GUIDE TO

POLICE MAGISTRATES

AND

JUSTICES OF THE PEACE.

A PRACTICAL GUIDE

TO

POLICE MAGISTRATES

AND

JUSTICES OF THE PEACE.

WITH AN ALPHABETICAL SYNOPSIS OF THE CRIMINAL LAW AND AN ANALYTICAL INDEX

BY

JAMES CRANKSHAW, B.C.L., MONTREAL

Advocate and Revising Barrister; Author of "An Annotated Edition of the Criminal Code of Canada, 1892."

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TO THE HONORABLE

SIR CHARLES HIBBERT TUPPER, K.C.M.G., Q.C.

MINISTER OF JUSTICE OF THE DOMINION OF CANADA

THIS WORK

IS

MOST RESPECTFULLY DEDICATED.

PREFACE.

Encouraged by the favor with which his annotated edition of the CRIMINAL CODE OF CANADA has been received by the profession throughout the Dominion, and prompted, also, by the urgent solicitation of his publishers, the Author ventures to make another effort in the field of legal literature.

The present work is intended for the guidance of Justices of the Peace, and to be of practical use,—as a book of ready reference,—to Police Magistrates, Magistrates' Clerks, and legal practitioners. It is based, mainly, though not solely, upon the Criminal Code; and, with the view of bringing the work up to date, the latest statutory changes and amendments, including those made by the Dominion Parliament in 1894, as well as the most recent judicial decisions of importance have been incorporated and carefully noted in their proper places.

After a short introduction on the origin of the office of a Justice of the Peace and the growth of the institution to its present state of importance, the work is divided into four divisions. The FIRST treats of the modes of and the formalities attending the appointment of Justices of the Peace and Police Magistrates and of their respective powers, duties and responsibilities; the SECOND treats of the parties to the commission of crimes, and of the extent of the Criminal Law as to time, persons, and place; the THIRD deals with the prosecution of criminal offenders, the jurisdiction of the criminal courts and of Magistrates and Justices of the Peace, the general powers

of summary arrest of criminal offenders, the modes of prosecuting indictable offences, the procedure before and at the preliminary enquiry into charges triable by indictment, the procedure in summary trials of indictable offences, speedy trials, and trials of juvenile offenders, and the procedure in connection with the summary trial and conviction of persons charged with non-indictable offences, including the subsequent proceedings by way of appeal, reserved case, *certiorari*, and *habeas corpus*; while the FOURTH division consists of an alphabetical synopsis of the criminal law.

Besides all the necessary forms, appropriately distributed according to the several subjects to which they relate, a table of indictable offences is placed at the end of the chapter upon procedure in preliminary enquiries, and at the end of the chapter on summary convictions a table is given of non-indictable offences.

J. C.

MONTREAL, 31st January, 1895.

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ABBREVIATIONS AND REFERENCES.

Ad. & E. (*or* A. & E.) .....Adolphus & Ellis' Reports.
Allen..... .....Allen's New Brunswick Reports.
Am. Rep.....American Reports.
Ann. Reg..... .....Annual Register.
Anon..... ..... .Anonymous.
Arch. Cr. Pl. & Ev..... Archbold's Criminal Pleading and Evidence.

B. & Ald.....Barnewall & Alderson.
B. & Ad..... .....Barnewall & Adolphus.
B. & B. (*or* Brod. & B.).....Broderip & Bingham.
B. & C. (*or* B. & Cr.) .....Barnewall & Cresswell.
Barn..... .....Barnardiston.
Bell C. C..... .....Bell's Crown Cases.
B. & S.....Best & Smith.
B. & P. (*or* Bos. & P.).....Bosanquet & Puller.
Bing..... .....Bingham.
Bish. New Cr. L. Com.....Bishop's New Criminal Law Commentaries.
Bl. Com.....Blackstone's Commentaries.
Broom's Leg. Max.....Broom's Legal Maxims.
Broom's Com L ....Broom's Common Law Commentaries.
Bull. N. P..... .....Buller's Nisi Prius.
Bur. Dig.....Burbridge's Digest Criminal Law.
Burr..... .....Burrow's Reports.

Cald.....Caldecott's Cases.
Camp.... .....Campbell's Reports.
Can. L. J..... .....Canada Law Journal.
Can. L. T. (*or* C. L. T.).....Canadian Law Times.
Can. S. C..... .....Canada Supreme Court Reports.
Carr ... .Carrington's Criminal Law.
C & K .....Carrington & Kirwan's Reports.
C. & M. (*or* Car. & M.).....Carrington & Marshman's Reports.
C. & P.....Carrington & Payne's Reports.
Chit..... .....Chitty's Criminal Law.
Chit. Rep.....Chitty's Reports.
Carth.....Carthew's Reports.
Cl. & F..... .....Clark & Finnelly.
Co. Litt..... .....Coke upon Littleton.
Comb.... ....Comberbach.
C. S. C..... .....Consolidated Statutes of Canada.
C. S. L. C..... ..... " " Lower Canada.
C. S. U. C..... " " Upper "
Cranch..... .....Cranch's U. S. Supreme Court Reports.

Cr. L. Mag.....Criminal Law Magazine.
Cromp. & M.....Crompton & Meeson's Reports.
C. M. & R.....Crompton, Meeson & Roscoe's Reports.
C. C. R.....Crown Cases Reserved.
Cowp.....Cowper's Reports.
Cox C. C.....Cox's Criminal Cases.

Dalt.....Dalton's Justice of the Peace.
D. & M.....Davison & Merival's Reports.
Dears.....Dearsley's Crown Cases.
Dears. & B.....Dearsley & Bell's Crown Cases.
Den.....Denison's Crown Cases.
Dick.....Dickinson's Quarter Sessions Practice.
Dor. Q. B.....Dorion's Queen's Bench Rep. (Quebec.)
Doug.....Douglas' Reports.
Dowl.....Dowling's Reports.
Dowl. & L. (*or* D. & L.).....Dowling & Lownde's Reports.
D. & R.....Dowling & Ryland's Reports.

East.....East's Reports.
East P. C.....East's Pleas of the Crown.
E. & B.....Ellis & Blackburn's Reports.
E. B. & E.....Ellis, Blackburn & Ellis.
E. & E.....Ellis & Ellis.
Esp.....Espinasse.

Fort.....Fortescue.
F. & F.....Foster & Finlason.
Fost.....Foster's Crown Cases.

Greenl. Ev.....Greenleaf on Evidence.
Greenw. & M. Mag. G.....Greenwood & Martin's Magisterial Guide.

Hale, P. C.....Hale's Pleas of the Crown.
Han.....Hannay's New Brunswick Reports.
Hawk. P. C.....Hawkins' Pleas of the Crown.
H. L. C.....House of Lords Cases.
How. St. Tr.....Howell's State Trials.
H. & N.....Hurlstone & Norman.

Inst.....Institutes (Coke's).
Ir. C. L. R.....Irish Common Law Reports.
Ir. L. T.....Irish Law Times.

Jur.....The Jurist
J. P.....Justice of the Peace.

Keb.....Keble's Reports.
Kel.....Kelyng.

L. J. (M. C.).....Law Journal (Magistrate's Cases).
L. J. (P. C.).....Law Journal (Privy Council).
L. J. (Q. B.).....Law Journal (Queen's Bench).

L. R. App. Ca. ..... Law Reports (Appeal Cases, House of Lords and Privy Council).
L. R., C. C. R. ..... Law Reports (Crown Cases Reserved).
L. R., P. & D. ..... Law Reports (Probate & Divorce).
L. R., Prob. ..... Law Reports (Probate).
L. R., Q. B. ..... Law Reports (Queen's Bench).
L. M. & P. ..... Lowndes, Maxwell & Pollock's Reports.
L. T. ..... Law Times.
L. N. ..... Legal News (Montreal).
L. & C. ..... Leigh & Cave's Crown Cases.
Lev. ..... Levinz.
Lew. ..... Lewins Crown Cases.
Ld. Raym. ..... Lord Raymond.
L. C. J. ..... Lower Canada Jurist.
L. C. L. J. ..... Lower Canada Law Journal.
L. C. R. ..... Lower Canada Reports.
Leach ..... Leach's Crown Cases.

M. & G. (*or* M. & Gr.) ..... Manning & Granger's Reports.
Man. L. R. ..... Manitoba Law Reports.
Marsh. ..... Marshall's Reports.
M. & Sel. ..... Maule & Selwyn.
M. & W. ..... Meeson & Welsby.
Mod. ..... Modern Reports.
Moo. ..... Moody's Reports.
M. & M. ..... Moody & Malkin's Reports.
Mon. L. D. ..... Monthly Law Digest (Montreal).
M. L. R. (Q. B.) ..... Montreal Law Reports (Queen's Bench).
M. L. R. (S. & C. C.) ..... Montreal Law Reports (Superior and Circuit Courts).
Moo. & R. ..... Moody & Robinson's Reports.
M. & P. ..... Moore & Payne's Reports.
M. & S. (*or* Moo. & S.) ..... Moore & Scott's Reports.

N. B. R. ..... New Brunswick Reports.
N. S. R. ..... Nova Scotia Reports.

Odg. Lib. & Sl. ..... Odgers on Libel & Slander.
Oke's Mag. Syn. ..... Oke's Magisterial Synopsis.
Ont. App. Rep. (*or* Ont. A. R.) .. Ontario Appeal Reports.
Ont. R. (*or* O. R.) ..... Ontario Reports.

Paley ..... Paley on Summary Convictions.
P. E. I. Rep. ..... Prince Edward Island Reports.
P. & D. ..... Perry & Davidson.
Plow. (*or* Plowd.) ..... Plowden.
P. & B. ..... Pugsley & Burbridge's Reports (N. B.).
Pugs. ..... Pugsley's Reports (N. B.).

Q. L. R. ..... Quebec Law Reports.
Que. Off. Rep. (Q. B.) ..... Quebec Official Reports (Queen's Bench.)

3 R. & 8 R. ..... "The Reports" (Chancery Division).
1 R. & 9 R. ..... " " (Queen's Bench Appeals).
5 R. & 10 R. ..... " " (Queen's Bench Division.)

R. S. C. ..... Revised Statutes of Canada.
R. S. B. C. ..... " " British Columbia.
R. S. N. B. ..... " " New Brunswick.
R. S. N. S. ..... " " Nova Scotia.
R. S. O. ..... " " Ontario.
R. S. Q. ..... " " Quebec.
Rev. Leg. ..... Revue Legale (Quebec).
Roscoe Cr. Ev. ..... Roscoe's Criminal Evidence.
Russ. & Geld. (*or* R. & G.) ..... Russell & Geldert's Reports (N. S.).
R. & R. (*or* Russ & Ry.) ..... Russell & Ryan.
Russ. Cr. ..... Russell on Crimes.
R. & M. (*or* Ry. & M.) ..... Ryan & Moody.

Salk. ..... Salkeld's Reports.
Saund. ..... Saunders' Reports.
Show. ..... Shower's Reports.
Sid. ..... Siderfin's Reports.
Sir T. Raym. ..... Sir T. Raymond's Reports.
Sm. L. C. ..... Smith's Leading Cases.
Stark. Ev. ..... Starkie on Evidence.
Stark. ..... Starkie's Reports.
Steph. Com. ..... Stephen's Commentaries.
Steph. Dig. Cr. Pro. ..... Stephen's Digest of Criminal Procedure.
Steph. Gen. V. C. L. ..... Stephen's General View of Criminal Law.
Steph. Hist. C. L. ..... Stephen's History of the Criminal Law.
Str. ..... Strange's Reports.
Stev. Dig. ..... Steven's Digest of New Brunswick Reports.
St. Tr. ..... State Trials.

T. R. ..... Term Reports (Durnford & East).
Tayl. Ev. ..... Taylor on Evidence.
Taunt. ..... Taunton's Reports.
Tyrw. (*or* Tyr.) ..... Tyrwhitt.

U. C., C. P. ..... Upper Canada, Common Pleas.
U. C., Q. B. ..... Upper Canada, Queen's Bench.

Ventr. ..... Ventris.
Ves. ..... Vesey's Reports.

W. Bl. ..... William Blackstone's Reports.
W. N. ..... Weekly Notes.
W. R. ..... Weekly Reporter.
Whart. C. L. ..... Wharton's Criminal Law.

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CITED BY NAME.

INTRODUCTION.

ORIGIN OF THE OFFICE OF JUSTICE OF THE PEACE.

Early English Courts.—The territorial divisions bearing upon the subject of the administration of justice in England, at the time of the Norman Conquest, were the KINGDOM, the COUNTY or SHIRE, the HUNDRED or WAPENTAKE, and the TITHING, TOWNSHIP or PARISH, the greater townships being called *burhs*. The Hundreds or Wapentakes were large districts or divisions of the County; and the townships, tithings, parishes, and *burhs*, or boroughs, were subdivisions of the Hundred.

For each county or shire there was an *ealdorman*,—(whose office became, about the time of the Conquest, merged in the titular dignity of an earl),—and there was also a *viscount* or *sheriff* for each county. There were, for each township or tithing, a *reeve* and four other principal inhabitants, and there was, very likely, a *chief officer* for every hundred.

This organization formed the police system of the country, and, nominally, at least, continues to the present day. For England still has its shires with their sheriffs, its hundreds with—until 1869, —their high bailiffs, chief constables, or other such officers, and its parishes, townships, or tithings, with,—until 1872,—their parish constables; although the police functions of these various officers were, before the dates just mentioned, practically superseded by more modern police arrangements.

From a period much earlier than the Conquest, the King of England had come to be regarded as the "source of justice, the lord and patron of his people, and the owner of the public lands." Occasionally, he exercised his high prerogative of administering justice either personally or by his officers in immediate attendance

upon him, but the regular and stated method of doing so was through the local courts, held before his officers in the Counties and the Hundreds, each such court being in the nature of a public meeting attended by specified "*suitors*" or members. The *suitors* at the Hundred Court were the parish priest, the reeve, and the four principal men of each township in the Hundred; and, at the County Court, the *suitors* were the same persons from every township, parish or tithing in the whole county, together with all the county's land owners and public officers.

These County and Hundred Courts had civil and criminal jurisdiction. On the criminal side the Court was called the *tourn* or circuit of the Sheriff, who, when the *ealdorman's* office was merged in the earl, became, in connection with the administration of justice, the chief officer of the county; and there appears, in reality, to have been no distinction, for the purposes at least of *criminal* jurisdiction, between the Hundred Court and the County Court; the Sheriff's *tourn* or circuit being simply the County Court held in and for a particular Hundred.

The Court seems to have consisted of the suitors collectively; but a representative body of twelve men (possibly the predecessors of the Grand Jury of later times), appears to have been instituted as a Judicial Committee of the Court.

The procedure consisted of *accusation* and *trial;* the accusation being made either by the above mentioned Committee, by the reeve and the four principal men of a township, or by a private accuser; and, as the proceedings were conducted orally, the memorials of the Court were entrusted to the recollections of the *Witan*, the Judges by whom the decrees were pronounced; so that if evidence was required of judicial transactions, the proof was made by the Hundred or the Shire in its corporate capacity, the suitors bearing witness to the judgments pronounced by them or their predecessors. (1)

Decline of the County or Hundred Courts.—It will thus be seen that, before the Conquest, the ordinary Court in

(1) 1 Steph. Hist. Cr. L., 65-68.

criminal cases was the County or Hundred Court, which, however, was subject to the general supervision and concurrent jurisdiction of the King's Court; and the same state of things was continued by the Conqueror and his sons, with this difference, that the supervision of the King's Court and the exercise of its concurrent jurisdiction were gradually increased and the jurisdiction and importance of the local courts were gradually narrowed and diminished: and as the King's Court developed into the Court of King's Bench and the Courts of the King's Justices of Assize, Oyer and Terminer and Gaol Delivery, and as the exercise of the criminal jurisdiction of these Courts and of the Quarter Sessions of the local Justices of the Peace, established under Edward III, became more and more general, the result was that, in the reign of Edward IV, the County Court, although it still retained a separate existence, was virtually abolished.

Conservators of the Peace.—The *peace* in its broadest sense comprised the whole of the criminal law. Most offences were said to be against the peace, and all those magistrates who had authority to take cognisance of criminal offences were considered as guardians and conservators of the peace, *ex officio*. Such, for instance were the King's Justices, the inferior Judges, and the Sheriffs, Reeves, Constables, Tithing men, Headboroughs, and so on. The other keepers and conservators of the peace,—*custodes* or *conservatores pacis*,—were those who,—without having any other office,—were *simply* and *merely* conservators of the peace, either by prescription, or by the tenure of their lands, or by having been elected by the freeholders assembled in full County Court, in pursuance of the writ directed for that purpose to the Sheriff (1).

Institution of Justices of the Peace.—The statute instituting Justices of the peace,—1 Edw. III, st. 2, c. 16, passed in 1327,—ordained that, for the better maintaining and keeping of the peace in every county, good and lawful men should be *assigned* by commission of the king. The election of conservators of the peace was thus taken from the people, and their appointment given

(1) 2 Steph Comm., 642-644; 2 Reeves Eng. L. (Finl.) 228, 329.

to the King. But, although by the 4 Edw. III, c. 2, (which contained also the regulations for appointing the Justices of Assize and Gaol Delivery),—the powers of the new conservators of the peace were increased, and although by the 18 Edw. III, st. 2, c. 2, it was enacted that, when necessary, they—*jointly with others wise and learned in the law*,—should be assigned, by the King's Commission, to *hear and determine* criminal offences,—they were not called *Justices* of the peace until, by later legislation, they, themselves, *independently of others learned in the law*, were empowered to hold courts, four times in the year, for the trial of criminal offenders (1).

Creation of their Summary Jurisdiction.—By successive statutes the powers exercisable by Justices in Quarter Sessions for the trial of offenders were much extended; but they had no general powers of summary conviction, and, except in cases of forcible entry (2), or of riot (3), or on the confession in certain cases, of the party charged (4), they could only proceed according to the common law mode of trial by jury, until the passing of the 2 Hen. 7, c. 3, by which individual Justices were authorised, *at their discretion*, to hear and determine upon information (for the king) all offences, short of felony, against any statute then in being. Under this statute Justices of the Peace were enabled to, summarily, and without any presentment or trial by jury, deal with and punish all offences short of felony. But it was repealed by the 1 Hen. 8, c. 6; and the earliest instance which we find recorded of a summary conviction by a Justice of the Peace, upon a penal statute, is one rendered on the statute 33 Hen. 8, c. 6, against the practice of carrying dags or short guns. (5).

In the reign of James I, great additions were made to the powers of Justices of the Peace: and the passing in that and the two following reigns of numerous statutes respecting ale houses, profane swearing, drunkenness, embezzlement, the excise, the regulation of

(1) 34 Edw. III, c. 1; 36 Edw. III, st. 1, c. 12; 2 Steph. Com., 644; 2 Reeve's Eng. L. (Finl.), 330, 332.
(2) 12 Ric. I, c. 2.
(3) 13 Hen. 4, c. 7.
(4) 2 Hen. 5, st. 1, c. 4.
(5) Paley Sum. Conv. 6 Ed. 10.

trade, and the Game Act (22 and 23 Car. 2, c. 25), occasioned a more frequent recourse to the exercise of their summary jurisdiction. (1).

At first, the judgments of the Justices of the Peace were final. There was no appeal from a Justice's decision in summary matters until the 22 Car. 2, c. 1,—called the Conventicle Act,—gave a right of appeal to the verdict of a jury at the next Quarter Sessions; and this was shortly afterwards altered, by the 22 and 23 Car. 2, c. 25, to an appeal to the Justices in Sessions, without a Jury. (2).

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(1) Kerr's Mag. Acts, 2, 3; Carter, 22.
(2) Carter, 23.

FIRST DIVISION.

Appointment of Justices of the Peace and Police Magistrates: and their Powers, Duties and Responsibilities.

CHAPTER I.

Justices of the Peace.

How Constituted.—Justices of the peace are generally divided into two classes, namely, those who are such by virtue of and while holding some other office, and those who are constituted such by commission.

Justices Ex-Officio.—Of those who are justices of the peace by virtue of and while holding some other office are the judges of all the Superior Courts of law, including the Supreme and Exchequer Courts of Canada, the Supreme Court of Judicature in Ontario, and the Court of Queen's Bench of the province of Quebec; (1) and every police or stipendiary magistrate, recorder, mayor, alderman, counsellor and reeve is, during his tenure of office as such, a justice of the peace *ex officio*. (2)

Every commissioner of police appointed by commission of the Governor General in council, for any one or more of the provinces, territories, or districts of Canada, or for any one or more of the districts or counties in any province, territory, or district or for any temporary judicial district in Ontario, is given, for the carrying out of the criminal laws and other laws of Canada the right of

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(1) R. S. O., c. 71, sec. 1; R. S. Q., Art. 2447.

(2) R. S. Q., Arts. 2485, 2489, 2492; R. S. O., c. 72, sec. 18; C. S. B. C., (1888), c. 78, sec. 3; R. S. Man., (1891), c. 93, sec. 3; 52 Vic., (Que.), c. 79, s. s. 13, 16.

exercising, within the limits of his jurisdiction, all the powers, authority, rights and privileges by law appertaining to justices of the peace generally. (1)

Every commissioner and every assistant commissioner of the North West Mounted Police Force is vested with all the powers of two justices of the peace, under the *Mounted Police Act*, 1894, or any other Act in force in the North West Territories; and every superintendent of the force is *ex-officio* a justice of the peace. (2).

For all the purposes of the *Indian Act*, or of any other Act respecting Indians, and with regard to any offence against the provisions of such Acts, or against the provisions of Article 98 of the *Criminal Code* (*Inciting Indians to riotous acts*), or of Article 190 (*Prostitution of Indian women*), and with reference to any offence by an Indian against any of the provisions of Part XIII of the Criminal Code (*Offences against morality*), every Indian agent is *ex-officio* a Justice of the Peace, and is vested with the power and authority of two Justices of the Peace, anywhere within the territorial limits of his jurisdiction, as defined by his appointment or otherwise defined by the Governor in Council, whether the Indian or Indians charged with or in any way concerned in or affected by the offence, matter or thing to be tried, investigated or dealt with, are or are not within his ordinary jurisdiction, charge or supervision as an Indian agent; (3) and in the North West territories, and in the provinces of Manitoba and British Columbia, every Indian agent is, for all such purposes, and with respect to any such offence as aforesaid, a justice of the peace *ex-officio*, and has the power and authority of two justices of the peace anywhere in the said territories or provinces within which his agency is situated, whether or not the territorial limits of his jurisdiction as a justice, as defined in his appointment or otherwise defined, extend to the place where he may have occasion to act as such justice or to exercise such power or authority, and whether the Indians charged with or in any way concerned in or affected

(1) R. S. C., c. 184, s.s. 1, 3.

(2) 57 and 58 Vict., c. 27, sec. 9.

(3) 57 and 58 Vict., c. 32, sec. 8.

by the offence, matter or thing to be tried, investigated or otherwise dealt with, are or are not within his ordinary jurisdiction, charge or supervision as Indian agent. (1)

The Governor General in council may, by the regulations to be made, from time to time, for the enforcement of the provisions of the Quarantine Act, constitute any quarantine officer to be, by virtue of his office or employment, a justice of the peace for and in connection with the quarantine station to which he is assigned, whether such officer be otherwise qualified or not. (2)

Every fishery officer appointed under the *Fishery Act* is, for all the purposes of the Act and the regulations made under it, a justice of the peace *ex officio* within the district for which he is appointed to act as such fishery officer. (3)

Under the "*Dominion Elections Act*," every returning officer and every deputy returning officer is, from the time of his taking the oath of office, on the occasion of an election, until the day after the closing of the election, a conservator of the peace, with all the powers appertaining to a justice of the peace. (4)

Some of the provincial statutes confer similar powers upon returning officers and their deputies during elections for the local legislatures. (5) And on the occasion of any poll for taking the votes of the electors of a county or city for and against the adoption of a petition for bringing the "*Canada Temperance Act*" into force, every returning officer and every deputy returning officer is, from the time of taking his oath of office until the day after the summing up of the votes, a conservator of the peace invested with all powers appertaining to a justice of the peace. (6)

Whenever a vessel of Her Majesty's Navy enters the Gulf of St. Lawrence, every officer attached or belonging to such vessel, and

(1) 57 and 58 Vic., c. 32, sec. 8.
(2) R. S. C., c. 68, sec. 5.
(3) R. S. C., c. 95, sec. 2.
(4) R. S. C., c. 8, sec. 73.
(5) See R. S. Q., Art. 395, and 55 Vict., (Ont.), c. 3, sec. 137.
(6) R. S. C., c. 106, sec. 65.

holding the commission of vice-admiral, post-captain, captain, or commander in Her Majesty's navy, and any lieutenant in such navy, having the command of any such vessel is, while such vessel remains within the limits of the province of Quebec, *ex officio* a justice of the peace for the districts of Gaspe, Saguenay and Rimouski, without taking any oath of office and without being subject to the general requirements of the law as to residence and property qualification. (1)

Justices by Commission.—Of this class are those commonly known as justices assigned to keep the peace in and for some particular county, district, or place.

Their appointment in Canada.—Although the prerogative right to appoint justices of the peace within the Dominion of Canada and in each of the provinces is exerciseable by the Crown, directly, the power to appoint them is also vested in the Dominion Government by virtue of the British North America Act; but as the administration of justice is by that Act delegated to the provinces, the appointments are, for that reason, and by virtue, moreover, of various Acts of the Dominion and Provincial legislatures, invariably made in each province by the Lieutenant Governor in council, who names, for each county, district or place, any number that he may deem necessary. (2)

In Ontario, justices of the peace may be appointed in and for any county, city and town, and in and for any provisional judicial, temporary judicial, or territorial district or provisional county, or for any portion of the territory of the province not attached to any county for ordinary municipal or judicial purposes. (3)

The Lieutenant-Governor of Quebec appoints as justices of the peace in the several districts of the province the most efficient persons dwelling in such districts respectively: and all qualified

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(1) R. S. Q. Art. 2567.

(2) R. S. Q., Art. 2545; R. S. O., c. 71, sec. 3; R. S. C., c. 50, sec. 64; R. S. C., c. 53, sec. 23; R. v. Bush, 8 C. L. T. 131; R. v. Bennett, 1 Ont. R., 445; *Ex parte* Williamson, 24 Supr. Ct., (N. B.) 64.

(3) R. S. O., c. 71, sec. 3.

persons so appointed have all the powers, authorities, rights and privileges and are subject to all the duties, obligations and responsibilities conferred or imposed upon justices of the peace. (1)

In the province of Quebec the Lieutenant-Governor in Council may also from time to time appoint justices of the peace with jurisdiction extending outside the territorial limits assigned to any district or county in the province and over places which, though comprised within the limits of a district, are in remote parts of the province; and, in regard to any such justice, it is not necessary for him to be resident within or to possess any property qualification whatever in that part of the province for which he may be appointed or over which his jurisdiction may extend.(2) The Lieutenant-Governor in Council may, moreover, by special commission, appoint one or more justices of the peace with jurisdiction extending over the whole of the province of Quebec, or over such districts as may be named in such special commission; every justice so appointed being invested with all the rights and powers of one or more justices of the peace; and it being unnecessary for him to reside or possess real estate in the province. (3)

In each of the Provinces of Nova Scotia and New Brunswick the Lieutenant-Governor may appoint, in and for the several and respective counties of the Province, such justices of the peace as may be deemed expedient and proper. (4)

The Lieutenant-Governor of the North West Territories of Canada may appoint justices of the peace, with jurisdiction as such throughout the Territories. (5) And the Governor-General of Canada in Council, or such person as he deputes for the purpose, may appoint game guardians in the North West Territories to carry out the provisions of the *North West Game Preservation Act*, 1894; and, after taking the oath of office prescribed by the Act, every game guardian so appointed has, for the purposes of the Act, within the district for which he is appointed game guardian, all

(1) R. S. Q., Arts. 2545, 2562.
(2) *Ib.*, Arts. 2565, 2566.
(3) R. S. Q., Arts. 2572, 2573, 2574.
(4) R. S. N. S. (1884), c. 101, sec. 1; C. S. N. B. (1877), c. 29, sec. 1.
(5) R. S. C., c. 50, sec. 64; 57 & 58 Vic. c. 17, sec. 7.

the powers of a Justice of the Peace in and for the North West Territories. (1)

In Manitoba, justices of the peace may be appointed by the Lieutenant-Governor in or for any city, town or other municipality in the Province, or for the whole Province; and they must be chosen from the most competent persons dwelling in the places for which they are appointed. (2) And the Lieutenant-Governor of Manitoba—who is *ex-officio* Lieutenant-Governor also of Keewatin, a separate district of the North West Territories—is authorized to appoint justices of the peace for the Keewatin district. (3)

In British Columbia, justices of the peace may be appointed in and for any county or electoral district in the Province, or in or for any less extensive jurisdiction. (4)

The Commission appointing justices of the peace may be *general* or *special*. It is a general commission of the peace when it names or replaces all the justices of a certain district, county or place; and it is special when it names one or more justices to be added to the general commission.

The commission, whether general or special, bears the signature of the Lieutenant-Governor and the great seal of the Province where it is issued. It is addressed to the persons therein named, and it is sent to and remains deposited with the clerk of the peace.

Property Qualification.—With regard to a justice of the peace who is such *ex officio*, no property qualification is required of him, and some of the statutes expressly declare that the provisions of the law as to property qualification shall not apply to the Members of Her Majesty's Executive Council, nor to the Judges of the Supreme Court of Judicature, or of the courts of Queen's Bench or of the County courts, nor to any police magistrate, nor to Her Majesty's Attorney-General, nor to any of Her Ma-

(1) 57 and 58 Vict., c. 31, sec. 22.
(2) R. S. Man. (1891), c. 93, ss. 4, 6.
(3) R. S. C., c. 53, ss. 3, 4, 23.
(4) 55 Vict. (B. C.), c. 29, sec. 6.

jesty's Counsel learned in the law, who, by reason of their office, are justices of the peace, nor to any mayor, alderman, councillor, reeve or deputy reeve of any municipality who is *ex officio* a justice of the peace. (1) But, a justice of the peace appointed by commission, must as a rule, have a property qualification.

In the provinces of Ontario and Quebec it is specially enacted that in all cases not otherwise provided by law, no person shall be a justice of the peace, or act as such within any district or place, (except,—as to the province of Quebec,—the Magdalen Islands, and the counties of Chicoutimi and Saguenay), unless he has in his actual possession, for his own proper use, an interest in real estate, lying and being within the province, of or above the value of $1200, over and above all encumbrances, rents and charges payable out of or affecting the same. (2) In Manitoba, a justice of the peace must, in all cases not otherwise provided, be the owner, in fee simple, for his own proper use, of lands lying and being in that province, of or above the net value of $500, over and above what will satisfy and discharge all encumbrances affecting the same, and over and above all rents and charges payable out of or affecting the same; (3) and in the North west Territories, a justice of the peace must be the owner in fee simple of lands there of the net value of $300, and have been three years residing in the Territories. (4

Oath of Qualification.—A justice of the peace, named by general or special commission, must, before acting as such, take and subscribe an oath that he has the property qualification required by the law of his province.

In the province of Quebec the oath of qualification is taken before the clerk of the peace, or before some justice of the peace for the district for which the new justice intends to act, or before a commissioner charged by *dedimus potestatem* to administer oaths and receive declarations, and it must be in the following form :—

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(1) R. S. O., c. 71, sec. 2; R. S. Man. (1891), c. 93, sec. 21; R. S. Q., Arts. 2488, 2491, 2559.

(2) R. S. O., c. 71, sec. 9; R. S. Q, Art. 2547.

(3) R. S. Man. (1891), c. 93, sec. 9.

(4) 57 & 58 Vic. c. 17, sec. 7.

"I, A. B., do swear that I truly and *bonâ fide* have, to and for my own proper use and benefit, such an estate (*specifying the same by its local description, rents, or anything else*), as doth qualify me to act as a justice of the peace for the district of..... according to the true intent and meaning of section second of chapter fourth of title sixth of the Revised Statutes of the Province of Quebec, respecting the qualification of justices of the peace; (*nature of such estate, whether land, and if land, designating it*), and that the same is lying and being, (*or* issuing out of lands, tenements and hereditaments, situate) within the township, (*parish or seigniory*) of..... .....(*or* in the several townships (*parishes or seigniories*) of.....(*or as the case may be*). So help me God." (1)

In the province of Ontario the oath of qualification must be taken within three months from the date of the commission under which the justice is appointed, or the commission so far as it relates to him, is deemed to be absolutely revoked and cancelled. (2) It is taken before some other Justice of the Peace or before any person appointed by the Lieutenant-Governor to administer oaths and declarations, or before the clerk of the peace for the county or district for which the new justice intends to act, and it must be in the following form:

"I, A.B., do swear that I truly and *bonâ fide* have to and for my own proper use and benefit such an estate as qualifies me to act as a justice of the peace for the county, (*or* as the case may be), of .....according to the true intent and meaning of the Act respecting the qualification and appointment of justices of the peace, to wit, (*nature of such estate, whether land, and if land, designating*), and that the same is lying and being, (*or*, is issuing out of lands, tenements and hereditaments situate), within the township (*or*, in the several townships, *or*, as the case may be) of.....So help me God." (3)

In the province of Manitoba the oath of qualification is taken

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(1) R. S. Q., Art. 2547.
(2) 54 Vict., (Ont.), c. 16, sec., 2.
(3) R. S. O., c. 71, s. 10.

before some justice of the peace or other person authorized to take affidavits, and is in the following form :

"I, A. B., of.....in the province of Manitoba, do swear that I truly and *bonâ fide* have, to and for my own proper use and benefit, an estate in fee simple in lands situate in the province of Manitoba of such a value as doth qualify me to act as a justice of the peace, according to the true intent and meaning of the statute in that behalf, and that such lands are the following : (*parish, township, range etc.*) So help me God." (1)

In the North West Territories, the oath of qualification is in a similar form, and it and the oath of office must be taken before the Lieutenant Governor, a Supreme Court judge, or some other justice of the peace. (2)

A certificate of the oath of qualification having been so taken and subscribed must in the provinces of Quebec and Ontario be *forthwith* deposited.—by the justice of the peace who has taken the same.—with the clerk of the peace for the district or county within which the newly appointed justice is to act ; (3) and in the province of Manitoba such a certificate must be *forthwith* deposited in the office of the provincial secretary. (4)

If the land upon which a justice of the peace qualifies be mortgaged, it will be sufficient, if over and above the amount of the mortgage it be of the net value required by the law fixing the property qualification. (5)

The *interest* of a justice of the peace in property in respect of which he qualifies as such, under the R. S. O., c. 71, sec. 9, need not be in itself worth $1200. It will be sufficient if he have, *in lands which are of the value of* $1200 *over and above what will satisfy and discharge all encumbrances affecting the same*, such an estate or interest as is mentioned in the section, no matter what may be the actual value of the estate or interest which he possesses. (6)

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(1) R. S. Man., (1891), c. 93, s. 9.
(2) 57 & 58 Vic. c. 17, sec. 7.
(3) R. S. Q., Art. 2548 ; R. S. O., c. 71, s. 12.
(4) R. S. Man. (1891), c. 93, s. 10.
(5) Frazer v. McKenzie, 28 U. C. Q. B., 255.
(6) Weir v. Smyth, 19 App. Rep. (Ont.), 433 ; 12 C. L. T. 347.

A person who acts as a justice of the peace without having taken or subscribed the oath of qualification or without having the required property qualification is liable to a penalty, which in each of the provinces of Quebec, Ontario and Manitoba is fixed at $100. (1) But notwithstanding his liability to a penalty, it seems that where a person, whose name is in the commission, acts as a justice of the peace, without having the necessary property qualification, his acts are not, on that account, invalid. (2) A different rule, however, prevails if a justice of the peace acts in a matter over which he has no jurisdiction; so that a justice who committed a man for a supposed offence, when, in fact, there was no accusation against him, was held liable to an action in trespass. (3)

A person who assumes to act as a Justice of the Peace by virtue of his being an alderman of a city, and not under a commission of the peace, is not legally qualified to so act as a Justice of the Peace until he has taken the oath of qualification required of him as an alderman under the Municipal Acts. (4) But when he has taken his oath of qualification as an alderman he does not (as we have already seen) need any additional property qualification, nor to take any further oath, to enable him to act as a Justice of the Peace by virtue of his office as an alderman. (5)

Oaths of Allegiance and of Office.—The new Justice of the Peace must, before entering upon the duties of his office, take the oath of allegiance and an oath of office.

In the province of Ontario these oaths may be taken before any other justice of the peace, or before any other person appointed by the Lieutenant-Governor to administer oaths and declarations, or before the clerk of the peace of the county or district in which the new justice is to act; and the oaths must then be *forthwith* transmitted or delivered to and filed by the clerk of the peace of

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(1) R. S. Q., Art. 2550; R. S. O., c. 71, s. 15; R. S. Man., (1891), c. 93, s. 13.

(2) Margate Pier Co., v. Hannen & Dyson, 3 B. & A., 266; R. v. Hodgins 12 Ont. Rep. 367.

(3) Morgan v. Hughes, 2 T. R. 225; Lancaster v. Graves, 9 B. & C. 628; Mason v. Barker, C. & K. 100.

(4) R. v. Boyle, 4 C. L. J., N. S., 256; 4 P. R. (Ont.) 256.

(5) R. S. O., c. 71, sec. 2; R. S. Man. (1891), c. 93, sec. 21, *cit.* at p. 7 *ante*.

the county or district within which the new justice is to act. (1) And every person appointed a justice of the peace in Ontario, after the passing of the 54 Vict., (Ont.), c. 16, must, according to section 2 of that Act, take the oath of office as well as the oath of qualification within *three months* from the date of the commission under which he is appointed, or the commission so far as the same relates to him, is deemed to be absolutely revoked and cancelled.

In the provinces of Nova Scotia and New Brunswick the new justice is sworn before the clerk of the peace for the county or city and county for which such justice is appointed, and the clerk of the peace must keep a record thereof. (2)

In the province of British Columbia the oaths of allegiance and of office must be taken before some other justice of the peace within *thirty* days after the appointment, and they must within the same delay, be transmitted to the Provincial Secretary to be filed by him among the records of his office. (3)

Forms of Oath of Allegiance.—The general form of the oath of allegiance is as follows:

"I, A. B., do sincerely promise and swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria (*or the reigning Sovereign for the time being*) as lawful Sovereign of the United Kingdom of Great Britain and Ireland, and of this Dominion of Canada, dependent on and belonging to the said Kingdom, and that I will defend Her to the utmost of my power against all traitorous conspiracies or attempts whatever, which shall be made against Her person, crown and dignity, and that I will do my utmost endeavor to disclose and make known to Her Majesty, Her heirs or successors, all treasons or traitorous conspiracies and attempts which I shall know to be against Her or any of them; and all this I do swear without any equivocation, mental evasion or secret reservation.—So help me God." (4)

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(1) R. S. O., c. 71, s. s. 11, 12.
(2) R. S. N. S. (1884), c. 101, sec. 3; C. S. N. B. (1877), c. 29, sec. 3.
(3) C. S. B. C. (1888), c. 78, sec. 9; 55 Vic. (B. C.), c. 29, sec. 9.
(4) R. S. C., c. 112, s. 1.

In the province of British Columbia, the form of oath of allegiance required of every person appointed a justice of the peace or a stipendiary magistrate is as follows: (1)

"I, ... do solemnly promise and swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her heirs or successors.—So help me God.

(*Signature of Stipendiary Magistrate* or *J.P.*

Sworn and subscribed by the said ..... before me, at ..... this ..... day of .....A.D. 189.....

Forms of Oath of Office.—The general form of oath of office is as follows:

"I, A. B., do swear that I will well and truly serve our Sovereign Lady, Queen Victoria, in the office of justice of the peace, in and for the district (or county, etc.) of ....., and I will do right to all manner of people, according to the laws and usages of this province, without fear or favor, affection or illwill.—So help me God." (2)

In the Province of Ontario the form of the oath of office is as follows:

"I, A. B., of ....., in the county of ..... do swear that I will well and truly serve our Sovereign Lady, Queen Victoria, in the office of justice of the peace, and I will do right to all manner of people after the laws and usages of this Province, without fear, affection or illwill.—So help me God." (3)

In the Province of British Columbia the form of the oath of office to be taken by every person appointed a stipendiary magistrate or a justice of the peace is as follows:

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(1) C. S. B. C., (1888), c. 78, sec. 6.
(2) Oke's Mag. Syn., 13 Ed., 5.
(3) R. S. O., c. 71, sec. 11.

"I, ..., swear that, as a stipendiary magistrate (or justice of the peace), for the county (or electoral district, or part of the county or electoral district) of ...., in the Province of British Columbia, in all articles in the Queen's name to me directed, I will do equal right to the poor and to the rich, after my cunning, wit and power, and after the laws and customs of the realm and statutes therein made, and that I will take nothing for my office of stipendiary magistrate to be done but of the Queen, and fees accustomed and costs limited by statute.—So help me God. (*Signature of Stipendiary Magistrate* or *J. P.*)

Sworn and subscribed by the said ...., before me, at ....., this..... day of ..... A.D., 189 ." (1)

Persons Prohibited from Acting as Justices of the Peace.—Certain persons and officials are sometimes prohibited from acting as justices of the peace. For instance, the Ontario statute relating to justices of the peace enacts that, except where otherwise specially provided by law, no solicitor in any court whatever shall be a justice of the peace during the time he continues to practice as a solicitor; and that no person having, using or exercising the office of sheriff or coroner, in and for any county, district or place in Ontario, shall be competent or qualified to be a justice of the peace, or to act as such for any county, district or place wherein he is sheriff or coroner, during the time that he uses or exercises such office; and that every act done by a sheriff or coroner by authority of any commission of the peace during the time aforesaid shall be void. (2)

In the province of Quebec, no coroner can act as a justice of the Peace in cases arising out of facts which have been the subject of any inquest held by him; and every act so done by such coroner is absolutely void. (3)

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(1) C. S. B. C. (1888), c. 78, sec. 9; 55 Vic. (B. C.), c. 29, sec. 8.
(2) R. S. O., c. 71, ss. 7, 8.
(3) 57 Vic. (Que.), c. 26, sec. 1.

No sheriff in the districts of Quebec and Montreal can be a justice of the peace for the district wherein he is sheriff, during the time he exercises such office; and every act done by such sheriff, as a justice of the peace during such time is absolutely void. (1)

When not otherwise specially provided by law, no advocate can be a justice of the peace in and for any district of the province of Quebec during the time he continues to practice his profession. (2)

In Manitoba, when not otherwise provided by law, no barrister, attorney, or solicitor in any court whatever, shall be appointed or act as a Justice of the Peace in and for any portion of the province during the time he continues to practice as such. (3)

CHAPTER II.

Appointment of Police Magistrates.

In Ontario.—In the province of Ontario a salaried police magistrate is appointed by the Lieutenant-Governor for every city and for every town having more than 5,000 inhabitants, and also for every other town,—that is, every town of less than 5,000 inhabitants,—if two-thirds of the members of its council pass a resolution affirming the expediency thereof: the salary of such police magistrate to be paid by the city or town for which he is appointed. (4)

The Lieutenant-Governor may, moreover, at all times appoint an unsalaried police magistrate for any town of less than 5,000 inhabitants, without any resolution from its council. (5)

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(1) 57 Vic. (Que.), c. 26, sec. 1.
(2) R. S. Q., Art. 2546.
(3) R. S. Man. (1891), c. 93, sec. 7.
(4) R. S. O., c. 72, ss. 1, 2, 3.
(5) *Ib.*, sec. 5.

A salaried police magistrate may also be appointed for any county of Ontario, whose county council passes a resolution affirming the expediency thereof, the salary of such magistrate to be paid by the county ; (1) and every such county magistrate is vested with and exercises, within the county for which he is appointed, all the powers by law appertaining to police magistrates appointed for cities : (2) and he need not be actually resident within the county or district for which he is appointed (3).

The Lieutenant-Governor of Ontario may appoint more police magistrates than one for any county or union of counties or district or part of a district in which the *Canada Temperance Act* or a like Act is in force ; and any such magistrate holds office during pleasure, save that he ceases to be such police magistrate in case and from the time that the said Act or any new Act substituted therefore ceases to be in force in the county or district or part of a district aforesaid. (4)

The following is the oath of office to be taken by a Police Magistrate in Ontario :

"I, A. B., of ....., in the County of ....do swear that I will well and truly serve our Sovereign Lady, Queen Victoria, in the office of police magistrate, and I will do right to all manner of people, after the laws and usages of this Province, without fear or favor, affection or ill-will.—So help me God." (5)

This oath may be taken before any justice of the peace or before any person appointed by the Lieutenant-Governor to administer oaths or declarations, or before the clerk of the peace for the county or district in which the police magistrate is to act, and it must be *forthwith* transmitted by him to the clerk of the peace. (6)

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(1) R. S. O., c. 72, sec. 8.
(2) *Ib.*, sec. 12.
(3) *Ib.*, sec. 15.
(4) 50 Vic. (Ont.), c. 11, sec. 1.
(5) R. S. O., c. 72, ss. 22, 23.
(6) *Ib.*

In Ontario a police magistrate needs no property qualification, nor to take any other than the foregoing oath, to enable him to act as a justice of the peace. (1)

In Quebec.—The Lieutenant-Governor of the Province of Quebec may appoint stipendiary magistrates, called judges of the sessions of the peace, for each of the cities of Montreal and Quebec, with jurisdiction over the whole Province, to execute the duties of justices of the peace and such other duties as may be from time to time directed by the provincial secretary, for the more efficient administration of the police within the limits of the said cities, (2) and they are declared to be, in virtue of their office, justices of the peace for the districts in which the said cities are respectively situate, with jurisdiction as such over the whole Province and with all the powers and authority of any one or two justices of the peace, as the case may require, notwithstanding that they may not possess the property qualification required by law of any other person performing the duties of justices of the peace. (3)

Before beginning to execute the duties of his office every person appointed a judge of the sessions of the peace for the city of Quebec or for the city of Montreal must take, before a judge of the Court of Queen's Bench, or of the Superior Court, the following oath :

"I, A. B., do swear that I will faithfully, impartially and honestly, according to the best of my skill and knowledge, execute all the powers and duties of a judge of sessions of the peace, under and by virtue of sections fourth and fifth of chapter third of title sixth of the Revised Statutes of the Province of Quebec." (4)

Police magistrates may also be appointed by the Lieutenant-Governor of Quebec within any one or more districts of the Province or in any judicial district : and no police magistrate so appointed need possess any property qualification, nor be domiciled

(1) R. S. O., c. 72, sec. 24.
(2) R. S. Q., Art 2485.
(3) *Ib.*, Art. 2488.
(4) R. S. Q., Art. 2487.

or actually resident within any district for which he is appointed: (1) and the police magistrates so appointed have and exercise all the powers and authority, rights and privileges appertaining to police magistrates of cities (except as regards offences against municipal by-laws and as regards other purely municipal matters), and all the powers and authority, rights and privileges appertaining to justices of the peace generally. (2)

In Nova Scotia.—Upon the report of a committee appointed upon petition in that behalf by the General Sessions of any county or district in the Province of Nova Scotia, any place mentioned in and assigned by such report may, after compliance with certain formalities, be formed into a police division, to which one or more stipendiary justices are appointed from among the justices of the peace residing within the limits of such police division, the selection being made by the majority of such justices assembled at a meeting specially called for that purpose by the clerk of the peace; and the stipendiary justice or justices so selected, or one of them, acts as a police court within the limits of the said division whenever occasion requires or he or they think necessary. (3)

In Manitoba.—In Manitoba the Lieutenant-Governor in Council may appoint one or more police magistrates, and may define the territorial limits of their separate and respective jurisdictions. (4)

In Keewatin.—The Governor-General in Council may appoint, by commission under the great seal, one or more fit and proper persons as stipendiary magistrates within the district of Keewatin; and every such stipendiary magistrate exercises within the district of Keewatin, or within such limited portion of the same as is prescribed by the Governor-General in Council, the powers appertaining to any justice of the peace, or to any two

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(1) R. S. Q., Arts. 2490, 2491.

(2) *Ib.*, Art. 2492.

(3) R. S. N. S. (1864), c. 128, as amended and contained in Appendix A, R. S. N. S. (1884), pp. 15-16.

(4) R. S. Man. (1891), c. 93, sec. 2.

justices of the peace, under any laws or ordinances in force from time to time in that district. (1)

In British Columbia.—In British Columbia stipendiary magistrates may be appointed by the Lieutenant-Governor in Council, to act as such for any county or electoral district in the Province, or for any less extensive jurisdiction. (2)

Every person appointed a stipendiary magistrate in British Columbia must take the oaths of office and of allegiance within *thirty* days from his appointment (unless such time is extended by the Lieutenant-Governor in Council), or his appointment absolutely ceases and determines. (3)

In the North-West Territories.—In the North-West Territories, the judges of the Supreme Court of the territories are vested with all the powers, authority and jurisdiction of stipendiary magistrates; and the Governor General in Council may appoint police magistrates in the Territories with all the powers of two justices of the peace under any law in Canada; but no person can be so appointed unless he has practiced as an advocate, barrister or solicitor in Canada for three years, or unless he is a magistrate of three years standing in Canada.. (4)

CHAPTER III.

The Powers, Duties, and Responsibilities of Justices of the Peace and Police Magistrates.

Nature and extent of their powers.—The general powers of justices of the peace are derived from the commission of the peace which is addressed to and assigns the persons therein named jointly and severally to keep the peace in a particular

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(1) R. S. C., c. 53, s.s. 24, 25.

(2) 55 Vic. (B. C.), c. 29, sec. 5.

(3) 55 Vic. (B. C.), c. 29, sec. 9. For the forms of oath of office and allegiance, see pp. 12, 13, *ante*.

(4) R. S. C., c. 50, sec. 54; 57 & 58 Vic. c. 17, sec. 7.

county, district, city, or place, with all the powers and privileges by law and of right appertaining to the office of justice of the peace.

Besides the general powers which they derive from the commission of the peace.—which include all the powers of the ancient conservators of the peace, at the common law, to suppress riots, to take securities for the peace and to apprehend and commit criminal offenders.—there are many other powers and duties, (including the holding of special sessions for the granting of licenses and other special business), which by virtue of general and local legislation, devolve upon justices of the peace, and in the exercise of which they have sometimes civil as well as criminal jurisdiction. In their civil jurisdiction are included cases in which they are called upon to hear and determine complaints between masters and servants, and claims for assessments, rates, and other matters of a similar nature, under provincial Acts and civic and municipal by-laws. But their most important functions are those which they exercise in criminal matters; and these are so extensive that, while, as a general and almost invariable rule, the case of every person accused and brought to trial upon an indictment must, in the first instance, have been enquired into before a magistrate or a justice of the peace, and have been by him sent for trial, and while, in the general or quarter sessions of the peace, certain Magistrates, have (under Article 539 of the Code), jurisdiction.—concurrently with the Superior Courts of criminal jurisdiction.—to try a great many indictable offences, and while, moreover, exclusive jurisdiction is given, in some cases to a single justice, and, in others, to two justices, to try and determine, in a summary manner, out of sessions and without the intervention of a jury, a multitude of offences which are not indictable, and which are punishable either under the Criminal Code and other statutes of Canada, or under the statutes of the different provinces, or the by-laws of cities, towns and municipalities, they have, also, under special conditions, the right to summarily try and dispose of some offences which, in the absence of such special conditions, are indictable.

It will be readily seen that the jurisdiction and powers of justices of the peace are in some cases anciliary to—whilst in others they

are substituted for—those of a superior tribunal; and their acts are either *ministerial* or *judicial*. In so far as their acts relate to the preservation of the peace, the preliminary investigation of indictable offences triable by another tribunal, the issuing of a summons or a warrant, the binding over of the parties to prosecute or of the witnesses to give evidence, the admission of the accused to bail, or committing him for trial, they are ministerial acts; but with regard to offences over which they exercise summary jurisdiction, their acts are both ministerial and judicial: *ministerial*, in causing the offender to be brought before them, and *judicial*, in hearing and examining the evidence and in determining the case; the test of an act being ministerial or judicial being whether the justices are entitled to withhold their assent, if they think fit, or whether they can be compelled, either by *mandamus* or by a rule in the nature of a *mandamus*, to do the act in question. (1)

The judicial acts of a justice must be done within the territorial limits of the district, county or place for which he is appointed; (2) unless he be specially authorized by statute or otherwise to exercise his judicial functions elsewhere. The judicial acts of a justice (who is not so specially authorized) are, when done outside of the territory for which he is appointed, absolutely null and void. (3)

In the absence, however, of evidence to the contrary, a magistrate will be *presumed* to be acting within the territorial limits of his jurisdiction. (4) And, with regard to acts which are merely ministerial, the rule is that they may always be done by a justice beyond the limits of his district. (5)

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(1) *Per* Wightman, J., in Staverton v. Ashburton, 24 L. J. M. C. 53; 4 El. & B. 526.

(2) R. v. Totness, 18 L. J. M. C. 46; R. v. Stockton, 7 Q. B. 520; R. v. Newton Ferrers, 9 Q. B. 32; R. v. Holborn, 6 E. & B. 715; 59 L. J. M. C. 110; Newbould v. Coltman, 6 Exch. 189; 20 L. J. M. C., 149, 151, 152.

(3) Helier v. Benhurst, Cro. Car. 211; R. v. All Saints, Southampton, 7 B. & C. 785; Bosanquet v. Woodford, 5 Q. B. 310; R. v. Hughes, 5 Russ. & Geld. 194; R. v. Beemer, 15 Ont. R. 266.

(4) R. v. Fearman, 22 Ont. R. 456.

(5) R. v. Stainforth, 11 Q. B. 66; Langwith v. Dawson, 30 U. C. C. P. 375.

The powers given to justices by statute law must be exercised by them in strict accordance with the statutes by which the powers are given and under which they act. In other words, their statutory powers must be given to them in express terms, and not by *mere inference*. At common law, justices of the peace have no jurisdiction to convict summarily in any case. It is not because a statute *creates* an offence that justices have power to try it. Distinct legislative authority to deal with it summarily must be given to them. (1) But where, owing to some omission in a statute, the power to summarily try and convict is not given in *express* words, the justices may still proceed, if from the rest of the statute it may be reasonably implied that such jurisdiction was *intended* to be given to them. Thus, where a statute declared that any person exposing, in a public place where animals are commonly exhibited for sale, any animal infected with a contagious or infectious disease, should be deemed guilty of an offence and be liable to pay a penalty, it was held that, although there were no express words making the penalty recoverable by summary procedure, a jurisdiction to deal summarily with offences under the statute was *impliedly* conferred upon justices. (2)

Where the statute prescribes any particular justice or description of justice, the justice must be shown to come within that description. (3)

Whenever the concurrence of two or more justices is requisite, the general rule is that they must be present, acting together, during the whole of the hearing and determination of the case. (4) And where a view is required to be had by two justices, it should be a *joint* view. (5) Where more than two justices are acting

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(1) Ayard v. Cavendish, Saville, 134; Bross v. Huber, 18 U. C. Q. B. 286; R. v. Carter, 5 O. R. 651.

(2) Cullen v. Trimble, L. R., 7 Q. B. 416; 41 L. J. M. C. 132; Johnson v. Colam, L. R., 10 Q. B. 544; 44 L. J. M. C. 135; Greenw. & M. Mag. G., 1; Pal. Sum. Conv., 6 Ed., 15.

(3) R. v. Broadhurst, 32 L. J. M. C. 168.

(4) Billings v. Prinn, 2 Bla. Rep. 1017; R. v. Arnold. 1 Str. 101. See also sub-sec. 6 of Art. 842 of the Code, *post.*

(5) R. v. Cambridgesh. J. J., 4 A. & E. 111.

together judicially, the act of the majority decides ; (1) and where the statute refers the matter to any two justices, they must be justices acting within the limits of their jurisdiction. (2)

The authority given by statute to two justices cannot in general be exercised by one justice. (3) So that where a statute requires the conviction of an offender to be before two justices, a conviction by one, alone, is bad. (4) And where an act provides that the prosecution is to be *brought* before any police magistrate or before any *two* justices of the peace, it seems that, as the *laying of the information* is the *bringing* of the prosecution, it (the laying of the information) must be done either before a police magistrate or before *two* justices ; and where in a case subject to such a statute, the information was laid before only *one* justice, the conviction was quashed for want of jurisdiction, although heard and determined by two. (5) But where the direction in the statute is that the *final determination* of a thing is to be by *two* justices, one of these justices may receive the complaint and grant his warrant to arrest the offender and bring him before the same or any other justice to find surety for his appearance at the sessions ; (6) and if the authority is given to one justice, it may, of course, be exercised by any greater number. (7)

A power expressly given to a justice of the peace to do a particular act cannot be enlarged, by inference. Thus, where the 6 Geo. 2, c. 31, gave a single justice authority in bastardy cases, to take the examination of any unmarried woman *if she should charge any person with having gotten her with child*, it was held that the statute did not incidentally give the justice power to *compel* the woman to be examined. (8) So, although justices of the peace

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(1) R. v. Jeffreys, 34 J. P. 727 : 2 L. T. (N. S.) 786.

(2) Re Peerless, 1 Ad. & Ell 143; 1 Q. B. 143, 153.

(3) Dalt. c. 6; 4 Co., 46.

(4) McGilvery v. Galt, Pugs. & B. 641.

(5) R. v. Starkey, 7 M. L. R., 43; *Aff.* on appeal, *Ib.*, 489.

(6) Ware v. Stanstead, 2 Salk., 488; R. v. Simmons, 1 Pugs., 158; *See also* Art., 842 of the Code, *post.*

(7) Hatton's Case, 2 Salk., 477. R. v. Weale, 5 C. & P., 135.

(8) *Ex parte* Martin, 6 B. & C. 80; 9 Dowl & Ryl., 60.

were given jurisdiction, by the 6 Geo. 3, c. 25, to determine disputes between masters and servants *employed in manufactures or trade*, it was held that this did not give them jurisdiction to settle disputes between masters and *household* servants. (1)

All the justices of a district are equal in authority; but the jurisdiction attaches in any particular case to the first set of duly authorized magistrates, who have possession and cognizance of the matter, to the exclusion of the separate jurisdiction of all others; and the acts of any others except in conjunction with the first are wholly void. (2)

In Ontario, it is expressly enacted that no justice of the peace shall admit to bail or discharge a prisoner, or adjudicate upon or otherwise act in any case for a town or city where there is a police magistrate, except at the Court of General Sessions of the Peace, or in the case of the illness or absence or at the request of the police magistrate. (3) But in the case of justices for a county, in which a town *having no* police magistrate is situate, their jurisdiction over offences committed in such town is in no way interfered with. (4)

The appointment of a police magistrate for a county or district in Ontario may exclude any city or town which has a police magistrate; and, *otherwise*, a police magistrate appointed for a county or district has jurisdiction in the whole of the county or district, inclusively of every city or town therein, whether such city or town has also a police magistrate of its own or not; (5) and a police magistrate for a county or part of a county may sit or hold his courts within a town separated from the county or a city situated within the limits of the county for judicial purposes, whether such city or town has a police magistrate or not, and may, in such town or city, hear complaints and dispose thereof as police magistrate in respect of all matters arising within the county or

(1) Kitchen v. Shaw, 6 A. & E., 729.
(2) R. v. Sainsbury, 4 T. R. 456.
(3) R. S. O., c. 72, sec. 6.
(4) *Ib.*, sec. 7.
(5) R. S. O., c. 72, sec. 11; 50 Vict. (Ont.), c. 11, sec. 3.

the part of the county for which he is appointed, and do all acts, matters and things in the discharge of the duties and powers of his office as fully as when sitting or holding court in any other part of the county for which he is appointed. (1)

Justices of the peace are expressly prohibited, in Ontario, from interfering with proceedings had before police magistrates. (2) But nothing is to be construed to interfere with the jurisdiction of justices of the peace in cases in which the initiatory proceedings are not taken by the police magistrate, nor to prevent other justices from acting with the police magistrate at the police magistrate's request. (3) And, in case of the absence or illness, or at the request of a police magistrate, any two or more justices of the peace may act in his place in any matter within the jurisdiction of the police magistrate; and the justices or a majority of them shall, in such case, have all the powers which by any statute are given to the police magistrate; and any one justice of the peace may so act for the police magistrate in cases in which by law one justice of the peace has generally jurisdiction in that behalf. (4) Whenever any justice of the peace acts for a police magistrate in case of the latter's illness or absence, or at his request, the maxim *omnia praesumuntur rite esse aetu* applies, and the justice who so acts for a police magistrate is presumed to be properly authorized, unless the contrary appear. (5)

No police magistrate in Ontario need act in any case arising outside of the limits of the city, town or place for which he is police magistrate, unless he sees fit so to do. (6) And, except in cases of urgent necessity, no attendance by him at the police office is required on Sundays or other holidays or on any day set apart by the municipal council as a civic holiday. (7)

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(1) R. S. O., c. 72, sec. 16; 50 Vict. (Ont.), c. 11, sec. 7.
(2) R. S. O., c. 72, sec. 13.
(3) R. S. O., c. 72, sec. 14.
(4) *Ib.*, sec. 20.
(5) R. v. Hodge, 23 Ont. R., 450.
(6) R. S. O., c. 72, sec. 26.
(7) *Ib.*, sec. 30.

Disqualifying Interest, Bias or Partiality.—No magistrate and no justice of the peace has a right to act judicially in any case in which he himself is a party, or in which he has any direct or indirect pecuniary interest, however small.

The plain principle of justice that no one can be a judge in his own cause pervades every branch of the law, and is as old as the law itself; and every proceeding in respect of which this objection exists, is,—if the objection appears upon the face of the proceeding,—absolutely void; and every proceeding, in respect of which this objection exists, though not appearing on its face, is voidable. (1)

There are instances upon record of magistrates being punished by attachment for acting as judges in matters in which they themselves were parties. (2)

Where a criminal information was moved for against a justice of the peace who, upon a complaint made before him, in his magisterial capacity, by his own bailiff, had convicted and sentenced to punishment a laborer employed on his (the justice's) own farm, for refusing to perform his work according to contract, the English Court of Queen's Bench granted a rule to show cause, and only declined making the rule absolute, from a consideration that, under all the circumstances, the steps taken appeared to proceed from an error in judgment, rather than a bad motive; but at the same time they severely reprehended the conduct of the magistrate in sitting in judgment upon a charge in which he himself was to be considered as the real complainant, though in form the complaint was preferred by his bailiff; and they declared that it was a most abusive interpretation of the law that a man should presume to erect himself into a criminal judge over the servants on his own farm for an offence against himself. (3)

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(1) Co. Litt. 141*a*; Dimes v. Grand Junc. Can. Co., 3 H. of L. Cas. 759-785; Chester Mercers & Ironmongers Co. v. Bowker, 1 Str. 639.

(2) Mayor of Hereford's case, per Holt, C. J. 2 Ld. Raym. 766; 1 Salk. 201; 396.

(3) R. v. Hoseason, 14 East, 606.

Magistrates and justices of the peace are not only disqualified from acting judicially in any case in which they themselves are parties, but also in any case in which they have any direct interest, however small; and they should, moreover, refrain from taking any part in proceedings in which they are *indirectly* interested; for, although their conduct may be the most honorable, the fact of their being in any way, (although only indirectly), interested in the matter at issue, leaves them open to suspicion. (1)

It is most essential for the satisfactory administration of justice that parties interested in a decision should not only take no part in the decision, but that they should avoid giving any ground for the belief that they influence others in arriving at a decision. (2)

So jealously have the Superior Courts regarded proceedings in which the appearance of partiality could exist that when one of a set of magistrates who heard a case at the sessions was interested in the result, the English Court of Queen's Bench quashed the order made in the case, inasmuch as the interested magistrate appeared to have joined in discussing the matter with the other magistrates, although there was a majority in favor of the judgment, without reckoning his vote, and although he withdrew before the other magistrates rendered their decision; and the court would not enter into a discussion as to the extent of the influence exercised by the interested party. (3)

Even where an interested magistrate had decided *against* his own interest it was held, nevertheless, that in cases where they are directly or indirectly interested, magistrates should not interfere. (4)

In another case three magistrates, who were interested in the matter at issue, joined eight other magistrates in the proceedings in a case taken under an Act which took away, in express terms,

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(1) Anon., 1 Salk. 396; R. v. Yarlpole, 4 T. R. 71; R. v. Gt. Yarmouth, 6 B. & C., 646; R. v. Rishton, 1 Q. B. 479 (*n*).

(2) R. v. Suffolk, J. J., 21 L. J. M. C. 169; 18 Q. B. 416. And see R. v. Hereford, J. J., 2 D. & L. 500; and R. v. O'Grady, 7 Cox C. C. 247.

(3) R. v. Hertfordshire, J. J., 6 Q. B. 753; 14 L. J. M. C. 73.

(4) R. v. Gudridge, 5 B. & C. 459.

the right of *certiorari*. Upon an application being made for a writ of *certiorari* it was resisted, therefore, on the grounds, 1, that the writ of *certiorari* was expressly taken away by the Act, and, 2, that the presence of the three interested justices did not affect the decision, as the result would have been the same had they been absent. But Lord Denman, C. J., said, "The clause which takes away the *certiorari* does not preclude our exercising a superintendence over the proceedings so far as to see justice executed. And here I am clearly of opinion that justice has not been executed. It is clear that, on the second day, three magistrates who were interested took a part in the decision. It is enough to show that this decision was followed by an order; and I will not enquire what the particular question was, nor how the majority was made up, nor what the result would have been if the interested magistrates had retired. The court was improperly constituted, and that rendered the decision invalid." (1)

It has been held that where a magistrate sitting on a case was called as a witness, this did not disqualify him from further acting in the case. (2) And a magistrate is not disqualified from sitting in a case because he has been subpœnaed and is to be called as a witness at the hearing. (3)

Any pecuniary interest, however slight, and even although it may be indirect, will as a rule disqualify a magistrate from taking part in the decision of the case. Thus, where a defendant was convicted of a breach of a municipal by-law, in having made an auction sale without license, and two of the convicting justices, who were licensed auctioneers, persisted in sitting after being objected to as being, on that account, interested, it was held that they were disqualified; and the conviction was, on that ground, quashed with costs against them. (4)

The interest, in order to be a disqualifying one, need not be a pecuniary one, but, if not pecuniary, it must be substantial. The *mere possibility* of bias in favor of one of the parties does not *ipso*

(1) R. v. Cheltenham Commrs., 1 Ad. & E. (N. S.) 467; 10 L. J. M. C. 99.
(2) R. v. Sproule, 14 Ont. R. 375.
(3) R. v. Farrant, 20 Q. B. D. 58. *See also* R. v. Tooke, 31 W. R. 753.
(4) R. v. Chapman, 1 Ont. R. 582.

facto avoid the justice's decision. In order to have that effect the bias must be shown at least to be real; and if a magistrate has such a substantial interest—whether pecuniary or not—as to make it likely for him to have a real bias in the matter, he should not only take no part in the decision which would render it void, but should entirely withdraw during the whole case. (1) Where, for instance, a justice was a member of a division of the Sons of Temperance which carried on a prosecution for selling liquor, he was held incompetent to try the case, and a conviction obtained before him was held bad. (2) And, where, at a vestry meeting held to consider the obstruction of a highway, the resolution, directing that the offender be called upon to remove the obstruction, was the result of a motion made by a justice of the peace who afterwards sat, and, with another justice, adjudicated upon the hearing of a case taken against the offender for having deposited the obstruction and for having failed to remove it after being notified to do so, it was held that the justice who had moved the resolution was disqualified from adjudicating upon the case, because the fact of his having moved the resolution afforded ground for a reasonable suspicion of bias on his part, although there might not have been any bias in fact. (3)

In pursuance of a resolution, passed by the town council of W., to take steps to remove a nuisance, a summons was issued against the owner of the premises on which the nuisance existed, and at the hearing an order was made for the abatement of the nuisance. Two of the justices who sat in the case were members of the town council when the resolution was passed; and it was held that they had such an interest as might give them a bias in the matter, and that they ought not to have sat as justices upon the hearing of the summons. (4)

Where a number of persons were associated together to aid in enforcing the *Canada Temperance Act*, and one of them, N., with money

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(1) R. v. Myers, L.R., 1 Q.B.D., 173; 34 L.T.N.S. 247; R. v. Rand, 35 L. J. M.C. 157; L.R. 1 Q.B. 230.

(2) R. v. Simmons, 1 Pugs. 159.

(3) R. v. Gaisford, L.R., 1 Q.B., 381.

(4) R. v. Milledge, L.R., 4 Q.B.D. 332.

furnished by another of them, purchased liquor in order to maintain a prosecution, and the information was laid at the request of other members of the association who furnished money for carrying on the proceedings, and on the evidence of *N.*, who was a cousin of the justice who tried the case, the defendant was convicted, it was held that the justice was not incompetent to try the case. (1)

Where, during the hearing of an appeal from a refusal to grant a license, one of the justices who had refused the license was present on the bench, and conversed with some of the magistrates who were hearing the appeal, on some matter unconnected with the appeal, it was held that, being present, he formed part of the court, and that, although in reality he did not act in the hearing or determination of the appeal, the order of the Sessions was invalid. (2)

At the summary trial of a defendant for an offence against the Liquor License Act, the bench at which the magistrates sat consisted of a desk on a raised platform, at the end of the court room, and on this platform, some four feet from the desk, there was a chair for the use of the constable. During the trial a license commissioner, who was also a justice of the peace, went from the counsel's table, where he had been sitting, and sat in the constable's chair on the platform. There was no evidence that he in any way improperly interfered in the trial; and it was held that under the circumstances he could not be deemed to have been sitting on the bench and taking part in the trial. (3)

Where prosecutions for offences against the *Canada Temperance Act* were taken before magistrates who were notoriously "thoroughgoing Scott Act men," it was alleged that these magistrates had said that in no case of conviction would they inflict a less fine than $50, and that one of them was, moreover, a member of a local committee for taking prosecutions under the Act; but it transpired that he had, before the Act came into operation in the county, resigned from the committee; and it was held by the court that there was no disqualifying interest in the magistrates, nor any

(1) *Ex parte* Grieves, 29 S.C. N.B. 543.
(2) R. v. Surrey, J. J., 1 Jur. N. S. 1138; 24 L. J. M. C. 195.
(3) R. v. Southwick, 12 C. L. T. 173.

real or substantial bias attributable to them, nor any reason why they should not lawfully adjudicate in the case. (1)

The fact that a justice of the peace is a ratepayer pecuniarily interested in the result of a case may disqualify him from taking part in the hearing of it. (2) Sometimes, however, a justice of the peace is expressly empowered to act, although interested to some extent in the result of a decision. For instance, the Imperial statute, 16 Geo. II., c. 18, sec. 1, provides that justices of the peace may enforce the law as to rates made in any parish within their jurisdiction, although they themselves are chargeable to rates made in the same parish; and in a case involving a full consideration of the provisions of that statute and of the *Union Assessment Committee Amendment Act*, 1864, (3) it was recently held (December, 1893), by the English Court of Appeals, that, under these Acts, a justice of the peace is not disqualified from acting, at Special Sessions, in the determination of a rating appeal by reason of his being a ratepayer in the parish in which the rate appealed against was made. (4)

In like manner the police magistrate of St. John, New Brunswick, is not disqualified from trying offences against the Liquor License Act by reason of his being a ratepayer, there being a local statute preventing such disqualification. (5)

Relationship may be a ground of disqualification.

Thus, in a case of assault, where the complainant was the daughter of the convicting magistrate, the conviction was quashed. (6) And, in a prosecution, for cruelty to animals, taken against the father of the children who were alleged to have committed the acts complained of, the justice was the father of the complainant, and, on this ground, the conviction was quashed. (7)

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(1) R. v. Klemp, 10 Ont. R. 143. *See also* R. v. Eli., 10 Ont. R. 727.

(2) R. v. Gaisford, L. R., 1 Q. B. 381.

(3) 27 and 28 Vict. (Imp.), c. 39.

(4) *Ex parte* Workington Overseers, 9 R. (Feb. 1894). *Following*, R. v. Bolingbroke, 5 R. 536; 62 L. J. M. C. 180; 69 L. T. 717; *and* R. v. Essex, J. J., 5 M. & S. 513.

(5) *Ex parte* Driscoll, 27 S. C. N. B. 216.

(6) R. v. Langford, 15 Ont. R. 52.

(7) R. v. Holman, 3 Russ. & Ches. 375.

A magistrate was held to be disqualified in a case in which the defendant, herself, was the widow of the magistrate's deceased son. (1) But where the defendant was the *husband* of the widow of the magistrate's deceased son, it was held that the magistrate was not disqualified. (2)

A magistrate whose grandfather is a brother of the defendant's great grandmother is incompetent under the *Canada Temperance Act*. (3)

Where, on appeal from convictions by four justices in several cases of assault arising out of the same matter, it appeared that one of the four justices was a first cousin of the principal respondent, and that the other respondents, though not related to any of the justices, were, at the time of the alleged assault, servants of the principal respondent, it was held that no distinction could be made between the case of the principal respondent and the cases of his servants, and that all the convictions must be set aside. (4)

Where it appeared that at the time of a trial before a Parish Court Commissioner, the plaintiff in the case was a servant of the commissioner, it was held, upon a review of the commissioner's decision, that it was improper for him to act while under such relations with the plaintiff; and a non-suit was ordered. (5)

Under the *Trades Union Act*, a master and the father, son or brother of a master in the particular trade or business, in or in connection with which any offence under the Act is charged to have been committed, are respectively disqualified from acting as a justice of the peace, or as a member of any court hearing any appeal under the Act. (6)

There is a similar provision contained in the Act relating to threats and intimidations. (7)

In Ontario, no police magistrate and no partner or clerk of any

(1) *Ex parte* Wallace, 27 S. C. N. B. 174.
(2) *Ex parte* Wallace, 26 S. C. N. B. 593.
(3) *Ex parte* Jones, 27 S. C. N. B. 552.
(4) Campbell v. McDonald, 1 P. E. I. 423.
(5) Gallant v. Young, 11 C. L. T. 217, 218.
(6) R. S. C., c. 131, s. 21.
(7) R. S. C., c. 173, sec. 12, s.s. 5.

police magistrate can act as agent, solicitor or counsel in any case, matter, prosecution or proceeding of a criminal nature: nor can such police magistrate, partner or clerk act as aforesaid in any case which by law may be investigated or tried before a magistrate or justice of the peace. (1)

The proper course to be pursued, in order to *prevent* a magistrate from acting in and adjudicating upon a case in which he is interested, is to apply for a writ of prohibition. (2) But, when this course by prohibition is not adopted, and the interested magistrate goes on with and adjudicates upon the case, the objection of interest may be used as a ground of error to attack and set aside his judgment. (3)

The objection that a magistrate or a justice is disqualified, by interest, from sitting in and adjudicating upon a case may be waived: and, therefore, the objection should be raised before the evidence is taken; for if a party, knowing of the interest, do not raise the objection, but go on with the case, and take the chance of a decision in his favor, there will be a waiver of the objection of interest, and the proceedings will not be void on the ground of such interest. (4)

But the objection is not waived by reason of its not being taken at the hearing, unless the party entitled to take the objection was then aware of the judge's interest. (5)

Ouster of the Summary Jurisdiction of Justices.—Whenever property or title is in question or there is a *bôna fide* claim of legal right to do the act complained of, justices are ousted of their jurisdiction to hear and determine in a summary manner, and their hands are tied from interfering, although the

(1) R. S. O., c. 72, sec. 27.

(2) Hutton v. Fowke, 1 Keb. 648; Anon., 1 Salk. 336.

(3) *Per* Baron Parke, in Dimes v. Grand Junction Canal Co., 3 H. of L. Cas. 759-785.

(4) R. v. Cheltenham Commrs. 10 L. J. M. C. 99; R. v. Rishton, 1 Q. B. 479; R. v. Allen, 33 L. J. M. C. 98; Wakefield v. West Riding & Grimsby Ry., 35 L. J. M. C. 69; R. v. Stone, 23 Ont. R. 46; Turner & anor. v. Postmaster-Gen., 34 L. J. M. C. 10; *Ex parte* Barbere, 12 C. L. T. 449.

(5) R. v. Recorder of Cambridge, 8 El. & Bl. 637; 27 L. J. M. C. 160; R. v. Warwickshire Sheriff, 24 L. T. 211.

facts be such as they otherwise have authority to take cognizance of. (1)

This principle is not founded upon any legislative provision, but is a qualification which the law itself raises in the execution of penal statutes, and it is always implied in their construction. (2)

It is sometimes, also, the subject of special statutory enactment. For instance, the Code provides that no justice shall hear and determine any case of assault or battery in which any question arises as to the title to any lands, hereditaments, or any interest therein or accruing therefrom, or as to any bankruptcy or insolvency, or any execution under the process of any court of justice. (3)

The jurisdiction of a justice is not to be ousted, however, by any mere *pretence* of title, (4) or even by a *bôna fide* claim of a right which cannot, in law, exist. (5)

There must be some color for the claim of title. (6) And it is for the justices to determine, from all the facts and circumstances of the case, whether a claim of right, when put forward, is made *bôna fide* and with a show of reason. (7) If they determine that it is not so made, it is their duty to proceed with and decide the case. (8) Still, if the grounds upon which justices decide against the fairness and reasonableness of a claim of right be insufficient, the court will review their determination and overrule it. (9)

If the justices believe that there is a *bôna fide* question of title they have no jurisdiction. (10) And, even when the matter is

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(1) Paley, 4 Ed. 41; R. v. Cridland, 7 E. & B. 853; 27 L. J. M. C. 28; Bingstock v. Raynor, 40 J. P. 245; Watkins v. Major, 44 L. J. M. C. 164; Denny v. Thwaites, 46 L. J. M. C. 141.

(2) Paley, 4 Ed. 117.

(3) Code, Art. 842, sub sec. 8, *post*.

(4) R. v. Wrottesley, 1 B. & Ald. 648; R. v. Speed, 1 Ld. Raym. 583; R. v. Burnaby 2 Ld. Raym. 900; Kinnersley v. Orpe., Doug. 499.

(5) Simpson v. Wells, 41 L. J. M. C. 105; Hargreaves v. Diddams, 44 L. J. M. C. 178.

(6) Rees v. Davies, 8 C. B. N. S. 56.

(7) R. v. Dodson, 9 Ad. & El. 704.

(8) R. v. Mussett, 26 L. T. N. S. 427.

(9) R. v. Dodson, *supra*; Paley v. Birch, 16 L. T. N. S. 410.

(10) Legg v. Pardoe, 9 C. B. N. S. 289.

doubtful, it will be enough to stop their proceedings; and they cannot give themselves jurisdiction by a false decision. (1)

Upon an information for "unlawfully and wilfully" fishing in a non-navigable river, the private property of another, a claim of right, by the defendant as one of the public, to fish in the river was held not to oust the justices of jurisdiction, as such a right could not possibly be acquired, and the *bôna fide* belief of the defendant that he had the right to fish would not prevent his being convicted, a guilty mind not being an essential ingredient to constitute the offence. (2)

Where, in an action of trespass to land, tried before a justice of the peace, the defendant set up a title, and offered a deed in evidence, and the plaintiff also produced evidence of deeds and of a title arising by estoppel, on which the justices undertook to decide, it was held that the title was *bôna fide* in question, and that the justice's jurisdiction was ousted. (3)

Where in a prosecution for an injury, amounting to twenty-five cents, done to growing trees, the defendant set up and proved a *bôna fide* claim of title, the Court held that the jurisdiction of the justice was ousted. (4) And where a defendant was convicted under a statute which provided that nothing therein contained should extend to any case in which the party acted under a fair and reasonable supposition that he had a right to do the act complained of, and it appeared by the evidence adduced before the magistrate, that there was a dispute between the parties as to the ownership, it was held that a title to land came in question, and that the defendant was improperly convicted, even though the magistrate did not believe that the defendant had a title. (5)

Upon a charge of trespass upon a fishery, the defendants, who claimed a right to fish therein, produced evidence of long user and offered security for costs in case the complainant would institute a

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(1) R. v. Nunnely, E. B. & E. 852; 27 L. J. M. C. 260; R. v. Stimpson, 32 L. J. M. C. 208.

(2) Hudson v. Macrae, 33 L. J. M. C. 65; 9 L. T. N. S. 678.

(3) R. v. Harshman, 1 Pugs. 346.

(4) R. v. O'Brien, 5 Q. L. R. 161.

(5) R. v. Davidson, 45 U. C. Q. B. 91.

civil action; and it was held that this was such a *bôna fide* claim of title that the jurisdiction of the magistrates was ousted. (1)

When, in order to constitute an offence a *mens rea* or criminal intention must be shown, an honest claim of right will avoid a summary conviction; but, where the absence of a criminal intent is not necessarily a defence, the party setting up the claim of right must show some ground for its assertion, and if he fails to do so he is liable to be convicted of the offence charged. (2)

S. owned a lot of land in N. In 1866 he sold the west half of it to the complainant, reserving, however, a strip of thirty feet along the north line thereof, as a road, for himself and successors in title, to and from the east half of the lot. S. put up a gate at the west limit of the land, where it met the highway, which gate remained there from 1866 until it was removed by the defendants, who were the successors in title to S. The defendants removed the gate in question as an obstruction; and they were convicted on a charge of having unlawfully and maliciously broken and destroyed the gate as the property of the complainant. *Held*, that in claiming a right to remove the gate the defendants were acting in good faith and under a fair and reasonable supposition of right to do the act complained of; and the conviction was therefore quashed. *Held*, also, that the question of fair and reasonable supposition of right to do the act complained of was a fact to be determined by the justice, and his decision upon a matter of fact would not, as a rule, be reviewed; but this rule did not apply where, as here, all the facts showed that the matter or charge itself was one in which such reasonable supposition existed; that is, where the case and the evidence were all one way, and in favor of the defendants. (3)

One Ovide Lacoursiere, on being charged with receiving a bedstead, knowing it to be stolen, claimed to be the owner of it, but, being summarily tried and convicted, he signed, in consideration of not being sent to gaol, a written agreement providing for his discharge from conviction on restoring the bedstead, and on paying the costs and $50 damages to the prosecutor within fifteen days.

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(1) R. v. Magistrate, Bally Castle, 9 L. T. R., N. S. 88,
(2) Watkins v. Major, L. R. 10 C. P. 662; 33 L. T. R., N. S. 352.
(3) R. v. McDonald, 12 O. R. 381.

he also agreeing that there should be no appeal or proceedings against the conviction. Upon an application for a *certiorari*, the court looked to the evidence to see if a criminal offence was committed, and it was held that there was a *bóna fide* claim of title which should have ousted the justices' jurisdiction, that the written agreement was without valid consideration and entirely illegal and void, and that the action of the justices was an abuse of the process provided by the criminal law. (1)

The acts of a person's servants under his guidance in asserting a right would not render them liable to conviction, if the master himself be not so liable. (2)

Although, as a rule, justices have no power to enquire into a case involving a question of title to real property, yet when the title is itself the question which they have to decide, or of the very essence of the enquiry before them, their jurisdiction remains. (3) And the jurisdiction of justices is not ousted in cases in which they have power by statute to determine the right to which the claim is made. (4)

Power to Maintain Order and to Commit for Contempt.—There are some few cases—forming, as it were, an exception to the general rule—in which, from necessity and from the special nature of the occasion, a party although interested is allowed to adjudicate, it being considered a less evil that he should do so than that there should be an entire failure of justice. There are cases in which circumstances of such a character arise that it becomes the unfortunate duty of the court to act as both party and judge. (5) For instance, justices of the peace, acting judicially in any case in which they have the right to fine and imprison, are judges of record, with power to maintain order, and to orally and

(1) R. v. Lacoursiere, 12 C. L. T., 334. *Aff.* in appeal, 8 Man. L. R. 302.

(2) R. v. Thexton, 23 J. P. 323; Birnie v. Marshall, 35 L. T. 373; 41 J.P. 22

(3) R. v. Llanfillo (Brecknockshire), J. J., 15 L. T. N. S. 277; 31 J. P. 7; Williams v. Adams, 31 L. J. M. C. 109.

(4) R. v. Young, 52 L. J. M. C. 55.

(5) *Per* Lord Denman, C. J., Wilson's Case, 7 Q. B. 1015; Dime's Case, 12 Beav. 63; 14 Q. B. 554.

without warrant commit persons to prison for contempt committed in the face of the court. (1)

Under Article 585 of the Code, which has reference to the preliminary examination of persons charged with indictable offences, the investigating magistrate has the power by warrant to commit for contempt any person, who having appeared under subpœna or being otherwise present, refuses to be sworn or to answer such questions as are put to him, or refuses to produce any documents or to sign his deposition. And Article 908 of the Code expressly provides that every judge of sessions of the peace, chairman of the court of General Sessions of the peace, police magistrate, district magistrate or stipendiary magistrate shall have such and the like powers and authority to preserve order in the said courts during the holding thereof and by the like ways and means as now by law are or may be exercised and used in like cases and for the like purposes by any court in Canada, or by the judges thereof during the sittings thereof.

According, however, to a recent Ontario decision, (confirmed in appeal) the powers given by Article 908 of the Code are not exercisable by a single justice of the peace. In this case a lawyer while acting as counsel for the defence in a summary trial before a justice of the peace was arrested by order of the justice and, without any formal adjudication or warrant, excluded from the court and imprisoned, for an alleged contempt and disorderly conduct before the court ; and, in an action for assault and false arrest and imprisonment against the justice of the peace and against the constable who made the arrest upon the justice's order, it was held that the justice had no power to summarily punish for a contempt committed in the face of the court, at any rate not without a formal adjudication and a warrant setting out the contempt in question ; but it was held that a justice has the right to *remove* persons who by their disorderly conduct obstruct or interfere with the business of the court ; and it was also held that the proper exercise of the privilege of counsel in examining witnesses does not constitute an interruption of the proceedings so as to warrant his exclusion ; but, that, if the justice in this case had

(1) Armstrong v. McGaffrey, 1 Hannay, 517. *And see* R. v. Scott, 2 U. C. L. J. N. S. 323.

issued his warrant for the commitment of the plaintiff for the alleged contempt, and had stated therein sufficient grounds for such commitment, the court would not have reviewed the facts therein alleged; but that as there was no warrant of commitment, the justice was bound to establish such facts as would justify the course he had taken. (1)

There seems to be no doubt that justices, while acting in the performance of their judicial duties, have the power to protect themselves from slander and abuse. And if a person charges a magistrate to his face or in his presence with acting corruptly or partially, the magistrate may, if this be said while he is acting judicially, forthwith commit the offender, provided such commitment be made out in writing and be duly signed. (2) It must, however, be a commitment for a time certain; and, therefore, a commitment *until the defendant be discharged by due course of law* is bad. (3)

A magistrate thus abused and insulted while acting judicially may instead of exercising, himself, the power of committal for contempt, proceed, if he thinks fit, in a less summary manner by way of indictment against the offender. (4)

It is said that the proper course is, first, to oblige the offender to find sureties for his good behaviour, and in default of his doing so then to commit him until the next quarter sessions, unless he sooner find such sureties and also enter into his own recognisance for his good behavior, (5) the result of such a course being to oblige him to answer any indictment which may be preferred against him for the contempt.

It seems that the power of committal for such contempt does not exist when the abuse or insult is offered while the justice is merely acting ministerially. (6)

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(1) Young v. Saylor, 23 Ont. R. 513. *Aff.* in Appeal, 20 App. Rep. (Ont.), 645.

(2) Aston v. Blagrave, 1 Str. 617.

(3) R. v. James, 5 B. & A. 894.

(4) R. v. Collyer, 1 Wils., 332; R. v. Revel, 1 Str. 420.

(5) R. v. Langley, Ld. Ray., 1030, per Holt, C. J.

(6) Mayhew v. Locke, 7 Taunt. 63; R. v. James, *supra.*

But a magistrate is not without redress, if slander or abuse is intruded upon him at a time when he is not acting judicially. He may have an action for such words as the law deems actionable; or he may cause the speaker to be, by another justice or magistrate, bound over for his good behavior. (1)

It seems that, with regard to slanderous words spoken of a justice behind his back, they are not indictable. Thus, where a defendant said of a Middlesex magistrate, that he was a scoundrel and a liar, and the words were made the subject of an indictment preferred against the defendant, as having been spoken of the prosecutor in his character of a justice and with intent to defame him in that capacity, Lord Ellenborough interposed and said that as the words were not spoken *to* the justice, they were not indictable. (2)

The importance of maintaining proper respect for and decorum before justices in the execution of their duty should render them careful not to be guilty, themselves, of any outrage which may be the occasion of violence or abuse being used towards them. Where, upon an application for an information against a person for striking a mayor in the execution of his duty, it appeared that the mayor struck the first blow, the court refused to grant the information. (3) They should also be careful not to abuse their position and not to inflict a wrong upon or maliciously punish a party or witness, by the use of insulting or improper language. A justice who makes use of language of this character, without any legal justification, will be liable for exemplary damage. (4)

Liability of Magistrates and Justices of the Peace for Illegal Acts.—Magistrates and justices of the peace who exercise their functions illegally may render themselves liable in damages and even to criminal proceedings.

Criminal Liability.—They are subject to a criminal information or to a prosecution by indictment when their acts, besides

(1) R. v. Cotton, S. C., 2 Bernard, 313; W. Kel. 133.
(2) R. v. Weltje, 2 Campb. 142. *See* R. v. Pocock, 2 Str. 1157.
(3) R. v. Symons, Cas. Temp. Hardw. 240; Grady's C. P. 29.
(4) Clissold v. Machell, 25 U. C. Q. B. 80; 26 U. C. Q. B. 422.

being illegal and productive of private injury, are done dishonestly or corruptly, or with partiality, or from vindictive or oppressive motives. (1)

The grounds upon which the court will interfere by granting a criminal information are not definite enough to admit of any fixed rule; but it may be said that whenever the powers of justices in the summary execution of penal laws are exercised by them from corrupt or personal motives, this mode of punishment will be extended. (2)

Criminal informations have been granted against magistrates in the following among other cases:—for a *wilful* refusal to perform their duty: (3) for *extortion* under color of office: (4) for adjudicating upon a matter in which they have a direct pecuniary interest: (5) for granting, in order to serve election purposes, a distress warrant for poor rates, against the occupiers of a house, after the landlord had tendered the amount to the overseer; (6) for refusing licenses to publicans who, at a borough election, had voted against the candidates recommended by the magistrates, the magistrates having, before the election, threatened to withhold licenses from those who should so vote; (7) for refusing a beer license to an innkeeper merely from a motive of resentment against him for having joined in an affidavit made in support of some interest adverse to that espoused by the justices and their friends; (8) for improperly granting an ale license to a person to whom the general meeting of magistrates had, on the ground of misbehavior, refused a license; (9) and in another case the magistrate was, for a similar offence, prosecuted by indictment. (10)

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(1) *Ex parte* Fentiman, 2 Ad. & El. 127; R. v. Jackson, 1 T. R. 653; R. v. Barron, 3 B. & Ald. 432; R. v. Staffordshire, J. J., 1 Chtt. R. 217.

(2) Paley, 4 Ed. 425.

(3) R. v. Fox, 1 Str. 21; R. v. Newton, 1 Str. 413.

(4) R. v. Yea, cit. 1 Gude's Cr. Pr. 111, *note*. See also R. v. Jones, 1 Wils. 7.

(5) R. v. Davis, Loffh. 62.

(6) R. v. Cozens, 2 Doug. 426.

(7) R. v. Williams, 3 Burr. 1317.

(8) R. v. Hann & Price, 3 Burr. 1716.

(9) R. v. Holland & Foster, 1 T. R. 692. See also R. v. Filewood 2 T. R. 145.

(10) R. v. Sainsbury, 4 T. R. 451.

It is not necessary to show a corrupt motive in the ordinary sense of the word "corrupt." If the illegal act of the magistrate is done from *passion* or *opposition* on his part, that, according to Ashurst, J., is as corrupt as if he acted from pecuniary considerations. (1)

So, that, where certain persons were duly committed by a magistrate for fourteen days, under the Vagrant Act, (17 Geo. 2, c 5), and were, by other magistrates, discharged from custody on giving bail to appear at the next quarter sessions to prosecute an appeal, the court made absolute a rule for a criminal information against the latter magistrates, their action being considered gross misbehavior which could not be imputed to mere mistake or ignorance of the law. (2)

In another case a rule *nisi* was issued against a magistrate for having, in his office or capacity as such, spoken abusively of other magistrates, and for having imputed to the latter corruption in their administration of justice. (3)

A criminal information was granted against justices for making a false return to a mandamus: (4) but in a subsequent case the court expressed a doubt whether an information should be granted in such a case, unless the return was corruptly and wilfully false. (5)

An information will not be granted against a magistrate for convicting, unless, besides setting forth the other essential grounds, the applicant swears in his affidavit that he is innocent of the charge against him. (6)

An information was refused against a magistrate for an assault committed by him on an attorney who had several days previously conducted certain proceedings against him before other magistrates, the assault not being one committed by him in his public and magisterial but in his private capacity. (7)

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(1) R. v. Brooke and others, 2 T. R. 195.
(2) *Ib.*, 195.
(3) *Ex parte* Ewen, 25 J. P. 339.
(4) R. v. Spotland, Cas. Temp. Hard. 184.
(5) R. v. Lancashire, J. J., 1 D. & Ry. 485.
(6) R. v. Webster, 3 T. R. 388.
(7) R. v. Arrowsmith, 2Dowl, N. S. 704.

If the act done by a magistrate be, (though illegal), the result of honest error or of a mere mistake of judgment, he will incur no criminal responsibility.

In *R. v. Cozens.* (1) Lord Mansfield said :—"No justice of the peace ought to suffer for ignorance where the heart is right; on the other hand where magistrates act from undue, corrupt or indirect motives, they are always punished by this court." In another case, which was an application for a criminal information against justices for arbitrarily, obstinately and unreasonably refusing to grant an alehouse license the same learned judge said :—"The court has no power or claim to review the reasons of justices of the peace upon which they form their judgments in granting licenses, by way of appeal from their judgments or overruling the discretion entrusted to them. But if it clearly appear that the justices have been partially, maliciously or corruptly influenced in the exercise of this discretion, and have consequently abused the trust reposed in them, they are liable to prosecution by indictment or information or even possibly by action if the malice be very gross and injurious. If their judgment be wrong, yet their heart and intention pure, God forbid that they should be punished." (2)

A criminal information will not be granted, therefore, unless, coupled with the illegal act, there be some dishonest, corrupt or oppressive motive; under which description, Abbott, C. J., says that fear and favor may generally be included. And if, on an application for a criminal information, an order *nisi* has been granted, the court will discharge it on seeing that the magistrate did not act from the corrupt motives charged. (3)

The words of Abbott, C. J., are as follows :—"They are indeed, (the justices), like any other subject, answerable to the law for the faithful and upright discharge of their trust and duties. But whenever they have been challenged upon this head, either by way of indictment or application for a criminal information, the question has always been, not whether the act done might upon full investigation be found strictly right, but from what motive

(1) R. v. Cozens, 2 Doug. 416.
(2) R. v. Young & Pitts, 1 Burr. 556.
(3) R. v. Baylis, 3 Burr. 1318; R. v. Athay, 2 Burr. 652.

it had proceeded, whether from a dishonest, oppressive or corrupt motive—(under which fear and favor may generally be included), —or from mistake or error. In the former case, alone, they have become the objects of punishment." (1)

If, though the magistrate was not actuated by any corrupt motive, his act was an illegal one, the court, in discharging the rule against him, may make him pay the costs. (2)

Thus, where a magistrate refused, as bail, certain persons of unquestionable sufficiency, because they were Chartist leaders—the charge against the prisoner sought to be bailed being sedition—and it appeared, upon cause shown against a rule for a criminal information, that the magistrates acted only in pursuance of a resolution previously come to at a general meeting of the magistrates of the county, with the sanction of the Lord Lieutenant, the court discharged the rule, but the magistrates were ordered to pay the costs, as their refusal of bail, merely on the ground of personal character or political opinions, was illegal. (3)

The motion for a rule *nisi* to file a criminal information should always be made promptly, and before it is made, a notice of six days must be given to the justice of the intended application against him, in order that he may show cause against the application, in the first instance, if he thinks fit. (4)

A rule *nisi* was granted against a justice for neglecting his duty as a county magistrate by refusing to call in the military or to establish a sufficient force to repress a riot at an election; but the rule was discharged because the requisite notice had not been given. (5)

It is expressly enacted by the Criminal Code that any justice of the peace who corruptly accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person any money or valuable consideration, office, place or employment, is guilty of an indictable offence and liable to fourteen years' imprisonment. (6)

(1) R. v. Barron, 3 B. & Ald. 434.
(2) R. v. Whately, 4 M. & Ry. 431.
(3) R. v. Badger, 4 Q. B. 468; 6 Jur. 994; 7 Jur. 261.
(4) *Ex parte* Fentiman, 4 N. & M. 126; 2 Ad. & El. 127.
(5) R v. Heming, 5 B. & Ad. 666.
(6) Code, Art. 132.

Civil Liability.—The general rule of magisterial liability is that it is only in cases where a magistrate or justice of the peace has *no* jurisdiction or where he *exceeds* his jurisdiction, that he is liable in damages to the party aggrieved by his acts, and that, where he has jurisdiction over the subject matter before him and acts judicially, he is not liable for any act done by him within his jurisdiction, however erroneous the conclusion at which he arrives may be. (1)

The proposition that a magistrate is not liable to an action for any act done by him judicially in any matter within his jurisdiction is so well established that in the event of an action being brought against him for false imprisonment or for causing a seizure, under the conviction, to be made of the plaintiff's goods, a conviction valid on its face will, if produced at the trial, be conclusive evidence of the facts therein stated, and no proof in denial thereof will be allowed to be adduced: (2) provided, of course, that the conviction was not made maliciously and without reasonable and probable cause, and provided also that the execution levied thereunder has been regular: although the magistrate in making the conviction may have formed an erroneous judgment upon the facts. (3)

The liability of justices in cases where they either have *no* jurisdiction, or *exceed* it, must not be taken in its limited sense, but must be understood to include not only those cases where there has been an *absence* of jurisdiction in fact over the case, but also where some statutable or formal requisite has been omitted, if such requisite be an essential ingredient. (4)

The defendant is entitled, upon application, to a copy of the

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(1) Oke's Syn. 13 Ed. 40; West v. Smallwood, 3 M. & W. 418; Cartier v. Burland, 2 Rev. Leg. 475; Birch v. Perkins, 2 Pugs. 327; Hallett v. Wilmott, 40 U. C. Q. B. 263.

(2) Basten v. Carew, 3 B. & C. 649; Brittain v. Kinnaird, 1 Brod. & Bing, 432; Mann v. Denvers, 3 B. & Ald. 103; Tarry v. Newman, 15 M. & W. 653 Cave v. Mountain, 1 Man. & Gr. 257.

(3) Fullers v. Fotch, Holt, 287.

(4) Lindsay v. Leigh, 17 L. J. M. C. 50; Attwood v. Joliffe, 3 New Sess. Cas. 116.

conviction from the convicting magistrates. (1) They are not bound, however, by the copy they deliver; and if it should be found to be defective or informal, from misstating the name of the informer or any other fact, without there being any fraud or intention to mislead, a more correct one may be returned to the sessions; and the court can only take notice of the latter. (2)

It seems, indeed, that the formal conviction may be drawn up at any time before the return of the *certiorari*, although such return be after a commitment, (3) or after the penalty has been levied by distress, (4) or after action brought against the magistrates. (5)

A magistrate has even been allowed to return an *amended* conviction to the sessions after having returned an erroneous one; (6) but it was held that he could not do this after the conviction as first returned had been quashed either on appeal or by the Court of Queen's Bench, nor after the discharge of the defendant by the Queen's Bench by reason of the conviction recited in the warrant of commitment being bad. (7)

In many of the provinces the question of the liability of magistrates and justices of the peace is the subject of express statutory enactment.

In Ontario, the act relating to justices of the peace provides that, in case of an action being brought against a police magistrate or other justice of the peace, for any act done by him in the execution of his duties as such justice, with respect to any matter within his jurisdiction as such justice, whether such duties arise out of the common law or are imposed by any act either of the Imperial or Dominion Parliament, or of the legislature of the province, it shall be expressly alleged in the statement of claim that the act was done maliciously and without reasonable and probable cause, and that, if at the trial of the action the plaintiff fails to prove

(1) R. v. Midlam, 3 Burr. 1720.
(2) R. v. Allen, 15 East, 333, 346.
(3) Massey v, Johnson, 12 East, 82; R. v. McCarthy, 11 O. R. 657.
(4) R. v. Barker, 1 East, 186.
(5) Lindsay v. Leigh, 11 Q. B. 455; Gray v. Cookson, 16 East, 13.
(6) Sellwood v. Mount, 9 C. & P. 75; 1 Q. B. 729.
(7) Chaney v. Payne, 1 Ad. & Ell. (N. S.) 712; 10 L. J. M. C. 114.

such allegation, he shall be non-suited, or a verdict or judgment shall be given for the defendant. (1)

The same statute also provides that, for any act done by a justice of the peace in a matter in which, by law, he has *not* jurisdiction, or in which he has exceeded his jurisdiction, or for any act done under a conviction or order made or warrant issued by the justice in such matter, any person injured thereby may maintain any action against the justice that in the same case he might have done before the passing of the act, without making any allegation in his statement of claim that the act complained of was done maliciously and without reasonable and probable cause; (2) and further that, if one justice makes a conviction or order, and another justice, in good faith, grants a warrant of distress or commitment thereunder, the action, if any, must be against the justice who made the conviction or order. (3)

It is also provided that no action, as mentioned in the Act, shall be brought for anything done under a conviction or order until the conviction or order has been quashed, either upon appeal or upon application to the high court, and that no such action shall be brought for anything done under any warrant issued by such justice to procure the appearance of the party, and which has been followed by a conviction or order in the same matter, until the conviction or order has been quashed as aforesaid. (4)

In case of a justice of the peace having granted a warrant of distress or a warrant of commitment upon a conviction or order which, either before or after the granting of the warrant, has been confirmed upon appeal, it is provided that no action is to be brought against the justice by reason of any defect in the conviction or order, for anything done under the warrant. (5)

It has been held that section 4 (above set forth) of the R. S. O. c. 73, prevents any action being brought for anything done under a conviction so long as the conviction remains unquashed and in

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(1) R. S. O., c. 73, sec. 1.
(2) R. S. O., c. 73, sec. 2.
(3) R. S. O., c. 73, sec. 3.
(4) R. S. O., c. 73, sec. 4.
(5) R. S. O., c. 73, sec. 7.

force, whether there was jurisdiction to make the conviction or not. (1)

The justice is not deprived of the protection of the Act by a mere irregularity in drawing up the conviction, such as leaving a blank for the amount of costs to be afterwards filled up by the clerk. (2)

The first and second sections of the Imperial Act, 11 & 12 Vict. c. 44, are to the same effect as the first and second sections (above set forth) of the R. S. O. c. 73; and it has been held, in England, that these two sections must be read together, and that section 2 applies only to those cases where the particular proceeding in respect of which an action is brought against the justice is in itself an excess of jurisdiction; so that where a justice convicted the plaintiff in a penalty and costs and adjudged that this penalty and costs should be levied by distress and sale, but exceeded his jurisdiction in ordering the plaintiff, in default of payment, to be set in the stocks, which however was never done—but the penalty was levied by distress, it was held that an action of trespass for seizing the goods under the distress warrant was not within section 2, and was not maintainable under section 1, which requires the action to be one on the case and to allege malice and want of reasonable and probable cause. (3)

The falsity of the charge in an information laid before a magistrate cannot give a cause of action against the magistrate who acts upon the assumption and belief of the truth of the charge; and where an information contained every material averment necessary to give the magistrate jurisdiction to make an order to find sureties to keep the peace, but also contained additional matter which, as was contended, so qualified these averments as to render them nugatory, it was held that this was a judicial question for the magistrate to decide, and that, therefore, in issuing his warrant for

(1) Arscott v. Lilley & al., 11 Ont. R. 285; *Aff.* in Appeal, 23 C.L.J. 235. Graham v. McArthur, 25 U.C.Q.B. 478.

(2) Bott. v. Ackroyd & anor. 28 L.J.M.C. 207; 33 L.T. 89.

(3) Barton v. Bricknell, 20 L. J. M. C. 1; 16 L. T. 212; Somerville v. Mirehouse, 3 L, T., N. S. 294; See also Newbould v. Coltman, 20 L. J. M. C. 149; Haylock v. Sparke, 22 L. J. M. C. 72; Kendall v. Wilkinson, 24 L. J. M. C. 94 Basébé v. Matthews, 36 L. J. M. C. 93.

the appearance of the accused, he was not acting without jurisdiction, even although a superior court might quash his order to find sureties. (1)

It is only in cases where the production of a conviction would justify the act upon which an action of damages is based that the quashing of the conviction is necessary before bringing the action. It is therefore unnecessary to quash the conviction before bringing an action against a magistrate who has backed a warrant of commitment in a county other than that in which the conviction took place, for this cannot be an act done under the conviction or an act which the conviction justifies the magistrate in doing. (2)

It has been held in New Brunswick that where a justice of the peace issues a warrant without jurisdiction, as on an insufficient information, he is liable to an action of trespass for assault and false imprisonment at the instance of the person arrested under such warrant, and that the question of reasonable and probable cause cannot arise in such a case as this, but only in a case in which the justice has jurisdiction. (3)

Enactments, similar in effect to those above cited from the Ontario statute, are contained in the statutes of the provinces of Nova Scotia, New Brunswick and Prince Edward Island, it being there provided that every action against a justice of the peace or a stipendiary magistrate for any act done in the execution of his office, with respect to any matter within his jurisdiction shall expressly allege that the act complained of was done maliciously and without reasonable and probable cause; and that in case of the plaintiff failing at the trial to prove this allegation, judgment shall be given for the defendant; (4) and, further, that no justice *bonâ fide* issuing a warrant of distress or commitment founded on the conviction of another justice shall be liable for any defect in the conviction or order or other want of jurisdiction in the justice who made it. (5)

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(1) Sprung v. Anderson, 23 U. C., C. P. 152.

(2) Jones v. Grace, 17 Ont. R. 681.

(3) Whittier v. Diblee, 2 Pugs. 243.

(4) R. S. N. S. (1884), c. 101, sec. 12; C. S. N. B. (1877), c. 90, sec. 1; Acts of P. E. I. 1853 to 1862), c. 13, sec. 1.

(5) R. S. N. S. (1884), c. 101, sec. 15, C. S. N. B. (1877), c. 90, sec. 3; Acts of P. E. I. (1853 to 1862), c. 13, sec. 3.

It is also provided that an action brought against a justice of the peace for an act done in a matter where he has *no* jurisdiction or *exceeding* his jurisdiction need not allege malice and want of reasonable and probable cause, but that no action in such a case shall be brought until such conviction shall have been quashed. (1)

In Nova Scotia and New Brunswick, it is further provided that, where a warrant of distress or commitment shall be granted by a justice of the peace upon a conviction or order which, either before or after the granting of the warrant, shall have been confirmed upon appeal, no action shall be brought against the justice granting the warrant, for anything done thereunder, by reason of any defect in such conviction or order. (2)

Under the Ontario Act, no action can be brought against any stipendiary or police magistrate or justice of the peace for any act done by him under the supposed authority of a statute or statutory provision of the Province or of the Dominion of Canada, which statute or statutory provision was beyond the legislative jurisdiction of the Legislature of the Province or of the Parliament of Canada, as the case may be, provided the action would not lie against him if the statute or statutory provision had been within the legislative jurisdiction of the Parliament or Legislature which assumed to enact the same; (3) and that where an order is made quashing a summary conviction, the court may, if it thinks fit so to do, provide that no action for a trespass shall be brought against the justice of the peace who made the conviction. (4)

In the Province of Quebec, it has been held that in order to render a justice of the peace liable in damages there must be malice and a want of reasonable and probable cause whether the act complained of is within his jurisdiction or not. (5)

Where justices of the peace acted illegally and maliciously, in committing a person to gaol for refusing as a witness to answer

(1) R. S. N. S. (1884), c. 101, sec. 13; C. S. N. B. (1877), c. 90, ss. 1, 2; Acts of P. E. I. (1853-1862), c. 13, sec. 2.

(2) R. S. N. S. (1884), c. 101, sec. 17; C. S. N. B. (1877), c. 90, sec. 6.

(3) R. S. O., c. 73, sec. 8.

(4) R. S. O., c. 73, sec. 10.

(5) Marois v. Bolduc, 7 Rev. Lég. 148; Leclerc v. Copeland, Ramsay's App. Cas. 235; Huston v. Corbeil, 7 L. N. 325.

an irrelevant question at a trial which took place before them,—the order of imprisonment being signed out of court some days after the termination of the trial, and under circumstances indicating malice,—they were held responsible in damages. (1)

Special Provisions of the Code as to Formalities of Action.—The Criminal Code contains the following provisions with regard to the formalities necessary to be observed in connection with actions against persons administering the criminal law:

Limitation of Time and Place of Action.—Every action and prosecution against any person *for anything purporting to be done in pursuance of any Act of the Parliament of Canada relating to criminal law*, shall, unless otherwise provided, be laid and tried in the district, county or other judicial division, where the act was committed, and not elsewhere, and shall not be commenced except within six months next after the act committed. (Art. 975.)

Notice of Action.—Notice in writing of such action and of the cause thereof shall be given to the defendant one month at least before the commencement of the action. (Art. 976.)

Defence.—In any such action the defendant may plead the general issue, and give the provisions of this title and the special matter in evidence at any trial had thereupon. (Art. 977.)

Tender or Payment in Court.—No plaintiff shall recover in any such action if tender of sufficient amends is made before such action brought, or if a sufficient sum of money is paid into court by or on behalf of the defendant after such action brought. (Art. 978.)

Costs.—If such action is commenced after the time hereby limited for bringing the same, or is brought or the venue laid in any other place than as aforesaid, a verdict shall be found or judgment shall be given for the defendant; and thereupon, or if

(1) Gauvin v. Moore et al., 7 Mont. L. R. 376.

the plaintiff becomes nonsuit, or discontinues any such action after issue joined, or if upon demurrer or otherwise judgment is given against the plaintiff, the defendant shall, in the discretion of the court, recover his full costs as between solicitor and client, and shall have the like remedy for the same as any defendant has by law in other cases; and although a verdict or judgment is given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the judge before whom the trial is had certifies his approval of the action. (Art. 979.)

Other Remedies Saved.—Nothing herein shall prevent the effect of any Act in force in any Province of Canada, for the protection of justices of the peace or other officers from vexatious actions for things purporting to be done in the performance of their duty. (Art. 980.)

Special Provisions of Provincial Acts.—The statutes of the Provinces of Ontario, Quebec, Nova Scotia and New Brunswick provide that no action shall be brought against a justice of the peace for anything done by him in the execution of his office, unless the same is commenced within six months after the act complained of was committed; (1) nor unless notice in writing of such action and of the cause thereof shall be given to the defendant one month at least before the commencement of the action. (2)

In Prince Edward Island the time limited for commencing an action against a justice of the peace for any act done by him in the execution of his office, is three months; and there must be a month's notice in writing given before the action is commenced. (3)

As to the computation of the limited time where the cause of action is a continuing one,—imprisonment for instance,—the action, when the limited time is six months, may be brought within six months from the last day of the imprisonment; and where in a

(1) R. S. O., c. 73, sec. 13; R. S. Q., Art. 2598; R. S. N. S. (1884), c. 101, sec. 19; C. S. N. B. (1877), c. 29, sec. 19.

(2) R. S. O., c. 73, sec. 14; C. C. P. (Que.), Art. 22; R. S. N. S. (1884), c. 110, sec. 20; C. S. N. B. (1877), c. 90, sec. 8.

(3) Acts of P. E. I. (1853 to 1862), c. 13, ss. 7, 8.

particular case the imprisonment expired on the 14th December, and the writ in the action was sued out on the 14th June following, it was held that the former day was to be excluded, and that, therefore, the action was in time. (1)

As, by Article 976 (above set forth) of the Code, the notice of action must be given one month, *at least*, before the suit is commenced, the day of giving the notice and the day of suing out the writ in the action are both to be excluded. (2)

In Ontario, it has been held that where a magistrate acts in direct contravention of the statute in issuing a warrant, without the proper information under the statute, or without even a verbal charge having been laid against the plaintiff, and there is no evidence of good faith on his part, he is not entitled to notice of action. (3)

In another Ontario case, it was held that where a magistrate acts clearly in excess of, or without jurisdiction, he is nevertheless entitled to notice, unless the *bona fides* of his conduct be disproved; but that the plaintiff may require the question to be left to the jury, and that if they find that he did not honestly believe he was acting as a magistrate, he has no claim to notice. (4)

Where a justice acts either without jurisdiction, or entirely in excess of his jurisdiction, the notice of action need not contain an allegation of malice. (5)

A justice of the peace is entitled to notice of action whenever the act complained of has been done by him in the honest belief that he was acting in the execution of his duty as a magistrate. (6)

In an action against a justice of the peace and a constable for having issued and executed a search warrant against the plaintiff for having and concealing goods belonging to another, it was held that the notice of action and statement of claim being each of them

(1) Hardy v. Ryle, 9 B. & C., 603; Massey v. Johnson, 12 East. 67.

(2) Young v. Higgins, 6 M. & W. 49, 52; R. v. Herefordshire J. J., 3 B. & Ald. 581; R. v. Shropshire J. J., 8 A. & E. 113.

(3) Friel v. Ferguson, 15 U. C. C. P., 584.

(4) Neill v. McMillan. 25 U. C., Q. B., 485.

(5) Hatch v. Taylor, 1 Pugs. 39.

(6) Sprung v. Anderson, 23 U. C. C. P. 159.

founded upon a cause of action arising in a case in which the magistrate had jurisdiction, were defective for want of the allegation that the justice had acted maliciously and without reasonable and probable cause, and that the statement of claim was also defective in not showing a right to restitution of the property, although the plaintiff was acquitted of any wrongful taking, detention or concealment of the same. (1)

The notice of action must state the time when and the place where the act forming the basis of the action took place; (2) and it must state the cause of action explicitly. Where, for instance, a justice had issued a void warrant directing the constable to take the plaintiff's goods, and, *in default of goods*, to take his body, and the constable, under this warrant, arrested the plaintiff, although there were goods which he might have levied, a notice of action alleging a joint trespass against the justice and the constable was held defective for not clearly setting forth the grounds of the justice's liability. (3)

The notice must state the name and place of abode of the plaintiff's attorney; and it will be sufficient if it appears on any part of the notice. (4)

A notice of action describing the plaintiff's attorney's residence as of Birmingham generally is sufficient. (5)

A notice describing the plaintiff's residence as of the township of B., in the county of P., is sufficient. (6)

In the province of Quebec, it is expressly provided that every justice of the peace and other derson fulfilling a public duty shall, in all cases, be entitled to the benefit of the protective clauses of the statute with reference to the limitation and notice of action, tender of amends, and otherwise, although he may not have acted *bona fide* in the execution of his duty, and although in the doing of

(1) Howell v. Armour, 7 O. R. 363.

(2) Parkyn v. Staples, 19 U. C. C. P. 240; Bettersworth v. Hough, 16 L. C. R. 419.

(3) McGilvery v. Gault, 1 Pugs, & Bur. 641.

(4) Bross v. Huber, 15 U. C., Q. B. 625.

(5) Osborn v. Gough, 3 B. & P. 551.

(6) McDonald v. Stuckey, 31 U. C., Q. B. 377.

the act done by him he has exceeded his powers or jurisdiction and has acted clearly contrary to law. (1)

Compelling Justices, by mandamus, to exercise their functions.—If a charge be laid before a justice, and there be no reasonable ground for doubting his jurisdiction or the propriety of exercising it, the justice ought to receive the information or complaint and issue the summons or warrant; and if he should refuse he may be compelled to do so, as otherwise the law would remain unadministered. But if the justice has reasonable ground for doubting his jurisdiction, the court will not compel him to do an act which might subject him to an action. (2)

If justices reject an application, on the erroneous ground that they have no power to grant it, the court will interfere, so far as to set the jurisdiction of the justices in motion, by directing them to hear and determine upon the application. (3)

If persons exercising an inferior jurisdiction refuse, on a mistaken view of the law, to hear a case, they erroneously decline to exercise their jurisdiction; and the court will compel them, by *mandamus*, to hear and decide it. (4)

When an inferior court abstains from entering upon the merits of a case, in consequence of its arriving at a wrong decision upon a preliminary point of law, this will be regarded as a refusal to hear; and a *mandamus* to hear and determine will be granted. (5)

A statute which provides that a justice may issue a summons or warrant, *if he thinks fit*, gives him a discretion in the issuing of the summons or warrant; but he is bound to exercise this discretion, on the evidence of a criminal offence which the information discloses; and if, on a consideration of something extraneous or extra-judicial, he refuses the summons or warrant, the court will order him to issue it. (6)

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(1) R. S. Q., Art. 2599.

(2) R. v. Broderip, 5 B. & C. 239; 7 D. & R. 861.

(3) *Per* Lord Ellenborough, in R. v. Kent, 14 East 397. See also R. v. Surrey, 2 Show. 74, *n.*

(4) *Per* Blackburn, J., in R. v. Monmouth, L. R. 5 Q. B. 256.

(5) *Per* Coleridge, J., in R. v. Richards, 20 L. J. Q. B. 352.

(6) R. v. Adamson, L. R., 1 Q. B. D. 201.

Where, upon a charge being laid against a defendant for violating, in the County of Cumberland, the "*Canada Temperance Act*," the justices declined to issue a warrant, on the ground that the notice to the Secretary of State required to be filed with the sheriff or registrar of deeds of or in the county was not regularly filed, inasmuch as there were two registrars of deeds in Cumberland County, and the notice had only been deposited with one, and that therefore the Act was not legally in force in the county, it was held by the court, in granting an application for a writ of *mandamus*, that the provisions of the Act with regard to the filing of the notice were merely directory, that the proclamation having issued and the election having taken place and resulted in the adoption of the Act, the Act was in force, and that at all events, it was not open for the justices to question the regularity of the preliminary proceedings for bringing the Act into force. (1)

A *mandamus* has been issued in the following cases:—to receive an information or complaint; (2) to issue a distress warrant for costs upon a conviction; (3) to hear a complaint when the justices have declined jurisdiction. (4)

A *mandamus* was granted against a justice who refused to proceed upon an information under the Pawnbrokers' Act, (39 and 40 Geo. 3, c. 99), on the erroneous ground that it was not a case for a summary conviction in a penalty within the statute; (5) and in another case it was granted against justices who refused to hear and determine an application for a bastardy order, on the erroneous supposition that they had no jurisdiction. (6)

In one case, the Court granted a *mandamus* to compel justices to hear and determine an application for a summons against certain persons for unlawfully conspiring to break the peace and do grievous bodily harm; although there was no misapprehension of the law, and the justices heard all the evidence offered, before they de-

(1) R. v. Hicks, 19 N. S. R. 89.
(2) R. v. Newton, 1 Str. 413.
(3) R. v. Hants, J.J., 1 B. & Ad., 654; See *Ex parte* Robert Thomas, 16 L. J. M. C. 57.
(4) R. v. Brown, 26 L. J. M. C. 183.
(5) R. v. Beard, 12 East, 672.
(6) *Ex parte* Wallingford, 9 Dowl. 987.

clined to issue the summons, and although the words of the statute, (11 & 12 Vict. (Imp.), c. 42, sec. 9), were that the justices *may, if they shall think fit*, issue a summons. The Court proceeded on the ground that the evidence given in support of the application was so strong as to induce a belief that the justices must have acted upon a consideration of something extraneous and extra-judicial, which ought not to have affected their decision, and that this amounted to a declining of jurisdiction. (1)

Where a magistrate refused to issue a summons for perjury upon an information setting forth facts on which no jury would convict, the court would not, under these circumstances, grant a *mandamus* to interfere with the magistrate's discretion. (2)

The Ontario statute provides that no action or other proceeding shall be commenced or prosecuted against any person or persons for or by reason of anything done in obedience to a peremptory writ of *mandamus*. (3)

In the province of Quebec, the code of civil procedure provides that a *mandamus* may issue, whenever any person holding any office in any corporation, public body, or court of inferior jurisdiction omits, neglects or refuses to perform any duty belonging to such office or any act which by law he is bound to perform, and also in all cases where a *mandamus* would lie in England. (4)

Rule in the Nature of a Mandamus.—The statutes of some of the provinces, in imitation of Imperial legislation, provide us with a useful substitute for the writ of *mandamus*, in such simple questions as may be conveniently argued and disposed of upon a rule, the more important questions being still the proper subject of an application for the writ of *mandamus*.

This provision, which is to the same effect, variously worded, in the statutes of different provinces, provides that, in case of a justice of the peace or a stipendiary magistrate refusing to do any act relating to the duties of his office, the party requiring such act to

(1) R. v. Adamson, *supra*.
(2) *Ex parte* Reid, 49 J. P. 600.
(3) R. S. O., c. 73, sec. 24.
(4) C. C. P. (Que.) Art. 1022.

be done may, upon an affidavit of the facts, apply, in the province of Ontario, to the High Court, or a County Court judge, and, in the provinces of Nova Scotia and New Brunswick, to the Supreme Court, or a judge thereof, for a rule calling upon the justice and also upon the party to be affected by such act, to show cause why such act should not be done, and if, after service of such rule, good cause be not shown against it, the court may make the rule absolute, with or without costs, as may seem meet; and the justice or stipendiary magistrate, upon being served with the rule absolute, shall obey the same, and do the act required; and no action or proceeding shall be commenced or prosecuted against him for having obeyed such rule. (1)

The course here provided is not intended simply for the benefit of justices, or confined to cases in which their jurisdiction is doubtful; but it extends to all cases in which they refuse to do an act relating to the duties of their office. (2)

It does not apply where a *mandamus* would not have been granted; (3) nor is it intended for cases in which the justice has heard and adjudicated and done what he believes to be his duty, whatever may be the conclusion to which, in the exercise of his discretion, he has arrived. (4) It applies only to cases in which the magistrate does not consider the propriety of doing or not doing the act in question. (5)

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(1) R. S. O., c. 73, sec. 6; R. S. N. S. (1884), c. 101, sec. 25; C. S. N. B. (1877), c. 90, sec. 5.

(2) R. v. Aston, 1 L. M. & P. 491; R. v. Philimore, L. R. 14 Q. B. D. 474 *n.*; 51 L. T. N. S. 245; R. v. Biron, 51 L T. N. S. 429.

(3) R. v. Bristol, J. J., 18 Jur. 426 *n.*

(4) *Re* Clee & Osborn, 21 L. J. M. C. 112; R. v. Dayman, 26 L. J. M. C. 129; R. v. Vaughan, 9 B. & S. 329.

(5) *Ex parte* Lewis, 16 Cox 449.

SECOND DIVISION.

Parties to Crimes; Extent of the Criminal Law as to Time, Persons, and Place; Special Restrictions.

CHAPTER IV.

Parties to the Commission of Offences.

Principal Offenders.—Every one is a party to and guilty of an offence who—

(*a*) actually commits it; or

(*b*) does or omits an act for the purpose of aiding any person to commit the offence; or

(*c*) abets any person in the commission of the offence; or

(*d*) counsels or procures any person to commit the offence.

If several persons form a common intention to prosecute any unlawful purpose, and to assist each other therein, each of them is a party to every offence committed by any one of them in the prosecution of such common purpose, the commission of which offence was or ought to have been known to be a probable consequence of the prosecution of such common purpose. (Code, Art. 61.)

Every one who counsels or procures another to be a party to an offence of which that other is afterwards guilty, is a party to that offence, although committed in a way different from that which was counselled or suggested.

Every one who counsels or procures another to be a party to an offence is a party to every offence which that other commits in consequence of such counselling or procuring, and which the person counselling or procuring knew, or ought to have known, to be likely to be committed in consequence of such counselling or procuring. (Code, Art. 62.)

The distinctions between principals of the first and second degree and between principals and accessories before the fact are here done away with, and all are expressly made principals or parties to, and equally guilty of an offence, who (*a*) actually commit it, (*b*) who do or omit anything to help its commission, (*c*) who abet or assist at its commission, or (*d*) who counsel or procure its commission.

In reality, and for all practical purposes, the distinctions between principals and accessories before the fact were removed years ago both in England and in Canada: (1) and have since existed only in name.

The Criminal Code has dropped these unnecessary nominal distinctions, and it gives only two classes of persons as being, in regard to the degree of their guilt, parties to or implicated in a criminal offence, namely, *principals, and accessories after the fact.*

A principal may be the actual perpetrator of the act, that is, the one who, with his own hands or through an innocent agent, does the act itself; he may be one who, before the act is done, does or omits something to help its commission; he may be one who counsels or procures the doing of it, or who does it through the medium of a guilty agent: or he may be one who is present, aiding and abetting another in the doing of it.

Actual Perpetrator with His Own Hands.—To be the actual perpetrator of the deed, with his own hands, the offender may or may not be present when it is consummated.

A., purposely lays poison for B. who takes it, and dies from it. A, although absent when the poison is taken, is the actual perpetrator of the deed. (2)

Actual Perpetrator Through Innocent Agent.—To be the actual perpetrator of the deed, by means of an innocent agent, is, for instance, where an offender, who may be absent when the act is done, uses, as an instrument to effect his purpose, a

(1) 24 and 25 Vic. (Imp.), c. 94; R. S. C., c. 145.

(2) Fost. 349; 1 Russ. Cr., 5 Ed., 161; Burb. Dig. Cr. L. 42; Vaux's Case, 4 Co. 44; Bish. New Cr. L. Com., s. 651. *See also* R. v. Kelly, C. & K. 379.

child under years of discretion, a madman or other person of defective mental capacity, or any one excused from responsibility by ignorance of fact or other cause. (1)

Where A induced B, a child of nine, to take money from his father's till, and give it to him, A, it was left to the jury to say whether B was acting unconsciously of guilt at the dictation and as the innocent agent of A. (2)

A gives to B, a note which he knows is forged, and asks him to get it cashed. If B gets it cashed, not knowing it to be forged, the innocent uttering by him is the guilty uttering of A, though A is absent when it is done. (3)

If a person employed as an instrument is aware of the nature of the act, but merely concurs in it, in order to detect and punish the person employing him, he is, in that case, also considered and treated as an innocent agent. (4)

Rendering Aid Beforehand.—A person who, *before* the commission of an offence, does something to aid in its being committed, may also be a principal, without being present when it is actually committed or completed.

A, a servant, let B into his master's house to steal therein his master's money. B continued inside until he committed the theft, but A left the house before the theft was actually committed. A was a party to the offence; (5) and would now be held a principal.

A, a servant, unlocks the door of the house, that B may enter and steal therein, which he does about 20 minutes after A has left the house. A is a principal offender. (6)

Counselling or Advising an Offence.—A person who counsels or procures the commission of an offence, or who

(1) Fost. 349; 1 Bish. Cr. Law Com. s. 651.
(2) R. v. Manley, 1 Cox. C. C. 104.
(3) R. v. Palmer & Hudson, 4 New Rep, 96.
(4) R. v. Bannen, 2 Mood, C. C. 309; 1 C. & K. 295.
(5) R. v. Tuckwell, C. & M. 215; 1 Russ. Cr. 158.
(6) R. v. Jeffries & Bryant, Gloucester Spr. Ass. 1848, Cresswell & Patterson, JJ., MSS., S. G., 3 Cox, C. C., 85; 1 Russ. Cr. 159.

does it through the medium of a *guilty* agent is necessarily absent when the offence is actually committed; or, if present, he would be doing or aiding at the very act itself. It seems to be in the very nature of things that there should be no distinction drawn between the guilt of one who procures a crime to be done and that of the agent who does it for him; or, at least, the distinction, if any, should not be in favor of the procurer. It is only right that the procurer or any one who commits an offence by the agency of another should be treated as a principal, whether his agent or instrument be a guilty or an innocent one: for *qui facit per alium facit per se*,—what one causes to be done by another is regarded as done by himself. (1)

The procurement may be personal between the procurer and the doer; or it may be through the intervention of a third party; and it will be sufficient even though the employer merely direct his agent to procure some other person, without naming him. (2) It may be *direct*.—by hire, counsel, or command, or by conspiracy; or it may be *indirect*.—by expressly evincing, (that is, evincing by some words or actions), a liking for, approbation of, or assent to another's criminal design of committing an offence. (3) So, a mere silent acquiescence would not be sufficient. (4)

The procurement must be continuing; for if the procurer repent, and, before the offence is committed, actually countermand his order, and the person whom he has ordered counselled or procured persists in committing the offence, in spite of the countermand, it seems that the original contriver will not be held responsible as a party to the offence.; (5) but, by having counselled the commission of the crime, he may be held guilty of an *attempt* to commit it, notwithstanding his subsequent repentance. For when a person with criminal intent advises another to commit an offence which the other does *not* commit, the soliciting or advising, in that case, constitutes, on the part of the person counselling and advising, an attempt to commit the offence solicited by him. (6)

(1) Broom's Leg. Max., 2 Ed. 643; Co. Lit. 258 a.
(2) Fost. 121, 125; R. v. Cooper, 5 C. & P. 535.
(3) R. v. Cooper, 5 C. & P. 535.
(4) R. v. Atkinson, 11 Cox C. C. 330.
(5) Arch. Cr. Pl. 11.
(6) R. v. Gregory, L. R. 1 C. C. 77; 10 Cox, C. C. 459.

If a person order, counsel or advise one crime, and the person ordered, counselled or advised *intentionally* commit another, as, for instance, if he be ordered to burn a house and instead of that he commit a theft, or if his instructions are to commit a crime against A, and instead of doing so he *purposely* commit the crime against B, the person so ordering will not be answerable. But if it be merely *by mistake* that he commits the offence against B instead of A, in that case the person ordering would be responsible. (1) And it is clearly laid down by the above Article, 62, that he who counsels or procures the commission of any offence is a party to it, although the offence itself be committed in a way different from that which was counselled, and he is a party to every offence which is committed in consequence of such counselling, and which he knew or ought to have known to be likely to be committed in consequence of such counselling; and, therefore, both by this Article and by the common law, he is liable for everything that ensues upon the execution of the unlawful act counselled or commanded.

A commands B to beat C, and B beats him to such an extent that he dies. A is a party to the murder. (2)

A commands B to burn C's house, and in the burning, the house of D is burned also. A is a party to the offence of burning D's house. (3)

A hires B to kill C by means of poison, and instead of poisoning him, B kills C by shooting him. A is a party to the murder. (4)

Not only is a person liable for what is done under his actual or presumed authority; (5) but the agent also is liable for an unlawful act done by him under the express or implied authority of his principal. (6)

Aiding and Abetting at the Commission of the Offence.—A person may be considered as a principal

(1) Fost. 370 et seq.; 2 Hawk., P. C., c. 29, s. 22.
(2) 4 Bl. Com. 37; 1 Hale, 617.
(3) R. v. Saunders, Plowd, 475.
(4) Fost. 369, 370.
(5) R. v. King, 20 U. C. C. P. 248.
(6) R. v. Brewster, 8 U. C. C. P. 208.

present aiding and abetting in the commission of an offence, without his presence being such a strict, actual, immediate presence as would make him an eye or ear witness of what is passing; it may be a constructive presence. (1) So that if a number of persons set out together, or in small parties, upon one common design, be it murder or any other offence, or for any other unlawful purpose, and each takes the part assigned to him; some to commit the act, others to watch at proper distances and stations to prevent a surprise or to favor if need be the escape of those more immediately engaged, they are all, provided the act be committed, present at it, in the eye of the law; for the part taken by each man in his particular station tended to give countenance, encouragement and protection to the whole gang and to ensure the success of their common enterprise. (2) If, however, the original purpose of persons assembling and setting out together be a lawful one, and if their common purpose be prosecuted by lawful means, and opposition to them be made by others, and one of the opposing party is killed in the struggle, the person actually killing may be guilty of culpable homicide, but the persons engaged with him will not be involved in his guilt, unless they actually aided and abetted him in the fact. (3)

Accessories after the Fact.—Article 63 of the Code declares that, "An accessory after the fact to an offence is one who receives, comforts or assists any one who has been a party to such offence, in order to enable him to escape, knowing him to have been a party thereto; and, that, no married person whose husband or wife has been a party to an offence shall become an accessory after the fact thereto, by receiving, comforting or assisting the other of them, and no married woman, whose husband has been a party to an offence, shall become an accessory after the fact thereto, by receiving, comforting or assisting, in his presence and by his authority, any other person who has been a party to such offence, in order to enable her husband or such other person to escape.

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(1) 1 Russ. Cr. 5 Ed. 157.

(2) Fost. 350; R. v. Howell, 9 C. & P. 437. See also R. v. Slavin, 17 U.C.C.P. 205.

(3) Fost. 354-5; 1 Russ. Cr. 163-4.

The evident basis of this offence is, that to assist an offender to escape punishment is, in principle, an obstruction of public justice, of the same nature as resisting a peace officer in making an arrest, or rescuing a prisoner under arrest, and other like offences. To be an accessory after the fact, a man must be aware of the guilt of the person whom he harbors or assists. And one does not become an accessory after the fact by merely neglecting to inform the authorities that a crime has been committed, or by forbearing to arrest the offender. (1) The accused must have done some act to assist the principal offender in relation to the crime which he has committed. (2) But if a person employ another to harbor or relieve the principal offender, he is equally guilty as an accessory after the fact as if he did the harboring and relieving personally. (3)

The test of an accessory after the fact seems to be that he renders the principal offender some active personal help to enable him to escape punishment, as, by furnishing him with money or food to support him in hiding, or by supplying him with a horse to enable him to fly from his pursuers, or a house or other shelter to conceal him in, or by using open force and violence to protect him, or by conveying instruments to an offender to enable him to break gaol, or by bribing the gaoler to let him escape. (4) Of course, when a person actually rescues an offender from prison or from lawful custody, the rescuer is not only guilty of being an accessory after the fact to the other's offence, if he has actually committed one, but also of the substantive offence of rescue; and he may be indicted either way at the election of the prosecution. (5) But where the rescue is effected before the principal offender has been convicted, the prosecution would probably prefer to prosecute the rescuer on the substantive offence of rescue; for, when a person is in prison or in lawful custody upon a criminal charge, it is an offence to rescue him or to help him to break prison, whether the prisoner be guilty or not of the crime charged against him. (6)

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(1) 1 Hale, P. C. 618, 619.

(2) R. v. Chapple, 9 C. & P. 955.

(3) R. v. Jarvis, 2 M. & R. 49.

(4) 4 Bl. Com. 38.

(5) R. v. Burridge, 3 P. Wms. 439, 483, 485, 493.

(6) See Articles 165-167 of the Code. R. v. Allan, Car. & M. 295; R. v. Haswell, R. & R. 458.

Where several principal offenders are guilty of a joint crime, the person harboring them is guilty of a separate offence for each of the offenders whom he harbors. (1)

CHAPTER V.

EXTENT OF THE CRIMINAL LAW AS TO TIME, PERSONS, AND PLACE.

No Limitation of Time under the Common Law.—Under the common law, there is no time limited for the prosecution of proceedings at the suit of the Crown; and, therefore, the proceedings in all criminal cases, in relation to which the time is not limited by statute, may be prosecuted during the life of the person charged, at any length of time after the commission of the offence.

Limitations of Time under the Criminal Code.—It is provided, by Article 551, that no prosecution for an offence against the Code, or action for penalties or forfeitures, shall be commenced—

(*a*) after the expiration of THREE YEARS from the time of its commission, if such offence be—

1. TREASON, except treason by killing Her Majesty, or where the overt act alleged is an attempt to injure the person of Her Majesty (section 65);
2. TREASONABLE OFFENCES (section 69);
3. any offence against Part XXXIII., relating to the FRAUDULENT MARKING OF MERCHANDISE; nor

(*b*) after the expiration of TWO YEARS from its commission, if such offence be—

1. A FRAUD UPON THE GOVERNMENT (section 133);
2. A CORRUPT PRACTICE IN MUNICIPAL AFFAIRS (section 136);
3. UNLAWFULLY SOLEMNIZING MARRIAGE (section 279);

(*c*) after the expiration of ONE YEAR from its commission, if such offence be—

(1) R. v. Richards, L. R. 2 Q. B. D. 311.

1. OPPOSING READING OF RIOT ACT and assembling after proclamation (section 83);
2. REFUSING TO DELIVER WEAPON TO JUSTICE (section 113);
3. COMING ARMED NEAR PUBLIC MEETING (section 114);
4. LYING IN WAIT NEAR PUBLIC MEETING (section 115);
5. SEDUCTION of girl under sixteen (section 181);
6. SEDUCTION under promise of marriage (section 182);
7. SEDUCTION of a ward, etc. (section 183);
8. UNLAWFULLY DEFILING WOMEN (section 185);
9. PARENT OR GUARDIAN PROCURING DEFILEMENT OF GIRL (section 186);
10. HOUSEHOLDERS PERMITTING DEFILEMEFT OF GIRLS ON THEIR PREMISES (section 187); nor

(*d*) after the expiration of SIX MONTHS from its commission, if the offence be—

1. UNLAWFUL DRILLING (section 87);
2. BEING UNLAWFULLY DRILLED (section 88);
3. HAVING POSSESSION OF ARMS for purposes dangerous to the public peace (Part VI., section 102);
4. PROPRIETOR OF NEWSPAPER PUBLISHING advertisement offering REWARD for recovery of stolen property (section 157, paragraph (*d*); nor

(*e*) after the expiration of THREE MONTHS from its commission, if the offence be—

1. CRUELTY TO ANIMALS (under sections 512 and 513);
2. RAILWAYS VIOLATING PROVISIONS relating to conveyance of cattle (section 514);
3. REFUSING PEACE OFFICER ADMISSION TO CAR, etc. (section 515); nor

(*f*) after the expiration of ONE MONTH from its commission, if the offence be—

1. IMPROPER USE OF OFFENSIVE WEAPONS (sections 103, and 105 to 111, inclusive).

And the same Article further provides as follows :—

No person shall be prosecuted, under the provisions of section 65 or section 69 of the Code, for any OVERT ACT OF TREASON,

expressed or declared by open and advised speaking, unless information of such overt act, and of the words by which the same was expressed or declared, is given upon oath to a justice within SIX DAYS after the words are spoken, and a warrant for the apprehension of the offender is issued within TEN DAYS after such information is given.

Other Limitations.—An information or complaint in summary proceedings in respect of any offence under the following Acts, must be laid within TWELVE MONTHS from the time when the matter arose, namely, in respect of—

(*a*) Any offence against the *Steamboat Inspection Act;* (1) or

(*b*) Any offence against the *Inspection of Ships Acts;* (2) o.

(*c*) Any offence against the *Deck and Load Lines Act.* (3)

All proceedings under the *Trade Marks Act* must be brought within TWELVE MONTHS from the commission of the offence. (4)

Every penalty and forfeiture incurred under the *Cullers' Act* must (except where otherwise provided) be sued for within TWELVE MONTHS after the offence is committed. (5)

No action or prosecution under the *Copyright Act* can be commenced more than TWO YEARS after the cause of action arises. (6)

Penalties under the *Fisheries Act*, or the regulations made under it, must be sued for within TWO YEARS from the commission of the offence. (7) And prosecutions under the *Electric Light Inspection Act* must be commenced within THREE MONTHS. (8)

No information or complaint, in summary proceedings, in the case of any violation of the *Montreal Harbor Commissioners' Act*, 1894, or of any by-law under that Act, can be made or laid after

(1) 52 Vic., c. 23, sec. 5.
(2) 54 and 55 Vic., c. 37, sec. 13.
(3) 54 and 55 Vic., c. 40, sec. 18.
(4) R. S. C., cap. 63, sec. 36.
(5) R. S. C., c. 103, sec. 43.
(6) R. S. C., c. 62, sec, 34.
(7) R. S. C., c. 95, sec. 19, subsec. 3.
(8) 57-58 Vic., c. 39, sec. 34.

the expiration of TWO YEARS from the time when the matter of complaint or information arose. (1)

Proceedings for the recovery of any penalty under the Act of 1888, amending the *Weights and Measures Act as to packages of salt*, must be instituted within TWENTY DAYS after delivery of the package of salt, in respect of which a contravention of the Act is claimed to have been committed. (2)

Computation of the limited time.—In a case based upon the repealed statutes relating to coin, it was held that the information and proceedings before the magistrate, *upon the defendant being taken*, was to be deemed the "*commencement of the prosecution.*" (3)

Where the warrant of commitment for trial for the offence was within the time limited, but the indictment not till afterwards, it was held sufficient. (4)

The mere *issuing* of a warrant to apprehend the defendant was held not to be a commencement of the prosecution; (5) but that it was necessary to show, in addition to the *issuing* of the warrant, that it was *executed* within the time limited for the commencement of the prosecution. (6)

Proof of a *warrant* to apprehend the defendant was held not to be evidence of the commencement of a prosecution within the time limited by the 9 Geo. 4. c. 69, s. 4. although the warrant was issued within the twelve months prescribed by that section, and although it recited the laying of the information, but it was held that the information itself should have been given in evidence. (7)

"*Bringing the prosecution*" is not the hearing or trial, but it is the initiation of the proceedings by the prosecutor. (8)

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(1) 57 and 58 Vic., c. 48, sec. 52.
(2) 51 Vic., c. 25, sec. 4.
(3) R. v. Willace, 1 East, P. C. 186. *See also* R. v. Brooks, 1 Den. 217.
(4) R. v. Austin, 1 C. & K. 621.
(5) R. v. Hull, 2 F. & F. 16.
(6) R. v. Casbolt, 11 Cox, 385, 386.
(7) R. v. Parker, L. & C. 45?; 33 L. J. (M. C.) 135.
(8) R. v. McKenzie, 23 N. S. R. 6.

Where the law requires that the party shall be *prosecuted* or that the prosecution shall be commenced within a limited time after the commission of the offence it is sufficient to make the complaint or lay the information within that time, although the conviction may not take place until after the expiration of the time limited. (1) But where the law provides that the party shall be *convicted* within a stated time after the commission of the offence, the mere laying of the information within that time will not suffice; in that case, the conviction itself must be made within the limited time, or it will be void. (2)

"Sunday" must be counted, unless expressly excluded. (3)

Verbal proof that a prisoner, charged with a treasonable offence respecting the coin, was *apprehended*, within three months after the offence was committed, that being the time limited for prosecuting, was held insufficient, where the *indictment* was after three months, and *the warrant to apprehend or to commit was not produced.* (4)

Where the prisoner was indicted, in 1869, for night poaching alleged to have been committed in 1863, and pleaded guilty, he was allowed to withdraw his plea, and plead not guilty, and no information or warrant being produced showing that the prosecution had been commenced within twelve calendar months as directed by 9 Geo. 4, c. 69, sec. 4, Byles, J., directed an acquittal. (5)

The time limited for the commencement of a criminal prosecution begins to run as soon as the act which constitutes the offence has taken place. For instance, it was held in an American case that the crime of embezzlement was committed, and the statute of limitations, relating to that offence, began to run when the defendant, as treasurer of a county, failed to pay over the county's money, in his hands, to his successor in office, and that the mere

(1) R. v. Barrett, 1 Salk. 383.

(2) R. v. Mainwaring, E. B. & E. 474; 27 L. J. M. C. 278; Dowell v. Benningfield, 1 C. & M. 9; R. v. Bellamy, 1 B. & C. 500; R. v. Peckham, Comb 439; R. v. Tolley, 3 East, 467; 1 Oke's Syn. 13 Ed. 136.

(3) *Ex parte* Simkin, 2 E. & E. 392; 29 L. J. M. C. 23.

(4) R. v. Philips, R. & R. 369.

(5) R. v. Casbolt, *supra.* See, also, Tilladam v. Inhabitants of Bristol, 4 N. & M., 144; 2 A. & E. 388; 4 L. J. M. C. 35.

fact of a subsequent demand and refusal did not take the case out of the operation of the statute. (1)

A defence based upon the provisions of Article 551, as to the limitation of the prosecution, need not be specially pleaded, but may, under Article 631 of the Code, be relied on under the plea of not guilty.

The Supreme Court of Kansas recently held that the failure of a defective indictment and the presentation of a new and correct one, after the statute of limitations has begun to run, does not revive the statute; but that the statute is put aside by the presentation and filing of an indictment against a defendant, and remains silent until the legal proceedings thereon are terminated; and, that if a defective indictment is withdrawn by means of a *nolle prosequi*, or dismissed with consent of the court, and an information is filed charging the defendant with the same offence, the information continues the legal proceedings which were commenced by the presentation and filing of the original indictment. (2)

In an English case, an indictment for night poaching preferred against the defendant, within twelve months after the commission of the offence, was ignored. Four years afterwards, another bill was laid and found against him, for the same offence, and, upon an objection that the proceeding was out of time, Coleridge, J., doubting whether the first indictment was not a proceeding sufficient to entitle the prosecutor to proceed, reserved the point; but the defendant was acquitted by the jury, on the merits. (3)

Limitation of time in Summary Prosecutions.—In the case of any offence punishable on summary conviction, *if no time is specially limited* for making any complaint or laying any information in the Act or law relating to the particular case, the complaint must be made or the information must be laid within six months from *the time when the matter of complaint or information arose*, except in the Northwest territories, where the time within which such complaint may be made or such information

(1) S. v. Mason, (Ind. Supr. Ct.), 8 N. East Rep. 716. See, also, Labalmondiere v. Addison, 1 El. & El. 41.

(2) S. v. Child, 24 Pac. Rep. 952.

(3) R. v. Killminster, 7 C. & P. 228.

may be laid shall be extended to *twelve* months from the time when the matter of the complaint or information arose. (Code Art. 841.)

Although this article mentions the *making* of the complaint and the *laying* of the information as the necessary thing to be done within the time limited, the making of the complaint or the laying of the information, as the case may be, should be followed up by useful proceedings in the shape of a warrant or summons, and the arrest of or otherwise bringing the defendant before the magistrate or justice.

The time limited is counted from when the matter which gives rise to the offence or cause of information or complaint is complete. (1)

The general rule is that where the law requires an act to be done within a certain time after the happening of an event, the day of the happening of the event—for instance, the day of the commission of the offence, or of the arising of the matter of complaint—is to be excluded, and that on which the act is done—for instance, the laying of the information or complaint—is to be included. (2) So that where the law required the complaint to be made *within one calendar month* after the cause of complaint should arise, and it appeared that on June 30th a complaint was made in respect of an offence committed on May 30th, it was held to be made in time. (3)

Fractions of a day are not taken notice of. (4)

The word "month" means a calendar month. (5)

Some offences may be continuing offences, such as, for instance, neglecting to maintain a family, punishable under the law as to

(1) Hill v. Thorncroft 3 E. & E. 257; Jacomb v. Dodgson 27 J. P. 68; 32 L. J. M. C. 113.

(2) Pellew v. Inhabitants of Wonford, 9 B. & C. 134; Hardy v. Ryle, *ib.*, 663; Williams vs. Burgess, 12 A. & E. 635; Freeman v. Reed, 32 L. J. M. C. 226.

(3) Radcliffe v. Bartholomew, L. R. 1 Q. B. 161.

(4) Lester v Garland, 15 Ves. 248; Field v. Jones, 9 East. 154; Latless v. Holmes, 4 T. R. 660; Freeman v. Reed, *supra.*

(5) *See* Interpretation Act, R. S. C., c. 1, sec. 7, par. 25.

vagrants; and these may be always within the limited time; and there are offences which may be constantly recurring, as where the law imposes a penalty for disobeying a notice or order, and each disobedience is a distinct offence, a fresh penalty being incurred every time a similar order or notice is served and disobeyed. (1) In such cases the time for laying the information runs from the date of the service of the fresh notice or order. (2)

"Immediately" and "forthwith" do not mean *on the instant*, but with reasonable promptness, and without unreasonable delay, having regard to all the circumstances of the case. (3)

Where a statute directs any act to be made within so many days, or a notice to be given so many days "at the least," these words mean "clear days," *i. e.*, a number of intervening days. (4)

Persons to whom the Criminal Law Extends.—The criminal law extends to all persons, except the reigning Sovereign, who is absolutely exempt from it, and foreign ambassadors, who are exempt to an extent not precisely determined. (5)

Extent of the Criminal Law of Canada as to Place.—It is said that, "the criminal law of Canada extends to all offences committed in Canada, or on such part of the sea adjacent to the coast of Canada as is within one marine league from ordinary low water mark, or is deemed, by International law, to be within the territorial sovereignty of Her Majesty, or committed by any person on board any British ship or boat, on the great lakes or on the high seas, or in any place where the Admiralty of England has jurisdiction, and to piracy by the Law of Nations *wherever* committed." (6)

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(1) Allen v. Worthy, L. R. 5 Q. B. 163.

(2) Knight v. Halliwell, L. R. 9 Q. B. 412.

(3) R. v. Aston, 1 L. M. & P. 491; 19 L. J. M. C. 236; Hancock v. Somes 1 El. & El. 795; 28 L. J. M. C. 196; Costar v. Hetherington, 28 L. J. M. C. 198; Hudson v. Hill, 43 L. J. C. P. 273; R. v. Berkshire, J. J., 48 L. J. M. C. 137.

(4) Mitchell v. Foster, 12 A. & E. 472; Zouch v. Empsey. 4 B. & Ald. 522.

(5) 2 Steph. Hist. Cr. L., 2-9, and 43-56.

(6) Bur. Dig. Cr. L. 9; R. v. Cunningham, Bell, C. L. 72; Atty.-Gen. (Hong Kong) v. Kwok-a-Sing, L. R. 7 P. C., 179; 2 Steph. Hist. Cr. L. 27.

An Article to this effect was contained in our Criminal Code, when first introduced, but, in committee, it was allowed to drop, although considered to be a correct statement of the law.

A foreigner who commits a criminal offence against another foreigner, or against a British subject, on board a foreign ship, on the high seas, outside of the territorial waters of Her Majesty, is not triable in Her Majesty's Dominions. (1) This was held even in the case of a ship which (though foreign built) carried the British flag. The prisoner was one of the crew of a ship built in Holstein, whence she sailed to London, England. All the officers and crew were foreigners. The registered sole owner, one R., was an alien born, though described in the register as "of London, Merchant." The ship sailed on a voyage from London, under the British flag. While on the voyage, the prisoner killed the master, on board the vessel, when several thousand miles from England, and 200 miles from land. On the trial for murder, no evidence was given that R., the owner of the ship, had been naturalized, or had obtained letters of denization; and it was held that there was no evidence that the ship was British, and that, consequently, the prisoner could not be convicted in England. (2)

Formerly, Her Majesty's Courts had no jurisdiction over an offence committed by a foreigner on board of a foreign ship, even if, at the time of the crime being committed, the ship was within the territorial waters of Her Majesty's dominions.

It was so held in the case of R. v. Keyn. (3) That decision led to the passing of the Imperial Statute, 41 & 42 Vic. c. 73, (*The Territorial Waters Jurisdiction Act* 1878), amending the law, so that a foreigner, as well as a British subject on board a foreign ship may be tried by the courts of England or of any of Her Majesty's Dominions for an offence committed on the open sea, provided the occurrence takes place *within* the territorial waters of Her Majesty's dominions (section 2), and subject to the consent, as to the United Kingdom, of one of Her Majesty's Principal Secretaries of State,

(1) R. v. Lewis, 26 L. J. M. C. 104; R. v. De Mattos, 7 C. & P. 458; R. v. Kohn, 4 F. & F. 66; R. v. Depardo, R. & R. 134.

(2) R. v. Bjornsen, 34 L. J. M. C. 180.

(3) R. v. Keyn, 46 L. J. M. C. 17.

or,—as to cases arising in any part of Her Majesty's dominions outside of the United Kingdom,—subject to the consent of the Governor of that part, (section 3).

The jurisdiction of the Admiralty extends over *British* ships, not only on the high seas, but also in foreign rivers, below bridges where the tide ebbs and flows, and where great ships go, although the municipal authorities of the foreign country may be entitled to concurrent jurisdiction. (1) So, that a person, whether a British subject or a foreigner, on board a British ship, on the high seas, or in foreign rivers below bridges, where the tide ebbs and flows, and where great ships go, is subject to the laws of England, the same as if he were on British soil, such a ship being, in law, part of the territory of the United Kingdom. (2)

Thus, where a foreigner was convicted, in England, of manslaughter committed on board a British ship in the river *Garonne*, in France, about 35 miles from the sea, and about 300 yards from the nearest shore, within the ebb and flow of the tide, the conviction was upheld. (3)

So, also, where a person committed a larceny on board a British ship lying afloat in the open river at Rotterdam, moored to the quay in a place where large vessels usually lay, 18 miles from sea, between which and the ship there were no bridges, and within the ebb and flow of the tide, it was held that the larceny took place within the jurisdiction of the Admiralty, and, therefore, that a person who, afterwards, in England, received the property so stolen, could be tried at the Central Criminal Court, as the thief, himself, even if he had been a foreigner, not one of the crew, might have been so tried. (4)

Upon an indictment for larceny on board a vessel lying in a river at Wampu, in China, the prosecutor gave no evidence as to the tide flowing; but the judges held that the Admiralty had jurisdiction, it being a place where great ships go. (5)

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(1) R. v. Anderson, L. R. 1 C. C. R. 161.
(2) R. v. Lopez, Dears & B. 525.
(3) R. v. Anderson, *supra*.
(4) R. v. Carr, 10 Q. B. D. 76; 52 L. J. M. C. 12.
(5) R. v. Allen, 1 Mood C. C. 494.

It has been held that the liability of a foreigner is not affected by the fact that he was, in the first instance, brought illegally on board the ship, unless the offence committed by him was one committed merely for the purpose of freeing himself from such unlawful restraint. Therefore, where a foreigner, having committed a crime in England, had fled to Hamburg, and was there arrested and forced on board an English ship, and, while kept in custody on board such ship, on the high seas, he killed the officer who had arrested him, not in order to escape, but of malice prepense, it was held that, even assuming such arrest and detention to be illegal, he was guilty of murder. (1)

By section 267 of the Merchant Shipping Act, 17 and 18 Victoria, chapter 104, (Imp.), all offences against property or person committed in or at any place either ashore or afloat out of Her Majesty's dominions, by any master, seaman, or apprentice, who at the time when the offence is committed is, or, within three months previously, has been employed in any British ship, shall be deemed to be offences of the same nature respectively and be liable to the same punishments respectively, and be enquired of, heard, tried, determined, and adjudged in the same manner and by the same courts, and in the same places, as if such offences had been committed within the jurisdiction of the Admiralty of England. (2)

A hulk containing the general appointments of a ship, registered as a British ship and hoisting the British ensign, although only used as a floating warehouse, is a British ship within the meaning of the above enactment. (3)

Section 21 of the 18 & 19 Vic. c. 91, enacts that if any British subject charged with having committed any crime or offence on board any British ship on the high seas, or in any foreign port, or harbour, or if any person not being a British subject charged with having committed any crime or offence on board any British ship on the high seas is *found* (that is to say, is found to be at the time of his trial), (4) within the jurisdiction of any court of justice in Her Majesty's dominions, which would have had cognizance of

(1) R. v. Sattler, Dears & B. 525.
(2) R. v. Dudley, 11 Q. B. D. 273; 54 L. J. M. C. 32.
(3) R. v. Armstrong, 13 Cox, 184.
(4) R. v. Lopez, Dears & B. 525.

such crime or offence if committed within the limits of its ordinary jurisdiction, such court shall have jurisdiction to hear and try the case, as if such crime or offence had been committed within such limits.

By section 11 of the 30 & 31 Vict. c. 124, if a British subject commits a crime on board a British ship, or on board a foreign ship to which he does not belong, any court in the Queen's dominions, which would have cognizance of such crime if committed on board a British ship within the limits of the ordinary jurisdiction of such court, shall have jurisdiction to hear and determine the case, as if the said crime had been committed as last aforesaid. (1)

Under section 9 of 24 & 25 Vict. c. 100, a British subject who, in a foreign country, within the dominion of a foreign power, murders a British subject or a foreigner, is triable in England. This, in fact, was the state of the law before the passing of 24 & 25 Vict. c. 100. (2)

The legislative powers of a colonial legislature are confined to its own territory, and it cannot legislate for offences committed beyond the limits of the colony. (3)

A magistrate has authority to enquire into offences committed on the great inland lakes of Canada, though in American waters, for they are within the admiralty jurisdiction and as though committed on the high seas. (4)

Section 7 of the *Territorial Waters Jurisdiction Act* defines the *territorial waters of Her Majesty* as being "such part of the sea adjacent to the coast of the United Kingdom, or the coast of some other part of Her Majesty's dominions, as is deemed, by international law, to be within the territorial sovereignty of Her Majesty," and declares that, "for the purposes of any offence declared by the act to be within the jurisdiction of the Admiral, any part of the open sea within one marine league of the coast,

(1) *See* Arch. Cr. Pl. & Ev. 21 Ed. p. 36.
(2) *See* R. v. Azzopardi, 2 Mood. C. C. 288.
(3) *See* McLeod v. Atty. Gen. N. S. Wales, 14 L. N. 402–405.
(4) R. v. Sharp, 5 P. R. (Ont.) 135. See, also, Art. 560 of the Code, p. 106, *post*.

measured from low-water mark, shall be deemed to be open sea within the territorial waters of Her Majesty's dominions."

Section 18 of the Imperial statute, 52 & 53 Vict., c. 63 (*The Interpretation Act*, 1889), declares that the expression "Governor" shall, as respects Canada and India, mean the Governor-General, and include any person who, for the time being, has the powers of the Governor-General.

CHAPTER VI.

Special Restrictions.

Prosecutions Requiring Consent of the Governor-General.

Offences by Foreigners in Admiralty Jurisdiction.—The criminal code of Canada conforms to the above mentioned Imperial enactments by providing, in article 542, that proceedings for the trial and punishment of a person who is not a subject of Her Majesty, and who is charged with any offence committed within the jurisdiction of the Admiralty of England shall not be instituted in any court in Canada, except with the leave of the Governor-General, and on his certificate that it is expedient that such proceedings should be instituted.

Prosecutions Requiring the Consent of the Attorney-General.

Obtaining or Communicating Official Information.—No person shall be prosecuted for the offence of unlawfully obtaining and communicating official information, as defined in sections 77 and 78, of the Code, without the consent of the Attorney-General or of the Attorney-General of Canada. (Art. 543 of the Code.)

Judicial Corruption.—No one holding any judicial office shall be prosecuted for the offence of judicial corruption, as defined in section 131 of the Code, without the leave of the Attorney-General of Canada. (Art. 544.)

Making or Having Explosives.—If any person is charged before a justice of the peace with the offence of making or having explosive substances, as defined in section 100 of the Code, no further proceeding shall be taken against such person without the consent of the Attorney-General, except such as the justice of the peace thinks necessary, by remand or otherwise, to secure the safe custody of such person. (Art. 545.)

Criminal Breach of Trust.—No proceeding or prosecution against a trustee for a criminal breach of trust, as defined in section 363 of the Code, shall be commenced without the sanction of the Attorney-General. (Art. 547.)

Concealing Encumbrances.—No prosecution for concealing deeds and encumbrances, as defined in section 370 of the Code, shall be commenced without the consent of the Attorney-General, given after previous notice to the person intended to be prosecuted of the application to the Attorney-General for leave to prosecute. (Art. 548.)

Uttering Defaced Coin.—No proceeding or prosecution for the offence of uttering defaced coin, as defined in section 476, of the Code, shall be taken without the consent of the Attorney-General. (Art. 549.)

PROSECUTIONS REQUIRING THE CONSENT OF THE MINISTER OF MARINE AND FISHERIES

Sending or Taking an Unseaworthy Ship to Sea.—No person shall be prosecuted for any offence under section 256 or section 257 of the Code, without the consent of the Minister of Marine and Fisheries. (Art. 546.)

LIVE STOCK SHIPPING ACT.—No prosecution under section 7 of this Act can be instituted except by or with the consent of the Minister of Marine and Fisheries. (54 & 55 Vic. c. 36, sec. 7.)

OFFENCES AGAINST THE SAFETY OF SHIPS ACT.—No prosecution under section 19 A of the *Act respecting the Safety of Ships and the prevention of Accidents thereon*, (namely, sending or carrying dangerous goods) can be instituted without the consent of the Minister of Marine and Fisheries. (54 & 55 Vic. c. 38.)

Deck and Load Lines Act.—No prosecution under this Act can be instituted except by or with the consent of the Minister of Marine and Fisheries. (54 & 55 Vic. c. 40, sec. 19.)

Consent Need Not be Averred.—It is unnecessary to state in an indictment that any consent required by the above Articles of the Code has been obtained. (1)

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(1) Code, Art. 613 (*h*).

THIRD DIVISION.

Prosecution of Criminal Offenders.

CHAPTER VII.

Indictable and Non-Indictable Offences. — Jurisdiction. Summary Arrest.

Indictable and Non-Indictable Offences.—By the Criminal Code, the distinction between felony and misdemeanor has been abolished : and criminal offences are divided into "INDICTABLE OFFENCES,"—that is, offences which may be prosecuted by indictment,—and, "OFFENCES" which are not indictable, but which are punishable on summary conviction. (Code, Arts. 535, 536).

With regard to indictable offences, justices have merely the power, as a general rule, to hear, by way of preliminary enquiry, the evidence on both sides, and, if they think it sufficient to put the accused on his trial, to commit him accordingly for trial by a higher Court. while, with regard to non-indictable offences and certain indictable offences specially provided for, they have the right to hear and determine them in a summary manner, that is. to hear all the evidence on both sides, and either to convict or make an order against the accused, or to dismiss the case.

Jurisdiction of the Criminal Courts.—In regard to some indictable offences, the power to try them is vested exclusively in the Superior Courts of criminal jurisdiction ; while, in regard to others, the Courts of General or Quarter Sessions of the Peace have jurisdiction concurrently with the Superior Courts.

Jurisdiction of the Superior Criminal Courts.—Every Superior Court of criminal jurisdiction, and every judge of such court sitting as a court for the trial of criminal causes, and every Court of Oyer and Terminer and General Gaol delivery, has power to try any indictable offence. (Code, Art. 538.)

The Superior Courts of Criminal Jurisdiction in the several Provinces.—The expression "Superior Court of criminal jurisdiction" means and includes the following courts:

1. In the province of Ontario, the three divisions of the High Court of Justice;

2. In the province of Quebec, the Court of Queen's Bench;

3. In the provinces of Nova Scotia, New Brunswick and British Columbia, and in the North West Territories, the Supreme Court;

4. In the province of Prince Edward Island, the Supreme Court of Judicature:

5. In the province of Manitoba, the Court of Queen's Bench (Crown side). (Code, Art. 3 *y*.)

Exclusive Jurisdiction of Superior Courts.—The indictable offences which the Superior Courts of criminal jurisdiction have the *exclusive* power to try are enumerated in Article 540 of the code; and, alphabetically arranged, they are as follows:

Assaults on the Queen. (Art. 71 of the Code.)

Administering, taking, or procuring unlawful oaths. (Arts. 120, 121.)

Breach of Trust by Public Officer. (Art. 135.)

Combinations in Restraint of Trade. (Art. 520.)

Communicating Information obtained by holding office. (Art. 78.)

Corruption of Judges. (Art. 131.)

Corruption of Prosecuting Officers. (Art. 132.)

Corrupt Practices in Municipal Affairs. (Art. 136.)

Defamatory Libel. (Arts. 285 to 302.)

FRAUDS ON THE GOVERNMENT. (Art. 133.)

INCITING TO MUTINY. (Art. 72)

LIBELS ON FOREIGN SOVEREIGNS. (Art. 125.)

MURDER; ACCESSORY AFTER THE FACT TO MURDER; AND ATTEMPTS, CONSPIRACIES. AND THREATS TO MURDER. (Arts. 231 to 235.)

PIRACY. (Arts. 127 to 130.)

RAPE; AND ATTEMPT TO RAPE. (Arts. 267, 268.)

SELLING OR PURCHASING OFFICES. (Art. 137 *a*.)

SPREADING FALSE NEWS. (Art. 126.)

TREASON; ACCESSORY AFTER THE FACT TO TREASON; AND TREASONABLE OFFENCES. (Arts. 65, 67, 68, 69, 70.)

UNLAWFULLY OBTAINING AND COMMUNICATING OFFICIAL INFORMATION. (Art. 77.)

CONSPIRING TO COMMIT, ATTEMPTING TO COMMIT, OR BEING ACCESSORY AFTER THE FACT TO ANY OF THE ABOVE OFFENCES.

Article 540, as originally passed, included the offences punishable under Articles 159 to 169 of the code (Escapes and Rescues), as being within the exclusive jurisdiction of the Superior Courts. At the last session of the Dominion Parliament this was altered, so as to give the General or Quarter Sessions concurrent jurisdiction over them. (1)

Concurrent Jurisdiction of General or Quarter Sessions.—All indictable offences, other than those above enumerated as being within the *exclusive* jurisdiction of the Superior Courts, may be tried either by a Superior Court of criminal jurisdiction, or by any Court of General or Quarter Sessions of the Peace, when presided over by a Superior Court judge or a County or District Court judge, or—in the cities of Montreal and Quebec—by a recorder or a judge of the Sessions of the Peace; and, in the province of New Brunswick, they may be tried by any County Court judge. (Code, Art. 539.)

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(1) 57 & 58 Vic. c. 57, sec. 1.

Where Offenders may be Tried.—Subject to Articles 538, 539 and 540, every court of criminal jurisdiction in Canada is competent to try all offences, *wherever committed*, if the accused is found or apprehended within the jurisdiction of such court, or if he has been committed for trial to such court or ordered to be tried before such court, or before any other court, the jurisdiction of which has by lawful authority been transferred to such first mentioned court under any Act for the time being in force: Provided that nothing in this Act authorizes any court in one province of Canada to try any person for any offence committed entirely in another province, except in the following case:

Every proprietor, publisher, editor or other person charged with the publication in a newspaper of any defamatory libel, shall be dealt with, indicted, tried and punished in the province in which he resides, or in which such newspaper is printed. (Code, Art. 640).

The words "*all offences wherever committed*" used in this Article, must be interpreted to mean offences committed wherever the criminal law of Canada extends. (1)

Magisterial Jurisdiction—Of the many duties and functions devolving upon, and exercisable by, magistrates and justices of the peace, the most important are: 1, the *ministerial* functions which they exercise in the preliminary investigation of indictable offences triable before a jury; 2, the *ministerial* and *judicial* functions which they exercise at and in connection with the summary trial, without a jury, of non-indictable offences, and of indictable offences subjected under special conditions to their summary jurisdiction; and, 3, the judicial functions exercised by the magistrates authorized, under Article 539, to preside at the trial of the indictable offences which are within the jurisdiction of the General or Quarter Sessions.

The preliminary investigation of indictable offences may, under the Code, be initiated by and be held before a single justice of the peace or more justices than one; (2) the indictable offences rendered subject to summary trial under certain special conditions, are triable before a magistrate or other functionary or tribunal having

(1) McLeod v. Attorney-Gen. N. S. Wales, 14 L. N. 402-405.
(2) Code, Arts. 554, 557, pp. 101, 103, *post*.

the powers of two justices of the peace; (1) and, in the summary trial of non-indictable offences, a single justice will have jurisdiction, unless, by the enactment under which the offence is triable summarily, two or more justices are specified. (2)

Exercising the Powers of Two Justices.—The judge of the Sessions of the Peace for the city of Quebec, the judge of the Sessions of the Peace for the city of Montreal, and every recorder, police magistrate, district magistrate or stipendiary magistrate appointed for any territorial division, and every magistrate authorized, by the law of the Province in which he acts, to perform acts usually required to be done by two or more justices of the peace, may do alone whatever is authorized by this Act to be done by any two or more justices of the peace, and the several forms contained in the Code may be varied as far as necessary to render them applicable to such case. (Art. 541.)

North-West Territories and Keewatin.—The provisions of the Criminal Code extend to and are in force in the North-West Territories and the District of Keewatin, except in so far as they are inconsistent with the provisions of the *North-West Territories Act* or the *Keewatin Act* and the amendments thereto. (3)

Under the *North-West Territories Act*, the judges of the Supreme Court of the Territories are vested with all the powers, authority and jurisdiction vested, before the passing of the Act, in the stipendiary magistrates of the Territories: and the Governor-General in Council may appoint police Magistrates in the Territories with all the powers of two justices of the peace. (4)

Every judge of the Supreme Court of the North West Territories is given and exercises the powers of a justice of the peace, or of any two justices of the peace under any laws or ordinances in force in the territories; (5) and every such judge has also the same

(1) Code, Arts. 782, 783.
(2) Code, Art. 842.
(3) Code, Art. 983.
(4) R. S. C., c. 50, sec. 54; 57 & 58 Vic., c. 1[illegible], sec. 7. See p. 18, ante.
(5) R. S. C., c. 50,, sec. 66.

power and authority for trying offences in the district of Keewatin as if appointed a stipendiary magistrate under the *Keewatin Act*. (1)

Offences against the *Unorganised Territories' Game Preservation Act*, 1894, may (after the 1st January, 1896) be summarily tried by

(*a.*) Any judge of the Supreme Court of the North-west Territories.

(*b.*) Any justice of the peace in and for the North-west Territories.

(*c.*) Any commissioned officer of the North-west Mounted Police.

(*d.*) Any game guardian appointed under the Act. (2)

Fishery Officers.—Under the *Fisheries Act*, any fishery officer or other justice of the peace may, on view, convict of any of the offences punishable under the provisions of the Act. (3)

Local Jurisdiction as to Offences Committed under Special Circumstances.—For the purposes of the Code, the following provisions shall have effect with respect to the jurisdiction of justices :

(*a.*) Where the offence is committed in any water, tidal or other, between two or more magisterial jurisdictions, such offence may be considered as having been committed in either of such jurisdictions ;

(*b.*) Where the *offence* is committed on the boundary of two or more *magisterial jurisdictions*, or within the distance of five hundred yards from any such boundary, or is begun within one *magisterial jurisdiction* and completed within another, such *offence* may be considered as having been committed in any one of such *jurisdictions ;*

(*c.*) Where the offence is committed on or in respect to a mail, or a person conveying a post-letter bag, post-letter or anything sent by post, or on any person, or in respect of any property, *in* or *upon* any vehicle employed in a journey, or on board any vessel employed on any navigable river, canal or other inland navigation, the person accused

(1) R. S. C., c. 53, sec. 28.
(2) 57-58 Vic. c. 31, sec. 16.
(3) R. S. C., c. 95, sec. 17.

shall be considered as having committed such offence in any magisterial jurisdiction through which such vehicle or vessel passed in the course of the journey or voyage during which the offence was committed: and where the centre or other part of the road, or any navigable river, canal or other inland navigation along which the vehicle or vessel passed in the course of such journey or voyage, is the boundary of two or more magisterial jurisdictions, the person accused of having committed the offence may be considered as having committed it in any one of such jurisdictions. (Code, Art. 553)

This Article is, in effect, a re-enactment of sections 10, 11, and 12 of R. S. C., c. 174, which were derived from sections 12 and 13 of the Imperial statute, 7 Geo. 4, c. 64, clause (*b*) being only slightly varied from the wording of section 12 of 7 Geo. 4, c. 64, which is as follows: "Where a *felony or misdemeanor* is committed on the boundary of two or more *counties*, or within the distance of five hundred yards from any such boundary or is *begun* in *one county* and *completed* in *another*, the venue may be laid in either *county*, in the same manner as if it had been committed therein."

In cases of murder or manslaughter, where the cause of death arises in one magisterial jurisdiction and the death takes place in another, the prisoner may, under the above Article, be indicted in either jurisdiction. (1)

If a man commit theft in one magisterial jurisdiction and carry the stolen goods with him into another, he may be indicted within the limits of the jurisdiction where he committed it, or in the place into which, or any of the places through which he carried the goods; for in contemplation of law there is such a taking and carrying away as to constitute the offence of theft in every place through which, at any distance of time, the goods were carried by him. (2) For instance, where a prisoner, on the 4th of November, stole a note in Yorkshire, and, upon the 4th of March, he carried it into Durham, the judges were clear, upon a case reserved, that the interval between the first taking and carrying the note into Durham did not prevent it from being a theft in Durham, and that the conviction in that county was right. (3)

(1) 1 Russ. Cr. (by Greaves), 4 Ed. 753.
(2) 1 Hale, 507; 2 Hale, 163; 3 Inst. 113; 4 Bl. Com. 304.
(3) R. v. Parkin, 1 Mood. C. C., 45.

A country bank note was stolen during its transit, through the post, from Swindon, a town in Wiltshire, to the City of Bristol, which lies between the counties of Somerset and Gloucester, and the same note was afterwards enclosed by the defendant in a letter posted by him in Somersetshire and addressed to the bankers at Swindon, requesting payment of it, which letter, with the bank note in it, arrived in due course at Swindon. The defendant was held triable in Wiltshire, the possession of the post office servants or of the bankers at Swindon, in Wiltshire, being held, for this purpose, the defendant's possession, (1)

A charge of sending a threatening letter may be prosecuted either in the Magisterial jurisdiction where the prosecutor received it, or in the place from which the offender sent it ; because the offence, in such a case, is begun in the one and completed in the other. (2)

Where money obtained by a false pretence was transmitted in a letter posted, in accordance with the defendant's request, in County A., but which reached him in County B., it was held that this was an obtaining of the money in County A. (3)

If two persons steal a thing in one county, though one of them alone carry the property into another county, yet if both afterwards co-operate to secure the thing in the latter county, both may be indicted there ; for the subsequent concurrence may be connected with the previous taking. (4)

Where two jointly committed a theft in one county, and one of them carried the stolen goods into another county, the other still accompanying him, without their ever being separated, they were held both indictable in either county ; the possession of one being the possession of both, in each of the counties, as long as they continued in company. (5)

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(1) R. v. Cryer, Dears & B. 324 ; 36 L. J. (M. C.) 192.

(2) R. v. Girdwood, 1 Leach, 142 ; R. v. Esser, 2 East. P. C. 1125 ; R. v. Burdett, 4 B. & Ald. 95.

(3) R. v. Jones, 1 Den. 551 ; 19 L. J. (M.C.) 162 ; R. v. Buttery, 4 B. & Ald. 179.

(4) R. v. County & Donovan, East. T. 1816, M. S. Bailey, J., 2 Russ. 175.

(5) R. v. McDonagh, Carr. Supp., 2d. Ed., 23.

The taking into the other county or jurisdiction must be *animo furandi*. For instance, a constable apprehended a prisoner with two stolen horses at Croydon in Surrey. On being so arrested, the prisoner said he had been at Dorking to fetch the horses, and that they belonged to his brother, who lived at Bromley. The police constable offered to go with him to Bromley; and they took the horses and rode together as far as Beckenham Church, when the prisoner said he had left a parcel at the *Black Horse*, in some place in Kent. The constable, accordingly, went there with him each riding one of the horses. When they got there, the constable gave the horses to the ostler. The prisoner did not enquire for any parcel, but made his escape, and was, afterwards, again apprehended in Surrey, and indicted in Kent for stealing the two horses. Upon a case reserved, the judges were unanimously of opinion that there was no evidence to be left to the jury of stealing in Kent. (1)

Where a theft was committed in County A., and the receiving of the property took place in County B., it was held that both were triable in A., and that the stealing and receiving could both be alleged to have been in A. (2)

Where an offence has been committed within 500 yards of the boundary between two magisterial jurisdictions, it seems that Clause (*b*) of Article 553 will not enable the prosecutor to lay it in one jurisdiction and try it in another, but it merely gives him the option of both laying and trying the offence in either jurisdiction. (3)

With regard to Clause (*c*) of Article 553, it seems that, in order to maintain an indictment in a magisterial jurisdiction other than that in which an offence has been committed, in respect of property in or upon a vehicle or vessel employed in a journey, etc., it would be necessary to prove that the offence was committed *in* or *upon* the vehicle or vessel itself. For instance, a defendant was held to bail to appear at the Cumberland Assizes to answer a charge of stealing committed on a journey. He had acted as guard of a coach

(1) R. v. Simmonds, 1 Mood. C. C. 408.
(2) R. v. Hinley, 2 M. & Rob. 524.
(3) R. v. Mitchell, 2 G. & Dav. 274; 2 Q. B. 638.

from Penrith in the county of Cumberland to Kendal in Westmoreland, and was entrusted with a banker's parcel, containing bank notes and two sovereigns. On changing horses at some distance from Penrith, he carried the parcel to a privy, and while there took out of it the sovereigns; and Parke, B., held that, as the act of stealing was not "in or upon the coach," the case was not within the statute, and the felony having been committed in Westmoreland, the indictment ought to be preferred in that county. (1)

Clause (*c*) is not confined to the carriages of common carriers or to public conveyances, but extends to any vehicle employed in any journey. (2)

Clause (*c*) applies to an offence committed in a carriage of a train running through several jurisdictions. (3)

A prisoner was tried at Quebec and convicted there of manslaughter. He and the deceased had been serving on board a British ship and the latter had died, in the district of Kamouraska, where the ship was loading, from injuries inflicted by the prisoner on board the ship while on the high seas.

Held, that as the injuries were inflicted at sea, that is, within the Admiralty jurisdiction and the death happened in the district of Kamouraska, he should have been tried in the latter district, and not in the district of Quebec. (4)

If any offence against the *Fisheries Act* be committed in upon or near any waters forming the boundary between different counties or districts, or fishery districts, such offence may be prosecuted before any justice of the peace in either of such counties or districts, or before the fishery officer for either of such districts. (5)

Every offence against the *Animal Contagious Diseases Act* is, for the purposes of proceedings under the Act, deemed to have been committed and every cause of complaint under the Act is deemed to have arisen either in the place where the same actually was

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(1) Sharpe's Case, 2 Lew. 233.
(2) R. v. Sharpe, Dears. 415; 24 L. J. M. C. 40.
(3) R. v. French, 8 Cox C. C. 252.
(4) R. v. Moore, 8 Q. L. R. 9.
(5) R. S. C. c. 95, sec. 17, sub sec. 3.

committed or arose, or in any place in which the person charged or complained against happens to be. (1)

Under the *Canadian Government Vessels Discipline Act*, any justice of the peace for the county or district in which is situated the port where the vessel, on board of which an offence against the provisions of the Act has been committed, touches next after the time of its commission, is given jurisdiction over the offence. (2) And with regard to offences against sections 10 & 11 of the Act respecting the *Safety of Ships*, jurisdiction is given to any justice of the peace either in the place where the offence is committed, or, if committed while the steamer is under way, then, in the place where it next stops. (3)

In any complaint, information or conviction under *the Dairy Products Act* 1893, the matter complained of may be declared and shall be held to have arisen at the place where the cheese or butter complained of was manufactured, sold, offered, exposed, or had in possession for sale. (4).

In any complaint, information or conviction under the Act against frauds in supplying milk to cheese and butter manufacturers, the matter complained of may be declared and will be held to have arisen at the place where the milk complained of was to be manufactured, notwithstanding that the deterioration thereof was effected elsewhere. (5)

Summary Arrest.—The first paragraph of Article 552 of the criminal code provides that any one found committing any of the offences therein enumerated may be arrested, WITHOUT WARRANT, by ANYONE; and the following is an alphabetical list of such offences :

Abduction, (Article 281).

Administering, taking, or procuring unlawful oaths, (Articles 120, 121).

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(1) R. S. C. c. 69, sec. 45.
(2) R. S. C., c. 71, sec. 14.
(3) R. S. C., c. 77, sec. 20.
(4) 56 Vict. c. 37, sec. 7.
(5) 52 Vict. c. 43, sec. 8.

Arson, setting fires, etc. (Articles 482, 483, 484, 485).

Assaults on the Queen, (Article 71).

Attempt to damage by explosives, (Article 488).

Being at large while under sentence of imprisonment, (Article 159).

Breaking prison. (Article 161).

Bringing stolen property into Canada, (Article 355).

Breaking place of worship. (Articles 408, 409).

Burglary, housebreaking, shopbreaking, etc. (Articles 410, 411, 412, 413, 414).

Being found in a dwelling by night, (Article 415).

Being found armed with intent to break a dwellnghouse,(Article 416).

Being disguised or in possession of housebreaking instruments ; (Article 417).

Clipping Current coin ; Possessing clippings ; (Articles 468, 470).

Counterfeiting seals ; Counterfeiting stamps, (Articles 425, 435).

Counterfeiting gold and silver coin ; Making coining instruments ; and Uttering counterfeit current coin. (Articles 462, 466, 477).

Counterfeiting copper coin. (Article 472).

Counterfeiting foreign gold and silver coin. (Article 473).

Defiling children, (Article 269).

Demanding by threatening letters, (Article 403).

Demanding with intent to steal, (Article 404).

Endangering persons on railways, (Articles 250, 251).

Escapes, (Articles 163, 164).

Extortion by threats, (Article 405).

Falsifying Registers. (Article 436).

Forcibly compelling execution of documents, (Article 402).

Forgery ; Uttering forged documents ; Possessing forged bank

notes; Using probate obtained by forgery or perjury; Making, having, or using forgery instruments, (Articles 423, 424, 430, 432 434).

Inciting to mutiny, (Article 72).

Injuring or attempting to injure by explosives, (Articles 247, 248).

Injuring electric telegraphs, etc., (Article 492).

Interfering with marine signals, (Article 495.)

Murder; Attempt to murder; Accessory to murder, (Articles 231, 232, 235).

Manslaughter, (Article 236).

Mischief on railways, etc., (Articles 489, 498, 499).

Piracy; Piratical acts; Piracy with violence, (Articles 127, 128, 129).

Personation, (Article 458).

Riot act, offences respecting reading of, (Article 83).

Riotous destruction: Riotous damage, (Articles 85, 86).

Rape; Attempt to commit rape, (Articles 267, 268).

Receiving stolen property, (Article 314).

Robbery; Aggravated robbery; Assault with intent to rob, (Articles 398, 399, 400).

Stopping the mail, (Article 401).

Suicide, attempt at, (Article 238).

Stupefying in order to commit indictable offence, (Article 244).

Treason; Accessory; Treasonable offences, (Articles 65 67, 68, 69, 70).

Theft by agent, etc., (Article 320).

Unnatural offences, (Article 174).

Wounding, (Articles 241, 242).

Wreck, preventing escape from, (Article 254).

Wrecking; Attempt to wreck, (Articles 493, 494.)

"FOUND COMMITTING." has been held to mean either seeing the party actually committing the offence or pursuing him imme-

diately or continuously after he has been seen committing it; so that to justify the arrest, without warrant, of an offender, on the ground of his being *found committing* an offence, he must be taken in the very act of committing it, or there must be such fresh and continuous pursuit of him from his being seen and surprised in the act until his actual capture, that the finding him in the act and his subsequent pursuit and capture may be considered to constitute one transaction. (1) "Immediately" means immediately after the *commission* of the offence, and not immediately after the *discovery* of its commission. Pursuit after an interval of three hours would not be a fresh pursuit. (2)

It seems that if the offender be seen in the commission of an offence by one person, he may be arrested by another person who did not see him committing it. (3)

Clause 2 of Article 552 provides that a PEACE OFFICER may arrest, without warrant, any one found committing any of the following offences:

Attempting to injure or poison cattle (Article 500).

Cruelty to animals (Article 512).

Cutting booms, or breaking loose rafts or cribs of timber (Article 497).

Counterfeiting foreign copper coin (Article 473).

Exporting counterfeit coin (Article 465).

Keeping cock-pit (Article 513).

Obtaining by false pretence (Article 359).

Obtaining execution of valuable securities by false pretence (Article 360).

Possessing counterfeit current coin (Article 471).

Possessing counterfeit foreign gold or silver coin (Article 473).

A PEACE OFFICER may arrest, without warrant, any one whom he finds committing any offence against the Code, and ANY PERSON

(1) R. v. Curran, 3 C. & P. 397; 1 Russ. Cr., 5 Ed., 715; Hanway v. Boultbee, 1 M. & R. 15.

(2) Downing v. Capel, L. R. 2 C. P. 461; Leete v. Hart, 37 L. J. C. P. 157.

(3) R. v. Howarth, R. & M., C. C. R., 207.

may arrest, without warrant, any one whom he finds *by night* committing any offence against the Code. (Code. Article 552, par. 3).

ANY ONE may arrest, without warrant, a person whom he, on reasonable and probable grounds, believes to have committed an offence, and to be escaping from and to be freshly pursued by, those whom the person arresting, on reasonable and probable grounds, believes to have lawful authority to arrest such person (Code, Article 552, par. 4).

The OWNER of any property on or in respect to which any person is found committing an offence against the Code, or any person authorized by such owner, may arrest, without warrant, the person so found, who shall forthwith be taken before a justice of the peace to be dealt with according to law. (Code, Art. 552. par. 5).

Any OFFICER in Her Majesty's service, any WARRANT or PETTY OFFICER in the navy, and any NON-COMMISSIONED OFFICER OF MARINES may arrest, without warrant, any person found committing any of the offences mentioned in section 119 of the Code. (Code, Art. 552. par. 6).

Any PEACE OFFICER may, without a warrant, take into custody any person whom he finds lying or loitering in any highway, yard, or other place *during the night*, and whom he has good cause to suspect of having committed, or being about to commit, any indictable offence, and may detain such person until he can be brought before a justice of the peace, to be dealt with according to law.

No person who has been so apprehended shall be detained after noon of the following day, without being brought before a justice of the peace. (Code, Article 552, par. 7).

The expression "peace officer" includes a mayor, warden, reeve, sheriff, deputy sheriff, sheriff's officer, and justice of the peace, and also the warden, keeper or guard of a penitentiary and the gaoler or keeper of any prison, and any police officer, police constable, bailiff, constable, or other person employed for the preservation and maintenance of the public peace, or for the service or execution of civil process (Article 3 *s*).

"Night" is the interval between 9 P. M. and 6 A. M. of the following day (Article 3 *q*).

The Criminal Procedure Act, R. S. C., chap. 174,—section 26 of which empowered persons, to whom goods suspected to be stolen were offered for sale or for pawn, to arrest and carry before a justice any one so offering,—is now repealed. But the *Pawnbrokers' Act*, which is still in force, provides, by sections 9 and 10, that if any person offers to any pawnbroker by way of pawn or pledge, etc., any goods, and is, by giving an unsatisfactory account of the goods or otherwise, suspected of having stolen or illegally obtained such goods, the pawnbroker may seize and detain such person, or any person trying to redeem pawned goods to which he is not entitled, and carry him before a justice of the peace, who, upon examination and enquiry and upon finding cause to suspect a theft of the goods, or an attempt by the person so apprehended to redeem goods to which he is not entitled, may commit him for safe custody, and, if he find the goods to be stolen, etc., he may, unless the offence authorizes commitment by any other law, commit the offender to gaol for any term not exceeding three months.

Under the *Indian Act*, any constable or peace officer may arrest without warrant any person or Indian found gambling, or drunk, or with intoxicants in his possession, on any part of a reserve, and may detain him until he can be brought before a justice of the peace, and such person or Indian shall be liable upon summary conviction to imprisonment for a term not exceeding three months, or to a penalty not exceeding fifty dollars and not less than ten dollars, with costs of prosecution, half of which penalty shall belong to the informer. (1)

Any constable may, without warrant, apprehend any person found committing any offence against the *Animal Contagious Diseases* Act with respect to infected places, and take any person so apprehended before a justice of the peace to be dealt with according to law. (2)

Justification of Summary Arrest by Peace Officer of Suspected Offender.—Article 22 of the Code provides that, every peace officer who, on reasonable and probable grounds, believes that an offence for which the offender may be

(1) 57-58 Vic., c. 32, sec. 7.
(2) R. S. C., c. 69, sec. 44.

arrested without warrant has been committed, whether it has been committed or not, and who, on reasonable and probable grounds, believes that any person has committed that offence, is *justified* in arresting such person without warrant, whether such person is guilty or not.

Justification of Persons Assisting Peace Officer to Arrest Suspect.—Every one called upon to assist a peace officer in the arrest of a person suspected of having committed such offence as last aforesaid is *justified* in assisting, if he knows that the person calling on him for assistance is a peace officer, and does not know that there is no reasonable ground for the suspicion. (Code, Art. 23.)

As the common law justified a constable in making an arrest without warrant, upon a reasonable ground of suspicion of a felony having been committed, although no felony had in fact been committed, (1) it was, in so far as felonies were concerned, identical with the law as now made applicable by Article 22 of the Code to the particular offences (enumerated in Article 552), for which offenders may be arrested without warrant.

Of course, the grounds of belief upon which a peace officer acts under this provision of the law must, as shown by all the authorities in point, be such as would lead any reasonable person, acting without bias or prejudice, to believe the arrested party guilty of the offence. (2)

Justification of Summary Arrest by Private Individuals.—Every one is *justified* in arresting without warrant any person whom he finds committing any offence for which the offender may be arrested without warrant, or may be arrested when found committing. (Code, Art. 24)

If any offence, for which the offender may be arrested without warrant, has been committed, any one who, on reasonable and pro-

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(1) Beckwith v. Philby, 6 B. & C. 635; Davies v. Russell, 5 Bing. 354; Hogg v. Ward, 27 L. J. Ex. 443; Cowles v. Dunbar, M. & M. 37; 2 Oke's Syn. 913.

(2) Allen v. Wright, 8 C. & P. 522; Leete v. Hart, L. R., 3 C. P. 322; Greenwood & M's Mag. G. 2 Ed. 117.

bable grounds, believes that any person is guilty of that offence is *justified* in arresting him without warrant, whether such person is guilty or not. (Code, Art. 25).

Every one is *protected from criminal responsibility* for arresting without warrant any person whom he, on reasonable and probable grounds, believes he finds committing by night any offence for which the offender may be arrested without warrant. (Code, Art. 26).

Justification of Arrest by Peace Officer of a Person Whom He Finds Committing an Offence.—Every peace officer is *justified* in arresting without warrant any person whom he finds committing an offence. (Code, Art. 27)

Justification of Arrest of Person Found Committing Any Offence at Night.—Every one is *justified* in arresting without warrant any person whom he finds by night committing any offence.

2. Every peace officer is *justified* in arresting without warrant any person whom he finds lying or loitering in any highway, yard or other place, by night, and whom he has good cause to suspect of having committed or being about to commit any offence for which an offender may be arrested without warrant. (Code, Art. 28)

Arrest During Flight.—Everyone is *protected from criminal responsibility* for arresting without warrant any person whom he, on reasonable and probable grounds, believes to have committed an offence and to be escaping from and to be freshly pursued by those whom he, on reasonable and probable grounds, believes to have lawful authority to arrest that person for such offence. (Code, Art. 29).

It will noticed that, in some of the foregoing articles the word "*justified*" is used, while in others the words used are "*protected from criminal responsibility.*" The different meanings intended to be conveyed by these two expressions are explained in the following extract, from the Royal Commissioners' report on the English Draft Code: "There is a difference in the language used in the

sections in this part which probably requires explanation. Sometimes it is said that the person doing an act is '*justified*' in so doing under particular circumstances. The effect of an enactment using that word would be, not only to relieve him from punishment, but also to afford him a statutable defence against a civil action for what he had done. Sometimes it is said that the person doing an act is '*protected from criminal responsibility*' under particular circumstances. The effect of an enactment using this language is to relieve him from punishment, but to leave his liability to an action for damages to be determined on other grounds, the enactment neither giving a defence to such an action where it does not exist, nor taking it away where it does."

Statutory Power of Arrest.—The Code provides that nothing therein contained shall take away or diminish any authority given by any Act in force for the time being to arrest, detain or put any restraint on any person. (Code, Art. 30).

Justification of Force used in Arrests, &c.—Every one *justified* or *protected from criminal responsibility*, in executing any sentence, warrant or process, or in making any arrest, and everyone lawfully assisting him, is *justified* or *protected from criminal responsibility*, as the case may be, in using such force as may be necessary to overcome any force used in resisting such execution or arrest, unless the sentence, process or warrant can be executed or the arrest effected by reasonable means in a less violent manner. (Code, Art. 31).

This article is based upon the principle that, as in making an arrest or in executing any sentence, warrant, order, or process, a peace officer or other person legally authorized acts under legal command or compulsion, he may, if resisted, repel force with force; and if, in using reasonable and necessary force to overcome resistance, the officer should happen, in the struggle, to kill the person resisting or any of his accomplices, he will be exonerated; while, on the other hand, if death should ensue to the officer or any one assisting him, the persons so resisting will be guilty of murder. (1).

(1) Fost. 270, 271, 318; 1 Hale, 494; R. v. Porter, 12 Cox, C. C. 444.

Duty of Persons Arresting.—It is the duty of everyone executing any process or warrant to have it with him, and to produce it, if required.

It is the duty of every one arresting another, whether with or without warrant, to give notice, where practicable, of the process or warrant under which he acts, or of the cause of arrest.

A failure to fulfil either of the two duties last mentioned shall not of, itself, deprive the person executing the process or warrant, or his assistants, or the person arresting, of protection from criminal responsibility, but shall be relevant to the inquiry whether the process or warrant might not have been executed, or the arrest effected, by reasonable means in a less violent manner. (Code, Art. 32).

Preventing Escape by Flight.—Every peace officer proceeding lawfully to arrest, with or without warrant, any person for any offence for which the offender may be arrested without warrant, and every one lawfully assisting in such arrest, is *justified*, if the person to be arrested takes to flight to avoid arrest, in using such force as may be necessary to prevent his escape by such flight, unless such escape can be prevented by reasonable means in a less violent manner. (Code, Art. 33)

Every private person proceeding lawfully to arrest without warrant any person for any offence for which the offender may be arrested without warrant is *justified*, if the person to be arrested takes to flight to avoid arrest, in using such force as may be necessary to prevent his escape by flight, unless such escape can be prevented by reasonable means in a less violent manner: Provided, that such force is neither intended nor likely to cause death or grievous bodily harm. (Code, Art. 34).

Every one proceeding lawfully to arrest any person for any cause other than such offence as in the last section mentioned is *justified*, if the person to be arrested takes to flight to avoid arrest, in using such force as may be necessary to prevent his escape by flight, unless such escape can be prevented by reasonable means in a less violent manner: Provided such force is neither intended nor likely to cause death or grievous bodily harm. (Code, Art. 35)

Preventing Escape or Rescue after Arrest.—Every one who has lawfully arrested any person for any offence for which the offender may be arrested without warrant is *protected from criminal responsibility* in using such force in order to prevent the rescue or escape of the person arrested as he believes, on reasonable grounds, to be necessary for that purpose. (Code, Art. 36).

Every one who has lawfully arrested any person for any cause other than an offence for which the offender may be arrested without warrant, is *protected from criminal responsibility* in using such force in order to prevent his escape or rescue as he believes, on reasonable grounds, to be necessary for that purpose: Provided that such force is neither intended nor likely to cause death or grievous bodily harm. (Code, Art. 37.)

CHAPTER VIII.

PROSECUTION OF INDICTABLE OFFENCES; COMPELLING APPEARANCE; LAYING INFORMATION; SUMMONS; WARRANTS OF ARREST; SEARCH WARRANTS.

Modes of Prosecution of Indictable Offences Before the Code.—Before the coming into force of the criminal code, there were four different modes of proceeding against a person accused of having committed an indictable offence,—*first*, by taking him before a magistrate and having him committed for trial; *second*, by means of an indictment, without being so committed; *third*, in the case of homicide, by committal for trial upon a coroner's inquisition; and *fourth*, by means of a criminal information filed either by the Attorney-General, *ex-officio*, or by the clerk of the Crown, by leave of a Superior Court. (1)

Present Modes of Prosecution.—No one, except the Attorney-General or some one by his direction, can now, in any case or for any offence, prefer a bill of indictment before the grand jury, unless he has first had the charge investigated before

(1) As to criminal informations, see Crankshaw's Cr. C. 244–248.

a magistrate or justice of the peace, and been bound over to prosecute, or unless he has the written consent of a court of criminal jurisdiction, or of the Attorney-General, or of the court before which the bill of indictment is to be preferred ; (1) and, as criminal informations are very rare, and, as no one can now be tried upon a coroner's inquisition, (2) the practical result and the general rule is that no one is now tried upon an indictment without a previous preliminary enquiry into the charge, before a magistrate or justice of the peace.

North-West Territories and Keewatin.—No grand jury is summoned or sits in the North-West Territories, (3) nor in the District of Keewatin. (4)

Compelling Appearance Before Justices. — Every justice may issue a warrant or summons as hereinafter mentioned to compel the attendance of an accused person before him, for the purpose of preliminary inquiry, in any of the following cases :

(*a.*) If such person is accused of having committed *in any place whatever* an indictable offence triable in the province in which such justice resides, and is, or is suspected to be, within the limits over which such justice has jurisdiction, or resides or is suspected to reside within such limits ;

(*b.*) If such person, wherever he may be, is accused of having committed an indictable offence within such limits ;

(*c.*) If such person is alleged to have anywhere unlawfully received property which was unlawfully obtained within such limits ;

(*d.*) If such person has in his possession, within such limits, any stolen property. (Code, Art. 554).

Offences Committed in Certain Parts of Ontario.—All offences committed in any of the unorganized tracts of country in the province of Ontario, including lakes, rivers,

(1) Code Art. 641.
(2) Code, Art. 642.
(3) R. S. C., c. 50, sec. 65.
(4) R. S. C., c. 53, sec. 27.

and other waters therein, not embraced within the limits of any organized county, or within any provisional judicial district, may be laid and charged to have been committed and may be enquired of, tried and punished within any county of such province; and such offences shall be within the jurisdiction of any court having jurisdiction over offences of the like nature committed within the limits of such county, before which court such offences may be prosecuted; and such court shall proceed therein to trial, judgment and execution or other punishment for such offence, in the same manner as if such offence had been committed within the county where such trial is had.

2. When any provisional judicial district or new county is formed and established in any of such unorganized tracts, all offences committed within the limits of such provisional judicial district, or new county shall be inquired of, tried and punished within the same, in like manner as such offences would have been inquired of, tried and punished if this section had not been passed.

3. Any person accused or convicted of any offence in any such provisional district may be committed to any common gaol in the province of Ontario; and the constable or other officer having charge of such person and intrusted with his conveyance to any such common gaol, may pass through any county in such province with such person in his custody; and the keeper of the common gaol of any county in such province in which it is found necessary to lodge for safe keeping any such person so being conveyed through such county in custody, shall receive such person and safely keep and detain him in such common gaol for such period as is reasonable or necessary; and the keeper of any common gaol in such province, to which any such person is committed as aforesaid, shall receive such person and safely keep and detain him in such common gaol under his custody until discharged in due course of law, or bailed in cases in which bail may by law be taken. (Code, Art. 555).

Offences Committed in Gaspé—Whenever any offence is committed in the district of Gaspé, the offender, if committed to gaol before trial, may be committed to the common gaol of the county in which the offence was committed, or may, in law, be deemed to have been committed, and if tried before the

Court of Queen's Bench, he shall be so tried at the sitting of such court held in the county to the gaol of which he has been committed, and if imprisoned in the common gaol after trial he shall be so imprisoned in the common gaol of the county in which he has been tried. (Code, Art. 556).

Offences Committed out of Magistrate's Jurisdiction.—The preliminary inquiry may be held either by one justice or by more justices than one: Provided that if the accused person is brought before any justice charged with an offence committed out of the limits of the jurisdiction of such justice, such justice may, after hearing both sides, order the accused at any stage of the inquiry to be taken by a constable before some justice having jurisdiction in the place where the offence was committed. The justice so ordering shall give a warrant for that purpose to a constable, which may be in the FORM A IN SCHEDULE ONE of the Code, (1) or to the like effect, and shall deliver to such constable the information, depositions and recognizances, if any, taken under the provisions of the Code, to be delivered to the justice before whom the accused person is to be taken, and such depositions and recognizances shall be treated to all intents as if they had been taken by the last mentioned justice.

2. Upon the constable delivering to the justice the warrant, information, if any, depositions and recognizances, and proving on oath or affirmation, the handwriting of the justice who has subscribed the same, such justice, before whom the accused is produced, shall thereupon furnish such constable with a receipt or certificate in the FORM B IN SCHEDULE ONE of the Code, (2) of his having received from him the body of the accused, together with the warrant, information, if any, depositions and recognizances, and of his having proved to him, upon oath or affirmation, the handwriting of the justice who issued the warrant.

3. If such justice does not commit the accused for trial, or hold him to bail, the recognizances taken before the first mentioned justice shall be void. (Code, Art. 557).

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(1) For Form A, see p. 135, *post*.
(2) For Form B, see p. 135, *post*.

Laying Information.—Any one who, upon reasonable or probable grounds, believes that any person has committed an indictable offence against the Code may make a complaint or lay an information in writing and under oath before any magistrate or justice of the peace having jurisdiction to issue a warrant or summons against such accused person in respect of such offence.

2. Such complaint or information may be in the FORM C in SCHEDULE ONE of the Code, (1) or to the like effect. (Code, Art. 558).

By Article 534 of the Code no civil remedy for any act or omission is to be suspended by reason of such act or omission amounting to a criminal offence.

The information and complaint should contain the Informant's or Complainant's name, occupation and address, (2) the date and place of preferring it, with the name and style of the justice before whom it is laid or made, (3) and the name and description of the person charged. (4)

If the Act under which the proceedings are taken extends only to persons of a particular class, office, or situation in life, the party charged should be shown to come within the description of such persons, bearing in mind the broad rule, for construing statutes, as laid down by Lord Tenterden, that, "where general words follow particular ones, the rule is to construe them as applicable to persons *ejusdem generis*. (5)

The prosecutor may prosecute all or any of the parties, and the omission of a *particeps criminis* cannot, as in cases of joint contracts in civil actions, be taken advantage of by those who are prosecuted. (6)

The above Article 558 requires the information or complaint to be in writing and under oath, and to be in the form C in schedule

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(1) For Form C. see p. 136, *post*.
(2) R. v. Stone, 2 Ld. Raym. 1545.
(3) R. v. Johnson, 1 Str. 261.
(4) R. v. Dobbin, 2 Salk. 473.
(5) Sandiman v. Broach, 7 B. & C. 100.
(6) R. v. Brown, 26 L. J. M. C. 183.

one of the Code or to the like effect; but form C. does not show how the offence is to be described. For examples of the manner of stating offences, see pp. 143, et seq., *post*.

The description of the charge in the information and complaint should include, in express terms, every ingredient required by the statute to,—or a statement of facts which—constitute the offence. (1)

It is, however, provided by Article 578 of the Code, *post*, that no irregularity or defect in the substance or form of the summons or warrant, and that no variance between the charge contained in the summons or warrant and the charge contained in the information or between either and the evidence adduced on the part of the prosecution at the enquiry shall affect the validity of the proceedings at or subsequent to the hearing. The possibility of taking technical objections either to the information or complaint or to the case as made out in the evidence adduced at the preliminary investigation of an indictable offence is thus done away with. The information or complaint in the case of an indictable offence is taken merely for the purpose of enabling the justice to judge whether or not he should interfere, and to guide his discretion as to the propriety of issuing a summons or a warrant; (2) so that after the summons or warrant issues the information or complaint ceases to be of any importance, and it necessarily follows that if the evidence taken before the justice reveals an indictable offence as having been committed by the party summoned or apprehended, though it may not be the same offence as the one charged in the information or complaint, he is bound to adjudicate upon the evidence and to discharge, bind over, or commit the accused, as directed by Articles 579, 586, 587, 594 and 596, *post*.

Hearing Information.—Upon receiving any such complaint or information the justice *shall* hear and consider the allegations of the complainant, and, if of opinion that a case for so doing is made out, he shall issue a summons or warrant, as the case

(1) R. v. Denman, 1 Chitt. Rep. 152: *Ex parte* Askew, 15 J. P. 485.
(2) Saunders' Prac. Mag. Cts. 5 Ed. 212.

may be, in manner hereinafter mentioned, and such justice shall not refuse to issue such summons or warrant, only because the alleged offence is one for which an offender may be arrested without warrant. (Code, Art. 559)

This Article expressly provides that the justice *shall* hear and consider the allegations of the complainant, before issuing a summons or warrant.

The summons or the warrant, as the case may be, should be issued by the magistrate who hears the information. The Courts disapprove of the practice of the magistrate's clerk hearing the complaint and filling up the summons or warrant and getting it signed by the magistrate, without the latter having personally heard the party complaining. (1)

The information should be taken as nearly as possible in the language of the party complaining ; (2) and a magistrate should not place upon the complainant's words a legal construction which they do not bear. If, for instance, the complainant's statement shows only a civil trespass, it should not be construed by the magistrate as an indictable offence, nor should he so describe it in the information. (3)

If the information discloses no offence in law, it will not authorize the issue of a warrant, as it contains nothing to found the magistrate's jurisdiction. (4) But, if it can, by reasonable intendment be read as disclosing a criminal offence, the rule is to so read it. (5).

There are cases, occasionally, in which it may be thought advisable to issue merely a summons ; but it is very seldom that this process is deemed sufficient upon an information being laid for an indictable offence. The usual course is to issue a warrant of apprehension.

Warrant in Cases of Offences Committed on the High Seas, Etc.—Whenever any indictable offence is committed on the high seas, or in any creek, harbor, haven or

(1) Dixon v Wells, 25 Q.B.D. 249.
(2) Cohen v Morgan, 6 D. & R. 8.
(3) Rogers v. Hassard, 2 App. Rep. (Ont). 507.
(4) Stephens v. Stephens, 24 U.C.C.P. 424.
(5) Lawrence v. Hill, 10, Ir. C.L.R. 177.

other place in which the Admiralty of England have or claim to have jurisdiction, and, whenever any offence is committed on land beyond the seas for which an indictment may be preferred, or the offender may be arrested in Canada, any justice for any territorial division in which any person charged with, or suspected of, having committed any such offence is or is suspected to be, may issue his warrant, in the *form D* in *schedule one* of the Code, (1) or to the like effect, to apprehend such person, to be dealt with as herein and hereby directed. (Code, Art. 560).

As to offences committed within the jurisdiction of the Admiralty, see comments and authorities at pp. 72-77, *ante*.

Arrest of Suspected Deserters.—Every one who is reasonably suspected of being a deserter from Her Majesty's service may be apprehended and brought for examination before any justice of the peace, and, if it appears that he is a deserter, he shall be confined in gaol until claimed by the military or naval authorities, or proceeded against according to law.

2. No one shall break open any building to search for a deserter, unless he has obtained a warrant for that purpose from a justice of the peace,—such warrant to be founded on affidavit that there is reason to believe that the deserter is concealed in such building, and that admittance has been demanded and refused; (2) and every one who resists the execution of any such warrant shall incur a penalty of eighty dollars, recoverable on summary conviction in like manner as other penalties under the Code. (Code, Art. 561.)

Contents of Summons.—Service.—Every summons issued by a justice under the Code shall be directed to the accused, and shall require him to appear at a time and place to be therein mentioned. Such summons may be in the FORM E IN SCHEDULE ONE of the Code, (3) or to the like effect. *No summons shall be signed in blank.*

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(1) For Form D, see p. 137, *post*.

(2) For form of information to obtain a search warrant, see p. 140, *post*.

(3) For Form E, see p. 137, *post*.

2. Every such summons shall be served by a constable or other peace officer upon the person to whom it is directed, either by delivering it to him personally, or, if such person cannot conveniently be met with, by leaving it for him at his last or most usual place of abode, with some inmate thereof, *apparently not under sixteen years of age.*

3. The service of any such summons may be proved by the oral testimony of the person effecting the same or by the affidavit of such person purporting to be made before a justice. (Code, Art. 562.)

This article requires that service shall be effected by delivering the summons itself to the party *personally*, or by leaving the same at his last or most usual place of abode, with some inmate thereof apparently not under sixteen years of age.

Where the service is effected by leaving the summons with another person, the constable must tell the person with whom he leaves it that it is for the defendant, and the person with whom the summons is left should be made to understand the nature of it. (1)

The words "last or most usual place of abode" mean the party's present place of abode, if he has any, and the last place of abode which he had if he has ceased to have any. (2)

The delivery of the summons to a person on the premises apparently residing there as a servant is sufficient. (3)

The service of a notice, under the "Public Health Act," 11 & 12 Vic. (Imp.), c. 63, upon a clerk at the office of the "owner," where the owner carried on his business, was held to be a service upon "*some inmate of his place of abode,*" under section 150 of that Act. (4)

Warrant to Arrest in the First Instance.—The warrant issued by a justice for the apprehension of the person against whom an information or complaint has been laid, as

(1) *Ex parte* Smith, 39 J. P. 614.
(2) *Ex parte* Rice, Jones, 1 L. M. & P. 357.
(3) R. v. Chandler, 14 East, 267.
(4) Mason v. Bibby, 9 L. T. N. S. 692; 33 L. J. M. C. 85.

provided in section five hundred and fifty-eight, may be in the FORM F IN SCHEDULE ONE of the Code, (1) or to the like effect. *No such warrant shall be signed in blank.*

2. Every such warrant shall be under the hand and seal of the justice issuing the same, and may be directed, either to any constable by name, or to such constable, and all other constables within the territorial jurisdiction of the justice issuing it, or generally to all constables within such jurisdiction.

3. The warrant shall state shortly the offence for which it is issued, and shall name or otherwise describe the offender, and it shall order the officer or officers to whom it is directed to apprehend the offender and bring him before the justice or justices issuing the warrant, or before some other justice or justices, to answer to the charge contained in the said information or complaint, and to be further dealt with according to law. It shall not be necessary to make such warrant returnable at any particular time, but the same shall remain in force until it is executed.

4. The fact that a summons has been issued shall not prevent any justice from issuing such warrant at any time before or after the time mentioned in the summons for the appearance of the accused; and, where the service of the summons has been proved, and the accused does not appear, or when it appears that the summons cannot be served, the warrant (FORM G) may issue. (2) (Code, Art. 563.)

Execution of Warrants.—Every such warrant may be executed by arresting the accused, wherever he is found in the territorial jurisdiction of the justice by whom it is issued, or in the case of fresh pursuit, at any place in an adjoining territorial division within seven miles of the border of the first-mentioned division.

2. Every such warrant may be executed by any constable named therein, or by any one of the constables to whom it is directed,

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(1) For Form F, see p. 138, *post*.

(2) For Form G, see pp. 138, 139, *post*. For form of deposition proving service of summons, see p. 141, *post*.

whether or not the place in which it is to be executed is within the place for which he is constable.

3. Every warrant authorized by the Code may be issued and executed on a Sunday or statutory holiday. (Code, Art. 564)

The expression "holiday" includes Sundays, New Year's Day, the Epiphany, Good Friday, the Ascension, All Saints' Day, Conception Day, Easter Monday, Ash Wednesday, Christmas Day, the birthday (or the day fixed by proclamation for the celebration of the birthday) of the reigning Sovereign, Dominion Day, Labor Day, (first Monday in September), and any day appointed by proclamation for a general fast or thanksgiving. (1)

The police have a right, under a warrant for the arrest of a person charged with stealing goods, to take possession of the goods; and any property found in the possession of a person arrested for an indictable offence may,—if believed to have been used for the purpose of committing the offence,—be seized and detained as evidence in support of the charge. (2)

A warrant issued under the *Extradition Act* may be executed in any part of Canada, in the same manner as if it had been originally issued, or subsequently endorsed, by a justice of the peace having jurisdiction in the place where it is executed. (3) and everything found in the possession of the fugitive at the time of his arrest, which may be material as evidence in making proof of the crime, may be delivered up with the fugitive on his surrender, subject to all rights of third persons with regard thereto. (4)

A fugitive offender accused of having committed an offence in some part of Her Majesty's dominions outside of Canada may be apprehended in Canada under an *endorsed* warrant or a *provisional* warrant. (5)

A Magistrate in Canada may issue a provisional warrant for the apprehension of a fugitive who is or is suspected of being in or on his way to Canada, on such information and under such circum-

(1) R. S. C., c. 1, sec. 7, par. 26; 56 Vic., c. 30, sec. 1; 57 & 58 Vic., c. 55. sec. 1.
(2) Dillon v. O'Brien, 16 Cox, 245.
(3) R. S. C., c. 142, sec. 7.
(4) *Ib.*, sec. 18.
(5) R. S. C., c. 143, sec. 4. As to endorsed warrants, see pp. 115, 116, *post*.

stances as would, in his opinion, justify the issue of a warrant, if the offence of which the fugitive is accused had been committed within his jurisdiction ; and such warrant may be backed and executed accordingly. (1)

Execution of Lawful Process Justified.—Every ministerial officer of any court duly authorized to execute any lawful process of such court, whether of a civil or criminal nature, and every person lawfully assisting him, is *justified* in executing the same ; and every gaoler who is required under such process to receive and detain any person is justified in receiving and detaining him. (Code, Art. 16)

Execution of Lawful Warrants Justified.—Every one duly authorized to execute a lawful warrant issued by any court or justice of the peace or other person having jurisdiction to issue such warrant, and every person lawfully assisting him, is *justified* in executing such warrant ; and every gaoler who is required under such warrant to receive and detain any person is *justified* in receiving and detaining him. (Code, Art. 17)

Where, upon warrants being issued for the arrest of parties accused of having committed an offence in one county, persons from another county came to assist the constables of the county where the offence was committed in making the arrests, the persons so assisting were held entitled to the same protection as the constables. (2)

Execution of Erroneous Sentence or Process Justified.—If a sentence is passed or process issued by a court having jurisdiction under any circumstances to pass such a sentence or issue such process, or if a warrant is issued by a court or person having jurisdiction under any circumstances to issue such a warrant, the sentence passed or process or warrant issued shall be sufficient to *justify* the officer or person authorized to execute the same, and every gaoler and person lawfully assisting in executing or carrying out such sentence, process or warrant, although the court passing the sentence or issuing the process had not, in the

(1) *Ib.*, sec. 6.

(2) R. v. Chassen, 3 Pugs. 546.

particular case, authority to pass the sentence or to issue the process, or although the court, justice or other person in the particular case had no jurisdiction to issue, or exceeded its or his jurisdiction in issuing the warrant, or was, at the time when such sentence was passed or process or warrant issued, out of the district in or for which such court, justice or person was entitled to act. (Code, Art. 18.)

In their comments upon sections of the English Draft Code of the same import as the foregoing Articles 16 to 18, the Royal Commissioners say: "The result of the authorities justifies us in saying that wherever a ministerial officer, who is bound to obey the orders of a court or magistrate, (as, for instance, in executing a sentence or effecting an arrest under warrant), and is punishable by indictment for disobedience, merely obeys the order which he has received, he is *justified*, if that order was within the jurisdiction of the person giving it. And we think that the authorities show that a ministerial officer obeying an order of a court or the warrant of a magistrate, is *justified* if the order or warrant was one which the court or magistrate could under any circumstances lawfully issue, though the order or warrant was, in fact, obtained improperly, or though there was a defect of jurisdiction in the particular case which might make the magistrate issuing the warrant civilly responsible, on the plain principle that the ministerial officer is not bound to enquire what were the grounds on which the order or warrant was issued, and is not to blame for acting on the supposition that the court or magistrate had jurisdiction."

When Execution of Sentence or Process Without Jurisdiction is Protected.—Every officer, gaoler, or person executing any sentence, process or warrant, and every person lawfully assisting such officer, gaoler or person shall be *protected from criminal responsibility*, if he acts in good faith, under the belief that the sentence or process was that of a court having jurisdiction, or that the warrant was that of a court, justice of the peace, or other person having authority to issue warrants; and if it be proved that the person passing the sentence or issuing the process acted as such a court under color of having some appointment or commission lawfully authorizing him to act as such a court, or that the person issuing the warrant acted as a justice of the peace or

other person having such authority, although, in fact, such appointment or commission did not exist, or had expired, or although, in fact, the court or the person passing the sentence or issuing the process was not the court or the person authorized by the commission to act, or the person issuing the warrant was not duly authorized so to act. (Code, Art. 19.)

It will be seen that Article 18 protects an officer who executes the sentence or warrant of a court or person having jurisdiction, generally speaking, but acting, in the particular case in hand, either without or in excess of such jurisdiction, or outside of his or its district: and that Article 19 protects an officer in executing, in good faith, a sentence or warrant which he believes has been passed or issued by such court or person under some color of lawful authority.

In commenting upon the latter clause the English commissioners say: "Though cases of this sort have rarely arisen in practice, we think we are justified by the opinion of Lord Hale (1 Hale, 498) in saying that the order of a court, having a color of jurisdiction, though acting erroneously, is enough to justify the ministerial officer."

Arresting the Wrong Person.—Every one duly authorized to execute a warrant to arrest, who thereupon arrests a person, believing, in good faith and on reasonable and probable grounds, that he is the person named in the warrant, shall be *protected from criminal responsibility* to the same extent and subject to the same provision as if the person arrested had been the person named in the warrant.

Every one called on to assist the person making such arrest, and believing that the person in whose arrest he is called on to assist is the person for whose arrest the warrant is issued, and every gaoler who is required to receive and detain such person, shall be protected, to the same extent and subject to the same provisions as if the arrested person had been the person named in the warrant. (Code, Art. 20.)

This Article of the Code made an important change. By the common law, if an officer, having a warrant for one person, arrested another, the arrest was illegal and unjustifiable. For instance,

in one case, a magistrate issued a warrant upon a criminal charge against a man who was described in the warrant by the name of John H. Under this warrant the constable arrested Richard H.; and, although the man so arrested was, in reality, the person against whom the warrant was intended, and was pointed out as such to the constable by the prosecutor, who supposed the man's name to be John H., Mr. Justice Coltman directed the jury, and his ruling was afterwards upheld, that a person could not be lawfully taken under a warrant describing him by a name that did not belong to him, unless he had assumed or called himself by the wrong name. (1)

Of course, as a constable could always apprehend, without warrant, any one suspected on reasonable grounds of having committed a felony, he was able to justify an arrest on that ground, although he had a warrant which happened to be illegal. (2)

The remarks of the English commissioners in support of a similar clause in their Draft Code are as follows: "This is new. As an officer arresting for felony without warrant is by the common law justified, even if he, by mistake, arrests the wrong person, we think that the one who arrests any person with a warrant for any offence shall at least be protected from criminal responsibility. The right of action is not affected by it."

Irregular Warrant or Process.—Every one acting under a warrant or process which is bad in law, on account of some defect in substance or in form apparent on the face of it, if he, in good faith and without culpable ignorance and negligence, believes that the warrant or process is good in law, shall be *protected from criminal responsibility*, to the same extent and subject to the same provisions as if the warrant or process were good in law, and ignorance of the law shall in such case be an excuse: provided that it shall be a question of law whether the facts of which there is evidence may or may not constitute culpable ignorance or negligence in his so believing the warrant or process to be good in law. (Code, Art. 21.)

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(1) Hoye v. Bush, 1 M. & Gr. 775, 780. 1 Russ. Cr., 5th Ed., 738; R. v. Hood, R. & M. C. C. R. 281.

(2) Hoye v. Bush, 1 M. & Gr. 775, 780.

In reference to this clause the English commissioners say: "It is at least doubtful, on the existing authorities, whether a person honestly acting under a bad warrant, defective on the face of it, has any defence, though doing only what would have been his duty if the warrant was good. The section as framed protects him. The proviso is new, but seems to be reasonable. It does not touch the question of civil responsibility."

Proceedings When the Offender is not Within the Justice's Jurisdiction.—If the person against whom any warrant has been issued cannot be found within the jurisdiction of the justice by whom the same was issued, but is or is suspected to be in any other part of Canada, any justice within whose jurisdiction he is or is suspected to be, upon proof being made on oath or affirmation of the handwriting of the justice who issued the same, shall make an endorsement on the warrant, signed with his name, authorizing the execution thereof within his jurisdiction; and such endorsement shall be sufficient authority to the person bringing such warrant, and to all other persons to whom the same was originally directed, and also to all constables of the territorial division where the warrant has been so endorsed, to execute the same therein and to carry the person against whom the warrant issued, when apprehended, before the justice who issued the warrant, or before some other justices for the same territorial division. Such endorsement may be in the FORM H IN SCHEDULE ONE of the Code. (1) . (Code, Art. 565).

Disposal of Person Arrested on Endorsed warrant.—If the prosecutor or any of the witnesses for the prosecution are in the territorial division where such person has been apprehended upon a warrant endorsed as provided in the last preceding section, the constable or other person or persons who have apprehended him may, if so directed by the justice endorsing the warrant, take him before such justice, or before some other justice for the same territorial division; and the said justice may thereupon take the examination of such prosecutor or witnesses, and proceed in every respect as if he had himself issued the warrant. (Code, Art. 566).

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(1) For Form H. see p. 139, *post*.

Proceedings in Canada on warrant Issued Elsewhere.—Whenever a warrant has been issued in a part of Her Majesty's dominions for the apprehension of a fugitive from that part who is, or is suspected to be in or on the way to Canada, the Governor-General or a judge of a court, if satisfied that the warrant was issued by some person having lawful authority to issue the same, may indorse such warrant in manner provided by the *Fugitive Offenders' Act*, and the warrant so indorsed shall be a sufficient authority to apprehend the fugitive in Canada and bring him before a magistrate. (1)

An endorsement of a warrant, in pursuance of the *Fugitive Offenders' Act*, must be signed by the authority endorsing the same, and it authorizes all or any of the persons named in the endorsement and all or any of the persons to whom the warrant was originally directed, and also every constable, to execute the warrant within Canada by apprehending the person named in it, and bringing him before a magistrate in Canada, whether he is the magistrate named in the indorsement or some other. (2)

Bringing Arrested Person Before a Justice.—When any person is arrested upon a warrant, he shall, except in the case provided for in Article 566, be brought, as soon as is practicable, before the justice who issued it or some other justice for the same territorial division, and such justice shall either proceed with the inquiry or postpone it to a future time, in which latter case he shall either commit the accused person to proper custody, or admit him to bail, or permit him to be at large on his own recognizance, according to the provisions hereinafter contained. (Code, Art. 567).

Coroner's Inquisition.—Every coroner, upon any inquisition taken before him, whereby any person is charged with manslaughter or murder, shall (if the person or persons, or either of them, affected by such verdict or finding be not already charged with the said offence before a magistrate or justice), by warrant under his hand, direct that such person be taken into custody and

(1) R. S. C. c. 143, sec. 5.
(2) *Ib.* sec. 14.

be conveyed, with all convenient speed, before a magistrate or justice; or such coroner may direct such person to enter into a recognizance before him, with or without a surety or sureties, to appear before a magistrate, or justice. In either case, it shall be the duty of the coroner to transmit to such magistrate or justice, the depositions taken before him in the matter. Upon any such person being brought or appearing before any such magistrate or justice, he shall proceed in all respects as though such person had been brought or had appeared before him upon a warrant or summons. (Code, Art. 568)

No one can now be tried upon a coronor's inquisition. (Code, Art. 642).

Search warrants, Generally.——Any justice who is satisfied by information upon oath in the FORM J in SCHEDULE ONE of the Code, (1) that there is reasonable ground for believing that there is in any building, receptacle, or place—

(*a*) anything upon or in respect of which any offence against the Code has been or is suspected to have been committed; or

(*b*) anything which there is reasonable ground to believe will afford evidence as to the commission of any such offence; or

(*c*) anything which there is reasonable ground to believe is intended to be used for the purpose of committing any offence against the person for which the offender may be arrested without warrant,

—may at any time issue a warrant under his hand authorizing some constable, *or other person named therein*, to search such building, receptacle or place, for any such thing, and to seize and carry it before the justice issuing the warrant, or some other justice for the same territorial division to be by him dealt with according to law.

2. Every search warrant shall be executed, by day, unless the justice shall by the warrant authorize the constable or other person to execute it, at night.

3. Every search warrant may be in the FORM I in SCHEDULE ONE of the Code, (2) or to the like effect.

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(1) For Form J, see p. 140, *post*.
(2) For Form I, see p. 140, *post*.

4. When any such thing is seized and brought before such justice, he may detain it, taking reasonable care to preserve it till the conclusion of the investigation; and, if any one is committed for trial, he may order it further to be detained for the purpose of evidence on the trial. If no one is committed, the justice shall direct such thing to be restored to the person from whom it was taken, except in the cases next hereinafter mentioned, unless he is authorized or required by law to dispose of it otherwise. In case any improved arm or ammunition, in respect to which any offence under section one hundred and sixteen has been committed, has been seized, it shall be forfeited to the Crown.

5. If, under any such warrant, there is brought before any justice, any forged bank note, bank note-paper, instrument or other thing, the possession whereof in the absence of lawful excuse is an offence under any provision of the Code, or of any other Act, the court to which any such person is committed for trial or, if there is no commitment for trial, such justice may cause such thing to be defaced or destroyed.

6. If, under any such warrant, there is brought before any justice, any counterfeit coin or other thing the possession of which, with knowledge of its nature and without lawful excuse, is an indictable offence under any provision of Part XXXV. of the Code, (1) every such thing, as soon as it has been produced in evidence, or as soon as it appears that it will not be required to be so produced, shall forthwith be defaced or otherwise disposed of as the justice or the court directs.

7. Every person acting in the execution of any such warrant may seize any explosive substance which he has good cause to suspect is intended to be used for any unlawful object,—and shall, with all convenient speed, after the seizure, remove the same to such proper place as he thinks fit, and detain the same until ordered by a judge of a Superior Court to restore it to the person who claims the same.

8. Any explosive substance so seized shall, in the event of the person in whose possession the same is found, or of the owner thereof, being convicted of any offence under Part VI. of the

(1) Part XXXV of the Code deals with offences relating to the Coin.

Code, (1) be forfeited ; and the same shall be destroyed or sold under the direction of the court before which such person is convicted, and, in the case of sale, the proceeds arising therefrom shall be paid to the Minister of Finance and Receiver General, for the public uses of Canada.

9. If offensive weapons, believed to be dangerous to the public peace, are seized under a search warrant, the same shall be kept in safe custody in such place as the justice directs, unless the owner thereof proves, to the satisfaction of such justice, that such offensive weapons were not kept for any purpose dangerous to the public peace ; and any person from whom any such offensive weapons are so taken may, if the justice of the peace upon whose warrant the same are taken, upon application made for that purpose, refuses to restore the same, apply to a judge of a superior or county court for the restitution of such offensive weapons, upon giving ten days' previous notice of such application to such justice ; and such judge shall make such order, for the restitution or safe custody of such offensive weapons, as upon such application appears to him to be proper.

10. If goods or things by means of which it is suspected that an offence has been committed under Part XXXIII, are seized under a search warrant, and brought before a justice, such justice and one or more other justice or justices shall determine summarily whether the same are or are not to be forfeited under the said Part XXXIII. (2) and if the owner of any goods or things which, if the owner thereof have been convicted, would be forfeited under the Code, is unknown nor cannot be found, an information or complaint may be laid for the purpose only of enforcing such forfeiture, and the said justice may cause notice to be advertised stating that unless cause is shown to the contrary at the time and place named in the notice, such goods or things will be declared forfeited ; and at such time and place the justice, unless the owner, or any person on his behalf, or other person interested in the goods or things, shows cause to the contrary, may declare such goods or things, or any of them, forfeited. (Code, Art. 569.)

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(1) Part VI, of the Code deals with the unlawful use and possession of explosive substances and offensive weapons.

(2) Part XXXIII, of the Code deals with forgery of trade marks and fraudulent marking of merchandise.

It sometimes happens that, without any direct proof of guilt existing against a party, there is evidence of his being in possession of goods which have been stolen and which the owner is able to identify. In such a case, criminal proceedings may be initiated by an application to a justice for a search warrant, which being granted, the suspected premises are searched by a constable, and should the goods be discovered, they are taken possession of, and the occupier of the premises whereon they are found is himself apprehended and brought before the magistrate to answer the charge either of having stolen them or of having received them knowing them to have been stolen.

When the charge is likely to mould itself into one of receiving goods knowing them to have been stolen, the obtaining of a search warrant in the first instance will be the most advisable course, since the prosecutor is thereby enabled at the same time not only to seize the goods upon the premises before they are made away with,—and so obtain cogent evidence in support of his case,—but also to apprehend the party suspected of guilt in the transaction; whereas, if merely a warrant to apprehend be obtained in the first instance, great difficulty may afterwards be experienced in getting at the property, and a case, otherwise almost conclusive, may fail for want of the necessary evidence to support it.

When, therefore, a party whose goods have been stolen has reasonable grounds for suspecting that they are upon the premises of some other person, he should go before a justice having jurisdiction in the district where the premises to be searched are situate, and make oath by himself or by witness of the facts upon which he bases his application; and, upon the justice being satisfied either that the goods have been stolen, or that there is reason to suspect they are stolen, and that there is also reason to believe they are upon the premises indicated, he will grant his warrant to search the premises and seize the goods and also to apprehend the party in whose possession they may be found. (1))

The above Article 569 authorizes the issue of a search warrant whenever the justice is satisfied by information upon oath that there is reasonable ground for believing that there is in any prem-

(1) Elsee v. Smith, 1 D. & R. 97.

ises, 1. anything upon or in respect of which any offence has been or is suspected to have been committed, or, 2. anything which there is reasonable ground to believe will afford evidence as to the commission of any offence, or, 3. anything which there is reasonable ground to believe is *intended to be used* to commit any offence for which the offender may be arrested without warrant.

The constable to whom a search warrant is directed and to whom it is entrusted should use great caution in the execution of it. He should be accompanied to the premises by the owner of the property or by some other person able to point out and swear to the goods in question. If the premises are closed and the constable is denied admission after making demand of admission and disclosing his authority and the object of his visit, the premises may be forced open by him. (1)

In making the search, care must be taken that no other goods than those designated in the warrant, (2) or such as have been actually stolen, (3) be seized.

Should the goods sought for be found, the constable will seize and keep them in his possession, and he will then, also, by virtue of his warrant, apprehend the person on whose premises they have been found and take him before the magistrate to answer the charge which will then be preferred against him.

Where, on the preliminary enquiry into a charge of having and concealing property belonging to another, the prisoner was acquitted of any wrongful taking, detention or concealment thereof, it was held that the magistrate was still entitled to retain the property, if proved to have been stolen, until the offence could be tried, or until for some sufficient reason no trial could be had; but that if it appeared that the property was not stolen it should be returned to the owner. (4)

Search for Public Stores.—Any constable or other officer, if deputed by any public department, may, within the limits

(1) Saunders Prac. Mag. Cts. 5 Ed. 198, 199.
(2) Price v. Messenger, 2 B. & P. 158; Bell v. Oakley, 2 M. & Sel. 259.
(3) Crozier v. Cundy, 6 B. & C. 232.
(4) Howell v. Armour, 7 Ont. R. 363.

for which he is such constable or peace officer, stop, detain and search any person reasonably suspected of having or conveying in any manner any *public stores* defined in section 383 of the Code, stolen or unlawfully obtained, or any vessel, boat or vehicle in or on which there is reason to suspect that any public stores stolen or unlawfully obtained may be found.

2. A constable or other peace officer shall be deemed to be deputed within the meaning of this section if he is deputed by any writing signed by the person who is the head of such department, or who is authorized to sign documents on behalf of such department. (Code, Art. 570.)

The expression "public stores" includes all stores under the care, superintendence or control of any public department or of any person in the service of such department. (Code, Art. 383, b.)

Search Warrant for Mined Gold, Silver, etc.—On complaint in writing made to any justice of the county, district, or place, by any person interested in any mining claim, that mined gold or gold-bearing quartz, or mined or unmanufactured silver or silver-ore, is unlawfully deposited in any place, or held by any person contrary to law, a general search warrant may be issued by such justice, as in the case of stolen goods, including any number of places or persons named in such complaint; and if, upon such search, any such gold or gold-bearing quartz, or silver or silver-ore is found to be unlawfully deposited or held, the justice shall make such order for the restoration thereof to the lawful owner as he considers right.

2. The decision of the justice in such case is subject to appeal as in ordinary cases coming within the provisions of Part LVIII. (Code, Art. 571.)

Part LVIII of the Code relates to Summary Convictions. See *post*.

Search by Peace Officer for Detained Lumber, etc.—If any constable or other peace officer has reasonable cause to suspect that any timber, mast, spar, saw-log, or other description of lumber, belonging to any lumberman or owner of lumber, and bearing the registered trade mark of such lumberman or owner of

lumber, is kept or detained in any saw-mill, mill-yard, boom or raft, without the knowledge or consent of the owner, such constable or other peace officer may enter into or upon the same, and search or examine for the purpose of ascertaining whether such timber, mast spar, saw-log or other description of lumber is detained therein, without such knowledge and consent. (Code, Art. 572.)

Search for and Seizure of Intoxicating Liquors on Her Majesty's Ships.—Any officer in Her Majesty's service, any warrant or petty officer of the navy, or non-commissioned officer of marines, with or without seamen or persons under his command, may search any boat or vessel which hovers about or approaches, or which has hovered about or approached, any of Her Majesty's ships or vessels mentioned in section 119, Part VI. of the Code, and may seize any intoxicating liquor found on board such boat or vessel; and the liquor so found shall be forfeited to the Crown. (Code, Art. 573.)

Warrants to Search Houses of Ill-fame.—Whenever there is reason to believe that any woman or girl mentioned in section 185, Part XIII. of the Code has been inveigled or enticed to a house of ill-fame or assignation, then, upon complaint thereof being made under oath by the parent, husband, master or guardian of such woman or girl, or in the event of such woman or girl having no known parent, husband, master nor guardian in the place in which the offence is alleged to have been committed, by any other person, to any justice of the peace, or to a judge of any court authorized to issue warrants in cases of alleged offences against the criminal law, such justice of the peace or judge of the court may issue a warrant to enter, by day or night, such house of ill-fame or assignation, and, if necessary, use force for the purpose of effecting such entry whether by breaking open doors or otherwise, and to search for such woman or girl, and bring her, and the person or persons in whose keeping and possession she is, before such justice of the peace or judge of the court, who may, on examination, order her to be delivered to her parent, husband, master or guardian, or to be discharged, as law and justice require. (Code, Art. 574.)

Article 185 of the Code deals with offences against women and girls.

Searching Gaming Houses, Betting Houses, and Lotteries.—If the chief constable or deputy chief constable of any city or town, or other officer authorized to act in his absence, reports in writing to any of the commissioners of police or mayor of such city or town, or to the police magistrate of any town, that there are good grounds for believing, and that he does believe, that any house, room or place within the said city or town is kept or used as a common gaming or betting-house as defined in Part XIV., sections 196 and 197 of the Code, or is used for the purpose of carrying on a lottery, or for the sale of lottery tickets, contrary to the provisions of Part XV., section 205 of the Code, whether admission thereto is limited to those possessed of entrance keys or otherwise, the said commissioners or commissioner, or mayor, or the said police magistrate, may, by order in writing, authorize the chief constable, deputy chief constable, or other officer as aforesaid, to enter any such house, room or place, with such constables as are deemed requisite by the chief constable, deputy chief constable or other officer,—and, if necessary, to use force for the purpose of effecting such entry, whether by breaking open doors or otherwise,—and to take into custody all persons who are found therein, and to seize, as the case may be, 1,—all tables and instruments of gaming, or betting, and all moneys and securities for money, or 2,—all instruments or devices for the carrying on of such lottery, and all lottery tickets found in such house or premises.

2. The chief constable, deputy chief constable or other officer making such entry, in obedience to any order, may, with the assistance of one or more constables, search all parts of the house, room or place which he has so entered, where he suspects that tables or instruments of gaming or betting, or any such instruments or devices for the carrying on of such lottery or any lottery tickets, are concealed, and all persons whom he finds in such house or premises, and seize all tables and instruments of gaming, or betting, or any such instruments or devices or lottery tickets, which he so finds.

3. The police magistrate or other justice of the peace before whom any person is taken by virtue of an order or warrant under this section, may direct any cards, dice, balls, counters, tables or other instruments of gaming, used in playing any game, and

seized under the Code in any place used as a common gaming-house, or any tables and instruments of betting so seized in any place used as a common betting-house or any such instruments or devices for the carrying on of a lottery, or of any such lottery tickets as aforesaid, to be forthwith destroyed, and any money or securities seized under this section shall be forfeited to the Crown for the public uses of Canada.

4. The expression "chief constable" includes chief of police, city marshal, or other head of the police force of any city, town or place.

5. The expression "deputy chief constable" includes deputy chief of police, deputy or assistant city marshal, or other deputy head of the police force of any city, town or place, and the expression "police magistrate" includes stipendiary magistrates. (Code, Art. 575, as amended by 57–58 Vic., c. 57, sec 1.)

A common GAMING-HOUSE is—

(*a.*) a house, room or place kept by any person for gain, to which persons resort for the purpose of playing at any game of chance; or

(*b.*) a house, room or place kept or used for playing therein at any game of chance, or any mixed game of chance and skill, in which—

(i.) a bank is kept by one or more of the players exclusively of the others; or

(ii.) in which any game is played the chances of which are not alike favourable to all the players, including among the players, the banker or other person by whom the game is managed, or against whom the game is managed, or against whom the other players stake, play or bet. (Code, Art. 196.)

A common BETTING-HOUSE is a house, office, room or other place—

(*a.*) opened, kept, or used for the purpose of betting between persons resorting thereto and—

(i.) the owner, occupier or keeper thereof;
(ii.) any person using the same;

(iii.) any peason procured or employed by, or acting for or on behalf of any such person ;

(iv.) any person having the care and management, or in any manner conducting the business thereof ; or

(*b.*) opened, kept, or used for the purpose of any money or valuable thing being received by or on behalf of any such person as aforesaid, as or for the consideration—

(i.) for any assurance or undertaking, express or implied, to pay or give thereafter any money or valuable thing on any event or contingency for or relating to any horse-race or other race, fight, game, or sport ; or

(ii.) for securing the paying or giving by some other person of any money or valuable thing on any such event or contingency. (Code, Art. 197.)

Article 201, par. 3, of the Code makes a bucket-shop, that is to say, an office or place of business in which gaming in stocks is carried on, a common gaming-house.

The above Article 575, with reference to warrants to search houses suspected of being common gaming-houses, provides that such a warrant may be issued to the *chief constable* or *deputy chief constable* of any *city* or *town* ; and by clauses 4 and 5, it defines the expression "chief constable" as including the *chief of police*, *city marshal*, or *other head* of the *police force* of any *city*, *town* or *place*, and the expression "deputy chief constable" as including the *deputy chief of police*, etc., of any *city*, *town* or *place*.

It would appear, therefore, that such search warrants are only to be issued to and executed by the *head* or *deputy head* of a *police force* of a *city*, *town or* place, (the word "*place*" being probably meant to include places under the control of the head of a provincial or a county police force), and that, under the terms of Article 575, they cannot be issued to or executed by, for instance, the high constable or deputy high constable of the district of Montreal, (who seems to be more of a head or chief bailiff of the Criminal Courts than a police officer) nor by any other constable or officer unconnected with and not occupying the position of *head* or *deputy head* of the police force of a city or town or the head or deputy head of a provincial or county police force.

But, *quære*, suppose a constable or other peace officer not occupying the position of *head* or *deputy head* of a *police force*, were to receive and act upon such a warrant, and to find, upon entering the suspected premises, a number of gaming instruments and some persons engaged there in playing, would he not have the right (independently of any warrant), to apprehend such persons, under the authority of clause 3 of Article 552, *ante*, which provides that ANY PEACE OFFICER may arrest, *without warrant*, any one whom he finds committing an offence against this Act? Or, would the fact of such constable, or peace officer not being the proper officer authorized by Article 575 to receive and act upon a warrant to search a suspected gaming house, debar him from making any valid arrest of persons found in the premises entered by him by virtue of such a warrant.

A case somewhat in point recently arose in the city of Montreal. On the 14th October, 1893, a warrant was issued, (under Article 575), by Police Magistrate Dugas to Deputy High Constable Bissonnette to search premises alleged to be kept by one Maloney as a common gaming house. Under this warrant Bissonnette, with the assistance of several other officers entered the premises and found therein a number of gaming instruments consisting of cards, dice, balls, counters, roulette tables, card cutters or markers, etc., and five or six persons seated at a gaming table. The officers seized and carried away the gaming instruments together with several thousand dollars in cash, and they apprehended Maloney and the five or six persons found in the premises. On the following Monday (16th October), Maloney was charged, under Article 198 of the Code, with the indictable offence of keeping a gaming house, and Judge Dugas, after fixing a time for holding the preliminary investigation and after hearing special evidence as to the nature of the articles seized, ordered the destruction of the gaming instruments and the confiscation of the monies. With regard to the persons found in the premises, they were brought before Police Magistrate Desnoyers to be summarily tried under Article 199 of the Code, for the non-indictable offence of having been found playing in a common gaming house. The counsel for the defendants raised the objection that Bissonnette the Deputy High Constable was not such an officer as is authorized under Article 575 to receive and execute a warrant to search a suspected gaming house,

inasmuch as he is only a Deputy High Constable in connection with the Criminal Courts and not the head or deputy head of any police force, but that the proper officer to receive and execute such a warrant was the Chief or Deputy Chief of the police force of the City of Montreal, that the warrant and the entry thereunder of the premises in question being illegal, the arrest made at the same time of the defendants was also illegal, and that therefore they could not be legally tried upon the charge preferred against them.

Judge Desnoyers took a note of the objection, the defendants pleaded not guilty, the trial was proceed with, and at its close the Judge reserved his decision until the 23rd October, 1893, when he rendered judgment against the defendants, finding them guilty of being found playing in a gaming house and imposing a fine upon each. He held that, whatever force there might be in the objections raised by the defendant's counsel, they were of no avail in the case against the defendants, although they might be found to have some value in that branch of the transaction which related to the case against Maloney, as the keeper of the house, and in deciding that the defendants were regularly before him, he relied upon Articles 22, 24, 552, 557 and 843 of the Code, and particularly upon Article 24, "which," he said, "gives any private individual the right of arresting *without warrant* any person whom he finds committing an offence," and upon Article 577, which (when read in connection with Article 843), provides that when any person accused of an offence is before a justice whether voluntarily or upon summons or after being apprehended *with or without a warrant*, the Justice shall proceed to enquire into the matters charged against such person. (1)

Sections 9 and 10 of R. S. C., chap. 158, (which are unrepealed), empower a Police Magistrate to swear and examine, when brought before him, any persons found in any gaming house entered and searched under the provisions of Article 575. These sections are as follows:

"The police magistrate, mayor or justice of the peace, before whom any person is brought who has been found in any house, room or place, entered in pursuance of any warrant or order issued

(1) R. v. Louis Aaron and others, Crankshaw's Cr. C. 646, 647.

under the Code, may require any such person to be examined on oath and to give evidence touching any unlawful gaming in such house, room or place, or touching any act done for the purpose of preventing, obstructing or delaying the entry into such house, room or place, or any part thereof, of any constable or officer authorized as aforesaid; and no person so required to be examined as a witness shall be excused from being so examined when brought before such police magistrate, mayor or justice of the peace, or from being so examined at any subsequent time by or before the police magistrate or mayor or any justice of the peace, or by or before any court, on any proceeding, or the trial of any indictment, information, action or suit in anywise relating to such unlawful gaming or any such acts as aforesaid, or from answering any question put to him touching the matter aforesaid, on the ground that his evidence will tend to criminate himself; and any such person so required to be examined as a witness who refuses to make oath accordingly, or to answer any such question, shall be subject to be dealt with in all respects as any person appearing as a witness before any justice or court in obedience to a summons or subpœna and refusing, without lawful cause or excuse to be sworn or to give evidence, may, by law, be dealt with; but nothing in this section shall render any offender, liable on his trial to examination hereunder." (Sec. 9.)

"Every person so required to be examined as a witness, who, upon such examination, makes true disclosure, to the best of his knowledge, of all things as to which he is examined shall receive from the judge, justice of the peace, magistrate, examiner or other judicial officer before whom such proceeding is had, a certificate in writing to that effect, and shall be freed from all criminal prosecutions and penal actions, and from all penalties, forfeitures and punishments to which he has become liable for anything done before that time in respect of the matters regarding which he has been examined; but such certificate shall not be effectual for the purpose aforesaid, unless it states that such witness made a true disclosure in respect to all things as to which he was examined; and any action, indictment or proceedings pending or brought in any court against such witness, in respect of any act of gaming regarding which he was so examined, shall be stayed, upon the production and proof of such certificate, and upon summary appli-

cation to the court in which such action, indictment or proceeding is pending, or any judge thereof, or any judge of any of the superior courts of any province." (Sec. 10.)

Warrant to Search for Vagrants.—Any stipendiary or police magistrate, mayor or warden, or any two justices of the peace, upon information before them made, that any person described in Part XV. of the Code as a loose, idle or disorderly person, or vagrant, is, or is reasonably suspected to be, harbored or concealed in any disorderly house, bawdy-house, house of ill-fame, tavern or boarding-house, may, by warrant, authorize any constable or other person to enter, at any time, such house or tavern, and to apprehend and bring before them or any other justices of the peace, every person found therein so suspected as aforesaid. (Code, Art. 576.)

Other Search Warrants and Powers of Search or of Entry.—Any fishery officer or other justice of the peace may search, or grant a warrant to search, any vessel or place where there is reason to believe that any fish taken in violation of the *Fisheries Act*, or anything used in violation thereof, is concealed. (1) And certain officers and persons are empowered by the *Act respecting Fishing by Foreign Vessels*, and its amendments, to bring into port any ship, vessel or boat, being within any harbor in Canada, or hovering in British waters within three marine miles of any of the coasts, bays, creeks or harbors in Canada, and to search her cargo. (2)

Under the *Wrecks and Salvage Act*, a wreck receiver, who suspects that any wreck is secreted or concealed, may obtain from any justice of the peace a search warrant to search for, remove, and detain the secreted wreck. (3)

Whenever a warrant for the apprehension of a person accused of an offence has been endorsed in pursuance of the *Fugitive Offenders' Act*, in Canada, any magistrate in Canada has the same power of issuing a warrant to search for any property alleged to have

(1) R. S. C., c. 95, sec. 17, par. 2.
(2) 49 Vic., c. 114, sec. 1.
(3) R. S. C., c. 81, sec. 41.

been stolen or to be otherwise unlawfully taken or obtained by such person, or otherwise to be the subject of such offence, as that magistrate would have if the property had been stolen or otherwise unlawfully taken or obtained, or the offence had been committed wholly within the jurisdiction of such magistrate. (1)

Any commissioner appointed under the Act respecting the *Preservation of the Peace in the Vicinity of Public Works*, or any justice of the peace having authority within the place in which the Act is at the time in force, may—upon the oath of a credible witness that he believes that any weapon is in the possession of any person, or in any house or place, contrary to the provisions of the Act—issue his warrant to any constable or peace officer to search for and seize the same; and he or any person in his aid may search for and seize the same in the possession of any person or in any such house or place. (2) And a warrant may be issued to search for intoxicating liquor with respect to which a violation of the provisions of the Act is believed to have been committed or to be intended to be committed. (3)

In the North West Territories, any justice of the peace or any judge of the Supreme Court of the Territories, upon complaint made before him, supported by the evidence of one credible witness, that any intoxicating liquor is manufactured, imported, sold, exchanged, traded or bartered in violation of the *North West Territories Act*, may issue a search warrant as in cases of stolen goods. (4) And in the District of Keewatin a similar warrant to search for intoxicating liquor may, upon a like complaint, be issued by any judge, stipendiary magistrate or justice of the peace. (5)

By the *North West Mounted Police Act*, 1894, it is provided that, upon information or upon reasonable grounds of suspicion, and without the necessity of any intervention or process of law, the members of the force may, in those portions of the North West Territories in which the law relating to the prohibition of intoxicants remains in force,—enter any shop, store, hut, tent, wigwam,

(1) R. S. C., c. 143, sec. 12.
(2) R. S. C., c. 151, sec. 8.
(3) *Ib.*, sec. 16.
(4) R. S. C. c. 50, sec. 94.
(5) R. S. C. c. 53, sec. 37.

dwelling or building, or place, or enclosure, and also enter and for such purpose stop and detain while travelling any vessel, canoe, carriage, waggon, cart, sleigh, or other vehicle or means of conveyance of any description, and search all parts thereof, and any kegs, barrels, cases, boxes, or packages or receptacles of any kind, for spirits, strong waters, spirituous liquors, wines, or fermented or compounded liquors, or intoxicating drink of any kind, and break and destroy any such kegs, barrels, cases, boxes or packages or other receptacles of any kind found containing the same, and pour out and destroy all spirits, strong waters, spirituous liquors, wines, or fermented or compounded liquors or intoxicating drink; but no constable shall so enter any hut, tent, wigwam or dwelling, unless accompanied by or under the order of a commissioned officer. (1)

Under the Act for the preservation of game in the unorganized portions of the North West Territories, any game guardian who has reason to suspect that a breach of any of the provisions of the Act has been committed, or that any beast, bird or eggs in respect of which such a breach has been committed, or any part of any beast or bird, in respect of which such a breach has been committed, is likely to be in any tent or on any premises or on board any vessel or in any conveyance, may by warrant under his hand authorize any constable to enter and search such tent, premises, vessel or conveyance, and if found to seize any such beast, bird or eggs or any such part of any beast or bird. (2)

Under the *Seamen's Act*, justices of the peace at any port or place in the Provinces of Quebec, Nova Scotia, New Brunswick, Prince Edward Island and British Columbia, are authorized to grant warrants to search for seamen or apprentices unlawfully concealed or secreted; (3) and any police officer or constable required by the Act to assist in apprehending any seaman or apprentice unlawfully absenting himself from his ship, may enter any tavern, inn, alehouse, beer house, seamen's boarding-house or other house or place of entertainment or into any liquor shop or other refreshment place, or any house of ill-fame. (4) And under the *Inland Waters Sea-*

(1) 57 & 58 Vic. c. 27, sec. 13.
(2) 57 & 58 Vic. c. 31, sec. 20.
(3) R. S. C. c. 74, sec. 119.
(4) *Ib.*, sec. 124.

men's Act, similar powers are given to justices of the peace, at any port in Canada, to grant warrants to search for seamen unlawfully harbored or secreted, and to police officers and constables to enter taverns, etc. (1)

Any superintendent of harbor and river police and any constable appointed under the authority of the Act respecting the Harbor and River Police of the Province of Quebec, may board any vessel for the purpose of arresting or searching for any person for whose arrest a warrant has been issued. (2)

Any inspector or other officer appointed under the *Animal Contagious Diseases Act* may, at any time, for the purpose of carrying into effect any of the provisions of the Act, enter any common, field, stable, cow-shed or other premises within his district, in which he has reasonable ground for supposing that any animal affected with any infectious or contagious disease is to be found, but shall, if required, state in writing the ground on which he so enters. (3) He may also at all times enter on board any steamship, steamer, vessel or boat in respect whereof he has reasonable ground for supposing that any company or person has failed to comply with the requirements of any order respecting the cleansing and disinfecting of steamships, steamers, vessels, boats, pens, carriages, trucks, horse-boxes or vehicles used by such company or person for the carriage of animals, and on premises where he has reasonable ground for supposing that any pen, carriage, car, vessel, truck, horse-box or vehicle in respect whereof any company or person has on any occasion so failed, is to be found. (4)

Any peace officer or constable may, at all times, enter any premises where he has reasonable ground for supposing that there is any car, truck, or vehicle, in respect of which any company or person has failed to comply with the provisions of Article 514 of the Code, as to the treatment of cattle while in transit by rail or water, or to enter on board any vessel in respect of which he has reasonable ground for supposing that any company or person has, on any occasion, so failed. (Code, Art. 515).

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(1) R. S. C. c. 75, s.s. 42, 43.
(2) R. S. C. c. 89, sec. 6.
(3) R. S. C. c. 69, sec. 34.
(4) *Ib.* sec. 35.

Any gas inspector appointed under the *Gas Inspection Act*, may at all reasonable hours enter any place within his district where any meter is used for measuring gas delivered to a purchaser, for the purpose of inspecting the meter so used; (1) and, under the *Petroleum Inspection Act*, any duly authorized inspector may, at any time during ordinary business hours, enter the refinery shop or warehouse of any person who refines or keeps petroleum or naptha for sale, in order to test the quality of the petroleum or naptha found therein. (2)

A weights and measures' inspector or his assistant may at all reasonable times, without notice, enter any shop, store, warehouse, stall, yard or place, within his division, where any commodity is bought, sold, exposed or kept for sale, or where a charge is made for the carriage or conveyance thereof by weight or measure, and there examine all weights, measures, scales, steelyards or other weighing machines. (3)

Under the *Electric Light Inspection Act*, any officer of the contractors furnishing electricity for lighting purposes may, by written authority of the inspector, enter, at all reasonable times, any premises to which electricity is or has been supplied by the contractors, in order to inspect their electric wires, meters, accumulators, fittings, works and apparatus for the supply of electricity, or for the purpose of ascertaining the quantity of electricity consumed or supplied, or, where a supply of electricity is no longer required or the contractors are authorized to take away and cut off the supply of electricity from any premises, for the purpose of removing any electric lines, accumulators, fittings, works and apparatus belonging to the contractors, repairing all damage caused by such entry, inspection or removal. (4)

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(1) R. S. C. c. 101, sec. 6,
(2) R. S. C. c. 102, sec. 17.
(3) R. S. C. c. 104, sec. 45.
(4) 57 and 58 Vic., c. 39, sec. 11.

FORMS UNDER PART XLIV. OF THE CODE.

A.—(*Section* 557.)

WARRANT TO CONVEY BEFORE A JUSTICE OF ANOTHER COUNTY.

Canada,
Province of .
County of .

Whereas information upon oath was this day made before the undersigned, that A. B. of , on the day of , in the year , at , in the county of , (*state the charge.* (1)

And whereas I have taken the deposition of X. Y. as to the said offence.

And whereas the charge is of an offence committed in the county of .

This is to command you to convey the said (*name of accused*), of , before some justice of the last-mentioned county, near the above place, and to deliver to him this warrant and the said deposition.

Dated at , in the said county of , this day of , in the year .

J. S.,
J. P. (*Name of county.*)

To of

B.—(*Section* 557.)

RECEIPT TO BE GIVEN TO THE CONSTABLE BY THE JUSTICE FOR THE COUNTY IN WHICH THE OFFENCE WAS COMMITTED.

Canada,
Province of ,
County of .

(1) For Forms of Statements of Offences, see pp. 143, et seq., *post.*

I, J. L., a justice of the peace in and for the county of , hereby certify that W. T., peace officer of the county of , has, on this day of , in the year of , by virtue of and in obedience to a warrant of J. S., Esquire, a justice of the peace in and for the county of , produced before me one A. B., charged before the said J. S. with having (*etc., stating shortly the offence*), and delivered him into the custody of , by my direction, to answer to the said charge, and further to be dealt with according to law, and has also delivered unto me the said warrant, together with the information (*if any*) in that behalf, and the deposition (*s*) of C. D. (*and of*), in the said warrant mentioned, and that he has also proved to me, upon oath, the handwriting of the said J. S. subscribed to the same.

Dated the day and year first above mentioned, at , in the said county of .

J. L.,
J. P., (Name of county.)

C.—(*Section* 558.)

INFORMATION AND COMPLAINT FOR AN INDICTABLE OFFENCE.

Canada.)
Province of . }
County of ,)

The information and complaint of C. D. of (*yeoman*), taken this day of , in the year before the undersigned (*one*) of Her Majesty's justices of the peace in and for the said county of . who saith that (1) on at , (*&c., stating the offence*). (2)

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(1) If the offender is merely suspected to have committed the offence, and the informant did not see him commit it, insert here,—"*he hath just cause to believe and suspect, and doth believe and suspect that.*" Then insert the name and address, etc., of the offender, if known, or, if his name and address, etc., be not known, insert his description, as follows:—"*a certain man*" (or if he be a foreigner, "*a certain Italian*, or, *as the case may be*") "*whose name is not known, but the description of whose person is stated in the margin hereof.*"

(2) For Forms of statements of offences, see pp. 143, et seq., *post.*

Sworn before (*me*), the day and year first above mentioned, at

J. S.,

J. P., (*Name of county.*)

D.—(*Section* 560.)

WARRANT TO APPREHEND A PERSON CHARGED WITH AN INDICTABLE OFFENCE COMMITTED ON THE HIGH SEAS OR ABROAD.

For offences committed on the high seas the warrant may be the same as in ordinary cases, but describing the offence to have been committed "on the high seas, out of the body of any district or county of Canada and within the jurisdiction of the Admiralty of England."

For offences committed abroad, for which the parties may be indicted in Canada, the warrant also may be the same as in ordinary cases, but describing the offence to have been committed "on land out of Canada, to wit: at in the Kingdom of , (*or*, at , in the Island of , in the West Indies, *or* at , in the East Indies," *or as the case may be.*)

E.—(*Section* 562.)

SUMMONS TO A PERSON CHARGED WITH AN INDICTABLE OFFENCE.

Canada,
Province of ,
County of ,

To A. B., of , (*labourer*):

Whereas you have this day been charged before the undersigned , a justice of the peace in and for the said county of , for that you on , at (*stating shortly the offence*): These are therefore to command you, in Her Majesty's name, to be and appear before (*me*) on , at o'clock in the (fore) noon, at , or before such other justice or justices of the peace for the same county of , as shall then be there, to answer to the said charge, and to be further dealt with according to law. Herein fail not.

Given under (*my*) hand and seal, this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]

J. P., (*Name of county.*)

F.—(*Section* 563.)

WARRANT IN THE FIRST INSTANCE TO APPREHEND A PERSON CHARGED WITH AN INDICTABLE OFFENCE.

Canada,
Province of ,
County of ,

To all and any of the constables and other peace officers in the said county of

Whereas A. B. of , (*labourer*), has this day been charged upon oath before the undersigned , a justice of the peace in and for the said county of , for that he, on , at , did (*&c., stating shortly the offence*) : These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A. B., and to bring him before (*me*) (or some other justice of the peace in and for the said county of), to answer unto the said charge, and to be further dealt with according to law.

Given under (*my*) hand and seal, this day of . in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. P., (*Name of county.*)

G.—(*Section* 563.)

WARRANT WHEN THE SUMMONS IS DISOBEYED.

Canada,
Province of ,
County of ,

To all or any of the constables and other peace officers in the said county of

Whereas on the day of , (instant *or* last past) A. B., of , was charged before (*me* or *us,*) the undersigned (*or name the justice or justices, or as the case may be*), (*a*) justice of the peace in and for the said county of , for that (*&c., as in the summons*) ; and whereas I (*or* he *the said justice of the peace, or* we *or* they *the said justices of the peace*) did then issue (*my, our, his* or *their*) summons to the said

A. B., commanding him, in Her Majesty's name, to be and appear before (*me*) on at o'clock in the (*fore*) noon, at , or before such other justice or justices of the peace as should then be there, to answer to the said charge and to be further dealt with according to law: and whereas the said A. B. has neglected to be or appear at the time and place appointed in and by the said summons, although it has now been proved to (*me*) upon oath that the said summons was duly served upon the said A. B.: These are therefore to command you in Her Majesty's name, forthwith to apprehend the said A. B., and to bring him before (*me*) or some other justice of the peace in and for the said county of , to answer the said charge, and to be further dealt with according to law.

Given under (*my*) hand and seal, this day of , in the year , at in the county aforesaid.

J. S., [SEAL.]

J. P., (*Name of county.*)

H.—*Section* 565.

ENDORSEMENT IN BACKING A WARRANT.

Canada.
Province of ;
County of ;

Whereas proof upon oath has this day been made before me , a justice of the peace in and for the said county of , that the name of J. S. to the within warrant subscribed, is of the handwriting of the justice of the peace within mentioned; I do therefore hereby authorize W. T., who brings to me this warrant and all other persons to whom this warrant was originally directed, or by whom it may be lawfully executed, and also all peace officers of the said county of , to execute the same within the said last mentioned county.

Given under my hand, this day of , in the year , at , in the county aforesaid.

J. S.,

J. P., (*Name of county.*)

I.—(*Section* 569.)

WARRANT TO SEARCH.

Canada,
Province of ,
County of ,

Whereas it appears on the oath of A. B. of , that there is reason to suspect that (*Describe things to be searched for, and offence in respect of which search is made*) are concealed in at

This is, therefore, to authorize and require you to enter between the hours of (*as the justice shall direct*) into the said premises, and to search for the said things, and to bring the same before me or some other justice.

Dated at , in the said county of , this day of , in the year

J. S.,
J. P., (*Name of county*).

To of

J.—(*Section* 569).

INFORMATION TO OBTAIN A SEARCH WARRANT.

Canada,
Province of ,
County of ,

The information of A. B., of in the said county (*yeoman*), taken this day of , in the year , before me, J. S. Esquire, a justice of the peace, in and for the county, of , who says that (*Describe things to be searched for and offence in respect of which search is made*), have been stolen, (or *as the case may be*), and that he has just and reasonable cause to suspect, and suspects, that the said goods and chattels, or some part of them are concealed in the (*dwelling-house, &c.*) of C. D., of , in the said county, (*Here add the causes of suspicion, whatever they may be*): Wherefore (*he*) prays that a search warrant may be granted to

him to search the (*dwelling house, &c.*) of the said C. D., as aforesaid, for the said goods and chattels so unlawfully stolen, (or *as the case may be*), as aforesaid.

Sworn (*or* affirmed) before me the day and year first above mentioned, at , in the said county of

J. S.,
J. P., (*Name of county.*)

ADDITIONAL FORMS.

DEPOSITION OF CONSTABLE OR OTHER PEACE OFFICER, OF SERVICE OF SUMMONS.

Canada.
Province of
County (or, *District, etc.*) of

The deposition of A. B., of taken at in the said (*County*) of this day of A. D., 189 , before me, the undersigned, a justice of the peace (or, *as the case may be*), for the said (*county*) of who being duly sworn doth depose and say that at in the (*county*), of on the day of he the said A B. did serve C.D. of with the summons hereunto annexed marked A, (or, *within set forth*), by delivering a duplicate thereof to him the said C.D., in person. [or, *by leaving a duplicate thereof, for him the said C.D., at his last,* (or *most usual*) *place of abode, to wit, at No. Street, in with an inmate thereof apparently not under sixteen years of age.*]

Taken and sworn, before me, at this day of A.D. 189 .

A. B.

DYING DECLARATION, IN CASES OF PERSONAL INJURIES. (1)

Canada.
Province of
County (or, *District, etc.*) of }

I, C. D., of in the said (*County*) of do hereby solemnly and sincerely declare that [*Here set out the statement in the very words used.*]

Taken before me, at this }
day of A.D. 189 } J. S.

One of Her Majesty's justices of the peace for the said (*County*) of

(1) No particular form of this declaration is necessary: but it may be somewhat like the above. The principal ingredients of such a declaration, in order to render it admissable in evidence against the accused after the declarant's death, are, 1. The cause of the death of the declarant must be the subject of enquiry; 2. The circumstances of the death must be the subject of the declaration; and 3. It must appear to have been made at a time when the declarant (*deceased*) was well aware of his danger and entertained no hope of recovery.

If the accused can be brought into the presence of the person injured, the examination should be taken in the usual form.

EXAMPLES OF THE MANNER OF STATING OFFENCES. (1)

ABANDONING CHILD UNDER TWO YEARS OF AGE.

On at A. unlawfully did abandon and expose A., a child then under the age of two years, whereby the life of the said A. was and is endangered; (*or* "the health of the said A. has been and is permanently injured.")

ABDUCTION.

On at A. unlawfully did take away (*or* "detain") against her will a certain woman, to wit, B., with intent to marry (*or* "carnally know") the said B.; [*or* "with intent to cause her, the said B., to be married to (*or* "carnally known by") C."]

ABDUCTION OF AN HEIRESS.

On at , A., from motives of lucre, did unlawfully take away (*or* "detain," *or* "take away and detain") against her will, a certain woman, to wit, B., she then having a certain legal (*or* "equitable") present absolute (*or* "future absolute" *or* "future conditional" *or* "contingent") interest in certain real (*or* "personal") estate, to wit (*Describe the estate or property*), with intent to marry (*or* "carnally know") the said B., [or with intent to cause her, the said B., to be married to (*or* "carnally known by") C.]

OR,

On at , A, from motives of lucre, and with intent to marry (*or* "carnally know") a certain woman, to wit, B., did unlawfully take away (*or* "detain") against her will, her, the said B., she then being a presumptive heiress [or "co-heiress" *or* "presumptive next of kin"] to C., a person then having a certain legal (*or* "equitable") present absolute (*or* "future absolute," *or* "future conditional" *or* "contingent") interest in certain real (*or* "personal"), estate, to wit. (*Describe the estate or property.*)

ABDUCTION OF A MINOR HEIRESS.

On at A., with intent to marry (*or* "carnally know") a certain woman, to wit, B., then being under

(1) *See* Form FF of Schedule One of the Criminal Code, as authority for these examples.

the age of twenty-one years, did fraudulently allure (*or* "take away" *or* "detain") the said B. out of the possession and against the will of C., her father (*or* "mother," *etc.*), she, the said B., then having a certain legal (*etc.*) interest (*etc.*) in certain real estate, to wit, [*or* "being a presumptive heiress, *etc.*, to D., a person then having a certain legal interest, *etc.*] (*Follow the foregoing, according to circumstances.*)

ABDUCTION OF A GIRL UNDER SIXTEEN.

On at , A. unlawfully did take (*or* "cause to be taken") a certain unmarried girl, to wit, B., then under the age of sixteen years, out of the possession and against the will of C., her father (*or* "mother" *or* "a person having the lawful care and charge of her, the said B.").

ABOMINABLE CRIMES. (1)

BESTIALITY.

A., on at , with a certain mare ("*any other living creature*") unlawfully, wickedly, and against the order of nature, did have a venereal affair, and then and there unlawfully, wickedly, and against the order of nature, did, with the said mare, commit and perpetrate that detestable and abominable crime of buggery.

SODOMY.

A., on at unlawfully did assault, and then and there unlawfully, wickedly, and against the order of nature, have a venereal affair with and carnally know B., and then and there unlawfully, wickedly, and against the order of nature, with the said B., did commit and perpetrate that detestable and abominable crime of buggery.

ATTEMPT TO COMMIT SODOMY.

A., on at unlawfully did assault B., and then and there unlawfully did attempt to wickedly, and against the order of nature, have a venereal affair with and to carnally know and commit and perpetrate, with the said B., that detestable and abominable crime of buggery.

ABORTION. (2)

On at , A., with intent thereby to procure the miscarriage of a certain woman to wit, one B., did

(1) For "Indecent Assaults," see p. 148, *post.*

(2) For "Concealment of Birth," see p. 157, *post.*

unlawfully administer to (*or* "cause to be taken by") her the said B., a certain drug (*or* "a certain noxious thing") to wit. (*Describe the drug or noxious thing used, and mention the quantity.*)

OR,

On at , A., with intent thereby to procure the miscarriage of a certain woman, to wit, one B., did unlawfully use upon the person of the said B., a certain instrument, to wit, (*Describe the instrument used.*)

OR,

On at , A., a woman, did, with intent thereby to procure her own miscarriage, unlawfully administer (*or* "permit to be administered") to herself a certain drug (*or* "certain noxious thing") to wit, (*Describe the drug or noxious thing, and mention the quantity used.*)

OR,

On at , A., unlawfully did supply (*or* "procure") a certain drug (*or* "a certain noxious thing") to wit, (*Describe and mention the quantity of it*) he the said A., then knowing that the same was intended to be unlawfully used or employed with intent to procure the miscarriage of a certain woman, to wit, one B.

ACCESSORY AFTER THE FACT TO AN INDICTABLE OFFENCE, PROSECUTED WITH THE PRINCIPAL.

(*After describing the offence of the principal offender, A., proceed thus*) :—

And that C., of well knowing the said A. to have done and committed the said offence, as aforesaid, did, after the same was so done and committed, as aforesaid, to wit at aforesaid, on the day and year aforesaid, (or, *on the day of*), unlawfully receive, comfort and assist him, the said A., in order to enable him to escape.

ACCESSORY AFTER THE FACT, PROSECUTED WITHOUT THE PRINCIPAL, OR WHERE THE PRINCIPAL IS UNKNOWN.

At on A., (or, *some person or persons unknown by name*), did (*Describe the offence of the principal or principals*). And that C., of , well knowing the said A., (or, *person or persons unknown*) to have done and committed the said offence, as aforesaid, did, afterwards, to wit, at aforesaid, on the day and year aforesaid (or, *on the day of*), unlawfully receive comfort and assist him, the said C., (or, *person or persons unknown*), in order to enable him (or *them*) to escape.

ACCESSORY AFTER THE FACT PROSECUTED ALONE, THE PRINCIPAL HAVING BEEN CONVICTED.

(*After stating the principal offence, and the principal offender's conviction, proceed thus*) :—

And that C., well knowing the said A. to have done and committed the said offence as aforesaid, did, afterwards, to wit, at aforesaid, on the day of unlawfully receive, comfort and assist him, the said A., in order to enable him to escape.

ARSON.

At on , A., unlawfully, wilfully, without legal justification or excuse, and without color of right, did set fire to a certain building, to wit, a dwelling-house belonging to B., and situated in aforesaid.

OR,

At on , A., unlawfully, wilfully, without legal justification or excuse, without color of right, and with intent to defraud, did set fire to a certain building, to wit, a store situated in aforesaid and belonging to him the said A.

OR,

At on , A., unlawfully, wilfully, without legal justification or excuse, and without color of right, did set fire to a certain stack of vegetable produce (*or* "mineral" *or* vegetable fuel") to wit, (*Describe the stack*) belonging to B.

ATTEMPT TO COMMIT ARSON.

At on , A., unlawfully, wilfully, without legal justification or excuse, and without color of right, did attempt to set fire to a certain building, to wit, a dwelling-house belonging to B., and situated in aforesaid.

WILFULLY SETTING FIRE TO CROPS, TREES, ETC.

At on , A., unlawfully, wilfully, without legal justification or excuse, and without color of right, did set fire to a certain crop (*or* "tree," *or* "wood," *or* "forest," *or* "coppice," *or* "plantation," *or* "heath," *or* "gorse," *or* "furze," *or* "fern"), to wit [*Describe and give the situation of the crop, etc.*], the property of B.

NEGLIGENTLY SETTING FIRE TO FOREST, ETC.

At on , A., negligently, recklessly, and with wanton disregard of consequences (*or* "in violation of a certain

provincial law, to wit, "), did unlawfully set fire to a certain forest (*or* "tree," *or* "manufactured lumber," *etc.*), situated (*or* "being") on the Crown domain (*or* "land leased or lawfully held for the purpose of cutting timber," *etc.*), so that the said forest (*etc.*) was injured (*or* "destroyed").

ASSAULT. (1)

On at , A. assaulted (*or* "assaulted and beat") me this deponent (*or* "B.").

ASSAULT CAUSING ACTUAL BODILY HARM.

On at , A., did make an assault upon and beat and occasion actual bodily harm to me this deponent, (*or* B).

AGGRAVATED ASSAULT.

On at , A., in and upon me this deponent (*or* "B.") did make an assault, with intent to commit an indictable offence, namely. (*Describe the offence intended.*)

OR

On at , A., in and upon me this deponent (*or* "B"), a public officer (*or* "a peace officer," *or* "a bailiff"), then and there engaged in the execution of his duty, to wit, while (*Describe the duty being performed*), did unlawfully make an assault.

OR,

On at , A., in and upon me this deponent (*or* "B."), did unlawfully make an assault, with intent to resist (*or* "prevent") the lawful apprehension (*or* "detainer") of him the said A. (*or* "one C.") for a certain offence, to wit. (*State the offence.*)

OR,

On at , A. did unlawfully make an assault upon B., who was then and there, in his quality of a duly appointed bailiff of , engaged in the lawful execution of a certain process against (*or* "in the making of a lawful seizure of") lands (*or* "goods").

OR,

On at , A. did unlawfully make an assault upon me this deponent (*or* "B."), a duly appointed bailiff of , with intent to rescue certain goods then and there taken and held by me this deponent (*or* "the said B."), under legal process (*or* "distress" *or* "seizure").

(1) For "Assaults on the Queen," see Forms under the head of "Treason," *post.*

OR,

At on , a day whereon a poll for the election of municipal councillors, for the municipality of , was being proceeded with, A., being then and there, within two miles from the place where such poll was being held, did unlawfully make an assault upon and beat me this deponent, (*or* "B.").

INDECENT ASSAULT ON A FEMALE. (1)

On at , A. unlawfully and indecently did assault B., a female.

INDECENT ASSAULT ON A MALE.

On at , A., a male person, unlawfully and indecently did assault B., another male person.

ATTEMPT TO COMMIT AN INDICTABLE OFFENCE.

At on , A. unlawfully did attempt to steal one gold watch, of the value of sixty-five dollars of the goods and chattels of B.

OR.

At on , A. unlawfully did attempt, by false pretences, to obtain from B., one horse, of the value of seventy dollars, the property of the said B., with intent to defraud.

OR,

At on , A. unlawfully did solicit and advise B. to unlawfully steal one piano of the goods and chattels of C., whereby he the said A. did unlawfully attempt to commit the indictable offence of theft.

OR,

At on , A. unlawfully did attempt to commit the indictable offence of bigamy (*or* "burglary," etc.), by then and there. (*Set out the means used in making the attempt.*)

CHOKING OR DISABLING WITH INTENT TO COMMIT AN INDICTABLE OFFENCE.

At on , A., with intent thereby to enable him the said A. (*or* "one B.") to rob C., unlawfully did attempt to choke (*or* "suffocate," *or* "strangle") the said C.

OR,

At on , A., with intent thereby to enable him the said A. (*or* "one B.") to rob (*or* "to commit a rape upon")

(1) For "Indecent Acts," see p. 167, *post*.

C., unlawfully did attempt to render the said C. insensible (*or* "unconscious," *or* "incapable of resistance"), by gagging (*or* "garrotting, *or* "sandbagging," *or* [*Mention the actual means used*]), the said C. in a manner calculated to choke (*or* "suffocate," *or* "strangle") the said C.

DRUGGING WITH INTENT TO COMMIT AN INDICTABLE OFFENCE.

At on , A., with intent thereby to enable him the said A. (*or* "one B.") to rob (*or* "to commit a rape upon") C., unlawfully did apply and administer (*or* "attempt to apply and administer") to (*or* "cause to be taken by") the said C. certain chloroform [*or* "laudanum," *or* (*Mention the stupefying or overpowering drug, matter or thing used.*)]

BIGAMY. (1)

On at , A., being already theretofore, married to and having as and for his lawful wife (*or* "her lawful husband"), one B., did unlawfully marry and go through a form of marriage with and take to wife (*or* "husband") another woman, (*or* "man"), to wit, C., and, to her (*or* "him") the said C., was then and there married,—his, the said A's, said first wife (*or* "her, the said A's, said first husband", being still B., alive.

BLASPHEMOUS LIBEL (2)

On at A., unlawfully did publish a certain blasphemous, indecent and profane libel of and concerning the Holy Scriptures and the Christian religion, in one part of which said libel there were and are contained, amongst other things, certain blasphemous, indecent and profano matters and things, of and concerning the Holy Scriptures and the Christian religion, of the tenor following, that is to say, (*Here set out the libel as far as passage*), to the high displeasure of Almighty God, and to the great scandal and reproach of the Christian religion.

BREAKING PRISON.

On the day of at A., being then a prisoner confined in the common gaol or prison in and for the county (*or* "district") of on a criminal charge, did unlawfully, by force and violence, break the said gaol or prison, by cutting and removing two iron bars of the said gaol or prison, and by also then and there breaking, cutting and removing a quantity of stone, parcel of the wall of the gaol or prison aforesaid, with intent thereby, then and there, to set himself, the said A., at liberty.

(1) For "Polygamy" see p. 177, *post*; for "Feigned Marriages" see p. 166, *post*; and for "Solemnizing Marriages unlawfully," see p. 182, *post*.

(2) For "Defamatory Libel," see p. 159, *post*.

BURGLARY.

At on , about the hour of twelve, *at night*, A., unlawfully and burglariously did break and enter the dwelling-house of B., there situated, with intent unlawfully and burglariously to steal the goods and chattels of the said B., then and there in the said dwelling-house, (*or* "with intent to commit, in the said dwellinghouse, an indictable offence, to wit," [*Describe the offence*]).

OR,

At on , about the hour of twelve, *at night*, A.. unlawfully and burglariously did break and enter the dwelling-house of B., there situated, with intent unlawfully and burglariously to steal the goods and chattels of the said B., then and there in the said dwelling-house; and he the said A., having so broken and entered and then being in the said dwelling-house did unlawfully and burglariously steal twelve silver forks and twelve silver spoons of the value of forty dollars, of the goods and chattels of the said B., in the said dwelling-house then being found.

OR,

At on A., then being in the dwelling-house of B., unlawfully did steal twelve silver forks and twelve silver spoons of the value of forty dollars of the goods and chattels of the said B. in the said dwelling-house, and the said A., being so as aforesaid in the said dwelling-house and having committed the theft aforesaid, did afterwards, to wit, on the day and year aforesaid, about the hour of twelve, at night, unlawfully and burglariously *break out* of the said dwelling-house.

HOUSE BREAKING.

At on , A, unlawfully did break and enter *by day*, the dwelling-house of B., there situated, and, twelve silver forks of the value of twenty dollars. the property of the said B., then and there being found therein, did then and there unlawfully steal.

OR,

At on , A, unlawfully did break and enter, *by day*, the dwelling-house of B., there situated, with intent to commit an indictable offence therein, to wit, to steal the goods then and there being in the said dwelling-house.

BREAKING SHOP, Etc.

At on , A., unlawfully, did break and enter the shop of B., there situated, and five boxes of cigars of the

value of twenty dollars, the property of the said B., then and there being found therein, did, then and there, unlawfully steal.

OR,

At on , A., unlawfully, did break and enter a certain building, there situated, and being within the curtilage of and occupied with the dwelling-house of B., but not connected with or forming part of the said dwelling-house either immediately or by means of any covered or enclosed passage, and one horse of the value of seventy-five dollars the property of the said B., then and there in the said building, did then and there unlawfully steal.

OR,

At on , A., unlawfully did break and enter the shop of B., there situated, with intent to commit an indictable offence therein, to wit, to steal the goods and chattels of the said B., then and there in the said shop.

BEING FOUND IN A DWELLING-HOUSE, BY NIGHT.

At on about the hour of twelve, at night, A. unlawfully did enter (*or* "was in") the dwelling-house of B., there situated, with intent the goods and chattels of the said B. unlawfully to steal.

BEING FOUND ARMED, WITH INTENT TO BREAK AND ENTER.

At on A., was found, by day, (*or* by night), unlawfully armed with a certain dangerous and offensive weapon (*or* "instrument") to wit, [*Describe it*] with intent to break and enter the dwelling-house (*or* a certain building) of B. there situated, and to commit therein an indictable offence, to wit, unlawfully to steal the goods and chattels of the said B. then being in the said dwelling-house, (*or* building).

HAVING POSSESSION, BY NIGHT, OF HOUSE-BREAKING INSTRUMENTS.

At on , A., was found, about the hour of twelve, at night, unlawfully and without lawful excuse, in possession of certain house-breaking instruments, to wit, (*Describe them*).

HAVING POSSESSION, BY DAY, OF HOUSE-BREAKING INSTRUMENTS, WITH INTENT.

At on , A., was found, by day unlawfully and without lawful excuse, in possession of certain house-breaking instruments, to wit, (*Describe them*) with intent to commit an indictable offence, to wit, (*Mention the offence.*)

BEING FOUND DISGUISED BY NIGHT.

At on , A., was found, by night, unlawfully and without lawful excuse, with his face masked (*or* "blackened").

BEING FOUND DISGUISED, BY DAY, WITH INTENT.

At on , A., was found, by day, unlawfully and without lawful excuse, in a certain disguise, to wit, (*Describe the disguise*) with intent then and there to commit an indictable offence, to wit, (*Mention the offence*).

CAUSING DANGEROUS EXPLOSIONS.

On at , A., by a certain explosive substance, to wit, unlawfully and wilfully did cause an explosion of a nature likely to endanger life, (*or* "of a nature likely to cause injury to property.")

CONSPIRACY TO CAUSE A DANGEROUS EXPLOSION.

On at , A. and B. unlawfully did conspire, confederate and agree together to cause, by a certain explosive substance, to wit, an explosion of a nature likely to endanger life (*or* "likely to cause serious injury to property.")

MAKING, OR POSSESSING EXPLOSIVES.

On at , A. unlawfully and wilfully did make (*or* "have possession" *or* "control of") a certain explosive substance, to wit, with intent, by means thereof, to endanger life (*or* "to cause serious injury to property" *or* "to enable C., by means thereof, to endanger life," *or* "cause serious injury to property.")

OR,

On at A. unlawfully did make (*or* "knowingly have possession" *or* "control of") a certain explosive substance, to wit, , under such circumstances as to give rise to a reasonable suspicion that his making [*or* "having possession" *or* "control of") it was not for a lawful object, the said circumstances being as follows: (*Relate them.*)]

CAUSING BODILY INJURY, BY EXPLOSION.

On at , A., by the explosion of a certain explosive substance, to wit, , unlawfully

did burn, (*or* "maim," *or* "disfigure," *or* "disable," *or* "do grievious bodily harm to") B.

CAUSING EXPLOSION, WITH INTENT TO INJURE.

At on , A., with intent thereby to burn (*or* "maim," *or* "disfigure," *or* "disable," *or* "do grievous bodily harm to") B. (*or* "any person") unlawfully did cause a certain explosive substance, to wit, , to explode.

SENDING AN EXPLOSIVE SUBSTANCE, WITH INTENT TO INJURE.

At on , A., with intent thereby to burn (*or* "maim," *or* "disfigure," *or* "disable," *or* "do grievous bodily harm to") B., unlawfully did send (*or* "deliver") to, (*or* "cause to be taken into the possession of" *or* "to be received by") the said B., a certain explosive substance, to wit,

PLACING DESTRUCTIVE FLUIDS, ETC., WITH INTENT TO INJURE.

At on , A., with intent thereby to burn (*or* maim," *or* "disfigure," *or* "disable," *or* "do grievous bodily harm to") B., unlawfully did put and lay, in a certain place, to wit, (*Describe the place*) a certain fluid (*or* "destructive" *or* "explosive substance") to wit, (*Describe the fluid or substance.*)

CASTING DESTRUCTIVE FLUIDS, ETC., WITH INTENT TO INJURE.

At on , A., with intent thereby to burn (*or* "maim," *or* "disfigure," *or* "disable," *or* "do grievous bodily harm to") B., unlawfully did cast and throw at and upon the said B., a certain corrosive fluid (*or* "destructive "*or* "explosive substance") to wit (*Describe the fluid or substance used.*)

COMBINATION IN RESTRAINT OF TRADE.

At on A., unlawfully conspired, combined, agreed and arranged with B., C., and D., and with the Company, to unduly limit the facilities for transporting, (*or* "producing," *or* "supplying," *or* "storing," *or* "dealing in" *or* "manufacturing,") cotton goods (*etc.*), a subject of trade and commerce.

OR

At on A., unlawfully conspired, combined, agreed and arranged with B., C., and D., and with the Company, to unduly prevent, and lessen competition in the production (*or* "manufacture," *or* "purchase," *or* "barter," *or* "sale," *or* "transportation," *or* "supply,") of woollen goods (*etc.*) a subject of trade and commerce.

COMMON BAWDY-HOUSE.

At on , and on and at divers days and times since that date. A, and B.,—the wife of the said A.,—unlawfully did keep and maintain a disorderly house, to wit, a common bawdy-house, by keeping and maintaining a certain house (*or* "room," *or* "set of rooms" *etc.*), situate and being , for purposes of prostitution.

COMMON GAMING-HOUSE.

At on , and on and at divers other days and times since that date, A., (*or* "A., B., and C.,") unlawfully did keep and maintain a disorderly house, to wit, a common gaming house, by keeping and maintaining for gain a certain house (*or* "room" *etc.*), situate and being to which persons did and do resort for the purpose of playing at games of chance.

OR

(*Commence as above*) unlawfully did keep and maintain a disorderly house, to wit, a common gaming-house, by keeping (*or* "using") for gain, a certain house (*or* "room" *etc.*), situate and being for playing therein at games of chance and mixed games of chance and skill, and in which a bank was and is kept by one or more of the players exclusively of the others, (*or* "*in which, in the games played therein, the chances are not alike favorable to all the players.*")

COMMON NUISANCE, ENDANGERING LIFE, &c.

On at , and on and at divers other days and times before and since that date, A., unlawfully, and injuriously did, and he does yet continue to (*Set out the particular act or omission, complained of*) and thereby unlawfully did commit and does continue to commit a common nuisance endangering the lives (*or* "safety" *or* "health") of the public.

COMMON NUISANCE, OCCASIONING PERSONAL INJURY.

At on and on and at divers other days and times before and since that date, A., unlawfully and injuriously did, and he does yet continue to (*Set out the particular act or omission complained of*) and thereby unlawfully did commit and does continue to commit a common nuisance by which the public were and are obstructed in the exercise or enjoyment of a right common to all Her Majesty's subjects, to wit, (*Set out the common right obstructed*) and which common nuisance did at aforesaid on the day of occasion actual injury to the person of B.

OR

At on , and on and at divers other days and times before and since that date, A., unlawfully and injuriously did and he does yet continue to (*Set out the particular act or omission complained of*) and thereby unlawfully did commit and does continue to commit a common nuisance, endangering the property (*or* "comfort") of the public and which common nuisance did at aforesaid on the day of occasion actual injury to the person of B.

CHEATING AT PLAY, ETC.

At on , A., unlawfully, and with intent to defraud B., did cheat in playing at a game with cards (or "dice.")

COINING AND COUNTERFEITING.

COUNTERFEITING CURRENT SILVER COINS.

At on A., did unlawfully make (*or* "begin to make") and counterfeit twenty pieces of false and counterfeit coin resembling (*or* "apparently intended to resemble and pass for") current silver dollars (*or* "half dollars," *or* "ten cent pieces.")

IMPORTING OR EXPORTING COUNTERFEIT COIN.

At on , A., did unlawfully and without lawful authority or excuse, import and receive into Canada (*or* "export from Canada"), twelve pieces of false and counterfeit coin resembling (*or* "apparently intended to resemble and pass for") current silver dollars, he the said A., then and there well knowing the same to be counterfeit.

MAKING COINING INSTRUMENTS.

At on , A., unlawfully and without lawful authority or excuse, did make, (*or* "mend," *or* "begin or proceed to make or mend") one puncheon (*or* "counter puncheon" etc.), in and upon which there was then made and impressed (*or* "which would make and impress" *or* "which was adapted and intended to make and impress") the figure and apparent resemblance of one of the sides, to wit, the head-side of a current silver dollar.

BRINGING COINING INSTRUMENTS INTO CANADA.

At on , A., unlawfully, knowingly and without lawful authority or excuse, did convey out of Her Majesty's Mints into Canada, one puncheon (*or* "counter-puncheon," *or* "matrix" etc.), used or employed in or about the coining of coin.

CLIPPING CURRENT COIN.

At on , A., did unlawfully impair (*or* "diminish," *or* "lighten,") twelve pieces of current silver coin called dollars, with intent that each of the said twelve pieces so impaired, (*or* "diminished," *or* "lightened") might pass for a current silver dollar.

DEFACING CURRENT COIN, AND TENDERING SAME.

At on , A., unlawfully did deface one piece of current silver coin, called a dollar, by then and there stamping thereon certain names (*or* "words,") to wit, , and did afterwards unlawfully tender the said current silver coin, so defaced as aforesaid.

POSSESSING COUNTERFEIT COIN, WITH INTENT.

At on , A., unlawfully, had in his custody and possession twelve pieces of counterfeit coin resembling (*or* "apparently intended to resemble, and pass for") current silver dollars, with intent to utter the same, he the said A., then well knowing the same to be counterfeit.

COUNTERFEITING CURRENT COPPER COIN.

At on , A., unlawfully, did make and counterfeit two hundred pieces of false and counterfeit coin resembling (*or* "apparently intended to resemble and pass for") the current copper coin called a one cent piece.

COUNTERFEITING FOREIGN COIN.

At on , A., unlawfully, did make (*or* "begin to make") and counterfeit coin resembling (*or* "apparently intended to resemble and pass for") the silver coin of a foreign country, to wit, the silver coin of the United States of America, called a dollar.

BRINGING COUNTERFEIT FOREIGN COIN INTO CANADA.

At on , A., unlawfully and without lawful authority or excuse, did bring into (*or* "receive in") Canada, twenty pieces of false and counterfeit coin resembling (*or* "apparently intended to resemble and pass for") the silver coin of a foreign country, to wit, the silver coin of the United States of America called a dollar, he the said A., then well knowing the same to be counterfeit.

UTTERING COUNTERFEIT COIN.

At on , A., unlawfully, did utter to B., one piece of counterfeit coin resembling (*or* "apparently intended

to resemble and pass for") the current silver coin called a dollar, (*or* the current copper coin called one cent,) knowing it to be counterfeit.

UTTERING LIGHT COIN.

At on , A. unlawfully did utter, as being current, a certain silver coin, to wit, a silver dollar of less than lawful weight, he the said A. well knowing the said coin to have been impaired (*or* "diminished," *or* "lightened") otherwise than by lawful wear.

UTTERING UNCURRENT COIN.

At on , A., unlawfully and with intent to defraud, did utter, as being current,, a certain silver coin, not being a current silver coin, but resembling, in size, figure and color, a current silver dollar, and being of less value than a current silver dollar.

UTTERING MEDALS, ETC., AS CURRENT COIN.

At on , A., unlawfully and with intent to defraud, did utter, as being a current silver dollar, a certain medal (*or* "piece of metal") resembling, in size, figure and color, a current silver dollar, and being of less value than a current silver dollar.

COUNTERFEITING SEALS.

At on A., unlawfully did make and counterfeit a certain public seal, to wit, the public seal of the Dominion of Canada.

UTTERING COUNTERFEIT SEALS.

At on A., knowing a certain seal, to wit, a seal purporting to be the public seal of the Dominion of Canada, to be counterfeited, did unlawfully use the said counterfeit seal.

COUNTERFEITING REVENUE STAMPS.

At on A., unlawfully and fraudulently did counterfeit a certain revenue stamp, to wit, (*describe it*).

SELLING COUNTERFEIT REVENUE STAMPS.

At on A., unlawfully and knowingly, did sell (*or* "expose for sale" *or* "utter" *or* "use") a certain counterfeited revenue stamp, to wit, (*describe it*).

CONCEALMENT OF BIRTH. (1)

On at , A., was delivered of a child, and that, subsequently, on at aforesaid, the said child being dead, the said A. (*or* "B") unlawfully did dispose of the

(1) For "Neglect to procure Assistance in Childbirth" see p. 175, *post*.

dead body of the said child, by secretly burying it (*or State the actual means used*), with intent to conceal the fact that the said A. had been delivered of such child.

CONSPIRACY TO BRING FALSE ACCUSATION OF CRIME.

At on A. B. and M. B.,—his wife,—C. D. and E. F,, unlawfully did conspire, combine, confederate and agree together to prosecute G. H. for an alleged offence, to wit, upon a false charge and accusation, falsely charging and accusing that he the said G. H. had, then, lately before, unlawfully assaulted, ravished and carnally known the said M. B., without her consent, they the said A. B., M. B,, C. D. and E. F. then well knowing the said G. H. to be innocent of the said alleged offence.

That, afterwards, at aforesaid, on the day and year aforesaid, the said A. B. and M. B., (his wife,) C. D. and E. F., in pursuance of their said conspiracy, did attend together before J. N., Esquire, one of Her Majesty's Justices of the Peace for the District of , to whom they the said A. B. and M. B., (his wife,) C. D. and E. F., did, then and there, make the said false charge and accusation, falsely charging and accusing the said G. H. with and of the rape aforesaid; and, then and there, before the said J, N., she the said M. B., in the presence of and in company with the said A. B., C. D. and E. F., and in further pursuance of the said conspiracy, did make her written and sworn information and complaint, falsely charging and accusing that the said G. H. had, then, lately before, unlawfully assaulted, ravished, and carnally known her, the said M. B., without her consent.

That, afterwards, to wit, in the Court of Queen's Bench (*or* [Name the court] *as the case may be*) of the province of , holden at , in and for the district (*or* "county") of , on , in the year aforesaid, they, the said A. B. and M. B., (his wife,) C. D. and E. F., in further pursuance of their said conspiracy, did cause and procure to be falsely laid and exhibited, before the Grand Jury then and there sworn before the said Court, a bill of indictment falsely charging and accusing the said G. H. with and of the rape aforesaid; which said bill of indictment was by the Grand Jury, then and there, returned into the said Court, thus endorsed :—"No Bill."

CONSPIRACY TO COMMIT AN INDICTABLE OFFENCE.

At on , A. B. and C., unlawfully, did conspire, combine, confederate and agree together to commit a certain indictable offence, to wit, the crime of arson (*or* "burglary" *or* "aggravated assault," *or* "rape," *or* "forgery," etc.), by then and there conspiring, combining, confederating, and agreeing together to unlawfully, etc., set fire to [*or* "unlawfully break and enter" *or*, etc., (*Describe the crime agreed upon*

and mention the property or person, or both, as the case may be, to be affected thereby.)] (A clause may be added setting out the overt acts of the conspiracy.)

CONSPIRACY TO DEFRAUD.

At on , A., B. and C. did, unlawfully, conspire together to defraud the public (*or* "D") by deceit, [*or* "falsehood," *or* "by the fraudulent means following, to wit," (*Set out the fraudulent means agreed upon*].

CRIMINAL BREACH OF CONTRACT.

At on A., unlawfully and wilfully did break a certain contract, to wit (*describe it*), theretofore made by him, well knowing (*or* "having reasonable cause to believe") that the probable consequences of his so doing would be to endanger human life (*or* "cause serious bodily injury," *or* "expose valuable property to destruction," *or* "serious injury").

CRIMINAL BREACH OF TRUST.

At on , A., then being—under and by virtue of the will of B.—a trustee of certain property, to wit (*Describe it*), for the use and benefit of C., D., E. and F., did, unlawfully, and in violation of his trust, convert the same to a use not authorized by the said trust, with intent to defraud.

DEFAMATORY LIBEL.

On at A. unlawfully did publish on, and of and concerning B., a defamatory libel, in a certain letter directed to C., which libel was in the words following, that is to say (*Set out the part of the letter complained of as libellous*), and which libel was written in the sense of imputing that the said B. was (*as the case may be.*)

PUBLISHING A DEFAMATORY LIBEL KNOWING IT TO BE FALSE.

On at A, unlawfully did publish, in a certain newspaper called the , a defamatory libel, on, and of and concerning B., he the said A. well knowing the same to be false, which libel was contained in the said newspaper in an article therein headed (*or* "commencing with") the following words, to wit, (*Set out the heading, or the commencing, and, if necessary, the concluding words of the libel, or otherwise give so much detail as is sufficient to furnish the accused with reasonable information as to the part of the publication to be relied on against him*), and which libel was written in the sense of imputing that the said B. was (*as the case may be.*)

EXTORTION BY DEFAMATORY LIBEL.

On at , A., unlawfully did publish (*or* "threaten to publish" *or* "offer to abstain from publishing" *etc.*) a defamatory libel of and concerning B., with intent, thereby, then and there, to extort money from the said B., (*or* "from C.")

OR,

On at A, unlawfully did publish (*or* "threaten to publish" *or* "offer to abstain from or prevent the publishing of") a defamatory libel of and concerning B., with intent thereby, then and there, to induce the said B., (*or* "one C."), to confer upon, (*or* "procure for") the said A., (*or* "one D.") a certain appointment (*or* "office") of profit (*or* "trust") to wit, (*Mention the appointment or office in question.*)

OR,

On at A, unlawfully did publish (*or* "threaten to publish") a defamatory libel of and concerning B. in consequence of the said A. having been refused money theretofore demanded by him the said A. of and from the said B. (*or* "in consequence of the said A. having been refused a certain appointment, *etc.*, theretofore sought by him the said A., of or from or at the hands or by the influence of the said B.")

DEFILEMENT OF WOMEN AND GIRLS.

PROCURING DEFILEMENT OF A WOMAN UNDER AGE.

On at A, unlawfullly did procure (*or* "did attempt to procure") B, a girl, (*or* "woman") then under the age of twenty-one years, to wit, of the age of years, and not being a prostitute nor of known immoral character, to have unlawful carnal connection with another person (*or* "other persons").

ENTICING A WOMAN, UNDER AGE, TO PROSTITUTION.

On at A, unlawfully did inveigle (*or* "entice") B, a girl, (*or* "woman"), then under the age of twenty-one years, to wit, of the age of , and not being a prostitute nor of known immoral character, to a house of ill-fame, (*or* "assignation"), for the purpose of illicit intercourse (*or* "prostitution").

CONCEALING A WOMAN SO ENTICED

On at A, unlawfully and knowingly did conceal, in a house of ill-fame, (*or* "assignation"), B. a girl, (*or* "woman"), then being under the age of twenty-one years, to wit, of the age of years, and not being a common prostitute nor of known

immoral character, she the said B, having been unlawfully inveigled, (*or* "enticed") to the said house of ill-fame (*or* "assignation") for the purpose of illicit intercourse (*or* "prostitution".)

PROCURING A WOMAN TO BECOME A PROSTITUTE.

On at A, unlawfully did procure (*or* "attempt to procure"), B, a woman (*or* "girl") to become, within Canada, (*or* "out of Canada"), a common prostitute.

PROCURING A WOMAN'S DEFILEMENT BY THREATS.

On at A, unlawfully and by threats (*or* "intimidation") did procure (*or* "attempt to procure") B, a woman (*or* "girl") to have unlawful carnal connection within Canada (*or* "out of Canada.")

DEFILING BY MEANS OF DRUGS.

On at A, unlawfully did apply (*or* "administer") to and cause to be taken by B, a woman, (*or* "girl"), a certain drug, to wit, (*or* "some intoxicating liquor," *or* some other matter or thing, *as the case may be*), with intent to stupefy (*or* "overpower") her the said B, so as thereby to enable the said A (*or* "a certain man, to wit C,") to have unlawful carnal connection with her the said B.

CONSPIRACY TO INDUCE A WOMAN TO COMMIT ADULTERY OR FORNICATION.

On at A, and B, unlawfully did conspire, combine, confederate, and agree together, unlawfully, and by false pretences, false representations, and other fraudulent means to induce C, a woman, to commit adultery (*or* "fornication") with D.

EXTORTION, BY THREATS TO ACCUSE OF CERTAIN SERIOUS CRIMES. (1)

At on A., unlawfully, did accuse (*or* "threaten to accuse") B., of having committed an offence punishable by law with death (*or* "imprisonment for seven years or more") to wit, murder, (or "forgery," *or* "burglary," *or* "bigamy," etc.), with intent thereby to extort and gain money from the said B.

OR,

At on A., unlawfully, did accuse (*or* "threaten to accuse") B. of having committed an assault with intent

(1) For "Threatening Letters" and "Demanding with threats," see p. 188, *post*. For "Threats to Murder," see p. 174, *post*.

to commit a rape, (*or* "attempted or endeavored to commit a rape"), with intent thereby to extort and gain money from the said B.

OR,

At on A., unlawfully, did accuse (*or* "threaten to accuse") B. of having committed an infamous offence, to wit, the abominable crime of buggery, with intent thereby to extort and gain money from the said B.

OR,

At on A., with intent to extort and gain money from B., unlawfully did cause the said B., to receive a certain document accusing (*or* "threatening to accuse") the said B., of having counselled and procured one C., to commit an infamous offence, to wit, the abominable crime of buggery, he the said A. then well knowing the contents of the said document, which is as follows: (*Set out the document.*)

EXTORTION, BY THREATS TO ACCUSE OF OTHER CRIMES.

At on , A., unlawfully did accuse (*or* "threaten to accuse") B., of having committed the offence of polygamy (*or* "libel" *or* "aggravated assault" *or* "gaming in stocks," *or* "frequenting bucket shops," *or* "corrupting jurors," *or* "obtaining money by false pretences," *or* "defrauding creditors" etc.), with intent, thereby, to extort and gain money from the said B.

FALSE PRETENCES.

At on , A., unlawfully, and by false pretences, did obtain from B., five barrels of flour of the value of with intent to defraud.

OBTAINING EXECUTION OF VALUABLE SECURITY BY FALSE PRETENCES.

At on , A., unlawfully, and by false pretences, did cause and induce B., to execute (*or* "make" *or* "accept," *or* "endorse" *or* "destroy") a certain valuable security, to wit, a promissory note for one hundred dollars, with intent thereby to defraud and injure the said B.

OBTAINING PASSAGE BY FALSE TICKET.

At on , A., fraudulently, unlawfully, and by means of a false ticket (*or* "order"), did obtain (*or* "attempt to obtain") a passage on a carriage or car of the Montreal Street Railway Company, (or, *as the case may be*).

FALSE ACCOUNTING BY CLERK.

At on , A., then being a clerk in the employ of B., did, unlawfully, with intent to defraud, destroy (*or* "alter," *or* "mutilate," *or* "falsify") a certain book (*or* "paper," *or* "writing," *or* "valuable security,") to wit, (*describe the book*, etc.), belonging to (*or* "in the possession of," *or* "received by the said A., for and on behalf of") the said B.

FALSE WAREHOUSE RECEIPT.

At on A., then being the keeper of a warehouse, *etc.*, for storing timber. *etc.*, unlawfully, knowingly, wilfully and with intent to mislead (*or* "injure," or "defraud,") did give to B. a certain writing purporting to be a receipt for, (*or* "acknowledgment of"), certain goods, to wit, (*describe them*), as having been received into his the said A's warehouse, *etc.*, before the said goods had been received by him, the said A., as aforesaid.

FALSE STATEMENT BY A PROMOTER, DIRECTOR, PUBLIC OFFICER OR MANAGER OF A PUBLIC COMPANY.

At on , A., being then a promoter, (*or* "director," *or* "public officer," *or* "manager") of a certain body corporate (*or* "public company") then intended to be formed and to be called , (*or* "then actually existing and called ") did, unlawfully, make, circulate, and publish (*or* "concur in making, circulating, and publishing") a certain prospectus (*or* "account" *or* "statement,") well knowing the same to be false in certain material particulars, to wit (*state them*), with intent to induce certain persons unknown, to this deponent, to become shareholders or partners (*or* "with intent to deceive and defraud the members, shareholders and creditors,") of the said body, corporate (*or* "public company.")

FALSE TELEGRAMS.

At on , A., unlawfully, and with intent to defraud, did cause and procure a certain telegram, in the words and figures following, (*Set out the telegram*) to be sent, (*or* "delivered,") to B., as being sent by the authority of C., knowing that it was not sent by such authority, and with intent that the said telegram should be acted on as being sent by the said C.

SENDING FALSE TELEGRAMS, OR LETTERS, WITH INTENT TO INJURE OR ALARM.

At on , A., unlawfully and with intent to injure (*or* "alarm") B., did send (*or* "cause" *or* "procure to be sent") to the said B., a certain telegram (*or* "letter,") containing matter

which he the said A., knew to be false, to wit, a telegram (*or* "letter,") in the words and figures following, (*Set out the telegram or letter*).

FALSIFYING REGISTERS.

At on , A., unlawfully, did destroy (*or* "deface" *or* "injure") a certain register then and there lawfully kept as the register of births (*or* "baptisms," *or* "marriages," *or* "deaths" *or* "burials") of the parish of

OR,

At on , A., unlawfully, did insert in a certain register then and there lawfully kept as the register of births, *etc.*, of the parish of a certain entry, known by him, the said A., to be false, and relating to the birth (*or* "marriage," *etc.*,) of

OR,

At on A., unlawfully, did erase from a certain register then and there lawfully kept as the register of births (*or* "marriages," *etc.*), of the parish of a certain material part of such register, to wit, (*Describe the material part erased*).

FALSELY CERTIFYING EXTRACTS FROM REGISTERS.

At on A., being a person authorized and required by law to give certified copies of entries in a certain register then and there lawfully kept as the register of births (*or* "marriages" *etc.*), of the parish of , unlawfully did certify a certain writing to be a true copy of (*or* "extract from") a certain entry in the said register, to wit, an entry of the birth (*or* "marriage," *etc.*), of

FRAUD BY OFFICIAL.

At on , A, then being a director (*or* "manager," etc.) of a certain body corporate called did unlawfully destroy (*or* "alter," *or* "mutilate," *or* "falsify,") a certain book (*or* "paper," *or* "writing," *or* "valuable security") to wit, (*Describe the book*, etc.), belonging to the said body corporate, with intent to defraud.

OR,

At on A., then being a director, *etc.*, of a certain body corporate called did unlawfully, and with intent to defraud, make (*or* "concur in making") in a certain book of account, to wit, (*describe it*) of the said body corporate, a certain false entry, by then and there falsely entering in such book (*Describe the false entry*).

OR,

At on , A., then being a director, *etc.*, of a certain body corporate called did, unlawfully and with intent to defraud, omit (*or* "concur in omitting") certain material particulars from a certain book of account of the said body corporate, to wit, (*Describe the omission*).

FRAUDULENT ASSIGNMENT BY A DEBTOR.

At on A., unlawfully, and with intent to defraud his creditors, did make (*or* "cause to be made") a gift, (*or* "conveyance," *or* "assignment," *or* "sale," *or* "transfer," *or* "delivery,") of his property, to B.

OR,

At on A., unlawfully, did remove, (*or* "conceal," *or* "dispose of") his property, with intent to defraud his creditors.

FRAUDULENTLY RECEIVING A DEBTOR'S PROPERTY.

At on A., unlawfully, and with intent that B. should defraud his creditors, did receive, the property of the said B., then and there given, *or* "conveyed," *or* "assigned," *or* "sold," *or* "transferred," *or* "delivered," *or* "removed," *or* "concealed," *or* "disposed of") by the said B., with intent to defraud his creditors.

FRAUDULENT CONVERSION BY A PERSON ENTRUSTED WITH MONEY.

At on , A.,—having theretofore received from B., the sum of one hundred dollars, on terms requiring him, the said A., to pay over the same to C.,—did fraudulently convert to his own use and thereby steal the said sum of money.

FRAUDULENTLY DESTROYING DOCUMENT OF TITLE TO GOODS.

At on , A., unlawfully, and for a fraudulent purpose, did destroy, (*or* "cancel" *or* "conceal," *or* "obliterate") a certain document of title to goods, to wit, (*Describe it*).

FRAUDULENT TRANSFER OF STOCK.

At on , A., a transfer of a certain share and interest of and in certain stock, (*annuity or other public fund*), transferable at the Bank, to wit. the share and interest of B., of and in (*Mention the amount and description of the stock, etc.*), did unlawfully, and with intent to defraud, make, in the name of C., he the said C. not

being then the true and lawful owner of the said stock, *etc.*, or any part thereof.

FEIGNED MARRIAGE.

At on , A., did unlawfully procure a feigned and pretended marriage between himself, the said A., and a certain woman, to wit, B.

OR,

At on , A., did unlawfully aid and assist B., in procuring a feigned and pretended marriage between him, the said B., and a certain woman, to wit, C.

FORCIBLE ENTRY.

A, B, C, and D on unlawfully, forcibly, and with a strong hand, did enter into a certain dwelling-house situate and being at and then in the actual and peaceable possession of E, and unlawfully, forcibly, and with a strong hand, did expel and put out the said E. from the said dwelling-house, in a manner likely to cause a breach of the peace.

FORGERY.

At on A., unlawfully and knowingly did forge a certain document, to wit, (*Describe the document by its usual name*, or, *set forth a copy of it*).

UTTERING A FORGERY.

At on A., knowing a certain document, to wit, (*describe it*) to be forged, did unlawfully utter (*or* "use" *or* "deal with," *or* "act upon," *or* "attempt to use," *etc.*), the said forged document, as if it were genuine.

FURIOUS DRIVING.

On at , A., being in charge of a certain vehicle, to wit, a four-wheeled cab, did, by his wanton and furious driving, (*or* "racing") of and with the said vehicle unlawfully do (*or* "cause to be done") bodily harm to B.

INCEST.

On at A., and B., being and knowing themselves to be brother and sister, did unlawfully commit incest (*or* "did unlawfully have sexual intercourse") with each other.

INDECENT ACTS.

On at A., a male person, in public (*or* "in private") did commit an act of gross indecency, with B., another male person.

OR,

On at A., a male person was a party to the commission of (*or* "did procure the commission of" *or* "did attempt to procure the commission of") an act of gross indecency, in public, (*or* "in private") by B., also a male person, with C., another male person.

INTIMIDATION.

At on A., and B., unlawfully, and without lawful authority, did use violence to (*or* "injure the property of") C., by [*Describe the personal violence or the injury to property, (as the case may be)*], with a view to compel the said C. to employ D., E., and F., whom he the said C. had a lawful right to refuse to employ (*or* "to compel the said C. to discharge from and refuse to keep in his employ G., and H., whom he the said C. had a lawful right to retain in his employ.")

OR

At on A., B., and C., being workmen in the employ of D., unlawfully, wrongfully and without lawful authority did, by means of threats of using violence to (*or* "of injuring the property of") the said D., intimidate the said D., with a view to compel the said D., to raise and advance the wages of them the said A., B., and C.

OR,

At on A., and B., unlawfully, wrongfully, and without lawful authority, did persistently follow C., from place to place, with a view to compel the said C., to cease working for D., he the said C., having a lawful right to continue to work for the said D.

INTIMIDATION, BY PICKETING.

At on , and on divers other days before and since that date, A., and B., unlawfully, wrongfully, and without lawful authority, did beset and watch the building, workshop, and premises of C., where D., was then working in the employ of the said C., with a view to compel the said D., to cease from working in the employ of the said C., he the said D., having a lawful right to continue to work in the employ of the said C., (*or* "with a view to compel the said C., to discharge and to discontinue employing the said D., he the said C., having a lawful right to continue the said D., in his employ.")

INTIMIDATION, BY ASSAULTS OR THREATS, IN PURSUANCE OF AN UNLAWFUL COMBINATION.

At on , A., B., and C., having before then, unlawfully conspired, combined, confederated and agreed together to raise the rate of wages, then usually payable to workmen in a certain trade, business and manufacture, to wit, the trade, business and manufacture of brass fornding (*or* "calico printing," *or* "cotton spinning" *or* "silk weaving" *or* "engine making" *or* "cigar making" *or* "brickmaking," etc.), did, then and there, in pursuance of the said conspiracy, unlawfully make an assault upon (*or* "use violence" *or* "threats of violence to") B., with a view to hinder him from working (*or* "being employed") at such trade, business and manufacture.

KIDNAPPING.

On at , A., unlawfully, forcibly, and without lawful authority, did kidnap B., and did unlawfully, forcibly, and without lawful authority, seize, confine and imprison him, within the Dominion of Canada, with intent to cause the said B., to be secretly confined and imprisoned in Canada aforesaid, against his will, (*or* "with intent to cause the said B., to be unlawfully sent and transported out of Canada aforesaid.")

MANSLAUGHTER.

A. unlawfully did kill and slay B. at on

OR,

At on A. did commit manslaughter.

MISCHIEF: OR WILFUL DAMAGE, DESTRUCTION, AND INJURY.

WILFULLY DAMAGING A CANAL, ETC.

At on A. unlawfully, wilfully, without legal justification or excuse, and without color of right, did damage a certain canal (*or* "navigable river"), to wit (*Describe it*), by interfering with and breaking down the flood-gates (*or* "sluices") thereof, with intent, and so as thereby, to obstruct the navigation thereof.

WILFULLY DAMAGING MANUFACTURING MACHINES.

At on A., unlawfully, wilfully, without legal justification or excuse, and without color of right, did damage (or "destroy") certain agricultural (*or* "manufacturing") machines, to wit (*Describe them*), the property of B., with intent thereby to render them useless.

WILFULLY DAMAGING A POST LETTER BAG, ETC.

At on A., unlawfully, wilfully, without legal justification or excuse, and without color of right, did damage (*or* "destroy") a certain post-letter bag (*or* "post-letter," *or* "street letter box," *or* "pillar box"), the property of the Postmaster-General.

WILFULLY DAMAGING A PARCEL SENT BY POST.

At on A., unlawfully, wilfully, without legal justification or excuse, and without color of right, did damage (*or* "destroy") a certain parcel sent by parcel post, the property of the Postmaster-General.

WILFULLY DAMAGING A PRIVATE FISHERY.

At on A., unlawfully, wilfully, without legal justification or excuse, and without color of right, did damage a certain private fishery (*or* "salmon river"), by putting into it a large quantity of lime, with intent, thereby, to destroy the fish therein.

WILFULLY DAMAGING A SHIP, WITH INTENT TO DESTROY OR RENDER IT USELESS.

At on A., unlawfully, wilfully, without legal justification or excuse, and without color of right, did damage a certain ship, (*Describe it*), with intent to destroy it, (*or* "render it useless.")

WILFULLY DAMAGING THE SLUICE OF A PRIVATE WATER.

At on A., unlawfully, wilfully, without legal justification or excuse, and without color of right, did damage (*or* "destroy") the flood-gate (*or* "sluice") of a certain private water, to wit, the fish pond of B., situated in aforesaid, with intent to take (*or* "destroy" *or* "to cause the loss of") the fish therein.

WILFULLY DESTROYING BRIDGES.

At on , A., unlawfully, wilfully, without legal justification or excuse, and without color of right, did destroy (*or* "damage") a certain bridge (*or* "viaduct," *or* "aqueduct") situated in aforesaid, and over (*or* "under") which a certain highway (*or* "railway," *or* "canal") to wit, (*describe it*), passes, and the said destruction (*or* "damage") was so done by the said A., with intent and so as to render the said bridge (*or* "viaduct," *etc.*) dangerous and impassable.

WILFULLY DESTROYING CATTLE, ETC.

At on , A., unlawfully, wilfully, without legal justification or excuse and without color of right, did

destroy (*or* "damage") one cow, the property of B., by then and there killing (*or* "maiming," *or* "poisoning," *or* "wounding") the said cow.

WILFULLY DESTROYING GOODS IN PROCESS OF MANUFACTURE.

At on A., unlawfully, wilfully, without legal justification or excuse, and without color of right, did destroy (*or* "damage") certain goods. (*Describe them*) the property of B., then in process of manufacture, with intent thereby to render them useless.

WILLFULLY DESTROYING A HOUSE, ETC., AND ENDANGERING LIFE.

At on , A., unlawfully, wilfully, without legal justification or excuse, and without color of right, did, by means of an explosion, destroy (*or* "damage") a certain dwelling-house (*or* "ship," *or* "boat") to wit, (*Describe it*), the property of B., there being certain persons to wit, C., and D., then in the said dwelling-house, *etc.*, and the said destruction *or* "damage") did then and there cause actual danger to life.

WILFULLY DESTROYING A RIVER BANK, ETC., AND CAUSING DANGER OF INUNDATION.

At on , A., unlawfully, wilfully, without legal justification or excuse, and without color of right, did destroy, (*or* "damage") the bank (*or* "dyke") of a certain river, (*Name it*), whereby there was actual danger of inundation.

WILFULLY DESTROYING OR DAMAGING, BY NIGHT, PROPERTY TO THE AMOUNT OF TWENTY DOLLARS.

At on A., unlawfully, wilfully, without legal justification or excuse, and without color of right, did damage, (*or* "destroy,") by night, seven birch trees, (*or* "thirty-five patterns for the making of waterproof coats,") the property of B., thereby then and there injuring the said trees (*or* "patterns") to the amount of twenty dollars.

WILFULLY DESTROYING, BY DAY, PROPERTY TO THE AMOUNT OF TWENTY DOLLARS.

At on , A., unlawfully, wilfully, without legal justification or excuse, and without color of right, did damage (*or* "destroy,") by day, one crate of crockery ware, the property of B., thereby injuring the said crockery ware to the amount of twenty dollars.

WILFULLY DAMAGING OR DESTROYING TREES IN A PARK, ETC.

At on A., unlawfully, wilfully, without legal justification, and without color of right, did damage (*or* "des-

troy") two fir trees, the property of B., then growing in a certain park, (*or* "pleasure ground," *or* "garden," *or* "land adjoining and belonging to the dwelling-house") of the said B., thereby injuring the said trees to an extent exceeding five dollars.

WILFULLY DESTROYING OR DAMAGING VEGETABLE PRODUCTIONS GROWING IN A GARDEN, ETC., AFTER A PREVIOUS CONVICTION.

At on , A., unlawfully, wilfully, without legal justification or excuse, and without color of right, did damage (*or* "destroy") forty cauliflowers, the property of B., then growing in a certain garden of the said B., situated in aforesaid. That, heretofore, to wit, at on (before the committing of the above mentioned offence,) the said A., was duly convicted before C., one of Her Majesty's justices of the peace, for the district of of having at on (*Set out the offence forming the basis of the first conviction,*) and was adjuged, for his said offence, to pay, (*etc.*), and in default of payment, etc., to be imprisoned, (*etc.*) And that, therefore, on the day and year first aforesaid, the said A., did unlawfully, wilfully, without legal justification or excuse and without color of right, damage (*or* "destroy") the said forty cauliflowers after having been previously convicted of a like offence of wilfully damaging (*or* "destroying") vegetable productions in a garden, *etc.*

WILFUL INJURIES TO BUILDINGS, BY TENANTS.

At on , A., being then possessed of a certain dwelling-house situated in aforesaid, and then held by him the said A., as tenant thereof, for an unexpired term of three years, did unlawfully, wilfully, without legal justification or excuse, without color of right, and to the prejudice of B., the owner thereof, pull down and demolish the said dwelling-house.

MISCHIEF ON RAILWAYS.

At on , A., unlawfully and in a manner likely to cause danger to valuable property, to wit, to certain cars of the Canadian Pacific Railway, on their railway at aforesaid, did displace a rail (*or* "sleeper, *etc.*), on and belonging to said railway, (*or* "did make a false signal on [*or* near] the said railway.")

MISCHIEF ON RAILWAYS, WITH INTENT.

At on , A. did unlawfully break and injure a rail (*or* "sleeper") on and belonging to the railway of the Grand Trunk Railway Company, at aforesaid, with intent

thereby to cause danger to certain cars of the said Railway Company on their said railway.

WILFULLY DESTROYING OR DAMAGING A RAILWAY.

At on , A., unlawfully, wilfully, without legal justification or excuse, and without color of right, did destroy (*or* "damage") a certain railway, (*Describe it*), with intent and so as to render the same dangerous and impassable.

WILFULLY REMOVING MARINE SIGNALS.

At on A., unlawfully, wilfully, without legal justification or excuse, and without color of right, did alter (*or* "remove," *or* "conceal") a certain signal (*or* "buoy") used upon the river St. Lawrence for the purpose of navigation.

INTENTIONALLY ENDANGERING RAILWAY PASSENGERS.

On at , A., upon and across a certain railway (*Describe it*), a certain piece of wood (*or* "stone," *etc.*) did unlawfully put (*or* "throw") with intent thereby to injure or endanger the safety of persons travelling (*or* "being") upon the said railway.

OR

On at , A., a certain point (*or other machinery*) then being upon and belonging to a certain railway (*Describe it*), did unlawfully turn (*or* "move," *or* "divert"), with intent thereby to injure or endanger the safety of persons travelling (*or* "being") thereon.

OR,

On at , A., unlawfully, did make (*or* "show," *or* "hide," *or* "remove") a certain signal (*or* "light") upon (*or* "near to") a certain railway (*Describe it*), with intent, thereby to injure or endanger the safety of persons travelling (*or* "being") upon the said railway.

OR,

On at , A., a certain piece of wood (*or* "stone," *etc.*), unlawfully did throw (*or* "cause to fall" *or* "strike") at (*or* "against," *or* "into," *or* "upon") a certain engine ("*or* "tender," *or* "carriage," *or* "truck"), then being used and in motion upon a certain railway (*Describe it*), with intent, thereby, to injure or endanger the safety of B., then and there being upon the said engine (*or* "tender," *etc.*, *or* "another engine, *etc.*, of the train of which the said first mentioned engine, *etc.*, then formed part.")

NEGLIGENTLY ENDANGERING THE SAFETY OF RAILWAY PASSENGERS.

On at , A., by wilfully omitting and neglecting to do his duty, to wit, by wilfully omitting and neglecting to (*Set out the particular act omitted*), which it was then his duty to do, unlawfully did endanger (*or* "cause to be endangered") the safety of persons then conveyed (*or* "being") in and upon a certain railway there called

MURDER.

A. murdered B. at on

OR,

At on A. did commit murder.

ATTEMPT TO MURDER, BY DROWNING,

At on , A., unlawfully did attempt to drown (*or* "suffocate," *or* "strangle") B., with intent, thereby, to murder the said B., (*or* "with intent, thereby, to commit murder").

ATTEMPT TO MURDER, BY EXPLOSION.

At on , A., unlawfully, did, by the explosion of a certain explosive substance, (1) to wit, (*Describe the explosive*), destroy (*or* "damage" a certain building situate and being in street, in aforesaid, with intent, thereby, to commit murder").

ATTEMPT TO MURDER, BY POISONING OR SHOOTING.

At on , A., unlawfully did with a certain gun (*or* pistol, *or* revolver), shoot at (*or* unlawfully did administer, *or* cause to be administered certain poison, *or* a certain destructive thing, to wit, to) me, (*or* B.), with intent, thereby, to commit murder.

ATTEMPT TO MURDER BY WOUNDING, ETC.

At on , A., unlawfully did wound (*or* "cause grievous bodily harm") to B. with intent, thereby, to murder the said B. (*or* "with intent, thereby, to commit murder").

ATTEMPT TO MURDER BY ANY MEANS.

At on , A., by cutting the rope of a certain hoist (*or* "breaking the chain of a certain elevator") in a certain building situate and being in street in aforesaid, (or, *Otherwise describe the actual deed*) did unlawfully attempt to murder B. (*or* "to commit murder").

(1) See article 3 (*i*), of the Code, for definition of explosive substance."

CONSPIRACY TO MURDER.

At on , A., B. and C. did unlawfully conspire and agree together to murder D., (*or* "to cause D., to be murdered.")

COUNSELLING MURDER.

At on , A., did unlawfully counsel (*or* "attempt to procure") B., to murder C.

THREATENING, BY LETTER, TO KILL OR MURDER.

At on , A., unlawfully did send (*or* "deliver"), to (*or* "cause to be received by") B., a certain letter (*or* "writing") threatening to kill (*or* "murder") the said B., he the said A., then knowing the contents of the said letter (*or* "writing").

OR,

At on , A., unlawfully did utter a certain writing, (*or* "letter"), threatening to kill (*or* "murder") B., he the said A., then knowing the contents thereof.

NEGLECT OF DOMESTIC DUTIES, ETC. (1)

OMISSION OF FATHER TO PROVIDE NECESSARIES FOR CHILD UNDER SIXTEEN.

At on , and on divers other days before and since that date, A., being the father of B., a child under sixteen years of age, then and there a member of the said A.'s household, and the said A., being as such father, under a legal duty and bound by law to provide sufficient food, clothing lodging and all other necessaries for the said B., did, in disregard of his duty in that behalf, unlawfully, refuse, neglect, and omit, without lawful excuse, to provide necessaries for the said B., his said child, by means whereof the said B's life has been and is endangered ; (*or* "the said B's health is now and is likely to be permanently injured.")

OMISSION OF HUSBAND TO PROVIDE NECESSARIES FOR WIFE.

(*Commence as above*) A., the husband of B., being, then and there, under a legal duty and bound by law to provide sufficient food, clothing and lodging and all other necessaries for B., his said wife, did, in disregard of his duty in that behalf, unlawfully, refuse, neglect and omit, without lawful excuse, to provide necessaries for her the said B., by means whereof the said B's life has been and is endangered, (*or*, "the said B.'s health is now and is likely to be permanently injured.")

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(1) For "Abandoning Child," see p. 143, *ante*.

OMISSION OF MASTER TO PROVIDE NECESSARIES FOR SERVANT OR APPRENTICE.

(*Commence as above*) A., being the master of B., a servant, (*or* "an apprentice"), under sixteen years of age, and being under contract and legally bound to provide necessary food, clothing and lodging for the said B., as his servant, (*or* "apprentice,") did in disregard of such contract and the legal duty imposed upon him by law, in that behalf, unlawfully refuse, neglect and omit, without lawful excuse, to provide necessary food, clothing and lodging for the said B., by means whereof the said B's life has been and is endangered; (*or* "the said B's health has been and is likely to be permanently injured.")

CAUSING BODILY HARM TO SERVANT OR APPRENTICE.

On at A., being the master of B., a servant (*or* "an apprentice"), unlawfully did do and cause to be done bodily harm to the said B., whereby the life of the said B. was and is endangered; (*or* "the health of the said B. has been and is likely to be permanently injured.")

NEGLECT TO OBTAIN ASSISTANCE IN CHILD-BIRTH.

At on , A., being with child and about to be delivered thereof, unlawfully, with intent that the child should not live, did, neglect to provide reasonable assistance in her delivery, in consequence of which neglect her said child was and is permanently injured, (*or* "died during or shortly after birth.")

OR,

(*Commence as above*) with intent to conceal the fact of her having had a child, did neglect to provide reasonable assistance in her delivery, in consequence of which neglect, her said child was and is permanently injured, (*or* "died during or shortly after birth.")

OBSCENE ACTS.

A., on at , in a certain open and public store of him the said A., there situate, unlawfully, knowingly, and without lawful justification or excuse, did sell (*or* "expose for public sale," *or* "expose for public view,") a certain, lewd, wicked, indecent, and obscene picture (*or* "photograph" *or* "model") representing a naked man and a naked woman in a lewd, indecent, and obscene posture together, (or, *as the case may be*), and having a tendency to corrupt morals.

OFFENSIVE WEAPONS.

On at A., unlawfully did carry (*or* "have in his possession," *or* "custody") a certain offensive weapon,

to wit, a sword (*or* "an air-gun," *or* "a dagger," *or* "a pistol," *or* "metal knuckles"), for a purpose dangerous to the public peace.

SMUGGLERS CARRYING OFFENSIVE WEAPONS.

On at , A., did unlawfully have possession of certain goods, to wit, (*describe them*) liable to seizure (*or* "forfeiture") under (*mention the Act or law*) relating to inland revenue, (*or* "the customs," *or* "trade," *or* "navigation") knowing them to be so liable, and that he did then and there and at the same time unlawfully carry a certain offensive weapon to wit, (*describe it.*)

OFFICIATING CLERGYMAN,—OBSTRUCTION OF.

A., on at unlawfully did, by force, (*threats or force*) obstruct and prevent B., a clergyman from celebrating divine service in the parish church in the parish of C., (*or* "in the performance of his duty in the lawful burial of the dead in the church yard of the parish church of the parish of C.")

STRIKING OR ARRESTING OFFICIATING CLERGYMAN.

A., on at unlawfully did arrest upon a certain civil process, (*or* "did strike," *or* did offer violence to") B., a clergyman whilst he, as such clergyman, was going to perform divine service, he, the said A., then well knowing that the said B., was a clergyman going to perform divine service

PERJURY.

A. committed perjury, with intent to procure the conviction of B. for an offence punishable with imprisonment for more than seven years, namely, robbery, by swearing on the trial of B. for the robbery of C., at the Court of Quarter Sessions for the County of on the day of 18 ; *first*, that he, A. saw B. at on the day of ; *secondly*, that B. asked A. to lend B. money on a watch belonging to C.; *thirdly, etc.*

OR,

A. committed perjury, on the trial of B. at the Court of Quarter Sessions held at on for an assault alleged to have been committed by the said B. on C. at Toronto on the day of , by swearing to the effect that the said B. could not have been at Toronto at the time of the alleged assault, inasmuch as the said A. had seen him at that time in Port Arthur.

SUBORNATION OF PERJURY.

Same as last form to the end, and then proceed :—

And that before the committing of the said perjury by the said A. to wit,

on the day of , at , C. unlawfully, did counsel and procure the said A., to do and commit the said perjury.

PERSONATION.

At on , A. unlawfully did personate B., (*or* "the administrator," *or* "widow," *or* "next of kin of the late C.," *or* "the wife of D.") with intent thereby fraudulently to obtain (*Describe the money or property intended to be obtained.*)

PERSONATION AT AN EXAMINATION.

At on , A., unlawfully falsely and with intent to gain an advantage for himself, (*or* "one B.") did personate C,, a candidate at a competitive (*or* "qualifying") examination held under authority of law, [*or* "in connection with the McGill College University, "*or* "the Laval University" of Montreal."]

PERSONATING AN OWNER OF STOCK.

At on , A., unlawfully, falsely and deceitfully did personate B., the owner of a certain share and interest in certain stock (*annuity or other public fund*) to wit, (*give the amount and description of the said stock*, etc.), then transferable at the Bank, and did, by means of such personation, transfer (*or* "endeavor to transfer,") the said share and interest of the said B., in the said stock, *etc.*, as if he the said A., were the lawful owner thereof.

ACKNOWLEDGING AN INSTRUMENT IN A FALSE NAME.

At on , A., did, before the Court of Queen's Bench for the Province of Quebec, sitting in and for the District of Montreal, (*or* "the Honorable Mr. Justice —" etc.), unlawfully, and without lawful authority or excuse, acknowledge in the name of B., a certain recognizance of bail, (*or* "*cognovit actionem*" etc.), to wit, (*Describe the instrument and the cause, action, or proceeding to which it relates.*)

PIRACY.

A., B., and C., on with force of arms, upon the high seas, to wit, in and on board a certain ship called the *Alabama*, in a certain place upon the high seas about ten leagues from Baltimore in the United States of America, then being, did in and upon certain mariners whose names are unknown, then and there being, unlawfully, piratically and violently make an assault and them, the said mariners, put in bodily fear and danger of their lives.

POLYGAMY.

At on , and on divers other days before and since that date, A., a male person, and B., C , and D., three

females, unlawfully, did practice, (*or* "agree to practice") polygamy together.

OR

At on , A., a male person, and B., C., and D., three females, did unlawfully, by mutual consent, enter into a form of polygamy together.

OR

At on , and on divers other days before that date, A., unlawfully did practice (*or* "agree to practice") polygamy with certain women, to wit, B., C., and D.

OR

At on , A., a male person, and B., C., and D., three females, did unlawfully enter into a conjugal union (*or* "spiritual or plural marriage," *etc*), together, by means of a contract [*or* "the rites" *or* "rules," *etc.*, "of a certain denomination," *or* "sect" *or* "society" called Mormons, (*or* "called" *etc.*)]

PUBLIC STORES—UNLAWFULLY APPLYING MARKS TO THEM.

At on , A., unlawfully and without lawful authority, did apply, in and on certain stores, to wit, fifty yards of canvas, and twenty yards of fearnaught, a certain mark, to wit, a blue line in a serpentine form.

OR,

At on , A., unlawfully and without lawful authority, did apply in and on certain stores, to wit, fifty yards of bunting, a certain mark, to wit, a double tape in the warp of the said bunting.

UNLAWFUL POSSESSION, ETC., OF PUBLIC STORES.

At on , A., unlawfully, and without lawful authority, did receive (*or* "possess," *or* "keep," *or* "sell," *or* "deliver") certain public stores, to wit, twenty five pounds of candles, bearing a certain mark, to wit, blue threads in each wick, to denote Her Majesty's property therein.

RAPE.

On at , A., in and upon B., a woman, not his wife, did unlawfully make an assault, and did unlawfully ravish and have carnal knowledge of her the said B., without her consent.

OR,

On at , A., did unlawfully have carnal knowledge of B., a woman, not his wife, with consent by him

obtained from the said B., unlawfully, and by threats, (*or* "unlawfully and by personating the husband of the said B.," *or* "by false and fraudulent representations as to the nature and quality of the act.")

ATTEMPT TO COMMIT RAPE.

On at , A., in and upon B., a woman, not his wife, did unlawfully make an assault, with intent to unlawfully ravish and have carnal knowledge of her without her consent.

CARNALLY KNOWING A GIRL UNDER FOURTEEN.

On at , A., did unlawfully have carnal knowledge of B., a girl under the age of fourteen years, to wit, of the age of thirteen years and six months.

ATTEMPT TO CARNALLY KNOW A GIRL UNDER FOURTEEN.

On at , A., did unlawfully attempt to have carnal knowledge of B., a girl under the age of fourteen years, to wit, of the age of thirteen years and six months.

RECEIVING PROPERTY STOLEN, OR OBTAINED BY ANY INDICTABLE OFFENCE.

At on , A., did unlawfully receive and have one piano, belonging to B., and theretofore unlawfully stolen [*or* "obtained by an indictable offence, to wit, by false pretences," *or* (*Describe the offence by which the piano was obtained*], he the said A., then well knowing the said piano to have been so unlawfully stolen, (*or* "obtained by the said indictable offence.")

OR,

At on , A., unlawfully stole one piano belonging to B. *And*, that, afterwards, at on C., unlawfully did receive and have, the said piano so stolen as aforesaid, he, the said C., then well knowing the same to have been stolen.

RIOT.

On at A., B., and C., with divers other persons unknown, unlawfully, riotously and in a manner causing reasonable fear of a tumultuous disturbance of the peace, did assemble together, and, being so assembled together, did make a great noise, and thereby began and continued for sometime to disturb the peace tumultuously.

RIOTOUS DESTRUCTION OF BUILDINGS.

A., on at , with two other persons at least, did unlawfully, riotously and tumultuously assemble together to the distur-

bance of the public peace, and with force did unlawfully demolish and pull down (*or* "begin to demolish &c."), a certain building of B.

RIOTOUS DAMAGE TO BUILDINGS.

A., on , at , with two other persons at least, did unlawfully, riotously and tumultuously assemble together, to the disturbance of the public peace, and with force did unlawfully injure and damage certain machinery of B.

NEGLECT TO SUPPRESS RIOT.

On at the city of , within the jurisdiction of A., then the mayor of and present in the city of , there was a riot, and the said A., then having notice thereof, unlawfully and without any reasonable cause, did omit to do his duty as such mayor in suppressing the said riot.

OMITTING TO AID PEACE OFFICER TO SUPPRESS RIOT.

On at , there was a riot, and that A., B. and C., then and there present, being called upon and requested by D., a peace officer in the exercise of his duty in that behalf, to render him their assistance in suppressing the said riot, did unlawfully and without any reasonable cause refuse and omit to do so.

ROBBERY.

At on , A., unlawfully, and by means of violence (*or* "threats of violence") used by him to and against the person (*or* "property") of B., to prevent (*or* "overcome") resistance, did steal from the person (*or* "in the presence") of the said B., and against his will, moneys of him the said B., amounting to fifty dollars.

ROBBERY BY SEVERAL PERSONS TOGETHER.

At on , A., B. and C., being then and there together, did, with and by means of violence (*or* "threats of violence") used by them to and against the person (*or* "property") of B., to prevent (*or* "overcome") resistance, unlawfully and violently steal from the person (*or* "in the presence") of the said B., and against the said B's will, moneys of the said B., amounting to one hundred dollars.

ROBBERY BY A PERSON ARMED WITH AN OFFENSIVE WEAPON.

At on , A., being armed with a certain offensive weapon, to wit, a brass knuckle-duster (*or* "lead-loaded cane," *or* "sand-bag," *or* "pistol," *or* "knife"), did, with and by means of violence (*or* "threats of violence"), used by him to and against the person (*or* "property") of B., to prevent (*or* "overcome") resistance,

unlawfully and violently steal from the person (*or* "in the presence") of the said B., and against his will, one diamond ring belonging to the said B.

ROBBERY, WITH WOUNDING, Etc.

At on , A., with and by means of violence (*or* "threats of violence") used by him to and against the person (*or* "property") of B., to prevent (*or* "overcome") resistance, did unlawfully and violently steal from the person (*or* "in the presence") of the said B., and against his will, one gold watch belonging to the said B.; and that at the time (*or* "immediately before," *or* "immediately after") he so robbed the said B., he the said A. did unlawfully wound (*or* "beat," *or* "strike," *or* "use personal violence to") the said B.

ASSAULT, WITH INTENT TO ROB.

At on , A., in and upon B. unlawfully did make an assault, with intent the moneys, and goods of the said B., unlawfully and violently to steal from the person and against the will of the said B.

ASSAULT BY AN ARMED PERSON.

At on , A., then being armed with a certain offensive weapon, to wit, a heavy bludgeon, did, in and upon B., unlawfully make an assault, with intent the moneys of the said B., unlawfully and violently to steal from the person and against the will of the said B.

STOPPING THE MAIL.

At on , A., unlawfully did stop a certain mail, to wit, the mail for conveying letters between and , with intent to rob (*or* "search") the same.

ROBBERY, BY FORCIBLY COMPELLING EXECUTION OF A DOCUMENT.

At on , A., by means of unlawful violence to (*or* "restraint of") the person of B., did unlawfully compel the said B. to execute (*or* "sign," *or* "destroy") a certain deed, to wit, (*Describe it*), with intent to defraud (*or* "injure").

OR,

At on , A., by means of a threat to employ unlawful violence to (*or* "restraint of") the person of B., did unlawfully compel the said B. to sign (*or* "accept," *or* "endorse," *or* "destroy," *or* "alter") a certain promissory note (*etc.*) to wit, (*Describe it*), with intent to defraud (*or* "injure").

SEDUCTION OF GIRL BETWEEN FOURTEEN AND SIXTEEN.

On at , A. unlawfully did seduce (*or* "have illicit connection with") B., a girl of previously chaste character, then being of (*or* "above") the age of fourteen years and under the age of sixteen years.

SEDUCTION UNDER PROMISE OF MARRIAGE.

On at , A., then above the age of twenty-one years, did, unlawfully, and under promise of marriage, seduce and have illicit connection with B., an unmarried female, of previously chaste character, and under twenty-one years of age.

SEDUCTION BY GUARDIAN OF WARD.

On at , A., then being the guardian of B., unlawfully did seduce (*or* "have illicit connection with") the said B., his ward.

SEDUCTION OF FACTORY EMPLOYEE.

On at A., unlawfully did seduce (*or* "have illicit connection with") B., a woman of previously chaste character, and under the age of twenty-one years, to wit, of the age of years, and then also being in the said A's employ, in the said A's factory (*or* "mill," *or* "workshop").

SETTING SPRING-GUNS, ETC.

On at , A., unlawfully did set and place (*or* "cause to be set and placed") in a certain place (*Describe where set*) a certain spring-gun (*or* "man-trap") calculated to destroy human life (*or* "inflict grievous bodily harm") with intent that the same (*or* "whereby the same") might destroy (*or* "inflict grievous bodily harm upon") any trespasser or other person coming in contact therewith.

SOLEMNIZING MARRIAGE WITHOUT AUTHORITY.

On at A., without lawful authority, did unlawfully solemnize (*or* "pretend to solemnize") a marriage between B. and C.

OR,

On at , A., then knowing that B. was not lawfully authorized to solemnize a marriage between C. and D., did unlawfully procure the said B. to unlawfully solemnize a marriage between the said C. and D.

SOLEMNIZING A MARRIAGE CONTRARY TO LAW.

At on , A., a clergyman of , having lawful authority to solemnize marriages, did solemnize

a marriage between B. and C., unlawfully, and in violation of the laws of the province of , in which the said marriage was so solemnized, to wit, by solemnizing the same without any previous publication of banns, and without any licence in that behalf (or, *Set out the particular violation complained of*).

STEALING CATTLE.

At on , A., unlawfully did steal one horse the property of B.

STEALING CHILDREN UNDER FOURTEEN.

On at , A., unlawfully did take (*or* "entice") away (*or* "detain") one B., a child under the age of fourteen years, to wit, aged twelve years, with intent, thereby, to deprive C., the father (*or* "mother," *or* "guardian" *etc.*), of the said B., of the possession of the said B. [or with intent thereby, then and there, to steal certain articles, to wit, (*Mention them*), then being on or about the person of the said B.]

OR,

On at , A., unlawfully did receive (*or* "harbor") one B., a child under the age of fourteen years, to wit, aged years, knowing the said B. to have been theretofore taken (*or* "enticed") away, with intent to deprive C., the father (*or* "mother," *or* "guardian" *etc.*) of the said B., of the possession of the said B.

STEALING FROM A DOCK.

At on , A unlawfully did steal from a certain dock, (*or* "wharf") adjacent to the navigable river St. Lawrence, one sack of flour belonging to B., and then being upon the said dock.

STEALING FROM THE PERSON.

At on , A., unlawfully did steal one gold watch, and one silver watch-chain from the person of B.

STEALING IN A DWELLING-HOUSE.

At on , A., unlawfully did steel twelve silver spoons, of the value of twenty-five dollars, belonging to B. in the dwelling-house of the said B., situated in aforesaid

OR,

At on , A., unlawfully did steal twelve silver forks belonging to B., in the dwelling-house of the said B. situated in aforesaid, there then being in the said dwelling-house, one C., who was put in bodily fear by the menaces and threats of the said A.

STEALING GOODS IN MANUFACTORIES.

At on , A., unlawfully did steal forty yards of calico worth five dollars, belonging to B., in a certain weaving shed of the said B., situated in aforesaid, whilst the same were there exposed upon the looms of the said B., during a certain stage, process or progress of the manufacture thereof.

FRAUDULENTLY DISPOSING OF GOODS ENTRUSTED FOR MANUFACTURE.

At on , A., did fraudulently dispose of one hundred yards of tweed cloth, the property of B., which the said A. had been theretofore entrusted with to manufacture.

STEALING IN OR FROM RAILWAY STATIONS, ETC.

At on , A., unlawfully did steal one umbrella and one rug belonging to B., in (*or* "from,") a certain railway station, to wit, a station of the Grand Trunk Railway Company (*or* "the Canadian Pacific Railway Company,") and situated at aforesaid.

STEALING IN A SHIP ON A NAVIGABLE RIVER.

At on , A., unlawfully did steal in a certain ship called the "Nepigon" twelve bars of iron of the goods and merchandise of B., then being in the said ship, upon the navigable river St. Lawrence, (*or* "in a certain port of discharge, to wit, the port of Montreal.")

STEALING OYSTERS.

At on , A., unlawfully did steal from a certain oyster-bed, called , the property of B. one hundred oysters.

STEALING A POST-LETTER BAG, POST-LETTER, ETC.

At on , A., unlawfully did steal one post-letter bag, (*or* "post-letter" *or* "parcel in transit through the post,") the property of the Post-Master General.

STEALING A POST-LETTER FROM A POST-LETTER BAG, ETC.

At on , A., unlawfully did steal one post-letter, the property of the Post-Master General, from a post-letter bag, (*or* "from a post-office" *or* "from an officer employed in the post-office of Canada.")

STEALING A POST-LETTER WITH MONEY IN IT.

At on , A., unlawfully did steal one post-letter, the property of the Post-Master General which post-letter contained a certain chattel, to wit, (*Describe it*), [*or* "certain money to wit, (*Amount*)," *or* "a certain valuable security, to wit," (*Describe it*).]

STEALING MONEY, ETC., OUT OF A POST-LETTER, ETC.

At on , A., unlawfully did steal a certain chattel, to wit, (*Describe it*), [*or* "certain money, to wit, (*Amount*)" *or* "a certain valuable security, to wit," (*Describe it*], from and out of a post-letter (*or* "parcel,") the property of the Post-Master General.

STEALING TREES WORTH MORE THAN $25.

At on , A., unlawfully did steal one ash tree worth twenty-six dollars, the property of B., then growing in a certain field of the said B., situated in aforesaid.

STEALING A TREE (WORTH $5), IN A PARK, ETC.

At on , A., unlawfully did steal one apple tree, of the value of six dollars, the property of B., growing in a certain orchard of the said B., situated at aforesaid.

STEALING TREES AFTER TWO PREVIOUS CONVICTIONS.

At on A., unlawfully, did steal one shrub worth fifty cents, the property of B., then growing in a certain plot of land situate in aforesaid; that at on (before the committing of the above mentioned offence), the said A., was duly convicted, before C., one of Her Majesty's justices of the peace for the district of , of having at on (*Set out the offence forming the basis of the first conviction*) and was adjudged, for such offence, to pay, *etc.*, and in default of payment, *etc.*, to be imprisoned, *etc.*; that at on (before the committing of the firstly above mentioned offence, but after the next hereinbefore mentioned conviction, the said A., was again duly convicted, before D., one of Her Majesty's justices of the peace for the district of of having at on (*Set out the second conviction*): And, therefore, on the day and year first aforesaid, the said A., did unlawfully steal the said shrub worth fifty cents, after having been twice convicted of the offence of stealing a shrub, (*or* "tree," *etc.*), worth at least twenty-five cents.

STEALING WRECK.

At on , A., unlawfully did steal one coil of rope, and one compass, being portions of the tackle of a certain ship, called the "*Hawk*," the property of B., and other persons, which ship was then and there lying stranded and wrecked.

OR,

At on , A., unlawfully did steal one bale of raw silk belonging to B., and forming part of the cargo of a certain ship called the "*Pomeranian*," then and there lying stranded and wrecked.

SUICIDE.

AIDING AND ABETTING SUICIDE.

At on , and on divers other days before that date, A., unlawfully did counsel and procure B., to commit suicide, in consequence whereof the said B., then and there, did commit suicide.

ATTEMPT TO COMMIT SUICIDE.

A., at on unlawfully did attempt to commit suicide, by then and there endeavouring to kill himself.

THEFT BY A BANK OFFICIAL.

At, on A., being then and there a cashier (*or* "assistant cashier," *or* "manager" *or* "clerk," *etc.*,) of the Bank, (*or* "Savings Bank"), did unlawfully steal certain money, to wit, five thousand dollars, [*or* "bonds," *or* "obligations," etc., [*Describe them*],) belonging to, (*or* "lodged," *or* "deposited") in the said Bank, [*or* "Savings Bank."].

THEFT BY A CLERK OR SERVANT.

At on A., being a clerk, (*or* "employed for the purpose and in the capacity of a clerk") to B., his master, (*or* "employer"), did unlawfully steal certain money, to wit, one hundred dollars, certain goods, to wit, one gold watch, and a certain valuable security, to wit, one promissory note for twenty dollars, belonging to (*or* "in the possession of") the said B., his master, (*or* "employer.")

THEFT BY GOVERNMENT EMPLOYEE.

At on A., being employed in the service of Her Majesty, (*or* "the Government of Canada," *or* "the Government of the Province of Ontario," *or* "Quebec," *or* "the Municipality of

") and being, by virtue of his said employment, in possession of certain moneys to the amount of ten thousand dollars, (*or* "certain valuable securities, [*Describe them*]), did unlawfully steal the said moneys, *etc.*")

THEFT BY HOLDER OF A POWER OF ATTORNEY.

At on , A., having been theretofore entrusted, by B., with a power of attorney to sell certain land and buildings, to wit, (*Describe the property,*) and having theretofore sold the said land and buildings, did, fraudulently convert the proceeds of the said sale, to wit, the sum of two thousand dollars, to a purpose other than that for which he was entrusted with the said power of attorney, by applying and converting the said money to his own use.

THEFT BY MISAPPROPRIATING MONEY HELD UNDER DIRECTION.

At on A., having theretofore received from B., the sum of one hundred dollars, with a direction from him the said B., to the said A., that the said money should be paid to C,, did, in violation of good faith and contrary to the terms of the said direction, fraudulently and unlawfully convert to his own use and thereby steal the said sum of money.

THEFT BY A PARTNER.

At on , A stole one car load of coals of the value of the property of a co-partnership composed of the said A. and one B.

THEFT BY A TENANT.

At on A., being then and there a tenant, (*or* "lodger") of or in a certain house (*or* "lodging,") to wit, (*Describe the premises*), did unlawfully steal a certain chattel, (*or* "fixture"), to wit, (*Describe it*), belonging to B., and let to be used by him the said A. in or with the said house, (*or* "lodging.")

THEFT OF A DOCUMENT OF TITLE.

At on , A., unlawfully did steal a certain document of title to goods, (*or* "to lands"), to wit, one bill of lading, (*or* "deed." *or* "map," *or* "paper." *etc.*,) containing evidence of the title, (*or* "a part of the title") of B., to certain goods, (*or* "real property,") to wit, (*describe the property*), belonging to the said B. (*or* "in which the said B. has an interest.")

THEFT OF JUDICIAL DOCUMENTS, ETC.

At on , A., unlawfully did steal, a certain record, (*or* "writ," *or* "petition," *etc.*, forming part of a certain record") of and belonging to the Superior Court of Lower Canada, for the District of Montreal, in a certain cause (*Describe the cause, matter or proceeding,*) then (*or* "theretofore") depending in the said Court.

THEFT OF THINGS UNDER SEIZURE.

At on , A., without lawful authority, did unlawfully take or carry away, one horse of the value of belonging to the said A., (*or* "one B,") and then and there being under lawful seizure.

THEFT OF A WILL.

At on A., did unlawfully steal a certain testamentary instrument, to wit, the last will and testament (*or* "a codicil to the last will and testament") of B.

THREATENING LETTER. (1)

At on , A., did unlawfully send to (*or* "cause to be received by") B., a certain letter (*or* "writing") demanding of him the said B., with menaces, a certain sum of money, to wit, , the said demand being without reasonable or probable cause, and he the said A. then well knowing the contents of the said letter (*or* "writing"), which is as follows. (*Set it out.*)

DEMANDING, WITH THREATS, WITH INTENT TO STEAL.

At on , A., with menaces, unlawfully did demand of me, this deponent (*or* "B."), one hundred dollars, with intent to steal the same from me, (*or* "the said B.")

TRADE MARK,—FORGERY OF.

At on , A., unlawfully did forge (*or* "cause to be forged"), a certain trade-mark, to wit, (*Describe it*).

FALSELY APPLYING A TRADE-MARK.

At on , A did unlawfully, falsely apply (*or* "cause to be applied") to certain goods, to wit, (*Describe them*) a certain trade-mark to wit, (*Describe it*), (*or* "a mark so nearly resembling a certain trade-mark to wit" (*Describe it*), "as to be calculated to deceive.")

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(1) For "Extortion by Threats," see p. 161, *ante*.

TREASON.

On at . within Her Majesty's Dominions, A, with divers other false traitors unknown, and armed, arrayed, and assembled together in warlike manner, did unlawfully and traitorously levy and make war against our Sovereign Lady the Queen, with intent thereby to depose Her Majesty from the style, honor and royal name of the Imperial Crown of the United Kingdom of Great Britain and Ireland and of Her other Dominions.

ASSAULTS ON THE QUEEN.

On at A., a certain pistol, which he the said A., in his right hand then had and held, unlawfully, and wilfully did point, aim, and present at ("*at or near to*") the person of our Lady the Queen, with intent, thereby, to alarm our said Lady the Queen.

INCITING TO MUTINY.

A., on at , unlawfully, and for a traitorous and mutinous purpose, did endeavor to seduce one B., he the said B. then being a person serving in Her Majesty's forces on land, from his duty and allegiance to Her Majesty.

UNLAWFUL OATH,—ADMINISTERING OR TAKING.

A., on at did unlawfully take, (*or* "administer and cause to be administered to B."), a certain oath and engagement purporting to bind the said A., (*or* "B.") not to inform or give evidence against any associate, confederate or other person of or belonging to a certain unlawful association or confederacy, (*Add,—in case of a charge for taking the oath,*—"he the said A. not being then compelled to take the said oath and engagement," *or,—in case of a charge for administering,*—"and which said oath and engagement was then and there taken by the said B.")

WOUNDING, WITH INTENT TO MAIM, Etc.

On at A., with intent to maim (*or* "disfigure," *or* "disable" *or* "do grievous bodily harm to") B., unlawfully did wound (*or* "cause grievous bodily harm to") the said B. (*or* "unlawfully did, with a certain loaded gun, or *pistol* or *revolver*, shoot *or* attempt to discharge a loaded arm at the said B,"]

OR,

On at , A., with intent to resist the lawful apprehension (*or* "detainer") of him the said A. (*or* "of B.") unlawfully did wound (*or* "cause grievous bodily harm to") C. [*or* "unlaw-

fully did with a certain loaded gun *or* pistol, *or* revolver, shoot (*or* attempt to discharge a loaded arm at) C.]

WOUNDING, WITHOUT INTENT.

On at , A., unlawfully did wound (*or* " inflict grievous bodily harm upon ") B.

WOUNDING A PUBLIC OFFICER.

At on , A unlawfully did maim (*or* " wound ") B., a public officer engaged in the execution of his duty, (*or* " a person acting in aid of C., a public officer engaged in the execution of his duty.")

CHAPTER IX.

(Part XLV of the Code)

PROCEEDURE ON APPEARANCE OF ACCUSED.

PRELIMINARY ENQUIRY.

577.—When Preliminary Enquiry to be Held.—When any person accused of an indictable offence is before a justice, whether *voluntarily*, or *upon summons*, or after being *apprehended, with or without warrant*, or *while in custody* for the same or any other offence, the justice shall proceed to inquire into the matters charged against such person, in the manner hereinafter defined.

Property found upon a Prisoner when Apprehended.—If, upon his apprehension, the accused has been deprived by the constable of his money and other valuables, it will be proper, under certain circumstances, to make an application to the magistrate for their restoration.

There can be no doubt that, when a person is apprehended upon a criminal charge, it is right and proper that all weapons as well as everything connected with or having a tendency to throw light upon the subject matter of the charge should be searched for and taken from him, and be kept in safety until the charge is in some way

disposed of, or some order made in reference thereto. But to deprive a prisoner of his property for any other purpose is both unjustifiable and cruel, as he may be thereby deprived of his best, if not his only, means of defence.

To search a party on his apprehension, and, without scruple, to take from him every particle of property in his possession, without regard to the nature of the charge upon which he is apprehended is not right, and is too frequently the course adopted by constables and other officers.

Upon this subject, Mr. Justice Patteson, in a case which came before him, remarked as follows: "The prisoner complains that his money was taken from him and that he was thereby deprived of the means of making his defence. Generally speaking, it is not right that a man's money should be taken away from him, unless it is connected, in some way, with the property stolen. If it is connected with the robbery, it is quite proper that it should be taken, but, unless it is, it is not a fair thing to take away his money which he might require for his defence." (1)

Some important observations were also made, upon this subject, by Lord Campbell, C. J., in the case of Bessell v. Wilson. (2) In that case, which was an action of trespass, the plaintiff had been summoned for an infringement of the *Copyright of Designs Act*, and ordered to pay a fine and costs, upon non-payment of which he was summoned to show cause why he did not pay according to the adjudication; and, as he did not attend personally, but only by counsel, to show cause, he was arrested, under a warrant to compel his personal attendance, and taken to prison, where he was searched and detained until brought before the magistrates. Subsequently, the conviction was quashed; and hence the plaintiff's action of trespass, in the course of which, his Lordship said: "At the conclusion of the trial of this case, I expressed my disapprobation,—which I now repeat,—of the manner in which the plaintiff was searched when taken to the station-house. There is no right, in a case of this kind, to inflict the indignity to which the plaintiff was subjected.

(1) R. v. O'Donnell, 7 C. & P., 138. See also R. v. Kinsey, 7 C. & P., 449 R. v. Griffiths, 9 J. P. 66.

(2) Bessell v. Wilson, 17 J. P., 52, 567.

But I am informed that an erroneous impression of what I said has gone abroad, and that it has been supposed that I asserted that there was *no right in any one to search a prisoner*. I have not said so. It is often the duty of an officer to search a prisoner. If, for instance, a man is taken in the commission of a felony, he may be searched to see whether the stolen articles are in his possession, or whether he has any instrument of violence about him. I have never said that searching a prisoner was a forbidden act. What I said applied to circumstances such as existed in the present case. If a tradesman be charged with an offence such as that with which the plaintiff in the present case was charged, and he appear by counsel and not in person and a warrant be issued against him, not charging him with any crime, but merely to make him appear in person, the act of searching him is contrary to law."

If, therefore, the accused has been deprived of his property upon his apprehension, an application should be made to the magistrate to order its restoration; and if it appears to the justice, after due consideration of the circumstances, that there is no connection between the subject matter of the charge and the property applied for, and that such property is not the produce of crimes which may form the subject of enquiry, he will act wisely in ordering it to be restored, provided, of course, that the property itself is not of a dangerous nature.

578.—Irregularity in Procuring Appearance.—No irregularity or defect in the substance or form of the summons or warrant, and no variance between the charge contained in the summons or warrant and the charge contained in the information, or between either and the evidence adduced on the part of the prosecution at the inquiry, shall affect the validity of any proceeding at or subsequent to the hearing.

This Article does away with all possibility of taking any technical objection to the information or complaint, or to the case as made out at the preliminary enquiry. If the evidence adduced tends to show the commission, by the accused, of an indictable offence—whether it be the same as, or different from, the one charged by the information or complaint—the magistrate is bound to proceed upon and examine the evidence adduced, and to either discharge

the accused—if he considers the evidence *insufficient*—or commit him for trial for the crime disclosed by such evidence—if he considers it *sufficient*.

579.—Adjournment, in Case of Variance.—If it appears to the justice that the person charged has been deceived or misled by any such variance in any summons or warrant, he may adjourn the hearing of the case to some future day, and in the meantime may remand such person, or admit him to bail as hereinafter mentioned.

580.—Procuring the Attendance of Witnesses.—If it appears to the justice that any person, being or residing *within the province* is likely to give material evidence either for the prosecution or for the accused on such inquiry, he may issue a summons under his hand, requiring such person to appear before him at a time and place mentioned therein to give evidence respecting the charge, and to bring with him any documents in his possession or under his control relating thereto.

2. Such summons may be in the FORM K in SCHEDULE ONE, or to the like effect. (1)

581.—Service of Summons for Witness.—Every such summons shall be served by a constable or other peace officer upon the person to whom it is directed, either personally, or, if such person cannot conveniently be met with, by leaving it for him at his last or most usual place of abode with some inmate thereof apparently *not under sixteen years of age*.

See Art. 562, and notes and authorities thereon, at pp. 107, 108, *ante*, as to service of summons.

A witness, upon being served with the summons or with a subpœna, cannot refuse to attend until his expenses are paid: and it is not necessary, therefore, to tender him his expenses. (2)

582.—Warrant for Witness after Summons.—If any one to whom such last-mentioned summons is directed does

(1) For Form K, see p. 229, *post*.
(2) R. v. James, 1 C. & P., 322; R. v. Cook, 1 C. & P., 321.

not appear at the time and place appointed thereby, and no just excuse is offered for such non-appearance, then (after proof upon oath that such summons has been served as aforesaid, or that the person to whom the summons is directed is keeping out of the way to avoid service), the justice, before whom such person ought to have appeared, being satisfied by proof on oath that he is likely to give material evidence, may issue a warrant under his hand to bring such person, at a time and place to be therein mentioned, before him or any other justice, in order to testify as aforesaid.

2. The warrant may be in the FORM L in SCHEDULE ONE. (1) or to the like effect. Such warrant may be executed anywhere within the territorial jurisdiction of the justice by whom it is issued, or, if necessary, endorsed as provided in section 565, and executed anywhere in the province but out of such jurisdiction.

3. If a person summoned as a witness under the provisions of this part is brought before a justice on a warrant issued in consequence of refusal to obey the summons, such person may be detained on such warrant before the justice who issued the summons, or before any other justice in and for the same territorial division who shall then be there, or in the common gaol, or any other place of confinement, or in the custody of the person having him in charge, with a view to secure his presence as a witness on the day fixed for the trial; or, in the discretion of the justice, such person may be released on recognizance, with or without sureties, conditioned for his appearance to give evidence as therein mentioned, and to answer for his default in not attending upon the said summons as for contempt; and the justice may, in a summary manner, examine into and dispose of the charge of contempt against such person, who, if found guilty thereof, may be fined or imprisoned, or both, such fine not to exceed twenty dollars, and such imprisonment to be in the common gaol, without hard labour, and not to exceed one month, and may also be ordered to pay the costs incident to the service and execution of the said summons and warrant and of his detention in custody.

(The conviction under this section may be in the FORM PP in SCHEDULE ONE. (2)

(1) For Form L, see p. 230, *post*. For Form of Deposition that a person is a material witness, see "Additional Forms" at end of this chapter.

(2) For Form PP, see Forms at end of Chapter X, *post*.

583.—Warrant for Witnesses in First Instance.—If the justice is satisfied by evidence, *upon oath*, that any person within the province, likely to give material evidence either for the prosecution or for the accused, will not attend to give evidence without being compelled so to do, then instead of issuing a summons, he may issue a warrant in the first instance. (1) Such warrant may be in the FORM M IN SCHEDULE ONE of the Code, (2) or to the like effect, and may be executed anywhere within the jurisdiction of such justice, or, if necessary, endorsed as provided in section 565, and executed anywhere in the province but out of such jurisdiction.

584.—Procuring Attendance of Witnesses beyond the Province.—If there is reason to believe that any person residing anywhere in Canada, *out of the province*, and not being within the province, is likely to give material evidence either for the prosecution or for the accused, any judge of a superior court or a county court, on application therefor by the informant or complainant, or the Attorney-General, or by the accused person or his solicitor or some person authorized by the accused, may cause a writ of subpœna to be issued under the seal of the court of which he is judge, requiring such person to appear before the justice before whom the inquiry is being held or is intended to be held, at a time and place mentioned therein, to give evidence respecting the charge and to bring with him any documents in his possession or under his control relating thereto,

2, Such subpœna shall be served personally upon the person to whom it is directed and an affidavit of such service by a person effecting the same, purporting to be made before a justice of the peace, shall be sufficient proof thereof.

3. If the person served with a subpœna, as provided by this section, does not appear at the time and place specified therein, and no just excuse is offered for his non-appearance, the justice holding the inquiry, after proof upon oath that the subpœna has been served, may issue a warrant under his hand directed to any constable or peace officer of the district, county or place where such person is, or

(1) For Form of Deposition, see "Additional Forms," *post*.
(2) For Form M, see p. 231, *post*

to all constables or peace officers in such district, county or place, directing them or any of them to arrest such person and bring him before the said justice or any other justice, at a time and place mentioned in such warrant, in order to testify as aforesaid.

4. The warrant may be in the FORM N IN SCHEDULE ONE. (1) or to the like effect. If necessary, it may be endorsed in the manner provided by section 565, and executed in a district, county or place other than the one therein mentioned.

Procuring Attendance of a Prisoner as a Witness.—When the attendance of any person confined in any prison in Canada is required in any court of criminal jurisdiction in any case cognizable therein by indictment, the court before whom such prisoner is required to attend may, or any judge of such court, or of any superior court or county court may, *before* or *during* any such term or sittings at which the attendance of such person is required, make an order upon the warden or gaoler of the prison, or upon the sheriff or other person having the custody of such prisoner, to deliver such prisoner to the person named in such order to receive him: and such person shall, at the time prescribed in such order, convey such prisoner to the place at which such person is required to attend, there to receive and obey such further order as to the said court seems meet. (Code, Art. 680.)

Taking Evidence, under Commission, of person Dangerously Ill.—Whenever it is made to appear at the instance of the crown, or of the prisoner or defendant, to the satisfaction of a judge of a superior court, or a judge of a county court having criminal jurisdiction, that any person who is dangerously ill, and who, in the opinion of some licensed medical practitioner, is not likely to recover from such illness, is able and willing to give material information relating to any indictable offence, or relating to any person accused of any such offence, such judge may, by order under his hand, appoint a commissioner to take in writing the statement on oath or affirmation of such person.

Such commissioner shall take such statement and shall subscribe the same and add thereto the names of the persons, if any, present

(1) For Form N, see p. 232, *post*.

at the taking thereof, and, if the deposition relates to any indictable offence for which any accused person is already committed or bailed to appear for trial, shall transmit the same, with the said addition, to the proper officer of the court at which such accused person is to be tried; and in every other case he shall transmit the same to the clerk of the peace of the county, division or city in which he has taken the same, or to such other officer as has charge of the records and proceedings of a superior court of criminal jurisdiction in such county, division or city, and such clerk of the peace or other officer shall preserve the same and file it of record, and upon order of the court or of a judge transmit the same to the proper officer of the court where the same shall be required to be used as evidence. (Code, Art. 681.)

Presence of Prisoner at such Examination.—Whenever a prisoner in actual custody is served with, or receives, notice of an intention to take the statement mentioned in the last preceding section, the judge who has appointed the commissioner may, by an order in writing, direct the officer or other person having the custody of the prisoner to convey him to the place mentioned in the said notice for the purpose of being present at the taking of the statement; and such officer or other person shall convey the prisoner accordingly, and the expenses of such conveyance shall be paid out of the funds applicable to the other expenses of the prison from which the prisoner has been conveyed. (Code, Art. 682.)

Reading Deposition of a Sick Witness at the Trial.—If the evidence of a sick person has been taken under commission, as provided in the above section, 681, and upon the trial of any offender for any offence to which the same relates, the person who made the statement is proved to be dead, or if it is proved that there is no reasonable probability that such person will ever be able to attend at the trial to give evidence, such statement may, upon the production of the judge's order appointing such commissioner, be read in evidence, either for or against the accused, without further proof thereof,—if the same purports to be signed by the commissioner by or before whom it purports to have been taken, and if it is proved to the satisfaction of the court that

reasonable notice of the intention to take such statement *was served* upon the person (whether prosecutor or accused) against whom it is proposed to be read in evidence, and that such person or his counsel or solicitor had, or might have had, if he had chosen to be present, full opportunity of cross-examining the person who made the same. (Code, Art. 686)

In view of the proviso at the end of this Article, 686, no statement professedly taken under the provisions thereof and under the provisions of Article 681, can be available as such at the trial, unless, before taking it, notice has been given of the intention to take it: (1) and such notice must be in writing; otherwise the statement cannot at the trial be read against the prisoner, although he may have been present when it was taken and have had a full opportunity of cross-examination. (2)

Taking Evidence, Under Commission, of Witnesses out of Canada.—Whenever it is made to appear, at the instance of the crown, or of the prisoner or defendant, to the satisfaction of the judge of any superior court, or the judge of a county court having criminal jurisdiction, that any person who resides out of Canada is able to give material information relating to any indictable offence for which a prosecution is pending, or relating to any person *accused* of such offence, such judge may, by order under his hand, appoint a commissioner or commissioners to take the evidence, upon oath, of such person

Until otherwise provided by rules of court, the practice and procedure in connection with the appointment of commissioners under this section, the taking of depositions by such commissioners, and the certifying and return thereof, and the use of such depositions as evidence at the trial shall be as nearly as practicable the same as those which prevail in the respective courts in connection with the like matters in civil causes. (Code, Art. 683.)

585.—Commitment of a Witness Refusing to be Examined.—Whenever any person appearing, either in obedience to a summons or subpœna, or by virtue of a warrant, or

(1) R. v. Quigley, L. T., N. S. 211, Mellor & Lush, JJ.
(2) R. v. Shurmer, 17 Q. B. D. 323; 55 L. J. M. C. 153.

being present and being verbally required by the justice to give evidence, refuses to be sworn, or having been sworn, refuses to answer such questions as are put to him, or refuses or neglects to produce any documents which he is required to produce, or refuses to sign his depositions, without in any such case offering any just excuse for such refusal, such justice may adjourn the proceedings for any period not exceeding eight clear days and may in the meantime by warrant in FORM O in SCHEDULE ONE of the Code, (1) or to the like effect, commit the person, so refusing, to gaol, unless he sooner consents to do what is required of him. If such person, upon being brought up, upon such adjourned hearing, again refuses to do what is so required of him, the justice, if he sees fit, may again adjourn the proceedings, and commit him for the like period, and so again from time to time until such person consents to do what is required of him.

2. Nothing in this section shall prevent such justice from sending any such case for trial, or otherwise disposing of the same in the meantime, according to any other sufficient evidence taken by him.

586.—Discretionary Powers of the Justice at the Preliminary Examination.—A justice holding the preliminary inquiry may, in his discretion :

(*a.*) permit or refuse permisson to the prosecutor, his counsel or attorney to address him in support of the charge, either by way of opening or summing up the case, or by way of reply upon any evidence which may be produced by the person accused ;

(*b.*) receive further evidence on the part of the prosecutor after hearing any evidence given on behalf of the accused ;

(*c.*) adjourn the hearing of the matter, from time to time, and *change the place of hearing*, if, from the absence of witnesses, the inability of a witness who is ill to attend at the place where the justice usually sits, or from any other reasonable cause, it appears desirable to do so, and may remand the accused, if required, by warrant in the FORM P in SCHEDULE ONE of the Code : (2) Provided that no such remand shall be for more than eight clear days, the

(1) For Form O., see p. 233, *post.*

(2) For Form P, see p. 234, *post.*

day following that on which the remand is made-being counted as the first day; and further provided, that if the remand is for a time not exceeding three clear days, the justice may verbally order the constable or other person in whose custody the accused then is, or any other constable or person named by the justice in that behalf, to keep the accused person in his custody and to bring him before the same or such other justice as shall be there acting at the time appointed for continuing the examination;

(*d.*) order that no person, *other than the prosecutor and accused, their counsel and solicitor,* shall have access to or remain in the room or building in which the inquiry is held, (which shall not be an open court), if it appears to him that the ends of justice will be best answered by so doing;

(*e.*) regulate the course of the inquiry in any way which may appear to him desirable, and which is not inconsistent with the provisions of the Code.

It will be seen by this article (par. *d*) that the justice's power to exclude persons from the place of holding the preliminary enquiry does not extend to the counsel or solicitor of either of the parties; and that, here, as well as in Article 590, *post*, there is a distinct recognition of the defendant's right to be represented, at the preliminary enquiry, by his counsel or solicitor.

Accused Persons Under Sixteen to be kept separate.—Young persons apparently under the age of sixteen who are:—

(*a*) arrested upon any warrant, *or*

(*b*) committed to custody at any stage of a preliminary enquiry into a charge for an indictable offence, *or*

(*c*) committed to custody at any stage of a trial, either for an indictable offence or for an offence punishable on summary conviction, *or*

(*d*) committed to custody after such trial, but before imprisonment under sentence,—

SHALL be kept in custody separate from older persons charged with criminal offences and separate from *all persons undergoing*

sentences of imprisonment, and SHALL NOT be confined in the lock-ups or police stations with older persons charged with criminal offences, nor with ordinary criminals. (1)

Article 550 of the Criminal Code, as originally passed, directed the trial of persons apparently under sixteen years of age to take place without publicity, and separately and apart from that of other accused persons, *so far as it should appear expedient and practicable*. But this article has, at the last session of Parliament, been reframed, by striking out the words above italicized, and thus making it IMPERATIVE that the trials of all young persons, apparently under the age of sixteen years, SHALL take place without publicity, and separately and apart from the trials of other accused persons. (2)

587.—Bail on Remand.—If the accused is remanded under the next preceding section, the justice may discharge him, upon his entering into a recognizance in the FORM Q in SCHEDULE ONE. (3) with or without sureties, in the discretion of the justice, conditioned for his appearance at the time and place appointed for the continuance of the examination.

588.—Hearing May be Ordered to Proceed during the time of Remand.—The justice may order the accused person to be brought before him, or before any other justice for the same territorial division, at any time before the expiration of the time for which such person has been remanded, and the gaoler or officer in whose custody he then is shall duly obey such order.

589.—Breach of Recognizance on Remand.—If the accused person does not appear at the time and place mentioned in the recognizance, the said justice, or any other justice who is then and there present, having certified upon the back of the recognizance the non-appearance of such accused person, in the FORM R in SCHEDULE ONE of the Code, (4) may transmit the recognizance

(1) 57 & 58 Vic., c. 58, sec. 2.
(2) 57 & 58 Vic., c. 58, sec. 4.
(3) For form Q, see p. 235, *post*.
(4) For form R, see p. 236, *post*.

to the clerk of the court where the accused person is to be tried, or other proper officer appointed by law, to be proceeded upon in like manner as other recognizances; and such certificate shall be *primâ facie* evidence of the non-appearance of the accused person.

590.—Evidence for the Prosecution.—When the accused is before a justice holding an inquiry, such justice shall take the evidence of the witnesses called on the part of the prosecution.

2. The evidence of the said witnesses shall be given *upon oath*, and in the presence of the accused; and the accused, his counsel or solicitor, shall be entitled to cross-examine them.

3. The evidence of each witness shall be taken down in writing in the form of a deposition, which may be in the FORM S in SCHEDULE ONE. (1) or to the like effect.

4. Such deposition shall, at some time before the accused is called on for his defence, be read over to and signed by the witness and the justice, the accused, the witness and justice being all present together at the time of such reading and signing.

5. The signature of the justice may either be at the end of the deposition of each witness, or at the end of several or of all the depositions in such a form as to show that the signature is meant to authenticate each separate deposition.

6. Every justice holding a preliminary inquiry is hereby required to cause the depositions to be written in a legible hand and on one side only of each sheet of paper on which they are written.

7. Provided that the evidence upon such inquiry or any part of the same may be taken in shorthand by a stenographer who may be appointed by the justice, and who before acting shall make oath that he shall truly and faithfully report the evidence; and, where evidence is so taken, it shall not be necessary that such evidence be read over to or signed by the witness, but it shall be sufficient if the transcript be signed by the justice and be accompanied by an affidavit of the stenographer that it is a true report of the evidence.

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(1) For form S, see p. 236, *post*.

This Article expressly provides that the accused, his counsel, or solicitor shall be entitled to cross-examine the witnesses for the prosecution; and it thus recognises the right of the defendant to be represented, at the preliminary investigation, by his counsel or attorney.

It also provides that the evidence of the witnesses shall be given in the presence of the accused, and, therefore, the preliminary enquiry cannot be proceeded with in his absence.

A defendant charged with the commission of an indictable offence is not to be called upon to plead; but the case is to be substantiated against him, in the first instance; for, with the exception of the cases provided for by Articles 765, 783 and 810, *post*, justices have no power in indictable offences to deal with the accused, summarily, even though he openly admit his guilt.

The manner of taking the depositions varies: In some places it is usual in all indictable cases to take down the evidence in the form of a deposition, at once; in others, abbreviated notes are taken of the examination before the magistrate, copied verbatim, and afterwards read over to the witnesses in the presence of the accused, the latter having every opportunity of cross-examination and of making objections. The former of these two modes is the more correct: but the latter has been approved, and depositions so taken have been held admissible. (1) If the latter plan is adopted, the depositions should be merely a plain copy of the notes; and the clerk should not, in the absence of the magistrate, ask the witnesses any questions to complete the depositions: (2) even though the accused be present at the time. (3)

The evidence should be taken down as nearly as possible in the witness' own words, and the deposition should contain the cross-examination and re-examination as well as the examination in chief; and any interruption or observation which may be made by the accused should also be taken down. It may be evidence against him. (4) But it should be made to appear, upon the depositions, under what circumstances the observation was made. (5)

(1) R. v. Bates, 2 F. & F. 317.
(2) R. v. Christopher, 14 J. P. 83; 19 L. J. M. C. 103.
(3) R. v. Watts, 33 L. J. M. C. 63.
(4) R. v. Stripp, 25 L. J. M. C. 109.
(5) See R. v. Jarvis, L. R. 1 C. C. R. 94; 37 L. J. M. C. 1.

Interest or Crime, no Bar to a Witness' Competency.—A person shall not be incompetent to give evidence by reason of interest or crime. (*Can. Ev. Act*, 1893, 56 Vic. c, 31, sec. 3).

Accused and Husband and Wife Competent.—Every person charged with an offence, and the wife or husband, as the case may be, of the person so charged, shall be a competent witness, whether the person so charged is charged solely or jointly with any other person. Provided, however, that no husband shall be competent to disclose any communication made to him by his wife during their marriage, and no wife shall be competent to disclose any communication made to her by her husband during their marriage. (*Can. Ev. Act*, 1893, sec. 4).

Number of Witnesses Necessary.—As a rule, one witness is sufficient, if he can prove the necessary facts. But, with regard to certain offences, it is specially provided by Article 684 of the Criminal Code that no person charged with any of such offences shall be convicted upon the evidence of one witness, unless such witness is corroborated, in some material particular, by evidence implicating the accused.

The offences subject to this special provision are the following:

FORGERY. (Article 423 of the Code.)

PERJURY. (Article 146.)

PROCURING A FEIGNED MARRIAGE. (Article 277.)

SEDUCTION AND DEFILEMENT OF FEMALES. (Articles 181 to 190.)

TREASON. (Article 65.)

Ordering Witnesses Out of Court.—On the application of either of the parties, an order will, as a general rule, be given for all witnesses, except the one under examination, to leave the court. This order may be applied for at any stage of the enquiry, and it is rarely withheld; (1) although the authorities are somewhat conflicting as to whether it can be demanded of strict right, especially with regard to a prisoner. (2)

(1) Southey v. Nash, 7 C. & P. 632.

(2) Stark. Ev. 162; 2 Tayl. Ev. 8 Ed., sec. 1400; R. v. Cook, 13 How. St. Tr. 348; R. v. Vaughan, *Ib.*, 494.

If any of the witnesses remain in court after an order has been made to withdraw, the justices will have no right to exclude their testimony, however much the witness' wilful disobedience of the order may lessen the value of his evidence. (1)

With regard to ordering witnesses out of court, an exception is made in favor of medical witnesses when their evidence is merely to medical facts. And, of course, the defendant, although he is to be called as a witness, will also have the right to remain.

Evidence Must, as a Rule, be Upon Oath.—The second paragraph of the above Article, 590, requires the evidence of the witnesses to be given upon oath. But a person who, when called upon to give evidence, objects, on grounds of conscientious scruples, to take an oath, or who is *objected to as incompetent to take an oath*, may (by virtue of section 23 of the *Canada Evidence Act*, 1893) make an affirmation in the following form: "I solemnly affirm that the evidence to be given by me shall be the truth, the whole truth, and nothing but the truth." And upon making such solemn affirmation, the evidence of the person so affirming is to be taken, and to have the same effect as if taken under oath.

The general form of oath is as follows:—

"The evidence you shall give touching this information (or *complaint*, or *the present charge*, or *as the case may be*), wherein is the informant (or *complainant*, or, *as the case may be*), and is the defendant (or *as the case may be*), shall be the truth, the whole truth, and nothing but the truth. So help you God."

The New Testament should, if the witness is a Christian, be held by him in his right hand, during the administration of the oath; and at its conclusion he should kiss the book.

The form of oath is to be accommodated to the religious persuasion which the swearer entertains of God, and is to be administered in such a manner as is binding on the witness' conscience. (2)

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(1) Chandler v. Horne, 2 M. & Rob. 423; Cobbett v. Hudson, 22 L. J. Q. B. 13.

(2) Roscoe. Ev. 5 Ed. 122.

If a person offered as a witness admits that he has no belief in God or in a future state, he cannot be sworn, and, formerly his evidence could not be received at all. (1)

But the *Evidence Amendment Act*, 1869. (2) made an important change, in England. Section 4 of that Act provided that, if any person called to give evidence in any Court of Justice should object to take an oath, or be objected to as incompetent to take an oath, such person should, upon the presiding judge being satisfied that the taking of an oath would have no binding effect on his conscience, make a solemn promise and declaration to tell the truth. And, in the famous case of Clarke v. Bradlaugh, it was held by Mathews, J., (confirmed in Appeal), that, although the Act did not give to a member of parliament, *having no religious belief*, the right to affirm instead of taking the oath required of him by the *Parliamentary Oaths Act*, 1866, (3) before taking his seat in the House, it enabled and even *required* persons, *having no religious belief and upon whose conscience an oath would have no binding effect*, to give evidence, by solemnly affirming and declaring instead of swearing. (4)

Later on, it was enacted, by the *Oaths Act*, 1888, (5) that, in all places, and for *all purposes*, where an oath is required, by law, every person, upon objecting to be sworn and stating as the ground of such objection, either, that he has no religious belief, or that the taking of an oath is contrary to his religious belief, shall be permitted to make his solemn declaration and affirmation, instead of taking an oath, and that such affirmation shall be of the same effect as if he had taken the oath.

In Canada, we have now, in effect, the same law, in section 23 of the *Canada Evidence Act*, 1893, *supra*.

A witness who states that he is a Christian cannot be further questioned before being sworn. (6)

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(1) *Anon*, 1 Leach, 341 (*n*); R. v. White, 1 Leach, 430, Maden v. Catanagh, 26 J. P. 248.

(2) 32-33 Vic., (Imp.), c. 68.

(3) 29 Vic. (Imp.), c. 29.

(4) Clarke v. Bradlaugh, L. R., 7 Q. B. D. 38.

(5) 51-52 Vic. (Imp.), c. 47, sec. 1.

(6) R. v. Serva, 2 C. & K. 56.

A Jew is sworn on the Pentateuch, and he keeps his head covered during the administration of the oath. (1) But a Jew who stated that he professed Christianity, although he had never been baptized, and had never formally renounced the Jewish faith was allowed to be sworn on the New Testament. (2)

A Mahomedan is sworn on the Koran. Placing his right hand flat upon the book and the other hand to his forehead, he brings the top of his forehead down to the book, which he touches with his head. He then looks, for some time, upon it; and, being asked what effect that ceremony produces, he answers that he is bound by it to speak the truth. (3)

A Parsee swears in a similar manner, except that instead of the Koran, he swears upon the Parsee prayer book. (4)

Part of the ceremony of swearing a Gentoo (a native of India or Hindostan professing the Brahmin religion) consists in his touching, with his hand the foot of a Brahmin. If the witness, himself, is a priest, he touches the Brahmin's hand. (5)

This, however, does not appear to be the only mode of swearing among the Hindoos; and it seems that, in some parts of India, the natives swear on a portion of the waters of the Ganges. (6)

A Chinese witness on entering the witness box, kneels down, and a china saucer being placed in his hand, he breaks it against the box. The clerk then administers the oath to him (through the interpreter) in these words,—"You shall tell the truth and the whole truth; the saucer is cracked, and, if you do not tell the truth, your soul will be cracked, like the saucer." (7)

It is said that, in the Island of Hong Kong, even since it became an English possession, part of the ceremony of swearing a Chinese

(1) 2 Hale, P. C. 279; Omichund v. Barker, Willes' Rep. 546; Roscoe Ev. 5 Ed. 123.
(2) R. v. Gilham, 1 Esp. 285.
(3) R. v. Morgan, 1 Leach, C. L., 54, Roscoe Ev., 5 Ed. 123.
(4) Kerr's Mag. Acts, 21; Best on Ev., §163.
(5) Omichund v. Barker, 1 Atk. 22.
(6) Best on Ev., §163.
(7) Entrehman's Case, 1 C. & Mar. 248.

witness consists in cutting off the head of a live cock or other fowl. (1)

A witness, who stated that he believed both the Old and New Testament to be the word of God, but that as the latter prohibited and the former countenanced swearing, he wished to be sworn on the former, was permitted to be sworn accordingly. (2) And, where a witness refused to be sworn by laying his right hand on the book, and afterwards kissing it, but desired to be sworn by having the book laid open before him and holding up his right hand, he was sworn accordingly. (3)

Where, on a trial for high treason, a witness refused to be sworn in the usual manner, but put his hands to his buttons, and in reply to a question whether he was sworn stated that he was sworn and was under oath, it was held sufficient. (4)

A Scotch witness has been allowed to be sworn by holding up the hand without touching the book, or kissing it, and the form of oath administered to him was, "You swear according to the custom of your country and of the religion you profess that the evidence, etc., etc." (5) Lord George Gordon, before he turned Jew, was sworn in the same manner, upon exhibiting Articles of the peace in the King's Bench. (6)

The following is given as the form of oath of a Scotch Covenanter:—"I, A. B., do swear, by God himself, as I shall answer to him at the great day of judgment, that the evidence I shall give, touching the matter in question, is the truth, the whole truth, and nothing but the truth." (7)

An Indian, who was not a Christian, and who knew of no ceremony, in use among his tribe, for binding him to speak the truth, was offered as a witness in a murder trial. As he appeared to have a full sense of the obligation to speak the truth, and as he and his

(1) Berncastle's Voyage to China, 39; 2 Best on Ev. §163. (*n*).
(2) Edmonds v. Rowe, Ry. & Moo. N. P. C. 77.
(3) Dalton v. Colt, 2 Sid. 6.
(4) R. v. Love, 5 How. St. Tr. 113.
(5) R. v. Mildrone, 1 Leach, 319, 412; Mee v. Reid, Peake, N. P. C. 23.
(6) Roscoe Ev., 5 Ed. 123.
(7) 1 Leach, 412 (*n*).

tribe had a belief in a Supreme Being, who created all things, and in a future state of reward and punishment, he was allowed to be sworn in the usual way on the New Testament, and his evidence was held admissible. If, however, his tribe had had in use among them any particular ceremony for binding them to speak the truth, the witness would have had to be sworn according to that ceremony, however strange and fantastical it might be; because everything should be done that can be done to bind the conscience of the witness according to his notions however superstitious they may be. (1)

Evidence of Mute.—A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible. (2)

Evidence of Foreign Witnesses.—A witness who does not speak the language spoken by the justice should be sworn, and give his evidence through the medium of another person duly qualified to interpret him, the interpreter being first sworn faithfully to interpret what the witness may say.

The oath of the interpreter may be as follows :—

"You shall truly and faithfully interpret the evidence about to be given, and all other matters and things touching the present information (or *charge*, or *as the case may be*), and the Italian (or *German*, or *as the case may be*) language into the English (or *French*) language, and the English (or *French*) language into the Italian (or *German*, or, *as the case may be*) language, according to the best of your skill and ability. So help you, God."

Examination in Chief.—In examination in chief, a witness must not, as a rule, be asked any leading questions, that is, questions in such a form as to suggest the answers desired. (3)

There are, however, several exceptions to this rule. It is not applied, for instance, to that part of the examination which is merely introductory of that which is material. (4) And even

(1). R. v. Pah-mah-gay, 20 U. C. Q. B. 195-198.
(2) *Can. Ev. Act*, 1893, sec. 6.
(3) 2 Tayl. Ev. 8 Ed., sec. 1404; 1 Stark. Ev. 169.
(4) Nicholls v. Dowding, 1 Stark. R. 81.

with regard to material points, leading questions may sometimes be allowed to be put in a *direct* examination; as, for instance, where the witness by his conduct in the box obviously appears to be hostile to the party producing him, or interested for the other party, or unwilling to give evidence. (1) So, where the object is identification, a witness may be directed to look at a particular person, and say whether he is the man. (2)

A witness will sometimes be allowed to be led where an omission in his testimony is evidently caused by *want of recollection*, which a *suggestion* may assist. Thus, when a witness stated that he could not recollect the names of the members of a firm, so as to repeat them without suggestion, this was permitted to be done. (3)

Where a witness is called to establish a contradiction, leading questions may be allowed. For instance, where a witness was called to contradict another respecting the contents of a lost letter, it was held that after exhausting the witness' memory as to the contents of the letter, he might be asked if it contained a particular passage recited to him. (4) And, where a witness was called to contradict another who had denied having used certain expressions, counsel was permitted to ask whether the particular words denied were not in fact uttered by the former witness. (5)

Cross-Examination.—In cross-examination, *leading questions* may in general be asked; but this does not mean that counsel may go the length of putting into the witness' mouth the very words which he is to echo back again; (6) nor does it sanction the putting of a question, assuming that facts have been proved which have not been proved, or that particular answers have been given, contrary to the fact. (7)

The rule should also receive some further qualification where the witness is evidently hostile to the party calling him; for, although

(1) R. v. Chapman, 8 C. & P. 559.

(2) R v. De Berenger, 2 Stark. R. 129 (*n*); R. v. Watson, 32 How. St. Tr. 74.

(3) Acerro v. Petroni, 1 Stark. R. 100.

(4) Courteen v. Touse, 1 Campb. 43.

(5) Edmonds v. Walter, 3 Stark. R., 8.

(6) R. v. Hardy, 24 How. St. Tr. 659, 755.

(7) Hill v. Coombe, *cit.* 1 Stark. Ev. 188, n. *n*.

it appears to have been laid down in one case that leading questions may always be put in cross-examination, whether a witness be willing or not. (1) some restriction should surely be imposed where the witness betrays a vehement desire to serve the cross-examining party. (2)

Re-Examination.—A re-examination should be confined to showing the true color and bearing of the answers elicited by the cross-examination; and, without the permission of the court, new facts and new matter, not tending to explain the witness' answers in cross-examination, should not be allowed to be gone into. (3)

Evidence of Young Child.—Section 25 of the *Canada Evidence Act*, 1893, provides that in any legal proceeding where a child of tender years is tendered as a witness, and such child does not, in the opinion of the judge, justice, or other presiding officer, understand the nature of an oath, the evidence of such child may be received, though not given upon oath, if, in the opinion of the judge, justice, or other presiding officer, as the case may be, such child is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth; but that no case shall be decided upon such evidence alone, and that such evidence must be corroborated by some other material evidence.

591.—Evidence to be read to the Accused.—After the examination of the witnesses produced on the part of the prosecution has been completed, and after the depositions have been signed as aforesaid, the justice, unless he discharges the accused person, shall ask him whether he wishes the depositions to be read again, and, unless the accused dispenses therewith, shall read or cause them to be read again. When the depositions have been again read, or the reading dispensed with, the accused shall be addressed by the justice in these words, or to the like effect:

"Having heard the evidence, do you wish to say anything in answer to the charge? You are not bound to say anything, but

(1) Parkin v. Moon, 7 C. & P. 409.
(2) 2 Tayl. Ev. 8 Ed., sec. 1431.
(3) Prince v. Samo, 7 Ad. & E. 627; Queen's Case, 2 B. & B. 297.

whatever you do say will be taken down in writing and may be given in evidence against you, at your trial. You must clearly understand that you have nothing to hope from any promise of favour and nothing to fear from any threat which may have been held out to you to induce you to make any admission or confession of guilt, but whatever you now say may be given in evidence against you upon your trial, notwithstanding such promise or threat."

2. Whatever the accused then says in answer thereto shall be taken down in writing in the FORM T in SCHEDULE ONE, (1) or to the like effect, and shall be signed by the justice and kept with the depositions of the witnesses and dealt with as hereinafter mentioned.

The caution contained in this Article is two-fold. In the first part of it, the accused is told that he is not bound to say anything, but that whatever he does say will be written down and may be given in evidence against him at his trial; and, in the second part, he is told that he must clearly understand that he has nothing to hope from any promise of favor and nothing to fear from any threat which may have been held out to him to induce him to make any admission or confession of guilt.

Although the second part of the caution is only of importance in cases where some previous promise of favor or threat has, in fact, been held out, (2) it is better, in all cases to give both parts of the caution, as the justice may not have the means of knowing whether a previous promise of favor or threat has been held out or not.

The object of giving the caution contained in the above Article is to enable the prosecution to give in evidence upon the trial of the accused, any confession or admission that he may afterwards make, notwithstanding any previous promise of favor or threat that may have been held out to him.

The statement made by the accused person before the justice may if necessary, upon the trial of such person, be given in evidence against him, *without further proof thereof*, unless it is proved that the justice did not in fact sign it. (Code, Art. 689).

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(1) For Form T, see p. 237, *post*,

(2) R. v. Sansome, 1 Den. C. C. 545; 19 L. J. M. C. 143.

When the form prescribed by the above Article 591, is followed, the prisoner's statement purporting to be attested by the signature of the examining justice thus makes proof of itself, under Article 689. But, when the prescribed form has not been followed, the caution, the prisoner's statement, and the justice's signature may still be proved by the justice, or his clerk, or by some person who was present at the examination. (1)

592.—Evidence of Confession or Admission.—Nothing herein contained shall prevent any prosecutor from giving in evidence any admission or confession, or other statement made at any time by the person accused or charged, which, by law, would be admissible.

A confession must, in order to be admissable, be entirely free and voluntary. When it is obtained from the accused by the flattery of hope or the torture of fear, it comes in so questionable a shape, when it is to be considered as evidence of guilt, that no reliance can be placed upon it, and no credit should be given to it.

Take the following case as an example :—

Three men were tried and convicted of the murder of a Mr. Harrison. One of them, under promise of pardon, confessed himself guilty of the fact. The confession, therefore, was not given in evidence against him ; and a few years afterwards it turned out that Mr. Harrison was still alive. (3)

The confession will not be admissible, if it be procured by a threat to take the defendant before a magistrate unless he give a more satisfactory account. (4) or by a threat to send for a constable for that purpose ; (5) or by saying, "Tell me where the things are, and I will be favourable to you ;" (6) or by saying, "You had better split, and not suffer for all of them ;" (7) or by

(1) R. v. Boyd, 19 L. J. M. C. 141 ; R. v. Hearn C. & M. 109.

(2) Gibb. Ev. 123 ; R. v. Eldridge, R. & R., C. C. R., 440.

(3) 2 Hale, 285 ; R. v. Warringham, 2 Den. 447 ; Warwickshall's case, 1 Leach, 263.

(4) R. v. Thompson, 1 Leach, 29.

(5) R. v. Richards, 5 C. & P. 318.

(6) R. v. Cass, 1 Leach, 293. *See also* R. v. McCafferty, 25 S. C., N. B. 396.

(7) R. v. Thomas, 6 C. & P. 353.

saying, "It would have been better if you had told at first;" (1) or by saying, "You had better tell me the truth. It will be better for you." (2)

Where the prosecutor asked the defendant for the money which he had taken; and, before it was produced, said; "I only want my money, and if you give me that, you may go to the devil, if you please," upon which the defendant took part of the money from his pocket, and said that was all he had left, a majority of the judges held that the evidence was inadmissible. (3)

A confession made with a view, and under a hope, of being thereby permitted to turn Queen's evidence, or of obtaining a pardon, or reward, has been held inadmissible. (4) And this is clearly so where such hope is the reasonable result of a communication from, or the conduct of a person in authority. (5)

The inducement must refer to a temporal benefit. Hopes which are referable to a future state merely are not within the principle which renders a confession obtained by improper influence inadmissible. (6)

Thus, where a prisoner, under fourteen years of age, was arrested on a charge of murder, and was spoken to by a man who was present at the time of the arrest, as follows: "Now, kneel down; I am going to ask you a very serious question, and I hope you will tell me the truth in the presence of the Almighty," and the prisoner in consequence made a statement, it was held admissible. (7)

It was, in a recent case, held by A. L. Smith, J., that, although a person who is suspected of a crime may, before he is charged or is in custody, be asked what he has to say in answer to or explanation of the matter, yet, after he is in custody, the police have no

(1) R. v. Walkley, 6 C. & P. 175.
(2) R. v. Fennell, 50 L. J. M. C. 126.
(3) R. v. Jones, R. & R. 152; R. v. Parratt, 4 C. & P. 570.
(4) R. v. Hall, 2 Leach, 559.
(5) R. v. Gillis, 11 Cox, 69.
(6) R. v. Gilham, R. & R., C. C. 186.
(7) R. v. Wild, 1 Mood. C. C. 452.

right to ask him questions, and an admission or confession obtained in that way is inadmissible in evidence. (1)

When the prisoner has been duly cautioned by the magistrate, in pursuance of Article 591, anything said by him, thereupon, will be admissible in evidence against him on his trial, although, at some time previous to such caution by the magistrate, there may have been a promise or threat held out to him to induce him to confess. (2)

Before the passing of the Canada Evidence Act, 1893, it was held in the case of a prisoner indicted for arson, that his deposition taken on oath at a previous enquiry, before the Fire Commissioners into the cause of the fire, was admissible as evidence against him. (3)

But sec. 5, of the Canada Evidence Act, 1893, now provides that "No person shall be excused from answering any question upon the ground that the answer to such question may tend to criminate him, etc.; provided, however, that no evidence so given shall be used or receivable in evidence against such person in any criminal proceeding thereafter instituted against him, other than a prosecution for perjury in giving such evidence."

What a prisoner has been overheard to say to another, or to himself is equally admissible; though it is a species of evidence to be acted on with much caution, as being liable to be unintentionally misrepresented by the witnesses. (4)

In all cases, the whole confession should be proved; for it is a general rule, that the whole of the account which the party gives of a transaction must be taken together; and his admission of a fact disadvantageous to himself shall not be received without receiving at the same time his contemporaneous assertion of a fact favorable to him. (5)

DYING DECLARATIONS.—When the death of a person is the subject of a criminal charge the declarations made before death by the

(1) R. v. Gavin, 15 Cox, 656.
(2) R. v. Bate, 11 Cox, 686.
(3) R. v. Coote, L. R., 4 P. C., 599; 42 L. J. P. C., 45.
(4) R. v. Simmons, 6 C. & P., 540.
(5) Taunt, 245; Queen's Case, 2 B & B., 294.

deceased person concerning the cause and circumstances of the death are admissible in evidence for or against the accused, if the declaration were made by the deceased with a full consciousness and belief,—without hope,—of approaching death. (1)

The dying declarations of a *felo de se* were held to be good evidence against a person indicted for assisting the deceased in his self-murder; and the majority of the judges were of opinion that this evidence would of itself be sufficient to convict, although the testimony of the accomplice, if living, would not, unless corroborated by other evidence. (2) This case is no infringement of the general rule that a man's own confession is, as such, no evidence against his accomplice; for an accomplice is admissible as a *witness* against his fellows, and a dying declaration made by a person who, if alive, would be admissible as a witness, is admissible as evidence where the death of the deceased is the subject of the charge, and the cause of the death the subject of the dying declaration. (3)

For form of Dying Declaration, see p. 142 *ante*.

593. Evidence for the Defence.—After the proceedings required by section 591 are completed, the accused shall be asked if he wishes to call any witnesses.

2. Every witness called by the accused, who testifies to any fact relevant to the case, shall be heard, and his deposition shall be taken in the same manner as the depositions of the witnesses for the prosecution.

Under this Article the magistrate is obliged to take, at the preliminary investigation, the depositions of any witnesses that the prisoner may wish to examine as well as those of the witnesses for the prosecution.

This, however, does not authorize the magistrate to try the case; nor does it give the defendant the right, for instance, in a prosecution for publishing a libel, to prove, at the preliminary

(1) Kerr's Mag. Acts, 28; R. v. Jenkins, 11 Cox, 250; R. v. Goddard, 15 Cox, 7; R. v. Smith, 16 Cox, 170; R. v. McMahon, 18 Ont. R. 502; R. v. Mitchell, 17 Cox, 503.

(2) R. v. Twicker, 1 East, P. C. 354.

(3) Arch. Cr. Pl. & Ev. 21 Ed. 274.

enquiry, the truth of the matter charged as a libel; for it has been held in England, since the granting, there, of the right to call witnesses for the defence at a police court investigation, that, although where the charge was that of maliciously *publishing* a defamatory libel KNOWING IT TO BE FALSE, the magistrate *had* jurisdiction to receive evidence of the truth of the libel, so as to negative the allegation that the defendant KNEW it to be false, he had *not* such jurisdiction where the charge was that of simply maliciously *publishing* a defamatory libel. (1)

Expediency of Calling Witnesses for the Defence.—As to the expediency of calling witnesses for the defence, at the preliminary enquiry, this will greatly depend upon the nature of the case established by the prosecution and the probable result of the enquiry. If the case established at the close of the evidence for the prosecution is such that any proof to be adduced on the part of the accused will only amount, at most, to a conflict of evidence, it will not be advisable to make use of it at this stage, since, although the preponderance would, if the accused's witnesses were examined, be in his favor, the justice would, in all probability, commit for trial, it being no part of his duty to determine as to the guilt or innocence of a party under such circumstances. There are, however, many cases of *prima facie* guilt which the accused may, by calling witnesses, be enabled so to explain as to clear up at once the imputation against him. Thus, upon a charge of theft, it may be that the only proof of guilt against him is his possession of the stolen property; and it may happen that he is in a situation to show by highly respectable testimony that he became possessed of the property in a perfectly fair and honest manner. Indeed, in all these cases, where the criminality of the party accused rests merely upon the presumption of law which the accused is able to explain by evidence, such evidence may be adduced with a reasonable expectation of success. The question to be asked, under such circumstances, before adducing evidence, should be: Will the production of the evidence be most likely to result in the discharge of the prisoner? If it will, then it will be judicious to offer it; but if such a result is not

(1) R. v. Carden, 5 Q. B. D. 1; 49 L. J. M. C. 1.

likely, then its production at the preliminary enquiry will not be advisable.

It is sometimes imagined that, if the accused has exculpatory evidence, and fails to offer it at the preliminary enquiry before the magistrate, advantage may be taken of the omission on his afterwards producing it on his trial. But learned judges have often reprehended observations made, upon this ground, by prosecuting counsel. For instance, in a case in which the prisoner's counsel, after addressing the jury, observed that he should call witnesses to prove an *alibi*; that these witnesses were not examined before the committing magistrate, and that perhaps some observation might be made on that account, but that the witnesses had gone to the preliminary enquiry before the magistrate and, on the advice of the prisoner's attorney, were not called,—Pollock, C. B., said that in his opinion no such observation should be made as to witnesses not being called for a prisoner when being examined before the magistrate, and if made it would be very improper. Where, at the preliminary enquiry, one or more witnesses spoke of the accused as the person by whom the crime inquired into was committed, it would be the duty of the magistrate to commit, and it would be quite useless to call witnesses on the part of the prisoner either to prove an *alibi* or anything else in his favor. It would be useless expense to call them, at once, to prove the same thing as could be proved at the trial, and a thing which no discreet attorney ought to advise his client to do. This, the learned judge said, had always been his opinion, and therefore he never allowed such observations to be made. (1)

It will sometimes happen, where a party is charged with theft, and the only evidence against him is that of recent possession of the stolen article, that he defends himself by asserting that he received the property in question from a particular person whom he names. If such person so named is procurable, and there is nothing to show that the statement of the prisoner is an utter fabrication, he (the person named by the prisoner) should be sent for and examined as to the alleged fact. Upon this point, several judges have expressed a strong opinion. In one case, the prisoner was indicted for stealing a piece of wood, the property of a person

(1) R. v. Clark, 5 Cox, C. C. 230.

named Herman, and it appeared from the evidence for the prosecution that on the piece of wood being found by a policeman in the prisoner's shop, about five days after Herman had lost possession of it, the prisoner stated that he had bought it from a person named Nash, who lived about two miles off. Nash was not produced as a witness for the prosecution, and the prisoner did not call any witnesses. Baron Alderson, in summing up, said: "In cases of this nature you may take it as a general principle, that where a man in whose possession stolen property is found gives a reasonable account of how he came by it, as by stating the name of the person from whom he received it, and who is known to be a real person, it is incumbent on the prosecution to show that that account is false: but if the account given by the prisoner be unreasonable or improbable on the face of it, the *onus* of proving that it is true lies on him. Suppose, for instance, a person were to charge me with stealing his watch, and I were to say I bought it from a particular tradesman, whom I name, that is *prima facie* a reasonable account, and I ought not to be convicted, unless it is shown that that account is a false one." (1)

This ruling was confirmed in the case of R. v. Hughes. (2) And, in a more recent case, Lord Denman, C.J., approved of it, and expressly laid down his view, of the duties of justices in such a case, in these words,—"I quite agree with the case of R. v. Crowhurst. It was mentioned to me by Baron Alderson, at the time when it occurred. If a person in whose possession stolen property is found give a reasonable account of how he came by it, and makes reference to some known person as the person from whom he received it, the magistrate should send for that person and examine him; as it may be that his statement may entirely exonerate the accused person, and put an end to the charge." (3)

This rule, of course, will apply only to the case of a reference not inconsistent with the other facts of the case; for, if the prisoner himself have given various accounts of how he came possessed of the property, (4) or if there are in the case circumstances which

(1) R. v. Crowhurst, 1 C. & K. 370.
(2) R. v. Hughes, 1 Cox, C. C. 176.
(3) R. v. Smith, 2 C. & K. 107.
(4) R. v. Debley, 2 C. & K. 818.

render the prisoner's account unreasonable or its truth improbable, the burden then of producing the party referred to will be cast upon the accused. (1)

594.—Discharge of Accused, when no Sufficient Case.—When all the witnesses on the part of the prosecution and the accused have been heard, the justice shall, if upon the whole of the evidence he is of opinion that no sufficient case is made out to put the accused upon his trial, discharge him; and in such case any recognizances taken in respect of the charge shall become void, unless some person is bound over to prosecute under the provisions next hereinafter contained.

When witnesses are produced and examined on the part of the prisoner, at the preliminary investigation, the proper course to be followed by the magistrate seems to be this. If the prisoner's witnesses are believed, and their evidence, without actually contradicting the testimony of the witnesses for the prosecution, tends merely to *explain* the facts proved in support of the charge, and to thus show the prisoner's innocence, they will have made out on behalf of the accused a defence which would render any further proceedings unnecessary. But, if the prisoner's witnesses *contradict* those for the prosecution, in material points, the case would then be a proper one to be sent to a jury to ascertain and decide which of the two conflicting statements is the truth.

It should not be supposed that, because the hearing before the justice is only preliminary, and not of a final nature, slight evidence alone will be sufficient to warrant a committal for trial.

Justices have a right, in the preliminary investigation of an indictable offence, to expect, and ought to insist upon having the best evidence that exists in the case; and although in a preliminary enquiry it is not for them to balance the evidence, yet such evidence as is produced ought to be of the same nature and quality as that which would be admitted at the trial of the accused. All the evidence, therefore, that would be required to support the charge upon the trial should be carefully gathered together for use upon the preliminary examination.

(1) R. v. Harmer, 2 Cox, C. C. 487; R. v. Wilson, 2 Dears, C. C. 157.

595.—Prosecutor Allowed to be Bound Over to Indict.—If the justice discharges the accused, and the person preferring the charge desires to prefer an indictment respecting the said charge, he may require the justice to bind him over to prefer and prosecute such an indictment, and thereupon the justice shall take his recognizance to prefer and prosecute an indictment against the accused before the court by which such accused would be tried if such justice had committed him, and the justice shall deal with the recognizance, information and depositions in the same way as if he had committed the accused for trial.

2. Such recognizance may be in the FORM U IN SCHEDULE ONE, (1) or to the like effect.

3. If the prosecutor so bound over at his own request does not prefer and prosecute such an indictment, or if the grand jury do not find a true bill, or if the accused is not convicted upon the indictment so preferred, the prosecutor shall, if the court so direct, pay to the accused person his costs, including the costs of his appearance on the preliminary inquiry.

4. The court before which the indictment is to be tried or a judge thereof may in its or his discretion order that the prosecutor shall not be permitted to prefer any such indictment until he has given security for such costs to the satisfaction of such court or judge.

596.—Committal for Trial.—If a justice holding a preliminary inquiry thinks that the evidence is sufficient to put the accused on his trial, he shall commit him for trial by a warrant of commitment, which may be in the FORM V IN SCHEDULE ONE, (2) or to the like effect.

597.—Copies of Depositions.—Every one who has been committed for trial, whether he is bailed or not, may be entitled at any time before the trial to have copies of the depositions, and of his own statement, if any, from the officer who has custody thereof, on payment of a reasonable sum not exceeding five cents for each folio of one hundred words.

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(1) For Form U, see p. 238, *post*.
(2) For Form V, see p. 239, *post*.

598.—Recognizance to Prosecute or give Evidence.—When any one is committed for trial the justice holding the preliminary inquiry may bind over, to prosecute, some person willing to be so bound, and bind over every witness whose deposition has been taken, and whose evidence in his opinion is material, to give evidence at the court before which the accused is to be indicted.

2. Every recognizance so entered into shall specify the name and surname of the person entering into it, his occupation or profession if any, the place of his residence and the name and number, if any, of any street in which it may be, and whether he is owner or tenant thereof or a lodger therein.

3. Such recognizance may be either at the foot of the deposition or separate therefrom, and may be in the FORM W, X or Y in SCHEDULE ONE of the Code, (1) or to the like effect, and shall be acknowledged by the person entering into the same, and be subscribed by the justice or one of the justices before whom it is acknowledged.

4. Every such recognizance shall bind the person entering into it to prosecute, or give evidence, (both or either as the case may be), before the court by which the accused shall be tried.

5. All such recognizances and all other recognizances taken under the Code shall be liable to be estreated in the same manner as any forfeited recognizance to appear is by law liable to be estreated by the court before which the principal party thereto was bound to appear.

6. Whenever any person is bound by recognizance to give evidence before a justice of the peace, or any criminal court, in respect of any offence under the Code, any justice of the peace, if he sees fit, upon information being made in writing and on oath, that such person is about to abscond, or has absconded, may issue his warrant for the arrest of such person: and if such person is arrested any justice of the peace, upon being satisfied that the ends of justice would otherwise be defeated, may commit such person to prison until the time at which he is bound by such recognizance to give evidence, unless in the meantime he produces sufficient sureties,

(1) For Forms W, X and Y, see pp. 240, and 241, *post*.

but any person so arrested shall be entitled on demand to receive a copy of the information upon which the warrant for his arrest was issued.

If the witness committed for trial elects a speedy trial under the provisions of Part LIV. of the Code, relating to speedy trials of indictable offences, any recognizance taken under the above article, 598, for binding a prosecutor or a witness will be obligatory on each person bound thereby, as to all things therein mentioned with reference to such speedy trial, as if such recognizance had been originally entered into for the doing of such things with reference to such speedy trial; provided, however, that at least *forty-eight hours' notice* shall be given, either personally or by leaving the same at the place of residence of the persons bound, to appear before the judge at the place where such speedy trial is to be had. (Code, Art. 779, *post*.)

599. Witness Refusing to be Bound Over.—Any witness who refuses to enter into or acknowledge any such recognizance as aforesaid may be committed by the justice holding the inquiry by a warrant in the FORM Z in SCHEDULE ONE of the Code, (1) or to the like effect, to the prison for the place where the trial is to be had, there to be kept until after the trial, or until the witness enters into such a recognizance as aforesaid, before a justice of the peace having jurisdiction in the place where the prison is situated: Provided that, if the accused is afterwards discharged, any justice having such jurisdiction may order any such witness to be discharged by an order which may be in the FORM A A in the SAID SCHEDULE. (2) or to the like effect.

600. Transmission of Documents.—The following documents shall, as soon as may be after the committal of the accused, be transmitted to the clerk or other proper officer of the court by which the accused is to be tried, that is to say, the information, if any, the depositions of the witnesses, the exhibits thereto, the statement of the accused, and all recognizances entered into, and also any depositions taken before a coroner if any such have been sent to the justice.

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(1) For Form Z, see p. 241, *post*.

(2) For Form AA, see p. 242, *post*.

2. When any order changing the place of trial is made, the person obtaining it shall serve it, or an office copy of it, upon the person then in possession of the said documents, who shall thereupon transmit the indictment, if found, to the officer of the court before which the trial is to take place.

Section 12 of the *North West Territories Act* (54-55 Vict., c. 22) directs that every justice of the peace or other magistrate holding a preliminary investigation into any criminal offence, which may not be tried under the provisions of "*The Summary Convictions Act*," shall, immediately after the conclusion of such investigation, transmit, to the clerk of the Court for the judicial district in which the charge was made, all informations, depositions, recognizances, and papers connected with such charge, and that the clerk of the Court shall notify the judge thereof.

601.—Rule as to Bail.—When any person appears before any justice charged with an indictable offence punishable by imprisonment for more than five years,—other than treason or an offence punishable with death, or an offence under Part IV of the Code, (1)—and the evidence adduced is, in the opinion of such justice, sufficient to put the accused on his trial, but does not furnish such a strong presumption of guilt as to warrant his committal for trial, the justice *jointly with some other justice*, may admit the accused to bail upon his procuring and producing such surety or sureties as, in the opinion of the *two justices*, will be sufficient to insure his appearance at the time and place when and where he ought to be tried for the offence; and thereupon the two justices shall take the recognizances of the accused and his sureties, conditioned for his appearance at the time and place of trial, and that he will then surrender and take his trial and not depart the court without leave; and, in any case in which the offence committed or suspected to have been committed is an offence punishable by imprisonment for a term less than five years, any *one* justice, before whom the accused appears, may admit to bail in manner aforesaid; and such justice or justices may, in his or their discretion, require such bail to justify upon oath as to their sufficiency, which oath the said justice or

(1) Part IV of the Code, deals with Treason and other offences against the Queen's authority and person.

justices may administer; and in default of such person procuring sufficient bail, such justice or justices may commit him to prison, there to be kept until delivered according to law.

2. The recognizance mentioned in this section shall be in the FORM BB in SCHEDULE ONE. (1)

In the case of a prisoner charged with an indictable offence punishable by more than five years imprisonment,—other than treason or an offence punishable with death, or any offence against Part IV of the Code—this Article gives to *two* justices, or, (by virtue of Article 541 of the Code, *ante*,) to a judge of sessions, police magistrate, recorder, or other functionary vested, by that Article, with the powers of two justices, a discretionary power to admit him to bail; and in the case of a prisoner charged with an offence punishable by less than five years imprisonment, he may be admitted to bail by *one* justice.

In deciding whether the accused should or should not be admitted to bail it should be borne in mind that, the purpose of a committal to prison before trial is to *ensure the appearance of the accused* at the time and place when and where he is to be tried; and justices should consider the circumstances of each case, with this object only in view. As this duty involves an enquiry in which discretion must be exercised, no general rule can be laid down.

Usually, however, it will be sufficient for the justices to look at the nature and magnitude of the charge, the position in life of the accused, the cogency of the evidence against him, and the probable severity of the punishment likely to follow a conviction; and, if they consider it probable that the accused would sooner that he and his sureties should forfeit a sum of money than run the risk of a trial and conviction and the sentence likely to follow, they should refuse to admit the accused to bail.

The amount of the recognizance is entirely in the justice's discretion, and should depend upon the nature of the charge and the position of the parties.

A magistrate must not, however, in a case in which the accused is entitled to be admitted to bail, require *excessive* bail, so as in

(1) For Form BB, see p. 243, *post*.

effect to amount to a denial of bail; or he may render himself liable to an action at the suit of the person wrongfully imprisoned, or even to a criminal prosecution. (1)

Still, it has been held that the power of a magistrate to accept or refuse bail, even in cases where the accused has a right to be bailed, is a judicial function, and that an action will not lie against him for refusing to take bail in such cases, in the absence of proof of express malice, even though the sureties tendered are found sufficient. (2)

For the purpose of determining the sufficiency of the persons tendered as sureties, the justice may require their names to be given to the prosecutor, some time previously, say 24 or 48 hours, and he may administer to the persons tendered an oath "to make true answer to all such questions as may be demanded of them"; and he may then put to them the usual questions as to their means, property and liabilities and whether or not they are solvent, and so on; but the justice ought not to interfere in any way to disquiet them from becoming bound as bail: (3) nor can he legally enquire into the personal character or political opinions of the persons offered as bail. His duty is restricted to an enquiry into the sufficiency of the property of the sureties to meet the recognizance. (4)

In a case which came before Martin B., that learned judge is reported to have stated his opinion to be that if the justice is satisfied of the solvency of the persons tendered as bail, he is not justified in rejecting them on account of any alleged objections to their moral character, or from the fact of their being indemnified by the defendant. (5)

602. Bail After Committal.—In case of any offence other than treason or an offence punishable with death, or an offence under Part IV. of the Code, where the accused has been finally committed as herein provided, any judge of any superior or

(1) R. v. Badger, 12 L. J. M. C. 66; 4 Ad. & E. 468; R. v. Tracey, 15 L. J. M. C. 145.

(2) Linford v. Fitzroy, 18 L. J. M. C. 108; 13 Q. B. 240.

(3) R. v. Saunders, 2 Cox, C. C. 240.

(4) R. v. Badger, *supra*.

(5) R. v. Broome, 18 L. T. 19.

county court, having jurisdiction in the county or district within the limits of which the accused is confined, may, in his discretion, on application made to him for that purpose, order the accused to be admitted to bail on entering into recognizance with sufficient sureties before two justices, in such amount as the judge directs, and thereupon the justices shall issue a warrant of deliverance as hereinafter provided, and shall attach thereto the order of the judge directing the admitting of the accused to bail.

2. Such warrant of deliverance shall be in the FORM CC in SCHEDULE ONE. (1)

603. Bail by Superior Court.—No judge of a county court or justices shall admit any person to bail accused of treason or an offence punishable with death, or an offence under Part IV of the Code, nor shall any such person be admitted to bail, except by order of a Superior Court of Criminal Jurisdiction for the province in which the accused stands committed, or of one of the judges thereof, or, in the province of Quebec, by order of a judge of the Court of Queen's Bench or Superior Court.

604. Application for Bail After Committal.—When any person has been committed for trial by any justice, the prisoner, his counsel, solicitor or agent may notify the committing justice, that he will, as soon as counsel can be heard, move before a Superior Court of the province in which such person stands committed, or one of the judges thereof, or the judge of the county court, if it is intended to apply to such judge, under section 602, for an order to the justice to admit such prisoner to bail,—whereupon such committing justice shall, as soon as may be, transmit to the Crown, or the chief clerk of the court, or the clerk of the county court, or other proper officer, as the case may be, endorsed under his hand and seal, a certified copy of all informations, examinations and other evidence touching the offence wherewith the prisoner has been charged, together with a copy of the warrant of commitment, and the packet containing the same shall be handed to the person applying therefor, for transmission, and it shall be certified on the outside thereof to contain the information concerning the case.

(1) For Form CC, see p. 244, *post*.

2. Upon such application to any such court or judge the same order concerning the prisoner being bailed or continued in custody shall be made as if the prisoner was brought up upon a *habeas corpus*.

3. If any justice neglects or offends in anything contrary to the true intent and meaning of any of the provisions of this section, the court to whose officer any such examination, information, evidence, bailment or recognizance ought to have been delivered, shall, upon examination and proof of the offence, in a summary manner, impose such fine upon every such justice as the court thinks fit.

605. Warrant of Deliverance.—Whenever any justice or justices admit to bail any person who is then in any prison charged with the offence for which he is so admitted to bail, such justice or justices shall send to or cause to be lodged with the keeper of such prison, a warrant of deliverance under his or their hands and seals requiring the said keeper to discharge the person so admitted to bail if he is detained for no other offence, and upon such warrant of deliverance being delivered to or lodged with such keeper, he shall forthwith obey the same.

606. Warrant for Arrest of Bailed Person About to Abscond.—Whenever a person charged with any offence has been bailed in manner aforesaid, it shall be lawful for any justice, if he sees fit, upon the application of the surety or of either of the sureties of such person, and upon information being made in writing and on oath by such surety, or by some person on his behalf, that there is reason to believe that the person so bailed is about to abscond for the purpose of evading justice, to issue his warrant for the arrest of the person so bailed, and afterwards, upon being satisfied that the ends of justice would otherwise be defeated, to commit such person when so arrested to gaol until his trial, or until he produces another sufficient surety or other sufficient sureties, as the case may be, in like manner as before.

For Forms of Information of Surety, and of Warrant, and Commitment thereon, see "Additional Forms" after the general forms, at the end of this chapter. (pp. 247-250, *post*.)

607. Delivery of Accused to Prison.—The constable or any of the constables, or other person to whom any warrant of commitment authorized by the Criminal Code or any other act or law is directed, shall convey the accused person therein named or described to the gaol or other prison mentioned in such warrant, and there deliver him, together with the warrant, to the keeper of such gaol or prison, who shall thereupon give the constable or other person delivering the prisoner into his custody, a receipt for the prisoner, setting forth the state and condition of the prisoner when delivered into his custody.

2. Such receipt shall be in the FORM DD in SCHEDULE ONE. (1)

As to Recognizances generally, and remedies thereon, when forfeited, see Chapter XIV, *post*.

FORMS UNDER PART XLV OF THE CODE.

K.—(*Section* 580.)

SUMMONS TO A WITNESS.

Canada,
Province of
County of

To E. F., of , (*labourer*)

Whereas information has been laid before the undersigned , a justice of the peace in and for the said county of , that A. B. (*&c., as in the summons or warrant against the accused*), and it has been made to appear to me upon (*oath*), that you are likely to give material evidence for (*the prosecution*).; These are therefore to require you to be and to appear before me, on next, at o'clock in the (*fore*) noon, at , or before such other justice or justices of the peace of the same county of , as shall then be there, to testify what you know

(1) For Form DD, see p. 245, *post*.

concerning the said charge so made against the said A. B. as aforesaid. Herein fail not.

Given under my hand and seal, this day of in the year , at , in the county aforesaid.

J. S., [SEAL.]

J. P., (*Name of county*)

L.—(*Section* 582.)

WARRANT WHEN A WITNESS HAS NOT OBEYED THE SUMMONS.

Canada, }
Province of , }
County of , }

To all or any of the constables and other peace officers in the said county of

Whereas information having been laid before , a justice of the peace, in and for the said county of , that A. B. (*&c., as in the summons*) ; and it having been made to appear to (*me*) upon oath that E. F. of , (*labourer*), was likely to give material evidence for (*the prosecution*), (*I*) duly issued (*my*) summons to the said E. F., requiring him to be and appear before (*me*) on , at , or before such other justice or justices of the peace for the same county, as should then be there, to testify what he knows respecting the said charge so made against the said A. B., as aforesaid ; and whereas proof has this day been made upon oath before (*me*) of such summons having been duly served upon the said E. F. ; and whereas the said E. F. has neglected to appear at the time and place appointed by the said summons, and no just excuse has been offered for such neglect : These are therefore to command you to bring and have the said E. F. before (*me*) on at o'clock in the (*fore*) noon, at or before such other justice or justices for the same county, as shall then be there, to testify what he knows concerning the said charge so made against the said A. B. as aforesaid.

Given under (*my*) hand and seal, this day of

, in the year , at . in the county aforesaid.

J. S., [SEAL.]

J. P., (*Name of county.*)

M.—(*Section* 583.)

WARRANT FOR A WITNESS IN THE FIRST INSTANCE.

Canada,
Province of ,
County of ,

To all or any of the constables and other peace officers in the said county of .

Whereas information has been laid before the undersigned , a justice of the peace, in and for the said county of hat (*&c., as in the summons*); and it having been made to appear to (*me*) upon oath, (1) that E. F. of , (*labourer*), is likely to give material evidence for the prosecution, and that it is probable that the said E. F. will not attend to give evidence unless compelled to do so; These are therefore to command you to bring and have the said E. F. before (*me*) on , at o'clock in the (*fore*) noon. at , or before such other justice or justices of the peace for the same county, as shall then be there, to testify what he knows concerning the said charge so made against the said A. B. as aforesaid.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]

J. P. (*Name of county.*)

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(1) For Form of Deposition that a person is a material witness, see p. 245, *post.*

N.—(*Section* 584.)

WARRANT WHEN A WITNESS HAS NOT OBEYED THE SUBPŒNA.

Canada,
Province of
County of

To all or any of the constables and other peace officers in the said county of

Whereas information having been laid before , a justice of the peace, in and for the said county, that A. B. (*&c., as in the summons*); and there being reason to believe that E. F., of in the province of , (*labourer*), was likely to give material evidence for (*the prosecution*), a writ of subpœna was issued by order of , judge of (*name of court*) to the said E. F., requiring him to be and appear before (*me*) on , at or before such other justice or justices of the peace for the same county, as should then be there, to testify what he knows respecting the said charge so made against the said A. B., as aforesaid; and whereas proof has this day been made upon oath before (*me*) of such writ of subpœna having been duly served upon the said E. F.; and whereas the said E. F. has neglected to appear at the time and place appointed by the said writ of subpœna, and no just excuse has been offered for such neglect: These are therefore to command you to bring and have the said E. F. before (*me*) on at o'clock in the (*fore*) noon, at , or before such other justice or justices for the same county as shall then be there, to testify what he knows concerning the said charge so made against the said A. B. as aforesaid.

Given under (*my*) hand and seal, this day of , in the year , at , in the county aforesaid.

J S., [SEAL.]

J. P. (*Name of county.*)

O.—(*Section* 585.)

WARRANT OF COMMITMENT OF A WITNESS FOR REFUSING TO BE SWORN OR TO GIVE EVIDENCE.

Canada,
Province of ,
County of ,

To all or any of the constables and other peace officers in the county of , and to the keeper of the common gaol at . in the said county of

Whereas A. B. was lately charged before , a justice of the peace in and for the said county of , for that (*&c., as in the summons*); and it having been made to appear to (*me*) upon oath that E. F., of , was likely to give material evidence for the prosecution (*I*) duly issued (*my*) summons to the said E. F., requiring him to be and appear before me on , at , or before such other justice or justices of the peace for the same county as should then be there, to testify what he knows concerning the said charge so made against the said A. B. as aforesaid; and the said E. F. now appearing before (*me*) (*or* being brought before [*me*] by virtue of a warrant in that behalf,) to testify as aforesaid, and being required to make oath or affirmation as a witness in that behalf, now refuses so to do (*or* being duly sworn as a witness now refuses to answer certain questions concerning the premises which are now here put to him, and more particularly the following:) without offering any just excuse for such refusal. These are therefore to command you, the said constables or peace officers, or any one of you, to take the said E. F. and him safely to convey to the common gaol at , in the county aforesaid, and there to deliver him to the keeper thereof, together with this precept: And (*I*) do hereby command you, the said keeper of the said common gaol to receive the said E. F. into your custody in the said common gaol, and him there safely keep for the space of days, for his said contempt unless in the meantime he consents to be examined, and to answer concerning the premises; and for your so doing, this shall be your sufficient warrant.

Given under (*my*) hand and seal, this day of , in the year , at , in the county aforesaid.

J. S, [SEAL]
J. P., (*Name of county*)

P.—(*Section* 586.)

WARRANT REMANDING A PRISONER.

Canada.
Province of .
County of .

To all or any of the constables and other peace officers in the said county of , and to the keeper of the common gaol at , in the said county.

Whereas A. B. was this day charged before the undersigned , a justice of the peace in and for the said county of , for that (*&c., as in the warrant to apprehend*), and it appears to (*me*) to be necessary to remand the said A. B.: These are therefore to command you, the said constables and peace officers, or any of you, in Her Majesty's name, forthwith to convey the said A. B. to the common gaol at , in the said county, and there to deliver him to the keeper thereof, together with this precept: And I hereby command you the said keeper to receive the said A. B. into your custody in the said common gaol, and there safely keep him until the day of (*instant*), when I hereby command you to have him at , at o'clock in the (*fore*) noon of the same day before (*me*) or before such other justice or justices of the peace for the said county as shall then be there, to answer further to the said charge, and to be further dealt with according to law, unless you shall be otherwise ordered in the meantime.

Given under my hand and seal, this day of in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. P., (*Name of county.*)

Q.—(*Section* 587.)

RECOGNIZANCE OF BAIL INSTEAD OF REMAND ON AN ADJOURNMENT OF EXAMINATION.

Canada,
Province of ,
County of ,

Be it remembered that on the day of , in the year , A. B., of , (*labourer*), L. M., of , (*grocer*), and N. O., of (*butcher*), personally came before me, , a justice of the peace for the said county, and severally acknowledged themselves to owe to our Sovereign Lady the Queen, her heirs and successors, the several sums following, that is to say: the said A. B., the sum of , and the said L. M. and N. O., the sum of each, of good and lawful current money of Canada, to be made and levied of their several goods and chattels, lands and tenements, respectively, to the use of our Lady the Queen, her heirs and successors, if he, the said A. B., fails in the condition endorsed (*or* hereunder written.)

Taken and acknowledged the day and year first above mentioned at before me.

J. S.,

J. P., (*Name of county.*)

CONDITION.

The condition of the within (*or* above) written recognizance is such, that, whereas the within bounden A. B. was this day (*or* on last past) charged before me for that (*&c., as in the warrant*); and whereas the examination of the witnesses for the prosecution in this behalf is adjourned until the day of (*instant*): If, therefore, the said A. B. appears before me on the said day of (*instant*), at o'clock in the (fore) noon, or before such other justice or justices of the peace for the said county as shall then be there, to answer (*further*) to the said charge, and to be further dealt with according

to law, the said recognizance to be void, otherwise to stand in full force and virtue.

R.—(*Section* 589.)

CERTIFICATE OF NON-APPEARANCE TO BE ENDORSED ON THE RECOGNIZANCE.

I hereby certify that the said A. B. has not appeared at the time and place in the above condition mentioned, but therein has made a default, by reason whereof the within written recognizance is forfeited.

J. S.,
J. P., (*Name of county.*)

S.—(*Section* 590.)

DEPOSITION OF A WITNESS.

Canada,
Province of ,
County of ,

The deposition of X. Y., of , taken before the undersigned, a justice of the peace for the said county of , this day of , in the year , at (*or* after notice to C. D., who stands committed for) in the presence and hearing of C. D., who stands charged that (*state the charge*). The said deponent saith on his (*oath or affirmation*) as follows: (*Insert deposition as nearly as possible in words of witness*). (1)

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(1) Where the accused interposes an observation during the examination of a witness, insert it, as follows:—"The prisoner here voluntarily says "(*Put his very words*) [*or* "The prisoner—having at this stage of the proceedings, said he desired to make a statement, and having been given clearly to understand that he was not obliged to say anything, now, but that whatever he did say could be taken down in writing and might be used as evidence against him,—voluntarily says, as follows:—(*Put his very words*), *or*,"The prisoner, being asked whether he wished to put any question to the witness, voluntarily says, (*Put his very words*).]

(*If depositions of several witnesses are taken at the same time, they may be taken and signed as follows :*)

The depositions of X., of , Y., of , Z., of , &c., taken in the presence and hearing of C. D., who stands charged that

The deponent X. (*on his oath or affirmation*) says as follows :

The deponent Y. (*on his oath or affirmation*) says as follows :

The deponent Z. (*on his oath, &c., &c.*)

(*The signature of the justice may be appended as follows :*)

The depositions of X., Y., Z., &c., written on the several sheets of paper, to the last of which my signature is annexed, were taken in the presence and hearing of C. D., and signed by the said X., Y., Z., respectively, in his presence. In witness whereof I have in the presence of the said C. D. signed my name.

J. S.,

J. P., (*Name of county.*)

T.—*Section* 591.)

STATEMENT OF THE ACCUSED.

Canada,
Province of
County of } ,

A. B. stands charged before the undersigned , a justice of the peace in and for the county aforesaid, this day of , in the year , for that the said A. B., on , at (*&c., as in the captions of the depositions*) ; and the said charge being read to the said A. B., and the witnesses for the prosecution, C. D. and E. F., being severally examined in his presence, the said A. B. is now addressed by me as follows : " Having heard the evidence, do you wish to " say anything in answer to the charge ? You are not obliged to " say anything unless you desire to do so ; but whatever you say " will be taken down in writing, and may be given in evidence

"against you at your trial. You must clearly understand that "you have nothing to hope from any promise of favour, and "nothing to fear from any threat which may have been held out "to induce you to make any admission or confession of guilt, but "whatever you now say may be given in evidence against you "upon your trial, notwithstanding such promise or threat." Whereupon the said A. B. says as follows: (*Here state whatever the prisoner says, and in his very words as nearly as possible. Get him to sign it if he will.*) (1)

A. B.

Taken before me, at , the day and year first above mentioned.

J. S. [SEAL.]

J. P. (*Name of county.*)

U.—(*Section* 595.)

FORM OF RECOGNIZANCE WHERE THE PROSECUTOR REQUIRES THE JUSTICE TO BIND HIM OVER TO PROSECUTE AFTER THE CHARGE IS DISMISSED.

Canada,
Province of ,
County of ,

Whereas C. D. was charged before me upon the information of E. F., that C. D. (*state the charge*), and upon the hearing of the said charge I discharge the said C. D., and the said E. F. desires to prefer an indictment against the said C. D. respecting the said charge, and has required me to bind him over to prefer such an indictment at (*here describe the next practicable sitting of the court by which the person discharged would be tried if committed.*)

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(1) When there are several persons charged with the same offence, there need not be a separate statement for each person accused; but all their names should be stated at the commencement of the above form; and then, in the latter part of the form,—after giving the statement of the prisoner, whose name comes first,—say, for the second one in order,—"And the said says, as follows:"—(*Here give the statement of the second prisoner*) and so on, with each of the several persons accused.

The undersigned E. F. hereby binds himself to perform the following obligation, that is to say, that he will prefer and prosecute an indictment respecting the said charge against the said C. D. at (*as above*). And the said E. F. acknowledges himself bound to forfeit to the Crown the sum of $ in case he fails to perform the said obligation.

E. F.

Taken before me.

J. S.,
J. P., (*Name of county.*)

V.—(*Section* 596.)

WARRANT OF COMMITMENT.

Canada,
Province of ,
County of ,

To the constable of , and to the keeper of the (*common gaol*) at , in the said county of

Whereas A. B. was this day charged before me, J. S., one of Her Majesty's justices of the peace in and for the said county of , on the oath of C. D., of , (*farmer*), and others for that (*&c., stating shortly the offence*) : These are therefore to command you the said constable to take the said A. B., and him safely convey to the (*common gaol*) at aforesaid, and there to deliver him to the keeper thereof, together with this precept : And I do hereby command you the said keeper of the said (*common gaol*) to receive the said A. B. into your custody in the said (*common gaol*), and there safely keep him until he shall be thence delivered by due course of law.

Given under my hand and seal. this day of , in the year , at , in the county aforesaid.

J. S., [SEAL]
J. P., (*Name of county.*)

W.—(*Section* 598.)

RECOGNIZANCE TO PROSECUTE.

Canada,
Province of ,
County of ,

Be it remembered that on the day of , in the year , C. D., of , in the of , in the said county of , (*farmer*), personally came before me , a justice of the peace in and for the said county of , and acknowledged himself to owe to our Sovereign Lady the Queen, her heirs and successors, the sum of , of good and lawful current money of Canada, to be made and levied of his goods and chattels, lands and tenements, to the use of our said Sovereign Lady the Queen, her heirs and successors, if the said C. D. fails in the condition endorsed (*or* hereunder written).

Taken and acknowledged the day and year first above mentioned at , before me.

J. S.,

J, P., (*Name of county.*)

CONDITION TO PROSECUTE.

The condition of the within (*or* above) written recognizance is such that whereas one A. B., was this day charged before me, J. S., a justice of the peace within mentioned, for that (*&c., as in the caption of the depositions*); if, therefore, he the said C. D. appears at the court by which the said A. B. is or shall be tried * and there duly prosecutes such charge then the said recognizance to be void, otherwise to stand in full force and virtue.

X.—(*Section* 598).

COGNIZANCE TO PROSECUTE AND GIVE EVIDENCE.

(*Same as the last form, to the asterisk,* * *and then thus*):—And there duly prosecutes such charge against the said A. B. for the offence

aforesaid and gives evidence thereon, as well to the jurors who shall then inquire into the said offence, as also to them who shall pass upon the trial of the said A. B., then the said recognizance to be void, or else to stand in full force and virtue.

Y.—(*Section* 598).

(*Same as the last form but one, to the asterisk,* * *and then thus:*— And there gives such evidence as he knows upon the charge to be then and there preferred against the said A. B., for the offence aforesaid, then the said recognizance to be void, otherwise to remain in full force and virtue.

Z.—(*Section* 599.)

COMMITMENT OF A WITNESS FOR REFUSING TO ENTER INTO THE RECOGNIZANCE.

Canada,
Province of ,
County of ,

To all or any of the peace officers in the said county of ,
and to the keeper of the common gaol of the said county of
, at in the said county of ,

Whereas A. B., was lately charged before the undersigned (*name of the justice of the peace*), a justice of the peace in and for the said county of , for that (*&c., as in the summons to the witness*), and it having been made to appear to (*me*) upon oath that E. F., of , was likely to give material evidence for the prosecution. (I) duly issued (*my*) summons to the said E. F., requiring him to be and appear before (*me*) on , at or before such other justice or justices of the peace as should then be there, to testify what he knows concerning the said charge so made against the said A. B. as aforesaid; and the said E. F. now appearing before (*me*) (or being brought before (*me*) by virtue of a warrant in that behalf to testify as aforesaid), has been now examined before (*me*) touching the premises, but being by (*me*) required to enter

into a recognizance conditioned to give evidence against the said A. B. now refuses so to do: These are therefore to command you the said peace officers, or any one of you, to take the said E. F. and him safely convey to the common gaol at , in the county aforesaid, and there deliver him to the said keeper thereof, together with this precept: And I do hereby command you, the said keeper of the said common gaol, to receive the said E. F. into your custody in the said common gaol, there to imprison and safely keep him until after the trial of the said A. B. for the offence aforesaid, unless in the meantime the said E. F. duly enters into such recognizance as aforesaid, in the sum of before some one justice of the peace for the said county, conditioned in the usual form to appear at the court by which the said A. B. is or shall be tried, and there to give evidence upon the charge which shall then and there be preferred against the said A. B. for the offence aforesaid.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. P., (*Name of county.*)

AA.—(*Section* 599.)

SUBSEQUENT ORDER TO DISCHARGE THE WITNESS.

Canada,
Province of ,
County of ,

To the keeper of the common gaol at , in the county of , aforesaid.

Whereas by (*my*) order dated the day of (*instant*) reciting that A. B. was lately before then charged before (*me*) for a certain offence therein mentioned, and that E. F. having appeared before (*me*) and being examined as a witness for the prosecution on that behalf, refused to enter into recognizance to give evidence against the said A. B., and I therefore thereby committed the said E. F. to your custody, and required you safely to keep him until after the trial of the said A. B. for the offence aforesaid; unless in the meantime he should enter into such recognizance as

aforesaid; and whereas for want of sufficient evidence against the said A. B., the said A. B. has not been committed or holden to bail for the said offence, but on the contrary thereof has been since discharged, and it is therefore not necessary that the said E. F. should be detained longer in your custody: These are therefore to order and direct you the said keeper to discharge the said E. F. out of your custody, as to the said commitment, and suffer him to go at large.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. P., (*Name of county.*)

BB.—(*Section* 601.)

RECOGNIZANCE OF BAIL.

Canada,
Province of ,
County of ,

Be it remembered that on the day of , in the year , A. B. of , (*labourer,*) L. M. of (*grocer*), and N. O. of , (*butcher*), personally came before (*us*) the undersigned, (*two*) justices of the peace for the county of , and severally acknowledged themselves to owe to our Sovereign Lady the Queen, her heirs and successors, the several sums following, that is to say: the said A. B. the sum of , and the said L. M. and N. O. the sum of each, of good and lawful current money of Canada, to be made and levied of their several goods and chattels, lands and tenements respectively; to the use of our said Sovereign Lady the Queen, her heirs and successors, if he, the said A. B., fails in the condition endorsed (*or* hereunder written).

Taken and aknowledged the day and year first above mentioned, at before us.

J. S.,
J. N.,
J. P., (*Name of county.*)

CONDITION.

The condition of the within (*or* above) written recognizance, is such that whereas the said A. B. was this day charged before (*us*), the justices within mentioned for that (*&c., as in the warrant*) ; if, therefore, the said A. B. appears at the next court of oyer and terminer (*or* general gaol delivery *or* court of General or Quarter Sessions of the Peace) to be holden in and for the county of , and there surrenders himself into the custody of the keeper of the common gaol (*or* lock-up house) there, and pleads to such indictment as may be found against him by the grand jury, for and in respect to the charge aforesaid, and takes his trial upon the same, and does not depart the said court without leave, then the said recognizance to be void, otherwise to stand in full force and virtue.

CC.—(*Section* 602.)

WARRANT OF DELIVERANCE ON BAIL BEING GIVEN FOR A PRISONER ALREADY COMMITTED.

Canada,
Province of ,
County of ,

To the keeper of the common gaol of the county of at , in the said county.

Whereas A. B., late of , (*labourer*), has before (*us*) (*two*) justices of the peace in and for the said county of , entered into his own recognizance, and found sufficient sureties for his appearance at the next court of oyer and terminer or general gaol delivery (*or* Court of General or Quarter Sessions of the Peace), to be holden in and for the county of , to answer our Sovereign Lady the Queen, for that (*&c., as in the commitment*), for which he was taken and committed to your said common gaol : These are therefore to command you, in Her Majesty's name, that if the said A. B. remains in your custody in the said common gaol for the said cause, and for no other, you shall forthwith suffer him to go at large.

Given under our hands and seals, this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]

J. N., [SEAL.]

J. P., (*Name of county.*)

DD.—(*Section* 607.)

GAOLER'S RECEIPT TO THE CONSTABLE FOR THE PRISONER.

I hereby certify that I have received from W. T., constable of the county of , the body of A. B., together with a warrant under the hand and seal of J. S., Esquire, justice of the peace for the said county of , and that the said A. B. was sober (*or as the case may be*), at the time he was delivered into my custody.

P. K

Keeper of the common gaol of the said county.

ADDITIONAL FORMS.

DEPOSITION THAT A PERSON IS A MATERIAL WITNESS.

Canada,
Province of ,
County (or, *District, etc.*,) of .

The deposition of A. B., of , taken at , in the said (*County*) of , this day of , A. D., 189 , before me the undersigned, a justice of the peace (or, *as the case may be*), for the said (*County*) of , who, being duly sworn, doth depose and say that , of , is likely to give material evidence on behalf of the prosecution (*or* "accused") touching the matter of the annexed (*or* "within") information (*or* "complaint"); and that he the said A. B. verily

believes that the said will not appear voluntarily for the purpose of being examined as a witness without being compelled so to do.

Taken and sworn before me, at this day of , A. D. 189 . } A. B.

ORDER TO BRING UP ACCUSED BEFORE EXPIRATION OF REMAND.

Canada,
Province of ,
County (or *District, etc.*) of , }

To the keeper of the common gaol of the (*County*) of at , in the said (*County*)

Whereas A. B. (hereinafter called the "accused") was on the day of committed by (*me*) to your custody in the said (*common gaol*), charged for that (*etc., as in the warrant remanding the prisoner*), and, by the warrant in that behalf,* you were commanded to have him at on the day of now (*next*) at o'clock in the forenoon, before such justice or justice of the peace for the said (*county*) as might then be there, to answer further to the said charge, and to be further dealt with, according to law; (or, *shortly, from the asterisk,** "he was remanded to the day of next"), unless you should be otherwise ordered in the meantime;

And whereas it appears to me, the undersigned, one of Her Majesty's justices of the peace in and for the said (*county*) of , (*or*, "one of the said justices") to be expedient that the said accused should be further examined before the expiration of the said remand;

These are therefore to order you in Her Majesty's name to bring and have the said accused at , at o'clock in the (fore) noon of the same day before (*me*) or before such other justice or justices of the peace for the said county as shall then be there, to answer further to the said charge, and to

be further dealt with according to law, unless you shall be otherwise ordered in the meantime.

Given under my hand and seal, this day of in the year , at , in the county aforesaid.

J. S.,

J. P., (name of county).

MEMORANDUM TO BE WRITTEN ON DOCUMENTS PRODUCED IN EVIDENCE.

This is the plan (*or* "letter," or, *as the case may be*) produced to me, the undersigned, one of Her Majesty's justices of the peace for the (*county*) of , on the examination of A. B., charged with arson (*forgery, etc.*), and referred to in the deposition of C. D. touching the said charge taken before me this day of , 189 .

J. S.

INFORMATION AND COMPLAINT OF SURETIES FOR A PERSON CHARGED WITH AN INDICTABLE OFFENCE, SO AS TO HAVE HIM COMMITTED IN DISCHARGE OF THEIR RECOGNIZANCES.

Proceed as in form C., at p. 136, *ante, to the words,* "who saith," (*altering it to the plural when the complaint is by two or more sureties, and then continue thus:*) that the said C. D. and E. F. (*names of sureties complaining*) were on the day of now last past, severally and respectively duly bound by recognizance before J. P., Esquire, one of Her Majesty's justices of the peace for the said (*county*) of , in the sum of each, upon condition that one A. B., of , should appear at the next term of the Court of Queen's Bench (Crown side) for the district of , (or Court of Oyer and Terminer and General Gaol Delivery, or Court of General or Quarter Sessions of the Peace) to be holden in and for the (*county*) of , and there surrender himself into the custody of the keeper of the (*common gaol*) there, and plead to such indict-

ment as might be found against him by the Grand Jury for or in respect of the charge of (*stating the charge shortly*), and take his trial upon the same and not depart the said court without leave; and that these complainants have reason to suspect and believe, and do verily suspect and believe, that the said A. B. is about to depart from this part of the country; and therefore they pray of me the said justice that I would issue my warrant of apprehension of the said A. B. in order that he may be surrendered to prison in discharge of them his said bail.

Taken and sworn before me at
in the (*county*) of
, this day
of , 189 .

C. D.
E. F.

WARRANT TO APPREHEND THE ACCUSED UPON THE INFORMATION OF HIS SURETIES.

Canada,
Province of
County (or *District, etc.*) of ,

To all or any of the constables and other peace officers in the said county of , and to the keeper of the common gaol at , in the said county.

Whereas you the said C. D. and E. F. were, etc. (*as in the information and complaint, p. 247, ante, to the end*): These are therefore to authorize you the said C. D. and E. F., and also to command you the said (*constable or other peace officer*), in Her Majesty's name forthwith to apprehend the said A. B., and to bring him before me or some justice or justices of the peace in and for the said (*county*) to the intent that he may be committed to the (*common gaol*) in and for the said (*county*) until the next Court of Oyer and Terminer and General Gaol Delivery (*or* Court of General or Quarter Sessions of the Peace), to be holden in and for the said (*county*) of , (or, *etc., as the case may be*), unless he find new and sufficient sureties to become bound for him in such recognizance as aforesaid.

Given under my hand and seal, this day of , in the year of our Lord , at . in the (*county*) aforesaid.

COMMITMENT OF THE ACCUSED ON HIS APPREHENSION AT THE INSTANCE OF HIS BAIL.

Canada,
Province of :
County (or *District, etc.*) of .

To all or any of the constables and other peace officers in the said county of , and to the keeper of the common gaol at , in the said county.

Whereas on the day of , instant, complaint was made to me, the undersigned (or J. S), one of Her Majesty's justices of the peace in and for the said (*county*) of , by C. D. and E. F. of , that (*as in the information and complaint, p. 147, ante, to the end*) I (or the said justice) thereupon issued my warrant authorizing the said C. D. and E. F., and also commanding the said constables of and all other peace officers in the said (*county*) of , in Her Majesty's name forthwith to apprehend the said A. B., and to bring him (*follow to end of warrant, supra*); and whereas the said A. B. hath been apprehended under and by virtue of the said warrant, and being now brought before me the said justice (*or*, me the undersigned, one, etc.) and surrendered by the said C. D. and E. F., his said sureties, in discharge of their said recognizances, I have required the said A. B. to find new and sufficient sureties to become bound for him in such recognizances as aforesaid, but the said A. B. hath now refused so to do: These are therefore to command you the said constables (*or other peace officers*) in Her Majesty's name forthwith to take and safely to convey the said A. B. to the said (*common gaol*) at , in the said (*county*), and there deliver him to the keeper thereof, together with this precept: and I hereby command you the said keeper to receive the said A. B. into your custody in the said (*common gaol*), and him there safely to keep until the next

Court of Oyer and Terminer and General Gaol Delivery (*or* Court of General or Quarter Sessions of the Peace), to be holden in and for the said (*county*) of , unless in the meantime the said A. B. shall find new and sufficient sureties to become bound for him in such recognizance as aforesaid.

Given under my hand and seal, this day of , in the year of our Lord, , at , in the (*county*) aforesaid.

J. S. [L. S.]

TABLE OF

INDICTABLE OFFENCES UNDER THE CODE,

Offences against public order, internal and external.

TREASON AND OTHER OFFENCES AGAINST THE QUEEN'S AUTHORITY AND PERSON.

ART.	OFFENCE.	PUNISHMENT.	TRIBUNAL.	LIMITATION.
65	Treason	Death	Sup.CourtCr. Juris	3 years.
67	Accessory after fact to Treason	Two years	do	
68	Levying war, etc	Death	Sup.CourtCr. Juris. or Court Martial.	
69	Treasonable offences	Life	Sup.CourtCr. Juris.	3 years.
70	Conspiracy to intimidate a Legislature	Fourteen years	do	
71	Assaults on the Queen	Seven years and whipping	do	
72	Inciting to mutiny	Life	do	
73	(1) Enticing soldiers or seamen to desert	Five years	General or Quarter Sessions.	
77	Unlawfully obtaining official information	One year or $100 fine	Sup.CourtCr. Juris.	
78	Communication of information by official. If to a foreign State	Life	do	
78	In any other case	One year and $100 fine, or both	do	

Note. It will be understood that, with regard to offences mentioned in this table as triable in a Sup. Court of Cr. Juris., those offences cannot be tried in a Court of General or Quarter Sessions, and that with regard to offences mentioned as triable in a Court of General or Quarter Sessions, the latter Court has not exclusive jurisdiction over these offences, but that, in relation to them, its jurisdiction is concurrent with that of the Superior Courts of Cr. Juris.

UNLAWFUL ASSEMBLIES, RIOTS, BREACHES OF THE PEACE.

ART.	OFFENCE.	PUNISHMENT.	TRIBUNAL.	LIMITATION.
81	Unlawful assembly	One year.	General or Quarter Sessions.	
82	Riot	Two years	do	
83	Opposing Reading of Riot Act	Life	do	one ye
85	Riotous destruction	Life.	do	
86	Riotous damage	Seven years	do	
87, 88	Unlawful drilling	Two years	do	6 months
89	Forcible entry or detainer	One year	do	
90	Affray	One year; with hard labor	do	
91	Challenge to fight	Three years	do	
99	Inciting Indians to riot	Two years	do	

(1) Enticing soldiers, etc., may also be tried summarily. Fine $200, and not less than $50. In default of payment, six months imprisonment.

Unlawful use and possession of Explosive Substances and Offensive Weapons.

Art.	Offence.	Punishment.	Tribunal.	Limitation.
99	Causing dangerous explosions	Life	Sup. Court Cr. Juris.	
100	Having explosives	Fourteen years	do	
101	Making explosives	Seven years	do	6 months.
102	Having arms for dangerous purposes	Five years	do	
104	Smugglers carrying arms	Ten years	do	one year.
113	Refusing to deliver weapon to a justice	Five years	do	
114	Coming near meeting armed	$100 fine, or 6 m'ths or both	do	do
115	Lying in wait near meeting	$200 fine, or 3 m'ths or both	do	do

Seditious offences.

Art.	Offence.	Punishment.	Tribunal.
120	Administering or taking oath to commit an indictable offence	Fourteen years	Sup. Ct. Cr. Juris.
121	Administering or taking other unlawful oaths	Seven years	do
124	Seditious offences	Two years	do
125	Libels on foreign sovereigns	One year	do
126	Spreading false news	One year	do

Piracy.

Art.	Offence.	Punishment.	Tribunal.
127	Piracy by the Law of Nations	Death or Life Imprisonment	Sup. Court Cr. Juris.
128	Piratical Acts	Life	do
	Piratical Acts endangering Life	Death	do
129	Not Fighting Pirates	Six months Imprisonment	do

Offences Against the Administration of Law and Justice.

Corruption and Disobedience.

Art.	Offence.	Punishment.	Tribunal.	Limitation.
131	Corruption of Judges and Legislators	Fourteen years	Sup. Court Cr. Juris.	
132	Corruption of officers of justice.	Fourteen years	do	
143	Frauds upon the Government	$1,000 fine and one year, also 6 mos extra in default of paying fine. Disabled from contracting with or holding office under Government	do	2 years.
135	Breach of trust by public officer.	Five years	do	
136	Corrupt practices in municipal affairs	$1,000 fine and two years, also 6 mos. extra in default of paying fine.	do	2 years.
137*a*	Selling offices, &c	Five years. (See Art. 951) Disability from holding office	do	
138	Disobedience to a statute	One year	Gen'l or Qu'tr. Sess.	
139	Disobedience to orders of Court	One year	do	
140	Neglect of peace officers to suppress riot	Two years	do	
141	Neglect to aid peace officer in suppressing riot	One year	do	
142	Neglect to aid peace officer arresting offender	Six months	do	
143	Misconduct of officers entrusted with warrants, etc	Fine and imprisonment. (See Arts. 934 & 951)	do	
144	Obstructing public officer	Ten years	do	
"	Obstructing peace officer. (1)	Two years	do	

Misleading Justice.

Art.	Offence.	Punishment.	Tribunal.	Limitation.
146 & 148	Perjury	Fourteen years and life	Gen'l or Qu'tr Sess.	
146	Subornation of perjury	Fourteen years	do	
147	False oaths	Seven years	do	
150	False statements	Two years	do	
151	Fabricating evidence	Seven years	do	
152	Conspiracy to bring false accusation	Fourteen years and ten years	do	
153	Administering oaths without authority	$50 fine or 3 mos.	do	
154	Corrupting jurors or witnesses	Two years	do	
155	Compounding penal actions	Fine not exceeding penalty compounded for	do	
156	Corruptly taking reward for helping to recover stolen property	Seven years	do	
157	Advertising reward for stolen property	$250 penalty	Civil Court	6 months
158	Signing false certificate of executing death sentence	Two years	Gen'l or Qu'tr Sess.	

(1) This offence, besides being indictable, may also be tried summarily, before two justices, and in that case the punishment upon conviction is 6 months with hard labor, or $100 fine.

Escapes and Rescues.

Art.	Offence.	Punishment.	Tribunal.
159	Being at large while under sentence	Two years	Gen'l or Quarter Sess.
160	Assisting escape of prisoner of war	Five years	do
161	Prison-breach	Seven years	do
162	Attempted prison breach	Two years	do
163, 164	Escapes from lawful custody	Two years	do
165, 166	Rescuing prisoners or assisting escape	Seven years and 5 years	do
167	Conveying anything into prison to aid escape	Two years	do
168	Unlawfully procuring prisoner's discharge	Two years	do

Offences against Religion, Morals, and Public Convenience.

Offences against Religion.

Art.	Offence.	Punishment.	Tribunal.
170	Blasphemous libels	One year	Genl. or Quar. Sess.
171	Obstructing officiating clergyman	Two years	do
172	Violence to officiating clergyman	Two years	do

Offences against Morality.

Art.	Offence.	Punishment.	Tribunal.	Limitation
174	Unnatural offence	Life	Genl. or Quar. Sess.	
175	Attempt to commit sodomy	Ten years	do	
176	Incest	Fourteen years and whipping	do	
178	Acts of gross indecency	Five years	do	
179	Publishing obscene matter	Two years	do	
180	Posting immoral books, etc	Two year	do	
181	Seduction of girl under sixteen	Two years	do	One year.
182	Seduction under promise of m'riage	Two years	do	do
183	Seduction of a ward or a servant, factory girl, etc	Two years	do	do
184	Seduction of female passengers on vessels	$400 fine or one year	o	
185	Unlawfully defiling women	Two years with hard labor	do	One year.
186	Parent or guardian procuring defilement of girl	Fourteen years and five years	do	do
187	Householders permitting defilement of girls	Ten years & two yrs	do	do
188	Conspiracy to defile	Two years	do	
189	Carnally knowing idiots	Four years	do	
190	Prostitution of Indian women	$100 fine or six mths	do	

NUISANCES.

ART.	OFFENCE.	PUNISHMENT.	TRIBUNAL.
192	Common nuisance	One year, or fine. (See Art. 934)	Genl. or Quar. Sess.
194	Selling things unfit for food	One year	do
198	Keeping disorderly house, (bawdy-house, gaming house) (1)	One year	do
201	Gaming in stocks, etc	Five years and $500 fine	d
202	Frequenting bucket-shops	One year.	d
203	Gambling in public conveyances (railways, steamers, etc.) (2)	One year	o
204	Betting and pool-selling	One year and $1000 fine	o
205	Lotteries	Two years & $2000 fine	o
206	Misconduct towards human remains	Five years	o

Offences against the person and reputation.

DUTIES TENDING TO THE PRESERVATION OF LIFE.

ART.	OFFENCE,	PUNISHMENT.	TRIBUNAL.
215	Neglecting duty to provide necessaries	Three years	General or Quarter Sessions.
216	Abandoning children under two years of age	Three years	do
217	Causing bodily harm to apprentices or servants	Three years	do

HOMICIDE, MURDER, MANSLAUGHTER, ETC.

ART.	OFFENCE.	PUNISHMENT	TRIBUNAL.
231	Murder	Death	Sup. Court Cr. Juris.
232	Attempt to commit murder	Life	do
233	Threats to murder	Ten years	do
234	Conspiracy to murder	Fourteen years	do
235	Accessory after the fact to murder	Life	do
236	Manslaughter	Life	Gen. or Quarter Sess.
237	Aiding and abetting suicide	Life	do
238	Attempt to commit suicide	Two years	do
239	Neglecting to obtain assistance in child birth	Life, or Seven years	do
240	Concealing dead body of child	Two years	do

(1) These offences, as well as being indictable, may also be tried summarily under articles 783 and 784, *post* (which see).

(2) Railway conductors, steamboat officers, station masters, etc., are obliged to arrest and prosecute offenders under this article and are liable to $100 fine, for neglect to do so.

Every company or other owner of a railway car, or steamboat must keep a copy of the above Article, 203, posted up conspicuously in their railway car, or steamboat, and are liable, for neglect to do so, to $100 penalty.

Bodily injuries, and acts and omissions causing danger to the person.

Art.	Offence.	Punishment.	Tribunal.
241	Wounding with intent	Life	Genl. or Quar. Sess.
242	Unlawful wounding	Three years	do
243	Shooting at H. M's vessels. Wounding public officer	Fourteen years	do
244	Disabling or drugging with criminal intent	Life and whipping	do
245	Endangering life by poison, etc	Fourteen years	do
246	Administering poison with intent to injure	Three years	do
247	Causing bodily injuries by explosives	Life	do
248	Attempting bodily injury by explosives	Life or fourteen years	do
249	Setting spring guns and man traps	Five years	do
250	Intentionally endangering persons on railways	Life	do
251	Negligently endangering persons on railways	Two years	do
252	Negligently causing bodily injury	Two years	do
253	Injuring persons by furious driving	Two years	do
254	Preventing the saving of person shipwrecked	Seven years	do
256	Sending unseaworthy ships to sea	Five years	do
257	Taking unseaworthy ships to sea	Five years	do

Assaults.

Art.	Offence.	Punishment.	Tribunal.
259	Indecent assaults on females (1)	Two years and whipp'g	Genl. or Quar. Sess.
260	Indecent assaults on males	Ten years and whippi'g	do
262	Assault causing actual bodily harm	Three years	do
263	Aggravated assaults, assault on public or peace officer, etc (1)	Two years	do
264	Kidnapping	Seven years	do
265	Common assault	One year or $100 fine (2)	do

(1) Under Article 783, *post*, whenever a person is charged before a magistrate with having committed an aggravated assault, or with having committed an assault upon any female whatsoever, or upon any male child under fourteen, or with having assaulted, obstructed, molested or hindered any peace officer or public officer in the lawful performance of his duty, the magistrate may, subject to the provisions of part LV of the Code, try the charge summarily.

See also Article 785, *post*, which *in regard to the Province of Ontario*, gives, to a police magistrate or stipendiary magistrate, power to try summarily, *with the accused's consent*, any person charged before him, with any offence triable in a court of General or Quarter Sessions.

(2) This offence is also triable in a summary manner, and is then punishable by a fine of $20 and costs, or two months imprisonment, with or without h. l.

Rape and Procuring Abortion.

Art.	Offence.	Punishment.	Tribunal
267	Rape	Death or life imprisonment	Sup. Ct. Cr. Juris.
268	Attempt to commit rape	Seven years	do
269	Defiling girl under fourteen	Life and whipping	Gen. or Quarter Sess.
270	Attempt to defile girl under fourteen.	Two years & whipping.	do
271	Killing unborn child	Life	do
272	Procuring abortion	Life	do
273	Woman procuring her own miscarriage	Seven years	do
274	Supplying means of procuring abortion	Two years	do

Offences against Conjugal and Parental Rights—Bigamy—Abduction.

Art.	Offence.	Punishment.	Tribunal.	Limitation
276	Bigamy	Seven years (second offence fourt'n yrs)	Gen. or Quart. Sess.	
277	Feigned marriages	Seven years	do	
278	Polygamy	Five yrs. & $500 fine	do	
279	Solemnization of marriage without lawful authority	Fine (1) or two years or both	do	2 years.
280	Solemnization of marriage contrary to law	Fine (1) or one year	do	
281	Abduction of a woman	Fourteen years	do	
282	Abduction of an heiress	Fourteen years	do	
283	Abduction of an unmarried girl under sixteen	Five years	do	
284	Stealing children under fourteen	Seven years	do	

Defamatory Libel.

Art.	Offence.	Punishment.	Tribunal.
300	Extortion by defamatory libel	Two years or $600 fine, or both	Sup. Court Cr. Juris.
301	Publishing libel knowing it to be false.	Two years or $400 fine, or both	do
302	Defamatory libel	One year, or $200 fine, or both	do

(1) See Article 934 of the Code, as to regulation of fine.

Offences against rights of property and rights arising out of contracts, and offences connected with trade.

Theft and Receiving. (1)

Art.	Offence.	Punishment.	Tribunal.
306 356	Theft of things under seizure	Seven years; 2nd offence, ten years	Genl. or Quar. Sess.
307 331	Killing cattle, with intent to steal the carcase, etc	Fourteen years	do
308 320	Theft by Agent	Fourteen years	do
309 320	Theft by holder of power of attorney	Fourteen years	do
310 320	Misappropriating money, etc., held under direction	Fourteen years	do
312 354	Fraudulent concealment of gold, etc., by mining partner	Two years	do
314	Receiving stolen property	Fourteen years	do
315	Receiving stolen post-letter, etc	Five years	do
319	Thefts by clerks, servants, Bank employees, Gov'ment and other officials	Fourteen years	do
321	Public servants refusing to deliver up books, etc	Fourteen years	do
322	Theft by tenant or lodger	Two years & four years	do
323	Stealing a will	Life	do
324	Stealing a document of title	Three years	do
325	Stealing judicial or official documents	Three years	do
326	Stealing post-letter bags, etc	Life	do
327	Stealing a post-letter, etc	Seven years	do
328	Stealing other mailable matter	Five years	do
(2)	Unlawfully opening a post-letter, etc	Five years	do
329	Stealing election documents	Fine, (3) or 7 yrs, or both	do
330	Stealing railway, tramway, or steamer ticket	Two years	do
331	Stealing cattle (4)	Fourteen years	do
334	Stealing oysters or oyster brood	Seven years	do
334	Dredging in oyster beds	Three months	do
335	Stealing fixtures in buildings or lands	Seven years	do
336	Stealing trees, etc., worth $25	Two years	do
336	Stealing trees, etc., worth $5, in a garden, etc	Two years	do
337	Stealing a tree, etc., worth 25c. after two other convictions	Five years	do
338	Fraudulently taking, etc., drift timber, etc	Three years	do
341	Stealing plants, etc., in a garden after one other conviction	Three years	do
343	Stealing ores of metals, etc	Two years	do
344	Stealing from the person	Fourteen years	do
345	Stealing in a dwelling-house	Fourteen years	do
346	Stealing by picklocks, etc	Fourteen years	do
347	Stealing goods in process of manufacture	Five years	do
348	Fraudulent disposal of goods entrusted to manufacture	Two years	do
349	Stealing from ships, wharves, etc	Fourteen years	do
350	Stealing wreck	Seven years	do
351	Stealing from a railway station, or engine, etc	Fourteen years	do
353 323	Fraudulently destroying a will	Life	do

(1) Under Article 783, of the Code whenever a person is charged before a magistrate with having committed theft, or obtaining property by false pretences or receiving stolen property, and the value of the property in question does not exceed ten dollars the magistrate may, subject to the provisions of Part LV of the Code, try the charge summarily.

(2) R. S. C., c. 35, sec. 89.

(3) The fine is in the discretion of the Court.

(4) This means live cattle. The stealing of a dead cow, etc., is punishable under Art. 356, by seven years.

Obtaining by False Pretences, Criminal Breach of Trust, and Other Frauds.

Art.	Offence.	Punishment.	Tribunal.
353	Fraudulently destroying other documents	Three years	Genl. or Quar. Sess.
354	Fraudulent concealment of property	Two years.	do
355	Bringing stolen property into Canada	Seven years	do
356	Stealing in cases not otherwise provided for (1)	Seven y...l offence ten y	do
359	Obtaining by false pretences	Three years	do
360	Obtaining executionof valuable security by false pretences	Three years	do
361	Falsely pretending to send money etc in a post-letter	Three years	do
362	Obtaining passage by false ticket	Six months	do
363	Criminal breach breach of trust	Seven years	do
364	False accounting by a director or official of a corporate body	Seven years	do
(6)	Fraudulent preference by a bank president, director, etc	Two years	do
(6)	False bank returns, etc., by bank officials	Five years	do
(7)	Unlawfully using the title of "Bank," etc	Fine $1000 or five years.	do
365	Making false prospectus or statement, by promoter or director, etc., of Company	Five years	do
366	False accounting by clerk or servant	Seven years	do
367	False statement by public officer	Five years	do
368	Fraudulent transfer by a debtor	Fine $800 and one year	do
369	Fraudulent falsification of books by a debtor	Ten years	do
370	Concealing encumbrances, etc	Fine or 2 years, or both	do
371	Frauds in respect of registration of titles	Three years	do
372	Fraudulent sales of real property	One year	do
373	Fraudulent hypothecation of real property	One year and $100 fine.	do
374	Fraudulent seizures of land, in Quebec	One year	do
375	Fraudulent dealings in mined gold or silver	Two years	do
376	Giving or using false warehouse receipt	Three years	do
377	Disposal of merchandise in fraud of consignees	Three years	do
378	Making false receipts for grain, etc	Three years	do
380	Unlawfully selling wreck	Seven years	do
381	Secreting wreck, or receiving or keeping it, etc. (4)	Two years	do
382	Buying marine stores from persons under sixteen, (after two other convictions)	Five years	do
385	Unlawfully applying marks to public stores	Two years	do
386	Taking marks from public stores	Two years	do
387	Unlawfully possessing public stores. (5)	One year	do
390	Receiving regimental necessities...(6)	Five years	do

(1) Art 357 provides that when the value of property stolen exceeds $200, two years shall be added to the punishment.
(2) R. S. C., c. 31, secs. 97, 99.
(3) *Ib.*, Secs. 100 and 101.
(4) This may also be dealt with summarily, and in that case the penalty is $400 or six months imprisonment.
(5) When the value of the stores is less than $25, the offence is punishable summarily by a fine of $100, or six months imprisonment.
(6) This may also be dealt with summarily, the penalty in that case being $40 or six months.

FALSE PRETENCES, ETC. (*Continued*)

ART.	OFFENCE.	PUNISHMENT.	TRIBUNAL.
391	Receiving necessaries from marines or deserters. (1)	Five years	Genl. or Quar. Sess.
392	Receiving a seamen's property, by purchase, exchange or pawn. (2)	Five years	do
394	Conspiring to defraud	Seven years	do
395	Cheating at play	Three years	do
396	Fortune-telling, witchcraft, etc	One year	do

ROBBERY AND EXTORTION.

ART.	OFFENCE.	PUNISHMENT.	TRIBUNAL.
398	Robbery with wounding, etc., or by a person armed	Life and whipping	Genl. or Quar. Sess.
399	Robbery	Fourteen years	do
400	Assault with intent to rob	Three years	do
401	Stopping mail with intent to rob	Life	do
402	Compelling execution of documents	Life	do
403	Sending threatening letter demanding money, etc	Fourteen years	do
404	Demanding with intent to steal	Two years	do
405	Extortion by threats to accuse of capital or infamous offences	Fourteen years	do
406	Extortion by threats to accuse of other offences	Seven years	do

BURGLARY AND HOUSEBREAKING.

ART.	OFFENCE.	PUNISHMENT.	TRIBUNAL.
408	Breaking a church, etc., and committing indictable offence	Fourteen years	Genl. or Quar. Sess.
409	Breaking a church, etc., with intent	Seven years, 2nd offence fourteen years	do
410	Burglary	Life	do
411	House breaking	Fourteen years	do
412	House breaking with intent	Seven years	do
413	Breaking shop, etc	Fourteen years	do
414	Breaking shop with intent	Seven years	do
415	Entering or being found in a dwelling-house, at night	Seven years, 2nd offence fourteen years	do
416	Being found armed with intent to break into a dwelling-house	Seven years, 2nd offence fourteen years	do
417	Being disguised or having burglars tools	Five years, 2nd offence fourteen years	do

(1) This may also be dealt with summarily; penalty $120 or six months.
(2) On summary conviction, the penalty is $100.

FORGERY.

ART.	OFFENCE.	PUNISHMENT.	TRIBUNAL.
423	FORGERY:—		
A			
(a) (b)	Of public document, (Imperial, Colonial, Dominion or Provincial).....	Life.....	Genl. or Quar. Sess.
(c) (g)	Of documents of title to land.....	Life.....	do
(d)	Of registers of title to lands.....	Life.....	do
(e) (f)	Of land registration documents	Life.....	do
(h)	Of Notarial Acts etc.....	Life.....	do
(i)	Of register of births, etc.....	Life.....	do
(j)	Of copy of register of births, etc. ...	Life.....	do
(k)	Of wills or probates, etc.....	Life.....	do
(l)	Of transfer of public funds, etc.....	Life.....	do
(m)	Of transfer of stocks, etc.....	Life.....	do
(n)	Of transfer in share of crown lands..	Life	do
(o)	Of power of attorney for transfer of crown lands.....	Life.....	do
(p)	Of entry in book of shares or stock, etc	Life.....	do
(q)	Of Exchequer bills	Life.....	do
(r)	Of bank notes, bills of exchange, etc.	Life.....	do
(s)	Of scrip in lieu of land	Life	do
(t)	Of document of title to any public debt	Life.....	do
(u)	Of deed, bond order, etc.....	Life.....	do
(v)	Of accountable receipt.	Life.....	do
(w)	Of bills of lading. Insur. Policy. etc .	Life	do
(x)	Of Warehouse Receipt, Dock Warrant, etc	Life.....	do
B			
(a)	Of any document relating to registry of personal property.....	Fourteen years (1).....	do
(b)	Of any public register, not above mentioned	Fourteen years.....	do
C			
(a) (b) (c)	Of Court Records, Judicial Documents, etc.....	Seven years.....	do
(d) (e)	Of Magistrates' Documents, registers, etc....	Seven years.....	do
(f)	Of Copy Letters Patent, etc.....	Seven years.....	do
(g)	Of Marriage Licenses or certificates..	Seven years.....	do
(h)	Of contracts.....	Seven years.....	do
(i)	Of powers or letters of attorney.....	Seven years.....	do
(j)	Of request for money or goods, etc..	Seven years	do
(k)	Of acquittances vouchers, etc.....	Seven years.....	do
(l)	Documents to be given in evidence in judicial proceedings.....	Seven years.....	do
(m)	Of railway, tramw'y or steam'r tickets	Seven years	do
(n)	Of any other document	Seven years.....	do
425	Counterfeiting public seals, etc.....	Life.....	do
426	Counterfeiting seals of Courts, Registries, etc	Fourteen years.....	do
427	Unlawfully printing proclamations, etc.....	Seven years.....	do
428	Sending fraudulent telegrams in a false name	(2)	do
429	Sending a false telegram or letter with intent to alarm, etc.....	Two years.....	do

(1) The Uttering of a forgery is subject to the same punishment as the forgery itself. Code, Art. 424.)

(2) Same punishment as for forgery of a document to the same effect as the telegram. (Art. 428.)

Preparation for Forgery and Offences resembling Forgery.

Art.	Offence.	Punishment.	Tribunal.
430	Receiving or having forged bank-notes.....	Fourteen years.....	do
431	Fraudulently making a document without authority.....	(1)	do
432	Using a forged will or other instrument, or probate, etc., obtained thereon.....	Fourteen years.....	do
434	Making, having, or using, etc., instruments of forgery.....	Fourteen years.....	Genl. or Quar. Sess.
435	Counterfeiting stamps, etc.....	Fourteen years.....	do
436	Falsifying registers.....	Ten years	co
437	Falsifying extracts from registers...		do
438	Falsely certifying entries in or extracts from registers.....	Seven years.....	do
440	Forging certificates, certifying false copies, etc.....	Two years.....	do
441	Making false entries in books relating to public funds, etc.....	Fourteen years.....	do
	Issuing false dividend warrants.....	Seven years.....	do

Forgery of Trade Marks—Fraudulently marking of Merchandise.

Art.	Offence.	Punishment.	Tribunal.	Limitation.
447 / 450	Forging a trade-mark; or applying a forged trade-mark (4)....	Two years & forft. of goods.....	Genl. or Quar. Sess	3 years.
448 / 450	Selling goods falsely marked	Two years & forft. of goods.....	do	do
449 / 450	Selling marked bottles without assent of proprietor of trade-mark (4).....	Two years & forft. of goods.....	do	do

(1) Same punishment as for forgery of the document so fraudulently made without authority. (Art. 431.)

(2) These may be dealt with summarily; in which case the punishment is four months imprisonment, and $100, fine, as well as forfeiture.

Personation.

Art.	Offence.	Punishment.	Tribunal.
{456 / 458}	Fraudulent personation	Fourteen years	Genl. or Quar. Sess.
457	Personation at Examination.	One year, or $100, fine	do
459	Acknowledging an instrument in false name	Seven years	do

Offences Relating to the Coin.

Art.	Offence.	Punishment.	Tribunal.
462	Counterfeiting (etc.), current gold or silver coin	Life	Genl. or Quar. Sess.
463	Dealing in or importing counterfeit gold and silver coin	Life	do
465	Exporting counterfeit coin	Two years, 2nd offence seven years.	do
466	Making, buying, or having counterfeiting instruments	Life	do
467	Bringing coining instruments into Canada	Life	do
468	Clipping current gold or silver coin.	Fourteen years	do
469	Defacing current coin and afterwards tendering same	One year, 2nd offence seven years.	do
470	Possessing clippings of current gold or silver coin	Seven years, 2nd offence fourteen years.	do
471	Possessing any counterfeit gold or silver coin, with intent to utter same.	Three years, 2nd offence seven years.	do
471	Possessing three or more counterfeit copper coins	Three years, 2nd offence seven years.	do
472	Counterfeiting current copper coin, or dealing in same, etc	Three years, 2nd offence seven years.	do
473	Counterfeiting foreign coins or uttering same, etc.	Three years, 2nd offence seven years.	do
474	Uttering counterfeit gold or silver coin	Fourteen yrs, 2d offence life.	do
475	Uttering light coins, medals, base copper coins, etc	Three years, 2nd offence seven years.	do
480	Advertising counterfeit money, etc.	Five years	do

MISCHIEF.

Art.	Offence.	Punishment.	Tribunal.
482	Arson	Life	Genl. or Quar. Sess.
483	Attempt to commit arson	Fourteen years	do
484	Setting fire to crops, etc	Fourteen years	do
485	Attempt to fire crops, etc	Seven years	do
486	Recklessly setting fire to forest, etc., on Crown domain. (1)	Two years	do
487	Sending letter threatening to burn buildings, etc	Ten years	do
488	Attempt to damage any building, etc., by explosives	Fourteen years	do
489	Obstructing a railway in a manner likely to endanger property	Five years	do
489	Obstructing a railway *with intent* to endanger property	Life	do
490	Obstructing construction or free use of railway	Two years	do
492	Destroying, damaging, or obstructing telegraphs, telephones, electric lights, fire alarms, etc	Two years	do
493	Wrecking	Life	do
494	Attempting to wreck	Fourteen years	do
495	Wilfully altering, removing, or concealing marine signals, buoys etc	Seven years	do
496	Wilfully preventing the saving of a wrecked vessel	Seven years	do
496	Wilfully preventing the saving of wreck. (2)	Two years	do
497	Injuring rafts booms, piers, etc	Two years	do
498	Mischief to mines	Seven years	do
499			
A			
(*a*)	Wilfully damaging a ship, house, etc., *and causing danger to life*	Life	do
(*b*)	Wilfully damaging a river or sea bank dyke, etc., *and causing danger of inundation*	Life	do
(*c*)	Damaging bridges, viaducts, aqueducts, etc., and *rendering same* or highway or railway, etc., *dangerous or impassable*	Life	do
(*d*)	Damaging railway *with intent to render it impassable*	Life	do
B			
(*a*)	Wilfully damaging a ship in distress, etc	Fourteen years	do
(*b*)	Wilfully destroying or injuring cattle by killing, maiming, etc	Fourteen years	do
C			
(*a*)	Wilfully damaging ship with intent to render it useless	Seven years	do
(*b*)	Wilfully damaging navigation signal, etc	Seven years	do
(*c*)	Wilfully damaging a river or sea bank, etc	Seven years	do
(*d*), (*e*), (*f*), (*g*)	Wilfully damaging river or canal, private water, etc	Seven years	do
(*h*)	Mischief to goods in process of manufacture	Seven years	do
(*i*)	Mischief to machinery, etc	Seven years	do
(*j*)	Mischief to hop-binds, etc	Seven years	do
D			
(*a*)	Mischief to garden trees, etc	Five years	do
(*b*), (*c*), (*d*)	Mischief to post-letter, letter boxes, post parcels, etc	Five years	do
(*e*)	Mischief (by night) to any property worth $20	Five years	do

(1) This may be dealt with summarily, and, in that case, punished by fine ($50), or six months imprisonment. (Art. 486, sub. sec. 2.)
(2) This is punishable summarily by fine ($100), or six months imprisonment.

MISCHIEF.—*Continued.*

ART.	OFFENCE.	PUNISHMENT.	TRIBUNAL.
E			
(a)	Mischief to any property, worth $20 by day	Two years	Genl. or Quar. Sess.
500	Attempt to maim or kill cattle	Two years	do
501	Killing, maiming or injuring other animals after another conviction	Fine, (1) or imprisonment, (2) or both	do
502	Written threats to injure cattle	Two years	do
502	Injuring poll-books, voters' lists and other election documents	Seven years	do
504	Injuries to building by tenants	Five years	do
505	Injuring Provincial, Municipal, etc., boundary marks	Seven years	do
506	Injuries to other land marks	Five years	do
508	Injuring trees to the amount of twenty-five cents, after two other convictions	Two years	do
509	Injuring vegetable productions in gardens, etc., after another conviction	Two years	do

OFFENCES CONNECTED WITH TRADE AND BREACHES OF CONTRACT.

ART.	OFFENCE.	PUNISHMENT.	TRIBUNAL.
520	Combination in restraint of trade (the offenders being persons)	Fine $4000 or two years	Sup. Ct. of Cr. Juris.
520	Combination in restraint of trade (the offender being a corporation)	Fine $10,000	do
521	Criminal breaches of contract, by persons (3)	Fine $100 or 3 months	Genl. or Quar. Sess.
521	Criminal breaches of contract by Municipal Corporations, etc.	Penalty $1000	do
521	Criminal breaches of contract by railway companies	Penalty $100	do
523	Intimidation, by violence, threats of violence, picketting, etc., (4)	Fine $100 or 3 months	do
524	Intimidation by assaults, or violence or threats of violence used in pursuance of unlawful combination	Two years	do
525	Intimidation of Wheat Dealers, seamen, etc., (4)	Fine $100 or 3 months	do
526	Intimidation of bidders for public lands	Fine $400, or two years or both	do

(1) See Art. 934, of the Code, as to regulation of fine.
(2) See Art. 951, of the Code.
(3) This offence may be prosecuted either by indictment or summarily.
(4) These may be dealt with summarily or by indictment.

ATTEMPTS—CONSPIRACIES—ACCESSORIES.

ART.	OFFENCE.	PUNISHMENT.	TRIBUNAL.
527	Conspiracies (*not hereinbefore provided for*) to commit an indictable offence	Seven years	Genl. or Quar. Sess.
528	Attempts (*not before provided for*) to		
529	commit an indictable offence	(1)	do
531	Accessory after the fact to an indict-		
532	able offence (*in cases not otherwise provided for*)	(1)	do

(1) In cases (*not otherwise provided for*) of attempts to commit, or of accessories after the fact to an indictable offence, the punishment will be seven years, when the indictable offence itself is punishable by fourteen years or more, (Code, Articles 528 and 531), or one half of the longest term of imprisonment for indictable offence itself when such longest term is less than fourteen years. (Code, Articles 529 and 532.)

Cases of conspiracy to commit, of attempt to commit or of being accessory after the fact to an indictable offence are not triable in a Court of General or Quarter Sessions, unless the offence itself is so triable. (Code, Art. 540.)

CHAPTER X.

(Part LIV of the Code.)

SPEEDY TRIALS OF INDICTABLE OFFENCES.

762. Application.—The provisions of this part do not apply to the North-West Territories or the District of Keewatin.

763. Meanings of expressions.—In this part, unless the context otherwise requires,—

(*a.*) the expression "Judge" means and includes,—

(i.) in the province of ONTARIO, any judge of a county court, junior judge or deputy judge authorized to act as chairman of the General Sessions of the Peace, and also the judges of the provisional districts of Algoma and Thunder Bay, and the judge of the district court of Muskoka and Parry Sound, authorized respectively to act as chairman of the General Sessions of the Peace;

(ii.) in the province of QUEBEC, in any district wherein there is a judge of the sessions, such judge of sessions, and in any district wherein there is no judge of sessions but wherein there is a district magistrate, such district magistrate, and in any district wherein there is neither a judge of sessions nor a district magistrate, the sheriff of such district;

(iii.) in each of the provinces of NOVA SCOTIA, NEW BRUNSWICK and PRINCE EDWARD ISLAND, any judge of a county court;

(iv.) in the province of MANITOBA, the Chief Justice, or a puisne judge of the Court of Queen's Bench, or any judge of a county court;

(v.) in the province of BRITISH COLUMBIA, the Chief Justice or a puisne judge of the Supreme Court, or any judge of a county court;

(*b.*) the expression "County Attorney" or "Clerk of the Peace" includes, in the Provinces of Nova Scotia, New Brunswick and Prince Edward Island, any clerk of a county court, and, in the Province of Manitoba, any Crown Attorney, the Prothonotary of

the Court of Queen's Bench, and any Deputy Prothonotary thereof, any deputy Clerk of the Peace, and the deputy Clerk of the Crown and Pleas for any district in the said province.

764. Judge to be a Court of Record.—The judge sitting on any trial under this part of the Code, for all the purposes thereof and proceedings connected therewith or relating thereto, shall be a Court of Record, and in every province of Canada, EXCEPT THE PROVINCE OF QUEBEC, such Court shall be called "The County Court Judge's Criminal Court" of the county or union of counties or judicial district in which the same is held.

2. The record in any such case shall be filed among the records of the Court over which the judge presides, and as part of such records.

765. Offences triable under this part.—Every person committed to gaol for trial on a charge of being guilty of any of the offences which are mentioned in section 539, (1) as being within the jurisdiction of the General or Quarter Sessions of the Peace, may, with his own consent, (of which consent an entry shall then be made of record), and subject to the provisions herein, be tried in any province, under the following provisions, out of sessions and out of the regular term or sittings of the Court, whether the Court before which, but for such consent, the said person would be triable for the offence charged, or the Grand Jury thereof, is or is not then in session, and if such person is convicted, he may be sentenced by the judge.

This Article applies to the speedy trial of persons actually COMMITTED FOR TRIAL, in any province of the Dominion, for any of the offences triable before a Court of General or Quarter Sessions. But Article 785, *post*, contains provisions under which persons charged in ONTARIO, with offences, triable at Sessions may,—not only after being committed for trial, but even WHEN CHARGED with any such offence, before a police Magistrate, or before a Stipendiary Magistrate,—elect to be tried before such Magistrate.

766. Duty of Sheriff after committal of accused.—Every sheriff shall, within twenty-four hours after any

(1) For Art. 539, see p. 82, *ante*.

prisoner charged, as aforesaid, is committed to gaol for trial, notify the judge in writing that such prisoner is so confined, stating his name and the nature of the charge preferred against him, whereupon, with as little delay as possible, such judge shall cause the prisoner to be brought before him.

767. Arraignment of accused before Judge,— The judge, upon having obtained the depositions on which the prisoner was so committed, shall state to him,

(*a.*) that he is charged with the offence, describing it;

(*b.*) that he has the option to be forthwith tried before such judge without the intervention of a Jury, or to remain in custody, or under bail, as the Court decides, to be tried in the ordinary way by the Court having criminal jurisdiction.

2. If the prisoner demands a trial by Jury, the judge shall remand him to gaol; but if he consents to be tried by the judge, without a jury, the county solicitor, clerk of the peace, or other prosecuting officer shall prefer the charge against him for which he has been committed for trial, and if, upon being arraigned upon the charge, the prisoner pleads guilty, the prosecuting officer shall draw up a record as nearly as may be in one of the forms MM or NN in schedule one of the Code, (1) such plea shall be entered on the record, which shall have the same force and effect as if passed by any Court having jurisdiction to try the offence in the ordinary way.

Costs.—Article 832 of the Code provides that, upon any person being convicted of an indictable offence, any Court by which, and any Judge, *under Part LIV*, by whom judgment is pronounced or recorded, may,—in addition to such sentence as may otherwise be passed,—condemn such person to the payment of the whole or any part of the costs or expenses incurred in and about the prosecution and conviction for the offence of which he is convicted; and that the payment of such costs may be ordered to be made out of any monies taken from such person on his apprehension (*if such monies are his own*) or may be enforced at the instance of any person liable to pay or who has paid the same, in the same manner,

(1) For Forms MM and NN, see pp. 281, and 282, *post.*

(subject to the provisions of the Code) as the payment of any costs ordered to be paid by the judgment or order of any Court of competent jurisdiction in any civil action or proceeding may be enforced ; that until the recovery of such costs and expenses from the person so convicted, or from his estate, the same shall be paid and provided for in the same manner as if this section (832) had not been passed ; and that any money recovered in respect thereof from the person so convicted, or from his estate, shall be applicable to the reimbursement of any person or fund by whom or out of which such costs and expenses have been paid or defrayed. And it is provided by Article 835 of the Code that any costs ordered to be paid, by a Court pursuant to the foregoing provisions shall, in case there is no tariff of fees provided with respect to criminal proceedings, be taxed by the proper officer of the Court according to the lowest scale of fees allowed in such Court in a civil suit ; and that if such Court has no civil jurisdiction, the fees shall be those allowed in civil suits in a Superior Court of the province according to the lowest scale.

The provision contained in the above Article, 832, is to the same effect as the Imperial statute, 33–34 Vict. c. 23, sec. 3, except that the latter only applies to treason and felony and not to convictions for misdemeanor : and the English Act does not contain the words, "if such moneys are his own," above italicised.

In a case in which a prisoner, arrested on the 4th April, was convicted at the following May Sessions of the Central Criminal Court, the Court after passing sentence, made under the above provision of the Imperial statute, an order for the payment of the costs of the prosecution out of the money taken from him at the time of his apprehension. On the 24th of April—between the time of his apprehension and his conviction—he had been adjudged bankrupt ; and it was held—without deciding what would have been the case if the money in question, though in the possession of, had not really belonged to the prisoner, or if the act of bankruptcy had been previous to his apprehension—that the order was valid, on the ground that the subsequent bankruptcy could not affect the right of the Criminal Court to make the order, such right having vested at the time of the apprehension and before the bankruptcy. (1)

(1) R. v. Roberts, 43 L. J. M. C. 17 ; L. R. 9 Q. B. 77.

Article 834 of the Code, provides that, if a person convicted on an indictment for assault, whether with or without battery and wounding, is ordered to pay costs as provided in section 832, he shall be liable unless the said costs are sooner paid, to three months' imprisonment, in addition to the term of imprisonment, if any, to which he is sentenced for the offence, and the court may, by warrant in writing, order the amount of such costs to be levied by distress and sale of the goods and chattels of the offender, and paid to the prosecutor, and the surplus, if any, arising from such sale, to the owner; and if such sum is so levied, the offender shall be released from such imprisonment.

Compensation to Bona-Fide Purchaser of Stolen Property.—When any prisoner has been convicted, either summarily or otherwise, of any theft or other offence, including the stealing or unlawfully obtaining any property, and it appears to the court by the evidence, that the prisoner sold such property or part of it to any person who had no knowledge that it was stolen or unlawfully obtained, and that money has been taken from the prisoner on his apprehension, the court may, on application of such purchaser and on restitution of the property to its owner, order that out of the money so taken from the prisoner. (*if it is his*), a sum, not exceeding the amount of the proceeds of the sale, be delivered to such purchaser. (Code, Art. 837.)

Restitution of Stolen Property.—Article 838 of the Code, (*as amended by* 56 *Vict. c.* 32), provides that if any person, who is guilty of any indictable offence in stealing or knowingly receiving any property, is indicted for such offence by or on behalf of the owner of the property, or his executor or administrator, and convicted thereof, or is, under any of the provisions of the Code relating to the trial of indictable offences, tried before a judge or justice for such offence and convicted thereof, the property shall be restored to the owner or his representative. By clause 2 of the same Article, it is provided that, in every such case, the court or tribunal, before which such person is tried for any such offence, shall have power to award, from time to time, writs of restitution for the said property or to order the restitution thereof in a summary manner; and that the court or tribunal may also, if it sees fit, award restitution of the property taken from the

prosecutor, or any witness for the prosecution, by such offence, *although the person indicted is not convicted thereof*, if the jury declares, as it may do, or if, in case the offender is tried without a jury, it is proved to the satisfaction of the court or tribunal by whom he is tried, that such property belongs to such prosecutor or witness, and that he was unlawfully deprived of it by such offence. And clause 3 provides that, if it appears, before any award or order is made, that any valuable security has been *bona fide* paid or discharged by any person liable to the payment thereof, or being a negotiable instrument, has been *bonâ fide* taken or received by transfer or delivery, by any person, for a just and valuable consideration, without any notice or without any reasonable cause to suspect that the same had, by any indictable offence been stolen, or if it appears that the property stolen has been transferred to *an innocent purchaser for value who has acquired a lawful title thereto*, the court or tribunal shall not award or order the restitution of such security or property.

This third clause makes an exception in favor of an innocent third party who has purchased, for value, the stolen property, and *who has acquired a lawful title thereto*, that is, a lawful title according to the law as to civil rights, of the province where the offence has been committed.

For instance, by the law of the Province of Quebec, "If a thing lost or stolen be bought in good faith in a fair or market or at a public sale, or from a trader dealing in similar articles, the owner cannot reclaim it, without re-imbursing to the purchaser the price he has paid for it." and "If the thing lost or stolen be sold under the authority of law, it cannot be reclaimed." (1)

The power to award restitution of property under the above Article, 838, extends to the PROCEEDS of the property as well as the property itself. Therefore, if the property stolen has been sold before the conviction, an application may be made to the court, before which the criminal is convicted, for the restitution of the proceeds, which, if they are in the hands of the criminal or of an agent who holds them for him, should be granted. (2)

(1) See Civ. Code L. C., Arts. 1489, 1490.

(2) R. v. Justices Cent. Crim. Ct., 17 Q. B. D. 598; 55 L. J. Q. B., 183; *Aff.* 18 Q. B. D., 314: 56 L. J. M. C. 25.

Where, after the trial and conviction of a prisoner for larceny, the judges who presided at the trial ordered property found in his possession, when arrested, to be disposed of in a particular manner, such property not being part of that stolen nor connected therewith, it was held that the order was bad, as the judges had no jurisdiction to make it. (1)

Clause 4 of the above article, 838, provides that nothing in that article contained shall apply to the case of any prosecution of any trustee, banker, merchant, attorney, factor, broker, or other agent entrusted with the possession of goods or documents of title to goods, for any indictable offence under sections 320 or 363 of the Code.

768. Persons Jointly Accused.—If one of two or more prisoners charged with the same offence demands a trial by jury, and the other or others consent to be tried by the judge without a jury, the judge, in his discretion, may remand all the prisoners to gaol to await trial by a jury.

769. Election After Refusal to be Tried by Judge.—If under Part LV. (2) or Part LVI. (3) any person has been asked to elect whether he would be tried by the magistrate or justices of the peace, as the case may, or before a jury, and he has elected to be tried before a jury, and if such election is stated in the warrant of committal for trial, the sheriff and judge shall not be required to take the proceedings directed by this part.

2. But if such person, after his said election to be tried by a jury, has been committed for trial, he may, at any time before the regular term or sittings of the court at which trial by jury would take place, notify the sheriff that he desires to re-elect; whereupon it shall be the duty of the sheriff to proceed as directed by section 766, and, thereafter, the person so committed shall be pro-

(1) R. v. City of London, E. B. & E. 509; 27 L. J. M. C. 231, R. v. Pierce, Bell, 235.

(2) Part LV. (comprising Articles 782–808) relates to the Summary Trial of Indictable Offences. See *post*.

(3) Part LVI. (comprising Articles 809–831) relates to the trial of Juvenile Offenders for Indictable Offences. See *post*.

ceeded against as if his said election in the first instance had not been made.

770. Continuance of Proceedings Before Another Judge.—Proceedings under this part of the Code commenced before any judge may, where such judge is for any reason unable to act, be continued before any other judge competent to try prisoners under this part in the same judicial district, and such last mentioned judge shall have the same powers with respect to such proceedings, as if such proceedings had been commenced before him, and may cause such portion of the proceedings to be repeated before him as he shall deem necessary.

771. Election After Committal Under Part LV. or LVI.—If, on the trial, under Part LV. or Part LVI. of the Code, of any person charged with any offence triable under the provisions of this part, the magistrate or justices of the peace decide not to try the same summarily, but commit such person for trial, such person may, afterwards, with his own consent, be tried under the provisions of this part of the Code.

772. Trial of Accused.—If the prisoner, upon being so arraigned and consenting as aforesaid, pleads not guilty, the judge shall appoint an early day, or the same day, for his trial, and the county attorney or clerk of the peace shall subpœna the witnesses named in the depositions, or such of them and such other witnesses as he thinks requisite to prove the charge, to attend at the time appointed for such trial, and the judge may proceed to try such prisoner, and, if he be found guilty, sentence shall be passed as hereinbefore mentioned ; (I) but if he be found not guilty the judge shall immediately discharge him from custody, so far as respects the charge in question.

773. Trial of Offences Other Than Those for Which Accused is Committed.—The county attorney or clerk of the peace or other prosecuting officer may, with the

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(1) See Art. 767 at p. 269, *ante*. See pp. 269-270, *ante*, as to costs, also p. 271, *ante*, as to COMPENSATION TO BONA FIDE PURCHASER OF STOLEN PROPERTY, and pp. 271-272, *ante*, as to RESTITUTION OF STOLEN PROPERTY.

consent of the judge, prefer against the prisoner a charge or charges for any offence or offences, for which he may be tried under the provisions of this part, other than the charges for which he has been committed to gaol for trial, although such charge or charges do not appear, or are not mentioned, in the depositions upon which the prisoner was so committed.

It seems, however, that when other charges than those for which the accused has been committed for trial are preferred against him, his consent to a speedy trial of such other charges must be shown. Thus, in a case where some prisoners were charged with having defrauded the prosecutor by means of the three-card monte game, they consented to be tried summarily. When they were brought up for trial, the Crown attorney applied for and obtained leave to substitute a charge of combining to obtain money by false pretences; but the prisoners objected. The trial was then proceeded with, without the consent of the prisoners to be tried summarily for this substituted offence being obtained. And, upon error brought, it was held that the consent of the prisoners to be summarily tried on the substituted charge should distinctly appear, and that, by reason of its absence, the conviction was bad. (1)

774. Powers of Judge.—The judge shall, in any case tried before him, have the same power as to acquitting or convicting, or convicting of any other offence than that charged, as a jury would have in case the prisoner were tried at a sitting of any court mentioned in this part, and may render any verdict which may be rendered by a jury upon a trial at a sitting of any such court.

By Article 711 of the Code, (which, together with Articles 712 and 713, *post*, will, under the terms of the above Article 774, apply to "Speedy trials of Indictable Offences"), it is provided that when the complete commission of the offence charged is not proved, but the evidence establishes an attempt to commit the offence, the accused may be convicted of such attempt. And Article 712 provides that when an *attempt* to commit an offence is charged, but the evidence establishes the commission of the *full* offence, the accused shall not be acquitted, but may be convicted

(1) Goodman v. R. 3 Ont. Rep. 18.

of the attempt, or the court may, in its discretion, direct such person to be indicted for the complete offence; but it also provides that after a conviction for such attempt the accused shall not be liable to be tried again for the offence which he was charged with attempting to commit.

Artidle 713 of the Code provides that if the commission of the offence charged against the accused includes the commission of any other offence the person accused may be convicted of any offence so included which is proved, although the whole offence charged is not proved, or he may be convicted of an attempt to commit any offence so included.

This artiele follows the common law rule (now considerably extended by the abolition of the distinction between felonies and misdemeanors), under which it is not necessary to prove, to the full extent laid, the offence charged in the indictment, provided the facts actually proved constitute an offence punishable by law, and for which the defendant may by law be convicted on that indictment. (1)

Under this rule, if, upon a charge of burglary and stealing goods, there be no burglary but only stealing proved, or, if upon an indictment for robbery there be proof of the stealing of the property but not that it was taken from the person by violence or putting in fear, the prisoner may be convicted of the simple theft. (2) Indeed, upon an indictment for burglary and stealing, the prisoner may be convicted either of burglary,, of entering a dwelling-house in the night with intent to commit an indictable offence therein, of housebreaking, of stealing in a dwelling-house to the amount of $25 (if the property stolen be laid in the indictment to be of that value), or simply of theft, according to the facts proved. (3)

Upon a charge of assaulting and unlawfully wounding and illtreating the prosecutor, and thereby occasioning him actual bodily

(1) R. v. Hollingberry, 4 B. & C. 330; R. v. Hunt., 2 Camp. 583; R. v. Williams, 2 Camp. 246.

(2) 2 Hale, 203.

(3) R. v. Compton, 3 C. & P. 418; R. v. Bullock, 1 Moo. C. C. 423; R. v. Brookes, C. & Mar. 543.

harm, the defendant may be convicted of a common assault. (1)

Upon an indictment for conspiring to prevent *workmen* from continuing work, it is sufficient to prove a conspiracy to prevent *one workman* from working. (2)

Where two intentions are ascribed to one act—as that an assault was committed on a female with intent *to abuse* and *to carnally know* her—proof of either of the intentions ascribed will be sufficient. (3)

Upon a charge of stealing, if any one of the articles enumerated in the charge be proved to have been stolen by the defendant, it will be sufficient. (4)

Upon an indictment for extortion, alleging that the defendant extorted twenty shillings, it was held sufficient to prove that he extorted one shilling. (5)

On a charge of obtaining money by false pretences, proof of part of the pretence alleged was held sufficient where the money was obtained upon that part of the pretence which was proved. (6)

Where several are indicted for burglary and theft, one may be found guilty of the burglary and stealing, and the others of the stealing only. (7)

VIEW.—Article 732 of the Code, provides that on the trial of any person for an offence against the Code, the court may direct that the jury shall have a view of any place, thing or person. But it does not appear to empower the taking of such a view by the court or judge in the case of a trial without a jury. Thus, where upon an indictment for unlawfully displacing a railway switch, a prisoner was tried without a jury by a county court Judge, exercising jurisdiction under the "*Speedy Trials Act*,"

(1) R. v. Olivér, Bell, 287; 30 L. J. (M. C.) 12; R. v. Yeadon, L. & C. 81; 31 L. J. (M. C.) 70.

(2) R. v. Bykerdike, 1 M. & R. 179.

(3) R. v. Evans, 3 Stark, 35; R. v. Dawson, 3 Stark, 62.

(4) 2 Hale, 302. See R. v. Ellins, R. & R. 188.

(5) R. v. Burdett, 1 Ld. Raym. 149. See R. v. Carson, R. & R. 303.

(6) R. v. Hill, R. & R. 190.

(7) R. v. Butterworth, R. & R. 520.

and after hearing the evidence and the addresses of counsel, the judge reserved his decision, and, then, before giving it, having occasion to pass the place, he examined the switch in question, neither the prisoner nor any one on his behalf being present, and the prisoner was found guilty;—it was held that there was no authority for the judge taking a *view* of the place, and that even if he had the right to take the view, the manner of his taking it, without the presence of the prisoner or of any one on his behalf, was unwarranted, and, further, that the question whether the judge had the right to take a view was a question of law arising on the trial and was a proper question to reserve under the R. S. C., c. 174, sec. 259, (1)

Reserving Questions of Law.—Article 743 provides as follows :

1. The court before which any accused person is tried may, either during or after the trial, reserve *any question of law* arising either on the trial or on any of the proceedings *preliminary*, *subsequent*, or *incidental* thereto, or arising out of the direction of the judge, for the opinion of the Court of Appeal in manner hereinafter provided.

2. EITHER THE PROSECUTOR OR THE ACCUSED may, during the trial, either orally or in writing, apply to the court to reserve any such question as aforesaid, and the court, if it refuses so to reserve it, shall nevertheless take a note of such objection.

3. After a question is reserved, the trial shall proceed as in other cases.

4. If the result is a conviction, the court may, in its discretion, respite the execution of the sentence, or postpone sentence till the question reserved has been decided, and shall in its discretion commit the person convicted to prison or admit him to bail, with one or two sufficient sureties, in such sums as the court thinks fit, to surrender at such time as the court directs.

5. If the question is reserved, a case shall be stated for the opinion of the Court of Appeal.

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(1) R. v. Petrie, 20 Ont., Rep. 317.

Appeal when Question not Reserved.—If the court refuses to reserve the question, the PARTY APPLYING may, with the leave, in writing, of the Attorney-General, move the Court of Appeal, after notice to the ACCUSED or PROSECUTOR, as the case may be, for leave to appeal; and, if leave to appeal is granted, a case shall be stated for the opinion of the Court of Appeal as if the question had been reserved. (Code, Art. 745.)

775. Admission to Bail.—If a prisoner elects to be tried by the judge without the intervention of a jury, the judge may, in his discretion, admit him to bail to appear for his trial, and extend the bail, from time to time, in case the court be adjourned or there is any other reason therefor; and such bail may be entered into and perfected before the clerk.

776. Bail in Case of Election of Trial by Jury.—If a prisoner elects to be tried by a jury, the judge may, instead of remanding him to gaol, admit him to bail, to appear for trial at such time and place and before such court as is determined upon, and such bail may be entered into and perfected before the clerk.

777. Adjournment.—The judge may adjourn any trial from time to time until finally terminated.

778. Powers of Amendment.—The judge shall have all powers of amendment which any court mentioned in this part would have if the trial was before such court.

Article 629 of the Code, provides for the amending of defects apparent upon the face of an indictment when attacked by demurrer or motion to quash; and Article 723 of the Code provides for the making of amendments when there are variances between the charge as laid in the indictment and the evidence given on the trial. (1)

779. Recognizance to Prosecute or give Evidence.—Any recognizance taken under section 598 of the Code, for the purpose of binding a prosecutor or a witness, shall, if the

(1) For these Articles 629 and 723, and full comments and authorities thereon, see Crankshaw's Cr. Code, pp. 591-592 and 654-656.

person committed for trial elects to be tried under the provisions of this part, be obligatory on each of the persons bound thereby, as to all things therein mentioned with reference to the trial by the judge under this part, as if such recognizance had been originally entered into for the doing of such things with reference to such trial: Provided, that AT LEAST FORTY-EIGHT HOURS NOTICE IN WRITING SHALL BE GIVEN, either personally or by leaving the same at the place of residence of the persons bound by such recognizance as therein described, to appear before the judge at the place where such trial is to be had.

780. Witnesses to attend throughout trial.—Every witness, whether on behalf of the prisoner or against him, duly summoned or subpœnaed to attend and give evidence before such judge, sitting on any such trial, on the day appointed for the same, shall be bound to attend and remain in attendance throughout the trial; and if he fails so to attend he shall be held guilty of contempt of court, and may be proceeded against therefor accordingly.

781. Compelling attendance of Witnesses.—Upon proof to the satisfaction of the judge of the service of subpœna upon any witness who fails to attend before him as required by such subpœna, and upon such Judge being satisfied that the presence of such witness before him is indispensable to the ends of justice, he may, by his warrant, cause the said witness to be apprehended and forthwith brought before him to give evidence as required by such subpœna, and to answer for his disregard of the same; and such witness may be detained on such warrant before the said Judge, or in the common gaol, with a view to secure his presence as a witness; or, in the discretion of the Judge, such witness may be released on recognizance, with or without sureties, conditioned for his appearance to give evidence as therein mentioned, and to answer for his default in not attending upon the said subpœna, as for a contempt; and the Judge may, in a summary manner, examine into and dispose of the charge of contempt against the said witness, who, if found guilty thereof, may be fined or imprisoned, or both, such fine not to exceed one hundred dollars, and such imprisonment to be in the common gaol, with or without

hard labour, and not to exceed the term of ninety days, and he may also be ordered to pay the costs incident to the execution of such warrant and of his detention in custody.

2. Such warrant may be in the form OO (1) and the conviction for contempt in the form PP in schedule one of the Code, (2) and the same shall be authority to the persons and officers therein required to act to do as therein they are respectively directed.

FORMS UNDER PART LIV OF THE CODE.

MM.—(*Section* 767.)

FORM OF RECORD WHEN THE PRISONER PLEADS NOT GUILTY.

Canada,
Province of ,
County of .

Be it remembered that A. B., being a prisoner in the gaol of the said county, committed for trial on a charge of having on the day of , in the year , stolen, &c. (*one cow, the property of* C. C., *or as the case may be, stating briefly the offence*) and having been brought before *me* (*describe the Judge*) on the day of , in the year , and asked by me if he consented to be tried before me without the intervention of a jury, consented to be so tried; and that upon the day of , in the year , the said A. B., being again brought before me for trial, and declaring himself ready, was arraigned upon the said charge and pleaded not guilty; and after hearing the evidence adduced, as well in support of the said charge as for the prisoner's defence (*or as the case may be*), I find him to be guilty of the offence with which he is charged as aforsaid, and I accordingly sentence him to (*here insert such sentence as the law allows and the Judge thinks right,*) (*or* I find him

(1) For Form OO, see p. 283, *post.*
(2) For Form PP, see p. 284, *post.*

not guilty of the offence with which he is charged, and discharge him accordingly.)

Witness my hand at , in the county of , this day of , in the year .

O. K.,
Judge.

NN.—(*Section* 767.)

FORM OF RECORD WHEN THE PRISONER PLEADS GUILTY.

Canada,
Province of ,
County of .

Be it remembered that A. B., being a prisoner in the gaol of the said county, on a charge of having on the day of , in the year , stolen, &c., (*one cow, the property of C. D., or as the case may be, stating briefly the offence*), and being brought before me (*describe the Judge*) on the day of , in the year , and asked by me if he consented to be tried before me without the intervention of a Jury, consented to be so tried; and that the said A. B., being then arraigned upon the said charge, he pleaded guilty thereof, whereupon I sentenced the said A. B. to (*here insert such sentence as the law allows and the Judge thinks right.*)

Witness my hand this day of , in the year .

O. K.,
Judge.

OO.—(*Section* 781.)

WARRANT TO APPREHEND WITNESS.

Canada,
Province of ,
County of .

To all or any of the constables and other peace officers in the said county of

Whereas, it having been made to appear before me, that E. F., of , in the said county of , was likely to give material evidence on behalf of the prosecution (*or* defence, *as the case may be*) on the trial of a certain charge of (*theft, or as the case may be*), against A. B., and that the said E. F. was duly subpœned (*or* bound under recognizance) to appear on the day of , in the year , at in the said county at o'clock (forenoon *or* afternoon, *as the case may be*), before me, to testify what he knows concerning the said charge against the said A. B.

And whereas, proof has this day been made before me, upon oath of such subpœna having been duly served upon the said E. F., (*or* of the said E. F., having been duly bound under recognizance to appear before me, *as the case may be*); and whereas the said E. F. has neglected to appear at the trial and place appointed, and no just excuse has been offered for such neglect: These are therefore to command you to take the said E. F. and to bring him and have him forthwith before me, to testify what he knows concerning the said charge against the said A. B., and also to answer his contempt for such neglect.

Given under my hand, this day of , in the year

O. K.,
Judge.

PP.—(*Section* 781.)

CONVICTION FOR CONTEMPT.

Canada.
Province of .
County of .

Be it remembered that on the day of in the year , in the county of , E. F. is convicted before me, for that he the said E. F. did not attend before me to give evidence on the trial of a certain charge against one A. B. of (*theft, or as the case may be*), although duly supœnaed (*or* bound by recognizance to appear and give evidence in that behalf, *as the case may be*) but made default therein, and has not shown before me any sufficient excuse for such default, and I adjudge the said E. F., for his said offence, to be imprisoned in the common gaol of the county of , at , for the space of , there to be kept at hard labour (*and in case a fine is also intended to be imposed, then proceed,*) and I also adjudge that the said E. F. do forthwith pay, to and for the use of Her Majesty, a fine of dollars, and in default of payment, that the said fine, with the cost of collection, be levied by distress and sale of the goods and chattels of the said E. F. (*or in case a fine alone is imposed then the clause of imprisonment is to be omitted.*)

Given under my hand at , in the said county of , the day and year first above mentioned.

O. K.,
Judge.

ADDITIONAL FORMS.

ACCUSATION.

In the County Court Judge's Criminal Court for the county of (*or* "In the Court of the Judge of sessions of the peace for the district of ")

Canada. } The day of
Province of } A. D. 189 , at
County of } in the county

(or *district*) of before Esquire. County Judge of the said county (*or Judge of the sessions of the peace for the said district*) exercising criminal jurisdiction under the provisions of Part LIV of the Criminal Code, relating to the Speedy Trials of Indictable Offences, A. B. who is committed for trial to the common gaol of the said county (or *district*), and is now a prisoner in close custody therein, stands charged this day, before the said judge, sitting in open court assembled for the trial of the said A. B., as follows:

FIRST COUNT, for that he the said A. B., on the day of , in the year A. D., 189 , at did (*set out the offence to be charged in the first count.*)

SECOND COUNT, and for that, he, the said A. B., on the day and year last aforesaid at aforesaid did (*set out the offence to be charged in the second count.*)

J. N.
County attorney, county of (or clerk of the peace, district of).

A. B., within (or *above*) named, upon the within (or *above*) charge being read to him by the judge in open court, and being informed by the judge that he has his option either of being forthwith tried without the intervention of a jury upon the said charge, or of remaining untried until the next court of Oyer and Terminer of this county (or *district*), consents to be now tried upon the said charge, by the said judge, without a jury, and the prisoner pleads not guilty to the said charge.

SHERIFF'S NOTICE.

To His Honor the County Judge of (or *the Judge of sessions of the peace for*)

Pursuant to Article 766 of the Criminal Code relating to the Speedy Trials of Indictable offences, I, sheriff of the said county (or *district*) certify that the several persons whose names are mentioned in the first column of the schedule hereunder written were committed for trial to the common gaol of the said county (or *district*), and were received by the gaoler of the said gaol on the days severally mentioned in the second column of the said schedule, opposite the names of the said persons respectively, and were so committed to gaol and severally received under and by virtue of a warrant from charged with the commission of indictable offences triable at a Court of General or Quarter Sessions of the peace, and that the nature of the charge against each of the said persons is set forth in the third column of the said schedule opposite each of the names of the said several persons.

SCHEDULE ABOVE REFERRED TO.

Name of Prisoner.	Time when committed for trial.	Nature of charge as contained in the warrant of commitment for trial.
A. B.....		
C. D.....		
E. F.....		

(Signed) X. Y.,

Sheriff of the county (or *district*) of

CHAPTER XI.

(*Part LV. of the Code.*)

SUMMARY TRIAL OF INDICTABLE OFFENCES.

782. Definitions.—In this part, unless the context otherwise requires,

(*a*) the expression "Magistrate" means and includes—

(i.) in the provinces of ONTARIO, QUEBEC and MANITOBA, any recorder, judge of a County Court, being a justice of the peace, commissioner of police, judge of the Sessions of the Peace, police magistrate, district magistrate, or other functionary or tribunal, invested by the proper legislative authority with power to do alone such acts as are usually required to be done by two or more justices of the peace, and acting within the local limits of his or its jurisdiction ;

(ii.) in the provinces of NOVA SCOTIA and NEW BRUNSWICK, any recorder, judge of a County Court, stipendiary magistrate or police magistrate, acting within the local limits of his jurisdiction, and any commissioner of police and any functionary, tribunal or person invested by the proper legislative authority with power to do alone such acts as are usually required to be done by two or more justices of the peace ;

(iii.) in the provinces of PRINCE EDWARD ISLAND and BRITISH COLUMBIA and in the district of KEEWATIN, any two justices of the peace sitting together, and any functionary or tribunal having the powers of two justices of the peace ;

(iv.) in the NORTH-WEST TERRITORIES, any judge of the Supreme Court of the said territories, any two justices of the peace sitting together, and any functionary or tribunal having the powers of two justices of the peace ;

(*b*) the expression "the common gaol or other place of confinement," in the case of any offender whose age at the time of his conviction does not, in the opinion of the magistrate, exceed sixteen years, includes any reformatory prison provided for the reception

of juvenile offenders in the province in which the conviction referred to takes place, and to which by the law of that province the offender may be sent; and

(*c*) the expression "property" includes everything included under the same expression or under the expression "valuable security," as defined by the Code, and in the case of any "valuable security" the value thereof shall be reckoned in the manner prescribed in the Code.

783. Offences to be Dealt With Under This Part.—Whenever any person is charged before a magistrate,

(*a*) with having committed THEFT, or obtained money or property by FALSE PRETENCES, or unlawfully RECEIVED STOLEN PROPERTY, and the value of the property alleged to have been stolen, obtained or received, does not, in the judgment of the magistrate, exceed TEN DOLLARS; or

(*b*) with having attempted to commit theft; or

(*c*) with having committed an AGGRAVATED ASSAULT by unlawfully and maliciously inflicting upon any other person, either with or without a weapon or instrument, any grievous bodily harm, or by unlawfully and maliciously wounding any other person; or

(*d*) with having committed an ASSAULT UPON ANY FEMALE whatsoever, or upon any MALE CHILD whose age does not, in the opinion of the magistrate, exceed FOURTEEN YEARS, such assault being of a nature which cannot, in the opinion of the magistrate, be sufficiently punished by a summary conviction before him under any other part of this act, and such assault, if upon a female, not amounting, in his opinion, to an assault with intent to commit a rape; or

(*e.*) with having ASSAULTED, obstructed, molested or hindered ANY PEACE OFFICER OR PUBLIC SERVANT in the lawful performance of his duty, or with intent to prevent the performance thereof; or

(*f.*) with KEEPING or being an INMATE OF HABITUAL FREQUENTER of any DISORDERLY HOUSE, HOUSE OF ILL-FAME OR BAWDY-HOUSE; or;

(*g.*) with USING or knowingly allowing any part of ANY PREMISES under his control to be used—

(i.) for the purpose of RECORDING or registering ANY BET or WAGER, or SELLING ANY POOL; or

(ii.) KEEPING, EXHIBITING, or EMPLOYING, or KNOWINGLY ALLOWING to be kept, exhibited or employed, ANY DEVICE or apparatus for the purpose of RECORDING or registering ANY BET or WAGER, or SELLING ANY POOL; or

(*h.*) becoming the custodian or depositary of any money, property, or valuable thing staked, wagered or pledged; or

(*i.*) recording or registering any bet or wager, or selling any pool, upon the result of any political or municipal election, or of any race, or of any contest or trial of skill or endurance of man or beast,—

The Magistrate may, subject to the provisions hereinafter made, hear and determine the charge in a summary way.

784. When Magistrate shall have absolute Jurisdiction.—The jurisdiction of such Magistrate is ABSOLUTE in the case of any person charged with KEEPING or being an INMATE or HABITUAL FREQUENTER of any DISORDERLY HOUSE, HOUSE OF ILL-FAME or BAWDY-HOUSE, and does not depend on the consent of the person charged to be tried by such Magistrate, nor shall such person be asked whether he consents to be so tried; nor do the provisions of this part affect the absolute summary jurisdiction given to any Justice or Justices of the Peace, in any case by any other part of the Code.

2. The jurisdiction of the Magistrate is ABSOLUTE in the case of any person who, being a SEAFARING PERSON and only transiently in Canada and having no permanent domicile therein, is charged, either within the city of Quebec as limited for the purpose of the police ordinance, or within the city of Montreal as so limited, or in any other seaport, city or town in Canada where there is such Magistrate, with the commission therein of ANY OF THE OFFENCES HEREINBEFORE MENTIONED, and also in the case of any other person charged with any such offence on the complaint of any such seafaring person whose testimony is essential to the proof of the offence; and such jurisdiction does not depend on the consent of any such person to be tried by the Magistrate, nor shall such person be asked whether he consents to be so tried.

3. The jurisdiction of a Stipendiary Magistrate in the province of PRINCE EDWARD ISLAND, and of a Magistrate in the district of KEEWATIN, under this part, is absolute, without the consent of the person charged.

785. Summary trial in certain cases, in Ontario.—If any person is CHARGED, in the province of ONTARIO, before a Police Magistrate or before a Stipendiary Magistrate, in any county, district or provisional county in such province, with having committed ANY OFFENCE FOR WHICH HE MAY BE TRIED AT A COURT OF GENERAL SESSIONS OF THE PEACE, or if any person is COMMITTED TO A GAOL in the county, district or provisional county, under the warrant of any Justice of the Peace, for trial on a charge of being guilty of any such offence, such person may, *with his own consent*, be tried before such Magistrate, and may, if found guilty, be sentenced by the Magistrate to the same punishment as he would have been liable to if he had been tried before the Court of General Sessions of the Peace.

786. Proceedings on arraignment of accused.—Whenever the Magistrate, before whom any person is charged as aforesaid, proposes to dispose of the case summarily, under the provisions of this part, such Magistrate, after ascertaining the nature and extent of the charge, but before the formal examination of the witnesses for the prosecution, and before calling on the person charged for any statement which he wishes to make, shall state to such person the substance of the charge against him, and (if the charge is not one that can be tried summarily without the consent of the accused) shall then say to him these words, or words to the like effect: "Do you consent that the charge against you shall be tried by me, or do you desire that it shall be sent for trial by a Jury at the (*naming the court at which it can probably soonest be tried*);" and if the person charged consents to the charge being summarily tried and determined as aforesaid, or if the power of the Magistrate to try it does not depend on the consent of the accused, the Magistrate shall reduce the charge to writing and read the same to such person, and shall then ask him whether he is guilty or not of such charge. If the person charged confesses the charge the Magistrate shall then proceed to pass such sentence

upon him as by law may be passed in respect to such offence, subject to the provisions of this Act; but if the person charged says that he is not guilty, the Magistrate shall then examine the witnesses for the prosecution, and when the examination has been completed, the Magistrate shall inquire of the person charged whether he has any defence to make to such charge, and if he states that he has a defence, the Magistrate shall hear such defence, and shall then proceed to dispose of the case summarily.

787. Punishment for certain offences under this part.—In the case of an offence charged under paragraph (*a*) or (*b*) of section 783, the Magistrate, after hearing the whole case for the prosecution and for the defence, shall, if he finds the charge proved, convict the person charged and commit him to the common gaol or other place of confinement, there to be imprisoned, with or without hard labour, for any term not exceeding SIX MONTHS.

788. Punishment for certain other offences—In any case summarily tried under paragraph (*c*), (*d*), (*e*), (*f*), (*g*), (*h*) or (*i*) of section 783, if the Magistrate finds the charge proved, he may convict the person charged and commit him to the common gaol or other place of confinement, there to be imprisoned, with or without hard labour, for any term not exceeding SIX MONTHS, or may condemn him to pay a fine not exceeding, *with the costs in the case*, one hundred dollars, or to both fine and imprisonment not exceeding the said sum and term; and such fine may be levied by warrant of distress under the hand and seal of the Magistrate, or the person convicted may be condemned, in addition to any other imprisonment on the same conviction, to be committed to the common gaol or other place of confinement for a further term not exceeding SIX MONTHS, unless such fine is sooner paid.

The Magistrate may, in addition to any sentence imposed upon the person convicted, require him forthwith to enter into his own recognizance, or to give security to keep the peace and be of good behaviour for any term not exceeding two years. (Code, Art. 958.)

Instead of at once sentencing a person CONVICTED OF A FIRST OFFENCE the Magistrate may direct him to be released on entering into a recognizance to keep the peace and be of good behaviour

and to appear and receive judgment when called upon, if it appears to the Magistrate that, regard being had to the youth, character and antecedents of the offender, to the trivial nature of the offence and to any extenuating circumstances under which the offence was committed, it is advisable to so release him on probation of good conduct. (Code, Art. 971.)

789. Proceedings for Offences in Respect of Property Worth Over Ten Dollars.—When any person is charged before a magistrate with theft or with having obtained property by false pretences, or with having unlawfully received stolen property, and the value of the property stolen, obtained or received exceeds ten dollars, and the evidence in support of the prosecution is, in the opinion of the magistrate, sufficient to put the person on his trial for the offence charged, such magistrate, if the case appears to him to be one which may properly be disposed of in a summary way, and may be adequately punished by virtue of the powers conferred by this part, shall reduce the charge to writing, and shall read it to the said person, and, unless such person is one who can be tried summarily without his consent, shall then put to him the question mentioned in section 786, and shall explain to him that he is not obliged to plead or answer before such magistrate, and that if he does not plead or answer before him, he will be committed for trial in the usual course.

790. Punishment on Plea of Guilty in Such Case.—If the person charged as mentioned in the next preceding section consents to be tried by the magistrate, the magistrate shall then ask him whether he is guilty or not guilty of the charge, and if such person says that he is guilty, the magistrate shall then cause a plea of guilty to be entered upon the proceedings, and sentence him to the same punishment as he would have been liable to if he had been convicted upon indictment in the ordinary way; and if he says that he is not guilty, the magistrate shall proceed as provided in section 786.

791. Magistrate May Decide not to Proceed Summarily.—If, in any proceeding under this part, it appears to the magistrate that the offence is one which, owing to a

previous conviction of the person charged, or from any other circumstances, ought to be made the subject of prosecution by indictment rather than to be disposed of summarily, such magistrate may, before the accused person has made his defence, decide not to adjudicate summarily upon the case; but a previous conviction shall not prevent the magistrate from trying the offender summarily, if he thinks fit so to do.

792. Election of Trial by Jury to be Stated on Warrant of Committal.—If, when his consent is necessary, the person charged elects to be tried before a jury, the magistrate shall proceed to hold a preliminary inquiry as provided in Parts XLIV. and XLV of the Code, *ante*, and if the person charged is committed for trial, shall state in the warrant of committal the fact of such election having been made.

793. Full Defence Allowed.—In every case of summary proceedings under this part, the person accused shall be allowed to make his full answer and defence, and to have all witnesses examined and cross-examined by counsel or solicitor.

794. Proceedings to be in Open Court.—Every court held by a magistrate for the purpose of this part shall be an open public court.

795. Procuring Attendance of Witnesses.—The magistrate before whom any person is charged under the provisions of this part, may, by summons, require the attendance of any person as a witness upon the hearing of the case, at a time and place to be named in such summons, and such magistrate may bind, by recognizance, all persons whom he considers necessary to be examined, touching the matter of such charge, to attend at the time and place appointed by him and then and there to give evidence upon the hearing of such charge; and if any person so summoned, or required or bound as aforesaid, neglects or refuses to attend in pursuance of such summons or recognizance, and if proof is made of such person having been duly summoned as hereinafter mentioned, or bound by recognizance as aforesaid, the magistrate before whom such person should have attended may issue a warrant to compel his appearance as a witness.

796. Service of Summons.—Every summons issued under the provisions of this part may be served by delivering a copy of the summons to the person summoned, or by delivering a copy of the summons to some inmate of such person's usual place of abode *apparently over sixteen years of age*; and every person so required by any writing under the hand of any magistrate to attend and give evidence as aforesaid, shall be deemed to have been duly summoned.

As to service of summons, see comments at pp. 108 and 193, *ante*.

797. Dismissal of Charge.—Whenever the magistrate finds the offence not proved, he shall dismiss the charge, and make out and deliver to the person charged a certificate under his hand stating the fact of such dismissal.

798. Effect of Conviction.—Every conviction under this part shall have the same effect as a conviction upon indictment for the same offence.

799. Certificate of Dismissal a Bar to Further Proceedings.—Every person, who obtains a certificate of dismissal or is convicted under the provisions of this part, shall be released from all further or other criminal proceedings FOR THE SAME CAUSE.

It has been held in England, under statutory provisions similar to the above Article 799, that, where a case summarily dealt with has been dismissed, by the magistrate or justice, on its merits, the defendant has the right *ex debito justitiæ* to receive the certificate of dismissal. (1)

The certificate of dismissal should only be granted when there has been a full hearing on the merits. If granted on a withdrawal of the charge before hearing, it will be no bar to subsequent proceedings for the same offence. (2)

A summary conviction for assault has been held to be a bar to a subsequent indictment for a felonious stabbing based on the same

(1) Hancock v. Somes 1 E. & E. 795; 28 L. J. M. C. 196. Costar v. Hetherington, 1 E. & E. 802; 28 L. J. M. C. 198.

(2) Reed v. Nutt, 24 Q. B. D. 669.

transaction: (1) and it has been held a bar to an indictment for unlawful wounding and an assault occasioning actual bodily harm, arising out of the same circumstances. (2)

A summary conviction for assault has, however, been held not to be a bar to a subsequent indictment for manslaughter, in a case where the man, who was assaulted, afterwards died in consequence of the assault. (3)

It appears that the production of the certificate of dismissal is of itself sufficient evidence of such dismissal, without proof of the signature of the magistrate or justice; (4) and if the defendant appeared before the magistrate or justice, the recital, in the certificate, of the fact of a complaint having been made and of a summons having been issued, is sufficient evidence of these facts without producing the complaint or summons. (5)

800. Proceedings not to be Void for Defect in Form.—No conviction, sentence or proceeding under the provisions of this part shall be quashed for want of form; and no warrant of commitment upon a conviction shall be held void by reason of any defect therein, if it is therein alleged that the offender has been convicted, and there is a good and valid conviction to sustain the same.

801. Result of Hearing to be Filed in Court of Sessions.—The magistrate adjudicating under the provisions of this part shall transmit the conviction, or a duplicate of a certificate of dismissal, with the written charge, the depositions of witnesses for the prosecution and for the defence, and the statement of the accused, to the next Court of General or Quarter Sessions of the peace or to the court discharging the functions of a Court of General or Quarter Sessions of the peace, for the district,

(1) R. v. Stanton, 5 Cox, 324; R. v. Walker, 2 M. & Rob. 446.

(2) R. v. Elrington, 1 B. & S. 688; 31 L. J. M. C. 14; R. v. Miles, 24 Q. B. D. 423; 59 L. J. M. C. 56.

(3) R. v. Morris, L. R., 1 C. C. R. 90; 36 L. J. M. C. 84.

(4) *See The Canada Evidence Act* 1893, sec. 10. See also Art. 802 of the Code, *infra*.

(5) R. v. Westley 11 Cox, 139; Arch. Cr. Pl. & Ev. 21 Ed. 155.

county or place, there to be kept by the proper officer among the records of the court.

802. Evidence of Conviction or Dismissal.—A copy of such conviction, or of such certificate of dismissal, certified by the proper officer of the court, or proved to be a true copy, shall be sufficient evidence to prove a conviction or dismissal for the offence mentioned therein, in any legal proceedings.

803. Restitution of Property.—The magistrate by whom any person has been convicted under the provisions of this part may order restitution of the property stolen, or taken or obtained by false pretences, in any case in which the court, before whom the person convicted would have been tried, but for the provisions of this part, might by law order restitution.

As to the power of the Magistrate to order RESTITUTION, and as to the further power to order COMPENSATION to be made to a BONA FIDE PURCHASER of STOLEN PROPERTY, see pp. 270-273, *ante*.

804. Remand for Further Investigation.—Whenever any person is charged before any justice or justices of the peace, with any offence mentioned in section 783 of the Code, and in the opinion of such justice or justices the case is proper to be disposed of summarily by a magistrate, as herein provided, the justice or justices before whom such person is so charged may, if he or they see fit, remand such person for further examination before the nearest magistrate in like manner in all respects as a justice or justices are authorized to remand a person accused for trial at any court, under Part XLV, section 586; (1) but no justice or justices of the peace, in any province, shall so remand any person for further examination or trial before any such magistrate in any other province. Any person so remanded for further examination before a magistrate in any city, may be examined and dealt with by any other magistrate in the same city.

805. Non-Appearance of Accused under Recognizance.—If any person suffered to go at large upon entering into such recognizance as the justice or justices are authorized,

(1) See p. 179, *ante*.

under Part XLV., section 587, (1) to take on the remand of a person accused, conditioned for his appearance before a magistrate, does not afterwards appear, pursuant to such recognizance, the magistrate before whom he should have appeared shall certify, under his hand, on the back of the recognizance, to the clerk of the peace of the district, county or place, or other proper officer, as the case may be, the fact of such non-appearance, and such recognizance shall be proceeded upon in like manner as other recognizances; and such certificate shall be *primâ facie* evidence of such non-appearance without proof of the signature of the magistrate.

806. Application of Fines.—Every fine and penalty imposed under the authority of this part shall be paid as follows, that is to say :—

(*a*) In the province of Ontario, to the magistrate who imposed the same, or the clerk of the court or clerk of the peace, as the case may be, to be paid over by him to the county treasurer for county purposes.

(*b.*) In any new district in the province of Quebec, to the sheriff of such district, as treasurer of the building and jury fund for such district, to form part of such fund,—and, if in any other district in the said province, to the prothonotary of such district, to be applied by him, under the direction of the Lieutenant-Governor-in-Council, towards the keeping in repair of the court house in such district, or to be added by him to the moneys and fees collected by him for the erection of a court house and gaol in such district, so long as such fees are collected to defray the cost of such erection ;

(*c*) In the provinces of Nova Scotia and New Brunswick, to the county treasurer for county purposes ; and

(*d.*) In the provinces of Prince Edward Island, Manitoba and British Columbia, to the treasurer of the province.

807. Forms to be Used.—Every conviction or certificate may be in the form QQ, RR, or SS, in schedule one of the

(1) See p. 201, *ante*.

Code, applicable to the case, or to the like effect, (1) and whenever the nature of the case requires it, such forms may be altered by omitting the words stating the consent of the person to be tried before the magistrate, and by adding the requisite words, stating the fine imposed, if any, and the imprisonment, if any, to which the person convicted is to be subjected if the fine is not sooner paid.

808. Certain Provisions not Applicable to this Part.—The provisions of the Code relating to preliminary inquiries before justices—except as mentioned in sections 804 and 805—and of Part LVIII., (2) shall not apply to any proceedings under this part. Nothing in this part shall affect the provisions of Part LVI.; (3) and this part shall not extend to persons punishable under that part so far as regards offences for which such persons may be punished thereunder.

FORMS UNDER PART LV. OF THE CODE.

QQ.—(*Section* 807.)

CONVICTION.

Canada,
Province of
County of

Be it remembered that on the day of in the year , at , A. B., being charged before me, the undersigned, , of the said (*city*), and consenting to my trying the charge summarily, is convicted before me, for that he, the said A. B. (*&c., stating the offence, and the time and place when and where committed*), and I adjudge the said A. B., for his said offence, to be imprisoned in the (and there kept to hard labour) for the term of

(1) For Forms RR and SS, see p. 299, *post*.

(2) Relating to Summary Convictions, see *post*.

(3) Relating to the Trial of Juvenile Offenders for Indictable Offences, see *post*.

Given under my hand and seal, the day and year first above mentioned, at aforesaid.

J. S., [SEAL.]

J. P. (*Name of county.*)

RR.—(*Section* 807.)

CONVICTION UPON A PLEA OF GUILTY.

Canada.
Province of
County of

Be it remembered that on the day of in the year , at , A. B., being charged before me the undersigned, , of the said (*city*) and consenting to my trying the charge summarily, for that he the said A. B. (*&c., stating the offence, and the time and place when and where committed*), and pleading guilty to such charge, he is thereupon convicted before me of the said offence; and I adjudge him the said A. B., for his said offence, to be imprisoned in the (and there kept to hard labour) for the term of

Given under my hand and seal, the day and year first above mentioned, at aforesaid.

J. S., [SEAL.]

J. P. (*Name of county.*)

SS.—(*Section* 807.)

CERTIFICATE OF DISMISSAL.

Canada
Province of
County of

I, the undersigned, , of the city (*or as the case may be*) of , certify that on the day of , in the year , at

aforesaid, A. B., being charged before me (and consenting to my trying the charge summarily), for that he, the said A. B. (*&c., stating the offence charged and the time and place when and where alleged to have been committed*). I did, after having summarily tried the said charge, dismiss the same.

Given under my hand and seal, this day of , in the year . at aforesaid.

J. S., [SEAL.]

J. P. (*Name of county.*)

CHAPTER XII.

(*Part LVI. of the Code.*)

TRIAL OF JUVENILE OFFENDERS FOR INDICTABLE OFFENCES.

809. Definitions.—In this part, unless the context otherwise requires,—

(*a*) The expression "two or more justices," or "the justices" includes,—

(i.) in the provinces of Ontario and Manitoba any judge of the county court being a justice of the peace, police magistrate or stipendiary magistrate, or any two justices of the peace, acting within their respective jurisdictions ;

(ii.) in the province of Quebec any two or more justices of the peace, the sheriff of any district, except Montreal and Quebec, the deputy sheriff of Gaspé, and any recorder, judge of the sessions of the peace, police magistrate, district magistrate or stipendiary magistrate acting within the limits of their respective jurisdictions ;

(iii.) in the provinces of Nova Scotia, New Brunswick, Prince Edward Island and British Columbia, and in the district of Keewatin, any functionary or tribunal invested by the proper legislative authority with power to do acts usually required to be done by two or more justices of the peace ;

(*b.*) The expression "the common gaol or other place of confinement" includes any reformatory prison provided for the reception of juvenile offenders in the province in which the conviction referred to takes place, and to which, by the law of that province, the offender may be sent.

810. Punishment for Stealing. — Every person charged with having committed, or having attempted to commit any offence which is THEFT, or punishable as theft, and whose age, at the period of the commission or attempted commission of such offence, does not, in the opinion of the justice before whom he is brought or appears, exceed the age of SIXTEEN YEARS, shall, upon conviction thereof in open court upon his own confession or upon proof, before any two or more justices, be committed to the common gaol or other place of confinement within the jurisdiction of such justices, there to be imprisoned, with or without hard labour, for any term NOT EXCEEDING THREE MONTHS, or, in the discretion of such justices, shall forfeit and pay such sum, NOT EXCEEDING TWENTY DOLLARS, as such justices adjudge.

811. Procuring Appearance of Accused.—Whenever any person whose age is alleged not to exceed SIXTEEN YEARS, is charged with any offence mentioned in the next preceding section, on the oath of a credible witness, before any justice of the peace, such justice may issue his summons or warrant, to summon or to apprehend the person so charged, to appear before any two justices of the peace at a time and place to be named in such summons or warrant.

Section 2 of 57 and 58 Vic., c. 58, provides as follows :—

Young persons apparently under the age of sixteen who are,—

(*a*) arrested upon any warrant, *or*

(*b*) committed to custody at any stage of a preliminary enquiry into a charge for an indictable offence, *or*

(*c*) committed to custody at any stage of a trial, either for an indictable offence or for an offence punishable on summary conviction, *or*

(*d*) committed to custody after such trial, but before imprisonment under sentence,—

SHALL be kept in custody separate from older persons charged with criminal offences and separate from *all persons undergoing sentences of imprisonment*, and SHALL NOT be confined in the lock-ups or police stations with older persons charged with criminal offences, nor with ordinary criminals.

Article 550 of the Code, as amended by sec. 1 of the above Act, makes it IMPERATIVE that the trials of persons, apparently under sixteen SHALL take place without publicity, and separately and apart from the trials of other accused persons. (1)

812. Remand of Accused.—Any justice of the peace, if he thinks fit, may remand for further examination or for trial, or suffer to go at large, upon his finding sufficient sureties, any such person charged before him with any such offence as aforesaid.

2. Every such surety shall be bound by recognizance conditioned for the appearance of such person before the same or some other justice or justices of the peace for further examination, or for trial before two or more justices of the peace as aforesaid, or for trial by indictment at the proper Court of Criminal Jurisdiction, as the case may be.

3. Every such recognizance may be enlarged, from time to time, by any such justice or justices to such further time as he or they appoint; and every such recognizance not so enlarged shall be discharged without fee or reward, when the person has appeared according to the condition thereof.

813. Accused to Elect How He Shall be Tried.—The justices before whom any person is charged and proceeded against under the provisions of this part, before such person is asked whether he has any cause to show why he should not be convicted, shall say to the person so charged, these words, or words to the like effect:

"We shall have to hear what you wish to say in answer to the charge against you; but if you wish to be tried by a jury, you must object now to our deciding upon it at once."

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(1) As to disposal of young children charged with offences in Ontario, see secs. 3, 4, 5, of 57 & 58 Vic., c. 58, in the Appendix, *post*.

2. And if such person, or a parent or guardian of such person, then objects, no further proceedings shall be had under the provisions of this part; but the justices may deal with the case according to the provisions set out in Parts XLIV. and XLV., (1) as if the accused were before them thereunder.

814. When Accused shall not be Tried Summarily.—If the justices are of opinion, before the person charged has made his defence, that the charge is, from any circumstances, a fit subject for prosecution by indictment, or if the person charged, upon being called upon to answer the charge, objects to the case being summarily disposed of under the provisions of this part, the justices shall not deal with it summarily, but may proceed to hold a preliminary inquiry as provided in Parts XLIV. and XLV.

2. In case the accused has elected to be tried by a jury, the justices shall state in the warrant of commitment the fact of such election having been made.

815. Summons to Witness.—Any justice of the peace may, by summons, require the attendance of any person as a witness upon the hearing of any case before two justices, under the authority of this part, at a time and place to be named in such summons.

816. Binding over Witness.—Any such justice may require and bind by recognizance every person whom he considers necessary to be examined, touching the matter of such charge, to attend, at the time and place appointed by him, and then and there to give evidence upon the hearing of such charge.

817. Warrant against Witness.—If any person, so summoned or required or bound, as aforesaid, neglects or refuses to attend in pursuance of such summons or recognizance, and if proof is given of such person having been duly summoned, as hereinafter mentioned, or bound by recognizance, as aforesaid, either of the justices before whom any such person should have attended, may issue a warrant to compel his appearance as a witness.

(1) Relating to the preliminary investigation of indictable offences.

818. Service of Summons.—Every summons issued under the authority of this part may be served by delivering a copy thereof to the person, or to some inmate, apparently over SIXTEEN YEARS OF AGE, at such person's usual place of abode; and every person so required by any writing under the hand or hands of any justice or justices to attend and give evidence as aforesaid, shall be deemed to have been duly summoned.

819. Discharge of Accused.—If the justices, upon the hearing of any such case, deem the offence not proved, or that it is not expedient to inflict any punishment, they shall dismiss the person charged,—in the latter case on his finding sureties for his future good behaviour, and, in the former case, without sureties,—and then make out and deliver to the person charged a certificate in the FORM TT in SCHEDULE ONE to this Act, (1) or to the like effect, under the hands of such justices, stating the fact of such dismissal.

820. Form of Conviction.—The justices, before whom any person is summarily convicted of any offence hereinbefore mentioned, may cause the conviction to be drawn up in the FORM UU, in SCHEDULE ONE of the Code, (2) or in any other form to the same effect, and the conviction shall be good and effectual to all intents and purposes.

2. No such conviction shall be quashed for want of form, or be removed by *certiorari* or otherwise into any court of record; and no warrant of commitment shall be held void by reason of any defect therein, if it is therein alleged that the person has been convicted, and there is a good and valid conviction to sustain the same.

821. Further Proceeding Barred.—Every person who obtains such certificate of dismissal, or is so convicted, shall be released from all further or other criminal proceedings for the same cause.

See comments and and authorities under Article 799, at pp. 294–295, *ante*, as to the CERTIFICATE of DISMISSAL, and its effect as a bar to further proceedings.

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(1) For Form TT, see p. 308, *post*.

(2) For Form UU, see p. 309, *post*.

822. Conviction and Recognizances to be Filed.—The justices before whom any person is convicted under the provisions of this part shall forthwith transmit the conviction and recognizances to the clerk of the peace or other proper officer, for the district, city, county or union of counties wherein the offence was committed, there to be kept by the proper officer among the records of the Court of General or Quarter Sessions of the peace, or of any other court discharging the functions of a Court of General or Quarter Sessions of the peace.

823. Quarterly Returns.—Every clerk of the peace, or other proper officer, shall transmit to the Minister of Agriculture a quarterly return of the names, offences and punishments mentioned in the convictions, with such other particulars as are, from time to time, required.

824. Restitution of Property.—No conviction under the authority of this part shall be attended with any forfeiture, except such penalty as is imposed by the sentence; but whenever any person is adjudged guilty under the provisions of this part, the presiding justice may order restitution of property in respect of which the offence was committed, to the owner thereof or his representatives.

2. If such property is not then forthcoming, the justices, whether they award punishment or not, may inquire into and ascertain the value thereof in money; and, if they think proper, order payment of such sum of money to the true owner, by the person convicted, either at one time or by instalments, at such periods as the justices deem reasonable.

3. The person ordered to pay such sum may be sued for the same as a debt in any court in which debts of the like amount are, by law, recoverable, with costs of suit, according to the practice of such court.

825. Proceeding on Non-payment of Penalty Imposed.—Whenever the justices adjudge any offender to forfeit and pay a pecuniary penalty under the authority of this part, and such penalty is not forthwith paid, they may, if they deem it expedient, appoint some future day for the payment thereof, and

order the offender to be detained in safe custody until the day so appointed, unless such offender gives security to the satisfaction of the justices, for his appearance on such day; and the justices may take such security by way of recognizance or otherwise in their discretion.

2. If at any time so appointed such penalty has not been paid, the same or any other justices of the peace may, by warrant, under their hands and seals, commit the offender to the common gaol or other place of confinement within their jurisdiction, there to remain for any time not exceeding three months, reckoned from the day of such adjudication.

826. Costs.—The justices before whom any person is prosecuted or tried for any offence cognizable under this part may, in their discretion, at the request of the prosecutor or of any other person who appears on recognizance or summons to prosecute or give evidence against such person, order payment to the prosecutor and witnesses for the prosecution, of such sums as to them seem reasonable and sufficient, to reimburse such prosecutor and witnesses for the expenses they have severally incurred in attending before them, and in otherwise carrying on such prosecution, and also to compensate them for their trouble and loss of time therein, —and may order payment to the constables and other peace officers for the apprehension and detention of any person so charged.

2. The justices may, although no conviction takes place, order all or any of the payments aforesaid to be made, when they are of opinion that the persons, or any of them, have acted in good faith.

827. Application of Fines.—Every fine imposed under the authority of this part shall be paid and applied as follows, that is to say :—

(*a.*) In the province of Ontario, to the justices who impose the same or the clerk of the county court, or the clerk of the peace, or other proper officer, as the case may be, to be by him or them paid over to the county treasurer for county purposes ;

(*b.*) In any new district in the province of Quebec, to the sheriff of such district as treasurer of the building and jury fund for such district to form part of such fund, and in any other district in the

province of Quebec to the prothonotary of such district, to be applied by him, under the direction of the Lieutenant-Governor-in-Council, towards the keeping in repair of the court house in such district or to be added by him to the money or fees collected by him for the erection of a court house or gaol in such district, so long as such fees are collected to defray the cost of such erection ;

(*c.*) In the provinces of Nova Scotia and New Brunswick, to the county treasurer, for county purposes ; and

(*d.*) In the provinces of Prince Edward Island, Manitoba and British Columbia to the treasurer of the province.

828. Costs to be Certified by Justices.—The amount of expenses of attending before the justices and the compensation for trouble and loss of time therein, and allowances to the constable and other peace officers for the apprehension and detention of the offender, and the allowances to be paid to the prosecutor, witnesses and constables for attending at the trial or examination of the offender, shall be ascertained by and certified under the hands of such justices ; but the amount of the costs, charges and expenses attending any such prosecution, to be allowed and paid as aforesaid, shall not in any one case exceed the sum of eight dollars.

2. Every such order of payment to any prosecutor or other person, after the amount thereof has been certified by the proper justices of the peace as aforesaid, shall be forthwith made out and delivered by the said justices or one of them, or by the clerk of the peace or other proper officer, as the case may be, to such prosecutor or other person, upon such clerk or officer being paid his lawful fee for the same, and shall be made upon the officer to whom fines imposed under the authority of this part are required to be paid over in the district, city, county or union of counties in which the offence was committed, or was supposed to have been committed, who, upon sight of every such order, shall forthwith pay to the person named therein, or to any other person duly authorized to receive the same on his behalf, out of any moneys received by him under this part, the money in such order mentioned, and he shall be allowed the same in his accounts of such moneys.

829. Application of this Part.—The provisions of this part shall not apply to any offence, committed in the provinces of Prince Edward Island or British Columbia, or the district of Keewatin, punishable by imprisonment for two years and upwards; and, in such provinces and district, it shall not be necessary to transmit any recognizance to the clerk of the peace or other proper officer.

830. No Imprisonment in Reformatory in Ontario, under this Part.—The provisions of this part shall not authorize two or more justices of the peace to sentence offenders to imprisonment in a reformatory in the province of Ontario.

831. Other Proceedings Against Juvenile Offenders.—Nothing in this part shall prevent the summary conviction of any person, who may be tried thereunder before one or more justices of the peace, for any offence for which he is liable to be so convicted under any other part of the Code or under any other act.

FORMS UNDER PART LVI., OF THE CODE.

TT.—(*Section* 819.)

CERTIFICATE OF DISMISSAL.

Canada, Province of , County of , } We , justices of the peace for the of , (*or if a recorder; &c.*,

I, a , *of the* of , *as the case may be*), do hereby certify that on the day of , in the year at , in the said of , A. B., was brought before us, the said justices (*or* me, the said) charged with the following offence, that is to say (*here state briefly the particulars of the charge*), and that we, the said justices, (*or* I, the said) thereupon dismissed the said charge.

Given under our hands and seals, (*or* my hand and seal) this day of , in the year , at aforesaid,

J. P. [SEAL.]
J. R. [SEAL.]
or S. J. [SEAL.]

UU.—(*Section* 820.)

CONVICTION.

Canada,
Province of ,
County of ,

Be it remembered that on the day of , in the year , at , in the county of , A. B. is convicted before us, J. P. and J. R., justices of the peace for the said county (*or* me, S. J., *recorder*, of the , of . *or as the case may be*) for that he, the said A. B., did (*specify the offence and the time and place when and where the same was committed, as the case may be, but without setting forth the evidence*), and we the said J. P. and J. R. (*or* I, the said S. J.), adjudge the said A. B., for his said offence, to be imprisoned in the (*or* to be imprisoned in the , and there kept at hard labour), for the space of , (*or* we) (*or* I) adjudge the said A. B., for his said offence, to forfeit and pay (*here state the penalty actually imposed*), and, in default of immediate payment of the said sum, to be imprisoned in the (*or* to be imprisoned in the and kept at hard labour) for the term of , unless the said sum is sooner paid.

Given under our hands and seals (*or* my hand and seal), the day and year first above mentioned.

J. P. [SEAL.]
J. R. [SEAL.]
or S. J [SEAL.]

CHAPTER XIII.

(*Part LVIII., of the Code.*)

SUMMARY CONVICTIONS.

839. Interpretation.—In this part, unless the context otherwise requires:

(*a.*) the expression "Justice" means a justice of the peace and includes two or more justices if two or more justices act or have jurisdiction, and also a police magistrate, a stipendiary magistrate and any person having the power or authority of two or more justices of the peace;

(*b.*) the expression "Clerk of the Peace" includes the proper officer of the court having jurisdiction in appeal under this part, as provided by section 879;

(*c*) the expression "territorial division" means district, county, union of counties, township, city, town, parish or other judicial division or place;

(*d.*) the expression "district" or "county" includes any territorial or judicial division or place in and for which there is such judge, justice, justice's court, officer or prison as is mentioned in the context;

(*e.*) the expression "common gaol" or "prison" means any place other than a penitentiary in which persons charged with offences are usually kept and detained in custody.

840. Application.—Subject to any special provision otherwise enacted with respect to such offence, act or matter, this part shall apply to:

(*a.*) EVERY CASE in which any person commits, or is suspected of having committed, any offence or act OVER WHICH THE PARLIAMENT OF CANADA HAS LEGISLATIVE AUTHORITY, and for which such person is liable, on summary conviction, to imprisonment, fine, penalty or other punishment;

(*b.*) EVERY CASE in which a complaint is made to any justice in relation to any matter, OVER WHICH THE PARLIAMENT OF CANADA HAS LEGISLATIVE AUTHORITY, and with respect to which such justice has authority by law to make any order for the payment of money or otherwise.

841. Time within which Proceedings shall be Commenced.—In the case of any offence punishable on summary conviction, if no time is specially limited for making any complaint, or laying any information, in the Act or law relating to the particular case, the complaint shall be made, or the information shall be laid within SIX MONTHS from the time when the matter of complaint or information arose, except in the North-west Territories, where the time within which such complaint may be made, or such information may be laid, shall be extended to TWELVE MONTHS from the time when the matter of the complaint or information arose.

It will be seen by this Article that in summary matters, not otherwise specially limited, the prosecution must be commenced *by the making of the complaint or* the laying of the information within six months, (in all places except the N. W. Territories where the time limited is twelve months) from the time when the matter of complaint or information arose. But the laying of the complaint or the making of the information should be followed up by useful proceedings in the shape of a warrant or summons and the arrest of or otherwise bringing the defendant before the magistrate or justice. See authorities and comments, upon this subject, at pp. 68–72, *ante*.

842. Jurisdiction.—Every complaint and information shall be heard, tried, determined and adjudged by one justice or two or more justices as directed by the Act or law, upon which the complaint or information is framed or by any other Act or law in that behalf.

2. If there is no such direction in any Act or law, then the complaint or information may be heard, tried, determined and adjudged by any one justice for the territorial division where the matter of the complaint or information arose: Provided that every one who aids, abets, counsels or procures the commission of any offence

punishable on summary conviction, may be proceeded against and convicted either in the territorial division or place where the principal offender may be convicted, or in that in which the offence of aiding, abetting, counselling or procuring was committed.

3. Any one justice may receive the information or complaint, and grant a summons or warrant thereon, and issue his summons or warrant to compel the attendance of any witnesses for either party, and do all other acts and matters necessary preliminary to the hearing, even if by the statute in that behalf it is provided that the information or complaint shall be heard and determined by two or more justices.

4. After a case has been heard and determined ONE justice may issue all warrants of distress or commitment thereon. (1)

5. It shall not be necessary for the justice who acts BEFORE or AFTER the hearing to be the justice or one of the justices by whom the case is to be or was heard and determined.

6. If it is required by any Act or law that an information or complaint shall be heard and determined by two or more justices, or that a conviction or order shall be made by two or more justices, such justices SHALL BE PRESENT AND ACTING TOGETHER DURING THE WHOLE OF THE HEARING AND DETERMINATION of the case.

8. No justice shall hear and determine any case of assault or battery, in which any question arises as to the title to any lands, tenements, hereditaments, or any interest therein or accruing therefrom, or as to any bankruptcy or insolvency, or any execution under the process of any court of justice.

As to the ouster of the summary jurisdiction of justices when property or title is in question or there is a *bona fide* claim of legal right to do the act complained of, see comments and authorities at pp. 32–36, *ante*.

843. Proceedings before Justices.—The provisions of Parts XLIV and XLV, of the Code, relating to compelling the appearance of the accused before the justice receiving an information under section 558, and the provisions respecting the attend-

(1) See also Art. 885 *post*, empowering any other justice than the justice who convicts to issue a warrant of distress or commitment.

ance of witnesses on a preliminary inquiry and the taking of evidence thereon, shall, so far as the same are applicable, except as varied by sections immediately following, apply to any hearing under the provisions of this part: Provided that whenever a warrant is issued in the first instance against a person charged with an offence punishable under the provisions of this part, the justice issuing it shall furnish a copy or copies thereof, and cause a copy to be served on the person arrested at the time of such arrest.

2. Nothing herein contained shall oblige any justice to issue any summons to procure the attendance of a person charged with an offence by information laid before such justice whenever the application for any order may, by law, be made *ex parte*.

The above provision as to service of a copy of the warrant is merely directory: and it has been held that, where the defendant appears and does not claim to be prejudiced nor ask for further time, the omission to serve upon him a copy of the warrant at the time of his arrest does not go to the magistrate's jurisdiction, and is no ground for quashing a conviction. (1)

The wording of these two Articles indicates that they are to be read in conjunction with and as if the provisions of Parts XLIV and XLV relating to compelling the appearance of persons charged with INDICTABLE offences were here repeated in relation to NON-INDICTABLE offences; and, therefore, it seems that a justice may compel the appearance of an accused person for the purpose of being tried summarily in any of the cases mentioned in Article 554, *ante*, namely:

(*a*.) If such person is accused of having committed *in any place whatever* an offence triable in the province in which such justice resides, and is, or is suspected to be, within the limits over which such justice has jurisdiction, or resides or is suspected to reside within such limits;

(*b*.) If such person, wherever he may be, is accused of having committed an offence within such limits;

(*c*.) If such person is alleged to have anywhere unlawfully received property which was unlawfully obtained within such limits;

(1) *Ex parte* Lutz, 27 S. C. N. S. 491.

(*d.*) If such person has in his possession, within such limits, any stolen property.

See Article 553, *ante*, as to offences committed on or near the boundary of two or more magisterial jurisdictions, or committed upon any vehicle or vessel in the course of a journey or of an inland river or lake voyage, through several magisterial jurisdictions. And, as to offences committed on the high seas or in any place within the jurisdiction of the Admiralty, see Article 560, *ante*, and comments and authorities, on the same subject, at pp. 72-77, *ante*.

844. Backing Warrants.—The provisions of section 565 of the Code, relating to the endorsement of warrants shall apply to the case of any warrant issued under the provisions of this part against the accused, whether BEFORE or AFTER conviction, and whether for the APPREHENSION or IMPRISONMENT of any such person.

This section, when read with Article 565 (p. 115, *ante*), empowers the backing not only of a warrant of arrest, but also of a warrant of commitment issued upon a conviction made in one county or district, for the purpose of arresting the convicted person in any other part of Canada.

845. Informations and Complaints.—It shall NOT be necessary that any complaint upon which a justice may make an ORDER for the payment of money or otherwise shall be IN WRITING, unless it is so required by some particular Act or law upon which such complaint is founded.

2. Every COMPLAINT upon which a justice is authorized by law to make an order, and every INFORMATION for any offence or act punishable on summary conviction, may, unless it is herein or by some particular Act or law otherwise provided, be made or had WITHOUT ANY OATH OR AFFIRMATION as to the truth thereof.

3. Every complaint shall be for ONE MATTER OF COMPLAINT only, and not for two or more matters of complaint, and every information shall be for ONE OFFENCE only, and not for two or more offences; and every complaint or information may be laid or made by the complainant or informant in person, or by his counsel or attorney or other person authorized in that behalf.

The distinction generally made between an information and a complaint is as follows :

When the proceeding is one taken against a party charged with the commission of, or who is suspected to have committed a criminal act or offence for which he is liable, on summary conviction, to imprisonment, fine, penalty or other punishment, an INFORMATION is laid ; and when the proceeding is one against a person liable by law to have an order made upon him to pay a sum of money or to do some act which he has illegally failed, neglected or refused to do, a COMPLAINT is made.

Although the above Article 845 does not *expressly* require an INFORMATION to be taken in writing, it evidently implies that it should be so taken, by specially mentioning that a COMPLAINT need *not* be in writing, unless so required by some particular Act or law upon which the complaint is founded.

The INFORMATION should contain the informant's name, occupation and address, the date and place of laying it, with the name and style of the justice before whom it is laid, and the name, occupation and address (if known) of the person charged, or, if his name, occupation and address be unknown, then some other description of him.

When the Act or law under which the proceedings are taken extends only to persons of a particular class, office or situation in life, the party charged should be shown to come within the description of such persons. (1) And where any thing is declared to be an offence *sub modo* only, the facts should be averred with the necessary modification. For instance, in proceeding against a person for selling intoxicating liquor without a license, it would not be sufficient to simply allege that he sold the liquor, but it would be necessary to aver that he sold it, without having a license to sell intoxicating liquor.

The above Article 845 requires that every information shall be for one offence only, and not for two or more offences ; but Article 907, *post*, provides that no information, *etc.*, shall be held to charge two offences or be held to be uncertain, on account of its stating the offence to have been committed in different modes, or in respect

(1) Sandman v. Breach, 7 B. & C. 100 ; R. v. Caton, 16 Ont. R. 11.

of one or other of several articles either conjunctively or disjunctively.

If distinct and separate acts are committed on different days, the offences are distinct and subject to separate penalties. (1) But ambiguity arises upon a repetition of similar acts upon the *same* day. With regard to cases of this kind, no general rule can be laid down; but the law in each case must be determined by the nature of the offence and the manner in which the particular statute applicable to it is worded. Killing several hares on the same day has been held to be a single offence; and so, likewise, is exercising trade on a Sunday a single offence, although several sales have taken place. (2)

See further comments at pp. 335-336, *post*.

If a justice, upon an information or a complaint being laid or made before him, declines or refuses to act, a *mandamus* will be granted, and the court will set the jurisdiction of the justice in motion by directing him to hear and determine the matter; (3) and although a statute, which provides that a justice may issue a summons or warrant, *if he thinks fit*, gives him a discretion in the issuing of a summons or warrant, he is bound to exercise this discretion, and if, on a consideration of something extraneous, he refuses the summons or warrant, the court will order him to issue it. (4)

846. Certain Objections not to Vitiate Proceedings.—No information, complaint, warrant, conviction or other proceeding under this part shall be deemed objectionable or insufficient on any of the following grounds, that is to say:

(*a.*) that it does not contain the name of the person injured, or intended or attempted to be injured; or

(*b.*) that it does not state who is the owner of any property therein mentioned; or

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(1) R. v. Mathews, 10 Mod. 27.

(2) Marriott v. Shaw, Cowp. 278; R. v. Lovett, 7 T. R. 152; Crepps v. Durden, Cowp. 640; 1 Smith's L. C. 378; Wray v. Toke, 12 Q. B., 499.

(3) R. v. Kent, 14 East. 397; R. v. Surrey, 2 Show. 74 *n.*

(4) R. v. Adamson L. R. 1 Q. B. D. 201. See comments and authorities at pp. 54-57, *ante*, as to compelling justices to exercise their functions.

(*c.*) that it does not specify the means by which the offence was committed; or

(*d.*) that it does not name or describe with precision any person or thing:

Provided that the justice may, if satisfied that it is necessary for a fair trial, order that a particular, further describing such means, person, place or thing, be furnished by the prosecutor.

An application for particulars is addressed to the judicial discretion of the presiding judge or magistrate, who will exercise such discretion upon the facts as they are made to appear before him, according to established rules and judicial usage. (1)

Upon an application for particulars, it should be shown that there is reasonable necessity for more specific information than is contained in the charge as laid; and, therefore, where in a case of embezzlement the defendant had ample time to go over his books, which were to prove his embezzlement, his application for a bill of particulars was denied. (2)

The limit of the right of a defendant to a bill of particulars has been laid down, in an English *Nisi Prius* case, to be that, on the one hand, the particulars shall give him the same information which a special count would give, and on the other hand that the specific acts with time and place need not be stated. (3)

In a later case before the English Court of Queen's Bench, it was held that, on a special count for conspiracy alleging overt acts, the court would not order particulars to be furnished, in the absence of an affidavit by the defendant denying knowledge of the acts charged and of sufficient information to enable him to meet them. "The general principle" said Lord Coleridge," applies only to this extent,—to give such information as is sufficient to enable the defendant fairly to defend himself when in court; but, on the other hand, not to fetter the prosecutor in the conduct of his case. (4)

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(1) *In re* Taylor, L. R. 4 Ch. 160; Doherty v. Alman, L. R. 3 App. 728.
(2) State v. Miller, 3 N. J. L. J. 381.
(3) R. v. Hamilton, 7 C. & P. 448.
(4) R. v. Stapylton, 8 Cox C. C. 69.

847. Variance.—No objection shall be allowed to any information, complaint, summons or warrant for any alleged defect therein, in substance or in form, or for any variance between such information, complaint, summons or warrant and the evidence adduced on the part of the informant or complainant at the hearing of such information or complaint.

2. Any variance between the information for any offence or act punishable on summary conviction and the evidence adduced in support thereof as to the time at which such offence or act is alleged to have been committed, shall not be deemed material if it is proved that such information was, in fact, laid within the time limited by law for laying the same.

3. Any variance between the information and the evidence adduced in support thereof, as to the place in which the offence or act is alleged to have been committed, shall not be deemed material if the offence or act is proved to have been committed within the jurisdiction of the justice by whom the information is heard and determined.

4. If any such variance, or any other variance between the information, complaint, summons or warrant, and the evidence adduced in support thereof, appears to the justice present and acting at the hearing to be such that the defendant has been thereby deceived or misled, the justice may, upon such terms as he thinks fit, adjourn the hearing of the case to some future day.

It will be seen by the terms of Article 882, *post*, that every objection to any information for any alleged defect therein, in substance or in form, must be taken before the magistrate at the commencement of the trial, or it will be waived. And upon any appeal from any summary conviction or order, the case is, according to Article 883, *post*, to be heard and determined upon the merits, notwithstanding any defect in substance or in form in the conviction or order appealed from.

The variance between the information laid and the evidence adduced, referred to in the above article, 847, as being immaterial, is merely a difference between the mode of stating and the mode of proving one and the same thing in substance; and, therefore, where the evidence adduced establishes something entirely different from that which is charged, the objection to the variance may

be taken and allowed. As, if a defendant were summoned for an assault, and the evidence, instead of establishing any assault, showed that the defendant had committed some slight damage to property, for which, if charged therewith, he might have been summarily tried, the variance would be a good ground of objection, and ought to be sustained.

Where an information differs from the evidence by stating the complainants to be "T. B. and his partners," instead of an incorporated company by its corporate name it is such a variance as is cured by the above article. (1)

848. Summons or Warrant to Witnesses.—A summons may be issued to procure the attendance, on the hearing of any charge under the provisions of this part, of a witness who resides out of the jurisdiction of the justices before whom such charge is to be heard, and such summons and a warrant issued to procure the attendance of a witness, whether in consequence of refusal by such witness to appear in obedience to a summons or otherwise, may be respectively served and executed by the constable or other peace officer to whom the same is delivered, or by any other person, as well beyond as within the territorial division of the justice who issued the same.

849. Hearing to be in Open Court.—The room or place in which the justice sits to hear and try any complaint or information shall be deemed an open and public court, to which the public generally may have access so far as the same can conveniently contain them.

850. Counsel for Parties.—The person against whom the complaint is made or information laid shall be admitted to make his full answer and defence thereto, and to have the witnesses examined and cross-examined by counsel or attorney on his behalf.

2. Every complainant or informant in any such case shall be at liberty to conduct the complaint or information, and to have the witnesses examined and cross-examined by counsel or attorney on his behalf.

(1) See Whittle v. Frankland, 31 L. J. M. C. 81.

We have already seen that, under section 4 of the *Canada Evidence Act* 1893, (1) every person charged with an offence and the husband or wife of the person charged are competent witnesses. But there is some difference of opinion as to whether this section renders a defendant competent as a witness on his own behalf, when charged with an offence punishable under a provincial statute or a municipal bye-law, when there is an absence of provincial legislation rendering him so competent.

The question is of some nicety and importance, and seems to depend upon the construction to be placed upon the sections of the B. N. A. Act regulating the respective powers of the Dominion and Provincial legislatures in relation to criminal law and procedure. In other words, does subsection 27 of section 91 of the B. N. A. Act, extend so far as to vest in the Dominion Parliament *exclusive* legislative authority to regulate procedure, (including, of course, evidence, as a branch of procedure), in relation to ALL criminal offences, no matter by what authority punishable,—that is, whether punishable by virtue of Dominion, Provincial, Municipal or other laws? Or, is subsection 15 of section 92 of the B. N. A. Act, (which gives provincial legislatures authority to make laws imposing the punishment by fine, penalty, or imprisonment for the enforcement of provincial laws), to be construed as conferring on the provincial legislatures the power to regulate and fix the procedure in regard to offences against provincial laws? And, if this be so, are there, therefore, as some have contended, two sets of criminal offences,—FEDERAL crimes, and PROVINCIAL crimes?

Sec. 91, subsection 27, of the B. N. A. Act, declares that the exclusive legislative authority of the Dominion Parliament extends to all matters relating to the CRIMINAL LAW, except the constitution of the Courts, but *including* the PROCEDURE in CRIMINAL MATTERS.

This language is very broad, and certainly seems to cover procedure in all criminal matters whatsoever; and, as subsection 15 of section 92 says nothing at all about procedure, it seems that, in empowering provincial legislatures to impose a fine or penalty or imprisonment for infraction of provincial laws, it merely confers

(1) See p. 204, *ante*.

upon the provincial legislatures a SPECIAL and LIMITED authority concurrent with and in aid of the GENERAL authority which the Dominion Parliament possesses over all criminal matters and criminal procedure.

When, under the limited authority conferred upon them, provincial legislatures impose a fine, or a penalty or imprisonment, for a disobedience of a provincial law, they do not thereby create the criminal offence involved in such disobedience. Disobedience of a statute is a crime under the common law. It is a crime under the general criminal law of the country; and the Criminal Code itself (by Article 138) expressly makes it an indictable offence to unlawfully disobey any Act of any Legislature in Canada, and enacts that the offender shall be liable to one year's imprisonment, unless there is some other punishment expressly provided by law.

So, that, if the limited authority given to the provincial legislatures by the B. N. A. Act were not in existence at all, or, if, though in existence, it were not exercised, a contravention of a provincial statute would be punishable under the general criminal law controlled by the Dominion Parliament. And, surely, the mere fact that the provincial legislatures are granted a limited right to the extent of fixing the punishment in the case of a criminal offence which contravenes a provincial statute,—a limited right which does not override, but is in aid of the general powers of the Dominion Parliament,—cannot give them the further right to regulate, in regard to such offences, the criminal procedure, over which the Dominion Parliament is given exclusive control; such exclusive control being so given to the Dominion Parliament in order, no doubt, to secure in the trial of criminal offences, uniformity of procedure and evidence all over Canada.

It is not easy to reconcile the decisions in some of the cases which have arisen upon the questions involved in this subject, and which are briefly noticed below. But there seems a good deal of reason in the contention that when the subject matter of a proceeding before a Justice or a Magistrate is in the nature of a criminal offence, it should have applied to it the general law of criminal procedure and evidence, whether it is based upon an infraction of a provincial law or otherwise.

In Roddy's case, the defendant who was accused, in Ontario, of

selling intoxicating liquor on a Sunday, in violation of the License Act, 37 Vict. (Ont.), c. 32, secs. 28 & 34, was convicted of the offence on his own evidence; the prosecution having called him as a witness (against his own protest), under the authority of 36 Vict. (Ont.), c. 10, sec. 4, rendering a defendant a competent and COMPELLABLE witness in any matter, NOT BEING a crime; the position taken being that a violation of the license laws was NOT a crime, but a mere violation of provincial laws. In appeal, the question was thoroughly gone into; and Harrison, C. J., in rendering the judgment of the Court quashing the conviction referred to sec. 91, sub-sec. 27 of the B. N. A. Act, and said that, as the provincial legislatures have no direct power to legislate either as to crime or criminal procedure, the question was whether the charge against the defendant was a charge of crime or not. He then quoted from Paley on Convictions as follows:—"The question, what is a criminal proceeding as the subject of summary conviction depends on the manner in which the Legislature have created the cause of complaint, and for this purpose the scope and object of the statute as well as the language of the particular enactments should be considered. As a general rule, every proceeding before a Magistrate where he has power to *convict*,—in contradistinction to the power of *making an order*,—is a criminal proceeding, whether the Magistrate be authorized, in the first instance, to direct payment of a sum of money as a penalty, or, at once, to adjudge the defendant to be imprisoned; and it must be borne in mind that where a statute orders, enjoins, or prohibits an act, every disobedience is punishable at common law by indictment. In such cases, the addition of a penalty to be recovered by summary conviction can hardly prevent the proceeding from being a criminal one." (1)

After reviewing a number of decisions as to what particular offences are crimes, the learned chief justice concluded that the offence of selling liquor on Sunday being one of public interest and being punishable by fine or imprisonment with hard labour, it was so far of a criminal nature that the defendant ought not to have been compelled to give evidence against himself, under the author-

(1) Paley Sum. Conv., 5 Ed. 112, 113; 6 Ed. p. 118; See R. v. JJ., Gloucestershire, L. R. 4 Q. B. 225; 38 L. J. M. C., 73.

ity of a provincial statute rendering him competent and compellable as a witness in any matter NOT being a crime. (1)

In England, the parties and the husbands or wives of the parties to an action or civil proceeding are competent witnesses on their own behalf or for or against each other, but they are not competent, as a general rule, in any criminal proceedings whether triable on indictment or summarily; (2) and the question of whether a defendant could be examined as a witness in a proceeding before a justice or a magistrate has been held, there, in a number of cases to depend upon the further question whether it was a criminal proceeding in which the defendant was charged with committing an offence punishable on summary conviction. For instance, where a licensed public house keeper was prosecuted, under the English Liquor License Laws, for unlawfully permitting persons of notoriously bad character to assemble together in his house, against the tenor of his license, it was held that he was not a competent witness; Wightman, J., being of opinion that the statute treated the offence as a crime. (3)

In a case against a physician charged with violating a law of the province of Ontario, by practising without being registered, it was held that, as this was a crime, the defendant could not be a witness under 36 Vic. c. 10, sec. 4. (Ont.) (4)

In another Ontario case, the defendant was charged with the violation of a municipal by-law, and, as the act complained of was a criminal offence, he was held incompetent to give evidence. (5)

In a recent case, upon the trial, before a police magistrate, of an offence against a city by-law in erecting a wooden building within the fire limits, the defendant was compelled to give evidence under

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(1) R. v. Roddy, 41 U. C. Q. B. 291.

(2) 14 & 15 Vict. c. 99, secs 2 & 3, (Imp); 16 & 17 Vict., c. 83 (Imp).

(3) Parker v. Green, 9 Cox C. C. 169; 2 B. & S. 299; 31 L. J. M. C. 133; See Catell v. Ireson E. B. & E. 91; 27 L. J. M. C. 167; Atty.-Gen. v. Radloff, 10 Exch. 84; 23 L. J. Exch. 240, S. C; Atty.-Gen. v. Sillem 32 L. J. Exch. 92, 101; Mellor v. Denham, 5 Q. B. D. 467; R. v. Whitchurch, 7 Q. B. D. 534; Atty.-Gen. v. Bradlaugh, 14 Q. B. D. 669

(4) R. v. Sparham, 8 Ont. Rep. 570.

(5) R. v. McNicholl, 11 Ont. Rep. 659.

sec. 9, R. S. O., c. 61, which enacts that upon the trial before any justice of the peace, mayor, or police magistrate of any matter or question *not being a crime*, the party opposing or defending shall be competent and compellable to give evidence; and, the defendant being convicted, it was held by the Common Pleas Division, in quashing the conviction, that an offence against the by-law in question was a criminal offence, and that therefore the defendant was not a competent nor compellable witness. (1)

In a still more recent case, however, a different decision seems to have been arrived at. A defendant was convicted, by the police magistrate of Toronto, on a charge of selling intoxicating liquor without a license, (contrary to sec. 70 of the Liquor License Act, R. S. O., c. 194). Upon a motion to quash the conviction, on the ground of defendant's evidence on his own behalf having been rejected, it was contended for the defendant, that he was a competent witness under sec. 114, R. S. C., c. 106 (*The Canada Temperance Act*); but it was contended for the prosecution that sec. 114 of the *Canada Temperance Act* was *ultra vires* of the Dominion Parliament, and that the province alone has the right to regulate the procedure under the Liquor License Act; and the Common Pleas Division (Galt, C. J., and McMahon, J.), held that, notwithstanding the reservation of criminal procedure to the Dominion Parliament, by subsection 27 of section 91 of the B. N. A. Act, a provincial legislature has power to regulate and provide for the course of trial and adjudication of offences against its lawful enactments, such as a breach of the Liquor License Law, even though such offences may be termed crimes, and that therefore they have power to regulate the giving of evidence by the defendant in such a case, as is done by R. S. O., c. 61, sec. 9, by providing that where the proceeding is a crime under the provincial law, the defendant is neither a competent nor compellable witness. (2)

854. Witnesses to be Examined on Oath or Affirmation.—Every witness at any hearing shall be examined upon oath or affirmation, and the justice before whom any witness

(1) R. v. Hart, 20 Ont. Rep. 611. See R. v. Wason, 17 App. Rep. (Ont.) 221; R. v. Dunning, 14 Ont. Rep. 52.

(2) R. v. Bittle, 21 Ont. R. 605.

appears for the purpose of being examined shall have full power and authority to administer to every witness the usual oath or affirmation. (1)

852 Evidence of Exemptions and Exceptions.—If the information or complaint in any case negatives any exemption, exception, proviso or condition in the statute on which the same is founded it shall not be necessary for the prosecutor or complainant to prove such negative, but the defendant may prove the affirmative thereof in his defence if he wishes to avail himself of the same.

853 Non-Appearance of Accused.—In case the accused does not appear at the time and place appointed by any summons issued by a justice on information before him of the commission of an offence punishable on summary conviction, then, if it appears to the satisfaction of the justice that the summons was duly served, a reasonable time before the time for appearance, such justice may proceed *ex parte* to hear and determine the case *in the absence of the defendant*, as fully and effectually, to all intents and purposes, as if the defendant had personally appeared in obedience to such summons, or the justice may, if he thinks fit, issue his warrant as provided by section 563 of the Code, (2) and adjourn the hearing of the complaint or information until the defendant is apprehended.

Before proceeding in the absence of the defendant, as provided by this article, the service and manner of service of the summons should be sworn to, and the justice should be satisfied that a reasonable time has elapsed since the service to enable the defendant to obey it. He should have strong grounds for concluding that the summons has reached or come to the knowledge of the defendant, and that he is wilfully disobeying it; and the evidence to satisfy him of this should be much stronger where the summons was not served personally than where it was served personally.

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(1) As to the different modes of administering the oath to suit the religious persuasion of the witness, and as to the cases in which the witness may affirm instead of swearing, see pp. 205-209, *ante*.

(2) See pp. 108-109, *ante*.

(1) In case of doubt, the other course of issuing a warrant should be taken.

An information was, on the 9th of March, laid against the defendant for an assault alleged to have been committed on the 6th of the same month; whereupon the justices issued a summons, which was, on the 10th, left at the house of the defendant's mother, where he lived when at home. Upon the return of the summons on the 12th, the defendant did not appear, and the case was heard *ex parte*; and the defendant was convicted and sentenced to six months' imprisonment with hard labour. The defendant being afterwards apprehended upon a warrant under this conviction, a rule for a *certiorari* was moved for to bring up the conviction in order that it might be quashed upon the ground of want of jurisdiction in the justices to make it. The ground of the motion was that the defendant had not been legally served with the summons. It appeared that he was a fisherman, and on the 9th of March (the day on which the summons was applied for and the day before it was served) he went to sea and remained on board a lugger, fishing off the coast, until the 13th of March, when he landed and was immediately arrested upon the warrant issued under the *ex parte* conviction. He denied that he had any knowledge of the summons having been issued or served until after his conviction, and there was additional evidence of the summons not having come to his knowledge. In support of the conviction, it was argued that the question of the sufficiency of the service of the summons was one entirely for the justices, and that, according to the cases of R. v. Evans and Gale, and *Re* Williams, the service was sufficient. The court, however, were unanimous in their judgment that the service was bad. Cockburn, J., in delivering judgment, said: "This is a very dangerous exercise of power on the part of the magistrates. The alternative course of issuing their warrant to apprehend the defendant and bring him before them to answer the complaint would have been much safer. They ought not to have acted as they have done unless they were certain that the man was keeping out of the way in order to evade service of the summons. * * * It is true that the latter part of section

(1) R. v. Smith, L. R., 10 Q. B., 604; R. v. Mateo, 17 O. R. 194; Read v. Hunter, 8 C. L. T. 422.

2 of the 11 and 12 Vic. c. 43, provides that, if the party summoned fails to appear, then, if it be proved on oath or affirmation, to the justice or justices then present, that such summons was duly served upon such party a reasonable time before the day so appointed for his appearance, as aforesaid, it shall be lawful for such justice or justices of the peace to proceed *ex parte* and adjudicate as if such party had personally appeared; but, on that, I think it should be shown that the circumstances were such, and that the time between the leaving of the summons and the time appointed for appearance were such as to lead to the conclusion that the summons must have reached the defendant." (1)

It thus appears to be well established that, to give justices jurisdiction to proceed *ex parte* on the non-appearance of the defendant, it must appear that the summons has been either served personally, or has been left with some person for him at his last or most usual place of abode, and that, in the latter case, there are circumstances to lead to the conclusion that the summons must have reached the defendant.

It also appears that, where the case is not within the operation of the Code, and where in that case there is no mode of service of the summons provided for by the statute under which the proceeding is taken, the service of the summons must be personal, so as to authorize the justices to proceed *ex parte*. It is laid down in Burn, Boscaven, Nares, and other text books, that personal service of the summons is necessary, *unless where it is expressly dispensed with by statute.* (2)

The Justices must determine what is a *reasonable* time of service (having regard to the nature and circumstances of the charge against the defendant), and also as to the sufficiency of the service; but the defendant's appearance will, as a rule, be a waiver of any irregularity in the service. (3)

Still, the time allowed between the service and the hearing must be sufficient for the defendant to prepare his defence. For instance,

(1) *Re* William Smith, 32 L. T. N. S., 394; 39 J. P. 292, 322.

(2) Per Bayley, J., in R. v. Hall, 6 D. & R. 84; and Parker L. C. J., in R. v. Simpson, 10 Mod. 345.

(3) R. v. Johnson, 1 Str., 261: R. v. Stone, 1 East, 649; *ex parte* Hopwood, 19 L. J. M. C., 197: R. v. Williams, 21 L. J. M. C., 46.

a summons, calling upon a defendant to appear at 8.30 A.M., on a certain day, was served at 4 P.M., on the previous day, and, at 8.15 A.M. on the day fixed for the defendant's appearance, two other summonses for similar offences were served requiring the defendant to appear before the Magistrate at 9 A.M. on the same day. When the Court met, the first case was commenced, but before it was closed the prosecutor asked the Magistrate to take up the other two cases. The defendant said he had not understood the meaning of the second summons, as it was served while he was in the act of leaving home to attend the first case; and, by his counsel's advice, he refused to plead. The Magistrate entered a plea, in each case, of not guilty, and proceeded with both cases, the defendant and his counsel remaining in Court awaiting the completion of the evidence in the first case, but refusing to plead or take any part in the second and third cases, or to ask for their adjournment. After hearing all the evidence in the first case, the Magistrate, at the request of the defendant, adjourned that case, but, in each of the other cases he proceeded to a conviction. It was held that the proceedings were contrary to natural justice, the summonses being served almost immediately before the sitting of the Court, at which the defendant had already been summoned to attend; and the convictions were quashed with costs against the prosecutor. (1)

854. Non-appearance of Prosecutor.—If, upon the day and at the place so appointed, the defendant appears voluntarily in obedience to the summons in that behalf served upon him, or is brought before the justice by virtue of a warrant, then, if the complainant or informant, having had due notice, does not appear by himself, his counsel or attorney, the justice shall dismiss the complaint or information, unless he thinks proper to adjourn the hearing of the same until some other day, upon such terms as he thinks fit.

855. Proceedings When Both Parties Appear.—If both parties appear, either personally OR BY THEIR RESPECTIVE COUNSEL OR ATTORNEYS, before the justice who is to hear and

(1) R. v. Eli, 10 Ont. R. 727.

determine the complaint or information, such justice shall proceed to hear and determine the same.

The appearance of both or either party may be by counsel or attorney without proof of the service of the summons; (1) and will be sufficient to warrant the justices in proceeding to the hearing, unless there is any special provision to the contrary in the statute on which the information is laid. (2) The defendant's appearance, either by himself or his attorney, waives all irregularity in the service of the warrant or summons, or even the want of one. (3)

856. Arraignment of Accused.—If the defendant is present at the hearing, the substance of the information or complaint shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted, or why an order should not be made against him, as the case may be.

2. If the defendant thereupon admits the truth of the information or complaint, and shows no sufficient cause why he should not be convicted, or why an order should not be made against him, as the case may be, the justice present at the hearing shall convict him or make an order against him accordingly.

3. If the defendant does not admit the truth of the information or complaint, the justice shall proceed to inquire into the charge, and, for the purpose of such inquiry, shall take the evidence of witnesses both for the complainant and accused in the manner provided by Part XLV. in the case of a preliminary inquiry. (4) Provided that the prosecutor or complainant is not entitled to give evidence in reply if the defendant has not adduced any evidence other than as to his general character; provided further, that in a hearing under this section the witnesses need not sign their depositions.

857. Adjournment.—Before or during the hearing of any information or complaint the justice may, in his discretion adjourn the hearing of the same to a certain time and place to be

(1) *Ex parte* Hopwood, 19 L. J. M. C. 197, 15 Q. B. 121.
(2) Bessell v. Wilson, 22 L. J. M. C. 94; 1 E. & B. 489.
(3) R. v. Aiken, 3 Burr. 1785.
(4) See p. 203, *ante*.

then appointed and stated in the presence and hearing of the party or parties, or of their respective solicitors or agents then present, but *no such adjournment shall be for more than eight days.*

2. If, at the time and place to which the hearing or further hearing is adjourned, either or both of the parties do not appear, personally or by his or their counsel or solicitors respectively, before the justice or such other justice as shall then be there, the justice who is then there may proceed to the hearing or further hearing as if the party or parties were present.

3. If the prosecutor or complainant does not appear, the justice may dismiss the information, with or without costs, as to him seems fit.

4. Whenever any justice adjourns the hearing of any case, he may suffer the defendant to go at large or may commit him to the common gaol or other prison within the territorial division for which such justice is then acting, or to such other safe custody as such justice thinks fit, or may discharge the defendant upon his recognizance, with or without sureties, at the discretion of such justice, conditioned for his appearance at the time and place to which such hearing or further hearing is adjourned.

5. Whenever any defendant who is discharged upon recognizance, or allowed to go at large, does not appear at the time mentioned in the recognizance or to which the hearing or further hearing is adjourned, the justice may issue his warrant for his apprehension.

Adjournments cannot exceed eight days, even with the consent of all parties. (1)

But if an adjournment for longer than the prescribed period is made at the defendant's request, and he afterwards attend on the resumed proceedings, and take his chance of, and urge a dismissal of the charge, upon the merits, he will be estopped from afterwards objecting that such resumed proceedings were illegal by reason of the adjournment being for longer than the prescribed period. (2) And it has been held in Manitoba that the absence of a formal ad-

(1) R. v. French, 13 Ont. R. 80.
(2) R. v. Henerman, 13 Ont. R. 616.

journment of the proceedings before a magistrate may be waived by the defendant's subsequent appearance. (1)

The adjournment of the hearing of the case is entirely in the justice's discretion, and may take place under several different circumstances, namely: 1. Before or during the hearing, whereupon the defendant is set at large, or committed, or released, giving bail for his future appearance; 2. Where the defendant does not appear upon the summons, and a warrant is granted, and he is apprehended and brought before the justice, who thereupon orders him to be kept in custody and brought up at a future time, of which the complainant or informant is to have notice; and then, if the latter do not appear by himself or his attorney, the justice may dismiss the charge, unless for some reason he thinks proper to adjourn upon such terms as he thinks fit, in which case the defendant is committed or bailed; and, 3. Where, upon the hearing any variance between the information, or complaint, or summons or warrant of apprehension, and the evidence adduced on the part of the complainant or informant shall appear to the justice to have deceived or misled the defendant, the justice may upon such terms as he thinks fit adjourn the hearing, in which case the defendant is committed or bailed.

As to the separate trial of youthful offenders, and the necessity for keeping youthful offenders, when in custody, separate and apart from older persons charged with or convicted of crime, see 57–58 Vic. c. 58, which is set out in full in the Appendix, *post*, and sections 1 and 2 of which are noted at pp. 301–302, *ante*.

858. Adjudication by Justice.—The justice, having heard what each party has to say, and the witnesses and evidence adduced, shall consider the whole matter, and, unless otherwise provided, determine the same and convict or make an order against the defendant, or dismiss the information or complaint, as the case may be.

We have already seen that, at common law, justices have no jurisdiction to convict summarily, in any case, but that distinct legis-

(1) Re Bibby, 6 M. L. R. 472.

lative authority must be given to deal with a case summarily ; (1) although, as we have also seen, the justices may proceed summarily, where, owing to some omission in the statute, the power of summary trial and conviction is not given *expressly*, if from the rest of the statute it may be reasonably implied that such jurisdiction was *intended* to be given to them. (2)

The adjudication is confined within the limits of the information or complaint, (subject however to the provisions of Article 847, relating to variances between the information and the evidence adduced). Thus, where on an application for sureties to keep the peace, an assault as well as a threat was proved and the justices not only ordered the defendant to find sureties, but also, notwithstanding the protest of the complainant, convicted the defendant of the assault, a *certiorari* was granted to quash the conviction. (3)

After the evidence has been adduced and the case heard and closed, the justices may adjourn the adjudication and determination of the charge ; but in that case they should name a day for delivering their judgment. For, the defendant is entitled to be present at the rendering of the judgment, in order to protect his rights.

In a case tried in Nova Scotia under the *Liquor License Act*, the magistrate, at the close of the evidence, adjourned the case for judgment, without fixing any particular day. On a subsequent day, he gave notice in open court that he would give judgment on the next day. The defendant appeared on the day so named for judgment, and was convicted after being called and examined as to a previous conviction ; his attorney not being present. *Held*, that the conviction was illegal, because the case having been closed, there could be no adjournment for the adduction of further evidence, and also because the defendant should have been first found guilty of the offence under consideration, before being questioned as to the previous conviction. (4)

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(1) See Ayard v. Cavendish, Saville, 134, and other authorities cited at p. 21, *ante*.

(2) See Cullen v. Trimble, and other authorities cited at p. 21, *ante*. And for full comments and authorities as to the general powers, duties and responsibilities of justices and police magistrates, see chap. III, pp. 18-57 *ante*.

(3) R. v. Deny, 20 L. J. M. C. 189. And see R. v. Soper, 3 B. & C. 857.

(4) R. v. Gough, 22 N. S. R. 516.

The adjournment for delivering judgment is not, like adjournments, before or during the trial, limited to eight days; but may be for a longer period. (1)

859. Form of Conviction.—If the justice convicts or makes an order against the defendant, a minute or memorandum thereof shall THEN be made,—for which no fee shall be paid,—and the conviction or order shall afterwards be drawn up by the justice, on parchment or paper, under his hand and seal, in such one of the forms of conviction or of order from VV, to AAA, inclusive, in SCHEDULE ONE of the Code, (2) as is applicable to the case, or to the like effect.

The minute or memorandum of the conviction or order, as the case may be, is here required to be made, at once, that is, immediately upon the judgment pronouncing the conviction or order being rendered; and this minute or memorandum should state, in substance, the whole of the adjudication of the justice, as to the punishment inflicted, or the fine or penalty, or the amount of money ordered to be paid or the thing ordered to be done, and the mode of enforcing it, whether by distress or imprisonment. (3) For, the conviction or order, which is the formal record, is to be based upon the minute. It is merely a short statement in writing in any form of words, such as the following: "I find the defendant guilty of the assault herein charged against him, and adjudge him to pay a fine of ten dollars, together with costs to the amount of four dollars, and that in default of payment he be imprisoned for one month."

The defendant is entitled, under the above Article, to the minute or memorandum of the conviction or order, without any fee.

The judgment in case of a conviction consists of two parts namely, the adjudication of conviction, and the sentence or award of punishment.

Where the magistrate imposes a fine and fixes an imprisonment which are within his discretion and power, the formal conviction

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(1) R. v. Hall, 12 P. R. 142; R. v. Alexander, 18 Ont. R. 169.

(2) For Forms VV, to AAA, see pp. 375-381, *post*.

(3) R. v. Perley, 25 S. C. N. B. 43.

must correspond with the adjudication as contained in the minute or memorandum required to be made at the rendering of the judgment; because it must be according to the fact, and the fact is as shown by the minute or memorandum. (1)

Article 982 of the Code declares that the several forms in schedule one thereto, varied to suit the case, or forms to the like effect, shall be deemed good, valid, and sufficient in law.

The conviction must show the place for which the justice acts; and it must also show either that the offence, of which the offender is convicted was committed within the limits of the justices' jurisdiction or that there are special facts,—which must be mentioned,—giving jurisdiction beyond those limits. (2) For instance, in cases of jurisdiction given, to justices of the territorial division in which the offender is found, over an offence committed in another territorial division, it will be necessary to mention where the offence was committed and the fact of the person accused of the offence being found within the limits of the convicting justices' jurisdiction. (3) For, an Act which declares that, "an offence or a cause of complaint shall be deemed to have been committed or to have arisen either in the place where the same was actually committed or arose, or in any place in which the person charged or complained against is found or happens to be," does not give justices jurisdiction to convict a person summoned from beyond their jurisdiction for an offence that has taken place out of their jurisdiction; for such person by appearing in answer to their summons is not *found* and does not *happen to be* at such place and within their jurisdiction. (4)

Where the offenders were taken on board a smuggling boat within the harbor of Folkestone,—which had an exclusive local jurisdiction,—and were afterwards taken, with the boat, to the port of Dover, and convicted before two justices of that port and town, the conviction, which merely stated that the offenders had been found in a boat in the harbor of Folkestone, was held to be

(1) R. v. Hartley, 20 Ont. R. 485.
(2) R. v. Young, 5 Ont. R. 400.
(3) Re Peerless, 1 Q. B. 143, 154.
(4) Johnson v. Colam, L. R. 10 Q. B. 544; 44 L. J. M. C. 185.

bad, as not showing jurisdiction. The justices of Folkestone alone had authority to convict, they being the justices of the first port or place into which the vessel was carried. (1)

If the law under which the proceedings are taken is directed against a particular description of persons, the conviction, in setting out the offence, must show that the defendant is within the description of persons against whom the law is directed. So that, where, under the by-laws of a town, no transient trader or other person, occupying a place of business in the town for a temporary period of less than a year and not duly entered on the assessment roll for the current year, was allowed to offer goods for sale within the limits of the town, without having a license, it was held, upon a conviction obtained under this by-law, that the omission in the conviction of an allegation that the defendant was a *transient trader not duly entered on the assessment roll for the current year* was fatal. (2)

A conviction for trading as a hawker and pedlar without a license was held not to be supported by evidence of a single act of selling a parcel of silk handkerchiefs to a particular person; for the bare act of sale, it was held, did not show the defendant to have been such a person as by law is required to take out a license. (3)

We have seen, by Article 846, *ante*, that a conviction is not to be deemed insufficient for not containing the name of the person injured, nor for omitting to state who is the owner of any property therein mentioned, nor for omitting to specify the means by which the offence has been committed, nor that it does not name or describe any person or thing with precision. The time when the offence was committed ought to be stated. But the precise day need not be named; and it will be sufficiently certain if the fact be alleged to have happened between such a day and such a day, provided the last of the days specified be within the limited time. Thus, where the information charged the offence to have been committed on the 4th of October and on divers other days and times between that day and the 16th of November, and the conviction stated the offence to have been committed on the 8th of

(1) Kite & Lane's Case, 1 B. & C. 101. See also R. v. Nunn, 8 B. & C. 644.
(2) R. v. Caton, 16 Ont. R. 11.
(3) R. v. Little, 1 Burr. 610.

November, it was held to be valid. (1) And where, in a conviction under the *Canada Temperance Act*, there was a statement alleging that the offence was committed between the thirtieth of June and the thirty-first of July, it was held to be a sufficiently certain statement of the time. (2) And a conviction for keeping a house of ill-fame on the eleventh of October and on other days and times before that day was also held sufficiently certain as to time; the only offence charged by these words being the keeping and maintaining of a house of ill-fame; and the fact that the parties accused kept such a house on the eleventh of October and on other days before that day did not constitute a distinct and separate offence against them upon each of those days. (3)

When the summons alleges the offence to have been committed on a certain day, and at the hearing it is proved to have been, in fact, committed on some other day, the justices should amend the summons by altering the date. (4)

Under the second clause of Article 847, *supra*, any variance between the information and the evidence adduced, at the summary trial thereof, as to the time at which such offence is alleged to have been committed is not to be deemed material, if it is proved that the information was in fact laid within the time limited by law for laying it.

Before proceeding to a conviction, the justices should have evidence which is reasonably sufficient to show that the offence charged has been committed. Where, in a case under the *Canada Temperance Act*, the defendant swore at the trial that he did not sell any intoxicating liquor on the day charged, and there was no other evidence showing positively that the liquor sold was INTOXICATING liquor, the evidence for the Crown being merely that it RESEMBLED intoxicating liquor, it was held that, under these circumstances, there was no evidence on which to found a conviction for selling intoxicating liquor. (5)

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(1) Onley v, Gee, 30 L. J. M. C. 222.
(2) R. v. Wallace, 4 Ont. R. 127.
(3) R. v. Williams, 37 U. C. Q. B. 540.
(4) Mayor of Exeter v. Heaman, 37 L. T. 534.
(5) R. v. Bennett, 1 Ont. R. 445.

So, where, on a conviction under the 11 Geo. 1. (Imp.), c. 30. sec. 16, for knowingly harbouring and keeping certain spirits liable to excise duty, it appeared, from the evidence, that search having been made in the defendant's house during the defendant's absence, but in the presence of his wife, the spirits were found concealed in an inner room therein, that the defendant before the convicting justices produced no evidence, but insisted that the room in which the seizure was made was detached from his dwelling-house and had a door always left unlocked, it was held that the evidence was too slight to found a conviction, and that the mere naked fact of the spirits being found in the defendant's house during his absence—although abundant as a ground of suspicion—could not be considered as satisfactory evidence that the defendant KNOWINGLY harboured or permitted the spirits to remain in the house; and the conviction was quashed. (1)

The defendant, upon being convicted, is entitled, upon application, to a copy of the conviction; (2) and a justice who refuses it may have to pay the costs of a *certiorari* to obtain it. (3) But the justices are not bound by the copy they deliver; and if it should be found to be defective or informal, from misstating the name of the informer or any other fact, without there being any fraud or intention to mislead, a more correct one may be returned to the sessions; and the court can only take notice of the latter. (4)

It seems, indeed, that the formal conviction may be drawn up at any time before the return of the *certiorari*, although such return be after a commitment, (5) or after the penalty has been levied by distress, (6) or after action brought against the magistrates. (7)

A magistrate has even been allowed to return an *amended* conviction to the sessions after having returned an erroneous one; (8)

(1) *Ex parte* Ransley, 3 D. & R. 572.
(2) R. v. Midlam, 3 Burr, 1720.
(3) R. v. Huntingdon, 5 D. & R. 588.
(4) R. v. Allen, 15 East, 333, 346.
(5) Massey v. Johnson, 12 East, 82; R. v. McCarthy, 11 O. R. 657.
(6) R. v. Barker, 1 East, 186.
(7) Lindsay v. Leigh, 11 Q. B. 455; Gray v. Cookson, 16 East, 13.
(8) Sellwood v. Mount, 9 C. & P. 75; 1 Q. B. 729.

but it was held that he could not do this after the conviction as first returned had been quashed either on appeal or by the Court of Queen's Bench, nor after the discharge of the defendant by the Queen's Bench by reason of the conviction recited in the warrant of commitment being bad. (1)

860. Disposal of penalties on conviction of joint offenders.—When several persons join in the commission of the same offence, and upon conviction thereof each is adjudged to pay a penalty which includes the value of the property, or the amount of the injury done, no further sum shall be paid to the person aggrieved than such amount or value, and costs, if any, and the residue of the penalties imposed shall be applied in the same manner as other penalties imposed by a Justice are directed to be applied.

861. First conviction in certain cases.—Whenever any person is summarily convicted before a Justice of any offence against Parts XX. to XXX. inclusive, or Part XXXVII. of the Code, and it is a first conviction, the Justice may, if he thinks fit, discharge the offender from his conviction upon his making such satisfaction to the person aggrieved, for damages and costs, or either of them, as are ascertained by the Justice.

Parts XX. to XXIII. relate to ASSAULTS, RAPE, LIBEL, etc.; parts XXIV. to XXX. relate to THEFT, BURGLARY, etc., and part XXXVII. relates to MISCHIEF.

A person summarily convicted of any offence for which no punishment is specially provided shall be liable to a penalty not exceeding $50, or to imprisonment with or without hard labor for a term not exceeding 6 months, or to both. (Code, Art. 951, sub-sec. 2.)

Whenever the offence of which the defendant is convicted is, in the opinion of the justice, directly against the peace, and if the justice is of opinion that the offence was committed under circumstances rendering it probable that the person convicted will be again guilty of the same or some other offence unless bound over

(1) Chaney v. Payne, 1 Ad. & Ell (N. S.) 712; 10 L. J. M. C. 114.

to good behaviour, such justice may, in addition to or in lieu of any other sentence, require the accused to give security to keep the peace and be of good behaviour for any term not exceeding twelve months. (Code. Art. 959.)

As to COSTS, see p. 342, *post;* and as to COMPENSATION TO THE BONA FIDE PURCHASER OF STOLEN PROPERTY, see p. 271, *ante.*

862. Certificate of dismissal.—If the Justice dismisses the information or complaint, he may, when required so to do, make an order of dismissal in the form BBB in schedule one and he shall give the defendant a certificate in the form CCC in the said schedule, (1) which certificate, upon being afterwards produced, shall, without further proof, be a bar to any subsequent information or complaint *for the same matter*, against the same defendant.

At common law and independently of statutory enactment, a former conviction or acquittal, whether on a criminal summary proceeding or on an indictment, will be an answer to an information of a criminal nature before justices founded on the same facts.

The true test to show that such previous conviction or acquittal is a bar is whether the evidence necessary to support the second proceeding would have been sufficient to procure a legal conviction on the first. (2)

See comments and authorities at pp. 295, *ante*, and 340-342, *post.*

863. Disobedience to Order of Justice.—Whenever, by any Act or law, authority is given to commit a person to prison, or to levy any sum upon his goods or chattels by distress, for not obeying an order of a Justice, the defendant shall be served with a copy of the minute of the order before any warrant of commitment or of distress is issued in that behalf; and the order or minute shall not form any part of the warrant of commitment or of distress.

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(1) For Forms BBB and CCC, see p. 382, 383, *post.*

(2) Per Coleridge, J., in R. v. Drury, 18 L. J. M. C., 189.

864. Assaults.—Whenever any person unlawfully assaults or beats any other person, any Justice may summarily hear and determine the charge, unless at the time of entering upon the investigation the person aggrieved or the person accused objects thereto.

2. If such Justice is of opinion that the assault or battery complained of is, from any other circumstance, a fit subject for prosecution by indictment, he shall abstain from any adjudication thereupon, and shall deal with the case in all respects in the same manner as if he had no authority finally to hear and determine the same.

865. Dismissal of Complaint for Assault.—If the justice, upon the HEARING of any case of assault or battery upon the merits where the complaint is preferred by or on behalf of the person aggrieved, under the next preceding section, deems the offence not to be proved, or finds the assault or battery to have been justified, or so trifling as not to merit any punishment, and accordingly dismisses the complaint, he shall *forthwith* make out a certificate under his hand stating the fact of such dismissal, and shall deliver such certificate to the person against whom the complaint was preferred.

866. Release from further Proceedings.—If the person against whom any such complaint has been preferred, by or on behalf of the person aggrieved, obtains such certificate, or, having been convicted, pays the whole amount adjudged to be paid or suffers the imprisonment or imprisonment with hard labour, awarded, he shall be released from all further or other proceedings, civil or criminal, *for the same cause.*

In R. v. Miles, already cited at p. 295, *ante*, a case was stated for the consideration of the Court for Crown Cases Reserved. The defendant had been convicted at the Central Criminal Court upon an indictment charging him (in the first count) with unlawfully and maliciously wounding the prosecutor; (in the second count) with unlawfully and maliciously inflicting grievous bodily harm; (in the third count) with causing actual bodily harm to the prosecutor: and (in the fourth count) with common assault. The defendant pleaded and pointed out at the trial the following con-

viction in respect of this same assault before a Court of Summary Jurisdiction: 'G. J. Miles, hereinafter called the defendant, is this day convicted for that he.....did unlawfully assault and beat one Chubs Living, and the court being of opinion that the said offence was of so trifling a nature that it is inexpedient to inflict any other than a nominal punishment, and the defendant, having given security to the satisfaction of the court to be of good behaviour, is discharged.' The question for the opinion of the court was whether the above summary conviction was a bar to the proceedings against him at the Central Criminal Court for the same offence. Poland, Q. C., and Warburton, for the defendant, said: "Express power is given by the *Summary Jurisdiction Act*, 1879 (42 & 43 Vict. c. 49), s. 16, subsec 2, to Justices, upon convicting a person of assault, to discharge him conditionally on his giving security to be of good behaviour; and the provisions in 24 & 25 Vict. c. 100, s. 45, must now be read with the section above referred to. Moreover, apart from statutes, the summary conviction formed a bar at common law to the present indictment." Lockwood, Q.C., and Besley, for the prosecution, said: "The 24 & 25 Vict. c. 100, s. 45, only operates as a bar where a defendant shall have paid the whole amount adjudged or shall have suffered the imprisonment awarded; but the Court neither fined nor imprisoned the defendant. The proceedings under the Summary Jurisdiction Act 1889, did not bring the case within section 45 of the earlier statute." *Cur. adv. vult.* The court (Lord Coleridge, C. J. Pollock, B., Hawkins, J., Charles, J., and Grantham, J.), upon the above facts, held that the summary conviction was a good answer at common law to the indictment, apart altogether from the question whether the defendant was entitled to the protection afforded by 24 & 25 Vict. c. 100, sec. 45; and quashed the conviction. (1)

The objection of *res judicata* must when raised against a second prosecution for an offence already disposed of, be taken before the magistrates at the hearing and not reserved as a ground for quashing the conviction or order after it has been made. (2)

The previous proceeding when used as an answer to a new one

(1) R. v. Miles, 13 L. N. 79; 24 Q. B. D. 423; 59 L. J. M. C. 56. See other cases cit. at p. 295, *ante*.

(2) R. v. Herrington, 12 W. R. 420.

should have been carried to a decision upon the merits. (1) And it seems that the certificate of dismissal can only be granted when there has been a hearing upon the merits. (2)

The granting of the certificate mentioned in the above Article 866 is a ministerial act, and the application for it need not be made in the presence of the other party; and, as it seems, it may be made at any time, the word FORTHWITH in Article 865 meaning forthwith on application for it, and not forthwith on dismissal of the information. (3)

867. Costs on Conviction or Order.—In every case of a summary conviction, or of an order made by a justice, such justice, may, in his discretion, award and order, in and by the conviction or order, that the defendant shall pay to the prosecutor or complainant such costs as to the said justice seem reasonable in that behalf, and not inconsistent with fees established by law to be taken on proceedings had by and before justices.

868. Costs on Dismissal.—Whenever the justice, instead of convicting or making an order, dismisses the information or complaint, he may in his discretion, in and by his order of dismissal, award and order that the prosecutor or complainant shall pay to the defendant such costs as to the said justice seem reasonable and consistent with law.

869. Recovery of Costs on Conviction or Dismissal.—The sums so allowed for costs shall, in all cases, be specified in the conviction or order, or order of dismissal, and the same shall be recoverable in the same manner and under the same warrants as any penalty, adjudged to be paid by the conviction or order, is to be recovered.

The recovery of penalties is provided for by Article 872, *infra*.

A conviction which imposes an amount of costs in excess of those authorized by the statute under which the conviction takes place

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(1) R. v. Herrington, 3 N. R. 468; 12 W. R. 420.

(2) Reed v. Nutt, 24 Q. B. D. 669.

(3) Hancock v. Somes, 1 E. & E. 795; 28 L. J. M. C. 196; Costar v. Hetherington, 1 E. & E. 802; 28 L. J. M.C. 198.

will be invalid. (1) But where the statute authorizing the justice to award costs does not fix any tariff, the justice may award such costs as he thinks reasonable. (2)

Where justices signed a conviction and warrant of commitment leaving blanks for the amount of costs to be inserted, it was held to be an irregularity, but not an excess of jurisdiction rendering them liable to an action. (3)

870. Recovery of Costs when there is no Penalty.—Whenever there is no such penalty to be recovered, such costs shall be recoverable by distress and sale of the goods and chattels of the party, and in default of distress, by imprisonment, with or without hard labour, for any term not exceeding ONE MONTH.

871. Fees.—The fees mentioned in the following tariff and on others shall be and constitute the fees to be taken on proceedings before justices in proceedings under this part:—

Fees to be taken by Justices of the Peace or their Clerks

	$ cts.
1. Information or complaint and warrant or summons.....	0 50
2. Warrant where summons issued in first instance.....	0 10
3. Each necessary copy of summons or warrant.....	0 10
4. Each summons or warrant to or for a witness or witnesses. (Only one summons on each side to be charged for in each case, which may contain any number of names. If the justice of the case requires it, additional summonses shall be issued without charge).....	0 10
5. Information for warrant for witness and warrant.....	0 50
6. Each necessary copy of summons or warrant for witness.	0 10
7. For every recognizance.....	0 25
8. For hearing and determining case.....	0 50
9. If case lasts over two hours.....	1 00

(1) Re Bibby, 6 M. L. R., 472.
(2) R. v. Starkey, 7 M. L. R. 489.
(3) Bolt v. Ackroyd, 28 L. J. M. C. 207.

10. Where one justice alone cannot lawfully hear and determine the case, the same fee for hearing and determining to be allowed to the associate justice.
11. For each warrant of distress or commitment..... 0 25
12. For making up record of conviction or order where the same is ordered to be returned to sessions or on *certiorari*..... 1 00
    But in all cases which admit of a summary proceeding before a single justice and wherein no higher penalty than $20 can be imposed, there shall be charged for the record of conviction not more than 0 50
13. For copy of any other paper connected with any case, and the minutes of the same if demanded, per folio of 100 words..... 0 05
14. For every bill of costs when demanded to be made out in detail..... 0 10
    (Items 13 and 14 to be chargeable only when there has been an adjudication.)

Constables' Fees.

1. Arrest of each individual upon a warrant. (1)..... 1 50
2. Serving summons..... 0 25
3. Mileage to serve summons or warrant, per mile (one way) necessarily travelled..... 0 10
4. Same mileage when service cannot be effected, but only upon proof of due diligence.
5. Mileage taking prisoner to gaol, exclusive of disbursements necessarily expended in his conveyance..... 0 10
6. Attending justices on trial, for each day necessarily employed in one or more cases, when engaged less than four hours. (1)..... 1 00
7 Attending justices on trial, for each day necessarily employed in one or more cases, when engaged more than four hours. (1)..... 1 50

(1) *As amended by* 57-58 Vic., c. 57, sec. 1.

8. Mileage travelled to attend trial (when public conveyance can be taken only reasonable disbursements to be allowed) one way, per mile..... 0 10
9. Serving warrant of distress and returning same..... 1 00
10. Advertising under warrant of distress..... 1 00
11. Travelling to make distress, or, to search for goods to make distress when no goods are found (one way), per mile. 0 10
12. Appraisements, whether by one appraiser or more, 2 cents in the dollar on the value of the goods.
13. Commission on sale and delivery of goods, 5 cents in the dollar on the net produce of the goods.

Witnesses' Fees.

1. Each day attending trial..... 0 75
2. Mileage travelled to attend trial (one way) per mile..... 0 10

872. Provisions Respecting Convictions.— Whenever a conviction adjudges a pecuniary penalty or compensation to be paid, or an order requires the payment of a sum of money, whether the act or law authorizing such conviction or order does or does not provide a mode of raising or levying the penalty, compensation or sum of money, or of enforcing the payment thereof, the justice by his conviction, or order after adjudging payment of such penalty, compensation or sum of money, with or without costs, may order and adjudge—

(*a*) that in default of payment thereof forthwith, or within a limited time, such penalty, compensation or sum of money shall be levied by distress and sale of the goods and chattels of the defendant, and, if sufficient distress cannot be found, that the defendant be imprisoned in the manner and for the time directed by the act or law authorizing such conviction or order or by the Code, or for any period not exceeding three months, if the act or law authorizing the conviction or order does not specify imprisonment, or does not specify any term of imprisonment, unless such penalty, compensation or sum of money AND COSTS, if the conviction or

order is made with costs, and the expenses of the distress and of conveying the defendant to gaol are sooner paid ; (1) or

(*b.*) that in default of payment of the said penalty, compensation or sum of money, and costs, if any, forthwith, or within a limited time, the defendant be imprisoned in the manner and for the time mentioned in the said act or law, or for any period not exceeding three months, if the act or law authorizing the conviction or order does not specify imprisonment, or does not specify any term of imprisonment, unless the said sums with the like costs and expenses are sooner paid. (1)

2. The justice making the conviction or order mentioned in the paragraph lettered (*a*) of subsection one of this section may issue a warrant of distress in the form DDD or EEE, as the case requires ; (2) and in the case of a conviction or order under the paragraph lettered (*b*) of the said subsection, a warrant in one of the forms FFF or GGG (3) may issue ;

(*a.*) If a warrant of distress is issued and the constable or peace officer charged with the execution thereof returns (form III) that he can find no goods or chattels whereon to levy thereunder (4) the justice may issue a warrant of commitment in the form JJJ. (5)

3. Where, by virtue of an act or law so authorizing, the justice by his conviction adjudges against the defendant payment of a penalty or compensation, and also imprisonment, as punishment for an offence, he may, if he thinks fit, order that the imprisonment in default of distress or of payment, as provided for in this section, shall commence at the expiration of the imprisonment awarded as a punishment for the offence.

4. The like proceeding may be had upon any conviction or order made as provided by this section as if the act or law authorizing the same had expressly provided for a conviction or order in the above terms.

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(1) *As amended by* 57-58 Vict., c. 57, sec. 1.
(2) For forms DDD and EEE, see pp. 383 and 384, *post.*
(3) For forms FFF and GGG, see pp. 385-387, *post.*
(4) For form III see p. 388, *post.*
(5) For form JJJ, see p. 389, *post.*

When imprisonment is directed as a mode of punishment for an offence, the defendant must stay in prison for the period ordered. But when imprisonment is directed as a mode of enforcing payment of a penalty or fine, the defendant may pay, and thus avoid the imprisonment; or, if he does not pay at once, and is sent to gaol, he can obtain his release before the end of the time by paying.

When the judgment orders the money to be levied by distress, and that, in default of there being sufficient goods, the defendant shall be imprisoned, the distress warrant should be issued first, and it should be ascertained that there are no sufficient distress upon which to levy, and a return to that effect should be made before the warrant of commitment is issued. And it seems that the defendant's goods cannot be sold for part of the penalty and costs, and the defendant sent to gaol for the balance. So that, if the defendant has paid part of the penalty, it must be returned to him before he can be sent to gaol for non-payment. (1)

873. Order as to Collection of Costs on a dismissal.—When any information or complaint is dismissed with costs, the justice may issue a warrant of distress on the goods and chattels of the prosecutor or complainant, in the form KKK, for the amount of such costs; (2), and, in default of distress, a warrant of commitment in the form LLL may issue. (3) Provided that the term of imprisonment in such case shall not exceed ONE MONTH.

874. Endorsement of Warrant of Distress.—If, after delivery of any warrant of distress issued under this part to the constable or constables to whom the same has been directed to be executed, sufficient distress cannot be found within the limits of the jurisdiction of the justice granting the warrant, then upon proof being made upon oath or affirmation of the handwriting of the justice granting the warrant, before any justice of any other territorial division, such justice shall thereupon make an endorsement on the warrant, signed with his hand, authorizing the execu-

(1) Brown v. Linden, 17 Ont., App. Rep. 173.
(2) For form KKK, see p. 390, *post*.
(3) For form LLL, see p. 391, *post*.

tion of the warrant within the limits of his jurisdiction, by virtue of which warrant and endorsement the penalty or sum and costs, or so much thereof as has not been before levied or paid, shall be levied by the person bringing the warrant, or by the person or persons to whom the warrant was originally directed, or by any constable or other peace officer of the last mentioned territorial division, by distress and sale of the goods and chattels of the defendant therein.

2. Such endorsement shall be in the form IIIII in schedule one of the Code. (1)

875. Distress not to Issue in Certain Cases.—Whenever it appears to any justice that the issuing of a distress warrant would be ruinous to the defendant and his family, or whenever it appears to the justice, by the confession of the defendant or otherwise, that he has no goods and chattels whereon to levy such distress, then the justice, if he deems it fit, instead of issuing a warrant of distress, may commit the defendant to the common gaol or other prison in the territorial division, there to be imprisoned, with or without hard labour, for the time and in the manner he would have been committed in case such warrant of distress had issued and no sufficient distress had been found.

876 Remand of Defendant When Distress is Ordered.—Whenever a justice issues a warrant of distress as hereinbefore provided, he may suffer the defendant to go at large, or verbally, or by a written warrant in that behalf, may order the defendant to be kept and detained in safe custody, until return has been made to the warrant of distress, unless the defendant gives sufficient security, by recognizance or otherwise, to the satisfaction of the justice, for his appearance, at the time and place appointed for the return of the warrant of distress, before him or before such other justice for the same territorial division as shall then be there.

877. Cumulative Punishment.—Whenever a justice, upon any information or complaint, adjudges the defendant to be imprisoned and the defendant is then in prison undergoing im-

(1) For form HHH, see p. 388, *post.*

prisonment for any other offence, the warrant of commitment for the subsequent offence shall be forthwith delivered to the gaoler or other officer to whom it is directed; and the justice who issued the same, if he thinks fit, may award and order therein that the imprisonment for the subsequent offence shall commence at the expiration of the imprisonment to which the defendant was previously sentenced.

When the defendant is *not* already in prison upon some other conviction, the imprisonment upon a warrant of commitment is to be calculated from the earliest moment of the day of the arrest under the warrant of commitment. (1)

878. Recognizances.—Whenever a defendant gives security by or is discharged upon recognizance and does not afterwards appear at the time and place mentioned in the recognizance, the justice who took the recognizance, or any justice who is then present, having certified upon the back of the recognizance the non-appearance of the defendant, may transmit such recognizance to the proper officer in the province appointed by law to receive the same, to be proceeded upon in like manner as other recognizances; and such certificate shall be *primâ facie* evidence of the non-appearance of the said defendant.

2. Such certificate shall be in the form MMM in schedule one of the Code. (2) The proper officer to whom the recognizance and certificate of default are to be transmitted, in the province of Ontario, shall be the clerk of the peace of the county for which such justice is acting, except in the district of Nipissing, as to which district the proper officer shall be the clerk of the peace for the county of Renfrew; and the Court of General Sessions of the Peace for such county shall, at its then next sitting, order all such recognizances to be forfeited and estreated, and the same shall be enforced and collected in the same manner and subject to the same conditions as any fines, forfeitures or amercements imposed by or forfeited before such court; and in the other provinces of Canada the proper officer to whom any such recognizance and certificate

(1) Bowdler's case, 12 Q. B. 612; *Ex parte* Foulkes, 15 M. & W. 612, Braham v. Joyce, 4 Exch. 487.

(2) For form MMM, see p. 392, *post*.

shall be transmitted shall be the officer to whom like recognizances have been heretofore accustomed to be transmitted under the law in force before the passing of the Code; and such recognizance shall be enforced and collected in the same manner as like recognizances have heretofore been enforced and collected.

879. Appeal.—Unless it is otherwise provided in any special Act under which a conviction takes place or an order is made by a justice for the payment of money or dismissing an information or complaint, any person who thinks himself aggrieved by any such conviction or order,—the PROSECUTOR OR COMPLAINANT, as well as the defendant,—may appeal,—in the province of ONTARIO, to the Court of GENERAL SESSIONS of the peace; in the province of QUEBEC, to the Court of QUEEN'S BENCH, crown side; in the provinces of NOVA SCOTIA, NEW BRUNSWICK and MANITOBA, to the COUNTY COURT of the district or county where the cause of the information or complaint arose; in the province of PRINCE EDWARD ISLAND, to the SUPREME COURT; in the province of BRITISH COLUMBIA, to the COUNTY OR DISTRICT COURT, at the sitting thereof which shall be held nearest to the place where the cause of the information or complaint arose; and, in the NORTH-WEST TERRITORIES, to a JUDGE of the SUPREME COURT of the said TERRITORIES, sitting without a jury,—at the place where the cause of the information or complaint arose, or the nearest place thereto where a court is appointed to be held.

2. In the district of NIPISSING, such person may appeal to the Court of GENERAL SESSIONS of the peace for the county of RENFREW.

See Article 900 of the Code, *post*, as to stating a case for review.

880. Certificate of Appeal.—Every right of appeal shall, unless it is otherwise provided in any special Act, be subject to the conditions following, that is to say:—

(*a.*) If the conviction or order is made more than FOURTEEN days before the sittings of the court to which the appeal is given, such appeal shall be made to the then NEXT sittings of such court; but if the conviction or order is made within fourteen days of the sittings of such court, then to the SECOND sittings next after such conviction or order;

(*b.*) The appellant shall give to the respondent, or to the justice who tried the case, for him, a notice IN WRITING, in the FORM NNN IN SCHEDULE ONE of the Code, (1) of such appeal, within TEN DAYS after such conviction or order;

(*c.*) The appellant, if the appeal is from a conviction adjudging imprisonment, shall either remain in custody until the holding of the court to which the appeal is given, or shall enter into a recognizance in the FORM OOO in the said SCHEDULE (2) with two sufficient sureties, before a justice, conditioned personally to appear at the said court, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as are awarded by the court; or, if the appeal is against any conviction or order, whereby only a penalty or sum of money is adjudged to be paid, the appellant (although the order directs imprisonment in default of payment), instead of remaining in custody as aforesaid, or giving such recognizance as aforesaid, may deposit with the justice convicting or making the order such sum of money as such justice deems sufficient to cover the sum so adjudged to be paid, together with the costs of the conviction or order, and the costs of the appeal; and upon such recognizance being given, or such deposit being made, the justices before whom such recognizance is entered into, or deposit made, shall liberate such person, if in custody.

(*d.*) In the case of an appeal from the order of a justice, pursuant to section 571, for the restoration of gold or gold-bearing quartz, or silver, or silver ore, the appellant shall give security by recognizance to the value of the said property to prosecute his appeal at the next sittings of the court and to pay such costs as are awarded against him;

(*e.*) The court to which such appeal is made shall thereupon hear and determine the matter of appeal and make such order therein, with or without costs to either party, including costs of the court below, as seems meet to the court,—and, in case of the dismissal of an appeal by the defendant and the affirmance of the conviction or order, shall order and adjudge the appellant to be punished according to the conviction or to pay the amount adjudged

(1) For Form NNN, see p. 392, *post.*
(2) For Form OOO, see p. 393, *post.*

by the said order, and to pay such costs as are awarded,—and shall, if necessary, issue process for enforcing the judgment of the court; and whenever, after any such deposit has been made as aforesaid, the conviction or order is affirmed, the court may order the sum thereby adjudged to be paid, together with the costs of the conviction or order, and the costs of the appeal, to be paid out of the money deposited, and the residue, if any, to be repaid, to the appellant; and whenever, after any such deposit, the conviction or order is quashed, the court shall order the money to be repaid to the appellant;

(*f.*) The said court shall have power, if necessary, from time to time, by order endorsed on the conviction or order, to ADJOURN the hearing of the appeal from one sitting to another, or others, of the said court;

(*g.*) Whenever any conviction or order is quashed on appeal, as aforesaid, the clerk of the peace or other proper officer shall FORTHWITH endorse, on the conviction or order, a memorandum that the same has been quashed; and whenever any copy or certificate of such conviction or order is made, a copy of such memorandum shall be added thereto, and shall, when certified under the hand of the clerk of the peace, or of the proper officer having the custody of the same, be sufficient evidence, in all courts and for all purposes, that the conviction or order has been quashed.

In computing the ten days within which the notice of appeal is to be given, the day of the conviction is to be excluded. (1)

The TEN days within which the notice of appeal is to be given under the above Article must be calculated from the day of the adjudication and not from the time when the formal conviction or order is made up and signed. (2)

The notice should state that the appellant is aggrieved by the conviction or order appealed from. (3)

The object of the notice is to inform the respondents of the par-

(1) See Pellew v. Wonford, 9 B. & C. 134, and other authorities at pp. 71, 72, *ante*.

(2) *Ex parte* Johnson 32 L. J. M. C. 193.

(3) R. v. J. J. West Riding of Yorks., 7 B. & C. 792; R. v. J. J., Essex, 5 B. & C., 431.

ticular conviction appealed against; and the Justice before whom the conviction took place, and the nature of the conviction itself should be mentioned in the notice. But the notice will not be critically construed, and, if it substantially give to the respondents the requisite information, it will (apart from statutory provision on the subject), be held sufficient. (1)

881. Proceedings on appeal. — When an appeal against any summary conviction or decision has been lodged in due form, and in compliance with the requirements of this part, the Court appealed to shall try, and shall be the ABSOLUTE JUDGE, as well of the FACTS as of the LAW, in respect to such conviction or decision; and any of the parties to the appeal may call witnesses and adduce evidence, whether such witnesses were called or evidence adduced at the hearing before the Justice or not, either as to the credibility of any witness, or as to any other fact material to the inquiry; but any evidence taken before the justice at the hearing below, signed by the witness giving the same and certified by the Justice, may be read on such appeal, and shall have the like force and effect as if the witness was there examined: Provided, that the Court appealed to is satisfied by affidavit or otherwise, that the personal presence of the witness cannot be obtained by any reasonable efforts.

If when the appeal comes up for hearing, the appellant be surprised by the production of a conviction different from the copy previously delivered to him, he may apply for time, and the appeal should be adjourned. (2)

The first step after the appeal is called on is for the appellant to prove his notice, unless it is admitted. Where an appeal is called on and then adjourned to the next sittings of the Court appealed to, the respondent's counsel, although the adjournment takes place on his application, may nevertheless require proof of due notice of appeal. (3)

After the notice of appeal has been proved or admitted, the clerk of the Court reads the conviction returned by the convicting jus-

(1) R. v. J. J. Denbighsh, 9 Dowl. P. C., 509.
(2) R. v. Allen, 15 East. 346.
(3) R. v. J. J., Middlesex, 2 Dowl. N. S., 719.

tice; and if there are any objections raised as appearing on the face of the conviction, the appellant usually begins by stating all his objections thereto at once, in order that they may be met by the other side. But if there are no such objections taken, or if when taken they are overruled, the respondent opens his case on the merits, and calls witnesses; and, if the Court thinks the case thus opened and proved requires an answer, the appellant then opens his case and calls his witnesses. And when the appellant's case is closed, the respondent has a general reply upon the whole case.

882. Appeal on matters of form.—No judgment shall be given in favour of the appellant if the appeal is based on an objection to any information, complaint or summons, or to any warrant to apprehend a defendant issued upon any such information, complaint or summons, for any alleged defect therein, in substance or in form, or for any variance between such information, complaint, summons or warrant, and the evidence adduced in support thereof at the hearing of such information or complaint, unless it is proved before the Court hearing the appeal that such objection was made before the Justice before whom the case was tried and by whom such conviction, judgment or decision was given, or unless it is proved that notwithstanding it was shown to such Justice that by such variance the person summoned and appearing or apprehended had been deceived or misled, such Justice refused to adjourn the hearing of the case to some further day, as herein provided.

883. Judgment to be upon the merits.—In every case of appeal from any summary conviction or order had or made before any Justice, the Court to which such appeal is made shall, notwithstanding any defect in such conviction or order, and notwithstanding that the punishment imposed or the order made may be in excess of that which might lawfully have been imposed or made, hear and determine the charge or complaint on which such conviction or order has been had or made, upon the merits, and may confirm, reverse or modify the decision of such Justice, or may make such other conviction or order in the matter as the Court thinks just, and may by such order exercise any power which the Justice whose decision is appealed from might have ex-

ercised, and such conviction or order shall have the same effect and may be enforced in the same manner as if it had been made by such Justice. The Court may also make such order as to costs to be paid by either party as it thinks fit.

2. Any conviction or order made by the Court on appeal may also be enforced by process of the Court itself.

884. Costs when appeal not prosecuted.—The Court to which an appeal is made, upon proof of notice of the appeal to such Court having been given to the person entitled to receive the same,—WHETHER SUCH NOTICE HAS BEEN PROPERLY GIVEN OR NOT,—though such appeal was not afterwards prosecuted or entered, may, if such appeal has not been abandoned according to law, at the same sittings for which such notice was given, order to the party or parties receiving the same, such costs and charges as are thought reasonable and just by the Court, to be paid by the party or parties giving such notice; and such costs shall be recoverable in the manner provided by the Code for the recovery of costs upon an appeal against an order and conviction. (1)

885. Proceedings when Appeal Fails.—If an appeal against a conviction or order is decided in favour of the respondents, the justice who made the conviction or order, or any other justice for the same territorial division, may issue the warrant of distress or commitment for execution of the same, as if no appeal had been brought.

886. Conviction not to be Quashed for Defects of Form.—No conviction or order affirmed, or affirmed and amended, in appeal, shall be quashed for want of form, or be removed by *certiorari* into any Superior Court, and no warrant or commitment shall be held void by reason of any defect therein, provided it is therein alleged that the defendant has been convicted, and there is a good and valid conviction to sustain the same.

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(1) *As amended by* 57-58 Vict., c. 57, sec. 1.

887. Certiorari not to lie when Appeal is Taken.—No writ of *certiorari* shall be allowed to remove any conviction or order had or made before any justice of the peace, IF THE DEFENDANT HAS APPEALED from such conviction or order to any court to which an appeal from such conviction or order is authorized by law, or shall be allowed to remove any conviction or order made upon such appeal.

The writ of *certiorari* is a writ issuing out of a Superior Court for the purpose of procuring the inspection of the proceedings of any court of inferior jurisdiction.

It requires no special law to authorize the *certiorari*, for it is a matter of course that all courts of inferior jurisdiction shall have their proceedings removable for the purpose of being examined by a Superior Court.

In this respect the *certiorari* differs from the right of appeal; for an appeal does not exist, unless expressly given by statute, while a *certiorari* lies unless expressly taken away by statute. (1)

The practice of taking away the *certiorari*, by statute, which Lord Kenyon thought was too frequent, only began to prevail at the beginning of the reign of William III, not long after the introduction of appeals to the sessions, which, as already observed (2), came into use at the latter end of the reign of Charles II.

The power of granting a *certiorari* is considered as so beneficial to the subject that it is not allowed to be interfered with by anything short of an express statutory prohibition; and it is not taken away, unless there be express words to take it away. (3) And, even where a statute in express terms declares that the proceedings shall not be removed by *certiorari*, this does not prevent its issuing at the instance of the prosecutor; for (4) to restrain the prerogative of the Crown, in this particular, there must either be ex-

(1) R. v. Hanson, 4 B. & Ald. 521; per Abbott, C. J., R. v. Cashiobury, 3 D. & R. 35.

(2) See INTRODUCTION, p. V., *ante*. For Forms of *Certiorari* and of Recognizance thereon, see "ADDITIONAL FORMS" at the end of this Chapter.

(3) R. v. Morley and others, 2 Burr. 1041.

(4) R. v. Allan 15 East, 334, 341, 342.

press words for that purpose, or an intention, manifestly appearing upon the Act, that the Crown, as well as the subject, shall be prohibited from removing the proceedings. (1)

It is in fact beneficial to the subject that this privilege should exist on the part of the Crown, for, in several instances where the *certiorari* is taken away from the defendant, the Attorney-General has assisted defendants,—where a doubtful judgment has been given below,—to have their cases reconsidered by applying on behalf of the Crown for the *certiorari*.

Where there is a want or excess of jurisdiction, (2)—(which may be shown by affidavit), (3), or where the court has been illegally constituted, (4) or the conviction has been obtained by fraud, (5)—express words taking away the *certiorari* will not be applicable. And, notwithstanding that there were express words taking away the *certiorari*, the writ was allowed to issue in a case where the magistrate convicted of an assault upon a complaint asking only for sureties to be found to keep the peace. (6)

The following objections have been held not to go to the jurisdiction, namely; that the defendant was convicted on a summons giving an unreasonably short notice, and in the absence of himself or anyone on his behalf except an attorney authorized to apply only for an adjournment, and that the conviction took place without proof of service of the summons, the justices having jurisdiction over the subject matter. (7)

So, where costs were ordered to be paid to the clerk of the commissioners instead of the clerk of the peace, it was held to be a defect in form only. (8)

If a summons is taken out under one statute, and the defendant

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(1) 15 East, 337; Paley Conv., 6 Ed. 429.
(2) R. v. Sheffield Ry. Co., 11 A. & E. 194; R. v. Boultbee, 4 A. & E. 498.
(3) R. v. Bolton, 1 Q. B., 96.
(4) R. v. Cheltenham Commrs. 1 Q. B. 447.
(5) R. v. Gillyard, 12 Q. B. 527.
(6) R. v. Deny. and others, 20 L. J. M. C. 189.
(7) *Ex parte* Hopwood, 15 Q. B. 121.
(8) R. v. Binney, 22 L. J. M. C. 127.

is convicted under another, it is an excess of jurisdiction; and a *certiorari* will be granted. (1)

Where the application for a writ of *certiorari* rests on the ground of defective jurisdiction, matters on which the defect depends may be apparent on the face of the proceedings, or may be brought before the Superior Court by affidavit. (2) And objections of this kind may be founded on the character and constitution of the inferior court, the nature of the subject matter of the enquiry, or the absence of some preliminary proceeding which was necessary to give jurisdiction to the inferior court. (3)

The rule for a *certiorari* is sometimes absolute in the first instance, but it is usual to grant it *nisi* only, and the argument thereon generally decides the case; for, if it be made absolute after argument, the conviction is quashed almost as a matter of course when it is afterwards brought up on the *certiorari*. (4)

The rule for the *certiorari* must specify the omission or mistake or other defect objected to in the conviction, order, or judgment sought to be removed.

By the above Article, 887, no *certiorari* is to be allowed to remove any conviction or order had or made before any justice of the peace, IF THE DEFENDANT HAS APPEALED from such conviction or order. But it appears that, under a proper interpretation of this Article, the defendant may waive his right to appeal, and apply for a *certiorari*. (5)

It seems, also, that where the objection taken to a conviction goes to the jurisdiction of the justices, a *certiorari* may issue, even although the party applying for it has induced the magistrate to state a case for the opinion of a superior court, and although such case is still pending before the court. (6)

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(1) R. v. Brickhall, 33 L. J. M. C. 156.

(2) Colonial Bank of Australasia v. Willan, L. R. 5 P. C. 417; 43 L. J. C. P. 39.

(3) *Ib.*

(4) See R. v. Purdey, 34 L. J. M. C. 4.

(5) R. v. Harman, Andr. 343.

(6) R. v. Allen and others, 33 L. J, M. C. 98. See Article 900 of the Code, *post*, as to stating a case for review, on matters of law.

Still, even where there is no objection to the *certiorari* issuing before the time for appealing has expired, the court in the exercise of its discretion will refuse to grant it, if, upon the affidavits in support of the application, it appears that the ground alleged for it is more properly the subject of appeal (1), or if the defendant before raising the objection to the jurisdiction of the justices endeavored to obtain their decision on the merits; (2) or if the objection is one which ought to have been taken at the hearing, instead of being reserved as a ground for quashing the conviction or order, after it has been made, *e, g.*, the objection of *res judicata.* (3)

888. Conviction to be Transmitted to Appeal Court.—Every justice before whom any person is summarily tried, shall transmit the conviction or order to the court to which the appeal is herein given, in and for the district, county or place wherein the offence is alleged to have been committed, before the time when an appeal from such conviction or order may be heard, there to be kept by the proper officer among the records of the court; and if such conviction or order has been appealed against, and a deposit of money made, such justice shall return the deposit into the said court; and the conviction or order shall be presumed not to have been appealed against, until the contrary is shown.

2. Upon any indictment or information against any person for a subsequent offence, a copy of such conviction, certified by the proper officer of the court, or proved to be a true copy, shall be sufficient evidence to prove a conviction for the former offence.

889. Conviction not to be Held Invalid for Irregularity.—No conviction or order made by any justice of the peace and no warrant for enforcing the same, shall, on being removed by *certiorari*, be held invalid for any irregularity, informality or insufficiency therein, provided that the court or judge before which or whom the question is raised is, upon perusal of the depositions, satisfied that an offence of the nature described in the conviction, order or warrant, has been committed, over which

(1) Per Lord Mansfield, R. v. Whitehead, Doug. 550.
(2) R. v. J. J. Salop, 29 L. J. M. C. 39.
(3) R. v. Herrington, 12 W. R. 420.

such justice has jurisdiction, and that the punishment imposed is not in excess of that which might have been lawfully imposed for the said offence; and any statement which, under this act or otherwise, would be sufficient if contained in a conviction, shall also be sufficient if contained in an information, summons, or warrant: Provided that the court or judge, where so satisfied as aforesaid, shall, even if the punishment imposed or the order made is in excess of that which might lawfully have been imposed or made, have the like powers in all respects to deal with the case as seems just as are by section 883 conferred upon the court to which an appeal is taken under the provisions of section 879.

890. Irregularites Within the Preceding Section.—The following matters amongst others shall be held to be within the provisions of the next preceding section;—

(*a.*) The statement of the adjudication, or of any other matter or thing, in the past tense instead of in the present;

(*b.*) The punishment imposed being less than the punishment by law assigned to the offence stated in the conviction or order, or to the offence which appears by the depositions to have been committed;

(*c.*) The omission to negative circumstances, the existence of which would make the act complained of lawful, whether such circumstances are stated by way of exception or otherwise in the section under which the offence is laid, or are stated in another section.

2. But nothing in this section contained shall be construed to restrict the generality of the wording of the next preceding section.

As to the writ of *habeas corpus*, in cases of illegal commitment, see pp. 368-371, *post*.

891. Protection of Justice Whose Conviction is Quashed.—If an application is made to quash a conviction or order made by a justice, on the ground that such justice has exceeded his jurisdiction, the court or judge to which or whom the application is made, may, as a condition of quashing the same, if the court or judge thinks fit so to do, provide that no action shall

be brought against the justice who made the conviction, or against any officer acting under any warrant issued to enforce such conviction or order.

892. Condition of Hearing Motion to Quash.—The Court having authority to quash any conviction, order or other proceeding by or before a justice may prescribe by general order that no motion to quash any conviction, order or other proceeding by or before a justice and brought before such court by *certiorari*, shall be entertained unless the defendant is shown to have entered into a recognizance with one or more sufficient sureties, before a justice or justices of the county or place within which such conviction or order has been made, or before a judge or other officer, as may be prescribed by such general order, or to have made a deposit to be prescribed in like manner, with a condition to prosecute such writ of *certiorari* at his own costs and charges, with effect, without any wilful or affected delay, and, if ordered so to do, to pay the person in whose favour the conviction, order or other proceeding is affirmed, his full costs and charges to be taxed according to the course of the court where such conviction, order or proceeding is affirmed.

893. Imperial Act Superseded.—The second section of the Imperial Act, passed in the fifth year of the reign of His Majesty King George the Second, and chaptered nineteen, shall no longer apply to any conviction, order or other proceeding by or before a justice in Canada, but the next preceding section of the Code shall be substituted therefor, and the like proceedings may be had for enforcing the condition of a recognizance taken under the above section as might be had for enforcing the condition of a recognizance taken under the said Imperial Act.

894. Judicial Notice of Proclamation.—No order, conviction or other proceeding shall be quashed or set aside, and no defendant shall be discharged, by reason of any objection that evidence has not been given of a proclamation or order of the Governor-in-Council, or of any rules, regulations, or by-laws made by the Governor-in-Council in pursuance of a statute of Canada, or of the publication of such proclamation, order, rules, regulations, or by-laws in the *Canada Gazette*; but such proclamation, order,

rules, regulations and by-laws and the publication thereof shall be judicially noticed.

895. No procedendo necessary on Refusal to quash.—If a motion or rule to quash a conviction, order or other proceeding is refused or discharged, it shall not be necessary to issue a writ of *procede io*, but the order of the Court refusing or discharging the application shall be a sufficient authority for the registrar or other officer of the Court forthwith to return the conviction, order and proceedings to the Court or Justice from which or whom they were removed, and for proceedings to be taken thereon for the enforcement thereof, as if a *procedendo* had issued, which shall forthwith be done.

896. Conviction not to be set aside in certain cases.—Whenever it appears by the conviction that the defendant has appeared and pleaded, and the merits have been tried, and the defendant has not appealed against the conviction, where an appeal is allowed, or, if appealed against, the conviction has been affirmed, such conviction shall not afterwards be set aside or vacated in consequence of any defect of form whatever, but the construction shall be such a fair and liberal construction as will be agreeable to the justice of the case.

897. Order as to costs.—If upon any appeal, the Court trying the appeal orders either party to pay costs, the order shall direct the costs to be paid to the Clerk of the Peace or other proper officer of the Court, to be paid over by him to the person entitled to the same, and shall state within what time the costs shall be paid.

898. Recovery of costs.—If such costs are not paid within the time so limited, and the person ordered to pay the same has not been bound by any recognizance conditioned to pay such costs, the Clerk of the Peace or his deputy, on application of the person entitled to the costs, or of any person on his behalf, and on payment of any fee to which he is entitled, shall grant to the person so applying, a certificate that the costs have not been paid; and upon production of the certificate to any Justice in and for the same territorial division, such Justice may enforce the payment

of the costs by warrant of distress in manner aforesaid, and in default of distress may commit the person against whom the warrant has issued in manner hereinbefore mentioned, for any term not exceeding ONE MONTH unless the amount of the costs and all costs and charges of the distress and also the costs of the commitment and conveying of the party to prison, if the justice thinks fit so to order (the amount thereof being ascertained and stated in the commitment) are sooner paid. The said certificate shall be in the form PPP and the warrants of distress and commitment in the forms QQQ and RRR respectively in schedule one to the Code. (1)

899. Abandonment of appeal.—An appellant may abandon his appeal by giving to the opposite party NOTICE IN WRITING of his intention SIX CLEAR DAYS before the sitting of the Court appealed to, and thereupon the costs of the appeal shall be added to the sum, if any adjudged, against the appellant by the conviction or order, and the Justice shall proceed on the conviction or order as if there had been no appeal.

900. Statement of case by Justice for Review.—In this section the expression "the Court" means and includes any Superior Court of criminal jurisdiction for the province in which the proceedings herein referred to are carried on.

2. Any person aggrieved—the PROSECUTOR OR COMPLAINANT as well as the DEFENDANT,—who desires to question a conviction, order, determination OR OTHER PROCEEDING of a Justice under this part, on the ground that it is erroneous IN POINT OF LAW, or is in EXCESS OF JURISDICTION, may apply to such Justice to state and sign a case setting forth the facts of the case and the grounds on which the proceeding is questioned, and if the Justice declines to state the case, may apply to the Court for an order requiring the case to be stated.

3. The application shall be made and the case stated within such time and in such manner as is, from time to time, directed by RULES or ORDERS under section 533 of the Code. (2)

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(1) For forms PPP, QQQ, and RRR, see pp. 395-397, *post*.

(2) Article 533 of the Code provides that every Superior Court of Criminal Jurisdiction may at any time with the concurrence of the Judges thereof

4. The appellant, at the time of making such application, and before a case is stated and delivered to him by the justice, shall, in every instance, enter into a recognizance before such justice or any other justice exercising the same jurisdiction, with or without surety or sureties, and in such sum as to the justice seems meet, conditioned to prosecute his appeal without delay, and to submit to the judgment of the court and pay such costs as are awarded by the same ; and the appellant shall, at the same time, and before he shall be entitled to have the case delivered to him. pay to the justice such fees as he is entitled to ; and the appellant, if then in custody, shall be liberated upon the recognizance being further conditioned for his appearance before the same justice, or such other justice as is then sitting, within TEN DAYS after the judgment of the court has been given, to abide such judgment, unless the judgment appealed against is reversed.

5. If the justice is of opinion that the application is merely frivolous, BUT NOT OTHERWISE, he may refuse to state a case, and shall, on the request of the applicant, sign and deliver to him a certificate of such refusal ; provided that the justice shall not refuse to state a case where the application for that purpose is made to him by or under the direction of Her Majesty's Attorney-General of Canada or of any province.

6. Where the justice refuses to state a case, it shall be lawful for the appellant to apply to the court, upon an affidavit of the facts, for a rule calling upon the justice, and also upon the respondent, to show cause why such case should not be stated ; and such court may make such rule absolute, or discharge the application, with or without payment of costs, as to the court seems meet ; and the justice, upon being served with such rule absolute, shall state a case accordingly, upon the appellant entering into such recognizance as hereinbefore provided.

7. The court to which a case is transmitted under the foregoing provisions shall hear and determine the question or questions of

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present at any meeting held for the purpose make rules of Court, for,—among other things,—regulating, in criminal matters, the practice and procedure in the Court, including the subjects of MANDAMUS, CERTIORARI, HABEAS CORPUS, PROHIBITION, QUO WARRANTO, BAIL, and COSTS, and the proceedings under Article 900 of the Code.

law arising thereon, and shall thereupon affirm, reverse or modify the conviction, order or determination in respect of which the case has been stated, or remit the matter to the justice with the opinion of the court thereon, and may make such other order in relation to the matter and such orders as to costs, as to the court seems fit; and all such orders shall be final and conclusive upon all parties: Provided always, that any justice who states and delivers a case, in pursuance of this section, shall not be liable to any costs in respect or by reason of such appeal against his determination.

8. The court for the opinion of which a case is stated shall have power, if it thinks fit, to cause the case to be sent back for amendment; and thereupon the same shall be amended accordingly, and judgment shall be delivered after it has been amended.

9. The authority and jurisdiction hereby vested in the court, for the opinion of which a case is stated, may, subject to any rules and orders of court in relation thereto, be exercised by a judge of such court sitting in chambers, and as well in vacation as in term time.

10. After the decision of the court in relation to any such case stated for their opinion, the justice, in relation to whose determination the case has been stated, or any other justice exercising the same jurisdiction, shall have the same authority to enforce any conviction, order or determination which has been affirmed, amended or made by such court as the justice who originally decided the case would have had to enforce his determination if the same had not been appealed against; and no action or proceeding shall be commenced or had against a justice for enforcing such conviction, order or determination by reason of any defect in the same.

11. If the court deems it necessary or expedient, any order of the court may be enforced by its own process.

12. No writ of *certiorari* or other writ shall be required for the removal of any conviction, order or other determination in relation to which a case is stated under this section or otherwise, for obtaining the judgment or determination of a Superior Court on such case under this section.

13. In all cases where the conditions, or any of them, in any recognizance entered into in pursuance of this section have not been complied with, such recognizance shall be dealt with in the

like manner as is provided by section 878 with respect to recognizances entered into thereunder.

14. Any person who appeals under the provisions of this section against any determination of a justice from which he is entitled to an appeal under section 879 of the Code, shall be taken to have abandoned such last mentioned right of appeal FINALLY and CONCLUSIVELY and to all intents and purposes.

15. Where, by any special Act, it is provided that there shall be no appeal from any conviction or order, no proceedings shall be taken under this section in any case to which such provision in such special Act applies.

The general effect of the provisions of this Article is to enable either party, in a matter determinable by justices in a summary manner,—if dissatisfied with and aggrieved by their decision, as being erroneous in point of law,—to obtain the opinion thereon of a Superior Court of criminal jurisdiction, by means of a case stated and signed by the justices for that purpose.

Among the rules and orders made by the Supreme Court of the N. W. T., in reference to the procedure governing the application for and the stating of a case for the opinion of a Superior Court, (under sec. 28 of 53 Vic., c. 37, now embodied in the above Article 900), are to be found the following :

1. An application to a justice of the peace to state and sign a case shall be delivered to such justice or left with some person for him at his place of abode within FOUR DAYS after the making of the conviction, order, determination or other proceeding questioned. Such application shall state the grounds upon which the proceeding is questioned.

2. Within FOUR DAYS after such application has been so delivered or left for him, the justice shall state and sign and deliver to the appellant a case setting forth the facts of the case and the grounds on which the proceeding is questioned, stating—

(*a.*) the substance of the information or complaint ;

(*b.*) the names of the prosecutor (or complainant) and the defendant ;

(*c.*) the date of the proceeding questioned ;

(*d.*) the evidence, (if any), in full, as taken before the J. P.;

(*e.*) the substance of the conviction, order, determination or other proceeding questioned;

(*f.*) the grounds on which the same is questioned;

(*g.*) the grounds on which the justice supports the proceeding questioned, if the justice sees fit to state any.

3. Within TWENTY DAYS after the delivery to the appellant of a case stated by a justice, the appellant shall deliver or cause the same to be delivered,

(*a.*) To the Registrar of the Court in banc; or

(*b.*) (If he desires the matter to be heard or determined by a Judge in Chambers), to the Clerk of the Court of the judicial district in which the justice resides, provided that upon sufficient cause for the delay being shown, the Court or Judge, as the case may be, may hear and determine the matter, although the case was not delivered within said twenty days. (1)

Although the evidence is set out in the case, the Superior Court does not put itself in the position of the Justices in deciding on the weight or sufficiency of such evidence; but it accepts the findings of the Justices, upon facts within their jurisdiction, as conclusive, whatever the Superior Court's own opinion may be as to the nature of the evidence. (2)

The Superior Court, in such a case, has only to see whether the determination of the Justices is erroneous in point of law. (3) The main question in the case, namely, whether an offence has or has not been committed within the statute is a subject involving a question of law; but the subordinate facts leading up to it are left entirely to the decision of the Justice. The circumstances which lead to the conclusion of law are for the Justices. And it is for the Superior Court to see whether the facts are sufficient to warrant the legal conclusion which the Justices have drawn from them. (4)

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(1) McGuire's Magis. Handbook, 75-76.
(2) Cornwell v. Sanders, 3 B & S. 206; 32 L. J. M. C., 6.
(3) Taylor v. Oram, 31 L. J. M. C., 252.
(4) R. v. Paffles, 45 L. J. M. C., 61.

HABEAS CORPUS.—When there is any fault or illegality in the commitment under which a defendant is imprisoned, he may obtain his discharge by means of a writ of HABEAS CORPUS *ad subjiciendum*, which may be obtained from a Superior Court of Criminal Jurisdiction or from a Judge of such Court. Its object being to effect deliverance from illegal confinement, it commands the party detaining the prisoner to produce his body, together with a true statement of the cause of his detention; and it may be applied for, issued, and made returnable in Chambers. (1)

Although the right to remove the conviction by *certiorari* be taken away, yet, in moving for a writ of *habeas corpus*, a certified copy of the conviction may be brought before the Court for the purpose of defeating the commitment. (2) But the certified copy must be verified by affidavit, and the commissioner before whom the affidavit is sworn ought to certify on the exhibit annexed that it is the document referred to in the affidavit. (3)

The application may be for a rule calling on the keeper of the prison to show cause why a writ of *habeas corpus* should not issue to bring up the body of the prisoner, and why in the event of the rule being made absolute he should not be discharged, without the writ of *habeas corpus* actually issuing and without his being personally brought before the Court. (4)

Although, when this course is pursued, and the rule is made absolute, after being opposed and cause shown, the defendant may be released by virtue of the rule thus made absolute, it appears that,—if no cause is shown,—a writ of *habeas corpus* must, in that case, issue, before the prisoner can be discharged. (5)

Objections to the writ of *habeas corpus* for any irregularity are to be taken by way of substantive motion to set it aside, and not upon the motion to discharge the prisoner on the return. (6)

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(1) Re Leonard Watson & others, 9 A & E., 731.
(2) R. v. Mellor, 2 Dowl., 173.
(3) Re Allison, 10 Exch. 561.
(4) *Ex parte* Eggington, 23 L. J. M. C., 44; *Re* Geswood, 2 El. & Bl., 952. For Form of *Habeas Corpus*, see p. 402, *post*.
(5) *Ex parte*, Jacklin, 5 C. B. 103, (*a*.)
(6) R. v. Baines, 12 A. & E. 210, 213.

Upon receipt of the writ, the gaoler, or other officer having the party in custody, returns, along with the body of the prisoner, the warrant of commitment, which, if it be illegal or insufficient on its face, will be quashed and an order will be made for the defendant's release. (1)

The Court, upon the return to a writ of *habeas corpus* have nothing before them, but the warrant of commitment; but they may, nevertheless, refuse to discharge the prisoner until they have the conviction before them. Thus, where a commitment was "until the party should pay a fine" without specifying any sum, the Court refused to discharge him upon the commitment alone; but when, upon the conviction itself being brought before them, it appeared that no precise sum was thereby awarded, they ordered the defendant's discharge. (2)

As, however, the conviction as recited in the commitment, is *prima facie* taken to be as recited, it is for the party asserting it to be different to bring it before the Court by *certiorari*, or, if that process is not available, by affidavit; and in such a case, if the CONVICTION be right, the defect in the COMMITMENT will be cured, provided the latter shows the like offence as is stated in the conviction. (3)

With regard to the question of whether the truth of the return to a writ of *habeas corpus ad subjiciendum* can be controverted by means of affidavits, a distinction has been drawn in England between cases in which the writ is issued at common law or under statutes containing or not containing, as the case may be, an express provision on the subject. If the case came within the 31 Car. 2, c. 2, (the object of which was to provide, more particularly, against delays in bringing accused persons to trial) the English Courts would not receive affidavits impeaching the return. (4) But if the case came within the 56 Geo. 3, c. 100, affidavits were received, because they were admissible by the *express* terms of secs. 3 and 4 of that Act. So, that where prisoners, in custody of a Customs Officer, on a charge of smuggling, were brought up by *habeas corpus* at common

(1) *See* Bac. Ab., Tit. "*Habeas Corpus.*"

(2) R. v. Elwell, Str. 794; 2 Ld. Raym. 1514.

(3) R. v. Taylor, 7 D. & R. 623.

(4) Carus Wilson's Case, 7 Q. B., 984; R. v. Rogers, 3 D. & R., 607; R. v. Sheriff of Middlesex, 11 A. & E., 273.

law, they were held entitled, under the above sections of 56 Geo. 3, c. 100, to controvert the truth of the return by affidavit. Abbott, C. J., said, "The writs of *habeas corpus* in this instance are not to be considered as writs issuing under the 31 Car. 2, but as issuing at common law, under the general authority of the Court, and consequently the discussion of the truth of the return is left open by virtue of the 56 Geo. 3, c. 100, sec. 4. The object of 56 Geo. 3, was to give the party a summary remedy by controverting the truth of a return, instead of putting him to an action for a false return." (1)

But, even in cases within the 56 Geo. 3, c. 100, it does not appear that all statements upon the return may be contradicted by affidavit. There are certain questions which are exclusively within the province of the tribunal issuing the commitment, and which cannot be opened again before another tribunal, except by appeal or upon a case stated. Such, for instance, is the weight of evidence, the innocence or guilt of the defendant, and the adjudication of contempt. No other Court except the Court to which an appeal is granted is competent to re-investigate these matters, whether the proceeding be brought before it on return to *habeas corpus*, or *certiorari*, or in an action against the magistrate. (2)

It appears that affidavits, to show a WANT or EXCESS of JURISDICTION, are admissible whether the case is one at common law or under the statute of Car. 2, or Geo. 3, although they may directly contradict facts stated in the return which, if true, would show jurisdiction and no excess of it. The rule appears to be the same as that which is applied to proceedings by *certiorari*, where a want or excess of jurisdiction may be shown by affidavit as ground for quashing a conviction or order. The exercise of this privilege does not try the guilt or innocence of the prisoner, upon affidavit; nor does it impugn the rule that matters on which Justices, acting within their jurisdiction, decide shall be held to be conclusive, if found by them; but, on the contrary, it is a consequence of the salutary maxim that no Judge, by misstating facts, can give himself jurisdiction. (3) And, accordingly, on a conviction under the *Master*

(1) *Ex parte* Beeching, 6 D. & R., 209.
(2) Dimes's Case, 14 Q. B., 554.
(3) R. v. Bolton, 1 Q. B., 66; R. v. Nunnely, 27 L. J. M. C., 260.

and Servants Act, (4 Geo. 4, c. 34), affidavits were admitted to show that there was no evidence before the Justice of such facts as were essential to the exercise of his jurisdiction, *namely*, the contract to serve. (1)

The result, briefly stated, of the decisions upon this question seems to be, that, if the fact found be one essential to jurisdiction, or on which jurisdiction depends, it may be shown that there was NO EVIDENCE before the justices to warrant the finding; but, that, if the fact be merely a fact in the case and a part of it,—jurisdiction having attached,—their finding is not, as a general rule, reviewable on affidavit, or in any manner except on appeal or on a case reserved. (2)

After the return is put in and read, it is considered as filed, but the Court may still amend it. (3)

If the return shows a commitment bad upon its face, the Court will not, on the suggestion that the conviction itself is good, adjourn the case for the purpose of having the conviction brought up and of amending the commitment. Nor will the Court look at the conviction unless it is before them, having been brought up by *certiorari*. (4)

If the defect be not on the face of the commitment, but in the conviction, the defendant, besides a writ of *habeas corpus* to bring up the prisoner and the warrant of commitment, must sue out a *certiorari* directed to the convicting magistrate,—or to the sessions or other Court where the conviction has been filed,—to return the conviction into the Court above. (5)

901. Tender and Payment.—Whenever a warrant of distress has issued against any person, and such person pays or tenders to the peace officer having the execution of the same, the

(1) *Re* Bailey and Collier, 23 L. J. M. C., 161.
(2) R. v. Huntsworth, 33 L. J. M. C., 131; Pal. Sum. Conv., 6 Ed., 421.
(3) Canadian Prisoners' Case, *nom.* Re Watson, 9 A. & E., 731.
(4) *Ex parte* Timson, L. R. 5 Ex. 257; 39 L. J. M. C., 129.
(5) *Re* Allison, 10 Exch. 661.

sum or sums in the warrant mentioned, together with the amount of the expenses of the distress up to the time of payment or tender, the peace officer shall cease to execute the same.

2. Whenever any person is imprisoned for non-payment of any penalty or other sum, he may pay or cause to be paid to the keeper of the prison in which he is imprisoned, the sum in the warrant of commitment mentioned, together with the amount of the costs and charges and expenses therein also mentioned, and the keeper shall receive the same, and shall thereupon discharge the person, if he is in his custody for no other matter. He shall also forthwith pay over any moneys so received by him to the Justice who issued the warrant.

902. Returns respecting convictions and moneys received.—Every Justice shall, quarterly, on or before the second Tuesday in each of the months of MARCH, JUNE, SEPTEMBER and DECEMBER in each year, make to the Clerk of the Peace or other proper officer of the Court having jurisdiction in appeal, as herein provided, a return in writing, under his hand, of all convictions made by him, and of the receipt and application by him of the moneys received from the defendants,—which return shall include all convictions and other matters not included in some previous return, and shall be in the form SSS in schedule one of the Code. (1)

2. If two or more Justices are present, and join in the conviction, they shall make a joint return.

3. In the province of Prince Edward Island such return shall be made to the Clerk of the Court of Assize of the county in which the convictions are made, and on or before the fourteenth day next before the sitting of the said Court next after such convictions are so made.

4. Every such return shall be made in the said district of Nipissing, in the province of Ontario, to the Clerk of the Peace for the county of Renfrew, in the said province.

5. Every justice, to whom any such moneys are afterwards paid, shall make a return of the receipts and application thereof, to the

(1) For Form SSS, see p. 398, *post*.

Court having jurisdiction in appeal as hereinbefore provided,—which return shall be filed by the Clerk of the Peace or the proper officer of such Court with the records of his office.

6. Every justice, before whom any such conviction takes place or who receives any such moneys, who neglects or refuses to make such return thereof, or wilfully makes a false, partial or incorrect return, or wilfully receives a larger amount of fees than by law he is authorized to receive, shall incur a penalty of EIGHTY DOLLARS, together with costs of suit, in the discretion of the Court, which may be recovered by any person who sues for the same by action of debt or information in any Court of record in the province in which such return ought to have been or is made.

7. One moiety of such penalty shall belong to the person suing, and the other moiety to Her Majesty, for the public uses of Canada.

In Ontario, returns are required by the Revised Statutes, c. 76, and must include convictions under Provincial Acts.

903. Publication &c., of Returns.—The clerk of the peace of the district or county in which any such returns are made, or the proper officer, other than the clerk of the peace, to whom such returns are made, shall, within seven days after the adjournment of the next ensuing General or Quarter Sessions, or of the term or sitting of such other court as aforesaid, cause the said returns to be posted up in the court-house of the district or county, and also in a conspicuous place in the office of such clerk of the peace, or other proper officer, for public inspection, and the same shall continue to be so posted up and exhibited until the end of the next ensuing General or Quarter Sessions of the peace, or of the term or sitting of such other court as aforesaid ; and for every schedule so made and exhibited by such clerk or officer, he shall be allowed such fee as is fixed by competent authority.

2. Such clerk of the peace or other officer of such district or county, within twenty days after the end of each General or Quarter Sessions of the peace, or the sitting of such court as aforesaid, shall transmit to the Minister of Finance and Receiver General a true copy of all such returns made within his district or county.

904. Prosecutions for Penalties under Article 902.—All actions for penalties arising under the provisions of section 902 shall be commenced within SIX MONTHS next after the cause of action accrues, and the same shall be tried in the district, county or place wherein such penalties have been incurred; and if a verdict or judgment passes for the defendant, or the plaintiff becomes non-suit, or discontinues the action after issue joined, or if, upon demurrer or otherwise, judgment is given against the plaintiff, the defendant shall, in the discretion of the court, recover his costs of suit, as between solicitor and client, and shall have the like remedy for the same as any defendant has by law in other cases.

905. Remedies Saved.—Nothing in the three sections next preceding shall have the effect of preventing any person aggrieved from prosecuting, by indictment, any justice, for any offence, the commission of which would subject him to indictment at the time of the coming into force of this Act.

906. Defective Returns.—No return purporting to be made by any justice under this Act shall be vitiated by the fact of its including, by mistake, any convictions or orders had or made before him in any matter over which any Provincial Legislature has exclusive jurisdiction, or with respect to which he acted under the authority of any provincial law.

907. Certain Defects not to Vitiate Proceedings.—No information, summons, conviction, order or OTHER PROCEEDING shall be held to charge two offences, or shall be held to be uncertain on account of its stating the offence to have been committed in different modes, or in respect of one or other of several articles, either conjunctively or disjunctively; for example, in charging an offence under section 508 of the Code, it may be alleged that "the defendant unlawfully did cut, break, root up and otherwise destroy or damage a tree, sapling or shrub"; and it shall not be necessary to define more particularly the nature of the act done, or to state whether such act was done in respect of a tree, or a sapling, or a shrub.

908. Preserving order in Court.—Every Judge of Sessions of the Peace, Chairman of the Court of General Sessions of the Peace, Police Magistrate, District Magistrate or Stipendiary Magistrate, shall have such and like powers and authority to preserve order in the said Courts during the holding thereof, and by the like ways and means as now by law are or may be exercised and used in like cases and for the like purposes by any Court in Canada, or by the judges thereof, during the sittings thereof.

See comments and authorities upon this subject at pp. 36-39, *ante*.

909. Resistance to execution of process.—(*As amended by* 56 *Vic., c.* 32.) Every Judge of the Sessions of the Peace, Chairman of the Court of General Sessions of the Peace, Recorder, Police Magistrate, District Magistrate or Stipendiary Magistrate, whenever any resistance is offered to the execution of any summons, warrant of execution or other process issued by him, may enforce the due execution of the same by the means provided by the law for enforcing the execution of the process of other courts in like cases.

FORMS UNDER PART LVIII. OF THE CODE

VV.—(*Section* 859.)

CONVICTION FOR A PENALTY TO BE LEVIED BY DISTRESS AND IN DEFAULT OF SUFFICIENT DISTRESS, BY IMPRISONMENT.

Canada,
Province of ,
County of .

Be it remembered that on the day of , in the year , at , in the said county, A. B. is convicted before the undersigned, , a Justice of the Peace for the said county, for that the said A. B. (*&c., stating the offence, and the time and place when and where committed*), and I adjudge the said A. B. for his said offence to forfeit and pay the sum of $

(*stating the penalty, and also the compensation, if any*), to be paid and applied according to law and also to pay to the said C. D. the sum of , for his costs in this behalf; and if the said several sums are not paid forthwith, (*or* on or before the of next). * I order that the same be levied by distress and sale of the goods and chattels of the said A. B., and in default of sufficient distress, * I adjudge the said A. B. to be imprisoned in the common gaol of the said county, at in the said county of , there to be kept at hard labour, (*if such is the sentence*) for the term of , unless the said several sums and all costs and charges of the said distress (and of the commitment and conveying of the said A. B. to the said gaol) are sooner paid.

Given under my hand and seal, the day and year first above mentioned, at . in the county aforesaid.

J. S., [SEAL.]
J. P., (*Name of county.*)

* *Or when the issuing of a distress warrant would be ruinous to the defendant and his family, or it appears he has no goods whereon to levy a distress, then instead of the words between the asterisks* * * *say*, inasmuch as it is now made to appear to me that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B., and his family," (*or*, "that the said A. B. has no goods or chattels whereon to levy the said sums by distress.").

WW.—(*Section* 859.)

CONVICTION FOR A PENALTY, AND IN DEFAULT OF PAYMENT IMPRISONMENT.

Canada,
Province of ,
County of ,

Be it remembered that on the day of in the year , at , in the said county, A. B. is convicted before the undersigned, . a Justice of the

Peace for the said county for that he the said A. B. (*&c., stating the offence, and the time and place when and where it was committed*), and I adjudge the said A. B. for his said offence to forfeit and pay the sum of (*stating the penalty and the compensation, if any*) to be paid and applied according to law; and also to pay to the said C. D. the sum of for his costs in this behalf; and if the said several sums are not paid forthwith (*or*, on or before next), I adjudge the said A. B. to be imprisoned in the common gaol of the said county, at in the said county of (and there to be kept at hard labour) for the term of , unless the said sums and the costs and charges of conveying the said A. B. to the said common gaol are sooner paid.

Given under my hand and seal, the day and year first above mentioned at , in the county aforesaid.

J. S., [SEAL.]

J. P., (*Name of county*)

XX.—(*Section* 859.)

CONVICTION WHEN THE PUNISHMENT IS BY IMPRISONMENT, ETC.

Canada,
Province of ,
County of ,

Be it remembered that on the day of , in the year , at , in the said county, A. B. is convicted before the undersigned, , a justice of the peace in and for the said county, for that he the said A. B. (*&c., stating the offence, and the time and place when and where it was committed*); and I adjudge the said A. B. for his said offence to be imprisoned in the common gaol of the said county, at , in the county of , (and there to be kept at hard labour) for the term of ; and I also adjudge the said A. B. to pay to the said C. D. the sum of , for his costs in this behalf, and if the said sum for costs are not paid forthwith (*or* on or before next), then * I order that the said sum be levied by distress and sale of the goods and chattels of the said A. B.; and in default of suffi-

cient distress in that behalf, * I adjudge the said A. B. to be imprisoned in the said common gaol and kept there at hard labour for the term of , to commence at and from the term of his imprisonment aforesaid, unless the said sum for costs is sooner paid.

Given under my hand and seal, the day and year first above mentioned at , in the county aforesaid.

J. S. [SEAL.]

J. P. (*Name of county.*)

**Or, when the issuing of a distress warrant would be ruinous to the defendant and his family, or it appears that he has no goods whereon to levy a distress, then instead of the words between the asterisks * * say,* "inasmuch as it is now made to appear to me that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B. and his family," (*or*, "that the said A. B. has no goods or chattels whereon to levy the said sum for costs by distress.")

YY.—(*Section* 859.)

ORDER FOR PAYMENT OF MONEY TO BE LEVIED BY DISTRESS AND IN DEFAULT OF DISTRESS IMPRISONMENT.

Canada,
Province of ,
County of ,

Be it remembered that on , complaint was made before the undersigned, , a justice of the peace in and for the said county of , for that (*stating the facts entitling the complainant to the order, with the time and place when and where they occurred*), and now at this day, to wit, on , at , the parties aforesaid appear before me the said justice (*or* the said C. D. appears before me the said justice, but the said A. B., although duly called, does not appear by himself, his counsel or attorney, and it is now satisfactorily proved to me on oath that the said A. B. was duly served with the summons in this behalf, which required him to be and appear here on this day before me or such justice or jus-

tices of the peace for the county, as should now be here, to answer the said complaint, and to be further dealt with according to law); and now having heard the matter of the said complaint, I do adjudge the said A. B. to pay to the said C. D. the sum of forthwith (*or* on or before next, *or as the Act or law requires*), and also to pay to the said C. D. the sum of for his costs in this behalf; and if the said several sums are not paid forthwith (*or* on or before next), then, * I hereby order that the same be levied by distress and sale of the goods and chattels of the said A. B, and in default of sufficient distress in that behalf * I adjudge the said A. B. to be imprisoned in the common gaol of the said county, at , in the said county of , (and there kept at hard labour) for the term of , unless the said several sums, and all costs and charges of the said distress (and the commitment and conveyance of the said A. B. to the said common gaol) are sooner paid.

Given under my hand and seal, this day of in the year , at in the county aforesaid.

J. S. [SEAL.]

J P. (Name of County.)

* *Or, when the issuing of a distress warrant would be ruinous to the defendant and his family, or it appears he has no goods whereon to levy a distress, then, instead of the words between the asterisks* * * *say.* "inasmuch as it is now made to appear to me that the issuing of a warrant of distress in this behalf would be ruinous to the said A.B. and his family," (*or* "that the said A. B. has no goods or chattels whereon to levy the said sums by distress.")

ZZ.—(*Section* 859.)

ORDER FOR PAYMENT OF MONEY, AND IN DEFAULT OF PAYMENT IMPRISONMENT.

Canada,
Province of ,
County of .

Be it remembered that on , complaint was made before the undersigned, , a justice of the peace in and for

the said county of , for that (*stating the facts entitling the complainant to the order, with the time and place when and where they occurred*), and now on this day, to wit, on , at , the parties aforesaid appear before me the said justice (*or* said C. D. appears before me the said justice, but the said A. B., although duly called, does not appear by himself, his counsel or attorney, and it is now satisfactorily proved to me upon oath that the said A. B. was duly served with the summons in this behalf, which required him to be and appear here this day before me, or such justice or justices of the peace for the said county, as should now be here, to answer to the said complaint, and to be further dealt with according to law, and now having heard the matter of the said complaint, I do adjudge the said A. B. to pay to the said C. D. the sum of forthwith (*or* on or before next, (*or as the Act or law requires*), and also pay to the said C. D. the sum of for his costs in this behalf; and if the said several sums are not paid forthwith (*or* on or before next), then I adjudge the said A. B. to be imprisoned in the common gaol of the said county at , in the said county of , (there to be kept at hard labour *if the Act or law authorizes this*) for the term of , unless the said several sums (and costs and charges of commitment and conveying the said A. B. to the said common gaol) are sooner paid.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]

J. P., (*Name of county.*)

AAA.—(*Section* 859.)

ORDER FOR ANY OTHER MATTER WHERE THE DISOBEYING OF IT IS PUNISHABLE WITH IMPRISONMENT.

Canada,
Province of ,
County of .

Be it remembered that on , complaint was made before the undersigned, , a justice of the peace in and

for the said county of , for that (*stating the facts entitling the complainant to the order with the time and place where and when they occurred*) ; and now on this day, to wit, on , at , the parties aforesaid appear before me the said justice (*or* the said C. D. appears before me the said justice, but the said A. B., although duly called, does not appear by himself, his counsel or attorney, and it is now satisfactorily proved to me, upon oath, that the said A. B. was duly served with the summons in this behalf, which required him to be and appear here this day before me, or such justice or justices of the peace for the said county, as should now be here to answer to the said complaint, and to be further dealt with according to law) ; and now having heard the matter of the said complaint, I do adjudge the said A. B. to (*here state the matter required to be done*), and if, upon a copy of the minute of this order being served upon the said A. B., either personally or by leaving the same for him at his last or most usual place of abode, he neglects or refuses to obey the same, in that case I adjudge the said A. B., for such his disobedience, to be imprisoned in the common gaol of the said county, at , in the said county of , there to be kept at hard labour (*if the statute authorizes this*), for the term of unless the said order is sooner obeyed, and I do also adjudge the said A. B. to pay to the said C. D. the sum of for his costs in this behalf, and if the said sum for costs is not paid forthwith (*or* on or before next), I order the same to be levied by distress and sale of the goods and chattels of the said A. B., and in default of sufficient distress in that behalf I adjudge the said A. B. to be imprisoned in the said common gaol (there to be kept at hard labour) for the space of , to commence at and from the termination of his imprisonment aforesaid, unless the said sum for costs is sooner paid.

Given under my hand and seal. this day of , in the year , at , in the county aforesaid.

J. S., [SEAL]

J. P., (*Name of county.*)

BBB.—(*Section* 862.)

FORM OF ORDER OF DISMISSAL OF AN INFORMATION OR COMPLAINT.

Canada,
Province of ,
County of ,

Be it remembered that on , information was laid (*or* complaint was made) before the undersigned. , a justice of the peace in and for the said county of , for that (*&c., as in the summons of the defendant*), and now at this day, to wit, on , at , (*if at any adjournment insert here :* "to which day the hearing of this case was duly adjourned, of which the said C. D. had due notice,") both the said parties appear before me in order that I should hear and determine the said information (*or* complaint) (*or* the said A. B. appears before me, but the said C. D., although duly called, does not appear) ; [whereupon the matter of the said information (*or* complaint) being by me duly considered, it manifestly appears to me that the said information (*or* complaint) is not proved, and] (*if the informant or complainant does not appear, these words may be omitted*), I do therefore dismiss the same, and do adjudge that the said C. D. do pay to the said A. B. the sum of , for his costs incurred by him in defence in his behalf ; and if the said sum for costs is not paid forthwith (*or* on or before), I order that the same be levied by distress and sale of the goods and chattels of the said C. D., and in default of sufficient distress in that behalf, I adjudge the said C. D. to be imprisoned in the common gaol of the said county of , at , in the said county of , (and there kept at hard labour) for the term of , unless the said sum for costs, and all costs and charges of the said distress (and of the commitment and conveying of the said C. D. to the said common gaol) are sooner paid.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]

J. P., (*Name of county.*)

CCC.—(*Section* 862.)

FORM OF CERTIFICATE OF DISMISSAL.

I hereby certify that an information (*or* complaint) preferred by C. D. against A. B. for that (*&c., as in the summons*) was this day considered by me, a justice of the peace in and for the said county of , and was by me dismissed (with costs).

Dated at , this day of , in the year

J. S.,

J. P., (*Name of county*)

DDD.—(*Section* 872.)

WARRANT OF DISTRESS UPON A CONVICTION FOR A PENALTY.

Canada,
Province of ,
County of ,

To all or any of the constables and other peace officers in the said county of

Whereas A. B., late of , (*labourer*), was on this day (*or* on last past) duly convicted before , a justice of the peace, in and for the said county of , for that (*stating the offence, as in the conviction*), and it was thereby adjudged that the said A. B. should for such offence, forfeit and pay (*&c., as in the conviction*), and should also pay to the said C. D. the sum of , for his costs in that behalf; and it was thereby ordered that if the said several sums were not paid (forthwith) the same should be levied by distress and sale of the goods and chattels of the said A.B., and it was thereby also adjudged that the said A. B., in default of sufficient distress, should be imprisoned in the common gaol of the said county, at , in the said county of (and there kept at hard labour) for the space of , unless the said several sums and all costs and charges of the said distress, and of the commitment and conveying of the said A. B. to the said common gaol were sooner paid; * And whereas the said A. B., being so

convicted as aforesaid, and being (now) required to pay the said sums of and has not paid the same or any part thereof, but therein has made default: These are, therefore, to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said A. B.; and if within days next after the making of such distress, the said sums, together with the reasonable charges of taking and keeping the distress, are not paid, then to sell the said goods and chattels so by you distrained, and to pay the money arising from such sale unto me, the convicting justice (*or* one of the convicting justices), that I may pay and apply the same as by law directed, and may render the overplus, if any, on demand, to the said A. B.; and if no such distress is found then to certify the same unto me, that such further proceedings may be had thereon as to law appertain.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S., [SEAL]

J. P., (*Name of county.*)

EEE.—(*Section* 872.)

WARRANT OF DISTRESS UPON AN ORDER FOR THE PAYMENT OF MONEY.

Canada,)
Province of , }
County of ,)

To all or any of the peace officers in the said county of ,

Whereas on , last past, a complaint was made before . . , a justice of the peace in and for the said county, for that (*&c., as in the order*), and afterwards, to wit, on , at , the said parties appeared before (*as in the order*), and thereupon the matter of the said complaint having been considered, the said A. B. was adjudged to pay to the said C. D. the sum of , on or before then next, and also to pay to the said C. D. the sum of , for his costs in that behalf; and it was ordered that if the said several sums were not paid on or before the said then next, the same should be

levied by distress and sale of the goods and chattels of the said A. B., and it was adjudged that in default of sufficient distress in that behalf, the said A. B. should be imprisoned in the common gaol of the said county, at in the said county of (and there kept at hard labour) for the term of , unless the said several sums and all costs and charges of the distress (and of the commitment and conveying of the said A. B. to the said common gaol) were sooner paid ; *And whereas the time in and by the said order appointed for the payment of the said several sums of , and has elapsed, but the said A. B. has not paid the same, or any part thereof, but therein has made default : These are, therefore, to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said A. B., and if within the space of days after the making of such distress, the said last mentioned sums, together with the reasonable charges of taking and keeping the said distress, are not paid, then to sell the said goods and chattels so by you distrained, and to pay the money arising from such sale unto me (*or some other of the convicting justices, as the case may be*), that I (*or* he) may pay or apply the same as by law directed, and may render the overplus, if any, on demand to the said A. B. ; and if no such distress can be found, then to certify the same unto me, to the end that such proceedings may be had therein, as to law appertain.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. P., (*Name of county.*)

FFF.—(*Section* 872.)

WARRANT OF COMMITMENT UPON A CONVICTION FOR A PENALTY IN THE FIRST INSTANCE.

Canada,
Province of ,
County of ,

To all or any of the constables and other peace officers in the county of , and to the keeper of the common gaol at , in the said county of

Whereas A. B., late of , (*labourer*), was on this day convicted before the undersigned , a justice of the peace in and for the said county, for that (*stating the offence, as in the conviction*), and it was thereby adjudged that the said A. B., for his offence, should forfeit and pay the sum of (*&c. as in the conviction*), and should pay to the said C. D. the sum of for his costs in that behalf; and it was thereby further adjudged that if the said several sums were not paid (forthwith) the said A. B. should be imprisoned in the common gaol of the county at , in the said county of (and there kept at hard labour) for the term of , unless the said several sums (and the costs and charges of conveying the said A. B. to the said common gaol) were sooner paid; And whereas the time in and by the said conviction appointed for the payment of the said several sums has elapsed, but the said A. B. has not paid the same, or any part thereof, but therein has made default: These are, therefore, to command you, the said peace officers, or any of you, to take the said A. B, and him safely to convey to the common gaol at aforesaid, and there to deliver him to the said keeper thereof, together with this precept: And I do hereby command you, the said keeper of the said common gaol, to receive the said A. B., into your custody in the said common gaol, there to imprison him (and keep him at hard labour) for the term of , unless the said several sums (and costs and charges of carrying him to the said common gaol, amounting to the further sum of), are sooner paid unto you, the said keeper; and for your so doing, this shall be your sufficient warrant.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]

J. P., (*Name of county.*)

GGG.—(*Section* 872.)

WARRANT OF COMMITMENT ON AN ORDER IN THE FIRST INSTANCE.

Canada,
Province of ,
County of ,

To all or any of the constables and other peace officers in the said county of , and to the keeper of the common gaol of the county of , at , in the said county of .

Whereas, on last past, complaint was made before the undersigned , a justice of the peace in and for the said county of , for that (*&c., as in the order,*) and afterwards, to wit, on the day of , at A. B. and C. D. appeared before me, the said justice (*or as it is in the order,*) and thereupon having considered the matter of the complaint, I adjudged the said A. B. to pay the said C. D. the sum of , on or before the day of then next, and also to pay to the said C. D. the sum of , for his costs in that behalf; and I also thereby adjudged that if the said several sums were not paid on or before the day of then next, the said A. B. should be imprisoned in the common gaol of the county of , at , in the said county of (and there be kept at hard labour) for the term of , unless the said several sums (and the costs and charges of conveying the said A. B. to the said common gaol, *as the case may be*) were sooner paid; And whereas the time in and by the said order appointed for the payment of the said several sums of money has elapsed, but the said A. B. has not paid the same, or any part thereof, but therein has made default: These are, therefore, to command you, the said peace officers, or any of you, to take the said A. B. and him safely to convey to the said common gaol, at aforesaid, and there to deliver him to the keeper thereof, together with this precept: And I do hereby command you, the said keeper of the said common gaol, to receive the said A. B. into your custody in the said common gaol, there to imprison him (and keep him at hard labour) for the term of , unless the said several sums (and the cost and charges of conveying him to the said common gaol, amounting to

the further sum of), are sooner paid unto you the said keeper: and for your so doing, this shall be your sufficient warrant.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. P., (*Name of county.*)

HHH.—(*Section* 874.)

ENDORSEMENT IN BACKING A WARRANT OF DISTRESS.

Canada,
Province of ,
County of .

Whereas proof upon oath has this day been made before me , a justice of the peace in and for the said county, that the name of J. S. to the within warrant subscribed is of the handwriting of the justice of the peace within mentioned, I do therefore authorize W. T., who brings me this warrant, and all other persons to whom this warrant was originally directed, or by whom the same may be lawfully executed, and also all peace officers in the said county of , to execute the same within the said county,

Given under my hand, this day of , one thousand eight hundred and

O. K.
J. P., (*Name of county.*)

III.—(*Section* 872.)

CONSTABLE'S RETURN TO A WARRANT OF DISTRESS.

I, W. T., constable, of , in the county of , hereby certify to J. S., Esquire, a justice of the peace in and for the county of , that by virtue of this warrant I have made diligent search for the goods and chattels of the within mentioned A. B., and that I can find no sufficient goods or chattels of the said A. B. whereon to levy the sums within mentioned.

Witness my hand, this day of , one thousand eight hundred and

W. T.

JJJ.—(*Section* 872.)

WARRANT OF COMMITMENT FOR WANT OF DISTRESS.

Canada,
Province of ,
County of ,

To all or any of the constables and other peace officers in the county of , and to the keeper of the common gaol of the said county of , at , in the said county.

Whereas (*&c., as in either of the foregoing distress warrants,* DDD *or* EEE, *to the asterisk* and then thus*) : And whereas, afterwards on the day of , in the year aforesaid, I, the said justice, issued a warrant to all or any of the peace officers of the county of , commanding them, or any of them, to levy the said sums of and by distress and sale of the goods and chattels of the said A. B. ; And whereas it appears to me, as well by the return of the said warrant of distress, by the peace officer who had the execution of the same, as otherwise, that the said peace officer has made diligent search for the goods and chattels of the said A. B., but that no sufficient distress whereon to levy the sums above mentioned could be found : These are, therefore, to command you, the said peace officers, or any of you, to take the said A. B., and him safely to convey to the common gaol at , aforesaid, and there deliver him to the said keeper, together with this precept : And I do hereby command you, the said keeper of the said common gaol, to receive the said A. B. into your custody, in the said common gaol, there to imprison him (and keep him at hard labour) for the term of , unless the said several sums, and all the costs and charges of the said distress (and of the commitment and conveying of the said A. B. to the said common gaol) amounting to the further sum of , are sooner paid unto you, the said keeper ; and for so doing this shall be your sufficient warrant.

Given under my hand and seal, this day of ; in the year , at . in the county aforesaid.

J. S. [SEAL.]

J. P. (*Name of county.*)

KKK.—(*Section* 873.)

WARRANT OF DISTRESS FOR COSTS UPON AN ORDER FOR DISMISSAL OF AN INFORMATION OR COMPLAINT.

Canada,
Province of ,
County of .

To all or any of the constables and other peace officers in the said county of

Whereas on last past, information was laid (*or* complaint was made) before , a justice of the peace in and for the said county of , for that (*&c., as in the order of dismissal*) and afterwards, to wit, on , at , both parties appearing before , in order that (I) should hear and determine the same, and the several proofs adduced to (me) in that behalf, being by (me) duly heard and considered, and it manifestly appearing to (me) that the said information (*or* complaint) was not proved, (I) therefore dismissed the same and adjudged that the said C. D. should pay to the said A. B. the sum of , for his costs incurred by him in his defence in that behalf; and (I) ordered that if the said sum for costs was not paid (forthwith) the same should be levied on the goods and chattels of the said C. D., and (I) adjudged that in default of sufficient distress in that behalf the said C. D. should be imprisoned in the common gaol of the said county of , at , in the said county of (and there kept at hard labour) for the space of , unless the said sum for costs, and all costs and charges of the said distress, and of the commitment and conveying of the said A. B. to the said common gaol, were sooner paid; * And whereas the said C. D. being now required to pay to the said A. B. the said sum for costs, has not paid the same, or any part thereof, but therein has made default: These are, therefore, to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said C. D., and if within the term of days next after the making of such distress, the said last mentioned sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, then to sell the said goods and chattels so by you

distrained, and to pay the money arising from such sale to (*me*) that (I), may pay and apply the same as by law directed, and may render the overplus (if any) on demand to the said C. D., and if no distress can be found, then to certify the same unto me (*or* to any other justice of the peace for the same county), that such proceedings may be had therein as to law appertain.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]

J. P., (*Name of county.*)

LLL.—(*Section* 873.)

WARRANT OF COMMITMENT FOR WANT OF DISTRESS.

Canada,
Province of ,
County of ,

To all or any of the constables and other peace officers in the said county of , and to the keeper of the common gaol of the said county of , at , in the said county of

Whereas (*&c., as in form KKK to the asterisk, * and then thus*): And whereas afterwards, on the day of , in the year aforesaid, I, the said justice, issued a warrant to all or any of the peace officers of the said county, commanding them, or any one of them, to levy the said sum of , for costs, by distress and sale of the goods and chattels of the said C. D. And whereas it appears to me, as well by the return to the said warrant of distress of the peace officer charged with the execution of the same as otherwise, that the said peace officer has made diligent search for the goods and chattels of the said C. D. but that no sufficient distress whereon to levy the sum above mentioned could be found: These are, therefore, to command you, the said peace officers, or any one of you, to take the said C. D., and him safely convey to the common gaol of the said county, at aforesaid, and there deliver him to the keeper thereof, together with this precept:

And I hereby command you, the said keeper of the said common gaol to receive the said C. D. into your custody in the said common gaol, there to imprison him (and keep him at hard labour) for the term of , unless the said sum, and all the costs and charges of the said distress (and of the commitment and conveying of the said C. D. to the said common gaol, amounting to the further sum of), are sooner paid unto you the said keeper; and for your so doing, this shall be your sufficient warrant.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S., [SEAL]
J. P., (*Name of county.*)

MMM.—(*Section* 878.)

CERTIFICATE OF NON-APPEARANCE TO BE ENDORSED ON THE DEFENDANT'S RECOGNIZANCE.

I hereby certify that the said A. B. has not appeared at the time and place in the said condition mentioned, but therein has made default, by reason whereof the within written recognizance is forfeited.

J. S., [SEAL]
J. P., (*Name of county.*)

NNN.—(*Section* 880.)

NOTICE OF APPEAL AGAINST A CONVICTION OR ORDER.

To C. D., of , and (*the names and additions of the parties to whom the notice of appeal is required to be given.*)

Take notice, that I, the undersigned, A. B. of intend to enter and prosecute an appeal at the next General Sessions of the peace (*or other Court, as the case may be*) to be holden at , in and for the county of , against a certain conviction (*or* order) bearing date on or about the day of instant, and made by (you) J. S., Esquire, a justice of the peace in and for the said county of , whereby I, the said A. B.

was convicted of having (or was ordered) to pay , (*here state the offence as in the conviction, information, or summons, or the amount adjudged to be paid, as in the order, as correctly as possible.*)

Dated at , this day of , one thousand eight hundred and .

A. B.

MEMORANDUM.—*If this notice is given by several defendants, or by an attorney, it may be adapted to the case.*

OOO.—(*Section* 880.)

FORM OF RECOGNIZANCE TO TRY THE APPEAL.

Canada,
Province of ,
County of ,

Be it remembered that on , A. B., of (*labourer*), and L. M., of (*grocer*), and N. O., of , (*yeoman*), personally came before the undersigned , a justice of the peace in and for the said county of , and severally acknowledged themselves to owe to our Sovereign Lady the Queen, the several sums following, that is to say, the said A. B. the sum of , and the said L. M. and N. O. the sum of , each, of good and lawful money of Canada, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said Lady the Queen, her heirs and successors, if he the said A. B. fails in the condition endorsed (*or* hereunder written).

Taken and acknowledged the day and year first above mentioned, at , before me.

J. S.,

J. P., (*Name of county.*)

The condition of the within (*or* the above) written recognizance is such that if the said A. B. personally appears at the (next) General Sessions of the peace (*or other court discharging the functions*

of the court of General Sessions, as the case may be), to be holden at , on the day of , next, in and for the said county of , and tries an appeal against a certain conviction. bearing date the day of (*instant*), and made by (me) the said justice, whereby he, the said. A. B., was convicted, for that he, the said A. B., did, on the day of , at , in the said county of , (*here set out the offence as stated in the conviction*); and also abides by the judgment of the court upon such appeal. and pays such costs as are by the court awarded, then the said recognizance to be void, otherwise to remain in full force and virtue.

FORM OF NOTICE OF SUCH RECOGNIZANCE TO BE GIVEN TO THE APPELLANT AND HIS SURETIES.

Take notice, that you, A. B., are bound in the sum of and you L. M. and N. O. in the sum of , each, that you, the said A. B. will personally appear at the next General Sessions of the peace to be holden at , in and for the said county of , and try an appeal against a conviction (*or* order) dated the day of , (*instant*) whereby you A. B. were convicted of (*or* ordered, &c.), (*stating offence or the subject of the order shortly*), and abide by the judgment of the court upon such appeal and pay such costs as are by the court awarded, and unless you the said A. B. personally appear and try such appeal and abide by such judgment and pay such costs accordingly, the recognizance entered into by you will forthwith be levied on you and each of you.

Dated at , this day of , one thousand eight hundred and

PPP.—(*Section* 898.)

CERTIFICATE OF CLERK OF THE PEACE THAT THE COSTS OF AN APPEAL ARE NOT PAID.

Office of the clerk of the peace for the county of

Title of the Appeal.

I hereby certify that at a court of General Sessions of the peace, (*or other court discharging the functions of the court of General Sessions, as the case may be*), holden at , in and for the said county, on last past, an appeal by A. B. against a conviction (*or* order) of J. S., Esquire, a justice of the peace in and for the said county, came on to be tried, and was there heard and determined, and the said court of General Sessions (*or other court, as the case may be*) thereupon ordered that the said conviction (*or* order) should be confirmed (*or* quashed), and that the said (appellant) should pay to the said (respondent) the sum of , for his costs incurred by him in the said appeal, and which sum was thereby ordered to be paid to the clerk of the peace for the said county, on or before the day of (*instant*), to be by him handed over to the said (respondent), and I further certify that the said sum for costs has not, nor has any part thereof, been paid, in obedience to the said order.

Dated at , this day of , one thousand eight hundred and

G. H.,

Clerk of the Peace.

QQQ.—(*Section* 898.)

WARRANT OF DISTRESS FOR COSTS OF AN APPEAL AGAINST A CONVICTION OR ORDER.

Canada,
Province of ,
County of ,

To all or any of the constables and other peace officers in the said county of

Whereas (*&c., as in the warrants of distress, DDD or EEE, and to the end of the statement of the conviction or order, and then thus*) ; And whereas the said A. B. appealed to the court of General Sessions of the peace (*or other court discharging the functions of the court of General Sessions, as the case may be*) for the said county, against the said conviction or order, in which appeal the said A. B. was the appellant, and the said C. D. (*or* J. S., Esquire, the justice of the peace who made the said conviction *or* order) was the respondent, and which said appeal came on to be tried and was heard and determined at the last General Sessions of the peace (*or other court, as the case may be*) for the said county, holden at , on ; and the said court thereupon ordered that the said conviction (*or* order) should be confirmed (*or* quashed) and that the said (appellant) should pay to the said (respondent) the sum of , for his costs incurred by him in the said appeal, which said sum was to be paid to the clerk of the peace for the said county, on or before the day of , one thousand eight hundred and to be by him handed over to the said C. D. ; and whereas the clerk of the peace of the said county has, on the day of (*instant*), duly certified that the said sum for costs had not been paid : * These are, therefore, to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said A. B., and if, within the term of days next after the making of such distress, the said last mentioned sum, together with the reasonable charges of taking and keeping the said distress, are not paid, then to sell the said goods and chattels so by you distrained, and to pay the money arising from such sale to the clerk of the peace for the said county of , that he may pay and apply the same as by law directed ; and if no such distress can be found, then to certify the same unto me or any other justice of the peace for the same county, that such proceedings may be had therein as to law appertain.

Given under my hand and seal, this day of in the year , at , in the county aforesaid.

O. K., [SEAL.]

J. P., (*Name of county.*)

RRR.—(*Section* 898.)

WARRANT OF COMMITMENT FOR WANT OF DISTRESS IN THE LAST CASE.

Canada,
Province of ,
County of ,

To all or any of the constables and other peace officers in the said county of .

Whereas (*&c.. as in form QQQ, to the asterisk * and then thus*): And whereas, afterwards, on the day of , in the year aforesaid, I, the undersigned, issued a warrant to all or any of the peace officers in the said county of , commanding them, or any of them, to levy the said sum of , for costs, by distress and sale of the goods and chattels of the said A.B.; And whereas it appears to me, as well by the return to the said warrant of distress of the peace officer who was charged with the execution of the same, as otherwise, that the said peace officer has made diligent search for the goods and chattels of the said A. B.. but that no sufficient distress whereon to levy the said sum above mentioned could be found: These are, therefore, to command you, the said peace officers, or any one of you, to take the said A. B., and him safely to convey to the common gaol of the said county of , at aforesaid, and there deliver him to the said keeper thereof, together with this precept: And I do hereby command you, the said keeper of the said common gaol, to receive the said A. B. into your custody in the said common gaol, there to imprison him (and keep him at hard labour) for the term of , unless the said sum and all costs and charges of the said distress (and for the commitment and conveying of the said A. B. to the said common gaol, amounting to the further sum of), are sooner paid unto you, the said keeper; and for so doing this shall be your sufficient warrant.

Given under my hand and seal, this day of in the year , at , in the county aforesaid.

O. K., [SEAL.]

J. P., (*Name of county.*)

888.—(*Section* 902.)

RETURN of convictions made by me (*or* us, *as the case may be*), during the quarter ending , 18 .

Name of the Prosecutor.	Name of the Defendant.	Nature of the Charge.	Date of Conviction.	Name of Convicting Justice.	Amount of Penalty, Fine or Damage.	Time when paid or to be paid to the said Justice.	To whom paid over by the said Justice.	If not paid, why not, and general observations, if any.

J. S., Convicting Justice,

or

J. S. and O. K., Convicting Justices (*as the case may be.*)

ADDITIONAL FORMS.

JUDGMENT OF AFFIRMANCE, ON AN APPEAL AGAINST A CONVICTION.

Canada,
Province of .
County of .

At (*Describe the Court appealed to*) held at on the day of in the year of our Lord, 189 ; before J. W, of in the (*county*) of aforesaid, (*farmer*) entered an appeal to and against a conviction under the

hand and seal of J. S., Esquire, one of Her Majesty's justices of the peace, for the county (*or* district) aforesaid, dated and made the day of 189 , for (*Here state the offence as in the conviction*), and by which said conviction, he the said J. S. did adjudge that the said J. W. should, for the said offence, forfeit the sum of together with for costs, and did order the said sums to be paid by the said J. W. on or before the , and that in default of payment on or before that day, he the said J. S. did by the said conviction, adjudge the said J. W. to be imprisoned in the common gaol at in the (*county*) aforesaid for the space of unless the said sums should be sooner paid (*and so on, giving the terms of the conviction.*)

Now, therefore, at the said court so holden as aforesaid, upon hearing the said appeal, it is here ORDERED and ADJUDGED,, by the said court that the said conviction be and the same is HEREBY, in all things, AFFIRMED, and it is now, here, by the said court FURTHER ORDERED and ADJUDGED that the said J. W. be dealt with and punished according to the said conviction, and also that he the said J. W. do and shall pay to the said , the respondent in the said appeal, the sum of the amount of costs sustained by the said and by him incurred by reason of the said appeal, and now by the said court, here, adjudged to be paid to him by the said J. W., according to the statute in such case made and provided.

WRIT OF CERTIORARI TO A JUSTICE OF THE PEACE. TO RETURN A CONVICTION.

Canada, Province of , County of , } VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, QUEEN, Defender of the Faith.

To one of our justices, assigned to keep our peace, in and for the county (*or* district) of and also to hear and determine divers offences in the said (*county*) committed GREETING :

WE, being willing for certain reasons that all and singular records of conviction of whatsoever trespasses and contempts against the

Criminal Code of Canada (*or* against the form of a certain statute, *etc.*), whereof C. D is before you convicted (as it is said) be sent by you before us, DO COMMAND YOU that you send under your hand and seal before the Honorable in days from (*or* immediately on the receipt of this writ) all and singular the said records of conviction with all things touching the same, as fully and perfectly as they have been made by you and now remain in your custody or power, together with this our writ, that we may further cause to be done therein what of right and according to law we shall see fit.

IN WITNESS WHEREOF, WE have caused the seal of our court of to be hereunto affixed at our (*city*) of this day of in the year of our reign .

Clerk of the Crown.

CERTIORARI—RECOGNIZANCE.

BE IT REMEMBERED, that, on the day of in the year of the reign of Our Sovereign Lady, VICTORIA, (*etc.*), G. H. of (*merchant*), and M. W. of (*gentleman*) came before me, J. S., Esquire, one of the keepers of the peace and justices of Our Lady, the Queen, in and for the (*county*) of and acknowledged to owe to Our Sovereign Lady the Queen the sum of to be levied upon their goods and chattels, lands and tenements to Her Majesty's use, upon condition that if C. D. shall prosecute with effect, without any wilful or affected delay, at his own proper costs and charges, a writ of CERTIORARI issued out of the court of our said Lady the Queen, at to remove into the said court all and singular the records of conviction of whatsoever trespasses and contempts against the Criminal Code of Canada (*or* against the form of a certain statute *etc.*), whereof the said C. D. is convicted before me the said J. S., and shall pay to the prosecutors within next after the said record of conviction (*or* order) shall be confirmed in the said court, all their said full costs and

charges to be taxed according to the course of the said court, then this recognizance to be void, or else to remain in full force.

TAKEN and acknowledged the day and year aforesaid, at before me, } G. H. M. W.

J. S.

NOTE.—A blank recognizance is usually transmitted with the writ of *certiorari* from the office of the court issuing it, and when taken and acknowledged the recognizance is returned with the writ.

If the conviction be quashed, the recognizance is cancelled by being struck through, and is marked, in the margin "discharged, because the conviction is quashed."

RETURN TO A WRIT OF CERTIORARI BY A JUSTICE OF THE PEACE.

(*To be endorsed on the Certiorari.*)

The answer of one of Her Majesty's Justices assigned to keep the peace in and for the county (*or* district) of

The execution of this writ appears in the schedule hereunto annexed.

Justice of the peace.

(*The following to be written as a separate document.*)

I, one of the keepers of the peace of Our Lady the Queen, assigned to keep the peace within the said (*county*) of and to hear and determine divers offences committed in the said (*county*), by virtue of this writ of *certiorari* to me delivered, DO, under my seal, CERTIFY unto Her Majesty, in Her court of , the record of conviction of which mention is made in the said writ.

IN WITNESS WHEREOF, I the said have to these presents set my seal.

GIVEN at in the said (*county*) this day of in the year of our Lord, 189 .

(*Name of convicting magistrate.*)

[L. S.]

NOTE.—The conviction is to be annexed to the writ and returned along with it, but not the information or depositions.

WRIT OF HABEAS CORPUS AD SUBJICIENDUM.

Canada, Province of , County (*or* District) of } VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, QUEEN, Defender of the Faith.

To the keepers of our common gaol for our county (*or* district) of or his deputy or deputies, and to each of them GREETING :

WE COMMAND YOU that you have before the Honorable for at the Judges' Chambers in the Court House in our (*city*) of immediately after the receipt of this writ, the body of being committed and detained in our prison, under your custody (as it is said), together with the day and cause of the taking and detaining of the said by whatsoever name the said be called in the same, to undergo and receive all and singular such things as our said shall then and there consider of him in that behalf, and that you have then and there this writ.

IN WITNESS WHEREOF, we have caused the seal of our Court of Queen's Bench for Lower Canada (*or, as the case may be*) to be hereunto affixed, at our (*city*) of this day of in the year of our reign.

Clerk of the Crown.

TABLE OF NON-INDICTABLE OFFENCES UNDER THE CODE.

With the exception of those specially noted as being triable by indictment as well as summarily, all the offences in this list are non-indictable

ART.	OFFENCE.	PUNISHMENT.	TRIABLE BEFORE	LIMITATION.
	ANIMALS.			
512	Cruelty to.....	Penalty $50, or 3 months, with or without h. l. or both.....	Two Justices..	3 months (Art. 551c)
501	Injuries to animals (not being cattle) (1)	Penalty $100 or 3 months with or without h. l.	One Justice....	Six months (2)
513	Keeping cock pit	Penalty $40 or 3 months, (besides forfeiture	Two Justices.	3 months (Art. 551c)
307 332	Killing dogs, birds, etc., with intent to steal the skin, plumage, etc.....	Penalty $20 (3) or one month with h. l., 2nd offence, three months with h. l.....	One Justice...	Six months
333	Killing or taking pigeons ...	Penalty $10 (3)....	do	do
	ASSAULT.			
265	Common assault (4).....	$20 fine or 2 mos. imprisonm't with or without h. l....	do	do
	BANK NOTES, ETC.			
442	Printing or using circulars or business cards in the likeness of.....	Fine, $100. or 3 months, or both..	Two Justices.	do
	CATTLE.			
515	Refusing Peace Officer admission to cattle car, etc	Penalty $20, or 30 days.....	One Justice....	3 months (Art. 551c)
514	Violating provisions as to conveyance of cattle	Penalty $100.....	do	3 months (Art. 551c)
	COINAGE OFFENCES.			
464	Manufacturing or importing uncurrent copper coin	Penalty $20 for every pound; besides forfeiture...	One Justice....	Six months. (2)
470	Uttering defaced coin.....	Penalty $10	Two Justices...	do
477	Uttering uncurrent copper coin	Penalty double the nominal value of the coin or eight days	One Justice....	do

(1) This offence is, under Art. 501, indictable, when committed after a previous conviction.

(2) Art. 841 limits (in all cases not otherwise limited) the prosecution of summary offences to SIX MONTHS, except in the N. W. T., where the limitation in such cases, when not otherwise provided for, is TWELVE months.

(3) In addition to the value of the animal, bird, or article in question.

(4) This may be prosecuted either by indictment or summarily.

TABLE.—*Continued.*

ART.	OFFENCE	PUNISHMENT.	TRIABLE BEFORE	LIMITATION.
	CRIMINAL BREACHES OF CONTRACT.			
521	By individuals (1).....	Fine $100 or 3 mos. with or without h. l	Two Justices.	Six months.
521	By Municipal Corporat'ns (1)	Penalty $100	do	do
521	By Railway Companies. (1).	Penalty $100	do	do
522	Municipal Corporation or Company failing to post up the provisions of Art. 521	Penalty $20 per day	One Justice....	do
522	Injuring copy of provisions when posted up	Penalty $10.....	One Justice....	do
	DANGEROUS WEAPONS.			
110	Carrying any bowie knife or other offensive weapon	Penalty $50 (not less than $10). In default of payment 30 days with or without hard labour	Two Justices.	1 month (Art. 551 *f*)
103	Carrying any offensive weapon publicly.....	$40 fine. In default of payment thirty days.....	do	1 month (Art. 551 *f*)
105	Carrying a pistol or air-gun	$25 fine (not less than $), or one month.....	One Justice....	1 month (Art. 551 *f*)
111	Carrying sheath knives ...	$40 (not less than $10). In default 30 days with or without h. l.....	Two Justices...	1 month (Art. 551 *f*)
117	Concealing weapon in or about public works	Penalty $100 (not less than $40. ..	One Justice....	Six months
107	Having weapon when arrested.....	$50 fine or 3 months with or without h. l.....	Two Justices...	1 month (Art. 551 *f*)
108	Having weapon with intent to injure any one.	Penalty $200 (not less than $ 0), or 6 months with or without h. l	do	do
109	Pointing any fire arm at any one....	$100 (not less than $10), or 30 days with or without h. l	do	do
117	Possessing weapon near public works.....	Penalty $1 each weapon.	One Justice....	Six months
116	Selling arms in N. W. T	$200 fine or 6 mos. or both.	Two Justices..,	do
106	Selling pistol, etc., to a minor under 16 ...	$50 fine	One Justice....	1 month. (Art 551 *f*)
106	Selling pistol, etc., without keeping record	$25 fine.....	do	do
	DESERTERS.			
75	Enticing militia or mounted police men to desert	3 months with or without h. l.....	do	Six months
74	Resisting warrant for desert'rs	$80 penalty.....	Two Justices.	do

(1) This may be prosecuted either by indictment or summarily.

TABLE.—*Continued.*

ART.	OFFENCE.	PUNISHMENT	TRIABLE BEFORE	LIMITATION.
	DISORDERLY HOUSE.			
200	Wilfully preventing, obstructing or delaying officer entering.....	Penalty $100, and 6 months, with or without h. l	Two Justices..	Six months.
	(See VAGRANCY.)			
	FIRE ARMS.			
	(See DANGEROUS WEAPONS.)			
	GAMBLING.			
199	Playing or looking on at play in a gaming house.....	Penalty $10; In default 2 months	Two Justices...	do
200	Wilfully obstructing or delaying officer entering a gaming house, etc.....	Penalty $100 and 6 months with or without h. l.....	Two Justices.	do
	(See VAGRANCY.)			
203[2]	Railway or Steamboat Company neglecting to post up in their conveyances the provisions of Art. 203 against gambling	Penalty $100; not less than $20.....	Civil Court (See Art. 929).....	do
203[3]	Railway or Steamboat officer neglecting to arrest persons gambling in their conveyances	Penalty $100; not less than $20....	One Justice...	do
	INDECENT ACTS.			
177	In any place to which the public have access or in *any* place with intent to insult or offend any one..	$50, fine, or six months, with or without h l., or both.....	Two Justices...	do
	INDIAN GRAVES.			
352	Stealing or Injuring things in.....	Penalty $100, or 3 months, 2nd *offence*, $100 and 6 months, h. l....	One Justice....	do
	INTIMIDATION.			
523	By violence, picketing, &c. (1)	Fine, $100, or 3 months with or without h. l.....	Two Justices.	do
525	Of Wheat Dealers, Seamen, etc. (1).....	Fine, $100, or 3 months with or without h. l.....	do ...	do
	INTOXICATING LIQUORS.			
119	Conveying on board H. M's ships.	$50 fine; 1 month n default.....	do	do
118	Selling, near public works.	1st *offence*: Penalty $10 and costs. In default, 3 months. *Every further offence*: same penalty; and imprisonm't in default, together with a further imprisonment of 6 months.	One Justice....	do

(1) This may be prosecuted either by indictment or summarily.

TABLE.—*Continued.*

ART.	OFFENCE.	PUNISHMENT.	TRIABLE BEFORE	LIMITATION.
	MARINE STORES.			
382	Buying marine stores from persons under sixteen	Penalty $4. 2nd *offence*, $6.....	One Justice....	Six months.
382	Receiving marine stores before sunrise or after sunset.	Penalty, $5. 2nd *offence*, $7.....	do ...	do
	MISCHIEF.			
495	Fastening any vessel, etc., to a buoy, etc,.....	Penalty $10, or one month	do	do
510	Injuring cultivated roots, etc	Penalty $5 (2) or one month. 2nd *offence*, 3 months h.l..	do ...	do
507	Injuring fences, etc	Penalty $20, (2) 2nd *offence*, 3 months h. l.....	do ..	do
491	Injuring goods, etc., in railway station, etc., with intent to steal.....	Penalty $20, (above value of injury) or 1 month (with or with't h.l. or both	do ..	do
507A	Injuring harbor bars.....	Penalty $50.....	do	do
511	Injuries not otherwise provided for.	Penalty $20 (2)....	do ...	do
508	Injuring trees, etc., wheresoever growing, (1).....	Penalty $25, (2) or 2 months. 2nd *offence*, 3 months	do	do
509	Injuring vegetable productions in gardens, etc., (1)...	Penalty $20, (2) 2 months in default	do ...	do
486	Reckl'ssly s'tting fire to forest etc., on Crown domain, (4).	Fine $50. In default, 6 months..	do	do
	NEGLIGENCE.			
255	Leaving holes in ice, or excavations, etc., unguarded	Fine or imprisonment, with or without h. l., or both	d	do
	OFFENSIVE WEAPONS. (See DANGEROUS WEAPONS.)			
	PERSONATION.			
457	At any qualifying or competitive examination (5).....	One year, or $100 fine	do	do
	PRIZE FIGHTING.			
93	Challenge to prize fight ...	$1000 fine (not less than $100); or 6 months (with or without h. l.) or both.....	do	do
94	Principal in a prize fight.	One year with or without h. l	do ...	do
95	Attending prize fight.....	$500 fine (not less than $50) or one year (with or without h. l. or both	do ...	do

(1) This offence is indictable if committed after two previous convictions.
(2) This is in addition to the amount of injury done.
(4) See note (4) at foot of p. 407, opposite.

TABLE.—*Continued.*

Art.	OFFENCE.	PUNISHMENT.	TRIABLE BEFORE	LIMITATION.
97	Fight on a quarrel	Discharge, or $50 fine	One Justice....	Six months.
96	Leaving Canada to attend a prize fight	$400 (not less than $50), or 9 months with or without h. l	do	do
	PUBLIC STORES.			
388	Not satisfying Justice of lawful possession of.	Fine $25.....	Two Justices...	o
389	Unlawfully dredging for stores	Fine $25, or 3 mos..	do	do
387	Unlawfully possessing public stores not exceeding the value of $25 (5)	Fine $100, or 6 mos. with or without h.l	do	do
	PUBLIC WORSHIP.			
173	Disturbance of	$50 fine. One month in default.... ...	One Justice .	Six months
	RECEIVING.			
316	Anything unlawfully obtained the stealing of which is punishable summarily	Same punishment as for stealing it.	do ...	do
391	Necessaries from Marine or Deserter (5)	Penalty $120; 6 mos. in default ..	Two Justices.	do
390	Regimental necessaries (5)..	Penalty $40, or six mouths	do .	do
	(See MARINE STORES.) (See SEAMAN'S PROPER V.) (See PUBLIC STORES.) (See WRECK.)			
	SEAMAN'S PROPERTY.			
393	Not satisfying Justice of lawful possession of.....	Fine $25.....	One Justice ...	Six months.
392	Receiving, by purchase, exchange, or pawn (5)...	Penalty $10; 2nd offence, penalty $10 or six mths.	do	do
	STEALING.			
342	Cultivated roots, etc., in land not being a garden, etc	Penalty $5 (6) or one month: 2nd offence, 3 months h. l	do	do
339	Fences, gates, etc	Penalty $20 (6); 2d offence, 3 months h. l . ..	do	do
341	Garden plants, fruits, etc (7)	Penalty $20 (6) or 1 month ..	do	do
340	Not satisfying Justice of lawful possession of tree, etc	Penalty $10 (6) ..	do .	do
337	Trees, etc., worth 25c at least (1) (See p 406, opposite.) (See INDIAN GRAVES.)	Penalty $ 5, (6) 2d offence 3 months h. l	do	do

(3) This offence is indictable when the value is over $25.

(4) This is an indictable offence, but may be dealt with by the magistrate, summarily when the consequences have not been serious.

(5) This is also indictable

(6) This is in addition to the value of the article in question.

(7) This offence, when committed after a previous conviction, is indictable.

TABLE.—*Continued.*

ART.	OFFENCE.	PUNISHMENT.	TRIABLE BEFORE	LIMITATION.
	TRADE MARKS.			
451	Falsely representing goods as manufactured for Her Majesty or any Government..	Penalty $100.....	One Justice...	Six months.
450	Offences against the provisions of Part XXXIII as to Trade Marks. (1).....	Four months, or $100 fine; 2nd offence, 6 mos. or $250 fine, besides forfeiture.....	do ...	do
452	Unlawfully importing goods liable to forfeiture under Part XXXIII.....	Penalty $500 & forfeiture of goods .	do	do
	VAGRANCY.			
207 } 208 }	Including publicly exposing indecent show, begging, loitering, swearing, being drunk and disorderly, etc. in street, defacing signs, breaking windows, etc., common prostitution, night walking, etc., keeping or being inmate of or frequenting disorderly houses, living by gaming or crime or by the avails of prostitution	$50 fine, or 6 months (with or without h. l.), or both ..	Two Justices.	do
	WRECK.			
496	Preventing Saving of. (1)...	Penalty $100, or 6 months with or without h. l.....	o .	do
381	Secreting, or receiving, or keeping wreck. (1)	do	do .	do

(1) This is also indictable.

CHAPTER XIV.

(Part LIX. of the Code.)

RECOGNIZANCES.

910. Render of Accused by Surety.—Any surety for any person charged with any indictable offence may, upon affidavit showing the grounds therefor, with a certified copy of the recognizance, obtain from a judge of a Superior Court or from a judge of a County Court having criminal jurisdiction, or in the province of Quebec from a district magistrate, an order in writing under his hand, to render such person to the common gaol of the county where the offence is to be tried.

2. The sureties, under such order, may arrest such person, and deliver him, with the order, to the gaoler named therein, who shall receive and imprison him in the said gaol, and shall be charged with the keeping of such person until he is discharged by due course of law. (1)

911. Bail after Render.—The person rendered may apply to a judge of a Superior Court or in cases in which a judge of a County Court may admit to bail, to a judge of a County Court, to be again admitted to bail, who may on examination allow or refuse the same, and make such order as to the number of the sureties and the amount of the recognizance as he deems meet,—which order shall be dealt with in the same manner as the first order for bail, and so on as often as the case requires.

912. Discharge of Recognizance.—On due proof of such render, and certificate of the sheriff, proved by the affidavit of a subscribing witness, that such person has been so rendered, a judge of the Superior or County Court, as the case may be, shall order an entry of such render to be made on the recognizance by

(1) See Form of Information of Surety against a person bailed under Part XLV of the Code, and Forms of Warrant and Commitment thereon, at pp. 247-249, *ante*.

the officer in charge thereof, which shall vacate the recognizance, and may be pleaded or alleged in discharge thereof.

913. Render in Court.—The sureties may bring the person charged as aforesaid into the court at which he is bound to appear, during the sitting thereof, and then, by leave of the court, render him in discharge of such recognizance at any time before trial, and such person shall be committed to gaol, there to remain until discharged by due course of law; but such court may admit such person to bail for his appearance at any time it deems meet.

914. Sureties not Discharged by Arraignment or Conviction.—The arraignment or conviction of any person charged and bound as aforesaid, shall not discharge the recognizance, but the same shall be effectual for his appearance for trial or sentence, as the case may be; nevertheless the court may commit such person to gaol upon his arraignment or trial, or may require new or additional sureties for his appearance for trial or sentence, as the case may be, notwithstanding such recognizance; and such commitment shall be a discharge of the sureties.

915. Right of Surety to Render not Affected.—Nothing in the foregoing provisions shall limit or restrict any right which a surety now has of taking and rendering to custody any person charged with any such offence, and for whom he is such surety.

916. Entry of Fines &c., on Record and Recovery Thereof.—Unless otherwise provided, all fines, issues, amercements and forfeited recognizances, the disposal of which is within the legislative authority of the Parliament of Canada, set, imposed, lost or forfeited before any court of criminal jurisdiction shall, within twenty-one days after the adjournment of such court be fairly entered and extracted on a roll by the clerk of the court, or in case of his death or absence, by any other person, under the direction of the judge who presided at such court, which roll shall be made in duplicate and signed by the clerk of the court, or in case of his death or absence, by such judge,

2. If such court is a Superior Court of criminal jurisdiction one

of such rolls shall be filed with the clerk, prothonotary, registrar or other proper officer—

(*a.*) in the province of Ontario, of a division of the High Court of Justice ;

(*b.*) in the provinces of Nova Scotia, New Brunswick and British Columbia, of the Supreme Court of the province ;

(*c.*) in the province of Prince Edward Island, of the Supreme Court of Judicature of that province ;

(*d.*) in the province of Manitoba, of the Court of Queen's Bench of that province ; and

(*e.*) in the North-west Territories, of the Supreme Court of the said territories,—

on or before the first day of the term next succeeding the court by or before which such fines or forfeitures were imposed or forfeited.

3. If such court is a court of General Sessions of the Peace, or a County Court, one of such rolls shall remain deposited in the office of the clerk of such court.

4. The other of such rolls shall, as soon as the same is prepared, be sent by the clerk of the court making the same, or in case of his death or absence, by such judge as aforesaid, with a writ of *fieri facias* and *capias*, according to the FORM TTT in SCHEDULE ONE to this Act, (1) to the sheriff of the county in and for which such court was holden ; and such writ shall be authority to the sheriff for proceeding to the immediate levying and recovering of such fines, issues, amercements and forfeited recognizances, on the goods and chattels, lands and tenements of the several persons named therein, or for taking into custody the bodies of such persons respectively, in case sufficient goods and chattels, lands or tenements cannot be found, whereof the sums required can be made ; and every person so taken shall be lodged in the common gaol of the county, until satisfaction is made, or until the court into which such writ is returnable, upon cause shown by the party, as hereinafter mentioned, makes an order in the case, and until such order has been fully complied with.

(1) For Form TTT, see p. 418, *post*.

5. The clerk of the court shall, at the foot of each roll made out as herein directed, make and take an affidavit in the following form, that is to say:

"I, A. B. (*describing his office*), make oath that this roll is truly and carefully made up and examined, and that all fines, issues, amercements, recognizances and forfeitures which were set, lost, imposed or forfeited, at or by the court therein mentioned, and which, in right and due course of law, ought to be levied and paid, are, to the best of my knowledge and understanding, inserted in the said roll; and that in the said roll are also contained and expressed all such fines as have been paid to or received by me, either in court or otherwise, without any wilful discharge, omission, misnomer or defect whatsoever. So help me God;"

Which oath any justice of the peace for the county is hereby authorized to administer.

917. Officer to Prepare Lists of Persons under Recognizance making Default.—If any person bound by recognizance for his appearance (or for whose appearance any other person has become so bound) to prosecute or give evidence on the trial of any indictable offence, or to answer for any common assault, or to articles of the peace, makes default, the officer of the court by whom the estreats are made out, shall prepare a list in writing, specifying the name of every person so making default, and the nature of the offence in respect of which such person, or his surety, was so bound, together with the residence, trade, profession or calling of every such person and surety,—and shall, in such list, distinguish the principals from the sureties, and shall state the cause, if known, why each such person did not appear, and whether, by reason of the non-appearance of such person, the ends of justice have been defeated or delayed.

918. Proceeding on Forfeited Recognizance not to be taken except by Order of Judge, &c.—Every such officer shall, before any such recognizance is estreated, lay such list before the judge or one of the judges who presided at the court, or if such court was not presided over by a judge, before two justices of the peace who attended at such court, and such

judge or justices shall examine such list, and make such order touching the estreating or putting in process any such recognizance as appears just, subject, in the province of Quebec, to the provisions hereinafter contained; and no officer of any such court shall estreat or put in process any such recognizance without the written order of the judge or justices of the peace before whom respectively such list has been laid.

919. Recognizance need not be Estreated in Certain Cases.—Except in the cases of persons bound by recognizance for their appearance, or for whose appearance any other person has become bound to prosecute or give evidence on the trial of any indictable offence, or to answer for any common assault, or to articles of the peace, in every case of default whereby a recognizance becomes forfeited, if the cause of absence is made known to the court in which the person was bound to appear, the court, on consideration of such cause, and considering also, whether, by the non-appearance of such person the ends of justice have been defeated or delayed, may forbear to order the recognizance to be estreated: and, with respect to ALL recognizances estreated, if it appears to the satisfaction of the judge who presided at such court that the absence of any person for whose appearance any recognizance was entered into, was owing to circumstances which rendered such absence justifiable, such judge may make an order directing that the sum forfeited upon such estreated recognizance shall not be levied.

2. The clerk of the court shall, for such purpose, before sending to the sheriff any roll, with a writ of *fieri facias* and *capias*, as directed by section 916, submit the same to the judge who presided at the court, and such judge may make a minute on the said roll and writ of any such forfeited recognizances and fines as he thinks fit to direct not to be levied; and the sheriff shall observe the direction in such minute written upon such roll and writ, or endorsed thereon, and shall forbear accordingly to levy any such forfeited recognizance or fine.

920. Sale of Lands by Sheriff Under Estreated Recognizance.—If upon any writ issued under section 916, the sheriff takes lands or tenements in execution, he shall advertise

the same in like manner as he is required to do before the sale of lands in execution in other cases; and no sale shall take place in less than twelve months from the time the writ came to the hands of the sheriff.

921. Discharge from Custody on Giving Security.—If any person on whose goods and chattels a sheriff, bailiff or other officer is authorized to levy any such forfeited recognizance, gives security to the said sheriff or other officer for his appearance at the return day mentioned in the writ, in the court into which such writ is returnable, then and there to abide the decision of such court, and also to pay such forfeited recognizance, or sum of money to be paid in lieu or satisfaction thereof, together with all such expenses as are adjudged and ordered by the court, such sheriff or officer shall discharge such person out of custody and if such person does not appear in pursuance of his undertaking, the court may forthwith issue a writ of *fieri facias* and *capias* against such person and the surety or sureties of the person so bound as aforesaid.

922. Discharge of Forfeited Recognizance.—The court into which any writ of *fieri facias* and *capias*, issued under the provisions of this part, is returnable may inquire into the circumstances of the case, and may in its discretion order the discharge of the whole of the forfeited recognizance, or sum of money paid or to be paid in lieu or satisfaction thereof, and make such order thereon as to such court appears just; and such order shall accordingly be a discharge to the sheriff, or to the party, according to the circumstances of the case.

923. Return of Writ by Sheriff.—The sheriff to whom any writ is directed under this Act shall return the same on the day on which the same is made returnable, and shall state, on the back of the roll attached to such writ, what has been done in the execution thereof; and such return shall be filed in the court into which such return is made.

924. Roll and Return to be Transmitted to Minister of Finance.—A copy of such roll and return, certified by the clerk of the court into which such return is made,

shall be forthwith transmitted to the Minister of Finance and Receiver-General, with a minute thereon of any of the sums therein mentioned which have been remitted by order of the court, in whole or in part, or directed to be forborne, under the authority of section 919.

925. Appropriation of Moneys Collected by Sheriff.—The sheriff or other officer shall, without delay, pay over all moneys collected under the provisions of this part by him to the Minister of Finance and Receiver-General, or other person entitled to receive the same.

926. Quebec.—The provisions of sections 916, 919 to 924, both inclusive, shall not apply to the province of Quebec, and the following provisions shall apply to that province only :

2. Whenever default is made in the condition of any recognizance lawfully entered into or taken in any criminal case, proceeding, or matter, IN THE PROVINCE OF QUEBEC, within the legislative authority of the Parliament of Canada, so that the penal sum therein mentioned becomes forfeited and due to the Crown, such recognizance shall thereupon be estreated or withdrawn from any record or proceeding in which it then is, or,—where the recognizance has been entered into orally in open court—a certificate or minute of such recognizance, under the seal of the court, shall be made from the records of such court ;

(*a.*) Such recognizance, certificate or minute, as the case may be, shall be transmitted by the court, recorder, justice of the peace, magistrate or other functionary before whom the cognizor, or the principal cognizor, where there is a surety or sureties, was bound to appear, or to do that, by his default to do which the condition of the recognizance is broken, to the Superior Court in the district in which the place where such default was made is included for civil purposes, with the certificate of the court, recorder, justice of the peace, magistrate or other functionary as aforesaid, of the breach of the condition of such recognizance, of which and of the forfeiture to the Crown of the penal sum therein mentioned, such certificate shall be conclusive evidence ;

(*b.*) The date of the receipt of such recognizance or minute and certificate by the prothonotary of the said court shall be endorsed

thereon by him, and he shall enter judgment in favour of the Crown against the cognizor for the penal sum mentioned in such recognizance, and execution may issue therefor after the same delay as in other cases, which shall be reckoned from the time when the judgment is entered by the prothonotary of the said court ;

(*c.*) Such execution shall issue upon fiat or *præcipe* of the Attorney-General, or of any person thereunto authorized in writing by him ; and the Crown shall be entitled to the costs of execution and to costs on all proceedings in the case subsequent to execution, and to such costs, in the discretion of the court, for the entry of the judgment, as are fixed by any tariff.

(*d.*) The cognizor shall be liable to coercive imprisonment for the payment of the judgment and costs.

(*e.*) When sufficient goods and chattels, lands and tenements cannot be found to satisfy the judgment against a cognizor and the same is certified in the return to the writ of execution or appears by the report of distribution, a warrant of commitment addressed to the sheriff of the district may issue upon the fiat or præcipe of the Attorney-General, or of any person thereto authorized in writing by him, and such warrant shall be authority to the sheriff to take into custody the body of the cognizor so in default and to lodge him in the common gaol of the district until satisfaction is made, or until the court which issued such warrant, upon cause shown as hereinafter mentioned, makes an order in the case and such order has been fully complied with.

(*f.*) Such warrant shall be returned by the sheriff on the day on which it is made returnable and the sheriff shall state in his return what has been done in execution thereof.

(*g.*) On petition of the cognizor, of which notice shall be given to the clerk of the Crown of the district, the court may inquire into the circumstances of the case and may in its discretion order the discharge of the amount for which he is liable or make such order with respect thereto and to his imprisonment as may appear just, and such order shall be carried out by the sheriff. (1)

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(1) *As amended and added to by* 57-58 *Vic. c.* 57, *sect* 1.

3. Nothing in this section contained shall prevent the recovery of the sum forfeited by the breach of any recognizance from being recovered by suit in the manner provided by law, whenever the same cannot, for any reason, be recovered in the manner provided in this section;

(*a.*) In such case the sum forfeited by the non-performance of the conditions of such recognizance shall be recoverable, with costs, by action in any court having jurisdiction in civil cases to the amount, at the suit of the Attorney-General of Canada or of Quebec, or other person or officer authorized to sue for the Crown; and in any such action it shall be held that the person suing for the Crown is duly empowered so to do, and that the conditions of the recognizance were not performed, and that the sum therein mentioned is, therefore, due to the Crown, unless the defendant proves the contrary.

(*b.*) The cognizor for the recovery of the judgment in any such action shall be liable to coercive imprisonment in the same manner as a surety is in the case of judicial suretyship in civil matters. (1)

4. In this section, unless the context otherwise requires, the expression "cognizor" includes any number of cognizors in the same recognizance, whether as principals or sureties.

5. When a person has been arrested in any district for an offence committed within the limits of the province of Quebec, and a justice of the peace has taken recognizances from the witnesses heard before him or another justice of the peace, for their appearance at the next session or term of the court of competent criminal jurisdiction, before which such person is to undergo his trial, there to testify and give evidence on such trial, and such recognizances have been transmitted to the office of the clerk of such court, the said court may proceed on the said recognizances in the same manner as if they had been taken in the district in which such court is held.

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(1) *As amended and added to* by 57-58 Vic. c. 57, sec. 1.

FORM UNDER PART LIX, OF THE CODE.

TTT.—(*Section* 916.)

WRIT OF FIERI FACIAS.

Victoria, by the Grace

To the sheriff of , Greeting:

You are hereby commanded to levy of the goods and chattels, lands and tenements, of each of the persons mentioned in the roll or extract to this writ annexed, all and singular the debts and sums of money upon them severally imposed and charged, as therein is specified; and if any of the said several debts cannot be levied by reason that no goods or chattels, lands or tenements can be found belonging to the said persons, respectively, then and in all such cases, that you take the bodies of such persons, and keep them safely in the gaol of your county, there to abide the judgment of our court (*as the case may be*) upon any matter to be shown by them, respectively, or otherwise to remain in your custody as aforesaid, until such debt is satisfied unless any of such persons respectively gives sufficient security for his appearance at the said court, on the return day hereof, for which you will be held answerable; and what you do in the premises make appear before us in our court (*as the case may be*) on the day of next, and have then and there this writ.

WITNESS, *etc.*, G. H., clerk (*as the case may be*).

CHAPTER XV.

(*Part LXV., of the Code.*)

SURETIES FOR KEEPING THE PEACE.

958. Persons Convicted may be Fined and Bound Over to Keep the Peace.—(*As amended by* 56 *Vic. c.* 32.)—Every court of criminal jurisdiction and every magistrate under Part LV of the Code, before whom any person shall be convicted of an offence and shall not be sentenced to death, shall have power, in addition to any sentence imposed upon such person, to require him forthwith to enter into his own recognizances, or to give security to keep the peace, and be of good behaviour, for any term not exceeding TWO YEARS, and that such person in default shall be imprisoned for not more than ONE YEAR after the expiry of his imprisonment under his sentence, or until such recognizances are sooner entered into or such security sooner given, and any person convicted of an indictable offence, punishable with imprisonment for five years or less, may be fined in addition to or in lieu of any punishment otherwise authorized, in which case the sentence may direct that, in default of payment of his fine, the person so convicted shall be imprisoned until such fine is paid, or for a period not exceeding FIVE YEARS, to commence at the end of the term of imprisonment awarded by the sentence, or forthwith, as the case may require.

959. Recognizance to Keep the Peace.—Whenever any person is charged before a justice with an offence triable under Part LVIII., which, in the opinion of such justice, is directly against the peace, and the justice, after hearing the case, is satisfied of the guilt of the accused, and that the offence was committed under circumstances which render it probable that the person convicted will be again guilty of the same or some other offence against the peace unless he is bound over to good behaviour, such justice may, in addition to, or in lieu of, any other sentence which may be imposed upon the accused, require him forthwith to enter into his own recognizances, or to give security to keep the peace

and be of good behaviour for any term not exceeding TWELVE months.

2. Upon complaint by or on behalf of any person that, on account of threats made by some other person or on any other account, he, the complainant, is afraid that such other person will do him, his wife or child some personal injury, or will burn or set fire to his property, the justice, before whom such complaint is made may, if he is satisfied that the complainant has reasonable grounds for his fears, require such other person to enter into his own recognizances, or to give security, to keep the peace, and to be of good behaviour, for a term not exceeding TWELVE months.

3. The provisions of Part LVIII. shall apply so far as the same are applicable to proceedings under this section, and the complainant and defendant and witnesses may be called and examined, and cross-examined, and the complainant and defendant shall be subject to costs as in the case of any other complaint.

4. If any person so required to enter into his own recognizances or give security as aforesaid, refuses or neglects so to do, the same or any other justice may order him to be imprisoned for any term not exceeding TWELVE months.

5. The forms WWW, XXX and YYY, with such variations and additions as the circumstances may require, may be used in proceedings under this section. (1)

The application for sureties to keep the peace,—on account of threats,—should be made soon after the cause of fear, upon which it is based, has arisen (2), and the threat complained of should not be merely a conditional or contingent one, to be executed in case only of the complainant doing something which he has no right to do, or which it is not necessary for him to do in the course of his business. But if it is so necessary then a threat so made may be a proper foundation for the application for sureties. (3)

The Magistrate will form his own opinion and satisfy himself as to whether or not the facts stated amount in reality to a threat of

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(1) For forms WWW, XXX and YYY, see pp. 422-424, *post.*

(2) Dennis v. Lane, 6 Mod., 131.

(3) R. v, Mallinsen, 20 L. J. M. C., 33.

personal violence. It is not enough that the complainant swears to an apprehension of personal violence. He should disclose facts which show that he has reasonable grounds for his fears and that the defendant's conduct is such as would make that impression upon the mind of any impartial and dispassionate man.

If the Magistrate is satisfied upon this subject, he issues either a summons or a warrant to bring the defendant before him. And the defendant, upon his appearance, is asked if he has any cause to shew why he should not enter into his recognizance and give the required sureties to keep the peace.

It has been held that, as the binding over to keep the peace, on account of threats, is in reality a means of preventing an apprehended breach of the peace rather than a punishment (1), the defendant should not be allowed to adduce evidence to deny having used the alleged threats (2), and that, in case of the allegations of the complaint being untrue, his remedy should be by action or by indictment for perjury, and that he should be merely allowed,—either by cross-examination or by witnesses of his own,—to explain any ambiguous portions of the complaint, or to show that his words or acts do not fairly raise the inference sought to be raised from them, and do not really contain any threat creating fear of bodily injury (3) ; or that the complaint is made from malice or ill-will. (4)

The third paragraph of the above Article, 959, expressly provides, however, that the provisions of Part LVIII,—(relating to summary convictions),—shall apply, so far as applicable, to proceedings there under, and that the complainant and defendant and witnesses may be called and examined and cross-examined.

Where, on an application for sureties to keep the peace, proof is made not only of the alleged threats, but also of the commission of an assault, not alleged, the justice cannot convict the defendant of the assault, but can only order the giving of sureties as applied for. (5)

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(1) Lort v. Hutton, 45 L. J. M. C., 95.

(2) Lord Vane's Case, 2 Str. 1202; R. v. Doherty, 13 East, 171 ; R. v. Dunn, 12 A. & E., 599.

(3) R. v. Bringloe, 13 East, 174, *n* ; R. v. Tregarthen, 5 B. & Ad., 678.

(4) R. v. Parnell, 2 Burr. 806.

(5) R. v. Deny, 20 L. J. M. C., 189.

960. Proceedings for Not Finding Sureties to Keep the Peace.—Whenever any person, who has been required to enter into a recognizance with sureties to keep the peace and be of good behaviour, has, on account of his default therein, remained imprisoned for two weeks, thes heriff, gaoler, or warden shall give notice, in writing, of the facts to a judge of a Superior Court, or to a judge of the County Court of the county or district in which such gaol or prison is situate, and, in the cities of Montreal and Quebec, to a judge of the Sessions of the Peace for the district, or, in the North-West Territories, to a stipendiary magistrate—and such judge or magistrate may order the discharge of such person, thereupon, or at a subsequent time, upon notice to the complainant or otherwise, or may make such other order as he sees fit, respecting the number of sureties, the sum in which they are to be bound, and the length of time for which sueh person may be bound.

FORMS UNDER PART LXV. OF THE CODE.

WWW.—(*Section* 959.)

COMPLAINT, BY THE PARTY THREATENED, FOR SURETIES FOR THE PEACE.

Canada,
Province of ,
County of .

The information (*or* complaint) of C. D., of , in the said county of , (*labourer*), (*if preferred by an attorney or agent, say*—by D. E., his duly authorized agent [*or* attorney], in this behalf,) taken upon oath, before me, the undersigned, a justice of the peace in and for the said county of , at , in the said county of , this day of , in the year , who says that A. B., of , in the said county, did, on the day of , (instant *or* last past), threaten the said C. D. in the words or to the effect following, that is to say : (*set them out, with the circumstances*

under which they were used) ; and that from the above and other threats used by the said A. B. towards the said C. D., he, the said C. D., is afraid that the said A. B. will do him some bodily injury, and therefore prays that the said A. B. may be required to find sufficient sureties to keep the peace and be of good behaviour toward him, the said C. D. ; and the said C. D. also says that he does not make this complaint against nor require such sureties from the said A. B. from any malice or ill-will, but merely for the preservation of his person from injury.

XXX.—(*Section* 959.)

FORM OF RECOGNIZANCE FOR THE SESSIONS.

Canada,
Province of ,
County of ,

Be it remembered that on the day of in the year , A. B., of , (*labourer*), L. M. of , (*grocer*), and N. O. of (*butcher*), personally came before (*us*) the undersigned, (*two*) justices of the peace for the county of , and severally acknowledged themselves to owe to our Lady the Queen the several sums following, that is to say ; the said A. B. the sum of , and the said L. M. and N. O. the sum of , each, of good and lawful money of Canada, to be made and levied of their goods and chattels, lands and tenements, respectively, to the use of our said Lady the Queen, her heirs and successors, if he, the said A. B., fails in the condition endorsed (*or* hereunder written).

Taken and acknowledged the day and year first above mentioned, at before us.

J. S.
J. T.
J. P.'s, (*Name of county.*)

The condition of the within (*or* above) written recognizance is such that if the within bound A. B. (of, &c.), * appears at the next Court of General Sessions of the Peace, (*or other court discharg-*

ing the functions of the Court of General Sessions), to be holden in and for the said county of , to do and receive what is then and there enjoined him by the court, and in the meantime * keeps the peace and is of good behaviour towards Her Majesty and her liege people, and specially towards C. D. (of, &c.), for the term of now next ensuing, then the said recognizance to be void, otherwise to stand in full force and virtue.

YYY.—(*Section* 959.)

FORM OF COMMITMENT IN DEFAULT OF SURETIES.

Canada,
Province of ,
County of ,

To all or any of the other peace officers in the county of , and to the keeper of the common gaol of the said county, at , in the said county.

Whereas on the day of (*instant*), complaint on oath was made before the undersigned (*or* J. L., Esquire), a justice of the peace in and for the said county of , by C. D., of , in the said county, (*labourer*), that A. B., of, (&c.), on the day of , at aforesaid, did threaten (*&c., follow to the end of complaint, as in form above, in the past tense, then*): And whereas the said A. B. was this day brought and appeared before me, the said justice (*or* J. L., Esquire, a justice of the peace in and for the said county of), to answer unto the said complaint; and having been required by me to enter into his own recognizance in the sum of , with two sufficient sureties in the sum of each, * as well for his appearance at the next General Sessions of the peace (*or other court discharging the functions of the Court of General Sessions, or as the case may be*), to be held in and for the said county of , to do what

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The words between the asterisks * * to be used only where the principal is required to appear at the sessions or such other court.

shall be then and there enjoined him by the court, as also in the meantime * to keep the peace and be of good behaviour towards Her Majesty and her liege people, and especially towards the said C. D., has refused and neglected, and still refuses and neglects, to find such sureties: These are, therefore, to command you, and each of you, to take the said A. B., and him safely to convey to the (common gaol) at aforesaid, and there to deliver him to the keeper thereof, together with this precept: And I do hereby command you, the said keeper of the said (common gaol), to receive the said A. B. into your custody in the said (common gaol), there to imprison him until the said next General Sessions of the peace (*or the next term or sitting of the said court discharging the functions of the Court of General Sessions, as the case may be*), unless he, in the meantime, finds sufficient sureties as well for his appearance at the said Sessions (*or* court) as in the meantime to keep the peace as aforesaid.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. P. (*Name of county.*)

The words between the asterisks * * to be used when the recognizance is to be so conditioned.

FOURTH DIVISION.

ALPHABETICAL SYNOPSIS OF THE CRIMINAL LAW OF CANADA.

Abandonment.

Abandoning Child Under Two Years Old.—It is an indictable offence, punishable by three years imprisonment, to unlawfully abandon or expose any child under two years old, whereby its life is endangered, or its health permanently injured.

The words "abandon" and "expose" include a wilful omission to take charge of the child, on the part of the person legally bound to take charge of it, and any mode of dealing with it calculated to leave it exposed to risk without protection. (Code, Art. 216.)

Two defendants were charged with having abandoned and exposed a weakly bastard child, five weeks old, and with having thereby endangered its life. The defendants (one being the child's mother) wrapped the child in a shawl and packed it in a hamper, with shavings and wool, and left it at the railway station at M., the hamper being addressed to the child's father at G., the father having told the mother, before the child's birth, that, if she sent it to him, he would keep it. The mother paid the carriage of the hamper and told the railway clerk to be careful of it and to send it by the next train, due in ten minutes. Upon the address were the words, "With care—To be delivered immediately." The hamper arrived at its address in G. in an hour from being despatched from M., and, on being opened, the child was alive, but died three weeks afterwards, from causes not attributable to the

prisoners. *Held*, an abandonment and exposure endangering the child's life; and the prisoners were found guilty. (1)

A woman, living apart from her husband, left their child outside the father's door, telling him she had done so. The father knowingly allowed the child to remain outside from 7 p.m. till 1 a.m., when it was found, cold and stiff, by a constable, who removed it. *Held*, that, although the father had not the actual possession of the child, yet, as he was legally bound to provide for it, his allowing it to remain where he did was an abandonment and exposure whereby the child's life was endangered. (2)

ABDUCTION.

Abduction of any Woman.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who, with intent to marry or carnally know *any woman*, whether married or not, or with intent to cause her to be married to or carnally known by any other person, *takes away* or *detains* any woman *of any age* against her will. (Code, Art. 281.)

Abduction of an Heiress.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who, with intent to marry or carnally know any woman, or with intent to cause her to be married or carnally known by any person—

(*a.*) *from motives of lucre* takes away or detains *against her will* any such woman *of any age* having an interest, legal or equitable, present or future, absolute, conditional or contingent, in any real or personal estate, or who is a presumptive heiress or co-heiress or presumptive next of kin to any one having such interest; or

(*b.*) *fraudulently allures, takes away or detains* any such woman, being *under twenty-one years*, out of the possession and against the will of her father or mother, or other person having the lawful care or charge of her, with intent to marry or carnally know her.

2. Every one convicted of any offence defined in this section can take no estate or interest, legal or equitable, in any real or

(1) R. v. Falkingham, L. R., 1 C. C. R., 222; 39 L. J. (M. C.) 47.

(2) R. v. White, 1 C. C. R. 311; 40 L. J. (M. C.) 134.

personal property of such woman, or in which she has any interest, or which comes to her as such heiress, co-heiress or next of kin; and if any such marriage takes place such property shall, upon such conviction, be settled in such manner as any court of competent jurisdiction, upon any information at the instance of the Attorney-General, appoints. (Code, Art. 282.)

If the woman be taken away, in the first instance, with her consent, but afterwards refuses to continue with the offender, and, if, then, he still *detain* her, against her will, he is punishable.

If, after having been, at first *forcibly* taken away, the woman be afterwards married, or defiled, by or at the instance of her abductor, with her own consent, the offence will still be committed within the terms of the above enactment. (1) Even if she be taken away and married with her own consent, yet, if this be effected by means of fraud, it will still be within the law; for, she cannot, whilst under the influence of fraud, be considered a free agent. (2)

There need not be an actual marriage or a defilement to constitute the offence. The *taking away* or the *detaining* against the woman's will, or, in the case of a minor heiress, the *fraudulent allurement* or the *taking* or *detaining* against the will of the parent or guardian, coupled, in either case, with the *intent* to marry or carnally know, or, have her married or carnally known, constitute the offence; and upon an indictment for *fraudulent allurement*, etc., it is not necessary to show that the accused knew that the woman was an heiress, or interested in any property; (3) although in the case of a charge under clause (*a*) of Article 282 it might be necessary, in order to establish that the abduction was from *motives of lucre*, to prove the accused's knowledge or belief that the woman had an interest in property.

Unlawful Taking of a Girl Under Sixteen.—Every one is guilty of an indictable offence and liable to five years' imprisonment who unlawfully takes or causes to be taken

(1) Fullwood's Case, Cro. Car. 488; Swendon's Case, 5 St. Tr. 450; 1 Hale 660.

(2) R. v. Perry, 1 Hawk, c. 41, s. 13; 1 Russ. Cr. 710.

(3) R. v. Kaylor, 1 Dor. Q.B. 364; Bur. Dig. 257.

any *unmarried girl*, being *under* the age of *sixteen years*, out of the possession and against the will of her father or mother, or other person having the lawful care or charge of her.

2. It is immaterial whether the girl is taken with her own consent or at her own suggestion or not.

3. It is immaterial whether or not the offender believed the girl to be of or above the age of sixteen. (Code, Art. 283.)

The gist of the offence is the taking of the girl *out of the possession* of her parents or any one having legal care and charge of her.

Where the girl—without persuasion or inducement on the part of the defendant—leaves her father, has got fairly away from home, and then goes to the defendant, his not sending her back to her father's possession is no infraction of this article; for it does not say that he shall *restore* her, but that he shall not *take her away*. (1)

Merely cohabiting with a girl *after* she has left her father is not an offence within this Article. (2) But a girl's *temporary* absence from home will not interrupt the father's possession. And, if while living with her father, a girl leaves the house for a mere temporary purpose, intending to return home, she is considered to be still in her father's possession, and if while so out of her father's house, temporarily, the defendant induces her to run away with him, he is guilty of the above offence. (3)

A girl employed as a barmaid away from her father's home is under the lawful charge of her employer and, therefore, an indictment will not lie for taking her out of her father's possession. (4)

A., a girl under sixteen, who, with her father's consent, was under the care of B., her uncle, was allowed, by B., to dine at the house of C., the husband of B's sister. C. took A. for a drive and stayed over night with her, and debauched her, at a hotel. The next day he left her at B's. *Held*, that B. had the lawful care of A., and that she was unlawfully taken out of his possession by C. (5)

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(1) R. v. Olifier, 10 Cox, 402.
(2) R. v. Miller, 13 Cox, 179.
(3) R. v. Mycock, 12 Cox, 28.
(4) R. v. Henkers, 16 Cox, 257.
(5) R. v. Mondelet, 21 L. C. J. 154.

It has been held, and is so declared by the second clause of the above Article, that the girl's consent is immaterial; and the taking need not be by force actual or constructive; nor is it any legal excuse that there is an absence of any corrupt motive, or that the defendant made use of no other means than the common blandishments of a lover, to induce the girl to elope with and marry him. (1) And so, where the defendant went in the night to the girl's father's house, placed a ladder against her window, and held it while she descended and she eloped with him, this was held a "taking out of the possession of her father," although the girl herself had proposed the plan to the defendant. (2)

Where the girl was persuaded by defendant to go away with him from her father's house, without her father's consent, and she accordingly left home by a pre-arrangement between them and met the prisoner at an appointed place, without intending to go back, this was held a taking of the girl out of her father's possession, since up to the time of her meeting the defendant, as appointed, she had not yet absolutely renounced her father's protection, and was still in his constructive possession, (3)

It has been held to be an abduction, under this law, to induce the parents, by false and fraudulent representations, to allow the defendant to take the girl away. (4)

The girl of course must be proved to be under sixteen and unmarried. But Article 283, clause 3, expressly declares, and it has been so held, (5) that it is immaterial that the offender believed the girl to be sixteen.

Evidence of cruel treatment of the girl by her guardian is inadmissible; but, where persons, prompted by benevolent motives, had taken the girl from a barn where she had sought refuge, and placed her with the defendant, as secretary of a society for protecting

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(1) R. v. Kipps, 4 Cox, 167; R. v. Booth, 12 Cox, 231; R. v. Tursleton, 1 Lev. 237; R. v. Hawley, 1 F. & F. 648.

(2) R. v. Robins, 1 C. & K. 456.

(3) R. v. Mankleton, Dears, 159; 22 L. J. M. C. 115.

(4) R. v. Hopkins, C. & Mar. 254.

(5) R. v. Prince, L. R. 2 C. C. R. 154; 44 L. J. M. C. 122; R. v. Robins, *supra.*

women and children, it was held that the defendant was not guilty of taking the girl out of the possession of the guardian. (1)

ABOMINABLE CRIME.

Sodomy.—To commit buggery, either with a human being or with any other living creature is indictable and punishable with life imprisonment (Code, Art. 174.) And an attempt to commit the offence is indictable and punishable with ten years imprisonment. (Code, Art. 175.)

Article 260 of the Code, makes it an indictable offence, punishable with ten years and WHIPPING, for any one to assault any person with intent to commit sodomy, or for any male to indecently assault any other person.

ABORTION.

Using Means to Procure Abortion.—Every one is guilty of an indictable offence and liable to imprisonment for life who, with intent to procure a woman's miscarriage, WHETHER SHE IS OR IS NOT WITH CHILD, unlawfully *administers* to her *or causes to be taken by* her any drug or other noxious thing, or unlawfully uses any instrument or other means whatsoever with the like intent. (Code, Art. 272.) And every woman is guilty of an indictable offence and liable to seven years' imprisonment who, WHETHER WITH CHILD OR NOT, unlawfully administers to herself or permits to be administered to her any drug or other noxious thing, or unlawfully uses on herself or permits to be used on her any instrument or other means whatsoever with intent to procure miscarriage. (Code, Art. 273.)

Supplying Means to Procure Abortion.—Every one is guilty of an indictable offence and liable to two years' imprisonment who unlawfully supplies or procures any drug or other noxious thing, or any instrument or thing whatsoever, knowing that the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman, WHETHER THE IS OR IS NOT WITH CHILD. (Code, Art. 274.)

Where the prisoner gave a woman a drug to procure abortion,

(1) R. v. Hollis, 8 L. N. 229.

and she took it for that purpose, in prisoner's absence, this was held a causing of it to be taken. (1)

The thing administered must be, either in its nature or by reason of the quantity, noxious; and it would not be sufficient if, not being actually noxious, in itself, it was merely imagined by the defendant that it would have the effect intended. (2) But, if the drug administered actually produces miscarriage.—and there be no other evidence of its nature,—this, in itself, is sufficient evidence of its being noxious. (3)

Where the drug is not noxious in itself and quite innoxious when administered in small quantities, yet if the quantity administered is noxious, that makes the drug so administered a noxious thing. (4)

If the drug is such that when administered in large quantities it is noxious, yet, if the quantity administered by the defendant, is innoxious, he is not guilty of administering a noxious thing. (5)

Where the instrument used to procure an abortion was a quill, which, by its nature, might have been used for an innocent purpose, evidence was allowed to be adduced,—in order to prove the intent,—showing that the prisoner had, at other times, caused miscarriages by similar means. (6)

If, in the attempt to procure abortion or after or in consequence of the abortion being effected, the woman dies, the crime is murder, and comes within the definition of murder contained in Article 227D of the Code.

Killing Unborn Child.—Every one is guilty of an indictable offence and liable to imprisonment for life who causes the death of any child which has not become a human being, in such a manner that he would have been guilty of murder if such child had been born.

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(1) R. v. Wilson, 26 L. J. M. C. 18; R. v. Farrow, Dears, & B. 164.
(2) R. v. Isaacs, L. & C. 220.
(3) R. v. Hollis, 12 Cox, C. C. R. 463.
(4) R. v. Cramp, 5 Q. B. D. 307; 49 L. J. M. C. 44.
(5) R. v. Hennah, 13 Cox, 547.
(6) R. v. Dale, 16 Cox, 703.

2. No one is guilty of any offence who, by means which he, in good faith, considers necessary for the preservation of the life of the mother of the child, causes the death of any such child before or during its birth. (Code, Art. 271.)

By Article 219 of the Code, a child only becomes a human being when it has completely proceeded, *in a living state*, from the body of its mother; and it is not homicide to kill a child which becomes extinct before it has so become a human being. So, that, Article 271 will meet the case of any wilful and unlawful killing of a child which, in consequence of injuries inflicted upon it, becomes extinct either while still in the womb or while it is proceeding but has not yet completely proceeded from its mother's body.

Advertising Drugs, Etc., to Procure Abortion.—This is punishable under Article 179 of the Code by two years' imprisonment (See p. 433, *post.*)

ACCESSORIER.

(See PARTIES TO CRIMES, pp. 58-65, *ante*).

ACTIONS AGAINST PERSONS ADMINISTERING THE CRIMINAL LAW.

(See pp. 50-53, *ante.* And see also LIABILITY OF MAGISTRATES AND JUSTICES FOR ILLEGAL ACTS, pp. 39-49, *ante*).

ADMINISTERING DRUGS, ETC.

Administering Drugs in order to Defile Females.—It is an indictable offence punishable with two years' imprisonment with hard labor, to apply or administer to or cause to be taken by ANY WOMAN OR GIRL, any drug, intoxicating liquor, matter or thing, with intent to stupefy or overpower so as thereby to enable any person to have unlawful carnal connection with her. (Code, Art. 185i.)

Administering Poison with Intent to Murder.—By Article 232 of the Code, it is an indictable offence punishable by imprisonment for life, to administer or cause to be administered to any person, any poison or other destructive thing with intent to murder. (See HOMICIDE, *post.*)

Drugging with Intent to Commit an Indictable Offence.—Every one is guilty of an indictable offence and liable to imprisonment for life, and to be WHIPPED, who with intent to enable himself or any other person to commit, or with intent thereby to assist any other person in committing any indictable offence, unlawfully applies or administers to or causes to be taken by, or attempts to apply or administer to, or attempts or causes to be administered to or taken by, any person, any chloroform, laudanum or other stupefying or overpowering drug, matter or thing. (Code, Art. 244.)

Administering Poison and thereby Endangering Life.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who unlawfully administers or causes to be administered to or taken by any person, any poison or other *destructive* or *noxious* thing, so as thereby to endanger the life of such person or to inflict upon such person any grievous bodily harm. (Code, Art. 245.)

Administering Poison with Intent to Injure.—Every one is guilty of an indictable offence and liable to three years' imprisonment who unlawfully administers to, or causes to be administered to or taken by, any other person, any poison or other *destructive* or *noxious* thing, with intent to injure, aggrieve or annoy such person. (Code, Art. 246.)

If the poison or destructive or noxious thing is administered merely with intent to *injure, aggrieve* or *annoy*, which in itself would be punishable under Article 246, yet if it does in fact endanger the life of or inflict grievous bodily harm upon the person to whom it is administered, it would amount to the higher offence covered by and punishable under Article 245. (1)

To warrant a conviction under Article 246, it must be proved that the defendant intended the administration of the poison, *etc.*, to injure, aggrieve or annoy the prosecutor; and it was held that where the defendant had administered cantharides to a woman with intent to excite her sexual passion and desire so as to obtain

(1) Tulley v. Corrie, 10 Cox, 640.

carnal connection with her, it was an administering with intent to "injure, aggrieve and annoy" her. (1)

Whether the thing is noxious or not may depend upon the quantity administered. Thus, where the evidence showed that the prisoner had administered cantharides to the prosecutrix, that a large dose of cantharides is poisonous, but that the quantity administered was insufficient to produce any effect upon the human system, it was held that the prisoner could not be convicted of administering a "destructive and noxious thing," notwithstanding that he administered it with intent to injure and annoy. (2)

Where the prisoner was indicted for having caused to be taken a certain noxious thing, namely half an ounce of oil of juniper, with intent to procure miscarriage, and the evidence was that oil of juniper in considerably less quantities than half an ounce might be taken without any ill effect, but that half an ounce produces ill effects, and to a pregnant woman is dangerous, it was held that the half ounce of juniper oil was "a noxious thing." (3)

Administering Oaths.

Administering Unlawful Oaths.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who—

(*a.*) administers, or is present at and consenting to the administration of, any oath or any engagement purporting to bind the person taking the same to commit any crime punishable by death or imprisonment for more than five years; or

(*b.*) attempts to induce or compel any person to take any such oath or engagement; or

(*c.*) takes any such oath or engagement. (Code, Art. 120.)

Every one is guilty of an indictable offence and liable to seven years' imprisonment who—

(*a.*) administers or is present at and consenting to the administration of any oath or engagement purporting to bind the person taking the same;

(1) R. v. Wilkins, L. & C. 89; 31 L. J. M. C. 72.
(2) R. v. Hennah, 13 Cox, 547.
(3) R. v. Cramp, 5 Q. B. D. 307; 49 L. J. M. C. 44.

(i.) to engage in any mutinous or seditious purpose ;

(ii.) to disturb the public peace or commit or endeavour to commit any offence ;

(iii.) not to inform and give evidence against any associate, confederate or other person ;

(iv.) not to reveal or discover any unlawful combination or confederacy, or any illegal act done or to be done or any illegal oath or obligation or engagement which may have been administered or tendered to or taken by any person, or the import of any such oath or obligation or engagement ; or

(*b.*) attempts to induce or compel any person to take any such oath or engagement ; or

(*c.*) takes any such oath or engagement. (Code, Art. 121.)

Any one who, under such compulsion as would otherwise excuse him, offends against either of the two preceding sections shall not be excused thereby unless, within the period hereinafter mentioned, he declares the same and what he knows touching the same, and the persons by whom and in whose presence, and when and where, such oath or obligation or engagement was administered or taken, by information on oath before a justice of the peace for the district, city or county in which such oath or engagement was administered or taken. Such declaration may be made by him within FOURTEEN days after the taking of the oath or, if he is hindered from making it by force or sickness, then within EIGHT days of the cessation of such hindrance, or on his trial if it happens before the expiration of those periods. (Code, Art. 122.)

These three articles are taken from sections 1, 2, 3 and 4 of chapter 10 of the Consolidated Statutes of Lower Canada. With regard to the province of Quebec, there is no doubt that the remaining sections 5, 6, 7, 8 and 9 (*unrepealed*) of that Act are still in force, and the law as contained in those remaining sections may probably also apply to British Columbia, Manitoba and the North-West Territorities seeing that the whole statute was simply a re-enactment of the English law on the subject as it stood, in 1837, under 52 Geo. 3, c. 104, and 7 Will. 4, & 1 Vic., c. 91.

Administering Oaths Without Authority.—Every justice of the peace or other person who administers or causes or allows to be administered, or receives or causes or allows to be received any oath or affirmation, touching any matter or thing whereof such justice or other person has not jurisdiction or cognizance by some law in force at the time being, or authorized or required by any such law, is guilty of an indictable offence and liable to a fine not exceeding fifty dollars, or to imprisonment for any term not exceeding three months.

2. Nothing herein contained shall be construed to extend to any oath or affirmation before any justice in any matter or thing touching the preservation of the peace, or the prosecution, trial or punishment of any offence, or to any oath or affirmation required or authorized by any law in Canada, or by any law of the province wherein such oath or affirmation is received or administered, or is to be used, or to any oath or affirmation, which is required or authorized by the laws of any foreign country to give validity to an instrument in writing or to evidence designed or intended to be used in such foreign country. (Code, Art. 153.)

ADULTERATION.

(See FOOD, *post.*,

ADULTERY.

Conspiracy to Induce a Woman to Commit Adultery.—Every one is guilty of an indictable offence and liable to two years' imprisonment who conspires with any other person, by false pretences, or false representations or other fraudulent means, to induce any woman to commit adultery or fornication. (Code, Art. 188.)

Adultery, fornication and incest are not common law offences; but in England they are criminally cognizable under the ecclesiastical law, although, the only one which is prosecuted in these days is incest. (1)

There being no competent Ecclesiastical Court in Canada, and the ecclesiastical law of England not being in force here, (2) none

(1) 2 Steph. His. Cr. L. 396.

(2) *In re* Lord Bishop of Natal, 3 Moo. C. C. N. S. 115; Bur. Dig. Cr. L. 162.

of these offences have heretofore been punishable in any part of Canada, except Nova Scotia, New Brunswick and Prince Edward Island, under special acts of the local legislatures of those provinces for the punishment of incest, (1) and also, as regards New Brunswick, for the punishment of adultery. (2)

Advertising.

Advertising Abortion and Other Obscene Drugs, etc.—It is an indictable offence punishable by two years' imprisonment to knowingly, without lawful justification or excuse, offer to sell, advertise, publish an advertisement of, or have for sale or disposal any medicine, drug or article intended or represented as a means of preventing conception or causing abortion. (Code, Art. 179.)

Advertising Counterfeit Money.—Every one is guilty of an indictable offence and liable to five years' imprisonment, who

(*a.*) prints, writes, utter , publishes, sells, lends, gives away, circulates or distributes any letter, writing, circular, paper, pamphlet, handbill or any written or printed matter advertising, or offering or purporting to advertise or offer for sale, loan, exchange, gift or distribution, or to furnish, procure or distribute, any counterfeit token of value, or what purports to be a counterfeit token of value, or giving or purporting to give, either directly or indirectly, information where, how, of whom, or by what means any counterfeit token of value, or what purports to be a counterfeit token of value, may be procured or had ; or

(*b.*) purchases, exchanges, accepts, takes possession of or in any way uses, or offers to purchase, exchange, accept, take possession of or in any way, use, or negotiates or offers to negotiate with a view of purchasing or obtaining or using any such counterfeit token of value, or what purports so to be ; or

(*c.*) in executing, operating, promoting or carrying on any

(1) R. S. N. S. (3rd S.), c. 160, s. 2; R. S. N. B., c. 145, s. 2. 24 Vic. (P. E. I.), c. 27, s. 3.

(2) R. S. N. B. c. 145, s. 3 ; Burb. Dig. 162.

scheme or device to defraud, by the use or by means of any papers, writings, letters, circulars or written or printed matters concerning the offering for sale, loan, gift, distribution or exchange of counterfeit tokens of value, uses any fictitious, false or assumed name or address, or any name or address other than his own right, proper and lawful name; or

(*d.*) in the execution, operating, promoting or carrying on, of any scheme or device offering for sale, loan, gift or distribution, or purporting to offer for sale, loan, gift or distribution, or giving or purporting to give information, directly or indirectly, where, how, of whom or by what means any counterfeit token of value may be obtained or had, knowingly receives or takes from the mails, or from the post office, any letter or package addressed to any such fictitious, false or assumed name or address, or name other than his own right, proper or lawful name. (Code, Art. 480.)

Prima Facie Evidence on Proceedings for Advertising Counterfeit Money.—On the trial of any person charged with the offences mentioned in section 480, any letter, circular, writing or paper offering or purporting to offer for sale, loan, gift or distribution, or giving or purporting to give information, directly or indirectly, where, how, of whom or by what means any counterfeit token of value may be obtained or had, or concerning any similar scheme or device to defraud the public, shall be *prima facie* evidence of the fraudulent character of such scheme or device. (Code, Art. 693.)

An offer to purchase bank notes which are genuine but *unsigned* is not an offer to purchase *counterfeit tokens of value*, even if the person offering to purchase them made such offer under the belief that they were counterfeit. (1)

Advertising Reward for Return of Stolen Property.—(See COMPOUNDING, *post.*)

ADVERTISEMENT.

Printing Advertisements, Cards, Circulars, etc., in Likeness of Bank Notes.—Every one is guilty of

(1) R. v. Atwood, 20 Ont. R. 574.

an offence and liable, on summary conviction before two justices of the peace, to a fine of one hundred dollars or three months' imprisonment, or both, who designs, engraves, prints or in any manner makes, executes, utters, issues, distributes, circulates or uses any business or professional card, notice, placard, circular, hand-bill or advertisement in the likeness or similitude of any bank note, or any obligation or security of any Government or any bank. (Code, Art. 442.)

Affray.

An affray is the act of fighting in any public street or highway, or fighting to the alarm of the public in any other place to which the public have access.

2. Every one who takes part in an affray is guilty of an indictable offence and liable to one year's imprisonment *with hard labour*. (Code, Art. 90.)

The essence of this offence is its tendency to alarm people at or near the scene of the fight. It is not necessary that actual terror should exist; but it will be inferred by the law from the fact of the fighting taking place in a public street or highway, or in any other place accessible to the public.

Agency.

Criminal Liability of Principals and Agents.—A person is not, as a general rule, criminally responsible for the acts of another; but a man may be brought, under some circumstances, within the criminal law by the acts of his agents or servants. We have seen that where a person employs, solicits or advises another to commit a crime, in his absence, he and the agent are equally principal offenders. (1)

An agent or servant who, knowing the facts, does a criminal act for his principal or master, is answerable to the criminal law precisely as though he had proceeded self-moved, and for his own personal benefit. The command of a superior to an inferior,—as of a parent to a child, or of a master to his servant, or of a princi-

(1) See Parties to Offences, p. 58, *ante*.

pal to his agent,—will not justify a criminal act done in pursuance of it. (1)

An agent, who is such for civil purposes only, cannot by an unauthorized act render his principal answerable for a breach of the criminal law. But the principal is criminally responsible for what the agent does under his principal's authority. And, if the business itself involves a violation of the law, the authorization by the principal or employer of an agent or servant to conduct it will bring guilt upon the principal or master whenever the thing done therein is a criminal offence; and this will not prevent the agent or servant, who has done the act, from being equally guilty with the principal. Thus, where the keeper of a place of public resort left his premises in the management of a servant, and prostitutes were, in violation of the English License Act, suffered to visit and remain therein, it was held that the mere relation of master and servant neither made nor prevented the latter from being an aider and abettor in the offence, but that if the servant, in harboring, was carrying out the master's orders, the master was guilty as principal, and the servant as aiding and abetting. (2) And a shopkeeper has been held criminally liable for the unlawful act of a servant in charge of the store in selling liquor without a license, although done in the shopkeeper's absence. (3)

Under a section of the English License Act, which makes it an offence for a licensed person to knowingly harbor on his premises any constable on duty, or to supply him with *liquor, etc.*, it was even held that a master might be convicted for the act of his servant, though the master was personally ignorant of it. (4) But it has been held, in some later cases, that where there is no evidence to show any connivance or wilful blindness on the part of the licensed person—if he does not shut his eyes, and is himself really and *bona fide* ignorant—he is not liable, and that the knowledge of the servant, under such circumstances, is not sufficient to justify a conviction against the master. (5)

(1) 1 Bish. New. Cr. L. Com., ss 355, 892; Broom's Leg. Max. 2 Ed. 11.

(2) Wilson v. Stuart, 32 L. J. Q. B. 311.

(3) R. v. King, 20 U. C., C. P. 246.

(4) Mullins v. Collins, L. R., 9 Q. B. 292; 43 L. J. M. C. 67.

(5) Somerset v. Hart, 12 Q. B. D. 360; 53 L. J. M. C. 77; 48 J. P. 327 Newman v. Jones, 17 Q. B. D. 132; 55 L. J. M. C. 113.

Employer's Liability for Defamatory matter sold by Servant.—The sale by a servant of any book, magazine, pamphlet or other thing, whether periodical or not, shall not make his employer criminally responsible in respect of defamatory matter contained therein, *unless it be proved that such employer authorized such sale, knowing that such book, etc., contained* defamatory matter, or, in case of a number or part of a periodical, that defamatory matter was habitually contained in such periodical. (Code, Art. 298, ss. 2.)

Pledging by Factor or Agent.—No factor or agent shall be guilty of theft by pledging or giving a lien on any goods or document of title to goods intrusted to him for the purpose of sale or otherwise, for any sum of money not greater than the amount due to him from his principal at the time of pledging or giving a lien on the same, together with the amount of any bill of exchange accepted by him for or on account of his principal. (Code, Art. 305, ss. 5.)

AGENTS.

Theft by Agent.—*Every one* commits theft who, having received any money or *valuable security* or other thing whatsoever, on terms requiring him to account for or pay the same, or the proceeds thereof, or any part of such proceeds, to any other person, though not requiring him to deliver over in specie the identical money, valuable security or other thing received, *fraudulently converts* the same to his own use, or *fraudulently omits to account for* or pay the same or any part thereof, or to account for or pay such proceeds or any part thereof, which he was required to account for or pay as aforesaid.

2. Provided, that if it be part of the said terms that the money or other thing received, or the proceeds thereof, shall form an item in a debtor and creditor account between the person receiving the same and the person to whom he is to account for or pay the same, and that such last mentioned person shall rely only on the personal liability of the other as his debtor in respect thereof, the proper entry of such money or proceeds, or any part thereof, in such account, shall be a sufficient accounting for the money or proceeds, or part thereof so entered, and in such case no fraudulent conver-

sion of the amount accounted for shall be deemed to have taken place. (Code, Art. 308.)

Theft by Holder of Power of Attorney.—*Every one* commits theft who, being entrusted, either solely or jointly with any other person, with any power of attorney for the sale, mortgage, pledge or other disposition of any *property*, real or personal, whether capable of being stolen or not, fraudulently sells, mortgages, pledges or otherwise disposes of the same or any part thereof or fraudulently converts the proceeds of any sale, mortgage, pledge or other disposition of such property, or any part of such proceeds, to some purpose other than that for which he was intrusted with such power of attorney. (Code, Art. 309.)

Offences against Articles 308, 309 and 310, are punishable by 14 years imprisonment under Article 320; and Article 357 provides that when, in cases of theft, the value of the article exceeds $200, two years shall be added to the term of imprisonment.

Theft by Misappropriating Proceeds Held under Direction.—*Every one* commits theft who,—having received, either solely or jointly with any other person, any money or *valuable security* or any power of attorney to sell any *property*, real or personal, with a *direction* that such money, or any part thereof, or the proceeds, or any part of the proceeds of such security, or such property, shall be applied to any purpose or paid to any person specified in such direction,—in violation of good faith and contrary to such direction, fraudulently applies, to any other purpose, or pays to any other person, such money or proceeds, or any part thereof.

2. Provided, that where the person receiving such money, security or power of attorney, and the person from whom he receives it, deal with each other on such terms that all money paid to the former would, in the absence of any such direction, be properly treated as an item in a debtor and creditor account between them, this section shall not apply, *unless such direction is in writing.*

The law, as now contained in the above Articles 308, 309, and 310, is so framed as to apply not only to bankers, merchants, brokers, attorneys and agents, but to all persons whomsoever, and

they are also so framed that it shall not be essential, (especially in connection with Articles 308 and 310), that the direction, if any, should be *in writing*, nor that the conversion or other wrongful dealing, in order to be theft, be against some direction *in writing*, but, that if there is no WRITTEN direction, it shall be sufficient to show that the conversion or other wrongful dealing was against a *verbal* direction.

AGGRESSIONS BY FOREIGNERS.

(See LEVYING WAR, *post*).

AIDERS AND ABBETTORS.

(See PARTIES TO OFFENCES, p. 58, *ante*.

ALLEGIANCE.

Natural and Local Allegiance.—The duty of allegiance is based upon the relation which subsists between him who owes it and the Crown, and upon the privileges derived by the former from that relation. Allegiance is either *natural* or *local*. Natural allegiance is that which a natural born subject owes at all times and in all places to the Crown as head of that society of which he is a member. Local allegiance is founded upon the protection which a foreigner enjoys for his person, his family and effects during his residence here ; and if such foreigner while so resident here commit an offence which in the case of a natural born subject would be treason, he is dealt with as a traitor ; and this is so, whether his sovereign be at peace with us or not. (1)

(See OATHS OF ALLEGIANCE, *post*.)

ANIMALS.

Animals capable of being stolen. — (See THEFT, *post*.)

Killing, Maiming or Injuring Animals, not being Cattle.—Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding $100, over and

(1) Broom's Comm. on Com. L., 5 Ed. 877, 878.

above the amount of injury done, or to three months' imprisonment, with or without hard labour, who wilfully kills, maims, wounds, poisons or injures any dog, bird, beast, or other animal, not being cattle, but being either the subject of larceny at common law, or being ordinarily kept in a state of confinement, or kept for any lawful purpose.

2. Every one who, having been convicted of any such offence, afterwards commits any offence under this section, is guilty of an indictable offence, and liable to a fine or imprisonment, or both, in the discretion of the court. (Code, Art. 501.)

The imprisonment under clause 2 of this Article will be five years. (See Art. 951, of the Code.)

Theft of animals.—Every one commits theft, and steals the creature killed who kills any *living creature* capable of being stolen with intent to steal the carcase, skin, plumage or any part of such creature. (Code, Art. 307.)

The stealing of cattle is punishable, under Article 331, of the Code, by fourteen years imprisonment; and, according to Article 307, the same punishment will apply to any one *killing* cattle with intent to steal the carcase, etc., thereof.

Stealing dogs, birds, beasts, etc.—Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty dollars over and above the value of the property stolen, or to one month's imprisonment with hard labour, who steals any dog, or any bird, beast or other animal ordinarily *kept* in a state of confinement or *for any domestic purpose*, or *for* any lawful purpose of *profit or advantage*.

2. Every one who, having been convicted of any such offence, afterwards commits any such offence, is liable to three months' imprisonment with hard labour. (Code, Art. 332.)

Pigeons.—Every one who unlawfully and wilfully kills, wounds or takes any house-dove or pigeon, under such circumstances as do not amount to theft, is guilty of an offence and liable, upon complaint of the owner thereof, on summary conviction, to a penalty not exceeding ten dollars over and above the value of the bird. (Code, Art. 333.)

Under the first clause of Article 304 of the Code, tame pigeons, while in a dovecote, or on their owner's land are capable of being stolen. The punishment would be under Article 332, *supra*.

Oysters.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who steals oysters or oyster brood.

2. Every one is guilty of an indictable offence and liable to three month's imprisonment, who unlawfully and wilfully uses any dredge or net, instrument or engine whatsoever, within the limits of any oyster bed, laying or fishery, being the property of any other person, and sufficiently marked out or known as such, for the purpose of taking oysters or oyster brood, although none are actually taken, or unlawfully and wilfully, with any net, instrument or engine, drags upon the ground of any such fishery.

Nothing herein applies to any person fishing for or catching any swimming fish within the limits of any oyster fishery with any net, instruments or engine adapted for taking swimming fish only. (Code, Art. 334.)

(See CATTLE, *post*.)

(See CRUELTY TO ANIMALS, *post*.)

ARMS.

(See OFFENSIVE WEAPONS, *post*.)

ARMY AND NAVY.

Inciting to Mutiny.—Every one is guilty of an indictable offence and liable to imprisonment for life who, *for any traitorous or mutinous purpose*, endeavours to seduce any person serving in Her Majesty's forces by sea or land from his duty and allegiance to Her Majesty, or to incite or stir up any such person to commit any *traitorous* or *mutinous* practice. (Code, Art. 72.)

Enticing Soldiers or Sailors to Desert.—Every one is guilty of an indictable offence who, not being an enlisted soldier in Her Majesty's service, or a seaman in Her Majesty's naval service—

(*a.*) by words or with money, or by any other means whatsoever, directly or indirectly, persuades or procures, or goes about or endeavours to persuade, prevail on or procure, any such seaman or soldier to desert from or leave Her Majesty's military or naval service; or

(*b.*) conceals, receives or assists any deserter from Her Majesty's military or naval service, knowing him to be such deserter.

2. The offender may be prosecuted by indictment, or summarily before two justices of the peace. In the former case he is liable to fine and imprisonment in the discretion of the court, and in the latter to a penalty not exceeding two hundred dollars, and not less than eighty dollars and costs, and in default of payment to imprisonment for any term not exceeding six months. (Code, Art. 73.)

This article provides that an offender may be prosecuted either by indictment or summarily, and it specifies the penalty to be incurred on a summary conviction; but in the case of a conviction upon indictment, although it enacts that the offender shall be liable to fine and imprisonment in the discretion of the court, it does not specify the amount of the fine nor the length of the imprisonment. Article 951, however, provides that a person convicted of an indictable offence for which no punishment is specially provided shall be liable to five years imprisonment.

Section 9, R. S. C., chap. 169, provides that one moiety of the amount of any penalty recovered under this Article shall go to the prosecutor and the other moiety to the Crown.

Any one reasonably suspected of being a deserter from Her Majesty's service may be arrested and brought before a justice of the peace and held till claimed by the military or naval authorities. (See Art. 561, Code.)

Resisting Execution of Warrant for Arrest of Deserters.—Every one who resists the execution of any warrant authorizing the breaking open of any building to search for any deserter from Her Majesty's military or naval service is guilty of an offence and liable, on summary conviction before two justices of the peace, to a penalty of eighty dollars. (Code, Art. 74.)

No one is entitled to break open any building to search for a deserter without having obtained a warrant for that purpose from a justice of the peace. (See Art. 561, Code.)

Enticing Militiamen or Mounted Police to Desert.—Every one is guilty of an offence and liable, on summary conviction, to six months' imprisonment, *with or without hard labour*, who—

(*a.*) persuades any man who has been enlisted to serve in any corps of militia, or who is a member of or has engaged to serve in the North-West mounted police force, to desert, or attempts to procure or persuade any such man to desert; or

(*b.*) knowing that any such man is about to desert, aids or assists him in deserting; or

(*b.*) knowing any such man is a deserter, conceals such man or aids or assists in his rescue. (Code, Art. 75.)

Receiving Regimental Necessaries, etc., from Soldiers or Deserters.—Every one is guilty of an indictable offence and liable on conviction, on indictment, to five years' imprisonment, and, on summary conviction before two justices of the peace, to a penalty not exceeding forty dollars, and not less than twenty dollars and costs, and, in default of payment, to six months' imprisonment with or without hard labour, who—

(*a.*) buys, exchanges or detains, or otherwise receives, from any soldier, militiamen or deserter, any arms, clothing or furniture belonging to Her Majesty, or any such articles belonging to any soldier, militiamen or deserter as are generally deemed regimental necessaries according to the custom of the army; or

(*b.*) exchanges, buys or receives, from any soldier or militiaman, any provisions, *without leave in writing from the officer commanding* the regiment or detachment to which such soldier belongs. (Code, Art. 390.)

See sec. 13 of 38 & 39 Vic., c. 25 (Imp.), and 44-45 Vic., c. 58, s. 156 (Imp.), and note, at p. 908 of Archbold on Cr. Pl. & Ev. 21 Ed.

Receiving, etc., Necessaries from Marines or Deserters.—Every one is guilty of an indictable offence and liable, on conviction, on indictment, to five years' imprisonment, and on summary conviction before two justices of the peace, to a penalty not exceeding one hundred and twenty dollars, and not less than twenty dollars and costs, and in default of payment to six months' imprisonment, who buys, exchanges or detains, or otherwise receives from any seaman or marine, upon any account whatsoever, or has in his possession, any arms or clothing, or any such articles, belonging to any seaman, marine or deserter, as are generally deemed necessaries according to the custom of the navy. (Code, Art. 391.)

Receiving, etc., a Seaman's Property.—Every one is guilty of an indictable offence who detains, buys, exchanges, takes on pawn or receives, from any seaman or any person acting for a seaman, any seaman's property, or solicits or entices any seaman, or is employed by any seaman to sell, exchange or pawn any seaman's property, unless he acts in ignorance of the same being seaman's property, or of the person with whom he deals being or acting for a seaman, or unless the same was sold by the order of the Admiralty or Commander-in-Chief.

2. The offender is liable on conviction, on indictment, to five years' imprisonment, and, on summary conviction, to a penalty not exceeding one hundred dollars; and for a second offence, to the same penalty, or, in the discretion of the justice, to six months' imprisonment, with or without hard labour.

3. The expression "seaman" means every person, not being a commissioned, warrant or subordinate officer, who is in or belongs to Her Majesty's navy, and is borne on the books of any one of Her Majesty's ships in commission, and every person, not being an officer as aforesaid, who, being borne on the books of any hired vessel in Her Majesty's service, is, by virtue of any act of Parliament of the United Kingdom for the time being in force for the discipline of the navy, subject to the provisions of such act.

4. The expression "seaman's property" means any clothes, slops, medals, necessaries or articles usually deemed to be necessaries for sailors on board ship, which belong to any seaman.

5. The expression "Admiralty" means the Lord High Admiral of the United Kingdom, or the commissioners for executing the office of Lord High Admiral. (Code, Art. 392.)

Not Satisfying Justice that Possession of Seaman's Property is Lawful.—Every one, in whose possession any seaman's property is found who does not satisfy the justice of the peace before whom he is taken or summoned that he came by such property lawfully, is liable, on summary conviction, to a fine of twenty-five dollars. (Code, Art. 393.)

Arrest.

(See Summary Arrest, p. 91, *aute.*)

Arson.

Every one is guilty of the indictable offence of arson, and liable to imprisonment for life, who *wilfully sets fire* to any building or structure, whether such building, erection or structure is completed or not, or to any stack of vegetable produce or of mineral or vegetable fuel, or to any mine, or any well of oil or other combustible substance, or to any ship or vessel, WHETHER COMPLETED OR NOT, or to any timber or materials placed in any shipyard for building or repairing or fitting out any ship, or to any of Her Majesty's stores or munitions of war. (Code, Art. 482.)

Arson, at common law, was a felony, and was the *malicious and wilful burning of the house of another.* (1) The burning of a party's own house did not come within this definition; although the burning of a man's own house in a town or so near to other houses as to create danger to them was a great misdemeanor at common law; (2) and, to constitute arson at common law, there must have been an actual *burning* of the whole or some part of the house, (3) although it was not necessary that any flame should be visible. (4) But clause 3, of Article 481 of the Code, provides that where an

(1) 3 Inst. 66; 4 Bl. Com. 220.
(2) 1 Hale, 568; 2 East, P. C. 1027.
(3) 1 Hale, 569.
(4) R. v. Russell, 1 C. & M. 541; R. v. Stallion, R. & M., C. C. R., 398; R. v. Parker, 9 C. & P. 45.

offence consists in an injury to anything in which the offender has an interest, the existence of such interest shall not prevent his act being an offence if done with intent to defraud. And, therefore, a person will be guilty of arson even if he be the owner of the building, *etc.*, if he wilfully sets fire to it, *with intent to defraud:* and if he be not the owner of, but have only some partial interest in the building, *etc.*, he will be guilty of arson by setting fire to it, whether he does it with intent to defraud or not. It will be seen, that, instead of the words *wilful burning*, used in the common law definition of arson, the words used in Article 482 are, *wilfully sets fire to*, merely; and the burning of any part of the building, *etc.*, however slight, will be sufficient, although the fire be afterwards extinguished. (1)

Where the question is, whether the burning was ACCIDENTAL or WILFUL, evidence is admissible to show that, on another occasion, the defendant was in such a situation as to render it probable that he was then engaged in the commission of the like offence against the same property; (2) or, that he had previously occupied houses which had been on fire and in respect of which he made insurance claims and got paid; (3) but on a charge of arson, where the question was as to the prisoner's identity, evidence that, a few days previous to the fire in question, another building of the prosecutor's was on fire, and that the prisoner was then standing by with a demeanor showing indifference or gratification, was rejected. (4)

An unfinished house, of which all the walls, external and internal, are built and finished, the roof on, and completed, the flooring of a considerable part laid, and the internal walls and ceilings prepared for plastering, was held to be a "*building.*" (5)

It will be seen, that, Article 482 covers any building or structure whatever, whether completed or not; and, therefore, the distinctions formerly existing, as shown by a number of cases cited in

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(1) 1 Hawk, c. 39, s. 17; 1 Hale, 569; Dalt. 506.
(2) R. v. Dossett, 2 C. & K. 306.
(3) R. v. Gray, 4 F. & F. 1102; and R. v. Voke, R. & R. 531.
(4) R. v. Harris, 4 F. & F. 342.
(5) R. v. Manning, L. R. 1 C. C. R. 338; 41 L. J. M. C. 11.

Archbold, (1) in regard to the description of the building, or its state of completeness or incompleteness, are no longer material.

When a person is charged with setting fire to his own house, the intent to defraud,—which, according to Article 481, clause 3, is an essential ingredient of the offence,—cannot be inferred from the act itself, but must be proved by other evidence. Where, therefore, a defendant was charged with arson with intent to defraud an insurance company, and a sufficient notice to produce the insurance policy had not been given, it was held that secondary evidence of it could not be given, and, that, there being no other evidence of the insurance, the defendant must be acquitted. (2)

In one case, the counsel for the prosecution suggested, as a motive for the act, the defendant's desire to realise the amount of an insurance which she had upon her goods; and, upon evidence being tendered to show that she was in easy circumstances, so as to negative the suggested motive, the evidence was admitted. (3)

A quantity of straw, packed on a lurry, in course of transmission to market, and left for the night in an inn-yard, was held not to be a *stack* of straw. (4)

Where a sailor on board a ship entered a part of the vessel, where spirits were kept, for the purpose of stealing some rum, and, while he was tapping a cask, a lighted match held by him, came in contact with the spirits which were flowing from the cask tapped by him, and a fire ensued, which destroyed the vessel, it was held that a conviction for arson of the ship could not, under these circumstances, be upheld. (5)

A pleasure boat, eighteen feet long, was set fire to, and Patteson, J., inclined to think, that it was a vessel within the meaning of the Act, but the prisoner was acquitted on the merits, and no decided opinion was given. (6)

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(1) Arch. Cr. Pl. & Ev. 21 Ed. pp. 590, 591.
(2) R. v. Kitson, Dears. 187; 22 L. J. M. C. 118.
(3) R. v. Grant, 4 F. & F. 322.
(4) R. v. Satchwell, L. R., 2 C. C. R., 21; 42 L. J. M. C. 63.
(5) R. v. Faulkner, 13 Cox, C. C. R. Ir. 550.
(6) R. v. Bowyer, 4 C. & P. 559.

Attempt to Commit Arson.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment, who wilfully attempts to set fire to anything mentioned in Article 482, or who wilfully sets fire to any substance so situated that he knows that anything mentioned in the last preceeding section is likely to catch fire therefrom. (Code, Art. 483.)

A, was charged with attempting to set fire to a dwelling-house, and B. with inciting and hiring him to commit the offence Under B's directions A. had arranged and placed pieces of blanket saturated with coal-oil against the doors and sashes of the house, had lighted a match which he held in his fingers till it was burning well, and had then put the light down close to the blanket with the intention of setting the house on fire, but just before the blaze touched the blanket the light went out, and he threw away the match without making any further attempt. *Held*, that the attempt was complete. (1)

The mere act of buying a box of matches with the intention of using them to set a corn stack on fire is too remote to constitute an attempt to set the fire. But where the evidence showed that the prisoner had knelt down before a corn stack and had actually lighted a match with the intention of setting the stack on fire, and blew out the light, on observing that he was watched, it was held that this was an attempt to burn the stack. (2)

Setting Fire to Crops, Etc.—Every one is guilty of an indictable offence, and liable to fourteen years' imprisonment, who wilfully sets fire to—

(*a.*) any crop, whether standing or cut down, or any wood, forest, coppice or plantation, or any heath, gorse, furze or fern; or

(*b.*) any tree, lumber, timber, logs, or floats, boom, dam or slide, and thereby injures or destroys the same. (Code, Art. 484.)

Every one is guilty of an indictable offence and liable to seven years' imprisonment who wilfully ATTEMPTS to set fire to anything mentioned in the last preceeding section, or who wilfully sets fire to any substance so situated that he knows that anything men-

(1) R. v. Goodman, 22 U. C. C. P. 338.
(2) R. v. Taylor, 1 F. & F. 511, 512.

tioned in the last preceding section is likely to catch fire therefrom. (Code, Art. 485.)

A defendant, who set fire to a summer-house in a wood, which fire was thence communicated to the wood, was held to be properly convicted on an indictment charging him with setting fire to the wood. (1)

Where a prisoner was indicted for setting fire to growing furze, Lopez, J., directed the jury that if she set fire to the furze, thinking, although erroneously, that she had a right to do so, they ought not to convict her. (2)

Recklessly Setting Fire to any Forest, Tree, Etc.—Every one is guilty of an indictable offence and liable to two years' imprisonment, who, by such negligence as shows him to be reckless or wantonly regardless of consequences, or in violation of a provincial or municipal law of the locality, sets fire to any forest, tree, manufactured lumber, square timber, logs or floats, boom, dam or slide on the Crown domain, or land leased or lawfully held for the purpose of cutting timber, or on private property, on any creek or river, or rollway, beach or wharf, *so that the same is injured or destroyed.*

2. The magistrate investigating any such charge may, in his discretion, if the consequences have not been serious, dispose of the matter summarily, without sending the offender for trial, by imposing a fine not exceeding fifty dollars, and in default of payment, by the committal of the offender to prison for any term not exceeding six months, with or without hard labour. (Code, Art. 486.)

Threats to Burn.—Every one is guilty of an indictable offence and liable to ten years' imprisonment who sends, delivers or utters, or directly or indirectly causes to be received, knowing the contents thereof, any letter or writing threatening to burn or destroy any building, or any rick or stack of grain, hay or straw or other agricultural produce, in or under any building, or any ship or vessel. (Code, Art. 487.)

Clause 2, of Article 959 of the Code, (pp. 419, 420, *ante*), pro-

(1) R. v. Price, 9 C. & P. 729.
(2) R. v. Twose, 14 Cox, 327.

vides that, upon complaint by any person, that, on account of threats or on any other account, the complainant is, on reasonable grounds, afraid that his property will be set fire to, the justice hearing the complaint may require the person, who has made the threats, to give security to keep the peace.

ASSAULTS.

Assault Defined.—An assault is the act of intentionally applying force to the person of another, directly or indirectly, or attempting or threatening, by any act or gesture, to apply force to the person of another, if the person making the threat, has, or causes the other to believe, upon reasonable grounds, that he has, present ability to effect his purpose, and in either case, without the consent of the other or with such consent, if it is obtained by fraud. (Code, Art. 258.)

The following are given as examples of what amounts to an assault, namely: striking at another with a cane, stick or the fist, although the person striking misses his aim; (1) drawing a sword or bayonet, or throwing a bottle or glass with intent to strike; presenting a loaded gun at a man who is within the distance to which the gun will carry; (2) discharging a pistol (loaded with powder and wadding) at a person so near that it might have hit him; (3) and using the fist in a threatening manner to the face of a person. (4)

A person who presents and discharges a firearm, which he knows to be unloaded, at another, who does not know that it is unloaded, commits an assault. (5) And Article 109 of the Code makes the pointing of an unloaded firearm at another a substantive offence punishable by $100 fine.

If a medical man unnecessarily strips a female patient naked, under pretence of not being able otherwise to judge of her illness, he commits an assault. (6)

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(1) 2 Roll. Abr. 554.
(2) R. v. Baker, 1 C. & K. 254; Osborn v. Veitch, 1 F. & F. 317.
(3) R. v. Cronan, 24 U. C. C. P. 102.
(4) R. v. Harmer, 17 U. C. Q. B. 555.
(5) R. v. St. George, 9 C. & P. 483.
(6) R. v. Rosinski, 1 Moo. C. C. 12.

Any attempt unlawfully to apply, directly or indirectly, the least force to the person of another will amount to an assault, without any actual touching of the person assaulted. (1) But mere words of themselves will not amount to an assault. (2) And when the party affected consents to the act done, there is, as a rule, no assault. (3) But this rule has its exceptions. For instance, the above Article, 258, shows that an assault may be committed upon a person, notwithstanding his consent, if such consent be obtained by fraud; and Article 261 of the Code provides that it shall be no defence to a charge of indecent assault on a young person under fourteen, to prove that he or she consented to the act of indecency.

The following are examples of what, under the above Article, would be an assault, and what, under the common law, would amount to a battery, namely: any touching or laying hold (however trifling) of another's body or clothes, in an angry, revengeful, rude, insolent or hostile manner; (4) as for instance, thrusting or pushing him, in anger; holding him by the arm; spitting in his face; jostling him out of the way; pushing another man against him; (5) throwing a squib at him; striking a horse upon which he is riding, whereby he is thrown. (6)

It is a good defence to prove that the alleged assault happened by misadventure. Thus, if a horse run away with his rider and run against a man, it would be no assault, and the rider would not be punishable, unless he were guilty of some culpable negligence. (7)

It is also a good defence to prove that the alleged assault happened whilst the defendant was engaged in an amicable contest, as, some sport or game, not unlawful nor dangerous. (8)

It is likewise a good defence to prove that the alleged assault was merely the lawful and moderate correction of a child by its

(1) R. v. Shaw, 24 U. C. Q. B. 619; Stephens v. Myers, 4 C. & P. 660.
(2) R. v. Langford, 15 Ont. R. 52.
(3) R. v. Connolly, 26 U. C. Q. B. 320.
(4) Rawlings v. Till, 3 M. & W. 28.
(5) Bull, N. P. 16.
(6) 1 Mod. 24; W. Jones, 444.
(7) Gibbons v. Pepper, 2 Salk. 637.
(8) Fost. 260.

parent, or of a servant by his master, or of a scholar by his teacher. (1)

It is not an assault or battery to merely lay one's hand upon another in order to attract his attention, provided it be not done in a hostile manner. (2)

Self-defence against (*a*) Unprovoked, and (*b*) Provoked Assault.—Every one assaulted, NOT HAVING PROVOKED such assault, is *justified* in repelling force by force, if the force he uses is not meant to cause death or grievous bodily harm, and is no more than is necessary for the purpose of self-defence; and every one so assaulted is *justified*, though he causes death or grievous bodily harm, if he causes it under reasonable apprehension of death or grievous bodily harm from the violence with which the assault was originally made or with which the assailant pursues his purpose, and if he believes, on reasonable grounds, that he cannot otherwise preserve himself from death or grievous bodily harm. (Code, Art. 45.)

Every one, WHO HAS WITHOUT JUSTIFICATION ASSAULTED another, or HAS PROVOKED AN ASSAULT from that other, may nevertheless *justify* force subsequent to such assault, if he uses such force under reasonable apprehension of death or grievous bodily harm from the violence of the person first assaulted or provoked, and in the belief, on reasonable grounds, that it is necessary for his own preservation from death or grievous bodily harm: Provided, that he did not commence the assault with intent to kill or do grievous bodily harm, and did not endeavour at any time before the necessity for preserving himself arose, to kill or do grievous bodily harm: Provided also, that before such necessity arose he declined further conflict, and quitted or retreated from it as far as was practicable. (Code, Art. 46.)

2. Provocation, within the meaning of these two articles, may be given by blows, words or gestures. (Code, Art. 46, ss. 2.) (3)

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(1) 1 Hawk., c. 60, s. 23. c. 62, s. 2. See also Art. 55 of the Code, under the head, DISCIPLINE, *post*.

(2) Coward v. Baddeley, 28 L. J. Exch. 290.

(3) For full illustrations and authorities, see Crankshaw's C. C., pp. 30–32.

Prevention of Assault with Insult.—Every one is justified in using force in defence of his own person, or that of any one under his protection, from an assault accompanied with insult: Provided, that he uses no more force than is necessary to prevent such assault, or the repetition of it: Provided also, that this section shall not justify the wilful infliction of any hurt or mischief disproportionate to the insult which the force used was intended to prevent. (Code, Art. 47.)

Defence of Moveable Property.—Every one, who is in peaceable possession of any moveable property or thing, and every one lawfully assisting him is *justified* in resisting the taking of such thing by any trespasser, or in retaking it from such trespasser, if in either case he does not strike or do bodily harm to such trespasser; and if, after any one, being in peaceable possession as aforesaid, has laid hands upon any such thing, such trespasser persists in attempting to keep it or to take it from the possessor, or from any one lawfully assisting him, the trespasser shall be deemed to commit an assault without justification or provocation. (Code, Art. 48.)

Under this article, the fact of a trespasser persisting in attempting to take or keep the thing after the possessor has laid hands upon it, places the latter in the position of a person acting in self-defence, as contemplated by Article 45, *supra.*

Every one who is in peaceable possession of any moveable property or thing under a claim of right, and every one acting under his authority, is *protected from criminal responsibility* for defending such possession, even against a person entitled by law to the possession of such property or thing, if he uses no more force than is necessary. (Code, Art. 49.)

Every one who is in peaceable possession of any moveable property or thing, but neither claims right thereto nor acts under the authority of a person claiming right thereto, is neither *justified* nor *protected from criminal responsibility* for defending his possession against a person entitled by law to the possession of such property or thing. (Code, Art. 50.)

Defence of Dwelling House.—Every one who is in peaceable possession of a dwelling-house, and every one lawfully

assisting him or acting by his authority, is *justified* in using such force as is necessary to prevent the forcible breaking and entering of such dwelling-house, EITHER BY NIGHT OR DAY, by any person with the intent to commit any indictable offence therein. (Code, Art. 51.)

Every one, who is in peaceable possession of a dwelling-house, and every one lawfully assisting him or acting by his authority, is *justified* in using such force as is necessary to prevent the forcible breaking and entering of such dwelling-house BY NIGHT by any person, if he believes, on reasonable and probable grounds, that such breaking and entering is attempted with the intent to commit any indictable offence therein. (Code, Art. 52.)

The distinctions made by these two Articles appear to be that, where there is an *actual intent* to commit an indictable offence, necessary force to prevent the breaking and entering may be used whether it is attempted by night or by day; but if there be merely a *reasonable belief* that the breaking and entering is attempted with intent to commit an indictable offence, the attempted breaking and entering must occur in the night time, to justify the use of force to prevent it.

While these Articles,—51 and 52,—have reference to a breaking and entering with intent to commit an indictable offence, Article 53, *infra*, deals with the case of a MERE TRESPASSER.

Defence of Real Property.—Every one who is in peaceable possession of any house or land, or other real property, and every one lawfully assisting him or acting by his authority, is *justified* in using force to prevent any person from TRESPASSING on such property, or to remove him therefrom, if he uses no more force than is necessary; and if such trespasser resists such attempt to prevent his entry or to remove him such trespasser shall be deemed to commit an assault without justification or provocation. (Code, Art. 53.)

A a trespasser enters B's house and refuses to leave it. B is entitled to use all necessary force to remove A, but not to strike him. If, on B applying such necessary force, A resists, which is equivalent to an unprovoked assault, or if he otherwise actually

assault B, B may defend himself, overcome A's resistance, and persist in using the necessary force to remove A from the house. (1)

A, on entering his own house, found B there, and desired him to withdraw, but B refused to go. Upon this, words ensued between them, and A becoming excited proceeded to use force, and, by a kick which he gave B, caused his death. A was not justified in turning B out of the house by means of a kick, and was held guilty of manslaughter. (2)

A train conductor, who, by the use of no more force than is necessary, attempts to put off the cars a person who refuses, after being several times requested, to pay his proper fare, is not liable, under the Railway Act, for an assault. (3)

A and his servant B insisted on placing corn in C's barn, which she refused to allow. A and B insisted and used force; a scuffle ensued, in which C received a blow on the breast, upon which she threw at A, a stone which killed him. It was held that as A received the blow in an attempt to invade C's barn against her will, and as C had a right, in defending her barn, to employ such force as was reasonably necessary, for that purpose, she was not responsible for the unforeseen occurrence which happened in so doing. (4)

Asserting Right to House or Land.—Every one is *justified* in peaceably entering in the day-time to take possession of any house or land to the possession of which he, or some person under whose authority he acts, is lawfully entitled.

2. If any person, not having or acting under the authority of one having peaceable possession of any such house or land with a claim of right, assaults any one peaceably entering as aforesaid, for the purpose of making him desist from such entry, such assault shall be deemed to be without justification or provocation.

3. If any person having peaceable possession of such house or land with a claim of right, or any person acting by his authority, assaults any one entering as aforesaid, for the purpose of making

(1) 1 Hale P. C. 486; Burbridge Dig. Cr. L. 195; 3 Steph. Hist. Cr. L. 15.
(2) Wild's case, 2 Lew, 214.
(3) R. v. Faneuf, 5 L. C. J. 167.
(4) Hinchcliffe's case, 1 Lew. 161.

him desist from such entry, such assault shall be deemed to be provoked by the person entering. (Code. Art. 54.)

Common assault.—Every one who commits a common assault is guilty of an indictable offence and liable, IF CONVICTED UPON AN INDICTMENT, to one year's imprisonment, or to a fine not exceeding one hundred dollars, and, on SUMMARY CONVICTION, to a fine not exceeding twenty dollars and costs, or to two months imprisonment with or without hard labour. (Code, Art. 265.)

Clause 8, of Article 842, (p. 312, *ante*,) enacts that no justice shall hear and determine any case of assault and battery in which any question arises as to the title to or interest in lands or real property. And Article 864, (p. 340, *ante*,) provides that a charge of assault shall not be heard and determined summarily, if, at the time of the investigation being entered upon, the person aggrieved or the person accused objects thereto.

If a justice, upon summarily hearing any case of assault and battery, *upon the merits*, deems the offence not proved, or justified, or too trifling to merit punishment, he shall give the accused a certificate to that effect, and if the accused obtains such certificate, or, having been convicted, pays the whole amount adjudged to be paid, or suffers the imprisonment, *etc.*, awarded, he will be released from all further or other proceedings FOR THE SAME CAUSE. (1)

Aggravated assaults.—Every one is guilty of an indictable offence and liable to two years' imprisonment who—

(*a.*) assaults any person with intent to commit any indictable offence, or

(*b.*) assaults any public or peace officer engaged in the execution of his duty, or any person acting in aid of such officer ; or

(*c.*) assaults any person with intent to resist or prevent the lawful apprehension or detainer of himself, or of any other person, for any offence ; or

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(1) See Articles 865 and 866, of the Code, and comments thereon at p. 340 *ante*.

(*d.*) assaults any person in the lawful execution of any process against any lands or goods, or in making any lawful distress or seizure, or with intent to rescue any goods taken under such process, distress or seizure.

(*e.*) on any day wherein any poll for any election, parliamentary or municipal, is being proceeded with, within the distance of two miles from the place where such poll is taken or held, assaults or beats any person. (Code, Art. 263.)

In the case of an assault upon a public or peace officer, the fact that the accused did not know that the person assaulted was a peace officer, or that he was acting in the execution of his duty will be no defence, if, as a matter of fact, the officer was actually engaged in the execution of his duty. (1)

A constable who sees an assault committed has the right, thereupon, and, before all danger of further violence has ceased to apprehend the offender, and if the latter, when he is being so arrested, assaults the constable, he may be convicted of assaulting a constable engaged in the execution of his duty. (2)

If a constable is assaulted while making an arrest which he is not entitled to make, the person who assaults him is not guilty of assaulting a constable engaged in the execution of his duty. (3)

As to RESISTING OR WILFULLY OBSTRUCTING a public officer or a peace officer, see Art. 144 of the Code.

Assaults occasioning bodily harm.—Every one who commits any assault which *occasions* actual bodily harm is guilty of an indictable offence and liable to three years' imprisonment. (Code, Art. 262.)

Indecent assaults on females.—Every one is guilty of an indictable offence and liable to two years' imprisonment, and to be whipped, who—

(*a.*) indecently assaults any female; or

(1) R. v. Forbes, 10 Cox, 362.
(2) R. v. Light, 7 Cox, 389.
(3) R. v. Saunders, L. R., 1 C. C. R., 75.

(*b.*) does anything to any female by her consent which but for such consent would be an indecent assault, such consent being obtained by false and fraudulent representations as to the nature and quality of the act. (Code, Art. 259.)

If, on an indictment for an indecent assault, it appears that the woman consented to the assault, under circumstances shewing that the consent was obtained by fraud, such consent will constitute no defence; such a case being expressly provided for by subsection (*b*) of the above article.

Where a medical man had connection with a girl fourteen years of age under the pretence that he was thereby treating her medically for the complaint for which he was attending her, she making no resistance solely from the *bona fide* belief that such was the case, it was held that this was certainly an indecent assault, and probably a rape. (1)

Where, on the trial of an indictment for indecent assault, the prosecutrix denies, on cross-examination, having had intercourse with a third person named to her, such person cannot be called to contradict her upon this answer. (2) But, if on cross-examination, the prosecutrix denies having had previous intercourse *with the accused*, evidence may, in that case, be given to contradict her. (3)

As to the reception of the evidence of a child of tender years without being sworn, see section 25 of the *Canada Evidence Act*, 1893, at p. 211, *ante*.

Indecent assaults on males.—Every one is guilty of an indictable offence and liable to ten years imprisonment and to be whipped, who assaults any person with intent to commit sodomy or who, being a male, indecently assaults any other person. (Code, Art. 260.)

Consent of child under fourteen no defence.—It is no defence to a charge or indictment for any indecent assault on a young person under the age of fourteen years to prove that he or she consented to the act of indecency. (Code, Art. 261.)

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(1) R. v. Case, 1 Den. 580; 19 L. J. (M. C.) 174.
(2) R. v. Holmes, L. R., 1 C. C. R. 334; 41 L. J. (M. C.) 12.
(3) R. v. Riley, 18 Q. B. D. 481; 56 L. J. (M. C.) 52.

This Article will apply to all offences, which include an indecent assault, committed either upon male or female children.

SUMMARY TRIAL OF AGGRAVATED AND OTHER SERIOUS INDICTABLE ASSAULTS, ETC.—Under the provisions of Article 783, (p. 288, *ante*), magistrates are empowered, under certain conditions, to summarily try,—with the accused's consent,—cases of aggravated assault, indecent assault, *etc.*

ASSAULTS INCLUDED IN OTHER OFFENCES.

Of offences only partly proved.—Every count is to be deemed divisible ; and if the commission of the offence charged, as described in the enactment creating the offence or as charged in the count, includes the commission of any other offence, the person accused may be convicted of any offence so included and which is proved, although the whole offence charged is not proved ; or he may be convicted of an ATTEMPT to commit any offence so included :

2. Provided, that on a count charging murder, if the evidence proves manslaughter but does not prove murder, the jury may find the accused not guilty of murder but guilty of manslaughter, but shall not, on that count, find the accused guilty of any other offence. (Code, Art. 713.)

Upon an indictment for assaulting and unlawfully wounding and ill-treating the prosecutor and thereby occasioning him actual bodily harm, the defendant may, by virtue of the above Article, be convicted of a common assault. (1)

Upon an indictment charging that the defendant did unlawfully make an assault in and upon a girl between the ages of ten and twelve and did then unlawfully and carnally know and abuse her, etc., being the ordinary form of an indictment for an offence against sec. 51 (now repealed) of 24 and 25 Vict., c. 100, the defendant might have been convicted of a common assault. (2)

The defendant may also be convicted of a common assault upon an indictment charging him with unlawfully wounding and with unlawfully inflicting grievous bodily harm, although the word "*assault*" is not used in the indictment. (3)

(1) R. v. Oliver, 30 L. J. M. C. 12 ; R. v. Yeadon. 31 L. J. M. C. 70.
(2) R. v. Guthrie, 39 L. J. M. C. 95.
(3) R. v. Taylor, 38 L. J. M. C. 106.

ASSAULTS ON THE QUEEN.

Every one is guilty of an indictable offence and liable to seven years' imprisonment, and to be WHIPPED once, twice or thrice as the court directs, who—

(*a.*) wilfully produces, or has near Her Majesty, any arm or destructive or dangerous thing, with intent to use the same to injure the person of, or to alarm Her Majesty; or

(*b.*) wilfully and with intent to alarm or to injure Her Majesty, or to break the public peace;

(i.) points, aims or presents, at or near Her Majesty, any firearm, loaded or not, or any other kind of arm;

(ii.) discharges, at or near Her Majesty, any loaded arm;

(iii.) discharges any explosive material near Her Majesty;

(iv.) strikes, or strikes at Her Majesty, in any manner whatever;

(v.) throws anything at or upon Her Majesty; or

(*c.*) attempts to do any of the things specified in paragraph (*b*) of this section. (Code, Art. 71.)

ATTEMPTS.

Attempts defined.—Every one who, having an intent to commit an offence, DOES or OMITS an act, for the purpose of accomplishing his object, is guilty of an attempt to commit the offence intended, *whether under the circumstances. it was possible to commit such offence or not.*

2. The question whether an act done or omitted with intent to commit an offence is or is not mere *preparation* for the commission of the offence, and too remote to constitute an *attempt* to commit it, is a question of law. (Code, Art. 64.)

An attempt is "*an abortive or frustrated effort.*" (1) A bare intention to commit a criminal offence is not of itself punishable; but, in order to be so, there must be some act or acts amounting either to an *actual* or an *attempted* carrying out of the criminal intention. Thus, if A resolves in his own mind to shoot B, and openly avows it, he thereby commits no criminal offence; but

(1) Holloway v. R. 17 Q. B. 317, Broom's Com. L. 5 Ed. 856.

when he does something in execution of his design, and, through being interrupted or through some unforeseen cause intervening, he falls short of the actual perpetration of the intended offence, he is guilty of an attempt. (1)

An attempt to commit a crime may be made by soliciting another to commit it. For, as, on the one hand, a person is guilty, as a principal offender, of an offence which he solicits, advises or incites another to commit, and which the other actually *does* commit, (2) so, on the other hand, when a person solicits, advises or incites another to commit an offence which the other does *not* commit, the act of soliciting, advising or inciting amounts to an attempt to commit the offence in view. (3) In other words, one who unsuccessfully solicits or advises the commission of an offence is guilty of an attempt to commit it; while one whose solicitation is successful in procuring the actual commission of an offence is a party to its commission. Thus, where one wrote to a school boy to meet him for the purpose of sodomy, but the boy, without even reading the letter, passed it to the school authorities, it was held that the offence of attempt, by solicitation, was complete. (4)

It is said that an act to constitute an attempt must be such as directly approximates to or is closely connected with the actual commission of the intended offence. (5)

In the application of this principle, some nice questions have arisen as to what acts, on the one hand, are preparations too remote to be an attempt, and what, on the other hand, are close enough to the offence to be an attempt; it being in many cases, very difficult, —some say, impossible,—to distinctly define the dividing line between *mere preparation* for an offence and an *actual attempt* to commit it. (6) As an illustration, the case is given of a man who, with intent to commit murder, walks to the place where he pur-

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(1) R. v. Scofield, Cald. 397, 403; 1 Russ. Cr. 5 Ed. 188; R. v. Connoly, 26 U. C. Q. B. 322.

(2) See Art. 61 of the Code, p. 58, *ante*.

(3) R. v. Higgins, 2 East. 5; R. v. Gregory, L. R. 1 C. C. 77.

(4) R. v. Ransford, 13 Cox, C. C. 9.

(5) Harris Cr. L. 4 Ed. 16; R. v. Eagleton, Dears. C. C. 515; 1 Russ. Cr. 5 Ed. 190.

(6) 2 Steph. Hist. Cr. L. 224, 226.

poses to commit it. This act of walking to the place is not considered an act sufficient to constitute an attempt to murder. (1) But if, besides walking to the place, the man were, on arriving there to meet and fire a pistol shot at his intended victim, and fail to kill him, either by missing his aim altogether, or through the shot, though taking effect, not being fatal, he would undoubtedly be guilty of an attempt to murder.

The mere act of buying a box of matches with the intention of using them to set a corn stack on fire is too remote to constitute an attempt to set fire. (2) But where the prisoner had knelt down before a corn stack, and had lighted a match with the intention of setting the stack on fire, and then he blew out the light on observing that he was watched, it was held that this was an attempt to burn the stack. (3)

There are decisions which have gone a long way towards treating PREPARATION TO COMMIT a crime as an ATTEMPT to commit it. For instance, the procuring of dies for coining bad money has been treated as an attempt to coin bad money. (4)

It was formerly considered that an act done with intent to commit an offence was not an attempt unless done under circumstances rendering it possible to accomplish the object in view; (5) and so where in an English case, A put his hand into B's pocket with intent to steal what was in it, and the pocket happened to be empty, it was held that A could not be convicted of an attempt to steal. (6) But this decision has, recently, been overruled by the English Court of Crown Cases Reserved, presided over by Lord Chief Justice Coleridge, who, in delivering judgment, said, in reference to the pickpocket case,—"This is a decision with which we are not satisfied. Reg. v. Dodd proceeded upon the same view, that a person could not be convicted of an attempt to commit an

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(1) *Per* Jervis, C. J., in R. v. Roberts, 33 Eng. L. & Eq. 553.

(2) *Per* Pollock, C. B., in R. v. Taylor, 1 F. & F. 512.

(3) R. v. Taylor, 1 F. & F. 511.

(4) R. v. Roberts, Dears. 539: 2 Steph. Hist. Cr. L. 224. [Art. 466 of the Code makes it a substantive offence,—indictable and punishable with life imprisonment,—to purchase or have possession of coining instruments.]

(5) Steph. Dig. Cr. L. 3 Ed. 37, 38; R. v. McCann, 28 U. C. Q. B. 514.

(6) R. v. Collins, 33 L. J. M. C. 177.

offence which he *could not actually commit.* We are of opinion that Reg. v. Dodd is no longer law. It was decided on the authority of Reg. v. Collins" (the pickpocket case,) "and that case in our opinion is no longer law." (1)

It will be seen that the above Article 64 of our Code, coincides with this holding and expressly declares that an intent to commit an offence combined with an act done or omitted for the purpose of accomplishing the object in view will constitute an attempt, whether, under the circumstances, it was possible to commit the intended offence or not.

Punishment of attempts (not otherwise expressly provided for).—Every one is guilty of an indictable offence and liable to seven years' imprisonment who attempts, in any case not otherwise provided for, to commit any indictable offence for which the punishment is imprisonment for life, or for fourteen years, or for any term longer than fourteen years. (Code, Art. 528.)

Every one who attempts to commit any indictable offence for committing which the longest term to which the offender can be sentenced is less than fourteen years, and no express provision is made by law for the punishment of such attempt, is guilty of an indictable offence and liable to imprisonment for a term equal to one-half of the longest term to which a person committing the indictable offence attempted to be committed may be sentenced. (Code, Art. 529.)

Every one is guilty of an indictable offence and liable to one year's imprisonment who attempts to commit any offence under any statute for the time being in force and not inconsistent with the Code, or *incites*, or *attempts to incite* any person to commit any such offence, and for the punishment of which no express provision is made by such statute. (Code, Art. 530)

Proof of attempt, on trial for full offence.—When the complete commission of the offence charged is not proved but the evidence establishes an attempt to commit the offence, the accused may be convicted of such attempt and punished accordingly. (Code, Art. 711.)

(1) R. v. Brown, 24 Q. B. D. 357, 359; 16 Cox, C. C. 715.

Banks, Bankers, and Bank Officials.

Thefts by Bank Officials.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment, who being a cashier, assistant cashier, manager, officer, clerk, or servant of any bank, or savings bank, steals any bond, obligation, bill obligatory or of credit, or other bill or note, or any security for money, or any money or effects *of* such bank *or lodged or deposited with* any such bank. (Code, Article 319 *b*.)

It will be seen by this Article that the thing alleged to be stolen by a cashier or other employee of a Bank may be either anything BELONGING TO or anything DEPOSITED WITH the Bank.

Bankers giving fraudulent preferences.—It is enacted, by section 97 of the *Bank Act*, (53 Vic. c. 31) that "Every one is guilty of a misdemeanor and liable to imprisonment for a term not exceeding two years who, being the president, vice-president, director, principal partner *en commandite*, manager, cashier or other officer of the bank, wilfully gives, or concurs in giving any creditor of the bank, any fraudulent, undue or unfair preference over other creditors, by giving security to such creditor or by changing the nature of his claim or otherwise howsoever, and shall further be responsible for all damages sustained by any person in consequence of such preference.

False Bank Reports.—By section 99 of the *Bank Act*, it is enacted that "The making of any wilfully false or deceptive statement in any account, statement, return, report or other document respecting the affairs of the bank is, unless it amounts to a higher offence, a misdemeanor, punishable by imprisonment for a term not exceeding five years; and every president, vice-president, director, principal partner *en commandite*, auditor, manager, cashier, or other officer of the bank, who prepares, signs, approves or concurs in such statement, return, report, or document, or uses the same with intent to deceive or mislead any person, shall be held to have wilfully made such false statement, and shall further be responsible for all damages sustained by any person in consequence thereof."

Assuming the Title of "Bank," etc.—It is also enacted by sections 100 and 101 as follows: "Every person

assuming or using the title of 'bank,' 'banking company,' 'banking house,' 'banking association' or 'banking institution,' without being authorized so to do by this Act, or by some other Act in force in that behalf, is guilty of an offence against this Act." (Section 100.)

"Every person committing an offence declared to be an offence against this Act, shall be liable to a fine not exceeding one thousand dollars, or to imprisonment for a term not exceeding five years, or to both, in the discretion of the court before which the conviction is had." (Section 101.)

False Entries as to Public Funds.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who, *with intent to defraud*—

(*a.*) makes any untrue entry or any alteration in any book of account kept by the Government of Canada, or of any province of Canada, or by any bank for any such Government, in which books are kept the accounts of the owners of any stock, annuity or other public fund transferable for the time being in any such books, or who, in any manner, *wilfully* falsifies any of the said books; or

(*b.*) makes any transfer of any share or interest of or in any stock, annuity or public fund, transferable for the time being at any of the said banks, in the name of any person other than the owner of such share or interest. (Code, Art. 440.)

Bank Clerk Issuing False dividend Warrants.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, being in the employment of the Government of Canada, or of any province of Canada, or of any bank in which any books of account mentioned in the last preceding section are kept, with intent to defraud, makes out, or delivers any dividend warrant, or any warrant, for the payment of any annuity, interest or money payable at any of the said banks, for an amount greater or less than that to which the person on whose account such warrant is made out is entitled. (Code, Art. 441.)

Bawdy House.

Common Bawdy House defined.—A common bawdy house is a house, room, set of rooms, or place of any kind kept for purposes of prostitution. (Code, Art. 195.)

Keeping a Common Bawdy House.—This is an indictable offence punishable with one years' imprisonment. And any one who appears, acts, or behaves as master or mistress, or as the person having the care, government or management of any such house is deemed the keeper of it, and liable to be prosecuted and punished as such, although, in fact, not the real owner or keeper thereof. (Code, Art. 198.)

If a lodger let her apartment for the purpose of indiscriminate prostitution, it is as much a bawdy house as if she held the whole house. (1)

It is not necessary that there should be evidence of any indecency or disorderly conduct perceptible from the outside of the house. (2)

The keeper of a bawdy-house may be a man or a woman; and a married woman may be indicted for the offence either alone or with her husband. (3)

The gist of the offence appears to consist in the allurement which the place holds out to a miscellaneous and common bawdry corrupting to public morals. By way of comparison and illustration, it has been said that, as an inn is for all travellers, so a bawdy-house is for all persons lewdly inclined. Generally—though not necessarily—it supplies the girls, who may either dwell in the house, or visit it with or without the men accompanying, for the evil practice. (4)

Search Warrants.—As to warrants to search for any woman or girl inveigled or enticed to a house of ill-fame or assignation, see p. 123, *ante*.

Betting-House.

Common Betting-house defined.—A common betting-house is a house, office, room, or OTHER PLACE—

(*a.*) opened, kept or used for the purpose of betting between persons resorting thereto and—

(1) R. v. Pierson, 2 Ld. Raym. 1197.
(2) R. v. Rice, L. R., 1 C. C. R. 21; Sylvester v. S. 42 Tex. 496.
(3) R. v. Williams, 10 Mod. 63; C. v. Cheney, 114 Mass. 281.
(4) King v. P. 83 N. Y. 587.

(i.) the owner, occupier, or keeper thereof ;

(ii.) any person using the same ;

(iii.) any person procured or employed by, or acting for or on behalf of any such person ;

(iv.) any person having the care or management, or in any manner conducting the business thereof ;

(*b.*) opened, kept or used for the purpose of any money or valuable thing being received by or on behalf of any such person as aforesaid, as or for the consideration.

(i.) for any assurance or undertaking, express or implied, to pay or give thereafter any money or valuable thing on any event or contingency of or relating to any horse-race or other race, fight, game or sport ; or

(ii.) for securing the paying or giving by some other person of any money or valuable thing on any such event or contingency. (Code, Art. 194.)

Keeping a Common Betting-house.—This, also, is an indictable offence punishable with one year's imprisonment. And any one who appears, acts or behaves as master or mistress, or as the person having the care, government or management of any such house is deemed the keeper of it, and liable to be prosecuted and punished as such, although in fact not the real owner or keeper thereof. (Code, Art. 198.)

Under the *Imperial Betting-House Act*, which has the words, "HOUSE, ROOM, OR OTHER PLACE," it was held that the PLACE must be one of which the accused is or may be the owner or occupier, or of which he has the care or management, and that, therefore, a tree in a public park, to which the accused resorted for betting purposes, was not a *place* within the Act. (1) But a temporary wooden structure erected during a race meeting, (2) and even an umbrella on a race-course, (3) have each been held to be a PLACE within the Act.

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(1) Daggett v. Catterns, 12 Jur. N. S. 243.

(2) Shaw v. Morley, L. R., 3 Exch. 137.

(3) Haigh v. Sheffield Town Council, L. R. 10, Q. B. 102 ; 44 L. J. M. C., 17.

To open or keep a house or other place for the PURPOSE of betting with persons resorting thereto is made an offence by sec. 1 of the *Suppression of Betting Houses Act*, 1853, (Imp.); and it has been held not necessary,—in a prosecution under that Act,—to prove that money had been received as a deposit on bets. (1)

Searching Suspected Betting-houses.—(See Art. 575 of the Code, at p. 124 *ante*.)

BETTING AND POOL-SELLING.

Betting and Pool-selling.—Every one is guilty of an indictable offence, and liable to one year's imprisonment, and to a fine not exceeding one thousand dollars, who—

(*a*.) uses or knowingly allows any part of any premises under his control to be used for the purpose of recording or registering any bet or wager, or selling any pool; or

(*b*.) keeps, exhibits, or employs, or knowingly allows to be kept, exhibited or employed, in any part of any premises under his control, any device or apparatus for the purpose of recording any bet or wager or selling any pool; or

(*c*.) becomes the custodian or depositary of any money, property or valuable thing staked, wagered or pledged; or

(*d*.) records or registers any bet or wager, or sells any pool, upon the result—

(i.) of any political or municipal election;

(ii.) of any race;

(iii.) of any contest or trial of skill or endurance of man or beast.

2. The provisions of this section shall not extend to any person by reason of his becoming the custodian or depositary of any money, property or valuable thing staked, to be paid to the winner of any lawful race, sport, game, or exercise, or to the owner of any horse engaged in any lawful race, or to bets between individuals or made on the race course of an incorporated association during the actual progress of a race meeting. (Code, Art. 204.)

See GAMING HOUSES, *post*.

See LOTTERIES, *post*.

(1) Bond v. Plumb, 10 R. (Feb.) 244.

Bigamy.

Definition.—Bigamy is—

(*a.*) the act of a person who, *being married,* goes through a form of marriage with any other person *in any part of the world* ; or

(*b.*) the act of a person who goes through a form of marriage *in any part of the world* with any person whom he or she KNOWS to be married ; or

(*c.*) the act of a person who goes through a form of marriage with more than one person simultaneously or on the same day.

2. A "form of marriage" is any form either recognized as a valid form by the law of the place where it is gone through, or, though not so recognized, is such that a marriage celebrated there, in that form, is recognized as binding by the law of the place where the offender is tried. Every form shall, for the purpose of this section, be valid, notwithstanding any act or default of the person charged with bigamy, if it is otherwise a valid form. The fact that the parties would, if unmarried, have been incompetent to contract marriage shall be no defence upon a prosecution for bigamy.

3. No one commits bigamy by going through a form of marriage—

(*a.*) *if he or she* in good faith, and on reasonable grounds BELIEVES HIS WIFE OR HER HUSBAND TO BE DEAD ; or

(*b.*) if his wife or her husband has been continually absent for SEVEN YEARS then last past, and he or she is NOT PROVED to have known that his wife or her husband was alive at any time during those seven years ; or

(*c.*) if he or she has been divorced from the bond of the first marriage ; or

(*d.*) if the former marriage has been declared void by a court of competent jurisdiction.

4. No person shall be liable to be convicted of bigamy in respect of having gone through a form of marriage in a place NOT IN CANADA, unless such person, *being a British subject resident in Canada,* leaves Canada WITH INTENT to go through such form of marriage. (Code, Art. 275.)

Punishment.—Every one who commits bigamy is guilty of an indictable offence and liable to seven years' imprisonment.

2. Every one who commits this offence after a previous conviction for a like offence shall be liable to fourteen years' imprisonment. (Code, Art. 276.)

Proof must be made of the two marriages, and that, at the time of the second marriage, the first husband or first wife, as the case may be, was still alive.

Proof of the first marriage, if it was celebrated out of Canada, may be made by any person present at it; and circumstances should be proved from which the jury may presume that it was a VALID marriage according to the laws of the country where it was celebrated.

The first marriage must be a valid one. There can be no bigamy, if the first marriage was actually *void*. For instance, if a woman marry A, and, in A's lifetime, she marry B, and, then, after A's death and whilst B is alive, she also marry C, she cannot be indicted for bigamy in marrying C, because the marriage with B was a mere nullity, seeing that, when she married him, her first husband, A, was still alive. (1)

Although a first VALID marriage must be proved, it is not essential, in order to establish it, that proof should be made of the license, or of the publication of the banns, etc.; but the fact of the marriage having been validly solemnized may be proved by some person who was actually present and saw the ceremony performed. (2) And in England, it has been held that the prisoner's own admission of a prior marriage may be relied on as good evidence to show that it was lawfully solemnized. (3) But it has been held, in Ontario, that evidence of a confession made by the prisoner of his first marriage (when unsupported by any other testimony) was not sufficient evidence upon which he could be convicted. (4)

(1) 1 Hale, 693; R. v. Willshire, L. R., 6 Q. B. D. 366.
(2) R. v. Alison, R. & R. 109; R. v. Mainwaring, 26 L. J. M. C. 10.
(3) R. v. Newton, 2 M. & Rob. 503.
(4) R. v. Ray, 20 Ont. R. 212.

Where the first marriage is not actually VOID, but merely VOIDABLE, there prevails a different rule to that above noticed in regard to a first marriage which is actually void ; and, where, in a prosecution for bigamy, proof is made of a first marriage which, though *voidable*, has not been judicially voided, it will be sufficient. (1) Thus, a marriage contracted, in Ireland, by a minor without consent,—such a marriage being, by the *Irish Marriage Act*, VOIDABLE only within a year,—will support a conviction for bigamy, if such first marriage has not been set aside by the courts. (2)

It is not necessary to show that the second or bigamous marriage was a valid one. The above Article 275 makes it bigamy for any person, being married, *to go through a* FORM OF MARRIAGE with any other person ; and sub-section 2 declares that every form of marriage shall, for the purpose of this section, be valid, notwithstanding any act or default of the person charged with bigamy, if it be otherwise a valid form. So that, after proving the defendant's first marriage, it will be sufficient to make proof of his having gone through a second marriage ceremony with another woman ; and it will be no defence to an indictment for bigamy to show that the second marriage was not legal but was void, by reason, for instance, of the parties to it being relations within the prohibited degrees of consanguinity or affinity. (3)

The proof that the first wife was living when the second marriage was solemnized may be made by some person acquainted with the first wife, and who saw her at the time of the second marriage or afterwards.

Assuming that evidence is made of the two marriages, the defendant may not only, as already intimated, show, as a ground of defence, that the first marriage was invalid, that is, actually void, by reason, for instance, of his first wife being, when he married her, already a married woman with a husband then living, or he may avail himself of the other defences following, namely ;—1, Belief, on reasonable grounds, that the first wife is dead ; 2, continual absence of the first wife for seven years ; 3, divorce from the bond of the first marriage ; and 4, that the first marriage

(1) 3 Inst. 88.
(2) R. v. Jacobs, 2 Moo. C. C. 140.
(3) R. v. Allison, R. & R. 109; R. v. Allen, 41 L. J. M. C. 97.

(which was a voidable one), has been declared void by a court of competent jurisdiction.

As to the defence of seven years absence of the first husband or wife, proof of this fact will entitle the defendant to be acquitted, unless the Crown make evidence showing that the accused knew of the first wife or husband being alive during the seven years. (1)

With regard to the defence of a divorce obtained from the bond of the first marriage, or of a judgment voiding the first marriage, it has been thought that no sentence or act of a foreign country or state could dissolve *a vinculo matrimonii*, an English marriage for grounds on which it would not be liable to be dissolved in England.

Although the existence of such a rule seems to have been referred to in the case of R. v. Lolley, in which a Scotch divorce,—granted upon a ground which would be insufficient under English law,—was held to be invalid, it appears that, in that case, the marriage was not only solemnized in England, but that the parties were at the time of the granting of the divorce domiciled in England, and this alone, would have been a good ground for holding the Scotch divorce invalid in England. (2) In a later case, in which the marriage had been solemnized in England, a divorce *a vinculo matrimonii* was granted by a Scotch court upon a ground for which such divorce is not obtainable in England, but as in that case the husband's domicile was in Scotland, the English Court of Appeal held that the divorce so granted in Scotland was valid in England, on the ground that, although the marriage had been solemnnized in England, the question of divorce was not an incident of the marriage contract to be governed by the *lex loci contractus*, but an incident of status to be disposed of by the law of the domicile of the parties, that is to say, the domicile of the husband. (3)

A divorce obtained in a foreign court may be impeached by extrinsic evidence showing that such court had no jurisdiction, or that such decree was obtained by fraud. (4)

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(1) Article 275 (*b*); R. v. Curgerwen, 35 L. J. M. C. 58; R. v. Fontaine, 15 L. C. J. 141; R. v. Dwyer 27 L. C. J. 201; R. v. Smith, 14 U. C. Q. B. 565.

(2) R. v. Lolley, R. & R. 238.

(3) Harvey v. Farnie, L. R. 5 P. & D. 153; L. R. 6 P. & D. 35.

(4) R. v. Wright, 1 P. & B. 363.

Although, in the first part of Article 275, bigamy is defined to be the act of a person who, being married, marries another person, IN ANY PART OF THE WORLD, subsection 4 modifies the latter part of this clause by declaring, that ;—

"No person shall be liable to be convicted of bigamy in respect of having gone through a form of marriage in a place *not in Canada*, unless such person, being a British subject resident in Canada, leaves Canada with intent to go through such form of marriage."

This clause is intended to restrict, to our own jurisdiction, the early words of the Article speaking of the act of marrying *in any part of the world*, and to thus make it an offence to LEAVE CANADA WITH INTENT to commit bigamy elsewhere ; that being the full extent of the power of the Canadian Parliament,—a colonial legislature having, as appears by a decision, in that respect, rendered, by the Privy Council, in regard to an Australian Parliament, no authority to legislate as to acts done beyond its territorial jurisdiction. (1)

BLASPHEMY.

Blasphemous Libels.—Every one is guilty of an indictable offence and liable to one year's imprisonment who publishes a blasphemous libel.

2. Whether any particular published matter is a blasphemous libel or not is a question of law. But no one is guilty of a blasphemous libel for expressing in good faith and in decent language, or attempting to establish by arguments used in good faith and conveyed in decent language any opinion whatever upon any religious subject. (Code, Art. 170.)

It is blasphemy, scoffingly or irreverently to ridicule or impugn the doctrines of the Christian faith, yet any man may without incurring any penal consequences, soberly and reverently examine and question the truth of those doctrines which have been assumed as essential to it. (2)

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(1) McLeod v. Atty-Gen., N. S. Wales, 14 L. N. 402. For full comments and authorities on *Bigamy*, see Crankshaw's Cr. Code, pp. 196-214

(2) Per Erskine, J., in Shore v. Wilson, 9 Cl. & F. 524-5.

A blasphemous libel is said to consist in the publication of any profane words vilifying or ridiculing God, Jesus Christ, the Holy Ghost, the Old and New Testament or Christianity in general with intent to shock and insult believers, or to pervert or mislead the ignorant and unwary; and if a publication be full of scurrilous and opprobrious language,—if sacred subjects are treated with levity, if indiscriminate abuse is employed instead of argument,—then a design to wound the religious feelings of others may be readily inferred. But where the work is free from all offensive levity, abuse and sophistry, and is, in fact, the honest and temperate expression of religious opinions conscientiously held and avowed, it is not a blasphemous libel. (1)

The law, as laid down by Coleridge, J., in R. v. Pooley, (2), and as since stated by Lord Chief Justice Coleridge in R. v. Ramsay and Foote, is in effect that the publication of any matter which has reference to God, Jesus Christ, the Bible, or the Book of Common Prayer, intended and calculated to wound the feelings of mankind or, to excite contempt and hatred against the church or religion or to promote immorality is blasphemous; but that matters couched in decent and proper language and published and intended in good faith to advance religious opinions, which the publisher regards as true, are not blasphemous merely because their publication is likely to wound the feelings of those who have contrary opinions or because their general adoption might tend by lawful means to alterations in religion or in the constitution of the church. (3)

Bodily Injury.

Wilfully or Negligently Causing Bodily Injury.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, by any unlawful act, or by doing negligently, or omitting to do any act which it is his duty to do, causes grievous bodily injury to any other person. (Code, Art. 252.)

Where it was proved that the prisoner, who was nearly the first to leave the gallery of a theatre at the close of the performance,

(1) Odg. Lib. & Sl. 440, 441.
(2) Steph. Dig. Cr. L. 97
(3) R. v. Ramsay & Foote, 48 L. T. 739; 15 Cox C. C. 231.

ran down the stairs and wilfully put out the gas and placed an iron bar across the doorway, thus causing, among the people leaving the gallery, a panic in which several persons were seriously injured through the pressure of the crowd, it was held that the prisoner was properly convicted of wilfully causing bodily injuries. (1)

Breaches of the Peace.

It is said, in regard to the criminal law of England, that "the foundation of the whole system of criminal procedure was the prerogative of keeping the peace, which is as old as the monarchy itself, and which was, as it still is, embodied in the expression, 'The King's Peace,' the legal name of *the normal state of society*. (2)

It may, therefore, be safely asserted that, as all crimes, being public wrongs, tend, more or less, to affect or disturb, directly or indirectly, the good order and tranquility so essential to the general welfare of a community, the commission of an offence will nearly always include or involve a breach of the peace. But there are some offences which are directed more particularly against the public peace; or in which the breach of the peace is the prominent feature, such, for example, as an affray, an unlawful assembly, a riot, and the like. (3) An affray (from *affraier*, to terrify), was by the common law the act of two or more persons fighting in some public place to the alarm of the public. If the fight were in private, it was no affray, but an assault; (4) and mere quarrelsome or threatening words would not amount to an affray; although a person, even when he uses no actual force himself, may nevertheless be guilty of an affray by, for example, assisting at a prize fight. (5) An unlawful assembly was the meeting together, —in a manner likely to endanger the peace,—of three or more persons for the carrying out of some common purpose of a private nature, there being no aggressive act actually done. (6) When

(1) R. v. Martin, 3 Q. B. D. 54; 14 Cox, 633.
(2) 1 Steph. Hist. Cr. Law, 184.
(3) 4 Steph. Com. 7 Ed. 238; Harris Cr. Law, 3 Ed. 108.
(4) 4 Steph. Com. 251-2.
(5) Harris, Cr. Law, 4 Ed. 111.
(6) R. v. Vincent, 9 C. & P. 91.

the persons thus unlawfully assembled proceeded or moved forward to the execution of their purpose, but did not go to the point of actually executing it, it was called a rout; (1) and if they went on to the actual execution of their purpose, in a violent and alarming manner, it was a riot. (2)

Preventing Breach of the Peace.—Every one who witnesses a breach of the peace is *justified* in interfering to prevent its continuance or renewal, and may detain any person committing or about to join in or renew such breach of the peace, in order to give him into the custody of a peace officer: Provided that the person interfering uses no more force than is reasonably necessary for preventing the continuance or renewal of such breach of the peace, or than is reasonably proportioned to the danger to be apprehended from the continuance or renewal of such breach of the peace. (Code, Art. 38.)

Every peace officer who witnesses a breach of the peace, and every person lawfully assisting him, is *justified* in arresting any one whom he finds committing such breach of the peace, or whom he, on reasonable and probable grounds, believes to be about to join in or renew such breach of the peace.

2. Every peace officer is *justified* in receiving into custody any person given into his charge as having been a party to a breach of the peace by one who has, or whom such peace officer, upon reasonable and probable grounds, believes to have, witnessed such breach of the peace. (Code, Art. 39.)

Suppressing Riot.—Every sheriff, deputy sheriff, mayor, or other head officer, or acting head officer, of any county, city, town or district, and every magistrate and justice of the peace is *justified* in using, and ordering to be used, and every peace officer is *justified* in using such force as he, in good faith, and on reasonable and probable grounds, believes to be necessary to suppress a riot, and as is not disproportioned to the danger which he, on reasonable and probable grounds, believes to be apprehended from the continuance of the riot. (Code, Art. 40.)

(1) 1 Hawk. P. C., c. 65, s. 8.
(2) 1 Hawk. P. C., c. 66, s. 1.

Every one, whether subject to military law or not, acting in good faith in obedience to orders given by any sheriff, deputy sheriff, mayor or other head officer or acting head officer of any county, city, town or district or by any magistrate or justice of the peace, for the suppression of a riot, is justified in obeying the orders so given *unless such orders, are manifestly unlawful,* and is *protected from criminal responsibility* in using such force as he, on reasonable and probable grounds, believes to be necessary for carrying into effect such orders.

2. It shall be a question of law whether any particular order is manifestly unlawful or not. (Code, Art. 41.)

Every one, whether subject to military law or not, who in good faith and on reasonable and probable grounds believes that serious mischief will arise from a riot before there is time to procure the intervention of any of the authorities aforesaid, is *justified* in using such force as he, in good faith and on reasonable and probable grounds believes to be necessary for the suppression of such riot, and as is not disproportioned to the danger which he, on reasonable grounds, believes to be apprehended from the continuance of the riot. (Code, Art. 42.)

Every one who is bound by military law to obey the lawful command of his superior officer is *justified* in obeying any command given him by his superior officer for the suppression of a riot, *unless such order is manifestly unlawful;*

2. It shall be a question of law whether any particular order is manifestly unlawful or not. (Code, Art, 43.)

Unlawful Assembly.—An unlawful assembly is an assembly of three or more persons who, with intent to carry out any common purpose, assemble in such a manner or so conduct themselves when assembled as to cause persons in the neighbourhood of such assembly to fear, on reasonable grounds, that the persons so assembled will disturb the peace tumultuously, or will by such assembly needlessly and without any reasonable occasion provoke other persons to disturb the peace tumultuously.

2. Persons lawfully assembled may become an unlawful assembly if they conduct themselves with a common purpose in such a

manner as would have made their assembling unlawful if they had assembled in that manner for that purpose.

3. An assembly of three or more persons for the purpose of protecting the house of any one in their number against persons threatening to break and enter such house in order to commit any indictable offence therein is not unlawful. (Code, Art. 79.)

Riot.—A riot is an unlawful assembly which has begun to disturb the peace tumultuously. (Code, Art. 80.)

Every member of an unlawful assembly is guilty of an indictable offence and liable to one year's imprisonment. (Code, Art. 81.)

Every rioter is guilty of an indictable offence and liable to two year's imprisonment with hard labour. (Code, Art. 82.)

Reading the riot act.—It is the duty of every sheriff, deputy sheriff, mayor or other head officer, and justice of the peace, of any county, city or town, who has notice, that there are within his jurisdiction persons, to the number of twelve or more, unlawfully, riotously and tumultuously assembled together to the disturbance of the public peace, to resort to the place where such unlawful, riotous and tumultuous assembly is, and among the rioters, or as near to them as he can safely come, with a loud voice to command or cause to be commanded silence, and after that openly and with loud voice to make or cause to be made a proclamation in these words or to the like effect:—

"Our Sovereign Lady the Queen charges and commands all persons being assembled immediately to disperse and peaceably to depart to their habitations or to their lawful business, upon the pain of being guilty of an offence on conviction of which they may be sentenced to imprisonment for life.

GOD SAVE THE QUEEN."

2. All persons are guilty of an indictable offence and liable to imprisonment for life who—

(*a.*) with force and arms wilfully oppose, hinder or hurt any person who begins or is about to make the said proclamation, whereby such proclamation is not made; or

(*b.*) continue together to the number of twelve for *thirty minutes* after such proclamation has been made, or if they know that its

making was hindered as aforesaid, within thirty minutes after such hindrance. (Code, Art. 83.)

If the persons so unlawfully, riotously and tumultuously assembled together as mentioned in the next preceding section, or twelve or more of them, continue together, and do not disperse themselves, for the space of *thirty minutes* after the proclamation is made or after such hindrance as aforesaid, it is the duty of every such sheriff, justice and other officer, and of all persons required by them to assist, to cause such persons to be apprehended and carried before a justice of the peace; and if any of the persons so assembled is killed or hurt in the apprehension of such persons or in the endeavour to apprehend or disperse them, by reason of their resistance, every person ordering them to be apprehended or dispersed, and every person executing such orders, shall be indemnified against all proceedings of every kind in respect thereof: Provided that nothing herein contained shall, in any way, limit or affect any duties or powers imposed or given by this act as to the suppression of riots before or after the making of the said proclamation. (Code Art. 84.)

Neglect of Magistrates or Other Peace Officers to Suppress Riot.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, being a sheriff, deputy sheriff, mayor, or other head officer, justice of the peace, or other magistrate, or other peace officer, of any county, city, town, or district, having notice that there is a riot within his jurisdiction, without reasonable excuse, omits to do his duty in suppressing such riot. (Code, Art. 140.)

Neglect to Aid in Suppressing Riot.—Every one is guilty of an indictable offence and liable to one year's imprisonment who, having reasonable notice that he is required to assist any sheriff, deputy-sheriff, mayor, or other head officer, justice of the peace, magistrate, or peace officer in suppressing any riot, without reasonable excuse, omits so to do. (Code, Art. 141.)

Riotous Destruction of, or Damage to Buildings.—All persons are guilty of an indictable offence and liable to imprisonment for life who, being riotously and tumultuously assembled together to the disturbance of the public peace, unlaw-

fully and with force *demolish or pull down, or begin to demolish or pull down*, any building, or any machinery, whether fixed or moveable, or any erection used in farming land, or in carrying on any trade or manufacture, or any erection or structure used in conducting the business of any mine, or any bridge, waggon-way or track for conveying minerals from any mine. (Code, Art. 85.)

All persons are guilty of an indictable offence and liable to seven years' imprisonment who, being riotously and tumultuously assembled together to the disturbance of the public peace, unlawfully and with force *injure or damage* any of the things mentioned in the last preceding section.

2. It shall not be a defence to a charge of an offence against this or the last preceding section that the offender believed he had a right to act as he did, unless he actually had such a right. (Code, Art. 86.)

It has been held to be a sufficient demolishing of a house if it were so far demolished as to be no longer a house, there being only a chimney left standing, and that, if any *one* of Her Majesty's subjects were terrified, it was a sufficient terror and alarm to substantiate that part of the charge of riot, and it was also held that if persons riotously assembled and demolished a house believing it to be the property of one of them, and acted *bona fide* in the assertion of a supposed right, it would not be a felonious demolition, although there would be a riot. (1)

Where prisoners were charged with having unlawfully and riotously assembled and with force demolished and pulled down a house and scattered a hay rick *contra pacem*, it was held that, upon the hypothesis that the prisoners had demolished the house, not feloniously, but in the assertion of a supposed right, the indictment could be sustained as for a misdemeanor at common law, that is, for the riot with the statement of the demolition of the house as an aggravation. (2)

By paragraph 2 of the above Article 86, it will be seen that persons who riotously destroy or damage a building cannot now reduce their offence to a mere riot, on the plea that they acted in

(1) R. v. Langford and others, C. & M. 602.
(2) R. v. Casey, 8 Ir. Rep., C. L. 408.

the assertion of a right which they believed they had, unless they really had such a right. The effect of the law as it now stands seems, therefore, to be that, if the offenders or any of them actually have a right to the building, they will only be guilty of the RIOT; but, if they have not such right, although they believe they have, they will be guilty of the higher offence of RIOTOUS DESTRUCTION or riotous damage, as the case may be.

Inciting Indians to Riotous Acts.—Every one is guilty of an indictable offence and liable to two years' imprisonment who induces, incites or stirs up any three or more Indians, non-treaty Indians, or half-breeds, apparently acting in concert—

(*a.*) to make any request or demand of any agent or servant of the Government in a riotous, routous, disorderly or threatening manner, or in a manner calculated to cause a breach of the peace; or

(*b.*) to do any act calculated to cause a breach of the peace. (Code, Art. 98.)

(See AFFRAY, *ante*, p. 440.)

BREACH OF TRUST.

Breach of Trust by Public Officer.—Every public officer is guilty of an indictable offence and liable to five years' imprisonment who, in the discharge of the duties of his office, commits any fraud or breach of trust affecting the public, whether such fraud or breach of trust would have been criminal or not if committed against a private person. (Code, Art. 135.)

Criminal Breach of Trust by Trustees, etc.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who,—being a trustee of any property for the use or benefit, either in whole or in part, of some other person, or for any public or charitable purpose, with intent to defraud, and in violation of his trust, converts anything of which he is trustee to any use not authorized by the trust. (Code, Art. 363.)

BRIBERY AND CORRUPTION.

Bribery at Elections.—Under sec. 84 of the *Dominion Elections Act* (R. S. C., c. 8), it is a criminal offence to give money

or promise employment to procure votes at a Dominion election, or give money to obtain the return of any person to serve in the House of Commons, or to procure such return in consequence, or to advance money to be used in bribery; and, under sec. 85, certain acts of voters are punishable as bribery.

Under the new ACT TO DISFRANCHISE VOTERS WHO HAVE TAKEN BRIBES, (passed at the last session), every voter is to be held to have taken a bribe who, before or during any election, directly or indirectly, himself or by any other person on his behalf, receives, agrees or contracts for any money, gift, loan or valuable consideration, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting at any election, or who, after any election, directly or indirectly, himself or by any other person on his behalf, receives any money or valuable consideration for having voted or refrained from voting. And voters who have taken bribes are to be disfranchised for SEVEN YEARS after the judge, assigned in any province to make an enquiry under the Act, has reported them to the Secretary of State. (1)

Judicial Corruption.—Every one is guilty of an indictable offence and liable to fourteen years imprisonment who—

(*a.*) holding any judicial office, or being a member of Parliament or of a Legislature, corruptly accepts or obtains, or agrees to accept, or attempts to obtain for himself or any other person, any money or valuable consideration, office, place, or employment on account of any thing already done or omitted, or to be afterwards done or omitted, by him in his judicial capacity or in his capacity as such member; or

(*b.*) corruptly gives or offers to any such person or to any other person, any such bribe as aforesaid on account of any such act or omission. (Code, Art. 131.)

Corruption of Officers Employed in Prosecuting Offenders.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who—

(*a.*) being a justice of the peace, peace officer, or public officer, employed in any capacity for the prosecution or detection or pun-

(1) 57-58 Vic., c. 14, secs. 15, 16.

ishment of offenders, corruptly accepts or obtains, or agrees to accept or attempts to obtain for himself, or for any other person, any money or valuable consideration, office, place or employment, with the intent to interfere corruptly with the due administration of justice, or to procure or facilitate the commission of any crime, or to protect from detection or punishment any person having committed or intending to commit any crime; or

(*b.*) corruptly gives or offers to any such officer as aforesaid any such bribe as aforesaid with any such intent. (Code, Art. 132.)

CORRUPTION OF GOVERNMENT OFFICIALS AND FRAUDS UPON THE GOVERNMENT. (See Articles 133 and 134 of the Code.)

CORRUPTION IN MUNICIPAL AFFAIRS. (See Article 136 of the Code.)

SELLING OR PURCHASING ANY PUBLIC OFFICE, APPOINTMENT, ETC. (See Article 137 of the Code.)

BURGLARY.

Meaning of Terms in Relation to Burglary.

(*a.*) "DWELLING-HOUSE" means a PERMANENT building the whole or any part of which is kept by the owner or occupier for the RESIDENCE therein of himself, his family or servants, or any of them, although it may at intervals be unoccupied;

(i.) A building occupied with, and within the same curtilage with any dwelling-house shall be deemed to be part of the said dwelling-house if there is between such building and dwelling-house a communication, either immediate or by means of a covered and inclosed passage, leading from the one to the other, but not otherwise;

(*b.*) To "BREAK" means to break any part, internal or external, of a building, or to open by any means whatever (including lifting, in the case of things kept in their places by their own weight), any door, window, shutter, cellar-flap or other thing intended to cover openings to the building, or to give passage from one part of it to another;

(i.) An entrance into a building is made as soon as any part

of the body of the person making the entrance, or any part of any instrument used by him, is within the building ;

(ii,) Every one who obtains entrance into any building by any threat or artifice used for that purpose, or by collusion with any person in the building, or who enters any chimney or other aperture of the building PERMANENTLY left open for any necessary purpose, shall be deemed to have broken and entered that building. (Code, Art. 407.)

Where a servant boy of the prosecutor always slept over his brew house which was separated from his dwelling house by a public passage, but occupied therewith, it was held, upon an indictment for burglary, that as the brew house was used by the prosecutor's servant boy for sleeping in, it was the dwelling-house of the prosecutor ; although, being separated by the passage, it could not be deemed to be part of the house in which he himself dwelt. (1)

A burglary cannot be committed in a tent or booth in a market or fair, even although the owner lodge in it : because it is a temporary, not a permanent edifice ; (2) but if it be a permanent building, although used for the purpose of a fair, it may be a dwelling-house if a part of it be used as such during the fair. (3)

Punishment of Burglary.—Every one is guilty of the indictable offence called burglary, and liable to imprisonment for life, who—

(*a.*) breaks and enters a dwelling-house *by night* with intent to commit any indictable offence therein ; or

(*b.*) breaks out of any dwelling-house *by night*, either after committing an indictable offence therein, or after having entered such dwelling-house, either by day or by night, with intent to commit an indictable offence therein. (Code. Art. 410.)

"*Night*" is the interval between nine P.M., and six A.M., of the following day. (Article 3 (*q.*) of the Code.)

The intent to commit an indictable offence ought to be charged ; or it will be necessary to prove the commission of some indictable

(1) R. v. Westwood, R. & R. 495.
(2) 1 Hale, 557.
(3) R. v. Smith, 1 M. & R. 256.

offence in the house after the breaking and entering. Thus, where an indictment was for burglariously breaking and entering a dwelling-house and then and there stealing goods therein and it omitted to state the intent, it was held that the defendant might be convicted of the burglary, if the stealing were proved but not otherwise. (1)

Both a breaking and an entering are necessary to constitute burglary; and the breaking and entering must both be in the night. If the breaking be in the day and the entering in the night, or the breaking in the night and the entering in the day, it will not be burglary; but the breaking may be on one night and the entering on another; (2) provided the breaking be with intent to enter, and the entering with intent to commit an indictable offence. (3)

Every entrance into a house, in the nature of a mere trespass is not sufficient. Thus, if a man steals in a house which he enters by a door or window which he finds open, or through a hole or opening which was made there before, (unless it be such a permanent opening as a chimney *etc.*, as mentioned in Article 407 (*b*) *ante*,) he will not be guilty of burglary. (4) But see Art. 415, p. 493, *post*, as to being found in a dwelling-house, at night.

There must be either an ACTUAL breaking, or a breaking BY CONSTRUCTION OF LAW, as where the entrance is obtained by some threat or artifice, or by collusion with some one in the building, as provided by the second sub-clause of article 407 (*b*) *ante*.

Actual breaking.—Where a cellar window, which was boarded up, had in it a round aperture of considerable size, to admit light into the cellar, and through this aperture one of the prisoners thrust his head, and, by the assistance of the other prisoner, he thus entered the house, but the prisoners did not enlarge the aperture at all, it was held that this was not a sufficient breaking. (5)

The following are some examples of burglarious breakings.

(1) R. v. Furnival, R. & R. 445.
(2) 1 Hale, 551.
(3) R. v. Smith, R. & R. 417; R. v. Jordan, 7 C. & P. 432.
(4) 4 Bl. Com. 225.
(5) R. v. Lewis, 2 C. & P. 628.

Making a hole in the wall; forcing open the door; putting back, picking or opening the lock with a false key; breaking the window; taking a pane of glass out of the window; putting back the leaf of a window with an instrument, drawing or lifting a latch; turning the key where the door is locked on the inside; or unloosening any other fastening which the owner has provided. (1)

It has been held, and it is expressly declared by Article 407 (*b*) *ante*, that the breaking requisite to constitute a burglary is not confined to the external part of the house, but may be of an inner door after the offender has entered by means of a part of the house which was open. Thus, if A enter the house of B in the night time through the outer door which is open, or by an open window, and, when within the house, turn the key of a chamber door, or unlatch it, with intent to steal, this will be burglary. (2)

Constructive Breaking.—Where, in consequence of violence commenced or threatened in order to obtain entrance to a house, the owner, either from apprehension of the violence, or in order to repel it, opens the door, and the thief enters, such entry will amount, in law, to breaking. (3)

Where an act is done, in *fraudem legis*, the law gives no benefit thereof to the party. Upon this principle, the getting possession of a dwelling-house by a judgment of ejectment obtained by false affidavits, without any color of title, and then rifling the house, was ruled to be within the statute against breaking into the house and stealing the goods therein. (4) So, if a man go to a house under pretence of having a search warrant, or of being authorized to make a distress, and, by these means, obtain admittance, it is, if done in the night-time, a sufficient breaking and entering to constitute burglary, or, if done in the day-time, house-breaking. (5)

If admission to a house be gained by fraud, though not carried on under the cloak of legal process, but merely by a pretence of business, it will also amount to a breaking by the construction of

(1) 1 Hale, 552.
(2) 1 Hale 553
(3) 2 East P. C. 486.
(4) Farre's Case, Kel. 43.
(5) Gascoigne's case, 1 Leach, 284.

law. Accordingly, where some persons took lodgings in a house, and afterwards, at night, while the people were at prayers, robbed them, it was considered that, the entrance into the house being gained by fraud, with an intent to rob, the offence was burglary. (1)

Entrance.—Any, even the least entry with any part of the offender's body or with any part of any instrument or weapon used by him is sufficient. (2)

So that, where A, in the night-time, cut a hole in the window shutters of B's shop, which was part of his dwelling-house, and, putting his hand through the hole, took out some watches which hung in the shop, within his reach, it was held to be burglary. (3)

The Intent.—There must be an intent to commit some indictable offence; and if the intention of the entry be alleged or be proved by the evidence to have been only for the purpose of committing a mere trespass, the offence will not be burglary. (4)

The best evidence of the intent is, that the defendant actually committed the offence alleged to have been intended by him; (5) but any other facts may be given in evidence from which the intent may be presumed.

House-breaking.—Every one is guilty of the indictable offence called house-breaking, and liable to fourteen years' imprisonment, who—

(*a.*) breaks and enters any dwelling-house BY DAY and commits any indictable offence therein; or

(*b.*) breaks out of any dwelling-house by day after having committed any indictable offence therein. (Code, Art. 411.)

Every one is guilty of an indictable offence and liable to seven years' imprisonment who, by day, breaks and enters any dwelling-

(1) 1 Hawk. P. C., c. 38, s. 9; 4 Bl. Com. 227.
(2) See Article 407 (*b*) *ante*. See also R. v. Davis, R. & R. 499.
(3) Gibbon's case, Fost. 107, 108.
(4) R v. Knight & Roffey, 2 East. P. C. 510.
(5) See R. v. Locost, Kel. 30.

house with intent to commit any indictable offence therein. (Code, Art. 412.)

Breaking Shop.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who, either by day or night, breaks and enters and commits any indictable offence in a school-house, shop, warehouse or counting-house, or any building within the curtilage of a dwelling-house, but not so connected therewith as to form part of it under the provisions hereinbefore contained. (Code, Art. 413.)

Every one is guilty of an indictable offence and liable to seven years' imprisonment who, either by day or night, breaks and enters any of the buildings mentioned in the last preceding section with intent to commit any indictable offence therein. (Code, Art. 414.)

ENTERING OR BEING FOUND IN A DWELLING-HOUSE AT NIGHT.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who unlawfully ENTERS OR IS IN a dwelling-house, by night, *with intent to commit an indictable offence.* (Code, Art. 415.)

BEING FOUND ARMED WITH INTENT TO BREAK A DWELLING, ETC.—This is indictable and punishable by seven years' imprisonment. (Code, Art. 416.)

HAVING POSSESSION OF BURGLARS' TOOLS, OR BEING DISGUISED. —This is indictable and punishable by five years' imprisonment. (Code, Art. 417,)

Breaking Place of Worship.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who *breaks and enters* any place of public worship *and commits* any indictable offence therein, or who, having committed any indictable offence therein, *breaks out* of such place. (Code, Art. 408.)

Every one is guilty of an indictable offence and liable to seven years' imprisonment who *breaks and enters* any place of public worship *with intent* to commit any indictable offence therein. (Code, Art. 409.)

Upon an indictment for breaking into a parish church, and stealing two surplices and a scarf, it appeared that the surplices

and scarf were stolen from a box kept in the church tower, built higher than the church, and having a separate roof, but no outer door, the only way of going into it being through the body of the church, from which the tower was not separated by a door or partition. It was objected that the stealing of these articles deposited in the tower was not sacrilege. But it was held that a tower, circumstanced as this tower was, must be taken to be part of the church, and that the stealing therein was a stealing in the church. (1)

Canada Temperance Act.

(See Intoxicating Liquor, *post.*)

Canned Goods.

Stamping or Labelling.—Every package of canned goods sold or offered for sale in Canada, for consumption therein, must be legibly labelled with the name and address of the person, firm or company by whom the same was packed, or of the dealer who sells or offers it for sale; and every such package containing goods prepared from products previously dried must, in addition, be labelled or stamped with the word "soaked."

A violation of any of these provisions is punishable summarily before a justice of the peace, by a penalty for a first offence of $2 for each such package, and for a subsequent offence by a penalty not exceeding $20 and not less than $4 for each such package.

False Labelling. — For placing on any package any label, brand, or mark falsely representing the date of the packing of the goods therein, or falsely representing the quantity or weight of its contents, to the extent of three per cent. or more, the penalty is $2 for each such package.

The expression "package" means every can, tin, or package in which articles or goods are put up for sale and which are closed by being hermetically sealed. (2)

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(1) R v. Wheeler, 3 C. & P. 585.
(2) R. S. C., c. 105.

Capacity for Crime.

A child within the age of seven is considered without any capacity to discern right from wrong, and is so conclusively presumed to be incapable of crime that this presumption cannot be rebutted.

Between the ages of seven and fourteen there is still a presumption, but only *primâ facie*, that the child is incapable, that is, the presumption is one which may be rebutted by clear and conclusive evidence of actual capacity; (1) and, therefore, when a child between seven and fourteen is charged with an offence, it must be proved not only that the child committed the act, but that he did it with a guilty knowledge of wrong-doing. (2)

(See Insanity, *post.*)

Cattle.

Stealing Cattle.—This is indictable and punishable by 14 years' imprisonment. (Code, Art. 331.)

This article refers to live cattle. The stealing of a dead cow or any part of it would be punishable by seven years' imprisonment, under Article 356 of the Code.

"Cattle" includes any horse, mule, ass, swine, sheep or goat, and any neat cattle or animal of the bovine species, and applies to *one* animal as well as to many. (Code, Art. 3*d.*)

Wilfully destroying or damaging cattle is also punishable by 14 years' imprisonment. (Code, Art. 499a.)

A person who kills any animal included in the above definition of cattle, with intent to steal its carcase, skin, etc., is guilty (under Art. 307) of stealing it, and punishable (under the above Art. 331) by 14 years' imprisonment.

Attempts and written threats to kill or injure cattle are punishable by two years' imprisonment. (Code, Arts. 500 and 502.)

(See Cruelty to Animals, p. 512-515, *post.*)

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(1) R. v. Owen, 4 C. & P. 236; R. v. Groombridge, 7 C. & P. 582; 4 Bl. Com. 23.

(2) Code, Articles 9, 10.

Certiorari.

(See pp. 356–359, *ante*.)

Challenge to Fight.

Challenging to Fight a duel.—Every one is guilty of an indictable offence and liable to three years' imprisonment who challenges or endeavours by any means to provoke any person to fight a duel, or endeavours to provoke any person to challenge any other person so to do. (Code, Art. 91.)

A duel is where two persons fight with deadly weapons and by previous mutual agreement. If in such a fight one of the combatants kill the other, he will be guilty of murder; and the seconds of both combatants and all present giving countenance to the transaction (including even the surgeon), will also be equally guilty of that offence. (1)

(See Prize Fights, *post*.)

Cheating at Play.

Every one is guilty of an indictable offence and liable to three years' imprisonment who, with intent to defraud any person, cheats in playing at any game, or in holding the stakes, or in betting on any event.

The Imperial statute 8 & 9 Vict. c. 109, s. 17, treats and punishes cheating at play as an obtaining by false pretences

Child.

Carnal Knowledge of Children Under Fourteen.—This is indictable and punishable by imprisonment for LIFE and WHIPPING. (Code, Art. 269.) And an attempt to commit the offence is indictable and punishable by TWO YEARS' imprisonment and WHIPPING. (Code, Art. 270.)

Under section 5 of the Imperial Act, 48–49 Vic. c. 69, it is a misdemeanor to carnally know a girl between the ages of 13 and 16. And it has been recently held that it is not a criminal offence for a

(1) R. v. Young, 8 C. & P. 644; R. v. Barronet, Dears. 53; R. v. Cuddy, 1 C. & K. 210.

girl, between 13 and 16, to aid and abet a male person in the commission of the misdemeanor of having carnal connection with her, or to solicit and incite a male person to commit the offence upon her. (1)

Causing a child's death by frightening it.—A person who wilfully frightens a child or sick person to death is guilty of culpable homicide. (Code, Articles 220, 223.)

CHASTISEMENT OF CHILD. (See DISCIPLINE, *post.*)

KILLING UNBORN CHILD. (See ABORTION, *ante.*)

NEGLECT TO MAINTAIN CHILD. (See MAINTENANCE *post.*)

Stealing child under fourteen.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, *with intent to deprive* any parent or guardian, or other person having the lawful charge, of any child, *under* the age of *fourteen* years, of the possession of such child, *or with intent to steal any article* about or on the person of such child, unlawfully—

(*a.*) *takes* or *entices* away *or detains* any such child ; or

(*b.*) *receives* or *harbours* any such child *knowing* it to have been dealt with as aforesaid.

2. Nothing in this section shall extend to any one who gets possession of any child, claiming in good faith a right to the possession of the child. (Code, Art. 284.)

A woman was held rightly convicted, upon evidence that the child, having been placed by its mother in the prisoner's service, was afterwards missing, and could not be discovered, and that the woman had given different accounts of what had become of the child, but implying that she had given her to some third party, although there was no evidence that she still possessed the child. (2)

In an American case it was held that, where a wife leaves her husband, taking her two-year old child, and is assisted, in leaving him, by another person, and the child, after such separation, continues in the custody and under the control of the wife,—the person

(1) R. v. Tyrell [*December*, 1893], 10 R., *March*, (1894,) 212.

(2) R. v. Johnson, 15 Cox, C. C. R., 481.

so assisting her to leave her husband is not guilty, of unlawfully taking and carrying away the child, which the mother continues to retain in her care and possession. (1)

CHILDBIRTH.

Concealment of birth.—Every one is guilty of an indictable offence, and liable to two years' imprisonment, who *disposes* of the dead body of any child *in any manner*, with intent *to conceal* the fact that its mother was delivered of it, whether the child died before, or during, or after birth. (Code, Art. 240.)

The mere denial of the birth is not sufficient to convict. There must be proof of some act of disposal of the body after the child's death. (2)

In order to convict a woman of attempting to conceal the birth of her child it has been held that a dead body must be found and identified as that of the child of which she was delivered. (3)

Neglecting to obtain assistance in childbirth.—Every woman is guilty of an indictable offence who, with either of the intents hereinafter mentioned, being with child and being about to be delivered, neglects to provide reasonable assistance in her delivery, if the child is permanently injured thereby, or dies, either just before, or during, or shortly after birth, unless she proves that such death or permanent injury was not caused by such neglect, or by any wrongful act to which she was a party, and is liable to the following punishment :

(*a.*) If the intent of such neglect be that the child shall not live, to imprisonment for life ;

(*b.*) If the intent of such neglect be to conceal the fact of her having had a child, to imprisonment for seven years. (Code, Art. 239.)

CHINESE IMMIGRATION.

No vessel carrying Chinese immigrants to any port in Canada shall carry more than one such immigrant for every fifty tons of

(1) State v. Angel, (Kan. Supr. Ct.), 11 Cr. L. Mag. 788. See also C. v. Myers, S. C. 23 Atl. Rep. 164; 14 Cr. L. Mag. 252.

(2) R. v. Turner, 8 C. & P. 755.

(3) R. v. Williams, 11 Cox, 684.

its tonnage. Penalty, for every Chinese immigrant carried in excess of this number, $50. (1)

Every person of Chinese origin shall pay into the Consolidated Revenue Fund of Canada, on entering Canada, a duty of $50. But members of the Diplomatic Corps or other government representatives, their suite and their servants and consuls and consular agents are exempt from this payment; and so are tourists, merchants, men of science and students, bearing certificates of identity specifying their occupation and their object in coming into Canada and endorsed by a British Consul at the place of the granting of such certificate. (2)

Every master of any vessel, who lands or allows to be landed any Chinese immigrant before payment of the above duty, is liable to a penalty not exceeding $1,000, and not less than $500, and to imprisonment not exceeding twelve months in default of payment; and the vessel will be forfeited to Her Majesty. (3)

No duty is payable in respect of any woman of Chinese origin who is the wife of a person not of Chinese origin; but, for the purpose of the *Chinese Immigration Act*, such woman is deemed to be of the same nationality as her husband. (4)

Persons of Chinese origin may pass through Canada by railway, *in transitu* from one port or place out of Canada to another port or place out of Canada, without payment of entry dues, provided that such passage is made under regulations of the Minister of Customs. (5)

A Chinese person, who wilfully evades or attempts to evade the provisions of the *Chinese Immigration Act*, as respects the payment of duty, by personating any other individual, or who wilfully makes use of any forged or fraudulent certificate to evade the provisions of the Act, and every one who wilfully aids and abets any such Chinese person in any such evasion or attempt, is guilty of a mis-

(1) R. S. C., c. 67, sec. 5.
(2) *Ib.*, sec. 8.
(3) *Ib.*, sec. 16.
(4) 50-51 Vic. c. 35, sec. 1.
(5) 50-51 Vic. c. 35, sec. 2.

demeanor and liable to imprisonment not exceeding twelve months or to a fine not exceeding $500 or to both. (1)

As to certificates to Chinese leaving Canada and intending to return, see sec. 13 of the R. S. C. c. 67.

All actions to recover duties or penalties under the *Chinese Immigration Act* and all prosecutions thereunder for offences not therein declared to be misdemeanors are triable before one or more justices of the peace having jurisdiction where the cause of action arose or the offence was committed. (2)

COMBINATIONS.

Combinations in Restraint of Trade.—Every one is guilty of an indictable offence and liable to a penalty not exceeding four thousand dollars and not less than two hundred dollars, or to two years' imprisonment, and, if *a corporation*, is liable to a penalty not exceeding ten thousand dollars and not less than one thousand dollars, who conspires, combines, agrees or arranges with any other person, or with any railway, steamship, steamboat or transportation company, *unlawfully*—

(*a.*) to unduly limit the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any article or commodity which may be a subject of trade or commerce; or

(*b.*) to restrain or injure trade or commerce in relation to any such article or commodity; or

(*c.*) to unduly prevent, limit, or lessen the manufacture or production of any such article or commodity, or to unreasonably enhance the price thereof; or

(*d.*) to unduly prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation or supply of any such article or commodity, or in the price of insurance upon person or property. (Code, Art. 520.)

It is the policy of the law to encourage trade and commerce; and it is against public policy and illegal to enter into a combination or agreement for the purpose of restraining trade, or tending

(1) R. S. C. c. 67, sec. 17.
(2) R. S. C. c. 67, sec. 21.

to take it out of the realms of competition ; even although it may not appear that the combination or agreement has *actually* produced any result detrimental to public interests. (1)

An association of manufacturers of wire cloth, formed for the avowed purpose of regulating the price of the commodity, each member stipulating, under a heavy penalty, not to sell at less than a specified rate, was held to be contrary to public policy and illegal. (2)

The defendants, (who were shipowners), agreed that, if persons in a certain trade would deal with them, exclusively, such persons should have certain advantages at their hands, and that if they dealt with any other shipowner, to however small an extent, they should lose all the advantages which they would derive from dealing with defendants. The plaintiffs, (who were also shipowners,) alleged that this was done for the purpose of injuring them by driving them out of the trade. But the defendants said it was done for the protection of their own trade. *Held*, that the question would be which of these two views was in fact, true. (3)

Compounding Offences.

Compounding penal actions. — Every one is guilty of an indictable offence and liable to a fine not exceeding the penalty compounded for who, having brought, or under colour of bringing, an action against any person under any penal statute in order to obtain from him any penalty, compounds the said action *without order or consent of the court, whether any offence has in fact been committed or not.* (Code, Art. 155.)

Corruptly Taking Reward for Helping to Recover Stolen Property.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who corruptly takes any money or reward, directly or indirectly, under pretense or upon account of helping any person to recover any

(1) Santa Clara, V. M. & L. Co. v. Hayes, 76 Cal. 387 ; Atcheson v. Mallow, 43 N. Y. 147.

(2) De Witt Wire Cloth Co., v. New Jersey Wire Cloth Co., 14 N. Y. Supp. Rep. 277.

(3) Mogul Steamship Co., v. McGregor, L. R 15, Q. B. D. 476.

chattel, money, valuable security or other property which, by any indictable offence, has been stolen, taken, obtained, extorted, converted or disposed of, unless he has used all due diligence to cause the offender to be brought to trial for the same. (Code, Art. 156.)

Unlawfully advertising Reward for Return of Stolen Property.—Every one is liable to a penalty of two hundred and fifty dollars for each offence, recoverable with costs by any person who sues for the same in any court of competent jurisdiction, who—

(*a.*) publicly advertises a reward for the return of any property which has been stolen or lost, and in such advertisement uses any words purporting that no questions will be asked ; or

(*b.*) makes use of any words in any public advertisement purporting that a reward will be given or paid for any property which has been stolen or lost, without seizing or making any inquiry after the person producing such property ; or

(*c.*) promises or offers in any such public advertisement to return, to any pawnbroker or other person who has advanced money by way of loan on, or has bought, any property stolen or lost, the money so advanced or paid, or any other sum of money for the return of such property ; or

(*d.*) prints or publishes any such advertisement. (Code, Art. 157.)

On the subject of compounding offences, Archbold cites a number of cases. (1) Amongst them is one in which the plaintiffs, a local board, had indicted the defendants for obstructing a highway. At the trial a compromise was made by the parties and sanctioned by the judge, and afterwards confirmed by deed. By this deed the defendants covenanted to restore the road within seven years, and the plaintiffs covenanted that, when that had been done, they would consent to a verdict of "not guilty" on the indictment. The defendants failed to restore the road, and the plaintiffs then brought an action on their covenant. *Held*, by the

(1) R. v. Burgess, 55 L. J. M. C. 97 ; R. v. Gatley, R. & R. 84 ; R. v. Crisp, 1 B. & Ald. 282 ; R. v. Best, 9 C. & P. 368 ; Keir v. Leeman, 13 L. J. (Q. B.) 359 ; 15 L. J. Q. B. 360, etc.

Court of Appeal, that, as the indictment was for a public injury, the agreement to consent to a verdict of "not guilty" was illegal, and that the plaintiffs could not maintain an action on the defendants' covenant. (1)

So that, when an offence,—even if it be not very serious,—is one of a public nature, the compromise of a prosecution based upon it will be illegal; but if the offence is of a light character and one which might be made the subject of a civil action, such as a common assault or a libel, an agreement to withdraw the prosecution will be legal; but where the public characteristic of the offence predominates, as, in the case of an assault and riot combined, an agreement to compromise the prosecution would be illegal.

Compulsion.

Compulsion by Threats. — Except as hereinafter provided, compulsion, by threats of immediate death or grievous bodily harm from a person actually present at the commission of the offence, shall be an excuse for the commission,—by a person subject to such threats, and who believes such threats will be executed, and who is not a party to any association or conspiracy the being a party to which rendered him subject to compulsion,—of any offence other than treason (as defined in paragraphs *a*, *b*, *c*, *d* and *e* of subsection one of section 65 of the Code), murder, piracy, offences deemed to be piracy, attempting to murder, assisting in rape, forcible abduction, robbery, causing grievous bodily harm, and arson. (Code, Art. 12.)

Compulsion by Force.—Although the law will not excuse the commission of any of the above excepted offences,—such as murder, piracy, rape, arson,—done under compulsion by threats even of immediate death, it will be different with a person who is not a free agent physically, but who is subjected,—not to threats operating on his mental faculties,—but to actual physical force exercised without or against his consent by a third party at the time of the act being done.

If A, by force, take the arm of B, in which is a weapon, and

(1) Windmill Loc. B. of Health v. Vint, 45 Ch. D. 351.

thereby kill C, A is guilty of murder, not B; (1) for B, in this instance, is as unwittingly the instrument of A as if he were inanimate or unconscious; and his own will has nothing at all to do with the act, which is as exclusively the act of A as if the weapon were in the latter's hands instead of in B's.

Compulsion by Necessity.—The law of necessity is paramount over all other laws; and it has been well said that every law of man has in it the implied exception, which is of the same force as if expressed, that obedience shall not be required when it is impossible, and that an act which is unavoidable is no crime. (2) And, as everything which is necessary for a man to do to save his life is treated as compelled, it follows that if I am attacked by a ruffian who seeks my life, I may kill him if I cannot otherwise preserve my own life. (3)

A & B swimming in the sea after a shipwreck, get hold of a plank not large enough to support both, A pushes off B, who is thereby drowned. A commits no crime. (4)

A doctor kills a child in the act of birth as the only way to save the life of the mother. The doctor is justified. (5)

Compulsion of Wife.—No presumption shall be made that a married woman committing an offence does so under compulsion because she commits it in the presence of her husband. (Code, Art. 13.)

CONSPIRACY.

General Definition.—A conspiracy is an agreeing or combining or confederating together by two persons (not being man and wife) or more than two persons to accomplish some unlawful purpose, or to accomplish a lawful purpose by some unlawful means. (6)

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(1) 1 Russ, Cr. 5 Ed. 139.
(2) R. v. Dunnett, 1 C. & K. 425.
(3) 4 Bl. Com. 183.
(4) Bacon's Max. No. 5; Burb. Dig. 38.
(5) Steph. Gen. V. C. L. 77.
(6) R. v. Bunn, 12 Cox, 316-339; R. v. Roy, 11 L. C. J. 93.

The combination being the gist of the offence, a conspiracy is complete as soon as the conspirators combine and agree together, although the conspiracy has not been actually carried into effect. (1)

A conspiracy consists not in the mere *intention* of two or more, but in the *agreement* of two or more, to do an unlawful act, or to do a lawful act by unlawful means. So long as such design rests in *intention* only, it is not indictable. (2)

As a conspiracy must, from its nature, be by two persons, or more, one man alone cannot be tried and convicted of it, unless he be indicted for conspiring with other persons to the jurors unknown; or unless he be charged with having conspired with others who have not appeared, or who are since dead. (3)

The acts and declarations of any of the conspirators in furtherance of the common design may be given in evidence against all of them. But before evidence of the acts of one conspirator can be given against the others, the existence of the conspiracy must be proved, and that the act in question was an act done in furtherance of the common design. (4)

Conspiracy in Restraint of Trade.—A conspiracy in restraint of trade is an agreement between two or more persons to do or procure to be done any *unlawful act* in restraint of trade. (Code, Art. 516.)

What Acts in Restraint of Trade are not Unlawful.—The purposes of a trade union are *not*, by reason merely that they are in restraint of trade, *unlawful*, within the meaning of the next preceding section. (Code. Art. 517.)

The expression "Trade Union" means such combination, whether temporary or permanent, for regulating the relation between workmen and masters, or for imposing restrictive conditions on

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(1) R. v. Thayer, 5 L. N. 162; Horseman v. R., 16 Q. B. (Ont.), 542; Heymann v. R., 12 Cox, 383.

(2) Mulcahy v. R, L. R. 3 H. of L., 306-328.

(3) Hawk c. 72, s. 8; R. v. Kinnersley, 1 Str. 193; R. v. Nicholls, 2 Str. 1227

(4) R. v. Sheliard, 9 C. & P. 277; R. v. Blake, 13 L. J. M. C. 131.

the conduct of any trade or business, as would, but for this Act, have been deemed to be an unlawful combination by reason of some one or more of its purposes being in restraint of trade. (Sec. 2 of "*The Trade Unions Act*," R. S. C., c. 131.)

Prosecution for Trade Conspiracy.—No prosecution shall be maintainable against any person for conspiracy in refusing to work with or for any employer or workman, or for doing any *act* or causing any *act* to be done for the purpose of a trade combination, unless such *act* is an *offence* punishable by statute. (Code. Art. 518.)

Where the defendants, who were members of a trade union, conspired together to injure a non-unionist workman, by depriving him of his employment, it was held to be a misdemeanor, and not for the purposes of their trade combination, within the meaning of the law. (1)

Meaning of "Trade Combination" and "Act."—The expression "*trade combination*" means any combination between masters or workmen or other persons for regulating or altering the relations between any persons being masters or workmen, or the conduct of any master or workman in or in respect of his business or employment, or contract of employment or service; and the expression "*act*" includes a default, breach or omission. (Code, Art. 519.)

See COMBINATIONS IN RESTRAINT OF TRADE, p. 500, *ante*.

Conspiring to bring a False Accusation.—Every one is guilty of an indictable offence who conspires to prosecute any person for any alleged offence, knowing such person to be innocent thereof, and shall be liable to the following punishment:

(*a*.) To imprisonment for fourteen years, if such person might, upon conviction for the alleged offence, be sentenced to death or imprisonment for life;

(*b*.) To imprisonment for ten years, if such person might, upon

(1) R. v. Bunn, 12 Cox, 316-340.

conviction for the alleged offence, be sentenced to imprisonment for any term less than life. (Code, Art. 152.)

Conspiring to Commit an Indictable Offence.—Every one is guilty of an indictable offence and liable to seven years' imprisonment, who, in any case not hereinbefore provided for, conspires with any person to commit any indictable offence. (Code, Art. 527.)

Conspiring to Defraud.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who conspires with any other person, by deceit or falsehood or other fraudulent means, to defraud the public or any person, ascertained or unascertained, or to affect the public market price of stocks, shares, merchandise or anything else publicly sold, whether such deceit or falsehood or other fraudulent means would or would not amount to a false pretense as hereinbefore defined. (Code, Art. 394.)

The following are examples of *conspiracies to defraud:*

A conspiracy to impose pretended wine upon a man as and for true and good Portugal wine in exchange for goods (1);

A conspiracy to defraud the public by means of a mock auction, —that is, an auction with sham bidders, who pretend to be real bidders,—for the purpose of selling goods at prices grossly above their worth (2);

A conspiracy to injure a man in his trade or profession (3);

A conspiracy to raise, by false rumors, the price of public funds (4);

A conspiracy, by the promoters of a joint stock company, to cheat and defraud, by means of false pretences, those who might buy shares in the company (5);

A conspiracy by persons to cause themselves to be reputed men of property, in order to defraud tradesmen (6);

(1) R. v. Macarty, 2 Ld. Raym. 1179.
(2) R. v. Lewis, 11 Cox, 404.
(3) R. v. Eccles, 1 Leach, 274.
(4) R. v. Aspinall, 46 L. J. (M. C.) 150; R. v. DeBerenger, 3 M. & Sel. 67.
(5) R. v. Aspinall, 45 L. J. (M. C.) 129; 46 L. J. (M. C.) 145.
(6) R. v. Roberts, 1 Camp. 399.

A conspiracy to defraud by means of false representations of the solvency of a bank or other mercantile establishment (1);

Conspiracy to intimidate a Legislature.—(See Article 70 of the Code.)

CONTRACT.

Criminal breaches of contract.—It is an offence, punishable,—on indictment, or on summary conviction before two justices,—by, (as to persons), a penalty of $1000, or 3 months imprisonment, with or without hard labour, and by, (as to municipal corporations, etc.), a penalty of $1000, and by, (as to railway companies) a penalty of $100,—to wilfully break a contract knowing or having reasonable cause to believe that such breach will (*a.*) endanger life or property, or (*b.*) deprive the inhabitants of a city or place of their supply of power, light, gas or water, or (*c.*) delay, or prevent the running of any locomotive, engine or tender, or any freight or passenger train, or car, on a railway carrying the mails, *etc.* (Code, Art. 521.)

Every such municipal corporation, authority, or company shall cause to be posted up at their works or railway stations, as the case may be, a printed copy of the above section. Penalty, for default, $20 per day. Penalty, for unlawfully injuring, defacing or covering such posted copy, $10.

CONTAGIOUS DISEASES.

See *The Animal Contagious Diseases Act*, R. S. C., c. 69. And see p. 133, *ante*.

CO-OWNERS AND CO-PARTNERS.

Theft by Owners, Co-Owners and Partners.—Theft may be committed by the owner of anything capable of being stolen against a person having a special property or interest therein, or by a person having a special property or interest therein against the owner thereof, or by a lessee against his reversioner, or by one of several joint owners, tenants in common, or partners of or in any such thing against the other persons interested there-

(1) R. v. Esdaile, 1 F. & F. 213.

in, or by the directors, public owners or members of a public company, or body corporate, or of an unincorporated body or society associated together for any lawful purpose, against such public company or body corporate or unincorporated body or society. (Code, Art. 311.)

The offence is indictable and punishable (under Art. 356 of the Code) by seven years' imprisonment.

Concealing Gold or Silver with Intent to Defraud Partner in Mining Claim.—Every one commits theft who, with intent to defraud his co-partner, co-adventurer, joint tenant or tenant in common, in any mining claim, or in any share or interest in any such claim, secretly keeps back or conceals any gold or silver found in or upon or taken from such claim. (Code, Art. 312.)

This is indictable and punishable (under Art. 354 of the Code) by two years' imprisonment.

Corporations.

Corporations appear by Attorney.—A corporation against whom an indictment is found shall appear by attorney; and no writ of *certiorari* is necessary to remove such indictment into any Superior Court so as to compel the corporation defendant to plead thereto. (Code, Articles 635, 636.)

On the finding of an indictment against a corporation, a notice to plead shall be served upon such corporation, for whom,—in case of default to appear and plead,—a plea of "not guilty" may be ordered to be entered; and whether the corporation has appeared and pleaded, or a plea has been so entered for it, the trial may proceed in its absence. (Code, Articles 637-638.)

Counterfeiting.

Definition.—Counterfeiting is the making of false or spurious coin to imitate the genuine.

A genuine coin prepared or altered (for instance, by gilding or silvering it), so as to resemble a coin of a higher denomination, is a counterfeit coin; and a coin fraudulently filed or cut at the

edges so as to remove the milling, and on which a new milling has been added to restore the appearance of the coin, is also a counterfeit coin. (Code, Art. 460.)

When Offence is Complete.—Every offence of making any counterfeit coin, or of buying, selling, receiving, paying, tendering, uttering, or putting off, or of offering to buy, sell, receive, pay, utter, or put off, any counterfeit coin is deemed to be complete, *although the coin* so made or counterfeited, or bought, sold, received, paid, tendered, uttered or put off, or offered to be bought, sold, received, paid, tendered, uttered or put off, *was not in a fit state to be uttered*, or *the counterfeit* thereof *was not finished or perfected.* (Code, Art. 461.)

Counterfeiting Coins, &c.—Every one is guilty of an indictable offence and liable to imprisonment for life who—

(*a.*) makes or begins to make any counterfeit coin resembling, or apparently intended to resemble or pass for, any current gold or silver coin ; or

(*b.*) gilds or silvers any coin resembling, or apparently intended to resemble or pass for, any current gold or silver coin ; or

(*c.*) gilds or silvers any piece of silver or copper, or of coarse gold or coarse silver, or of any metal or mixture of metals respectively, being of a fit size and figure to be coined, and with intent that the same shall be coined into counterfeit coin resembling, or apparently intended to resemble or pass for, any current gold or silver coin ; or

(*d*) gilds any current silver coin, or files or in any manner alters such coin, with intent to make the same resemble or pass for any current gold coin ; or

(*e.*) gilds or silvers any current copper coin, or files or in any manner alters such coin, with intent to make the same resemble or pass for any current gold or silver coin. (Code, Art. 462.)

As to the offences of DEALING IN AND IMPORTING COUNTERFEIT COIN, MAMUFACTURING COPPER COIN AND IMPORTING UNCURRENT COPPER COIN, EXPORTING COUNTERFEIT COIN, CLIPPING CURRENT GOLD OR SILVER COIN, DEFACING CURRENT COIN, POSSESSING CURRENT COIN CLIPPINGS, POSSESSING COUNTERFEIT COIN, COUNTERFEIT-

ING COPPER COINS, and MAKING BASE FOREIGN COINS, see Articles 463, 464, 465, 468, 469, 470, 471, 472 and 473 of the Code. And as to the MAKING OF INSTRUMENTS FOR COINING and the BRINGING OF COINING INSTRUMENTS INTO CANADA, see Articles 466 and 467 of the Code.

ADVERTISING COUNTERFEIT MONEY.—(See p. 438, *ante*.)

Suspected Coin may be Cut.—Coin tendered as current gold or silver coin may, if suspected to be diminished or to be counterfeit, be cut, bent or broken by the person to whom it is tendered; and if it is diminished or counterfeit, the person tendering it shall bear the loss; but, if it be good coin, the person cutting, bending or breaking it shall receive it at the rate for which it was coined. Any dispute as to whether such coin is diminished or counterfeit shall be summarily tried by a justice of the peace. (R. S. C., c. 167, sec. 26.)

Seizure of Unlawfully Manufactured or Imported Copper Coin.—(See R. S. C. c. 167, ss. 29–34.)

Uttering Counterfeit Gold or Silver Coins.—This is indictable and punishable by 14 years' imprisonment. (Code, Art. 474.)

Where a good shilling was handed to a Jew boy for fruit, and he put it into his mouth, under pretence of trying it, and, then, (instead of the good shilling handed to him), he took, out of his mouth, a bad shilling, which he handed to the prosecutor, saying it was not good, this (which is one of the modes of ringing the changes) was held to be an uttering of the bad shilling. (1)

It is an "uttering and putting off," as well as a "tendering," if the counterfeit coin be offered in payment, though it be refused by the person to whom it is offered. (2)

Uttering light Coins, Medals resembling current Coins, etc.—This is indictable and punishable by three years' imprisonment. (Code, Art. 475.)

(1) R. v. Franks, 2 Leach, 736.
(2) R. v. Welsh, 20 L. J. M. C. 101.

Uttering Defaced Coin.—This is punishable summarily before two justices, the penalty being ten dollars. (Code, Art. 476,)

Uttering uncurrent Copper Coin.—This is punishable summarily, the penalty being double the nominal value of the uttered coin, or eight days imprisonment, in default of payment. (Code, Art. 477.)

Punishment after Previous Conviction.—A person, convicted of a coinage offence after a previous conviction, is liable, (*a.*) to imprisonment for life, if, otherwise, fourteen years would have been the longest term, (*b.*) to fourteen years' imprisonment, if, otherwise, seven years would have been the longest term, and, (*c.*) to seven years' imprisonment, if, otherwise, he would not have been liable to seven years.

Before the prisoner has pleaded guilty or been found guilty of the subsequent offence, the previous conviction cannot be given in evidence. (1)

CRUELTY TO ANIMALS.

Every one is guilty of an offence and liable, on summary conviction before two justices of the peace, to a penalty not exceeding fifty dollars, or to three months imprisonment, with or without hard labour, or to both, who—

(*a.*) wantonly, cruelly or *unneccessarily* beats, binds, illtreats, abuses, overdrives or tortures any cattle, poultry, dog, domestic animal or bird ; or

(*b.*) while driving any cattle or other animal is by *negligence* or *ill-usage* in the driving thereof, the means whereby any mischief, damage or injury is done by any such cattle or other animal ; or

(*c.*) in any manner encourages, aids or assists at the fighting or baiting of any bull, bear, badger, dog, cock or other kind of animal, whether of domestic or wild nature. (Code, Art. 512.)

Every pecuniary penalty recovered, with respect to any such offence shall be applied in the following manner, that is to say ; one moiety thereof to the corporation of the city, town, village,

(1) Art. 676 of the Code ; R. v. Martin, 39 L. J. M. C. 31.

township, parish or place in which the offence was committed, and the other moiety, with full costs, to the person who informed and prosecuted for the same, or to such other person as to the justices of the peace seems proper, (R. S. C., c. 172, s. 7.)

The cruelty punishable under the above Article is cruelty to cattle, poultry, dogs, domestic animals or birds; and it has been held that lizards or American chameleons are not domestic animals. This was the holding of Police Magistrate Dugas of Montreal, in refusing a warrant upon an information charging cruelty to six lizards, (offered for sale as pet ornaments and toys with rings fastened round their necks to which chains and pins were attached), by depriving them of their natural and proper food, by exposing them to cold, by confining them in paper boxes, and by depriving them of their natural and accustomed warmth and sunshine. (1)

A domestic animal is one which has been tamed for the service of man; and it has been held that lions kept in a cage are wild animals kept in confinement, and not domestic animals within the *Cruelty to Animals Acts*, 1849, (ss. 2. 29), and 1854, (s. 3), (Imp.) (2)

With regard to the meaning of the words, "*wanton*" and "*cruel*," any act, which is unjustifiable by the circumstances, is wanton; and cruelty exists whenever the animal is subjected to unnecessary pain or suffering. But the mere infliction of some bodily pain will not, of itself, constitute the offence. There must be not only some ill-usage, from which the animal suffers, but the ill-usage must be without any *necessity*, actually existing or honestly believed to exist. (3) The most common case to which the law would apply is that in which an animal is cruelly beaten or tortured for the mere purpose of causing pain, or for the gratification of a malignant or vindictive temper.

The mere inconvenience and discomfort attendant upon the transportation of animals by rail or by water, does not constitute cruelty. And a surgeon who performs, upon an animal, some operation which he honestly believes to be of benefit to it, will be guilty

(1) Soc. for Prev. Cruelty v. Graetz, 17 L. N. 74.
(2) Harper v. Marcks, 10 R. *Aug.* (1891) 306.
(3) Budge v. Parsons, 7 L. T. 184; Swan v. Saunders, 50 L. J. M. C. 67.

of no offence, under the above Article, although the performance of the operation may cause the animal severe pain and suffering. (1)

Nor does the law interfere with the infliction of any chastisement which may be necessary for the training or discipline of animals.

A man may also protect himself and his property against the intrusions of mischievous and vicious animals. And so where a farmer's premises were nightly invaded by some animal and his hen's nests broken up, and he set in his garden a steel trap in which a dog was caught by his tongue and a part of it torn out, it was held that the man had the right to protect his premises, and that the object of the statute was to protect animals from wilful or wanton cruelty and not from the incidental pain casually inflicted by the use of lawful means of protection against them. (2)

Whenever the purpose for which the act is done is to make the animal more serviceable for the use of man, the law ought not to be held to apply. And, so, the castration of horses or other animals or the spaying of sows has been held not to be cruelty, if done with reasonable care and skill, even though it be a mistaken idea that it improves them. (3)

And, the dishorning of cattle has been held not to be forbidden by the statute against cruelty. (4)

The cutting of the combs of cocks to fit them for cock fighting or winning prizes at exhibitions was held to be cruelty. (5)

If an injury be inflicted by overdriving, the overdriving must be wanton. If the driver, while honestly exercising his judgment, happen to err, he is not guilty. An error of judgment is to be distinguished from mere recklessness of consequence or wilful cruelty. (6)

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(1) Com. v. Lufkin, 7 Allen, Mass. 579.
(2) Hodge v. S., 12 Lea. (Tenn.) 528.
(3) Lewis v. Fermer, 18 Q. B. D. 532.
(4) Callaghan v. Soc. *etc.*, 11 Cox, C. C. 101. And see Brady v. McArgle, 14 L. R. (Ir.) 174.
(5) Murphy v. Manning, L. R. 2 Exch. Div. 312.
(6) Com. v. Wood ,111 Mass. 408.

Where the prevention of cruelty and suffering is concerned, there is plainly a difference between *instantaneous* death and *lingering* death; the former being generally if not always painless. And, in favor of those sports which are considered healthful recreations tending to promote strength, bodily agility and courage, even the pain attendant upon a lingering death in the lower animals is often disregarded in the customs and laws of humane and highly civilized people; so, that the angler, who catches fish for pastime, or the marksman who as an exercise of skill or as a diversion, shoots pigeons as they fly wild in the woods, is not considered guilty of any violation of the law in question.

Keeping cockpit.—Every one is guilty of an offence and liable, on summary conviction before two justices of the peace, to a penalty not exceeding fifty dollars, or to three months' imprisonment, with or without hard labour, or to both, who builds, makes, maintains or keeps a cock-pit on premises belonging to or occupied by him, or allows a cock-pit to be built, made, maintained or kept on premises belonging to or occupied by him.

2. All cocks found in any such cock-pit, or on the premises wherein such cock-pit is, shall be confiscated and sold for the benefit of the municipality in which such cock-pit is situated. (Code Art. 513.)

Conveyance of Cattle—Treatment, in transit by rail or water.—Article 514 of the Code provides that cattle, while being carried by rail or by water, shall not be confined in any car or vessel for a longer period than twenty-eight hours without the same being unloaded for rest, water, and feeding for at least five consecutive hours. Penalty for contravention $100, on summary conviction. When cattle are carried in any car or vessel giving proper space and opportunity for rest and proper food and water, these provisions as to cattle being unladen do not apply.

DEAD BODIES.

Digging up buried body.—It is an offence at common law to dig up a dead body from a grave; and it is no defence to such

a charge that the motives of the defendant were laudable. (1) And a person who, without lawful authority, disposes of a dead body for dissecting purposes and for gain and profit, is indictable at common law. (2)

Misconduct in Respect to Human Remains.—Every one is guilty of an indictable offence and liable to five years' imprisonment who—

(*a.*) without lawful excuse, neglects to perform any duty either imposed upon him by law or undertaken by him with reference to the burial of any dead human body or human remains ; or

(*b.*) improperly or indecently interferes with or offers any indignity to any dead human body or human remains, whether buried or not. (Code, Art. 206.)

DEFILEMENT OF WOMEN OR GIRLS.

Procuring Defilement.—Every one is guilty of an indictable offence, and liable to two years' imprisonment with hard labour, who—

(*a.*) procures, or attempts to procure, any girl or woman *under twenty-one years of age*, not being a common prostitute or of known immoral character, to have unlawful carnal connection, either within or without Canada, with any other person or persons ; or

(*b.*) inveigles or entices *any such woman or girl* to a house of ill-fame or assignation for the purpose of illicit intercourse or prostitution, or knowingly conceals in such house any such woman or girl so inveigled or enticed ; or

(*c.*) procures, or attempts to procure, *any* woman or girl to become, either within or without Canada, a common prostitute ; or

(*d.*) procures, or attempts to procure, *any* woman or girl to leave Canada with intent that she may become an inmate of a brothel elsewhere ; or

(*e.*) procures *any* woman or girl to come to Canada from abroad

(1) R. v. Sharp, Dears & B. 160 ; R. v. Giles, R. & R. 366, *n.*
(2) R. v. Feist, Dears & B. 590.

with intent that she may become an inmate of a brothel in Canada; or

(*f.*) procures, or attempts to procure, *any* woman or girl to leave her usual place of abode in Canada, such place not being a brothel, with intent that she may become an inmate of a brothel, within or without Canada; or

(*g.*) by threats or intimidation procures, or attempts to procure *any* woman or girl to have any unlawful carnal connection, either within or without Canada; or

(*h.*) by false pretences or false representations, procures *any* woman or girl, not being a common prostitute or of known immoral character, to have any unlawful carnal connection, either within or without Canada; or

(*i.*) applies, administers to, or causes to be taken by *any* woman or girl any drug, intoxicating liquor, matter, or thing, with intent to stupify or overpower so as thereby to enable any person to have unlawful carnal connection with such woman or girl. (Code, Art. 185.)

As to SEARCH WARRANTS to search houses of ill-fame, for females believed to have been enticed there, see p. 123, *ante*.

Parent or Guardian Procuring Defilement.—A parent or guardian of any girl or woman is indictable and punishable, by 14 years' imprisonment if the girl is under 14 years of age, or by 5 years' imprisonment, if the girl is above 14, if such parent or guardian procures such girl or woman to have carnal connection with any man other than the procurer, or orders, is party to, or permits or knowingly receives the avails of the defilement, seduction or prostitution of such girl or woman. (Code, Art. 186.)

Householders Permitting Defilement of Girls on their Premises—Every owner or occupier of premises who induces or knowingly suffers any girl to resort or be in or upon such premises for the purpose of being unlawfully and carnally known by any man is guilty of an indictable offence, and punishable by 10 years' imprisonment, if such girl is under 14 years

of age, and, by two years' imprisonment if the girl is of or above 14 and under 16. (Code, Art. 187.)

It has been held, in England, that, under section 6 of the *Criminal Law Amendment Act*, 1885, 48–49 Vic. c. 69, it is not an offence for the occupier of a house to permit a man who has seduced her daughter, to come on the premises to repeat the immoral intercourse, in order to secure his conviction for carnally knowing the girl. (1)

Carnally knowing female idiots or dummies.—This is indictable and punishable by five years' imprisonment. (Code, Art. 189.)

Prostitution of Indian Women.—(See Art. 190 of the Code.)

DISCIPLINE.

Discipline of Minors.—It is lawful for every parent, or person in the place of a parent, schoolmaster or master, to use force by way of correction towards any child, pupil or apprentice under his care, provided that such force is reasonable under the circumstances. (Code, Art. 53.)

The doctrine embodied in this article is that a parent, guardian, schoolmaster or master may inflict upon a minor child, ward, pupil or apprentice under his care, such force by way of correction as amounts to *moderate* chastisement. But he must not go beyond this; if he does, he will be liable to be indicted for assault, or—if his excessive chastisement causes the child's death—for culpable homicide. (2) The right of a teacher to chastise his pupil cannot be greater than that of the parent over the child. And so where a schoolmaster beat a scholar for two hours with a thick stick the beating was held unlawful. (3) Nor can the teacher of a

(1) R. v. Merthyr Tydvil, JJ., 10 R., *June*, (1894), 245.

(2) 3 Greenl. Ev. s. 63; R. v. Cheeseman, 7 C. & P. 455; R. v. Hazel, 1 Leach, 368.

(3) R. v. Hopley, 2 F. & F. 202. *See also* Brisson v. Lafontaine, 8 L. C. J. 173, and Mitchell v. Defries, 2 U. C. Q. B. 430.

mere day scholar, living with the parents, usurp the parental function of chastising for faults committed at home. (1)

Where an apprentice, on being chided by his master for neglecting some work, made a sharp answer, and the master struck and killed the apprentice with an iron bar which he had in his hand, it was held to be murder, on account, no doubt, of the dangerous nature of the weapon used. (2) But where, in another case, a master struck his servant with one of his clogs because he had not cleaned them, and death unfortunately ensued, it was held to be manslaughter only, because the clog, although an improper instrument to use for the purpose of correction, was very unlikely to cause death, and therefore the master could have had no intention of taking life when he used it. (3)

Where a mother, being angry with one of her children, took up a poker, and, as the child ran to the door which was open, threw it after him, and struck and killed another child who happened to be coming in at the open doorway, it was held that, although she did not intend to hit, but merely to frighten, the child at whom she threw the poker, it was manslaughter. (4)

Where the father of a child, two years old, chastised it, for some childish fault, by beating it with a strap on its back and thighs, and the death of the child was thereby accelerated, he was held guilty of manslaughter; *Martin*, B., after consulting with *Willes*, J., ruling that the law of correction had no reference to an infant of two years old, but only to those capable of appreciating correction, and that, although a slight slap might be lawfully given to an infant by its mother, more violent treatment of one so young, by her father, would not be justifiable. (5)

Discipline on Ships.—The master or officer in command of a ship on a voyage may use force for the purpose of maintaining good order and discipline on board of his ship, pro-

(1) 1 Bish. New Cr. Law Com. p. 535.

(2) R. v. Gray, Kel. 64.

(3) R. v. Turner, Comb. 407, 408. *See also* R. v. Wigg, 1 Leach, 378*n*; R. v. Leggett, 8 C. & P. 191.

(4) R. v. Conner, 7 C. & P. 438.

(5) R. v. Griffin, 11 Cox, 402.

vided that he believes, on reasonable grounds, that such force is necessary, and if the force used is reasonable in degree. (Code, Art. 56.)

DISOBEDIENCE.

Disobedience to a Statute.—Every one is guilty of an indictable offence and liable to one year's imprisonment who, without lawful excuse, disobeys any Act of the Parliament of Canada or of any legislature in Canada, by wilfully doing any act which it forbids, or omitting to do any act which it requires to be done, unless some penalty or other mode of punishment is expressly provided by law. (Code, Art. 138.)

Disobedience of Orders of Court.—Every one is guilty of an indictable offence and liable to one year's imprisonment who, without lawful excuse, disobeys any lawful order, other than for the payment of money, made by any court of justice, or by any person or body of persons authorized by any statute to make or give such order, unless some penalty is imposed, or other mode of proceeding is expressly provided by law. (Code, Art. 139.)

DISORDERLY HOUSES.

Keeping a Disorderly House.—Every one is guilty of an indictable offence and liable to one year's imprisonment who keeps any DISORDERLY HOUSE, that is to say, any common bawdy-house, common gaming-house, or common betting-house, as defined by the Code. (Code, Art. 198.)

(See BAWDY-HOUSE, *ante*, p. 470 ; GAMING-HOUSE, *post*, p. 557, and BETTING-HOUSE, *ante*, p. 471.)

DRILLING.

Unlawful drilling.—The Governor-General may, from time to time, by proclamation in the *Canada Gazette*, prohibit assemblies, without lawful authority, of persons for training or drilling or being trained or drilled in the use of arms or for practising military exercises, *etc.* ; and training or drilling or being present at assemblies for training or drilling, in contravention of any such

proclamation, will be indictable and punishable by two years' imprisonment. (Code, Articles 87, 88.)

ELECTRIC LIGHT.

Breach of Contract to supply Electric Light.—(See CONTRACT, p. 508, *ante*.) (See INSPECTION, *post*.)

EMBEZZLEMENT.—(See THEFT, *post*.)

EMBRACERY.

Embracery is an attempt to influence a jury corruptly to one side, by promises, persuasions, entreaties, money, entertainments, and the like. (1)

Corrupting Jurors or Witnesses.—It is an indictable offence, punishable by two years' imprisonment, for any one, by threats, bribes, or other corrupt means, to dissuade or attempt to dissuade any person from giving evidence in any civil or criminal case, or to influence any juryman, or for any witness or juryman to accept a bribe or other corrupt consideration, or for any one to wilfully attempt in any other way to obstruct, pervert or defeat the course of justice. (Code, Art. 154.)

ESCAPES AND RESCUES.

Escapes.—It is an indictable offence punishable by two years' imprisonment for any one, having been convicted of any offence, to escape from any lawful custody in which he may be under such conviction, or, for any one, whether convicted or not, to escape from any prison where he is lawfully confined on a criminal charge, or for any one, in lawful custody, other than as aforesaid, on a criminal charge, to escape from such custody. (Code, Articles 163, 164.)

Rescuing or assisting to Escape.—It is an indictable offence, punishable by seven years' imprisonment, for any one to rescue or assist any person in escaping or attempting to escape from lawful custody, under sentence of death or life im-

(1) 4 Bl. Com. 140.

prisonment, or after conviction of and before sentence for, or while in custody upon a charge of any crime punishable with death or life imprisonment; or for any peace officer having any such person in his lawful custody or for an officer of any prison, in which such person is lawfully confined, to voluntarily and intentionally permit him to escape therefrom. (Code, Art. 165.)

And if the person so rescued or assisted or permitted to escape is under sentence for or convicted of, or charged with an offence punishable with imprisonment for a term less than life, the punishment of the person rescuing or assisting or permitting him to escape is five years' imprisonment. (Code, Art. 166.)

It is an indictable offence punishable by two years' imprisonment for any one, with intent to facilitate a prisoner's escape, to convey or cause anything to be conveyed into any prison; or for any one, knowingly and unlawfully, under color of any pretended authority, to direct or procure the discharge of any prisoner not entitled to be so discharged; and the person so discharged will be held to have escaped. (Code, Art. 168.)

Breaking Prison.—It is an indictable offence, punishable by seven years' imprisonment, for any one, by force or violence, to break any prison with intent to set at liberty himself or any other person confined therein on any criminal charge. (Code, Art. 161.) And an attempt to break prison is indictable and punishable by two years' imprisonment. (Code, Art. 162.)

Being at Large while under Sentence of Imprisonment.—This is indictable and punishable by two years' imprisonment. (Code, Art. 159.)

Assisting Escape of Prisoners of War.—This is indictable and punishable by five years' imprisonment. (Code, Art. 160.)

Escapes from Reformatory Schools, etc.—See 53 Vic., c. 37, sec. 1.

EVIDENCE.

General Rules.—In general, there is no difference in the rules of evidence applicable to civil and criminal cases. (1) But

(1) R. v. Watson, 2 Stark N. P. 155; R. v. Atkinson 17 U. C. C. P. 304.

the amount or degree of the proof to be exacted will vary with the nature of the proceedings. For, while, in matters of civil jurisdiction, a mere preponderance of proof will suffice to establish a case, the proof of the defendant's guilt must, in criminal proceedings, be full and convincing; and the defendant is entitled to the benefit of any doubt that may exist in the minds of the jury or in the minds of justices occupying the position and exercising the functions of a jury. (1)

The law presumes innocence until the contrary is proved.

Hearsay evidence is inadmissible.

Conversations which have taken place out of the hearing of the party to be affected cannot be admitted in evidence.

The evidence of an accomplice is admissible, but ought not to be fully relied on, unless corroborated by some collateral proof.

The evidence offered should be only such as is relevant to the issue; and witnesses should be asked only questions of fact.

As a general rule the opinions of a witness are not admissible as evidence. But there is an exception in the case of a skilled or scientific witness, whose opinions are admissible to elucidate matters of a strictly professional or scientific character.

Comparison of disputed writing with genuine.—Comparison of a disputed writing with any writing proved to the satisfaction of the court to be genuine shall be permitted to be made by witnesses; and such writings, and the evidence of witnesses respecting the same may be submitted to the court and jury as evidence of the genuineness or otherwise of the writing in dispute. (Code, Art. 698.)

Confidential Communications.—Counsel, solicitors, and attorneys cannot be compelled to disclose communications made to them in professional confidence by their clients. Nor can priests and ministers of religion be compelled to disclose secrets confided or confessed to them under the regulations of their respective churches or religious persuasions. A witness cannot be compelled

(1) Kerr's Mag. Acts, 15.

and will not be allowed to state facts, the disclosure of which may be prejudicial to any public interest.

The advice which a solicitor gives to a client in connection with the latter's defence on a criminal charge is privileged; but the communications made to a solicitor and the advice given by him are not privileged, when the communications are made and the advice is obtained by the client, previous to and with the view of committing the offence. (1)

Extent of Right to cross-examine.—If a witness is called to produce a document,—which either requires no proof, or can be identified by some other person,—he need not be sworn, and, if not sworn, he is not subject to cross-examination. (2) But where a person is intentionally called and sworn, and is moreover a competent witness, the opposite party has a right to cross examine him although the party calling him has declined to ask a single question. (3)

It is usual for the prosecution to call every witness whose name is endorsed on the indictment, and even if he declines to call any such witness he should have him in Court so that he may be called for the defence, if required. (4) And the Judge will sometimes call any witness omitted, so as to give the prisoner's counsel an opportunity to cross-examine him. (5)

The cross-examination is not limited to the matters upon which the witness has been examined in chief, but extends to the whole case. (6) And therefore if the plaintiff calls a witness to prove the simplest fact connected with the case, the defendant is at liberty to cross-examine him on every issue, and, by putting leading questions, to establish, if he can, his entire defence. (7)

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(1) R. v. Cox, 15 Cox, 611.

(2) R. v. Murhs, M. & M., 515.

(3) R. v. Brooks, 2 Stark, R. 472.

(4) R. v. Woodhead, 2 C. & K., 520; R. v. Cassidy, 1 F. & F. 79.

(5) R. v. Bull, 9 C. & P. 22; R. v. Vincent, 9 C. & P. 91.

(6) Berwick on Tweed v. Murray, L. J., Ch., 281, 286.

(7) Morgan v. Brydges, 2 Stark, R. 314; R. v. Murphy, 1 A. M. & O. 20c.

Compelling Incriminating Answers.—No person shall be excused from answering any question upon the ground that the answer to such question may tend to criminate him, or may tend to establish his liability to a civil proceeding at the instance of the Crown or of any other person. Provided, however, that no evidence so given shall be used or receivable in evidence against such person in any criminal proceeding thereafter instituted against him other than a prosecution for perjury in giving such evidence. (*Can. Ev. Act*, 1893, sec. 5.)

The effect of this section appears to be that on the trial of a criminal charge no proof can be made of anything which the accused may have said while under examination as a witness in any other case, whether, at the time of testifying, he did or did not object to the questions put to him, as tending to elicit self incriminating answers. For instance, one Rose Morrison was charged with bigamy, in having during the lifetime of her first husband, Jeremiah Kirby, married one William May. For the defence it was contended that her marriage with Kirby was void, as he (Kirby) was then already a married man with a wife still living; and Kirby, on being examined as a witness at the preliminary investigation, made admissions to that effect. At the time of so testifying, Kirby himself was under arrest on a charge of bigamy in having married Rose Morrison during the lifetime of his first wife; and on his being subsequently brought to trial on this charge in the Court of Queen's Bench, at Montreal, in June 1894, the Crown Counsel offered to prove the admissions made by Kirby in his evidence given in the police Court in the case against Rose Morrison. But it was held, by Chief Justice Lacoste, that this could not be done, that under section 5 of the *Canada Evidence Act*, Kirby was bound to answer the questions put to him, that there would have been no use for him to object on the ground that his answers might incriminate him, and that the latter part of the section was an absolute bar to his evidence being used in any prosecution against him. (1)

Admissions at Trial.—Any accused person on his trial for any indictable offence, or his counsel or solicitor, may admit

(1) R. v. Kirby, Q. B., Montreal, June 1894. (*Not Rep.*)

any fact alleged against the accused so as to dispense with proof thereof. (Code, Art. 690.)

Evidence of other Criminal Acts Committed by the Accused.—It is not competent for the prosecution to prove other criminal acts of the accused outside of those forming the subject matter of the charge in hand for the purpose of showing that the defendant is a person likely from his criminal conduct or character, to have committed the offence for which he is being tried. Still, the mere fact that the evidence adduced may TEND to show the commission of other crimes does not render it inadmissible, if it be relevant to an issue, and it may be relevant if it bears upon the question of whether the acts alleged to constitute the crime charged were DESIGNED or ACCIDENTAL. Thus, where, in a case of arson, the question was whether the burning was ACCIDENTAL or WILFUL, evidence was allowed to show that on another occasion the defendant was in such a situation as to render it probable that he was then engaged in the like offence against the same property. (1)

And where a woman was on trial for having murdered her husband by administering arsenic, evidence was admitted to show that two of her sons who had formed part of the same family and for whom, as well as for her husband, the prisoner had cooked their food, had died of poison, the symptoms in all these cases being the same. (2)

On an indictment for attempting to obtain money by falsely pretending that a ring was composed of diamonds, when in fact it was composed of crystals, it was held that, to show the defendant's guilty knowledge and his intent to defraud, evidence was admissible of a false pretence by him, on a prior occasion, to another person, that a chain was gold, whereas it was plated, and, on another distinct occasion, that a ring was of diamonds, which it was not. (3)

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(1) R. v. Dossett, 2 C. & K. 306.

(2) R. v. Geering, 18 L. J. M. C. 215. See also, Makens and wife, v. Atty.-Gen. N. S. Wales, 6 R. *Jan.* (1894) 22.

(3) R. v. Francis, 43 L. J. M. C. 97.

Documentary Evidence.—Imperial Acts and all ordinances of the Governor General in Council or of any Lieutenant-Governor in Council and all provincial statutes are to be judicially noticed. (*Can. Ev. Act*, 1893, sec. 7.)

See, as to proof of proclamations, etc., secs. 8, 9 & 11, *Can. Ev. Act*.

Evidence of any proceeding in any court or before any justice of the peace or any coroner, or of any official or public document or of any entry in a public book, or, (in the province of Quebec) of any notarial document, may be made by producing a certified copy of or extract therefrom. (*Can. Ev. Act*, secs. 10, 12 & 18.) But no copy of such book or document can be received in evidence upon any trial, unless the party intending to produce it has, before the trial, given to the party against whom it is intended to be produced reasonable notice, such notice to be not less, in any case, than TEN days. (*Can. Ev. Act*, sec. 19.)

Fabricating Evidence.—It is an indictable offence, punishable by seven years imprisonment, to fabricate evidence by any means other than perjury or subornation. (Code, Art. 151.)

See, further, as to EVIDENCE, the COMPETENCY OF ACCUSED as a WITNESS, the MODES OF SWEARING, AFFIRMING, CONFESSIONS, etc., pp. 203-219, *ante*. And as to COMPETENCY OF DEFENDANT as a WITNESS on his own behalf, when charged with an OFFENCE PUNISHABLE UNDER PROVINCIAL LAWS, see pp. 320-324, *ante*.

EXCISE.

Matters subject to excise are regulated by the *Inland Revenue Act* (R.S.C., c. 34), and its amendments, 51 Vic. c. 16, 52 Vic. c. 15, 53 Vic. c. 23, 54–55 Vic. c. 46, 55–56 Vic. c. 22, and 57–58 Vic. c. 35.

The expression "SUBJECT TO EXCISE" means subject to the provisions of the *Inland Revenue Act*, or of any other act respecting duties of excise or the inland revenue, or of any proclamation, order-in-council or departmental regulation published or made under such provisions; and every place wherein licit or illicit, licensed or unlicenced mashing, fermentation, distillation, rectifying, brewing or malting, or manufacturing of tobacco, or of cigars,

or manufacturing in bond or manufacturing of any article on which there is a duty of excise or customs, and on which such duty has not been paid, is carried on or performed—and every worm, still, mash-tub, fermenting tun or other tool, utensil, apparatus or thing which is or might be used for such purposes lawfully or unlawfully, are deemed to be "SUBJECT TO EXCISE." (1)

No person not licensed as provided by the *Inland Revenue Act*, shall carry on the business or trade of a distiller, rectifier, compounder, brewer or malster, or of a manufacturer of tobacco or cigars, or bonded manufacturer, nor use any utensil, machinery or apparatus suitable for carrying on any such trade or business, or any business subject to excise, nor import, make or begin to make any still, rectifier, or other apparatus suitable for the manufacture of wash, beer or spirits, or for the rectification or compounding of spirits. And no person shall import, make, or have in his possession, or keep any still, worm, mash-tub, fermenting-tun, distillery, rectifying or brewing apparatus, or any malt-kiln, or malt-floor or any apparatus for the manufacture or production of malt, or any tobacco press or mill for cutting or grinding tobacco without having given, when such articles came into his possession, and on or before the tenth of July of each subsequent year, a full and particular list, description and return thereof to the Collector of Inland Revenue of the division in which such article or apparatus is located, of the same nature and in the same form as is required by the *Inland Revenue Act* in an application for a license to use similar apparatus or machinery. (R. S. C. c. 34, sec, 9.)

If any officer of inland revenue, after having demanded admittance into any distillery, malt-house, brewery, tobacco manufactory, cigar manufactory, bonded manufactory or other premises subject to excise, is not immediately admitted, he may enter therein by force. (R. S. C. c. 34, sec. 70.)

The collector or other officer of Inland Revenue, or any person or persons acting under him or by his directions respectively, having first obtained a search warrant for that purpose from some justice of the peace, who may grant the same on affidavit (made

(1) R. S. C. c. 34, sec. 8 (*b*).

before him and to his satisfaction, and stating reasonable grounds for the issuing thereof), may, at any hour between sunrise and sunset, enter into and search any house, building or place mentioned in such search warrant, as being one in which it has been made to appear by affidavit that there is reasonable cause to suppose that an unlicensed still, worm, mash-tub, cooler, fermenting-tun, malt-floor or kiln, press, cutting-knife, mill or other vessel or implement is unlawfully in use or possession, or that the provisions of the *Inland Revenue Act* are otherwise violated. R. S. C. c. 34, sec. 71.)

Every manufacturer who neglects or refuses to keep his license posted up in a conspicuous place in his manufactory shall incur a penalty of $50 for the first offence, and of $100 for each subsequent offence. (R. S. C. c. 34, sec. 82.)

All stock, machinery, tools, worms, stills, utensils, manufactured articles, horses, vehicles and other appliances found in any distillery, malt-house, brewery, tobacco manufactory, cigar manufactory, bonded manufactory or other premises for which a license is required under the Act, but in respect of which no such license has been taken out, are liable to be seized and forfeited. (R. S. C. c. 34, sec. 83.)

A variety of punishments by fine and imprisonment are imposed by the Act and its amendments, for violations of their provisions. And,—(under sections 102 and 103),—every person who violates any provision of the Act, or who neglects any duty imposed upon him thereby—for which violation or neglect no other penalty is therein specially provided—incurs a penalty of $200 ; and whenever any person is convicted of any offence for which a money penalty only is thereby provided, the court may, in addition to or in lieu of any punishment authorized by the Act, sentence the offender to be imprisoned for any term not exceeding two years.

Explosive Substances.

Causing dangerous explosions.—It is an indictable offence, punishable by imprisonment for life, to wilfully cause, by any explosive substance, an explosion of a nature LIKELY to endanger life or cause serious injury to property, whether any injury is actually caused or not. (Code, Art. 99.)

Doing any act or possessing any explosive with intent to cause an explosion.—This is indictable and punishable by fourteen years' imprisonment. (Code, Art. 100.)

Unlawfully making or possessing explosives.—This is indictable and punishable by seven years' imprisonment. (Code, Art. 101.)

Causing bodily injury by explosives.—It is an indictable offence, punishable by life imprisonment, to unlawfully, and by an explosion, burn, maim, disfigure, disable, or do grievous bodily harm to any person. (Code, Art. 247.)

Attempts to cause bodily injuries by explosives.—(See Art. 248 of the Code.)

Seizure of explosives.—(See SEARCH WARRANTS, pp. 118, 119, *ante.*)

Destroying buildings, etc., by explosives.—Wilfully placing or throwing any explosive INTO OR NEAR a building or ship, with intent to destroy the same or anything therein, is indictable and punishable by fourteen years' imprisonment, whether any explosion occurs or not. (Code, Art. 488.)

EXTORTION.

In a broad sense, extortion signifies any oppression under color of right; but, in a more strict sense, it signifies the unlawful taking, by any officer of justice, by color of his office, of any money or thing of value that is not due. (1) According to Blackstone, it is "any officer's unlawful taking, by color of his office, from any man, any money or thing of value that is not due to him, or MORE than is due, or BEFORE it is due." (2)

It has been held to be extortion in any under-sheriff to obtain his fees by refusing to execute process till they were paid, (3) and in a jailer to obtain money from his prisoner by color of his

(1) 1 Hawk. P. C. c. 68, s. 1.
(2) 4 Bl. Com. 141.
(3) Hescott's case, 1 Salk. 330.

office. (1) And where magistrates sat together, and one of them exacted money from a prisoner charged before them with felony, the other not dissenting, it was held that they might be jointly convicted of extortion. (2)

Extortion by Defamatory Libel.—(See LIBEL, *post.*)

Extortion by Threats to Accuse of Crime.—(See THREATS, *post.*)

See ROBBERY, *post.*)

EXTRADITION.

See *The Extradition Act*, and a list of offences extraditable between Canada and the United States, in the APPENDIX, *post.*

FALSE NEWS.

Spreading False News.—Every one is guilty of an indictable offence and liable to one year's imprisonment who wilfully and knowingly publishes any false news or tale whereby injury or mischief is or is likely to be occasioned to any PUBLIC interest.

In 1778 there was a case of this kind in which the defendant was indicted for having unlawfully, wickedly and maliciously published false news—whereby discord might grow between the king and his subjects or the great men of the realm—by publishing and placarding a printed notice falsely announcing that an order in council had been made by the king proclaiming war with France. (3)

FALSE PRETENCES.

Definition.—A false pretence is a *representation*, either by words or otherwise, of a matter *of fact* either present or past, which representation is *known* to the person making it *to be false*, and which is *made with a fraudulent intent* to induce the person to whom it is made to act upon such representation.

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(1) R. v. Broughton, Trem. P. C. 111; R. v. Tracey, 6 Mod, 178.
(2) R. v. Tisdale, 20 U. C. Q. B. 272.
(3) Scott's case, 5 New Newgate Calendar, 284.

2. Exaggerated commendation or depreciation of the quality of anything is not a false pretence, unless it is carried to such an extent as to amount to a fraudulent misrepresentation of fact.

3. It is a question of fact whether such commendation or depreciation does or does not amount to a fraudulent misrepresentation of fact. (Code, Art. 358.)

Punishment.—Every one is guilty of an indictable offence and liable to three years' imprisonment who, with intent to defraud, either *directly* or *through the medium of any contract obtained by such false pretense*, obtains anything capable of being stolen, or procures anything capable of being stolen to be *delivered* to any other person than himself. (Code, Art. 359.)

Distinction between obtaining by False Pretences and Theft.—In a case of theft, the owner of the thing in question has no intention of parting with his property therein to the party obtaining it, while in the case of an obtaining by false pretenses he has an intention of parting with it, but his consent to part with it is brought about by the false pretense made to him. (1)

If a servant, acting under a *general* authority co-equal with his master's, intentionally part with his master's property, under a misconception fraudulently induced by false representations as to the real facts, such property is not stolen, but obtained by false pretences; but, if the servant, having only a *limited* authority, and being precluded from parting with the property, is, nevertheless, tricked out of it, the offender thus obtaining it is guilty of theft; because the master has never *consented to* nor *authorized* the parting with it. (2)

To constitute the crime of obtaining by false pretenses there must be: 1, a false statement, which represents, as existing, something which does not exist, or which represents, as having happened or existed, something which has not happened or existed; 2, the offender must also have known, when making the false

(1) White v. Gardner, 10 C. B. 927; R. v. Barnes 2 Den. C. C. 59; R. v. Radcliffe, 12 Cox, 474.

(2) R. v. Prince, L. R. 1 C. C. R. 150.

statement or representation, that it was false; and 3, the goods in question must have been parted with in consequence of and through the false representation. (1)

A mere representation as to some *future* fact, or a false *promise*, by the party charged, that he will do or means to do a particular act, will not suffice to constitute a false pretence; (2) unless it be conjoined with a false pretence as to an existing fact. (3)

There is a false pretence where a person goes to a shop and says that he is sent by some particular customer for such and such goods, which, upon the faith of what he says, are handed to him; or where money is obtained by means of a begging letter setting forth false statements as to the name and circumstances of the accused; (4) or where A falsely represents that he is connected with B, a person of known opulence, and, on the faith of such representation, obtains property for himself; (5) or, where E, with intent to defraud, buys goods, and on taking possession of them pays for them by a cheque, stating that he wishes to pay ready money for them, but knowing at the time that he has only a nominal balance at the bank on which the cheque is drawn, and that he has no power to overdraw his account, and not intending to pay money in to meet the cheque. (6)

A. sold to B., a railway pass, representing it to be valid in B's hands, but as a matter of fact it was not transferrable, but only good to carry a particular person, and could not be used by B., except at the risk of being, at any moment, expelled from the train. A. was held guilty of obtaining, by false pretences, the money paid to him, by B., for such pass. (7)

A prisoner who had obtained money and goods by pretending that a paper which he produced was the bank note of an existing

(1) R. v. Welman, Dears. 188; R. v. Giles, L. & C. 502.

(2) R. v. Johnson, 2 Moo. C. C. 254. R. v. Lee, 9 Cox, 304; R. v. Bertles 13 C. P. (Ont.) 607.

(3) R. v. Jennison, L. & C. 157; R. v. West. 8 Cox, 12; R. v. Crossley, 2 M. & Rob. 17; R. v. Giles, 34 L. J. M. C. 50.

(4) R. v. Jones, 1 Den. C. C. 551.

(5) R. v. Archer, 1 Dears. 449.

(6) R. v. Hazleton, L. R. 2 C. C. 134.

(7) R. v. Abrahams, 24 L. C. J. 325.

solvent bank, which he knew had stopped payment forty years before, was held guilty of obtaining by false pretences. (1)

If the purchaser intends to buy a *particular substance*, and the seller passes off to him a counterfeit,—and money is thus obtained, —that is a false pretence within the statute. (2) And it may also be constituted by a fraudulent representation as to the *quantity* of goods sold. For instance, where A. having contracted to sell and deliver to B. a load of coals at 7d. per cwt, delivered to her a load which he knew weighed only 14 cwt., but which he stated to her contained 18 cwt and produced a ticket, to that effect, which he said he himself had made out, when the coals were weighed, and she thereupon paid him the price for 18 cwt, it was held that A was guilty of obtaining by false pretences. (3)

A false representation that a stamp on a watch is the hall-mark of the Goldsmiths' Company, and that the number 18, part thereof, indicates that it is made of 18 carat gold, is a false pretence. (4)

A person who sold spurious blacking, which he represented as "Everetts Blacking," was held to be indictable for false pretences. (5)

The pretence need not be in words ; the conduct and acts of the party may be sufficient to constitute a false pretence, without any verbal representation. Thus, giving, in payment, for goods, a cheque upon a banker, with whom the defendant has no account, is a false pretence. (6) But if, at the time of giving the cheque, the defendant,—although he has no account at the bankers upon whom he draws the cheque,—believes that it will be paid at that bank on presentation, he is not guilty of a false pretence. (7)

Where a person, at Oxford, not being a member of the University, went, for the purpose of fraud, wearing a University commoner's gown, and, in this garb, obtained goods, it was held a suf-

(1) R v. Dowey, 37 L. J. M. C. 52; R. v. Brady 26 U. C. Q. B. 14.
(2) R. v. Ragg, Bell, C. C. 218 ; 29 L. J. M. C. 86.
(3) R. v. Sherwood, Dears & B. 251 ; R. v. Lee, 33 L. J. M. C. 129.
(4) R. v. Suter, 10 Cox, 577.
(5) R. v. Dundas, 6 Cox, 380.
(6) R. v. Lara, 6 T. R. 565 ; R. v. Flint, R. & R. 460 ; R. v. Jackson, 3 Camp. 370; R. v. Hunter, and R. v. Carter, 10 Cox, 642, 648.
(7) R. v. Walne, 11 Cox, C. C. R. 647.

ficient false pretence to satisfy the statute, although no representation passed in words. (1)

The fact that the defendant, at the time of obtaining goods by false pretences, intended to pay for them when able to do so, affords no defence. (2)

The parting with the property must be induced by the false pretence; and, therefore, where A. made false representations to and thereby induced B., to sell him, A., some horses, but B., afterwards, on learning the falsity of the representations, entered into a new agreement in writing with the prisoner, it was held that the subsequent dealings repelled the idea that the prosecutor had parted with the horses in consequence of the false pretence. (3)

Where the defendant offered to pledge with a pawnbroker, a chain which he falsely represented to be silver, but the pawnbroker stated that he advanced money on it, not in consequence of defendant's statement but in reliance on its withstanding a test which he himself applied to it, it was held that the defendant could not be convicted of obtaining the money by means of the false pretence but that he was properly convicted of *attempting* to obtain money by false pretences. (4)

When the prosecutor himself knows the falsehood of the pretence but parts with his money or goods, notwithstanding, the defendant cannot be convicted of obtaining by false pretences; (5) but in such a case he may (under Article 711 of the Code), be convicted of *attempting* to *obtain* by false pretences, although the indictment charges him with obtaining.

The mere fact of the prosecutor having the means at hand of acquiring knowledge of the falsity of the pretence will not of itself excuse the defendant so as to prevent him from being convicted of obtaining by false pretences. (6)

Parol evidence has been held admissible to prove the false pretences laid in the indictment, although a deed made between the

(1) R. v. Barnard, 7 C. & P., 784.
(2) R. v. Naylor, 35 L. J. M. C. 61.
(3) R. v. Connor, 14 U. C. C. P. 529.
(4) R. v. Roebuck, Dears. & B. 24; 25 L. J. M. C. 101.
(5) R. v. Mills, Dears. & B. 205; 26 L. J. M. C. 79.
(6) R. v. Jessop, Dears. & B. 442; 27 L. J. M. C. 70.

parties and stating a different consideration for parting with the money was put in evidence for the prosecution ; such deed having been made for the purposes of the fraud. (1)

And it has been decided, upon a case reserved, that the execution of a contract between the parties does not secure from punishment the obtaining of money under false pretences. (2)

It will be noticed that Article 359 expressly declares that the obtaining by false pretence, shall be punishable whether it is done DIRECTLY OR THROUGH THE MEDIUM OF A CONTRACT.

Obtaining Execution of Valuable Security by False Pretences.—Every one is guilty of an indictable offence and liable to three years' imprisonment who, with intent to defraud or injure any person by any false pretence, causes or induces any person to execute, make, accept, endorse or destroy the whole or any part of any *valuable security*, or to write, impress or affix any name or seal on any parchment in order that it may afterwards be made or converted into or used or dealt with as a valuable security. (Code, Art. 360.)

Falsely Pretending to enclose Money in a Letter.—Every one is guilty of an indictable offence and liable to three years' imprisonment who, wrongfully and with wilful falsehood, pretends or alleges that he enclosed and sent, or caused to be enclosed and sent, in any post letter, any money, *valuable security*, or chattel, which in fact he did not so enclose and send or cause to be enclosed or sent therein. (Code, Art. 361,)

Obtaining Passage by False Ticket.— Every one is guilty of an indictable offence and liable to six months' imprisonment who, by means of any false ticket or order, or of any other ticket or order, fraudulently and unlawfully obtains or attempts to obtain any passage on any carriage, tramway or railway, or in any steam or other vessel. (Code, Art. 362.)

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(1) R. v. Adamson, 2 Mood. C. C. 286.

(2) R. v. Abbott, 1 Den. 173; R. v. Burgon, 25 L. J. M. C. 105; R. v. Meakin, 11 Cox, C. C. R. 270.

FALSE TELEGRAMS OR LETTERS.

Sending unauthorized Telegrams.—Every one is guilty of an indictable offence who, *with intent to defraud*, causes or procures any telegram to be sent or delivered as being sent by the authority of any person, knowing that it is not sent by such authority, with intent that such telegram should be acted on as being sent by that person's authority, and is liable, upon conviction thereof, to the same punishment as if he had forged a document to the same effect as that of the telegram. (Code, Art. 428.)

Sending False Telegrams or Letters.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, with intent to injure or alarm *any person*, sends, causes, or procures to be sent any telegram or letter or other message containing matter which he knows to be false. (Code, Art. 429.)

FALSE WAREHOUSE RECEIPTS.

(See FRAUD, *post* p. 550.)

FELONY AND MISDEMEANOR.

Distinction Abolished.—The distinction between felony and misdemeanor is abolished. And offences which are indictable are called "INDICTABLE OFFENCES;" while those which are not indictable are called "OFFENCES." (Code, Arts. 535 536.)

FERRIES.

The issuing of licences for ferries is regulated by the R. S. C. c. 97. Sections 3 and 4 (*as amended by* 51 *Vic. c.* 23) provide that in the case of a ferry between Canada and any other country, a license may be granted for a period not exceeding TEN years, and that for ferries between any two provinces, such licenses shall be offered to public competition, and that after such public competition they may be granted for any period not exceeding FIVE years. And section 8 provides that every person who interferes with the rights of any licensed ferryman shall, upon conviction thereof, before a justice of the peace, for the county, city or district in which either terminus of the ferry is situated, incur a penalty not exceeding $20.

FIRE ARMS.

(See OFFENSIVE WEAPONS, *post.*)
(See ARMY AND NAVY, *ante*, pp. 446-449.)

FISHERIES.

This subject is regulated by *The Fisheries Act*, (R. S. C., c. 95), and its amendments, 52 Vic., c. 24, 54-55 Vic., c. 43, and 57-58 Vic., c. 51.

Section 6 of the Act, as amended, provides that every one who hunts or kills seals, porpoises, whales, or FISH OF ANY KIND, by means of rockets, explosive materials, or explosive projectiles or shells shall be liable to a penalty not exceeding $300 and costs, and, in default of payment, to imprisonment not exceeding 6 months.

Sections 5, 8 and 9 have reference to cod, salmon and trout and whitefish fisheries respectively. And section 10, (as amended by 57-58 Vic., sec 3), contains a number of new provisions as to lobster fishing, the canning, preserving or curing of lobsters, the marking, labelling or stamping of cases containing lobsters canned, preserved or cured in Canada, and of cases of lobsters imported into Canada from other countries, and also some provisions prohibiting the canning, preserving or curing of lobsters except under license from the Minister of Marine and Fisheries.

As to the power to search for fish taken in violation of the Act, and as to the power to bring into port and SEARCH ANY FOREIGN VESSEL HOVERING IN CANADIAN WATERS, see p. 130 *ante*.

FOOD.

Adulteration—The penalty for a WILFUL ADULTERATION of any article of food or of any drug is,—when the adulteration is injurious to health,—$50, (and not less than $10), and costs, for a first offence, and $200, (and not less than $50), and costs, for each subsequent offence; and, when the adulteration is NOT injurious to health, the penalty is $30 and costs, for a first offence, and $100 (and not less than $50), and costs, for each subsequent offence. (1)

(1) R. S. C. c. 107, sec. 22.

The penalty for SELLING OR OFFERING OR EXPOSING FOR SALE any adulterated article deemed injurious to health is $50 and costs, for a first offence, and $200 (and not less than $50) for a subsequent offence; and for selling or offering or exposing for sale any adulterated article NOT deemed injurious to health, the penalty is $50 (and not less than $5), and costs. (1) Provided, that, if the person accused proves that he had purchased the article as the same, in nature, substance and quality, as that demanded of him by a purchaser or the inspector, and with a WRITTEN WARRANTY to that effect, to be produced at the trial, and that he sold the article in the same state as when he purchased it, and that he could not with reasonable diligence have obtained knowledge of its adulteration, he shall be discharged from the prosecution, and shall be liable to pay the costs incurred by the prosecutor, unless he has given notice to him that he will rely on the above defence, in which case he shall be liable only to forfeiture of the adulterated article. (2)

The expression "FOOD" includes every article used for food or drink by man or cattle, and EVERY INGREDIENT INTENDED FOR MIXING with the food or drink of man or cattle for any purpose whatsoever. (53 Vic., c. 26, sec. 2.) And the expression "DRUG" includes all medicines for internal and external use for man or cattle. (*Ib.* sec. 2 *b.*)

It has been held in England that baking powder composed of ingredients some of which are injurious to health is not an article of food, within the meaning of the *Sales of Food and Drugs Act*, 1875, which defines food as being, for the purposes of that Act, "every article used for food and drink, by man, other than drugs or water," and that therefore the selling of a package of such baking powder is not a selling of food in contravention of the Act. (3) But such a sale would be an offence in Canada; because the definition of food, as contained in the above clause *b*, sec. 2 of 53 Vic., c. 26, covers every ingredient intended for mixing with food or drink.

A person bought, from Grimble & Co., a cask of malt vinegar, labelled, "Vinegar,—warranted unadulterated, Grimble & Co., Limited, Cumberland Market, London." Some of the vinegar in

(1) *Ib.* sec. 23.
(2) 53 Vic., c. 26, sec. 9.
(3) James v. Jones, 10 R. *Oct.* (1894) 265.

the same condition as purchased, was sold to a customer by the person so buying from Grimble & Co. The vinegar contained 30 per cent. of added water. *Held*, that this was a written warranty, and that the person so buying from Grimble was protected. (1)

If milk is sold or offered or exposed for sale after any valuable constituent thereof has been abstracted therefrom, or if water has been added thereto, or if it is the product of a diseased animal or of an animal fed upon unwholesome food, it is deemed to have been adulterated in a manner injurious to health. But SKIMMED MILK may be sold, as such, if contained in cans bearing on their exterior the word "SKIMMED," and if served in measures similarly marked. Still, any person supplying such skimmed milk,—unless such quality of milk has been asked for by the purchaser,—shall not be entitled to set up the above provision as a defence to or in extenuation of any violation of the Act. (2)

The manufacture or sale of oleomargarine, butterine and any other substitute for butter manufactured from any animal substance other than milk is prohibited under a penalty of $400 (and not less than $200), and twelve months (not less than three months) imprisonment, in default of payment. (3)

The penalty for selling, supplying or sending,—to any cheese, butter, or condensed milk maker or manufacturer,—any milk diluted with water, or in any way adulterated, or any skimmed milk or any milk tainted or partly sour, or any milk drawn from a diseased cow, is $50 (and not less than $5) and costs, and imprisonment not exceeding six months, in default of payment. (4)

The making of any cheese from or by the use of skimmed milk to which there has been added any fat foreign to such milk, and the knowingly buying, selling or exposing or having for sale any cheese so manufactured, is punishable by a fine not exceeding $500 (and not less than $25) and costs, and imprisonment, not exceeding six months with or without hard labour, in default of payment. (5)

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(1) Lindsay v. Rook, 10 R. *Dec.* (1894) 429.
(2) R. S. C., c. 107, sec. 15.
(3) R. S. C., c. 100, sec. 1.
(4) 52 Vic. c. 43, secs. 1, 3, 5.
(5) 56 Vic. c. 37, sec. 2.

Cheese made from or by the use of skimmed milk must not be sold, offered or exposed or had in possession for sale, unless the words "SKIM-MILK CHEESE" are legibly branded, marked or stamped on the side of every cheese, and also upon the outside of every box or package containing the same. Penalty, $5 (not less than $2) and costs, for every such cheese or box or package sold, offered, exposed or had in possession for sale; and three months' imprisonment, with or without hard labour, in default of payment. (1)

Selling Things Unfit for Food.—Every one is guilty of an indictable offence and liable to one year's imprisonment who knowingly and wilfully exposes for sale or has in his possession, with intent to sell, for human food, articles which he knows to be unfit for human food. Punishment, on conviction for a subsequent offence,—2 years' imprisonment. (Code, Art. 194.)

Fertilizers.—"Fertilizer" means and includes every natural or artificial manure which is sold at more than $10 per ton, and which contains phosphoric acid, nitrogen, ammonia or nitric acid. (53 Vic., c. 24, sec. 2 *b*.)

Under the *Fertilizers Act*, 1890, every person who sells or offers or exposes for sale any fertilizer, in respect of which the provisions of the Act have not been complied with, is liable to a penalty not exceeding $50 for the first offence and to a penalty not exceeding $100 for each subsequent offence, besides forfeiture of the fertilizer in respect of which the conviction is had. (*Ib.*, sec. 14.) And the penalty for forging or uttering or using, knowing it to be forged, any manufacturer's certificate, bill of inspection, certificate of analysis or inspector's tag required under the Act, is liable to two years' imprisonment with or without hard labour. (*Ib.*, sec 15.)

FORCIBLE ENTRY AND DETAINER.

Forcible entry is where a person, whether entitled or not, enters in a manner likely to cause a breach of the peace, or reasonable apprehension thereof, on land then in actual and peaceable possession of another.

(1) 56 Vic., c. 37, sec. 3.

2. Forcible detainer is where a person in actual possession of land, without color of right detains it in a manner likely to cause a breach of the peace, or reasonable apprehension thereof, against a person entitled by law to the possession thereof.

3. What amounts to actual possession or color of right is a question of law.

4. Every one who forcibly enters or forcibly detains land is guilty of an indictable offence and liable to one year's imprisonment. (Code, Art. 89.)

Foreign Sovereigns.

Libels on Foreign Sovereigns.—Every one is guilty of an indictable offence and liable to one year's imprisonment who, without lawful justification, publishes any libel tending to degrade, revile or expose to hatred and contempt in the estimation of the people of any foreign state any prince or person exercising sovereign authority over any such state. (Code, Art. 125.)

A French refugee in England was held amenable to the law of England for having written a poem suggesting that it would be a heroic deed to assassinate Napoleon Bonaparte, and was found guilty by an English jury, although the libel was purely political and attacked England's greatest enemy. (1)

Forgery.

Definition.—Forgery is the making of a *false* document *knowing* it to be false, with the intention that it shall in any way be used or acted upon as genuine, to the prejudice of any one whether within Canada or not, or that some person should be induced, by the belief that it is genuine, to do or refrain from doing anything, whether within Canada or not.

2. Making a false document includes altering a genuine document in any material part, and making any material addition to it or adding to it any false date, attestation, seal or other thing which

(1) R. v. Peltier, 28 How. St. Tr. 617. *See also* R. v. Most, 7 Q. B. D. 244.

is material, or by making any material alteration in it, either by erasure, obliteration, removal or otherwise.

3. Forgery is complete as soon as the document is made with such knowledge and intent as aforesaid, though the offender may not have intended that any *particular* person should use or act upon it as genuine, or be induced, by the belief that it is genuine, to do or refrain from doing anything.

4. Forgery is complete although the false document may be incomplete, or may not purport to be such a document as would be binding in law, if it be so made as, and is such as to indicate that it was intended, to be acted on as genuine. (Code, Art. 422.)

Meaning of "Document," "Bank Note" "Exchequer Bill" "False Document." — A *document* means, *in this part*, any paper, parchment, or other material used for writing or printing, marked with matter capable of being read, but does not include trade marks on articles of commerce, or inscriptions on stone or metal or other like material. (Code, Art. 419.)

"*Bank note*" includes all negotiable instruments issued by or on behalf of any person, body corporate, or company carrying on the business of banking in any part of the world, or issued by the authority of the Parliament of Canada or of any foreign prince, or government, or any governor or other authority lawfully authorized thereto in any of Her Majesty's dominions, and intended to be used as equivalent to money, either immediately upon their issue at or some time subsequent thereto, and all bank bills and bank post bills;

(*a*.) "*Exchequer bill*" includes exchequer bonds, notes, debentures and other securities issued under the authority of the Parliament of Canada, or under the authority of any legislature of any province forming part of Canada, whether before or after such province so became a part of Canada. (Code, Art. 420.)

The expression "*false document*" means—

(*a*) a document the whole or some material part of which purports to be made by or on behalf of any person who did not make or authorize the making thereof, or which, though made by, or by

the authority of, the person who purports to make it, is falsely dated as to time or place of making, where either is material; or

(*b*) a document the whole or some material part of which purports to be made by or on behalf of some person who did not in fact exist; or

(*c*.) a document which is made in the name of an existing person either by that person or by his authority, with the fraudulent intention that the document should pass as being made by some person, real or fictitious, other than the person who makes or authorizes it.

2. It is not necessary that the fraudulent intention should appear on the face of the document, but it may be proved by external evidence. (Code, Art. 421.)

The gist of the offence of forgery, as defined by the Code is the *knowingly making of any false document*, (defined by article 421), either, 1, *with intent*, that such false document shall be used or acted upon as genuine, to the prejudice of any one, or 2, *with intent* that any one shall, by belief in its genuineness, be induced to do or refrain from doing anything; and it is expressly declared by article 422, that *making* shall include any material alteration in or addition to a genuine document; and that the forgery shall be complete as soon as the false document is made, "with such knowledge and intent as aforesaid."

It is unnecessary that the forgery should reach the point of being actually used or acted upon as genuine, or that it should have actually prejudiced any one. As soon as the false document is made with *intent* that it shall be acted upon or used as genuine, it is sufficient; and the forgery is complete without any further step being taken, and therefore without any uttering of it. For, although the publication or uttering of the instrument is the usual medium by which the intent is made manifest, the intent may be proved as plainly by other evidence.

The intent necessary is an intent that the false document shall be used or acted upon as genuine to some one's prejudice, or that some one shall be led by belief in its genuineness to do or refrain from doing something; and therefore, a man, who makes a false note, and issues and gets money or anything on it will have led

some one to act on it as genuine, and will be guilty of forgery, although he may mean to take it up, and even if he actually does take it up, at maturity. (1)

It is forgery to execute a deed in the name of, and as representing another person, with intent to defraud, even though the prisoner has a power of attorney from such person, but fraudulently conceals the fact of his being only such attorney, and assumes to be the principal. (2)

If a bill of exchange, payable to A. B. or order, get into the hands of another person of the same name with the payee, and such person knowing that he is not the real payee, in whose favour it was drawn, endorse it, for the purpose of fraudulently possessing himself of the money, he is guilty of forgery. (3)

The general principle upon which *making* a false document includes altering or adding to a genuine one, (as provided by the second paragraph of article 422), is that an alteration of any material part of a true instrument changes and falsifies the whole.

Upon an indictment for "making, forging and conterfeiting" a bill of exchange, and for uttering it knowing it to be forged, the prisoners were convicted upon evidence of an alteration of the bill, from £10 to £50. (4)

Where a party committing forgery uses a name different from his own, it is immaterial whether the name used be that of a person actually existing or that of a merely fictitious person who never existed. (See Article 421 *b*.) It is as much a forgery in the one case as in the other. (5)

Where the forgery is committed by using the name of an existing person, it makes no difference whether the offender passes himself off for such person or not. (6)

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(1) R. v. Hill, 2 Moo. C. C. R., 30; R, v. Cooke, 8 C. & P., 582; R. v. Geach 9 C. & P., 499.

(2) R. v. Gould, 20 U. C. C. P., 159.

(3) Mead v. Young, 4 T. R., 28.

(4) R. v. Teague, 2 East, P. C., 979; R. & R. 33. See R. v. Dawson, 1 Str. 19.

(5) R. v. Parkes, 2 Leach, 773.

(6) R. v. Dunn, 1 Leach, 57.

A person endorsing a fictitious name on a bill of exchange to give it currency, will be guilty of forgery, and in a case which was stated to the judges, they were all of opinion that a bill of exchange drawn in fictitious names, when there are no such persons exisiting as the bill imports, was a forged bill. (1)

If three persons, A, B and C, have authority jointly to draw out money from a bank, and A, one of them, draw out the money by a cheque signed by himself and D and E, two strangers who personate B and C, it is forgery. (2)

If a person write an acceptance in his own name to represent a fictitious *firm*, with intent to defraud, it is a forged acceptance; for if an acceptance represent a fictitious *firm*, it is the same as if it represented a fictitious *person*. (3)

It is immaterial whether any additional credit be gained by using the false name. (4)

But it has been held that where a man, who had long been known by a fictitious name, drew a bill in that name, it was not a forgery. (5)

It is forgery for a person, having authority to fill up a blank acceptance or a cheque for a certain sum, to fill it up for a larger amount. (6)

Filling in, without authority, the body of a blank cheque, to which a signature is attached, is a forgery. (7)

If a person put the name of another on a bill of exchange as acceptor without the other's authority, expecting to be able to meet it when due, or expecting that such other person will overlook it, it is forgery. But if the person either had authority from such other person, or, from the course of their dealings, *bona fide* considered that he had such authority, it is not forgery. (8)

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(1) R. v. Wilks, 2 East, P. C. 957; *Ex parte* Cadby, 26 S. C. N. B. 452.
(2) R. v. Dixon. 2 Lew. 178.
(3) R. v. Rodgers, 8 C. & P. 629.
(4) R. v. Taft, 1 Leach, 172. *See* R. v. Marshall, R. & R. 75.
(5) R. v. Aickles, 2 East, P. C. 968.
(6) R. v. Minter Hart, 1 Mood, C. C. 486.
(7) R. v. Wright, 1 Lew. 135.
(8) R. v. Forbes, 7 C. & P. 224; R. v. Hill, 8 C. & P. 274.

Punishment.—The punishments for forgery range from imprisonment for life to seven years' imprisonment, according to the purport of the document forged. (See Article 423 of the Code.)

The punishment for forgery of any document not enumerated in Article 423 is, under the last clause of that Article, seven years imprisonment.

Proof.—That the signature or other part of the instrument alleged to be forged is not of the handwriting of the party may be proved by any person acquainted with his handwriting, either from having seen him write, or from being in the habit of corresponding with him. (1) It is sufficient, *primâ facie*, to disprove his handwriting, and he need not be called to disprove an authority to others to use his name. (2)

As to proof by comparison of writings, see *Evidence*, *p.* 523, *ante*.

Evidence must be given of the identity of the party whose handwriting is forged; that is, it must be proved, expressly, or from circumstances, that the alleged forgery was intended to represent the handwriting of the person whose handwriting it is proved not to be, or that it was intended as the handwriting of a person who never existed. (3)

Uttering forged documents.—Every one is guilty of an indictable offence who, knowing a document to be forged, uses, deals with, or acts upon it, or *attempts to use*, deal with, or act upon it, or causes or *attempts to cause* any person to use, deal with, or act upon it, as if it were genuine, and is liable to the same punishment as if he had forged the document.

2. It is immaterial where the document was forged.

The mere showing of a forged *receipt*, to a person with whom the defendant was claiming credit for it, has been held to be an uttering, although the defendant refused to part with the possession of it. (4)

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(1) Garrells v. Alexander, 4 Esp. 37; Gould v. Jones, 1 W. Bl. 384; Harrington v. Fry, R. & M. 99; R. v. Horn Tooke, 25 How. St. Tr. 71, 72.

(2) R. v. Harley, 2 M. & Rob. 473.

(3) R. v. Sponsonby, 2 East P. C. 996, 997.

(4) R. v. Radford, 1 C. & K. 707.

A. placed a forged receipt for poor-rates in the hands of B., for the purpose of inspection only, in order, by representing himself as a person whose poor-rates were paid, to fraudulently induce B. to advance money to C., for whom he, A., proposed to become surety for its repayment. *Held* to be an uttering: the rule there laid down by the Court being that a using of the forged instrument in some way, in order to get money or credit on it, *or by means of it*, is sufficient to constitute the offence of uttering. (1)

On an indictment for uttering forged bonds in England, it was held that such uttering was sufficiently proved by evidence of the bonds having been posted in England to a firm at Brussels for negotiation. (2)

The giving of a forged note to an innocent agent, or to an accomplice is a disposing of and putting away of the note. (3)

Upon an indictment for uttering a forged bank-note, knowing it to be forged, proof that the defendant had passed other forged notes, when proved by legitimate evidence, was held to raise a probable presumption that he knew the particular note in question to be forged. (4)

Fortune-Telling.

Witchcraft, fortune-telling, &c.—Every one is guilty of an indictable offence and liable to one year's imprisonment who pretends to exercise or use any kind of witchcraft, sorcery, enchantment or conjuration, or undertakes to tell fortunes, or pretends from his skill and knowledge in any occult or crafty science, to discover where or in what manner any goods or chattels supposed to have been stolen or lost may be found. (Code, Art. 396.)

Fraud.

Defrauding Creditors.—Every one is guilty of an indictable offence and liable to a fine of eight hundred dollars and to one year's imprisonment who—

(1) R. v. Ion, 21 L. J. M. C. 166.
(2) R. v. Finklestein, 15 Cox, 107.
(3) R. v. Palmer, 1 N. R. 93; R. & R. 72.
(4) R. v. Millard, R. & R. 245; R. v. Colclough, 15 Cox, (Ir. C. C. R.) 92.

(*a.*) with intent to defraud his creditors, or any of them,

(i.) makes, or causes to be made, any gift, conveyance, assignment, sale, transfer or delivery of his property ;

(ii.) removes, conceals or disposes of any of his property ; or

(*b.*) with the intent that any one shall so defraud his creditors, or any of them, receives any such property. (Code, Art. 368.)

Every one is guilty of an indictable offence and liable to ten years' imprisonment who, with intent to defraud his creditors, or any of them, destroys, alters, mutilates or falsifies any of his books, papers, writings or securities, or makes, or is privy to the making of any false or fraudulent entry in any book of account or other document. (Code, Art. 369.)

Concealing Deeds or Encumbrances or Falsifying Pedigrees.—Every one is guilty of an indictable offence and liable to a fine, or to two years' imprisonment, or to both, who, being a seller or mortgagor of land, or of any chattels, real or personal, or chose in action, or the solicitor or agent of any such seller or mortgagor (and having been served with a written demand of an abstract of title by or on behalf of the purchaser or mortgagee before the completion of the purchase or mortgage) conceals any settlement, deed, will or other instrument material to the title, or any encumbrance, from such purchaser or mortgagee, or falsifies any pedigree upon which the title depends, with intent to defraud and in order to induce such purchaser or mortgagee to accept the title offered or produced to him. (Code, Art. 370.)

Frauds in respect to the Registration of Titles to Lands.—Every one is guilty of an indictable offence and liable to three years' imprisonment who, acting either as principal or agent, in any proceeding to obtain the registration of any title to land or otherwise, or in any transaction relating to land which is, or is proposed to be, put on the register, knowingly and with intent to deceive, makes or assists or joins in, or is privy to the making of any material false statement or representation, or suppresses, conceals, assists or joins in, or is privy to the suppression, withholding or concealing from any judge or registrar, or any person employed by or assisting the registrar, any material document, fact or matter of information. (Code, Art. 371.)

Fraudulent Sales of Real Property.—Every one is guilty of an indictable offence and liable to one year's imprisonment and to a fine not exceeding $2,000 who, knowing the existence of any unregistered prior sale, grant, mortgage, hypothec, privilege or encumbrance of or upon any real property, fraudulently makes any subsequent sale of the same or of any part thereof. (Code, Art. 372.)

Fraudulently Hypothecating or Mortgaging Real Property.—Every one who pretends to hypothecate mortgage, or otherwise charge any real property to which he knows he has no legal or equitable title, is guilty of an indictable offence and liable to one year's imprisonment, and to a fine not exceeding $100.

2. The proof of the ownership of the real estate rests with the person so pretending to deal with the same. (Code, Art. 373.)

Fraudulent Seizures of Land.—Every one is guilty of an indictable offence and liable to one year's imprisonment, who, in the province of Quebec, wilfully causes or procures to be seized and taken in execution, any lands or tenements or other real property, not being at the time of such seizure, to the knowledge of the person causing the same to be taken in execution, the *bona fide* property of the person or persons against whom or whose estate the execution is issued. (Code, Art. 374.)

Fraudulent dealings in Gold or Silver by Lessees of Mines.—(See Art. 375 of the Code.)

Giving or using false Warehouse Receipts.—Every one is guilty of an indictable offence and liable to three years' imprisonment who—

(*a.*) being the keeper of any warehouse, or a forwarder, miller, master of a vessel, wharfinger, keeper of a cove, yard, harbour or other place for storing timber, deals, staves, boards, or lumber, curer or packer of pork, or dealer in wool, carrier, factor, agent or other person, or a clerk or other person in his employ, knowingly and wilfully gives to any person a writing purporting to be a receipt for, or an acknowledgment of, any goods or other property

as having been received into his warehouse, vessel, cove, wharf, or other place, or in any such place about which he is employed, or in any other manner received by him, or by the person in or about whose business he is employed before the goods or other property named in such receipt, acknowledgment or writing have been actually delivered to or received by him as aforesaid, with intent to mislead, deceive, injure or defraud any person, although such person is then unknown to him ; or

(*b.*) knowingly and wilfully accepts, transmits or uses any such false receipt or acknowledgment or writing. (Code, Art. 376.)

Owners of Merchandise disposing thereof contrary to agreements with Consignees who have made advances thereon.—Every one is guilty of an indictable offence and liable to three years' imprisonment, who—

(*a.*) having in his name, shipped or delivered to the keeper of any warehouse, or to any other factor, agent or carrier, to be shipped or carried, any merchandise upon which the consignee has advanced any money or given any valuable security, afterwards, with intent to deceive, defraud or injure such consignee, in violation of good faith, and without the consent of such consignee, makes any disposition of such merchandise different from and inconsistent with the agreement made in that behalf between him and such consignee at the time of or before such money was so advanced or such negotiable security so given ; or

(*b.*) knowingly and wilfully aids and assists in making such disposition for the purpose of deceiving, defrauding or injuring such consignee.

2. No person commits an offence under this section who, before making such disposition of such merchandise, pays or tenders to the consignee the full amount of any advance made thereon. (Code, Art. 377.)

Making false statements in Receipts for Property that can be used under the Bank Act; or fraudulently dealing with such Property.—Every person is guilty of an indictable offence and liable to three years' imprisonment who—

(*a.*) wilfully makes any false statement in any receipt, certificate or acknowledgment for grain, timber or other property which can be used for any of the purposes mentioned in the *Bank Act*; or (*b.*) having given any receipt, *etc.*, for grain, *etc.*, or having obtained any such receipt and passed over to any bank or person fraudulently deals with such property. (Code, Art. 378.)

Innocent Partners,—If any offence mentioned in Articles 376, 377 and 378 is committed in the name of a firm, company or co-partnership, the person by whom the thing is actually done or who connives at the doing thereof is guilty of the offence and not any other person. (Code, Art. 379.)

FRAUDULENT MARKING OF MERCHANDIZE.

(See TRADE MARKS, *post.*)

FUGITIVE OFFENDERS.

(See APPENDIX, *post.*)

FURIOUS DRIVING.

Every one is guilty of an indictable offence and liable to two years' imprisonment who, having the charge of any carriage or vehicle, by wanton or furious driving, or racing, or other wilful misconduct, or by wilful neglect, does or causes to be done any bodily harm to any person. (Code, Art. 253.)

GAMBLING.

Gambling in Public Conveyances.—Every one is guilty of an indictable offence and liable to one year's imprisonment who—

(*a.*) in any railway car or steamboat, used as a public conveyance for passengers, by means of any game of cards, dice or other instrument of gambling, or by any device of like character, obtains from any other person any money, chattel, valuable security or property; or

(*b.*) attempts to commit such offence by actually engaging any person in any such game with intent to obtain money or other valuable thing from him.

2. Every conductor, master or superior officer in charge of, and every clerk or employee when authorised by the conductor or superior officer in charge of, any railway train or steamboat, station or landing place where any such offence is committed or attempted, must, with or without warrant, arrest any person whom he has good reason to believe to have committed or attempted to commit the same, and take him before a justice of the peace, and make complaint of such offence on oath, in writing.

3. Every such conductor, master or superior officer who makes default in the discharge of any such duty is liable, on summary conviction, to a penalty not exceeding one hundred dollars and not less than twenty dollars.

4, Every company or person who owns or works any such railway car or steamboat must keep a copy of this section posted up in some conspicuous part of such railway car or steamboat.

5. Every company or person who makes default in the discharge of such duty is liable to a penalty not exceeding one hundred dollars and not less than twenty dollars. (Code, Art. 203.)

GAME.

Quebec.—It is forbidden, in the province of Quebec, to hunt, kill, or take,—1. Deer, between the first of January and the first of October in each year, or, moose and caribou between the first of February and the first of September in each year. It is also forbidden to make use of dogs for hunting, killing or taking moose, caribou, or deer. (R. S, Q. Art. 1396 ; 52 Vic. (Que.), c. 19, sec. 1.)

No person shall have a right, unless he is domiciled in the province, and has previously obtained a permit from the Commissioner of Crown Lands for that purpose, to kill or take alive, during one season, more than two moose, three deer and two caribou. Such permit shall be granted only when deemed advisable and upon payment of a fee of $5, and can in no case authorize the taking of more than five additional caribou and five additional deer. The Commissioner may exempt from the payment of such fee any Indian, whose poverty has been established to his satisfaction. (R. S. Q., Art. 1398.)

For restrictions as to hunting, killing, or taking beaver, mink,

otter, marten, pekan, hare, and musk-rat, or woodcock, snipe, partridge, wild duck, black duck, teal, etc, see R. S. Q., Arts. 1401-1407.

Every game-keeper, if he has reason to suspect and if he suspect that game killed or taken during the close season, or peltries or skins out of season, are contained or kept in any private house, store, shed or other buildings, can, upon making a deposition to that effect, obtain from a justice of the peace a search warrant to search such house, store or building. (R. S. Q., Art. 1408.)

Every infringement of the *Quebec Game Laws* is punishable summarily; and prosecutions may be brought either by the game-keeper or by any other before a justice of the peace of the district in which the offence was committed, or the seizure or confiscation effected. (R. S. Q., Art. 1410.) But no prosecution shall be brought after three calendar months from the day of the committing of the offence charged. (R. S. Q., Art. 1412.)

The fines for infringements of the Quebec Game Laws are set forth in Article 1410 of the R. S. Q.

Ontario.—The law on the subject is contained in the 56 Vic. (Ont.), c. 49.

Unorganized Portions of the North West Territories.—It is enacted by section 4 of the *Unorganized Territories Game Preservation Act*, 1894, (57-58 Vic. (Can.), c. 31), that, except as thereinafter provided, buffalo and bison shall not be hunted, taken, killed, shot at, wounded, injured, or molested, at any time of the year until the first day of January 1900.

By sections 5 and 7 of the Act, it is enacted that except as thereinafter provided, the following beasts and birds shall not be hunted, taken, killed, etc., during the following times of the year respectively:

(*a.*) Musk oxen, between the 20th of March and the 15th of October;

(*b.*) Elk or wapiti, moose, cariboo, deer, mountain sheep and mountain goats, between the first day of April and the 15th day of July, and between the first day of October and the first day of December;

(*c.*) Minks, fishers and martens,—between the 15th March and the first day of November ;

(*d.*) Otters and beavers,—between the 15th of May and the first day of October ;

(*e.*) Muskrats,—between the 15th of May and the first day of October ;

(*f.*) Grouse, partridges, pheasant and prairie chickens,—between the first day of January and the first day of September ;

(*g.*) Wild swans, wild ducks and wild geese,—between the fifteenth day of January and the first day of September ; and

No eggs in the nest of any bird above mentioned,—at any time of the year.

Section 8 contains exceptions, allowing the hunting, taking and killing of the above beasts and birds (except buffalo, bison or musk oxen in their close seasons)—

(*a.*) by Indian inhabitants and other inhabitants of the country to which the act applies ;

(*b.*) by explorers, surveyors or travellers in actual need of the beasts, birds, or eggs for food ; and

(*c.*) by any person having a permit to do so granted under the Act.

The Act applies only to the portions of the North-West Territories not included within the provisional districts of Assiniboia, Alberta and Saskatchewan ; and it applies to the district of Keewatin. (Section 2.)

The Act provides for the appointment and remuneration of game guardians and constables, and the infliction of penalties for violations of the Act, which, as to the general provisions thereof, is to come into force on the first of January, 1896.

The "Game Ordinance" No 8, of 1893, of the Provincial Legislature of the N. W. T. is not to apply to the country in which the Act is in force.

GAMING.

Gaming in Stocks, etc.—Every one is guilty of an indictable offence and liable to five years' imprisonment, and to a fine of

five hundred dollars, who, with the intent to make gain or profit by the rise or fall in price of any stock of any incorporated or unincorporated company or undertaking, either in Canada or elsewhere, or of any goods, wares or merchandise—

(*a.*) without the *bona fide* intention of acquiring any such shares, goods, wares or merchandise, or of selling the same, as the case may be, makes or signs, or authorizes to be made or signed, any contract or agreement, oral or written, purporting to be for the sale or purchase of any such shares of stock, goods, wares or merchandise : or

(*b.*) makes or signs, or authorizes to be made or signed, any contract or agreement, oral or written, purporting to be for the sale or purchase of any such shares of stock, goods, wares or merchandise in respect of which no delivery of the thing sold or puchased is made or received, and without the *bona fide* intention to make or receive such delivery.

2. But it is not an offence if the broker of the purchaser receives delivery, on his behalf, of the article sold, notwithstanding that such broker retains or pledges the same as security for the advance of the purchase money or any part thereof.

3. Every office or place of business wherein is carried on the business of making or signing, or procuring to be made or signed, or negotiating or bargaining for the making or signing of such contracts of sale or puchase as are prohibited in this section is a common gaming-house, and every one who as principal or agent occupies, uses, manages or maintains the same is the keeper of a common gaming-house. (Cnde, Art. 201.)

By Article 704 of the Code, the *onus* of proving a *bona fide* intention to sell or purchase shares or goods is thrown upon the person accused of gaming in stocks.

Frequenting Bucket Shops.—Every one is guilty of an indictable offence and liable to one year's imprisonment who habitually frequents any office or place wherein the making or signing, or procuring to be made or signed, or the negotiating or bargaining for the making or signing of such contracts of sale or purchase as are mentioned in section 201 is carried on. (Code, Art. 202.)

GAMING HOUSES.

Common Gaming-House.—A common gaming-house is—

(*a.*) a house, room or place kept by any person for gain, to which persons resort for the purpose of playing at any game of chance; or

(*b.*) a house, room or place kept or used for playing therein at any game of chance, or any mixed game of chance and skill, in which—

(i.) a bank is kept by one or more of the players exclusively of the others; or

(ii.) in which any game is played the chances of which are not alike favourable to all the players, including among the players, the banker or other person by whom the game is managed, or against whom the game is managed, or against whom the other players stake, play or bet. (Code, Art. 196.)

Keeping a Common Gaming-House.—Every one is guilty of an indictable offence and liable to one year's imprisonment who keeps any *disorderly* house, that is to say, any common bawdy-house, common GAMING-HOUSE or common betting-house, as hereinbefore defined.

2. Any one who appears, acts, or behaves as master or mistress, or as the person having the care, government or management, of any disorderly house shall be deemed to be the keeper thereof, and shall be liable to be prosecuted and punished as such, although in fact he or she is not the real owner or keeper thereof. (Code, Art. 198.)

Evidence of a Place being a Common Gaming-House.—When any cards, dice, balls, counters, tables or other instruments of gaming used in playing any unlawful game are found in any house, room, or place, suspected to be used as a common gaming-house, and entered under a warrant or order issued under the Code, or about the person of any of those who are found therein, it shall be PRIMA FACIE evidence on the trial of a prosecution, under Article 198 of the Code, that such house, room or place is used as

a common gaming-house, and that the persons found in the room or place where such tables or instruments of gaming are found were PLAYING THEREIN, although no play was actually going on in the presence of the chief constable or other officer entering the same under the Code, or in the presence of the persons by whom he is accompanied. (Code, Art. 702.)

It will also be PRIMA FACIE evidence,—in any prosecution for keeping a common gaming-house, under Article 198 of the Code,—that a house, room or place is used as a common gaming-house, and that the persons found therein were unlawfully playing therein.

(*a.*) if any constable or officer authorized to enter any house, room or place, is wilfully prevented from or obstructed or delayed in entering the same or any part thereof; or

(*b.*) if any such house, room or place is found fitted or provided with any means or contrivance for unlawful gaming or with any means or contrivance for concealing removing or destroying any instruments of gaming. (Code, Art. 703.)

In a recent Ontario case (decided 23 June, 1894), a defendant was indicted under Article 198 of the Code, for keeping a common gaming house at Fort Erie, (Ont.), and was convicted upon evidence showing, 1, that he was the person appearing to have the care, government or management of the house; 2, that the game carried on therein was the game of "POLICY," the implements used being a wheel, a quantity of numbers,—1 to 78,— on printed slips, and a board with the same numbers painted thereon; and, 3, that the manner of playing the game, as carried on by the defendant was as follows:—In Buffalo, (U. S.), there were scattered a number of agencies, where persons desirous of playing went, and there selected three of the numbers 1 to 78. The player marked down his numbers on two slips, one of which he gave to the agent, the other he retained, and, at the same time, he paid whatever sum (five or ten cents being the ordinary amount) he desired to stake. The agent delivered these slips and the money so staked to the defendant's head office, which was also in Buffalo. In Fort Erie, the other part of the game, namely, determining the winning or losing numbers, was carried on, as follows: The operator went each day, at 12 and at 5 o'clock, to the room where the wheel was kept. He had the individual numbers from 1 to 78, in small individual

boxes,—one in each box. These boxes he deposited in the wheel,—a hollow wheel, resembling a cheese box, with glass sides; and after revolving the wheel, so as to shuffle the boxes, he opened the wheel, withdrew twelve of the boxes, and called out the numbers contained on the slips therein. He then returned the numbers to the boxes, closed the boxes, deposited them in the wheel, and again went through the same operation of revolving the wheel to shuffle the boxes, and of withdrawing twelve, the numbers in which he also read out. Having done this, he telegraphed these numbers, which were the winning ones,—to the head office in Buffalo where printed slips were issued and delivered to the different agencies. A player who had chosen three of the numbers appearing on these slips was a winner and got $2 for each cent staked by him; but all the three numbers chosen by him must be winning ones in order for him to win; and the odds were in favor of the banker or person by whom the game was managed.

The only thing done in Canada was the revolving of the wheel and the determining of the winning numbers. The money was staked, and, if won, paid in Buffalo.

The implements used in the game were instruments of gaming under Article 702 of the Code; and it was proved that the house where the implements were used was entered by the constable (who made the arrest of the defendant) under a search warrant properly issued, that the defendant was there in the same room where the implements were, and that these implements were seized and retained by the constable until the trial; and there was no evidence, on behalf of the defendant, that there was no gaming going on in the house, to meet the *prima facie* case established under Article 702.

The question of whether the defendant was properly convicted of the offence charged was reserved for the opinion of the High Court; and that Court held that the object of the statute was to save the unwary from hurtful temptation, to protect the residents of Canada from the injury resulting to them and to society at large from the waste of their substance in gaming; that it was not to be supposed that the legislation was for the protection of the residents in a foreign state; that the use of a gaming instrument in

this country for deciding who were the winners of money staked, and, if won, paid in a foreign country is not gaming HERE; that, in order to constitute gaming, there must be a stake of some kind, and, there being no stake in this country, there could be no violation of the law against gaming HERE; that the statute does not reach such a case as this; and that the conviction must be quashed. (1)

Playing or looking on in Gaming-House.—Every one who plays or looks on while any other person is playing in a common gaming-house is guilty of an offence and liable, on summary conviction before two justices of the peace, to a penalty not exceeding one hundred dollars, and not less than twenty dollars and, in default of payment to two months' imprisonment. (Code, Art. 199.)

Obstructing Peace Officer entering Gaming-House.—Every one is guilty of an offence and liable, on summary conviction before two justices of the peace, to a penalty not exceeding one hundred dollars, and to six months' imprisonment with or without hard labour who—(*a.*) wilfully prevents any constable or other officer,—duly authorized to enter any disorderly house, as mentioned in section 198,—from entering the same or any part thereof; or (*b.*) obstructs or delays any such constable or officer in so entering; or, (*c.*) by any bolt, chain, or other contrivance, secures any external or internal door of, or means of access to, any common gaming-house so authorized to be entered; or (*d.*) uses any means or contrivance whatever for the purpose of preventing, obstructing or delaying the entry of any constable or officer authorized as aforesaid, into such disorderly house or any part thereof. (Code, Art. 200.)

Searching Gaming-Houses.—(See pp. 124-129, *ante.*)

See BETTING HOUSES, and comments and authorities, at pp. 471-473, *ante.*

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(1) R. v. Wittman. 25 Ont. R. 459. 14 C.L.T. 447.

GAS.

Criminal Breach of Contract to Supply Gas.—(See CONTRACT, p. 508, *ante.*)

(See INSPECTION, *post.*)

GRAIN.

Intimidation of Dealers in Grain.—(See INTIMIDATION, *post.*

HABEAS CORPUS.

See p. 368, *ante.*

HARBOR MASTERS.

The *Harbor Masters Act*, (R. S. C. c. 86, as amended by 57-58 Vic. c. 50) authorizes the Governor in Council to appoint harbor masters and deputy harbor masters, and to make regulations in reference to their rights, powers and duties.

HAWKERS.

(See PEDDLERS, *post.*)

HOLES AND EXCAVATIONS.

(See NEGLIGENCE, *post.*)

HOMICIDE.

Definition.—Homicide is the killing of a human being by another, directly or indirectly, by any means whatsoever. (Code, Art. 218.)

By Article 219 of the Code, a child becomes a human being when it has completely proceeded, IN A LIVING STATE, from the body of its mother, whether it has breathed or not, whether it has an independent circulation or not, and whether the navel string is severed or not. And the killing of such child is homicide when it dies in consequence of injuries received before, during or after birth.

Culpable homicide.—Homicide is culpable when it consists in the killing of any person, either by an UNLAWFUL ACT or by an OMISSION, without lawful excuse, TO PERFORM OR OBSERVE

ANY LEGAL DUTY, or by both combined, or by CAUSING a person, BY THREATS OR FEAR OF VIOLENCE, or BY DECEPTION to do an act which causes that person's death, or by WILFULLY FRIGHTENING a child or sick person.

2. Culpable homicide is either murder or manslaughter.

3. Homicide which is not culpable is not an offence. (Code, Art. 220.)

A man who had frightened a child into convulsions, from the effects of which it eventually died, was convicted, before *Denman, J.*, of manslaughter. (1)

A man, who had taken advantage of or had created a panic in a theatre and had obstructed a passage and rendered it so difficult to get out of the theatre that some people were crushed, was held answerable for the consequences of what he had done. (2) And where a woman, in order to escape from her husband who had used threats against her life, got out of a window, and in so doing fell and broke her leg, the husband was convicted of having wilfully inflicted, upon her, grievous bodily harm. (3)

Procuring Death by false evidence.—Procuring by false evidence the conviction and death of any person by the sentence of the law shall not be deemed homicide. (Code, Art. 221.) (See PERJURY, *post.*)

Death must be within a Year and a Day.—No one is criminally responsible for the killing of another unless the death take place within a year and a day of the cause of death. (Code, Art. 222.)

Killing by Influence on the Mind.—No one is criminally responsible for the killing of another by any influence on the mind, alone, nor for the killing of another by any disorder or disease arising from such influence, SAVE, in either case, by WILFULLY FRIGHTENING a child or sick person. (Code, Art. 223.)

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(1) R. v. Towers, 12 Cox, C. C. 530.
(2) R. v. Martin, 8 Q. B. D. 54.
(3) R. v. Halliday, 51 L. J. Rep. (N. S.) 701.

Acceleration of Death.—Every one who, by any act or omission, causes the death of another kills that person, although the effect of the bodily injury caused to such person be merely to accelerate his death while labouring under some disorder or disease arising from some other cause. (Code, Art. 224.)

Killing when Death might have been Prevented.—Every one, who, by any act or omission, causes the death of another, kills that person, although death from that cause might have been prevented by resorting to proper means. (Code, Art. 225.)

For instance, A injures B's finger. B is advised by a surgeon to allow it to be amputated, refuses to do so, and dies of lockjaw. A has killed B. (1)

Death following treatment of Injury Inflicted.—Every one, who causes a bodily injury, which is of itself of a dangerous nature, to any person, from which death results, kills that person, although the immediate cause of death be treatment proper or improper applied in good faith. (Code, Art. 226.)

A wounds B in a duel. Competent surgeons perform on B an operation which they, in good faith, consider necessary. B dies of the operation, the surgeons being mistaken as to the necessity of the operation. A has killed B. (2)

Non-Culpable Homicide—Justifiable and Excusable.—Homicide which is not culpable may be either *justifiable* or *excusable*. (3)

Justifiable Homicide.—is subdivided into, 1, Homicide done under the necessity arising in the exercise of an office, which makes it *compulsory*—in executing public justice, under judicial command—to put to death a malefactor who has forfeited his life by the laws and verdict of his country; and, 2, homicide which happens in the advancement of public justice, and in which the act, though not commanded, is permitted: as where the killing

(1) R. v. Holland, 2 Moo. & P. 351.
(2) R. v. Pym, 1 Cox C. C. 339.
(3) Broom's Com. L. 910,

happens in preventing crime, (1) or in the arrest of persons guilty or accused of crime, or in preventing escapes or rescues from arrest or from custody, or in suppressing riots, etc. (2)

Excusable Homicide—is subdivided into, 1, Homicide *per infortunium*, or misadventure, and 2, homicide in self-defence, or *se defendendo*.

Accidental Homicide,—or homicide *per infortunium*, is such as occurs where a man, in the doing of a lawful act, happens —without any negligence, and with no intention to injure—unfortunately, to kill another. For instance, if the head of a hatchet, with which a workman is working, flies off and strikes and kills a bystander, it is excusable homicide by misadventure. (3)

A whips a horse on which B is riding, in consequence of which the horse takes fright, and, before B can check him, runs over and kills C. This is accidental as to B, but it is manslaughter in A, for his act, being a trespass, was unlawful. (4)

Homicide, in Self-Defence,—is such as occurs where a man, being violently attacked, is obliged to kill his assailant in order to save his own life. The right of self-defence begins where necessity begins, and ends where necessity ends; and, therefore, the defending party, in order to be excused, must exercise only such power and apply only such instruments as will simply prove effectual; nothing more. For instance, homicide to prevent a mere trespass is not justifiable. (5) And one, upon whom another

(1) R. v. Huntley, 3 C. & K. 142. *See, also*, Art. 44 of the Code, which JUSTIFIES any one in using such force as may be reasonably necessary, in order to prevent the commission of any offence for which, if committed, the offender might be arrested without warrant, and the commission of which would be likely to cause immediate and serious injury to the person or property of any one, or, in order to prevent the doing of any act which he, on reasonable grounds, believes would, if committed, amount to any of such offences.

(2) See Articles 31, 33 to 37, at pp. 98-100, *ante*, and also Articles 40-43 and 83 and 84, at pp. 481-484, *ante*.

(3) 1 Hawk. P. C. c. 29, s. 2.

(4) 4 Bl. Com. 182, 183.

(5) R. v. Moir, Ann. Reg. (1830) vol. 72, p. 344.

is making a mere assault with the fist, must not instantly stab him.

(See SELF DEFENCE AGAINST ASSAULTS, ETC., at pp. 457-460, *ante*, and see PROVOCATION, p. 569, *post*.

Murder.—Culpable homicide is murder—

(*a.*) *If the offender means to cause the death of the person killed;*

(*b.*) *If the offender means to cause* to the person killed any *bodily injury* which is *known* to the offender *to be likely to cause death*, and is reckless whether death ensues or not;

(*c.*) If the offender means to cause death or, being so reckless as aforesaid, means to cause such bodily injury as aforesaid to one person, and by accident or mistake *kills another person*, though he does not mean to hurt the person killed;

(*d.*) If the offender, *for any unlawful object*, does an act which he knows or ought to have known to be likely to cause death, and thereby kills any person, though he may have desired that his object should be effected without hurting any one. (Code, Art. 227.)

Culpable homicide is also murder in each of the following cases, *whether the offender means or not death to ensue, or knows or not that death is likely to ensue:*

(*a.*) If he means to inflict grievous bodily injury for the purpose of facilitating the commission of any of the offences in this section mentioned, or the flight of the offender upon the commission or attempted commission thereof, and death ensues from such injury; or

(*b.*) If he administers any stupefying or overpowering thing for either of the purposes aforesaid, and death ensues from the effects thereof; or

(*c.*) If he by any means wilfully stops the breath of any person for either of the purposes aforesaid, and death ensues from such stopping of the breath.

2. The following are the offences in this section referred to,—*Treason* and the other offences mentioned in Part IV., of the Code, *piracy* and offences deemed to be piracy, *escape* or *rescue* from pri-

son or lawful custody, *resisting lawful apprehension, murder, rape, forcible abduction, robbery, burglary, arson.* (Code, Art. 228.)

Punishment.—Every one who commits murder is guilty of an indictable offence and shall, on conviction thereof, be sentenced to death.

Duelling.—(See CHALLENGE TO FIGHT, p. 496, *ante.*)

Attempts to murder.—Every one is guilty of an indictable offence and liable to imprisonment for life, who does any of the following things with intent to commit murder; that is to say—

(*a.*) administers any poison or other destructive thing to any person, or causes any such poison or destructive thing to be so administered or taken, or attempts to administer it, or attempts to cause it to be so administered or taken; or

(*b.*) by any means whatever wounds or causes any grievous bodily harm to any person; or

(*c.*) shoots at any person, or, by drawing a trigger or in any other manner, attempts to discharge at any person any kind of loaded arms; or

(*d.*) attempts to drown, suffocate, or strangle any person; or

(*e.*) destroys or damages any building by the explosion of any explosive substance; or

(*f.*) sets fire to any ship or vessel or any part thereof or any part of the tackle, apparel or furniture thereof, or to any goods or chattels being therein; or

(*g.*) casts away or destroys any vessel; or

(*h.*) by any other means attempts to commit murder. (Code, Art. 232.)

Where a female servant put arsenic into coffee which she prepared for breakfast, and afterwards told her mistress that the coffee was prepared, upon which the mistress drank the coffee, it was held that this was an administering. (1)

(1) R. v. Harley, 4 C. & P. 369.

Where A knowingly gave poison to B. to administer as a medicine to C., but, B. neglecting to do so, it was accidentally given to C. by a child, this was held to be an administering by A. (1)

A person, who fired a loaded pistol into a group of people, not aiming at any particular one, and who hit one of such group, was held guilty of shooting at the person he hit, with intent to do grievous bodily harm to that person. (2)

Subsection (h) of the above Article 232, embracing as it does all attempts, *by any other means*, to commit murder, will include all those cases where machinery used in lowering miners into mines is injured with intent that it shall break and precipitate the miners, who may be passing up or down, to the botton of the pit; and also all cases where steam engines are injured for the purpose of killing any one, as well as the cases of sending or placing infernal machines with intent to murder. (3)

Threats to Murder.—Every one is guilty of an indictable offence and liable to ten years' imprisonment who sends, delivers or utters, or directly or indirectly causes to be received, knowing the contents thereof, any letter or *writing* threatening to kill or murder any person. (Code, Art. 233.)

Conspiracy to Murder.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment, who—

(*a*,) conspires or agrees with any person to murder or to cause to be murdered any other person, whether the person intended to be murdered is a subject of Her Majesty or not, or is within Her Majesty's dominions or not; or

(*b*.) counsels or attempts to procure any person to murder such other person anywhere, although such person is not murdered in consequence of such counselling or attempted procurement.

Accessory after the Fact to Murder,—Every one is guilty of an indictable offence and liable to imprisonment for

(1) R. v. Michael, 9 C. & P. 356.
(2) R. v. Fretwell, L. & C. 443; 33 L. J. M. C. 128.
(3) R. v. Mountford, R. & M., C. C. 441; 7 C. & P. 242.

life who is an accessory after the fact to murder. (Code, Art. 235.)

(See CHILDBIRTH, p. 498, *ante.*)

(See SUICIDE, *post.*)

Manslaughter.—Culpable homicide not amounting to murder is manslaughter. (Code, Art. 230.)

Every one who commits manslaughter is guilty of an indictable offence and liable to imprisonment for life. (Code, Art. 236.)

Persons in charge of dangerous things, animate or inanimate, and persons engaged in erecting or making anything which, in the absence of due precaution or care, may endanger human life, are under a legal duty to guard against danger, (See Article 213 of the Code), and are criminally responsible for the consequences of omitting their duty, without lawful excuse.

If a man, breaking an unruly or vicious horse, ride him into a crowd of people, and the horse kick and kill one of the persons in the crowd, it would be murder, if the rider in bringing the horse into the crowd, MEANT to do mischief, or even if he meant to divert himself by frightening the crowd; for, by reason of his intention to do mischief or to frighten people, he would be doing an unlawful act, which he knew or ought to know to be likely to cause some one's death. If his riding into the crowd were done not intentionally, but carelessly and incautiously only, he would be guilty of manslaughter.

So, if a workman throw materials from a house in course of being erected or repaired, and thereby kill a person passing underneath on the street, it is MURDER, OR MANSLAUGHTER OR HOMICIDE BY MISADVENTURE, according to whether there is an entire absence of care, or according to the degree of the precautions taken and of the necessity of such precautions. (1)

A, having the right to the possession of a gun which was in the hands of B, and which he, A, knew to be loaded, attempted to take by force. In the struggle which ensued the gun accidentally went off and caused the death of B; and A was held guilty of man-

(1) 1 Hawk. c. 31, s. 68; 1 East. P. C. 231.

slaughter, inasmuch as the discharge of the gun was the result of his unlawful act in attempting to retake the gun by force. (1)

Contributory Negligence of Deceased no Defence.—It is no defence to show that the death of the deceased was due in part to his own contributory negligence. (2)

If the drivers of two carriages race with each other and urge their horses to so rapid a pace that they cannot control them, it is manslaughter in both drivers if, in consequence, one of the carriages upsets and a passenger is killed. (3)

Immoderate Correction.—Where a parent is moderately correcting his child, a teacher his pupil, or a master his servant, and death happens to ensue, it is only misadventure; but if the bounds of moderation be exceeded, either in the manner, the instrument, or the quantity of punishment, and death ensue, it is either manslaughter or murder, according to the circumstances. (4) Thus, where a master corrected his servant by striking him with an iron bar, so that the sufferer died, it was held to be murder. (5) And in all cases where the correction is inflicted with a deadly weapon and death ensues, it will be murder; if with a weapon not likely to kill, though not proper for the purpose of correction, it will then be manslaughter. (6)

Provocation.—Culpable homicide, which would otherwise be murder, may be reduced to manslaughter if the person who causes death does so in the heat of passion caused by sudden provocation.

2. Any wrongful act or insult, of such a nature as to be sufficient to deprive an ordinary person of the power of self-control, may be provocation if the offender acts upon it on the sudden, and before there has been time for his passion to cool.

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(1) R. v. Archer, 1 F. & F. 351.
(2) R. v. Swindall, 2 C. & K. 230; R. v. Dant, L. & C. 567.
(3) R. v. Timmins, 7 C. & P. 499.
(4) 1 Hale, 473, 474.
(5) R. v. Grey, Kel, 64.
(6) Fost. 262; R. v. Hopley, 2 F. & F. 201. *See, also*, R. v. Turner, Comb. 407; R. v. Conner, 7 C. & P. 438; R. v. Griffin, 11 Cox, 402.

3. Whether or not any particular wrongful act or insult amounts to provocation, and whether or not the person provoked was actually deprived of the power of self-control by the provocation which he received, shall be questions of fact. No one shall be held to give provocation to another by doing that which he had a legal right to do, or by doing anything which the offender incited him to do in order to provide the offender with an excuse for killing or doing bodily harm to any person.

4. An arrest shall not necessarily reduce the offence from murder to manslaughter because the arrest was illegal, but if the illegality was known to the offender it may be evidence of provocation. (Code, Art. 229.)

Husband and Wife.

Compulsion of Wife.—(See p. 504, *ante*.)

Duty of Husband to Provide Necessaries.—(See Maintenance, *post*.)

Not Accessories after the fact to each other's Offences.—(See Parties to Offences, p. 63, *ante*.)

Stealing by Husband or Wife.—(See Theft, *post*.)

Ignorance.

Ignorance of the Law.—The fact that an offender is ignorant of the law is not an excuse for any offence committed by him. (Code, Art. 14.)

The general principle that every person is presumed to know the law (1) is so strong that it has been held to be no defence for a foreigner, charged with a crime committed in England, to show that the act was no offence in his own country, and that he did not know he was doing wrong in doing it in England. (2)

An exception to the general rule is made in Article 12, which enacts that a person acting under a bad warrant shall, if he, in good faith and without culpable ignorance and negligence, believe

(1) Broom's Leg. Max. 6 Ed. 247; R. v. Crawshaw, Bell, 303.
(2) R. v. Esop, 7 C. & P. 456; Barronet's case, 1 E. & B. 1.

it to be good in law, be protected from criminal responsibility, and that *ignorance of the law shall in such case be an excuse.* (Code, Art. 21.)

Ignorance of fact.—Ignorance or mistake in point of fact will, as a rule, be a good and sufficient excuse. (1) For it may negative the existence of an evil intent; so that whenever any one, without fault or carelessness, is, while pursuing a lawful object, misled concerning facts, and acts upon them as he would be justified in doing were they what he believes them to be, he is legally as well as morally innocent. Thus, A in his own house strikes a blow under the mistaken though *bona fide* belief that he is striking at a concealed burglar, but by this blow he kills B, a member of his own family. A is guilty of no offence. (2) But if the mistake be made in the course of doing an unlawful act, and some unintended or unforeseen consequence ensue from an act wrongful and unlawful in itself, or if the mistake be due to negligence, the actor will be criminally responsible. For instance, A kills B, a friendly visitor, through *negligently* mistaking him for a burglar. Although A cannot be convicted of murder he may be convicted of manslaughter by reason of his having *negligently* failed to acquaint himself with the true state of affairs. (3)

When a statute makes an act indictable, irrespective of guilty knowledge of some fact connected with it, ignorance of the fact will be no defence. (4) So that, where A. abducted B., a girl of 15 years of age, from her father's house believing in good faith and on reasonable grounds that B. was 18 years of age, he was held to have committed an offence, although if B had been 18 years of age, she would not have been within the statute. (5)

It has been held that a person licensed to sell intoxicating liquors cannot be convicted of "permitting drunkenness," unless he has knowledge of the drunkenness complained of. (6)

(1) 4 Bl. Com. 27.

(2) R. v. Levitt, Cro. Car. 538; 1 Hale. 474.

(3) Hudson v. MacRae, 4 B. & S. 585.

(4) Sedg. Stat. Law, 2nd Ed. 80; R. v. Jukes. 8 T. R. 536.

(5) R. v. Prince, L. R. 2 C. C. R. 154.

(6) Somerset v. Wade. 10 R. (Mch. 1894) 265.

IMMIGRATION.

The Governor-General may, by proclamation, whenever he deems it necessary, prohibit the landing of pauper or destitute immigrants in all ports or any port in Canada, until such sums of money as are found necessary are provided and paid into the hands of one of the Canadian immigration agents by the master of the vessel carrying such immigrants for their temporary support and transport to the place of destination. (1) And the Governor-General may by proclamation, when he deems it necessary prohibit the landing in Canada of any criminal or other vicious class of immigrants, except upon such conditions, for insuring their re-transportation to the port in Europe whence they came, as the Governor-in-Council prescribes. (2)

Every passenger on board any vessel, arriving in the port or harbor to which the master, owner, or charterer of such vessel engaged to convey him shall be entitled to remain and keep his luggage on board such vessel during 48 hours after her arrival in such port or harbor; and every such master who compels any passenger to leave his vessel before the expiration of the said term of 48 hours shall incur a penalty not exceeding $20 for every passenger he so compels to leave his vessel; and the master of the vessel shall not before the expiration of the said 48 hours remove any berths or accommodation used by his passengers under a like penalty, except with the written permission of the medical superintendent at the proper quarantine station. (3)

As to seduction of female passengers by any master, officer or seaman on board a vessel while in Canadian waters, see Art. 184 of the Code, under the head of SEDUCTION, *post*.

INCEST.

Every parent and child, every brother and sister, and every grand-parent and grand-child, who co-habit or have sexual intercourse with each other, shall each of them, IF AWARE OF THEIR CONSANGUINITY, be deemed to have committed incest, and be guilty

(1) R. S. C., c. 65, sec. 23.
(2) *Ib.* sec. 24.
(3) *Ib.* sec. 25.

of an indictable offence and liable to 14 years' imprisonment, and the male person shall also be liable to be WHIPPED: Provided that, if the court or judge is of opinion that the female accused is a party to such intercourse only by reason of the restraint, fear or duress of the other party the court or judge shall not be bound to impose any punishment on such person. (Code, Art. 176.)

INDECENCY.

Indecent Acts.—Every one is guilty of an offence and liable, on summary conviction before two justices of the peace, to a fine of fifty dollars or to six months' imprisonment with or without hard labour, or to both fine and imprisonment, who wilfully—

(*a.*) in the presence of *one* or more persons does any indecent act in any place to which the public have or are permitted to have access; or

(*b.*) does any indecent act in any place intending thereby to insult or offend any person.

Sec. 6, of 53 Vic., c. 37 (which remains unrepealed), expressly mentions *indecent exposure of the person* as a punishable offence. It reads as follows:

"Every one who wilfully commits any indecent exposure of the person or act of gross indecency in any public place, in the presence of *one* or more persons, is guilty of a misdemeanor, and liable, on summary conviction before two justices of the peace, to a fine of fifty dollars or to six months' imprisonment with or without hard labour, or to both fine and imprisonment."

It has been held in England that the offence of indecent exposure of the person may be indictable if committed before several persons, even if the place be not public, (1) and that men who bathe—without any screen or covering—so near to a public footpath that exposure of their persons must necessarily occur, are guilty of an indictable nuisance. (2)

(1) R. v. Wellard, 14 Q. B. D. 63; 54 L. J. (M. C.) 14.
(2) R. v. Reid, 12 Cox, 1; *per Cockburn*, C. J.

Gross Indecency.—Every male person is guilty of an indictable offence and liable to five years' imprisonment and to be whipped who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person, of any act of gross indecency with another male person. (Code, Art. 178.)

Indecent Assaults.—(See pp. 462, 463, *ante.*)

Posting Immoral Books, Etc.—(See Art. 180 of the Code.)

Publishing or Exposing Obscene Matter.—Every one is guilty of an indictable offence and liable to ten years' imprisonment who knowingly, without lawful justification or excuse—

(*a.*) publicly sells or exposes for public sale or to public view, any obscene book, or other printed or written matter, or any picture, photograph, model or other object tending to corrupt morals ; or

(*b.*) publicly exhibits any disgusting object or any indecent show ; or

(*c.*) offers to sell, advertises, publishes an advertisement of or has for sale or disposal any medicine, drug or article intended or represented as a means of preventing conception or causing abortion.

2. No one shall be convicted of any offence in this section mentioned, if he proves that the public good was served by the acts alleged to have been done.

3. It shall be a question of law whether the occasion of the sale, publishing, or exhibition is such as might be for the public good ; but it shall be a question for the jury whether there is or is not excess beyond what the public good requires.

4. The motives of the seller, publisher or exhibitor shall in all cases be irrelevant. (Code, Art. 179.)

(See VAGRANCY, *post.*)

INDIANS.

The provisions of the *Indian Act*, R. S. C., c. 43, have been modified and amended by the 51 Vic., c. 22, the 53 Vic., c. 29, the 54-55 Vic., c. 30, and the 57-58 Vic., c. 32.

Incitement of Indians to Riotous Acts.—(See p. 486, *ante*.)

Indian Graves.—To steal or unlawfully injure or remove any image, bone, article or thing deposited in or near any Indian grave, is an offence punishable, on summary conviction, by a penalty of $100 OR three months' imprisonment for a first offence, and by the same penalty AND six months' imprisonment, with hard labour, for a subsequent offence. (Code, Art. 352.)

INSANITY.

Insanity.—No person shall be convicted of an offence by reason of an act done or omitted by him when labouring under natural imbecility, or disease of the mind, to such an extent as to render him incapable of appreciating the nature and quality of the act or omission, and of knowing that such act or omission was wrong.

2. A person labouring under specific delusions, but in other respects sane, shall not be acquitted on the ground of insanity, under the provisions hereinafter contained, unless the delusions caused him to believe in the existence of some state of things which, if it existed, would justify or excuse his act or omission.

3. Every one shall be presumed to be sane at the time of doing or omitting to do any act until the contrary is proved. (Code, Art. 11.)

This Article corresponds with the decisions of English Judges on the subject. (1) Under the law as here expressed, a man may be insane, and still be convicted of an offence; in other words, notwithstanding his insanity he will be held responsible and punishable, unless his insanity was such that it rendered him inca-

(1) R. v. Oxford, 9 C. & P. 525; R. v. Offord, 5 C. & P. 168; McNaghten's Case, 10 Cl. & F. 200; R. v. Townley, 3 F. & F. 839.

pable of knowing that what he did was wrong; and, although a man may be labouring under some delusion when he commits an offence, he may still be convicted of and punished for that offence, unless the delusion were such that it made him believe that something then existed which if it had been a reality would have justified or excused what he did, as, for instance, a delusion that he was being violently attacked and in danger of being murdered, and that he was obliged in self defence to kill his supposed antagonist.

Drunkenness.—With regard to derangement of the mind by the use of intoxicating liquors, the rule is that if drunkenness be contracted voluntarily it will not relieve a person from responsibility for a criminal offence committed by him while in a drunken condition, whether at the time he knows what he is doing or not. (1) Still, if the act be one which must, in order to render it a criminal offence, be done with some particular intent, the fact of its being done when the offender is in a state of intoxication should be taken into account in deciding whether he has such intent or not. (2)

If the drunkenness be involuntary, as if a person be made drunk by stratagem or fraud, or by some mistake, as by a physician unskilfully administering some drug or intoxicant to a patient, or if a man become intoxicated in any other way than by his own voluntary act, he will not be responsible for an offence committed while so affected to an extent which prevents him from knowing what he is doing or from knowing that he is doing wrong. (3) Or, if, by habitual drinking, a person become affected by a fixed frenzy, delirium tremens, or other form of insanity, whether permanent or intermittent, he cannot be held responsible for an act done by him while thus affected, if he be thereby rendered incapable of knowing that the act is wrong, or if he be thereby subjected to some specific delusion causing him to believe in the existence of some state of things which, if real, would justify or excuse his act. (4)

Insanity of accused at time of offence.—Whenever it is given in evidence upon the trial of any person charged

(1) 1 Hale, 32; 1 Hawk, P. C. c. 1, sec. 6.
(2) R. v. Meakin, 7 C, & P. 297; R. v. Cruse, 8 C. & P. 541-546.
(3) 1 Russ. Cr. 5 Ed. 114.
(4) 1 Hale, 30; Burrow's Case, 1 Lewin, 25.

with any indictable offence, that such person was insane at the time of the commission of such offence, and such person is acquitted, the jury shall be required to find, specially, whether such person was insane at the time of the commission of such offence, and to declare whether he is acquitted on account of such insanity; and if it finds that such person was insane at the time of committing such offence, the Court before which such trial is had, shall order such person to be kept in strict custody in such place and in such manner as to the Court seems fit, until the pleasure of the Lieutenant-Governor is known. (Code, Art. 736.)

On the trial of a deaf mute for felony, he was found guilty, but the Jury also found that he was incapable of understanding and did not understand the proceedings at the trial; upon which finding it was held that the prisoner could not be convicted, but must be detained as a non-sane person during the Queen's pleasure. (1)

Insanity of accused on arraignment or trial.—If, at any time after the indictment is found, and before the verdict is given, it appears to the Court that there is sufficient reason to doubt whether the accused is then, on account of insanity, capable of conducting his defence, the Court may direct that an issue shall be tried whether the accused is or is not then, on account of insanity, unfit to take his trial.

If the verdict on this issue is that the accused is not then unfit to take his trial, the arraignment or the trial shall proceed as if no such issue had been directed. If the verdict is that he is unfit, on account of insanity, the Court shall order the accused to be kept in custody till the pleasure of the Lieutenant-Governor of the province shall be known, and any plea pleaded shall be set aside and the Jury shall be discharged.

But no such proceeding shall prevent the accused being afterwards tried on such indictment. (Code, Art. 737.)

Insane person discharged for want of prosecution.—If any accused person, brought before any court to be discharged for want of prosecution, appears to be insane, a jury shall be empanelled to try his sanity, and if they find him insane

(1) R. v. Berry, 45 L. J. M. C., 123.

the court shall order him to be detained until the pleasure of the Lieutenant-Governor is known. (Code, Art. 739.)

Custody of Insane Person.—In all cases of insanity so found, the Lieutenant-Governor may make an order for the safe custody of the person so found to be insane. (Code, Art. 740.)

INSPECTION.

The General Inspection Act, (R. S. C., c. 99), and its amendments, 50-51 Vic., c. 36, 52 Vic., c. 16, 54-55 Vic., c. 48, and 57-58 Vic., c. 36, provide for the inspection of the following staple articles of Canadian produce, namely: (*a.*) Flour and meal; (*b.*) Wheat and other grain, and hay; (*c.*) Beef and pork; (*d.*) Pot ashes and pearl ashes; (*e.*) Pickled fish and fish-oil; (*f.*) Butter; and (*g.*) Leather and raw-hides. And a variety of penalties are imposed for violations of the Act.

Section 6, provides that no INSPECTOR shall deal or trade in, or have any interest directly or indirectly, in the production of any article subject to inspection by him, or sell, or—*except for consumption by himself and his family*—BUY any such article. Penalty, for violation of this provision, $200 and forfeiture of office.

Section 6 (as amended by 57-58 Vic., c. 36, sec. 1), also provides that any DEPUTY INSPECTOR, *except a deputy inspector of grain*, may engage in the purchase and sale of articles inspected by him; but that, whenever he inspects any article in which he has a direct or an indirect interest, he shall brand it under his name as branded thereon, with the words "DEPUTY INSPECTOR AND OWNER." And every DEPUTY INSPECTOR who violates any provision of the Act incurs a penalty not exceeding $100 and forfeiture of office.

Gas Inspection.—The *Gas Inspection Act*, (R. S. C. c. 101), provides for the appointment, by the Governor-General in Council, of inspectors of gas and gas meters in every city, town, village or place in Canada where gas is made for use, and for regulating the verification and stamping of gas meters, for testing the quality and purity of gas, and for punishing offences against the Act.

Amendments to the Act have been made by 53 Vic., c. 25.

Electric Light.—The appointment of electric light inspectors, the inspection, verification and stamping of electric light meters, and the testing of electric wires, lines, fittings and apparatus are provided for by the *Electric Light Inspection Act*, (57-58 Vic., c 39.)

Section 10 of the Act provides that any person, who maliciously or fraudulently abstracts, causes to be wasted or diverted, consumes or uses any electricity, shall be deemed guilty of theft and punishable accordingly.

Prosecutions under the Act must be commenced within 3 months after the offence is committed. (Section 34.)

So soon as the standards and apparatus have been obtained and approved, the Governor in Council may issue a proclamation, fixing a day, not less than 6 months from the date of such proclamation, upon which the provisions of the Act respecting inspection shall go into operation, and may, from time to time, determine at and for what places inspectors shall be appointed, and until such inspectors are appointed the Act shall not be deemed to have come into operation with respect to such places. (Section 36.)

Inspection of Petroleum.—See the *Petroleum Inspection Act*, (R. S. C., c. 102), and its amendments, 54-55 Vic., c. 49, 56 Vic., c. 36, and 57-58 Vic., c. 40.

Inspection of Ships.—See the *Inspection of Ships Act*, (54-55 Vic., c. 37), amended by 57-58 Vic., c. 45.

Steamboat Inspection.—See the *Steamboat Inspection Act*, (R. S. C., c. 78), and its amendments, 52 Vic., c. 23, 53 Vic., c. 17, 54-55 Vic., c. 39, 55-56 Vic., c. 19, 56 Vic., c. 25, and 57-58 Vic., c. 46.

INTENT.

It is well established, as a general principle, that the essence of a criminal offence is the evil or wrongful intent with which the act is done. This is the doctrine embodied in the legal maxim, *Actus non facit reum nisi mens sit rea*, "The act itself does not make a man guilty, unless his intention were so." (1)

(1) Broom's Leg. Max., 6 Ed. 300.

This principle, however, is not to be taken as absolute and without limitation. For instance, the law may positively forbid a thing to be done, and declare, in absolute terms, that the doing of it shall be a criminal offence, and in such a case it becomes thereupon, *ipso facto*, illegal to do it wilfully, or, in some cases even ignorantly. (1)

In general, however, the intention of the party, at the time of committing an act charged as an offence, is as necessary to be proved as any other fact laid in the indictment, though it may happen that the proof of the intention consists in showing overt acts only, the reason in such cases being that every man is *prima facie* supposed to intend the necessary or even probable or natural consequences of his own acts. (2)

See CAPACITY FOR CRIME, p. 495, *ante*.

See IGNORANCE, p. 570, *ante*.

See INSANITY, p. 575, *ante*.

INTIMIDATION.

Intimidation of any person.—Everyone is guilty of an indictable offence, and liable, on indictment or on summary conviction before two justices of the peace, to a fine not exceeding $100 or to three months' imprisonment, with or without hard labor, who wrongfully and without lawful authority, with a view to compel any other person to abstain from doing anything which he has a lawful right to do, or to do anything from which he has a lawful right to abstain,—(*a*) uses violence to such other person, or his wife or children, or injures his property; or (*b.*) intimidates such other person, or his wife or children, by threats of violence to him, her or any of them, or of injuring his property; or (*c.*) persistently follows such other person about from place to place; or (*d.*) hides any tools, clothes or other property owned or used by such other person, or deprives him of or hinders him in the use thereof; or (*e.*) with one or more other persons follows such other person in a disorderly manner, in or through any street

(1) *Ib.*, 301; *See* R. v. Prince, L. R. 2 C. C. R. 154, 175; *cit.* at p. 571, *ante*.
(2) Broom's Leg. Max. 304; R. v. Moore, 3 B. & Ad. 188; R. v. Hicklin L. R. 3 Q. B. 375.

or road ; or (*f.*) besets or watches the house or other place where such person resides or works, or carries on business, or happens to be. (Code, Art. 523.)

A threat made to a workman that his fellow-workmen will strike, unless he joins a union, or a threat made to a master that the union men in his employ will strike if he continues to employ non-union men, was held not to be intimidation, because, as strikes are now lawful, the mere threat to strike,—which is a lawful act, cannot amount to intimidation. (1)

Clause (*f*) of the above article expressly forbids picketing, as being an act of unlawful intimidation ; and a threat to picket has also been held to be intimidation. (2)

The law allows simple watching or attending near a place to obtain or communicate information. (3)

Intimidation of workmen, etc.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, in pursuance of any unlawful combination or conspiracy to raise the rate of wages, or of any unlawful combination or conspiracy respecting any trade, business or manufacture, or respecting any person concerned or employed therein, unlawfully assaults any person, or, in pursuance of any such combination or conspiracy, uses any violence or threat of violence to any person with a view to hinder him from working or being employed at such trade, business or manufacture. (Code, Art. 524.)

Intimidation of produce dealers, stevedores, ship carpenters, ship laborers, etc., by violence or threats.—This is an offence punishable, on indictment or on summary conviction before two justices, by $100 fine, or three months' imprisonment, with or without hard labor.

Intimidating bidders at sales of public lands.—This is indictable and punishable by $400 fine or three months' imprisonment, or both. (Code, Art. 526.)

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(1) Connor v. Kent, Gibson v. Lawson, Curran v. Treleaven, (1891), 2 Q. B., 545 ; 61 L. J. (M. C.), 9.

(2) Judge v. Bennett, 52 J. P. 247.

(3) R. v. Bauld, 13 Cox 282.

See CONSPIRACY IN RESTRAINT OF TRADE p. 505, *ante*, and TRADE COMBINATIONS, p. 506, *ante*.

CONSPIRACY TO INTIMIDATE A LEGISLATURE. See Art. 70 of the Code.

INTOXICATING LIQUORS.

Liquor Selling.—Under the common law, and aside from statutory inhibitions and restrictions, it is no offence to sell or to keep a place for selling intoxicating liquor without a license, provided the place be kept and conducted in an orderly and proper manner. (1) But the place may, by the manner of keeping and conducting it, become a common law nuisance and a disorderly house, and the keeper thereof may render himself liable to indictment (2) by, for instance, permitting dissolute persons to be tippling, carousing, swearing, hallooing, and the like in and around his premises. (3) In such a case, moreover, he will not be protected from the charge, even if he have a license for selling. (4) For, as has been said, by the court, in an American case, "The license to retail liquor is not, in the eye of the law, a license to keep a nuisance." (5)

Respective Powers of Dominion Parliament and of Provincial Legislatures.—The "regulation of trade and commerce" is one of the classes of subjects expressly placed under the control of the Dominion Parliament, by section 91 of the B. N. A. Act, which moreover, gives to the Dominion Parliament a general authority to legislate for the peace, order and good government of Canada, and to make laws in relation to all matters not expressly assigned to the provincial legislatures. Section 92 of the B. N. A. Act gives to the provincial legislatures the right (among other local powers) to legislate as to shop, saloon and tavern licenses in order to the raising of a revenue for provincial purposes. And as an incident to this right, and in the exercise of the power (also conferred on them) to legislate as to property and civil rights

(1) R. v. Joyce, 2 Show, 468.
(2) Stephens v. Watson, 1 Salk. 45; Walker v. Brewster, L. R. 5 Eq. 22.
(3) S. v. Bertheol, 6 Blackf. 474.
(4) U. S. v. Elder, 4 Cranch. C. C. 507.
(5) S. v. Mullikin, 8 Blackf. 260.

and matters of a merely local or private nature, the provincial legislatures may make reasonable police or municipal regulations in connection with such licenses and may pass legislation imposing fines and penalties including imprisonment with hard labour, for selling liquor without license. (1)

But the closing paragraph of section 91 provides that,—notwithstanding anything in the Act contained,—any matters which come within the subjects placed, by section 91, within the jurisdiction of the Dominion Parliament, SHALL NOT BE DEEMED TO COME WITHIN the classes of subjects assigned by section 92 to the provincial legislatures. And it has been held that the *Canada Temperance Act*,—the object of which is to promote temperance throughout the Dominion, by prohibiting the sale of any intoxicating liquor as a beverage, in any county or city wherein it is adopted,—is an Act which relates to the regulation of trade and commerce and to matters within the Dominion Parliament's general authority to legislate for the peace, order and good government of Canada, and that, although that Act is legislation which, in the counties and cities in which it is adopted, affects property and civil rights and interferes with shop, saloon and tavern licences and local and private matters, it is constitutional and within the legislative power of the Dominion Parliament; (2) the principal ground of this and other decisions on the subject being that the Dominion Parliament is the dominant power, and that all *bona fide* legislation, which it passes, upon matters comprised in the classes of subjects enumerated in section 91, is within its competency, no matter how much such legislation may affect, override or even exclude or supersede the powers of the local legislatures with reference to any of the subordinate classes of subjects enumerated in section 92; and that, in short, whenever the subject matter of any Dominion Act falls within any of the classes of subjects placed by section 91 under the control of the Dominion Parliament, it is immaterial to the constitutional legality of such Act that it also trenches upon or covers one or more of the classes assigned, by section 92, to the provincial legislatures, and that in such a case the subordinate power of the provincial legislature must give way to the dominant

(1) R. v. Hodge, 7 Ont. A. R. 246; Hodge v. R., L. R. 9 App. Cas. 117.
(2) Russell v. R., L. R. 7 App. Cas. 829.

power of the Federal parliament, as far as may be necessary to render the Dominion statute effective.

In places, therefore, which have adopted the *Canada Temperance Act*, (the provisions of which are noticed further on, at p. 595, *post*,) that Act overrides provincial legislation on the subject of licences for the sale of intoxicating liquors. But, in places where the Act has NOT been adopted, the sale of intoxicating liquors as a beverage, and the granting of licenses for the sale thereof may be regulated by provincial statutes.

It has been held that sec. 18 of 53 Vic. c. 56 (Ont), and sec. 1 of 54 Vic. c. 46 (Ont), allowing, under certain conditions, municipalities to pass by-laws for prohibiting the sale of spirituous liquors is *intra vires* the Ontario Legislature. (1) And in the province of Quebec it has been held that Article 561 of the Municipal Code as amended by 51-52 Vic., c. 29 (Que.) sec. 6., (R. S. Q., Art. 6118), by which a municipality is authorized to prohibit,—within a municipality,—the sale of intoxicating liquors in quantities less than two gallons is within the powers of the provincial legislature. (2)

The sale of intoxicating liquors and the granting of licences for the sale thereof are governed, in the province of Quebec, by the R. S. Q., Articles 828 to 942, 52 Vic. c. 52, (Que.), 54 Vic. c. 13, (Que.), 55-56 Vic., c. 11, and 56 Vic., c. 16 (Que.); in the province of Ontario by the R. S. O., c. 194, as amended by 51 Vic. c. 30 (Ont.), 52 Vic., c. 41, (Ont.), 53 Vic. c. 56, (Ont.) 54 Vic. c. 46, (Ont.), 55 Vic. c. 51, (Ont.), and 56 Vic. c. 40 (Ont.); in the province of Nova Scotia, by 50 Vic. chaps. 38-43, (N. S.), 52 Vic. c. 17 (N. S.), 53 Vic. c. 18, (N. S.), 54 Vic. chaps. 26-28 (N. S.), and 55 Vic. chaps. 23, 24 (N. S.); in the province of New Brunswick by C. S. N. B., c. 105; in the province of British Columbia by the *License Acts*, 51 Vic. chaps. 73 & 76 (B. C.), 52 Vic. c. 10 (B. C.), the *Liquor License Regulation Act*, 1891, 54 Vic. c. 21 (B. C.), and the *License Amendment Acts*, 1894, 57 Vic. c. 28, & c. 29; in the province of Manitoba by the R. S. (Man.), c. 90, 55 Vic. c. 24, and 56 Vic. c. 18, (Man.)

Intoxicating liquors are not allowed to be manufactured, com-

(1) *In re Local Option Act*, Ont. A. R. 572; 11 C. L. T. 294.
(2) Corporation of Huntingdon & Moir, 7 M. L. R. (Q. B.) 281.

pounded or made in the North West Territories, nor in the district of Keewatin, except by special permission of the Governor in Council; and no intoxicating liquors are allowed to be imported or brought into the Territories or into Keewatin from any province of Canada nor to be sold, exchanged, traded or bartered. or had in possession, except by special permission of the Lieutenant-Governor, (R. S. C. c. 50, sec. 92; R. S. C. c. 53, sec. 35.)

It has been held that under the Liquor Licensing laws of the province of Quebec, a municipal council has a discretion to refuse the renewal of a license, on the ground of there being no necessity for its existence, although the application for such renewal was supported by the signatures of the requisite number of the resident electors of the parish and complied in other respects with all the technical requirements of the law. (1)

It is enacted by the Imperial statute 33-34 Vic., c. 29, sec. 14, that every person convicted of felony shall forever be disqualified from selling spirits by retail; and this section has been held in England to apply to persons convicted before the Act was passed. (2)

On an application for a SHOP LICENSE under sub-section 14 of section 11 of the Ontario *Liquor License Act*, R. S. O., c. 194, as amended by 53 Vic. c. 56, (Ont.) sec. 1, it is imperative that the petition which is to be filed with the inspector before April 1st, be accompanied by a properly signed certificate of the majority of the electors, and the Act does not authorize the granting of such a license contrary to the provisions of that section, and it has been held that where the applicant for such a license omitted to file the certificate until some time after the first of April the granting of the license would on that account be contrary to the provisions of the section; but that it would be otherwise as to a TAVERN LICENSE, in which case a discretion rests with the commissioners. (3)

A regulation by license commissioners requiring the lower half of bar-room windows to be left uncovered during prohibited hours

(1) St. Amour v. Corporation de St. Erançois de Sales, 7 M. L. R. (S. C.) 4:9.

(2) Vine v. Leeds, 44 L. J. M] C. 60.

(3) *In re* Robert H. Hunter's License, 24 Ont. R. 721. 14 C. L. T. 126.

is valid and reasonable, and a defendant was held by the Ontario Court of Appeal rightly convicted of a breach of the regulation. (1)

The principal offences which, in places where the *Canada Temperance Act* is not in force, can be committed in connection with the liquor traffic are: the SELLING of intoxicating liquor WITHOUT A LICENSE; and the SELLING of intoxicating liquor by a licensee DURING PROHIBITED HOURS OR in ANY PLACE in which he is NOT AUTHORIZED BY HIS LICENSE to sell it.

Selling without license.—Upon a charge of selling intoxicating liquor without a license, there must be evidence to show that the liquor sold was intoxicating liquor. (2)

It is a question of fact whether the liquor sold is intoxicating; and a mild beverage which would not cause perceptible intoxication to some persons, may be held to be intoxicating if it exhilirates the parties who drink it, though it might not be sufficiently strong to affect habitual users. (3)

A conviction, upon a charge of selling without license, should contain an allegation that the sale was without license. (4)

A conviction for that one H did sell wine, beer and other spirituous or fermented liquors, to wit, one glass of whiskey, CONTRARY TO LAW, was held bad, for uncertainty, in not showing whether the offence was selling without a license, or selling by a licensee during illegal hours. (5)

A defendant purchased for $25 from a duly licensed hotelkeeper the day's receipts of the bar; and at the close of the day such receipts were paid over to him. *Held*, that a conviction against the defendant for selling liquor without a license, contrary to the Ontario *Liquor License Act*, could not be supported, and it was accordingly quashed. (6)

The License Act in New Brunswick provides that in cities all applications for licenses shall be considered by the mayor at a

(1) R. v. Martin, 21 Ont. A. R. 145.
(2) R. v. Grannis, 5 Man. L. R. 153; R. v. Bennett, 1 Ont. R. 445.
(3) R. v. McDonald, 24 N. S. R. 35.
(4) *Ex parte* Woodhouse, 3 L. C. R. 94.
(5) R. v. Hoggard, 30 U. C. Q. B. 152.
(6) R. v. Westlake, 12 C. L. T. 97.

meeting to be held *not later* than the first of April in each year. It was held that the fact of the meeting to consider the applications for licenses not being held till after the first of April was no defence to a charge of selling liquor without a license. (1)

It has been held in Ontario that the quashing of a by-law under which a certificate has been granted and a license issued to sell spirituous liquors does not nullify the license, and that a conviction, under these circumstances, for selling liquor without license could not be supported. (2)

A conviction for selling liquor without a license is bad, if it do not specify the day on which the offence was committed. (3)

Under section 112 of the Ontario *Liquor License Act*, R. S. O., c. 194 (amended by 53 Vic. c. 56, (Ont,), sec. 113) the occupant of the house in which an offence is committed is personally liable to the penalty. Thus, where a married woman was the lessee of the premises and the husband in her absence sold liquor without a license, she was held liable to conviction. (4)

A defendant,—who had been a licensed hotel keeper, having a bar furnished with a counter and the usual appliances for the sale of liquor, but whose license had expired,—was asked by a couple of persons for whiskey. He told them he could not sell it, and gave them temperance drinks, and, on being paid therefor, he treated them to whiskey, which he obtained from a bottle behind the counter. He was convicted under sec. 50 of the *Liquor License Act*, R. S. O. c. 194 for permitting spirituous liquors to be drunk in his house, being a house of public entertainment; and the conviction was maintained. (5)

It has been held in Ontario that a wife who sells liquor at the husband's place of business, in his absence, is his agent, so that the husband may be convicted for the act of the wife. (6)

It has however been held that if the act of sale by a person other

(1) *Ex parte* Driscoll, 27 S. C. N. B. 216.
(2) R. v. Stafford, 22 U. C. C. P. 177.
(3) R. v. French, 2 Kerr, 121.
(4) R. v. Campbell, 8 U. C. P. R. 55.
(5) R. v. Richardson, 11 C. L. T., 154.
(6) R. v. McCauley, 14 Ont. R. 643.

than the occupant were an isolated act, wholly unauthorized by the occupant and not in any way in the course of his business, but a thing done by the unwarranted or wilful act of the subordinate, the occupant might escape personal responsibility. (1)

It has been held, in England, that a sale in a club to a member thereof was not a sale, within the meaning of the *Liquor License Acts*, even when the liquor was for consumption off the club premises. (2) And the members of a club committee were held not liable for the wrongful sale by the club's steward, contrary to their order and without their knowledge. (3)

But where liquor was supplied—by a limited company carrying on a proprietory club,—to and paid for by a person who had been named an "honorary member," pending enquiries and pending his election as an active member and had paid his subscription, but not being elected as an active member, his subscription was subsequently returned to him, it was held that there was a sale to him by the company of the liquor by retail for which the company were liable in penalties. (4)

It has been held that where, in a club incorporated under the *Benevolent Societies Act* (R. S. O. c. 172) liquor was sold or supplied to members, but such sale or supply was not the main or special object of the club, there was no violation of the *License Act;* but that it was otherwise where the sale or supply of liquor was the main object of the incorporation, and that the question was one for the decision of the magistrate upon the evidence, and that there being some evidence to support the magistrate's finding that liquor selling was the main object of the club with intent to evade the *Liquor License Act*, the Court would not interfere with the magistrate's finding. (5)

Upon a motion to quash a conviction for selling liquor without a license, it appeared that at a dinner given at the Ottawa Club, a purely social club, one of the guests, who was not a member of the club, ordered some wine, in payment of which he gave to the

(1) R. v. King, 20 U. C. C. P. 246.

(2) Graff v. Evans, 8 Q. B. D, 373; 51 L. J. M. C. 25. See cases cited at pp. 441 & 571, *ante.*

(3) Newman v. Jones, 55 L. J. M. C. 113.

(4) Bowyer v. Percy Supper Club, 5 R. (1893) 472.

(5) R. v. Austin, 17 Ont. R. 743.

waiter his cheque, which was delivered by the waiter to the steward, who, on the following morning, handed it to the defendant, the secretary of the club, which was the first he knew of the sale, and, so far as appeared, he was not aware that the guest was not a member. *Held*, that the sale was complete when the cheque was accepted by the waiter, but, as there was no evidence to show that the defendant was, in any way, aware that the wine was to be sold to anyone not a member of the club, and as the club was the proprietor and owner of the wines and the steward its agent, and in no sense the agent of the defendant, the latter could not be convicted for the act of any other servant of the club to which he was neither party nor privy; and the conviction was accordingly quashed. (1)

Where a particular act constitutes the offence, it is enough to describe the act in the words of the statute; and so a conviction under the 32 Vic. (Ont.) c. 32, alleging that the defendant sold spirituous liquors by retail without license at such a time and at such a place was held sufficient without specifying the kind and quantity of liquor sold. (2)

Though the general rule of law is that the burden of proof lies on the party substantially asserting the affirmative, there is an exception in the case of a prosecution for selling liquor without a license; and the burden of proving the existence of a license, where such is required to legalize the act, is upon the defendant. It is for him to show his license, and not for the prosecutor to make proof negativing its existence. (3)

Selling during prohibited hours.—It is only the holder of a license who can be prosecuted for selling on prohibited days or in prohibited hours. (4)

When a defendant is charged with selling liquor during prohibited hours, there must be proof of the license in order to justify a conviction. (5)

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(1) R. v. Hodgins, 24 Ont. R. 433 (*a*).

(2) R. v. King, 20 U. C. C. P. 246; *Re* Donnelly, 20 U. C. C. P. 165.

(3) *Re* Barrett, 28 U. C. Q. B. 559; *Ex parte* Parke, 3 Allen, 237; R. v McNicol, 11 Ont R. 659.

(4) R. v. Duquette, 9 U. C. P. R. 28; R. v. French, 34 U. C. Q. B. 403.

(5) R. v. Williams, 8 Man. L. R. 342. 12 C. L. T. 282.

Sections 54 and 58 of the Ontario *Liquor License Act* do not authorize the sale of intoxicating liquor to a lodger during prohibited hours. The most that can be said is that a sale to a lodger does not make him an offender. (1)

The Imperial statute, 37-38 Vic., c. 49, sec. 30, provides that no licensed person is liable to any penalty for supplying during prohibited hours his private friends, *bona fide* entertained by him, at his own expense. But, when, on the break-up of a customer's supper party the landlord invited nine of his customer's guests to wine, after hours, it was held that he was rightly convicted of KEEPING OPEN, as he could not convert those people into private friends. (2)

It has been held that a constable who, by order, visits saloons on Sundays to see whether or not the law with respect to the sale of liquor is being obeyed is a *bona fide* traveller within the meaning of the Act. (3)

The Licensing Acts generally contain some provision to enable a licensee to serve drink to a *bona fide* traveller, on prohibited days or in prohibited hours.

The test whether a man is a *bona fide* traveller, who may be served with drink during prohibited hours, is the object of his journey.

A *bona fide* traveller under the English *License Acts*, is one who travels three miles for business or for pleasure, and does not include one who travels that distance solely with the object of obtaining drink; and the licensee who serves such a man, if, as in the case in point, he knows the man's object, may be convicted of the offence of selling during prohibited hours. (4)

A man left his home on a Sunday morning and walked three quarters of a mile to a railway station and thence took the train to another station about 2½ miles off, where he was employed as a porter. He afterwards left the station and walked to certain li-

(1) R. v. Southwick, 12 C. L. T. 173.
(2) Corbet v. Haigh, 5 C. P. D. 50.
(3) R. v. Harris, 2 Brit. Col. L. R. 177.
(4) Penn v. Alexander, 5 R. (1893), 251. 1 Mon. Law Dig. 578.

censed premises where he was served with beer. The licensed premises were less than a mile from the station where he was employed, but more than three miles from his residence. *Held* that he was a *bona fide* traveller within the English *Licensing Act*. (1)

Selling off the Licensed Premises.—A license to sell intoxicating liquor only extends to permit a sale on the premises licensed, and not to other premises forming no part of the licensed premises, though such other premises belong to the same person.

The defendant, in an Ontario case, was licensed to sell in and upon premises known as the "Palmer House," which stood upon the front of a deep lot owned by the defendant, the rear part of such lot having been for many years enclosed and used as a fair ground. Facing this ground and opening therein was a booth, the back of which formed part of a fence which separated the fair ground from the yard in the rear of the defendant's hotel. The distance between the nearest out-building of the hotel and the booth was 50 yards, and it did not appear that the booth was used at all in connection with the hotel. A conviction for selling liquor without a license in the booth was held proper, inasmuch as it was no part of the licensed premises. (2)

A company was incorporated under the *Joint Stock Letters Patent Act*, R.S.O., c. 157, for establishing a driving park to improve the breed of horses, etc., and, for such purposes, to acquire the Dufferin Park property, on Dufferin Street, Toronto, with power to erect a club house, and, subject to the Liquor License Act, to maintain and rent or lease the same, for social purposes, etc.; and generally to do all things incidental or conducive to the objects aforesaid.

Held, that the charter did not authorize the company to have a club house at any other place than that specified in the charter; and where, therefore, the defendant was found in possession of and selling liquor at a place called the Occident Hall, on Queen Street, though claimed to be a club constituted under the charter, and of which the defendant claimed to be the secretary, he was properly convicted under section 50 of the Liquor License Act,

(1) Cowap v. Atherton, 5 R. (1893), 86.
(2) R. v. Palmer, 4 U. C. Q. B. 262.

R. S. O., c. 194, (Ont.), of unlawfully keeping liquor for sale, barter or traffic, without a license. (1)

The Imperial Act, 35-36 Vic., c. 94, makes it an offence for any person to sell or expose for sale by retail any intoxicating liquor without being duly licensed to sell the same, or to sell or expose for sale any intoxicating liquor at ANY PLACE WHERE HE IS NOT AUTHORIZED BY HIS LICENSE TO SELL THE SAME; and it has been held that, a person holding, under that Act, a retail license in one town is not entitled (without another license) to have in another town an office where his agent takes orders only, and which orders are executed at the head establishment. The facts were these: S. had in Worcester an establishment duly licensed, and in Cheltenham he had an office where no liquors were kept. An order was given in Cheltenham by A., to whom the goods were afterwards sent direct from the establishment in Worcester; and it was held that the agent, in Cheltenham, who received the order there, from A., was rightly convicted of selling without a license. (2) And sending liquor to a place where it was raffled for, the licensee taking the money, was held to support a conviction for selling at an unlicensed place. (3)

It is an offence under the *Liquor License Act*, R. S. O, c. 194, (Ont.), and amendments, thereto, for a chemist or druggist to allow intoxicating liquor, sold by him or in his possession, to be consumed in his shop by the purchaser thereof; and it is not essential that he should be registered; and a conviction therefor was sustained. (4)

A conviction for an offence against the *Liquor License Acts* must show jurisdiction in the magistrate, by stating the place where the offence was committed; and a clause providing that a conviction shall not be void for defects in form or substance does not cure an objection of this kind, but only applies when it can be understood from the conviction that it was made for an offence within the jurisdiction of the convicting magistrate. (5)

(1) R. v. Charles, 14 C. L. T., 40.
(2) Shellard v. Marks, 3 Q. B. D. 412; 47 L. J. M. C. 91.
(3) Seager v. White, 51 L. T. (N.S.) 261.
(4) R. v. McCay, 13 C. L. T. 203; 23 Ont. R. 442.
(5) R. v. Young, 5 Ont. R. 184.

Where the jurisdiction of the justice appeared on the conviction, the offence being alleged to have been committed at the town of Moncton, where it was tried, and the conviction being in the form prescribed by the R. S. (N. B.) c. 138, and the place of sale spoken of at the trial appearing to be known to all parties, and there having been no objection then made that it was not within the justice's jurisdiction, it was held that the jurisdiction sufficiently appeared, though there did not appear to be positive evidence that the offence was committed within the limits of the town of Moncton. (1)

A defendant was summarily convicted in New Brunswick of a violation of the *Canada Temperance Act*. The summons was served on the defendant's wife at the defendent's last place of abode, as directed by Article 562 of the Code (p. 108, *ante*). Upon a rule for a *certiorari*,—granted on an affidavit of the defendant that from a date previous to the information until after the hearing he had been continuously out of the province, in the State of Maine,—it was held that the convicting justice could not acquire any jurisdiction over the person of the defendant while he was out of the province and that therefore the service was void and the conviction must be removed. (2)

In Nova Scotia, it has been held that,—where a summons for selling liquor contrary to law was issued by two justices of the peace, and the case tried before one of them and another justice who had not signed the summons,—the conviction must be set aside. (3)

Where a conviction,—for unlawfully selling liquor in violation of the provisions of the Nova Scotia *Liquor License Act*, 1886, and amending Acts,—omitted to show that the offence was commited within 90 days from the date of the laying of the information, it was held that the conviction was bad. (4)

Where a defendant was convicted for that he did sell liquor "within 90 days before the 28th August, the date of the information herein, to wit, between the 29th day of May, 1890, and the

(1) *Ex parte* Dunlop, 3 Allen, 281.
(2) *Ex parte* Fleming, 14 C. L. T. 106.
(3) Weeks v. Bonham, 2 Russ. & Ches. 377.
(4) R. v. Adams, 13 C. L. T. 466.

28th day of August, 1890, a motion was made to set aside the conviction, on the ground that the time of the commission of the offence was not stated in the conviction. *Held*, that this ground did not cover the objection that upon the face of the conviction the offence might have been committed on a date barred by the limit of the statute (1)

The defendant was detained in gaol under a warrant issued on a conviction of a third offence against the Ontario Liquor License Act, the warrant reciting the conviction in question and the first conviction, and also the fact that subsequent to the first conviction, on a day mentioned, the defendant was "again" convicted. *Held*, that the warrant, which directed the levying of a fine and the imprisonment of the defendant, and ordered among the costs to be paid by him, costs of conveying to gaol, was good, and that the word "again" was a sufficient statement that the conviction recited was a second conviction. (2)

In order to maintain a conviction for a third offence under sec. 94 of the Quebec License Law, as amended by 50 Vic., c. 3, sec. 11 (now Article 926 R. S. Q.), the previous convictions need not have been under the same license nor during the same license year, but may have been under a license of a previous license year. (3)

A defendant was indicted and convicted, under Article 154 of the Criminal Code, of an attempt by corrupt means to dissuade a witness from testifying upon certain prosecutions against the defendant and another, for offences against the Ontario *Liquor License Act*, R. S. O. c. 194. On a case reserved the defendant's counsel contended that the defendant should not have been prosecuted under Article 154 of the Code (which makes a corrupt interference or attempt to interfere with a witness indictable and punishable by TWO YEARS' imprisonment), but that the prosecution should have been under the provincial Act containing a provision against tampering with witnesses, inasmuch as the provision in question in the provincial Act was recognized in the Code, by Article 138, which makes it an indictable offence (punishable by ONE YEARS' imprisonment) to disobey any act of the Parliament of Canada or of ANY

(1) R v. Murphy, 13 C. L. T. 242; 24 N. S. R. 21.
(2) R. v. McLean, 14 C. L. T. 312.
(3) Desnoyers v. Bazin, 43 L. C. J. 225; See R. v. Black, 4 U. C. Q. B. 180.

LEGISLATURE of Canada. *Held* (following R. v. Lawrence, 43 U. C. Q. B. 164), that the provision in question in the Ontario License Act is still *ultra vires* the provincial legislature, and that Article 138 of the Code was passed merely to cover any case not otherwise provided for in the Code; and the conviction of the defendant under Article 154 of the Code was accordingly maintained. (1)

The Ontario *Liquor License Act*, as amended by 52 Vic. c 17, (Ont.) sec. 2, empowers any policeman, etc., to enter at any time any place WHERE LIQUORS ARE REPUTED TO BE SOLD, or where he believes that liquors are kept for sale or disposal contrary to the provisions of the Act, and to make searches in every part thereof, as he may think necessary. But it has been held that these words afford no protection to a policeman who invades a private house at an unreasonable hour, and without a well founded and honest belief that the law has been violated. (2)

Where, in Ontario, the defendants were committed for trial on a charge of obstructing a peace officer acting under a search warrant issued on an information charging reasonable ground for the belief that spirituous liquors were unlawfully kept for sale in an unlicensed house, it was held that the search warrant must be deemed to have been issued under section 131 of the Ontario *Liquor License Act*, R. S. O. 194 (amended by 55 Vic. [Ont.] c. 12), giving power to force an entrance into the premises, but containing no power to punish an obstruction, and that consequently the proceedings against the defendants for obstructing the officer must be under Article 263 of the Code. (3)

The Canada Temperance Act.—Under the *Canada Temperance Act* (R. S. C., c. 106) and its amendments (51 Vic., c. 34 and c. 35) one-fourth of the qualified Dominion electors of a county, or of a city, may petition the Governor-General for an order-in-council to prohibit the sale of any intoxicating liquor in such county or city. The petition is embodied in a notice addressed and sent to the Secretary of State, after TEN days' deposit thereof, for public examination, in the office of the sheriff or registrar of

(1) R. v. Holland, 14 C. L. T. 294.
(2) White v. Beckham, 14 C. L. T. 475.
(3) R. v. Hodge, 13 C. L. T. 204.

deeds, pursuant to a TWO WEEKS' NOTICE in two local newspapers. The Governor-in-Council may then, by proclamation published THREE TIMES in the *Canada Gazette*, and THREE TIMES in the *Official Gazette* of the province where the county or city is situated, direct a poll to be held for taking the votes of the electors for and against the adoption of the petition.

In the case of a city which is within the territorial limits of a county, the Act may be brought into force, as to such city, upon petition and vote of the electors of such city alone. (1)

If, by the electors of the county or city to which it relates, the petition be adopted, the Governor-in-Council may, at any time after the expiration of SIXTY DAYS from the day of its adoption, declare, by order-in-council published in the *Canada Gazette*, that the second part of the Act shall be in force and take effect in such county or city from and after the expiration of certain specified delays, which vary according to whether there are or are not any liquor licenses then in force in such county or city, and according to the time of the expiration of such licenses, if any. (R. S. C., c. 106, sec. 95.)

A poll had been held in the county of Kings, N.S., and the Governor-in-Council declared by proclamation that the second part of the Act should be in force and take effect "upon, from and after the day on which the annual or semi-annual licenses now in force in said county will expire." There were then no licenses in the county, and there had been none for years previously. *Held*, that no day had been fixed, either by the statute or by proclamation, for bringing the second part of the Act into force.(2)

No order in council issued under the Act can be revoked until after the expiration of THREE YEARS from the date of the coming into force, under it, of the second part of the Act; and no petition for any such revocation can be submitted to the vote of the electors more than THIRTY DAYS before the expiration of the three years. (3)

When a petition for revocation is adopted by the electors of the

(1) Ex parte Dalton, 27 S. C. N. B. 426.

(2) R. v. Lyons, 5 Russ. & Geld. 201.

(3) R. S. C. c. 106, sec. 96, as amended by 51 Vic., c. 35, sec. 3.

county or city to which it relates, the Governor in Council may, at the expiration of THIRTY DAYS from its adoption, declare, by order-in-council, published in the *Canada Gazette*, that the second part of the Act shall be no longer in force. (1)

While the Act continues in force in any county or city, NO PERSON, by himself, his clerk, servant or agent, SHALL, therein, EXPOSE OR KEEP FOR SALE, or directly or indirectly, on any pretence or upon any device, SELL OR BARTER, or, in consideration of the purchase of any other property, GIVE, to any other person, any intoxicating liquor. (2) And every one so EXPOSING OR KEEPING FOR SALE, OR SO SELLING OR BARTERING OR GIVING any intoxicating liquor, is liable, on summary conviction, to a penalty of NOT LESS THAN $50 for the first offence, (3) of not less than $100 for the second offence, and to IMPRISONMENT not exceeding TWO MONTHS for the third and every subsequent offence. (4) And all intoxicating liquors in respect to which any such offence has been committed, and all kegs, barrels, bottles, etc., are subject to forfeiture. (5)

Provision, however, is made for the sale—by DRUGGISTS AND VENDORS THERETO SPECIALLY LICENSED—of WINE for exclusively SACRAMENTAL PURPOSES; (6) and for the purchase and sale by LEGALLY QUALIFIED PHYSICIANS, CHEMISTS OR DRUGGISTS (under certain special restrictions) of the following articles: (*a.*) the OFFICIAL PREPARATIONS of the authorized pharmacopœias, when made of full medicinal strength, and sold only FOR MEDICINAL PURPOSES; (*b*) any patent medicine, unless known to the vendor to be capable of use as a beverage, the sale of which is a violation of the Act; (*c.*) EAU DE COLOGNE, BAY RUM OR other PERFUMERY,

(1) 51 Vic. c. 35, sec. 9.

(2) R. S. C., c. 106, sec. 99.

(3) The words "not less than $50" mean JUST $50; and a conviction imposing $75 was quashed as being beyond the magistrate's jurisdiction.—R. v. Smith, 16 Ont. R. 454.

(4) It has been held that as the Act does not make it an offence to BUY liquor, a purchaser cannot be found guilty of an offence in respect of a SALE of liquor MADE TO HIM.—R. v. Heath, 13 Ont. R. 471. See also *Ex parte*, Barker, 11 C. L. T., 136.

(5) R. S. C., c. 106, sec. 100.

(6) *Ib.*, s. 99, sub-sec. 3.

LOTIONS, EXTRACTS, VARNISHES, TINCTURES, or other pharmaceutical preparations containing alcohol, and not intended for use as beverages; (*d.*) METHYLATED SPIRITS for pharmaceutical, chemical or mechanical uses; and (*e.*) SPIRITUOUS LIQUORS or ALCOHOL for PURELY MEDICINAL PURPOSES, or for *bona fide* use in some art, trade or manufacture. (1) And there are special provisions enabling producers of cider, distillers, brewers, vine-growing companies, manufacturers of pure native wines, and licensed wholesale dealers to make certain sales of their liquors. (2)

Prosecutions under the Act are summary and must be commenced within three months after the alleged offence. (3)

Prosecutions may be brought before any Judge of the Sessions of the Peace, recorder, police magistrate, stipendiary magistrate, sitting magistrate, commissioner of a parish court, two justices of the peace or any magistrate having the power or authority of two or more justices of the peace having jurisdiction where the offence was committed. (4)

As to warrants to search for and power to seize and forfeit and destroy intoxicating liquors and the kegs, etc., containing them, see sections 108 and 109 of the Act, as amended by 51 Vic., c. 34, secs. 10 and 11.

Section 115 of the Act shows the procedure upon an information for committing any offence against the Act, in case of a previous conviction or convictions being charged

There is no power to punish as for a third offence unless there have been two prior convictions for offences of the same nature, and where neither the record of conviction nor the evidence shows this, the conviction must be quashed. (5)

Section 110 of the Act makes it sufficient to state the unlawful sale of intoxicating liquor without stating the name or kind of such liquor. So, that, where a conviction under the Act stated that the defendant had sold "spirituous or other intoxicating li-

(1) 51 Vic., c. 34, sec. 5; 51 Vic., c. 35, sec. 11; 55-56 Vic., c. 26.
(2) R. S. C., c. 106, sec. 99, sub-secs. 5-8.
(3) *Ib.*, secs. 106, 107 (as amended by 51 Vic., c. 34, sec. 9).
(4) *Ib.*, sec. 103 (*as amended by* 51 Vic. c. 34, sec. 6.)
(5) R. v. Clark, 15 Ont. R. 49.

quors" and the proof was a sale of brandy, the conviction was amended, under section 118 of the Act, by striking out the words "spirituous or other." (1)

Proof.—When a bar, counter, beer pumps, kegs or other appliances, similar to those used in liquor taverns and shops are found in any premises in any municipality where the Act is in force, any intoxicating liquor that may be also found there shall be deemed to be kept for sale in contravention of the Act unless the defendant proves the contrary; and the occupant of such premises shall be taken conclusively to be the person who keeps therein such liquor for sale. (R. S. C., c. 106, sec. 111.)

Before a person can be legally convicted, under the Act, of selling liquor, it must be proved, before the magistrate, that the second part of the Act is in force, by the production of the *Canada Gazette* containing the proclamation. (2)

The fact of the Act having come into force must be proved as any other fact necessary to give jurisdiction. (3) See secs. 8 & 9 of the *Can. Ev. Act*, 1893, as to proof of proclamations.

It is provided by section 120 of the *Canada Temperance Act* that every one who, having violated any of the provisions of the Act or of any act in force in any province respecting the issue of licenses for the sale of fermented or spirituous liquors, compromises, compounds or settles, or offers or attemps to compromise, compound or settle the offence with any person or persons, with the view of preventing any complaint being made in respect thereof, or, if a complaint has been made, with the view of getting rid of such complaint, or of stopping or having the same dismissed for want of prosecution or otherwise, is guilty of an offence against the Act, and liable, on conviction thereof, to imprisonment at hard labor for any term not exceeding three months; and that every one who is concerned in or is a party to the compromise, composition or settlement mentioned in this section, is guilty of an offence, and liable, on conviction thereof to imprisonment for any term not exceeding three months.

(1) R. v. Blair, 24 S. C. N. B. 71.
(2) R. v. Risteen, 22 S. C. (N.B.) 51.
(3) R. v. Bennett, 1 Ont. R. 445; R. v. Welsh, 2 Ont. R. 206.

Section 121 provides that every one who, on any prosecution under any of the said Acts, tampers with a witness, either before or after he is summoned or appears as such witness on any trial or proceeding under any such Act, or by the offer of money, or by threats, or in any other way, either directly or indirectly, induces or attempts to induce any such witness to absent himself, or to swear falsely, shall incur a penalty of fifty dollars for each offence.

In a proceeding under this section for tampering with a witness it is sufficient to prove that an information has been laid and a summons issued for a violation of the Act, and that the party tampered with was summoned to be a witness on the hearing of the charge; and where a conviction under this section, for tampering with a witness, charged the defendant with offering the witness money to induce him to leave the country and also with attempting by threats to induce him to absent himself, it was held that though this was a charge of two offences, it was cured by Article 907 of the Code. (1)

Certiorari and appeal restricted.—No conviction, judgment or order in respect of any offence against the Act shall be removed by *certiorari* or otherwise into any court of record, and no appeal is allowed from any such conviction, judgment or order to any court of general sessions or other court whatsoever, if the conviction has been made by a stipendiary magistrate, recorder, judge of sessions, police magistrate, sitting magistrate, commissioner of a parish court, or any magistrate or officer having the powers of two or more justices of the peace. (R. S. C., c 106, sec. 119.)

This section takes away the right to a *certiorari*, except where the magistrate proceeds without jurisdiction (2), or where there is no offence shown. (3)

It has been held that the refusal by a justice to allow the defendant to give evidence on a trial of an information under the

(1) Ex parte White, 30 S. C. N. B. 12,
(2) R. v. Saunderson, 12 Ont. R. 178.
(3) R. v. Elliott, 12 Ont. R. 524.

Act, is a matter going to the justice's jurisdiction, and that, therefore, a *certiorari* will lie to remove the conviction. (1)

Where a conviction for selling intoxicating liquor contrary to the provisions of the Act, contained no reference to the Act, did not show where the offence was committed, and merely adjudged that the defendant pay $100 for selling intoxicating liquors, the Court held the conviction bad, and that the information and warrant could not be looked at to see that an offence had been committed. (2)

A druggist, licensed to sell intoxicating liquors, on prescription, for medicinal purposes, as authorized by the *Canada Temperance Act*, was convicted of violating the provisions of the second part of the Act, on evidence that his clerk had sold intoxicating liquor for other than medicinal purposes. At the trial the clerk testified that he had been directed by his employer not to sell liquors except on prescription. On this point the defendant applied for a *certiorari*, and moved to quash the conviction; and it was held by the Court, in quashing the conviction, that there was no offence proved against the applicant, that the act of selling was, under the circumstances, the independent crime of the clerk, and that, therefore, the magistrate had no jurisdiction. (3)

An application was made for a rule for a *certiorari* to remove a conviction for a third offence against the *Canada Temperance Act*, on the ground that there was no evidence that the defendant was the same person who had been convicted of the previous offences stated in the information. At the trial, certificates of these previous convictions against the defendant were put in evidence, as provided for by the Act. For the defence, it was contended that proof should have been given to show that the defendant was the person named in the previous convictions. *Held*, that the same name in the previous convictions was some evidence of the identity of the defendant, and in the absence of proof to the contrary, the magistrate was justified in convicting him. (4)

Three summary convictions having been made by a stipendiary

(1) Ex parte Legere, 27 S. C. N. B. 292.
(2) Woodlock v. Dickie, 6 Russ. & Geld. 86.
(3) Ex parte McKeen, 13 C. L. T. 249.
(4) Ex parte Dugan, 13 C. L. T. 249.

magistrate in and for the county of Pictou, against a defendant for violation of the *Canada Temperance Act*, a motion was made for a *certiorari* to remove them into the Superior Court to be quashed on the ground, in particular, that the magistrate was not legally appointed, the municipality of Pictou county for which he was acting not having been constituted a police division either prior to or at the time of his appointment under the Acts of the Legislature of Nova Scotia for 1891, c. 48, Sec. 2.

On reference to the history of the appointment of stipendiary magistrates in Nova Scotia, and the erection of the police divisions over which they were to preside, and having regard to the statutory provision that the territorial jurisdiction of the county magistrate should be constituted either prior to or concurrently with his appointment, and it appearing by affidavit that this had not been done, it was held that the magistrate's appointment was invalid, and that having acted without jurisdiction the *certiorari* must issue and that the conviction on its return into court should be quashed. (1)

W. was summarily convicted under the *Canada Temperance Act*. The only objections to the conviction were, 1, That a justice of the peace can try a summary conviction case only in the parish where he resides, and, 2, that a certificate of dismissal for a similar offence covering the period charged was a bar to the second information. In this case, the information was for selling liquor on the 8th July, and at the hearing the defendant put in evidence a certificate of dismissal of an information for a like offence "within three months last past, to wit, on the 7th July." *Held* that a justice of the peace can hear a summary conviction case in any part of the county for which he is a justice and that a certificate of dismissal covering three months is no bar to a subsequent information for a like offence under the *Canada Temperance Act* committed during that period unless it is shown that the information is for the same offence. (2)

By a summary conviction for an offence against the *Canada Temperance Act* the defendant was ordered to pay a fine of $50 and costs, and in default of payment his goods were to be distrained,

(1) R. v. Roberts, 14 C. L. T. 481.
(2) *Ex parte* Whalen, 14 C. L. T. 107

and in default of distress he was to be imprisoned. The fine not being paid a distress warrant was issued to a constable to whom the defendant pointed out on his premises a cask of whiskey, worth $150, as a sufficient distress. The constable refused to levy on the whiskey and returned the distress warrant with the endorsement that he had searched for and could not find sufficient goods of the defendant upon which to levy the fine and costs. The magistrate thereupon issued a warrant of commitment, under which the defendant was imprisoned.

Upon application, on the return of a *habeas corpus*, for an order to discharge the defendant, it was contended that the constable was not bound to levy on the whiskey, as the sale of it by him under the distress warrant would of itself be an offence against the *Canada Temperance Act*. But the court held that the whiskey was property that could be properly taken under the distress warrant and that there was nothing in the *Canada Temperance Act* to prevent the sale thereof for judicial purposes; and the defendant was discharged, as being wrongly in custody. (1)

INDIANS.—As to the punishment of persons for selling or supplying intoxicating liquors to Indians, and the punishment of Indians for making or having intoxicants or selling them to other Indians, see the *Indian Act*, R. S. C. c. 43, secs. 94-96, and 51 Vic. c. 22, sec. 4.

Where an information, laid against the defendant under the *Indian Act*, charged that he sold liquor to two persons on the 5th July and to two persons on the 8th July, and the Justices, notwithstanding that the defendant's counsel objected to the information on this ground, heard evidence in respect of all the offences so charged, then amended the information by substituting the 8th August for the 8th July, proceeded and heard evidence in respect of the substituted charge, and dismissed it, but convicted the defendant for selling to two persons on the 5th July, the conviction was quashed, the Court holding that it was the duty of the Justices, when the objection was taken, to have amended the information by striking out one or other of the charges and to have then heard the evidence applicable to the remaining charge only. (2)

(1) *Ex parte* Fitzpatrick, 14 C. L. T. 51.
(2) R. v. Alward, 14 C. L. T., 338.

The *Canada Temperance Act* can have no operation where the *Indian Act* is in force. (1)

PUBLIC WORKS.—As to prohibiting (by proclamation of the Governor General in Council), the sale of intoxicating liquor in the vicinity of any public work, see R. S. C. c. 151, secs. 13-19.

KIDNAPPING.

Kidnapping.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, *without lawful authority*, forcibly seizes and confines or imprisons any other person within Canada, or kidnaps any other person with intent :—

(*a*) to cause such other person to be secretly confined or imprisoned in Canada against his will ; or

(*b*) to cause such other person to be unlawfully sent or transported out of Canada against his will ; or

(*c*) to cause such other person to be sold or captured as a slave, or in any way held to service against his will.

2. Upon the trial of any offence under this section the non-resistance of the person, so kidnapped or unlawfully confined, thereto, shall not be a defence, unless it appears that it was not caused by threats, duress or force or exhibition of force. (Code, Art. 264.)

The intent applies as well to the seizing and confining or imprisoning as to the kidnapping (2)

LANDLORD AND TENANT.

Theft by Tenants or Lodgers.—Every one who steals any chattel or fixture let to be used by him or her in or with any house or lodging is guilty of an indictable offence and liable to two years' imprisonment, and, if the value of such chattel or fixture exceeds the sum of twenty-five dollars, to four years' imprisonment. (Code, Art. 322.)

Injuries to buildings by tenants, etc.—Every one is guilty of an indictable offence and liable to five years' imprison-

(1) *Re* Metcalfe, 17 Ont. R. 357.

(2) Cornwall v. R., 33 U. C. Q. B. 106 ; Burb. Dig. 246.

ment, who, being possessed of any dwelling-house or other building, or part of any dwelling-house or other building which is built on lands subject to a mortgage or which is held for any term of years or other less term, or at will, or held over after the termination of any tenancy, wilfully and to the prejudice of the mortgagee or owner :—

(*a*) pulls down or demolishes, or begins to pull down or demolish the same or any part thereof, or removes or begins to remove the same or any part thereof from the premises on which it is erected ; or

(*b*) pulls down or severs from the freehold any fixture fixed in or to such dwelling-house or building, or part of such dwelling-house or building. (Code, Art. 504.)

LAND MARKS.

Injuries to landmarks showing the boundaries of a province, county, city, town, etc.—(See Code, Articles 505 and 506.)

Injuries to fences, walls or posts on the boundary of any land, etc.—(See Code, Article 507.)

LARCENY

See THEFT, *post*.

LEVYING WAR.

Every subject or citizen of any foreign state or country at peace with Her Majesty, who—

(*a.*) is or continues in arms against Her Majesty within Canada ; or

(*b.*) commits any act of hostility therein ; or

(*c.*) enters Canada with intent to levy war against Her Majesty, or to commit any indictable offence therein for which any person would, in Canada, be liable to suffer death , and

Every subject of Her Majesty within Canada who—

(*d.*) levies war against Her Majesty in company with any of the

subjects or citizens of any foreign state or country at peace with Her Majesty : or

(*e.*) enters Canada in company with any such subjects or citizens with intent to levy war against Her Majesty, or to commit any such offence therein; or

(*f.*) with intent to aid and assist, joins himself to any person who has entered Canada with intent to levy war against Her Majesty, or to commit any such offence therein, is guilty of an indictable offence and liable to suffer death. (Code, Art. 78.)

Persons offending against the provisions of this article may be tried and punished either by any Superior Court of Criminal Jurisdiction, or by a Militia court martial. (Code, Articles 539, 540; R. S. C., c. 146, secs. 6 and 7.)

LIBEL.

Blasphemous Libel.—(See BLASPHEMY, *ante*, p. 478.)

Defamatory Libel.—A defamatory libel is matter published, without legal justification or excuse, *likely* to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or designed to insult the person to whom it is published.

2. Such matter may be expressed either in words legibly marked upon any substance whatever, or by any object signifying such matter otherwise than by words, and may be expressed either directly or by insinuation or irony. (Code, Art. 285.)

Publishing a libel is exhibiting it in public, or causing it to be read or seen, showing or delivering it or causing it to be shown or delivered, with a view to its being read or seen by the person defamed or by any other person. (Code, Art. 286.)

Privileged communications—Invited or challenged publications.—No one commits an offence by publishing defamatory matter on the invitation or challenge of the person defamed thereby, nor if it is necessary to publish such defamatory matter in order to refute some other defamatory statement published by that person concerning the alleged offender, if such defamatory matter is believed to be true, and is relevant to

the invitation, challenge or the required refutation and the publishing does not in manner or extent exceed what is reasonably sufficient for the occasion. (Code, Art. 287.)

Publishing in Courts of Justice.—No one commits an offence by publishing any defamatory matter, in any proceeding held before or under the authority of any court exercising judicialaut hority, or in any inquiry made under the authority of any statute or by order of Her Majesty, or of any of the departments of Government, Dominion or Provincial. (Code, Art. 288.)

Publishing Parliamentary Papers.—No one commits an offence by publishing to either the Senate, or House of Commons, or to any Legislative Council, Legislative Assembly or House of Assembly, defamatory matter contained in a petition to any such body, or by publishing by order or under the authority of any such body any paper containing defamatory matter or by publishing, in good faith and without ill-will to the person defamed, any extract from or abstract of any such paper. (Code, Art. 289.)

Fair Reports of Proceedings of Parliament and Courts.—No one commits an offence by publishing in good faith, for public information, a fair report of the proceedings of the Senate or House of Commons, or any committee thereof, or of any such Council or Assembly, or any committee thereof, or of the public proceedings PRELIMINARY or FINAL heard before any court exercising judicial authority, nor by publishing, in good faith, any fair comment upon any such proceedings. (Code, Art. 290.)

This rule applies to all courts of justice, superior or inferior. (1) It is immaterial whether the proceeding be *ex parte*, or not; and recent decisions in England,—where the law, as to reports of proceedings in courts of justice, is not so wide as ours, as now expressed in the above Article,—show that it is also immaterial whether the matter be one over which the court has jurisdiction or not.

Formerly, the law was not construed so as to privilege reports of *ex parte* proceedings before police magistrates or justices of the

(1) Lewis v. Levy, E. B. & E. 537; 27 L. J. Q. B., 287.

peace ; and many judges, by their *dicta*, denied any privilege to fair and accurate reports of *ex parte* proceedings, even in the superior courts ; (1) but other judges have since taken a different view. (2)

The law became settled, by the decision in Usill's case, in which it was held that the privilege extended to all *bona fide* and correct reports of all proceedings in a magistrate's court, whether *ex parte* or otherwise. (3)

Fair Reports of Public Meetings.—No one commits an offence by publishing in good faith, in a newspaper, a fair report of the proceedings of any public meeting lawfully convened for a lawful purpose and open to the public, and if such report is fair and accurate, and if the publication of the matter complained of is for the public benefit ; provided the defendant does not refuse to insert, in a conspicuous place, in the newspaper in which the report appeared, a reasonable letter or document of explanation or contradiction by or on behalf of the prosecutor. (Code, Art. 291.)

Fair Discussion.—No one commits an offence by publishing any defamatory matter which he, on reasonable grounds, believes to be true, and which is relevant to any subject of public interest, the public discussion of which is for the public benefit. (Code, Art. 292.)

Fair Comment.—No one commits an offence by publishing fair comments upon the public conduct of a person who takes part in public affairs ; nor by publishing fair comments on any published book or other literary production, or any composition or work of art or performance publicly exhibited, or any other communication made to the public on any subject, if such comments are confined to criticism on such book or literary production, composition, work of art, performance or communication. (Code, Art. 293.)

COMMENT and CRITICISM on matters of public interest stand on a different footing from REPORTS of judicial or parliamentary pro-

(1) Maule, J., in Hoare v. Silverlock, 9 C. B. 23, Abbott, C. J., in Duncan v. Thwaites, 3 B. & C., 556.

(2) Cockburn, C. J., in Wason v. Walter, L. R. 4 Q. B. 87 ; and Lawrence J., in R. v. Wright, 8 T. R. 298.

(3) Usill v. Hales, Usill v. Breasley, & Usill v. Clarke. 3 C. P. D., 206-324, 47 L. J., C. P. 323, 380.

ceedings. A REPORT is the mechanical reproduction, more or less condensed or abridged, of what has actually taken place. COMMENT is the judgment passed on the circumstances reported by one who has applied his mind to them. FAIR REPORTS are privileged communications; while FAIR COMMENTS, if on matters of public interest, are as such no libels at all. (1)

Seeking Remedy for Grievance.—No one commits an offence by publishing defamatory matter for the purpose, in good faith, of seeking remedy or redress for any private or public wrong or grievance from a person who has, *or is reasonably believed* by the person publishing *to have*, the right or be under obligation to remedy or redress such wrong or grievance, if the defamatory matter is believed by him to be true, and is relevant to the remedy or redress sought, and such publishing does not in manner or extent exceed what is reasonably sufficient for the occasion. (Code, Art. 294).

Answers to Inquiries.—No one commits an offence by publishing, in answer to inquiries made of him, defamatory matter relating to some subject as to which the person by whom, or on whose behalf, the inquiry is made has, or on reasonable grounds is believed by the person publishing to have, an interest in knowing the truth, if such matter is published for the purpose, in good faith, of giving information in respect thereof to that person, and if such defamatory matter is believed to be true, and is *relevant* to the inquiries made, and also if such publishing does not in manner or extent exceed what is reasonably sufficient for the occasion. (Code, Art. 295.)

If A., is about to have dealings with B., but first comes to C., and confidentially asks him his opinion of B., C.'s answer is privileged. (2)

Giving Information.—No one commits an offence by publishing to another person defamatory matter for the purpose of giving information to that person with respect to some subject as to which he has, or is, on reasonable grounds, believed to have, such an interest in knowing the truth as to make the conduct of

(1) Odg. Lib. & Sl. 36.

(2) Story v. Challands, 8 C. & P. 234.

the person giving the information reasonable under the circumstances: Provided, that such defamatory matter is relevant to such subject, and that it is either true, or is made without ill-will to the person defamed, and in the belief, on reasonable grounds, that it is true. (Code, Art. 296).

Selling periodicals containing defamatory Libel.—Every proprietor of any newspaper is presumed to be criminally responsible for defamatory matter inserted and published therein, but such presumption may be rebutted by proof that the particular defamatory matter was inserted without such proprietor's cognizance, and without negligence on his part.

2. General authority given to the person actually inserting such defamatory matter to manage or conduct, as editor or otherwise, such newspaper, and to insert therein what he in his discretion thinks fit, shall not be negligence unless it be proved that the proprietor, when originally giving such general authority, meant that it should extend to inserting and publishing defamatory matter, or continued such general authority knowing that it had been exercised by inserting defamatory matter in any number or part of such newspaper.

3. No one is guilty of an offence by selling any number or part of such newspaper, unless he knew either that such number or part contained defamatory matter, or that defamatory matter was habitually contained in such newspaper. (Code, Art. 297.)

Selling books containing defamatory matter.—No one commits an offence by selling any book, magazine, pamphlet or other thing, whether forming part of any periodical or not, although the same contains defamatory matter, if, at the time of such sale, he did not know that such defamatory matter was contained in such book, magazine, pamphlet or other thing.

2. The sale by a servant of any book, magazine, pamphlet or other thing, whether periodical or not, shall not make his employer criminally responsible in respect of defamatory matter contained therein, unless it be proved that such employer authorized such sale knowing that such book, magazine, pamphlet or other thing contained defamatory matter, or, in case of a number or part of a periodical, that defamatory matter was habitually contained in such periodical. (Code, Art. 298.)

When truth is a defence.—It shall be a defence to an *indictment* or *information* for a *defamatory* libel that the publishing of the defamatory matter in the manner in which it was published was for the public benefit at the time when it was published, and that the matter itself was true. (Code, Art. 299.)

Extortion by defamatory libel.—Every one is guilty of an indictable offence and liable to *two years'* imprisonment, or to a fine not exceeding six hundred dollars, or to both, who publishes or threatens to publish, or offers to abstain from publishing, or offers to prevent the publishing of a defamatory libel with intent to extort any money, or to induce any person to confer upon or procure for any person any appointment or office of profit or trust, or in consequence of any person having been refused any such money, appointment or office. (Code, Art. 300.)

Punishment of defamatory libel.—Every one is guilty of an indictable offence and liable to two years' imprisonment or to a fine not exceeding four hundred dollars, or to both, who *publishes* any defamatory libel *knowing the same to be false.* (Code, Art. 301.)

Every one is guilty of an indictable offence and liable to one year's imprisonment, or to a fine not exceeding two hundred dollars, or to both, who publishes any defamatory libel. (Code, Art. 302.)

LOTTERIES.

Every one is guilty of an indictable offence and liable to two years' imprisonment and to a fine not exceeding two thousand dollars, who—

(*a*) makes, prints, advertises or publishes, or causes or procures to be made, printed, advertised or published, any proposal, scheme or plan for advancing, lending, giving, selling or in any way disposing of any *property*, by lots, cards, tickets, or any mode of chance whatsoever; or (*b*) sells, barters, exchanges or otherwise disposes of, or causes or procures, or aids or assists in the sale, barter, exchange, or other disposal of, or offers for sale, barter or exchange any lot, card, ticket or other means or device for advancing, lending, giving, selling or otherwise disposing of any *property*, by lots, tickets, or any mode of chance whatsoever.

2. Every one is guilty of an offence and liable on summary conviction to a penalty of twenty dollars, who buys, takes or receives any such lot, ticket or other device as aforesaid.

3. Every sale, loan, gift, barter or exchange of any property, by any lottery, ticket, card or other mode of chance depending upon or to be determined by chance or lot, is void, and all such property so sold, lent, given, bartered or exchanged, is liable to be forfeited to any person who sues for the same by action or information in any court of competent jurisdiction.

4. No such forfeiture shall affect any right or title to such property acquired by any *bona fide* purchaser for valuable consideration without notice.

5. This section includes the printing or publishing, or causing to be printed or published, of any advertisement, scheme, proposal or plan of any foreign lottery, and the sale or offer for sale of any ticket, chance or share, in any such lottery, or the advertisement for sale of such ticket, chance or share.

6. THIS SECTION DOES NOT APPLY TO (*a*) the division by lot or chance of any property by joint tenants or tenants in common, or persons having joint interests (*droits indivis*) in any such property; or (*b*) RAFFLES for PRIZES OF SMALL VALUE at any BAZAAR held for any charitable object, if permission to hold the same has been obtained from the city or other municipal council, or from the mayor, reeve, or other chief officer of the city, town or other municipality wherein such bazaar is held, and the articles raffled for thereat have first been offered for sale and NONE OF THEM are of a value exceeding FIFTY DOLLARS; or (*c*) any distribution by lot among the members or ticket-holders of any incorporated society established for the encouragement of art, of any paintings, drawings or other work of art produced by the labour of the members of, or published by or under the direction of such incorporated society; or (*d*) the CreditFoncier Bas-Canada, or to the Credit Foncier Franco-Canadien. (Code, Art. 205.)

Article 2920 of the Revised Statutes of Quebec (as amended by 53 Vic. c. 36, Que.) provides that whenever it is intended to hold a bazaar or lottery, the object whereof is to assist in the construction or support or to aid in the payment of the debt of any church,

chapel or other religious building, of an hospital, of an asylum or any charitable establishment whatever or of any establishment of public interest or for instruction, or of any educational establishment or of a colonization society, within the limits of the province, such bazaar or lottery may take place WITHOUT ANY RESTRICTION AS TO AMOUNT provided always that if they are of a permanent character, it shall be necessary to obtain the previous permission of Lieutenant-Governor in Council; and provided the things offered or to be disposed of by lottery do not consist of sums of money, notes, bank notes, bonds, debentures or other negociable securities of like nature. But it has been held that this legislation is *ultra vires* the Quebec legislature and an unconstitutional encroachment upon the powers of the Dominion parliament, which alone has the power to legislate on the subject of lotteries. (1)

A lottery is defined to be "a distribution of prizes by lot or chance." (2)

The proprietor of a paper conducted competitions as follows: In the paper there was inserted a sentence with a word missing. Intending competitors were required to cut out a coupon attached to the paper, to guess at and write, on the coupon, what they guessed as the missing word, and to then send the coupon with a fee of one shilling for each coupon to the proprietor, who fixed before hand the missing word, and placed it in a sealed envelope in the hands of a chartered accountant, who verified the result of the competition. *Held*, that the competition constituted a lottery within the meaning of the Imperial Statute, 42 Geo. 3, c. 119. (3)

Where a defendant, being the proprietor of a newspaper, advertized in it that, whoever should guess the number nearest to the number of beans, placed in a sealed jar in a window in a public street, should receive a $20 gold piece, that the person making the second nearest guess should receive a set of harness, and that the person making the third nearest guess should receive a $5 gold piece,—any person desiring to compete being required to buy a

(1) Pigeon v. Mainville, and Mainville v. Poitras, 17 L. N. 68. See also R. v. Harper, 1 Que. Off. Rep. (S. & C. C.) 327.

(2) *Per* Hawkins, J., in Taylor & Smetton, 52 L. J. M. C., 101.

(3) Barclay v. Pearson, 3 R. (1893), 388.

copy of the newspaper and to write, on a coupon to be cut from the paper, his name and his guess of the number of beans,—it was held that as the approximation of the number depended as much upon the exercise of skill and judgment as upon chance, this was not a MODE OF CHANCE for the disposal of property within the meaning of the Act against lotteries. (1)

Where a defendant placed in his shop window a sealed glass jar full of buttons of different sizes, and offered to give, to anyone who should guess the nearest to the number of buttons contained in the jar, a pony and cart, the successful guesser being required to purchase goods of the defendant to a certain amount, it was held that as the approximation of the number of buttons depended on the exercise of judgment, observation and mental effort, this was not a MODE OF CHANCE for disposing of property. (2)

A defendant was summarily convicted of an offence against sec. 2 of the R. S. C., c. 159. The defendant's mode of operation was as follows. He held a kind of concert in a certain hotel in Winnipeg, and he then proceeded to sell boxes of what he called "Parker's Pacific Pens." Before selling, he placed in an empty box 100 envelopes with a $5 bill in each, 15 envelopes with a $10 bill in each, and one envelope with a $50 in it, making in all $250 in 116 envelopes. He also placed in the same box 116 other envelopes containing blank pieces of paper. Every person paying $1 for one box of pens was entitled to draw one envelope, and a person paying $5 for a box of pens could draw 8 envelopes; but he would not take more than $5 from any one person in order as he said to protect himself because in case he allowed any one man to take the 232 envelopes he would be $18 out of pocket besides the 232 boxes of pens. He said that if the $50 was drawn out before two thirds of the pens were sold he would put in another $50 bill and 50 more envelopes containing blanks. He also said he was not selling the envelopes; he would not take $20 for one of them; but that he sold the pens and distributed the money to advertize the pens. A box of the pens was worth not more than ten cents. *Held*, that the defendant was offering for sale and selling the pens as a means

(1) R. v. Dodds, 3 Ont. R. 390.
(2) R. v. Jamieson, 7 Ont. R. 149

or device for disposing of the property enclosed in the envelopes by a mode of chance, that it was not necessary to enquire whether the alleged object of the accused,—the advertizing of this particular kind of pens,—was his real object or a subterfuge, but that an act constituting an offence under the statute was equally an offence if done to attract attention to particular wares or if the article disposed of had an intrinsic value which might be an inducement to purchase it, and that where the selling of the article was in itself a means or device for disposing by chance of the money, there was a breach of the statute; and the conviction was accordingly maintained. (1)

In an Ontario case, a defendant,—who told customers to whom he sold tea that amongst the cans of tea which he had on his shelves for sale at $1 each, there were some cans containing articles of value, including a gold watch, a diamond ring, and $20 in money, —was convicted of selling cans of tea as a means of disposing of a gold watch, etc., by a mode of chance. (2)

A., a shopkeeper, was convicted of KEEPING an unauthorized lottery, contrary to the Imperial Statute 42, Geo. III., c. 119, and B., a wholesale confectioner, was convicted of AIDING, ABETTING, COUNSELLING AND PROCURING A. to commit the offence, it being proved that sweetmeats, some of which contained small money prizes, had been sold by B. to A., with a view to the latter retailing these sweetmeats, and the chances which persons buying them would have of winning a money prize, and that A. had a quantity of these sweetmeats in his shop on sale to the public. *Held*, that the convictions were right. (3)

As to WARRANTS TO SEARCH LOTTERIES, ETC., see p. 124, *ante*.

MAINTENANCE.

Duty to provide necessaries of life.—Every one who has charge of any other person unable, by reasons either of detention, age, sickness, insanity or any other cause, to withdraw himself from such charge, and unable to provide himself with the

(1) R. v. Parker, 13 C. L. T., 316.
(2) R. v. Freeman, 18 Ont. R., 524.
(3) Barratt v. Burden, 10 R. *Dec.* (1894) 505.

necessaries of life, is, whether such charge is undertaken by him under any contract, or is imposed upon him by law, or by reason of his unlawful act, under a legal duty to supply that person with the necessaries of life, and is criminally responsible for omitting, without lawful excuse, to perform such duty if the death of such person is caused, or if his life is endangered, or his health has been or is likely to be permanently injured, by such omission. (Code, Art. 209.)

Every one who as parent, guardian or head of a family is under a legal duty to provide necessaries for any child *under the age of sixteen years*, is criminally responsible for omitting, without lawful excuse, to do so while such child remains a member of his or her household, whether such child is helpless or not, if the death of such child is caused, or if his life is endangered or his health is or is likely to be permanently injured, by such omission.

2. Every one who is under a legal duty to provide necessaries for his wife, is criminally responsible for omitting, without lawful excuse, so to do, if the death of his wife is caused, or if her life is endangered, or her health is or is likely to be permanently injured by such omission. (Code, Art. 210.)

Every one who, as master or mistress, has contracted to provide necessary food, clothing or lodging for any servant or apprentice *under the age of sixteen years* is under a legal duty to provide the same, and is criminally responsible for omitting, without lawful excuse, to perform such duty, if the death of such servant or apprentice is caused, or if his life is endangered, or his health has been or is likely to be permanently injured, by such omission. (Code, Art. 211.)

Neglecting duty to provide necessaries.—Every one is guilty of an indictable offence and liable to three years' imprisonment who, being bound to perform any duty specified in sections two hundred and nine, two hundred and ten and two hundred and eleven without lawful excuse neglects or refuses to do so; *unless the offence amounts to culpable homicide.* (Code, Art. 215. as amended by 56 V., c. 32.)

See ABANDONMENT OF CHILD, p. 426, *ante*.

MANDAMUS.

See pp. 54-57, *ante*.

MANSLAUGHTER.

See p. 568, *ante*.

MARRIAGE.

Feigned marriages.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who procures a feigned or pretended marriage between himself and any woman, or who knowingly aids and assists in procuring such feigned or pretended marriage. (Code, Art. 277.)

Solemnizing marriage without lawful authority.—This is an indictable offence punishable by fine, or two years' imprisonment or both. (Code, Art. 279.)

Solemnization of marriage contrary to law.—Every one is guilty of an indictable offence and liable to a fine, or to one year's imprisonment, who, being lawfully authorized, knowingly and wilfully solemnizes any marriage in violation of the laws of the province in which the marriage is solemnized. (Code, Art. 280.)

MASTER AND SERVANT.

Causing bodily harm to a servant or apprentice.—It is an indictable offence punishable by three years' imprisonment for any master or mistress, legally liable to provide for any servant or apprentice, to unlawfully do or cause bodily harm to such servant or apprentice so that the latter's life is endangered or so that the latter's health has been or is likely to be permanently injured. (Code, Art. 217.)

Neglect to provide necessaries.—(See MAINTENANCE, pp. 615, 616, *ante*.)

See CRIMINAL BREACHES OF CONTRACT, at p. 508, *ante*, and INTIMIDATION, at p. 580, *ante*.

MEDICINE AND SURGERY.

Art. 3998 of the R. S. Q. imposes a penalty of $50 on any person who, in contravention of the law respecting physicians and surgeons and their registration, practices medicine, surgery or midwifery, in the province of Quebec, for hire or for or in the hope of money, goods, effects or any reward whatsoever, or who illegally assumes the title of doctor, physician, surgeon, etc., or who in any advertizement in any newspaper or in circulars or on business cards or signs, assumes any title, name or designation of such a nature as to lead the public to believe that he is duly registered or qualified as a practitioner of medicine, surgery or midwifery, or who offers or gives his services as a physician, surgeon or *accoucheur* for hire, gain or hope of reward, and if he be not duly authorised and registered in the province.

The Ontario Acts, on the subject are the R. S. O. c. 148, and 54 Vic. c. 26 and 56 Vic. c. 27.

Sec. 45 of the R. S. O. c. 148, enacts that it shall not be lawful for any person, not registered, to practice medicine, surgery or midwifery for hire, gain or hope of reward ; and if any person not registered pursuant to the Act, for hire, gain or hope of reward, practices or professes to practice medicine, surgery or midwifery, or advertizes to give advice in medicine, surgery or midwifery, he shall upon summary conviction thereof, for any and every offence, pay a penalty not exceeding $100 nor less than $25.

There must be more than one act to constitute practising. (1)

A conviction under the R. S. O. c. 148, sec. 45, for practising medicine for hire, was held bad for uncertainty in not specifying the particular act or acts which constituted the practising ; and the Court refused to amend, and quashed the conviction where the evidence shewed that the practising consisted in telling a man which of several patent medicines sold by the defendant was suitable to the complaint which the man indicated, and in selling the man some of the medicine. (2)

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(1) Apothecaries Co. v. Jones, 5 R. (189.), 101.
(2) R. v. Coulson, 24 Ont. R. 246.

But where a person went into a druggist's shop, stating that he was sick, and describing his symptoms to the druggist, whereupon the latter said he believed it was the diarrhœa, and, after telling the person to live on a milk diet, gave him a bottle of medicine, for which he charged him fifty cents, it was,—upon these facts and upon the druggist's own admission that he had everal kinds of diarrhœa mixture and had to sometimes enquire as to symptoms in order to decide what mixture would be suitable,—held, that there was a practising of medicine within sec. 45 of the R. S. O. c. 148, and that the fact of the druggist being registered under the *Pharmacy Act*, R. S. O. c. 151, which entitled him to act as an apothecary as well as a druggist, did not authorize the practice of medicine. (1)

See POISON, *post*.

MISCHIEF.

The subject of MISCHIEF or MALICIOUS INJURIES to persons and to property is cove ed by Articles 481-511 of the Code.

Article 481 enacts that every one who causes any event by an act which he knew would probably cause it, being reckless whether such event happens or not, is deemed to have caused it WILFULLY: but that nothing shall be an offence under any provision contained in the part relating to mischief, unless it is done without legal justification or excuse and without color of right. The Article also enacts that where the offence consists in an injury to anything in which the offender has an interest, the existence of such interest if partial, shall not prevent his act being an offence, and, if total, shall not prevent his act being an offence, if done with intent to defraud.

As to ARSON, (which is included in the provisions of the Code relating to MISCHIEF), see pp. 450-454, *ante*.

Mischief on Railways.—Every one is guilty of an indictable offence and liable to five years' imprisonment, who, in manner likely to cause danger to valuable property, *without endangering life or person*,—

(*a*.) places any obstruction upon any railway, or takes up,

(1) R. v. Howarth, 24 Ont. R. 561; 14 C. L. T., 132.

removes, displaces, breaks or injures any rail, sleeper or other matter or thing belonging to any railway ; or

(*b.*) shoots or throws anything at an engine or other railway vehicle ; or

(*c.*) interferes without authority with the points, signals or other appliances upon any railway ; or

(*d.*) makes any false signal on or near any railway ; or

(*e.*) wilfully omits to do any act which it is his duty to do ; or

(*f.*) does any other unlawful act.

2. Every one who does any of the acts above mentioned, with *intent* to cause such danger, is liable to imprisonment for life. (Code, Art. 489.)

Wilfully obstructing the construction or use of any railway.—This is indictable and punishable by two years' imprisonment. (Code, Art. 490.)

A line of railway constructed and completed under the powers of an Act of parliament and intended for the conveyance of passengers by locomotive power, but not yet used for that purpose, but only for the carriage of materials and workmen, is within the above Article. (1)

Where a defendant by unlawfully altering some railway signals, at a railway station, caused a train to slacken speed and to come nearly to a stand, he was held guilty of *obstructing* a train within the meaning of sec. 36 of 24-25 Vic. c. 97, which is to the same effect as our Article 490. (2)

Where a defendant, by holding up his arms in the mode used by inspectors of the line, when desirous of stopping a train, intentionally induced the driver of a train to reduce his speed, although the train was not wholly stopped, but immediately afterwards resumed its ordinary speed, he was held to be guilty of an unlawful obstruction. (3)

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(1) R. v. Bradford, Bell, 268 ; 29 L. J. M. C., 171.
(2) R. v. Hadfield, L. R., 1 C. C. R. 253; 39 L. J. M. C., 131.
(3) R. v. Hardy, L. R., 1 C. C. R., 278 ; 40 L. J. M. C., 62.

A., without the consent of the railway company, took a trolley placed it on the track, and ran with it, upon the railway for several miles; and although it was at a time when, ordinarily, no train was running thereon, A was held to have obstructed the free use of the railway. (1)

Injuries to Packages in Custody of Railways. Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty dollars, over and above the value of the goods or liquors so destroyed or damaged or to one month's imprisonment, with or without hard labour, or to both, who—

(*a.*) wilfully destroys or damages anything containing any goods or liquors in or about any railway station or building or any vehicle of any kind on any railway, or in any warehouse, ship or vessel, with intent to steal or otherwise unlawfully to obtain or to injure the contents, or any part thereof; or (*b.*) unlawfully drinks or wilfully spills or allows to run to waste any such liquor, or any part thereof. (Code, Art. 491.)

Wilful Injuries to Electric Telegraphs, Electric Lights, Telephones, or Fire Alarms.—This is indictable and punishable by two years' imprisonment. And a wilful attempt to commit any such injury is punishable summarily by fine not exceeding $50, or 3 months' imprisonment with or without hard labour. (Code, Art. 492.)

Wrecking.—It is an indictable offence punishable by life imprisonment to wilfully cast away or destroy any ship, whether complete or unfinished, or to do any act tending to the immediate loss or destruction of any ship in distress or to interfere with any marine signal or exhibit any false signal with intent to bring a ship or boat into danger. (Code, Art. 493.) And an attempt to cast away or destroy any ship, whether complete or unfinished, is indictable and punishable by 14 years' imprisonment. (Code, Art. 494.)

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(1) R. v. Brownell, 26 N. B. R. 579; Bur. Dig. 164.

Interfering with Marine Signals, Buoys or Sea Marks.—This is indictable and punishable by seven years' imprisonment. And every one who makes fast any vessel or boat to any signal buoy or sea mark is liable on summary conviction to a penalty not exceeding $10, and, in default of payment, to one month's imprisonment. (Code, Art. 495.)

Preventing the saving of wrecked vessels or wreck.—It is an indictable offence punishable by seven years' imprisonment, to wilfully prevent or impede or to endeavor to prevent or impede, (*a*) the saving of any vessel that is wrecked stranded or abandoned or in distress, or (*b*) any person in his endeavor to save such vessel. And a person who wilfully prevents or impedes or endeavors to prevent or impede the saving of any wreck may be punished on conviction or indictment by two years' imprisonment or on summary conviction before two justices by $400 fine or six months' imprisonment with or without hard labor. (Code, Art. 496.)

Injuries to dams, piers, slides, booms, rafts, etc.—This is indictable and punishable by two years' imprisonment. (Code, Art. 497.)

Mischief to mines.—This is indictable and punishable by seven years' imprisonment. (Code, Art. 498.)

If any act covered by this article be done under a *bonâ fide* claim of right, it will not be punishable. (1)

A scaffold erected at some distance above the bottom of a mine, for the purpose of working a vein of coal on a level with the scaffold, was held to be an erection used in conducting the business of the mine. (2)

Mischief causing danger to life and other serious dangers.—Article 499A makes it an indictable offence punishable by imprisonment for life for any one to wilfully destroy or damage a dwelling-house, ship or boat, if the damage be caused

(1) R v. Matthews, 14 Cox, 5.
(2) R. v. Whittingham, 9 C. & P. 234, Arch. Cr. Pl. & Ev. 21 Ed. 616.

by an explosion and any person be in such dwelling-house, ship or boat, and the damage causes ACTUAL DANGER TO LIFE; or to wilfully destroy or damage a bank, dyke or wall of the sea or of any inland water and to thereby cause ACTUAL DANGER OF INUNDATION; or to wilfully destroy or damage any bridge, viaduct or aqueduct and to thereby render the same or any highway, railway or canal passing over or under the same DANGEROUS OR IMPASSABLE; or to wilfully destroy or damage a railway with intent and so as to render it DANGEROUS OR IMPASSABLE.

Other mischiefs.—If the object damaged be a ship in distress or if it be any cattle damaged by killing, maiming or wounding, the punishment is fourteen years' imprisonment. (Code, Art. 499B.) If the damage be done to a ship with intent to destroy or render it useless or to any goods in process of manufacture or any agricultural or manufacturing machines or implements with intent to render them useless or to any private fishery, etc., etc., the punishment is seven years' imprisonment. (Code, Art. 499C.) If it be a damage amounting to $5 to a tree shrub or underwood growing in a park or garden, or in any land adjoining or belonging to a dwelling house, or if the damaged object be a post letter bag or post letter, letter box or any post parcel, or any property real or personal (to the extent of $20), damaged *by night*, the punishment is five years' imprisonment. (Code, Art. 499D.) And if the damaged object be any property real or personal (to the extent of $20), for damage to which no special punishment is by law prescribed the punishment is two years' imprisonment. (Code, Art. 499E.)

Where a prisoner, charged with *maliciously* killing a mare, had caused the death of the mare by inserting the handle of a fork into her vagina, and the jury found that the prisoner was not actuated by any motive except the gratification of his own depraved taste, and that he did not intend to kill the mare, but knew that what he was doing would or might kill her, and nevertheless did what he did recklessly, and not caring whether the mare was injured or not, it was held that his conviction was right. (1)

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(1) R. v. Welch, 1 Q. B. D. 23; 45 L. J. (M.C.) 17.

To constitute a *maiming*, the injury inflicted on the animal must be a *permanent* one. (1)

Where it is a *wounding* that is alleged, the injury or damage inflicted upon or done to the animal need not be one producing a permanent injury, inasmuch as the legislature used the word "*wounding*" as contradistinguished from *maiming*, which *is* a permanent injury. (2)

Where, upon an indictment for killing, wounding and maiming a mare, it appeared that the defendant poured nitrous acid into her ears, some of which acid ran into her eye or was poured into it, and blinded her: upon which the owner killed her; and it appeared from the evidence of the surgeons that the injuries done to the mare's ears were wounds; the defendant was convicted of maiming: and the judges held the conviction right. (3)

See CATTLE, p. 495, *ante*, and CRUELTY TO ANIMALS, p. 512, *ante*.

The destruction of any part of a threshing machine which has been taken to pieces and separated by the owner is punishable under the above Article; (4) and so is the destruction of a water-wheel by which a threshing machine is worked. (5) Even if the sides of the machine be wanting, without which it will only work imperfectly, it will be within the meaning of the above Article. (6) But it has been held, that where the machine had been taken to pieces and in part destroyed by the owner, from fear, the remaining parts did not constitute a machine. (7)

Where a prisoner, in company with some other persons, unfastened and took away a certain part—called the *half-jack*—of a machine, called a stocking-frame, without which the frame was useless, but did no further injury either to the half-jack or to the frame, than the removal of the half-jack, the judges held that this

(1) R. v. Jeans, 1 C. & K. 539.
(2) R. v. Haywood, 2 East, P. C. 1076; R. & R. 16.
(3) R. v. Owens, 1 Mood. C. C. 205.
(4) R. v. Mackerel, 4 C. & P. 448.
(5) R. v. Tidler, 4 C. & P. 449.
(6) R. v. Bartlett, 2 Deacon, C. L. 1517.
(7) R. v. West, 2 Deacon, C. L. 1518.

was a damaging of the frame, as it made the frame imperfect and inoperative. (1)

The amount of injury done means the actual injury done to the tree, etc., itself, and does not extend to *consequential* injury resulting from the act of the defendant. (2)

It has been held that one who cuts off a portion of his neighbour's trees to protect his own property from the nuisance caused by boys throwing stones at the blossoms on such trees, and to secure the entrance of air and light to his own dwelling, cannot be said to be acting under a fair and reasonable supposition that he has a right to do the acts complained of. (3)

As the act of the offender must be done wilfully, it was held, in a case where the defendant threw, at some people with whom he had been fighting, a stone which struck and broke the windows of a house, that he was wrongly convicted of unlawfully and maliciously committing damage, although it was intimated that, if the jury had found that the defendant knew that the window was where it was, when he threw the stone, and that he was likely to break it, and was reckless whether he did so or not, the decision might have been different. (4)

INJURIES TO ANIMALS NOT BEING CATTLE. — (See ANIMALS, p. 444, *ante.*)

INJURIES TO BUILDINGS BY TENANTS.—(See p. 604, *ante.*)

INJURIES TO ELECTION DOCUMENTS.—(See Code, Art. 503.)

INJURIES TO LANDMARKS, FENCES, ETC. — (See LANDMARKS, p. 605, *ante.*)

INJURIES TO HARBOR BARS.—(See Code, Art. 507A.)

INJURIES TO TREES, ETC., WHERESOEVER GROWING. — (See Code, Art. 508.)

INJURIES TO VEGETABLE PRODUCTIONS GROWING IN GARDENS, ORCHARDS, ETC.—(See Code, Art. 509.)

INJURIES NOT OTHERWISE PROVIDED FOR—Every one who wilfully commits any damage, injury or spoil to or upon any real or

(1) R. v. Tacey, R. & R. 452.
(2) R. v. Whiteman, Dears, 353; 23 L. J. (M.C.) 120.
(3) Hamilton v. Bone, 16 Cox, C. C. 437.
(4) R. v Pembleton, L. R. 2 C. C. R. 119. R. v. Welch, *supra.*

personal property, either corporeal or incorporeal, and either of a public or private nature, for which no punishment is otherwise provided, is guilty of an offence and liable, on summary conviction, to a penalty not exceeding $20, and such further sum not exceeding $20 as appears to be a reasonable compensation for the damage or injury done to the private property of the person aggrieved, together with costs; and imprisonment, not exceeding two months, with or without hard labor, may be ordered in default of payment. But nothing in this article is to extend to—(*a.*) any case where the person acted under a fair and reasonable supposition that he had a right to do the act complained of; or (*b.*) any trespass, not being wilful and malicious, committed in hunting or fishing or in the pursuit of game. (Code, Art. 511.)

MURDER.

See p. 565, *ante*.

NAVIGATION.

Navigation of Canadian waters.—Chapter 79 of the R. S. C. contains the rules with respect to lights, fog signals, steering and sailing and rafts, and provides by sec. 2, that such rules shall apply to all the rivers, lakes and other navigable waters within Canada or within the jurisdiction of the parliament thereof; and by section 4, a wilful default to obey entails a penalty not exceeding $200 and not less than $20.

Protection of navigable waters.—Section 7 of the R. S. C. c. 91, prohibits the throwing of any saw dust, edgings, slabs, bark or rubbish, into any navigable river, stream or other water, under a penalty of not less than $20 for a first offence and of not less than $50 for each subsequent offence.

NEGLIGENCE.

Duty of persons doing dangerous acts.—Every one who undertakes (except in case of necessity) to administer surgical or medical treatment, or to do any other lawful act the doing of which is or may be dangerous to life, is under a legal duty to have and to use reasonable knowledge, skill and care in doing any such act, and is criminally responsible for omitting, without lawful excuse, to discharge that duty if death is caused by such omission. (Code, Art. 212.)

Duty of persons in charge of dangerous things.—Every one who has in his charge or under his control anything whatever, whether animate or inanimate, or who erects, makes or maintains anything whatever which, in the absence of precaution or care, may endanger human life, is under a legal duty to take reasonable precautions against, and use reasonable care to avoid such danger, and is criminally responsible for the consequences of omitting, without lawful excuse, to perform such duty. (Code, Art. 213.)

Duty to avoid omissions dangerous to life.—Every one who undertakes to do any act, the omission to do which is or may be dangerous to life, is under a legal duty to do that act, and is criminally responsible for the consequences of omitting, without lawful excuse, to perform that duty. (Code, Art. 213.)

Neglecting Child.—(See ABANDONMENT, p. 426, *ante*.)

Neglecting to provide necessaries.—(See MAINTENANCE, p. 615, 616, *ante*.)

Negligently endangering the safety of persons on railways.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, by any unlawful act, or by any wilful omission or neglect of duty, endangers or causes to be endangered the safety of any person conveyed or being in or upon a railway, or aids or assists therein. (Code, Art. 251.)

Negligently causing bodily injury to any person.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, by any unlawful act, or by doing negligently or omitting to do any act which it is his duty to do, causes grievous bodily injury to any other person. (Code Art. 252.)

Furious driving.—It is an indictable offence punishable by two years' imprisonment to do or cause any bodily harm to any person by racing, or other wilful misconduct or wilful neglect. (Code, Art. 253.)

Leaving excavations, unused mines or quarries, or holes or openings in ice, unguarded.—(See Code, Art. 255.)

NORTH-WEST MOUNTED POLICE.

The Acts relating to the North-West Mounted Police force are amended and consolidated by the *Mounted Police Act*, 1894 (57–58 Vic. c. 27), sec. 18 of which enumerates a number of offences (including intoxication, oppression, tyrannical conduct towards an inferior, wearing any party emblem, mutinous or insubordinate conduct, and desertion) for the commission of which a member of the force (not being a commissioned officer) may be summarily convicted, before the commissioner, the assistant commissioner or the superintendent or other commissioned officer commanding at any post or in any district, and punished by fine not exceeding one month's pay, or by imprisonment not exceeding one year, with hard labor, or by both fine and imprisonment, and, also, if a non-commissioned officer, by reduction in rank, in addition in any case to any punishment to which the offender is liable with respect to such offence, under any law in force in the North-West Territories, or in the province in which the offence is committed.

Sections 21 and 22 provide for investigations in the case of a commissioned officer being charged with any of the offences enumerated in section 18.

Section 32 declares that the Act shall be in force in and apply to the district of Keewatin.

Section 33 provides that the Governor-General-in-Council may, from time to time, enter into arrangements with the Government of any Province for the use or employment of the force, or any portion thereof, in aiding the administration of justice in such Province, and in carrying into effect the laws of the Legislature thereof.

Section 34 repeals the R. S. C., c. 45, and the 52 Vic., c. 25.

NORTH-WEST TERRITORIES.

See the *North-West Territories Act* (R. S. C., c. 50) and its amendments, 50–51 Vic., c. 28; 51 Vic, c. 19; 54–55 Vic., c. 22, and 57–58 Vic., c. 17.

NUISANCES.

A common nuisance is an unlawful act or omission to discharge a legal duty, which act or omission endangers the lives, safety, health, property, or comfort of the public, or by which the public are obstructed in the exercise or enjoyment of any right common to all Her Majesty's subjects. (Code, Art. 191.)

A common or public nuisance, under the common law, is an injury or damage to all persons who come within the sphere of its operation, though it may be so in a greater degree to some than to others. (1) For example, if, in the operation of a manufactory —such as a dye-works, a tallow furnace, a smelting house, a tanning factory, or a lime pit for cleaning skins—volumes of noxious smoke or poisonous effluvia are emitted; to persons who are within the reach of these operations, and whose health may be thereby endangered, a nuisance, in the popular sense of the term, is committed. So, also, an obstruction in a highway is, to all who have occasion to travel upon it, a nuisance. It may be a greater nuisance to those who have to travel over it daily than it is to a person using it only once a year; but it is more or less a nuisance to every one who has occasion to use it, and it is, therefore, a *common or public nuisance*, (2) although not of so serious a character as a nuisance endangering life or health.

Where, however, the thing complained of is such as to be limited to one or only a few individuals, it is a private nuisance.

It has been said that in judging of a public nuisance, the public good it does might, in some cases, where the public health was not concerned, be taken into consideration, in order to see if the public annoyance was outweighed by the public benefit derived; (3) but this doctrine was overruled in Ward's case, where it was held to be no answer, to an indictment for a nuisance in a harbor by erecting

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(1) Soltau v. De Held, 2 Sim. N. S. 142; R. v. Meyers, 3 U. C. C. P. 333.

(2) See Att. Gen. v. Sheffield Gas Consumers' Co., 3 De G. M. and G 304; Imperial Gas Light & Coke Co. v. Broadbent, 7 H. L. Ca. 600; Crowder v. Tinkler, 19 Ves. 617: Reg. v. Train, 2 B. and S. 640; Bliss v. Hall, 4 Bing. N. C. 183.

(3) R. v. Russell, 6 B. & C. 566.

an embankment, that although the work was in some degree a hindrance to navigation, it was advantageous in a greater degree to the other uses of the port. (1)

No length of time will legalize a nuisance. (2)

Common nuisances which are criminal.—Every one is guilty of an indictable offence and liable to one year's imprisonment or a fine, who commits any common nuisance which *endangers* the lives, safety or health of the public, or which *occasions* injury to the person of any individual. (Code, Art. 192.)

Common nuisances which are not criminal.—Any one convicted upon any indictment or information for any common nuisance other than those mentioned in Article 192, shall not be deemed to have committed an indictable offence, but all such proceedings or judgments may be taken and had, as heretofore, to abate or remedy the mischief done by such nuisance to the public right. (Code, Art. 193.)

Article 192 deals disjunctively, but distinctly, with two different classes of COMMON NUISANCE, namely, 1, a common nuisance which endangers the lives, safety or health of the public; and, 2, a common nuisance which, though not dangerous to life, etc., occasions injury to the person of any individual.

OATHS.

The *Canada Evidence Act*, 1893 (56 Vic., c. 31), provides by section 26 that any judge, notary public, justice of the peace, police or stipendiary magistrate, recorder, mayor, or commissioner authorized to take affidavits to be used in Provincial or Dominion Courts, or any other functionary authorized by law to administer an oath in any matter, may receive the solemn declaration of any person voluntarily making the same before him in attestation of any writing, deed or instrument, or of the truth of any fact or of any

(1) R. v. Morris, 1 B. & Ad. 441; R. v. Ward, 4 A. & E. 384; R. v. Randall, C. & Mar. 496.

(2) R. v. Cross, 3 Camp. 227; S. v. Rankin, 16 Am. R 737; 1 Bish. New Cr. L. Com. s. 1078*a*.

account rendered in writing; and that such declaration may be in the following form :—

I, A. B., do solemnly declare that [*state the fact or facts declared to*], and I make this solemn declaration, conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath and by virtue of *The Canada Evidence Act*, 1893.

Declared before me
at this day
of A.D. 18

ADMINISTERING UNLAWFUL OATHS.—See p. 435, *ante*.

ADMINISTERING OATHS WITHOUT AUTHORITY.—See p. 437, *ante*.

As to the MODES OF ADMINISTERING THE OATH to a witness, and as to AFFIRMING instead of taking the oath, see pp. 203–219, *ante*.

OATHS OF ALLEGIANCE.

See R. S. C., c. 112.

For general form of OATH OF ALLEGIANCE see p. 11, *ante*.

See ALLEGIANCE, p. 444, *ante*.

OBSCENE MATTER.

Selling obscene books or advertising obscene drugs, etc.—See Article 179 of the Code, at p. 547, *ante*.

POSTING OBSCENE OR IMMORAL BOOKS, ETC.—See Art. 180 of the Code.

OBSTRUCTION OF PUBLIC OR PEACE OFFICER.

See Article 144 of the Code.

Assaulting a public or peace officer.—See AGGRAVATED ASSAULTS, p. 461, *ante*.

OFFENSIVE WEAPONS.

The expression "OFFENSIVE WEAPON" includes any gun or other firearm or air-gun, or any part thereof, or any sword, sword-blade,

bayonet, pike, pike-head, spear, spear-head, dirk, dagger, knife or other instrument intended for cutting or stubbing, or any metal knuckles, or other deadly or dangerous weapon and any instrument or thing intended to be used as a weapon, and all ammunition which may be used with or for any weapon. (Code, Art. 3*r*.)

POSSESSING OR CARRYING ANY OFFENSIVE WEAPON FOR ANY PURPOSE DANGEROUS TO THE PUBLIC PEACE,—is an indictable offence punishable by FIVE years' imprisonment. (Code, Art. 102.)

OPENLY CARRYING OFFENSIVE WEAPONS SO AS TO CREATE ALARM.—This is an offence punishable summarily by fine not exceeding $40 (not less than $10), and 30 days imprisonment in default of payment.

SMUGGLERS CARRYING OFFENSIVE WEAPONS.—Every one is guilty of an indictable offence and liable to imprisonment for TEN years' who is found with any goods liable to seizure or forfeiture under any law, relating to inland revenue, the customs, trade or navigation, and KNOWING THEM TO BE SO LIABLE, and carrying offensive weapons. (Code, Art. 104.)

CARRYING A PISTOL OR AIR-GUN WITHOUT JUSTIFICATION AND WITHOUT HAVING A CERTIFICATE FROM A JUSTICE OF THE PEACE.—(See Code, Art. 105.)

SELLING PISTOL OR AIR-GUN TO A MINOR UNDER SIXTEEN; OR SELLING A PISTOL OR AIR-GUN WITHOUT KEEPING A RECORD OF SUCH SALE.—(See Code, Art. 106.)

HAVING A PISTOL OR AIR-GUN WHEN ARRESTED FOR ANY OFFENCE. —(See Code, Art. 107.)

HAVING A PISTOL OR AIR-GUN WITH INTENT TO INJURE ANYONE. —(See Code, Art. 108.)

POINTING A FIREARM (LOADED OR UNLOADED) AT ANYONE—is an offence punishable summarily by a fine not exceeding $120. (Code, Art. 109.)

CARRYING OFFENSIVE WEAPONS.—It is an offence punishable summarily by a fine not exceeding $50 (not less than $10), for any one to carry any bowie knife, dagger, dirk, metal knuckles, skull cracker, slung shot or other offensive weapon of a like character or to secretly carry any instrument loaded at the end, or for any

person to sell or expose for sale publicly or privately any such weapon, or to be masked or disguised and carry or have in his possession any firearm or air-gun. (Code, Art. 110.)

CARRYING SHEATH KNIVES.—(See Code, Art. 111.)

REFUSING TO DELIVER AN OFFENSIVE WEAPON WHEN DEMANDED BY A JUSTICE OF THE PEACE.—(See Code, Art. 113.)

As to the offences of COMING ARMED NEAR A PUBLIC MEETING, and LYING IN WAIT FOR PERSONS RETURNING FROM A PUBLIC MEETING, see Articles 114 and 115 of the Code.

As TO SALE OF ARMS IN N. W. TERRITORIES, and POSSESSING WEAPONS NEAR PUBLIC WORKS, see Articles 116 and 117 of the Code.

ONTARIO FACTORIES ACT.

See R. S. O., c. 208, and 52 Vic., c. 43, (Ont.)

QUEBEC FACTORIES ACT.

See R. S. Q., Articles 3019 to 3053, 52 Vic. c. 32, and 56 Vic., c. 28.

PATENTS.

See the *Patent Act* R. S. C., c. 64, and its amendments, 51 Vic., c. 18, 53 Vic., c. 13, 54-55 Vic., c. 33, 55-56 Vic., c. 24 and 56 Vic., c. 34.

PAWNBROKERS.

See R. S. C., c. 128; R. S. O., c. 155, and R. S. Q., Articles 954 to 992.

A person who engages in a single act of receiving or taking a pawn or pledge, cannot be thereby considered a pawnbroker. (1)

PEDDLERS.

Every peddler travelling from house to house and from town to town in the province of Quebec, to sell or expose for sale any goods and merchandise, (except those mentioned below), without being the holder of a peddler's license is liable to a fine of $40 for each

(1) R. v. Andrews, 25 U. C. Q. B. 196.

article which he sells, barters or delivers under any title whatever. (1) It is however expressly provided that the law as to peddler's licenses shall not apply to persons employed by a temperance society, or by a benevolent or religious society, to peddle and sell temperance tracts and other moral and religious publications under the direction of such society; that no person is obliged to take out a license to peddle and sell any of the following articles, namely:—Acts of the Legislature; prayer books an catechisms; proclamations, gazettes, almanacs or other documents printed by authority; fish, fruit and vituals or any goods, wares and manufactures when they are peddled and sold by the actual maker or worker, he being a British subject and a resident of the province, or by his children, apprentices, agents or servants, excepting always, drugs, medicines and patent remedies); and that a peddler's license shall not be required from any of the following persons, namely:—Tinkers, coopers, glaziers, harness repairers or other persons in order to go on the highway to carry on their trade of repairing kettles, casks, household furniture and utensils; nor from hucksters or persons having stalls or stands on markets in cities or towns for the sale of fish, fruit or vituals, or goods, wares and merchandise in such stalls or stands, on their complying with the police regulations of the locality. (2)

It has been held that a person, who has a store and travels through the adjoining country soliciting orders which he afterwards fills, is not a peddler within the meaning of a Pennsylvania law prohibiting "sales, without a license, by a hawker or peddler or travelling merchant. (3)

It has also been held in Illinois, that under a statute which authorizes city councils to license, regulate and prohibit hawkers and peddlers, a city has no authority to require book canvassers, who solicit subscriptions for books for future delivery, to obtain licenses, since such canvassers are neither hawkers nor peddlers. (4)

Where manufacturers of household goods of West Virginia sent their agent into North Carolina to sell goods by sample on the

(1) R. S. Q., Art. 993.
(2) R. S. Q., Art. 870.
(3) Com. v. Eichenberg, 21 Atl. Rep. 258; 13 Cr. L. Mag. 647.
(4) Emmons v. City of Lewiston, 24 N. E. Rep. 58; 12 Cr. L. Mag. 865.

instalment plan, the goods to be delivered to purchasers by the agent afterwards, the fact that the goods were to be delivered by the agent, was held not to make him liable to pay a tax as a peddler under the laws of North Carolina. (1)

A person who delivered goods previously sold by another person was held not to be a peddler under a State ordinance which provided that any person who should sell, or offer for sale, barter or exchange any goods or other articles of value in any street or alley or other public place or in wagons or other vehicles or at private or public houses should be deemed a peddler. (2)

The council of any county, city or town in Ontario is empowered to pass by-laws for licensing hawkers, etc.; and the word "hawker" under the law of that province includes all persons who being agents for persons not resident within the county, sell or offer for sale tea, dry goods, watches, plated-ware, silverware or jewellery, or carry and expose samples or patterns of any such goods, to be afterwards delivered within the county, to any person not being a wholesale or retail dealer in such goods, wares or merchandise. (3)

It has been held that the Ontario law does not meet the case of a principal, although it applies to agents. So that where the defendant, a wholesale and retail dealer in teas, went out of the county where he resided into another county where he sold teas by sample to private persons, to whom after taking their orders he subsequently delivered the teas which were sent in one parcel to the county where the buyers resided and there distributed, it was held that a conviction of the defendant for carrying on a petty trade could not be sustained; for the defendant was not carrying goods for sale, and, as the defendant could not be classed as a hawker within the meaning of the Act, he was not liable for offering goods for sale by sample. (4)

Perjury.

Definition of perjury and subornation of perjury.—Perjury is an assertion as to a matter of fact, opinion,

(1) *In re* Spain, U. S. C. C. (N. Car.), 47 Fed. Rep. 208; 1 Mon. L. Dig. 36.

(2) City of Stewart v. Cunningham, Iowa, 55 N. W. Rep. 311; Mon. L. Dig. 502.

(3) 55 Vic., c. 42 (Ont.) sec. 495.

(4) R. v. Henderson, 18 Ont. R. 144.

belief or knowledge, made by a witness in a judicial proceeding as part of his evidence, upon oath or affirmation, whether such evidence is given in open court, or by affidavit or otherwise, *and whether such evidence is material or not*, such assertion being known to such witness to be false, and being intended by him to mislead the court, jury or person holding the proceeding. Evidence in this section includes evidence given on the *voir dire* and evidence given before a grand jury.

2. Every person is a witness within the meaning of this section who actually gives his evidence, *whether he was competent to be a witness or not, and whether his evidence was admissible or not.*

3. Every proceeding is judicial within the meaning of this section which is held in or under the authority of any court of justice, or before a grand jury, or before either the Senate or House of Commons of Canada, or any committee of either the Senate or House of Commons, or before any Legislative Council, Legislative Assembly or House of Assembly, or any committee thereof, empowered by law to administer an oath, or before any justice of the peace, or any arbitrator or umpire, or any person or body of persons authorised by law or by any statute in force for the time being, to make an inquiry and take evidence therein upon oath, or before any legal tribunal by which any legal right or liability can be established, or before any person acting as a court, justice or tribunal, having power to hold such judicial proceeding, *whether duly constituted or not, and whether the proceeding was duly instituted or not* before such court or person, so as to authorise it or him to hold the proceeding, *and although such proceeding was held in a wrong place or was otherwise invalid.*

4. Subornation of perjury is counselling or procuring a person to commit any perjury which is actually committed. (Code, Art. 145.)

Punishment.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who commits PERJURY or SUBORNATION of perjury.

2. If the crime is committed in order to procure the conviction of a person for any crime punishable by death, or imprisonment for seven years' or more, the punishment may be imprisonment for life.

Any judge of any Court of Record, or any commissioner before whom any enquiry or trial is held, and which he is by law required or authorized to hold, may direct the prosecution of any person who appears to him to have been guilty of perjury in any evidence given, or in any affidavit, affirmation, declaration, deposition, examination or other proceeding made or taken before him. (R. S. C., c. 154, sec. 4.)

False Oaths.—Every one is guilty of an indictable offence and liable to seven years' imprisonment, who, being required or authorized by law to make any statement on oath, affirmation or solemn declaration, thereupon makes a statement which would amount to perjury if made in a judicial proceeding. (Code, Art. 147.)

As to other false oaths, see Articles 148 and 149.

False statements.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, upon any occasion on which he is permitted by law to make any statement or declaration before any officer authorised by law to permit it to be made before him, or before any notary public to be certified by him as such notary, makes a statement which would amount to perjury if made on oath in a judicial proceeding. (Code, Art. 150.)

PERSONATION.

Personation with intent to obtain any property.—Every one is guilty of an indictable offence, and liable to fourteen years' imprisonment, who, with intent fraudulently to obtain any *property*, personates any person, living or dead, or administrator, wife, widow, next of kin or relation of any person. (Code, Art. 456.)

Personation at examinations.—Every one is guilty of an indictable offence, and liable on indictment or summary conviction to one year's imprisonment, or to a fine of one hundred dollars, who falsely, with intent to gain some advantage for himself or some other person, personates a candidate at any competitive or qualifying examination, held under the authority of any law or statute or in connection with any university or college, or who

procures himself or any other person to be personated at any such examination, or who knowingly avails himself of the results of such personation. (Code, Art. 457.)

Personation of owners of shares or dividends, etc., in Government or other stocks.—This is an indictable offence punishable by fourteen years' imprisonment. (Code, Art. 458.)

Acknowledging any instrument in a false name.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, without lawful authority or excuse (the proof of which shall lie on him) acknowledges, in the name of any other person, before any court, judge or other person, lawfully authorized in that behalf, any recognizance of bail, or any *cognovit actionem*, or consent for judgment, or judgment, or any deed or instrument. (Code, Art. 459.)

As to false personation of voters at parliamentary elections, see the *Dominion Elections Act*, R. S. C., c. 8, ss. 89, 90, and 103.

It has been held that in an indictment for the offence of personating a voter, there should be an averment negativing the identity of the defendant with the voter alleged to have been personated. (1)

PETROLEUM.

See Inspection of Petroleum, p. 579, *ante*.

PILOTAGE.

See the *Pilotage Act*, R. S. C. c. 80, (amended by 55-56 Vic. c. 20

Sec. 19 of the *Montreal Harbor Commissioners Act*, 1894, (57-58. Vic. c. 48), provides that the Harbor Commissioners of Montreal shall have for the purposes of that Act, jurisdiction within the limits of the port of Montreal, and that under the *Pilotage Act* that corporation is the pilotage authority of the pilotage district of Montreal.

(1) R. v. Hogg, 25 U. C. Q. B., 68.

PIRACY.

Definition.—The usual definition of piracy, in English law, is "*robbery at sea.*" But robbery at sea, in order to constitute piracy must be without authority from any prince or state. If a party making a capture at sea do so by the authority of any prince or state it cannot be considered piracy; for a nation can never be deemed pirates. Fixed domain, public revenue and a certain form of government exempt a people from that character. (1)

Piracy by the law of nations.—Every one is guilty of an indictable offence who does any act which amounts to piracy by the law of nations, and is liable to the following punishment:—

(*a.*) To death, if in committing or attempting to commit such crime, the offender murders, attempts to murder or wounds any person, or does any act by which the life of any person is likely to be endangered;

(*b.*) To imprisonment for life in all other cases. (Code, Art. 127.)

As to other piratical acts, see Articles 128 and 129 of the Code.

Not fighting pirates.—(See Code, Art. 130.)

POISON.

It is enacted by Article 4035 of the R. S. Q., that no person,—unless he be a *physician* inscribed as a member of the College of Physicians and Surgeons of the province of Quebec, or be registered in accordance with the provisions of the law as to "LICENTIATE OF PHARMACY,"—shall keep open a shop for the retailing dispensing or compounding of drugs or of certain poisons in schedule A nor sell or attempt to sell any drug or poison or medicinal preparation containing any of such poisons, nor engage in the dispensing of prescriptions, nor use or assume the title of chemist and druggist, or chemist or druggist or apothecary or pharmacist or pharmaceutist or dispensing or pharmaceutical chemist or any other title bearing a similar interpretation within the province. By Article

(1) Grot. 2, c. 18, s. 2.

4046, the penalty for any infringement of the law is $20 for the first offence and $50 for each subsequent offence and costs. Article 4034 prescribes certain rules to be observed in connection with the selling of poisons by persons having the right to sell them. And under Article 4039, the selling of certain articles including patent medicines is exempted from the operation of the above provisions.

It has been held under the English *Pharmacy Act*, 1868, that a person, not being a registered chemist, who sells an article containing a considerable amount though not consisting solely of the poisons mentioned in the schedule to the Act, is subject to the penalty imposed by section 15 of the Act, that the exemption of patent medicines in section 16 from the penalty only applies to medicines protected by letters patent, that chlorodyne was a poison, on account of its containing scheduled poisons, notably chloroform and preparations of opium; that it was not a patent medicine although so called, and that therefore it did not come within the exception in section 16, in favor of patent medicines, and that sales thereof must be conducted in accordance with the regulations to be observed under section 17 of the Act, in relation to sales of poisons. (1)

Where a defendant was sued for a penalty for keeping open a shop for the retailing, dispensing or compounding of poisons,—to wit, a preparation of morphine called LICORACINE, contrary to the provisions of the English *Pharmacy Act*, and where the analyst called on behalf of the plaintiff, stated that the actual quantity of morphine in a bottle of the preparation might have been from one-fiftieth to three fiftieths of a grain per ounce, and he was not prepared to say whether the taking of the whole contents of the bottle would do an adult any harm, it was held that the evidence as to the quantity of morphine in the mixture was not sufficient to entitle the plaintiff to recover the penalty, and that the prohibition in the Act does not apply to a mixture containing an infinitesimal quantity of poison. (2)

The prohibition against the sale of poisons by unqualified persons has been held in England to extend to the sale of proprietory

(1) Pharmaceutical Society v. Piper, 5 R. (1893), 296; 62 L. J. Q. B., 305.
(2) Pharmaceutical Society v. Delve, 10 R. (*Feb.* 1894), 225.

medicines containing one of the scheduled poisons as an ingredient in such a quantity as to be hurtful to man or child, and that the exemption in favor of patent medicines is restricted to medicines which are protected by letters patent under the great seal, and does not apply to proprietory medicines. (1)

ATTEMPT TO MURDER BY ADMINISTERING POISON. See p. 566, *ante*.

ADMINISTERING POISON AND THEREBY CAUSING DANGER TO LIFE, ETC. See p. 434, *ante*.

POLYGAMY.

Polygamy.—Every one is guilty of an indictable offence and liable to imprisonment for five years, and to a fine of five hundred dollars, who—

(*a.*) practices, or, by the rites, ceremonies, forms, rules or customs of any denomination, sect or society, religious or secular, or by any form of contract, or by mere mutual consent, or by any other method whatsoever, and whether in a manner recognized by law as a binding form of marriage or not, agrees or consents to practise or enter into (i.) any form of polygamy; (ii.) any kind of conjugal union with more than one person at the same time; (iii.) what among the persons commonly called Mormons is known as spiritual or plural marriage; (iv.) lives, cohabits, or agrees or consents to live or cohabit, in any kind of conjugal union with a person who is married to another, or with a person who lives or cohabits with another or others in any kind of conjugal union; or

(*b.*) celebrates, is a party to, or assists in any such rite or ceremony which purports to make binding or to sanction any of the sexual relationships mentioned in paragraph (*a*) of this section; or

(*c.*) procures, enforces, enables, is a party to, or assists in the compliance with, or carrying out of, any such form, rule or custom which so purports; or

(*d.*) procures, enforces, enables, is a party to, or assists in the execution of, any such form of contract which so purports, or the giving of any such consent which so purports. (Code, Art. 278.)

(1) Pharmaceütical Society v. Armson, 9 R. (*Sept.* 1894), 241.

Mere cohabitation between a married man and another man's wife is not sufficient to sustain a conviction under this article, but, the law being aimed at the repression of Mormonism, there must be, between the parties, some contract or conjugal union, supposed to be binding upon them, and which the law was intended to prohibit. (1)

POST OFFICE.

See the *Post Office Act* R. S. C. c. 35, and its amendments, 52 Vic. c. 20 and 57-58 Vic. c. 54.

Section 93 of the *Post Office Act* (as amended by 57-58 Vic. c. 54, sec. 2) enacts that every one who encloses a letter or letters, or writing intended to serve the purpose of a letter or post card, in a parcel posted for the parcel post,—or in a packet of samples or patterns posted to pass at the rate of postage applicable to samples and patterns,—or incloses a letter or post card, or any writing to serve the purpose of a letter or post card, or incloses any other thing, in a newspaper posted to pass as a newspaper at the rate of postage applicable to newspapers (except in the case of the accounts and receipts of newspaper publishers and of the printed circulars inviting subscriptions and the printed envelopes addressed to such publishers, which will be permitted to pass folded or inclosed within the newspapers sent by them to their subscribers),—or incloses a letter or any writing intended to serve the purpose of a letter or post card, in any mail matter sent by post not being a letter, shall incur a penalty not exceeding forty dollars and not less than ten dollars in each case.

STEALING POST OFFICE LETTERS, POST LETTER BAGS AND OTHER MAIL MATTER.—See Articles 326-328 of the Code.

Under Section 89 of the R. S. C. c. 35, it is a misdemeanor punishable under Art. 951 of the Code, for any one to unlawfully open or wilfully keep or secrete any post letter bag or post letter or to neglect or refuse to deliver up any post letter to the person entitled to it.

PRIZE FIGHTING.

Definition.—The expression "prize fight" means an encounter or fight with fists or hands, between two persons who have

(1) R. v. Labrie, M. L. R., 7 Q. B. 211.

met for such purpose by previous arrangement made by or for them. (Code, Art. 92.)

Punishment.—Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding $1,000, and not less than $100, or to imprisonment for a term not exceeding six months, with or without hard labor, or to both, who sends or accepts a challenge to a prize fight, or who trains for a prize fight or acts as trainer or second to such a person. (Code, Art. 93.)

The principals in a prize fight are punishable summarily by twelve months' imprisonment; (Code, Art. 94.) and every person present at a prize fight as an aid, second, surgeon, umpire, backer, assistant or reporter is summarily punishable in a penalty of $500 or imprisonment for twelve months, or both. (Code, Art. 95.)

Canadians leaving Canada to engage in a prize fight beyond the limits thereof are liable to a penalty of $400 or six months' imprisonment, or both. (Code, Art. 96.)

As to duty of sheriffs, police officers, constables and other peace officers to arrest persons believed to be about to engage in any prize fight within Canada, and to forcibly prevent prize fights, see R. S. C. c. 153, secs. 6, 7 and 10.

See AFFRAY, p. 440, *ante*.

PROCURING PROSTITUTION.

See DEFILEMENT OF FEMALES, p. 516, *ante*.

RAILWAYS.

See the *Railway Act*, (51 Vic. c. 29) and its amendments, 53 Vic. c. 28, 55-56 Vic. c. 27, 56 Vic. c. 27, and 57-58 Vic. c. 53.

As to CRIMINAL BREACH OF CONTRACT BY A RAILWAY COMPANY, see CONTRACT, p. 508, *ante*.

Conveyance of Cattle by Rail.—(See p. 515, *ante*.)

False Railway Tickets.—It is an indictable offence punishable by 6 months imprisonment to fraudulently obtain a passage on any carriage, tramway, railway, steamer or other vessel by means of a false ticket or order. (Code, Art. 362.)

Forgery of Railway Tickets.—The forgery of any ticket for a free or paid passage on any carriage, tramway, railway

or steamer or other vessel is punishable by seven years' imprisonment. (Code, Art. 423 c. *m.*)

Gambling in Railway Cars.—(See p. 552, *ante.*)

Mischief on Railways.—See pp. 619-621, *ante.*

Stealing on Railways.—See Code, Art. 313.

Stealing Railway or Steamboat Tickets.—The stealing of any railway, tramway or steamboat ticket or order, is indictable and punishable by two years' imprisonment. (Code, Art. 330.)

Rape.

Definition.—Rape is the act of a man having carnal knowledge of a woman, who is not his wife, without her consent, or with consent which has been extorted by threats or fear of bodily harm, or obtained by personating the woman's husband, or by false and fraudulent representations as to the nature and quality of the act.

2. No one under the age of fourteen years can commit this offence. (Code, Art. 266.)

Carnal knowledge is complete upon penetration to any, even the slightest degree, and even without the emission of seed. (Code, Art. 3c1.)

Punishment.—Every one who commits rape is guilty of an indictable offence and liable to suffer death, or to imprisonment for life. (Code, Art. 267.)

A boy under the age of fourteen years is by law presumed to be incapable of committing a rape. (1)

A husband, too, is legally incapable of committing a rape upon his wife; but a husband may be punished for aiding in the commission of a rape upon his wife, (2) and so may a boy under fourteen be punished for aiding in the commission of the offence. (3)

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(1) 1 Hale 631; R. v. Groombridge, 7 C. & P. 582; R. v. Philips, 8 C. & P. 736.

(2) R. v. Audley, 1 St. Tr. 393.

(3) 1 Hale 620, 639; R. v. Eldershaw, 3 C. & P. 396; R. v. Allen, 1 Den. 364.

A man who got into bed to a woman while she was asleep and knew she was asleep, and had connection with her while in that state, was held guilty of rape. (1)

Where a medical man, by pretending to be treating, medically, a young girl under fourteen, had connection with her, she being led to believe that it was part of the treatment, the prisoner was held to be guilty of an indecent assault. (2)

It would now be a rape, and it was so held to be, in a later case, where the prosecutrix, a girl of nineteen, had consulted the prisoner as to her illness, and he, under pretence of performing a surgical operation, had connection with her, she submitting under the belief that he was merely performing the surgical operation. (3)

The defendant may adduce evidence to show that the woman is of notoriously bad character, unchaste, and of indecent habits, or that she is a common prostitute; or to show that she has previously had carnal connection with himself of her own free will; (4) but he cannot adduce evidence of other particular acts with other persons, so as to impeach her chastity. (5)

If asked on cross examination whether, outside of the prisoner, she has had carnal connection with other men, named to her in the questions, and if she deny having had any such intercourse with them, her answer will be conclusive and those men cannot be called to contradict her. (6)

A man who gave a girl of thirteen, a quantity of intoxicating liquor to excite her, and, on her becoming drunk, violated her, while insensible to what he did, was held to have committed a rape. (7)

Attempt to commit rape.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who attempts to commit rape. (Code, Art. 268.)

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(1) R. v Mayers, 12 Cox, 311.

(2) R. v. Case, 1 Den. 580; 19 L. J. (M.C.) 174.

(3) R. v. Flattery, 2 Q. B. D. 410; 46 L. J. (M.C.) 130.

(4) R. v. Riley, 18 Q. B. D. 481; 56 L. J. (M.C.) 52.

(5) R. v. Hodgson, R. & R. 211; R. v. Martin, 6 C. & P. 562.

(6) R. v. Holmes, L. R., 1 C. C. 334; 41 L. J. (M.C.) 12; R. v. Hodgson, R. & R., 211.

(7) R. v. Camplin, 1 Den. C. C. 89.

Defiling girls under fourteen.—Every one is guilty of an indictable offence and liable to imprisonment for life, and to be whipped, who carnally knows any girl under the age of fourteen years, not being his wife, whether he believes her to be of or above that age or not. (Code, Art. 269.)

An attempt to have carnal knowledge of any girl under fourteen is punishable by two years imprisonment and whipping. (Code, Art. 270.)

Administering drugs in order to defile females.—(See p. 433, *ante*.)

Carnally knowing female idiots or dummies.—(See p. 518, *ante*.)

RECEIVING.

Receiving Property Obtained by any indictable Offence—Every one is guilty of an indictable offence, and liable to fourteen years' imprisonment, who *receives* or *retains in his possession* anything *obtained by any offence punishable on indictment*, or by any acts wheresoever committed, which, if committed in Canada after the commencement of this Act, would have constituted an offence punishable upon indictment, knowing such thing to have been so obtained. (Code, Art. 314.)

Receiving Stolen Post-Letter or Post-Letter bag.—Every one is guilty of an indictable offence and liable to five years' imprisonment who receives or retains in his possession, any post-letter, post-letter bag, or any chattel, money or valuable security, parcel or other thing, the stealing whereof is hereby declared to be an indictable offence, knowing the same to have been stolen. (Code, Art. 315.)

Receiving Property Obtained by Offence Punishable Summarily.—Every one who receives or retains in his possession anything, knowing the same to be unlawfully obtained, the stealing of which is punishable, on summary conviction, either for every offence, or for the first and second offence only, is guilty of an offence and liable, on summary conviction, for every first, second or subsequent offence of receiving, to the same

punishment as if he were guilty of a first, second or subsequent offence of stealing the same. (Code, Art. 316.)

When Receiving is Complete.—The act of receiving anything unlawfully obtained is complete as soon as the offender has either EXCLUSIVELY or JOINTLY WITH THE THIEF or any other person, possession of or control over such thing, or aids in concealing or disposing of it. (Code, Art. 317.)

As long as the EXCLUSIVE possession of the goods still remains with the thief or other principal offender, the alleged receiver cannot be legally convicted of receiving. (1)

Where a defendant, who receives the goods has merely rendered some aid in carrying them off, just after being stolen, he may still be convicted of receiving; as where A. and B. broke into a warehouse and stole thereout a quantity of butter, which they carried along the street thirty yards, and then fetched C. who, being apprised of the robbery, assisted in carrying the property away. (2)

A receiver of stolen property may be prosecuted whether the principal offender or thief has or has not been prosecuted or convicted; and any number of receivers of different parts of property stolen, may be tried together. (Code, Art. 627.)

If a husband, knowing that his wife has stolen goods, receives them from her, he may be convicted of receiving. (3)

Recent possession of stolen property is evidence either that the person in possession stole it, or that he received it knowing it to be stolen, according to the circumstances of the particular case. (4)

The confession of the thief (unless made in the presence of and assented to by the alleged receiver) is not evidence against the person charged with the receiving. (5)

To show guilty knowledge, other instances of receiving goods belonging to the prosecutor, from the same person, may be proved;

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(1) R. v. Wiley, 20 L. J. M. C., 4.

(2) R. v. King, R. & R. 332; R. v. Atwell, 2 East P. C. 768.

(3) R. v. McAthey, 32 L. J. M. C. 35.

(4) R. v. Langmead, L. & C. 427. R. v. McMahon, 13 Cox, (C. C. R. *Irish*,) 275.

(5) R. v. Cox, 1 F. & F. 99.

(1) even though they be the subject of other indictments and antecedent to the receiving in question. (2)

In proceedings against a person for receiving or for having possession of goods knowing them to be stolen evidence may, in order to show guilty knowledge, be given of his having been found in possession of other property *stolen within the preceding twelve months.* (Code, Art. 716.)

It will not be sufficient however merely to prove that *other property stolen within the preceding twelve months* has, at *some time* during the twelve months, been dealt with by the prisoner, but it must be proved that such *other* property was found in the prisoner's possession at the time when he was found in possession of the property forming the subject matter of the indictment, on which he is being tried. (3) Therefore, where, to show guilty knowledge, evidence was tendered to prove that, a short time previously, the prisoner had sold for half its value, and had otherwise disposed of, other property stolen within the preceding twelve months, it was held that such evidence was inadmissible. (4)

In proceedings taken against a person charged with receiving or possessing stolen goods, evidence of his having been previously convicted, *within five years past*, of any offence involving fraud or dishonesty may be given, so as to show that he knew the goods in question to be stolen. (Code, Art. 717.)

Receiving after restoration to owner.—When the thing unlawfully obtained has been restored to the owner, or when a legal title to the thing so obtained has been acquired by any person, a subsequent receiving thereof shall not be an offence although the receiver may know that the thing had previously been dishonestly obtained. (Code, Art. 318.)

A., after stealing some goods, sent them (by rail) in a parcel addressed to B.; C., an officer of the railway company, from information received, examined the parcel at the place of destination,

(1) R. v. Dunn, 1 Moo, C. C. 146.
(2) R. v. Davis, 6 C. & P. 177.
(3) R. v. Carter, 53 L. J. M. C. 96.
(4) R. v. Drage, 14 Cox, 85.

and stopped its delivery. It was called for by A., the thief, on the day of its arrival, and refused to him. Next day, a porter, by C.'s direction, took the parcel to a house which A. had designated; and it was there received by B. *Held*, that B. could not be convicted of receiving, as the goods had ceased to be stolen goods when received by him from the porter sent by C. to deliver them. (1)

Recognizances.

See pp. 409–418, *ante*.

Restitution and Compensation.

Compensation for loss of property—Article 836 of the Code, provides that a court, on the trial of any person on an indictment, may upon the application of any person aggrieved and immediately after the conviction of the offender award any sum of money, not exceeding $1000, as compensation for any loss of property suffered by the applicant by means of the offence of which such offender is convicted; and that the amount awarded for such compensation shall be deemed a judgment debt due to the person entitled to receive the same from the person so convicted, and that the order for payment of such amount may be enforced in the same manner as in the case of any costs ordered by the court to be paid under Article 832 of the Code, (p. 269, *ante*).

Compensation to bona-fide purchaser of stolen property—(See p. 271, *ante*).

Restitution of stolen property—(See pp. 271-273, 279 and 305, *ante*.)

Riots.

See p. 483, *ante*.

Robbery.

Definition.—Robbery is theft accompanied with violence or threats of violence, to any person or property, used to extort the property stolen, or to prevent or overcome resistance to its being done. (Code, Art. 397).

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(1) R. v. Schmidt, 35 L. J. M. C. 59; R. v. Villensky (1892), 2 Q. B. 597.

Punishment of Robbery with Violence.—Every one is guilty of an indictable offence and liable to imprisonment for life and to be whipped, who—

(*a*) robs any person, and at the time of, or immediately before, or immediately after such robbery, wounds, beats, strikes, or uses personal violence to such person; or

(*b*) being together with any other person or persons, robs, or assaults with intent to rob, any person; or

(*c*) being armed with an offensive weapon or instrument, robs, or assaults with intent to rob, any person. (Code, Art. 398.)

Punishment of Robbery.—Every one who commits robbery is guilty of an indictable offence and liable to fourteen years' imprisonment. (Code, Art. 399.)

Assault with intent to Rob.—Every one who assaults any person with intent to rob him, is guilty of an indictable offence and liable to three years' imprisonment. (Code, Art. 400.)

The difference between robbery and stealing from the person is that the former is open and violent, while the latter is generally done clandestinely. In robbery, force is a necessary ingredient; in simple stealing from the person it is not. For instance, merely snatching property from a person unawares, and running off with it, is not robbery. No such sudden taking or snatching is sufficient to constitute robbery, unless at the same time some injury be done to the person, or there be a previous struggle for the possession of the property, or some violence, or threats of violence, used to obtain it. (1)

If, however, any injury be done to the person, or if there be, by the person stolen from, any struggle to keep possession of the property before it is taken from him, there will be a sufficient actual violence. Thus, where the prisoner had torn some hair from a lady's head in snatching a heavy diamond pin from it, the pin having a corkscrew stalk and being twisted in her hair, which was closely frizzed and strongly craped, it was held to be robbery. (2)

(1) Reg. v. Baker, 1 Leach 290; R. v. Walls, 2 C. & K. 214; Reg. v. Walton, L. & C. 288; R. v. Steward, 2 East. P. C. 702; R. v. Macauley, 1 Leach 287; R. v. Robins, 1 Leach 290.

(2) R. v. Moore, 1 Leach 335.

It is not necessary that the thing when taken should be actually on the owner's person. It will be sufficient if by means of violence or threats of violence it be taken in his presence. (1)

Therefore, if A., upon being assaulted by a thief, throws his purse or cloak into a bush, and the thief takes it up and carries it away; or if, while A. is flying from the thief, he lets fall his hat, and the thief takes it up and carries it away, such taking being done in the presence of A. will be sufficient. (2)

If the property be once taken, the offence will not be purged by the robber delivering it back to the owner.

For instance, A. requires B. to deliver his purse, and he delivers it accordingly when A, finding only two shillings in it, gives it to him again. This is a *taking* by robbery. (3)

The taking, in robbery, as in all other cases of theft must be *animo furandi;* and therefore if a person, under a *bonâ fide* impression that the property is his own, obtain it by threats, it is a trespass and it may be an assault but not a robbery. Therefore, where A owed B money and B violently assaulted A and forced him by that means to then and there pay him the debt, it was held that there was no felonious intent and no robbery. (4)

Where violence is used and the prosecutor forced to deliver his property under circumstances calculated to excite fear, the offence will not the less amount to robbery on account of the thief having had recourse to some colorable or specious pretence, in order the better to effect his purpose. For instance, one Hall at the head of a riotous mob stopped on the highway a cart laden with cheeses and insisted upon seizing them, for want of a permit. This was a mere pretence, no permit being necessary. After some altercation, Hall induced the owner to go with him before a magistrate; and, while they were absent, the mob, by preconcerted arrangement with Hall, pillaged the cart. On an action against the hundred, upon the statutes of hue and cry, the jury found that the offence was robbery. This finding was confirmed on a motion for new

(1) R. v. Francis, 2 Str. 1015.
(2) 3 Inst 68.
(3) R. v. Peat, 1 Leach, 228.
(4) See R. v. Hemmings, 4 F. & F. 50.

trial; and it was held that the first seizure of the cart and goods being by violence in presence of the owner it constituted the offence one of robbery. (1)

Stopping the Mail with intent to Rob or Search it—is indictable and punishable by imprisonment for life (and not less than 5 years.) (Code, Art. 401.)

Seamen.

See ARMY AND NAVY, pp. 446-450, *ante.*

See also the *Government Vessels Discipline Act*, R. S. C., c. 71, the *Seamen's Act*, R. S. C., c. 74, (with its amendments, 53 Vic., c. 16, and 57-58 Vic., c. 43), and the *Inland Waters Seamen's Act*, R. S. C., c. 75, as amended by 56 Vic., c. 24.

Search Warrants.

See pp. 117-134, *ante.*

Seditious Offences.

Seditious Words.—Seditious words are words expressive of a seditious intention.

Seditious Libel.—A seditious libel is a libel expressive of a seditious intention.

Seditious Conspiracy.—A seditious conspiracy is an agreement between two or more persons to carry into execution a seditious intention. (Code, Art. 123.)

Punishment of Seditious Offences.—Every one is guilty of an indictable offence and liable to two years' imprisonment who speaks any seditious words or publishes any seditious libel or is a party to any seditious conspiracy. (Code, Art. 124.)

Seduction.

Seduction of Girls between Fourteen and Sixteen.—Every one is guilty of an indictable offence and liable to two

(1) Merriman v. Chippenham Hundred, 2 East P. C. 709.

years' imprisonment who seduces *or* has illicit connection with any girl of previously chaste character, of or above the age of fourteen years and under the age of sixteen years. (Code, Art. 181.)

This Article has the words "seduces *or* has illicit connection; so that while seduction, if proved will be punishable it would seem also that the mere act of carnal connection with a previously chaste girl between the age of fourteen and sixteen years would be sufficient, of itself, to constitute an offence under this Article.

Seduction under Promise of Marriage.—Every one, above the age of twenty-one years, is guilty of an indictable offence and liable to two years' imprisonment who, *under promise of marriage*, seduces *and* has illicit connection with any unmarried female of previously chaste character and under twenty-one years of age. (Code, Art. 182.)

Seduction of Ward, Servant, Etc.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, being a guardian, seduces *or* has illicit connection with his ward, and every one who seduces *or* has illicit connection with any woman or girl of previously chaste character and under the age of twenty-one years, who is in his employment in a factory, mill or workshop, or who being in a common employment with him in such factory, mill or workshop, is, in respect of her employment or work in such factory, mill or workshop, under or in any way subject to his control or direction. (Code, Art. 183.)

Seduction of Female Passengers on Vessels.—Every one is guilty of an indictable offence and liable to a fine of four hundred dollars, or to one year's imprisonment, who, being the master or other officer or a seaman or other person employed on board of any vessel, while such vessel is in any water within the jurisdiction of the Parliament of Canada, *under promise of marriage*, or *by threats*, or *by the exercise of his authority*, or *by solicitation*, or *the making of gifts or presents*, seduces *and* has illicit connection with any female passenger.

2. The subsequent intermarriage of the seducer and the seduced is, if pleaded, a good defence to any indictment for any offence against this or either of the two next preceding sections *except in the case of a guardian seducing his ward.* (Code, Art. 184.)

Ships.

CASTING AWAY OR DESTROYING A SHIP.—See WRECKING, p. 621, *ante*, and see ATTEMPTS TO MURDER, p. 566, *ante*.

PREVENTING THE SAVING OF A WRECKED VESSEL, OR WRECK.—See p. 622, *ante*.

PREVENTING THE SAVING OF A SHIPWRECKED PERSON'S LIFE.—(See Code, Art. 254.)

SENDING OR TAKING ANY UNSEAWORTHY SHIP TO SEA.—It is an indictable offence punishable by FIVE years' imprisonment for any one to SEND or ATTEMPT TO SEND, or for any master to knowingly TAKE any Canadian ship (in an unseaworthy state) to sea or on a voyage on any of the inland waters of Canada, or on a voyage between the respective ports of the inland waters of Canada and the United States. (Code, Articles 256 and 257.)

See ARSON, pp. 450-455, *ante*.

SAFETY OF SHIPS AND PREVENTION OF ACCIDENTS THEREON.—See R. S. C., c. 77, 52 Vic., c. 22, 54-55 Vic., c. 38, and 57-58 Vic., c. 44.

INSPECTION OF SHIPS AND STEAMBOATS.—See p. 579, *ante*.

SHIPPING OF LIVE STOCK.—See 54-55 Vic., c. 36.

MARKING OF DECK AND LOAD LINES.—See 54-55 Vic., c. 40. See also 56 Vic., c. 22.

Shooting.

SHOOTING WITH INTENT TO MURDER.—See ATTEMPTS TO MURDER, p. 566, *ante*.

SHOOTING WITH INTENT TO WOUND, ETC.—See WOUNDING, *post*.

POINTING A FIREARM.—See p. 632, *ante*.

See ASSAULTS ON THE QUEEN, p. 465, *ante*.

Spring Guns.

SETTING SPRING GUNS AND MAN TRAPS.—This is indictable and punishable by FIVE years' imprisonment if done with intent to destroy or inflict grievous bodily harm on any trespasser or other person coming in contact with the instrument set. (Code, Art. 249.)

SUICIDE.

Aiding and Abetting Suicide.—Every one is guilty of an indictable offence and liable to imprisonment for life who counsels or procures any person to commit suicide, actually committed in consequence of such counselling or procurement, or who aids or abets any person in the commission of suicide. (Code, Art. 237.)

Attempt to Commit Suicide.—Every one who attempts to commit suicide is guilty of an indictable offence and liable to two years' imprisonment. (Code, Art. 238.)

SUNDAY.

In the province of Quebec, it is provided that, (with the exception of the sale at church doors of country parishes of the effects arising from public gatherings for the benefit of churches or those destined for pious purposes), no SHOPKEEPER, PEDLAR, HAWKER or OTHER PERSON shall sell or retail any goods, wares or merchandise during Sunday, under a penalty not exceeding $20 for the first offence and not less than $20 or more than $40 for every subsequent offence, (R. S. Q., Art. 3498.) But no prosecution shall be instituted for any such fine unless it be commenced within TWO MONTHS after the offence committed, (R. S. Q., Art, 3501.)

Where general words follow particular ones the rule is to construe them as applicable to persons *ejusdem generis;* (1) and, therefore, the words "OR OTHER PERSON" in the above Article, 3498, of the R. S. Q. must be taken to include only all persons of the same description as those particularized in the preceding words, "SHOPKEEPER, PEDLAR, HAWKER," that is to say, all persons following some particular calling covered by the description contained in the words SHOPKEEPER, PEDLAR and HAWKER.

Article 729 of the Code, provides that the taking of the verdict of the jury shall not be invalid by reason of its happening on a Sunday.

SURETIES FOR THE PEACE.

See pp. 419-422, *ante.*

(1) Per Lord Tenterden, in Sandiman v. Breach, 7 B. & C. 100.

THEFT.

Things capable of being Stolen.—Every inanimate thing whatever which is the property of any person, and which either is or may be made moveable, shall henceforth be capable of being stolen as soon as it becomes moveable, although it is made moveable in order to steal it: Provided, that nothing growing out of the earth of a value not exceeding twenty-five cents shall (except in the cases otherwise provided) be deemed capable of being stolen. (Code, Art. 303.)

Animals capable of being Stolen.—All tame living creatures, whether tame by nature or wild by nature and tamed, shall be capable of being stolen; but tame pigeons shall be capable of being stolen so long only as they are in a dovecote or on their owner's land.

2. All living creatures wild by nature, such as are not commonly found in a condition of natural liberty in Canada, shall, if kept in a state of confinement, be capable of being stolen, not only while they are so confined but after they have escaped from confinement.

3. All other living creatures wild by nature shall, if kept in a state of confinement, be capable of being stolen so long as they remain in confinement or are being actually pursued after escaping therefrom but no longer.

4. A wild living creature shall be deemed to be in a state of confinement so long as it is in a den, cage or small enclosure, stye or tank, or is otherwise so situated that it cannot escape and that its owner can take possession of it at pleasure.

5. Oysters and oyster brood shall be capable of being stolen when in oyster beds, layings, and fisheries which are the property of any person, and sufficiently marked out or known as such property.

6. Wild creatures in the enjoyment of their natural liberty shall not be capable of being stolen, nor shall the taking of their dead bodies by, or by the orders of, the person who killed them before they are reduced into actual possession by the owner of the land on which they died, be deemed to be theft.

7. Every thing produced by or forming part of any living

creature capable of being stolen shall be capable of being stolen. (Code, Art. 304.)

Theft Defined.—Theft or stealing is the act of *fraudulently* and *without colour of right taking*, or fraudulently and without colour of right, *converting to the use of* any person, anything capable of being stolen, *with intent*—

(*a*) to *deprive* the owner, or any person having any special property or interest therein, temporarily or absolutely of such thing or of such property or interest; or

(*b*) to *pledge* the same or deposit it as security; or

(*c*) to *part with it under a condition* as to its return, which the person parting with it may be *unable to perform*; or

(*d*) to *deal with* it in such a manner that it *cannot be restored* in the condition in which it was at the time of such taking and conversion.

2. The taking or conversion may be fraudulent, although effected without secrecy or attempt at concealment.

3. It is immaterial whether the thing converted was taken for the purpose of conversion, or whether it was, at the time of the conversion, in the lawful possession of the person converting.

4. Theft is committed when the offender moves the thing or causes it to move or to be moved, or begins to cause it to become moveable, with intent to steal it.

5. Provided that no factor or agent shall be guilty of theft by pledging or giving a lien on any goods or document of title to goods intrusted to him for the purpose of sale or otherwise, for any sum of money not greater than the amount due to him from his principal at the time of pledging or giving a lien on the same, together with the amount of any bill of exchange accepted by him for or on account of his principal.

6. Provided, that if any servant, contrary to the orders of his master, takes from his possession any food for the purpose of giving the same, or having the same given to any horse or other animal belonging to or in the possession of his master, the servant

so offending shall not, by reason thereof, be guilty of theft. (Code, Art. 305.

The phrase, "*without color of right*," forming part of the above definition of theft, seems to be intended to take the place of the word *feloniously*, which in connection with the definition of larceny is usually said to mean "without color of right." (1)

Theft may be either *simple* or *aggravated*. *Simple theft* is so closely connected with certain kinds of frauds that the two subjects run into each other. Theft, *aggravated by violence*, is either *robbery* or *extortion*; and theft, accompanied by wilful trespass on a dwelling-house, is either *burglary* or *housebreaking*.

Theft is no longer restricted to what, under the common law, constituted the offence of stealing or larceny—the principal ingredient of which was the physical asportation or taking or carrying away of personal property out of the possession and against the will of the owner—but it is extended to and made to cover all other means of fraudulent misappropriation; so that theft, as a general term, now includes every thing and every act amounting to larceny under the common law, as ONE of the different ways in which the offence of theft may be committed. But whether the act be a TAKING of the thing out of the owner's possession, or a CONVERSION of it while in the offender's lawful possession, the essence of the offence will still be the intent with which the act is done. For instance, if A. were to place his horse and cart opposite to B.'s door, and B., not wishing to have them there, were to lay hold of the horse and lead it away, and leave it and the cart at a short distance from where it originally stood, there would be a taking by B. of the horse and cart into his temporary possession, but no conversion and no intent to deprive A. of his property, B.'s intent being merely to remove the horse and cart from opposite to B.'s door (where they were in A.'s possession), to another place away from B.'s door, where they still remain in A.'s possession.

If, under color of having a claim for arrears of rent, A. distrains the cattle of B., his tenant, this may amount to a civil wrong—a trespass, for instance, under the common law of England as to civil matters—but no theft. (2)

(1) R. v. Thurborn, 1 Den. 388; 2 C. & K. 831

(2) 1 Hale, 509.

If A., having done work upon an article, returns it to B., the owner, and then, on a dispute arising between them as to the price to be paid for the work, A. takes and carries off the article against B.'s will, honestly intending to hold it as security for the amount which is alleged to be due to him, this is no theft, although in fact it turn out that there was nothing due to him. (1)

Under subsection 4, of article 305, *theft by taking* is committed as soon as the offender moves the thing, or causes it to move or to be moved, or begins to cause it to become moveable, with intent to steal it.

Where a thief, intending to steal some plate, took it out of a chest in which it was, and laid it down upon the floor, but was surprised before he could make off with it, it was held a sufficient taking; (2) and where, with the intention of stealing a cask of wine, the thief removed it from the head to the tail of the wagon upon which it lay, it was also held sufficient. (3)

The transfer, by a letter-carrier, of a letter from his pouch to his pocket was held a sufficient asportation. (4)

Where the thief was unable to carry off the goods on account of their being attached by a string on the counter, (5) or to carry off a purse on account of some keys attached to the strings of it getting entangled in the owner's pocket, (6) it was held in these cases that there was not a sufficient carrying away to constitute larceny, but that to render the asporation complete in such cases there must be a severance. It would seem likely, however, that under subsection 4, of article 305, these cases may now be held to be covered, so as to make them *theft by taking;* for that subsection makes it a sufficient taking as soon as the offender moves the thing, or causes it to move, or begins to cause it to be moveable.

It is clear that, under the common law not only was it no larceny if the owner himself of his own free-will parted with the property

(1) R. v. Wade, 11 Cox, 549.
(2) R. v. Simpson, Kel. 31; 1 Hawk. c. 33, s. 25.
(3) R. v. Walsh, 1 Moo. C. C. 14.
(4) R. v. Poynton, L. & C. 247; 32 L. J. (M. C.) 29.
(5) *Anon*, 2 East. P. C. 556.
(6) R. v. Wilkinson, 1 Hale, 508.

in the goods taken ; (1) but the same principle applied whenever the servant from whom goods were obtained had a general authority to act for his employer, and while acting under such general authority willingly parted with the goods ; the person to whom they were thus delivered not being guilty of larceny.

For instance, where a person obtained money from the cashier of a bank by presenting, knowing it to be forged, a forged order purporting to be drawn by one of the bank's customers, it was held not to be larceny ; because the cashier voluntarily parted with the money, and was acting within the scope of his general authority. (2)

Where a person, having the *animus furandi*, obtained possession of goods by means of some trick or artifice, it was considered larceny, under the common law, even though there was an actual delivery, if the owner did not intend to part with his entire right of property, but only with the temporary possession of the goods.

Where A., by means of what is known as the *purse trick*, induced B. to give him a shilling for a purse by showing B. three shillings and then making it appear as if he, A., had dropped them into the purse whereas in fact he had only dropped in three half-pence, it was held not to be larceny, but false pretences. (3)

Where an *automatic box*, the property of a company, was placed in a public passage, and was so constructed that, upon a penny being placed in it, through a slot, a cigarette was ejected from it, and the prisoner, instead of putting a penny in the box put into it a metal disc of the size of a penny, and so obtained a cigarette, he was held guilty of larceny. (4)

With regard to larceny of lost things, the general rule, under the common law, seems to have been that if a person found goods which had been actually lost or reasonably supposed by him to have been lost, and appropriated them, with intent to take the entire dominion over them, really believing, when he took them,

(1) R. v. Macgrath, L. R. 1 C. C. R. 205 ; R. v. Harvey, 1 Leach, 467 ; R. v. Adams, R. & R. 225 ; R. v. Coleman, 2 East, P. C. 672 ; R. v. Thomas, 9 C. & P. 741 ; R. v. Atkinson, 2 East, P. C. 673.

(2) R. v. Prince, 1 C. C. R. 205.

(3) R. v. Solomons, 17 Cox, C. C. R. 93.

(4) R. v. Hands, 16 Cox, C. C. R. 188.

that the owner could *not* be found, it was not larceny; but if he took them with the like intent, though lost, or reasonably supposed to be lost, but reasonably believing that the owner *could* be found, it was larceny. (1) It was necessary that the prisoner *at the time of finding*, should believe that the owner could be ascertained, and without this, an intention to appropriate, at the time of the finding, did not make the prisoner guilty of larceny, although he ascertained the name of the owner before converting to his own use. (2)

It will be seen that now, under Article 305, a finder of lost goods will render himself liable to prosecution for *theft by conversion*, if after finding the goods he discover the name of the owner and do not restore them, but converts them to his own use, although at the time of finding them he neither knew the owner nor believed nor had reasonable grounds for believing that the owner could be found.

The following are some of the cases decided under the old rule.

A. put 900 guineas in a secret drawer in a bureau, and died. B., her son and executor, lent the bureau to his brother, C., who, after keeping it several years, sold it to D., who gave it out to be repaired by E., who found the money. *Held*, to be such a taking, by E., out of the possession of A., as to constitute larceny. (3)

If a cabman converted to his own use a parcel left by a passenger in his cab, by mistake, it was larceny, by the common law, if he knew the owner, or if he took him or set him down at a particular place where he could have enquired for him. (4)

In every case where the property was not, properly speaking, lost, but only *mislaid*, under circumstances which would enable the owner to know where to look for and find it, the person finding and appropriating property so mislaid was held guilty of larceny under the common law.

The subject of larceny, or, *theft by taking*, as we may now call it, is intimately connected with the doctrine of property, and more

(1) 3 Inst. 108; 1 Hawk, c. 33, s. 2.

(2) R. v. Thurborn, 1 Den. 388; 2 C. & K. 831; R. v. Christopher, Bell, 27; R. v. Kerr, 8 C. & P. 176; R. v. Reed, C. & Mar. 306; R. v. Matthews, 12 Cox, C. C. R. 489.

(3) Cartwright v. Green, 8 Ves. 405; 2 Leach, 952.

(4) R. v. Wynne, 2 East, P. C. 664; 1 Leach, 413; R. v. Lear, 1 Leach, 415 *n*

particularly with that part of it which relates to POSSESSION; and the point upon which, under the common law, the most subtle questions have arisen as to possession was the distinction between *theft* and *embezzlement* in connection with which it has been held that, though the master's *possession* continued when he himself gave the *custody* of a thing to his servant, it (the master's possession) did not *begin* when the servant received from some one else, a thing for or an account of the master. So, that, a servant, having received something on his master's account from a third person, committed *embezzlement*, if he appropriated it *before* doing an act to vest the possession of it in his master, but if he appropriated it, *after* doing some such act, he committed *theft*. This useless distinction between THEFT and embezzlement is now entirely removed by Articles 305 and 308-310 of the Code.

For specific acts of THEFT and the different punishments imposed according to the description of the article stolen or the position or occupation of the offender, see Articles 319-357 of the Code: and see also the TABLE OF INDICTABLE OFFENCES at p. 258 *ante*, and the TABLE OF NON-INDICTABLE offences at p. 407 *ante*.

Theft of Things under Seizure.—Every one commits theft and steals the thing taken or carried away who, whether pretending to be the owner or not, secretly or openly, takes or carries away, or causes to be taken or carried away, without lawful authority, any property under lawful seizure and detention. (Code, Art. 306.)

Stealing from the Person.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who steals any chattel, money or *valuable security* from the person of another. (Code, Art. 344.)

To constitute this offence, the thing must be taken either from the person of the prosecutor, or in his presence. (1)

Where A. drew a book from the inside of B's coat pocket about an inch above the top of the pocket, but, whilst the book was still about B's person, B. suddenly put up his hand, when A. let go his hold and the book dropped back into the pocket. *Held* not to constitute stealing from the person, but a simple larceny. (2)

(1) R. v. Francis, 2 Str. 1015; R. v. Grey, 2 East, P. C. 708.
(2) R. v. Thompson, 1 Mood, 78.

Stealing in Dwelling-Houses.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who—

(*a.*) steals in any dwelling-house any chattel, money or *valuable security* to the value in the whole of twenty-five dollars or more; or,

(*b.*) steals any chattel, money or valuable security in any dwelling-house, and by any menace or threat puts any one therein in bodily fear. (Code, Art. 345.)

Where a person in his own dwelling-house stole from another person goods of the value of £5, it was held to constitute, under the English statute, the offence of stealing in a dwelling-house. (1)

A. a lodger, invited B. an acquaintance, to sleep at his lodgings. (without the knowledge of C., the landlord of the house,) and during the night, A. stole B's watch from the bed's head. *Held*, that A. was properly convicted of stealing in the dwelling-house. (2)

If one, on going to bed, put his clothes and money by his bedside, they are under the protection of the dwelling-house, and not of the person. (3)

Bringing Stolen Property into Canada.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, having obtained elsewhere than in Canada any property by any act which if done in Canada would have amounted to theft, brings such property into or has the same in Canada. (Code, Art. 355.)

Stealing Things not otherwise Provided for.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who steals anything, for the stealing of which no punishment is otherwise provided, or commits in respect thereof any offence for which he is liable to the same punishment as if he had stolen the same.

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(1) R. v. Bowden, 2 Mood. C. C. 285; 1 C. & K. 147.
(2) R. v. Taylor, R. & R. 418.
(3) R. v. Thomas, Car. Sup. 295.

2. The offender is liable to ten years' imprisonment if he has been previously convicted of theft. (Code, Art. 356.)

THREATS.

Compelling Execution of Documents by Force or Threats of Violence.—Every one is guilty of an indictable offence and liable to imprisonment for life who, with intent to defraud, or injure, by unlawful violence to, or restraint of the person of another, or by the threat that either the offender or any other person will employ such violence or restraint, unlawfully compels any person to execute, make, accept, endorse, alter or destroy the whole or any part of any valuable security, or to write, impress or affix any name or seal upon any paper or parchment, in order that it may be afterwards made or converted into or used or dealt with as a valuable security.

The provision contained in this article, 402, meets such cases as R. v. Phipoe, in which it was held that where one person compelled another, by threats, to sign a promissory note it was no robbery, the note being of no value to the party signing it. (1)

Demanding with intent to Steal.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, with menaces, demands from any person, either for himself or for any other person, anything capable of being stolen *with intent to steal it.* (Code, Art. 404.)

The gist of the offence is the demand itself accompanied with menaces and an intent to steal; and, therefore, if such a demand is successful it amounts to an actual theft.

As menaces are of two kinds,—by words or by gestures,—it seems that it is not necessary to prove an *express* demand *in words.* but that if the words or gestures of the defendant at the time were plainly indicative of what he required and tantamount in fact to a demand, though not in actual words, it would seem to be sufficient proof of the allegation, in the indictment, of a demand. (2)

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(1) R. v. Phipoe, 2 Leach, 673.
(2) R. v. Jackson, 1 Leach, 269.

Threatening Letters.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who sends, delivers or utters, or directly or indirectly *causes to be received*, knowing the contents thereof, any letter or writing *demanding* of any person with menaces, and without any reasonable or probable cause, any property, chattel, money, valuable security or other valuable thing.

It will be sufficient evidence of the sending or causing to be received to prove that the defendant placed the letter in a place where he knew the prosecutor would come, and that it thus reached him, or, that it was there picked up by another person and by him delivered to the prosecutor; (1) or that the letter is in the defendant's handwriting and came to the prosecutor through the post. (2)

Sending a letter to A., in order that he may deliver it to B., is a sending to B., if the letter is delivered by A. to B. (3) And the leaving of a letter, directed to A., near A's house, with the intention that it should not only reach A. but B. also, was held to be a sending of it to B., by whom it was afterwards seen. (4)

The words "without any reasonable or probable cause" apply to the demand for money, and not to the threatened accusation to be made against the prosecutor; and therefore it is immaterial in point of law whether the threatened accusation be true or not. (5)

Threats to accuse of a capital or infamous crime.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who, with intent to extort or gain anything from any person—

(*a.*) accuses or threatens to accuse either that person or any other person, *whether the person accused or threatened* with accusation *is guilty or not*,—of—(i) any offence punishable by law with death or imprisonment for seven years or more; (ii) any assault with intent

(1) R. v. Lloyd, 2 East, P. C. 1122; R. v. Wagstaff, R. & R. 308.

(2) R. v. Hemming, 2 East P. C. 1116; R. v. Jepson, 2 East, P. C. 1115.

(3) R. v. Paddle, R. & R. 484.

(4) R. v. Grimwade, 1 Den. 30; 1 C. & K. 592.

(5) R. v. Hamilton, 1 C. & K, 212; R. v. Gardner, 1 C. & P. 479.

to commit a rape, or any attempt or endeavour to commit a rape, or any indecent assault; (iii) carnally knowing or attempting to know any child so as to be punishable under this Act; (iv) any infamous offence, that is to say buggery, an attempt or assault with intent to commit buggery, or any unnatural practice, or incest; (v) counselling or procuring any person to commit any such infamous offence; or

(*b.*) threatens that any person shall be so accused by any other person; or

(*c.*) causes any person to receive a document containing such accusation or threat, knowing the contents thereof; or

(*d.*) by any of the means aforesaid compels or attempts to compel any person to execute, make, accept, endorse, alter or destroy the whole or any part of any valuable security, or to write, impress or affix any name or seal upon or to any paper or parchment, in order that it may be afterwards made or converted into or used or dealt with as a valuable security. (Code, Art. 405.)

Under this Article, the accusation or the threat to accuse may be either verbal or in the shape of a document.

It seems that the threat need not be a threat to accuse before a judicial tribunal; but that a threat to make the accusation before a third party is sufficient. (1)

Proof that the prisoner went to the prosecutor, and threatened to accuse his son of an unnatural offence with a mare unless the prosecutor would buy the mare for £3, was held to sustain an indictment for threatening to accuse of an abominable crime, with intent thereby to extort money. (2)

Extortion by Threats to Accuse of any other Offence.—Every one is guilty of an indictable offence, and liable o imprisonment for seven years who—

(*a.*) with intent to extort or gain anything from any person accuses or threatens to accuse either that person or any other person of any offence other than those specified in the last section,

(1) R. v. Robinson, 2 M. & Rob. 14.
(2) R. v. Redman, L. R. 1 C. C. R. 12.

whether the person accused or threatened with accusation *is guilty or not* of that offence; or

(*b.*) with such intent as aforesaid, threatens that any person shall be so accused by any person; or

(*c.*) causes any person to receive a document containing such accusation or threat knowing the contents thereof; or

(*d.*) by any of the means aforesaid, compels or attempts to compel any person to execute, make, accept, endorse, alter or destroy the whole or any part of any valuable security, or to write, impress or affix any name or seal upon or to any paper or parchment, in order that it may be afterwards made or converted into or used or dealt with as a valuable security. (Code, Art. 406.)

A demand,—with menaces,—of money actually due is not a demand with intent to steal. (1)

See EXTORTION, p. 530, *ante*.

See ROBBERY, *ante*, p. 649, *ante*.

TRADE MARKS.

As to the FORGERY OF TRADE MARKS and the FRAUDULENT MARKING OF MERCHANDISE, see Articles 443 to 455 of the Code, sections 15, 16, 18 and 22 of the *Merchandise Marks Offences Act*, 1888, (51 Vic., c. 41) and the 57-58 Vic., c. 37 (an Act in restraint of Fraudulent Sale or Marking). And see also the *Trade Marks and Industrial Designs Act*, (R. S. C., c. 63), and its amendments, 53 Vic., c. 14 and 54-55 Vic., c. 35.

TREASON.

Definition of and Punishment for Treason.—Treason is—

(*a.*) the act of killing Her Majesty, or doing her any bodily harm tending to death or destruction, maim or wounding, and the act of imprisoning or restraining her; or

(*b.*) the forming and manifesting by an overt act an intention to kill Her Majesty, or to do her any bodily harm tending to

(1) R. v. Johnson, U. C. Q. B. 569.

death or destruction, maim or wounding, or to imprison or to restrain her; or

(*c.*) the act of killing the eldest son and heir apparent of Her Majesty, or the Queen consort of any King of the United Kingdom of Great Britain and Ireland; or

(*d.*) the forming and manifesting, by an overt act, an intention to kill the eldest son and heir apparent of Her Majesty, or the Queen consort of any King of the United Kingdom of Great Britain and Ireland; or

(*e.*) conspiring with any person to kill Her Majesty, or to do her any bodily harm tending to death or destruction, maim or wounding or conspiring with any person to imprison or restrain her; or

(*f.*) levying war against Her Majesty either—

(i.) with intent to depose Her Majesty from the style, honour and royal name of the Imperial Crown of the United Kingdom of Great Britain and Ireland or of any other of Her Majesty's dominions or countries;

(ii.) in order, by force or constraint, to compel Her Majesty to change her measures or counsels, or in order to intimidate or overawe both Houses or either House of Parliament of the United Kingdom or of Canada; or

(*g.*) conspiring to levy war against Her Majesty with any such intent or for any such purpose as aforesaid; or

(*h.*) instigating any foreigner with force to invade the said United Kingdom or Canada or any other of the dominions of Her Majesty; or

(*i.*) assisting any public enemy at war with Her Majesty in such war by any means whatsoever; or

(*j.*) violating, whether with her consent or not, a Queen consort, or the wife of the eldest son and heir apparent, for the time being, of the King or Queen regnant.

2. Every one who commits treason is guilty of an indictable offence and liable to suffer death. (Code, Art. 65.)

Treasonable Conspiracy.—In every case in which it is treason to conspire with any person for any purpose, the act of so conspiring, and every overt act of any such conspiracy, is an overt act of treason. (Code, Art. 66.)

Accessories after the fact to Treason.—Every one is guilty of an indictable offence and liable to two years' imprisonment who—

(*a.*) becomes an accessory after the fact to treason; or

(*b.*) knowing that any person is about to commit treason does not with all reasonable despatch give information thereof to a justice of the peace, or use other reasonable endeavours to prevent the commission of the same. (Code, Art. 67.)

Levying war against the Queen.—(See p. 605, *ante*.

Treasonable Offences.—Every one is guilty of an indictable offence and liable to imprisonment for life who forms any of the intentions hereinafter mentioned, and manifests any such intention by conspiring with any person to carry it into effect, or by any other overt act, or by publishing any printing or writing; that is to say—

(*a.*) an intention to depose Her Majesty from the style, honour and royal name of the Imperial Crown of the United Kingdom of Great Britain and Ireland, or of any other of Her Majesty's dominions or countries;

(*b.*) an intention to levy war against Her Majesty within any part of the United Kingdom, or of Canada, in order by force or constraint to compel her to change her measures or counsels, or in order to put any force or constraint upon or in order to intimidate or overawe both Houses or either House of Parliament of the United Kingdom or of Canada;

(*c.*) an intention to move or stir any foreigner or stranger with force to invade the said United Kingdom, or Canada, or any other of Her Majesty's dominions or countries under the authority of Her Majesty. (Code, Art. 69.)

Conspiracy to intimidate a Legislature.—(See Art. 70 of the Code.)

Assaults on the Queen.—(See p. 465, *ante*.)

VAGRANCY.

Every one is a loose, idle or disorderly person or vagrant who—

(*a.*) not having any visible means of maintaining himself lives without employment;

(*b.*) being able to work and thereby or by other means to maintain himself and family wilfully refuses or neglects to do so;

(*c.*) openly exposes or exhibits in any street, road, highway or public place, any indecent exhibition;

(*d.*) without a certificate signed, within six months, by a priest, clergyman or minister of the Gospel, or two justices of the peace, residing in the municipality where the alms are being asked, that he or she is a deserving object of charity, wanders about and begs or goes about from door to door, or places himself or herself in any street, highway, passage or public place to beg or receive alms;

(*e.*) loiters on any street, road, highway or public place, and obstructs passengers by standing across the footpath, or by using insulting language, or in any other way;

(*f.*) causes a disturbance in or near any street, road, highway or public place, by screaming, swearing or singing or by being drunk, or by impeding or incommoding peaceable passengers:

(*g.*) by discharging fire arms, or by riotous or disorderly conduct in any street or highway, wantonly disturbs the peace and quiet of the inmates of any dwelling-house near such street or highway;

(*h.*) tears down or defaces signs, breaks windows, or doors or door plates, or the walls of houses, roads or gardens, or destroys fences;

(*i.*) being a common prostitute or night walker, wanders in the fields, public streets or highways, lanes or places of public meeting or gathering of people, and does not give a satisfactory account of herself; or

(*j.*) is a keeper or inmate of a disorderly house, bawdy-house or house of ill-fame, or house for the resort of prostitutes;

(*k.*) is in the habit of frequenting such houses and does not give a satisfactory account of himself or herself; or

(*l.*) having no peaceable profession or calling to maintain himself by, for the most part supports himself by gaming or crime, or by the avails of prostitution.

Every loose, idle or disorderly person or vagrant is liable, on summary conviction before two justices of the peace, to a fine not exceeding fifty dollars or to imprisonment, with or without hard labour, for any term not exceeding six months, or to both.

Where a woman was convicted of being a common prostitute and of wandering in the public streets and not giving a satisfactory account of herself, the conviction was held illegal, because it did not allege that the woman was asked, before being taken, or when she was being taken, to give an account of herself; and it was held further that an allegation "she giving no satisfactory account" does not show that any prior demand was made upon her to give an account of herself. (1)

When a person is charged with vagrancy in being able to work and maintain himself and family and wilfully refusing or neglecting to do so, an obligation to maintain must be established against him. For instance, a man is not bound to support his wife who has left him and is living in adultery; (2) nor can a person, charged as above, be convicted if he offers to take back his wife. (3)

Where a woman who, being deserted by her husband, and having no means of maintaining her children, left them so that they became chargeable to the parish, it was held that she could not be convicted, under the English Vagrant Act, 5 Geo. IV, c. 83, s. 4. (4

Being drunk is not an offence under clause (*f*) of the above Article. The offence consists in causing a disturbance by being drunk. (5)

A licensed carter who, contrary to a city ordinance, loiters on the street near the entrance of a hotel and solicits passengers to hire his cab, but who does not obstruct passengers, is not within clause (*e*) of the above article. (6)

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(1) R. v. Levecque. 30 U. C. Q. B. 509.

(2) R. v. Flinton, 1 B. & Ad. 227.

(3) Flannagan v. Bishop Wearmouth, 8 E. & B. 451.

(4) Peters v. Cowie, L. R. 2 Q. B. D. 131.

(5) *Ex parte* Despatie, 9 L. N. 387; R. v. Daly, 24 C. L. J. 157.
Smith v. R. 4 M. L. R. 325; Bur. Dig. 188.

VEXATIOUS ACTIONS.

See pp. 50–53, *ante*.

WAREHOUSE RECEIPTS.

See p. 550, *ante*.

WEIGHTS AND MEASURES.

See R. S. C., c. 104, 51 Vic., c. 25, and 52 Vic. c. 17.

WIFE OR HUSBAND.

THEFT BY WIFE OR HUSBAND from each other, when living separate. (See Code, Art. 313).

WORSHIP.

DISTURBING PUBLIC WORSHIP. (See Code, Art. 173).

OBSTRUCTING OFFICIATING CLERGYMAN. (See Code, Art. 171).

WOUNDING.

Wounding with Intent to Murder.—See ATTEMPTS TO MURDER by wounding. (Code, Art. 232 (*b*), at p. 566, *ante*.)

Wounding with Intent to Maim, Etc.—Every one is guilty of an indictable offence and liable to imprisonment for life who, with intent to maim, disfigure or disable any person, or to do some other grievous bodily harm to any person, or with intent to resist or prevent the lawful apprehension or detainer of any person, unlawfully by any means *wounds* or *causes any grievous bodily harm* to any person, or *shoots* at any person, or, by drawing a trigger, or in any other manner, *attempts to discharge* any kind of *loaded arms* at any person. (Code, Art. 241.)

Wounding.—Every one is guilty of an indictable offence and liable to three years' imprisonment who unlawfully *wounds* or *inflicts* any *grievous bodily harm* upon any other person, either with or without any weapon or instrument. (Code, Art. 242.)

Shooting at Her Majesty's Vessels, and Wounding Public Officers on Duty.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who wilfully—

(*a.*) shoots at any vessel belonging to Her Majesty or in the service of Canada; or (*b.*) maims or wounds any public officer engaged in the execution of his duty or any person acting in aid of such officer. (Code, Art. 243.)

APPENDIX.

THE EXTRADITION ACT

The law of Canada as to procedure in extradition matters is contained in the *Extradition Act*, R. S. C., c. 142, as amended and extended by the 52 Vic., c. 36.

The Act applies in the case of any foreign state with which there is, at or after the time of its coming into force, an extradition treaty, convention, or arrangement. (R. S. C., c. 142, sec. 3.)

All judges of the Superior Courts and of the County Courts of any province, and all commissioners. appointed for the purpose in any province by the Governor in Council under the great seal of Canada, by virtue of the act, are authorized to act judicially in extradition matters within the province, and they have, for the purposes of the Act, all the powers and jurisdiction of any judge or magistrate of the province. (*Ib.*, sec. 5.)

Extradition from Canada.—Whenever the Act applies, a judge may issue his warrant of arrest. to arrest a fugitive on a foreign warrant of arrest, or on an information or complaint laid before him, and on such evidence and after such proceedings as in his opinion would justify the issue of the warrant if the crime in question had been committed in Canada. And he shall forthwith send a report of the fact of the issue of the warrant, with certified copies of the evidence and foreign warrant, information or complaint, to the Minister of Justice. (*Ib.*, sec. 6.)

A warrant issued under the Act may be executed in any part of Canada, as if originally issued, or subsequently endorsed by a justice of the peace having jurisdiction in the place where executed. (*Ib.*, sec. 7.)

The fugitive shall be brought before a judge, and the judge shall hear the case in the same manner, as nearly as may be, as if the

fugitive was brought before a justice of the peace charged with an indictable offence committed in Canada, receive the evidence of any witness tendered to show the truth of the charge, or the fact of the conviction; and also receive any evidence tendered to show that the crime in question is one of a political character, or that it is, for any other reason, not an extradition crime, or that the proceedings are being taken with a view to prosecute or punish him for an offence of a political character. (*Ib.*, sec. 9.)

Depositions taken in a foreign state and copies thereof, and certificates of or judicial documents stating the fact of conviction may be received in evidence provided such papers are duly authenticated as required by section 10 of the Act.

If, in the case of a fugitive offender alleged to have been CONVICTED of an extradition crime, such evidence is produced as would, according to the law of Canada, prove that he was so convicted, and if, in the case of a fugitive ACCUSED of an extradition crime, such evidence is produced as would, according to the law of Canada, justify his committal for trial, if the crime had been committed in Canada, the judge shall issue his warrant for the committal of the fugitive to prison until surrendered to the foreign state, or discharged according to law; but, otherwise, the judge shall order him to be discharged. (*Ib.*, sec. 11.)

If the judge commits a fugitive to prison he shall, on such committal: (*a.*) inform him that he will not be surrendered until after the expiration of FIFTEEN DAYS, and that he has a right to apply for a writ of *habeas corpus*; and, (*b.*) transmit to the Minister of Justice a certificate of the committal with a copy of all the evidence taken before him, not already so transmitted, and such report on the case as he thinks fit. (*Ib.*, sec 12.)

The requisition for the fugitive's surrender is made to the Minister of Justice by a consular officer of the foreign state resident at Ottawa,—or by any minister of that state communicating with the Minister of Justice through the diplomatic representative of Her Majesty in that state,—or, if neither of these modes is convenient, then in such other mode as is settled by arrangement. (*Ib.*, sec. 13.)

If the offence in question is of a political character or if the proceedings are being taken with a view to prosecute or punish the

fugitive for an offence of a political character he shall not be liable to be surrendered. (*Ib.*, sec. 14.)

If the Minister of Justice, at any time, determines—(*a*) that the offence, in respect of which extradition proceedings are being taken, is of a political character, or (*b*) that the proceedings are being taken with a view to try or punish the fugitive for an offence of a political character, or (*c*) that the foreign state does not intend to make a requisition for surrender, he may refuse to make an order for surrender, or cancel any order made by him or any warrant issued by a judge, and order the fugitive's discharge. (*Ib.*, sec. 15.)

A fugitive shall not be surrendered until after the expiration of FIFTEEN DAYS from his committal, or, if a writ of *habeas corpus* is issued, until after the decision of the court remanding him. (*Ib.*, sec. 16.)

If a fugitive is not surrendered and conveyed out of Canada within TWO MONTHS after his committal for surrender, or,—if a writ of *habeas corpus* is issued,—within TWO MONTHS after the decision of the court on such writ, any of the judges of the Superior Courts of the Province where such person is confined, having power to grant a *habeas corpus*, may, upon application being made to him after reasonable notice to the Minister of Justice, order the fugitive to be discharged, unless sufficient cause be shown against such discharge. (*Ib.*, sec. 19.)

Section 1 of 52 Vic., c. 36, provides for the surrender, to a foreign state, of fugitive offenders, charged with or convicted of any of the crimes mentioned in the schedule to the Act, in case of there being no extradition treaty or arrangement with such foreign state or in case of there being, with such foreign state, an extradition arrangement which does not include the crimes mentioned in the schedule to the Act.

Extradition from Foreign State.—A requisition for the surrender of a criminal who is a fugitive from Canada, and who is or is suspected to be in any foreign state, with which there is an extradition treaty, convention or arrangement, may be made by the Minister of Justice to a consular officer of that state resident at Ottawa, or to a Minister of Justice or any other minister of that state through the diplomatic representative of Her Majesty in that

state, or if neither of these modes is convenient, then in such other mode as is settled by arrangement. (R. S. C., c. 142, sec. 21.)

Whenever any person accused or convicted of an extradition crime is surrendered by a foreign state in pursuance of any extradition arrangement, such person shall not, until after he has been restored or has had an opportunity of returning to the foreign state, be subject, in contravention of any of the terms of the arrangement, to any prosecution or punishment in Canada for any other offence committed prior to his surrender for which he should not under the arrangement be prosecuted. (*Ib.*, sec. 23.)

Political Offence.—An explosion caused by an Anarchist is not a political offence; but, to constitute a political offence, there must, in connection therewith be two parties in the State, each trying to impose its own government on the other. (1)

Extradition between Canada and the United States—is regulated by the *Ashburton Treaty*,—made between Great Britain and the United States in 1842,—by statutes passed to give that treaty effect, and by a convention made between Great Britain and the United States in 1889-1890.

The *Ashburton Treaty* has been extended by the convention of 1888-1890 so as to make provision for the extradition, between Great Britain and the United States, of fugitive criminals, accused or convicted of any of the following crimes:—

MURDER.

PIRACY.

ARSON.

ROBBERY.

FORGERY; UTTERING OF FORGERIES.

MANSLAUGHTER when voluntary.

COUNTERFEITING; UTTERING COUNTERFEIT MONEY.

EMBEZZLEMENT; LARCENY; RECEIVING any money, valuable security or other property knowing the same to have been embezzled, stolen or fraudulently obtained. (2)

FRAUD, by a bailee, banker, agent, factor, trustee, director, mem-

(1) *In re* Meunier, 10 R., *Oct.*, (1894), 225.

(2) EMBEZZLEMENT and LARCENY are now included in "THEFT."

ber or officer of any company, made criminal by the laws of both countries.

PERJURY; SUBORNATION OF PERJURY.

RAPE; ABDUCTION; CHILD STEALING; KIDNAPPING.

BURGLARY; HOUSEBREAKING; SHOPBREAKING.

PIRACY by the law of nations.

REVOLT OR CONSPIRACY TO REVOLT by two or more persons on board a ship on the high seas against the authority of the master; WRONGFULLY SINKING OR DESTROYING A VESSEL AT SEA; OR ATTEMPTING to do so; ASSAULTS ON BOARD A SHIP on the high seas WITH INTENT to do grievous bodily harm.

CRIMES AND OFFENCES against the laws of both countries for the suppression of SLAVERY AND SLAVE TRADING.

FORMS IN THE SECOND SCHEDULE OF THE EXTRADITION ACT.

Warrant of Apprehension.

To wit:

To all and each of the constables of

WHEREAS it has been shown to the undersigned, a judge under "*The Extradition Act*" that late of is accused [or, *convicted*] of the crime of within the jurisdiction of

This is therefore to command you in Her Majesty's name forthwith to apprehend the said and to bring him before me or some other judge under the said Act to be further dealt with according to law for which this shall be your warrant.

GIVEN under my hand and seal at this day of A. D. 189 .

WARRANT OF COMMITTAL.

To wit:

To one of the constables of and to the keeper of the at

BE IT REMEMBERED that on this day of , in the year , at , is brought before me, a Judge under "*The Extradition Act*," , who has been apprehended under the said Act, to be dealt with according to law; and forasmuch as I have determined that he should be surrendered in pursuance of the said Act, on the ground of his being accused [or *convicted*] of the crime of within the jurisdiction of .

This is therefore to command you, the said constable, in Her Majesty's name, forthwith to convey and deliver the said into the custody of the keeper, of the at , and you the said keeper, to receive the said .

GIVEN under my hand and seal at this day of . A. D. 189 .

Order of Minister of Justice for Surrender.

To the keeper of the at and to .

WHEREAS , late of , accused [or *convicted*] of the crime of within the jurisdiction of , was delivered into the custody of you, the keeper of the at , by warrant dated , pursuant to "*The Extradition Act*."

Now, I do hereby, in pursuance of the said Act, ORDER you, the keeper, to deliver the said into the custody of the said , and I COMMAND you, the said , to receive the said into your custody and to convey him within the jurisdiction of the said , and there place him in the custody of any person or persons (or of) appointed by the said to receive him: for which this shall be your warrant.

GIVEN under the hand and seal of the undersigned Minister of Justice of Canada, this day of A. D. 189 .

FUGITIVE OFFENDERS ACT.

The *Fugitive Offenders Act* applies to the following offences, namely: TREASON, PIRACY, and every offence which is, for the time being punishable, in the part of Her Majesty's dominions in

which it was committed, either on indictment or information, by imprisonment with hard labour for a term of TWELVE MONTHS or more, or by any greater punishment; and the Act applies also, so far as is consistent with the tenor thereof to any person convicted by a court in any part of Her Majesty's dominions of an offence committed in Her Majesty's dominions or elsewhere, who is unlawfully at large before the expiration of his sentence, in like manner as it applies to a person accused of the like offence committed in the part of Her Majesty's dominions in which such person was convicted. (R. S. C., c. 143, sec. 3.)

Whenever a person accused of having committed an offence (to which the Act applies), in any part of Her Majesty's dominions outside of Canada, has left that part, such person, as a fugitive from that part, if found in Canada, shall be liable to be apprehended and returned to the part from which he is a fugitive; and he may be so apprehended under an indorsed warrant or a provisional warrant. (*Ib.*, sec. 4.)

Whenever a warrant has been issued in a part of Her Majesty's dominions for the apprehension of a fugitive from that part who is, or is suspected to be, in or on the way to Canada, the Governor-General or a judge of a court, if satisfied that the warrant was issued by some person having lawful authority to issue the same, may indorse such warrant, and the warrant so indorsed shall be a sufficient authority to apprehend the fugitive in Canada and bring him before a magistrate. (*Ib.*, sec. 5.)

A magistrate in Canada may issue a PROVISIONAL WARRANT for the apprehension of a fugitive who is or is suspected of being in or on his way to Canada, on such information and under such circumstances as would, in his opinion, justify the issue of a warrant if the offence of which the fugitive is accused had been committed within his jurisdiction; and such warrant may be backed and executed accordingly. (*Ib.*, sec. 6.)

A magistrate issuing a provisional warrant must forthwith send a report of the issue, together with the information or a certified copy thereof, to the Governor-General; and the Governor-General may, if he thinks fit, discharge the person apprehended under such warrant. (*Ib.*)

A fugitive when apprehended shall be brought before a magistrate, who, subject to the provisions of the Act, shall hear the case in the same manner and have the same jurisdiction and powers, as nearly as may be, including the power to remand and admit to bail, as if the fugitive was charged with an offence committed within his jurisdiction. (*Ib.*, sec. 7, subsec. 1.)

Whenever the magistrate commits the fugitive to prison, he must inform him that he will not be surrendered until after the expiration of FIFTEEN DAYS, and that he has a right to apply for a writ of *habeas corpus* or other like process. (*Ib.*, sec. 7, subsec. 3.)

A fugitive apprehended on a provisional warrant may from time to time be remanded for such reasonable time, not exceeding seven days at any one time, as seems requisite for the production of an endorsed warrant. (*Ib.*, sec. 7, subsec. 4.)

Upon the expiration of FIFTEEN DAYS after the fugitive's committal to prison to await his return, or, (if a writ of *habeas corpus* or other like process has been issued with reference to him), after the final decision of the court in the case, the Governor-General by warrant under his hand, if he thinks it just, may order the fugitive to be returned to the part of Her Majesty's dominions from which he is a fugitive. (*Ib.*, sec 8.)

If a fugitive committed to prison to await his return is not returned out of Canada within TWO MONTHS after his committal the court, upon application, by or on behalf of the fugitive after reasonable notice to the Governor-General, may, unless cause is shown, to the contrary, order the fugitive to be discharged. (*Ib.*, sec. 9.)

Manner of Return of Fugitive.—Whenever a fugitive or prisoner is authorized to be returned to any part of Her Majesty's dominions in pursuance of this Act, such fugitive or prisoner may be sent thither in any ship registered in Canada or belonging to the Government of Canada :

2. The Governor-General, for the purpose aforesaid, may, by the warrant for the return of the fugitive, order the master of any ship registered in Canada, bound to the said part of Her Majesty's dominions, to receive such fugitive or prisoner, and afford a passage and subsistence during the voyage to him, and to the person having him in custody, and to the witnesses ; but such master shall

not be required to receive more than one fugitive or prisoner for every hundred tons of his ship's registered tonnage, or more than one witness for every fifty tons of such tonnage :

3. The Governor-General shall cause to be indorsed upon the agreement of the ship such particulars with respect to any fugitive prisoner or witness sent in her, as the Minister of Marine and Fisheries, from time to time, requires :

4. Every such master shall, on his ship's arrival in the said part of Her Majesty's dominions, cause such fugitive or prisoner, if he is not in the custody of any person, to be given into the custody of some constable there to be dealt with according to law.

5. Every master who fails, on payment or tender of a reasonable amount for expenses, to comply with an order made in pursuance of this section, or to cause a fugitive or prisoner committed to his charge to be given into custody as required by this section, shall be liable, on summary conviction, to a penalty not exceeding two hundred dollars. (*Ib.*, sec. 15.)

Evidence.—A magistrate may take depositions for the purposes of this Act, in the absence of a person accused of an offence, in like manner as he might take the same if such person was present and accused of an offence before him. (*Ib.*, sec. 16.)

Depositions whether taken in the absence of the fugitive or otherwise and copies thereof, and official certificates of, or judicial documents stating facts, may, if duly authenticated, be received in evidence in proceedings under this Act. (*Ib.*, sec. 17.)

Warrants and depositions and copies thereof and official certificates of or judicial documents stating facts shall be deemed duly authenticated for the purposes of the Act, if they are authenticated in manner provided, for the time being by law, or if they purport to be signed, by or authenticated by the signature of a judge, magistrate, or officer of the part of Her Majesty's dominions in which the same are issued, taken, or made and are authenticated either by the oath of some witness or the public seal of a British possession or of a Colonial secretary or of some secretary or minister administering a department of the government of a British possession ; and all courts and magistrates are required to take judicial notice of every such seal and admit without further proof the documents authenticated by it. (*Ib.*, 18.)

AN ACT FURTHER TO AMEND THE CRIMINAL CODE, 1892.

(57-58 Vic. c. 57.)

1. The *Criminal Code*, 1892, is hereby amended in the manner set forth in the following schedule :—

SCHEDULE.

Section 65, paragraph (*f*)..	By inserting after the word "countries" in the fifth line the word "or."
Section 197.....	By substituting in the French version for the word "jeu" in the tenth line the word "paris."
Section 207.....	By adding at the end thereof the following subsection :— "2. The expression 'public place' in this section includes any open place to which the public have or are permitted to have access and any place of public resort."
Section 208.....	By striking out the following words in the second and third lines : "before two justices of the peace."
Section 263, paragraph (*d*).	By inserting after the word "seizure" in the fourth line the word "or."
Section 319, paragraph (*b*)..	By adding at the end thereof the word "or."
Section 540.....	By striking out the words "Part XI.—Escapes and Rescues ; any of the sections in this part."
Section 575.....	By inserting after the word "gaming" in the twenty-third line of subsection one the words "or betting."
do	By inserting after the word "gaming" in the ninth line of subsection two the words "or betting."
do	By inserting after the word "gaming-house" in the sixth line of subsection three the words "or any tables and instruments of betting so seized in any place used as a common betting-house."
Section 651.....	By adding at the end thereof, as subsection 5, the following :— "5. Whenever, in the province of Quebec, it has been decided by competent authority that no term of the Court of Queen's Bench, holding criminal pleas, is to be held, at the appointed time, in any district in the said province within which a term of the said court should be then held, any person charged with an indictable

	offence whose trial should by law be held in the said district, may in the manner hereinbefore provided obtain an order that his trial be proceeded with in some other district within the said province, named by the court or judge; and all the provisions contained in this section shall apply to the case of a person so applying for and obtaining a change of venue as aforesaid."
Section 662	By adding at the end thereof, as subsection 2, the following: "2. Notwithstanding any law, usage or custom to the contrary, seven grand jurors, instead of twelve as heretofore, may find a true bill in any province where the panel of grand jurors is not more than thirteen: Provided that this subsection shall not come into force until a day to be named by the Governor by his proclamation."
Section 801	By adding at the end thereof the following proviso:— "Provided, as regards the provinces of Ontario, Nova Scotia and New Brunswick, that the Governor in Council may from time to time direct that any fine or penalty which would otherwise under this section be payable to the county treasurer for county purposes, or any portion thereof, be paid to any municipal or local authority which wholly or in part bears the expenses of the administration of justice under this part, or that the same be applied in any other manner deemed best adapted to secure its due administration of such provisions."
Section 871	By striking out "1.00" and substituting "1.50" in the first item of the tariff of constables' fees, and By striking out the item numbered 7 in the said tariff and substituting the following:— "6. Attending justices on trial, for each day necessarily employed in one or more cases, when engaged less than four hours, $1.00. "7. Attending justices on trial, for each day necessarily employed in one or more cases, when engaged more than four hours, $1.50."
Section 872, subsection one, paragraph (*a*)	By striking out the following words in the fifth, sixth and seventh lines: "in the common jail or other prison of the territorial division for which the justice is then acting."
Section 872, subsection one, paragraph (*b*)	By striking out the following words in the third and fourth lines: "in the common jail or other prison of the said territorial division."
Section 884	By inserting after the word "same" in the third line the words "whether such notice has been properly given or not."
Section 926	By adding at the end of subsection 2 thereof the following paragraphs:— "(*d*.) The cognizor shall be liable to coercive imprisonment for the payment of the judgment and costs.

	"(e.) When sufficient goods and chattels, lands or tenements cannot be found to satisfy the judgment against a cognizor and the same is certified in the return to the writ of execution or appears by the report of distribution, a warrant of committment addressed to the sheriff of the district may issue upon the fiat or precipe of the Attorney General, or of any person thereto authorized in writing by him, and such warrant shall be authority to the sheriff to take into custody the body of the cognizor so in default and to lodge him in the common jail of the district until satisfaction is made, or until the court which issued such warrant, upon cause shown as hereinafter mentioned, makes an order in the case and such order has been fully complied with. "(f.) Such warrant shall be returned by the sheriff on the day on which it is made returnable and the sheriff shall state in his return what has been done in execution thereof. "(g.) On petition of the cognizor, of which notice shall be given to the clerk of the Crown of the district, the court may inquire into the circumstances of the case and may in its discretion order the discharge of the amount for which he is liable or make such order with respect thereto and to his imprisonment as may appear just, and such order shall be carried out by the sheriff."
Section 926	By adding at the end of subsection 3 thereof the following paragraph :— "(b.) The cognizor for the recovery of the judgment in any such action shall be liable to coercive imprisonment in the same manner as a surety is in the case of judicial suretyship in civil matters."
Schedule 2.....	By striking out "30" and substituting "35," in the fifth line, as the chapter of the Revised Statutes respecting the Postal Service.
Schedule 2.....	By striking out the figure "6" in the fourth line from the end.

AN ACT RESPECTING THE ARREST, TRIAL AND IMPRISONMENT OF YOUTHFUL OFFENDERS.

(57-58 Vic., chap. 58.)

1. Section five hundred and fifty of *The Criminal Code*, 1892, is hereby repealed and the following section substituted therefor:

"**550.** The trials of young persons apparently under the age of sixteen years, shall take place without publicity and separately and apart from the trials of other accused persons, and at suitable times to be designated and appointed for that purpose."

2. Young persons apparently under the age of sixteen years who are:—

(*a.*) arrested upon any warrant; or

(*b.*) committed to custody at any stage of a preliminary enquiry into a charge for an indictable offence; or

(*c.*) committed to custody at any stage of a trial, either for an indictable offence or for an offence punishable on summary conviction; or

(*d.*) committed to custody after such trial, but before imprisonment under sentence,—

shall be kept in custody separate from older persons charged with criminal offences and separate from all persons undergoing sentences of imprisonment, and shall not be confined in the lock-ups or police stations with older persons charged with criminal offences or with ordinary criminals.

3. If any child, appearing to the court or justice before whom the child is tried to be under the age of fourteen years, is convicted in the province of Ontario of any offence against the law of Canada, whether indictable or punishable on summary conviction, such court or justice, instead of sentencing the child to any imprisonment provided by law in such case, may order that the child shall be committed to the charge of any home for destitute and

neglected children, or to the charge of any children's aid society duly organized and approved by the Lieutenant-Governor of Ontario in Council, or to any certified industrial school.

4. Whenever in the province of Ontario, an information or complaint is laid or made against any boy under the age of twelve years, or girl under the age of thirteen years, for the commission of any offence against the law of Canada, whether indictable or punishable on summary conviction, the court or justice seized thereof shall give notice thereof in writing to the executive officer of the children's aid society, if there be one in the county, and shall allow him opportunity to investigate the charges made, and may also notify the parents of the child, or either of them, or other person apparently interested in the welfare of the child.

2. The court or justice may advise and counsel with the said officer and with the parents or such other person, and may consider any report made by the said officer upon the charges.

3. If, after such consultation and advice, and upon consideration of any report so made, and after hearing the matter of information or complaint, the court or justice is of opinion that the public interest and the welfare of the child will be best served thereby, then, instead of committing the child for trial, or sentencing the child, as the case may be, the court or justice may, by order:—

(*a.*) authorize the said officer to take the child and, under the provisions of the law of Ontario, bind the child out to some suitable person until the child has attained the age of 21 years, or any less age; or

(*b.*) place the child out in some approved foster-home; or

(*c.*) impose a fine not exceeding ten dollars; or

(*d.*) suspend sentence for a definite period or for an indefinite period; or

(*e.*) if the child has been found guilty of the offence charged or is shown to be wilfully wayward and unmanageable, commit the child to a certified industrial school, or to the provincial reformatory for boys, or to the refuge for girls, as the case may be, and in such cases, the report of the said officer shall be attached to the warrant of commitment.

5. Whenever an order has been made under either of the two sections next preceding, the child may thereafter be dealt with under the law of the province of Ontario, in the same manner, in all respects, as if such order had been lawfully made in respect of a proceeding instituted under authority of a statute of the province of Ontario.

6. No Protestant child dealt with under this Act, shall be committed to the care of any Roman Catholic children's aid society, or be placed in any Roman Catholic family as its foster-home; nor shall any Roman Catholic child dealt with under this Act, be committed to the care of any Protestant children's aid society, or be placed in any Protestant family as its foster-home. But this section shall not apply to the care of children in a temporary home or shelter, established under the Act of Ontario, fifty-six Victoria, chapter forty-five, intituled *An Act for the Prevention of Cruelty to, and better Protection of, Children*, in a municipality in which there is but one children's aid society.

AN ACT RESPECTING THE CUSTODY OF JUVENILE OFFENDERS, NEW BRUNSWICK.

(57-58 Vic., c. 59.)

1. Chapter thirty-three of the Statutes of 1893, intituled *An Act relating to the custody of juvenile offenders in the province of New Brunswick*, is hereby amended by adding to it the following section :—

"**16.** The Governor General by warrant under his hand may at any time in his discretion, on the application of the Attorney General of the province of New Brunswick, cause any boy who is imprisoned in the Dorchester Penitentiary, or in any jail in that province, for an offence within the law of Canada, and who is certified by any judge of the Supreme Court or of any County Court to have been, in the opinion of such judge, at the time of his trial under the age of fifteen years, to be transferred to the Boys' Industrial Home in the province, for the remainder of his term of imprisonment and for such further term in addition thereto as the Governor General, on the report and recommendation of such judge, deems expedient ; provided that the whole term of imprisonment shall not exceed five years from the commencement of the imprisonment in such penitentiary or jail."

GENERAL INDEX.

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