

Alderney, which are parcels of the dominion of the Crown of England, but not within the realm of England as to this purpose concerning treason."

In a celebrated case of treason, it was held that the words: "This realm," "meant the United Kingdom of Great Britain (excluding Ireland) and nothing else."

A prisoner who had stolen goods in Guernsey and brought them into England was arrested and committed for trial in England. Mr. Justice Byles, at the Devon Summer Assizes, 1861, after consultation with Baron Channell, held that Guernsey not being a part of the United Kingdom, the prisoner could not be convicted of larceny for having the goods in his possession here, nor of receiving them in England.

The following joint opinion was given by the attorney and solicitor-general, Sir Robert Henley, and the Hon. Charles Yorke, in 1757:—

"MY LORDS,—In obedience to your lordships' commands, signified to us by Mr. Pownall by letter dated April 1st, 1757, accompanied with an enclosed letter and papers, which he had received from Jonathan Belcher, Esq., chief justice of His Majesty's colony of Nova Scotia, relating to the case of two persons convicted in the courts there of counterfeiting and uttering Spanish dollars and pistareens, and requiring our opinion, in point of law, thereon; we have taken the said letters and papers into our consideration, and find that the question upon which the case of those two persons convicted of high treason depends is this: Whether the Act of Parliament, 1 Mary, c. 6, entitled, "An Act that the counterfeiting of strange coins (being current within this realm), the Queen's sign-manual or privy seal, to be adjudged treason," extends to Nova Scotia, and is in force there, with respect to the counterfeiting Spanish dollars and pistareens in the said province?"

And we are of opinion, first, that it doth not; for that the Act is expressly restrained to the counterfeiting of foreign coin current within this realm, of which Nova Scotia is no part.

Secondly, we are of opinion that the proposition adopted by the judges there, that the inhabitants of the colonies carry with them the statute laws of the realm, is not true, as a general proposition, but depends upon circumstances; the effect of their charter-usage, and acts of their legislature; and it would be both inconvenient and dangerous to take it in so large an extent.

The statute 25 Edward III., is simply a definition of the crime of high treason. By

that definition it is high treason to levy war against the King in his realm.

From the authorities cited it would seem that it is of the essence of the offence that the levying of war should be within the realm.

Mr. James Fitzjames Stephen, in his Digest of the Criminal Law, says that it is treason to levy war against the Queen in her Dominions, and refers in a foot-note to the statute under consideration and the works of Sir Matthew Hale. He does not explain his reasons for using the term "dominions" for "realm," though his definition is no doubt better adapted to the present conditions of the Queen's world-wide sovereignty. His digest, however, does not always express the law as it is and was objected to on this ground by the Chief Justice of England when it was proposed by legislative action to convert the digest into a criminal code. Mr. Justice Stephen did not pretend that his digest in all cases expressed the law as it is. He aimed not merely to consolidate but to improve the criminal laws. I could not, however, in fairness overlook the definition of so great an authority as Mr. Justice Stephen, though I do not think it impairs the force of Sir Matthew Hale's interpretation of the statute. The value of Sir Matthew Hale's constructions, Mr. Justice Stephen himself concedes in his History of the Criminal Law in these words:—"The Act 25 Edw. III., is still the standard Act on which the whole law of treason is based, and the constructions put upon its different members by Coke, Hale, Foster and others, have been in many instances adopted by the court, and must still be taken to be part of the law of the land."

Upon the whole, there is fair ground for argument that the North-west Territories of Canada are not within "the realm" as intended by the statute of Edward, and if not, it is doubtful if that statute can be made to apply to offences committed there, without more express enactment.

The difficulty here presented is obviated in the United States by a clause in the constitution which declares that: "Treason against the United States shall consist in levying war against them, or adhering to their enemies, giving them aid or comfort."

The object of the statute of Edward was to define and limit the matters which should be adjudged treasons, and to prevent the Sovereign from making arbitrary encroachments upon the life, liberty, and property of his subjects by resort to prosecutions for ill defined and constructive treasons.

The validity of the conviction and sentence might be tested by an application to a judge of the Supreme Court of Canada for a writ of *habeas corpus*. There is an appeal from the decision of a judge in such case to the full court.