

an extradition crime. Larceny at common law was plain theft—the wrongful taking and carrying away the property of another with the felonious intent to convert it to the taker's own use without the consent of the owner, and by our criminal law many other fraudulent dealings with the property of another were declared to be crimes, by that name. We have now abandoned that name as descriptive of these offences and embrace them all, including the common law offence of simple larceny, under the generic name of 'theft' or 'stealing': Cr. Code, sec. 305. If the evidence of criminality prescribed by the treaty sufficiently establishes the facts which constitute the offence described in the treaty, convention and Extradition Act, that must be all that is necessary whether we call such offence larceny or stealing."

Since the passing of the Code no civil remedy for any act or omission is suspended or affected by reason that such act or omission amounts to a criminal offence: s. 534.

*Malice.*—"A term which is truly a legal enigma": Harris, p. 13.

The terms "malice" and "malicious" are practically eliminated from the code owing to the confusion of ideas connected with them. "Malice" only appears in two places; s. 521 dealing with criminal breaches of contract where it is declared to be immaterial whether any offence defined in the section is committed from malice conceived against the person, etc., with whom the contract is made, and in s. 676 where the expression "motive of malice" is retained.

Standing mute means not answering at all to an indictment, or answering irrelevantly. In former times, in cases of felony, when this standing mute was obstinate, the prisoner was said to be "mute of malice." In such cases, in these good old days he met with but scant courtesy, and was sentenced to penance, which meant the infliction of the *peine forte et dure*.

"The sentence of penance which was pronounced against those who thus added contumacy to guilt, was indeed exceedingly dreadful. They were to be remanded to prison, and there placed in some low, dark room, laid on the back with scarcely any covering, and iron weights more heavy than they could bear placed upon them. In this situation they were to receive no sustenance the first day but three morsels of the worst bread, and on the second day, three draughts of standing water which should be nearest the prison door, and thus remain till they died; or, as the