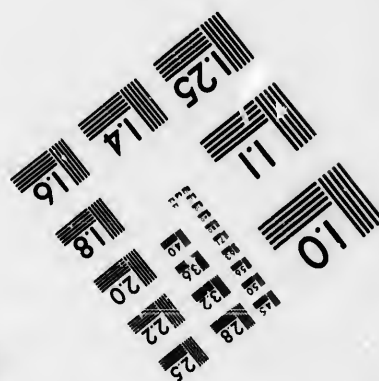
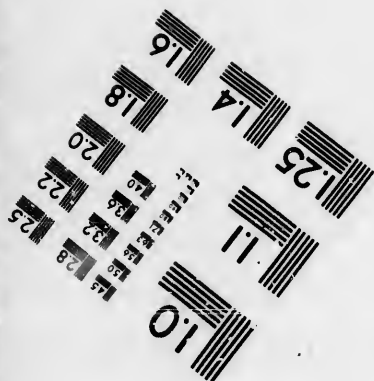
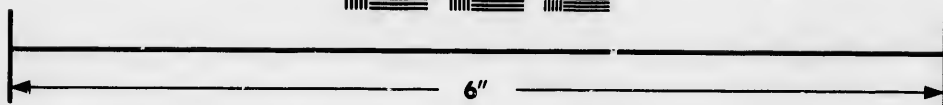
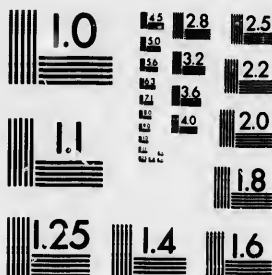


IMAGE EVALUATION TEST TARGET (MT-3)



Photographic
Sciences
Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

**CIHM/ICMH
Microfiche
Series.**

**CIHM/ICMH
Collection de
microfiches.**



Canadian Institute for Historical Microreproductions / Institut canadien de microreproductions historiques

© 1986

Technical and Bibliographic Notes/Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- ☐ Coloured covers/
Couverture de couleur
- ☐ Covers damaged/
Couverture endommagée
- ☐ Covers restored and/or laminated/
Couverture restaurée et/ou pelliculée
- ☐ Cover title missing/
Le titre de couverture manque
- ☐ Coloured maps/
Cartes géographiques en couleur
- ☐ Coloured ink (i.e. other than blue or black)/
Encre de couleur (i.e. autre que bleue ou noire)
- ☐ Coloured plates and/or illustrations/
Planches et/ou illustrations en couleur
- ☐ Bound with other material/
Relié avec d'autres documents
- ☐ Tight binding may cause shadows or distortion
along interior margin/
La reliure serrée peut causer de l'ombre ou de la
distorsion le long de la marge intérieure
- ☐ Blank leaves added during restoration may
appear within the text. Whenever possible, these
have been omitted from filming/
Il se peut que certaines pages blanches ajoutées
lors d'une restauration apparaissent dans le texte,
mais, lorsque cela était possible, ces pages n'ont
pas été filmées.
- ☒ Additional comments:/
Commentaires supplémentaires: Various pagings.

- ☐ Coloured pages/
Pages de couleur
- ☐ Pages damaged/
Pages endommagées
- ☐ Pages restored and/or laminated/
Pages restaurées et/ou pelliculées
- ☒ Pages discoloured, stained or foxed/
Pages décolorées, tachetées ou piquées
- ☐ Pages detached/
Pages détachées
- ☒ Showthrough/
Transparence
- ☐ Quality of print varies/
Qualité inégale de l'impression
- ☐ Includes supplementary material/
Comprend du matériel supplémentaire
- ☐ Only edition available/
Seule édition disponible
- ☐ Pages wholly or partially obscured by errata
slips, tissues, etc., have been refilmed to
ensure the best possible image/
Les pages totalement ou partiellement
obscurcies par un feuillet d'errata, une pelure,
etc., ont été filmées à nouveau de façon à
obtenir la meilleure image possible.

This item is filmed at the reduction ratio checked below/
Ce document est filmé au taux de réduction indiqué ci-dessous.

10X	12X	14X	16X	18X	20X	22X	24X	26X	28X	30X	32X
						<input checked="" type="checkbox"/>					

The copy filmed here has been reproduced thanks to the generosity of:

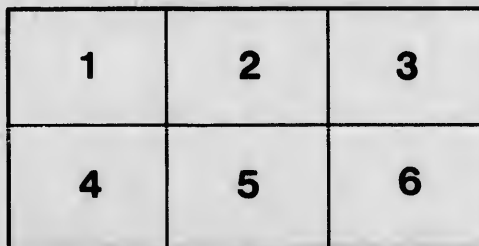
National Library of Canada

The images appearing here are the best quality possible considering the condition and legibility of the original copy and in keeping with the filming contract specifications.

Original copies in printed paper covers are filmed beginning with the front cover and ending on the last page with a printed or illustrated impression, or the back cover when appropriate. All other original copies are filmed beginning on the first page with a printed or illustrated impression, and ending on the last page with a printed or illustrated impression.

The last recorded frame on each microfiche sheet contains the symbol \rightarrow (meaning "CONTINUED"), or the symbol ∇ (meaning "END"), whichever applies.

Maps, plates, charts, etc., may be filmed at different reduction ratios. Those too large to be entirely included in one exposure are filmed beginning in the upper left hand corner, left to right and top to bottom, as many frames as required. The following diagrams illustrate the method:



L'exemplaire filmé fut reproduit grâce à la générosité de:

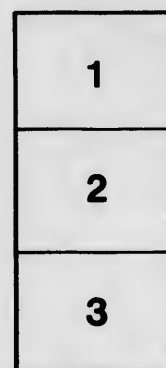
Bibliothèque nationale du Canada

Les images suivantes ont été reproduites avec le plus grand soin, compte tenu de la condition et de la netteté de l'exemplaire filmé, et en conformité avec les conditions du contrat de filmage.

Les exemplaires originaux dont la couverture en papier est imprimée sont filmés en commençant par le premier plat et en terminant soit par la dernière page qui comporte une empreinte d'impression ou d'illustration, soit par le second plat, selon le cas. Tous les autres exemplaires originaux sont filmés en commençant par la première page qui comporte une empreinte d'impression ou d'illustration et en terminant par la dernière page qui comporte une telle empreinte.

Un des symboles suivants apparaîtra sur la dernière image de chaque microfiche, selon le cas: le symbole \rightarrow signifie "A SUIVRE", le symbole ∇ signifie "FIN".

Les cartes, planches, tableaux, etc., peuvent être filmés à des taux de réduction différents. Lorsque le document est trop grand pour être reproduit en un seul cliché, il est filmé à partir de l'angle supérieur gauche, de gauche à droite, et de haut en bas, en prenant le nombre d'images nécessaire. Les diagrammes suivants illustrent la méthode.



C

O

of

ONE

THE
CRIMINAL LAW CONSOLIDATION
AND
AMENDMENT ACTS

OF
1869, 32-33 VICT.

FOR THE
DOMINION OF CANADA,

AS AMENDED AND IN FORCE

ON THE 1ST DAY OF NOVEMBER, 1874, IN THE PROVINCES
OF ONTARIO, QUEBEC, NOVA SCOTIA, NEW BRUNSWICK,
MANITOBA, AND, ON THE 1ST DAY OF JANUARY, 1875, IN
BRITISH COLUMBIA,

WITH

Notes, Commentaries, Precedents of Judgments, &c. &c. &c.

BY

HENRI ELZÉAR TASCHEREAU,

ONE OF THE JUDGES OF THE SUPERIOR COURT FOR THE PROVINCE OF QUEBEC

VOL. I.

Montreal:

PRINTED BY THE LOVELL PRINTING AND PUBLISHING COMPANY.
1874.

KE 8804

1874

v. 1

c. 2

Entered according to Act of the parliament of Canada, in the year of our
Lord, one thousand eight hundred and seventy-four, by HENRI ELZÉAR
TASCHEREAU, in the office of the Minister of Agriculture.

PREFACE.

The following pages are hardly anything else but a compilation. They may, nevertheless, perhaps prove useful.

They will be found to contain the full text of the Criminal Statutes Consolidation Acts of 1869, with a synopsis, under each clause, of the law and the rules of pleading, practice and evidence applicable to it.

It will be found that no reference is made, except in very few instances, to the Criminal Statutory Law in force, in each of the Provinces, before Confederation. This has been thought the best mode to ensure, for the work, an equal usefulness throughout the whole of the Dominion. For the same object, no citations of cases decided and reported in each of the Provinces will generally be met with. With Mr. Clarke's valuable book, this would, moreover, have been superfluous.

However, it has not been forgotten that,

Longum iter est per præcepta,

Breve et efficax per exempla,—Seneca.

and the reported English Crown cases down to July last will be found numerouslly cited and largely made use of: it cannot be denied that the weight of their authority and their practical importance, for the Dominion of Canada, have been largely increased by the enactment of the Crimi-

nal Law Consolidation Acts of 1869, based as these are on the Imperial Criminal Law Consolidation Acts of 1861, and taken almost textually from them.

At the end of each clause will be found cited the corresponding clause of the Imperial Statute, and any material difference between both mentioned.

The annotations made by the learned Mr. Greaves, Q.C., on the "Lord Campbell's Acts," of 1851, and the Consolidated Acts of 1861, have been compiled and inserted, when thought of practical utility to the Canadian practitioner: these annotations are rendered the more valuable by the fact that these Statutes were drawn and framed by Mr. Greaves.

Not a few errors, some of a very grave nature, have crept into our said Statutes of 1869: they will be found noticed, under each clause, as they have been observed. By a glance at the following sections, where *some* of such errors are met with, the necessity of a complete revision of these Acts will be amply demonstrated: sections 12, 20, 29, 32 and 45, of the Forgery Act: sections 19, 31 and 41 of the offences against the Person Act: sections 12, 15, 43, 54, 56, 57, 60, and 61 of the Malicious Injuries to property Act: sections 72 and 73 of 31 Vict. ch. 68, and sections 67 and 68 of 31 Vict. ch. 12, in conjunction with sections 31, 32 and 33 of the Offences against the Person Act: section 74 of 31 Vict. ch. 68, page 213, &c., &c., &c.

In other parts, are found provisions which seem to cover matters left entirely, by the *British North America Act*, under the control and legislative powers of the provincial legislatures, and therefore, *ultra vires* of the Parliament and unconstitutional: attention has been called to the sections

containing these enactments, as well as to others, which seem to contain a legislation entirely new, based on doctrines at all times repudiated by the Criminal Law of England, unknown, before Confederation, in each and every one of the Provinces now constituting this Dominion of Canada, and rejected by perhaps all the modern Codes of the world. An enactment of this kind may be seen in section 110 of the Larceny Act.

To this Volume, so as to make it complete by itself, have been joined a list of the cases cited, a table of contents, a table of Statutes, and a copious index: in fact, no pains have been spared to enhance its usefulness to the practitioner.

The second Volume will consist of the Procedure Act of 1869, with annotations, the general Repeal Act of 1869, and the Acts extending the Criminal Consolidation Statutes to Manitoba, (34 Vict. ch. 14) British Columbia, (37 Vict. ch. 42) and Prince Edward Island, if this last one is then enacted. But a condition, which must be admitted to be a fair one, is attached to the publication of the second Volume: it is, that the expenses incurred in the publication of the first be reimbursed. The experience of others teaches that, in this Country, one would be greatly mistaken if he expected a pecuniary reward for a law publication, but it would not be just to ask the addition of a pecuniary sacrifice to the no small amount of labour necessarily bestowed on these pages.

Fraserville, River du Loup, en bas, P.Q.

2nd November, 1874.

The first of these is the fact that the majority of the population of the United States is of European descent. This is a result of the fact that the United States was founded by European immigrants. The second is the fact that the majority of the population of the United States is of European descent. This is a result of the fact that the United States was founded by European immigrants.

1714660

TABLE OF CONTENTS.

	PAGE
An Act respecting offences relating to the Coin., 32-33 Vict., ch. 18.....	1
Forgery.—General Remarks.....	39
An Act respecting Forgery.—32-33 Vict., ch. 19.....	65
The Trade Marks Offences Act.—35 Vict., ch. 32.....	113
An Act respecting offences against the person.—32-33 Vict., ch. 20.....	161
Larceny.—General Remarks.....	356
An Act respecting Larceny and other similar offences.—32-33 Vict., ch. 21.....	400
An Act for the avoidance of doubts respecting Larceny of Stamps. —35 Vict., ch. 33.....	640
An Act respecting Malicious Injuries to Property.—32-33 Vict., ch. 22.....	641
An Act respecting Perjury.—32-33 Vict., ch. 23.....	726
An Act for the suppression of voluntary and extra-judicial oaths. —37 Vict., ch. 37.....	747
An Act for the better preservation of the peace in the vicinity of public works.—32-33 Vict., ch. 24 (<i>mentioned only</i>)	753
An Act respecting certain offences relative to Her Majesty's Army and Navy.—32-33 Vict., ch. 25.....	754
An Act for the better protection of Her Majesty's Military and Naval stores.—32-33 Vict., ch. 26.....	758
An Act respecting cruelty to animals.—32-33 Vict., ch. 27.....	765
An Act respecting Vagrants.—32-33 Vict., ch. 28.....	769
Index.....	771

CONTENTS

1	.....	1
2	.....	2
3	.....	3
4	.....	4
5	.....	5
6	.....	6
7	.....	7
8	.....	8
9	.....	9
10	.....	10
11	.....	11
12	.....	12
13	.....	13
14	.....	14
15	.....	15
16	.....	16
17	.....	17
18	.....	18
19	.....	19
20	.....	20
21	.....	21
22	.....	22
23	.....	23
24	.....	24
25	.....	25
26	.....	26
27	.....	27
28	.....	28
29	.....	29
30	.....	30
31	.....	31
32	.....	32
33	.....	33
34	.....	34
35	.....	35
36	.....	36
37	.....	37
38	.....	38
39	.....	39
40	.....	40
41	.....	41
42	.....	42
43	.....	43
44	.....	44
45	.....	45
46	.....	46
47	.....	47
48	.....	48
49	.....	49
50	.....	50
51	.....	51
52	.....	52
53	.....	53
54	.....	54
55	.....	55
56	.....	56
57	.....	57
58	.....	58
59	.....	59
60	.....	60
61	.....	61
62	.....	62
63	.....	63
64	.....	64
65	.....	65
66	.....	66
67	.....	67
68	.....	68
69	.....	69
70	.....	70
71	.....	71
72	.....	72
73	.....	73
74	.....	74
75	.....	75
76	.....	76
77	.....	77
78	.....	78
79	.....	79
80	.....	80
81	.....	81
82	.....	82
83	.....	83
84	.....	84
85	.....	85
86	.....	86
87	.....	87
88	.....	88
89	.....	89
90	.....	90
91	.....	91
92	.....	92
93	.....	93
94	.....	94
95	.....	95
96	.....	96
97	.....	97
98	.....	98
99	.....	99
100	.....	100

TABLE OF STATUTES.

THE COIN ACT.

32-33 Vict., ch. 18.

Section 1.....	1	Section 20.....	23
Section 2.....	2	Section 21.....	24
Section 3.....	6	Section 22.....	24
Section 4.....	8	Section 23.....	26
Section 5.....	9	Section 24.....	26
Section 6.....	10	Section 25.....	31
Section 7.....	12	Section 26.....	32
Section 8.....	13	Section 27.....	33
Section 9.....	13	Section 28.....	34
Section 10.....	14	Section 29.....	35
Section 11.....	14	Section 30.....	35
Section 12.....	18	Section 31.....	36
Section 13.....	19	Section 32.....	37
Section 14.....	20	Section 33.....	37
Section 15.....	21	Section 34.....	38
Section 16.....	21	Section 35.....	38
Section 17.....	22	Section 36.....	38
Section 18.....	23	Section 37.....	38
Section 19.....	23		

THE FORGERY ACT.

32-33 Vict., ch. 19.

Section 1.....	65	Section 22.....	94
Section 2.....	67	Section 23.....	97
Section 3.....	67	Section 24.....	99
Section 4.....	68	Section 25.....	100
Section 5.....	69	Section 26.....	105
Section 6.....	72	Section 27.....	109
Section 7.....	73	Section 28.....	111
Section 8.....	75	Section 29.....	112
Section 9.....	77	Section 30.....	113
Section 10.....	78	Section 31.....	113
Section 11.....	79	Section 32.....	130
Section 12.....	80	Section 33.....	130
Section 13.....	81	Section 34.....	131
Section 14.....	82	Section 35.....	133
Section 15.....	87	Section 36.....	133
Section 16.....	89	Section 37.....	134
Section 17.....	90	Section 38.....	136
Section 18.....	91	Section 39.....	137
Section 19.....	92	Section 40.....	138
Section 20.....	93	Section 41.....	139
Section 21.....	94	Section 42.....	139

TABLE OF STATUTES.

Section 43.....	140	Section 52.....	151
Section 44.....	143	Section 53.....	151
Section 45.....	144	Section 54.....	154
Section 46.....	146	Section 55.....	155
Section 47.....	146	Section 56.....	156
Section 48.....	148	Section 57.....	157
Section 49.....	149	Section 58.....	157
Section 50.....	150	Section 59.....	158
Section 51.....	150		

THE TRADE MARKS OFFENCES ACT.

35 Vict. ch. 32.,

113

OFFENCES AGAINST THE PERSON ACT.

32-33 Vict., ch. 20.

Section 1.....	161	Section 38.....	283
Section 2.....	161	Section 39.....	285
Section 3.....	220	Section 40.....	287
Section 4.....	221	Section 41.....	288
Section 5.....	192	Section 42.....	289
Section 6.....	162	Section 43.....	293
Section 7.....	222	Section 44.....	293
Section 8.....	225	Section 45.....	294
Section 9.....	226	Section 46.....	294
Section 10.....	227	Section 47.....	298
Section 11.....	231	Section 48.....	307
Section 12.....	232	Section 49.....	307
Section 13.....	233	Section 50.....	313
Section 14.....	239	Section 51.....	314
Section 15.....	240	Section 52.....	315
Section 16.....	243	Section 53.....	317
Section 17.....	244	Section 54.....	318
Section 18.....	233	Section 55.....	322
Section 19.....	249	Section 56.....	323
Section 20.....	253	Section 57.....	325
Section 21.....	254	Section 58.....	326
Section 22.....	255	Section 59.....	335
Section 23.....	255	Section 60.....	338
Section 24.....	256	Section 61.....	339
Section 25.....	257	Section 62.....	340
Section 26.....	260	Section 63.....	344
Section 27.....	262	Section 64.....	345
Section 28.....	263	Section 65.....	347
Section 29.....	263	Section 66.....	347
Section 30.....	265	Section 67.....	347
Section 31.....	268	Section 68.....	348
Section 32.....	268	Section 69.....	349
Section 33.....	269	Section 70.....	350
Section 34.....	279	Section 71.....	350
Section 35.....	280	Section 72.....	351
Section 36.....	281	Section 73.....	351
Section 37.....	282	Section 74.....	352

TABLE OF STATUTES.

xi

Section 75.....	352	Section 79.....	355
Section 76.....	352	Section 80.....	355
Section 77.....	353	Section 81.....	355
Section 78.....	354		

THE LARCENY ACT.

32-33 Vict., ch. 21.

Section 1.....	400	Section 46.....	484
Section 2.....	404	Section 47.....	486
Section 3.....	404	Section 48.....	487
Section 4.....	413	Section 49.....	504
Section 5.....	414	Section 50.....	506
Section 6.....	415	Section 51.....	508
Section 7.....	418	Section 52.....	512
Section 8.....	418	Section 53.....	512
Section 9.....	419	Section 54.....	514
Section 10.....	420	Section 55.....	518
Section 11.....	421	Section 56.....	522
Section 12.....	422	Section 57.....	524
Section 13.....	423	Section 58.....	524
Section 14.....	424	Section 59.....	525
Section 15.....	425	Section 60.....	529
Section 16.....	431	Section 61.....	529
Section 17.....	432	Section 62.....	532
Section 18.....	433	Section 63.....	535
Section 19.....	436	Section 64.....	536
Section 20.....	437	Section 65.....	537
Section 21.....	438	Section 66.....	540
Section 22.....	440	Section 67.....	540
Section 23.....	442	Section 68.....	541
Section 24.....	443	Section 69.....	542
Section 25.....	444	Section 70.....	544
Section 26.....	444	Section 71.....	563
Section 27.....	446	Section 72.....	564
Section 28.....	447	Section 73.....	545
Section 29.....	447	Section 74.....	545
Section 30.....	448	Section 75.....	566
Section 31.....	449	Section 76.....	567
Section 32.....	449	Section 77.....	570
Section 33.....	450	Section 78.....	570
Section 34.....	451	Section 79.....	570
Section 35.....	451	Section 80.....	572
Section 36.....	451	Section 81.....	573
Section 37.....	452	Section 82.....	574
Section 38.....	452	Section 83.....	574
Section 39.....	457	Section 84.....	574
Section 40.....	457	Section 85.....	575
Section 41.....	458	Section 86.....	575
Section 42.....	474	Section 87.....	576
Section 43.....	477	Section 88.....	576
Section 44.....	479	Section 89.....	577
Section 45.....	482	Section 90.....	578

TABLE OF STATUTES.

Section 91.....	579	Section 108.....	618
Section 92.....	579	Section 109.....	619
Section 93.....	584	Section 110.....	620
Section 94.....	602	Section 111.....	626
Section 95.....	603	Section 112.....	627
Section 96.....	604	Section 113.....	628
Section 97.....	604	Section 114.....	632
Section 98.....	606	Section 115.....	633
Section 99.....	606	Section 116.....	635
Section 100.....	607	Section 117.....	636
Section 101.....	608	Section 118.....	637
Section 102.....	609	Section 119.....	637
Section 103.....	609	Section 120.....	638
Section 104.....	609	Section 121.....	638
Section 105.....	610	Section 122.....	639
Section 106.....	610	Section 123.....	639
Section 107.....	618	Section 124.....	640

THE LARCENY OF STAMPS ACT.

35 Vict., ch. 33.

Section 1.....	640	Section 2.....	641
----------------	-----	----------------	-----

THE MALICIOUS INJURIES ACT.

32-33 Vict., ch. 22.

Section 1.....	641	Section 27.....	676
Section 2.....	645	Section 28.....	677
Section 3.....	646	Section 29.....	678
Section 4.....	649	Section 30.....	679
Section 5.....	650	Section 31.....	679
Section 6.....	651	Section 32.....	680
Section 7.....	651	Section 33.....	680
Section 8.....	653	Section 34.....	682
Section 9.....	655	Section 35.....	683
Section 10.....	655	Section 36.....	684
Section 11.....	656	Section 37.....	685
Section 12.....	656	Section 38.....	686
Section 13.....	658	Section 39.....	687
Section 14.....	658	Section 40.....	688
Section 15.....	661	Section 41.....	688
Section 16.....	662	Section 42.....	688
Section 17.....	664	Section 43.....	691
Section 18.....	666	Section 44.....	692
Section 19.....	667	Section 45.....	692
Section 20.....	669	Section 46.....	692
Section 21.....	669	Section 47.....	693
Section 22.....	669	Section 48.....	695
Section 23.....	671	Section 49.....	695
Section 24.....	672	Section 50.....	696
Section 25.....	672	Section 51.....	697
Section 26.....	674	Section 52.....	698

TABLE OF STATUTES.

xiii

Section 53.....	698	Section 65.....	709
Section 54.....	699	Section 66.....	709
Section 55.....	701	Section 67.....	710
Section 56.....	701	Section 68.....	710
Section 57.....	702	Section 69.....	711
Section 58.....	703	Section 70.....	711
Section 59.....	704	Section 71.....	711
Section 60.....	705	Section 72.....	712
Section 61.....	706	Section 73.....	712
Section 62.....	707	Section 74.....	712
Section 63.....	708	Section 75.....	725
Section 64.....	709	Section 76.....	725

THE PERJURY ACT.

32-33 Vict., ch. 23.

Section 1.....	726	Section 7.....	727
Section 2.....	726	Section 8.....	743
Section 3.....	737	Section 9.....	732
Section 4.....	738	Section 10.....	744
Section 5.....	738	Section 11.....	743
Section 6.....	739		

THE VOLUNTARY OATHS ACT.

37 Vict., ch. 37.

Section 1.....	747	Section 2.....	748
----------------	-----	----------------	-----

THE PEACE ON PUBLIC WORKS ACT.

32-33 Vict., ch. 24. 753

THE ARMY AND NAVY OFFENCES ACT.

32-33 Vict., ch. 25.

Section 1.....	754	Section 6.....	756
Section 2.....	754	Section 7.....	756
Section 3.....	755	Section 8.....	756
Section 4.....	755	Section 9.....	756
Section 5.....	755		

THE MILITARY AND NAVAL STORES ACT.

32-33 Vict., ch. 26.

Section 1.....	758	Section 10.....	760
Section 2.....	758	Section 11.....	761
Section 3.....	758	Section 12.....	761
Section 4.....	758	Section 13.....	761
Section 5.....	759	Section 14.....	761
Section 6.....	759	Section 15.....	761
Section 7.....	759	Section 16.....	762
Section 8.....	759	Section 17.....	762
Section 9.....	760		

TABLE OF STATUTES.

THE CRUELTY TO ANIMALS ACT.

32-33 Vict., ch. 27.

Section 1.....	765	Section 7.....	767
Section 2.....	766	Section 8.....	767
Section 3.....	766	Section 9.....	767
Section 4.....	766	Section 10.....	767
Section 5.....	766	Section 11.....	768
Section 6.....	767		

THE VAGRANTS ACT.

32-33 Vict., ch. 28.

Section 1.....	769	Section 2.....	770
----------------	-----	----------------	-----

The following are the Editions of the books most frequently cited in these pages, besides the Reports of cases, and the Criminal Law Commissioners' Reports:

Archbold.....	17th.
Burn's Justice.....	30th.
Stephen's Commentaries.....	7th.
Russell, Crimes and Misdemeanors, by Greaves.....	4th.
Broom's Commentaries.....	4th.
Taylor, on Evidence.....	6th.
Hale, Pleas of the Crown.....	1st American.
Hawkins, Pleas of the Crown.....	8th.
East, Pleas of the Crown.....	1st.
Sir J. Kelyng's Crown cases.....	Stevens and Haynes' reprint, 1873.
Roscoe, Crim. Evidence.....	6th.
Wharton's Law Lexicon.....	5th.
Greaves' Consol. Crim. Acts.....	2nd.
Blackstone's Commentaries.....	10th.
Starkie, Crim. Pleading.....	2nd.
Bishop, Crim. Law.....	5th.
Bishop, Crim. Procedure.....	2nd.
Bishop, Statutory Crimes.....	1st.

TABLE OF CASES CITED.

(See the second Volume for this list in alphabetical order.)

	PAGE		PAGE
Bennet v. Watson.....	717	R v. Sutton	28
Costar v. Hetherington	296	R v. Foster	28
Elmore v. St. Briavels.....	646	R v. Ridgeley	28
Hoye v. Bush.....	200	R v. Bannon	28
Hancock v. Somes.....	296	R v. Roberts	29
Hamilton v. Rex.....	597	R v. Grover.....	29
Hopkin v. Crowe	768	R v. Richmond.....	29
Martin v. Shoppee.....	300	R v. Rogers	29
Morris v. Wise.....	447	R v. Weeks.....	30
Merriman v. Hundred of		R v. Harvey	30
Chippenham.....	468	R v. Collins.....	42
McPherson v. Daniels.....	176	R v. Chadwick	42
O'Neil v. Longman.....	290	R v. Ritson	43
Read v. Coker.....	300	R v. Hill	44
R v. Rogers.....	3	R v. Geach	44
R v. Gerrish.....	3	R v. Birkett.....	44
R v. Williams.....	3	R v. Wilson.....	44
R v. Varley.....	5	R v. Hodgson.....	45
R v. Morris.....	5	R v. Hodgson.....	46
R v. Robinson.....	6	R v. Tylney.....	48
R v. Connell.....	6	R v. Marcus.....	48
R v. Bryne.....	6	R v. Nash	48
R v. Case.....	7	R v. de Berenger	49
R v. Lavey.....	8	R v. Peck	50
R v. Turner.....	8	R v. King	50
R v. Turner.....	8	R v. Birch.....	50
R v. Woolridge	11	R v. Tylney.....	50
R v. Joyce.....	11	R v. Hevey	50
R v. Hedges.....	11	R v. Higgins	51
R v. Franks.....	15	R v. Hodgson.....	52
R v. Page.....	15	R v. Nash	52
R v. Ion	15	R v. Mazagora	52
R v. Welch	15	R v. Crooke.....	53
R v. Greenwood.....	16	R v. Goate.....	53
R v. Hulse	16	R v. Holden.....	53
R v. Else.....	16	R v. Shephard	53
R v. Manners	16	R v. Trenfield	53
R v. Page.....	16	R v. Crowther	53
R v. Jones.....	16	R v. James	53
R v. Price	16	R v. Boardman.....	53
R v. McGinnes.....	17	R v. Todd	53
R v. Martin.....	19	R v. Powner	53
R v. Goodwin.....	19	R v. Asplin.....	53
R v. Robinson	20	R v. Elliott.....	54
R v. Lennard	23	R v. Post.....	54

TABLE OF CASES CITED.

	PAGE		PAGE
R v. Hodgson.....	54	R v. Whiley and Baines.....	60
R v. Lewis.....	54	R v. Bail.....	60
R v. Bolland.....	54	R v. Salt.....	60
R v. Lockett.....	55	R v. Nesbitt.....	60
R v. Parkes.....	55	R v. Harrison.....	60
R v. Froud.....	55	R v. Green.....	60
R v. Sheppard.....	55	R v. Millard.....	60
R v. Wiley.....	55	R v. Philipps.....	60
R v. Francis.....	55	R v. Cooke.....	60
R v. Webb.....	55	R v. Browne.....	61
R v. Watts.....	55	R v. Cooke.....	61
R v. Mitchell.....	55	R v. Forbes.....	61
R v. Bontien.....	55	R v. Hill.....	61
R v. Rogers.....	55	R v. Todd.....	61
R v. Tait.....	55	R v. Vaughan.....	62
R v. Taylor.....	55	R v. Cooke.....	62
R v. Marshall.....	55	R v. Geach.....	62
R v. Wiley.....	55	R v. Higgins.....	64
R v. Francis.....	55	R v. Rigby.....	64
R v. Hart.....	55	R v. Collicott.....	83
R v. Wilson.....	55	R v. Field.....	83
R v. Close.....	55	R v. Asplin.....	83
R v. Dunn.....	56	R v. Ogden.....	83
R v. Wall.....	56	R v. Allday.....	83
R v. Moffatt.....	56	R v. Page.....	84
R v. McIntosh.....	56	R v. Ion.....	84
R v. Lyon.....	56	R v. Page.....	84
R v. Lee.....	56	R v. Allday.....	86
R v. Hawkeswood.....	56	R v. Page.....	86
R v. Morton.....	57	R v. Ion.....	86
R v. Roberts.....	57	R v. Hodgson.....	87
R v. Davies.....	57	R v. Holden.....	88
R v. Teague.....	57	R v. Palmer.....	89
R v. Welch.....	57	R v. Soares.....	89
R v. Ion.....	57	R v. Stewart.....	89
R v. Shukard.....	58	R v. Giles.....	89
R v. Radford.....	58	R v. Rowley.....	90
R v. Ion.....	58	R v. Brackenridge.....	96
R v. Giles.....	59	R v. Keith.....	96
R v. Palmer & Hudson.....	59	R v. Warshaner.....	96
R v. Foster.....	59	R v. Harris.....	96
R v. Harris.....	59	R v. Ball.....	96
R v. Millard.....	59	R v. Hannon.....	97
R v. Sunderland.....	59	R v. Rinaldi.....	97
R v. Hodgson.....	59	R v. Mazeau.....	97
R v. Kirkwood.....	59	R v. Lyons.....	98
R v. Martin.....	59	R v. Fauntleroy.....	98
R v. Hough.....	59	R v. Ritson.....	99
R v. Weeks.....	59	R v. Morton.....	99
R v. Aston.....	59	R v. Tylney.....	100
R v. Lewis.....	60	R v. Murphy.....	100
R v. Oddy.....	60	R v. Sterling.....	100

TABLE OF CASES CITED.

xvii

	PAGE		PAGE
R v. Coogan.....	100	R v. Kay.....	111
R v. Avery.....	100	R v. Smith.....	129
R v. Fitzgerald.....	100	R v. Gooden.....	130
R v. Chisholm.....	103	R v. Evans.....	132
R v. Box.....	103	R v. Richmond.....	132
R v. Kinnear.....	103	R v. Powner.....	134
R v. Hawkes.....	103	R v. Powner.....	137
R v. Curry.....	103	R v. Sharpe.....	142
R v. Mopsey.....	103	R v. Bowen.....	142
R v. Bartlett.....	104	R v. Asplin.....	142
R v. Smith.....	104	R v. Wavell.....	144
R v. Howie.....	104	R v. Garrett.....	144
R v. Blenkinsop.....	104	R v. Adams.....	144
R v. Mitchell.....	104	R v. Connell.....	144
R v. Epps.....	104	R v. Lee.....	148
R v. Winterbottom.....	105	R v. James.....	149
R v. Nesbitt.....	105	R v. Smythies.....	149
R v. Webb.....	105	R v. Whiley.....	149
R v. Arscott.....	106	R v. Williams.....	150
R v. Thorn.....	106	R v. Smith.....	154
R v. Kay.....	107	R v. Avery.....	154
R v. Taylor.....	107	R v. Hayward.....	154
R v. Willoughby.....	107	R v. Farley.....	154
R v. Sheppard.....	107	R v. Tuffs.....	154
R v. Smith.....	107	R v. Hughes.....	155
R v. McIntosh.....	107	R v. Maguire.....	155
R v. Curry.....	107	R v. Holland.....	164
R v. Howie.....	107	R v. Pym.....	164
R v. Bamfield.....	107	R v. McIntyre.....	164
R v. Anderson.....	107	R v. Martin.....	164
R v. Reed.....	107	R v. Webb.....	164
R v. Joyce.....	107	R v. Selton.....	167
R v. Stone.....	107	R v. Maynard.....	168
R v. West.....	107	R v. Fisher.....	168
R v. Rogers.....	108	R v. Fisher.....	169
R v. Snelling.....	108	R v. Lynch.....	169
R v. Morrison.....	108	R v. Maynard.....	169
R v. Illidge.....	108	R v. Noon.....	169
R v. Carney.....	108	R v. Mason.....	170
R v. Cullen.....	108	R v. Welch.....	170
R v. Pulbroke.....	108	R v. Rowley.....	172
R v. Thomas.....	108	R v. Rothwell.....	172
R v. Thorn.....	108	R v. Noon.....	176
R v. Evans.....	108	R v. Harvey.....	176
R v. Fitch.....	108	R v. Campbell.....	178
R v. Howley.....	108	R v. Lee.....	179
R v. Moody.....	109	R v. Martin.....	180
R v. Smith.....	109	R v. Haynes.....	180
R v. French.....	109	R v. Dixon.....	180
R v. Gooden.....	109	R v. Pitts.....	181
R v. Chambers.....	109	R v. Shaw.....	181
R v. White.....	110	R v. Smith.....	181

	PAGE		PAGE
R v. Macdaniel.....	181	R v. Cheeseman	204
R v. Poulton.....	182	R v. Griffin.....	204
R v. Enoch.....	182	R v. Hughes.....	205
R v. Trilloe.....	182	R v. Smith.....	205
R v. Snellis.....	182	R v. Ledger.....	205
R v. Wright.....	182	R v. Walker.....	205
R v. Blain.....	182	R v. Swindall.....	206
R v. Senior.....	182	R v. Dant.....	206
R v. Michael.....	183	R v. Hutchinson.....	206
R v. Johnston.....	183	R v. Kew.....	207
R v. Winslow.....	183	R v. Jones.....	207
R v. Geering.....	184	R v. Birchall.....	207
R v. Garner.....	184	R v. Allen.....	207
R v. Cotton.....	184	R v. Green.....	207
R v. Gordon.....	185	R v. Taylor.....	207
R v. Ford.....	186	R v. Trainer.....	208
R v. Woemer.....	186	R v. Bengel.....	209
R v. Howarth.....	187	R v. Van Butchell.....	209
R v. Hagan.....	187	R v. Williamson.....	209
R v. Young.....	189	R v. St John Long.....	209
R v. Cuddy.....	190	R v. St John Long (2nd case).....	209
R v. Dyson.....	192	R v. Webb.....	210
R v. Alison.....	192	R v. Spilling.....	210
R v. Burgess.....	192	R v. Spiller.....	210
R v. Doody.....	192	R v. Simpson.....	210
R v. Maloney.....	192	R v. Ferguson.....	210
R v. Chatburn.....	193	R v. Crick.....	210
R v. Smith.....	193	R v. Crook.....	210
R v. Gaylor.....	194	R v. McLeod.....	210
R v. Taylor.....	194	R v. Whitehead.....	211
R v. Fisher.....	196	R v. Noakes.....	211
R v. Lynch.....	196	R v. Spencer.....	211
R v. Hayward.....	196	R v. Bull.....	211
R v. Eagle.....	196	R v. Markuss.....	211
R v. Kirkham.....	197	R v. McLeod.....	211
R v. Kessel.....	197	R v. Senior.....	212
R v. Whiteley.....	197	R v. Edwards.....	212
R v. Ayes.....	197	R v. Saunders.....	212
R v. Young.....	198	R v. Smith.....	212
R v. Thompson.....	198	R v. Marriott.....	213
R v. Curvan.....	198	R v. Horsay.....	214
R v. Withers.....	198	R v. Bernard.....	221
R v. Hood.....	199	R v. Banks.....	221
R v. Patience.....	199	R v. Smith.....	223
R v. Chapman.....	199	R v. Bull.....	223
R v. Weir.....	200	R v. Scully.....	225
R v. Fray.....	201	R v. Fowler.....	228
R v. Martin.....	202	R v. Harley.....	228
R v. Campbell.....	202	R v. Cadman.....	228
R v. Towers.....	202	R v. Michael.....	229
R v. Wiggs.....	203	R v. Lewis.....	229
R v. Hopley.....	204	R v. Briggs.....	229

TABLE OF CASES CITED.

xix

AGE

204

204

205

205

205

205

206

206

206

207

207

207

207

207

207

208

209

209

209

209

210

210

210

210

210

210

210

210

210

211

211

211

211

211

211

212

212

212

212

212

213

214

221

221

221

223

223

225

228

228

228

229

229

229

	PAGE		PAGE
R v. Wood.....	230	R v. Philpott.....	260
R v. Harris.....	230	R v. Falkingham.....	262
R v. Stevens.....	230	R v. White.....	262
R v. Murrow.....	230	R v. Crawford.....	264
R v. Hunt.....	230	R v. Murrow.....	265
R v. Strange.....	230	R v. Holroyd.....	270
R v. Murphy.....	230	R v. Court.....	271
R v. Roxburg.....	231	R v. Bradford.....	271
R v. Archer.....	231	R v. Bowray.....	271
R v. Burgess.....	231	R v. Upton.....	272
R v. Ryan.....	232	R v. Monaghan.....	272
R v. Williams.....	234	R v. Verelet.....	286
R v. Carr.....	234	R v. Gordon.....	286
R v. Harris.....	234	R v. Murphy.....	286
R v. Cadman.....	234	R v. Newton.....	286
R v. Dale.....	235	R v. Forbes.....	286
R v. Smith.....	236	R v. Davis.....	287
R v. Myster.....	237	R v. Bunn.....	292
R v. Stopford.....	238	R v. Shaw.....	295
R v. Smith.....	238	R v. Walker.....	297
R v. Mountford.....	239	R v. Elrington.....	297
R v. Hunter.....	241	R v. Stanton.....	297
R v. Lloyd.....	241	R v. Morris.....	297
R v. Paddle.....	242	R v. Basset.....	297
R v. Burridge.....	242	R v. Westley.....	298
R v. Jones.....	242	R v. Pearson.....	298
R v. Grunwade.....	242	R v. Oliver.....	299
R v. Tyler.....	242	R v. Yeadon.....	299
R v. Girdwood.....	242	R v. Sparrow.....	299
R v. Boucher.....	242	R v. Martin.....	301
R v. Ward.....	243	R v. Meredith.....	301
R v. Ryan.....	245	R v. Cockburn.....	301
R v. Briggs.....	245	R v. Mehegan.....	301
R v. Duffin.....	246	R v. Read.....	301
R v. Boyce.....	246	R v. Johnston.....	301
R v. Gillow.....	246	R v. Ryland.....	301
R v. Cox.....	246	R v. Guthrie.....	301
R v. Stopford.....	247	R v. Beale.....	301
R v. Fretwell.....	247	R v. Wollaston.....	301
R v. Cox.....	247	R v. Williams.....	302
R v. Marsden.....	248	R v. Saunders.....	302
R v. Roxbury.....	248	R v. Mayers.....	302
R v. Cunningham.....	248	R v. Lock.....	302
R v. Oliver.....	250	R v. Woodhurst.....	302
R v. Yeadon.....	250	R v. Day.....	303
R v. Taylor.....	250	R v. Nicholl.....	303
R v. Canwell.....	250	R v. Rosinski.....	303
R v. Ward.....	251	R v. Williams.....	309
R v. Wilkins.....	257	R v. Clarke.....	309
R v. Rugg.....	259	R v. Barrow.....	309
R v. Chandler.....	260	R v. Jackson.....	310
R v. Hogan.....	260	R v. Barrett.....	310

	PAGE		PAGE
R v. Fletcher	310	R v. Hollis	338
R v. Camplin	310	R v. Isaacs	339
R v. Mayers	310	R v. Hillman	339
R v. Hodgson	311	R v. Berriman	341
R v. Cockcroft	311	R v. Colmer	341
R v. Holmes and Furness	312	R v. Goldthorpe	341
R v. Hodgson	312	R v. Perry	341
R v. Cockcroft	312	R v. George	341
R v. Robins	312	R v. Brown	342
R v. Hapgood	312	R v. Cook	342
R v. Loyd	313	R v. Williams	342
R v. Read	315	R v. Bates	343
R v. Guthrie	316	R v. Cole	343
R v. Woodhurst	316	R v. Maynard	343
R v. Lock	316	R v. Jacobs	344
R v. Ryland	316	R v. Martin	346
R v. Johnston	316	R v. Wollaston	346
R v. Cockburn	316	R v. Lock	347
R v. Martin	316	R v. Thurborn	356
R v. Wollaston	316	R v. Guernsey	356
R v. Lock	316	R v. Holloway	356
R v. Shott	316	R v. Middleton	356
R v. Holmes & Furness	317	R v. Willis	357
R v. Wakefield	320	R v. McNamee	360
R v. Dunn	322	R v. Harvey	360
R v. Mankletow	323	R v. Jackson	360
R v. Timmins	323	R v. Robinson	360
R v. Hilbert	324	R v. Jones	360
R v. Booth	324	R v. Thompson	361
R v. Mycock	324	R v. Bass	361
R v. Jacob	328	R v. Williams	361
R v. McQuiggan	329	R v. Robson	361
R v. Creamer	329	R v. Brazier	361
R v. Newton	330	R v. White	361
R v. Allison	330	R v. Spears	361
R v. Rea	330	R v. Abrahath	361
R v. Brown	330	R v. Reid	361
R v. Fanning	330	R v. Frances	362
R v. Allen	330	R v. Bull	362
R v. Lumley	330	R v. Bazeley	362
R v. Briggs	331	R v. Waite	362
R v. Ellis	332	R v. Pear	363
R v. Turner	333	R v. Semple	363
R v. Curgerwen	333	R v. Pearce	363
R v. Fontaine	333	R v. Stock	363
R v. Jones	334	R v. Bramley	363
R v. Horton	334	R v. Campbell	364
R v. Turner	334	R v. Small	364
R v. Gibbons	334	R v. Hazell	365
R v. Heaton	335	R v. Slowby	365
R v. McQuiggan	335	R v. Gilbert	365
R v. Wilson	337	R v. Pratt	366

	PAGE		PAGE
R v. Hassall	405	R v. Ransom	429
R v. Robson	406	R v. Gilchrist	430
R v. Denmour	406	R v. Heath	430
R v. Wells	408	R v. Morrison	430
R v. Reeves	408	R v. Smith	430
R v. Hassall	408	R v. Lowrie	430
R v. Garratt	408	R v. West	430
R v. Hoare	408	R v. Meagle	430
R v. Bunkall	408	R v. Pooley	430
R v. Davies	408	R v. Perry	430
R v. Loose	409	R v. Watts	430
R v. Jackson	410	R v. Morris	432
R v. Clegg	411	R v. Powell	432
R v. Henderson	411	R v. Skeen	433
R v. Richmond	411	R v. Strahan	433
R v. Matthews	412	R v. Walker	435
R v. Aden	413	R v. Westbear	435
R v. Daynes	413	R v. Bailey	436
R v. Heywood	414	R v. Parker	437
R v. Young	414	R v. Norris	437
R v. Heywood	415	R v. Worrald	437
R v. Jones	416	R v. Rice	438
R v. Heywood	416	R v. Reece	438
R v. Firth	416	R v. Munday	438
R v. Henwood	417	R v. Gooch	438
R v. Blea	418	R v. Jones	438
R v. Beaumont	420	R v. Hodges	439
R v. Pitman	420	R v. Whiteman	439
R v. Phillips	421	R v. Shepherd	439
R v. Harvey	421	R v. Martin	442
R v. Crump	421	R v. Sunley	444
R v. Pear	421	R v. Sleep	444
R v. Charlewood	421	R v. Hodges	445
R v. Stock	421	R v. Brunsby	447
R v. Rawlins	421	R v. Webb	448
R v. Williams	421	R v. Holloway	448
R v. Yend	421	R v. Poole	448
R v. Gumble	421	R v. Trevenner	448
R v. Olay	422	R v. Butterworth	453
R v. Sutton	422	R v. Butterworth	454
R v. Williams	422	R v. Ball	454
R v. Downing	425	R v. Blackburn	454
R v. Walsh	426	R v. John Lowenbruck	454
R v. Metcalfe	427	R v. Webster	456
R v. Heath	427	R v. Burgess	456
R v. Minter Hart	428	R v. Moody	456
R v. Danger	428	R v. Diprose	456
R v. Yates	428	R v. Robinson	458
R v. Clarke	428	R v. Pearce	458
R v. Ransom	428	R v. Thompson	459
R v. Vyse	429	R v. Simpson	459
R v. West	429	R v. Hamilton	460

TABLE OF CASES CITED.

xxiii

	PAGE		PAGE
R v. Collins	460	R v. Gill	485
R v. Farrell	462	R v. Gardner	486
R v. Peat	463	R v. Cracknell	486
R v. Hemmings	463	R v. Richards	486
R v. Davies	464	R v. Redman	486
R v. Moore	464	R v. Kain	486
R v. Mason	464	R v. Phipoe	487
R v. Steward	464	R v. Edwards	487
R v. Horner	464	R v. Pickford	488
R v. Baker	464	R v. Smith	488
R v. Robins	464	R v. Smith	491
R v. Macaulay	464	R v. Lyons	491
R v. Gnosil	465	R v. Martin	492
R v. Keane	465	R v. Smith	492
R v. Donnelly	465	R v. Brown	492
R v. Simons	465	R v. Margetts	492
R v. Brown	465	R v. Davis	492
R v. Astley	465	R v. Hallard	492
R v. Taplin	466	R v. Thompson	492
R v. Winkworth	466	R v. Harris	492
R v. Knewland	466	R v. Fuller	492
R v. MacGrath	466	R v. Murray	493
R v. Gascoigne	467	R v. Kirkham	493
R v. Blackham	467	R v. Gibbine	493
R v. Harman	469	R v. Flannagan	493
R v. Gnosil	469	R v. Stock	493
R v. Astley	470	R v. Wilson	493
R v. Fallons	472	R v. Rawlings	494
R v. Wright	472	R v. Jarvis	494
R v. Nicholson	473	R v. Westwood	494
R v. Pelfryman and Randall	473	R v. Smith	494
R v. Bingley	474	R v. Turner	494
R v. Archer	474	R v. Jones	495
R v. Hagan	474	R v. Athea	495
R v. Ellis	474	R v. Rodgers	495
R v. Nicholls	474	R v. Carroll	495
R v. Woodhall	474	R v. Trapshaw	495
R v. Mitchell	477	R v. Bailey	495
R v. Robinson	479	R v. Jenkins	495
R v. Hamilton	479	R v. Carroll	495
R v. Gardner	479	R v. Burrowes	496
R v. Smith	479	R v. Higgs	496
R v. Pickford	479	R v. Jenkins	497
R v. Jackson	480	R v. Smith	498
R v. Edwards	480	R v. Lewis	498
R v. Walton	481	R v. Spriggs	498
R v. Robinson	481	R v. Brice	498
R v. Tucker	484	R v. Hames	499
R v. Gardner	484	R v. Hall	499
R v. Richards	484	R v. Robinson	499
R v. Harris	484	R v. Callan	500
R v. Robinson	485	R v. Lawrence	500

	PAGE		PAGE
R v. Russell.....	500	R v. Wenmouth.....	519
R v. Johnson.....	501	R v. Amier.....	519
R v. Wenmouth.....	501	R v. Sanders.....	519
R v. Davis.....	501	R v. Carter.....	519
R v. Bennett.....	501	R v. Hill.....	520
R v. Paine.....	501	R v. Potter.....	520
R v. Davis.....	501	R v. Andrews.....	520
R v. Smith.....	501	R v. Smith.....	520
R v. Bailey.....	502	R v. McPherson.....	521
R v. Davis.....	502	B v. Johnson.....	522
R v. Brice.....	502	R v. Bain.....	523
R v. Hughes.....	502	R v. Lawes.....	526
R v. Smith.....	503	R v. Nicholas.....	526
R v. Spanner.....	503	R v. Clarke.....	526
R v. Dobbs.....	503	R v. Tarrald.....	526
R v. Brice.....	504	R v. Oldham.....	527
R v. Spanner.....	504	R v. Bailey.....	529
R v. Thompson.....	504	R v. McPherson.....	530
R v. Furnival.....	504	R v. Petrie.....	530
R v. Barker.....	505	R v. Hamilton.....	530
R v. Wheeler.....	505	R v. Thompson.....	530
R v. Evans.....	505	R v. Gould.....	530
R v. Hutchinson.....	505	R v. Bowden.....	530
R v. Wheeldon.....	507	R v. Taylor.....	531
R v. Lawrence.....	507	R v. Campbell.....	531
R v. Russell.....	507	R v. Owen.....	531
R v. Davis.....	507	R v. Carroll.....	531
R v. Withal.....	509	R v. Thomas.....	532
R v. Corner.....	509	R v. Hamilton.....	532
R v. Hungerford.....	509	R v. Rosser.....	532
R v. Butterworth.....	509	R v. Etherington.....	533
R v. Clarke.....	510	R v. Jackson.....	533
R v. Nicholas.....	510	R v. Leonard.....	534
R v. Lawes.....	510	R v. Murphy.....	535
R v. Johnson.....	510	R v. Woodhead.....	536
R v. Thompson.....	510	R v. Hugill.....	536
R v. Compton.....	511	R v. Dixon.....	536
R v. Lawrence.....	511	R v. Grimes.....	538
R v. Wheeldon.....	511	R v. Leigh.....	538
R v. Garland.....	512	R v. Pike.....	539
R v. Clayburn.....	515	R v. Madox.....	539
R v. Chalking.....	515	R v. Bowden.....	539
R v. Lithgo.....	516	R v. Wright.....	539
R v. Walters.....	516	R x. Jennings.....	543
R v. Hancock.....	516	R v. Cheeseman.....	544
R v. Westwood.....	516	R v. Snowley.....	547
R v. Bennett.....	516	R v. Thorley.....	547
R v. Davis.....	516	R v. Hawtin.....	547
R v. Gilbert.....	517	R v. Mellish.....	547
R v. Egginton.....	517	R v. Gorbutt.....	549
R v. Pearce.....	518	R v. Betts.....	549
R v. Robinson.....	518	R v. Noake.....	550

TABLE OF CASES CITED.

XXV

PAGE

519
519
519
520
520
520
520
521
522
523
526
526
526
526
527
529
530
530
530
530
530
531
531
531
531
532
532
532
533
533
534
535
536
536
536
538
538
539
539
539
543
544
547
547
547
549
549
550

PAGE

R v. Purchase.....	550
R v. Balls.....	550
R v. Furneaux.....	551
R v. Flower.....	551
R v. Tyers.....	551
R v. Keena.....	551
R v. McGregor.....	551
R v. Beacall.....	551
R v. Somerton.....	551
R v. Lovell.....	551
R v. Crighton.....	551
R v. Beacall.....	552
R v. Crighton.....	252
R v. Bootyman.....	552
R v. Hodgson.....	552
R v. Smith.....	552
R v. Mellish.....	552
R v. Squire.....	552
R v. Townsend.....	552
R v. Adey.....	552
R v. Jenson.....	552
R v. Harley.....	552
R v. Macdonald.....	552
R v. Balls.....	552
R v. Carr.....	552
R v. Hoggins.....	552
R v. Tite.....	552
R v. Bowers.....	553
R v. Walker.....	553
R v. May.....	553
R v. Mayle.....	553
R u. Marshall.....	553
R v. Dixon.....	554
R v. Turner.....	554
R v. Bowers.....	555
R v. Marshall.....	555
R u. Bailey.....	555
R v. Negus.....	555
R u. Cullum.....	556
R v. Spencer.....	556
R v. Smith.....	556
R v. Hughes.....	556
R v. Nettleton.....	556
R v. Burton.....	556
R v. Tongue.....	556
R v. Hall.....	556
R v. Miller.....	556
R v. Proud.....	556
R v. Tyrie.....	556
R v. Diprose.....	557
R v. Taffs.....	557
R v. Bren.....	557

R v. Bedford.....	PAGE
R v. Hunt.....	557
R v. Stamer.....	557
R v. Carr.....	558
R v. Batty.....	558
R v. Leach.....	558
R v. White.....	558
R v. Glover.....	558
R v. Flanagan.....	558
R v. Taylor.....	558
R v. Peck.....	558
R u. Smith.....	558
R v. Hawkins.....	558
R v. Goodenough.....	558
R v. Murray.....	559
R v. Watts.....	559
R v. Read.....	559
R u. Wright.....	559
R v. Masters.....	559
R v. Hedge.....	559
R v. Gill.....	559
R v. Betts.....	560
R v. Hoggins.....	560
R v. Wilson.....	560
R v. Cooke.....	561
R v. Beaumont.....	561
R v. Thorp.....	561
R v. Harris.....	561
R v. Sullens.....	561
R v. Lister.....	561
R v. Tuelder.....	562
R v. Walstenholme.....	562
R v. Jackson.....	562
R v. Welch.....	562
R v. Wortley.....	562
R v. Grove.....	562
R v. Lambert.....	562
R v. Moab.....	562
R v. Jones.....	562
R v. Chapman.....	562
R v. King.....	563
R v. Williams.....	563
R v. Townsend.....	566
R v. Borrett.....	566
R v. Belstead.....	567
R v. Cooper.....	580
R v. Golde.....	580
R v. Prince.....	580
R v. White.....	580
R v. Gomm.....	580
R v. Fletcher.....	580
R. Roebuck.....	585

	PAGE		PAGE
R v. Eagleton.....	585	R v. Howarth.....	594
R v. Hensler.....	585	R v. Carpenter.....	595
R v. Gorbutt.....	587	R v. Walne.....	595
R v. Adams.....	587	R v. Kilham.....	595
R v. Bryan.....	587	R v. Kinrick.....	595
R v. Mason.....	588	R v. Abbott.....	595
R v. Airey.....	588	R v. Burgon.....	596
R v. Goodhall.....	588	R v. Roebuck.....	596
R v. Johnston.....	588	R v. Sherwood.....	596
R v. Lee.....	588	R v. Bryan.....	596
R v. Fry.....	588	R v. Ragg.....	596
R v. West.....	588	R v. Goss.....	596
R v. Jennison.....	588	R v. Lees.....	596
R v. Giles.....	588	R v. Ridgway.....	596
R v. Henshaw.....	589	R v. Pratt.....	596
R v. Steels.....	589	R v. Lee.....	596
R v. Wickham.....	589	R v. Suter.....	596
R v. Woolley.....	589	R v. Ardley.....	596
R v. Ball.....	589	R v. Oates.....	596
R v. Roebuck.....	589	R v. Wakeling.....	596
R v. Young.....	589	R v. Copeland.....	597
R v. Jessop.....	589	R v. Jennison.....	597
R v. Hughes.....	589	R v. Archer.....	597
R v. Mills.....	590	R v. Bloomfield.....	597
R v. Roebuck.....	590	R v. Asterley.....	597
R v. Brooks.....	590	R v. Crossley.....	597
R v. Dale.....	590	R v. Kilham.....	597
R v. Gardner.....	590	R v. Naylor.....	597
R v. Martin.....	590	R v. Henderson.....	597
R v. Watson.....	590	R v. Philpotts.....	597
R v. Evans.....	590	R v. Bowen.....	597
R v. Stone.....	590	R v. Adamson.....	597
R v. Barnes.....	590	R v. Ady.....	597
R v. Thompson.....	590	R v. Hewgill.....	597
R v. Flint.....	590	R v. Hill.....	598
R v. Jackson.....	590	R v. Wickham.....	598
R v. Parker.....	590	R v. Bates.....	598
R v. Spencer.....	590	R v. Dale.....	598
R v. Wickham.....	590	R v. Hunt.....	598
R v. Philpott.....	590	R v. Bulmer.....	598
R v. Freeth.....	590	R v. Jennison.....	598
R v. Story.....	590	R v. Brooks.....	598
R v. Jones.....	590	R v. Adamson.....	598
R v. Barnard.....	591	R v. Chadwick.....	598
R v. Crab.....	591	R v. Holt.....	598
R v. Dowey.....	591	R v. Welman.....	599
R v. Davis.....	592	R v. Danger.....	599
R v. Burrows.....	592	R v. Boulton.....	599
R v. Meakin.....	593	R v. Beecham.....	599
R v. Williamson.....	593	R v. Greenhaigh.....	599
R v. Mills.....	593	R v. Wavill.....	599
R v. Hensler.....	594	R v. Garrett.....	599

	PAGE		PAGE
R v. Taylor.....	658	R v. Thomas.....	704
R v. Clayton.....	658	R v. Peinbliton.....	705
R v. Howell.....	659	R v. Essex.....	707
R v. Brown.....	659	R v. Mussett.....	707
R v. Sheppard.....	660	R v. Thomas.....	713
R v. Howell.....	661	R v. Dunn.....	713
R v. Tacey.....	667	R v. Tate.....	730
R v. Fisher.....	667	R v. Holden.....	730
R v. Mackerel.....	668	R v. Lewis.....	730
R v. Fidler.....	668	R v. Willmott.....	720
R v. Bartlett.....	668	R v. Bampton.....	733
R v. West.....	668	R v. Yarrington.....	733
R v. Foster.....	668	R v. Higgins.....	733
R v. Turner.....	670	R v. Harris.....	733
R v. Newill.....	670	R v. Ganard.....	737
R v. Woodward.....	670	R v. Harvey.....	737
R v. Swatkins.....	670	R v. Tyson.....	737
R v. Spencer.....	670	R v. Smith.....	737
R v. Aris.....	671	R v. Naylor.....	737
R v. Price.....	671	R v. Western.....	737
R v. McKeever.....	671	R v. Alsop.....	737
R v. Satchwell.....	671	R v. Hodgkins.....	737
R v. Whiteman.....	674	R v. Bawn.....	737
R v. Lewis.....	674	R v. Chugg.....	737
R v. Dodson.....	675	R v. Buttle.....	737
R v. Martin.....	677	R v. Timins.....	737
R v. Jones.....	679	R v. Dunning.....	737
R v. Oxfordshire.....	686	R v. London.....	737
R v. Derbyshire.....	686	R v. Fletcher.....	737
R v. Bradford.....	690	R v. Crawley.....	737
R v. Hadfield.....	690	R v. Willis.....	737
R v. Hardy.....	690	R v. Hook.....	737
R v. Chalkley.....	693	R v. Nott.....	751
R v. Mogg.....	693	R v. Dixon.....	763
R v. Haywood.....	693	R v. Farrington.....	763
R v. Jeans.....	693	R v. Cohen.....	764
R v. Bullock.....	693	R v. Sleep.....	764
R v. Owens.....	693	R v. Sunley.....	764
R v. Haughton.....	693	Skuse v. Davis.....	296
R v. Bowyer.....	696	Stephen v. Meyer.....	300
R v. Smith.....	696	Tatlock v. Harris.....	46
R v. Wallace.....	696	Taylor v. Newman.....	424
R v. Philp.....	697	The Common Wealth v. Yer-	
R v. Newill.....	697	ker.....	584
R v. Gilson.....	697	Walsby v. Harvey.....	290
R v. Hill.....	703	Wilkinson v. Dutton.....	297
R v. Jepson.....	703	Walker v. Corporation of	
R v. Williams.....	704	London.....	630
R v. Whiteman.....	704	White v. Feast.....	707

THE

CRIMINAL LAW

Consolidation and Amendment Acts of 1869,

FOR THE

DOMINION OF CANADA.

AN ACT RESPECTING OFFENCES RELAT-
ING TO THE COIN.

32-33 VICT. CHAP. 18.

IMPERIAL ACT, 24-25 VICT. CHAP. 99.

WHEREAS it is expedient to assimilate, amend and consolidate the statute law of the several provinces of Quebec, Ontario, Nova Scotia and New Brunswick, respecting offences relating to the coin, and to extend the same, as so consolidated, to all Canada: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Sect. 1. In the interpretation of and for the purpose of this Act, the expression "current gold or silver coin"


shall include any gold or silver coined in any of Her Majesty's mints, or gold or silver coin of any foreign prince, or state or country or other coin lawfully current, by virtue of any proclamation or otherwise, in Canada, or any other part of Her Majesty's dominions, and the expression "current copper coin" shall include any copper coin, and any coin of bronze or mixed metal coined in any of Her Majesty's mints, or lawfully current, by virtue of any proclamation or otherwise, in Canada, or any other part of Her Majesty's dominions; and the expression "false or counterfeit coin resembling or apparently intended to resemble or pass for current gold or silver coin" or other similar expression, shall include any of the current coin, which has been gilt, silvered, washed, coloured or cased over, or in any manner altered, so as to resemble or be apparently intended to resemble or pass for any of the current coin of a higher denomination; and the expression "current coin" shall include any coin coined in any of Her Majesty's mints, or lawfully current, by virtue of any proclamation or otherwise, in Canada, or any other part of Her Majesty's dominions, and whether made of gold, silver, copper, bronze or mixed metal;—and where the having any matter in the custody or possession of any person is mentioned in this Act, it shall include not only the having of it by himself in his personal custody or possession, but also the knowingly and wilfully having it in the actual custody or possession of any other person, and also the knowingly and wilfully having it, in any dwellinghouse or other building, lodging, apartment, field or other place, open or inclosed, whether belonging to or occupied by himself or not, and whether such matter is so had for his own use or benefit, or for that of any other person. Sect. 1, Imperial Act.

The Imperial Act applies only to the "Queen's current gold and silver coin" coined in any of Her Majesty's mints, or lawfully current in any part of Her Majesty's dominions in or out of the United Kingdom. The Canadian Act includes gold or silver coin of any foreign prince, state or country current in Canada, or in any other part of Her Majesty's dominions. But the clause is so framed, in the English Act, as to include all such coin, though the words "of any foreign prince, state or country" are not inserted. The part of the clause, declaring what shall be the having in possession mentioned in the Act, is to cover questions which came up in *Reg. vs. Rogers*, 2 Mood, 45; *Reg. vs. Gerrish*, 2 M. & Rob, 219, and *Reg. vs. Williams*, 1 C. & M. 259.—*Greaves*, Consol. Acts, 318.

COUNTERFEITING CURRENT GOLD OR SILVER COIN.

Sect. 2.—Whosoever falsely makes or counterfeits any coin resembling or apparently intended to resemble or pass for any current gold or silver coin is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life, or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—Sect. 2, Imp. Act.

Sect. 34. Whenever any person is convicted of any indictable misdemeanor punishable under this Act, the Court may, if it thinks fit in addition to or in lieu of any of the punishments by this Act authorized, fine the offender and require him to enter into his own recognizances, and to find sureties, both or either, for keeping the peace and being of good behaviour; and in case of any



felony punishable under this Act, the Court may, if it thinks fit, require the offender to enter into his own recognizances and to find sureties, both or either, for keeping the peace, in addition to any punishments by this Act authorized : Provided that no person shall be imprisoned under this section for not finding sureties, for any period exceeding one year. Sect. 38, Imp. Act.

Indictment. The Jurors for Our Lady the Queen upon their oath present, that J. S., on the first day of June, in the year of ten pieces of false and counterfeit coin, each piece thereof resembling and apparently intended to resemble and pass for a piece of current gold coin, called a sovereign, falsely and feloniously did make and counterfeit, against the form. Archbold, 744.

It is rarely the case that the counterfeiting can be proved directly by positive evidence : it is usually made out by circumstantial evidence, such as finding the necessary coining tools in the defendant's house, together with some pieces of the counterfeit money in a finished, some in an unfinished state, or such other circumstances as may fairly warrant the jury in presuming that the defendant either counterfeited or caused to be counterfeited, or was present aiding and abetting in counterfeiting the coin in question. Before the modern statutes which reduced the offence of coining from treason to felony, if several conspired to counterfeit the Queen's coin, and one of them actually did so in pursuance of the conspiracy, it was treason in all, and they might all have been indicted for counterfeiting the Queen's coin generally, 1 Hale, 214 ; but now, only the party who actually counterfeits would be the principal felon, and the others, accessories before the fact, although triable as principals.—31 Vict ch. 72.

A variance between the indictment and the evidence in the number of the pieces of coin alleged to be counterfeited, is immaterial; but a variance as to the denomination of such coin, as guineas, sovereigns, shillings, would be fatal, unless amended. By the old law the counterfeit coin produced in evidence must have appeared to have that degree of resemblance to the real coin that it would be likely to be received as the coin for which it was intended to pass by persons using the caution customary in taking money. In *R. vs. Varley*, 1 East. P. C. 164, the defendant had counterfeited the resemblance of a half-guinea upon a piece of gold previously hammered, but it was not round, nor would it pass in the condition in which it then was, and the judges held that the offence was incomplete. So, in *R. vs. Morris*, 1 Leach 165, where the defendants were taken in the very act of coining shillings, but the shillings coined by them were taken in an imperfect state, it being requisite that they should undergo another process, namely immersion in diluted *aqua fortis*, before they could pass as shillings, the judges held that the offence was incomplete; but now by sect. 32, of the Coin Act of 1869, the offence of counterfeiting shall be deemed complete although the coin made or counterfeited shall not be in a fit state to be uttered, or the counterfeiting thereof shall not be finished or perfected.

Any credible witness may prove the coin to be counterfeit, and it is not necessary for this purpose to produce any moneyer or other officer from the mint. Sect. 30, *infra*. If it become a question whether the coin, which the counterfeit money was intended to imitate be current coin, it is not necessary to produce the Proclamation to prove its legitimation: it is a mere question of fact to be

left to the jury upon evidence of usage, reputation, &c.—Hale, 196, 212, 213. It is not necessary to prove that the counterfeit coin was uttered or attempted to be uttered. 1 East, P. C. 165; Archbold, 744; Reg. vs. Robinson, 10 Cox, 107; Reg. vs. Connell, 1 C. and K. 190; Reg. vs. Byrne, 6 Cox, 475.

By sect. 49, 32-33 Vict., ch. 29, if, upon the trial for any felony, it appears that the defendant did not complete the offence charged, but was only guilty of an attempt to commit the same, a verdict may be given of guilty of the attempt.

As to solitary confinement, see sect. 94, 32-33 Vict., ch. 29.

COLOURING, &C., COIN.

Sect. 3. Whosoever gilds or silvers, or with any wash or materials capable of producing the colour or appearance of gold or of silver, or by any means whatsoever washes, cases over, or colours any coin whatsoever resembling or apparently intended to resemble or pass for any current gold or silver coin, or gilds or silvers or with any wash or materials capable of producing the colour or appearance of gold or of silver, or by any means whatsoever, washes, cases over or colours 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 false and counterfeit coin resembling or apparently intended to resemble or pass for any current gold or silver coin, or gilds or with any wash or materials capable of producing the colour and appearance of gold, or by any means whatsoever, washes,

cases over or colours 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 gilds or silvers, or with any wash or materials capable of producing the colour or appearance of gold or silver, or by any means whatsoever, washes, cases over or colours 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, is guilty of felony, and shall be liable to be imprisoned in the penitentiary for life or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—Sect. 3, Imp. Act.

Indictment for colouring coin..... falsely, deceitfully and feloniously did gild a certain false and counterfeit coin resembling a certain piece of current gold coin, called a sovereign, against the form Archbold, 746.

Prove the gilding, &c. or colouring as stated in the indictment. Where the defendant was apprehended in the act of making counterfeit shillings, by steeping round blanks, composed of brass and silver in *aqua fortis*, none of which were finished, but exhibited the appearance of lead, though by rubbing they readily acquired the appearance of silver, and would pass current, it was doubted whether this was within the late Act, but the judges held the conviction to be right.—*R. vs. Case*, 1 Leach, 145. In another case a doubt was expressed whether an immersion of a mixture, composed of silver and base metal, into *aqua fortis*, which draws the silver to the surface, was a colouring within the repealed statutes, and whether they were not intended to apply only to a colouring produced by a

superficial application. *R. vs. Lavey*, 1 Leach, 153. But the words "capable of producing" seem to have been introduced into the recent Statute for the purpose of obviating the doubt. Moreover, the present Statute adds the general words "or by any means whatsoever." Where a wash or material is alleged to have been used by the defendant, it must be shown either from the application by the defendant, or from an examination of their properties, that they are capable of producing the colour of gold or silver. But an indictment charging the use of such material will be supported by proof of a colouring with gold itself. *R. vs. Turner*, 2 Mood. 41. Archbold, 746. Where direct evidence of the act of colouring cannot be obtained, circumstances may be shown from which the act may be presumed, as that the prisoner was in possession of false coin, and that blanks coloured and materials for colouring were found in his house.—1 Burn's Justice, 806.

Indictment for colouring metal, &c......falsely, deceitfully and feloniously did gild ten pieces of silver, each piece thereof being respectively of a fit size and figure to be coined, and with intent that each of the said pieces of silver respectively should be coined into false and counterfeit coin resembling a piece of current gold coin, called a sovereign, against the form..... Archbold, 747.

An indictment charging the gilding of sixpences "with materials capable of producing the colour of gold" is good, and is supported by proof of colouring sixpences with gold.—*R. vs. Turner*, 2 Mood., 41.

IMPAIRING, &C., GOLD AND SILVER COIN.

Sect. 4.—Whosoever impairs, diminishes, or lightens any current gold or silver coin, with intent that the

coin so impaired, diminished or lightened may pass for current gold or silver coin, is guilty of felony and shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years, and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—Sect. 4, Imp. Act.

Sect. 5.—Whosoever unlawfully has in his custody or possession any filings or clippings, or any gold or silver bullion, or any gold or silver in dust, solution or otherwise, which have been produced or obtained by impairing, diminishing, or lightening any current gold or silver coin, knowing the same to have been so produced or obtained, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding seven years, and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labor, and with or without solitary confinement. Sect. 5, Imp. Act.

Indictment.—....ten pieces of current gold coin, called sovereigns, falsely, deceitfully and feloniously did impair with intent that each of the ten pieces so impaired might pass for a piece of current gold coin, called a sovereign, against the form..... Archbold, 748.

The act of impairing must be shown, either by direct evidence of persons who saw the prisoner engaged in it, or by presumptive evidence, such as the possession of filings and of impaired coin, or of instruments for filing, &c. The intent to pass off the impaired coin must then appear. This may be done by showing that the prisoner attempted to pass the coin so impaired, or that he car-

ried it about his person, which would raise a presumption that he intended to pass it. And if the coin were not so defaced by the process by impairing, as apparently to affect its currency, it would, under the circumstances, without further evidence, be a question for the jury, whether the diminished coin was intended to be passed.—Roscoe, on Coining, 19. As to sect. 5, Greaves remarks, p. 321: "This clause is new. It has frequently happened that filings and clippings, and gold dust have been found under such circumstances as to leave no doubt that they were produced by impairing coin, but there has been no evidence to prove that any particular coin had been impaired. This clause is intended to meet such cases."

As to solitary confinement, see 32-33 Vict., ch. 29, s. 94. As to requiring the offender to enter into recognizances and find sureties for keeping the peace, see sect. 34, *ante*, with sect. 2.

BUYING OR SELLING COUNTERFEIT COIN AT A LOWER
VALUE.

Sect. 6.—Whosoever, without lawful authority or excuse, the proof whereof shall lie on the party accused, buys, sells, receives, pays or puts off, or offers to buy, sell, receive, pay or put off, any false or counterfeit coin, resembling or apparently intended to resemble or pass for any current gold or silver coin, at or for a lower rate or value than the same imports or was apparently intended to import, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than

two years, with or without hard labour, and with or without solitary confinement; and in any indictment for any such offence as in this section aforesaid, it shall be sufficient to allege that the party accused did buy, sell, receive, pay or put off, or did offer to buy, sell, receive, pay or put off the false or counterfeit coin, at or for a lower rate of value than the same imports, or was apparently intended to import, without alleging at or for what rate, price or value, the same was bought, sold, received, paid or put off, or offered to be bought, sold, received, paid or put off.—Sect. 6, Imp. Act.

Indictment—...ten pieces of false and counterfeit coin, each piece thereof resembling a piece of the current gold coin, called a sovereign, falsely, deceitfully and feloniously, and without lawful authority or excuse did put off to one J. N. at and for a lower rate and value than the same did then import; against the....Archbold, 750.

Prove that the defendant put off the counterfeit coin as mentioned in the indictment. In *R. vs Woolridge*, 1 Leach, 307, it was holden that the putting off must be complete and accepted. But the words offer to buy, sell, &c. in the above clause would now make the acceptance immaterial.

The last part of the clause refers to the indictment: by it, the cases of *R. vs. Joyce*, and *R. vs. Hedges*, 3 C. & P. 410 would not now apply.—Archbold, 751. If the names of the persons to whom the money was put off can be ascertained, they ought to be mentioned and laid severally in the indictment; but if they cannot be ascertained the same rule will apply which prevails in the case of stealing the property of persons unknown.—1 Russell, 135.

As to requiring the offender to enter into recognizances, and find sureties for keeping the peace, see sect. 34, *ante*, under sect. 2. As to solitary confinement, see sect. 94, 32-33 Vict., ch. 29.

IMPORTING COUNTERFEIT COIN.

SECT. 7.—Whosoever, without lawful authority or excuse, the proof whereof shall lie on the party accused, imports or receives into Canada any false or counterfeit coin, resembling or apparently intended to resemble or pass for any current gold or silver coin, knowing the same to be false or counterfeit, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life, or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—Sect. 7, Imp. Act.

Indictment.—.....ten thousand pieces of false and counterfeit coin, each piece thereof resembling a piece of the current silver coin called a shilling, falsely, deceitfully and feloniously, and without lawful authority or excuse, did import into Canada,—he the said J. S. at the said time, when he so imported the said pieces of false and counterfeit coin, well knowing the same to be false and counterfeit; against the form :.....Archbold, 751; 1 Russell, 108; 1 Burn's Justice, 867.

The guilty knowledge of the defendant must be averred in the indictment and proved.

As to sureties and solitary confinement, as, *ante*, under sect. 2.

EXPORTING COUNTERFEIT COIN.

SECT. 8.—Whosoever, without lawful authority or excuse, the proof whereof shall lie on the party accused, exports or puts on board any ship, vessel or boat, *or on any railway or carriage or vehicle of any description whatsoever*, for the purpose of being exported from Canada, any false or counterfeit coin, resembling or apparently intended to resemble or pass for any current coin, *or for any foreign coin of any prince, country or state*, knowing the same to be false or counterfeit, is guilty of a misdemeanor, and shall be liable to be imprisoned in any gaol or place of confinement other than a Penitentiary, for any term less than two years, with or without hard labour, and with or without solitary confinement.—Sect. S, Imp. Act.

The words in *Italics* are not in the English Statute.

Indictment.....One hundred pieces of false and counterfeit coin, each piece thereof resembling a piece of the current coin called a sovereign, falsely, deceitfully and knowingly, and without lawful authority did export from Canada,—he the said C. D. at the time when he so exported the said pieces of false and counterfeit coin, then well knowing the same to be false and counterfeit; against.....1 Burn's Justice, 825. See observations on last preceding clause.

UTTERING COUNTERFEIT GOLD OR SILVER COIN.

SECT. 9.—Whosoever tenders, utters or puts off any false or counterfeit coin resembling or apparently intended to resemble or pass for any current gold or silver coin, knowing the same to be false or counterfeit, is guilty of a misdemeanor, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen

years, and not less than two years, or to be imprisoned in any other gaol or place of confinement, for any term less than two years, with or without hard labour, and with or without solitary confinement.—Sect. 9, Imp. Act.

SECT. 10.—Whosoever tenders, utters or puts off as being current, any gold or silver coin of less than its lawful weight, knowing such coin to have been impaired, diminished or lightened, otherwise than by lawful wear, is guilty of a misdemeanor, and shall be liable to be imprisoned in any gaol or place of confinement other than a Penitentiary, for a period not exceeding one year, with or without hard labour, and with or without solitary confinement. (This clause is not in the English Act, whose Sect. 10 is different.)

SECT. 11.—Whosoever has in his custody or possession any false or counterfeit coin, resembling or apparently intended to resemble or pass for any current gold or silver coin, knowing the same to be false or counterfeit, and with intent to utter or put off any such false or counterfeit coin, is guilty of a misdemeanor, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding three years, nor less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement. (Sect. 11 of the English Act is for having three or more pieces of counterfeit coin.)

Indictment for uttering counterfeit coin.....
one piece of false and counterfeit coin resembling a piece of the current gold coin, called a sovereign, unlawfully, falsely and deceitfully did utter to one J. N., —he the said (defendant) at the time he so uttered the

said piece of false and counterfeit coin, well knowing the same to be false and counterfeit; against the form.....Archbold, 753.

Prove the tendering, uttering or putting off the sovereign in question, and prove it to be a base and counterfeit sovereign. Where a good shilling was given to a Jew boy for fruit, and he put it into his mouth under pretence of trying whether it were good, and then taking a bad shilling out of his mouth instead of it, returned it to the prosecutor, saying that it was not good; this (which is called *ringing the changes*) was holden to be an uttering, indictable as such.—R. vs. Franks, 2 Leach, 644; Archbold, 753. The giving of a piece of counterfeit money in charity is not an uttering, although the person may know it to be counterfeit; as in cases of this kind, there must be some intention to defraud.—Reg. vs. Page, 8 C. and P. 122. But this case has been overruled.—Reg. vs. Ion, 2 Den, 484; 1 Russell, 126. (See sect. 14 of the Forgery Act, and remarks thereon.)

A prisoner went into a shop, asked for some coffee and sugar, and in payment put down on the counter a counterfeit shilling: the prosecutor said that the shilling was a bad one; whereupon the prisoner quitted the shop, leaving the shilling and also the coffee and sugar: held that this was an uttering and putting off within the statute.—Reg. vs. Welch, 2 Den. 78; 4 Cox, 430. The prisoner and J. were indicted for a misdemeanor in uttering counterfeit coin. The uttering was effected by J. in the absence of the prisoner, but the jury found that they were both engaged on the evening on which the uttering took place, in the common purpose of uttering counterfeit shillings, and that in pursuance of that common purpose, J. uttered the coin in question: held, that the pri-

soner was rightly convicted as a principal, there being no accessories in a misdemeanor.—Reg. vs. Greenwood, 2 Den. 453 ; 5 Cox, 521. If two jointly prepare counterfeit coin, and utter it in different shops apart from each other but in concert, intending to share the proceeds, the utterings of each are the joint utterings of both, and they may be convicted jointly.—Reg. vs. Hurse, 2 M. and Rob. 360.

R. vs. Else, R. & J. 142 ; Reg. vs. Manners, 7 C. & P. 801 ; R. vs. Page, 9 C. & P. 756 ; 2 Mood, 219 ; R. vs. Jones, 2 Mood, 85, are not law.—Archbold, 754. Husband and wife were jointly indicted for uttering counterfeit coin : held, that the wife was entitled to an acquittal, as it appeared that she uttered the money in the presence of her husband,—R. vs. Price, 8 C. & P. 19. A wife went from house to house uttering base coin : her husband accompanied her but remained outside : held, that the wife acted under her husband's compulsion.—Conolley's case, 2 Lewin, 229. Sarah McGinnes was indicted for uttering counterfeit coin. It appeared that at the time of the commission of the offence, she was in company with a man who went by the same name, and who was convicted of the offence at the last assizes. When the prisoners were taken into custody the police constable addressed the female prisoner as the male prisoner's wife. The male prisoner denied the fact, (of her being his wife) in the hearing and presence of the woman. Sarah McGinnes since her committal had been confined of a child : *held*, per Byles, J., that, under the circumstances, although the woman had not pleaded her coverture, and even although she had not asserted she was married to the male prisoner, when he stated she was not his wife, it was a question for the jury whether, taking the birth of the

child and the whole circumstances, there was not evidence of the marriage, and the jury thought there was, and acquitted her, as being under the influence of her husband, when she uttered the coin.—Reg. v. McGinnes, 11 Cox, 391.

Proof of the guilty knowledge by the defendant must be given. This of course must be done by circumstantial evidence. If, for instance, it be proved that he uttered, either on the same day or at other times, whether before or after the uttering charged, base money, either of the same or of a different denomination, to the same or to a different person, or had other pieces of base money about him when he uttered the counterfeit money in question; this will be evidence from which the jury, may presume a guilty knowledge.—Archbold, 754; 1 Russell, 127.

Indictment for having in possession counterfeit gold or silver coin with intent, &c., &c., &c. . . . unlawfully, falsely and deceitfully had in his custody and possession four pieces of false and counterfeit coin, resembling the current silver coin called with intent to utter the said pieces of false and counterfeit coin, he the said J. S. then well knowing the said pieces of false and counterfeit coin to be false and counterfeit; against Archbold, 757.—See remarks under sections 9 and 10. As to what constitutes the having in possession, see sect. 1, interpretation clause. As to fining the offender and require him to give sureties, in any cases of misdemeanor under this act, see *ante*, sect. 34, under sect. 2.

As to solitary confinement, 32–33 Vict., ch. 29, s. 94.

UTTERING, &c., AFTER A PREVIOUS CONVICTION SHALL
BE FELONY.

Sect. 12.—Whosoever having been convicted, either before or after the passing of this Act, of any such misdemeanor as in any of the last three preceding sections mentioned, or of any misdemeanor or felony against this or any former Act heretofore in force in Canada, or in any of the Provinces thereof, relating to the coin, afterwards commits any of the misdemeanors in any of the said sections mentioned, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life, or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—Sect. 12, Imp. Act.

In the English Statute, the mode of proceeding on a subsequent offence, after a previous conviction, under the Coin Act, is given by sect. 37 of this Act. In Canada, we have the same clause, applying to all trials, generally, of a subsequent offence, after a previous conviction, and for which a greater punishment may be inflicted on that account, viz.: sect. 26, 32–33 Vict., ch. 29, (Procedure Act, 1869.) It is exactly in the same terms as the corresponding clause of the English Statute, on offences relating to the coin. The English Larceny Act, sect. 116, re-enacts it. See Greaves' observations on this last clause; also Archbold, 364, 755. More observations on the question will be found in the Annotations on sect. 26 of the Procedure Act of 1869.

Upon the trial of an indictment for the felony of having committed a misdemeanor, within either of sections 9, 10, or 11 of 24–25 Vict., ch. 99, relating to the unlaw-

ful possession and uttering of counterfeit coin after a previous conviction for a misdemeanor within those sections, the prisoner must be arraigned upon, and evidence respecting the subsequent offence must first be submitted to the jury, and the previous conviction must not be inquired into until after the verdict on the charge of the subsequent offence.—*Regina vs. Martin*, 11 Cox, 843; *R. vs. Goodwin*, 10 Cox, 534, overruled. In *Reg. vs. Martin*, Lush, J., admitted that he was in error, in the case mentioned at p. 757 of *Archbold, Cr. Pl.*

UTTERING FOREIGN COIN, MEDALS, &C., WITH INTENT TO DEFRAUD.

Sect. 13.—Whosoever, with intent to defraud, tenders, utters, or puts off, as or for any current gold or silver coin, any coin not being such current gold or silver coin, or any medal or piece of metal or mixed metals, resembling in size, figure and colour the current coin, as or for which the same is so tendered, uttered, or put off, such coin, medal or piece of metal or mixed metals so tendered, uttered or put off, being of less value than the current coin as or for which the same is so tendered, uttered or put off, is guilty of a misdemeanor, and shall be liable to be imprisoned in any gaol or place of confinement, other than a penitentiary, for any term not exceeding one year, with or without hard labour, and with or without solitary confinement.—Sect. 13 Imp. Act.

An indictment for the offences against this section may be readily framed from the preceding forms.—See observations under sect. 2, for fine, sureties and solitary confinement.

A person was convicted, under the above section, of putting off, as and for a half sovereign, a medal of the

same size and colour, which had on the obverse side a head similar to that of the Queen, but surrounded by the inscription "Victoria, Queen of Great Britain," instead of "Victoria Dei Gratia" and a round guerling, and not square. And no evidence was given as to the appearance of the reverse side, nor was the coin produced to the jury; and it was held that there was sufficient evidence that the medal resembled, in figure, as well as size and colour, a half sovereign.—Reg. vs. Robinson, L. & C., 604: the medal was produced, but, in the course of his evidence, one of the witnesses accidentally dropped it, and it rolled on the floor; strict search was made for it for more than half an hour, but it could not be found.

COUNTERFEITING COPPER COIN.

SECT. 14.—Whosoever falsely makes or counterfeits any coin resembling or apparently intended to resemble or pass for any current copper coin; and whosoever without lawful authority or excuse (the proof of which shall lie on the party accused) knowingly makes or mends, or begins, or proceeds to make or mend, or buy or sell, or have in his custody or possession any instrument, tool or engine adapted and intended for the counterfeiting any current copper coin, or buys, sells, receives, pays or puts off, or offers to buy, sell, receive, pay or put off any false or counterfeit coin, resembling or apparently intended to resemble or pass for any current copper coin, at or for a lower rate of value than the same imports, or was apparently intended to import, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding seven years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than

two years with or without hard labour, and with or without solitary confinement.—Sect. 14, Imp. Act.

UTTERING BASE COPPER COIN.

SECT. 15.—Whosoever tenders, utters or puts off any false or counterfeit coin, resembling or apparently intended to resemble or pass for any current copper coin, knowing the same to be false or counterfeit, or has in his custody or possession three or more pieces of false or counterfeit coin, resembling or apparently intended to resemble or pass for any current copper coin, knowing the same to be false or counterfeit, with an intent to utter or put off the same or any of them, is guilty of a misdemeanor, and shall be liable to be imprisoned in any gaol or place of confinement, other than a Penitentiary, for any term not exceeding one year, with or without hard labour, "or" with or without solitary confinement.—Sect. 15, Imp. Act.

The evidence on the prosecution relating to the copper coin, will in general be the same as on prosecutions relating to the counterfeiting of the gold or silver coin.

See remarks as to proof of intent, &c., under the preceding sections, and sect. 1, Interpretation Clause, as to what is having in custody or possession, under this clause.

DEFACING COIN, TENDER OF DEFACED COIN.

SECT. 16.—Whosoever defaces any current gold, silver or copper coin, by stamping thereon any names or words, whether such coin is or is not thereby diminished or lightened, and afterwards tenders the same, is guilty of a misdemeanor, and shall be liable to be imprisoned in

any gaol or place of confinement other than the Penitentiary, for any term not exceeding one year, with or without hard labour.—Sect. 16, Imp. Act.

Sec. 17.—No tender of payment in money made in any gold, silver or copper coin so defaced by stamping, as in the last preceding section mentioned, shall be allowed to be a legal tender; and whosoever tenders, utters or puts off any coin so defaced shall on conviction before two justices of the peace be liable to forfeit and pay any sum not exceeding ten dollars, provided that it shall not be lawful for any person to proceed for any such last mentioned penalty without the consent of the Attorney General for the province in which such offence is alleged to have been committed.—Sect. 17, Imp. Act.

Indictment for defacing Coin. one piece of the current silver coin, called a half crown, unlawfully and wilfully did deface, by then stamping thereon certain names and words against the form Archbold 748.

Prove that the defendant defaced the coin in question, by stamping on it any names or words, or both. It is not necessary to prove that the coin was thereby diminished or lightened. There must be defacing and tendering, to bring the offence within section 16. Legal tender is within the attributions of the Parliament of Canada, and clause 17 is not, therefore, unconstitutional. British N. A. Act, sect. 91, par. 20. By sect. 35, of ch. 18, 32-33 Vict., every offence under this Act made punishable on summary conviction may be prosecuted as directed by ch. 31, 32 33 Vict.

As to fining the offender, and requiring him to give sureties for the peace, see sect. 34, *ante*, under sect. 2.

COUNTERFEITING FOREIGN GOLD AND SILVER COIN, NOT
CURRENT IN CANADA.

SECT. 18.—Whosoever makes or counterfeits any kind of coin not being current gold or silver coin, but resembling or apparently intended to resemble or pass for any gold or silver coin of any foreign prince, state or country, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding seven years, and not less than two years, or to be imprisoned in any other gaol or place of confinement, for any term less than two years, with or without hard labour, and with or without solitary confinement.—Sect. 18, Imp. Act.

BRINGING SUCH COUNTERFEIT COIN IN CANADA.

SECT. 19.—Whosoever, without lawful authority or excuse, the proof whereof shall lie on the party accused, brings or receives into Canada any such false or counterfeit coin, resembling or apparently intended to resemble or pass for any gold or silver coin of any foreign prince, state or country, not being current coin, knowing the same to be false or counterfeit, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary, for any term not exceeding seven years, and not less than two years, or to be imprisoned in any other gaol or place of confinement, for any term less than two years, with or without hard labour, and with or without solitary confinement.—Sect. 19, Imp. Act.

UTTERING FOREIGN COUNTERFEIT COIN.

SECT. 20.—Whosoever tenders, utters or puts off any such false or counterfeit coin, resembling or apparently

intended to resemble or pass for any gold or silver coin of any foreign prince, state or country, not being current coin, knowing the same to be false or counterfeit, is guilty of a misdemeanor, and shall be liable to be imprisoned in any gaol or place of confinement, other than a Penitentiary, for any term not exceeding six months, with or without hard labour.—Sect. 20, Imp. Act.

SUBSEQUENT OFFENCES.

SECT. 21.—Whosoever, having been so convicted as in the last preceding section mentioned, afterwards commits the like offence of tendering, uttering or putting off any such false or counterfeit coin as aforesaid, knowing the same to be false or counterfeit, is guilty of a misdemeanor, and shall be liable to be imprisoned in any gaol or place of confinement, other than a Penitentiary, for any term less than two years; and whosoever, having been so convicted of a second offence, afterwards commits the like offence of tendering, uttering or putting off any such false or counterfeit coin as aforesaid, knowing the same to be false or counterfeit, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary, for any term not exceeding seven years, and not less than two years, or to be imprisoned in any other gaol or place of confinement, for any term less than two years, with or without hard labour, and with or without solitary confinement.—Sect. 21, Imp. Act.

HAVING FOREIGN GOLD OR SILVER COIN, FALSE OR COUNTERFEIT, IN POSSESSION.

SECT. 22.—Whosoever without lawful authority or excuse (the proof whereof shall lie on the party accused)

has in his possession or custody any *forged*, false or counterfeited piece or coin, counterfeited to resemble any foreign gold or silver coin described in the four next preceding sections of this Act mentioned, knowing the same to be false or counterfeit, with intent to put off any such false or counterfeit coin, is guilty of a misdemeanor, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding three years, nor less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.

Sect. 23, Imp. Act, applies to the having in possession *five* pieces or more of foreign counterfeit coin, gold, silver or any other metal. The Canadian corresponding enactment, it will be perceived, applies only to gold or silver coin, and to any number of them; the word *forged* is not in the English clause.

SECT. 23.—Whosoever falsely makes, or counterfeits any kind of coin, not being current coin but resembling or apparently intended to resemble or pass for any copper coin, or any other coin made of any metal or mixed metals, of less value than the silver coin, of any foreign prince, state or country, is guilty of a misdemeanor, and shall be liable, for the first offence, to be imprisoned in any gaol or place of confinement, other than the Penitentiary, for any term not exceeding one year; and for the second offence, to be imprisoned in the Penitentiary for any term not exceeding seven years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.

Sect. 22, Imp. Act, is the corresponding clause. So that sect. 22 of the Canadian Act is sect. 23 of the English Act, and *vice versa*: in consequence, having in possession counterfeit foreign coin *other than gold* or silver, which in England, is an offence, is not provided for by our said Statute. (See 31 Vict., ch. 47:) the enactment upon subsequent offences contained in sect. 23 of the Canadian Statute, is not to be found in sect. 22 of the English Statute.

The remarks under the first part of the Act are all applicable here, the enactments in those sections being the same, and repeated, to apply to foreign coin *not current here*.

MAKING, &C., COINING TOOLS.

Sect. 24.—Whosoever, without lawful authority or excuse, the proof whereof shall lie on the party accused, knowingly makes or mends, or begins or proceeds to make or mend, or buy or sell, or have in his custody or possession any puncheon, counter puncheon, matrix, stamp, die, pattern, or mould, in or upon which there shall be made or impressed, or which will make or impress, or which shall be intended and adapted to make or impress the figure, stamp or apparent resemblance of both or either of the sides of any current gold or silver coin, or of any coin of any foreign prince, state or country, or any part or parts of both or either of such sides; or makes, or mends, or begins or proceeds to make or mend, or buys or sells or has in his custody or possession any edger, edging or other tool, collar, instrument or engine, adapted and intended for the marking of coin round the edges with letters, grainings or other marks or figures, apparently resembling those on the edges of any such

coin as in this section aforesaid, knowing the same to be so intended and adapted as aforesaid,—or makes, or mends, or begins or proceeds to make or mend, or buys or sells, or has in his custody or possession any press for coinage or any cutting engine for cutting by force of a screw or of any other contrivance, round blanks out of gold, silver, or other metal or mixture of metals, or any other machine, knowing such press to be a press for coinage, or knowing such engine or machine to have been used or to be intended to be used for or in order to the false making or counterfeiting of any such coin as in this section aforesaid, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—Sect. 24, Imp. Act.

Indictment for making a puncheon for coining. —

. one puncheon, in and upon which there was then made and impressed the figure of one of the sides, that is to say, the head side of a piece of the current silver coin, commonly called a shilling, knowingly, falsely, deceitfully and feloniously and without lawful authority or excuse, did make; against the form. Archbold 759.

Prove that the defendant made a puncheon, as stated in the indictment; and prove that the instrument in question is a puncheon included in the Statute. The words in the Statute “upon which there shall be made or impressed” apply to the puncheon which being convex bears upon it the figure of the coin; and the word “which will make or impress” apply to the counterpun

cheon, which being concave will make and impress. However, although it is more accurate to describe the instruments according to their actual use, they may be described either way.—*R. vs. Lennard*, 1 Leach, 85. It is not necessary that the instrument should be capable of making an impression of the whole of one side of the coin, for the words “or any part or parts” are introduced into this Statute, and consequently the difficulty in *R. vs. Sutton*, 2 Str. 1074, where the instrument was capable of making the sceptre only cannot now occur.

And on an indictment for making a mould “intended to make and impress the figure and apparent resemblance of the obverse side” of a shilling, it is sufficient to prove that the prisoner made the mould and a part of the impression, though he had not completed the entire impression.—*R. vs. Foster*, 7 C. and P. 495. It is not necessary to prove under this branch of the Statute the *intent* of the defendant: the mere similitude is treated by the Legislature as evidence of the intent; neither is it essential to show that money was actually made with the instrument in question.—*R. vs. Ridgely*, 1 East P. C. 171. The proof of lawful authority or excuse, if any, lies on the defendant. Where the defendant employed a die-sinker to make, for a pretended innocent purpose, a die calculated to make shillings: and the die-sinker, suspecting fraud, informed the authorities at the mint, and under their directions made the die for the purpose of detecting prisoner; it was held that the die-sinker was an innocent agent and the defendant was rightly convicted as a principal.—*R. vs. Bannion*, 2 Mood. 309.

The *making* and *procuring* dies and other materials, with intent to use them in coining Peruvian half-dollars in England, not in order to utter them here, but by way of

trying whether the apparatus would answer, before sending it out to Peru, to be there used in making the counterfeit coin for circulation in that country, was held to be an indictable misdemeanor at common law.—*R. vs. Roberts*, Dears. 539; Archbold, 760; 1 Burn, 814; 1 Russell, 100. A galvanic battery is a machine within this section.—*Reg. vs. Grover*, 9 Cox, 282.

Indictment for having a puncheon in possession.—.....

..... one puncheon in and upon which there was then made and impressed the figure of one of the sides, that is to say the head side of a piece of the current silver coin commonly called a shilling, knowingly, falsely, deceitfully and feloniously, and without lawful authority or excuse, had in his custody and possession, against the form..... Archbold 760.

An indictment which charged that the defendant feloniously had in his possession a mould "upon which said mould was made and impressed the figure and apparent resemblance" of the obverse side of a sixpence, was held bad on demurrer, as not sufficiently showing that the impression was on the mould at the time when he had it in his possession.—*R. vs. Richmond*, 1 C. & K. 240.

As to evidence of possession, see sect. 1, Interpretation Clause, *ante*.—*R. vs. Rogers*, 2 Mood., 758.—The prisoner had occupied a house for about a month before the police entered it, and found two men and two women there, one of whom was the wife of the prisoner. The men attacked the police, and the women threw something into the fire. The police succeeded, however, in preserving part of what the women threw away, which proved to be fragments of a plaster-of-Paris mould of a half crown. The prisoner came in shortly afterwards,

and, on searching the house, a quantity of plaster-of-Paris was found up-stairs. An iron ladle and some fragments of plaster-of-Paris moulds were also found. It was proved that the prisoner, thirteen days before the day in question, had passed a bad half-crown, but there was no evidence that it had been made in the mould found by the police. He was afterwards tried and convicted for uttering the base half-crown. It was held that there was sufficient evidence to justify the conviction, and that, on a trial for felony, other substantive felonies which have a tendency to establish the scienter of the defendant may be proved for that purpose.—Reg. vs. Weeks, L. & C., 18. In Reg. vs. Harvey, 11 Cox., 662, it was held: 1. That an indictment under this section is sufficient if it charges possession without lawful excuse, as excuse would include authority; 2. That the words "the proof whereof shall lie on the accused" only shift the burden of proof, and do not alter the character of the offence; 3. That the fact that the Mint authorities, upon information forwarded to them, gave authority to the die maker to make the die, and that the police gave permission to him to give the die to the prisoner, who ordered him to make it, did not constitute lawful authority or excuse for prisoner's possession of the die; 4. That, to complete the offence, a felonious intent is not necessary; and, upon a case reserved, the conviction was affirmed.

Indictment for making a collar.—.....one collar adapted and intended for the marking of coin round the edges with grainings apparently resembling those on the edges of a piece of the current gold coin called a sovereign, falsely, deceitfully and feloniously, and without lawful authority or excuse, did make,—he the said

J. S. then well knowing the same to be so adapted and intended as aforesaid, against the form..... Archbold, 761

It must be proved, upon this indictment that the defendant knew the instrument to be adapted and intended for the making of coin round the edges.

It must be remarked that the present Statute expressly applies to tools for making foreign coin, as well as current coin.

As to sureties for keeping the peace, and solitary confinement, see the preceding sections.

CONVEYING COINING TOOLS OR COIN OUT OF THE MINT INTO CANADA.

Sect 25.—Whosoever, without lawful authority or excuse, the proof whereof shall lie on the party accused, knowingly conveys out of any of Her Majesty's mints *into Canada*, any puncheon, counter-puncheon, matrix, stamp, die, pattern, mould, edger, edging, or other tool, collar, instrument, press or engine used or employed in or about the coining of coin, or any useful part of any of the several matters aforesaid, or any coin, bullion, metal or mixture of metals, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life, or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—Sect. 25, Imp. Act.

The words *into Canada* make the offence very different with that mentioned in the English enactment, and one not often likely to be brought before our courts.

COIN SUSPECTED MAY BE CUT.

Sect. 26.—Where any coin is tendered as current gold or silver coin to any person who suspects the same to be diminished otherwise than by reasonable wearing, or to be counterfeit, it shall be lawful for such person to cut, break, bend or deface such coin, and if any coin so cut broken, bent or defaced, appears to be diminished otherwise than by reasonable wearing, or to be counterfeit, the person tendering the same shall bear the loss thereof; but if the same is of due weight and appears to be lawful coin, the person cutting, breaking, bending or defacing the same shall be bound to receive the same at the rate it was coined for, and if any dispute arises whether the coin so cut, broken, bent or defaced is diminished in manner aforesaid, or counterfeit, it shall be heard and finally determined in a summary manner by any Justice of the Peace, who is hereby empowered to examine upon oath, as well the parties as any other person, in order to the decision of such dispute, *and if he entertains any doubt in that behalf, he may summon three persons the decision of a majority of whom shall be final*; and the receivers of every branch of Her Majesty's revenue in Canada are hereby required to cut, break or deface, or cause to be cut, broken or defaced, every piece of counterfeit or unlawfully diminished gold or silver coin which shall be tendered to them in payment of any part of Her Majesty's revenue in Canada.—Sect. 26, Imp. Act.

The words in *italics* are not to be found in the English Act. The clause, taken altogether, is the most crude, ill-digested, impracticable piece of legislation to be found in our Statute book. The words introduced in it by our Parliament, are no improvement on the English clause. It has moreover, with us, also, a tinge of unconstitutionality.

SEIZURE AND DISPOSAL OF COUNTERFEIT COIN AND
COINING TOOLS.

Sect. 27.—If any person finds or discovers in any place whatever, or in the custody or possession of any person having the same without lawful authority or excuse, any false or counterfeit coin resembling or apparently intended to resemble, or pass for any current gold, silver or copper coin, or any coin of any foreign prince, state or country, or any instrument, tool or engine whatsoever, adapted and intended for the counterfeiting of any such coin, or any filings or clippings, or any gold or silver bullion, or any gold or silver in dust, solution or otherwise, which has been produced or obtained by diminishing or lightening any current gold or silver coin, the person so finding or discovering may, and he is hereby required to seize the same and to carry the same forthwith before some Justice of the Peace; and in case it is proved on the oath of a credible witness, before any Justice of the Peace, that there is reasonable cause to suspect that any person has been concerned in counterfeiting current gold, silver or copper coin, or any such foreign or other coin as is in this Act before mentioned, or has in his custody or possession any such false or counterfeit coin, or any instrument, tool or engine whatsoever, adapted and intended for the making or counterfeiting of any such coin, or any other machine used or intended to be used for making or counterfeiting any such coin, or any such filings, clippings or bullion, or any such gold or silver in dust, solution, or otherwise as aforesaid, any Justice of the Peace may, by warrant under his hand, cause any place whatsoever belonging to or in the occupation or under the control of such suspected person to be searched, either in the day or in the night, and if any

c

such false or counterfeit coin, or any such instrument, tool or engine, or any such machine, or any such filings, clippings or bullion, or any such gold or silver, in dust, solution or otherwise as aforesaid, is found in any place so searched, to cause the same to be seized and carried forthwith before some Justice of the Peace; and whenever any such false or counterfeit coin, or any such instrument, tool or engine, or any such machine or any such filings, clippings or bullion, or any such gold or silver, in dust, solution or otherwise as aforesaid, is in any case whatsoever seized and carried before a Justice of the Peace, he shall, if necessary, cause the same to be secured, for the purpose of being produced in evidence against any person who may be prosecuted for an offence against this Act, and all such false and counterfeit coin, and all instruments, tools and engines, adapted and intended for the making or counterfeiting of coin, and all such machines, and all such filings, clippings and bullion and all such gold and silver in dust, solution, or otherwise as aforesaid, after they have been produced in evidence, or when they have been seized and are not required to be produced in evidence, shall forthwith by *the order of the Court be defaced or otherwise disposed of as the Court may direct.*—Sect. 27, Imp. Act.

The words in *Italics* are in lieu of “the officers of Her Majesty’s mint, &c., &c., &c.,” in the English Act.

DISPOSAL OF SUCH COIN PRODUCED IN COURT.

SECT. 28.—If any false or counterfeit coin be produced in any Court of law, the Court shall order the same to be cut in pieces in open Court, or in the presence of a Justice of the Peace, and then delivered to or for the lawful owner thereof, if such owner claims the same.

This clause is not to be found in the English Act.

VENUE.

Sect. 29.—Where any person tenders, utters or puts off any false or counterfeit coin in any one province of Canada or in any one district, county or jurisdiction therein, and also tenders, utters or puts off any other false or counterfeit coin, in any other province, district, county or jurisdiction, either on the day of such first mentioned tendering, uttering or putting off, or within the space of ten days next ensuing, or where two or more persons, acting in concert in different provinces, or in different districts, counties or jurisdictions therein, commit any offence against this Act, every such offender may be dealt with, indicted, tried and punished, and the offence laid and charged to have been committed, in any one of the said provinces, or districts, counties or jurisdictions, in the same manner in all respects, as if the offence had been actually and wholly committed within one province, district, county or jurisdiction.—Sect. 28, Imp. Act.

Greaves says on this clause: "The first part is introduced to remove a doubt which had arisen, whether a person tendering, &c., &c., coin in one jurisdiction and afterwards tendering, &c., &c., coin in another jurisdiction, within sect. 10, could be tried in either. As the offence created by that section is only a misdemeanor, probably there was no substantial ground for that doubt, but it was thought better to set the matter at rest." Now, sect. 10 of the English Act is not reproduced in the Canadian Act: Sect. 29 was, then, not necessary.

WHAT SHALL BE SUFFICIENT PROOF OF COIN BEING
COUNTERFEIT.

Sect. 30.—Where, upon the trial of any person charged with any offence against this Act, it becomes necessary

to prove that any coin produced in evidence against such person is false or counterfeit, it shall not be necessary to prove the same to be false and counterfeit, by the evidence of any moneyer or other officer of Her Majesty's mint, *or other person employed, in producing the lawful coin in Her Majesty's dominions, or elsewhere, whether the coin counterfeited be current coin, or the coin of any foreign prince, state or country not current in Canada*, but it shall be sufficient to prove the same to be false or counterfeit by the evidence of any other credible witness.—Sect. 29, Imp. Act.

The words in *Italics* are not in the English Act.

The usual practice is to call as a witness, a silversmith of the town where the trial takes place, who examines the coin in Court, in the presence of the Jury—Davis's Cr. L., 235.

PROOF IN CERTAIN CASES.

Sect. 31.—Upon the trial of any person accused of any offence alleged to have been committed against the form of any Statute of Canada, or of any of the Provinces, passed or to be passed, respecting the currency or coin, or against the provisions of this Act, no difference in the date or year, or in any legend marked upon the lawful coin described in the indictment, and the date or year or legend marked upon the false coin counterfeited to resemble or pass for such lawful coin, or upon any die, plate, press, tool or instrument used, constructed, devised, adapted or designed, for the purpose of counterfeiting or imitating any such lawful coin, shall be considered a just or lawful cause or reason for acquitting any such person of such offence; and it shall in any case be sufficient to prove such general resemblance to the lawful coin as will

show an intention that the counterfeit should pass for it.

Not in the English Act.

Sect. 32.—Every offence of falsely making or counterfeiting any 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 false or counterfeit coin, against the provisions of this Act, shall be 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 counterfeiting thereof was not finished or perfected.—

Sect. 30, Imp. Act.—

The word in *Italics* is not in the English Act.

Sect. 33.—It shall be lawful for any person whatsoever to apprehend any person who is found committing any indictable offence against this Act, and to convey or deliver him to some peace officer, constable or officer of police, in order to his being conveyed, as soon as reasonably may be, before a Justice of the Peace or some other proper officer, to be dealt with according to law.—

Sect. 31, Imp. Act.

On this clause, Greaves remarks: "this clause is new, and clearly, unnecessary, as far as it relates to any felony or indictable misdemeanor, for there is no doubt whatever that any person in the act of committing any such offence is liable by the common law to be apprehended by any person, but it was introduced at the instigation of the solicitors of the Treasury, as it has been found that there was great unwillingness to apprehend in such cases, in consequence of doubts that prevailed among the public as to the right to do so."

Sect. 34.—Vide *ante*, under sect. 2.

Sect. 35.—Enacts that every offence by this Act made punishable on summary conviction may be prosecuted in the manner directed by 32-33 Vict., ch. 31.

Sect. 36.—Repeals Imperial Act, 16-17 Vict. ch. 48, as regards Canada, and the Act of Parliament therein cited and amended. The Imperial Act 16-17 Vict., ch. 48, extended the Coin Act, 2 Will. 4, ch. 34, to the colonies. The 2 Will. 4, ch. 34, had been repealed, only as to the United Kingdom by 24-25 Vict., ch. 95, sects. 1 and 2, Imperial Repeal Act; it stands now repealed for Canada by the above clause. The Imperial Act, 16-17 Vict., ch. 102, repealed as to the United Kingdom by 24-25 Vict., ch. 95, appears to be in force as regards Canada. Judge Day, in *Warner vs. Fyson*, 2 Low. Can. Jurist, 106, ruled it to be law here, but its provisions are re-enacted in our Coin Act so that its non-repeal is of no consequence.

A special Statute concerning the copper coin has been passed since Confederation.

It is the 31 Vict., ch. 47, *an Act respecting the manufacture or importation of copper coins or tokens*. The offences against it are all punishable on summary conviction.

Sect. 37.—This Act shall commence and take effect on the first day of January, one thousand eight hundred and seventy.

FORGERY.

GENERAL REMARKS.

"To forge is metaphorically taken from the smith who beateth upon his anvil, and forgeth what fashion and shape he will: the offence is called *crimen falsi*, and the offender *falsarius*, and the Latin word, to forge, is *falsare* or *fabricare*."—Coke, 3rd. Inst. 169.

"Forgery is the fraudulent making or alteration of a writing, to the prejudice of another's right."—4. Blackst. 247.

In Coogan's case (1. Leach, 448), Buller, J., said "it is the making of a false instrument with intent to deceive," and Eyre, B., in Taylor's case, defined it to be "a false signature made with intent to deceive." In the word "deceive" must doubtless be intended to be included an intent to "defraud,"[?]—and so it was defined by Grose, J., in delivering the opinion of the judges in the case of Parkes and Brown, viz.: "the false making a note or other instrument with intent to defraud." Again Eyre, B., in the case of Jones and Palmer, defined it to be "the false making an instrument, which purports on the face of it to be good and valid for the purposes for which it was created, with a design to defraud any person or persons."—(1 Leach, 367.) 2 East, P. C. 853. And East himself, 2 P. C. 852, says "forgery at common law denotes a false making, which includes every alteration of or addition to a true instrument, a making *malò animo*, of any written instrument for the purpose of fraud and deceit."

"Forgery is the false making of an instrument with intent to prejudice any public or private right." 3rd Rep. Crim., Law Comm., 10th June, 1847, p. 34.

"Forgery is the fraudulent making of a false writing, which, if genuine, would be apparently of some legal efficacy."—Bishop, 2. Cr. L. 523.

"The characteristic of the crime of forgery is the false making of some written or other instrument for the purpose of obtaining credit by deception. The relation this offence bears to the general system may be thus briefly established: In most affairs of importance, the intentions, assurances, or directions, of men are notified and authenticated by means of written instruments. Upon the authenticity of such instruments the security of many civil rights, especially the right of property, frequently depends; it is, therefore, of the highest importance to society to exclude the numerous frauds and injuries which may obviously be perpetrated by procuring a false and counterfeited written instrument, to be taken and acted on as genuine. In reference to frauds of this description, it is by no means essential that punishment should be confined to cases of actually accomplished fraud; the very act of falsely making and constructing such an instrument with the intention to defraud is sufficient, according to the acknowledged principles of criminal jurisprudence, to constitute a crime,—being in itself part of the endeavour to defraud, and the existence of the criminal intent is clearly manifested by an act done in furtherance and in part execution of that intention. The limits of the offence are immediately deducible from the general principle already adverted to. As regards the subject matter, the offence extends to every writing used for the purpose of authentication.....

.....The crime is not confined to the falsification of mere writings; it plainly extends to seals, stamps, and all other visible marks of distinction by which the truth.

of any fact is authenticated, or the quality or genuineness of any article is warranted; and, consequently, where a party may be deceived and defrauded, from having been by false signs induced to give credit where none was due. With respect to the false making of any such instrument, the offence extends to every instance where the instrument is, under the circumstances, so constructed as to induce a party to give credit to it as genuine and authentic in a point where it is false and deceptive. And in this respect, a forged instrument differs from one which is merely false and untrue in stating facts which are false. Where the instrument is forged, as where a certificate purporting to be signed by an authorized officer was not, in truth, signed by him, a party to whom it is shown is deceived in being induced to suppose that the fact certified is accredited by the officer whose certificate it purports to be, and he is deceived in that respect, whether the fact certified be true or false. If, on the other hand, such a certificate be in truth signed by the officer whose name it bears, the instrument is not forged, although the fact certified be falsely certified, for here the party receiving the certificate is deceived, not by being falsely induced to believe that the officer had accredited the instrument by his signature, but from the officer having falsely certified the fact. The instrument may, therefore, be forged, although the fact authenticated be true. The instrument may be genuine, although the fact stated be false. Where money or other property is obtained by an instrument of the latter description, that is, where it is false merely, as containing a false statement or representation, the offence belongs to the class of obtaining money or other property by false pretences."—5th Rep. Crim. L. Comm. 22nd of April, 1840.

of any fact is authenticated, or the quality or genuineness of any article is warranted; and, consequently, where a party may be deceived and defrauded, from having been by false signs induced to give credit where none was due. With respect to the false making of any such instrument, the offence extends to every instance where the instrument is, under the circumstances, so constructed as to induce a party to give credit to it as genuine and authentic in a point where it is false and deceptive. And in this respect, a forged instrument differs from one which is merely false and untrue in stating facts which are false. Where the instrument is forged, as where a certificate purporting to be signed by an authorized officer was not, in truth, signed by him, a party to whom it is shown is deceived in being induced to suppose that the fact certified is accredited by the officer whose certificate it purports to be, and he is deceived in that respect, whether the fact certified be true or false. If, on the other hand, such a certificate be in truth signed by the officer whose name it bears, the instrument is not forged, although the fact certified be falsely certified, for here the party receiving the certificate is deceived, not by being falsely induced to believe that the officer had accredited the instrument by his signature, but from the officer having falsely certified.

"Consistently with the principles which govern the offence of forgery, an instrument may be falsely made, although it be signed or executed by the party by whom it purports to be signed or executed. This happens where a party is fraudulently induced to execute a will, a material alteration having been made, without his knowledge, in the writing ; for, in such a case, although the signature be genuine, the instrument is false, because it does not truly indicate the testator's intentions, and it is the forgery of him who so fraudulently caused such will to be signed, for he made it to be the false instrument which it really is."—Cr. L. Comm. Rep. loc. cit.

This passage of the Criminal Law Commissioners seems to be based on a very old case, cited in Noy's Reports, 101, Combe's case ; but in a more recent case, R. vs. Collins, 2 M. and Rob. 461, it was held that, fraudulently to induce a person to execute an instrument, on a misrepresentation of its contents, is not a forgery ; and, in a case of R. vs. Chadwick, 2 M. and Rob. 545, that to procure the signature of a person to a document, the contents of which have been altered without his knowledge, is not a forgery.

The report (loc. cit.) of the criminal law Commissioners continues as follows: " Upon similar grounds, an offender may be guilty of a false making of an instrument, although he sign or execute it in his own name, in case it be false in any material part, and calculated to induce another to give credit to it as genuine and authentic, where it is false and deceptive. This happens where one, having conveyed land, afterwards, for the purpose of fraud, executes an instrument, purporting to be a prior conveyance of the same land ; here again, the instrument is designed to obtain credit by deception, as pur-

porting to have been made at a time earlier than the true time of its execution."—5th Report, loc. cit.

This doctrine was approved of in a modern case, in England: Reg. vs. Ritson, 11 Cox, 352, and it was there held, upon a case reserved, that a man may be guilty of forgery by making a false deed in his own name. (See this case, under Sect. 23, *post.*) Kelly, C. B., delivering the judgment of the Court, said:

"I certainly entertained some doubt at one time upon this case, because most of the authorities are of an ancient date, and long before the passing of the Statutes of 11 Geo. 4 & 1 Will. 4, and 24-25 Vict. However, looking at the ancient authorities and the text-books of the highest repute, such as Com. Dig., Bacon's Abr., 3 Co. Inst., and Foster's C. L. 117, they are all uniformly to the effect, not that every instrument containing a false statement is a forgery, but that every instrument which is false in a material part, and which purports to be that which it is not, or to be executed by a person who is not the real person, or which purports to be dated on a day which is not the real day, whereby a false operation is given to it, is forgery."

"Forgery, at common law, is an offence in falsely and fraudulently making and altering any matter of record, or any other authentic matter of a public nature, as a parish register or any deed or will, and punishable by fine and imprisonment. But the mischiefs of this kind increasing, it was found necessary to guard against them by more sanguinary laws. Hence we have several Acts of Parliament declaring what offences amount to forgery, and which inflict a severer punishment than there were at the common law."—Bacon's Abridg. 3 Vol. 277. Curwood, note, 1 Hawkins, P. C. 263, is of opinion that

this last definition is wholly inapplicable to the crime of forgery *at common law*, as, even at *common law*, it was forgery to make false "*private*" writings.

"The notion of forgery does not seem so much to consist in the counterfeiting a man's hand and seal, which may often be done innocently, but in the endeavouring to give an appearance of truth to a mere deceit and falsity, and either to impose that upon the world as the solemn act of another, which he is, no way privy to, or at least to make a man's own act appear to have been done at a time when it was not done, and by force of such a falsity to give it an operation, which in truth and justice it ought not to have."—1 Hawk. P. C. 264.

The definitions containing only the words "with intent to defraud" without the words "with intent to deceive" seem defective. In fact, there are many acts held to be forgery, where no intent to defraud, as this expression is commonly understood, exists in the mind of the person committing the act; as, for instance, if the man, forging a note, means to take it up, and even has taken it up, so as not to defraud any one, this is clearly forgery, if he issued it, and got money or credit, or anything upon it: Reg. vs. Hill, 2 Mood 30; Reg. vs. Geach 9, C. and P. 499; or forging a bill payable to the prisoner's own order, and uttering it without indorsement, Rex. vs. Birkett, Russ. and Ry. 86, or if one, while knowingly passing a forged bank note, agrees to receive it again should it prove not to be genuine, or if a creditor executes a forgery of the debtor's name, to get from the proceeds payment of a sum of money due him, Reg. vs. Wilson, 1 Den. 284, or if a party forges a deposition to be used in Court, stating merely what is true, to enforce a just claim: Bishop, 2 Cr. L. 598. All these

acts
in th
But
does
false
or de
cases
the f
used
and
conse
he di
bly be
See 2
Act.

It is
Englan
Dears.
at com
intent
lar pe
Statute
that it
allege
clause,
lidated
words
defraud
the pri
lege of
the doe
belief th
the Col

acts are forgery; yet where is the intent to defraud, in these cases? It may be said that the law infers it. But why make the law infer the existence of what does not exist? Why not say that "forgery is the false making of an instrument with intent to defraud or deceive." The word "*deceive*" would cover all the cases above cited: in each of these cases, the intent of the forger, is that the instrument forged should be used as good, should be taken and received as signed and made, by the person whose name is forged, in consequence, to deceive *quoad hoc*, and for this, though he did not intend to defraud, though no one could possibly be defrauded by his act, he is in law, guilty of forgery. See 2 Russell, 774. See *post*, under sect. 14 of the Forgery Act.

It is true that the Court of Crown cases reserved, in England, held in a modern case, *Reg. vs. Hodgson*, 3, Dears. & B. 1856, that, upon an indictment for forgery at common law, it is necessary to prove, not only an intent to defraud, but also an intent to defraud a particular person, though, when this case was decided, the Statute, in England, (15 Vict., ch. 100, s. 8.) enacted that it was not necessary in indictments for forgery to allege an intent to defraud any particular person. (This clause, as in England, has been inserted into our Consolidated Statute on Forgery, sect. 51, with the additional words "where it shall be necessary to allege an intent to defraud."—See *post*, sect. 51.) In this, *Hodgson's* case, the prisoner had forged and uttered a diploma of the College of Surgeons: the jury found that the prisoner forged the document with the general intent to induce the belief that it was genuine, and that he was a member of the College, and that he showed it to certain persons

with intent to induce such belief in them; but that he had no intent, in forging or uttering it, to commit any particular fraud or specific wrong to any individual. . . .

Though the offence charged in this case was under the common law, it must be remembered that S. 8, of 14-15 Vict., ch. 100, applied to indictments under the common law as well as to indictments under the Statutes, as now also do sect. 44 of the English Forgery Act and sect. 51 of the Canadian Forgery Act.—

Greaves remarks on the decision in this case :—

“As the clause of which this is a re-enactment (44 of the English Act, 51 of the Canadian Act) was considered in *Reg. vs. Hodgson*, and as that case appears to me to have been erroneously decided, it may be right to notice it here. The prisoner was indicted at common law for forging and uttering a diploma of the College of Surgeons, and the indictment was in the common form. The College of Surgeons has no power of conferring any degree or qualification, but before admitting persons to its membership, it examines them as to their surgical knowledge, and, if satisfied therewith, admits them, and issues a document called a diploma, which states the membership. The prisoner had forged one of these diplomas. He procured one actually issued by the College of Surgeons, erased the name of the person mentioned in it, and substituted his own. He hung it up in his sitting room, and, on being asked by two medical practitioners, whether he was qualified, he said he was, and produced this document to prove his assertion. When a candidate for an appointment as vaccinating officer, he stated he had his qualification, and would show it, if the clerk of the guardians, who were to appoint to the office, would

go to
it.

TH
to b
intea
was
show
induc
no in
cular
upon
ch. 10
not al
the la
been p
of forg
time t
some
errone
express
ment,
the off
disposi
shall no
act cha
therefor
tradition
cannot
sedly fo
note to
suppose
any part
In Tatle

go to his gig; he did not, however, then produce or show it.

The prisoner was found guilty: the facts to be taken to be, that he forged the document with the general intent to induce a belief that it was genuine, and that he was a member of the College of Surgeons, and that he showed it to two persons with the particular intent to induce such belief in these two persons; but that he had no intent in forging or in altering, to commit any particular fraud, or any specific wrong to any individual. And, upon a case reserved, it was held that the 14 & 15 Vict., ch. 100, s. 8, altered the form of pleading only, and did not alter the character of the offence charged, and that the law as to that is the same as if the Statute had not been passed; and that, in order to make out the offence of forgery at common law, there must have been at the time the instrument was forged, an intention to defraud some particular person. Now, this judgment is clearly erroneous. The 14 & 15 Vict., ch. 100, s. 8, does, in express terms, alter the law as well as the form of indictment, for, it expressly enacts, that "*on the trial* of any of the offences in this section mentioned (forging, uttering, disposing of or putting off any instrument whatsoever) it shall not be necessary to *prove* that the defendant did the act charged with an intent to defraud." The judgment, therefore, and the clause in the Act are directly in contradiction to each other, and, consequently, the former cannot be right. The clause, too, was introduced advisedly for the very purpose of altering the law. See my note to Lord Campbell's Acts, page 13. It is a fallacy to suppose that there must have been an intent to defraud any particular person at the time of forging the document. In *Tatlock vs. Harris*, 3 T. R. 176, that great lawyer,

Shepherd, said in argument, "it is no answer to a charge of forgery to say that there was no *special* intent to defraud any *particular* person, because a *general intent* to defraud is sufficient to constitute the crime;" and this position was not denied by that great lawyer, Wood, who argued on the other side, and was apparently adopted by the Court. It is cited in 1 Leach, 206, note *a*; 3 Chitty, Cr. L. 1036, and, as far as we are aware, was never doubted before this case. Indeed, in Reg. vs. Tylney, 1 Den. 319, it seems to have been assumed on all hands to be the law. There the prisoners forged a will, but there was no evidence to show that any one existed who could have been defrauded by it, and the judges were equally divided whether a count for forgery with intent to defraud some person unknown, could, under such circumstances, be supported. It is obvious that this assumed that, if there had been evidence that there was any one who might have been defrauded, though there was no evidence that the prisoners even knew of the existence of any such person, the offence would have been forgery. Indeed it would be very startling to suppose that a man who forged a will, intending to defraud the next of kin, whoever they might happen to be, was not guilty of forgery because he had only that general intent.

The point is too obvious to have escaped that able criminal lawyer, Mr. Prendergast, and, as he did not take it, he clearly thought it wholly untenable, and so, also, must the judges who heard the case. See also the observations of Cresswell, J., in Reg. vs. Marcus, 2 C. & K. 356. In Reg. vs. Nash, 2 Den. 493, Maule, J., expressed a very strong opinion that it was not necessary in order to prove an intent to defraud that there should be any

per
not
I
whi
ing
957
draw
one
forg
lar
who
the
thes
of th
merl
fraud
doubt
name
to the
any p
impra
minen
names
need n
racy t
not be
the fun
person
"for
prophe
subsequ
de Ber
applica

person who could be defrauded, and this opinion was not dissented from by any of the other judges.

It has long been settled that making any instrument, which is the subject of forgery, in the name of a non-existing person, is forgery, and in Wilks' case, 2 East, P. C. 957, all the judges were of opinion that a bill of exchange drawn in fictitious names was a forged bill. Now, every one knows that, at the time when such documents are forged, the forger has no intent to defraud any particular person, but only an intent to defraud any person whom he may afterwards meet with, and induce to cash the bill; and no suggestion has ever been made in any of these cases that that offence was not forgery. The ground of the present judgment seems to have been that formerly the particular person who was intended to be defrauded must have been named in the indictment: no doubt, it is a general rule of criminal pleading that the names of persons should be stated, but this rule is subject to the exception that, wherever the stating the name of any person in an indictment is highly inconvenient or impracticable, the name need not be stated, for *Lex neminem cogit ad vana seu impossibilia*. Therefore, the names of inhabitants of counties, hundreds and parishes need never be stated; so, too, where there is a conspiracy to defraud tradesmen in general, the names need not be stated. So, where there is a conspiracy to raise the funds, it is not necessary to state the names of the persons who shall afterwards become purchasers of stock, "for the defendants could not, except by a spirit of prophecy divine who would be the purchasers on a subsequent day," per Lord Ellenborough, C. J., *Rex. vs. de Berenger*, 3, M. and S. 67; which reason is equally applicable to the case, where, at the time of forging an

instrument, there is no intent to defraud any particular person. Indeed, it is now clearly settled that, where a conspiracy is to defraud indefinite individuals, it is unnecessary to name any individuals.—*R. vs. Peck*, 9 A. & E. 686 ; *Reg. vs. King*, 7. Q. B. 782. This may be taken to be a general rule of Criminal pleading, and it has long been applied to forgery. In 1771, in *R. vs. Birch*, 1 Leach 79, the prisoners were convicted of forging a will, and one count alleged the intent to be “to defraud the person or persons who would by law be entitled to the messuages” whereof the testator died seized.—*Chitty*, Cr. L. 1066. And it has been the regular course in indictments for forging wills, at least ever since that case, to insert counts with intent to defraud *the heir-at-law* and *the next of kin*, generally.—*Jerv. Archb.* 8th Edit. 370 ; 3 *Chitty* Cr. L. 1069. It is true that in general there have also been counts specifying the heir-at-law or the next of kin by name. But in *Reg. vs. Tylney*, there was no such count. No objection seems ever to have been taken to any such general count. So, also, in any forgery with intent to defraud the inhabitants of a county, hundred or parish, the inhabitants may be generally described. These instances clearly show that it is not necessary in forgery any more than in other cases, to name individuals where there is either great inconvenience or impracticability in doing so. A conviction for conspiracy to negotiate a bill of exchange, the drawers of which were a fictitious firm, and thereby fraudulently to obtain goods from the *King's subjects*, although it did not appear that any particular person to be defrauded was contemplated at the time of the conspiracy, has been held good, *R. vs. Hevey*, 2 East, P. C. 858, note *a*, and this case bears considerably on the present question. If

a person forged a bill of exchange with intent to defraud any one whom he might afterwards induce to cash it, and he uttered it to A. B., it cannot be doubted that he would be guilty of uttering with intent to defraud A. B., and it would indeed be strange to hold that he was guilty of uttering, but not of forging, the bill. No doubt, the offence of forgery consists in the intent to deceive or defraud; but a general intent to defraud is just as criminal as to defraud any particular individual. In each case, there is a wrongful act done with a criminal intent, which, according to *R. vs. Higgins*, 2 East R. 5, is sufficient to constitute an indictable offence. In the course of the argument, Erle, J., said: "Would it not have been enough to allege an intent to deceive divers persons to the jurors unknown, to wit, all the patients of his late master?" This approaches very nearly to the correct view, viz. that it would have been enough before the 14 & 15 Vict., ch. 100, s. 8, to have alleged and proved an intent to deceive any persons who should afterwards become his patients. Wightman, J., during the argument said, "The question is, whom did he intend to deceive when the forgery was committed?" And Jervis, C. J., said: "The intent must not be a roving intent, but a specific intent." Now, if these remarks are confined to a count for forging, they are correct; though, in Bolland's case, 1 Leach, 83, the prisoner was executed for forging an indorsement in the name of a non-existing person, with intent to defraud a person whom he does not even seem to have known when he forged the indorsement.

But it cannot be doubted that a man may be guilty of intending to defraud divers persons at different times by the same instrument, as where he tries to utter a

forged note to several persons one after another, in which case he may be convicted of uttering with intent to defraud each of them. Thus much has been said, because it is very important that the law on the subjects discussed in this note should not be left in uncertainty, and it is much to be regretted that *Reg. vs. Hodgson* was ever decided as it was, as it may encourage ignorant pretenders to fabricate diplomas, and thereby not only to defraud the poor of their money, but to injure their health." Greaves, *Consol. Acts*, 303.

The case of *Tatlock vs. Harris*, hereinbefore cited by Greaves, is cited by almost all who have treated this question; 2 *Russell*, 774; 2 *East.*, P. C., 854, &c. In *Reg. vs. Nash*, 2 *Den.* 493, *Maule, J.*, said: "The Recorder seems to have thought, that, in order to prove an intent to defraud there should have been some person defrauded or who might possibly have been defrauded. But I do not think that at all necessary. A man may have an intent to defraud, and yet there may not be any person who could be defrauded by his act. Suppose a person with a good account at his bankers, and a friend, with his knowledge, forges his name to a cheque, either to try his credit, or to imitate his handwriting, there would be no intent to defraud, though there would be parties who might be defrauded. But where another person has no account at his bankers, but a man supposes that he has, and on that supposition forges his name, there would be an intent to defraud in that case, although no person could be defrauded."

And in *R. vs. Mazagora*, R. & R. 291, it has been holden that the jury ought to infer an intent to defraud the person who would have to pay the instrument if it were genuine, although from the manner of executing

the forgery, or from that person's ordinary caution, it would not be likely to impose upon him, and although the object was general to defraud whoever might take the instrument, and the intention of defrauding, in particular, the person who would have to pay the instrument, if genuine, did not enter into the prisoner's contemplation.—See *R. vs. Crooke*, 2 Str. 901; *R. vs. Goate*, 1 Ld. Raymond 737; *R. vs. Holden*, R. & R. 754. And even, if the party to whom the forged instrument is uttered believes that the defendant did not intend to defraud him, and swears it, this will not repel the presumption of an intention to defraud.—*R. vs. Shephard*, R. & R. 169. *R. vs. Trenfield*, 1 F. & F. 43, is wretchedly reported, and cannot be relied upon.—2 Russell, 790, note by Greaves. See also *R. vs. Crowther*, 5, C. & P. 316, and *R. vs. James*, 7 C. & P. 153, on the question of the necessary intent to defraud, in forgery; and *Reg. vs. Boardman*, 2 M. & Rob. 147; *Reg. vs. Todd*, 1 Cox 57. Though the present Statute, see *post*, sect. 51, has the words “where it shall be necessary to allege an intent to defraud” showing evidently that there are cases where such an averment is not necessary, it has been held, in a recent case, by Mr. Justice Quain, *Reg. vs. Pownier*, 12 Cox 235, that, in all cases, an intent to defraud must be alleged. This doctrine seems to have been since repudiated by *Martin, B.*, in *Reg. vs. Asplin*, 12 Cox 391; see *post*, under sect. 43.

It should be observed that the offence of forgery may be complete, though there be no publication or uttering of the forged instrument, for the very making with a fraudulent intention, and without lawful authority, of any instrument which, at common law or by Statute is the subject of forgery, is of itself a sufficient completion of

the offence before publication, and though, the publication of the instrument be the medium by which the intent is usually made manifest, yet it may be proved as plainly by other evidence. 2 East, P. C. 855. Thus in a case where the note, which the prisoner was charged with having forged was never published, but was found in his possession at the time he was apprehended, the prisoner was found guilty, and no one even thought of raising the objection that the note had never been published. Rex. vs. Elliot, 1 Leach, 175. At the present time, most of the Statutes which relate to forgery make the publication of the forged instrument, with knowledge of the fact, a substantive felony.—2 Russell, 709.

Not only the fabrication and false making of the whole of a written instrument, but a fraudulent insertion, alteration, or erasure, even of a letter, in *any material part* of a true instrument, and even if it be afterwards executed by another person, he not knowing of the deceit, or the fraudulent application of a true signature to a false instrument, for which it was not intended or *vice versa*, are as much forgeries, as if the whole instrument had been fabricated. As by altering the date of a bill of exchange after acceptance, whereby the payment was accelerated.—2 East, P. C. 855; 2 Russell, 710; Crim. law Comm. reports, cited *supra*; R. vs. Post. R. & R. 101; Reg. vs. Hodgson, Dears. and B. 3.

In addition to Wilks's case, 2 East, 957, cited *supra* by Greaves, as to the principle that the making of any instrument which is the subject of forgery, in the name of a non-existing and fictitious person, is forgery, the following are given in Archbold, 562: R. vs. Lewis, Foster, 116; R. vs. Bolland, 2 East, P. C. 958; R.

vs. Lockett, 1 Leach. 94; R. vs. Parkes, 2 Leach, 773; R. vs. Froud, R. & R. 389; R. vs. Sheppard, 1 Leach, 226; R. vs. Wiley, 2 Leach, 983; R. vs. Francis, R. & R. 209; R. vs. Webb, R. & R. 405; R. vs. Watts, R. & R. 436; R. vs. Mitchell, 1 Den. 282; R. vs. Bontien, R. & R. 260; R. vs. Rogers, 8 C. & P. 629.

Even where a man, upon obtaining discount of a bill, indorsed it in a fictitious name, when he might have obtained the money as readily by indorsing it in his own name, it was holden to be a forgery. R. vs. Taft, 1 Leach, 172; R. vs. Taylor, 1 Leach, 214; R. vs. Marshall. R. & R. 75; R. vs. Wiley, R. & R. 90; R. vs. Francis, R. & R. 209.

It is a forgery for a person having authority to fill up a blank acceptance or a cheque for a certain sum, to fill up the bill or cheque for a larger sum. R. vs. Hart 1 Mood. 486; and the circumstance of the prisoner, alleging a claim on his master for the greater sum, as salary then due, is immaterial, even if true; Reg. vs. Wilson, 1 Den. 284.

In respect of the persons who might formerly be witnesses in cases of forgery, it was an established point that a party by whom the instrument purported to be made was not admitted to prove it forged, if, in case of its being genuine, he would have been liable to be sued upon it, 2 Russell, 817. But now, see *post*, sect. 54 of the Forgery Act, and sect. 63 of the Procedure Act of 1869.—Also, sect. 67 of the Procedure Act of 1869.

A forgery must be of some document or writing: therefore the putting an artist's name in the corner of a picture, in order falsely to pass it off as an original picture by that artist, is not a forgery. R. vs. Close, Dears & B. 460; though it may be a cheat at common law.

The false signature *by a mark* is forgery. *R. vs. Dunn*, 1 Leach, 57.

When the writing is invalid on its face, it cannot be the subject of forgery, because it has no legal tendency to effect a fraud. It is not indictable, for example, to forge a will attested by a less number of witnesses than the law requires. *R. vs. Wall*, 2 East. 953; *R. vs. Mofatt*, 1 Leach, 954; 2 Bishop, Cr. L. 538.

But a man may be indicted for forging an instrument, which, if genuine, could not be made available by reason of some circumstance not appearing upon the face of the instrument, but to be made out by extrinsic evidence. *R. vs. McIntosh*, 2 Leach, 833.—So, a man may be indicted for forging a deed, though not made in pursuance of the provisions of particular Statutes, requiring it to be in a particular form, *R. vs. Lyon*, R. & R. 255.

And a man may be convicted of forging an unstamped instrument, though such instrument can have no operation in law.—*R. vs. Hawkeswood*, 1 Leach, 257; *R. vs. Lee*, 1 Leach, 258. This question, a few years afterwards, again underwent considerable discussion, and was decided the same way, though, in the meantime, the law, with regard to the procuring of bills and notes to be subsequently stamped, upon which in *R. vs. Hawkeswood*, the judges appear in some degree to have relied, had been repealed. The prisoner was indicted for knowingly uttering a forged promissory note. Being convicted the case was argued before the judges, and for the prisoner it was urged that the 31 Geo. 3., ch. 25, S. 19, which prohibits the stamps from being afterwards affixed, distinguished the case from *R. vs. Hawkeswood*. Though two or three of the judges doubted at first the propriety of the latter case if the matter

were
thor
held
the
in R
of R
to m
to p
for r
migh
not m
shou
forge
court
stam
note
der t
R. vs
was a
vies,
C. 97
ment
lid, p
plete.
As
occur
and th
offers
ment
receiv
be acc
so far
vs. Jo

were *res integra*, yet they all agreed that, being an authority in point, they must be governed by it; and they held that the Statute 31 Geo. 3. made no difference in the question. Most of them maintained the principle in *R. vs. Hawkeswood* to be well founded, for the Acts of Parliament referred to were mere revenue laws, meant to make no alteration in the crime of forgery, but only to provide that the instrument should not be available for recovering upon it in a court of justice, though it might be evidence for a collateral purpose; that it was not necessary, to constitute forgery, that the instrument should be available; that the stamp itself might be forged, and it would be a strange defence to admit, in a court of justice, that because the man had forged the stamp, he ought to be excused for having forged the note itself, which would be setting up one fraud in order to protect him from the punishment due to another. *R. vs. Morton*, 2 East, P. C. 955. The same principle was again recognized in *R. vs. Roberts*, and *R. vs. Davies*, 2 East, P. C. 955, and in *R. vs. Teague*, 2 East, P. C. 979, where it was holden that supposing the instrument forged to be such on the face of it as would be valid, provided it had a proper stamp, the offence was complete. Roscoe, 497, 6th Edit.

AS TO THE UTTERING.—These words, *utter*, *uttering*, occur frequently in the law of forgery, counterfeiting and the like; meaning, substantially, to offer. If one offers another a thing, as for instance a forged instrument or a piece of counterfeit coin, intending it shall be received as good, he utters it, whether the thing offered be accepted or not. It is said that the offer need not go so far as a tender.—*Reg. vs. Welch*, 2 Den. 78; *Reg. vs. Ion*, 2 Den. 475; (See Greaves' remarks on this

case, 2 Russell, 838.) But, to constitute an uttering, there must be a complete attempt to do the particular act the law forbids, though there may be a complete conditional uttering, as well as any other, which will be criminal. The words "pay" or "put off" in a statute are not satisfied by a mere uttering or by a tender; there must be an acceptance also.—Bishop, Stat. Crimes, 306.

The Forgery Act now describes the offence of uttering by the words "offer, utter, dispose of or put off," which include attempts to make use of a forged instrument, as well as the cases where the defendant has actually succeeded in making use of it.—Archbold, 568.

Showing a man an instrument, the uttering of which would be criminal, though with an intent of raising a false idea in him of the party's substance, is not an uttering. Nor will the leaving it, afterwards, sealed up, with the person to whom it was shown, under cover, that he may take charge of it, as being too valuable to be carried about, be an uttering.—R. vs. Shukard, R. & R. 200. But the showing of a forged receipt, to a person with whom the defendant is claiming credit for it, was held to be an offering or uttering, though the defendant refused to part with the possession of it.—R. vs. Radford, 1 Den. 59.

In R. vs. Ion., 2 Den. 475, *supra*, cited by Bishop, the rule laid down by the Court is, that a using of the forged instrument in some way, in order to get money or credit upon it, *or by means of it*, is sufficient to constitute the offence described in the Statute.—Archbold, 569.

Giving a forged note to an innocent agent or an accomplice that he may pass it is a disposing of and put-

ting
son
who
deliv
havin
mer
Or
mate
mens
son v
uine,
offen
guilt
tion.-
Th
cases
may
the g
in the
mitted
Thus,
instru
coin, p
uttera
person
though
the sub
rial to
Evid.,
456 ;
& R. 2
wooda
R. & 1

ting it away.—R. vs. Giles, 1 Mood. 166. So, if a person knowingly deliver a forged bank note to another, who knowingly utters it accordingly, the prisoner who delivered such note to be put off may be convicted of having disposed of and put away the same.—R. vs. Palmer & Hudson, R. & R. 72; 2 Leach, 978.

On the charge of uttering, the guilty knowledge is a material part of the evidence. *Actus non facit reum, nisi mens sit rea.* If there is no guilty knowledge, if the person who utters a forged instrument, really thinks it genuine, there is no *mens rea* with him: he commits no offence. Therefore, the prosecutor must prove this guilty knowledge by the defendant, to obtain a conviction.—2 Russell, 836.

This is not capable of direct proof. It is nearly in all cases proved by evidence of facts, from which the jury may presume it.—Archbold, 570. And by a laxity of the general rules of evidence, which has long prevailed in the English Courts, the proof of collateral facts is admitted to prove the guilty knowledge of the defendant. Thus, on an indictment for knowingly uttering a forged instrument, or a counterfeit bank note, or counterfeit coin, proof of the possession, or of the prior or *subsequent* utterance, either to the prosecutor himself or to other persons, of other false documents or notes, or bad money, though of a different description, and though themselves the subjects of separate indictments, is admissible as material to the question of *guilty knowledge* or intent. Taylor, Evid., 1 vol., par. 322.—R. vs. Foster, Pearce & D. 456; R. vs. Harris, 7 C. & P. 429; R. vs. Millard, R. & R. 245; R. vs. Sunderland, R. vs. Hodgson, R. vs. Kirkwood and R. vs. Martin, 1 Lew. C. C. 102-104; R. vs. Hough, R. & R. 122; R. vs. Weeks, 8 Cox 455; R. vs. Aston,

2 Russell 841; R. vs. Lewis, 2 Russell 841; R. vs. Oddy, 2 Den. 264. But in these cases, it is essential to prove distinctly that the instruments offered in evidence of guilty knowledge were themselves forged.—Taylor, loc. cit.; R. vs. Whiley and Baines, 2 Leach, 983; R. vs. Ball, R. & R. 132; R. vs. Salt, 3 Fost. & Fin. 834; R. vs. Nisbett, 6 Cox 320; R. vs. Harrison, 2 Lew. C. C. 118; R. vs. Green, 3 C. & K. 209; R. vs. Millard, R. & R. 245.

It seems also, that though the prosecutor may prove the uttering of other forged notes by the prisoner, and his conduct at the time of uttering them, he cannot proceed to show what the prisoner said or did at another time, with respect to such uttering; for these are collateral facts, too remote for any reasonable presumption of guilt to be founded upon them, and such as the prisoner cannot by any possibility be prepared to contradict.—Taylor, loc. cit.; R. vs. Philipps, 1 Lewin C. C. 105; R. vs. Cooke, 8 C. & P. 586. In Philipps' case, the judge said: "That the prosecutor could not give in evidence anything that was said by the prisoner at a time collateral to a former uttering in order to show that what he said at the time of such former uttering was false, because the prisoner could not be prepared to answer or explain evidence of that description: that the prisoner is called upon to answer all the circumstances of a case under consideration, but not the circumstances of a case which is not under consideration: that the prosecutor is at liberty to show other cases of the prisoner having uttered forged notes, and likewise his conduct at the time of uttering them; but that what he said or did *at another time collateral to such other utterings*, could not be given in evidence, as it was impossible that

the pr
vs. B
therei
7 C. &
that y
fact, o
circum

The
accom
remark
genera
2 Moo
uttered
forged,
it shou
infer th
ruling
Todd,
well, J
and utt
signatu
son wh
it to be
given, t
strong e
party so
quences
The na
this mor
profess
giving u
person i
intending

the prisoner could be prepared to combat it."—See *Reg. vs. Browne*, 2 F. & F. 259, and Paterson's, J., remarks therein on *Reg. vs. Cooke*, cited *ante*, and *R. vs. Forbes*, 7 C. & P. 224. The rule, in such cases, seems to be that you cannot bring collateral evidence of a collateral fact, or that you cannot bring evidence of the collateral circumstances of a collateral fact.

The prosecutor must also prove that the uttering was accompanied by an intent to defraud. As to which, see remarks, *ante*, on the necessity of this intent in forgery, generally. Baron Alderson told the jury, in *Reg. vs. Hill*, 2 Mood, 30, that, if they were satisfied that the prisoner uttered the bill as true, knowing at the time that it was forged, and meaning that the person to whom he offered it should believe it to be genuine, they were bound to infer that he intended to defraud this person, and this ruling was held right by all the judges. And in *Reg. vs. Todd*, 1 Cox, 57, Coleridge, J., after consulting Cresswell, J., said: "If a person forge another person's name, and utter any bill, note, or other instrument with such signature, knowing it not to be the signature of the person whose signature he represents it to be, but intending it to be taken to be such by the party to whom it is given, the inference, as well in point of fact as of law, is strong enough to establish the intent to defraud, and the party so acting becomes responsible for the legal consequences of his act, whatever may have been his motives. The natural, as well as the legal consequence, is that this money is obtained, for which the party obtaining it profess to give but cannot give a discharge to the party giving up the money on the faith of it. Supposing a person in temporary distress puts another's name to a bill, intending to take it up when it becomes due, but cannot

perform it, the consequence is that he has put another under the legal liability of his own act, supposing the signature to pass for genuine." See *R. vs. Vaughan*, 8 C. & P. 276; *R. vs. Cooke*, 8 C. & P. 582; *R. vs. Geach*, 9 C. & P. 499.

A consequence of the judgment for forgery was an incapacity to be a witness until restored to competency by the king's pardon.—2 Russell, 844. But now by sect. 62 of the Procedure Act, of 1869, it is enacted that "no person offered as a witness, shall, by reason of any alleged incapacity from crime or interest, be excluded from giving evidence on the trial of any criminal case, or in any proceeding relating or incidental to such case." And sect. 63, of the same Act enacts that every person shall be admitted and be compellable to give evidence, in criminal cases, notwithstanding that such person has been previously convicted of a crime or offence. (6 and 7 Vict., ch. 85, Imp.)

Indictment. (General form, under Statute.) The jurors for our lady the Queen, upon their oath present, that J. S. on.... feloniously did forge a certain (*here name the instrument*) which said forged is as follows: that is to say (*here set out the instrument verbatim*) (see *post* sections 49 and 50) with intent thereby then to defraud; against the form of the Statute in such case made and provided, and against the peace of our lady the Queen, her crown and dignity.

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said J. S., afterwards, to wit, on the day and year aforesaid, feloniously did forge a certain other (*state the instrument forged by any name or designation by which it is usually known,*) with intent thereby then to defraud; against the form of the Statute

in suc
of our
And
furthe
on the
dispos
last m
(*here s*
then t
uttered
mentio
to be f
case m
dy the
And
do furt
on the
utter, d
the seco
the said
ed of a
aforesai
the form
and aga
and dig
This
to serve
particul
the ind
it, and
words i
can find
case.—A

in such case made and provided, and against the peace of our lady the Queen, her crown and dignity.

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said J. S.; afterwards, to wit, on the day and year aforesaid, feloniously did offer, utter, dispose of and put off a certain other forged....which said last mentioned forged....is as follows: that is to say (*here set out the instrument verbatim*) with intent thereby then to defraud, he, the said J. S. at the time he so uttered, offered, disposed of and put off the said last mentioned forged....as aforesaid, well knowing the same to be forged; against the form of the Statute in such case made and provided, and against the peace of our lady the Queen, her crown and dignity.

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said J. S., afterwards, to wit, on the day and year aforesaid, feloniously did offer, utter, dispose of and put off a certain other forged (*as in the second count*) with intent thereby then to defraud, he, the said J. S., at the time he so uttered, offered, disposed of and put off the said last mentioned forged....as aforesaid, well knowing the same to be forged; against the form of the Statute in such case made and provided, and against the peace of our lady the Queen, her crown and dignity.

This indictment is not intended as a general precedent to serve in all cases of forgery; because the form in each particular case must depend upon the Statute on which the indictment is framed. But, with the assistance of it, and upon an attentive consideration of the operative words in the Statute creating the offence, the pleader can find no difficulty in framing an indictment in any case.—Archbold, 559.



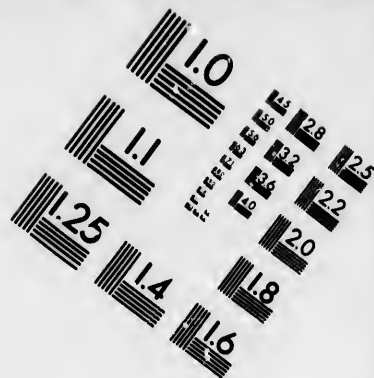
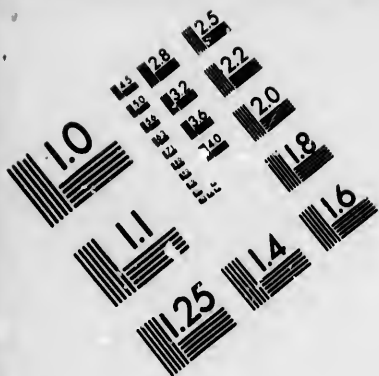
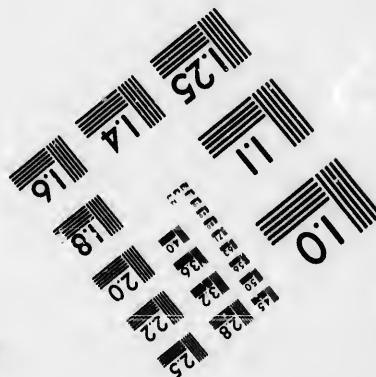
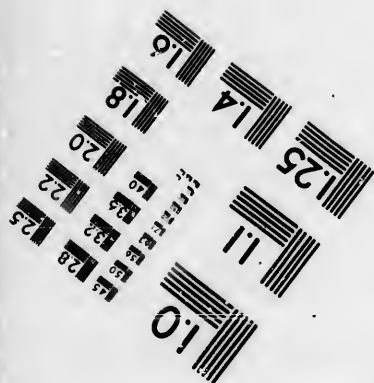
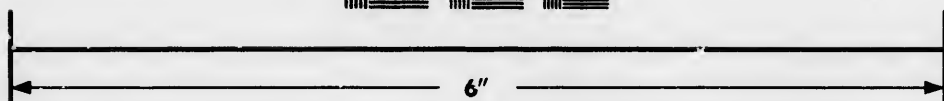
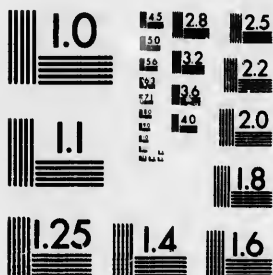


IMAGE EVALUATION TEST TARGET (MT-3)



Photographic
Sciences
Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 372-4503



Indictment for forgery at common law—The jurors for Our Lady the Queen upon their oath present, that J. S. on.....unlawfully, knowingly and falsely did forge and counterfeit a certain writing purporting to be (*describe the instrument*) with intent thereby then to defraud: to the evil example of all others in like case offending, and against the peace of Our Lady the Queen, her Crown and dignity.

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said J. S. afterwards, to wit, on the day and year aforesaid, unlawfully, falsely and deceitfully did utter and publish as true a certain other false, forged and counterfeited writing, purporting to be (*describe the instrument*) with intent thereby then to defraud,—he the said J. S., at the said time he so uttered and published the said last mentioned false, forged and counterfeited writing as aforesaid, well knowing the same to be false, forged and counterfeited, to the evil example of all others in the like case offending and against the peace of Our Lady the Queen, her Crown and dignity.—Archbold, 599.

At common law, forgery is a misdemeanor, punishable by fine or imprisonment, or both, at the discretion of the Court.—By section 45 of our Statute on Forgery, see *post*, it is doubtful if there is now, with us, any forgery, at common law.

The Court of Quarter Sessions has no jurisdiction in cases of forgery, 2 Russell 814, and never had: "why?" said Lord Kenyon, "I know not, but having been expressly so adjudged, I will not break through the rules of law."—*R. vs. Higgins*, 2 East Rep. 18.—See also *Reg. vs. Rigby*, 8 C. & P. 770.

sol
Qu
spe
the
He
Sen
low

S
know
Grea
of t
late
Cana
Quek
of H
Priv
Maje
Seals
betw
conti
Priv
of the
Gover
Nova
at any
Provin

AN ACT RESPECTING FORGERY.

32-33 VICT. CH. 19.

Whereas it is expedient to assimilate, amend and consolidate the Statute Law of the several Provinces of Quebec, Ontario, Nova Scotia and New Brunswick, respecting indictable offences by forgery, and to extend the same as so consolidated to all Canada. Therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :

FORGING THE GREAT SEAL, &c.

Sect. 1—Whosoever forges, or counterfeits, or utters, knowing the same to be forged or counterfeited, the Great Seal of the United Kingdom, or the Great Seal of the Dominion of Canada, or of any one of the late Provinces of Upper Canada, Lower Canada, or Canada, or of any one of the Provinces of Ontario, Quebec, Nova Scotia, or New Brunswick, or of any one of Her Majesty's Colonies or Possessions, Her Majesty's Privy Seal, any Privy Signet of Her Majesty, Her Majesty's Royal Sign Manual, or any of Her Majesty's Seals appointed by the twenty-fourth article of the Union between England and Scotland, to be kept, used and continued in Scotland, the Great Seal of Ireland, or the Privy Seal of Ireland, or the Privy Seal or Seal at Arms of the Governor General of Canada, or of the Lieutenant Governor of either of the Provinces of Ontario, Quebec, Nova Scotia and New Brunswick, or of any person who at any time administered the Government of any of the Provinces now constituting Canada, or of the Governor

or Lieutenant Governor of any one of Her Majesty's Colonies or Possessions, or forges or counterfeits the stamp or impression of any of the seals aforesaid, or utters any document or instrument whatsoever, having thereon, or affixed thereto, the stamp or impression of any such forged or counterfeited seal, knowing the same to be the stamp or impression of such forged or counterfeited seal, or any forged or counterfeited stamp or impression made or apparently intended to resemble the stamp or impression of any of the seals aforesaid, knowing the same to be forged or counterfeited, or forges, or alters, or utters, knowing the same to be forged or altered, any document or instrument having any of the said stamps or impressions thereon or affixed thereto, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life, or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 98, s. 1. Imp.

See *post*, sect. 58, as to requiring the offender to give sureties for the peace, in felonies under this Act.

See sect. 94 of the Procedure Act of 1869, as to solitary confinement.

Indictment..... that A. B., on.....the Great Seal of the United Kingdom falsely, deceitfully and feloniously did forge and counterfeit, against the form..... And the jurors aforesaid, upon their oath aforesaid, do further present that the said A. B. afterwards, to wit, on the day and year aforesaid, falsely deceitfully and feloniously did utter a certain other false, forged and counterfeited Great Seal as aforesaid, then well knowing the same to be false, forged and counterfeited against the form.....Add counts stating the in-

strument to which the counterfeit seal was appended, or which had thereon or affixed thereto the stamp or impression of such counterfeit seal, &c.—Archbold, 571.

Before the recent Statutes, this offence was treason.—1 Hale 183.—See general remarks on forgery.

Upon the trial of any indictment for any offence under this section, the jury may, if the evidence warrants it, under sect. 49 of the Procedure Act of 1839, convict the prisoner of an attempt to commit the same.—2 Russell, 857.

FORGING DOCUMENT SIGNED BY GOVERNOR, LIEUTENANT-GOVERNOR, LETTERS-PATENT, PUBLIC REGISTERS, ETC., ETC., ETC.

Sect. 2.—Whosoever forges or fraudulently alters any document bearing or purporting to bear the signature of the Governor of Canada, or of any deputy of the Governor, or of the Lieutenant-Governor of any one of the Provinces of Ontario, Quebec, Nova Scotia and New Brunswick, or of any person who at any time administered the Government of any of the Provinces now constituting Canada, or offers, utters, disposes of or puts off any such forged or fraudulently altered document as aforesaid, knowing the same to be so forged or altered, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.

Sect. 3.— Whosoever forges or alters, or in any way publishes, puts off or utters as true, knowing the

same to be forged or altered, any copy of letters-patent, or of the enrolment or enregistration of letters-patent, or of any certificate thereof made or given, or purporting to be made or given, by virtue of any Statute of Canada, of any one of the late Provinces of Upper Canada, Lower Canada, or Canada, or of the Provinces of Ontario, Quebec, Nova Scotia or New Brunswick, is guilty of felony and shall be liable to be imprisoned in the Penitentiary for any term not more than seven years, nor less than two years, or to be imprisoned in any gaol or place of confinement for any term less than two years, with or without hard labour.

SECT. 4.—Whosoever forges, or counterfeits or alters any public register or book, appointed by law to be made or kept, or any entry therein, or wilfully certifies or utters any writing as and for a true copy of such public register or book, or of any entry therein, knowing such writing to be counterfeit or false, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not more than fourteen years, nor less than two years, or in any gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.

These three clauses are not in the English Act.—Sects. 37, 42 and 43, *post*, also provide for the forgery of certain registers.

As to solitary confinement, see sect. 94 of the Procedure Act of 1869.—As to sureties for the peace, in felonies under this Act, see *post* sect. 58.

As to indictment, see *ante*, form under sect. 1, and general remarks on forgery.

Upon the trial of any indictment for any offence

under these sections, the jury may, if the evidence warrants it, under sect. 49 of the Procedure Act of 1869, convict the prisoner of an attempt to commit the same,

FORGING TRANSFERS OF STOCKS, POWERS OF ATTORNEY,
ETC., ETC., ETC.

Sect. 5.— Whosoever forges or alters, or offers, utters, disposes of or puts off, knowing the same to be forged or altered, any transfer of any share or interest of or in any stock, annuity, or other public fund, which now is or hereafter may be transferable in any of the Books of the Dominion of Canada, or of any one of the Provinces of Quebec, Ontario, Nova Scotia or New Brunswick, respectively, or of any Bank at which the same may be transferable, or of or in the capital stock of any body corporate, company or society, which now is or hereafter may be established by charter, or by, under, or by virtue of any Act of Parliament of the United Kingdom or of any of the late Provinces of Upper Canada, Lower Canada or of Canada, or of the Dominion of Canada, or by any Act of the Legislature of either of the Provinces of Ontario, Quebec, Nova Scotia or New Brunswick, or forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any power of attorney or other authority to transfer any share or interest of or in any such stock, annuity, public fund, or capital stock, *or any claim for a grant of land from the Crown in Canada or for any scrip or other payment or allowance in lieu of any such grant or land*, or to receive any dividend or money payable in respect of any such share or interest, or demands or endeavours to have any such share or interest transferred, or to receive any dividend or money

payable in respect thereof, or *any such grant of land or scrip or payment or allowance in lieu thereof as aforesaid*, by virtue of any such forged or altered power of attorney or other authority, knowing the same to be forged or altered, with intent in any of the cases aforesaid to defraud, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life or for any term not less than two years, or to be imprisoned in any gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict. ch. 98, s. 2, Imp.

The words in *Italics* are not in the English Act; they extend the clause to land claims, scrips, &c., &c., &c.

As to sureties for the peace in felonies under this Act, see *post*, sect. 58.

As to solitary confinement, see sect. 94, of the Procedure Act of 1869.

See general remarks on forgery.

Indictment for forging and uttering a transfer of stock.

—..... that A. B. on feloniously did forge a transfer of a certain share and interest in certain stock and annuities, to wit which said stock and annuities were then transferable at the Bank of ———, and which said transfer then purported to be made by one J. N. with intent thereby then to defraud, against the form of the Statute in such case made and provided, and against the peace of Our Lady the Queen, her crown and dignity.

(2nd Count.)—..... did offer, utter, dispose of, and put off, a certain other forged transfer of a certain share and interest of, and in certain other stock and annuities, to wit which said last men-

tion
the
pur
ther
tere
shan
agai
I.
to se
did
tain
whic
said
(her
again
did c
forge
attor
said
trans
tent
know
forge
nious
share
annui
—
the sa
pove
to tra
in the
with
at the

tioned stock and annuities were then transferable at the Bank of——, and which said last mentioned transfer purported to be made by one J. N., with intent thereby then to defraud, he the said A. B., at the time he so uttered the said last mentioned forged transfer of the said share and annuity, well knowing the same to be forged, against the form.....—Archbold, 590.

Indictment for forging and uttering a power of attorney to sell out stock.—..... That A. B. on..... feloniously did forge a certain power of attorney to transfer a certain share and interest in certain stock and annuities which were then transferable at the Bank of——, which said forged power of attorney is as follows, that is to say (*here set it out*) with intent thereby then to defraud, against the form..... (2nd Count.)feloniously did offer, utter, dispose of and put off, a certain other forged power of attorney, purporting to be a power of attorney to transfer a certain share and interest of the said J. N. in certain stock and annuities which were then transferable at the Bank of——, to wit,.....with intent thereby then to defraud, he the said A. B. then well knowing the said last mentioned power of attorney to be forged, against the form..... (3rd Count.)feloniously did demand and endeavour to have a certain share and interest of the said J. N. in certain stock and annuities, which were then transferable at the Bank of——, to wit..... transferred, in the books of the said Bank of——, by virtue of a certain other forged power of attorney, purporting to be a power of attorney, to transfer the said share and interest of the said J. N. in the said stock and annuities so transferable as aforesaid, with intent thereby then to defraud, he the said A. B., at the time he so demanded and endeavoured to have the

said share and interest transferred as aforesaid, well knowing the said last mentioned power of attorney to be forged, against the form.....—Archbold, 590.

Upon the trial of any indictment for any offence under this section, the jury may, if the evidence warrants it, under sect. 49 of the Procedure Act of 1869, convict the prisoner of an attempt to commit the same.—2 Russell, 865.

PERSONATING OWNER OF STOCK, WITH INTENT, &C.

Sect. 6.—Whosoever falsely and deceitfully personates any owner of any share, or interest of or in any stock, annuity or other public fund, which now is, or hereafter may be transferable in any of the books of the Dominion of Canada, or of any one of the Provinces of Quebec, Ontario, Nova Scotia, or New Brunswick, or of any bank at which the same may be transferable, or any owner of any share, or interest of or in the capital stock of any body corporate, company or society which now is, or hereafter may be established by charter, or by, under, or by virtue of any Act of Parliament of the United Kingdom, or of any of the late Provinces of Upper Canada, Lower Canada, or Canada, or of the Dominion of Canada, or by any Act of the Legislature of any one of the Provinces of Ontario, Quebec, Nova Scotia, or New Brunswick, *or of any claim for a grant of land from the Crown in Canada, or for any scrip or other payment or allowance in lieu of such grant of land*, or any owner of any dividend or money payable in respect of any such share or interest as aforesaid, and thereby transfers or endeavours to transfer any share or interest belonging to any such owner, or thereby receives or endeavours to receive any money due to any such owner, *or to obtain any such grant of land, or such scrip or allowance in lieu there-*

of, a
lawfu
be in
not l
gaol
years
solita

Th

exten

As

see p

As

dure

In

deceit

the o

and a

of—

stock)

fer th

said s

the t

Up

this s

under

the pr

sel, 8

FO

SE

ing or

ing or

of, as *aforesaid*, as if such offender were the true and lawful owner, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life, or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24–25 Vict. ch. 98, s. 3, Imp.

The words in *Italics* are not in the English Act; they extend the clause to land claims, scrips, &c.

As to sureties for the peace in felonies under this Act, see *post*, sect. 58.

As to solitary confinement, see sect. 94 of the Procedure Act of 1869.

Indictment.—..... feloniously did, falsely and deceitfully personate one J. N., the said J. N. then being the owner of a certain share and interest in certain stock and annuities, which were then transferable at the Bank of——, to wit, (*state the amount and nature of the stock*); and that the said A. B. thereby did then transfer the said share and interest of the said J. N. in the said stock annuities, as if he, the said A. B. were then the true and lawful owner thereof, against the form—Archbold, 614.

Upon the trial of any indictment for any offence under this section, the jury may, if the evidence warrants it, under sect. 49 of the Procedure Act of 1869, convict the prisoner of an attempt to commit the same.—2 Russell, 865.

FORGING ATTESTATION TO POWER OF ATTORNEY FOR TRANSFER OF STOCK, &c., &c., &c.

SECT. 7.—Whosoever forges any name, handwriting or signature, purporting to be the name, handwriting or signature of a witness attesting the execution

of any power of attorney or other authority to transfer any share or interest of or in any such stock, annuity, public fund, or capital stock, or *grant of land or scrip, or allowance in lieu thereof*, as in either of the last two preceding sections mentioned, or to receive any dividend or money payable in respect of any such share or interest, or offers, utters, disposes of, or puts off any such power of attorney or other authority, with any such forged name, handwriting or signature thereon, knowing the same to be forged, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding seven years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 98, s. 4. Imp.

The words in *Italics* are not in the English Act; they correspond with those inserted in the last two preceding sections.

As to sureties for the peace in felonies under this Act, see *post* sect. 58.

As to solitary confinement, see sect. 94 of the Procedure Act of 1869.

See general remarks on forgery.

Indictment.—.....feloniously did forge a certain name, handwriting and signature, as and purporting to be the name, handwriting and signature of one....., as and purporting to be a witness attesting the execution of a certain power of attorney to transfer a certain share and interest of one J. N. in certain stock and annuities which were then transferable at the Bank of——, to wit, (*here state the amount and nature of the stock*), against the form..... (2nd Count.)did utter,

dispo
attor
said
then
with

ney,
he th
uttere
the s
name
attest
again

Upo
this se
under
prison
sell, 8

MA

Sect.
in, or v
books o
or of an
Scotia,
of the l
or of ei
Scotia c
account
public f
ferable i
manner
such ow

dispose of and put off a certain other forged power of attorney to transfer a certain share and interest of the said J. N. in certain stock and annuities which were then transferable at the Bank of——, to wit,.... with the name, handwriting and signature of the said —— forged on the said last mentioned power of attorney, as an attesting witness to the execution thereof, he the said (defendant,) at the time he so offered, uttered, disposed of and put off the same, well knowing the said name and handwriting, purporting to be the name and handwriting of the said —— thereon, as attesting witness thereof as aforesaid, to be forged, against the form.—Archbold, 593.

Upon the trial of any indictment for any offence under this section, the jury may, if the evidence warrants it, under sect. 49 of the Procedure Act of 1869, convict the prisoner of an attempt to commit the same. — 2 Russell, 865.

MAKING FALSE ENTRIES OF STOCK, ETC., ETC., ETC.

Sect. 8.— Whosoever wilfully makes any false entry in, or wilfully alters any word or figure in any of the books of the account kept by the Government of Canada, or of any one of the Provinces of Ontario, Quebec, Nova Scotia, or New Brunswick, or of any bank at which any of the books of account of the Government of Canada, or of either of the Provinces of Ontario, Quebec, Nova Scotia or New Brunswick are kept, in which books the accounts of the owners of any stock, annuities or other public funds, which now are or hereafter may be transferable in such books, are entered and kept, or in any manner wilfully falsifies any of the accounts of any of such owners in any of the said books, with intent, in any

of the cases aforesaid, to defraud, or wilfully makes any transfer of any share or interest of or in any stock, annuity or other public fund which now is or hereafter may be transferable as aforesaid, in the name of any person not being the true and lawful owner of such share or interest, with intent to defraud, is guilty of felony, and shall be liable to imprisonment in the Penitentiary for life, or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 98, s. 5. Imp.

As to sureties for the peace in felonies under this Act, see *post*, sect. 58.

As to solitary confinement, see sect. 94, of the Procedure Act of 1869.

See general remarks on forgery.

Indictment for making false entries of stock.—....
 feloniously did wilfully alter certain words and figures, that is to say (*here set out the words and figures as they were before the alteration*) in a certain book of account kept by ———, in which said book the accounts of the owners of certain stock, annuities and other public funds, to wit, the (*state the stock*) which were then transferable at ——— were then kept and entered, by (*set out the alteration and the state of the account or item when so altered*) with intent thereby then to defraud; against the form. . . .— Archbold, 592.

Indictment for making a transfer of stock in the name of a person not the owner.—.... feloniously did wilfully make a transfer of a certain share and interest of and in certain stock and annuities, which were then

transf
 intere
 natur
 said C
 the sa
 annui
 to def
 Upo
 this s
 under
 the pr
 sell, 8

CLEWK

Sect
 of, or
 ernmen
 Ontari
 being
 employ
 books
 ding se
 any di
 annuit
 greater
 such w
 defraud
 prison
 seven y
 soned i
 term l
 and wit
 ch. 98,

transferable at the Bank of ———, to wit, the share and interest of ———, in the ——— (*state the amount and nature of the stock*), in the name of one C. D., he the said C. D., not being then the true and lawful owner of the said share and interest of and in the said stock and annuities, or any part thereof, with intent thereby then to defraud, against the form.—Archbold, 592.

Upon the trial of any indictment for any offence under this section, the jury may, if the evidence warrants it, under sect. 49 of the Procedure Act of 1869, convict the prisoner of an attempt to commit the same.—2 Russell, 865.

CLERKS MAKING OUT FALSE DIVIDEND, WARRANTS, ETC.

Sect. 9.—Whosoever being a clerk, officer or servant of, or other person employed or entrusted by the Government of Canada, or of any one of the Provinces of Ontario, Quebec, Nova Scotia, or New Brunswick, or being a clerk, or officer, or servant of, or other person employed or entrusted by any bank in which any of such books and accounts as are mentioned in the next preceding section, are kept, knowingly makes out, or delivers any dividend, warrant, or warrant for payment of any annuity, interest or money payable as aforesaid, for a greater or less amount than the person on whose behalf such warrant is made out is entitled to, with intent to defraud, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding seven years, and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict. ch. 98, s. 6, Imp.

As to sureties for the peace in felonies under this Act, see *post*, sect. 58.

As to solitary confinement, see sect. 94 of the Procedure Act of 1869.

Indictment.—..... then being a clerk of —, and employed and entrusted by the said —, feloniously did knowingly make out and deliver to one J. N. a certain dividend warrant for a greater amount than the said J. N. was then entitled to, to wit, for the sum of five hundred pounds: whereas, in truth and in fact, the said J. N. was then entitled to the sum of one hundred pounds only; with intent thereby then to defraud, against the form.....—Archbold, 594.

Upon the trial of any indictment for any offence under this section, the jury may, if the evidence warrants it, under sect. 49 of the Procedure Act of 1869, convict the prisoner of an attempt to commit the same.—2 Russell, 865.

FORGING DEBENTURES, STOCK, &c., MAKING PLATES, PAPER, IN IMITATION OF THOSE USED FOR DEBENTURES, ETC.,
HAVING SUCH PLATE, PAPER, ETC., IN POSSESSION.

Sect. 10.—Whosoever forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any debenture or other security, issued under the authority of any Act of the Legislature of any one of the late Provinces of Upper Canada, Lower Canada, or Canada, or of the Parliament of Canada, or of the Legislature of any one of the Provinces of Quebec, Ontario, Nova Scotia or New Brunswick, or any exchequer bill or exchequer bond, or any Dominion or Provincial note, or any endorsement on, or assignment of, any such debenture, exchequer bill or exchequer bond, or other security,

issue
any
Can
of th
Onta
recei
scrip
is gu
the P
years
confir
witho
ment.

Th

Sec
excus
makes
in ma
any f
words
to or
or to
chequ
Provin
machin
of any
imitate
or devi
such d
or such
liarly u
such d
notes o

issued under the authority of any Act of the Legislature of any one of the late Provinces of Upper Canada, Lower Canada, or Canada, or of the Parliament of Canada, or of the Legislature of any one of the Provinces of Quebec, Ontario, Nova Scotia, or New Brunswick, or any coupon, receipt or certificate for interest accruing thereon, *or any scrip in lieu of land as aforesaid*, with intent to defraud, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life, or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 98, s. 8, Imp.

The words in *Italics* are not in the English Act.

Sect. 11.—Whosoever, without lawful authority or excuse, (the proof whereof shall lie on the party accused) makes, or causes, or procures to be made, or aids, or assists in making, or knowingly has in his custody or possession, any frame, mould or instrument, having therein any words, letters, figures, marks, lines or devices, peculiar to or appearing in the substance of any paper provided or to be provided and used for any such debentures, exchequer bills or exchequer bonds, Dominion notes or Provincial notes, or other securities as aforesaid, or any machinery for working any threads into the substance of any such paper, or any such thread, and intended to imitate such words, letters, figures, marks, lines, threads or devices, or any plate peculiarly employed for printing such debentures, exchequer bills or exchequer bonds, or such notes or other securities, or any die or seal peculiarly used for preparing any such plate, or for sealing such debentures, exchequer bills or exchequer bonds, notes or other securities, or any plate, die or seal intended

to imitate any such plate, die or seal, as aforesaid, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding seven years, and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict. ch. 98, s. 9, Imp.

Sect. 12.—Whosoever, without lawful authority or excuse, (the proof whereof shall lie on the party accused) makes, or causes or procures to be made, or aids, or assists in making any paper in the substance of which appear any words, letters, figures, marks, lines, threads or other devices peculiar to and appearing in the substance of any paper provided or to be provided or used, for such debentures, exchequer bills, or exchequer bonds, notes or other securities aforesaid, or any part of such words, letters, figures, marks, lines, threads or other devices, and intended to imitate the same, or knowingly has in his custody or possession, any paper whatsoever, in the substance whereof appear any such words, letters, figures, marks, lines, threads or devices as aforesaid, or any part of such words, letters, figures, marks, lines, threads or other devices, and intended to imitate the same, or causes or assists in causing any such words, letters, figures, marks, lines, threads, or devices as aforesaid, or any part of such words, letters, figures, marks, lines, threads and other devices, and intended to imitate the same, to appear in the substance of any paper whatever, or takes, or assists in taking, an impression of any such plate, die or seal, as in the last preceding section mentioned, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding seven years, and not

less than two years, or to be imprisoned in any other gaol or place of confinement for any term *not* less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 93, s. 10, Imp.

The word "*not*" making the imprisonment in any gaol, other than the Penitentiary, for a term *not* less than two years, has undoubtedly been inserted here by a typographical error. But the consequences of such errors are grave.

Sect. 13.—Whosoever, without lawful authority or excuse, the proof whereof shall lie on the party accused, purchases, or receives, or knowingly has in his custody or possession, any paper manufactured and provided by or under the directions of the Government of Canada, or of any one of the Provinces of Ontario, Quebec, Nova Scotia or New Brunswick, for the purpose of being used as such debentures, exchequer bills, or exchequer bonds, notes or other securities as aforesaid, before such paper has been duly stamped, signed and issued for public use, or any such plate, die or seal, as in the two last preceding sections mentioned, is guilty of a misdemeanor, and shall be liable to be imprisoned in any gaol or place of confinement other than a Penitentiary for any term less than two years, with or without hard labour.—24-25 Vict., ch. 98, s. 11, Imp.

As to sureties for the peace in felonies, and fine and sureties for the peace, in misdemeanors under this Act, see *post*, sect. 58.

As to solitary confinement, see sect. 94 of the Procedure Act of 1869.

See *post*, sect. 52, as to what constitutes a criminal possession under this Act.

Upon the trial of any indictment for any offence under these sections, the jury may, if the evidence warrants it, under sect. 49 of the Procedure Act of 1869, convict the prisoner of an attempt to commit the same. 2 Russell, 939.

See general remarks on forgery, and general form of indictment.

AS TO FORGING STAMPS.

Sect. 14.—Whosoever forges, counterfeits or imitates, or procures to be forged, counterfeited or imitated any stamp or stamped paper, issued or authorized to be used by any Act of the Parliament of Canada, or of the Legislature of any of the Provinces of Quebec, Ontario, Nova Scotia or New Brunswick, by means whereof any duty thereby imposed may be paid, or any part or portion of any such stamp, or knowingly uses, offers, sells or exposes to sale, any such forged, counterfeited, or imitated stamp, or engraves, cuts, sinks or makes, any plate, die or other thing whereby to make or imitate such stamp or any part or portion thereof, except by permission of any officer or person, who, being duly authorized in that behalf by the Government of Canada or of any of the Provinces aforesaid, may lawfully grant such permission, or has possession of any such plate, die or other thing, without such permission, or, without such permission, uses or has possession of any such plate, die or thing lawfully engraved, cut or made, or tears off or removes from any instrument, on which a duty is payable, any stamp by which such duty has been wholly or in part paid, or removes from any such stamp any writing or mark indicating that it has been used for or towards the payment of any such duty, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for

any term not exceeding twenty-one years, and not less than two years, or in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—32-33 Vict., ch. 49, s. 8, Imp. ; 33-34 Vict., ch. 98, Imp. and various Statutes cited in 2 Russell, 878. See 31 Vict., ch. 71, sect. 2, (of Canada).

Also see 31 Vict., ch. 9, sections 13 and 16, as to forgery of stamps for promissory notes, and 31 Vict., ch. 10, sect. 77, par. 8, as to forgery of postage stamps.—As to larceny of stamps, see 35 Vict., ch. 33, *post*.

As to sureties for the peace in felonies under this Act, see *post*, sect. 58.

As to solitary confinement, see sect. 94 of the Procedure Act of 1869.

As to what is a criminal possession under this Act, see *post*, sect. 52.

See *R. vs. Collicott*, R. & R. 212, and *R. vs. Field*, 1 Leach, 283.—See general remarks on forgery, and form of indictment under sect. 1.—As under sect. 1, the words “with intent to defraud” are not necessary in the indictment, since the Statute does not contain them. See *Reg. vs. Aspin*, 12 Cox 391, and remarks under sects. 42 and 36.

It was held, in *R. vs. Ogden*, 6 C. & P. 631, under a similar Statute, that a fraudulent intent was not necessary, but in a case of *Reg. vs. Allday*, 8 C. & P. 136, Lord Abinger, ruled the contrary: “The Act of Parliament, he said, does not say that an intent to deceive or defraud is essential to constitute this offence, but it is a serious question whether a person doing this thing innocently, and intending to pay the stamp duty is liable to be transported. I am of opinion, and I hope I shall not be

found to be wrong, that to constitute this offence, there must be a guilty mind. It is a maxim older than the law of England, that a man is not guilty unless his mind be guilty."

This opinion is not everywhere followed. Though Lord Abinger seems to hold to it, as, in another case, *Reg. vs. Page*, 8 C. & P. 122, —(see remarks under sect. 11 of the *Coin Act*),—this learned Judge held, upon the same principle, that giving counterfeit coin in charity, knowing it to be such, is not criminal, though in the Statute there are no words with respect to defrauding. But this is overruled, as stated by Baron Alderson, in *Reg. vs. Ion*, 2 Den. 484; and Greaves well remarks (on *Reg. vs. Page*): "As every person is taken to intend the probable consequence of his act, and as the probable consequence of giving a piece of bad money to a beggar is that that beggar will pass it to some one else, and thereby defraud that person, *quare*, whether this case rests upon satisfactory grounds? In any case a party *may* not be defrauded by taking base coin, as he *may* pass it again, but still the probability is that he will be defrauded, and that is sufficient."—1 Russell, 126, note Z.

And are there not cases, where a party, receiving a counterfeited coin or a false note, not only *may* not be defrauded, but will *certainly not* be defrauded. As for example, suppose that during an election, any one buys an elector's vote, and pays it with a forged bill,—is the uttering of this bill, with guilty knowledge, not criminal? Yet, the whole bargain is a nullity: the seller has no right to sell; the buyer has no right to buy; if he buys, and does not pay, the seller has no legal or equitable claim against him, though he may have fulfilled his part of the bargain.

If the buyer does not pay, he *does not* defraud the seller; he *cannot* defraud him, since he does not owe him anything; it, then, cannot be said that he defrauds him in giving him, in payment, a forged note. Why see in this a fraud, and no fraud in giving a counterfeit note, in charity, to a beggar? Nothing is due to this beggar, and he is not defrauded of anything by receiving this forged bill, nor is this elector, who has sold his vote, defrauded of anything, since nothing was due to him: they are both *deceived* but not *defrauded*. In the general remarks, on forgery, *ante*, an opinion was expressed that forgery would be better described as "a false making with the intent to defraud *or deceive*," and such cases as the above seem to demonstrate the necessity of a codification of our criminal laws. And, when the Statute makes no mention of the intention, does it not make the Act prohibited a crime in itself, apart of the intention? Of course, it is a maxim of our law that "*actus non facit reum nisi mens sit rea*" or, as said in other words, by Starkie, 1 Cr., pl. 177, that, "to render a party criminally responsible, a vicious will must concur with a wrongful act." "But," continues Starkie, "though it be universally true, that a man cannot become a criminal unless his mind be in fault, it is not so general a rule that the guilty intention must be averred upon the face of the indictment." And then, for example, does not the man who forges a stamp, or, *scienter*, utters it, do wilfully an unlawful act? Does not the law say that this act, by itself, is criminal? Has Parliament not got the right to say: "The forging, false-making a stamp, or knowingly uttering it, is a felony, by itself, whether the person who does it means wrong, or whether he means right, or whether he means nothing at all?" And this is exactly

what it has said with regard to stamps, the Great Seal, records of the Courts of Justice, &c. It has said of these: "they shall be sacred, inviolable: you shall not deface them, imitate them, falsify, or alter them in any way or manner whatsoever, and if you do, you will be a felon." And to show that, as regards these documents, the intent to defraud was not to be a material element of the offence, it has expressly, in all the other clauses of the Statute, where it *did* require this intent to make the act criminal, inserted the words "with intent to defraud," and left them out in the clause concerning the said stamps, Great Seal, Court records, &c.—And no one, would be prepared to say, that the maxim "*la fin justifie les moyens*," has found its introduction into the English Criminal Law; and that, for instance, a clerk of a Court of justice is not guilty of a criminal act, if he alters a record, provided that the alteration is done with a *good intent*, and to put the record, as *he* thinks, it ought to be, and should, in fact, be.—Is it not better to say that in such cases, the guilty mind, the evil intent, the *mens rea* consist in the wilful disobedience to a positive law, in the rebellious infraction of the enactments of the legislative authority?

Against the preceding remarks, it must be said that Bishop, 1 Cr. L. 345, and 2 Cr. L. 607, cites these two cases, Reg. vs. Allday, and Reg. vs. Page, and apparently approves of the judgments given in them; but Baron Alderson's remarks on Reg. vs. Page, in Reg. vs. Ion, do not appear to have been noticed in Bishop's learned books. At the same time, it may be mentioned that in his 1 Cr. Procedure, after remarking, par. 521, that the adjudged law, on this question, seems to be not quite consistent with the general doctrine, and not quite clear and

un
not
wh
the
the
tha
hav
ano
this
the
ing
S
gen

S
dis
or a
pora
of ba
exch
assign
bank
and s
for li
impr
any t
bour
Vict.

As
see p
As
dure

uniform in itself, this distinguished author says, in a foot note, to par. 522: "Now, in this complication of things, where also practice has run on without decision, and then decision has proceeded without much reference to the principles adhering in the law, it is not surprising that, on this question of alleging the intent, legal results have been reached, not altogether harmonious with one another, and not uniformly correct in principle. Still, as this is a practical question, the practical good sense of the judges has prevented any great inconvenience attending this condition of things."

See remarks by Greaves, on *Reg. vs. Hodgson*, under general remarks on forgery, *ante*, page 45.

AS TO FORGING BANK NOTES, ETC., ETC., ETC.

SECT. 15 — Whosoever forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any note or bill of exchange of any body corporate, company, or person, carrying on the business of bankers, commonly called a bank note, a bank bill of exchange, or a bank post bill, or any endorsement on or assignment of any bank note, bank bill of exchange, or bank post bill, with intent to defraud, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life, or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 98, s. 12, Imp.

As to sureties for the peace in felonies under this Act, see *post*, sect. 58.

As to solitary confinement, see sect. 94 of the Procedure Act of 1869.

Indictment.—..... feloniously did forge a certain note of the Bank of —— commonly called a bank-note, for the payment of ten dollars, with intent thereby then to defraud, against the form

(2nd Count.) And the jurors aforesaid, upon their oath aforesaid, do further present, that the said J. S. afterwards, to wit, on the day and year aforesaid, feloniously did offer, utter, dispose of and put off a certain other forged note of the Bank of —— commonly called a bank-note, for the payment of ten dollars with intent thereby then to defraud, —he the said J. S. at the time he so offered, uttered, disposed of and put off the said last mentioned forged note as aforesaid, then and there well knowing the same to be forged, against the form.....Archbold, 573.

It is unnecessary to set out the forged instrument: it is sufficient to describe it by any name or designation by which it is usually known, or by its purport.—Section 49, *post*, and sect. 24 of the Procedure Act of 1869.

An indictment need not state, in the counts for uttering, to whom the note was disposed of.—*Rex. vs. Holden*, R. & R. 154; 2 Leach, 1019. The intent to defraud any particular person need not be alleged or proved.—Sect. 51, *post*.

Under the counts for uttering, evidence may be given that the defendant offered or tendered the note in payment, or that he actually passed it, or otherwise disposed of it to another person. Where it appeared that the defendant sold a forged note to an agent employed by the Bank to procure it from him, the judges held this to be within the Act, although it was objected that the prisoner had been solicited to commit the act proved against him, by the Bank themselves, by means of their agents.—*R. vs. Holden*, *ubi supra*. So where A. gave B. a forged

PU
note
ment
judg
dispo
of the
R. 2
1 Mo
to an
it, is
mean
Sec
Up
this s
under
the p
sell, &
pu
Sec
excus
purch
his cu
of exc
bank
the sa
liable
not ex
er to
fineme
hard l
As t
see p
posses

note to pass for him, and upon B.'s tendering it in payment of some goods, it was stopped: the majority of the judges held, that A., by giving the note to B. was guilty of disposing of and putting away the note, within the meaning of the Act.—*R. vs. Palmer*, R. & R. 72; *R. vs. Soares*, R. & R. 25; *R. vs. Stewart*, R. & R. 363; and *R. vs. Giles*, 1 Mood. 166, where it was held, that giving a forged note to an innocent agent, or an accomplice, that he may pass it, is a disposing of, and putting it away, within the meaning of the Statute.

See general remarks on forgery.

Upon the trial of any indictment for any offence against this section, the jury may, if the evidence warrants it, under sect. 49 of the Procedure Act of 1869, convict the prisoner of an attempt to commit the same.—2 Russell, 874.

PURCHASING OR HAVING FORGED BANK NOTES, ETC.

Sect. 16.—Whosoever, without lawful authority or excuse, (the proof whereof shall lie on the party accused) purchases or receives from any other person, or has in his custody or possession any forged bank note, bank bill of exchange, or bank post bill, or blank bank note, blank bank bill of exchange, or blank bank post bill, knowing the same to be forged, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labor.—24-25 Vict., ch. 98, s. 13, Imp.

As to sureties for the peace in felonies under this Act, see *post*, sect. 58. As to what constitutes a criminal possession under this Act, see *post*, sect. 52.

Indictment.—The jurors for Our Lady the Queen, upon their oath present, that A. B. on.....feloniously and without lawful authority or excuse, had in his custody and possession five forged bank notes for the payment of ten dollars each, the said A. B. then well knowing the said several bank notes and each and every of them respectively to be forged; against the form of the Statute in such case made and provided, and against the peace of Our Lady the Queen, her Crown and dignity.—Archbold, 596; 2 Burn's Just. 682.

In *R. vs. Rowley, R. & R. 110*, it was held, that every uttering included having in custody and possession, and, by some of the judges, that, without actual possession, if the notes had been put in any place under the prisoner's control, and by his direction, it was a sufficient possession within the Statute.—See now, sect. 52, *post*.

Upon the trial of any indictment for any offence under this section, the jury may, if the evidence warrants it, under sect. 49 of the Procedure Act of 1869, convict the prisoner of an attempt to commit the same.—2 Russell, 874.

AS TO MAKING PAPER AND ENGRAVING PLATES, ETC., ETC.,
FOR BANK NOTES, ETC.

Sect. 17.—Whosoever, without lawful authority or excuse, the proof whereof shall lie on the party accused, makes or uses or knowingly has in his custody or possession, any frame, mould or instrument, for the making of paper used for Dominion or Provincial notes, or for bank notes with any words used in such notes, or any part of such words intended to resemble or pass for the same, visible in the substance of the paper, or for the making of paper with curved or waving bar lines, or

AS
with
shape,
a wor
the pa
and ap
notes,
utters
posses
such
resemb
of the
lines,
or cur
expres
in the
tinction
the pa
art or
such w
or any
the sub
pective
or caus
in a wo
substan
printed
impriso
ing fou
impriso
any ter
labour.
Sect.
tained s

with the laying wire lines thereof in a waving or curved shape, or with any number, sum or amount expressed in a word or words in letters, visible in the substance of the paper, or with any device or distinction peculiar to and appearing in the substance of the paper used for such notes, respectively, or makes, uses, sells, exposes to sale, utters or disposes of, or knowingly has in his custody or possession any paper whatsoever with any words used in such notes, or any part of such words; intended to resemble and pass for the same, visible in the substance of the paper, or any paper with curved or waving bar lines, or with the laying wire lines thereof in a waving or curved shape or with any number, sum, or amount expressed in a word or words in letters, appearing visible in the substance of the paper, or with any device or distinction peculiar to and appearing in the substance of the paper used for any such notes respectively, or by any art or contrivance causes any such words or any part of such words, intended to resemble and pass for the same, or any device or distinction peculiar to and appearing in the substance of the paper used for any such notes, respectively, to appear visible in the substance of any paper, or causes the numerical sum or amount of any such note, in a word or words in letters to appear visible in the substance of the paper, whereon the same is written or printed, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour.—24-25 Vict., ch. 98, s. 14, Imp.

Sect. 18.—Nothing in the last preceding section contained shall prevent any person from issuing any bill of

exchange or promissory note having the amount thereof expressed in a numerical figure or figures denoting the amount thereof in pounds or dollars, appearing visible in the substance of the paper upon which the same is written or printed, nor shall prevent any person from making, using or selling any paper having waving or curved lines, or any other devices in the nature of watermarks visible in the substance of the paper, not being bar lines or laying wire lines, provided the same are not so contrived as to form the ground work or texture of the paper, or to resemble the waving or curved laying wire lines, or bar lines, or the watermarks of the paper used for Dominion notes or Provincial notes, or bank notes, as aforesaid. -24-25 Vict. ch. 98, s. 15, Imp.

Sect. 19.—Whosoever, without lawful authority or excuse, the proof whereof shall lie on the party accused, engraves, or in anywise makes upon any plate whatsoever, or upon any wood, stone, or other material, any promissory note or part of a promissory note, purporting to be a Dominion or provincial note or bank note, or to be a blank Dominion or provincial note or bank note, or to be a part of any Dominion or provincial note or bank note as aforesaid, or any name, word or character, resembling or apparently intended to resemble any subscription to any such Dominion or provincial note, or bank note, as aforesaid, or uses any such plate, wood, stone, or other material, or any other instrument or device for the making or printing of any such note or part of such note; or knowingly has in his custody or possession any such plate, wood, stone or other material, or any such instrument or device, or knowingly offers, utters, disposes of or puts off, or has in his custody or possession any paper upon which any blank Dominion or provincial note or

bank r
or ch
resemb
guilty
the P
years,
in any
less tha
with o
98, s. 1

Sect.
excuse,
engrave
or upon
number
pression
intende
cial not
custody
other m
impressi
any wor
resemble
any such
or puts
or other
any such
be liable
term not
years, or
confinem
without
nement.-

bank note, or part of any such note, or any name, word or character resembling or apparently intended to resemble, any such subscription, is made or printed, is guilty of felony and shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years, and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 98, s. 16, Imp.

Sect. 20—Whosoever, without lawful authority or excuse, the proof whereof shall lie on the party accused, engraves or in anywise makes upon any plate whatsoever, or upon any wood, stone or other material, any word, number, figure, device, character or ornament, the impression taken from which resembles, or is apparently intended to resemble any part of a Dominion or Provincial note or bank note, or uses, or knowingly has in his custody or possession any such plate, wood, stone or other material, or any other instrument or device for the impressing or making upon any paper or other material any word, number, figure, character or ornament, which resembles or is apparently intended to resemble any part of any such note, as aforesaid, or offers, utters, disposes of or puts off, or has in his custody or possession any paper or other material upon which there is an impression of any such matter as aforesaid, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years, and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 98, s. 17, Imp.

The word "*knowingly*" before *offers, &c.*, has been left out, probably by a typographical error.

Sect. 21.—Whosoever without lawful authority or excuse, the proof whereof shall lie on the party accused, makes or uses any frame, mould or instrument for the manufacture of paper with the name or firm of any bank or body corporate, company or person carrying on the business of bankers appearing visible in the substance of the paper, or knowingly has in his custody or possession any such frame, mould or instrument, or makes, uses, sells or exposes to sale, utters or disposes of, or knowingly has in his custody or possession, any paper in the substance of which the name or firm of any such bank, body corporate, company or person appears visible, or by any art or contrivance causes the name or firm of any such bank, body corporate, company or person to appear visible in the substance of the paper upon which the same is written or printed, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour and with or without solitary confinement.—24-25 Vict., ch. 98, s. 18, Imp.

Sect. 22. *Whosoever forges or alters, or offers, utters, disposes of or puts off, knowing the same to be forged or altered, any bill of exchange, promissory note, undertaking or order for payment of money, in whatever language or languages the same may be expressed, and whether the same is or is not under seal, purporting to be the bill, note, undertaking, or order of any foreign prince, or state, or of any minister or officer in the service of any foreign prince or state, or of any body cor-*

*porate
nized
compa
the do
lawful
the pa
any pl
materi
taking
any b
order f
same n
not, or
to be t
bill, no
state, o
foreign
of the li
prince
resident
Majesty
session
which a
or any
offers, u
or posse
foreign l
is guilty
in the F
years, an
in any o
less than
with or v
98, s. 19*

porate or body of the like nature constituted or recognized by any foreign prince or state, or of any person or company or persons resident in any country not under the dominion of Her Majesty, or whosoever, without lawful authority or excuse, the proof whereof shall lie on the party accused, engraves or in any wise makes upon any plate whatever, or upon any wood, stone or other material, any bill of exchange, promissory note, undertaking, or order for payment of money, or any part of any bill of exchange, promissory note, undertaking or order for payment of money, in whatsoever language the same may be expressed, and whether the same is or is not, or is or is not intended to be, under seal, purporting to be the bill, note, undertaking or order, or part of the bill, note, undertaking or order, of any foreign prince or state, or of any minister or officer in the service of any foreign prince or state, or of any body corporate or body of the like nature, constituted or recognized by any foreign prince or state, or of any person or company of persons resident in any country not under the dominion of Her Majesty, or uses or knowingly has in his custody or possession any plate, stone, wood or other material, upon which any such foreign bill, note, undertaking or order, or any part thereof, is engraved or made, or knowingly offers, utters, disposes of, or puts off, or has in his custody or possession any paper upon which any part of any such foreign bill, note, undertaking or order is made or printed, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years, and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement. 24-25 Vict., ch. 98, s. 19, Imp.

The words in *italics* are not in the English Act: they extend the provisions of sections 25 and 26, *post*, to foreign bills, notes, &c.

As to solitary confinement, see sect. 94 of the Procedure Act of 1869.

As to sureties for the peace, in felonies under this Act, see *post*, sect. 58.

As to what is a criminal possession under this Act, see *post*, sect. 52.

As to description of instruments in indictments for forgery, see *post*, sect. 49, and sect. 24 of the Procedure Act of 1869.

As to description of instruments in indictments for engraving, etc., etc., etc., see *post*, sect. 50.

As to warrants to search for paper or instruments employed or intended for any forgery, illegal engraving or forged instruments, see *post*, sect. 53.

Upon the trial of any indictment for any offence under these sections, the jury may, if the evidence warrants it, under sect. 49, of the Procedure Act of 1869, convict the prisoner of an attempt to commit the same.--- 2 Russell, 874.

It was held, in *Reg. vs. Brackenridge*, 11 Cox. 96, that it is an offence, under sect. 16 of the Imperial Act, (sect. 19 of our Act) feloniously, and without lawful excuse, to engrave upon a plate in England a note of a bank in Scotland, or in the colonies.

In *Reg. vs. Keith*, Dears 486, a decision was given on what is a part of a bank note, but Greaves, note *a*, 2 Russell 874, questions the legality of the decision.

R. vs. Warshaner, 1 Mood. 466, *R. vs. Harris*, and *R. vs. Ball*, 1 Mood. 470, are cases under a clause similar to sect. 22, *ante*, as to foreign bills and notes.

In
land,
note o
within

In
that
note o
a "ma
(sect. 2
taken
engrav
tive."

of the
If so
forged
of the
and 31

Sect.
or alters
ing the
bond, or
in equit
forges an
be the
attesting
gatory, o
bond, or
forged na
to be for
imprison
not less t

In *Reg. vs. Hannon*, 2 Mood. 77, the having, in England; in possession, a plate upon which was engraved a note of the Bank of *Upper Canada*, was declared to be within the then existing Statute.

In *Reg. vs. Rinaldi*, L. and C. 330, it was held, that the taking of a "positive" impression of a note on glass by means of the photographic process is a "making" of a note within 24-25 Vict., ch. 98., s. 19 (sect. 22, *ante*, of our statute) although the impression so taken is evanescent, and although it cannot be printed or engraved from until it has been converted into a "negative." The report of this case gives at full length a copy of the indictment therein.

If several concur in employing another to make a forged instrument, knowing its nature, they are all guilty of the forgery; *Reg. vs. Mazeau*, 9 C. and P. 676, and 31 Vict., ch. 72, sect. 1, of our Statutes.

AS TO FORGING DEEDS, BONDS, ETC. 4

Sect. 23.—Whosoever, with intent to defraud, forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any deed or any bond, or writing obligatory, or any assignment at law or in equity, of any such bond or writing obligatory, or forges any name, handwriting or signature purporting to be the name, handwriting or signature, of a witness attesting the execution of any deed, bond or writing obligatory, or offers, utters, disposes of, or puts off, any deed, bond, or writing obligatory, having thereon any such forged name, handwriting or signature, knowing the same to be forged, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life, or for any term not less than two years, or to be imprisoned in any other

gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 98, s. 20, Imp.

As to sureties for the peace, in felonies under this Act, see *post*, sect. 58.

As to solitary confinement, see sect. 94 of the Procedure Act of 1869.

Indictment.—..... a certain bond and writing obligatory feloniously did forge, with intent thereby then to defraud, against the form.....

(2nd Count)..... that the said J. S. afterwards, to wit, on the day and year aforesaid, feloniously did offer, utter, dispose of and put off, a certain other forged bond and writing obligatory, with intent thereby then to defraud,—he the said J. S. at the time he so offered, uttered, disposed of and put off the said last-mentioned forged bond and writing obligatory as aforesaid, well knowing the same to be forged, against the form.....Archbold, 576.

A power of attorney is a deed within the meaning of 2 Geo. 2, ch. 25, and forging a deed is within this Statute, though there may have been subsequent directory provisions by Statute, that instruments for the purpose of such forged deed shall be in a particular form, or shall comply with certain requisites, and the forged deed is not in that form, or does not comply with those requisites. *R. vs. Lyons*, R. & R. 255. And a power of attorney to transfer government stock was holden to be a deed under the repealed Statutes.—*R. vs. Fauntleroy*, 1 Mood. 52; but the forging of such a power of attorney is now provided for by sect. 5, *ante*.

R. made an equitable deposit of title deeds with G. for £750, and afterwards assigned all his property to B.

for the benefit of his creditors. R. and his assignee, B. then, for an additional advance, conveyed to G. the freehold of the property to which the deeds deposited related. After this, the prisoner R. executed a deed of assignment to the other prisoner of a large part of the land so conveyed to G. for a long term of years; but this deed was falsely antedated before the conveyance by R. and B. to G., and upon this deed, the prisoners resisted G.'s title to possession of this part of the land. *Held* that this deed, so antedated for the purpose of defrauding G. amounted to forgery, and that a man may be guilty of forgery by making a false deed in his own name.—Reg. vs. Ritson, 11 Cox, 352.

Letters of orders issued by a bishop, certifying that so and so has been admitted into the holy orders, is not a deed within this section, and a forgery of such letters is not within this statute, but a misdemeanor at common law.—Reg. vs. Morton, 12 Cox, 456.

Upon any indictment, for any offence under this section, the jury may, if the evidence warrants it, under sect. 49 of the Procedure Act of 1869, convict the prisoner of an attempt to commit the same.

AS TO FORGING WILLS.

Sect. 24.—Whosoever, with intent to defraud, forges or utters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any will, testament, codicil, or testamentary instrument, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25, Vict., ch. 98, s. 21, Imp.

As to sureties for the peace in felonies under this Act, see *post*, sect. 58.

As to solitary confinement, see sect. 94 of the Procedure Act of 1869.

Indictment. — feloniously did forge a certain will and testament purporting to be the last will and testament of one with intent thereby then to defraud, against the form (2nd Count.) did offer, utter (as in the last precedent.) — Archbold, 575.

The judges were equally divided upon the question whether in the absence of the existence of some person who could have been defrauded by the forged will, a count for forging it with intent to defraud a person or persons unknown could be supported.—*R. vs. Tylney*, 1 Den. 319.

See *post*, sect. 56.

Forgery may be committed by the false making of the will of a living person ; or of a non-existing person.—*R. vs. Murphy*, 2 East P. C. 949 ; *R. vs. Sterling*, 1 Leach, 117 ; *R. vs. Coogan*, 1 Leach, 449 ; *R. vs. Avery*, 8 C. & P. 596. So, though it be signed by the wrong christian name of the person whose will it purports to be.—*R. vs. Fitzgerald*, 1 Leach, 20.

Upon the trial of any indictment for any offence under this section, the jury may, if the evidence warrants it, under sect. 49 of the Procedure Act of 1869, convict the prisoner of an attempt to commit the same.

FORGING BILLS OF EXCHANGE OR PROMISSORY NOTES.

Sect. 25.—Whosoever forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any bill of exchange, or any acceptance, in-

dorsement, or assignment of any bill of exchange, or any promissory note for the payment of money, or any indorsement on or assignment of any such promise (*promissory*) note, with intent to defraud, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 98, s. 22, Imp.

As to sureties for the peace in felonies under this Act, see *post*, sect. 58.

As to solitary confinement, see sect. 94 of the Procedure Act of 1869.

Indictment. — a certain bill of exchange feloniously did forge, with intent thereby then to defraud; against the form (2nd Count.) did offer, utter as form under sect. 23.—*If the acceptance be also forged, add counts for it, as follows.* (3rd Count.) that the said J. S. afterwards, to wit, on the day and year last aforesaid, having in his custody and possession a certain other bill of exchange, feloniously did forge on the said last mentioned bill of exchange, an acceptance of the said last mentioned bill of exchange, which said forged acceptance is as follows, that is to say: (set it out *verbatim*) with intent thereby then to defraud, against the form (4th Count.) that the said J. S. afterwards, to wit, on the year and day last aforesaid, having in his custody and possession a certain other bill of exchange, on which said last mentioned bill of exchange was then written a certain forged acceptance of the said last mentioned bill of exchange, which said forged acceptance of the said last mentioned bill of ex-

change is as follows, that is to say : (set it out *verbatim*.) he, the said J. S. on the day and year last aforesaid, feloniously did offer, utter, dispose of and put off the said forged acceptance of the said last mentioned bill of exchange, with intent thereby then to defraud, he the said J. S. at the time he so offered, uttered, disposed of and put off the said forged acceptance of the said last mentioned bill of exchange well knowing the said acceptance to be forged, against the form *If an indorsement be also forged, add counts for it as follows :* (5th Count.) that the said J. S. afterwards, to wit, on the day and year last aforesaid, having in his custody and possession a certain other bill of exchange, feloniously did forge on the back of the said last mentioned bill of exchange, a certain indorsement of the said bill of exchange, which said forged indorsement is as follows, that is to say : (set it out *verbatim*) with intent thereby then to defraud, against the form (6th Count.) that the said J. S. afterwards, to wit, on the day and year last aforesaid, having in his custody and possession a certain other bill of exchange, on the back of which said last mentioned bill of exchange was then written a certain forged indorsement of the said last mentioned bill of exchange, which said last mentioned forged indorsement is as follows, that is to say : (set it out *verbatim*) he, the said J. S. on the day and year last aforesaid, feloniously did offer, utter, dispose of, and put off the said last mentioned forged indorsement of the said last mentioned bill of exchange, with intent thereby then to defraud,—he the said J. S. at the time he so offered, uttered, disposed of and put off the said last mentioned forged indorsement of the said last mentioned bill of exchange, well knowing the said indorsement to be forged, against the form

R
be
mer
the
and
ce.—
A
been
lieut
has
holm
B.,
“suc
been
ing c
nego
draw
trato
accep
M. &
as dr
forge
2 Mo
sort c
witho
chang
In
what
at the
signed
quenc
a doc
but re

From the above precedent, an indictment may readily be framed for forging and uttering a promissory note, merely substituting for the words "bill of exchange" the words "promissory note for the payment of money" and omitting, of course, the counts as to the acceptance.—Archbold, 577.

A bill payable ten days after sight, purporting to have been drawn upon the Commissioners of the Navy, by a lieutenant, for the amount of certain pay due to him, has been holden to be a bill of exchange. *R. vs. Chisholm*. R. & R. 297,—so a note, promising to pay A. & B., "stewardesses" of a certain benefit society, or their "successors" a certain sum of money on demand, has been holden to be a promissory note: within the meaning of the Act, it is not necessary that the note should be negotiable.—*R. vs. Box*, R. & R. 300. An instrument drawn by A on B, requiring him to pay to the administrators of C a certain sum, at a certain time "without acceptance," is a bill of exchange.—*R. vs. Kinnear*, 2 M. & Rob. 117. So, though there be no person named as drawee, the defendant may be indicted for uttering a forged acceptance on a bill of exchange.—*R. vs. Hawkes*, 2 Mood. 60. For the act of putting the acceptance is a sort of estoppel to say it was not a bill of exchange, but, without acceptance, this instrument is not a bill of exchange.—*R. vs. Curry*, 2 Mood. 218.

In *Reg. vs. Mopsey*, 11 Cox, 143, the acceptance to what purported to be a bill of exchange was forged, but at the time it was so forged, the document had not been signed by the drawer, and it was held that, in consequence, the document was not a bill of exchange. And a document in the ordinary form of a bill of exchange, but requiring the drawee to pay to his own order, and

purporting to be indorsed by the drawer, and accepted by the drawer, cannot, in an indictment for forgery or uttering, be treated as a bill of exchange.—*R. vs. Bartlett*, 2 M. & Rob. 262. But an instrument payable to the order of A, and directed "*At Messrs. P. & Co., Bankers*," was held to be properly described as a bill of exchange.—*R. vs. Smith*, 2 Mood. 295.—It is necessary that the promissory note should be *for the payment of money* only to be within the Statute. In *Reg. vs. Howie*, 11 Cox, 320, the prisoner had forged a seaman's advance note. He was indicted for forging or uttering a certain promissory note or order for the payment of money: *held*, that a seaman's advance note was not a promissory note or order for the payment of money, and that the indictment was therefore bad: the advance note was conditional, and there must be no condition in a promissory note or order for payment of money.—The adding of a false address to the name of the drawee of a bill, while the bill is in the course of completion, in order to make the acceptance appear to be that of a different existing person, is a forgery.—*R. vs. Blenkinsop*, 1 Den. 276. See *Reg. vs. Mitchell*, 1 Den. 282.—A nurseryman and a seedsman got his foreman to accept two bills, the acceptances, having no addition, description or address, and afterwards, without the acceptor's knowledge, he added to the direction a false address, but no description, and represented in one case that the acceptance was that of a customer, and in the other case that it was that of a seedsman, there being in fact no such person at the supposed false address: *held*, that in the one case, the former, he was not guilty of forgery of the acceptance, but that, in the other case, he was.—*Reg. vs. Epps*, 4 F. & F. 81.—A bill of exchange was made payable to A, B, C, D, or order, executrixes. The indictment charged that

the
forg
(na
men
1 D
exis
pers
draw
pers
or a
or a
forge
U
this
unde
priso
FORG
Se
dispo
or alt
requ
trans
other
ing o
of an
requ
receip
other
ment
or an
otherw
any o
and sh

the prisoner forged on the back of the bill a certain forged indorsement, which indorsement was as follows (naming one of the executrices): *held*, a forged indorsement, and indictment sufficient.—R. vs. Winterbottom, 1 Den. 41.—Putting off a bill of exchange of A, an existing person, as the bill of exchange of A, a fictitious person, is a felonious uttering of the bill of a fictitious drawer.—Reg. vs. Nesbitt, 6 Cox, 320.—If there are two persons of the same name, but of different descriptions or additions, and one signs his name with the description or addition of the other for the purpose of fraud, it is forgery.—R. vs. Webb ; Bayley, on Bills, 432.

Upon the trial of any indictment for any offence under this section the jury may, if the evidence warrants it, under sect. 49 of the Procedure Act of 1869, convict the prisoner of an attempt to commit the same.

FORGING ORDERS, RECEIPTS, &C., FOR MONEY, GOODS, &C.

Sect. 26.—Whosoever forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any undertaking, warrant, order, authority or request, for the payment of money, or for the delivery or transfer of any goods or chattels, or of any note, bill, or other security for the payment of money, or for procuring or giving credit, or any indorsement on or assignment of any such undertaking, warrant, order, authority, or request, or any accountable receipt, acquittance or receipt, for money or for goods, or for any note, bill, or other security for the payment of money, or any indorsement on or assignment of any such accountable receipt, *or any account, book or thing written or printed or otherwise made capable of being read*, with intent, in any of the cases aforesaid, to defraud, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary

for life, or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 98, s. 23, Imp.

The words in *italics* are not in the English Act: they constitute an important extension of the clause.

As to sureties for the peace, in felonies under this Act, see *post*, sect. 58.

As to solitary confinement, see sect. 94 of the Procedure Act of 1869.

Greaves says: "This clause is new as far as it relates to any authority or request for the payment of money, or to any authority for the delivery or transfer of any goods, &c., or to any indorsement on or assignment of any such undertaking, warrant, order, authority, request or accountable receipt, as is mentioned in the clause. *Rex. vs. Arscott*, 6 C. & P. 408, is therefore no authority on this clause. The words 'authority, or request for the payment of money' are introduced to get rid of the question so commonly arising in cases of this kind, whether the forged instrument were either a warrant or order for the payment of money. Requests for the payment of money were not within these words. *Reg. vs. Thorn*, 1 C. & Marsh, 206; 2 Mood. 210.

It would be a waste of space, and of no practical use, to refer to the cases that have occurred on these points; for, whenever there is any doubt as to the legal character of the instrument, different counts should be inserted describing it in each by one only of the terms *warrant, order, authority or request*. A forged indorsement on a warrant or order for the payment of money was not within the former enactments. *Rex. vs. Arscott*, 6 C. &

P. 40
indor

Inc
warran
then t
felonic
23.—
supra.
under

A d
warrant
Taylor
944.
1 Leac
not spe
tute.—
ing in
drawee
the pay
ments t
vs. Ho
advance
would s
ment of
vs. Ban
469; R
576. TH
the pay
posed p
181. A
of a railv
tute.—R
in *italics*

P. 408. But this clause includes that and other forged indorsements."

Indictment.—.....feloniously did forge a certain warrant for the payment of money, with intent thereby then to defraud, against the form.... (2nd Count) feloniously did offer, utter:....(as, *ante*, form under sect. 23.—Add separate counts, as suggested by Greaves, *suprà*.—Archbold, 581.—See Reg. vs. Kay, 11 Cox, 529, under next section.

A draft upon a banker, although it be post-dated, is a warrant and order for the payment of money.—R. vs. Taylor, 1 C. & K. 213 ; R. vs. Willoughby, 2 East, P. C. 944. So is, even, a bill of exchange.—R. vs. Sheppard, 1 Leach, 226 ; R. vs. Smith, 1 Den. 79. An order need not specify any particular sum to fall under the Statute.—R. vs. McIntosh, 2 East P. C. 942. A writing in the form of a bill of exchange, but without any drawee's name, cannot be charged as an order for the payment of money ; at least, unless shown by averments to be such.—R. vs. Curry, 2 Mood. 218. In Reg. vs. Howie, 11 Cox, 320, it was held that a seaman's advance note was not an order for payment of money. It would seem, however, to be an *undertaking* for the payment of money, within the statute Archbold, 586 ; R. vs. Bamfield, 1 Mood. 417 ; R. vs. Anderson, 2 M. & Rob. 469 ; R. vs. Reed, 2 Mood. 62 ; Reg. vs. Joyce, L. & C. 576. The statute applies as well to a written promise for the payment of money by a third person, as by the supposed party to the instrument.—R. vs. Stone, 1 Den. 181. An instrument, professing to be a scrip certificate of a railway company, is not an undertaking within the statute.—R. vs. West, 1 Den. 258. But perhaps, the words *in italics* in the present section would cover this case.

In *R. vs. Rogers*, 9 C. & P. 41, it was held, that a warrant for the payment of money need not be addressed to any particular person.—See *R. vs. Snelling*, Dears. 219.

As to what is a warrant or order for the delivery of goods, the following cases may be cited.—A pawnbroker's ticket is a warrant for the delivery of goods.—*R. vs. Morrison*; Bell, 158. At the London docks, a person bringing a "tasting order" from a merchant having wine there, is not allowed to taste until the order has across it the signature of a clerk of the company: the defendant uttered a tasting order with the merchant's name forged to it, by presenting it to the company's clerk for his signature across it, which the clerk refused: it was held to be, in this state, a forged order for the delivery of goods within the Statute.—*R. vs. Illidge*, 1 Den. 404. A request for the delivery of goods need not be addressed to any one.—*R. vs. Carney*, 1 Mood. 351; *R. vs. Cullen*, 1 Mood. 300; *R. vs. Pulbroke*, 9, C. & P. 37. Nor need it be signed by a person who can compel a performance of it, or who has any authority over or interest in the goods.—*R. vs. Thomas*, 2 Mood. 16; *R. vs. Thorn*, 2 Mood. 210. Formerly, if upon an indictment for the misdemeanor of obtaining goods under false pretences, a felonious forgery were proved, the Judge had to direct an acquittal.—*R. vs. Evans*, 5 C. & P. 553—but now, see sect. 50 of the Procedure Act of 1869

As to what is a receipt, under this section.—As remarked by Greaves, *suprà*, the additions in the present clause render many of the cases on the subject of no practical importance. A turnpike toll-gate ticket is a receipt for money within this section.—*Reg. vs. Fitch*, *Reg. vs. Howley*, L. & C. 159.—If a person, with intent

to defraud,
fact, th
a book
entry,
he is g
—R. vs.
A docu
the An
that th
authori
as a cl
for mor
472.—

or rece
672; b
is a fe
tor for
giving
porting
held, th
of mon
a felon
Cox, 10

Upon
this sec
under s
prison

MAKING

Sect.
makes,

to defraud, and to cause it to be supposed contrary to the fact, that he has paid a certain sum into a bank, make in a book, purporting to be a pass-book of the bank, a false entry, which denotes that the bank has received the sum, he is guilty of forging an accountable receipt for money.—*R. vs. Moody*, L. & C. 173 ; *R. vs. Smith*, L. & C. 168.—A document called a “clearance” issued to members of the Ancient Order of Foresters Friendly Society, certified that the member had paid all his dues and demands, and authorized any Court of the Order to accept the bearer as a clearance member : *Held*, that this was not a receipt for money under this section.—*Reg. vs. French*, 11 Cox 472.—An ordinary railway ticket is not an acquittance or receipt, within this section, *Reg. vs. Gooden*, 11 Cox 672 ; but now, by sect. 32, *post*, forging a railway ticket is a felony.—The prisoner being pressed by a creditor for the payment of £35 obtained further time by giving an I. O. U. for £35, signed by himself, and also purporting to be signed by W.—W’s name was a forgery ; *held*, that the instrument was a security for the payment of money by W., and that the forgery of his name was a felony within this section.—*Reg. vs. Chambers*, 12 Cox, 109.

Upon the trial of any indictment for any offence under this section, the jury may, if the evidence warrants it, under sect. 49 of the Procedure Act of 1869, convict the prisoner of an attempt to commit the same.

MAKING, ACCEPTING ANY BILL, ETC., ETC., ETC., BY PROCURATION, WITHOUT LAWFUL AUTHORITY,
ETC., ETC., ETC.

Sect. 27.—Whosoever, with intent to defraud, draws, makes, signs, accepts or indorses, any bill of exchange or pro-

missory note, or any undertaking, warrant, order, authority or request for the payment of money, or for the delivery or transfer of goods or chattels, or of any bill, note, or other security for money, by procuration, or otherwise, for, in the name, or on the account of any other person, without lawful authority or excuse, or offers, utters, disposes of, or puts off, any such bill, note, undertaking, warrant, order, authority or request, so drawn, made, signed, accepted, or indorsed by procuration or otherwise without lawful authority or excuse, as aforesaid, knowing the same to have been so drawn, made, signed, accepted or indorsed as aforesaid, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 98, s. 24, Imp.

As to sureties for the peace, in felonies under this Act, see *post*, sect. 58.

As to solitary confinement, see sect. 94 of the Procedure Act of 1869.

Greaves says: "This clause is new, and was framed in order to make persons punishable, who, without authority, make, accept, or indorse bills or notes "per procuration," which was not forgery under the former enactments.—Maddock's case, 2 Russell, 947; Reg. vs. White, 1 Den. 208."

Indictment, as under sect. 25.—See general remarks on forgery.

A deposited with a Building Society £460, for two years, at interest, through the prisoner, who was an agent of the Society. Having obtained the deposit note from A, who gave it up on receiving an accountable receipt

for £
prison
ment
of £
Sussey
by m
jury,
such
and a
mone
98, s.
convic
Up
this s
under
prison

Sec
banke
transv
abbrev
alters
puts o
tion, s
same
afores
to be
term
other
two y
witho
Imp.

for £500, being made up by the £460, and interest, the prisoner wrote, without authority, the following document: "Received of the S. L. Building Society the sum of £417.13.0, on account of my share, No. 8071, *pp.*, Susey Ambler,—William Kay," and obtained £417.13.0, by means thereof and giving up the deposit note. The jury, having found that, by the custom of the Society, such documents were treated as an "authority to pay," and as "a warrant to pay," and as "request to pay" money, the prisoner was convicted under 24-25 Vict., ch. 98, s. 24, (sect. 27, *ante*, of our Statute): *held*, that the conviction was right.—Reg. vs. Kay, 11 Cox 529.

Upon the trial of any indictment for any offence under this section, the jury may, if the evidence warrants it, under sect. 49 of the Procedure Act of 1869, convict the prisoner of an attempt to commit the same.

OBLITERATING CROSSING ON CHEQUES.

Sect. 28. — Whenever any cheque or draft on any banker is crossed with the name of a banker, or with two transverse lines with the words "and company," or any abbreviation thereof, whosoever obliterates, adds to, or alters any such crossing, or offers, utters, disposes of, or puts off, any cheque or draft whereon any such obliteration, addition or alteration has been made, knowing the same to have been made, with intent in any of the cases aforesaid to defraud, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 98, s. 25, Imp.

As to sureties for the peace, in felonies under this Act, see *post*, sect. 58.

As to solitary confinement, see sect. 94 of the Procedure Act of 1869.

Greaves says: "This clause is so framed as to meet the case of a draft either issued with a crossing on it, or crossed after it was issued."

FORGING DEBENTURES.

Sect. 29.—Whosoever fraudulently forges, or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or fraudulently altered, any debenture issued under any lawful authority whatsoever, either within Her Majesty's Dominions, or elsewhere, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years, and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24–25 Vict., ch. 98, s. 26, Imp.

As to sureties for the peace, in felonies under this Act, see *post*, sect. 58.

As to solitary confinement, see sect. 94 of the Procedure Act of 1869.

Greaves says: "The words of this clause originally were *forge or alter*; but as the clause contained no intent to defraud, the Select Committee of the Commons thought 'fraudulently' should be prefixed to 'alter.' By some mistake in the reprint, it is prefixed to *forge*."

— This error has been inserted into our Statute: the words "*fraudulently forge*" are a tautological expression and do not sound well: forgery need not this qualifica-

tion :
like *f*
See
forger

Sec
repeal
relatin
is a re
ch. 88.

AN A
THE

When
the frau
of Merc
Therefo
sent of
enacts a

1. In
shall in
jesty or
nature,
Canada,
or accor
any com
the mem
or some
some of
body of

tion : its own name bears it : *fraudulent* forgery sounds like *fraudulent* larceny, or *malicious* murder.

See remarks under sect. 14, and general remarks on forgery.

FORGERY OF TRADE MARKS.

Sections 30 and 31 of the Forgery Act of 1869 are repealed by 35 Vict., ch. 32, "*an Act to amend the law relating to the fraudulent marking of merchandise*"; which is a reproduction of the Imperial Statute 25-26 Vict., ch. 88, and reads as follows :—

AN ACT TO AMEND THE LAW RELATING TO THE FRAUDULENT MARKING OF MER- CHANDISE.

Whereas it is expedient to amend the Law relating to the fraudulent marking of Merchandise, and to the sale of Merchandise falsely marked for the purpose of fraud : Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

1. In the construction of this Act, the word, " Person " shall include any person, whether a subject of Her Majesty or not, and any body corporate or body of the like nature, whether constituted according to the law of Canada, or of any of Her Majesty's Dominions or Colonies, or according to the law of any foreign country, and also any company, association or society of persons, whether the members thereof be subjects of Her Majesty or not, or some of such persons be subjects of Her Majesty and some of them not, and whether such body corporate, body of the like nature, company, association or society,

be established or carry on business within Her Majesty's Dominions or elsewhere, or partly within Her Majesty's Dominions and partly elsewhere : the word "Mark " shall include any name, signature, word, letter, device, emblem, figure, sign, seal, stamp, diagram, label, ticket or other mark of any other description : and the expression " Trade Mark," shall include any and every such name, signature, word, letter, device, emblem, figure, sign, seal, stamp, diagram, label, ticket or other mark as aforesaid, registered or unregistered, lawfully used by any person to denote any chattel or article to be an article or thing of the manufacture, workmanship, production or merchandise of such person, or to be an article or thing of any peculiar or particular description, made or sold by such person, and shall also include any name, signature, word, letter, number, figure, mark or sign, which, in pursuance of any statute or statutes for the time being in force, relating to trade marks or registered designs, is to be put or placed upon or attached to any chattel or article during the existence or continuance of any patent, copyright or other sole right acquired under the provisions of such statutes or any of them.

2. Every person who, with intent to defraud, or to enable another to defraud any person, forges or counterfeits, or causes or procures to be forged or counterfeited, any trade mark, or applies, or causes or procures to be applied, any trade mark or any forged or counterfeit trade mark, to any chattel or article, not being the manufacture, workmanship, production or merchandise of any person denoted or intended to be denoted by such trade mark or denoted or intended to be denoted by such forged or counterfeited trade mark, or not being the manufacture, workmanship, production or merchandise of any person whose trade mark is so forged or counterfeited :

or app
mark,
chattel
descrip
mercha
trade
mark,
commi
jesty e
to whic
cured t
counter
ment in
means
terfeite
and eve
of such
counter
to Her
misdem
or artic
posed o

3. E
enable a
or proc
or coun
cork, ca
ticket, l
chattel o
ed or ex
trade or
article,
enclosed

or applies, or causes or procures to be applied any trade mark, or any forged or counterfeited trade mark, to any chattel or article, not being the particular or peculiar description of manufacture, workmanship, production or merchandise, denoted or intended to be denoted by such trade mark, or by such forged or counterfeited trade mark, is guilty of a misdemeanor; and every person so committing a misdemeanor shall also forfeit to Her Majesty every chattel and article belonging to such person to which he has so unlawfully applied, or caused or procured to be applied, any such trade mark, or forged or counterfeited trade mark as aforesaid; and every instrument in the possession or power of such person, and by means of which any such trade mark, or forged or counterfeited trade mark as aforesaid, has been so applied, and every instrument or mark in the possession or power of such person for applying any such trade mark, or counterfeited trade mark as aforesaid, shall be forfeited to Her Majesty; and the court before which any such misdemeanour is tried may order such forfeited chattels or articles as aforesaid to be destroyed or otherwise disposed of as such court thinks fit.

3. Every person who, with intent to defraud, or to enable another to defraud any person, applies or causes or procures to be applied any trade mark or any forged or counterfeited trade mark, to any cask, bottle, stopper, cork, capsule, vessel, case, cover, wrapper, band, reel, ticket, label or other thing in, on, or with which any chattel or article is intended to be sold or is sold, or uttered or exposed for sale, or intended for any purpose of trade or manufacture; or encloses or places any chattel or article, or causes or procures any chattel or article to be enclosed or placed in, upon, under, or with any cask,

bottle, stopper, cork, capsule, vessel, case, cover, wrapper, band, reel, ticket, label or other thing to which any trade mark has been falsely applied, or to which any forged or counterfeited trade mark has been applied; or applies, or attaches, or causes or procures to be applied or attached to any chattel or article, any case, cover, reel, ticket or label or other thing to which any trade mark has been falsely applied, or to which any forged or counterfeited trade mark has been applied; or encloses, places or attaches any chattel or article, or causes or procures any chattel or article to be enclosed, placed, or attached in, upon, under, with or to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label or other thing having thereon any trade mark of any other person, is guilty of a misdemeanor; and every person so committing a misdemeanor, shall also forfeit to Her Majesty every such chattel and article, and also every such cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label or other thing as aforesaid, in the possession or power of such person; and every other similar cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label or other thing made to be used in like manner as aforesaid, and every instrument in the possession or power of such person, and by means of which any such trade mark, or forged or counterfeited trade mark, as aforesaid, has been applied, and also every instrument or mark in the possession or power of such person for applying any such trade mark, or forged or counterfeited trade mark as aforesaid, shall be forfeited to Her Majesty; and the Court before which any such misdemeanor is tried, may order such forfeited articles, as aforesaid, to be destroyed or otherwise disposed of as such Court thinks fit.

4. Every person who sells, utters or exposes, either for

sale o
or pro
other
ther w
he kno
the tr
or wr
knowi
so app
such t
afores
cle is
as afo
article
per, co
reel, t
which
posed
every
of mon
sold, u
as afo
dollars
5 H
every
or use
son to
alterat
mark,
manne
and be
trade m
act of
vending

sale or for any purpose of trade or manufacture, or causes or procures to be sold, uttered, or exposed for sale or other purpose as aforesaid, any chattel or article, together with any forged or counterfeited trade mark, which he knows to be forged or counterfeited, or together with the trade mark of any other person applied or used falsely or wrongfully or without lawful authority or excuse, knowing such trade mark of another person to have been so applied or used as aforesaid, and that, whether any such trade mark, or forged or counterfeited trade mark, as aforesaid, together with which any such chattel or article is sold, uttered or exposed for sale or other purpose as aforesaid, be in, upon, about, or with such chattel or article, or in, upon, about, or with any cask, bottle, stopper, cork, capsule, vessel, case, cover, wrapper, band, reel, ticket, label or other thing in, upon, about or with which such chattel or article is so sold or uttered or exposed for sale or other purpose as aforesaid — shall for every such offence forfeit and pay to Her Majesty a sum of money equal to the value of the chattel or article so sold, uttered, offered or exposed for sale or other purpose as aforesaid, and a further sum not exceeding twenty dollars and not less than two dollars.

5 Every addition to and every alteration of, and also, every imitation of any trade mark which is made, applied or used with intent to defraud, or to enable any other person to defraud, or which causes a trade mark with such alteration or addition, or causes such imitation of a trade mark, to resemble any genuine trade mark so or in such manner as to be calculated or likely to deceive, shall be and be deemed to be a false, forged and counterfeited trade mark within the meaning of this Act; and every act of making, applying or otherwise using, procuring vending, or delivering to another, any such addition to,

or alteration of, a trade mark or any such imitation of a trade mark, as aforesaid, done by any person with intent to defraud, or to enable any other person to defraud, shall be and be deemed to be forging and counterfeiting a trade mark within the meaning of this Act; and every act of making, applying, using, procuring, vending or delivering to another, or having in possession any forged or counterfeited trade mark, or any trade mark without the authority of the owner of such trade mark, or of some person by him authorized to use or apply the same, or other lawful and sufficient excuse, shall be *prima facie* evidence of an intent to defraud, or to enable another person to defraud, and shall be deemed to be forging and counterfeiting such trade mark, within the meaning of this Act.

6. Where any person has, before or after the coming into force of this Act, sold, uttered or exposed for sale or other purpose as aforesaid, or has caused or procured to be sold, uttered or exposed for sale or other purpose as aforesaid, any chattel or article, together with any forged or counterfeited trade mark, or together with the trade mark of any other person used without lawful authority or excuse as aforesaid, and that, whether such trade mark, or such forged or counterfeited trade mark as aforesaid, be in, upon, about or with such chattel or article, or in, upon, about or with any cask, bottle, stopper, cork, capsule, vessel, case, cover, wrapper, band, reel, ticket, label or other thing in, upon, about or with which such chattel or article has been sold or exposed for sale, such person shall be bound, upon demand in writing delivered to him, or left for him at his last known dwelling house, or at the place of sale or exposure for sale, by or on the behalf of any person whose trade mark has been so forged or counterfeited, or used without lawful

author
requir
forty-
writin
he pur
the tin
lawful
oath o
the pa
mand
tion to
him; a
ply wi
and pa
such r
the pe
that th
or artic
purpos
or expo
mark,
used w
may be

7. E
enable
be put
bottle,
wrappe
with w
sold or
of trade
thing, i
intende

authority or excuse, as aforesaid, to give to the person requiring the same, or his Attorney or Agent, within forty-eight hours after such demand, full information, in writing, of the name and address of the person from whom he purchased or obtained such chattel or article, and of the time when he obtained the same: and it shall be lawful for any Justice of the Peace, on information on oath of such demand and refusal, to summon before him the party refusing, and on being satisfied that such demand ought to be complied with, to order such information to be given within a certain time to be appointed by him; and any such party who refuses or neglects to comply with such order shall for every such offence, forfeit and pay to Her Majesty, the sum of twenty dollars, and such refusal or neglect shall be *prima facie* evidence that the person so refusing or neglecting had full knowledge that the trade mark, together with which such chattel or article was sold, uttered or exposed for sale or other purpose, as aforesaid, at the time of such selling, uttering or exposing, was a forged, counterfeited and false trade mark, or was the trade mark of a person, which had been used without lawful authority or excuse, as the case may be.

7. Every person who, with intent to defraud, or to enable another to defraud, puts or causes or procures to be put upon any chattel or article, or upon any cask, bottle, stopper, cork, capsule, vessel, case, cover, wrapper, band, reel, ticket, label or other thing, together with which any chattel or article is intended to be, or is sold or uttered, or exposed for sale, or for any purpose of trade or manufacture, or upon any case, frame or other thing, in or by means of which any chattel or article is intended to be, or is exposed for sale, any false descrip-

tion, statement or other indication of or requesting the the quality, number, quantity, measure or weight of such chattel or article, or any part thereof, or of the place or country in which such chattel or article has been made, manufactured, bottled, put up, or produced, or puts or causes, or procures to be put upon any such chattel or article, cask, bottle, stopper, cork, capsule, vessel, case, cover, wrapper, band, reel, ticket, label or thing as aforesaid; any word, letter, figure, signature or mark, for the purpose of falsely indicating such chattel or article, or the mode of manufacturing, bottling or putting up, or producing the same, or the ornamentation, shape or configuration thereof, to be the subject of any existing patent, privilege or copyright, shall, for every such offence, forfeit and pay to Her Majesty a sum of money equal to the value of the chattel or article so sold or uttered or exposed for sale, and a further sum not exceeding twenty dollars, and not less than two dollars.

S. Every person who sells, utters or exposes for sale, or for any purpose of trade or manufacture, or causes or procures to be sold, uttered or exposed for sale, or other purpose as aforesaid, any chattel or article, upon which has been, to his knowledge, put, or upon any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label or other thing, together with which such chattel or article is sold or uttered, or exposed for sale or other purpose as aforesaid, has been so put, or upon any case, frame or other thing used or employed to expose or exhibit such chattel or article for sale, has been so put, any false description, statement or other indication of, or respecting the number, quantity, measure or weight of such chattel or article, or any part thereof, or the place or country in which such chattel or article has been made, manufactured or produced, shall, for every such

offence, forfeit and pay to Her Majesty a sum not exceeding twenty dollars, and not less than two dollars.

9. Provided always that the provisions of this Act shall not be construed so as to make it any offence for any person to apply to any chattel or article, or to any cask, bottle, stopper, cork, capsule, vessel, case, cover, wrapper, band, reel, ticket, label or other thing, with which such chattel or article is sold, or intended to be sold, any name, word or expression generally used for indicating such chattel or article to be of some particular class or description of manufacture only; or so as to make it any offence for any person to sell, utter, or offer, or expose for sale any chattel or article to which, or to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing sold therewith, any such generally used name, word or expression, as aforesaid, has been applied.

10. In every indictment, pleading, proceeding, and document whatsoever, in which any trade mark is intended to be mentioned, it shall be sufficient to mention or state the same to be a trade mark without further or otherwise describing such trade mark, or setting forth any copy or *fac simile* thereof; and in every indictment, pleading, proceeding and document whatsoever, in which it is intended to mention any forged or counterfeited trade mark, it shall be sufficient to mention or state the same to be a forged or counterfeited trade mark, without further or otherwise describing such forged or counterfeited trade mark, or setting forth any copy or *fac simile* thereof.

11. The provisions in this Act contained, of or concerning any act or any proceeding, judgment or conviction for any act hereby declared to be a misdemeanor or offence, shall not, nor shall any of them, take away,

diminish or prejudicially affect any suit, process, proceeding, right, or remedy, which any person aggrieved by such act may be entitled to at law, in equity or otherwise, and shall not, nor shall any of them, exempt or excuse any person from answering or making discovery upon examination as a witness, or upon interrogatories, or otherwise, in any suit or other civil proceeding: provided always, that no evidence, statement or discovery, which any person is so compelled to give or make shall be admissible in evidence against such person in support of any indictment for a misdemeanor at common law or otherwise, or of any proceeding under the provisions of this Act.

12. In every indictment, information, conviction, pleading and proceeding against any person for any misdemeanor or other offence against the provisions of this Act, in which it may be necessary to allege or mention an intent to defraud, or to enable another to defraud, it shall be sufficient to allege or mention that the person accused of having done any act which is hereby made a misdemeanor or other offence, did such act with intent to defraud, or with intent to enable some other person to defraud, without alleging or mentioning any intent to defraud any particular person; and on the trial of any such indictment or information for any such misdemeanor, and on the hearing of any information or charge of or for any such other offence, as aforesaid, and on the trial of any action against any person to recover any penalty for any such other offence, as aforesaid, it shall not be necessary to prove an intent to defraud any particular person, or an intent to enable any particular person to defraud any particular person, but it shall be sufficient to prove with respect to every such misdemeanor or offence that the person accused did the act charged with

intent to defraud, or with intent to enable some other person to defraud, or with the intent that any other person might be enabled to defraud.

13. Every person who aids, abets, counsels or procures the commission of any offence which is by this Act made a misdemeanor, is also guilty of a misdemeanor.

14. Every person convicted or found guilty of any offence which is by this Act made a misdemeanor, shall be liable, at the discretion of the Court, and as the Court shall award, to suffer such punishment by imprisonment for not more than two years, with or without hard labour, or by fine, or both by imprisonment with or without hard labour and fine, and also by imprisonment until the fine (if any) shall have been paid and satisfied.

15. In every case in which any person has committed or done any offence or act, whereby he has forfeited or become liable to pay to Her Majesty any of the penalties or sums of money mentioned in the provisions of this Act, every such penalty or sum of money may be recovered in an action of debt, which any person may, as plaintiff for and on behalf of Her Majesty, commence and prosecute to judgment in any court of record, and the amount of every such penalty or sum of money to be recovered in any such action, shall or may be determined by the jury (if any) sworn to try the issue in such action, and if there be no such jury, then by the court or some other jury as the court thinks fit; or instead of any such action being commenced, such penalty or sum of money may be recovered by a summary proceeding before two Justices of the Peace having jurisdiction in the county or place where the party offending resides

or has any place of business, or in the county or place in which the offence has been committed.

16. In every case in which any such penalty or sum of money forfeited to Her Majesty, as hereinbefore mentioned, is sought to be recovered by a summary proceeding before two Justices of the Peace, the offence or act, by the committing or doing of which such penalty or sum of money has been so forfeited, shall be and be deemed to be an offence and act within the meaning of the Act passed in the session held in the thirty-second and thirty-third years of the reign of Her present Majesty, intituled: "An Act respecting the duties of Justices of the Peace out of Sessions, in relation to summary convictions and orders;" and the information, conviction of the offender, and other proceedings for the recovery of the penalty, or sum so forfeited, shall be had according to the provisions of the said Act.

17. In every case in which judgment is obtained in any such action as aforesaid, for the amount of any such penalty or sum of money forfeited to Her Majesty, the amount thereof shall be paid by the defendant to the Sheriff or the officer of the court, who shall account for the same in like manner as other moneys payable to Her Majesty, and, if it be not paid, may be recovered, or the amount thereof levied, or the payment thereof enforced by execution or other proper proceeding as money due to Her Majesty; and the plaintiff suing on behalf of Her Majesty, upon obtaining judgment, shall be entitled to recover and have execution for all his costs of suit, which shall include a full indemnity for all costs and charges which he shall or may have expended or incurred in, about or for the purposes of the action, unless the court or a judge thereof, directs that costs of the ordinary amount only shall be allowed.

18. No person shall commence any action or proceeding for the recovery of any penalty, or for procuring the conviction of any offender in manner hereinbefore provided, after the expiration of three years next after the committing of the offence, or one year next after the first discovery thereof by the person proceeding.

19. In every case in which, after this Act is in force, any person sells or contracts to sell (whether by writing or not) to any other person, any chattel or article, with any trade mark thereon, or upon any cask, bottle, stopper, cork, capsule, vessel, case, cover, wrapper, band, reel, ticket, label or other thing, together with which such chattel or article is sold, or contracted to be sold, the sale or contract to sell shall in every such case be deemed to have been made with a warranty or contract by the vendor to, or with the vendee, that every trade mark upon such chattel or article, or upon any such cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label or other thing, as aforesaid, was genuine and true, and not forged or counterfeit, and not wrongfully used, unless the contrary be expressed in some writing signed by or on behalf of the vendor, and delivered to and accepted by the vendee.

20. In every case in which, after this Act is in force, any person sells or contracts to sell (whether by writing or not) to any other person any chattel or article upon which, or upon any cask, bottle, stopper, cork, capsule, vessel, case, cover, wrapper, band, reel, ticket, label or other thing, together with which such chattel is sold or contracted to be sold, there is any description, statement or other indication of or respecting the number, quality, quantity, measure or weight of such chattel or article, or the place or country in which such chattel or article has been made, manufactured, bottled or put up, or pro-

duced, the sale or contract to sell shall in every such case, be deemed to have been made with a warranty or contract by the vendor to or with the vendee, that no such description, statement or other indication was in any material respect false or untrue, unless the contrary be expressed in some writing signed by or on behalf of the vendor, and delivered to and accepted by the vendee.

21. In every case in any suit at law or in equity against any person for forging or counterfeiting any trade mark, or for fraudulently applying any trade mark to any chattel or article, or for selling, exposing for sale, or uttering any chattel or article with any trade mark falsely or wrongfully applied thereto, or with any forged or counterfeit trade mark applied thereto, or for preventing the repetition or continuance of any such wrongful act, or the commission of any similar act, in which the plaintiff obtains a judgment or decree against the defendant, the Court shall have power to direct every such chattel or article to be destroyed or otherwise disposed of: and in every such suit in a Court of law, the Court may, upon giving judgment for the plaintiff, award a writ of injunction or injunctions to the defendant, commanding him to forbear from committing, and not by himself or otherwise, to repeat or commit any offence or wrongful act of the like nature as that of which he has been convicted by such judgment; and any disobedience of any such writ of injunction or injunctions shall be punished as a contempt of Court; and in every such suit at law or in equity, it shall be lawful for the Court, or a judge thereof, to make such order as such Court or judge thinks fit, for the inspection of every or any manufacture or process carried on by the defendant, in which any such forged or counterfeit trade mark, or any such trade mark as aforesaid, is alleged to be used or applied as aforesaid; and of every or

any chattel, article and thing in the possession or power of the defendant, alleged to have thereon, or in any way attached thereto, any forged or counterfeit trade mark, or any trade mark falsely or wrongfully applied, and every or any instrument or mark in the possession or power of the defendant, used, or intended to be, or capable of being used for producing or making any forged or counterfeit trade mark, or trade mark alleged to be forged or counterfeit, or for falsely or wrongfully applying any trade mark; and any person who refuses or neglects to obey any such order, shall be held guilty of a contempt of Court.

22. In every case in which any person does, or causes to be done, any of the wrongful acts following, that is to say :—forges or counterfeits any trade mark; or, for the purpose of sale, or for the purpose of any manufacture or trade, applies any forged or counterfeit trade mark to any chattel or article, or to any cask, bottle, stopper, cork, capsule, vessel, case, cover, wrapper, band, reel, ticket, label or thing in or with which any chattel or article is intended to be sold, or is sold, or uttered, or exposed for sale, or for any purpose of trade or manufacture; or encloses or places any chattel or article in, upon, under or with any cask, bottle, stopper, cork, capsule, vessel, case, cover, wrapper, band, reel, ticket, label or other thing, to which any trade mark has been falsely applied; or to which any forged or counterfeit trade mark has been applied, or applies or attaches to any chattel or article, any case, cover, reel, wrapper, band, ticket, label or other thing to which any trade mark has been falsely applied, or to which any forged or counterfeit trade mark has been applied; or encloses, places or attaches any chattel or article in, upon, under, with or to any cask, bottle, stopper, cork, capsule, vessel, case, cover, reel, wrapper, band,

ticket, label or other thing having thereon any trade mark of any other person, every person aggrieved by any such wrongful act, shall be entitled to maintain an action or suit, for damages in respect thereof, against the person guilty of having done such act, or causing or procuring the same to be done, and for preventing the repetition or continuance of the wrongful act, and the commission of any similar act.

23. In every action which any person under the provisions of this Act, commences as plaintiff for or on behalf of Her Majesty for recovering any penalty or sum of money, if the defendant obtains judgment, he shall be entitled to recover his costs of suit, which shall include a full indemnity for all the costs, charges and expenses by him expended, or incurred, in, about or for the purposes of the action, unless the court or a judge thereof directs that costs of the ordinary amount only shall be allowed.

24. In any action which any person, under the provisions of this Act, commences as plaintiff for or on behalf of Her Majesty, for recovering any penalty or sum of money, if it be shown to the satisfaction of the court, or a judge thereof, that the person suing as plaintiff for or on behalf of Her Majesty has no ground for alleging that he has been aggrieved by the committing of the alleged offence, in respect of which the penalty or sum of money is alleged to have become payable, and also that the person so suing as plaintiff is not resident within the jurisdiction of the court, or is not a person of sufficient property to be able to pay any costs which the defendant may recover in the action, the court or judge may order that the plaintiff shall give security, by the bond or recognizance of himself and a surety, or by the deposit of a

sum
fit, f
he m

25

first
eight
thirt
in th

ty's r
the m
1868

mitte

26.

1872,
Act.

The
that o
" Bor
Powd
wrapp

The
similar
these v
which
forgery
was in
resemb
observ
wick's,
soner, v
was wr

The
guilty c

sum of money, or otherwise, as the court or judge thinks fit, for the payment to the defendant of any costs which he may be entitled to recover in the action.

25. This Act shall commence and take effect on the first day of September, in the present year, one thousand eight hundred and seventy-two; and the thirtieth and thirty-first sections of the Act passed in the session held in the thirty-second and thirty-third years of Her Majesty's reign, intituled:—" *An Act respecting Forgery*," and the ninth section of " *The Trade Mark and Design Act of 1868*," are hereby repealed, as regards any offence committed after this Act comes into force.

26. The expression, "The Trade Marks Offences Act, 1872," shall be a sufficient description and citation of this Act.

The prisoner was convicted of forgery: it appeared that one Borwick, the prosecutor, sold powders called "Borwick's Baking Powders" and "Borwick's Egg Powders," which powders he invariably sold in packets, wrapped up in printed papers.

The prisoner procured 10,000 wrappers to be printed similar, with some exceptions, to Borwick's wrappers. In these wrappers, the prisoner enclosed powders of his own, which he sold for Borwick's powders, and it was for the forgery and uttering of these wrappers that the prisoner was indicted. The jury found that the wrappers so far resembled Borwick's as to deceive persons of ordinary observation, and to make them believe them to be Borwick's, and that they were procured and used by the prisoner with intent to defraud: *held* that the conviction was wrong.—Reg. vs. Smith, Dears & B. 566.

The judges were of opinion that the prisoner was guilty of obtaining money under false pretences, but not

of forgery. A similar case would now fall under the above Statute, provided the trade mark was registered.

FORGERY OF RAILWAY TICKETS, ETC.

Sect. 32.--Whosoever knowingly forges or utters, knowing the same to be forged, any ticket or order for a free or paid passage on any railway or on any steam or other vessel, with intent to defraud, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for a term not exceeding three years nor less than two years, or to be imprisoned in any common gaol or place of confinement other than a Penitentiary for any term less than two years.

This clause is the 14th of ch. 94, C. S. C., and is not in the English Act; it will meet such cases, as Reg. vs. Gooden, 11 Cox, 672.

The word "knowingly" before "forges" is useless, and not employed in the other sections, taken from the English Act; the absence of the words "offers, disposes of or puts off" also renders the clause defective and not in conformity with the other parts of the Act.

See general remarks on forgery, and remarks and form of indictment under Sect. 26.

FORGERY OF RECORDS, PROCESS OF COURTS OF JUSTICE, DOCUMENTS PRODUCED IN COURT, ETC.

Sect. 33.—Whosoever forges or fraudulently alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or fraudulently altered, any record, writ, return, panel, process, rule, order, warrant, interrogatory, deposition, affidavit, affirmation, recognizance, *cognovit actionem*, or warrant of attorney, or any original document whatsoever, of or belonging to any court of record,

or any bill, petition, process, notice, rule, answer, pleading, interrogatory, deposition, affidavit, affirmation, report, order, or decree, or any original document whatsoever of or belonging to any Court of Equity or Court of Admiralty, *or any original document whatsoever of or belonging to any Court of Justice*, or any document or writing, or any copy of any document or writing, used or intended to be used as evidence in any court in this section mentioned, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding seven years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 98, s. 27, Imp.

The words in *Italics* are not in the English Act; they constitute an important extension of the clause. *Cognovit actionem* means a confession of judgment.

Sect. 34.—Whosoever, being the clerk of any court, or other officer having the custody of the records of any court, or being the deputy of any such clerk or officer, utters any false copy or certificate of any record, knowing the same to be false, and whosoever, other than such clerk, officer or deputy, signs or certifies any copy or certificate of any record as such clerk, officer or deputy; and whosoever forges or fraudulently alters, or offers, utters, disposes of, or puts off, knowing the same to be forged, or fraudulently altered, any copy or certificate of any record, or offers, utters, disposes of or puts off, any copy or certificate of any record having thereon any false or forged name, hand-writing or signature, knowing the same to be false or forged; and whosoever forges the seal of any court of record, or forges, or fraudulently alters any process of *any court whatsoever*, or serves or enforces any

forged process of any court whatsoever, knowing the same to be forged, or delivers or causes to be delivered to any person, any paper, falsely purporting to be any such process, or a copy thereof, or to be any judgment, decree or order of any court of law or equity, or a copy thereof, knowing the same to be false, or acts, or professes to act under any such false process, knowing the same to be false, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding seven years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 98, s. 28, Imp.

The words in *italics* are not in the English Act.

Greaves says : " In Reg. vs. Evans, 1 Dears and B. 236, and Reg. vs. Richmond, Bell 142, Bramwell, B., differing from the other judges, thought that the words in the 9 and 10 Vict., ch. 95, s. 57, " who shall act or profess to act under any false colour or pretence of the process of the Court " implied an acting under genuine process by false colour or pretence ; and in order to prevent any such doubt, the words " any such false process " are substituted in this clause. The provisions of this clause are,—1. Against any clerk, officer or deputy, uttering any false copy, or certificate of any record knowing it to be false ;—2. Against any person other than such clerk, etc., etc., signing or certifying any such copy or certificate as such clerk ;—3. Against forging or uttering, knowing it to be forged, any such copy or certificate, or any such copy or certificate with a forged signature, knowing it to be forged ; —4. Against forging the seal of any Court of record, or forging the process of *any Court whatsoever* ;—5. Against serving or enforcing any forged process of any

Court whatsoever, knowing it to be forged;—6. Against delivering any paper falsely purporting to be any such process, or a copy thereof, or any judgment, decree or order of any Court of law or equity, or a copy thereof knowing it to be false;—7. Against acting, or professing to act under any such false process, knowing it to be false.”

Sect. 35.—Whosoever forges or fraudulently alters, or offers, utters, disposes of or puts off, knowing the same to be forged or fraudulently altered, any instrument, whether written or printed, or partly written and partly printed, which is or shall be made evidence by any Act passed by the Legislature of any one of the late Provinces of Upper Canada, Lower Canada or Canada, or passed or to be passed by the Parliament of Canada, or by the Legislature of any one of the Provinces of Ontario, Quebec, Nova Scotia, or New Brunswick, and for which offence no other punishment is herein provided, is guilty of felony and shall be liable to be imprisoned in the Penitentiary for any term not exceeding seven years, nor less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement. 24–25 Vict., ch. 98, s. 29, Imp.

Sect. 36.—Whenever any such instrument has been admitted in evidence, the Court or the judge or person who has admitted the same, may, at the request of any party against whom the same has been admitted in evidence, direct that the same shall be impounded and be kept in custody of some officer of the Court or other proper person, for such period and subject to such conditions as the Court, judge or person admitting the same, may seem meet.

This clause is not in the English Act. It is taken from the Consolidated Statutes for Upper Canada, ch. 101, sect.

2. *Quoad* Courts of civil jurisdiction, is it constitutional ?

As to sureties for the peace, in felonies under this Act, see *post*, sect. 58.

As to solitary confinement, see sect. 94 of the Procedure Act of 1869.

See general remarks on forgery, and remarks, and form of indictment under sections 1 and 14, *ante*.

In *Reg. vs. Powner*, 12 Cox 235, it was held by Quain, J., that an indictment for forgery under sect. 28 of the English Act (sect. 34 of our Act, *suprà*) must allege an intent to defraud, ; but that this averment was unnecessary in a count for *fraudulently* altering under the same section.—The “process” alleged to have been altered in this case, was an order by two Justices of the Peace, under the Poor Laws, and was held to fall under the aforesaid section.

Upon the trial of any indictment for any offence under this section, the jury may, if the evidence warrants it, under sect. 49 of the Procedure Act of 1869, convict the prisoner of an attempt to commit the same.—2 Russell, 857.

FORGERY OF NOTARIAL ACTS, REGISTERS OF DEEDS, ETC.

Sect. 37.—Whosoever forges, or fraudulently alters, or offers, utters, disposes of or puts off, knowing the same to be forged or fraudulently altered, *any notarial act or instrument, or copy purporting to be an authenticated copy thereof, or any proces verbal of a surveyor, or like copy thereof*, or forges, or fraudulently alters, or offers, or utters, disposes of or puts off, knowing the same to be forged or fraudulently altered, *any duplicate of any instrument, or any memorial, affidavit, affirmation, entry, certificate, indorsement, document, or writing made or*

issued under, the provisions of any Act heretofore passed by the Legislature of any one of the late Provinces of Upper Canada, Lower Canada, or Canada, or passed or hereafter to be passed by the Parliament of Canada, or by the Legislature of any one of the Provinces of Ontario, Quebec, Nova Scotia or New Brunswick, for or relating to the registry of deeds, or *other instruments or documents respecting or concerning the title to or claims upon any real or personal property whatever*, or forges, or counterfeits the seal of or belonging to any office for the registry of deeds, or *other instruments as aforesaid*, or any stamp or impression of any such seal; or forges any name, handwriting or signature, purporting to be the name, handwriting or signature of any person to any such memorial, affidavit, affirmation, entry, certificate, indorsement, document, or writing, required or directed to be signed by or by virtue of any Act passed or to be passed, or offers, utters, disposes of or puts off, any such memorial or other writing as in this section before mentioned, having thereon any such forged stamp, or impression of any such seal, or any such forged name, handwriting or signature, knowing the same to be forged, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour and with or without solitary confinement.—24–25 Vict., ch. 98, s. 31, Imp.

The words in *Italics* are not in the English Act: they seem principally adaptable to the Province of Quebec.

As to sureties for the peace, in felonies under this Act, see *post*, sect. 58.

As to solitary confinement, see sec. 9 of the Procedure Act of 1869.

See general remarks on forgery, and remarks and form of indictment, under sections 1 and 14, *ante*; also, under the last preceding section, as to the intent to defraud.

Upon the trial of any indictment for any offence under this section, the jury may, if the evidence warrants it, under sect. 49 of the Procedure Act of 1869, convict the prisoner of an attempt to commit the same.—2 Russell, 939.

FORGERY OF ORDERS, SUMMONS, ETC., ETC., ETC., OF
JUSTICES OF THE PEACE.

Sect. 38.— Whosoever, with intent to defraud, forges or alters, or offers, utters, disposes of or puts off, knowing the same to be forged or altered, any summons, conviction, order or warrant, of any Justice of the Peace, or any recognizance purporting to have been entered into before any Justice of the Peace or other officer authorized to take the same, or any examination, deposition, affidavit, affirmation, or solemn declaration, taken or made before any Justice of the Peace, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding three years, nor less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.— 24-25 Vict., ch. 98, s. 32, Imp.

As to sureties for the peace, in felonies under this Act, see *post*, sect. 58.

As to solitary confinement, see sect. 94 of the Procedure Act of 1869.

See general remarks on forgery and form of indictment for forgery therewith.

Reg. vs. Powner, 12 Cox 235, *ante*, under sect. 36, is not very clear as to what is the difference between a "process" of a Court under sections 33 and 34 *ante*, and an order, under the present section.

The forgery of an affidavit taken before a Commissioner to receive affidavits would not fall under this section.

FORGERY OF THE NAMES OF JUDGES, CLERKS,
ETC., ETC., ETC.

Sect. 39.—Whosoever, with intent to defraud, forges, or alters any certificate, report, entry, indorsement, declaration of trust, note, direction, authority, instrument or writing, made or purporting or appearing to be made by any judge, officer or clerk, of any Court in Canada, or the name, handwriting or signature of any such judge, officer or clerk, as aforesaid, or offers, utters, disposes of, or puts off any such certificate, report, entry, indorsement, declaration of trust, note, direction, authority, instrument or writing, knowing the same to be forged or altered, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years and not less than two years, or to be imprisoned in any other gaol or place of confinement, for any term less than two years, with or without hard labour and with or without solitary confinement.—24-25 Vict., ch. 98, s. 33, Imp.

As to sureties for the peace, in felonies under this Act, see *post*, sect. 58.

As to solitary confinement, see sect. 94 of the Procedure Act of 1869.

See general remarks on forgery, and form of indictment for forgery therewith.

FALSE LYACKNOWLEDGING RECOGNIZANCES, ETC., ETC., ETC.

Sect. 40.—Whosoever, without lawful authority or excuse, the proof whereof shall lie on the party accused, in the name of any other person, acknowledges any recognizance of bail, or any *cognovit actionem* or judgment, or any deed or other instrument, before any Court, Judge, *Notary*, or other person lawfully authorized in that behalf, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding seven years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24–25 Vict., ch. 98, s. 34, Imp.

The word "*Notary*" is not in the English Act.

As to sureties for the peace, in felonies under this Act, see *post*, sect. 58.

As to solitary confinement, see sect. 94 of the Procedure Act of 1869.

Indictment.—.....on.....feloniously did, without lawful authority or excuse, before.....(the said..... then being lawfully authorized in that behalf) acknowledge a certain recognizance of bail in the name of J. N. in a certain cause then depending in the said Court (or in the court of.....) wherein A. B. was plaintiff, and C. D. defendant, against the form.....—Archbold, 615; 2 Russell, 1016.

Upon the trial of any indictment, for any offence under this section, the jury may, if the evidence warrants it, under sect. 49 of the Procedure Act of 1869, convict the prisoner of an attempt to commit the same.

Se
any l
dispo
know
guilty
the P
and n
other
two y
witho
35, Ir
See

FOR

Sect
injures
injured
or bur
author
one of
New B
certifie
thereof
gister a
death
any ce
thereof
or perm
any cer
relating

FORGERY OF MARRIAGE LICENCES.

Sect. 41.—Whosoever forges or fraudulently alters any licence or certificate for marriage, or offers, utters, disposes of or puts off any such licence or certificate, knowing the same to be forged or fraudulently altered, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding seven years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 98, s. 35, Imp.

See remarks under next section.

FORGERY OF REGISTERS OF BIRTHS, MARRIAGES AND DEATHS.

Sect 42.—Whosoever unlawfully destroys, defaces or injures, or causes or permits to be destroyed, defaced or injured, any register of birth, baptisms, marriages, deaths or burials, which now is or hereafter shall be by law authorized or required to be kept in Canada, or in any one of the Provinces of Ontario, Quebec, Nova Scotia or New Brunswick, or any part of any such register, or any certified copy of any such register, or of any part thereof, or forges, or fraudulently alters in any such register any entry relating to any birth, baptism, marriage, death or burial, or any part of any such register, or any certified copy of such register, or of any part thereof, or knowingly and unlawfully inserts, or causes or permits to be inserted in any such register, or in any certified copy thereof, any false entry of any matter relating to any birth, baptism, marriage, death, or burial,

or knowingly and unlawfully gives any false certificate relating to any birth, baptism, marriage, death or burial, or certifies any writing to be a copy or extract from any such register, knowing such writing or the part of such register whereof such copy or extract is so given, to be false in any material particular, or forges, or counterfeits the seal of or belonging to any register, office, or burial board, or offers, utters, disposes of or puts off any such register, entry, certified copy, certificate or seal, knowing the same to be false, forged or altered, or offers, utters, disposes of or puts off any copy or any entry in any such register, knowing such entry to be false, forged or altered, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life, or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 98, s. 36, Imp.

Sect. 43—Whosoever knowingly and wilfully inserts, or causes or permits to be inserted, in any copy of any register directed or required by law to be transmitted to any registrar or other officer, any false entry of any matter relating to any baptism, marriage, or burial, or forges, or alters, or offers, utters, disposes of or puts off knowing the same to be forged or altered, any copy of any register so directed or required to be transmitted as aforesaid, or knowingly or wilfully signs or verifies any copy of any register so directed or required to be transmitted as aforesaid, which copy is false in any part thereof, knowing the same to be false, or unlawfully destroys, defaces or injures, or for any fraudulent purpose takes from its place of deposit, or conceals any such copy of any register, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life, or for

any te
any ot
than t
or wit
s. 37,

As t
see pos

As t
dure A

Indi
marria
unlawf
which
false en
and w
(set it
it); wh
married
—da

stated;
was no
elsewh
any oth

(2nd
fully, o
other fa
which
inserted
ized to
entry is
truth an
said, up
S. at th

any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 98, s. 37, Imp.

As to sureties for the peace, in felonies under this Act, see *post*, sect. 58.

As to solitary confinement, see sect. 94 of the Procedure Act of 1869.

Indictment under sect. 42 for making a false entry in a marriage register.—..... feloniously, knowingly and unlawfully did insert in a certain register of marriages, which was then by law authorized to be kept, a certain false entry of a matter relating to a supposed marriage, and which said false entry is as follows: that is to say (*set it out verbatim with inuendoes if necessary to explain it*); whereas in truth and in fact the said A. B. was not married to the said C. D., at the said church, on the said —day of— as in the said entry is falsely alleged and stated; and whereas, in truth and in fact, the said A. B. was not married to the said C. D. at the said church or elsewhere, at the time in the said entry mentioned, or at any other time whatsoever, against the form.....

(2nd Count.).....feloniously did, knowingly and wilfully, offer, utter, dispose of and put off a copy of a certain other false entry relating to a certain supposed marriage, which said last mentioned false entry was before then inserted in a certain register of marriages, by law authorized to be kept, and which said last mentioned false entry is as follows: that is to say (*set it out*) whereas in truth and in fact.....(*as above*). And the jurors aforesaid, upon their oath aforesaid do say that the said J. S. at the time he so offered, uttered, disposed of and put

off the said copy of the said last mentioned false entry well knew the said last mentioned false entry to be false against the form. . . .—Archbold, 598. See *R. vs. Sharpe*, 8 C. & P. 436.

In *Reg. vs. Bowen*, 1 Den. 22, the indictment was under what is now the first part of sect. 42, and charged that "John Bowen feloniously and *wilfully* (*wilfully* must now be *unlawfully*) did destroy, deface and injure a certain register of to wit, the register of which said register was then and there kept (*and by law authorized to be kept*) as the register of the parish of and was then and there in the custody of rector of the said parish of against the form. . . ." It was objected that the indictment was bad for charging three offences, *destroying*, *defacing* "and" *injuring*, the statute saying, *destroying*, *defacing* "or" *injuring*. A second objection was taken that no scienter was charged, and that the word "knowingly" was not in the indictment. The indictment was held good.

In *Reg. vs. Asplin*, 12 Cox 291, it was held by Martin, B., that upon an indictment under sect. 36, (sect. 42 of our Act) for making a false entry into a marriage register, it is not necessary that the entry should be made with intent to defraud, and that it is no defence that the marriage solemnized was null and void, being bigamous; also that, if a person knowing his name to be A, signs another name without authority, he is guilty, and it is immaterial that he is a third witness, the Marriage Act only requiring two.

Upon the trial of any indictment for any offence under these sections, the jury may, if the evidence warrants it, under sect. 49 of the Procedure Act of 1869, convict the prisoner of an attempt to commit the same.—2 Russell, 939.

DEMANDING PROPERTY UPON FORGED INSTRUMENTS.

Sect. 44.—Whosoever, with intent to defraud, demands, receives or obtains, or causes or procures to be delivered or paid to any person, or endeavours to receive or obtain, or to cause or procure to be delivered or paid to any person, any chattel, money, security for money, or other property whatsoever, under, upon or by virtue of any forged or altered instrument whatsoever, knowing the same to be forged or altered, or under, upon or by virtue of any probate or letters of administration, knowing the will, testament, codicil, or testamentary writing, on which such probate or letters of administration are obtained to have been forged or altered, or knowing such probate or letters of administration to have been obtained by any false oath, affirmation or affidavit, is guilty of felony and shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 98, s. 38, Imp.

As to sureties for the peace in felonies under this Act, see *post*, sect. 58.

As to solitary confinement, see sect. 94 of the Procedure Act of 1869.

Greaves says: "This clause is new. It is intended to embrace every case of demanding, etc., any property whatsoever upon forged instruments; and it is intended to include bringing an action on any forged bill of exchange, note, or other security for money. The words 'procure to be delivered or paid to any person' were inserted to include cases where one person by means of a forged instrument causes money to be paid to another person, and to avoid

the difficulty which had arisen in the cases as to obtaining money by false pretences.—*R. vs. Wavell*, 1 Mood. 224; *Reg. vs. Garrett*, 1 Dears. 232."

In *Reg. vs. Adams*, 1 Den. 38, the prisoner had obtained goods at a store with a forged order: this was held not to be larceny; it would now fall under this clause.

The clause seems to cover the attempt to commit the offence, as well as the offence itself, and if, as provided for by sect. 49 of the Procedure Act of 1869, a verdict of guilty of the attempt to commit the offence is given by the jury, the prisoner would stand convicted of a felony, and punishable under this clause though see *Reg. vs. Connell*, 6 Cox, 178.

FORGERY OF ANY DOCUMENT OR WRITING WHATSOEVER.

Sect. 45.—Whosoever maliciously and for any purpose of fraud or deceit, forges any document or thing written, printed or otherwise made capable of being read, or utters any such forged document or thing, knowing the same to be forged, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement; and the wilful alteration for any purpose of fraud or deceit of any such document or thing, or of any document or thing the forging of which is made penal by this Act, shall be held to be a forging thereof.

This clause is not in the English Act.

It is very defective. It seems to be intended to cover all documents, etc., etc., etc., *not before provided for by the Act*, and these words are omitted. And then, the word "maliciously" is here very improperly used: the

abse
also
of th
men
the
"for
conf
As
see p
As
dure
Se
ment
have
and s
pose q
"offe
ment
"wils
"wils
remen
tion of
and th
proof
genuin
to alleg
1 Star
The
perly
accomp
possibl
the cla
otherwi

absence of the words *offers, disposes of, and puts off*, also renders the clause very dissimilar to the other parts of the Act. The last part is useless, as to documents not mentioned in this clause, and as to those mentioned in the clause, the words "or fraudulently alters" after "forges" in the second line would have been more in conformity with the other parts of the Act.

As to sureties for the peace in felonies under this Act, see *post*, sect. 58.

As to solitary confinement, see sect. 94 of the Procedure Act of 1869.

See general remarks on forgery, and form of indictment therewith; each count under this clause should have "*feloniously, maliciously and for a purpose of fraud*," and should be repeated with the variance *and for a purpose of deceit*. The count for uttering should not have "*offer, dispose of or put off*." If an alteration of the document is charged, it must be stated to have been done "*wilfully and for a purpose of fraud*," and in another count "*wilfully and for a purpose of deceit*." But it must be remembered that, in consideration of law, every *alteration* of an instrument amounts to a forgery of the whole, and that an indictment for *forgery* will be supported by proof of a *fraudulent alteration*, though, in cases where a genuine instrument has been altered, it is perhaps better to allege the *alteration* in one count of the indictment.—1 Starkie's Crim. pl. 99.

The words, "*fraud or deceit*" are certainly very properly employed in this clause, and, if they were not accompanied by the word "*maliciously*" would cover all possible cases of forgery, (see general remarks, *ante*,) as the clause is not limited to any document or writing, *not otherwise provided for*.

Sect. 49 of the Procedure Act of 1869 would apply to the trial of any indictment for any offence against this clause.

FORGERY OF ANY INSTRUMENT, HOWEVER DESIGNATED, IN
LAW A WILL, BILL OF EXCHANGE, ETC., ETC., ETC.,
FORGERY OF BILLS MADE OUT OF CANADA,
ETC., ETC., ETC., VENUE,
ETC., ETC., ETC.

Sect. 46.—Where by this or any other Act any person is or shall hereafter be made liable to punishment for forging or altering, or for offering, uttering, disposing of or putting off, knowing the same to be forged or altered, any instrument or writing designated in such Act by any special name or description, and such instrument or writing, however designated, is in law a will, testament, codicil or testamentary writing, or a deed, bond or writing obligatory, or a bill of exchange or a promissory note for the payment of money, or an indorsement on, or assignment of a bill of exchange, or promissory note for the payment of money, or an acceptance of a bill of exchange, or an undertaking, warrant, order, authority, or request for the payment of money, or an indorsement on or assignment of an undertaking, warrant, order, authority or request for the payment of money, within the true intent and meaning of this Act, in every such case, the person forging or altering such instrument or writing, or offering, uttering, disposing of, or putting off such instrument or writing, knowing the same to be forged or altered, may be indicted as an offender against this Act, and punished accordingly.—24-25 Vict., ch. 98, s. 39, Imp.

Sect. 47.—Where the forging or altering any writing or matter whatsoever, or the offering, uttering, disposing

of or p
ing t
expres
forges
knowi
ing o
Canad
not, su
may h
or any
and ev
person
ing of
same n
to be n
person
poses o
altered,
the pay
ment of
paymen
exchang
request
transfer
writing
such de
the pay
together
on or ass
authorit
whatsoe
the dom
or secur
authorit

of or putting off any writing or matter whatsoever, knowing the same to be forged or altered, is in this Act expressed to be an offence, if any person in Canada forges, or alters, or offers, utters, disposes of or puts off, knowing the same to be forged or altered, any such writing or matter, in whatever country or place out of Canada, whether under the Dominion of Her Majesty or not, such writing or matter may purport to be made or may have been made, and in whatever language the same or any part thereof, may be expressed, every such person and every person, aiding, abetting, or counselling such person, shall be deemed to be an offender within the meaning of this Act, and shall be punishable thereby in the same manner as if the writing or matter had purported to be made, or had been made in Canada, and if any person in Canada forges, or alters, or offers, utters, disposes of or puts off, knowing the same to be forged or altered, any bill of exchange, or any promissory note for the payment of money, or any indorsement on or assignment of any bill of exchange or promissory note for the payment of money, or any acceptance of any bill of exchange, or any undertaking, warrant, order, authority, or request for the payment of money, or for the delivery or transfer of any goods or security, or any deed, bond, or writing obligatory for the payment of money, whether such deed, bond, or writing obligatory is made only for the payment of money, or for the payment of money together with some other purpose, or any indorsement on or assignment of any such undertaking, warrant, order, authority, request, deed, bond, or writing obligatory, in whatsoever place or country out of Canada, whether under the dominion of Her Majesty or not, the money payable or secured by such bill, note, undertaking, warrant, order, authority, request, deed, bond or writing obligatory may

be or may purport to be payable, and in whatever language the same respectively or any part thereof may be expressed, and whether such bill, note, undertaking, warrant, order, authority, or request, be or be not, under seal, every such person, and every person aiding, abetting or counselling such person, shall be deemed to be an offender within the meaning of this Act, and shall be punishable thereby in the same manner as if the money had been payable or had purported to be payable in Canada.—24-25 Vict., ch. 98, s. 40, Imp.

In *R. vs. Lee*, 2 M. & Rob. 280, it was held, that, in an indictment upon this section, for uttering a forged foreign bill or note, the bill or note need not be alleged to be payable out of England.

Sect. 48.—Whosoever commits any offence against this Act, or commits any offence of forging, or altering any matter whatsoever, or of offering, uttering, disposing of, or putting off, any matter whatsoever, knowing the same to be forged or altered, whether the offence in any such case be indictable at common law, or by virtue of any Act passed or to be passed, may be dealt with, indicted, tried and punished in any district, county or place in which he is apprehended or in custody, in the same manner in all respects as if the offence had been actually committed in that district, county or place; and every accessory before or after the fact to any such offence, if the same be a felony, and every person aiding, abetting or counselling the commission of any such offence, if the same be a misdemeanor, may be dealt with, indicted, tried and punished, in any district, county or place, in which he shall be apprehended, or be in custody, in the same manner in all respects as if his offence, and the offence of his principal, had been actually committed, in

such
41, In
Sec
It is d
this ex
be the

As
section
tried i
may b
and th
in cust
in the
held th
been in
until th
dischar
triable
had bee
the rep

DESC

Sect.
offering
strumen
describ
the sam
thereof,
thereof,
thereof.

The v
See s

such district, county or place.—24-25 Vict., ch. 98, s. 41, Imp.

Sect. 46 was first enacted by 11 Geo. 4 & 1 Will. 4. It is doubtful, says Bishop, 2 Crim. Proced. 446, whether this explanatory section does more than affirm what would be the interpretation of the Courts, without it.

As to Sect. 48, it was held, under the corresponding section of the English Act, that where the prisoner is tried in the county where he is in custody, the forgery may be alleged to have been committed in that county, and there need not be any averment that the prisoner is in custody there.—*R. vs. James*, 7 C. & P. 553. And in the case of *Reg. vs. Smythies*, 1 Den. 498, it was held that, although the defendant is not shewn to have been in custody in the county where the bill is found, until the moment before his trial, when he surrenders in discharge of his bail, that is sufficient to make him triable there, and the judges said that the same ruling had been given in *Reg. vs. Whiley*, 2 Mood. 186, though the report is to the contrary.

DESCRIPTION OF INSTRUMENT IN INDICTMENTS FOR
FORGING, OR FOR ENGRAVING, ETC.

Sect. 49.—In any indictment for forging, altering, offering, uttering, disposing of or putting off any instrument, *stamp, mark or thing*, it shall be sufficient to describe the same by any name or designation by which the same may be usually known, or by the purport thereof, without setting out any copy or *fac-simile* thereof, or otherwise describing the same or the value thereof.—24-25 Vict. ch. 98, s. 42, Imp.

The words in *Italics* are not in the English Act.
See sect. 24, of the Procedure Act of 1869.

If the instrument be set out, it should be correctly given.—Archbold, 561. In *Reg. vs. Williams*, 2 Den. 61, the prisoner was indicted for forging a certain warrant, order and request in the words and figures following, (the instrument was then set out in full); it was proved to be only a request: *Held*, that as the instrument was set out in full, the description of its legal character was surplusage, and therefore caused no variance.

And now, any variance of this kind would be amendable, under the Procedure Act of 1869.

Sect. 50.—In any indictment for engraving, or making the whole or any part of any instrument, matter or thing whatsoever, or for using or having the unlawful custody or possession of any plate or other material upon which the whole or any part of any instrument, matter or thing whatsoever has been engraved or made, or for having the unlawful custody or possession of any paper, upon which the whole or any part of any instrument, matter or thing whatsoever has been made or printed, it shall be sufficient to describe such instrument, matter or thing by any name or designation by which the same may be usually known, without setting out any copy or *fac-simile* of the whole or any part of such instrument, matter or thing.—24-25 Vict. ch. 98, s. 43, Imp.

See remarks under last preceding section.

INTENT TO DEFRAUD, HOW TO BE ALLEGED.

Sect. 51.—It shall be sufficient in any indictment for forging, altering, uttering, offering, disposing of, or putting off any instrument whatsoever, where it shall be necessary to allege an intent to defraud, to allege that the party accused did the act with intent to defraud, with-

out alleging an intent to defraud any particular person ; and on the trial of any such offence, it shall not be necessary to prove an intent to defraud any particular person, but it shall be sufficient to prove that the party accused did the act charged with an intent to defraud.—24-25 Vict., ch. 98, s. 44, Imp.

See general remarks on forgery.

CRIMINAL POSSESSION, WHAT IS, UNDER THIS ACT.

Sect. 52.—Where the having any matter or thing in the custody or possession of any person is in this Act expressed to be an offence, if any person has any such matter or thing in his personal custody and possession, or knowingly and wilfully has any such matter or thing in the actual custody and possession of any other person, or knowingly and wilfully has any such matter or thing in any dwelling-house or other building, lodging, apartment, field, or other place, open or enclosed, whether belonging to or occupied by himself or not, and whether such matter or thing is so had for his own use, or for the use or benefit of another, every such person shall be deemed and taken to have such matter or thing in his custody or possession within the meaning of this Act.—24-25 Vict., ch. 98, s. 45, Imp.

SEARCH WARRANTS FOR FORGED INSTRUMENTS, ETC.

Sect. 53.—If it is made to appear by information on oath or affirmation before a Justice of the Peace, that there is reasonable cause to believe that any person has in his custody or possession without lawful authority or excuse, any Dominion or Provincial note, or any note or bill of any bank or body corporate, company or person carrying on the business of bankers, or any frame, mould

or implement for making paper in imitation of the paper used for such notes or bills, or any such paper, or any plate, wood, stone or other material, having thereon any words, forms, devices, or characters capable of producing or intended to produce the impression of any such note or bill, or any part thereof, or any tool, implement or material used or employed, or intended to be used or employed, in or about any of the operations aforesaid, or any forged security, document or instrument whatsoever, or any machinery, frame, mould, plate, die, seal, paper or other matter or thing used or employed, or intended to be used or employed, in the forgery of any security, document or instrument whatsoever, such Justice may, if he think fit, grant a warrant to search for the same; and if the same is found upon such search, it shall be lawful to seize and carry the same before some Justice of the district, county or place, to be by him disposed of according to law, and all such matters and things so seized as aforesaid shall by order of the court where any such offender is tried, or in case there be no such trial, then by order of some Justice of the Peace, be defaced and destroyed, or otherwise disposed of as such court or Justice may direct.—24-25 Vict., ch. 98, s. 46, Imp.

Greaves says: "The cases embraced by this clause are:—1. Where any person has in his possession, without lawful authority or excuse, any notes or bills (of any banks): this provision is intended to reach any case where the bills or notes of *any banks* may have been unlawfully taken away before they were regularly issued. It is true that in such a case the bills or notes are not forged, but they have been unlawfully taken out of the bank, and ought not to be circulated, and the case is at

least
any c
excus
the C
2.
out l
etc.,
used
or an
word
impr
etc.,
3.
lawfu
ment
sion a
will t
cases
have
is he
instru
such
Crow
search
able c
forge
its po
is in
have
the fo
forge
circu
woul
a law

least as strong, as that of coining tools conveyed out of any of Her Majesty's mints without lawful authority or excuse, which may be seized under a search warrant, (by the Coin Act.)

2. Where any person has in his possession, without lawful authority or excuse, any frame, etc., etc., etc., for making paper in imitation of any of the paper used for such notes or bills, — or any such paper, or any plate, wood, etc., etc., etc., having thereon any words, devices, etc., etc., etc., capable of producing the impression of any such note or bill, or any tool, etc., etc., etc., used about any of those operations.

3. Where any person has in his possession, without lawful authority or excuse, any forged security, document, or instrument whatsoever. This is a new provision and a very important amendment of the law; for it will tend to facilitate prosecutions for forgery in many cases. Hitherto, it has frequently happened that forgers have escaped with impunity for want of such a power as is here conferred: this clause includes every forged instrument whatsoever, and it authorizes the search for such an instrument, in every case, at the instance of the Crown or a private prosecutor. It is quite clear that a search may be made under it whenever there is reasonable cause to believe that it is in the possession of the forger, for he can have no lawful authority or excuse for its possession: just as clearly is that the case, where it is in the possession of any agent of the forger, for he can have no more authority or excuse for its possession than the forger. But perhaps it may be said that where a forged instrument is delivered to an attorney under such circumstances that, if it were a genuine instrument, he would be privileged from producing it, the attorney has a lawful authority or excuse for keeping possession of it:

but this, clearly, is not so ; the words " without lawful authority or excuse " are introduced in this clause, for the like purpose as (when it is used) in the other sections of this Act, and in the similar sections of the Coin Act, viz. to protect persons who are lawfully in possession of the thing specified and their agents, and are inapplicable to persons who are unlawfully in possession of the things, or their agents, whether attorneys or not. Consequently, all such questions as arose in *R. vs. Smith*, 1 Phil. Evid. 171 ; *R. vs. Avery*, 8 C. & P. 596 ; *Reg. vs. Hayward*, 2 C. & K. 234, 1 Den. 166 ; *Reg. vs. Farley*, 2 C. & K. 313, 1 Den. 197, and *Reg. vs. Tuffs (Tylney and Tuffs)*, 1 Den. 319, may be avoided in future by seizing the forged instrument under a search warrant issued in pursuance of this clause. (See *Dixon's case*, decided by Lord Mansfield, 3 Burrows, 1687.) Nor is there any reason why this should not be done : for it is perfectly clear that a stolen deed, bill or note, delivered by a client to his attorney, may be seized under a search warrant issued under s. 103 (s. 117) of the Larceny Act ; so that this construction places the search for forged and stolen instruments on precisely the same footing.— Lastly, where any person has in his possession without lawful authority or excuse, any machinery used in the forgery of any security, document or instrument whatsoever."

See Taylor, on Evid., Vol. 1, p. 813, 823, 828

COMPETENCY OF WITNESSES ON TRIAL.

Sect. 54.—In all prosecutions by indictment, or information against any person or persons for any offence punishable under this Act, no person shall be deemed an incompetent witness, in support of the prosecution, by reason of any interest which such person may have or be

sup
men
suc
per
este
con
corn
pros
S
Ibid

S
this
ject
as an
Reig
forg
first
shall
impr
four
impr
any
labor
25 V

TH
char
ment
trils
all pr

supposed to have in respect of any deed, writing, instrument, or other matter given in evidence on the trial of such indictment or information ; but the evidence of any person or persons so interested or supposed to be interested shall in no case be deemed sufficient to sustain a conviction for any of the said offences, unless the same is corroborated by other legal evidence in support of such prosecution.—9 Geo. 4, ch. 32, s. 1. Imp.

See *R. vs. Hughes*, 2 East. P. C. 1002 ; *R. vs. Maguire*, *Ibid* ; the Bank Prosecutions, R. & R. 378.

PUNISHMENTS, ETC.

Sect. 55.—Whosoever, after the commencement of this Act, is convicted of any offence which has been subjected by any Act or Acts to the same pains or penalties as are imposed by the Act passed in the fifth year of the Reign of Queen Elizabeth, intituled : “ An Act against forgers of false deeds and writings,” for any of the offences first enumerated in the said Act, is guilty of felony, and shall, in lieu of such pains and penalties, be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24–25 Vict., ch. 98. s. 47, Imp.

The Stat. 5 Eliz. ch. 14, relates to the forgery of deeds, charters, writing sealed, court rolls, or wills : the punishment for which was pillory, both ears cut off, the nostrils slit and cut and seared with a hot iron, forfeiture of all property, and imprisonment for life. .

Sect. 56.—Where, by any Act now in force in any Province of Canada, any person falsely making, forging, counterfeiting, erasing or altering any matter whatsoever, or uttering, publishing, offering, disposing of, putting away, or making use of any matter whatsoever, knowing the same to have been falsely made, forged, counterfeited, erased, or altered; or any person demanding, or endeavouring to receive or have anything, or to do or to cause to be done any act, upon or by virtue of any matter whatsoever, knowing such matter to have been falsely made, forged, counterfeited, erased, or altered; or where, by any such Act now in force, any person falsely personating another, or falsely acknowledging anything in the name of another, or falsely representing any other person than the real party to be such real party, or wilfully making a false entry in any book, account or document, or in any manner wilfully falsifying any part of any book, account or document, or wilfully making a transfer of any stock, annuity or fund in the name of any person not being the owner thereof, or knowingly taking any false oath, or knowingly making any false affidavit or false affirmation, or demanding or receiving any money or other thing by virtue of any probate or letters of administration, knowing the will on which such probate shall have been obtained to have been false or forged, or knowing such probate or letters of administration to have been obtained by means of any false oath or false affirmation; or where, by any such Act now in force, any person making or using, or knowingly having in his custody or possession, any frame, mould or instrument for the making of paper, with certain words visible in the substance thereof, or any person making such paper, or causing certain words to appear visible in the substance of any paper, would, according to the Provisions contained in any such Act, be guilty of

felony, and be liable to any greater punishment than is provided by this Act, then and in each of the several cases aforesaid; if any person after the commencement of this Act is convicted of any such felony as is hereinbefore in this section mentioned, or of aiding, abetting, counselling or procuring the commission thereof, and the same is not punishable under any of the other Provisions of this Act, every such person shall be liable to be imprisoned in the Penitentiary for life, or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 98, s. 48, Imp.

It would perhaps have been better to do without this and the last preceding sections, by a repeal clause, and a proper phraseology in sect. 45.

ACCESSORIES AFTER THE FACT.

Sect. 57.—Every accessory after the fact to any felony punishable under this Act, shall be liable to be imprisoned in any gaol or place of confinement, other than the Penitentiary, for any term less than two years, with or without hard labour, and with or without solitary confinement; and every person who aids, abets, counsels or procures the commission of any misdemeanor punishable under this Act, shall be liable to be proceeded against, indicted and punished, as a principal offender.—24-25 Vict. ch. 98, s. 49, Imp.

See sections 4 and 5, 31 Vict., ch 72.

FINE AND SURETIES FOR KEEPING THE PEACE, IN WHAT CASES.

Sect. 58.—Whenever any person is convicted of a misdemeanor under this Act, the Court may, if it thinks fit, in addition to or in lieu of any of the punishments by



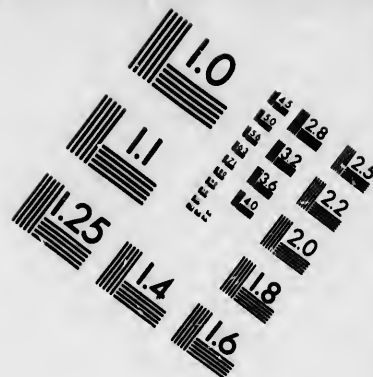
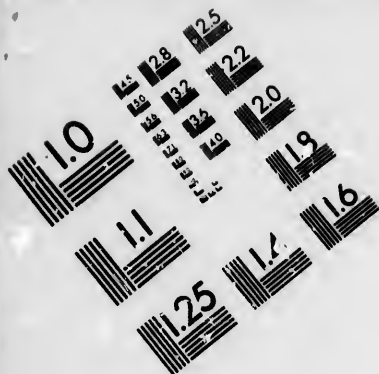
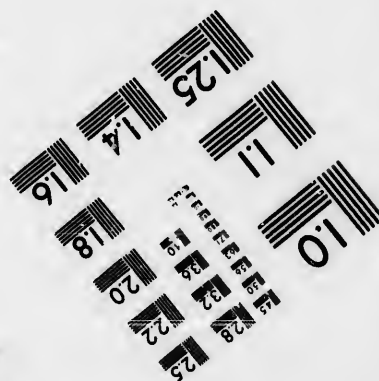
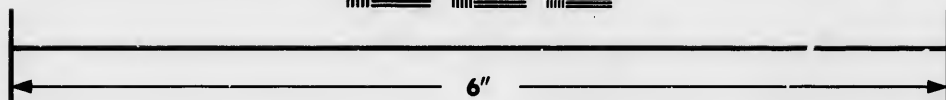
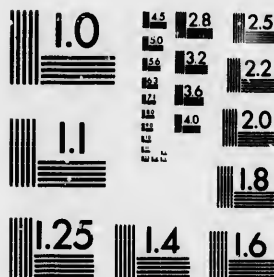


IMAGE EVALUATION TEST TARGET (MT-3)



Photographic Sciences Corporation

**23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503**

0
24
28
32
36
40
44
48
52
56
60
64
68
72
76
80
84
88
92
96
100

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

this Act authorized, fine the offender, and require him to enter into his own recognizances, and to find sureties, both or either, for keeping the peace and being of good behaviour, and in all cases of felonies in this act mentioned, the Court may, if it thinks fit, require the offender to enter into his own recognizances, and to find sureties, both or either, for keeping the peace, in addition to any of the punishments by this Act authorized, provided that no person shall be imprisoned under this section for not finding sureties, for any period exceeding one year.—24-25 Vict., ch. 98, s. 51, Imp.

See remarks under sect. 74 of the *Act respecting malicious injuries to property*.

Sect. 59.—This Act shall commence and take effect on the first day of January, one thousand, eight hundred and seventy.

FORGERY UNDER THE "ACT RESPECTING THE CUSTOMS."

31 VICT., CH. 6.

Sect. 87.—If any person at any time forges or counterfeits any mark or brand to resemble any mark or brand provided or used for the purposes of this Act, or forges or counterfeits the impression of any such mark or brand, or sells or exposes to sale, or has in his custody or possession, any goods with a counterfeit mark or brand, knowing the same to be counterfeit, or uses or affixes any such mark or brand to any other goods required to be stamped as aforesaid, other than those to which the same was originally affixed, such goods so falsely marked or branded shall be forfeited, and every such offender, and his aiders, abettors or assistants, shall, for every such offence, forfeit and pay the sum of two hundred dollars; which penalty shall be recoverable in a summary way,

before
defa
mitt
peri
Se
uses
ment
ment
any f
coun
matic
know
such
there
ingly.

FO

Sec
Post C
or Pos
ity of
Office
any si
ney O
Bank
eral fo
sit or
a felon
for any
seven y
be pun

before any two Justices of the Peace in Canada, and in default of payment the party so offending shall be committed to any of Her Majesty's Gaols in Canada, for a period not exceeding twelve months.

Sect. 88.—If any person counterfeits or falsifies, or uses when so counterfeited or falsified, any paper or document required under this Act or for any purpose therein mentioned, whether written, printed, or otherwise, or by any false statement procures such document, or forges or counterfeits any certificate relating to any oath, affirmation, or declaration, hereby required or authorized, knowing the same to be so forged or counterfeited, such person shall be guilty of a misdemeanor and being thereof convicted, shall be liable to be punished accordingly.

FORGERY UNDER THE "ACT FOR THE REGULATION OF
THE POSTAL SERVICE." 31 VICT., CH. 10.

Sect. 17, par. 9.—To forge, counterfeit or imitate any Post Office Money Order, or advice of such Money Order, or Post Office Savings Bank Depositor's Book, or authority of the Post Master General for repayment of a Post Office Savings Bank deposit or of any part thereof,—or any signature or writing in or upon any Post Office Money Order, Money Order advice, Post Office Savings Bank Depositor's Book, or authority of Post Master General for repayment of a Post Office Savings Bank deposit or of any part thereof with intent to defraud, shall be a felony punishable by imprisonment in the Penitentiary for any term not less than two years and not exceeding seven years, and the accessories to any such offence shall be punishable accordingly.

FORGERY UNDER THE "ACT RESPECTING THE SHIPPING OF
SEAMEN." 36 VICT., CH. 129.

Sect. 34.—Every person who fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, or makes, or assists in making, or procures to be made, any false entry in, or delivers, assists in delivering, or procures to be delivered, a false copy of any agreement under this Act, shall for each such offence be guilty of a misdemeanor.

AN

When
solidate
Quebec
ing to c
same as
Majesty
and How

Sect.
death as

Sect.
shall pro
carried i
such, ser
taken in
the conv
in all res
for whic
a felon.—

The Criminal Law Consolidation Acts.

AN ACT RESPECTING OFFENCES AGAINST THE PERSON.

32-33 VICT., CH. 20.

Whereas it is expedient to assimilate, amend and consolidate the Statute Law of the several Provinces of Quebec, Ontario, Nova Scotia and New Brunswick, relating to offences against the person, and to extend the same as so consolidated to all Canada: Therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

MURDER.

Sect. 1.—Whosoever is convicted of murder shall suffer death as a felon.—24-25 Vict., ch. 100, s. 1, Imp.

Sect. 2.—Upon every conviction for murder the Court shall pronounce sentence of death, and the same may be carried into execution, and all other proceedings upon such sentence and in respect thereof may be had and taken in the same manner, and the Court before which the conviction takes place shall have the same powers in all respects, as after a conviction for any other felony for which a prisoner may be sentenced to suffer death as a felon.—24-25 Vict., ch. 100, s. 2, Imp.

K*

Sect. 6.—In any indictment for murder or manslaughter, or for being an accessory to any murder or manslaughter, it shall not be necessary to set forth the manner in which, or the means by which the death of the deceased was caused, but it shall be sufficient in any indictment for murder to charge that the defendant did feloniously, wilfully, of his malice aforethought, kill and murder the deceased; and it shall be sufficient in any indictment for manslaughter to charge that the defendant did feloniously kill and slay the deceased; and it shall be sufficient in any indictment against any accessory to any murder or manslaughter to charge the principal with the murder or manslaughter, as the case may be, in the manner hereinbefore specified, and then to charge the defendant as an accessory in the manner heretofore used and accustomed *or by law provided*.—24–25 Vict., ch. 100, s. 6, Imp.

The words "*or by law provided*" are not in the English Act.

By sect. 12 of the Procedure Act of 1869, it is enacted that no court of General or Quarter Sessions or Recorder's Court, nor any Court, but a Superior Court having criminal jurisdiction shall have power to try any treason, or any felony punishable with death, or any libel.

Indictment. The Jurors for Our Lady the Queen, upon their oath present, that A. B., on at in the County (or District) of did feloniously, wilfully, and of his malice aforethought, kill and murder one C. D., against the peace of Our Lady the Queen, her crown and dignity.

Upon this indictment the defendant may be acquitted of the murder, and found guilty of manslaughter.—Archbold, 620.

Th
slaug
1.
death
some
from
by an
"unl
one,
clothe
or ma
or pre
duty.
takes
withi
tion o
the w
any d
to be
a subj
the w
wise i
any b
was y
XXX
If a
termi
wound
other s
has be
itself s
cured,
and da
case m

The following rules of law apply to murder and manslaughter.

1. The law takes no cognizance of homicide unless death result from bodily injury, occasioned by some act or unlawful omission, or contradistinguished from death occasioned by any influence on the mind, or by any disease arising from such influence. 2. The terms "*unlawful omission*" comprehend every case where any one, being under any legal obligation to supply food, clothing or other aid or support, or to do any other Act, or make any other provision for the sustentation of life, or prevention of injury to life, is guilty of any breach of duty. 3. It is essential to homicide of which the law takes cognizance that the party die of the injury done within one year and a day thereafter: In the computation of the year and the day from the time of the injury, the whole of the day on which the act was done or of any day on which the cause of injury was continuing, is to be reckoned the first. 4. A child in the womb is not a subject of homicide in respect of any injury inflicted in the womb, unless it afterwards be born alive: it is otherwise if a child die within a year and a day after birth of any bodily injury inflicted upon such child, whilst it was yet in the womb.—4th Cr. L. Com. Report, p. XXXII, 8th of March, 1839.

If a man have a disease which in all likelihood would terminate his life in a short time, and another give him a wound or hurt which hastens his death, it is murder or other species of homicide as the case may be. And it has been ruled that though the stroke given is not in itself so mortal but that with good care it might be cured, yet if the party die of this wound within a year and day, it is murder or other species of homicide as the case may be. And when a wound, not in itself mortal,

for want of proper applications or from neglect, turns to a gangrene or a fever, and that gangrene or fever is the immediate cause of the death of the party wounded, the party by whom the wound is given is guilty of murder or manslaughter, according to the circumstances. For though the fever or gangrene, and not the wound, be the immediate cause of death, yet the wound being the cause of the gangrene or fever is the immediate cause of the death, *causa causati*. So if one gives wounds to another, who neglects the cure of them or is disorderly, and doth not keep that rule which a person wounded should do, yet if he die, it is murder or manslaughter, according to the circumstances: because if the wounds had not been, the man had not died; and therefore neglect or disorder in the person who received the wounds shall not excuse the person who gave them.—1 Russell, 700.

So if a man be wounded, and the wound become fatal from the refusal of the party to submit to a surgical operation.—Reg. vs. Holland, 2 M. & Rob. 351; Reg. vs. Pym, 1 Cox 339; Reg. vs. McIntyre, 2 Cox 379; Rex. vs. Martin, 5, C. & P. 128; R. vs. Webb, 1 M. & Rob. 405. But it is otherwise if death results not from the injury done, but from unskilful treatment, or other cause subsequent to the injury.—4th Rep. Cr. L. Comrs., p. XXXII, 8th of march, 1839.

Murder is the killing any person under the king's peace, with malice prepense or aforethought, either express or implied by law. Of this description the malice prepense, *malitia precogitata*, is the chief characteristic, the grand criterion by which murder is to be distinguished from any other species of homicide, and it will therefore be necessary to inquire concerning the cases in which such malice has been held to exist. It should, however,

be c
mal
it is
ciple
the
are
mali
delib
form
ther
ditat
also,
with
wick
quen
Ma
press
sedat
desig
cover
dent
do th
by la
perso
man
consi
perso
of su
if a n
act th
be pr
such
comm
infer

be observed that when the law makes use of the term *malice aforethought*, as descriptive of the crime of murder, it is not to be understood merely in the sense of a principle of malevolence to particulars, but as meaning that the fact has been attended with such circumstances as are the ordinary symptoms of a wicked, depraved, and malignant spirit; a heart regardless of social duty, and deliberately bent upon mischief. And in general any formed design of doing mischief may be called malice. And therefore, not such killing only as proceeds from premeditated hatred or revenge against the person killed, but also, in many other cases, such killing as is accompanied with circumstances that show the heart to be perversely wicked is adjudged to be of *malice prepense* and consequently murder.—1 Russell, 667.

Malice may be either *express* or *implied by law*. Express malice is, when one person kills another with a sedate deliberate mind and formed design; such formed design being evidenced by external circumstances, discovering the inward intention; as lying in wait, antecedent menaces, former grudges, and concerted schemes to do the party some bodily harm. And malice is implied by law from any deliberate cruel act committed by one person against another, however sudden; thus, where a man kills another suddenly without any, or without a considerable provocation, the law implies malice; for no person, unless of an abandoned heart, would be guilty of such an act upon a slight or no apparent cause. So if a man wilfully poisons another: in such a deliberate act the law presumes malice, though no particular enmity be proved. And where one is killed in consequence of such a wilful act as shows the person by whom it is committed to be an enemy to all mankind, the law will infer a general malice from such depraved inclination to

mischief. And it should be observed as a general rule, that all homicide is presumed to be malicious, and of course amounting to murder, until the contrary appears, from circumstances of alleviation, excuse or justification: and that it is incumbent upon the prisoner to make out such circumstances to the satisfaction of the court and jury, unless they arise out of the evidence produced against him. It should also be remarked that, where the defence rests upon some violent provocation, it will not avail, however grievous such provocation may have been, if it appears that there was an interval of reflection, or a reasonable time for the blood to have cooled before the deadly purpose was effected. And provocation will be no answer to proof of *express malice*: so that, if, upon a provocation received, one party deliberately and advisedly denounce vengeance against the other, as by declaring that *he will have his blood*, or the like, and afterwards carry his design into execution, he will be guilty of murder; although the death happened so recently after the provocation as that the law might, apart from such evidence of express malice, have imputed the act to unadvised passion. But where fresh provocation intervenes between preconceived malice and the death, it ought clearly to appear that the killing was upon the antecedent malice; for if there be an old quarrel between A and B, and they are reconciled again, and then upon a new and sudden falling out, A kills B, this is not murder. It is not to be presumed that the parties fought upon the old grudge, unless it appear from the whole circumstances of the fact; but if upon the circumstances it should appear that the reconciliation was but pretended or counterfeited, and that the hurt done was upon the score of the old malice, then such killing will be murder.—1 Russell, 667.

If a man, after receiving a blow, feigns a reconciliation, and, after the lapse of a few minutes, invites a renewal of the aggression, with intent to use a deadly weapon, and, on such renewal, uses such weapon with deadly effect, there is evidence of implied malice to sustain the charge of murder. But if, after such reconciliation, the aggressor renews the contest, or attempts to do so, and the other, having a deadly weapon about him, on such sudden renewal of the provocation, uses it without previous intent to do so, there is evidence which may reduce the crime to manslaughter.—Reg. vs. Selton, 11 Cox 674. Mr. Justice Hannen in his charge to the jury in that case said: "Now, murder is killing with malice aforethought; but though the malice may be harboured for a long time for the gratification of a cherished revenge, it may, on the other hand, be generated in a man's mind according to the character of that mind, in a short space of time, and therefore it becomes the duty of the jury in each case to distinguish whether such motive had arisen in the mind of the prisoner, and whether it was for the gratification of such malice he committed the fatal act. But the law, having regard to the infirmity of man's nature, admits evidence of such provocation as is calculated to throw a man's mind off its balance, so as to show that he committed the act while under the influence of temporary excitement, and thus to negative the malice which is of the essence of the crime of murder. It must not be a light provocation, it must be a grave provocation; and undoubtedly a blow is regarded by the law as such a grave provocation; and supposing a deadly stroke inflicted promptly upon such provocation, a jury would be justified in regarding the crime as reduced to manslaughter. But if such a period of time has elapsed as would be sufficient to enable the mind to recover its balance, and it

appears that the fatal blow has been struck in the pursuit of revenge, then the crime will be murder." Verdict of manslaughter.

In a case of death by stabbing, if the jury is of opinion that the wound was inflicted by the prisoner while smarting under a provocation so recent and so strong that he may be considered as not being at the moment the master of his own understanding, the offence will be manslaughter; but if there has been, after provocation, sufficient time for the blood to cool, for reason to resume its seat, before the mortal wound was given, the offence will amount to murder; and if the prisoner displays thought, contrivance and design in the mode of possessing himself of the weapon, and in again replacing it immediately after the blow was struck, such exercise of contrivance and design denotes rather the presence of judgment and reason than of violent and ungovernable passion.—*Rex vs. Maynard*, 6 C. & P. 157.

Where a man finds another in the act of adultery with his wife, and kills him or her in the first transport of passion, he is only guilty of manslaughter and that in the lowest degree; for the provocation is grievous, such as the law reasonably concludes cannot be borne in the first transport of passion: and the Court in such cases will not inflict a severe punishment.—1 Russell, 786.

So it seems that if a father were to see a person in the act of committing an unnatural offence with his son and were instantly to kill him, it would only be manslaughter.—*Reg. vs. Fisher*, 8 C. & P. 182.

But in the case of the most grievous provocation to which a man can be exposed, that of finding another in the act of adultery with his wife, though it would be but manslaughter if he should kill the adulterer in

the
rate
cool
it b
cide
und
his
law
he o
he
ber
—F

So
of c
killi
if he
and
ward
law,

In
has
and
leng
and
loc. c
5 C.
terde
had

If
law
if de
the b
—R

the first transport of passion, yet if he kill him deliberately, and upon revenge, after the fact, and sufficient cooling time, it would undoubtedly be murder. For let it be observed that in all possible cases, deliberate homicide upon a principle of revenge is murder. No man under the protection of the law is to be the avenger of his own wrongs. If they are of a nature for which the laws of Society will give him an adequate remedy, thither he ought to resort, but be they of what nature soever, he ought to bear his lot with patience and remember that vengeance belongeth only to the Most High. —Foster, 296.

So, in the case of a father seeing a person in the act of committing an unnatural offence with his son, and killing him instantly, this would be manslaughter, but if he only hears of it, and goes in search of the person, and meeting him strikes him with a stick, and afterwards stabs him with a knife, and kills him, in point of law, it will be murder.— Reg. vs. Fisher, 8 C. & P. 182.

In this last case, the Court said: "Whether the blood has had time to cool or not is a question *for the Court* and not for the jury, but it is for the jury to find what length of time elapsed between the provocation received and the act done.— 1 Russell, 725, but Greaves, note *d*, loc. cit., questions this dictum, and refers to Rex vs. Lynch, 5 C. & P. 324, and Rex vs. Maynard, *supra*, where Tenterden and Tindal left it *to the jury* to say if the blood had had time to cool or not.

If a blow without provocation is *wilfully* inflicted, the law infers that it was done with malice aforethought, and if death ensues the offender is guilty of murder, although the blow may have been given in a moment of passion. — Reg. vs. Noon, 6 Cox 137.

Even blows previously received will not extenuate homicide upon deliberate malice and revenge, especially where it is to be collected from the circumstances that the provocation was sought for the purpose of colouring the revenge.—*Rex vs. Mason*, 1 East P. C. 239.

In *Reg. vs. Welsh*, 11 Cox 336, Keating, J., in summing up the case to the jury, said: "The prisoner is indicted for that he killed the deceased feloniously and with malice aforethought, that is to say, intentionally, without such provocation as would have excused, or such cause as might have justified the act. Malice aforethought means intention to kill. Whenever one person kills another intentionally, he does it with malice aforethought; in point of law, the intention signifies the malice. It is for him to show that it was not so by showing sufficient provocation, which only reduces the crime to manslaughter, because it tends to negative the malice. But when that provocation does not appear, the malice aforethought implied in the intention remains. By the law of England therefore, all intentional homicide is *prima facie* murder. It rests with the party charged with and proved to have committed it to show, either by evidence adduced for the purpose, or upon the facts as they appear, that the homicide took place under such circumstances as to reduce the crime from murder to manslaughter. Homicide which would be *prima facie* murder may be committed under such circumstances of provocation as to make it manslaughter and show that it was not committed with malice aforethought. The question therefore is, first, whether there is evidence of any such provocation as could reduce the crime from murder to manslaughter; and if there be any such evidence, then it is for the jury, whether it was such that they can attribute the act to the violence of passion

naturally arising therefrom and likely to be aroused thereby in the breast of a reasonable man. The law, therefore, is not, as was represented by the prisoner's counsel, that if a man commits the crime under the influence of passion, it is mere manslaughter. The law is, that there must exist such an amount of provocation as passion would be excited by the circumstances in the mind of a reasonable man, and so as to lead the jury to ascribe the act to the influence of that passion. When the law says that it allows for the infirmity of human nature, it does not say that if a man without sufficient provocation gives way to angry passion, and does not use his reason to control it,—the law does not say that an act of homicide intentionally committed under the influence of that passion is excused, or reduced to manslaughter. The law contemplates the case of a reasonable man, and requires that the provocation shall be such as that such a man might naturally be induced, in the anger of the moment, to commit the act. Now, I am bound to say that I am unable to discover in the evidence in this case any provocation which would suffice, or approach to such as would suffice, to reduce the crime to manslaughter. It has been laid down that mere words or gestures will not be sufficient to reduce the offence, and at all events the law is clear that the provocation must be serious. I have already said that I can discover no proof of such provocation in the evidence. If you can discover it, you can give effect to it, but you are bound not to do so unless satisfied that it was serious. What I am bound to tell you is that, in law it is necessary that there should have been serious provocation in order to reduce the crime to manslaughter, as for instance a blow, and a severe blow, something which might naturally cause an ordinary and

reasonably minded man to lose his self-control and commit such an act." Verdict: Guilty of murder.

"So also if a man be greatly provoked, as by pulling his nose or other great indignity, and immediately kills the aggressor, though he is not excusable *se defendendo*, since there is no absolute necessity for doing it to preserve himself, yet neither is it murder for there is no previous malice: but it is manslaughter. But in this and every other case of homicide upon provocation, if there be a sufficient cooling time for passion to subside and reason to interpose, and the person so provoked afterwards kill the other, this is deliberate revenge and not heat of blood, and accordingly amounts to murder.—4 Blackstone, 191.

A packer found a boy stealing wood in his master's ground: he bound him to his horse's tail and beat him: the horse took fright and ran away, and dragged the boy on the ground so that he died. This was holden to be murder, for it was a deliberate act and savoured of cruelty.—Foster, 292.

At page 632 of Archbold, is cited *R. vs. Rowley*; a boy after fighting with another, ran home bleeding to his father, the father immediately took a staff, ran three quarters of a mile, and beat the other boy who died of this blow. And this was holden to be manslaughter only. But Mr. Justice Foster, 294, says that he always thought Rowley's case a very extraordinary one.

Though the general rule of law is that provocation by words will not reduce the crime of murder to that of manslaughter, special circumstances attending such a provocation might be held to take the case out of the general rule. In *Reg. vs. Rothwell*, 12 Cox 147, Blackburn, J., in summing up, said: "A person who inflicted a danger-

ous w
must
of mu
vocati
is such
to tha
blows,
must k
who d
the ad
genera
the cri
special
words
sudden
adulter
were t
Now, i
previou
'Aye;
no mor
it again
to con
just pr
as wou
passion
justify
of man
In S
summin
words o
mansla
cation
when, a
ed the

ous wound, that is to say a wound of such a nature as he must know to be dangerous, and death ensues, is guilty of murder; but there may be such heat of blood and provocation as to reduce the crime to manslaughter. A blow is such a provocation as will reduce the crime of murder to that of manslaughter. Where, however, there are no blows, there must be a provocation equal to blows; it must be at least as great as blows. For instance a man who discovers his wife in adultery, and thereupon kills the adulterer, is only guilty of manslaughter. As a general rule of law, no provocation of words will reduce the crime of murder to that of manslaughter, but under special circumstances there may be such a provocation of words as will have that effect, for instance, if a husband, suddenly hearing from his wife that she had committed adultery, and he having no idea of such a thing before, were thereupon to kill his wife, it might be manslaughter. Now, in this case, words spoken by the deceased just previous to the blows inflicted by the prisoner were these: 'Aye; but I'll take no more for thee, for I will have no more children of thee: I have done it once, and I'll do it again,' meaning adultery. Now, what you will have to consider is, would these words, which were spoken just previous to the blows, amount to such a provocation as would in an ordinary man, not in a man of violent or passionate disposition, provoke him in such a way as to justify him in striking her as the prisoner did." Verdict of manslaughter.

In *Sherwood's case*, 1 C. & K. 556, Pollock, C. B., in summing up said: "It is true that no provocation by words only will reduce the crime of murder to that of manslaughter; but it is equally true that every provocation by blows will not have this effect, particularly when, as in this case, the prisoner appears to have resented the blow by using a weapon calculated to cause death.

Still, however, if there be a provocation by blows, which would not of itself render the killing manslaughter, but it be accompanied by such provocation by means of words and gestures as would be calculated to produce a degree of exasperation equal to that which would be produced by a violent blow, I am not prepared to say that the law will not regard these circumstances as reducing the crime to that of manslaughter only."

When A, finding a trespasser upon his land, in the first transport of his passion, beat him and unluckily killed him, and it was holden to be manslaughter, it must be understood that he beat the trespasser, not with a mischievous intention, but *merely to chastise* him, and to deter him from a future commission of such a trespass. For if A had knocked his brains out with a bill or hedge stake, or had killed him by an outrageous beating with an ordinary cudgel, beyond the bounds of a sudden resentment, it would have been murder: these circumstances being some of the genuine symptoms of the *mala mens*, the heart bent upon mischief, which enter into the true notion of malice in the legal sense of the word. Moir having been greatly annoyed by persons trespassing upon his farm, repeatedly gave notice that he would shoot any one who did so, and at length discharged a pistol at a person who was trespassing, and wounded him in the thigh, which led to erysipelas, and the man died. Moir was convicted of murder and executed.—1 Russell, 718.

As there are very many nice distinctions upon this subject of malice prepense, express and implied, the following additional quotations are given here.

Malitia in its proper or legal sense, is different from that sense which it bears in common speech. In common acceptation, it signifies a desire of revenge, or a settled anger against the particular person; but this is

not the
have be
the pass
a rancor
consider
is a m
between
are thro
perly is
and pros
opimis.
ira inv
mind of
degrees.
to anoth
and use
a cruel
Kelyng

But t
is not t
found i
construe
Statute
also in s
strued a
Statutes
"He tha
prepense
establish
thought,
slayer n
hand, an
he spec
certain s

not the legal sense, and Lord Holt, C. J., says: "Some have been led into mistakes by not well considering what the passion of malice is; they have construed it to be a rancour of mind lodged in the person killing for some considerable time before the commission of the fact, *which is a mistake*, arising from the not well distinguishing between *hatred* and *malice*. *Envy, hatred and malice* are three distinct passions of the mind. 1. *Envy* properly is a repining or being grieved at the happiness and prosperity of another, *Invidus alterius rebus macrescit opimis*. 2. *Hatred* which is *odium*, is as Tully said, *ira inveterata*, a rancour fixed and settled in the mind of one towards another which admits of several degrees. 3. *Malice* is a design formed of doing mischief to another; *cum quis data opera male agit*, he that designs and useth the means to do ill is malicious: he that doth a cruel act voluntarily doth it of malice prepensed."

Kelyng's Cr. C. *Stevens & Haynes' reprint*, 174.

But the meaning of the words "*malice aforethought*" is not to be determined in the same way as if they were found in a statute just enacted, and had never been construed. On the other hand they were employed in a Statute on this subject as far back as 1389, were found also in several other early Statutes, and were first construed at a time when the Courts took more liberties with Statutes than they do now. Thus, it is said in an old book, "He that doth a cruel act voluntarily, doth it of malice prepensed"..... The doctrine was long ago and is now established that to constitute the *malice prepensed or aforethought*, which distinguishes murder from manslaughter, the slayer need not have contemplated the injury before hand, and need at no time have intended to take life. If he specifically meant not death, but bodily harm of a certain standard in magnitude or kind, or if he purpose-

ly employed a certain weapon or did certain acts from which the law implies malice, the offence is murder when death follows within a year and a day, the same as though he intended to kill. The actual intent is in many circumstances an important element; but there may be murder as well without as with a murderous mind, and especially the fatal result need not be predetermined. Thus the words "*malice aforethought*" have a technical legal meaning, differing considerably from the popular idea of them.--Bishop, Stat. Cr. 467.

Malice in its legal sense denotes a wrongful act done intentionally without just cause or excuse. Per Little-dale, J., in *McPherson vs. Daniels*, 10 B. & C. 272, and approved of by Cresswell, J., in *Reg. vs. Noon*, 6 Cox 137.

We must settle what is meant by the term *malice*. The legal import of this term differs from its acceptation in common conversation. It is not, as in ordinary speech, only an expression of hatred and ill-will to an individual, but means any wicked or mischievous intention of the mind.

Thus, in the crime of murder which is always stated in the indictment to be committed with malice aforethought, it is neither necessary in support of such indictment to show that the prisoner had any enmity to the deceased, nor would proof of absence of ill-will furnish the accused with any defence, when it is proved that the act of killing was intentional and done without any justifiable cause.—Per Best, J., in *Rex vs. Harvey*, 2 B. & C. 268.

The nature of implied malice is illustrated by the maxim "*Culpa lata dolo æquiparatur.*"

When negligence reaches a certain point, it is the same as intentional wrong. "Every one must be taken to intend that which is the natural consequence of his

action.
he wou
be allo
v. mali

Malice
murder
or actu
of the m
and me
to be s
be only
that an
dient in
Where
horseba
death i
though
but only
throw h

In Gr
with a r
not mean
the repo
rect his
things a
ments a
Stevens

A per
kill. If
likely to
it was w
seen the
manslau
the accid
due care

action." If any one acts in exactly the same way as he would do if he bore express malice to another, he cannot be allowed to say he does not. Wharton's Law lexicon, v. malice.

Malice aforethought, which makes a felonious killing murder, may be practically defined to be not *actual malice* or *actual aforethought*, or any other particular actual state of the mind, but any such combination of wrongful deed and mental culpability as judicial usage has determined to be sufficient to render that murder which else would be only manslaughter. One proposition is plain: that an actual intent to take life is not a necessary ingredient in murder, any more than it is in manslaughter. Where the prisoner fired a loaded pistol at a person on horseback, and the ball took effect on another, whose death it caused, the offence was held to be murder; though the motive for firing it was not to kill the man, but only to frighten his horse, and cause the horse to throw him.—2 Bishop, Cr. L. 675, 676, 682.

In Grey's case, the defendant, a blacksmith, had broken, with a rod of iron, the skull of his servant, *whom he did not mean to kill*, and this was held to be murder; for, says the report, if a father, master, or school-master will correct his child, servant or scholar, he must do it with such things as are fit for correction, and not with such instruments as may probably kill them.—Kelyng, S. C. C. Stevens & Haynes, reprint, 99.

A person driving a cart or other carriage happeneth to kill. If he saw or had timely notice of the mischief likely to ensue, and yet drove on, it will be murder; for it was wilfully and deliberately done. If he might have seen the danger, but did not look before him, it will be manslaughter for want of due circumspection. But if the accident happened in such a manner that no want of due care could be imputed to the driver, it will be acci-

dental death, and the driver will be excused.—Foster, 263.

Further, if there be an evil intent, though that intent extendeth not to death, it is murder. Thus if a man, knowing that many people are in the street, throw a stone over a wall, intending only to frighten them or to give them a little hurt, and thereupon one is killed, this is murder: for he had an ill intent though that intent extendeth not to death, and though he knew not the party slain.—3 Instit. 57.

Although the malice in murder is what is called "*malice aforethought*," yet there is no particular period of time during which it is necessary it should have existed, or the prisoner should have contemplated the homicide. If, for example, the intent to kill or to do other great bodily harm is executed the instant it springs into the mind, the offence is as truly murder, as if it had dwelt there for a longer period.—2 Bishop, Cr. L. 677.

Where a person fires at another a fire-arm, knowing it to be loaded, and therefore intending either to kill or to do grievous bodily harm, if death ensues the crime is murder; and if in such case, the person who fires the weapon though he does not know that it is loaded has taken no care to ascertain, it is manslaughter.—Reg. vs. Campbell, 11 Cox 323.

If an action, unlawful in itself, be done deliberately, and with intention of mischief or great bodily harm to particular individuals, or of mischief indiscriminately, fall where it may, and death ensue against or beside the original intention of the party, it will be murder.—1 Russell, 739. If a man deliberately shoot at A and miss him, but kill B, this is murder.—1 Hale, 438. So where A gave a poisoned apple to his wife, intending to poison her, and the wife, ignorant of the matter, gave it to a child who took it and died, this was held murder in A,

though
suade
loc. c

So
an ab
held
woma
and m
ger to
C., 23

Wh
ting a
life, y
offence
where
of mu
was lib

In F
jury "
felony
its com
then t
was no

Also
to anot
intend
malice,
he did
what h
for all i
doing h
for all t
at one v

though he, being present at the time, endeavoured to dissuade his wife from giving the apple to the child.—Hale, loc. cit.

So if a person give medicine to a woman to procure an abortion, by which the woman is killed, the act was held clearly to be murder, for, though the death of the woman was not intended, the act is of a nature deliberate and malicious, and necessarily attended with great danger to the person on whom it was practised.—1 East P. C., 230, 254.

Whenever one does an act with the design of committing any felony, though not a felony dangerous to human life, yet, if the life of another is accidentally taken, his offence is murder. So if a man set fire to a house, whereby a person in it is burned to death, he is guilty of murder, even if he had no idea that any one was or was likely to be there.—1 Russell, 741.

In Reg. vs. Lee, 4 F. & F. 63, Pollock, C. B., told the jury "that if two or more persons go out to commit a felony with intent that personal violence shall be used in its committal, and such violence is used and causes death, then they are all guilty of murder, even although death was not intended."

Also, where the intent is to do some great bodily harm to another and death ensues, it will be murder: as if A intend only to *beat* B in anger, or from preconceived malice, and happen to kill him, it will be no excuse that he did not intend *all* the mischief that followed; for what he did was *malum in se*, and he must be answerable for all its consequences: he beat B with an intention of doing him some bodily harm, and is therefore answerable for all the harm he did. So, if a large stone be thrown at one with a deliberate intention to hurt, though not to

kill him, and, *by accident*, it kill him, or any other, this is murder.—1 Russell, 742.

Where two persons go out with the common object of robbing a third person, and one of them, in pursuit of that common object, does an act which causes the death of that third person, under such circumstances as to be murder in him who does the act, it is murder in the other also.—Reg. vs. Martin, 7 Cox 357.

See, *post*, sect. 74, 31 Vict., ch. 68, which reduces to manslaughter the killing of any person on a railway, though the act causing the death is unlawful, as by removing a rail, or obstructing the railway.

CASES ILLUSTRATIVE OF GENERAL PRINCIPLES.

The circumstance of a person having acted under an irresistible influence to the commission of homicide, is no defence, if at the time he committed the act, he knew he was doing what was wrong.—Reg. vs. Haynes, F. & F. 666.

On an indictment for murder, it being proved that the prisoner, a soldier, shot his officer through the head, the only evidence for the defence being that the act was sudden, without apparent motive, and that he had been addicted to drink, and had been suffering under depression. *Held*, that this was not enough to raise the defence of insanity, that the sole question was whether the prisoner fired the gun intending to kill, and that his expressions soon after the act were evidence of this, and that alleged inadequacy of motive was immaterial, the question being, not motive, but intent.—Reg. vs. Dixon, 11 Cox, 341.

Killing a man who was out at night dressed in white as a ghost, for the purpose of frightening the neighbour-

hood
wise

For
and c
threw
the v
Pitts

If
knock
stran
& P.

If a
enter
time
test a
but if
but u
attack
uses i
such s
appreh
ing no
retrea
— Reg

A p
another
crime
Leach
1846,

Chil
ment o
of whi
the ju

hood, is murder : it is no excuse that he could not otherwise be taken.— 1 Russell, 749.

Forcing a person to do an act which is likely to produce and does produce death is murder ; so, if the deceased threw himself out of a window, or in a river to avoid the violence of the prisoner.— 1 Russell, 676 ; Reg. vs. Pitts, Car. & M. 284.

If two persons fight and one overpowers the other and knocks him down, and puts a rope round his neck, and strangles him, this will be murder.— Rex vs. Shaw, 6 C & P. 372.

If a person being in possession of a deadly weapon enters into a contest with another intending at the time to avail himself of it, and in the course of the contest actually uses it, and kills the other, it will be murder, but if he did not intend to use it when he began the contest, but used it in the heat of passion, in consequence of an attack made upon him, it will be manslaughter. If he uses it to protect his own life or to protect himself from such serious bodily harm as would give him a reasonable apprehension that his life was in immediate danger, having no other means of defence, and no means of escape, and retreating as far as he can, it will be justifiable homicide.— Reg. vs. Smith, S C. & P. 160.

A person cannot be indicted for murder in procuring another to be executed, by falsely charging him with a crime of which he was innocent.—R. vs. Macdaniel, 1 Leach, 44. Sed quære. ? 4 Blackstone, 196 ; 2d Report, 1846, Cr. Law Comm. 45.

Child murder.— To justify a conviction on an indictment charging a woman with the wilful murder of a child of which she was delivered and which was born alive, the jury must be satisfied affirmatively that the whole

body was brought alive into the world; and it is not sufficient that the child has breathed in the progress of the birth.—*R. vs. Poulton*, 5 C. & P. 329; *R. vs. Enoch*, 5 C. & P. 539.—If a child has been wholly produced from the body of its mother, and she wilfully and of malice aforethought, strangles it while it is alive, and has an independent circulation, this is murder, although the child is still attached to its mother by the umbilical cord.—*Reg. vs. Trilloe*, 2 Mood. 260.—A prisoner was charged with the murder of her new-born child, by cutting off its head: *held* that, in order to justify a conviction for murder, the jury must be satisfied that the entire child was actually born into the world in a living state; and that the fact of its having breathed is not a decisive proof that it was born alive, as it may have breathed and yet died before birth.—*R. vs. Sellis*, 7 C. & P. 850.

An infant in its mother's womb is not considered as a person who can be killed within the description of murder or manslaughter. The rule is thus: it must be born, every part of it must have come from the mother, before the killing of it will constitute a felonious homicide.—*Rex vs. Wright*, 9 C. & P. 754; *R. vs. Blain*, 6 C. & P. 349; 1 Russell, 670; 2 Bishop, Cr. L. 632.—Giving a child, whilst in the act of being born, a mortal wound in the head, as soon as the head appears, and before the child has breathed, will, if the child is afterwards born alive and dies thereof, and there is malice, be murder, but if there is not malice, manslaughter.—*R. vs. Senior*, 1 Mood. C. 346; 1 Lewin, C. C. 183.

Murder by poisoning.—Of all the forms of death, by which human nature may be overcome, the most detestable is that of poison: because it can, of all others, be the least prevented either by manhood or forethought.—3

Inst
hath
the
law,
was
She
pers
ful e
bott
foun
child
of th
law,
actu
Mich
sonin
short
to ha
of his
354.
not a
of sin
death
—Re
a wo
Sept
cutio
of wh
quene
follow
of sy
dered
and s
victu

Inst. 48.—He that wilfully gives poison to another, that hath provoked him or not, is guilty of wilful murder; the reason is because it is an act of deliberation odious in law, and presumes malice.—1 Hale. 455.—A prisoner was indicted for the murder of her infant child by poison. She purchased a bottle of laudanum, and directed the person who had the care of the child to give it a teaspoonful every night. That person did not do so, but put the bottle on the mantel-piece, where another little child found it, and gave part of the contents to the prisoner's child who soon after died: held, that the administering of the laudanum by the child was as much, in point of law, an administering by the prisoner, as if she herself had actually administered it with her own hand.—Reg. vs. Michael, 2 Mood. 120.—On a trial for murder by poisoning, statements made by the deceased in a conversation shortly before the time at which the poison is supposed to have been administered, are evidence to prove the state of his health at that time. Reg. vs. Johnston, 2 C. & K. 354.—On an indictment for the murder of A, evidence is not admissible that three others in the same family died of similar poison, and that the prisoner was at all the deaths, and administered something to two of his patients.—Reg. vs. Winslow, 8 Cox 397.—On an indictment against a woman for the murder of her husband by arsenic, in September, evidence was tendered, on behalf of the prosecution, of arsenic having been taken by her two sons, one of whom died in December and the other in March subsequently, and also, by a third son, who took arsenic in April following but did not die. Proof was given of a similarity of symptoms in the four cases. Evidence was also tendered that she lived in the same house with her husband and sons, and that she prepared their tea, cooked their victuals, and distributed them to the four parties: *held*

that this evidence was admissible for the purpose of proving, first, that the deceased husband actually died of arsenic ; secondly, that his death was not accidental ; and that it was not inadmissible by reason of its tendency to prove or create a suspicion of a subsequent felony.—Reg. vs. Geering, 18 L. J. M. C. 215.—Upon the trial of a husband and wife for the murder of the mother of the former by administering arsenic to her, for the purpose of rebutting the inference that the arsenic had been taken by accident, evidence was admitted that the male prisoner's first wife had been poisoned nine months previously ; that the woman who waited upon her, and occasionally tasted her food, shewed symptoms of having taken poison ; that the food was always prepared by the female prisoner ; and that the two prisoners, the only other persons in the house, were not affected with any symptoms of poison.—Reg. vs. Garner, 4 F. & F. 346. And Archibald, J., after consulting Pollock, C. B., in Reg. vs. Cotton, March, 1873, 12 Cox 400, held, that where a prisoner was charged with the murder of her child by poison, and the defence was that its death resulted from an accidental taking of such poison, evidence to prove that two other children of hers and a lodger in her house had died previous to the present charge, after having been attended by her, was admissible.

MURDER BY KILLING OFFICERS OF JUSTICE.

Ministers of justice, as bailiffs, constables, watchmen, etc., (either civil or criminal justice) while in the execution of their offices, are under the peculiar protection of the law ; a protection founded in wisdom and equity, and in every principle of political justice ; for without it the public tranquillity cannot possibly be maintained, or pri-

vate property secured. For these reasons, the killing of officers so employed has been deemed murder of malice prepense as being an outrage wilfully committed in defiance of the justice of the kingdom. The law extends the same protection to any person acting in aid of an officer of justice, whether specially called thereunto or not. And a public officer is to be considered as acting strictly in discharge of his duty, not only while executing the process intrusted to him, but likewise while he is coming to perform, and returning from the performance of his duty.

He is under the protection of the law *eundo, morando et redeundo*. And therefore, if coming to perform his office he meets with great opposition and retires, and in the retreat is killed, this will be murder. Upon the same principles, if he meets with opposition by the way, and is killed before he comes to the place (such opposition being intended to prevent his performing his duty) this will also be murder.—Roscoe, 697; 1 Russell, 732. But the defendant must be proved to have known that the deceased was a public officer, and in the legal discharge, of his duty as such; for if he had no knowledge of the officer's authority or business, the killing will be manslaughter only.

In order to render the killing of an officer of justice, whether he is authorized in right of his office or by warrant, amount to murder, upon his interference with an affray, it is necessary that he should have given some notification of his being an officer, and of the intent with which he interfered.—Rex vs. Gordon, 1 East, P. C. 315, 352.

Where a constable interferes in an affray to keep the peace, and is killed, such of the persons concerned in killing him as knew him to be a constable are guilty of

murder, and such as did not know it, of manslaughter only.—1 Hale, 446. But it hath been adjudged that if a justice of the peace, constable or watchman, or even a private person, be killed in endeavouring to part those whom he sees fighting, the person by whom he is killed is guilty of murder; yet it hath been resolved, that if the third person slain in such a sudden affray do not give notice for what purpose he comes, by commanding the parties in the king's name to keep the peace, or otherwise manifestly shewing his intention to be not to take part in the quarrel but to appease it, he who kills him is guilty of manslaughter only, for he might suspect that he came to side with his adversary; but if the person interposing in such case be an officer within his proper district, and known, or but generally acknowledged to bear the office he assumeth, the law will presume that the party killing had due notice of his intent, especially if it be in the day-time.—1 Hawkins, 101.

Killing an officer will amount to murder, though he had no warrant, and was not present when any felony was committed, and takes the party upon a charge only, and though such charge does not in terms specify all the particulars necessary to constitute the felony.—*R. vs. Ford*, Russ & Ry. 329.

Killing an officer who attempts to arrest a man will be murder, though the officer had no warrant, and though the man has done nothing for which he was liable to be arrested, if the officer has a charge against him for felony, and the man knows the individual to be an officer, though the officer does not notify to him that he has such a charge —*Rex vs. Woolmer*, 1 Mood. 334.

So, where a man seen attempting to commit a felony, on fresh pursuit kills his pursuer, it is as much murder as

if the
fenda

or no

mit o

1 Mo

If a

and th

man i

his ha

done t

on so

danger

otherv

him de

r

Wh

his du

mansla

Where

tion of

doing s

homici

1 Hale,

acting

have a

stand i

and in

person

liable.—

to arres

interfer

the pers

Hale, 4

if the party were killed while attempting to take the defendant in the act, for any person, whether a peace officer or not, has power to arrest a person attempting to commit or actually committing a felony.—*R. vs. Howarth*, 1 Mood. 207

If a person is playing music in a public thoroughfare, and thereby collects together a crowd of people, a policeman is justified in desiring him to go on, and in laying his hand on him and slightly pushing him, if it is only done to give effect to his remonstrance; and if the person, on so small a provocation, strikes the policeman with a dangerous weapon and kills him, it will be murder, but otherwise if the policeman gives him a blow and knocks him down.—*Rex vs. Hagan*, 8 C. & P. 167.

MURDER.—KILLING BY OFFICERS OF JUSTICE.

Where an officer of justice in endeavouring to execute his duty, kills a man, this is justifiable homicide, or manslaughter, or murder, according to circumstances. Where an officer of justice is resisted in the legal execution of his duty, he may repel force by force; and if in doing so, he kills the party resisting him, it is justifiable homicide; and this in civil as well as in criminal cases.—1 Hale, 494; 2 Hale, 118. And the same as to persons acting in aid of such officer. Thus if a peace officer have a legal warrant against B for felony, or if B stand indicted for felony, in these cases, if B resist, and in the struggle be killed by the officer, or any person acting in aid of him, the killing is justifiable.—*Foster*, 318. So, if a private person attempt to arrest one who commits a felony in his presence or interferes to suppress an affray, and be resisted, and kill the person resisting, this is also justifiable homicide.—1 Hale, 481, 484. Still there must be an apparent neces-

sity for the killing: for if the officer were to kill after the resisting had ceased, or if there were no reasonable necessity for the violence used upon the part of the officer, the killing would be manslaughter at the least. Also, in order to justify an officer or private person in these cases, it is necessary that they should, at the time, be in the act of *legally* executing a duty imposed upon them by law, and under such circumstances that, if the officer or private person were killed, it would have been murder; for if the circumstances of the case were such that it would have been manslaughter only to kill the officer or private person, it will be manslaughter, at least, in the officer or private person to kill the party resisting.—Fost. 318; 1 Hale, 490. If the prisoners in a gaol, or going to a gaol, assault the gaoler or officer, and he, in his defence, kill any of them, it is justifiable, for the sake of preventing an escape.—1 Hale, 496.

Where an officer or private person, having legal authority to apprehend a man, attempts to do so and the man, instead of resisting, flies, or resists and then flies, and is killed by the officer or private person in the pursuit, if the offence with which the man was charged were a treason or a felony, or a dangerous wound given, and he could not otherwise be apprehended, the homicide is justifiable; but if charged with a breach of the peace or other misdemeanor merely, or if the arrest were intended in a civil suit, or if a press-gang kill a seaman or other person flying from them, the killing in these cases would be murder, unless, indeed, the homicide were occasioned by means not likely or intended to kill, such as tripping up his heels, giving him a blow of an ordinary cudgel, or other weapon not likely to kill, or the like: in which case, the homicide, at most, would be manslaughter only. In case of a riot or rebellious assembly, the officers

ende
them
riot

W
have
ensu
occas
prece
killin
if the
anoth
727.

W
been
deadl
occas
also
shew
their
agem
will
either
the p
confl
they
sence
are, i
Youn

W
and d
ing an
And t

endeavouring to disperse the mob are justifiable in killing them, both at common law, and by the Riot Act, if the riot cannot otherwise be suppressed.—Archbold, 646.

DUELLING.

Where words of reproach or other sudden provocations have led to blows and mutual combat, and death has ensued, the important enquiry will be, whether the occasion was altogether sudden and not the result of preconceived anger or malice; for in no case will the killing, though in mutual combat, admit of alleviation, if the fighting were upon a malice. Thus a party killing another in a deliberate duel is guilty of murder.—1 Rus. 727.

When, upon a previous agreement, and after there has been time for the blood to cool, two persons meet with deadly weapons and one of them is killed, the party who occasions the death is guilty of murder, and the seconds also are equally guilty; and with respect to others shewn to be present, the question is, did they give their aid and assistance by their countenance and encouragement of the principals in the contest: mere presence will not be sufficient; but if they sustain the principals either by advice or assistance, or go to the ground for the purpose of encouraging and forwarding the unlawful conflict, although they do not say or do anything, yet, if they are present assisting and encouraging by their presence at the moment when the fatal shot is fired, they are, in law, guilty of the crime of murder.—Reg. vs. Young, 8 C. & P. 644.

Where two persons go out to fight a deliberate duel and death ensues, all persons who are present, encouraging and promoting that death, will be guilty of murder. And the person who acted as the second of the deceased

person in such a duel may be convicted of murder, on an indictment charging him with being present, aiding and abetting the person by whose act the death of his principal was occasioned.—Reg. vs. Cuddy, 1 C. & K. 210.

Verdict.—General Remarks.—By sect. 49 of the Procedure Act of 1869, if upon the trial of any person charged with any felony or misdemeanor, it appears to the jury upon the evidence that the defendant did not complete the offence charged, but that he was guilty only of an attempt to commit the same, such person shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that the defendant is not guilty of the felony or misdemeanor charged but is guilty of an attempt to commit the same: and thereupon, such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for attempting to commit the particular felony or misdemeanor charged in the indictment.—Same in England, 14-15 Vict., ch. 100, s. 9. 1 Russell, 773.

And by sect. 51 of the Procedure Act of 1869, on the trial of any person for any felony whatever, where the crime *charged* includes an assault against the person, although an assault be not charged in terms, the jury may acquit of the felony, and find a verdict of guilty of assault against the person indicted, if the evidence warrants such finding, and the person so convicted shall be liable to be imprisoned in the Penitentiary for any term not exceeding five years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years.—In England, a similar clause, 7 Will. 4 & 1 Vict., ch. 85, sect. 11, has been repealed.

SELF-MURDER.

A *felo de se*, or felon of himself, is a person who being

of some
killed

If a
se, and
he is

Th
be use

"I

temp

few, v

ties, b

ders t

use of

is not

—1 H

"B

which

who k

said to

thing

this an

a mad

the re

aggrav

imposs

the ne

a mad

reason

parent

that n

ch. 9,

If or

present

of sound mind and of the age of discretion, voluntarily killeth himself. 3 Inst. 54.

If a man give himself a wound, intending to be *felo de se*, and dieth not within a year and a day after the wound, he is not *felo de se*.—Ibid.

The following passages from Hale and Hawkins may be usefully inserted here :

"It is not every melancholy or hypochondriacal distemper that denominates a man *non compos*, for there are few, who commit this offence, but are under such infirmities, but it must be such an alienation of mind that renders them to be madmen or frantic, or destitute of the use of reason : a lunatic killing himself in the fit of lunacy is not *felo de se* ; otherwise it is, if it be at another time."—1 Hale, 412.

"But here, I cannot but take notice of a strange notion which has unaccountably prevailed of late, that every one who kills himself must be *non compos* of course : for it is said to be impossible that a man in his senses should do a thing so contrary to nature and all sense and reason. If this argument be good, self-murder can be no crime, for a madman can be guilty of none : but it is wonderful that the repugnancy to nature and reason, which is the highest aggravation of this offence, should be thought to make it impossible to be any crime at all, which cannot but be the necessary consequence of this position, that none but a madman can be guilty of it. May it not, with as much reason, be argued that the murder of a child or of a parent is against nature and reason, and consequently that no man in his senses can commit it."—1 Hawkins, ch. 9, s. 2.

If one encourages another to commit a suicide and is present abetting him while he does so, such person is guilty

of murder as a principal, and if two encourage each other to murder themselves, and one does so, the other being present, but failing in the attempt on himself, the latter is a principal in the murder of the first.—*R. vs. Dyson, R. & R. 523; R. vs. Alison, 8 C. & P. 418.*

An attempt to commit suicide is not an attempt to commit murder, within 32–33 Vict., ch. 20, but still remains a common law misdemeanor.—*Reg. vs. Burgess, Leigh & Cave, 258.*

The finding of *felo de se* by the Coroner's jury, carries a forfeiture of goods and chattels —2 Burns' Justice, 1340.

An attempt to commit suicide is a misdemeanor at common law.—*Reg. vs. Doody, 6 Cox, 463.* See *Reg. vs. Maloney, 9 Cox, 6.*

MANSLAUGHTER.

Sect. 5.—Whosoever is convicted of manslaughter shall be liable to be imprisoned in the Penitentiary for life, or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, or to pay such fine as the court may award, in addition to or without any such other discretionary punishment as aforesaid.—24–25 Vict., ch. 100, s. 5, Imp.

See *post*, as to section 74 of the Railway Act of 1868.

Sect. 6.—In any indictment for murder or manslaughter, or for being an accessory to any murder or manslaughter, it shall not be necessary to set forth the manner in which or the means by which the death of the deceased was caused, but it shall be sufficient in any indictment for murder to charge that the defendant did feloniously, wilfully, of his malice aforethought, kill and murder the deceased; and it shall be sufficient in any indictment for man-

slau
and
men
to ch
as th
and
man
—24

Th
Statu

In
B, or
niou

It
Chat
mans
act o
vs. S

Ma
der, i
d-

imis
is the
in m
infirm

In
ingre
be wa
feloni
to hu
eye o
frailty

slaughter to charge that the defendant did feloniously kill and slay the deceased, and it shall be sufficient in any indictment against any accessory to any murder or manslaughter to charge the prisoner with the murder or manslaughter, as the case may be, in the manner hereinbefore specified, and then to charge the defendant as an accessory, in the manner heretofore used and accustomed *or by law provided*.—24-25 Vict., ch. 100, s. 6, Imp.

The words *or by law provided* are not in the English Statute.

Indictment.—..... The jurors that A, B, on at in the county did feloniously kill and slay one against the peace

It need not conclude *contra formam statuti*.—R. vs. Chatburn, 1 Mood. 402. Nor is it necessary where the manslaughter arises from an act of omission, that such act of omission should be stated in the indictment.—R. vs. Smith, 11 Cox, 210.

Manslaughter is principally distinguishable from murder, in this, that, though the act which occasions the death is unlawful, or likely to be attended with bodily injury, the malice, either express or implied, which is the essence of murder, is presumed to be wanting in manslaughter, the act being rather imputed to the infirmity of human nature.—Roscoe, 638; Foster, 290.

In this species of homicide, malice, which is the main ingredient and characteristic of murder, is considered to be wanting; and though manslaughter is in its degree felonious, yet it is imputed by the benignity of the law to human infirmity; to infirmity which, though in the eye of the law criminal, is considered as incident to the frailty of the human constitution. In order to make an

abettor to a manslaughter a principal in the felony, he must be present aiding and abetting the fact committed. It was formerly considered that there could not be any accessories before the fact in any case of manslaughter, because it was presumed to be altogether sudden, and without premeditation. And it was laid down that if the indictment be for murder against A, and that B and C were counselling and abetting as accessories before only (and not as *present* aiding and abetting, for such are principals), if A be found guilty only of manslaughter, and acquitted of murder, the accessories before will be thereby discharged. But the position ought to be limited to these cases where the killing is sudden and unpremeditated; for there are cases of manslaughter where there may be accessories. Thus a man may be such an accessory by purchasing poison for a pregnant woman to take in order to procure abortion, and which she takes and thereby causes her death.—*Reg. vs. Gaylor, Dears. & Bell*, 288. If therefore upon an indictment against the principal and an accessory after the fact for murder, the offence of the principal be reduced to manslaughter, the accessory may be convicted as accessory to the manslaughter.—1 Russell, 783.

Manslaughter is homicide not under the influence of malice.—*R. vs. Taylor*, 2 Lewin, 215.

The several instances of manslaughter may be considered in the following order. 1. Cases of provocation. 2. Cases of mutual combat. 3. Cases of resistance to officers of justice, to persons acting in their aid, and to private persons lawfully interfering to apprehend felons, or to prevent a breach of the peace. 4. Cases where the killing takes place in the prosecution of some criminal unlawful or wanton act. 5. Cases where the killing takes place in consequence of some lawful act being criminally or

imp
law

V
pass
and
to h
ter.
hima
the c
Cour
prod
all h
The
insul
or go
murd
made
bodil
weap
provo
a stic
unluc
slaugh
cumst
ing h
aggre
case i
and t
brevis
along
ient d

improperly performed, or of some act performed without lawful authority.—1. Russ. loc. cit.

CASES OF PROVOCATION.

Whenever death ensues from the sudden transport of passion, or heat of blood upon a reasonable provocation, and without malice, it is considered as solely imputable to human infirmity : and the offence will be manslaughter. It should be remembered that the person sheltering himself under this plea of provocation must make out the circumstances of alleviation to the satisfaction of the Court and jury, unless they arise out of the evidence produced against him ; as the presumption of law deems all homicide to be malicious, until the contrary is proved. The most grievous *words* of reproach, contemptuous and insulting actions or gestures, or trespasses against lands or goods will not free the party killing from the guilt of murder, if upon such provocation a deadly weapon was made use of, or an intention to kill, or to do some great bodily harm, was otherwise manifested. But if no such weapon be used, or intention manifested, and the party so provoked give the other a box on the ear or strike with a stick or other weapon not likely to kill, and kill him unluckily and against his intention, it will be only manslaughter. Where an assault is made with violence or circumstances of indignity upon a man's person, as by pulling him by the nose, and the party so assaulted kills the aggressor, the crime will be reduced to manslaughter, in case it appears that the assault was resented immediately, and the aggressor killed in the heat of blood, the *furor brevis* occasioned by the provocation. So if A be passing along the street, and B meeting him (there being convenient distance between A and the wall) take the wall of

him and jostle him, and thereupon A kill B, it is said that such jostling would amount to provocation which would make the killing only manslaughter.

And again it appears to have been considered that where A riding on the road, B whipped the horse of A out of the track, and then A alighted and killed B, it was only manslaughter. But in the two last cases, it should seem that the first aggression must have been accompanied with circumstances of great violence or insolence; for it is not every trivial provocation which, in point of law, amounts to an assault, that will of course reduce the crime of the party killing to manslaughter. Even a blow will not be considered as sufficient provocation to extenuate in cases where the revenge is disproportioned to the injury, and outrageous and barbarous in its nature; but where the blow which gave the provocation has been so violent as reasonably to have caused a sudden transport of passion and heat of blood, the killing which ensued has been regarded as the consequence of human infirmity, and entitled to lenient consideration.—1 Russ. 784. For cases on this defence of provocation, see under the head *Murder*.

In *Reg. vs. Fisher*, 8 C. & P. 182, it was ruled that whether the blood has had time to cool or not is a question for the Court and not for the jury, but it is for the jury to find what length of time elapsed between the provocation received, and the act done.—But in *Rex vs. Lynch*, 5 C. & P. 324; *R. vs. Hayward*, 6 C. & P. 127; *Reg. vs. Eagle*, 2 F. & F. 827, the question, whether or not the blow was struck before the blood had time to cool and in the heat of passion, was left to the jury: and this seems now settled to be the law on the question. The English commissioners, 4th Report, p. XXV, are also of opinion that “the law may pronounce whether

any
for t
on t
in re
it.”

C
proa
come
being
unde
ing v
a del
and l
this v
death
the su
115.
of the
tion a
deadl
killing
amou
began
—1 R
White

Wh
one of
the ct
force,
be ma
If t
intent
he be
slaugh

any extenuating occasion of provocation existed, but it is for the jury to decide whether the offender acted solely on that provocation, or was guilty of a malicious excess in respect of the instrument used or the manner of using it."

Cases of mutual combat.—Where, upon words of reproach, or any other sudden provocation, the parties come to blows, and a combat ensues, no undue advantage being sought or taken on either side, if death happen under such circumstances, the offence of the party killing will amount only to manslaughter. If A has formed a deliberate design to kill B, and after this they meet and have a quarrel and many blows pass, and A kills B, this will be murder, if the jury is of opinion that the death was in consequence of previous malice, and not of the sudden provocation.—*Reg. vs. Kirkham*, 8 C. & P. 115. If after an exchange of blows on equal terms, one of the parties on a sudden and without any such intention at the commencement of the affray, snatches up a deadly weapon and kills the other party with it, such killing will only amount to manslaughter; but it will amount to murder if he placed the weapon, before they began to fight, so that he might use it during the affray.—1 *Russell*, 731; *R. vs. Kessel*, 1 C. & P. 437; *R. vs. Whiteley*, 1 *Lewin*, 173.

Where there had been mutual blows, and then, upon one of the parties being pushed down on the ground the other stamped upon his stomach and belly with great force, and thereby killed him, it was considered only to be manslaughter.—*Rex vs. Ayes*, *Russ. & Ry.* 166.

If two persons be fighting, and another interfere with intent to part them, but do not signify such intent, and he be killed by one of the combatants, this is but manslaughter.

A sparring match with gloves fairly conducted in a private room is not unlawful, and therefore death caused by an injury received during such a match does not amount to manslaughter.—*R. vs. Young*, 10 Cox, 371.

Cases of resistance to officers of justice ; to persons acting in their aid, and to private persons lawfully interfering to apprehend felons or to prevent a breach of the peace.—See under the head *murder* ; sub-title *murder by killing officers of justice*. Attempting illegally to arrest a man is sufficient to reduce killing the person making the attempt to manslaughter, though the arrest was not actually made, and though the prisoner had armed himself with a deadly weapon to resist such attempt, if the prisoner was in such a situation that he could not have escaped from the arrest ; and it is not necessary that he should have given warning to the person attempting to arrest him before he struck the blow.—*R. vs. Thompson*, 1 Moo. 80.

If a constable takes a man without warrant upon a charge which gives him no authority to do so, and the prisoner runs away and is pursued by J. S. who was with the constable at the time, and charged by him to assist, and the man kills J. S. to prevent his retaking him, it will not be murder, but manslaughter only ; because if the original arrest was illegal, the recaption would have been so likewise.—*R. vs. Curvan*, 1 Moo. 132.

Where a common soldier stabbed a sergeant in the same regiment who had arrested him for some alleged misdemeanor, *held*, that as the articles of war were not produced, by which the arrest might have been justified, it was only manslaughter as no authority appeared for the arrest.—*R. vs. Withers*, 1 East. P. C. 295.

A warrant leaving a blank for the christian name of the person to be apprehended, and giving no reason for

omi
(it a
and
part
of th
to a
to e
Moo
A
to h
him
at th
quar
that
slaug
the k
vs. P
In
a wa
he sh
fore,
the v
not a
rest v
warr
the o
Chap
If
police
the c
him,
griev
he do
cours

omitting it but describing him only as the son of J. S., (it appears that J. S. had four sons, all living in his house) and stating the charge to be for assaulting A without particularizing the time, place or any other circumstances of the assault, is too general and unspecific. A resistance to an arrest thereon, and killing the person attempting to execute it, will not be murder.— R. vs. Hood, 1 Moo. 381.

A constable having a warrant to apprehend A gave it to his son, who in attempting to arrest A was stabbed by him with a knife which A happened to have in his hand at the time, the constable then being in sight, but a quarter of a mile off; *held*, that this arrest was illegal, and that if death had ensued, this would have been manslaughter only, unless it was shewn that A had prepared the knife beforehand to resist the illegal violence.— R. vs. Patience, 7 C. & P. 795.

In order to justify an arrest even by an officer, under a warrant, for a mere misdemeanor, it is necessary that he should have the warrant with him at the time. Therefore, in a case where the officer, although he had seen the warrant, had it not with him at the time, and it did not appear that the party knew of it: *held*, that the arrest was not lawful: and the person against whom the warrant was issued resisting apprehension and killing the officer, *held* that it was manslaughter only.— Reg. vs. Chapman, 12 Cox 4.

If a prisoner, having been lawfully apprehended by a police-constable on a criminal charge, uses violence to the constable, or to any one lawfully aiding or assisting him, which causes death, and does so with intent to inflict grievous bodily harm, he is guilty of murder: and so, if he does so, only with intent to escape. But if in the course of the struggle, he accidentally causes an injury,

it would be manslaughter. Suppose a constable, having a good and bad warrant, arrest a man on the bad warrant only, which he allows the man to read, who sees it is void, and resists his arrest on that ground, and the result is the death of the officer; if this had been the only authority the officer had, the offence would have been only manslaughter; is the man guilty of murder by reason of the good warrant of which he knew nothing? It would seem that there are strong reasons for saying that he would not be guilty of murder. The ground on which the killing an officer is murder is that the killer is wilfully setting the law at defiance, and killing an officer in the execution of his duty. The ground on which the killing of an officer whilst executing an unlawful warrant is manslaughter is that every man has a right to resist an unlawful arrest, and that such an arrest is a sufficient provocation to reduce the killing to manslaughter. In the supposed case the killer would not be setting the law at defiance, but would be resisting to what appeared to him to be an unlawful arrest; and the actual provocation would be just as great as if the bad warrant alone existed. It is of the essence of a warrant that "the party upon whom it is executed should *know* whether he is bound to submit to the arrest:" (Per Coltman J., in *Hoye vs. Bush*, citing *Rex vs. Weir*, 1 B. & C. 288.) And where an arrest is made without a warrant, it is of the essence of the lawfulness of the arrest that the party arrested should have either express or implied notice of the cause of the arrest. Now, where a constable in the supposed case arrests on the void warrant, the party arrested has no express notice of the good warrant, for it is not shown, and no implied notice of it, for every thing done by the constable is referable to the void warrant; and, besides, the conduct of the constable is calculated

to mislead, and it may well be that the party is innocent, and knows nothing of the offence specified in the valid warrant. Lastly, it must be remembered that in such a case the criminality of the act depends upon the intention of the party arrested, and that intention cannot in any way be affected by facts of which he is ignorant.

On the other hand, it would seem to be clear that, where an officer has two or more warrants, one of which is bad, and he shows all to the party to be arrested, who kills the officer in resisting the arrest, it would be murder, for he was bound to yield obedience to the lawful authority. *By Greaves, in notes on "arrest without warrant," (Cox & Saunders' Crim. Law Consol. Acts, p. LXXVII.)*

Cases where the killing takes place in the prosecution of some criminal, unlawful or wanton act.—Where from an action unlawful in itself, done deliberately and with mischievous intention, death ensues, though against or beside the original intention of the party, it will be murder: and if such deliberation and mischievous intention do not appear, which is matter of fact and to be attested from circumstances, and the act was done heedlessly and incautiously, it will be manslaughter.

As if a person breaking an unruly horse, ride him amongst a crowd of people, and death ensue from the viciousness of the animal, and it appear clearly to have been done heedlessly and incautiously only, and not with the intent to do mischief, the crime will be manslaughter. —1 Russell, 849.

Where one having had his pocket picked, seized the offender, and being encouraged by a concourse of people, threw him into an adjoining pond by way of avenging the theft by ducking him; but without any intention of taking away his life, this was held to be manslaughter only.—*R. vs. Fray*, 1 East. P. C. 236.

Causing the death of a child by giving it spirituous liquors in a quantity quite unfit for its tender age amounts to manslaughter.—*R. vs. Martin*, 3 C. & P. 211.

If a man take a gun, not knowing whether it is loaded or unloaded and using no means to ascertain, fires it in the direction of any other person, and death ensues, this is manslaughter.—*Reg. vs. Campbell*, 11 Cox, 323.

The prisoner was charged with manslaughter. The evidence showed that the prisoner had struck the deceased twice with a heavy stick, that he had afterwards left him asleep by the side of a small fire in a country by-lane during the whole of a frosty night in January, and the next morning finding him just alive, put him under some straw in a barn, where his body was found some months after. The jury were directed that if the death of the deceased had resulted from the beating or from the exposure during the night in question, such exposure being the result of the prisoner's criminal negligence, or from the prisoner leaving the boy under the straw ill but not dead, the prisoner was guilty of manslaughter. Verdict, manslaughter.—*Reg. vs. Martin*, 11 Cox, 137. (See *Reg. vs. Towers*, 12 Cox 530, as to causing death through frightening the deceased.)

Cases where the killing takes place in consequence of some lawful act being criminally or improperly performed or of some act performed without lawful authority.—Where a felony has been committed, or a dangerous wound given, and the party flies from justice, he may be killed in the pursuit, if he cannot otherwise be taken. And the same rule holds if a felon, after arrest, break away as he is carried to gaol, and his pursuers cannot retake without killing him. But if he may be taken in any case without such severity, it is at least manslaughter in him who kills him, and the jury ought to enquire whether it were done of necessity or not.

In making arrests in cases of misdemeanor and breach of the peace (with the exception, however, of some cases of flagrant misdemeanors) it is not lawful to kill the party accused if he fly from the arrest, though he cannot otherwise be overtaken and though there be a warrant to apprehend him, and generally speaking it will be murder; but under circumstances it may amount only to manslaughter, if it appear that death was not intended.—1 Russell, 858.

If an officer whose duty it is to execute a sentence of whipping upon a criminal, should be so barbarous as to cause the party's death by excessive execution of the sentence, he will at least be guilty of manslaughter.—1 Hawkins P. C., ch. 29, s. 5.

Killing by correction.—Moderate and reasonable correction may properly be given by parents, masters and other persons, having authority in *foro domestico*, to those who are under their care, but if the correction be immoderate or unreasonable, either in the measure of it, or in the instrument made use of for that purpose, it will be either murder or manslaughter, according to the circumstances of the case. If it be done with a dangerous weapon, likely to kill or maim, due regard being always had to the age and strength of the party, it will be murder; but, if with a cudgel or other thing not likely to kill, though improper for the purpose of correction, it will be manslaughter,—1 Russell, 861.

Where a master struck his servant with one of his clogs, because he had not cleaned them, and death unfortunately ensued, it was holden to be manslaughter only because the clog was very unlikely to cause death, and the master could not have the intention of taking away the servant's life by hitting him with it.—R. vs. Wiggs, 1 Leach, 378.

A schoolmaster who, on the second day of a boy's return to school wrote to his parent, proposing to beat him severely in order to subdue his alleged obstinacy, and on receiving the father's reply assenting thereto, beat the boy for two hours and a half, secretly in the night, and with a thick stick until he died, is guilty of manslaughter.—Reg. vs. Hopley, 2 B. & P. 202.

Where a person in *loco parentis* inflicts corporal punishment on a child, and compels it to work for an unreasonable number of hours, and beyond its strength, and the child dies, the death being of consumption, but hastened by the ill-treatment, it will not be murder but only manslaughter in the person inflicting the punishment, although it was cruel and excessive, and accompanied by violent and threatening language, if such person believed that the child was shamming illness, and was really able to do the quantity of work required.—R. vs. Cheeseman, 7 C. & P. 454.

An infant, two years and a half old, is not capable of appreciating correction; a father therefore is not justified in correcting it, and if the infant dies owing to such correction, the father is guilty of manslaughter.—Reg. vs. Griffin, 11 Cox, 402.

Death caused by negligence.—Where persons employed about such of their lawful occupations, from whence danger may probably arise to others, neglect the ordinary cautions, it will be manslaughter at least, if death is caused by such negligence.—1 Russell, 864.

That which constitutes murder when by design and of malice prepense, constitutes manslaughter when arising from culpable negligence. The deceased was with others employed in walling the inside of a shaft. It was the duty of the prisoner to place a stage over the mouth of the shaft and the death of the deceased was occasioned by

the negligent omission on his part to perform such duty. He was convicted of manslaughter, and upon a case reserved the conviction was affirmed.—*Reg. vs. Hughes*, 7 Cox, 301.

In an indictment for manslaughter, caused by an act of omission it is not necessary to state in the indictment that it was an act of omission on the part of the prisoner which caused the death of the deceased. The prisoner, as the private servant of B, the owner of a tramway crossing a public road, was entrusted to watch it. While he was absent from his duty, an accident happened and C was killed. The Private Act of Parliament, authorizing the road, did not require B to watch the tramway: *held*, that there was no duty between B and the public, and therefore that the prisoner was not guilty of negligence.—*Reg. vs. Smith*, 11 Cox, 210.

Although it is manslaughter, where the death was the result of the joint negligence of the prisoner and others, yet it must have been the direct result wholly or in part of the prisoner's negligence, and his neglect must have been wholly or in part the proximate and efficient cause of the death, and it is not so where the negligence of some other person has intervened between his act or omission and the fatal result.—*Reg. vs. Ledger*, 2 F. & F. 857.

If a person is driving a cart at an unusually rapid rate and drives over another and kills him, he is guilty of manslaughter though he called to the deceased to get out of the way, and he might have done so, if he had not been in a state of intoxication.—*R. vs. Walker*, 1 C. & P. 320.

And it is no defence to an indictment for manslaughter where the death of the deceased is shown to have been caused in part by the negligence of the prisoner, that

the deceased was also guilty of negligence, and so contributed to his own death. Contributory negligence is not an answer to a criminal charge.—*R. vs. Swindall*, 2 Cox, 141. In summing up in that case, Pollock, C. B., said :

“The prisoners are charged with contributing to the death of the deceased by their negligence and improper conduct ; and, if they did so, it matters not whether the deceased was deaf, or drunk, or negligent, or in part contributed to his own death ; for in this consists a great distinction between civil and criminal proceedings. If two coaches run against each other, and the drivers of both are to blame, neither of them has any remedy for damages against the other. But in the case of loss of life, the law takes a totally different view ; for there each party is responsible for any blame that may ensue, however large the share may be ; and so highly does the law value human life, that it admits of no justification wherever life has been lost, and the carelessness or negligence of any one person has contributed to the death of another person.”

In *Reg. vs. Dant*, 10 Cox, 102, and *L. & C. 570*, Blackburn, J., said : “I have never heard that upon an indictment for manslaughter, the accused is entitled to be acquitted because the person who lost his life was in some way to blame.” And Erle, Channell, Mellor and Montague Smith, JJ., concurred, following *Reg. vs. Swindall*.

And in *Reg. vs. Hutchinson*, 9 Cox 555, Byles, J., in his charge to the Grand-Jury, said : “If the man had not been killed, and had brought an action for damages, or if his wife and family had brought an action, if he had in any degree contributed to the result, an action could not be maintained. But in a criminal case, it was dif-

ferent. The Queen was the prosecutor and could be guilty of no negligence; and if both the parties were negligent the survivor was guilty."

And the same learned Judge, in *Reg. vs. Kew*, 12 Cox, 355, said: "It has been contended if there was contributory negligence on the part of the deceased, then the defendants are not liable. No doubt contributory negligence would be an answer to an action. But who is the plaintiff here? The Queen, as representing the nation; and if they were all negligent together I think their negligence would be no defence."

And Lush, J., in *Reg. vs. Jones*, 11 Cox, 544, distinctly said that contributory negligence on the part of the deceased was no excuse in a criminal case.

In *Reg. vs. Birchall*, 4 F. & F. 1087, Willes, J., however, held that where the deceased has contributed to his death by his own negligence, although there may have been negligence on the part of the prisoner, the latter cannot be convicted of manslaughter, observing that, until he saw a decision to the contrary, he should hold that a man was not criminally responsible for negligence for which he would not be responsible in an action.

If a man undertakes to drive another in a vehicle, he is bound to take proper care in regard to the safety of the man under his charge; and if by culpable negligent driving he causes the death of the other, he will be guilty of manslaughter.—*Reg. vs. Jones*, 11 Cox, 544.

In order to convict the captain of a steamer of manslaughter in causing a death by running down another vessel, there must be some act of personal misconduct or personal negligence shown on his part.—*Reg. vs. Allen*, 7 C. & P., 153; *Reg. vs. Green*, 7 C. & P. 156; *Reg. vs. Taylor*, 9 C. & P. 672.

On an indictment against an engine-driver and a fire-

man of a railway train, for the manslaughter of persons killed, while travelling in a preceding-train, by the prisoner's train running into it, it appeared that on the day in question special instructions had been issued to them, which in some respects differed from the general rules and regulations, and altered the signal for danger so as to make it mean not "stop" but proceed with caution; that the trains were started by the superior officers of the company irregularly, at intervals of about five minutes; that the preceding train had stopped for three minutes, without any notice to the prisoners except the signal for caution; and that their train was being driven at an excessive rate of speed; and that then they did not slacken immediately on perceiving the signal, but almost immediately, and that as soon as they saw the preceding train they did their best to stop but without effect: *held*, first, that the special rules, so far as they were not consistent with the general rules, superseded them; secondly, that if the prisoner honestly believed they were observing them, and they were not obviously illegal, they were not criminally responsible; thirdly, that the fireman being bound to obey the directions of the engine-driver, and so far as appeared, having done so, there was no case against him.—*Reg. vs. Trainer*, 4 F. & F. 105.

Where a fatal railway accident had been caused by the train running off the line, at a spot where rails had been taken up, without allowing sufficient time to replace them, and also without giving sufficient, or at all events effective warning to the engine-driver; and it was the duty of the foreman of plate-layers to direct when the work should be done: *held*, that, though he was under the general control of an inspector of the district, the inspector was not liable, but that the foreman was, assuming his negligence to have been a material and a substan-

tial cause of the accident, even although there had also been negligence on the part of the engine-driver in not keeping a sufficient lookout.—*Reg. vs. Bengé*, 4 F. & F. 504.

By medical practitioners and quacks.—If a person, bona fide and honestly exercising his best skill to cure a patient, performs an operation which causes the patient's death, he is not guilty of manslaughter, and it makes no difference whether such person is a regular surgeon or not, nor whether he has had a regular medical education or not.—*Rex. vs. Van Butchell*, 3 C. & P. 629. A person in the habit of acting as a man midwife tearing away part of the prolapsed uterus of one of his patients, supposing it to be a part of the placenta, by means of which the patient dies, is not indictable for manslaughter, unless he is guilty of criminal misconduct arising either from the grossest ignorance or from the most criminal inattention.—*Rex. vs. Williamson*, 8 C. & P. 635. A person acting as a medical man, whether licensed or unlicensed, is not criminally responsible for the death of a patient occasioned by his treatment, unless his conduct is characterized either by gross ignorance of his art, or by gross inattention to his patient's safety.—*R. vs. St. John Long*, 4 C. & P. 398. Where a person, undertaking the cure of a disease (whether he has received a medical education or not) is guilty of gross negligence in attending his patient after he has applied a remedy, or of gross rashness in the application of it, and death ensues in consequence of either, he is liable to be convicted of manslaughter.—*R. vs. St. John Long* (2nd case) 4 C. & P. 423.

Where a person grossly ignorant of medicine administers a dangerous remedy to one labouring under a disease, proper medical assistance being at the time procurable,

and that dangerous remedy causes death, the person so administering it is guilty of manslaughter—*R. vs. Webb*, 2 Lewin, 196.

In this case, Lord Lyndhurst laid down the following rule: "In these cases there is no difference between a licensed physician or surgeon and a person acting as physician or surgeon without licence. In either case, if a party having a competent degree of skill and knowledge, makes an accidental mistake in his treatment of a patient, through which mistake death ensues, he is not thereby guilty of manslaughter; but if, where proper medical assistance can be had, a person totally ignorant of the science of medicine takes on himself to administer a violent and dangerous remedy to one labouring under disease, and death ensues in consequence of that dangerous remedy having been so administered, then he is guilty of manslaughter."

If a medical man, though lawfully qualified to practise as such, causes the death of a person by the grossly unskilful, or grossly incautious use of a dangerous instrument, he is guilty of manslaughter.—*Reg. vs. Spilling*, 2 M. & Rob. 107.—Any person whether a licensed medical practitioner or not who deals with the life or health of any of His Majesty's subject, is bound to have competent skill; and is bound to treat his or her patients with care, attention and assiduity, and if a patient dies for want of either, the person is guilty of manslaughter.—*R. vs. Spiller*, 5 C. & P. 333; *R. vs. Simpson*, 1 Lewin, 172; *R. vs. Ferguson*, 1 Lewin, 181. In cases of this nature, the question for the jury is always, whether the prisoner caused the death by his criminal inattention and carelessness.—*Reg. vs. Crick*, and *Reg. vs. Crook*, 4 F. & F. 519, 521; *Reg. vs. McLeod*, 12 Cox 534. On an indictment for manslaughter, by reason of gross ignorance and

ne
the
ed
20
A
nou
bot
by
bein
pris
neg
ter.
for
pois
for
dispe
taine
show
of th
dical
disea
died,
tinctl
or wh
with
unski
rous
is culp
ble.—
McLe
The
infant
called
and w

negligence in surgical treatment, neither on one side nor the other can evidence be gone into of former cases treated by the prisoner.—Reg. vs. Whitehead, 3 C. & K. 202.

A mistake on the part of a chemist in putting a poisonous liniment into a medicine bottle, instead of a liniment bottle, in consequence of which the liniment was taken by his customer internally with fatal results, the mistake being made under circumstances which rather threw the prisoner off his guard, does not amount to such criminal negligence as will warrant a conviction for manslaughter.—Reg. vs. Noakes, 4 F. & F. 920.—On an indictment for manslaughter against a medical man by administering poison by mistake for some other drug, it is not sufficient for the prosecution merely to show that the prisoner who dispensed his own drugs supplied a mixture which contained a large quantity of poison, they are bound also to show that this happened through the gross negligence of the prisoner.—Reg. vs. Spencer, 10 Cox, 525.—A medical man who administered to his mother for some disease prussic acid, of which she almost immediately died, is not guilty of manslaughter, it not appearing distinctly what the quantity was which he had administered or what quantity would be too great to be administered with safety to life.—Reg. vs. Bull, 2 F. & F. 201.—An unskilled practitioner who ventures to prescribe dangerous medicines of the use of which he is ignorant, that is culpable rashness, for which he will be held responsible.—Reg. vs. Markuss, 4 F. & F. 356; Reg. vs. McLeod, 12 Cox, 234.

The prisoner was indicted for the manslaughter of an infant child: the prisoner, who practised midwifery was called in to attend a woman who was taken in labour, and when the head of the child became visible, the pri-

soner being grossly ignorant of the art which he professed, and unable to deliver the woman with safety to herself and the child, as might have been done by a person of ordinary skill, broke and compressed the skull of the infant, and thereby occasioned its death immediately after it was born; the prisoner was found guilty; it was submitted that the child being *en ventre de sa mère* when the wound was given, the prisoner could not be guilty of manslaughter; but, upon a case reserved, the judges were unanimously of opinion that the conviction was right.—*R. vs. Senior*, 1 Mood. 346.

NEGLECT OF NATURAL DUTIES.

Lastly, there are certain natural and moral duties towards others, which if a person neglect without malicious intention, and death ensue, he will be guilty of manslaughter. Of this nature is the duty of a parent to supply a child with proper food. When a child is very young, and not weaned, the mother is criminally responsible, if the death arose from her not suckling it, when she was capable of doing so.—*R. vs. Edwards*, 8 C. & P. 611.—But if the child be older, the omission to provide food is the omission of the husband, and the crime of the wife can only be the omitting to deliver the food to the child, after the husband has provided it.—*R. vs. Saunders*, 7 C. & P. 277.

A master is not bound by the common law to find medical advice for his servant; but the case is different with respect to an apprentice, for a master is bound during the illness of his apprentice to find him with proper medicines, and if he die for want of them, it is manslaughter in the master.—*R. vs. Smith*, 8 C. & P. 153. Where a person undertakes to provide necessaries for a

per
doi
his
sibl
infi
prov
cine
men
jury
so g
cont
if th
was
temp
Mar
V
mura
as to
dictn
requi
find
feloni
Be
to a s
offenc
Th
says :
remov
break
track
portio
any su
to be
machi

person who is so aged and infirm that he is incapable of doing it for himself, and through his neglect to perform his undertaking death ensues, he is criminally responsible. On an indictment for the murder of an aged and infirm woman by confining her against her will, and not providing her with meat, drink, clothing, firing, medicines and other necessaries, and not allowing her the enjoyment of the open air, in breach of an alleged duty, if the jury think that the prisoner was guilty of wilful neglect, so gross and wilful that they are satisfied he must have contemplated her death, he will be guilty of murder; but if they only think that he was so careless that her death was occasioned by his negligence, though he did not contemplate it, he will be guilty of manslaughter.—*R. vs. Marriott*, 8 C. & P. 425.

Verdict—General remarks.—See *ante*, under head *murder, in fine*, sect. 51, of the Procedure Act of 1869, as to a verdict of assault, in certain cases, upon any indictment for any felony. See sect. 77, *post*, as to requiring the offender to enter into recognizances and to find sureties for keeping the peace, both or either, in felonies under this Act.

Before leaving the subject of manslaughter a reference to a special clause to be found in our Statutes, on this offence, should be made.

The Railway Act of 1868, 31 Vict., chap. 68, sect. 74, says: "If any person wilfully and maliciously displaces or removes any railway switch or rail of any railway, or breaks down, rips up, injures or destroys any railway track or railway bridge or fence of any railway or any portion thereof, or places any obstruction whatever on any such rail or railway track or bridge, or does or causes to be done any act whatever, whereby any engine, machine or structure, or any matter or thing appertain-

ing thereto is stopped, obstructed, impaired, weakened, injured or destroyed, with intent thereby to injure any person or property passing over or along such railway, and if, in consequence thereof, any person be killed, or his life be lost, such person so offending shall be guilty of manslaughter, and being found guilty, shall be punished by imprisonment in the Penitentiary for any period not more than ten nor less than four years."

It is difficult to understand *why* this clause has been inserted in the Statute Book. The killing of any person, under the circumstances mentioned in it would, at common law, be murder. What induced the Legislature to reduce it to manslaughter? Or has the clause been inserted, under the impression that the killing of any person under such circumstances would not, at common law, be punishable either as manslaughter or as murder? This is hardly possible. In all cases, it would be felonious homicide, and in most cases murder. Supposing the act done a felony in itself, and it would be such in almost all cases, as well by the last part of section 73 of the same Act, as by section 31 of chap. 20, and section 39 of chap. 22, of the 32-33 Victoria, the killing in such a case is always murder. "A common and plain rule on this subject," says Bishop, 2 Cr. L. 694, "is, that, whenever one does an act with the design of committing any felony, though not a felony dangerous to human life, yet, if the life of another is accidentally taken, his offence is murder." Or in the language of Baron Bramwell, in *Reg. vs. Horsay*, 3 F. & F. 287: "the law laid down was that where a prisoner, in the course of committing a felony, caused the death of a human being, that was murder, *even though he did not intend it.*"

And if the act committed or attempted is only a mis-

der
con
is
An
we
is r
tre
see
com
a l
tion
kill
Rus
gre
be r
from
be r
foll
be a
an i
ther
742.
ter,
done
bodil
ly, fi
the o
if suc
matt
the a
mans
upon
Th
inten

demeanor, yet the "accidental" causing of death, in consequence of this act, is murder, if the misdemeanor is one endangering human life.—Bishop, 2 Cr. L. 691. And, in saying that "if the act intended or attempted were unlawful but not amounting to felony, the killing is manslaughter, not murder," page 246 of his valuable *treatise on the Criminal Law of Canada*, Mr. Clarke seems to have extended rather erroneously the rule of the common law. All our books repeat, for instance, that if a large stone be thrown at one with a deliberate intention to hurt, though not to kill him, and, by accident, it kill him, or any other, this is murder.—1 Hale, 440, 1 Russell, 742. Also, that where the intent is to do some great bodily harm to another, and death ensues, it will be murder: as if A intend only to beat B in anger, or from preconceived malice, and happen to kill him, it will be no excuse that he did not intend all the mischief that followed: for what he did was *malum in se*, and he must be answerable for all its consequences: he beat B with an intention of doing him some bodily harm, and is therefore answerable for all the harm he did.—1 Russell, 742. And the rule seems very clearly laid down in Foster, 261, as follows: "If an action unlawful in itself be done deliberately and with intention of mischief or great bodily harm to particulars, or of mischief indiscriminately, fall it where it may, and death ensue *against or beside the original intention of the party*, it will be murder. But if such mischievous intention doth not appear, which is matter of fact and to be collected from circumstances, and the act was done heedlessly and incautiously, it will be manslaughter, not accidental death, because the act upon which death ensued was unlawful."

These authorities show clearly that, if a man, with intent to injure any person or property, wilfully and

maliciously removes a rail from a railway track, and that, in consequence, a train is thrown off the track and a person killed, this man, at common law, is guilty of murder. And yet, in Canada, by sect. 74 of the Railway Act, he is only guilty of manslaughter. And then, though, generally, manslaughter is punishable by imprisonment for life, (sect. 5, ch. 20, 32-33 Vict.) the legislator has specially provided, by this sect. 74 of the Railway Act, that manslaughter which may, at one blow, destroy hundreds of human beings shall not be punished by more than ten years imprisonment!

It is thought useful to insert here the special report made by the Select Committee of the House of Commons, to which was referred, during the last Session of the Imperial Parliament, the *Homicide Law Amendment Bill*, to show that, in England, the necessity of a change in the law on murder and manslaughter is fully admitted. It requires no elaborate argumentation to prove that what is wrong there cannot be right here, especially when fundamental principles, on such a grave and important subject, are at issue; and a glance at the notes above given, on the present state of our law of homicide, will conclusively demonstrate the necessity of a complete change in the matter: *if there is any case in which the law should speak plainly without sophism or evasion, it is where life is at stake and it is on this very occasion that the law is most evasive and most sophistical.*

"Your committee have examined Mr. Justice Blackburn and Baron Bramwell, and have received from the Chief Justice of England a letter containing an elaborate criticism of the Homicide Law Amendment Bill. They have also examined Mr. Stephen, Q.C., by whom the Bill was drawn.

It was been strongly urged before your committee that partial codification is a mistake, and that no measure should be passed till the whole of that branch of the law to which it belongs has been reduced to a series of simple and abstract positions. Your committee think that such a doctrine would be fatal to the prospect of producing any code.

At the same time, they observe that in the Bill before them there are many provisions which are not peculiar to the law of Homicide, but extend to almost every sort of crime, and that there are others which are common to homicide and to other injuries to the person. It may be that the best way of commencing a penal code would be to deal first with such rules of law as are common to all or to large classes of crimes, and thus at once to avoid needless repetition, and to place the whole doctrine of criminal responsibility on a clear and intelligible basis.

The subject referred to your committee is of the highest importance. The responsibility of declaring the terms on which it shall be lawful to take the life of a fellow creature, is the most awful that can be undertaken. It should not be adventured on as a test or experiment, but should be reserved till the method of codification has been perfected by numerous trials or less momentous subjects.

The subjects best adapted for a code are obviously those in which the law is most technical, where its definitions are most accurate, and the terms it employs are furthest removed from the loose and careless vocabulary of common life. With such terms it is comparatively easy to construct abstract legal propositions. But in the case of homicide, we have to deal, not with technical terms, but with ordinary language, which is quite intelli-

gible when used by a Judge in directing a jury on a state of facts proved before them, but which, when reduced to abstract propositions, becomes obscure and ambiguous from the want of particulars to which the proposition applies, and from the want of a clear definition of the terms used. These terms, such as "causing death without actual injury to the body," "causing death by a course of conduct" "an act by which death is caused, which would not have caused death but for intermediate events, not its consequences" and so forth, would doubtless ultimately have a fixed and technical meaning given to them by judicial interpretation, but in the meantime would, it may be apprehended, rather serve to provoke than to remove controversy. It would seem that a code aiming, like the Homicide Bill, to reduce a large and complicated subject to a few abstract propositions, can hardly be made intelligible to the non-legal mind without the use of illustrations, by putting particular cases, an important innovation which your committee recommend to the favourable attention of the House.

It has been urged with great force that the law of homicide requires codification more than any other, because it is not to be found in books or statutes, but in a kind of oral tradition and understanding among lawyers, which is only acquired by practice. But if this be so, it furnishes a conclusive reason against commencing to codify with the law of homicide and above all against delegating such a duty to a select committee of the House of Commons. To make a code is a work of compression, simplification and arrangement. It assumes the knowledge of the law by the codifier, but in order to codify the law of homicide it is necessary first to declare what it is and that is impossible, as it seems, to any but practising lawyers, for the reason stated above. It is better

surely to begin with that which is easily ascertained than select a subject where we must take upon ourselves to declare the law first before we co-ordinate and condense it.

The law of homicide requires very considerable alterations in substance, before it is reduced to its simplest form and made permanent in a code. We are required to declare that negligence is not manslaughter, and that suicide is not murder; both, probably, salutary changes, but which should be settled on their own merits.

The existing definition of murder, which may be roughly stated as killing with malice aforethought, is far too narrow, and the defect has been supplied, not by redefining the crime, but by subtle intendments of law, by which malice is presumed to exist in some cases where the action is unpremeditated, and even in some cases where death is caused by accident. It is most desirable that a state of the law under which people are condemned and executed by means of a legal fiction should cease. But such a change, however urgently required, is, in the opinion of your committee, not a matter for them, but rather for the law officers of the Crown, assisted by the advice, and fortified by the sanction, of the highest legal authorities, after mature and careful deliberation. Nothing would be more likely to impede, or indeed, utterly to frustrate the work of codification than the suspicion or certainty that, under the pretext of simplification and rearrangement, great and important changes were effected which had never been brought in a clear and simple way to the notice of Parliament. For these reasons your committee are of opinion that it is not desirable to proceed with the present Bill, notwithstanding that this experiment in codification has been presented to them with every advantage that learning and skill can give it.

Finally, your committee earnestly recommend that the attention of the Government and of Parliament should be directed to the present imperfect state of the definition of the law of murder. They believe that they have collected materials from which a re-definition of murder can be produced, and they are convinced that such a definition is urgently needed, not only to rescue the law from its present discreditable state, but to give clear notions to the public at large of the real nature and extent of this crime, and to prevent the confusion often created in the minds of jurors by an appeal to the doctrine that murder cannot be without malice aforethought, which it is not always easy for the judge to remove. If there is any case in which the law should speak plainly, without sophism or evasion, it is where life is at stake; and it is on this very occasion that the law is most evasive and most sophistical."

CONSPIRING OR SOLICITING TO MURDER.

Sect. 3.—All persons who conspire, confederate and agree to murder any person, whether he be a subject of Her Majesty or not, and whether he be within the Queen's dominions or not, and whosoever solicits, encourages, persuades, endeavours to persuade or proposes to any person to murder any other person, whether he be a subject of Her Majesty or not, and whether he be within the Queen's dominions or not, are and is guilty of a misdemeanor, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding ten years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour.—24–25 Vict. ch. 100 s. 4, Imp.

Indictment..... That J. S., J. T., and E. T. on ——— unlawfully and wickedly did conspire, confederate and agree together one J. N. feloniously, wilfully, and of their malice aforethought to kill and murder, against the form..... (*you may add counts charging the defendants or any of them with "soliciting, encouraging, etc., or endeavouring to persuade, etc., if the facts warrant such a charge,"*)—Archbold, 647.

No indictment can be preferred for conspiracy, unless one or other of the preliminary steps required by sect. 28 of the Procedure Act of 1869 has been taken.

As to fining the offender and requiring him to enter into recognizances and find sureties for keeping the peace and being of good behaviour, both or either, in addition to or in lieu of any other punishment, see sect. 77, *post*.

See 1 Russell, 967; 3 Russell, 664.

Reg. vs. Bernard, 1 F. & F. 240.

In Reg. vs. Banks, 12 Cox, 393, upon an indictment under this clause, the defendants were convicted of an attempt to commit the misdemeanor charged.— See sect. 49 of the Procedure Act of 1869.

PUNISHMENT OF ACCESSORIES AFTER THE FACT TO MURDER.

Sect. 4.—Every accessory after the fact to murder shall be liable to be imprisoned in the Penitentiary for life or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour.—24–25 Vict., ch. 100, s. 67, Imp.

See 31 Vict., ch. 72, as to accessories and abettors of indictable offences. The above clause provides for a

different punishment in cases of accessories after the fact to murder; the procedure and trial in such cases continue to be ruled by sects. 4 and 5 of the said 31 Vict., ch. 72.

EXCUSABLE HOMICIDE.

Sect. 7.—No punishment or forfeiture shall be incurred by any person who kills another by misfortune, or in his own defence or in any other manner without felony.—24-25 Vict., ch. 100, s. 7, Imp.

Homicide in self-defence, *i.e.* committed *se et sua defendendo* in defence of a man's person or property, upon some sudden affray, has been usually classed with homicide *per infortunium*, under the title of *excusable*, as distinct from *justifiable*, because it was formerly considered by the law as in some measure blameable, and the person convicted either of that or of homicide by misadventure forfeited his goods. The above clause has put an end to these distinctions, which Foster says "had thrown some darkness and confusion upon this part of the law."—Foster, 273.

Homicide *se defendendo* seems to be where one, who has no other possible means of preserving his life from one who combats with him on a sudden quarrel, or of defending his person from one who attempts to beat him (especially if such attempt be made upon him in his own house) kills the person by whom he is reduced to such inevitable necessity. And not only he, who on assault retreats to a wall or some such streight, beyond which he can go no farther, before he kills the other, is judged by the law to act upon unavoidable necessity; but also he who being assaulted in such a manner and such a place, that he cannot go back without manifestly endan-

geri
Hav
In
may
tion
and
know
oblig
finde
then
—Fe
B
he u
the
he c
hims
sona
ger.
resis
retre
Reg.
P. 2
U
and
and
an a
pect
strue
C
medl
man
pre
enco
ing

gering his life, kills the other without retreating at all.—1 Hawkins, ch. 11, s. 13-14.

In the case of justifiable self-defence, the injured party may repel force by force in defence of his person, habitation or property against one who manifestly intendeth and endeavoureth by violence or surprise to commit a known felony upon either. In these cases he is not obliged to retreat, but may pursue his adversary till he findeth himself out of danger, and if in a conflict between them he happeneth to kill, such killing is justifiable.—Foster, 273.

Before a person can avail himself of the defence that he used a weapon in defence of his life, he must satisfy the jury that the defence was necessary, that he did all he could to avoid it, and that it was necessary to protect himself from such bodily harm as would give him a reasonable apprehension that his life was in immediate danger. If he used the weapon having no other means of resistance and no means of escape, in such case, if he retreated as far as he could, he would be justified.—Reg. vs. Smith, 8 C. & P. 160; Reg. vs. Bull, 9 C. & P. 22.

Under the excuse of self-defence, the principal civil and natural relations are comprehended; therefore master and servant, parent and child, husband and wife, killing an assailant in the necessary defence of each other respectively, are justified: the act of the relation being construed as the act of the party himself.—1 Hale, 484.

Chance medley, or as it was sometimes written, *chaud medley*, has been often indiscriminately applied to any manner of homicide by misadventure: its correct interpretation seems to be a killing happening in a sudden encounter: it will be manslaughter or self-defence according to whether the slayer was actually striving and

combating at the time the mortal stroke was given, or had *bond fide* endeavoured to withdraw from the contest, and afterwards, being closely pressed, killed his antagonist to avoid his own destruction; in the latter case, it will be justifiable or excusable homicide, in the former, manslaughter.—1 Russell, 888.

A man is not justified in killing a mere trespasser; but if, in attempting to turn him out of his house, he is assaulted by the trespasser he may kill him, and it will be *se defendendo*, supposing that he was not able by any other means to avoid the assault or retain his lawful possession, and in such a case, a man need not fly as far as he can as in other cases of *se defendendo*, for he has a right to the protection of his own house.—1 Hale, 485.

But it would seem that in no case is a man justified in intentionally taking away the life of a mere trespasser, his own life not being in jeopardy: he is only protected from the consequences of such force as is reasonably necessary to turn the wrong-doer out. A kick has been held an unjustifiable mode of doing so,—Child's case, 2 Lewin, 214: throwing a stone has been held a proper mode.—Hinchcliffe's case, 2 Lewin, 161.

Homicide committed in prevention of a forcible and atrocious crime, amounting to felony, is justifiable. As if a man come to burn my house, and I shoot out of my house, or issue out of my house and kill him. So, if A makes an assault upon B, a woman or maid, with intent to ravish her, and she kills him in the attempt, it is justifiable, because he intended to commit a felony. And not only the person upon whom a felony is attempted may repel force by force, but also his servant or any other person present may interpose to prevent the mischief; and if death ensue, the party so interposing will be justified; but the attempt to commit a felony should be apparent and not

left in doubt, otherwise the homicide will be manslaughter at least; and the rule does not extend to felonies without force, such as picking pockets, nor to misdemeanors of any kind.—2 Burn 1314.

It should be observed that, as the killing in these cases is only justifiable on the ground of necessity, it cannot be justified unless all other convenient means of preventing the violence are absent or exhausted: thus a person set to watch a yard or garden is not justified in shooting one who comes into it in the night, even if he should see him go into his master's hen roost: for he ought first to see if he could not take measures for his apprehension; but if, from the conduct of the party, he has fair ground for believing his own life in actual and immediate danger, he is justified in shooting him.—R. vs. Scully, 1 C. & P. 319. Nor is a person justified in firing a pistol on every forcible intrusion into his house at night: he ought, if he have reasonable opportunity, to endeavour to remove him without having recourse to the last extremity.—Meade's case, 1 Lewin, 184.

As to justifiable homicide by officers of justice or other persons in arresting felons, see under the heads *Murder* and *Manslaughter*. Also Foster, 258. As to homicide by misadventure, 2 Burn, 316.

PETIT TREASON ABOLISHED.

Sect. 8.—Every offence which before the abolition of the crime of petit treason, would have amounted to petit treason shall be deemed to be murder only, and no greater offence; all persons guilty in respect thereof, whether as principals or accessories, shall be dealt with, indicted, tried and punished as principals and accessories in murder.—24-25 Vict., ch. 100, sect. 8, Imp.

Petit treason was a breach of the lower allegiance of

private and domestic faith, and considered as proceeding from the same principle of treachery in private life as would have led the person harbouring it to have conspired in public against his liege lord and sovereign. At common law, the instances of this kind of crime were somewhat numerous and involved in some uncertainty; but by the 25 Edw. 3, ch. 2, they were reduced to the following cases: 1. Where a servant killed his master. 2. Where a wife killed her husband. 3. Where an ecclesiastical person, secular or regular, killed his superior, to whom he owed faith and obedience. It was murder aggravated by the circumstance of the allegiance which the murderer owed to the deceased; and in consequence of that circumstance of aggravation, the judgment upon a conviction was more grievous than in murder. Petit treason is now nothing more than murder.—Greaves' note, 1 Russell, 710.

VENUE IN TRIAL OF MURDER IN CERTAIN CASES.

Sect. 9.—Where any person being feloniously stricken, poisoned or otherwise hurt, upon the sea, or at any place out of Canada, shall die of such stroke, poisoning or hurt in Canada, or being feloniously stricken, poisoned, or otherwise hurt at any place in Canada, shall die of such stroke, poisoning or hurt upon the sea, or at any place out of Canada, every offence committed in respect of any such case, whether the same amounts to murder or manslaughter, or of being accessory to murder or manslaughter, may be dealt with, enquired of, tried, determined and punished in the district, county or place in Canada in which such death, stroke, poisoning or hurt happens, in the same manner in all respects as if such offence had been wholly committed in that district, county or place. —24-25 Vict., ch. 100, s. 10, Imp.

ADM

So
min
or o
wou
son,
mur
felon

No
s. 12

In
der.-
their
and

or c

perso

dead

destr

wilfu

to ki

such

Our

count

nister

ty, et

add c

statin

afores

The

be po

ATTEMPTS TO MURDER.

ADMINISTERING POISON, WOUNDING, ETC., WITH INTENT
TO MURDER.

Sect. 10.—Whosoever administers or causes to be administered to or to be taken by any person, any poison or other destructive thing, or by any means whatsoever, wounds or causes any grievous bodily harm to any person, with intent, in any of the cases aforesaid, to commit murder, is guilty of felony, and shall suffer death as a felon.—24-25 Vict., ch. 100, s. 11, Imp.

Not triable at Quarter Sessions.—Procedure Act, 1869, s. 12.

Indictment for administering poison with intent to murder.—.....The jurors for Our Lady the Queen upon their oath present, that J. S., on.....feloniously and unlawfully did administer to one A. B., (*administer or cause to be administered to or to be taken by any person*) a large quantity, to wit, two drachms of a certain deadly poison called white arsenic, (*any poison or other destructive thing*) with intent thereby then feloniously, wilfully, and of his malice aforethought the said A. B. to kill and murder, against the form of the Statute in such case made and provided, and against the peace of Our Lady the Queen, her crown and dignity. (*Add counts stating that the defendant "did cause to be administered to" and "did cause to be taken by" a large quantity, etc., etc., and if the description of poison be doubtful, add counts describing it in different ways; and one count stating it to be "a certain destructive thing to the jurors aforesaid unknown."*)—Archbold, C49.

The indictment must allege the thing administered to be poisonous or destructive; and therefore an indictment

for administering sponge mixed with milk, not alleging the sponge to be destructive, was holden bad.—*R. vs. Powler*, 4 C. & P. 571.

If there be any doubt whether the poison was intended for A. B. add a count, stating the intent to be to “commit murder” generally.

If a person mix poison with coffee, and tell another that the coffee is for her, and she takes it in consequence, it seems that this is an administering; and, at all events, it is causing the poison to be taken. In *Rex vs. Harley*, 4 C. & P. 369, it appeared that a coffee pot, which was proved to contain arsenic, mixed with coffee, had been placed by the prisoner by the side of the grate: the prosecutrix was going to put out some tea, but on the prisoner telling her that the coffee was for her, she poured out some for herself, and drank it, and in about five minutes became very ill. It was objected that the mere mixing of poison, and leaving it in some place for the person to take it was not sufficient to constitute an administering.—*Park, J.*, said: “There has been much argument whether, in this case, there has been an administering of this poison. It has been contended that there must be a manual delivery of the poison, and the law, as stated in *Ryan & Moody’s Reports* goes that way (*R. vs. Cadman*, 1 *Moody* 114); but as my note differs from that report, and also from my own feelings, I am inclined to think that some mistake has crept into that report. It is there stated that the judges thought the swallowing of the poison not essential, but my recollection is, that the judges held just the contrary. I am inclined to hold that there was an administering here; and I am of opinion that, to constitute an administering it is not necessary that there should be a delivery by the hand.”—1 *Russell* 988, and *Greaves*, note *N* to it.

A
nister
gave
with
it wa
inten
Moo.
WI
with
Daws
man,
sugar,
Lewis
And
to com
Lewis,
Evid
given t
to mur
that int
Indic

(wound
&c., &c.
the inte
650.
The in
inflicted
fine the
R. vs. B
“As th
and “cu
has alone
now nece

An indictment stating that the prisoner gave and administered poison is supported by proof that the prisoner gave the poison to A to administer as a medicine to B, with intent to murder B, and that A neglecting to do so, it was accidentally given to B by a child, the prisoner's intention to murder continuing. Reg. vs. Michael, 2 Moo. 120.

Where the prisoner, having mixed corrosive sublimate with sugar, put it into a parcel, directing it to "*Mrs. Daws, Townhope*," and left it on the counter of a tradesman, who sent it to Mrs. Daws who used some of the sugar, *Gurney*, held it to be an administering.—R. vs. Lewis, 6 C. & P. 161.

And if the indictment contains a count, "*with intent to commit murder*," generally, the preceding case, R. vs. Lewis, is clear law.—Archbold, 653.

Evidence of administering at different times may be given to show the intent.—Archbold, 650. The intent to murder must be proved by circumstances from which that intent may be implied.

Indictment for wounding with intent to murder.—.....
..... one J. N. feloniously and unlawfully did wound (*wound or cause any grievous bodily harm*) with intent &c., &c., &c., (*as in the last precedent*.) Add a count "*with the intent to commit murder*" generally. Archbold, 650.

The instrument or means by which the wound was inflicted need not be stated, and, if stated, would not confine the prosecutor to prove a wound by such means.—R. vs. Briggs, 1 Mood. 318.

"As the general term "*wound*" includes every "*stab*" and "*cut*" as well as other wounds, that general term has alone been used in these Acts. All therefore that it is now necessary to allege in the indictment is, that the

prisoner did wound the prosecutor; and that allegation will be proved by any wound, whether it be a stab, cut, or other wound." Greaves, Cons. Acts, 45. The word "wound" includes incised wounds, punctured wounds, lacerated wounds, contused wounds, and gunshot wounds.—Archbold, 664.

But to constitute a wound, within the meaning of this Statute, the continuity of the skin must be broken.—R. vs. Wood, 1 Mood. 278.

The whole skin, not the mere cuticle or upper skin, must be divided.—Archbold, 665.

But a division of the internal skin, within the cheek or lip, is sufficient to constitute a wound within the Statute.—Archbold, 665.

The Statute says "by any means whatsoever, so that it is immaterial by what means the wound is inflicted, provided it be inflicted with the intent alleged.—Rex vs. Harris, Rex vs. Stevens, Rex vs. Murrow and Jennings's case, and other similar cases cannot therefore be considered as authorities under the present law." Greaves, Cons. Acts, 45.

It is not necessary that the prosecutor should be in fact wounded in a vital part; for the question is not what the wound is, but what wound was intended.—R. vs. Hunt, 1 Mood. 93.

There does not seem any objection to insert counts on the 10th and 17th sections (Canada); and it is in all cases advisable, where it is doubtful whether the prisoner intended to murder or merely to maim.—3 Burn 752.—Archbold, form of indictment, 650; R. vs. Strange, 8 Car. & P. 172; R. vs. Murphy, 1 Cox, 108.

On the trial of any indictment for wounding with intent to murder, if the intent be not proved, the jury may convict of unlawfully wounding.—Archbold, 650.

This
the
A
dict
or.
vs. F
burn
T
to c
1869
T
if th
1869
If
sect.
A
at co
der
258.
ATT
Se
other
ing, v
shall
life, c
impr
any
labou
25 V
In
and n

This verdict would fall under the last part of sect. 19, of the 32-33 Vict., ch. 20, see *post*.

Archbold, 650, says that a defendant cannot, on an indictment for the felony, *plead guilty* to the misdemeanor. But it appears to have been done recently, in *Reg. vs. Roxburg*, 12 Cox, 8, and allowed by Ch. Justice Cockburn.

The defendant may also be found guilty of an attempt to commit the felony charged: s. 49, Procedure Act, 1869.

The jury may also find a verdict of common assault, if the evidence warrants it.—Sect. 51, Procedure Act, 1869. *Reg. vs. Archer*, 2 Mood. 283.

If the defendant is *convicted* of a misdemeanor only, sect. 77 *post* as to fine and sureties applies.

An attempt to commit suicide remains a misdemeanor at common law, and is not an attempt to commit murder within this Statute.—*R. vs. Burgess*, L. & C. 258.

ATTEMPTING TO MURDER BY DESTROYING OR DAMAGING BUILDING WITH GUNPOWDER.

Sect. 11.—Whosoever, by the explosion of gunpowder or other explosive substance, destroys or damages any building, with intent to commit murder is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life, or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 100, s. 12, Imp.

Indictment.— feloniously, unlawfully and maliciously did, by the explosion of a certain explo-

sive substance, that is to say, gunpowder, destroy (*destroy or damage*) a certain building situate.....with intent thereby then feloniously, wilfully and of his malice aforethought, one J. N. to kill and murder, against.....
(*Add a count, stating the intent to be generally "to commit murder."*)

In *R. vs. Ryan*, 2 M. & Rob. 213, Parke and Alderson held that a count alleging *to commit murder*, generally, is sufficient.

See sect. 77 of this Act *post*, as to recognizance and sureties.

The jury may return a verdict of an attempt to commit the felony.—S. 49, Procedure Act, 1869

As to solitary confinement, see sect. 94 of the Procedure Act of 1869.

SETTING FIRE TO OR DESTROYING SHIPS WITH INTENT TO MURDER.

Sect. 12.—Whosoever sets fire to any ship or vessel, or any part thereof, or any part of the tackle, apparel or furniture thereof, or any goods or any chattels being therein or casts away or destroys any ship or vessel, with the intent in any of such cases to commit murder, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24–25 Vict., ch. 100, s. 13, Imp.

Indictment.—..... feloniously and unlawfully did set fire to (*cast away or destroy*) a certain ship called with intent thereby then feloniously, wilfully and of his malice aforethought, to kill one..... (*Add a count stating the intent to "commit murder" generally.*)

Sect. 49 of the Procedure Act of 1869 allows a verdict for an attempt to commit the felony charged in certain cases.

See section 77 *post* as to sureties to keep the peace, and sect. 94 of the Procedure Act of 1869, as to solitary confinement.

ATTEMPTING TO POISON, SHOOT, DROWN, ETC., WITH INTENT TO MURDER.

Sect. 13.—Whosoever attempts to administer to, or attempts to cause to be administered to, or to be taken by any person, any poison or other destructive thing, 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, or attempts to drown, suffocate or strangle any person, with intent in any of the cases aforesaid to commit murder, whether any bodily injury be effected or not, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life, or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 100, sect. 14, Imp.

Sect. 18.—Any gun, pistol or other arm, loaded in the barrel with gunpowder or other explosive substance and ball, shot, slug or other destructive material, or charged with compressed air and having ball, shot, slug or other destructive material in the barrel, shall be deemed to be loaded arms, within the meaning of this Act, although the attempt to discharge the same may fail for want of proper priming or other cause.—24-25 Vict., ch. 100, s. 19, Imp.

Greaves (Consol. Acts, 48) on clause 14, Imp. remarks: "Where the prisoner delivered poison to a guilty agent, with directions to him to cause it to be administered to another in the absence of the prisoner, it was held that the prisoner was not guilty of an attempt to administer poison, within the repealed acts.—Reg. vs. Williams, 1 Den. 39; and the words 'attempt to cause to be administered to, or to be taken by' were introduced in this section to meet such cases."

And on sect. 19 Imp., he says: "This clause is new, and is introduced to meet every case where a prisoner attempts to discharge a gun, etc., etc., loaded in the barrel, but which misses fire for want of priming, or of a copper cap, or from any like cause. Rex vs. Carr, Rus. & Ry. 377; Anon, 1 Russell, 979; and Rex vs. Harris, 5 C. & P. 159, cannot therefore be considered as authorities under this Act."

Indictment for attempting to poison with intent.— feloniously and unlawfully did attempt to administer (*attempt to administer to, or attempt to cause to be administered to, or to be taken by*) to one J. N. a large quantity, to wit, two drachms of a certain deadly poison called white arsenic (*any poison or other destructive thing*) with intent thereby then feloniously, wilfully, and of his malice aforethought, the said J. N. to kill and murder, against. (*Add a count stating the intent "to commit murder," generally. Add counts charging that the defendant "attempted to cause to be administered to" and that he "attempted to cause to be taken by" J. N. the poison.*) Archbold, 651.

In R. vs. Cadman, 1 Mood. 114, the defendant gave the prosecutrix a cake containing poison, which the prosecutrix merely put into her mouth, and spit out again, and did not swallow any part of it. It is said in Archbold,

651, that these circumstances would support an indictment under the above clause.

Where the prisoner put salts of sorrel in a sugar basin, in order that the prosecutor might take it with his tea, it was held an attempt to administer.—Reg. vs. Dale, 6 Cox, 547.

See remarks under clause 10 *supra*.

Indictment for attempting to drown with intent to murder.

—.....feloniously and unlawfully did take one J. N. into both the hands of him the said J. S. and feloniously and unlawfully did cast, throw, and push the said J. N. into a certain pond wherein there was a great quantity of water, and did thereby then feloniously and unlawfully attempt the said J. N. to drown and suffocate, with intent thereby then feloniously, wilfully and of his malice aforethought, the said J. N. to kill and murder, against(*Add a count charging generally that the defendant did attempt to drown J. N. and counts charging the intent to be to commit murder.*)— Archbold, 652.

It has been held upon an indictment for attempting to drown, it must be shown clearly that the acts were done with intent to drown. An indictment alleged that the prisoner assaulted two boys, and with a boat-hook made holes in a boat in which they were, with intent to drown them. The boys were attempting to land out of a boat they had punted across a river, across which there was a disputed right of ferry: the prisoner attacked the boat with his boat-hook in order to prevent them, and by means of the holes which he made in it caused it to fill with water, and then pushed it away from the shore, whereby the boys were put in peril of being drowned. He might have got into the boat and thrown them into the water; but he confined his attack to the boat itself, as if to prevent the landing, but apparently regardless of

the consequences. Coltman, J., stopped the case, being of opinion that the evidence against the prisoner showed his intention to have been rather to prevent the landing of the boys than to do them any injury.—Sinclair's case, 2 Lew. 49.

Indictment for shooting with intent to murder.—.....a certain gun, then loaded with gunpowder and divers leaden shot, at and against one J. N. feloniously and unlawfully did shoot, with intent thereby then feloniously(as in the last precedent.) Add also counts stating "with intent to commit murder" generally. Also a count for shooting with intent to maim, etc., etc, under sect. 17, post—Archbold, 652.

In order to bring the case, within the above section, it must be proved that the prisoner intended by the act charged to cause the death of the suffering party. This will appear either from the nature of the act itself, or from the expressions and conduct used by the prisoner.—Roscoe, 720.

Upon an indictment for wounding Taylor with intent to murder him, it appeared that the prisoner intended to murder one Maloney, and, supposing Taylor to be Maloney, shot at and wounded Taylor; and the jury found that the prisoner intended to murder Maloney, not knowing that the party he shot at was Taylor, but supposing him to be Maloney, and that he intended to murder the individual he shot at, supposing him to be Maloney, and convicted the prisoner; and upon a case reserved, it was held that the conviction was right, for though he did not intend to kill the particular person, he meant to murder the man at whom he shot.—Reg. vs. Smith, Dears. 559; 1 Russell, 1001.

It seems doubtful whether it must not appear, in order to make out the intent to murder, that that in-

ten
the
wo
652
C
rem
Leg
was
ens
The
actu
mus
pers
may
case
pers
ther
that
mist
owin
but
in th
a mi
inter
Reg.
mur
mur
perfe
whon
was
never
by m
taken
he c

tent existed in the mind of the defendant at the time of the offence, or whether it would be sufficient if it would have been murder had death ensued.—Archbold, 652.

On this question, Greaves, note *g*, 1 Russell, 1003 remarks: "It seems probable that the intention of the Legislature in providing for attempts to commit murder, was to punish every attempt where, in case death had ensued, the crime would have amounted to murder. The tendency of the cases, however, seems to be that an actual intent to murder the particular individual injured must have been showed. Where a mistake of one person for another occurs, the cases of shooting, etc., etc., may, perhaps, admit of a different consideration from the cases of poisoning. In the case of shooting at one person, under the supposition that he is another, although there be a mistake, the prisoner must intend to murder that individual at whom he shoots: it is true he may be mistaken in fact as to the person, and that it may be owing to such mistake that he shoots at such person, but still he shoots with intent to kill that person. So in the case of cutting: a man may cut one person under a mistake that he is another person, but still he must intend to murder the man whose throat he cuts. In *Reg. vs. Mister*, the only count charging an intent to murder was the first, and that alleged the intent to be to murder Mackreth; and although on the evidence it was perfectly clear that Mister mistook Mackreth for Ludlow, whom he had followed for several days before, yet he was convicted and executed, and I believe the point never noticed at all. The case of poisoning one person by mistake for another seems different, if the poison be taken in the absence of the prisoner; for in such case, he can have no actual intent to injure that person.

These difficulties, however, seem to be obviated by the present Statute, which, instead of using the words "with intent to murder such person" has the words "with intent to commit murder".....In all cases of doubt, as to the intention, it would be prudent to insert one count for shooting at A with intent to murder him; another "with intent to commit murder;" and a third for shooting at A, with intent to murder the person really intended to be killed, and if the party intended to be killed were unknown, a count for shooting at A with intent to murder a person to the jurors unknown.

In a recent case, 1870, Reg. vs. Stopford, 11 Cox 643, Brett, J., after consulting Mellor, J., held, following Reg. vs. Smith, *supra*, that an indictment charging the prisoner with wounding Haley, with intent to do him, Haley, grievous bodily harm, was good, although it was proved that the prisoner intended to wound somebody else, and that he mistook Haley for another man.

A bodily injury is, in cases under this section, not material, "whether any bodily injury be effected or not."

Indictment for attempting to shoot with intent, &c.—...did, by drawing the trigger (drawing a trigger or in any other manner) of a certain pistol then loaded in the barrel with gunpowder and one leaden bullet, feloniously and unlawfully attempt to discharge the said pistol at and against one J N with intent..... (as in the last precedent.) Add a count charging an intent to commit murder, and counts for attempting to shoot with intent to main, under sect. 17. The indictment need not in the latter clause, describe it as "the said pistol so loaded as aforesaid."—Archbold, 653.

See remarks under this section, *supra*.

As to solitary confinement, see sect. 94 of the Procedure Act of 1869.

See sect. 77, *post*, as to sureties to keep the peace.

A verdict of common assault may, in certain cases, be given, upon an indictment under this section.—Sect. 51 Procedure Act, 1869.

Sect. 14.—Whosoever by any means other than those specified in any of the preceding sections of this Act, attempts to commit murder, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24–25 Vict., ch. 100, s. 15, Imp.

Indictment.—.....feloniously, unlawfully and maliciously, did, by then (*state the act*) attempt feloniously, wilfully and of his malice aforethought, one J N to kill and murder against..... (*Add a count charging the intent to be to commit murder.*)—Archbold, 655.

Greaves, on this clause, says (Consol. Acts, 48):
 “This section is entirely new, and contains one of the most important amendments in these Acts. It includes every attempt to murder not specified in any preceding section. It will therefore embrace all those atrocious cases where the ropes, chains, or machinery used in lowering miners into mines have been injured with intent that they may break, and precipitate the miners to the bottom of the pit. So, also, all cases where steam engines are injured, set on work, stopped, or anything put into them, in order to kill any person, will fall into it. So, also, cases of sending or placing infernal machines with intent to murder. See *Rex vs. Mountford*, R. & M.

C. C. 441. Indeed, the malicious may now rest satisfied that every attempt to murder, which their perverted ingenuity may devise, or their fiendish malignity suggest, will fall within some clause of this Act, and may be visited with penal servitude for life. In any case where there may be a doubt whether the attempt falls within the terms of any of the preceding sections, a count framed on this clause should be added."

As to solitary confinement, see sect. 94 of the Procedure Act of 1869, and sect. 77.—As to requiring the offender to enter in to his own recognizances and to find sureties, *both or either*, for keeping the peace, in addition to any authorized punishment.

LETTERS THREATENING TO MURDER.

Sec. 15. — Whosoever maliciously *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, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding ten years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement. —24-25 Vict., ch. 100, s. 16, Imp.

Indictment:—... feloniously and maliciously did send (*send, deliver, utter, or directly or indirectly cause to be received*) to one J. N. a certain letter (*letter or writing*) directed to the said J. N., by the name and description of Mr. J. N. threatening to kill and murder the said J. N., he the said.....(*defendant*) then well knowing the contents of the said letter, which said letter is as follows, that is to say. . . . Against the form. . . . And the ju-

rors aforesaid.....that the said....on....feloniously and maliciously did utter a certain writing..... (as in the first count, substituting writing for letter.—Archbold, 853.

In *Rex vs. Hunter*, 2 Leach, 631, the Court said: "In an indictment for sending a threatening letter, the letter must be set out in order that the Court may judge from the face of the indictment whether it is or is not a threatening letter within the meaning of the Statute on which the indictment is founded."

The same ruling had been held in *R. vs. Lloyd*, 2 East P. C. 1122.

The Procedure Act of 1869, sect. 24, now gives the following rule on the matter: "Whenever it is necessary to make an averment in an indictment, as to any instrument, whether the same consists wholly or in part of writing, print or figures, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known, or by the purport thereof, without setting out any copy or *fac-simile* of the whole or of any part thereof."—14-15 Vic., ch. 100, s. 7, Imp.

Greaves, *Crim. L. Consol. Acts*, 50, says on this clause: "The words *directly or indirectly caused to be received*, are taken from the 9 Geo. 4, c. 55, s. 8, and introduced here in order to prevent any difficulty which might arise as to a case falling within the words *send, deliver or utter*. The words *to any other person* in the 10 & 11 Vic., c. 66. s. 1, were advisedly omitted, in order that ordering, sending, delivering, uttering, or causing to be received may be included. If, therefore, a person were to send a letter or writing without any address by a person with direction to drop it in the garden of a house in which several persons lived, or if a person were

to drop such a letter or writing anywhere, these cases would be within this clause. In truth, this clause makes the offence to consist in sending, &c., any letter or writing which contains a threat to kill or murder any person whatsoever, and it is wholly immaterial whether it be sent, &c., to the person threatened or to any other person. The cases, therefore, of *Rex. vs. Paddle*, R. & R. 484; *Reg. vs. Burridge*, 2 M. & Rob. 296; *Reg. vs. Jones*, 2 C. & K. 398; 1 Den. C. C. R. 218; and *Reg. vs. Grimwade*, 1 Den. C. C. R. 30, are not to be considered as authorities on this clause, so far as they decide that the letter must be sent, &c., to the party threatened. In every indictment on this and the similar clauses in the other Acts, a count should be inserted alleging that the defendant uttered the writing without stating any person to whom it was uttered."

Where the threat charged is to kill or murder, it is for the jury to say whether the letter amounts to a threat to kill or murder.—*R. vs. Girdwood*, 1 Leach, 142; *R. vs. Tyler*, 1 Moo. C.C. 428.

The bare delivery of the letter, though sealed, is evidence of a knowledge of its contents by the prisoner, in certain cases.—*R. vs. Girdwood*, 1 Leach, 142.

And in the same case, it was held that the offender may be tried in the county where the prosecutor received the letter, though he may also be tried in the county where the sending took place.

In *Rex. vs. Boucher*, 4 C. & P. 562, the following letter was held to contain a threat to murder:—"You are a rogue, thief and vagabond, and if you had your deserts, you should not live the week out; I shall be with you shortly, and then you shall nap it, my banker. Have a care, old chap, or you shall disgorge some of your ill-gotten gains, watches and cash, that you have robbed

the widows and fatherless of. Don't make light of this, or I'll make light of you and yours. Signed, *Cut-throat.*"

Where an indictment contained three counts, each charging the sending of a different threatening letter, Byles, J., held that the prosecutor must elect on which count he would proceed, though any letter leading up to or explaining the letter on which the trial proceeded would be admissible.—Reg. vs. Ward, 10 Cox, 42.

As to solitary confinement, see sect. 94 of the Procedure Act of 1869.

And sect. 77, *post*, as to requiring the offender to enter into his own recognizances and to find sureties, in addition to any other authorized punishment.

IMPEDING PERSONS ENDEAVOURING TO ESCAPE FROM WRECKS.

Sect. 16.—Whosoever unlawfully and maliciously prevents or impedes any person, being on board of or having quitted any ship or vessel in distress, or wrecked, stranded or cast on shore, in his endeavour to save his life, or unlawfully and maliciously prevents or impedes any person in his endeavour to save the life of any such person as in this section first aforesaid, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life, or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 100, s. 17, Imp.

Indictment.—The jurors for Our Lady the Queen upon their oath present, that before and at the time of the committing of the felony hereinafter mentioned, to wit, on.....a certain ship was stranded and cast on shore,

and that J. S. on the day and year aforesaid, one A. B. then endeavouring to save his life from the said vessel so stranded and cast on shore as aforesaid, feloniously, unlawfully and maliciously did prevent and impede against—Archbold, 680.

As to solitary confinement, see the Procedure Act of 1869, sect. 94 ; and sect. 51 of the same Act, as to a verdict of common assault in certain cases, upon an indictment for felony.

See sect. 77, *post*, as to sureties to keep the peace in addition to any other punishment in certain cases. By sect. 19 of 36 Vict., ch. 55, *an act respecting wreck and salvage* other provisions for the offences here above mentioned are made ; but by sect. 33 of the said Act, it is enacted that—" Any person committing an offence against this Act, which is also an offence against some other Act, may be prosecuted, tried, and, if convicted, punished under either Act."

SHOOTING OR ATTEMPTING TO SHOOT, WOUNDING, ETC.,
ETC., ETC., WITH INTENT TO DO GRIEVOUS
BODILY HARM.

Sect. 17.—Whosoever unlawfully and maliciously, by any means whatsoever, 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, with intent in any of the cases aforesaid to maim, disfigure or disable *any* person, or to do some other grievous bodily harm to *any* person, or with the intent to resist or prevent the lawful apprehension or detainer of *any* person, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life or for any term

not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years with or without hard labour, and with or without solitary confinement—24-25 Vict., ch. 100, s. 18, —Imp.

See section 18, *supra*, as to what constitutes a loaded arm within the meaning of this Act.

Indictment for wounding with intent to maim—.....

.....That J. S. on.....one J. N. feloniously, unlawfully and maliciously did wound, with intent in so doing, him the said J. N. thereby then to maim; against Add count stating "*with intent to disfigure,*" and one "*with intent to disable.*" Also one stating with "*intent to do some grievous bodily harm.*"—And if necessary one "*with intent to prevent (or resist) the lawful apprehension of.*"—Archbold, 663.

An indictment charging the act to have been done "feloniously, wilfully and maliciously" is bad, the words of the Statute being "unlawfully and maliciously."—*R. vs. Ryan*, 2 Mood. 15. In practice the first count of the indictment is generally for wounding with intent to murder, under sect. 10. These counts are allowed to be joined in the same indictment, though the punishments of the several offences specified in them are different.—Archbold, 664.

The word "maliciously" in this section does not mean with malice aforethought; for if it did the offence would be included under the 13th section. This clause includes every wounding done without lawful excuse, with any of the intents mentioned in it, for from the act itself malice will be inferred.—Archbold 669.

The instrument or means by which the injury was inflicted need not be stated in the indictment, and, if stated, need not be proved as laid.—*R. vs. Briggs*, 1

Mood. 318. And in the same case, it was held that upon an indictment which charged a wound to have been inflicted by striking with a stick and kicking with the feet, proof that the wound was caused either by striking with a stick or kicking was sufficient, though it was uncertain by which of the two the injury was inflicted.

As to what is "a wound" within the Statute, see *ante* remarks under section 10.

In order to convict of the felony, the intent must be proved as laid; hence the necessity of several counts charging the offence to have been committed with different intents. If an indictment alleged that the defendant cut the prosecutor with intent to murder, to disable, and to do some grievous bodily harm, it will not be supported by proof of an intention to prevent a lawful apprehension., *R. vs. Duffin, R. & R. 365*; *R. vs. Boyce, 1 Mood. 29*; unless for the purpose of effecting his escape the defendant also harboured one of the intents stated in the indictment, *R. vs. Gillow, 1 Mood. 85*; for where both intents exist, it is immaterial which is the principal and which the subordinate. Therefore, where, in order to commit a rape, the defendant cut the private parts of an infant, and thereby did her grievous bodily harm, it was holden that he was guilty of cutting with intent to do her grievous bodily harm notwithstanding his principal object was to commit the rape.—*R. vs. Cox, Russ. & Ry. 362*. So also, if a person wound another in order to rob him, and thereby inflict grievous bodily harm, he may be convicted on a count charging him with an intent to do grievous bodily harm.—*Archbold, 666*.

An indictment charging the prisoner with wounding A, with intent to do him grievous bodily harm, is good, although it is proved that he mistook A for some body

else, and that he intended to wound another person.
—11 Cox, 643, Reg. vs. Stopford.

The prisoner was indicted for shooting at A with intent to do him grievous bodily harm. He fired a pistol into a group of persons, who had assaulted and annoyed him, among whom was A, without aiming at A, or any one in particular, but intending generally to do grievous bodily harm, and wounded A. Held, on a case reserved, that he was rightly convicted.—1864, Reg. vs. Fretwell, Leigh & Cave, 443.

With respect to the intents mentioned in the Statute, it may be useful to observe that to *maim* is to injure any part of a man's body, which may render him, in fighting, less able to defend himself, or annoy his enemy. To disfigure, is to do some external injury which may detract from his personal appearance; and to disable, is to do something which creates a permanent disability, and not merely temporary injury.—Archbold, 666. It is not necessary that a grievous bodily harm should be either permanent or dangerous; if it be such as seriously to interfere with health or comfort, that is sufficient; and, therefore, where the defendant cut the private parts of an infant, and the wound was not dangerous, and was small, but bled a good deal, and the jury found that it was a grievous bodily harm, it was holden that the conviction was right.—R. vs. Cox, Rus. & Ry. 362.

Where the intent laid is to prevent a lawful apprehension, it must be shown that the arrest would have been lawful; and where the circumstances are not such that the party must know why he is about to be apprehended, it must be proved that he was apprised of the intention to apprehend him.—Archbold, 667.

While the defendant was using threatening language to a third person, a constable in plain clothes came up

and interfered. The defendant struck the constable with his fist, and there was a struggle between them. The constable went away for assistance, and was absent for an hour; he changed his plain clothes for his uniform and returned to defendant's house with three other constables. They forced the door and entered the house. The defendant refused to come down, and threatened to kill the first man who came up to take him. The constables ran up stairs to take him, and he wounded one of them in the struggle that took place. *Held*, upon a case reserved, that the apprehension of the prisoner at the time was unlawful, and that he could not be convicted of wounding the constable with intent to prevent his lawful apprehension.—Reg. vs. Marsden, 11 Cox, 90.

Under an indictment for a felonious assault with intent to do grievous bodily harm, a plea of guilty to a common assault may be received, if the prosecution consents.—Reg. vs. Roxbury, 12 Cox, 8.

Upon an indictment, for the felony under this clause, the jury may find a verdict of guilty of an attempt to commit it.—Sect. 49, Procedure Act, 1869.

A verdict of common assault may also be found.—Sect. 51, Procedure Act, 1869.

And, if the prosecutor fail in proving the intent, the defendant, in virtue of the last part of sect. 19 of chap. 20, 32-33 Vict., (*next section*) may be convicted of the misdemeanor of unlawfully wounding, and sentenced under said sect.—Archbold, 667.

And where three are indicted for malicious wounding with intent to do grievous bodily harm, the jury may convict two of the felony and the third of unlawfully wounding.—Reg. vs. Cunningham, Bell C.C. 72.

As to solitary confinement, see Procedure Act, 1869, sect. 94.

And sect. 77, *post*, for additional punishment in certain cases.

WHAT CONSTITUTES LOADED ARMS.

Sect. 18.—See, *ante*, under sect. 13.

UNLAWFULLY WOUNDING OR INFLECTING GRIEVOUS
BODILY HARM.

Sect. 19. — Whosoever unlawfully and maliciously wounds or inflicts any grievous bodily harm upon any other person, either with or without any weapon or instrument, is guilty of a misdemeanor, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding three years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour.—24-25 Vict., ch. 100, s. 18, Imp.

Sect. 19 *continued*.—And if upon the trial of any indictment for any felony (except in cases of murder and manslaughter) the indictment alleges that the defendant did cut, stab, wound or *inflict grievous bodily harm* on any person, and the jury be satisfied that the defendant is guilty of the cutting, stabbing or wounding, or *inflicting grievous bodily harm* charged in the indictment, but be not satisfied that the defendant is guilty of the felony charged in such indictment, the jury may acquit of the felony, and find the defendant guilty of unlawfully cutting, stabbing or wounding, or *inflicting grievous bodily harm*, and such defendant shall be liable to be imprisoned in the Penitentiary for any term not exceeding three years and not less than two years, or to be imprisoned in any gaol or place of confinement, other than the Penitentiary, for any term less than two years. — 14-15 Vict., ch. 19, s. 5, Imp.

Indictment for unlawfully wounding.—.....one J. N. unlawfully and maliciously did wound (*wound or inflict any grievous bodily harm upon*) against the form....*Add a count charging that the defendant "did inflict grievous bodily harm upon J. N."*—Archbold, 668.

As to what is a wounding, see *ante*, remarks under sect. 10.

The act must have been done maliciously. Malice would in most cases be presumed.—3 Burn, 754.

See, *ante*, remarks under sects. 13 and 17.

Upon an indictment for assaulting, beating, wounding and inflicting grievous bodily harm, the prisoner may be convicted of a common assault.—Reg. vs. Oliver, Bell C. C. 287.

Upon an indictment charging that the prisoner "unlawfully and maliciously did assault one H. R., and did then and there unlawfully and maliciously kick and wound him, the said H. R., and thereby then and there did unlawfully and maliciously inflict upon the said H. R., grievous bodily harm, against"the jury may return a verdict of guilty of a common assault merely.—Reg. vs. Yendon, Leigh & Cave, 81.

In Reg. vs. Taylor, 11 Cox, 261, the indictment was as follows....."That Taylor on.....unlawfully and maliciously did wound one Thomas And the jurors that the said Taylor did unlawfully and maliciously inflict grievous bodily harm upon the said Thomas" Upon this indictment the jury returned a verdict of common assault, and upon a case reserved, the conviction was affirmed.

In Reg. vs. Canwell, 11 Cox, 263, a verdict of common assault was also given upon an indictment contain-

ing only one count for maliciously and unlawfully inflicting grievous bodily harm, and the conviction was affirmed, upon a case reserved.

The last part of the above section, the 19th, forms, in England, a separate clause of quite a different Statute, 14-15 Vict., ch. 19, sect. 5.

It would apply to an indictment for robbery with wounding. See remarks on sect. 42 of the Larceny Act.

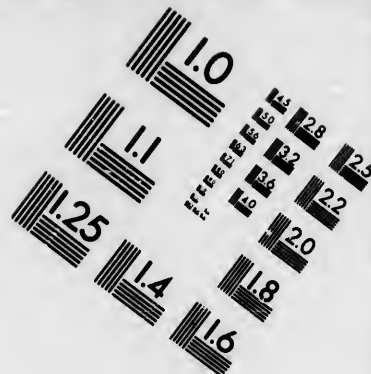
The words in *italics* are not in the English Act.

The words *cutting or stabbing* ought to have been left out. There is no such offence in the whole Statute. Of course these words are in the Imperial Statute, but at the time of this enactment, in England, 14-15 Vict., ch. 19, s. 5, there was then there, as there was for us, the offence of *cutting or stabbing*. But there is no such thing now, neither in England nor in Canada. *Wounding* is now the general term covering all these cases, by our Act concerning offences against the person of 1869, ch. 20, as it is in England by the 24-25 Vict., ch. 100.

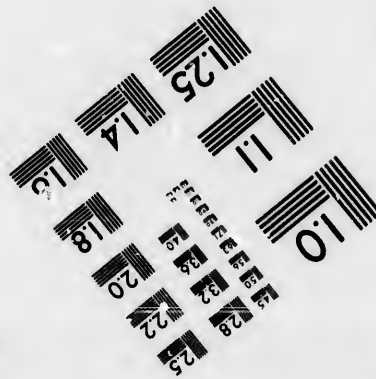
In *Reg. vs. Ward*, 12 Cox, 123, the indictment charged a felonious wounding with intent to do grievous bodily harm. The jury returned a verdict of unlawful wounding, under 14-15 Vict., ch. 19, s. 5, (second part of our s. 19 ch. 20, *supra*.) Upon a case reserved, it was held that the words "*maliciously and*" must be understood to precede the word unlawfully in this section, and that to support the verdict, the act must have been done maliciously as well as unlawfully.

Greaves, in an article on this case, 1 *Law Magazine* 379, censures severely this ruling. According to him, a new offence, that of unlawful wounding, was created by that clause, and the word *maliciously* has been purposely





6"



Photographic Sciences Corporation

**23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503**

0
15 28
16 22
18 20
19 18

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

omitted from it. In a preceding number of the same magazine, p. 269, an anonymous writer, attacks the decision in Ward's case from another point of view. The shooting was certainly proved not to have been intended to strike the prosecutor, but the Court, by twelve judges against three, found that there was proof of malice sufficient to support the conviction. On this appreciation of the facts of the case, this anonymous writer censures the judgment, at the same time admitting its correctness, so far as the Court held the *maliciously* as necessary as the *unlawfully* under this clause, though the word *maliciously* had been dropped in the Statute. It thus appears that the question is not very well settled in England, so far.

Why does our Statute allow imprisonment *with or without hard labour*, for unlawfully and maliciously wounding under sect. 19,—and simple imprisonment only, without *hard labour*, for unlawfully wounding, found upon an indictment for feloniously wounding?

The defendant may be found guilty of the attempt to commit the misdemeanor, *charged upon* an indictment under sect. 19, Procedure Act of 1869, s. 49.

And if, upon the trial of any person for any misdemeanor, it appears that the facts given in evidence, while they include such misdemeanor, amount in law to a felony, such person shall not, by reason thereof, be entitled to be acquitted of such misdemeanor, (and the person tried for such misdemeanor, if *convicted*, shall not be liable to be afterwards prosecuted for felony, on the same facts) unless the Court before which such trial is had thinks fit, in its discretion, to discharge the jury from giving any verdict upon such trial, and to direct such person to be indicted for felony, in which case such person may be dealt with in all respects, as if he had not been put upon

his trial for such misdemeanor. (Procedure Act of 1869, s. 50.)

See sect. 77, *post*, as to fine and sureties to keep the peace, in the discretion of the Court.

ATTEMPTING TO CHOKE, ETC., WITH INTENT TO COMMIT ANY
INDICTABLE OFFENCE.

Sect. 20.—Whosoever by any means whatsoever attempts to choke, suffocate or strangle any other person, or by any means calculated to choke, suffocate or strangle, attempts to render any other person insensible, unconscious, or incapable of resistance, with intent in any of such cases thereby to enable himself or any other person to commit, or with intent in any of such cases thereby to assist any other person in committing any indictable offence, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and if a male with or without whipping.—24-25 Vict., ch. 100, s. 21, and 26-27 Vict., ch. 44, Imp.

Indictment.—.....feloniously and unlawfully did attempt by then (*state the means or by any means whatsoever*) to choke, suffocate and strangle one J. N., (*choke, suffocate or strangle any person, or.....*) with intent thereby then to enable him, the said A. B., the monies, goods, and chattels of the said J. N., from the person of the said J. N. feloniously and unlawfully to steal, take and carry away, against the formAdd counts varying the statement of the overt acts and of the intent.—Archbold, 669.

This clause is new, and is directed against those at-

tempts at robbery which have been accompanied by violence to the throat.—Greaves, Cons. Acts, 54.

The clause gives the intent "to commit any *indictable* offence;" that is to say, either a misdemeanor or a felony.

See sect. 77 of the same Act, *post*, for sureties to keep the peace.

In certain cases, a verdict of common assault may be given, upon an indictment for this felony.—Procedure Act of 1869, sect. 51.

If a male, for the whipping, see Procedure Act of 1869, sect. 93.

USING CHLOROFORM, ETC., ETC., ETC., TO COMMIT
INDICTABLE OFFENCES.

Sect. 21.—Whosoever unlawfully applies or administers to, or causes to be taken by, or attempts to apply or administered 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, with intent in any of such cases thereby to enable himself or any other person to commit, or with intent in any of such cases thereby to assist any other person in committing any indictable offence, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life, or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and if a male with or without whipping.—24-25 Vict., ch. 100, s. 22, Imp.

Indictment.—... feloniously and unlawfully did apply and administer to one J. N. (or *cause*...) certain chloroform with intent thereby (*intent as in the last precedent*.)

If it be not certain that it was chloroform, or laudanum, that was administered, add a count or counts stating it to be "a certain stupefying and overpowering drug and matter to the jurors aforesaid unknown." Add also counts varying the intent if necessary.—Archbold, 670.

As to what constitutes an "administering, or attempting to administer," see remarks under sects. 12 and 13, *ante*.

Under the Procedure Act of 1869, sect. 51, a verdict of common assault may be given, if the evidence warrants it.

See also s. 95, of the said Procedure Act, as to the whipping.

And sect. 77, *post*, as to sureties to keep the peace.

ADMINISTERING POISON, ETC., ETC., ETC., SO AS TO
ENDANGER LIFE OR WITH INTENT TO INJURE,
ETC., ETC., ETC.

Sect. 22.—Whosoever unlawfully and maliciously administers to, or causes to be administered to or taken by any other person, any poison or other destructive or noxious thing, so as thereby to endanger the life of such person, or so as thereby to inflict upon such person any grievous bodily harm, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding ten years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years with or without hard labour. — 24-25 Vict., ch. 100, s. 23, Imp.

Sect. 23.—Whosoever unlawfully and maliciously 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, is guilty of a misdemeanor, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding three years, and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour.—24-25 Vict., ch. 100, s. 24, Imp.

Sect. 24.—If, upon the trial of any person for any felony in the last but one preceding section mentioned, the jury are not satisfied that such person is guilty thereof, but are satisfied that he is guilty of any misdemeanor in the last preceding section mentioned, then, and in every such case, the jury may acquit the accused of such felony, and find him guilty of such misdemeanor, and thereupon he shall be punished in the same manner as if convicted upon an indictment for such misdemeanor.—24-25 Vict., chap. 100, s. 25, Imp.

Indictment for administering poison so as to endanger life.—.....feloniously, unlawfully and maliciously did administer to one J. N., (or cause.....) a large quantity, to wit, two drachms of a certain deadly poison called white arsenic, and thereby then did endanger the life of the said J. N. against.....

Add a count stating that the defendant "did cause to be taken by J. N. a large quantity....." and if the kind of poison be doubtful, add counts describing it in different ways, and also stating it to be "a certain destructive thing, (or a certain noxious thing) to the jurors aforesaid unknown." There should be also a set of counts stating that the defendant thereby "inflicted upon J. N. grievous bodily harm."—Archbold, 671.

A
exc
with
agg
Reg
I
inju
amo
in f
felon
640
S
peac
U
defer
atter

NE

Se
husb
mistr
wife,
infan
wilfu
prov
done
so th
dang
has b
of a
in th
years

Administering cantharides to a woman with intent to excite her sexual passion, in order to obtain connexion with her, is an administering with intent to injure, aggrieve or annoy, within the meaning of the Statute.—*Reg. vs. Wilkins, Leigh & Cave, 89.*

If the poison is administered merely with intent to injure, aggrieve or annoy, which in itself would merely amount to a misdemeanor under sect. 23, yet if it does in fact inflict grievous bodily harm, this amounts to a felony under section 22.—*Tulley vs. Corrie, 10 Cox, 640.*

See, *post*, sect. 77, as to fine and sureties to keep the peace in certain cases.

Under sect. 49 of the Procedure Act of 1869, the defendant, in certain cases, may be found guilty of the attempt to commit the offence charged.

NEGLECT TO PROVIDE WITH FOOD, ETC., ETC., WIFE,
CHILD, APPRENTICE, ETC.

Sect. 25.—Whosoever being legally liable, either as a *husband, parent, guardian or committee, master or mistress, nurse or otherwise*, to provide for any person as *wife, child, ward, lunatic or idiot, apprentice or servant, infant or otherwise*, necessary food, clothing or lodging, wilfully and without lawful excuse, refuses or neglects to provide the same, or maliciously does or causes to be done any bodily harm to any such apprentice or servant, so that the life of such apprentice or servant is endangered, or the health of such apprentice or servant has been or is likely to be, permanently injured, is guilty of a misdemeanor, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding three years and not less than two years, or to be imprisoned

in any other gaol or place of confinement for any term less than two years, with or without hard labour.—24-25 Vict., ch. 100, s. 26, Imp.

The words in *Italics* are not in the Imperial Statute. They were in the Bill as introduced in the House of Lords, but were struck out by the Commons.—Greaves, Cons. Acts. 56.

Indictment for not providing an apprentice with necessary food... That J. S., on.... then being the master of J. N. his apprentice, and then being legally liable to provide for the said J. N., as his apprentice as aforesaid, necessary food (*clothing or lodging*), unlawfully, wilfully and without lawful excuse did refuse and neglect to provide the same, so that the life of the said J. N. was thereby endangered (*or the health of the said J. N. has been or is likely to be permanently injured*) against the form.... ..Add counts varying the statement of the injury sustained.—Archbold, 692.

Prove the apprenticeship; if it was by deed, by production and proof of the execution of the deed, or in case it be in the possession of the defendant, and there be no counterpart, by secondary evidence of its contents, after due notice given to the defendant to produce it. The legal liability of the defendant to provide the prosecutor with necessary food, clothing or lodging will be inferred, even if it be not expressly stipulated for, from the apprenticeship itself. Prove the wilful refusal or neglect of the defendant to provide the prosecutor with necessary food, &c., as stated in the indictment. Whether it be necessary to prove that by such neglect, the prosecutor's life was endangered, or his health was or was likely to be permanently injured, depends upon the construction which is to be put upon the Statute. If the words "so that the life of such person shall be

en
suc
the
har
un
the
..
par
to
ove
gle
cla
ous
suc
A
pris
pro
she
sec
wil
chil
tha
retu
pris
wou
as i
tain
it is
—R
It
was
tute
ante
By

endangered, or, &c.," apply to all the preceding matter, such proof will be necessary; if only to the branch of the section which relates to the actual doing of bodily harm to the apprentice or servant, such proof will be unnecessary. Until there has been some decision on the subject, it will be safer to allege "so that the lifeor health...." as the case may be, and to be prepared with evidence to sustain it. It would seem indeed to be the better opinion, that the words "so that, &c." override all the preceding matter, otherwise a mere single wilful refusal to provide a dinner would be within the clause. Upon an indictment for unlawfully and maliciously assaulting an apprentice or servant, it is clear that such allegation and proof are necessary.—Archbold, 692.

An indictment alleged in the first count that the prisoner unlawfully and wilfully neglected and refused to provide sufficient food for her infant child five years old, she being able and having the means to do so. The second count charged that the prisoner unlawfully and wilfully neglected and refused to provide her infant child with necessary food, but there was no allegation that she had the ability or means to do so. The jury returned a verdict of guilty, on the ground that if the prisoner had applied to the guardians for relief she would have had it: *Held*, that neither count was proved, as it was not enough that the prisoner could have obtained the food on application to the guardians, and that it is doubtful whether the second count is good in law.—Reg. vs. Rugg, 12 Cox, 16.

It is to be remarked that the indictment in that case was under the Common law, since, in England, the Statute corresponding to our s. 25, ch. 20, 32-33 Vict., as *ante*, applies only to masters and servants or apprentices. By the common law, an indictment lies for all misde-

meanors of a public nature. Thus it lies, for a breach of duty, which is not a mere private injury, but an outrage upon the moral duties of society; as for the neglect to provide sufficient food or other necessities for an infant of tender years, unable to provide for and take care of itself, whom the defendant is obliged by duty to provide, so as thereby to injure its health.—Archbold, 1.

But the parent must have a present means or ability to support the child; the possibility of obtaining such relief is not sufficient: and by the neglect of such duty, the child must have suffered a serious injury. An opportunity of applying to a relieving officer of the union, from which the mother would have received adequate relief on application, is not a sufficient proof of her having present means.—*R. vs. Chandler*, Dears. 453; *R. vs. Hogan*, 2 Den. 277; *R. vs. Philpott*, Dears. 145. But these and similar cases, are no authorities under our present Statute, in Canada.

As to fining the offender and requiring him to enter into recognizances and give sureties for keeping the peace *see post*, sect. 77.

EXPOSING CHILDREN UNDER TWO YEARS OF AGE.

Sect. 26.—Whosoever unlawfully abandons or exposes any child being under the age of two years, whereby the life of such child is endangered, or the health of such child has been or is likely to be permanently injured, is guilty of a misdemeanor, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding three years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour —24-25 Vict., ch. 100, s. 27, Imp.

Indictment.—...unlawfully did abandon and expose a certain child called J. N., then being under the age of two years, whereby the life of the said child was endangered (or whereby the health of such child was likely to be permanently injured) against the form....

This provision is new. In order to sustain an indictment under it, it is only necessary to prove that the defendant wilfully abandoned or exposed the child mentioned in the indictment: that the child was then under two years of age, and that its life was thereby endangered, and its health had been or then was likely to be permanently injured.—Archbold, 693.

A and B were indicted for that they "did abandon and expose a child then being under the age of two years, whereby the life of the child was endangered." A, the mother of a child five weeks old, and B put the child into a hamper, wrapped up in a shawl, and packed with shavings and cotton wool, and A, with the connivance of B, took the hamper to M, about four or five miles off, to the booking office of the railway station there. She there paid for the carriage of the hamper, and told the clerk to be very careful of it, and to send it to G by the next train, which would leave M in ten minutes from that time. She said nothing as to the contents of the hamper, which was addressed "Mr. Carr's, Northoutgate, Gisbro, with care, to be delivered immediately," at which address the father of the child (a bastard) was then living. The hamper was carried by the ordinary passenger train, and delivered at its address the same evening. The child died three weeks afterwards, from causes not attributable to the conduct of the prisoners. On proof of these facts, it was objected for the prisoners that there was no evidence that the life of the child was endangered and

that there was no abandonment and no exposure of the child within the meaning of the Statute. The objections were overruled and the prisoners found guilty: *Held*, that the conviction should be affirmed.—*Reg. vs Falkingham*, 11 Cox, 475.

A mother of a child under two years of age brought it and left it outside the father's house (she not living with her husband, the father of it.) He was inside the house, and she called out "Bill, here's your child; I can't keep it. I am gone." The father some time afterwards came out, stepped over the child and went away. About an hour and a half afterwards, his attention was again called to the child still lying in the road. His answer was, "it must bide there for what he knew, and then the mother ought to be taken up for the murder of it." Later on, the child was found by the police in the road, cold and stiff; but, by care, it was restored to animation. *Held*, on a case reserved, that, though the father had not had the actual custody and possession of the child, yet, as he was by law bound to provide for it, his allowing it to remain where he did was an abandonment and exposure of the child by him, whereby its life was endangered, within the Statute.—*Reg. vs. White*, 12 Cox, 83.

See sect. 77, *post*, as to fine and sureties to keep the peace, in certain cases.

CAUSING BODILY INJURY BY GUNPOWDER, ETC., EXPLOSION,
ETC., THROWING CORROSIVE FLUID ON A PERSON,
ETC., PLACING GUNPOWDER NEAR A
BUILDING WITH INTENT, ETC.

Sect. 27—Whosoever unlawfully and maliciously, by the explosion of gunpowder or other explosive substance, burns, maims, disfigures, disables or does grievous bodily

harm to
to be in
term ne
other g
two ye
without
28, Imp
Sect.
causes
explode
received
other d
place, o
to any
explosiv
aforesai
or to do
ther any
and shal
for life.
imprison
any terr
labour, a
25 Vict.

Sect.
places o
building
sive sub
any per
and whe
of felony
nitentiar
not less

harm to any person is guilty of felony and shall be liable to be imprisoned in the Penitentiary for life, or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 100, s. 28, Imp.

Sect. 28.—Whosoever unlawfully and maliciously causes any gunpowder or other explosive substance to explode, or sends or delivers to, or causes to be taken or received by any person, any explosive substance, or any other dangerous or noxious thing, or puts or lays at any place, or casts or throws at or upon, or otherwise applies to any person, any corrosive fluid, or any destructive or explosive substance, with intent, in any of the cases aforesaid, to burn, maim, disfigure or disable any person, or to do some grievous bodily harm to any person, whether any bodily harm be effected or not, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life, or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 100, s. 29, Imp.

Sect. 29.—Whosoever unlawfully and maliciously places or throws in, into, upon, against or near any building, ship or vessel any gunpowder, or other explosive substance, with intent to do any bodily injury to any person, *whether or not any explosion takes place, and whether or not any bodily injury is effected*, is guilty of felony and shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years, and not less than two years, or to be imprisoned in any other

gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 100, s. 30, Imp.

Indictment for burning by gunpowder—...feloniously, unlawfully and maliciously, by the explosion of a certain explosive substance, that is to say, gunpowder, one J. N. did burn; against the form.....Add counts, vaying the statement of the injury, according to circumstances.—Archbold, 673.

Indictment for sending an explosive substance with intent, etc......feloniously, unlawfully and maliciously did send (or deliver to, or cause to be taken or received by) to one J. N, a certain explosive substance and dangerous and noxious thing, to wit, two drachms of fulminating silver, and two pounds weight of gunpowder, with intent in so doing him the said J. N. thereby then to burn (*maim, disfigure or disable, or do some grievous bodily harm*) against..... Add counts varying the injury and intent.—Archbold, 673.

Indictment for throwing corrosive fluid, with intent, etc...... feloniously, unlawfully and maliciously did cast and throw upon one J. N. a certain corrosive fluid, to wit, one pint of oil of vitriol, with intent in so doing him the said J. N. thereby then to burn..... Add counts varying the injury and the intent. Archbold, 674.

In *Reg. vs. Crawford*, 1 Den. C. C. 100, the prisoner was indicted for maliciously throwing upon P. C. certain destructive matter, to wit, one quart of boiling water, with intent, etc. The prisoner was the wife of P. C., and when he was asleep, she, under the influence of jealousy, boiled a quart of water, and poured it over his face and

into
him
man
lost
con
the
I
tie
and
"v
Arc
tut
H
acti
pla
rece
or
offe
twe
A
kee
U
be
cas
of t
SET
S
set
calc
har
may
tres

into one of his ears, and ran off boasting she had boiled him in his sleep. The injury was very grievous. The man was for a time deprived of sight, and had frequently lost for a time the hearing of one ear. The jury having convicted, upon a case reserved, the Judges held that the conviction was right.

In *R. vs. Murrow*, 1 Mood., 456, it was held, where the defendant threw vitriol in the prosecutor's face, and so wounded him, that this wounding was not the "wounding" meant by the 9 Geo. 4, ch. 31, s. 12.—*Archbold*, 665: but it would now fall under this Statute.

By section 48, *post*, "neither the justice of the Peace acting in and for any district, county, division, city or place, nor any judge of the sessions of the Peace, nor the recorder of any city, shall, at any session of the Peace, or at any adjournment thereof try any person for any offence under the twenty-seventh, twenty-eighth or twenty-ninth section of this Act."

And see section 77, *post*, as to requiring sureties to keep the peace, in certain cases.

Upon an indictment for any felony, the prisoner may be convicted of an attempt to commit the same in certain cases.—*Procedure Act* of 1869, sect. 49, and see sect. 94 of the same Act, as to solitary confinement.

SETTING SPRING-GUNS, ETC., ETC., WITH INTENT, ETC., ETC.

Sect. 30.—Whosoever sets or places, or causes to be set or placed, any spring-gun, man-trap or other engine calculated to destroy human life or inflict grievous bodily harm, with the intent that the same or whereby the same may destroy or inflict grievous bodily harm, upon any trespasser or other person coming in contact therewith,

is guilty of a misdemeanor, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding three years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour; and whosoever knowingly and wilfully permits any such spring-gun, man-trap or other engine which may have been set or placed in any place then being in or afterwards coming into his possession or occupation by some other person, to continue so set or placed shall be deemed to have set or placed such gun, trap or engine with such intent, as aforesaid; provided that nothing in this section contained shall extend to make it illegal to set or place any gin or trap such as may have been or may be usually set or placed with the intent of destroying vermin.—24-25 Vict., ch. 100, s. 31, Imp.

The English Act has the following additional proviso :
 “Provided also that nothing in this section shall be deemed to make it unlawful to set or place or cause to be set or placed, or to be continued set or placed from sunset to sunrise, any spring-gun, man-trap or other engine, which shall be set or placed, or caused or continued to be set or placed, in a dwelling-house for the protection thereof.”

The omission of this proviso in our Statute, whether intentional or not, is very important.

Indictment.— unlawfully did set and place, and caused to be set and placed, in a certain garden situate a certain spring-gun which was then loaded and charged with gunpowder and divers leaden shot, with intent that the said spring-gun, so loaded and charged as aforesaid, should inflict grievous bodily harm

upon
with

F
gun
tact
stat
tent
tion
fort
evid

A
gam
tion
Rus

T
caus
if th
bush
wire
kno
was
was
subs
enou
alarm

Se
quir
ties
viou

upon any trespasser who might come in contact therewith, against.....

Prove that the defendant placed or continued the spring-gun loaded in a place where persons might come in contact with it; and if any injury was in reality occasioned, state it in the indictment, and prove it as laid. The intent can only be inferred from circumstances, as the position of the gun, the declarations of the defendant, and so forth; any injury actually done will, of course, be some evidence of the intent.—Archbold, 675.

A dog-spear set for the purpose of preserving the game is not within the Statute, if not set with the intention to do grievous bodily harm to human beings.—1 Russell, 1052.

The instrument must be calculated to destroy life of cause grievous bodily harm, and proved to be such; and, if the prosecutor, while searching for a fowl among some bushes in the defendant's garden, came in contact with a wire which caused a loud explosion, whereby he was knocked down, and slightly injured about the face, it was held that the case was not within the Statute, as it was not proved what was the nature of the engine or substance which caused the explosion, and it was not enough that the instrument was one calculated to create alarm.—1 Russell, 1053.

See sect. 77, *post*, as to fining the offender, and requiring him to enter into recognizances and find sureties for keeping the peace and being of good behaviour.

PLACING WOOD, ETC., CASTING STONES ON A RAILWAY OR RAILWAY CARRIAGE WITH INTENT, ETC., ENDANGERING SAFETY OF PASSENGERS BY UNLAWFUL ACT OR WILFUL NEGLIGENCE.—

Sect. 31.—Whosoever unlawfully and maliciously puts or throws upon or across any railway any wood, stone or other matter or thing, or unlawfully and maliciously takes up, removes or displaces any rail, sleeper or other matter or thing belonging to any railway, or unlawfully and maliciously turns, moves, or diverts any point or other machinery belonging to any railway, or unlawfully and maliciously makes or shows, hides or removes any signal or light upon or near to any railway, or unlawfully “or” maliciously does or causes to be done any other matter or thing, with intent in any of the cases aforesaid, to endanger the safety of any person travelling or being upon such railway, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life, or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour.—24-25 Vict., ch. 100, s. 32, Imp.

See, *post*, under section 39 of the Act concerning malicious injuries to property for form of indictment, with the necessary change in the statement of the intent.

Sect. 32.—Whosoever unlawfully and maliciously throws, or causes to fall, or strike at, against, into or upon any engine, tender, carriage or truck used upon any railway, any wood, stone or other matter or thing, with intent to injure or endanger the safety of any person being in or upon such engine, tender, carriage or truck, or in or upon any other engine, tender, carriage or truck of any train, of which such first mentioned engine, tender, carriage or

see p. 213-4

truck forms part, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life, or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement, for any term less than two years, with or without hard labour.—24-25 Vict., ch. 100, s. 33 Imp.

SECT. 33.—Whosoever, 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, is guilty of a misdemeanor, and shall be liable to be imprisoned in any gaol or place of confinement, other than a Penitentiary, for any term less than two years, with or without hard labour.—24-25 Vict., ch. 100, s. 34, Imp.

In the eighth line of the 31st section the word *or* is erroneously inserted instead of *and*, making it unlawfully *or* maliciously, instead of unlawfully *and* maliciously. An error of this kind may lead to grave consequences.

The words *of duty* in the 33rd section are not in the English Act. But they are superfluous. In such a case, a *neglect* means a *neglect of duty*.

See, *post*, sect. 67, 31 Vic. ch. 12, and sect. 78, 31 Vict. ch. 68, which seem to relate to the same offence.

Indictment for endangering by wilful neglect the safety of Railway passengers..... That J. S. on.... unlawfully did, by a certain wilful omission and neglect of his duty, that is to say by then wilfully omitting and neglecting to turn certain points in and upon a certain railway called.... in the parish.... which points it was then the duty of him, the said J. S., to turn, endanger the safety of certain persons then conveyed and being in and upon the said railway, against the form....

Add counts, varying the state.... of defendant's duty, etc.—Archbold, 676.

Prove that it was the duty of the defendant to turn the points; that he wilfully omitted and neglected to do so; and that, by reason of such omission and neglect, the safety of the passengers or other persons conveyed or being on the railway was endangered, (which words will include not only passengers but officers and servants of the railway company).—Archbold, loc. cit.

In Reg. vs. Holroyd, 2 M. and Rob. 339, it appeared that large quantities of earth and rubbish were found placed across the railway, and the prosecutor's case was that this had been done by the defendant wilfully and in order to obstruct the use of the railway; and the defendant's case was that the earth and rubbish had been accidentally dropped on the railway: Maule, J., told the jury, that if the rubbish had been dropped on the rails by mere accident, the defendant was not guilty; but "it was by no means necessary, in order to bring the case within this Act, that the defendant should have thrown the rubbish on the rails expressly with the view to upset the train of carriages. If the defendant designedly placed these substances, having a tendency to produce an obstruction, not caring whether they actually impeded the carriages or not, that was a case within the Act." And on one of the jury asking what was the meaning of the term "wilfully" used in the Statute, the learned Judge added "he should consider the act to have been *wilfully* done, if the defendant *intentionally* placed the rubbish on the line, knowing that it was a substance likely to produce an obstruction; if for instance, he had done so in order to throw upon the Company's officers the necessary trouble of removing the rubbish." This decision may afford a safe guide to the meaning of the term *wilful* in this clause. Greaves, Cons. Acts, 62, on s. 34.

33 of our Statute).—In the other clauses, the word *wilfully* is now replaced by *unlawfully*.

On s. 33 (32 of our Statute,) Greaves says: (Consol. Acts, 61.) "The introduction of the word *at* extends this clause to cases where the missile fails to strike any engine or carriage. Other words were introduced to meet cases where a person throws into or upon one carriage of a train, when he intended to injure a person being in another carriage of the same train, and similar cases. In *Reg. vs. Court*, 6 Cox 202, the prisoner was indicted for throwing a stone against a tender with intent to endanger the safety of persons on the tender, and it appeared that the stone fell on the tender, but there was no person on it at the time, and it was held that the section was limited to something thrown upon an engine or carriage having some person therein, and consequently that no offence within the Statute was proved, but now, this case would clearly come within this clause."

In *Reg. vs. Bradford*, Bell C. C. 268, it was held that a railway not yet opened for passengers, but used only for the carriage of materials and workmen, is a railway within the Statute.

In *Reg. vs. Bowray*, 10 Jurist, 211, 1 Russell, 1058, on an indictment for throwing a stone on a railway, so as to endanger the safety of passengers, it was held that the intention to injure is not necessary, if the act was done wilfully, and its effect be to endanger the safety of the persons on the railway.

It is not necessary that the defendant should have entertained any feeling of malice against the railway company, or against any person on the train: it is quite enough to support an indictment under the Statute, if the

act was done mischievously, and with a view to cause an obstruction of a train. *Reg. vs. Upton*, 5 Cox, 298.

Two boys went upon premises of a Railway Company, and began playing with a heavy cart, which was near the line. Having started the cart, it ran down an embankment by its own impetus. One boy tried to divert its course: the other cried to him "Let it go." The cart ran on without pushing until it passed through a hedge, and a fence of posts and rails, and over a ditch on to the Railway; it rested so close to the Railway lines as to obstruct any carriages passing upon them. The boys did not attempt to remove it: *Held*, that as the first act of moving the cart was a trespass, and therefore an unlawful act, and as the jury found that the natural consequence of it was that the cart ran through the hedge and so on to the Railway, the boys might be properly convicted. *Reg. vs. Monaghan*, 11 Cox, 608.

See, *post*, section 77, as to sureties for the peace in felonies, and fine and sureties for the peace, in misdemeanors under this Act.

—Before taking any proceedings under any of the above sections, or under sections 39 or 40 of the act concerning malicious injuries to property (32-33 Vict., ch. 22) the practitioner should refer to the penal clauses of the General Railway Act of 1868, 31 Vict., ch. 68, which are as follows:

Sect. 72, par. 2.—Every person who, by any means, or in any manner or way whatsoever, obstructs or interrupts the free use of the Railway, or the carriages, vessels, engines or other works incidental or relative thereto, or connected therewith, shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished by imprisonment in the Common Gaol of the District or County, where the conviction takes place, for

any term less than two years, or in the Penitentiary for a term not to exceed five years, and not less than two years.

Sect. 72, par. 3.—All persons wilfully and maliciously, and to the prejudice of the Railway, breaking, throwing down, damaging or destroying the same, or any part thereof, or any of the buildings, stations, depots, wharves, vessels, fixtures, machinery or other works or devices incidental or relative thereto, or connected therewith, or doing any other wilful hurt or mischief, or wilfully "*or*" maliciously obstructing or interrupting the free use of the Railway, vessels or works, or obstructing, hindering, or preventing the carrying on, completing, supporting and maintaining the Railway, vessels, or works, shall be guilty of a misdemeanor, *unless the offence committed amounts, under some other act or law, to a felony, in which case such person shall be guilty of a felony*; and the Court by and before whom the person is tried and convicted, may cause such person to be punished in like manner as persons guilty of misdemeanor or felony, as the case may be, are directed to be punished by the laws in force in Canada.

Sect. 73.—If any person wilfully and maliciously displaces or removes any Railway switch or rail of any Railway, or breaks down, rips up, injures or destroys any Railway track or Railway bridge or fence of any Railway or any portion thereof, or places any obstruction whatsoever on any such rail, or Railway track, or bridge, with intent thereby to injure any person or property passing over or along such Railway, or to endanger human life, such person shall be guilty of a misdemeanor, and shall be punished by imprisonment, with hard labour, in the common gaol of the Territorial Division in which

such offence is committed or tried, for any period not exceeding one year from conviction thereof; and if in consequence of such act, done with the intent aforesaid, any person so passing over and along such Railway actually suffers any bodily harm, or if any property passing over and along such Railway be injured, such suffering or injury shall be an aggravation of the offence, and shall render the offence a felony, and shall subject the offender to punishment by imprisonment in the Penitentiary for two years, or in any other prison or place of confinement for any period exceeding one year and less than two years.

Sect. 74 enacts that if, in consequence of any act punishable under sections 73 and 75, any person be killed, or his life be lost, the offence is manslaughter, punishable by imprisonment in the Penitentiary for any period not more than ten nor less than four years. As to this clause, see, *ante*, under head "*manslaughter*."

Sect. 75.—If any person wilfully and maliciously does or causes to be done, any act whatever, whereby any building, fence, construction or work of any Railway, or any engine, machine or structure of any Railway, or any matter or thing appertaining to the same is stopped, obstructed, impaired, weakened, injured or destroyed, the person so offending shall be guilty of a misdemeanor, and be punished by imprisonment with hard labour not exceeding one year, in the Common Gaol of the Territorial Division in which the offence was committed or has been tried.

In England, sect. 15 of the General Railway Act, 3 & 4 Vict., ch. 97, contained enactments of the same nature as the above, but was repealed by the General Repeal Act, 24–25 Vict., ch. 95, passed with the Consolidation of the Criminal Statutes. Our General Repeal Act, 32–33

Vic
our
full
of th
agai
unde
the
twec
with
he i
sonn
by c
Peni
Acts
Railw
subj
liame
the l
TH
68 of
work
Se
life a
ways
panie
dient
purp
Queb
of, or
Railw
Depar
or Ne
any b
of the

Vict., ch. 36, makes no mention of the above clauses of our Railway Act. They then stand unrepealed, and in full force, according to the third paragraph of section 1 of the said Repeal Act; and in virtue thereof offences against Railway, &c., are to be tried and punished either under the said Railway Act, or under chapters 20 or 22 of the 32-33 Vict. Now, there is a wide difference between these Acts: for instance, if a man removes a rail, with intent to endanger human life, by the Railway Act, he is guilty of misdemeanor, and punishable by imprisonment for any period not exceeding one year (sect. 73); by ch. 20, sect. 31, he is guilty of felony, and liable to Penitentiary for life! And this difference between these Acts is remarkable throughout all the penal clauses of the Railway Act, when compared with the clauses on the same subject of chapters 20 and 22 of the 32-33 Vict. Parliament should, it is submitted, remedy these anomalies in the law.

Then why not repeal, as to railways, sect. 67 and sect. 68 of 31 Vict., ch. 12—"an Act respecting the public works of Canada?" They are as follows:

Sect. 67.—And whereas, for the better protection of life and property, as well on the Public Works and Railways of the Dominion, as on Railways managed by companies in Nova Scotia and New-Brunswick, it is expedient to extend to them the provisions made for that purpose as regards Railways managed by companies in Quebec and Ontario, therefore if any officer or servant of, or any person employed by the Department on any Railway or Public Work being under the control of the Department, or by any Railway company in Nova Scotia or New Brunswick, wilfully or negligently contravenes any by-law, order or regulation of the Department, or of the Company, or any order in Council, lawfully made

or in force respecting the Railway or the Public Work on which he is employed, and of which a copy has been delivered to him, or has been posted up or open to his inspection in some place where his work or his duties or any of them are to be performed, then if such contravention causes injury to any property or to any person, or exposes any property or any person to the risk of injury, or renders such risk greater than it would have been without such contravention, although no actual injury occurs, such contravention shall be a misdemeanor, and the person convicted thereof shall, in the discretion of the court before whom the conviction is had, and according as such court considers the offence proved to be more or less grave, or the injury or risk of injury to person or property to be more or less great, be punished by fine or imprisonment or both, so as no such fine exceeds four hundred dollars, nor any such imprisonment the term of five years; and such imprisonment, if for two years or upwards, shall be in the Penitentiary for the Province in which the conviction takes place.

Sect. 68.—If such contravention does not cause injury to any property or person, nor expose any property or person to the risk of injury, nor make such risk greater than it would have been without such contravention, then the officer, servant, or other person guilty thereof shall thereby incur a penalty not exceeding the amount of thirty days pay, nor less than fifteen days pay of the offender from the Department or Company, in the discretion of the Justice of the Peace before whom the conviction is had, and such penalty shall be recoverable with costs before any one Justice of the Peace having jurisdiction where the offence has been committed or where the offender is found, on the oath of one credible witness, other than the informer.

Vi
fol
by
tra
law
Ra
eng
or
pla
to
to
per
risk
trav
cont
conv
befo
such
less
prop
impr
hund
five
shall
It
ch. 2
In
Statu
just
thes
rema
sect.
“ I

Sections 78 and 79 of the Railway Act of 1868, 31 Vict. ch. 68, should also be repealed. Section 78 is as follows :—If any officer or servant of, or person employed by any Railway Company, wilfully or negligently contravenes any By-Law or regulation of the Company lawfully made and in force, or any order or notice of the Railway Committee, or of the inspecting engineer or engineers, of which a copy has been delivered to him, or has been posted up or open to his inspection in some place where his work or his duties, or any of them are to be performed, then if such contravention causes injury to any property or to any person, or exposes any property or any person to the risk of injury, or renders such risk greater than it would have been without such contravention, although no actual injury occurs, such contravention shall be a misdemeanor, and the person convicted thereof shall in the discretion of the Court before whom the conviction is had, and according as such Court considers the offence proved to be more or less grave, or the injury or risk of injury to person or property to be more or less great, be punished by fine or imprisonment, or both, so as no such fine exceeds four hundred dollars, nor any such imprisonment the term of five years; and such imprisonment, if for over two years, shall be in the Penitentiary.

It is evident that these clauses clash with sect. 33 of ch. 20, cited *ante*.

In England before the Consolidation Acts of 1861, the Statute law was, for sometime, in the same state as it is just now for us in Canada, (two different Statutes on these offences) and it may be useful to insert here the remarks then made by Greaves on 14-15 Vict., chap. 19, sect. 6. (*Lord Campbell's Acts, by Greaves, 42.*

“It may be well to observe that the 3 & 4 Vict.,

c. 97, sects. 13 & 14, provided for the punishment of servants, of railway companies, who (*inter alia*) wilfully or maliciously did any acts, whereby the life or limb of any person passing along or being upon the railway should or might be injured, or endangered, or the passage of any engine, carriage or train impeded or obstructed. Such persons might either be summarily convicted before one justice, or tried at the sessions, but the greatest punishment was two years imprisonment with hard labour. By sect. 15 of the same act, persons who wilfully did, or caused to be done any thing in such manner as to obstruct any engine or carriage using any railway, or to endanger the safety of persons conveyed upon the same, were made guilty of a misdemeanor, but the greatest punishment was two years imprisonment with hard labour. Every one was perfectly satisfied that these provisions were quite inadequate to meet many malicious acts, that might be committed in respect of railway passengers, and therefore this and the next clause were introduced (31 and 32 *ante*, of chap. 20, 32-33 *Vict. of our Statutes*) to provide a fitting punishment for offences of such a serious character.

Although such parts of the clauses of the 3 & 4 *Vict. c. 97*, as relate to the offences specified in this Act are not in terms repealed, yet they ought never to be acted upon; for the offences being made felony and subjected to so much more severe punishment, all cases falling within this Act ought to be prosecuted under it, and if any indictment were preferred under the former Act when the case fell within this, no doubt the Court would order the jury to be discharged, and an indictment for the felony to be preferred, under the 14 and 15 *Vict.*, c. 100, s. 12 *ante* p. 16; this being just the sort of case to which that clause is properly applicable. Whether the misde-

meanor would at common law have merged in the felony need not now be considered."

The clause of the Imperial Statute hereinbefore cited by Greaves, 14-15 Vict., chap. 100, sect. 12, is repeated in our Procedure Act of 1869, sect. 50, so that, what this learned man said for England in 1851, may now be applied in Canada, and if any one were to prefer an indictment for a misdemeanor for any offences respecting a railway under the Railway Act of 1868, instead of under the Act on offences against the person, or on malicious injuries to property, it would be proper—generally speaking—to discharge the jury and order an indictment for felony to be preferred.—Lord Campbell's Acts, by Greaves, p. 16.

DRIVERS OF CARRIAGES INJURING PERSONS.

Sect. 34.—Whosoever, 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 whatsoever, is guilty of a misdemeanor, and shall be liable to be imprisoned in any gaol or place of confinement other than a Penitentiary, for any term less than two years with or without hard labour.—24-25 Vict., ch. 100, s. 35, Imp.

Indictment.—.....being then a coachman, and then having charge of a certain carriage and vehicle called an omnibus, unlawfully did, by the wanton and furious driving of the said carriage and vehicle by him the said.....
(defendant) cause certain bodily harm to be done to one J. N. against the form.....—Archbold, 677.

This section includes all carriages and vehicles of every description, both public and private. *Wilful* means *voluntary*. Greaves, Consol. Acts, 63.

By sect. 77, *post*, the Court may in addition to *or in lieu* of any punishment authorized by this Act fine the offender, *and* require him to enter into his own recognizances and to find sureties, *both or either*, for keeping the peace, and being of good behaviour.

CAUSING BODILY INJURY BY UNLAWFUL ACT, OR
NEGLECT OF DUTY.

Sect. 35.—Whosoever, 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, is guilty of a misdemeanor, and shall be liable to be imprisoned in any gaol or place of confinement other than a Penitentiary for any term less than two years.

This clause is not in the English Act. It is in the same terms as s. 33, *ante*, except that this last one applies only to passengers by railway endangered by the unlawful act or neglect, or omission of duty.

See s. 77, *post*, as to fining the offender and requiring him to give sureties for the peace, or both, or either.

An injury resulting from an omission does not subject the person causing it to punishment, unless such omission be unlawful. An omission is deemed unlawful whensoever it is a breach of some duty imposed by law, or gives cause to a civil action. 2nd Report Cr L. Com. 14 May, 1846.

Mr. Starkie, one of the English Commissioners, in a separate report, objected strongly to such an enactment, and the framers of the Imperial Statutes have thought proper to leave it out. What reasons can be given for introducing it in Canada?

The fact that it forms part of the Criminal laws of the Colony of Victoria, Australia, (section 24) is not a con-

clusive proof of the soundness of this enactment when we have the weight of Imperial legislation against it.

ASSAULTING A CLERGYMAN IN THE DISCHARGE OF
HIS DUTY.

Sect. 36.—Whosoever by threats or force unlawfully obstructs or prevents, or endeavours to obstruct or prevent any clergyman or other minister in or from celebrating Divine Service, or otherwise officiating in any church, chapel, meeting-house, *school-house*, or other place *used for* divine worship, or in or from the performance of his duty in the lawful burial of the dead in any churchyard or other burial place, or strikes, or offers any violence to, or upon any civil process, or under the pretence of executing any civil process, arrests any clergyman or other minister who is engaged in or, to the knowledge of the offender, is about to engage in any of the rites or duties in this section aforesaid, or who, to the knowledge of the offender, is going to perform the same, or returning from the performance thereof, is guilty of a misdemeanor, and shall be liable to be imprisoned in any gaol or place of confinement, other than a Penitentiary, for any term less than two years, with or without hard labour.—24-25 Vict., ch. 100, s. 36, Imp.

The words *school-house* are not in the English Act, and the words *used for* divine worship are substituted for of divine worship.

Indictment for obstructing a clergyman in the discharge of his duty.—.....unlawfully did by force (*threats or force*) obstruct and prevent one J. N., a clergyman, then being the vicar of the parish of B., in the county of M., from celebrating divine service in the parish church of the said parish (*or in the performance of his*

duty in the lawful burial of the dead in the church-yard of the parish church of the said parish) against the form....

Prove that J. N. is a clergyman and vicar of the parish of B., as stated in the indictment; that the defendant by force obstructed and prevented him from celebrating divine service in the parish church, etc., etc., or assisted in doing so.—Archbold, 678.

Indictment for arresting a clergyman about to engage in the performance of divine service.....unlawfully did arrest one J. N., a clergyman, upon certain civil process, whilst he, the said J. N., as such clergyman as aforesaid, was going to perform divine service, he the said (*defendant*) then well knowing that the said J. N. was a clergyman, and was so going to perform divine service as aforesaid; against the form.....Archbold, 678.

As to fining the offender and requiring him to enter into recognizances and find sureties for keeping the peace and being of good behaviour, see s. 77, *post*.

DISTURBING CONGREGATIONS MET FOR RELIGIOUS WORSHIP, &C.

Sect. 37.—Whosoever wilfully disturbs, interrupts or disquiets any assemblage of persons met for religious worship, or for any moral, social or benevolent purpose, by profane discourse, by rude or indecent behaviour, or by making a noise, either within the place of such meeting or so near it as to disturb the order or solemnity of the meeting, may be arrested on view by any peace officer present at such meeting or by any other person present thereto verbally authorized by any Justice of the Peace present thereat, and detained until he can be brought

before a Justice of the Peace; and such offender shall, upon conviction thereof before a Justice of the Peace, on the oath of one or more credible witnesses, forfeit and pay such sum of money, not exceeding twenty dollars, as the said Justice may think fit, and costs, within the period specified for the payment thereof by the convicting Justice, at the time of the conviction, and in default of payment, such Justice shall issue his warrant to a constable, to levy such fine and costs within a time to be specified in the warrant, and, if no sufficient distress can be found, such Justice shall commit the offender to the common gaol of the district, county or place wherein the offence was committed, for any term not exceeding one month, unless the fine and costs be sooner paid.

The Imperial Statutes on the subject are the 1 Will. & M., ch. 18: 52 G. 3, ch. 155, s. 12; 15-16 Vict., ch. 36; 23-24 Vict., ch. 32.

The offences against this clause are punishable by summary conviction. The clause seems to be based on ch. 92, s. 18, C. S. Canada, and ch. 22, s. 3, C. S. L. Canada. The procedure, in cases under this clause, would be under the Summary Conviction Act, ch. 31, 32, 33 Vict.

ASSAULTS ON OFFICERS, ETC., SAVING WRECK.

Sect. 3S.—Whosoever assaults and strikes or wounds any magistrate, officer or other person whatsoever, lawfully authorized in or on account of the exercise of his duty, in or concerning the preservation of any vessel in distress, or of any vessel, goods or effects wrecked, stranded, or cast on shore, or lying under water, is guilty of a misdemeanor, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding seven years, and not less than two years, or to be imprisoned

in any other gaol or place of confinement for any term less than two years, with or without hard labour.—24 25 Vict., ch. 100, s. 37, Imp.

Indictment for assaulting a Magistrate, etc., on account of the exercise of his duty in preserving wrecks.....

That, before and at the time of the committing of the offence hereinafter mentioned, to wit, on..... one J. N., then being a magistrate, was engaged in the exercise of his duty as such magistrate, in and concerning the preservation of a certain vessel then wrecked, stranded, and cast on shore, the said J. N. being then lawfully authorized thereunto; and that J. S. well knowing the premises, on the day and year aforesaid, in and upon the said J. N. unlawfully did make an assault, and him the said J. N. then unlawfully did strike and wound in and on account of the exercise of the said duty of him the said J. N. in and concerning the preservation of the said vessel so wrecked, stranded, and cast on shore as aforesaid, against the form.....

Prove that J. N. was a magistrate as stated in the indictment: that a vessel was wrecked, etc.; that J. N. was engaged endeavouring to preserve the vessel: that J. S. struck and wounded him as stated, and that he did so on account of his doing his duty in the preservation of the vessel. This may be proved by the declarations or acts of the defendant, or by circumstances from which his motive may be inferred.—Archbold, 679.

See sect. 77, *post*, as to fine and sureties for the peace in misdemeanors under this Act.

See sects. 19, 20 and 33 of the 36 Vict., ch. 55, *an act respecting wreck and salvage*.

ASSAULT WITH INTENT TO COMMIT FELONY, OR ON PEACE OFFICERS, ETC.

Sect. 39—Whosoever assaults any person with intent to commit felony, or assaults, resists, or wilfully obstructs any *revenue* or peace officer in the due execution of his duty or any person acting in aid of such officer, or assaults any person with intent to resist or prevent the lawful apprehension or detainer of himself, or of any other person for any offence, is guilty of a misdemeanor, and shall be liable to be imprisoned in any gaol or place of confinement other than a Penitentiary for any term less than two years with or without hard labour.—24-25 Vict., ch. 100, s. 38, Imp.

Revenue officers are not included in the corresponding clause of the English Act, assaults on them being, there, otherwise provided for.—Greaves, Cons. Acts, 65.

And see 31 Vict., ch. 6, sect. 97 of our Statutes.

Indictment.—..... in and upon one J. N. unlawfully did make an assault, and him the said J. N. did beat, wound and ill-treat with intent him the said J. N. feloniously, wilfully and of his malice aforethought to kill and murder, and other wrongs to the said J. N. then did, to the great damage of the said J. N., against the form Add a count for a common assault.—Archbold, 684.

Every attempt to commit a felony against the person of an individual without his consent involves an assault. Prove an attempt to commit such a felony, and prove it to have been done under such circumstances, that had the attempt succeeded, the defendant might have been convicted of the felony. If you fail proving the intent, but prove the assault, the defendant may be convicted of the common assault.—Archbold, loc. cit.

INDICTMENT FOR ASSAULTING A PEACE OFFICER IN THE
EXECUTION OF HIS DUTY.

....in and upon one J. N., then being a peace officer, to wit, a constable (*any peace officer in the execution of his duty, or any revenue officer in the execution of his duty, or any person acting in aid of*) and then being in the due execution of his duty as such constable, did make an assault, and him, the said J. N., so being in the execution of his duty as aforesaid, did then beat, wound and ill-treat, and other wrongs to the said J. N. then did, to the great damage of the said J. N., against the form....(Add a count for a common assault.)—Archbold, loc. cit.

Prove that J. N. was a peace or revenue officer, as stated in the indictment, by showing that he had acted as such.

It is a maxim of law, that "*omnia præsumuntur rite et solenniter esse acta donec probetur in contrarium*," upon which ground it will be presumed, even in a case of murder, that a man who has acted in a public capacity or situation was duly appointed.—R. vs. Verelet, 3 Camp. 432; R. vs. Gordon, 1 Leach, 515; R. vs. Murphy, 8 C. & P. 297; R. vs. Newton, 1 C. & K. 469; Taylor, on evidence, par. 139, 431. Prove that J. N. was in the due execution of his duty, and the assault. If you fail in proving that J. N. was a peace officer, or that he was acting lawfully as such, the defendant may be convicted of a common assault.

The fact that the defendant did not know that the person assaulted was a peace officer, or that he was acting in the execution of his duty, is no defence.—R. vs. Forbes, 10 Cox, 362.

INDICTMENT FOR AN ASSAULT TO PREVENT ARREST.

...in and upon one J. N. did make an assault, and him, the said J. N., did then beat, wound and ill-treat with intent in so doing to resist and prevent (resist or prevent) the lawful apprehension of (*himself or of any other person*) for a certain offence, that is to say (*state the offence generally*) against the....(*count for common assault.*)—Archbold, 685.

It must be stated and proved that the apprehension was lawful. See *R. vs. Davis, L. & C., 64.* If this and the intent be not proved, a verdict of common assault may be given. But it must be remembered that resistance to an illegal arrest is justifiable.

As to fining the offender and requiring him to give sureties for the peace and good behaviour. See sect. 77, *post.*

ASSAULT WITH INTENT TO OBSTRUCT THE SALE OF
GRAIN, ETC.

Sect. 40.—Whosoever beats or uses any violence or threat of violence to any person with intent to deter or hinder him from buying, selling or otherwise disposing of, or other grain, flour, meal, malt or potatoes, or produce or goods, in any market or other place, or beats or uses any such violence or threat to any person having the charge or care of any wheat or other grain, flour, meal, malt or potatoes, whilst on the way to or from any city, market, town or other place, with intent to stop the conveyance of the same shall, on conviction thereof, before two Justices of the Peace, be liable to be imprisoned and kept to hard labour in any gaol or place of confinement, other than a Penitentiary, for any term not exceeding three months; provided that no person

punished for any such offence by virtue of this section shall be punished for the same offence by virtue of any other law whatsoever.—24-25 Vict., ch. 100, s. 39, Imp.

The English Act has the words, *or to compel him to buy, sell or otherwise dispose of*, after the words, *or otherwise disposing of*.

Section 80 enacts that all summary proceedings under this clause should be taken under ch. 31, 32-33 Vict.

See 1 Burn's Justice, 331, for a form of conviction.

ASSAULT ON SEAMEN, STEVEDORES, SHIP-CARPENTERS, ETC.

Sect. 41.—Whosoever unlawfully and with force hinders or prevents any *seaman, stevedore, ship-carpenter, or other person usually working at or on board any ship or vessel*, from working at or exercising his lawful trade, business or occupation, or beats or uses any violence to any such person with intent to hinder or prevent him from working at or exercising the same, shall, on conviction thereof before two Justices of the Peace, be liable to be imprisoned and kept to hard labour, in any gaol or place of confinement other than a Penitentiary for any term not exceeding three months; provided that no person for any such offence by reason of this section shall be punished for the same offence by any other law whatsoever.—24-25 Vict., ch. 100, s. 40, Imp.

The words in *Italics* are not in the English Act, which, in lieu thereof, has the words "*keelman or caster*."

The word "punished" is omitted after the words "provided that no person."

Summary proceedings under this clause are to be taken as under the last clause.

See 1 Burn's Justice, 333, for form of conviction.

ASSAULTS ARISING FROM COMBINATION OR CONSPIRACY.

Sect. 42.—Whosoever, 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*, is guilty of a misdemeanor, and shall be liable to be imprisoned in any gaol or place of confinement, other than a Penitentiary, for any term less than two years, with or without hard labour.—24-25 Vict., ch. 100, s. 41, Imp., repealed by 34-35 Vict., ch. 32, Imp.

The words in *Italics* are not in the English Act. They cover any violence or threat of violence with a view to hinder any person from working or being employed at a trade, business or manufacture, in pursuance of a combination or conspiracy respecting such trade, business or manufacture.

Indictment for an assault in pursuance of a conspiracy to raise wages.—The jurors for Our Lady the Queen upon their oath present, that J. S., J. W., and E. W. on . . . did amongst themselves conspire, combine, confederate, and agree together to raise the rate of wages then usually paid to workmen and labourers in the art, mystery and business of cotton spinners; and that the said . . . (*defendants*) in pursuance of the said conspiracy, on the day and year aforesaid, in and upon one J. N. unlawfully did make an assault, and him the said J. N. did then beat, wound and ill-treat, and other wrongs to the said J. N. did, to the

great damage of the said J. N., against the form.... (Add a count stating that the defendants assaulted J. N. "in pursuance of a certain conspiracy before then entered into by the said.....(defendants) to raise the rate of wages of workmen and labourers in the art, mystery and business of cotton-spinners;" also a count for a common assault.)—Archbold, 686.

For a number of workmen to combine to go in a body to a master and say that they will leave the works, if he does not discharge two fellow workmen in his employ is an unlawful combination by threats to force the prosecutor to limit the description of his workmen. *Walsby vs. Auley*, 3 E. & E. 516. And a combination to endeavour to force workmen to depart from their work by such a threat as that they would be considered as blacks, and that other workmen would strike against them all over London, is unlawful.—*Ex parte Perham*, 5 H. & N. 30. So also is a combination with a similar object to threaten a workman by saying to him that he must either leave his master's employ, or lose the benefit of belonging to a particular club and have his name sent round all over the country.—*O'Neil vs. Longman*, 4 B. & S. 476. An indictment or commitment alleging the offence to be a conspiracy to force workmen to depart from their work by threats need not set out the threats.—*Ex parte Perham*, *supra*.

As to fining the offender, and requiring sureties, in certain cases, for the peace and good behaviour, see sect. 77, *post*.

We have now additional enactments (the above clause is not repealed) on these offences, by the 35 Vict., ch. 31, (Ottawa, 1872,) being an *Act to amend the Criminal law relating to violence, threats and molestation*, copied on the English Act, 34–35 Vict., ch. 32.

Sect. 1—provides that every person who uses violence to any person or property, or threatens or intimidates any person in such manner as would justify a Justice of the Peace, on complaint made to him, to bind over the person so threatening or intimidating to keep the peace, or molests or obstructs any person in the manner defined by this section, shall be guilty of an offence against this statute, and shall be liable to imprisonment, with or without hard labour, for a term not exceeding three months, if these acts are done with a view to coerce such person—1st. Being a master, to dismiss or cease to employ any workman, or being a workman, to quit any employment, or to return work before it is finished.—2nd. Being a master, not to offer, or being a workman, not to accept any employment or work.—3rd. Being a master or workman to belong to, or not to belong to, any temporary or permanent association or combination.—4th. Being a master or workman, to pay any fine or penalty imposed by any temporary or permanent association or combination.—5th. Being a master, to alter the mode of carrying on his business or the number or description of any persons employed by him.

Par. 4—of the same section enacts that, for the purposes of this Act, a person shall be deemed to molest or obstruct another person in any of the following cases, that is to say:—if he persistently follows such other person about from place to place:—if he hides away tools, clothes or other property owned or used by such other person, or deprives him of, or hinders him in the use thereof:—if he watches or besets the house or place where such other person resides or works or carries on business, or happens to be, or the approach to such house or place, or if with two or more other persons he follows such other

person in a disorderly manner in or through any street or road.

Par. 5—declares that nothing in this section shall prevent any person from being liable under any other Act, to any other punishment than is provided for any offence by this section; provided that no person shall be liable to any punishment for doing or conspiring to do any act, on the ground that such act restrains or tends to restrain the free course of trade, unless such act is one of the acts hereinbefore specified in this section, and is done with the object of coercing as hereinbefore mentioned.

The above proviso appears to amend and alter, if not repeal, sect. 42, of ch. 20, 32-33 Vict., though it is not given as so doing; but sect. 5 repeals so much of any act or law as may be inconsistent with this Act.

Sects. 2, 3, 4, enact that all offences under this Act shall be prosecuted under the provisions of ch. 31, 32-33 Vict., and provide for the procedure under the Statute.

As above remarked the English Act repealed expressly sect. 41 of the Act concerning offences against the person, 24-25 Vict., ch. 100. In *Reg. vs. Bunn et al*, 12 Cox, 316, it was held that, notwithstanding 34-35 Vict., ch. 32, Imp. (above mentioned) and the Trades Union Act, 34-35 Vict., ch. 31, Imp., an indictment would lie, at common law, for conspiracy against servants of a Gas company under contract of service, who, being offended by the dismissal of a fellow servant, agreed together to quit the service of their employers, without notice and in breach of their contract of service, by reason of which the Company were seriously impeded in the conduct of their business. These two Statutes being now incorporated in our own law, this decision applies fully to this country.—Our Trade Union Act, is the 35 Vict., ch. 30.

Se
beats
comp
him
and
conv
Justi
finem
sonec
exce
fine
ceedi
(if or
the c
the c
shall,
mit t
than
not e
soone

Sec
of ass
was p
under
to be
justifi
and a
with
fact c
to th
—24—

SUMMARY CONVICTION FOR COMMON ASSAULTS.

Sect. 43.—Where any person unlawfully assaults or beats any other person, any Justice of the Peace upon complaint by or on behalf of the party aggrieved, *praying him to proceed summarily on the complaint*, may hear and determine such offence, and the offender shall, upon conviction thereof before him, at the discretion of the Justice either be committed to any gaol or place of confinement other than the Penitentiary, there to be imprisoned, with or without hard labour, for any term not exceeding two months, or else shall forfeit and pay such fine as shall appear to such Justice to be meet, not exceeding the sum of twenty dollars, together with costs (if ordered); and if such fine so awarded, together with the costs (if ordered) are not paid either immediately after the conviction or within such period as the said Justice shall, at the time of the conviction, appoint, he may commit the offender to any gaol or place of confinement other than a Penitentiary, there to be imprisoned for any term not exceeding two months, unless such fine and costs be sooner paid.—24-25 Vict., ch. 100, s. 42, Imp.

Sect. 44.—If the Justice upon the hearing of any case of assault or battery upon the merits, where the complaint was preferred by or on behalf of the party aggrieved, under the last 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 party against whom the complaint was preferred.—24-25 Vict., ch. 100, s. 44, Imp.

Sect. 45.—If any person against whom any such complaint, as in either of the last two preceding sections mentioned, has been preferred, by or on behalf of the party aggrieved, has obtained such certificate, or having been convicted, has paid the whole amount adjudged to be paid, or has suffered the imprisonment, or imprisonment with hard labour awarded, in every such case he shall be released from all further or other proceedings, civil or criminal, for the same cause.—24–25 Vict., ch. 100, s. 45, Imp.

Sect. 46.—Provided that in case the Justice finds the assault or battery complained of to have been accompanied by an attempt to commit felony, or is of opinion that the same 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. Provided also that nothing herein contained shall authorize any Justice to hear and determine any case of assault or battery, in which any question shall arise 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.—24–25 Vict., ch. 100, s. 46, Imp.

The words *praying him to proceed summarily on the complaint* in section 43, are not in the English Statute. There does not seem to exist any other way of interpreting them than to say that the complainant, by his complaint, must have prayed the Justice to proceed summarily upon it to authorize him to do so. If there is no such prayer, the Justice has no jurisdiction to proceed summarily, and hear and determine the case. He must then treat the case, as one on an indictable offence, and

pro
Vic
rem
33
wh
wh
and
But
law
or i
the
a ca
no a

It
ant'
a pa
a Ju
will
will
ant
hear
all t
reme
bar

A
Clar
is th
616.
appe
on a
See
Th
and

proceed under chap. 30, instead of under chap. 31, 32 33 Vict. For, it must not be forgotten that a common assault remains an indictable offence. Sect. 1 of chap. 31, 32-33 Vict. it is true, authorizes the Justice of the Peace who receives an information concerning an offence for which the offender is *liable by law* to be summarily tried and punished, to issue his summons and proceed to trial. But, the defendant, accused of an assault, is *not liable by law* to be so tried and punished, where by his complaint or information, his accuser has not prayed the Justice of the Peace to proceed summarily, and the Justice in such a case must proceed under chap. 30. He has no power, no authority to do otherwise.

If he could proceed summarily, without the complainant's consent and demand, there would be no means for a party aggrieved, then, to bring a case of assault before a Jury, if the Justice of the Peace had only to say: "I will decide this case, and whether you like it or not, it will not go before a jury." He could force the complainant to give his evidence, he could summon the witnesses, hear the evidence, and give his judgment; and, perhaps all this to protect the defendant; because, it must be remembered that by sect. 45, this judgment would be a bar to any other proceeding.

A decision contrary to these views is cited by Mr. Clarke, in his treatise of the Criminal Law of Canada. It is the case of *Reg. vs. Shaw*, 23 Upper Canada, Q. B. 616. It is hard to conceive how a want of jurisdiction appearing on the face of the proceedings must be shewn on affidavit, as is reported to have been held in that case. See *Paley*, on *Convictions*, 55, 56.

The words *by or on behalf*, in sect. 4 enable parents and others to complain on the part of an injured child.

Sect. 30, *post*, regulates the procedure in prosecutions in these clauses.

Sect. 45, as will be seen, enacts that a conviction or certificate of dismissal, under ss. 43 and 44, shall be a bar to any other proceedings, *civil* or criminal, for the same cause. Is the word *civil* therein not *ultra vires* of the federal Parliament? Does not the Constitutional Act give exclusive jurisdiction to the local legislatures over civil rights?

The above provisions do not prevent the prosecutor from preferring an indictment, if he chooses, in the first instance, for it is clear law that a party assaulted has several remedies. He may proceed by indictment or by action, or he may apply for a summary conviction under the above clauses.—1 Burn's Justice, 319.

The certificate mentioned in sect. 44 must be given *forthwith*: that is to say, forthwith upon demand of the party entitled to it: the magistrate is obliged to deliver it, *when* asked for, and it is immaterial whether the prosecutor was present or not when the certificate is demanded.—Hancock vs. Somer, 1 E. & E. 795; Costar vs. Hetherington, 1 E. & E. 802.

Under sect. 44, the case must have been heard *upon the merits*, to authorize the magistrate to grant his certificate of dismissal. Sect. 42, ch. 91, Cons. Stat. Canada (repealed Act) had not those words.

As the certificate of dismissal is only to have the effect of a release from other proceedings when the dismissal takes place by reason of one of the three grounds specified, it ought therefore to show upon the face of it the ground upon which it is given, otherwise neither party can know whether it is a bar or not.—Skuse vs. Davis, 10 A. & E. 635.

If the charge is before the magistrate on a legal com-

plaint, and the evidence goes to prove an offence committed, over which he has no jurisdiction to hear and determine, as if, on a complaint of an assault, the evidence go to show that a rape or assault with intent to commit a felony has been committed, he may, if he disbelieves the evidence as to the rape or intent, convict as to the residue of it of an assault.—*Wilkinson vs. Dutton*, 3 B. & S. 821; *Anon*, 1 B. & Ad. 382.

In this last case Lord Tenterden held that the magistrate had *found* that the assault was not accompanied by any attempt to commit felony, and that, *quoad hoc*, his decision was final.

In *Reg. vs. Walker*, 2 M. & Rob. 446, Coltman, J., gave the same interpretation to the clause.

In *Reg. vs. Elrington*, 1 B. & S. 688, it was held that the magistrate's certificate of dismissal is a bar to an indictment for an unlawful assault occasioning actual bodily harm, arising out of the same circumstances.

In *R. vs. Stanton*, 5 Cox, 324, Erle, J., said that in his opinion, a summary conviction before Justices of the Peace (in England, the law requires two) is a bar to an indictment for a felonious assault, arising out of the same facts.

But a summary conviction for assault is no bar to a subsequent indictment for manslaughter, upon the death of the man assaulted, consequent upon the same assault.—*Reg. vs. Morris*, 10 Cox, 480; *Reg. vs. Basset*, Greaves, Cons. Acts, 72.

Where an assault charged in an indictment and that referred to in a certificate of dismissal by a magistrate appear to have been on the same day, it is *prima facie* evidence that they are one and the same assault, and it is incumbent on the prosecutor to show that there was a second assault

on the same day if he alleges that such is the case. The defendant having appeared before the magistrate, the recital in the certificate of the fact of a complaint having been made and of summons having been issued is sufficient evidence of those facts.—Reg. vs. Westley, 11 Cox 139.

When a question of title to lands comes before him, the magistrate's jurisdiction is at an end and he cannot inquire into or adjudicate upon an excess of force or violence which may be used in the assertion of a title to lands.—Reg. vs. Pearson, 11 Cox, 493.

See 32-33 Vict., ch. 32, for the trial, under certain circumstances, of assaults upon females, or upon males not exceeding fourteen years of age.

COMMON ASSAULT.—ASSAULT OCCASIONING BODILY HARM.

Sect. 47.—Whosoever is convicted upon an indictment of any assault occasioning actual bodily harm, shall be liable to be imprisoned in the Penitentiary for any term not exceeding three years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour; and whosoever is convicted upon an indictment for a common assault, shall be liable to be imprisoned in any gaol or place of confinement other than a Penitentiary, for any term not exceeding one year, with or without hard labour.—24-25 Vict., ch. 100, s. 47, Imp.

Indictment for an assault occasioning actual bodily harm.

—..... That J. S. on in and upon one J. N. did make an assault, and him the said J. N. did then beat, wound and ill-treat, thereby then occasioning to the said J. N. actual bodily harm, and other wrongs.

to the said J. N. then did, to the great damage of the said J. N. against the form.—Archbold, 657.

Indictment for a common assault.—..... That C. D. on the at in and upon one A. B. an assault did make, and him the said A. B. then and there did beat, wound and illtreat, and then and there to him other wrongs and injuries did, against the form.....

The defendant may be convicted of a common assault upon an indictment for occasioning actual bodily harm.—R. vs. Oliver, Bell, 287 ; R. vs. Yeadon, L. & C. 281.

The intent to do bodily harm, or premeditation, is not necessary to convict upon an indictment, under this section : thus a man who commits an assault the result of which is to produce bodily harm is liable to be convicted under this section, though the jury find that the bodily harm formed no part of the prisoner's intention, and was done without premeditation, under the influence of passion.—R. vs. Sparrow, Bell 298.

An assault is an attempt or offer, with force and violence, to do a corporal hurt to another, whether from malice or wantonness ; as by striking at him with or without a weapon, though the party striking misses his aim ; so drawing a sword, throwing a bottle or glass, with intent to wound or strike, presenting a loaded gun or pistol at a person within the distance to which the gun or pistol will carry, or pointing a pitchfork at a person standing within reach ; holding up one's fist at him, in a threatening or insulting manner, or with such other circumstances as denote at the time an intention, coupled with a present ability, of using actual violence against his person, will amount to an assault.—1 Burn's Justice 308.

It had been said that the presenting a gun or pistol at a person within the distance to which it will carry, though in fact not loaded, was an assault, but later authorities

have held that if it be not loaded it would be no assault to present it and pull the trigger.—1 Burn's Justice, loc. cit.

One charged with an assault and battery may be found guilty of the assault, and yet acquitted of the battery; but every battery includes an assault; therefore on an indictment for assault and battery, in which the assault is ill-laid, if the defendant be found guilty of the battery it is sufficient.—1 Hawk. 110.

Mere words will not amount to an assault, though perhaps they may in some cases serve to explain a doubtful action.—1 Burn's Justice 309.

If a man strike at another, but at such a distance that he cannot by possibility touch him, it is no assault. But if A advances in a threatening attitude with his fists clenched towards B, with an intention of striking him, so that his blow would have almost immediately reached B, if he had not been stopped by a third person; this would be an assault in point of law, though at the particular moment when A was stopped, he was not near enough for his blow to take effect.—Stephen vs. Meyers, 4 C. & P. 349.

To collect a number of workmen round a person who tuck up their sleeves and aprons and threaten to break his neck, if he did not go out of the place, through fear of whom he did go out, amounts to an assault. There is the intention and present ability and a threat of violence causing fear.—Read vs. Coker, 13 C. B. 850.

So riding after a person and obliging him to run away into a garden to avoid being beaten is an assault.—Martin vs. Shoppee, 3 C. & P. 373.

Any man wantonly doing an act of which the direct consequence is that another person is injured commits an

assault at common law, though a third body is interposed between the person doing the act and the person injured. Thus to drive a carriage against another carriage in which a person is sitting, or to throw over a chair on which a person is sitting, whereby the person in the carriage or on the chair, as the case may be, is injured, is an assault. So by encouraging a dog to bite, or by wantonly riding over a person with a horse, is an assault.—1 Burn's Justice 309; 1 Russ. 1021.

Where an act is done with the consent of the party it is not an assault; for in order to support a charge of assault, such an assault must be proved as could not be justified if an action were brought for it, and leave and licence pleaded; attempting therefore to have connection with a girl between the ages of ten and twelve, or under ten years of age, if done with the girl's consent, is not an assault. If the girl is between ten and twelve, the indictment in such a case should be for an attempt to commit a misdemeanor: if the girl is under ten, the indictment should be for an attempt to commit a felony.—1 Russell, 933. 1023; Reg. vs. Martin, 9 C. & P. 213; Reg. vs. Meredith, 8 C. & P. 589; Reg. vs. Cockburn, 3 Cox 543; Reg. vs. Mehegan, 7 Cox 145; Reg. vs. Read, 1 Den. C. C. 377; Reg. vs. Johnston, 10 Cox 114, L. & Cave 632; Reg. vs. Ryland, 11 Cox 101; Reg. vs. Guthrie, 11 Cox 523. By s. 49 of the Procedure Act of 1869, the defendant may be convicted of the attempt to commit the offence charged upon any indictment for any felony or misdemeanor, if the evidence warrants it, and the fact that the girl consented is immaterial, upon an indictment for an attempt to commit the felony or the misdemeanor.—Reg. vs. Beale, 10 Cox, 157.

In Reg. vs. Wollaston, 12 Cox 182, Kelly, C. B. said :

"If anything is done by one being upon the person of another, to make the act an assault it must be done without the consent and against the will of the person upon whom it is done. Mere submission is not consent, for there may be submission without consent, and while the feelings are repugnant to the act being done. Mere submission is totally different from consent. But in the present case, there was actual participation by both parties in the act done, and complete mutuality:" and the defendant was acquitted as the boys, aged above fourteen, upon whom he was accused of having indulged in indecent practices, had been willing and assenting parties to what was done.

But if resistance be prevented by fraud, it is an assault. If a man, therefore, have connection with a married woman, under pretence of being her husband, he is guilty of an assault.—Reg. vs. Williams, 8 C. & P. 286; Reg. vs. Saunders, 8 C. & P. 265.

In Reg. vs. Mayers, 12 Cox, 311, it was held that if a man has or attempts to have connection with a woman while she is asleep, it is no defence that she did not resist, as she is then incapable of resisting.

In Reg. vs. Lock, 12 Cox 244, upon a case reserved, it was held, that the definition of an assault that the act must be *against the will* of the patient implies the possession of an active will on his part, and therefore, the mere submission by a child of tender years (eight years old) to an indecent assault, without any active sign of dissent, the child being ignorant of the nature of the assault, does not amount to consent so as to take the offence out of the operation of criminal law.

In Reg. vs. Woodhurst, 12 Cox, 443, on an indictment for carnal knowledge of a girl above ten years of age and under twelve, and also for an assault, it was held on

the latter count that although consent would be a defence, consent extorted by terror or induced by the influence of a person in whose power the girl feels herself, is not really such consent as will have that effect; following *R. vs. Day*, 9 C. & P. 722; *R. vs. Nicholl*, Russ. & Ry. 130; *R. vs. Rosinski*, 1 Mood 19; *R. vs. Case*, 1 Den. 580.

An unlawful imprisonment is also an assault; for it is a wrong done to the person of a man, for which, besides the private satisfaction given to the individual by action, the law also demands public vengeance, as it is a breach of the King's Peace, a loss which the State sustains by the confinement of one of its members, and an infringement of the good order of society.—4 Blackstone, 518.—It has been supposed that every imprisonment includes a battery, but this doctrine was denied in a recent case, where it was said by the Court that it was absurd to contend that every imprisonment included a battery.—1 Russell, 1025.

A battery in the legal acceptance of the word includes beating and wounding.—Archbold, 659.—Battery seemeth to be, when any injury whatsoever, be it ever so small, is actually done to the person of a man in an angry or revengeful, or rude, or insolent manner, as by spitting in his face, or throwing water on him, or violently jostling him out of the way.—1 Hawkin ch. 15, sec. 2.—For the law cannot draw the line between different degrees of violence, and therefore totally prohibits the first and lowest stages of it, every man's person being sacred and no other having a right to meddle with it in any the slightest manner.—1 Russell, 1021.

The touch or hurt must be with a hostile intention, and therefore, a touch given by a constable's staff for the purpose of engaging a person's attention only is not a battery.—1 Burn, 312.

Whether the act shall amount to an assault must in every case be collected from the intention, and if the injury committed were accidental and undesigned it will not amount to a battery.—1 Russell, 1025.

Striking a horse whereon a person is riding and whereby he is thrown, is a battery on him, and the rider is justified in striking a person who wrongfully seizes the reins of his horse, and in using all the violence necessary to make him loose his hold. A wounding is where the violence is such that the flesh is opened: a mere scratch may constitute a wounding.—1 Burn, loc. cit.

The actual bodily harm mentioned in this section would include any hurt or injury calculated to interfere with the health or comfort of the prosecutors; it need not be an injury of a *permanent* character, nor need it amount to what would be considered to be *grievous* bodily harm.—Archbold, 660.

Even a mayhem is justifiable if committed in a party's own defence. But a person struck has merely a right to *defend* himself, and strike a blow in his defence, but he has no right to revenge himself; and, if, when all the danger is past, he strikes a blow not necessary, he commits an assault and battery. And in no case should the battery be more than necessary for self defence.—1 Burn's Justice, 312.

The mere offer of a person to strike another is sufficient to justify the latter's striking him: he need not stay till the other has actually struck him.

A husband may justify a battery in defence of his wife, a wife in defence of her husband, a parent in defence of his child, a child in defence of his parent, a master in defence of his servant and a servant in defence of his master, but in all these cases the battery must be such only as was necessary to the defence of the party

or his relation, for it were excessive, if it were greater than was necessary for mere defence, the prior offence will be no justification. So a person may lay hands upon another to prevent him from fighting, or committing a breach of the peace, using no unnecessary violence. If a man without authority attempt to arrest another illegally, it is a breach of the peace, and any other person may lawfully interfere to prevent it, doing no more than is necessary for that purpose.

Churchwardens and private persons are justified in gently laying their hands on those who disturb the performance of any part of divine service and turning them out of church.—1 Burn's Justice, 314.

A parent may in a reasonable manner chastise his child, or a master his servant, or a schoolmaster his scholar, or a gaoler his prisoner, and a captain of a ship, any of the crew who have mutinously or violently misconducted themselves.—1 Burn's Justice, loc. cit.

So might a military officer order a moderate correction for disobedience of orders.—1 Burn's Justice, loc. cit.

A party may justify a battery by showing that he committed it in defence of his possession, as for instance, to remove the prosecutor out of his close or house,—or to remove a servant, who, at night, is so misconducting himself as to disturb the peace of the household,—or to remove a person out of a public house, if the party be misconducting himself; or to prevent him from entering the defendant's close or house,—to restrain him from taking or destroying his goods,—from taking or rescuing cattle, &c., &c., in his custody upon a distress,—or to retake personal property improperly detained or taken away,—or the like.

In the case of a trespass in law merely *without actual*

force, the owner of the close, or house, &c., &c., &c., must first request the trespasser to depart, before he can justify laying his hands on him for the purpose of removing him; and even if he refuse, he can only justify so much force as is necessary to remove him. But if the trespasser use force, then the owner may oppose force to force; and in such a case, if he be assaulted or beaten, he may justify even a wounding or mayhem in self-defence, as above mentioned. In answer to a justification in defence of his possession, it may be shown that the battery was excessive, or that the party assaulted, or some one by whose authority he acted, had a right of way or other easement over the close, or the like.—1 Burn, 313; Archbold, 661. On this part of the subject, 1 Russell, 1028 has the following remarks: "It should be observed with respect to an assault by a man on a party endeavouring to dispossess him of his land, that where the injury is a mere breach of a close, in contemplation of law, the defendant cannot justify a battery without a request to depart; but it is otherwise where any actual violence is committed, as it is lawful in such a case to oppose force by force; therefore if a person break down the gate, or come into a close *vi et armis*, the owner need not request him to be gone, but may lay hands on him immediately; for it is but returning violence with violence. If a person enters another's house with force and violence, the owner of the house may justify turning him out, using no more force than is necessary, without a previous request to depart; but if the person enters quietly, the other party cannot justify turning him out without previous request."

It appears to have been formerly holden that a person could not be prosecuted upon one indictment for assaulting two persons, each assault being a distinct offence;

but a subsequent decision has established the contrary.—
1 Russell, 1030.

See *ante* remarks on sects. 43, 44, 45, 46.

By sect. 77, *post*, when any person is convicted of any misdemeanor punishable under this Act, the Court *may* in addition to or *in lieu* of any punishment authorized by this Act fine the offender, and require him to enter into his own recognizances, and to find sureties, *both or either*, for keeping the peace, and being of good behaviour, and sects. 78 and 79, *post*, provide that, when any person is convicted on any indictment of any assault, the Court may order payment by the defendant of the prosecutor's costs, and enact how such costs shall be levied.

See 32–33 Vict., ch. 32, for assaults upon any male child aged not more than fourteen, or upon any female, not amounting to an assault with intent to commit rape, and the trial of persons charged thereof in certain cases.—24–25 Vict., ch. 100, s. 43 Imp.

COURT OF QUARTER SESSIONS NOT TO TRY CERTAIN OFFENCES.

Sect. 48.—This section has been noticed, *ante*, under sections 27, 28 and 29.

RAPE.

Sect. 49 as amended by 36 Vict., ch. 50.—Whoever commits the crime of rape is guilty of felony, and shall be liable to suffer death as a felon, or to be imprisoned in the Penitentiary for life, or for any term not less than seven years; and whosoever assaults any woman or girl with intent to commit rape is guilty of a misdemeanor, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding seven years, and not

less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour.—24-25 Vict., ch. 100, sect. 48, Imp.

Sect. 65.—Carnal knowledge defined.—Whenever, upon the trial of any offence, punishable under this Act, it is necessary to prove carnal knowledge, it shall not be necessary to prove the actual emission of seed in order to constitute a carnal knowledge, but the carnal knowledge shall be deemed complete on proof of any degree of penetration only.—24-25 Vict., ch. 100, sect. 63, Imp.

Indictment.—..... That A. B., on..... in the year in and upon one C. D. in the peace of God and Our Lady the Queen then and there being, violently and feloniously did make an assault, and her, the said C. D., violently and against her will feloniously did ravish and carnally know; against the form of the Statute in such case made and provided, and against the peace of Our Lady the Queen, her crown and dignity.—Archbold, 704.

Not triable at Quarter Sessions; sect. 12, Procedure Act of 1869.

Rape has been defined to be the having unlawful and carnal knowledge of a woman, by force, and against her will. 1 Russell, 904. *Against her will means without her consent.*—1 Russell 906, 908; Roscoe, 805.

To constitute the offence there must be a penetration, or *res in re*, in order to constitute the "carnal knowledge" which is a necessary part of this offence. But a very slight penetration is sufficient, though not attended with the deprivation of the marks of virginity.—1 Russell, 912.

A boy under fourteen years of age is presumed by law

incapable to commit a rape, and therefore he cannot be guilty of it, nor of an assault with intent to commit it; and no evidence is admissible to show that, in point of fact, he could commit the offence of rape.—A husband cannot be guilty of a rape upon his wife.—The offence of rape may be committed, though the woman at last yielded to the violence, if such her consent was forced by fear of death or by duress.

It will not be any excuse that the woman was first taken with her own consent if she were afterwards forced against her will; nor will it be an excuse that she consented after the fact, or that she was a common strumpet, or the concubine of the ravisher. Circumstances of this kind, however, though they do not necessarily prevent the offence from amounting to a rape, yet are material to be left to the jury, in favour of the party accused especially in doubtful cases. The notion that if the woman conceived, it could not be a rape, because she must, in such case, have consented, appears to be quite exploded.—1 Russell, 905.

Having carnal knowledge of a woman by a fraud which induces her to suppose it is her husband does not amount to a rape. *Reg. vs. Williams*, 8 C. & P. 286; *Reg. vs. Clarke*, Dearsly 397; 1 Russell, 908; *Reg. vs. Barrow*, 11 Cox, 191.

In this last case, the woman, with her baby in her arms, was lying in bed between sleeping and waking, and her husband was asleep beside her. She was completely awakened by a man having connection with her, and pushing the baby aside. Almost directly she was completely awakened, she found the man was not her husband, and awoke her husband. The Court of Criminal Appeal, composed of Bovill, C. J., and Channell,

Byles, Blackburn and Lush, J.J., held that a conviction for a rape upon this evidence could not be sustained. See also *Rex vs. Jackson*, Russ. & Ry. 487.

Upon the trial of an indictment for rape upon an idiot girl, the proper direction to the jury is that if they are satisfied that the girl was in such a state of idiocy as to be incapable of expressing either consent or dissent, and that the prisoner had connection with her without her consent, it is their duty to find him guilty.—*Reg. vs. Barratt*, 29 L. T. N. S. 409: 12 Cox, 498. In *Reg. vs. Fletcher*, 10 Cox, 248, the law was so given, but the evidence of non-consent was declared insufficient.

If a woman is incapable of resisting, it is no defence that she did not resist. *Reg. vs. Fletcher*, 8 Cox, 131: Bell C. C. 63; *R. vs. Camplin*, 1 Den. 89. If a man has or attempts to have connection with a woman while she is asleep, it is no defence that she did not resist, as she is then incapable of resisting. The man can therefore be found guilty of a rape, or of an attempt to commit a rape.—*Reg. vs. Mayers*, 12 Cox C. C. 311.

It is clear that the party ravished is a competent witness. But the credibility of her testimony must be left to the jury, upon the circumstances of fact which concur with that testimony. Thus if she be of good fame: if she presently discovered the offence, and made search for the offender: if she showed circumstances and signs of the injury, whereof many are of that nature that women only are proper examiners: if the place where the fact was done were remote from inhabitants or passengers: if the party accused fled for it: these, and the like, are concurring circumstances, which give greater probability to her evidence. But if, on the other hand, the witness be of evil fame, and stand unsupported by

others: if without being under the control or the influence of fear, she concealed the injury for any considerable time after she had the opportunity of complaining: if the place where the fact is alleged to have been committed was near to persons by whom she might probably have been heard, and yet she made no outcry: if she has given wrong descriptions of the place: these, and the like circumstances, afford a strong, though not conclusive presumption that her testimony is feigned.—1 Russell, 692.

The character of the prosecutrix, as to general chastity, may be impeached by *general* evidence, as by showing her general light character, etc., etc., but evidence of connection with other persons than the prisoner cannot be received.

In *Reg. vs. Hodgson*, Russ. & Ry. 211, the woman in the witness box was asked: Whether she had not before had connection with other persons, and whether she had not before had connection with a particular person (named.) The Court ruled that she was not obliged to answer the question. In the same case, the prisoner's counsel offered a witness to prove that the woman had been caught in bed about a year before this charge with a young man. The Court ruled that this evidence could not be received. These rulings were subsequently maintained by all the judges.

Although you may cross-examine the prosecutrix as to particular acts of connection with other men; (and she need not answer the question, unless she likes,) you cannot, if she deny it, call witnesses to contradict her.—*Reg. vs. Cockcroft*, 11 Cox, 410.

—On the trial of an indictment for an indecent assault, the defence being consent on the part of the prosecutrix,

she denied on cross-examination having had intercourse with a third person, S. *Held* that S. could not be examined to contradict her upon this answer. This rule applies to cases of rape, attempt to commit a rape, and indecent assaults in the nature of attempts to commit a rape.—Reg. vs. Holmes and Furness, 12 Cox C. C. 137.

This decision is by the Court of Criminal Appeal, composed of five judges, confirming Rex. vs. Hodgson, and Reg. vs. Cockcroft. The case of Reg. vs. Robins, 2 Moo. and Rob. 512, is now overruled. Taylor, Evidence, par. 336.

It is true, rape is a most detestable crime, and therefore ought severely and impartially to be punished with death, but it must be remembered that it is an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, though never so innocent.—1 Hale 634.

Upon an indictment under the first part of this section the jury may find the prisoner guilty of an attempt to commit a rape.—Reg. vs. Hapgood, 11 Cox, 471; Procedure Act of 1869, sect. 49—or may find a verdict of common assault, sect. 51 of the same Act.

Under the second part of the section, for an assault with intent to commit rape (misdemeanor) the indictment can be as follows: in and upon one A. B., a woman, (or girl) unlawfully did make an assault, with intent her, the said A. B., violently and against her will, feloniously, to ravish and carnally know, against the form. Add a count for a common assault.—Archbold, 684.

See sect. 77, *post*, for fine and sureties.

If upon trial for this misdemeanor, the felony under the first part of the section be proved, the defendant is

not therefore entitled to an acquittal.—Procedure Act of 1869, sect. 50.

On an indictment for an assault with intent to commit a rape, Pateson J., held that the evidence of the prisoner, having, on a prior occasion, taken liberties with the prosecutrix, was not receivable to show the prisoner's intent; also, that in order to convict of assault with intent to commit rape, the jury must be satisfied not only that the prisoner intended to gratify his passion on the person of the prosecutrix, but that he intended to do so at all events, and notwithstanding any resistance on her part.—*R. vs. Loyd*, 7 Car. & P. 318.

PROCURING THE DEFILEMENT OF A WOMAN OR GIRL
UNDER TWENTY-ONE YEARS OF AGE.

Sect. 50. Whosoever by false pretences, false representations, or other fraudulent means, procures any woman or girl under the age of twenty-one years, to have illicit carnal connection with any man other than the procurer, is guilty of a misdemeanor, and shall be liable to be imprisoned in any gaol or place of confinement, other than the penitentiary, for any term less than two years, with or without hard labour. 24-25 Vic., ch. 100, sect. 49, Imp.

Indictment. . . . That J. S. on the first day of June, in the year of our Lord . . . by falsely pretending and representing unto one A. B., that . . . (*here set out the false pretences or representations*) did procure the said A. B. to have illicit carnal connection with a certain man named . . . (*or to the jurors aforesaid unknown*) she, the said A. B., at the time of such procurement, being then a woman (*or girl*) under the age of twenty-one years, to wit, of the age of . . . whereas in truth

and in fact (*negative the pretences or representations*) against. . . . Archbold, 707.

The pretences and representations made by the defendant must be proved, as well as their falsehood. Also, that by means of these false pretences or representations, the defendant induced the woman, or girl, to have carnal connection with the man named in the indictment, and that she was then under twenty-one. A boy must not be under fourteen years of age to be indictable under this clause.—See section 77, *post*, as to fine and sureties.—On the trial of an indictment under this section, the prisoner may be convicted of an attempt to commit the offence, under sect. 49 of the Procedure Act of 1869.

CARNALLY ABUSING CHILDREN UNDER TEN YEARS OF AGE.

Sect. 51. Whosoever unlawfully and carnally knows and abuses any girl under the age of ten years, is guilty of felony, and shall suffer death as a felon.—24-25 Vic., ch. 100, sect. 50, Imp.

Indictment. . . . in and upon one A. N., a girl under the age of ten years, to wit, of the age of nine years, feloniously did make an assault, and her, the said A. N., then and there feloniously did unlawfully and carnally know and abuse, against the form. . . . Archbold, 708.

Not triable at Quarter Sessions; sect. 12, Procedure Act of 1869.

Sect. 77, *post*, does not apply to this clause, as the crime provided for is a capital felony.

The evidence is the same as in rape, with the exception that the consent or non-consent of the girl is immaterial.—Archbold, 79.

Upon the trial of an indictment under this clause, the jury may, under sect. 51 of the Procedure Act of 1869 find the defendant guilty of a common assault, in certain

cases. But no such verdict can be returned, if the girl assented. *Reg. vs. Read*, 1 Den. 377.

Under sect. 49 of the Procedure Act of 1869, the defendant may be convicted of an attempt to commit the offence charged, if the evidence warrants it. A boy under fourteen years of age cannot be convicted of this offence, nor of the attempt to commit it.—1 Russell 931.

CARNALLY ABUSING A GIRL ABOVE TEN AND UNDER
TWELVE YEARS OF AGE.

Sect. 52.—Whosoever unlawfully and carnally knows and abuses any girl being above the age of ten years and under the age of twelve years is guilty of a misdemeanor, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding seven years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour.—24–25 Vict., ch. 100, s. 51, Imp.

Indictment. —..... in and upon one A. N., a girl above the age of ten years and under the age of twelve years, to wit, of the age of eleven years, unlawfully did make an assault, and her the said A. N. did then unlawfully and carnally know and abuse, against the form.....
—Archbold, 709.

Same evidence as in rape; but it will be no defence that the girl consented.

Remarks under preceding section are applicable here; but section 77. *post*, of this same Act applies.

An indictment charged that G in and upon D, a girl above the age of ten, and under the age of twelve, unlawfully did make an assault, and her, the said D, did then unlawfully and carnally know and abuse. *Held* by the Court of Criminal Appeal, that the indictment contained

two charges, one of common assault, and the other of the statutable misdemeanor (under this section), and that the prisoner might be convicted of a common assault upon it, *as no consent* on the part of the girl had been proved.—Reg. vs. Guthrie, 11 Cox, 522.

On an indictment for carnal knowledge of a girl above ten years of age and under twelve, and also for an assault: *Held*, Lush, J., on the count for assault, that although consent would be a defence, consent extorted by terror or induced by the influence of a person in whose power she feels herself, is not really such consent as will have that effect.—Reg. vs. Woodhurst, 12 Cox, 443; Reg. vs. Lock, 12 Cox 244.

Upon an indictment for unlawfully assaulting and having carnal knowledge of a girl between ten and twelve years of age, the prisoner may be convicted of the attempt to commit that offence.—Court of Criminal Appeal, 11 Cox, 101; Reg. vs. Ryland.

The punishment would then be under section 53.

If the girl has consented, there can be no verdict of assault.—Reg. vs. Johnston, 1 Leigh & Cave 632; 1 Russell 934; Reg. vs. Cockburn, 3 Cox C. C. 543. Reg. vs. Martin, 2 Moo. C. C. 123. Reg. vs. Wollaston, 12 Cox, 180.

But there is a difference between consent and submission.—1 Russell, 934; Reg. vs. Lock, 12 Cox 244.

If upon an indictment for having a carnal knowledge of a girl between ten and twelve years of age, it appear that in fact the girl was under ten, the indictment cannot be amended to make it agree *quoad hoc* with the proof, and, notwithstanding sect. 50 of the Procedure Act of 1869, the prisoner must be acquitted.—1 Russell 935.—Reg. vs. Shott, 3 C & K. 206.

INDECENT ASSAULT ON FEMALES. ATTEMPT TO ABUSE
GIRL UNDER TWELVE.

Sect. 53.—Whosoever shall be convicted of any indecent assault upon any female, or of any attempt to have carnal knowledge of any girl under twelve years of age, shall be liable to be imprisoned in any gaol or place of confinement, other than a Penitentiary, for any term less than two years, with or without hard labour, and with or without whipping.—24-25 Vict., ch. 100, s. 52, Imp.—Misdemeanor.

Indictment.—... One A. D. unlawfully and indecently did assault, and her, the said A. D., did then beat, wound and ill-treat, and other wrongs to the said A. D. did, to the great damage of the said A. D., against the form... .. Archbold 710.

No indictment can be preferred for any indecent assault, unless one or other of the preliminary steps required by sect. 28 of the Procedure Act of 1869 has been taken.

As to fining the offender, and requiring sureties, see section 77, *post*.

As to the whipping, see sect. 95 of the Procedure Act of 1869. The consent is immaterial upon an indictment for the attempt to have carnal knowledge of a girl under twelve, but upon an indictment for indecent assault, if the girl, although under twelve, consented, the prisoner must be acquitted, as there can be no assault on a person consenting. See *ante* cases under sections 49 and 52, and Reg. vs. Holmes & Furness, 12 Cox, 137.

ABDUCTION OF A WOMAN FROM MOTIVES OF LUCRE.

Sect. 54.—Where any woman of any age has any interest, whether legal or equitable, present or future, absolute, conditional or contingent, in any real or personal estate, or is a presumptive heiress or co-heiress or presumptive next of kin, or one of the presumptive next of kin to any one having such interest, whosoever, from motives of lucre, takes away or detains such woman against her will with intent to marry or carnally know her, or to cause her to be married or carnally known by any other person; and whosoever fraudulently allures, takes away or detains such woman, being under the age of twenty-one years, out of the possession and against the will of her father and mother or of any other person having the lawful care or charge of her, with intent to marry or carnally know her or to cause her to be married or carnally known by any other person, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour; and whosoever is convicted of any offence against this section shall be incapable of taking any estate or interest, legal or equitable, in any real or personal property of such woman, or in which she has any such interest, or which shall come to her as such heiress, co-heiress or next of kin as aforesaid; and if any such marriage as aforesaid shall have taken place, such property shall, upon such conviction, be settled in such manner as the Court of Chancery in Ontario, the Supreme Court in Nova Scotia or New Brunswick, or the Superior Court in Quebec, shall appoint, upon any information at the suit of the

Attorney-General for the Province in which the property is situate.—24-25 Vict., ch. 100, s. 53, Imp.

It is not necessary that an actual marriage or defilement should take place. Under the first part of this section, the taking or detaining must be *from motives of lucre* and *against the will of the woman*, coupled with an intent to marry or carnally know her or cause her to be married or carnally known by another person.

Indictment under first part of this section.—..... feloniously and from motives of lucre did take away and detain (“take away or detain”) one A. N. against her will, she, the said A. N., then having a certain present and absolute interest in certain real estate (*any interest, whether legal or equitable, present or future, absolute, conditional or contingent in any real or personal estate*) with intent her, the said A. N., to marry (*or carnally know her, or cause her to be married or carnally known by. . . .*) against the form. Add a count stating generally the nature of some part of the property, and if the intent be doubtful, add counts varying the intent.—Archbold, 699. The value of the property should be stated. See another form, in Chitty, C. L. 3rd V., 818.

Indictment under the second part of this section.—..... feloniously and fraudulently allured (*took away or detained*) one A. B. out of the possession and against the will of C. D., her father, she, the said A. B., then being under the age of twenty-one years, and having a certain present interest in with intent, her, the said A. B., to marry (*or carnally know, or cause to be married or, etc., etc., etc.,*) contrary to the Statute, etc., etc., etc. (Add counts, if necessary, varying the statements as to the property, possession, or intents.)

Under the second part of the section, the offence con-

sists in the fraudulent allurements of a woman under twenty-one out of the possession of or against the will of her parent or guardian, coupled with an intent to marry or carnally know her, or cause her to be married or carnally known by another person, but, for this offence, no motives of lucre are mentioned, nor should it have been committed against the will of the woman, though she must be an heiress, or such a woman as described in the first lines of this section.

The taking under the first part of this section must be against the will of the woman; but it would seem that, although it be with her will, yet, if that be obtained by fraud practised upon her, the case will be within the Act; for she cannot whilst under the influence of fraud be considered to be a free agent.—*R. vs. Wakefield*, Lancaster Assizes, 1827.

If the woman be taken away in the first instance with her own consent, but afterwards refuse to continue with the offender, the offence is complete, because if she so refuse, she may from that time as properly be said to be taken against her will as if she had never given her consent at all, for, till the force was put upon her, she was in her own power.—1 Burn's Justice 8.

Moreover the *detaining against* her will is by itself an offence.

It seems, also, it is not material whether a woman so taken contrary to her will at last consents thereto or not, for if she were in force at the time, the offence is complete at the time of the taking, and the offender is not to escape from the provisions of the Statute by having prevailed over the weakness of the woman by such means.—*Loc. cit.*

The second part of this section expressly contemplates the case of a girl, under twenty one, whose cooperation has been obtained by influence over her mind,

and who has been taken out of the possession of her parent or guardian by means of a fraud practised upon them and against their will, or by force, against their will, but with her consent. If a girl, under twenty-one, is taken away or detained against her own will, or her consent is obtained through fear, that case would be within the first part of this section.

The woman, though married, may be a witness against the offender — *Archbold* 700.

"If therefore," says Taylor, on Evidence, No. 1236, "a man be indicted for the forcible abduction of a woman with intent to marry her, she is clearly a competent witness against him, if the force were continuing against her till the marriage. Of this last fact also she is a competent witness, and the better opinion seems to be that she is still competent, notwithstanding her subsequent assent to the marriage and her voluntary cohabitation : for otherwise, the offender would take advantage of his own wrong." — Also, 1 Russ. 709.

The last part of the clause relating to the property of the woman married as aforesaid, seems unconstitutional ; the Local Legislatures have exclusive jurisdiction in the matter.

Under sect. 77, *post*, the Court may require sureties to keep the peace in addition to the punishment.

Under sect. 49 of the Procedure Act of 1869, the prisoner charged with the felony aforesaid may be found guilty of an attempt to commit the same, which is a misdemeanor at common law, Roseoe 283, and punishable by fine, or imprisonment, or both. — *Archbold* 174. — The Court may also, in misdemeanors, require the defendant to find sureties to keep the peace and be of good behaviour, at common law, and may order him to be impri-

soned until such security is found.—Reg. vs. Dunn, 12 Q. B. 1026.—Greaves, Cons. Acts, 7.

Under sect. 51 of the Procedure Act of 1869, the prisoner may be acquitted of the felony, and found guilty of an assault, if the evidence warrants such finding.

ABDUCTION OF ANY WOMAN.

Sect. 55.—Whosoever by force takes away or detains against her will any woman of any age, with intent to marry or carnally know her, or to cause her to be married or carnally known by any other person, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour.—24–25 Vict., ch. 100, s. 54, Imp.

The observations upon the last section will apply for the most part to this, which provides a very proper protection to women who happen to have neither any present nor future interest in any property.—*Greaves, Consol. Acts*, 80.

It may be that manual force may not in all cases be necessary, and, that though no actual force was used, yet, if the taking away was accomplished under the fear and apprehension of a *present immediate threatened* injury, depriving the woman of freedom of action, the Statute would be satisfied.—1 *Burn's Justice* 9.

Indictment.—.....feloniously and by force did take away (or detain) one A. B. against her will, with intent her, the said A. B., to marry ... (or) against the form of the Statute....If the intent is doubtful, add a count stating it to be to “carnally know,” or to cause

her t
juror
by, &
A
offen
may
ding

Se
taken
years
fathe
care
shall
confi
less t
Vict.

Th
dient
is the
the p
of lu
offen

It
the t
Reg.
Whe
of th
again
no de
taking
if for
mins.

her to be married to one N. S., or to some persons to the jurors unknown, or to cause her to be carnally known by, &c., &c., &c. 1 Burn's Justice, 12.

A verdict for assault or for an attempt to commit the offence charged, may be given, and sureties for the peace may be required by the Court, as under the next preceding section.

ABDUCTION OF GIRLS UNDER SIXTEEN.

Sect. 56.—Whosoever unlawfully takes or causes to be taken any unmarried girl being under the age of sixteen years out of the possession and against the will of her father or mother or of any other person having the lawful care or charge of her, is guilty of a misdemeanor, and shall be liable to be imprisoned in any gaol or place of confinement, other than a Penitentiary, for any term less than two years, with or without hard labour.—24-25 Vict., ch. 100, s. 55, *Imp.*

The intent to marry, or carnally know is not an ingredient of this offence. . . The only intent which is material is the intent to deprive the parent or legal guardian of the possession of the child.—Roscoe, 248. No motives of lucre are necessary. A woman may be guilty of this offence.

It is immaterial whether the girl consents or not, and the taking need not be by force, actual or constructive. *Reg. vs. Mankletow*, 1 *Russell* 954; *Dearsly*, 159—Where a parent countenances the loose conduct of the girl, the jury may infer that the taking is not against the parent's will. Ignorance of the girl's age is no defence.—1 *Russell* 952.—It is not necessary that the taking away should be for a permanency: it is sufficient if for the temporary keeping of the girl.—*Reg. vs. Timmins*, Bell C. C. 276.

To pick up a girl in the streets and take her away is not to take her out of the possession of any one. The prisoner met a girl under sixteen years of age in a street, and induced her to go with him to a place at some distance, where he seduced her and detained her for some hours. He then took her back to where he met her and she returned home to her father. In the absence of any evidence that the prisoner knew, or had reason for knowing, or that he believed that the girl was under the care of her father at the time, *held* by the Court of Criminal Appeal that a conviction under this section could not be sustained.—Reg. vs. Hibbert. 11 Cox C. C. 246,

One who takes an unmarried girl under the age of sixteen years out of the possession and against the will of her father or mother is guilty of this offence, although he may not have had any bad motive in taking her away, nor means of ascertaining her age, and although she was willing to go.—Reg. vs. Booth, 12 Cox C. C. 231. The defence in this case was that the prisoner, actuated by religious and philanthropic motives, had taken the girl from her parents in order to save her from seclusion in a convent. He was found guilty and sentenced.

A girl who is away from her home is still in the custody or possession of her father, if she intends to return; it is not necessary to prove that the prisoner knew the girl to be under sixteen; the fact of the girl being a consenting party cannot absolve the prisoner from the charge of abduction; this section is for the protection of parents.—*Willes, J.*, Reg. vs. Mycock. 12 Cox C. C. 28,

Indictment.—...unlawfully did take (*or cause to be taken*) one A. B. out of the possession and against the will of E. F., her father, she, the said A. B., being then an unmarried girl, and under the age of sixteen years, to wit, of the age of. . . against the form, &c., (if neces-

sary add a count stating E. F. to be a person having the lawful care and charge of the said A. B., or that the defendant unlawfully did cause to be taken one)
—Archbold, 700.

As to fining the offender, and requiring him to give sureties for good behaviour, see sect. 77, *post*.

As to verdict for an attempt to commit this offence, on a prosecution for the offence itself, as above, under section 54.

STEALING CHILDREN LESS THAN FOURTEEN YEARS OF AGE.

Sect. 57.—Whosoever unlawfully, either by force or fraud, leads, or takes away, or decoys, or entices away, or detains any child under the age of fourteen years, with intent to deprive any parent, guardian or other person having the lawful care or charge of such child of the possession of such child, or with intent to steal any article upon or about the person of such child, to whomsoever such article may belong, and whosoever, with any such intent, receives or harbours any such child, knowing the same to have been by force or fraud, led, taken, decoyed, enticed away or detained, as in this section before mentioned, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding seven years, and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour; Provided that no person who has claimed any right to the possession of such child, or is the mother, or has claimed to be the father of an illegitimate child, shall be liable to be prosecuted by virtue hereof on account of the getting possession of such child, or taking such child out of the

possession of any person having the lawful charge thereof.—24–25 Vict., ch. 100, sect. 56, Imp.

Indictment.—..... feloniously and unlawfully did by force (*or fraud*) lead and take away (*lead or take away, or decoy, or entice away, or detain*) one A. N., a child then under the age of fourteen years, to wit, of the age of seven years, with intent thereby then to deprive one A. S., the father of the said A. N., of the possession of the said A. N., his said child, against..... And the jurorsthat the said.....afterwards, to wit on the day and year aforesaid, feloniously and unlawfully did by force (*or fraud*) lead and take away, (*or &c.*,) the said A. N., a child then under the age of fourteen years, to wit, of the age of seven years, with intent thereby then feloniously to steal, take and carry away divers articles, that is to say..... then being upon and about the person of the said child, against..... (Add counts stating that the defendant did by *fraud entice away*, or *did by fraud detain*, or *did by force detain*, if necessary).—Archbold, 703.

As to requiring the prisoner to enter into recognizances and find sureties for keeping the peace, in addition to any other punishment, see sect. 77, *post*.

Upon the trial of any offence contained in this section, the defendant may under sect. 49 of the Procedure Act of 1869, be convicted of an attempt to commit the same.—1 Russell, 966.

All those claiming a right to the possession of the child are specially exempted from the operation of this section, by the proviso.

BIGAMY.

Δ Sect. 58.—Whosoever, being married, marries any other person during the life of the former husband or wife,

whether the second marriage has taken place in Canada, or elsewhere, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding seven years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour; and any such offence may be dealt with, enquired of, tried, determined and punished in any district, county or place in Canada, where the offender is apprehended or is in custody, in the same manner in all respects as if the offence had been actually committed in that district, county or place; provided that nothing in this section contained shall extend to any second marriage contracted elsewhere than in Canada by any other than a subject of Her Majesty resident in Canada and leaving the same with intent to commit the offence, or to any person marrying a second time whose husband or wife has been continually absent from such person for the space of seven years then last past, and was not known by such person to be living within that time, or shall extend to any person who, at the time of such second marriage, was divorced from the bond of the first marriage, or to any person whose former marriage has been declared void by the sentence of any Court of competent jurisdiction.
—24-25 Vict., ch. 100, s. 57, Imp.

Indictment.— The Jurors for Our Lady the Queen upon their oath present, that J. S. on.....
in the year of Our Lord..... at the parish of.....
in the..... did marry one A. C., spinster, and her the said A. then and there had for his wife; and that the said J. S. afterwards, and whilst he was so married to the said A., as aforesaid, to wit, on the..... day.....
at..... feloniously and unlawfully did marry and take

to wife one M. Y., and to her the said M. Y. was then and there married, the said A., his former wife, being then alive; against the form..... And the jurors aforesaid, upon..... that the said J. S. afterwards, to wit, on at in the district of within the jurisdiction of the said Court, was apprehended (or is now in custody in the common gaol of the said district of at within the jurisdiction of the said court) for the said felony.—Archbold, 883.

Bigamy is the felonious offence of a husband or wife marrying again during the life of the first wife or husband. It is not strictly correct to call this offence *bigamy*; it is more properly denominated *polygamy*, i. e. having a plurality of wives or husbands at once, while bigamy according to the canonists consists in marrying two virgins successively, one *after* the death of the other, or in once marrying a widow.—Wharton's Law Lexicon *verbo* Bigamy.

Upon an indictment for bigamy, the prosecutor must prove: 1st, the two marriages; 2d, the identity of the parties.—Roscoe, 294.

The law will not, in cases of bigamy, presume a marriage valid to the same extent as in civil cases.—R. vs. Jacob, 1 Moo. C. C. 140.

The first wife or husband is not a competent witness to prove any part of the case, but the second wife or husband is, after the first marriage is established, for she or he is not legally a wife or husband.—1 Russell, 319.

The first marriage must be a valid one. The time at which it was celebrated is immaterial, and whether celebrated in this country or in a foreign country is also immaterial.—Archbold, 883.

If celebrated abroad, it may be proved by any person

who was present at it; and circumstances should also be proved from which the jury may presume that it was a valid marriage according to the laws of the country in which it was celebrated. Proof that a ceremony was performed by a person appearing and officiating as a priest, and that it was understood by the parties to be the marriage ceremony, according to the rites and customs of the foreign country, would be sufficient presumptive evidence of it, so as to throw upon the defendant the *onus* of impugning its validity.—Archbold, 884.

In the case of *Reg. vs. McQuiggan*, 2 Low. Canada Rep. Note, 346, the proof of the first marriage was attempted to be made by the voluntary examination of the accused, taken before Thomas Clancy, the committing magistrate, but this being irregular and defective, its reception was successfully objected to by the counsel for the prisoner. The Crown then tendered the evidence of Mr. Clancy as to the story the prisoner told him when taken before him after his arrest. This the Court held to be good evidence, and allowed to go to the jury: this was the only evidence of the first marriage, the prisoner having on that occasion, as Mr. Clancy deposed, confessed to him that he was guilty of the offence, as charged, and at the same time expressed his readiness to return and live with his first wife. The second marriage was proved by the evidence of the clergyman who solemnized it.—Rolland and Aylwin, J. J.

In *Reg. vs. Creamer*, 10 Low. Can. Rep. 404, upon a case reserved, the Court of Queen's Bench, composed of Lafontaine, C. J., Aylwin, Duval, Meredith and Mondelet, J.J., unanimously ruled that upon the trial of an indictment for bigamy, the admission of the first marriage by the prisoner unsupported by other testimony, is sufficient to support a conviction.

In *R. vs. Newton*, 2 Moody C.C. 503, and *R. vs. Simmonds*, 1 C. & K. 164, Wightman, J., held that the prisoner's admissions, deliberately made, of a prior marriage in a foreign country are sufficient evidence of such marriage, without proving it to have been celebrated according to the law of the country where it is stated to have taken place.

A first marriage, though *voidable*, if not absolutely *void* will support an indictment for bigamy.—Archbold, 886.

As to the second marriage, it is immaterial whether it took place in Canada, or elsewhere, provided, if it took place out of Canada, the defendant be a subject of Her Majesty resident in Canada, whence he had left to commit the offence.—32-33 Vict., ch. 20, s. 58.

It seems that the offence will be complete, though the defendant assume a fictitious name at the second marriage.—*R. vs. Allison*, R. & Ryan, 109.

The same ruling was lately maintained, on a case reserved, in *Reg. vs. Rea*, 12 Cox, 190.

Though the second marriage would have been void, in any case, as for consanguinity or the like, the defendant is guilty of bigamy.—*R. vs. Brown*, 1 C. & K. 144.

In *R. vs. Fanning*, 10 Cox, 411, a majority of the judges of the Irish Court of Criminal Appeal held, contrary to *R. vs. Brown*, that to constitute the offence of bigamy, the second marriage must have been one which, but for the existence of the previous marriage, would have been a valid marriage, but the English Court of Criminal Appeal, by sixteen judges, unanimously overruled *R. vs. Fanning*, in *Reg. vs. Allen*, 12 Cox, 193, and decided, as in *Reg. vs. Brown*, that the invalidity of

the second marriage, on account of relationship, does not prevent its constituting the crime of bigamy.

It must be proved that the first wife was living at the time the second marriage was solemnized; which may be done by some person acquainted with her and who saw her at the time or afterwards.—Archbold, 887. On a prosecution for bigamy, it is incumbent on the prosecutor to prove that the husband or wife, as the case may be, was alive at the date of the second marriage. There is no presumption of law of the continuance of the life of the party for seven years after the date at which he or she was proved to have been alive. The existence of the party at an antecedent period may or may not afford a reasonable inference that he or she was alive at the date of the second marriage; but it is purely a question of fact for the jury.—Reg. vs. Lumley, 11 Cox, 274.

On the trial of a woman for bigamy, whose first husband had been absent from her for more than seven years, the jury found that they had no evidence that at the time of her second marriage, she knew that he was alive; but that she had the means of acquiring knowledge of that fact, had she chosen to make use of them. It was held that upon this finding, the conviction could not be supported.—R. vs. Briggs, Dears. and Bell 98.

On this last case, Greaves, 1 Russell 270, note 1, remarks:—"The case was argued only on the part of the prisoner, and the Court studiously avoided determining on which side the onus of proof as to the knowledge of the first husband being alive lay, and yet the point seems very clear. It is plain that the latter part of the section in the 9 Geo. 4, ch. 31, s. 22, and in the new Act is in the nature of proviso. (32-33 Vict., ch. 20, s. 58, Canada.) Now no rule is better settled than that if an exception comes by way of proviso, whether it occurs in a

subsequent part of the Act, or in a subsequent part of the same section containing the enactment of the offence, it must be proved in evidence by the party relying upon it. Hence it is that no indictment for bigamy ever negatives the exceptions as retained in the proviso, and hence it follows that the proof of those exceptions lies on the prisoner; if it was otherwise, the prosecutor would have to prove more than he has alleged. Then the proviso in terms requires proof both of the absence of the party for seven years, *and* that the party shall not have been known by the prisoner to have been living within that time, and consequently it lies on the prisoner to give evidence of *both*; and as the Legislature has required proof of both, it never could have been intended that proof of the one should be sufficient evidence of the other. When, however, the prisoner has given evidence to negative his knowledge that the party is alive, the onus may be thrown on the prosecutor to show that he had that knowledge; and in accordance with this view is the dictum of Willes, J, in *Reg. vs. Ellis*, 1 F. and F. 309, that 'if the husband has been living apart from his wife for seven years, under such circumstances as to raise a probability that he supposed that she was dead when he was re-married, evidence may be necessary that he knew his first wife was alive.' As to the manner in which the case should be left to the jury, it should seem that the proper course is to ask them whether they are satisfied that the prisoner was married twice, and that the person whom he first married was alive at the time of the second marriage; and, if they are satisfied of these facts, to tell them that it then lies upon the prisoner to satisfy them that there was an absence for seven years, and also that during the whole of those seven years he was ignorant that his first wife was alive, and that unless he has proved

both those facts to their satisfaction they ought to convict him. It is perfectly clear that the question is not whether he knew that his first wife was alive *at the time of the second marriage*, for he may have known that she was alive within the seven years, and yet not know that she was alive at the time of the second marriage, and, if he knew that she was alive *at any time within the seven years*, he ought to be convicted."

On *Reg. vs. Turner*, 9 Cox 145, Greaves, 1 Russell, 273, note w, says: "This is the first case in which it has ever been suggested that the belief of the death of the first husband or wife was a defence, and the case is probably misreported. The proviso that requires absence for seven years *and* ignorance of the first husband or wife being alive during the whole of that time, clearly shows that this case cannot be supported."

If it appears that the prisoner and his first wife had lived apart for seven years before he married again, mere proof that the first wife was alive at the time of the second marriage will not warrant a conviction, but some affirmative evidence must be given to show that the accused was aware of this fact.—*R. vs. Curgerwen*, 10 Cox, C. C. 152; *Reg. vs. Fontaine*, 15 Low. Can. Jur. 141, Drummond, J.

In 1863, the prisoner married Mary Anne Richards, lived with her about a week and then left her. It was not proved that he had since seen her. In 1867, he married Elizabeth Evans, his first wife being then alive. The Court left it to the jury to declare if they were satisfied that the prisoner knew his first wife was alive at the time of the second marriage, and ruled that positive proof on that point was not absolutely necessary. The prisoner was found guilty, and, on a case re-

served the conviction was affirmed.—Reg. vs. Jones, 11 Cox, 353.

In Reg. vs. Horton, 11 Cox, 670, Cleasby, B., summed up as follows: "It is submitted that, although seven years had not passed since the first marriage, yet if the prisoner reasonably believed (which pre-supposes proper grounds of belief) that his first wife was dead, he is entitled to an acquittal. It would press very hard upon a prisoner if under such circumstances he could be convicted, when it appeared to him as a positive fact that his first wife was dead. The case of Reg. vs. Turner, 9 Cox, 145, shows that this was the view of Baron Martin, a judge of as great experience as any on the bench now, and I am not disposed to act contrary to his opinion. You must find the prisoner guilty, unless you think that he had fair and reasonable grounds for believing and did honestly believe, that his first wife was dead." The jury returned a verdict of guilty, and the judge sentenced the prisoner to imprisonment for three days, remarking that he was quite satisfied with the verdict, and that he should inflict a light sentence, as he thought the prisoner really believed his first wife was dead, although he was not warranted in holding that belief. See, *ante*, Greaves' remarks on Reg. vs. Turner.

But in a later case,—Reg. vs. Gibbons, 12 Cox 237, (July 30, 1872),—it was held, Brett and Willes, J. J., that *bonâ fide* belief that the first husband was dead was no defence by a woman accused of bigamy, unless he has been continuously absent for seven years.

On an indictment for bigamy, a witness proved the first marriage to have taken place eleven years ago, and that the parties lived together some years, but could not say how long, it might be four years, Wightman, J., said: "How is it possible for any man to prove a nega-

tive ? How can I ask the prisoner to prove that he did not know that his wife was living ? There is no evidence that the prisoner knew that his wife was alive, and there is no offence proved.—Reg. vs. Heaton, 3 F. & F. 819.

The 32-33 Vict., ch. 20, s. 58, provides that the offender may be tried in the district, county or place, where he is apprehended or is in custody. But this provision is only cumulative, and the party may be indicted where the second marriage took place, though he be not apprehended; for in general where a statute directs that the offender may be tried in the county, district or place in which he is apprehended, but contains no negative words, he may be tried where the offence was committed.—1 Russell, 274.

The averment of the prisoner's apprehension as in the form given *ante*, is only necessary where the second marriage took place in another district than where the defendant is indicted.—Archbold, 883.

In Reg. vs. McQuiggan, 2 Low. Can. Rep., p. 340, the Court ruled that in an indictment for bigamy, under the Canadian Statute, it is absolutely necessary, when the second marriage has taken place in a foreign country, that the indictment should contain the allegations that the accused is a British subject, that he is or was resident in this Province, and that he left the same with intent to commit the offence.

See sect. 77, *post*, as to requiring sureties from the offender in addition to any other punishment.

ATTEMPTS TO PROCURE ABORTION.

Sect. 59.—Every woman, being with child, who, with the intent to procure her own miscarriage, unlawfully

administers to herself any poison or other noxious thing, or unlawfully uses any instrument or other means whatsoever with the like intent, and whosoever with intent to procure the miscarriage of any woman, whether she be or be not with child, unlawfully administers to her, or causes to be taken by her any poison or other noxious thing, or unlawfully uses any instrument or other means whatsoever with the like intent, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vic., ch. 100, sect. 58, Imp.

Indictment for woman administering poison to herself with intent or, &c..... That C. D. late of... on... at... and being then with child, with intent to procure her own miscarriage, did unlawfully and feloniously administer to herself one drachm of a certain poison (or *noxious thing*) called..... (or *did unlawfully and feloniously use a certain instrument (or means) to wit*..... contrary to the Statute..... 1 Burn's Justice, 16.

Indictment for administering poison to a woman, with intent to procure abortion.—..... That C. D. on..... unlawfully and feloniously did administer to (or *cause to be taken by*) one S. P. one ounce weight of a certain poison, called..... (or *noxious thing called*.....) with intent then and thereby to cause the miscarriage of the said S. P. contrary to the Statute... 1 Burn's Justice, 16.

Indictment for using instrument with the like intent.—..... unlawfully and feloniously did use a certain instrument called a..... upon the person of one S. P., with intent then and thereby to cause the miscarriage of the said S. P. 1 Burn's Justice, 16.

In order to constitute an offence under the first part of section 59, the woman must be with child, though not necessarily quick with child. The poison or other noxious thing must have been administered, or the instrument used with the intent to procure the miscarriage. It must be proved, according to the fact stated in the indictment, that the woman administered to herself, etc., or that the defendant administered, etc., or caused to be taken, etc., the drug, as therein stated, and that the drug was noxious, or that the defendant used the instrument, *or other means*, mentioned in the manner described in the indictment.—1 Burn's Justice 14.

Where the prisoner gave the prosecutrix the drug for the purpose of procuring abortion and the prosecutrix takes it for that purpose in the prisoner's absence, this was held to be a causing of it to be taken within the Statute.—*R. vs. Wilson, R. vs. Farrow*, 127, 164, Dears. & Bell.

A man and woman were jointly indicted for feloniously administering to C a noxious thing to the jurors unknown with intent to procure miscarriage. C, being in the family way, went to the male prisoner, who said he would give her some stuff to put her right, and gave her a light coloured medicine and told her to take two spoonfuls till she became in pain. She did so and it made her ill. She then went to him again, and he said the safest course would be to get her a place to go to. He told her that he had found a place for her at L and gave her some more of the stuff, which he said would take effect when she got there. They went together to L, and met the female prisoner, who said she had been down to the station several times the day before to meet them. C then began to feel pain and told the female prisoner.

Then the male prisoner told what he had given C. They all went home to the female prisoner's, and the male prisoner then gave C another bottle of similar stuff, in the female prisoner's presence, and told her to take it like the other. She did so and became very ill, and the next day had a miscarriage, the female prisoner attending her and providing all things: *held*, that there was evidence that the stuff administered was a noxious thing within the 24-25 Vict., ch. 100, s. 58, Imp. Also that there was evidence of the female being an accessory before the fact, and a party, therefore, to the administration of the noxious thing.—Reg. vs. Hollis, 12 Cox 463.

Under the second part of this section, the fact of the woman being pregnant is immaterial. But, the prisoner must have believed her to be pregnant; otherwise there could be no intent under the Statute. Under an indictment for this offence, the prisoner may be convicted of an attempt to commit it, under sect. 49 of the Procedure Act of 1869.

See sect. 77, *pcst*, as to sureties.

As to solitary confinement, see s. 94 of the Procedure Act of 1869.

PROCURING DRUGS TO CAUSE ABORTION.

Sect. 60.—Whosoever unlawfully supplies or procures any poison 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 she be or be not with child*, is guilty of a misdemeanor, and shall be liable to be imprisoned in the Penitentiary for the term of two

years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour.—24–25 Vict. ch. 100, s. 59, Imp.

Indictment.—..... unlawfully did procure (*supply or procure*) a large quantity, to wit, two ounces of a certain noxious thing called savin, he the said (*defendant*) then well knowing that the same was then intended to be unlawfully used and employed with intent to procure the miscarriage of one A. N. against the form..... Archbold, 713.

The drug supplied must be a poison or noxious thing, and the supplying an innoxious drug, whatever may be the intent of the person supplying it, is not an offence against this enactment.—Reg. vs. Isaacs, Leigh & Cave 220.

In order to constitute the offence within the meaning of this section, it is not necessary that the intention of employing the noxious drug should exist in the mind of the woman: it is sufficient, if the intention to procure abortion exists in the mind of the defendant.—Reg. vs. Hillman, L. & C. 343.

Under sect. 77, *post*, the prisoner may be fined and required to give sureties.

The prisoner may be convicted of an attempt to commit this offence, upon an indictment under this section, sect. 49 of the Procedure Act of 1869.

CONCEALING THE BIRTH OF A CHILD.

Sect. 61.—If any woman is delivered of a child, every person who by any secret disposition of the dead body of the said child, whether such child died before, at or after its birth, endeavours to conceal the birth thereof, is guilty

of a misdemeanor, and shall be liable to be imprisoned in any gaol or place of confinement other than the Penitentiary, for any term less than two years, with or without hard labour; Provided that if any person tried for the murder of any child be acquitted thereof, it shall be lawful for the jury, by whose verdict such person is acquitted, to find, in case it so appears in evidence, that the child had recently been born, and that such person did, by some secret disposition of *such child* or of the dead body of such child, endeavour to conceal the birth thereof, and thereupon the Court may pass such sentence as if such person had been convicted upon an indictment for the concealment of birth.—24–25 Vict., ch. 100, s. 60, Imp.

Sect. 62.—No part of the Act passed in the twenty-first year of the reign of King James the First, intituled: *An Act to prevent the destroying and murdering of bastard children*, shall extend to or be in force in Canada, and the trial of any woman charged with the murder of any issue of her body, male or female, which being born alive would by law be bastard, shall proceed and be governed by such and like rules of evidence and presumption, as are by law used and allowed to take place in respect to other trials for murder, and as if the said Act passed in the reign of King James the First had never been made.

Indictment.—..... That A. S. on..... was delivered of a child; and that the A. S. being so delivered of the said child as aforesaid, did then unlawfully endeavour to conceal the birth of the said child by secretly burying (*by any secret disposition of*) the dead body of the said child, against the form, etc.,..... State the means of concealment specially, when it is otherwise than by secret burying.—Archbold, 714.

The words in Italics "*of such child*" in the proviso of section 61 are not to be found in the Imperial Statute.

Section 62 repeals 21 Jac. 1, ch. 27, repealed in England by 43 Geo. 3, ch. 58. By the repealed Act, if the mother of an illegitimate child endeavoured privately to conceal his birth and death, she was presumed to have murdered it, unless she could prove that the child was born dead. Taylor, on Evidence, Note 7, p. 128, justly says that this rule was barbarous and unreasonable.

In Reg. vs. Berriman, 6 Cox C. C. 388, Erle, J., told the jury that this offence cannot be committed unless the child had arrived at that stage of maturity at the time of birth that it might have been a living child. But in a later case, Reg. vs. Colmer, 9 Cox C. C. 506, Martin, J., ruled that the offence is complete on a foetus delivered in the fourth or fifth month of pregnancy, not longer than a man's finger, but having the shape of a child.

Final disposing of the body is not material, and hiding it in a place from which a further removal was contemplated, would support the indictment.—R. vs. Goldthorpe, 2 Moo. C. C. 244; R. vs. Perry, Dears. 471.

Leaving the dead body of a child in two boxes, closed but not locked or fastened, one being placed inside the other in a bedroom, but in such a position as to attract the attention of those who daily resorted to the room, is not a secret disposition of the body, within the meaning of the Statute.—Bovill, C. J.—Reg. vs. George, 11 Cox C. C. 41.

What is a secret disposition of the dead body of a child within the Statute is a question for the jury, depending on the circumstances of the particular case: where the dead body of a child was thrown into a field, over a wall 4½ feet high, separating the yard of a public house from the field, and a person looking over the wall

from the yard might have seen the body, but persons going through the yard or using it in the ordinary way would not, it was held, on a case reserved, by five judges, that this was an offence within the Statute.—*Reg. vs. Brown*, 11 Cox C. C. 517.

Although the fact of the prisoner having placed the dead body of her newly-born child in an unlocked box is not of itself sufficient evidence of a criminal concealment of birth, yet all the attendant circumstances of the case must be taken into consideration, in order to determine whether or not an offence has been committed.—*Reg. vs. Cook*, 11 Cox C. C. 542.

In order to convict a woman of attempting to conceal the birth of her child, a dead body must be found, and identified as that of the child of which she is alleged to have been delivered: a woman, apparently pregnant, while staying at an inn, at *Stafford*, received by post, on the 28th of August, 1870, a *Rugby newspaper with the Rugby postmark upon it*. On the same day her appearance and the state of her room seemed to indicate that she had been delivered of a child. She left for Shrewsbury next morning, carrying a parcel. That afternoon a parcel was found in a waiting room at *Stafford* station. It contained the dead body of a newly-born child wrapped in a *Rugby Gazette*, of August 27th, bearing the *Rugby postmark*. There is a railway from Stafford to Shrewsbury, but no proof was given of the woman having been at Stafford Station: *Held*, Montague Smith, J., that this evidence was insufficient to identify the body found as the child of which the woman was said to have been delivered, and would not therefore justify her conviction for concealment of birth.—*Reg. vs. Williams*, 11 Cox C. C. 684.

A., being questioned by a police-constable about the

concealment of a birth, gave an answer which caused the officer to say to her, "It might be better for you to tell the truth and not a lie." *Held*, that a further statement made by A to the policeman after the above inducement was inadmissible in evidence against her, as not being free and voluntary. A was taken into custody the same day, placed with two accomplices, B and C, and charged with concealment of birth. All three then made statements. *Held*, that those made by B and C could not be deemed to be affected by the previous inducement to A, and were therefore, admissible against B and C respectively, although that made by A was not so. The prisoners were sent for trial, but before their committal they received the formal caution from the magistrate as to anything they might wish to say. Whereupon A made a statement which was taken down in writing, as usual, and attached to the deposition: *Held*, that this latter statement of A might be read at the trial as evidence against herself. Mere proof that a woman was delivered of a child and allowed two others to take away its body is insufficient to sustain an indictment against her for concealment of birth.—Montague Smith, J., in *Reg. v. Bates*, 11 Cox C. C. 686.

By sect. 1, par. 1, of the Procedure Act of 1869, the word indictment includes *inquisition*, and a coroner's inquisition is a charge, so that the proviso of section 61 of ch. 20, and section 62 of the same chapter, extend to a trial on a coroner's inquisition as well as to a trial on a bill of indictment by the grand-jury.—*Rex vs. Cole*, 2 Leach C. C. 1095. *Rex vs. Maynard*, Russ. & Ryan 240. 1 Russell 780, note G, by Greaves.

As to fining the offender and requiring sureties for good behaviour, see section 77, *post*.

SODOMY.

Sect. 63.—Whosoever is convicted of the abominable crime of buggery, committed either with mankind or with any animal, shall be liable to be imprisoned in the Penitentiary for life, or for any term not less than two years.—24-25 Vict., ch. 100, s. 61, Imp.

Indictment.—.....in and upon one J. N. feloniously did make an assault, and then feloniously, wickedly, and against the order of nature had a venereal affair with the said J. N., and then feloniously carnally knew him, the said J. N., and then feloniously, wickedly, and against the order of nature, with the said J. N., did commit and perpetrate that detestable and abominable crime of buggery (not to be named among Christians); against the form.....—Archbold 716.

Sodomy or Buggery is a detestable and abominable sin, amongst Christians not to be named, committed by carnal knowledge against the ordinance of the Creator and order of nature by mankind with mankind, or with brute and beast, or by womankind with brute beast.—3 Inst. 58.

If the offence be committed on a boy under fourteen years of age, it is felony in the agent only.—1 Hale 670. If by a boy under fourteen on a man over fourteen, it is felony in the patient only.

The evidence is the same as in rape, with two exceptions: first, that it is not necessary to prove the offence to have been committed against the consent of the person upon whom it was penetrated, and secondly, both agent and patient (if consenting) are equally guilty.—5 Burn's Justice 644.

In *Rex. vs. Jacobs*, Russ. and Ry. 331, it was proved that the prisoner had prevailed upon a child, a boy of

seven years of age, to go with him in a back-yard; that he, then and there, forced the boy's mouth open with his fingers, and put his private parts into the boy's mouth, and emitted in his mouth; the judges decided that this did not constitute the crime of sodomy.

In one case, the majority of the judges were of opinion that the commission of the crime with a woman was indictable; also by a man with his wife.—1 Russell 939.

As in the case of rape, penetration alone is sufficient to constitute the offence.—32-33 Vict., ch. 20, s. 65.

The evidence should be plain and satisfactory in proportion as the crime is detestable.

Upon an indictment under this section, the prisoner may be convicted of an attempt to commit the same.—Sect. 49 of the Procedure Act of 1869.

The punishment would then be under section 61 of this chapter 20.

The defendant may be convicted of the assault, if the evidence warrants it. sect. 51, Procedure Act of 1869.

See sect. 77, *post*, as to sureties for the peace.

Indictment for bestiality.—.....with a certain *cow* (*any animal*) feloniously, wickedly and against the order of nature had a venereal affair, and then feloniously, wickedly and against the order of nature, with the said cow did commit and perpetrate that detestable and abominable crime of buggery (not to be named among Christians); against the form.....—Archbold, 717.

ASSAULT WITH INTENT TO COMMIT SODOMY. INDECENT

ASSAULT ON MALES.

Sect. 64.—Whosoever attempts to commit the said abominable crime, or is guilty of any assault with intent to commit the same, or of any indecent assault upon any male person, is guilty of a misdemeanor, and shall be



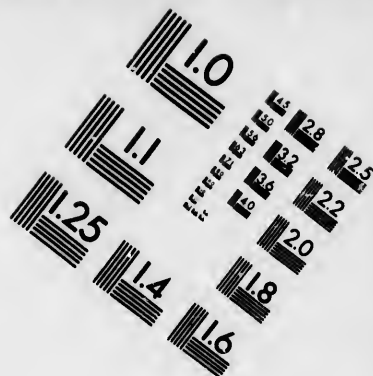
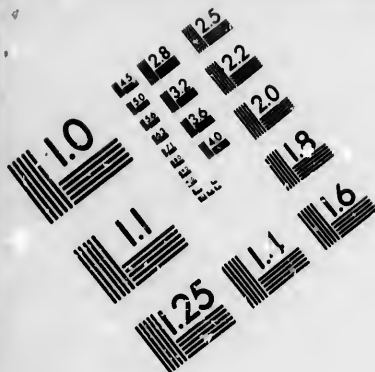
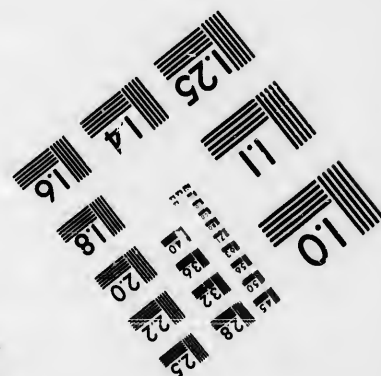
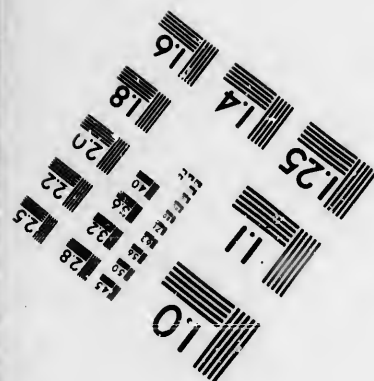
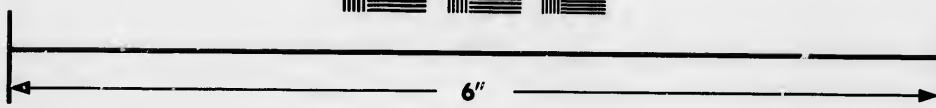
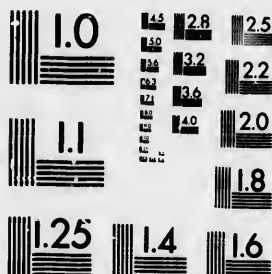


IMAGE EVALUATION TEST TARGET (MT-3)



Photographic
Sciences
Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

0
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99

liable to be imprisoned in the Penitentiary for any term not exceeding ten years, and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour.—24-25 Vict., ch. 100, s. 62, Imp.

Indictment. - in and upon one J N did make an assault, and him, the said J N did then beat, wound and ill-treat, with intent that detestable and abominable crime called buggery with the said J N feloniously, wickedly, diabolically, and against the order of nature to commit and perpetrate against the form, &c., &c., &c.—Archbold, 718.

If the indictment be for an indecent assault, one or other of the preliminary steps required by sect 28 of the Procedure Act of 1869 must be taken.

As to fining the offender and requiring sureties to keep the peace and be of good behaviour, see section 77, *post*.

Where there is a consent there cannot be an assault in point of law. - Reg. vs. Martin, 2 Moo. C. C. 123. A man induced two boys above the age of fourteen years to go with him in the evening to an out of the way place, where they mutually indulged in indecent practices on each others' persons: *held*, on a case reserved, that under these circumstances, a conviction for an indecent assault could not be upheld.—Reg. vs. Wollaston, 12 Cox C. C. 180.

But the definition of an assault that the act must be *against the will* of the patient implies the possession of an active will on his part, and, therefore, mere submission by a boy eight years old to an indecent assault and immoral practices upon his person, without any active sign of dissent, the child being ignorant of the nature of

the assault, does not amount to consent so as to take the offence out of the operation of criminal law.—Reg. vs Lock, 12 Cox C. C. 244.

CARNAL KNOWLEDGE DEFINED.

Sect. 65.—See *ante*, under sect 49, as to this section.

MAKING OR HAVING GUNPOWDER, ETC., ETC., ETC., WITH
INTENT TO COMMIT ANY FELONY. WARRANT TO
SEARCH FOR THE SAME; DISPOSAL OF
THE SAME.

Sect. 66.—Whosoever *knowingly* has in his possession, or makes or manufactures any gunpowder, or explosive substance or any dangerous or noxious thing, or any machine, engine, instrument or thing, with intent by means thereof to commit, or for the purpose of enabling any other person to commit any of the felonies in this Act, or in any other Act mentioned, is guilty of a misdemeanor, and shall be liable to be imprisoned in any gaol or place of confinement, other than a Penitentiary, for any term less than two years, with or without hard labour, and with or without solitary confinement.—24.25 V., ch. 100, s. 54, Imp.

Sect. 67.—Any justice of the peace for any district county or place in which any such gunpowder, or other explosive, dangerous or noxious substance or thing, or any such machine, engine, instrument or thing is suspected to be made, kept or carried for the purpose of being used in committing any of the felonies in this Act, or in any other Act mentioned, upon reasonable cause assigned upon oath by any person, may issue a warrant under his hand and seal for searching in the day-time, any house, mill,

magazine, storehouse, warehouse, shop, cellar, yard, wharf or other place or any carriage, waggon, cart, ship, boat or vessel, in which the same is suspected to be made, kept or carried for such purpose, as herein before mentioned ; and every person acting in the execution of any such warrant may seize any gunpowder or explosive substance or any dangerous or noxious thing, or any machine, engine or instrument or thing which he has good cause to suspect is intended to be used in committing or enabling any other person to commit any offence against this Act, and with all convenient speed after the seizure shall remove the same to such proper place as he thinks fit, and detain the same until ordered by a Judge of one of Her Majesty's Superior Courts of Criminal jurisdiction to restore it to the person who may claim the same.—24-25 V., ch. 100, s. 65, Imp.

Sect. 68.— Any gunpowder, explosive substance or dangerous, or noxious thing, or any machine, engine, instrument or thing intended to be used in committing or enabling any other person to commit any offence against this Act, and seized and taken possession of under the provisions hereof, shall in the event of the person in whose possession the same is found, or of the owner thereof being convicted for an offence under this Act, be forfeited; and the same shall be sold under the direction of the Court before which any such person may be convicted, and the proceeds thereof shall be paid into the hands of the Receiver-General, to and for the use of the Dominion.

The words, *or in any other act*, in sections 66 and 67 are not in the Imperial Statute. Their object is to extend these provisions to the possession or manufacture of gunpowder, etc., with intent to commit *any felony*, instead of *any of the felonies in this Act mentioned*, only.

Sects. 62 and 63 of ch. 22, 32-33 Vict., are almost in the same terms as sects. 66 and 67 of chap. 20.

Sect. 65 of ch. 22 is also identical with sect. 68 of ch. 20, with this difference, that by the former the proceeds of the sale of the articles forfeited is to be paid to the Government of the Province, in which the conviction takes place, and by the latter such proceeds are to be paid to the Federal Government.

The reason of this distinction is not quite apparent.

See sect. 77, *post*, as to fining the offender, and requiring him to give sureties for keeping the peace and to be of good behaviour. As to solitary confinement, see sect. 94 of the Procedure Act of 1869.

Indictment.—..... unlawfully did make and manufacture (or knowingly have in his possession) a large quantity, to wit..... pounds of gunpowder (any explosive substance or noxious thing, or instrument, etc.,) with intent by means thereof feloniously to.....
(here state the act intended to be committed according to the words of the Statute which declares such act to be a felony)
against the form.....

KIDNAPPING.

Sect. 69.—Whosoever, without lawful authority, forcibly seizes and confines or imprisons any other person within Canada, or kidnaps any other person, with intent: 1st. To cause such other person to be secretly confined or imprisoned in Canada against his will; or 2d, to cause such other person to be unlawfully sent or transported out of Canada against his will; or 3d, to cause such other person to be sold or captured as a slave, or in any way held to service against his will, is guilty

of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding seven years, and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years.

Sect. 70.—Upon the trial of any offence under the next preceding section, the non-resistance of the person so kidnapped or unlawfully confined thereto, shall not be a defence, unless it appears to the satisfaction of the Court and Jury that it was not caused by threats, duress, or force, or exhibition of force.

Sect. 71.—Every offence against the next preceding section but one may be tried either in the district, county or place in which the same was committed or in any district, county or place into or through which any person so kidnapped or confined was carried or taken while under such confinement; but no person who has been once duly tried for any such offence shall be liable to be again indicted or tried for the same offence.

At common law, kidnapping is a misdemeanor punishable by fine and imprisonment.—1 Russell, 962.

The above sections are taken from the 29 Victoria, ch. 14, (1865).

The forcible stealing away of a man, woman or child from their own country, and sending them into another was capital by the Jewish and also by the civil law. This is unquestionably a very heinous crime, as it robs the sovereign of his subjects, banishes a man from his country, and may, in its consequences, be productive of the most cruel and disagreeable hardships.—Blackstone, 4, 219; Stephen's Com. 4, 93.

By our Statute, transportation to a foreign country is not necessarily an ingredient in this offence.

See sect. 77, *post*, as to requiring the offender to give sureties for good behaviour.

Under sect. 49 of the Procedure Act of 1869, the defendant may be found guilty of an attempt to kidnap, upon an indictment for kidnapping.

A verdict of assault may also be given, if the evidence warrants it.—Procedure Act of 1869, sect. 51.

Indictment.— . . . with force and arms unlawfully and feloniously an assault did make on one A. B., and did then and there, without lawful authority, feloniously and forcibly seize and imprison the said A. B. within the Dominion of Canada (*or confine or kidnap*) with intent the said A. B. unlawfully, forcibly and feloniously to cause to be unlawfully transported out of Canada, against his will. . . . against the form. . . . —2 Bishop, Crim. Law 750; 2 Bishop, Crim. Proced. 690.

CARRYING BOWIE-KNIVES, ETC., ETC., ABOUT THE
PERSON.

Sect. 72.—Whosoever carries about his person any bowie-knife, dagger or dirk, or any weapons called or known as iron knuckles, skull-crackers or slung shot, or other offensive weapon of a like character, or secretly carries about his person any instrument loaded at the end, or sells or exposes for sale publicly or privately any such weapon, shall be liable, on conviction thereof, before any Justice of the Peace, to a fine of not less than ten, nor more than forty dollars, and in default of payment thereof, to be imprisoned in any gaol or place of confinement for a term not exceeding thirty days.

Sect. 73.—Whosoever is found in any of the seaport towns or cities of Canada carrying about his person any sheath-knife, shall be liable on conviction thereof before

any Justice of the Peace, to the like pains and penalties as in the next preceding section; provided, however, that nothing herein contained shall apply to seamen or riggers when occupied or engaged in their lawful trade or calling.

Sect. 74.—Whosoever is charged with having committed any offence against the provisions of the two last preceding sections of this Act, may be tried and dealt with in pursuance of the Act of the present session (1869) respecting the prompt and summary administration of criminal justice in certain cases.

Sect. 75.—It shall be the duty of the Court or Justice before whom any person is convicted under the three last preceding sections of this Act to impound the weapon for carrying which such person is convicted, and to cause the same to be destroyed.

Sect. 76. All prosecutions under the four next preceding sections of this Act shall be commenced within one month from the commission of the offence charged.

Offences against these sections are to be tried summarily, under 32-33 Vict., ch. 31.

Carrying any bowie-knife, dagger or dirk, or any weapon called or known as iron knuckles, skull-crackers or slung-shot, or other offensive weapons of a like character, is an offence under sect. 72, whether the bowie-knife be *concealed about* the person or carried openly.

Carrying any instrument loaded at the end is not an offence against this section, if not *carried secretly*, and concealed about the person.—Bishop, Statutory Crimes, 790.

It is not clear what weapons cannot be sold or exposed for sale publicly or privately, under this clause. Is it only instruments loaded at the end? The word *weapon* is mentioned in the first part of the section only, so that

the prohibition seems to extend to bowie-knives, daggers, iron knuckles, etc., etc.

Under section 73, the carrying of a sheath-knife is an offence, whether done openly or secretly, but applies only to the seaport towns and cities, and then, not to seamen or riggers, occupied or engaged in their lawful trade or calling.

GENERAL CLAUSES.

Sect. 77.—When any person is convicted of any indictable misdemeanor punishable under this Act, the Court may, if it think fit, in addition to or in lieu of any punishment by this Act authorized, fine the offender and require him to enter into his own recognizances and to find sureties, both or either, for keeping the peace and being of good behaviour; *and such fine may be proportioned to the means of the offender*; and in case of any felony punishable under this Act, otherwise than with death, the Court may, if it think fit, require the offender to enter into his own recognizances and to find sureties, both or either, for keeping the peace, in addition to any punishment by this Act authorized; provided that no person shall be imprisoned for not finding sureties under this section, for any period exceeding one year.—24–25 Vict., ch. 100, s. 71, Imp.

The words in *italics* are not in the English Act: nor are they to be found in the corresponding clauses, (in other respects, all similar to this one,) of the *Coin, Larceny, Forgery*, and *Malicious Injuries to Property Acts*, of 1869. Why were they inserted in this one? They are more than superfluous: they are grossly erroneous, in the sense that they give to understand that such fine may *not* be proportioned to the means of the offender. A judge, if

such was the law, might in each case that a fine can be imposed, indirectly condemn a man to imprisonment for life. But no judge, under English rule, has or ever had that power. "However unlimited the power of the Court may seem, says Blackstone, Vol. IV, p. 378, it is far from being wholly arbitrary; but its discretion is regulated by law. For the Bill of rights (1 W. & M, st. 2, ch. 2,) has particularly declared that excessive fines ought not to be imposed...and the reasonableness of fines in criminal cases has also been usually regulated by the determination of *magna carta*, c. 14, concerning amercements for misbehaviour by the suiters in matters of civil right." By this passage of the Great Charter, the amercement must always be imposed according to the personal estate of the offender, and so as to leave *to the landholder, his land, to the trader, his merchandize, and to the countryman, his wainage, or team and instruments of husbandry*: "*sit in misericordiâ.*" This is the guide which *must* be followed in the imposition of fines. And one wonders how the words "*such fine may be proportioned to the means of the offender*" have found their way in the above statutory enactment. They are a blot on the Statute Book.

See remarks under section 74 of chap. 22, *post*, *an Act respecting malicious injuries to propriety.*

Sect. 78.—When any person is convicted on any indictment of any assault whether with or without battery and wounding, or either of them, such person may, if the Court thinks fit, in addition to any sentence which the Court may deem proper for the offence, be adjudged to pay to the prosecutor his actual and necessary costs and expenses of the prosecution, and such moderate allowance for loss of time as the Court shall, by affidavit or other inquiry and examination, ascertain to be reasonable; and

unless the sums so awarded are sooner paid, the offender shall be imprisoned in any gaol or place of confinement other than a Penitentiary, for any term the Court shall award, not exceeding three months, in addition to the term of imprisonment, if any, to which the offender may be sentenced for the offence.—24-25 Vict., ch. 100, sect. 74, Imp.

Sect. 79.—The Court may, by warrant in writing, order such sum as shall be so awarded to be levied by distress and sale of the goods and chattels of the offender, and paid to the prosecutor, and that the surplus, if any, arising from such sale shall be paid to the owner; and in case such sum shall be so levied, the imprisonment awarded until payment of such sum shall thereupon cease.—24-25 Vict., ch. 100, sect. 75, Imp.

Sect. 80.—Every offence hereby made punishable on summary conviction may be prosecuted in the manner directed by the Act of the present session, intituled: *An Act respecting the duties of Justices of the Peace, out of Sessions, in relation to summary convictions and orders*, (32-33 Vict., ch. 31), or in such other manner as may be directed in any Act that may be passed for like purposes and all provisions contained in such Acts shall be applicable to such prosecutions in the same manner as if they were incorporated in this Act.

Sect. 81.—This Act shall commence and take effect on the first day of January, one thousand eight hundred and seventy.

LARCENY.

GENERAL REMARKS.

Larceny is the wrongful taking and carrying away of the personal goods of any one from his possession, with a felonious intent to convert them to the use of the offender, without the consent of the owner; 2 East P. C. 553; the word "felonious" showing that there is no colour of right to excuse the act, and the "intent" being to deprive the owner permanently of his property.—Reg. vs. Thurborn, 1 Den. 388; Reg. vs. Guernsey, 1 F. & F. 394; Reg. vs. Holloway, 1 Den. 370; 3 Burn's Justice, 198; 2 Russell, 146, note by Greaves; Reg. vs. Middleton, 12 Cox, 417.

It is not, however, an essential ingredient of the offence that the taking should be for a cause of gain, *lucri causâ*; a fraudulent taking, with intent wholly to deprive the owner of his property, or with intent to destroy it is sufficient. But see *post*, on this question of intent in larceny.

Larceny is either *simple*, that is, unaccompanied by any other aggravating circumstance, or *compound*, that is, when it is accompanied by the aggravating circumstances of taking from the house or person, or both.

Larceny was formally divided into grand larceny and petit larceny; but this distinction is now abolished; see *post*, sect. 2 of the Larceny Act.

By sect. 110 of the said Act, a more severe punishment may be inflicted when the value of the article

stolen is over two hundred dollars, but then, this value must be alleged in the indictment and duly proved on the trial, otherwise the larceny is punishable under section 4 of the said Act.

The requisites of the offence are :

1. *The taking.*
2. *The carrying away.*
3. *The goods taken.*
4. *The owner of the goods.*
5. *The owner's dissent from the taking.*
6. *The felonious intent in taking.*

1.—THE TAKING.

To constitute the crime of larceny, there must be a taking or severance of the thing from the actual or constructive possession of the owner ; for all felony includes trespass, and every indictment must have the words *feloniously took* as well as *carried away* ; from whence it follows that, if the party be guilty of no trespass in taking the goods, he cannot be guilty of felony in carrying them away.—1 Hawkins, p. 142.—As in the case of a wife carrying away and converting to her own use the goods of her husband, for husband and wife are one person in law, and, consequently, there can be no taking so as to constitute larceny ; 1 Hale, 514, and the same if the husband be jointly interested with others in the property so taken.—R. vs. Willis, 1 Mood. 375.

The taking, however, may be by the hand of another, 2 East P. C. 555 ; as if the thief procure a child within the age of discretion to steal goods for him, it will be the same as if he had taken them himself, and the taking in such case should be charged to him.—1 Hale, 507.

The possession of the owner may be actual or con-

structive; that is, he may have the goods in his manual possession, or they may be in the actual possession of another, and at the same time be constructively in the owner's possession; and they may be his property by virtue of some contract, and yet not have been reduced by him into actual possession; in which case, his possession is constructive, as by placing them under his servant's care to be by him managed for him.

But besides the actual and constructive possession in the owner, who at the same time has the property in him, there is a possession distinct from the actual property, although arising out of an interest in the goods, acquired by contract, as in the case of one who has possession of goods in pledge, or of goods lent, or let. Such an one has a property, as well as possession, concurrent with the absolute property of the real owner, and either defeasible or reducible into an absolute property, according to the terms agreed upon between him and the actual owner.

Either of the above kinds of possession will be sufficient to sustain an indictment of larceny from the absolute owner.—3 Burn's Just. 201.

This part of the law on larceny is laid down *as follows* in the draft of a Criminal Code for Canada, introduced in the Legislative Assembly, in 1850, by Mr. Justice Badgley, then Attorney-General: "To constitute larceny, a thing must be owned by, or be the general or special property of some one, or belong to him, either by a proprietary or possessory right thereto. A proprietary right is that of one having a general or special property in a thing. A possessory right is that of one having and being entitled to the possession of a thing. One having the authorized custody of or being entrusted

with a thing, so as to be answerable therefor, or for the value thereof, has a possessory right thereto. The actual possession of a thing by any one is the constructive possession of all who have proprietary or possessory rights therein, general or special, absolute or qualified. A proprietary or a possessory right to a thing by one constitutes him the owner thereof as to larceny thereof by another."

As very nice questions frequently arise, as to what will amount to a sufficient taking, where the owner of the chattels has delivered them to the party accused, or to a third person, the subject will be inquired into in the following order.

1. *The taking where the owner has delivered the chattels, under a bare charge.*

2. *The taking where the possession of the goods has been obtained animo furandi.*

3. *The taking where the possession of the goods has been obtained bona fide without any fraudulent intention in the first instance.*

4. *The taking where the offender has more than a special property in the goods.*—3 Burn's Justice, 201.

1. *The taking where the offender has a bare charge.*

The books notice cases in which, although the manual custody be out of the owner, and delivered by him to another, yet the possession, absolute as well as constructive, is deemed to remain in him, and the possession of the other to be no more than a bare charge.

Upon this difference between a possession and a charge, Lord Coke says: "There is a diversity between a possession and a charge: for, when I deliver goods to a man, he hath the possession of the goods, and may have an action of trespass if they be taken or stolen out of his possession. But my butler, or cook, that in my house

hath charge of my vessels or plate, hath no possession of them, nor shall have an action of trespass as the bailee shall; and therefore, if they steal the plate, etc., etc., it is larceny: and so it is of a shepherd, for these things be in onere et non in possessione promi, coci, pastoris, etc., etc."

So he says: "If a taverner set a piece of plate before a man to drink in it, and he carry it away, it is larceny; for it is no bailment, but a special use to a special purpose."

The servant who keeps a key to my chamber may be guilty of felony in fraudulently taking away the goods therein, for he hath only a bare charge given him. And where a person employed to drive cattle sells them, it is larceny, for he has the custody merely, and not the right to the possession,—*R. vs. McNamee*, 1 Mood. 368; although the intention to convert them were not conceived until after they were delivered to him.—*R. vs. Harvey*, 9 C. & P. 353; *Reg. vs. Jackson*, 2 Mood. 32.—So a carter going away with his master's cart was holden to have been guilty of felony.—*R. vs. Robinson*, 2 East. P. C. 565.—If A. ask B., who is not his servant, to put a letter into the post, telling him that it contains money, and B. break the seal and abstract the money before he puts the letter in the post, he is guilty of larceny.—*R. vs. Jones*, 7 C. & P. 151.—So if a master deliver property into the hands of a servant for a special purpose, as to leave it at the house of a friend, or to get change, or to deposit it with a banker, the servant will be guilty of felony in applying it to his own use; for it still remains in the constructive possession of its owner.—1 Leach, 302; 2 Leach, 870.

So where a lady asked the prisoner to get a railway ticket for her, and handed him a sovereign to pay for it,

which he took, intending to steal, and instead of getting the ticket, ran away; it was held to be larceny.—Reg vs. Thompson, L. & C. 225.

If a banker's clerk is sent to the money room to bring cash for a particular purpose, and he takes the opportunity of secreting some for his own use, 1 Leach, 344; or if a tradesman intrust goods to his servant to deliver to a customer, and he appropriate them to himself, the parties are respectively guilty of larceny.—R. vs. Bass, 2 East P. C. 566; 1 Leach, 251; 1 Cowp. 294.

And if several people play together at cards, and deposit money for that purpose, not parting with their property therein, and one sweep it all away and take it to himself, he will be guilty of larceny, if the jury find that he acted with a felonious design—1 Leach, 270; R. vs. William, 6 C. & P. 390; R. vs. Robson, R. & R. 413.

And if a bag of wheat be delivered to a warehouseman merely for safe custody, and he take all the wheat out of the bag, and dispose of it, it is larceny.—R. vs. Brazier, R. & R. 337.

An unauthorized gift by the servant of his master's goods is as much a felony as if he sold or pawned them.—Reg. vs. White, 9 C. & P. 344.

Where goods have not been *actually* reduced into the owner's possession, yet, if he has intrusted another to deliver them to his servant, and they are delivered accordingly, and the servant embezzle them, he may be guilty of larceny.—R. vs. Spears, 2 East P. C. 568; R. vs. Abrahath, 2 East P. C. 569; R. vs. Reid, Dears. 257.

On the trial of an indictment for larceny as a servant it appeared that the prisoner lived in the house of the

prosecutor, and acted as the nurse to her sick daughter, the prisoner having board and lodging and occasional presents for her services, but no wages: while the prisoner was so residing, the prosecutor's wife gave the prisoner money to pay a coal bill, which money the prisoner kept, and brought back a forged receipt to the coal bill: *held*, that the prisoner was not the servant of the prosecutor, but that this was a larceny of the money. *Reg. vs. Frances*, 1 Car. & K. 423.

These several cases were all founded upon the master having an actual or legal possession, prior to the delivery to the servant. But there are others in which the master has neither *property* nor *possession* in the goods, previously to the receipt of them by his servant from a third person, for the purpose of delivering them to him. And it has been held, that a servant so receiving goods, and then embezzling them, is not guilty of larceny at common law.—2 East P. C. 568.

Therefore, if a shopman receive money from a customer of his master, and, instead of putting it into the till, secrete it, *R. vs. Bull*, 2 Leach, 841; or if a banker's clerk receive money at the counter, and, instead of putting it into the proper drawer, purloin it, *R. vs. Bazely*, 2 Leach, 835; or receive a bond for the purpose of being deposited in the bank, and, instead of depositing it, convert it to his own use, *R. vs. Waite*, 1 Leach, 28: in these cases it has been holden that the clerk or shopman is not guilty of larceny at common law.

But now, this offence is punishable under section 70 of the Larceny Act, 32-33 Vict., ch. 21, see *post*.

2. *The taking where the possession of the goods has been obtained animo furandi*.—Where the offender unlawfully ac-

quired the possession of goods, as by fraud or force, with an intent to steal them, the owner still retaining his property in them, such offender will be guilty of larceny in embezzling them. Therefore, hiring a horse on pretence of taking a journey, and immediately selling it, is larceny: because the jury found the defendant acted *animo furandi* in making the contract, and the parting with the possession merely had not changed the nature of the property.—R. vs. Pear, 1 Leach, 212. And so, where a person hires a post-chaise for an indefinite period, and converts it to his own use, he may be convicted of larceny, if his original intent was felonious.—R. vs. Semple, 1 Leach, 420.

So, where the prisoner intending to steal the mail bags from the post office, procured them to be let down to him by a string, from the window of the post office, under pretence that he was the mail guard, he was held guilty of larceny.—R. vs. Pearce, 2 East, P. C. 603.

Where the prisoner was hired for the special purpose of driving sheep from one fair to another, and, instead, of doing so, drove them, the following morning after he received them, a different road, and sold them, the jury having found that, at the time he received the sheep, he intended to convert them to his own use, and not drive them to the specified fair, the judges were unanimously of opinion that he was rightly convicted of larceny.—R. vs. Stock, 1 Mood. 87.

Where the prisoner covered some coals in a cart with slack, and was allowed to take the coals away, the owner believing the load to be slack, and not intending to part with his property in the coals, it was held a larceny of the coals.—R. vs. Bramley, Leigh & Cave, 21.

Prevailing upon a tradesman to bring goods, proposed to be brought to a given place, under pretence that the

price shall then be paid for them, and further prevailing upon him to leave them there in the care of a third person, and then, getting them from that person without paying the price, is a felonious taking, if, *ab initio*, the intention was to get the goods from the tradesman and not pay for them.—*R. vs. Campbell*, 1 Mood. 179.

In another case, a person by false pretences induced a tradesman to send by his servant to a particular house, goods of the value of two shillings and ten pence, with change for a crown piece. On the way, he met the servant, and induced him to part with the goods and the change for a crown piece which afterwards was found to be bad. Both the tradesman and servant swore that the latter had no authority to part with the goods or change without receiving the crown piece in payment, though the former admitted that he intended to sell the goods, and never expected them back again: it was held, that the offence amounted to larceny.—*Reg. vs. Small*, 8 C. & P. 46.

The prosecutor met a man and walked with him. During the walk, the man picked up a purse, which he said he had found, and that it was dropped by the prisoner. He then gave it to the prisoner who opened it, and there appeared to be about forty pounds in gold in it. The prisoner appeared grateful, and said he would reward the man and the prosecutor for restoring it. The three then went to a public house and had some drink. Prisoner then showed some money and said, if the man would let him have ten pounds, and let him go out of his sight, he would not say what he would give him. The man handed what seemed to be ten pounds in money and the prisoner and prosecutor then went out together. They returned and prisoner appeared to give the ten pounds back and five pounds more. Prisoner then said

he would do the same for the prosecutor and by that means obtained three pounds in gold, and the prosecutor's watch and chain from him. The prisoner and the man then left the public-house, and made off with the three pounds and the watch and chain. At the trial, the prosecutor said he handed the three pounds and the watch and chain to the men in terror, being afraid they would do something to him, and not expecting they would give him five pounds. *Held*, that the prisoner was properly convicted of larceny.—Reg. vs. Hazell, 11 Cox, 597.

Prosecutor sold onions to the prisoners, who agreed to pay ready money for them. The onions were unloaded at a place indicated by the prisoners, and the prosecutor was then induced to make out and sign a receipt which the prisoners got from him, and then refused to restore the onions or pay the price. The jury convicted the prisoners of larceny, and said that they never intended to pay for the onions, and that the fraud was meditated by them from the beginning: *held*, that the conviction was right.—Reg. vs. Slowly & al., 12 Cox, 269.

So, taking goods the prisoner has bargained to buy is felonious, if, by the usage, the price ought to be paid before they are taken, and the owner did not consent to their being taken, and the prisoner, when he bargained for them, did not intend to pay for them, but meant to get them into his possession and dispose of them for his own benefit, without paying for them.—R. vs. Gilbert, 1 Mood. 185.

So, getting goods delivered into a hired cart, on the express condition that the price shall be paid for them before they are taken from the cart, and then, getting them from the cart, without paying the price, will be larceny, if the prisoner never had the intention to pay, but had,

ab initio, the intention to defraud.—R. vs. Pratt, 1 Mood. 250.

So, where the prosecutor, intending to sell his horse, sent his servant with it to a fair, but the servant had no authority to sell or deal with it in any way, and the defendants, by fraud, induced the servant to part with the possession of the horse, under colour of an exchange for another, intending all the while to steal it: this was holden to be larceny.—Reg. vs. Sheppard, 9 C. & P. 121.

So, where the prisoner, pretending to be the servant of a person who had bought a chest of tea deposited at the East India Company's warehouse, got a request paper and permit for the chest, and took it away with the assent of a person in the company's service who had the charge of it; it was held that this was larceny.—R. vs. Hench, R. & R. 163.

Prisoner and a confederate went to prosecutor's shop to buy something, and put down a florin in payment. Prosecutor put the florin into the till and placed the change on the counter which the prisoner took up. The confederate said, "You need not have changed" and threw down a penny on the counter, which the prisoner took up, and put a sixpence in silver and sixpence in copper down, and asked prosecutor to give him a shilling for it. Prosecutor took a shilling from the till, and put it on the counter when prisoner said, "You may as well give me the florin back and take it all." Prosecutor took the florin from the till, and put it on the counter, expecting to receive two shillings of the prisoner's money in lieu of it. Prisoner took up the florin, and prosecutor took up the silver sixpence and the sixpence in copper, and the shilling put down by herself, and was put-

ting them in the drawer, when she saw that she had only got one shilling of the prisoner's money and her own shilling: but, at that moment, her attention was diverted by the confederate, and both confederate and prisoner quitted the shop. *Held*, upon a case reserved, that this was a case of larceny, for the transaction of exchange was not complete: prosecutor had not parted with the property in the florin.—Reg. vs. McKale, 11 Cox, 32.

On the other hand, if the owner give his property voluntarily, whatever false pretence be used to obtain it, no felony can be committed.—1 Hale, 506; Rex. vs. Adams, R. & R. 225.

Thus, where, in a case of ring-dropping, the prisoners prevailed on the prosecutor to buy the share of the other party, and the prosecutor was prevailed on to part with his money, intending to part with it for ever, and not with the possession of it only, it was held by Coleridge, J., that this was not a larceny.—Reg. vs. Wilson, 8 C. & P. 111.

It was the duty of the prisoner to ascertain the amount of certain dock dues payable by the prosecutors, and having received the money from their cash-keeper, to pay the dues to those who were entitled to them. He falsely represented a larger sum to be due than was due, and, paying over the real amount, converted the difference to his own use. This was held not to be a larceny.—R. vs. Thompson, Leigh & Cave, 233.

So, where the prisoner was sent by his fellow workmen to get their wages, and received the money from the employer done up in separate pieces of paper, and converted the money to his own use, it was held upon an indictment laying the property in the employer that the prisoner could not be convicted, he being the agent of

the workmen.—*R. vs. Barnes*, 12 Jur. N. S. 549. And see *Reg. vs. Jacobs*, 12 Cox, 151, *post*.

A cashier of a bank has a general authority to part with his employer's money in payment of such cheques as he may think genuine: where, therefore, money has been obtained from a cashier at a bank on a forged cheque knowingly, it does not amount to the crime of larceny. By the Court of Criminal Appeal, in *Reg. vs. Prince*, 11 Cox, 193. In this case, Bovill, C. J., said: "The distinction between larceny and false pretences is very material. The one is a felony and the other a misdemeanor; and, although, by reason of modern legislation, it has become not of so much importance as formerly, it is still desirable to keep up the distinction. To constitute larceny, there must be a taking of the property against the will of the owner, which is the essence of the crime of larceny. The authorities cited by the counsel for the prisoner show that where the property has been obtained voluntarily from the owner, or a servant acting within the scope of his authority, the offence does not amount to larceny. The cases cited for the prosecution were cases where the servant who parted with the property had a limited authority only. In the present case, the cashier of the bank was acting within his authority in parting with the possession and property in the money. Under these circumstances the conviction must be quashed."

And, if credit be given for the property, for ever so short a time, no felony can be committed in converting it.—2 East P. C. 677.

Thus, obtaining the delivery of a horse *sold*, on promise to return immediately and pay for it, and riding off, and not returning is no felony.—*R. vs. Harvey*, 1 Leach, 467.

So, where the prisoner, with a fraudulent intent to obtain goods, ordered a tradesman to send him a piece of silk, to be paid for on delivery, and upon the silk being sent accordingly, gave the servant who brought it bills which were mere fabrications, and of no value; it was holden not to be larceny on the ground that the servant *parted with the property* by accepting such payment as was offered, though his master did not intend to give the prisoner credit.—Parke's case, 2 Leach, 614.

The prisoner, having entered into a contract with the prosecutors for the purchase of some tallow, obtained the delivery orders from the prosecutors, by paying over to them a cheque for the price of the tallow, and, when the cheque was presented, there were no assets. *Held* not to be a larceny of the delivery orders by a trick, but a lawful possession of them by reason of the credit given to the prisoner in respect of the cheque.—Reg. vs. North, 8 Cox, 433.

So, fraudulently winning money at gaming, where the injured party really intended to pay, is no larceny, though a conspiracy to defraud appear in evidence.—R. vs. Nicholson, 2 Leach, 610.

To constitute larceny, there must be an original felonious design. Lord Coke draws a distinction between such as gain possession *animo furandi*, and such as do not. He says: "The intent to steal must be when it comes to his hands or possession: for if he hath the possession of it once lawfully, though he hath the *animus furandi* afterwards, and carrieth it away, it is no larceny." Therefore, where a house was burning, and a neighbour took some of the goods to save them, but afterwards converted them to his own use, it was held no felony.—1 Leach, 411.

But if the original intent be wrongful, though not a felonious trespass, a subsequent felonious appropriation is larceny. So, where a man drove away a flock of lambs from a field, and in doing so inadvertently drove away along with them a lamb, the property of another person, and, as soon as he discovered that he had done so, sold the lamb for his own use, and then denied all knowledge of it: *held*, that as the act of driving the lamb from the field in the first instance was a trespass, as soon as he resolved to appropriate the lamb to his own use, the trespass became a felony.—*Reg. vs. Riley, Dears. 149; 6 Cox, 88.*

It is peculiarly the province of the jury to determine with what intent any act is done; and, therefore, though, in general, he who has a possession of anything on delivery by the owner cannot commit larceny thereof; yet, that must be understood, first, where the possession is absolutely changed by the delivery, and next, where such possession is not obtained by fraud, and with a felonious intent. For, if, under all the circumstances of the case, it be found that a party has taken goods from the owner, although by his delivery, with an intent to steal them, such taking amounts to felony.—*2 East P. C. 685.*

Overtures were made by a person to the servant of a publican to induce him to join in robbing his master's till. The servant communicated the matter to the master, and, some weeks after, the servant, by the direction of the master, opened a communication with the person who had made the overtures, in consequence of which he came to the master's premises. The master, having previously marked some money, it was, by his direction, placed upon the counter by the servant, in order that it might be taken up by the party who had come for the

purpose. It was so taken up by him: *held*, larceny in such party.—Reg. vs. Williams, 1 C. & K. 195.

3.—*The taking, where the possession of the goods has been obtained bona fide without any fraudulent intention in the first instance.*—If the party obtained possession of the goods lawfully, as upon a trust for, or on account of, the owner, by which he acquires a special property therein, he cannot *at common law* be afterwards guilty of felony in converting them to his own use, unless by some new and distinct act of taking, as, by severing part of the goods from the rest, with intent to convert them to his own use, he thereby determines the privity of the bailment and the special property thereby conferred upon him.—1 Hale, 504; 2 East P. C. 554.

But now, by sect. 3 of 32–33 Vict., ch. 21, it is provided that: “Whosoever being a bailee of any chattel, money or valuable security, fraudulently takes or converts the same to his own use or to the use of any person other than the owner thereof, although he do not break bulk or otherwise determine the bailment, is guilty of larceny, and may be convicted thereof upon an indictment for larceny; but this section shall not extend to any offence punishable on summary conviction.”

See R. vs. Wells, 1 F. & F. 109, where it was held that a carrier who receiving money to procure goods, obtained and duly delivered the goods, but fraudulently retained the money, may be convicted of larceny as a bailee.

A man cannot, however, be convicted of larceny as a bailee, unless the bailment was to re-deliver the *very same* chattel or money.—R. vs. Hoare, 1 F. & F. 647; R. vs. Garrett, 2 F. & F. 14; R. vs. Hassall, L. & C. 58.

The prisoner was intrusted by the prosecutor with money to buy a load of coals, which were to be brought

to the prosecutor's by the prisoner in his own cart, the prisoner being paid for his services including the use of his horse and cart. He bought a load of coals in his own name, and on the way to the prosecutor's abstracted a portion of the coal and converted it to his own use, delivering the rest of the coal to the prosecutor as and for the whole load. *Held*, that he was rightly convicted of larceny as a bailee.—*R. vs. Bunkall*, L. & C. 371; 9 Cox 419.

A carrier employed by the prosecutor to deliver in his, the prisoner's, cart, a boat's cargo of coals to persons named in a list, to whom only he was authorized to deliver them, and, having fraudulently sold some of the coals and appropriated the proceeds, is properly convicted of larceny as a bailee.—*Reg. vs. Davies*, 10 Cox, 239.

It seems that a married woman may be a bailee within the meaning of sect. 3 of the Larceny Act, *R. vs. Robson*, L. & C. 93, notwithstanding a previous ruling to the contrary by Martin, B., in *R. vs. Denmour*, 8 Cox, 440.

See, *post*, remarks under section 3 of the Larceny Act.

4.—*The taking where the offender has more than a special property in the goods.* If the goods of a husband be taken with the consent or privity of the wife, it is not larceny.—*R. vs. Harrison*, 1 Leach, 47; *R. vs. Avery*, Bell, 150.

However, it is said that if a woman steal the goods of her husband, and give them to her avowterer, who, knowing it, carries them away, the avowterer is guilty of felony; *Dalt. c. 104*. And where a stranger took the goods of the husband *jointly* with the wife, this was holder to be larceny in him, he being her adulterer.—*R. vs. Tolfree*, 1 Mood. 243, overruling *R. vs. Clarke*, 1 Mood. 376, note *a*

Also, in *Reg. vs. Featherstone*, Dears. 369; the prisoner was charged with stealing twenty-two

sovereigns and some wearing apparel. The prosecutor's wife took from the prosecutor's bedroom thirty-five sovereigns and some articles of clothing, and left the house, saying to the prisoner, who was in a lower room, "It's all right, come on." The prisoner and the prosecutor's wife were afterwards seen together, and were traced to a public house, where they slept together. When taken into custody, the prisoner had twenty-two sovereigns on him. The jury found the prisoner guilty on the ground that he received the sovereigns from the wife, knowing that she took them without the authority of her husband. Upon a case reserved, it was held that the conviction was right. Lord Campbell, C. J., in delivering the judgment said: "We are of opinion that this conviction is right. The general rule of law is, that a wife cannot be found guilty of larceny for stealing the goods of her husband, and that is upon the principle that the husband and wife are, in the eye of the law, one person; but this rule is properly and reasonably qualified when she becomes an adulteress. She thereby determines her quality of wife, and her property in her husband's goods ceases."—See *Reg. vs. Berry*, Bell, 95, where the same principle was maintained.

And so it is, even though no adultery has been committed, but the goods are taken with the intent that the wife shall elope and live in adultery with the stranger.—*R. vs. Tollett*, C. & Mar. 112; *R. vs. Thompson*, 1 Den. 549.

And if a servant, by direction of his master's wife, carries off his master's property, and the servant and wife go off together with the property with the intention of committing adultery, the servant may be indicted for stealing the property.—*R. vs. Mutters*, L. & C. 511.

It seems, however, that if a wife elopes with an adul-

terer, it is no larceny in the adulterer to assist in carrying away her necessary wearing apparel.—*R. vs. Fitch, Dears. & B. 187*, overruling on this point the direction of Coleridge, J., in *R. vs. Tollett*, cited *supra*.

The prisoner who had lodged at the prosecutor's house left it, and the next day, the prosecutor's wife also left, taking a bundle with her, which, however, was not large enough to contain the things which, the evening she left, it was found had been taken from the house. Two days after, all the things were found in the prisoner's cabin, or on his person, in a ship in which the prosecutor's wife was, the prisoner and the prosecutor's wife having taken their passage in the ship as man and wife. It was held that from these facts the jury were justified in drawing the inference that the prisoner had received the property, knowing it to have been stolen.—*R. vs. Deer, L. & C. 240*.

But an adulterer cannot be convicted of stealing the goods of the husband brought by the wife to his house, in which the adultery is afterwards committed, merely upon evidence of their being there, unless they be traced to his personal possession.—*R. vs. Rosenberg, 1 C. & K. 233* ; *Archbold, 342*.

The prisoner eloped with the prosecutor's wife, travelling in a cart which the wife took from her husband's yard. The prisoner sold the pony, cart and harness in the presence of the wife, who did not object to the sale and received the proceeds which she retained after paying the prisoner a sovereign he had expended in obtaining lodging while they were living in a state of adultery. *Held*, that the presence of the woman did not alter the offence; that the fact that he negotiated the sale and received part of the proceeds, was sufficient; from the circumstances, the prisoner must have known that the

pony, cart and harness were not the property of the woman; and that if the jury were of opinion he had that knowledge, they were bound to convict him. By Lush, J., in *Reg. vs. Harrison*, 12 Cox, 19.

Under certain circumstances, indeed, a man may commit felony of his own goods; as if A bail goods to B and afterwards, *animo furandi*, steal the goods from B with design to charge him for the value of them, this is felony.—1 Hale, 513; 2 East P. C. 558.

So where A having delivered money to his servant to carry to a certain place, disguised himself and robbed the servant on the road, with intent to charge the hundred, this was held robbery in A.—2 East P. C. 558.

If a man steal his own goods from his own bailee, though he has no intent to charge the bailee, but his intent is to defraud the king, yet, if the bailee had an interest in the possession and could have withheld it from the owner, the taking is a larceny.—*R. vs. Wilkin-*son, R. & R. 470. But it is said in *Roscoe, Cr. evid.* 597: "It may be doubted whether the law has not been somewhat distorted in this case in order to punish a flagrant fraud."

Bishop, 2 Cr. L. 790, says: "If one, therefore, has transferred to another a special property in goods, retaining in himself the general ownership, or, if the law has made such transfer, he commits larceny by taking them with felonious intent."

So if a man steal his goods *in custodia legis*. But "if the goods stolen were the general property of the defendant, who took them from the possession of one to whose care they had been committed, as, for instance from an officer seizing them on an execution against the defendant, it must be shown that the latter knew of

the execution and seizure ; otherwise the required intent does not appear. The presumption, in the absence of such knowledge, would be, that he took the goods supposing he had the right so to do."—2 Bishop, Cr. proc. 749.

If a part owner of property steal it from the person in whose custody it is, and who is *responsible for its safety*, he is guilty of larceny.—R. vs. Bramley, R. & R. 478. See, *post*, sect. 38 of the Larceny Act, and remarks under it.

A wife may steal the goods of her husband which have been bailed or delivered to another person, or are in the possession of a person who has a temporary special property in them.—1 Hale, 513.

The wife cannot commit larceny in the company of her husband ; for it is deemed his coercion, and not her own voluntary act. Yet, if she do in his absence, and, by his mere command, she is then punishable as if she were sole.—R. vs. Morris, R. & R. 270 ; R. vs. Robson, L. & C. 93.

Husband and wife were jointly indicted for stealing. The husband was in the employ of the prosecutors, and was seen near the spot when the property stolen arrived at the prosecutor's. The next day, the wife was seen near the spot where her husband was engaged on his work. She was at a place where there was no road, with a bundle concealed, and was followed home. On the following day, she pledged the stolen property at two different places. At one of the places, where she was not known, she pledged it in a false name. *Held*, that, upon this evidence, the wife might be convicted of stealing the property.—Reg. vs. Cohen, 11 Cox, 99.

The doctrine of coercion, as applicable to a crime committed by a married woman in the presence of her hus-

band, only raises a disputable presumption of law in her favour, which is, in all cases, capable of being rebutted by the evidence : this disputable presumption of law exists in misdemeanors as well as in felonies, and the question for the jury is the same in both cases ; the doctrine in question applies to the crime of robbery with violence. *Semble* : Where a man and woman are indicted together for a joint crime, and it appears from the evidence for the prosecution that they had lived together for some months as husband and wife, having with them an infant, who passed as their child, it is not necessary for the woman to give evidence of her marriage in order to entitle her to the benefit of the doctrine of coercion, although the indictment does not describe her as a married woman.—Reg. vs. Torpey, 12 Cox, 45.

2. THE CARRYING AWAY.

To constitute larceny, there must be a *carrying away*, asportation, as well as a taking. The least removing of the thing taken *from the place where it was before* is sufficient for this purpose, though it be not quite carried off. And, upon this ground, the guest, who, having taken off the sheets from his bed, with an intent to steal them, carried them into the hall, and was apprehended before he could get out of the house, was adjudged guilty of larceny. So, also, was he, who, having taken a horse in a close, with an intent to steal him, was apprehended before he could get him out of the close. And such was the case of him who, intending to steal plate, took it out of the trunk wherein it was, and laid it on the floor, but was surprised before he could remove it any further.—2 East, P. C. 555 ; 3 Burn's Just. 214. Or if a servant, *animo furandi*, take his master's hay from his

stable, and put it into his master's waggon.—Reg. vs. Gruncell, 9 C. & P. 365.

H. was indicted for stealing a quantity of currants, which were packed in the forepart of a waggon. The prisoner had laid hold of this parcel of currants, and had got near the tail of the waggon with them, when he was apprehended; the parcel was afterwards found near the middle of the waggon. On this case being referred to the twelve judges, they were unanimously of opinion that, as the prisoner had *removed* the property from the spot where it was originally placed, with intent to steal, it was a *taking and carrying away*.—Coslett's case, 2 East P. C. 556.

Prisoner had lifted up a bag from the bottom of a boot of a coach, but was detected before he had got it out; it did not appear that it was entirely removed from the space it at first occupied in the boot, but the raising it from the bottom had completely removed each part of it from the space that specific part occupied: *Held*, that this was a complete *asportation*.—R. vs. Walsh, 1 Mood. 14.

The offence of simple larceny is complete, if the defendant drew a book from the inside pocket of the prosecutor's coat about an inch above the top of the pocket, though, the prosecutor then suddenly putting up his hand, the defendant let the book drop, and it fell back into the prosecutor's pocket.—R. vs. Thompson, 1 Mood. 78.

On the other hand, a mere change of *position* of the goods will not suffice to make out a carrying away. So, where W. was indicted for stealing a wrapper and some pieces of linen cloth, and it appeared that the linen was packed up in the wrapper in the common form of a long square, which was laid length-way in a waggon, and that

the prisoner set up the wrapper on one end in the wagon for the greater convenience of taking the linen out, and cut the wrapper all the way down for that purpose, but was apprehended before he had taken anything ; all the judges agreed that this was no larceny, although his intention to steal was manifest. For a carrying away, in order to constitute felony, must be a removal of the goods from the place where they were ; and the felon, must, for the instant at least, have the entire and absolute possession of them.—*R. vs. Cherry*, 2 East, P. C. 556.

So, where one had his keys tied to the strings of his purse in his pocket, which W. attempted to take from him, and was detected with the purse in her hand ; but the strings of the purse still hung to the owner's pocket by means of the keys ; this was ruled to be no asportation.—*Wilkinson's case*, 1 Leach, 321.

So in another case, where A. had his purse tied to his girdle, and B. attempted to rob him : in the struggle, the girdle broke, and the purse fell to the ground. B. not having previously taken hold of it, or picked it up afterwards, it was ruled to be no taking.—1 Hale, 533.

Upon an indictment for robbery the prisoner was found to have stopped the prosecutor as he was carrying a feather bed on his shoulders, and told him to lay it down, or he would shoot him ; on which the prosecutor laid the bed on the ground, but the prisoner was apprehended before he could take it up so as to remove it from the spot where it lay, the judges were of opinion that the offence was not complete.—*Farrell's case*, 2 East P.C. 557.

Where the prisoner by means of a pipe and stopcock, turned off the gas belonging to a company before it came into the meter, and so consumed the gas, it was held

that there was a sufficient severance of the gas in the entrance pipe to constitute an *asportavit*—Reg. vs. White, 1 Dears. & B. 203.

The same principle was upheld in Reg. vs. Firth, 11 Cox 234; see, *post*, under section 6 of the Larceny Act.

In the cases cited before the two last preceding, a verdict of guilty of an attempt to commit the offence charged could now be given, under section 49 of the Procedure Act of 1869.

If the thief once take possession of the thing, the offence is complete, though he afterwards return it.—3 Burn's Just. 215.

Where it is one continuing transaction, though there be several distinct asportations in law by several persons, yet all may be indicted as principals, who concur in the felony before the final carrying away of the goods from the virtual custody of the owner, 2 East P. C. 557; and if several persons act in concert to steal a man's goods, and he is induced by fraud to trust one of them, in the presence of the others, with the possession of the goods, and another of them entice him away, that the man who has his goods may carry them off, all are guilty of felony, the receipt by one is a felonious taking by all.—R. vs. Standley, R. & R. 305.

And where property which the prosecutors had bought, was weighed out in the presence of their clerk, and delivered to their carter's servant to cart, who let other persons take away the cart, and dispose of the property for his benefit jointly with that of the other persons, it was held, that the carter's servant, as well as the other persons, was guilty of larceny at common law.—R. vs. Harding, R. & R. 125.

3. THE GOODS TAKEN.

The property taken must, to constitute larceny at

common law, be *personal* property, and of some intrinsic value, though it need not be of the value of some coin known to the law.—Reg. vs. Morris, 9 C. & P. 349; 3 Burn's Just. 216; R. vs. Walker, 1 Mood. 155.

Things real, or which savour of the realty, choses in action, as deeds, bonds, notes, etc., etc., cannot be the subject of larceny, at common law.

But now, for these, see the Larceny Act, *post*; as to larceny of stamps, see 35 Vict., ch. 33, *post*.

No larceny, at common law, can be committed of such animals in which there is no property either absolute or qualified; as of beasts that are *feræ nature* and unreclaimed. But if they are reclaimed or confined, or are practically under the care and dominion of the prosecutor and may serve for food, it is otherwise.

So young pheasants, hatched by a hen, and under the care of the hen in a coop, although the coop is in a field at a distance from the dwelling-house and although the pheasants are designed ultimately to be turned out and to become wild, are the subject of larceny.—R. vs. Corry, 10 Cox, 23.

Partridges were reared from eggs by a common hen: they could fly a little, but still remained with the hen as her brood, and slept under her wings at night, and from their inability to escape were practically in the power and dominion of the prosecutor: *held*, that they were the subject of larceny at common law.—Reg. vs. Shickle, 11 Cox, 189.

The prisoner was indicted for stealing one dead partridge, and the proof was that the partridge was wounded, but was picked up or caught by the prisoner while it was alive but in a dying state: *held*, that the indictment was not proved.—Reg. vs. Roe, 11 Cox, 554.

Rabbits were netted, killed, and put in a place of depo-

sit, viz : a ditch, on the land of the owner of the soil on which the rabbits were caught, and some three hours afterwards the poachers came to take them away, one of whom was captured by gamekeepers who had previously found the rabbits and lay in wait for the poachers : *held*, that this did not amount to larceny.—Reg. vs. Townley, 12 Cox 59.

The flesh of such animals as are *feræ naturæ* may be the subject of larceny. In Reg. vs. Gallears, 1 Den. 501, the prisoner was indicted for stealing a ham. The prisoner objected that it did not appear by the indictment that the article stolen was the subject of larceny; that it might have been the ham of an animal *feræ naturæ*, a wild boar, for instance, which had been stolen. Upon a case reserved the objection was overruled. "I don't understand the objection," said Patteson, J. "Supposing it turned out on proof to be the ham of a wild boar, why should the prisoner be at liberty to take it from the prosecutor without becoming criminally liable? The doctrine respecting the description of animals in an indictment applies only to live animals, not to parts of the carcasses of animals when dead, such as a boar's head. Do you find in works on natural history that there is any living animal called a ham?"

See the Larceny Act, *post*, as to larceny of pigeons, oysters, animals of different species, etc., etc.

4 THE OWNER.

The goods taken, to constitute larceny, must be the property of another person, and not of the party taking them. But it has been seen, *ante*, that the owner, in certain cases, may commit larceny of his own goods;

See, *post*, under head "Indictment."

5. AGAINST OWNER'S CONSENT.

The taking must be against the will of the owner. The primary inquiry to be made is, whether the taking were *invito domino*, that is to say, without the will or approbation of the owner; for this is of the very essence of larceny and its kindred offence, robbery.—3 Burn's Just. 218.

But where a servant, being solicited to become an accomplice in robbing his master's house, informed his master of it, and the master thereupon told him to carry on the affair, consented to his opening the door leading to the premises, and to his being with the robbers during the robbery, and also marked his property, and laid it in a place where the robbers were expected to come: it was holden, that this conduct of the master was no defence to an indictment against the robbers.—See Bishop, 1 Cr. L. 262, and 2 Cr. L. 811.

An indictment charged the stealing of "nineteen shillings in money" of the moneys of A. B. It appeared that A. B. got into a merry-go-round at a fair, and handed the prisoner a sovereign in payment for the ride, asking her to give change. The prisoner gave A. B. eleven pence, and said she would give the rest when the ride was finished. After the ride was over the prisoner said A. B. only gave her one shilling, and refused to give her the nineteen shillings change: *held*, that the prisoner could not be convicted upon this indictment of stealing nineteen shillings.—Reg. vs. Bird, 12 Cox, 257.

B. making a purchase from the prisoner, gave him half a sovereign in mistake for a six pence. Prisoner looked at it and said nothing but put it into his pocket. Soon afterwards B. discovered the mistake, and returned and demanded the restoration of the half sovereign.

Prisoner said "all right, my boy; I'll give it to you," but he did not return it, and was taken into custody: *held*, not to be a larceny.—Reg. vs. Jacobs, 12 Cox, 151.

6. THE FELONIOUS INTENT.

The taking and carrying away must, to constitute larceny be with a *felonious intent* entertained, at the time of the taking.

Felony is always accompanied with an evil intention, and, therefore, shall not be imputed to a mere mistake or misanimadversion: as where, persons break open a door in order to execute a warrant which will not justify such a proceeding: for in such case there is no *felonious* intention.—1 Hawk. 142.

For it is the mind that make the taking of another's goods to be felony, or a bare trespass only; but, because the variety of circumstances is so great, and the complication thereof so mingled, that it is impossible to prescribe all the circumstances evidencing a felonious intent or the contrary, the same must be left to the due and attentive consideration of the Judge and jury: wherein, the best rule is, in doubtful matters, rather to incline to acquittal than conviction. Only, in general, it may be observed, that the ordinary discovery of a felonious intent is, the party doing it secretly, or, being charged with the goods, denying it.—1 Hale, 509.

And if goods be taken on claim of right or property in them, it will be no felony; at the same time, it will be matter of evidence whether they were, *bonâ fide*, so taken, or whether they were not taken from, the person actually possessing them, with a thievish and felonious intent, and therefore, obtaining possession of goods by a fraudulent claim of right, or by a fraudulent pretence of law, and then running away with them, would be a felo-

ny.—1 Hale, 507. Lemott's case and Farre's case, Kelyng's C.C., 64,65, *reprint by Stevens and Haynes*.

In a recent case, the prisoner had set wires, in which game was caught. The prosecutor, a game-keeper, took them away for the use of the lord of the manor, while the prisoner was absent. The prisoner demanded his wires and game, with menaces, and under the influence of fear, the prosecutor gave them up. The jury found that the prisoner acted under a *bona fide* impression that the game and wires were his property, and that he merely, by some degree of violence, gained possession of what he considered his own. It was held no robbery, there being no *animus furandi*.—R. vs. Hall, 3 C. & P. 409.

And where a letter, directed to J. O. at St. Martin's Lane, Birmingham, inclosing a bill of exchange drawn in favor of J. O. was delivered to the defendant, whose name was J. O. and who resided near St. Martin's Lane, Birmingham; but, in truth, the letter was intended for a person of the name of J. O. who resided in New Hall Street; and the prisoner, who, from the contents of the letter, must have known that it was not intended for him, applied the bill of exchange to his own use; the judges held that it was no larceny, because at the time when the letter was delivered to him, the defendant had not the *animus furandi*.—R. & Mucklow, 1 Mood. 160; Bishop, 2 Cr. L. 801.

And to constitute larceny, the intent must be to deprive the owner not temporarily, but permanently, of his property.—R. vs. Phillips, 2 East P. C. 662; Archbold, 326; 3 Burn's Just. 220. But see *post*, sect. 110 of the Larceny Act, and remarks thereon.—See Reg. vs. Hemmings, 4 F. & F. 50.

Money was given to the prisoner for the purpose of paying turnpike tolls at two gates on his journey.

Twelve days afterwards, on being asked if he had paid the toll at one of the gates, the prisoner said he had not, that he had gone by a parish road which only crossed the road at that gate, and so no toll was payable there, and that he had spent the money on beer for himself and his mates. The prisoner having been convicted of larceny of the money, but it not appearing on a case reserved, as to whether the facts proved a larceny, that the question of felonious intention had been distinctly left to the jury, the Court quashed the conviction.—*Reg. vs. Deering*, 11 Cox, 298.

In all cases of larceny, the questions whether the defendant took the goods knowingly or by mistake; whether he took them *bona fide* under a claim of right or otherwise, and whether he took them with an intent to return them to the owner, or to deprive the owner of them altogether and to appropriate and convert them to his own use, are questions entirely for the consideration of the jury, to be determined by them upon a view of the particular facts of the case.—1 Leach, 422; 3 Burn's Just. 224.

Upon an indictment for larceny, it appeared that the prisoner had been instructed by the wife of the prosecutor to repair an umbrella. After the repairs were finished, and it had been returned to the prosecutor's wife, a dispute arose as to the bargain made. The prisoner thereupon carried away the umbrella as a security for the amount alleged by him to be due for repairing it. Blackburn, J., left it to the jury to say whether the taking by the prisoner was an honest assertion of his right, or only a colourable pretence to obtain possession of the umbrella: verdict, not guilty.—*Reg. vs. Wade*, 11 Cox, 549.

A depositor in a post office savings bank obtained a

warrant for the withdrawal of ten shillings, and presented it with his depositor's book to a clerk at the post office, who instead of referring to the proper letter of advice for ten shillings, referred by mistake to another letter of advice for eight pounds, sixteen shillings and ten pence, and placed that sum upon the counter. The clerk entered eight pounds, sixteen shillings and ten pence in the depositor's book as paid and stamped it. The depositor took up that sum and went away. The jury found that he had the *animus furandi* at the moment of taking the money from the counter, and that he knew the money to be the money of the Postmaster General when he took it up, and found him guilty of larceny. *Held*, by a majority of the judges, that he was properly convicted of larceny. Per Cockburn, C. J., Blackburn, Mellor, Lush, Grove, Denman and Archibald, J. J., that the clerk and therefore, the Postmaster General, having intended that the property in the money should belong to the prisoner through mistake, the prisoner knowing of the mistake, and having the *animus furandi* at the time, was guilty of larceny. Per Bovill, C. J., Kelly, C. B., and Keating, J., that the clerk having only a limited authority under the letter of advice, had no power to part with the property in the money to the prisoner, and that therefore, the conviction was right. Per Pigott, B., that, before possession of the money was parted with, and while it was on the counter, the prisoner had the *animus furandi*, and took it up, and was therefore guilty of larceny. Per Martin, B., Bramwell, B., Brett, J. and Cleasby, B., that the money was not taken *invito domino*, and therefore that there was no larceny. Per Bramwell, B., and Brett, J., that the authority of the clerk authorized the parting with the posses-

sion and property in the entire sum laid down on the counter.—Reg. vs. Middleton, 12 Cox, 260, 417.

Larceny by finding.—If a man lose goods, and another find them, and, not knowing the owner, convert them to his own use, this has been said to be no larceny, even although he deny the finding of them, or secrete them. But this doctrine must be taken with great limitation, and can only apply where the finder *bona fide* supposes the goods to have been lost or abandoned by the owner, and not to a case in which he colours a felonious taking under that pretence. Archbold, 330; R. vs. Kerr, 8 C. & P. 176; R. vs. Reed, C. & Mar. 306; R. vs. Peters, 1 C. & K., 245; R. vs. Mole, 1 C. & K. 417.

The true rule of law resulting from the authorities on the subject has been recently pronounced to be that “if a man find goods that have been actually lost, or are reasonably supposed by him to have been lost, and appropriates them, with intent to take the entire dominion over them, really believing, when he takes them, that the owner cannot be found, it is not larceny; but, if he takes them, with the like intent, though lost, or reasonably supposed to be lost, but reasonably believing that the owner can be found, it is larceny.”—R. vs. Thurborn, 1 Den. 388; R. vs. Dixon, Dears. 580; R. vs. Christopher, Bell, 27.

In a still more recent case, R. vs. Moore, Leigh & Cave, 1, on an indictment for stealing a bank-note, the jury found that the prosecutor had dropped the note in the defendant's shop: that the defendant had found it there; that at the time he picked it up he did not know, nor had he reasonable means of knowing, who the owner was: that he afterwards acquired knowledge who the owner was, and after that, converted the note to his own use;

that he intended, when he found the note to take it to his own use and deprive the owner of it, whoever, he was: and that he believed, when he found it, that the owner could be found. It was held that upon these findings, the defendant was rightly convicted of larceny. It is to be observed that in the last mentioned case although the prisoner at the time he found the bank-note did not know, nor had reasonable means of knowing who the owner was, yet that he *did believe* at the time of the finding that the owner could be found.—Archbold, 330.

The recent case of *R. vs. Glyde*, 11 Cox, 103, shows that the belief by the prisoner at the time of the finding of the chattel that he could find the owner is a necessary ingredient in the offence, and that it is not sufficient that he intended to appropriate the chattel at the time of finding it, and that he acquired the knowledge of who the owner was before he converted it to his own use. In that case, the prisoner found a sovereign on the highway, believing it had been accidentally lost; but nevertheless, with a knowledge that he was doing wrong, he at once determined to appropriate it, notwithstanding it should become known to him who the owner was. The owner was speedily made known to him, and the prisoner refused to give up the sovereign. There was, however, no evidence that he believed, at the time of finding the sovereign, that he could ascertain who the owner was, and the prisoner was, therefore, held not guilty of larceny.

In *R. vs. Deaves*, 11 Cox, 227, the facts were, that the prisoner's child, having found six sovereigns in the street, brought them to the prisoner, who counted them and told some bystanders that the child had found a sovereign. The prisoner and the child then went down the street to the place where the child had found the money, and found a half-sovereign and a bag. On the same evening,

about two hours after the finding, the prisoner was told that a woman had lost money, upon which the prisoner told her informant to mind her own business, and gave her half a sovereign. It was held by the majority of the Irish Court of Criminal Appeal, that this case could not be distinguished from *Reg. vs. Glyde, supra*; that there was nothing to show that at the time the child brought her the money, the prisoner knew the property had an owner, or, at all events, to show that she was under the impression that the owner could be found, and that therefore, the conviction of the prisoner for larceny must be quashed.

Prisoner received from his wife a ten pound Bank of England note, which she had found, and passed it away. The note was endorsed "E. May" only, and the prisoner when asked to put his name and address on it by the person to whom he passed it, wrote on it a false name and address. When charged at the police station, the prisoner said he knew nothing about the note. The jury were directed that, if they were satisfied that the prisoner could, within a reasonable time, have found the owner, and if instead of waiting, the prisoner immediately converted the note to his own use, intending to deprive the owner of it, it would be larceny. The prisoner was convicted, but, upon a case reserved, it was held that the conviction was wrong, and that the jury ought to have been asked whether the prisoner, at the time he received the note, believed the owner could be found. *Reg. vs. Knight, 12 Cox, 102.*

The prisoner found two heifers which had strayed, and put them on his own marshes to graze. Soon afterwards, he was informed by S. that they had been put on his, S.'s marshes and had strayed, and a few days after that that they belonged to H. Prisoner left them on his

marshes for a day or two, and then sent them a long distance away, as his own property to be kept for him. He then told S. that he had lost them, and denied all knowledge of them. The jury found: 1. That at the time the prisoner found the heifers he had reasonable expectation that the owner could be found, and that he did not believe that they had been abandoned by the owner. 2. That, at the time of finding them, he did not intend to steal them, but that the intention to steal came on him subsequently. 3. That the prisoner, when he sent them away, did so for the purpose and with the intention of depriving the owner of them and appropriating them to his own use: *held*, that a conviction of larceny by finding, or as bailee, could not be sustained under the above circumstances.—*Reg. vs. Matthews*, 12 Cox, 489.

It is clearly larceny if the defendant, at the time he appropriates the property, knows the owner; and therefore, where a bureau was given to a carpenter to repair, and he found money secreted in it which he kept and converted to his own use, it was holden to be larceny.—2 Leach, 952.

So if a hackney coachman convert to his own use a parcel left by a passenger in his coach by mistake, it is felony, if he know the owner, or if he took him or set him down at any particular place, where he might have inquired for him.—*R. vs. Wynne*, 2 East P. C. 664; *R. vs. Lamb*, *loc cit*; *R. vs. Lear*, 1 Leach, 415; Archbold, 331.

So, in every case, where the property is not, properly speaking, lost, but only mislaid, under circumstances which would enable the owner to know where to look for and find it, as where a purchaser at a stall of the defendant in a market left his purse on the stall, the person who fraudulently appropriates property so mislaid is guilty of larceny.—*R. vs. West*, Dears. 402.

And in every case, in which there is any *mark* upon the property by which the owner may be traced, and the finder, instead of restoring the property, converts it to his own use, such conversion will amount to larceny.—*R. vs. Pope*, 6 C. & P. 346; *R. vs. Mole*, 1 C. & K. 417; *R. vs. Preston*, 2 Den. 353; *Archbold*, 331.

Doing an act openly does not make it the less a felony, in certain cases.—3 *Burn's Just.* 223.—So, where a person came into a seamstress's shop, and opened goods, and ran away with the goods out of the shop, openly, in her sight, this was adjudged to be a felony.—*Chiser's case*, T. Raym. 276.

Returning the goods will not purge the offence, if the prisoner took them originally with the intent of depriving the owner of them, and of appropriating them to his own use. In *Reg. vs. Trebilcock*, Dears. & B. 453, the jury found the prisoner guilty, but recommended him to mercy, "believing that he intended immediately to return the property": *Held*, that the conviction was right: the recommendation of the jury is no part of the verdict.

The felonious quality consists in the *intention* of the prisoner to defraud the owner, and to apply the thing stolen to his own benefit or use.—2 *Starkie*, on Evid. 606.

The intent need not be *lucri causâ*. 3 *Burn's Just.* 224; *R. vs. Morfit*, R. & R. 307; *Reg. vs. Gruncell*, 9 C. & P. 365; *Reg. vs. Handley*, 1 C. & Mar. 547; *Reg. vs. Privett*, 1 Den. 193; *Reg. vs. Jones*, 1 Den. 188; *R. vs. Cabbage*, R. & R. 292.

"The English Courts, however, seem at last, to have overthrown the old notion of *lucri causâ*." "Will it be contended, asked Pollock, C. B., that picking a man's pocket, not to make yourself rich, but to make him poor, would not be a larceny?"—*Reg. vs. Jones*, 1 Den. 188; 2 *Bishop*, Cr. L. 846.

Possession of stolen property recently after its loss, if unexplained is presumptive evidence that the party in possession stole it.—Such presumption will, however, vary, according to the nature of the property stolen, and whether it be or not likely to pass readily from hand to hand.—*R. vs. Partridge*, 7 C. & P. 551; 3 Burn's Just. 225; Archbold, 235.

Prisoner was found with dead fowls in his possession, of which he could give no account, and was tracked to a fowl house where a number of fowls were kept, and on the floor of which were some feathers corresponding with the feathers of one found on the prisoner, from the neck of which feathers had been removed. The fowl-house, which was closed over night, was found open in the morning. The spot where the prisoner was found was twelve hundred yards from the fowl-house, and the prosecutor, not knowing the number of fowls kept, could not swear that he had lost any: *held*, that there was evidence to support a conviction for larceny.—*Reg. vs. Mockford*, 11 Cox, 16.

On the first floor of a warehouse, a large quantity of pepper was kept in bulk. The prisoner was met, coming out of the lower room of the warehouse, where he had no business to be, having on him a quantity of pepper of the same kind as that in the room above. On being stopped, he threw down the pepper, and said, "I hope you will not be hard with me." From the large quantity in the warehouse, it could not be proved that any pepper had been taken from the bulk. It was objected that, as there was no direct proof that any pepper had been stolen, the judge was bound to direct an acquittal, but the Court of Criminal Appeal held that there was evidence to warrant a conviction.—*Reg. vs. Burton*, 6 Cox, 293.

Indictment.—The form of indictment for simple larceny, as given in Archbold, 313, is as follows :

The jurors for Our Lady the Queen upon their oath present, that J. S. on three pairs of shoes, and one waistcoat, of the goods and chattels of J.N. feloniously did steal, take and carry away, against the peace of Our Lady the Queen, her crown and dignity.

If the defendant has been guilty of other distinct acts of stealing, not exceeding three, committed by him against the same person within the space of six calendar months, one or two other counts, as the case may be, in the following form, may be added, under sect. 5, of the Larceny Act of 1869.

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said J. S. afterwards, and within the space of six calendar months from the time of the committing of the said offence in the first count of this indictment charged and stated, to wit, on———six silver teaspoons, of the goods and chattels of the said J. N. feloniously did steal, take and carry away; against the form of the statute in such case made and provided.

As to the punishment for simple larceny, see sects. 4 and 110 of the Larceny Act of 1869, *post*; also 32-33 Vict. ch. 34; but this last Act applies to the Province of Quebec only.

It is not necessary to allege the value of the property stolen, except where the value is of the essence of the offence, or has any bearing on the punishment, as by the last part of sect. 110 of the Larceny Act of 1869, where an additional punishment is decreed, in cases where the value of the property stolen exceeds two hundred dollars.

By sect. 74 of the Larceny Act of 1869, if upon the trial of any person indicted for larceny, it be proved that the defendant took the property in such manner as to amount in law to embezzlement, he shall not by reason

thereof be entitled to be acquitted, but the jury may return as their verdict that the defendant is not guilty of larceny but is guilty of embezzlement. See this section and remarks under it, *post*.

And by section 99 of the said Larceny Act of 1869, see *post*, if upon the trial of any person for larceny, it appears that the offence proved amounts to an obtaining by false pretences, the jury may return as their verdict that the defendant is not guilty of larceny, but is guilty of obtaining by false pretences.

Also by section 110 of the said Larceny Act of 1869, if upon the trial of any person for larceny, the jury are of opinion that such person is not guilty of larceny, but are of opinion that he is guilty of an offence against the said section, they may find him so guilty. See this section and remarks under it, *post*.

But if the jury find a verdict of larceny, where the facts prove an embezzlement, or an obtaining by false pretences, or an offence against Section 110 of the Larceny Act, the conviction is illegal. *R. vs. Gorbitt, Dears. & B. 166*; the offence found by the jury must be the offence proved.

By section 49 of the Procedure Act of 1869, if, on the trial of any person charged with any felony or misdemeanor it appears to the jury, upon the evidence, that the defendant did not complete the offence charged, but that he was guilty only of an attempt to commit the same, the jury may return as their verdict that the defendant is not guilty of the offence charged, but is guilty of an attempt to commit the same.

As to the venue, in indictments for larceny, &c., see sections 105, 106, 112 and 121 of the Larceny Act of 1869, *post*; and sections 8, 9, and 10 of the Procedure Act of 1869.

The time stated in the indictment need not be proved as laid; if the offence be proved to have been committed at any time before or after, provided it be some day before the finding of the indictment, it will be sufficient.—See section 23 of the Procedure Act of 1869.

The goods stolen must be proved to be the absolute or special property of the person named in the indictment. But any variance between the indictment and the evidence, in this respect, as well as in the description of the property stolen, may now be amended.

An indictment charged the prisoner with stealing nineteen shillings and six pence in money of the prosecutor. At the trial, it was objected that there was no case, for the evidence showed that if the prisoner was guilty of stealing anything, it was of stealing a sovereign. Thereupon the Court amended the indictment by striking out the words "nineteen shillings and six pence" and inserting in lieu thereof "one sovereign." The jury found the prisoner guilty of stealing a sovereign. Upon a case reserved, the judges held that the Court had power so to amend under 14-15 Vict. ch. 100, s. 1, (sect. 71, of the Procedure Act of 1869.)—Reg. vs. Gumble, 12 Cox, 248; R. vs. Marks, 10 Cox, 167.

See section 19 of the Procedure Act of 1869, as to cases where property need not be laid in any person.

See sections 17 and 18 of the said Procedure Act of 1869, as to stating the ownership, in cases of partnerships, joint-tenancies, or joint stock companies; also sections 20, 21 and 22 of the said Act as to the statement of the ownership in certain other cases, and sections 24 and 25 as to the description of instruments and money in indictments.

Where goods are stolen out of the possession of the bailee, they may be described in the indictment as the

property of the bailor or of the bailee ; but where a bailor steals his own goods from the bailee, they must be described as the goods of the bailee.—Archbold 321, 322.

Prisoner was charged with stealing a mare, the property of E. The evidence was that prosecutor, in presence of the prisoner, agreed to buy of W. a mare for five pounds, and that W. assented to take a cheque for the five pounds. The prosecutor afterwards sent prisoner to W. with the cheque, and direction to take the mare to Bramshot farm. On the next day, prisoner sold a mare to S., which he said he had bought for five pounds. When charged before the magistrate with stealing E.'s mare, he said he sold the mare to S., with the intention of giving the money to E., but that he got drunk : *held*, that that was sufficient evidence on which a jury might find that the mare sold to S. was the property of E.—Reg. vs. King, 12 Cox, 134.

Prosecutor bought a horse, and was entitled to the return of ten shillings, chap money out of the purchase money. Prosecutor afterwards, on the same day, met the seller, the prisoner, and others together in company and asked the seller for the ten shillings, but said he had no change, and offered a sovereign to the prosecutor, who could not change it. The prosecutor asked whether any one present could give change : the prisoner said he could, but would not give it to the seller of the horse, but would give it to the prosecutor, and produced two half-sovereigns. The prosecutor then offered a sovereign of his own with one hand to the prisoner, and held out the other hand for change. The prisoner took the sovereign and put one half-sovereign only into the prosecutor's hand, and slipped the other into the hand of the seller, who refused to give it to the prosecutor and ran off with it : *held*, that the indictment rightly charged the prisoner with stealing a sovereign.—Reg. vs. Twist, 12 Cox, 509.

W. let a horse on hire for a week to C., who fetched the horse every morning from W.'s stable, and returned it after the day's work was done. The prisoner went to C. one day, just as the day's work was done, and fraudulently obtained it from him, by saying falsely "I have come for W.'s horse; he has got a job on, and wants it as quickly as possible." The same evening, the prisoner was found three miles off with the horse by a constable, to whom he stated that it was his father's horse, and that he was sent to sell it: *held*, that the prisoner was rightly convicted of larceny on an indictment alleging the property of the horse to be in W.—*Reg. vs. Kendall*, 12 Cox, 598.

By section 101 of the Larceny Act of 1869, *post*, it is lawful to add a count or several counts for feloniously receiving the stolen property to any indictment for larceny, and vice versa. And it is deemed more prudent always to do so. And where a prisoner is charged with stealing and receiving, the jury may convict of receiving, though the evidence might have warranted a verdict of guilty as principal in the second degree.—*Reg. vs. Hilton*, Bell, 20; *Reg. vs. Langmead*, L. & C. 427; and Greaves' remarks upon it, 3 Russell, 668.

A summary trial, in certain cases of larceny, may be had, by consent, under 32-33 Vict., ch. 32, *an Act respecting the prompt and summary administration of Criminal Justice in certain cases*, and, 32-33 Vict., ch. 33, *an Act respecting the trial and punishment of juvenile offenders*. These Acts, by 37 Vict., ch. 42, are, with certain changes and restrictions, extended to British Columbia. By 34 Vict., ch. 13, they did not at first apply to Manitoba, but now, they are, by 37 Vict. ch. 39, extended to it.

The Act 32-33 Vict., ch. 35, also provides for the

more speedy trial, in certain cases, including larceny, of persons charged with felonies and misdemeanors, but applies only to the Provinces of Ontario and Quebec. By 37 Vict., ch. 41, this Act was *declared* to be in force in the District of Algoma.

As to the larceny, embezzlement, &c., &c., of post letters, mail bags, and other offences against the postal service, see 31 Vict., ch. 10, *an Act for the regulation of the postal service*, extended to Manitoba and British Columbia, by 34 Vict., ch. 13, and to Prince Edward Island, by 36 Vict., ch. 40.

8

AN ACT RESPECTING LARCENY AND OTHER SIMILAR OFFENCES.

32-33 VICT., CHAP. 21.

Whereas it is expedient to assimilate, amend and consolidate the Statute Law of the several Provinces of Quebec, Ontario, Nova Scotia and New Brunswick, relating to larceny and other similar offences, and to extend the same as so consolidated, to all Canada: Therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows.

Sect. 1.—In the interpretation of this Act:

1stly. The term "document of title to goods" shall include any bill of lading, India warrant, dock warrant, warehouse keeper's certificate, warrant or order for the delivery or transfer of any goods or valuable thing, bought and sold, note, or any other document used in the ordinary course of business as proof of the possession or control of goods, authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of such document to transfer or receive any goods thereby represented or therein mentioned or referred to.

2ndly. The term "document of title to lands" shall include any deed, map, paper or parchment written or printed, or partly written and partly printed, being or containing evidence of the title, or any part of the title

to any real estate, or to interest in or out of any real estate, *or any notarial or registrar's copy thereof, or any duplicate instrument, memorial, certificate, or document authorized or required by any law in force in any part of Canada respecting registration of titles, and relating to such title.*

3rdly. The term "trustee" shall mean a trustee on some express trust created by some deed, will or instrument in writing, or a trustee of personal estate created by parol, and shall include the heir or personal representative of any such trustee, and any other person upon or to whom the duty of such trust may have devolved or come, and also an executor and administrator, and an official manager, assignee, liquidator, or other like officer acting under any present or future Act relating to joint stock companies bankruptcy or insolvency, *and any person who is by the law of the Province of Quebec, an "administrateur;" and the word "trust" shall include whatever is by that law an "administration."*

4thly. The term "valuable security" shall include any order, exchequer acquittance or other security whatsoever entitling or evidencing the title of any person or body corporate to any share or interest in any public stock or fund, whether of Canada, or of any Province therein, or of the United Kingdom or of Great Britain or Ireland, or of any British Colony or Possession, or of any foreign state, or in any fund of any body corporate, company or society whether within Canada or the United Kingdom, or any British Colony or Possession, or in any foreign state or country, or to any deposit in any *savings bank or other bank*, and shall also include any debenture, deed, bond, bill, note, warrant, order or other security whatsoever for money or for payment of money, whether of Canada, or of any Province therein, or of the United Kingdom, or of any British Colony or Possession, or of any foreign state, and

any document of title to lands or goods as hereinbefore defined, and any stamp or writing which secures or evidences title to or interest in any chattel personal, or any release, receipt, discharge, or other instrument evidencing payment of money, or the delivery of any chattel personal; and every such valuable security shall, where value is material, be deemed to be of value equal to that of such unsatisfied money, chattel personal, share, interest or deposit, for the securing or payment of which, or delivery, or transfer or sale of which, or for the entitling or evidencing title to which such valuable security is applicable, or to that of such money or chattel personal, the payment or delivery of which is evidenced by such valuable security.

5thly. The term "property" shall include every description of real and personal property, money, debts and legacies, and all deeds and instruments relating to or evidencing the title or right to any property, or giving a right to recover or receive any money or goods, and shall also include not only such property as may have been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

6thly. The term "cattle" shall include any horse, mule, ass, swine, or goat, as well as any neat cattle or animal of the Bovine species, and whatever be the age or sex of the animal, and whether castrated or not, and by whatever technical or trivial name it may be known, and shall apply to one animal, as well as to many.

7thly. The term "banker" shall include any director of any incorporated bank or banking company.

8thly. The term "writing" shall include any mode in which and any material on which words or figures at

length or abridged are written, printed or otherwise expressed, or any map or place is inscribed.

9thly. The term "testamentary instrument" shall include any will, codicil, or any other testamentary writing or appointment, as well during the life of the testator whose testamentary disposition it purports to be as after his death, where the same relates to real or personal estate, or both.

10thly. The term "municipality" shall include the corporation of any city, town, village, township, parish, or other territorial or local division of any Province of Canada, the inhabitants whereof are incorporated or have the right of holding property for any purpose.

Whenever the having anything in the possession of any person, is in this Act expressed to be an offence, then if any person has any such thing in his personal custody or possession, or knowingly or wilfully has any such thing in any dwelling-house or other building, lodging, apartment, field, or other place open or enclosed, whether belonging to, or occupied by himself or not, and whether such matter or thing be so had for his own use or benefit, or for that of another, such person shall be deemed to have such matter or thing in his custody or possession within the meaning of this Act, and where there are two or more persons, any one or more of whom, with the knowledge and consent of the rest, has any such thing in his or their custody or possession, it shall be deemed and taken to be in the custody and possession of all of them.

For the purposes of this Act, the night shall be deemed to commence at nine of the clock in the evening of each day, and to conclude at six of the clock in the morning of the next succeeding day, *and the day shall include the remainder of the twenty-four hours.*—Sect. 1, 24-25 Vict., ch. 96, Imp.

The words in *italics*, and 6thly, 7thly, 8thly, 9thly, and 10thly are not in the English Act.

Sections 17 to 26, of the Procedure Act of 1869, contain various enactments as to description of property, money, written instruments, owners thereof, &c., &c., in indictments.

DISTINCTION BETWEEN GRAND AND PETIT LARCENY
ABOLISHED.

Sect. 2.—Every larceny, whatever be the value of the property stolen, shall be deemed to be of the same nature, and shall be subject to the same incidents in all respects as grand larceny was before the distinction between grand and petit larceny was abolished.—Sect. 2, 24–25 Vict., ch. 96, Imp.

Grand larceny was when the value of the thing stolen was above twelve pence; petit larceny, when the thing stolen was of the value of twelve pence or under. This distinction was abolished in England, on the 21st day of June, 1827.

LARCENY BY BAILEES.

Sect. 3.—Whosoever being a bailee of any chattel, money or valuable security, fraudulently takes or converts the same to his own use, or to the use of any person other than the owner thereof, although he do not break bulk or otherwise determine the bailment, is guilty of larceny, and may be convicted thereof upon an indictment for larceny; but this section shall not extend to any offence punishable on summary conviction.—Sect. 3, 24–25 Vict., ch. 96, Imp.

Greaves, on this clause, remarks: "Although there is no doubt that a person might have been convicted of any offence within this clause on a common indictment for larceny,—Reg. vs. Haigh, 7 Cox 403,—as it expressly

enacts that the offender 'shall be guilty of larceny,' yet to prevent all doubt, it is provided (by the Consolidated Act) that the offender may be convicted on an indictment for larceny. It was held that the bailment intended by the 20-21 Vict., ch. 54, s. 4, was a deposit of something which was itself to be returned; and therefore a person with whom money had been deposited, who was under an obligation to return the amount, but not the identical coin deposited, was held not to be a bailee of the money within that section.—Reg. vs. Hassall, Leigh & Cave 58. The object of this clause was simply to make those cases larceny, where the general property in the thing delivered was never intended to be parted with at all, but only the *possession*; where in fact the owner delivered the property to another under such circumstances as to deprive himself of the *possession* for some time, whether certain or uncertain, and whether longer or shorter, at the expiration or determination of which time the owner was to have restored to him the very same thing that had been so delivered. In order, therefore, to bring a case within this clause, in addition to the fraudulent disposal of the property, it must be proved, 1st. That there was such a delivery of the property as to divest the owner of the *possession*, and vest it in the prisoner for some time. 2nd. That at the expiration or determination of that time, the identical same property was to be restored to the owner. Proof of these facts will be all that is necessary under this clause. The decision in Reg. vs. Hassall was clearly right, and will apply to the present clause."

The prisoner was a married woman living with her husband. They took in lodgers, but she exclusively had to deal with them. The prosecutor, who lodged with them, delivered to the prisoner, the woman, a box con-

taining money to be taken care of. The prisoner stole the money, her husband being entirely innocent in the transaction. *Held*, that she was either guilty of simple larceny, or that she was a bailee, and guilty of larceny as a bailee, and by Pollock, C.B., and Martin, B., that a married woman may possibly be convicted of larceny as a bailee.—Reg. vs. Robson, Leigh & Cave, 93. The authority of Reg. vs. Denmour, 8 Cox 440, in which it was held that a married woman could not be a bailee, must be regarded as shaken.—Reporter's note, Leigh & Cave, 97.

The proviso, says Greaves, was introduced to prevent the clause applying to the cases of persons employed in the silk, woollen, and other manufactures, who dispose of goods entrusted to them, and are liable to be summarily convicted under sundry statutes.

Who is a bailee? What constitutes a bailment?.....
"Bailment," (French, *bailler*) a compendious expression to signify a contract resulting from delivery. Sir William Jones has defined bailment to be "a delivery of goods on a condition, express or implied, that they shall be restored by the bailee to the bailor, or according to his directions as soon as the purpose for which they are bailed shall be answered." He has again in the closing summary of his essay, defined it in language somewhat different, as "a delivery of goods in trust, on a contract express or implied, that the trust shall be duly exercised and the goods re-delivered, as soon as the time or use for which they were bailed shall have elapsed or be performed." Each of these definitions seems redundant and inaccurate, if it be the proper office of a definition to include these things only which belong to the genus or class. Both of these definitions suppose that the goods are to be restored or re-delivered. But in a bailment for sale, as in the case

of a consignment to a factor, no re-delivery is contemplated between the parties. In some cases, no use is contemplated by the bailee, in others it is of the essence of the contract; in some cases time is material to terminate the contract; in others, time is necessary to give a new accessorial right. Mr. Justice Blackstone has defined a bailment to be "a delivery of goods in trust upon a contract expressed or implied, that the trust shall be faithfully executed on the part of the bailee." And in another place as a "delivery of goods to another person for a particular use." It may perhaps be doubted, whether, although generally true, a faithful execution, if by faithful be meant a conscientious diligence or faithfulness, adequate to a due execution, or a particular use, if by use be meant an actual right of user by the bailee, constitutes an essential or proper ingredient in all cases of bailment. Mr. Chancellor Kent, in his commentaries, has blended, in some measure, the definitions of Jones and Blackstone. Without professing to enter into a minute criticism, it may be said that a bailment is a delivery of a thing in trust for some special object or purpose, and upon a contract express or implied to conform to the object or purpose of the trust. In the celebrated case of *Coggs vs. Bernard*, Lord Raym. 909, 1 Smith's leading cases, 177, Lord Holt divided bailments thus:

1. *Depositum*, or a naked bailment of goods, to be kept for the use of the bailor.

2. *Commodatum*, where goods or chattels that are useful are lent to the bailee *gratis*, to be used by him.

3. *Locato rei*, where goods are lent to the bailee to be used by him for hire.

4. *Vadium*, pawn or pledge.

5. *Locatio operis faciendi*, where goods are delivered to be carried, or something is to be done about them, for a reward to be paid to the bailee.

6. *Mandatum*, a delivery of goods to somebody, who is to carry them, or do something about them *gratis*.—Wharton, law lexicon.

A carrier who receives money to procure goods, obtains and duly delivers the goods, but fraudulently retains the money, is within this section.—*R. vs. Wells*, 1 F. & F. 109.

So one who takes a watch from the pocket of a tipsy man with his consent is a bailee of the watch.—*R. vs. Reeves*, 5 Jur. N. S. 716.

The bailment intended is a deposit of something to be specifically returned, and therefore one who receives money with no obligation to return the identical coins received is not a bailee within the section.—*Reg. vs. Hassall*, 1 Leigh & Cave, 58; *Reg. vs. Garratt*, 2 F. & F. 14; *Reg. vs. Hoare*, 1 F. & F. 647.

The prosecutor gave the prisoner money to buy half a ton of coals for him. He bought the coals and took a receipt in his own name, and used his own horse and cart to fetch them, but on the way home he appropriated a portion of the coals to his own use, and afterwards pretended to the prosecutor that he had delivered to him the full quantity: *Held*, that even if it was necessary to show a specific appropriation of the coals to the prosecutor, there was sufficient evidence of such appropriation, and that the prisoner was rightly convicted of larceny as a bailee.—*Reg. vs. Bunkall*, Leigh & C. 371; 9 Cox, 419.

A carrier employed by the prosecutor to deliver in his, the prisoner's cart, a boat's cargo of coals to persons named in a list, to whom only he was authorized to deliver them, and having fraudulently sold some of the coals and appropriated the proceeds, is properly convicted of larceny as a bailee.—*Reg. vs. Davies*, 10 Cox, 239.

A., who was a trustee of a friendly society, was

appointed by a resolution of the Society to receive money from the treasurer and carry it to the bank. He received the money from the treasurer's clerk, but instead of taking it to the bank he applied it to his own purposes. He was indicted for stealing, as bailee of the money of the treasurer, and also for a common law larceny. The 18-19 Vict., ch. 63, sect. 18, vests the property of friendly societies in the trustees, and directs that in all indictments the property shall be laid in their names: *Held*, that A. could not be convicted either as a bailee or of a common law larceny.—*Reg. vs. Loose, Bell, 259; 8 Cox, 302.*

On an indictment for larceny as a bailee, it appeared that the prisoner borrowed a coat from the prosecutor, with whom he lodged, for a day, and returned it. Three days afterwards he took it without the prosecutor's permission, and was seen wearing it by him, and he again gave him permission to wear it for the day. Some few days afterwards, he left the town, and was found wearing the coat on board a ship bound for Australia. Martin, B., stopped the case, stating that in his opinion there was no evidence of a conversion. There are many instances of conversion sufficient to maintain an action of trover, which would not be sufficient to support a conviction under this Statute: the determination of the bailment must be something analogous to larceny, and some act must be done inconsistent with the purposes of the bailment. As for instance, in the case of a bailment of an article of silver for use, melting it would be evidence of conversion. So when money or a negotiable security is bailed to a person for safe keeping, if he spend the money or convert the security, he is guilty of a conversion within the Statute. The prosecution ought to find some definite time at which the offence was committed. The taking the

coat on board ship was subsequent to the prisoner's going on board himself.—Reg. vs. Jackson, 9 Cox, 505.

Greaves, on this case, says: If this case is correctly reported it deserves reconsideration. The words are, "take *or* convert the same to his own use." The clause therefore does not require a conversion, but was studiously framed to avoid the necessity of proving one. The evidence was sufficient to go to the jury that the prisoner took the coat on board for his own use with intent permanently to deprive the owner of it; and such a case seems clearly within the Statute. Besides the case ought to have been left to the jury to say whether he did not return the coat to the prosecutor's house after the end of the last bailment for a day. If so the case was simply one of larceny.—3 Russell, 666.

M. was the owner of a wrecked ship. A. contracted with M. to save and recover the wrecked property. A. made a sub-contract with R. C. to act as diver and carry on the works of salvage; all goods saved to be forwarded to A., and the remuneration to be a percentage on the goods saved, but R. C. always to retain £150, as a guarantee. In his absence, R. C. put the defendant, his son, in charge of the wreck. The defendant corresponded with A. as to the sale of the salvage, and he was addressed by A. as a responsible party under the contract. A. deposed, however, that he had always considered R. C. as the party liable on the contract. The defendant sold and appropriated part of the salvage. The jury found that he did so *animo furandi*, but no question was asked them as to whether he was a bailee of A. *Held*, dissentientibus Fitzgerald and George, J.J., that there was sufficient evidence to show that the defendant was a bailee so as to make him liable for larceny under the 3rd section of the Larceny Act, also, that the property was rightly laid

in M.—Reg. vs. Clegg, Irish Cr. Appeal Court, 11 Cox, 212.

A. delivered two brooches to the prisoner to sell for him at £200 for one and £115 for the other, and the prisoner was to have them for a week for that purpose; but two or three days grace might be allowed. After ten days had elapsed, the prisoner sold them with other jewellery for £250, but arranged with the vendee that he might redeem the brooches for £110 before September: *held*, that this amounted to a fraudulent conversion of the brooches to his own use by a bailee within sect. 3 of the Larceny Act.—Reg. vs. Henderson, 11 Cox, 593.

A traveller was entrusted with pieces of silk, about 95 yards each, to carry about with him for sale to such customers as he might procure. It was his duty to send by the next post after sale the names and addresses of the customers to whom any might have been sold, and the numbers, qualities and prices of the silk sold. All goods not so accounted for remained in his hands, and were counted by his employers as stock. At the end of each half year it was his duty to send in an account for the entire six months, and to return the unsold silk. He was paid by a commission. Within six months after four pieces of silk had been delivered to him, the prisoner rendered an account of the same, and entered them as sold to two persons, with instructions to his employers to send invoices to the alleged customers. It turned out that this was false, and that he had appropriated the silk to his own use: *held*, on a case reserved, by the Court of Criminal Appeal unanimously, that the prisoner was rightly convicted of larceny as a bailee.—Reg. vs. Richmond, 12 Cox, 495.

The prisoner found two heifers which had strayed, and put them on his own marshes to graze. Soon afterwards

he was informed by S. that they had been put on his, S.'s marshes and had strayed, and a few days after that that they belonged to H. Prisoner left them on his marshes for a day or two, and then sent them a long distance away on his own property to be kept for him. He then told S. that he had lost them, and denied all knowledge of them. The jury found—1, that at the time the prisoner found the heifers, he had reasonable expectation that the owner could be found, and that he did not believe that they had been abandoned by the owner.—2. That at the time of finding them he did not intend to steal them, but that the intention to steal came on him subsequently.—3. That the prisoner when he sent them away, did so for the purpose and with the intention of depriving the owner of them and appropriating them to his own use: *held*, that a conviction of larceny, or of larceny as bailee, could not be sustained under the above circumstances.—Reg. vs. Matthews, 12 Cox, 489.

The prisoner was frequently employed by the prosecutor to fetch coals from C. Before each journey, the prosecutor made up to the prisoner £24, out of which he was to pay for the coals, keep 23 shillings for himself, and, if the price of the coal, with the 23 shillings, did not amount to £24, to keep the balance in hand to the credit of the next journey. It was the prisoner's duty to pay for the coal, as he obtained it, with the money received from the prosecutor; and the prosecutor did not know but that he did so; but provided he was supplied with the coal, and not required to pay more than the proper price for it, it was immaterial to the prosecutor in what manner the prisoner paid for it. On the 20th of March, the prisoner had a balance of £3 in hand, and the prosecutor gave him £21 to make up £24 for next journey. The prisoner did not then buy any coal,

but fraudulently appropriated the money : *held*, that the conviction of the prisoner for larceny of the £21 as a bailee was right.—Reg. vs. Aden, 12 Cox, 512.

Boot and shoe manufacturers gave out to their workmen leather and materials to be worked up, which were entered in the men's books and charged to their debit. The men might either take them to their own homes to work up, or work them up upon the prosecutor's premises; but in the latter case they paid for the seats provided for them. When the work was done they received a receipt for the delivery of the leather and materials and payment of the work. If the leather and materials were not re-delivered, they were required to be paid for. The prisoner Daynes was in the prosecutor's employ, and received materials for twelve pairs of boots : he did some work upon them, but instead of returning them sold them to the prisoner Warner. These materials were entered in the prosecutor's books to Daynes' debit, but omitted by mistake to be entered in Daynes' book : *held*, that Daynes could not be convicted of larceny as a bailee, under the 3rd section of the Larceny Act, as the offence of which he had been guilty was punishable summarily under 13 Geo. 2, ch. 8.—Reg. vs. Daynes, 12 Cox, 514.

An indictment for larceny by a bailee may be in the general form of indictment for larceny at common law ; and it is not necessary to allege that the defendant is a bailee.—3 Burn's Justice, 305.

PUNISHMENT FOR SIMPLE LARCENY.

Sect. 4.—Whosoever is convicted of simple larceny or of any felony hereby made punishable like simple larceny, shall (except in the cases hereinafter otherwise provided for) be liable to be imprisoned in the Penitentiary for any

term not exceeding three years, and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 96, sect. 4, Imp.

As to larceny after a previous conviction, see sections 7, 8, 9; and sect. 122, as to requiring the offender to enter into his own recognizances, and to find sureties, both or either, in cases of felony punishable under this Act. As to solitary confinement, see sect. 94 of the Procedure Act of 1869.

As to additional punishment, when the property stolen is over two hundred dollars in value, see *post*, sect. 110.

THREE LARCENIES, WITHIN SIX MONTHS IN ONE INDICTMENT.

Sect. 5.—It shall be lawful to insert several counts in the same indictment against the same person for any number of distinct acts of stealing, not exceeding three, which have been committed by him against the same person within the space of six months from the first to the last of such acts, and to proceed thereon for all or any of them.—24-25 Vict., ch. 96, sect. 5, Imp.

Before the passing of the Act, it was no objection in point of law that an indictment contained separate counts charging distinct felonies of the same degree, and committed by the same offender.—2 Hale, 173; 1 Chit. 253; Reg. vs. Heywood, L. & C. 451. It was, in truth, a matter for the discretion of the Court; and if the Court thought the prisoners would be embarrassed by the counts, the Court would either quash the indictment, or compel the Counsel for the prosecution to elect.—R. vs. Young, 2 East's P. C. 515. It seems that, where three acts of larceny are charged in separate counts there

may also be three counts for receiving.—Reg. vs. Heywood, L. & C. 451. See, *post*, remarks under next section.

Greaves, on this clause, says :

“ It frequently happened before this Statute passed that a servant or clerk stole sundry articles of small value from his master at different times, and in such a case it was necessary to prefer separate indictments for each distinct act of stealing, and on the trial it not seldom happened that the jury, having their attention confined to the theft of a single article of small value, improperly acquitted the prisoner on one or more indictments. The present section remedies these inconveniences, and places several larcenies from the same person in the same position as several embezzlements of the property of the same person, so that the prosecutor may now include three larcenies of his property committed within the space of six calendar months in the same indictment.”—Lord Campbell’s Acts, by Greaves, 19.

IF ONE TAKING IS CHARGED, AND SEVERAL ARE PROVED.

Sect. 6.—If, upon the trial of any indictment for larceny it appears that the property alleged in such indictment to have been stolen at one time was taken at different times, the prosecutor or counsel for the prosecution shall not by reason thereof be required to elect upon which taking he will proceed, unless it appears that there were more than three takings, or that more than the space of six months elapsed between the first and the last of such takings, and in either of such last mentioned cases the prosecutor or counsel for the prosecution shall be required to elect to proceed for such number of takings not exceeding three, as appear to have taken place within the period of six months from the

first to the last of such takings.—24–25 Vict., ch. 96, sect. 6, Imp.

The word “months” in this and the preceding clause means a calendar month.—31 Vict., ch. 1, sect. 7, Interpretation Act.

The effect of the above and the preceding section, is to restrain the power of the Court with respect to the doctrine of election. The Court cannot now put the prosecutor to his election where the indictment charges three acts of larceny within six months, or where the evidence shows that the property was not stolen at more than three different times, and that not more than six months had elapsed between the first and last of such times. But, on the other hand, the Court is not bound by the above section to put the prosecutor to his election in other cases, but is left to its discretion, according to the old practice at common law.—*R. vs. Jones*, 2 Campb. 131; *Reg. vs. Heywood, L. & C.* 451.

By means of a secret junction pipe with the main of a gas company, a mill was supplied with gas, which did not pass through the gas meter, and which was consumed without being paid for. This continued to be done for some years: *held*, on an indictment for stealing 1000 cubic feet of gas on a particular day, the entire evidence might be given, as there was one continuous act of stealing all the time, and that section 6 of the Larceny Act, as to the prosecutor's electing on three separate takings within six months, did not apply.—*Reg. vs. Firth*, 11 Cox 234.

An indictment charged an assistant to a photographer with stealing on a certain day divers articles belonging to his employer. It did not appear when the articles were taken, whether at one or more times, but only that they were found in the prisoner's possession on the

17th of January, 1870, and that one particular article could not have been taken before March, 1868; but the prosecution abandoned the case as to this article: *held*, that this was not a case in which the prosecutor should be put to elect upon which articles to proceed, under section 6 of the Larceny Act.—*Reg. vs. Henwood*, 11 Cox, 526.

On this clause, Greaves remarks:

“Formerly it very often happened on the trial of an indictment alleging the stealing of a number of articles at the same time, that it turned out that they had been taken at different times, in which case the prosecutor was usually compelled to elect some single taking; such election being required to be made on the spur of the moment, some times led to improper acquittals. The present section is intended to afford a remedy for such cases, and to place such cases in the same position as the cases provided for by the previous section. When, therefore, it appears on the trial of an indictment for stealing a number of goods at the same time, that the goods were taken at different times, the prosecutor is not to be put to elect to proceed on any particular taking, unless it appear that there were more than three takings, or that more than six calendar months intervened between the first and last of such takings, in which case he is to elect such takings, not exceeding three, within the period of six calendar months from the first to the last of such takings. A suggestion has been made, that in some extraordinary cases this may unduly limit the evidence on the part of the prosecution, as it is said that evidence of only three takings will be admissible. This is a fallacy; the clause confines the prosecutor to *proceeding to obtain a conviction* for three takings, but it does not at all interfere with the admissibility of any evidence that may in

the opinion of the Court tend to explain the nature and character of any of the takings. If, therefore, a case should occur where a doubt arose whether the evidence as to one or more takings shewed that it was felonious, there can be no doubt that evidence of other takings would be admissible for the purpose of removing such doubt precisely in the same way as heretofore, but not otherwise. (*See Reg. vs. Bleasdale*, 2 C. & K. 765). In fact the clause empowers the prosecutor to proceed for three takings instead of one without in any respect otherwise altering the evidence that may be admissible."

LARCENY AFTER PREVIOUS CONVICTIONS.

Sect. 7.—Whosoever commits the offence of simple larceny after a previous conviction for felony, whether such conviction has taken place upon an indictment or under the provisions of the *Act respecting the prompt and summary administration of Criminal justice in certain cases* (32–33 Vict. ch. 32) or of any other Act for like purposes shall be liable to be imprisoned in the Penitentiary for any term not exceeding ten years, and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24–25 Vict. ch. 96, sect. 7, Imp.

Sect. 8.—Whosoever commits the offence of simple larceny or any offence hereby made punishable like simple larceny, after having been previously convicted of any indictable misdemeanor punishable under this Act, shall be liable to be imprisoned in the Penitentiary for any term not exceeding seven years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24–25 Vict., ch. 96, sect. 8, Imp.

Sect. 9.—Whosoever commits the offence of simple larceny, or any offence hereby made punishable like simple larceny, after having been twice summarily convicted of any of the offences punishable upon summary conviction under the provisions contained in this Act, or in any former Act or law relating to the same subjects, or in the *Act respecting the prompt and summary administration of Criminal justice in certain cases* (32–33 Vict. ch. 32) or other Act for like purposes, or in the *Act respecting the trial and punishment of juvenile offenders* (32–33 Vict. ch. 33) or in the *Act respecting malicious injuries to property*, (32–33 Vict. ch. 22), whether each of the convictions has been in respect of an offence of the same description or not, and whether such convictions or either of them has been before or after the passing of this Act, is guilty of felony; and shall be liable to be imprisoned in the Penitentiary for any term not exceeding seven years, and not less than two years, or to be imprisoned in any other gaol or place of confinement, for any term less than two years, with or without hard labour and with or without solitary confinement.—24–25 Vict. ch. 96, sect. 9, Imp.

As to solitary confinement, see sect. 94, of the Procedure Act of 1869.

As to requiring the offender to enter into recognizances and give sureties for keeping the peace, in cases of felony, see sect. 122, *post*, of this Act (Larceny Act.)

The form of indictment for a subsequent offence, under these sections, is, in England, governed by sect. 116 of the Larceny Act, but, in Canada, this last clause is omitted from the Larceny Act, and inserted in the Procedure Act of 1869, sect. 26. It is exactly in the same terms, as sect. 116, of the English Larceny Act, and applies, for us, to subsequent offences, under all our Statutes.

LARCENY OF CATTLE AND OTHER ANIMALS.

Sect. 10.—Whosoever steals any cattle is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years, and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict. ch. 96, sect. 16, Imp.

See *ante*, sect. 1, for the interpretation of the word *cattle*.

Indictment.—The Jurors for Our Lady the Queen upon their oath present, that J. S. on at one horse of the goods and chattels of J. N. feloniously did steal, take and lead away; against the form If the indictment be for stealing a bull or sheep, &c., say “drive away” instead of “lead away.” The indictment must give the animal one of the descriptions mentioned in the Statute; otherwise the defendant can be punished as for simple larceny merely.—*R. vs. Beaney*, R. & Ry. 416; *Archbold*, 349.

If a person go to an inn, and direct the ostler to bring out his horse, and point out the prosecutor’s horse as his, and the ostler leads out the horse for the prisoner to mount, but, before the prisoner gets on the horse’s back, the owner of the horse comes up and seizes him, the offence of horse-stealing is complete.—*R. vs. Pitman*, 2 C. & P. 243.

The prisoners enter another’s stable at night, and take out his horses, and ride them 32 miles, and leave them at an inn, and are afterwards found pursuing their journey on foot. On a finding by the jury that the prisoners took the horses merely with intent to ride and afterwards leave them, and not to return or make any further use

of them, held trespass and not larceny.—R. vs. Philipps and Strong, 2 East P.C. 662.

If a horse be purchased and delivered to the buyer, it is no felony though he immediately ride away with it, without paying the purchase money.—Rex. vs. Harvey, 1 Leach. 467.

If a person stealing other property take a horse, not with intent to steal it, but only to get off more conveniently with the other property, such taking of the horse is not a felony.—Rex. vs. Crump, 1 C. & P. 658.

Obtaining a horse under the pretence of hiring it for a day, and immediately selling it is a felony, if the jury find the hiring was *animo furandi*.—Rex. vs. Pear, 1 Leach, 212; Rex. vs. Charlewood, 1 Leach. 409. It is larceny (at common law) for a person hired for the special purpose of driving sheep to a fair, to convert them to his own use, the jury having found that he intended so to do, at the time of receiving them from the owner.—Rex. vs. Stock, 1 Moody 87.—Where the defendant removed sheep from the fold, into the open field, killed them, and took away the skins merely, the judges held that removing the sheep from the fold was a sufficient driving away to constitute larceny.—R. vs. Rawlins, 2 East P.C. 617.

But it has been questioned, whether the merely removing a live sheep for the purpose of killing it, with intent to steal part of the carcass, was an asportation of the live sheep, as to constitute larceny of it.—R. vs. Williams, 1 Mood, 107. See 2 Russell, 361, and R. vs. Yend, 6 C. & P. 176

Any variance between the indictment and the proof, in the description of the animal stolen, may now be amended.—Sect. 71, Procedure Act, 1869. Reg. vs. Gumble, 12 Cox, 248.

KILLING ANIMALS WITH INTENT TO STEAL THE CARCASS.

Sect. 11.—Whosoever wilfully kills any animal, with

intent to steal the carcase, skin, or any part of the animal so killed, is guilty of felony, and shall be liable to the same punishment as if he had been convicted of feloniously stealing the same, provided the offence of stealing the animal so killed would have amounted to felony—24-25 Vict. ch. 96, sect. 11, Imp.

Indictment. one sheep of the goods and chattels of J. N. feloniously and wilfully did kill, with intent feloniously to steal, take and carry away part of the carcase, that is to say, the inward fat of the said sheep, against the form. Archbold, 350.

Cutting off part of a sheep, in this instance the leg, while it is alive, with intent to steal it, will support an indictment for killing with intent to steal, if the cutting off must occasion the sheep's death—*R. vs. Clay*, *Rus. & Ry.* 387.

So on the trial of an indictment for killing a ewe with intent to steal the carcase, it appeared that the prisoner wounded the ewe by cutting her throat, and was then interrupted by the prosecutor, and the ewe died of the wounds two days after. It was found by the jury who convicted the prisoner that he intended to steal the carcase of the ewe. The fifteen judges held the conviction right.—*Reg. vs. Sutton*, 8 C. & P. 291. It is immaterial whether the intent was to steal the whole or part only of the carcase.—*R. vs. Williams*, 1 Mood. 187.

STEALING DOGS, BIRDS, ETC., ETC., OR OTHER ANIMALS
ORDINARILY KEPT IN CONFINEMENT, AND NOT SUBJECT
OF LARCENY AT COMMON LAW.

Sect. 12.—Whosoever 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, not being the subject of

larceny at common law, or wilfully kills any such dog, bird, beast or animal, with intent to steal the same or any part thereof, shall on conviction thereof before a Justice of the Peace, either be committed to the common gaol or house of correction, there to be imprisoned only or to be imprisoned and kept at hard labour for any term not exceeding one month, or else, shall forfeit and pay, over and above the value of the dog, bird, beast, or other animal, such sum of money, not exceeding twenty dollars as to the justice may seem meet, and whosoever having been convicted of any such offence, either against this or any former Act or Law, afterwards commits any offence in this section before mentioned, and is convicted thereof in like manner, shall be committed to the common gaol or house of correction, there to be kept to hard labour for such term not exceeding three months, as the convicting Justice may think fit.—24-25 Vict. ch. 96, sect. 18 and 21, Imp.

The words in *italics* are not in the English Act, and the subsequent offence of stealing a dog, after a previous conviction, is there made a misdemeanor.

By sect. 123, it is enacted that every offence punishable by this Act on summary conviction may be prosecuted in the manner directed by 32-33 Vict., ch. 31.

KILLING OR TAKING PIGEONS.

Sect. 13.—Whosoever unlawfully and wilfully kills, wounds or takes any house-dove or pigeon under such circumstances as do not amount to larceny at common law, shall, on conviction before a Justice of the Peace, forfeit and pay, over and above the value of the bird, any sum not exceeding ten dollars.—24-25 Vict. ch. 96, sect. 23, Imp.

This clause does not extend to killing pigeons under a claim of right.—Taylor vs. Newman, 9 Cox, 314.

By sect. 123, proceedings on summary convictions under this Act are governed by 32-33 Vict. ch. 31.

STEALING OR DREDGING FOR OYSTERS, ETC.

Sect. 14.—Whosoever steals any cysters or oyster brood from any oyster bed, laying or fishery, being the property of any other person, and sufficiently marked out or known as such, is guilty of felony, and being convicted thereof, shall be liable to be punished as in the case of simple larceny; and whosoever 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 shall be actually taken, or unlawfully and wilfully, with any net, instrument or engine, drags upon the ground of any such fishery, is guilty of a misdemeanor, and shall be liable to be imprisoned for any term not exceeding three months, with or without hard labour, and with or without solitary confinement; and it shall be sufficient in any indictment to describe either by name or otherwise the bed, laying or fishery in which any of the said offences has been committed, without stating the same to be in any particular county, district or other local division; provided that nothing in this section contained shall prevent any person from catching or fishing for any floating fish within the limits of any oyster fishery with any net, instrument or engine adapted for taking floating fish only. 24-25 Vict. ch. 96, sect. 26, Imp.

Indictment for stealing oysters or oyster brood.—.....
from a certain oyster-bed called . . . the property of J. N.

and sufficiently marked out and known as the property of the said J. N., one thousand oysters feloniously did steal, take and carry away against the form.....

See sect. 122, *post*, for recognizances and sureties for the peace, both or either, in felonies under this Act.

Indictment for using a dredge in the oyster fishery of another.—.....within the limits of a certain oyster-bed called.....the property of J. N. and sufficiently marked out and known as the property of the said J. N., unlawfully and wilfully did use a certain dredge for the purpose of then and there taking oysters, against the form....—Archbold, 393.

See sect. 122, *post*, as to fine and sureties for the peace, in misdemeanors under this Act.

In support of an indictment for stealing oysters in a tidal river, it is sufficient to prove ownership by oral evidence as, for instance, that the prosecutor and his father for 45 years had exercised the exclusive right of oyster fishing in the locus in quo, and that in 1846, an action had been brought to try the right, and the verdict given in favor of the prosecutor.—*Reg. vs. Downing*, 11 Cox, 580.

LARCENY OF VALUABLE SECURITIES.

Sect. 15.—Whosoever steals or for any fraudulent purpose destroys, cancels, obliterates, or conceals the whole or any part of any valuable security, other than a document of title to lands, is guilty of felony, of the same nature and in the same degree, and punishable in the same manner as if he stole any chattel of like value with the share, interest or deposit, to which the security so stolen relates, or with the money due on the security so stolen or secured thereby and remaining unsatisfied, or with the value of the goods or other valuable thing

represented, mentioned or referred to, in or by the security.—24-25 Vict. ch. 96, sect. 27, Imp.

As to the interpretation of the words "valuable security" see *ante*, sect. 1.

Indictment.—.....a certain valuable security, other than a document of title to lands, to wit, one bill of exchange for the payment of ten pounds, the property of J. N., the said sum of ten pounds secured and payable by and upon the said bill of exchange being then due and unsatisfied to the said J. N., feloniously did steal, take and carry away, against the form..... Archbold, 371.

See *post*, sect. 122, as to requiring sureties in felonies under this Act.

To constitute the offence it must be proved that the defendant stole the bill as stated. Where the defendant, a stockbroker, received from the prosecutor a cheque upon his banker, to purchase exchequer bills for him, and cashed the cheque, and absconded with the money, upon an indictment for stealing the cheque and the proceeds of it, it was holden to be no larceny, although the jury found, that, before he received the cheque, the defendant had formed the intention of converting the money to his own use, not of the cheque, because the defendant had used no fraud or contrivance to induce the prosecutor to give it to him, and because being the prosecutor's own cheque, and of no value in his hands, it could not be called his goods and chattels, nor of the proceeds of the cheque, because the prosecutor never had possession of them, except by the hands of the defendant. —R. vs. Walsh, Russ. & Ry. 215.—But where the prosecutors gave to the defendant, who was occasionally employed as their clerk, a cheque payable to a creditor, to be delivered by him to the creditor, and he appropriated it to his own use, it was holden by the judges to be a

larceny of the cheque.—*R. vs. Metcalfe*, 1 Mood. 433 ; *R. vs. Heath*, 2 Mood, 33. See 2 Russell, 203, for a synopsis of Walsh's case.

With respect to what instrument or security is within the Act, the following decisions have taken place :—

At a conference of the Judges in Easter term, 1781, Nares, J., mentioned that a person was convicted before him for privately stealing from the person of another a pocket-book containing a note of the Bristol Bank signed by some one on behalf of himself and partners, promising to pay to the prosecutor or order a sum of money, but which the prosecutor had not indorsed. All the judges were of opinion that this was a capital felony within the statute 2 Geo. 2, ch. 25, which made the stealing promissory notes felony, with the same consequence as goods of the like purported value, that this was a promissory note, and that its not being indorsed was immaterial.—*Anon.* 2 East P. C. 598.

So an indictment for stealing a bill of exchange in London was sustained by proof that, when found in the prisoner's possession there, it had an indorsement, made afterwards and not laid in the indictment, for the addition of a third name made no difference, it being the same bill that was originally stolen.—*Austin and King's case*, 2 East P. C. 602.

When one was compelled by duress to make a promissory note on stamped paper before prepared by the prisoner, who was present during the time, and withdrew the note as soon as it was made, this was holden not to be a felony within the Statute. For according to some of the judges, that is confined to available securities in the hands of the party robbed, which this was not, being of no value while in the hands of the maker himself, yet even if it were, according to others, this was never in his

possession, his signature having been procured by duress to a paper which during the whole continuing transaction was in possession of the prisoner.—Phipoe's case, 2 Leach, 673.

This last case would now be punishable under sect. 47, *post*.

And where, in consequence of an advertisement, A. applied to B. to raise money for him, who promised to procure £5000, and produced ten blank 6 shillings stamps, across which A. wrote an acceptance, and B. took them up without saying anything, and afterwards filled up the stamps as bills for £500 each, and put them in circulation, it was holden by Littledale, Rolland and Bossanquet that the stamps so filled up were not bills of exchange, orders for the payment of money or securities for money within the meaning of the Statute.—*R. vs. Minter Hart*, 6 C. & P. 106.

This offence would now be punishable under sect. 95, *post*. *Reg. vs. Danger, Dears. & B.* 307, would also now fall under the said section.

A cheque on a banker written on unstamped paper payable to D. F. G., and not made payable to bearer, is not a valuable security, for it would be a breach in the law for the bankers to pay it.—*R. vs. Yates*, 1 Mood. 170.

The case of *R. vs. Clarke*, R. & R. 182, where the prisoner was indicted for stealing re-issuable notes after payment and before re-issuing, does not decide whether such notes were considered as valuable within the Statute, for the judges held the conviction right on the counts for the value of the stamps and paper, not referring to the objections as to the value of the note. But in *R. vs. Ransom*, 2 Leach, 1090, which was against a clerk in the post-office for secreting a letter containing country bank-

notes paid in London and not re-issued, it was contended that they were not available within the Act, but the majority of the judges, among whom was Lord Ellenborough, thought otherwise, and as upon the face of them they remained uncanceled, they would, in the hands of a holder for a valuable consideration, be available against the makers. And in the cases of *R. vs. Vyse*, 1 Mood. 218, it was decided that re-issuable notes, if they cannot properly be called valuable securities whilst in the hands of the maker, may be called goods and chattels.

Wherever, therefore, the instrument would, in the hands of an innocent holder, be *available* against the maker, such an instrument would, it is apprehended, be considered of value. It may be worth while to consider, further, whether the possession of the subject matter of the instrument is not sufficient to bring the offender within the Act. The object of the Statute is to put the securities mentioned therein upon the same footing as the money they represent. The property consists in the power of disposing: if therefore the power of disposal is taken away, the possession and property are gone. The disposal of such property is effected by means of those instruments; every such Act of disposal, therefore, it is apprehended, must be considered as an exercise of property, and the making of such a note, under any circumstances, an act of possession. If, therefore, such a promissory note so obtained, would be *accounted of value*, and to have been in the possession of the prosecutor, the offence would now, beyond doubt, come within the section.—3 Burn's Justice, 237.

In *Reg. vs. West, Dears. & B. 109*, the case of *R. vs. Ransom* was relied on in the argument, and it appeared that A. stole notes of a provincial bank which were not then in circulation for value, but which were paid in at

one branch of the bank, and were in course of transmission to another branch, in order to be re-issued: but it was held that, upon these facts, A. was rightly convicted.

The following instruments also have been held valuable securities: a post office money-order, *Reg. vs. Gilchrist*, 2 Mood. 233; a cheque on a banker, *Reg. vs. Heath*, 2 Mood. 33; a pawnbroker's certificate, *Reg. vs. Morrison*, Bell, 158; and a scrip-certificate of a foreign Railway Company, *Reg. vs. Smith*, Dears. 56.

It is to be observed that *valuable security* includes also *document of title to goods* and *document of title to lands*, see *ante*, sect. 1, but that *documents of title to lands* are especially exempted in this section. It is, therefore, material, in drawing an indictment under this section, to show the sort of valuable security in order to bring it within the section: and a variance between such description and the evidence will be fatal, unless amended.—*Reg. vs. Lowrie*, L. R., 1 C. C. R. 61.

Bank notes are properly described as "money," although, at the time of the larceny, they were not in circulation, but were in the hands of the bankers themselves.—*Reg. vs. West*, 7 Cox, 183.

Halves of notes should be described as goods and chattels.—*R. vs. Meagle*, 4 C. & P. 535.

If the instrument is void as a security, as, for instance, by being unstamped, it should be described as a piece of paper.—*R. vs. Pooley*, R. & R. 12; *Reg. vs. Perry*, 1 Den. 69.

But where an executory contract was unstamped, it was held not to be the subject of larceny, being merely evidence of a chose in action: and that the prisoner could not be convicted on a count charging him with stealing a piece of paper.—*Reg. vs. Watts*, 6 Cox, 304.

STEALING DOCUMENTS OF TITLE TO REAL ESTATE.

Sect. 16.—Whosoever steals, or for any fraudulent purpose destroys, cancels, obliterates or conceals the whole or any part of any document of title to lands, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding three years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement; and in any indictment for any such offence, relating to any document of title to lands, it shall be sufficient to allege such document to be or contain evidence of the title, or of part of the title, or of some matter affecting the title, of the person or of some one of the persons having an interest, whether vested or contingent, legal or equitable, in the real estate to which the same relates, and to mention such real estate or some part thereof.—24-25 Vict. ch. 96, sect. 23, Imp.

As to the interpretation of the words "documents of title to lands," see sect. 1, *ante*.

As to requiring the offender to enter into recognizances and find sureties for keeping the peace, see *post*, s. 122.

As to solitary confinement, see sect. 94, of the Procedure Act of 1869.

Indictment.—.....a certain deed, the property of J. N., being evidence of the title of the said J. N. to a certain real estate called.....in which said real estate the said J. N. then had, and still hath an interest, feloniously did steal, take and carry away, against the form.....Archbold, 357. Add a second count, describing the nature of the instrument more particularly. It seems that in an indictment under this

section, and the two following, for destroying, &c., &c., for a fraudulent purpose, the purpose should be stated.—Reg. vs. Morris, 9 C. & P. 89.

A mortgage deed cannot be described as goods and chattels.—R. vs. Powell, 2 Den. 403.

See the *proviso* to the following section.

STEALING, ETC., ETC., WILLS OR CODICILS.

Sect. 17.—Whosoever, either during the life of the testator or after his death, steals or for any fraudulent purpose, destroys, cancels, obliterates or conceals the whole or any part of any will, codicil or other testamentary instrument, whether the same relates to real or personal estate, or to both, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life, or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement; and it shall not, in any indictment for such offence, be necessary to allege that such will, codicil, or other instrument, is the property of any person *or of any value*; provided that nothing in this or in the last preceding section mentioned, nor any proceeding, conviction or judgment to be had or taken thereupon, shall prevent, lessen or impeach any remedy at law or in equity, which any party aggrieved by any such offence might or would have had if this Act had not been passed; but no conviction of any such offender shall be received in evidence in any action at law or suit in equity against him, and no person shall be liable to be convicted of any of the felonies in this and the last preceding section mentioned by any evidence whatever, in respect of any act done by him, if he has at any time, previously to his being charged with such

offence, first disclosed such act, on oath, in consequence of any compulsory process of any Court of law or equity, in any action, suit or proceeding, *bond fide* instituted by any party aggrieved, or if he has first disclosed the same in any compulsory examination or deposition before any court upon the hearing of any matter in bankruptcy or insolvency.—24–25 Vict., ch. 96, sect. 29, Imp.

The words in *italics* are not in the English Act.

As to requiring the offender to enter into recognizances and find sureties for keeping the peace, see *post*, sect. 122.

As to solitary confinement, see sect. 94 of the Procedure Act of 1869.

Indictment.—.....a certain will and testamentary instrument of one J. N. feloniously did steal, take and carry away, against the form.....Archbold, 356. Add counts varying description of the will, &c., &c.

The cases of Reg. vs. Skeen, Bell, 97, and Reg. vs. Strahan, 7, Cox 85, would not now be held as law.—Greaves, Cons. Stat. 126.

The words, *or of any value*, inserted into our Statute, were unnecessary.—Sect. 23, Procedure Act, 1869: Greaves loc. cit.

STEALING, ETC., ETC., RECORDS, ETC., ETC.

Sect. 18.—Whosoever steals, or, for any fraudulent purpose, takes from its place of deposit, for the time being, or from any person having the custody thereof, or unlawfully and maliciously cancels, obliterates, injures or destroys the whole or any part of any record, writ, return, panel, process, interrogatory, deposition, affidavit, rule, order, or warrant of attorney, or of any original document whatsoever, of or belonging to any Court of Record

or other Court of Justice, or relating to any matter, civil or criminal, begun, depending or terminated in any such Court, or of any bill, petition, answer, interrogatory, deposition, affidavit, order or decree, or of any original document whatsoever of or belonging to any court of equity or relating to any cause, or matter begun, depending or terminated in any such Court, or of any original document in any wise relating to the business of any office or employment under Her Majesty, and being or remaining in any office appertaining to any Court of Justice, or in any government or public office, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding three years, and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement, and it shall not in any indictment for such offence be necessary to allege that the article in respect of which the offence is committed is the property of any person.—24-25 Vict., ch. 96, sect. 30, Imp.

The words "*or other Court of Justice*" are not in the English Act.

As to recognizance and sureties, see *post*, sect. 122,

As to solitary confinement, see sect. 94 of the Procedure Act of 1869.

Indictment for stealing a record.— a certain judgment-roll of the Court of Our Lady the Queen, before the Queen herself, feloniously did steal, take and carry away, against

Indictment for taking a record from its place of deposit.— a certain judgment-roll of the Court of our said lady the Queen, before the Queen herself, from its place of deposit for the time being, to wit, from the treasury of the said Court feloniously and for a fraudulent purpose

did take, against. If for obliterating, &c., &c., &c., say, feloniously, unlawfully and maliciously did obliterate, &c., &c., &c., . . . Archbold 354, 355.

Stealing rolls of parchment will be larceny at common law, though they be the records of a Court of Justice, unless they concern the realty, *R. vs. Walker*, 1 Mood. 155; but it is not so if they concern the realty.—*R. vs. Westbeer*, 1 Leach, 13.

A commission to settle the boundaries of a manor is an instrument concerning the realty, and not the subject of larceny at common law.—*R. vs. Westbeer*, loc. cit.

Upon an indictment for taking a record from its place of deposit, with a fraudulent purpose, the mere taking is evidence from which fraud may fairly be presumed, unless it be satisfactorily explained.—Archbold, 355.

The prisoner was indicted under this section of the Larceny Act. The first count charged the prisoner with stealing certain process of a court of record, to wit, a certain warrant of execution issued out of the County Court of Berkshire, in an action wherein one Arthur was plaintiff and the prisoner defendant. The second count stated that at the time of committing the offence hereinafter mentioned, one Brooker had the lawful custody of a certain process of a court of record, to wit, a warrant of execution out of the County Court.that defendant intending to prevent the due course of law, and to deprive Arthur of the rights, benefits and advantages from the lawful execution of the warrant, did take from Brooker the said warrant, he, Brooker, having then the lawful custody of it. Brooker was the bailiff who had seized the defendant's goods, under the said writ of execution. The prisoner, a day or two afterwards, forcibly took the warrant out of the bailiff's hand, and kept it. He then ordered him away, as having no more authority,

and, on his refusal to go, forcibly turned him out. The prisoner was found guilty, and the conviction affirmed upon a case reserved. Cockburn, C. J., said: "I think that the first count of the indictment which charges larceny will not hold. There was no taking *lucris causa*, but for the purpose of preventing the bailiff from having lawful possession. Neither was the taking *animo furandi*. I may illustrate it by the case of a man, who, wishing to strike another person sees him coming along with a stick in his hand, takes the stick out of his hand, and strikes him with it. That would be an assault, but not a felonious taking of the stick. There is, however, a second count in the indictment which charges in effect that the prisoner took the warrant for a fraudulent purpose. The facts show that the taking was for a fraudulent purpose. He took the warrant forcibly from the bailiff, in order that he might turn him out of possession. That was a fraud against the execution creditor, and was also contrary to the law. I am therefore of opinion that it amounts to a fraudulent purpose within the enactment, and that the conviction must be affirmed." The rest of the Court concurred.—Reg. vs. Bailey, 12 Cox, 129.

STEALING RAILWAY TICKETS, ETC., ETC.

Sect. 19.—Whosoever steals any railway or steamboat ticket, or any order or receipt for a passage on any railway or in any steamer or other vessel, is guilty of felony, and shall be liable to be imprisoned in any gaol or place of confinement other than a Penitentiary, with or without hard labour, for any term less than two years.

This clause is not in the English Statute. As to recognizances and sureties for the peace, see *post*, sect. 122.

STEALING OR BREAKING, ETC., ETC., LEAD, METAL, GLASS, ETC., ETC., FIXED TO HOUSE OR LAND.

Sect. 20.—Whosoever steals, or rips, cuts, severs, or breaks with intent to steal, any glass or woodwork belonging to any building whatsoever, or any lead, iron, copper, brass or other metal, or any utensil or fixture, whether made of metal or other material, or of both, respectively, fixed in or to any building whatsoever, or any thing made of metal fixed in any land, being private property, or for a fence to any dwelling-house, garden or area, or in any square or street, or in any place dedicated to public use or ornament, or in any burial ground, is guilty of felony, and shall be liable to be punished as in the case of simple larceny: and in case of any such thing fixed in any such square, street or place as aforesaid, it shall not be necessary to allege the same to be the property of any person.—24–25 Vict., ch. 96, sect. 31, Imp.

At common law, larceny could not be committed of things attached to the freehold.

As to punishment for simple larceny, see *ante*, sect. 4, and *post*, sects. 110 and 122.

This enactment extends the offence much further than the prior acts did, as it includes all utensils and fixtures of whatever materials made, either fixed to buildings or in land, or in a square or street. A church, and indeed all buildings are within the Act, and an indictment for stealing lead fixed to a certain building, without further description will suffice.—*R. vs. Parker*, 1 East P. C. 592; *R. vs. Norris, R. & R.*, 69.—An unfinished building boarded on all sides, with a door and a lock, and a roof of loose gorse, was held a building within the Statute.—*R. vs. Worrald*, 7 C. & P. 516.—So also where the lead stolen formed the gutters of two sheds built of brick,

timber and tiles upon a wharf fixed to the soil, it was held that this was a building within the Act.—Reg. vs. Rice, Bell, 87.—But a plank used as a seat and fixed on a wall with pillars, but with no roof was held not to be a building.—R. vs. Reece, 2 Russell, 254. Where a man, having given a false representation of himself, got into possession of a house, under a treaty for a lease of it, and then stripped it of the lead, the jury being of opinion that he obtained possession of the house with intent to steal the lead, found him guilty, and he afterwards had judgment.—R. vs. Munday, 2 Leach, 850.

A prisoner, however, cannot, upon an indictment for this statutable felony, be convicted of simple larceny.—Reg. vs. Gooch, 8 C. & P. 293.

The prisoners were found guilty of having stolen a copper sun-dial fixed upon a wooden post in a church-yard. Conviction held right.—Reg. vs. Jones, Dears. & B. 655.

The ownership of the building from which the fixture is stolen must be correctly laid in the indictment.—2 Russell, 255.

Indictment for stealing metal fixed in land being private property.— . . . two hundred pounds weight of iron, the property of J. N., then being fixed in a certain land which was then private property, to wit, in a garden of the said J. N. situate . . . feloniously did steal, take and carry away, against . . . Archbold, 369.

STEALING OR CUTTING TREES.

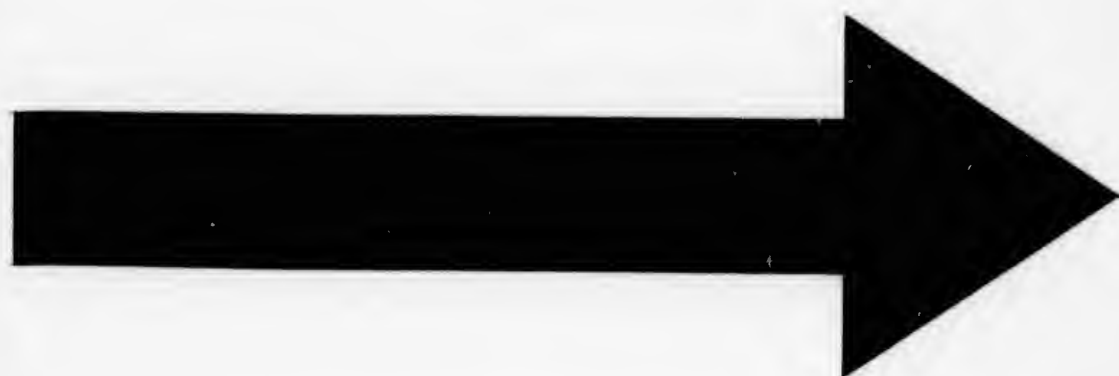
Sect. 21.—Whosoever steals or cuts, breaks, roots up, or otherwise destroys or damages with intent to steal, the whole or any part of any tree, sapling or shrub, or any underwood respectively growing in any park, pleasure ground, garden, orchard or avenue, or in any ground.

adjoining or belonging to any dwelling-house, in case the value of the article or articles stolen, or the amount of the injury done, exceeds the sum of five dollars, is guilty of felony, and shall be liable to be punished as in the case of simple larceny; and whosoever steals or cuts, breaks, roots up, or otherwise destroys or damages with intent to steal, the whole or any part of any tree, sapling or scrub, or any underwood, respectively growing elsewhere than in any of the situations in this section before mentioned, in case the value of the article or articles stolen, or the amount of the injury done, exceeds the sum of twenty-five dollars, is guilty of felony, and shall be liable to be punished as in the case of simple larceny.—24-25 Vict., ch. 96, sect. 32, Imp.

See sect. 4, *ante*, as to punishment for simple larceny, and sects. 110 and 122, *post*.

The words "grounds adjoining" mean ground in active contact with the dwelling-house. Whether the ground be a park or garden, etc., is a question for the jury. It seems it is not material that it should be in every part of it a park or garden.—*R. vs. Hodges, M. & M. 341.*—The amount of injury mentioned in this and the following section must be the actual injury to the tree or shrub itself, and not the consequential injury resulting from the act of the defendant.—*Reg. vs. Whiteman, Dears. 353.*—The respective values of several trees, or of the damage thereto, may be added to make up the £5, in case the trees were cut down, or the damage done as part of one continuous transaction.—*Reg vs. Shepherd, 11 Cox, 119.*

Indictment for stealing trees, etc., in parks, etc., of the value above five dollars.—.....one oak tree of the value of eight dollars, the property of J. N., then growing in a certain park of the said J. N. situate... in the said



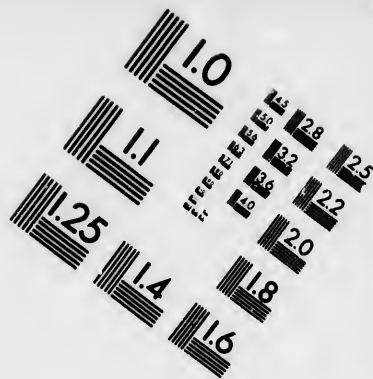
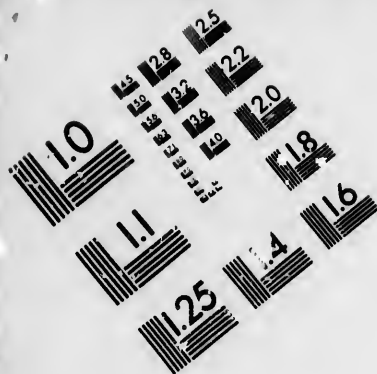
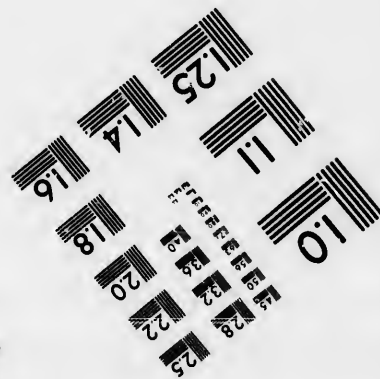
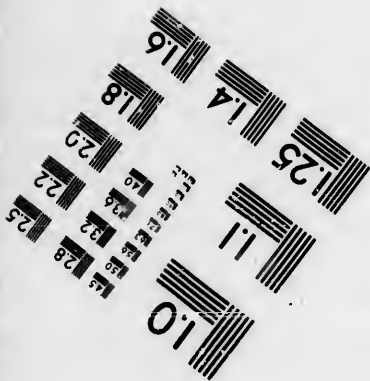
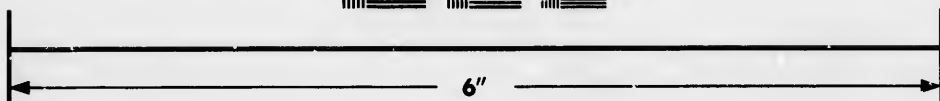
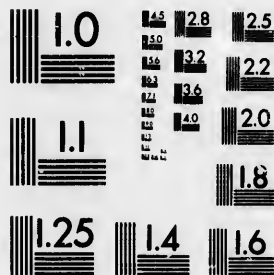


IMAGE EVALUATION TEST TARGET (MT-3)



Photographic
Sciences
Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

24 28 25
20 32 22
18 20

10
01

park, feloniously did steal, take and carry away, against
..... Archbold, 361.

Indictment under second part of the section.—.....one
ash-tree of the value of thirty dollars, the property of J.
N., then growing in a certain close of the said J. N.
situate..... in the said close, feloniously did steal, take
and carry away, against the form.....

It is not necessary to prove that the close was not a
park or garden, etc.—Archbold, 362.

See proviso to sect. 23, *post*.

STEALING TREES WORTH 25 CENTS. FIRST OFFENCE. SECOND
OFFENCE. THIRD OFFENCE.

Sect. 22.—Whosoever steals, or cuts, breaks, roots up
or otherwise destroys or damages with intent to steal,
the whole or any part of any tree, sapling, or shrub, or
any underwood, wheresoever the same may be respec-
tively growing, the stealing of such article or articles
or the injury done being to the amount of twenty-five
cents at the least, shall, on conviction thereof before a
Justice of the Peace, forfeit and pay, over and above the
value of the article or articles stolen, or the amount of
the injury done, such sum of money not exceeding twen-
ty-five dollars as to the justice may seem meet; and
whosoever, having been convicted of any such offence,
either against this or any former Act or Law, afterwards
commits any of the said offences in this section before
mentioned, and is convicted thereof in like manner,
shall for such second offence be committed to the common
gaol or house of correction, there to be kept to hard
labour for such term, not exceeding three months, as
the convicting Justice may think fit; and whosoever,
having been twice convicted of any such offence, whether

both or either of such convictions shall have taken place before or after the passing of this Act, afterwards commits any of the offences in this section before mentioned, is guilty of felony, and shall be liable to be punished in the same manner as in the case of simple larceny.—24–25 Vict., ch. 96, sect. 33, Imp.

By sect. 123, *post* offences punishable by summary conviction are to be prosecuted under 32–33 Vict., ch. 31.

As to punishment for simple larceny, see *ante*, sect. 4, and *post*, sect. 122.

See proviso to sect. 23, *post*.

As to indictment for any subsequent offence, see sect. 26, of the Procedure Act of 1869, which is based on sect. 116 of the English Larceny Act.

Indictment.—The Jurors for Our Lady the Queen, upon their oath present, that J. S. on one oak sapling of the value of forty cents, the property of J. N., then growing in certain land situate unlawfully did steal, take and carry away, against the form of the Statute in such case made and provided; and the jurors aforesaid, upon their oath aforesaid, do say, that heretofore, and before the committing of the offence herein before mentioned, to wit on at the said J. S. was duly convicted before J. P., one of Her said Majesty's Justices of the Peace for the said district of for that he, the said J. S., on (as in the first conviction) against the form of the Statute in such case made and provided; and the said J. S. was thereupon then and there adjudged, for his said offence, to forfeit and pay the sum of twenty dollars, over and above the value of the said tree so stolen as aforesaid, and the further sum of forty cents, being the value of the said tree, and also to pay the further sum of for costs; and in default of immediate payment of the said sums to be imprisoned in the common gaol of the said district of

..... for the space of unless the said sums should be sooner paid. (32-33 Vict., ch. 31). And the jurors aforesaid, upon their oath aforesaid, do further say, that heretofore and before the committing of the offence first hereinbefore mentioned, to wit, on at the said J. S. was duly convicted before O. P., one of Her said Majesty's Justices of the Peace for the said district of for that he.... (*setting out the second conviction in the same manner as the first and proceed thus*). And so, the jurors aforesaid, upon their oath aforesaid, do say, that the said J. S. on the day and year first aforesaid, the said oak sapling of the value of forty cents, the property of the said J. N., then growing in the said land situate..... feloniously did steal, take and carry away, against the form of the Statute in such case made and provided.—Archbold, 363; Greaves, on sect. 116 of the Larceny Act, and 37 of the Coin Act; Archbold 959; Reg. vs. Martin, 11 Cox 343, and remarks under sect. 12, of the Coin Act, 32-33 Vict., ch. 18, *ante*, page. 18.

PURCHASING OR RECEIVING STOLEN TREES.

Sect. 23.—If any person receives or purchases any tree or sapling, trees or saplings, or any timber made therefrom, exceeding in value the sum of ten dollars, knowing the same to have been stolen, or unlawfully cut or carried away, such receiver or purchaser shall be guilty of a misdemeanor, and may be indicted and convicted thereof, whether the principal offender has or has not been convicted, or be or be not amenable to justice, and be liable to the same punishment as the principal offender; provided that nothing in this or in either of the two next preceding sections contained, nor any proceeding, conviction or judgment to be had or taken thereupon,

shall prevent, lessen or impeach any remedy at law or in equity which any party aggrieved by any of the said offences would have had, if this Act had not been passed; nevertheless the conviction of the offender shall not be received in evidence in any action at law or suit in equity against him; and no person shall be convicted of either of the offences aforesaid, by any evidence disclosed by him on oath, in consequence of the compulsory process of a Court of law or equity in any action, suit or proceeding, instituted by any party aggrieved.

This clause is not in the English Act. The punishment would be the same as under sect. 21, *ante*, though the offence there is a felony, and here a misdemeanor: but by sect. 122, *post*, a fine may be imposed in lieu of any other punishment.

STEALING FENCES, GATES, ETC., ETC.

Sect. 24.—Whosoever steals or cuts, breaks or throws down with intent to steal, any part of any live or dead fence, or any wooden post, pale, wire or rail set up or used as a fence, or any stile or gate, or any part thereof respectively, shall, on conviction thereof before a Justice of the Peace, forfeit and pay, over and above the value of the article or articles so stolen, or the amount of the injury done, such sum of money not exceeding twenty dollars, as to the Justice may seem meet, and whosoever having been convicted of any such offence, either against this or any former Act or Law, afterwards commits any of the said offences in this section before mentioned, and is convicted thereof in like manner, shall be committed to the common gaol or house of correction, there to be kept to hard labour for such term not exceeding three months as the convicting Justice may think fit.—24-25 Vict., ch. 96, sect. 34, Imp.

See *post*, sect. 123, as to summary convictions under this Act.

POSSESSION OF STOLEN WOOD, ETC., ETC.

Section 25.—If the whole or any part of any tree, sapling or shrub, or any underwood, or any part of any live or dead fence, or any post, pale, wire, rail, stile or gate, or any part thereof, being of the value of twenty-five cents at the least, is found in the possession of any person, or on the premises of any person, with his knowledge, and such person being taken or summoned before a Justice of the Peace, does not satisfy the Justice that he came lawfully by the same, he shall, on conviction by the Justice, forfeit and pay, over and above the value of the article or articles so found, any sum not exceeding ten dollars.—24-25 Vict., ch. 96, sect. 35, Imp.

In *Reg. vs. Sunley*, Bell, 145, the words “found in possession” under another Statute, were explained; also, in *Reg. vs. Sleep*, L. & C. 44.

See *post*, sect. 123, as to summary convictions under this Act.

STEALING, ETC., PLANTS, ETC., ETC., IN GARDENS.

Sect. 26.—Whosoever steals, destroys or damages with intent to steal, any plant, root, fruit, or vegetable production growing in any garden, orchard, pleasure ground, nursery ground, hot-house, green-house or conservatory, shall, on conviction thereof before a Justice of the Peace, at the discretion of the Justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding one month, or else shall forfeit and pay, over and above the value of the article or articles so stolen or the amount of the injury done, such sum of money, not exceeding twenty dollars,

as to the Justice may seem meet. And whosoever having been convicted of any such offence, either against this or any former Act or Law, afterwards commits any of the offences in this section before mentioned, is guilty of felony, and shall be liable to be punished in the same manner as in the case of simple larceny.—24–25 Vict., ch. 96, sect. 36, Imp.

As to summary convictions under this Act, see *post*, s. 123. As to punishment for larceny, see *ante*, s. 4 and *post*, s. 122.

The words *plant* and *vegetable production* do not apply to young fruit trees.—*R. vs. Hodges, M. & M. 341*. Stealing trees would fall under sections 21 and 22.

Indictment.—The jurors for 'Our Lady the Queen, upon their oath present, that J. S. on twenty pounds' weight of grapes, the property of J. N., then growing in a certain garden of the said J. N. situate unlawfully did steal, take and carry away, against the form of the Statute in such case made and provided : And the jurors aforesaid, upon their oath aforesaid, do say that, heretofore, and before the committing of the offence hereinbefore mentioned, to wit, on at the said J. S. was duly convicted before J. P., one of Her Majesty's Justices of the peace for the said district of for that he, the said J. S., on (*as in the previous conviction*) against the form of the Statute in such case made and provided, and the said J. S. was thereupon then and there adjudged for the said offence to forfeit and pay the sum of twenty dollars, over and above the amount of the article so stolen as aforesaid, and the further sum of six shillings, being the amount of the said injury ; and also to pay the sum of ten shillings for costs, and in default of immediate payment of the said sums, to be imprisoned in for the space of unless the said sum should

be sooner paid, and so the jurors aforesaid, upon their oath aforesaid, do say, that the said J. S., on the day and in the year first aforesaid, the said twenty pounds' weight of grapes, the property of the said J. N., then growing in the said garden of the said J. N. situate . . . feloniously did steal, take and carry away, against the form of the Statute in such case made and provided.—Archbold, 367.

As to indictments for a subsequent offence, see *ante* under sect. 22.

STEALING VEGETABLE PRODUCTIONS NOT IN GARDENS.

Sect. 27.—Whosoever steals or destroys or damages with intent to steal, any cultivated root or plant used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture, and growing in any land open or enclosed, not being a garden, orchard, pleasure ground or nursery ground, shall, on conviction thereof before a Justice of the Peace, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding one month, or else shall forfeit and pay, over and above the value of the article or articles so stolen, or the amount of the injury done, such sum of money not exceeding five dollars, as to the Justice seems meet, and in default of payment thereof together with the costs, if ordered, shall be committed as aforesaid for any term not exceeding one month, unless payment be sooner made, and whosoever, having been convicted of any such offence, either against this or any former Act or Law, afterwards commits any of the said offences in this section before mentioned, and is convicted thereof in like manner, shall be committed to the common gaol or house of correction, there to be kept to hard labour, for such term not exceeding three months, as the

convicting Justice thinks fit.—24-25 Vict., ch. 96, sect. 37, Imp.

As to summary convictions, under this Act, see *post*, sect. 123.

Clover has been held to be a cultivated plant, Reg. vs. Brunsby, 3 C. & K. 315; but it was doubted whether grass were so.—Morris vs. Wise, 2 F. & F. 51.

STEALING FROM MINES, MINERS REMOVING ORE, ETC., ETC.

Sect. 28.—Whosoever steals or severs with intent to steal, the ore of any metal, or any quartz, lapis calaminaris, manganese, or mundick, or any piece of gold, silver or any other metal, or any wad, black cawlke or black lead, or any coal or cannel coal, *or any marble, stone or other mineral*, from any mine, bed or vein thereof respectively, is guilty of felony, and shall be liable to be imprisoned in any gaol or place of confinement other than a Penitentiary for any term less than two years, with or without hard labour, and with or without solitary confinement; provided that no person shall be held guilty of any offence for having, for the purposes of explanation or scientific investigation, taken any specimen, or specimens, of any ore or mineral from any piece of ground unenclosed and not occupied or worked as a mine, quarry or digging.—24-25 Vict., ch. 96, sect. 38, Imp.

The words in *italics* and the proviso are not in the English Act.

Sect. 29.—Whosoever being employed in or about any mine, quarry or digging, takes, removes or conceals any ore of any metal, or any quartz, lapis calaminaris, manganese, mundick, *or any piece of gold, silver or any other metal*, or any mineral found or being in such mine, quarry or digging with intent to defraud any proprietor

of or any adventurer in the same, or any workman or miner employed therein, is guilty of felony, and shall be liable to be imprisoned in any gaol or place of confinement other than a Penitentiary for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 96, sect. 39, Imp.

The words in *italics* are not in the English Act.

As to solitary confinement, see sect. 94, of the Procedure Act of 1869.

As to recognizances and sureties for keeping the peace in felonies under this Act, see *post*, sect. 122.

R. vs. Webb, 1 Mood. 421; Reg. vs. Holloway, 1 Den. 370; Reg. vs. Poole, Dears. & B. 345, would now fall under sect. 29. It must be alleged and proved that the ore was stolen from the mine.—Reg. vs. Trevenner, 2 M. & Rob. 476.

Indictment under sect. 28.—..... twenty pounds weight of copper ore, the property of J. N., from a certain mine of copper ore of the said J. N., situate.... feloniously did steal, take and carry away, against the form..... Archbold, 360.

Indictment under sect. 29.—..... at being then and there employed in a certain copper mine there situate, called the property of feloniously did take (*or remove or conceal*) fifty pounds weight of copper ore found in the said mine with intent thereby then to defraud the said 3 Burn's Just. 313.

See *post*, sect. 35, as to possession of gold or silver being *prima facie* evidence of larceny of it, in certain cases.

PENALTY FOR CONCEALING ROYALTY, SELLING OR PURCHASING GOLD, ETC., ETC.,

Sect. 30.—Whosoever being the holder of any lease or

license issued under the provisions of any Act relating to gold or silver mining, or by any private parties owning land supposed to contain any gold or silver, by any fraudulent device or contrivance, defrauds or attempts to defraud Her Majesty or any private party of any gold, silver or money payable or reserved by such lease, or with such intent as aforesaid, conceals or makes a false statement as to the amount of gold or silver procured by him, is guilty of a misdemeanor, and shall be liable to be imprisoned in any gaol or place of confinement other than a Penitentiary for any term less than two years, with or without hard labour, and with or without solitary confinement.

Sect. 31.—Whosoever, not being the owner or agent of mining claims then being worked, and not being thereunto authorized, in writing, by the commissioner or deputy commissioner of mines, in any district, or by the officer for the division in any gold mining division, or by any inspector or other proper officer in that behalf, named in any Act relating to mines in force in any Province of Canada, sells or purchases, except to or from such owner or authorized person, any quartz containing gold, or any smelted gold or silver, at or within three miles of any gold district, or mining district, or gold mining division, is guilty of a misdemeanor, and shall be liable to be imprisoned in any gaol or place of confinement other than a Penitentiary for any term less than two years, with or without hard labour, and with or without solitary confinement.

Sect. 32.—Whosoever purchases any gold in quartz, or any unsmelted or smelted gold or silver, or otherwise unmanufactured gold or silver of the value of one dollar or upwards, except from such owner or authorized person as in the last preceding section mentioned, and does not

at the same time execute in triplicate an instrument in writing, stating the place and time of purchase, and the quantity, quality and value of gold or silver so purchased, and the name or names of the person or persons from whom the same was purchased, and file the same in the office of the nearest commissioner or deputy commissioner of mines of the district, or officer for the division in the gold mining division, or of some inspector or other proper officer in that behalf named in any Act in force in the Province in which such purchase is made, within twenty days next after the date of such purchase, is guilty of a misdemeanor, and shall be liable to any penalty not exceeding in amount double the value of the gold or silver purchased, and to be imprisoned in any gaol or place of confinement, other than the Penitentiary, for any term less than two years, with or without hard labour, and with or without solitary confinement.

These three sections are not in the English Act.

See *post*, sect. 122, for fine and sureties in misdemeanors under this Act.

As to solitary confinement, see sect. 94 of the Procedure Act of 1869.

Sect. 36, *post*, applies to indictments under sections 31 and 32.

SEARCH WARRANT FOR GOLD, ETC., ETC. APPEAL, ETC., ETC.

Sect 33.—On complaint in writing made to any Justice of the Peace 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 search, any such gold or gold-bearing quartz, or silver or silver ore be 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.

Sect. 34.—The decision of such Justice shall be subject to appeal as in ordinary cases, on summary conviction; but before such appeal shall be allowed, the appellant shall enter into a recognizance in the manner by law provided in cases of appeal from summary conviction, to the value of the gold or other property in question that he will prosecute his appeal at the next sittings of any Court having jurisdiction in that behalf, and will pay the costs of the appeal in case of a decision against him, and in case of the defendant appealing that he will pay such fine as the Court may impose, with costs.

These two sections are not in the English Act.

In a search warrant, the particular thing or things intended to be searched for should be described as accurately as the nature of the case will allow.—Greaves, Cons. Acts 399.

POSSESSION OF GOLD, ETC., ETC., IN CERTAIN CASES,
EVIDENCE OF LARCENY,—FORM OF INDICTMENT. X

Sect. 35.—When any smelted gold or silver, or any gold-bearing quartz, or any unsmelted or otherwise unmanufactured gold or silver, is found in the possession of any operative, workman or labourer, actively engaged in or on any mine, contrary to the provisions of any law in that behalf, such possession shall be *prima facie* evidence that the same has been stolen by him.

Sect. 36.—In any indictment brought under any of the five next preceding sections, it shall be sufficient to lay the property in the Queen, or in any person

or persons, or corporation, in different counts in such indictment; and any variance in the latter case, between the statement in the indictment and the evidence adduced, may be amended at the trial, and if no owner be proved the indictment may be amended by laying the property in the Queen.

These clauses are not in the English Act.

Sect. 36 can only apply to indictments under sections 31 and 32; there are no indictments under the three next preceding sections.

FRAUD ON PARTNERS.

Sect. 37.—Whosoever, with intent to defraud his co-partner, co-adventurer, joint tenant or tenant in common, in any claim or in any share or interest in any claim, secretly keeps back or conceals any gold or silver found in or upon or taken from such claim, is guilty of felony, and shall be liable to be punished in the same manner as in the case of simple larceny. (*Not in the English Act.*)

See *ante*, sect. 4, as to punishment for simple larceny, and *post*, sects. 110 and 122.

LARCENY BY PARTNERS.

Sect. 38.—Whosoever, being a member of any co-partnership owning any money or other property, or being one of two or more beneficial owners of any money or other property, steals, embezzles or *unlawfully converts the same or any part thereof to his own use, or that of any person other than the owner*, shall be liable to be dealt with, tried, convicted and punished as if he had not been or were not a member of such co-partnership, or one of such beneficial owners.—31-32 Vict., ch. 116, sect. 1, Imp.

The English clause reads thus: "If any person, being

a member of any co-partnership, or being one of two or more beneficial owners of any money, goods or effects, bills, notes, securities, or other property, shall steal or embezzle any such money, goods or effects, bills, notes, securities or other property, of or belonging to any such co-partnership, or to such joint beneficial owners, every such person shall be liable to be dealt with, tried, convicted and punished for the same as if such person had not been or was not a member of such co-partnership, or one of such beneficial owners."

A partner stole goods belonging to the firm, and rendered himself liable to be dealt with as a felon under the 31-32 Vict., ch. 116, sect. 1, (*the present clause*), and sold the same to the prisoner who knew of their having been stolen: *held*, that the prisoner could not be convicted on an indictment for feloniously receiving, under the 24-25 Vict., ch. 96, sect. 91, (*sect. 100 of our Larceny Act*), but might have been convicted as an accessory after the fact under the 24-25 Vict., ch. 94, sect. 3, (*31 Vict., ch. 72 of our Statutes*) on an indictment properly framed.—Reg. vs. Smith, 11 Cox, 511.

An indictment framed upon the 31-32 Vict., ch. 116, sect. 1, alleged that B. was a member of a co-partnership consisting of B. and L., and that B., then being a member of the same, eleven bags of cotton waste, the property of the said co-partnership, feloniously did steal, take and carry away: *held*, that the indictment was not bad for introducing the word "feloniously."—Reg. vs. Butterworth, 12 Cox, 132. In this case, Cottingham, for the prisoner, said: "The indictment is bad because it does not follow the words of the Statute. That enactment creates a new offence, one which did not exist at common law; it does not say that the offence shall be a felony, and the indictment is bad for using the word

"feloniously." There are offences of stealing, which are not felonies, such as dog stealing." Lush, J., said: "If the offence created by this section is not a felony, what is it?" And the Court, without calling upon the counsel for the prosecution, affirmed the conviction, holding the objection not arguable.

Indictment.—The Jurors for Our Lady the Queen, upon their oath present, that on at Thomas Butterworth, of was a member of a certain co-partnership, to wit, a certain co-partnership carrying on the business of and trading as waste dealer, and which said co-partnership was constituted and consisted of the said Thomas Butterworth and of John Joseph Lee, trading as aforesaid; and thereupon, the said Thomas Butterworth, at aforesaid, during the continuance of the said co-partnership, and then being a member of the same as aforesaid, to wit, on the day and year aforesaid, eleven bags of cotton waste of the property of the said co-partnership feloniously did steal, take and carry away, against the form of the Statute in such case made and provided, and against the peace of Our said Lady the Queen, her crown and dignity.—Reg. vs. Butterworth, *supra*.

See Reg. vs. Ball, 12 Cox, 96, for an indictment against a partner for embezzlement of partnership property; also Reg. vs. Blackburn, 11 Cox, 157; in these two cases the defendants were indicted under this section.

The importance of the decision, given by Mr. Justice Ramsay, in April last, upon the interpretation of this clause (38 of the Larceny Act) is a sufficient excuse for inserting it here, though Canadian cases are not generally referred to in these notes:—

Court of Queen's Bench, Crown side. Montreal, 13th April, 1874. Regina vs. John Lowenbruck. Ramsay, J.:

"The prisoner is indicted for stealing money, the property of the partnership of which he is a partner, under sect. 38 of the Larceny Act of 1869. If it was the intention of the Legislature to overthrow the whole order of ideas as to the subject of larceny and embezzlement, they should have proceeded with a little more care than they have done in this section. This would have a double good effect. First the reducing the thing proposed to precise words would have the effect of making the proposition clear to the mind of the proposer; and secondly, it would warn the public what it is necessary to avoid. The Act really says that if the joint owner steals or embezzles any money or other property of which he is joint owner "he shall be liable to be dealt with, tried, convicted and punished, as if he had not been or were not a member of such co-partnership, or one of such beneficial owners." But, he cannot steal or embezzle it; therefore, the indictment for stealing or embezzling must fail. This is sufficient for me to say to determine the present case; but there is another category. If any such joint owner unlawfully converts the same, he shall be liable to be dealt with, tried, convicted and punished, as if he had not been or were not a member of such co-partnership, or one of such beneficial owners. At worst, he is only in the position of one unlawfully converting. How far is that indictable? Section 99, it is said, will meet the difficulty; but, on looking closely at that section, it will be seen that its object is to meet the case of larceny being laid in the indictment, and the obtention by false pretences, only, being proved. The indictment could not have been laid, or the case for the Crown been more satisfactorily proved, but the prosecution must fail, because the section of the Statute could not be applied. To have had the effect

sought to be given to it, the Statute should have stated that the unlawful conversion of the partnership property should be deemed to be larceny. But if the Act had been drawn in that form, it can hardly be supposed it would have passed. Such a law would destroy any tangible distinction between guilt and innocence, for partners are every hour of the day found unlawfully converting the partnership property, if their Acts were strictly examined. The simple unlawful conversion of the property of another is not indictable, and it should not be made indictable."

On the first category, provided for by this section, the English and Canadian Statutes are in the same terms, and since 1868, that the Statute is in operation in England, it has been, there, thought sufficiently to say that a partner who *steals* partnership property is guilty of larceny. Of course the taking must be *felonious*, and accompanied by the necessary circumstances, and have the ingredients required to constitute it a larceny. See the English cases, cited *ante*. And a partner, at common law, may be guilty of larceny of the partnership's property: so may a man be guilty of larceny of his own goods, *Regina vs. Webster, L. & C. 77*; *Regina vs. Burgess, L. & C. 299*; *Regina vs. Moody, L. & C. 173*: of course, that is when the property is stolen from another person in whose custody it is, and who is responsible for it. See also, Bovill's (C. J.) opinion in *Reg. vs. Diprose, 11 Cox, 185*.

As to the second category provided for by this section the words of the Statute do not seem to mean that all unlawful conversions by a partner of partnership property will be indictable, but only that, when the converting would be a misdemeanor in any other case, the fact that the property is partnership property, will not alter

the nature of the offence: extending in fact to misdemeanors, the English Act, which applies only to felonies within this kind of offences. A. and B. are in partnership, under the name of A. & Co.: there are there, three persons in law, 1, A; 2, B., and 3, the firm of A. & Co. If A. takes ten dollars from the firm of A. & Co., under such circumstances that the taking would be a larceny if A. were not a member of the firm, the fact that he is such a member of the firm, and consequently joint owner of these ten dollars, will not alter the criminal nature of the taking, and A. will be guilty of larceny. Is not that what the Statute means? Is not that what it says?

ROBBERY AND STEALING FROM THE PERSON.

Sect. 39.—Whosoever robs any person, or steals any chattel, money or valuable security from the person of another, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 96, sect. 40, Imp.

Sect. 40.—If upon the trial of any person upon an indictment for robbery it appears to the jury upon the evidence that the defendant did not commit the crime of robbery, but that he did commit an assault with intent to rob, the defendant shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that the defendant is guilty of an assault with intent to rob; and thereupon such defendant shall be liable to be punished in the same manner as if he had been convicted upon an indictment for feloniously assaulting with intent to rob, (*next clause*)

and no person so tried as is herein lastly mentioned shall be liable to be afterwards prosecuted for an assault with intent to commit the robbery for which he was so tried.—24-25 Vict., ch. 96, sect. 41, Imp.

Sect. 41.—Whosoever assaults any person with intent to rob is guilty of felony, and shall (save and except in cases where a greater punishment is provided by this Act) be liable to be imprisoned in the Penitentiary for any term not exceeding three years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 96, sect. 42, Imp.

As to requiring the offender to enter into recognizances and give sureties for the peace, see *post*, sect. 122.—As to solitary confinement, see sect. 94 of the Procedure Act of 1869.

Indictment for stealing from the person under sect. 39—
 one watch, one pocket-book and one pocket handkerchief of the goods and chattels of J. N., of from the person of the said J. N. feloniously did steal, take, and carry away, against the form Archbold, 419.

The words “from the person of the said J. N.” constitute the characteristic of this offence, as distinguished from simple larceny: the absence of force, violence or fear distinguishes it from robbery.

The indictment need not negative the force or fear necessary to constitute robbery; and though it should appear upon the evidence that there was such force or fear, the punishment for stealing from the person may be inflicted.—*R. vs. Robinson*, R. & R. 321; *R. vs. Pearce*, R. & R. 174.

To constitute a stealing from the person, the thing

taken must be completely removed from the person. Where it appeared that the prosecutor's pocket book was in the inside front pocket of his coat, and the prosecutor felt a hand between his coat and waistcoat attempting to get the book out, and the prosecutor thrust his right hand down to his book, and on doing so brushed the prisoner's hand; the book was just lifted out of the pocket, an inch above the top of the pocket, but returned immediately into the pocket: it was held by a majority of the judges that the prisoner was not rightly convicted of stealing from the person, because from first to last the book remained about the person of the prosecutor, but the judges all agreed that the simple larceny was complete. On ten judges, four were of opinion that the stealing from the person was complete.—R. vs. Thompson, 1 Mood. 78. Of course the prisoner could now, under these circumstances, be found guilty of the attempt to commit the offence, under sect. 49, of the Procedure Act of 1869.

Where the prosecutor carried his watch in his waistcoat pocket, fastened to a chain, which was passed through a button-hole of the waistcoat, and kept there by a watch-key at the other end of the chain; and the defendant took the watch out of the pocket, and forcibly drew the chain and key out of the button-hole, but the point of the key caught upon another button, and the defendant's hand being seized, the watch remained there suspended, this was held a sufficient severance. The watch was no doubt temporarily, though but for a moment, in the possession of the prisoner.—Reg. vs. Simpson, Dears. 621. In this case, Jervis, C. J., said he thought the minority of the judges in Thompson's case, *supra*, were right.

Where a man went to bed with a prostitute, leaving

his watch in his hat, on the table, and the woman stole it whilst he was asleep, it was held not to be stealing from the person, but stealing in the dwelling-house.—*R. vs. Hamilton*, 8 C. & P. 49.

Upon the trial of any indictment for stealing from the person, if no asportation be proved, the jury may convict the prisoner of an attempt to commit that offence, under sect. 49, of the Procedure Act of 1869.

In *Reg. vs. Collins, Leigh & Cave* 471, it was held that there can only be an attempt to commit an act, where there is such a beginning as if uninterrupted would end in the completion of the act, and that if a person puts his hand into a pocket with intent to steal, he cannot be found guilty of an attempt to steal, if there was nothing in the pocket. But, *Bishop, Cr. Law*, Vol. 1, 741, censures this decision. By sects. 59 and 60, of 32-33 Vict., ch. 20, attempting to procure abortion is a crime, *whether the woman be with child or not*. And rightly so, it is the criminal intent, the *mens rea*, which deserves punishment. But why not so for the other case? What is the difference between putting the hand into the pocket and not finding there anything to be removed, and penetrating to the womb, and there finding no embryo or foetus, in the first case to steal whatever may be in the pocket, in the second case to destroy whatever there may be in the womb.—*Bishop, loc. cit.*

Indictment for robbery under sect. 39.— . . . in and upon one J. N. feloniously did make an assault, and him, the said J. N., in bodily fear and danger of his life then feloniously did put, and the moneys of the said J. N., to the amount of ten pounds, from the person and against the will of the said J. N. then feloniously and violently did steal, take and carry away, against the form. . . . *Archbold*, 419.

The indictment may charge the defendant with having assaulted several persons, and stolen different sums from such, if the whole was one transaction.—Archbold, *loc. cit.*

The crime of robbery is a species of theft, aggravated by the circumstances of a taking of the property *from the person or whilst it is under the protection of the person by means either of violence "or" putting in fear.*—4th Rep. Cr. L. Commrs. LXVII.

Robbery is larceny committed by violence from the person of one put in fear.—Bishop, 2 Cr. Law. 1156.

This definition differs in the form of expression, though not in substance, from what has been given by preceding authors.

To constitute this offence, there must be, 1, a larceny embracing the same elements as a simple larceny. 2. Violence, but it need only be slight, for anything which calls out resistance is sufficient, or what will answer in place of actual violence, there must be such demonstrations as put the person robbed in fear. The demonstrations of fear must be of a physical nature, (a threatened charge of a crime falling now under sect. 45.) And 3, the taking must be from what is technically called the "person", the meaning of which expression is, not that it must necessarily be from the actual contact of the person, but it is sufficient if it is from the personal protection and presence.—Bishop, Stat. crimes, 517.

1. *Larceny.*—Robbery is a compound larceny, that is it is larceny aggravated by particular circumstances. Thus, the indictment for robbery must contain the description of the property stolen as in an indictment for larceny: the ownership must be in the same way set out, and so of the rest. Then if the aggravating matter is not proved at the trial, the defendant may be convicted of the

simple larceny. If a statute makes a larceny to steal a thing of which there could be no larceny at the common law, then it becomes, by construction of law, a robbery, to take this thing forcibly and feloniously from the person of one put in fear.. Bishop, 2 Cr. Law, 1158, 1159, 1160. An actual taking either by force or upon delivery must be proved, that is, it must appear that the robber actually got *possession* of the goods. Therefore if a robber cut a man's girdle in order to get his purse, and the purse thereby fell to the ground, and the robber run off or be apprehended before he can take it up, this would not be robbery, because the purse was never in the possession of the robber.—1 Hale, P. C. 553.

But it is immaterial whether the taking were by force or upon delivery, and if by delivery, it is also immaterial whether the robber have compelled the prosecutor to it by a direct demand in the ordinary way, or upon any colourable pretence.—Archbold, 417.

A carrying away must also be proved as in other cases of larceny. And therefore where the defendant, upon meeting a man carrying a bed, told him to lay it down or he would shoot him, and the man accordingly laid down the bed, but the robber, before he could take it up so as to remove it from the place where it lay, was apprehended, the judges held that the robbery was not complete.—R. vs. Farrell, 1 Leach, 362; 2 East P. C. 557.

But a momentary possession though lost again in the same instant, is sufficient. James Lapier was convicted of robbing a lady and taking from her person a diamond earring. The fact was that as the lady was coming out of the opera house she felt the prisoner snatch at her earring and tear it from her ear, which bled, and she was much hurt, but the earring fell into her hair, where it

was found after she returned home. The judges were all of opinion that the earring being in the possession of the prisoner for a moment, separate from the lady's person, was sufficient to constitute robbery, although he could not retain it, but probably lost it again the same instant.—2 East P. C. 557.

If the thief once takes possession of the thing, the offence is complete, though he afterwards return it: as if a robber finding little in a purse which he had taken from the owner, restored it to him again, or let it fall in struggling, and never take it up again, having once had possession of it.—2 East, loc. cit.; 1 Hale, 533; R. vs. Peat, 1 Leach, 228; Archbold 417.

The taking must have been feloniously done, that is to say *animo furandi*, as in larceny, and against the will of the party robbed, that is, that they were either taken from him by force and violence, or delivered up by him to the defendant, under the impression of that degree of fear and apprehension which is necessary to constitute robbery.—Archbold, 417.

Where on an indictment for robbery, it appeared that the prosecutor owed the prisoner money, and had promised to pay him five pounds, and the prisoner violently assaulted the prosecutor, and so forced him then and there to pay him his debt, Erle, C. J., said that it was no robbery, there being no felonious intent.—Reg. vs. Hemmings, 4 F. & F. 50.

2. *Violence*.—The prosecutor must either prove that he was actually in bodily fear from the defendant's actions, at the time of the robbery, or he must prove circumstances from which the court and jury may presume such a degree of apprehension of danger as would induce the prosecutor to part with his property; and in this latter case, if the circumstances thus proved be such as

are calculated to create such a fear, the court will not pursue the inquiry further, and examine whether the fear actually existed. Therefore if a man knock another down, and steal from him his property whilst he is insensible on the ground, that is robbery. Or suppose a man makes a manful resistance, but is overpowered and his property taken from him by the mere dint of superior strength, this is a robbery.—*Foster*, 128 ; *R. vs. Davies*, 2 East P. C. 709.

On Mrs. Jeffries coming out of a ball, at St. James' Palace, where she had been as one of the maids of honor, the prisoner snatched a diamond pin from her headdress with such force as to remove it with part of the hair from the place in which it was fixed, and ran away with it : held, to be a robbery.—*R. vs. Moore*, 1 Leach, 335. See *supra*, *Lapier* se, 1 Leach, 320.

Where the defendant laid hold of the seals and chain of the prosecutor's watch and pulled the watch out of his fob, but the watch, being secured by a steel chain which went round the prosecutor's neck, the defendant could not take it until, by pulling and two or three jerks, he broke the chain, and then ran off with the watch ; this was holden to be robbery.—*R. vs. Mason, Rus. & Ry.* 419.—But merely snatching property from a person unawares, and running away with it, will not be robbery,—*R. vs. Steward*, 2 East P. C. 702 ; *R. vs. Horner*, Id. 703 ; *R. vs. Baker*, 1 Leach, 290 ; *R. vs. Robins*, do, do ; *R. vs. Macaulay*, 1 Leach, 287 ; *Archbold*, 414,—because fear cannot in fact be presumed in such a case.—When the prisoner caught hold of the prosecutor's watch-chain, and jerked his watch from his pocket with considerable force, upon which a scuffle ensued, and the prisoner was secured, *Garrow, B.*, held that the force used to obtain the watch did not make the offence amount to robbery,

nor did the force used afterwards in the scuffle; for the force necessary to constitute robbery must be either immediately before or at the time of the larceny, and not after it.—*R. vs. Gnosil*, 1 C. & P. 304.—The rule, therefore, appears to be well established, that no sudden taking or snatching of property unawares from a person is sufficient to constitute robbery, unless some injury be done to the person, or there be a previous struggle for the possession of the property, or some force used to obtain it.—*Archbold*, loc cit.; 2 *Russell*, 104.

If a man take another's child, and threaten to destroy him, unless the other give him money, this is robbery.—*R. vs. Reane*, 2 East P. C. 735; *R. vs. Dounolly*, Id. 718. So where the defendant, at the head of a mob, came to the prosecutor's house and demanded money, threatening to destroy the house unless the money were given, the prosecutor therefore gave him five shillings, but he insisted on more, and the prosecutor, being terrified, gave him five shillings more: the defendant and the mob then took bread, cheese and cider from the prosecutor's house, without his permission, and departed, this was holden to be a robbery as well of the money as of the bread, cheese and cider.—*R. vs. Simons*, 2 East P. C. 731; *R. vs. Brown*, Id.—So where during some riots at Birmingham, the defendant threatened the prosecutor that unless he would give a certain sum of money, he should return with the mob and destroy his house, and the prosecutor, under the impression of this threat, gave him the money, this was holden by the judges to be robbery.—*R. vs. Astly*, 2 East P. C. 729.—So where, during the riots of 1780, a mob, headed by the defendant, came to the prosecutor's house, and demanded half a crown, which the prosecutor, from terror of the mob, gave, this was holden to be robbery, although no threats were uttered.

—R. vs. Taplin, 2 East P.C. 712.—Upon an indictment for robbery, it appeared that a mob came to the house of the prosecutor, and with the mob the prisoner who advised the prosecutor to give them something to get rid of them, and prevent mischief, by which means they obtained money from the prosecutor; and Parke, J., after consulting Vaughan and Anderson, J. J., admitted evidence of the *acts of the mob* at other places before and after on the same day, to show that the advice of the prisoner was not *bonâ fide*, but in reality a mere mode of robbing the prosecutor.—R. vs. Winkworth, 4 C. & P. 444; Archbold, 414.—Where the prosecutrix was threatened by some person at a mock auction to be sent to prison, unless she paid for some article they pretended was knocked down to her, although she never bid for it; and they accordingly called in a pretended constable, who told her that unless she gave him a shilling, she must go with him, and she gave him a shilling accordingly, not from any apprehension of personal danger but from a fear of being taken to prison, the judges held that the circumstances of the case were not sufficient to constitute the offence of robbery: it was nothing more than a simple duress, or a conspiracy to defraud.—R. vs. Knewland, 2 Leach, 721; 2 Russell, 118. This case is now provided for by sect. 44, *post*.—In Reg. vs. MacGrath, 11 Cox, 347, a woman went into a mock auction room, where the prisoner professed to act as auctioneer. Some cloth was put up by auction, for which a person in the room bid 25 shillings. A man standing between the woman and the door said to the prisoner that she had bid 26 shillings for it, upon which the prisoner knocked it down to the woman. She said she had not bid for it, and would not pay for it, and turned to go out. The prisoner said she must pay for it, before she would be allowed to go out, and she was pre-

vented from going out. She then paid 26 shillings to the prisoner, because she was afraid, and left with the cloth: the prisoner was indicted for larceny, and having been found guilty, the conviction was affirmed: but Martin, B., was of opinion that the facts proved also a robbery.—Where the defendant with an intent to take money from a prisoner who was under his charge for an assault, handcuffed her to another prisoner, kicked and beat her whilst thus handcuffed, put her into a hackney coach for the purpose of carrying her to prison, and then took four shillings from her pocket for the purpose of paying the coach hire: the jury finding that the defendant had previously the intent of getting from the prosecutrix whatever money she had, and that he used all this violence for the purpose of carrying his intent into execution, the judges held clearly that this was robbery.—*R. vs. Gascoigne*, 2 East P. C. 709.—Even in a case where it appeared that the defendant attempted to commit a rape upon the prosecutrix, and she, without any demand from him, gave him some money to desist, which he put into his pocket, and then continued his attempt until he was interrupted; this was holden by the judges to be robbery, for the woman from violence and terror occasioned by the prisoner's behaviour, and to redeem her chastity, offered the money which it is clear she would not have given voluntarily, and the prisoner, by taking it derived that advantage to himself from his felonious conduct, though his original intent was to commit a rape.—*R. vs. Blackham*, 2 East P. C. 711.

And it is of no importance under what pretence the robber obtains the money, if the prosecutor be forced to deliver it from actual fear, or under circumstances from which the Court can presume it. As for instance, if a man with a sword drawn ask alms of me, and I give it him through mistrust and apprehension of violence, this

is a felonious robbery.—4 Blackst. Comm. 243.—Thieves come to rob A., and finding little about him enforce him by menace of death to swear to bring them a greater sum, which he does accordingly; this is robbery: not for the reason assigned by Hawkins, because the money was delivered while the party thought himself bound in conscience to give it by virtue of the oath, which in his fear he was compelled to take; which manner of stating the case affords an inference that the fear had ceased at the time of the delivery, and that the owner then acted solely under the mistaken compulsion of his oath. But the true reason is given by Lord Hale and others: because the fear of that menace still continued upon him at the time he delivered the money.—2 East P. C. 714.—Where the defendant, at the head of a riotous mob, stopped a cart laden with cheeses, insisting upon seizing them for want of a permit: after some altercation, he went with the driver, under pretence of going before a magistrate and during their absence the mob pillaged the cart; this was holden to be a robbery.—Merriman vs. Hundred of Chippenham, 2 East P. C. 709. On this case, it is well observed that the opinion that it amounted to a robbery must have been grounded upon the consideration that the first seizure of the cart and goods by the defendant, being by violence and while the owner was present, constituted the offence of a robbery.—2 Russell, 111.

So where the defendant took goods from the prosecutrix of the value of eight shillings, and by force and threats compelled her to take one shilling, under pretence of payment for them, this was holden to be a robbery.—Simon's case and Spencer's case, 2 East P. C. 712.—The fear must precede the taking. For if a man privately steal money from the person of another, and afterwards keep it by putting him in fear, this is no robbery,

for the fear is subsequent to the taking.—*R. vs. Harman*, 1 Hale, 534, and *R. vs. Gnosil, ante. Archbold*, 416.

“It remains further to be considered of what nature this fear may be. This is an inquiry the more difficult, because it is nowhere defined in any of the acknowledged treatises upon the subject. Lord Hale proposes to consider what shall be said a putting in fear, but he leaves this part of the question untouched. Lord Coke and Hawkins do the same. Mr. Justice Foster seems to lay the greatest stress upon the necessity of the property's being taken *against the will of the party*, and he leaves the circumstance of fear out of the question; or that at any rate, when the fact is attended with circumstances of evidence or terror, the law, *in odium spoliatoris*, will presume fear if it be necessary, where there appear to be so just a ground for it. Mr. Justice Blackstone leans to the same opinion. But neither of them afford any precise idea of the nature of the fear or apprehension supposed to exist. Staunford defines robbery to be a felonious taking of anything from the person or in the presence of another *openly and against his will*; and Bracton also rests it upon the latter circumstance. I have the authority of the Judges, as mentioned by Willes, J., in delivering their opinion in Donnelly's case, in 1779, to justify me in not attempting to draw the exact line in this case; but thus much, I may venture to state, that on the one hand the fear is not confined to an apprehension of bodily injury, and on the other hand, it must be of such a nature as in reason and common experience is likely to induce a person to part with his property against his will, and to put him, as it were, under a temporary suspension of the power of exercising it through the influence of the terror impressed; in which case fear supplies, as well in sound reason as in legal construction, the place of force, or an

actual taking by violence, or assault upon the person."—2 East P. C. 713.

It has been seen, *ante*, R. vs. Astley, 2 East P. C. 729, that a threat to destroy the prosecutor's house, is deemed sufficient by law to constitute robbery, if money is obtained by the prisoner in consequence of it. Bishop, 2 Cr. L. 1171, says that this is no exception to the law, which requires violence or fear of bodily injury, because one without a house is exposed to the inclement elements: so that to deprive a man of his house, is equivalent to inflicting personal injury upon him. In general terms, the person robbed must be, in legal phrase, put in fear. But if force is used, there need be no other fear than the law will imply from it: there need be no fear in fact. The proposition is sometimes stated to be, that there must be either force or fear, while there need not be both. The true distinction is doubtless that, where there is no actual force, there must be actual fear, but where there is actual force, the fear is conclusively inferred by the law. And within this distinction, assaults, where there is no actual battery, are probably to be deemed actual force. Where neither this force is employed, nor any fear is excited, there is no robbery, though there be reasonable grounds for fear.—Bishop, 2 Cr. Law, 1174. Thus to constitute a robbery from the person, if there is no violence, actual or constructive, the party beset must give up his money through fear; and when his fears are not excited, but his secret motive for yielding is to prosecute the offender, this crime is not committed. When, however, there is an assault, such as would furnish a reasonable ground for fear, the offence of robbery is held to be complete, though the person assaulted parts with his money for the purpose of appre-

hending and bringing to punishment the wrong doer.—
Bishop, 1 Cr. Law, 438.

From the person.—The goods must be proved to have been taken *from the person* of the prosecutor. The legal meaning of the word *person*, however, is not here, that the taking must necessarily be from the actual contact of the body, but if it is from under the personal protection, that will suffice. Within this doctrine, the person may be deemed to protect all things belonging to the individual, within a distance, not easily defined, over which the influence of the personal presence extends. If a thief, says Lord Hale, (1 Vol. 533) come into the presence of A., and with violence and putting A. in fear, drives away his horse, cattle or sheep, he commits robbery. But if the taking be not either directly from his person, or in his presence, it is no robbery.—Bishop, 2 Cr. Law, 1178; Blackst. Comment, 4 Vol. 242. In robbery, says East, 2 P. C. 707, it is sufficient if the property be taken in the presence of the owner: it need not be taken immediately from his person, so that there be violence to his person, or putting him in fear. As where one, having first assaulted another, takes away his horse standing by him; or having put him in fear, drives his cattle out of his pasture in his presence, or takes up his purse which the other in his fright had thrown into a bush. Or, adds Hawkins, rob my servant of my money before my face, *after having first assaulted me*.—1 Hawkins, 214.—Where, on an indictment for robbery, it appeared that the prosecutor gave his bundle to his brother to carry for him, and while they were going along the road the prisoner assaulted the prosecutor, upon which his brother laid down his bundle in the road, and ran to his assistance, and one of the prisoners then ran away with the bundle; Vaughan, B., intimated an opinion that under

these circumstances the indictment was not sustainable, as the bundle was in the possession of another person at the time when the assault was committed. Highway robbery was a felonious taking of the property of another by violence against his will, either from his person or in his presence: the bundle in this case was not in the prosecutor's possession. If these prisoners intended to take the bundle, why did they assault the prosecutor, and not the person who had it.—*R. vs. Fallows*, 2 Russell, 107. The prisoners were convicted of a simple larceny. *Quære*, whether if the indictment had been for robbing the brother, who was carrying the bundle, it might not have been sustained, as it was the violence of the prisoners that made him put it down and it was taken in his presence. In *R. vs. Wright, Styles*, 156, it was holden that if a man's servant be robbed of his master's goods in the sight of his master, this is robbery of the master.—Note by Greaves.

Where on an indictment for robbery and stealing from the person, it was proved that the prosecutor who was paralyzed, received, whilst sitting on a sofa in a room, a violent blow on the head from one prisoner, whilst the other prisoner went and stole a cash-box from a cupboard in the same room: it was held that the cash-box being in the room in which the prosecutor was sitting, and he being aware of that fact, it was virtually under his protection; and it was left to the jury to say whether the cash-box was under the protection of the prosecutor at the time it was stolen.—*S Cox*, 235.

Indictment.—The offence of robbery being felony, it is necessary for the indictment to charge the act to have been committed "feloniously." There is some reason to suppose that, if this word "feloniously" is prefixed to the first material allegation, its force will extend

through and qualify the rest.—Reg. vs. Nicho'son, 1 East 346. But, however this may be, if the violence which enters into the offence, as one of its ingredients, is the first thing stated in the indictment, and the word "feloniously" is not employed to qualify it, but is inserted in a subsequent part of the indictment, the whole will be insufficient. Thus, if the allegation is that the defendant "in the king's highway, therein and upon one.....did make an assault, and him the said.....in corporeal fear and danger of his life, then and there feloniously did put, and one metal watch of the property of the said..... then and there feloniously did steal, take and carry away".....it will be inadequate, because it does not charge the assault to have been feloniously made.—R. vs. Pelfryman and Randall, 2 Leach, 563; Bishop, 2 Cr. Proced. 1003. The taking must be charged to be with violence from the person, and against the will of the party; but it does not appear certain that the indictment should also charge that he was put in fear, though this is usual, and therefore, safest to be done.

But in the conference on Donnelly's case, where the subject was much considered, it was observed by Eyre, B., that the more ancient precedents did not state the putting in fear, and that though others stated the putting in corporeal fear, yet the putting in fear of life was of modern introduction. Other judges considered that the gist of the offence was the taking by violence, and that the putting in fear was only a constructive violence, supplying the place of actual force. In general, however, as was before observed, no technical description of the fact is necessary, if upon the whole it plainly appears to have been committed with violence against the will of the party—2 East. P. C. 783.

The ownership of the property must be alleged the

same as in an indictment for larceny. The value of the articles stolen need not be stated. In *Reg. vs. Bingley*, 5 C. & P. 602, the prisoner robbed the prosecutor of a piece of paper, containing a memorandum of money that a person owed him, and it was held sufficient to constitute robbery.

By sect. 40, if the robbery be not proved, the jury may return a verdict of an assault with intent to rob, if the evidence warrants it, and then the defendant is punishable as under sect. 41. By sect. 51 of the Procedure Act of 1869, if the intent be not proved, a verdict of common assault may be given. *Reg. vs. Archer*, 2 Mood. 283; *Reg. vs. Hagan*, 8 C. & P. 174; *Reg. vs. Ellis*, 8 C. & P. 654; *Reg. vs. Nicholls*, 8 C. & P. 269. *Reg. vs. Woodhall*, 12 Cox, 240, is not to be followed here, as the enactment to the same effect is, now, in England, repealed.

ROBBERY, WITH AGGRAVATED CIRCUMSTANCES.

Sect. 42.—Whosoever being armed with any offensive weapon or instrument, robs or assaults with intent to rob any person, or together with one or more other person or persons, robs or assaults with intent to rob any person, or robs any person, and at the time of or immediately before or immediately after such robbery, wounds, beats, strikes, or uses any other personal violence to any person, is guilty of felony; and shall be liable to be imprisoned in the Penitentiary for life, or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24–25 Vict., ch. 96, sect. 43, Imp.

As to recognizances and sureties for keeping the peace in felonies under this Act, see *post*, sect. 122. As to

solitary confinement, see sect. 94 of the Procedure Act of 1869.

This clause provides for five offences: 1. Being armed with any offensive weapon or instrument, robbing any person.

2. Being so armed, assaulting any person with intent to rob this person.

3. Together with one or more person or persons, robbing any other person.

4. Together with one or more person or persons, assaulting any person with intent to rob this person.

5. Robbing any person, and at the time of or immediately before, or immediately after such robbery, wounding, beating, striking, or using any other personal violence to any person.

1. *Indictment for a robbery by a person armed.*—That J. S. on.... at being then armed with a certain offensive weapon and instrument, to wit, a bludgeon, in and upon one D. feloniously did make an assault, and him the said D. in bodily fear and danger of his life then feloniously did put, and, a sum of money, to wit, the sum of ten pounds, of the moneys, of the said D. then feloniously and violently did steal, take and carry away against....

2. *Indictment for an assault by a person armed with intent to commit robbery.*—That J. S. on at being then armed with a certain offensive weapon and instrument, called a bludgeon, in and upon one D. feloniously did make an assault, with intent the moneys, goods and chattels of the said D. from the person and against the will of him the said D., then feloniously and violently to steal, take and carry away, against the form....

3. *Indictment for robbery by two or more persons in com-*

pany.— That A. B. and D. H. together, in and upon one J. N. feloniously did make an assault, and him the said J. N. in bodily fear and danger of his life then and there together feloniously did put, and the moneys of the said J. N. to the amount of from the person and against the will of the said J. N., then feloniously and violently together did steal, take and carry away, against the form. (If one only of them be apprehended, it will charge him by name *together with a certain other person, or certain other persons, to the jurors aforesaid unknown*) —Archbold, 418; 2 Russell, 142.

4. *Indictment for, together with one or more person, or persons, assaulting with intent to rob.*—Can be drawn on forms 2 and 3.

5. *Robbery, accompanied by wounding, etc., etc.*—That J. N. at on in and upon one A. M. feloniously did make an assault, and him the said A. M. in bodily fear and danger of his life then feloniously did put, and the moneys of the said A. M. to the amount of ten pounds, and one gold watch, of the goods and chattels of the said A. M. from the person and against the will of the said A. M. then feloniously and violently did steal, take and carry away; and that the said J. N. immediately before he so robbed the said A. M. as aforesaid, the said A. M. feloniously did wound, against It will be immaterial, in any of these indictments, if the place where the robbery was committed be stated incorrectly.—Archbold, 412.

The observation *ante*, applicable to robbery generally, will apply to these offences.

Under indictment number 1, the defendant may be convicted of the robbery only, or of an assault with intent to rob. The same, under sections number 3 and 5.—And wherever a robbery with aggravated circumstances,

that is to say, either by a person armed, or by several persons together, or accompanied with wounding is charged in the indictment, the jury may convict of an assault with intent to rob, attended with the like aggravation, the assault following the nature of the robbery.—Reg. vs. Mitchell, 2 Den. 468, and remarks upon it, in Dears. C. C. 19.

By sect. 51 of the Procedure Act of 1869, a verdict of common assault may be returned, if the evidence warrants it. And by sect. 49, if the offence has not been completed, a verdict of guilty of the attempt to commit the offence charged may be given, if the evidence warrants it.

Upon an indictment for robbery charging a wounding, the jury may under the 32-33 Vict., ch. 20, s. 19, *an Act respecting offences against the person*, see *ante*, p. 249, convict of unlawfully wounding and thereupon the prisoner is liable to be imprisoned in the Penitentiary for any term not exceeding three years and not less than two years, or in any other gaol for any term less than two years.—2 Russell, 144.

LETTERS DEMANDING MONEY WITH MENACES.

Sect. 43.—Whosoever 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, is guilty of felony and shall be liable to be imprisoned in the Penitentiary for life, or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 96, sect. 44, Imp.

As to requiring recognizances and sureties for keeping the peace, in felonies under this Act, see *post*, s. 122. As to solitary confinement, see sect. 94, of the Procedure Act of 1869.

An indictment on this clause should always contain a count for uttering without stating the person to whom the letter or writing is uttered.—Greaves, Cons. Acts, 135. As to the meaning of the words "property," "valuable security" see *ante*, sect. 1.

Indictment for sending a letter, demanding money with menaces.—The Jurors for Our Lady the Queen, upon their oath present, that J. S. on.....feloniously did send to one J. N. a certain letter, directed to the said J. N. by the name and description of Mr. J. N. of.....demanding money from the said J. N. with menaces, and without reasonable or probable cause, he the said J. S. then well knowing the contents of the said letter; and which said letter is as follows, that is to say, (*here set out the letter verbatim*) against the form.....
.....And the jurors aforesaid, upon their oath aforesaid, do further present, that the said J. S. on the day and in the year aforesaid, feloniously did utter a certain writing demanding money from the said J. N. with menaces and without any reasonable or probable cause, he the said J. S. then well knowing the contents of the said writing; and which said writing is as follows, that is to say (*here set out the writing verbatim,*) against the form....Archbold, 422.

See remarks under sect. 15, ch. 20, 32-33 Vict., on clause relating to letters threatening to murder, of the *Act respecting offences against the person*.

Where the letter contained a request only, but intimating, that, if it were not complied with, the writer would publish a certain libel then in his possession, accusing

the prosecutor of murder, this was holden to amount to a demand.—*R. vs. Robinson*, 2 Leach, 749. - The demand must be with menaces, and without any reasonable or probable cause, and it will be for the jury to consider whether the letter does expressly or impliedly contain a demand of this description. The words "without any reasonable or probable cause" apply to the demand of money, and not to the accusation threatened by the defendant to be made against the prosecutor; and it is, therefore, immaterial in point of law, whether the accusation be true or not.—*R. vs. Hamilton*, 1 C. & K. 212; *R. vs. Gardner*, 1 C. & P. 479.—A letter written to a banker, stating that it was intended by a cracksman to burn his books and cause his bank to stop, and that if 250 pounds were put in a certain place, the writer of the letter would prevent the mischief, but if the money were not put there, it would happen, was held to be a letter demanding money with menaces.—*R. vs. Smith*, 1 Den. 510. The judges seemed to think that this decision did not interfere with *R. vs. Pickford*, 4 C. & P. 227. Nevertheless, it is said, in Archbold 424, that it is difficult to admit that. In *R. vs. Pickford*, the injury threatened was to be done by a third person. Now, sect. 49 would cover that case, see *post*. It is immaterial whether the menaces or threats hereinbefore mentioned be of violence, injury or accusation to be caused or made by the offender, or by any other person.

DEMANDING MONEY WITH MENACES OR BY FORCE WITH
INTENT TO STEAL.

Sect. 44—Whosoever with menaces or by force demands any property, chattel, money, valuable security or other valuable thing, of any person with intent to steal the same is guilty of felony, and shall be liable to be impri-

soned in the Penitentiary for the term of two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 96, sect. 45, Imp.

See observations under last preceding section.

Indictment.— . . . feloniously with menaces did demand of J. N. the money of him the said J. N. with intent the said money from the said J. N. feloniously to steal, take and carry away, against. . . . Archbold, 421.

The prosecutor must prove a demand by the defendant of the money or other thing stated in the indictment "by menaces or force" with intent to steal it. It is not necessary to prove an express demand in words: the Statute says "whosoever with menaces or by force demands," and menaces are of two kinds, by words or by gestures: so 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, it should seem to be sufficient proof of the allegation of demand in the indictment.—*R. vs. Jackson*, 1 Leach, 269.—If a person, with menaces, demand money of another, who does not give it him, because he has it not with him, this is a felony within the Statute; but if the party demanding the money knows that it is not then in the prosecutor's possession, and only intends to obtain an order for the payment of it, it is otherwise.—*R. vs. Edwards*, 6 C. & P. 515.

The intent to steal must of course be presumed from circumstances: it is a question entirely for the jury to determine, and which they will, in general, have to presume from the circumstances attending the demand, the expression or gestures of the prisoner, when he made it, and the like.—Archbold, 422.

In order to bring a case within this section, the demand, if successful, must amount to stealing, and to constitute a menace within this section, it must be of such a nature as to unsettle the mind of the person upon whom it operates, and to take away from his acts that element of voluntary action which alone constitutes consent: it must, therefore, be left to the jury to say whether the conduct of the prisoner is such as to have had that effect on the prosecutor: and in this case, the Judge having directed the jury as a matter of law, that the conduct of the prisoner constituted a menace within the statute, the conviction must be quashed.—*R. vs. Walton, L. & Cave, 288.*

In *Reg. vs. Robinson, L. & Cave, 483, 10 Cox, 9*, it was holden that a threat by a policeman to imprison a man upon a fictitious charge is a menace within this section, and though the money had in fact been obtained and the prisoner could, in consequence, also have been indicted for stealing the money, yet the conviction, under the present section, was right. On the ruling in *Reg. vs. Walton, supra*, Greaves remarks: "This decision requires reconsideration, as it obviously proceeds upon the fallacy of supposing it necessary that the menaces should be such that if property were obtained by them, the offence would be larceny. Now the words of the clause warrant no such construction."

The words are "Whosoever shall by menaces or by force, demand any property with intent to steal the same." (*With menaces not by menaces*): any menaces or any force therefore, clearly satisfy the terms of the clause, provided there be an intent to steal. It might just as well be said that on an indictment for an assault with intent to rob or for wounding with intent to murder, it was necessary to prove such an assault in the one case, or such wounding in the other, as would be sufficient to effectuate the

intent, and yet it has never been doubted that any assault, however slight, or any wound however trivial, was sufficient, provided the intent were proved. In truth, the criminality in these cases depends on the intent. The effect of this decision is to render the clause almost inoperative, for where the menaces have not obtained the money, it is plain the jury will be very reluctant to find that they were sufficient to obtain it. The whole offence consists in the acts and intent of the prisoner : and it is quite beside that to consider what the effect on the prosecutor might be.—3 Russell 203, note by Greaves.

LETTERS THREATENING TO ACCUSE OF A CRIME, WITH INTENT
TO EXTORT &c., &c., &c.

Sect. 45.—Whosoever sends, delivers or utters, or directly or indirectly causes to be received, knowing the contents thereof, any letter or writing, accusing or threatening to accuse or cause to be accused any other person of any crime punishable by law with death or imprisonment in the Penitentiary for not less than seven years, or of any assault with intent to commit any rape, or of any attempt or endeavour to commit any rape, or of any infamous crime, as hereinafter defined, with a view or intent in any of such cases to extort or gain by means of such letter or writing any property, chattel, money, valuable security or other valuable thing from any person, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life, or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement; and the abominable crime of buggery, committed either with mankind or with beast, and every assault with intent to commit the said abominable crime, and every

attempt or endeavour to commit the said abominable crime, and every solicitation, persuasion, promise, or threat, offered or made to any person whereby to move or induce such person to commit or permit the said abominable crime, shall be deemed to be an infamous crime within the meaning of this Act, *and every species of parting with any such letter to the end that it may come, or whereby it comes into the hands of the person for whom it is intended shall be deemed a sending of such letter.*—24–25 Vict., ch. 96, sect. 46, Imp.

The words in *italics* are not in the English Act: they are superfluous: the words “directly or indirectly causes to be received” at the beginning of the clause have been held to mean all what is intended by these additional words. See remarks under sect. 15, of ch. 20, 32–33 Vict. *Act concerning offences against the person.*

Indictment.—The jurors for Our Lady the Queen, upon their oath present, that J. S. on . . . feloniously did send to one J. N. a certain letter, directed to the said J. N. by the name and description of Mr. J. N., threatening to accuse him the said J. N. of having attempted and endeavoured to commit the abominable crime of buggery with him the said J. S., with a view and intent thereby then to extort and gain money from the said J. N., he the said J. S. then well knowing the contents of the said letter, and which said letter is as follows, to wit (*here set out the letter verbatim*) against the form. . . . And the jurors aforesaid upon their oath aforesaid do further present, that the said J. S. on the day and in the year aforesaid feloniously did utter a certain writing threatening to accuse him the said J. N. of having attempted and endeavoured to commit the abominable crime of buggery with him the said J. S., with a view and intent thereby then to extort and gain money from the said J. N., he the said

J. S. then well knowing the contents of the said letter, and which said letter is as follows, to wit (*here set out the letter verbatim* against the form. . . . Archbold, 426.

An indictment for sending a letter threatening to accuse a man of an infamous crime, need not specify such crime, for the specific crime the defendant threatened to charge might intentionally by him be left in doubt.—*R. vs. Tucker*, 1 Mood. 134.—The threat may be to accuse another person than the one to whom the letter was sent.—Archbold, loc. cit.—It is immaterial whether the prosecutor be innocent or guilty of the offence threatened to be imputed to him.—*R. vs. Gardner*, 1 C. & P. 479; *Reg. vs. Richards*, 11 Cox, 43.

Where it was doubtful from the letter what charge was intended, parol evidence was admitted to explain it, and the prosecutor proved that having asked the prisoner what he meant by certain expressions in the letter, the prisoner said that he meant that the prosecutor had taken indecent liberties with his person: the judges held the conviction to be right.—*R. vs. Tucker*, 1 Mood. 134.

The Court will, after the bill is found, upon the application of the prisoner, order the letter to be deposited with an officer, in order that the prisoner's witnesses may inspect it.—*R. vs. Harris*, 6 C. & P. 105.

ACCUSING OR THREATENING TO ACCUSE, WITH INTENT TO EXTORT.

Sect. 46.—Whosoever accuses or threatens to accuse either the person to whom such accusation or threat is made, or any other person, of any of the infamous or other crimes lastly hereinbefore mentioned, with the view or intent in any of the cases last aforesaid, to extort or gain from such person so accused or threatened to be accused, or from any other person, any property,

chattel, money, valuable security or other valuable thing, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life, or for any term, not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour.—24-25 Vict., ch. 96, sect. 47, Imp.

As to the interpretation of the words "property" and "valuable security," see *ante*, sect. 1.

By sect. 48, *post*, it is enacted that "it shall be immaterial whether the menaces or threats hereinbefore mentioned be of violence, injury or accusation, to be caused or made by the offender or by any other person."

The words "crimes lastly before mentioned" in sect. 46, mean all those mentioned in sect. 45.—Archbold, 425.

Indictment.—... feloniously did threaten one J. N. to accuse him the said J. N. of having attempted and endeavoured to commit the abominable crime of sodomy with the said J. S., with a view and intent thereby then to extort and gain money from the said J. N. against the form. . . . Archbold, 425.

See the remarks under sections 43, 44, 45, *ante*. It must be a threat to accuse, or an accusation: if J. N. be indicted or in custody for an offence, and the defendant threaten to procure witnesses to prove the charge, this will not be a threat to accuse within the meaning of the statute.—*R. vs. Gill*, Archbold, 425. But it need not be a threat to accuse before a judicial tribunal; a threat to charge before any third person is sufficient.—*R. vs. Robinson*, 2 M. & Rob. 14. It is immaterial whether the prosecutor be innocent or guilty of the offence charged, and therefore, although the prosecutor may be cross-examined as to his guilt of the offence imputed to him, with a view to shake his credit, yet no evidence

will be allowed to be given, even in cross-examination by another witness, to prove that the prosecutor was guilty of such offence.—*R. vs. Gardner*, 1 C. & P. 479; *R. vs. Cracknell*, 19 Cox, 408. Whether the crime of which the prosecutor was accused by the prisoner was actually committed is not material in this, that the prisoner is equally guilty if he intended for such accusation to extort money: but it is material in considering the question, whether, under the circumstances of the case, the intention of the prisoner was to extort money or merely to compound a felony.—*Reg. vs. Richards*, 11 Cox, 43. In *Archbold*, 425, this last decision seems not to be approved of.—A person threatening A.'s father that he would accuse A. of having committed an abominable offence upon a mare for the purpose of putting off the mare, and forcing the father, under terror of the threatened charge to buy and pay for her at the prisoner's price, is guilty of threatening to accuse within this section.—*Reg. vs. Redman*, 10 Cox, 159. On the trial of an indictment for threatening to accuse a person of an abominable crime, with intent to extort money, and by intimidating the party by the threat, in fact obtaining the money, the jury need not confine themselves to the consideration of the expressions used before the money was given, but may, if those expressions are equivocal, connect with them what was afterwards said by the prisoner when he was taken into custody.—*Reg. vs. Kain*, 8 C. & P. 187.

OBTAINING THE EXECUTION OF A DEED, ETC., ETC., BY
THREATS OR VIOLENCE.

Sect. 47.—Whosoever, with intent to defraud or injure any other person, by any unlawful violence to or restraint of, or threat of violence to or restraint of the person of another, or by accusing or threatening to accuse any

person of any treason, felony, or infamous crime as hereinbefore defined, compels or induces any person to execute, make, accept, indorse, alter or destroy the whole or any part of any valuable security, or to write, impress or affix his name, or the name of any other person, or of any company, firm or co-partnership, or the seal of any body corporate, company or society, upon or to any paper or parchment, in order that the same may be afterwards made or converted into or used or dealt with as a valuable security, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life, or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 96, sect. 48, Imp.

As to requiring recognizances and sureties for keeping the peace in felonies under this Act, see *post*, sect. 122.

As to solitary confinement, see sect. 94, of the Procedure Act of 1869.

On this clause, Greaves says: "This clause is new. It will meet all such cases as *Reg. vs. Phipoe*, 2 Leach, 673, and *R. vs. Edwards*, 6 C. & P. 521, where persons by violence to the person or by threats of accusation of crimes, induce others to execute deeds, bills of exchange or other securities.

GENERAL CLAUSE ON THREATS, MENACES, ETC., ETC.

Sect. 48.—It shall be immaterial whether the menaces or threats hereinbefore mentioned be of violence, injury or accusation to be caused or made by the offender or by any other person.—24-25 Vict., ch. 96, sect. 49, Imp.

This clause is new, says Greaves; it is intended to meet cases where a letter may be sent by one person

and may contain menaces of injury by another, and to remove the doubts occasioned by *Rex. vs. Pickford*, 4 C. & P. 227. In *Reg. vs. Smith*, 1 Den. 510, the threat by a person writing a letter of an injury to be made by a third person [was held within the Statute, before this clause. Of course, now, this is clear law, whatever doubts may have existed heretofore.

and to
rd, 4 C.
threat
made by
ore this
whatever

BURGLARY.

GENERAL REMARKS.

Burglary, or nocturnal housebreaking, *burgi latrocinium*, which by our ancient law, was called *hamesecken*, has always been looked upon as a very heinous offence. For it always tends to occasion a frightful alarm, and often leads by natural consequence to the crime of murder itself. Its malignity also is strongly illustrated by considering how particular and tender a regard is paid by the laws of England to the immunity of a man's house, which it styles its castle, and will never suffer to be violated with impunity; agreeing herein with the sentiments of Ancient Rome, as expressed in the words of Tully (*Pro Domo*, 41) "*quid enim sanctius, quid omni religione munitius, quam domus uniuscujusque civium?*" For this reason no outward doors can, *in general*, be broken open to execute any civil process, though, in criminal cases, the public safety supersedes the private. Hence, also, in part arises the animadversion of the law upon cavesdroppers, nuisancers, and incendiaries; and to this principle, it must be assigned, that a man may assemble people together lawfully, (at least if they do not exceed eleven) without danger of raising a riot, rout or unlawful assembly, in order to protect and defend his house, which he is not permitted to do in any other case. Stephen's Comment, Vol. 4, 104; Blackst. Comment, Vol. 4, 223.

Burglary is a breaking and entering the mansion-house

of another in the night, with intent to commit some felony within the same, whether such felonious intent be executed or not.—2 Russell, 1; Chitty, 1101. In which definition there are four things to be considered, the *time*, the *place*, the *manner*, and the *intent*.

The time.—The time must be by night and not by day, for in the day time there is no burglary. As to what is reckoned night and what day for this purpose, anciently the day was accounted to begin only at sunrising, and to end immediately upon sunset; but the better opinion afterwards was that if there were daylight or *crepusculum* enough, begun or left, to discern a man's face withal, it was no burglary. But this did not extend to moonlight, for then many midnight burglaries would have gone unpunished; and besides, the malignity of the offence does not so properly arise from its being done in the dark, as at the dead of night, when all creation is at rest. But the doctrines of the common law on this subject are no longer of practical importance, as it is enacted by 32-33 Vict., ch. 21, sect. 1, that for the purposes of that Act, and in reference to the crime now under consideration, "the night shall be deemed to commence at nine of the clock in the evening of each day, and to conclude at six of the clock in the morning of the next succeeding day, and the day shall include the remainder of the twenty-four hours." 4 Blackst. 224; 4 Steph. Com. 105; 2 Russell, 39. The breaking and entering must both be committed in the night-time; if the breaking be in the day, and the entering in the night, or *vice versa*, it is no burglary.—1 Hale, 551. But the breaking and entering need not be both done in the same night: for if thieves break a hole in a house one night, with intent to enter another night and commit felony and come accordingly another night and commit a felony,

seems to be burglary, for the breaking and entering were both *noctanter*, though not the same night.—2 Russell, 39. The breaking on Friday night with intent to enter at a future time, and the entering on the Sunday night constitute burglary.—R. vs. Smith, Russ. & Ry. 417. And then, the burglary is supposed to have taken place on the night of the entry, and is to be charged as such.—1 Hale, 551. In Jordan's case, 7 C. & P. 432, it was held that where the breaking is on one night and the entry on another, a party present at the breaking, but absent at the entry, is a principal.

The place. — The breaking and entering must take place in a *mansion* or *dwelling-house* to constitute burglary. At the common law, Lord Hale says that a church may be the subject of burglary, 1 Hale, 559, on the ground, according to Lord Coke, that a church is the mansion house of God, though Hawkins, 1 vol. 133 does not approve of that *nicety*, as he calls it, and thinks that burglary in a church seems to be taken as a distinct burglary from that in a house. However, this offence is now provided for by sections 49 and 56 of the Larceny Act.

What is a *dwelling house*? — From all the cases, it appears that it must be a place of actual *residence*. Thus a house under repairs, in which no one lives, though the owner's property is deposited there, is not a place in which burglary can be committed, R. vs. Lyons, 1 Leach, 185: in this case, the proprietor of the house, nor any of his family, nor any person whatever had yet occupied the house.

In Fuller's case, 1 Leach, note, loc cit., the defendant was charged of a burglary in the dwelling-house of Henry Holland. The house was new built, and nearly finished: a workman who was constantly employed by Holland

slept in it for the purpose of protecting it : but none of Holland's family had yet taken possession of the house, and the Court held that it was not the dwelling-house of Holland,— and where the owner has never by himself or by any of his family, slept in the house, it is not his dwelling-house, so as to make the breaking thereof burglary, though he has used it for his meals, and all the purposes of his business.—*R. vs. Martin, Russ & Ry. 108.*

If a porter lie in a warehouse for the purpose of protecting goods, *R. vs. Smith, 2 East, 497*, or a servant lie in a barn in order to watch thieves, *R. vs. Brown, 2 East, 501*, this does not make the warehouse or barn a dwelling-house in which burglary can be committed. But if the agent of a public company reside at a warehouse belonging to his employers, this crime may be committed by breaking it, and he may be stated to be the owner.—*R. vs. Margetts, 2 Leach, 931.* Where the landlord of a dwelling-house, after the tenant, whose furniture he had bought, had quitted it put a servant into it, to sleep there at night, until he should re-let it to another tenant, but had no intention to reside in it himself : the judges held that it could not be deemed the dwelling-house of the landlord.—*R. vs. Davis, 2 Leach, 876.* So where the tenant had put all his goods and furniture into the house, preparatory to his removing to it with his family, but neither he nor any of his family had as yet slept in it, it was holden not to be a dwelling-house in which burglary can be committed. *R. vs. Hallard, 2 East, 498 ; R. vs. Thompson, 2 Leach, 771.* And the same has been ruled, when under such circumstances, the tenant had put a person, not being one of the family, into the house, for the protection of the goods and furniture in it, until it should be ready for his residence.—*R. vs. Harris, 2 Leach, 701 ; R. vs. Fuller, 1 Leach, 187.*

A house will not cease to be the house of its owner, on account of his occasional or temporary absence, even if no one sleep in it, provided the owner has an *animus revertendi*.—R. vs. Murray, 2 East, 496; and in R. vs. Kirkham, 2 Starkie, Ev. 279; Wood, B., held that the offence of stealing in a dwelling-house had been committed, although the owner and his family had left six months before, having left the furniture and intending to return.—Idem, Mitbrow's case, 2 East, 496. And though a man leaves his house and never means to live in it again, yet if he uses part of it as a shop, and lets his servant and his family live and sleep in another part of it, for fear the place should be robbed, and lets the rest to lodgers, the habitation by his servant and family will be a habitation by him, and the shop may still be considered as part of his dwelling-house.—R. vs. Gibbons, R. & Ry. 442. But where the prosecutor, an upholsterer, left the house in which he had resided with his family, without any intent of returning to live in it and took a dwelling-house elsewhere, but still retained the former house as a warehouse and workshop; two women employed by him as workwomen in his business, and not as domestic servants, slept there to take care of the house, but did not have their meals there, or use the house, for any other purpose than sleeping in it as a security to the house; the judges held that this was not properly described as the dwelling-house of the prosecutor.—R. vs. Flannagan, R. & R. 187. The occupation of a servant in that capacity, and not as tenant, is in many cases the occupation of a master, and will be a sufficient residence to render it the dwelling-house of the master.—R. vs. Stock, R. & R. 185; R. vs. Wilson, R. & R. 115. Where the prisoner was indicted for burglary in the dwelling-house of J. B. J. B. worked for one W. who did carpenter's work for a public com-

pany and put J. B. into the house in question, which belonged to the company, to take care of it, and some mills adjoining: J. B. received no more wages after than before he went to live in the house. It was held not rightly laid.—*R. vs. Rawlings*, 7 C. & P. 150.—If a servant live in a house of his master's at a yearly rent, the house cannot be described as the master's house.—*R. vs. Jarvis*, 1 Mood. 7.—Every permanent building, in which the renter or owner and his family dwell and lie, is deemed a dwelling house, and burglary may be committed in it. Even a set of chambers in an inn of court or college is deemed a distinct dwelling-house for this purpose.—*Archbold*, 490. And it will be sufficient if any part of his family reside in the house. Thus 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 holden, upon an indictment for burglary, that the brew-house 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 actually dwelt.—*R. vs. Westwood*, R. & R. 495. 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, 1 Hale, 557; but if it be a permanent building, though used only for the purpose of a fair it is a dwelling-house.—*R. vs. Smith*, 1 M. & Rob. 256. So even a loft, over a stable, used for the abode of a coachman, which he rents for his own use and that of his family, is a place which may be burglariously broken.—*R. vs. Turner*, 1 Leach, 305. If a house be divided, so as to form two or more dwelling-houses, within the meaning of the word in the definition of burglary and all internal communication be

cut off, the partitions become distinct houses and each part will be regarded as a mansion.—*R. vs. Jones*, 1 Leach, 537. But a house the joint property of partners in trade in which their business is carried on, may be described as the dwelling-house of all the partners, though only one of the partners resides in it.—*R. vs. Athea*, 1 Mood. 329. If the owner, who lets out apartments in his house to other persons, sleep under the same roof, and have but one outer door common to him and his lodgers, such lodgers are only inmates and all their apartments are parcel of the one dwelling-house of the owner. But if the owner do not lodge in the same house, or if he and the lodgers enter by different outer-doors, the apartments so let out are the mansion for the time being of each lodger respectively, even though the rooms are let by the year.—2 East, 505. If the owner let off a part, but do not dwell in the part he reserves for himself, then the part let off is deemed in law the dwelling-house of the party who dwells in it, whether it communicates internally with the other part or not; but the part he has reserved for himself is not the subject of burglary: it is not his dwelling-house, for he does not dwell in it, nor can it be deemed the dwelling-house of the tenant, for it forms no part of his lodging.—*R. vs. Rodgers*, *R. vs. Carrell*, *R. vs. Trapshaw*, 1 Leach, 89, 237, 427. If the owner let the whole of a dwelling-house, retaining no part of it for his or his family's dwelling, the part each tenant occupies and dwells in is deemed in law to be the dwelling-house of such tenant, whether the parts holden by the respective tenants communicate with each other internally or not.—*R. vs. Bailey*, 1 Mood. 23; *R. vs. Jenkins*, *R. & R.* 244; *R. vs. Carroll*, 1 Leach, 237.

The term "dwelling-house" includes in its legal signification all out-houses occupied with and immediately

communicating with the dwelling-house. But by 32-33 Vict., ch 21, sect. 52, (24-25 Vict., ch. 96, sect. 53, Imp.) no building, although within the same curtilage with any dwelling-house, and occupied therewith, shall be deemed to be part of such dwelling-house for any of the purposes of this Act, unless there shall be a communication between such building and dwelling-house, either immediate or by means of a covered and enclosed passage leading from the one to the other. Where the prosecutor's house consisted of two living-rooms, another room used as a cellar, and a wash-house on the ground floor, and of three bed-rooms up-stairs, one of them over the wash-house, and the bedroom over the house-place communicated with that over the wash-house, but there was no internal communication between the wash-house and any of the rooms of the house, but the whole was under the same roof, and the defendant broke into the wash-house, and was breaking through the partition-wall between the wash-house and the house-place, it was holden that the defendant was properly convicted of burglary in breaking the house.—R. vs. Burrowes, 1 Mood. 274. But where adjoining to the house was a kiln, one end of which was supported by the wall of the house, and adjoining to the kiln a dairy, one end of which was supported by the wall of the kiln, the roofs of all three being of different heights, and there being no internal communication from the house to the dairy, it was held that burglary was not committed by breaking into the dairy.—R. vs. Higgs, 2 C. & K. 322. To be within the meaning of this section, the building must be occupied with the house in the same right; and therefore where a house let to and occupied by A. adjoined and communicated with a building let to and occupied by A. and B., it was holden that the building

would not be considered a part of the dwelling-house of A.—R. vs. Jenkins, R. & R. 224. If there be any doubt as to the nature of the building broken and entered, a count may be inserted for breaking and entering a building within the curtilage, under sect. 54, *post*.

It is necessary to state with accuracy in the indictment, to whom the dwelling-house belongs.—1 Burn's, Just., 554. But in all cases of doubt, the pleader should vary in different counts the name of the owner, although there can be little doubt that a variance in this respect would be amended at the trial.—Archbold, 496; 2 Russell, 47, 49.—As to the local description of the house, it must be proved as laid: if there be a variance between the indictment and evidence in the parish, &c., &c., where the house is alleged to be situate, the defendant must be acquitted of the burglary, unless an amendment be made. To avoid difficulty, different counts should be inserted, varying the local description. If the house be not proved to be a dwelling-house, the defendant must be acquitted of the burglary but found guilty of the simple larceny, if larceny is proved.—Archbold, 489, 496.

The manner.—There must be both a *breaking* and an *entering* of the house. The breaking is either actual or constructive. Every entrance into the house by a trespasser is not a breaking in this case. As if the door of a mansion-house stand open, and the thief enter, this is not breaking; so if the window of the house be open, and a thief with a hook or other engine draweth out some of the goods of the owner, this is no burglary, because there is no actual breaking of the house. But if the thief breaketh the glass of a window, and, with a hook or other engine draweth out some of the goods of the owner, this is burglary, for there was an actual breaking of the house.—1 Hale, 551. Where a window

was a little open, and not sufficiently so to admit a person, and the prisoner pushed it wide open and got in, this was held to be no sufficient breaking.—*R. vs. Smith*, 1 Mood. 178.

If there be an aperture in a cellar window to admit light, through which a thief enter in the night, this is not burglary.—*R. vs. Lewis*, 2 C. & P. 628; *R. vs. Spriggs*, 1 Mood. & R. 357.—There is no need of any demolition of the walls or any manual violence to constitute a breaking. Lord Hale says “and these acts amount to an actual breaking, *viz.*, opening the case-ment, or breaking the glass window, picking open a lock of a door with a false key, or putting back the lock with a knife or dagger, unlatching the door that is only latched, to put back the leaf of a window with a dagger.” In *Robert’s alias Chamber’s case*, 2 East 487, where a glass window was broken, and the window opened with the hand, but the shutters on the inside were not broken, this was ruled to be burglary by Ward, Powis and Tracey, justices, and the Recorder; but they thought this the extremity of the law; and, on a subsequent conference, Holt, C.J., and Powel, C.J., doubting and inclining to another opinion, no judgment was given. In *Bailey’s case*, R. & R. 341, it was held by nine judges that introducing the hand between the glass of an outer window and an inner shutter is a sufficient entry to constitute burglary. If a thief enter by the chimney, it is a breaking; for that is as much closed as the nature of things will permit. And it is a burglarious breaking, though none of the rooms of the house are entered. Thus in *R. vs. Brice*, R. & Ry. 450—the prisoner got in at a chimney and lowered himself a considerable way down, just above the mantel piece of a room on the ground floor. Two of the judges thought

he was not in the dwelling-house, till he was below the chimney-piece. The rest of the judges, however, held otherwise; that the chimney was part of the dwelling-house, that the getting in at the top was a breaking of the dwelling-house, and that the lowering himself was an entry therein.

Where the prisoner effected an entry, by pulling down the upper sash of a window, which had not been fastened, but merely kept in its place by the pulley weight: the judges held this to be a sufficient breaking to constitute burglary, even although it also appeared that an outside shutter, by which the window was usually secured, was not closed or fastened at the time.—*R. vs. Haines*, *R. & R.* 451.—Where an entry was effected, first into an outer cellar, by lifting up a heavy iron grating that led into it, and then into the house by a window, and it appeared that the window, which opened by hinges, had been fastened by means of two nails as wedges, but could, notwithstanding, easily be opened by pushing, the judges held that opening the window, so secured, was a breaking sufficient to constitute burglary.—*R. vs. Hall*, *R. & R.* 355.—So, where a party thrust his arm through the broken pane of a window, and in so doing broke some more of the pane, and removed the fastenings of the window and opened it.—*R. vs. Robinson*, 1 *Mood.* 327.

But, if a window thus opening on hinges, or a door, be not fastened at all, opening them would not be a breaking within the definition of burglary. Even where the heavy flat door of a cellar, which would keep closed by its own weight, and would require some degree of force to raise it, was opened: it had bolts by which it might have been fastened on the inside, but it did not appear that it was so fastened at the time, the judges were divided in opinion whether the opening of this door was

such a breaking of the house as constituted burglary : six thinking that it was, and six that it was not. *R. vs. Callan*, *R. & R.* 157.—It was holden in *Brown's* case that it was.—2 *East*, 487.—In *R. vs. Lawrence*, 4 *C. & P.* 231, it was holden that it was not.—In *R. vs. Russell*, 1 *Mood.* 377, it was holden that it was.

Where the offender, with intent to commit a felony, obtains admission by some artifice or trick for the purpose of effecting it, he will be guilty of burglary, for this is a constructive breaking. Thus, where thieves, having an intent to rob, raised the hue-and-cry, and brought the constable, to whom the owner opened the door; and when they came in, they found the constable and robbed the owner,—this was held a burglary. So if admission be gained under pretence of business, or if one take lodging with a like felonious intent, and afterwards rob the landlord, or get possession of a dwelling-house, by false affidavits, without any colour of title, and then rifle the house, such entrance being gained by fraud, it will be burglarious. In *Hawkin's* case, she was indicted for burglary: upon evidence it appeared that she was acquainted with the house, and knew that the family were in the country, and, meeting with the boy who kept the key, she prevailed upon him to go with her to the house, by the promise of a pot of ale; the boy accordingly went with her, opened the door and let her in, whereupon she sent the boy for the pot of ale, robbed the house and went off, and this being in the night time it was adjudged that the prisoner was clearly guilty of burglary.—2 *East P. C.* 485. If a servant conspire with a robber, and let him into the house by night, this is burglary in both, 1 *Hale*, 553, for the servant is doing an unlawful act; and the opportunity afforded him of doing it with greater ease rather aggravates than extenuates

the guilt. But if a servant, pretending to agree with a robber, open the door and let him in for the purpose of detecting and apprehending him, this is no burglary, for the door is lawfully open.—Reg. vs. Johnson, C. & M. 218.

And the breaking necessary to constitute burglary is not restricted to the breaking of the outer wall or doors, or windows of a house: if the thief get admission into the house by the outer door or windows being open, and afterwards breaks or unlocks an inner door, for the purpose of entering one of the rooms in the house, this is burglary, 1 Hale, 553; 2 East P. C. 488. So if a servant open his master's chamber door, or the door of any other chamber not immediately within his trust, with a felonious design, or if any other person lodging in the same house, or in a public inn, open and enter another's door with such evil intent, it is burglary.—2 East P. C. 491; 1 Hale, 553;—Reg vs. Wenmouth, 8 Cox, 348.—The breaking open chests is not burglary. 1 Hale, 554.—The breaking must be of some part of the house; and, therefore, where the defendant opened an area gate with a skeleton key, and then passed through an open door into the kitchen, it was holden not to be a breaking, there being no free passage from the area to the house in the hours of sleep.—R. vs. Davis, R. & R. 322; R. vs. Bennett, R. & R. 289; R. vs. Paine 7 C. & P., 135.—It is essential that there should be an entry as well as a breaking, and the entry must be connected with the breaking.—1 Hale, 555; Reg. vs. Davis, 6 Cox, 369; R. vs. Smith, R. & R. 417, *ante*. It is deemed an entry when the thief breaketh the house, and his body or any part thereof, as his foot or his arm, is within any part of the house; or when he putteth a gun into a window which he hath broken, though the hand be not in, or into a hole of the house which he hath

made, with intent to murder or kill; this is an entry and breaking of the house; but if he doth barely break the house, without any such entry at all, this is no burglary. 3 Inst. 64; 2 East, P. C. 490.—Thieves came by night to rob a house: the owner went out and struck one of them, another made a pass with a sword at persons he saw in the entry, and, in so doing, his hand was over the threshold: this was adjudged burglary by great advice. 2 East. P. C., 490.

In Gibbon's case, evidence that the prisoner in the night time cut a hole in the window-shutters of a shop, part of a dwelling-house, and putting his hand through the hole took out watches, &c., &c., was holden to be burglary, although no other entry was proved.—2 East, P. C. 490. Introducing the hand through a pane of glass, broken by the prisoner, between the outer window and an inner shutter, for the purpose of undoing the window latch, is a sufficient entry.—R. vs. Bailey, R. & R. 341. So would the mere introduction of the offender's finger.—R. vs. Davis, R. & R. 499. So an entry down a chimney is a sufficient entry in the house, for a chimney is part of the house.—R. vs. Brice, R. & R. 450.

It is even said that discharging a loaded gun into a house is a sufficient entry.—1 Hawkins, 132. Lord Hale, 1 vol. 155, is of a contrary opinion, but adds *quære*? East 2, P. C. 490, seems to incline towards Hawkins' opinion.—Where thieves bored a hole through the door with a centre-bit, and parts of the chips were found in the inside of the house, this was holden not a sufficient entry to constitute burglary.—R. vs. Hughes, 2 East, P. C. 491. If divers come in the night to do a burglary, and one of them break and enter, the rest of them standing to watch at a distance, this is burglary in all.—1 Burn's Just. 550.

The entry need not be at the same time as the breaking.—*R. vs. Smith, R. & R. 417, supra.*

In *Reg. vs. Spanner, 12 Cox, 155*, Bramwell B. held, that an attempt to commit a burglary may be established on proof of a breaking with intent to rob the house, although there be no proof of an actual entry. The prisoner was indicted for burglary, but no entry having been proved, a verdict for an attempt to commit a burglary was given.

The intent.—There can be no burglary but where the indictment both expressly alleges, and the verdict also finds an intention to commit some felony; for if it appear that the offender meant only to commit a trespass, as to beat the party or the like, he is not guilty of burglary.—*1 Hale, 561*: whether a felony at common law or by statute is immaterial.—The intent must be proved as laid. Where the intent laid was to kill a horse, and the intent proved was merely to lame him, in order to prevent him from running a race, the variance was holden fatal.—*R. vs. Dobbs, 2 East., P. C. 513.* It is immaterial whether the felonious intent be executed or not: thus, they are burglars, who, with a felonious intent, break any house or church in the night, although they take nothing away. And herein this offence differs from robbery, which requires that something be taken, though it be not material of what value. The felonious intent with which the prisoner broke and entered the house cannot be proved by positive testimony: it can only be proved by the admission of the party, or by circumstances from which the jury may presume it. Where it appears that the prisoner actually committed a felony after he entered the house, this is satisfactory evidence, and almost conclusive, that the intent with which he broke and entered the house was to commit that felony. Indeed, the very

fact of a man's breaking and entering a dwelling-house in the night time is strong presumptive evidence that he did so with intent to steal, and the jury will be warranted in finding him guilty upon this evidence merely.—*R. vs. Brice*, R. & R. 450 ; *Reg. vs. Spanner*, 12 Cox, 155. If the intent be at all doubtful, it may be laid in different ways in different counts.—*R. vs. Thomson*, 2 East, P. C. 515 ; 2 Russell, 45. It seems sufficient in all cases where a felony has actually been committed, to allege the commission of it, as that is sufficient evidence of the intention. But the intent to commit a felony, and the actual commission of it, may both be alleged ; and in general this is the better mode of statement.—*R. vs. Furnival*, R. & R. 445.

As to punishment, indictment, &c., &c., see *post*, on sect. 51.

It will be observed that the entry may be before the breaking as well as after : for, though there were once different opinions upon the question as to whether the breaking *out* of a house to escape, by a man who had previously entered by an open door with intent to commit a felony, was burglary, all doubts are now removed by sect. 50 of the Larceny Act, *post*.

BREAKING AND ENTERING A CHURCH OR CHAPEL, AND
THEREIN COMMITTING A FELONY.

Sect. 49.—Whosoever breaks and enters any church, chapel, meeting-house, or other place of Divine worship, and commits any felony therein, and breaks out of the same, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years,

with or without hard labour, and with or without solitary confinement.—24-25 Vict. ch. 96, sect. 50, Imp.

Greaves says: "This clause clearly includes every place of public worship, the former enactments were confined not only to stealing, but to stealing any chattel.—(Sect. 17, ch. 92, (Cons. Stat. Can.) Therefore stealing fixtures was not within them.—Reg. vs. Barker, 3 Cox, 581. The present clause includes *any* felony, and this clause and the eight subsequent clauses are in this respect made uniform."

The breaking and entering required to constitute an offence under this section are of the same nature as in burglary, except that they need not be in the night time.

If the breaking is with intent to commit a felony, but no felony be actually committed, the offence falls under sect. 56, *post*. A tower of a parish church is parcel of a church, R. vs. Wheeler, 3 C. & P. 585; so is the vestry, R. vs. Evans, C. & Mar. 298.

The goods of a dissenting chapel, vested in trustees, cannot be described as the goods of a servant, put in charge of the chapel and the things in it—R. vs. Hutchinson, R. & R. 412. Where the goods belonging to a church are stolen, they may be laid in the indictment to be the goods of the parishioners—2 Russell, 73. As to requiring sureties, in felonies under this Act, see *post* sect. 122.—As to solitary confinement, see sect. 94 of the Procedure Act of 1869.

Indictment for breaking and entering a church and stealing therein.—..... the church of the parish of. in the county of. feloniously did break and enter, and then, in the said church, one silver cup of the goods and chattels, of the parishioners of the said parish feloniously did steal, take and carry away against the form. . . . Archbold, 395.

Indictment for stealing in and breaking out of a church.—
.... one silver cup, of the goods and chattels of the parishioners of the parish of. . . in the county of. . . in the church of the said parish there situate, feloniously did steal, take and carry away; and that the said (*defendant*) so being in the said church as aforesaid, afterwards, and after he had so committed the said felony in the said church, as aforesaid, on the day and year aforesaid, feloniously did break out of the said church, against the form. . . . Archbold, 397.

If a chapel which is private property be broken and entered, lay the property as in other cases of larceny. If the evidence fails to prove the breaking and entering a church, &c., &c., the defendant may be convicted of simple larceny.—Archbold, 396. Upon the trial of any offence under this section, the jury may, under sect. 49 of the Procedure Act of 1869, convict of an attempt to commit such offence.—2 Russell, 74.

BURGLARY BY BREAKING OUT.

Sect 50.—Whosoever enters the dwelling house of another, with intent to commit any felony therein, or, being in such dwelling-house, commits any felony therein, and in either case breaks out of the said dwelling-house in the night, is guilty of burglary.—24-25 Vict., ch. 96, sect 51, Imp.

Sect. 1, *ante*, declares what is night, in the interpretation of this Act.

There was some doubt, at common law, on this point. Lord Bacon thought it was burglary, and Sir Matthew Hale, that it was not.—4 Steph., Comment 109.

If a person commits a felony in a house, and afterwards breaks out of it in the night-time, this is burglary, although he might have been lawfully in the house; if,

therefore, a lodger has committed a larceny in the house and in the night-time even lifts a latch to get out of the house with the stolen property, this is a burglariously breaking out of the house.—Reg. vs. Wheeldon, 8 C. & P. 747. Bishop, 2 Cr. L. 99, thinks, this is carrying the doctrine very far. It has been held that getting out of a house by pushing up a new trap door, which was merely kept down by its own weight, and on which fastenings had not yet been put, but the old trap-door, for which this new one was substituted, had been secured by fastenings, was not a sufficient breaking out of the house.—R. vs. Lawrence, 4 C. & P. 231. On this case Greaves says : unless a breaking *out* of a house can be distinguished from the breaking *into* a house, this case seems overruled by R. vs. Russell, 1 Mood, 377.

If the felon, to get out of the dwelling-house, should break an inside door, the case would plainly enough be within the Statute. But the facts of the cases seem not to have raised the question, absolutely to settle it, whether where the intent is not to get out, the breach of an inner door by a person already within, having made what is tantamount to a felonious entry, but not by breaking, is sufficient to constitute burglary, if there is no entry through the inner door thus broken. There are indications that the breaking alone in such circumstances may be deemed enough.—(Reg vs. Wheeldon, *supra*). On the other hand, in an English case, it was held that burglary is not committed by an entry, with felonious intent, into a dwelling-house, without breaking, followed by a mere breaking, without entry, of an inside door.—Reg. vs. Davis, 6 Cox, 369 ; 2 Bishop Cr. L. 100. But in Sir T. Kelyng's Cr. C. 104, *Stevens & Haynes' re-print*, it is said : A servant in the house, lodging in a room remote from his master in the night-time,

draweth the latch of a door to come into his master's chamber, with an intent to kill him, this, on a special verdict, agreed by all the judges, to be burglary.

See, next section for punishment and form of indictment.

PUNISHMENT FOR BURGLARY.

Sect. 51.—Whosoever is convicted of the crime of burglary shall be liable to be imprisoned in the Penitentiary for life or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict, ch. 96, sect. 52, Imp.

As to requiring recognizances and sureties for keeping the peace in felonies punishable under this Act, see *post* sect. 122.—As to solitary confinement see sect. 94 of the Procedure Act of 1869.—See remarks under head "*Burglary.*"

Indictment for burglary and larceny to the value of five pounds.—The jurors for Our Lady the Queen upon their oath present, that J. S. on about the hour of eleven of the clock, of the night of the same day, the dwelling-house of J. N., situate feloniously and burglariously did break and enter, with intent the goods and chattels of one K. O. in the said dwelling-house then being, feloniously and burglariously to steal, take and carry away; and then, in the said dwelling-house, one silver sugar basin, of the value of three pounds, six silver table-spoons of the value of three pounds, and twelve silver tea-spoons of the value of two pounds, of the goods and chattels of the said K. O. in the said dwelling-house then being found, feloniously and burglariously did steal, take and carry away, against the form of the Statute in

such case made and provided, and against the peace of Our Lady the Queen, her crown and dignity.—Archbold, 489.

Upon this indictment, the defendant, if all the facts are proved as alleged, may be convicted of burglary; if they are all proved, with the exception that the breaking was by night, the defendant may be convicted of house-breaking, under sect. 55, *post*; if no breaking be proved, but the value of the property stolen proved to be as alleged, over twenty-five dollars, the verdict may be of stealing in a dwelling-house to that amount, under sect. 61, *post*; if no satisfactory evidence be offered to show, either that the house was a dwelling-house, or some building communicating therewith, or that it was the dwelling-house of the party named in the indictment, or that it was locally situated as therein alleged, or that the stolen property was of the value of five pounds, still the defendant may be convicted of a simple larceny—1 Taylor, evid. 216; Archbold, 489; R. vs. Withal, 1 Leach, 88; R. vs. Comer, 1 Leach, 36; R. vs. Hungerford, 2 East P. C. 518.—Where several persons are indicted together for burglary and larceny, the offence of some may be burglary, and of the others only larceny.—R. vs. Butterworth; R. & R. 520. See *post* remarks under. sect. 53.

If no felony was committed in the house, the indictment should be as follows:—

That A. B. on about the hour of eleven in the night of the same day, at the dwelling-house of J. N. there situate, feloniously and burglariously did break and enter, with intent the goods and chattels of the said J. N. in the said dwelling-house then and there being found, then and there feloniously and burglariously to steal, take and carry away, against (*as in the last precedent* Chitty, 1118.

See post sections 56 and 57, which apply undoubtedly to burglary, where an intent to commit a felony only is charged in the indictment, as in this last form.

The terms of art. usually expressed by the averment "feloniously and burglariously did break and enter" are essentially necessary to the indictment. The word *burglariously* cannot be expressed by any other word or circumlocution; and the averment that the prisoner broke and entered is necessary, because a breaking without an entering, or an entering without a breaking, will not make burglary. 2 Russell, 50. The offence must be laid to have been committed in a mansion-house or dwelling-house, the term *dwelling-house* being that more usually adopted in modern practice. It will not be sufficient to say a *house*.—2 Russell, 46; 1 Hale, 550. It has been said that the indictment need not state whose goods were intended to be stolen, or were stolen.—Reg. vs. Clarke, 1 C. & K. 421; Reg. vs. Nicholas, 1 Cox, 218; Reg. vs. Lawes, 1 C. & K. 62; nor to specify which goods, if an attempt or an intent to steal only is charged.—Reg. vs. Johnson, Leigh & Cave, 489.

It is better to state at what hour of the night the acts complained of took place, though it is not necessary that the evidence should correspond with the allegation as to the exact hour; it will be sufficient if it shows the acts to have been committed in the night, as this word is interpreted by the Statute. However, in Reg. vs. Thompson, 2 Cox, 377, it was held that the hour need not be specified, and that it will be sufficient if the indictment alleges *in the night*.—Bishop, 2 Crim. Proced. 131, is also of this opinion.

The particular felony intended must be specified in the indictment.—Bishop, 2 Crim. Proced. 142.

Indictment under sect. 50, for burglary by breaking out.

—The Jurors for our lady the Queen upon their oath present, that J. S. on about the hour of eleven in the night of the same day, being in the dwelling-house of K. O. situate . . . one silver sugar-basin of the value of three pounds, six silver table-spoons of the value of three pounds, and twelve silver tea-spoons of the value of two pounds, of the goods and chattels of the said K. O. in the said dwelling-house of the said K. O., then being in the said dwelling-house, feloniously did steal, take and carry away; and that he, the said J. S. being so as aforesaid in the said dwelling-house, and having committed the felony aforesaid, in manner and form aforesaid, afterwards, to wit, on the same day and year aforesaid, about the hour of eleven in the night of the same day, feloniously and burglariously did break out of the said dwelling-house of the said K. O.; against the form of the statute in such case, made and provided, and against the peace of our lady the Queen, her crown and dignity.—Archbold, 500.

An indictment alleging “did break to get out” or “did break and get out” is bad: the words of the Statute are “break out” *R. vs. Compton*, 7 C. & P. 139.—See *ante*, *R. vs. Lawrence*, 4 C. & P. 231; *R. vs. Wheeldon*, 8 C. & P. 747, and remarks on burglary.—If it be doubtful whether a felony can be proved, but there be sufficient evidence of an intent to commit a felony, a count may be added stating the intent. To prove this count, the prosecutor must prove the entry, the intent as in other cases, and the breaking out.—Archbold, 501.

Upon the trial of any offence hereinbefore mentioned, the jury may convict of an attempt to commit such offence, if the evidence warrants it, under sect. 49, of the Procedure Act of 1869.

WHAT BUILDING WITHIN CURTILAGE ARE DEEMED PART
OF DWELLING-HOUSE.

Sect 52.—No building, although within the same curtilage with any dwelling-house, and occupied therewith, shall be deemed to be part of such dwelling-house for any of the purposes of this Act, unless there shall be a communication between such building and dwelling-house, either immediate or by means of a covered and enclosed passage leading from the one to the other.—24-25 Vict., ch. 96, sect. 53, Imp.

See remarks on Burglary, and under sect. 54 *post*.

Where the burglary is in an outhouse, falling within this clause, it must still be laid to have been done in the dwelling-house.—2 East, P. C. 512; R. vs. Garland; 2 East, P. C. 493.

“Curtilage” is a court-yard, enclosure or piece of land near and belonging to a dwelling-house. Toml. law dict.

ENTERING A DWELLING-HOUSE IN THE NIGHT WITH
INTENT, ETC., ETC.

Sect. 53.—Whosoever enters any dwelling-house in the night, with intent to commit any felony therein, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding seven years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict. ch. 96, sect. 54, Imp.

As to recognizances and sureties in felonies under this Act, see *post*, sect. 122. As to solitary confinement, see sect. 94, of the Procedure Act of 1869.

Greaves says: “This clause is new, and contains a very great improvement of the law. It frequently happened

on the trial of an indictment for burglary where no property had been stolen that the prisoner escaped altogether for want of sufficient proof of the house having been broken into, though there was no moral doubt that it had been so. This clause will meet all such cases. It will also meet all cases where any door or window has been left open, and the prisoner has entered by it in the night. It is clear that if, on the trial of an indictment for burglary with intent to commit a felony, the proof of a breaking should fail, the prisoner might nevertheless be convicted of the offence created by this clause for such an indictment contains everything that is required to constitute an offence under this clause, in addition to the allegation of the breaking, and the prisoner may be acquitted of the breaking and convicted of the entering with intent to commit felony, in the same way as on an indictment for burglary and stealing, he may be acquitted of the breaking, and convicted of the stealing. And this affords an additional reason why in an indictment for burglary and committing a felony, there should always be introduced an averment of an intent to commit a felony, so that if the proof of the commission of the felony and of the breaking fail, the prisoner may nevertheless be convicted of entering by night with intent to commit it."

Indictment.—.... That J. S. on.... about the hour of eleven in the night of that same day, the dwelling of K. O. situate..... feloniously did enter, with intent the goods and chattels of the said K. O. in the said dwelling-house then being, feloniously to steal, take and carry away, against the form..... Archbold, 489.

As to what is night, and what is a dwelling-house, in the interpretation of this clause, the same rules as for burglary must be followed. Under sect. 49 of the Pro-

cedure Act of 1869, the jury may, if the evidence warrants it, convict of an attempt to commit the offence charged, upon an indictment under this section.

BREAKING, ETC., ETC., ETC., A BUILDING WITHIN THE CURTILAGE, NOT FORMING PART OF THE HOUSE, AND COMMITTING ANY FELONY THEREIN.

Sect. 54.—Whosoever breaks and enters any building and commits any felony therein, such building being within the curtilage of a dwelling-house and occupied therewith, but not being part thereof, according to the provision hereinbefore mentioned, or being in any such building, commits any felony therein and breaks out of the same, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour and with or without solitary confinement—24-25 Vict., ch. 96, sect. 55 Imp.

As to recognizances and sureties, in felonies under this Act, see *post*, sect. 122.—As to solitary confinement, see sect. 94 of the Procedure Act of 1869.

The breaking and entering must be proved in the same manner as in burglary, except that it is immaterial whether it was done in the day or night. If this proof fail, the defendant may be convicted of simple larceny.

The building described in the Statute is "any building within the *curtilage* of a dwelling-house, and occupied therewith, not being part of the dwelling-house, according to the provision hereinbefore mentioned" that is, not communicating with the dwelling-house, either immediately or by means of a covered and enclosed pas-

sage leading from the one to the other."—Sect. 52, *ante*. To break and enter such a building was, before the present Statute, burglary, or house-breaking, and, although this enactment, which expressly defines the building meant thereby to be a building within the *curtilage*, appears to exclude many of those buildings which were formerly deemed parcel of the dwelling-house, from their adjoining to the dwelling-house, and being occupied therewith; although not within any common enclosure or curtilage, yet some of the cases decided upon these subjects may afford some guide to the construction of the present section.—Where the defendant broke into a goose-house, which opened into the prosecutor's yard, into which yard the prosecutor's house also opened, and the yard was surrounded, partly by other buildings of the homestead, and partly by a wall in which there was a gate leading to the road, and some of the buildings had doors opening into the lane, as well as into the yard, the goose-house was holden to be part of the dwelling-house.—*R. vs. Clayburn, R. & R. 360.*—Where the prosecutor's house was at the corner of the street, and adjoining thereto was a workshop, beyond which a coach-house and stable adjoined, all of which were used with the house, and had doors opening into a yard belonging to the house, which yard was surrounded by adjoining buildings, and was altogether enclosed, but the shop had no internal communication with the house, had a door opening into the street, and its roof was higher than that of the house, the workshop was holden to be a parcel of the dwelling-house.—*R. vs. Chalking, R. & R. 334.*—So, a warehouse which had a separate entrance from the street, and had no internal communication with the dwelling-house, with which it was occupied, but was under the same roof, and had a back door opening into the yard, into which the

house also opened and which enclosed both, was holden to be part of the dwelling-house.—R. vs. Lithgo, R. & R. 357.—So, where in one range of buildings the prosecutor had a warehouse and two dwelling-houses, formerly one house, all of which had entrances into the street, but had also doors opening into an enclosed yard belonging to the prosecutor; and the prosecutor let one of the houses between his house and the warehouse together with certain easements in the yard, it was holden that the warehouse was parcel of the dwelling-house of the prosecutor; it was so before the division of the house, and remained so afterwards.—R. vs. Walters, 1 Mood. 13.—And where the dwelling-house of the prosecutor was in the centre of a space of about an acre of land, surrounded by a garden wall, the front wall of a factory, and the wall of the stable-yard, the whole being the property of the prosecutor, who used the factory, partly for his own business and partly in a business in which he had a partner, and the factory opened into an open passage, into which the outer door of the dwelling-house also opened, it was holden that the factory was properly described as the dwelling-house of the prosecutor.—R. vs. Hancock, R. & R. 170.—But a building separated from the dwelling-house by a public thoroughfare cannot be deemed to be part of the dwelling-house.—R. vs. Westwood, R. & R. 495.—So neither is a wall, gate or other fence, being part of the outward fence of the curtilage, and opening into no building but into the yard only, part of the dwelling-house.—R. vs. Bennett, R. & R. 289.—Nor is the gate of an area, which opens into the area only, if there be a door or fastening to prevent persons from passing from the area into the house, although that door or other fastening may not be secured at that time.—R. vs. Davis, R. & R. 322.

Where the building broken into was in the fold-yard of the prosecutor's farm, to get to which from the house it was necessary to pass through another yard called the pump-yard, into which the back door of the house opened, the pump-yard being divided from the fold-yard by a wall four feet high, in which there was a gate, and the fold-yard being bounded on all sides by the farm buildings, a wall from the house, a hedge and gates, it was held that the building was within the curtilage.—*R. vs. Gilbert*, 1 C. & K. 84; See *R. vs. Egginton*, 2 Leach, 913; Archbold, 405.

Indictment.— a certain building of one J. N. situate feloniously did break and enter, the said building then being within the curtilage of the dwelling-house of the said J. N. there situate, and by the said J. N. then and there occupied therewith, and there being then and there no communication between the said building and the said dwelling-house, either immediate or by means of any covered and enclosed passage leading from the one to the other, with intent the goods and chattels of the said J. N., in the said building then being, feloniously to steal, take and carry away, and that the said J. S. then and there, in the said building, one silver watch, of the goods and chattels of the said J. N. feloniously did steal, take and carry away, against the form This count may be added to an indictment for burglary, housebreaking or stealing in a dwelling-house to the amount of five pounds, and should be added, whenever it is doubtful whether the building is in strictness a dwelling-house. If the evidence fail to prove the actual stealing, but the breaking, entry and intent to steal be proved, the prisoner may be convicted, under this indictment, of the felony described in sect. 56, post,

as this indictment alleges the intent as well as the act.—Archbold, 404.

Under sect. 49 of the Procedure Act of 1869, a verdict of guilty of an attempt to commit the offence charged may be given upon an indictment on this section, if the evidence warrants it.

HOUSEBREAKING AND COMMITTING ANY FELONY INTO
ANY HOUSE, ETC., ETC., ETC.

Sect. 55. Whosoever breaks and enters any dwelling-house, school-house, shop, warehouse or counting-house, and commits any felony therein and breaks out of the same, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years and not less than two years or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 96, s. 56, Imp.

See *post*, Sect. 122, as to recognizances and sureties in felonies under this act; and sect. 94 of the Procedure Act of 1869 as to solitary confinement.

The breaking and entering must be proved in the same manner as in burglary, except that it need not be proved to have been done in the night-time. But if it be proved to have been done in the night-time, so as to amount to burglary, the defendant may, notwithstanding, be convicted upon this indictment.—R. vs. Pearce, R. & R. 174; R. vs. Robinson, R. & R. 321; Archbold, 399.—And so, also, any breaking and entering, which would be sufficient in a case of burglary, would be sufficient under this section. Thus, where the prisoner burst open an inner door in the inside of a house, and so entered a shop, in order to steal money from the till, it was held that

this was a sufficient breaking to support an indictment for housebreaking—Reg. vs. Wenmouth, 8 Cox, 348.—The value of the goods is immaterial, if a breaking and entry be proved: but if proved and alleged to be of the value of twenty-five dollars, the prisoner may be convicted of the felony described in sect. 61, *post*: if the prosecutor succeed in proving the larceny, but fail in proving any of the other aggravating circumstances, the defendant may be convicted of simple larceny.—Archbold, 399. The same accuracy in the statement of the ownership and situation of the dwelling-house is necessary in an indictment for this offence as in burglary. But it must be remembered that any error in these matters may now be amended, under the Procedure Act of 1869.—2 Russell, 76.

Sect. 52, *ante*, applies to this clause, as well as the rules which govern the interpretation of the words *dwelling-house* in burglary.—2 Russell, 76.

As in simple larceny, the least removal of the goods from the place where the thief found them, though they are not carried out of the house, is sufficient upon an indictment for house-breaking. It appeared that the prisoner, after having broken into the house, took two half-sovereigns out of a bureau in one of the rooms, but being detected, he threw them under the grate in that room; it was held that if they were taken with a felonious intent, this was a sufficient removal of them to constitute the offence.—R. vs. Amier, 6 C. & P. 344.

As to what is a shop under this section, it was once said that it must be a shop for the sale of goods, and that a mere workshop was not within the clause.—Reg. vs. Sanders, 9 C. & P. 79; but in Reg. vs. Carter, 1 C. & K. 173, Lord Denman, C. J., declined to be governed by the preceding case, and held that a blacksmith's shop, used as

a workshop only, was within the Statute. A warehouse means a place where a man stores or keeps his goods, which are not immediately wanted for sale.—Reg. vs. Hill, 2 Russell, 95.—Upon an indictment for breaking and entering a counting-house, owned by Gamble, and stealing therein, it appeared that Gamble was the proprietor of extensive chemical works, and that the prisoner broke and entered a building, part of the premises, which was commonly called the machine-house, and stole therein a large quantity of money. In this building, there was a weighing machine, at which all goods sent out were weighed, and one of Gamble's servants kept in that building a book, in which he entered all goods weighed and sent out. The account of the time of the men employed in different departments was taken in that building and their wages were paid there; the books in which their time was entered were brought to that building for the purpose of making the entries and paying the wages. At other times, they were kept in another building called the office, where the general books and accounts of the concern were kept. It was objected that this was not a counting-house; but, upon a case reserved, the judges held that it was a counting-house within the Statute.—Reg. vs. Potter, 2 Den. 235.

An indictment for house-breaking is good, if it alleges that the prisoner broke and entered the dwelling-house, and the goods of in the said dwelling-house then and there being found, then and there (omitting "in the said dwelling-house") feloniously did steal, take and carry away.—Reg. vs. Andrews, C. & M. 121, overruling Reg. vs. Smith, 2 M. & Rob. 115, which Coleridge, J., said Patteson, J., was himself since satisfied had been wrongly decided.—2 Russell, 76, note by Greaves

Indictment.—on . . . the dwelling-house of J. N., situ-

ate. feloniously did break and enter, with intent the goods and chattels of the said J. N., in the said dwelling-house then being, feloniously to steal, take and carry away, and one dressing-case of the value of twenty-five dollars, of the goods and chattels of the said J. N., then in the said dwelling-house, then feloniously did steal, take and carry away, against the form. Archbold, 398.

Upon the trial of an indictment for an offence under this section the jury may, under sect. 49 of the Procedure Act of 1869, convict the defendant of an attempt to commit the same, if the evidence warrants it. But they can only convict of the attempt to commit the identical offence charged in the indictment: the prisoner was indicted for breaking and entering a dwelling-house, and stealing therein certain goods specified in the indictment, the property of the prosecutor. It was proved at the trial that, at the time of the breaking, the goods specified were not in the house but there were other goods there, the property of the prosecutor; the prisoner had not had time to steal anything, having been caught immediately after his entering the house. The jury acquitted the prisoner of the felony charged, but found him guilty of breaking and entering the dwelling house of the prosecutor, and attempting to steal his goods therein. *Held* that the conviction was wrong, and that an attempt must be to do that which, if successful, would amount to the felony charged.—Reg. vs. McPherson, Dears. & B. 197. Bishop, 1 Cr. Law, 757, does not approve of this decision. As said in Archbold, 399, the prisoner, under such circumstances, may be convicted of breaking and entering *with intent* to commit a felony, under sect 56, *post.* But only if, as in the form above given, the intent is alleged, which was in the case in Reg. vs. McPherson, *ubi supra*.

A second count to an indictment under sect. 55 may be taken on the form of indictment given, *ante*, under sect. 54.

HOUSE-BREAKING WITH INTENT TO COMMIT A FELONY.

Sect. 56.—Whosoever breaks and enters any dwelling-house, church, chapel, meeting-house, or other place of divine worship, or any building within the curtilage, school-house, shop, warehouse, or counting-house, with intent to commit any felony therein, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding seven years nor less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24–25 Vict., ch. 96, sect. 57, Imp.

As to recognizances and sureties in felonies under this Act, see *post*, sect. 122.—As to solitary confinement, see sect. 94 of the Procedure Act of 1869.

Indictment.—.....on.....the dwelling-house of J. N., situate.....feloniously did break and enter, with intent to commit a felony therein, to wit, the goods and chattels of the said J. N. in the said dwelling-house then being, then feloniously to steal, take and carry away, against the form of the Statute in such case made and provided.—Archbold, 403.

Where there is only an attempt, it is not always possible to say what goods the would-be thief meant to steal, and an indictment for an attempt to commit larceny need not specify the goods intended to be stolen.—Reg. vs. Johnson, L. & C. 489.

Upon an indictment under this section the prisoner may be convicted, under sect. 49 of the Procedure Act of 1869, of the misdemeanor of attempting to commit the

felony charged.—Reg. vs. Bain, L. & C. 129, and reporter's note, 2 Russell, 97.

Greaves says: "This clause is new, and contains a very important improvement in the law. Formely the offence here provided was only a misdemeanor at common law. Now, it often happened that such an offence was very inadequately punished as a misdemeanor, especially since the night was made to commence at nine in the evening; for at that time, in the winter, in rural districts, the poor were often in bed. Nor could anything be much more unreasonable than that the same acts done just after nine o'clock at night should be liable to penal servitude for life, but if done just before nine they should only be punishable as a misdemeanor. It is clear that if, on the trial of an indictment for burglary, with intent to commit a felony, it should appear that the breaking and entry were before nine o'clock, the prisoner might be convicted under this clause. But upon an indictment *in the ordinary form* for house breaking, the prisoner could not be convicted under this clause, because it does not allege an intent to commit a felony; (as in McPherson's case, *ante*, under last preceding section.) It will be well, however, to alter the form of these indictments, and to allege a breaking and entry with intent to commit some felony, in the same manner as in an indictment for burglary with intent to commit felony, and then to allege the felony that is supposed to have been committed in the house. If this be done, then, if the evidence fail to prove the commission of that felony, but prove that the prisoner broke and entered with intent to commit it, he may be convicted under this clause."—The form of indictment given under the last preceding section is in conformity with these remarks.

See the following sections, 57 and 58, which refer to this one.

WHEN BURGLARY NOT CLEARLY PROVEN, CONVICTION MAY
BE UNDER SECT. 56.

Sect. 57.—Whosoever is indicted for any burglary, where the breaking and entering are proved at the trial to have been made in the day-time and no breaking-out appears to have been made in the night-time, or where it is left doubtful whether such breaking and entering or breaking out took place in the day or night-time, shall be acquitted of the burglary, but may be convicted of the offence specified in the next preceding section.

This clause is not in the English Act, as remarked *ante*, under sect. 51, it applies to cases of burglary where an intent only to commit a felony is charged.—

It will be seen by Greaves' remarks under the last section, that he is of opinion that even without this enactment, such a verdict could be given, upon such an indictment for burglary.

IF, UPON INDICTMENT UNDER SECT. 56, BURGLARY IS
PROVED.

Sect. 58.—It shall not be available by way of defence to a person charged with the offence specified in the next preceding section but one to show that the breaking and entering were such as to amount in law to burglary, provided that the offender shall not be afterwards prosecuted for burglary upon the same facts, but it shall be open to the Court before whom the trial for such offence takes place, upon the application of the person conducting the prosecution, to allow an acquittal on the ground that the offence, as proved, amounts to burglary, and if an acquittal takes place on such ground, and is so returned by the jury in delivering their verdict, the same shall be

recorded together with the verdict; and such acquittal shall not then avail as a bar or defence upon an indictment for such burglary.

This clause is not in the English Act—it seems a superfluous enactment. As the law stands, in cases of doubt, the prosecution would indict for burglary.

BEING FOUND BY NIGHT ARMED WITH INTENT TO BREAK A DWELLING-HOUSE, ETC., ETC., ETC., OR HAVING IN POSSESSION, BY NIGHT IMPLEMENTS OF HOUSE-BREAKING.

Sect. 59.—Whosoever is found by night armed with any dangerous or offensive weapon or instrument whatsoever, with intent to break or enter into any dwelling-house or other building whatsoever, and to commit any felony therein, or is found by night having in his possession without lawful excuse (the proof of which excuse shall lie on such person) any pick-lock key, crow, jack, bit, or other implement of house-breaking, or any match, or combustible or explosive substance; or is found by night having his face blackened or otherwise disguised, with intent to commit any felony; or is found by night in any dwelling-house or other building whatsoever, with intent to commit any felony therein, is guilty of a misdemeanor, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding three years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years with or without hard labour.—24–25 Vict., ch. 96, sect. 58, Imp.

As to fining the offender, and requiring him to enter into recognizances and find sureties for keeping the peace, in misdemeanors under this Act, see *post.*, sect. 122.

The distinction between this clause and sect. 53, as far as relates to being in a dwelling-house with intent to

commit a felony, is this, that, under sect. 53, the entry must be proved to have been in the night, but under this clause, proof that the prisoner was in the dwelling-house by night with the intent to commit felony is enough, and it is unnecessary to prove whether he entered by day or by night.—Greaves, Cons. Acts 150.

Indictment for being found by night armed, with intent, etc., etc., etc.—The jurors for Our Lady the Queen upon their oath present, that J. S. on . . . about the hour of eleven in the night of the same day, at — was found unlawfully armed with a certain dangerous and offensive instrument, that is to say, a crow-bar, with intent then to break and enter into a certain dwelling-house of A. B. there situate, and the goods and chattels in the said dwelling-house then being, feloniously to steal, take and carry away, against the form of the Statute in such case made and provided, and against the peace of Our Lady the Queen, her crown and dignity.—Archbold, 501.

It is not necessary to aver that the goods and chattels were the property of any particular person.—*R. vs. Lawes*, 1 C. & K. 62; *Reg. vs. Nicholas*, 1 Cox, 218; *Reg. vs. Clarke*, 1 C. & K. 421.

See *ante*, sect. 1, as to the interpretation of the word "night."

In *Reg. vs. Tarrald*, L. & C. 301, it was held, upon a case reserved, that an indictment under this section, for being found by night armed with a dangerous and offensive weapon and instrument with intent to break and enter into a building, and commit a felony therein, must specify, as in burglary, the building to be broken into. Crompton, J., was of opinion that the particular felony intended must also be specified.

On this case, Greaves, 2 Russell, 70, note *g.*, says: "With all deference it is submitted that this decision is

clearly erroneous. The ground on which Cockburn, C. J., rests the decision of the first point (as to a particular house to be specified) is answered by the second clause of the same section; for, under it, the mere possession without lawful excuse, of any instrument of house-breaking in the night, constitutes the offence without any intent to commit any felony at all; (See *post*, as to this part of the clause) and this offence is plainly one step further from the attempt to commit a felony than where the intent to commit some felony exists, though the particular felony is not yet fixed As to the rules of criminal pleading, these seem, in this case, to have been misconceived. It is quite a mistake to suppose that these rules require the specification of particulars where it is impracticable to specify them. Wherever this is the case the rules allow general or other statements instead It cannot be doubted that this decision, instead of promoting the object of the Act in this respect, is substantially a repeal of it, for it is hardly conceivable that, in the majority of cases, it will be possible to prove an intent to commit any particular felony."

To this, Cave answers, (3 Burn's just. 252, note a): " . . . But a close consideration of the Statute appears to confirm it: (the decision in Tarrald's case) it may well be that in all the other cases except "having implements of housebreaking" an intent must be clearly proved; for the "being armed with a dangerous weapon" or "having the face blacked" or "being by night in a dwelling-house" are clearly no offences unless done for a felonious purpose, and the very essence of the offence is such felonious purpose. But, with regard to "having instruments of house-breaking" the Statute implies the intent from the nature of the instrument, and throws the proof of innocence upon the prisoner. The general

intention of the Statute is thus well carried out; for if a man be found by night anywhere with house-breaking implements, or such as the jury shall think he intended to use as such, he may be indicted for that offence.—Reg. vs. Oldham, 2 Den. 472, *post*, but if he has not any house-breaking implements: but is “armed with a dangerous weapon” not usable for house-breaking, or has “his face blacked” or is “in a dwelling-house” without instruments of house-breaking, then the particular intent must be laid and proved as laid.”

Indictment for having in possession, by night, implements of house-breaking on about the hour of eleven in the night of the same day, at was found, he the said (*defendant*) then and there, by night as aforesaid, unlawfully having in his possession, without lawful excuse, certain implements of house-breaking, that is to say, two crows, three jacks and one bit, against the form Archbold, 502.

Any instrument, capable of being used for lawful purposes, is within the Statute, if the jury find that such instrument may also be used for the purposes of house-breaking, and that the prisoner intended to use it as an implement of house-breaking, when found, at night, in possession of it.—Reg. vs. Oldham, 2 Den. 472. It would have been better, in our Statute, to meet a doubt raised by Maule, and Cresswell, J.J., in this last case, to put a comma between pick-lock and key. What is a *picklock-key*?—What have the translators done with the word *key* in the French version of the Statute?

Where, on an indictment for having in possession without lawful excuse certain implements of house-breaking the jury found the prisoners guilty of the possession without lawful excuse, but that there was no evidence of an intent to commit a felony, and the indict-

ment omitted the words "with intent to commit a felony," it was held that the omission did not render the indictment bad, and that it was not necessary to prove an intent to commit a felony. *Reg. vs. Bailey, Dears. 244.*

OFFENCE UNDER SECT. 59, AFTER A PREVIOUS CONVICTION.

Sect. 60.—Whosoever is convicted of any such misdemeanor as in the last preceding section mentioned committed after a previous conviction, either for felony or such misdemeanor shall, on such subsequent conviction be liable to be imprisoned in the Penitentiary for any term not exceeding ten years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour.—24-25 Vict., ch. 96, s. 59, Imp.

See Procedure Act of 1869, sect. 26, as to indictments for a subsequent offence.

STEALING IN A DWELLING-HOUSE TO THE VALUE OF \$25.

Sect. 61.—Whosoever steals in any dwelling-house any chattel, money or valuable security to the value, in the whole, of twenty-five dollars or more, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour and with or without solitary confinement.—24-25 Vict., ch. 96, sect. 60, Imp.

As to the meaning of the words "valuable security," see *ante*, sect. 1. As to sureties for the peace, in felonies under this Act, see *post*, sect. 122. As to soli-

tary confinement, see sect. 94 of the Procedure Act of 1869.

Indictment one silver sugar basin, of the value of twenty-five dollars of the goods and chattels of A. B., in the dwelling-house of the said A. B., situate feloniously did steal, take and carry away, against the form Archbold, 401.

If no larceny is proved the defendant must of course be acquitted altogether, except if the jury should find him guilty of the attempt to commit the offence *charged*, under sect. 49 of the Procedure Act of 1869; but the jury could not find him guilty of an attempt to commit simple larceny.—Reg. vs. McPherson, Dears. & B. 197, see *supra*, under sect. 55.

The word "*dwelling-house*" has the same meaning as in burglary and sect. 52. *ante*. If the proof fails to prove the larceny to have been committed in a dwelling-house or in the dwelling-house described, or that the value of the things stolen at any one time amounts to twenty-five dollars, the defendant must be acquitted of the compound offence, and may be found guilty of the simple larceny only.—Archbold, 402.

The goods must be stolen to the amount of twenty-five dollars or more at one and the same time.—R. vs. Petrie, 1 Leach, 294; R. vs. Hamilton, 1 Leach, 348; 2 Russell, 85.

It had been held in several cases that, if a man steal the goods of another in his own house, R. vs. Thompson, R. vs. Gould, 1 Leach, 338, it is not within the Statute, but these cases appear to be overruled by R. vs. Bowden, 2 Mood. 285. Bowden was charged with having stolen Seagall's goods, in his, Bowden's, house, and having been found guilty, the conviction was affirmed.—Where a lodger invited an acquaintance to sleep at his lodgings,

without the knowledge of his landlord; and during the night, stole his watch from his bed's head, it was doubted at the trial whether the lodger was not to be considered as the owner of the house with respect to the prosecutor; but the judges held that the defendant was properly convicted of stealing in the dwelling-house of the landlord: the goods were under the protection of the dwelling-house.—*R. vs. Taylor, R. & R. 418.*—If the goods be under the protection of the *person* of the prosecutor, at the time they were stolen, the case will not be within the Statute: as, for instance, where the defendant procured money to be delivered to him for a particular purpose and then ran away with it.—*R. vs. Campbell, 2 Leach, 264*, and so, where the prosecutor, by the trick of ring-dropping, was induced to lay down his money upon the table, and the defendant took it up and carried it away.—*R. vs. Owen, 2 Leach, 572.*—For a case to be within the Statute, the goods must be under the protection of the house. But property left at a house for a person supposed to reside there, will be under the protection of the house, within the Statute.—Two boxes belonging to A., who resided at 38 Rupert street, were delivered by a porter, whether by mistake or design did not appear, at No. 33 in the same street; the owner of the house imagining that they were for the defendant who lodged there, delivered them to him: the defendant converted the contents of the boxes to his own use, and absconded; it was doubted at the trial whether the goods were sufficiently within the protection of the dwelling-house to bring the case within the Statute, but the judges held that they were.—*R. vs. Carroll, 1 Mood. 89.*—If one on going to bed put his clothes and money by the bedside, these are under the protection of the dwelling-house and not of the person; and the question whether goods

are under the protection of the dwelling-house, or in the personal care of the owner, is a question for the Court, and not for the jury.—*R. vs. Thomas*, Carr. Supp. 295.—So where a man went to bed with a prostitute, having put his watch in his hat on a table, and the woman stole the watch while he was asleep; this was held to be a stealing in a dwelling-house, and not a stealing from the person.—*R. vs. Hamilton*, 8, C. & P. 49.—But if money be stolen from under the pillow of a person sleeping in a dwelling-house, this is not stealing in the dwelling-house within the meaning of the Act.—2 Russell, 84.—In ascertaining the value of the articles stolen, the jury may use that general knowledge which any man can bring to the subject, but if it depends on any particular knowledge of the trade by one of the jurymen, this jurymen must be sworn and examined as a witness.—*R. vs. Rosser*, 7 C. & P. 648.

STEALING IN A DWELLING HOUSE, ANY PERSON THEREIN
BEING PUT IN FEAR.

Sect. 62.—Whosoever steals any chattel, money or valuable security in any dwelling-house, and by any menace or threat, put any one therein in bodily fear, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 96, sect. 61, Imp.

As to requiring sureties for keeping the peace in felonies under this Act, see *post*, sect. 122. As to solitary confinement, see sect. 94 of the Procedure Act of 1869. As to the meaning of the words "valuable security," see *ante*, sect. 1.

The indictment must expressly allege that some person in the house was put in fear by the defendant.—*R. vs. Etherington*, 2 Leach, 671.

Sect. 52, *ante*, and the observations under the head "Burglary" upon questions which may arise as to what shall be deemed a dwelling-house, will apply to the offence under this clause.—2 Russell, 78.

The value, if amounting to twenty-five dollars had better always be inserted, as then, if no menace or threat, or no person in the house being put in fear, are proved, the defendant may be convicted of stealing in the dwelling-house to the value of twenty-five dollars, under sect. 61. If there is no proof of a larceny in a dwelling-house, or the dwelling-house alleged, or if the goods stolen are not laid and proved to be of the value of twenty-five dollars, the defendant may still be convicted of simple larceny, if the other aggravating circumstances are not proved.

The value is immaterial, if some person was in the house at the time, and was put in bodily fear by a menace or threat of the defendant, which may be either by words or gestures.—*R. vs. Jackson*, 1 Leach, 269.

It is clear that no breaking of the house is necessary to constitute this offence; and it should seem that property might be considered as stolen in the dwelling-house within the meaning of the Statute, if a delivery of it out of the house should be obtained by threats, or an assault upon the house by which some persons therein should be put in fear. But questions of difficulty may perhaps arise as to the degree of fear which must be excited by the thief. Where, however, the prosecutor in consequence of the threat of an armed mob, fetched provisions out of his house and gave them to the mob, who stood outside the door, this was holden not to be a



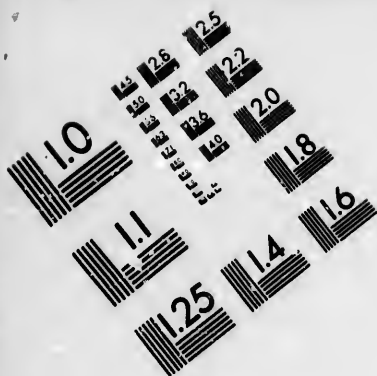
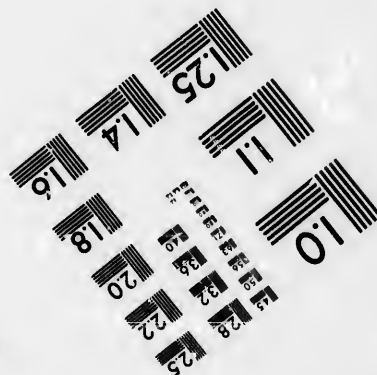
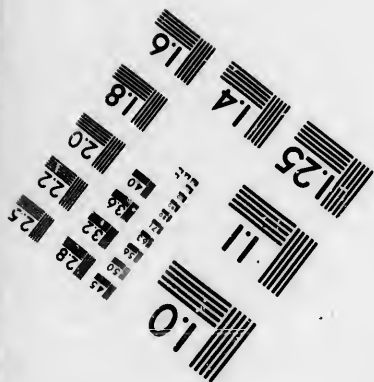
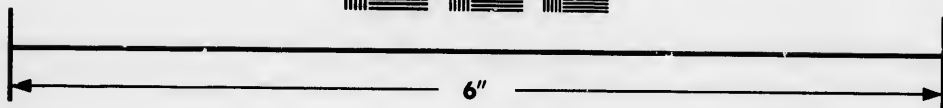
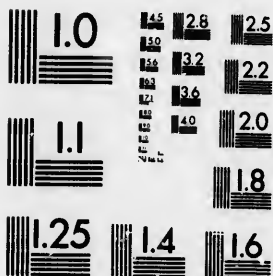


IMAGE EVALUATION TEST TARGET (MT-3)



Photographic
Sciences
Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503



stealing in the dwelling-house.—Reg. vs. Leonard, Cheshire Special Com. 1842; 2 Russell, 78. But Greaves adds: "It is submitted with all deference that this decision is erroneous; the law looks on an act done under the compulsion of terror as the act of the person causing that terror just as much as if he had done it actually with his own hands. Any asportation, therefore, of a chattel under the effects of terror is in contemplation of law the asportation of the party causing the terror."—Note g, 2 Russell, loc. cit. If so, in Leonard's case, suppose the prisoner had been taken up by the police just before the prosecutor gave him the provisions, and as he, the prosecutor, was coming with them towards the prisoner, under the influence of terror, the offence would have been larceny, according to Greaves, as the asportation by the prosecutor was in law the asportation of the prisoner; this would be going far.

It does not appear to have been expressly decided by the Repealed Statute whether or not it was necessary to prove the actual sensation of fear felt by some person in the house, or whether fear was to be implied, if some person in the house were conscious of the fact at the time of the robbery. But it was suggested as the better opinion, and was said to have been the practice, that proof should be given of an actual fear excited by the fact, when committed out of the presence of the party, so as not to amount to a robbery at common law. And it was observed that where the fact was committed in the presence of the party, possibly it would depend upon the particular circumstances of the transaction, whether fear would or would not be implied; but that clearly, if it should appear that the party in whose presence the property was taken was not conscious of the fact at the time, the case was not within that Statute. But, now,

by the express words of the Statute, the putting in fear must have been by an actual menace or threat.—2 Russell, 79; Archbold, 401.

A person outside a house may be a principal in the second degree to menaces used in the house: menaces used out of the house may be taken into consideration with menaces used in the house.—Reg. vs. Murphy, 6 Cox, 340.

Upon the trial of any offence mentioned in this section the jury may, under sect. 49 of the Procedure Act of 1869, convict of an attempt to commit such offence.—2 Russell, 81.

Indictment.—..... one silver basin (of the value of twenty-five dollars) of the goods and chattels of J. N., in the dwelling-house of the said J. N., situate: ... feloniously did steal, take and carry away: one A. B. then, to wit, at the time of the committing of the felony aforesaid, being in the said dwelling-house, and therein by the said (defendant) by a certain menace and threat then used by the said. (defendant) then being put in bodily fear, against the form. Archbold, 401. (As to value, see *ante*.)

LARCENY IN MANUFACTORIES.

Sect. 63.—Whosoever steals to the value of two dollars any woollen, linen, hempen or cotton yarn, or any goods or articles of silk, woollen, linen, cotton, alpaca or mohair, or of any one or more of those materials mixed with each other, or mixed with any other material, whilst laid, placed or exposed, during any stage, process or progress of manufacture, in any building, field or other place, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years and not less than two years, or to be imprisoned in

any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 36, sect. 62; *Imp.*

As to sureties for the peace, in felonies under this Act, see *post*, sect. 122. As to solitary confinement, see sect. 94 of the Procedure Act of 1869.

If you prove the larceny, but fail to prove the other circumstances so as to bring the case within the Statute, the defendant may be found guilty of the simple larceny only.—Archbold, 407.

Goods remain in "a stage, process or progress of manufacture," though the texture be complete, if they be not yet brought into a condition fit for sale.—*R. vs. Woodhead*, 1 M. & Rob. 549.—See *R. vs. Hugill*, 2 Russell 517; *R. vs. Dixon*, R. & R. 53.

Upon the trial of any offence mentioned in this section, the jury may, under sect. 49 of the Procedure Act of 1869, convict the prisoner of an attempt to commit the same.—2 Russell, 518.

Indictment.—... on ... thirty yards of linen cloth, of the value of four dollars, of the goods and chattels of J. N., in a certain building of the said J. N., situate... feloniously did steal, take and carry away, whilst the same were laid, placed and exposed in the said building, during a certain state, process and progress of manufacture, against the form of the Statute in such case made and provided.—Other counts may be added, stating the particular process and progress of manufacture in which the goods were when stolen.—Archbold, 407.

STEALING GOODS INTRUSTED FOR MANUFACTURE.

Sect 64.—Whosoever, having been intrusted for the

purpose of manufacture, or for a special purpose connected with manufacture, or employed to make any felt or hat, or to prepare or work up any woollen, linen, fustian, cotton, iron, leather, fur, hemp, flax, cotton, silk, or any such materials mixed with one another, or having been so intrusted as aforesaid, with any other article, materials, fabric or thing, or with any tools or apparatus for manufacturing the same, sells, pawns, purloins, secrets, embezzles, exchanges, or otherwise fraudulently disposes of the same, or any part thereof, where the case does not fall within the last preceding section hereof, is guilty of a misdemeanor, and shall be liable to be imprisoned in any gaol or place of confinement, other than a Penitentiary, for any term less than two years, with or without hard labour, and with or without solitary confinement.

This clause is not in the English Act. See *post*, sect. 122, as to fine and sureties for the peace, in misdemeanors under this Act. As to solitary confinement, see sect. 94 of the Procedure Act of 1869.

LARCENY IN SHIPS, WHARVES, ETC., ETC.

Sect. 65.—Whosoever steals any goods or merchandise in any vessel, barge or boat of any description whatsoever, in any haven, or in any port of entry or discharge, or upon any navigable river or canal, or in any creek or basin belonging to or communicating with any such haven, port, river or canal, or steals any goods or merchandise from any dock, wharf or quay, adjacent to any such haven, port, river, canal, creek or basin, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than

two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 96, sect. 63, Imp.

As to sureties for the peace, in felonies under this Act, see *post*, sect. 122. As to solitary confinement, see sect. 94 of the Procedure Act of 1869.

Indictment for stealing from a vessel on a navigable river
 twenty pounds weight of indigo of the goods and merchandise of J. N., then being in a certain ship called the Rattler upon the navigable river Thames, in the said ship, feloniously did steal, take and carry away, against the form . . . Archbold, 408.

Indictment for stealing from a dock— . . . on . . . twenty pounds weight of indigo of the goods and merchandise of J. M., then being in and upon a certain dock adjacent to a certain navigable river called the Thames, from the said dock, feloniously did steal, take and carry away, against the form . . . Archbold, 409.

The value is immaterial, and need not be laid. If the prosecutor fails to prove any of the circumstances necessary to bring the case within the Statute, but proves a larceny, the defendant may be convicted of the simple larceny.—Archbold, 409.

The construction of the Repealed Statute was generally confined to such goods and merchandise as are usually lodged in ships, or on wharves or quays; and therefore where Grimes was indicted on this Statute for stealing a considerable sum of money out of a ship in port, though great part of it consisted in Portugal money, not made current by proclamation, but commonly current; it was ruled not to be within the Statute.—*R. vs. Grimes, Foster*, 79; *R. vs. Leigh*, 1 Leach, 52. The same may be said of the present Statute, by reason of the substitution of the words "goods and merchandise" for the words

"chattel, money or valuable security" which are used in other parts of the Act."—Archbold, 408.

It would not be sufficient, in an indictment for stealing goods from any vessel on a certain navigable river to prove in evidence that the vessel was aground in a dock in a creek of the river, unless the indictment were amended.—*R. vs. Pike*, 1 Leach, 417. The words of the Statute are "in any vessel," and it is therefore immaterial whether the defendant succeeded in taking the goods from the ship or not, if there was a sufficient asportation in the ship to constitute larceny.—3 Burn's Just. 254.

The words of the Statute are "from the dock," so that, upon an indictment for stealing from a dock, wharf, &c., &c., a mere removal will not suffice; there must be an actual removal from the dock, &c., &c.—Archbold, 409.

A man cannot be guilty of this offence in his own ship.—*R. vs. Madox*, R. & R. 92; but see *Reg. vs. Bowden*, 2 Mood. 285, *ante*, under sect. 61. And now, sect. 3, *ante*, would apply to such a case, being larceny by a bailee.

The luggage of a passenger going by steamer is within the Statute. The prisoners were indicted for stealing a portmanteau, two coats and various other articles, in a vessel, upon the navigable river Thames. The property in question was the luggage of a passenger going on board the Columbian steamer from London to Hamburg; and it was held that the object of the Statute was to protect things on board a ship, and that the luggage of a passenger came within the general description of goods.—*R. vs. Wright*, 7 C. & P., 159.

Upon an indictment for any offence mentioned in this section, the jury may convict of an attempt to commit the same, under sect. 49 of the Procedure Act of 1869, if the evidence warrants it.—2 Russell, 381.

STEALING FROM SHIPWRECKED VESSELS. POSSESSION OF SHIPWRECKED GOODS, ETC., ETC., ETC.

Sect. 66.—Whosoever plunders or steals any part of any ship or vessel in distress or wrecked, stranded or cast on shore, or any goods, merchandise or articles of any kind belonging to such ship or vessel, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement; and the offender may be indicted and tried either in the district, county or place in which the offence has been committed, or in any district, county or place next adjoining, *or in which he has been apprehended or is in custody.*—24-25 Vict., ch 96, sect. 64, Imp.

The words in *italics* are not in the English Act.

Sect. 67.—If any goods, merchandise or articles of any kind belonging to any ship or vessel in distress or wrecked, stranded or cast on shore, are found in the possession of any person, or on the premises of any person with his knowledge, and such person being taken or summoned before a Justice of the Peace, does not satisfy the Justice that he came lawfully by the same, then the same shall, by order of the Justice, be forthwith delivered over to or for the use of the rightful owner thereof, and the offender shall on conviction of such offence before the Justice, at the discretion of the Justice, either be committed to the common gaol or house of correction, there to be imprisoned only or to be imprisoned and kept to hard labour for any term not exceeding three months, or else shall forfeit and pay, over and above the value of the goods, merchandise or articles, such sum of money not

exceeding twenty dollars, as to the Justice may seem meet.—24-25 Vict., ch. 96, sect. 65, Imp.

Sect. 68—If any person offers or exposes for sale any goods, merchandise or articles whatsoever, unlawfully taken or reasonably suspected so to have been taken from any ship or vessel in distress, or wrecked, stranded or cast on shore, in every such case any person to whom the same are offered for sale, or any officer of customs, or excise or peace officer may lawfully seize the same, and shall, with all convenient speed carry the same or give notice of such seizure to some Justice of the Peace, and if the person who has offered or exposed the same for sale, being summoned by such Justice, does not appear and satisfy the Justice that he came lawfully by such goods, merchandise or articles, then the same shall, by order of the Justice, be forthwith delivered over to or for the use of the rightful owner thereof, upon payment of a reasonable reward to be ascertained by the Justice, to the person who seized the same, and the offender shall, on conviction of such offence by the Justice, at the discretion of the Justice, either be committed to the common gaol or house of correction there to be imprisoned only, or to be imprisoned and kept to hard labour for any term not exceeding three months, or else shall forfeit and pay, over and above the value of the goods, merchandise or articles, such sum of money not exceeding twenty dollars as to the Justice seems meet.—24-25 Vict., ch. 96, sect. 66, Imp.

As to sureties for the peace, in felonies under this Act, see *post*, sect. 122.

As to solitary confinement, see sect. 94 of the Procedure Act of 1869.—As to prosecution of offences punishable on summary convictions by this Act, see *post*, sect. 123.

Indictment under sect. 66.—The jurors for Our Lady the Queen upon their oath present, that on . . . a certain ship, the property of a person or persons to the jurors aforesaid unknown, was stranded, and that J. S., on the day and year aforesaid, ten pieces of oak plank, being parts of the said ship (or twenty pounds weight of cotton, of the goods and merchandise of a person or persons to the jurors aforesaid unknown, belonging to the said ship) so then stranded as aforesaid, feloniously did plunder, steal, take and carry away, against the form . . . —You may add a second count stating the ship to have been “in distress,” a third count stating the ship to have been “wrecked,” and a fourth count stating the ship to have been “cast on shore.” If the name of the ship be known, it should be stated in the indictment, and if the name of the owner be known, the ship should be described as his property.—Archbold, 384.

As to what shall be deemed “having in possession” under this Act, see *ante*, sect. 1.

By the 36 Vict., ch. 55, sects. 19 and 20, an Act respecting *Wreck and Salvage*, provisions are made concerning offences in respect of wreck, which, in many cases, would clash with the above sections of the Larceny Act; but by sect. 33 of the said 36 Vict., ch. 55, it is enacted that, “Any person committing an offence against this Act, which is also an offence against some other Act, may be prosecuted, tried, and if convicted, punished under either Act.”

LARCENY BY CLERKS OR SERVANTS.

Sect. 69.—Whosoever being a clerk or servant, or being employed for the purpose or in the capacity of a clerk or servant, steals any chattel, money or valuable security belonging to or in the possession or power of

his master or employer, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years, and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour; and with or without solitary confinement.—24-25 Vict., ch. 96, sect. 67, Imp.

As to sureties for the peace in felonies, under this Act, see *post*, sect. 122. As to solitary confinement, see sect. 94 of the Procedure Act of 1869. As to what is a "valuable security," see *ante*, sect. 1.

See next section, and the cases there cited.

Indictment.—J. S. on was clerk to J. N., and that the said J. S., whilst he was such clerk to the said J. N. as aforesaid, to wit on the day and year aforesaid, certain money to the amount of ten pounds, ten yards of linen cloth, and one hat, of and belonging to the said J. N., his master, feloniously did steal, take and carry away, against the form of the Statute in such case made and provided, and against the peace of Our Lady the Queen, her crown and dignity.—Archbold, 346.

If the defendant is not shown to be the clerk or servant of J. N. but a larceny is proved, he may be convicted of the larceny merely.—Archbold, 348; *Reg. vs. Jennings, Dears. & B.* 447. It is not necessary by the Statute that the goods stolen should be the property of the master: the words of the Statute are, belonging to, or in the possession or power of the master. A second count stating the goods "then being in the possession and power" of the master may be added. If it appear that the money, &c., &c., &c., was received by the clerk for and on account of his master, and was not received into the possession of the master otherwise than by the actual possession of the clerk so as not to amount to larceny

but to embezzlement, the defendant is nevertheless not entitled to be acquitted, but the jury may return as their verdict that the defendant was not guilty of larceny, but was guilty of embezzlement, and thereupon he shall be liable to be punished in the same manner as if he had been convicted on an indictment for embezzlement; but he cannot be afterwards prosecuted for embezzlement on the same facts; see *post*, sect. 74.

Upon the trial of any offence under this section, the jury, if the evidence warrants it, may convict of an attempt to commit the same, under sect. 49 of the Procedure Act of 1869.

As to what is sufficient evidence of an attempt to steal, see *Reg. vs. Cheeseman*, L. & C. 140.

EMBEZZLEMENT BY CLERKS OR SERVANTS

Sect. 70.—Whosoever being a clerk or servant, or being employed for the purpose or in the capacity of a clerk or servant, fraudulently embezzles any chattel, money, or valuable security, delivered to or received, or taken into possession by him, for or in the name or on the account of his master or employer, or any part thereof, shall be deemed to have feloniously stolen the same from his master or employer, although such chattel, money or security was not received into the possession of such master or employer, otherwise than by the actual possession of his clerk, servant or other person so employed, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 96, sect. 68, Imp.

Sect. 73.—For preventing difficulties in the prosecution of offenders in any case of embezzlement, fraudulent application or disposition hereinbefore mentioned, it shall be lawful to charge in the indictment and proceed against the offender for any number of distinct acts of embezzlement, or of fraudulent application or disposition not exceeding three, which may have been committed by him against Her Majesty, or against the same municipality, master or employer within the space of six months from the first to the last of such acts, and in every such indictment, where the offence relates to any money or any valuable security, it shall be sufficient to allege the embezzlement or fraudulent application or disposition to be of money, without specifying any particular coin or valuable security; and such allegation, so far as regards the description of the property, shall be sustained if the offender be proved to have embezzled or fraudulently applied or disposed of any amount, although the particular species of coin or valuable security of which such amount was composed, is not proved, or if he is proved to have embezzled or fraudulently applied or disposed of any piece of coin or any valuable security, or any portion of the value thereof, although such piece of coin or valuable security has been delivered to him in order that some part of the value thereof should be returned to the party delivering the same or to some other person, and such part has been returned accordingly.—24-25 Vict., ch. 96, sect. 71, Imp.

Sect. 74.—If upon the trial of any person indicted for embezzlement or fraudulent application or disposition as aforesaid, it is proved that he took the property in question in any such manner as to amount in law to larceny, he shall not, by reason thereof, be entitled to be acquitted, but the jury shall be at liberty to return as their verdict

that such person is not guilty of embezzlement or fraudulent application or disposition, but is guilty of simple larceny or larceny as a clerk, servant, or person employed for the purpose or in the capacity of a clerk or servant, or as a person employed in the public service, (as the case may be) and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for such larceny, and if upon the trial of any person indicted for larceny, it is proved that he took the property in question, in any such manner as to amount in law to embezzlement or fraudulent application or disposition as aforesaid, he shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict, that such person is not guilty of larceny, but is guilty of embezzlement or fraudulent application or disposition, as the case may be, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for such embezzlement, fraudulent application or disposition; and no person so tried for embezzlement, fraudulent application or disposition, or larceny as aforesaid shall be liable to be afterwards prosecuted for larceny, fraudulent application or disposition or embezzlement upon the same facts.—24-25 Vict., ch. 96, sect. 72, Imp.

A verdict may also be given under section 110, *post*.—As to sureties for keeping the peace in felonies under this Act, see *post*, sect. 122.—As to solitary confinement, see sect. 94 of the Procedure Act of 1869.—As to the meaning of the words “valuable security,” see *ante*, sect. 1, and *post*, sect. 110, for punishment, when value of property is over \$200.

Embezzlement is the appropriation to his own use by a servant or clerk of money or chattels received by him

for or on account of his master or employer. Embezzlement differs from larceny in this, that in the former the property misappropriated is not at the time in the actual or legal possession of the owner, whilst in the latter it is. The distinctions between larceny and embezzlement are often extremely nice and subtle; and it is sometimes difficult to say under which head the offence ranges. —Wharton, law lexicon, verb: *embezzlement*; 4 Stephen's Comment. 130.

Greaves says: "The words of the former enactments were "*shall by virtue of such employment* receive or take into his possession any chattel, &c., &c., for, or in the name, or on the account of his master." In the present clause, the words "*by virtue of such employment*" are advisedly omitted in order to enlarge the enactment, and get rid of the decisions on the former enactments. The clause is so framed as to include every case where any chattel, &c., &c., is delivered to, received or taken possession of by the clerk or servant, for or in the name or on account of the master. If therefore a man pay a servant money for his master, the case will be within the Statute, though it was neither his duty to receive it, nor had he authority to do so; and it is perfectly just that it should be so; for, if my servant receive a thing, which is delivered to him for me, his possession ought to be held to be my possession just as much as if it were in my house or in my cart. And the effect of this clause is to make the possession of the servant the possession of the master wherever any property comes into his possession within the terms of this clause, so as to make him guilty of embezzlement, if he converts it to his own use. The cases of *R. vs. Snowley*, 4 C. & P. 390; *Crow's case*, 1 Lew. 88; *R. vs. Thorley*, 1 Mood. 343; *R. vs. Hawtin*, 7 C. & P. 281; *R. vs. Mellish*, R. & R.

80, and similar cases are consequently no authorities on this clause. It is clear that the omission of the words in question, and the change in the terms in this clause render it no longer necessary to prove that the property was received by the defendant by virtue of his employment; in other words that it is no longer necessary to prove that the defendant had authority to receive it. . . . Greaves adds: Mr. Davis says "still it must be the master's money which is received by the servant, and not money wrongfully received by the servant by means of false pretences or otherwise:" this is plainly incorrect. A.'s servant goes to B., who owes A. £10, and falsely states that A. has sent him for the money, whereupon B. pays him the money. This case is clearly within the clause; for the money is delivered to *and* received *and* taken into possession by him for *and* in the name *and* on the account of his master, so that the case comes within every one of the categories of the clause, and if it came within any one it would suffice; in fact, no case can be put where property is delivered to a servant for his master that does not come within the clause, and it is perfectly immaterial what the moving cause of the delivery was.—Greaves, Cons. Acts, 156.

In larceny a wrongful taking is essential, whilst in embezzlement the offence consists in some actual fraudulent appropriation of that which is not unlawfully in the possession of the offender.—Cr. Law Com. 4th Rep. LV, LXXVIII.

By sect. 74, *ante*, it would seem that the distinction, often so difficult to establish, between larceny and embezzlement, is no more of practical importance as if upon an indictment for embezzlement, a larceny is proved, the jury shall be at liberty to return a verdict of guilty of larceny, and vice versa. But practically, this distinction

has still to be made, as the jury must specify by their verdict, of which special offence they find the defendant guilty; and, if, for instance, upon an indictment for larceny, the jury return a general verdict of guilty, when the evidence proves an embezzlement and not a larceny, the conviction will be illegal.—Reg. vs. Gorbett, Dears. & B. 166; Reg. vs. Betts, Bell, 90; Broom's Comment. 973.

Indictment.—The Jurors for Our Lady the Queen upon their oath present, that J. S. on being then employed as clerk to A. B., did then, and whilst he was so employed as aforesaid, receive and take into his possession certain money, to a large amount, to wit, to the amount of for and in the name and on the account of the said A. B. his master, and the said money then fraudulently and feloniously did embezzle; and so the jurors aforesaid upon their oath aforesaid do say that the said J. S. then, in the manner and form aforesaid, the said money, the property of the said A. B., his said master, from the said A. B., his said master, feloniously did steal, take and carry away, against the form

If the defendant has been guilty of other acts of embezzlement within the period of six months against the same master, the same, not exceeding three in number, may be charged in the same indictment in separate counts, (sect. 73, *ante*) as follows: And the jurors aforesaid, upon their oath aforesaid, do further present, that the said J. S. afterwards, and within six calendar months from the time of the committing of the said offence in the first count of this indictment charged and stated, to wit, on in the year aforesaid, being then employed as clerk to the said A. B., did then, and whilst he was so employed as last aforesaid,

receive and take into his possession certain other money to a large amount, to wit, to the amount of . . . for and in the name and on the account of the said A. B., his said master, and the said last mentioned money then, and within the said six calendar months, fraudulently and feloniously did embezzle; and so the jurors aforesaid upon their oath aforesaid do say, that the said J. S. then, in manner and form aforesaid, the said money, the property of the said A. B., his said master, from the said A. B., his said master, feloniously did steal, take and carry away, against the form And so on, for a third count, if required.—Archbold, 444.

The indictment must show *by express words* that the different sums were embezzled within the six months.—*R. vs. Noake*, 2 C. & K. 620. *R. vs. Purchase*, C. & Mar. 617.—It was the duty of the defendant an agent and collector of a coal club, to receive payment, by small weekly instalments, and to send in weekly accounts on Tuesdays, and on each Tuesday to pay the gross amount received into the bank to the credit of the club: the defendant was a shareholder and co-partner in the society, and indicted as such; the indictment charged him with three different acts of embezzlement during six months: each amount as charged was proved by the different payments of smaller sums, making altogether each amount charged: *held*, that the indictment might properly charge the embezzlement of a gross sum and be proved by evidence of smaller sums received at different times by the prisoner, and that it was not necessary to charge the embezzlement of each particular sum composing the gross sum, and that, although the evidence might show a large number of small sums embezzled, the prosecution was not to be confined to the proof of three of such small sums only. *Reg. vs. Balls*,

12 Cox, 96.—R. vs. Furneaux, R. & R. 325, R. vs. Flower, 8 D. & R. 512, R. vs. Tyers, R. & R. 402, holding it necessary in all cases of embezzlement to state specifically in the indictment some article embezzled, are not now law, as now, by sect. 73, *ante*, it is sufficient to allege the embezzlement to be of money, without specifying any particular coin or valuable security, except where the offence relates to a chattel, which must be described as in an indictment for larceny. In case the indictment alleges the embezzlement of money, such allegation, so far as regards the description of the property, is sustained by proof that the offender embezzled any amount, although the particular species of coin or valuable security of which such amount was composed shall not be proved; or by proof that he embezzled any piece of coin or any valuable security, or any portion of the value thereof, although such piece of coin or valuable security may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, or to some other person, and such part shall have been returned accordingly; sect. 73, *ante*; but an indictment for embezzling money is not proved by showing merely that the prisoner embezzled a cheque without evidence that the cheque had been converted into money.—Reg. vs. Keena, 11 Cox, 123.—The indictment must allege the goods embezzled to be the property of the master, Rex. vs. McGregor, 3 Bos. & P. 106, R. & R. 23; R. vs. Beacall, 1 Mood. 15, and it has been said that it must show that the defendant was servant at the time.—R. vs. Somerton, 7 B. & C. 463. See, however, R. vs. Lovell, 2 M. & Rob. 236.—It is usual and prudent to state that the defendant *feloniously* did embezzle, but it is not absolutely necessary, if the conclusion state that he *feloniously* stole.—R. vs. Crighton, R. & R. 62.—It is not

necessary to state from whom the money was received.—*R. vs. Beacall*, 1 C. & P. 454; and note in *R. vs. Crighton*, R. & R. 62. But the judge may order a particular of the charge to be furnished to the prisoner.—*R. vs. Bootyman*, 5 C. & P. 300; *R. vs. Hodgson*, 3 C. & P. 422; *Archbold*, 445.

A female servant is within the meaning of the Act, *R. vs. Smith*, R. & R. 267; so is an apprentice though under age, *R. vs. Mellish*, R. & R. 80; and any clerk or servant, whether to person in trade or otherwise.—*R. vs. Squire*, K. & R. 349; *R. vs. Townsend*, 1 Den. 167; *R. vs. Adey*, 1 Den. 571.—A clerk of a savings-bank, though elected by the managers, was held to be properly described as clerk to the trustees.—*R. vs. Jenson*, 1 Mood. 434. The mode by which the defendant is remunerated for his services is immaterial, and now, if he has a share or is a co-partner in the society whose monies or chattels he embezzled, he may be indicted as if he was not such shareholder or co-partner; sect. 38, *ante*.—*R. vs. Hartley*, R. & R. 139; *R. vs. Macdonald*, L. & C. 85; *Reg. vs. Balls*, 12 Cox, 96.—So, where the defendant was employed as a traveller to take orders and collect money, was paid by a percentage upon the orders he got, paid his own expenses, did not live with the prosecutors, and was employed as a traveller by other persons also, he was holden to be a clerk of the prosecutors within the meaning of the Act.—*R. vs. Carr*, R. & R. 198; *R. vs. Hoggins*, R. & R. 145; *R. vs. Tite*, L. & C. 29; 8 Cox, 458.—Where the prisoner was employed by the prosecutors as their agent for the sale of coals on commission, and to collect monies in connection with his orders, but he was at liberty to dispose of his time as he thought best, and to get or abstain from getting orders as he might choose, he was held not to be a clerk or servant within the

Statute.—Reg. vs. Bowers, 10 Cox, 254. In delivering judgment in that case, Erle, C. J., observed: "The cases have established that a clerk or servant must be under the orders of his master, or employed to receive the monies of his employer, to be within the Statute; but if a man be intrusted to get orders and to receive money, getting the orders where and when he chooses, and getting the money where and when he chooses, he is not a clerk or servant within the Statute."—See R. vs. Walker, Dears. & B. 600; R. vs. May, L. & C. 13.—A person whose duty it is to obtain orders where and when he likes, and forward them to his principal for execution, and then has three months within which to collect the money for the goods sent is not a clerk or servant; if such a person, at the request of his principal, collects a sum of money from a customer, with the obtaining of whose order he has had nothing to do, he is a mere volunteer, and is not liable to be prosecuted for embezzlement, if he does not pay over or account for the money so received. Reg. vs. Mayle, 11 Cox, 150.—The prisoner was employed by a coal merchant under an agreement whereby "he was to receive one shilling per ton procuration fee, payable out of the first payment, four per cent for collecting, and three pence on the last payment; collections to be paid on Friday evening before 5 P.M., or Saturday before 2 P.M." He received no salary, was not obliged to be at the office except on the Friday or Saturday to account for what he had received: he was at liberty to go where he pleased for orders: *held*, that the prisoner was not a clerk or servant within the Statute relating to embezzlement.—Reg. vs. Marshall, 11 Cox, 490.—Prisoner was engaged by U. at weekly wages to manage a shop; U. then assigned all his estate and effects to R., and a notice was served on prisoner to act as the agent of R. in the

management of the shop. For fourteen days afterwards R. received from U. the shop moneys. Then the shop money was taken by U. as before. Prisoner received his weekly wages from U. during the whole time. Some time after a composition deed was executed by R. and U. and U.'s creditors, by which R. re-conveyed the estate and effects to U.; but this deed was not registered until after the embezzlement charged against the prisoner: *held*, that prisoner was the servant of U. at the time of the embezzlement.—Reg. vs. Dixon, 11 Cox, 178.—The prisoner agreed with the prosecutor, a manufacturer of earthenware, to act as his traveller, and “diligently employ himself in going from town to town, in England, Ireland and Scotland, and soliciting orders for the printed and decorated earthenware manufactured by the prosecutor, and that he would not, without the consent in writing of the prosecutor, take or execute any order for vending or disposing of any goods of the nature or kind aforesaid for or on account of himself or any other person.” It was further agreed that the prisoner should be paid by commission, and should render weekly accounts. The prosecutor subsequently gave the prisoner written permission to take orders for two other manufacturers. The prisoner being indicted for embezzlement, *held*, that he was a clerk or servant of the prosecutor within the meaning of the Statute.—Reg. vs. Turner, 11 Cox, 551. Lush, J., in this case, said: “If a person says to another carrying on an independent trade, ‘if you get any orders for me I will pay you a commission,’ and that person receives money and applies it to his own use, he is not guilty of embezzlement, for he is not a *clerk or servant*, but if a man says ‘I employ you and will pay you, not by salary, but by commission’ the person employed is a servant. In the first case, the

person employing has no control over the person employed; in the second case, the person employed is subject to the control of the employer. And on this, this case was distinguished from *Reg. vs. Bowers*, and *Reg. vs. Marshall*, *supra*.—So, in *Reg. vs. Bailey*, 12 Cox, 56, the prisoner was employed as traveller to solicit orders, and collect the moneys due on the execution of the orders, and to pay over moneys on the evening of the day when collected, or the day following. The prisoner had no salary but was paid by commission. The prisoner might get orders where and when he pleased within his district. He was to be exclusively in the employ of the prosecutors, and to give the whole of his time, the whole of every day, to their service; *held*, that the prisoner was a clerk and servant within the Statute.

A person engaged to solicit orders and paid by commission on the sums received, which sums he was forthwith to hand over to the prosecutors, was at liberty to apply for orders, when he thought most convenient, and was not to employ himself for any other persons: *held*, not a clerk or servant within the Statute: the prisoner was not under the control and bound to obey the orders of the prosecutors.—*Reg. vs. Negus*, 12 Cox, 492.

Prisoner was employed by B. to navigate a barge, and was entitled to half the earnings after deducting the expenses. His whole time was to be at O.'s service, and his duty was to account to O. on his return after every voyage. In October, prisoner was sent with a barge load of bricks to London, and was there forbidden by O. to take back manure for P. Notwithstanding this, prisoner took the manure, and received £4 for the freight, which he appropriated to his own use. It was not proved that he carried the manure, or received the freight for his master, and the person who paid the £4 did not know for

whom it was paid: *held*, that the prisoner could not be convicted of embezzlement, as the money was not received by him in the name, or for, or on account of his master.—*Reg. vs. Cullum*, 12 Cox, 469.

It is not necessary that the employment should be permanent: if it be only occasional, it will be sufficient. Where the prosecutor having agreed to let the defendant carry out parcels when he had nothing else to do, for which the prosecutor was to pay him what he pleased, gave him an order to receive two pounds, which he received and embezzled, he was holden to be a servant within the meaning of the Act.—*R. vs. Spencer*, R. & R. 299; *R. vs. Smith*, R. & R. 516. And in *R. vs. Hughes*, 1 Mood. 370, where a drover, who was employed to drive two cows to a purchaser, and receive the purchase money, embezzled it, he was holden to be a servant within the meaning of the Act, by the judges; but the judge presiding the trial seemed to be of a contrary opinion, and *R. vs. Nettleton*, 1 Mood. 259, *R. vs. Burton*, 1 Mood. 237, appear to be adverse to *R. vs. Hughes*.—See *R. vs. Tongue*, Bell, 289; *R. vs. Hall*, 1 Mood. 374; *R. vs. Miller*, 2 Mood. 249; *R. vs. Proud*, Leigh & Cave, 97; 9 Cox, 22.—The treasurer of a friendly society, into whose hands the monies received on behalf of the society were to be paid, and who was to pay no money except by an order signed by the secretary and counter-signed by the chairman or a trustee, and who by the Statute was bound to render an account to the trustees, and to pay over the balance on such accounting when required, but was not paid for his services, is not a clerk or servant, and cannot be indicted for embezzlement of such balance.—*Reg. vs. Tyrie*, 11 Cox, 241.—And before the Statute making it larceny or embezzlement for a partner to steal or embezzle any of the

co-partnership property, the secretary of a friendly society, and himself a member of it, could not be convicted on an indictment for embezzling the society's monies, laying the property in, and describing him as the servant of A. B. (another member of the society) and others, because the "others" would have comprised himself, and so the indictment would in fact have charged him with embezzling his own money, as his own servant.—*R. vs. Diprose*, 11 Cox, 185 ; *R. vs. Taffs*, 4 Cox, 169 ; *R. vs. Bren. L. & C.* 346. But a stealing or embezzlement by a partner is now provided for by sect. 38, *ante*.

The trustees of a benefit building society borrowed money for the purpose of their society on their individual responsibility: the money, on one occasion, was received by their secretary and embezzled by him: *held*, that the secretary might be charged in the indictment for embezzlement of the property of W. and others, W. being one of the trustees, and a member of the society.—*Reg. vs. Bedford*, 11 Cox, 367.—A person cannot be convicted of embezzlement as clerk or servant to a society, which, in consequence of administering an unlawful oath to its members, is unlawful, and prohibited by law.—*R. vs. Hunt*, 8 C. & P. 642.—But an unregistered friendly society or trades union may prosecute its servants for embezzlement of its property, though some of its rules may be void as being in restraint of trade, and contrary to public policy. Rules in a trades union or society imposing fines upon members for working beyond certain hours, or for applying for work at a firm where there is no vacancy, or for taking a person into a shop to learn weaving where no vacant loom exists, though void as being in restraint of trade, do not render the society criminally responsible.—*Reg. vs. Stainer*, 11 Cox, 489.—If the clerk of several partners embezzle the private money of one of them, it

is an embezzlement within the Act, for he is a servant of each. So where a traveller is employed by several persons and paid wages, to receive money, he is the individual servant of each.—*R. vs. Carr, R. & R. 198*; *R. vs. Batty, 2 Mood. 257*; *R. vs. Leach, Archbold, 450*.—So a coachman, employed by one proprietor of a coach to drive a certain part of the journey, and to receive money and hand it over to him, may be charged with embezzling the money of that proprietor, though the money, when received, would belong to him and his partners.—*R. vs. White, 2 Mood. 91*.

In *R. vs. Glover, L. & C. 466*, it was held that a county court bailiff, who has fraudulently misappropriated the proceeds of levies, made under county court process, cannot be indicted for embezzling the monies of the high-bailiff. His master; these monies are not the property of the high-bailiff.—A distraining broker employed exclusively by the prosecutor, and paid by a weekly salary and by a commission, is a servant within the Statute.—*R. vs. Flanagan, 10 Cox, 561*.

Where the prisoner was charged with embezzlement, but his employer who made the engagement with him was not called to prove the terms thereof, but only his managing clerk, who knew them through repute alone, having been informed of them by his employer, it was held that there was no evidence to go to the jury that the prisoner was servant to the prosecutor.—*R. vs. Taylor, 10 Cox, 544*.

Money received by the defendant from his master himself, for the purpose of paying it to a third person, is not within the embezzlement section; it is larceny.—*R. vs. Peck, 2 Russell, 449*; *R. vs. Smith, R. & R. 267*; *R. vs. Hawkins, 1 Den. 584*; *R. vs. Goodenough, Dears. 210*. The principle in these and the following cases, is

that in law, the possession by the servant is possession by the master, and that the master who places money in his servant's hands for paying bills, &c., &c., &c., does not loose the possession of his money; so, that the servant, in fraudulently misappropriating this money, takes it wrongfully, in law, in his master's possession, *inde*, commits larceny, not embezzlement. And the principle is the same, when money is constructively in the possession of the master by the hands of any other clerk or servant.—R. vs. Murray, 1 Mood. 276; R. vs. Watts, 2 Den. 15; R. vs. Read, Dears. 168-257.

So, where the defendant's duty was to place every night in an iron safe, provided by his employer for that purpose, in an office where he conducted the business of his employer, though in his own house, the monies received by him on his employer's account and not used during the day, it was held that by placing it there, he determined his own exclusive possession of the money, and that, by afterwards taking some of it out of the safe, *animo furandi*, he was guilty of larceny.—R. vs. Wright, Dears. & B. 431.—The fraudulent appropriation of money, which has never been in the master's own possession, and which the defendant has received from a fellow-servant to give to his master, is embezzlement.—R. vs. Masters, 1 Den. 332. Greaves, note *d*, 2 Russell, 450, thinks this is a wrong decision.—Where the master gave a stranger some marked money, for the purpose of purchasing goods from the master's shopman, in order to try the shopman's fidelity; the stranger bought the goods, and the shopman embezzled the money, the judges held this to be a case within the Act.—R. vs. Hedge, R. & R. 160; R. vs. Gill, Dears. 289.—Where the defendant's duty was to sell his master's goods, entering the sales in a book, and settling accounts with his master weekly,

and upon such a sale the defendant fraudulently omitted to make an entry of it in the book, and appropriated the money which he received from the buyer, this was held to be embezzlement and not larceny.—*R. vs. Betts, Bell, 90.*—A defendant, whose business it was to receive orders, to take the materials from his master's shop, work them up, deliver the goods, receive the price for them, and pay it over to his master, who at the end of the week paid the defendant a proportion of the price for his work, received an order for certain goods, took his master's materials, worked them up on his premises, delivered them and received the price, but concealed the transaction, and embezzled the money; upon a conviction for embezzlement, it was doubted whether this was not a larceny of the materials, rather than a case within the statute: the Judges held the conviction right.—*R. vs. Hoggins, R. & R. 145.*

But where it appeared that the defendant was employed as a town traveller and collector, to receive orders from customers, and enter them in the books and receive the money for the goods supplied thereon, but had no authority to take or direct the delivery of goods from his master's shop, and a customer having ordered two articles of the defendant, he entered one of them only in the order book, for which an invoice was made out by the prosecutor for the customer; but the defendant entered the price of the other at the bottom of the invoice, and having caused both to be delivered to the customer, received the price of both, and accounted to the prosecutor only for the former; this was held not to be embezzlement but larceny.—*R. vs. Wilson, 9 C. & P. 27.*—The prisoner, as foreman, by fraudulently misrepresenting that twenty-one pounds, eighteen shillings was due for wages to the men under him, obtained that sum from his

master's cashier. On the pay-sheet made out by the prisoner, one pound, ten shillings and four pence was set down as due to W., whereas only one pound, eight shillings was due, and that amount only was paid by prisoner to W. out of the twenty-one pounds, eighteen shillings; the excess, two shillings and four pence, was appropriated, out of the twenty-one pounds eighteen shillings, to the prisoner's own use, he intending so to appropriate it at the time he received the twenty-one pounds eighteen shillings: *held*, that the prisoner was guilty of larceny of his master's two shillings and four pence.—Reg. vs. Cooke, 12 Cox, 10. See R. vs. Beaumont, Dears 270; R. vs. Thorp, Dears & B. 262; R. vs. Harris, Dears. 344; R. vs. Sullens, 1 Mood. 129. A correct entry of money received in one book out of several is no answer to a charge of embezzlement, where the prisoner has actually appropriated the money.—Reg. vs. Lister, Dears. & B. 118.

The usual presumptive evidence of embezzlement is that the defendant never accounted with his master for the money, &c., &c., received by him, or that he denied his having received it. But merely accounting for the money is not sufficient, if there is a misappropriation of it.—Reg. vs. Lister, *supra*. Greaves says, note *n*, 2 Russell, 455: "A fallacy is perpetually put forward in cases of embezzlement: the offence consists in the conversion of the *thing* received: no entry or statement is anything more than evidence bearing on the character of the disposal of the thing; and yet entries are constantly treated as the offence itself. If a man made every entry in due course, ~~it would~~ only, at most, amount to evidence that he did not, when he made them, intend to convert the money; and yet he might have converted it before, or might do so afterwards. If he were proved

to have converted it before he made the entries, the offence would be complete, and no entry afterwards made could alter it. So, on the other hand, if he made no entries or false entries but actually paid the money to his master, he would be innocent." See *Reg. vs. Guelder, Bell*, 284, and *Brett's, J.*, remarks in *Reg. vs. Walstenholme*, 11 Cox, 313; *R. vs. Jackson*, 1 C. & K. 384.—The fact of not paying over monies received by a servant is proof of embezzlement, even if no precise time can be fixed at which it was his duty to pay them over, if his not accounting for them is found by the jury to have been done fraudulently.—*R. vs. Welch*, 1 Den. 199; *R. vs. Wortley*, 2 Den, 333.

In *R. vs. Grove*, 1 Mood. 447, a majority of the judges (eight against seven) are reported to have held that an indictment for embezzlement might be supported by proof of a general deficiency of monies that ought to be forthcoming, without showing any particular sum received and not accounted for. See also, *R. vs. Lambert*, 2 Cox, 309; *R. vs. Moah*, Dears. 626. But in *R. vs. Jones*, 8 C. & P. 288, where, upon an indictment for embezzlement, it was opened that proof of a general deficiency in the prisoner's accounts would be given, but none of the appropriation of a specific sum, Alderson, B., said: "Whatever difference of opinion there might be in *R. vs. Grove*, (*ubi supra*) that proceeded more upon the particular facts of that case than upon the law: it is not sufficient to prove at the trial a general deficiency in account: some specific sum must be proved to be embezzled, in like manner as in larceny some particular article must be proved to have been stolen. See also *R. vs. Chapman*, 1 C. & K. 119, *2 P. Assell*, 460, and *Reg. vs. Wolstenholme*, 11 Cox, 313.

A conductor of a tramway car was charged with

embezzling three shillings. It was proved that on a certain journey there were fifteen threepenny fares, and twenty-five twopenny fares, and the conductor was seen to give tickets to each fare and to receive money from each, but what sum did not appear. He made out a way bill for the journey debiting himself with only nine threepenny fares and sixteen twopenny fares. The mode of accounting was to deliver the way bills for each journey to a clerk, and to hand in all the money received during each day on the following morning. The prisoner's money should have been £3 1 9, according to his way bills for the day, but he paid in only £3 0 8: *held*; that there was sufficient evidence of the receipt of seven shillings and eleven pence, the total amount of fares of the particular journey, and of the embezzlement of three shillings, part thereof.—*Reg. vs. King*, 12 Cox, 73.

Where the indictment contains only one count, charging the receipt of a gross sum on a particular day, and it appears in evidence that the money was received in different sums on different days, the prosecutor will be put to his election, and must confine himself to one sum and one day.—*R. vs. Williams*, 6 C. & P. 626.

Upon the trial for any offence, mentioned in these sections, the jury may convict of an attempt to commit the same, under sect. 49 of the Procedure Act of 1869, if the evidence warrants it.

LARCENY BY PUBLIC OFFICERS, ETC. EMBEZZLEMENT BY
PUBLIC OFFICERS, ETC.

Sect. 71.—Whosoever being employed in the public service of Her Majesty, or of the Lieutenant Governor or Government of any Province of Canada or of any municipality, steals any chattel, money or valuable security belonging to or in the possession or power of Her Majesty, or of such Lieutenant Governor, Government or

municipality, or intrusted to or received or taken into possession by him by virtue of his employment, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 96, sect. 69, Imp.

Sect. 72—Whosoever being employed in the public service of Her Majesty, or of the Lieutenant Governor or Government of any Province of Canada, or of any municipality, and intrusted by virtue of such employment with the receipt, custody, management or control of any chattel, money or valuable security, embezzles any chattel, money or valuable security entrusted to or received or taken into possession by him by virtue of his employment, or any part thereof, or in any "*matter*," (manner) fraudulently applies or disposes of the same, or any part thereof to his own use or benefit, or for any purpose whatsoever, except for the public service, or the service of such Lieutenant Governor, Government or municipality, shall be deemed to have feloniously stolen the same from Her Majesty, or from such municipality, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour; and every offender against this and the last preceding section may be dealt with, indicted, tried and punished either in the district, county or place in which he is apprehended or is in custody, or in which he has committed the offence; and in every case of larceny, embezzlement or fraudulent application or dis-

position of any chattel, money or valuable security, in this and the last preceding section mentioned, it shall be lawful in the warrant of commitment by the Justice of the Peace, before whom the offender is charged, and in the indictment to be preferred against such offender, to lay the property of any such chattel, money or valuable security in Her Majesty, or in the municipality, as the case may be.—24–25 Vict., ch. 96, sect. 70, Imp.

As to sureties for the peace, in felonies under this Act, see *post*, sect. 122. As to solitary confinement, see sect. 94 of the Procedure Act of 1869. As to the interpretation of the words “valuable security,” see *ante*, sect. 1.

These clauses have the effect of extending sections 69 and 70, as to larceny and embezzlement by clerks or servants, to public and municipal officers, and the remarks under the said sections 69 and 70, *ante*, may be applied here. Sections 73 and 74, *ante*, apply also to sections 71 and 72.

Indictment under sect. 71.—..... on at being then employed in the public service of Her Majesty, to wit, being then and there one belonging to Her Majesty, feloniously did steal, take and carry away, against the form 3 Burn’s Just. 319.

This form has not the word “feloniously” in 3 Burn’s Just., loc. cit.

Indictment under sect. 72.—..... on at being employed in the public service of Her Majesty, and being entrusted, by virtue of such employment with the receipt, custody, management and control of a certain valuable security, to wit did then and there, whilst he was so employed as aforesaid, receive and take into his possession the said valuable security, and the said valuable security then fraudulently and feloniously did embezzle; and so the jurors aforesaid, upon their oath

aforesaid do say, that (*defendant*) in manner and form aforesaid, the said valuable security, the property of Her Majesty, from Her Majesty, feloniously did steal, take and carry away, against the form 3 Burn's Just. 319: *see note to last form*. A second count laying what particular office the defendant held may be added.

Evidence of acting in the capacity of an officer employed by the crown is sufficient to support an indictment: and the appointment need not be regularly proved.—Reg. vs. Townsend, C. & M. 178; R. vs. Borrett, 6 C. & P. 124. Proof of a general deficiency in account would probably not be sufficient: the embezzlement of a specific sum would have to be proved.—See cases on this subject, *ante*, under sect. 70.

LARCENY BY TENANTS OR LODGERS.

Sect. 75.—Whosoever steals any chattel or fixture, let to be used by him or her, in or with any house or lodging, whether the contract has been entered into by him or her, or by her husband, or by any person on behalf of him or her or her husband, is guilty of felony, and shall be liable to be imprisoned for any term less than two years, with or without hard labour, and with or without solitary confinement; and in case the value of such chattel or fixture exceeds the sum of twenty-five dollars, shall be liable to be imprisoned in the Penitentiary for any term not exceeding seven years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement; and in every case of stealing any chattel in this section mentioned, it shall be lawful to prefer an indictment in the common form as for larceny, and in every case of stealing any fixture, in this section men-

tioned, to prefer an indictment in the same form as if the offender were not a tenant or lodger, and in either case to lay the property in the owner or person letting to hire.—24-25 Vict., ch. 96, sect. 74, Imp.

As to sureties for the peace in felonies under this Act, see *post*, sect. 122. As to solitary confinement, see sect. 94 of the Procedure Act of 1869.

If the indictment be for stealing a chattel, it may be, by the clause itself, in the common form for larceny, and in case of stealing a fixture, the indictment may be in the same form as if the offender were not a tenant or lodger, and the property may be laid either in the owner or person letting to hire. If the indictment be for stealing a fixture, use form under sect. 20, *ante*, and describe the dwelling-house as that of the landlord, as in burglary.—3 Burn's Just. 319.

There may be a conviction of an attempt to commit any offence mentioned in this section, upon a trial for that offence.—Sect. 49 of the Procedure Act of 1869.

By common law, a lodger had a special property in the goods which were let with his lodgings: during the lease he, and not the landlord, had the possession: therefore the landlord could not maintain trespass for taking the goods: in consequence, the taking by the lodger was not felonious.—Meere's case, 2 Russell, 519; R. vs. Belstead, R. & R. 411. Hence, the statutory enactments on the subject.

FRAUDS BY AGENTS, BANKERS OR FACTORS.

Sect. 76.—Whosoever, having been intrusted, either solely, or jointly with any other person, as a banker, merchant or broker, attorney or other agent, with any money, or security for the payment of money, with any direction in writing, to apply, pay or

deliver such money or security or any part thereof respectively, or the proceeds or any part of the proceeds of such security, for any purpose or to any person specified in such direction, in violation of good faith, and contrary to the terms of such direction, in any wise converts to his own use or benefit or the use or benefit of any person other than the person by whom he has been so intrusted, such money, security or proceeds, or any part thereof respectively, and whosoever, having been intrusted, either solely or jointly with any other person, as a banker, merchant, broker, attorney or other agent, with any chattel or valuable security, or any power of attorney for the sale or transfer of any share or interest in any public stock or fund, whether of the United Kingdom, or any part thereof, or of this Dominion of Canada, or any Province thereof, or of any British colony or possession, or of any foreign state, or in any stock or fund of any body corporate, company or society, for safe custody or for any special purpose without any authority to sell, negotiate, transfer, or pledge, in violation of good faith and contrary to the object or purpose for which such chattel, security or power of attorney has been intrusted to him, sells, negotiates, transfers, pledges or in any manner converts to his own use or benefit, or the use or benefit of any person other than the person by whom he has been so intrusted, such chattel, or security or the proceeds of the same, or any part thereof, or the share or interest in the stock or fund to which such power of attorney relates, or any part thereof, is guilty of a misdemeanor, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding seven years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without

solitary confinement, but nothing in this section containing relating to agents shall affect any trustee in or under any instrument whatsoever, or any mortgagee of any property, real or personal, in respect to any act done by such trustee or mortgagee in relation to the property comprised in or affected by any such trust or mortgage, nor shall restrain any banker, merchant, broker, attorney, or other agent from receiving any money due or to become actually due and payable upon or by virtue of any valuable security, according to the tenor and effect thereof in such manner as he might have done, if this Act had not been passed, nor from selling, transferring or otherwise disposing of any securities or effects in his possession, upon which he has any lien, claim or demand entitling him by law so to do, unless such sale, transfer or other disposal extends to a greater number or part of such securities or effects than are requisite for satisfying such lien, claim or demand.—24-25 Vict., ch. 96, sect. 75, Imp.

Greaves says:—"The former enactments did not extend to a direction to apply any security for the payment of money; the present clause is extended to that case, and the words "pay or deliver" "to any person" are introduced to include cases where the direction is to pay or deliver a bill of exchange or other security to a particular person. The words "or the use or benefit of any person other than the person" are introduced to include cases where the banker, &c., &c., &c., converts the property not to his own use, but to that of some person other than the person employing him. If it should be suggested that these words are too large, as they would include a payment to the use of A. by the direction of the party intrusting the money to the banker; the answer is, that to bring a case within this clause,

three things must concur: the property must be disposed of, first, in violation of good faith; secondly, contrary to the term of the direction; thirdly, to the use of the banker or of some one other than the party intrusting the banker, and consequently no case where the banker obeys the direction of the party intrusting him can come within the clause.

See *post*, under section 92.

Sect. 77.—Whosoever, being a banker, merchant, broker, attorney, or agent, and being intrusted either solely or jointly with any other person, with the property of any other person for safe custody, with intent to defraud, sells, negotiates, transfers, pledges, or in any other manner converts or appropriates the same or part thereof, to or for his own use or benefit, or the use or benefit of any person other than the person by whom he was so intrusted, is guilty of a misdemeanor, and shall be liable to any of the punishments which the Court may award as hereinbefore last mentioned.—24-25 Vict., ch. 96, sect. 76, Imp.

See *post*, under section 92.

Sect. 78.—Whosoever, being intrusted, either solely or jointly with any other person, with any power of attorney, for the sale or transfer of any property, fraudulently sells or transfers, or otherwise converts the same or any part thereof to his own use or benefit, or the use or benefit of any person other than the person by whom he was so intrusted, is guilty of a misdemeanor, and shall be liable to any of the punishments which the Court may award as hereinbefore last mentioned.—24-25 Vict., ch. 96, sect. 77, Imp.

See *post*, under section 92.

Sect. 79.—Whosoever being a factor or agent intrusted, either solely or jointly, with any other person,

for the purpose of sale or otherwise, with the possession of any goods, or of any document of title to goods, contrary to or without the authority of his principal in that behalf, for his own use or benefit, or the use or benefit of any person other than the person by whom he was so intrusted, and in violation of good faith, makes any consignment, deposit, transfer, or delivery of any goods or document of title so intrusted to him as in this section before mentioned, as and by way of a pledge, lien or security for any money or valuable security, borrowed or received by such factor or agent at or before the time of making such consignment, deposit, transfer or delivery, or intended to be thereafter borrowed or received, or contrary to, or without such authority, for his own use or benefit, or the use or benefit of any person other than the person by whom he was so intrusted, and in violation of good faith, accepts any advance of any money or valuable security on the faith of any contract or agreement to consign, deposit, transfer or *delivery of any* (deliver any) such goods or document of title, is guilty of a misdemeanor, and shall be liable to any of the punishments which the Court may award as hereinbefore last mentioned; and every clerk or other person who knowingly and wilfully acts and assists in making any such consignment, deposit, transfer or delivery, or in accepting or procuring such advance as aforesaid, is guilty of a misdemeanor, and shall be liable to any of the same punishments; provided that no such factor or agent shall be liable to any prosecution for consigning, depositing, transferring or delivering any such goods or documents of title, in case the same are not made as security for, or subject to the payment of any greater sum of money than the amount, which at the time of such consignment, deposit, transfer or delivery

was justly due and owing to such agent from his principal, together with the amount of any bill of exchange drawn by or on account of such principal, and accepted by such factor or agent.—24-25 Vict., ch. 96, sect. 78, Imp.

See *post*, under section 92.

Sect. 80—Any factor or agent intrusted as aforesaid, and possessed of any such document of title, whether derived immediately from the owner of such goods or obtained by reason of such factor or agent having been intrusted with the possession of the goods, or of any other document of title thereto, shall be deemed to have been intrusted with the possession of the goods represented by such document of title, and every contract pledging or giving a lien upon such document of title as aforesaid, shall be deemed to be a pledge of and lien upon the goods to which the same relates, and such factor or agent shall be deemed to be possessed of such goods or document whether the same are in his actual custody or held by any other person subject to his control, or for him, or on his behalf, and where any loan or advance is *bonâ fide* made to any factor or agent intrusted with and in possession of any such goods or document of title, on the faith of any contract or agreement in writing to consign, deposit, transfer or deliver such goods or document of title, and such goods or document of title is or are actually received by the person making such loan or advance, without notice that such factor or agent was not authorized to make such pledge or security, every such loan or advance shall be deemed to be a loan or advance on the security of such goods or document of title, within the meaning of the last preceding section, though such goods or document of title are not actually received by the person making such loan or advance, till a period subse-

quent thereto, and any contract or agreement whether made, direct with such factor or agent, or with any clerk or other person on his behalf, shall be deemed a contract or agreement with such factor or agent, and any payment made, whether by money or bill of exchange or other negotiable security, shall be deemed to be an advance within the meaning of the last preceding section, and a factor or agent, in possession, as aforesaid, of such goods or document, shall be taken for the purpose of the last preceding section to have been intrusted therewith by the owner thereof, unless the contrary be shown in evidence.—24-25 Vict., ch. 96, sect. 79, Imp.

See *post*, under section 92.

Sect. 81.—Whosoever, being a trustee of any property for the use or benefit, either wholly or partially, of some other person, or for any public or charitable purpose, with intent to defraud, converts or appropriates the same or any part thereof to or for his own use or benefit, or the use or benefit of any person other than such person as aforesaid, or for any purpose other than such public or charitable purpose, as aforesaid, or otherwise disposes of or destroys such property or any part thereof, is guilty of a misdemeanor, and shall be liable to any of the punishments which the Court may award, as hereinbefore last mentioned. Provided that no proceeding or prosecution for any offence included in this section shall be commenced without the sanction of the Attorney General or Solicitor General for that Province in which the same is to be instituted, provided also that when any civil proceeding has been taken against any person to whom the provisions of this section may apply, no person who has taken such civil proceeding shall commence any prosecution under this section without the sanction of the Court or Judge

before whom such civil proceeding has been had or is pending.—24-25 Vict., ch. 96, sect. 80, Imp.

See *post*, under section 92.

Sect. 82.—Whosoever, being a director, member, manager or public officer of any body corporate or public company, fraudulently takes or applies for his own use or benefit, or for any use or purpose other than the use or purposes of such body corporate or public company any of the property of such body corporate or public company, is guilty of a misdemeanor, and shall be liable to any of the punishments which the Court may award as hereinbefore last mentioned.—24-25 Vict., ch. 96, sect. 81, Imp.

See *post*, under section 92.

Sect. 83.—Whosoever, being a director, member, manager, or public officer of any body corporate or public company, as such, receives or possesses himself of any of the property of such body corporate or public company, otherwise than in payment of a just debt or demand, and, with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof in the books and accounts of such body corporate or public company, is guilty of a misdemeanor and shall be liable to any of the punishments which the Court may award as hereinbefore last mentioned.—24-25 Vict., ch. 96, sect. 82, Imp.

See *post*, under section 92.

Sect. 84.—Whosoever, being a director, manager, public officer or member of any body corporate or public company, with intent to defraud, destroys, alters, mutilates or falsifies any book, paper, writing or valuable security belonging to the body corporate or public company, or makes or concurs in the making of any false entry, or omits, or concurs in omitting any material par-

ticular in any book of account or document, is guilty of a misdemeanor, and shall be liable to any of the punishments which the Court may award, as hereinbefore last mentioned.—24-25 Vict., ch. 96, sect. 83, Imp.

See *post* under section 92.

Sect. 85.—Whosoever, being a director, manager or public officer or member of any body corporate or public company, makes, circulates or publishes, or concurs in making, circulating or publishing any written statement or account which he knows to be false in any material particular, with intent to deceive or defraud any member, shareholder, or creditor of such corporate or public company, or with intent to induce any person to become a shareholder or partner therein, or to intrust or advance any property to such body corporate or public company, or to enter into any security for the benefit thereof, is guilty of a misdemeanor, and shall be liable to any of the punishments which the Court may award as hereinbefore last mentioned.—24-25 Vict., ch. 96, sect. 84, Imp.

See *post*., under section 92.

Sect. 86.—Nothing in any of the last ten preceding sections of this Act contained shall enable or entitle any person to refuse to make a full and complete discovery by answer to any bill in equity, or to answer any question or interrogatory in any civil proceeding in any Court, or upon the hearing of any matter in bankruptcy or insolvency; and no person shall be liable to be convicted of any of the misdemeanors in the said sections mentioned by any evidence whatever in respect of any act done by him, if, any time previously to his being charged with such offence, he has first disclosed such act on oath, in consequence of any compulsory process of any court of law or equity, in any action, suit or proceeding, *bona*

fide instituted by any party aggrieved, or if he has first disclosed the same in any compulsory examination or deposition before any Court, upon the hearing of any matter in bankruptcy or insolvency.—24-25 Vict., ch. 96, sect. 85, Imp.

See *post*, under section 92.

Sect. 87.—Nothing in the last eleven preceding sections of this Act contained, nor any proceeding, conviction or judgment to be had or taken thereon against any person under any of the said sections shall prevent, lessen, or impeach any remedy at law or in equity, which any party aggrieved by any offence against any of the said sections might have had if this Act had not been passed; but no conviction of any such offender shall be received in evidence in any action at law or suit in equity against him; and nothing in the said sections contained shall affect or prejudice any agreement entered into, or security given by any trustee, having for its object the restoration or repayment of any trust property misappropriated.—24-25 Vict., ch. 96, sect. 86, Imp.

See *post*, under section 92.

Sect. 88.—If the keeper of any warehouse, or any forwarder, common carrier, agent, clerk, or other person employed in or about any warehouse, or if any other factor or agent, or any clerk or other person employed in or about the business of such factor or agent, 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 in his warehouse, or in the warehouse in or 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 or acknowledgment have

been actually delivered to him as aforesaid, with intent to mislead, deceive, injure or defraud any person or persons whomsoever, although such person or persons may be then unknown, or if any person knowingly and wilfully accepts, or transmits, or uses any such false receipt or acknowledgment, the person giving and the person accepting, transmitting or using such receipt or acknowledgment, are severally guilty of a misdemeanor, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding three years, and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years but not less than one year. (*Not in the English Act.*)

Sect. 89.—If any merchandise has, in the name of the owner or of any other person, been shipped or delivered to the keeper of any warehouse or to any other factor, agent or carrier, to be shipped or carried, and the consignee afterwards advances any moneys or gives any negotiable security to such owner or other person, then, if after any such advance, the said owner or other person for his own benefit, and in violation of good faith, and without the consent of such consignee first had and obtained, makes any disposition of such merchandise different from and inconsistent with the agreement made in that behalf between such owner or other person aforesaid, and such consignee at the time of or before such money being so advanced or such negotiable security being so given, with the intent to deceive, defraud or injure such consignee, the owner or other person aforesaid, and each and every other person knowingly and wilfully acting and assisting in making such disposition for the purpose of deceiving, defrauding or injuring such consignee, is or are guilty of a misdemeanor, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding

three years, and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, but not less than one year ; but no person shall be subject to prosecution under this section, who had, before making a disposition of the merchandise aforesaid, paid or tendered to the consignee the full amount of any advance made thereon. (*Not in the English Act.*)

Sect. 90.—Any miller, warehouseman, factor, agent, or other person, who, after having given, or after any clerk or person in his employ has to his knowledge given, as having been received by him, in any mill, warehouse, vessel, cove, or other place, any receipt, certificate or acknowledgment, for grain, timber or other goods or property, which can be used for any of the purposes mentioned in the Act passed in thirty-first year of Her Majesty's reign and intituled: "An Act respecting Banks," or any person, who, after having obtained any such receipt, certificate or acknowledgment, and after having endorsed or assigned it to any bank or person, afterwards and without the consent of the holder, or endorsee in writing, or the production and delivery of the receipt, certificate or acknowledgment, wilfully alienates, or parts with, or does not deliver to such holder or endorsee of such receipt, certificate or acknowledgment, the grain, timber, goods or property therein mentioned, is guilty of a misdemeanor, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding three years, ("*but not less than two years*" is omitted) or in any other gaol or place of confinement for any term less than two years, but not less than one year ; provided that nothing in this section shall prevent the offender from being indicted and punished for larceny,

instead of misdemeanor, if, as being a bailee, his offence amounts to larceny. (*Not in the English Act.*)

Sect. 91.—If any offence in the last three preceding sections mentioned be committed by the doing of anything in the name of any firm, company or co-partnership of persons, the person by whom such thing is actually done, or who connives at the doing thereof, shall be deemed guilty of the offence, and not any other person. (*Not in the English Act.*)

Sect. 92.—No misdemeanor against any of the sixteen last preceding sections of this Act shall be prosecuted or tried at any Court of General or Quarter Sessions of the Peace; and if upon the trial of any person under any of the said sections, it appears that the offence proved amounts to larceny, he shall not by reason thereof be entitled to be acquitted of a misdemeanor under the said sections.—24-25 Vict., ch. 96, sect. 87, Imp.

The words in *italics* in this last clause are not in the English Act. They were there omitted (though contained in the Repealed Statute) because the case was provided for by 14-15 Vict., ch. 100, sect. 12. The same reason should have induced the framers of our Statute to leave out these words, as sect. 50 of the Procedure Act of 1869 provides for the same case.

As to the meaning of the words "property," "valuable security," "document of title to goods," in these seventeen preceding sections, see *ante*, sect. 1.

As to fining the offender *and* requiring him to enter into recognizances and give sureties for keeping the peace in misdemeanors under this Act, see *post*, sect. 122.

As to solitary confinement, see sect. 94 of the Procedure Act of 1869.

W. deposited title deeds with D., as security for a loan,

and requiring a further loan, the defendant, an attorney, obtained for W. a sum of money from T. and delivered to her a mortgage deed as security. There were no directions in writing to the defendant to apply the money to any purpose, and he was entrusted with the mortgage deed, with authority to hand it over to T. on receipt of the mortgage money, which was to be paid to D. and W., less costs of preparing the deed. The defendant fraudulently converted a substantial part of the money to his own use: *held*, that as there was no direction in writing, the defendant was not guilty of a misdemeanor under sect. 75 of the Larceny Act, sect. 76 of our Statute: *held* also, that he was not guilty under sect. 76, sect. 77 of our Statute.—*Reg. vs. Cooper*, 12 Cox, 600. See *R. vs. Golde*, 2 Russell, 481; *R. vs. Prince*, 2 C. & P. 517; *R. vs. White*, 4 C. & P. 46; *Reg. vs. Gomm*, 3 Cox, 64; *Reg. vs. Fletcher, Leigh & Cave*, 180.

A stock and share dealer was in the habit of buying for S. gratuitously and receiving cheques on account. On the 27th of November, he wrote informing S. that £300 Japanese bonds had been offered to him in one lot, and that he had secured them for her, and that he had no doubt of her ratifying what he had done, and enclosing her a sold note for £326, signed in his own name. S. wrote in reply "that she had received the contract note for Japan shares and had inclosed a cheque for £336 in payment, and that she was perfectly satisfied that he had purchased the shares for her." In fact, the bonds had not been offered to the dealer in one lot, but he had applied to a stock jobber, and agreed to buy three at £112 each, but never completed the purchase. *Held* that S.'s letter was a sufficient written direction, within the meaning of 24-25 Vict., ch. 96, sect. 75 (sect. 76, *ante*, of Canadian Statute) to apply the cheque to a par-

particular purpose, viz., in payment for the bonds.—Reg. vs. Christian, 12 Cox, 502.

Indictment, under sect. 76, against a banker for a fraudulent conversion of money intrusted to him.—..... that A. B. on did intrust C. D. as a banker, with a certain large sum of money, to wit, the sum of one hundred pounds, with a direction to the said C. D. in writing to pay the said sum of money to a certain person specified in the said direction, and that the said C. D. as such banker as aforesaid, afterwards, to wit, on in violation of good faith and contrary to the terms of such direction, unlawfully did convert to his own use and benefit the said sum of money so to him intrusted as aforesaid against..... (In case of a security for money, the indictment must allege a written direction as to the application of the proceeds. A count should be added stating particularly the purpose to which the money was to be applied, and the person to whom it was to be paid.)—3 Burn's Just. 320.

Indictment, under sect. 76, against a banker, for selling or converting goods or valuable securities intrusted to him for safe keeping, or for a special purpose "not" in writing.—..... that A. B. on did intrust to C. D. as a banker, for safe custody, a certain bill of exchange the property of the said A. B. drawn by..... on dated for the payment of the sum of one hundred pounds, without any authority to sell, negotiate, transfer or pledge the same; and that the said C. D. then being such banker, as aforesaid, and being so intrusted, as aforesaid, in violation of good faith and contrary to the object and purpose for which the said bill of exchange so intrusted to him as aforesaid, and whilst so intrusted as aforesaid, unlawfully did negotiate, transfer and convert to his own use and benefit, the said bill of exchange,

against (Add other counts, as the case may suggest.)—3 Burn's Just. 320.

Indictments, under sections 77 and 78, may readily be framed from the above, omitting the special allegations as to safe custody, &c., &c.—3 Burn's Just. 320.

Indictment, under sect. 79, against a factor for pledging goods.— . . . that A. B. on did intrust to C. D., he, the said C. D. then being a factor and agent, one hundred bales of cotton, of the value of one thousand pounds, for the purpose of selling the same, and that the said C. D. afterwards, contrary to and without the authority of the said A. B., for his own benefit, and in violation of good faith, unlawfully did deposit the said cotton with E. F. of . . . as and by way of a pledge, lien and security, for a sum of money, to wit, one hundred pounds, by the said C. D. then borrowed and received of and from the said E. F. against the 3 Burn's Just. 320.

Indictment, under sect. 81, against a trustee for fraudulent conversion.—The Jurors for Our Lady the Queen upon their oath present, that, before and at the time of the committing of the offences hereinafter mentioned, to wit, on C. D. was a trustee for certain property, to wit, five thousand pounds three per centum consolidated bank annuities wholly (or partially) for the benefit of J. N., and that he, the said C. D., so being such trustee as aforesaid, on the day and year aforesaid, unlawfully and wilfully did convert and appropriate the said property to his own use, with intent thereby then to defraud, against the form (Add counts alleging that the defendant disposed of, showing the mode of disposition, or destroyed the property, if necessary).—3 Burn's Just. 321.

Indictment, under sect. 82, against a director for fraud-

ulent conversion of the company's money.—The jurors for Our Lady the Queen upon their oath present, that before and at the time of the committing of the offence hereinafter mentioned, C. D. was a director of a certain public company, called and that he, the said C. D., so being such director as aforesaid, on the did unlawfully and fraudulently take and apply for his own use and benefit, certain money, to wit, one thousand pounds, of and belonging to the said Company, against the
—3 Burn's Just. 321.

Indictment, under sect. 83, against directors for keeping fraudulent accounts.— that C. D. on then being a director of a certain body corporate, called unlawfully did, as such director, receive and possess himself of certain of the property of the said body corporate, otherwise than in payment of a just debt or demand, to wit, the sum of one hundred pounds, and unlawfully, with intent to defraud, did omit to make a full and true entry of the said sum, in the books and accounts of the said body corporate, against 3 Burn's Just. 321.

Indictment, under sect. 84, against a director for destroying or falsifying books, &c., &c.— . . . that C. D. on then being a director of a certain body corporate called unlawfully, with intent to defraud, did destroy (alter, or mutilate, or falsify) a certain book (or paper, or writing, or valuable security) to wit belonging to the said body corporate, against the form
—3 Burn's Just. 321.

Indictment, under sect. 85, against a director for publishing fraudulent statements.— that before and at the time of the committing of the offences hereinafter mentioned, C. D. was a director of a certain public company, called , and that he, the said C. D., so being such director as aforesaid, on did unlawfully cir-

culate and publish a certain written statement and account, which said written statement was false in certain material particulars, that is to say, in this, to wit, that it was therein falsely stated that (*state the particulars*), he the said C. D. then well knowing the said written statement and account to be false in the several particulars aforesaid, with intent thereby then to deceive and defraud J. N., then being a shareholder of the said public company (*or with intent. . .*) against the form Add counts stating the intent to be to deceive and defraud "certain persons to the jurors aforesaid unknown, being shareholders of the said public company," and also varying the allegation of the intent as in the section.—3 Burn's Just. 321; Archbold, 467.

FALSE PRETENCES.

Sect. 93.—Whosoever by any false pretence obtains from any other person any chattel, money or valuable security, with intent to defraud, is guilty of a misdemeanor, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding three years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement; provided, that if, upon the trial of any person indicted for such misdemeanor, it is proved that he obtained the property in question in any such manner as to amount in law to larceny, he shall not, by reason thereof, be entitled to be acquitted of such misdemeanor, and no person tried for such misdemeanor shall be liable to be afterwards prosecuted for larceny upon the same facts; provided also, that it shall be sufficient in any indictment for obtaining or attempting to obtain any such property by false pretences, to allege

that the party accused did the act with intent to defraud, and without alleging an intent to defraud any particular person, and without alleging any ownership of the chattel, money or valuable security; and on the trial of any such indictment, it shall not be necessary to prove an intent to defraud any particular person, but it shall be sufficient to prove that the party accused did the act charged with an intent to defraud.—24-25 Vict., ch. 96, sect. 88, Imp.

See *post*, sect. 94.

As to the meaning of the words "valuable security," see *ante*, sect. 1.

As to fining the offender and requiring him to give sureties for the peace, in misdemeanors under this Act, see *post*, sect. 122, and sect. 110, *post*, for additional punishment, where value of property is over \$200.

As to solitary confinement, see sect. 94 of the Procedure Act of 1869.

By sect. 49, of the Procedure Act of 1869, upon an indictment under any of these sections, the jury may return a verdict of guilty of an attempt to commit the offence charged, if the evidence warrants it.—Reg. vs. Roebuck, Dears. & B. 24; Reg. vs. Eagleton, Dears. 376, 515; Reg. vs. Hensler, 11 Cox, 570; Archbold, 484. A verdict under sect. 110, *post*, may also be given. No indictment can be preferred for obtaining money or other property by false pretences, unless one or other of the preliminary steps required by sect. 28 of the Procedure Act of 1869 has been taken.

Cheats and frauds, heretofore punishable at common law, are now punishable under sect. 86 of the Procedure Act of 1869.

The following is quoted from an American case, reported in 12 Cox, 208, *the Commonwealth vs. Yerker* :

"The distinction between larceny and false pretences is a very nice one in many instances. In some of the old English cases the difference is more artificial than real, and rests purely upon technical grounds. Much of this nicety is doubtless owing to the fact that at the time these cases were decided larceny was a capital felony in England, and the judges naturally leaned to a merciful interpretation of the law out of a tender regard for human life. But whatever may have been the cause, the law has come down to us with such distinctions. The distinction between larceny and false pretences is well stated in Russell, on Crimes, 2nd Vol., 4th Edit., p. 200: "The correct description in cases of this kind seems to be that, if by means of any trick or artifice the owner of property is induced to part with the possession only, still meaning to retain the right of property, the taking by such means will amount to larceny; but if the owner part with not only the possession of the goods, but the right of property in them also, the offence of the party obtaining them will not be larceny, but the offence of obtaining goods by false pretences."

Indictment.—..... that J. S. on unlawfully, knowingly and designedly did falsely pretend to one A. B. that the said J. S. then was the servant of one O. K., of tailor, (the said O. K. then and long before being well known to the said A. B. and a customer of the said A. B. in his business and way of trade as a woollen draper), and that the said J. S. was then sent by the said O. K. to the said A. B. for five yards of superfine woollen cloth, by means of which said false pretences, the said J. S. did then unlawfully obtain from the said A. B. five yards of superfine woollen cloth, with intent to defraud; whereas, in truth and in fact, the said J. S. was not then the servant of the said O. K., and whereas in truth and

in fact the said J. S. was not then sent by the said O. K. to the said A. B. for the said cloth, or for any cloth whatsoever, as he the said J. S. well knew at the time when he did so falsely pretend as aforesaid, against the form Archbold, 469.

It has been seen, by sect. 93, *ante*, that if, upon the trial for the misdemeanor provided for by this section, a larceny is proved, on the facts as alleged, the prisoner is not, by reason thereof, entitled to an acquittal. So far, this is in conformity with the English Act, but our Statute goes further, and, by section 99, *see post*, whose provisions are not in the English Act, provides that, if upon an indictment for larceny, the facts proved establish an obtaining by false pretences, the jury may find the defendant *guilty of such obtaining by false pretences*. This constitutes an important difference between the English Statute and our own Statute on the subject. But it is probable that the rule laid down in *Reg. vs. Gorbitt*, *Dears & B.* 166, would apply here, and that, upon an indictment for larceny, if the facts proved constitute an obtaining by false pretences, a general verdict of guilty would be wrong. It would be finding the defendant guilty of a felony, where a misdemeanor only has been proved against him.—*Reg. vs. Adams*, 1 Den. 38.

Moreover, in such a case, the only verdict authorized by the Statute, is "guilty of obtaining such property by false pretences with intent to defraud," and such must be the words of a verdict, under such circumstances. Under section 93, the words of the Statute are different, and, if larceny is proved, upon an indictment for obtaining by false pretences, the verdict must be for the latter. "Shall not by reason thereof be entitled to be acquitted of *such misdemeanor*" are the words of the Statute. See Greaves' note to *Reg. vs. Bryan*, 2 Russell, 664. It

would have been impossible and against the spirit of the law to allow a verdict for a felony upon an indictment for a misdemeanor.—See sect. 50 of the Procedure Act of 1869.

The pretence must be set out in the indictment, *R. vs. Mason*, 2 T. R. 581; and it must be stated to be false, *R. vs. Airey*, 2 East, P. C. 30. And it must be of some existing fact; a pretence that the defendant will do some act, or that he has got to do some act is not sufficient. *R. vs. Goodall*, R. & R. 461; *Reg. vs. Johnston*, 2 Mood. 254; *Reg. vs. Lee*, L. & C. 309. Where the pretence is partly a misrepresentation of an existing fact, and partly a promise to do some act, the defendant may be convicted, if the property is parted with in consequence of the misrepresentation of fact, although the promise also acted upon the prosecutor's mind.—*Reg. vs. Fry*, *Dears. & B.* 449; *Reg. vs. West*, *Dears. & B.* 575; *Reg. vs. Jennison*, L. & C. 157.

Where the pretence, gathered from all the circumstances, was that the prisoner had power to bring back the husband of the prosecutrix, though the words used were merely promissory that she, the prisoner, would bring him back, it was held a sufficient pretence of an existing fact, and that it is not necessary that the false pretence should be made in express words, if it can be inferred from all the circumstances attending the obtaining of the property.—*Reg. vs. Giles*, L. & C. 502.

An indictment for obtaining money by false pretences must state the false pretences with certainty, so that it may clearly appear that there was a false pretence of an existing fact: where the indictment alleged that the prisoner pretended to A.'s representative that she was to give him twenty shillings for B., and that A. was going to allow B. ten shillings a week, it was held that it did

not sufficiently appear that there was any false pretence of an existing fact.—Reg. vs. Henshaw, L. & C. 444.

An indictment alleged that the prisoner obtained a coat by falsely pretending that a bill of parcels of a coat, value £0 14 6, of which £0 4 6 had been paid on account, and £0 10 0 only was due, was a bill of parcels of another coat of the value of twenty-two shillings. The evidence was that the prisoner's wife had selected the £0 14 6 coat for him subject to its fitting him, and had paid £0 4 6 on account, for which she received a bill of parcels giving credit for that amount. On trying on the coat, it was found to be too small, and the prisoner was then measured for one to cost twenty-two shillings. When that was made, it was tried on by the prosecutor, who was not privy to the former part of the transaction. The prisoner when the coat was given to him handed the bill of parcels for the £0 14 6 and also £0 10 0 to the prosecutor, saying "There is £0 10 0 to pay." The bill was receipted, and the prisoner took the twenty-two shillings coat away with him. The prosecutor stated that believing the bill of parcels to refer to the twenty-two shillings coat, he parted with that coat on payment of £0 10 0, otherwise he should not have done so; *held*, that there was evidence to support a conviction on the indictment.—Reg. vs. Steels, 11 Cox, 5.

So the defendant may be convicted, although the pretence is of some existing fact, the falsehood of which might have been ascertained by inquiry by the party defrauded, R. vs. Wickham, 10 Ad. & Ed. 34; Reg. vs. Woolley, 1 Den., 559; Reg. vs. Ball, Car. & M. 249; Reg. vs. Roebuck, Dears. & B. 24; or against which common prudence might have guarded, R. vs. Young, 3 T. R. 98; Reg. vs. Jessop, Dears. & B. 442; Reg. vs. Hughes, 1 F. & F. 355. If, however, the prosecutor

knows the pretence to be false, *Reg. vs. Mills*, *Dears. & B.* 205, or does not part with the goods in consequence of defendant's representation, *Reg. vs. Roebuck*, *Dears. & B.* 24, or parts with them before the representation is made, *Reg. vs. Brooks*, 1 F. & F. 502, or in consequence of a representation as to some future fact, *R. vs. Dale*, 7 Car. & P. 352, or if the obtaining of the goods is too remotely connected with the false pretence, which is a question for the jury, *Reg. vs. Gardner*, *Dears. & B.* 40; *Reg. vs. Martin*, 10 Cox, 383, or if the prosecutor continues to be interested in the money alleged to have been obtained, as partner with the defendant, *Reg. vs. Watson*, *Dears. & B.* 348; *Reg. vs. Evans*, L. & C. 252, or the object of the false pretence is something else than the obtaining of the money, *Reg. vs. Stone*, 1 F. & F. 311, the defendant cannot be convicted.

Falsely pretending that he has bought goods to a certain amount, and presenting a check-ticket for them, *R. vs. Barnes*, 2 Den. 59; or overstating a sum due for dock dues or custom duties, *Reg. vs. Thompson*, L. & C. 233, will render the prisoner liable to be convicted under the Statute. (See Reporter's note to this last case.)

The pretence need not be in words, but may consist of the acts and conduct of the defendant. Thus the giving a cheque on a banker, with whom the defendant has no account, *R. vs. Flint*, R. & R. 460; *R. vs. Jackson*, 3 Campb. 370; *R. vs. Parker*, 2 Mood. 1; *R. vs. Spencer*, 3 Car. & P. 420; *Reg. vs. Wickham*, 10 Ad. & E. 34; *Reg. vs. Philpott*, 1 Car. & K. 112; *R. vs. Freeth*, R. & R. 127, or the fraudulently assuming the name of another to whom money is payable, *R. vs. Story*, R. & R. 81; *Reg. vs. Jones*, 1 Den. 551; or the fraudulently assuming the dress of a member of one of the universities, *R.*

vs. Barnard, 2 Car. & P. 784, is a false pretence within the Statute.

The prisoner obtained a sum of money from the prosecutor by pretending that he carried on an extensive business as an auctioneer and house agent, and that he wanted a clerk, and that the money was to be deposited as security for the prosecutor's honesty as such clerk. The jury found that the prisoner was not carrying on that business at all: *held*, that this was an indictable false pretence.—Reg. vs. Crab, 11 Cox, 85.

The defendant, knowing that some old country bank notes had been taken by his uncle forty years before, and that the bank had stopped payment, gave them to a man to pass, telling him to say, if asked about them, that he had taken them from a man he did not know. The man passed the notes, and the defendant obtained value for them. It appears that the bankers were made bankrupt: *held*, that the defendant was guilty of obtaining money by false pretences, and that the bankruptcy proceedings need not be proved.—Reg. vs. Dowey, 11 Cox, 115.

The indictment alleged that the prisoner was living apart from her husband under a deed of separation, and was in receipt of an income from her husband, and that he was not to be liable for her debts, yet that she falsely pretended to the prosecutor that she was living with her husband, and was authorized to apply for and receive from the prosecutor goods on the account and credit of her husband, and that her husband was then ready and willing to pay for the goods. The evidence at the trial was that the prisoner went to the prosecutor's shop and selected the goods, and said that her husband would give a cheque for them as soon as they were delivered, and that she would send the person bringing the goods to her husband's office, and that he would give

a cheque. When all the goods were delivered, the prisoner told the man who delivered them to go to her husband's office, and that he would pay for them. The man went, but could not see her husband, and ascertained that there was a deed of separation between the prisoner and her husband, which was shown to him. He communicated what he had learnt to the prisoner, who denied the deed of separation. The goods were shortly after removed and pawned by the prisoner. The deed of separation between the prisoner and her husband was put in evidence, by which it was stipulated that the husband was not to pay her debts; and it was proved that she was living apart from her husband, and receiving an annuity from him, and that she was also cohabiting with another man; *held*, that the false pretences charged were sufficiently proved by this evidence.—Reg. vs. Davis, 11 Cox, 181.

On an indictment for fraudulently obtaining goods in a market by falsely pretending that a room had been taken at which to pay the market people for their goods, the jury found that the well known practice was for buyers to engage a room at a public house, and that the prisoner, pretending to be a buyer, conveyed to the minds of the market people that she had engaged such a room, and that they parted with their goods on such belief: *held*, there being no evidence that the prisoner knew of such a practice, and the case being consistent with a promise only on her part to engage such a room and pay for the goods there, the conviction could not be sustained.—Reg. vs. Burrows, 11 Cox, 258.

On the trial of an indictment against the prisoner for pretending that his goods were unencumbered, and obtaining thereby eight pounds from the prosecutor with intent to defraud, it appeared that the prosecutor lent

money to the prisoner at interest, on the security of a bill of sale on furniture, a promissory note of prisoner and another person and a declaration made by prisoner that the furniture was unencumbered. The declaration was untrue at the time it was handed to the prosecutor, the prisoner having a few hours before given a bill of sale for the furniture to another person, but not to its full value: *held*, that there was evidence to go to the jury in support of a charge of obtaining money by false pretences.—Reg. vs. Meakin, 11 Cox, 270.

A false representation as to the value of a business will not sustain an indictment for obtaining money by false pretences. On an indictment for obtaining money by false pretences, it appeared that the prisoner, on engaging an assistant from whom he received a deposit, represented to him that he was doing a good business, and that he had sold a good business for a certain large sum, whereas the business was worthless and he had been bankrupt; *held*, that the indictment could not be sustained upon either of the representations.—Reg. vs. Williamson, 11 Cox, 328.

It has been seen, *ante*, that in Reg. vs. Mills, Dears. & B. 205, it was held, that the defendant cannot be convicted, if the prosecutor knows the pretence to be false. The defendant, however, in such cases may, under sect. 49, of the Procedure Act of 1869, be found guilty of an attempt to commit the offence charged. Or be, in the first instance, indicted for the attempt. In Reg. vs. Hensler, 11 Cox, 570, the prisoner was indicted for attempting to obtain money by false pretences in a begging letter. In reply to the letter the prosecutor sent the prisoner five shillings; but he stated in his evidence at the trial that he knew that the statements contained in the letter were untrue: it was held, upon a case reserved that

the prisoner might be convicted, on this evidence, of attempting to obtain money by false pretences.

But an indictment for an attempt to obtain property by false pretences must specify the attempt.—Reg. vs. Marsh, 1 Den., 505. The proper course is to allege the false pretences, and to deny their truth in the same manner as in an indictment for obtaining property by false pretences, and then to allege that by means of the false pretences, the prisoner attempted to obtain the property. Note by Greaves, 2 Russell, 698. But it must be remembered that by sect. 52 of the Procedure Act of 1869, “no person shall be tried or prosecuted for an attempt to commit any felony or misdemeanor, who has been previously tried for committing the same offence.”

An indictment charged that the prisoner falsely pretended that he had got a carriage and pair, and expected it down to T. that day or the next, and that he had a large property abroad. The evidence was that the prisoner was at E., assuming to be a man of position and wealth, but was in a destitute condition, and could not pay his hotel and other bills. That three days after he came to T. and induced prosecutor to part with goods on the representation that he had just come from abroad and had shipped a large quantity of wine to R. from England, and expected his carriage and pair to come down, and that he had taken a large house at T., and was going to furnish it: *held*, that the false pretences charged were sufficient in point of law, and also that the evidence was sufficient to sustain a conviction.—Reg. vs. Howarth, 11 Cox, 588.

Prisoner was indicted for obtaining from George Hislop, the master of the warehouse of the Strand Union, one pint of milk and one egg, by falsely pretending that a certain child then brought by him had been by

him found in Leicester-Square, whereas these facts were untrue. The facts were that the prisoner was waiter at an hotel in George street, Hanover-Square. A female servant there, named Spires, had been delivered of a child by him, which was put out to nurse. The child falling ill, the nurse brought it to the hotel, and the prisoner, saying that he would find another nurse, took the woman with him to Westminster, where the nurse put the child into his arms and went away. He took it to the work-house of St. Martin-in-the-Fields, which is in the Strand Union, and delivered it to the master, stating that he had found it in Leicester-Square. It was by the master delivered to the nurse to be taken care of, and the nurse fed it with the pint of milk and egg which was the subject of the charge of the indictment as the property obtained by the false pretences alleged: *held*, that this evidence did not sustain the indictment, and that the food given to the child was too remote an object.—Reg. vs. Carpenter, 11 Cox, 600.

In Reg. vs. Walne, 11 Cox, 647, the conviction was also quashed, on the deficiency of the evidence, as no false pretence of an existing fact was proved.

Prisoner by falsely pretending to a liveryman that he was sent by another person to hire a horse for him for a drive to E. obtained the horse. The prisoner returned in the same evening but did not pay for the hire: *held*, that this was not an obtaining of a chattel with intent to defraud within the meaning of the Statute. To constitute such an offence, there must be an intention to deprive the owner of the property.—Reg. vs. Kilham, 11 Cox, 561. But see now, for Canada, sect 110 *post*.

There may be a false pretence made in the course of a contract, by which money is obtained under the contract, Reg. vs. Kinrick, D. & M. 208; Reg. vs. Abbott, 2 Cox,

430; Reg. vs. Burgon, Dears. & B. 11; Reg. vs. Roebuck, Dears. & B. 24; as to weight or quantity of goods sold when sold by weight or quantity, Reg. vs. Sherwood, Dears. & B. 251; Reg. vs. Bryan, Dears. & B. 265; Reg. vs. Ragg, Bell, 214; Reg. vs. Goss, Bell, 208; Reg. vs. Lees, L. & C. 418; Reg. vs. Ridgway, 3 F. & F. 838; but, in all such cases, there must be a misrepresentation of a definite fact.

But a mere false representation as to quality is not indictable, Reg. vs. Bryan, Dears. & B. 265, and the comments upon it by the judges, in Ragg's case, Bell, 214; Reg. vs. Pratt, 8 Cox, 334. Thus representing a chain to be gold, which turns out to be made of brass, silver and gold, the latter very minute in quantity, is not within the Statute.—Reg. vs. Lee, 8 Cox, 233; *sed quare*; 3 Burn's Just. 275. And see Greaves' observations, 2 Russell, 664, and R. vs. Suter, 10 Cox, 577: also, Reg. vs. Ardley, 12 Cox, 23, *post*.

It is not a false pretence, within the Statute, that more money is due for executing certain work than is actually due; for that is a mere wrongful overcharge.—Reg. vs. Oates, Dears. 459. So, where the defendant pretended to a parish officer, as an excuse for not working, that he had no clothes, and thereby obtained some from the officer, it was held that he was not indictable, the statement being rather a false excuse for not working than a false pretence to obtain goods.—R. vs. Wakeling, R. & R. 504.

Where the prisoner pretended, first, that he was a single man, and next that he had a right to bring an action for breach of promise, and the prosecutrix said that she was induced to pay him money by the threat of the action, but she would not have paid it had she known the defendant to be a married man, it was *held* that either

of these two false pretences was sufficient to bring the case within the Statute.—Reg. vs. Copeland, C. & M. 516; Reg. vs. Jennison, Leigh & Cave, 157.

Where the prisoner represented that he was connected with J. S., and that J. S. was a very rich man, and obtained goods by that false representation, it was held within the Statute.—Reg. vs. Archer, Dears. 449. Obtaining by falsely pretending to be a medical man or an attorney is within the Statute.—Reg. vs. Bloomfield, C. & M. 537; R. vs. Asterley, 7 C. & P. 191.

It is no objection that the moneys have been obtained only by way of a loan, R. vs. Crossley, 2 M. & Rob. 17; but perhaps this is true only of moneys, and not of other goods, 2 Russell, 668, and Reg. vs. Kilham, 11 Cox, 561.

Obtaining goods by false pretences intending to pay for them is within the Statute.—Reg. vs. Naylor, 10 Cox, 151.

It must be alleged and proved that the defendant knew the pretence to be false at the time of making it.—Reg. vs. Henderson, 2 Mood. 192; Reg. vs. Philpotts, 1 C. & K. 112. After verdict, however, an indictment following the words of the Statute is sufficient.—Reg. vs. Bowen, 3 Cox, 483; Hamilton vs. Reg. in error, 2 Cox, 11. It is no defence that the prosecutor laid a trap to draw the prisoner into the commission of the offence.—Reg. vs. Adamson, 2 Mood. 286; R. vs. Ady, 7 C. & P. 140.

Upon a charge of obtaining money by false pretences it is sufficient if the actual substantial pretence, which is the main inducement to part with the money, is alleged in the indictment, and proved, although it may be shewn by evidence that other matters not laid in the indictment in some measure operated upon the mind of the prosecutor as an inducement for him to part with his money.—Reg. vs. Hewgill, Dears. 315. The indictment must

negative the pretences by special averment, and the false pretence must be proved as laid.—Any variance will be fatal, unless amended. 3 Burn's Just. 277. But proof of part of the pretence, and that the money was obtained by such proof is sufficient.—*R. vs. Hill*, R. & R. 190 ; *Reg. vs. Wickham*, 10 Ad. & E. 34 ; *Reg. vs. Bates*, 3 Cox, 201.

But the goods must be obtained by means of some of the pretences laid.—*Reg. vs. Dale*, 7 C. & P. 352 ; *Reg. vs. Hunt*, 8 Cox, 495. And where the indictment alleged a pretence which in fact the prisoner did at first pretend, but the prosecutor parted with his property in consequence of a subsequent pretence, which was not alleged, it was held that the evidence did not support the indictment.—*R. vs. Bulmer*, L. & C. 476.

Where money is obtained by the joint effect of several misstatements, some of which are not and some are false pretences within the Statute, the defendant may be convicted, *Reg. vs. Jennison*, L. & C. 157 ; but the property must be obtained by means of one of the false pretences charged, and a subsequent pretence will not support the indictment.—*Reg. vs. Brooks*, 1 F. & F. 502.

Parol evidence of the false pretence may be given, although a deed between the parties, stating a different consideration for parting with the money is produced, such deed having been made for the purpose of the fraud.—*Reg. vs. Adamson*, 2 Mood. 286. So also parol evidence of a lost written pretence may be given.—*R. vs. Chadwick*, 6 C. & P. 181.—On an indictment for obtaining money from A., evidence that the prisoner about the same time obtained money from other persons by similar false pretences is not admissible.—*Reg. vs. Holt*, 8 Cox, 411; *Bell*, 280. But other false pretences at other times to the same person are admissible, if they are so connected as

to form one continuing representation, which it is the province of the jury to determine.—Reg. vs. Welman, Dears. 188; 6 Cox, 153.

Inducing a person by a false pretence to accept a bill of exchange is not within this section.—Reg. vs. Danger, Dears. & B. 307. In such a case, the indictment should be under sect. 95, *post*.

A railway ticket obtained by false pretences is within the Statute, Reg. vs. Boulton, 1 Den. 508; Reg. vs. Beecham, 5 Cox, 181; and so is an order by the president of a burial society on a treasurer for the payment of money, Reg. vs. Greenhaigh, Dears. 267.

Where the defendant only obtains credit and not any specific sum by the false pretences, it is not within the Statute.—R. vs. Wavill, 1 Mood. 224; Reg. vs. Garrett, Dears. 233; Reg. vs. Crosby, 1 Cox, 10.

There must be an intent to defraud. Where C. B.'s servant obtained goods from A.'s wife by false pretence, in order to enable B. his master, to pay himself a debt due from A., of which he could not obtain payment from A., it was held that C. could not be convicted.—R. vs. Williams, 7 Car. & P. 554. But it shall not be necessary to allege nor to prove the intent to defraud any person in particular. *With intent to defraud* are the words of the Statute, sect. 93, *ante*.

But these words "with intent to defraud" are a material and necessary part of the indictment; their omission is fatal, and cannot be remedied by an amendment inserting them. By Lush, J., Reg. vs. James, 12 Cox, 127.

An indictment for false pretences charged that the defendant falsely pretended that he had a lot of trucks of coal at a railway station on demurrage, and that he required forty coal bags. The evidence was that defendant saw prosecutor and gave him his card, "J. W. and

Co., Timber and Coal Merchants," and said that he was largely in the coal and timber way; and inspected some coal bags, but objected to the price. The next day, he called again, showed prosecutor a lot of correspondence, and said that he had a lot of trucks of coal at the railway station under demurrage, and that he wanted some coal bags immediately. Prosecutor had only forty bags ready, and it was arranged that defendant was to have them, and pay for them in a week. They were delivered to defendant, and prosecutor said he let the defendant have the bags in consequence of his having the trucks of coal under demurrage, at the station; there was evidence as to the defendant having taken premises, and doing a small business in coal, but he had no trucks of coal on demurrage at the station. The jury convicted the prisoner, and on a case reserved, the judges held that the false pretence charged was not too remote to support the indictment, and that the evidence was sufficient to maintain it.—Reg. vs. Willot, 12 Cox, 68.

The prisoner induced the prosecutor to buy a chain by knowingly and falsely asserting, *inter alia*, "it is a 15-carat fine gold, and you will see it stamped on every link." In point of fact, it was little more than 6-carat gold: *held*, upon a case reserved, that the above assertion was sufficient evidence of the false representation of a definite matter of fact to support a conviction for false pretences.—Reg. vs. Ardley, 12 Cox, 23. Reg. vs. Bryan, Dears. & B. 265, 7 Cox, 313, *ante*, was said by the judges not to be a different decision, but that there, there was no definite matter of fact falsely represented.

On an indictment for inducing the prosecutor, by means of false pretences, to enter into an agreement to take a field for the purpose of brick making, in the belief that the soil of the field was fit to make bricks, whereas.

it was not, he being himself a brickmaker, and having inspected the field and examined the soil: *held* that, nevertheless, if he had been induced to take the field by false and fraudulent representations by the defendant of the specific matters of fact relating to the quality and character of the soil, as, for instance, that he had himself made good bricks therefrom, the indictment would be sustained; *held*, also, that it would be sufficient, if he was partly and materially, though not entirely, influenced by the false pretences.—Reg. vs. English, 12 Cox, 171.

The prisoner was convicted on an indictment charging that he did falsely pretend that he then lived at, and was the landlord of a beerhouse, and thereby obtained goods. The evidence was, that prisoner said he was the nephew of a man in prosecutor's employ which was true; and that he lived at the beerhouse, but he did not say that he was the landlord of that house. Prosecutor, in parting with his goods, was influenced both by the fact of his being the nephew of his servant, and the statement that he lived at the beerhouse; he believed him to be the landlord of the beerhouse; *held*, that it was immaterial that the prosecutor was partly influenced by the fact that the prisoner was the nephew of his servant; *held*, also, that the allegation that the prisoner lived at and was the landlord of the beerhouse was divisible, and that the fact, "that he lived at the beerhouse," being false, he was rightly convicted.—Reg. vs. Lince, 12 Cox, 451.

If the possession only and not the property has been passed by the prosecutor, the offence is larceny and not false pretences.—Reg. vs. Radcliffe, 12 Cox, 474.

All persons who concur and assist in the fraud are principals, though not present at the time of making the pretence or obtaining the property.—Reg. vs. Mooland,

2 Mood. 376 ; Reg. vs. Kerrigan, L. & C. 383 : see *post*, sect. 107.

If, upon the trial of an indictment for obtaining by false pretences, a forgery is proved, the prisoner nevertheless, if the fact proved include the misdemeanor, may be convicted of the misdemeanor, unless the Court sees fit to discharge the jury, and direct the prisoner to be indicted for the felony: sect. 50 of the Procedure Act of 1869. And it is prudent, in consequence of this section, to indict for obtaining money by false pretences, wherever it is doubtful whether an instrument be a forgery or not.—2 Russell, 677.

OTHER CASES OF FALSE PRETENCES.

Sect. 94.—Whosoever, by any false pretence, causes or procures any money to be paid, or any chattel or valuable security to be delivered to any other person, for the use or benefit, or on account of the person making such false pretence, or of any other person, with intent to defraud, shall be deemed to have obtained such money, chattel or valuable security, within the meaning of the last preceding section.—24-25 Vict., ch. 96, sect 89, Imp.

Greaves says: "This clause is new. It is intended to meet all cases where any person by means of any false pretence, induces another to part with property to any person other than the party making the pretence. It was introduced to get rid of the narrow meaning which was given to the word "obtain" in the judgments in Reg. vs. Garrett, Dears. 232, according to which it would have been necessary that the property should either have been actually obtained by the party himself, or for his benefit. . . . This clause includes every case where a defendant by any false pretence causes property to be delivered to any other person, for the use either of the person making

the pretence, or *of any other person*. It, therefore is, a very wide extension of the law as laid down in *Reg. vs. Garret*, and plainly includes every case where any one, with intent to defraud, causes any person by means of any false pretence to part with any property to any person whatsoever."

INDUCING PERSONS, BY FRAUDULENT MEANS, TO SIGN
DEEDS, PAPERS, ETC., ETC.

Sect. 95.—Whosoever, with intent to defraud or injure any other person, by any false pretence, fraudulently causes or induces any other person to execute, make, accept, endorse or destroy the whole or any part of any valuable security, or to write, impress or affix his name, or the name of any other person, or of any company, firm or co-partnership, or the seal of any body corporate, company or society, upon any paper or parchment, in order that the same may be afterwards made or converted into, or used, or dealt with as a valuable security, is guilty of a misdemeanor, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding three years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 96, sect. 90, Imp.

As to fine and sureties for the peace, see *post*, sect. 122. As to solitary confinement, see sect. 94, of the Procedure Act of 1869.

Greaves says: "This clause is principally new it will include such cases as *Reg. vs. Danger, Dears. & B.* 307."

Indictment.— that A. B. on unlawfully, knowingly and designedly did falsely pretend to one J.N. that . . . by means of which false pretence the said A. B.

did then unlawfully and fraudulently induce the said J. N. to accept a certain bill of exchange, that is to say a bill of exchange for one hundred pounds, with intent thereby then to defraud and injure the said J. N., whereas, in truth and in fact (here negative the false pretences, as in the form, under sect. 93, *ante*) against the form —Archbold, 485.

FALSELY PRETENDING TO HAVE INCLOSED MONEY OR
OTHER PROPERTY IN A POST LETTER.

Sect. 96.—Whosoever for any purpose, or with any intent, 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 and sent therein, is guilty of a misdemeanor, and shall be liable to be punished as if he had obtained the money, valuable security or chattel so pretended to be enclosed or sent, by false pretences; and it shall not be necessary to allege in the indictment, or to prove on the trial that the act was done with intent to defraud.

This clause is not in the English Act.

WINNING MONEY BY CHEATING AT A GAME.

Sect. 97.—Whosoever by any fraud or unlawful device or ill practice in playing at any game of cards or dice, or any other kind, or at any race, or in betting on any event, wins or obtains any money, or property from any other person, shall be held to have unlawfully obtained the same by false pretences, and shall be punishable accordingly.—8-9 Vict., ch. 109, sect. 17, Imp.

Misdemeanor: see *post*, sect. 122;—and *ante*, sect. 93.

Indictment.—The Jurors for Our Lady the Queen, upon their oath present, that W. M. on by fraud,

unlawful device and ill-practice in playing at and with cards, unlawfully did win from one A. B., and obtain for himself, the said W. M., a sum of money, to wit, fifty pounds, of the monies of the said A. B.; and so the jurors aforesaid, upon their oath aforesaid, do say that the said W. M. then, in manner and form aforesaid, unlawfully did obtain the said sum of money, to wit, fifty pounds, so being the monies of the said A. B. as aforesaid, from the said A. B. by a false pretence, with intent to cheat and defraud the said A. B. of the said sum of money, to wit, fifty pounds, against the form of the Statute in such case made and provided, and against the peace of Our Lady the Queen, her crown and dignity. (2nd count): And the jurors aforesaid, upon their oath aforesaid do further present, that the said W. M. afterwards, to wit, on the day and year aforesaid, by fraud, unlawful device and ill-practice, in playing at and with cards, unlawfully did win from the said A. B. and obtain for himself, the said W. M., a certain sum of money with intent to cheat him, the said A. B., to the evil example of all others in the like case offending, against the form of the Statute in such case made and provided, and against the peace of Our Lady the Queen, her crown and dignity.—Archbold, 921.

An indictment in the form contained in the above second count was held good after verdict, although it was objected that it should have alleged that the money won was the property of the person defrauded.—*R. vs. Moss, Dears. & B. 104.*

Where the offence was committed by two or more, and there is any doubt whether the game or fraud comes within this section, a count should be added as in—*R. vs. Hudson, Bell, 263*, charging a conspiracy to cheat.

The fraud or unlawful device, or ill-practice must be proved.—*R. vs. Darmley*, 1 Stark. R. 359; *R. vs. Rogier*, 2 D. & R. 431. It does not seem necessary to state the name of the game.—*Archbold*, 922. See *R. vs. Bailey*, 4 Cox, 390.

OBTAINING STEAMER OR RAILWAY PASSAGE BY FALSE TICKET.

Sect. 98—Whosoever 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 railway, or in any steam, or other vessel, is guilty of a misdemeanor, and shall be liable to be imprisoned in any common gaol or house of correction, with or without hard labour, for any period not exceeding six months.

This clause is not in the English Act.

See *post*,¹¹ sect. 122, as to fine and sureties for the peace in misdemeanors under this Act.

The clause provides for the offence and the attempt to commit the offence Under sect. 49 of the Procedure Act of 1869, upon the trial of an indictment for any offence against this clause, not including the attempt provided for thereby, the jury may convict of the attempt to commit the offence charged, if the evidence warrants it.

CONVICTION OF OBTAINING BY FALSE PRETENCES, ON INDICTMENT FOR LARCENY.

Sect. 99.—If upon the trial of any person for larceny, it appears that the property taken was obtained by such person by fraud under circumstances which do not amount to such taking as constitutes larceny, such person shall not by reason thereof be entitled to be acquitted, but the jury may return as their verdict, that such person is not guilty of larceny, but is guilty of obtaining such property by false pretences, with intent to defraud, if the evidence prove such to have been the case, and thereupon such person shall be punished in the same

manner as if he had been convicted upon an indictment for obtaining property under false pretences, and no person so tried for larceny as aforesaid shall be afterwards prosecuted for obtaining property by false pretences upon the same facts.

This very important clause is not in the English Act. It was in the 14-15 Vict., ch. 100, as the bill was introduced, but was struck out. See observations upon it, under sect. 93, *ante*. In *Reg. vs. Adams*, 1 Den. 38, the judges held the conviction wrong, because the indictment was for larceny, and the facts established an obtaining by false pretences; now, under the above clause, the jury, in such a case, may find the defendant guilty of the obtaining by false pretences.

RECEIVING STOLEN GOODS.

Sect. 100.—Whosoever receives any chattel, money, valuable security, or other property whatsoever, the stealing, taking, extorting, obtaining, embezzling, and otherwise disposing whereof amounts to a felony, either at common law or by virtue of this Act, knowing the same to have been feloniously stolen, taken, extorted, obtained, embezzled or disposed of, is guilty of felony, and may be indicted and convicted either as an accessory after the fact or for a substantive felony, and in the latter case whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice; and every such receiver, howsoever convicted, shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years and not less than two years, or to be imprisoned in any gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement; provided that no person, howsoever tried for receiving as aforesaid, shall be liable to be pro-

secuted a second time for the same offence.—24-25 Vict., ch. 96, sect. 91, Imp.

This clause applies to all cases where property has been feloniously extorted, obtained, embezzled, or otherwise disposed of, within the meaning of any section of this Act.—Greaves, Consol. Acts, 179.

Sect. 101.—In any indictment *containing a charge of* feloniously stealing any property, it shall be lawful to add a count or several counts for feloniously receiving the same, or any part or parts thereof, knowing the same to have been stolen; and in any indictment for feloniously receiving any property, knowing it to have been stolen, it shall be lawful to add a count for feloniously stealing the same; and where any such indictment has been preferred and found against any person, the prosecutor shall not be put to his election, but it shall be lawful for the jury who try the same to find a verdict of guilty, either of stealing the property, or of receiving the same, or any part or parts thereof, knowing the same to have been stolen; and if such indictment has been preferred and found against two or more persons, it shall be lawful for the jury who try the same to find all or any of the said persons guilty either of stealing the property or receiving the same, or any part or parts thereof, knowing the same to have been stolen, or to find one or more of the said persons guilty of stealing the property, and the other or others of them guilty of receiving the same, or any part or parts thereof, knowing the same to have been stolen.—24-25 Vict., ch. 96, sect. 92, Imp.

The words "containing a charge of" are substituted for the word "for" in the former Act, in order that a count for receiving may be added in *any* indictment containing a charge of stealing any property. It will there-

fore apply to burglary with stealing, housebreaking, robbery, &c., &c., &c. It is also provided, by this clause, for cases which frequently occur, and were not within the former clause; where different prisoners may be proved to have had possession of different parts of the stolen property.—Greaves, Consol. Acts, 180.

Sect. 102.—Whenever any property whatsoever has been stolen, taken, extorted, obtained, embezzled, or otherwise disposed of in any such a manner as to amount to a felony, either at common law, or by virtue of this Act, any number of receivers at different times of such property, or of any part or parts thereof, may be charged with substantive felonies in the same indictment, and may be tried together, notwithstanding that the principal felon shall not be included in the same indictment, or shall not be in custody or amenable to justice.—24-25 Vict., ch. 96, sect. 93, Imp.

See sect. 7, of 31 Vict., ch. 72, *an Act respecting accessories to and abettors of indictable offences.* (1868.)

Sect. 103.—If, upon the trial of two or more persons indicted for jointly receiving any property, it is proved that one or more of such persons separately received any part or parts of such property, it shall be lawful for the jury to convict, upon such indictment, such of the said persons as are proved to have received any part or parts of such property.—24-25 Vict., ch. 96, sect. 94, Imp.

Sect. 104.—Whosoever receives any chattel, money, valuable security or other property whatsoever, the stealing, taking, obtaining, converting or disposing whereof is made a misdemeanor by this Act, knowing the same to have been unlawfully stolen, taken, obtained, converted or disposed of, is guilty of a misdemeanor, and may be indicted and convicted thereof, whether the person guilty of the principal misdemeanor has or has not

been previously convicted thereof, or is or is not amenable to justice ; and every such receiver shall be liable to be imprisoned in the Penitentiary for any term not exceeding seven years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour and with or without solitary confinement.—24-25 Vict., ch. 96, sect. 95, Imp.

Sect. 105.—Whosoever receives any chattel, money, valuable security or other property whatsoever, knowing the same to have been feloniously or unlawfully stolen, taken, obtained, converted or disposed of, may, whether charged as an accessory after the fact to the felony, or with a substantive felony, or with a misdemeanor only, be dealt with, indicted, tried, and punished in any country, district or place in which he has or has had any such property in his possession, or in any county, district or place in which the party guilty of the principal felony, or misdemeanor may by law be tried, in the same manner as such receiver may be dealt with, indicted, tried and punished in the country, district or place where he actually received such property.—24-25 Vict., ch. 96, sect. 96, Imp.

Sect. 106.—Where the stealing or taking of any property whatsoever is by this Act punishable on summary conviction, either for every offence, or for the first or second offence only, or for the first offence only, any person who receives any such property, knowing the same to be unlawfully come by, shall on conviction thereof before a Justice of the Peace, be liable, for every first, second or subsequent offence of receiving, to the same forfeiture and punishment to which a person guilty of a first, second or subsequent offence of stealing or taking such property is by this Act made liable.—24-25 Vict., ch. 96, sect. 97, Imp.

As to the meaning of the words "valuable security," "property" and "having in possession" under this Act, see *ante*, sect. 1.

As to other and additional punishments in felonies and misdemeanors under this Act, see *post*, sect. 122.

As to solitary confinement, see sect. 94, of the Procedure Act of 1869.

Indictment against a receiver of stolen goods, under sect. 100, as for a substantive felony.—.... that A. B. on at one silver tankard, of the goods and chattels of J. N. before then feloniously stolen, taken and carried away, feloniously did receive and have, he the said A. B. at the time when he so received the said silver tankard as aforesaid then well knowing the same to have been feloniously stolen, taken and carried away, against the form.... Archbold, 434.

Any number of receivers at different times of stolen property may now be charged with substantive felonies in the same indictment.—Sect. 102, *ante*.

And where the indictment contains several counts for larceny, describing the goods stolen as the property of different persons, it may contain the like number of counts, with the same variations, for receiving the same goods.—*R. vs. Beeton*, 1 Den. 415. It is not necessary to state by whom the principal felony was committed, *R. vs. Jervis*, 6 C. & P. 156; and, if stated, it is not necessary to aver that the principal has not been convicted., *R. vs. Baxter*, 5 T. R. 83. Where an indictment charged Woolford with stealing a gelding, and Lewis with receiving it, knowing it to have been "so feloniously stolen as aforesaid," and Woolford was acquitted, *Patteson, J.*, held that Lewis could not be convicted upon this indictment, and that he might be tried on another indictment, charging him with having received the gelding,

knowing it to have been stolen by some person unknown.—*R. vs. Woolford*, 1 M. & Rob. 384; 2 Russell, 556.

An indictment charging that a certain evil-disposed person feloniously stole certain goods, and that C. D. and E. F. feloniously received the said goods, knowing them to be stolen, was holden good against the receivers, as for a substantive felony.—*R. vs. Caspar*, 2 Mood. 101. The defendant may be convicted both on a count charging him as accessory before the fact and on a count for receiving.—*R. vs. Hughes, Bell*, 242.—The first count of the indictment charged the prisoner with stealing certain goods and chattels; and the second count charged him with receiving "the goods and chattels aforesaid of the value aforesaid, so as aforesaid feloniously stolen." After objection that he could not be found to have feloniously received goods stolen by himself, the case went to the jury, and the prisoner was acquitted upon the first count, and convicted upon the second: *held*, that the conviction was good.—*Reg. vs. Huntley, Bell*, 238; *Reg. vs. Craddock*, 2 Den. 31.

Indictment against the principal and receiver jointly.—The jurors for Our Lady the Queen, upon their oath present, that C. D. on at one silver spoon and one table-cloth, of the goods and chattels of A. B., feloniously did steal, take and carry away, against the peace of Our Lady the Queen, her crown and dignity; and the jurors aforesaid, upon their oath aforesaid, do further present, that J. S. afterwards, on the goods and chattels aforesaid, so as aforesaid feloniously stolen, taken and carried away, feloniously did receive and have, he the said J. S. then well knowing the said goods and chattels to have been feloniously stolen, taken and carried away, against the form..... Archbold, 440; 3 Burn's Just. 323.

Indictment against the receiver as accessory, the principal having been convicted.—The jurors for Our Lady the Queen upon their oath present, that heretofore, to wit, at the general sessions of the holden at on it was presented, that one J. T. (*continuing the former indictment to the end; reciting it, however, in the past and not in the present tense:*) upon which said indictment the said J. T. at aforesaid, was duly convicted of the felony and larceny aforesaid. And the jurors aforesaid, upon their oath aforesaid, do further present, that A. B. after the committing of the said larceny and felony as aforesaid, to wit, on the goods and chattels aforesaid, so as aforesaid feloniously stolen, taken and carried away, feloniously did receive and have, he the said A. B. then well knowing the said goods and chattels to have been feloniously stolen, taken and carried away, against the form Archbold, 440.

Indictment against a receiver, under sect. 104, where the principal offence is a misdemeanor.— on at one silver tankard of the goods and chattels of J. N. then lately before unlawfully, knowingly, and designedly obtained from the said J. N. by false pretences, unlawfully did receive and have, he the said A. B. at the time when he so received the said silver tankard as aforesaid, then well knowing the same to have been unlawfully, knowingly, and designedly obtained from the said J. N. by false pretences, against the form Archbold, 439.

The indictment must allege the goods to have been obtained by false pretences, and known to have been so: it is not enough to allege them to have been "unlawfully obtained, taken and carried away."—R. vs. Wilson, 2 Mood. 52.

In *Reg. vs. Goldsmith*, 12 Cox, 479, upon an indictment under this section, an objection was taken that the indictment did not set out what the particular false pretences were, as in the form, from Archbold, above given. In Goldsmith's case, it was held that the objection, not having been taken before plea, was cured by the verdict of guilty, but the judges did not adjudicate upon the merit of the objection itself; Bramwell, B., intimated, that, for the future, it might be safer, in indictments of this nature, to state specifically what the false pretences were, as in indictments for obtaining under false pretences; see *Reg. vs. Hill*, note r, 2 Russell, 554, where it was held that an indictment, for so receiving goods obtained by false pretences would be held bad on demurrer (or motion to quash) if it did not allege what were the false pretences.

It must be remarked, that the provisions for charging the receiver with a substantive offence do not extend to cases under sect. 104, where the offence of the principal is a misdemeanor.—2 Russell, loc. cit.

At common law, receivers of stolen goods were only guilty of a misdemeanor, even when the thief had been convicted of felony.—Foster, 373.

The goods must be so received as to divest the possession out of the thief.—*Reg. vs. Wiley*, 2 Den. 37. But a person having a joint possession with the thief may be convicted as a receiver.—*Reg. vs. Smith*, Dears. 494. Manual possession is unnecessary, it is sufficient if the receiver has a control over the goods.—*Reg. vs. Hobson*, Dears. 400; *Reg. vs. Smith*, Dears. 494; see *ante*, sect. 1; as to the words "having in possession." The defendant may be convicted of receiving, although he assisted in the theft.—*R. vs. Dyer*, 2 East, 767; *Reg. vs. Craddock*, 2 Den. 31; *Reg. vs. Hilton*, Bell, 20; *Reg. vs.*

Hughes, Bell, 242. But not if he actually stole the goods.—Reg. vs. Perkins, 2 Den. 459. Where the jury found that a wife received the goods without the knowledge or control of her husband, and apart from him, and that he afterwards adopted his wife's receipt, no active receipt on his part being shown, it was held that the conviction of the husband could not be sustained.—Reg. vs. Dring; Dears. & B. 329; but see Reg. vs. Woodward, L. & C. 122.

There must be a receiving of the thing stolen, or of part of it, and where A. stole six notes of £100 each, and having changed them into notes of £20 each, gave some of them to B.; it was held that B. could not be convicted of receiving the said notes, for he did not receive the notes that were stolen.—R. vs. Walkley, 4 Car. & P. 132. But where the principal was charged with sheep-stealing, and the accessory with receiving "twenty pounds of mutton, parcel of the goods," it was held good.—R. vs. Cowell, 2 East, P. C. 617, 781. In the last case, the thing received is the same, for part, as the thing stolen, though passed under a new denomination, whilst in the first case nothing of the article or articles stolen have been received, but only the proceeds thereof. And says Greaves, note, 2 Russell, 561, it is conceived that no indictment could be framed for receiving the proceeds of stolen property. The section only applies to receiving *the* chattel stolen, knowing *that* chattel to have been stolen. In the case of gold or silver, if it were melted after the stealing, an indictment for receiving it might be supported, because it would still be the *same* chattel, though altered by the melting; but where a £100 note is charged for other notes, the identical chattel is gone and a person might as well be indicted for receiv-

ing the money, for which a stolen horse was sold, as for receiving the proceeds of a stolen note.

The receiving must be subsequent to the theft. If a servant commit a larceny at the time the goods are received both servant and receiver are principals, but if the goods are received subsequently to the act of larceny, it becomes a case of principal and receiver.—*R. vs. Butteris*, 6 C. & P. 147; *Reg. vs. Gunnell*, 9 C. & P. 365; *Reg. vs. Roberts*, 3 Cox, 74.

The receiving need not be *lucri causa*: if it is to conceal the thief, it is sufficient.—*R. vs. Richardson*, 6 C. & P. 365; *R. vs. Davis*, 6 C. & P. 177.

There must be some evidence that the goods were stolen by another person.—*R. vs. Densley*, 6 C. & P. 399; *R. vs. Cordy*, 2 Russell, 556.

A husband may be convicted of receiving property which his wife has voluntarily stolen, *Reg. vs. M'Athey*, L. & C. 250, if he receives it, knowing it to have been stolen.

The principal felon is a competent witness to prove the larceny.—*R. vs. Haslam*, 1 Leach, 418. But his confession is not evidence against the receiver, *R. vs. Turner*, 1 Mood. 347, unless made in his presence and assented to by him.—*Reg. vs. Cox*, 1 F. & F. 90. If the principal has been convicted, the conviction, although erroneous, is evidence against the receiver until reversed.—*R. vs. Baldwin*, R. & R. 241.

To prove guilty knowledge, other instances of receiving similar goods stolen from the same person may be given in evidence, although they form the subject of other indictments, or are antecedent to the receiving in question.—*R. vs. Dunr*, 1 Mood. 146; *R. vs. Davis*, 6 Car. & P. 177; *Reg. vs. Nicholls*, 1 F. & F. 51; *Reg. vs. Mansfield*, C. & M. 140. But evidence cannot be given

of the possession of goods stolen from a different person.—*Reg. vs. Oddy*, 2 Den. 264. Where the stolen goods are goods that have been found, the jury must be satisfied that the prisoner knew that the circumstances of the finding were such as to constitute larceny.—*R. vs. Adams*, 1 F. & F. 86. Belief that the goods are stolen, without actual knowledge that they are so, is sufficient to sustain a conviction.—*Reg. vs. White*, 1 F. & F. 665.

Recent possession of stolen property is not generally alone sufficient to support an indictment under this section,—2 Russell, 555. However, in *Reg. vs. Langmead*, L. & C. 427, the judges would not admit this as law, and maintained the conviction for receiving stolen goods, grounded on the recent possession by the defendant of stolen property.—See also *Reg. vs. Deer*, L. & C. 240.

A partner stole goods belonging to the firm, and rendered himself liable to be dealt with as a felon, under the 31-32 Vict., ch. 116 (sect. 38, *ante*, of Canadian Larceny Act) and sold the same to the prisoner, who knew of their having been stolen. *Held*, that the prisoner could not be convicted on an indictment for feloniously receiving under the 24-25 Vict., ch. 96, s. 91, (sect. 100 of Canadian Larceny Act) but might have been convicted as an accessory after the fact under the 24-25 Vict., ch. 94, sect. 3, (31 Vict., ch. 72, sect. 4, Canada) on an indictment properly framed.—*Reg. vs. Smith*, 11 Cox, 511. It is observed, in Archbold, 436, that in this last case, if the only thing that could have been proved against the prisoner was the receiving with a guilty knowledge, he ought to have been indicted for the common law misdemeanor of receiving stolen property. *Sed quære?*

An indictment charged S. with stealing eighteen shillings and sixpence, and G. with receiving the same. The

facts were : S. was a barman at a refreshment bar, and G. went up to the bar, called for refreshments and put down a florin : S. served G. took up the florin, and took from his employer's till some money, and gave G. as his change eighteen shillings and six pence, which G. put in his pocket and went away with it. On leaving the place he took some silver from his pocket, and was counting it when he was arrested. On entering the bar, signs of recognition took place between S. and G., and G. was present when S. took the money from the till. The jury convicted S. of stealing and G. of receiving. *Held*, that this was evidence which the judge ought to have left to the jury as reasonable evidence upon which G. might have been convicted as a principal in the second degree, and that therefore the conviction for receiving could not be sustained.—Reg. vs. Coggins, 12 Cox, 517.

PRINCIPALS IN THE SECOND DEGREE AND ACCESSORIES, HOW PUNISHABLE. ABETTORS IN MISDEMEANORS, AND IN OFFENCES PUNISHABLE ON SUMMARY CONVICTION.

Sect. 107.—In the case of every felony punishable under this Act, every principal in the second degree, and every accessory before the fact, shall be punishable in the same manner as the principal in the first degree is punishable, and every accessory after the fact to any felony punishable under this Act, except only a receiver of stolen property, shall be liable to be imprisoned for any term less than two years, with or without hard labour, and with or without solitary confinement, and every person aiding, abetting, counselling, or procuring the commission of any misdemeanor punishable under this Act, shall be liable to be indicted and punished as a principal offender.—24-25 Vict., ch. 96, sect. 98, Imp.

Sect. 108.—Whoever aids, abets, counsels or pro-

cures the commission of any offence, which is by this Act punishable on summary conviction, either for every time of its commission, or for the first or second time only, or for the first time only, shall, on conviction before a Justice of the Peace, be liable for every first, second or subsequent offence of aiding, abetting, counselling or procuring, to the same forfeiture and punishment to which a person guilty of a first, second or subsequent offence as a principal offender is made liable.—24-25 Vict., ch. 96, sect. 99, Imp.

See *post*, sect. 122, as to fine and sureties for the peace in misdemeanors under this Act, and sureties for the peace in felonies under this Act. See sect. 94 of the Procedure Act of 1869, as to solitary confinement. See *post*, sect. 123, as to summary convictions under this Act.

See 31 Vict., ch. 72, *an Act respecting accessories to and abettors of indictable offences*. (1868).

REGULATIONS FOR DEALERS IN MARINE STORES.

Sect. 109.—Every person dealing in the purchase of old marine stores of any description, including anchors, cables, sails, junk, iron, copper, brass, lead, and other marine stores, shall conform to the following regulations:

1st.—He shall not, by himself or his agent, purchase any old marine stores from any person under the age of sixteen years, and on conviction of any such offence before a Justice of the Peace, shall be liable to a penalty of four dollars for the first offence, and of six dollars for every subsequent offence.

2dly.—He shall not purchase or receive into his stores, premises or places of deposit, any old marine stores except in the day-time, between sunrise and sunset, under a penalty of five dollars for the first offence, and of seven dollars for every subsequent one, and if any old marine

stores, which had been stolen, are found secreted in the premises of any person purporting to be a dealer in such stores, such persons shall be guilty of a misdemeanor, and shall be punishable therefor in any manner by law prescribed for misdemeanor.

This clause is not in the English Act. It seems rather defective.—The punishment for misdemeanor, under it, would be by fine and imprisonment, either or both at the discretion of the Court. By this clause, it would appear, the simple fact of a dealer in marine stores having in his premises any stolen old marine stores would constitute him guilty, whether he knows that they have been stolen or not. But, undoubtedly, no Court nor jury would condemn a man who would innocently and without fraud or guilty knowledge be found with such stores in his possession, and the word “secreted” might then be distinguished from “found.”

As to summary convictions under this Act, see *post*, sect. 122.

DEFRAUDING A PERSON OF THE ADVANTAGE, POSSESSION
OR USE OF HIS PROPERTY.

Sect. 110.—Whosoever unlawfully and with intent to defraud, by taking, by embezzlement, by obtaining by false pretences, or in any other manner whatever, appropriates to his own use or to the use of any other person, any property whatsoever, real or personal, in possession or in action, so as to deprive any other person temporarily, or absolutely of the advantage, use or enjoyment of any beneficial interest in such property in law or in equity, which such other person may have therein, is guilty of a misdemeanor punishable in like manner as simple larceny, and if the value of such property exceeds two hundred dollars, then such misdemeanor shall be

punishable by imprisonment in the Penitentiary for any term not exceeding fourteen years or in any manner in which simple larceny is punishable; and if on the trial of any person for larceny, for embezzlement, or for obtaining by false pretences, the jury are of opinion that such person is not guilty of the offence charged in the indictment but are of opinion that he is guilty of an offence against this section, they may find him so guilty, and he shall be liable to be punished as herein provided, as if he had been convicted on an indictment under this section, and in any case in which any person is convicted of an offence against this Act by stealing, embezzling or obtaining by false pretences any property whatever, then if the value of the property be over two hundred dollars, the offender shall be liable to be punished by imprisonment in the Penitentiary for a term not exceeding seven years, *in additio.* to any punishment to which he would be otherwise liable for such offence.

This clause is not in the English Act.

It is probable that no Court would feel authorized to inflict the additional punishment provided for in the last part of this clause, unless it be *alleged in the indictment* and duly *proved upon the trial* that the property stolen, embezzled or obtained by false pretences is over two hundred dollars in value. See Bishop, 1 Cr. Proced. 79, 538, and 2 Cr. Proced. 569, 713.

As to the punishment for the misdemeanor created by this section, see *ante*, sect. 4, and *post*, sect. 122.

As to the meaning of the word "property," see *ante*, sect. 1.

As to the meaning of the words "property in possession" and "property in action," see 2 Stephen's Comm. 10.

It has been remarked that the most striking defect of

the English Criminal Statutes Consolidation Acts is the great want of uniformity in the punishments annexed to offences of the same class. (*Welsby's preface to Archbold's fifteenth edition.*) The Canadian Acts are not free from censure in that respect, and the present clause affords a striking illustration of it. By the last part of the clause, if a man is convicted of simple larceny of three hundred dollars, *a felony*, he cannot have more than ten years in the Penitentiary: and by the first part, if he appropriates unlawfully the *possession or use* only of a property worth three hundred dollars, *a misdemeanor*, he can have fourteen years in the Penitentiary.

As remarked *ante*, a court of justice would not feel authorized to inflict the punishment increased by the value of the property being of an amount exceeding two hundred dollars, unless such value be stated in the indictment and duly proved at the trial.

The words "or in any manner in which simple larceny is punishable," after the words "fourteen years" seem to have been erroneously inserted. It makes the clause, in fact, read "Whosoever unlawfully takes is guilty of a misdemeanor *punishable in like manner as simple larceny*, and if the value of such property exceeds two hundred dollars, then such misdemeanor shall be punishable *in any manner in which simple larceny is punishable.*"

The offence created by this section is unknown in the English Criminal Law, and, it is believed, was unknown throughout the whole of the Dominion of Canada before this enactment.

In answer to our enquiries about it, Mr. R. J. Wicksteed, of the Law Department of the House of Commons, the author of the valuable "Table of the Statutes of the Dominion of Canada," had the kindness to give us the following information, inserted here with his permission:

" Chap. 21 of 32-33 Vict., (1869) or the Act respecting larceny, was prepared, as well as the other criminal Acts, by the Law Clerk. In the preparation, old materials were used as much as possible, the provisions found in the laws of the various Provinces of the Dominion, and the English Acts being freely used ; but, in some instances, new sections were written to meet cases at that time unprovided for.—Section 110 of chap. 21, as to which you enquire ' whence taken, &c., &c., ' was new, written by my father to supply a deficiency. He informs me that it was suggested to him by some work on English Criminal Law, and thinks it was the book entitled ' General View of the Criminal Law of England, ' by J. Fitz. Stephen. This book, having been removed from the Parliamentary library, I cannot give you the writer's exact arguments, but the sense you have in section 110 of chap. 21. The English Commissioners on Criminal Law, in their fourth report to Her Majesty, of 8th of March, 1839, (Vol. 1,) remarking on the Law of England as to theft or larceny, observe, page 52 : ' It is further observable, that the intent essential to the offence must extend to the fraudulent appropriation of the whole property, and that the mere intent to deprive the owner of the temporary possession only is not sufficient to constitute the offence. For, although, under particular circumstances, a fraudulent privation of possession may justly be made penal, such an offence cannot, without great inconvenience, be included with so general a predicament as that of theft. A law designed for the protection of the right of property would be far too general in its operation, were it to be extended to mere temporary privations of possession. In practice, this would be to injure, if not to destroy, the important boundary between the crime of theft and a mere civil trespass. '

And again, on page 56: 'And although the intent be not to commit a collateral fraud, but to enjoy the temporary possession in fraud of another's right of possession, the offence cannot properly constitute a theft; for this is an offence, as we have already observed, against the right of property, as distinguished from the mere right of possession, and the Law of England does not, as the Roman law did, notice the *furtum possessionis* as constituting a branch of the law of theft. The offence properly consists in the unlawful appropriation of that which belongs to another, which cannot be where another has not the property, but only the right of temporary possession. A law might no doubt be made to comprehend mere wrongs to the temporary right of possession; but the same principles of policy and convenience, which occasion the distribution of offences into defined classes, must also regulate the limits of each separate class of offences, and we have already observed that to extend the class of thefts to mere injuries to the possession, would be to extend its boundaries too widely, and render the limits between theft, and a mere trespass indistinct.' But, see Bishop, on Criminal Law, 2nd Edition, vol. 1, section 429: (section 579 of the fifth edition). 'Then we have a very extensive influence exerted by the universal rule that the law does not regard small things. We have seen that in the application of this rule, the general, rather than the particular, consequence of the Act is to be regarded. Therefore, although it is criminal to steal personal property which is of some value, however small the value may be, yet it is not so for a trespasser to take and carry away such property, be the value great or small, with the intent of appropriating to himself, not the property itself, but its mere use, too small a thing, in respect of the general consequence, for the criminal

law, not for the civil, to notice. But this rule of small things can be accurately understood only as we see it applied in the cases: for the decisions are not harmonious with any general principle. There is no reason, in principle, why many things deemed too small for the law to notice, should not in fact be noticed by it; for instance, if a man converts to his own use, with a bad motive, a valuable thing, which he takes intending to return it after he has served his end, there is no reason of principle why he should not be as severely punished as he who converts the entire property in a piece of paper worth one mill.' It was upon reasoning similar to this of Mr. Bishop, that my father submitted section 110 to Sir John Macdonald, then Minister of Justice, who approved of it, and the Act passed with it included"

Certainly, Bishop's observations are entitled to great consideration, but it must be admitted, that, in practice, the legislation contained in the clause in question, "destroys the important boundary between the crime of theft and a mere civil trespass."—Crim. L. Comm. Report, loc. cit. And is it very clear, as stated by Bishop, that the rule of the English criminal law, that *possession* or *use* of property is not the subject of larceny, is based on the maxim "*de minimis non curat lex*." Then Bishop says that, *in principle*, a man unlawfully defrauding another of the *use* or *possession* of a valuable thing, ought to be punishable, but does not go so far as to say, that, in practice, such a legislation would work well. And the English Commissioners, in a foot note to page 56 of their Report, cited *ante*, say: "It is worthy of remark, that the necessity of abandoning this principle of the Roman law has been felt in nations whose systems depend more immediately upon that law than our own, inasmuch as the doctrine of the *furtum possessionis*, as

well as the *furtum usus*, has no place in any of the modern German codes."

Is the full extent of the Roman law, on the subject, to be now considered as forming part of our Criminal law system? "*Furtum autem fit, non solum quum quis interceptiendi causâ rem alienam amovet, sed generaliter quum quis alienam rem invito domino contractat. Itaque, sive creditor pignore, sive is apud quem res deposita est, eâ re utatur; sive is qui rem utendam accepit, in alium usum eam transferat quam cujus gratiâ ei data est, furtum committat: veluti, si quis argentum utendum acceperit quasi amicos ad cœnam invitaturus, et id peregre secum tulcrit, aut si quis equum, gestandi causâ commodatum sibi, longius aliquo duxerit.*" Instit. lib. 4, tit. 1, par. 6.

Would the defendants in *R. vs. Phillips*, 2 East, P. C. 662; *Reg. vs. Holloway*, 1 Den. 370; *Reg. vs. Poole, Dears. & B. 345*, *Reg. vs. Kilham*, 11 Cox, 561, have been convicted under this clause? And then, let it be noticed that the clause applies to *real* as well as to personal property.

This enactment of doubtful merit in principle may certainly be said to be *unexpected* in a "*larceny*" Act: and the more so, when the preamble of this larceny Act reads "*Whereas it is expedient to assimilate, amend and consolidate the Statute law relating to larceny and other similar offences.*"

OFFENCES CONCERNING TIMBER FOUND ADRIFT.

Sect. 111.—Whosoever wilfully and unlawfully conceals or appropriates any timber, mast, spars, saw-logs, or other description of lumber, which, having been adrift in any river or lake, is found so adrift in any such river or lake, or cast ashore on the bank or beach of any such river or lake, or wilfully and unlawfully defaces or adds any mark or number, on any such article or thing, or

makes any false or counterfeit mark thereon, or refuses to deliver up to the proper owner thereof or to the person in charge thereof on behalf of such owner, any such article or thing, is guilty of a misdemeanor punishable in like manner as simple larceny.

Of course, this clause is not in the English Statute. If the facts warrant it, the defendant could be indicted for larceny, notwithstanding this clause. As to the punishment for the misdemeanor under this clause, see *ante*, sect. 4, and *post*, sect. 122. No intent to defraud seems necessary, under this clause. It is only on timber, logs, &c., &c., &c., *adrift or cast on shore*, that it is an offence, by this clause, to deface or add any mark or number, or make any false or counterfeit mark. The offence of refusing to deliver up any *such* article or thing, applies also only to timber, logs, &c., &c., &c., *adrift or cast on shore*. The indictment, therefore, must aver these material elements of the offence.

BRINGING INTO CANADA PROPERTY STOLEN, EMBEZZLED OR
UNLAWFULLY OBTAINED ELSEWHERE.

Sect 112.—If any person brings into Canada, or has in his possession therein, any property, stolen, embezzled, converted or obtained by fraud or false pretence, in any other country, in such manner, that the stealing, embezzling, converting, or obtaining it in like manner in Canada, would by the laws of Canada, be a felony or misdemeanor; then, the bringing such property into Canada, or the having it in possession therein, knowing it to have been so stolen, embezzled or converted, or unlawfully obtained, shall be an offence of the same nature, and punishable in like manner as if the stealing, embezzling, converting or unlawfully obtaining such property had taken place in Canada, and such person may be tried and



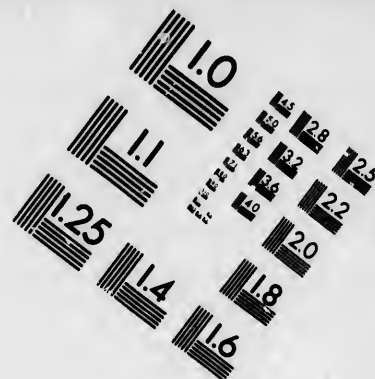
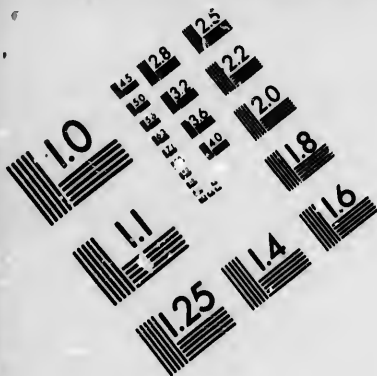
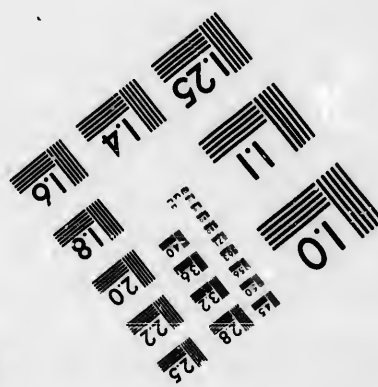
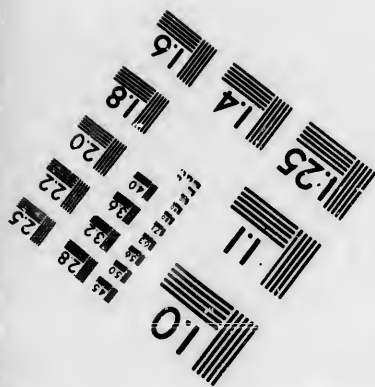
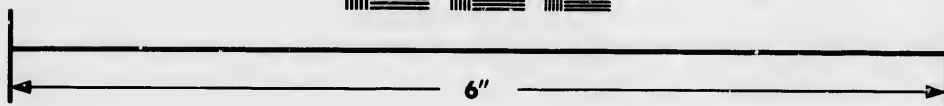
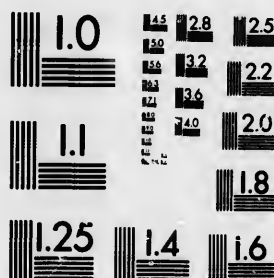


IMAGE EVALUATION TEST TARGET (MT-3)



Photographic
Sciences
Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

18 20 22 25
16 18 20 22 25
14 16 18 20 22 25

10 01

convicted in any district, county or place in Canada, into or in which he brings such property, or has it in possession.

This clause is not in the English Act. Under sect. 8, chap. 158, of the Revised Statutes of New Brunswick, it was held that, upon an indictment in New Brunswick, for a larceny committed in Maine, the goods stolen having been brought in New Brunswick, it was necessary to prove that the taking was larceny, *according to the law of Maine*.—Clark's Crim. L. 317. This clause was as follows: When any person shall be feloniously hurt or injured at any place out of this Province, and shall die in this Province of such hurt or injury, or when any person shall steal any property out of this Province and shall bring the same within the Province, any such offence, whether committed by any person as principal or accessory before or after the fact, may be dealt with in the county in which such death may happen, or such property shall be brought.—Sect. 8, ch. 158, Revised Stat. New Bruns. The words "in such manner that the stealing, &c., &c., &c., would by the laws of Canada, be a felony or misdemeanor," in the present Act, sect. 112, *ante*, constitute a wide difference with this New Brunswick Act, and the case noticed by Mr. Clarke would probably not now be followed.

RESTITUTION OF STOLEN PROPERTY.

Sect. 113.—If any person, guilty of any such felony or misdemeanor as is mentioned in this Act, in stealing, taking, obtaining, extorting, embezzling, appropriating, converting or disposing of, or in knowingly receiving any chattel, money, valuable security, or other property whatsoever, is indicted for such offence, by or on behalf of the owner of the property, or his executor, or admin-

strator, and convicted thereof, in such case the property shall be restored to the owner or his representative; and in every case in this section aforesaid, the Court before whom any person is tried for any such felony or misdemeanor 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 the Court may also, if it see fit, award restitution of the property taken from the prosecutor, or any witness for the prosecution, by such felony or misdemeanor, although the person indicted is not convicted thereof, if the jury declare, as they may do, that such property belongs to such prosecutor or witness, and that he was unlawfully deprived of it by such felony or misdemeanor*; Provided that if it appear before any award or order made, that any valuable security has been *bonâ fide* paid or discharged by some person or body corporate liable to the payment thereof, or, being a negotiable instrument, has been *bonâ fide* taken or received by transfer or delivery, by some person or body corporate, for a just and valuable consideration, without any notice or without any reasonable cause to suspect that the same had by any felony or misdemeanor been stolen, taken, obtained, extorted, embezzled, converted or disposed of, in such case the Court shall not award or order the restitution of such security; Provided also that nothing in this section contained shall apply to the case of any prosecution of any trustee, banker, merchant, attorney, factor, broker, or other agent intrusted with the possession of goods or documents of title to goods, for any misdemeanor against this Act.—24-25 Vict., ch. 96, sect. 100, Imp.

It is to be observed that the proviso as to trustees, bankers, &c., only excepts cases of misdemeanors from the operation of this section, and leaves all cases of felony

within it.—2 Russell, 355. The words in *italics* are not in the English Act; they were in the bill as passed in the House of Lords, but were struck out by the select Committee of the Commons. Greaves, Consol. Acts, 185.

The prisoners were convicted of feloniously stealing certain property. The Judges who presided at the trial made an order directing that property found in the possession of one of the prisoners, not part of the property stolen, should be disposed of in a particular manner. *Held*, that the order was illegal, and that a judge has no power either by common law or by statute to direct the disposal of chattels in the possession of a convicted felon, not belonging to the prosecutor.—Reg. vs. Pierce, Bell, 235.

The case of Walker vs. Corporation of London, 11 Cox, 280, is of no application in Canada. In Reg. vs. Stancliffe, 11 Cox, 318, it was held that the present section applies to cases of false pretences as well as felony, and that the fact that the prisoner parted with the goods to a *bona fide* pawnee did not disentitle the original owner to the restitution of the goods.—See 2 Russell, 355.

The Court is bound by the Statute to order restitution of property obtained by false pretences and the subject of the prosecution, in whose hands soever it is found: and so likewise of property received by a person knowing it to have been stolen or obtained by false pretences; but the order is strictly limited to property identified at the trial as being the subject of the charge, therefore it does not extend to property in the possession of innocent third persons which was not produced and identified at the trial as being the subject of the indictment.—Reg. vs. Goldsmith, 12 Cox, 594.

An order of restitution of property stolen will extend only to such property as is produced and identified in the course of the trial, and not to all the articles named in the indictment, unless so produced and identified and in the possession of the Court.—*Reg. vs. Smith*, 12 Cox, 597.

It has been held, on this clause, in a recent case, in Montreal, (*Reg. vs. Atkin*, April, 1874,) that the court will not give an order for the restitution of stolen goods, where the ownership is the subject of a dispute in the Civil Courts. Mr. Justice Ramsay's remarks in this case are as follows :

"In this case an application was made for the restitution of the goods to Cassils & Stimson, under the 32-33 Vict., ch. 21, sect. 113. In England, it seems, it is not usual to grant a writ of restitution, *R. vs. Macklin*, 5 Cox, 216. It therefore only remains to be seen whether we should give a summary order. The difficulty in this case arises from the fact that the goods in question have been seized in the hands of the High-Constable by civil process of revendication. It is said on the part of the applicant that we have no discretion, and that we are bound to give the order. We are not of that opinion. 'Shall be restored to the owner' is only a waiving of the rights of the Crown. It does not decide any right between other parties. *Scattergood vs. Sylvester*, 19 L. J. Q. B. 447. Were it considered otherwise, should an enactment be beyond the jurisdiction of Parliament. It would be a matter of civil law. The other words, 'the Court shall have power to award,' are evidently permissive. It has been said that they are permissive in form because of the proviso of the section ; but the proviso is an absolute exception, and therefore, unless it

was intended to leave the granting of the order discretionary with the Court, it was not necessary to use the permissive form. Again, the Statute says, 'from time to time;' this shows the intention of the Legislature to leave it discretionary when this order was to be given. The objection to granting the order now is not so much that it might affect the rights of third parties, but because it would place our officer in an awkward position. He would be between two fires. On one hand he would have our order to make restitution: on the other hand, he would be open to civil liabilities if he delivered up. It does not alter the question that the applicants say they won't press the delivery till the civil suit is decided. We are asked for an order, and we must see what it may lead to. Nor can we see any inconvenience in delaying to give the order, for any Judge holding the Court might give it when the obstacle created by the seizure is removed."—18 Low. Can. Jur., p. 213.

The case of *Reg. vs. Macklin*, cited *supra*, by Mr. Justice Ramsay is noticed by Greaves, in 2 Russell, 356.

Sect. 114.—When any prisoner has been convicted either summarily or otherwise, of any larceny or other offence including the stealing or unlawfully obtaining any property, and it appears to the Court, by 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 the application of such purchaser and on restitution of the property to its owner, order that out of the money so taken from the prisoner, a sum not exceeding the amount of

the proceeds of the sale be delivered to such purchaser.
—30-31 Vict., ch. 35, sect. 9, Imp.

The English Act does not, expressly, provide by the corresponding clause, for cases of obtaining by false pretences.

The section provides for the *sale* only of the stolen property. *Reg. vs. Stancliffe*, 11 Cox, 318, *supra*, would not be affected by it.

TAKING A REWARD FOR HELPING TO THE RECOVERY OF
STOLEN PROPERTY, ETC., ETC.

Sect. 115.—Whosoever corruptly takes any money or reward, directly or indirectly, under pretence or upon account of helping any person to any chattel, money, valuable security or other property whatsoever, which by any felony or misdemeanor has been stolen, taken obtained, extorted, embezzled, converted, or disposed of as in this Act before mentioned, unless he has used all due diligence to cause the offender to be brought to trial for the same, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding seven years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour and with or without solitary confinement.—24-25 Vict., ch. 96, sect. 101, Imp.

As to the meaning of the words “valuable security” and “property,” see *ante*, sect. 1. As to sureties for the peace in felonies under this Act, see *post*, sect. 122. As to solitary confinement, see sect. 94 of the Procedure Act of 1869.

Indictment.—The jurors for Our Lady the Queen upon their oath present that A. B. on feloniously, unlawfully and corruptly did take and receive from one J.

N. certain money and reward, to wit, the sum of five pounds of the monies of the said J. N. under pretence of helping the said J. N. to certain goods and chattels of him the said J. N. before then feloniously stolen, taken and carried away, the said A. B. not having used all due diligence to cause the person by whom the said goods and chattels were so stolen, taken and carried away as aforesaid, to be brought to trial for the same; against the form Archbold, 837.

It was held to be an offence within the Repealed Statute to take money under pretence of helping a man to goods stolen from him, though the prisoner had no acquaintance with the felon, and did not pretend that he had, and though he had no power to apprehend the felon, and though the goods were never restored, and the prisoner had no power to restore them.—R. vs. Ledbitter, 1 Mood. 76. The section of the Repealed Statute, under which this case was decided, was similar to the present section.—2 Russell, 575.

If a person know the persons who have stolen any property, and receive a sum of money to purchase such property from the thieves, not meaning to bring them to justice, he is within the Statute, although the jury find that he did not mean to screen the thieves, or to share the money with them, and did not mean to assist the thieves in getting rid of the property by procuring the prosecutrix to buy it.—Reg. vs. Pascoe, 1 Den. 456.

A person may be convicted of taking money on account of helping a person to a stolen horse, though the money be paid after the return of the horse; Reg. vs. O'Donnell, 7 Cox, 337. As to the meaning of the words "*corruptly takes*," see Reg. vs. King, 1 Cox, 36.

ADVERTISING A REWARD FOR THE RETURN OF STOLEN
PROPERTY, ETC., ETC.

Sect. 116.—Whosoever publicly advertises a reward for the return of any property whatsoever, which has been stolen or lost, and in such advertisement uses any words purporting that no questions will be asked, or 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 promises or offers in any such public advertisement to return to any pawnbroker or other person, who may have bought or advanced money by way of any loan on any property stolen or lost, the money so paid or advanced, or any other sum of money for the return of such property, or prints or publishes any such advertisement, shall forfeit the sum of two hundred and fifty dollars for any such offence to any person who will sue for the same by action of debt, to be recovered with full costs of suit.—24-25 Vict., ch. 96, sect. 102, Imp.

The Canadian Act is amended as follows by 35 Vict., ch. 35, sect. 3.—Every action against the printer or publisher of a news-paper to recover a forfeiture, under sect. 116 of the Larceny Act of 1869, shall be brought within six months after the forfeiture is incurred.—33-34 Vict., ch. 65, sect. 3, Imp. (*The English Act requires the authorization of the law officers of the Crown.*)

35 V. ch. 35, section 2.—In this Act the term “news-paper” means a newspaper as defined for the purposes of the Acts for the time being in force relating to the carriage of newspapers by post.—33-34 Vict., ch. 65, sect. 2, Imp.

APPREHENSION OF OFFENDERS, SEARCH WARRANT, ETC.,
ETC., ETC.

Sect. 117.—Any person found committing any offence punishable either upon indictment or upon summary conviction by virtue of this Act, may be immediately apprehended *without* a warrant by *any* person, and forthwith taken, together with the property, if any, on or with respect to which the offence is committed, before some neighbouring Justice of the Peace to be dealt with according to law; and if any credible witness proves upon oath before a Justice of the Peace a reasonable cause to suspect that any person has in his possession or on his premises any property whatsoever on or with respect to which any offence, punishable either upon indictment or upon summary conviction by virtue of this Act, has been committed, the Justice may grant a warrant to search for such property as in the case of stolen goods; and any person to whom any property is offered to be sold, pawned or delivered, if he has reasonable cause to suspect that any such offence has been committed on or with respect to such property, is hereby authorized, and, if in his power is required, to apprehend and forthwith to take before a Justice of the Peace the party offering the same, together with such property to be dealt with according to law.—24–25 Vict., ch. 96, sect. 103, Imp.

See sections 2, 3, 4, 5 and 6 of the Procedure Act of 1869.

Greaves had proposed an amendment to this clause, which, though rejected by the House of Commons in England, ought to have been inserted in our Statute. As it is, the following example given by Greaves shows the unsatisfactory state of the law. Any one, who has obtained a drove of oxen or a flock of sheep by false pre-

tences, may go quietly on his way, and no one, not even a peace officer, can apprehend him without a warrant; but if a man offer to sell any person a bit of a dead fence supposed to have been stolen, he not only may, but is required to be apprehended by that person.

PROCEEDINGS ON SUMMARY CONVICTIONS.

Sect. 118.—In every case of a summary conviction under this Act, where the sum forfeited for the value of the property stolen or taken, or for the amount of the injury done, or imposed as a penalty by the Justice, is not paid either immediately after the conviction, or within such period as the Justice shall, at the time of the conviction, appoint, the convicting Justice, unless where otherwise specially directed, may commit the offender to the common gaol or house of correction, there to be imprisoned only or to be imprisoned and kept to hard labour, according to the discretion of the Justice, for any term not exceeding two months, where the amount of the sum forfeited or of the penalty imposed, or of both as the case may be, together with the costs, does not exceed twenty-five dollars, and for any term not exceeding three months where the amount, with costs, exceeds twenty-five dollars: the commitment to be determinable in each of the cases aforesaid upon payment of the amount and costs.—24-25 Vict., ch. 96, sect. 107, Imp.

Sect. 119.—Where any person is summarily convicted before a Justice of the Peace, of any offence against this Act, and it is a first conviction, the Justice may, if he so thinks fit, discharge the offender from his conviction, upon his making such satisfaction to the party aggrieved, for damages and costs, or either of them, as shall be ascertained by the Justice. —24-25 Vict., ch. 96, sect. 108, Imp.

Sect. 120.— In case any person convicted of any offence punishable upon summary conviction, by virtue of this Act, has paid the sum adjudged to be paid, together with costs, under such conviction, or has received a remission thereof from the Crown, or has suffered the imprisonment awarded for non-payment thereof, or the imprisonment adjudged in the first instance, or has been so discharged from his first conviction by any Justice as aforesaid, in every such case, he shall be released from all further or other proceedings for the same cause.—24—25 Vict., ch. 96, sect. 109, Imp.

See *post*, sect. 123, on summary proceedings under this Act.

VENUE IN CERTAIN CASES.—PUNISHMENT. &c., &c.

Sect. 121.—If any person has in his possession in any one part of Canada, any chattel, money, valuable security or other property whatsoever, which he has stolen or otherwise feloniously or *unlawfully taken or obtained*, by any offence against this Act, in any other part of Canada, he may be dealt with, indicted, tried and punished for larceny or theft in that part of Canada where he so has such property, in the same manner as if he had actually stolen, or taken or *obtained* it in that part; and if any person in any one part of Canada receives or has any chattel, money, valuable security or other property whatsoever which has been stolen, or otherwise feloniously or *unlawfully taken or obtained* in any other part of Canada, such person knowing such property to have been stolen or otherwise feloniously or *unlawfully taken or obtained*, he may be dealt with, indicted, tried and punished for such offence in that part of Canada where he so receives or has such property, in the same manner as if it had been origin-

ally stolen, or taken, or *obtained* in that part.—24-25 Vict., ch. 96, sect. 114, Imp.

The words in *italics* are not in the English Act. To complete the change and additional effect of these words, the words “or for so unlawfully having taken or obtained such chattel, &c., &c.” should be inserted after the words “and punished for larceny or theft.” As the clause reads, it gives power to indict, try and punish for *larceny or theft* a person guilty of obtaining under false pretences!

Sect. 122.—Whenever any person is convicted of any indictable misdemeanor punishable under this Act, the Court may, if it thinks fit, in addition to, or in lieu of any of the punishments by this Act authorized, fine the offender, and require him to enter into his own recognizances and to find sureties, both or either, for keeping the peace and being of good behaviour; and in case of any felony punishable under this Act, the Court may, if it thinks fit, require the offender to enter into his own recognizances, and to find sureties, both or either, for keeping the peace, in addition to any punishment by this Act authorized; Provided that no person shall, under this section, be imprisoned for any period exceeding one year for not finding sureties.—24-25 Vict., ch. 96, sect. 117, Imp.

See remarks under sect. 74, of the *Act concerning malicious injuries to property*, 32-33 Vict., ch. 22.

Sect. 123.—Every offence hereby made punishable on summary conviction may be prosecuted, in the manner directed by the Act of the present session, intituled: *An Act respecting the duties of Justices of the Peace out of Sessions, in relation to summary convictions and orders*, so far as no other provision is hereby made for any matter or

thing which may be required to be done in the *cause* (course) of such prosecution; and all provisions contained in the said Act shall be applicable to such prosecution in the same manner as if they were incorporated in this Act.

The Act referred to is the 32-33 Vict., ch. 31.

Sect. 124.—This Act shall commence and take effect on the first day of January, one thousand eight hundred and seventy.

AN ACT FOR THE AVOIDANCE OF DOUBTS
RESPECTING LARCENY OF STAMPS.

35 VICT., CHAP. 33.

For the avoidance of doubts under the Act passed in the Session held in the thirty-second and thirty-third years of Her Majesty's reign and intituled "An Act respecting larceny and other similar offences," and "the Post-Office Act, 1867," Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. Every postal card, postage stamp and every other stamp issued or prepared for issue by the authority of the Parliament of Canada or of the Legislature of any Province in Canada, for the payment of any rate or duty on bills of exchange, or promissory notes, or law proceedings, or of any rate or duty whatever, and whether still in the possession of the Crown, or of any person or corporation *of* (or) any officer or agent of the Government of Canada or of the Province by the authority of the Legislature whereof it was issued or prepared for issue, shall be held to be a chattel and "property" within the meaning of the Acts cited in the Preamble to this Act, and of

the enactments and provisions thereof, and to be equal in value to the amount of the postage, rate or duty which can be paid by it, and is expressed on its face in words or figures, or both ; and in any indictment or proceeding for larceny, or any other offence against either of the said acts, in respect of any such stamp, the property thereof may be laid in the person in whose possession, as the owner thereof, it was, when the larceny or offence was committed, or in the Crown, if it was then unissued or in the possession of any officer or agent of the Government of the Dominion, or of the Province by the authority of the Legislature whereof it was issued or prepared for issue.

2.—Nothing in this Act shall be construed as intending that such stamps as aforesaid were not, without this act, chattel property and subjects of larceny at common law, and under the Acts cited in the Preamble.

AN ACT RESPECTING MALICIOUS INJURIES TO PROPERTY.

32-33 VICT. CHAP. 22.

Whereas it is expedient to assimilate, amend and consolidate the Statute Law of the several Provinces of Quebec, Ontario, Nova Scotia and New Brunswick, relating to malicious injuries to property, and to extend the same as so consolidated to all Canada : Therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows.

SETTING FIRE TO A CHURCH OR CHAPEL, ETC., ETC.

Sect. 1.—Whosoever unlawfully and maliciously sets fire to any church, chapel, meeting-house, or other place

of divine worship, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life, or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 97, s. 1, Imp.

As to sureties for the peace, see sect. 74, *post*. As to solitary confinement, see 32-33 Vict., ch. 29, s. 94, Procedure Act of 1869.

Indictment.—The jurors for Our Lady the Queen, upon their oath present that J. S. on the in the year feloniously, unlawfully and maliciously did set fire to a certain church, situate at in the parish of in the district of against the form of the Statute in such case made and provided, and against the peace of Our Lady the Queen, her crown and dignity.

Though it is not necessary to prove malice against the owner, yet the indictment must allege the act to have been done “unlawfully and maliciously.” If a Statute makes it criminal to do an act unlawfully and maliciously, an indictment must state it to have been done so: stating that it was done feloniously; voluntarily and maliciously is not enough.—1 Mood. 239, *Rex. vs. Turner*; 2 Russel, 1062, *R. vs. Lewis*.

The definition of arson at common law is as follows: Arson is the malicious and wilful burning the house of another, and to constitute the offence there must be an actual burning of some part of the house, though it is

not necessary that any flames should appear. —3 Burn's Just. 768. But now the words of the Statute are *set fire to*, merely; and, therefore it is not necessary in an indictment to aver that the house was burnt, nor need it be proved that the house was actually consumed. But within the Statute, as well as at common law, there must be an actual burning of some part of the house; a bare intent or attempt to do it is not sufficient. But the burning or consuming of any part of the house, however trifling, is sufficient, although the fire be afterwards extinguished. Where on an indictment it was proved that the floor of a room was scorched: that it was charred in a trifling way: that it had been at a red heat but not in a blaze, this was held a sufficient burning to support the indictment. But where a small faggot having been set on fire on the boarded floor of a room, the boards were thereby scorched black but not burnt, and no part of the wood was consumed, this was held not sufficient. —Archbold, 509.

The time stated in the indictment need not be proved as laid: if the offence be proved to have been committed at any time before or after, provided it be some day before the finding of the indictment by the grand jury, it is sufficient. Where the indictment alleged the offence to have been committed in the night time and it was proved to have been committed in the day time, the judges held the difference to be immaterial. The parish is material, for it is stated as part of the description of the house burnt. Wherefore, if the house be proved to be situate in another parish, the defendant must be acquitted, unless the variance be amended. If a man intending to commit a felony, by accident set fire to another's house, this, it should seem, would be arson. If intending to set fire to the house of A. he accidentally set fire to that of B., it is

felony. Even if a man by wilfully setting fire to his own house, burns also the house of one of his neighbour, it will be felony: for the law in such a case implies malice, particularly if the party's house were so situate that the probable consequence of its taking fire was that the fire would communicate to the houses in its neighbourhood. And generally, if the act be proved to have been done wilfully, it may be inferred to have been done maliciously, unless the contrary be proved.—Archbold, 508.

It is seldom that the wilful burning by the defendant can be made out by direct proof: the jury, in general, have to adjudicate on circumstantial evidence. Where a house was robbed and burnt, the defendant's being found in possession of some of the goods which were in the house at the time it was burnt, was admitted as evidence tending to prove him guilty of the arson. So 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. But on a charge of arson, where the question was as to the identity of the prisoner, 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 demeanour which showed indifference or gratification, was rejected.—Archbold, 509.

Upon an indictment for any offence mentioned in this chapter (except the attempts specially provided for as such) the jury may, under s. 49, 32-33 Vict., ch. 29, (Procedure Act, 1869) convict the prisoner of an attempt to commit the same, and thereupon he may be punished in the same manner as if he had been convicted on an indictment for such attempt. 2 Russell, 1054.

SETTING FIRE TO A DWELLING-HOUSE, ANY PERSON BEING
THEREIN.

Sect. 2.—Whosoever unlawfully and maliciously sets fire to any dwelling-house, any person being therein, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 97, s. 2, Imp.

This offence was formerly punishable with death.

As to solitary confinement, see Procedure Act of 1869, sect. 94.

As to requiring the offender to enter into a recognizance and give sureties for the peace, see sect. 74, *post*.

As to verdict for an attempt to commit the offence charged upon an indictment for the offence, see Procedure Act, of 1869, sect. 49.

Indictment.—.... feloniously, unlawfully and maliciously did set fire to a certain dwelling-house of J. N. situate in the parish of in the district of..... one J. L. and M. his wife then, to wit, at the time of the committing of the felony aforesaid, being in the said dwelling-house; against the form

In this section, no mention is made of the intent with which the act is done; and it seems it is not necessary to show that the prisoner knew that any person was in the house. It must be shown that some one was in the house at the time the house caught fire; and where a person was in a house at the time the prisoner set fire to an outhouse, but left the house before the fire reached it, it was held that the offence was not proved within this section.—*Pegg vs. Warren*, 1 Cox, 68; *Reg. vs. Fletcher*, 2 C. & K. 215.

Under the Repealed Statute, a common gaol was held to be a dwelling-house, *Donnavan's case*, 1 Leach, 69; but a mere lock-up where persons are never detained more than a night or two was held not to be a house.—*Reg. vs. Connor*, 2 Cox, 65.

A building intended for a dwelling-house but used as a place to deposit straw, etc., is neither a house, out-house nor barn.—*Elsmore vs. St. Briavels*, 8 B. & C. 461. A dwelling-house must be one in which a person dwells, *Reg. vs. Allison*, 1 Cox, 64; but temporary absence is not sufficient to take the building out of the protection of the statute.—*Reg. vs. Kimbrey*, 6 Cox, 464. A building not intended for a dwelling-house, but slept in by some one without the leave of the owner, and a cellar under a cottage separately occupied, were held not to be houses.—*Reg. vs. England*, 1 C. & K. 533; *Anon.* 1 Lew. 8.

What is understood by the *house*? This extends at common law not only to the very dwelling-house, but to all out-houses which are parcel thereof, though not adjoining thereto, nor under the same roof.—2 East P. C. 1020.

SETTING FIRE TO A HOUSE, OUT-HOUSE, MANUFACTORY,
FARM-BUILDING, ETC., ETC.

Sect. 3.—Whosoever unlawfully and maliciously sets fire to any house, stable, coach-house, out-house, ware-house, office, shop, mill, malt-house, hop-oast, barn, storehouse, granary, hovel, shed or fold, or to any farm-building, or to any building or erection used in farming land, or in carrying on any trade or manufacture, or any branch thereof, whether the same is then in the possession of the offender, or in the possession of any other person, with the intent thereby to injure or defraud any person, is guilty of felony, and shall be liable to be imprison-

ed in the Penitentiary for life, or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term (the word *not* struck off, 35 Vict., ch. 34) less than two years, with or without hard labour, and with or without solitary confinement. —24–25 Vict., ch. 97, s. 3, Imp.

See sect. 74, *post*, as to requiring the offender to enter into a recognizance and to give sureties for the peace.

See sect. 94, Procedure Act of 1869, as to solitary confinement, and sect. 49 of the same Act, as to verdict for an attempt to commit the offence charged, in certain cases, upon an indictment for the offence.

Indictment.—.....feloniously, unlawfully, and maliciously did set fire to a certain dwelling-house of J. N. situate with intent thereby then to injure the said J. N., (or to defraud a certain insurance company called..... against the form.

A. was indicted for setting fire to an out-house. The building set on fire was a thatched pigsty, situate in a yard in the possession of the prosecutor, into which yard the back door of his house opened, and which yard was bounded by fences and by other buildings of the prosecutor, and by a cottage and barn which were lent to him by a tenant, but which did not open into this yard: *held*, that this pigsty was an out-house within the Repealed Statute.—Reg. vs. Jones, 2 Mood. 308.

A. was indicted for having set fire to a building twenty-four feet square, the sides of which were composed of wood with glass windows; it was roofed and was used by a gentleman, who built houses on his own property, for the purpose of disposing of them, as a storehouse for seasoned timber, as a place of deposit for tools, and as a place where timber was prepared for use: *held*, that this

was a shed, and also an erection used in carrying on trade.—Reg. vs. Amos, 5 Cox, 222.

Burning a stable is not supported by proof of burning a shed, which has been built for and used as a stable originally, but has latterly been used as a lumber shed only.—Reg. vs. Colley, 2 M. & Rob. 475.

An unfinished structure intended to be used as a house is not a house within the meaning of this section.—Reg. vs. Edgell, 11 Cox, 132.

An indictment under this section, for setting fire to a house, shop, etc., etc., need not allege the ownership of the house. The evidence in support of the intent to injure was that the prisoner N. was under notice to quit, and a week before the fire was asked to leave but did not. Of the intent to defraud, the evidence was that in 1867 he called on an agent about effecting an insurance, and that in 1871, he called on him again, and said he had come to *renew* his policy for £500, and paid ten shillings: *held*, that the evidence was sufficient to prove the intent to injure the owner of the house, and the intent to defraud the insurance company: though the policy of insurance was not produced, there was sufficient evidence of it by the defendant's implied admission of its existence by saying he wished to *renew* his policy.—Reg. vs. Newbould, 12 Cox, 148.

Malice against owner is unnecessary, see sect. 66, *post*, and intent to injure or defraud any particular person need not be stated in the indictment, nor proved on the trial.

In Harrington's case, R. vs. R. 207, no motive of ill-feeling whatsoever against the owner of the property burnt could be proved against the prisoner: he was proved to be a harmless, inoffensive man; but upon a case reserved it was held that an injury to the burnt building being the necessary consequence of setting fire to

it, the *intent to injure* might be inferred, for a man is supposed to intend the necessary consequence of his own act.

Under the Statute, it is immaterial whether the building, house, &c., &c., be that of a third person or of the defendant himself; but in the latter case, the intent to defraud cannot be inferred from the act itself, but it must be proved by other evidence. In *Reg. vs. Kitson, Dears. 187*, the prisoner was indicted for arson, in setting fire to his own house, with intent to defraud an insurance office. Notice to produce the policy was served too late on the defendant, and it was held that secondary evidence of the policy was not admissible. "But it must not, however, be understood, said Jervis, C. J., that it is absolutely necessary in all cases to produce the policy, but the intent to defraud alleged in the indictment must be proved by proper evidence."

A married woman cannot be indicted for setting fire to the house of her husband with intent to injure him.—*R. vs. March, 1 Mood. 182*. But this decision would now be considered doubtful.

See remarks under sects. 1 and 2, *ante*.

SETTING FIRE TO ANY RAILWAY STATION, ETC., ETC., ETC.

Sect. 4.—Whosoever unlawfully and maliciously sets fire to any station, engine-house, warehouse or other building, belonging or appertaining to any railway, port, dock or harbor, or to any canal or other navigation, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life, or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24–25 Vict., ch. 97, s. 4, Imp.

As to verdict for an attempt to commit the offence charged in certain cases, solitary confinement and requiring the offender to give sureties, as under sects. 1 and 2, *ante*. Indictment, as under sect. 1, need not allege *with intent to injure or defraud*.

As to destroying or injuring by fire or otherwise any custom-house, or any building whatsoever in which seized, forfeited or bonded goods are deposited, see 31 Vict., ch. 6, sect. 97, *an Act respecting the customs*.

SETTING FIRE TO THE QUEEN'S DOCK YARDS, SHIPS, ETC.,
ETC., ETC.

Sect 5.—Whosoever unlawfully and maliciously sets on fire or burns, or otherwise destroys or causes to be set on fire or burnt, or otherwise destroyed, or aids, procures, abets, or assists, in the setting on fire or burning, or otherwise destroying, of any of Her Majesty's ships or vessels of war, whether afloat or building, or begun to be built in any of Her Majesty's dock-yards, or building or repairing by contract in any private yard for the use of Her Majesty's arsenals, magazines, dock-yards, rope yards, victualling offices, or any of the buildings erected therein or belonging thereto, or any timber or material there placed, for building, repairing or fitting out of ships or vessels, or any of Her Majesty's military, naval, or victualling stores, or other ammunition of war, or any place or places where any such military, naval or victualling stores, or other ammunition of war are kept, placed or deposited, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life, or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.

This clause is taken from 12 Geo. 3, ch. 24, sect. 1, Imp.

SETTING FIRE TO ANY PUBLIC BUILDING.

Sect. 6.—Whosoever unlawfully and maliciously sets fire to any building, other than such as are in this Act before mentioned, belonging to the Queen, or to any county, riding, division, city, town, village, parish or place, or belonging to any university or college or hall of any university, or to any corporation, or to any unincorporated body or society of persons, associated together for any lawful purpose, or devoted or dedicated to public use or ornament, or erected or maintained by public subscription or contribution, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life, or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 97, s. 5, Imp.

Greaves says "This clause is new, and an extremely great amendment of the law. Before this Act passed, there was no Statute applicable to the burning of any public building, however important, unless it could be held to fall within the term "house." It would be easy to point out such buildings, the burning of which would have been looked upon as a national calamity. This section therefore has been introduced to protect all such buildings, as well as all the others specified in it,"

SETTING FIRE TO OTHER BUILDINGS.

Sect. 7.—Whosoever unlawfully and maliciously sets fire to any building other than such as are in this Act before mentioned, is guilty of felony, and shall be liable

to be imprisoned in the Penitentiary for any term not exceeding fourteen years, and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 97, s. 6, Imp.

Greaves says, "This clause is new. It will include every building not falling within any of the previous sections of the Act. It will include ornamental buildings in parks and pleasure grounds, hot houses, pineries, and all those buildings which not being within the curtilage of a dwelling-house, and not falling within any term previously mentioned, were unprotected before this Act passed. The term 'building' is no doubt very indefinite. . . . but it was thought much better to adopt the term, and leave it to be interpreted as each case might arise, than to attempt to define it, as any such attempt would probably have failed in producing any expression more certain than the term 'building' itself."

In *Reg. vs. Edgell*, 11 Cox, 132, it was doubted whether an unfinished structure intended to be used as a house was a *building* within this section. The point was not determined.

But in *Reg. vs. Manning*, 12 Cox, 106, upon a case reserved, it was held that an unfinished dwelling-house of which the external and internal walls were built, and the roof covered in, and a considerable part of the flooring laid, and the walls and ceilings prepared for plastering, is a building, within this section. In this case, Lush, J., presiding the trial, left it to the jury whether as a question of fact, the erection was a building, and the Court of Crown cases reserved seemed to be of opinion that this had been correctly done.—No intent to injure

or defraud need be alleged in an indictment under this section.

SETTING FIRE TO GOODS IN ANY BUILDING, THE SETTING
FIRE OF WHICH WOULD BE FELONY.¹¹

Sect. 8.—Whosoever unlawfully and maliciously sets fire to any matter or thing, being in, against or under any building, under such circumstances that if the building were thereby set fire to, the offence would amount to felony, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years, and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour and with or without solitary confinement.—24-25 Vict., ch. 97, sect. 7, Imp.

Greaves says: The terms "under such circumstances that if the building were thereby set fire to the offence would amount to felony" were advisably substituted instead of the terms used (*before*)... in consequence of the case of *Reg. vs. Lyons*, 1 Bell, 38. Some of the enactments as to setting fire to buildings, ships, &c., &c., &c., make an intent to injure or defraud necessary, but others do not; and the terms in question were adopted in order to include both categories; so that if goods are set fire to in a building where an intent to injure or defraud is necessary to constitute the offence of the setting fire to such building (as in the cases included in sect. 3) the case will fall within this clause; as well as where no intent is necessary to constitute the offence of setting fire to the building in which the goods are set fire to (as in the cases included in sects. 4, 5, 6, 7). An indictment under this clause where no intent is necessary to constitute the offence of setting fire to the building in which the

goods are set fire to, it will be sufficient to allege the setting fire to the goods in that building: but where an intent to injure or defraud is necessary to constitute the offence of setting fire to the building, it would seem necessary to allege in addition an intent to injure or defraud as the case may be; and the evidence in the former case will suffice, if it prove the setting fire to the goods in the building, but in the latter case, it must also be sufficient to satisfy the jury that the prisoner had the intent alleged in the indictment.

Indictment.— feloniously, unlawfully and maliciously did set fire to a certain heap of straw in a certain building of J. N. situate at in the district of against the form 3 Burn's Justice, 799.— According to Greaves, if the heap of straw was in a house, (as under sect. 3) the intent to injure or defraud should be added. But see *Reg. vs. Heseltine*, 12 Cox, 404 *Post*.

Where the prisoners were indicted for setting fire to letters in a post-office, divers persons being in the house, it was held that there was no evidence of any intent, but it was what is vulgarly called a lark, and even if the house had been burned, they would not have been guilty.— *Reg. vs. Batstone*, 10 Cox, 20.

A person maliciously set fire to goods in a house with intent to injure the owner of the goods, but he had no malicious intention to burn the house, or to injure the owner of it. The house did not take fire, but would have done so, if the fire had not been extinguished: *held*, that if the house had thereby caught fire, the setting fire to it would not have been within this section, as, under the circumstances, it would not have amounted to felony.—*Reg. vs. Child*, 12 Cox, 64. This case would perhaps bear reconsideration.

It is not necessary in a count in an indictment laid under this section to allege an intent to defraud, and it is sufficient to follow the words of the section without substantively setting out the particular circumstances relied on as constituting the offence. Evidence of experiments made subsequently to the fire is admissible in order to show the way in which the building was set fire to.—Reg. vs. Heseltine, 12 Cox, 404.

As to verdict for an attempt to commit the offence charged in certain cases, solitary confinement and requiring sureties for the peace, same as under sect. 1, *ante*.

SETTING FIRE BY NEGLIGENCE TO ANY FOREST, TREE,
LUMBER, ETC., ETC., ETC.

Sect. 9.—Whosoever by such negligence as shall show him to be reckless or wantonly regardless of consequences, or in contravention of a 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 roll-way, beach or wharf, so that the same be injured or destroyed, is guilty of a misdemeanor, and shall be liable to imprisonment in any gaol or place of confinement for any term not longer than two years, with or without hard labour.

Sect. 10.—When in the opinion of the magistrate investigating the charge under the preceding section the consequences have not been serious, he may in his discretion dispose of the matter summarily without sending the offender for trial, by imposing such a fine not exceeding fifty dollars, as he may deem right to impose, or in default of payment by committal to gaol for any period not exceeding six months, or until the fine be paid, and with or without hard labour.

Sect. 11.—Whosoever unlawfully and maliciously sets fire to any forest, tree, manufactured lumber, square timber, logs or floats, boom, dam or slide on the Crown domain, or on land leased or lawfully held for the purpose of cutting timber, or on private property or on any creek, or river, or rollway, beach or wharf, so that the same be injured or destroyed, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.

These three clauses are not in the English Statute. Sects. 9 and 11, both apply to forest, tree, lumber, &c., &c., &c.; but under the former, the act must have been done carelessly, or in contravention to a municipal law, whilst under the latter, it must have been done *unlawfully and maliciously*.

See sect. 75, *post*, as to summary conviction authorized by sect. 10, and sect. 74, *post*, as to additional or other punishment in misdemeanors and felonies under this Act. As to solitary confinement, under sect. 11, see sect. 94, Procedure Act of 1869.

An attempt to commit the felony under sect. 11 would probably be tried and punished under sect. 12, see *post*.

ATTEMPTING TO SET FIRE TO BUILDINGS.

Sect. 12.—Whosoever, unlawfully and maliciously, by any overt act, attempts to set fire to any building, or any matter or thing in *the last preceding section mentioned*, under such circumstances that if the same were thereby set fire to the offender would be guilty of felony, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years,

and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 97, sect. 8, Imp.

To give to this clause the same effect as sect. 8 of the English Act, it should have been the *ninth* of our Statute, so as to refer to our sect. 8, (sect. 7 of the English Act,) by the words "*the last preceding section.*" As it is, the English section, by the words "*or any matter or thing in the last preceding section mentioned*" refers to setting fire to any matter or thing being in, against or under any building, under such circumstances that if the building were thereby set fire to, the offence would amount to felony, whilst our section, by the same words, refers to unlawfully and maliciously setting fire to any forest, tree, &c., &c., &c. So that with us, the attempt to set fire to any matter or thing, under the circumstances mentioned in sect. 8, not being provided for by Statute, would be, by the common law, a misdemeanor; and the attempt to set fire to any forest, tree, &c., &c., &c., would be a felony, by the said sect. 12.

As to the attempt to set fire to any building, our section is useless as no building is mentioned in the last preceding section.

Indictment.— feloniously, unlawfully and maliciously did attempt, by then (*state the overt act*) feloniously, unlawfully and maliciously to set fire to a certain dwelling-house (*building*) of J. N. situate at the parish of in the with intent thereby then to injure the said J. N. against the form Archbold, 517.

The intent to injure is perhaps unnecessarily alleged in this form.

By the erroneous transposition above referred to, or rather by the insertion into our Statute of clauses 9, 10, 11, the words "under such circumstances, &c., &c., &c.," in this sect. 12, have no meaning.

As to solitary confinement, see sect. 94, Procedure Act of 1869.

As to requiring the offender to enter into a recognizance and give sureties for the peace, see sect. 74, *infra*.

Lighting a match by the side of a stack with intent to set fire to it is an attempt to set fire to it, because it is an act immediately and directly tending to the execution of the crime.—Reg. vs. Taylor, 1 F. & F. 511.—On an indictment against two prisoners for attempting to set fire, one prisoner had not assisted in the attempt, but had counselled and encouraged the other: both were convicted.—Reg. vs. Clayton, 1 C. & K. 128.

x INJURIES BY EXPLOSIVE SUBSTANCES TO BUILDINGS AND
GOODS THEREIN.

Sect. 13.—Whosoever unlawfully and maliciously, by the explosion of gunpowder, or other explosive substance, destroys, throws down, or damages the whole or any part of any dwelling-house, any person being therein, or of any building, whereby the life of any person is endangered, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life, or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 97, sect. 9, Imp.

Sect. 14.—Whosoever unlawfully and maliciously places or throws in, into, upon, under, against or near

any building any gunpowder or other explosive substance with intent to destroy or damage any building, or any engine, machinery, working tools, fixtures, goods or chattels, whether or not any explosion takes place, and whether or not any damage is caused, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 97, sect. 10, Imp.

Indictment for destroying by explosion part of a dwelling-house, some person being therein.—.... feloniously, unlawfully, and maliciously did, by the explosion of a certain explosive substance, that is to say, gunpowder, destroy a certain part of the dwelling-house of J. N. situate one A. N. then being in the said dwelling-house, against the form..... Add counts for *throwing down* and *damaging* part of the dwelling-house.—Archbold, 521.

Prove that the defendant by himself or with others destroyed or was present aiding and abetting in the destruction of some part of the dwelling-house in question, by the explosion of gunpowder or other explosive substance mentioned in the indictment. It is apprehended that a destruction of some part of the *freehold* must be shown.—R. vs. Howell, 9 C. & P. 437. It has been held that firing a gun loaded with powder through the keyhole of the door of a house, in which were several persons, and by which the lock of the door was blown to pieces, is not within this section.—R. vs. Brown, 3 F. & F. 821. But Greaves is of opinion that this case deserves reconsideration.—2 Russell, 1045, note. Prove

that it was the dwelling-house of J. N., and situate as described in the indictment. Prove that the act was done maliciously, that is, wilfully and not by accident. Prove also that J. N. was in the house at the time of the committing the offence. No intent need be laid or proved.—Archbold, 522. In *Reg. vs. Sheppard*, 11 Cox, 302, it was held that, in order to support an indictment under this section, it is not enough to show simply that gunpowder or other explosive substance was thrown against the house, but it must also be shown that the substance was in a condition to explode at the time it was thrown, although no actual explosion should result.

Indictment for blowing up a house, whereby life was endangered.—.... feloniously, unlawfully and maliciously did, by the explosion of a certain explosive substance, that is to say, gunpowder, destroy the dwelling-house of J. N. situate.... whereby the life of one A. N. was then endangered, against the form.... Add a count for *damaging* the house with a like consequence.—Archbold, 522.

Same proof as under last preceding indictment, and that the life of A. N. was endangered by the defendant's act.

Indictment for throwing gunpowder into a house with intent, &c., &c.—.... feloniously, unlawfully and maliciously did throw into the dwelling-house of J. N., situate.... a large quantity, to wit, two pounds of a certain explosive substance, that is to say, gunpowder, with intent thereby then to destroy the said dwelling-house, against the form..... Add counts varying the statement of the act, and also stating the intent to be to *damage* the house.—Archbold, 522. See *Reg. vs. Sheppard*, 11 Cox, 302, *ante*. Prove as under sect. 13, and

prove circumstances from which the jury may infer the intent as laid.

RIOTOUSLY DEMOLISHING OR INJURING BUILDINGS., ETC.,
ETC., ETC.

Sect. 15.—If any *person* riotously and tumultuously assembled together to the disturbance of the public peace unlawfully and with force demolish, or pull down, or destroy, or begin to demolish, pull down or destroy, any church, chapel, meeting-house or other place of divine worship, or any house, stable, coachhouse, outhouse, warehouse, office, shop, mill, malt-house, hop-oast, barn, granary, shed, hovel or fold, or any building or erection used in farming land, or in carrying on any trade or manufacture or any branch thereof, or any building other than such as are in this section before mentioned, belonging to Her Majesty, or to any county, riding, city, town, village, parish or place, or to any university, or college, or hall of any university, or to any *corporation or to any unincorporated body or society or persons associated for any lawful purpose*, or devoted, or dedicated to public use or ornament, or erected or maintained by public subscription or contribution, or any machinery, whether fixed or moveable, prepared for or employed in any manufacture or in any branch thereof, or any steam-engine or other engine for sinking, working, ventilating, or draining any mine, or any staith, building or erection used in conducting the business of any mine, or any bridge, waggon way or trunk for conveying minerals from any mine, every such offender is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life or for any term not less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 97, s. 11, Imp.

Sect. 16.—If any persons riotously and tumultuously assembled together to the disturbance of the public peace unlawfully and with force injure or damage any such church, chapel, meeting-house, place of divine worship, house, stable, coach-house, outhouse, warehouse, office, shop, mill, malt-house, hop-oast, barn, granary, shed, hovel, fold, building, erection, machinery, engine, staith, bridge, waggon-way or trunk, as in the last preceding section mentioned, every such offender is guilty of a misdemeanor, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding seven years, and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, provided that if upon the trial of any person for any felony in the last preceding section mentioned the jury are not satisfied that such person is guilty thereof, but are satisfied that he is guilty of any offence in this section mentioned, then the jury may find him guilty thereof, and he may be punished accordingly.—24-25 Vict., ch. 97, s. 12, Imp.

By a misprint, the word *person* is inserted for *persons*, in the beginning of sect. 15. The other words in *italics* in the said section are not in the English Act.

Indictment under sect. 15.—That on.....at..... S., J. W. and E. W., together with divers other evil disposed persons, to the jurors aforesaid unknown, unlawfully, riotously and tumultuously did assemble together, to the disturbance of the public peace; and being then and there so unlawfully, riotously and tumultuously assembled together as aforesaid, did then and there feloniously, unlawfully and with force begin to demolish and pull down the dwelling-house of one J. N. there situate, against the form.....

Indictment under sect. 16.—That on.....at.....
J. S., J. W. and E. W., together with divers other
evil-disposed persons, to the said jurors unknown,
unlawfully, riotously, and tumultuously did assemble
together to the disturbance of the public peace, and
being then and there so unlawfully, riotously and
tumultuously assembled together as aforesaid, did then
and there unlawfully and with force injure a certain
dwelling-house of one J. N. there situate, against the
form..... Add a count stating *damage* instead of *injure*.

The riotous character of the assembly must be proved.
It must be proved that these three or more, but not less
than three, persons assembled together, and that their
assembling was accompanied with some such circum-
stances, either of actual force or violence, or at least of an
apparent tendency thereto, as were calculated to inspire
people with terror, such as being armed, using threaten-
ing speeches, turbulent gestures, or the like. It is a
sufficient terror and alarm, if *any one* of the Queen's
subjects be in fact terrified.—Archbold, 842. Then
prove that the assembly began with force to demolish
the house in question. It must appear that they began
to demolish some part of the *freehold*; for instance the
demolition of moveable shutters is not sufficient.—R. vs.
Howell, 9 C. & P. 437. A demolition by fire is within the
Statute. Prove that the defendants were either active in
demolishing the house, or present, aiding and abetting.
To convict under sect. 15, the jury must be satisfied that
the ultimate object of the rioters was to demolish the
house, and that if they had carried their intention into
effect, they would in point of fact have demolished it;
for if the rioters merely do an injury to the house, and
then of their own accord go away, as having completed
their purpose, it is not a beginning to demolish within

this section. But a total demolition is not necessary, though the parties were not interrupted, and the fact that the rioters left a chimney remaining will not prevent the Statute from applying.—Archbold, 525. But if the demolishing or intent to demolish be not proved, and evidence of riot and injury or damage to the building is produced, the jury may find the defendant guilty of the misdemeanor created by sect. 16, by the proviso contained in the said sect. 16, on which Greaves says: This clause is intended to provide both for cases where there is no sufficient evidence of an intention to proceed to the total demolition of the house, etc., etc., etc., and also for cases where no such intent ever existed, provided there be a riot and injury done within the terms of the clause.

As to solitary confinement, see sect. 94, Procedure Act of 1869; as to sureties in felonies, and fine and sureties in misdemeanors under this Act., see post, s. 74.

INJURIES TO BUILDINGS BY TENANTS.

Sect. 17.—Whosoever, being possessed of any dwelling-house or other building, or part of any dwelling-house or other building, held for any term of years or other less term, or at will, or held over after the termination of any tenancy, unlawfully and maliciously pulls down or demolishes, or unlawfully and maliciously begins to pull down or demolish the same or any part thereof, or unlawfully or maliciously pulls down or severs from the freehold any fixture being fixed in or to such dwelling-house or building, or part of such dwelling-house or building, is guilty of a misdemeanor.—24-25 Vict., ch. 97, s. 13, Imp.

The word *or* is, by an error, substituted for *and*, in unlawfully "*or*" maliciously pulls down or severs, etc.,

etc.; such errors may lead to very grave consequences.

Indictment.—..... that on J. S. was possessed of a certain dwelling-house, situate then held by him the said J. S. for a term of years then unexpired; and that the said J. S. being so possessed as aforesaid, on the day and year aforesaid did unlawfully and maliciously pull down and demolish the said dwelling-house (or begin to pull down or demolish the said dwelling-house or any part thereof) against the form Archbold, 526.

Greaves says: "This clause is a very important improvement in the law of England, as tenants have very frequently, especially when under notice to quit, wilfully injured houses and buildings to a great extent." Mr. Cox says: "Malice is of the essence of this offence. It is not enough that it be unlawfully done, there must be a design to injure the owner." This is clearly wrong by the express terms of sect. 58, *post*, (66 of our Statute). Mr. Welsby perfectly correctly says "prove that the act was done maliciously, that is wilfully and without any claim or pretence of right to do it."—Archbold, 526. No punishment for the offence created by this section was inserted, because it was thought that the common law punishment of fine or imprisonment, or both, was the proper punishment." By the common law, when a fine is imposed, the offender may be imprisoned till the fine is paid.—Greaves, *Consol. Acts*, 9.

This section only applies to any dwelling-house or building, but sect. 3, *ante*, provides for cases of setting fire to any of the things therein mentioned, whether in the offender's possession or not, and sect. 67, *post*, extends the provisions of the Act generally to all offenders, whether

in the possession of the property or not, if there be an intent to injure or defraud.—3 Burn's Justice, 775.

DESTROYING GOODS IN PROCESS OF MANUFACTURE, OR
CERTAIN MACHINERY, &C., &C., &C.

Sect. 18.—Whosoever unlawfully and maliciously cuts, breaks, or destroys, or damages with intent to destroy or to render useless any goods or article of silk, woollen, linen, cotton, hair, mohair or alpaca, or of any one or more of those materials mixed with each other or mixed with any other material, or any framework-knitted piece, stocking, hose or lace, being in the loom or frame, or on any machine or engine, or on the rack or tenters, or in any stage, process or progress of manufacture, or unlawfully and maliciously cuts, breaks, or destroys, or damages with intent to destroy or render useless any warp or shute of silk, woollen, linen, cotton, hair, mohair, or alpaca, or of any one or more of those materials mixed with each other or mixed with any other material, or unlawfully and maliciously cuts, breaks or destroys or damages with intent to destroy or render useless, any loom, frame, machine, engine, rack, tackle, tool or implement, whether fixed or moveable, prepared for or employed in carding, spinning, throwing, weaving, fulling, shearing, or otherwise manufacturing or preparing any such goods or articles, or by force enters into any house, shop, building or place, with intent to commit any of the offences in this section mentioned, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 97, s. 14, Imp.

Sect. 19.—Whosoever unlawfully and maliciously cuts, breaks or destroys, or damages with intent to destroy or render useless, any machine or engine whether fixed or moveable, used or intended to be used for sowing, reaping, mowing, thrashing, ploughing or draining, or for performing any other agricultural operation, or any machine or engine, or any tool or implement, whether fixed or moveable, prepared for or employed in any manufacture whatsoever (except the manufacture of silk, woollen, linen, cotton, hair, mohair or alpaca goods or goods of any one or more of those materials mixed with each other or mixed with any other material, or any framework-knitted piece, stocking, hose or lace) is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding seven years, and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 97, s. 15, Imp.

As to solitary confinement, see sect. 94, Procedure Act of 1869. As to requiring sureties for the peace, see *post*, sect. 74. As to verdict for an attempt to commit the offence charged upon an indictment for the offence itself, in certain cases, see sect. 49, Procedure Act of 1869. It is not necessary to prove malice against owner; *post*, sect. 66. To prove that the act was done maliciously, it is sufficient to prove that it was done wilfully.

Taking away part of a frame and thereby rendering it useless, *R. vs. Tacey*, R. & R. 452, and screwing up parts of an engine, and reversing the plug of the pump, thereby rendering it useless and liable to burst, *Reg. vs. Fisher*, 10 Cox, 146, are damaging within the Act, although no actual permanent injury be done.—If a thrashing machine be taken to pieces and separated by the owner, the destruction

of any part of it is within the Statute.—*R. vs. Mackerel*, 4 C. & P. 448.—So is the destruction of a water-wheel, by which a thrashing machine is worked. *R. vs. Fidler*, 4 C. & P. 449.—So though the side boards of the machine be wanting, without which it will act, but not perfectly, it is within the Statute.—*R. vs. Bartlett*, 2 Deacon, 1517. But if the machine be taken to pieces, and in part destroyed by the owner from fear, the remaining parts do not constitute a machine within the Statute.—*R. vs. West*, Id. 1518.—It is not necessary that any part of the machine should be broken: a dislocation or disarrangement is sufficient.—*R. vs. Foster*, 6 Cox, 25.—A table with a hole in it for water, used in the manufacture of bricks, was held not to be a machine “prepared for or employed in any manufacture” within the Repealed Statute; but it would no doubt now be held to be within the words *tool or implement* contained in the present section.—3 Burn’s Justice, 776.

Indictment for cutting goods in the loom.— . . . twenty-five yards of woollen cloth of the goods and chattels of J. N. in a certain loom then being, feloniously, unlawfully and maliciously did cut and destroy, against the form

Indictment for breaking warp of silk.— . . . a certain warp of silk, of the goods and chattels of J. N., feloniously maliciously and unlawfully did cut and destroy, against the form

Indictment for entering by force into a house with intent to cut or destroy woollen goods.— . . . into a certain house of J. N. situate feloniously and by force did enter, with intent certain woollen goods of the said J. N. in a certain loom then and there being, feloniously, unlawfully and maliciously to cut and destroy, against the form

Indictment for destroying a thrashing machine.—
a certain thrashing machine, the property of J. N., feloniously, unlawfully and maliciously did cut, break and destroy, against the form Archbold, 527, 529.

SETTING FIRE TO CROPS, STACKS, &C., &C., &C.

Sect. 20.—Whosoever unlawfully and maliciously sets fire to any crop of hay, grass, corn, grain, or pulse, or of any cultivated vegetable produce, whether standing or cut down, or to any part of any wood, coppice or plantation of trees, or to any heath, gorse, furze or fern, wheresoever the same may be growing, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years, and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement—24-25 Vict., ch. 97, s. 16, Imp.

Sect. 21.—Whosoever unlawfully and maliciously sets fire to any stack of corn, grain, pulse, tares, hay, straw, haulm or stubble, or of any cultivated vegetable produce, or of furze, gorse, heath, fern, turf, peat, coals, charcoal, wood or bark, or to any steer or pile of wood or bark, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life, or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour and with or without solitary confinement.—24-25 Vict., ch. 97, s. 17, Imp.

Sect. 22.—Whosoever unlawfully and maliciously, by any overt act, attempts to set fire to any such matter or thing, as in either of the last two preceding sections mentioned, under such circumstances that if the same

were thereby set fire to the offender would be, under either of such sections, guilty of felony, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding seven years, and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 97, s. 18, Imp.

As to requiring the offender to enter into recognizances, and find sureties for keeping the peace, see sect. 74, *post*. As to solitary confinement, see sect. 94, Procedure Act of 1869.

Indictment for setting fire to a stack of wheat.—..... feloniously, unlawfully and maliciously did set fire to a certain stack of wheat, of J. N., against the form

Where the word *unlawfully* was omitted, the judges held the indictment to be bad.—R. vs. Turner, 1 Mood. 239.—No intent need be stated. Archbold, 519; R. vs. Newill, 1 Mood 458; R. vs. Woodward, 1 Mood. 323.

Prove that the defendant wilfully set fire to the stack of wheat, as stated in the indictment, and prove the ownership of the property. An indictment for setting fire to a stack of beans, R. vs. Woodward, 1 Mood. 323, or barley, R. vs. Swatkins, 4 C. & P. 548, is good; for the Court will take notice that beans are pulse, and barley, corn.—A stack composed of the flax-plant with the seed or grain in it, the jury finding that the flax-seed is a grain, was held to be a stack of grain.—R. vs. Spencer, Dears. & B. 131.—The prisoner was indicted for setting fire to a stack of wood, and it appeared that the wood set fire to consisted of a score of faggots heaped on each other in a temporary loft over the gateway, *held*, this not to be a stack of wood.—R. vs. Aris, 6 C. & P. 348.—Where the defendant set fire to a summer-

house in a wood, and the fire was thence communicated to the wood, he was held to be properly convicted on an indictment charging him with setting fire to the wood.—*R. vs. Price*, 9 C. & P. 729. An indictment for setting fire to a cock of hay cannot be sustained under a Statute making it an offence to set fire to a stack of hay.—*Reg. vs. McKeever*, 5 Ir. R. C. L. 86, Q. B.. A quantity of straw, packed on a lory, in course of transmission to market, and left for the night in the yard of an inn, is not a stack of straw within 24–25 Vict., ch. 97, s. 17, (Imp.) and the setting fire thereto wilfully and maliciously is not felony.—*Reg. vs. Satchwell*, 12 Cox, 449.

DESTROYING HOP-BINDS, GRAPE-VINES, &c., &c., &c.

Sect. 23.—Whosoever unlawfully and maliciously cuts or otherwise destroys any hop-binds growing on poles in any plantation of hops, or any *grape-vines growing in any vineyard*, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years, and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24 25 Vict., ch. 97, sect. 19, Imp.

The words in *Italics* are not in the English Act.

As to requiring sureties for the peace, see *post*, sect. 74. As to solitary confinement, see sect. 94, Procedure Act of 1869. As to verdict for an attempt to commit the felony charged upon an indictment under this section, see sect. 49, Procedure Act of 1869.

Indictment.—..... one thousand hop-binds, the property of J. N., then growing on poles in a certain plantation of hops of the said J. N. situate.... feloniously, unlawfully and maliciously did cut and destroy; against the form..... Archbold, 548.

Prove that the defendant cut or otherwise destroyed the hop-binds, or some part of them, as alleged: that they were at the time growing in a plantation of hops, situate as described, belonging to J. N. Prove also that the act was done maliciously, that is to say, wilfully, and without the belief of a supposed right.—Archbold, loc. cit.

DESTROYING TREES, ETC., ETC., ETC.

Sect. 24.—Whosoever unlawfully and maliciously cuts, breaks, barks, roots up or otherwise destroys or damages the whole or any part of any tree, sapling or shrub, or any underwood growing in any park, pleasure ground, garden, orchard or avenue, or in any ground adjoining or belonging to any dwelling-house, in case the amount of the injury done exceeds the sum of five dollars, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding three years, and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 97, sect. 20, Imp.

Sect. 25.—Whosoever unlawfully and maliciously cuts, breaks, barks, roots up or otherwise destroys or damages the whole or any part of any tree, sapling or shrub, or any underwood growing in any public street, or place, or elsewhere than in any park, pleasure-ground, garden, orchard or avenue, or in any ground adjoining or belonging to any dwelling-house, in case the amount of injury done exceeds the sum of twenty dollars, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding three years and not less than two years, or to be imprisoned in any other

gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 97, sect. 21; Imp.

Indictment under sect. 24.—..... two elm trees, the property of J. N.; then growing in a certain park, of the said J. N. situate in..... feloniously, unlawfully and maliciously did cut and damage, thereby then doing injury to the said J. N. to an amount exceeding the sum of five dollars, to wit, the amount of ten dollars, against the form..... A count may be added for cutting with intent to steal the trees, under sect. 21 of the Larceny Act.—Archbold, 549.

Indictment under sect. 25.—..... ten elm trees; the property of J. N., then growing in a certain close of the said J. N. situate..... feloniously, unlawfully and maliciously did cut and damage, thereby then doing injury to the said J. N. to an amount exceeding the sum of twenty dollars, to wit, the sum of twenty-five dollars, against the form..... Add a count, under sect. 21 of the Larceny Act.

As to requiring the offender to enter into recognizances and find sureties for keeping the peace, see *post*, sect. 74. As to solitary confinement, see sect. 94, Procedure Act of 1869; and sect. 49, of the same Act, as to a verdict for an attempt to commit the offence charged upon an indictment for the offence, in certain cases.

A variance in the number of trees is not material. It must be proved, under sect. 24, that the tree was growing in a park, and the damage done to exceed five dollars.

Under sect. 25, the damage must exceed twenty dollars, and the trees growing elsewhere than in a park. The amount of injury done means the actual injury done

to the trees, by the defendant's act: it is not sufficient to bring the case within the Statute, that, although the amount of such actual injury is less than twenty dollars, the amount of *consequential* damage would exceed twenty dollars.—*R. vs. Whiteman*, Dears. 353. An indictment under these sections is defective, if it does not allege the act to have been done *unlawfully and maliciously*, and it is not sufficient to state that it was done *feloniously*.—*Reg. vs. Lewis, & Russell*, 1067.

DAMAGING TREES TO THE AMOUNT OF TWENTY-FIVE CENTS.

—SECOND OFFENCE.—THIRD OFFENCE.—

Sect. 26.—Whosoever unlawfully and maliciously cuts, breaks, barks, roots up or otherwise destroys or damages the whole or any part of any tree, sapling or shrub, or any underwood, wheresoever the same may be growing, the injury done being to the amount of twenty-five cents at the least, shall, on conviction thereof before any Justice of the Peace, at the discretion of the Justice, either be committed to the common gaol or house of correction, there to be imprisoned only or to be imprisoned and kept to hard labour for any term not exceeding one month, or else shall forfeit and pay, over and above the amount of the injury done, such sum of money not exceeding five dollars as to the Justice seems meet, and whosoever having been convicted of any such offence, either against this or any former Act or Law, afterwards commits any of the said offences in this section before mentioned, and is convicted thereof in like manner, shall for such second offence, be liable to be committed to the common gaol or other place of confinement, there to be kept at hard labour for such term, not exceeding three months, as the convicting Justice thinks fit, or else shall forfeit and pay, over and above the amount of the injury done, such sum

of money, not exceeding twenty dollars, as to the Justice seems meet, and whosoever having been twice convicted of any such offence, whether both or either of such convictions have taken place before or after the passing of this Act, afterwards commits any of the said offences in this section before mentioned, is guilty of a misdemeanor and shall be liable to be imprisoned in any gaol or place of confinement other than a Penitentiary, for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 97, s. 22, Imp.

As to summary convictions under this Act, see *post*, sect. 75,—and sect. 74, as to fine and sureties in misdemeanors, at the discretion of the Court. As to solitary confinement, see sect. 94, Procedure Act of 1869.

If the injury done does not amount to twenty-five cents, the defendant may be punished under sects. 60 and 61, *post*.—Reg. vs. Dodson, 9 Ad. & El. 704.

If a tree is cut or damaged, that is sufficient: it need not be totally destroyed.—Taylor's case, R. & R. 373.

Indictment after two previous convictions for cutting or damaging trees to the value of twenty-five cents, wheresoever growing—.....that J. S., on one elm tree, the property of J. N., then growing on a certain land of the said J. N., in the unlawfully and maliciously did cut and damage, thereby then doing injury to the said J. N., to the amount of forty cents, against the form of the Statute in such case made and provided. And the jurors aforesaid, upon their oath aforesaid, do say, that heretofore and before the committing of the offence hereinbefore mentioned (*stating the two previous convictions.*) See sect. 26, Procedure Act of 1869, as to indictments and procedure, in indictable offences committed after previous

convictions, and for which a greater punishment may be inflicted on that account.

DESTROYING PLANTS, VEGETABLES, ETC., IN A GARDEN, ETC.

Sect. 27.—Whosoever unlawfully and maliciously destroys, or damages with intent to destroy, any plant, root, fruit or vegetable production, growing in any garden, orchard, nursery ground, house, hot-house, green-house or conservatory, shall, on conviction thereof before a Justice of the Peace, at the discretion of the Justice, either be committed to the common gaol or other place of confinement, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding three months, or else shall forfeit and pay, over and above the amount of the injury done, such sum of money not exceeding twenty dollars, as to the Justice seems meet, and whosoever having been convicted of any such offence either against this or any former Act or Law, afterwards commits any of the said offences in this section before mentioned, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for the term of two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement. —24-25 Vict., ch. 97, s. 23, Imp.

As to summary convictions under this Act, see *post*, sect. 75. As to sureties for the peace, in felonies, see *post*, sect. 74. As to solitary confinement, see sect. 94, Procedure Act of 1869, and sect. 49, as to a verdict for an attempt to commit the offence charged in certain cases. Sect. 26, of the Procedure Act of 1869, provides for the form of indictment and the procedure in cases of offences committed after a previous conviction, and for which, on that account, a greater punishment may be inflicted.

In England there is no such clause applying to the Act concerning malicious injuries to property, and the form in Archbold, page 552, would be defective here. The indictment, with us, must be in accordance with what is said by Greaves, Consol. Acts, 200, and Archbold, 364. The law laid down in *Reg. vs. Martin*, 11 Cox, 343, applies, with us, to any indictment for a subsequent offence.

Indictment for destroying plants after a previous conviction— . . . that J. S., on . . . one dozen heads of celery, the property of J. N., in a certain garden of the said J. N. situate . . . then growing, unlawfully and maliciously did destroy, against the form of the Statute in such case made and provided. And the jurors aforesaid, upon their oath aforesaid, do say that heretofore and before the committing of the offence hereinbefore mentioned (*state the previous conviction*) And so, the jurors aforesaid, upon their oath aforesaid, do say that the said J. S., on the day and year first aforesaid, one dozen heads of celery, the property of J. N. in a certain garden of the said J. N. situate . . . then growing, feloniously, unlawfully and maliciously did destroy, against the form. . . .

DESTROYING PLANTS, VEGETABLES, NOT IN A GARDEN.

Sect. 28.—Whosoever unlawfully and maliciously destroys, or damages with intent to destroy, any cultivated root or plant used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture, and growing in any land, open or inclosed, not being a garden, orchard or nursery ground, shall on conviction thereof before a Justice of the Peace at the discretion of the Justice, either be committed to the common gaol or other place of confinement, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding one

month, or else shall forfeit and pay over and above the amount of the injury done, such sum of money, not exceeding five dollars, as to the Justice seems meet; and in default of payment thereof, together with the costs if ordered, shall, be committed as aforesaid, for any term not exceeding one month, unless payment be sooner made, and whosoever, having been convicted of any such offence, either against this or any former Act or Law, afterwards commits any of the said offences in this section before mentioned and is convicted thereof in like manner, shall be committed to the common gaol or other place of confinement, there to be kept to hard labour for such term, not exceeding three months, as the convicting Justice thinks fit.—24-25 Vict., ch. 97, s. 24, Imp.

All offences against this clause are punishable summarily.—See sect. 75, *post*.

INJURIES TO FENCES, GATES, ETC., ETC., ETC.

Sect. 29.—Whosoever unlawfully and maliciously cuts, breaks, throws down, or in anywise destroys any fence of any description whatsoever, or any wall, stile, or gate, or any part thereof respectively, shall, on conviction thereof before a Justice of the Peace, for the first offence forfeit and pay, over and above the amount of the injury done, such sum of money, not exceeding five dollars, as to the Justice seems meet; and whosoever, having been convicted of any such offence, either against this or any former act or law, afterwards commits any of the said offences in this section before mentioned, and is convicted thereof in like manner, shall be committed to the common gaol or other place of confinement, there to be kept to hard labour for such term, not exceeding three months, as the convicting Justice thinks fit.—24-25 Vict., ch. 27, s. 25, Imp.

All offences against this clause are punishable summarily.— See *post*, sect. 75.

INJURIES TO MINES.

Sect. 30.—Whosoever unlawfully and maliciously sets fire to any mine of coal, cannel coal, anthracite, or other mineral fuel, *or to any mine or well of oil or other combustible substance*, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life, or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24--25 Vict., ch. 97, s. 26, Imp.

Sect. 31.—Whosoever unlawfully and maliciously, by any overt act, attempts to set fire to any mine, *or to any such oil well*, as aforesaid, under such circumstances that if the same were thereby set fire to the offender would be guilty of felony, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24--25 Vict.—ch. 97, s. 27, Imp.

The words in *italics* are additions to the English Act.

As to solitary confinement, see sect. 94, Procedure Act of 1869. As to sureties for the peace, see sect. 74, *post*.

It is equally an offence within this section to set fire to a mine in the possession of the party himself, provided it is proved to be done with intent to injure or defraud any other person. The mine may be laid as the property of the person in possession of or working it, though only as agent.—Reg. vs. Jones, 2 Mood. 293.

Indictment.— feloniously, unlawfully and maliciously did set fire to a certain mine of coal of J. N. situate at against the form

DROWNING MINES, ETC., ETC., ETC.

Sect. 32.—Whosoever unlawfully and maliciously causes any water, earth, rubbish or other substance to be conveyed or run or fall into any mine, *or into any oil well*, or into any subterraneous passage communicating therewith, with intent thereby to destroy or damage such mine *or well*, or to hinder or delay the working thereof, or, with the like intent, unlawfully and maliciously pulls down, fills up, or obstructs, or damages with intent to destroy, obstruct or render useless, any airway, waterway, drain, pit, level or shaft, of or belonging to any mine *or well*, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding seven years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour and with or without solitary confinement; provided that this section shall not extend to any damage committed underground by any owner of any adjoining mine *or well* in working the same, or by any person duly employed in such working.—24--25 Vict., ch. 97, s. 28, Imp.

The words in *italics* are additions to the English Statute, and intended, no doubt, as in the last two preceding sections, to protect petroleum wells.

See the remarks under these two sections.

Indictment for drowning a mine.— . . . feloniously, unlawfully and maliciously did cause a quantity of water to be conveyed into a certain mine of J. N., situate . . . with intent thereby then feloniously to destroy the said mine, against the form of the Statute. . . .

DESTROYING ENGINES, ERECTIONS, ETC., ETC., ETC., USED IN MINES.

Sect. 33.—Whosoever unlawfully and maliciously

pulls down, or destroys, or damages with intent to destroy or render useless, any steam engine, or other engine for sinking, draining, ventilating or working, or for in anywise assisting in sinking, draining, ventilating, or working any mine *or well*, or any appliance or apparatus in connection with any such steam or other engine, or any staith, building or erection used in conducting the business of any mine *or well*, or any bridge, waggon-way or trunk for conveying minerals *or oil* from any mine *or well*, whether such engine, staith, building, erection, bridge, waggon-way or trunk be completed or in an unfinished state, or unlawfully and maliciously stops, obstructs or hinders the working of any such steam or other engine, or of any such appliance or apparatus as aforesaid, with intent thereby to destroy or damage any mine *or well*, or to hinder, obstruct or delay the working thereof, or unlawfully and maliciously wholly or partially cuts through, severs, breaks, or unfastens, or damages with intent to destroy or render useless, any rope, chain or tackle, of whatsoever material the same shall be made, used in any mine *or well*, or in or upon any inclined plane, railway or other way, or other work whatsoever, in anywise belonging or appertaining to or connected with or employed in any mine *or well*, or the working or business thereof, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding seven years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 97, s. 29, Imp.

The words in *italics* are not in the English Act. As to solitary confinement, see sect. 94, Procedure Act of 1869, also sect. 49, of the same Act as to a verdict for an

attempt to commit the felony charged, upon an indictment for the felony itself, in certain cases. See *post*, sect. 74, as to sureties for the peace.

Prove that the defendant pulled down or destroyed the engine, as alleged. 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 holden to be an *erection* used in conducting the business of the mine, within the meaning of the Statute.—*R. vs. Whittingham*, 9 C. & P. 234.—Wrongfully setting a steam-engine in motion, without its proper machinery attached to it, and thereby damaging it and rendering it useless, is within this section.—*R. vs. Norris*, 9 C. & P. 241. Damaging a drum moved by a steam-engine, but of which it forms no part, is not damaging a steam-engine.—*R. vs. Whittingham*, *supra*.—A trunk of wood used to convey water to wash the earth from the ore was held to be an erection used in conducting the business of a mine within the meaning of the Statute.—*Barwell vs. Winterstoke*, 14 Q. B. 704.

Indictment.— a certain steam-engine, the property of J. N. for the draining and working of a certain mine of the said J. N., situate feloniously, unlawfully and maliciously did pull down and destroy, against the form

INJURIES TO SEA AND RIVER BANKS, ETC., ETC., ETC.

Sect. 34.—Whosoever unlawfully and maliciously breaks down or cuts down, or otherwise damages or destroys any sea-bank, sea-wall, dyke or aboiteau or the bank, dam or wall of or belonging to any river, canal, drain, reservoir, pool or marsh, whereby any land or building is or is in danger of being overflowed or damaged, or unlawfully and maliciously throws, breaks, or cuts down, levels, undermines, or otherwise destroys

any quay, wharf, jetty, lock, sluice, floodgate, weir, tunnel, towing-path, drain, water-course or other work belonging to any port, harbour, dock or reservoir, or on or belonging to any navigable river or canal, or any dam or structure erected to create or utilize any hydraulic power, or any embankment for the support thereof, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life, or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 97, s. 30, Imp.

Sect. 35.—Whosoever unlawfully and maliciously cuts off, draws up or removes any piles, stone, or other materials fixed in the ground and used for securing any sea-bank or sea-wall, or the bank, dam, or wall of any river, canal, drain, aqueduct, marsh, reservoir, pool, port, harbour, dock, quay, wharf, jetty or lock, or unlawfully and maliciously opens or draws up any floodgate or sluice, or does any other injury or mischief to any navigable river or canal, with intent and so as thereby to obstruct or prevent the carrying on, completing or maintaining the navigation thereof, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding seven years, and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour and with or without solitary confinement.—24-25 Vict., ch. 97, s. 31, Imp.

As to solitary confinement, verdict for an attempt, and sureties for the peace, same as under sect. 33, *ante*.

Indictment under sect. 34.— . . . a certain part of the bank of a certain river called the river situate feloniously, unlawfully and maliciously did cut

down and break down, by means whereof certain lands were then overflowed and damaged (*or was in danger. . . .*) against

Indictment under sect. 35.— a certain pile, then fixed in the ground, and then used for securing the bank of a certain river called the river situate feloniously, unlawfully and maliciously did cut off, against the form

INJURIES TO PONDS.

Sect. 36.—Whosoever unlawfully and maliciously cuts through, breaks down, or otherwise destroys the dam, floodgate or sluice of any fish-pond, or of any water which is private property, or in which there is any private right of fishery, with intent thereby to take or destroy any of the fish in such pond or water, or so as thereby to cause the loss or destruction of any of the fish, or unlawfully and maliciously puts any lime or other noxious material in any such pond or water, with intent thereby to destroy any of the fish that may then be, or that may thereafter be put therein, or unlawfully and maliciously cuts through, breaks down or otherwise destroys the dam or floodgate of any millpond, reservoir or pool, is guilty of a misdemeanor, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding seven years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 97, s. 32, Imp.

Indictment for breaking down the dam of a fish-pond.— the dam of a certain fish-pond of one J. N., situate unlawfully and maliciously did break down and destroy with intent thereby then to take and destroy the

fish in the said pond then being, against the form.....

Indictment for putting lime into a fish pond.—.... unlawfully and maliciously did put a large quantity, to wit, ten bushels of lime, into a certain fish-pond of one J. N., situate with intent thereby then to destroy the fish in the said pond then being, against the form.....

Indictment for breaking down a mill dam.—..... the dam of a certain mill-pond of J. N., situate unlawfully and maliciously did break down and destroy; against the

Maliciously in all cases under this Act means a wrongful act done intentionally without just cause or excuse.—2 Russell, 1073, note by Greaves.—See Procedure Act of 1869, sect. 94, as to solitary confinement, and sect. 49 of the same Act as to a verdict for an attempt to commit the misdemeanor charged in certain cases, upon an indictment for the misdemeanor itself. See *post*, sect. 74, as to fine *in lieu* or in addition to any punishment authorized by this Act, and sureties for the peace.

INJURIES TO BRIDGES, VIADUCTS, ETC., ETC.

Sect. 37.—Whosoever unlawfully and maliciously pulls or throws down, or in any wise destroys, any bridge, whether over any stream of water or not, or any viaduct or aqueduct, over or under which bridge, viaduct or aqueduct, any highway, railway or canal passes, or does any injury with intent and so as thereby to render such bridge, viaduct or aqueduct, or the highway, railway or canal passing over or under the same, or any part thereof dangerous or impassable, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or

without solitary confinement.—24–25 Vict., ch. 97, s. 33, Inp.

This clause by the words *over any stream of water* or *not* does away with the difficulties raised in *Rex. vs. Oxfordshire*, 1 B. & Ad. 289–297, and *Reg. vs. Derbyshire*, 2 Q. B. 745.

The clause does not apply to private bridges, but any injury to a private bridge exceeding the sum of twenty dollars would bring the case within sect. 59, *post*, and if less than that sum within sect. 60, *post*.

Indictment for pulling down a bridge.—..... a certain bridge, situate feloniously, unlawfully and maliciously did pull down and destroy, against the form

.....
Indictment for injuring a bridge.—..... feloniously, unlawfully and maliciously did (*state the injury*) a certain bridge, situate with intent thereby to render the said bridge dangerous and impassable, against the form Archbold, 541.

The intent, under this part of the section must be laid and proved, but if the bridge be proved to have been rendered dangerous or impassable, by the act of the defendant, it will be sufficient proof of the intent. Archbold, *loc. cit.*

See sect. 94, Procedure Act of 1869, as to solitary confinement, and sect. 49 of the same Act as to a verdict for an attempt to commit the offence charged, in certain cases, upon an indictment for the offence itself. See *post*, sect. 74, as to sureties for the peace.

DESTROYING TURNPIKE GATES, TOLL-BARS, ETC., ETC.

Sect. 38.—Whosoever unlawfully and maliciously throws down, levels, or otherwise destroys, in whole or in part, any turnpike gate or toll-bar, or any wall, chain,

rail, post, bar or other fence belonging to any turnpike gate or toll-bar, or set up or erected to prevent passengers passing by without paying any toll directed to be paid by any Act or Law relating thereto, or any house, building or weighing engine erected for the better collection, ascertainment or security of any such toll, is guilty of a misdemeanor and shall be liable to be punished by fine or imprisonment or both in the discretion of the Court.—24-25 Viet., ch. 97, s. 34, Imp.

See sect. 90, Procedure Act of 1869, as to punishment in such cases, also sect. 49 of the same Act, as to a verdict in cases where an attempt to commit the offence charged only is proved, and sect. 74, *post*, as to sureties for keeping the peace.

Indictment.—..... a certain turnpike gate situate unlawfully and maliciously did throw down, level and destroy, against the form.....

INJURIES TO RAILWAY TRAINS AND TELEGRAPHS.

Sect. 39.—Whosoever unlawfully and maliciously puts, places, casts or throws upon or across any railway, any wood, stone or other matter or thing, or unlawfully and maliciously takes up, removes or displaces any rail, sleeper or other matter or thing belonging to any railway, or unlawfully and maliciously turns, moves or diverts any point or other machinery belonging to any railway, or unlawfully and maliciously makes or shows, hides or removes any signal or light upon or near to any railway, or unlawfully and maliciously does or causes to be done any other matter or thing, with intent in any of the cases aforesaid to obstruct, upset, overthrow, injure or destroy any engine, tender, carriage or truck using such railway, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life, or for any term

not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour.—24-25 Vict., ch. 97, sect. 35, Imp.

Sect. 40.—Whosoever, by any unlawful act or by any wilful omission or neglect, obstructs or causes to be obstructed, any engine or carriage using any railway, or aids or assists therein, is guilty of a misdemeanor, and shall be liable to be imprisoned in any gaol or place of confinement for any term less than two years, with or without hard labour.—24-25 Vict., ch. 97, sect. 36, Imp.

Sect. 41.—Whosoever unlawfully and maliciously cuts, breaks, throws down, destroys, injures or removes, any battery, machinery, wire, cable, post, or other matter or thing whatsoever, being part of or being used or employed in or about any electric or magnetic telegraph, or in the working thereof, or unlawfully and maliciously prevents or obstructs in any manner whatsoever the sending, conveyance or delivery of any communication by any such telegraph, is guilty of a misdemeanor, and shall be liable to be imprisoned in any gaol or place of confinement, other than a Penitentiary, for any term less than two years, with or without hard labour, *unless some greater punishment is provided for the offence by any other Act in force, in which case such offender may be indicted and punished under this Act.*—24-25 Vict., ch. 97, s. 37, Imp.

Sect. 42.—Whosoever unlawfully and maliciously, by any overt act, attempts to commit any of the offences in the last preceding section mentioned, shall, on conviction thereof before a Justice of the Peace, at the discretion of the Justice, either be committed to the common gaol or any other place of confinement, there to be imprisoned

only, or to be imprisoned and kept to hard labour, for any term not exceeding three months, or else shall forfeit and pay such sum of money, not exceeding fifty dollars, as to the Justice seems meet.—24-25 Vict., ch. 97, s. 38, Imp.

The words in *italics* in sect. 41 are substituted to a proviso to be found in the English Statute, which empowers the Justice of the Peace summarily to convict the offender, if he is of opinion that it is not expedient to the ends of justice that the offence should be prosecuted by indictment; and as some offences against this section must be of a very trifling character, it is to be regretted that this proviso has been omitted in our Statute, though this is perhaps of no consequence, as to Ontario and Quebec, as ch. 67 of the Cons. Stat. of Canada, seems to be in force, and by sect. 1 of the General Repeal Act of 1869, proceedings for such offences may yet be taken under sect. 21 of the said ch. 67, C. S. C.

As to a verdict for an attempt to commit the felony charged, upon an indictment under sect. 39, in certain cases, see sect. 49 of the Procedure Act of 1869. As to sureties in felonies, and fine and sureties in misdemeanors, under this Act, see *post*, sect. 74.

See also remarks, under sections 31 and 33, of 32-33 Vict., ch. 20, *Act concerning offences against the person*.

Indictment under sect. 39.— . . . feloniously, unlawfully and maliciously did put and place a piece of wood upon a certain railway called . . . in . . . with intent thereby then to obstruct, upset, overthrow, and injure a certain engine and certain carriages using the said railway, against the form . . . Archbold, 543. The intent may be laid in different ways, in different counts, if necessary.

Prove that the defendant placed the piece of wood upon or across the railroad as described in the indictment, or was present aiding and assisting in doing so. The intent may be inferred from circumstances from which the jury may presume it. In general, the act's being done wilfully, and its being likely to obstruct or upset the railway train, would be sufficient *prima facie* evidence of an intent to do so. Where the engine or carriage is in fact obstructed, or the safety of the persons conveyed therein is in fact endangered by the defendant's act, but there is no evidence of any of the intents mentioned in sect. 39, the defendant should be indicted for a misdemeanor under sect. 40.—*R. vs. Bradford*, Bell, 268.—A line of railway constructed under an Act of Parliament, but not yet opened for public traffic, and used only for the carriage of materials and workmen, is within the Statute.—*Idem.*—A drunken man got upon the railway and altered the signals and thereby caused a luggage train to pull up and proceed at a very slow pace : *held*, upon a case reserved, *Martin, B. dissentiente*, that this was a causing of an engine and carriage using a railway to be obstructed within the meaning of sect. 36 (40 of our Statute) of the Act in question.—*Reg. vs. Hadfield*, 11 Cox, 574.—A person improperly went upon a line of railway and purposely attempted to stop a train approaching by placing himself on the space between two lines of rails, and holding up his arms in the mode adopted by inspectors of the line when desirous of stopping a train : *held* that this amounted to the offence of unlawfully obstructing an engine or carriage using a railway under sect. 36 (40 of our Statute) of the Statute in question.—*Reg. vs. Hardy*, 11 Cox, 656.

INJURIES TO WORKS OF ART, PICTURES, STATUES, BUSTS,
ETC., ETC.

Sect. 43.—Whosoever unlawfully and maliciously destroys or damages any book, manuscript, picture, print, statue, bust or vase, or any other article or thing kept for the purpose of art, science, or literature, or as an object of curiosity, in any museum, gallery, cabinet, library, or other depository, which museum, gallery, cabinet, library, or other depository is either at all times or from time to time open for the admission of the public or of any considerable number of persons to view the same, either by the permission of the proprietor thereof, or by the payment of money before entering the same, or any picture, statue, monument, or other memorial of the dead, painted glass, or *other monument of work of art* in any church, chapel, meeting-house or other place of divine worship, or in any building belonging to Her Majesty, or to any county, riding, city, town, village, parish or place, or to any university, or college, or hall of any university, or in any street, square, church-yard, burial ground, public garden or ground, or any statue or monument exposed to public view, or any ornament, railing or fence surrounding such statue or monument, or any fountain, lamp, post or other thing of metal, glass, wood or other material in any street, square or other public place, is guilty of a misdemeanor, and shall be liable to be imprisoned in any gaol or place of confinement for any term not exceeding one year, with or without hard labour, provided that nothing herein contained shall be deemed to affect the right of any person to recover, by action at law damages for the injury so committed.—24–25 Vict., ch. 97, s. 39, Imp.

See *post*, sect. 74, as to fine and sureties for the peace, in certain cases, if the Court thinks fit. The words or

other monument of work of art, are replaced by *or other ornament or work of art*, in the English Statute. This is undoubtedly an error of our printer.

INJURIES TO CATTLE, KILLING OR MAIMING CATTLE.

Sect. 44.—The word *cattle* wherever used in this Act shall have the meaning assigned to it in the Act respecting larceny and other similar offences, passed in the present session.

Sect. 1 of the said larceny Act, 32-33 Vict., ch. 21, declares that the term "cattle" shall include any horse, mule, ass, swine or goat, as well as any neat cattle or animal of the bovine species, and whatever be the age or sex of the animal, and whether castrated or not, and by whatever technical or trivial name it may be known, and shall apply to one animal as well as to many.

Sect. 45.—Whosoever unlawfully and maliciously kills, maims, wounds, *poisons or injures* any cattle is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 97, s. 40, Imp.

Sect. 46.—Whosoever unlawfully and maliciously attempts to kill, maim, wound, *poison or injure* any cattle, or unlawfully and maliciously places poison in such a position as to be easily partaken of by any cattle, is guilty of a misdemeanor, and shall be liable to be punished by fine or imprisonment, or both, at the discretion of the Court.

This last section is not in the English Act.—The words in *italics* in section 45 are not in the English Act. * Sect. 46 seems to be declaratory of the common law. As to

solitary confinement, under sect. 45, see sect. 94, of the Procedure Act of 1869. As to sureties for the peace, see sect. 74, *post*.

Indictment for killing a horse.—..... one horse of the goods and chattels of J. N. feloniously, unlawfully, and maliciously did kill, against the form.....

The particular species of cattle killed, maimed, wounded, poisoned or injured, must be specified; an allegation that the prisoner maimed certain cattle is not sufficient.—R. vs. Chalkley, R. & R. 258.

No malice against the owner is necessary: *post*, sect. 66. Other acts of administering poison to cattle are admissible in evidence to show the intent with which the drug is administered.—R. vs. Mogg, 4 C. & P. 364. The word *wound* is contradistinguished from a permanent injury, such as maiming, and a *wounding* need not be of a permanent nature.—R. vs. Haywood, 2 East, P. C., p. 1076; R. & R. 16.

In R. vs. Jeans, 1 C. & K. 539, it was held that where part of the tongue of a horse was torn off, there was no offence against the Statute, because no instrument was used. But, under the present Statute, the same act was held to be a wounding within this section.—Reg. vs. Bullock, 11 Cox, 125. Upon a case reserved, in Rex. vs. Owens, 1 Mood. 205, it was held that pouring acid into the eye of a mare, and thereby blinding her, is a maiming.—Setting fire to a building with a cow in it, and thereby *burning the cow* to death, is a killing within the statute.—R. vs. Haughton, 5 C. & P. 559.

KILLING OR MAIMING DOGS, BIRDS, ETC., ETC., ETC.

Sect. 47.—Whosoever unlawfully and maliciously 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 domestic purpose, *or purpose of lawful profit or advantage, or science*, shall on conviction thereof before a Justice of the Peace, at the discretion of the Justice, either be committed to the common gaol or any other place of confinement, there to be imprisoned only or to be imprisoned and kept to hard labour, for any term not exceeding three months, or else shall forfeit and pay, over and above the amount of the injury done, such sum of money not exceeding one hundred dollars as to the Justice seems meet; and whosoever having been convicted of any such offence, afterwards commits any of the said offences in this section before mentioned, and is convicted thereof upon indictment, is guilty of a misdemeanor, and shall be liable to be punished by fine or imprisonment, or both, in the discretion of the Court; *provided always that the prosecutor may, if he sees fit, proceed before a Justice of the Peace as for a first offence.*—24--25 Viet., ch. 97, s. 41, Imp.

The words in *italics* are not in the English Act. They are altogether superfluous. As to summary convictions, see *post*, sects. 71 and 75, and sect. 90, Procedure Act of 1869, as to fine and imprisonment, when not specially determined. As to indictment for the misdemeanor after a previous conviction, see sect. 26, Procedure Act of 1869, and *ante*, remarks under section 26 of this Act.

Greaves says: "This clause is new, and is a great improvement of the law, as it will protect domestic animals from malicious injuries. It includes any beast or animal not being cattle, which is the subject of larceny at common law. It also includes birds which are the subject of larceny at common law: such are all kinds of poultry, and, under certain circumstances, swans and

pigeons. So also it includes any bird, beast or other animal ordinarily kept in a state of confinement, though not the subject of larceny, such as parrots and ferrets; and it is to be observed that the words *ordinarily kept in a state of confinement*, are a description of the mode in which the animals are usually kept, and do not render it necessary to prove that the bird or animal was confined at the time when it was injured. Lastly the clause includes any bird or animal kept for any domestic purpose, which clearly embraces cats."—Consol. Acts, 242.

The words or *purpose of lawful profit* included in our Statute cover all animals kept in a circus, menagerie, etc., etc., etc.

SETTING FIRE, ETC., ETC., TO SHIPS.

Sect. 48.—Whosoever unlawfully and maliciously sets fire to, casts away or in anywise destroys any ship or vessel, whether the same be complete or in an unfinished state, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life, or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 97, s. 42, Imp.

Sect. 49.—Whosoever unlawfully and maliciously sets fire to, or casts away or in any wise destroys any ship or vessel with intent thereby to prejudice any owner or part owner of such ship or vessel, or of any goods on board the same, or any person that has underwritten, or may underwrite any policy of insurance upon such ship or vessel or on the freight thereof, or upon any goods on board the same, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life, or for any term not less than two years, or to be imprisoned in any

other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24–25 Vict., ch. 97, s. 43, Imp.

Sect. 50.—Whosoever unlawfully and maliciously, by any overt act, attempts to set fire to, cast away, or destroy any ship or vessel under such circumstances that if the ship or vessel were thereby set fire to, cast away or destroyed, the offender would be guilty of felony, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24–25 Vict., ch. 97, s. 44, Imp.

As to solitary confinement, see Procedure Act of 1869, sect. 94. As to sureties for the peace, see *post*, sect. 74.

Indictment under sect. 48.—..... that J. S. on feloniously, unlawfully and maliciously did set fire to a certain ship called “the Rattler,” the property of J. N., against the form.....

As to setting fire, etc., etc., etc., see notes under sections 1, 2 and 3, *ante*.—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.—*R. vs. Bowyer*, 4 C. & P. 559.—Upon an indictment for firing a barge, Alderson, J., seemed to doubt if a barge was within the meaning of the Statute.—*R. vs. Smith*, 4 C. & P. 569.—The burning of a ship of which the defendant was a part owner is within the statute.—*R. vs. Wallace*, C. & Mar. 200. See *post*, sect. 67. Archbold, 516.

Indictment under sect. 49.—.... that J. S. on on

board a certain ship called "the Rattler," the property of J. N., on a certain voyage upon the high seas, then being upon the high seas, feloniously, unlawfully and maliciously did set fire to the said ship, with intent thereby to prejudice the said J. N., the owner of the said ship, against the form The intent may be stated in different ways, in different counts.

In *R. vs. Philp*, 1 Mood. 263, there was no proof of malice against the owners, and the ship was insured for more than its value, but the judge thought that the defendant must be understood to contemplate the consequences of his act, and the judges held that, as to this point, the conviction was right.—See *R. vs. Newill*, 1 Mood. 458. The destruction of a vessel by a part-owner shows an intent to prejudice the other part-owners, though he has insured the whole ship, and promised that the other part-owners should have the benefit thereof.—*Idem*. The underwriters on a policy of goods fraudulently made are within the Statute, though no goods be put on board.—*Idem*. If the intent be laid to prejudice the underwriters, then prove the policy, and that the ship sailed on her voyage.—*R. vs. Gilson*, R. & R. 138. It would seem, however, that the general provision of the 48th section of this Statute renders unnecessary in any case the allegation or the proof of the intent mentioned in the 49th section.—Archbold, 517. Proof that it was done wilfully is of itself evidence that it was done with intent to prejudice.

PLACING GUNPOWDER NEAR A VESSEL WITH INTENT, ETC.

Sect. 51.—Whosoever unlawfully and maliciously places or throws in, into, upon, against or near any ship or vessel any gunpowder or other explosive substance, with intent to destroy or damage any ship or vessel, or any machinery, working tools, goods, or chattels, whether or not any explosion takes place, and whether or not any

injury is effected, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 97, s. 45, Imp.

Sect. 52.—Whosoever unlawfully and maliciously damages, otherwise than by fire, gunpowder or other explosive substance, any ship or vessel, whether complete or in an unfinished state, with intent to destroy the same or render the same useless, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding seven years, and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour and with or without solitary confinement.—24-25 Vict., ch. 97, s. 46, Imp.

See remarks under sects. 48, 49, 50, and under sects. 13 and 14 ; also under sect. 29 of ch. 20, *an Act concerning offences against the person*.

EXHIBITING FALSE SIGNALS, ETC.

Sect. 53.—Whosoever unlawfully masks, alters or removes any light or signal, or unlawfully exhibits any false light or signal, with intent to bring any ship, vessel or boat into danger, or unlawfully and maliciously does anything tending to the immediate loss or destruction of any ship, vessel or boat, and for which no punishment is hereinbefore provided, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for life or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour and with or without solitary confinement.—24-25 Vict., ch. 97, s. 47, Imp.

As to solitary confinement, see sect. 94, Procedure Act of 1869, and sect. 49, of the said Act, as to verdict when the offence is not completed. As to sureties for the peace, see *post*, sect. 74.

It is to be remarked that the first part of the section says "*unlawfully*" only.

Indictment for exhibiting false signals.—The jurors for Our Lady the Queen upon their oath present, that before and at the time of committing the felony hereinafter mentioned, a certain ship, the property of some person or persons to the jurors aforesaid unknown, was sailing on a certain river called near unto and that J. S. on well knowing the premises, whilst the said ship was so sailing on near unto the said parish as aforesaid, feloniously and unlawfully did exhibit a false light, with intent thereby to bring the said ship into danger, against the form Archbold, 535.

Indictment for doing an act tending to the immediate danger of a ship.—..... near unto the parish of and that J. S. on well knowing the premises, whilst the said ship was so sailing near the said parish as aforesaid, feloniously, unlawfully and maliciously did....(*state the act done*), the said act so done by the said J. S. as aforesaid then tending to the immediate loss of the said ship, against the form Archbold, 536.

CUTTING AWAY, ETC., ETC., ETC., BUOYS.

Sect. 54.—Whosoever unlawfully and maliciously cuts away, casts adrift, removes, alters, defaces, sinks or destroys, or unlawfully and maliciously does any act with intent to cut away, cast adrift, remove, alter, deface, sink or destroy, or in any other manner unlawfully and maliciously injures or conceals any boat, buoy, buoy-rope, perch or mark used or intended for the guidance of seamen

or the purpose of navigation, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding seven years, and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 97, s. 48, Imp.

No intent need be charged in the indictment. Maliciously means wilfully. This section includes the offence and the attempt to commit the offence. As to solitary confinement and sureties for the peace, as under last preceding section.

Indictment.— that J. S. on upon the river called feloniously, unlawfully and maliciously did cut away a certain buoy then used for the guidance of seamen and for the purpose of navigation, against the form Archbold, 537.

We have, in our Statute Book, an enactment, which, is certainly contradictory with the above clause: it is sect. 5, 31 Vict., ch. 59, *an Act relating to light-houses, buoys and beacons*, extended by sect. 4, 33 Vict., sect. 18, as follows:

“Whoever shall wilfully take away, destroy, deface, extinguish or remove any light-house, light-ship, floating or other light, lantern, or other signal, buoy or beacon, anchor or landmark constructed, created, laid down, placed or replaced, under this Act, shall be guilty of a misdemeanor, for which he may be tried, either on an indictment in the usual way, before any Court having cognizance of cases of misdemeanor in the county or district in which the offence is committed, or summarily before any Stipendiary Magistrate, or Police Magistrate or Judge of the Sessions of the Peace, or two Justices, within the limit of whose jurisdiction the offence is committed.

PENALTY FOR MAKING VESSELS FAST TO BUOYS, BEACONS
ETC.

Sect. 55.—Whosoever makes fast any vessel or boat to any such buoy, beacon or sea mark, shall, on conviction thereof before any Justice of the Peace, forfeit a sum not exceeding ten dollars, and in default of payment shall be liable to be imprisoned in any gaol or place of confinement for any term not exceeding one month.

This clause is not in the English Act.

As to summary convictions for offences against this Act. see *post*, sect. 75.

CUTTING BOOMS, RAFTS, ETC., ETC., ETC., ADRIFT.

Sect. 56.—Whosoever unlawfully and maliciously cuts or loosens any boom on any river, or other water, or breaks or cuts loose any raft or crib of timber or saw-logs, is guilty of a misdemeanor, and shall be liable to be punished by fine *and* imprisonment for *not less than two years*, or both, in the discretion of the Court.

This clause is not in the English Act. There are two errors in it: the first is the word "*and*" instead of *or* in fine "*and*" imprisonment: it ought to be fine "*or*" imprisonment. The second is imprisonment for *not less than two years*, instead of *not more*: which makes a great difference. As it is, a sentence for less than two years would undoubtedly be wrong. And then sect. 96, of the Procedure Act of 1869 enacts that whenever any offender is punishable by imprisonment, such imprisonment if it be for two years or any longer term shall be in the Penitentiary. So that, sect. 56 in question authorizes a sentence to *imprisonment for life in the Penitentiary*, for a misdemeanor!

Malice against owner is unnecessary, and the clause applies to every person in possession of the property injured, if act done with intent to injure or defraud. But in such a case, it is not necessary to allege that the

intent was to injure or defraud any particular person—Sections 66, 67, 68, *post*.

Indictment.—..... that A. B. on..... in unlawfully and maliciously did cut a certain boom then and there lying on the river called the said boom being then and there the property of J. S. of against the form.....

DESTROYING PARTS OF SHIPS IN DISTRESS, ETC., ETC.

Sect. 57.—Whosoever unlawfully and maliciously destroys any part of *the* ship or vessel in distress, or wrecked, stranded or cast on shore, or any goods, merchandize, or articles of any kind belonging to such ship or vessel, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour and with or without solitary confinement.—24-25 [Vict., ch. 97, s. 49, Imp.

The word "*the*" is erroneously substituted for "*any*" in "*any part of the ship or vessel in distress*."

Indictment.—..... the property of some person or persons to the jurors aforesaid unknown was stranded and cast on shore at and that J. S. on and while the said ship was so stranded and cast on shore as aforesaid, the hull of the said ship feloniously, unlawfully and maliciously did destroy, against the form Archbold, 536.

As to solitary confinement, see sect. 94, Procedure Act of 1869, and sect. 49 of the same Act, as to cases where the offence is not completed. See *post*, sect. 74, as to sureties for the peace in certain cases.

By the 36 Vict., ch. 55, sections 19 and 20, *an Act respecting wrecks and salvage*, other enactments on offences

in respect of wrecks are made, which would, in many cases, come in contact with the above section; but by sect. 33 of the said Act, it is ordered that "any person committing an offence against this Act, which is also an offence against some other Act, may be prosecuted, tried, and, if convicted, punished under either Act."

LETTERS THREATENING TO BURN HOUSES, ETC., ETC., OR
TO KILL, MAIM, ETC., ETC., ANY CATTLE.

Sect. 58.—Whosoever 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 house, barn or other building, or any rick or stack of grain, hay or straw, or other agricultural produce, or any grain, hay or straw, or other agricultural produce, in or under any building, or any ship or vessel, or to kill, maim, wound, *poison or injure* any cattle, is guilty of felony, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding ten years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour and with or without solitary confinement.—24-25 Vict., ch. 97, s. 50, Imp.

The words *poison or injure* are not in the English Act.

See remarks under sect. 15, of chap. 20, *Act concerning offences against the person*. As to solitary confinement and sureties for the peace, same as under the last preceding section.

A threat to burn standing corn is not within the Statute.—Reg. vs. Hill, 5 Cox, 233.

It was held that a letter the necessary construction of which was not a threat to burn was not within the Statute.—R. vs. Jepson, 2 East, 1115, note *a*.

Indictment may be easily framed, on the form given under sect. 15 of chap. 20, above referred to.

MALICIOUS INJURIES NOT BEFORE PROVIDED FOR TO
AMOUNT EXCEEDING TWENTY DOLLARS.

Sect. 59.—Whosoever unlawfully and maliciously commits any damage, injury or spoil to or upon any real or personal property whatsoever, either of a public or a private nature, for which no punishment is hereinbefore provided, the damage, injury or spoil being to an amount exceeding twenty dollars, is guilty of a misdemeanor, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding five years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour.—24–25 Vict., ch. 97, s. 51, Imp.

If an attempt to commit the offence only is proved, see sect. 49, Procedure Act of 1869. See *post*, sect. 74, as to fine and sureties, at the discretion of the Court. The English Act has an additional enactment giving a greater punishment for offences committed in the night.—Under this section, evidence of damage committed at several times, in the aggregate, but not at any one time exceeding five pounds will not sustain an indictment.—Reg. vs. Williams, 9 Cox, 338.

The injury must directly amount to five pounds: consequential damage cannot be taken in consideration, to make up that amount.—Reg. vs. Whiteman, 6 Cox, 370; Dears. 353. In Reg. vs. Thoman, 12 Cox, 54, the indictment was as follows That Margaret Thoman on the 30th of January, 1871, in and upon three frocks, six petticoats, one flannel petticoat, one flannel vest, one pinafore, one jacket of the value of twenty pounds, of the property of unlawfully and maliciously did commit certain damage, injury and spoil to an amount exceeding five pounds, by unlawfully cutting and destroying the same against the form of the Statute in such case made and provided. At the trial, the prisoner's

counsel objected that the indictment was bad, because the value of the articles damaged was ascribed to them collectively and not individually. But upon a case reserved, the indictment was held good, and Bovill, C. J., said: "We are all of opinion that it was not material to allege the value of the several articles in the indictment, but only that the amount of the damage exceeded five pounds."

Defendant was indicted for unlawfully and maliciously committing damage upon a window, in the house of the prosecutor, against this section. Defendant who had been fighting with other persons in the street after being turned out of a public house, went across the street, and picked up a stone, which he threw at them. The stone missed them, passed over their heads, and broke a window in the house. The jury found that he intended to hit one or more of the persons he had been fighting with, and did not intend to break the window: *held*, that upon this finding the prisoner was not guilty of the charge within this section: to support a conviction of this nature, there must be a wilful and intentional doing of an unlawful act in relation to the property damaged.—*Reg. vs. Pembrilton*, 12 Cox, 607.

MALICIOUS INJURIES NOT BEFORE PROVIDED FOR, NOT
EXCEEDING TWENTY DOLLARS.

Sect. 60.—Whosoever *unlawfully* or maliciously commits any damage, injury or spoil to or upon any real or personal property whatsoever, either of a public or private nature, for which no punishment is hereinbefore provided, shall, on conviction thereof before a justice of the Peace, forfeit and pay such sum of money not exceeding twenty dollars as to the Justice seems meet, and also such further sum of money as appears to the Justice to be a reasonable compensation for the damage, injury

or spoil so committed, not exceeding the sum of twenty dollars; which last mentioned sum of money shall, in the case of private property, be paid to the party aggrieved; and in the case of property of a public nature, or wherein any public right is concerned, the money shall be applied in the same manner as every penalty imposed by a Justice of the Peace under this Act; and if such sum of money, together with the costs if ordered, are not paid, either immediately after the conviction, or within such period as the Justice shall at the time of the conviction appoint, the Justice may commit the offender to the common gaol or other place of confinement there to be imprisoned only, or to be imprisoned and kept to hard labour, as the Justice thinks fit, for any term not exceeding two months, unless such sum and costs be sooner paid; provided that nothing herein contained shall extend to any case where the party acted under a fair and reasonable supposition that he had a right to do the act complained of, nor to any trespass, not being wilful and malicious, committed in hunting, fishing or in the pursuit of game, but every such trespass shall be punishable in the same manner as if this Act had not been passed.—24-25 Vict., ch. 97, s. 52, Imp.

Sect. 61.—The provisions in the last preceding section contained shall extend to any person who *unlawfully* or maliciously commits any injury to any tree, sapling, shrub, or underwood, for which no punishment is hereinbefore provided.—24-25 Vict., ch. 97, s. 53, Imp.

In these two clauses it ought to be “*unlawfully and maliciously*.”

In the English Act the word *wilfully* stands in lieu of *unlawfully*, in these two clauses.

As to summary convictions under this Act, see *post*, sect. 75.

W. was summoned before the Justices under this clause. He was in the employment of D., and by his order, he forcibly entered a garden belonging to and in the occupation of F. accompanied by thirteen other men, and cut a small ditch, from forty to fifty yards in length, through the soil. F. and his predecessors in title had occupied the garden for thirty-six years, and during the whole time, there had been no ditch upon the site of part of that cut by D. For the defence D. was called, who stated that, fifteen years before, there had been an open ditch in the land, which received the drainage from the highway, and that he gave directions for the ditch to be cut by W. in the exercise of what he considered to be a public right. The Justices found that W. had no fair and reasonable supposition that he had a right to do the act complained of, and accordingly convicted him: *held*, that by the express words of the section and proviso, the jurisdiction of the justices was not ousted by the mere *bonâ fide* belief of W. that his act was legal, and that there was evidence on which they might properly find that he did not act under the fair and reasonable supposition required by the Statute.—*White vs. Feast*, 7 L. R. Q. B. 353.

A conviction by Justices under sect. 52, ch. 97, 24-25 Viet., cannot be brought up by certiorari on the ground that they had no jurisdiction inasmuch as the defendant had set up a *bonâ fide* claim of right, but the exemption is impliedly restricted to cases where the Justices are reasonably satisfied of the fair and reasonable character of the claim.—*Reg. vs. Essex*, *Reg. vs. Mussett*, 26, L. J., N. S. 429.

MAKING GUNPOWDER TO COMMIT OFFENCES, SEARCHING
FOR THE SAME.

Sect. 62.—Whosoever makes or manufactures, or knowingly has in his possession any gunpowder or other explosive substance, or any dangerous or noxious thing, or any machine, engine, instrument or thing with intent thereby, or by means thereof to commit, or for the purpose of enabling any other person to commit any of the felonies in this Act mentioned, is guilty of a misdemeanor, and shall be liable to be imprisoned in any gaol or place of confinement, for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vict., ch. 97, s. 54. Imp.

Sect. 63.—Any Justice of the Peace of any district, county or place, in which any machine, engine, implement or thing, or any gunpowder or other explosive, dangerous or noxious substance is suspected to be made, kept or carried, for the purpose of being used for committing any of the felonies in this Act mentioned, upon reasonable cause assigned upon oath by any person, may issue a warrant under his hand and seal, for searching in the day time any house, mill, magazine, storehouse, warehouse, shop, cellar, yard, wharf or other place, or any carriage, waggon, cart, ship, boat or vessel, in which the same is suspected to be made, kept or carried for such purpose as hereinbefore mentioned; and every person acting in the execution of any such warrant *may seize any gunpowder, explosive substance, or any dangerous or noxious thing, or any machine, engine or instrument or thing which he has good cause to suspect is intended to be used in committing or enabling any other person to commit any offence against this Act, and with all convenient speed after the seizure shall remove the same to such proper place as he thinks fit, and detain the same until ordered by a judge of one of Her Majesty's Superior Courts of criminal juris-*

diction to restore it to the person who may claim the same.
—24–25 Vict., ch. 97, s. 55, Imp.

The words in *italics* are new; in the English Act, the same powers and protection are given to any person acting in the execution of any such warrant as are given to persons searching for unlawful quantities of gunpowder, in virtue of 23–24 Vict., ch. 139, Imp.

Sect. 64.—The searcher or seizer shall not be liable to any suit for such detainer, or for any loss of or damage which may happen to the property, other than by the wilful act or neglect of himself or of the persons whom he intrusts with the keeping thereof.

This clause is not in the English Act.

Sect. 65.—Any gunpowder, explosive substance or dangerous or noxious thing, or any machine, engine, instrument or thing intended to be used in committing or enabling any other person to commit any offence against this Act, and seized and taken possession of under the provisions hereof, shall, in the event of the person in whose possession the same may be found, or of the owner thereof being convicted for any offence against this Act, be forfeited, and the same shall be sold under the direction of the Court before which any such person is convicted, and the proceeds thereof shall belong to the Province in which the offender is convicted, and shall be paid to the chief financial officer thereof for the use of such Province.

This clause is not in the English Act.

See remarks under sections 66, 67 and 68 of ch. 20, 32–33 Vict., *an Act concerning offences against the person.*

These sections provide for the making, etc., of gunpowder intended to be used to commit any of the felonies in this Act, *or in any other Act mentioned*; so that their re-enactment in ch. 22 was unnecessary.

OTHER MATTERS.—GENERAL CLAUSES.

Sect. 66.—Every punishment and forfeiture by this Act imposed on any person *maliciously* committing any offence, whether the same be punishable upon indictment or upon summary conviction, shall equally apply and be in force, whether the offence be committed from malice conceived against the owner of the property in respect of which it shall be committed or otherwise.—24–25 Vict., ch. 97, s. 58, Imp.

Sect. 67.—Every provision of this Act not hereinbefore so applied shall apply to every person who, with intent to injure or defraud any person, does any of the acts hereinbefore made penal, although the offender be in possession of the property against or in respect of which such act is done.—24–25 Vict., ch. 97, s. 59, Imp.

Greaves says: "This clause is new and a very important amendment. It extends every clause of the Act not already so extended, (see sect. 3) to persons in possession of the property injured, provided they intend to injure or defraud any other person. It therefore brings tenants within the provisions of the Act, whenever they injure the demised premises, or anything growing on or annexed to them, with intent to injure their landlords."

Sect. 68.—It shall be sufficient in any indictment for any offence against this Act where it is necessary to allege an intent to injure or defraud, to allege that the party accused did the act with intent to injure or defraud, as the case may be, without alleging an intent to injure or defraud any particular person: and on the trial of any such offence it shall not be necessary to prove an intent to injure or defraud any particular person, but it shall be sufficient to prove that the party accused did the act charged with an intent to injure or defraud, as the case may be.—24–25 Vict., ch. 97, s. 60, Imp.

This clause places the law on this matter in the same position as in cases of forgery and false pretences.

Sect. 69.—Any person found committing any offence against this Act, whether the same be punishable upon indictment or upon summary conviction, may be immediately apprehended, without a warrant by any peace officer, or the owner of the property injured, or his servant or any person authorized by him, and forthwith taken before some neighbouring Justice of the Peace, to be dealt with according to law.—24-25 Vict., ch. 97, sect. 61, Imp.

There is a similar clause applying to all offences generally, in the Procedure Act of 1869, sect. 2.

Sect. 70.—Whosoever aids, abets, counsels or procures the commission of any offence which is by this Act punishable on summary conviction, either for every time of its conviction, or for the first and second time only, or for the first time only, shall, on conviction before a Justice of the Peace, be liable for every first, second or subsequent offence, of aiding, abetting, counselling or procuring, to the same forfeiture and punishment to which a person guilty of a first, second or subsequent offence as a principal offender is by this Act made liable.—24-25 Vict., ch. 97, sect. 63, Imp.

Sect. 71.—In every case of a summary conviction under this Act, where the sum forfeited for the amount of the injury done, or imposed as a penalty by the Justice, is not paid, either immediately after the conviction or within such period as the Justice shall at the time of the conviction appoint, the convicting Justice, unless where otherwise specially directed, may commit the offender to the common gaol or other place of confinement, there to be imprisoned only, or to be imprisoned and kept to hard labour, according to the discretion of the Justice, for any term not exceeding two months, where the amount of the sum forfeited or of the penalty imposed,

or of both, as the case may be, together with the costs does not exceed twenty dollars; and for any term not exceeding three months, when the amount, with costs exceeds twenty dollars; the commitment to be determinable in each of the cases aforesaid upon payment of the amount and costs.—24-25 Vict., ch. 97, sect. 65, Imp.

Sect. 72.—Where any person is summarily convicted before any Justice of the Peace of any offence against this Act, and it is a first conviction, the Justice may, if he so thinks fit, discharge the offender from his conviction, upon his making such satisfaction to the party aggrieved, for damages and costs or either of them, as shall be ascertained by the Justice.—24-25 Vict., ch. 97, sect. 66, Imp.

Sect. 73.—When any person convicted of any offence punishable upon summary conviction by virtue of this Act, has paid the sum adjudged to be paid, together with costs, under such conviction, or has received a remission thereof from the Crown, or has suffered the imprisonment awarded for non-payment thereof, or the imprisonment awarded in the first instance, or has been so discharged from his conviction by any Justice as aforesaid, he shall be released from all further or other proceedings for the same cause.—24-25 Vict., ch. 97, s. 67, Imp.

Sect. 74.—Whenever any person is convicted of any indictable misdemeanor punishable under this Act, the Court may, if it think fit, in addition to or in lieu of any of the punishments by this Act authorized, fine the offender and require him to enter his own recognizances, and to find sureties, both or either, for keeping the peace and being of good behaviour; and in case of any felony punishable under this Act, the Court may, if it thinks fit, require the offender to enter into his own recognizances, and to find sureties, both or either, for keeping the

peace, in addition to any punishment by this Act authorized; provided that no person shall be imprisoned under this section for not finding sureties for any period exceeding one year.—24–25 Vict., ch. 97, s. 73, Imp.

This enactment is repeated in chapters 18, 19, 20, 21, of 32–33 Vict., (1869); it is so repeated, in England, in each of the Consolidated Criminal Statutes of 1861.

Several articles censuring this clause having been published in England, when it was enacted there as part of the Consolidated Criminal Acts, Mr. Greaves, Q.C., the learned framer of these Acts, and of this particular clause, answered these criticisms by the following remarks:—

“This is a new enactment.—A fine is, at common law, one of the punishments for a misdemeanor, and by this clause, the Court may, in addition to, or in lieu of, any of the punishments assigned to any misdemeanor by these Acts, fine the offender. It may be as well to observe that a fine ought not to be imposed on a married woman, because in presumption of law she has no property wherewith to pay it.—*Rex. vs. Thomas*, Rep. T. Hard. 278.”

“In all cases of misdemeanor the Court might, by the common law, add to the sentence of imprisonment, by ordering the defendant to find security for his good behaviour and for keeping the peace, and might order him to be imprisoned until such security were found, *Reg. vs. Dunn*, 12 Q. B. 1026; but as this power was not generally known, it was thought better to insert it in this clause.”

“As it sometimes happens in cases of felony, that it may be expedient to require sureties for keeping the peace after the expiration of any imprisonment awarded, this clause empowers the Court to require such sureties. It is easy to see that it may frequently be highly advisable

to pass a very short sentence of imprisonment on a youth, and to direct him to be delivered to his friends on their entering in the proper recognizances. And it may be well worth making the experiment whether requiring adults to find such sureties may not prove beneficial. The great difficulty with which convicts have to contend immediately after their discharge, is the want of some check that may tend to prevent them from relapsing into their former habits ; and the knowledge that their sureties would be liable to forfeit their recognizances might, and probably would, in some cases at least, operate as a check upon their conduct. In cases of assault and other breaches of the peace, it has been found highly beneficial to require the parties to find sureties for their future good behaviour ; and this leads to the hope that even in cases of felony a similar result may follow from requiring sureties for keeping the peace, especially where the felony has been accompanied by any personal violence."

"As an attack was made by Mr. Saunders in the *Law Times* of the 21st of September last on these clauses, which might, peradventure, cause some magistrates, who have not had a professional education, to doubt, we answered that attack in the *addenda* to the first edition, and as a reply to that answer was made by Mr. Saunders in the *Law Times* of the 30th November last, we shall answer that reply here. In order to render the matters plain, we will first state the objections raised, then our answers, then the reply, if any, to them ; and, lastly, our answers to that reply."

"1. Mr. Saunders asserted that the difficulties of these clauses were 'of so formidable a character as to render it exceedingly dangerous for any magistrate to encounter them.' Now, the power conferred by these clauses is

only conferred on courts which try criminals by indictment; and if there be any point of law peculiarly clear, it is that no action will lie against any of the members of such a Court for any error in any judgment pronounced by that Court. The Courts of Quarter Sessions, therefore, may act on these clauses with the most perfect safety. To this answer no reply has been given, and no doubt for the best possible reason, viz., that it admitted of none."

"2. Mr. Saunders said, 'it is difficult to understand why the infliction of a fine should be inflexibly associated with the entering into recognizances to keep the peace,' and *vice versa*. As the clause was originally framed, the Court might either impose a fine on the offender, or require him to find sureties; but the select Committee of the Commons altered the clause in that respect. Nor is there the slightest difficulty occasioned by the alteration. The fine may be as low; and the recognizances for as short a time, and in as small an amount as the Court thinks fit; and, consequently, the Court may, in any case, if it think fit, impose a nominal fine on the offender, and require him to find sureties in a large amount; or the Court may, if it think fit, impose a heavy fine on the offender, and take his own recognizances alone in a small sum and for a short time. So that the alteration made by the select Committee of the Commons can cause no practical difficulty whatever. To this answer Mr. Saunders replied, that the objection taken was that 'the hands of the Court were fettered for no practical advantage.' It is sufficient to rejoin that, *practically*, the hands of the Court are not fettered at all; for the Court may impose a nominal fine, or require recognizances for a nominal term."

"3. Mr. Saunders said, 'as regards the fine itself,

the section makes no provision in the event of its not being paid. Suppose the fine is not paid, what is to be done with the offender? Is he to be committed to gaol in default? What authority is there for this? And if committed, for how long? and if for a time certain, is it to be with, or without hard labour? These are difficulties which the framers of the section have evidently not foreseen, and most certainly have not provided for.' The answer is, all these supposed difficulties have no existence whatever. When an offender is convicted and receives judgment, he is in the custody of the sheriff, and the question is not whether he is to be committed to prison, for he is actually in prison, but how he is to get out of prison; and the only means by which he can lawfully get out of prison, is by doing and suffering whatever the Court may lawfully adjudge him to do or to suffer."

"It is a general rule, also, that when a statute creates a new felony or misdemeanor, all the common law incidents are impliedly attached to it. Where therefore, a statute creates a misdemeanor, it at once is liable to the common law punishments for misdemeanor, of which fine and sureties of the peace, and imprisonment in default of paying the one or finding the other, are part. So where a statute creates an offence and specifies its punishment, that punishment is to be carried into execution according to the course of the common law. Thus wherever a Statute creates a capital felony the offender may be sentenced and executed according to the course of the common law. So, where a statute authorizes the Court to impose a fine, the offender may be imprisoned according to the course of the common law till the fine is paid. For, as Lord Coke says, a fine signifieth a pecuniary punishment for an offence, and regularly to it imprisonment appertaineth.—1 Inst. 126 b. And

hence it is that the Statutes simply authorize the Courts to impose the fine, and its payment is enforced according to the course of the common law. The framers of the 9 Geo. 4, c. 31, were well aware that this was the law, and by s. 9, in the case of manslaughter, by s. 20, in the case of taking away girls under sixteen years of age, and by s. 23, in the case of assault upon clergymen, the Court was empowered to adjudge the offender to pay a fine; but no provision was made in any of these cases as to what was to be done in default of payment. No one will doubt that Lord Campbell knew the law in this respect; and it is well known that he drew his Libel Act, 5 and 6 Vict., c. 96, with his own hand; and by ss. 4 and 5 of that Act the Court may impose a fine, and there is no provision in default of payment. It would be waste of time to refer to other like enactments on a point so perfectly clear. All the preceding observations, except those founded on the 9 Geo. 4, c. 31, and 5 and 6 Vict., c. 96, apply equally to detaining an offender in prison till he finds sureties. But one precedent in point may be added. The 37 Geo. 3, c. 126, s. 4, makes every person uttering coins liable to six months' imprisonment and to find sureties for good behaviour for six months after the end of such imprisonment, and in, case of a second conviction, sureties are required for two years; but no power of commitment is given in either case. Again, both the 1 and 2 Phil. and Mary, c. 13, s. 5; and the 2 and 3 Phil. and Mary, c. 10, s. 2, gave justices who examined persons charged with felony, 'authority to bind all such by recognizances as do declare anything material to prove' the felony, and contained no provision as to what was to be done if the witness refused to be bound. Now, in *Bennett v. Watson*, 3 Maule & S. 1, it was held that under those statutes a justice might law-

fully commit a person who was a material witness upon a charge of felony brought before him, and who refused to appear at the Sessions to give evidence, in order that her evidence might be secured at the trial, and Dampier, J., said 'the power of commitment is absolutely necessary to the existence of the Statute of Phil. and Mary; for unless there were such a power, every person would of course refuse to enter into a recognizance, and the magistrate could not compel him; and then, if he could further avoid being served with a subpoena, the delinquent might escape unpunished.' This is a very much stronger case than the case of a convict required to find sureties, for he is already in prison, whereas the witness is at liberty, and, therefore in his case, the power both to apprehend and commit has to be implied."

"It is perfectly clear, then, that the Courts have power under these clauses to order an offender to be detained in prison until he pay a fine and find sureties. But supposing a provision had been introduced expressly empowering the Court to award imprisonment until the fine was paid and the sureties found, it would have made these clauses inconsistent with s. 5 of the offences against the Person Act, which follows s. 9 of the 9 Geo. 4, c. 31; and if that had been altered likewise, both would have been made inconsistent with Lord Campbell's Libel Act, and the other Acts containing similar clauses. To this answer Mr. Saunders replied, 'Taking Mr. Greaves' exposition to be correct that the common law incident of imprisonment attaches upon non-payment of the fine, the objection, that the imprisonment is indefinite still remains in force. If the fine is not paid, is imprisonment in default to be everlasting?' We rejoin that imprisonment for non-payment of a fine under this clause, is and was intended to be exactly the same as for non-payment

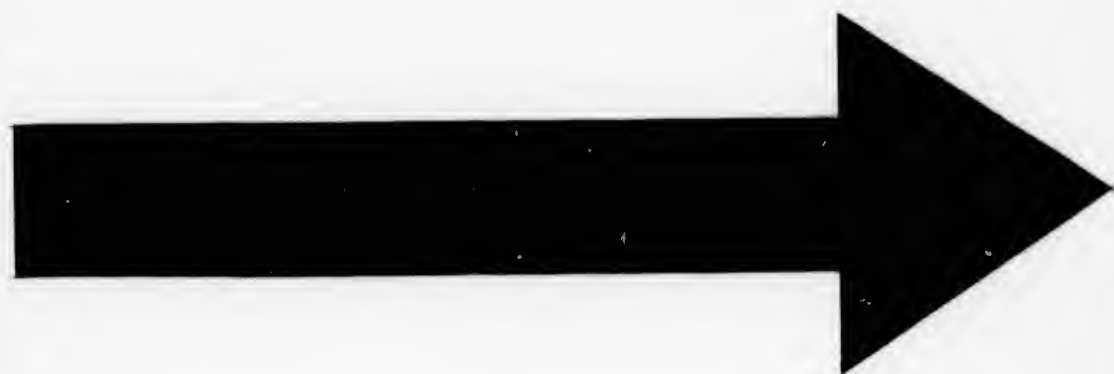
of a fine upon a conviction for any common law misdemeanor; that the object of this clause in this respect was to place all misdemeanors against these Acts precisely on the same footing as Common law misdemeanors; that no complaint had ever been made of the common law on this subject, and therefore, there was not only no reason for any alteration in it, but its long use without objection afforded a very good ground for extending it to all similar cases, and that any alteration in these Acts would have rendered the law on the subject inconsistent; for it would have rendered the law different in misdemeanors under these Acts from what it was with like offences at common law."

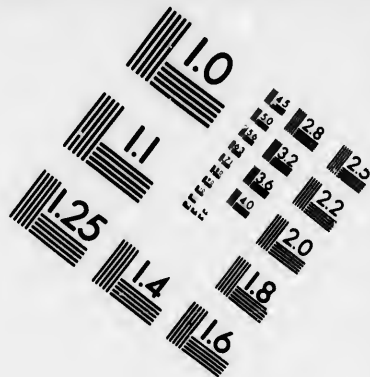
"4. But, Mr. Saunders asked, is the offender to be committed to hard labour, and for a time certain? Undoubtedly neither the one nor the other. The imprisonment for non-payment of a fine or not finding sureties is not by way of punishment, but in order to compel the payment of the one and the finding of the other, and therefore it is merely imprisonment until he pay the fine or find the sureties, exactly the same as it is in cases of common law misdemeanors. To this Mr. Saunders replied, that 'it was further objected that upon imprisonment in default of paying the fine, the Court has no power to impose hard labour. This Mr. Greaves admits.' Now, this is a misrepresentation. Mr. Saunders originally merely asked, 'Is it (the imprisonment) to be with or without hard labour?' and we, having answered that question conclusively, Mr. Saunders puts this new objection, and adds, 'surely the power of imposing hard labour would be in many cases an active stimulant towards accomplishing the end desired.' It might just as well be said that the Court ought to have been empowered to order the defendant to be whipped every day until he paid

the fine, which would, we conceive, have been a more active stimulant than hard labour. The question is not, however, what is the best stimulant to make the offender pay the fine; but what is the proper substitute for non-payment of the fine. By the common law, simple imprisonment has always been that substitute. We have shown that in summary cases, however, wherever justices have authority either to fine, and imprison, whether with or without hard labour, they never ought to have power to award imprisonment with hard labour for non-payment of a fine, *Introduction to 1st Ed., ante, P. xxviii.*, and our reasoning is completely supported by the high Authority of Chief Justice Cockburn, in *Reg. vs. Willmott*, 1. E. B. & S. 27. We will now apply the same reasoning to imprisonment for non-payment of a fine on conviction for a misdemeanor against these Acts, and we cannot do better than take the example of dog-stealing under the 24 & 25 Vict., c. 96, s. 18; by which any person who steals a dog may either be imprisoned with or without hard labour for not exceeding six months, or shall forfeit over the value of the dog not exceeding 20l., and by sec. 107, in default of payment he may be imprisoned either with or without hard labour. For a second offence of dog-stealing, the defendant is to be guilty of a misdemeanor, and liable to imprisonment for not exceeding eighteen months, with or without hard labour, and by the general clause in question the Court may impose a fine either in addition to or in lieu of these punishments. Now, if the Court under this clause adjudges imprisonment without hard labour, it is tantamount to adjudging that the offence does not deserve even imprisonment, and to give the Court power to imprison with hard labour for non-payment of the fine would be almost equivalent to giving it power, *uno flatu*, to

adjudge the offender not deserving and deserving of hard labour.—Nay, more, it would be giving the Court power, after adjudging that the defendant merely deserved to be fined for an indictable offence, to adjudge him to be imprisoned with hard labour for mere non-payment of money, no criminal offence at all. Mr. Saunders, however, says that ‘such an anomaly’ as not giving the Court power to award hard labour for non-payment of a fine imposed for a second offence of dog-stealing, ‘clearly shows the defectiveness of the section;’ and he arrives at this conclusion thus. After stating the punishment for the first offence, he proceeds: ‘then in default of payment he may, under Jervis’s Act, 11 & 12 Vict., c. 43, s. 19, be committed to prison with or without hard labour.’ In which short passage there are two mis-statements. That section only applies where, by the Statute in that behalf, no mode of enforcing the payment of the penalty is provided. Now sec. 107 of the Larceny Act does provide for enforcing the payment of the penalty for dog-stealing; and consequently Jervis’s Act has nothing to do with the case. But even if it did apply, a distress warrant must be issued in the first instance, unless its issuing would be ruinous to the defendant, or it appeared that he had no goods. It is therefore incorrect to state generally that the defendant may under that section be committed at all. So that we have both a wrong Statute cited, and that Statute wrongly stated. It is true that a similar argument might have been founded on sec. 107 of the Larceny Act, but it would be completely answered by what we have said here and in the Introduction.”

“5. Next, Mr. Saunders said that ‘the Court will have no authority to take the recognizance of one surety only since the Statute speaks only of sureties.’ Now





Resolution Test Chart

1.0

1.1

1.25

1.4

1.6

1.8

2.0

2.2

2.5

2.8

3.2

3.6

4.0

4.5

5.0

5.6

6.3

7.1

8.0

9.0

10

11

12.5

14

16

18

20

22.5

25

28

32

36

40

45

50

56

63

71

80

90

100

112

125

140

160

180

200

225

250

280

320

360

400

450

500

560

630

710

800

900

1000

1120

1250

1400

1600

1800

2000

2250

2500

2800

3200

3600

4000

4500

5000

5600

6300

7100

8000

9000

10000

11200

12500

14000

16000

18000

20000

22500

25000

28000

32000

36000

40000

45000

50000

56000

63000

71000

80000

90000

100000

112000

125000

140000

160000

180000

200000

225000

250000

280000

320000

360000

400000

450000

500000

560000

630000

710000

800000

900000

1000000

1120000

1250000

1400000

1600000

1800000

2000000

2250000

2500000

2800000

3200000

3600000

4000000

4500000

5000000

5600000

6300000

7100000

8000000

9000000

10000000

11200000

12500000

14000000

16000000

18000000

20000000

22500000

25000000

28000000

32000000

36000000

40000000

45000000

50000000

56000000

63000000

71000000

80000000

90000000

100000000

112000000

125000000

140000000

160000000

180000000

200000000

225000000

250000000

280000000

320000000

360000000

400000000

450000000

500000000

560000000

630000000

710000000

800000000

900000000

1000000000

1120000000

1250000000

1400000000

1600000000

1800000000

2000000000

2250000000

2500000000

2800000000

3200000000

3600000000

4000000000

4500000000

5000000000

5600000000

6300000000

7100000000

8000000000

9000000000

10000000000

11200000000

12500000000

14000000000

16000000000

18000000000

20000000000

22500000000

25000000000

28000000000

32000000000

36000000000

40000000000

45000000000

50000000000

56000000000

63000000000

71000000000

80000000000

90000000000

100000000000

112000000000

125000000000

140000000000

160000000000

180000000000

200000000000

225000000000

250000000000

280000000000

320000000000

360000000000

400000000000

450000000000

500000000000

560000000000

630000000000

710000000000

800000000000

900000000000

1000000000000

1120000000000

1250000000000

1400000000000

1600000000000

1800000000000

2000000000000

2250000000000

2500000000000

2800000000000

3200000000000

3600000000000

4000000000000

4500000000000

5000000000000

5600000000000

6300000000000

7100000000000

8000000000000

9000000000000

10000000000000

11200000000000

12500000000000

14000000000000

16000000000000

18000000000000

20000000000000

22500000000000

25000000000000

28000000000000

32000000000000

36000000000000

40000000000000

45000000000000

50000000000000

56000000000000

63000000000000

71000000000000

80000000000000

90000000000000

100000000000000

112000000000000

125000000000000

140000000000000

160000000000000

180000000000000

200000000000000

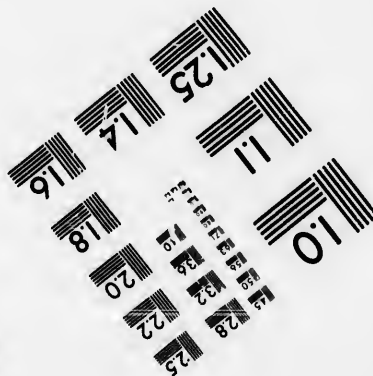
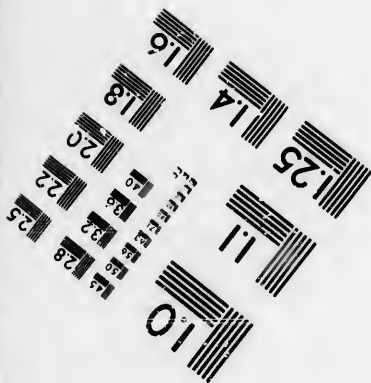
225000000000000

250000000000000

280000000000000

320000000000000

6"



Photographic Sciences Corporation

**23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503**

0
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99

the Court of Queen's Bench never takes less than two sureties in any case, and generally four in cases of felony, and with very good reason, for one surety may die, become insolvent, or quit the country; but it is much less likely that two or more sureties should do so. Therefore, there was an excellent precedent founded on good reason for requiring more than one surety. The Select Committee of the Commons introduced the power to take the offender's own recognizances. Mr. Saunders in reply admits 'that the Queen's Bench usually requires two sureties,' 'but thinks that circumstances may occur, particularly in the case of a young person, where one surety (the parent) need alone be required.' We reply that the admitted practice, invariably followed from time immemorial by the Court of Queen's Bench, was an infinitely better guide to follow than any other."

"Lastly, Mr. Saunders said that the proviso, which was introduced by the Committee of the Commons, 'means that if any person is required to find sureties for more than a year, he shall not be imprisoned for not doing it. According to this reading, every person required to find sureties for a less term than a year would be liable to be imprisoned for life unless he found them: whilst a person required to find them for more than a year would not be liable to be imprisoned at all. The objector, therefore, may well admit that that cannot be the intention of the section. The Committee of the Commons thought that the clause clearly meant that no one was to be imprisoned for more than a year for not finding sureties. They framed it, and they are at least as competent as the objector to understand its meaning. In reply Mr. Saunders says, that Mr. Greaves admits that the meaning of the Legislature was 'that no person shall be imprisoned under this clause for any period exceeding one

year for not finding sureties. That being so, we will only add, that it is very much to be regretted that the British Legislature has not said what it meant, instead of saying what it did not mean.' But has it done so? The words are, 'No person shall be imprisoned under this clause for not finding sureties for any period exceeding one year,' and the objection rests on reading 'sureties' together with "for any period exceeding one year." Now, 'sureties to keep the peace or to be of good behaviour for any term,' is a perfectly well-known expression; but 'sureties for any period' is a very unusual, if not an altogether unknown expression, and it therefore ought not to be supposed to be used in any case, especially where it makes nonsense of a sentence. Again, in pronouncing sentence nothing is more common than to insert the cause of imprisonment between the word 'imprisoned,' and the term of imprisonment awarded, e.g., 'The sentence of the Court, is that you be imprisoned for this your offence for the term of one year,' and if the clause be so read it is perfectly free from objection. If the clause had run 'imprisoned for not paying a fine for any period exceeding one year,' no doubt would have existed as to its meaning, and there is equally little as to the meaning of the clause as it stands; for where a clause is capable of being read in two ways, one of which leads to a manifest absurdity, and the other makes perfectly good sense, it is obvious that the latter is the right reading."

"We said and repeat, that there was nothing whatever in any one of these numerous objections, and unquestionably nothing to justify a writer in saying that the clause was 'so slovenly drawn;' 'it is astonishing that a section so loose as this one should have been permitted to have found its way into this Act;' 'taken altogether

this section is a most unfavourable specimen of legal workmanship, and will cause very great embarrassments to those whose duty it will be to carry it into effect."

"Not satisfied, however, with 'attacking' this clause in the *Law Times*, Mr. Saunders returns to the charge in his and Mr. Cox's Edition of the Statutes, p. 97, where he starts the additional objection, that 'the section contains new and very extensive powers.' Surely Mr. Saunders cannot but know that the power to fine and require sureties for keeping the peace and being of good behaviour on a conviction for misdemeanor is one of the oldest powers known to the common law. Then Mr. Saunders says, 'it may well be questioned whether when a criminal has suffered his appointed punishment, it is judicious to impose upon him the further inconvenience of providing bondsmen for his future good behaviour.' It would be enough to answer that such has been the case in common law misdemeanors from time immemorial, and no one ever heard a complaint against it; but it may be well to add, that neither fines nor sureties are ever awarded 'when a criminal has suffered his appointed punishment;' on the contrary, the Court always considers them as part of the punishment, and this power is always used in mercy towards the criminal, and a less term of imprisonment awarded, where it is exercised. In fact, instead of the clause being open to this objection, it is a most humane and merciful provision founded on that 'nursing mother,' the common law."

"Mr. Saunders again returns to the charge, p. 244, with the further objection that this clause 'in effect amounts to a bestowal of unlimited powers of mitigation of punishment, and when we find that unlawfully and maliciously wounding, &c., &c., are all misdemeanors,

the powers thus given to impose a fine in lieu of any other punishment, looks very like jesting with criminal punishment.'—This is a note to sec. 71 of the offences against the Person Act. Had Mr. Saunders forgotten that by sec. 5 of the same Act any person convicted of manslaughter (a crime infinitely greater in many cases than any misdemeanor) may be sentenced to pay a fine either in addition to or without any other punishment? So under the 9 Geo. 4, c. 31, s. 9, the Court might have awarded a fine on a conviction for manslaughter, without any other punishment." *Greaves' Cr. Acts*, 6.

Sect. 75.—Every offence hereby made punishable on summary conviction may be prosecuted in the manner directed by the Act of this Session *respecting the duties of Justices of the Peace out of sessions in relation to summary convictions and order*, so far as no provision is hereby made for any matter or thing which may be required to be done in the course of such prosecution.—24-25 Vict., ch. 97, s. 76, Imp.

The Act referred to is the 32-33 Vict., ch. 31, (1869.)

Sect. 76.—This Act shall commence and take effect on the first day of January, one thousand eight hundred and seventy.

AN ACT RESPECTING PERJURY.

32-33 VICT., CH. 23.

Whereas it is expedient to assimilate, amend and consolidate the Statute law relating to perjury, in force in the several Provinces of Quebec, Ontario, Nova Scotia and New Brunswick, and to extend the same as so consolidated to all Canada; Therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :

Sect. 1.—Perjury or subornation of perjury is a misdemeanor; and any person guilty thereof shall be liable to be imprisoned in the Penitentiary for any term not exceeding fourteen years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, and to pay such fine as the Court may award.

Sect. 2.—In every case in which, by any Act or Law now or hereafter to be in force in the Dominion of Canada, or in any Province forming part of the Dominion of Canada, it is required or authorized that facts, matters or things be verified, or otherwise assured or ascertained, by or upon the oath, affirmation, declaration or affidavit of some or any person, if any person having in any such case taken or made any oath, affirmation or declaration so required or authorized, knowingly, wilfully and corruptly, upon such oath, affirmation, or declaration,

deposes, swears to or makes any false statement as to any such fact, matter or thing; or if any person knowingly, wilfully and corruptly, upon oath or affirmation, affirms, declares or deposes to the truth of any statement for so verifying, assuring or ascertaining any such fact, matter or thing or purporting so to do, or knowingly, wilfully and corruptly takes, makes, signs or subscribes any such affirmation, declaration or affidavit, as to any such fact, matter or thing, such statement, affidavit, affirmation or declaration being untrue, in the whole or any part thereof, or knowingly, wilfully and corruptly omits from any such affidavit, affirmation or declaration, sworn or made under the provisions of any law, any matter which, by the provisions of such law, is required to be stated in such affidavit, affirmation or declaration, such person shall be deemed to be guilty of wilful and corrupt perjury, and be punished accordingly; Provided that nothing herein contained shall affect any case amounting to perjury at the common law, or the case of any offence in respect of which other or special provision is made by any Act.

Sect. 7.—All evidence and proof whatsoever, whether given or made orally, or by or in any affidavit, affirmation, declaration, examination or deposition, shall be deemed and taken to be material with respect to the liability of any person to be proceeded against and punished for wilful and corrupt perjury, or for subornation of perjury.

Perjury, by the common law, appears to be a wilful false oath by one, who being lawfully required to depose the truth in any proceeding in a "court" of justice, swears absolutely in a matter of some consequence to the point in question, whether he be believed or not.—3 Russell, 1.

Hawkins, Vol. 1, p. 429, has the word "*course*" of justice, instead of "*court*" of justice.

Bishop, Cr. Law, Vol. 2, 1015, says a "*course*" of justice, and thinks that the word "*court*" in Russell is a misprint for "*course*." Though Bacon's abridgement, verb: *perjury*, also has "*court*." Roscoe, 747, has also "*court*" of justice, but says the proceedings are not confined to courts of justice, and a note by the editor of the American sixth edition says a "*course*" of justice is a more accurate expression than a "*court*" of justice.

There is no doubt, however, that, according to all the definitions of this offence, by the common law, the party must be lawfully sworn, the proceeding in which the oath is taken must relate to the administration of justice, the assertion sworn to must be false, the intention to swear falsely must be wilful, and the falsehood material to the matter in question. Promissory oaths, such as those taken by officers for the faithful performance of duties, cannot be the subject of perjury.—Cr. L. Comrs., 5th Report, 51.

False swearing, under a variety of circumstances, has been declared by numerous Statutes to amount to perjury, and to be punishable as such. But at common law, false swearing was very different from perjury. The offence of perjury, at the common law, is of a very peculiar description, say the Cr. L. Comrs., 5th Rep. 23, and differs in some of its essential qualities from the crime of false testimony, or false swearing as defined in all the modern Codes of Europe. The definition of the word too, in its popular acceptation, by no means denotes its legal signification. Perjury, by the common law, is the assertion of a falsehood upon oath in a judicial proceeding, respecting some fact material to the point to be decided in such proceeding; and the characteristic of the offence

is not the violation of the religious obligation of an oath, but the injury done to the administration of public justice by false testimony.

Here, in Canada, we have now a general enactment, declaring to be perjury all oaths, &c., taken or subscribed in virtue of any law, sect. 2, ch. 23, 32-33 Vict., *supra*, required or authorized by any such law: and voluntary and extra-judicial oaths having been prohibited by 37 Vict., ch. 37, see *post*, it may, perhaps be said that, with us, every false oath, *knowingly, wilfully, and corruptly* taken amounts to perjury, and is punishable as such. The interpretation Act, 31 Vict., ch. 31, at *sixteenthly*, of sect. 6, enacts moreover as follows: "The word 'oath' shall be construed as meaning a solemn affirmation whenever the context applies to any person and case by whom and in which a solemn affirmation may be made instead of an oath, and in like cases the word *sworn* shall include the word *affirmed*. And in every case where an oath or affirmation is directed to be made before any person or officer, such person or officer shall have full power and authority to administer the same and to certify its having been made; and the wilful making of any false statement in any such oath or affirmation shall be wilful and corrupt perjury, and the wilful making of any false statement in any declaration required or authorized by any Act shall be a misdemeanor punishable as wilful and corrupt perjury."

Of course, this section applied only to oaths, affirmations or declarations required or authorized by an Act of the *Parliament of Canada*, but by sect. 2, *supra*, of the Act respecting Perjury, it is extended to all such oaths, &c., &c., required or authorized by *any Act or law now or hereafter to be in force in the Dominion of Canada, or in any Province forming part of the Dominion of Canada.*—

Sect. 4, ch. 71, 31 Vict., also declares that oaths taken in virtue of any Provincial Act shall be as binding as if taken under an Act of the Dominion Parliament, and if falsely taken will be subject to the same rules concerning perjury.

Sect. 7, 32-33 Vict. ch. 23, *supra*, is an important alteration of the law on perjury as it stood before with us, and as it stands now in England. As stated before, by the Common Law, to constitute perjury, the false swearing must be, besides the other requisites, in a *matter material* to the point in question. The above section may be said to have virtually abolished this necessary ingredient of perjury. A reference to the following late decisions, in England, will show the wisdom of the Canadian legislation on this matter: Reg. vs. Tate, 12 Cox, 7; Reg. vs. Lewis, 12 Cox, 163; Reg. vs. Holden, 12 Cox, 166. In these three cases, the defendants, guilty of perjury *in foro conscientie*, were acquitted, because the falsehoods by them said upon oath were not material to the contestations, in which their evidence had been given. Most extraordinary system, of which we may well be satisfied to be delivered.

This clause 7 of our Perjury Act has been taken from clause 272 of the Criminal Laws of Victoria, Australia.

As our law now stands, perjury may be defined a false oath, knowingly, wilfully and corruptly given by one, in some judicial proceeding, or on some other occasion where an oath is imposed, required, or sanctioned by law.

1st. *There must be a lawful oath.* And therefore, it must be taken before a competent jurisdiction or before an officer who had legal jurisdiction to administer the particular oath in question. And though it is sufficient *prima facie* to show the ostensible capacity in which the

judge or officer acted when the oath was taken, the presumption may be rebutted by other evidence, and the defendant, if he succeed, will be entitled to an acquittal.—2 Chitty, 304; Archbold, 815.

2nd. *The oath must be false.* By this, it is intended that the party must believe that what he is swearing is fictitious; for, it is said, that if, intending to deceive, he asserts of his own knowledge that which may happen to be true, without any knowledge of the fact, he is equally criminal, and the accidental truth of his evidence will not excuse him.—2 Chitty, 303. And a man may be indicted for perjury, in swearing that he *believes* a fact to be true, which he must know to be false.—R. vs. Pedley, 1 Leach, 327.

3rd. *The false oath must be knowingly, wilfully, and corruptly taken.* The oath must be taken and the falsehood asserted with deliberation and a consciousness of the nature of the statement made, for if it seems rather to have been occasioned by inadvertency or surprise, or a mistake in the import of the question, the party will not be subjected to those penalties which a corrupt motive alone can deserve.—2 Chitty, 303. If an oath is false to the knowledge of the party giving it, it is, in law, wilful and corrupt.—2 Bishop, Cr. L. 1043 and seq.

It hath been holden not to be material, upon an indictment of perjury at common law, whether the false oath were at all credited, or whether the party in whose prejudice it was intended were, in the event, any way aggrieved by it or not; insomuch as this is not a prosecution grounded on the damage of the party but on the abuse of public justice.—3 Burn's Justice, 1227.

Indictment for perjury.—The Jurors for Our Lady the Queen, upon their oath present, that heretofore, to wit, at the (*assizes*) holden for the County (*or District*) of. . .

on the . . . day of in the year of Our Lord, one thousand before (*one of the judges of Our Lady the Queen*) a certain issue between one E. F. and one J. H. in a certain action of *covenant* was tried, upon which trial A. B. appeared as a witness for and on behalf of the said E. F. and was then and there duly *sworn* before the said, and did then and there, upon his *oath* aforesaid, falsely, wilfully and corruptly depose and *swear* in substance and to the effect following, "*that he saw the said G. H. duly execute the deed on which the said action was brought,*" whereas, in truth, the said A. B. did not see the said G. H. execute the said deed, and the said deed was not executed by the said G. H., and the said A. B. did thereby commit wilful and corrupt *perjury*.—*Schedule A of the Procedure Act of 1869.*

Section 9, of ch. 23, 32-33 Vict., enacts as follows, concerning the form of indictment in perjury: "In any indictment for perjury, or for unlawfully, illegally, falsely, fraudulently, deceitfully, maliciously or corruptly taking, making, signing or subscribing any oath, affirmation, declaration, affidavit, deposition, bill, answer, notice, certificate or other writing, it shall be sufficient to set forth the substance of the offence charged upon the defendant, and by what Court or before whom the oath, affirmation, declaration, affidavit, deposition, bill, answer, notice, certificate or other writing was taken, made, signed or subscribed, without setting forth the bill, answer, information, indictment, declaration, or any part of any proceeding either in law or equity, and without setting forth the commission or authority of the Court or person before whom such offence was committed."—14-15 Vict., ch. 100, sect. 20, Imp.

No indictment for perjury can be preferred, unless one or other of the preliminary steps required by 32-33

Vict., ch. 29, sect. 28, (Procedure Act of 1869) has been taken.

Perjury is not triable at Quarter Sessions.—2 Hawkins, ch. 8, sect. 38 ; R. vs. Bainton, 2 Str. 1088 ; Reg. vs. Yarrington, 1 Salk. 406 ; Dickinson's Quarter Sessions, 156 ; R. vs. Higgins, 2 East R. 18.

The indictment must allege that the defendant swore falsely, wilfully and corruptly ; where the word *feloniously* was inserted instead of *falsely*, the indictment, though it alleged that the defendant swore wilfully, corruptly and maliciously, was held bad in substance, and not amendable.—R. Oxley, 3 C. & K. 317, Cresswell J.—Archbold, 812.

If the same person swears contrary at different times, it should be averred on which occasion he swore wilfully, falsely and corruptly.—R. vs. Harris, 5 B. & Ald. 926.

As to assignments of perjury, the indictment must assign positively the manner in which the matter sworn to is false. A general averment that the defendant falsely swore, etc., etc., upon the whole matter is not sufficient : the indictment must proceed by special averment, to negative that which is false.—3 Burn's Justice, 1235.

Proof.—It seems to have been formerly thought that in proof of the crime of perjury, two witnesses were necessary ; but this strictness, if it was ever the law, has long since been relaxed ; the true principle of the rule being merely this, that the evidence must be something more than sufficient to counterbalance the oath of the prisoner, and the legal presumption of his innocence. The oath of the opposing witness therefore will not avail, unless it be corroborated by material and independent circumstances ; for otherwise there would

be nothing more than the oath of one man against another, and the scale of evidence being thus in one sense balanced, it is considered that the jury cannot safely convict. So far the rule is founded on substantial justice. But it is not precisely accurate to say that the corroborative circumstances must be tantamount to another witness; for they need not be such as that proof of them, standing alone, would justify a conviction, in a case where the testimony of a single witness would suffice for that purpose. Thus, a letter written by the defendant, contradicting his statement on oath, will render it unnecessary to call a second witness. Still, evidence confirmatory of the single accusing witness in some slight particulars only, will not be sufficient to warrant a conviction, but it must at least be strongly corroborative of his testimony, or to use the quaint but energetic language of Chief Justice Parker, "a strong and clear evidence, and more numerous than the evidence given for the defendant." When several assignments of perjury are included in the same indictment, it does not seem to be clearly settled, whether, in addition to the testimony of a single witness, corroborative proof must be given with respect to each; but the better opinion is that such proof is necessary; and that too, although all the perjuries assigned were committed at one time and place. For instance, if a person, on putting in his schedule in the Bankruptcy Court, or on other the like occasion, has sworn that he has paid certain creditors, and is then indicted for perjury on several assignments, each specifying a particular creditor who has not been paid, a single witness with respect to each debt will not, it seems, suffice, though it may be very difficult to obtain any fuller evidence. The principal that one witness, with corroborating circumstances, is sufficient to estab-

lish the charge of perjury, leads to the conclusion, that without any witness directly to disprove what is sworn, circumstances alone, when they exist in a documentary shape, may combine to the same effect; as they may combine, though altogether unaided by oral proof, except the evidence of their authenticity, to prove any other fact connected with the declarations of persons or the business of life. In accordance with these views, it has been held in America, that a man may be convicted of perjury on documentary and circumstantial evidence alone, *first*, where the falsehood of the matter sworn to by him is directly proved by written evidence springing from himself, with circumstances showing the corrupt intent; *secondly*, where the matter sworn to is contradicted by a public record, proved to have been well known to the prisoner, when he took the oath; and *thirdly*, where the party is charged with taking an oath, contrary to what he must necessarily have known to be true, the falsehood being shown by his own letters, relating to the fact sworn to, or by any other writings, which are found in his possession, and which have been treated by him as containing the evidence of the fact recited in them.

If the evidence adduced in proof of the crime of perjury consists of two opposing statements by the prisoner, and nothing more, he cannot be convicted. For, if one only was delivered under oath, it must be presumed, from the solemnity of the sanction, that the declaration was the truth, and the other an error or a falsehood; though, the latter, being inconsistent with what he has sworn, may form important evidence, with other circumstances, against him. And if both the contradictory statements were delivered under oath, there is still nothing to show which of them is false, when no other evidence of the falsity is given. If, indeed, it can be

shown that, before making the statement on which perjury is assigned, the accused had been tampered with, or if any other circumstances tend to prove that the statement offered as evidence against the prisoner was true, a legal conviction may be obtained, and provided the nature of the statement was such, that one of them must have been false *to the prisoner's knowledge*, slight corroborative evidence would probably be deemed sufficient. But it does not necessarily follow that because a man has given contradictory accounts of a transaction on two occasions, he has therefore committed perjury. For cases may well be conceived in which a person might very honestly swear to a particular fact, from the best of his recollection and belief, and might afterwards from other circumstances be convinced that he was wrong and swear to the reverse, without meaning to swear falsely either time. Moreover when a man merely swears to the best of his memory and belief, it of course requires very strong proof to show that he is wilfully perjured. The rule requiring something more than the testimony of a single witness on indictments for perjury, is confined to the proof of the falsity of the matter on which the perjury is assigned. Therefore the holding of the Court, the proceedings in it, the administering the oath, the evidence given by the prisoner, and in short, all the facts, exclusive of the falsehood of the statement, which must be proved at the trial, may be established by any evidence that would be sufficient, were the prisoner charged with any other offence. For instance, if the false swearing be that two persons were together at a certain time, and the assignment of perjury be that they were not together at that time, evidence by one witness that at the time named the one person was at London, and by another witness that at the same time the other person was in York, will

be sufficient proof of the assignment of perjury.—2, T aylor, on Evidence, par. 876 and seq.

On an indictment for perjury alleged to have been committed at the Quarter Sessions, the chairman of the Quarter Sessions ought not to be called upon to give evidence as to what the defendant swore at the Quarter Sessions.—Reg. vs. Gazard, 8 C. & P. 595.

But the above ruling is criticized by Greaves, note *n*, 3 Russ. 86, and Byles, J., in Reg. vs. Harvey, 8 Cox, 99, said that though the judges of Superior Courts ought not to be called upon to produce their notes, yet the same objection was not applicable to the judges of inferior Courts, especially where the judge is willing to appear.—3 Burn's Justice, 1243.

The following is a list of the principal cases, on perjury, lately reported, in England. The difference now existing between the English law and our own law thereon renders these decisions less interesting for us; however, in some of these cases, as published, will be found the discussion of various questions of law, on this subject of perjury, which may be useful to the Canadian practitioner:—Reg. vs. Tyson, 11 Cox, 1; Reg. vs. Smith, 11 Cox, 10; Reg. vs. Naylor, 11 Cox, 13; Reg. vs. Western, 11 Cox, 93; Reg. vs. Alsop, 11 Cox, 264; Reg. vs. Hodgkins, 11 Cox, 365; Reg. vs. Bawn, 11 Cox, 540; Reg. vs. Chugg, 11 Cox, 558; Reg. vs. Buttle, 11 Cox, 566; Reg. vs. Timms, 11 Cox, 645; Reg. vs. Dunning, 11 Cox, 651; Reg. vs. London, 12 Cox, 50; Reg. vs. Fletcher, 12 Cox, 77; Reg. vs. Crawley, 12 Cox, 162; Reg. vs. Willis, 12 Cox, 164.

In Reg. vs. Hook, Dears, & B. 606, will also be found an interesting discussion, on the evidence necessary upon an indictment for perjury.

Sect. 3 (*as amended by 33 Vict., ch. 26.*)—Any per-

son who wilfully and corruptly makes any false affidavit, affirmation or declaration, out of the Province in which it is to be used, but within the Dominion of Canada, before any functionary authorized to take the same for the purpose of being used in any Province of Canada, shall be deemed guilty of perjury in like manner as if such false affidavit, affirmation or declaration had been made in the Province in which it is used, or intended to be used, before a competent authority; and such person may be dealt with, indicted, and tried, and if convicted may be sentenced, and the offence may be laid and charged to have been committed, in that district, county or place in which he has been apprehended or is in custody.

Of course, the last part of this section is only permissive, and the defendant may also be tried and if convicted, be sentenced, in the district, county or place where the offence was in fact committed.

PERJURIES IN INSURANCE CASES.

Sect. 4.—Any affirmation, affidavit or declaration required by any Fire, Life or Marine Insurance Company authorized by law to do business in Canada, in regard to any loss of property or life insured or assured therein, may be taken before any Commissioner, authorized by any of Her Majesty's Superior Courts to take affidavits, or before any Justice of the Peace, or before any Notary Public for any Province of the Dominion; and any such officer is hereby required to take such affirmation, affidavit or declaration.

Sect. 5.—Any person knowingly, wilfully and corruptly making any affirmation, affidavit or declaration required by any Fire, Life or Marine Insurance Company, authorized by law to do business in Canada, claiming to be entitled to any Insurance money in respect of

any loss of property or life insured or assured therein or on behalf of any person making such claim containing any false statement of fact, matter or thing in regard to such loss of property or life, shall be guilty of wilful and corrupt perjury.

PROSECUTION FOR PERJURY ORDERED BY JUDGE, &C., &C.

Sect. 6.—It shall be lawful for any Judge of any Superior Court of law or of equity, or for any judge of any Court of record, or any Commissioner before whom any inquiry or trial is held, and which he is by law required or authorized to hold, in case it appears to him that any person has been guilty of wilful and corrupt perjury in any evidence given, or in any affidavit, affirmation, declaration, deposition, examination, answer or other proceedings made or taken before him, to direct such persons to be prosecuted for such perjury, in case there appears to such judge or commissioner a reasonable cause for such prosecution, and to commit such person so directed to be prosecuted until the next term, sittings, or session of any Court having power to try for perjury, in the jurisdiction within which such perjury was committed, *or to permit such person* to enter into a recognizance with one or more sufficient surety or sureties conditioned for the appearance of such person, at such next term or session, and that he will then surrender and take his trial and not depart the Court without leave, and to require any person such judge may think fit to enter into a recognizance conditioned to prosecute or give evidence against such person so directed to be prosecuted as aforesaid.—14-15 Vict., ch. 100, s. 19, Imp.

The Imperial Statute authorizes the judge to commit such person, *unless* such person shall enter into a recognizance and give sureties: the Canadian Statute gives

power to commit *or* to permit such person to enter into a recognizance and give sureties. Whether intentional or not, this variance constitutes an important deviation from the English Act.

Greaves remarks on this clause : "The crime of perjury has become so prevalent of late years, and so many cases of impunity have arisen, either for want of prosecution, or for defective prosecution, that this and the following sections (*sects. 9 and 10 of Canadian Statute*) were introduced to check a crime, which so vitally affects the interests of the community.

"It was considered that by giving to every Court and person administering oaths a power to order a prosecution for perjury at the public expense, coupled with a power of commitment in default of bail, many persons would be deterred from committing so detestable a crime, and in order to effectuate this object, the present clause was framed, and as it passed the Lords, it was much better calculated to effect that object than as it now stands.

"As it passed the Lords it applied to any justice of the peace. The Committee in the Commons confined it to justices in petty and special sessions,—a change much to be regretted, as a large quantity of business is transacted before a single justice or one metropolitan or stipendiary magistrate who certainly ought to have power to commit under this clause for perjury committed before them.

"Again, as the clause passed the Lords, if an affidavit, &c., were made before one person, and used before another Judge or Court, &c., and it there appeared that perjury had been committed, such Judge or Court might commit. The clause has been so altered, that the evidence must be given, or the affidavit, &c., made before

the Judge, &c., who commits. The consequence is, that numerous cases are excluded; for instance, a man swears to an assault or felony before one justice, and on the hearing before two it turns out he has clearly been guilty of perjury, yet he cannot be ordered to be prosecuted under this clause. Again, an affidavit is made before a commissioner, the Court refer the case to the Master, and he reports that there has been gross perjury, or the Court see on the hearing of the case before them that there has been gross perjury committed, yet there is no authority to order a prosecution under this clause. So, again a man is committed for trial on the evidence of a witness which is proved on the trial to be false beyond all doubt, yet if such witness be not examined, and do not repeat the same evidence on the trial, the Court cannot order him to be prosecuted.

"Lastly, the Court before whom any person is tried for perjury under this clause, was *bound*, as the clause originally stood, to grant the costs. The committee of the Commons inserted the words 'unless such last mentioned Court shall specially otherwise direct,' so that, in point of law, as the clause now stands, it is clearly discretionary with that Court whether it will grant costs or not. However, the form of the clause indicates, and it certainly was the intention of the Committee of the Commons, that costs should be granted in every case *as a matter of course*, unless there were some *special and cogent reason* to prevent it; and it is to be hoped that the Courts will uniformly carry out such intention. It is perfectly idle to imagine that perjury will ever be sufficiently checked as long as it remains uncertain whether a party is to be effectively prosecuted for it or not. A prosecution for perjury under this clause stands on a very different footing from ordinary prosecutions. The Court may

compel any one *against his will* to prosecute, and such prosecution necessarily imposes expenses on the prosecutor that are much greater than in ordinary cases; an attorney, if not counsel, *must* be employed to frame the indictment and prepare the evidence. To deprive the prosecutor of his costs upon the ground that the prosecution ought not to have been ordered, would be extremely unjust, as it would be punishing one man for the error of another. The clause is silent as to what ground is to warrant a special order; the only reasonable ground would appear to be, that the prosecutor has himself been negligent, or misconducted himself in the prosecution. If such were the case, no doubt he might be justly deprived of the costs.

"It is to be observed, that before ordering a prosecution under this clause, the Court ought to be satisfied not only that perjury has been committed, but that there is a 'reasonable cause for such prosecution.' Now it must ever be remembered that two witnesses, or one witness and something that will supply the place of a second witness, are *absolutely essential* to a conviction for perjury. The Court, therefore, should not order a prosecution, unless it sees that such proof is capable of being adduced at the trial; and as the Court has the power, it would be prudent, in every case, if practicable, at once to bind over such two witnesses to give evidence on the trial, otherwise it may happen that one or both may not be then forthcoming to give evidence. It would be prudent also for the Court to give to the prosecutor a minute of the point, on which in its judgment the perjury had been committed, in order to guide the framer of the indictment, who possibly may be wholly ignorant otherwise of the precise ground on which the prosecution is ordered. It is very advisable also that where the perjury is com-

mitted in giving evidence, such evidence should be taken down in writing by some person who can prove it upon the trial, as nothing is less satisfactory or more likely to lead to an acquittal than that the evidence of what a person formerly swore should depend entirely upon mere memory. Indeed, it may well be doubted, whether it would be proper to order a prosecution in any case under this Act where there was no minute in writing of the evidence taken down at the time.

"Again, it ought to be clear, beyond all reasonable doubt, that perjury has been *wilfully* committed before a prosecution is ordered."—*Lord Campbell's Acts, by Greaves, 22.*

By the Canadian Act, this power is not given to Justices of the Peace, nor is there any enactment as to costs, in such prosecutions.

VENUE IN CASES OF PERJURY.

Sect. 8.—Any person accused of perjury may be tried, convicted and punished in any district, county or place where he is apprehended or is in custody.

This is permissive only, and any person accused of perjury may be tried, convicted and punished in the district, county or place where the offence was committed. This section does not appear to extend to subornation of perjury.

PROOF.

Sect. 11.—A certificate, containing the substance and effect only, omitting the formal part of the indictment and trial for any felony or misdemeanor, purporting to be signed by the clerk of the Court or other officer having the custody of the records of the Court whereat the indictment was tried, or among which such indictment has been filed, or by the deputy of such clerk or other

officer, shall, upon trial of an indictment for perjury or subornation of perjury, be sufficient evidence of the trial of such indictment for felony or misdemeanor, without proof of the signature or official character of the person appearing to have signed the same.—14–15 Vict., ch. 100, s. 22, Imp.

It is to be observed that this section is merely remedial, and will not prevent a regular record from being still admissible in evidence, and care must be taken to have such record drawn up in any case where the particular averments in the former indictment may be essential.—*Lord Campbell's Acts, by Greaves, 27.*

SUBORNATION OF PERJURY.

Sect. 10.—In every indictment for subornation of perjury, or for corrupt bargaining or contracting with any person to commit wilful and corrupt perjury, or for inciting, causing or procuring any person unlawfully, wilfully, falsely, fraudulently, deceitfully, maliciously or corruptly, to take, make, sign or subscribe any oath, affirmation, declaration, affidavit, deposition, bill, answer, notice, certificate, or other writing, it shall be sufficient, whenever such perjury or other offence aforesaid has been actually committed to allege the offence of the person who actually committed such perjury or other offence, in the manner hereinbefore mentioned, and then to allege that the defendant unlawfully, wilfully and corruptly, did cause and procure the said person, the said offence in the manner and form aforesaid to do and commit, and whenever such perjury or other offence aforesaid has not actually been committed, it shall be sufficient to set forth the substance of the offence charged upon the defendant, without setting forth or averring any of the matters or things hereinbefore ren-

dered unnecessary to be set forth or averred in the case of wilful and corrupt perjury.—14-15 Vict., ch. 100, s. 21, Imp.

Subornation of perjury is a misdemeanor, as perjury itself, and subject to the same punishment.—See remarks under sect. 1, *ante*.

Sect. 7, *ante*, declaring all evidence whatever material with respect to perjury, also applies to subornation of perjury.

Sect. 11, *ante*, as to certificate of indictment and trial, applies also to subornation of perjury.

Sect. 8, *ante*, allowing perjury to be tried, where the offender is apprehended or is in custody does not appear to apply to subornation of perjury.

Subornation of perjury, by the common law, seems to be an offence in procuring a man to take a false oath, amounting to perjury, who actually taketh such oath.—1 Hawkins, 435.

But it seemeth clear that if the person incited to take such an oath do not actually take it, the person by whom he was so incited is not guilty of subornation of perjury, yet it is certain that he is liable to be punished, not only by fine, but also by infamous corporal punishment.—1 Hawkins, loc. cit.

An attempt to suborn a person to commit perjury upon a reference to the judges, was unanimously holden by them to be a misdemeanor.—1 Russell, 85.

And, upon an indictment for subornation of perjury if it appears, at the trial, that perjury was not actually committed, but that the defendant was guilty of the attempt to suborn a person to commit the offence, such defendant may be found guilty of the attempt.—32-33 Vict., ch. 29, sect. 49, (Procedure Act, 1869.)

In support of an indictment for subornation, the re-

cord of the witness's conviction for perjury is no evidence against the suborners, but the offence of the perjured witness must be again regularly proved.—Although several persons cannot be joined in an indictment for perjury, yet for subornation of perjury, they may.—3 Burn's Justice, 1246.

*Indictment, same as indictment for perjury to the end, and then proceed:—*And the Jurors aforesaid upon their oath aforesaid further present, that before the committing of the said offence, by the said A. B., to wit, on the..... day of at C. D. unlawfully, wilfully and corruptly did cause and procure the said A. B. to do and commit the said offence in the manner and form aforesaid.—*Schedule A, of the Procedure Act of 1869.*

No indictment can be preferred for subornation of perjury unless one or other of the preliminary steps required by 32-33 Vict., ch. 29, sect. 28 (*Procedure Act, 1869*) has been taken:

As perjury, see *ante*, subornation of perjury is not triable at Quarter Sessions.

AN ACT FOR THE SUPPRESSION OF
VOLUNTARY AND EXTRA JUDICIAL
OATHS.

37 VICT. CH., 37, (1874.)

Whereas a practice has prevailed of administering and receiving oaths and affidavits voluntarily taken and made in matters not the subject of any judicial enquiry nor in any wise required or authorized by any law ; and whereas doubts have arisen whether or not such proceeding is illegal ; for the suppression of such practice and removing such doubts, Her Majesty, by and with the advice, and consent of the Senate and House of Commons of Canada, enacts as follows :—

Sect. 1.—It shall not be lawful for any Justice of the Peace or other person to administer, or cause or allow to be administered, or to receive, or cause or allow to be received, any oath, affidavit or solemn affirmation, touching any matter or thing whereof such Justice or other person hath not jurisdiction or cognizance by some law in force at the time being, or authorized, or required by any such law ; provided always that nothing herein contained shall be construed to extend to any oath, affidavit or solemn affirmation before any Justice in any matter or thing touching the preservation of the peace, or the prosecution, trial or punishment of any offence, nor to any oath, affidavit or affirmation which may be

required or authorized by any law of the Dominion of Canada, or by any law of the Province wherein such oath, affidavit or affirmation is received or administered or is to be used, nor to any oath, affidavit or affirmation which may be required by the laws of any foreign country to give validity to instruments in writing designed to be used in such foreign countries respectively: And provided further, that it shall be lawful for any Judge, Justice of the Peace, Public Notary or other functionary authorized by law to administer an oath, to receive the solemn declaration of any person voluntarily making the same before him in the form of the schedule to this Act annexed, in attestation of the execution of any written deed or instrument, or allegations of fact, or of any account rendered in writing, and if any such declaration be false or untrue in any material particular, the person making such false declaration shall be deemed guilty of a misdemeanor.

Section 2.—Any Justice of the Peace, or other person administering or receiving, or causing or allowing to be received or administered, any oath, affidavit or solemn affirmation contrary to the provisions of this Act, shall be deemed guilty of a misdemeanor, and shall be liable to be imprisoned for any term not exceeding three months, or to a fine not exceeding fifty dollars, at the discretion of the Court.—5-6 Will. 4, ch. 62, Imp.

SCHEDULE.

I, A. B., do solemnly declare that (*state the fact or facts declared to*) and I make the solemn declaration conscientiously believing the same to be true, and by virtue of the Act passed in the thirty-seventh year of Her Majesty's reign intituled (*insert the title of this Act.*)

Is the last proviso of section 1 of this Act constitutional? Has the Federal Government the right to legislate on such matters? This proviso is in the English Act, 5 & 6 Will. 4, ch. 62, and is sect. 18 thereof, but, of course, this does not give to our Federal Parliament a power which it has not by the constitutional Act. However, if the misdemeanor mentioned in it exists, it is punishable, at common law, by fine or imprisonment, or both, at the discretion of the Court: the punishment ordered by sect. 2 of the Act does not apply to the misdemeanor created by sect. 1.

As to the first part of section 1, it contains a very much needed enactment. It is taken from sect. 13, of the said 5 and 6 Will. 4, ch. 62, of the Imperial Statutes; the preamble (the same in the Canadian and the English Acts) reads thus:

"Whereas a practice has prevailed of administering and receiving oaths and affidavits voluntarily taken and made in matters not the subject of any judicial enquiry, nor in any wise required or authorized by any law; and whereas doubts have arisen whether or not such proceeding is illegal; for the suppression of such practice and removing such doubts, Her Majesty, &c., &c., &c."

Sir William Blackstone had said: (Vol. IV, p. 137) "The law takes no notice of any perjury, but such as is committed in some Court of Justice, having power to administer an oath; or before some magistrate or proper officer, invested with a similar authority, in some proceedings relative to a civil suit or a criminal prosecution: for it esteems all other oaths unnecessary at least, and therefore will not punish the breach of them. For which reason, it is much to be questioned, how far any magistrate is justifiable in taking a voluntary affidavit in any extra-judicial matter, as is now too frequent upon every

petty occasion, since it is more than possible that, by such idle oaths, a man may frequently, *in foro conscientie*, incur the guilt, and, at the same time, evade the temporal penalties of perjury."

"And Lord Kenyon indeed, in different cases, has expressed a doubt, whether a magistrate does not subject himself to a criminal information for taking a voluntary extra-judicial affidavit."—3 *Burn's Just.*, v. oath.

Indictment.—The Jurors for Our Lady the Queen upon their oath present, that J. S. on at being one of the Justices of Our said Lady the Queen, assigned to keep the peace in and for the said county (*or district*), did unlawfully administer to and receive from a certain person, to wit, one A. B., a certain oath, touching certain matters and things, whereof the said J. S., at the time and on the occasion aforesaid, had not any jurisdiction or cognizance by any law in force at the time being, to wit, at the time of administering and receiving the said oath, or authorized, or required by any such law: the same oath not being in any matter or thing touching the preservation of the peace, or the prosecution, trial or punishment of any offence nor being required or authorized by any law of the Dominion of Canada, or by any law of the said Province of wherein such oath has been so received and administered, and was to be used (*if to be used in another Province, add "or by any law of the Province of wherein the said oath (or affidavit) was (or is) to be used"*); nor being an oath required by the laws of any foreign country to give validity to any instrument in writing, designed to be used in such foreign country; that is to say, a certain oath touching and concerning (*state the subject-matter of the oath or affidavit, so as to show that it was not one of which the Justice had jurisdiction or cognizance, and was not within the*

exceptions) against the form of the Statute in such case made and provided, and against the peace of Our Lady the Queen, her crown and dignity.—Archbold, 829.

A County Magistrate complained to the Bishop of the diocese of the conduct of two of his clergy; and to substantiate his charge, he swore witnesses before himself, as magistrate, to the truth of the facts: *held*, that the matter before the bishop was not a judicial proceeding, and therefore that the magistrate had brought himself within the Statute against voluntary and extra-judicial oaths, and that he had unlawfully administered voluntary oaths, contrary to the enactment of the Statute.—Reg. vs. Nott, Car. & M. 288; 9 Cox, 301.

In the same case, on motion in arrest of judgment it was held, that an indictment under this Statute (5 and 6 Will. 4, ch. 62, s. 13) is bad, if it does not so far set out the deposition, that the Court may judge whether or not it is of the nature contemplated by the Statute, that the deposition and the facts attending it should have been distinctly stated, and the matter or writing relative to which the defendant was said to have acted improperly should have been stated to the Court in the indictment, so that the Court might have expressed an opinion whether the defendant had jurisdiction, the question whether the defendant had jurisdiction to administer the oath being one of law, and to be decided by the Court; but the majority of the Court thought that it was not necessary to set out the whole oath. Greaves nevertheless thinks it prudent to set it out at full length, if practicable, in some counts.—1 Russell, 193, note. At the same time, it must be remembered that by sect. 24 of the Procedure Act of 1869, it is enacted that "whenever it is necessary to make an averment in an indictment, as to any instrument, whether the same consists wholly or

in part of writing, print or figures, it shall be sufficient to describe such instruments by any name or designation by which the same may be usually known, or by the purport thereof, without setting out any copy or *facsimile* of the whole or of any part thereof."

Upon the trial, to establish that the defendant is a Justice of the Peace or other person authorized to receive oaths or affidavits, evidence of his acting as such will, *prima facie*, be sufficient.—Archbold, 830.

And it is not necessary to show that he acted wilfully in contravention of the Statute: the doing so, even inadvertently, is punishable.—*Idem*.

PEACE ON PUBLIC WORKS.

32-33 VICT., CH. 24.

This Act entitled "*An Act for the better preservation of the Peace in the vicinity of public works,*" becomes in force only by proclamation of the Governor in Council, and for the time, and within the places designated in such Proclamation. There is an amendment to it by the 33 Vict., ch. 28, (1870.)

OFFENCES RELATIVE TO HER MAJESTY'S
ARMY AND NAVY.
32-33 VICT., CH. 25.

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :

Sect. 1.—Whosoever, not being an enlisted soldier in Her Majesty's service or a seaman in Her Majesty's Naval Service, 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 soldier or seaman to desert or leave Her Majesty's Military or Naval Service, or conceals, receives or assists any deserter from Her Majesty's Military or Naval Service, knowing him to be such deserter, may be convicted thereof in a summary manner before any two Justices of the Peace, or before the Mayor of any city and any one Justice of the Peace, or before any Recorder, Judge of the Sessions of the Peace or Police Magistrate, on the evidence of one or more credible witness or witnesses, and shall then be liable to a penalty not less than eighty dollars, nor more than two hundred dollars in the discretion of the Court before which the conviction takes place, with costs, and in default of payment may be committed to gaol for any period not exceeding six months, or until such penalty is paid.

Sect. 2.—Whosoever buys, exchanges or detains, or otherwise receives from any soldier or deserter any arms, clothing or furniture belonging to Her Majesty, or any

such articles belonging to any soldier or deserter as are generally deemed regimental necessities, according to the custom of the army, or causes the color of such clothing or article to be changed, or exchanges, buys or receives from any soldier any provisions, without leave in writing from the officer commanding the regiment or detachment to which such soldier belongs, may be convicted thereof in the manner mentioned in the next preceding section, and shall then be liable to a penalty of not less than twenty dollars nor more than forty dollars and costs, and in default of payment be committed to gaol for a period not exceeding nine months, or until such penalty is paid.

Sect. 3.—Whosoever buys, exchanges, or detains or otherwise receives from any seaman or marine, upon any account whatever, or has in his possession, any arms or clothing, or any such articles belonging to any seaman, marine or deserter, as are generally deemed necessities, according to the custom of the Navy, may be convicted thereof in the manner mentioned in the next preceding section but one, and shall then be liable to a penalty not less than sixty dollars, nor more than one hundred and twenty dollars and costs, and in default of payment shall be committed to gaol for a term not exceeding nine months, or until such penalty is paid.
—(See 33 Vict., ch. 31.)

Sect. 4.—One half the amount of any penalty imposed under any of the preceding sections shall be paid over to the prosecutor or person by whose means the offender has been convicted, and the other moiety shall belong to the Crown.

Sect. 5.—Every offence against the preceding sections of this Act is a misdemeanor, and may be prosecuted as such, and the offender convicted shall then be liable to

punishment by fine and imprisonment in the discretion of the Court, and nothing in this Act shall be construed to prevent any person being prosecuted, convicted and punished under any Act of the Imperial Parliament in force in Canada; but no person shall be twice punished for the same offence.

Sect. 6.—The examination of any soldier, seaman, or marine liable to be ordered from the Province, in which any offence against this Act is prosecuted, or of any witness sick, infirm, or about to leave such Province, may be taken *de bene esse* before any commissioner or other proper authority, in like manner as depositions in civil cases may be taken.

Sect. 7.—Any person 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.

Sect. 8.—No person 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, and any person resisting the execution of any such warrant shall thereby incur a penalty of eighty dollars, recoverable on summary conviction in like manner as other penalties under this Act.

Sect. 9.—Any Justice of the Peace upon information on oath or affirmation may issue a warrant for the apprehension of any person charged with an offence against this Act, as in the case of other offences against the law.

See also 33 Vict., ch. 31, in which it seems to have

been forgotten that seamen's necessities and clothing were already protected by sect. 3 of the said 32-33 Vict., ch. 25.

As to the Imperial Statutes on the subject, see 1 Russell, 142.

OFFENCES RESPECTING HER MAJESTY'S MILITARY AND NAVAL STORES.

32-33 VICT., CHAP. 26.

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Sect. 1.—The marks described in the Schedule to this Act may be applied in or on Her Majesty's Naval, Military, Ordnance, Barrack, Hospital, and Victualling stores, to denote Her Majesty's property in stores so marked.

Sect. 2.—The Admiralty and War Department, their contractors, officers and workmen, may apply the said marks, or any of them, in or on any such stores as are described in the said Schedule.

Sect. 3.—Whosoever, without any lawful authority (proof of which authority shall lie on the party accused) applies any of the said marks in or on any such or any like stores, is guilty of a misdemeanor, and shall be liable to be imprisoned for any term less than two years, with or without hard labour.

Sect. 4.—Whosoever, with intent to conceal Her Majesty's property in any Naval, Military, Ordnance, Barrack, Hospital or Victualling stores, takes out, destroys or obliterates, wholly or in part, any such mark as aforesaid, is guilty of felony, and shall be liable to be imprisoned for any term less than two years, with or

without hard labour, and with or without solitary confinement.

Sect. 5.—Whosoever, without lawful authority (proof of which authority shall lie on the party accused) receives, possesses, keeps, sells, or delivers any Naval, Military, Ordnance, Barrack, Hospital, or Victualling stores, bearing any such mark as aforesaid, knowing them to bear such mark, is guilty of a misdemeanor, and shall be liable to be imprisoned for any term not exceeding one year, with or without hard labour.

Sect. 6.—Where the person charged with such a misdemeanor as last aforesaid, was, at the time at which the offence is charged to have been committed, a dealer in marine stores, or a dealer in old metals, or in Her Majesty's service or employment, knowledge on his part that the stores to which the charge relates bore such mark as aforesaid shall be presumed until the contrary is shewn.

Sect. 7.—Any person charged with such misdemeanor as last aforesaid in relation to stores, the value of which does not exceed twenty-five dollars, shall be liable, on summary conviction before two Justices of the Peace, or any Recorder, Stipendiary Magistrate or Police Magistrate, or the City Court of Halifax, to a penalty not exceeding one hundred dollars, or in the discretion of the Court, or Justices, or Magistrate, to be imprisoned for any term not exceeding six months with or without hard labour.

Sect. 8.—In order to prevent a failure of justice in some cases, by reason of the difficulty of proving knowledge of the fact that stores bore such a mark as aforesaid, if any Naval, Military, Ordnance, Barrack, Hospital or Victualling stores, bearing any such mark, are found in the possession of any person not being a dealer

in marine stores, or a dealer in old metals, and not being in Her Majesty's service, and such person, when taken or summoned before two Justices of the Peace, Recorder, Stipendiary Magistrate, or Police Magistrate, or the City Court of Halifax, does not satisfy the Justices, Recorder, Magistrate, or the Court, that he came by the stores so found lawfully, he shall be liable on conviction to a penalty not exceeding twenty-five dollars, and if any such person satisfies the Justices, Recorder, Stipendiary or Police Magistrate or Court, that he came by the stores so found lawfully, the Justices, Recorder, Magistrate or Court, at their discretion, as the evidence given or the circumstances of the case require, may summon before them every person through whose hands such stores appear to have passed; and if any person as last aforesaid, who has had possession thereof, does not satisfy the Justices, Recorder, Stipendiary or Police Magistrate or Court, that he came by the same lawfully, he shall be liable, on conviction of having had possession thereof, to a penalty not exceeding twenty-five dollars, and in default of payment to imprisonment for any period not exceeding three months, with or without hard labour.

Sect. 9.—For the purposes of this Act, stores shall be deemed to be in the possession or keeping of any person, if he knowingly has them in the actual possession or keeping of any other person, or in any house, building, lodging, apartment, field or place, open or enclosed, whether occupied by himself or not, and whether the same are so had for his own use or benefit, or for the use or benefit of another.

Sect. 10.—It shall not be lawful for any person, without permission in writing from the Admiralty, or from some person authorized by the Admiralty in that behalf, to creep, sweep, dredge or otherwise search for stores in

the sea, or any tidal or inland water, within one hundred yards from any vessel belonging to Her Majesty or in Her Majesty's service, or from any mooring place or anchoring place appropriated to such vessels, or from any mooring belonging to Her Majesty, or from any of Her Majesty's wharves or docks, victualling or steam factory yards.

Sect. 11.—Whosoever contravenes the next preceding section shall be liable, on summary conviction before two Justices of the Peace, or any Recorder, Stipendiary or Police Magistrate, or the City Court of Halifax, to a penalty not exceeding twenty-five dollars, or to be imprisoned for any term not exceeding three months, with or without hard labour.

Sect. 12.—And it shall not be competent for any person other than the officer commanding the Naval or Military Forces in Canada or some person acting under his authority to institute or carry on under this Act any prosecution or proceeding for any offence against it.

Sect. 13.—Nothing in this Act shall prevent any person from being indicted under this Act or otherwise, for any indictable offence made punishable on summary conviction by this Act, or prevent any person from being liable under any other Act or otherwise, to any other or higher penalty or punishment than is provided for any offence by this Act, so that no person be punished twice for the same offence.

Sect. 14.—The term "store" shall include any single store or article.

Sect. 15.—In all prosecutions under this Act, proof that any soldier, seaman or marine was actually doing duty in Her Majesty's service shall be *prima facie* evidence that his enlistment, entry or enrolment has been regular.

Sect. 16.—Persons convicted or sentenced to imprisonment under this Act before the City Court of Halifax, may, in the discretion of the Court, be imprisoned in the City prison with hard labour, instead of the County gaol.

Sect. 17.—This Act shall commence and take effect upon, from and after the first day of July, one thousand eight hundred and sixty-nine.

SCHEDULE.

<i>Stores.</i>	<i>Marks.</i>
Hempen Cordage and Wire Rope.	White, black or coloured worsted threads laid up with the yarns and the wire, respectively.
Canvas, Fearnought Hammocks and Seamen's Bags.	A blue line in a serpentine form.
Bunting.	A double tape in the warp.
Candles.	Blue or red cotton threads in each wick, or wicks of red cotton.
Timber, metal and other stores not before enumerated.	The broad arrow with or without the letters W. D.

This Act is taken from the 30 and 31 Vict., ch. 119, and 30 and 31 Vict., ch. 128, of the Imperial Statutes: in England, the 30 and 31 Vict., ch. 119, is repealed by the 32 Vict., ch. 12.

Indictment for wrongfully applying marks on Naval Stores.—The Jurors for Our Lady the Queen upon their oath present that J. S. on unlawfully and without lawful authority applied a certain mark, to wit, a double tape in the warp, in and on certain stores, to wit, five hundred yards of buntin; against the form of the Statute in such case made and provided, (*section 3.*)

Indictment for obliterating marks on Naval Stores.—The Jurors for Our Lady the Queen upon their oath pre-

sent that J.S. on feloniously and with intent to conceal Her Majesty's property therein took out from one hundred yards of canvas, which said canvas was then naval stores of and belonging to Her Majesty, a certain mark, to wit, a blue line in a serpentine form which said mark was then applied thereon in order to denote her said Majesty's property in naval stores so marked, against the form of the Statute in such case made and provided, (*sect. 4.*)

As to solitary confinement, see *sect. 94* of the Procedure Act of 1869.—Add counts charging "destroying" and "obliterating."—A man is presumed to intend the necessary and reasonable consequences of his own acts, *R. vs. Dixon*, 3 M. & Selw. 15; *R. vs. Farrington*, R. & R. 207; so the mere fact of the defendant's having taken out the mark will be sufficient evidence to go to the jury, that in doing so he intended to conceal Her Majesty's property in the stores.—Archbold, 788.

Indictment for being in unlawful possession of ordnance Stores.—The Jurors for Our Lady the Queen upon their oath present that J. S. on without lawful authority unlawfully possessed five hundred yards of canvas, which said canvas was then Ordnance department stores of and belonging to Her Majesty and then bore a certain mark, to wit, a blue line in a serpentine form then applied thereon, in order to denote Her Majesty's property in Ordnance department stores so marked, the said J. S. then well knowing the said canvas to bear the said mark; against the form of the Statute in such case made and provided, (*sect. 5.*)—Add counts charging "receiving" "keeping" "selling" and "delivering."

Sections 6, 7, 8, 9, of the Act relate to the necessary possession, guilty knowledge, proof, etc., etc., etc., and dispose of such questions as were raised in *Reg. vs.*

Cohen, 8 Cox, 41; R. vs. Sleep, L. & C. 44; Reg. vs. Sunley, Bell, 145, and in the anonymous case by Foster, 439.—2 Russell, 596, 597.

Upon the trial of any indictment for any offence mentioned in this Act, which is capable of being attempted to be committed, the jury may, under sect. 49 of the Procedure Act of 1869, convict the prisoner of an attempt to commit the same.—2 Russell, 599.

AN ACT RESPECTING CRUELTY TO ANIMALS.

32-33 VICT., CH. 27.

Whereas it is expedient that provision should be made, extending to all Canada, for the punishment of cruelty to animals: Therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Sect. 1.—Whosoever, wantonly, cruelly, or unnecessarily beats, binds, ill-treats, abuses or tortures any horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep, lamb, pig, or other cattle, or any poultry, or any dog, or domestic animal or bird, or whosoever, 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, shall, upon being convicted of any or either of the said offences before any one Justice of the Peace for the district, county or place in which the offence has been committed, for every such offence, forfeit and pay (over and above the amount of the damage or injury, if any, done thereby, which damage or injury shall and may be ascertained and awarded by such Justice) such a sum of money not exceeding ten dollars, nor less than one dollar with costs, as to such Justice seems meet,—and (33 Vict., ch. 29) any person who, 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, shall, upon being convicted before any one Justice of the Peace for the district, county or place, in which the offence was committed, for every such offence forfeit and pay such a sum of money not exceeding forty dollars, nor less than two dollars, with costs, as to such Justice seems meet.

Sect. 2.—The offender shall, in default of payment, be committed to the common gaol or other place of confinement, for the district, county or place in which the offence was committed, there to be imprisoned for any time not exceeding thirty days.

Sect. 3.—Nothing in this Act contained shall prevent or abridge any remedy by action against the offender or his employer where the amount of the damage is not sought to be recovered by virtue of this Act.

Sect. 4.—When any offence against this Act is committed, any constable or other peace officer, or the owner of any such cattle, animal or poultry, upon view thereof, or upon the information of any other person, (who shall declare his or their name or names and place or places of abode to the said constable or other peace officer) may seize and secure by the authority of this Act, and forthwith, and without any other authority or warrant, may convey any such offender before a Justice of the Peace within whose jurisdiction the offence has been committed, to be dealt with according to law.

Sect. 5.—If any person apprehended for having committed any offence against this Act refuses to discover his name and place of abode to the Justice of the Peace before whom he is brought, such person shall be immediately delivered over to a constable or other peace officer, and shall by him be conveyed to the common gaol or place of confinement for the district, county or place within which the offence has been committed, or in which

the offender has been apprehended, there to remain for any term not exceeding one month, or until he makes known his name and place of abode to the said Justice.

Sect. 6.—The prosecution of every offence punishable under this Act must be commenced within three months next after the commission of the offence, and not otherwise.

Sect. 7.—Every offence against any of the sections of this Act is a misdemeanor, and may be punished as such, —or may be prosecuted in the manner directed by the *Act respecting the duties of Justices of the Peace, out of Sessions, in relation to summary convictions and orders* (32-33 Vict., ch. 31) so far as no provision is hereby made for any matter or thing which may be required to be done with respect to such prosecutions, and all the provisions contained in the said Act shall be applicable to such prosecution, in the same manner as if they were incorporated in this Act.

Sect. 8.—All pecuniary penalties recovered before any Justice of the Peace under this Act shall be divided, paid and distributed in the following manner, that is to say: one moiety thereof to the corporation of the city, town, village, 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 such Justice seems proper.

Sect. 9.—Every sum of money ascertained and awarded, adjudged, by any Justice of the Peace under this Act to be paid as the amount of any damage or injury occasioned by the commission of any of the offences hereinbefore mentioned, shall be paid to the person who has sustained such damage or injury.

Sect. 10.—Where the word "cattle" is used in this Act,

it shall have the meaning assigned to it in the Act respecting larceny and other similar offences.— *Sect. 1, of the Larceny Act, ante.*

Sect. 11.—This Act shall commence and take effect upon, from and after the first day of January, one thousand eight hundred and seventy.

This Statute is based on the 12-13 Vict., ch. 92, amended by 17-18 Vict., ch. 60, of the Imperial Parliament.

See Bishop, Statutory Crimes, 1094.

It would seem under section 4, *ante*, that if the offence against this Act is committed out of the view of the constable, the constable should inquire into the particulars of the complaint made to him, or should see the animal and so form a judgment as to what has occurred, and the person complaining to the constable should leave it to him to act or not as he thought proper, for if without so doing he directs the officer to take the offender into custody, he may render himself liable to an action for false imprisonment.—*Hopkins vs. Crowe*, 7 C. & P. 373.

AN ACT RESPECTING VAGRANTS.

32-33 VICT., CH. 28.

Sect. 1.—All idle persons, who, not having visible means of maintaining themselves, live without employment; all persons who, being able to work, and thereby or by other means to maintain themselves and families, wilfully refuse or neglect to do so; all persons openly exposing or exhibiting in any street, road, public place or highway any indecent exhibition, or openly or indecently exposing their persons; all persons, who, 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, wander about and beg, or who go about from door to door, or place themselves in the streets, highways, passages or public places to beg or receive alms; all persons loitering in the streets or highways and obstructing passengers by standing across the footpaths or by using insulting language or in any other way, or tearing down or defacing signs, breaking windows, breaking doors or door plates, or the walls of houses, roads or gardens, destroying fences, causing a disturbance in the streets or highways by screaming, swearing or singing, or being drunk, or impeding, or incommoding peaceable passengers; all common prostitutes, or night walkers wandering in the fields, public streets or highways, lanes or places of public meeting or gathering of people, not giving a satisfac-

tory account of themselves; all keepers of bawdy houses and houses of ill fame, or houses for the resort of prostitutes, and persons in the habit of frequenting such houses, not giving a satisfactory account of themselves; all persons who have no peaceable profession or calling to maintain themselves by, but who do for the most part support themselves by gaming or crime, or by the avails of prostitution,—shall be deemed vagrants, loose, idle or disorderly persons within the meaning of this Act, and shall upon conviction before any Stipendiary or Police Magistrate, Mayor or Warden, or any two Justices of the Peace, be deemed guilty of a misdemeanor, and be punished by imprisonment in any gaol or place of confinement other than the Penitentiary for a term not exceeding *two months* (now *six months*,) 37 *Vict.*, *ch.* 43), and with or without hard labour, or by a fine not exceeding fifty dollars, or by both, such fine and imprisonment being in the discretion of the convicting Magistrate or Justices.

Sect. 2.—Any Stipendiary or Police Magistrate, Mayor or Warden, or any two Justices of the Peace upon information before them made, that any person hereinbefore described as vagrants, loose, idle and disorderly persons, are or are reasonably suspected to be harbored or concealed in any 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 Justice, all persons found therein so suspected as aforesaid.—5 *Geo.* 4, *ch.* 83, and 31–32 *Vict.*, *ch.* 52, Imperial Statutes.

Procedures under this Act are regulated by the 32–33 *Vict.*, *ch.* 31, *An Act respecting the duties of Justices of the Peace, out of Sessions, in relation to summary convictions and orders.*

INDEX

	PAGE
ABETTERS in misdemeanors and in offences punishable on summary conviction, under the Larceny Act.....	618
Do. do. do. under the Forgery Act.....	157
Do. do. do. under the Malicious Injuries to Property Act sect. 70	711
Abandoning child under the age of two years.....	260
ABORTION. Attempt to procure.....	335
Indictment for woman administering poison to herself with intent.....	336
Indictment for administering poison to a woman with intent...	336
Indictment for using instruments with like intent.....	336
Remarks.....	337-338
Procuring drugs, &c., to cause abortion.....	338
Indictment	339
ABDUCTION of a woman of any age from motives of lucre, &c.....	318
Indictment if of age.....	319
Indictment if under age.....	319
Remarks	319-322
Of any woman.....	322
Indictment	322
Of girls under sixteen.....	323
Indictment	324
Stealing children less than fourteen years of age.....	325
Indictment	326
ACCEPTANCE OF A BILL OF EXCHANGE, forging or uttering	100
ACCUSING OF CRIME with intent to extort.....	484
Indictment	485
ADULTERER, larceny by.....	372
ADMINISTERING POISON to procure miscarriage.....	335-338
Do. do. with intent to murder.....	227
Do. do. attempting to administer poison with intent to murder.....	233
So as to endanger life or inflict grievous bodily harm, or with intent to injure or annoy	255
ADMINISTERING CHLOROFORM with intent to commit offences.....	254
AGENTS, fraud by.....	567-572
ALGOMA, 32-33 Vict., ch. 35, declared in force in the District of	393

	PAGE
ADMINISTERING VOLUNTARY OATHS.....	747
ANIMALS, cruelty to.....	765-
ASSAULT on a clergyman in the discharge of his duty.....	281
Indictment for obstructing a clergyman in the discharge of his duty.....	281
Indictment for arresting a clergyman about to engage in the performance of divine service.....	282.
Disturbing congregations met for religious worship.....	282
On officers, &c., saving wreck.....	283
Indictment for assaulting a magistrate on account of the exercise of his duty in preserving wrecks.....	284
With intent to commit felony, or on peace officers.....	285
Indictment.....	285.
Indictment for assaulting peace officer in execution of his duty.....	286
Indictment for an assault to prevent arrest.....	287
With intent to obstruct the sale of grain.....	287
On seamen, stevedores, ship carpenters, &c.....	288.
Arising from combination or conspiracy.....	289
Indictment for an assault in pursuance of a conspiracy to raise wages.....	289.
Remarks.....	290-292
Summary convictions for common assault.....	293.
Case dismissed, certificate to be granted.....	293.
Party may be discharged in certain cases.....	294
With attempt to commit a felony, how justice shall proceed...	294
Remarks.....	294-298.
ASSAULT with intent to rob.....	457-458
Indecent, see "indecent assaults."	
What constitutes an.....	299
No, if there is consent.....	301-302, 316
When justifiable.....	304-306
ARMY AND NAVY, offences relative to Her Majesty's, 32-33 Vict., ch. 25.....	754-757
ARSON.....	641
ATTEMPTS to murder.....	227
Indictment for administering poison with intent to murder....	227
Indictment for wounding with intent to murder.....	229.
To murder by destroying or damaging building with gun-powder.....	231
Indictment.....	231
To murder by setting fire to, or destroying ships.....	232
Indictment.....	232
To murder by poisoning, shooting, drowning, &c.....	233.
Indictment for attempting to poison with intent.....	234
Indictment for attempting to drown with intent to murder...	235
Indictment for shooting with intent to murder.....	236
Indictment for attempting to shoot with intent.....	238

PAGE		PAGE
747	By any means.....	239
765	Punishment.....	239
281	Indictment.....	239
	To choke with intent to commit any indictable offence.....	253
	Indictment.....	254
281	To set fire to buildings.....	656
	Indictment.....	657
282	To set fire to a vessel.....	696
282	Indictment.....	696
283	To set fire to crops, stacks, &c.....	669
	To commit sodomy.....	345
284	To commit suicide.....	192
285	To set fire to mine.....	679
285	ARMS. Carrying bowie knives about the person.....	351
	Sheath knife, if carried about the person in any seaport towns or cities of Canada, person charged with same, how tried...	352
286	Duty of the Court or Justice before whom convicted.....	352
287	Limit of time within which prosecutions shall be commenced.	352
287	ARMS, what constitutes loaded.....	233
288		
289		
289		
290-292		
293		
293		
294		
294		
294-298		
457-458		
299		
302, 316		
304-306		
754-757		
641		
227		
227		
229		
231		
231		
232		
232		
233		
233		
234		
235		
236		
238		

	PAGE
Attempt to set fire to.....	656
Injuries by explosive substances to.....	658
Demolished or injured by rioters.....	661
Injuries to, by tenants.....	664
Indictment.....	665
BUOYS. Cutting away.....	699
Indictment.....	700
Penalty for making vessels fast to.....	701
BURIAL GROUND, injuries to statues, monuments in, &c., &c., &c..	691
Larceny of fixtures in.....	437
BRIDGES. Injuries to.....	685
Indictment for pulling down.....	686
Indictment for injury.....	686
BURGLARY. General remarks.....	489-504
In a church or chapel.....	504
Indictment for breaking and entering a church and stealing therein.....	505
Indictment for stealing in and breaking out of a church.....	506
By breaking out.....	506
Punishment.....	508
Indictment for burglary and larceny to the value of £5.....	508
Indictment if no felony was committed.....	509
Indictment for burglary by breaking out.....	510
Being found by night, armed with intent to break a dwelling-house, &c., &c., or having in possession by night implements of house-breaking.....	525
Indictment for being found by night armed with intent, &c....	526
Indictment for having in possession by night implements of house-breaking.....	528
Meaning of the word "night" in burglary.....	490
On what buildings burglary can be committed.....	491
What acts constitute burglary.....	497
The intent necessary in.....	503
The word "burglariously" necessary in indictment for.....	510
CATTLE. Interpretation of the word.....	402
Stealing.....	420
Killing or maiming.....	692
Indictment.....	693
CARNAL KNOWLEDGE DEFINED.....	308
Carnally knowing and abusing a girl under ten years.....	314
Carnally knowing and abusing a girl between the ages of ten and twelve.....	315
Attempts to commit the said offences.....	317
CARRIAGE. Doing bodily harm to any person by furiously driving	279
CHEATS, common, how now punishable.....	585

PAGE		PAGE
...	CHEQUE. Forgery, alteration of.....	105-111
...	CHEQUE, larceny of.....	425
...	CHILD. Exposing children under two years of age.....	260
...	Indictment.....	261
...	Carnally abusing.....	314
...	Concealing the birth of.....	339
...	Stealing, under the age of fourteen.....	325
...	CHILD-MURDER.....	181
...	CHLOROFORM. Using chloroform with intent to commit indictable	
...	offences.....	254
...	Indictment.....	254
...	CHOKE. Attempts to choke, etc., with intent to commit any	
...	indictable offence.....	253
...	Indictment.....	253
...	CHURCH. ("See Building.") Setting fire to.....	641
...	Indictment.....	642
...	Demolishing or injuring.....	661-662
...	Injuring statues, pictures, &c., &c., in a.....	691
...	Do. do. do. in a churchyard.....	691
...	Larceny of fixtures in a churchyard.....	437
...	CHAPEL. ("See Building.") Setting fire to.....	641
...	Indictment.....	642
...	CLERK. Larceny by.....	542
...	Indictment.....	543
...	Embezzlement by.....	544-563
...	Indictment.....	549
...	Remarks.....	546-563
...	CODICIL. (See Will).....	432
...	Cognovit actionem, forgery of, meaning of the word.....	130
...	COIN. Interpretation of terms under 32-33 Vic., chap. 99.....	1
...	Imperial Act (24-25 Vic., chap. 18) applies only to the "Queen's	
...	current gold and silver coin".....	3
...	What Canadian Act includes.....	3
...	How clause is framed in the English Act.....	3
...	Counterfeiting current gold or silver coin.....	3
...	Indictment.....	4
...	Evidence as to counterfeiting.....	5
...	Variance between indictment and evidence immaterial.....	5
...	Credible witness may prove.....	5
...	Colouring counterfeit coin, &c.....	6
...	Indictment.....	6
...	Proof of gilding.....	7
...	Indictment for colouring metal, &c.....	8

	PAGE
Impairing gold and silver coin with intent	8
Unlawful possession of filings, clippings, &c	9
Indictment	9
Act of impairing, how shewn	9
Buying or selling counterfeit coin at a lower value without law- ful authority	10
Punishment for	11
Indictment	11
Proof	11
Importing counterfeit coin without lawful authority	12
Punishment for same	12
Indictment	12
Exporting counterfeit coin without lawful authority	13
Punishment for same	13
Indictment	13
Uttering counterfeit gold or silver coin	13
Punishment for same	13
Knowingly tendering, uttering or putting off as being current any gold or silver coin of less than its lawful weight	14
Punishment for same	14
Having custody or possession of false or counterfeit coin with intent to utter or put off	15
Punishment	15
Indictment, for uttering counterfeit coin	14
Proof	15
Indictment, for having in possession counterfeit gold or silver coin with intent	17
Uttering, &c., &c., after a previous conviction shall be felony ..	18
Punishment for same	18
English Statute, mode of proceeding under	18
Uttering foreign coin, medals, &c., with intent to defraud	19
Punishment	19
Indictment, how framed	19
Proof as to	19
Counterfeit copper coin	20
Punishment for same	20
Uttering base copper coin	21
Evidence in prosecution relating to copper coin	21
Defacing coin, tender of defaced coin	21
Punishment for same	22
Tender of such, illegal	22
Indictment	22
Prove, what is necessary to	22
Counterfeiting foreign gold and silver coin not current in Can- ada	23
Punishment for same	23
Bringing such counterfeit coin in Canada	23
Uttering foreign counterfeit coin	23
Punishment for second and third offence	24
Punishment for same	24
Having foreign gold or silver coin, false or counterfeit in pos- session	24

PAGE	PAGE
8	Falsely making or counterfeiting any kind of coin, not being
9	current coin..... 24
9	Making, &c., coining tools..... 26
9	Proof where it shall lie..... 26
aw-	Indictment for making a puncheon for coining..... 27
10	Indictment for having a puncheon in possession..... 29
11	Indictment for making a collar..... 30
11	Conveying coining tools or coin out of the mint into Canada... 31
11	Suspected coin may be cut..... 32
12	Seizure and disposal of counterfeit coin and coining tools..... 33
12	Disposal of such coin produced in court..... 34
12	Sufficient proof of coin being counterfeit, what shall be..... 35
13	Proof in certain cases..... 36
13	Falsely making or counterfeiting any coin, or buying, sell-
13	ing, &c..... 37
13	When Act to commence..... 38
ent	COMMON ASSAULT. Summary conviction for..... 293-297
14	As an indictable offence..... 298
14	COMPANIES, PUBLIC. Frauds by directors or officers of.... 573-575
ith	COMPOUNDING FELONY. Taking a reward for the restitution of
15	stolen property..... 635
15	CONCEALING THE BIRTH OF A CHILD..... 339
14	CONCEALING WILLS, &c., &c..... 432
15	CONSENT. Difference between, and submission..... 302-316
ver	CONSPIRACY TO MURDER..... 220
17.	CONSPIRACY. Assaults arising from..... 289
18	CONSTRUCTIVE TAKING IN LARCENY..... 357-372
18	CONTRIBUTORY NEGLIGENCE, in cases of manslaughter..... 205-207
18	COPPER COIN, offences respecting the..... 38
19	CORPORATE BODIES. (See Companies, Public.)
19	CORRECTION. Killing by..... 203
20	CROPS. Setting fire to..... 669
20	COUNTERFEITING, see "Coin."
21	COUNTING-HOUSE, burglary and larceny in a..... 518-522
22	CROSSED CHEQUE, obliterating, adding to, or altering crossing... 111
22	CROW, having in possession by night without lawful excuse..... 525
23	CRUELTY TO ANIMALS. An Act respecting, 32-33 Vict., ch. 27. 765-768
23	Punishment..... 766
23	CURTILAGE. What buildings within..... 512
24	Breaking into a building within, and committing a felony..... 514
24	Indictment..... 517

What is the meaning of the word	PAGE. 512
CUSTOM-HOUSE OFFICERS, offences against	285
Forgery of stamps, documents, &c., &c., &c., under the "Act respecting Customs"	158
CUSTOM-HOUSE, destroying or injuring by fire	650
CUTTING, &c.	249-251
DAM, for timber, setting fire to	656
DAM of fish-pond, destroying	684
DAM of mill-pond, destroying	682
DEBENTURES, forgery of	78
DEED, acknowledging without authority or excuse, in name of another	133
DEED, obtaining execution of, by false pretences	603
DEED, obtaining execution of, by force	486
DEFACED COIN, not a legal tender	21
DEFILEMENT of a girl under twenty-one years of age, criminally procured	313
DEFAUD. Defrauding a person of the advantage, possession or use of his property	620
Remarks	620-626
Of the intent to defraud, in forgery	44, 61, 83, 142, 159
DESERTION, inducing soldiers to	754
DIPLOMA, forgery of	45
DIRECTORS OF COMPANIES. Fraudulently applying property of Com- pany	574
Keeping false accounts	574
Destroying, altering, &c., books	574
Making fraudulent statements	575
Indictment against, for fraudulent conversion of the company's money	583
Indictment for keeping fraudulent accounts	583
Indictment for destroying or falsifying books	583
Indictment for publishing fraudulent statements	583
DISTURBING religious meetings, &c.	282
DOCUMENTS OF TITLE TO REAL ESTATE. Stealing	431
Indictment	431
DOCK. Stealing from	538
Indictment	583
DOGS. Killing or maiming	693
Stealing	422

PAGE.	PAGE
512	DOVE. Killing or wounding..... 423
285	DREDGING in the oyster fishery of another..... 424
158	DRIVING, causing bodily harm by furious..... 279
650	DROWNING A MINE, &c..... 680
251	DROWN, attempting to, with intent to murder..... 233
656	DRUG, administering, with intent, &c..... 254
684	DUEL, killing in..... 189
682	DWELLING HOUSE. What is a, in burglary..... 491
78	Entering by night with intent to commit felony..... 512
	Indictment..... 513
138	Breaking into, within the curtilage..... 514
603	Indictment..... 517
486	Breaking and committing any felony therein..... 518
21	Stealing to the value of \$25 in a..... 529
	Indictment..... 530
313	Breaking, with intent to commit a felony..... 522
	Stealing in, any person therein being put in fear..... 532
620	Indictment..... 535
626	Setting fire to, any person being therein..... 645
159	Indictment..... 645
754	Stating ownership of, in burglary..... 497
45	Destroying, by gunpowder, any person being therein..... 658
	Riotously demolishing or injuring..... 661, 662
574	EXCUSABLE HOMICIDE..... 222
574	ELECTRIC TELEGRAPH, injuries to..... 688
574	EMBEZZLEMENT by clerks or servants..... 544-563
575	EMBEZZLEMENT by public officers..... 563
583	Three distinct acts of, may be charged in one indictment, in certain cases..... 545
583	Verdict of larceny allowed in indictments for embezzlement, and <i>vice versa</i> 545-548
282	EMBEZZLEMENT by partners..... 452
431	EMBEZZLEMENT by bankers, merchants, brokers, attorneys, agents, &c..... 567-584
431	EXCHEQUER BILLS OR BONDS, forgery of..... 78
538	EXPLOSIVE SUBSTANCE, injuries by, to buildings and goods therein. 658
583	Indictment for destroying by explosion part of a dwelling house, some person being therein..... 659
693	Indictment for blowing up a house whereby life was endangered. 660
422	Indictment for throwing gunpowder into a house with intent, &c. 661
	Causing bodily injury by..... 262
	Sending, with intent to burn..... 263
	Placing, near a building, with intent..... 263

	PAGE
EXPORTING COUNTERFEIT COIN	13
EXPOSING CHILD under two years of age	260
FACTORS, frauds by	567-584
FALSE PRETENCES, obtaining any chattel, money or valuable security by	584
Indictment	586
Remarks	585-602
Inducing persons by fraudulent means to sign deeds, papers, &c.	603
Indictment	603
Falsely pretending to have inclosed money or other property in a post letter	604
Winning money by cheating at a game	604
Indictment	605
Obtaining steamboat or railway passage by false ticket	606
Conviction of obtaining by false pretences on indictment for larceny	606
FALSE SIGNALS, exhibition of, with intent to bring any ship, &c., into danger	698
Indictment for exhibiting false signals	699
Indictment for doing an act tending to the immediate danger of a ship	699
FENCES, injuries to	678
Stealing, &c.	443
<i>Fera Naturæ</i> , animals that are, not the subject of larceny	381
FINE, power of court to impose, in addition to or in lieu of other punishments for misdemeanors, under Coin Act	3
Under Forgery Act	157
Under Offences against the Person Act	353
Under Larceny Act	639
Under Malicious Injuries Act, Sect. 74.	712
FISH, throwing lime, &c., in pond, with intent to destroy	684
FIXTURES, stealing, breaking, cutting, &c.	437
FIXTURES, stealing of, by tenants or lodgers	566
FOREIGN COIN, offences relating to	23
FOREST, setting fire to	655
Attempt to set fire to	656
FORGERY. General remarks	39
Meaning of	39
Characteristic of the crime	40
Not confined to falsifications of mere writings	40
Uttering, as to the	57
See (<i>defraud, intent to.</i>)	
Indictment, General Form, under Statute	62
Indictment for forgery at common law, form of.	64

PAGE	PAGE
13	Common law, forgery at 64
260	Act respecting forgery..... 65
567-584	Of great seal..... 65
ecu-	Punishment..... 66
584	Indictment, 66
586	Of documents signed by Governor, Lieutenant-Governor, letters
585-602	patent, public registers, &c., &c..... 67
&c. 603	Of letters patent, &c., or putting off same..... 68
603	Punishment..... 68
y in	Of public register..... 68
604	Punishment..... 68
604	Indictment, see general remarks..... 62
605	Of transfers of stocks, powers of attorney, &c., &c., &c..... 69
606	Punishment..... 70
t for	Indictment, for forging and uttering a transfer of stock..... 70
606	Indictment, for forging and uttering a power of attorney to
into	sell out stock..... 71
698	Personating owner of stock with intent, &c..... 72
699	Punishment..... 73
r of	Indictment, 73
699	Forging attestation to power of attorney for transfer of
678	stock, &c..... 73
443	Punishment..... 74
381	Indictment, 74
ther	Making false entries of stock, &c., &c., &c..... 75
3	Punishment..... 76
157	Indictment for making false entries of stock..... 76
353	Indictment for making a transfer of stock in the name of a
639	person not the owner..... 76
712	Clerks making out false dividend warrants, &c..... 77
684	Punishment..... 77
437	Indictment..... 78
566	Of forging debentures, stock, &c., making plates, paper, in imi-
23	tation of those used for debentures, &c. Having such plate,
655	paper, &c., in possession..... 78
656	Punishment..... 79
39	Instruments (unlawful possession of) having therein any words,
39	letters, figures, marks, lines or devices, peculiar to or appear-
40	ing in such debentures, exchequer bills or exchequer bonds,
40	Dominion notes or Provincial notes, &c..... 79
57	Paper (unlawful possession of) provided for debentures, exche-
62	quer bills or exchequer bonds, notes, &c..... 80
64	Paper (unlawful possession of) manufactured by the Govern-
	ment of Canada or Provinces..... 81
	Indictment (See general form)..... 82
	Of stamps,..... 83
	Punishment..... 83
	Remarks..... 87
	Of bank notes, &c., &c.,..... 87
	Punishment..... 88
	Indictment, 89
	Of purchasing or having forged bank notes..... 89
	Punishment..... 89

	PAGE
Indictment.....	90
As to making paper and engraving plate, &c., &c., for bank notes.....	90
Punishment.....	91
Paper, what permitted to be used for.....	92
Engraving Dominion or Provincial note or bank note.....	92
Engraving any word, number, figure or device intended to resemble Dominion or Provincial notes or bank notes, &c.....	93
Punishment.....	93
Using instruments for manufacture of paper with the name or firm of any bank, body corporate, company or person carrying on the business of bankers visible in the substance, &c.....	94
Punishment.....	94
As to forging, uttering or putting off, knowing to be forged, any bill of exchange, &c., promissory note, undertaking or order for payment of money.....	94
Punishment.....	95
Remarks.....	96
Of deeds, bonds, &c.....	97
Punishment.....	98
Indictment.....	98
Of a will.....	99
Punishment.....	99
Indictment.....	100
Remarks.....	100
Bills of exchange or promissory notes.....	100
Punishment.....	101
Indictment.....	101
Remarks.....	103
Of orders, receipts, &c., for money, goods, &c.....	105
Punishment.....	106
Indictment.....	107
Remarks.....	108
Making, accepting any bill, &c., &c., &c., by procuration, without lawful authority, &c., &c.....	109
Punishment.....	110
Indictment. See general remarks.....	62
Remarks.....	110
Obliterating crossing on cheques.....	111
Punishment.....	111
Of debentures.....	112
Punishment.....	112
Remarks.....	112
Of trade marks.....	113
"Person" construction of the word, in Trade Marks Offences Act.....	113
Provisions on trade marks.....	113-130
Of railway tickets, &c.....	130
Punishment.....	130
Of records, process of Courts of Justice, documents, produced in court, &c.....	130
Punishment.....	131
Of official documents by clerks, &c.....	131

PAGE	PAGE
90	Of instruments, made evidence by Act of Parliament..... 133
90	Of notarial acts, registers of deeds, &c..... 134
91	Of orders, summonses, &c., &c., of justices of the peace..... 135
92	Of the names of judges, clerks, &c..... 137
92	Falsely acknowledging recognizances, &c..... 138
93	Indictment..... 138
93	Of marriage licenses..... 139
94	Of registers of births, marriages and deaths..... 139
94	Of matters relating to baptism, marriage or burial..... 140
94	Indictment..... 141
94	Demanding property upon forged instruments..... 143
94	Of any document or writing whatsoever..... 144
94	Of any instrument, however designated in law, a will, bill of exchange, &c., &c., &c..... 146
95	Of bills made out of Canada..... 147
96	Forgers may be tried in county where apprehended, or in custody..... 148
97	Description of instrument in indictments for forging or for engraving, &c..... 149-50
98	Intent to defraud, how to be alleged..... 150
99	Criminal possession, what is, under this Act..... 151
99	Search warrants for forged instruments, &c..... 151
100	Remarks..... 151-154
100	Competency of witnesses on trial..... 154
100	Punishments, &c..... 155-156-157
101	Accessories after the fact..... 157
101	Fines and sureties for keeping the peace, in what cases..... 157
103	This Act, when to commence and take effect..... 158
105	Under the "Act respecting the Customs," 31 Viet., ch. 6..... 158-59
106	Under the "Act for the regulation of the Postal Service," 31 Viet., ch. 10..... 159
107	Under the "Act respecting the Shipping of Seamen," 31 Viet., ch. 129..... 160
108	FURTIOUS DRIVING, causing bodily harm by..... 279
109	
110	
62	
110	
111	
111	
112	
112	
112	
113	
ices	
113	
113-130	
130	
130	
130	
131	
131	
131	

G.

GAMING, winning money by cheating at..... 604
GARDEN, stealing in..... 438
Garden, destroying trees, plants, &c., &c., &c..... 672 676
GATES. Injuries to..... 678
Stealing..... 443
GIRL, under sixteen, abduction of, 323; under twenty-one, 318; by false pretences, procuring girl under twenty-one to have illicit carnal connexion with man, 313; carnally knowing girl under ten, 314; carnally knowing girl under twelve and above ten, 315; attempt to have carnal knowledge of girl under twelve..... 317

	PAGE
GOODS. Destroying, &c., in the process of manufacture.....	666
Destroying certain machinery	667
Indictment for cutting goods in the loom	668
For breaking warp of silk.....	668
For entering by force into a house, with intent to destroy or cut woollen goods.....	668
Indictment for destroying a thrashing machine.....	669
GOODS FOUND, larceny of.	388
GOVERNOR-GENERAL. Forgery of seal of.....	65
GRAIN. See "Crops."	
GRAND LARCENY AND PETIT LARCENY. Distinction between, abolished.....	404
GRAPE VINES. Destroying.....	671
GREAT SEAL. Counterfeiting.....	65
GREVIOUS BODILY HARM, what is	246
Wounding, or shooting, or attempting to shoot, with intent to do	244
Inflicting, with or without weapon	249
In indictment for felony, charging a grievous bodily harm, a verdict for a misdemeanor may be given.....	249
Upon indictment for, a verdict for common assault may be given	250
GROSS NEGLIGENCE OF MEDICAL PRACTITIONER, death caused by	209
GUILTY KNOWLEDGE, how proved, in forgery and uttering.....	59
GUNPOWDER. Causing bodily injury by gunpowder.....	262
Causing it to explode with intent, or sending it to persons with intent.....	263
Placing near a ship with intent to damage any body.....	263
Indictment for burning by gunpowder	264
For sending an explosive substance with intent.....	264
Indictment for throwing corrosive fluid with intent.....	264
Having in possession or making, &c., with intent to commit any of the felonies in this Act.....	347
Justice may issue a search warrant.....	347
Taken possession of under this Act may be sold under direction of the Court.....	348
Indictment.....	349
Placing gunpowder near a vessel with intent to destroy or damage	697
Making to commit offences.....	708
Searching for same.....	708
H.	
HOMICIDE, excusable, justifiable.....	222
HOMICIDE, <i>per infortunium</i> or <i>se at sua defendendo</i>	222

PAGE		PAGE
666	HOMICIDE, generally	163
667	HOMICIDE LAW AMENDMENT BILL, report on, by Committee of	
668	British House of Commons.....	216
668	HOP-BINS, destroying, &c., &c.....	671
668	HOP-OAST, setting fire to	648
669	HOP-OAST, riotously demolishing or injuring	661,662
388	HORSE-STEALING	420
65	HOUSE-BREAKING. Breaking into a house, &c., and out of the	
	saine, and committing a felony therein.....	518
	Indictment	520
404	Breaking into a dwelling house, &c., with intent to commit a	
671	felony.....	522
65	Indictment	522
246	Breaking into a dwelling house, &c., with intent to commit a	
	felony, in the night.....	512
	Having in possession by night implements of house-breaking..	525
244	HOUSE. Setting fire to.....	646
249	Indictment	647
249	Riotously demolishing or injuring.....	661,662
250	Injuries to by tenants	664
209	HUSBAND MAY KILL ADULTERER IN CERTAIN CASES.....	168
59	I.	
262	IMPLEMENTS OF HOUSE-BREAKING, having in possession by night..	525
263	IMPEDING PERSONS ENDEAVOURING TO ESCAPE FROM WRECKS.....	243
263	Punishment	243
264	Indictment.....	243
264	INDECENT ASSAULT, upon females	317
264	INDECENT ASSAULT, upon males	345
347	INFAMOUS CRIME, accusing or threatening to accuse of an infamous	
347	crime, with intent, &c.....	482
348	INJURIES, to houses by tenants.....	664
349	INTENT TO DEFRAUD, in forgery. See "Defraud."	
697	J.	
708	JUSTIFIABLE HOMICIDE.....	222
708	K.	
222	KIDNAPPING. Punishment.....	349
222	Offence, where it may be tried.....	350
	Indictment.....	357

	PAGE
KILLING, what to constitute murder.....	163
By correction.....	203
In defence of wife, children, &c., &c.....	223
In defence of property.....	224
In a duel.....	189
By fighting.....	197
Officers of justice.....	184-198
By officers of justice.....	187-202
Upon provocation.....	172-195
By negligence.....	204
By medical practitioners.....	211
By poisoning.....	182
Of the malice necessary to constitute murder.....	163-180
KNIVES, bowie, carrying, &c., &c.....	351
KNOWLEDGE, carnal, defined.....	308
LARCENY ACT, proceeding on summary convictions, under.....	637
LARCENY, at Common Law.....	356
Of the intent <i>Lucræ causa</i> in.....	356-392
Of the felonious intent necessary in.....	369-384-392
The taking in.....	357
Of constructive taking and possession.....	358
The taking where the offender has a bare charge.....	359
The taking where the possession of the goods has been obtained <i>animo furandi</i>	362
The taking where the possession of the goods has been obtained <i>bona fide</i> without any fraudulent intention in the first instance	371
The taking where the offender has more than a special property in the goods.....	372
LARCENY, by avowterer or adulterer.....	372
LARCENY of one's own goods.....	375
The carrying away, and asportation.....	377
The goods taken.....	380
The owner.....	382
Taking must be against owner's consent.....	383
LARCENY, by finding.....	388
Indictment, general remarks.....	393-399
LARCENY. (See the various heads).....	
General remarks.....	357-399
Act respecting, and other similar offences 32, 33, Vic. chap. 21.....	400
Distinction between Grand and Petit, abolished.....	404
By Bailees.....	404
Bailee, who is a.....	406
Bailment, what constitutes.....	407
Punishment for simple Larceny.....	413
When exceeds \$200.....	620
Three Larcenies within six months in one indictment.....	414

PAGE	PAGE
163	If one taking is charged and several proved..... 415
203	Punishment for simple Larceny after previous conviction for felony..... 418
223	Punishment for simple Larceny or any offence made punishable like simple Larceny after previous conviction of any indictable misdemeanor punishable under this Act..... 418
224	Punishment after two previous convictions of offences punishable upon summary conviction under this Act..... 419
189	Indictment..... 419
197	Of cattle and other animals..... 420
84-198	Indictment..... 421
87-202	Killing cattle with intent to steal the carcase..... 421
72-195	Indictment..... 422
204	Stealing Dogs, Birds, &c., &c., or other animals ordinarily kept in confinement and subject of Larceny at common Law..... 422
211	Killing or taking Pigeons..... 423
182	Larceny of oysters, &c., &c., &c..... 424
163-180	Larceny of valuable securities..... 425
351	Larceny of documents of title..... 431
308	Larceny of wills, codicils, &c., &c., &c..... 432
637	Larceny of records, &c., &c..... 433
356	Larceny of Railway tickets, &c., &c..... 436
356-392	Stealing trees, &c., &c., &c..... 438
384-392	Stealing trees worth at least 25 cents, first offence: second offence: third offence..... 440
357	Purchasing or receiving stolen trees..... 442
358	Stealing fences, gates, &c., &c., &c..... 443
359	Possession of stolen wood..... 444
ned	Stealing, &c., &c., &c., plants, &c., &c., &c., in garden..... 444
362	Stealing plants, &c., &c., &c., not in gardens..... 446
ned	Stealing from mines..... 447
nce 371	Concealing royalty, &c., &c., &c..... 448
erty 372	Search warrant for gold, &c., &c., &c..... 450
372	Possession of gold evidence of larceny in certain cases..... 451
375	Fraud on partner in mines..... 452
377	Larceny by partners..... 452
380	Robbery and stealing from the person..... 457
382	Robbery, with aggravated circumstances..... 474
383	Letters demanding money with menaces..... 477
388	Demanding money with menaces or by force..... 479
393-399	Letters threatening to accuse, &c., &c., &c., with intent, &c., &c..... 482
357-399	Accusing or threatening to accuse with intent, &c., &c., &c..... 484
21-400	Obtaining the execution of a deed by threats, &c., &c., &c..... 486
404	Burglary, see "Burglary"..... 488
404	House-breaking, see "house-breaking"..... 512-528
406	Stealing in a dwelling-house, see "dwelling-house"..... 529-535
407	Larceny in Manufactories..... 535
413	Stealing goods intrusted for manufacture..... 536
620	Larceny in ships, wharves, &c., &c., &c..... 537
414	Stealing from shipwrecked vessels..... 540
	Larceny by clerks or servants..... 542
	Embezzlement by clerks or servants..... 544
	Larceny or embezzlement by public officers..... 563

	PAGE
Larceny by tenants or lodgers.....	566
Frauds by agents, bankers, factors, directors, trustees, attorneys, &c., &c., &c.....	567-584
False pretences, see " <i>false pretences</i> ".....	584-607
Receiving stolen goods.....	607-618
✓ Defrauding a person of the use of his property, either real or personal.....	620
Offences concerning timber found adrift.....	626
Bringing into Canada property stolen, &c., &c., &c., elsewhere.	627
✓ Restitution of stolen property.....	628
✓ Taking a reward for do do do.....	633
Advertising a reward for do do do.....	635
Larceny of stamps.....	640
Venue in certain cases of larceny.....	638
Fine and sureties for the peace in certain cases, under Larceny Act.....	639
Prosecutions of offences punishable on summary conviction, under Larceny Act.....	639
Larceny under Post Office Act.....	399
Simply larceny in some cases punishable summarily.....	398
LETTERS, threatening to murder.....	241
Punishment.....	241
Indictment.....	241
Demanding money with menaces.....	477
Indictment.....	478
Threatening to accuse of a crime with intent to extort.....	482
Indictment.....	483
Threatening to burn houses, &c., &c., or to kill, maim, &c., any cattle.....	703
LOADED ARMS, what constitutes, under the offences against the Person Act.....	233
LODGER, larceny by.....	567
LUMBER, setting fire to.....	655
Attempt to.....	656

M.

MALICIOUS INJURIES. (See various heads.)

MALICIOUS INJURIES TO PROPERTY ACT.....	641
General clauses.....	710-712
Remarks.....	712
Malice against owner not necessary.....	710
Not before provided for, to amount exceeding twenty dollars..	704
Not before provided for, to amount not exceeding twenty dollars.....	705
MAILS, larceny, robbery of, &c., &c.....	399
MANSLAUGHTER, punishment.....	192

PAGE	PAGE
666	Indictment..... 193
667-684	Remarks..... 193-195
684-607	Provocation, cases of..... 195
607-618	Mutual combat cases..... 197
618	Resistance to officers of Justice, cases of..... 199
620	Killing by correction, cases of..... 203
626	Death caused by negligence..... 204
627	Neglect of natural duties..... 212
628	Special Report by the select Committee of the House of
633	Commons on the 'Homicide Law Amendment Bill'..... 217
635	Under General Railway Act..... 213
640	MANUFACTURES. Stealing goods intrusted for manufacture..... 536
638	MANUFACTORIES, larceny in, to the value of \$2..... 535
639	Indictment..... 536
639	MARINE STORES. Regulations for dealers..... 619
399	MEDICAL PRACTITIONERS, killing by..... 209
398	MERCHANDISE. Deposit of same with intent to defraud consignee..... 577
241	Refusal to deliver up by warehouseman, &c., to holder or
241	endorsee of receipt..... 578
477	METAL, &c. Fixed to House or land, stealing of..... 437
478	Indictment..... 438
482	MINES, stealing from, removing ore, &c., &c..... 447
483	Indictments..... 448
703	Fraud on Partners in..... 452
233	Injuries to..... 679
567	Indictment..... 679
655	Drowning Mines..... 680
656	Indictment..... 681
	Destroying engines, erections used in Mines..... 681
	Indictment..... 682
	MILITARY AND NAVAL STORES, offences respecting Her
	Majesty's..... 758-763
	Indictment for unlawful possession of ordnance stores..... 763
641	MONEY. Demanding money with menaces or by force, with
710-712	intent to steal..... 479
712	Indictment..... 480
710	MURDER. Punishment..... 161
704	Conviction for..... 161
705	Indictment..... 162
399	Remarks..... 163-165
192	Malice, definition of..... 165
	Malice aforethought..... 165-177
	Cases illustrative of general principle..... 180
	Of child..... 181
	By poisoning..... 182

	PAGE
By killing officers of justice.....	184
Killing by officers of justice.....	187
Duelling.....	189
Self-murder.....	190
Conspiring or soliciting to.....	220
Indictment.....	221
Punishment of accessories after the fact.....	221
Verdict, general remarks.....	162-190

MUNDICK. See "Ore."

N.

NAVY. See "Army and Navy."

NEGLECT to provide with food, &c., &c., wife, child, or apprentice, &c.....	257
Indictment, form of, for not providing an apprentice with necessary food.....	258

O.

OATHS, voluntary and extra-judicial.....	747
OFFENCES AGAINST THE PERSON, an Act respecting, 32-33 Vict., ch. 20.....	161
ORE, Miners removing, with intent to defraud.....	447
Indictments.....	448
OIL WELLS, drowning, &c.....	680
Destroying machinery, &c.....	681
OYSTERS, stealing, or dredging for.....	424
Indictment.....	425
Indictment for using the dredge in the oyster fishery of another.....	425

P.

PARTNERS, larceny by.....	452
Indictment.....	454
PEACE ON PUBLIC WORKS, Act for the better preservation of, 32-33 Vic., ch. 24.....	752
PERJURY, Act respecting, 32-33 Vict., ch 23.....	726
Punishment for.....	726
Indictment.....	746
In insurance cases.....	738
Prosecution for, ordered by Judge, &c., &c.....	739
Proof.....	743
Subornation of.....	744
All evidence material with.....	744
Respect to Perjury.....	727
PETIT TREASON ABOLISHED.....	225

INDEX.

791

PAGE	PAGE
184	PIGEONS, killing or taking..... 423
187	PLANTS, destroying, growing in any garden 676
189	Indictment after a previous conviction 677
190	Destroying, growing elsewhere 677
220	Stealing in garden 444
221	Stealing, not in garden 446
221	PONDS, injuries to 684
62-190	Indictment for breaking down the dam of a fish-pond..... 684
	Indictment for putting lime into a fish-pond..... 685
	Indictment for breaking down a mill dam..... 685
	POISON. Administering poison, &c., &c., so as to endanger life, or with intent to injure, &c., &c 255
en- 257	Indictment, for administering poison so as to endanger life.... 257
es- 258	Murder by 182
	Administering with intent to murder..... 237
	POST OFFICES, larceny respecting, mails, &c., &c..... 399
	PRINCIPALS, in the second degree, and accessories, how punished under the Larceny Act 619
... 747	PROPERTY, stolen elsewhere, bringing same into Canada..... 627
ct.,	PUBLIC BUILDING, setting fire to..... 651
... 161	Setting fire to other buildings..... 651
... 447	PUBLIC OFFICERS, larceny by 563
... 448	Indictment 565
... 680	Embezzlement by 564
... 681	Indictment 565
... 424	
... 425	Q.
her 425	QUEEN'S SHIPS, setting fire to..... 650
	QUEEN'S DOCKYARDS, setting fire to 650
	R.
... 452	RAFTS, cutting adrift..... 701
... 454	Indictment..... 702
of,	RAPE. Punishment 307
... 752	Carnal knowledge defined 308
... 726	Indictment..... 308
... 726	Remarks 308-313
... 746	Procuring the defilement of a woman or girl..... 313
... 738	Indictment..... 313
... 739	Carnally abusing children under ten years of age..... 314
... 743	Carnally abusing a girl above ten and under twelve years of age..... 315
... 744	
... 727	
... 225	

	PAGE
Indictment.....	315
Indecent assault on females, or attempt to abuse a girl under twelve.....	317
Indictment.....	317
RAILWAY, unlawfully and maliciously throwing upon or across, any wood, stone, &c.....	268
Taking, removing, or displacing any rail, sleeper, &c.....	268
Turning, moving or diverting any point with intent.....	268
Shewing, hiding or removing any signal or light upon or near to any Railway.....	268
Doing any act with intent.....	268
Throwing, &c., against any Engine, Tender or carriage, &c., with intent to injure or endanger the safety of any person thereon.	268
Doing any unlawful act or omitting or neglecting some act to the danger of the safety of persons on a railway.....	269
Indictment for endangering by wilful neglect the safety of Railway passengers.....	269
Remarks.....	270
Penal clauses under General Railway Act of 1868.....	272-275
Remarks.....	275-279
Manslaughter, under General Railway Act.....	213
RAILWAY TICKETS, &c., stealing.....	436
RAILWAY STATION, setting fire to.....	649
RAILWAY TRAINS, injuries to.....	687
Injuries to by unlawful act or wilful omission, &c.....	688
Indictment.....	689
RECEIPT. The giving of same by keeper of any warehouse, &c., before delivery of goods to him.....	576
RELIGIOUS CONGREGATIONS, disturbing.....	282
REPORT by the select committee of the House of Commons on the "Homicide Law Amendment Bill.".....	217
RESTITUTION of stolen property.....	628
Remarks.....	628-633
REAL ESTATE, stealing Documents of Title to.....	431
Indictment.....	431
RECORDS, &c., stealing.....	433
Indictment for stealing a Record.....	434
Indictment for taking a Record from its place of deposit.....	434
RESTITUTION of stolen goods.....	628
ROYALTY, (see Mines).....	448
RIOTERS. Demolishing buildings, &c.....	661
Indictment.....	662
Injuring buildings, &c.....	662

PAGE	PAGE
... 315	Indictment..... 663
der	RIVER BANKS. Damaging or destroying bank, dam, wall, &c.... 682
... 317	Indictment..... 683
... 317	Injuring piles, &c..... 683
oss,	Indictment..... 684
... 268	ROBBERY from the person..... 457
... 268	On trial of, may be convicted of assault with intent to rob.... 457
ear	Indictment for stealing from the person..... 458
... 268	Indictment for robbery..... 460
... 268	Remarks..... 458-474
with	With aggravated circumstances..... 474
on. 268	Indictment for robbery by persons armed..... 475
t to	Indictment for assault by a person armed with intent to com-
... 269	mit robbery..... 475
ail-	Indictment for robbery by two or more persons in company... 475
... 269	Indictment for, together with one or more person or persons,
... 270	assaulting with intent to rob..... 476
272-275	SEA BANKS. Damaging or destroying bank, dam, wall, &c..... 683
275-279	SERVANTS, larceny by..... 542
... 213	Indictment..... 543
... 436	Embezzlement by..... 544-563
... 649	Indictment..... 549
... 687	Remarks..... 546-563
... 688	SHOOT, attempting to, wounding, &c., with intent to do grievous
689	bodily harm..... 244
&c.,	Indictment for wounding with attempt to maim..... 245
... 576	Remarks..... 245
... 282	SHIPS, stealing from..... 537
s on	Indictment for stealing from a vessel on a navigable river.... 538
... 217	Setting fire to..... 695
... 628	Indictment..... 696
628-633	Setting fire to, with intent to prejudice owner, &c..... 695
... 431	Indictment..... 696
... 431	Damaging, otherwise than by fire..... 698
... 433	Setting fire to parts of..... 702
... 434	Indictment..... 702
... 434	SHIPWRECK, stealing from..... 540
... 628	Having property of, in possession..... 540
... 448	Offering such property for sale..... 541
... 661	Indictment..... 542
... 662	Offences respecting..... 243-702
... 662	SODOMY. Punishment..... 344
	Indictment..... 344
	Assault with intent to commit sodomy, indecent assault on
	males..... 345
	Indictment..... 346

	PAGE
SOLDIERS, inducing to desert	754
SPRING GUNS. As to setting, &c., with intent, &c.....	265
Indictment.....	266
STACKS, setting fire to.....	669
Indictment for setting fire to stack of wheat.....	671
STAMPS, Act for the avoidance of doubts respecting larceny of...	640
Stealing in a dwelling-house to the value of \$25.....	529
Stealing from the person.....	457
STOLEN GOODS. Receiving same.....	607
As to indictment.....	608
Receivers may be charged with substantive felonies in the same indictment.....	609
How Jury may convict.....	609
Receiving, &c., knowing the same to have been stolen.....	610
Indictment against the receiver of stolen goods for a substantive felony	611
Indictment against the receiver and principal jointly.....	612
Indictment against the receiver as accessory, the principal having been convicted	613
Indictment against the receiver, where the principal offence is a misdemeanour.....	613
Remarks.....	614-618
Principals, in the second degree, and accessories, how punishable.....	618
Restitution of stolen property.....	628
Taking a reward for helping to the recovery of stolen property, &c., &c.....	633
Indictment.....	633
Advertising a reward for return of.....	635
Apprehension of offenders, search warrant, &c.....	637
SUICIDE.....	190
Attempt to commit.....	192
STORES, military and naval.....	758
STORES, marine, dealers in.....	619

T.

TELEGRAPHS, injuries to.....	688
TENANT, larceny by.....	566
Injuries to buildings by.....	664
THREAT. Obtaining the execution of a deed, &c., &c., by threats or violence.....	486
General clauses.....	487
TIMBER. Offences concerning timber found adrift.....	626

PAGE	PAGE
.. 754	Cutting loose cribs of..... 701
.. 265	Setting fire to..... 655
.. 266	TOLL BARS, injuries to..... 686
.. 669	TRADE MARKS OFFENCES ACT, (see Forgery)..... 113
.. 671	TRADES UNION ACT..... 292
.. 640	TRUSTEE fraudulently appropriating property..... 573
.. 529	Sanction of Attorney General or Solicitor General before pro-
.. 457	ceeding to prosecute..... 573
.. 607	Indictment against Trustee for fraudulent conversion..... 583
.. 608	Stealing or cutting..... 438
me	Setting fire to..... 655
.. 609	TREES, destroying, &c..... 672
.. 609	Indictment..... 673
.. 610	Damage to the amount of twenty-five cents..... 674
ive	Second offence, third offence..... 674
.. 611	Indictment after two previous convictions..... 675
.. 612	TURNPIKE GATES, destroying..... 686
av-	Indictment..... 687
.. 613	V.
s a	VAGRANTS, an Act respecting, 32-33 Vict., ch. 28..... 769
.. 613	Punishment..... 770
614-618	VENUE, in uttering or putting off false or counterfeit coin..... 35
sh-	VENUE, in uttering a forged foreign bill or note..... 148
.. 618	VENUE, in trial of murder in certain cases..... 226
.. 628	VENUE, in certain cases under Larceny Act..... 638
ty,	Punishment..... 639
.. 633	In cases of Perjury..... 743
.. 633	VESSELS, placing gunpowder near, with intent, &c..... 697
.. 635	Shipwrecked, offences respecting..... 243-540-702
.. 637	VIADUCTS, injuries to..... 685
.. 190	VEGETABLES, destroying, growing in a garden..... 677
.. 192	Destroying, growing elsewhere..... 677
.. 758	Stealing, growing in a garden..... 444
.. 619	Stealing, not growing in a garden..... 446
.. 688	VALUABLE SECURITIES, larceny of..... 425
.. 566	Indictment..... 426
.. 664	VIOLENCE, threats and molestation, an Act to amend the Crimi-
reats	nal Law relating to..... 290
.. 486	
.. 487	
.. 626	

	Page
VOLUNTARY AND EXTRA JUDICIAL OATHS, an Act for the suppression of.....	747-752

W.

WORKS OF ART, injuries to.....	691
WHARF, stealing from.....	537
Indictment.....	538
WILL, stealing, &c., &c.....	432
Indictment.....	432
WOUNDING, with intent to murder.....	227
WOUNDING, with intent to maim, &c.....	244
WOUNDING, unlawfully, with intent to do grievous bodily harm..	249
Punishment.....	249
Indictment for unlawful wounding.....	251
WRECKS, offences respecting.....	243-540-702

Y.

YARN, stealing, in process of manufacture.....	535
--	-----

Page
ession
...747-752

..... 691
..... 537
..... 538
..... 432
..... 432
..... 227
..... 244
harm.. 249
..... 249
..... 251
243-540-702

..... 535

