should submit - with great respect
that one should be quite circumspect
for subsequent pages indicate
that I am very sorry to relate

THE

# CRIMINAL CODE

OF THE

# DOMINION OF CANADA

AS AMENDED IN 1907.

WITH

ANNOTATIONS, COMMENTARIES, PRECEDENTS

OF INDICTMENTS, &c., &c.

BY

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A WORK ON OATHS AND AFFIRMATIONS, &c.

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# PREFACE.

The Revision of the Statutes of Canada necessitated many changes in the Criminal Code. In the recent Code there were 983 sections; in the new Code there are 1,152 sections. The former Code was divided into ten titles; the new Code is divided into twenty-five parts.

In preparing the present volume, I have endeavoured to give such information as will be of practical value to the practitioner and others concerned in the administration of the Criminal Law of Canada. It contains:

1. The Criminal Code as amended in 1907.

2. The Canada Evidence Act and all other Acts relating to the Criminal Law of Canada.

3. The Forms in the Code are printed under the sections to which they relate, instead of at the end of the Code.

4. A complete set of Precedents of Indictments printed under the section to which they relate.

5. All the cases referred to by the Editors of the Annotations to the R. S. C. have been included; several have been revised and lengthened. It also contains very copious extracts from the Canadian Criminal Cases, Cox Criminal Cases, and other Canadian, English and American criminal reports.

W. E. L.

14th June, 1907.

# THE CRIMINAL CODE,

CHAPTER 146, R.S.C.

## ARRANGEMENT OF CODE.

# A TABLE OF REGNAL YEARS.

FOR CONVENIENCE OF REFERENCE TO THE ENGLISH STATUTES AND LAW REPORTS.

| Sovereigns. | Commencement of Reign. | Length of Reign. |
|---|---|---|
| William I | December 25, 1066 | 21 |
| William II | September 26, 1087 | 13 |
| Henry I. | August 5, 1100 | 36 |
| Stephen | December 26, 1135 | 19 |
| Henry II. | December 19, 1154 | 35 |
| Richard I. | September 3, 1189 | 10 |
| John | May 27, 1199 | 18 |
| Henry III. | October 28, 1216 | 57 |
| Edward I | November 20, 1272 | 35 |
| Edward II | July 8, 1307 | 20 |
| Edward III. | January 25, 1327 | 51 |
| Richard II | June 22, 1377 | 23 |
| Henry IV. | September 30, 1399 | 14 |
| Henry V | March 21, 1413 | 10 |
| Henry VI | September 1, 1422 | 39 |
| Edward IV. | March 4, 1461 | 23 |
| Edward V. | April 9, 1483 | .. |
| Richard III. | June 26, 1483 | 3 |
| Henry VII. | August 22, 1485 | 24 |
| Henry VIII. | April 22, 1509 | 38 |
| Edward VI. | January 28, 1547 | 7 |
| Mary | July 6, 1553 | 2 |
| Philip and Mary | July 25, 1554 | 4 |
| Elizabeth | November 17, 1558 | 45 |
| James I. | March 24, 1603 | 23 |
| Charles I. | March 27, 1625 | 24 |
| The Commonwealth | January 30, 1649 | 11 |
| Charles II*. | May 29, 1660 | 37 |
| James II. | February 6, 1685 | 4 |
| William and Mary | February 13, 1689 | 14 |
| Anne | March 8, 1702 | 13 |
| George I. | August 1, 1714 | 13 |
| George II | June 11, 1727 | 34 |
| George III. | October 25, 1760 | 60 |
| George IV | January 29, 1820 | 11 |
| William IV. | June 26, 1830 | 7 |
| Victoria | June 20, 1837 | 64 |
| Edward VII | January 22, 1901 | .. |

*Although Charles II. did not ascend the throne until 29th May, 1660, his regnal years were computed from the death of Charles I., January 13, 1649, so that the year of his restoration is styled the twelfth of his reign.

A TABLE OF REGNAL YEARS—*Continued.*

1831—1 & 2 Wm. IV.
1832—2 & 3 "
1833—3 & 4 "
1834—4 & 5 "
1835—5 & 6 "
1836—6 & 7 "
1837—7 Wm. IV. and 1 Vic.
1838— 1 & 2 Vic.
1839— 2 & 3 "
1840— 3 & 4 "
1841— 4 & 5 "
1841— 5 "
1842— 5 & 6 "
1843— 6 & 7 "
1844— 7 & 8 "
1845— 8 & 9 "
1846— 9 & 10 "
1847—10 & 11 "
1848—11 & 12 "
1849—12 & 13 "
1850—13 & 14 "
1851—14 & 15 "
1852—15 & 16 "
1853—16 & 17 "
1854—17 & 18 "
1855—18 & 19 "
1856—19 & 20 "
1857—20 "
1857—20 & 21 "
1858—21 & 22 "
1859—22 "
1859—22 & 23 "
1860—23 & 24 "
1861—24 & 25 "
1862—25 & 26 "
1863—26 & 27 "
1864—27 & 28 "
1865—28 & 29 "
1866—29 & 30 "
1867—30 & 31 "
1868—31 & 32 "
1869—32 & 33 Vic.
1870—33 & 34 "
1871—34 & 35 "
1872—35 & 36 "
1873—36 & 37 "
1874—37 & 38 "
1875—38 & 39 "
1876—39 & 40 "
1877—40 & 41 "
1878—41 & 42 "
1879—42 & 43 "
1880—43 & 44 "
1881—44 & 45 "
1882—45 & 46 "
1883—46 & 47 "
1884—47 & 48 "
1885—48 & 49 "
1886—49 & 50 "
1887—50 & 51 "
1888—51 & 52 "
1889—52 "
1889—52 & 53 "
1890—53 & 54 "
1891—54 & 55 "
1892—55 & 56 "
1893—56 & 57 "
1894—57 & 58 "
1895—58 & 59 "
1896—59 & 60 "
1897—60 & 61 "
1898—61 "
1899—62 & 63 "
1900—63 & 64 "
1901—1 Ed. VII
1902—2 "
1903—3 "
1904—4 "
1905—4 & 5 "
1906—6 & 7 "
1907—7 & 8 "

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## A.

D.

E.

F.

G.

H.

## K.



## L.

## M.

N.



O.

Q.



R.

T.

U.



V.



W.

# LIST OF ABBREVIATIONS.

| | |
|---|---|
| [ ] A. C. | Appeal Cases, Privy Council |
| A. & E. | Adolphus and Ellis, Reports |
| A. R. | Appeal Reports (Ont.) |
| B. & Ad. | Barnewall and Adolphus' Reports |
| B. & Ald. | Barnewall and Alderson's Reports |
| B. & C. | Barnewall and Cresswell's Reports |
| B. & P. | Bosanquet and Puller's Reports |
| B. & S. | Best and Smith's Reports |
| B. C. R. | British Columbia Reports |
| Bing. | Bingham's K. B. Reports |
| Brod. & B. | Broderip and Bingham's Reports |
| Burr. | Burrows' Reports |
| Can. C. C. | Canadian Criminal Cases |
| C. B. | Common Bench Reports |
| C. B. N. S. | Common Bench New Series Reports |
| Cl. & F. | Clark & Finelly's Reports |
| C. & D. | Crawford and Dixon's Reports |
| C. & K. | Carrington and Kirwan's N. P. Reports |
| Car. & M. | Carrington and Marshman's N. P. Reports |
| C. & P. | Carrington & Payne's N. P. Reports |
| Cald. | Caldecott's Reports |
| Camp. | Campbell's Reports |
| Carr. Supp. | Carrington's Criminal Law |
| Chit. | Chitty's Criminal Law |
| Chit. Rep. | Chitty's Reports |
| C. L. J. | Canada Law Journal, Ont. |
| C. L. T. | Canadian Law Times, Ont. |
| C. M. & R. | Crompton, Meeson & Roscoe's Reports |
| Co. | Coke's Reports |
| Cox C. C. | Cox's Criminal Cases |
| C. P. D. | Law Reports, Common Pleas Division |
| C. S. C. | Consolidated Statutes of Canada |
| C. S. L. C. | Consolidated Statutes of Lower Canada |
| C. S. U. C. | Consolidated Statutes of Upper Canada |
| D. & L. | Dowling & Lowndes' Reports |
| D. & M. | Davison and Merivale's Reports |
| D. & R. | Dowling and Ryland's Reports |
| Dears. | Dearsley's Reports |
| Dears. & B. | Dearsley and Bell's Crown Cases |
| Den. | Denison's Crown Cases |
| Dor. Q. B. R. | Dorion's Queen's Bench Reports, Montreal |
| Doug. | Douglas Reports |
| E. & B. | Ellis and Blackburn's Reports |
| E. B. & E. | Ellis, Blackburn and Ellis' Reports |
| E. L. R. | Eastern Law Reporter |
| E. & E. | Ellis and Ellis' Reports |
| Ex. C. R. | Exchequer Court Reports |

Ex. D. ..... Law Reports, Exchequer Division
F. & F. ..... Foster and Finlason's Reports
Fost. ..... Foster's Crown Cases
G. & D. ..... Gale and Davison's Reports
G. & O. ..... Geldert and Oxley's Nova Scotia Reports
H. & C. ..... Hurlstone and Coltman's Reports
H. & N. ..... Hurlstone and Norman's Reports
Han. ..... Hannay's New Brunswick Reports
Ill. ..... Illinois State Reports
Ind. ..... Indiana Reports
Inst. ..... Coke's Institutes
Ir. R. C. L. ..... Irish Common Law Reports
Ir. L. R. ..... Irish Law Reports
J. P. ..... Justice of the Peace
Jur. ..... Jurist
Kel. ..... Kelyng's Crown Cases
L. & C. ..... Leigh and Cave's Crown Cases
L. C. J. ..... Lower Canada Jurist
L. C. L. J. ..... Lower Canada Law Journal
L. C. R. ..... Lower Canada Reports
Ld. Raym. ..... Lord Raymond's Reports
L. J. ..... Law Journal (England)
L. N. ..... Legal News, P. Q.
L. R. C. C. R. ..... Law Reports, Crown Cases Reserved
L. R. C. P. ..... Law Reports, Common Pleas
L. R. H. L. ..... Law Reports, English and Irish Appeals
L. R. P. C. ..... Law Reports, Privy Council
L. R. Q. B. ..... Law Reports, Queen's Bench
L. T. ..... Law Times Reports
M. & G. ..... Manning and Granger's Reports
M. & M. ..... Moody and Malkin's Reports
M. & Rob. ..... Moody and Robinson's Reports
M. & S. ..... Maule and Selwyn's Reports
M. & W. ..... Meeson and Welsby's Reports
Man. L. R. ..... Manitoba Law Reports
Marsh. ..... Marshall's Reports
M. L. R. Q. B. ..... Montreal Law Reports, Queen's Bench
Me. ..... Maine State Reports
Mod. ..... Modern Reports
Moo. ..... Moody's Crown Cases
N. B. R. ..... New Brunswick Reports
N. S. R. ..... Nova Scotia Reports
O. L. R. ..... Ontario Law Reports
O. R. ..... Ontario Reports
O. W. R. ..... Ontario Weekly Reporter
Occ. N. ..... Can. Law Times, Occasional Notes
P. & B. ..... Pugsley and Burbidge, New Brunswick Reports
Plow. ..... Plowden's K. B. Report
P. R. (Ont.) ..... Practice Reports, Ontario
Pugs. ..... Pugsley's New Brunswick Reports
P. Wms. ..... Peere Williams, K. B. Reports
Q. B. ..... Queen's Bench Reports
Q. B. D. ..... Law Reports, Queen's Bench Division
Q. L. R. ..... Quebec Law Reports
R. & C. ..... Russell & Chesley's Nova Scotia Reports
R. & M. ..... Ryan and Moody's Reports
R. & R. ..... Russell and Ryan's Reports

| | |
|---|---|
| Rep. | Coke's Reports |
| R. L. | Revue Legale, P. Q. |
| R. S. B. C. | Revised Statutes of British Columbia |
| R. S. N. B. | Revised Statutes of New Brunswick |
| R. S. N. S. | Revised Statutes of Nova Scotia |
| Russ. | Russell on Crimes, 4th ed. |
| R. & G. | Russell and Geldert's Nova Scotia Reports |
| Salk. | Salkeld's Reports |
| S. C. R. | Supreme Court of Canada Reports |
| St. Tr. | State Trials |
| Str. | Strange's Reports |
| Taun. | Taunton's Reports |
| Terr. L. R. | Territories Law Reports |
| T. R. | Term. Reports |
| T. Raym. | T. Raymond's Reports |
| Tyr. | Tyrwhitt's Reports |
| U. C. C. P. | Upper Canada Common Pleas |
| U. C. R. | Upper Canada Queen's Bench |
| Warb. Lead. Cas. | Warburton's Leading Cases on Criminal Law |
| W. L. R. | Western Law Reporter |
| W. R. | Weekly Reporter |
| Wheat. | Wheaton's Reports |
| Wil. | Wilson's K. B. Reports |

CHAP.

1. In
78. O
90. G
97. A
106. D
107. V
108. F
121. P
122. M
125. T
145. C
146. C
147. P
148. P
150. T
152. C
153. L
154. F

*In*
*having*

*It*
*in the*
*the Re*

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*NOTE.*

*In this volume are collected chapters of the Revised Statutes of Canada, 1906, having reference to criminal law, procedure and evidence in criminal matters.*

*It must be noted, however, that many of the other general laws of Canada, included in the Revised Statutes, contain penal clauses, but as to these recourse must be had to the Revised Statutes, where the chapters containing them appear at length.*

Flags not to be furnished as a party flag.

**80.** No person shall furnish or supply any ensign, standard, or set of colours, or any other flag, to or for any person or persons whomsoever, with the intent that the same should be carried or used in the county or city on any day of polling under this Act, or within eight days before such day, or during the continuance of such polling, by such person or any other person, as a party flag, to distinguish the bearer thereof and those who follow the same as the supporters of the opinions entertained, or supposed to be entertained by such person, in either interest.

Party flags not to be carried.

2. No person shall for any reason, carry or use any such ensign, standard or set of colours or other flag as a party flag in either interest, within any county or city on the day of any such polling, or within eight days before such day, or during the continuance of such polling. R.S., c. 106, s. 72.

Sale or gift of liquor on polling day prohibited.

**81.** No intoxicating, spirituous or fermented liquors or strong drinks shall be sold or given at any hotel, tavern or shop or other place within the limits of any polling district, at any time during the day on which any poll is begun, holden, or proceeded with. R.S., c. 106, s. 74.

*Offences and Penalties.*

Refusing to furnish lists.

**82.** Every registrar, city or town clerk, clerk of the peace, clerk of a municipality or other officer, by law the proper custodian of any voters' list or certified duplicates or copies thereof, provided by this Part to be obtained by a returning officer, who omits or refuses to furnish such list, copies or extracts therefrom, within a reasonable time, to any returning officer requiring the same, shall incur a penalty not exceeding two thousand dollars and not less than two hundred dollars. R.S., c. 106, s. 16.

Penalty.

Taking ballot paper out of polling station.

**83.** Every elector who takes any ballot paper, delivered to him by a deputy returning officer for the purpose of using the same in voting, out of the polling station in which the same is so delivered to him, shall incur a penalty not exceeding two hundred dollars and not less than fifty dollars. R.S., c. 106, s. 38.

Penalty.

Officers or agents.

**84.** Every officer and agent in attendance at a polling place,—

Violating secrecy.

*(a)* who does not maintain and aid in maintaining the secrecy of the voting at such polling place; or,

Communicating information.

*(b)* who communicates, before the poll is closed, to any person any information as to whether any person on the voters' list has or has not applied for a ballot paper, or voted at that polling place; or,

Interfering with voter.

*(c)* who interferes with, or attempts to interfere with a voter when marking his vote, or otherwise attempts to obtain,

at the polling place, information as to how any voter at such polling place is about to vote or has voted; or,

*(d)* who communicates, at any time, to any person, any information obtained at a polling place as to how any voter at such polling place is about to vote or has voted; or, Communicating information.

*(e)* being in attendance at the counting of the votes, does not maintain and aid in maintaining the secrecy of the voting or attempts to ascertain at such counting how, or communicates any information obtained at such counting as to how, any vote is given in any particular ballot paper; Violating secrecy as to votes counted.

shall be liable to a penalty not exceeding two hundred dollars, and in default of payment, to imprisonment for any term not exceeding six months with or without hard labour. R.S., c. 106, s. 64. Penalty.

**85.** Every one who,—

*(a)* directly or indirectly, induces any voter to display his ballot paper after he has marked the same, so as to make known to any person how he has so marked it; or, Inducing voter to display ballot paper.

*(b)* interferes with, or attempts to interfere with, a voter when marking his vote, or otherwise attempts to obtain, at the polling place, information as to how any voter at such polling place is about to vote, or has voted; or, Interfering with voter at vote.

*(c)* communicates, at any time, to any person, any information obtained at a polling place as to how any voter at such polling place is about to vote, or has voted; Communicating information.

shall be liable to a penalty not exceeding two hundred dollars, and in default of payment to imprisonment for any term not exceeding six months with or without hard labour. R.S., c. 106, s. 64. Penalty.

**86.** Every person, having in his hands or personal possession any firearm, sword, staff, bludgeon or other offensive weapon, within half a mile of any polling station, during any day whereon any poll is begun, holden or proceeded with, who refuses to deliver such weapon to any returning officer or deputy returning officer requiring delivery to him of the same, shall be liable to a penalty not exceeding one hundred dollars, and in default of payment to imprisonment for a term not exceeding three months. R.S., c. 106, s. 68. Refusal to deliver up offensive weapon. Penalty.

**87.** Every person who sells or gives at any hotel, tavern or shop, or other place within the limits of any polling district any intoxicating, spirituous or fermented liquors or strong drinks, at any time during the day on which any poll is begun, holden, or proceeded with, shall, for each offence be liable to a penalty of one hundred dollars, and in default of payment, to imprisonment for a term not exceeding six months, at the discretion of the court or judge. R.S., c. 106, s. 74. Selling or giving any intoxicating liquor on polling day. Penalty.

Battery on polling day.

**88.** Every person committing any battery during any day whereon any poll is begun, holden, or proceeded with, within the distance of two miles of the place where such poll is begun, holden or proceeded with, is guilty of an aggravated assault, and shall be punished accordingly. R.S., c. 106, s. 69.

Penalty.

**89.** Every person,—

Providing drink.

*(a)* who, at any polling, either provides or furnishes drink or other refreshment at such person's expense to any elector during such polling;

Paying for same.

*(b)* who pays for, procures or engages to pay for any drink or other refreshment, provided or furnished, at any polling to any elector during such polling;

Furnishing party flags.

*(c)* who furnishes or supplies any ensign, standard, or set of colours, or any other flag to or for any person or persons whomsoever with the intent that the same shall be carried or used in the county or city on any day of polling under this Part, or within eight days before such day, or during the continuance of such polling, by such person or any other person, as a party flag, to distinguish the bearer thereof and those who follow the same as the supporters of the opinions entertained, by such person in either interest;

Carrying party flag.

*(d)* who for any reason, carries or uses in either interest any such ensign, standard, set of colours or other flag as a party flag, within any county or city on the day of any polling, or within eight days before such day, or during the continuance of such polling;

Entering polling district armed.

*(e)* except the returning officer or his deputy, or one of the constables or special constables appointed by the returning officer or his deputy for the orderly conduct of the poll and the preservation of the public peace thereat, who has not had a stated residence in the polling district for at least six months next before the day of polling, who comes during any part of the day upon which the poll is to remain open, into such polling district armed with offensive weapons of any kind, as firearms, swords, staves, bludgeons or the like;

Approaching polling station armed.

*(f)* who while in any polling district arms himself during any part of the day of polling with offensive weapons of any kind, as firearms, swords, staves, bludgeons or the like, and thus armed, approaches within the distance of one mile of the place where the poll for such polling district is held, unless called upon by lawful authority so to do;

Penalty.

is guilty of an indictable offence and liable to a fine not exceeding one hundred dollars, or to imprisonment for a term not exceeding three months, or to both, in the discretion of the court. R.S., c. 106, ss. 70, 71, 72 and 73.

**90.** Every person who,—

*(a)* directly or indirectly, by himself or by any other person on his behalf, gives or lends, or agrees to give or lend, or offers or promises any money or valuable consideration, or promises to procure or to endeavour to procure any money or valuable consideration to or for any voter, or to or for any person on behalf of any voter, or to or for any person in order to induce any voter to vote or to refrain from voting, or corruptly does any act aforesaid, on account of such voter having voted or refrained from voting at any polling under this Part; Giving, lending or promising money.

*(b)* directly or indirectly, by himself or by any other person on his behalf, gives or procures, or agrees to give or procure, or offers or promises any office, place or employment to or for any voter, or to or for any other person, in order to induce such voter to vote or to refrain from voting, or who corruptly does any act aforesaid, on account of any voter having voted or refrained from voting at any polling under this Part; Procuring office or employment.

*(c)* directly or indirectly, by himself, or by any other person on his behalf, makes any gift, loan, offer, promise, procurement or agreement, as aforesaid to or for any person, in order to induce such person to procure, or endeavour to procure, or to prevent or endeavour to prevent the adoption of any petition under the provisions of this Part, or to procure or endeavour to procure the vote of any elector at any polling under this Part, or to prevent or endeavour to prevent any elector from voting at any polling under this Part; Gifts or promises to induce or to prevent the adoption of the second Part of this Act.

*(d)* upon and in consequence of any such gift, loan, offer, promise, procurement or agreement, procures or prevents, or engages or promises or endeavours to procure or prevent the adoption of any petition under the provisions of this Part, or the vote of any voter at any poll under this Part; Corrupt agreement to procure adoption.

*(e)* advances or pays, or causes to be paid, any money to or to the use of any other person, with the intent that such money, or any part thereof, shall be expended in bribery or corrupt practices at any poll under this Part, or who knowingly pays or causes to be paid any money to any person, in discharge or re-payment of any money, wholly or in part expended in bribery or corrupt practices, at any poll under this Part; Paying money to be used or used in bribery.

shall be deemed to have committed the offence of bribery and is guilty of an indictable offence; and shall also incur a penalty of two hundred dollars, which may be recovered by any one who sues for the same to and for his own use, with full costs of suit: Provided that the actual personal expenses of any agent in either interest, his expenses for actual professional services performed, and *bona fide* payments for the fair cost of printing and advertising, shall be deemed to be expenses lawfully Guilty of bribery. Penalty. Lawful expenditure.

fully incurred, and the payment thereof shall not be deemed a violation of any provision of this Act. R.S., c. 106, s. 75.

Receiving consideration or promises in respect to vote.

**91.** *(a)* Every voter, who, before or during any polling of votes under this Act, directly or indirectly, by himself or by any other person on his behalf, receives, agrees or contracts for any money, gift, loan or valuable consideration, office, place or employment, for himself or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting, at any poll under this Part;

Receiving after voting.

*(b)* Every person who, after any polling under this Part, directly or indirectly, by himself or by any other person on his behalf, receives any money or valuable consideration for having voted or refrained from voting, or for having induced any other person to vote or refrain from voting, at any polling under this Part;

Penalty.

shall be deemed to have committed the offence of bribery and is guilty of an indictable offence; and shall also incur a penalty of two hundred dollars, which may be recovered by any one who sues for the same to and for his own use, together with full costs of suit. R.S., c. 106, s. 76.

Offence of treating defined.

**92.** Every person who, corruptly, by himself or by or with any person, or by any ways or means on his behalf, at any time, either before or during any polling of votes under this Part, directly or indirectly, gives or provides, or causes to be given or provided, or is accessory to the giving or providing of, or pays wholly or in part any expenses incurred for, any meat, drink, refreshment or provision, to or for any person, in order to procure or prevent, or for having procured or prevented, the adoption of any petition under the provisions of this Part, or for the purpose of corruptly influencing such person or any other person to give or refrain from giving his vote at such polling of votes, is guilty of the offence of treating, and shall

Penalty.

incur a penalty of two hundred dollars, which may be recovered by any one who sues for the same to and for his own use, with full costs of suit in addition to any other penalty to which he is liable under any other provision of this Act. R.S., c. 106, s. 77.

Giving meat or drink on polling day.

**93.** Every person who shall give to any voter on the day of polling, on account of such voter having voted or being about to vote, any meat, drink or refreshment, or any money or ticket to enable such voter to procure refreshment, shall be guilty of an

Penalty.

unlawful act and shall incur a penalty of ten dollars for each offence, which may be recovered by any one who sues for the same to and for his own use, with full costs of suit. R.S., c. 106, s. 78.

**94.** Every person who,—

*(a)* directly or indirectly, by himself or by any other person on his behalf, makes use of, or threatens to make use of any force, violence or restraint; or, Threats of violence.

*(b)* by himself or by or through any other person, inflicts or threatens the infliction of any injury, damage, harm or loss; or, Of injury.

*(c)* in any manner practises intimidation upon or against any person, in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any polling under this Part; or, Practising intimidation.

*(d)* by abduction, duress or any fraudulent device or contrivance, impedes, prevents or otherwise interferes with the free exercise of the franchise of any voter, or thereby compels, induces or prevails upon any voter either to give or refrain from giving his vote at any polling under this Part; Interfering with free exercise of franchise.

shall be deemed to have committed the offence of undue influence, and is guilty of an indictable offence; and shall also incur a penalty of two hundred dollars, which may be recovered by any one who sues for the same to and for his own use, with full costs of suit. R.S., c. 106, s. 79. Penalty.

**95.** Every person who hires or promises to pay, or pays for any horse, team, carriage, cab or other vehicle, by or through any agent or other person in either interest, to convey any voter or voters to or from the poll or from the neighbourhood thereof, at any polling of votes under this Part, or pays by or through any agent or other person in either interest the travelling or other expenses of any voter, in going to or returning from any polling of votes under this Part, shall be deemed to have committed an unlawful act and shall incur a penalty of one hundred dollars, which may be recovered by any one who sues for the same to and for his own use. Hiring conveyance for voters. Penalty.

2. Every voter, who hires any horse, cab, cart, wagon, sleigh, carriage or other conveyance for any such agent, for the purpose of conveying any voter or voters to or from the polling place or places, shall, *ipso facto*, be disqualified from voting at such polling of votes under this Part, and for every such offence shall incur a penalty of one hundred dollars, which may be recovered by any one suing for the same, to and for his own use. R.S., c. 106, s. 80. Hiring for agent. Penalty.

**96.** Every one, who, at any polling of votes under this Part,— Personation.

*(a)* applies for a ballot paper in the name of some other person, whether such name is that of a person living or dead, or a fictitious person; or, By applying for ballot paper.

Voting again.

*(b)* having voted once at any such polling, afterwards applies at the same polling for a ballot paper in his own name;

Penalty.

is for all the purposes of this Act guilty of the offence of personation and shall be liable to a penalty not exceeding two hundred dollars and to imprisonment for a term not exceeding six months. R.S., c. 106, ss. 81 and 82.

Compelling or inducing another to personate or swear falsely.

**97.** Every agent or other person in either interest, who corruptly, by himself or by or with any other person on his behalf, compels, or induces or endeavours to induce any person to personate any voter, or to take any false oath in any matter wherein an oath is required under this Part, is guilty of an indictable offence and shall, in addition to any other punishment to which he is liable for such offence, incur a penalty of two hundred dollars which may be recovered by any one who sues for the same, to and for his own use. R.S., c. 106, s. 83.

Penalty.

What shall be corrupt practices.

**98.** The offences of bribery, treating or undue influence aforesaid, personation or the inducing any person to commit personation, or any wilful offence against any of the eight sections last preceding, shall be corrupt practices within the meaning of the provisions of this Act. R.S., c. 106, s. 84.

Certain offences with respect to ballot papers.

**99.** Every one who,—

*(a)* forges or counterfeits, or fraudulently alters, defaces or fraudulently destroys, any ballot paper or the initials of the deputy returning officer signed thereon; or,

*(b)* without authority supplies any ballot paper to any person; or,

*(c)* fraudulently puts into any ballot box any paper other than the ballot paper which he is authorized by law to put in; or,

*(d)* fraudulently takes out of the polling place any ballot paper; or,

*(e)* without due authority destroys, takes, opens or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of the poll; or,

*(f)* attempts to commit any offence specified in this section;

Penalty.

is guilty of an indictable offence, and liable, if a returning officer, deputy returning officer or other officer engaged at the polling, to a fine not exceeding one thousand dollars, and in default of payment to imprisonment for any term less than two years, with or without hard labour, and, if any other person, to a fine not exceeding five hundred dollars, and, in default of payment to imprisonment for any term not exceeding six months, with or without hard labour. R.S., c. 106, s. 85.

Neglect of duty by officer.

**100.** Every returning officer or deputy returning officer who refuses or neglects to perform any of the obligations or formalities required of him by this Part, shall, for each such

refusal or neglect, incur a penalty of two hundred dollars, which may be recovered by any person who sues for the same to and for his own use. R.S., c. 106, s. 86. Penalty.

**101.** Every officer who is guilty of any wilful misfeasance or any wilful act or omission in violation of this Part shall forfeit to any person aggrieved by such misfeasance, act or omission, a penal sum not exceeding five hundred dollars, in addition to the amount of all actual damages thereby occasioned to such person. R.S., c. 106, s. 87. Contravention by election officer. Penalty.

*Procedure.*

**102.** All penalties and forfeitures, other than fines in cases of indictable offences, imposed by this Part, shall be recoverable or enforceable, with full costs of suit, by information or by any person who sues for the same in an action of debt, in any court of competent jurisdiction in the province in which the cause of action arises; and in default of payment of the amount which the offender is condemned to pay, within the period fixed by the court, the offender shall, if no other term of imprisonment is herein specially provided in that behalf, be imprisoned in the common gaol of the county or district for any term less than two years, unless such penalty and costs are sooner paid; and such imprisonment may be with hard labour where herein specially authorized. Enforcement of penalties.

2. No action or information for the recovery of any such penalty or forfeiture shall be commenced unless the person suing for the same has given good and sufficient security, to the amount of fifty dollars, to indemnify the defendant for the costs of his defence, if the person suing is condemned to pay the same. R.S., c. 106, s. 88. Security for costs.

**103.** It shall be sufficient for the plaintiff, in any action or suit under this Part, to allege, in his pleading or declaration, that the defendant is indebted to him in the sum of money thereby demanded, and to allege the particular offence in respect of which the action or suit is brought, and that the defendant has acted contrary to this Part. R.S., c. 106, s. 89. What it shall suffice to state in declaration.

**104.** Every prosecution for any indictable offence under this Part, and every action, suit or proceeding for any pecuniary penalty given by this Part to the person suing for the same, shall be commenced within the space of six months next after the act committed, and not afterwards, unless the same is prevented by the withdrawal or absconding of the defendant out of the jurisdiction of the court, and when commenced, shall be proceeded with and carried on without wilful delay. R.S., c. 106, s. 90. Limitation of actions.

*General.*

Mistakes in method only not fatal.

**105.** No polling of votes under this Part shall be declared invalid by reason of a non-compliance with the provisions of this Part, as to the taking of the poll or the counting of the votes, or of any mistake in the use of the forms contained in the schedule to this Act, if it appears to the tribunal having cognizance of the question that the polling of votes was conducted in accordance with the principles laid down in this Part, and that such non-compliance or mistake did not affect the result of the polling. R.S., c. 106, s. 91.

No privilege in relation to proceedings in court.

**106.** No person shall be excused from answering any question put to him in any action, suit or other proceeding in any court, or before any judge, commissioner or other tribunal, touching or concerning any polling of votes under this Part, or the conduct of any person thereat, or in relation thereto, on the ground of any privilege, or on the ground that the answer to such question will tend to criminate such person; but no answer given by any person claiming to be excused on the ground of privilege or on the ground that such answer will tend to criminate himself, shall be used in any criminal proceeding against such person, other than an indictment for perjury, if the judge, commissioner or president of the tribunal gives to the witness a certificate that he claimed the right to be excused on either of the grounds aforesaid and made full answer to the satisfaction of the judge, commissioner or tribunal. R.S., c. 106, s. 92.

Provision as to use of answer.

Contracts relating to polling of votes void.

**107.** Every executory contract, or promise or undertaking, in any way referring to, arising out of, or depending upon, any polling of votes under this Part, even for the payment of lawful expenses or the doing of some lawful act, shall be void in law.

Recovering back money.

2. This section shall not enable any person to recover back any money paid for lawful expenses connected with such polling. R.S., c. 106, s. 93.

No further election within three years.

**108.** When, in the county or city, one-half or more of all the votes polled have been against the adoption of any petition embodied, as aforesaid, in any notice and in any proclamation under this Part, no similar petition shall be put to the vote of the electors of such county or city for a period of three years from the day on which such vote was taken. R.S., c. 106, s. 94.

*Order in Council bringing into force.*

Bringing Part II. of Act into force where licenses exist.

**109.** When any petition embodied, as aforesaid, in any notice and in any proclamation under this Part, has been adopted by the electors of the county or city named therein, and to which the same relates, the Governor in Council may,

at any time after the expiration of sixty days from the day on which the same was adopted, by order in council published in the *Canada Gazette*, declare that Part II. of this Act shall be in force and take effect in such county or city upon, from and after the day on which the annual or semi-annual licenses for the sale of spirituous liquors then in force in such county or city will expire, if such day is not less than ninety days from the day of the date of such order in council; and if it is less, then on the like day in the then following year; and upon, from and after that day, Part II. of this Act shall become and be in force and take effect in such county or city accordingly, subject however to the revocation of such order in council as hereinafter provided.

Where no licenses exist.

2. If, in any county or city, there are no licenses in force when the petition mentioned in this Part is adopted, Part II. of this Act shall become and be in force, and take effect in such county or city, after the expiration of thirty days from the day of the date of an order in council to that effect, published in the *Canada Gazette*. R.S., c. 106, s. 95; 51 V., c. 35, s. 9.

*Revocation of Order in Council.*

Revoking order in council.

**110.** No order in council issued under this Part shall be revoked until after the expiration of three years from the date of the coming into force under it of Part II. of this Act.

Submitting petition to vote.

2. No petition for the revocation of the order in council which declares Part II. of this Act in force, shall be submitted to the vote of the electors sooner than thirty days before the expiration of three years from the coming into force of Part II. of this Act in any county or city. 51 V., c. 35, s. 3.

Form of petition for revocation.

**111.** A petition to the Governor in Council praying for revocation of any order in council, passed for bringing Part II. of this Act into force, may be in form M or to the like effect. 51 V., c. 35, s. 5.

Petition embodied in notice to Secretary of State.

**112.** Such petition may be embodied, as in form M, in a notice in writing addressed to the Secretary of State of Canada and signed by electors in a county or city, to the effect that the signers desire that the votes of such electors as, under the provisions of this Part are entitled to vote for the bringing into force of Part II. of this Act, be taken for and against the revocation of the order in council bringing Part II. of this Act into force. 51 V., c. 35, s. 6.

Application of provisions to proceedings for revocation.

**113.** The provisions of this Part as to proceedings for bringing Part II. of this Act into force, including such as relate to the mode of obtaining a poll, and to the returning officers and their duties, and to the poll, and to proceedings after close of the poll, and to the summing up of the votes and returns,

returns, and to the secrecy of voting, and to the preservation of peace and good order, and to the prevention of corrupt practices and other illegal acts, and to procedure, except so much of such provisions as relates to the form and substance of the petition in that behalf, and to the form and substance of the ballot paper and printed directions to be furnished to the deputy returning officers, shall apply, *mutatis mutandis*, to every case of a petition and notice for revocation of an order in council under this Part, and to all the proceedings to be had and taken thereon, and shall be applicable in respect of the powers to be exercised, and to the offences which may be committed and the penalties which may be incurred in the course of, and in connection with, such proceedings. 51 V., c. 35, s. 7.

Form of ballot paper.

**114.** For the voting for the revocation of any such order in council the ballot of each voter shall be a printed paper, in this Part called a ballot paper, with a counterfoil, and the ballot paper and counterfoil shall be according to form N, and in such ballot paper the words *Against the Act* shall be printed in red ink and the words *For the Act* in black ink; and the printed directions to be furnished to the deputy returning officers shall be according to form O. 51 V., c. 35, s. 8.

Printed directions.

Declaring Part II. of Act no longer in force.

**115.** When any petition for the revocation of an order in council for the bringing into operation of Part II. of this Act is adopted by the electors of the county or city to which the same relates, the Governor in Council may, at any time after the expiration of thirty days from the day on which the same was so adopted, by order in council published in the *Canada Gazette*, declare that Part II. of this Act shall no longer be in force; and thereafter Part II. shall cease to be in force or effect in such county or city. 51 V., c. 35, s. 9.

*Repeal of By-laws passed under The Temperance Act of 1864, and Repeal of Certain Sections of that Act.*

Proceedings for repeal of by-law under Temperance Act, 1864.

**116.** If a petition to the Governor in Council, praying for the repeal of a by-law passed by the council of any county or city in the provinces of Ontario or Quebec under the authority and for the enforcement of the Act of the Legislature of the late province of Canada, passed in the session thereof held in the twenty-seventh and twenty-eighth years of Her late Majesty's reign, chaptered eighteen, and known as *The Temperance Act of 1864*, is embodied in a notice addressed to the Secretary of State and signed by one-fourth or more of the electors of such county or city, and such proceedings are had thereon as are, by this Part, required to be had on a notice and petition for bringing Part II. of this Act into force, and more than one-half of the votes polled are found to be for the petition, the Governor in Council may, by order in council, repeal such by-law, and thereupon such by-law shall become

and be repealed, upon, from, and after the day of the publication of such order in council in the *Canada Gazette*.

Application of provisions of preceding sections.

2. Each and all of the provisions of the preceding sections of this Part shall apply, *mutatis mutandis*, to every case of a petition and notice for the repeal of any such by-law, and to the proceedings to be had and taken thereon, and in respect to the powers to be exercised, and the offences that may be committed and penalties that may be incurred in the course of and in connection with such proceedings.

Application in case of divided counties.

3. The provisions of this section shall be applicable to counties which have been divided for municipal purposes after the adoption of *The Temperance Act of 1864*. R.S., c. 106, s. 97; 51 V., c. 35, s. 10.

## PART II.

### TRAFFIC IN INTOXICATING LIQUORS.

*Prohibition.*

Sale of liquor where this Part of this Act is in force.

**117.** From the day on which this Part comes into force and takes effect in any county or city, and for so long thereafter as the same continues in force therein, no person shall, except as in this Part specially provided, within such county or city, by himself, his clerk, servant or agent, expose or keep for sale, or directly or indirectly, on any pretense or upon any device, sell or barter, or, in consideration of the purchase of any other property, give to any other person any intoxicating liquor.

Possession of licenses not to render act lawful.

2. No act done in violation of the foregoing provisions of this section shall be rendered lawful by reason of,—

*(a)* any license issued to any distiller or brewer; or,

*(b)* any license for retailing on board any steamboat or other vessel, brandy, rum, whiskey, or other spirituous liquors, wine, ale, beer, porter, cider, or other vinous or fermented liquors; or,

*(c)* any license for retailing on board any steamboat or other vessel, wine, ale, beer, porter, cider, or other vinous or fermented liquors, but not brandy, rum, whiskey or other spirituous liquors; or,

*(d)* any license of any other description whatsoever. R.S., c. 106, s. 99.

Sale for sacramental purposes.

**118.** The sale of wine for exclusively sacramental purposes may, on the certificate of a clergyman affirming that the wine is required for sacramental purposes, be made by druggists and vendors thereto specially licensed by the lieutenant governor in each province; but the number of such licensed druggists and vendors shall not exceed one in each township or parish, or two in each town, or one for every four thousand inhabitants in each city. R.S., c. 106, s. 99.

Sale for purposes of medicine, art, trade or manufacture.

**119.** The sale of intoxicating liquor for exclusively medicinal purposes, or for *bona fide* use in some art, trade or manufacture, may be made by any person duly authorized to sell the same; but such intoxicating liquor when sold for medicinal purposes, shall be removed from the premises, and such sale shall be made only on the certificate of a legally qualified physician having no interest in the sale, affirming that such liquor has been prescribed for the person named therein.

Certificate to be produced.

2. When such sale of intoxicating liquor is for its use in some art, trade or manufacture, the same shall be made only on a certificate, signed by two justices of the peace, of the good faith of the application, accompanied by the affirmation of the applicant, that the liquor is to be used only for the particular purposes set forth in the affirmation.

Record and annual return to collector.

3. Such vendor shall file the certificates and keep a register of all such sales, indicating the name of the purchaser and the quantity sold, and shall make an annual return of all such sales, on the thirty-first day of December in every year, to the collector of Inland Revenue within whose revenue division the county or city is situate. 51 V., c. 34, s. 5.

Sale in wholesale quantities and to certain persons only.

**120.** Any producer of cider in the county may, at his premises, and any licensed distiller or brewer, having his distillery or brewery within any county or city, may at such distillery or brewery, expose and keep for sale such liquor as he manufactures thereat, and no other; and may sell the same thereat, but only in quantities not less than ten gallons, or in the case of ale or beer, not less than eight gallons at any one time, and only to druggists and vendors licensed as aforesaid, or to such person as he has good reason to believe will forthwith carry the same beyond the limits of the county or city, and of any adjoining county or city in which this Part is then in force, to be wholly removed or taken away in quantities not less than ten gallons, or in the case of ale or beer, not less than eight gallons at a time. R.S., c. 106, s. 99.

Sales by vine-growing companies.

**121.** Any incorporated company authorized by law to carry on the business of cultivating and growing vines and of making and selling wine and other liquors produced from grapes, having their manufactory within such county or city, may thereat expose and keep for sale such liquor as they manufacture thereat and no other; and may sell the same thereat, but only in quantities not less than ten gallons at any one time, and only to druggists and vendors licensed as aforesaid, or to such persons as they have good reason to believe will forthwith carry the same beyond the limits of the county or city and of any adjoining county or city in which this Part is then in force, to be wholly removed and taken away in quantities not less than ten gallons at a time. R.S., c. 106, s. 99.

Sales by manufacturers of pure native wines.

**122.** Manufacturers of pure native wines made from grapes grown and produced by them in Canada may, when authorized so to do, by license from the municipal council, or other authority having jurisdiction where such manufacture is carried on, sell such wines at the place of manufacture in quantities of not less than ten gallons at one time, except when sold for sacramental or medical purposes, when any number of gallons, from one to ten, may be sold. R.S., c. 106, s. 99.

Sales by wholesale merchants and traders.

**123.** Any merchant or trader, exclusively in wholesale trade and duly licensed to sell liquor by wholesale, having his store or place for sale of goods within such county or city, may thereat keep for sale and sell intoxicating liquor, but only in quantities not less than ten gallons at any one time, and only to druggists and vendors licensed as aforesaid, or to such persons as he has good reason to believe will forthwith carry the same beyond the limits of the county or city, and of any adjoining county or city, in which this Part is then in force, to be wholly removed and taken away in quantities not less than ten gallons at a time. R.S., c. 106, s. 99.

Burden of proof of reasons of belief of intention to remove liquor sold.

**124.** In any prosecution against a producer, distiller, brewer, manufacturer, merchant or trader, for any violation of this Part, it shall lie upon the defendant to furnish satisfactory evidence of having good reason for believing that such liquor would be forthwith removed beyond the limits of the county or city, and of any adjoining county or city in which this Part is then in force, for consumption outside the same. R.S., c. 106, s. 99.

Sales by physicians and druggists.

**125.** Nothing in this Act shall be deemed to interfere with the purchase or sale, by legally qualified physicians, chemists or druggists,—

Officinal preparations.

(*a*) of the officinal preparations of the authorized pharmacopœias when made of full medicinal strength and sold only for medicinal purposes;

Patent medicines.

(*b*) of any patent medicine, unless such patent medicine is known to the vendor to be capable of being used as a beverage the sale of which is a violation of this Act;

Perfumery and preparations.

(*c*) of *eau de cologne*, bay rum, or other articles of perfumery, lotions, extracts, varnishes, tinctures or other pharmaceutical preparations containing alcohol, but not intended for use as beverages;

Methylated spirits.

(*d*) of methylated spirits for pharmaceutical, chemical or mechanical uses;

Alcohol for purposes of art, trade or manufacture.

(*e*) of spirituous liquors or alcohol for exclusively medicinal purposes, or for *bona fide* use in some art, trade or manufacture: Provided that such spirituous liquor or alcohol, when sold for medicinal purposes, shall not exceed in quantity ten ounces at any one time, and shall be removed from the premises, and that the sale thereof is

Certificate necessary.

made on the certificate or prescription of a legally qualified physician affirming that such liquor or alcohol has been prescribed for the person named therein; and that when such sale is for the use of the liquor or alcohol in some art, trade or manufacture, such sale shall be made only on a certificate signed by two justices of the peace of the good faith of the application, accompanied by the affirmation of the applicant that such liquor or alcohol is to be used only for the purposes set forth in the application.

Record of sales.

2. The vendor shall file all such certificates and prescriptions, and shall record every such sale in a book kept for that purpose, giving the name and address of the purchaser, the quantity of liquor or alcohol so sold, the name and address of the physician prescribing it, and of the person for whom it is prescribed, and of the justices whose names are appended to the certificate above referred to, and of the purpose for which the liquor or alcohol is prescribed.

Open for inspection.

3. The file of such certificates and prescriptions and the said book shall be kept for inspection by the inspector for the county or district at all proper times.

Annual return by vendor.

4. The vendor shall make an annual return of all such sales on the thirty-first day of December in every year to the collector of Inland Revenue within whose revenue division the county or district is situate. 55-56 V., c. 26, s. 1.

*Offences and Penalties.*

False medical certificate.

**126.** Any legally qualified physician who gives a certificate under this Part, for any other than strictly medical purposes, affirming that any intoxicating liquor, therein specified, has been prescribed for the person named therein, shall on summary

Penalty.

conviction, for the first offence be liable to a penalty of twenty dollars, and for any second or subsequent offence to a penalty of forty dollars. 51 V., c. 34, s. 5.

## PART III.

CONCERNING OFFENCES.

*Penalties and Prosecutions.*

Sale in violation of Part II.

**127.** Every one who by himself, his clerk, servant or agent, exposes or keeps for sale, or directly or indirectly, on any pretense or by any device, sells or barters, or in consideration of the purchase of any other property, gives to any other person any intoxicating liquor, in violation of Part II. of this Act,

Penalty.

shall, on summary conviction, be liable to a penalty, for the first offence, of not less than fifty dollars, or imprisonment for a term not exceeding one month, with or without hard labour, and, for a second offence, to a fine of not less than one hundred dollars, or imprisonment for two months, with or without hard labour,

labour, and, for a third and every subsequent offence, to imprisonment for a term not exceeding four months, with or without hard labour.

Employee selling.

2. Every one who, in the employment or on the premises of another, so exposes or keeps for sale, or sells or barters, or gives, in violation of Part II. of this Act, any intoxicating liquor, is equally guilty with the principal, and shall, on summary conviction, be liable to the same penalty or punishment.

Penalty.

Forfeiture.

3. All intoxicating liquors, with respect to which any such offence has been committed, and all kegs, barrels, cases, bottles, packages or receptacles of any kind in which such liquors are contained, shall be forfeited. 4 E. VII., c. 41, s. 1.

Second offence.

**128.** If any person who has been convicted of a violation of any provision of Part II. of this Act is afterwards convicted of any offence against such provision, or against any other provision of Part II., such conviction shall be deemed a conviction for a second offence, within the meaning of the last preceding section; and may be dealt with and punished accordingly, although the two convictions may be for acts of different descriptions; and if any such person is afterwards again convicted of a violation of any provision of Part II., whether similar or not to the previous offences, such conviction shall, in like manner, be deemed a conviction for a third offence, within the meaning of the last preceding section, and may be dealt with and punished accordingly. R.S., c. 106, s. 115.

Penalty.

Third offence.

Prosecution by collector.

**129.** Any prosecution for any such penalty or punishment may be brought by or in the name of the collector of Inland Revenue within whose official division the offence was committed, or by or in the name of any person. R.S., c. 106, s. 101.

Obligation to prosecute.

**130.** Such collector of Inland Revenue shall bring such prosecution, whenever he has reason to believe that any such offence has been committed, and that a prosecution therefor can be sustained, and would not subject him to any undue measure of responsibility in the premises. R.S., c. 106, s. 102.

Before whom prosecution may be brought.

**131.** Such prosecution may be brought before any judge of the sessions of the peace, recorder, police magistrate, stipendiary magistrate, sitting magistrate, two justices of the peace, or any magistrate having the power or authority of two or more justices of the peace, having jurisdiction where the offence was committed. 51 V., c. 34, s. 6.

Other officials not to interfere.

**132.** If any prosecution is brought before any such judge of the sessions of the peace, recorder, police magistrate, stipendiary magistrate, sitting magistrate, or magistrate having the power or authority of two or more justices of the peace, no other justice shall sit or take part therein. 51 V., c. 34, s. 7.

Prosecution before two justices.

**133.** If such prosecution is proposed to be brought before any two other justices of the peace, all acts and proceedings prior to the hearing and trial may be done and taken by one of them.

No other justice shall sit.

2. In such case no justice other than the two justices before whom the prosecution is proposed to be brought shall sit or take part therein, except in the case of their absence or in the absence of one of them; and not in the former, except with the assent of the prosecutor, or in the latter, except with the assent of the one of such justices who is present. 51 V., c. 34, s. 8.

Limitation of prosecutions.

**134.** Every such prosecution shall be commenced within three months after the alleged offence, and shall be heard and determined in a summary manner, either upon the confession of the defendant or upon the evidence of a witness or witnesses. R.S., c. 106, s. 106.

Summary conviction.

**135.** Every offence against Part II. of this Act may be prosecuted and the penalties and punishments therefor enforced in the manner directed by Part XV. of the Criminal Code so far as no provision is in this Part made for any matter or thing which is required to be done with respect to such prosecution; and all the provisions contained in Part XV. of the Criminal Code shall be applicable to such prosecutions and to the judicial and other officers before whom the same are by this Part authorized to be brought, in the same manner as if they were incorporated in this Part, and as if all such judicial and other officers were named in this Part. R.S., c. 106, s. 107; 51 V., c. 34, s. 9.

Search warrant.

**136.** If it is proved upon oath before any judge of the sessions of the peace, recorder, police magistrate, stipendiary magistrate, sitting magistrate, two justices of the peace, or any magistrate having the power or authority of two or more justices of the peace, that there is reasonable cause to suspect that any intoxicating liquor is kept for sale in violation of Part II. of this Act, or of *The Temperance Act of 1864*, in any dwelling-house, store, shop, warehouse, outhouse, garden, yard, croft, vessel, or other place or places, such officer may grant a warrant to search in the day time such dwelling-house, store, shop, warehouse, outhouse, garden, yard, croft, vessel, or other place or places for such intoxicating liquor, and if the same or any part thereof is there found, to bring the same before him.

Form of information.

2. Any information to obtain a warrant under this section may be in form Q, and any search warrant under this section may be in form R. 51 V., c. 34, s. 10.

Destruction of liquor seized under warrant.

**137.** When any person is convicted of any offence against any of the provisions of Part II. of this Act, or *The Temperance Act of 1864*, the officer or officers so convicting may adjudge

adjudge and order, in addition to any other penalty or punishment, that the intoxicating liquor in respect to which the offence was committed, and which has been seized under a search warrant as aforesaid, and all kegs, barrels, cases, boxes, bottles, packages, and other receptacles of any kind whatsoever, found containing the same be forfeited and destroyed, and such order shall thereupon be carried out by the constable or peace officer who executed the said search warrant or by such other person as may be thereunto authorized by the officer or officers who have made such conviction. 51 V., c. 34, s. 11.

*Necessary Allegations in Proceedings.*

Description of offences.

**138.** In describing offences respecting the sale or other unlawful disposal of intoxicating liquor, or the keeping thereof for sale, in any information, summons, conviction, warrant or proceeding under *The Temperance Act of 1864*, or under this Act, it shall be sufficient to state the unlawful sale, barter, disposal or keeping of intoxicating liquor simply, without stating the name or kind of such liquor, or the price thereof, or the name of any person to whom it was sold, bartered or disposed of; and it shall not be necessary to state the quantity of liquor so sold, bartered, disposed of or kept, except in the case of offences where the quantity is essential, and it shall then be sufficient to allege the sale or disposal of more or less than such quantity.

Alleging a negative.

2. It shall not be necessary, in any such summons, conviction, warrant or proceeding, to negative the circumstances, the existence of which would make the act complained of lawful, but upon any such circumstances being proved in evidence, the defendant shall be acquitted.

Provision applies to all cases.

3. The provision of the last preceding subsection as to manner of statement of an offence shall apply, whether such circumstances are stated by way of exception in the section under which the offence is laid, or in a substantive section, or otherwise. R.S., c. 106, s. 110.

*Proof.*

Liquor in premises where bar is found deemed to be kept for sale.

**139.** When in any house, shop, room or other place in any municipality in which Part II. of this Act or in which any prohibitory by-law passed under the provisions of *The Temperance Act of 1864*, is in force, a bar, counter, beer pumps, kegs, or any other appliances or preparations similar to those usually found in taverns and shops where intoxicating liquors are usually sold or trafficked in, are found, and intoxicating liquor is also found in such house, shop, room or place, such liquor shall be deemed to have been kept for sale contrary to the provisions of Part II. of this Act or of *The Temperance Act of 1864*, as the case may be, unless the contrary is proved by the defendant in any prosecution; and the occupant of such house, shop, room or other place shall be taken conclusively to be

Occupant deemed the keeper.

be the person who keeps therein such liquor for sale. R.S., c. 106, s. 111.

Passing of money or description of liquor need not be proved.

**140.** In proving the sale or barter or other unlawful disposal of liquor for the purpose of any proceeding relative to any offence under *The Temperance Act of 1864*, or under this Act, it shall not be necessary to show that any money actually passed or that any liquor was actually consumed, if the justices, magistrate or other officer or court hearing the case is satisfied that a transaction, in the nature of a sale or barter or other unlawful disposal, actually took place. R.S., c. 106, s. 112.

Conclusive evidence not necessary.

**141.** In any prosecution under *The Temperance Act of 1864*, or under this Act, for the sale or barter or other unlawful disposal of intoxicating liquor, it shall not be necessary that any witness should depose directly to the precise description of the liquor sold or bartered, or the precise consideration therefor, or to the fact of the sale or other disposal having taken place, with his participation or to his own personal and certain knowledge; but the justices or magistrate or other officer trying the case, so soon as it appears to them or him that the circumstances in evidence sufficiently establish the violation of law complained of, shall put the defendant on his defence, and in default of his rebuttal of such evidence, shall convict him accordingly. R.S., c. 106, s. 113.

Rebuttal competent.

Wife or husband a competent witness.

**142.** On the trial of any proceeding, matter or question under *The Temperance Act of 1864*, or under this Act, the person opposing or defending, or the wife or husband of such person opposing or defending, shall be competent to give evidence in such proceeding, matter or question. R.S., c. 106, s. 114; 51 V., c. 34, s. 13.

*Subsequent Offences.*

Subsequent offence to be first inquired into.

**143.** In case of a previous conviction or convictions being charged,—

*(a)* the justices or magistrate or other officer shall, in the first instance, inquire concerning such subsequent offence only, and if the accused is found guilty thereof, and is present when so found guilty, he shall then, and not before, be asked whether he was so previously convicted, as alleged in the information, and, if he answers that he was so previously convicted, he may be convicted accordingly, but, if he denies that he was so previously convicted or stands mute of malice, or does not answer directly to such question, or is not present when found guilty as aforesaid, the justices or police magistrate or other officer shall then inquire concerning such previous conviction or convictions;

Number of previous convictions.

*(b)* the number of such previous convictions shall be provable by the production of a certificate under the hand of

the convicting justices or magistrate, or officer, or of the clerk of the peace, without proof of signature or official character, or by other satisfactory evidence;

*(c)* a conviction may, in any case be had as for a first offence, notwithstanding that there has been a prior conviction or convictions for the same or any other offence. Conviction in any case for first offence.

2. Convictions for several offences may be made under this Act, although such offences have been committed on the same day; but the increased penalty or punishment hereinbefore imposed shall only be recoverable or be liable to be imposed in the case of offences committed on different days, and after information laid for a first offence. R.S., c. 106, s. 115. Several offences on same day. Increased penalty.

**144.** In the event of any conviction for any second or subsequent offence becoming void or defective after the making thereof, by reason of any previous conviction being set aside, quashed or otherwise rendered void, the justices or magistrate or other officer by whom such second or subsequent conviction was made, may, by summons under his or their hand, require the person convicted to appear at a time and place to be named in such summons, and may thereupon, upon proof of the due service of such summons, if such person fails to appear, or on his appearance, amend such second or subsequent conviction, and adjudge such penalty or punishment as might have been adjudged had such previous conviction never existed, and such amended conviction shall thereupon be deemed valid, to all intents and purposes, as if it had been made in the first instance. R.S., c. 106, s. 115. Amendment of second conviction if first conviction set aside.

*Variances, Defects and Amendments.*

**145.** In the event of any variance between the information and evidence adduced in support thereof, the justices or magistrate or other officer may amend or alter such information, and may substitute, for the offence charged therein, any other offence against the provisions of *The Temperance Act of 1864*, or of this Act, as the case may be; but if it appears that the defendant has been materially misled by such variance, such justices, magistrate or other officer shall thereupon adjourn the hearing of the case to a future day, unless the defendant waives such adjournment. R.S., c. 106, s. 116. Amendment of information for variance. Adjournment if defendant misled.

**146.** No conviction or warrant enforcing the same, or other process or proceeding under either of the said Acts shall be held insufficient or invalid by reason of any variance between the information and conviction, or by reason of any other defect in form or substance, if it can be understood from such conviction, warrant, process or proceeding, that the same was made for an offence against some provision of such Act, within the jurisdiction of the justices or magistrate or other officer who made or signed the same, and if there is evidence to prove such offence, and if no greater penalty is imposed than is authorized by such Variance or defect not to invalidate conviction.

Proviso.

Act: Provided that the court or judge, where so satisfied, shall, even if the punishment imposed or the order made is in excess of that which might lawfully have been imposed or made, have the like powers in all respects to deal with the case as seems just as are by section seven hundred and fifty-four of the Criminal Code conferred upon the court to which an appeal is taken under the provisions of section seven hundred and forty-nine of the Criminal Code. R.S., c. 106, s. 117; 55-56 V., c. 29, s. 889.

Application to quash conviction to be decided upon the merits.

**147.** Upon any application to quash such conviction or warrant enforcing the same, or other process or proceeding, or to discharge any person in custody under such warrant, whether such application is made in appeal or upon *habeas corpus,* or otherwise, the court or judge to whom such appeal is made, or to whom such application is made in appeal or upon *habeas corpus,* or otherwise, shall dispose of such appeal or application upon the merits, notwithstanding any such variance or defect as aforesaid.

Amendment.

2. Such court or judge may, in any case, amend any such conviction or warrant, process or proceeding, if necessary.

Not to be quashed if merits tried.

3. In all cases in which it appears that the merits have been tried and that any conviction, warrant, process or proceeding is sufficient and valid under this section or otherwise, such conviction, warrant, process or proceeding shall be affirmed, or shall not be quashed, as the case may be; and any conviction, warrant, process or proceeding so affirmed, or affirmed and amended, may be enforced in the same manner as convictions affirmed on appeal, and the costs thereof shall be recoverable as if originally awarded. R.S., c. 106, s. 118.

Enforcement.

*Certiorari and Appeal Restricted.*

*Certiorari* taken away.

**148.** No conviction, judgment or order, in respect of any offence against Part II. of this Act, shall be removed by *certiorari* or otherwise into any of His Majesty's courts of record.

No appeal in certain cases.

2. No appeal shall be allowed from any such conviction, judgment or order to any court of general sessions or other court whatsoever, if the conviction has been made by a stipendiary magistrate, recorder, judge of the sessions of the peace, police magistrate, sitting magistrate, or any magistrate or officer having the power and authority of two or more justices of the peace.

Except in case of conviction of a medical man.

3. The provisions of this section, taking away an appeal, shall not apply to any conviction made against any legally qualified physician on a charge of having given a certificate under Part II. of this Act for any other than strictly medicinal purposes, affirming that the liquor specified therein had been prescribed for the person named therein. R.S., c. 106, s. 119; 51 V., c. 34, ss. 5 and 12.

*Compounding Offences.*

**149.** Every one who, having violated any of the provisions of this Act or of any Act in force in any province, respecting the issue of licenses for the sale of fermented or spirituous liquors, or of *The Temperance Act of 1864*, compromises, compounds or settles, or offers or attempts to compromise, compound or settle the offence with any person or persons, with the view of preventing any complaint being made in respect thereof, or if a complaint has been made, with the view of getting rid of such complaint, or of stopping or of having the same dismissed for want of prosecution or otherwise, is guilty of an offence against this Act, and on conviction thereof, shall be liable to imprisonment at hard labour in the common gaol of the county or district in which the offence was committed, for any term not exceeding three months. Compounding offence. Penalty.

2. Every one who is concerned in, or is a party to the compromise, composition or settlement mentioned in this section, is guilty of an offence against this Act, and, on conviction thereof, shall be liable to imprisonment in the common gaol of the county or district in which the offence was committed, for any term not exceeding three months. R.S., c. 106, s. 120. Punishment of parties to compromise.

*Tampering with Witnesses.*

**150.** Every one who, on any prosecution under any of the Acts referred to in the last preceding section, tampers with a witness, either before or after he is summoned or appears as such witness on any trial or proceeding under any of such Acts, or by the offer of money, or by threats, or in any other way, either directly or indirectly, induces or attempts to induce any such witness to absent himself, or to swear falsely, shall incur a penalty of fifty dollars for each offence. R.S., c. 106, s. 121. Tampering with witnesses. Penalty.

**151.** The forms given in the schedule to this Act, or any forms to the like effect, shall be sufficient in the cases thereby respectively provided for, and, where no forms are prescribed by the said schedule, new ones may be framed in accordance with this Act or with Part XV. of the Criminal Code in so far as the same are not inconsistent with any provisions made in this Act, for any matter or thing required to be done with respect to any prosecution. 51 V., c. 34, s. 14. Forms to be used.

## SCHEDULE.

FORM A.

*Forms of Notice and Petition for the Bringing of Part II. of this Act into Force.*

To the Honourable the Secretary of State of Canada:

SIR,—We, the undersigned electors of the county (*or* city) of request you to take notice that we propose

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presenting the following petition to His Excellency the Governor General, namely:—

To His Excellency the Governor General of Canada in Council.

The petition of the electors of the county (*or* city) of , qualified and competent to vote at the election of a member of the House of Commons in the said county (*or* city),—

Respectfully shows, that your petitioners are desirous that Part II. of the Canada Temperance Act, should be in force and take effect in the said county (*or* city).

And that we desire that the votes of all the electors of the said county (*or* city) be taken for and against the adoption of the said petition.

Wherefore your petitioners humbly pray that Your Excellency will be pleased, by an order in council under the one hundred and ninth section of the said Act, to declare that Part II. of the said Act shall be in force and take effect in the said county (*or* city).

And your petitioners will ever pray, etc.

R.S., c. 106, sch. form A.

FORM B.

*Oath of the Returning Officer.*

I, the undersigned, A.B., returning officer under the Canada Temperance Act, for the county (*or* city) of solemnly swear (*or if he be one of the persons permitted by law to affirm in civil cases,* solemnly affirm) that I will act faithfully in that capacity, without partiality, fear, favour or affection. So help me God.

*(Signature)* A.B.,
*Returning Officer.*

*Certificate of Returning Officer having taken Oath of Office.*

I, the undersigned, hereby certify that on the day of the month of , 19 , A. B., the returning officer, under the Canada Temperance Act, for the county (*or* city) of , took and subscribed before me the oath (*or* affirmation) of office, in such case required of a returning officer, by section fourteen of the Canada Temperance Act.

In testimony whereof, I have delivered to him this certificate.

(*Signature*) C. D.,
*Justice of the Peace.*

R.S., c. 106, sch. form B.

FORM C.

*Commission of a Deputy Returning Officer.*

To G. H. *(insert his addition and residence).*

Know you, that in my capacity of returning officer, under the Canada Temperance Act, for the county (*or* city) of I have appointed and do hereby appoint you to be deputy returning officer for the polling district number , of the said county (*or* city) of , there to take the votes of the electors by ballot, according to law, at the polling station to be by you opened and kept for that purpose, and you are hereby authorized and required to open and hold the poll, under the said Act, for the said polling district, on the day of , at nine o'clock in the forenoon, at *(here describe particularly the place in which the poll is to be held)*, and there to keep the said poll open during the hours prescribed by law, and to take, at the said polling place, by ballot, in the manner by law provided, the votes of the electors voting at the said polling place, and after counting the votes given and performing the other duties required of you by law, to return to me forthwith the ballot box, sealed with your seal, and inclosing the ballots, voters' list, and other documents required by law, together with this commission.

Given under my hand, at , this day of , in the year 19 .

(*Signature*) A. B.,
*Returning Officer.*

R.S., c. 106, sch. form C.

FORM D.

*Oath of Deputy Returning Officer.*

I, the undersigned, G. H., appointed deputy returning officer for the polling district, No. , of the county (*or* city) of , solemnly swear (*or, being one of the persons permitted by law to affirm in civil cases,* solemnly affirm) that I will act faithfully in my said capacity of deputy returning officer, without partiality, fear, favour or affection. So help me God.

(*Signature*) G. H.,
*Deputy Returning Officer.*

*Certificate of a Deputy Returning Officer having taken the Oath of Office.*

I, the undersigned, hereby certify that on the day of the month of , G. H., deputy returning officer for the polling district No. , of the county (*or* city) of , took and subscribed the oath (*or* affirmation) of office, required in such case of a deputy returning officer, by section eighteen of the Canada Temperance Act.

In testimony whereof, I have delivered to him this certificate under my hand.

(*Signature*) A. B.,
*Returning Officer.*
*or* C. D.,
*Justice of the Peace.*

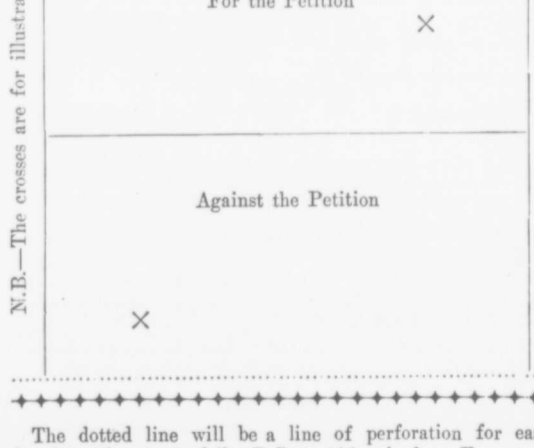
R.S., c. 106, sch. form D.

FORM E.

*Form of Ballot Paper.*

19 .

Voting on the petition to the Governor General for the bringing into force of Part II. of the Canada Temperance Act.




The dotted line will be a line of perforation for easily detaching the counterfoil. R.S., c. 106, sch. form E.

FORM F.

*Directions for the Guidance of Electors in Voting.*

The voter will go into one of the compartments, and with a pencil there provided, place a cross thus, ×, in the upper space if he votes for the adoption of the petition, and in the lower space if he votes against the adoption of the petition.

The voter will then fold the ballot, so as to show a portion of the back only, with the number and the initials of the deputy returning officer, and deliver it to the deputy returning officer, who will place it in the ballot box. The voter will then forthwith quit the polling station.

If a voter inadvertently spoils a ballot paper, he can return it to the proper officer, who, on being satisfied of the fact, will give him another.

If the voter places on the ballot more than one mark, or places any mark on it by which he can afterwards be identified, his vote will be void, and will not be counted.

If the voter takes a ballot paper out of the polling station, or fraudulently puts any other paper into the ballot box than the ballot paper given him by the deputy returning officer, he will be subject to be punished by fine or by imprisonment for a term not exceeding six months, with or without hard labour. R.S., c. 106, sch. form F.

FORM G.

*Form of Declaration of Agent.*

I, the undersigned, E. F., solemnly declare that I am desirous of promoting (*or* opposing) the adoption of a petition to the Governor General for the bringing into force in the said county (*or* city) of Part II. of the Canada Temperance Act.

(*Signature*) A. B.

Made and declared at this day of , A.D. 19 , before me,

C. D.,
*Returning Officer.*

R.S., c. 106, sch. form G.

FORM H.

*Form of Oath of Secrecy.*

I, the undersigned, E. F., agent for the electors of the county (*or* city) of , interested in promoting (*or* opposing) the adoption of a petition to the Governor General for the bringing into force in the said county (*or* city) of Part II. of the Canada Temperance Act, solemnly swear (*or if he be one of the persons permitted by law to affirm in civil cases,* solemnly affirm, promise and declare) that I will keep secret the way in

which any of the voters at the polling station in the polling district No. , marks his ballot in my presence, at this polling of votes for or against such petition. So help me God.

(*Signature.*) E.F.

Sworn (*or* affirmed) at this day of , A.D. 19 , before me.

A. B.,
*Returning Officer.*
*or* C. D.,
*Justice of the Peace.*

R.S., c. 106, sch. form H.

FORM I.

*Form of Voters' List.*

| Number of the Voters. | Names of the Voters. | Their legal addition. | Their place of residence. | Owners. | Tenants or occupants. | Residence or other qualification. | Objections. | Sworn or affirmed. | Voters refusing to be sworn or affirmed. | Voters voting after others have voted in their names. |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | |

NOTE.—*The qualification need not be inserted except where there are no provincial lists of voters.*

R.S., c. 106, sch. form I.

FORM J.

*Oath of Identity by Voter receiving a Ballot Paper after Another has Voted in his Name.*

I solemnly swear (*or, if he be one of the persons permitted by law to affirm in civil cases,* solemnly affirm), that I am A. B. of (*as on the voters' list*) whose name is entered on the voters' list now shown me. So help me God.

R.S., c. 106, sch. form J.

FORM K.

*Oath of Messenger sent to collect the Ballot Boxes.*

I, A. B., of , messenger appointed by C. D., returning officer for the county (*or* city) of , in the province of , do solemnly swear that the several boxes, to the number of now delivered by me to the said returning officer, have been handed to me by the several deputy returning officers at the present polling of votes, in the said county, city, or by (*here insert the names of the deputy returning officers who have delivered the said boxes*), that they have not been opened by me, nor by any other person, and that they are in the same state as they were when they came into my possession. (*If any change has taken place, the deponent shall vary his deposition by fully stating the circumstances.*)

(*Signature*) A. B.

Sworn (*or* affirmed) and subscribed before me, at this day of , in the year 19 .

(*Signature*) X. Y.,
*Justice of the Peace.*
*or* A. B.,
*Returning Officer.*
*or* G. H.,
*Deputy Returning Officer.*

R.S., c. 106, sch. form K.

FORM L.

*Oath of the Deputy Returning Officer after the Closing of the Poll.*

I, the undersigned, deputy returning officer for the polling district No. of the county (*or* city) of , do solemnly swear (*or, if he be one of the persons permitted by law to affirm in civil cases,* do solemnly affirm) that to the best of my knowledge and belief, the voters' list kept for the said polling district under my direction, has been so kept correctly, and that the total number of votes polled in the said list is , and that, to the best of my knowledge and belief it contains a true and exact record of the votes given at the polling station in the said polling district as the said votes were taken thereat, that I have faithfully counted the votes given for each interest, in the manner by law provided, and performed all duties required of me by law, and that the report, packets of ballot papers, and other documents required by law to be returned by me, to the returning officer, have been faithfully and truly prepared and placed within the ballot box, as this oath (*or* affirmation) will be to the end that the said ballot box

being first carefully sealed with my seal, may be transmitted to the returning officer according to law.

(*Signature*) G. H.,
*Deputy Returning Officer.*

Sworn before me at , in the county of , this day of , 19 .

(*Signature*) X. Y.,
*Justice of the Peace.*
*or* A. B.,
*Returning Officer.*

R.S., c. 106, sch. form L.

FORM M.

*Form of notice and petition for revocation of an order in council passed for bringing Part II. of the Canada Temperance Act into force.*

To the Honourable the Secretary of State of Canada.

SIR,—We, the undersigned electors of the county (*or* city) of request you to take notice that we propose presenting the following petition to His Excellency the Governor General of Canada in Council:—

The petition of the electors of the county (*or* city) of qualified and competent to vote at the election of a member of the House of Commons in the said county (*or* city) respectfully shows that your petitioners are desirous that the order in council passed for bringing into force within the said county (*or* city), Part II. of the Canada Temperance Act, should be revoked, wherefore your petitioners humbly pray that Your Excellency will be pleased by an order in council under section one hundred and fifteen of the Canada Temperance Act, to declare that the said order in council which brought into force and effect Part II. of the said the Canada Temperance Act, in the said county (*or* city) shall no longer be in force.

And that we desire that the votes of the electors of the said county (*or* city) be taken for and against the revocation of the said order in council.

And your petitioners will ever pray, etc.

51 V., c. 35, sch. form O.

FORM N.

*Form of Ballot Paper.*

19 .

Voting on the petition to the Governor General for the revocation of the order in council which brought into force Part II. of the Canada Temperance Act in the county (*or* city) of

*N.B.—The Crosses are for illustration.*


(*The dotted line will be a line of perforations for easily detaching the counterfoil.*)

Counterfoil

51 V., c. 35, form P.

FORM O.

*Directions for Guidance of Electors in Voting.*

The voter will go into one of the compartments, and with the pencil there provided place a cross thus × in the upper space if he votes against the Act and in the lower space if he votes for the Act.

The voter will then fold the ballot so as to show a portion of the back only with the number and initials of the deputy returning officer and deliver it to the deputy returning officer, who will place it in the ballot box. The voter will then, forthwith, quit the polling station.

If a voter inadvertently spoils a ballot paper he can return it to the proper officer who, on being satisfied of the fact, will give him another.

If the voter places on the ballot paper more than one mark, or places any marks on it by which he can afterwards be identified, his vote will be void and will not be counted.

If the voter takes a ballot paper out of the polling station, or fraudulently puts any other paper into the ballot box than the ballot paper given him by the deputy returning officer, he will be subject to be punished by fine or by imprisonment for a term not exceeding six months, with or without hard labour. 51 V., c. 35, sch. form Q.

FORM P.

*General form of Information.*

CANADA,

Province of

District (*or* county), *or as the case may be*) of To wit:

The information of A. B., of the of in the of , collector of Inland Revenue (*or as the case may be*), laid before me, C. D., police magistrate (*or as the case may be*) in and for the city of (*or* one of His Majesty's justices of the peace in and for the of ), this day of , in the year of Our Lord one thousand nine hundred and .

The said informant says he is informed and believes that X. Y., on or about the day of , in the year of Our Lord one thousand nine hundred and , at the of , in the of , unlawfully did sell intoxicating liquor contrary to the provisions of Part II. of the Canada Temperance Act then in force in the said county (*or* city, *as the case may be*).

N.B.—*For an information for a second or third offence add the appropriate clauses from forms U and V.*

A. B.

Laid and signed before me, the day and year and at the place first above mentioned.

C.D.,
*P.M. or J.P.*

*Forms for Describing Offences.*

2. *Unlawfully keeping intoxicating liquor for sale:*

'That X. Y., on at unlawfully did keep intoxicating liquor for sale, contrary to the provisions of Part II. of the Canada Temperance Act then in force in the said county (*or* city, *as the case may be*).'

3. *Unlawful sale by a distiller or brewer in small quantities:*

'That X. Y., being a licensed distiller (*or* brewer) having his distillery (*or* brewery) within the county (*or* city *or as the case may be*) of , on , at , unlawfully did sell whiskey (*or* other liquor manufactured in his distillery) in a quantity of less than ten gallons (*or* ale or beer in a quantity of less than eight gallons) at one time (*or* unlawfully did sell whiskey to be removed and taken away in quantities of less than ten gallons, *or* unlawfully did sell beer to be removed and taken away in quantities of less than eight gallons), contrary to, etc.' (*as in 2.*)

4. *Unlawful sale by a vine-growing company in small quantities:*

'That the company, being an incorporated company authorized by law to carry on the business of cultivating and growing vines, and of making and selling wine and other liquors produced from grapes, having their manufactory within the county (*or* city) of , on , at unlawfully did sell intoxicating liquor in a quantity of less than ten gallons at one time (*or* unlawfully did sell intoxicating liquor to be removed and taken away in quantities of less than ten gallons at one time) contrary to, etc.' (*as in 2.*)

5. *Unlawful sale by a manufacturer of native wines:*

'That X. Y., being a manufacturer of pure native wines made from grapes grown and produced by him in the Dominion of Canada, and being duly licensed to sell the same, on , at , unlawfully did sell such wines in a quantity of less than ten gallons (*or* unlawfully did sell such wine for sacramental or medicinal purposes in a quantity of less than one gallon) contrary to, etc.' (*as in 2.*)

6. *Unlawful sale by a wholesale merchant in small quantities:*

'That X. Y., having a license to sell intoxicating liquor by wholesale, on , at , unlawfully did sell intoxicating liquor in a quantity of less than ten gallons (*or* unlawfully did sell intoxicating liquor to be removed and taken away in quantities of less than ten gallons at one time) contrary to, etc.' (*as in 2.*)

7. *Physician unlawfully giving certificate:*

'That X. Y., being a legally qualified physician, on , at , unlawfully did give a certificate to obtain intoxicating liquor for other than strictly medicinal purposes, contrary to, etc.' (*as in 2.*)

8. *Tampering with a witness:*

'That X. Y., on a certain prosecution under the Canada Temperance Act, on , at , unlawfully did tamper with O. P., a witness in such prosecution, before (*or* after) he was summoned (*or* appeared) as a witness in such case (*or* by an offer of money, *or* by threat or otherwise) unlawfully did induce (*or* attempt to induce) such witness to absent himself (*or* herself), (*or* to swear falsely) contrary to, etc.' (*as in 2.*)

9. *Compromising or compounding a prosecution:*

'That X. Y., having violated a provision of the Canada Temperance Act, on , at , unlawfully did compromise (*or* compound *or* settle *or* offer *or* attempt to compromise, compound *or* settle) the offence with E. F., with the view of preventing any complaint being made in respect thereof (*or* with the view of getting rid of, *or* of stopping, *or* of having the complaint made in respect thereof, dismissed) (*as the case may be*) contrary to the provisions of the Canada Temperance Act.'

10. *Being a party to compromise a prosecution:*

'That X. Y., on , at , unlawfully was concerned in (*or* party to) a compromise (*or* a composition *or* a settlement) of an offence committed by O. P., against a provision of the Canada Temperance Act.'

51 V., c. 34, sch. form R.

FORM Q.

*Information to obtain a Search Warrant.*

CANADA,
PROVINCE OF
DISTRICT (*or* county, *or as the case may be*) of

The information of K. L., of the of in the said district (*or* county, etc., *yeoman*), taken this day of in the year of Our Lord before me W.S., Esq., one of His Majesty's justices of the peace, in and for the district (*or* county, *or* united counties, *or as the case may be*) of , who saith that he hath just and reasonable cause to suspect, and doth suspect that intoxicating liquor is kept for sale in violation of Part II. of the Canada

Temperance Act, in the (*dwelling-house, etc.*) of P. Q. of in the said district (*or* county, etc.) (*here add the causes of suspicion.*)

Wherefore he prays that a search warrant may be granted him to search the (*dwelling-house, etc.*) of the said P. Q. as aforesaid for the said intoxicating liquor.

Sworn (*or* affirmed) on the day and year first above mentioned at in the said district (*or* county, etc.) of before me.

(*Signature*) W. S.,
*J. P.*

51 V., c. 34, s. 15, sch. form M.

FORM R.

*Form of Search Warrant.*

CANADA,
PROVINCE OF
DISTRICT (*or* county, *or as the case may be*) of

To all or any of the constables, or other peace officers, in the district (*or* county, *or as the case may be*) of

Whereas, K. L., of the of in the said district (*or* county, etc.) hath this day made oath before me the undersigned, one of His Majesty's justices of the peace in and for the said district (*or* county, etc.) of that he hath just and reasonable cause to suspect and doth suspect that intoxicating liquor is kept for sale in violation of Part II. of the Canada Temperance Act, in the (*dwelling-house, etc.*) of one P. Q. of in the said district (*or* county, etc.) of : These are therefore, in the name of Our Sovereign Lord the King, to authorize and require you, and each and every of you, with necessary and proper assistance, to enter in the day time into the said (*dwelling-house, etc.*) of the said P. Q., and there diligently search for the said intoxicating liquor; and if the same, or any part thereof, shall be found upon such search, that you bring the intoxicating liquor so found, and also all barrels, kegs, cases, boxes, packages and other receptacles of any kind whatever containing the same before me to be disposed of and dealt with according to law.

Given under my hand and seal at in the said district (*or* county, etc.) this day of , in the year of Our Lord

(*Seal*) W. S.,
*J. P.*

51 V., c. 34, sch. form N.

FORM S.

*Summons to Witness.*

CANADA,
Province of
District (*or* county, *or as the case may be*) of To Wit:

To J. K., of the of , in the of

Whereas information has been laid before me, C. D., one of His Majesty's justices of the peace, in and for the of , (*or* police magistrate for the city of ), that X. Y., being a druggist, on the of , A.D. 19 , at the of , in the of , unlawfully did sell intoxicating liquor contrary to the provisions of Part II. of the Canada Temperance Act (*or as the case may be*) and it has been made to appear to me that you are likely to give material evidence on behalf of the prosecution in this matter:

These are to require you, under pain of imprisonment in the common gaol, personally to be and appear on the day of , A. D. 19 , at o'clock in the (fore)noon, at the , in the of , before me or such justice or justices of the peace as may then be there, to testify what you shall know in the premises, and also to bring with you, and there and then to produce all and every invoices, day-books, cash-books, or ledgers and receipts, promissory notes or other security relating to the purchase or sale of liquor by the said X. Y., and all other books and papers, accounts, deeds and other documents in your possession, custody or control, relating to any matter connected with the said prosecution.

Given under my hand and seal, this day of A.D. 19 , at the of in the of

C.D.,
*J.P.* (L.S.)

51 V., c. 34, sch. form S.

FORM T.

*Form of Conviction for first offence.*

CANADA,
Province of
District (*or* county, *or as the case may be*) of To Wit:

Be it remembered that on the day of , in the year of Our Lord one thousand nine hundred and , at

at the of , in the of , X. Y., is convicted before me, C.D., police magistrate in and for the city of (*or* before us, E. F., and G. H., two of His Majesty's justices of the peace, in and for the ), of having unlawfully sold intoxicating liquor on the day of , in the year of Our Lord one thousand nine hundred and , at the of , in the in his premises, (*or* of having unlawfully kept intoxicating liquor for sale, *or as the case may be*) contrary to the provisions of Part II. of the Canada Temperance Act, then in force in the said , A.B., being the informant; and I (*or* we) adjudge the said X. Y., for his said offence, to forfeit and pay the sum of fifty dollars, to be paid and applied according to law, and also to pay the said A.B., the sum of dollars for his costs in this behalf, and if the said several sums be not paid forthwith* I (*or* we) order the said sums to be levied by distress and sale of the goods and chattels of the said X. Y., and in default of sufficient distress in that behalf* [*or where the issuing of a distress warrant would be ruinous to the defendant and his family, or it appears that he has no goods whereon to levy a distress, then instead of the words between the asterisks**say*—' inasmuch as it has now been made to appear to me (*or* us) that the issuing of a warrant of distress in this behalf would be ruinous to said X. Y., and his family,' *or* 'that the said X. Y. has no goods or chattels whereon to levy the said several sums by distress,'] I (*or* we) adjudge the said X. Y., to be imprisoned in the common gaol for the of , at in the said , and there to be kept for the space of , unless the said sums and the costs and charges of the commitment and of the conveying of the said X. Y., to the said common gaol, shall be sooner paid.

Given under my hand and seal (*or* our hands and seals) the day and year first above mentioned, at the of in the aforesaid.

C.D., (L.S.)
*Police Magistrate*
*or* E.F., (L.S.)
*J.P.*
G.H., (L.S.)
*J.P.*

51 V., c. 34, sch. form T.

FORM U.

*Form of Conviction for a second offence.*

CANADA

Province of

District (*or* County, *or as the case may be*) of To Wit:

Be it remembered that on the day of , in the year of Our Lord one thousand nine hundred and , at the of , in the of , X. Y. is convicted before me, C. D., police magistrate in and for the city of (*or* before us, E. F. and G. H., two of His Majesty's justices of the peace, in and for the ), of having unlawfully sold intoxicating liquor on the day of , in the year of Our Lord, one thousand nine hundred and , at the of , in the , in his premises, (*or* of having unlawfully kept intoxicating liquor for sale, *as the case may be*) contrary to the provisions of Part II. of the Canada Temperance Act, then in force in the said , A.B. being the informant, and it appearing to me (*or* us) that the said X. Y. was previously, to wit, on the day of , A.D. 19 , at the of : I before, etc., duly convicted of having unlawfully sold intoxicating liquor contrary to the provisions of Part II. of the Canada Temperance Act then in force, in the said on the day of A.D. 19 , at the of : I [*or* we] adjudge the offence of the said X. Y., hereinbefore first mentioned, to be his second offence against the Canada Temperance Act, then in force in the said , and I (or we) adjudge the said X. Y., for his second offence, to forfeit and pay the sum of one hundred dollars, to be paid and applied according to law, and also to pay to the said A. B. the sum of dollars for his costs in this behalf; and if the said several sums be not paid forthwith, then* I (*or* we) order the said sums to be levied by distress and sale of the goods and chattels of the said X. Y., and in default of sufficient distress in that behalf,* [*or where the issuing of a distress warrant would be ruinous to the defendant and his family, or it appears that he has no goods whereon to levy a distress, then instead of the words between the asterisks*** say—'inasmuch as it has now been made to appear to me (*or* us) that the issuing of a warrant of distress in this behalf would be ruinous to the said X. Y. and his family,' *or* 'that the said X. Y. has no goods or chattels whereon to levy the said several sums by distress,'] I (*or* we) adjudge the said X. Y. to be imprisoned in the common gaol for the of , at in the said , and there to be kept for the space of , unless

unless the said sums and the costs and charges of the commitment and of the conveying of the said X. Y. to the said common gaol, shall be sooner paid.

Given under my hand and seal (*or* our hands and seals) the day and year first above mentioned, at the of in the aforesaid.

C. D., (L.S.)
*Police Magistrate.*
*or* E.F., (L.S.)
*J. P.*
G. H., (L.S.)
*J. P.*

51 V., c. 34, sch. form U.

FORM V.

*Form of Conviction for a third offence.*

CANADA,
Province of
District (*or* County, *or as the case may be*) of To wit:

Be it remembered that on the day of , in the year of Our Lord one thousand nine hundred and , in the of , in the X. Y. is convicted before the undersigned, C. D., police magistrate in and for the city of , in the said (*or* E. F. and G. H., two of His Majesty's justices of the peace in and for the said ), for that he, the said X. Y., on the day of , in the year of Our Lord, one thousand nine hundred and , at the city of (*or* of ) in the said (*as the case may be*) of having unlawfully sold intoxicating liquor (*or* of having unlawfully kept intoxicating liquor for sale, *or as the case may be*) contrary to the provisions of Part II. of the Canada Temperance Act, then in force in the said . And it also appearing to me (*or* us) that the said X. Y. was previously, to wit, on the day of , A.D. 19 , at the , of , before, &c., duly convicted of having unlawfully sold intoxicating liquor contrary to the provisions of Part II. of the Canada Temperance Act, then in force in the said , on the day of , A.D. 19 , at the , of . And it also appearing to me (*or* us) that the said X. Y. was previously, to wit, on the day of , A.D. 19 , at the of , before &c., (*see above*) again duly convicted of having unlawfully sold intoxicating

intoxicating liquor contrary to the provisions of Part II. of the Canada Temperance Act, then in force in the said on the day of , A.D. 19 , at the . (*or as the case may be*).

I (*or* we) adjudge the offence of the said X. Y. hereinbefore firstly mentioned, to be his third offence against the Canada Temperance Act, then in force in the said (A. B. being the informant), and I (*or* we) adjudge the said X. Y. for his said third offence to be imprisoned in the common gaol of the said of at , in the said of , there to be kept for the space of calendar months (*or as the case may be*) with (*or* without) hard labour.

Given under my hand and seal (*or* our hands and seals) the day and year above mentioned, at the of in the aforesaid.

C.D., (L.S.)
*Police Magistrate.*
*or* E.F., (L.S.)
*J.P.,*
G.H., (L.S.)
*J.P.,*

51 V., c. 34, sch. form V.

FORM W.

*Warrant of Commitment for first offence where penalty is imposed.*

CANADA,
Province of
District (*or* County, *or as the case may be*) *of* To Wit:

To all or any of the constables and other peace officers in the and to the keeper of the common gaol of the said at , in the of :

Whereas X. Y., late of the of , in the said , was this day convicted before the undersigned C. D., police magistrate in and for the city of (*or* E. F., and G. H., two of His Majesty's justices of the peace in and for the , of , ), (*or* of , *or as the case may be*), for that he, the said X. Y., on at unlawfully did sell intoxicating liquor (*state offence as in the conviction*), contrary to the provisions of Part II. of the Canada Temperance Act, then in force in the said (A. B. being the informant), and it was thereby adjudged that the said X.Y., for his said offence should forfeit and pay the sum of (*as in the conviction*). and should pay the said A. B. the sum of for his costs in that behalf;

And it was thereby ordered that if the said several sums were not paid (forthwith) the same should be levied by distress and sale of the goods and chattels of the said X. Y., and it was thereby also adjudged that the said X. Y., in default of sufficient distress, should be imprisoned in the common gaol of the said county, at , in the said county of for the space of , unless the said several sums and all costs and charges of the said distress and of the commitment and of the conveying of the said X. Y. to the said common gaol were sooner paid;

And whereas the said X. Y. has not paid the said several sums, or any part thereof, although the time for payment thereof has elapsed;

[*If a distress warrant issued and was returned 'no goods,' or 'not sufficient goods' say*] 'and whereas afterwards on the day of , A.D. 19 , I, the said police magistrate (*or* we, the said justices) issued a warrant to the said constables or peace officers, or any of them, to levy the said several sums of and by distress and sale of the goods and chattels of the said X. Y.;

'And whereas it appears to me (*or* us), as well by the return of the said warrant of distress by the constable who had the execution of the same as otherwise, that the said constable has made diligent search for the goods and chattels of the said X. Y., but that no sufficient distress whereon to levy the said sums could be found;'

[*Or where the issuing of a distress warrant would be ruinous to the defendant and his family, or if it appears that he has no goods whereon to levy a distress then, instead of the foregoing recitals of the issue and return of the distress warrant &c., say*—

'And whereas it has been made to appear to me (*or* us), that the issuing of a warrant of distress in this behalf would be ruinous to the said X. Y. and his family,' *or* 'that the said X. Y. has no goods or chattels whereon to levy the said sums by distress' *as the case may be*;]

These are therefore to command you, the said constables or peace officers, or any of you, to take the said X. Y., and him safely convey to the common gaol aforesaid at , in the of and there deliver him to the said keeper thereof, together with this precept.

And I (*or* we) do hereby command you the said keeper of the said common gaol to receive the said X. Y. into your custody in the said common gaol, there to imprison him and keep him for the space of unless the said several sums and all the costs and charges of the said distress amounting to the sum of , and of the commitment and of the conveying of the said X. Y. to the said common gaol, shall be sooner paid unto you, the said keeper, and for so doing this shall be your sufficient warrant.

Given

Given under my hand and seal (*or* our hands and seals), this day of , A.D. 19 , at in the said of

C.D., (L.S.)
*Police Magistrate,*
*or* E.F. (L.S.)
*J.P.,*
G. H., (L.S.)
*J.P.*

51 V., c. 34, sch. form W.

FORM X.

*Warrant of commitment for third offence, where punishment is by imprisonment only.*

CANADA,
Province of
District (*or* County) *or as the case may be* To wit:

To all or any of the constables or other peace officers in the the of , and to the keeper of the common gaol of the said at , in the of

Whereas X. Y., late of the of , in the said was on this day convicted before the undersigned C. D. (*or* E. F. and G. H., &c., *as in preceding form*) for what he the said X. Y., on at (*state offence, with previous convictions, as set forth in the conviction for the third offence, or as the case may be, and then proceed thus):* ' and it is hereby adjudged that the offence of the said X. Y., hereinbefore firstly mentioned, was his third offence against Part II. of the Canada Temperance Act, then in force in the said , (A. B. being the informant); And it was thereby further adjudged that the said X. Y., for his said third offence, should be imprisoned in the common gaol of the said of , at in the said of , and there to be kept at (*or* without) hard labour for the space of calendar months:

These are therefore to command you, the said constables, or any one of you, to take the said X. Y., and him safely convey to the said common gaol at , aforesaid, and there deliver him to the keeper thereof, with this precept. And I (*or* we) do hereby command you, the said keeper of the said common gaol, to receive the said X. Y. into your custody in the said common gaol, there to imprison him and to keep him at (*or* without) hard labour for the space of calendar months.

Given

Given under my hand and seal (*or* our hands and seals), this day of , A.D. 19 , at , in the said of

C. D., (L.S.)
*Police Magistrate.*
*or* E. F., (L.S.)
*J.P.*
G. H., (L.S.)
*J.P.*

51 V., c. 34, sch. form X.

FORM Y.

*Form of declaration of forfeiture and of order to destroy liquor seized.*

*If in the conviction, after adjudging penalty or imprisonment, proceed thus:*

And I (*or* we) declare the said intoxicating liquor and vessels in which the same is kept, to wit, (*two barrels*) containing *beer, three jars* containing *whiskey, two bottles* containing *gin, four kegs* containing *lager beer,* and *five bottles* containing *native wine (or as the case may be)*, to be forfeited to His Majesty, and I (*or* we) do hereby order and direct that the said liquor and vessels be destroyed by , the constable or peace officer who executed the search warrant under which the same was found or in whose custody the same was placed.

Given under my hand and seal, the day and year first above mentioned, at &c.

*If by separate subsequent order,*

CANADA,
Province of
District (*or* County) *or as the case may be)* of To wit:

We, E. F. and G. H., two of His Majesty's justices of the peace for the of (*or* C. D., police magistrate of the city of ,) having on the day of , one thousand nine hundred and , at the of in the said duly convicted X. Y. of having unlawfully kept intoxicating liquor for sale, contrary to the provisions of Part II. of the Canada Temperance Act, then in force in the said (*or as the case may be*), do hereby declare the said liquor and the vessels in which the same is kept, to wit—(*describe the same as above*), to be forfeited to His Majesty, and we (*or* I) do hereby order and direct that

that J. P. W., license inspector of the of the said , do forthwith destroy the said liquor and vessels.

Given under our hands and seals (*or* my hand and seal) this day of , at the of , in the said

E. F., (L.S.)
*J. P.*

G. H., (L.S.)
*J. P.*

*or*

C. D., (L.S.)
*Police Magistrate.*

51 V., c. 34, sch. form Y.

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# ANNOTATIONS.

## CHAPTER 152.

## Canada Temperance Act.

### INTERPRETATION.

Section 1, s.-s. d (County). Means county for municipal, not electoral, purposes: Reg. v. Shavelear, 11 O. R. 727. And see Reg. v. Monteith, 15 O. R. 290.

Counties united for municipal purposes cannot be said to have a police magistrate, before whom a prosecution under Part III. can be brought, because one of such counties has one: Reg. v. Abbott, 15 O. R. 640.

When Act is in force in a county, it is not affected by a portion of such county being made a city by the legislature: Rex v. McMullen, 38 N. S. 129; Ex parte Nagle, 30 N. B. 77.

### OBTAINING POLL.

Section 8 (Evidence as to petition). After notice and petition is laid before Secretary of State, with evidence of compliance with statutory requirements, though not submitted to the Governor-in-council, none of the signers of petition can be allowed to withdraw their names therefrom: In re Canada Temperance Act, 1878 County of Kent, Ont.), S. C. Dig. 223.

Section 9 (Proclamation). If proclamation issues and election is held court will not, in case of violation of Act, inquire whether or not petition was properly filed under s. 7: Reg. v. Hicks, 7 R. & G. (N.S.) 89.

Defective proclamation—Date for bringing Act into force not fixed: Reg. v. Lyons, 5 R. & G. 201.

But, held in New Brunswick, that proclamation need not state a particular day for the Act to come into force: Ex parte Tippett, 31 N. B. 139.

### RETURNING OFFICERS.

Section 15 (Qualified voters). Indians on reserve in Ontario cannot vote: In re Metcalfe, 17 O. R. 357.

# ANNOTATIONS.

## CHAPTER 150.

### Ticket of Leave.

Section 7. Revocation of license: Regina v. Johnson, 37 Can. L. J. 292.

# CHAPTER 153.

## An Act respecting the Lord's Day.

SHORT TITLE.

**1.** This Act may be cited as the Lord's Day Act. Short title.

INTERPRETATION.

**2.** In this Act, unless the context otherwise requires,— Definitions.

(*a*) 'Lord's Day' means the period of time which begins at twelve o'clock on Saturday afternoon and ends at twelve o'clock on the following afternoon; 'Lord's Day.'

(*b*) 'person' has the meaning which it has in the Criminal Code; 'Person.'

(*c*) 'vessel' includes any kind of vessel or boat used for conveying passengers or freight by water; 'Vessel.'

(*d*) 'railway' includes steam railway, electric railway, street railway and tramway; 'Railway.'

(*e*) 'performance' includes any game, match, sport, contest, exhibition or entertainment; 'Performance.'

(*f*) 'employer' includes every person to whose orders or directions any other person is by his employment bound to conform; 'Employer.'

(*g*) 'provincial Act' means the charter of any municipality, or any public Act of any province, whether passed before or since Confederation. 6 E. VII., c. 27, s. 1. 'Provincial Act.'

**3.** Nothing herein shall prevent the operation on the Lord's Day for passenger traffic by any railway company incorporated by or subject to the legislative authority of the Parliament of Canada of its railway where such operation is not otherwise prohibited. Dominion railways.

2. Nothing herein shall prevent the operation on the Lord's Day for passenger traffic of any railway subject to the legislative authority of any province, unless such railway is prohibited by provincial authority from so operating. 6 E. VII., c. 27, s. 13. Operation of provincial railways.

COMMENCEMENT.

**4.** This Act shall come into force on the first day of March, one thousand nine hundred and seven. 6 E. VII., c. 27, s. 16. Commencement of Act.

PROHIBITIONS.

No sales to be made or business or work done on Lord's Day.

**5.** It shall not be lawful for any person on the Lord's Day, except as provided herein, or in any provincial Act or law now or hereafter in force, to sell or offer for sale or purchase any goods, chattels, or other personal property, or any real estate, or to carry on or transact any business of his ordinary calling, or in connection with such calling, or for gain to do, or employ any other person to do, on that day, any work, business, or labour. 6 E. VII., c. 27, s. 2.

Substitution of another holiday for the Lord's Day.

**6.** Except in cases of emergency, it shall not be lawful for any person to require any employee engaged in any work of receiving, transmitting or delivering telegraph or telephone messages, or in the work of any industrial process, or in connection with transportation, to do on the Lord's Day the usual work of his ordinary calling, unless such employee is allowed during the next six days of such week, twenty-four consecutive hours without labour.

Restriction.

2. This section shall not apply to any employee engaged in the work of any industrial process in which the regular day's labour of such employee is not of more than eight hours' duration. 6 E. VII., c. 27, s. 4.

Games and performances where admission fee is charged.

**7.** It shall not be lawful for any person, on the Lord's Day, except as provided in any provincial Act or law now or hereafter in force, to engage in any public game or contest for gain, or for any prize or reward, or to be present thereat, or to provide, engage in, or be present at any performance or public meeting, elsewhere than in a church, at which any fee is charged, directly or indirectly, either for admission to such performance or meeting, or to any place within which the same is provided, or for any service or privilege thereat.

Charges for conveyance to performance.

2. When any performance at which an admission fee or any other fee is so charged is provided in any building or place to which persons are conveyed for hire by the proprietors or managers of such performance or by any one acting as their agent or under their control, the charge for such conveyance shall be deemed an indirect payment of such fee within the meaning of this section. 6 E. VII., c. 27, s. 5.

Excursions by conveyances where fee is charged.

**8.** It shall not be lawful for any person on the Lord's Day, except as provided by any provincial Act or law now or hereafter in force, to run, conduct, or convey by any mode of conveyance any excursion on which passengers are conveyed for hire, and having for its principal or only object the carriage on that day of such passengers for amusement or pleasure, and passengers so conveyed shall not be deemed to be travellers within the meaning of this Act. 6 E. VII., c. 27, s. 6.

**9.** It shall not be lawful for any person to advertise in any manner whatsoever any performance or other thing prohibited by this Act. Advertisements of prohibited performances, etc., wherever taking place.

2. It shall not be lawful for any person to advertise in Canada in any manner whatsoever any performance or other thing which if given or done in Canada would be a violation of this Act. 6 E. VII., c. 27, s. 7.

**10.** It shall not be lawful for any person on the Lord's Day to shoot with or use any gun, rifle or other similar engine, either for gain, or in such a manner or in such places as to disturb other persons in attendance at public worship or in the observance of that day. 6 E. VII., c. 27, s. 8. Shooting.

**11.** It shall not be lawful for any person to bring into Canada for sale or distribution, or to sell or distribute within Canada, on the Lord s Day, any foreign newspaper or publication classified as a newspaper. 6 E. VII., c. 27, s. 9. Sale of foreign newspapers on Sunday.

WORKS OF NECESSITY AND MERCY EXCEPTED.

**12.** Notwithstanding anything herein contained, any person may on the Lord's Day do any work of necessity or mercy, and for greater certainty, but not so as to restrict the ordinary meaning of the expression 'work of necessity or mercy,' it is hereby declared that it shall be deemed to include the following classes of work:— Works of necessity and mercy not prohibited.

*(a)* Any necessary or customary work in connection with divine worship; Divine worship.

*(b)* Work for the relief of sickness and suffering, including the sale of drugs, medicines and surgical appliances by retail; Relief of sickness.

*(c)* Receiving, transmitting, or delivering telegraph or telephone messages; Telegraph and telephone.

*(d)* Starting or maintaining fires, making repairs to furnaces and repairs in cases of emergency, and doing any other work, when such fires, repairs or work are essential to any industry or industrial process of such a continuous nature that it cannot be stopped without serious injury to such industry, or its product, or to the plant or property used in such process; Fires and repairs to any continuous industry.

*(e)* Starting or maintaining fires, and ventilating, pumping out and inspecting mines, when any such work is essential to the protection of property, life or health; Fires, pumping, etc., in protection of life and property.

*(f)* Any work without the doing of which on the Lord's Day, electric current, light, heat, cold air, water or gas cannot be continuously supplied for lawful purposes; Continuous supply of light, heat, etc.

*(g)* The conveying of travellers and work incidental thereto; Conveying travellers.

*(h)* The continuance to their destination of trains and vessels in transit when the Lord's Day begins, and work incidental thereto; Trains and vessels in transit.

Loading and unloading goods.
*(i)* Loading and unloading merchandise, at intermediate points, on or from passenger boats or passenger trains;

Clearing snow and ice, repairs, etc., in case of railways.
*(j)* Keeping railway tracks clear of snow or ice, making repairs in cases of emergency, or doing any other work of a like incidental character necessary to keep the lines and tracks open on the Lord's Day;

Work in railway yards.
*(k)* Work before six o'clock in the forenoon and after eight o'clock in the afternoon of yard crews in handling cars in railway yards;

Loading and unloading vessels.
*(l)* Loading, unloading and operating any ocean-going vessel which otherwise would be unduly delayed after her scheduled time of sailing, or any vessel which otherwise would be in imminent danger of being stopped by the closing of navigation; or loading or unloading before seven o'clock in the morning or after eight o'clock in the afternoon any grain, coal or ore carrying vessel after the fifteenth of September;

Milk, cheese and live animals.
*(m)* The caring for milk, cheese, and live animals, and the unloading of and caring for perishable products and live animals, arriving at any point during the Lord's Day;

Working bridges and ferries.
*(n)* The operation of any toll or drawbridge, or any ferry or boat authorized by competent authority to carry passengers on the Lord's Day;

Hiring horses and boats.
*(o)* The hiring of horses and carriages or small boats for the personal use of the hirer or his family for any purpose not prohibited by this Act;

Newspapers.
*(p)* Any unavoidable work after six o'clock in the afternoon of the Lord's Day, in the preparation of the regular Monday morning edition of a daily newspaper;

Mail carrying.
*(q)* The conveying His Majesty's mails and work incidental thereto;

Milk delivery.
*(r)* The delivery of milk for domestic use, and the work of domestic servants and watchmen;

Street railways.
*(s)* The operation by any Canadian electric street railway company, whose line is interprovincial or international, of its cars, for passenger traffic, on the Lord's Day, on any line or branch which is, on the day of the coming into force of this Act, regularly so operated;

Public officers.
*(t)* Work done by any person in the public service of His Majesty while acting therein under any regulation or direction of any department of the Government;

Fishermen.
*(u)* Any unavoidable work by fishermen after six o'clock in the afternoon of the Lord's Day, in the taking of fish;

Maple sugar.
*(v)* All operations connected with the making of maple sugar and maple syrup in the maple grove;

Saving property.
*(w)* Any unavoidable work on the Lord's Day to save property in cases of emergency, or where such property is in imminent danger of destruction or serious injury;

Work permitted by
*(x)* Any work which the Board of Railway Commissioners for Canada, having regard to the object of this Act, and

with the object of preventing undue delay, deems necessary to permit in connection with the freight traffic of any railway. 6 E. VII., c. 27, s. 3. Railway Commissioners.

OFFENCES AND PENALTIES.

**13.** Any person who violates any of the provisions of this Act shall for each offence be liable, on summary conviction, to a fine, not less than one dollar and not exceeding forty dollars, together with the cost of prosecution. 6 E. VII., c. 27, s. 10. Violation of this Act. Penalty.

**14.** Every employer who authorizes or directs anything to be done in violation of any provision of this Act, shall for each offence be liable, on summary conviction, to a fine not exceeding one hundred dollars and not less than twenty dollars, in addition to any other penalty prescribed by law for the same offence. 6 E. VII., c. 27, s. 11. Employer authorizing. Penalty.

**15.** Every corporation which authorizes, directs or permits its employees to carry on any part of the business of such corporation in violation of any of the provisions of this Act, shall be liable, on summary conviction before two justices of the peace, for the first offence, to a penalty not exceeding two hundred and fifty dollars and not less than fifty dollars, and, for each subsequent offence, to a penalty not exceeding five hundred dollars and not less than one hundred dollars, in addition to any other penalty prescribed by law for the same offence. 6 E. VII., c. 27, s. 12. Corporation directing or permitting violation of this Act. Penalty.

PROCEDURE.

**16.** Nothing herein shall be construed to repeal or in any way affect any provisions of any Act or law relating in any way to the observance of the Lord's Day in force in any province of Canada when this Act comes into force; and where any person violates any of the provisions of this Act, and such offence is also a violation of any other Act or law, the offender may be proceeded against either under the provisions of this Act or under the provisions of any other Act or law applicable to the offence charged. 6 E. VII., c. 27, s. 14. Provincial Lord's Day Acts not affected.

**17.** No action or prosecution for a violation of this Act shall be commenced without the leave of the Attorney General for the province in which the offence is alleged to have been committed, nor after the expiration of sixty days from the time of the commission of the alleged offence. 6 E. VII., c. 27, s. 15. Limitation of action.

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# ANNOTATIONS.

## CHAPTER 153.

### Lord's Day Act.

This legislation held intra vires of the Parliament of Canada: Re Sunday Legislation, 35 Can. S. C. R. 581.

# ANNOTATIONS.

## CHAPTER 155.

## Extradition Act.

UNDER TREATY.

Section 9 (Judges). All Judges "of the County Courts" includes Junior County Court Judges of Ontario: In re Garbutt: 21 O. R. 179, 465.

County Court Judge has jurisdiction in any part of his province: In re Parker, 10 C. L. T. Occ. N. 373. And also commissioner: In re Greene and Gaynor, Q. R. 22 S. C. 91.

Warrant issued by extradition commissioner for arrest of fugitive in another province is void: Ex parte Seitz, Q. R. 8 Q. B. 345.

Section 10 (Warrant). Sub-section 2 directory only. Neglect to forward report to minister no ground for prisoner's discharge: In re Garbutt, 21 O. R. 179.

Information gave wrong christian name of indorser of instrument for forgery, of which extradition was demanded. Under s. 669, Cr. Code, warrant was not avoided: See s. 13 infra, In re Garbutt, 21 O. R. 179.

Proceedings may be instituted in Canada. Warrant in country demanding extradition not essential: In re Garbutt, 21 O. R. 465; In re Lazier, 30 O. R. 419; 26 Ont. A. R. 260; In re Caldwell, 5 Ont. P. R. 217.

Form of information for forgery: In re Lee, 5 O. R. 583.

Warrant can issue only on proof of foreign warrant or on information or complaint laid before the Judge. Where issued on proof of foreign indictment and bench warrant prisoner was discharged: In re Bongard, 5 N. W. T. 10.

Under treaty with United States, crime charged need not be offence against federal law. If under law of Canada and demanding State it is a crime, and within treaties, extradition may be ordered: In re Lorenz, 9 Can. C. C. 158 Que.

# CHAPTER 154.

## An Act respecting fugitive offenders in Canada from other parts of His Majesty's Dominions.

SHORT TITLE.

**1.** This Act may be cited as the Fugitive Offenders Act. R.S., c. 143, s. 1. Short title.

INTERPRETATION.

**2.** In this Act, unless the context otherwise requires,— Definitions.

(*a*) 'magistrate' means any justice of the peace or any person having authority to issue a warrant for the apprehension of persons accused of offences, and to commit such persons for trial; 'Magistrate.'

(*b*) 'deposition' includes every affidavit, affirmation, or statement made upon oath; 'Deposition.'

(*c*) 'court' means, 'Court.'

in the province of Ontario, the High Court of Justice,

in the province of Quebec, the Superior Court,

in the province of Nova Scotia, New Brunswick, Prince Edward Island or British Columbia, respectively, the Supreme Court for the province,

in the province of Manitoba, the Court of King's Bench,

in the province of Saskatchewan or Alberta, a judge of the Supreme Court of the Northwest Territories, pending the abolition of that Court by the legislature of the province, and, after the abolition of the said Court, a judge of such superior court as is established by the legislature of the province in lieu of the Supreme Court of the Northwest Territories,

in the Northwest Territories, such court, or magistrate, or other judicial authority as is designated from time to time by proclamation of the Governor in Council published in the *Canada Gazette*,

in the Yukon Territory, the Territorial Court, or a court, magistrate, or other judicial authority designated as aforesaid;

(*d*) 'fugitive' means a person accused of having committed an offence to which this Act applies in any part of His 'Fugitive.'

Majesty's dominions, except Canada, and who has left that part. R.S., c. 143, ss. 2 and 4; 62-63 V., c. 11, s. 6.

APPLICATION.

To what offences this Act applies.

**3.** This Act shall apply to treason and to piracy, and to every offence, whether called felony, misdemeanour, crime or by any other name, which is, for the time being, punishable in the part of His Majesty's dominion in which it was committed, either on indictment or information, by imprisonment with hard labour for a term of twelve months or more, or by any greater punishment; and, for the purposes of this section, rigorous imprisonment, and any confinement in a prison combined with labour, by whatever name it is called, shall be deemed to be imprisonment with hard labour. R.S., c. 143, s. 3.

Application to acts not offences by Canadian law.

**4.** This Act shall apply to every such offence, notwithstanding that, by the law of Canada, it is not an offence or not an offence punishable in manner aforesaid; and all the provisions of this Act, including those relating to a provisional warrant and to a committal to prison, shall be construed as if the offence were in Canada an offence to which this Act applies. R.S., c. 143, s. 3.

Application to persons unlawfully at large after conviction.

**5.** This Act shall apply, so far as is consistent with the tenor thereof, to every person convicted by a court in any part of His Majesty's dominions of an offence committed either in His Majesty's dominions or elsewhere who is unlawfully at large before the expiration of his sentence, in like manner as it applies to a person accused of the like offence committed in the part of His Majesty's dominions in which such person was convicted. R.S., c. 143, s. 3.

As to offences committed before the commencement of this Act.

**6.** This Act shall apply in respect to offences committed before the commencement of this Act, in like manner as if such offences were committed after such commencement. R.S., c. 143, s. 3.

PROCEDURE.

Apprehension and return of fugitive offenders.

**7.** Any fugitive, if found in Canada, shall be liable to be apprehended and returned, in the manner provided by this Act, to the part of His Majesty's dominions from which he is a fugitive.

Warrant.

2. A fugitive may be so apprehended under an endorsed warrant or a provisional warrant. R.S., c. 143, s. 4.

Proceedings in Canada on warrant issued elsewhere.

**8.** Whenever a warrant has been issued in a part of His Majesty's dominions for the apprehension of a fugitive from that part who is or is suspected to be in or on the way to

Canada, the Governor General or a judge of a court, if satisfied that the warrant was issued by some person having lawful authority to issue the same, may endorse such warrant in manner provided by this Act, and the warrant so endorsed shall be a sufficient authority to apprehend the fugitive in Canada and bring him before a magistrate. R.S., c. 143, s. 5.

Issue of provisional warrant.

**9.** A magistrate in Canada may issue a provisional warrant for the apprehension of a fugitive who is or is suspected of being in or on his way to Canada, on such information and under such circumstances as would, in his opinion, justify the issue of a warrant, if the offence of which the fugitive is accused had been committed within his jurisdiction; and such warrant may be backed and executed accordingly. R.S., c. 143, s. 6.

Report to Governor General.

**10.** A magistrate issuing a provisional warrant shall forthwith send a report of the issue, together with the information or a certified copy thereof, to the Governor General; and the Governor General may, if he thinks fit, discharge the person apprehended under such warrant. R.S., c. 143, s. 6.

Fugitive to be brought before a magistrate.

**11.** A fugitive, when apprehended, shall be brought before a magistrate, who, subject to the provisions of this Act, shall hear the case in the same manner and have the same jurisdiction and powers, as nearly as may be, including the power to remand and admit to bail, as if the fugitive was charged with an offence committed within his jurisdiction. R.S., c. 143, s. 7.

Committal of fugitive.

Report to Governor General.

**12.** If the endorsed warrant for the apprehension of the fugitive is duly authenticated, and such evidence is produced as, subject to the provisions of this Act, according to the law ordinarily administered by the magistrate, raises a strong or probable presumption that the fugitive committed the offence mentioned in the warrant, and that the offence is one to which this Act applies, the magistrate shall commit the fugitive to prison to await his return, and shall forthwith send a certificate of the committal and such report of the case, as he thinks fit, to the Governor General. R.S., c. 143, s. 7.

Magistrate to inform fugitive as to his rights.

**13.** Whenever the magistrate commits the fugitive to prison, he shall inform the fugitive that he will not be surrendered until after the expiration of fifteen days, and that he has a right to apply for a writ of *habeas corpus* or other like process. R.S., c. 143, s. 7.

Remand of fugitive.

**14.** A fugitive apprehended on a provisional warrant may, from time to time, be remanded for such reasonable time, not exceeding seven days at any one time, as under the circum-

stances seems requisite for the production of an endorsed warrant. R.S., c. 143, s. 7.

Order for the return of fugitive.

**15.** Upon the expiration of fifteen days, after a fugitive has been committed to prison to await his return, or if a writ of *habeas corpus* or other like process is issued by a court, with reference to such fugitive, after the final decision of the court in the case, if the fugitive is not discharged by the court, the Governor General, by warrant under his hand, if he thinks it just, may order the fugitive to be returned to the part of His Majesty's dominions from which he is a fugitive, and for that purpose to be delivered into the custody of the persons to whom the warrant is addressed, or some one or more of them, and to be held in custody, and conveyed to the said part of His Majesty's dominions, to be dealt with there, in due course of law, as if he had been there apprehended.

Warrant.

Execution of warrant.

2. Such warrant shall be forthwith executed according to the tenor thereof. R.S., c. 143, s. 8.

Court may discharge fugitive, if not returned within a certain time.

**16.** If a fugitive who, in pursuance of this Act, has been committed to prison in Canada to await his return, is not conveyed out of Canada within two months after such committal, the court, upon application by or on behalf of the fugitive, and upon proof that reasonable notice of the intention to make such application has been given to the Governor General, may, unless sufficient cause is shown to the contrary, order the fugitive to be discharged out of custody. R.S., c. 143, s. 9.

Court may discharge fugitive in trivial cases.

**17.** Whenever it is made to appear to the court that by reason of the trivial nature of the case, or by reason of the application for the return of a fugitive not being made in good faith, in the interests of justice, or that, for any other reason, it would, having regard to the distance, to the facilities for communication, and to all the circumstances of the case, be unjust or oppressive or too severe a punishment to return the fugitive either at all or until the expiration of a certain period, the court may discharge the fugitive, either absolutely or on bail, or order that he shall not be returned until after the expiration of the period named in the order, or may make such other order in the premises, as to the court seems just. R.S., c. 143, s. 10.

Fugitive undergoing sentence.

**18.** A fugitive who has been accused of an offence within Canadian jurisdiction, not being the offence for which his surrender is asked, or who is undergoing sentence under a conviction in Canada, shall not be surrendered until after he has been discharged, whether by acquittal or by expiration of his sentence, or otherwise. R.S., c. 143, s. 11.

Search warrant may be granted.

**19.** Whenever a warrant, for the apprehension of a person accused of an offence, has been endorsed in pursuance of this

Act, in Canada, any magistrate in Canada shall have the same power of issuing a warrant to search for any property alleged to have been stolen or to have been otherwise unlawfully taken or obtained by such person, or otherwise to be the subject of such offence, as that magistrate would have if the property had been stolen or otherwise unlawfully taken or obtained, or the offence had been committed wholly within the jurisdiction of such magistrate. R.S., c. 143, s. 12.

Exercise of judicial powers.

**20.** Any judge of the court may, either in term time or vacation, exercise in chambers, all the powers conferred by this Act upon the court. R.S., c. 143, s. 13.

Effect of endorsement of warrant.

**21.** An endorsement of a warrant in pursuance of this Act shall be signed by the authority endorsing the same, and shall authorize all or any of the persons named in the endorsement, and of the persons to whom the warrant was originally directed, and also every constable, to execute the warrant within Canada by apprehending the person named in it, and bringing him before a magistrate in Canada, whether he is the magistrate named in the endorsement or some other.

As to death of signer or endorser.

2. Every warrant, summons, subpœna and process, and every endorsement made in pursuance of this Act thereon, shall, for the purposes of this Act, remain in force, notwithstanding that the person signing the warrant or such endorsement dies or ceases to hold office. R.S., c. 143, s. 14.

RETURN OF FUGITIVE.

How the fugitive may be returned.

**22.** Whenever a fugitive or prisoner is authorized to be returned to any part of His Majesty's dominions in pursuance of this Act, such fugitive or prisoner may be sent thither in any ship registered in Canada or belonging to the Government of Canada. R.S., c. 143, s. 15.

Order to master of Canadian ship to convey fugitive.

Proviso.

**23.** The Governor General, may, by the warrant for the return of the fugitive, order the master of any ship registered in Canada, bound to the said part of His Majesty's dominions, to receive such fugitive or prisoner, and afford a passage and subsistence during the voyage to him, and to the person having him in custody, and to the witnesses; but such master shall not be required to receive more than one fugitive or prisoner for every hundred tons of his ship's registered tonnage, or more than one witness for every fifty tons of such tonnage. R.S., c. 143, s. 15.

Endorsement upon agreement of the ship.

**24.** The Governor General shall cause to be endorsed upon the agreement of the ship such particulars with respect to any fugitive prisoner or witness sent in her, as the Minister of Marine and Fisheries, from time to time, requires. R.S., c. 143, s. 15.

Duty of master on arrival at destination.

**25.** Every such master shall, on his ship's arrival in the said part of His Majesty's dominions, cause such fugitive or prisoner, if he is not in the custody of any person, to be given into the custody of some constable there, to be dealt with according to law. R.S., c. 143, s. 15.

Penalty for non-compliance.

**26.** Every master who fails, on payment or tender of a reasonable amount for expenses, to comply with an order made in pursuance of this Act, or to cause a fugitive or prisoner committed to his charge to be given into custody as required by this Act, shall be liable, on summary conviction, to a penalty not exceeding two hundred dollars. R.S., c. 143, s. 15.

EVIDENCE.

Depositions.

**27.** A magistrate may take depositions for the purposes of this Act, in the absence of a person accused of an offence, in like manner as he might take the same if such person was present and accused of the offence before him. R.S., c. 143, s. 16.

Their use in evidence.

**28.** Depositions whether taken in the absence of the fugitive or otherwise and copies thereof, and official certificates of, or judicial documents stating facts, may, if duly authenticated, be received in evidence in proceedings under this Act. R.S., c. 143, s. 17.

Authentication of warrants and other documents.

**29.** Warrants and depositions, and copies thereof, and official certificates of facts, or judicial documents stating facts, shall be deemed duly authenticated for the purposes of this Act if they are authenticated in manner provided for the time being by law, or if they purport to be signed by or authenticated by the signature of a judge, magistrate or officer of the part of His Majesty's dominions in which the same are issued, taken or made, and are authenticated either by the oath of some witness, or by being sealed with the official seal of a secretary of state, or with the public seal of a British possession, or with the official seal of a governor of a British possession, or of a colonial secretary, or of some secretary or minister administering a department of the government of a British possession.

Seal to be evidence.

2. All courts and magistrates shall take judicial notice of every such seal, and shall admit in evidence without further proof the documents authenticated by it. R.S., c. 143, s. 18.

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# INDEX

## PRISONS AND REFORMATORIES

THE

# REVISED STATUTES

OF

# CANADA, 1906.

## CHAPTER 1.

## An Act respecting the Form and Interpretation of Statutes.

SHORT TITLE.

**1.** This Act may be cited as the Interpretation Act. R.S., c. 1, s. 1. Short title.

APPLICATION.

**2.** Every provision of this Act shall extend and apply to every Act of the Parliament of Canada, now or hereafter passed, except in so far as any such provision,— To every Act.

(*a*) is inconsistent with the intent or object of such Act; or, Exceptions.

(*b*) would give to any word, expression or clause of any such Act an interpretation inconsistent with the context; or,

(*c*) is in any such Act declared not applicable thereto.

2. The omission in any Act of a declaration that this Act applies thereto, shall not be construed to prevent its so applying, although such a declaration is expressed in some other Act or Acts of the same session. R.S., c. 1, s. 2. No declaration necessary in any Act.

**3.** Nothing in this Act shall exclude the application to any Act of any rule of construction applicable thereto, and not inconsistent with this Act. R.S., c. 1, s. 7. Rules of construction not excluded.

This Act applies to itself.

**4.** The provisions of this Act shall apply to the construction thereof, and to the words and expressions used therein. R.S., c. 1, s. 9.

FORM OF ENACTING.

Enacting clause.

**5.** The enacting clause of a statute may be in the following form:—'His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows.' R.S., c. 1, s. 3.

Order of clauses.

**6.** The enacting clause shall follow the preamble, if any, and the various clauses within the purview or body of the statute shall follow in a concise and enunciative form. R.S., c. 1, s. 4.

TIME OF COMMENCEMENT.

To be endorsed.

**7.** The Clerk of the Parliaments shall endorse on every Act, immediately after the title thereof, the day, month and year when the Act was, by the Governor General, assented to in His Majesty's name, or reserved by him for the signification of His Majesty's pleasure thereon; and in the latter case, the Clerk shall also endorse thereon the day, month and year when the Governor General signified, either by speech or message to the Senate and House of Commons, or by proclamation, that such Act had been laid before His Majesty in Council, and that His Majesty had been pleased to assent to the same.

Endorsement part of Act.

2. Such endorsement shall be taken to be a part of the Act, and the date of such assent or signification, as the case may be, shall be the date of the commencement of the Act, if no later commencement is therein provided. R.S., c. 1, s. 5.

AMENDMENT OR REPEAL.

In same session.

**8.** Any Act may be amended, altered or repealed by an Act passed in the same session of the Parliament. R.S., c. 1, s. 6.

RULES OF CONSTRUCTION.

Every Act applies to all Canada.

**9.** Every Act of the Parliament of Canada shall, unless the contrary intention appears, apply to the whole of Canada.

Amending Acts.

2. No Act amending a previous Act which does not apply to all the provinces of Canada, and no enactment in any such amending Act, although of a substantive nature or form, shall apply to any province to which the amended Act does not apply, unless it is expressly provided that such amending Act or enactment shall apply to such province, or to all the provinces of Canada. R.S., c. 1, s. 7.

Law always speaking.

**10.** The law shall be considered as always speaking, and whenever any matter or thing is expressed in the present tense, the same shall be applied to the circumstances as they arise, so that effect may be given to each Act and every part thereof, according to its spirit, true intent and meaning. R.S., c. 1, s. 7.

When to come into operation.

**11.** Where an Act, or any order in council, order, warrant, scheme, letters patent, rule, regulation, or by-law, made, granted, or issued, under a power conferred by any Act, is expressed to come into operation on a particular day, the same shall be construed as coming into operation immediately on the expiration of the previous day. 6 E. VII., c. 21, s. 1.

Preliminary proceedings.

**12.** Where an Act is not to come into operation immediately on the passing thereof, and confers power to make any appointment, to make, grant, or issue any instrument, that is to say, any order in council, order, warrant, scheme, letters patent, rule, regulation, or by-law, to give notices, to prescribe forms, or to do any other thing for the purposes of the Act, that power may, unless the contrary intention appears, so far as may be necessary or expedient for the purpose of making the Act effective at the date of the commencement thereof, be exercised at any time after the passing of the Act, subject to this restriction, that any instrument made under the power shall not, unless the contrary intention appears in the Act, or the contrary is necessary for making the Act effective from its commencement, come into operation until the Act comes into operation. 6 E. VII., c. 21, s. 2.

Acts to be deemed public.

**13.** Every Act shall, unless by express provision it is declared to be a private Act, be deemed to be a public Act. R.S., c. 1, s. 7.

Preamble a part.

**14.** The preamble of every Act shall be deemed a part thereof, intended to assist in explaining the purport and object of the Act. R.S., c. 1, s. 7.

Every Act remedial.

**15.** Every Act and every provision and enactment thereof, shall be deemed remedial, whether its immediate purport is to direct the doing of any thing which Parliament deems to be for the public good, or to prevent or punish the doing of any thing which it deems contrary to the public good; and shall accordingly receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act and of such provision or enactment, according to its true intent, meaning and spirit. R.S., c. 1, s. 7.

His Majesty not bound.

**16.** No provision or enactment in any Act shall affect, in any manner whatsoever, the rights of His Majesty, his heirs or successors, unless it is expressly stated therein that His Majesty shall be bound thereby. R.S., c. 1, s. 7.

Private Acts.

**17.** No provision or enactment in any Act of the nature of a private Act shall affect the rights of any person, save only as therein mentioned or referred to. R.S., c. 1, s. 7.

Powers of Parliament reserved.

**18.** Every Act shall be so construed as to reserve to Parliament the power of repealing or amending it, and of revoking, restricting or modifying any power, privilege or advantage thereby vested in or granted to any person, whenever such repeal, amendment, revocation, restriction or modification is deemed by Parliament to be required for the public good.

Bank charters.

2. Unless it is otherwise expressly provided in any Act passed for the chartering of any bank, it shall be in the discretion of Parliament, at any time thereafter, to make such provisions and impose such restrictions, with respect to the amount and description of notes which may be issued by such bank, as to Parliament appears expedient. R.S., c. 1, s. 7.

Effect of repeal.

**19.** Where any Act or enactment is repealed, or where any regulation is revoked, then, unless the contrary intention appears, such repeal or revocation shall not, save as in this section otherwise provided,—

*(a)* revive any Act, enactment, regulation or thing not in force or existing at the time at which the repeal or revocation takes effect; or,

*(b)* affect the previous operation of any Act, enactment or regulation so repealed or revoked, or anything duly done or suffered thereunder; or,

*(c)* affect any right, privilege, obligation or liability acquired, accrued, accruing or incurred under the Act, enactment or regulation so repealed or revoked; or,

*(d)* affect any offence committed against any Act, enactment or regulation so repealed or revoked, or any penalty or forfeiture or punishment incurred in respect thereof; or,

*(e)* affect any investigation, legal proceeding or remedy in respect of any such privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the Act or regulation had not been repealed or revoked.

If other provisions substituted.

2. If other provisions are substituted for those so repealed or revoked, then, unless the contrary intention appears,—

*(a)* all officers and persons acting under the Act, enactment or regulation so repealed or revoked shall continue to act, as if appointed under the provisions so substituted, until others are appointed in their stead; and,

*(b)* all proceedings taken under the Act, enactment or regulation so repealed or revoked, shall be taken up and continued under and in conformity with the provisions so substituted, so far as consistently may be; and,

*(c)* in the recovery or enforcement of penalties and forfeitures incurred, and in the enforcement of rights existing or accruing under the Act, enactment or regulation so repealed or revoked, or in any other proceedings in relation to matters which have happened before the repeal or revocation, the procedure established by the substituted provisions shall be followed as far as it can be adapted; and,

*(d)* if any penalty, forfeiture or punishment is reduced or mitigated by any of the provisions of the Act or regulation whereby such other provisions are substituted, the penalty, forfeiture or punishment, if imposed or adjudged after such repeal or revocation, shall be reduced or mitigated accordingly. R.S., c. 1, s. 7.

Effect of revision or consolidation.

**20.** Whenever any Act or enactment is repealed, and other provisions are substituted by way of amendment, revision or consolidation,—

*(a)* all regulations, orders, ordinances, rules and by-laws made under the repealed Act or enactment shall continue good and valid, in so far as they are not inconsistent with the substituted Act or enactment, until they are annulled and others made in their stead; and,

*(b)* any reference in any unrepealed Act, or in any rule, order or regulation made thereunder to such repealed Act or enactment, shall, as regards any subsequent transaction, matter or thing, be held and construed to be a reference to the provisions of the substituted Act or enactment relating to the same subject-matter as such repealed Act or enactment; and, if there is no provision in the substituted Act or enactment relating to the same subject-matter, the repealed Act or enactment shall stand good, and be read and construed as unrepealed in so far, and in so far only, as is necessary to support, maintain or give effect to such unrepealed Act, or such rule, order or regulation made thereunder. R.S., c. 1, s. 7.

Repeal.

**21.** The repeal of any Act or enactment shall not be deemed to be or to involve a declaration that such Act or enactment was, or was considered by Parliament to have been, previously in force.

Amendment

2. The amendment of any Act shall not be deemed to be or to involve a declaration that the law under such Act was, or was considered by Parliament to have been, different from the law as it has become under such Act as so amended.

Repeal or amendment.

3. The repeal or amendment of any Act shall not be deemed to be or to involve any declaration whatsoever as to the previous state of the law.

Re-enactment.

Does not adopt judicial construction.

4. Parliament shall not, by re-enacting any Act or enactment, or by revising, consolidating or amending the same, be deemed to have adopted the construction which has, by judicial decision or otherwise, been placed upon the language used in such Act, or upon similar language. 53 V., c. 7, s. 1.

Amendment a part of Act.

5. An amending Act shall, so far as is consistent with the tenor thereof, be construed as one with the Act which it amends. 6 E. VII., c. 21, s. 3.

Proclamation to be made upon advice.

**23.** When the Governor General is authorized to do any act by proclamation, such proclamation is understood to be a proclamation issued under an order of the Governor in Council; but it shall not be necessary that it be mentioned in the proclamation that it is issued under such order. R.S., c. 1, s. 7.

Officers during pleasure.

**24.** All officers now appointed or hereafter appointed by the Governor General, whether by commission or otherwise, shall remain in office during pleasure only, unless it is otherwise expressed in their commissions or appointments. R.S., c. 1, s. 7.

Oath, who may administer.

**25.** Whenever by any Act of Parliament, or by a rule of the Senate or House of Commons, or by an order, regulation or commission made or issued by the Governor in Council, under any law authorizing him to require the taking of evidence under oath, evidence under oath is authorized or required to be taken, or an oath is authorized or directed to be made, taken or administered, the oath may be administered, and a certificate of its having been made, taken or administered, may be given by any one authorized by the Act, rule, order, regulation or commission to take the evidence, or by a judge of any court, a notary public, a justice of the peace, or a commissioner for taking affidavits, having authority or jurisdiction within the place where the oath is administered. R.S., c. 1, s. 7.

Public moneys, to be paid by warrant.

**26.** If any sum of the public money is, by any Act, appropriated for any purpose, or directed to be paid by the Governor General, and no other provision is made respecting it, such sum shall be payable under warrant of the Governor General directed to the Minister of Finance and Receiver General, out of the Consolidated Revenue Fund of Canada.

Account.

2. All persons entrusted with the expenditure of any such sum, or any part thereof, shall account for the same in such manner and form, with such vouchers, at such periods and to such officer as the Governor General directs. R.S., c. 1, s. 7.

Imprisonment, where.

**27.** If, in any Act, any person is directed to be imprisoned or committed to prison, such imprisonment or committal shall, if no other place is mentioned or provided by law, be in or to

the common gaol of the locality in which the order for such imprisonment is made, or if there is no common gaol there, then in or to that common gaol which is nearest to such locality.

Keeper of gaol, duties of.

2. The keeper of any such common gaol shall receive such person, and safely keep and detain him in such common gaol under his custody until discharged in due course of law, or bailed, in cases in which bail may, by law, be taken. R.S., c. 1, s. 7.

**28.** Every Act shall be read and construed as if any offence for which the offender may be,—

Indictable offences.

*(a)* prosecuted by indictment, howsoever such offence may be therein described or referred to, were described or referred to as an indictable offence; and,

Offences.

*(b)* punishable on summary conviction, were described or referred to as an offence; and,

Criminal Code to apply.

all provisions of the Criminal Code relating to indictable offences, or offences, as the case may be, shall apply to every such offence.

Proclamations, etc., construed accordingly.

2. Every commission, proclamation, warrant or other document relating to criminal procedure, in which offences which are indictable offences, or offences, as the case may be, are described or referred to by any names whatsoever, shall be read and construed as if such offences were therein described and referred to as indictable offences, or offences, as the case may be. 55-56 V., c. 29, s. 536.

**29.** Unless the context otherwise requires, a reference in any Act to,— References to

Summary Convictions Act.

*(a) The Summary Convictions Act* shall be construed as a reference to Part XV. of the Criminal Code;

Summary Trials Act.

*(b) The Summary Trials Act* shall be construed as a reference to Part XVI. of the Criminal Code;

Speedy Trials Act.

*(c) The Speedy Trials Act* shall be construed as a reference to Part XVIII. of the Criminal Code. 55-56 V., c. 29, s. 537.

**30.** In every Act, unless the contrary intention appears, words making any association or number of persons a corporation or body politic and corporate shall,— Incorporation, effect of.

*(a)* vest in such corporation power to sue and be sued, to contract and be contracted with by their corporate name, to have a common seal, to alter or change the same at their pleasure, to have perpetual succession, to acquire and hold personal property or movables for the purposes for which the corporation is constituted, and to alienate the same at pleasure; and,

*(b)* vest in a majority of the members of the corporation the power to bind the others by their acts; and,

*(c)* exempt individual members of the corporation from personal liability for its debts or obligations or acts, if

they do not violate the provisions of the Act incorporating them.

Banking powers.

2. No corporation shall be deemed to be authorized to carry on the business of banking unless such power is expressly conferred upon it by the Act creating such corporation. R.S., c. 1, s. 7.

General rules.

**31.** In every Act, unless the contrary intention appears,—

Magistrates, etc.

*(a)* if anything is directed to be done by or before a magistrate or a justice of the peace, or other public functionary or officer, it shall be done by or before one whose jurisdiction or powers extend to the place where such thing is to be done;

Powers.

*(b)* whenever power is given to any person, officer or functionary, to do or enforce the doing of any act or thing, all such powers shall be understood to be also given as are necessary to enable such person, officer or functionary to do or enforce the doing of such act or thing;

Majorities.

*(c)* when any act or thing is required to be done by more than two persons, a majority of them may do it;

Forms.

*(d)* whenever forms are prescribed, slight deviations therefrom, not affecting the substance or calculated to mislead, shall not invalidate them;

Powers and duties.

*(e)* if a power is conferred or a duty imposed the power may be exercised and the duty shall be performed from time to time as occasion requires;

Idem.

*(f)* if a power is conferred or a duty imposed on the holder of any office as such, the power may be exercised and the duty shall be performed by the holder for the time being of the office;

Rules, regulations and by-laws.

*(g)* if a power is conferred to make any rules, regulations or by-laws, the power shall be construed as including a power, exercisable in the like manner, and subject to the like consent and conditions, if any, to rescind, revoke, amend or vary the rules, regulations or by-laws and make others;

If time falls on a holiday.

*(h)* if the time limited by any Act for any proceeding, or the doing of any thing under its provisions, expires or falls upon a holiday, the time so limited shall be extended to, and such thing may be done on the day next following which is not a holiday;

Masculine includes feminine.

*(i)* words importing the masculine gender include females;

Singular and plural.

*(j)* words in the singular include the plural, and words in the plural include the singular;

Removal and suspension.

*(k)* words authorizing the appointment of any public officer or functionary, or any deputy, include the power of removing or suspending him, re-appointing or re-instating him, or appointing another in his stead, in the discretion of the authority in whom the power of appointment is vested;

*(l)* words directing or empowering a minister of the Crown to do any act or thing, or otherwise applying to him by his name of office, include a minister acting for, or, if the office is vacant, in the place of such minister, under the authority of an order in council, and also his successors in such office, and his or their lawful deputy; Ministers and deputies.

*(m)* words directing or empowering any other public officer or functionary to do any act or thing, or otherwise applying to him by his name of office, include his successors in such office, and his or their lawful deputy. R.S., c. 1, s. 7. Other public officers.

**32.** Whenever in any Act of the Parliament of Canada heretofore passed, or that may be passed before the bringing into force of the Act of the Legislature of the province of New Brunswick, passed in the sixth year of His Majesty's reign, chapter thirty-seven, relating to the establishment of a Supreme Court of Judicature and to the practice and proceedings therein, the Supreme Court of the said province is named, such Act of the Parliament of Canada shall, after the said provincial Act is brought into force, be construed as if the Court therein named was the Court established by the said Act. Meaning of Supreme Court in past Acts.

2. Whenever in or under any such Act of the Parliament of Canada or otherwise any powers, rights or duties are conferred or imposed upon, or vested in or incumbent upon, the said Supreme Court of the said province, or any judge or judges thereof, such powers, rights or duties, after the said provincial Act has been brought into force, shall, so far as the Parliament of Canada has legislative authority to so enact, be deemed to have been conferred or imposed upon, or to be vested in and incumbent upon, the Court established as aforesaid, or any judge or judges thereof. Powers and duties of court.

3. Any jurisdiction or authority heretofore vested in the Supreme Court of the said province which has been exercised or is exerciseable by the said Court when sitting in banc, shall, after the said provincial Act is brought into force, so far as the Parliament of Canada has legislative authority to so enact, be vested in and exerciseable by the division of the Court established by the said provincial Act which is called the Court of Appeal. 6 E. VII., c. 51, ss. 1, 2 and 3. Jurisdiction of court in banc exerciseable by Court of Appeal.

**33.** Definitions or rules of interpretation contained in any Act shall, unless the contrary intention appears, apply to the construction of the sections of the Act which contain those definitions or rules of interpretation, as well as to the other provisions of the Act. 6 E. VII., c. 21, s. 4. Interpretation sections.

DEFINITIONS.

**34.** In every Act, unless the context otherwise requires,—

(1.) 'Act' as meaning an Act of a legislature, includes an ordinance of the Northwest Territories as now or heretofore 'Act.'

fore constituted, or of the district of Keewatin, or of the Yukon Territory;

'Commencement.' (2.) 'commencement' when used with reference to an Act means the time at which the Act comes into operation;

'County.' (3.) 'county' includes two or more counties united for purposes to which the enactment relates;

'County court.' (4.) 'county court' in its application to the province of Ontario, includes 'district court';

'Fiscal year.' (5.) 'fiscal year' or 'financial year' means, as respects moneys provided by Parliament, or any moneys relating to the Consolidated Revenue Fund of Canada, or to Dominion accounts, taxes or finance, the twelve months ending the thirty-first day of March;

'Governor.' (6.) 'Governor,' 'Governor of Canada,' or 'Governor General,' means the Governor General for the time being of Canada, or other the chief executive officer or administrator for the time being carrying on the Government of Canada on behalf and in the name of the Sovereign, by whatever title he is designated;

'Governor in Council.' (7.) 'Governor in Council,' or 'Governor General in Council' means the Governor General of Canada, or person administering the Government of Canada for the time being, acting by and with the advice of, or by and with the advice and consent of, or in conjunction with the King's Privy Council for Canada;

'Great Seal.' (8.) 'Great Seal' means the Great Seal of Canada;

'Herein.' (9.) 'herein' used in any section shall be understood to relate to the whole Act, and not to that section only;

'His Majesty.' (10.) 'His Majesty,' 'the King,' or 'the Crown,' or other reference to the sovereign reigning at the time of the passing of the Act, means the Sovereign of the United Kingdom of Great Britain and Ireland, his heirs and successors;

'Holiday.' (11.) 'holiday' includes Sundays, New Year's Day, the Epiphany, Good Friday, the Ascension, All Saints' Day, Conception Day, Easter Monday, Ash Wednesday, Christmas Day, the birthday or the day fixed by proclamation for the celebration of the birthday of the reigning sovereign, Victoria Day, Dominion Day, the first Monday in September, designated *Labour Day,* and any day appointed by proclamation for a general fast or thanksgiving;

'Legislature.' (12.) 'legislature,' 'legislative council' or 'legislative assembly' includes the Lieutenant Governor in Council and also the Legislative Assembly of the Northwest Territories, as constituted previously to the first day of September, one thousand nine hundred and five, the Lieutenant Governor in Council of the district of Keewatin, the Commissioner in Council of the Northwest Territories as now constituted, and the Commissioner in Council of the Yukon Territory;

(13.) 'lieutenant governor' means the lieutenant governor for the time being, or other chief executive officer or administrator for the time being, carrying on the government of the province indicated by the Act, by whatever title he is designated; 'Lieutenant Governor.'

(14.) 'lieutenant governor in council' means the lieutenant governor, or person administering the government of the province indicated by the Act, for the time being, acting by and with the advice of, or by and with the advice and consent of, or in conjunction with the executive council of such province; 'Lieutenant Governor in Council.'

(15.) 'magistrate' means a justice of the peace; 'Magistrate.'

(16.) 'month' means a calendar month; 'Month.'

(17.) the name commonly applied to any country, place, body, corporation, society, officer, functionary, person, or thing, means such country, place, body, corporation, society, officer, functionary, person or thing, although such name is not the formal and extended designation thereof; Names.

(18.) 'now' or 'next' shall be construed as having reference to the time when the Act was presented for the Royal Assent; 'Now,' 'next.'

(19.) 'oath' includes a solemn affirmation or declaration, whenever the context applies to any person and case by whom and in which a solemn affirmation or declaration may be made instead of an oath; and in like cases the expression 'sworn' includes the expression 'affirmed' or 'declared'; 'Oath.'

(20.) 'person' includes any body corporate and politic, and the heirs, executors, administrators or other legal representatives of such person, according to the law of that part of Canada to which the context extends; 'Person.'

(21.) 'proclamation' means a proclamation under the Great Seal; 'Proclamation.'

(22.) 'province' includes the Northwest Territories as now or heretofore constituted, the district of Keewatin, and the Yukon Territory; 'Province.'

(23.) 'registrar' or 'register' means and includes indifferently registrars or registers in the several provinces of Canada; 'Registrar.'

(24) 'shall' is to be construed as imperative, and 'may' as permissive; 'Shall,' 'may.'

(25.) 'statutory declaration' means a solemn declaration made by virtue of the Canada Evidence Act; 'Statutory declaration.'

(26.) 'superior court' means,— 'Superior court.'

*(a)* in the province of Ontario, the Court of Appeal for Ontario, and the High Court of Justice for Ontario;

*(b)* in the province of Quebec, the Court of King's Bench, and the Superior Court for the said province;

*(c)* in the provinces of Nova Scotia, New Brunswick, British Columbia and Prince Edward Island, the Supreme Court for each of the said provinces respectively;

*(d)* in the province of Manitoba, His Majesty's Court of King's Bench for the said province;

*(e)* in the province of Saskatchewan, the Supreme Court of the Northwest Territories, or, after the abolition of the said Court in the said province, such court as may be established by the legislature of the said province in lieu thereof;

*(f)* in the province of Alberta, the Supreme Court of the Northwest Territories, or, after the abolition of the said Court in the said province, such court as may be established by the legislature of the said province in lieu thereof; and,

*(g)* in the Yukon Territory, the Territorial Court;

'Sureties,' 'security.' (27.) 'sureties' means sufficient sureties, and the expression 'security' means sufficient security; and, whenever these words are used, one person shall be sufficient therefor, unless otherwise expressly required;

'Two justices.' (28.) 'two justices' means two or more justices of the peace, assembled or acting together;

'United Kingdom.' (29.) 'the United Kingdom' means the United Kingdom of Great Britain and Ireland;

'United States.' (30.) 'the United States' means the United States of America;

'Writing.' (31.) 'writing,' 'written,' or any term of like import, includes words printed, painted, engraved, lithographed or otherwise traced or copied. R.S., c. 1, s. 7; 56 V., c. 30, s. 1; 57-58 V., c. 55, s. 1; 1 E. VII., c. 11, s. 1, c. 12, s. 3, and c. 41, s. 12.

'Minister of Finance.' **35.** The expression 'Minister of Finance' or 'Receiver General' in any Act, or in any document, means the Minister of Finance and Receiver General, and the expression 'Deputy Minister of Finance' or 'Deputy Receiver General' in any Act or document means the Deputy Minister of Finance and Receiver General. R.S., c. 28, s. 1.

'Telegraph.' **36.** The expression 'telegraph' and its derivatives in any Act of the Parliament of Canada, or in any Act of the legislature of any province now forming part of Canada, passed before such province entered into the Union, on any subject which is within the legislative powers of the Parliament of Canada, shall not be deemed to include the word 'telephone' or its derivatives. R.S., c. 132, s. 10.

Expressions in instruments to have same meaning. **37.** Where any Act confers power to make, grant or issue any instrument, that is to say, any order in council, order, warrant, scheme, letters patent, rule, regulation, or by-law, expressions used in the instrument shall, unless the contrary intention appears, have the same respective meanings as in the Act conferring the power. 6 E. VII., c. 21, s. 5.

FISCAL YEAR—POWERS OF THE GOVERNOR IN COUNCIL.

**38.** Whenever in any Act of the Parliament of Canada, passed previously to the thirteenth day of July, one thousand nine hundred and six, a day or time is designated for any purpose, and the Governor in Council is of opinion that the day or time so designated was fixed because of its relation to the fiscal year as then constituted, or that the day or time designated for such purpose should bear a corresponding relation to the fiscal year as constituted by the Act passed in the sixth year of His Majesty's reign, intituled *An Act respecting the Fiscal Year,* chapter twelve, the Governor in Council may, by proclamation, declare that the day or the time fixed for such purpose shall be changed so that it shall bear to the fiscal year, as constituted by the said Act, the same relation as the day or time previously designated bore to the said previous fiscal year. 6 E. VII., c. 12, ss. 1 and 4. Change of dates.

CITATION OF ACTS.

**39.** In any Act, instrument or document, an Act may be cited by reference to its short title, if any, either with or without reference to the chapter, or by reference to the regnal year, or the year of our Lord in which it was passed. How.

2. Any such citation of or reference to any Act, shall, unless the contrary intention appears, be deemed to be a citation of or reference to such Act as amended. R.S., c. 1, s. 8; 6 E. VII., c. 21, s. 6. Includes amendments.

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# ANNOTATIONS.

## CHAPTER 1.

## Interpretation Act.

TIME OF COMMENCEMENT.

Section 7 (Assent). Act may provide for its coming into force before date of assent: The Queen v. Canada Sugar Refining Co., 27 S. C. R. 395; (1898) A. C. 735; 5 Ex. C. 177, reversed.

RULES OF CONSTRUCTION.

Section 13 (Acts public). Act private though declared to be public: La Compagnie pour l'Eclairage au gaz v. La Compagnie des pouvoirs hydrauliques, 25 S. C. 168.

Section 14 (Preamble). Works declared for general advantage of Canada by recital in preamble: Hewson v. Ontario Power Co., 36 S. C. 596.

Title may be considered to ascertain intention: O'Connor v. N. S. Telephone Co., 22 S. C. 276; Reg. v. Washington, 46 U. C. Q. B. 221.

Headings of divisions may be referred to: Donly v. Holmwood, 4 Ont. A. R. 555.

Declaration in title and preamble cannot restrict application of more extensive provision in enacting part: Reg. v. Washington, 46 U. C. Q. B. 221, at p. 230.

Section 15 (Every Act remedial). Reference to language of Minister introducing bill to aid in construction: Smith v. Belford, 1 Ont. A. R. 436.

General words restricted to sense of particular: Williams v. Town of Cornwall, 32 O. R. 255.

Strict construction of Act in derogation of rights: Re Ingersoll, 16 O. R. 194.

Liberal of Act in terms remedial: Trice v. Robinson, 16 O. R. 433.

Court will enlarge rather than limit operation of Act to legalize dedication of property to laudable public purposes: Butland v. Gillespie, 16 O. R. 486.

Strict construction of Act disqualifying licensee from holding office: Brine v. Booth, 3 O. R. 144, per Armour, J.

Construction of penal statute: Rex v. Mackintosh, 2 O. S. 531; N. Ontario Elec. Case, Hodg. Elec. Cas. 304; O'Grady v. Wiseman, Q. R. 9 Q. B. 169; Jones v. Hanford, 2 Pugs. (N.B.) 467.

Interference with private rights. "Quoties in verbis nulla est ambiguitas, &c.:" Kinney v. Plunkett, 26 N. S. 158; Francklyn v. People's Heat & Light Co., 32 N. S. 44.

Act permitting particular use of land not intended to prejudice common law rights of others: C. P. C. v. Parke (99), A. C. 535.

Taxing Act not construed differently from others: The King v. Algoma Cent. Ry. Co., 32 S. C. 277. Customs Act construed: Toronto Ry. Co. v. The Queen, 25 S. C. 24; O'Grady v. Wiseman, Q. R. 9 Q. B. 169.

Construction not to be aided by reference to debates: Gosselin v. King, 33 S. C. 255 (Taschereau, C.J.); Re Branch Lines, C. P. Ry., 36 S. C. 42. But see judgment of Mills, J., in Re Representation of New Brunswick in House of Commons, 33 S. C. 575: Toronto Ry. Co. v. The Queen, 4 Ex. C. 262.

Interpretation of statutory Code by reference to earlier law and decisions only justified on some special ground: Robinson v. C. P. Ry. Co. (1892) A. C. 481.

In construing a revenue Act regard may be had to general fiscal policy: Toronto Ry. Co. v. The Queen, 4 Ex. 262; 25 S. C. 24; (1896) A. C. 551?

Section of Criminal Code paraphrased: The Queen v. Egan, 11 Man. 134.

Construction of subsections: Washington v. G. T. Ry. Co., 24 Ont. A. R. 183, reversed by 28 S. C. 184; (1899) A. C. 275; Bain v. Anderson, 28 S. C. 481; City of Ottawa v. Hunter, 31 S. C. 7.

Last subsection not expression of latest mind of Parliament: City of Ottawa v. Hunter, supra.

Criminal Code—Noscitur a sociis: The Queen v. France, Q. R. 7 Q. B. 83.

Interpretation of Election Acts: Hearn v. McGreevy, 13 Q. L. R. 322.

Section 16 (Binding Crown). Statute affecting rights of the Crown must be pleaded: Sydney & Louisburg Coal & Ry. Co. v. Sword, 21 S. C. 152.

The King is not comprehended in enactments under the word "party:" Reg. v. Davidson, 21 U. C. Q. B. 41; Reg. v. Benson, 2 Ont. P. R. 350.

Crown cannot be claimant under Ontario Interpleader Act: McGee v. Baines, 3 U. C. L. J. 151.

For provincial purposes the Government of a Province exercises the Crown prerogatives: Liquidators of Maritime Bank v. Receiver-General of N. B., 27 N. B. 379; 20 S. C. 695; 8 Times L. R. 677.

Section not qualified by any exception such as "that the King is impliedly bound by statutes passed for the general good . . . or to prevent fraud, injury or wrong:" The Queen v. Pouliot, 2 Ex. C. 49.

Section 18 (Repeal). Of special by general Act not implied: City of Vancouver v. Bailey, 25 S. C. 62.

Section 19 (Effect of repeal). Procedure under repealed Act: The Queen v. Sailing Ship Troop Co., 29 S. C. 662.

C. T. Act, 1878—Information and conviction after R. S. C. 1886, were in force—Offence before and offence after: Reg. v. Durnion, 14 O. R. 672.

Section 21, s. 4 (Re-enactment). Law of construction of Dominion Acts was previously the same: Per Patterson J., Davidson v. Ross, 24 Gr. 22, at p. 79

Under same provision in Ontario Act re-enactment must be construed as repealed Act: Crain v. Trustees Collegiate Institute of Ottawa, 43 U. C. Q. B. 498.

Section 22 (Amendment). Statutory limitation not applicable to enforcement of more extensive rights under amendment: Reg. v. G. W. Ry. Co., 14 U. C. C. P. 462.

Railway Act, 1868, did not apply to G. W. Ry. Co., but an amending Act in 1871 was made applicable to all railways in Canada. Held that a section of the original amended by the later Act did not apply to the G. W. Ry. Co.: Allan v. G. W. Ry. Co., 33 U. C. Q. B. 483.

Criminal Act amended—Abolition of distinction between felony and misdemeanour: The Queen v. Cameron, Q. R. 6 Q. B. 158.

Section 31, s.-s. (a) (General rules). Perjury in proceedings before magistrate acting beyond territorial jurisdiction: Drew v. Thwing, 33 S. C. 228.

Section 34, s.-s. 2 (Commencement). See s. 7.

Section 34, s.-s. 20 ("Person"). Municipality a "person" interested under Railway Act, 1888, ss. 187, 188: City of Toronto v. G. T. Ry. Co., 37 S. C. 232.

See Ottawa Electric Ry. Co. v. City of Ottawa, 37 S. C. 354, as to company "interested or affected."

Section 34, s.-s. 24 ("Shall" and "may"). Enactment that "shall" is to be construed as imperative only declaratory of rule judicially established: Lincoln Election Case, 2 Ont. A. R. 324. And see Matton v. The Queen, 5 Ex. C. 401.

In enacting that a thing may be done which is for the public benefit "may" is held to be imperative: Ex parte Gilbert, 1 Pugs. 231; Aitcheson v. Mann, 9 Ont. P. R. 473.

The words "may convey" in 36 V. c. 48, s. 426 (Ont.) are compulsory: Cameron v. Wait, 3 Ont. A. R. 175.

A statute providing that municipal corporations may pass by-laws in relation to matters enumerated does not prevent them exercising their jurisdiction otherwise: Bernardin v. North Dufferin, 19 S. C. 581; Dwyer v. Port Arthur, 21 O. R. 175.

"Shall" in Criminal Code, 1892, s. 645: The Queen v. Buchanan, 12 Man. 190: The Queen v. Townshend, 28 N. S. 468.

# CHAPTER 78.

## An Act respecting Oaths of Allegiance.

Short title.

**1.** This Act may be cited as the Oaths of Allegiance Act.

Oath prescribed.

**2.** Every person in Canada, who, either of his own accord, or in compliance with any lawful requirement made of him, or in obedience to the directions of any Act or law in force in Canada, save and except *The British North America Act, 1867*, desires to take an oath of allegiance, shall have administered to him and take the oath in the following form, and no other:—

Form.

'I, A.B., do sincerely promise and swear that I will be faithful and bear true allegiance to His Majesty, King Edward VII. (*or reigning sovereign for the time being*) as lawful Sovereign of the United Kingdom of Great Britain and Ireland, of the British possessions beyond the seas, and of this Dominion of Canada, dependent on and belonging to the said Kingdom, and that I will defend Him to the utmost of my power against all traitorous conspiracies or attempts whatsoever, which shall be made against His person, crown and dignity, and that I will do my utmost endeavour to disclose and make known to His Majesty, His heirs or successors, all treasons or traitorous conspiracies and attempts which I shall know to be against Him or any of them ; and all this I do swear without any equivocation, mental evasion or secret reservation. So help me God.' R.S., c. 112, s. 1.

No other oath necessary.

**3.** It shall not be necessary for any person appointed to any civil office in Canada, or for any mayor or other officer or member of any corporation therein, or for any person admitted, called or received as a barrister, advocate, notary public, attorney, solicitor or proctor, to make any declaration or subscription, or to take or subscribe any other oath than the oath aforesaid, and also such oath for the faithful performance of the duties of his office, or for the due exercise of his profession or calling as is required by any law in that behalf. R.S., c. 112, s. 1.

Within what delay shall

**4.** The oath of allegiance hereinbefore set forth, together with the oath of office or oath for the due exercise of any

oath be taken.

profession or calling, shall be taken within the period and in the manner, and subject to the disabilities and penalties for the omission thereof, by law provided with respect to such oaths, in all such cases respectively. R.S., c. 112, s. 2.

An allegiance affirmation may be substituted for an oath.

**5.** All persons allowed by law in civil cases, in any part of Canada, to affirm instead of making oath, shall be permitted to take an affirmation of allegiance in the like terms, *mutatis mutandis*, as the said oath of allegiance.

2. Such affirmation of allegiance, taken before the proper officer, shall in all cases be accepted from such persons in lieu of such oath, and shall as to such affirmants have the like effect as the said oath of allegiance. R.S., c. 112, s. 3.

By whom administered.

**6.** All justices of the peace and other officers lawfully authorized either by virtue of their office, or special commission from the Crown for that purpose, may in any part of Canada administer the oath of allegiance or receive the affirmation of allegiance. R.S., c. 112, ss. 1 and 3.

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# CHAPTER 90.

## An Act respecting the Sale and Marking of Manufactures of Gold and Silver.

SHORT TITLE.

**1.** This Act may be cited as the Gold and Silver Marking Act. 6 E. VII., c. 17, s. 1. Short title.

COMMENCEMENT.

**2.** This Act shall come into force on the thirteenth day of July, one thousand nine hundred and seven. 6 E. VII., c. 17, s. 15. 13th July, 1907.

INTERPRETATION.

**3.** In this Act, unless the context otherwise requires,— Definitions.

(*a*) 'article' means an article of merchandise, and includes any portion of such article, whether a distinct part thereof or not; 'Article.'

(*b*) 'mark' includes any mark, sign, device, imprint, stamp, brand, label, ticket, letter, word, figure, or other means whatsoever of indicating, or of purporting to indicate, the quality, quantity or weight of gold, or of silver, or of any alloy of gold or of silver, in an article of merchandise; 'Mark.'

(*c*) 'apply' and 'applied' include any method or means of application or attachment to, or of use on, or in connection with, or in relation to, an article of merchandise, whether such application, attachment or use is to, on, or with 'Apply,' 'applied.'

(i) the article itself, or

(ii) anything attached to the article, or

(iii) anything to which the article is attached, or

(iv) anything in or on which the article is, or

(v) anything so used or placed as to lead to a reasonable belief that the mark on that thing is meant to be taken as a mark on the article itself;

(*d*) 'dealer' includes any person, corporation, association, or firm, being a manufacturer of, or a wholesale or retail seller of or dealer in gold or silver jewellery, or of or in gold ware, gold-plated ware, silver ware, or silver-plated ware, 'Dealer.'

ware, or the like, and any director, manager, officer, or agent of such corporation, association or firm;

'To sell.' *(e)* 'to sell' includes to dispose of for valuable consideration, to offer to sell, to offer to dispose of for valuable consideration, and to have in possession with intent to sell or to dispose of for valuable consideration.' 6 E. VII., c. 17, s. 2.

Marks on cases or coverings.

**4.** A mark applied to any case or covering attached to or forming part of any article composed of mechanism, works or movements, or intended to be so applied or to form such part, shall not be deemed to be applied to such mechanism, works or movements. 6 E. VII., c. 17, s. 10.

APPLICATION.

Exemptions.

**5.** This Act shall not apply to any article made in Canada before the date of the coming into force of this Act, or to any article imported into Canada before the said date, or to any article which, by regulation made by the Governor in Council under the authority of this Act, may be exempted from the application thereof. 6 E. VII., c. 17, s. 3.

Idem.

**6.** This Act shall not apply with respect to such parts of manufactured articles as may require adaptation to the use of the trade, that is to say, to springs, winding-bars, sleeves, crown cores, pins, joint-pins, and to such other like articles as by regulation made by the Governor in Council under this Act may be exempted from the operation of this Act. 6 E. VII., c. 17, s. 9.

Idem.

**7.** The Governor in Council may, from time to time, make such regulations as to him seem necessary for declaring articles to be exempt from the provisions of the last two preceding sections. 6 E. VII., c. 17, s. 14.

MARKING.

Marks allowed on gold and silverware.

**8.** It shall not be lawful to make or sell, or to import or attempt to import into Canada, any article composed either in whole or in part of gold or of silver, or of any alloy of gold or of silver, except the articles mentioned in section ten of this Act, if to such article there is applied any mark other than,—

Trade mark. *(a)* trade marks registered in accordance with the Trade Mark and Design Act; and,

Date mark. *(b)* such letter as is, by Schedule A to this Act, required to indicate the period of time during which such article was manufactured; and,

Quality mark. *(c)* marks truly and correctly indicating, as required by this Act, the quality of the gold or silver, or alloy of gold or of silver, used in the construction of such article.

2. The provisions of this section shall not apply to any article of gold less than ten karats in fineness, or of silver, or of any alloy of gold or of silver, to which is applied,— British and foreign marks.

*(a)* any hall-mark lawfully applied according to the laws of the United Kingdom of Great Britain and Ireland; or,

*(b)* any mark indicating the quality of the gold or of the silver or of the alloy and applied by the government of any foreign country;

if with respect to such article all the other provisions of this Act have been complied with. 6 E. VII., c. 17, ss. 4 and 8.

**9.** As respects articles composed, in whole or in part, of gold or of any alloy of gold,— Marks on gold.

*(a)* the marks indicating as required by this Act the quality of gold or alloy of gold used in the construction of the article shall state the fineness of the gold in karats, thus: *10K*, *18K*, or as the case may be; and, Karat mark.

*(b)* the number of karats so stated shall bear the same proportion to twenty-four karats as the gold in the alloy bears to pure gold; that is to say, *18K* shall be deemed to mean that in the composition there are intended to be eighteen parts of pure gold, and six parts of alloy; and, Karat ratio.

*(c)* the actual fineness of the gold or alloy of gold of which the article is composed shall not be less than the said proportion Allowable deviation from marked quality.

(i) by more than one-half of a karat, if solder is used, or

(ii) by more than one-quarter of a karat, if solder is not used. 6 E. VII., c. 17, s. 5.

**10.** In the case of articles made in whole or in part of an inferior metal, which has deposited or plated thereon, or brazed or otherwise affixed thereto, a plating, covering or sheet composed of gold or of silver, or of an alloy of gold or of silver, and known in the trade as rolled gold plate, gold filled, gold plate, silver plate, silver filled, or gold or silver electroplate, or by any similar designation, and in the case of articles of like nature brought under the provisions of this section by regulation made by the Governor in Council under this Act,— Plated ware, etc.

*(a)* no mark shall be applied indicating otherwise than truly and correctly the fineness and also the actual weight of gold or of silver, or of alloy of gold or of silver, contained in the article, or the decimal proportion of gold, or of silver, or of alloy of gold or of silver, to the gross weight of the article at the time the article is sold or delivered by the maker; but a mark plainly and truly indicating that the article or part thereof is made of rolled gold plate, gold filled, gold plate, silver plate, silver filled, or gold or silver electroplate, or of any similar material, as the case Marks.

may be, which mark must be accompanied by a trade mark registered in accordance with the Trade Mark and Design Act, may be applied; and,

Idem. *(b)* whenever the fineness or actual or proportionate weight of the gold, or of the silver, or of the alloy of gold or of silver, contained in the article is indicated by a mark, the article and its accessories shall be marked as required by the last preceding section and the next following section of this Act; and,

Weight of gold or of silver. *(c)* the actual weight or the decimal proportion of gold, or of silver, or of alloy of gold or of silver, shall not be less than the actual weight or decimal proportion indicated by the mark by more than ten per centum of the actual weight or decimal proportion so indicated.

Regulations by Governor in Council. 2. The Governor in Council may, from time to time, make such regulations as to him seem necessary for declaring articles to be brought under the provisions of this section. 6 E. VII., c. 17, ss. 11 and 14.

OFFENCES AND PENALTIES.

Offences. **11.** Every one, being within the meaning of this Act a dealer, is guilty of an indictable offence and liable to the penalty by this Act provided, who,—

Marked less than 10K and indefinite marks on gold prohibited. *(a)* makes or sells or imports or attempts to import into Canada, any article purporting to be wholly or partly composed of gold or of any alloy of gold, if the article when made or sold has applied thereto any mark indicating the gold in the article to be of less than ten karats in fineness, or bearing the words *Gold, Solid Gold, Pure Gold, U.S. Assay,* or other words purporting to describe the gold or alloy of which the article is composed; or,

Sterling silver, and articles falsely so marked. *(b)* makes, or sells, or imports or attempts to import into Canada, any article which has applied thereto any mark indicating, or purporting to indicate, or leading to a reasonable belief, that the metal or alloy of which such article is composed is sterling silver, if the metal or alloy of which such article is actually composed contains silver in less proportion than nine hundred and twenty-five parts of pure silver in every one thousand parts of such metal or alloy

(i) by more than twenty-five parts in one thousand when solder is used, or

(ii) by more than ten parts in one thousand when solder is not used.

Violation of sec. 10. *(c)* contravenes any provision of the last preceding section, or makes, sells or imports or attempts to import into Canada any article in respect of which any provision of the said section is contravened; or,

*(d)* makes use of any printed or written matter or applies any mark, guaranteeing or purporting to guarantee that the gold or silver on or in any article of the kind referred to in the last preceding section will wear or last for any specified time; or, Mark guaranteeing wear.

*(e)* makes or sells or imports or attempts to import into Canada any electro-silver-plated article to which is applied a mark indicating otherwise than truly and correctly the metal on which the plating is deposited, the metal of which the deposit is composed, and the grade, quality or description, as known to the trade, of the plating. 6 E. VII., c. 17, ss. 6, 7, 11 and 12. False marks on electro-silver-plated ware.

**12.** Every one who is convicted of an indictable offence under this Act, or of any other contravention of this Act, shall be liable to a fine not exceeding one hundred dollars for each article in respect of which the conviction is had; and after the conviction every such article shall be so broken or defaced as to be unfit for sale otherwise than as metal. 6 E. VII. c. 17, s. 13. Penalty.

REGULATIONS.

**13.** The Governor in Council may, from time to time, make such regulations as to him seem necessary,— Regulations by Governor in Council.

*(a)* to secure the efficient administration and enforcement of this Act; including the imposition of penalties, not exceeding fifty dollars, upon any person contravening any such regulation, to be recoverable on summary conviction;

*(b)* for the appointment, powers and duties of officers employed in such administration and enforcement;

*(c)* generally for the purposes of this Act. 6 E. VII., c. 17, s. 14.

## SCHEDULE A.

A. indicates the period of time from June 30, 1906, to July 1, 1910.

B. indicates the period of time from June 30, 1910, to July 1, 1915.

C. indicates the period of time from June 30, 1915, to July, 1, 1920.

D. indicates the period of time from June 30, 1920, to July 1, 1925.

E. indicates the period of time from June 30, 1925, to July 1, 1930.

F. indicates the period of time from June 30, 1930, to July 1, 1935.

G. indicates the period of time from June 30, 1935, to July 1, 1940.

H. indicates the period of time from June 30, 1940, to July 1, 1945.

I. indicates the period of time from June 30, 1945, to July 1, 1950. 6 E. VII., c. 17, sch.

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# CHAPTER 97.

## An Act respecting the Importation and Employment of Aliens.

Short title.

**1.** This Act may be cited as the Alien Labour Act.

Prepayment of transportation prohibited.

**2.** It shall be unlawful for any person, company, partnership or corporation, in any manner to prepay the transportation or in any way to assist, encourage or solicit the importation or immigration of any alien or foreigner into Canada, under contract or agreement, parole or special, express or implied, made previous to the importation or immigration of such alien or foreigner, to perform labour or service of any kind in Canada. 60-61 V., c. 11, s. 1.

Penalty for infringement of prohibition.

**3.** For every violation of any of the provisions of the last preceding section, the person, partnership, company or corporation violating it by knowingly assisting, encouraging or soliciting the immigration or importation of any alien or foreigner into Canada to perform labour or service of any kind under contract or agreement, expressed or implied, parole or special, with such alien or foreigner, previous to such alien or foreigner becoming a resident in or a citizen of Canada, shall forfeit and pay a sum not exceeding one thousand dollars, and not less than fifty dollars. 1 E. VII., c. 13, s. 1.

Recovery of penalty.

**4.** The sum so forfeited may, with the written consent of any judge of the court in which the action is intended to be brought, be sued for and recovered as a debt by any person who first brings his action therefor in any court of competent jurisdiction in which debts of like amount are now recovered. 1 E. VII., c. 13, s. 1.

Recovery on summary conviction.

**5.** Such sum may also, with the written consent, to be obtained *ex parte*, of the Attorney General of the province in which the prosecution is had, or of a judge of a superior or county court, be recovered upon summary conviction before any judge of a county court, being a justice of the peace or any judge of the sessions of the peace, recorder, police magistrate, or stipendiary magistrate, or any functionary, tribunal or person invested by the proper legislative authority with



power

power to do alone such acts as are usually required to be done by two or more justices of the peace, and, when recovered, shall be paid to the Minister of Finance. 1 E. VII., c. 13, s. 1.

Application of penalties.

Separate proceedings for each alien.

**6.** Separate proceedings may be instituted for each alien or foreigner who is a party to such contract or agreement. 1 E. VII., c. 13, s. 1.

Certain contracts with aliens for services void.

**7.** All contracts or agreements, express or implied, parole or special, made by and between any person, company, partnership or corporation and any alien or foreigner, to perform labour or service, or having reference to the performance of labour or service by any person in Canada, previous to the immigration or importation into Canada of the person whose labour or service is contracted for, shall be void and of no effect. 60-61 V., c. 11, s. 2.

Master of vessel bringing aliens to Canada.

**8.** The master of any vessel who knowingly brings into Canada on such vessel and lands or permits to be landed, from any foreign port or place, any alien, labourer, mechanic or artisan who, previous to embarkation on such vessel, had entered into contract or agreement, parole or special, express or implied, to perform labour or service in Canada, shall be deemed guilty of an indictable offence and, on conviction thereof, shall be punished by a fine of not more than five hundred dollars for each alien, labourer, mechanic or artisan so brought or landed, and may also be imprisoned for a term not exceeding six months. 60-61 V., c. 11, s. 4.

Penalty.

Exceptions to Act.

**9.** Nothing in this Act shall be so construed as,—

*(a)* to prevent any citizen or subject of any foreign country, temporarily residing in Canada either in private or official capacity, from engaging, under contract or otherwise, persons not residents or citizens of Canada, to act as private secretaries, servants or domestics for such foreigner temporarily residing in Canada;

*(b)* to prevent any person, partnership, company or corporation from engaging under contract or agreement, skilled workmen in foreign countries to perform labour in Canada in or upon any new industry not at present established in Canada: Provided that skilled labour for that purpose cannot be otherwise obtained;

*(c)* applying to professional actors, artists, lecturers or singers, or to persons employed strictly as personal or domestic servants; or,

*(d)* prohibiting any person from assisting any member of his family, or any relative, to migrate from any foreign country to Canada for the purpose of settlement in Canada. 60-61 V., c. 11, s. 5; 1 E. VII., c. 13, s. 2.

**10.** The Attorney General of Canada, in case he shall be satisfied that an immigrant has been allowed to land in Canada contrary to the prohibition of this Act, may cause such immigrant, within the period of one year after landing or entry, to be taken into custody and returned to the country whence he came, at the expense of the owner of the importing vessel, or, if he entered from an adjoining country, at the expense of the person, partnership, company or corporation assisting, encouraging or soliciting the importation or immigration of such immigrant under contract contrary to the provisions of this Act. 60-61 V., c. 11, s. 6; 1 E. VII., c. 13, s. 3. Return of immigrant landed.

**11.** The Minister of Finance may pay to any informer who furnishes original information that the law has been violated such a share not exceeding fifty per centum of the penalties recovered as he deems reasonable and just, where it appears that the recovery was had in consequence of the information thus furnished. 60-61 V., c. 11, s. 7. Share of penalty to informer.

**12.** It shall be deemed a violation of this Act for any person, partnership, company or corporation to assist or encourage the importation or immigration of any person who resides in, or is a citizen of any foreign country to which this Act applies, by promise of employment through advertisements printed or published in such foreign country. What is deemed violation of this Act.

2. Any such person coming to this country in consequence of such an advertisement shall be treated as coming under a contract as contemplated by this Act, and the penalties by this Act imposed shall be applicable in such case: Provided that this section shall not apply to skilled labour not obtainable in Canada, as hereinbefore specified. 1 E. VII., c. 13, s. 4. Advertisements deemed as contracts.

**13.** This Act shall apply only to the importation or immigration of such persons as reside in or are citizens of such foreign countries as have enacted and retained in force, or as enact and retain in force laws or ordinances applying to Canada of a character similar to this Act. 1 E. VII., c. 13, s. 5. Reciprocity of Act.

**14.** Evidence of any such law or ordinance of a foreign country may be given by the production of a copy thereof purporting to be,— Evidence of foreign law.

*(a)* printed by the government printer or at the government printing office of such foreign country, or contained in a volume of laws or ordinances of such country purporting to be so printed; or,

*(b)* certified to be true by some officer of state of such foreign country who also certifies that he is the custodian of the original of such law or ordinance, in which case no

proof shall be required of the handwriting or official position of the person so certifying. 61 V., c. 2, s. 1.

Powers as to immigration saved.

**15.** Nothing in this Act shall affect the exercise of the powers of the Government of Canada or of any province in connection with the promotion of immigration. 1 E. VII., c. 13, s. 6.

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# ANNOTATIONS.

## CHAPTER 97.

### The Alien Labour Act.

Section 4. Consent of judge—What to contain: Rex v. Breckenridge, 10 O. L. R. 459.

*Qui tam* action in Quebec — Security for costs: Laurin v. Raymond, 7 Que. P. R. 209.

Section 10. Deportation of alien—Held intra vires: Attorney-General of Canada v. Cain (1906) A. C. 543.

# ANNOTATIONS.

## CHAPTER 99.

### Manitoba Supplementary Provisions Act.

Section 3. Swamp lands—Transfer of proprietary rights—Vesting at future date.

It is a general principle that where the revenues of Crown lands are transferred by statute from one government to another there is no transfer of title. That remains all the time in the Crown. What is transferred is the right to administer such lands and the right to appropriate the revenues therefrom; and the latter right will in general co-exist with the former: See Attorney-General of Manitoba v. Attorney-General of Canada (1903), 8 Ex. C. R. 337.

# CHAPTER 106.

## An Act respecting Dominion Day.

Short title.

**1.** This Act may be cited as the Dominion Day Act.

Dominion Day a holiday.

**2.** Throughout Canada, in each and every year, the first day of July, not being a Sunday, shall be a legal holiday, and shall be kept and observed as such, under the name of *Dominion Day*. R.S., c. 111, s. 1.

When 1st of July is a Sunday.

**3.** When the first day of July is a Sunday, the second day of July shall be, in lieu thereof, throughout Canada, a legal holiday, and shall be kept and observed as such under the same name. R.S., c. 111, s. 2.

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# CHAPTER 107.

## An Act respecting Victoria Day.

Short title.

**1.** This Act may be cited as the Victoria Day Act.

Victoria Day a holiday.

**2.** Throughout Canada, in each and every year, the twenty-fourth day of May, being the birthday of Her late Majesty Queen Victoria, shall, when not a Sunday, be a legal holiday and shall be kept and observed as such under the name of *Victoria Day*. 1 E. VII., c. 12, s. 1.

If 24th of May is a Sunday.

**3.** When the twenty-fourth day of May is a Sunday, the twenty-fifth day of May shall be, in lieu thereof, a legal holiday throughout Canada, and shall be kept and observed as such under the same name. 1 E. VII., c. 12, s. 2.

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# CHAPTER 108.

## An Act respecting Public Ferries.

SHORT TITLE.

**1.** This Act may be cited as the Ferries Act. Short title.

INTERPRETATION.

**2.** In this Act, unless the context otherwise requires,— Definitions.

*(a)* 'ferry' means any ferry between any province and any British or foreign country, or between any two provinces;

*(b)* 'license' or 'renewal,' includes all ferry licenses or renewals thereof;

*(c)* 'Minister' means the Minister of Inland Revenue. R.S., c. 97, s. 1.

APPLICATION.

**3.** Nothing in this Act shall extend to the owner or master of any vessel plying between two ports in Canada or regularly entered or cleared by the officers of His Majesty's Customs at any such port, or shall, in any way, affect any privilege in respect to ferries granted previously to the first day of March, one thousand eight hundred and eighty-seven, to the proprietor of any bridge or to any railway or other company by the Parliament of Canada, or by the legislature of any of the provinces then composing Canada, before such province became a part of Canada. R.S., c. 97, s. 11. This Act not to apply to certain vessels, bridges and railways.

LICENSES.

**4.** Every license of ferry shall be under the Great Seal and shall be issued by the Governor in Council. R.S., c. 97, s. 2; 51 V., c. 23, s. 1. Licenses to be under Great Seal.

**5.** Whenever any ferry, other than a ferry between Canada and any other country, is established or becomes vacant the Minister shall offer the license or renewal of license for such ferry to public competition, and for that purpose give notice in the English and French languages in the *Canada Gazette*, and in one or more newspapers published or circulated in the locality in which the ferry is situate, of the time and place at which Licenses to be granted only after competition.

which tenders will be received for the license, or renewal of license, for such ferry.

Report by Minister.

2. The Minister shall report the result of such competition to the Governor in Council, and the license, or renewal thereof, shall be granted accordingly. R.S., c. 97, s. 3; 51 V., c. 23, s. 2.

Ferry between Canada and another country.

**6.** In the case of a ferry between Canada and any other country, the Governor in Council may authorize a ferry license to be granted, or to be renewed, for any period not exceeding ten years, as the exigencies of the case require.

Liable to cancellation for violating the Customs laws.

2. Every such license shall be liable to cancellation for any violation of the Customs laws of Canada, or of the country between which and Canada the ferry is established, and for any violation of the regulations made by the Governor in Council, as hereinafter provided.

Ferry between two provinces.

3. In the case of a ferry between any two provinces, a ferry license may be granted, after public competition as hereinbefore provided, for any period not exceeding five years: Provided that the Governor in Council, if he is satisfied that the regulations hereinafter mentioned have been complied with and the public requirements met, may in any case, without calling for tenders as aforesaid, authorize the extension of the license for an additional period of five years, upon such terms as are set forth in the order in council. 51 V., c. 23, s. 3.

REGULATIONS.

Governor in Council may make regulations.

**7.** The Governor in Council may, from time to time, make such regulations as he deems expedient, for any of the following purposes, that is to say:—

Extent of ferries.

*(a)* Establishing the extent and limit of all, or any such ferries as aforesaid;

Conditions.

*(b)* Defining the manner in which, the conditions, including any duty or sum to be paid for the license, under which, and the period for which, licenses shall be granted in respect of such ferries, or any one or more of them;

Vessels to be used.

*(c)* Determining the size and description of the vessels to be used on any such ferries by the persons holding licenses in respect thereof, and the nature of the accommodation and conveniences to be provided for passengers carried in such vessels;

Tolls.

*(d)* Fixing the tolls or rates at which persons and chattels shall be carried over such ferries, and the manner and places at which such tolls or rates shall be published or made known;

Enforcing payment.

*(e)* Enforcing the payment of such tolls or rates, by the persons carried, or for whom chattels are carried, over such ferries;

*(f)* Regulating the conduct of persons holding licenses in respect of such ferries, and fixing the times and hours and parts of hours during and at which vessels employed on such ferries shall cross and recross or depart from either side of any such ferry for that purpose; Conducting ferries.

*(g)* Annulling and declaring the forfeiture of any ferry license, in consequence of the conditions thereof, or any of them, not having been fulfilled, or in consequence of such license having been obtained by fraud or misrepresentation or through error; Forfeiture of license.

*(h)* Imposing penalties, not exceeding ten dollars in any case, for the violation of any such regulation. Penalties.

2. All such regulations shall, during the time for which they are intended to be in force, have the same force and effect as if contained in and enacted by this Act. R.S., c. 97, s. 5. Force of law.

**8.** The Minister shall cause all such regulations to be published in the English and French languages, in the *Canada Gazette*, at least three times during the three months following the date thereof. R.S., c. 97, s. 6. Regulations to be published in English and French.

INQUIRIES.

**9.** Whenever reasonable grounds are shown to the Minister, he may, either himself or by any person specially appointed by him for that purpose, make inquiry under oath, as to any matter connected with any ferry or ferry license. Minister may make inquiries.

2. The Minister or such person shall have the same power as is vested in any court of justice in civil cases, of summoning witnesses, of enforcing their attendance, and of requiring and compelling them to give evidence on oath, whether orally or in writing, and to produce such document and things as he deems requisite to the full investigation of such matter. R.S., c. 97, s. 7. Powers for that purpose.

PENALTIES.

**10.** Every person who interferes with the rights of any licensed ferryman, by conveying passengers or goods, for hire or profit or with the intention to lessen the tolls or revenue of any ferry, within the limits assigned to such ferryman by the Crown, shall, upon conviction thereof before a justice of the peace for the county, city or district in which either terminus of the ferry is situate, incur a penalty not exceeding twenty dollars. R.S., c. 97, s. 8. For interfering with ferry rights.

APPROPRIATION OF PENALTIES AND LICENSE FEES.

**11.** All fines or penalties imposed by this Act, or by any regulations under the authority thereof, shall be recoverable in a summary manner before any one justice of the peace. Recovery of fines and penalties.

Payment of penalties.

2. One moiety of every such penalty shall be paid to the informer, and the other moiety shall belong to the Crown. R.S., c. 97, s. 9.

Application of moneys.

**12.** All moneys arising out of such ferry licenses, and out of fines and penalties incurred in regard to the same, or otherwise, under this Act, shall form part of the Consolidated Revenue Fund of Canada. R.S., c. 97, s. 10.

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# ANNOTATIONS.

## CHAPTER 108.

### Public Ferries Act.

Section 3. Licenses—Language deemed sufficient for grant: Anderson v. Jellet, 9 Can. S. C. R. 1.

Who may sign grant: Jones v. Fraser, 6 O. S. 426.

International ferries and interprovincial ferries: Regina v. Davenport, 16 U. C. R. 411; Smith v. Rattè, 15 Gr. 473.

In re International and Interprovincial Ferries: 36 Can. S. C. R. 206.

Liability for negligence: St. John v. Macdonald, 14 Can. S. C. R. 1.

Taxation: Longueil Navigation Co. v. Montreal, 15 Can. S. C. R. 566.

North-west Territories: Dinner v. Humberstone, 26 Can. S. C. R. 252.

Sub-lease: Higgins v. Hogan, 7 U. C. R. 401.

Private rights within the ferry limits: Ives v. Calvin, 3 U. C. R. 464.

Section 10. Disturbance — It is not necessary in the action to prove that defendant received or claimed hire or payment: Burford v. Oliver, Dra. 9; Hickley v. Gildersleeve, 10 C. P. 460.

# ANNOTATIONS.

## CHAPTER 110.

### Land Titles Act.

For cases in Australasia relating to the Torrens Act, vide The Torrens Australasian Digest.

Section 55. Application to bring land under Act—Reference to Judge: In re Land Titles Act and Lillis, 4 N. W. T. Rep. 300.

Section 62. Evidence before Judge: Re G., 21 O. R. 109.

Section 67. Certificate of Title: Re Rivers, 1 N. W. T. Rep. 464.

Section 69. Implied covenant in transfer: Glenn v. Scott, 2 N. W. T. Rep. 339.

Sections 70 and 71. Transfer of lands—Unregistered: Wilkie v. Jellett, 2 N. W. T. Rep. 133.

Section 73. Reservations—Easement: James v. Stevenson (1893), A. C. 162.

Section 78. Transfer of title: Re Bentley & Morris, 1 N. W. T. Rep. 473; In re Kettleson, 17 C. L. T. 317.

Section 114. Transmission of interest: Re Bannerman, 2 M. R. 377; Re Lewis, 5 M. R. 44.

Section 124. Executions: Re Claxton, 1 N.W.T. Rep. 282; Re Town of Prince Albert, 4 N. W. T. Rep. 510; In re Land Titles Act, 1894, and Blanchard Estate, 5 N. W. T. Rep. 240; Registrar of Titles v. Paterson, 2 App. Cas. 110.

Section 130. Tax Sales: In re Prince Albert Tax Sales: 4 N. W. T. Rep. 198; Re Donnelly Tax Sales, 5 N.W.T. Rep. 270; Kirk v. Kirkland, 7 B. C. R. 12; North British Canadian Investment Co. v. St. John School Trustees, 35 Can. S. C. R. 461.

Section 131. Caveats: McArthur v. Glass, 6 M. R. 224; McKay v. Nanton, 7 M. R. 250; Jones v. Simpson, 8 M. R. 124; Martin v. Morden, 9 M. R. 565; Frost v. Driver, 10 M.

# CHAPTER 121.

## An Act respecting Pawnbrokers.

SHORT TITLE.

**1.** This Act may be cited as the Pawnbrokers Act. Short title.

INTERPRETATION.

**2.** In this Act, unless the context otherwise requires, 'pawnbroker' means any person who lawfully exercises the trade of receiving or taking, by way of pawn, pledge or exchange, any goods for the repayment of money lent thereon. R.S., c. 128, s. 1. Definitions.

RATES AND CONDITIONS.

**3.** Every pawnbroker may take the following rates above the principal sum advanced, before he is obliged to re-deliver the goods pawned, that is to say, for every pledge upon which there has been lent not exceeding fifty cents, the sum of one cent for any time not exceeding one month, and the same for every month afterwards, including the current month in which the pledge is redeemed, although such month has not expired; and so on progressively and in the same proportion for every sum of fifty cents up to twenty dollars. R.S., c. 128, s. 2. Rates which may be taken.

**4.** When the sum lent exceeds twenty dollars, the pawnbroker may take upon all beyond that amount after the rate of five cents for every four dollars by the month, and so on in proportion for any fractional sum. R.S., c. 128, s. 3. When sum lent exceeds $20.

**5.** Such sums respectively shall be in lieu of and taken as a full satisfaction for all interest due and charges for warehouse room. R.S., c. 128, s. 4. In lieu of interest.

**6.** Except as to amounts advanced on goods not exceeding twenty dollars hereinbefore provided for, the person entitled to redeem, shall on application during any current and unexpired month have the right of redemption on payment of the full rate for each expired month and in addition,— Redemption where advances exceed $20.

*(a)* for any portion of any current and unexpired month not exceeding fourteen days, a one-half month rate; and,

*(b)* for any portion of any current and unexpired month exceeding fourteen days, a full month rate.

Not exceeding $20.

2. The person entitled may redeem goods upon which any sum not exceeding twenty dollars has been advanced on payment of the amount specially provided by this Act as a rate for sums advanced up to twenty dollars. R.S., c. 128, ss. 2 and 5.

OFFENCES AND PENALTIES.

Taking unlawful rate.

**7.** Every pawnbroker who, in any case, stipulates for or takes a higher rate than that herein prescribed, shall, on summary conviction, be liable to a penalty not exceeding fifty dollars. R.S., c. 128, s. 6.

Forging pawnbroker's notes.

**8.** Every person who counterfeits, forges or alters any note or memorandum given by a pawnbroker for goods pledged, or causes or procures the same to be done, or utters, vends or sells such note or memorandum, knowing the same to be counterfeited, forged or altered, with intent to defraud any person, shall be liable, on summary conviction, to imprisonment for any term not exceeding three months. R.S., c. 128, s. 7.

Offender may be arrested.

**9.** If any note or memorandum aforesaid is uttered, shown or offered to any person, and such person has reason to suspect that the same has been forged, he may seize the person offering the same, and deliver him to a peace officer or constable, who shall convey him before a justice of the peace to be dealt with according to law. R.S., c. 128, s. 8.

Not giving a satisfactory account of goods offered.

**10.** If any person offers to any pawnbroker, by way of pawn or pledge, or of exchange or sale, any goods, and is not able or refuses to give a satisfactory account of himself, or of the means whereby he became possessed of the goods, or wilfully gives any false information to the pawnbroker or his servant, as to whether such goods are his own property or not, or as to his name and place of abode, or as to the owner of the goods; or if there is any other reason to suspect that such goods have been stolen or otherwise illegally or clandestinely obtained; or if any person not entitled, or not having any colour of title by law to redeem goods that have been pawned, attempts to redeem them, the person to whom the goods first above mentioned are offered to be pawned, or to whom the offer to redeem the goods in pawn is made, may seize and detain the person offering to pawn, and the goods offered to be pawned, or the person offering to redeem as aforesaid, and shall convey such person and the goods offered to be pawned, or the person offering to redeem, and immediately deliver the person so offering to pawn and the goods offered to be pawned, or the person so offering to redeem, into the custody of a peace officer or constable, who shall, as soon as possible, convey such person and

Arrest of offender.

and goods, or such person, as the case may be, before a justice of the peace of the district or county. R.S., c. 128, s. 9.

If justice supposes that goods have been stolen, he may commit the offender.

**11.** If such justice of the peace, upon examination and inquiry, has cause to suspect that such goods have been stolen or illegally or clandestinely obtained, or that the person offering to redeem them has not any pretense or colour of right so to do, he shall commit the offender into safe custody for such reasonable time as is necessary for obtaining proper information, in order to be further examined ; and if, upon either examination, it appears to the satisfaction of the justice that such goods were stolen or illegally or clandestinely obtained, or that the person offering to redeem them had not any pretense or colour or right so to do, he shall, unless the commitment is authorized by some other law, commit the offender to the common gaol of the district or county where the offence was committed, for any term not exceeding three months. R.S., c. 128, s. 10.

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# ANNOTATIONS.

## CHAPTER 121.

### Pawnbrokers' Act.

Section 3. A pawnbroker may charge a higher rate of interest than that mentioned in this section: Regina v. Adams, 8 Pr. (Ont.) 462.

# ANNOTATIONS.

## CHAPTER 120.

### Interest Act.

Section 2. Rate of interest exorbitant — Oppression — Fraud: Goodhue v. Widdifield, 8 Gr. 531; Teeter v. St. John, 10 Gr. 85.

Section 4. Provisions cannot be waived: Dunne v. Malone, 6 O. L. R. 484.

Section 6. Payment by instalments: Biggs v. Freehold Loan and Savings Co., 31 Can. S. C. R. 136.

Section 10. Mortgage extending beyond five years: In re Parker, Parker v. Parker, 24 O. R. 373.

# CHAPTER 122.

## An Act respecting Money-Lenders.

Short title.

**1.** This Act may be cited as the Money-Lenders Act. 6 E. VII., c. 32, s. 1.

Definition. 'Money-lender.'

**2.** 'Money-lender' in this Act includes any person who carries on the business of money-lending, or advertises, or announces himself, or holds himself out in any way, as carrying on that business, and who makes a practice of lending money at a higher rate than ten per centum per annum, but does not comprise registered pawnbrokers as such. 6 E. VII., c. 32, s. 2.

Not applicable to Yukon.

**3.** This Act shall not apply to the Yukon Territory. 6 E. VII., c. 32, s. 11.

Limitation as to small loans.

**4.** This Act shall not apply to any loan or transaction in which the whole interest or discount charged or collected in connection therewith does not exceed the sum of fifty cents. 6 E. VII., c. 32, s. 10.

Act not to increase existing rate of interest.

**5.** Nothing in this Act shall operate to increase the rate of interest that may be recovered in any case where by law the rate is fixed at less than twelve per centum per annum. 6 E. VII., c. 32, s. 8.

Interest on negotiable instruments, contracts, etc., limited to 12 per cent per annum.

And to 5 per cent after judgment rendered.

**6.** Notwithstanding the provisions of the Interest Act, no money-lender shall stipulate for, allow or exact on any negotiable instrument, contract or agreement, concerning a loan of money, the principal of which is under five hundred dollars, a rate of interest or discount greater than twelve per centum per annum; and the said rate of interest shall be reduced to the rate of five per centum per annum from the date of judgment in any suit, action or other proceeding for the recovery of the amount due. 6 E. VII., c. 32, s. 3.

Powers to court for inquiry into transaction and relief of debtor.

**7.** In any suit, action or other proceeding concerning a loan of money by a money-lender the principal of which was originally under five hundred dollars, wherein it is alleged that the amount of interest paid or claimed exceeds the rate of twelve per centum per annum, including the charges for discount, commission, expenses, inquiries, fines, bonus, renewals, or any

other charges, but not including taxable conveyancing charges, the court may re-open the transaction and take an account between the parties, and may, notwithstanding any statement or settlement of account, or any contract purporting to close previous dealings and create a new obligation, re-open any account already taken between the parties, and relieve the person under obligation to pay from payment of any sum in excess of the said rate of interest; and if any such excess has been paid, or allowed in account, by the debtor, may order the creditor to repay it, and may set aside, either wholly or in part, or revise, or alter, any security given in respect of the transaction. 6 E. VII., c. 32, s. 4.

Lender to repay excess.

Exception in case of negotiable instrument.

**8.** The *bona fide* holder, before maturity, of a negotiable instrument discounted by a preceding holder at a rate of interest exceeding that authorized by this Act, may nevertheless recover the amount thereof, but the party discharging such instrument may reclaim from the money-lender any amount paid thereon for interest or discount in excess of the amount allowed by this Act. 6 E. VII., c. 32, s. 5.

Act to apply to existing contracts.

**9.** The principal of any sum of money, originally under five hundred dollars, due and payable before the thirteenth day of July, one thousand nine hundred and six, in virtue of any negotiable instrument given to a money-lender, or of any contract or agreement entered into with such money-lender in respect of money lent by him, shall not, from and after the said date, bear a rate of interest greater than twelve per centum per annum; and from and after the said date no rate of interest greater than five per centum per annum shall be recovered upon any judgment, rendered before the said date, upon any such negotiable instrument, contract or agreement for the payment of money lent by a money-lender, and which allows a greater rate than five per centum per annum. 6 E. VII., c. 32, s. 6.

And to existing judgments.

As to instruments and contracts not yet matured.

**10.** In the case of any such negotiable instrument made before the thirteenth day of July, one thousand nine hundred and six, and maturing after the said date, and in the case of any such contract or agreement made before the said date and to be performed thereafter, the foregoing provisions of this Act shall apply only from the date of maturity or performance, as the case may be. 6 E. VII., c. 32, s. 7.

Penalty.

**11.** Every money-lender is guilty of an indictable offence and liable to imprisonment for a term not exceeding one year, or to a penalty not exceeding one thousand dollars, who lends money at a rate of interest greater than that authorized by this Act. 6 E. VII., c. 32, s. 9.

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# CHAPTER 125.

## An Act respecting Trade Unions.

SHORT TITLE.

**1.** This Act may be cited as the Trade Unions Act. R.S., c. 131, s. 1. Short title.

INTERPRETATION.

**2.** In this Act, unless the context otherwise requires, 'trade union' means such combination, whether temporary or permanent, for regulating the relations between workmen and masters, or for imposing restrictive conditions on the conduct of any trade or business, as would, but for this Act, have been deemed to be an unlawful combination by reason of some one or more of its purposes being in restraint of trade. R.S., c. 131, s. 2. 'Trade Union.'

APPLICATION.

**3.** This Act shall not affect,— Certain agreements not affected.

*(a)* any agreement between partners as to their own business;

*(b)* any agreement between an employer and those employed by him as to such employment;

*(c)* any agreement in consideration of the sale of the goodwill of a business, or of instruction in any profession, trade or handicraft. R.S., c. 131, s. 3.

**4.** Nothing in this Act shall enable any court to entertain any legal proceeding instituted with the object of directly enforcing or recovering damages for the breach of any agreement,— Certain legal proceedings not authorized by this Act.

*(a)* between members of a trade union, as such, concerning the conditions on which any members for the time being of the trade union shall, or shall not, sell their goods, transact business, employ or be employed;

*(b)* for the payment by any person of any subscription or penalty to a trade union;

*(c)* for the application of the funds of a trade union,

(i) to provide benefits to members, or

(ii) to furnish contributions to any employer or workman, not a member of such trade union, in consideration of such employer or workman acting in conformity with the rules or resolutions of such trade union, or

(iii) to discharge any fine imposed upon any person by sentence of a court of justice;

*(d)* made between one trade union and another; or,

*(e)* bond to secure the performance of any of the above mentioned agreements.

Agreement not unlawful thereunder.

2. Nothing in this section shall be deemed to constitute any of the agreements above mentioned unlawful. R.S., c. 131, s. 4.

Application of certain Acts.

**5.** No Act in force in Canada providing for the constitution and incorporation of charitable, benevolent or provident institutions, shall include or apply to trade unions; and this Act shall not apply to any trade union not registered under this Act. R.S., c. 131, s. 5.

CONSTITUTION AND REGISTRY.

Trade union may be registered.

**6.** Any seven or more members of a trade union may, by subscribing their names to the rules of the union and otherwise complying with the provisions of this Act with respect to registry, register such trade union under this Act, but if any one of the purposes of such trade union is unlawful, such registration shall be void. R.S., c. 131, s. 6.

Registrar.

**7.** The Registrar General of Canada shall be the Registrar under this Act. R.S., c. 131, s. 13.

Registry.

**8.** With respect to the registry, under this Act, of trade unions, the following provisions shall have effect:—

Application.

*(a)* An application to register the trade union and printed copies of its rules, together with a list of the titles and names of its officers, shall be sent to the Registrar under this Act;

Registration.

*(b)* The Registrar, upon being satisfied that the trade union has complied with the regulations respecting registry in force under this Act, shall register such trade union and such rules;

Name.

*(c)* No trade union shall be registered under a name identical with that under which any other trade union has been registered, or so nearly resembling such name as to be likely to deceive the members or the public;

Statement of affairs.

*(d)* If a trade union which applies to be registered has been in operation for more than a year before the date of such application, there shall be delivered to the Registrar, before the registry thereof, a general statement of the receipts, funds, effects and expenditure of such trade union, in the same form and showing the same particulars as if it was

the annual general statement required, as hereinafter mentioned to be transmitted annually to the Registrar;

*(e)* The Registrar, upon registering such trade union, shall issue a certificate of registry, which certificate, unless it is proved to have been withdrawn or cancelled, shall be conclusive evidence that the regulations of this Act, with respect to registry, have been complied with. R.S., c. 131, s. 14. Certificate of registry.

**9.** The Governor in Council may, from time to time, make regulations respecting registry under this Act, and respecting the seal, if any, to be used for the purpose of such registry, and the inspection of documents kept by the Registrar under this Act, and respecting the fees, if any, to be paid on registry, not exceeding the fees specified in the first schedule to this Act, and generally for carrying into effect the provisions of this Act as to registry of trade unions. R.S., c. 131, s. 14. Regulations may be made.

**10.** With respect to the rules of a trade union registered under this Act, the following provisions shall have effect:— Rules of registered union.

*(a)* The rules shall contain provisions in respect of the several matters mentioned in the second schedule to this Act;

*(b)* A copy of the rules shall be delivered by the trade union to every person on demand, on payment of a sum not exceeding twenty-five cents. R.S., c. 131, s. 15. Copies.

**11.** Every trade union registered under this Act shall have a registered office, to which all communications and notices may be addressed. R.S., c. 131, s. 16. Union to have registered office.

**12.** Notice of the situation of such registered office and of any change therein, shall be given to the Registrar and recorded by him; and until such notice is given, the trade union shall not be deemed to have complied with the provisions of this Act. R.S., c. 131, s. 16. Notice of such office to be given.

ANNUAL STATEMENT.

**13.** A general statement of the receipts, funds, effects and expenditure of every trade union registered under this Act shall be transmitted to the Registrar, before the first day of June in each year, and shall show fully the assets and liabilities at the date, and the receipts and expenditure of the trade union, during the year next preceding the date to which it is made out, and separately, the expenditure in respect of the several objects of the trade union, and such statement shall be prepared and made out to such date, in such form and shall comprise such particulars as the Registrar, from time to time, requires. General statement of affairs for Registrar.

2. Every member of and depositor in any such trade union shall be entitled to receive, on application to the secretary or treasurer Members and depositors

entitled to copy.

treasurer of the trade union, a copy of such general statement, without making any payment for the same. R.S., c. 131, s. 17.

Copies of rules to accompany statement.

**14.** There shall be sent to the Registrar, together with such general statement, a copy of all new rules and of all alterations of rules, and a statement showing the changes of officers, made by the trade union during the year preceding the date up to which the general statement is made out, and a copy of the rules of the trade union as they exist at that date. R.S., c. 131, s. 17.

RESPECTING PROPERTY.

Powers as to land.

**15.** Any trade union registered under this Act may purchase, or take upon lease, in the names of the trustees for the time being of such trade union, any land not exceeding one acre, and may sell, exchange, mortgage or let the same; and no purchaser, assignee, mortgagee or tenant shall be bound to inquire whether the trustees have authority for any sale, exchange, mortgage or letting, and the receipt of the trustees shall be a discharge for the money arising therefrom; and for the purposes of this section, every branch of a trade union shall be considered a distinct union. R.S., c. 131, s. 7.

Property vested in trustees.

**16.** All real and personal property whatsoever belonging to any trade union registered under this Act shall be vested in the trustees for the time being of such trade union, appointed as provided by this Act, for the use and benefit of such trade union and the members thereof, and the real or personal property of any branch of a trade union shall be vested in the trustees of such branch and be under the control of such trustees, their respective executors or administrators, according to their respective claims or interests; and upon the death or removal of any such trustees the same shall vest in the succeeding trustees for the same estate and interest as the former trustees had therein, and subject to the same trusts, without any conveyance or assignment whatsoever, save and except in the case of Dominion stock, which shall be transferred into the names of such new trustees. R.S., c. 131, s. 8.

PROCEDURE.

Whose the property may be stated to be.

**17.** In all actions, suits or indictments or summary proceedings before any court of summary jurisdiction, touching or concerning any property of a trade union or branch, the same shall be stated to be the property of the persons for the time being holding the said office of trustee, in their proper names, as trustees of such trade union without any further description. R.S., c. 131, s. 8.

**18.** The trustees of any trade union registered under this Act, or any other officer of such trade union who is authorized so to do by the order thereof, may bring or defend, or cause to be brought or defended, any action, suit, prosecution or complaint, in any court of competent jurisdiction, touching or concerning the property, right or claim to property of the trade union, and may, in all cases concerning the property, real or personal, of such trade union, sue and be sued, plead and be impleaded, in any such court, in their proper names, without other description than the title of their office. Powers of trustees as to suits and actions.

2. No such action, suit, prosecution or complaint, shall be discontinued or abated by the death or removal from office of such persons, or any of them, but the same shall be proceeded in by or against their successor or successors, as if such death, resignation or removal had not taken place; and such successors shall pay and receive the like costs as if the action, suit, prosecution or complaint had been commenced in their names, for the benefit of, or to be reimbursed from the funds of such trade union. Not abated by vacation of office.

3. Any summons to any such trustee or other officer may be served by leaving the same at the registered office of the trade union. R.S., c. 131, s. 9. Service of process.

ACCOUNTING.

**19.** A trustee of any trade union registered under this Act shall not be liable to make good any deficiency which arises or happens in the funds of such trade union; but such trustee shall be liable only for the moneys actually received by him on account of such trade union. R.S., c. 131, s. 10. Liability of trustee.

**20.** Every treasurer or other officer of a trade union registered under this Act shall, at such times as he is required by the rules of such trade union, or at any other time, when called upon by such trade union so to do, render to the trustees of the trade union, or to the members of such trade union, at a meeting thereof, a just and true account of all moneys received and paid by him since he last rendered a like account, and of the balance then remaining in his hands, and of all bonds or securities of such trade union. R.S., c. 131, s. 11. Account to be rendered.

**21.** The trustees shall cause such account to be audited by some fit and proper person or persons appointed by them; and such treasurer, if thereunto required, upon such account being audited, shall forthwith hand over to the trustees the balance which, on such audit, appears to be due by him, and shall also, if required, hand over to such trustees all securities and effects, books, papers and property of such trade union in his hands or custody; and if he fails so to do, the said trustees may sue such treasurer, in any court of competent jurisdiction, for the balance appearing to have been due from him upon the last account Audit. Payment, etc., to trustees. Recovery in case of default.

account rendered by him, and for all moneys since received by him on account of such trade union, and for the securities and effects, books, papers and property in his hands or custody, leaving him to set off in such action the sums, if any, which he has since paid on account of such trade union; and in such action the trustees shall be entitled to recover their full costs of suit, to be taxed as between solicitor and client. R.S., c. 131, s. 11.

Costs.

OFFENCES AND PENALTIES.

Fraudulently obtaining, misapplying funds, books, etc.

**22.** If any officer, member or other person who is, or represents himself to be a member of a trade union registered under this Act, or the nominee, executor, administrator or assignee of a member thereof, or any person whatsoever, by false representation or imposition, obtains possession of any moneys, securities, books, papers or effects of such trade union, or, having the same in his possession, wilfully withholds or fraudulently misapplies the same, or wilfully applies any part of the same to purposes other than those expressed or directed in the rules of such trade union, or any of them, the magistrate or justices having jurisdiction in cases of complaint for offences under this Act, for the place in which the registered office of the trade union is situate, may, by summary order, upon a complaint made by any person on behalf of such trade union or by the Registrar, order such officer, member or other person, to deliver up all such moneys, securities, books, papers or other effects to the trade union, or to repay the amount of money paid improperly, and to pay, if such magistrate or justices think fit, a further sum of money not exceeding one hundred dollars, together with costs not exceeding five dollars; and in default of such delivery of effects or payment of such amount of money, or payment of such penalty and costs, as aforesaid, the said magistrate or justices may order the person so convicted to be imprisoned, with or without hard labour, for any term not exceeding three months.

As to proceedings by indictment.

2. Nothing in this Act shall prevent the trade union from proceeding by indictment against the said person; but no person shall be proceeded against by indictment if a conviction has been previously obtained for the same offence under the provisions of this Act. R.S., c. 131, s. 12.

Failure to have an office.

**23.** If any trade union registered under this Act is in operation for seven days without having a registered office, to which all communications and notices may be addressed, such trade union and every officer thereof shall each incur a penalty not exceeding twenty-five dollars for every day during which it is so in operation. R.S., c. 131, s. 16.

Failing to transmit

**24.** *(a)* Every trade union registered under this Act that fails to transmit to the Registrar, before the first day of

June in each year, a general statement of its receipts, funds, effects and expenditure, showing fully the assets and liabilities at that date, and the receipts and expenditure of such trade union during the year next preceding, and showing separately the expenditure in respect of the several objects of the trade union, prepared and made out to such date, and in such form, and comprising such particulars as the Registrar from time to time requires, together with a copy of all alterations of rules, and new rules and changes of officers made by the trade union, and a copy of the rules of the trade union as they exist at that date; and, general statement.

*(b)* Every officer of such trade union whose duty it is to transmit any such statement who fails so to do;

shall each incur a penalty not exceeding twenty-five dollars for each such offence. Penalty.

2. If the secretary or treasurer of any trade union so registered refuses or fails to furnish to any member thereof or depositor therein, upon application, a copy of such general statement, he shall, for each such offence, incur a penalty not exceeding twenty-five dollars. R.S., c. 131, s. 18. Failing to furnish copies. Penalty.

**25.** Every person who wilfully makes, or orders to be made, any false entry in or any omission from any such general statement, or in or from the return of such copies or rules or alterations of rules as hereinbefore required shall incur a penalty not exceeding two hundred dollars for each offence. R.S., c. 131, s. 18. Making false entries. Penalty.

**26.** Every person who, with intent to mislead or defraud, gives to any member of a trade union registered under this Act, or to any person intending or applying to become a member of such trade union, a copy of any rules or of any alterations or amendments of the same falsely pretending that the same are the existing rules of such trade union, or that there are no other rules of such trade union, or who, with the intent aforesaid, gives a copy of any rules of any trade union not registered under this Act to any person under the pretense that such rules are the rules of a trade union registered under this Act, is guilty of an indictable offence, and liable to a penalty not exceeding two hundred dollars, or to imprisonment for a term not exceeding six months, or to both, in the discretion of the court. R.S., c. 131, s. 19. Circulating false copies of rules of a union. Penalty.

*Mode of Recovery.*

**27.** All offences and penalties under this Act may be prosecuted and recovered by summary conviction. R.S., c. 131, s. 20. Summary conviction.

**28.** Any complaint or information shall be brought, heard and determined before a stipendiary or police magistrate or other Before whom com-

plaint may be brought.

other functionary having, by law, the powers of two justices of the peace, if the offence is committed in any city, town or place in which any such magistrate or functionary has jurisdiction; and if the offence is committed elsewhere, then before two justices of the peace. R.S., c. 131, s. 20.

Description of offence.

**29.** The description of any offence against this Act in the words of this Act shall be sufficient in law. R.S., c. 131, s. 20.

How exception, exemption, etc., may be proved.

**30.** Any exception, exemption, proviso, excuse or qualification, whether it does or does not accompany the description of any offence charged under this Act, may be proved by the defendant, but need not be specified in the information; and if so specified and negatived in such information, no proof in relation to the matters specified and negatived shall be required on the part of the informant or prosecutor. R.S., c. 131, s. 20.

GENERAL.

Certain persons not to act as magistrates.

**31.** No person who is a master, or the father, son or brother of a master, in the particular trade or business in or in connection with which any offence under this Act is charged to have been committed, shall act as a magistrate or justice of the peace, in any case of complaint or information under this Act, or as a member of any court for hearing any appeal in any such case. R.S., c. 131, s. 21.

Purposes of trade union not unlawful.

**32.** The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise, or so as to render void or voidable any agreement or trust. R.S., c. 131, s. 22.

Annual report for Parliament.

**33.** The Registrar General of Canada shall lay before Parliament annual reports with respect to the matters transacted by him as Registrar under this Act and in pursuance thereof. R.S., c. 131, s. 23.

## SCHEDULES.

FIRST SCHEDULE.

*Maximum Fees.*

| | |
|---|---|
| For registering a trade union | $4 00 |
| For registering alterations in rules | 2 00 |
| For inspection of documents | 0 50 |

R.S., c. 131, 1st sch.

SECOND SCHEDULE.

*Matters to be provided for by the Rules of Trade Unions registered under this Act.*

1. The name of the trade union and the place of meeting for the business of the trade union;

2. Every object for which the trade union is to be established, the purposes for which the funds thereof shall be applicable, and the conditions under which any member may become entitled to any benefit assured thereby, and the fines and forfeitures which may be imposed on any member of such trade union;

3. The manner of making, altering, amending and rescinding rules;

4. A provision for the appointment and removal of a general committee of management, and of a trustee or trustees, treasurer and other officers;

5. A provision for the investment of the funds, and for an annual or periodical audit of accounts;

6. The inspection of the books and names of members of the trade union by every person having an interest in the funds of the trade union.

R.S., c. 131, 2nd sch.

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# ANNOTATIONS.

## CHAPTER 125.

### Trade Unions Act.

Sections 2, 3, 32. Union workmen may, in absence of intimidation, take measures to prevent non-union workmen from obtaining employment in union shops: Perrault v. Gauthier, 28 Can. S. C. R. 241.

Cf. Hynes v. Fisher, 4 O. R. 60; Krug Furniture Co. v. Berlin Union, 5 O. L. R. 463; Centre Star v. Rossland, 9 B. C. R. 190; Le Roi Mining Co. v. Rossland Miners' Union, 8 B. C. R. 370; Branch v. Roth, 10 O. L. R. 284; Metallic Roofing Co. v. Amalgamated Sheet Metal Workers, 5 O. L. R. 424, 10 O. L. R. 108; Metallic Roofing Co. v. José, 12 O. L. R. 200.

Section 4. An action by a member of a trade union against certain members for unlawfully fining him, and in default expulsion to follow, is a violation of this section: Beaulieu v. Cochrane, 29 O. R. 151, 598.

# ANNOTATIONS.

## CHAPTER 133.

### [Adulteration Act.

Legislation of this character intra vires of the Dominion Parliament: Regina v. Stone, 23 O. R. 221.

# CHAPTER 145.

## An Act respecting Witnesses and Evidence.

SHORT TITLE.

**1.** This Act may be cited as the Canada Evidence Act. 56 V., c. 31, s. 1. Short title.

## PART I.

APPLICATION.

**2.** This Part shall apply to all criminal proceedings, and to all civil proceedings and other matters whatsoever respecting which the Parliament of Canada has jurisdiction in this behalf. 56 V., c. 31, s. 2. Applies to all matters within legislative jurisdiction of Canada.

WITNESSES.

**3.** A person shall not be incompetent to give evidence by reason of interest or crime. 56 V., c. 31, s. 3. No incompetency from interest or crime.

**4.** Every person charged with an offence, and, except as in this section otherwise provided, the wife or husband, as the case may be, of the person so charged, shall be a competent witness for the defence, whether the person so charged is charged solely or jointly with any other person. Accused and wife or husband competent witnesses for defence.

2. The wife or husband of a person charged with an offence against any of the sections two hundred and two to two hundred and six inclusive, two hundred and eleven to two hundred and nineteen inclusive, two hundred and thirty-eight, two hundred and thirty-nine, two hundred and forty-four, two hundred and forty-five, two hundred and ninety-eight to three hundred and two inclusive, three hundred and seven to three hundred and eleven inclusive, three hundred and thirteen to three hundred and sixteen inclusive of the Criminal Code, shall be a competent and compellable witness for the prosecution without the consent of the person charged. Wife or husband competent and compellable witnesses for prosecution.

3. No husband shall be compellable to disclose any communication made to him by his wife during their marriage, and no wife shall be compellable to disclose any communication made to her by her husband during their marriage. Disclosure of communications during marriage not compellable.

4. Nothing in this section shall affect a case where the wife or husband of a person charged with an offence may at common Saving.

mon law be called as a witness without the consent of that person.

Failure to testify not to be commented on.

5. The failure of the person charged, or of the wife or husband of such person, to testify, shall not be made the subject of comment by the judge, or by counsel for the prosecution. 6 E. VII., c. 10, s. 1.

Incriminating questions.

**5.** No witness shall be excused from answering any question upon the ground that the answer to such question may tend to criminate him, or may tend to establish his liability to a civil proceeding at the instance of the Crown or of any person.

Answer not receivable against witness.

2. If with respect to any question a witness objects to answer upon the ground that his answer may tend to criminate him, or may tend to establish his liability to a civil proceeding at the instance of the Crown or of any person, and if but for this Act, or the act of any provincial legislature, the witness would therefore have been excused from answering such question, then although the witness is by reason of this Act, or by reason of such provincial act, compelled to answer, the answer so given shall not be used or receivable in evidence against him in any criminal trial, or other criminal proceeding against him thereafter taking place, other than a prosecution for perjury in the giving of such evidence. 61 V., c. 53, s. 1; 1 E. VII., c. 36, s. 1.

Evidence of mute.

**6.** A witness who is unable to speak, may give his evidence in any other manner in which he can make it intelligible. 56 V., c. 31, s. 6.

Expert witnesses.

**7.** Where, in any trial or other proceeding, criminal or civil, it is intended by the prosecution or the defence, or by any party, to examine as witnesses professional or other experts entitled according to the law or practice to give opinion evidence, not more than five of such witnesses may be called upon either side without the leave of the court or judge or person presiding.

Not more than five without leave.

When leave to be obtained.

2. Such leave shall be applied for before the examination of any of the experts who may be examined without such leave. 2 E. VII., c. 9, s. 1.

Handwriting, comparison.

**8.** Comparison of a disputed writing with any writing proved to the satisfaction of the court to be genuine shall be permitted to be made by witnesses; and such writings, and the evidence of witnesses respecting the same, may be submitted to the court and jury as evidence of the genuineness or otherwise of the writing in dispute. 55-56 V., c. 29, s. 698.

Adverse witnesses may be contradicted.

**9.** A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but if the witness, in the opinion of the court, proves adverse, such

party may contradict him by other evidence, or, by leave of the court, may prove that the witness made at other times a statement inconsistent with his present testimony; but before such last mentioned proof can be given the circumstances of the supposed statement, sufficient to designate the particular occasion, shall be mentioned to the witness, and he shall be asked whether or not he did make such statement. 55-56 V., c. 29, s. 699. Previous statements.

**10.** Upon any trial a witness may be cross-examined as to previous statements made by him in writing, or reduced to writing, relative to the subject-matter of the case, without such writing being shown to him: Provided that, if it is intended to contradict the witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him; and that the judge, at any time during the trial, may require the production of the writing for his inspection, and thereupon make such use of it for the purposes of the trial as he thinks fit. Cross-examination as to previous statements in writing.

2. A deposition of the witness, purporting to have been taken before a justice on the investigation of a criminal charge and to be signed by the witness and the justice, returned to and produced from the custody of the proper officer, shall be presumed *prima facie* to have been signed by the witness. 55-56 V., c. 29, s. 700. Deposition of witness in criminal investigation.

**11.** If a witness upon cross-examination as to a former statement made by him relative to the subject-matter of the case and inconsistent with his present testimony, does not distinctly admit that he did make such statement, proof may be given that he did in fact make it; but before such proof can be given the circumstances of the supposed statement, sufficient to designate the particular occasion, shall be mentioned to the witness, and he shall be asked whether or not he did make such statement. 55-56 V., c. 29, s. 701. Cross-examination as to previous oral statements.

**12.** A witness may be questioned as to whether he has been convicted of any offence, and upon being so questioned, if he either denies the fact or refuses to answer, the opposite party may prove such conviction. Examination as to previous conviction.

2. The conviction may be proved by producing,— How conviction proved.

*(a)* a certificate containing the substance and effect only, omitting the formal part, of the indictment and conviction, if it is for an indictable offence, or a copy of the summary conviction, if for an offence punishable upon summary conviction, purporting to be signed by the clerk of the court or other officer having the custody of the records of the court in which the conviction, if upon indictment, was had,

had, or to which the conviction, if summary, was returned; and,

*(b)* proof of identity. 55-56 V., c. 29, s. 695.

OATHS AND AFFIRMATIONS.

Who may administer oaths.

**13.** Every court and judge, and every person having, by law or consent of parties, authority to hear and receive evidence, shall have power to administer an oath to every witness who is legally called to give evidence before that court, judge or person. 56 V., c. 31, s. 22.

Affirmation by witness instead of oath.

**14.** If a person called or desiring to give evidence, objects, on grounds of conscientious scruples, to take an oath, or is objected to as incompetent to take an oath, such person may make the following affirmation:—

'I solemnly affirm that the evidence to be given by me shall be the truth, the whole truth, and nothing but the truth.'

Effect.

2. Upon the person making such solemn affirmation, his evidence shall be taken and have the same effect as if taken under oath. 56 V., c. 31, s. 23.

Affirmation by deponent.

**15.** If a person required or desiring to make an affidavit or deposition in a proceeding or on an occasion whereon or touching a matter respecting which an oath is required or is lawful, whether on the taking of office or otherwise, refuses or is unwilling to be sworn, on grounds of conscientious scruples, the court or judge, or other officer or person qualified to take affidavits or depositions, shall permit such person, instead of being sworn, to make his solemn affirmation in the words following, viz.: 'I, A. B., do solemnly affirm, etc.'; which solemn affirmation shall be of the same force and effect as if such person had taken an oath in the usual form.

Effect.

2. Any witness whose evidence is admitted or who makes an affirmation under this or the last preceding section shall be liable to indictment and punishment for perjury in all respects as if he had been sworn. 56 V., c. 31, s. 24.

Evidence of child.

**16.** In any legal proceeding where a child of tender years is offered as a witness, and such child does not, in the opinion of the judge, justice or other presiding officer, understand the nature of an oath, the evidence of such child may be received, though not given upon oath, if, in the opinion of the judge, justice or other presiding officer, as the case may be, such child is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth.

Must be corroborated.

2. No case shall be decided upon such evidence alone, and such evidence must be corroborated by some other material evidence. 56 V., c. 31, s. 25.

JUDICIAL NOTICE.

Imperial Acts, etc.

**17.** Judicial notice shall be taken of all Acts of the Imperial Parliament, of all ordinances made by the Governor in Council, or the lieutenant governor in council of any province or colony which, or some portion of which, now forms or hereafter may form part of Canada, and of all the acts of the legislature of any such province or colony, whether enacted before or after the passing of *The British North America Act, 1867*. 56 V., c. 31, s. 7.

Acts of Canada.

**18.** Judicial notice shall be taken of all public Acts of the Parliament of Canada without such Acts being specially pleaded. R.S., c. 1, s. 7.

DOCUMENTARY EVIDENCE.

Copies by King's Printer.

**19.** Every copy of any Act of the Parliament of Canada, public or private, printed by the King's Printer, shall be evidence of such Act and of its contents; and every copy purporting to be printed by the King's Printer shall be deemed to be so printed, unless the contrary is shown. R.S., c. 1, s. 7.

Imperial proclamations, etc.

**20.** Imperial proclamations, orders in council, treaties, orders, warrants, licenses, certificates, rules, regulations, or other Imperial official records, Acts or documents may be proved,—

*(a)* in the same manner as they may from time to time be provable in any court in England; or,

*(b)* by the production of a copy of the *Canada Gazette*, or a volume of the Acts of the Parliament of Canada purporting to contain a copy of the same or a notice thereof; or,

*(c)* by the production of a copy thereof purporting to be printed by the King's Printer for Canada. 56 V., c. 31, s. 11.

Proclamations, etc., of Governor General.

**21.** Evidence of any proclamation, order, regulation or appointment, made or issued by the Governor General or by the Governor in Council, or by or under the authority of any minister or head of any department of the Government of Canada, may be given in all or any of the modes following, that is to say:—

*(a)* By the production of a copy of the *Canada Gazette*, or a volume of the Acts of the Parliament of Canada purporting to contain a copy of such proclamation, order, regulation, or appointment or a notice thereof;

*(b)* By the production of a copy of such proclamation, order, regulation or appointment, purporting to be printed by the King's Printer for Canada; and,

*(c)* By the production, in the case of any proclamation, order, regulation or appointment made or issued by the

Governor General or by the Governor in Council, of a copy or extract purporting to be certified to be true by the clerk, or assistant or acting clerk of the King's Privy Council for Canada; and in the case of any order, regulation or appointment made or issued by or under the authority of any such minister or head of a department, by the production of a copy or extract purporting to be certified to be true by the minister, or by his deputy or acting deputy, or by the secretary or acting secretary of the department over which he presides. 56 V., c. 31, s. 8.

Proclamations, etc., of Lieutenant Governor.

**22.** Evidence of any proclamation, order, regulation or appointment made or issued by a lieutenant governor or lieutenant governor in council of any province, or by or under the authority of any member of the executive council, being the head of any department of the government of the province, may be given in all or any of the modes following, that is to say,—

*(a)* By the production of a copy of the official gazette for the province, purporting to contain a copy of such proclamation, order, regulation or appointment, or a notice thereof;

*(b)* By the production of a copy of such proclamation, order, regulation or appointment, purporting to be printed by the government or King's printer for the province;

*(c)* By the production of a copy or extract of such proclamation, order, regulation or appointment, purporting to be certified to be true by the clerk or assistant or acting clerk of the executive council, or by the head of any department of the government of a province, or by his deputy or acting deputy as the case may be.

In the case of the Territories.

2. *Prima facie* evidence of any proclamation, order, regulation or appointment made by the lieutenant governor or lieutenant governor in council of the Northwest Territories, as constituted previously to the first day of September, one thousand nine hundred and five, or of the commissioner in council of the Northwest Territories as now constituted, or of the commissioner in council of the Yukon Territory, may also be given by the production of a copy of the *Canada Gazette* purporting to contain a copy of such proclamation, order, regulation or appointment, or a notice thereof. R.S., c. 50, s. 111; 56 V., c. 31, s. 9.

Evidence of judicial proceedings, etc.

**23.** Evidence of any proceeding or record whatsoever of, in, or before any court in the United Kingdom, or the Supreme or Exchequer Courts of Canada, or any court in any province of Canada, or any court in any British colony or possession, or any court of record of the United States of America, or of any state of the United States of America, or of any other foreign country, or before any justice of the peace or coroner in any province of Canada, may be made in any action or proceeding by an exemplification or certified copy thereof, purporting



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porting to be under the seal of such court, or under the hand or seal of such justice or coroner, as the case may be, without any proof of the authenticity of such seal or of the signature of such justice or coroner, or other proof whatever.

2. If any such court, justice or coroner, has no seal, or so certifies, such evidence may be made by a copy purporting to be certified under the signature of a judge or presiding magistrate of such court or of such justice or coroner, without any proof of the authenticity of such signature, or other proof whatsoever. 56 V., c. 31, s. 10. Certificate if court has no seal.

**24.** In every case in which the original record could be received in evidence,— Official documents of Canada.

*(a)* a copy of any official or public document of Canada or of any province, purporting to be certified under the hand of the proper officer or person in whose custody such official or public document is placed; or,

*(b)* a copy of a document, by-law, rule, regulation or proceeding, or a copy of any entry in any register or other book of any municipal or other corporation, created by charter or statute of Canada or of any province, purporting to be certified under the seal of the corporation, and the hand of the presiding officer, clerk or secretary thereof;

shall be receivable in evidence without proof of the seal of the corporation, or of the signature or of the official character of the person or persons appearing to have signed the same, and without further proof thereof. 56 V., c. 31, s. 12.

**25.** Where a book or other document is of so public a nature as to be admissible in evidence on its mere production from the proper custody, and no other statute exists which renders its contents provable by means of a copy, a copy thereof or extract therefrom shall be admissible in evidence in any court of justice, or before a person having, by law or by consent of parties, authority to hear, receive and examine evidence, if it is proved that it is a copy or extract purporting to be certified to be true by the officer to whose custody the original has been entrusted. 56 V., c. 31, s. 13. Books and documents.

**26.** A copy of any entry in any book kept in any department of the Government of Canada, shall be received as evidence of such entry and of the matters, transactions and accounts therein recorded, if it is proved by the oath or affidavit of an officer of such department that such book was, at the time of the making of the entry, one of the ordinary books kept in such department, that the entry was made in the usual and ordinary course of business of such department, and that such copy is a true copy thereof. 56 V., c. 31, s. 17. Entries in books of Government departments.

**27.** Any document purporting to be a copy of a notarial act or instrument made, filed or enregistered in the province of Notarial acts in Quebec.

of Quebec, and to be certified by a notary or prothonotary to be a true copy of the original in his possession as such notary or prothonotary, shall be received in evidence in the place and stead of the original, and shall have the same force and effect as the original would have if produced and proved: Provided that it may be proved in rebuttal that there is no such original, or that the copy is not a true copy of the original in some material particular, or that the original is not an instrument of such nature as may, by the law of the province of Quebec, be taken before a notary or be filed, enrolled or enregistered by a notary in the said province. 56 V., c. 31, s. 18.

Notice of production of book or document.

**28.** No copy of any book or other document shall be received in evidence, under the authority of any of the last five preceding sections, upon any trial, unless the party intending to produce the same has before the trial given to the party against whom it is intended to be produced reasonable notice of such intention.

Not less than 10 days.

2. The reasonableness of the notice shall be determined by the court or judge, but the notice shall not in any case be less than ten days. 56 V., c. 31, s. 19.

Order signed by Secretary of State.

**29.** Any order in writing, signed by the Secretary of State of Canada, and purporting to be written by command of the Governor General, shall be received in evidence as the order of the Governor General. 56 V., c. 31, s. 15.

Copies printed in *Canada Gazette*.

**30.** All copies of official and other notices, advertisements and documents printed in the *Canada Gazette* shall be *prima facie* evidence of the originals, and of the contents thereof. 56 V., c. 31, s. 16.

Proof of handwriting of person certifying not required.

**31.** No proof shall be required of the handwriting or official position of any person certifying, in pursuance of this Act, to the truth of any copy of or extract from any proclamation, order, regulation, appointment, book or other document.

Printed or written.

2. Any such copy or extract may be in print or in writing, or partly in print and partly in writing. 56 V., c. 31, s. 14.

Attesting witness.

**32.** It shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite.

Instrument how proved.

2. Such instrument may be proved by admission or otherwise as if there had been no attesting witness thereto. 55-56 V., c. 29, s. 696.

Forged instrument may be impounded.

**33.** Whenever any instrument which has been forged or fraudulently altered is admitted in evidence the court or the judge or person who admits the instrument may, at the request of any person against whom it is admitted in evidence, direct

that the instrument shall be impounded and be kept in the custody of some officer of the court or other proper person for such period and subject to such conditions, as to the court, judge or person admitting the instrument seems meet. 55-56 V., c. 29, s. 720.

Construction of Act.

**34.** The provisions of this Part shall be deemed to be in addition to and not in derogation of any powers of proving documents given by any existing statute, or existing at law. 56 V., c. 31, s. 20.

PROVINCIAL LAWS OF EVIDENCE.

How applicable.

**35.** In all proceedings over which the Parliament of Canada has legislative authority, the laws of evidence in force in the province in which such proceedings are taken, including the laws of proof of service of any warrant, summons, subpœna or other document, shall, subject to the provisions of this and other Acts of the Parliament of Canada, apply to such proceedings. 56 V., c. 31, s. 21.

STATUTORY DECLARATIONS.

Solemn declaration.

**36.** Any judge, notary public, justice of the peace, police or stipendiary magistrate, recorder, mayor or commissioner authorized to take affidavits to be used either in the provincial or Dominion courts, or any other functionary authorized by law to administer an oath in any matter, may receive the solemn declaration of any person voluntarily making the same before him, in the form following, in attestation of the execution of any writing, deed or instrument, or of the truth of any fact, or of any account rendered in writing:—

I, A. B., do solemnly declare that (*state the fact or facts declared to*), and I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of the Canada Evidence Act.

Declared before me
at this day of A.D. 19

56 V. c. 31, s. 26, and sch. A.

INSURANCE PROOFS.

Affidavits, etc., may be taken before commissioner.

**37.** Any affidavit, affirmation or declaration required by any insurance company authorized by law to do business in Canada, in regard to any loss of, or injury to person, property or life insured or assured therein, may be taken before any commissioner or other person authorized to take affidavits, or before any justice of the peace, or before any notary public for any province of Canada; and such officer is hereby required to

take such affidavit, affirmation or declaration. 56 V., c. 31, s. 27.

## PART II.

### APPLICATION.

Foreign courts.

**38.** This Part applies to the taking of evidence relating to proceedings in courts out of Canada.

### INTERPRETATION.

Definitions.

**39.** In this Part, unless the context otherwise requires,—

*(a)* 'court' means and includes the Supreme Court of Canada, and any superior court in any province of Canada;

*(b)* 'judge' means and includes any judge of the Supreme Court of Canada and any judge of any superior court in any province of Canada;

*(c)* 'cause' includes a proceeding against a criminal;

*(d)* 'oath' includes affirmation in cases in which by the law of Canada, or of the province, as the case may be, an affirmation is allowed instead of an oath. R.S., c. 140, ss. 1 and 6.

Construction.

**40.** This Part shall not be so construed as to interfere with the right of legislation of the legislature of any province requisite or desirable for the carrying out of the objects hereof. R.S., c. 140, s. 8.

### PROCEDURE.

Order for examination of witness in Canada in relation to foreign suit, etc.

**41.** Whenever, upon an application for that purpose, it is made to appear to any court or judge, that any court or tribunal of competent jurisdiction, in any other of His Majesty's dominions, or in any foreign country, before which any civil, commercial or criminal matter is pending, is desirous of obtaining the testimony in relation to such matter, of any party or witness within the jurisdiction of such first mentioned court, or of the court to which such judge belongs, or of such judge, such court or judge may, in its or his discretion, order the examination upon oath upon interrogatories, or otherwise, before any person or persons named in such order, of such party or witness accordingly, and by the same or any subsequent order may command the attendance of such party or witness for the purpose of being examined, and for the production of any writings or other documents mentioned in such order, and of any other writings or documents relating to the matter in question that are in the possession or power of such party or witness. R.S., c. 140, s. 2.

Enforcement of such order.

**42.** Upon the service upon such party or witness of such order, and of an appointment of a time and place for the examination of such party or witness signed by the person named in such order for taking the same, or, if more than one person is named, then by one of the persons named, and upon payment or tender of the like conduct money as is properly payable upon attendance at a trial, such order may be enforced in like manner as an order made by such court or judge in a cause depending in such court or before such judge. R.S., c. 140, s. 3.

Expenses and conduct money.

**43.** Every person whose attendance is required in manner aforesaid shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial. R.S., c. 140, s. 4.

Who shall administer oath.

**44.** Upon any examination of parties or witnesses, under the authority of any order made in pursuance of this Part, the oath shall be administered by the person authorized to take the examination, or, if more than one, then by one of such persons. R.S., c. 140, s. 6.

Right of refusal to answer or produce document.

**45.** Any person examined under any order made under this Part shall have the like right to refuse to answer questions tending to criminate himself, or other questions, as a party or witness, as the case may be, would have in any cause pending in the court by which, or by a judge whereof, such order is made.

Same as upon trial of cause.

2. No person shall be compelled to produce, under any such order, any writing or other document that he could not be compelled to produce at a trial of such a cause. R.S., c. 140, s. 5.

Court may make rules.

**46.** The court may frame rules and orders in relation to procedure, to the evidence to be produced in support of the application for an order for examination of parties and witnesses under this Part, and generally for carrying this Part into effect.

Letters rogatory sufficient evidence.

2. In the absence of any order in relation to such evidence, letters rogatory from any court of justice in any other of the dominions of His Majesty, or from any foreign tribunal, in which such civil, commercial or criminal matter is pending, shall be deemed and taken to be sufficient evidence in support of such application. R.S., c. 140, s. 7.

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# ANNOTATIONS.

## CHAPTER 145.

### Canada Evidence Act.

WITNESSES.

Section 4 (Wife or husband). Wife or husband of person charged with indictable offence not only competent but may be compelled, to testify, and for the Crown as well as the prisoner: Gosselin v. The King, 33 S. C. 255.

Evidence by prisoner's wife of acts performed by her under direction of counsel sent by prisoner, not a communication disclosure of which cannot be compelled under par. 3. Ib.

Such communication may be de verbo, de facto, or de corpore. Sexual intercourse is a communication under said par.: Ib., per Girouard, J.

In an action to revendicate money seized in a gaming house, on a search by warrant issued under s. 575 of the Criminal Code, 1892, the plaintiff who, by law of the province, could not testify for himself, was not allowed to do so by invoking the provisions of the Canada Evidence Act: O'Neill v. Attorney-General of Quebec, 26 S. C. 122.

The person "charged with an offence" is one actually on trial. When two are jointly indicted but tried separately, the one not on trial is a competent witness irrespective of this Act, and s.-s. 5 does not prevent the Judge from commenting on failure to call him: Rex. v. Blais, 11 Ont. L. R. 345.

Direction to jury that accused has failed to account for a particular occurrence when onus is on him to do so, is not a comment on his failure to testify: Rex v. Aho, 11 B. C. 114.

But calling jury's attention to fact that prisoner was not called, warning them not to take it to his prejudice, and stating that if he was innocent he could have proved that he was not in the locality where and when the crime was committed, is prohibited comment: The King v. McGuire, 36 N. B. 609.

Section 5 (Incriminating questions). Applies to any evidence given under oath. Evidence cannot be subsequently used though witness does not claim privilege: Reg. v. Hendershott, 26 O. R. 678; Reg. v. Hammond, 29 O. R. 211. Contra, Reg. v. Williams, 28 O. R. 583; Reg. v. Connolly, 25 O. R. 151.

Covers evidence of party as well as independent witness: Chambers v. Jaffray, 12 Ont. L. R. 377; Reg. v. Fox, 18 Ont. P. R. 343.

And applies to examination on discovery in Ontario: Ib. And to examination of judgment debtor as to his means: Rex. v. Van Meter, 11 Can. C. C. 207.

On trial for perjury, evidence of incriminating answers to questions at preliminary hearing before coroner was improperly received, though privilege not claimed: The Queen v. Thompson, 2 N. W. T. 383. And on trial for murder, depositions of prisoner before coroner's court not admissible, though privilege was not claimed: Reg. v. Hendershott, supra.

Section 7 (Expert witness). Qu. If more than five are examined without objection, can evidence of extra witnesses be considered? Dodge v. The King, 38 S. C. 149; 10 Ex. C. 208, at p. 214.

DOCUMENTARY EVIDENCE.

Section 28 (Notice). Does not apply to certified extracts from registers of acts of civil status produced to explain alias: The King v. Long, Q. B. 11 K. B. 328.

# LEAR'S
# CRIMINAL CODE.

## Chapter 146, R.S.C.

**1.** SHORT TITLE.—This Act may be cited as the Criminal Code. 55-56 V., c. 29, s. 1.

**2.** INTERPRETATION.—In this Act, unless the context otherwise requires,—

(1) ANY ACT, or ANY OTHER ACT, includes any Act passed or to be passed by the Parliament of Canada, or any Act passed by the legislature of the late province of Canada, or passed or to be passed by the legislature of any province of Canada, or passed by the legislature of any province now a part of Canada before it was included therein;

(2) 'ATTORNEY-GENERAL' means the Attorney-General or Solicitor-General of any province in Canada in which any proceedings are taken under this Act, and, with respect to the Northwest Territories and the Yukon Territory, the Attorney-General of Canada;

(3) 'BANKER' includes any director of any incorporated bank or banking company;

(4) 'BANK-NOTE' includes all negotiable instruments issued by or on behalf of any person, body corporate, or company carrying on the business of banking in any part of the world, or issued by the authority of the Parliament of Canada, or any governor or other authority lawfully authorized thereto in any of His Majesty's dominions, or by the authority of any foreign prince, or

state or government, and intended to be used as equivalent to money, either immediately upon their issue or at some time subsequent thereto, and all bank bills and bank post bills;

(5) 'CATTLE' includes any horse, mule, ass, swine, sheep or goat, as well as any neat cattle or animal of the bovine species, and by whatever technical or familiar name known, and shall apply to one animal as well as to many;

(6) 'CHIEF CONSTABLE' includes the chief of police, city marshal or other head of the police force of any city, town, incorporated village or other municipality, district or place, and in the province of Quebec, the high constable of the district, and means any constable of a municipality, district or place which has no chief constable or deputy chief constable;

(7) 'COURT OF APPEAL' includes,

(*a*) in the province of Ontario, the Court of Appeal for Ontario,

(*b*) in the province of Quebec, the Court of King's Bench, appeal side,

(*c*) in the provinces of Nova Scotia, New Brunswick and British Columbia, the Supreme Court in banc,

(*d*) in the province of Prince Edward Island, the Supreme Court,

(*e*) in the province of Manitoba, the Court of Appeal,

(*f*) in the provinces of Saskatchewan and Alberta, the Supreme Court of the Northwest Territories in banc, until the same is abolished, and thereafter such court as is by the legislature of the said provinces respectively substituted therefor;

(*g*) in the Yukon Territory, the Supreme Court of Canada;

(8) 'COPPER COIN' includes any coin of bronze or mixed metal and every other kind of coin other than gold or silver;

(9) DEPUTY CHIEF CONSTABLE' includes deputy chief of police, deputy or assistant marshal or other deputy head

of the police force of any city, town, incorporated village, or other municipality, district or place, and, in the province of Quebec, the deputy high constable of the district;

A high constable may appoint a deputy to act during his temporary absence. The acts of a *de facto* officer are legal and binding as regards all persons other than the holder of the office. *O'Neil* v. *Atty.-Gen. of Can.*, 1 Can. C. C. 303, 26 S. C. R. 122, 16 Occ. N. 179.

(10) 'DISTRICT, COUNTY OR PLACE,' includes any division of any province of Canada for purposes relative to the administration of justice in the matter to which the context relates;

(11) 'DOCUMENT OF TITLE TO GOODS' includes 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;

(12) 'DOCUMENT OF TITLE TO LANDS' includes 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 property or to any interest in any real property, 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;

(13) 'EVERY ONE,' 'PERSON,' 'OWNER,' and other expressions of the same kind include His Majesty and all public bodies, bodies corporate, societies, companies, and inhabitants of counties, parishes, municipalities or other districts in relation to such acts and things as they are capable of doing and owning respectively;

The word "persons" and other similar expressions include corporations, only, in relation to such acts and things as they are capable of doing. A company cannot be indicted for manslaughter. *R.* v. *Great West Laundry Co.* (1900), 3 Can. C. C. 514.

(14) 'EXPLOSIVE SUBSTANCE' includes any materials for making an explosive substance; also any apparatus, machine, implement or materials, used or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance; and also any part of any such apparatus, machine or implement;

(15) 'FORM' means a form in Part XXV. of this Act, and 'SECTION' means a section of this Act:

(16) 'INDICTMENT' *and* 'COUNT' respectively include information and presentment as well as indictment, and also any plea, replication or other pleading, and any record;

(17) 'INTOXICATING LIQUOR' means and includes any alcoholic, spirituous, vinous, fermented or other intoxicating liquor, or any mixed liquor a part of which is spirituous or vinous, fermented or otherwise intoxicating;

(18) 'JUSTICE' means a justice of the peace, and includes two or more justices, if two or more justices act or have jurisdiction, and also a police magistrate, a stipendiary magistrate and any person having the power or authority of two or more justices of the peace;

(19) 'LOADED ARMS' includes any gun, pistol or other arm loaded with gunpowder, or other explosive substance, and ball, shot, slug or other destructive material, or charged with compressed air and ball, shot, slug or other destructive material;

See *R.* v. *Harris*, 5 C. & P. 159; *R.* v. *Jackson*, 17 Cox C. C. 104.

(20) 'MILITARY LAW' includes the Militia Act and any orders, rules and regulations made thereunder, the King's Regulations and Orders for the Army; and Act of the United Kingdom or other law applying to His Majesty's troops in Canada, and all other orders, rules and regulations of whatsoever nature or kind to which His Majesty's troops in Canada are subject;

(21) 'MUNICIPALITY' includes the corporation of any city, town, village, county, township, parish or other

territorial or local division of any province of Canada, the inhabitants whereof are incorporated or have the the right of holding property for any purpose;

(22) 'NEWSPAPER,' in the sections of the Act relating to defamatory libel, means any paper, magazine or periodical containing public news, intelligence or occurrences, or any remarks or observations thereon, printed for sale and published periodically or in parts or numbers, at intervals not exceeding thirty-one days between the publication of any two such papers, parts or numbers, and also any paper, magazine or periodical printed in order to be dispersed and made public, weekly or oftener, or at intervals not exceeding thirty-one days, and containing only or principally advertisements;

(23) 'NIGHT' or 'NIGHT TIME' means the interval between nine o'clock in the afternoon and six o'clock in the forenoon of the following day, and 'DAY' or 'DAY TIME' includes the interval between six o'clock in the forenoon and nine o'clock in the afternoon of the same day;

(24) 'OFFENSIVE WEAPON' OR 'WEAPON' includes any gun or other firearm, or air-gun, or any part thereof, or any sword, sword blade, bayonet, pike, pike-head, spear, spear-head, dirk, dagger, knife, or other instrument intended for cutting or stabbing, or any metal knuckles, or other deadly or dangerous weapon, and any instrument or thing intended to be used as a weapon, and all ammunition which may be used with or for any weapon;

(25) 'PART' means a Part of this Act;

(26) 'PEACE OFFICER' includes a mayor, warden, reeve, sheriff, deputy sheriff, sheriff's officer, and justice of the peace, and also the warden, keeper or guard of a penitentiary and the gaoler or keeper of any prison, and any police, officer, police constable, bailiff, constable, or other person employed for the preservation and maintenance of the public peace, or for the service or execution of civil process;

(27) 'PUBLIC DEPARTMENT' includes the Admiralty and War Department, and also any public department or

office of the Government of Canada, or of the public or civil service thereof, or any branch of such department or office;

(28) 'PUBLIC STORES' includes all stores under the care, superintendence or control of any public department as herein defined, or of any person in the service of such department;

The Imperial statute on Public Stores is 38-39 V. c. 25.

(29) 'PUBLIC OFFICER' includes any inland revenue or customs officer, officer of the army, navy, marine, militia, Royal Northwest mounted police, or other officer engaged in enforcing the laws relating to the revenue, customs, trade or navigation of Canada;

(30) 'PRISON' includes any penitentiary, common gaol, public or reformatory prison, lock-up, guard room or other place in which persons charged with the commission of offences are usually kept or detained in custody,

A small room for temporary detention of prisoners is not a common gaol or prison. *In re Burke* (1894), 27 N. S. R. 286.

(31) 'PRIZE FIGHT' means an encounter or fight with fists or hands, between two persons who have met for such purpose by previous arrangement made by or for them;

(32) 'PROPERTY' includes

(*a*) every kind of real and personal property, 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,

(*b*) not only such property as was originally in the possession or under the control of any person, but also any property into or for which the same has been converted or exchanged and anything acquired by such conversion or exchange, whether immediately or otherwise,

(*c*) any postal card, postage stamp or other stamp issued or prepared for issue by the authority of the Parliament of Canada, or of the legislature of any province of Canada, for the payment to the Crown or any corporate body of any fee, rate or duty, and

whether still in the possession of the Crown or of any person or corporation;

(32) 'SHIPWRECKED PERSON' includes any person belonging to, on board of, or having quitted any vessel wrecked, stranded or in distress at any place in Canada;

(34) 'STORES' includes all goods and chattels, and any single store or article;

(35) 'SUPERIOR COURT OF CRIMINAL JURISDICTION' means and includes,

(*a*) in the province of Ontario, the High Court of Justice for Ontario,

(*b*) in the province of Quebec, the Court of King's Bench,

(*c*) in the provinces of Nova Scotia, New Brunswick, and British Columbia, the Supreme Court,

(*d*) in the province of Prince Edward Island, the Supreme Court of Judicature,

(*e*) in the province of Manitoba, the Court of Appeal or the Court of King's Bench (Crown side),

(*f*) in the provinces of Saskatchewan and Alberta, the Supreme Court of the Northwest Territories, until the same is abolished, and thereafter such court as is by the legislatures of said provinces respectively substituted therefor,

(*g*) in the Yukon Territory, the Territorial Court;

(36) 'TERRITORIAL DIVISION' includes any county, union of counties, township, city, town, parish or other judicial division or place to which the context applies;

(37) 'TESTAMENTARY INSTRUMENT' includes any will, codicil, or other testamentary writing or appointment, as well during the life of the testator whose testamentary disposition it purports to be as after his death, whether the same relates to real or personal property, or both;

(38) 'TRADE COMBINATION' means any combination between masters or workmen or other persons for regulating or altering the relations between any persons being

masters or workman in or in respect of his business or employment, or contract of employment or service;

Members of a trade union held guilty of conspiring to injure a non-union workman by depriving him of his employment. Indictment held sufficient. *R.* v. *Gibson*, 16 O. R. 704.

(39) 'TRUSTEE' means a trustee on some express trust created by some deed, will or instrument in writing, or by parole, or otherwise, and includes the heir or personal representative of any such trustee, and every other person upon or to whom the duty of such trust has devolved or come, whether by appointment of a court or otherwise, and also an executor or administrator, and an official manager, assignee, liquidator or other like officer acting under any Act relating to joint stock companies, bankruptcy or insolvency and any person who is, by the law of the province of Quebec, an *administrateur or fidéicommissaire; and* 'TRUST' includes whatever is by that law an *administration* or *fidéicommis;*

(40) 'VALUABLE SECURITY' includes any order, exchequer acquittance or other security entitling or evidencing the title of any person to any share or interest in any public stock or fund, whether of Canada or of any province thereof, 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 also includes any debenture, deed, bond, bill, note, warrant, order or other security for money or for payment of money whether of Canada or of any province thereof, 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 wheresoever such lands or goods are situate, 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;

A promissory note is a valuable security: *R.* v. *Gordon*, 23 Q. B. D. 354. So also is a lien note: *R.* v. *Wagner*, 5 Terr. L. R. 119, 6 Can. C. C. 113.

(41) 'WRECK' includes the cargo, stores and tackle of any vessel and all parts of a vessel separated therefrom, and also the property of shipwrecked persons;

(42) 'WRITING' includes any mode in which, and any material on which, words or figures, whether at length or abridged, are written, printed or otherwise expressed, or any map or plan is inscribed.

(43) 'in Part XII. and in Parts XXII., XXIII. and XXIV. of this Act 'Part III.' means such section or sections of the said Part as are in force by virtue of any proclamation in the place or places with reference to which the Part is to be construed and applied; and "A COMMISSIONER' means a commissioner under Part III. R. S., c. 151, s. 1; 55-56 V., c. 29, ss. 3, 92, 383, 420, 460, 519 and 839; 63-64 V., c. 46, s. 3; 1 E. VII., c. 41, s. 11; 6 E. VII., c. 4, s. 4.

**3.** POST CARD A CHATTEL VALUE.—For the purpose of this Act a postal card or any stamp referred to in the last preceding section shall be deemed to be a chattel, and to be equal in value to the amount of the postage, rate or duty expressed on its face in words or figures or both. 55-56 V., c. 29, s. 3.

**4.** VALUABLE SECURITY.—Valuable security shall, where value is material, be deemed to be of value equal to that of the 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. 55-56 V., c. 29, s. 3.

See note to sec. 2, sub-sec. 40.

**5.** FINDING INDICTMENT.—In this Act, unless the context otherwise requires,—

(*a*) finding the indictment includes also exhibiting an information and making a presentment;

(*b*) having in one's possession includes not only having in one's own personal possession, but also knowingly

(i) having in the actual possession or custody of any other person, and

(ii) having in any place (whether belonging to or occupied by one's self or not) for the use or benefit of one's self or of any other person.

2. JOINT POSSESSION.—If there are two or more persons, and any one or more of them, with the knowledge and consent of the rest, has or have anything in his or their custody or possession, it shall be deemed and taken to be in the custody and possession of each and all of them. 55-56 V., c. 29, s. 3; 56 V., c. 32, s. 1.

**6.** MEANING OF EXPRESSIONS IN OTHER ACTS.—In every case in which the offence dealt with in this Act relates to the subject treated of in any other Act the words and expressions used herein in respect to such offence shall have the meaning assigned to them in such other Act. 55-56 V., c. 29, s. 4.

**7.** CARNAL KNOWLEDGE.—Carnal knowledge is complete upon penetration to any, even the slightest degree, and even without the emission of seed. 55-56 V., c. 2, s. 266.

## PART I.

### GENERAL.

### *Application of this Act.*

**8.** THIS ACT NOT TO AFFECT H. M. FORCES.—Nothing in this Act shall affect any of the laws relating to the government of His Majesty's land or naval forces. 55-56 V., c. 29, s. 983.

**9.** APPLICATION OF ACT TO SASKATCHEWAN, ALBERTA AND THE TERRITORIES.—Except in so far as they are inconsistent with the Northwest Territories Act and amendments thereto as the same existed immediately before the first day of September, one thousand nine hundred and five, the provisions of this Act extend to and are in force in the provinces of Saskatchewan and Alberta, the Northwest Territories, and, except in so far as inconsistent with the Yukon Act, the Yukon Territory. 55-56 V., c. 29, s. 983.

*Application of the Criminal Law of England.*

**10.**—Criminal Law of England Applicable to Ontario.—The criminal law of England, as it existed on the seventeenth day of September, one thousand seven hundred and ninety-two, in so far as it has not been repealed by any Act of the Parliament of the United Kingdom having force of law in the province of Ontario, or by any Act of the Parliament of the late province of Upper Canada, or of the province of Canada, still having force of law, or by this Act or any other Act of the Parliament of Canada, and as altered, varied, modified or affected by any such Act, shall be the criminal law of the province of Ontario. R. S., c. 144, s. 1.

**11.** Criminal Law of England Applicable to British Columbia.—The criminal law of England as it existed on the nineteenth day of November, one thousand eight hundred and fifty-eight, in so far as it has not been repealed by any ordinance or Act—still having the force of law—of the colony of British Columbia, or the colony of Vancouver Island, passed before the union of the said colonies, or of the colony of British Columbia passed since such union, or by this Act or any other Act of the Parliament of Canada, and as altered, varied, modified or affected by any such ordinance or Act, shall be the criminal law of the province of British Columbia. R. S., c. 144, s. 2.

**12.** Criminal Law of England Applicable to Manitoba.—The criminal law of England as it existed on the fifteenth day of July, one thousand eight hundred and seventy, in so far as it is applicable to the province of Manitoba, and in so far as it has not been repealed, as to the Province, by any Act of the Parliament of the United Kingdom, or by this Act or any other Act of the Parliament of Canada, and as altered, varied, modified or affected, as to the Province, by any such Act, shall be the criminal law of the province of Manitoba. 51 V., c. 33, s. 1.

*Effect of Act on Remedies.*

**13.** Civil Remedy not Suspended.—No civil remedy for any act or omission shall be suspended or affected by reason

that such act or omission amounts to a criminal offence. 55-56 V., c. 29, s. 534.

Quære: Is above section *intra vires* as to criminal proceedings in Quebec? *Paquet* v. *Lavoire*, Q. R. 7 Q. B. 277.

Defendant had been convicted and punished before the recorder's court, *Held*, that this was no bar to the plaintiff's action for damages for the same assault. *Marchesault* v. *Gregoire*, 18 L. C. J. 104 and 4 R. L. 541.

**14.** DISTINCTION BETWEEN FELONY AND MISDEMEANOUR ABOLISHED.—The distinction between felony and misdemeanour is abolished, and proceedings in respect of all indictable offences, except so far as they are herein varied, shall be conducted in the same manner. 55-56 V., c. 29, s. 535.

A provincial statute providing for the discharge of prisoners in default of indictment for felony, now applies to a person accused of an offence which was a misdemeanour before the enactment. *R.* v. *Cameron* (1897), 1 Can. C. C. 169.

**15.** WHEN OFFENCE PUNISHABLE UNDER MORE THAN ONE ACT OR LAW.—Where an act or omission constitutes an offence, punishable on summary conviction or on indictment, under two or more Acts, or both under an Act and at common law, the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under either or any of such Acts, or at common law, but shall not be liable to be punished twice for the same offence. 55-56 V., c. 29, s. 933.

A prisoner should be able to gather from the indictment whether he is charged with an offence at the common law; or under a statute, or, if there should be several statutes applicable to the subject under which statute he is charged. *per* Esten, V.-C., *R.* v. *Cummings*, 15 U. C. R. 16.

Defendant guilty of misbehaviour in office which is indictable under the common law. *Held*, it was not essential, to constitute the offence, that damage should have resulted to the public by reason of such irregular conduct, nor that the defendant should have acted from corrupt motives. *R.* v. *Arnoldi*, 23 O. R. 201.

This section enacts that where an offender is punishable under two or more Acts, or two or more sections of the same Act, he may be punished under either, and also leaves the common law in force. The rule is, that if a common law offence is made subject to a greater punishment by statute, it may still be proceeded against as a common law offence; but if a common law offence is made by statute punishable by a summary conviction both remedies exist. *Hamilton* v. *Massie*, 18 O. R. 585.

See 2 Hawk. c. 25, s. 4; *R.* v. *Wigg*, 2 Salk. 469; *R.* v. *Wright*, 1 Burr. 543; *R.* v. *Robinson*, 2 Burr. 800; *R.* v. *Carlile*, 3 B. & Ald. 161; *R.* v. *Gregory*, 5 B. & Ad. 555; *R.* v. *Crawshaw*, Bell C.C. 303; Bishop, Stat. Cr. par. 163 to 166 and s. 245; *R.* v. *Dickenson*, 1 Saund. 135. Also *per* Williams, J., in *Eastern Archipelago Co.* v. *The Queen*, 2 E. & B. 879; *R.* v. *Adams*, Car. and M. 299; *R.* v. *Dixon*, 10 Mod. 335; *R.* v. *Buchanan*, 8 Q. B. 883; *R.* v. *Hall*, 17 Cox C.C. 278.

*Justification or Excuse.*

**16.** COMMON LAW RULE IN FORCE.—All rules and principles of the common law which render any circumstances a justification or excuse for any Act, or a defence to any charge, shall remain in force and be applicable to any defence to a charge under this Act except in so far as they are hereby altered or are inconsistent herewith. 55-56 V., c. 29, s. 7.

Defence of being drunk comes under this section. *Marsh* v. *Loader*, 11 W. R. 784.

**17.** CHILDREN UNDER SEVEN.—No person shall be convicted of an offence by reason of any act or omission of such person when under the age of seven years. 55-56 V., c. 29, s. 9.

No proof can be admitted of the capacity of an infant under seven years to commit a crime. *R.* v. *Owen*, Warb. Lead. Cas. 2nd ed. 17, 4 C. & P. 236.

**18.** CHILDREN BETWEEN SEVEN AND THIRTEEN.—No person shall be convicted of an offence by reason of an act or omission of such person when of the age of seven but under the age of fourteen years, unless he was competent to know the nature and consequences of his conduct, and to appreciate that it was wrong. 55-56 V., c. 29, s. 10.

Such an infant is presumed to be incapable to commit any crime until the contrary is proved, and such a proof must be clear and beyond all doubt. 2 Blacks. 23.

This refers to mental ability to distinguish right from wrong, not to physical ability to commit crime. *R.* v. *Hartlen* (1898), 2 Can. C. C. 12, 30 N. S. R. 317.

A boy under fourteen cannot be convicted of perjury without proof that he knew he was doing wrong: *R.* v. *Carvery*, 11 Can. C. C. 331.

A boy under fourteen cannot, in law, commit a rape; section 298; nor the offence of carnally knowing a girl under fourteen, under section 301, *R.* v. *Waite*, [1892], 2 Q. B. 600, nor, any of the offences where carnal connection with a woman is a necessary ingredient of the offence, or any attempt to commit rape or any of the above mentioned offences; compare *R.* v. *Eldershaw*, 3 C. & P. 396; *R.* v. *Groombridge*, 7 C. & P. 582; *R.* v. *Philips*, 8 C. & P. 736; *R.* v. *Jordan*, 9 C. & P. 118; *R.* v. *Brimilow*, 2 Moo. 122, 1 Russ. 8; *R.* v. *Allen*, 1 Den. 364.

A person of the age of fourteen and upwards is presumed to have capacity to commit any crime until the contrary is proved: *see R.* v. *Owen*, Warb. Lead. Cas. 2nd ed. 17; *R.* v. *Vamplew*, 3 F. & F. 520.

**19.** INSANITY.—No person shall be convicted of an offence by reason of an act done or omitted by him when labouring

under natural imbecility or disease of the mind, to such an extent as to render him incapable of appreciating the nature and quality of the act or omission, and of knowing that such an act or omission was wrong.

2. DELUSIONS.—A person labouring under specific delusions, but in other respects sane, shall be not acquitted on the ground of insanity, under the provisions hereinafter contained, unless the delusions caused him to believe in the existence of some state of things which, if it existed, would justify or excuse his act or omission.

3. PRESUMPTION OF SANITY.—Every one shall be presumed to be sane at the time of doing or omitting to do any act until the contrary is proved. 55-56 V., c. 29, s. 11.

In sub-section (1) the word "wrong" means legally not morally wrong.

See sections 966 to 970 as to procedure when plea of insanity has been maintained.

There are three stages of insanity recognized by law as an excuse for criminal acts. They are respectively illustrated in the three cases following: 1. *R.* v. *Arnold* (1724); 2. *R.* v. *Bellingham* (1812), 1 Russel on Crimes 118; 3. *R.* v. *McNaughten* (1843), 10 C. & F. 200. All three cases are in Kenney's Criminal Cases.

Under the present law, insanity is a good plea: 1. When the mind of the accused was affected to such an extent, at the time of his commission of the act, that he was unable to understand the wrong he was doing; or, 2. When his mind is troubled with delusions which cause him to imagine a condition of things which, if they were as he imagines, would justify his act. *R.* v. *Offord* (1831), 5 C. & P. 169; *R.* v. *Oxford* (1840), Warb. Lead. Cas. 21, 9 C. & P. 525; *R.* v. *Haynes* (1859), 1 F. & F. 666; *R.* v. *Townley* (1863), 3 F. & F. 839.

Delusions which indicate a defective sanity such as will relieve a person from criminal responsibility are delusions of the senses, such as relate to facts or objects. It is not enough to shew that they have a diseased or depraved mind nor are mere wrong notions or impressions, or that the sense of right and wrong are still. See *R.* v. *Burton* (1863), 3 F. & F. 772.

A good test to apply is, would he have committed the crime had a policeman been there at the time of the act?

If the accused sets up the defence of insanity he must accept the *onus probandi*. *R.* v. *Layton* (1849), 4 Cox C. C. 149.

Being drunk is no excuse for crime. *Pierson's Case* (1835), 2 Lewin, C. C. 144. But may be taken into consideration in ascertaining the motive and state of the accused person's mind. *R.* v. *Meakins* (1836), 7 C. & P. 297; *R.* v. *Cruse* (1838), 8 C. & P. 541; *R.* v. *Monkhouse*, (1849), 4 Cox C. C. 55; *R.* v. *Moore* (1852), 3 C. & K. 319; *R.* v. *Gamlen* (1858), 1 F. & F. 90.

Delirium tremens is treated the same as insanity if accused was in such a state of madness as to render himself temporarily incapable of distinguishing right from wrong. *R.* v. *Davis* (1881), 14 Cox C. C. 563.

See 3 Burn's Just. 180; 1 Russ. 11; *R.* v. *Dubois*, 17 Q. L. R. 203; *R.* v. *Dore*, 3 Stephen's Hist. 426.

**20.** COMPULSION BY THREATS.—Except as hereinafter provided, compulsion by threats of immediate death or grievous bodily harm from a person actually present at the commission of the offence shall be an excuse for the commission, by a person subject to such threats, and who believes such threats will be executed, and who is not a party to any association or conspiracy, the being a party to which rendered him subject to compulsion, of any offence other than treason as defined by this Act, murder, piracy, offences deemed to be piracy, attempting to murder, assisting in rape, forcible abduction, robbery, causing grievous bodily harm, and arson. 55-56 V., c. 29, s. 12.

See *R. v. Tyler*, 8 C. & P. 616; Warb. Lead. Cas. 31; *R.* v. *Dunnett* (1844), 1 Car. & K. 425.

"There can be no doubt that a man is entitled to preserve his own life and limb; and, on this ground, he may justify much which otherwise would be punishable. The cases of a person setting up as a defence that he was compelled to commit a crime is of everyday occurrence. There is no doubt on the authorities that compulsion is a defence where the crime is not of a heinous character. But killing an innocent person, according to Lord Hale, can never be justified. He lays down the stern rule: 'If a man be desperately assaulted and in peril of death, and cannot otherwise escape, unless to satisfy his assailant's fury, he will kill an innocent person there present, the fear and actual force will not acquit him of the crime and punishment of murder, if he commit the fact; for he ought rather to die himself than kill an innocent.' On the trials for high treason in 1746, the defence of the prisoners was in many cases that they were compelled to serve in the rebel army. The law was laid down somewhat more favourably for the prisoners than it had been before, as the defence of compulsion was stated to apply not merely to furnishing provisions to the rebel army, but even to joining and serving in that army. It was laid down (*See* Foster 14) that, 'The only force that doth excuse is force upon the person and present fear of death; and this force and fear of death must continue all the time the party remains with the rebels. It is incumbent upon every man who makes force his defence, to shew an actual force, and that he quitted the service as soon as he could.' It is noticeable that though most of those who set up this defence must have fought in actual battle and must have killed, or at least assisted in killing the loyalists, and so brought themselves within the stern rule laid down by Hale; it was never suggested that this made a difference."

As to homicide by necessity, see *R.* v. *Dudley*, 14 Q. B. D. 273, Warb. Lead. Cas. 102; *United States* v. *Holmes*, 1 Wall., jr., 1.

**21.** COMPULSION OF WIFE.—No presumption shall be made that a married woman committing an offence does so under compulsion because she commits it in the presence of her husband. 55-56 V., c. 29, s. 13.

This section abrogates the Common Law rule that all offences commited by a married woman in presence of her husband, except high treason and murder, were presumed to have been committed under coercion: *R.* v. *Torpey*, 12 Cox C.C. 45, Warb. Lead. Cas. 26, and

cases there cited: *R.* v. *Buncombe*, 1 Cox C.C. 183; 1 Russ. 33, and Greaves' note (*a*).

**22.** IGNORANCE OF THE LAW.—The fact that an offender is ignorant of the law is not an excuse for any offence committed by him. 55-56 V., c. 29, s. 14.

See *R.* v. *Mailloux*, 3 Pugs (N.B.) 493; *R.* v. *Reed*, Car. & M. 308; *R.* v. *Hall*, 3 C. & P. 409; *R.* v. *Hearn*, cited in Warb. Lead. Cas. 204.

Where the criminal quality of an act depends upon its having been wilfully done the actual motive of the offender is immaterial: 7th Rep. Crim. L. Comm. 1843, Art. 10. For criminal purposes, the intention to do the act exists where it is wilfully done. Intention and motive are not the same thing: 4th Rep. xv. and 7th Rep. 29.

In *R.* v. *Crawshaw*, Bell C.C. 303, the jury found the defendant guilty, but that he did not know perhaps that he was acting contrary to law. But, said the Court, the defendant's ignorance of the statute is no excuse for him. As to ignorance of fact, and rule that "*actus non facit reum nisi mens sit rea*," see *R.* v. *Prince*, 13 Cox C. C. 138; *R.* v. *Tolson*, 16 Cox C. C. 629, 23 Q. B. D. 168, Warb. Lead. Cas. 72, and cases there cited: *R.* v. *Twose*, Warb Lead. Cas. 1; *R.* v. *Hicklin*, L. R. 3 Q. B. 360; *Dyke* v. *Gower*, 17 Cox C. C. 421, and cases cited under section 315 *post*.

Though drunkenness is never an excuse for a crime, yet, where the intention of the guilty party is an element of the offence itself, the fact that the accused was intoxicated at the time may be taken into consideration by the jury in considering whether he had the intention necessary to constitute the offence charged: *R.* v. *Cruse*, Warb. Lead. Cas. 24, and cases there cited: *R.* v. *Doherty*, 16 Cox C. C. 306; *R.* v. *Carroll*, 7 C. & P. 145; 1 Russ. 12, and Greaves' note.

Ignorance of the law, an excuse in a specified case under section 20, *post*.

As to liability, in criminal law, of masters for the acts of their servants: *see R.* v. *Stephens*, Warb. Lead. Cas. 37; *Bond* v. *Evans*, 16 Cox C. C. 461, 21 Q. B. D. 249; *R.* v. *Bennett*, Bell, 1; *R.* v. *Allen*, 7 C. & P. 153; *Chisholm* v. *Doulton*, 16 Cox. C. C. 675, 22 Q. B. D. 736, and cases there cited: *Kearley* v. *Tylor*, 17 Cox C. C. 328; *Elliott* v. *Osborn*, 17 Cox C. C. 346; *Brown* v. *Foot*, 17 Cox C. C. 509.

**23.** EXECUTION OF SENTENCE.—Every ministerial officer of any court authorized to execute a lawful sentence, and every gaoler, and every person lawfully assisting such ministerial officer or gaoler, is justified in executing such sentence. 55-56 V., c. 29, s. 15.

This section deals with homicide which does not amount to criminal homicide. See sections 26 and 27 as to erroneous sentences, and note under section 24 as to the word "justified."

**24.** EXECUTION OF PROCESS.—Every ministerial officer of any court duly authorized to execute any lawful process of such court, whether of a civil or criminal nature, and every person lawfully assisting him, is *justified* in executing the same.

2. GAOLER.—Every gaoler who is required under such process to receive and detain any person is justified in receiving and detaining him. 55-56 V., c. 29, s. 16.

See *R.* v. *King*, 18 O. R. 566 under section 26.

"There is a difference in the language used in the sections in this part which probably requires explanation. Sometimes it is said that the person doing the act is "justified" in so doing under particular circumstances. The effect of an enactment using that word would be not only to relieve him from punishment, but also to afford him a statutable defence against a civil action for what he had done. Sometimes it is said that a person doing an act is 'protected from criminal responsibility' under particular circumstances. The effect of an enactment using this language is to relieve him from punishment, but to leave his liability to an action for damages to be determined on other grounds, the enactment neither giving a defence to such an action where it does not exist, nor taking it away where it does. This difference is rendered necessary by the proposed abolition of the distinction between felony and misdemeanour.

"We think that in all cases where it is the duty of a peace officer to arrest (as it is in cases of felony), it is proper that he should be protected as he now is, from civil as well as from criminal responsibility. And as it is proposed to abolish the distinction between felony and misdemeanour, on which most of the existing law as to arresting without a warrant depends, we think it is necessary to give a new protection from all liability (both civil and criminal) for arrest, in those cases which by the schemes of the Draft Code are (so far as the power of arrest is concerned) substituted for felonies. In those cases therefore which are provided for in sections 32, 33, 34, 37, 38 (*30, 31, 32, 35, 36, of this Code*) the word 'justified' is used. A private person is, by the existing law, protected from civil responsibility for arresting without warrant a person who is on reasonable grounds believed to have committed a felony, provided a felony has actually been committed, but not otherwise. In section 35 (*33 of this Code*) providing an equivalent for this law, the word used is 'justified.'

"On the other hand, where we suggest an enactment which extends the existing law for the purpose of protecting the person from criminal proceedings, we have not thought it right that it should deprive the person injured of his right to damages.

"And in cases in which it is doubtful whether the enactment extends the existing law or not, we have thought it better not to prejudice the decision of the civil Courts by the language used. In cases therefore such as those dealt with by sections 29, 30, 31, 36, 39, 46, 47 (*27, 28, 29, 34, 37, 44, 45, of this Code*) we have used the words 'protected from criminal responsibility.'"—Imp. Comm. Rep.

**25.** EXECUTION OF WARRANTS.—Every one duly authorized to execute a lawful warrant issued by any court or justice of the peace or other person having jurisdiction to issue such warrant, and every person lawfully assisting him, is justified in executing such warrant.

2. GAOLER.—Every gaoler who is required under such warrant to receive and detain any person is justified in receiving and detaining him. 55-56 V., c. 29, s. 17.

See note under 23: *R.* v. *Davies*, 8 Cox C. C. 486, and note under section 24 as to the word justified.

A warrant can only be executed by the person to whom it is directed, and if executed by any other this other commits a trespass: *Symonds* v. *Kurtz*, 16 Cox C. C. 726.

An officer may break the outer door of a house when it is necessary to execute a criminal process. *Harvey* v. *Harvey*, L. R. (1 2) C. D. 644; *Vantasse* v. *Task* (1894), 27 N. S. R. 329.

A prosecution under the Canada Temperance Act is a criminal prosecution. *Messenger* v. *Parker* (1885), 18 N. S. R. 237; *R.* v. *Calhoun* (1888), 20 N. S. R. 395.

**26.** EXECUTION OF ERRONEOUS SENTENCE OR PROCESS.—If a sentence is passed or process issued by a court having jurisdiction under any circumstances to pass the sentence or issue such process, or if a warrant is issued by a court, justice or person having jurisdiction under any circumstances to issue the warrant, the sentence passed or process or warrant issued shall be sufficient to justify the officer or person thereby authorized, to execute the same, and every gaoler and person lawfully assisting in executing or carrying out such sentence, process or warrant, although the court passing the sentence or issuing the process had not in the particular case authority to pass the sentence or to issue the process, or although the court, justice or other person in the particular case had no jurisdiction to issue, or exceeded its or his jurisdiction in issuing, the warrant, or was, at the time when such sentence was passed or process or warrant issued, out of the district in or for which such court, justice or person was entitled to act. 55-56 V., c. 29, s. 18.

A warrant valid on its face affords complete protection to a constable executing it, notwithstanding that the awarding of the punishment may have been erroneous. *R.* v. *King*, 18 O. R. 566; *Sleeth* v. *Hulbert* (1896), 3 Can. C. C. 197, 25 S. C. R. 620.

See note under section 24 as to the word 'justified,' also *West* v. *Smallwood*, 3 M. & W. 418; *Phillips* v. *Byron* (1721), 1 Strange 509; *Parsons* v. *Lloyd*, 2 Wm. Bl. 845; *R.* v. *Harrison* (1812), 15 East. 615; *Codrington* v. *Lloyd* (1839), 8 A. & E. 449.

**27.** SENTENCE OR PROCESS WITHOUT JURISDICTION.—Every officer, gaoler or person executing any sentence, process or warrant, and every person lawfully assisting such officer, gaoler or person, shall be protected from criminal responsibility if he acts in good faith under the belief that the sentence or process was that of a court having jurisdiction, or that the warrant was that of a court, justice or other person having authority to issue warrants, and if it be proved that the person passing the sentence or issuing the process acted as a court under colour of having some appointment or commission law-

fully authorizing him to so act, or that the person issuing the warrant acted as a court, justice or other person having such authority, although in fact such appointment or commission did not exist or had expired, or although in fact the court or the person passing the sentence or issuing the process was not the court or the person authorized by the commission to act, or the person issuing the warrant was not duly authorized so to act. 55-56 V., c. 29, s. 19.

See note under section 24 as to the words, "criminal responsibility."

**28.** ARRESTING WRONG PERSON.—Every one duly authorized to execute a warrant to arrest, who thereupon arrests a person, believing in good faith and on reasonable and probable grounds that he is the person named in the warrant, shall be protected from criminal responsibility to the same extent and subject to the same provisions as if the person arrested had been the person named in the warrant.

2. ASSISTING IN SUCH ARREST — GAOLER.—Every one called on to assist the person making such arrest, and believing that the person in whose arrest he is called on to assist is the person for whose arrest the warrant is issued, and every gaoler who is required to receive and detain such person, shall be protected to the same extent and subject to the same provisions as if the arrested person had been the person named in the warrant. 55-56 V., c. 29, s. 20.

Where the defendant, arrested by a provincial constable, who believed that a robbery had been committed, and that the defendant was one of the persons who committed it, and who, being asked to shew his authority, produced and read a warrant against F. E. and others, for breaking and entering a shop and stealing a quantity of goods therefrom, seeing that his name was not mentioned in the warrant, resisted arrest, and in so doing assaulted a constable, and was tried and convicted for assaulting a police officer in the discharge of his duty, with intent to resist lawful arrest, it was held that the arrest could be justified under the statute, notwithstanding the insufficiency of the warrant: *R.* v. *Sabeans*, 37 N. S. R. 223, 7 Can. C. C. 498.

See *Hore* v. *Bush*, 1 M. & Gr. 775; *R.* v. *Hood* (1830), Moody's C. C. R. 281, and note under section 24, as to the words "criminal responsibility."

"As an officer arresting for felony without warrant is by the common law justified even if he by mistake arrests the wrong person, we think that the man who arrests any person with a warrant for any offence shall at least be protected from criminal responsibility. The right of action is not affected by it."—Imp. Comm. Rep.

**29.** IRREGULAR WARRANT OF PROCESS.—Every one acting under a warrant or process which is bad in law

on account of some defect in substance or in form apparent on the face of it, if he in good faith and without culpable ignorance and negligence believes that the warrant or process is good in law, shall be protected from criminal responsibility to the same extent and subject to the same provisions as if the warrant or process were good in law, and ignorance of the law shall in such case be an excuse.

2. QUESTION OF LAW.—It shall be a question of law whether the facts of which there is evidence may or may not constitute culpable ignorance or negligence in the belief of such person that the warrant or process is good law. 55-56 V., c. 29, s. 21.

See note under section 24 as to the words "criminal responsibility."

"It is at least doubtful on the existing authorities whether a person honestly acting under a bad warrant, defective on the face of it, has any defence, though only doing what would have been his duty if the warrant was good. The section, as framed, protects him. The proviso is new, but seems to be reasonable. It does not touch the question of civil responsibility."—Imp. Comm. Rep.

See *R.* v. *Monkman*, 8 Man. L. R. 509 under section 296 *post*.

**30.** ARREST BY PEACE OFFICER.—Every peace officer who, on reasonable and probable grounds, believes that an offence for which the offender may be arrested without warrant has been committed, whether it has been committed or not, and who, on reasonable and probable grounds, believes that any person has committed that offence, is justified in arresting such person without warrant, whether such person is guilty or not. 55-56 V., c. 29, s. 22.

This section protects the officer making the arrest from criminal and civil proceedings, and it also authorizes the arrest. It applies to cases where a peace officer may arrest without a warrant as well as to private persons may arrest without a warrant. But this section does not authorize a justice of the peace to direct a constable to make an arrest without a warrant. *McGuiness* v. *Dafoe* (1896), 27 O. R. 117; 23 A. R. 704, 3 Can. C. C. 139.

Verbal statements to officer that a person had committed a theft the day before does not justify him in arresting such person without warrant: *Mousseau* v. *City of Montreal*, Q. R. 12 S. C. 61.

A workman in Central Prison was detected conveying tobacco to convict contrary to rules. The warden directed a constable to arrest the workman and in so doing handcuffed him. *Held*, arrest legal, but the handcuffing under the circumstances was not justifiable, and the constable liable in trespass, but the warden not liable, as evidence failed to shew him a party to the handcuffing. *Hamilton* v. *Massie*, 18 O. R. 585.

**31.** PERSONS ASSISTING PEACE OFFICER.—Every one called upon to assist a peace officer in the arrest of

a person suspected of having committed such offence is justified in assisting, if he knows that the person calling on him for assistance is a peace officer, and does not know that there is no reasonable ground for the suspicion. 55-56 V., c. 29, s. 23.

See *McGuiness* v. *Dafoe* (1896), 27 O. R. 117, 23 A. R. 704, 3 Can. C. C. 139, under section 30, as to assisting a peace officer and the codification of the common law. See also *Allen* v. *Wright* (1838), 8 C. & P. 522; *Leete* v. *Harte* (1866), L. R. 3 C. P. 322, as to what are reasonable grounds for suspicion.

**32.** ARREST OF PERSONS FOUND COMMITTING AN OFFENCE BY NIGHT.—Every one is justified in arresting without warrant any person whom he finds committing any offence for which the offender may be arrested without warrant, or may be arrested when found committing. 55-56 V., c. 29, s. 24.

See note as to word "justified" under section 24.

It is not clear that it was necessary to enact in these sections that a person who, being by law duly authorized to do so, arrests any one without warrant, is justified in so doing.

The words "finds committing" in this and similar enactments are to be construed strictly. *R.* v. *Phelps*, Car. & M. 180. See remarks under section 646, *post*, as to arrests.

**33.** ARREST AFTER COMMISSION OF CERTAIN OFFENCES.—If any offence for which the offender may be arrested without warrant has been committed, any one who, on reasonable and probable grounds, believes that any person is guilty of that offence is justified in arresting him without warrant, whether such person is guilty or not. 55-56 V., c. 29, s. 25.

See section 649, also *Jordan* v. *McDonald* (1898), 31 N. S. R. 129.

**34.** ARREST DURING NIGHT.—Every one is protected from criminal responsibility for arresting without warrant any person whom he, on reasonable and probable grounds, believes he finds committing by night any offence for which the offender may be arrested without warrant. 55-56 V., c. 29, s. 26.

"Found committing" means: 1, either actually discovering the person committing the offence; or, 2, immediately and continuously pursuing him from the time he is seen committing the offence (even if seen by a person other than the one pursuing) until he is captured. *R.* v. *Curran* (1828), 3 C. & P. 397; *Hannay* v. *Boultbee* (1830), 1 M. & R. 15.

If an offender is seen committing an offence by one person, he may be arrested by another, although he did not actually see the commission of the offence, but was immediately informed thereof by a witness and thereupon immediately pursued the offender. *R.* v. *Howarth* (1828), Moody's C. C. R. 207.

**35.** WHILE COMMITTING OFFENCE.—Every peace officer is justified in arresting without warrant any person whom he finds committing any offence. 55-56 V., c. 29, s. 27.

"Peace officer" defined section 2, sub-section 26. As to arrest without warrant, see section 648, which applies only to offences against this Act. An officer is bound to arrest in many cases, but the Code has no reference to it.

**36.** BY NIGHT.—Every one is justified in arresting without warrant any person whom he finds by night committing any offence.

2. LOITERING BY NIGHT.—Every peace officer is justified in arresting without warrant any person whom he finds lying or loitering in any highway, yard or other place by night, and whom he has good cause to suspect of having committed or being about to commit any offence for which an offender may be arrested without warrant. 55-56 V., c. 29, s. 28.

**37.** ARREST DURING FLIGHT.—Every one is protected from criminal responsibility for arresting without warrant any person whom he, on reasonable and probable grounds, believes to have committed an offence and to be escaping from and to be freshly pursued by those whom he, on reasonable and probable grounds, believes to have lawful authority to arrest that person for such offence. 55-56 V., c. 29, s. 29.

See sections 649 and 652. Night defined section 2, sub-section 23, Peace officer defined section, 2 sub-section 26.

**38.** STATUTORY POWER OF ARREST.—Nothing in this Act shall take away or diminish any authority given by any Act in force for the time being to arrest, detain or put any restraint on any person. 55-56 V., c. 29, s. 30.

**39.** FORCE IN EXECUTING WARRANT, PROCESS OR SENTENCE.—Every one executing any sentence, warrant or process, or in making any arrest, and every one lawfully assisting him, is justified, or protected from criminal responsibility, as the case may be, in using such force as may be necessary to overcome any force used in resisting such execution or arrest, unless the sentence, process or warrant can be executed or the arrest effected by reasonable means in a less violent manner. 55-56 V., c. 29, s. 31.

See *Dillon* v. *O'Brien*, 16 Cox C. C. 245. As to excess see section 66. See also sections 41 and 53.

If it is necessary to effect an arrest to use force and in course of the struggle the person the officer is trying to arrest or any one assisting him in resisting the arrest should be killed, the officer attempting to make the arrest is not liable criminally nor civilly; but should it be the officer or any one aiding the officer that should be killed the person killing him is guilty of murder. *R.* v. *Porter* (1873), 12 Cox C. C. 444.

**40.** Duty of Person Arresting.—It is the duty of every one executing any process or warrant to have it with him, and to produce it if required.

2. Notice.—It is the duty of every one arresting another, whether with or without warrant, to give notice, where practicable, of the process or warrant under which he acts, or of the cause of the arrest.

3. Failure in Duty.—A failure to fulfil either of the two duties last mentioned shall not of itself deprive the person executing the process or warrant, or his assistants, or the person arresting, of protection from criminal responsibility, but shall be relevant to the inquiry whether the process or warrant might not have been executed, or the arrest effected, by reasonable means in a less violent manner. 55-56 V., c. 29, s. 32.

See *Codd* v. *Cabe*, 1 Ex. D. 352; *R.* v. *Carey*, 14 Cox C. C. 214; *R.* v. *Cumpton*, Warb. Lead. Cas. 215, and cases there cited.

**41.** Peace Officer Preventing Escape.—Every peace officer proceeding lawfully to arrest, with or without warrant, any person for any offence for which the offender may be arrested without warrant, and every one lawfully assisting in such arrest, is justified, if the person to be arrested takes to flight to avoid arrest, in using such force as may be necessary to prevent his escape by such flight, unless such escape can be prevented by reasonable means in a less violent manner. 55-56 V., c. 29, s. 33.

See section 66, as to excess.

**42.** Private Person Preventing Escape.—Every person proceeding lawfully to arrest without warrant any person for any offence for which the offender may be arrested without warrant is justified, if the person to be arrested takes to flight to avoid arrest, in using such force as may be necessary to prevent his escape by flight, unless such escape can be pre-

vented by reasonable means in a less violent manner, if such force is neither intended nor likely to cause death or grievous bodily harm. 55-56 V., c. 29, s. 34.

A private person may not attempt to shoot an escaping offender but a peace officer may.

**43.** PREVENTING ESCAPE IN OTHER CASES.—Every one proceeding lawfully to arrest any person for any cause other than an offence in the last section mentioned is justified, if the person to be arrested takes to flight to avoid arrest, in using such force as may be necessary to prevent his escape by flight, unless such escape can be prevented by reasonable means in a less violent manner, if such force is neither intended nor likely to cause death or grievous bodily harm. 55-56 V., c. 29, s. 35.

**44.** PREVENTING ESCAPE OR RESCUE OF ARRESTED PERSON.—Every one who has lawfully arrested any person for any offence for which the offender may be arrested without warrant is protected from criminal responsibility in using such force in order to prevent the rescue or escape of the person arrested as he believes, on reasonable grounds, to be necessary for that purpose. 55-56 V., c. 29, s. 36.

**45.** IDEM.—Every one who has lawfully arrested any person for any cause other than an offence for which the offender may be arrested without warrant is protected from criminal responsibility in using such force in order to prevent his escape or rescue as he believes, on reasonable grounds, to be necessary for that purpose, if such force is neither intended nor likely to cause death or grievous bodily harm. 55-56 V., c. 29, s. 37.

**46.** PREVENTING BREACH OF PEACE.—Every one who witnesses a breach of the peace is justified in interfering to prevent its continuance or renewal and may detain any person committing or about to join in or renew such breach of the peace, in order to give him into the custody of a peace officer, if the person interfering uses no more force than is reasonably necessary for preventing the continuance or renewal of such breach of the peace, or than is reasonably proportioned to the danger to be apprehended from the continuance or renewal of such breach of the peace. 55-56 V., c. 29, s. 38.

See section 167.

**47.** ARREST IN SUCH CASE.—Every peace officer who witnesses a breach of the peace, and every person lawfully assisting him, is justified in arresting any one whom he finds committing such breach of the peace, or whom he, on reasonable and probable grounds, believes to be about to join in or renew such breach of the peace.

2. GIVING PERSON IN CHARGE.—Every peace officer is justified in receiving into custody any person given into his charge as having been a party to a breach of the peace by one who has, or whom such peace officer, upon reasonable and probable grounds, believes to have, witnessed such breach of the peace. 55-56 V., c. 29, s. 39.

"Peace officer" defined section 2, sub-section 26. See *Timothy* v. *Simpson*, 1 C. M. & R. 757; *Baynes* v. *Brewster*, 2 Q. B. 375; *Price* v. *Seeley*, 10 Cl. & F. 28; *Webster* v. *Watts*, 11 Q. B. 311

**48.** SUPPRESSION OF RIOT BY MAGISTRATE.—Every sheriff, deputy sheriff, mayor or other head officer of any county, city, town or district, and every magistrate and justice of the peace, is justified in using, and ordering to be used, and every peace officer is justified in using, such force as he, in good faith, and on reasonable and probable grounds, believes to be necessary to suppress a riot, and as is not disproportioned to the danger which he, on reasonable and probable grounds, believes to be apprehended from the continuance of the riot. 55-56 V., c. 29, s. 40.

Riot defined, section 88.
Peace officer defined, section 2, sub-section 26.
Sheriffs or other officers are bound to endeavour to suppress a riot, section 94.
A magistrate charged with the preservation of the peace of a city, caused the militia to fire on a person who was thus wounded. Held, magistrate not liable to injured party, the circumstances being such that a person might have reasonably mistaken the necessity for such firing although there was no real necessity. *Stevenson* v. *Wilson*, 2 L. C. J. 254.

**49.** SUPPRESSION OF RIOT BY PERSONS COMMANDED THERETO.—Every one, whether subject to military law or not, acting in good faith in obedience to orders given by any sheriff, deputy sheriff, mayor or other head officer or acting head officer of any county, city, town or district, or by any magistrate or justice, for the suppression of a riot, is justified in obeying the orders so given unless such orders are manifestly unlawful, and is protected from criminal responsibility in

using such force as he, on reasonable and probable grounds, believes to be necessary for carrying into effect such orders.

2. QUESTION OF LAW.—It shall be a question of law whether any particular order is manifestly unlawful or not. 55-56 V., c. 29, s. 41.

Military law defined, section 2, sub-section 20.
Riot defined, section 94.
See the language of Tindal, C.J., in *R.* v. *Pinney*, 5 C. & P. 254, and *R.* v. *Rose*, 15 Cox C. C. 540.

**50.** SUPPRESSION OF RIOT BY PERSONS APPREHENDING SERIOUS MISCHIEF.—Every one, whether subject to military law or not, who in good faith and on reasonable and probable grounds believes that serious mischief will arise from a riot before there is time to procure the intervention of any of the authorities aforesaid, is justified in using such force as he, in good faith and on reasonable and probable grounds, believes to be necessary for the suppression of such riot, and as is not disproportioned to the danger which he, on reasonable grounds, believes to be apprehended from the continuance of the riot. 55-56 V., c. 29, s. 42.

**51.** PROTECTION OF PERSONS SUBJECT TO MILITARY LAW.—Every one who is bound by military law to obey the lawful command of his superior officer is justified in obeying any command given him by his superior officer for the suppression of a riot, unless such order is manifestly unlawful.

2. QUESTION OF LAW.—It shall be a question of law whether any particular order is manifestly unlawful or not. 55-56 V., c. 29, s. 43.

See sections 91, 92, 93 in regard to reading the Riot Act and what is to be done in case the proclamation has no effect.

**52.** USE OF FORCE.—Every one is justified in using such force as may be reasonably necessary in order,—

(*a*) TO PREVENT COMMISSION OF OFFENCE—to prevent the commission of any offence for which, if committed, the offender might be arrested without warrant, and the commission of which would be likely to cause immediate and serious injury to the person or property of any one; or,

(*b*) ACT AMOUNTING TO OFFENCE—to prevent any act being done which he, on reasonable grounds, believes

would, if committed, amount to any such offence. 55-56 V., c. 29, s. 44.

See section 646 as to offences for which arrest without warrant is authorized, and remarks thereunder. See note under section 24 as to the word "justified." See *Handcock* v *Baker*, 2 B. & P. 260, and *R.* v. *Rose*, 15 Cox C. C. 540.

**53.** SELF DEFENCE.—ASSAULT.—Every one unlawfully assaulted, not having provoked such assault, is justified in repelling force by force, if the force he uses is not meant to cause death or grievous bodily harm, and is no more than is necessary for the purpose of self-defence.

2. EXTENT JUSTIFIED.—Every one so assaulted is justified, though he causes death or grievous bodily harm, if he causes it under reasonable apprehension of death or grievous bodily harm from the violence with which the assault was originally made or with which the assailant pursues his purpose, and if he believes, on reasonable grounds, that he cannot otherwise preserve himself from death or grievous bodily harm. 55-56 V., c. 29, s. 45.

See note under section 24 as to the word "justified." See remarks under section 291, *post*. *R.* v. *Knock*, 14 Cox C. C. 1, and cases in Archbold, 755; 3 Blacks. 4; Horrigan, Cases on Self-Defence, 720; see section 261, *post*.

A man is justified in shooting one of a party who have invaded his house and have committed a wholly unprovoked assault upon him, and who have up to the time of the shooting, continued their violent and unjustifiable conduct there, and were destroying chattels in his house; if he has reasonable apprehension of immediate danger of grievous bodily harm to his wife and children, who are at the time in his house. *R.* v. *Theriault* (1894), 2 Can. C. C. 444, 14 Occ. N. 346, 32 N. B. R. 504.

See *R.* v. *Bull* (1839), 9 C. & P. 22; *R.* v. *Smith* (1837), 8 C. & P. 160.

**54.** SELF DEFENCE IN CASE OF AGGRESSION.—Every one who has without justification assaulted another, or has provoked an assault from that other, may nevertheless justify force subsequent to such assault, if he uses such force under reasonable apprehension of death or grievous bodily harm from the violence of the person first assaulted or provoked, and in the belief, on reasonable grounds, that it is necessary for his own preservation from death or grievous bodily harm, if he did not commence the assault with intent to kill or do grievous bodily harm, and did not endeavour, at any time before the necessity for preserving himself arose, to kill or do

grievous bodily harm, and if before such necessity arose, he declined further conflict, and quitted or retreated from it as far as was practicable.

2. PROVOCATION.—Provocation, within the meaning of this and the last preceding section, may be given by blows, words or gestures. 55-56 V., c. 29, s. 46.

See note under preceding section, and section 261.

"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 the 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 her, it might be manslaughter. Blackburn J., in *R.* v. *Rothwell* (1871), 12 Cox. C. C. 145, 3 Russ. Cr. 38, 39.

Homicide will only be reduced to manslaughter when the person receiving the provocation acts upon it immediately. If some time elapses between the receiving of the provocation and the commission of the deed, it will be presumed that the person committed the deed not under stress of such provocation, but with malice and with the intention to kill; and in such a case he would be guilty of murder. *R.* v. *Kirkham* (1837), 8 C. & P. 115, Arch. Cr. Pl. & Ev. 723.

See *R.* v. *Kelly* (1848), 2 C. & K. 814; *R.* v. *Shaw* (1834), 6 C. & P. 372.

**55.** PREVENTION OF INSULTING ASSAULT.—Every one is justified in using force in defence of his own person, or that of any one under his protection, from an assault accompanied with insult, if he uses no more force than is necessary to prevent such assault, or the repetition of it.

2. DISPROPORTIONATE HURT NOT JUSTIFIED.—This section shall not justify the wilful infliction of any hurt or mischief disproportionate to the insult which the force used was intended to prevent. 55-56 V., c. 29 s. 47.

See note under section 53.

**56.** DEFENCE OF MOVABLE PROPERTY.—Every one who is in peaceable possession of any movable property or thing, and every one lawfully assisting him, is justified in resisting the taking of such thing by any trespasser, or in retaking it from such trespasser, if in either case he does not strike or do bodily harm to such trespasser.

2. ASSAULT BY TRESPASSER.—If, after any one, being in peaceable possession as aforesaid, has laid hands upon any such thing, such trespasser persists in attempting to keep it or to take it from the possessor, or from any one lawfully as-

sisting him, the trespasser shall be deemed to commit an assault without justification or provocation. 55-56 V., c. 29, s. 48.

See note under section 61.

**57.** DEFENCE WITH CLAIM OF RIGHT.—Every one who is in peaceable possession of any movable property or thing under a claim of right, and every one acting under his authority, is protected from criminal responsibility for defending such possession, even against a person entitled by law to the possession of such property or thing, if he uses no more force than is necessary. 55-56 V., c. 29, s. 49.

**58.** DEFENCE WITHOUT CLAIM OF RIGHT.—Every one who is in peaceable possession of any movable property or thing, but neither claims right thereto nor acts under the authority of a person claiming right thereto, is neither justified nor protected from criminal responsibility for defending his possession against a person entitled by law to the possession of such property or thing. 55-56 V., c. 29, s. 50.

**59.** DEFENCE OF DWELLING-HOUSE.—Every one who is in peaceable possession of a dwelling-house, and every one lawfully assisting him or acting by his authority, is justified in using such force as is necessary to prevent the forcible breaking and entering of such dwelling-house, either by night or day, by any person with the intent to commit any indictable offence therein. 55-56 V., c. 29, s. 51.

See cases under section 291. Also Horrigan, Cases on Self Defence, 749 *et seq.*

**60.** SAME AT NIGHT.—Every one who is in peaceable possession of a dwelling-house, and every one lawfully assisting him or acting by his authority, is justified in using such force as is necessary to prevent the forcible breaking and entering of such dwelling-house by night by any person, if he believes, on reasonable and probable grounds, that breaking and entering is attempted with the intent to commit any indictable offence therein. 55-56 V., c. 29, s. 52.

**61.** DEFENCE OF REAL PROPERTY.—Every one who is in peaceable possession of any house or land, or other real pro-

perty, and every one lawfully assisting him or acting by his authority, is justified in using force to prevent any person from trespassing on such property, or to remove him therefrom, if he uses no more force than is necessary.

2. ASSAULT BY TRESPASSER.—If such trespasser resists such attempt to prevent his entry or to remove him, such trespasser shall be deemed to commit an assault without justification or provocation. 55-56 V., c. 29, s. 53.

See cases under 291; 1 Russ. 1028; 1 Burn. 313; *Lows* v. *Telford*, 13 Cox C. C. 226, Warb. Lead. Cas. 51; *Cook* v. *Beal*, 1 Ld. Raym. 170; *Handcock* v. *Baker*, 2 P. & B. 260; *R.* v. *Hewlett*, 1 F. & F. 91; *R.* v. *Hood*, 1 Moo. 281; *Spires* v. *Barrick*, 14 U. C. R. 424; *Glass* v. *O'Grady*, 17 U. C. C. P. 233; *Davis* v. *Lennon*, 8 U. C. R. 599; *Pockett* v. *Poole*, 11 Man. L. R. 275.

A full report of the evidence in the case of *R.* v. *Moir*, and an imperfect report of Lord Tenterden's summing up are to be found in the annual register for 1830, vol. 72, p. 344. Moir having ordered some fishermen not to trespass on his land by taking a short cut, found the deceased and others persisting in going across. He rode up to them and ordered them back. They refused to go and there was evidence of angry words, and some slight evidence that the deceased threatened to strike Moir with a pole. Moir shot him in the arm, and the wound ultimately proved fatal. Before the man died, or indeed was supposed to be in danger, Moir avowed and justified his act, and said that in similar circumstances he would do the same again. This land, he said, was his castle, and as he could not without the use of firearms prevent the fishermen from persisting in their trespass, he did use them, and would use them again. Lord Tenterden took a different view of the law. He told the jury that the prevention of such a trespass could not justify such an act, and he seems to have left them as the only justification which on these facts could arise, the question whether the prisoner was in reasonable apprehension of danger to his life from the threats of the deceased. Moir was found guilty of murder and executed. (*See* this case as since stated in *R.* v. *Price*, 7 C. & P. 178, and Roscoe, Cr. Evid. 714.)

The law discourages persons from taking the law into their own hands. Still the law does permit men to defend themselves. *Vim vi repellere licet modo fiat moderamine inculpatae tutelae, non ad sumendam vindictam, sed ad propulsandam injuriam*: Co. Lit. 162a. And when violence is used for the purpose of repelling a wrong, the degree of violence must not be disproportioned to the wrong to be prevented, or it is not justified. There is no case that we are aware of in which it has been held that homicide to prevent mere trespass is justifiable. The question raised has always been whether it was murder, or reduced by the provocation to manslaughter. . . . But the defence of possession either of goods or land against a mere trespass, not a crime, does not, strictly speaking, justify even a breach of the peace. The party in lawful possession may justify gently laying his hands on the trespasser and requesting him to depart. If the trespasser resists, and in doing so assaults the party in possession, that party may repel the assault and for that purpose may use any force which he would be justified in using in defence of his person. (*See section 53 ante.*) As is accurately said in 1 Rolle's Abt. Trespass, G. 8. "a justification of a battery in defence of possession, though it arose in the defence of the possession, yet in the end it is the defence of the person."—Imp. Comm. Rep.

**62.** ASSERTION OF RIGHT TO HOUSE OR LAND.—Every one is justified in peaceably entering in the daytime to take pos-

session of any house or land to the possession of which he, or some person under whose authority he acts, is lawfully entitled.

2. ASSAULT IN CASE OF LAWFUL ENTRY.—If any person, not having or acting under the authority of one having peaceable possession of any such house or land with a claim of right, assaults any one peaceably entering as aforesaid, for the purpose of making him desist from such entry, such assault shall be deemed to be without justification or provocation.

3. TRESPASSER PROVOKING.—If any person having peaceable possession of such house or land with a claim of right, or any person acting by his authority, assaults any one entering as aforesaid, for the purpose of making him desist from such entry, such assault shall be deemed to be provoked by the person entering. 55-56 V., c. 29, s. 54.

**63.** CORRECTION OF CHILD BY FORCE.—It is lawful for every parent, or person in the place of a parent, schoolmaster or master, to use force by way of correction towards any child, pupil or apprentice under his care, provided that such force is reasonable under the circumstances. 55-56 V., c. 29, s. 55.

A school teacher is to be regarded as having parental authority to chastise a pupil: *R.* v. *Robinson*, 7 Can. C. C. 52.

A teacher in one of the public schools was charged before a magistrate with assaulting, beating, and ill-using J. O., one of the pupils under his care, and was acquitted on the ground that there was no evidence of malice on his part or of permanent injury to the child. Held, that the only question properly before the magistrate was whether the punishment was reasonable in the circumstances, or, in other words, whether there was excess. Held, that there is no warrant in the Code for the test applied in the American case of *State* v. *Pendergrass*, 31 Am. Dec. 365, and adopted by the magistrate, that it is necessary for the prosecutor to prove either that the person inflicting the punishment was actuated by malice or that his act resulted in permanent injury to the child: *R.* v. *Gaul*, 24 Occ. N. 135, 36 N. S. R. 504, 8 Can. C. C. 178.

See *R.* v. *Couner* (1836), 7 C. & P. 438; *R.* v. *Cheeseman* (1836) 7 C. & P. 455; *R.* v. *Hopeley* (1860), 2 F. & F. 202.

**64.** MASTER OF SHIP.—It is lawful for the master or officer in command of a ship on a voyage to use force for the purpose of maintaining good order and discipline on board of his ship, provided that he believes, on reasonable grounds, that such force is necessary, and provided also that the force used is reasonable in degree. 55-56 V., c. 29, s. 56.

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. 314; *Mitchell* v. *Defries*, 2 U. C. R. 430; *Brisson* v. *Lafontaine*, 8 L. C. J. 173.

As to homicide by correction: see *R.* v. *Hopeley*, Warb. Lead. Cas. 110; *R.* v. *Griffin*, 11 Cox C. C. 402.

**65.** SURGICAL OPERATIONS.—Every one is protected from criminal responsibility for performing with reasonable care and skill any surgical operation upon any person for his benefit, provided that performing the operation was reasonable, having regard to the patient's state at the time, and to all the circumstances of the case. 55-56 V., c. 29, s. 57.

**66.** EXCESS.—Every one authorized by law to use force is criminally responsible for any excess, according to the nature and quality of the act which constitutes the excess. 55-56 V., c. 29, s. 58.

See *Hamilton* v. *Massie*, 18 O. R. 585, under s. 30.

**67.** CONSENT TO DEATH.—No one has a right to consent to the infliction of death upon himself.

2. CAUSING DEATH WITH CONSENT.—If such consent is given, it shall have no effect upon the criminal responsibility of any person by whom such death may be caused. 55-56 V., c. 29, s. 59.

**68.** OBEDIENCE TO DE FACTO LAW.—Every one is protected from criminal responsibility for any act done in obedience to the laws for the time being, made and enforced by those in possession *de facto* of the sovereign power in and over the place where the act is done. 55-56 V., c. 29, s. 60.

See II Hen. VII. c. 1. Sir H. Vance's case, Kelyng 15, and Foster's 4th discourse, p. 402.

*Parties to Offences.*

**69.** WHO PARTIES TO OFFENCE.—Every one is a party to and guilty of an offence who,—

(*a*) actually commits it; or,

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

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

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

2. Common Intention by Several Persons.—If several persons form a common intention to prosecute any unlawful purpose, and to assist each other therein, each of them is a party to every offence committed by any one of them in the prosecution of such common purpose, the commission of which offence was, or ought to have been known to be, a probable consequence of the prosecution of such common purpose. 55-56 V., c. 29, s. 61.

This and preceding section abolish the common law distinction between principals and accessories before the fact. All are now principals, whether or not they are actual perpetrators of the crime.

See section 269 as to aiding and abetting suicide. See a collection of cases on the subject of principals and accessories in *R.* v. *Jordan*, Warb. Lead. Cas. 2 and *R.* v. *Manning*, *Ib.* 7.

Three men on trial for burglary were being conveyed to the court house in a cab when a person unknown threw a parcel through the window containing revolvers, which were seized by the men and a struggle ensued resulting in the death of a constable. One of the men being indicted for murder, was convicted, the court holding that the shooting of the constable was committed in the prosecution of the unlawful purpose of escaping from custody, and each was liable for the acts of the others: *R.* v. *Rice*, 4 O. L. R. 223, 1 O. W. R. 394, 22 Occ. N. 225, 355, 32 S. C. R. 480.

The lessor of a house who knows of the intention of lessee to use it as a common bawdy house, aids the latter to commit an indictable offence and may be convicted as a principal under sub-sec. 2: *R.* v. *Roy* (1900), 3 Can. C. C. 472, Q. R. 9 Q. B. 312.

Principal and accessory—Fraudulent appropriation by principal and fraudulent receiving by accessory at same time: *McIntosh* v. *R.* 23 S. C. R. 180.

A person "aids and abets" when with a guilty knowledge he assists a thief in concealing money, although he took no part in the theft itself: *R.* v. *Campbell* (1889), 2 Can. C. C. 357.

Forgery—Accessory after the fact—Complicity with other forgeries and association with principal: *R.* v. *Bent*, 10 O. R. 557.

Betting—Stakeholder—Bettors accessories: *Walsh* v. *Trebilcock*, 23 S. C. R. 695.

A mere broker for two parties, one the buyer and the other the seller, without having any interest in a transaction other than his commission and without knowledge of the intention of the parties to gamble in stocks, is not guilty of being an accessory under this section: *R.* v. *Dowd* (1899) R. J. Q. 17, S. C. 67.

Abetting—Planning crime for others to commit: *R.* v. *Esmonde*, 26 U. C. R. 152; 18 Occ. N. 424; 12 Man. L. R. 319; 2 Can. C. C. 350.

An actual aider and abettor of a theft cannot be convicted of having subsequently received the stolen goods: *R.* v. *Hodges* (1898) 2 Can. C. C. 350; *R.* v. *Perkins* (1852), 2 Denison's C. C. 459; *R.* v. *Evans* (1856), 7 Cox C. C. 151.

Assisting to conceal stolen property—Liability as principal: *R.* v. *Campbell*, Q. R. 8 Q. B. 322.

Common criminal intent and actual participation must be shown to convict abettor as principal: *R.* v. *Graham* (1898), Q. R. 8 Q. B. 169, 2 Can. C. C. 388.

Assisting to conceal stolen property—Liability as principal: *R.* v. *Campbell*, Q. R. 8 Q. B. 322. Common criminal intention and participation must be shown to convict abettor as principal: *R* v. *Graham* (1898), Q. R. 8 Q. B. 169, 2 Can. C. C. 338.

A's sister lived in A's house with him but paid no rent or board. She kept a liquor shop there. A was aware of the fact but received no profit from the business. He was convicted under Canada Temperance Act as a principal. *Ex parte McCormack* (1894), 32 N. B. R. 272. See also *Ex parte William Kelly, ex parte Ellen Kelly* (1894), 32 N. B. R. 268.

Abetting murder—Insufficient evidence; *R.* v. *Curtley*, 27 U. C. R. 613.

A person who purchases intoxicating liquors sold in violation of the *Canada Temperance Act* is not liable to conviction as a party to the offence, in having aided, abetted, counselled or procured the sale by so purchasing the liquors: *Ex parte Armstrong*, 30 N. B. R. 425. See also *Ex parte Baker*, 30 N. B. R. 406.

**70.** PERSON COUNSELLING OFFENCE. — Every one who counsels or procures another person to be a party to an offence of which that person is afterwards guilty, is a party to that offence, although it may be committed in a way different from that which was counselled or suggested.

2. IDEM.—Every one who counsels or procures another to be a party to an offence is a party to every offence which that other commits in consequence of such counselling or procuring, and which the person counselling or procuring knew, or ought to have known, to be likely to be committed in consequence of such counselling or procuring. 55-56 V., c. 29, s. 62.

**71.** ACCESSORY AFTER THE FACT.—An accessory after the fact to an offence is one who receives, comforts or assists any one who has been a party to such offence in order to enable him to escape, knowing him to have been a party thereto.

2. HUSBAND OR WIFE.—No married person whose husband or wife has been a party to an offence shall become an accessory after the fact thereto by receiving, comforting or assisting the other of them, and no married woman whose husband has been a party to an offence shall become an accessory after the fact thereto, by receiving, comforting or assisting in his presence and by his authority any other person who has been a party to such offence in order to enable her husband or such other person to escape. 55-56 V., c. 29, s. 63.

Married woman—Murder of husband—Evidence—Corroboration; *R.* v. *Smith*, 38 U. C. R. 218; *United States Express Co.* v. *Donohoe*, 14 O. R. 333.

Corroboration—Cautioning jury—Case reserved; *R.* v. *Andrews*, 12 O. R. 184; *R.* v. *Smith*, *supra*.

Under the extradition laws in force between the U. S. A. and Can., an accessory before the fact to an extraditable offence may be extradited; but it is otherwise in the case of an accessory after the fact. *R.* v. *Browne*, 31 U. C. C. P. 484; *In re Counhays*, L. R. 8 Q. B. 410, 417.

**72.** ATTEMPTS.—Every one who, having an intent to commit an offence, does or omits an act for the purpose of accomplishing his object is guilty of an attempt to commit the offence intended whether under the circumstances it was possible to commit such offence or not.

2. QUESTION OF LAW.—The question whether an act done or omitted with intent to commit an offence is or is not only preparation for the commitment of that offence, and too remote to constitute an attempt to commit it, is a question of law. 55-56 V., c. 29, s. 64.

Planning robbery for others to commit; *R.* v. *Esmonde*, 26 U. C. R. 152; 18 Occ. N. 424; 12 Man. L. R. 319; 2 Can. C. C. 350.

Burglary — Abortive effort — Prevention — Evidence; *R.* v. *McCann*, 28 U. C. R. 514.

A mere intention to commit a crime is not indictable. Some act is required, but acts only remotely leading towards the commission of an offence are not to be considered as attempts to commit it, whilst acts immediately connected with it are; *R.* v. *Roebuck*, Dears. & B. 24; 1 Russ. 83; *R.* v. *Heasler*, 11 Cox C. C. 570; *R.* v. *Eagleton*, Dears. 515; *R.* v. *Roberts*, Dears. 539; *R.* v. *Cheeseman*, L. & C. 140.

An assault with intent to commit a crime is an attempt to commit that crime; *R.* v. *Dungey*, 4 F. & F. 99. See reporter's note in that case and *R.* v. *John*, 15 S. C. R. 384.

An attempt to commit a crime is an intent to commit such crime manifested by some overt act, and, in cases of rape, robbery, etc., etc., necessarily includes an assault: Stephen's Cr. L. 49; in such cases, an assault is an attempt and an attempt is an assault: *R.* v. *Martin*, 9 C. & P. 213, 215; see Annotation to section 949, *post*; and *R.* v. *Marsh*, 1 Den. 505; *R.* v. *Heath*, R. & R. 184; *R.* v. *Stewart*, R. & R. 288; *R.* v. *Fuller*, R. & R. 308; *R.* v. *Duckworth*, 17 Cox C. C. 495.

If A., mistaking a post in the dark for B., and intending to murder B., shoots at the post, he has not committed an attempt to murder, according to the existing law. Does the above section 64 change the law in this respect? Sir James Stephens thinks that article 74 of the Draft Code of 1879 would have had that effect in England: 2 Stephen's Hist., 225.

See *R.* v. *Goodman*, 22 U. C. C. P. 338.

## PART II.

### OFFENCES AGAINST PUBLIC ORDER, INTERNAL AND EXTERNAL.

*Interpretation.*

**73.** AS TO INFORMATION ILLEGALLY OBTAINED OR COMMUNICATED.—In the sections of this Part relating to information illegally obtained or communicated, unless the context otherwise requires,—

(*a*) REFERENCE TO PLACE—any reference to a place belonging to His Majesty includes a place belonging to any department of the Government of the United Kingdom, or of the Government of Canada, or of any pro-

vince, whether the place is or is not actually vested in His Majesty;

(*b*) REFERENCE TO COMMUNICATIONS—expressions referring to communications include any communication, whether in whole or in part, and whether the document, sketch, plan, model or information itself or the substance or effect thereof only be communicated;

(*c*) 'DOCUMENT' includes part of a document;

(*d*) 'MODEL' includes design, pattern and specimen;

(*e*) 'SKETCH' includes any photograph or other mode of expression of any place or thing;

(*f*) 'OFFICE UNDER HIS MAJESTY' includes any office or employment in or under any department of the Government of the United Kingdom, or for the Government of Canada or of any province. 55-56 V., c. 29, s. 76.

*Treason and other Offences against the King's Authority and Person.*

**74.** TREASON.—Treason is,—

(*a*) BODILY HARM TO HIS MAJESTY—the act of killing His Majesty, or doing him any bodily harm tending to death or destruction, maim or wounding, and the act of imprisoning or restraining him; or,

(*b*) INTENTION WITH OVERT ACT—the forming and manifesting by any overt act an intention to kill His Majesty, or to do him any bodily harm tending to death or destruction, maim or wounding, or to imprison or to restrain him; or,

(*c*) KILLING HEIR APPARENT—the act of killing the eldest son and heir apparent of His Majesty, or the Queen consort of any King of the United Kingdom of Great Britain and Ireland; or,

(*d*) INTENTION WITH OVERT ACT—the forming and manifesting, by an overt act, an intention to kill the eldest son and heir apparent of His Majesty, or the Queen consort of any King of the United Kingdom of Great Britain and Ireland; or,

(*e*) CONSPIRING TO DO HIS MAJESTY BODILY HARM.—conspiring with any person to kill His Majesty, or to do him any bodily harm tending to death or destruction,

maim or wounding, or conspiring with any person to imprison or restrain him; or,

(*f*) LEVYING WAR against His Majesty either

(i) TO DEPOSE HIS MAJESTY—with intent to depose His Majesty from the style, honour and royal name of the Imperial Crown of the United Kingdom of Great Britain and Ireland or of any other of His Majesty's dominions or countries, or

(ii) TO OVERAWE HIS MAJESTY—in order, by force or constraint, to compel His Majesty to change his measures or counsels or in order to intimidate or overawe both Houses or either House of Parliament of the United Kingdom or of Canada; or,

(*g*) CONSPIRING TO LEVY WAR—against His Majesty with any such intent or for any such purpose as aforesaid; or,

(*h*) INSTIGATING INVASION—instigating any foreigner with force to invade the said United Kingdom or Canada or any other of the dominions of His Majesty; or,

(*i*) ASSISTING ENEMY—assisting any public enemy at war with His Majesty in such war by any means whatsoever; or,

(*j*) VIOLATING PERSON OR WIFE OF HEIR APPARENT—violating, whether with the consent or not, a Queen consort, or the wife of the eldest son and heir apparent, for the time being, of the King or Queen regnant.

2. PENALTY.—Every one who commits treason is guilty of an indictable offence and liable to suffer death. 55-56 V., c. 29, s. 65; 57-58 V., c. 57, s. 1.

Limitation three years, section 1140.
Limitation six days, section 1140, sub-sec. 2.
Not triable at quarter sessions, section 583.
Compulsion by threats no excuse, section 20.
Requisites of indictment, section 847.
Special provisions as to trial for treason, 897.
Evidence of one witness must be corroborated, section 1002.

See Sir John Kelyng's Crown Cases, p. 7; Archbold, 755; Stephen's Crim. L. 32; and a discourse on High Treason in Foster's Cr. Law 183.

Also *R.* v. *Lord George Gordon* (1781), 2 Douglas 590; *R.* v. *Gallaghar* (1883), 15 Cox C. C. 291; Warb. Lead. Cas. 39; *R.* v. *Deasy* (1883) 15 Cox C. C 334; *R.* v. *Frost* (1839), 9 C. & P. 129.

*Mulcahy* v. *R.*, L. R. 3 H. L. 306; *R.* v. *Riel*, 16 Cox 48, 10 App. Cas. 675; *R.* v. *Davitt*, 11 Cox C. C. 676.

**75.** OVERT ACT.—In every case in which it is treason to conspire with any person for any purpose, the act of so conspiring, and every overt act of any such conspiracy, is an overt act of treason. 55-56 V., c. 29, s. 66.

**76.** PENALTY.—Every one is guilty of an indictable offence and liable to two years' imprisonment who,—

(*a*) ACCESSORIES AFTER THE FACT—becomes an accessory, after the fact, to treason; or,

(*b*) OMITTING TO PREVENT TREASON—knowing that any person is about to commit treason does not, with all reasonable despatch, give information thereof to a justice of the peace, or use other reasonable endeavours to prevent the commission of the same. 55-56 V. c. 29, s. 67.

Not triable at quarter sessions, section 583. Requisites of indictment, section 847. Special provisions for trial, section 897. This section covers the common law offence of misprision of treason.

**77.** LEVYING WAR BY SUBJECT OF A STATE AT PEACE WITH HIS MAJESTY.—Every subject or citizen of any foreign state or country at peace with His Majesty, who,—

(*a*) is or continues in arms against His Majesty within Canada; or,

(*b*) commits any act of hostility therein; or,

(*c*) enters Canada with intent to levy war against His Majesty, or to commit any indictable offence therein for which any person would, in Canada, be liable to suffer death; and,

every subject of His Majesty who,—

(*a*) SUBJECTS ASSISTING—within Canada levies war against His Majesty in company with any of the subjects or citizens of any foreign state or country at peace with His Majesty; or,

(*b*) enters Canada in company with any such subjects or citizens with intent to levy war against His Majesty, or to commit any such offence therein; or

(*c*) with intent to aid and assist, joins himself to any person who has entered Canada with intent to levy war against His Majesty, or to commit any such offence in Canada;

PENALTY—is guilty of an indictable offence and liable to suffer death. 55-56 V., c. 29, s. 68.

Not triable at quarter sessions, section 583. Special provisions as to indictment, section 847. Every subject of her majesty *within* Canada who enters Canada with any foreigner with intent to commit any capital offence is, by this enactment, liable to suffer death.

Evidence of intent to levy war: *R.* v. *Slavin*, 17 U. C. C. P. 205.

Prisoner indicted as citizen of United States was acquitted on proving himself a British subject. Being then indicted as British subject he was not allowed to plead autrefois acquit: *R.* v. *Magrath*, 26 U. C. R. 385.

One joined with armed body which entered Canada from United States and attacked Canadian volunteers is guilty of their acts of hostility and their intent even if he carried no arms: *R.* v. *Slavin*, *R.* v. *McMahon*, 26 U. C. R. 195.

And this though he was there as a clergyman: Ib. Or as a reporter only: *R.* v. *Lynch*, 26 U. C. R. 208.

Though aggressor was a British subject by birth he might become liable as citizen of United States by being naturalized: *R.* v. *McMahon*. Or Crown may waive allegiance and try him as an American citizen: *R.* v. *Lynch*.

Foreign citizenship established by prisoner's admission and declarations: *R.* v. *Slavin*, 17 U. C. C. P. 205; *R.* v. *McMahon*; *R.* v. *Lynch*.

**78.** TREASONABLE OFFENCES.—Every one is guilty of an indictable offence and liable to imprisonment for life who forms,—

(*a*) AN INTENTION TO DEPOSE HIS MAJESTY from the style, honour and royal name of the Imperial Crown of the United Kingdom of Great Britain and Ireland, or of any other of His Majesty's dominions or countries; or,

(*b*) AN INTENTION TO LEVY WAR against his Majesty within any part of the said United Kingdom, or of Canada, in order by force or constraint to compel him to change his measures or counsels, or in order to put any force or constraint upon or in order to intimidate or overawe both Houses or either House of Parliament of the United Kingdom or of Canada; or,

(*c*) INTENTION TO INDUCE INVASION—an intention to move or stir any foreigner or stranger with force to invade the said United Kingdom, or Canada, or any other of His Majesty's dominions or countries under the authority of His Majesty;

MANIFESTATION—and manifests any such intention by conspiring with any person to carry it into effect, or by any other

overt act, or by publishing any printing or writing. 55-56 V., c. 29, s. 69.

Not triable at quarter sessions, section 583. Limitation, 3 years, section 1140, and 6 days, section 1140, sub-section 2. Special provisions, section 847. *See* annotations under section 74, *ante*.
See *R.* v. *Lynch* [1903] 1 K. B. 144; L. J. K. B. 167.

**79.** CONSPIRACY TO INTIMIDATE A LEGISLATURE.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who confederates, combines or conspires with any person to do any act of violence in order to intimidate, or to put any force or constraint upon, any legislative council, legislative assembly or house of assembly. 55-56 V., c. 29, s. 70.

Not triable at quarter sessions, section 583. Special provisions, section 847.
This enactment does not apply to conspiracies to intimidate the Senate or House of Commons. They are covered partly by sections 74 and 78, *ante*.
See *R.* v. *Bunting et al.* (1884), 7 O. R. 524.

**80.** ASSAULTS UPON THE KING.—Every one is guilty of an indictable offence and liable to seven years' imprisonment, and to be whipped once, twice or thrice as the court directs, who,—

(*a*) ACTS INTENDED TO ALARM OR INJURE THE KING—wilfully produces, or has, near His Majesty, any arm or destructive or dangerous thing with intent to use the same to injure the person of, or to alarm His Majesty; or,

(*b*) OTHER SIMILAR ACTS—wilfully and with intent to alarm or to injure His Majesty, or to break the public peace,

(i) points, aims or presents, or attempts to point, aim or present, at or near His Majesty, any firearm, loaded or not, or any other kind of arm,

(ii) discharges or attempts to discharge at or near His Majesty any loaded arm,

(iii) discharges or attempts to discharge any explosive material near His Majesty.

(iv) strikes, or strikes at, or attempts to strike, or strike at, His Majesty in any manner whatever,

(v) throws, or attempts to throw, anything at or upon His Majesty. 55-56 V., c. 29, s. 71.

5 & 6 V. c. 51 (Imp.) Not triable at quarter sessions, section 583. Special provisions, section 847. As to whipping, section 1060.

**81.** INCITING TO MUTINY.—Every one is guilty of an indictable offence and liable to imprisonment for life, who for any traitorous or mutinous purpose, endeavours to seduce any person serving in His Majesty's forces by sea or land from his duty and allegiance to His Majesty, or to incite or stir up any such person to commit any traitorous or mutinous practice. 55-56 V., c. 229, s. 72.

37 Geo. III. c. 10 (Imp.); 7 W. IV. & 1 V. c. 9 1 (Imp.). Not triable at quarter sessions, section 583. Special provisions, section 847: *R.* v. *Fuller*, 1 B. & P. 180; *Archbold*, 820; *R.* v. *Tierney*, R. & R. 74.

**82.** OFFENCE.—Every one is guilty of an offence punishable on indictment, or on summary conviction before two justices, who, not being an enlisted soldier in His Majesty's service, or a seaman in His Majesty's naval service,—

(*a*) PERSUADING TO DESERT—by words or with money, or by any other means whatsoever, directly or indirectly, persuades or procures, or goes about or endeavours to persuade, prevail on or procure, any such seaman or soldier to desert from or leave His Majesty's military or naval service; or,

(*b*) CONCEALING DESERTER—conceals, receives or assists any deserter from His Majesty's military or naval service, knowing him to be such deserter;

PENALTY—and is liable, on conviction under indictment, to fine and imprisonment in the discretion of the court, and on summary conviction before two justices, to a penalty not exceeding two hundred dollars, and not less than eighty dollars and costs, and in default of payment to imprisonment for any term not exceeding six months. 55-56 V., c. 29, s. 73.

Triable at quarter sessions. Section 847 applies, though through error. Penalty section, 1042. Arrest of suspected deserters, section 657.

A conviction under this section which follows the very words thereof, "conceal, receive, assist," is not bad for uncertainty. Nor is such a conviction bad because it provides that the penalty imposed thereby shall be "paid and applied according to law" (see sections

1036 and 1037. Nor is it necessary that the conviction should award costs against the defendant: *In re Baker* (1899), 20 C. L. J. 16.

An indictment for treason or any other like offence must state overt acts, and evidence will only be admitted of such overt acts as are stated in the indictment.

**83.** RESISTING EXECUTION OF SEARCH WARRANT.—Every one who resists the execution of any warrant authorizing the breaking open of any building to search for any deserter from His Majesty's military or naval service is guilty of an offence and liable, on summary conviction before two justices, to a penalty of eighty dollors. 55-56 V., c. 29, s. 74.

Penalty section 1042.

In order to search for a deserter, it is not lawful to break open any buildings, unless a warrant for that purpose, founded on an affidavit, has been obtained from a justice of the peace. See section 657.

**84.** PENALTY.—Every one is guilty of an offence and liable, on summary conviction, to six months' imprisonment with or without hard labour, who,—

(*a*) PERSUADING MEN TO DESERT—persuades any man who has been enlisted to serve in any corps of militia, or who is a member of or has engaged to serve in the Royal Northwest Mounted Police Force, to desert, or attempts to procure or persuade any such man to desert; or,

(*b*) ASSISTING—knowing that any such man is about to desert, aids or assists him in deserting; or,

(*c*) CONCEALING—knowing that any such man is a deserter, conceals him or aids or assists in his rescue. 55-56 V., c. 29, s. 75.

*Information Illegally Obtained or Communicated.*

**85.** PENALTY.—Every one is guilty of an indictable offence and liable to imprisonment for one year, or to a fine not exceeding one hundred dollars, or to both imprisonment and fine, who,—

(*a*) FOR PURPOSE OF UNLAWFULLY OBTAINING—for the purpose of wrongfully obtaining information,

(i) ENTERING FORTRESS, ETC.—enters or is in any part of a fortress, arsenal, factory, dockyard, camp, ship, office or other like place in Canada belonging to His Majesty, in which part he is not entitled to be, or

(ii) OBTAINING AFTER ENTRY—when lawfully or unlawfully in any such place as aforesaid, either obtains any document, sketch, plan, model or knowledge of anything, which he is not entitled to obtain, or takes without lawful authority any sketch or plan, or

(iii) ATTEMPTING TO TAKE SKETCH, ETC., WHEN OUTSIDE—when outside any fortress, arsenal, factory, dockyard or camp in Canada, belonging to His Majesty, takes, or attempts to take, without authority given by or on behalf of His Majesty, any sketch or plan of that fortress, arsenal, factory, dockyard or camp; or,

(*b*) COMMUNICATION WITHOUT AUTHORITY — knowingly having possession of or control over any document, sketch, plan, model, or knowledge obtained or taken by means of any act which constitutes an offence against this and the next following section, at any time wilfully and without lawful authority communicates or attempts to communicate the same to any person to whom the same ought not, in the interests of the state, to be communicated at that time; or,

(*c*) COMMUNICATION IN BREACH OF CONFIDENCE—after having been entrusted in confidence by some officer under His Majesty with any document, sketch, plan, model or information relating to any such place as aforesaid, or to the naval or military affairs of His Majesty, wilfully, and in breach of such confidence, communicates the same when, in the interests of the state, it ought not to be communicated; or,

(*d*) COMMUNICATION TO IMPROPER PERSONS—having possession of any document relating to any fortress, arsenal, factory, dockyard, camp, ship, office or other like place belonging to His Majesty, or to the naval or military affairs of His Majesty, in whatever manner the same has been obtained or taken, at any time wilfully communicates the same to any person to whom he knows the same ought not, in the interests of the state, to be then communicated.

2. INFORMATION FOR FOREIGN STATE—PENALTY.—Every one who commits any such offence intending to communicate

to a foreign state any information, document, sketch, plan, model or knowledge obtained or taken by him, or entrusted to him as aforesaid, or communicates the same to any agent of a foreign state, is guilty of an indictable offence and liable to imprisonment for life. 55-56 V., c. 29, s. 77.

Not triable at quarter sessions, section 583. No prosecution without consent of Attorney-General, section 592. Section 847 is made to apply, though through error. "Having in possession" defined section 5.

**86.** COMMUNICATING INFORMATION ACQUIRED IN OFFICE. —Every one who, by means of his holding or having held an office under His Majesty, has lawfully or unlawfully either obtained possession of or control over any document, sketch, plan or model, or acquired any information, and at any time corruptly, or contrary to his official duty, communicates or attempts to communicate such document, sketch, plan, model or information to any person to whom the same ought not, in the interests of the state, or otherwise in the public interest, to be then communicated, is guilty of an indictable offence and liable,—

(*a*) PENALTY—if the communication was made, or attempted to be made, to a foreign state, to imprisonment for life; and,

(*b*) IDEM—in any other case, to imprisonment for one year, or to a fine not exceeding one hundred dollars, or to both imprisonment and fine.

2. APPLICATION OF SECTION.—This section shall apply to a person holding a contract with His Majesty, or with any department of the Government of the United Kingdom, or of the Government of Canada, or of any province, or with the holder of any office under His Majesty as such holder, where such contract involves an obligation of secrecy, and to any person employed by any person or body of persons holding such a contract who is under a like obligation of secrecy, as if the person holding the contract, and the person so employed, were respectively holders of an office under His Majesty. 55-56 V., c. 29, s. 78.

See *R. v. Snadoral*, Warb. Lead. Cas. 43.

*Unlawful Assemblies and Riots.*

**87.** DEFINITION OF UNLAWFUL ASSEMBLY.—An unlawful assembly of three or more persons who, with intent to carry out any common purpose, assemble in such manner or so conduct themselves when assembled as to cause persons in the neighbourhood of such assembly to fear, on reasonable grounds, that the persons so assembled will disturb the peace tumultuously, or will by such assembly needlessly and without any reasonable occasion provoke other persons to disturb the peace tumultuously.

2. INTENTION NOT NECESSARY.—Persons lawfully assembled may become an unlawful assembly if they conduct themselves with a common purpose in such a manner as would have made their assembling unlawful if they had assembled in that manner for that purpose.

3. EXCEPTION.—An assembly of three or more persons for the purpose of protecting the house of any one of their number against persons threatening to break and enter such house in order to commit any indictable offence therein is not unlawful. 55-56 V., c. 29, s. 79.

See *R.* v. *Vincent*, 9 C. & P. 91; *O'Kelly* v. *Harvey*, 15 Cox, C. C. 435; *Beatty* v. *Gillbanks*, 15 Cox, C. C. 138; *Warb. Lead. Cas.* 49; *Back* v. *Holmes*, 16 Cox C. C. 263; *R.* v. *Clarkson*, 17 Cox C. C. 483; *R.* v. *Cunningham*, 16 Cox C. C. 420; *R.* v. *Orton*, 14 Cox C. C. 226; *R.* v. *McNaughten*, 14 Cox C. C. 576; *R.* v. *Maillioux*, 3 Pugs. (N.B.), 493.

**88.** DEFINITION OF RIOT.—A riot is an unlawful assembly which has begun to disturb the peace tumultuously. 55-56 V., c. 29, s. 80.

See *R.* v. *Kelly*, 6 U. C. C. P. 372, and cases under preceding section.

**89.** PUNISHMENT OF UNLAWFUL ASSEMBLY.—Every member of an unlawful assembly is guilty of an indictable offence and liable to one year's imprisonment. 55-56 V., c. 29, s. 81.

Fine and sureties, section 1058. See *post*, under section 91, and *ante*, under section 87. The punishment was two years under the repealed section.

**90.** PUNISHMENT OF RIOT.—Every rioter is guilty of an indictable offence and liable to two years' imprisonment with hard labour. 55-56 V., c. 29, s. 82.

Fine and sureties, section 1058.

**91.** READING THE RIOT ACT.—It is the duty of every sheriff, deputy sheriff, mayor or other head officer, and justice, of any county, city or town, who has notice that there are within his jurisdiction persons to the number of twelve or more unlawfully, riotously and tumultuously assembled together to the disturbance of the public peace, to resort to the place where such unlawful, riotous and tumultuous assembly is, and among the rioters, or as near to them as he can safely come, with a loud voice to command or cause to be commanded silence, and after that openly and with loud voice to make or cause to be made a proclamation in these words or to the like effect:—

PROCLAMATION.—Our Sovereign Lord the King charges and commands all persons being assembled immediately to disperse and peaceably to depart to their habitations or to their lawful business, upon the pain of being guilty of an offence on conviction of which they may be sentenced to imprisonment for life.

'GOD SAVE THE KING.'

55-56 V., c. 29, s. 83.

The omission of "God Save the Queen" is fatal. *R.* v. *Child*, 4 C. & P. 442. See sections 48, 49 and 50. Also Archbold, 955.

**92.** PENALTY.—All persons are guilty of an indictable offence and liable to imprisonment for life who,—

(*a*) PREVENTING PROCLAMATION.—With force and arms wilfully oppose, hinder or hurt any person who begins or is about to make the said proclamation, whereby such proclamation is not made; or,

(*b*) NOT DISPERSING.—Continue together to the number of twelve for thirty minutes after such proclamation has been made, or if they know that its making was hindered as aforesaid, within thirty minutes after such hindrance. 55-56 V., c. 29, s. 83.

Limitation, one year, section 1140. *R.* v. *Pinney* (1832), 3 B. & Ad. 947, 5 C. & P. 254; *R.* v. *Kennett*, 5 C. & P. 282; *R.* v. *Neale*, 9 C. & P. 431; *R.* v. *Vincent*, 9 C. & P. 91; *R.* v. *James*, 5 C. & P. 153.

**93.** DUTY OF OFFICERS IF RIOTERS DO NOT DISPERSE.—If the persons so unlawfully, riotously and tumultuously assembled together, or twelve or more of them, continue together, and do not disperse themselves, for the space of thirty minutes after the proclamation is made or after such hindrance as aforesaid, it is the duty of every such sheriff, justice and other officer, and of all persons required by them to assist, to cause such persons to be apprehended and carried before a justice.

2. INDEMNIFICATION OF OFFICERS.—If any of the persons so assembled are killed or hurt in the apprehension of such persons or in the endeavour to apprehend or disperse them, by reason of their resistance, every person ordering them to be apprehended or dispersed, and every person executing such orders, are indemnified against all proceedings of every kind in respect thereof.

3. SECTION NOT RESTRICTIVE.—Nothing in this section contained shall, in any way, limit or affect any duties or powers imposed or given by this Act as to the suppression of riots before or after the making of the said proclamation. 55-56 V., c. 29, s. 84.

**94.** NEGLECT OF PEACE OFFICER TO SUPPRESS RIOT.—Every sheriff, deputy sheriff, mayor or other head officer, justice, or other magistrate, or other peace officer, of any county, city, town or district, who has notice that there is a riot within his jurisdiction, who, without reasonable excuse omits to do his duty in suppressing such riot, is guilty of an indictable offence and liable to two years' imprisonment. 55-56 V., c. 29, s. 140.

Fine or sureties, section 1058. See *R.* v. *Pinney*, (1832) 3 B. & Ad. 947, 5 C. & P. 254.

**95.** NEGLECT TO AID PEACE OFFICER THEREAT.—Every one is guilty of an indictable offence and liable to one year's imprisonment who, having reasonable notice that he is required to assist any sheriff, deputy sheriff, mayor, or other head officer, justice, magistrate, or peace officer in suppressing any riot, without reasonable excuse omits to do so. 55-56 V., c. 29, s. 141.

Fine or sureties, section 1058. Peace officer defined, section 2, sub-section 26. See *R.* v. *Brown*, Car. & M. 314.

**96.** RIOTOUS DESTRUCTION OF PROPERTY.—All persons are guilty of an indictable offence and liable to imprisonment for life who, being riotously and tumultuously assembled together to the disturbance of the public peace, unlawfully and with force demolish or pull down, or begin to demolish or pull down, any building, or any machinery, whether fixed or movable, or any erection used in farming land, or in carrying on any trade or manufacture, or any erection or structure used in conducting the business of any mine, or any bridge, wagonway, or track for conveying minerals from any mine. 55-56 V., c. 29, s. 85.

*Indictment.*—That on at J. S., J. W. and E. W., together with divers other evil-disposed persons, to the said 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 unlawfully and with force begin to demolish and pull down the dwelling-house of one J. N., there situate.

The accused may be convicted of the offence covered by next section, if the evidence warrants it: section 951.

**97.** RIOTOUS DAMAGE TO PROPERTY.—All persons are guilty of an indictable offence and liable to seven years' imprisonment who, being riotously and tumultuously assembled together to the disturbance of the public peace, unlawfully and with force injure or damage any of the things mentioned in the last preceding section.

2. BONA FIDES NO DEFENCE.—It shall not be a defence to a charge of an offence against this or the last preceding section that the offender believed he had a right to act as he did, unless he actually had such a right. 55-56 V., c. 29, s. 86.

See *R.* v. *Phillips*, 2 Moo. 252; *Drake* v. *Footitt*, 7 Q. B. D. 201.

*Indictment.*—That on at 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. *Add a count stating "damage" instead of "injure."*

## *Unlawful Drilling.*

**98.** PROHIBITION OF ASSEMBLIES.—The Governor in Council is authorized from time to time to prohibit assemblies, without lawful authority, of persons for the purpose of train-

ing or drilling themselves, or of being trained or drilled to the use of arms, or for the purpose of practising military exercises, movements or evolutions, and to prohibit persons when assembled for any other purpose from so training or drilling themselves or being trained or drilled.

2. GENERAL OR SPECIAL.—Any such prohibition may be general or may apply only to a particular place or district, or to assemblies of a particular character, and shall come into operation from the publication in the *Canada Gazette* of a proclamation embodying the terms of such prohibition, and shall continue in force until the like publication of a proclamation issued by the authority of the Governor in Council revoking such prohibition.

3. PENALTY.—Every person is guilty of an indictable offence and liable to two years' imprisonment who, without lawful authority and in contravention of such prohibition or proclamation,—

Limitation 6 months, section 1140. See Archbold, 822.

(*a*) BEING PRESENT FOR PURPOSE OF DRILLING OTHERS.—Is present at or attends any such assembly for the purpose of training or drilling any other person to the use of arms or the practice of military exercises or evolutions; or,

(*b*) DRILLING OTHERS.—At any assembly trains or drills any other person to the use of arms or the practice of military exercises or evolutions. 55-56 V., c. 29, s. 87.

**99.** BEING UNLAWFULLY DRILLED.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, without lawful authority, attends or is present at, any such assembly as in the last preceding section mentioned, for the purpose of being, or who at any such assembly is, without lawful authority and in contravention of such prohibition or proclamation, trained or drilled to the use of arms or the practice of military exercises or evolutions. 55-56 V., c. 29, s. 88.

Limitation 6 months, section 1140. See *R.* v. *Ryan* (1839), 2 M. & Rob. 213.

*Affrays and Duels.*

**100.** Definition of Affray.—An affray is the act of fighting in any public street or highway, or fighting to the alarm of the public in any other place to which the public have access.

2. Penalty.—Every one who takes part in an affray is guilty of an indictable offence and liable to one year's imprisonment with hard labour. 55-56 V., c. 29, s. 90.

**101.** Challenge to Fight a Duel.—Every one is guilty of an indictable offence and liable to three years' imprisonment who challenges or endeavours by any means to provoke any person to fight a duel, or endeavours to provoke any person to challenge any other person so to do. 55-56 V., c. 29, s. 91.

See *R.* v. *Rice*, 3 East 581; *R.* v. *Phillips*, 6 East 463; 3 Chit. 487.

The seconds in a duel, and all other persons who are present thereat, encouraging and promoting the same, are equally guilty with the principal offender if one of the combatants are killed. *R.* v. *Young* (1838), 8 C. & P. 644; *R.* v. *Cuddy* (1843), 1 Car. & K. 210; *R.* v. *Taylor* (1875), L. R. 2 C. C. R. 147.

*Forcible Entry and Detainer.*

**102.** Definition of Forcible Entry.—Forcible entry is where a person, whether entitled or not, enters in a manner likely to cause a breach of the peace, or reasonable apprehension thereof, on land then in actual and peaceable possession of another.

2. Definition of Forcible Detainer.—Forcible detainer is where a person in actual possession of land, without colour of right, detains it in a manner likely to cause a breach of the peace, or reasonable apprehension thereof, against a person entitled by law to the possession thereof.

3. Question of Law.—What amounts to actual possession or colour of right is a question of law. 55-56 V., c. 29, s. 89.

**103.** Every one who forcibly enters or forcibly detains land is guilty of an indictable offence and liable to one year's imprisonment. 55-56 V., c. 29, s. 89.

Archbold, 886; *R.* v. *Smyth* (1832), 5 C. & P. 261; *Lows* v. *Telford*, 13 Cox C.C. 226; Warb. Lead. Cas. 51; *R.* v. *Pike* (1898), 19 Occ. N. 43; 12 Man. L. R. 314; 2 Can. C. C. 314; *R.* v. *Conner*, 2 P. R.

139; *R.* v. *Cokely*, 13 U. C. R. 521; *Brundige* v. *Thompson*, 3 N. S. R. 356.

*Indictment*:—That A. D., C. D., E. F., G. H., and J. K., on day of , in the year of our Lord , unlawfully and injuriously and with a strong hand entered into a certain mill, and certain lands and houses, and the sites of a certain mill and certain houses, with the appurtenances, situate in the parish of , in the said county, and then in the possession of one L. M., and unlawfully and injuriously and with a strong hand, expelled and put out the said L.M. from the possession of the said premises, in a manner likely to cause a breach of the peace.

*Prize Fights.*

**104.** CHALLENGING, ETC.—Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding one thousand dollars and not less than one hundred dollars, or to imprisonment for a term not exceeding six months, with or without hard labour, or to both, who sends or publishes, or causes to be sent or published or otherwise made known, any challenge to fight a prize fight, or accepts any such challenge, or causes the same to be accepted, or goes into training preparatory to such fight, or acts as trainer or second to any person who intends to engage in a prize fight. 55-56 V., c. 29, s. 93.

*R.* v. *Perkins*, 4 C. & P. 537; *R.* v. *Murphy*, 6 C. & P. 103; *R.* v. *Coney*, 15 Cox C. C. 46, 8 Q. B. D. 534; in *R.* v. *Taylor*, 13 Cox C. C. 68, it was held that a stakeholder to a prize-fight is not an accessory before the fact nor an abettor to the manslaughter, if one of the combatants is killed, he not being present: see *R.* v. *Orton*, *Warb. Lead. Case*, 54, and *R.* v. *Coney*, *Id.* 56.

**105.** ENGAGING AS PRINCIPALS.—Every one is guilty of an offence and liable, on summary conviction, to imprisonment for a term not exceeding twelve months and not less than three months, with or without hard labour, who engages as a principal in a prize fight. 55-56 V., c. 29, s. 94.

Performance advertised as a boxing exhibition, but accompanied by all the elements constituting a prize-fight, is an offence under this section: *Steele* v. *Maber*, Q. R. 19 S. C. 392; 8 Can. C. C. 446.

A sparring exhibition without intention to fight to a finish is not a prize fight: *R.* v. *Littlejohn*, 8 Can. C. C. 212.

**106.** ATTENDING OR PROMOTING.—Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding five hundred dollars and not less than fifty dollars, or to imprisonment for a term not exceeding twelve months, with or without hard labour, or to both, who is present at a prize fight as an aid, second, surgeon, umpire, backer, assistant or reporter, or who advises, encourages or promotes such fight. 55-56 V., c. 29, s. 95.

**107.** Leaving Canada to Engage in Prize Fight.—Every inhabitant or resident of Canada is guilty of an offence and liable, on summary conviction to a penalty not exceeding four hundred dollars and not less than fifty dollars, or to imprisonment for a term not exceeding six months, with or without hard labour, or to both, who leaves Canada with intent to engage in a prize fight without the limits thereof. 55-56 V., c. 29, s. 96.

**108.** When Fight is Not a Prize Fight.—Discharge or Fine.—If, after hearing evidence of the circumstances connected with the origin of the fight or intended fight, the person before whom the complaint is made is satisfied that such fight or intended fight was *bona fide* the consequence or result of a quarrel or dispute between the principals engaged or intended to engage therein, and that the same was not an encounter or fight for a prize, or on the result of which the handing over transfer of money or property depended, such person may, in his discretion, discharge the accused or impose upon him a penalty not exceeding fifty dollars. 55-56 V., c. 29, s. 97.

*Inciting Indians.*

**109.** Penalty.—Every one is guilty of an indictable offence and liable to two years' imprisonment who induces, incites or stirs up any three or more Indians, non-treaty Indians, or half-breeds, apparently acting in concert,—

(*a*) Riotous Request.—To make any request or demand of any agent or servant of the Government in a riotous, disorderly or threatening manner, or in a manner calculated to cause a breach of the peace; or,

(*b*) Breach of the Peace.—To do any act calculated to cause a breach of the peace. 55-56 V., c. 29, s. 98.

**110.** Indictable Offence.—Every one who incites any Indian to commit any indictable offence is guilty of an indictable offence and liable to imprisonment for any term not exceeding five years. R. S., c. 43, s. 112.

*Explosive Substances.*

**111.** Causing Dangerous Explosions.—Every one is guilty of an indictable offence and liable to imprisonment

for life who wilfully causes, by any explosive substance, an explosion of a nature likely to endanger life or to cause serious injury to property, whether any injury to person or property is actually caused or not. 55-56 V., c. 29, s. 99.

Explosive substance defined, section 2 sub-section 14. See sections 279 and 280.

**112.** ATTEMPT TO DESTROY PROPERTY WITH EXPLOSIVES.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who wilfully places or throws any explosive substance into or near any building or ship with intent to destroy or damage the same or any machinery, working tools, or chattels whatever, whether or not an explosion takes place. 55-56 V., c. 29, s. 488.

"Explosives" defined, s. 2.

*Indictment for throwing gunpowder into a house with intent, etc.*— at unlawfully and wilfully did throw into the dwelling-house of J. N., 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. (*Add counts varying the statement of the act, and also stating the intent to be to damage the house.*)

*Indictment under s. 111 for destroying by explosion part of a dwelling-house, so as to endanger life.*— wilfully and unlawfully 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, so as to endanger the life of the said A. N. (*Add counts for throwing down and damaging part of the dwelling-house*), under s. 112: See *R.* v. *McGrath*, 14 Cox C. C. 598; and ss. 111, 113, 279, 280, 510, and also provide for offences by explosives.

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: *R.* v. *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.* v. *Brown*, 3 F. & F. 821. But Greaves is of opinion that this case would bear reconsideration: 2 Russ. 1017 *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 upon an indictment as *ante* under s. 111 that A. N. was in the house at the time. No intent need be laid or proved. In *R.* v. *Sheppard*, 11 Cox C. C. 302, it was held that, in order to support an indictment under this section, it is not enough to shew simply that gunpowder or other explosive substance was thrown against the house, but it must also be shewn that the substance was in a condition to explode at the time it was thrown, although no actual explosion did result.

**113.** DOING ANYTHING WITH INTENT TO CAUSE AN EXPLOSION.—Every one who wilfully,—

(*a*) does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance, an explosion of a nature likely to endanger life, or to cause serious injury to property; or,

(*b*) MAKING OR POSSESSING EXPLOSIVES.—Makes or has in his possession or under his control any explosive substance with intent by means thereof to endanger life or to cause serious injury to property, or to enable any other person by means thereof to endanger life or to cause serious injury to property;

PENALTY—is guilty of an indictable offence and liable to fourteen years' imprisonment, whether an explosion takes place or not, and whether any injury to person or property is actually caused or not. 55-56 V., c. 29, s. 100.

**114.** MAKING OR POSSESSING EXPLOSIVES.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who makes, or knowingly has in his possession or under his control, any explosive substance under such circumstances as to give rise to a reasonable suspicion that he is not making it, or has it not in his possession or under his control, for a lawful object, unless he can show that he made it or had it in his possession or under his control for a lawful object. 55-56 V., c. 29, s. 101.

**See section 594 and *R.* v. *Charles*, 17 Cox. C. C. 499.**

*Offensive Weapons.*

**115.** POSSESSION OF WEAPON.—Every one is guilty of an indictable offence and liable to five years' imprisonment who has in his custody or possession, or carries any offensive weapon for any purpose dangerous to the public peace. 55-56 V., c. 29, s. 102.

**Limitation six months, section 1140.**

**116.** OPENLY CARRYING WEAPONS.—If two or more persons openly carry offensive weapons in a public place in such a manner and under such circumstances as are calculated to create terror and alarm, each of such persons is liable, on summary conviction before two justices, to a penalty not exceeding forty dollars and not less than ten dollars, and in default of

payment to imprisonment for any term not exceeding thirty days. 55-56 V., c. 29, s. 103.

Limitation one month, section 1140.

**117.** SMUGGLER CARRYING WEAPONS.—Every one is guilty of an indictable offence and liable to imprisonment for ten years who, while carrying offensive weapons, is found with any goods liable to seizure or forfeiture under any law relating to inland revenue, the customs, trade or navigation, knowing such goods to be so liable. 55-56 V., c. 29, s. 104.

**118.** CARRYING PISTOL OR AIR-GUN.—JUSTIFICATION.—Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty-five dollars and not less than five dollars, or to imprisonment for one month who, not being a justice or a public officer, or a soldier, sailor, or volunteer in His Majesty's service on duty, or a constable or other peace officer, and not having a certificate of exemption from the operation of this section as hereinafter provided for, and not having at the time reasonable cause to fear an assault or other injury to his person, family or property, has upon his person a pistol, or air-gun elsewhere than in his own dwelling-house, shop, warehouse, or counting-house.

2. CERTIFICATE OF EXEMPTION.—If sufficient cause be shewn upon oath to the satisfaction of any justice, he may grant to any applicant therefor not under the age of sixteen years and as to whose discretion and good character he is satisfied by evidence upon oath, a certificate of exemption from the operation of this section, for such period, not exceeding twelve months, as he deems fit.

3. EVIDENCE.—Such certificate, upon the trial of any offence, shall be *prima facie* evidence of its contents and of the signature and official character of the person by whom it purports to be granted.

4. OPERATION OF SECTION SUSPENDED.—Whenever the Governor in Council deems it expedient in the public interest, he may by prolamation suspend the operation of the provisions of the first and second subsections of this section respecting certificates of exemption, or exempt from such operation

any particular part of Canada, and in either case for such period, and with such exceptions as to the persons affected by this section as he deems fit. 55-56 V., c. 29, s. 105.

Limitation one month, section 1146.

**119.** Selling Pistol or Air-gun to Minor.—Exception.—Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding fifty dollars, who sells or gives any pistol or air-gun, or any ammunition therefor, to a minor under the age of sixteen years, unless he establishes to the satisfaction of the justice before whom he is charged that he used reasonable diligence in endeavouring to ascertain the age of the minor before making such sale or gift, and that he had good reason to believe that such minor was not under the age of sixteen.

2. Record of Sale.—Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty-five dollars, who sells any pistol or air-gun without keeping a record of such sale, the date thereof, and the name of the purchaser and of the maker's name, or other mark by which such arm may be identified. 55-56 V., c. 29, s. 106.

Limitation one month, section 1146.

**120.** Having Pistol or Air-gun on Person when Arrested.—Every one who, when arrested, either on a warrant issued against him for an offence or while committing an offence, has upon his person a pistol or air-gun is guilty of an offence and liable on summary conviction before two justices, to a penalty not exceeding fifty dollars and not less than twenty dollars, or to imprisonment for any term not exceeding three months, with or without hard labour. 55-56 V., c. 29, s. 107.

Limitation one month, section 1146.

**121.** Having Pistol or Air-gun with Intent to Injure any Person.—Every one who has upon his person a pistol or air-gun, with intent therewith unlawfully to do injury to any other person, is guilty of an offence and liable, on summary conviction before two justices, to a penalty not exceeding two hundred dollars and not less than fifty dollars, or

to imprisonment for any term not exceeding six months, with or without hard labour. 55-56 V., c. 29, s. 108.

Limitation one month, section 1140.
See *R. v. Mines*, 14 Occ. N. 458; 25 O. R. 577.
A charge of "procuring a revolver with intent therewith to unlawfully do injury to J. S." discloses no offence known to the law.

**122.** POINTING ANY FIREARM OR AIR-GUN AT ANY PERSON.—Every one who, without lawful excuse, points at another person any firearm or air-gun, whether loaded or unloaded, is guilty of an offence and liable, on summary conviction before two justices, to a penalty not exceeding one hundred dollars and not less than ten dollars, or to imprisonment for any term not exceeding thirty days, with or without hard labour. 55-56 V., c. 29, s. 109.

Limitation one month, section 1140.

**123.** CARRYING OFFENSIVE WEAPONS.—Every one who carries about his person any bowie-knife, or any dagger, dirk, metal knuckles, skull cracker, 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, or, being masked or disguised, carries, or has in his possession any firearm or air-gun, is guilty of an offence and liable, on summary conviction before two justices, to a penalty not exceeding fifty dollars and not less than ten dollars, and in default of payment thereof, to imprisonment for any term not exceeding thirty days, with or without hard labour. 55-56 V., c. 29, s. 110.

Limitation one month, section 1140.

**124.** CARRYING SHEATH-KNIFE IN TOWN OR CITY.—Every one, not being thereto required by his lawful trade or calling, who is found in any town or city carrying about his person any sheath-knife is liable, on summary conviction before two justices, to a penalty not exceeding forty dollars and not less than ten dollars, and in default of payment thereof, to imprisonment for any term not exceeding thirty days, with or without hard labour. 55-56 V., c. 29, s. 111.

Limitation one month, section 1140.

**125.** Exception as to Soldiers, Etc.—It is not an offence for any soldier, public officer, peace officer, sailor or volunteer in His Majesty's service, or constable or other policeman, to carry loaded pistols or other usual arms or offensive weapons in the discharge of his duty. 55-56 V., c. 29, s. 112.

**126.** Refusing to Deliver Offensive Weapon.—Every one attending any public meeting or being on his way to attend the same who, upon demand made by any justice within whose jurisdiction such public meeting is appointed to be held, declines or refuses to deliver up, peaceably and quietly, to such justice, any offensive weapon with which he is armed or which he has in his possession, is guilty of an indictable offence.

2. Procedure and Penalty.—The justice may record the refusal and adjudge the offender to pay a penalty not exceeding eight dollars, or the offender may be proceeded against by indictment, as in other cases of indictable offences. R. S., c. 152, s. 1; 55-56 V., c. 29, s. 113.

Limitation one year, section 1140. See section 1052 for penalty.

**127.** Coming Armed within One Mile of Public Meeting.—Every one, except the sheriff, deputy sheriff and justices for the district or county, or the mayor, justices or other peace officer for the city or town, respectively, in which any public meeting is held, and the constables and special constables employed by them, or any of them, for the preservation of the public peace at such meeting, is guilty of an indictable offence, and liable to a penalty not exceeding one hundred dollars, or to imprisonment for a term not exceeding three months, or to both, who, during any part of the day upon which such meeting is appointed to be held, comes within one mile of the place appointed for such meeting armed with any offensive weapon. 55-56 V., c. 29, s. 114.

Limitation one year, section 1140.
An offender punishable by three months' imprisonment should be liable to conviction upon summary proceedings.

**128.** Lying in Wait for Persons Returning Therefrom.—Every one is guilty of an indictable offence and liable

to a penalty not exceeding two hundred dollars, or to imprisonment for a term not exceeding six months, or to both, who lies in wait for any person returning, or expected to return from any such public meeting, with intent to commit an assault upon such person, or with intent, by abusive language, opprobrious epithets or other offensive demeanour, directed to, at or against such person, to provoke such person, or those who accompany him, to a breach of the peace. 55-56 V., c. 29, s. 115.

Limitation one year, section 1140.

*Seditious Offences.*

**129.** PENALTY.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who,—

(*a*) ADMINISTERING OATH TO COMMIT CRIME.—Administers, or is present at and consenting to the administration of, any oath or any engagement purporting to bind the person taking the same to commit any crime punishable by death or imprisonment for more than five years; or,

(*b*) INDUCING OATH.—Attempts to induce or compel any person to take any such oath or engagement; or,

(*c*) TAKING OATH.—Takes any such oath or engagement. 55-56 V., c. 29, s. 120.

Not triable at quarter sessions, section 583.

**130.** PENALTY.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who,—

(*a*) ADMINISTERING OATHS BINDING TO—administers or is present at and consenting to the administration of any oath or engagement purporting to bind the person taking the same

(i) SEDITION.—To engage in any mutinous or seditious purpose,

(ii) DISTURBANCE OF PEACE.—To disturb the public peace or commit or endeavour to commit any offence,

(iii) NOT TO INFORM.—Not to inform and give evidence against any associate, confederate or other person,

(iv) NOT TO REVEAL ILLEGAL COMBINATION, ETC.—Not to reveal or discover any unlawful combination or confederacy, or any illegal act done or to be done, or any illegal oath or obligation or engagement which may have been administered or tendered to or taken by any person, or the import of any such oath or obligation or engagement; or

(*b*) ATTEMPTS.—Attempts to induce or compel any person to take any such oath or engagement; or,

(*c*) TAKING OATH.—Takes any such oath or engagement. 55-56 V., c. 29, s. 121.

Not triable at quarter sessions, section 583.
See *R.* v. *Lovelass*, 6 C. & P. 596.
*Indictment.*—The jurors for our Lord the King present, that A. B. on the day of in the year of our Lord , did unlawfully administer and cause to be administered to one C. D. a certain oath and engagement, purporting, and then intended, to bind the said C. D., not to inform or give evidence against any associate, confederate, or other person of or belonging to a certain unlawful association and confederacy, to wit and which said oath and engagement was then taken by the said C. D.

INDICTMENT FOR TAKING AN UNLAWFUL OATH.

*Commence as ante*]—did unlawfully take a certain oath and engagement, purporting [*&c., as in the last precedent*]; he, the said C. D., not being then compelled to take the said oath and engagement.

**131.** COMPULSION THERETO NO EXCUSE UNLESS DECLARATION MADE.—Any one who, under such compulsion as would otherwise excuse him, offends against either of the last two preceding sections, shall not be excused thereby unless, within the period hereinafter mentioned, he declares the same and what he knows touching the same, and the persons by whom and in whose presence and when and where, such oath or obligation or engagement was administered or taken, by information on oath before a justice for the district or city or county in which such oath or engagement was administered or taken.

2. LIMITATION OF TIME FOR DECLARATION.—Such declaration may be made by such person within fourteen days after the taking of the oath, unless he is hindered from making it by actual force or sickness, in which case it may be made within eight days of the cessation of such hindrance.

3. AT TRIAL.—The declaration may be made on such person's trial if it happens before the expiration of either of the periods aforesaid. 55-56 V., c. 29, s. 122.

These sections render illegal what are generally known as "secret societies." See the case of *Grant* v. *Beaudry* (1881), 4 L. N. 394.

**132.** SEDITIOUS WORDS.—Seditious words are words expressive of a seditious intention.

2. SEDITIOUS LIBEL.—A seditious libel is a libel expressive of a seditious intention.

3. SEDITIOUS CONSPIRACY.—A seditious conspiracy is an agreement between two or more persons to carry into execution a seditious intention. 55-56 V., c. 29, s. 123.

The truth of a seditious or blasphemous libel cannot be pleaded as a defence to an indictment: *R.* v. *Duffy*, 9 Ir. L. R. 329; *R.* v. *Bradlaugh*, 15 Cox C. C. 217; *Ex parte* O'Brien, 15 Cox C. C. 189; *R.* v. *Ramsay*, 15 Cox C. C. 231; *see* note under section 198, *post*.

**133.** INTENTIONS NOT SEDITIOUS.—No one shall be deemed to have a seditious intention only because he intends in good faith,—

(*a*) to show that His Majesty has been misled or mistaken in his measures; or,

(*b*) to point out errors or defects in the government or constitution of the United Kingdom, or of any part of it, or of Canada or any province thereof, or in either House of Parliament of the United Kingdom or of Canada, or in any legislature, or in the administration of justice; or to excite His Majesty's subjects to attempt to procure, by lawful means, the alteration of any matter in the state; or,

(*c*) to point out, in order to their removal, matters which are producing or have a tendency to produce feelings of hatred and ill-will between different classes of His Majesty's subjects. 55-56 V., c. 29, s. 123.

See *R.* v. *Frost*, 22 St. Tr. 471; *R.* v. *Winterbotham*, 22 St. Tr. 823; *R.* v. *Binns*, 26 St. Tr. 595; *O'Connell* v. *R.*, 11 Cl. & F. 155, 234; *R.* v. *Vincent*, 9 C. & P. 91; *R.* v. *Pigott*, 11 Cox C. C. 44; *R.* v. *Burns*, 16 Cox C. C. 355.

**134.** SEDITIOUS WORDS—PUNISHMENT.—Every one is guilty of an indictable offence and liable to two years' im-

prisonment who speaks any seditious words or publishes any seditious libel or is a party to any seditious conspiracy. 55-56 V., c. 29, s. 124.

Fine or sureties, section 1058. Not triable at quarter sessions, section 583. On an indictment for a seditious libel, the words need not be set out, section 861.

**135.** LIBEL ON FOREIGN SOVEREIGN.—Every one is guilty of an indictable offence and liable to one year's imprisonment who, without lawful justification, publishes any libel tending to degrade, revile or expose to hatred and contempt in the estimation of the people of any foreign state, any prince or person exercising sovereign authority over such state. 55-56 V., c. 29, s. 125.

Not triable at quarter sessions, section 583. Words need not be set out in indictment, section 861; *R.* v. *D'Eon*, 1 W. Bl. 517; *R.* v. *Peltier*, 28 St. Tr. 529; Shirley's Lead. Cas. Cr. L. 3; *R.* v. *Gordon*, 1 Russ. 351; *R.* v. *Bernard*, Warb. Lead. Cas. 45; *R.* v. *Most* (1881), 14 Cox C. C. 583, 7 Q. B. D. 244, *per* Coleridge, C.J. Fine, in lieu of or in addition to the punishment, section 1058. The intent to disturb peace and friendship between the United Kingdom and the foreign state whose sovereign has been libelled would appear to be necessary to constitute this offence at common law: Stephen, Cr. L. 99.

**136.** SPREADING FALSE NEWS.—Every one is guilty of an indictable offence and liable to one year's imprisonment who wilfully and knowingly publishes any false news or tale whereby injury or mischief is or is likely to be occasioned to any public interest. 55-56 V., c. 29, s. 126.

Not triable at quarter sessions, section 583. Fine and sureties for the peace, section 1058.

*Piracy.*

**137.** PIRACY BY THE LAW OF NATIONS.—Every one is guilty of an indictable offence who does any act which amounts to piracy by the law of nations, and is liable,—

(*a*) PUNISHMENT IN CASE OF VIOLENCE TO PERSON.—To the penalty of death, if in committing or attempting to commit such crime the offender murders, attempts to murder or wounds any person, or does any act by which the life of any person is likely to be endangered;

(*b*) OTHER CASES.—To imprisonment for life in all other cases. 55-56 V., c. 29, s. 127.

Not triable at quarter sessions, section 583. See Stephen's Cr. L. 104.

**138.** PIRATICAL ACTS.—Every one is guilty of an indictable offence and liable to imprisonment for life who, within Canada, does any of the piratical acts specified in this section, or who, having done any of such piratical acts, comes or is brought within Canada without having been tried therefor, that is to say:—

(*a*) BRITISH SUBJECT—HOSTILITY OR ROBBERY OR ADHERING TO KING'S ENEMIES.—Being a British subject, on the sea, or in any place within the jurisdiction of the Admiralty of England, under colour of any commission from any foreign prince or state, whether such prince or state is at war with His Majesty or not, or under pretense of authority from any person whomsoever commits any act of hostility or robbery against other British subjects, or during any war is in any way adherent to or gives aid to His Majesty's enemies;

(*b*) ENTERING BRITISH SHIP AND DESTROYING GOODS.—Whether a British subject or not, on the sea or in any place within the jurisdiction of the Admiralty of England, enters into any British ship, and throws overboard, or destroys any part of the goods belonging to such ship, or laden on board the same;

(*c*) CERTAIN ACTS DONE UPON BRITISH SHIP.—Being on board any British ship on the sea or in any place within the jurisdiction of the Admiralty of England,

(i) turns enemy or rebel, and piratically runs away with the ship, or any boat, ordnance, ammunition or goods,

(ii) yields up voluntarily any ship, boat, ordnance, ammunition or goods to any pirate,

(iii) brings any seducing message from any pirate, enemy or rebel,

(iv) counsels or procures any persons to yield up or run away with any ship, goods or merchandise, or to turn pirate or to go over to pirates,

(v) lays violent hands on the commander of any such ship, in order to prevent him from fighting in defence of his ship and goods.

(vi) confines the master or commander of any such ship,

(vii) makes or endeavours to make a revolt in the ship; or,

(*d*) BRITISH SUBJECT DOES CERTAIN ACTS.—Being a British subject in any part of the world, or whether a British subject or not, being in any part of His Majesty's dominions or on board a British ship, knowingly

(i) PIRATE SUPPLIES.—furnishes any pirate with any ammunition or stores of any kind,

(ii) FITTING OUT SHIP.—fits out any ship or vessel with a design to trade with or supply or correspond with any pirate.

(iii) ASSISTING PIRATE.—conspires or corresponds with any pirate. 55-56 V., c. 29, s. 128.

**139.** PIRATICAL ACT WITH VIOLENCE.—Every one is guilty of an indictable offence and liable to suffer death who, in committing or attempting to commit any piratical act, assaults with intent to murder, or wounds, any person, or does any act likely to endanger the life of any person. 55-56 V., c. 29, s. 129.

**140.** NOT RESISTING PIRATE.—Every one is guilty of an indictable offence and liable to six months' imprisonment, and to forfeit to the owner of the ship all wages then due to him, who, being a master, officer or seaman of any merchant ship which carries guns and arms, does not, when attacked by any pirate, fight and endeavour to defend himself and his vessel from being taken by such pirate, or who discourages others from defending the ship, if by reason thereof the ship falls into the hands of such pirate. 55-56 V., c. 29, s. 130.

Not triable at quarter sessions, section 583. Fine or sureties, Section 1058.

*Conveying Liquor on board His Majesty's Ships.*

**141.** PENALTY—OFFENCE.—Every one is guilty of an offence and liable, on summary conviction before two justices, to a fine not exceeding fifty dollars for each offence, and in

default of payment to imprisonment for a term not exceeding one month, with or without hard labour, who, without the previous consent of the officer commanding the ship or vessel,—

(*a*) TAKING LIQUOR ON BOARD SHIP.—Conveys any intoxicating liquor on board any of His Majesty's ships or vessels; or,

(*b*) ATTEMPTING TO TAKE.—Approaches or hovers about any of His Majesty's ships or vessels for the purpose of conveying any such liquor on board thereof; or,

(*c*) DELIVERING.—Gives or sells to any man in His Majesty's service, on board any such ship or vessel, any intoxicating liquor. 55-56 V., c. 29, s. 119.

As to arrest without warrant of offenders against this section by any officer, see section 651; as to search for liquor and seizure by such officer, section 639.

## PART III.

### RESPECTING THE PRESERVATION OF PEACE IN THE VICINITY OF PUBLIC WORKS.

*Interpretation.*

**142.** DEFINITIONS.—In this Part, unless the context otherwise requires,—

(*a*) 'THIS PART.—'This Part' means such section or sections thereof as are in force, by virtue of any proclamation, in the place with reference to which the Part is to be construed and applied;

(*b*) COMMISSIONER.—'Commissioner' means a commissioner under this Part;

(*c*) 'PUBLIC WORK.'—'Public work' includes any railway, canal, road, bridge or other work of any kind, and any mining operation constructed or carried on by the Government of Canada, or of any province of Canada, or by any municipal corporation, or by any incorporated company, or by private enterprise. R. S., c. 151, s. 1.

*Proclamation.*

**143.** PART MAY BE DECLARED IN FORCE.—The Governor in Council may, as often as occasion requires, declare, by pro-

clamation, that upon and after a day therein named, this Part, or any section or sections thereof, shall be in force in any place in Canada in such proclamation designated, within the limits or in the vicinity whereof any public work is in course of construction, or in any place in the vicinity of any public work, within which he deems it necessary that this Part, or any section or sections thereof, should be in force; and this Part, or any such section or sections thereof, shall, upon and after the day named in such proclamation, take effect within the place or places designated therein.

2. Declared No Longer in Force.—And Again in Force.—The Governor in Council may, in like manner, from time to time, declare this Part, or any section or sections thereof, to be no longer in force in any such place, and may again, from time to time, declare this Part, or any section or sections thereof, to be in force therein.

3. No Effect in City.—No such proclamation shall have effect within the limits of any city.

4. Judicial Notice.—All courts, magistrates and justices shall take judicial notice of every such proclamation. R. S., c. 151, s. 2.

*Weapons.*

**144.** Delivery of Arms to Commissioner.—On or before the day named in such proclamation, every person employed on or about the public work to which the same relates, shall bring and deliver up, to some commissioner or officer appointed for the purposes of this Part, every weapon in his possession, and shall obtain from such commissioner or officer a receipt for the same. R. S., c. 151, s. 3.

**145.** Seizure of Arms not Delivered.—Every weapon found in the possession of any person employed, as aforesaid, after the day named in any proclamation and within the limits designated in such proclamation, may be seized by any justice, commissioner, constable or other peace officer, and shall be forfeited to the use of His Majesty. R. S., c. 151, s. 4.

**146.** Possessing Weapons near Public Works.—Every one employed upon or about any public work, within any place

in which this Part is in force, who, upon or after the day named in such proclamation, keeps or has in his possession or under his care or control within any such place, any weapon, is liable on summary conviction to a penalty not exceeding four dollars and not less than two dollars for every such weapon found in his possession or under his care or control. R. S., c. 151, s. 5; 55-56 V., c. 29, s. 117.

**147.** Receiving or Concealing Arms with Intent.—Every one who, for the purpose of defeating the enforcement of this Part, receives or conceals, or aids in receiving or concealing, or procures to be received or concealed, within any place in which this Part is in force, any weapon belonging to or in the custody of any person employed on or about any public work, is liable, on summary conviction, to a penalty not exceeding one hundred dollars and not less than forty dollars; and a moiety of such penalty shall belong to the informer and the other moiety to His Majesty, for the public uses of Canada. R. S., c. 151, s. 6; 55-56 V., c. 29, s. 117.

**148.** Employees Carrying Weapons.—Every person employed on any public work found carrying any weapon, within any place in which this Part is at the time in force, for purposes dangerous to the public peace, is guilty of an indictable offence. R. S., c. 151, s. 7.

**149.** Return of Weapons when Part Ceases to be in Force.—Whenever this Part ceases to be in force within the place where any weapon has been delivered and detained in pursuance thereof, or whenever the owner or person lawfully entitled to any such weapon satisfies the commissioner that he is about to remove immediately from the limits within which this Part is at the time in force, the commissioner may deliver up to the owner or person authorized to receive the same, any such weapon, on production of the receipt given for it. R. S., c. 151, s. 11.

*Intoxicating Liquor.*

**150.** Sale of Liquor Prohibited.—Upon and after the day named in such proclamation and during such period as

such proclamation remains in force, no person shall, at any place within the limits specified in such proclamation, sell, barter or, directly or indirectly, for any matter, thing, profit or reward, exchange, supply or dispose of, any intoxicating liquor; or expose, keep or have in possession any intoxicating liquor intended to be dealt with in any such way.

2. As to Retail only.—The provisions of this section shall not extend to any person selling intoxicating liquor by wholesale, and not retailing the same, if such person is a licensed distiller or brewer. R. S., c. 151, s. 13; 55-56 V., c. 29, s. 118.

**151.** Penalty for Contravention.—Every one who, by himself, his clerk, servant, agent or other person, violates any of the provisions of the last preceding section, is guilty of an offence against this Part and liable on summary conviction for a first offence, to a penalty of forty dollars and costs, and, in default of payment to imprisonment for a term not exceeding three months, with or without hard labour; and for every subsequent offence, to a like penalty and to the like imprisonment in default of payment, and also to further imprisonment for a term not exceeding six months, with or without hard labour. R. S., c. 151, s. 14; 55-56 V., c. 29, s. 118.

**152.** Agent Liable to same Penalties as Principal.—Every clerk, servant, agent or other person who, being in the employment of, or on the premises of another person, violates or assists in violating any of the said provisions for the person in whose employment or on whose premises he is, shall be equally guilty with such person and shall be liable to the punishment mentioned in the last preceding section. R. S., c. 151, s. 15; 55-56 V., c. 29, s. 118.

**153.** Consideration Given for Purchase may be Recovered.—Any payment or compensation, whether in money or securities for money, labour or property of any kind, for intoxicating liquor sold, bartered, exchanged, supplied or disposed of, contrary to the provisions aforesaid, shall be held to have been criminally received without consideration, and against law, equity and good conscience, and the amount or value thereof may be recovered from the receiver by the per-

son making or furnishing such payment or compensation. R. S., c. 151, s. 18.

**154.** TRANSFER FOR LIQUOR VOID.—All sales, transfers, conveyances, liens and securities of every kind, which either in whole or in part have been made or given for or on account of intoxicating liquor sold, bartered, exchanged, supplied or disposed of contrary to such provisions, shall be void against all persons, and no right shall be acquired thereby.

2. NO ACTION ON ACCOUNT OF SALE OF LIQUOR.—No action of any kind shall be maintained, either in whole or in part, for or on account of intoxicating liquor sold, bartered, exchanged, supplied or disposed of, contrary to the said provisions. R. S., c. 151, s. 18.

## PART IV.

### OFFENCES AGAINST THE ADMINISTRATION OF LAW AND JUSTICE.

*Interpretation.*

**155.** DEFINITIONS.—In this Part, unless the context otherwise requires,—

(*a*) 'THE GOVERNMENT' includes the government of Canada, and the government of any province of Canada, as well as His Majesty in the right of Canada or of any province thereof, and the Commissioners of the Transcontinental Railway;

(*b*) 'OFFICIAL OR EMPLOYEE OF THE GOVERNMENT.'—'Official or person in the employment of the government' and 'official or employee of the government,' extend to and include the Commissioners of the Transcontinental Railway and the persons holding office as such commissioners, and the engineers, officials, officers, employees and servants of the said commissioners;

(*c*) 'OFFICE' includes every office in the gift of the Crown or of any officer appointed by the Crown, and all commissions, civil, naval and military, and all places or employments in any public department or office whatever, and all deputations to any such office and every

participation in the profits of any office or deputation. 55-56 V., c. 29, ss. 133 and 137; 6 E. VII., c. 7, s. 1.

*Corruption and Disobedience.*

**156.** PENALTY.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who,—

(*a*) JUDICIAL, ETC., OFFICER ACCEPTING OR OBTAINING OFFICE FOR CONSIDERATION—holding any judicial office, or being a member of Parliament or of a legislature, corruptly accepts or obtains, or agrees to accept, or attempts to obtain for himself or any other person, any money or valuable consideration, office, place, or employment on account of anything already done or omitted, or to be afterwards done or omitted, by him in his judicial capacity, or in his capacity as such member; or,

(*b*) GIVING OR OFFERING BRIBE—corruptly gives or offers to any such person or to any other person, any such bribe as aforesaid on account of any such act or omission. 55-56 V., c. 29, s. 131.

Not triable at quarter sessions, section 583; no indictment for judicial corruption without the leave of the Attorney-General of Canada, section 593; a common law misdemeanour: see *R.* v. *Bunting*, 7 O. R. 524.

**157.** PENALTY.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who,—

(*a*) OFFICER TAKING BRIBE—being a justice, peace officer, or public officer, employed in any capacity for the prosecution or detention or punishment of offenders, corruptly accepts or obtains, or agrees to accept or attempts to obtain for himself, or for any other person, any money or valuable consideration, office, place or employment with the intent to interfere corruptly with the due administration of justice, or to procure or facilitate the commission of any crime, or to protect from detection or punishment any person having committed or intending to commit any crime; or.

(*b*) OFFERING BRIBE TO OFFICER — corruptly gives or offers to any officer aforesaid any such bribe as aforesaid with any such intent. 55-56 V., c. 29, s. 132.

"Peace officer" defined, section 2 sub-section 26. Not triable at quarter sessions, section 583, a common law misdemeanour; form of indictment for attempt to bribe a constable: *Archbold*, 869

**158.** FRAUDS UPON THE GOVERNMENT.—Every one is guilty of an indictable offence and liable to a fine of not less than one hundred dollars, and not exceeding one thousand dollars, and to imprisonment for a term not exceeding one year and not less than one month, and in default of payment of such fine to imprisonment for a further time not exceeding six months who,—

(*a*) MAKING OFFER OR GIFT TO UNDULY INFLUENCE OFFICER—makes any offer, proposal, gift, loan or promise, or gives or offers any compensation or consideration, directly or indirectly, to any official or person in the employment of the government, or to any member of his family, or to any person under his control or for his benefit, with intent to obtain the assistance or influence of such official or person to promote either the procuring of any contract with the government for the performance of any work, the doing of any thing, or the furnishing of any goods, effects, food or materials, the execution of any such contract, or the payment of the price or consideration stipulated therein, or any part thereof, or of any aid or subsidy payable in respect thereof; or,

(*b*) ACCEPTING SUCH OFFER OR GIFT—being an official or person in the employment of the government, directly or indirectly, accepts or agrees to accept, or allows to be accepted by any person under his control or for his benefit, and such offer, proposal, gift, loan, promise, compensation or consideration; or,

(*c*) PROCURING WITHDRAWAL OF TENDERS—in the case of tenders being called for by or on behalf of the government for the performance of any work, the doing of any thing, or the furnishing of any goods, effects, food or materials, directly or indirectly, by himself, or by the agency of any other person on his behalf, with in-

tent to obtain the contract therefor, either for himself or for any other person, offers to make, or makes, any gift, loan, offer or promise, or offers or gives any consideration or compensation whatsoever to any person tendering for such work or other service, or to any member of his family or other person for his benefit, to induce such person to withdraw his tender for such work or other service, or to compensate or reward him for having withdrawn such tender; or,

(*d*) ACCEPTING GIFT, ETC., AS CONSIDERATION FOR WITHDRAWING TENDER—in case of tendering for the performance of any work, the doing of any thing, or the furnishing of any goods, effects, food or materials, for the government when tenders are called for by or on behalf of the government, accepts or receives, directly or indirectly, or permits or allows to be accepted or received by any member of his family, or by any other person under his control, or for his benefit, any such gift, loan, offer, promise, consideration or compensation, as a consideration or reward for withdrawing or for having withdrawn such tender; or,

(*e*) OFFICER ACCEPTING OR PERSON MAKING ANY GIFT CONCERNING GOVERNMENT BUSINESS—being an official or employee of the government, receives, directly or indirectly, whether personally or by or through any member of his family or person under his control or for his benefit, any gift, loan, promise, compensation or consideration whatsoever, either in money or otherwise, from any person whomsoever, for assisting or favouring any individual in the transaction of any business whatsoever with the government, or who gives or offers any such gift, loan, promise, compensation or consideration; or,

(*f*) COMPENSATION FOR PROCURING SETTLEMENT OF CLAIM—by reason of, or under the pretense of, possessing influence with the government, or with any minister or official thereof, demands, exacts or receives from any person, any compensation, fee or reward, for procuring from the government the payment of any claim or of any portion thereof, or for procuring or furthering the appointment of himself, or of any other

person, to any office, place or employment, or for procuring or furthering the obtaining for himself or any other person, of any grant, lease or other benefit from the government; or offers, promises or pays to such person, under the circumstances and for the causes aforesaid, or any of them, any such compensation, fee or reward; or,

(*g*) GIVING REWARD OR COMMISSION TO OFFICER—having dealings of any kind with the government through any department thereof, pays to any employee or official of the government, or to any member of the family of such employee or official, or to any person under his control or for his benefit, any commission or reward; or within one year before or after such dealings, without the express permission in writing of the head of the department with which such dealings have been had, the proof of which permission shall lie upon him, makes any gift, loan, or promise of any money, matter or thing, to any such employee or other person aforesaid; or,

(*h*) ACCEPTANCE—being an employee or official of the government, demands, exacts or receives from such person, directly or indirectly, by himself, or by or through any other person for his benefit, or permits or allows any member of his family, or any person under his control, to accept or receive

(i) COMMISSION—any such commission or reward, or

(ii) GIFT WITHIN A YEAR—within the said period of one year, without the express permission in writing of the head of the department with which such dealings have been had, the proof of which permission shall lie upon him, accepts or receives any such gift, loan or promise; or,

(*i*) CONTRACTOR SUBSCRIBING, ETC., TO ELECTION FUND OF CANDIDATE—having any contract with the government for the performance of any work, the doing of any thing, or the furnishing of any goods, effects, food or materials, and having or expecting to have any claim or demand against the government by reason of such contract, directly or indirectly, by himself or by any

person on his behalf, subscribes, furnishes or gives, or promises to subscribe, furnish or give, any money or other valuable consideration for the purpose of promoting the election of any candidate, or of any number, class or party of candidates, to a legislature or to Parliament, or with the intent in any way of influencing or affecting the result of a provincial or Dominion election.

2. PENALTY IF VALUE EXCEEDS $1,000.—If the value of the amount or thing paid, offered, given, loaned, promised, received or subscribed, as the case may be, exceeds one thousand dollars, the offender under this section is liable to any fine not exceeding such value. 55-56 V., c. 29, s. 133; 56 V., c. 32, s. 1.

Not triable at quarter sessions, section 583; limitation, two years, section 1140. Conspiracy to procure contract—Present to employee—Evidence: *R.* v. *Connolly*, 25 O. R. 151.
*See R.* v. *Arnoldi* (1892), 23 O. R. 201.

**159.** OTHER CONSEQUENCES.—Every person convicted of an offence under the last preceding section shall be incapable of contracting with the government, or of holding any contract or office with, from, or under it, or of receiving any benefit under any such contract. 55-56 V., c. 29, s. 134.

**160.** BREACH OF TRUST BY PUBLIC OFFICER.—Every public officer is guilty of an indictable offence and liable to five years' imprisonment who, in the discharge of the duties of his office, commits any fraud or breach of trust affecting the public, whether such fraud or breach of trust would have been criminal or not if committed against a private person. 55-56 V., c. 29, s. 135.

Not triable at quarter sessions, section 583; fine or sureties, section 1058.

**161.** MUNICIPAL CORRUPTION, PENALTY.—Every one is guilty of an indictable offence and liable to a fine not exceeding one thousand dollars and not less than one hundred dollars, and to imprisonment for a term not exceeding two years and not less than one month, and in default of payment of such fine to imprisonment for a further term not exceeding six months, who directly or indirectly,—

(*a*) CORRUPTLY OFFERING GIFT TO MUNICIPAL COUNCILLOR TO VOTE OR ABSTAIN FROM VOTING—makes

any offer, proposal, gift, loan, promise or agreement to pay or give any money or other material compensation or consideration to any member of a municipal council, whether the same is to enure to his own advantage or to the advantage of any other person, for the purpose of inducing such member either to vote or to abstain from voting at any meeting of the council of which he is a member or at any meeting of a committee of such council, in favour of or against any measure, motion, resolution or question submitted to such council or committee; or,

(*b*) CORRUPTLY OFFERING GIFT TO SECURE AID OF MUNICIPAL OFFICERS—makes any offer, proposal, gift, loan, promise or agreement to pay or give any money or other material compensation or consideration to any member or to any officer of a municipal council for the purpose of inducing him to aid in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person; or,

(*c*) OTHER CORRUPT PROPOSALS TO OFFICERS — makes any offer, proposal, gift, loan, promise or agreement to pay or give any money or other material compensation or consideration to any officer of a municipal council for the purpose of inducing him to perform or abstain from performing, or to aid in procuring or preventing the performance of, any official act; or,

(*d*) MEMBERS OF COUNCIL CORRUPTLY ACCEPTING GIFT —being a member or officer of a municipal council, accepts or consents to accept any such offer, proposal, gift, loan, promise, agreement, compensation or consideration in this section mentioned; or in consideration thereof votes or abstains from voting in favour of or against any measure, motion, resolution or question, or performs or abstains from performing any official act; or,

(*e*) USE OF THREATS OR FRAUD TO INFLUENCE VOTE—attempts by any threat, deceit, suppression of the truth or other unlawful means to influence any member of a municipal council in giving or withholding his vote in favour of or against any measure, motion, resolution or question, or in not attending any meeting of the muni-

cipal council of which he is a member, or of any committee thereof; or,

(*f*) THREATS OR FRAUD TO SECURE OR PREVENT VOTE OR OFFICAL ACT—attempts by any such means as in the last preceding paragraph mentioned to influence any member or any officer of a municipal council to aid in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person, or to perform or abstain from performing, or to aid in procuring or preventing the performance of, any official act. 55-56 V., c. 29, s. 136.

Not triable at quarter sessions, section 583; limitation two years, section 1140: *See R.* v. *Lancaster*, 16 Cox C. C. 737; *R.* v. *Hogg*, 15 U. C. R. 142.

**162.** OFFENCE.—Every one is guilty of an indictable offence who, directly or indirectly,—

(*a*) SELLING OFFICE—sells or agrees to sell any appointment to or resignation of any office, or any consent to any such appointment or resignation, or receives, or agrees to receive, any reward or profit from the sale thereof; or,

(*b*) PURCHASING OFFICE—purchases or gives any reward or profit for the purchase of any such appointment, resignation or consent, or agrees or promises to do so;

FORFEITURE—and in addition to any other penalty incurred, forfeits any right which he may have in the office and is disabled for life from holding the same. 55-56 V., c. 29, s. 137.

Not triable at quarter sessions, section 583; punishment, section 1052; *See R.* v. *Moodie*, 2 U. C. R. 389.

**163.** OFFENCE.—Every one is guilty of an indictable offence who directly or indirectly,—

(*a*) RECEIVING REWARD FOR CORRUPT MUNICIPAL ACT—receives or agrees to receive any reward or profit for any interest, request or negotiation about any office, or under pretence of using any such interest, making any such request or being concerned in any such negotiation; or,

(*b*) GIVING OR PROCURING ANY REWARD—gives or procures to be given any profit or reward, or makes or procures to be made any agreement for the giving of

any profit or reward, for any such interest, request or negotiation as aforesaid; or,

(*c*) BEING A PARTY TO NEGOTIATIONS—solicits, recommends or negotiates in any manner as to any appointment to or resignation of any office in expectation of any reward or profit; or,

(*d*) KEEPING OFFICE FOR THE PURPOSE—keeps any office or place for transacting or negotiating any business relating to vacancies in or the sale or purchase of, or appointment to or resignation of offices. 55-56 V., c. 29, s. 137.

Not triable at quarter sessions, section 585; punishment, section 1052.

**164.** DISOBEYING A STATUTE.—Every one is guilty of an indictable offence and liable to one year's imprisonment who, without lawful excuse, disobeys any Act of the Parliament of Canada or of any legislature in Canada by wilfully doing any act which it forbids, or omitting to do any act which it requires to be done, unless some penalty or other mode of punishment is expressly provided by law. 55-56 V., c. 29, s. 138.

Fine or sureties, section 1058; *See R.* v. *Hall*, 17 Cox C. C. 278; *R.* v. *Walker*, 13 Cox C. C. 94; Stephen's Cr. L. Art. 124, and *Hamilton* v. *Massie*, 18 O. R. 585.

**165.** DISOBEYING ORDERS OF COURT.—Every one is guilty of an indictable offence and liable to one year's imprisonment who, without lawful excuse, disobeys any lawful order, other than for the payment of money, made by any court of justice, or by any person or body of persons authorized by any statute to make or give such order, unless some penalty is imposed, or other mode of proceeding is expressly provided, by law. 55-56 V., c. 29, s. 139.

Fine or sureties, section 1058; Stephen's Cr. L. Art. 125; Archbold, 494.

**166.** MISCONDUCT OF OFFICERS ENTRUSTED WITH EXECUTION OF WRITS.—Every one is guilty of an indictable offence and liable to a fine and imprisonment who, being a sheriff, deputy-sheriff, coroner, elisor, bailiff, constable or other officer entrusted with the execution of any writ, warrant or process, willfully misconducts himself in the execution of the same, or wilfully, and without the consent of the person in whose

favour the writ, warrant or process was issued, makes any false return thereto. 55-56 V., c. 29, s. 143.

Section 1029 as to amount of fine, and section 1052 as to imprisonment.

*Peace Officers.*

**167.** NEGLECT TO AID PEACE OFFICERS IN ARRESTING OFFENDERS.—Every one is guilty of an indictable offence and liable to six months' imprisonment who, having reasonable notice that he is required to assist any sheriff, deputy-sheriff, mayor or other head officer, justice, magistrate, or peace officer, in the execution of his duty in arresting any person, or in preserving the peace, without reasonable excuse omits to do so. 55-56 V., c. 29, s. 142.

See section 1058. *R.* v. *Sherlock* (1866), 10 Cox, C. C. 170, Warb. Lead. Cas. 53.

*Indictment.*—The jurors for our Lord the King present that heretofore and before the commitment of the offence hereinafter mentioned, to wit, on the day of *A. B.* was lawfully in the custody of *C. D.*, a constable of , on a charge of and the said *A. B.* on the day aforesaid, committed an assault upon the said *C. D.*, being such constable as aforesaid, and a breach of the peace, with intent to resist such his lawful apprehension; and the jurors aforesaid, do further present, that the said *C. D.*, as such constable, there being a reasonable necessity for him so to do, called upon *E. F.*, who was then present, for his assistance, in order to prevent the said assault and breach of the peace; and that the said *E. F.* did unlawfully, wilfully, and knowingly refuse to aid the said *C. D.*, being such constable in the execution of his duty in arresting the said *A. B.*, and to prevent an assault and breach of the peace as aforesaid.

**168.** OBSTRUCTING PUBLIC OFFICER.—Every one is guilty of an indictable offence and liable to ten years' imprisonment who resists or wilfully obstructs any public officer in the execution of his duty or any person acting in aid of such officer. 55-56 V., c. 29, s. 144.

**169.** OBSTRUCTING PEACE OFFICER.—Every one who resists or wilfully obstructs,—

(*a*) any peace officer in the execution of his duty or any person acting in aid of such officer;

(*b*) PERSON EXECUTING PROCESS—any person in the lawful execution of any process against any lands or goods or in making any lawful distress or seizure;

is guilty of an offence punishable on indictment or on summary conviction and liable if convicted on indictment to two years' imprisonment, and, on summary conviction before two justices, to six months' imprisonment with hard labour, or to a fine of one hundred dollars. 55-56 V., c. 29, s. 144.

"Peace officer" and "public officer" defined, section 2. *See* annotation under section 296 *post*, which covers the same offence and makes it punishable by two years.

The offence of wilfully obstructing or resisting a peace officer in the execution of his duty comes within section 773, and, therefore, notwithstanding the present section, a person charged with having committed that offence, can only be summarily tried by a Magistrate when he has given his consent thereto, as required by section 778. See *R.* v. *Monkman* (1892), 13 Occ. N. 16.

It devolves on the prosecution under this section to prove the existence of all the ingredients which go to make up the offence, one of which is the legality of the distress, as for example, in this case, that there was rent in arrear. It was necessary therefore for the Crown to shew that rent was due and in arrear. *R.* v. *Harron*, 24 Occ. N. 10, 6 O. L. R. 668, 2 O. W. R. 903, 7 Can. C. C. 543.

The retaking of possession of a chattel by the vendors thereof under the provisions of a conditional sale agreement, is not a seizure within the meaning of this section, so as to subject the purchaser of the chattel, who in good faith disputes the right to retake it, to the penalty prescribed in that sub-section. *R.* v. *Shand*, 24 Occ. N. 125, 7 O. L. R. 190, 3 O. W. R. 293.

An order of a County Court Judge for the issue of a writ of replevin out of such other County Court, and the writ issued thereunder, are wholly ultra vires and void, and afford no protection to the officer attempting to execute the writ; and the owner of the goods described in the writ cannot be convicted under this section, for unlawfully obstructing or resisting the officer in the execution of his duty, because he by force prevented the bailiff from taking the goods under the writ. *R.* v. *Finlay*, 21 Occ. N. 419, 13 Man. L. R. 383, 4 Can. C. C. 539.

See *R.* v. *Carley*, 18 Occ. N. 26.

### *Misleading Justice.*

**170.** DEFINITION OF PERJURY.—Perjury is an assertion as to a matter of fact, opinion, belief or knowledge, made by a witness in a judicial proceeding as part of his evidence, upon oath or affirmation, whether such evidence is given in open court, or by affidavit or otherwise, and whether such evidence is material or not, such assertion being known to such witness to be false, and being intended by him to mislead the court, jury or person holding the proceeding.

2. A SUBORNATION.—Subornation of perjury is counselling or procuring a person to commit any perjury which is actually committed.

3. EVIDENCE.—Evidence in this section includes evidence given on the *voir dire* and evidence given before a grand jury. 55-56 V., c. 29, s. 145.

Triable at quarter sessions, section 583. Evidence of perjury must be corroborated, section 1002.

If the same person swears contrary at different times, it should be averred on which occasion he swore wilfully, falsely and corruptly: *R.* v. *Harris*, 5 B. & Ald. 926.

A person accused of perjury cannot have accomplices, and is alone responsible for the crime of which he is accused: *R.* v. *Pelletier*, and *R.* v. *Tellier* (1870), 1 R. L. 565.

Perjury may be committed on examination for discovery: *R.* v. *T*———, 12 B. C. R. 223.

Oath administered to prisoner in open Court by clerk of County Court sitting in general sessions of the peace for, and at verbal request of, clerk of the peace — Witness properly sworn: *R.* v. *Coleman*, 30 O. R. 93.

Perjury cannot be assigned for false statement in a deposition which is illegal for not conforming to requirements of local statutes: *R.* v. *Gibson*, 7 R. L. 573; *R.* v. *Martin*, 21 L. C. J. 156; *R.* v. *Denault*, 8 L. N. 250; *R.* v. *Lloyd*, 16 Cox, C. C. 235; 19 Q. B. D. 213.

Not even where the observance of the requirement was subsequently waived: *R.* v. *Martin*, 7 R. L. 672.

But see *R.* v. *Drew*, Q. R. 11 K. B. 477, 33 S. C. R. 228.

Accused committed perjury before a coroner and a jury, but was charged with having committed perjury before one of Her Majesty's coroners. Count was withdrawn from the jury who were instructed to acquit the accused because the inquest was before a coroner and jury instead of before a coroner. Upon a reserved case, Court held circumstances of the offence were sufficiently set forth to satisfy the statute. *R.* v. *Thompson* (1896), 32 C. C. J. 493.

In same case upon a preliminary investigation before a Justice of the Peace, the accused admitted he gave false evidence at the coroner's inquest and his admission was submitted to jury. *Held*, evidence should not have been received under Canada Evidence Act. *R.* v. *Thompson*, *supra*.

Attempting to procure woman falsely to make affidavit required by statute is indictable: *R.* v. *Clement*, 26 U. C. R. 297.

Attempt by letter—Place where offence was complete—Place of trial: *Ib.*

Joint affidavit—"Each for himself maketh oath," etc.—Each may be indicted: *R.* v. *Atkinson*, 17 U. C. C. P. 295.

Perjury is committed by taking of oath and defect in jurat or affidavit is not material: *Ib.*

Any one who falsely swears before a Deputy Returning Officer at a federal election that he is a certain person, is guilty of perjury even though he is not an elector: *R.* v. *Chamberlain* (1894), 10 Man. L. R. 261; *R.* v. *Proud* (1876), L. R. 1 C. C. 71; *R.* v. *Holland* (894), 30 C. L. J. 428; *R.* v. *Lawrence* (1878), 43 U. C. R., Q. B. 164; *R.* v. *Gibson* (1896), 29 N. S. R. 88.

Including two charges of perjury in one indictment would not be ground for quashing it. An indictment that follows the form given by the statute is sufficient: *R.* v. *Bain*, Ramsay's App. Cas. 191.

False statement by person sworn before County Judge taking evidence in United States in an inquiry under an Ontario statute not perjury, the oath administered by Judge having no legal significance: *In re Godson and City of Toronto*, 16 O. R. 275.

A magistrate having jurisdiction over a whole district heard a charge in a part thereof in which he did not reside, while by statute such charge could only be tried by a resident Justice. *Held*, that the hearing was a judicial proceeding and perjury could be assigned for

false swearing thereat. *R.* v. *Drew*, 33 S. C. R. 228, 6 Can. C. C. 424, affirming Q. R. 11 K. B. 477, 6 Can. C. C. 241. Under this decision the validity of the preceding case, *Re Godson and Toronto*, is doubtful.

Assignment of perjury in giving evidence in civil action sur faits et articles—Negative averments—Admissibility of evidence—General verdict: *R.* v. *Downie*, 15 S. C. R. 358; 11 L. N. 315.

The non-production by the prosecution, on a trial for perjury, of the plea which was filed in the civil suit wherein the defendant is alleged to have given false testimony, is not material when the assignment of perjury has no reference to the pleading, but the defendant may, if he wishes, in case the plea is not produced, prove its contents by secondary evidence. It is not essential to prove that the facts sworn to by the defendant, as alleged in the indictment, were material to the issue in the cause in which the defendant was examined: *R.* v. *Ross*, M. L. R. 1 Q. B. 227; 28 L. C. J. 261.

Acquittal on charge of personation—trial for perjury—identity of accused—"*Autrefois acquit*"—*Res judicata*—*Nemo bis vexari*: *R.* v. *Quinn*, 6 O. W. R. 1011; 11 L. R. 242.

As to stenographer's notes and sufficiency of evidence in perjury: see *Downie* v. *R.*, 15 S. C. R. 358, M. L. R. 3 Q. B. 309; *R.* v. *Murphy*, 9 L. N. 95; *R.* v. *Evans*, 17 Cox, C. C. 37; *R.* v. *Bird*, 17 Cox C. C. 387.

For leading cases on this subject decided before the Code came into force, see *R.* v. *Aylett* (1785), 1 T. R. 63; *R.* v. *Hughes* (1844), 1 Car. & K. 519; *R.* v. *Townshend* (1866), 10 Cox C. C. 356.

*Indictment for Perjury*: The Jurors for Our Lord the King present, that heretofore, to wit, at the (*assizes*) holden for the county (*or district*) of on the day of before (*one of the Judges of Our Lord the King*), a certain issue between one E. F. and one J. H. is 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*. See forms under s. 882, *post*.

*Indictment, subornation of perjury same as indictment for perjury to the end, and then proceed*:—And the Jurors 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.

**171.** WITNESS DEFINED.—Every person is a witness within the meaning of the last preceding section who actually gives his evidence, whether he was competent to be a witness or not, and whether his evidence was admissible or not.

2. JUDICIAL PROCEEDING.—Every proceeding is judicial within the meaning of the last preceding section which is held in or under the authority of any court of justice, or before a grand jury, or before either the Senate or House of Commons of Canada, or any committee of either the Senate or House of Commons, or before any legislative council, legislative assembly or house of assembly or any committee thereof, empowered

by law to administer an oath, or before any justice or any arbitrator or umpire, or any person or body of persons authorized by law or by any statute in force for the time being to make an inquiry and take evidence therein upon oath, or before any legal tribunal by which any legal right or liability can be established, or before any person acting as a court, justice or tribunal, having power to hold such judicial proceeding, whether duly constituted or not, and whether the proceeding was duly instituted or not before such court or person so as to authorize it or him to hold the proceeding, and although such proceeding was held in a wrong place or was otherwise invalid. 55-56 V., c. 29, s. 145.

A defendant charged with offering money to a person to swear that A., B., or C. gave him a certain sum of money to vote for a candidate at an election, was admitted to bail and the recognizances taken by one justice of the peace:—Held, that the offence was not an attempt to commit the crime of subornation of perjury, but something less, being an incitement to give false evidence or particular evidence regardless of its truth or falsehood, and was a misdemeanour at common law, and that the recognizance was properly taken by one justice, who had power to admit the accused to bail at common law, and that s. 696 of the Code did not apply. The common law jurisdiction as to crime is still operative, notwithstanding the Code, and even in cases provided for by the Code, unless there is such repugnance as to give prevalence to the later law: *R.* v. *Cole*, 22 Occ. N. 132; 3 O.L.R. 389, 1 O.W.R. 117, 5 Can. C. C. 330.

**172.** PERJURY.—Every one is guilty of perjury who,—

(*a*) FALSE STATEMENT UNDER OATH WITHIN CANADA—having taken or made any oath, affirmation, solemn declaration or affidavit where, by any Act or law in force in Canada, or in any province of Canada, it is required or permitted that facts, matters or things be verified, or otherwise assured or ascertained by or upon the oath, affirmation, declaration or affidavit of any person, wilfully and corruptly, upon such oath, affirmation, declaration or affidavit, deposes, swears to or makes any false statement as to any such fact, matter or thing; or,

(*b*) FALSE OATH, ETC., IN VERIFICATION OF STATEMENT—SUBSCRIBING AFFIRMATION AS AFFIDAVIT—knowingly, wilfully and corruptly, upon oath, affirmation or solemn declaration, 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, if such statement, affidavit, affirmation or declaration is untrue in whole or in part. 55-56 V., c. 29, s. 148.

**173.** MAKING FALSE AFFIDAVIT OUT OF THE PROVINCE BUT WITHIN CANADA.—Every person who wilfully and corruptly makes any false affidavit, affirmation or solemn declaration, out of the province in which it is to be used but within Canada, before any person authorized to take the same, for the purpose of being used in any province of Canada, is guilty of perjury in like manner as if such false affidavit, affirmation or declaration were made before a competent authority in the province in which it is used or intended to be used. 55-56 V., c. 29, s. 149.

**174.** PENALTY FOR PERJURY OR SUBORNATION.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who commits perjury or subornation of perjury.

2. INCREASED IN CERTAIN CASES.—If the crime is committed in order to procure the conviction of a person for any crime punishable by death, or imprisonment for seven years or more, the punishment may be imprisonment for life. 55-56 V., c. 29, s. 146.

**175.** FALSE OATHS IN EXTRA-JUDICIAL PROCEEDINGS.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, being required or authorized by law to make any statement on oath, affirmation or solemn declaration, thereupon makes a statement which would amount to perjury if made in a judicial proceeding. 55-56 V., c. 29, s. 147.

See *R.* v. *Skelton* (1898), 18 Occ. N. 205.

**176.** FALSE STATEMENTS IN EXTRA-JUDICIAL PROCEEDINGS.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, upon any occasion on which he is permitted by law to make any statement or declaration before any officer authorized by law to permit it to be made

before him, or before any notary public to be certified by him as such notary, makes a statement which would amount to perjury if made on oath in a judicial proceeding. 55-56 V., c. 29, s. 150.

Section 862 applies.

**177.** Fabricating Evidence.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, with intent to mislead any court of justice or person holding any such judicial proceeding, fabricates evidence by any means other than perjury or subornation of perjury. 55-56 V., c. 29, s. 151.

Section 862 applies. A verdict of attempt to commit the offence may be given. Section 949.

To mislead a Court by the manufacture of false evidence is a misdemeanour. An attempt to do so is also an offence although in point of fact the Court was not misled: *R.* v. *Vreones*, 17 Cox C. C. 267, [1891] 1 Q. B. 360.

**178.** Conspiring to Bring False Accusations.—Every one is guilty of an indictable offence who conspires to prosecute any person for any alleged offence, knowing such person to be innocent thereof, and shall be liable,—

(*a*) Penalty—to imprisonment for fourteen years if such person might, upon conviction for the alleged offence, be sentenced to death or imprisonment for life;

(*b*) Penalty—to imprisonment for ten years if such person might, upon conviction for the alleged offence, be sentenced to imprisonment for any term less than life. 55-56 V., c. 29, s. 152.

Section 862 applies.

*Indictment.*—That A.B. and C.D., being evil-disposed persons, and wickedly devising, and intending to deprive one E.F. of his good name, fame, and reputation, and subject him without just cause to the pains and penalties inflicted by law upon persons guilty of an assault, on , did unlawfully conspire, combine, confederate, and agree, wilfully, unlawfully, and without any reasonable or probable cause in that behalf, to charge and accuse the said E.F. of the crime of indecently and unlawfully assaulting the said A.B., knowing the said E.F. to be innocent thereof. And the jurors aforesaid further present, that the said A.B. and C.D., in pursuance of the said conspiracy, combination, confederacy, and agreement on the day aforesaid, falsely and maliciously did cause and procure the said E. F. to be apprehended and taken into custody by one E.H., then being one of the constables of the police force, and to be conveyed in custody to a certain prison and police-station, and there to be imprisoned.

**179.** Administering Oaths without Authority—Penalty.—Every justice or other person who administers, or

causes or allows to be administered, or receives, or causes or allows to be received, any oath or affirmation touching any matter or thing whereof such justice or other person has not jurisdiction or cognizance by some law in force at the time being, or not authorized or required by any such law, is guilty of an indictable offence and liable to a fine not exceeding fifty dollars, or to imprisonment for any term not exceeding three months.

2. SAVING.—Nothing in this section contained shall be construed to extend to any oath or affirmation before any justice in any matter or thing touching the preservation of the peace, or the prosecution, trial or punishment of any offence, or to any oath or affirmation required or authorized by any law of Canada, or by any law of the province wherein such oath or affirmation is received or administered, or is to be used, or to any oath or affirmation which is required or authorized by the laws of any foreign country to give validity to an instrument in writing or to evidence designed or intended to be used in such foreign country. 55-56 V., c. 29, s. 153.

*Indictment.*—The Jurors for our Lord the King present, that J. S. on at being one of the Justices of our said Lord the King, 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 or to evidence, designed or intended 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 shew that it was not one of which the Justice had jurisdiction or cognizance, and was not within the exceptions.*

**180.** PENALTY.—Every one is guilty of an indictable offence and liable to two years' imprisonment who,—

(*a*) CORRUPTING WITNESS—dissuades or attempts to dissuade any person by threats, bribes, or other corrupt means from giving evidence in any cause or matter, civil or criminal; or,

(*b*) CORRUPTING JURYMAN—influences or attempts to influence, by threats or bribes or other corrupt means, any juryman in his conduct as such, whether such person has been sworn as a juryman or not; or,

(*c*) ACCEPTING BRIBES—accepts any bribe or other corrupt consideration to abstain from giving evidence, or on account of his conduct as a juryman; or,

(*d*) OTHERWISE OBSTRUCTING JUSTICE — wilfully attempts in any other way to obstruct, pervert or defeat the course of justice. 55-56 V., c. 29, s. 154.

As to conspiracy to obstruct, pervert, prevent or defeat the course of justice, section 573.

**181.** COMPOUNDING PENAL ACTIONS.—Every one is guilty of an indictable offence and liable to a fine not exceeding the penalty compounded for who, having brought, or under colour of bringing, an action against any person under any penal statute in order to obtain from him any penalty, compounds the said action without order or consent of the court, whether any offence has in fact been committed or not. 55-56 V., c. 29, s. 155.

This applies to *qui tam* actions.

Action was brought on a covenant given for the purpose of stifling a prosecution for the embezzlement of partnership property. *Held*, that the alleged criminal act, having been committed before the Code came into force, was not affected by its provisions and the covenant was illegal at common law. Further, the partnership property not having been held on an express trust, the civil remedy was not preserved by the Imperial Act. *Major* v. *McCraney*, 29 S. C. R. 182, 2 Can. C. C. 547.

See *Keir* v. *Leeman*, 9 Q. B. 371; *R.* v. *Crisp*, 1 B. & Ald. 282; *R.* v. *Mason*, 17 U. C. C. P. 534; *R.* v. *Best*, 2 Moo. 124; *Kneeshaw* v. *Collier*, 30 U. C. C. P. 265; *Windhill Local Board* v. *Vint*, 17 Cox, C. C. 41, 45 Ch. D. 351, and cases there cited, as to compounding misdemeanours.

**182.** CORRUPTLY TAKING REWARD WITHOUT BRINGING OFFENDER TO TRIAL.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who corruptly takes any money or reward, directly or indirectly, under pretense or upon account of helping any person to recover any chattel, money, valuable security or other property which, by any indictable offence, has been stolen, taken, obtained, extorted, converted or disposed of, unless he has used all due diligence to cause the offender to be brought to trial for the same. 55-56 V., c. 29, s. 156.

As to the meaning of the words "valuable security" and "property," see *ante*, section 2.

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: *R.* v. *O'Donnell*, 7 Cox C. C. 337. As to the meaning of the words "*corruptly* takes": see *R.* v. *King*, 1 Cox C. C. 36.

As to compounding crimes, see *R.* v. *Burgess* (1885), Warb. Lead. Cas. 67, 16 Q. B. D. 141; *R.* v. *Crisp* (1818), 1 (1830), 4 C. & P. 379; *Kerr* v. *Leeman* (1844), 6 Q. B. 308; *Windhill Local Board of Health* v. *Vint* (1890), 45 C. D. 351.

*Indictment.*—The Jurors for our Lord the King, present that A.B. on unlawfully and corruptly did take and receive from one J.N. certain money and reward, to wit, the sum of five dollars of the monies of the said J.N. under pretense of helping the said J.N. to recover certain goods and chattels of him the said J.N. before then stolen, the said A.B. not having used all diligence to cause the person by whom the said goods and chattels were so stolen, to be brought to trial for the same.

**183.** PENALTY.—Every one is liable to a penalty of two hundred and fifty dollars for each offence, recoverable with costs by any person who sues for the same in any court of competent jurisdiction, who,—

(*a*) ADVERTISING REWARD AND IMMUNITY FOR OFFENDER—publicly advertises a reward for the return of any property which has been stolen or lost, and in such advertisement uses any words purporting that no questions will be asked; or,

(*b*) MAKING USE OF WORDS IN ADVERTISEMENT TO LIKE EFFECT—makes use of any words in any public advertisement purporting that a reward will be given or paid for any property which has been stolen or lost, without seizing or making any inquiry after the person producing such property; or,

(*c*) ADVERTISING THAT MONEY ADVANCED ON PROPERTY STOLEN WILL BE PAID—promises or offers in any such public advertisement to return to any pawnbroker or other person who advanced money by way of loan on, or has bought, any property stolen or lost, the money so advanced or paid, or any other sum of money for the return of such property; or,

(*d*) PRINTING ADVERTISEMENT—prints or publishes any such advertisement. 55-56 V., c. 29, s. 157.

Limitation 6 months, section 1140.

**184.** FALSE DECLARATION IN RESPECT TO EXECUTION OF JUDGMENT OF DEATH.—Every one is guilty of an indictable

offence and liable to two years' imprisonment, who knowingly and wilfully signs a false certificate or declaration, when a certificate or declaration is required, with respect to the execution of judgment of death on any prisoner. 55-56 V., c. 29, s. 158.

Fine in addition to or in lieu of punishment, section 1035.

*Escapes and Rescues.*

**185.** BEING AT LARGE WHILE UNDER SENTENCE OF IMPRISONMENT.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, having been sentenced to imprisonment, is afterwards, and before the expiration of the term for which he was sentenced, at large within Canada without some lawful cause, the proof whereof shall lie on him. 55-56 V., c. 29, s. 159.

Not triable at quarter sessions, section 583.

See 1 Russ, 581, *et seq.*; 4 Stephen's Comm. 227, *et seq.*; 1 Hale, P. C. 595; 2 Hawk. p. 183; 5 Rep. Cr. L. Com. (1840), p. 53; 2 Bishop, Cr. L. 1066; *R.* v. *Payne*, L. R. 1 C. C. R. 27; *R.* v. *Waters*, 12 Cox C. C. 390; *R.* v. *Haswell*, R. & R. 458.

For forms of indictment: see Archbold, 795; 2 Chit. Cr. L. 165; 5 Burn's Just. 137; 3 Burn's Just. 1332; 2 Burn's Just. 10; *R.* v. *Young*, 1 Russ. 291.

By section 949, *post*, upon an indictment for any of these offences the defendant may be found guilty of the attempt to commit the offence charged, if the evidence warrants it.

**186.** PENALTY.—Every one is guilty of an indictable offence and liable to five years' imprisonment who knowingly and wilfully,—

(*a*) ASSISTING PRISONER OF WAR TO ESCAPE — assists any alien enemy of His Majesty, being a prisoner of war in Canada, to escape from any place in which he may be detained; or,

(*b*) ASSISTING WHILE AT LARGE ON PAROLE—assists any such prisoner as aforesaid, suffered to be at large on his parole in Canada or in any part thereof, to escape from the place where he is at large on his parole. 55-56 V., c. 29, s. 160.

**187.** PRISON-BREACH.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, by force or violence, breaks any prison with intent to set at liberty

himself or any person confined therein on any criminal charge. 55-56 V., c. 29, s. 161.

Prison defined, section 2, sub-section 30. A verdict may be given under section 949.

**188.** ATTEMPT TO BREAK PRISON.—Every one is guilty of an indictable offence and liable to two years' imprisonment who attempts to break prison, or who forcibly breaks out of his cell or makes any breach therein with intent to escape therefrom. 55-56 V., c. 29, s. 162.

See *R. v. Hascell* (1821), R. & R. 458.

**189.** PENALTY.—Every one is guilty of an indictable offence and liable to two years' imprisonment who,—

(*a*) ESCAPES AFTER CONVICTION—having been convicted of any offence, escapes from any lawful custody in which he may be under such conviction; or,

(*b*) ESCAPING FROM PRISON—whether convicted or not, escapes from any prison in which he is lawfully confined on any criminal charge. 55-56 V., c. 29, s. 163.

A verdict may be given under section 949.

**190.** ESCAPE FROM CUSTODY.—Every one is guilty of an indictable offence and liable to two years' imprisonment who being in lawful custody other than as aforesaid on any criminal charge, escapes from such custody. 55-56 V., c. 29, s. 164.

**191.** PENALTY.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who,—

(*a*) RESCUE OF PERSON SENTENCED TO DEATH OR FOR LIFE—rescues any person or assists any person in escaping, or attempting to escape, from lawful custody, whether in prison or not, under sentence of death or imprisonment for life, or after conviction of, and before sentence for, or while in such custody upon a charge of any crime punishable with death or imprisonment for life; or,

(*b*) OFFICER PERMITTING ESCAPE—being a peace officer and having any such person in his lawful custody, or being an officer of any prison in which any such person

is lawfully confined, voluntarily and intentionally permits him to escape therefrom. 55-56 V., c. 29, s. 165.

**192.** Penalty.—Every one is guilty of an indictable offence and liable to five years' imprisonment who,—

(*a*) Rescuing or Assisting to Escape in Other Cases—rescues any person, or assists any person in escaping, or attempting to escape, from lawful custody, whether in prison or not, under a sentence of imprisonment for any term less than life, or after conviction of, and before sentence for, or while in such custody upon a charge of any crime punishable with imprisonment for a term less than life; or,

(*b*) Officer Permitting Escape in Other Cases—being a peace officer having any such person in his lawful custody, or being an officer of any prison in which such person is lawfully confined, voluntarily and intentionally permits him to escape therefrom. 55-56 V., c. 29, s. 166.

**193.** Escape by Failure to Perform Legal Duty.—Every one is guilty of an indictable offence and liable to one year's imprisonment, who, by failing to perform any legal duty, permits a person in his lawful custody on a criminal charge to escape therefrom. 63-64 V., c. 46, s. 3.

Verbal remand to enable prisoner to procure bail—Escape by negligence of constable—Custody of prisoner: *R.* v. *Shuttleworth*, 22 U. C. R. 372.

**194.** Escape by Conveying Things into Prison.—Every one is guilty of an indictable offence and liable to two years' imprisonment who with intent to facilitate the escape of any prisoner lawfully imprisoned conveys, or causes to be conveyed, any thing into any prison. 55-56 V., c. 29, s. 167.

*Indictment.*—The Jurors for our Lord the King present, that before and at the time of the committing of the offence hereinafter mentioned, to wit, on the day of , in the year of our Lord , one A. B. was a prisoner, and in lawful custody of one W.S., in the common gaol in and for the county of ; and that E.F. afterwards and whilst the said A.B. was such prisoner and in custody as aforesaid, unlawfully did convey and cause to be conveyed into the gaol aforesaid two steel files, being instruments proper to facilitate the escape of prisoners, and the said files, being such instruments as aforesaid, then unlawfully did deliver and cause to be delivered to the said A.B. then being such prisoner in the lawful custody of W.S. as aforesaid, without the consent or privity of the

said keeper of the said goal; which said files being such instruments as aforesaid, were so conveyed into the said gaol, and delivered to the said A.B. by the said E.F. as aforesaid, with the intent to aid and assist the said A.B., so being such prisoner and in custody as aforesaid, to escape from and out of the said gaol, and to facilitate his escape.

**195.** CAUSING DISCHARGE OF PRISONER UNDER PRETENDED AUTHORITY.—Every one is guilty of an indictable offence and liable to two years' imprisonment who knowingly and unlawfully, under colour of any pretended authority, directs or procures the discharge of any prisoner not entitled to be so discharged, and the person so discharged shall be held to have escaped. 55-56 V., c. 29, s. 168.

**196.** FULL TERM TO BE SERVED.—Every one who escapes from custody, shall, on being retaken, serve, in the prison to which he was sentenced, a term equivalent to the remainder of his term unexpired at the time of his escape, in addition to the punishment which is awarded for such escape.

2. PLACE OF ADDITIONAL IMPRISONMENT.—Any imprisonment so awarded may be to the penitentiary or prison from which the escape was made. 55-56 V., c. 29, s. 169.

## PART V.

### OFFENCES AGAINST RELIGION, MORALS AND PUBLIC CONVENIENCE.

*Interpretation.*

**197.** DEFINITIONS.—In this Part, unless the context otherwise requires,—

(*a*) 'THEATRE' includes any place open to the public, gratuitously or otherwise, where dramatic, musical, acrobatic or other entertainments or representations are presented or given;

(*b*) 'GUARDIAN' includes any person who has in law or in fact the custody or control of any girl or child referred to;

(*c*) 'PUBLIC PLACE' includes any open place to which the public have or are permitted to have access and any place of public resort. 57-58 V., c. 57, s. 1; 63-64 V., c. 46, s. 3; 3 E. VII., c. 13, s. 2.

*Offences Against Religion.*

**198.** Blasphemous Libels.—Every one is guilty of an indictable offence and liable to one year's imprisonment who publishes any blasphemous libel.

2. Question of Fact—Proviso—Expression of Opinion.—Whether any particular published matter is a blasphemous libel or not is a question of fact: Provided that no one is guilty of a blasphemous libel for expressing in good faith and in decent language, or attempting to establish by arguments used in good faith and conveyed in decent language, any opinion whatever upon any religious subject. 55-56 V., c. 29, s. 170.

A blasphemous libel is triable at Quarter Sessions, though not a defamatory nor a seditious libel, section 132.

The gist of blasphemous libel is the outrage inflicted upon the religious community: *R.* v. *Pelletier, et al.* (1900), 6 R. L. (N.S.) 116.

The truth of a blasphemous libel cannot be pleaded as a defence: see cases under section 132, *ante*; also *R.* v. *Hicklin*, L. R. 3 Q. B. 360, and Archbald, 813.

**199.** Obstructing Officiating Clergyman.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, 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 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. 55-56 V., c. 29, s. 171.

*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.*)

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: Archbald.

**200.** Violence to Officiating Clergyman.—Every one is guilty of an indictable offence and liable to two years' im-

prisonment who strikes or offers any violence to, or arrests upon any civil process or under the pretense of executing any civil process, 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 the last preceding section mentioned, or who, to the knowledge of the offender, is going to perform the same, or returning from the performance thereof. 55-56 V., c. 29, s. 172.

*Indictment for arresting a clergyman about to engage in the performance of divine service*— unlawfully did arrest one J. N., as 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.

**201.** DISTURBING MEETINGS FOR RELIGIOUS WORSHIP OR SPECIAL PURPOSES.—Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding fifty dollars and costs, and in default of payment to one month's imprisonment, who 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. 55-56 V., c. 29, s. 173.

These offences are punishable by summary conviction.

Person entering religious meeting, announcing himself a Catholic and French Canadian, and calling upon all of that faith and nationality to leave, is guilty of an offence under this section: *Moore* v. *Gauthier*, Q. R. 14 K. B. 530, 11 Can. C. C. 263.

Service must be conducted by person lawfully in charge: *R.* v. *Wasyl Kapij*, 15 Man. L. R. 110, 9 Can. C. C. 186.

See secs. 619-921, *post*, as to preserving order at public meetings.

## *Offences Against Morality.*

**202.** BUGGERY.—Every one is guilty of an indictable offence and liable to imprisonment for life who commits buggery, either with a human being or with any other living creature. 55-56 V., c. 29, s. 174.

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 a boy under fourteen on a man over fourteen, it is felony in the patient only: Archbold, 752.

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 perpetrated; and secondly, both agent and patient (if consenting) are equally guilty: 5 Burn's Just. 644.

It is to be conclusively presumed that any person under fourteen years of age is physically incompetent to commit the unnatural offences specified in this section. This presumption is not affected by the provisions of sec. 18, that section referring exclusively to the mental capacity of distinguishing between right and wrong.

Although a person under fourteen years of age cannot be convicted of sodomy, he may, if the act be committed against the will of the other person, be punished for an indecent assault under section 293. *R.* v. *Hartlen* (1898), 2 Can. C. C. 12.

In *R.* v. *Jacobs R. & R.*, 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 Russ. 939; *R.* v. *Jellyman*, Warb. Lead. Cas. 57.

As in the case of rape, penetration alone is sufficient to constitute the offence.

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, section 949.

The punishment would then be under the next section.

The defendant may also be convicted of either of the offences created by sections 206, 291 or 293, if the evidence warrants it; section 951. See section 294 as to indecent assaults on persons under fourteen.

See *R.* v. *Allen* (1848) 1 Dennison C. C. 364.

*Indictment.*— in and upon one J. N. did make an assault, and then wickedly, and against the order of nature had a venereal affair with the said J. N., and then carnally knew him, the said J. N., and then wickedly, and against the order of nature, with the said J.N., did commit and perpetrate that detestable and abominable crime of buggery.

*Indictment for bestiality.*— with a certain *cow (any animal)* unlawfully, wickedly and against the order of nature had a venereal affair, and then unlawfully, wickedly and against the order of nature, with the said cow did commit and perpetrate that detestable and abominable crime of buggery.

**203.** ATTEMPT TO COMMIT.—Every one is guilty of an indictable offence and liable to ten years' imprisonment who attempts to commit the offence mentioned in the last preceding section. 55-56 V., c. 29, s. 175.

Where there is consent there cannot be assault in point of law: *R.* v. *Martin*, 2 Moo. 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, that on a case reserved, that under these circumstances, a conviction for an indecent assault could not be upheld:

*R. v. Wallaston*, 12 Cox C. C. 180. But see now sections 206 and 294.

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: *R. v. Lock*, 12 Cox, C. C. 244. But see now section 294, *post*.

The prisoner was indicted for an indecent assault upon a boy of about fourteen years of age. The boy had consented. Held, on the authority of *R. v. Wollaston*, 12 Cox C. C. 180, that the charge was not maintainable: *R. v. Laprise*, 3 L. N. 139. See now section 294, *post*.

Assault with intent to commit sodomy, section 293, *post*.

*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. unlawfully, wickedly, diabolically, and against the order of nature to commit and perpetrate.

**204.** INCEST—EFFECT OF COMPULSION.—Every parent and child, every brother and sister, and every grandparent and grandchild, who cohabit or have sexual intercourse with each other, shall each of them, if aware of their consanguinity, be deemed to have committed incest, and be guilty of an indictable offence and liable to fourteen years' imprisonment, and the male person shall also be liable to be whipped: Provided that, if the court or judge is of opinion that the female accused is a party to such intercourse only by reason of the restraint, fear or duress of the other party, the court or judge shall not be bound to impose any punishment on such person under this section. 55-56 V., c. 29, s. 176.

Incest is not an offence at common law.

A verdict of common or indecent assault may be given, sections 291, 292, 294, if the evidence warrants it, section 951.

Or a verdict of assault with intent to commit an indictable offence, section 296.

A verdict of attempt to commit incest might also under certain circumstances be given, section 949. In the United States, in a case of *The People* v. *Murray*, 14 Cal. 159, the Court seems to have thought that such a verdict could be given. In *Commonwealth* v. *Goodhue*, 2 Met. 193, it was held that one indicted for rape on the person of his daughter might be convicted of incest. But this would not be allowed under this code on a trial for rape, except if the indictment contained also a count for incest: section 626. Then, the verdict would be on the count for incest, if the prisoner had been tried on both counts together.

On an indictment for incest, proof of relationship between the accused and his alleged victim must be established according to the rules of the civil law: *R. v. Garneau* (1889), R. J. Q. 8 Q. B. 447.

The *scienter* must be alleged in the indictment. If one of the parties is not aware of the consanguinity he is not guilty. In *Bergen* v. *The People*, 17 Ill. 426, it was held that the defendant's admission of relationship with the person with whom he held incestuous intercourse was sufficient proof of such relationship.

*Indictment.*— that on at A.B. did unlawfully have sexual intercourse with his daughter, C.B., then and there knowing the said C.B. to be his daughter. (*Add another count with "cohabit" instead of "have sexual intercourse." And another with "commit incest," instead of "have sexual intercourse"*: *Raumer* v. *The State*, 49 Ind. 544, Hawley, American Crim. Rep. vol. 1, 354.

*Indictment against father and daughter jointly.*— that on at A.B. and C.B. father and daughter, did unlawfully have sexual intercourse (*in another count, "did cohabit," and in a third one, "did commit incest"*) together and with one another, the said A.B. then and there knowing the said C.B. to be his daughter, and the said C. B. then and there knowing the said A. B. to be her father.

**205.** INDECENT ACTS.—Every one is guilty of an offence and liable, on summary conviction before two justices, to a fine of fifty dollars or to six months' imprisonment with or without hard labour, or to both fine and imprisonment, who wilfully,—

(*a*) IN PUBLIC PLACES—in the presence of one or more persons does any indecent act in any place to which the public have or are permitted to have access; or,

(*b*) AS AN INSULT—does any indecent act in any place intending thereby to insult or offend any person. "53 V., c. 37, s. 6; 55-56 V., c. 29, s. 177.

See Archbald, 1051; *R.* v. *Holmes*, Dears. 207; *R.* v. *Wellard*, 14 Q. B. D. 63.

On an indictment at common law for indecent exposure of the person, Held, that the exposure must be in an open and public place, but not necessarily generally public and open; if a person indecently exposed his person in a private yard, so that he might be seen from a public road where there were persons passing, an indictment would lie: *R.* v. *Levasseur*, 9 L. N. 386; *Ex parte Walter*, Ramsey's App Cas. 183; *R.* v. *Harris*, 11 Cox C. C. 659.

See *R.* v. *Reed*, 12 Cox C. C. 14; *R.* v. *Crunden*, Warb. Lead. Cas. 99; *R.* v. *O'Shaughnessy*, 8 Can. C. C. 136; *R.* v. *Tupper*, 11 Can. C. C. 199.

**206.** ACTS OF GROSS INDECENCY.—Every male person is guilty of an indictable offence and liable to five years' imprisonment and to be whipped who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person. 55-56 V., c. 29, s. 178.

Verdict of an attempt on an indictment to commit the offence in certain cases, section 949; see *R.* v. *Jellyman*, Warb. Lead. Cas. 57.

The facts proved in *R.* v. *Wollaston*, 12 Cox, C. C. 180, would now be indictable under this section. So would the facts proved in *R.* v. *Rowed*, 3 Q. B. 180. A verdict of attempt to commit sodomy

cannot be given on an indictment under this section. The indictment may simply charge that on at A. B., a male person, *in public (in another count "in private")* committed *(or was a party to the commission of)* an act of gross indecency with C. D., another person. An indictment charging an attempt by a male person to commit an act of gross indecency with another male person lies under section 571, *post*. Also under section 293, for an indecent assault by a male person on another male person.

**207.** PENALTY.—Every one is guilty of an indictable offence and liable to two years' imprisonment who knowingly, without lawful justification or excuse,—

(*a*) OBSCENE OR IMMORAL BOOKS OR PICTURES—manufactures, or sells, or exposes for sale or to public view, or distributes or circulates, or causes to be distributed or circulated, any obscene book, or other printed, typewritten or otherwise written matter, or any picture, photograph, model or other object tending to corrupt morals; or,

(*b*) INDECENT SHOW—publicly exhibits any disgusting object or any indecent show; or,

(*c*) DRUGS FOR ABORTION—offers to sell, advertises, publishes an advertisement of, or has for sale or disposal, any medicine, drug, or article intended or represented as a means of preventing conception or of causing abortion or miscarriage.

2. EXCESS.—No one shall be convicted of any offence in this section mentioned if he proves that the public good was served by the acts alleged to have been done, and that there was no excess in the acts alleged beyond what the public good required.

3. QUESTIONS FOR JUDGE AND FOR JURY.—It shall be a question for the court or judge whether the occasion of the manufacture, sale, exposing for sale, publishing, or exhibition is such as might be for the public good, and whether there is evidence of excess beyond what the public good required in the manner, extent or circumstances in, to or under which the manufacture, sale, exposing for sale, publishing or exhibition is made; but it shall be a question for the jury whether there is or is not such excess.

4. MOTIVES.—The motives of the manufacturer, seller, exposer, publisher or exhibitor shall in all cases be irrelevant. 63-64 V., c. 46, s. 3.

Advertising medicine intended to prevent conception—Evidence to support conviction—Functions of judge and jury—Acquittal—New trial. Selling medicine labelled with printed caution against use during pregnancy not in itself an offence : *R.* v. *Karn*, 23 Occ. N. 219, 5 O. L. R. 704, 2 O. W. R. 335, 38 C. L. J. 125, 5 Can. C. C. 543, 6 Can. C. C. 479.

Allegations in indictments, section 861. The corresponding article of the Imperial draft code covered obscene libels.

On appeal the Court refused to order a new trial, but held that it would have been right to leave the case to the jury : (Case) 5 O. L. R. 704.

Sub-section (*c*) section 238 *post*, covers offences which, in certain cases, would fall under sub-section (*b*) of this section 207.

See *R.* v. *Beaver*, 9 O. L. R. 418; 9 Can. C. C. 415; *R.* v. *Bradlaugh*, 3 Q. B. D. 697 ; Stephen's Cr. L. Art. 172 ; *R.* v. *Adams*, 16 Cox C. C. 544, 22 Q. B. D. 66, Warb. Lead. Cas. 58; *R.* v. *Saunders*, 13 Cox C. C. 116.

**208.** IMMORAL THEATRICAL PERFORMANCE—PENALTY FOR LESSEE OR MANAGER.—Every person who, being the lessee, agent or person in charge or manager of a theatre, presents or gives or allows to be presented or given therein any immoral, indecent or obscene play, opera, concert, acrobatic, variety, or vaudeville performance, or other entertainment or representation, is guilty of an offence punishable on indictment or on summary conviction, and liable, if convicted upon indictment, to one year's imprisonment with or without hard labour, or to a fine of five hundred dollars, or to both, and, on summary conviction, to six months' imprisonment, or to a fine of fifty dollars, or to both.

2. PERSON APPEARING AS ACTOR—PENALTY.—Every person who takes part or appears as an actor, performer, or assistant in any capacity, in any such immoral, indecent or obscene play, opera, concert performance, or other entertainment or representation, is guilty of an offence and liable, on summary conviction, to three months' imprisonment, or to a fine not exceeding twenty dollars, or to both.

3. PERSON IN AN INDECENT COSTUME.—Every person who so takes part or appears in an indecent costume is guilty of an offence and liable, on summary conviction, to six months' imprisonment, or to a fine of fifty dollars, or to both. 3 E. VII., c. 13, s. 2.

**209.** PENALTY.—Every one is guilty of an indictable offence and liable to two years' imprisonment who posts for transmission or delivery by or through the post,—

(*a*) POSTING OBSCENE PUBLICATIONS — any obscene or immoral book, pamphlet, newspaper, picture, print, engraving, lithograph, photograph or any publication, matter or thing of an indecent, immoral, or scurrilous character; or,

(*b*) LETTERS OR POST-CARDS—any letter upon the outside or envelope of which, or any post card or post band or wrapper upon which, there are words, devices, matters or things of the character aforesaid; or,

(*c*) LETTERS TO DECEIVE AND DEFRAUD—any letter or circular concerning schemes devised or intended to deceive and defraud the public, or for the purpose of obtaining money under false pretenses. 63-64 V., c. 46, s. 3.

This section does not cover letters or writings of an immoral character. The posting to be indictable under this section must be made within Canada, but whether to be delivered out of Canada or not is immaterial. *R.* v. *McKay*, 28 N. B. R. 564.

**210.** BURDEN OF PROOF.—The burden of proof of previous unchastity on the part of the girl or woman under the three next succeeding sections shall be upon the accused. 63-64 V., c. 46, s. 3.

**211.** SEDUCTION OF GIRL BETWEEN FOURTEEN AND SIXTEEN.—Every one is guilty of an indictable offence and liable to two years' imprisonment who seduces or has illicit connection with any girl of previously chaste character, of or above the age of fourteen years and under the age of sixteen years. 55-56 V., c. 29, s. 181; 56 V., c. 32, s. 1.

Limitation one year, section 1140. Evidence must be corroborated, section 1002.

As to evidence of age see *R.* v. *Nicholls*, (1876), 10 Cox C. C. 476; *R.* v. *Weaver* (1873), L. R. 2 C. C. R. 85; *R.* v. *Wedge*, 5 C. & P. 298.

If it is proved that the girl was under fourteen the prisoner must be acquitted. He may then be indicted under section 301.

Previous chastity, according to a case in the United States, is not to be presumed; it has to be proved. *West* v. *The State*, 1 Wis. 209; see Bishop Stat. Cr. 639. A contrary opinion is held in Archbold. The United States case seems to be correct.

See *R.* v. *Wyse* (1895), 1 Can. C. C. 6, and *R.* v. *Vahey* (1899), 2 Can. C. C. 258.

*Indictment.* that A. B. on unlawfully seduced and had illicit connection with one C. D., a girl of previously chaste character, and then being of, (*or above the age of*) fourteen years and under the age of sixteen years.

**212.** SEDUCTION UNDER PROMISE OF MARRIAGE. — Every one, above the age of twenty-one years, is guilty of an indictable offence and liable to two years' imprisonment who, under promise of marriage, seduces and has illicit connection with any unmarried female of previously chaste character and under twenty-one years of age. 55-56 V., c. 29, s. 182.

Limitation one year, section 1140.

One witness must be corroborated, section 1002: subsequent marriage between the parties a good defence, section 214.

There is misdirection when the judge tells the jury that if the seduction took place while there was an existing engagement to marry, this section applies, for the seduction contemplated by the section is one which is accomplished by means of a promise to marry. *R.* v. *Walker* (1893), 1 Terr. L. R. 84.

As to proof of a previous chaste character see under preceding section. If the man is married and the girl knows it there can be no offence under this section. *The People* v. *Alger*, 1 Parker, 333; Bishop, Stat. Cr. 647.

*Indictment.*—That A. B. being then above the age of twenty-one years, did seduce under promise of marriage one C. D., then an unmarried female of previously chaste character and then being, the said C. D., under twenty-one years of age, and had illicit connection with her the said C. D.

**213.** PENALTY.—Every one is guilty of an indictable offence and liable to two years' imprisonment,—

(*a*) SEDUCING WARD—who, being a guardian, seduces or has illicit connection with his ward; or,

(*b*) SEDUCING FEMALE EMPLOYEE—who seduces or has illicit connection with any woman or girl previously chaste and under the age of twenty-one years who is in his employment in a factory, mill, workshop, shop or store, or who, being in a common, but not necessarily similar employment with him in such factory, mill, workshop, shop or store, is, in respect of her employment or work in such factory, mill, workshop, shop or store, under or in any way subject to his control or direction, or receives her wages or salary directly or indirectly from him. 63-64 V., c. 46, s. 3.

Limitation one year, section 1140. Evidence of one witness must be corroborated, section 1002. Subsequent marriage between the

parties a defence, section 214. Verdict of attempt in certain cases, section 949.

The offence by a guardian on his ward need not have been seduction. Illicit intercourse with his ward constitutes an offence even if his ward was not of a previously chaste character.

The offence by an employer on his employee is seduction; the illicit connection must have been with a woman or girl of previously chaste character. Through an error, however, as the section reads, there is no offence whatever of the kind provided for.

*Indictment.*—That on A. B. being the guardian of one C. D. unlawfully did seduce and have illicit connection with the said C. D. his ward. (*Add another count charging illicit connection only.*)

**214.** SEDUCING FEMALE PASSENGERS ON VESSELS.—Every one is guilty of an indictable offence and liable to a fine of four hundred dollars or to one year's imprisonment, who, being a master or other officer or a seaman or other person employed on board of any vessel, while such vessel is in any water within the jurisdiction of the Parliament of Canada, under promise of marriage, or by threats, or by the exercise of his authority, or by solicitation, or the making of gifts or presents, seduces and has illicit connection with any female passenger.

2, MARRIAGE A DEFENCE.—The subsequent intermarriage of the seducer and the seduced is, if pleaded, a good defence to any indictment for any offence against this or either of the two last preceding sections, except in the case of a guardian seducing his ward. 55-56 V., c. 29, s. 184.

Evidence of one witness must be corroborated, section 1002.
Verdict of attempt in certain cases, section 949.

A conviction for "unlawfully procuring *or* attempting to procure" a girl to become a prostitute without Canada, "*or* with intent that she might become an inmate of a brothel elsewhere," does not disclose an offence under this section, but is void for duplicity and uncertainty. *R.* v. *Gibson* (1898), 2 Can. C. C. 302.

Girl under sixteen—Evidence of rape—Indictment for rape previously refused by grand jury—Conviction for seduction: *R.* v. *Doty*, 25 O. R. 362.

**215.** PARENT OR GUARDIAN PROCURING OR PARTY TO DEFILEMENT OF GIRL OR WOMAN.—Every one who, being the parent or guardian of any girl or woman,—

(*a*) procures such girl or woman to have carnal connection with any man other than the procurer; or,

(*b*) orders, is party to, permits or knowingly receives the avails of, the defilement, seduction or prostitution of such girl or woman;

PENALTY—is guilty of an indictable offence, and liable to fourteen years' imprisonment, if such girl or woman is under the age of fourteen years, and if such girl or woman is of or above the age of fourteen years, to five years' imprisonment. 55-56 V., c. 29, s. 186.

Limitation one year, section 1140.
Evidence must be corroborated, 1002.

*Forms of indictments.*—(*A*) that A. B., on, etc., at, etc., unlawfully did procure (*or attempt to procure*) one C. D., a girl (*or woman*) that being, the said C. D., under the age of twenty-one years, and not a common prostitute or of known immoral character, to have unlawful carnal connection with another person (*or other persons.*)

(*B*) that A. B. on at unlawfully inveigled and enticed one C. D., a girl (*or woman*) then being under the age of twenty-one years, she the said C. D. not being then a common prostitute or of known immoral character, to a house of ill-fame (*or assignation*) for the purpose of illicit intercourse and prostitution (*or*) that on at A. B. unlawfully concealed in a house of ill-fame (*or assignation*) one C. D., a girl (*or woman*) then being, the said C. D., under the age of twenty-one years and not a common prostitute or of known immoral character, and which said C. D. had been unlawfully inveigled and enticed to the said house of ill-fame (*or assignation*) for the purpose of illicit intercourse and prostitution.

(*C*) That the said A. B., on, etc., at, etc., unlawfully did procure (*or attempt to procure*) one C. D., a woman (*or girl*) to become a common prostitute: *R. v. McNamara*, 20 O. R. 489.

(*D*) That the said A. B., on, etc., at, etc., unlawfully did procure (*or attempt to procure*) one C. D., a woman (*or girl*) to leave Canada with intent unlawfully that she might become an inmate of a brothel elsewhere.

(*E*) that A. B., at on unlawfully procured (*or attempted to procure*) one C. D. a woman (*or girl*) to come to Canada from abroad with intent unlawfully that she might become an inmate of a brothel in Canada.

(*F*) that on at A. B., unlawfully procured (*or attempted to procure*) C. D., a woman (*or girl*) to leave her usual place of abode in Canada, to wit, at (*naming her abode*) such place not being a brothel, with intent that she should for the purpose of prostitution become an inmate of a brothel.

(*G*) That A. B., on, etc., at, etc., unlawfully by threats (*or intimidation*) procured (*or attempted to procure*) C. D., a woman (*or girl*) to have unlawful carnal connection with men.

(*H*) That A. B. by false pretences (*or false representations*) unlawfully procured C. D., a woman (*or girl*) not being a common prostitute or of known immoral character, to have unlawful carnal connection with men.

(*I*) That A. B., on, etc., at, etc., unlawfully applied to (*or administered to, or caused to be taken by*) C. D., a woman (*or girl*) a certain drug, intoxicating liquor (*or matter or thing*) with intent to stupefy (*or overpower*) her so as thereby to enable a man to have unlawful carnal connection with her the said C. D.

Under (*a*) and (*b*), the woman or girl must be under twenty-one years of age.

**216.** PENALTY.—Every one is guilty of an indictable offence and liable to two years' imprisonment with hard labour, who,—

(*a*) PROCURING GIRL FOR DEFILEMENT—procures, or attempts to procure, any girl or woman under twenty-one years of age, not being a common prostitute or of known immoral character, to have unlawful carnal connection, either within or without Canada, with any other person or persons; or,

(*b*) ENTICING GIRL TO HOUSE OF ILL-FAME—inveigles or entices any such woman or girl to a house of ill-fame or assignation for the purpose of illicit intercourse or prostitution, or knowingly conceals in such house any such woman or girl so inveigled or enticed; or,

(*c*) PROCURING GIRL FOR PROSTITUTION — procures, or attempts to procure, any woman or girl to become, either within or without Canada, a common prostitute; or,

(*d*) TO LEAVE CANADA FOR THE PURPOSE—procures, or attempts to procure, any woman or girl to leave Canada with intent that she may become an inmate of a brothel elsewhere; or,

(*e*) TO COME INTO CANADA FOR THE PURPOSE—procures any woman or girl to come to Canada from abroad with intent that she may become an inmate of a brothel in Canada; or,

(*f*) TO LEAVE HER ABODE FOR THE PURPOSE—procures, or attempts to procure, any woman or girl to leave her usual place of abode in Canada, such place not being a brothel, with intent that she may become an inmate of a brothel, within or without Canada; or,

(*g*) CARNAL CONNECTION BY THREATS—by threats or intimidation procures, or attempts to procure, any woman or girl to have any unlawful carnal connection, either within or without Canada; or,

(*h*) BY FALSE PRETENSES or false representations procures any woman or girl, not being a common prostitute or of known immoral character, to have any unlawful carnal connection, either within or without Canada; or,

(*i*) ADMINISTERING DRUGS FOR THE PURPOSE—applies, administers to, or causes to be taken by any woman or

girl any drug, intoxicating liquor, matter, or thing with intent to stupefy or overpower so as thereby to enable any person to have unlawful carnal connection with such woman or girl. 55-56 V., c. 29, s. 185.

Limitation, one year, section 1140. *One* witness must be corroborated, section 1002.

*A stranger* to a girl under fourteen is liable to ***imprisonment for life*** if he procures such girl to have carnal connection with any man: sections 69-301; but *a mother* who so procures her child to have carnal connection with a man is punishable by *fourteen years* only. And, in the case of a girl between fourteen and sixteen, the mother who procures her prostitution is punishable by five years whilst a stranger is liable only to two; sections 69-271. The last provision is not a wrong one taken by itself, but to find it in the same section with the first one shows with what carelessness this legislation has been enacted. For a mother to procure the prostitution of her daughter is *less* criminal than if done by a stranger to her daughter, if that daughter is less than fourteen years old. But when the daughter is over fourteen and less than sixteen, the procurement of her prostitution by her mother is *more* criminal than if done by a stranger! and a guardian who is accessory to the prostitution of his seventeen years old ward is liable to five years, but only to two years if he himself seduces that ward: ss. 213-215.

**217.** HOUSEHOLDER PERMITTING DEFILEMENT. — Every one who, being the owner or occupier of any premises, or having, or acting or assisting in, the management or control thereof, induces or knowingly suffers any girl under the age of eighteen years to resort to or be in or upon such premises for the purpose of being unlawfully and carnally known by any man, whether such carnal knowledge is intended to be with any particular man, or generally, is guilty of an indictable offence, and is liable,—

(*a*) PENALTY—AGE—to ten years' imprisonment if such girl is under the age of fourteen years;

(*b*) PENALTY—AGE—to two years' imprisonment if such girl is of or above the age of fourteen years. 63-64 V., c. 46, s. 3.

Limitation, one year, section 1140. One witness must be corroborated 1002.

It is no defence that the accused had reasonable cause to believe that the girl was above sixteen: see *R.* v. *Packer*, 16 Cox, 57; *R.* v. *Prince*, 13 Cox, 138, Warb. Lead. Cas. 89.

*Indictment under (a)* that A. B., on then being the owner *and* occupier *(the Imperial statute has ("or occupier") (or having, or acting, or assisting in the management or control)* of certain premises, to wit, a house *(describe it by street and number, or as minutely as possible)* did unlawfully induce *(or unlawfully and knowingly suffered)* a certain girl, to wit, one C. D., then being under the age of fourteen years, to resort to *(or to be in, or upon)* the said premises for the purpose of being unlawfully and

carnally known by a man named W. M. (*or by a man*) or by men generally. *Vary in different counts.* If it is proved that the girl is above fourteen, but under sixteen, the conviction may be under (*b*); see *R.* v. *Webster*, 16 Q. B. D. 136; *R.* v. *Barrett*, L. & C. 263, and *R.* v. *Stannard*, L. & C. 349. If it is proved that the girl is above sixteen the conviction may be, if the evidence warrants it, under section 216.

**218.** CONSPIRACY TO DEFILE.—Every one is guilty of an indictable offence and liable to two years' imprisonment who conspires with any other person by false pretenses, or false representations or other fraudulent means, to induce any woman to commit adultery or fornication. 55-56 V., c. 29, s. 188.

One witness must be corroborated, section 1002: see *R.* v. *Lord Grey*, 3 St. Tr. 519; *R.* v. *Mears*, 2 Den. 79; *R.* v. *Delaval*, 3 Burr. 1435. Adultery is an indictable offence in New Brunswick: *R.* v. *Egre*, 1 P. & B. 189; *R.* v. *Ellis*, 22 N. B. Rep. 440. But it being unlawful, though not indictable in the other provinces, the above section has only the effect of reducing the punishment which, on an indictment at common law, for such conspiracy would be punishable by five years under section 1052.

*Indictment for conspiracy to procure a woman to have illicit connection with a man.*—That A. B. and C. D., being persons of wicked and depraved mind and disposition, and contriving, craftily and deceitfully, to debauch and corrupt the morals of E. F., a woman, on the day of , did conspire, combine, confederate, and agree together, wickedly, knowingly, designedly, and unlawfully, by false pretences, false representations, and other fraudulent means, to induce the said E. F. to have illicit carnal connection and commit fornication with a man, whose name is to the jurors unknown, (*or with A. B.*).

**219.** CARNALLY KNOWING IDIOTS.—Every one is guilty of an indictable offence and liable to four years' imprisonment who unlawfully and carnally knows, or attempts to have unlawful carnal knowledge of, any female idiot or imbecile, insane or deaf and dumb woman or girl, under circumstances which do not amount to rape but where the offender knew or had good reason to believe, at the time of the offence, that the woman or girl was an idiot, or imbecile, or insane or deaf and dumb. 63-64 V., c. 46, s. 3.

The words in italics are new: see *R.* v. *Berry*, 1 Q. B. D. 447. One witness must be corroborated, section 1002; verdict of attempt in certain cases when full offence charged, section 949.

See *R.* v. *Pressy*, 10 Cox C. C. 635, and *R.* v. *Arnold*, 1 Russ. 9.

Consent by the female is not a defence. A verdict of common assault or indecent assault may be given, section 951, but not a verdict of attempt to commit rape. If rape or attempt to commit rape is proved the judge may order that the offender be indicted accordingly.

*Indictments* that A. B. on at unlawfully did indecently assault, and unlawfully and carnally did know (*or did attempt to have unlawful carnal knowledge of*) a

certain female idiot called C. D. (*or imbecile and insane woman or girl*) called C. D. (*or deaf and dumb woman or girl*) called C. D. under circumstances that do not amount to rape, he, the said A. B., well knowing at the time of the said offence that the said woman (*or girl*) was an idiot, or (*as the case may be.*)

**220.** PENALTY.—Every one is guilty of an indictable offence and liable to a penalty not exceeding one hundred dollars and not less than ten dollars, or six months' imprisonment,—

(*a*) KEEPING HABITATION FOR PROSTITUTION OF INDIAN WOMEN—who, being the keeper of any house, tent or wigwam, allows or suffers any unenfranchised Indian woman to be or remain in such house, tent or wigwam, knowing or having probable cause for believing that such Indian woman is in or remains in such house, tent or wigwam with the intention of prostituting herself therein; or,

(*b*) PROSTITUTING THEREIN—who, being an Indian woman, prostitutes herself therein; or.

(*c*) FREQUENTING THE SAME—who, being an unenfranchised Indian woman, keeps, frequents or is found in a disorderly house, tent or wigwam used for any such purpose.

2. WHO DEEMED KEEPER. — Every person who appears, acts or behaves as master or mistress, or as the person who has the care or management, of any house, tent or wigwam in which any such Indian woman is or remains for the purpose of prostituting herself therein, is deemed to be the keeper thereof, notwithstanding he or she is not in fact the real keeper thereof. 55-56 V., c. 29, s. 190.

*Nuisances.*

**221.** COMMON NUISANCE DEFINED.—A common nuisance is an unlawful act or omission to discharge a legal duty, which act or omission endangers the lives, safety, health, property or comfort of the public, or by which the public are obstructed in the exercise or enjoyment of any right common to all His Majesty's subjects. 55-56 V., c. 29, s. 191.

A private nuisance cannot be a criminal offence; and as will be seen by section 223, only such common or public nuisances as are stated to be so by section 222 are criminal.

4 Blac. Comm. 166; 1 Russ. 421; Stephen's Cr. L. Art. 176 *et seq*, and cases there cited; *R.* v. *Moore*, 3 B. & C. 184; *R.* v. *Medley*, 6 C. & P. 292; *R.* v. *Henson*, Dears. 24; *R.* v. *Lister*, Dears. & B. 209; *R.* v. *Stephens*, L. R. 1 Q. B. 702; *R.* v. *Brewster*, 8 U. C. C. P. 208; *Hillyard* v. *G. T. R.*, 8 O. R. 583; *R.* v. *Dunlop*, 11 L. C. J. 386; *R.* v. *Bruce*, 10 L. C. R. 117; *R.* v. *Patton*, 13 L. C. R. 311; *R.* v. *Brice*, 15 Q. L. R. 147; *Brown & Gugy*, 14 L. C. R. 213; *R.* v. *The Mayor of St. John*, Chipman MSS. 155; 3 Burn's *Just* v. *Nuisance*, 1026, 1068.

The omission of an electric railway company operating their cars upon a public highway to use reasonable precautions so as to avoid endangering the lives of the public using the highway in common with the company, is a breach of a legal duty, constituting a criminal nuisance. *R.* v. *Toronto Railway Company* (1900), 4 Can. C. C. 4.

*Indictment.*— that A. B. on and on divers other days and times as well before as afterwards, at *(set forth the nuisance) (the defendant will be entitled to particulars. R.* v. *Purwood*, 3 Ad. & El. 815, sections 882, 883 and 898, *post*), and the same nuisance so as aforesaid done, doth yet continue and suffer to remain to the great damage and common nuisance of all the liege subjects of Her Majesty. And the jurors aforesaid present that the said A. B. on the day and year aforesaid did commit a common nuisance which endangered the lives, safety, health, property or comfort *(as the case may be)* of the public *(or by which the public are obstructed in the exercise or enjoyment of a right common to all Her Majesty's subjects, to wit, the right of)* to the great damage and common nuisance of all the subjects of Her Majesty. Special forms in 3 Burn, *loc. cit.*; *R.* v. *Lister*, Dears. & B. 209; *R.* v. *Mutters*, L. & C. 491, Saunders' Precedents, 192, *et seq.*

**222.** CRIMINAL COMMON NUISANCES.—Every one is guilty of an indictable offence and liable to one year's imprisonment or a fine who commits any common nuisance which endangers the lives, safety or health of the public, or which occasions injury to the person of any individual. 55-56 V., c. 29, s. 192.

**223.** NON-CRIMINAL COMMON NUISANCES.—Any one convicted upon any indictment or information for any common nuisance other than those mentioned in the last preceding section, shall not be deemed to have committed a criminal offence; but all such proceedings or judgments may be taken and had as heretofore to abate or remedy the mischief done by such nuisance to the public right. 55-56 V., c. 29, s. 193.

See *R.* v. *Union Colliery Co.* (1900), 3 Can. C. C. 523; 31 S. C. R. 81.

**224.** KNOWINGLY SELLING UNFIT FOOD.—Every one is guilty of an indictable offence and liable to one year's imprisonment who knowingly and wilfully exposes for sale, or has in his possession with intent to sell, for human food, articles which he knows to be unfit for human food.

2. Penalty for Subsequent Offence.—Every one who is convicted of this offence after a previous conviction for the same crime shall be liable to two years' imprisonment. 55-56 V., c. 29, s. 194.

See *Shillito* v. *Thompson*, 1 Q. B. D. 12; 1 Russ. 169 and cases there cited.

**225.** Common Bawdy House Defined.—A common bawdy-house is a house, room, set of rooms or place of any kind kept for purposes of prostitution, or occupied or resorted to by one or more persons for such purposes." 55-56 V., c. 29, s. 195; 6-7 Ed. VII. c. 8, s. 2.

The above section displaces the law laid down in *R.* v. *Young*, 22 Occ. N. 211, 14 Man. L. R. 58; *Singleton* v. *Ellison* [1895], 1 Q. B. 607; *R.* v. *Osberg*, 15 Man. L. R. 147; 1 W. L. R. 121; *R.* v. *Mannix*, 6 O. W. R. 265; 10 O. L. R. 393.

In order to support a conviction for keeping a bawdy house, it is not sufficient to show the bad reputation of the house and its inmates and that men resorted to it in the night, but actual proof must be given of some act or acts of prostitution, though definite proof of one may be sufficient. *R.* v. *St. Clair*, 3 Can. C. C. 557; *R.* v. *Osberg*, *supra*.

Section 225 of the Criminal Code has not changed the law, as to the essential ingredients of the offence of keeping a bawdy house, and is intended merely to define the nature of the premises within which a bawdy house may be kept, and not to state what acts constitute such keeping. *R.* v. *Osberg*, *supra*; *R.* v. *Mannix*, *supra*.

See also *R.* v. *Leconte*, 6 O. W. R. 970; *R.* v. *Keeping*, 24 N. S. R. 442; 21 Occ. N. 508; *R.* v. *Martin*, 1 O. W. R. 429, and notes to section 773.

**226.** Common Gaming House Defined.—A common gaming-house is,—

(*a*) a house, room or place kept by any person for gain, to which persons resort for the purpose of playing at any game of chance, or at any mixed game of chance and skill; or,

(*b*) a house, room or place kept or used for playing therein at any game of chance, or any mixed game of chance and skill, in which

(i) a bank is kept by one or more of the players exclusively of the others; or,

(ii) any game is played the chances of which are not alike favorable to all the players, including among the players the banker or other person by whom the

game is managed, or against whom the game is managed, or against whom the other players stake, play or bet.

2. EFFECT OF PART OF GAME ONLY BEING PLAYED THERE OR STAKE ELSEWHERE.—Any such house, room or place shall be a common gaming-house, although part only of such game is played there and any other part thereof is played at some other place, either in Canada or elsewhere, and although the stake played for, or any money, valuables, or property depending on such game, is in some other place, either in Canada or elsewhere. 55-56 V., c. 29, s. 196; 58-59 V., c. 40, s. 1.

Playing "policy"—Betting and payment in United States—No offence: *R.* v. *Wettman* (1894), 25 O. R. 459; 1 Can. C. C. 287.

"Gain" may be derived indirectly—Keeper of cigar shop with room in rear for playing poker, convicted, though he profited nothing from the game itself, but did from sale of cigars to the players: *R.* v. *James*, 2 O. W. R. 342; 23 Occ. N. 220; 6 O. L. R. 35; see *R.* v. *Saunders*, 3 Can. C. C. 495.

See *Janks* v. *Turpin* (1884), 13 Q. B. D. 505; *R.* v. *France, et al*, (1897), 3 Revue de Jurisprudence, 268; (1898), R. J. Q. 7 Q. B. 83; *R.* v. *Laird* (1894), 3 Revue de Jurisprudence, 3 89; *R.* v. *Brady* (1896), R. J. Q. 10 S. C. 539; *R.* v. *Petrie* (1900), 3 Can. C. C. 439.

**227.** COMMON BETTING HOUSE DEFINED.—A common betting-house is a house, office, room or other place,—

(*a*) opened, kept or used for the purpose of betting between persons resorting thereto and

(i) the owner, occupier or keeper thereof,

(ii) any person using the same,

(iii) any person procured or employed by, or acting for or on behalf of any such person,

(iv) any person having the care or management, or in any manner conducting the business thereof; or,

(*b*) opened, kept or used for the purpose of any money or valuable thing being received by or on behalf of any such person as aforesaid, as or for the consideration

(i) for any assurance or undertaking, express or implied, to pay or give thereafter any money or valuable thing on any event or contingency of or relating to any horse race or other race, fight, game or sport, or

(ii) for securing the paying or giving by some other person of any money or valuable thing on any such event or contingency; or,

(*c*) opened, or kept for the purpose of recording or registering bets upon any contingency or event, horse race or other race, fight, game or sport, or for the purpose of receiving money or other things of value to be transmitted for the purpose of being wagered upon any such contingency or event, horse race or other race, fight, game or sport, whether any such bet is recorded or registered there, or any money or other thing of value is there received to be so transmitted or not; or,

(*d*) opened, kept or used for the purpose of facilitating or encouraging or assisting in the making of bets upon any contingency or event, horse race or other race, fight, game or sport, by announcing the betting upon, or announcing or displaying the results of, horse races or other races, fights, games or sports, or in any other manner, whether such contingency or event, horse race or other race, fight, game or sport occurs or takes place in Canada or elsewhere. 55-56 V., c. 29, s. 197; 58-59 V., c. 40, s. 1.

Betting on foreign race—Tent with wire to race track—Keepers convicted: *R.* v. *Giles* (1895), 15 Occ. N. 178; 26 O. R. 586; *R.* v. *Hanrahan*, 3 O. L. R. 659. Keeper not a party to offence: *R.* v. *Hendrie*, 11 O. L. R. 202; 6 O. W. R. 1015.

Telegraph office—Connection with bank—System of betting on foreign race—Keeper convicted: *R.* v. *Osborne*, 27 O. R. 185.

Sub-section 2 of section 235 not to be read into this section: *R.* v. *Hanrahan*.

Wooden box or booth moved on castors about grounds of racing association, and used by bookkeepers to make and record bets is an "office" or "place" under this section: *R.* v. *Saunders*, 12 O. L. R. 615; 20 Occ. N. 213.

See *R.* v. *Duffy*, 21 Occ. N. 477; *R.* v. *Mah Kee* (N.W.T.), 1 W. L. R. 37; *Doggett* v. *Catterns*, 19 C. B. N. S. 765; *Haigh* v. *Sheffield*, L. R. 10 Q. B. 102; *R.* v. *Preedy*, 17 Cox C. C. 433; *Whitehurst* v. *Fincher*, 17 Cox C. C. 70; *Davis* v. *Stephenson*, 17 Cox C. C. 73; *Snow* v. *Hill*, 15 Cox C. C. 737; 14 Q. B. D. 588; *Cambinada* v. *Hulton*, 17 Cox C. C. 307; *Hornsby* v. *Raggett*, 17 Cox C. C. 428.

**228.** DISORDERLY HOUSE.—Every one is guilty of an indictable offence and liable to one year's imprisonment who keeps any disorderly house, that is to say, any common bawdy-house, common gaming-house or common betting-house, as hereinbefore defined.

2. WHO DEEMED KEEPER.—Any one who appears, acts or behaves as master or mistress, or as the person having the care, government or management, of any disorderly house, shall be deemed to be the keeper thereof, and shall be liable to be prosecuted and punished as such, although in fact he or she is not the real owner or keeper thereof. 55-56 V., c. 29, s. 198.

Crown must prove that accused derives gain or profit from house: *R.* v. *Sanders*, 12 O. L. R. 615; 20 Occ. N. 213. See *R.* v. *James*, *supra*.

Husband and wife may be indicted together: *R.* v. *Williams*, 1 Salk. 383; *R.* v. *Digon*, 10 Mod. 335; *R.* v. *Warren*, 16 O. R. 590. See *R.* v. *Roy* (1900), 3 Can. C. C. 472; *R.* v. *Bougie* (1899), 3 Can. C. C. 487; *R.* v. *Spooner* (1900), 21 Occ. N. 159; *R.* v. *Crawshaw*, Bell, 303; *R.* v. *Barrett*, L. & C. 263; *R.* v. *Rogier*, 1 D. & R. 284; *Jenks* v. *Turpin*, 13 Q. B. D. 505; *R.* v. *McNamara*, 20 O. R. 489; *R.* v. *Stannard*, L. & C. 349; *R.* v. *Newton*, 11 O. P. R. 101; *R.* v. *Rice*, Warb. Lead. Cas. 101, as to what is a bawdy house, or a common gaming house.

Section 238, *post*, also provides for the offence of keeping a disorderly house.

Section 641, *post*, as to search warrants; ss. 982, 986, as to evidence in such cases, and ss. 773, 774, as to summary trial.

**229.** PLAYING OR LOOKING ON IN GAMING-HOUSE.—Every one who plays or looks on while any other person is playing in a common gaming-house is guilty of an offence and liable, on summary conviction before two justices, to a penalty not exceeding one hundred dollars and not less than twenty dollars, and in default of payment to two months' imprisonment. 55-56 V., c. 29, s. 199.

Conviction providing for distress on non-payment of fine quashed, punishment being excessive: *R.* v. *Logan*, 16 O. R. 325.

Being in office where contracts prohibited by s. 231 are made, not an offence under this section: *R.* v. *Murphy*, 17 O. R. 201.

**230.** PENALTY.—Every one is guilty of an offence and liable, on summary conviction before two justices, to a penalty not exceeding one hundred dollars, and to six months' imprisonment, with or without hard labour who,—

(*a*) PREVENTING OFFICER ENTERING—wilfully prevents any constable or other officer duly authorized to enter any disorderly house, from entering the same or any part thereof; or,

(*b*) OBSTRUCTING—obstructs or delays any such constable or officer in so entering; or,

(*c*) SECURING DOOR—by any bolt, chain or other contrivance secures any external or internal door of, or means of access to, any common gaming-house so authorized to be entered; or,

(*d*) MEANS TO PREVENT—uses any means or contrivance whatsoever for the purpose of preventing, obstructing or delaying the entry of any constable or officer, authorized as aforesaid, into any such disorderly house or any part thereof. 55-56 V., c. 29, s. 200.

**231.** GAMING IN STOCKS OR MERCHANDISE.—Every one is guilty of an indictable offence and liable to five years' imprisonment, and to a fine of five hundred dollars, who, with intent to make gain or profit by the rise or fall in price of any stock of any incorporated or unincorporated company or undertaking, either in Canada or elsewhere, or of any goods, wares or merchandise,—

(*a*) MAKING CONTRACT WITHOUT INTENTION OF ACQUIRING OR SELLING—without the *bonâ fide* intention of acquiring any such shares, goods, wares or merchandise, or of selling the same, as the case may be, makes or signs, or authorizes to be made or signed, any contract or agreement, oral or written, purporting to be for the sale or purchase of any shares of stock, goods, wares or merchandise; or,

(*b*) CONTRACT WITHOUT DELIVERY OR INTENTION OF RECEIVING DELIVERY—makes or signs, or authorizes to be made or signed, any contract or agreement, oral or written, purporting to be for the sale or purchase of any such shares of stock, goods, wares or merchandise in respect of which no delivery of the thing sold or purchased is made or received, and without the *bonâ fide* intention to make or receive such delivery.

2. SAVING.—It is not an affence under this section if the broker of the purchaser receives delivery, on his behalf, of the articles sold, notwithstanding that such broker retains or pledges the same as security for the advance of the purchase money or any part thereof. 55-56 V., c. 29, s. 201.

**232.** PLACE OF SUCH BUSINESS IS COMMON GAMING-HOUSE.—Every office or place of business wherein is carried

on the business of making or signing, or procuring to be made or signed, or negotiating or bargaining for the making or signing of contracts of sale or purchase prohibited by the last preceding section is a common gaming-house, and every one who as principal or agent occupies, uses, manages or maintains the same is the keeper of a common gaming-house. 55-56 V., c. 29, s. 201.

Being in office where contracts prohibited by s. 231 were made, not the offence of playing or looking on in gaming house under s. 229; *R.* v. *Murphy*, 17 O. R. 201.

A mere broker for two parties, one the buyer and the other the seller, without having any interest in a transaction other than his commission and without knowledge of the intention of the parties to gamble in stocks, is not guilty of being an accessory under section 69; *D.* v. *Dowd* (1899), R. J. Q. 17 S. C. 67.

**233.** FREQUENTING PLACES WHERE GAMING IN STOCKS CARRIED ON.—Every one is guilty of an indictable offence and liable to one year's imprisonment who habitually frequents any office or place wherein the making or signing or procuring to be made or signed, or the negotiating or bargaining for the making or signing, of such prohibited contracts of sale or purchase is carried on. 55-56 V., c. 29, s. 202.

**234.** PENALTY.—Every one is guilty of an indictable offence and liable to one year's imprisonment who,—

(*a*) OBTAINING MONEY, ETC., BY GAMBLING IN PUBLIC CONVEYANCES—in any railway car or steamboat, used as a public conveyance for passengers, by means of any game of cards, dice or other instrument of gambling, or by any device of like character, obtains from any other person any money, chattel, valuable security or property; or,

(*b*) ATTEMPTING—attempts to commit such offence by actually engaging any person in any such game with intent to obtain money or other valuable thing from him.

2. ARREST OF OFFENDER.—Every conductor, master or superior officer in charge of, and every clerk or employee when authorized by the conductor, master or superior officer in charge of, any railway train or steamboat, station or landing place in or at which any such offence, as aforesaid, is committed or attempted, shall, with or without warrant, arrest

any person whom he has good reason to believe to have committed or attempted to commit any such offence, and take him before a justice, and make complaint of such offence on oath, in writing.

3. PENALTY FOR OMITTING.—Every conductor, master or superior officer in charge of any such railway car or steamboat, who makes default in the discharge of any such duty is liable, on summary conviction, to a penalty not exceeding one hundred dollars and not less than twenty dollars.

4. POSTING UP SECTION.—It shall be the duty of every person who owns or works any such railway car or steamboat to keep a copy of this section posted up in some conspicuous part of such railway car or steamboat.

5. PENALTY.—Every person who makes default in the discharge of such duty is liable to a penalty not exceeding one hundred dollars and not less than twenty dollars. 55-56 V., c. 29, s. 203.

**235.** BETTING AND POOL-SELLING, PENALTY.—Every one is guilty of an indictable offence and liable to one year's imprisonment, and to a fine not exceeding one thousand dollars, who,—

(*a*) uses or knowingly allows any part of any premises under his control to be used for the purpose of recording or registering any bet or wager, or selling any pool; or,

(*b*) keeps, exhibits, or employs, or knowingly allows to be kept, exhibited or employed, in any part of any premises under his control, any device or apparatus for the purpose of recording any bet or wager, or selling any pool; or,

(*c*) becomes the custodian or depository of any money, property or valuable thing staked, wagered or pledged; or,

(*d*) records or registers any bet or wager, or sells any pool upon the result,

(i) of any political or municipal election,

(ii) of any race,

(iii) of any contest or trial of skill or endurance of man or beast.

2. SAVING.—The provisions of this section shall not extend to any person by reason of his becoming the custodian or depository of any money, property or valuable thing staked, to be paid to the winner of any lawful race, sport, game or exercise; or to the owner of any horse engaged in any lawful race, or to bets between individuals or made on the race course of an incorporated association during the actual progress of a race meeting. 55-56 V., c. 29, s. 204.

Bets between individuals on election — Stakeholder an offender —Bettors accessories: *Walsh* v. *Trebilcock*, 23 S. C. R. 695, rev'g 21 A. R. 55.

Does not apply to election, etc., out of Canada: *R.* v. *Smiley*, 22 O. R. 686.

Under s.-s. 2 agreement for sale of betting privileges at race meeting by unincorporated association, lessees of incorporated owners of course, not illegal: *Stratford Turf Assoc.* v. *Fitch* (1897), 28 O. R. 579.

Section does not forbid betting: *R.* v. *Dillon*, 10 O. P. R. 352. But bettors may be accessories to offence: *Walsh* v. *Trebilcock*, *supra*. See *Fulton* v. *James*, 5 U. C. C. P. 182.

Guessing number of beans or buttons in a jar not a "mode of chance" for disposing of property: *R.* v. *Dodds*, 4 O. R. 390; *R.* v. *Jamieson*, 7 O. R. 149.

Property in (a) not necessarily "specific property:" *D.* v. *Lorrain*, 28 O. R. 123.

Art association. Disposal of pictures. Option to give money: *Ib.*

Provincial legislature cannot authorize lotteries forbidden by code: *L'Assoc. St. John Baptiste* v. *Brault*, 30 S. C. R. 598.

A municipal by-law forbidding gambling, etc., in licensed taverns is valid as being authorized by the Mun. Act of the Province and general police power of the council: *In re Brodie and Town of Bowmanville*, 38 U. C. R. 580.

A customer purchased a can of tea from a dealer who represented that among the cans were some containing respectively a gold watch, a diamond ring and $20 in money, and not finding any of such articles purchased others without success. The dealer was properly convicted of disposing of property by a mode of chance under s.-s. (b): *R.* v. *Freeman*, 18 O. R. 524.

*Cronyn* v. *Widder*, 16 U. C. R. 356; *Power* v. *Caniff*, 18 U. C. R. 403; *La Société St. Louis* v. *Villeneuve*, 21 L. C. J. 309; *R.* v. *Crawshaw*, Bell C. C. 303.

**236.** PENALTY.—Every one is guilty of an indictable offence and liable to two years' imprisonment and to a fine not exceeding two thousand dollars who, —

(*a*) PRINTING LOTTERY SCHEME—makes, prints, advertises or publishes, or causes or procures to be made, printed, advertised or published, any proposal, scheme or plan for advancing, lending, giving, selling or in

any way disposing of any property, by lots, cards, tickets, or any mode of chance whatsoever; or,

(*b*) SELLING LOTTERY TICKETS, ETC.—sells, barters, exchanges or otherwise disposes of, or causes or procures, or aids or assists in, the sale, barter or exchange or other disposal of, or offers for sale, barter or exchange, any lot, car, ticket or other means or device for advancing, lending, giving, selling or otherwise disposing of any property by lots, tickets or any mode of chance whatsoever; or,

(*c*) CONDUCTING LOTTERY SCHEME—conducts or manages any scheme, contrivance or operation of any kind for the purpose of determining who, or the holders of what lots, tickets, numbers or chances, are the winners of any property so proposed to be advanced, loaned, given, sold or disposed of.

2. BUYING LOTTERY TICKETS, ETC.—Every one is guilty of an offence and liable on summary conviction to a penalty of twenty dollars, who buys, takes or receives any such lot, ticket or other device as aforesaid.

3. LOTTERY SALE VOID.—Every sale, loan, gift, barter or exchange of any property, by any lottery, ticket, card or other mode of chance depending upon or to be determined by chance or lot, is void, and all property so sold, lent, given, bartered or exchanged, is liable to be forfeited to any person who sues for the same by action or information in any court of competent jurisdiction.

4. BONA FIDE PURCHASES.—No such forfeiture shall effect any right or title to such property acquired by any *bona fide* purchaser for valuable consideration without notice.

5. FOREIGN LOTTERY INCLUDED.—This section includes the printing or publishing, or causing to be printed or published, of any advertisement, scheme, proposal or plan of any foreign lottery, and the sale or offer for sale of any ticket, chance or share, in any such lottery, or the advertisement for sale of such ticket, chance or share, and the conducting or managing of any such scheme, contrivance or operation for determining the winners in any such lottery.

6. SAVING.—This section does not apply to,—

(*a*) DIVIDING REAL ESTATE BY LOT—the division by lot or chance of any property by joint tenants or tenants in common, or persons having joint interests (*droits indivis*) in any such property; or,

(*b*) RAFFLES AT CHURCH BAZAAR—raffles for prizes of small value at any bazaar held for any charitable or religious object, if permission to hold the same has been obtained from the city or other municipal council, or from the mayor, reeve or other chief officer of the city, town or other municipality, wherein such bazaar is held, and the articles raffled for thereat have first been offered for sale and none of them are of a value exceeding fifty dollars;

(*c*) LONDON ART UNION, ETC.,—the Art Union of London, Great Britain, or the Art Union of Ireland. 55-56 V., c. 29, s. 205; 58-59 V., c. 40, s. 1; 1 E. VII., c. 42, s. 2; 6 E. VII., c. 6, s. 1.

**237.** PENALTY.—Every one is guilty of an indictable offence and liable to five years' imprisonment who,—

(*a*) NOT BURYING THE DEAD—without lawful excuse, neglects to perform any duty either imposed upon him by law or undertaken by him with reference to the burial of any dead human body or human remains; or,

(*b*) INDIGNITY TO DEAD BODY—improperly or indecently interferes with or offers any indignity to any dead human body or human remains, whether buried or not. 55-56 V., c. 29, s. 206.

One who, under no legal obligation to do so, undertakes to bury a dead body and removes it for the purpose, is indictable if he fails to carry out his undertaking: *R.* v. *Newcombe* (1898), 2 Can. C. C. 255. See *R.* v. *Clark* (1883), 15 Cox C. C. 171.

To dig up a dead body and sell it for purpose of dissection is an offence: *R.* v. *Lynn*, 1 Leach, 497. See *R.* v. *Price*, 12 Q. B. D. 247; *R.* v. *Stephenson*, 13 Q. B. D. 331, 15 Cox, 679, Warb. Lead. Cas. 97; *R.* v. *Sharpe*, Dears. & B. 160; *R.* v. *Feist*, Dears. & B. 590.

*Indictment.*— that A. B. on the day of in the year of our Lord the churchyard of and belonging to the parish church of the parish of in the said county of unlawfully and wilfully did break and enter, and the grave there in which the body of one C. D., deceased, had lately before then been interred, and there unlawfully, wilfully and indecently did dig open and the body of him the said C. D.

out of the grave aforesaid, unlawfully, wilfully and indecently did then take and carry away; *2nd count* (*after "open"*), and indecently interfered with the said dead human body; *3rd count*, charging "improperly" instead of "indecently."

*Vagrancy.*

**238.** VAGRANT.—Every one is a loose, idle or disorderly person or vagrant who,—

(*a*) NO VISIBLE MEANS OF SUPPORT—not having any visible means of subsistence, is found wandering abroad or lodging in any barn or outhouse, or in any deserted or unoccupied building, or in any cart or wagon, or in any railway carriage or freight car, or in any railway building, and not giving a good account of himself, or who, not having any visible means of maintaining himself, lives without employment;

(*b*) NOT MAINTAINING FAMILY—being able to work and thereby or by other means to maintain himself and family, wilfully refuses or neglects to do so;

(*c*) INDECENT EXHIBITIONS—openly exposes or exhibits in any street, road, highway or public place, any indecent exhibition;

(*d*) BEGGING—without a certificate signed, within six months by a priest, clergyman or minister of the Gospel, or two justices, residing in the municipality where the alms are being asked, that he or she is a deserving object of charity, wanders about and begs, or goes about from door to door, or places himself or herself in any street, highway, passage or public place to beg or receive alms;

(*e*) LOITERING ON HIGHWAY—loiters on any street, road, highway or public place, and obstructs passengers by standing across the footpath, or by using insulting language, or in any other way;

(*f*) DISORDERLY CONDUCT—causes a disturbance in or near any street, road, highway or public place, by screaming, swearing or singing, or by being drunk, or by impeding or incommoding peaceable passengers;

(*g*) WANTON DISTURBANCES—by discharging firearms or by riotous or disorderly conduct in any street or high-

way, wantonly disturbs the peace and quiet of the inmates of any dwelling-house near such street or highway;

(*h*) DESTROYING PROPERTY—tears down or defaces signs, breaks windows, or doors or door plates, or the walls of houses, roads or gardens, or destroys fences;

(*i*) NIGHT WALKER—being a common prostitute or night walker, wanders in the fields, public streets or highways, lanes or places of public meeting or gathering of people, and does not give a satisfactory account of herself;

(*j*) KEEPING HOUSE OF ILL-FAME—is a keeper or inmate of a disorderly house, bawdy-house or house of ill-fame, or house for the resort of prostitutes;

(*k*) FREQUENTING—is in the habit of frequenting such houses and does not give a satisfactory account of himself or herself; or,

(*l*) SUPPORTED BY PROSTITUTION—having no peaceable profession or calling to maintain himself by, for the most part supports himself by gaming or crime, or by the avails of prostitution. 55-56 V., c. 29, s. 207; 63-64 V., c. 46, s. 3.

Conviction under s.-s. (i) must show that accused, before or at the time of arrest, was asked to give an account of herself and did not: *R.* v. *Levecque*, 30 U. C. R. 509.

Conviction for keeping house of ill-fame must mention the place where offence was committed: *R.* v. *Cyr*, 12 P. R. 24.

In order to constitute a wilful refusal or neglect on the part of a husband to maintain his family, under this section it is necessary that he should be under a legal obligation to do so, and his failure to maintain his wife, who had left him without valid cause and refused to return, is not an offence thereunder. *R.* v. *Leclair* (1898), R. J. Q. B. 287.

For description of offence under s.-s. (1): see *Ex parte Gagnon*, Q. R. 2 Q. B. 287.

Being drunk not an offence under s.-s. (f). It is causing a disturbance by being drunk: *Ex parte Despatie*, 9 L. N. 387.

City carter who, contrary to city ordinances, loiters near hotel entrance and solicits passengers, but does not obstruct them, is not an offender under s.-s. (e): *Smith* v. *R.*, M. L. R. 4 Q. B. 325.

A conviction should not be made upon a charge of keeping, or being an inmate of a bawdy house, upon evidence of general reputation only, and the prosecution should be required to produce proof of acts or conduct from which the character of the house may be inferred; and the conduct and statements of the inmates of the alleged bawdy-house at the time of the arrest therein may properly be proved in support of the charge. *R.* v. *St. Clair* (Ont. 1900), 3 Can. C. C. 551

A woman kept by a married man who surrenders herself to sexual intercourse with him alone, is not within the purview of s.-s. (1): *R.* v. *Reche* (1897), Q. R. 6 Q. B. 274.

A man living with, and supported by, his parents is not an offender under par. (a) because he lives without employment: *R.* v. *Riley* (1898), Q. R. 7 Q. B. 198.

There may be a joint conviction against husband and wife for keeping a house of ill-fame: *R.* v. *Warren*, 16 O. R. 590; *R.* v. *Williams*, 1 Salk. 383.

See *R.* v. *Arscott*, 9 O. R. 541, and *Arscott & Lilly*, 11 O. R. 153; *R.* v. *Remon*, 16 O. R. 560.

**239.** PENALTY FOR VAGRANCY, PROVISO.—Every loose, idle or disorderly person or vagrant is liable, on summary conviction, to a fine not exceeding fifty dollars or to imprisonment, with or without hard labour, for any term not exceeding six months, or to both: Provided that no aged or infirm person shall be convicted for any reason within paragraph (*a*) of the last preceding section, as a loose, idle or disorderly person or vagrant in the county of which he has for the two years immediately preceding been a resident. 55-56 V., c. 29, s. 208; 57-58 V., c. 57, s. 1; 63-64 V., c. 46, s. 3.

It is unlawful for men to bathe, without any screen or covering, so near to a public footway frequented by females that exposure of their persons must necessarily occur, and they who so bathe are liable to an indictment for indecency: *R.* v. *Reed*, 12 Cox C. C. 1.

To keep a booth on a race course for the purpose of an indecent exhibition is a crime: *R.* v. *Saunders*, 13 Cox C. C. 116.

"Keeping a bawdy house" is, in itself, a substantial offence; so is "keeping a house for the resort of prostitutes." *Held*, nevertheless, that there was but one offence charged and that the commitment was good: *R.* v. *Mackenzie*, 2 Man. L. R. 168.

The six months' imprisonment provided by this section is only a substantive punishment, and if it is not imposed in the first instance it cannot be directed on account of default in payment of a fine. For such default over imprisonment for three months can be imposed, under section 739. Section 239 would, were it not for the decisions cited *infra*, appear to warrant the imposition of both fine and six months' imprisonment. *R.* v. *Stafford* (N. S. 1898), 1 Can. C. C. 239; *R.* v. *Horton* (1897), 31 N. S. R. 217.

A conviction under 32 & 33 V, c. 28, for keeping a house of ill-fame, imposed payment of a fine and costs to be collected by distress, and in default of distress ordered imprisonment. *Held*, good: *R.* v. *Walker*, 7 O. R. 186.

The charge against a prisoner, who was brought up on a writ of *habeas corpus*, was "for keeping a bawdy house for the resort of prostitutes in the City of Winnipeg."

See *R.* v. *Rice*, 10 Cox C. C. 155, L. R. 1 C. C. R. 21, Warb. Lead. Cas. 101; *R.* v. *Bassett*, 10 O. P. R. 386; *Pointon* v. *Hill*, 12 Q. B. D. 306; *R.* v. *Daly*, 24 L. C. J. 157; *R.* v. *Newton*, 11 O. P. R. 101; *R.* v. *Organ*, 11 O. P. R. 497; *Smith* v. *R.*, M. L. R. 4 Q. B. 325.

See s. 643, p. 875, *post*, as to search warrant.

# PART VI.

## OFFENCES AGAINST THE PERSON AND REPUTATION.

### *Interpretation.*

**240.** DEFINITIONS.—In this Part, unless the context requires,—

(*a*) 'FORM OF MARRIAGE'—includes any form either recognized as a valid form by the law of the place where it is gone through, or which, though not so recognized, is such that a marriage celebrated there in that form is recognized as binding by the law of the place where the offender is tried;

(*b*) 'GUARDIAN'—includes any person who has in law or in fact the custody or control of any child referred to;

(*c*) 'ABANDON' or 'EXPOSE'—includes a wilful omission to take charge of any child referred to on the part of a person legally bound to take charge of such child, as well as any mode of dealing with it calculated to leave it exposed to risk without protection. 55-56 V., c. 29, ss. 216 and 270; 63-64 V., c. 46, s. 3.

### *Duties Tending to the Preservation of Life.*

**241.** DUTY OF PERSON IN CHARGE TO PROVIDE NECESSARIES OF LIFE — CRIMINAL RESPONSIBILITY.—Every one who has charge of any other person unable by reason either of detention, age, sickness, insanity or any other cause, to withdraw himself from such charge, and unable to provide himself with the necessaries of life, is, whether such charge is undertaken by him under any contract, or is imposed upon him by law, or by reason of his unlawful act, under a legal duty to supply that person with the necessaries of life, and is criminally responsible for omitting, without lawful excuse, to perform such duty if the death of such person is caused, or if his life is endangered, or his health has been or is likely to be permanently injured, by such omission. 55-56 V., c. 29, s. 209.

See section 244, *post*, *R.* v. *Coventry* (1898), 3 Can. C. C. 541; *R.* v. *Friend*, R. & R. 20; *R.* v. *Shepherd*, L. & C. 147; *R.* v. *Smith*, L. & C. 607; *R.* v. *Marriott*, 8 C. & P. 425; *R.* v. *Ryland*, L. R. 1 C. C. R. 99; *R.* v. *Morby*, Warb. Lead. Cas. 115.

**242.** DUTY OF HEAD OF FAMILY TO PROVIDE NECESSARIES.—Every one who as parent, guardian or head of a family is under a legal duty to provide necessaries for any child under the age of sixteen years is criminally responsible for omitting, without lawful excuse, to do so while such child remains a member of his or her household, whether such child is helpless or not, if the death of such child is caused, or if his life is endangered, or his health is or is likely to be permanently injured, by such omission.

2. CRIMINAL RESPONSIBILITY.—Every one who is under a legal duty to provide necessaries for his wife, is criminally responsible for omitting, without lawful excuse so to do, if the death of his wife is caused, or if her life is endangered, or her health is or is likely to be permanently injured, by such omission. 55-56 V., c. 29, s. 210.

See section 244. Neglect to provide for wife—Indictment—Not necessary to aver that neglect endangered life or permanently injured health of wife: *R.* v. *Smith*, 2 L. N. 223; *R.* v. *Scott*, 7 L. N. 322; 28 L. C. J. 264.

Non-support of wife—Proof necessary that she was in need and husband able to supply her wants: *R.* v. *Nasmith* (1877), 42 U. C. Q. B. 242.

Former marriage of wife—Evidence of first husband's death: *R.* v. *Holmes* (1898) 29 O. R. 362.

Lawful excuse—Agreement to live apart and be supported as before marriage: *R.* v. *Robinson* (1897), 28 O. R. 407; 1 Can. C. C. 28.

Refusal of magistrate to allow husband to testify on his own behalf: *R.* v. *Meyer*, 11 P. R. 477.

On evidence that wife was pregnant and so incapacitated from work, judge may find that she was "likely to be permanently injured:" *R.* v. *Bowman* (1895), 31 N. S. 403. Whether or not health of wife is likely to be permanently injured is a question for trial Judge only: *R.* v. *McIntyre* (1898), 31 N. S. 422.

Neglect to provide medical attendance and remedies is within the section. Conscientious belief that same is wrong no excuse: *R.* v. *Brooks*, 9 B. C. R. 13; Christian Science, *R.* v. *Lewis*, 6 O. L. R. 132.

See *R.* v. *Lapierre* (1897), 1 Can. C. C. 413; *R.* v. *Pennock*, (1898), 18 Occ. N. 79.

**243.** DUTY OF MASTERS—CRIMINAL RESPONSIBILITY.—Every one who, as master or mistress, has contracted to provide necessary food, clothing or lodging for any servant or apprentice under the age of sixteen years is under a legal duty to provide the same, and is criminally responsible for

omitting, without lawful excuse, to perform such duty, if the death of such servant or apprentice is caused, or if his life is endangered, or his health has been or is likely to be permanently injured, by such omission. 55-56 V., c. 29, s. 211.

See next section. Neglect of servant, a boy of fifteen—Exposure to cold—Gross negligence—Manslaughter: *R.* v. *Brown*, 1 Terr. L. R. 475.

When it is necessary to amputate a child's toes by reason of their having been frozen, the Court should not infer therefrom that the child's health had thereby been, or was likely to be, "permanently injured," or that his life had been endangered thereby.

Under this section, a master is not criminally liable for failure to provide his servants with medical attendance or medicine. *R.* v. *Coventry* (1898), 3 Can. C. C. 541.

**244.** OMISSION OF DUTY—PENALTY.—Every one is guilty of an indictable offence and liable to three years' imprisonment who, being bound to perform any duty specified in the three last preceding sections, without lawful excuse, neglects or refuses to do so, unless the offence amounts to culpable homicide. 55-56 V., c. 29, s. 215; 56 V., c. 32, s. 1.

See *Williams* v. *E. I. Co.*, 3 East 192; *R.* v. *Nicholls*, 13 Cox C. C. 75; *R.* v. *Pelham*, 8 Q. B. 959; *R.* v. *Rugg*, 12 Cox C. C. 16.

1. In section 242 the words or "head of a family" are added to the words "parent or guardian." 2. The word "necessaries" in section 242, relating to parent and child and husband and wife, is substituted to the words "necessary food, clothing or lodging," whilst the words "necessary food, clothing or lodging," are retained in section 243, relating to master and servant or apprentice. 3. The words "while such child remains a member of his or her household, whether such child is helpless or not," in section 242, are new. 4. In both sections the words "under the age of sixteen years" are new. 5. In section 243 the words "has contracted to provide" are substituted to the words "being legally liable."

The difference in these two sections, 242 and 243, between necessaries and necessary food, clothing or lodging, is a right one. A parent is obliged to supply his child, or a husband his wife, with all the necessaries of life, which would include medical attendance (241 & 242 combined, see *R.* v. *Downes*, 1 Q. B. D. 25), whilst a master is only obliged to provide his servant or apprentice with the necessary food, clothing or lodging which he has contracted to so provide.

In an indictment under section 210, it is necessary to allege that the refusal, omission and neglect was without lawful excuse and that by such refusal, omission, and neglect to provide the food, etc., necessary to his wife, her life has been and is endangered, or her health permanently injured, or likely to be permanently injured: see *R.* v. *Maher*, 7 L. N. 82; *R.* v. *Nasmith*, 42 U. C. R. 242.

*Held*, Armour, J., dissenting, that the evidence of a wife is inadmissible on the prosecution of her husband for refusal to support her, under 32-33 V, c. 20, s. 25; *R.* v. *Bissell*, 1 O. R. 514.

*Indictment under sections 241-244 against a gaoler for not providing a prisoner with the necessaries of life*

that A. B. on and on divers other days before and after, was the keeper of the common gaol for the District of then and there situate, and as such had charge of all the prisoners therein confined; and was under a legal duty to pro-

vide all said prisoners with the necessaries of life; that one C. D. was then and there a prisoner detained in the said gaol and as such under the charge of the said A. B.; that the said C. D. was, by reason of his said detention, unable to withdraw himself from such charge and unable to provide himself with the necessaries of life; that the said A. B. was then and there under a legal duty to provide the said C. D. with the necessaries of life, but that the said A. B. not regarding his duty on that behalf, then and there unlawfully did refuse, omit and neglect, without lawful excuse, to provide the said C. D. with the necessaries of life, by means whereof the life of the said C. D. was and is endangered and his health was and is permanently injured (*or is likely to be permanently injured.*)

*Indictment under sections 242-244, against a father, for not providing necessaries to his child*— that A. B., the father of C.D., at on and on divers other days, after and before that day, unlawfully did refuse, neglect and omit, without lawful excuse, to provide for and find the said C.D., his child, with sufficient food, clothing and lodging, and other necessaries of life, the said C.D. being then and there a member of the household of his father, the said A.B., and being, then and there, under the age of sixteen years, and the said A.B. being then and there by law in duty bound to provide food, clothing and other necessaries of life for the said C.D., his child as aforesaid, by means of which refusal, neglect and omission, the life of the said C.D. was and is endangered, and the health of the said C.D. was and is (*or is likely to be*) permanently injured.

*Indictment under sections 242-244, against a husband for not providing necessaries for his wife*— that on at , and on divers days before and after, A.B. the husband of one C.D., being then and there under a legal duty to provide necessary food, clothing, lodging, and all other necessaries for the said C. D., his wife, unlawfully did refuse, neglect and omit without lawful excuse to provide for her the necessary food, clothing, lodging and other necessaries, so that the life of the said C.D. was and is thereby endangered, and her health was and is permanently injured (*or is likely to be permanently injured*).

*Indictment under sections 243-244 against a master for not providing an apprentice with necessary food.*— That J.S. on then being the master of J.N. his apprentice, the said J.N. being then under the age of 16 years, and the said J.S. having before the said day contracted to provide for the said J.N. as his apprentice as aforesaid, necessary food (*clothing or lodging*) unlawfully and without lawful excuse, did refuse, omit and neglect to provide the same, so that the life of the said J.N. was and is thereby endangered, (*or the health of the said J.N. has been or is likely to be permanently injured*). (*Add counts varying the statement of the injuries sustained*).

**245.** ABANDONING CHILDREN UNDER TWO YEARS.—Every one is guilty of an indictable offence and liable to three years' imprisonment who unlawfully abandons or exposes any child under the age of two years, whereby its life is endangered or its health is permanently injured. 55-56 V., c. 29, s. 216.

This clause is intended to provide for cases where children are abandoned or exposed under such circumstances that their lives or health may be, or are likely to be, endangered: see *R.* v. *Falkingham*, 11 Cox C. C. 475, Warb. Lead. Cas. 93; *R.* v. *White*, 12 Cox C. C. 83; *R.* v. *Hogan*, 2 Den. 277; *R.* v. *Cooper*, 1 Den. 459, 2 C. & K. 876; *R.* v. *Phillpot*, Dears. 179; *R.* v. *Gray*, Dears. & B. 303, which shew the necessity for this enactment.

*Indictment.*— unlawfully did abandon and expose a certain child 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 and is permanently injured*).

**246.** DUTY OF PERSONS UNDERTAKING ACTS DANGEROUS TO LIFE.—Every one who undertakes, except in cases of necessity, to administer surgical or medical treatment, or to do any other lawful act the doing of which is or may be dangerous to life, is under a legal duty to have and to use reasonable knowledge, skill and care in doing any such act, and is criminally responsible for omitting, without lawful excuse, to discharge that duty if death is caused by such omission. 55-56 V., c. 29, s. 212.

Abortion — Precautions against infection — Evidence: *R.* v. *Sparham*, 25 U. C. C. P. 143.

A person who practised as a "Christian Scientist," was called in by the parents of a child suffering from diphtheria. She was not retained as a medical attendant, and she did nothing but sit silently by the child, who subsequently died of the disease. She was then indicted for manslaughter. According to the medical evidence, the life of the child might have been saved or prolonged if the usual remedies had been applied. *Held*, that the accused could not be convicted under sec. 246 or under sec. 248. *Held*, also, dubitante, that the father of the child could not be indicted under sections 241 and 242 for not having supplied the child with a necessary of life, namely, medical attendance, nor could the accused be indicted as an accessory, under section 69, to the father's neglect. *R.* v. *Mary Ellen Beer* (1898), 32 C. L. J. 416.

**247.** DUTY OF PERSONS IN CHARGE OF DANGEROUS THINGS.—Every one who has in his charge or under his control anything whatever, whether animate or inanimate, or who erects, makes or maintains anything whatever which, in the absence of precaution or care, may endanger human life, is under a legal duty to take reasonable precautions against, and use reasonable care to avoid, such danger, and is criminally responsible for the consequences of omitting, without lawful excuse, to perform such duty. 55-56 V., c. 29, s. 213.

Corporation may be indicted for manslaughter and fined: *R.* v. *Union Coll. Co.* (1900), 3 Can. C. C. 523, 31 S. C. R. 81, affg. 7 B. C. R. 247; *R.* v. *Great West Laundry Co.* (1900) 3 Can. C. C. 521, 13 Man. 66, overruled.

As to a corporation committing a criminal nuisance, see *R.* v. *Toronto Ry. Co.* (1900), 4 Can. C. C. 4, cited under section 221.

**248.** DUTY TO AVOID OMISSIONS DANGEROUS TO LIFE.—Every one who undertakes to do any act, the omission to do which is or may be dangerous to life, is under a legal duty to

do that act, and is criminally responsible for the consequences of omitting, without lawful excuse, to perform that duty. 55-56 V., c. 29, s. 214.

See section 283.
See *R.* v. *Mary Ellen Beer* (1895), 32 C. L. J. 416, cited under section 246.

**249.** CAUSING BODILY HARM TO APPRENTICES OR SERVANTS.—Every one is guilty of an indictable offence and liable to three years' imprisonment who, being legally liable as master or mistress to provide for any apprentice or servant, unlawfully 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. 55-56 V., c. 29, s. 217.

Verdict of common assault may be given; *R.* v. *Bissonette*, Ramsay's App. Cas. 190.
*Indictment.*— that A.B. an then being the master of one J.N., his apprentice, and then being legally liable to provide for the said J.N. as his apprentice as aforesaid, unlawfully in and upon the said J.N. did make an assault, and him the said J.N. did then beat, wound and ill-treat, and thereby then did do, cause and occasion bodily harm to the said J.N. his apprentice as aforesaid, whereby the life of the said J.N. was endangered and his health has been and is permanently injured (*or is likely to be permanently injured*).

## *Homicide.*

**250.** DEFINITION.—Homicide is the killing of a human being by another, directly or indirectly, by any means whatsoever. 55-56 V., c. 29, s. 218.

Assault—Subsequent disease—Admission and weight of evidence: *R.* v. *Theal*, 7 S. C. R. 397, affg. 21 N. B. 449.
Malice—Continuance of quarrel: *R.* v. *McDowell*, 25 U. C. R. B. 108.
Motive—Insurance—Evidence of previous attempt by prisoner to insure another person not admissible: *R.* v. *Hendershott*, 26 O. R. 678. But on charge of wife murder evidence of various applications for insurance on her life was admitted: *R.* v. *Hammond*, 29 O. R. 211. And also where wife indicted for murder of husband by poison, evidence of attempt to poison her former husband: *R.* v. *Sternaman*, 29 O. R. 33.
Cause of death—Assault—Expert evidence: *R.* v. *Jones*, 28 U. C. R. 416.
Medical statement—Precautions — Evidence: *R.* v. *Sparham*, 25 U. C. C. P. 143.
Pagan Indian—Delusion: *R.* v. *Machekequonabe*, 28 O. R. 309.
Shooting with intent—Possession of burglar's tools—Evidence: *R.* v. *Mooney*, Q. R. 15 K. B. 57.

**251.** WHEN A CHILD BECOMES A HUMAN BEING.—A child becomes a human being within the meaning of this Act when it has completely proceeded, in a living state, from the body of its mother, whether it has breathed or not, whether it has an independent circulation or not, and whether the navel string is severed or not.

2. KILLING CHILD.—The killing of such child is homicide when it dies in consequence of injuries received before, during or after birth. 55-56 V., c. 29, s. 219.

See *R.* v. *Poulton*, 5 C. & P. 329; *R.* v. *Brain*, 6 C. & P. 349; *R.* v. *Handley*, 13 Cox C. C. 79. If a mortal wound be given to a child whilst in the act of being born, for instance upon the head as soon as the head appears and before the child has breathed, it may be murder if the child is afterwards born alive and dies thereof: *R.* v. *Senior*, 1 Moo. 346. But the entire child must actually have been born into the world in a living state, and the fact of its having breathed is not a conclusive proof thereof: *R.* v. *Sellis*, 7 C. & P. 850; *R.* v. *Crutchley*, 7 C. & P. 814. A child is born alive when it exists as a live child, breathing and living by reason of breathing through its own lungs alone, without deriving any of its living or power of living by or through any connection with its mother, but the fact of the child being still connected with the mother by the umbilical cord will not prevent the killing from being murder: *R.* v. *Crutchley*, 7 C. & P. 814; *R.* v. *Trilloe*, 2 Moo. 260; *R.* v. *West*, 2 C. & K. 784. See *post* s. 983, as to evidence on a charge of murder of a bastard child by his mother.

**252.** HOMICIDE WHEN CULPABLE.—Homicide may be either culpable or not culpable.

2. Homicide is culpable when it consists in the killing of any person, either by an unlawful act or by an omission, without lawful excuse, to perform or observe any legal duty, or by both combined, or by causing a person, by threats or fear of violence, or by deception, to do an act which causes that person's death, or by wilfully frightening a child or sick person.

3. OFFENCE.—Culpable homicide is either murder or manslaughter.

4. NO OFFENCE.—Homicide which is not culpable is not an offence. 55-56 V., c. 29, s. 220.

Under reasonable apprehension of injury to wife and family: *R.* v. *Theriault*, 32 N. B. 504.

As to what constitutes to inflict grievous bodily harm, see *R.* v. *Martin* (1881), 14 Cox, C. C. 633; 8 Q. B. D. 54; *R.* v. *Clarence*, 22 Q. B. D. 23.

**253.** Procuring Death by False Evidence.—Procuring by false evidence the conviction and death of any person by the sentence of the law shall not be deemed to be homicide. 55-56 V., c. 29, s. 221.

**254.** Death within a Year and a Day.—No one is criminally responsible for the killing of another unless the death takes place within a year and a day of the cause of death.

2. How Reckoned.—The period of a year and a day shall be reckoned inclusive of the day on which the last unlawful act contributing to the cause of death took place.

3. Idem.—Where the cause of death is an omission to fulfil a legal duty the period shall be reckoned inclusive of the day on which such omission ceased.

4. Idem.—When death is in part caused by an unlawful act and in part by an omission, the period shall be reckoned inclusive of the day on which the last unlawful act took place or the omission ceased, whichever happened last. 55-56 V., c. 29, s. 222.

**255.** Killing by Influence on the Mind.—No one is criminally responsible for the killing of another by any influence on the mind alone, nor for the killing of another by any disorder or disease arising from such influence, save in either case by wilfully frightening a child or sick person. 55-56 V., c. 29, s. 223.

In *R.* v. *Towers*, 12 Cox C. C. 530, a man was convicted of manslaughter for frightening a child to death. In *R.* v. *Dugal*, 4 Q. L. R. 350, a man in Quebec was convicted of manslaughter upon evidence of death from syncope caused by threats of personal violence and assault without battery on the deceased. If magnetism and hypnotism become more commonly practiced, the law of this section may have to be altered.

**256.** Acceleration of Death.—Every one who, by any act or omission, causes the death of another, kills that person, although the effect of the bodily injury caused to such other person be merely to accelerate his death while labouring under some disorder or disease arising from some other cause. 55-56 V., c. 29, s. 224.

No one has the right to shorten the life of another. A contrary rule, it is obvious, would lead to singular consequences. See 1 Hale, 428; *R.* v. *Martin*, 5 C. & P. 128.

**257.** DEATH WHICH MIGHT HAVE BEEN PREVENTED.—Every one who, by any act or omission, causes the death of another, kills that person, although death from that cause might have been prevented by resorting to proper means. 55-56 V., c. 29, s. 225.

Punishment of intoxicated soldier—Mode—Tieing up so as to cause death: *R.* v. *Stowe*, 2 N. S. R. 121.

**258.** CAUSING INJURY, THE TREATMENT OF WHICH BRINGS DEATH.—Every one who causes a bodily injury, which is of itself of a dangerous nature to any person, from which death results, kills that person, although the immediate cause of death be treatment proper or improper applied in good faith. 55-56 V., c. 29, s. 226.

See *R.* v. *Pym* (1846), 1 Cox C. C. 339; *R.* v. *Fletcher* (1841), 1 Russell on Crimes, 703; *R.* v. *Holland* (1841), 2 Moody & R. 351.

### *Murder and Manslaughter.*

**259.** INTENTION.—Culpable homicide is murder,—

(*a*) if the offender means to cause the death of the person killed;

(*b*) if the offender means to cause to the person killed any bodily injury which is known to the offender to be likely to cause death, and is reckless whether death ensues or not;

(*c*) if the offender means to cause death, or, being so reckless as aforesaid, means to cause such bodily injury as aforesaid to one person, and by accident or mistake kills another person, though he does not mean to hurt the person killed;

(*d*) if the offender, for any unlawful object, does an act which he knows or ought to have known to be likely to cause death, and thereby kills any person, though he may have desired that his object should be effected without hurting any one. 55-56 V., c. 29, s. 227.

**260.** CULPABLE HOMICIDE MURDER IN CERTAIN CASES.—In case of treason and the other offences against the King's authority and person mentioned in Part II., piracy and of-

fences deemed to be piracy, escape or rescue from prison or lawful custody, resisting lawful apprehension, murder, rape, forcible abduction, robbery, burglary or arson, culpable homicide is also murder, whether the offender means or not death to ensue, or knows or not that death is likely to ensue,—

(*a*) If Grievous Bodily Harm Intended—if he means to inflict grievous bodily injury for the purpose of facilitating the commission of any of the offences in this section mentioned, or the flight of the offender upon the commission or attempted commission thereof, and death ensues from such injury; or,

(*b*) Narcotic Administered—if he administers any stupefying or overpowering thing for either of the purposes aforesaid, and death ensues from the effects thereof; or,

(*c*) Wilfully Stopping the Breath—if he by any means wilfully stops the breath of any person for either of the purposes aforesaid, and death ensues from such stopping of the breath. 55-56 V., c. 29, s. 228.

The crime of murder is often proved by what is known as circumstantial evidence. The rule is that where a charge of murder depends upon such evidence it ought not only to be consistent with the prisoner's guilt, but inconsistent with any other rational conclusion. *R.* v. *Hodge* (1838), 2 Lewin's C. C. 227.

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 : *R.* v. *Dale*, 6 Cox C. C. 14.

See *R.* v. *Serné*, 16 Cox C.C. 311, Warb. Lead. Cas. 108, and remarks under s. 220, *ante;* also *R.* v. *Handley*, 13 Cox C.C. 79. *R.* v. *Charcoal* (1894), 34 C. L. J. 210; *R.* v. *Vian* (1898), R. J. Q. 7 Q. B. 362; *R.* v. *Davidson* (1898), 1 Can. C. C. 351; *R.* v. *Garrow & Creech* (1896), 1 Can. C. C. 246; *R.* v. *Theriault* (1894), 32 N. B. R. 504; *R.* v. *Williams* (1897), 28 O. R. 583; *R.* v. *Hendershott & Welter* (1895), 26 O. R. 678.

**261.** Homicide Reduced to Manslaughter. — Culpable homicide, which would otherwise be murder, may be reduced to manslaughter if the person who causes death does so in the heat of passion caused by sudden provocation.

2. Provocation Defined.—Any wrongful act or insult, of such a nature as to be sufficient to deprive an ordinary person of the power of self-control, may be provocation if the offender acts upon it on the sudden, and before there has been time for his passion to cool.

3, QUESTION OF FACT — PROVISO. — Whether or not any particular wrongful act or insult amounts to provocation, and whether or not the person provoked was actually deprived of the power of self-control by the provocation which he received, shall be questions of fact: Provided that no one shall be held to give provocation to another by doing that which he had a legal right to do, or by doing anything which the offender incited him to do in order to provide the offender with an excuse for killing or doing bodily harm to any person.

4. EXCEPTION—ILLEGAL ARREST.—The illegality of an arrest shall not necessarily reduce an offence of culpable homicide from murder to manslaughter, but if the illegality was known to the offender it may be evidence of provocation. 55-56 V., c. 29, s. 229.

Heat of passion—Continuance of quarrel—Malice: *R.* v. *McDowell*, 25 U. C. R. 108.

Legal right—Ejectment from house—Request to leave—Evidence: *R.* v. *Brennan*, 27 O. R. 659.

See *R.* v. *Fisher*, Warb. Lead. Cas. 112, and cases there cited, and ss. 45, 46, 220 *ante*; also a note to *R.* v. *Allen*, in appendix, Stephen's Cr. L. Art. 225.

**262.** MANSLAUGHTER.—Culpable homicide, not amounting to murder, is manslaughter. 55-56 V., c. 29, s. 230.

Assault—Subsequent disease—Evidence: *R.* v. *Theal*, 7 S. C. R. 397.

Inciting to drink—Intent—Murder or manslaughter: *R.* v. *Lortie*, 9 Q. L. R. 352.

Corporation—Charge of dangerous things: *R.* v. *Union Coll. Co.*, 31 S. C. R. 81.

Delusion — Pagan Indian: *R.* v. *Machekequonabe*, 28 O. R. 309.

Railway director cannot be indicted for manslaughter for omitting to do something not required by charter, though he had promised to do it: *Ex parte Brydges*, 18 L. C. J. 141.

**263.** PUNISHMENT FOR MURDER.—Every one who commits murder is guilty of an indictable offence and shall, on conviction thereof, be sentenced to death. 55-56 V., c. 29, s. 231.

Not triable at Quarter Sessions, section 583.

In murder, no count charging any other offence allowed, s. 856, and if evidence proves manslaughter the jury may return a verdict of not guilty of murder but guilty of manslaughter, s. 951; and, on an indictment for child murder, of concealment of birth, if the evidence warrants it, s. 952. As to a previous conviction or acquittal of murder being a bar to an indictment for manslaughter for the same homicide, and *vice versa*, see s. 909 *post*.

*Indictments*— that on A. murdered B. (schedule one form F. F., *post*;) under section 882.

**264.** ATTEMPTS.—Every one is guilty of an indictable offence and liable to imprisonment for life, who, with intent to commit murder,—

(*a*) ADMINISTERING POISON—administers any poison or other destructive thing to any person, or causes any poison or destructive thing to be so administered or taken, or attempts to administer it, or attempts to cause it to be so administered or taken; or,

(*b*) WOUNDING — by any means whatever wounds or causes any grievous bodily harm to any person; or,

(*c*) SHOOTING—shoots at any person, or, by drawing a trigger or in any other manner, attempts to discharge at any person any kind of loaded arms; or,

(*d*) DROWNING—attempts to drown, suffocate or strangle any person; or,

(*e*) DESTROYING BUILDING—destroys or damages any building by the explosion of any explosive substance; or,

(*f*) BURNING SHIPS—sets fire to any ship or vessel or any part thereof, or any part of the tackle, apparel or furniture thereof, or to any goods or chattels being therein; or,

(*g*) CASTING AWAY VESSEL—casts away or destroys any vessel; or,

(*h*) BY OTHER MEANS—by any other means attempts to commit murder. 55-56 V., c. 29, s. 232.

Not triable at quarter sessions, section 583. "Explosive substance" defined, s. 2; "loaded arms" defined s. 2.

*Indictment under (a) for administering poison with intent to murder.*— that J. S. on 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 unlawfully the said A. B. to kill and murder. (*Add counts stating that the defendant unlawfully, "did cause to be administered to" and unlawfully, "did cause to be taken by" a large quantity, 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."*) *Add a count with intent to commit murder.*

*Indictment under (a) for attempting to poison with intent*— unlawfully did attempt to administer (*attempt to administer to, or attempt to cause to be administered 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 unlawfully the said J. N. to kill and murder,

(*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.*")

If there be any doubt whether the poison was intended for A. B. or N. J. add a count, stating the intent to be to "commit murder" generally: *R.* v. *Ryan*, 2 M. & Rob. 213; *R.* v. *Duffin*, R. & R. 365.

*Indictment under* (c) *for shooting with intent to murder.*

a certain gun, then loaded with gunpowder and divers leaden shot, at and against one J. N. unlawfully did shoot, with intent thereby then unlawfully (*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.,*) under s. post.

*Indictment under* (c) *for attempting to shoot with intent, etc.*,— did, by drawing the trigger (drawing the trigger or in any other manner) of a certain pistol then loaded in the barrel with gun-powder and one leaden bullet (or with a ball cartridge) 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 maim,*) under s. 273.

*Indictment under* (d) *for attempting to drown with intent to murder.*— unlawfully did take one J. N. into both the hands of him the said J. S., 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 unlawfully attempt the said J. N. to drown and suffocate, with intent thereby then unlawfully the said J. N. to kill and murder. (*Add a count charging generally that the defendant did attempt to drown J. N. and counts charging the intent to be to commit murder.*)

*Indictment under* (e). that on J. S. unlawfully did, by the explosion of a certain explosive substance, that is to say gunpowder, destroy (*destroy and damage*) a certain building situate with intent thereby then unlawfully one J. N. to kill and murder (*Add a count, stating the intent to be generally "to commit murder."*)

*Indictment under* (f) *and* (g). unlawfully did set fire to (*cast away or destroy*) a certain ship called with intent thereby then to kill and murder one. (*Add a count stating the intent to "commit murder" generally.*)

*Indictment under* (h).— did, by then (*state the act*) attempt unlawfully one J. N. to kill and murder. (*Add a count charging the intent to be to commit murder.*)

**265.** LETTERS THREATENING MURDER.—Every one is guilty of an indictable offence and liable to ten years' imprisonment who sends, delivers or utters, or directly or indirectly causes to be received, knowing the contents thereof, any letter or writing threatening to kill or murder any person. 55-56 V., c. 29, s. 233.

Not triable at quarter sessions, section 583.

A verdict of attempt allowed, s. 949, if the evidence warrants it.

"Writing" defined, s. 2.

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. *R.* v. *Hunter*, 2 Leach, 631.

See *Ex parte Welsh* (1898), 2 Can. C. C. 35.

*Indictment.* that J. S. on at unlawfully did send to one J. N. a certain 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 And the jurors aforesaid that the said on at unlawfully did utter a certain writing (*as in the first count*).

**266.** PENALTY.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment, who,—

(*a*) CONSPIRING TO MURDER—Conspires or agrees with any person to murder or to cause to be murdered any other person, whether the person intended to be murdered is a subject of His Majesty or not, or is within His Majesty's dominions or not; or,

(*b*) COUNSELLING MURDER—counsels or attempts to procure any person to murder such other person anywhere, although such person is not murdered in consequence of such counselling or attempted procurement. 55-56 V., c. 29, s. 234.

Not triable at quarter sessions, section 583. The words in italics are new, and unnecessary. As to conspiracies generally: see remarks under s. 573.

See 1 Russ. 967; 3 Russ. 664; *R.* v. *Bernard*, 1 F. & F. 240; 2 Stephen's Hist. 12.

In *R.* v. *Banks*, 12 Cox C. C. 393, upon an indictment under this clause, the defendants were convicted of an attempt to commit the misdemeanour charged. In *R.* v. *Most* (1881), 14 Cox C. C. 583; L. R. 7 Q. B. D. 244, the defendant having written a newspaper article encouraging the murder of foreign potentates, was found guilty of an offence under the corresponding clause of the Imperial Act.

Would any one conspiring in Canada with another person in the United States to himself murder any one in the United States be subject to indictment under s. 266?

*Indictment.* that J. S., J. T., and E. T., on unlawfully and wickedly did conspire, confederate and agree together one J. N. unlawfully to kill and murder.

**267.** ACCESSORY AFTER THE FACT.—Every one is guilty of an indictable offence and liable to imprisonment for life, who is an accessory after the fact to murder. 55-56 V., c. 29, s. 235.

Not triable at quarter sessions, section 583. See remarks under s. 71, *ante*, and s. 575, *post*.

**268.** PUNISHMENT FOR MANSLAUGHTER.—Every one who commits manslaughter is guilty of an indictable offence and liable to imprisonment for life. 55-56 V., c. 29, s. 236.

*R.* v. *Morris*, 10 Cox C. C. 489 ; *R.* v. *Friel*, 17 Cox C. C. 325 ; see ss. 866 & 969, *post*.

*Indictment*,— that A. B. on at unlawfully did kill and slay one and thereby committed manslaughter.

*Suicide.*

**269.** AIDING OR COUNSELLING.—Every one is guilty of an indictable offence and liable to imprisonment for life who counsels or procures any person to commit suicide, actually committed in consequence of such counselling or procurement, or who aids or abets any person in the commission of suicide. 55-56 V., c. 29, s. 237.

If the suicide was not committed yet the inciting to it is an offence: *R.* v. *Gregory*, L. R. 1 C. C. R. 77; so is the conspiracy by two persons to commit suicide together, s. 527.

See *R.* v. *Dyson*, R. & R. 523; *R.* v. *Russell*, 1 Moo. 356. This last case applies only to an accessory, not to an aider and abettor: *R.* v. *Towle*, R. & R. 314.

A. and B. go out together with a gun to kill D. A. fires the shot, but his gun bursts and kills himself (A.). A. has committed suicide, and B. was aider and abettor to that suicide.

If one encourage another to commit suicide, and is present abetting him while he does so, such person would be indictable under this s. 269 for counselling the other to commit suicide.

At common law, if two persons mutually agreed to commit suicide together, and the means employed to produce death only took effect upon one of them, the survivor would be held to be guilty of the murder of the one who died, and therefore liable to be sentenced to death.

*R.* v. *Allison* (1838), 8 C. & P. 418.

*Indictment*,— that on at one A. D. committed suicide, and that on divers days before the said offence was committed by the said A. B., as aforesaid, C. D. did unlawfully move, procure, aid, counsel, hire and command the said A. B. the said offence and suicide to do and commit *(or, that C. D. was present and aiding and abetting the said A. B. in the commission of the said offence and suicide.)*

**270.** ATTEMPT.—Every one who attempts to commit suicide is guilty of an indictable offence and liable to two years' imprisonment. 55-56 V., c. 29, s. 238.

See *R.* v. *Burgess* (1862), 9 Cox C. C. 247.

*Indictment*,— that A. B. on unlawfully and wilfully did attempt and endeavour to unlawfully kill himself and thereby to commit suicide.

*Neglect in Childbirth and Concealing Dead Body.*

**271.** NEGLECTING TO OBTAIN ASSISTANCE IN CHILDBIRTH.—Every woman is guilty of an indictable offence who, with either of the intents in this section mentioned, being with child and being about to be delivered, neglects to provide reasonable assistance in her delivery, if the child is permanently injured thereby, or dies, either just before, or during, or shortly after birth, unless she proves that such death or permanent injury was not caused by such neglect, or by any wrongful act to which she was a party, and is liable,—

(*a*) PENALTY—If the intent of such neglect be that the child shall not live, to imprisonment for life;

(*b*) PENALTY—if the intent of such neglect be to conceal the fact of her having had a child, to imprisonment for seven years. 55-56 V., c. 29, s. 239.

See notes to section 251.

Under a charge of child murder the accused cannot be found guilty of the offence under s. 271. A verdict of concealment of birth may be given if the evidence warrants it. s. 951. The punishment would then be under next section.

If *R.* v. *Handley*, 13 Cox C.C. 79, is good law, the offence covered by this s. 271 would at common law, when the child dies after birth, be murder or manslaughter.

It is not easy to imagine a case where it would be possible to obtain a conviction under this section, where a child dies *before*, even if it is only *just before*, his birth. The expression itself "dies before his birth" is not a happy one; see s. 251, *ante*.

The words "unless she proves," etc., are utterly useless. Either the prosecutor's case must be proved or not. If it is, the jury must convict; if not, they must acquit; and it is not if it is proven that the death or injury was caused by the neglect.

*Indictment under (a).*— that A. B. on at a then and there being with child and about to be delivered, did unlawfully, with intent that her said child should not live, neglect to provide reasonable assistance in her delivery, whereby her said child was permanently injured, *(or died during or shortly after birth.)* A verdict of guilty under s.-s. (*b*) may be given upon this indictment if the evidence warrants it.

**272.** CONCEALING DEAD BODY OF CHILD.—Every one is guilty of an indictable offence and liable to two years' imprisonment, who disposes of the dead body of any child in any manner, with intent to conceal the fact that its mother was delivered of it, whether the child died before or during, or after birth. 55-56 V., c. 29, s. 240.

**A conviction for this offence may be given upon an indictment for child murder. s. 952.**

The enactment applies not only to a mother, but to every one who disposes of the dead body of a child with intent to conceal birth. The repealed clause had the words "by any *secret disposition*."

In *R.* v. *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, *R.* v. *Colmey* (1864), 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 disposition of the body is not material, and hiding it in a place from which a further removal was contemplated would support the indictment: *R.* v. *Goldthorpe*, 2 Moo. 244; *R.* v. *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: *R.* v. *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, that this was an offence within the statute: *R.* v. *Brown*, 11 Cox C. C. 517, Warb. Lead. Cas. 94.

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: *R.* v. *Cook*, 11 Cox C. C. 542.

In order to convict a woman of attempting to conceal the birth of her child, under s. 949, *post*, 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 in an inn, at *Stafford*, received by post, on the *28th of August, 1870, a Rugby newspaper with the Rugby post mark 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. In contained the dead body of a newly-born child, wrapped in *a Rugby Gazette, of August 27th, bearing Rugby postmark*. There is a railway from Stafford to Shrewsbury, but no proof was given of the woman having been at Stafford Station: Held, that this evidence was not sufficient 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: *R.* v. *Williams* (1871), 11 Cox C. C. 684.

Where death not proved conviction is illegal: *R.* v. *Bell*, 8 Ir. R. C. L. 542.

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, al-

though 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 sufficient to sustain an indictment against her for concealment of birth: *R.* v. *Bate*, 11 Cox C. C. 686.

A woman delivered of a child born alive endeavoured to conceal the birth thereof by depositing the child while alive in a corner of a field, when it died from exposure. *Held*, that she could not be indicted under the above section: *R.* v. *May*, 16 L. T. 362.

The prisoner, who lived alone, had placed the dead body of her new born child behind a trunk in the room she occupied, between the trunk and the wall. On being charged with having had a child she at first denied it. *Held*, sufficient to support a conviction for concealment of birth: *R.* v. *Piche* (1879), 30 U. C. C. P. 409.

See other cases under s. 94, *post*, and *R.* v. *Handley*, 15 Cox C. C. 79.

*R.* v. *Turner* (1839), 8 C. & P. 755; *R.* v. *Higley* (1830), 4 C. & P. 366; *R.* v. *Douglas* (1836), 1 Moody's C. C. 480.

*Indictment.*— that A. B., on was delivered of a child; and that subsequently, on , the said child having died, the said A. B. did unlawfully dispose of the dead body of the said child by secretly burying it with intent to conceal the fact that she had been delivered of it. (*State the means of concealment specially.*)

## *Bodily Injuries and Acts and Omissions Causing Danger to the Person.*

**273.** WOUNDING WITH INTENT.—Every one is guilty of an indictable offence and liable to imprisonment for life who, with intent to maim, disfigure or disable any person, or to do some other grievous bodily harm to any person, or with intent to resist or prevent the lawful apprehension or detainer of any person, unlawfully by any means wounds or causes any grievous bodily harm to any person, or shoots at any person, or by drawing a trigger, or in any other manner, attempts to discharge any kind of loaded arms at any person. 55-56 V., c. 29, s. 241.

"Loaded arms" defined, s. 2: see *R.* v. *Latimer*, 16 Cox, 70, Warb. Lead. Cas. 117; and *R.* v. *Clarence*, Warb. Lead. Cas. 130, 22 Q. B. D. 23.

An indictment under the English clause charging that the prisoner did "inflict" grievous bodily harm instead of "cause" is sufficient: *R.* v. *Bray*, 15 Cox C. C. 197.

On indictment for wounding with intent, a verdict of "guilty without malicious intent" is an acquittal: *R.* v. *Slaughterwhite*, 35 S. C. R. 607.

An indictment under the repealed act, charging the act to have been done "feloniously, wilfully and maliciously" was held bad, the words of the statute, then being "unlawfully and maliciously:": *R.* v. *Ryan*, 2 Moo. 15. In practice the first count of the indictment

is generally for wounding with intent to murder. These counts are allowed to be joined in the same indictment.

This clause includes every wounding done without lawful excuse with any of the intents mentioned in it: from the act itself malice will be inferred: *R.* v. *Latimer*, 17 Q. B. D. 359, Warb. Lead. Cas. 117, and cases there cited.

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.* v. *Briggs*, 1 Moo. 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.

In order to convict of the offence 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 defendants cut the prosecutor with intent to disable, and to do some previous bodily harm, it will not be supported by proof of an intention to prevent a lawful apprehension: *R.* v. *Duffin*, R. & R. 365; *R.* v. *Boyce*, 1 Moo. 29; unless for the purpose of affecting his escape the defendant also harboured one of the intents stated in the indictment: *R.* v. *Gillow*, 1 Moo. 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.* v. *Cox*, R. & R. 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.

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 somebody else, and that he intended to wound another person: *R.* v. *Stopford*, 11 Cox C. C. 643; see *R.* v. *Hunt*, 1 Moo. 93.

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: *R.* v. *Fretwell*, L. & C. 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.* v. *Cox*, R. & R. 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 de-

fendant 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 upstairs 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: *R.* v. *Marsden*, 11 Cox C. C. 90.

Upon an indictment for an assault with intent to do grievous bodily harm a plea of guilty to a common assault may be received if the prosecution consents: *R.* v. *Roxburgh*, 12 Cox C. C. 8.

Upon an indictment for any offence under this clause the jury may find a verdict of guilty of an attempt to commit it, s. 949.

A verdict of common assault may also be found, s. 951.

And, if the prosecutor fail in proving the intent, the defendant may be convicted of unlawfully wounding, and sentenced under the next session.

And where three are indicted for malicious wounding with intent to do grievous bodily harm the jury may convict two of the offence under s. 273, and the third of unlawfully wounding under s. 274: *R.* v. *Cunningham*, Bell. 72.

Where a prisoner was indicted for feloniously wounding with intent to do grievous bodily harm: *Held*, that the intention might be inferred from the act: *R.* v. *LeDante*, 2 G. & O. (N. S.) 401.

L. was tried on an indictment under 32 & 33 V. c. 20, containing four counts. The first charged that he did unlawfully, etc., kick, strike, wound and do grievous bodily harm to W., with intent, etc., to maim; the second charged an assault, as in first, with intent to disfigure; the third charged intent to disable; the fourth charged the intent to do some grievous bodily harm. The prisoner was found guilty of a common assault. *Held*, that L. was rightly convicted, s. 51 of the Act, 32 & 33 V. c. 20, authorizing such conviction: *R.* v. *Lackey*, 1 P. & B. (N. B.) 194.

An indictment for doing grievous bodily harm, which alleged that the prisoner did "feloniously" stab, cut and wound, etc., instead of alleging, in the terms of the 17th section of 32 & 33 V. c. 20, that he did "unlawfully" and "maliciously" stab, etc., is good: a defective indictment is amendable under 32 & 33 V. c. 29, s. 32, and any objection to it for any defect apparent on the face thereof must be taken by demurrer or motion to quash the indictment before the defendant has pleaded and not afterwards: *R.* v. *Flynn*, 2 P. & B. (N. B.) 321.

*Indictment for wounding with intent to maim.*— that J.S. on one J.N. unlawfully did wound, with intent in so doing him the said J. N. thereby there to maim *(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.)*

**274.** WOUNDING—BODILY HARM.—Every one is guilty of an indictable offence and liable to three years' imprisonment who unlawfully wounds or inflicts any grievous bodily harm upon any other person, either with or without any weapon or instrument. 55-56 V., c. 29, s. 242.

See remarks under preceding section and *R.* v. *Martin*, 8 Q. B. D. 54, and *R.* v. *Lee* (1897), 2 Can. C. C. 233.

If any one, intending to wound A., accidentally wounds B., he is guilty of an offence under this clause: *R.* v. *Latimer*, 16 Cox C. C. 70 17 Q. B. D. 359.

Upon an indictment for assaulting, beating, wounding and inflicting grievous bodily harm, the prisoner may be convicted of a common assault: *R.* v. *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: *R.* v. *Yeadon*, L. & C. 81.

In *R.* v. *Taylor*, 11 Cox C. C. 261, the indictment was as fellows: "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 *R.* v. *Canwell*, 11 Cox C. C. 263, a verdict of common assault was also given upon an indictment containing only one count for maliciously and unlawfully inflicting grievous bodily harm and the conviction was affirmed upon a case reserved.

The defendant may be found guilty of the attempt to commit the offence charged, s. 949.

To cause any one by threats of violence to do an act, under the impulsion of fright, by which he is grievously injured, is a criminal offence under this section: *R.* v. *Halliday*, 6 Times L. R. 109.

A man does not inflict grievous bodily harm on his wife within the meaning of this section by communicating to her a venereal disease: *R.* v. *Clarence*, 16 Cox C. C. 511, 22 Q. B. D. 23, Warb. Lead. Cas. 130; see *Hegarty* v. *Shine*, 14 Cox C. C. 124. A previous conviction for an assault bars an indictment for unlawful wounding based on the same facts: *R.* v. *Miles*, 17 Cox C. C. 9.

*Indictment for unlawfully wounding.*— one J.N. unlawfully did wound (*wound or inflict any grievous bodily harm upon*).

(*Add a count charging that the defendant "did inflict grievous bodily harm upon J.N.*")—

**275.** PENALTY.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who wilfully,—

(*a*) SHOOTING AT THE KING'S VESSELS—shoots at any vessel belonging to His Majesty or in the service of Canada; or,

(*b*) WOUNDING PUBLIC OFFICER—maims or wounds any public officer engaged in the execution of his duty or any person acting in aid of such officer. 55-56 V., c. 29, s. 243.

Public officer defined section 2.

**276.** PENALTY—OFFENCE.—Every one is guilty of an indictable offence and liable to imprisonment for life and to be whipped, who with intent thereby to enable himself or any

other person to commit, or with intent thereby to assist any other person in committing, any indictable offence,—

(*a*) By Strangling — 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; or,

(*b*) By Narcotic—unlawfully applies or administers to, or causes to be taken by, or attempts to apply or administer to, or attempts or causes to be administered to or taken by, any person, any chloroform, laudanum or other stupefying or overpowering drug, matter or thing. 55-56 V., c. 29, s. 244.

In certain cases a verdict of common assault may be given upon an indictment for this offence, s. 951.

*Indictment for attempting to choke.*— unlawfully did attempt by them (*state the means*), to choke, suffocate and strangle one J.N. (*suffocate or strangle any person, or* ) with intent thereby 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., unlawfully to steal. (*Add counts varying the statement of the overt acts, and of the intent.*)

*Indictment for attempting to drug.*— 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.

As to what constitutes an "administering or attempting to administer": see remarks under s. 264, *ante*.

**277.** Administering Poison to Endanger Life.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who unlawfully administers to, or causes to be administered to or taken by any other person, any poison or other destructive or noxious thing, so as thereby to do such person any grievous bodily harm. 55-56 V., c. 29, s. 245.

On a charge of murder by poison, evidence is admissible of the administration of the same kind of poison by the accused to another person, as proving intent; and evidence of similar symptoms of arsenical poison attending the death of the prisoner's former husband is likewise admissible on her trial for the alleged murder of her second husband for poison. *R.* v. *Sternaman* (1897), 1 Can. C. C. 1.

See also *Makin* v. *Attorney-General for New South Wales*, L. R. (1894), A. C. 57, *R.* v. *Geering* (1849), 18 L. J. M. C. 215; *R.* v. *Garner* (1863), 3 F. & F. 681, 4 F. & F. 346; *R.* v. *Gray* (1866), 4 F. & F. 1102; *R.* v. *Heeson* (1878), 14 Cox C. C. 40; *R.* v. *Flannagan* (1884), 15 Cox C. C. 403.

**278.** ADMINISTERING POISON WITH INTENT TO INJURE.—Every one is guilty of an indictable offence and liable to three years' imprisonment who unlawfully administers to, or causes to be administered to or taken by, any other person any poison or other destructive or noxious thing with intent to injure, aggrieve or annoy such person. 55-56 V., c. 29, s. 246.

Words imputing the commission of any of the offences specified in section 277 and 278, are actionable without proof of special damage. *Gamble* v. *Hirchfield* (1894), 26 N. S. R. 486.

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 s. 278: *R.* v. *Wilkins* (1861), L. & C. 89, 31 L. J. M. C. 72.

If the poison is administered merely with intent to injure, aggrieve or annoy, which in itself would merely amount to an offence under s. 278, yet if it does, in fact, inflict grievous bodily harm, this amounts to an offence under s. 277: *Tully* v. *Corrie* (1867), 10 Cox C. C. 640.

But to constitute this offence the thing administered must be noxious in itself, and not only when taken in excess: *R.* v. *Hennah* (1877), 13 Cox C. C. 547; *R.* v. *Cramp* (1880), L. R. 5 Q. B. D. 307.

"An intent to injure, in strictness, means more than an intent to do harm. It connotes an intent to do wrongful harm": *per* Bowen, L.J., *Mogul Co.* v. *McGregor*, 23 Q. B. D. 598.

Under an indictment under s. 277 the jury may find the prisoner guilty of the offence provided for in s. 278.

*Indictment under s. 277 for administering poison so as to endanger life.*— unlawfully 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.

*Add a count stating that the defendant "did cause to be taken by J.N. a large quantity of " 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."*

**279.** CAUSING BODILY INJURIES BY EXPLOSIVES.—Every one is guilty of an indictable offence and liable to imprisonment for life who unlawfully and by the explosion of an explosive substance burns, maims, disfigures, disables or does any grievous bodily harm to any person. 55-56 V., c. 29, s. 247.

*Indictment under s. 279 for burning by gunpowder.*— unlawfully, by the explosion of a certain explosive substance, that is to say, gunpowder, one J.N. did burn (*Add counts varying the statement of the injury, according to circumstances.*)

Indictment charged defendants with having unlawfully, knowingly and wilfully deposited in a room in a lodging or boarding house (described) in the city of Halifax, near to certain streets or thoroughfares and in close proximity to divers dwelling houses, excessive quan-

tities of a dangerous and explosive substance called dynamite, in excessive and dangerous quantities, by reason whereof the inhabitants, etc., were in great danger: *Held*, good, without alleging carelessness, or that the quantities deposited were so great that care would not produce safety: *R.* v. *Holmes*, 5 R. & G. (N.S.) 498.

**280.** INTENT TO HARM.—Every one who unlawfully,—

(*a*) with intent to burn, maim, disfigure or disable any person, or to do some grievous bodily harm to any person, whether any bodily harm is effected or not,

(i) EXPLOSIVES—causes any explosive substance to explode,

(ii) SENDING EXPLOSIVES—sends or delivers to, or causes to be taken or received by, any person any explosive substance, or any other dangerous or noxious thing,

(iii) APPLYING TO PERSON EXPLOSIVES—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; or,

(*b*) THROWING EXPLOSIVES AGAINST VESSEL—places or throws in, into, upon, against or near any building, ship or vessel an 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;

PENALTY—is guilty of an indictable offence and liable, in cases within paragraph (*a*) of this section, to imprisonment for life, and in cases within paragraph (*b*) of this section to fourteen years' imprisonment. 55-56 V., c. 29, s. 248.

"Explosive substance" defined, section 2.

In *R.* v. *Crawford*, 1 Den. 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 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, the judges held that the conviction was right.

In *R.* v. *Murrow*, 1 Moo. 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. IV. c. 31, s. 12; but it would now fall under this statute. The question of intent is for the jury: *R.* v. *Saunders*, 14 Cox C. C. 180.

*Indictment under s. 280 for sending an explosive substance with intent, etc.* unlawfully 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).* *(Add counts varying the injury and the intent.)*

*Indictment under s. 280 for throwing corrosive fluid, with intent, etc.* unlawfully 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.)*

**281.** SETTING SPRING-GUNS AND MAN-TRAPS.—Every one is guilty of an indictable offence and liable to five years' imprisonment who 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.

2. PERMITTING THE SAME TO BE SET.—Every one who knowingly and wilfully permits any such spring-gun, man-trap or other engine which has been set or placed by some other person, in any place which is in, or afterwards comes into, his possession or occupation, to continue so set or placed, shall be deemed to have set or placed such gun, trap or engine with such intent as aforesaid.

3. EXCEPTION.—This section does not extend to any gin or trap usually set or placed with the intent of destroying vermin or noxious animals. 55-56 V., c. 29, s. 249.

As to what instruments do, or do not, come within the terms of this section, see *Jordin* v. *Crump* (1841), 8 M. & W. 728; *Wootton* v. *Dawkins*, 2 C. B. N. S. 412; *Bird* v. *Holbrook*, 4 Bing. 628; *Ilott* v. *Wilkes*, 3 B. & Ald. 304.

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 Russ. 1052.

The instrument must be calculated to destroy life or 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 Russ. 1053.

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.

*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 any trespasser who might come in contact therewith.

**282.** PENALTY.—Every one is guilty of an indictable offence and liable to imprisonment for life who unlawfully,—

(*a*) INTENT TO INJURE TRAVELLER—with intent to injure or to endanger the safety of any person travelling or being upon any railway,

(i) STONE ON RAILWAY—puts or throws upon or across such railway any wood, stone, or other matter or thing,

(ii) REMOVING SLEEPER OR RAIL—takes up, removes or displaces any rail, railway switch, sleeper or other matter or thing belonging to such railway, or injures or destroys any track, bridge or fence of such railway, or any portion thereof,

(iii) DIVERTING POINTS, ETC.—turns, moves or diverts any point or other machinery belonging to such railway,

(iv) REMOVING SIGNAL—makes or shows, hides or removes any signal or light upon or near to such railway,

(v) OTHERWISE—does or causes to be done any other matter or thing with such intent; or,

(*b*) THROWING ANYTHING AT CAR, ETC.—throws, or causes to fall or strike at, against, into or upon any engine, tender, carriage or truck used in motion 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 truck forms part. 55-56 V., c. 29, s. 250.

Section 577 deals with the offence of endangering property by mischief on railways.

**283.** WANTONLY ENDANGERING SAFETY OF PERSONS ON RAILWAYS.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, by any unlawful act, or by any wilful omission or neglect of duty, endangers or causes to be endangered the safety of any person conveyed or being in or upon a railway, or aids or assists therein. 55-56 V., c. 29, s. 251.

A verdict of attempt may be given, if the evidence warrants it, s. 949.

An acquittal of the offence under s. 282 was no bar to an indictment for the offence under s. 283: *R.* v. *Gilmore*, 15 Cox C. C. 85; but now it would be as a verdict for the offence provided for in s. 283 can be given on an indictment under s. 282: s. 951 *post*.

See *post*, remarks under s. 489. The forms of indictments there given may form a guide for indictments under the present section.

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.

In *R.* v. *Bradford* (1860), 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 *R.* v. *Bowray*, 10 Jur. 211, 1 Russ. 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: *R.* v. *Upton*, 5 Cox C. C. 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: *R.* v. *Monaghan*, 11 Cox C. C. 608.

*Indictment under s. 282 (b).* that on at A.B. unlawfully did throw (*or cause to fall or strike against, into or upon*) upon a certain carriage (*engine, tender, carriage, or truck*) then and there used upon a certain railway there called a certain large piece of wood (*any wood, stone, or other matter or thing*) with intent thereby then and there to endanger the safety of one C. D., then and there being in (*in or upon*) the said carriage (*engine, tender, carriage or truck*).

*Indictment under c. 283 for endangering by wilful neglect the safety of railway passengers.* that J. S. on unlawfully did, by a certain wilful omission or 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 . (*Add counts varying the statement of defendant's duty, etc.*)

**284.** CAUSING BODILY INJURY.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, by any unlawful act, or by doing negligently or omitting to do any act which it is his duty to do, causes grievous bodily injury to any other person. 55-56 V., c. 29, s. 252.

A corporation may be indicted for manslaughter and fined. R v. *Union Coll. Co.* (1900), 3 Can. C. C. 523, 31 S. C. R. 81; *R.* v. *Great West Laundry Co.*, 13 Man. L. R. overruled.

The omission of an Electric Railway Co. operating their cars upon a highway to use reasonable precautions so as to avoid endangering the lives of the public using the highway in common with the company, is a breach of a legal duty constituting a criminal nuisance; *R.* v. *Toronto R. W. Co.* (1900), 4 Can. C. C. 4; *R.* v. *Woodstock Electric Light Co.* (1898), 4 Can. C. C. 107.

Lord Blackburn said in the *Pharmaceutical Society* v. *London and Provincial Supply Association, Ltd.* (1880), L. R., 5 A. C. at pages 869-870: "I quite agree that a corporation cannot, in one sense, commit a crime. A corporation cannot be imprisoned, if imprisonment be the sentence for the crime; a corporation cannot be hanged or put to death if that be the punishment for the crime; and, so, in those senses, a corporation cannot commit a crime. But a corporation may be fined, and a corporation may pay damages; and, therefore, I must totally dissent, notwithstanding what Lord Bramwell said, or is reported to have said. I must really say that I do not feel the slightest doubt upon that part of the case."

In such a case since a corporation cannot suffer the punishment of imprisonment laid down in this section, it may be fined under section 920, and the amount of the fine is in the discretion of the Court by virtue of the provisions of section 1029.

**285.** INJURING PERSONS BY FURIOUS DRIVING. — Every one is guilty of an indictable offence and liable to two years' imprisonment who, having the charge of any carriage or vehicle, by wanton or furious driving, or racing or other wilful misconduct, or by wilful neglect, does or causes to be done any bodily harm to any person. 55-56 V., c. 29, s. 253.

See remarks under s. 283 as to the word "wilful," and under s. 295 as to the words "bodily harm."

This section includes all carriages and vehicles of every description, both public and private. *Wilful* means *voluntary*: Greaves, Cons. Acts, 63.

*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.

**286.** PENALTY.—Every one is guilty of an indictable offence and liable to seven years' imprisonment,—

(*a*) IMPEDING SHIPWRECKED PERSON—who prevents or impedes, or endeavours to prevent or impede, any shipwrecked person in his endeavour to save his life; or,

(*b*) IMPEDING PERSON ASSISTING—who without reasonable cause prevents or impedes, or endeavours to prevent or impede, any person in his endeavour to save the life of any shipwrecked person. 55-56 V., c. 29, s. 254; 56 V., c. 32, s. 1.

"Shipwrecked person" defined, s. 2.

*Indictment.*— that before and at the time of the committing of the offence hereinafter mentioned, to wit, on a certain ship was wrecked, stranded and cast on shore, and that A.B., on the day and year aforesaid, did unlawfully prevent and impede (*or endeavour to prevent and impede*) one C.D., a shipwrecked person then endeavouring to save his life from the said ship so wrecked, stranded and cast on shore, in his endeavours to save his life.

**287.** PENALTY.—Every one is guilty of an offence and liable, on summary conviction, to a fine or imprisonment with or without hard labour, or both, who,—

(*a*) HOLE IN ICE UNGUARDED—cuts or makes, or causes to be cut or made, any hole, opening, aperture or place, of sufficient size or area to endanger human life, through the ice on any navigable or other water open to or frequented by the public, and leaves such hole, opening, aperture or place, while it is in a state dangerous to human life, whether the same is frozen over or not, uninclosed by bushes or trees or unguarded by a guard or fence, of sufficient height and strength to prevent any person from accidentally riding, driving, walking, skating or falling therein; or,

(*b*) UNUSED MINE UNGUARDED—being the owner, manager or superintendent of any abandoned or unused mine or quarry or property upon or in which there is any excavation of a sufficient area and depth to endanger human life, leaves the same unguarded and uninclosed by a guard or fence of sufficient height and strength to prevent any person from accidentally riding, driving, walking or falling therein; or,

(*c*) NEGLECTS TO MAKE INCLOSURE—omits within five days after conviction of any such offence to so guard or

inclose the same or to construct around or over such exposed opening or excavation a guard or fence of such height and strength.

2. NEGLECT TO GUARD HOLE.—Every one whose duty it is to guard such hole, opening, aperture or place, is guilty of manslaughter if any person loses his life by accidentally falling therein while the same is so unguarded or uninclosed. 55-56 V., c. 29, s. 255.

This sub-section (*b*) provides for what would be manslaughter under s. 252, or at common law.

**288.** SENDING UNSEAWORTHY SHIPS TO SEA.—Every one is guilty of an indictable offence and liable to five years' imprisonment who sends, or attempts to send, or is a party to sending, a ship registered in Canada to sea, or on a voyage on any of the inland waters of Canada, or on a voyage from any port or place on the inland waters of Canada to any port or place on the inland waters of the United States, or on a voyage from any port or place on the inland waters of the United States to any port or place on the inland waters of Canada, in such an unseaworthy state, by reason of overloading or underloading or improper loading, or by reason of being insufficiently manned, or from any other cause, that the life of any person is likely to be endangered thereby, unless he proves that he used all reasonable means to ensure her being sent to sea or on such voyage in a seaworthy state, or that her going to sea or on such voyage in such unseaworthy state was, under the circumstances, reasonable and justifiable. 55-56 V., c. 29, c. 256; 56 V., c. 32, s. 1.

**289.** TAKING SAME TO SEA.—Every one is guilty of an indictable offence and liable to five years' imprisonment who, being the master of a ship registered in Canada, knowingly takes such ship to sea, or on a voyage on any of the inland waters of Canada, or on a voyage from any port or place on the inland waters of Canada to any port or place on the inland waters of the United States, or on a voyage from any port or place in the United States to any port or place on the inland waters of Canada, in such an unseaworthy state, by reason of overloading or underloading or improper loading, or by reason of being insufficiently manned, or from any

other cause, that the life of any person is likely to be endangered thereby, unless he proves that her going to sea or on such voyage is such unseaworthy state was, under the circumstances, reasonable and justifiable. 55-56 V., c. 29, s. 257.

By s. 595, no prosecution is allowed for the offences under s. 288 and s. 289 without the consent of the Minister of Marine and Fisheries. This consent must precede the information or complaint before the magistrate, when prosecution begins by information or complaint.

*Assaults.*

**290.** DEFINITION.—An assault is the act of intentionally applying force to the person of another, directly or indirectly, or attempting or threatening, by any act or gesture, to apply force to the person of another, if the person making the threat has, or causes the other to believe, upon reasonable grounds, that he has present ability to effect his purpose, and in either case, without the consent of the other or with such consent, if it is obtained by fraud. 55-56 V., c. 29, s. 258.

A prisoner indicted for rape may be found guilty of common assault, though the complaint or information is not laid within six months, as provided in s. 1142: *R.* v. *Edwards* (1898), 29 O. R. 451.

Cannot convict of, on indictment for murder or manslaughter: *R.* v. *Ganes*, 22 U. C. C. P. 185; *R.* v. *Dingman*, 22 U. C. R. 283; *R.* v. *Smith*, 34 U. C. R. 283.

Firing pistol: *R.* v. *Cronan*, 24 U. C. C. P. 106

Abusive language and gestures: *R.* v. *Harmer*, 17 U. C. R. B. 555.

Assault may be committed though party assaulted consented to fight: *R.* v. *Buchanan* (1898), 12 Man. 190, 1 Can. C. C. 442.

**291.** COMMON ASSAULTS.—Every one who commits a common assault is guilty of an indictable offence and liable, if convicted upon an indictment, to one year's imprisonment, or to a fine not exceeding one hundred dollars, and on summary conviction to a fine not exceeding twenty dollars and costs, or to two months' imprisonment, with or without hard labour. 55-56 V., c. 29, s. 265.

See s. 122, *ante*, as to pointing firearms at any person, and s. 290 as to definition of an assault.

Civil action lies after conviction: *Marchesault* v. *Gregoire*, 18 L. C. J. 140; 4 R. L. 541.

By policeman—Liability of corporation: *City of Montreal* v. *Doolin*, 13 L. C. J. 71; 18 L. C. J. 124.

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; see note to *R.* v. *Read*, 1 Den. 377.

Mere words will not amount to an assault, though perhaps they may in some cases serve to explain a doubtful action: 1 Burn 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 D. 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: *Stephens* v. *Myers*, 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* v. *Coker*, 13 C. B. 950.

So riding after a person and obliging him to run away into a garden to avoid being beaten is an assault: *Mortin* v. *Shoppee*, 3 C. & P. 373.

If resistance be prevented by fraud it is an assault. If a man therefore, have connection with a married woman, under pretense of being her husband, he is guilty of an assault: *R.* v. *Williams*, 8 C. & P. 286; *R.* v. *Saunders*, 8 C. & P. 265; now, of rape: s. 298, *post*.

An indictment declaring that the prisoner did "beat, wound and ill-treat" A. was held to be substantially an indictment for a common assault: *R.* v. *Shannon*, 23 N. B. Rep. 1.

If the charge is, as under s. 732, *post*, before the magistrate on a legal complaint, and the evidence goes to prove an offence committed which he has no jurisdiction to hear and determine, as if, on a complaint of an assault, the evidence go to shew 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* v. *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 *R.* v. *Walker*, 2 M. & Rob. 446, Coltman, J., gave the same interpretation to the clause.

In *R.* v. *Elrington*, 1 B. & S. 688, it was held that the magistrate's certificate of dismissal, as under ss. 733, 734 *post*, is a bar to an indictment for an unlawful assault occasioning actual bodily harm, arising out of the same circumstances: see *Wemyss* v. *Hopkins*, L. R. 10 Q. B. 378.

In *R.* v. *Stanton*, 5 Cox C. C. 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.

In *R.* v. *Miles*, 17 Cox C. C. 9 Warb. Lead. Cas. 320, a conviction of assault was held to be, at common law, a bar to a subsequent indictment for unlawful wounding: see ss. 734 and 1079, *post*. See *Read* v. *Nutt*, 17 Cox C.C. 86, 24 Q.B.D. 669, as to a magistrate granting a certificate illegally.

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: *R.* v. *Morris*, 10 Cox C. C. 480; *R.* v. *Bassett*, Greaves' Cons. Acts, 72; *R.* v. *Friel*, 17 Cox C. C. 325.

Where an assault charged in an indictment and that referred to in the certificate of the fact of a complaint having been made and of 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 a summons having been issued is sufficient evidence of those facts: *R.* v. *Westley*, 11 Cox C. C. 139.

When a question of title to lands arises 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: *R.* v. *Pearson*, 11 Cox C. C. 493; s. 707, *post*.

A person making a *bona fide* claim of right to be present as one of the public in a law court at the hearing of a suit is not justified in committing an assault upon a police constable and an official who endeavours to remove him. Such a claim of right does not oust the jurisdiction of the magistrate who has to try the charge of assault, and he may refuse to allow cross-examination and to admit evidence in respect of such a claim: *R.* v. *Eardly*, 49 J. P. 551.

By s. 732, *post*, a magistrate cannot now try summarily a charge of assault if either the person aggrieved or the accused objects thereto.

*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 ill-treat, and then and there to him other wrongs and injuries did.

**292.** OFFENCE—PENALTY.—Every one is guilty of an indictable offence and liable to two years' imprisonment, and to be whipped, who,—

(*a*) INDECENT ASSAULT ON FEMALE—indecently assaults any female; or,

(*b*) CONSENT PROCURED BY FRAUD—does anything to any female by her consent which but for such consent would be an indecent assault, if such consent is obtained by false and fraudulent representations as to the nature and quality of the act. 55-56 V., c. 29, s. 259.

See s. 1003, *post*, as to evidence of young children upon a charge of an indecent assault.

Upon the trial of the prisoner, a school teacher, for an indecent assault upon one of the scholars, it appeared that he forbade the prosecutrix telling her parents what had happened, and they did not hear of it for two months. After the prosecutrix had given evidence of the assault evidence was tendered of the conduct of the prisoner towards her subsequent to the assault: *Held*, that the evidence was admissible as tending to show the indecent quality of the assault, and as being, in effect, a part or continuation of the same transaction as that with which the prisoner was charged: *R.* v. *Chute*, 46 U. C. R. 555; see *R.* v. *Drain*, under s. 295, *post*.

As to sub-section (*b*) of s. 292, see *R.* v. *Bennett*, 4 F. & F. 1105; *R.* v. *Case*, 1 Den. 580; *R.* v. *Clarence*, 16 Cox C. C. 511, 22 Q. B. D. 23, Warb. Lead. Cas. 130.

Also see *R.* v. *Graham* (1899), 3 Can. C. C. 22.

*Indictment.*— one A. D. a female, 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.

**293.** INDECENT ASSAULT ON MALES.—Every one is guilty of an indictable offence and liable to ten years' imprisonment, and to be whipped, who assaults any person with intent to commit sodomy or who, being a male, indecently assaults any other male person. 55-56 V., c. 29, s. 260; 56 V., c. 32, s. 1.

Attempt to commit sodomy is provided for by s. 203.

See *ante*, notes under ss. 202, 203, 206, and *post*, under s. 294.

Cannot be committed by boy under fourteen, but, if act was against will of other party he could be convicted of assault. *R.* v. *Harlten*, 30 N. S. R. 317.

An indictment under this clause is defective even after verdict if it does not aver in express terms that the accused and the assaulted party are males: *R.* v. *Montminy*, on a case reserved, Q. B. Quebec, May, 1893.

See form, *ante*, under s. 206.

**294.** CONSENT OF CHILD UNDER FOURTEEN NO DEFENCE.—It is no defence to a charge or indictment for any indecent assault on a young person under the age of fourteen years to prove that he or she consented to the act of indecency. 55-56 V., c. 29, s. 261.

This enactment applies to assaults on males as well as on females: *R.* v. *Mchegan*, 7 Cox C. C. 145; *R.* v. *Johnson*, L. & C. 632, and that class of cases are not now law: see *R.* v. *Brice*, 7 Man. L. R. 627.

This enactment applies to all offences which include an indecent assault.

**295.** ASSAULT WITH BODILY HARM.—Every one who commits any assault which occasions actual bodily harm is guilty of an indictable offence and liable to three years' imprisonment. 55-56 V., c. 29, s. 262.

In *R.* v. *Clarence*, 16 Cox C. C. 511; 22 Q. B. D. 23, Warb. Lead. Cas. 130, it was held that a husband who communicates a venereal disease to his wife cannot be indicted for causing her actual bodily harm.

In a prosecution under this section it is improper to exclude evidence of statements sworn to by a witness for the prosecution at a preliminary inquiry, the record of the depositions upon which had been lost, as to what was said by the accused at the time of the assault, such statements of the witness having had reference to statements of the accused forming a part of the *res gestae*.

*R.* v. *Troop* (1898), 2 Can. C. C. 22.

The defendant may be convicted of a common assault upon an indictment for occasioning actual bodily harm: *R.* v. *Oliver*, Bell C. C. 287; *R.* v. *Yeadon*, L. & C. 81; 713, *post*.

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.* v. *Sparrow*, Bell C. C. 298.

A statement by the man assaulted, made immediately after the assault and in presence of the accused, was held admissible: *R.* v. *Drain*, 8 Man. L. R. 535.

See *Neville* v. *Ballard* (1897), 28 O. R. 588.

See also *Miller* v. *Lea* (1898), 2 Can. C. C. 282.

But see *contra Flick* v. *Brisbin* (1895), 26 O. R. 423.

*Hardigan* v. *Graham* (1897), 1 Can. C. C. 437.

*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.

**296.** AGGRAVATED ASSAULT.—Every one is guilty of an indictable offence and liable to two years' imprisonment who,—

(*a*) assaults any person with intent to commit any indictable offence; or,

(*b*) assaults any public or peace officer engaged in the execution of his duty, or any person acting in aid of such officer; or,

(*c*) assaults any person with intent to resist or prevent the lawful apprehension or detainer of himself, or of any other person, for any offence; or,

(*d*) assaults any person in the lawful execution of any process against any lands or goods, or in making any lawful distress or seizure, or with intent to rescue any goods taken under such process, distress or seizure; or,

(*e*) on any day whereon any poll for an election, parliamentary or municipal, is being proceeded with, within the distance of two miles from the place where such poll is taken or held, assaults or beats any person. 55-56 V., c. 29, s. 263; 57-58 V., c. 57, s. 1.

"Public officer" and "peace officer" defined s. 2.

Occasioning bodily harm—Prior conviction—Evidence as to character: *R.* v. *Treganzie*, 15 O. R. 294.

Warrant to commitment valid on face—Part of penalty not authorized — Assault on constable executing: *R.* v. *King*, 18 O. R. 566.

A person accused of having committed an offence under this section may, by virtue of sec. 958, be punished hereunder by the imposition of a fine, as well as by imprisonment for the same offence.

*Ex parte McClements* (1895), 32 C. L. J. 39.

Assault with intent to commit indictable offence is an attempt to commit: *R.* v. *John*, 15 S. C. R. 384.

Indictment for rape — Conviction for assault with intent: *Ib.*

With intent to commit murder — Opening railway switch: *In re Lewis*, 6 O. P. R. 236.

On peace officer — Constable attempting to serve summons under C. T. Act—Evidence—Wife of prisoner not competent witness: *R.* v. *MacFarlane*, 16 S. C. R. 393.

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.* v. *Verelst*, 3 Camp. 432; *R.* v. *Gordon*, 1 Leach, 515; *R.* v. *Murphy*, 8 C. & P. 297; *R.* v. *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: *MacFarlane* v. *R.*, 16 S. C. R. 393, and *R.* v. *King*, 18 O. R. 566; *R.* v. *Lantz*, 19 N. S. Rep. 1. 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.* v. *Forbes* (1865), 10 Cox C. C. 362.

*Held*, on a case reserved, that the writ being regular on its face the sheriff was bound to execute it. The error was a mere irregularity which might have been amended and the prisoner was rightly convicted: *R.* v. *Monkman*, 8 Man. L. R. 509.

*Indictment under (a).* 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. unlawfully to kill and murder. (*Add a count for a common assault*).

*Indictment under (b).* 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 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. (*Add a count for a common assault.*)

Prove that J. N. was a peace officer, as stated in the indictment, by showing that he had acted as such.

*Indictment* under *(c).*— 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*). (*Count for common assault*).

It must be stated and proved that the apprehension was lawful: see *R.* v. *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, and if, in a case where a warrant is necessary and the officer making an arrest has not the warrant with him, the party whom he tries to arrest, resists and assaults him, he cannot be convicted of an assault on an officer in the due execution of his office: *Codd* v. *Cabe*, 13 Cox C. C. 202.

*Indictment under (d).*— in and upon J. N. did unlawfully make an assault, the said J. N. then and there making in his quality of a duly appointed bailiff of a lawful seizure under authority of justice, and whilst the said J. N. was making the said lawful seizure in his said quality.

*Indictment under (e).*— in and upon one J. N., unlawfully did make an assault, on a day whereon a poll for an election for was being proceeded with at in to wit, on and within the distance of two miles from the place where such poll was held.

**297.** KIDNAPPING.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, without lawful authority,—

(*a*) INTENT—kidnaps any other person with intent

(i) TO IMPRISON—to cause such other person to be secretly confined or imprisoned in Canada against his will, or

(ii) TO BE TRANSPORTED—to cause such other person to be unlawfully sent or transported out of Canada against his will, or

(iii) TO BE ENSLAVED—to cause such other person to be sold or captures as a slave, or in any way held to service against his will; or

(*b*) FORCIBLE CONFINEMENT—forcibly seizes or confines or imprisons any other person within Canada.

2. NON-RESISTANCE.—Upon the trial of any offence under this section the non-resistance of a person so unlawfully kidnapped or confined shall not be a defence unless it appears that it was not caused by threats, duress or force, or exhibition of force. 63-64 V., c. 46, s. 3.

The defendant may be found guilty of an attempt to kidnap upon an indictment for kidnapping, s. 949.

A verdict of assault may also be given if the evidence warrants it, s. 951.

*Held*, on the trial of an indictment for kidnapping under 32 & 33 V. c. 20, s. 69, that the intent required applies to the seizure and confinement as well as to the kidnapping, and the indictment should state such intent: *Cornwall* v. *R.*, 33 U. C. R. 106.

*Indictment.*— with force and arms unlawfully an assault did make on one A. B., and did then and there, without lawful authority, unlawfully 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 and forcibly to cause to be unlawfully transported out of Canada, against his will.

By the above section transportation to a foreign country is not necessarily an ingredient in this offence.

### *Unlawful Carnal Knowledge.*

**298.** RAPE DEFINED.—Rape is the act of a man having carnal knowledge of a woman who is not his wife without her consent, or with consent which has been extorted by threats or fear of bodily harm, or obtained by personating the woman's husband, or by false and fraudulent representations as to the nature and quality of the act.

2. AGE.—No one under the age of fourteen years can commit this offence. 55-56 V., c. 29, s. 266.

Rape and attempt to commit rape are not triable at quarter sessions, section 583.

Connection with woman under circumstances which induce her to believe it is her husband, not rape: *R.* v. *Francis*, 13 U. C. R. 116.

Idiot or lunatic—Capacity to consent—Evidence — Misdirection: *R.* v. *Connolly*, 26 U. C. R. 317.

On daughter — Fear or solicitation — Finding of fact: *R.* v. *Cardo*, 17 O. R. 11.

Evidence of commission of offence — Statement of counsel at previous trial: *R.* v. *Bedere*, 21 O. R. 189.

Consent of girl under fourteen immaterial: *R.* v. *Paquet*, 9 Q. L. R. 351.

Statement of prosecutrix to police inspector on day following assault not admissible: *R.* v. *Graham* (1899), 31 O. R. 77; 3 Can. C. C. 22.

Evidence of prosecutrix — Previous unchastity — Admissibility of question — Refusal to answer: *R.* v. *Laliberté*, 1 S. C. R. 117.

Que. Can rape be committed on girl under fourteen? *Ex parte Wright*, 34 N. B. 127. It can: *R.* v. *Riopel* (1898), Q. R. 8 Q. B. 181.

See *R.* v. *O'Shea*, 19 Cox C. C. 76.

On an indictment for rape he may be found guilty of a common assault or of an indecent assault: s. 713; *R.* v. *Brimilow*, 2 Moo. 122. A husband cannot be guilty of a rape upon his wife, but he may be guilty as an accessory before the fact or an aider and abettor to it: see *R.* v. *Audley (Lord)*, 3 St. Tr. 402. 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.

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: *R.* v. *Mayers*, 12 Cox C. C. 311; *R.* v. *Young*, 14 Cox C. C. 114.

In *R.* v. *Hodgson*, R. & R. 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 *R.* v. *Cockcroft*, 11 Cox C. C. 410; *R.* v. *Laliberté*, 1 S. C. R. 117.

But she may be cross-examined as to particular acts of connection with the prisoner, and if she denies them witnesses may be called to contradict her: *R.* v. *Martin*, 6 C. & P. 562; *R.* v. *Riley*, 16 Cox C. C. 191, 18 Q. B. D. 481, Warb. Lead. Cas. 128.

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, attempts to commit a rape, and indecent assaults in the nature of attempts to commit a rape: *R.* v. *Holmes*, 12 Cox C. C. 137.

Upon an indictment under section 299, the jury may find the prisoner guilty of an attempt to commit rape under s. 300: *R.* v. *Hapgood*, 11 Cox C. C. 471; or may find a verdict of common assault, or indecent assault.

Under s. 300, for an assault with intent to commit rape, the indictment may 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 unlawfully without her consent, to ravish and carnally know. (*Add a count for a common assault*), though it is not necessary.

If, upon trial for this offence, the offence under s. 299 be proved the defendant is not therefore entitled to an acquittal, s. 942, *post*.

On an indictment for an assault with intent to commit a rape Patterson, J., held that 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 resistance on her part: *R.* v. *Lloyd*, 7 C. & P. 318.

When a man is charged with rape all that the woman said to other persons in his absence shortly after the alleged offence is admissible in evidence: *R.* v. *Wood*, 14 Cox C. C. 46; see *R.* v. *Little*, 15 Cox C. C. 319.

In *R.* v. *Gisson*, 2 C. & K. 781, it was held that an acquittal on an indictment for a rape could not be successfully pleaded to a subsequent indictment for an assault with intent to commit a rape, because a verdict for the attempt to commit the offence could not be received on an indictment charging the offence itself. But that case is not now to be followed. The case of *R.* v. *Dungey*, 4 F. & F. 99, is a clear authority that upon a trial for rape the defendant may be found guilty of an attempt to commit it. In fact there can now be no doubt upon this; s. 949, *post*, is clear. See cases cited under that section.

An assault with intent to commit rape is different from an assault with intent to have an improper connection. The former is with intent to have connection by force and against the will of the woman: *R.* v. *Stanton*, 1 C. & K. 415; *R.* v. *Wright*, 4 F. & F. 967; *R.* v. *Dungey*, 4 F. & F. 99.

An indictment for an attempt to commit rape is always in the form of an assault with intent to commit rape, as in *R.* v. *Riley*, 16 Cox C. C. 191, for instance. And in *R.* v. *Dungey*, *ubi supra*, the judge charged the jury that they could, on an indictment for rape, find the prisoner guilty of an assault with intent to commit rape.

In this Code, however, a difference is made between an attempt to commit an offence and an assault with intent to commit it; ss. 203-293.

In a case of *John* v. *R.*, in British Columbia, upon a writ of error, the court held that, upon an indictment for rape, the prisoner had been lawfully convicted of an assault with intent to commit rape. That decision was upheld by the Supreme Court: *R.* v. *John*, 15 S. C. R. 384; 11 L. N. 313; 8 Occ. N. 88.

In *R.* v. *Wright*, 4 F. & F. 967, the prisoner was indicted for rape and for assault with intent to commit rape. Under s. 951, *post*, there is not the least room to doubt that this can now be done, whatever doubts may have existed in that case.

In a case of rape the counsel for the prosecution should not tell the jury that to acquit the prisoner is to find the woman guilty of perjury: *R.* v. *Rudland*, and *R.* v. *Puddick*, 4 F. & F. 495, 497.

On trial for rape evidence was that of a woman alone which, in view of previous admissions and the circumstances, was unsatisfactory: *Held*, evidence was properly submitted to the jury, but court directed that attention of Executive should be called to the case: *R.* v. *Lloyd*, 19 O. R. 352.

*Indictment.*— that A. B. on in and upon one C. D., a woman, unlawfully and violently did make an assault and her the said C. D. violently and without her consent unlawfully did ravish and carnally know.

Averment of woman's age unnecessary: 2 Bishop, Cr. Proc. 954.

**299.** PUNISHMENT FOR RAPE.—Every one who commits rape is guilty of an indictable offence and liable to suffer death or to imprisonment for life. 55-56 V., c. 29, s. 267.

**300.** PUNISHMENT FOR ATTEMPT.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who attempts to commit rape. 55-56 V., c. 29, s. 268.

ailure of Crown to shew that prosecutrix not wife of prisoner —Objection—Leave to appeal. *Rex* v. *Mullen*, 5 O. W. R. 451.

Assault with intent to commit, is an attempt: *R.* v. *John*, 15 S. C. R. 384; 11 L. N. 313; 8 Occ. N. 88.

**301.** CARNALLY KNOWING GIRL UNDER FOURTEEN YEARS. —Every one is guilty of an indictable offence and liable to imprisonment for life, and to be whipped, who carnally knows any girl under the age of fourteen years, not being his wife, whether he believes her to be of or above that age or not. 55-56 V., c. 29, s. 269.

Proof of penetration is sufficient: *R.* v. *Marsden*, 17 Cox C. C. 297.

**302.** ATTEMPT.—Every one who attempts to have unlawful carnal knowledge of any girl under the age of fourteen years is guilty of an indictable offence and liable to two years' imprisonment, and to be whipped. 55-56 V., c. 29, s. 270.

See s. 1003 as to evidence of young children in trials under these two sections. This section 302 has no other effect but to reduce the punishment, which, without it, would be seven years' imprisonment, s. 570.

The evidence is the same as in rape, with the exception that the consent or non-consent of the girl is immaterial independently of the enactment contained in s. 294. See *R.* v. *Brice*, 7 Man. L. R. 627.

Upon the trial of an indictment under these clauses the jury may, under s. 951, find the defendant guilty of a common assault, or an indecent assault: *R.* v. *Read*, 1 Den. 377; *R.* v. *Connolly*, 26 U. C. R. 317; *R.* v. *Roadley*, 14 Cox C. C. 463; even if the girl assented: s. 261, *ante*.

Under s. 949, *post*, the defendant may be convicted, if indicted under s. 301, of an attempt to commit the offence charged, if the evidence warrants it: *R.* v. *Ryland*, 11 Cox C. C. 101; *R.* v. *Catherall*, 13 Cox C. C. 109; but a boy under fourteen cannot be convicted of such attempt: *R.* v. *Waite*, 17 Cox C. C. 554.

An indictment for rape still lies for ravishing a girl under fourteen: *R.* v. *Dicken*, 14 Cox C. C. 8; *R.* v. *Ratcliffe*, 15 Cox C. C. 127.

Indictment that prisoner in and upon one J., a girl under fourteen, feloniously did make an assault, and her, the said J., then and there feloniously did unlawfully and carnally know and abuse, etc.: evidence of consent; general verdict of guilty affirmed: *R.* v. *Chrisholm*, Jacobs' Case, 7 Man. L. R. 613.

*Indictment under s. 301.*— in and upon one A. N., a girl under the age of fourteen years, to wit, of the age of twelve years, unlawfully did make an assault, and her, the said A. N., then and there did unlawfully and carnally know.

## *Abortion.*

**303.** ATTEMPT TO PROCURE.—Every one is guilty of an indictable offence and liable to imprisonment for life who, with intent to procure the miscarriage of any woman, whether she is or is not with child, unlawfully administers to her or causes to be taken by her any drug or other noxious thing, or unlawfully uses on her any instrument or other means whatsoever with the like intent. 55-56 V., c. 29, s. 272.

Using instrument—Evidence: *R.* v. *Anderson*, 12 O. R. 184.

**304.** WOMAN ATTEMPTING TO PROCURE HER OWN MISCARRIAGE.—Every woman is guilty of an indictable offence and liable to seven years' imprisonment who, whether with child or not, unlawfully administers to herself or permits to be administered to her any drug or other noxious thing, or unlawfully uses on herself or permits to be used on her any instrument or other means whatsoever with intent to procure miscarriage. 55-56 V., c. 29, s. 273.

**305.** SUPPLYING DRUG TO PROCURE.—Every one is guilty of an indictable offence and liable to two years' imprisonment who unlawfully supplies or procures any drug or other noxious thing, or any instrument or thing whatsoever, knowing that the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman, whether she is or is not with child. 55-56 V., c. 29, s. 274.

Section 304, as it reads, is an absurdity. It ought to read as in the English Act, "Every woman being with child."

Giving oil of savin to procure abortion is indictable: *R.* v. *Stitt*, 30 U. C. C. P. 30.

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 the enactment: *R.* v. *Isaacs*, L. & C. 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: *R.* v. *Hillman*, L. & C. 343.

The prisoner may be convicted of an attempt to commit this offence, upon an indictment under this section, s. 711.

Supplying a noxious thing with the intent to procure abortion is an offence under this section, whether the woman is pregnant or not: *R.* v. *Titley*, 14 Cox C. C. 502.

In *R.* v. *Dale*, 16 Cox C. C. 703, upon the trial of an offence, as provided for in s. 303, *ante*, evidence was admitted that at various times, before and after the offence charged, the prisoner had caused other miscarriages by similar means.

See *R.* v. *Whitchurch*, 16 Cox C. C. 743, 24 Q. B. D. 420, on a conspiracy to procure abortion.

Under s. 303, the fact of the woman being pregnant is immaterial: *R.* v. *Goodhall*, 1 Den. 187. But the prisoner must have believed her to be pregnant, otherwise there could be no intent under the section. Under an indictment for this offence the prisoner may be convicted of an attempt to commit it: s. 949; see *R.* v. *Cramp*, 14 Cox, 390 & 401, and Warb. Lead. Cas. 120.

Where the prisoner gave the prosecutrix the drug for the purpose of procuring abortion, and the prosecutrix took it for that purpose in the prisoner's absence, this was held to be a causing of it to be taken within s. 303: *R.* v. *Wilson*, Dears. & B. 127; *R.* v. *Farrow*, Dears. & B. 164.

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 spoonsfuls 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 V. c. 100, s. 58 (Imp.). Also that there was evidence of the female being an accessory before the fact, and a party, therefore, to the administering of the noxious thing: *R.* v. *Hollis*, 12 Cox C. C. 463.

*Indictment for woman administering poison to herself, with intent or, etc.*— that C. D., late of on at and being then with child, with intent to procure her own miscarriage, did unlawfully administer to herself one drachm of a certain poison (*or noxious thing*) called (*or did unlawfully use a certain instrument or means*) to wit.

*Indictment for administering poison to a woman, with intent to procure abortion.*— that C. D. on unlawfully 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.

*Indictment for using instrument with the like intent.*— unlawfully 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.

*Indictment under s. 305.*— 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.

**306.** KILLING UNBORN CHILD.—Every one is guilty of an indictable offence and liable to imprisonment for life who causes the death of any child which has not become a human being, in such a manner that he would have been guilty of murder if such child had been born.

2. SAVING.—No one is guilty of any offence who, by means which he in good faith considers necessary for the preservation of the life of the mother of the child, causes the death of any such child before or during its birth. 55-56 V., c. 29, s. 271.

See sections 251 and 271: *R.* v. *West*, 2 C. & K. 784; *R.* v. *Handley*, 13 Cox C. C. 79.

*Offences against Conjugal Rights.*

**307.** BIGAMY DEFINED.—Bigamy is,—

(*a*) the act of a person who, being married, goes through a form of marriage with any other person in any part of the world; or,

(*b*) the act of a person who goes through a form of marriage in any part of the world with any person whom he or she knows to be married; or,

(*c*) the act of a person who goes through a form of marriage with more than one person simultaneously, or on the same day.

2. INCOMPETENCY NO DEFENCE.—The fact that the parties would, if unmarried, have been incompetent to contract marriage shall be no defence upon a prosecution for bigamy.

3. EXCUSES.—No one commits bigamy by going through a form of marriage,—

(*a*) if he or she in good faith and on reasonable grounds believes his wife or her husband to be dead; or,

(*b*) if his wife or her husband has been continually absent for seven years then last past and he or she is not proved to have known that his wife or her husband was alive at any time during those seven years; or,

(*c*) if he or she has been divorced from the bond of the first marriage; or,

(*d*) if the former marriage has been declared void by a court of competent jurisdiction.

4. BIGAMOUS MARRIAGES OUTSIDE OF CANADA.—No person shall be liable to be convicted of bigamy in respect of having gone through a form of marriage in a place not in Canada, unless such person, being a British subject resident in Canada, leaves Canada with intent to go through such form of marriage.

5. EFFECT OF FORM.—Every form of marriage shall for the purpose of this section be valid, notwithstanding any act or default of the person charged with bigamy, if it is otherwise a valid form. 55-56 V., c. 29, s. 275.

A recital in a deed is not sufficient proof of former marriage. *R.* v. *Duff*, 29 U. C. C. P. 255. Nor confession of prisoner: *R.* v. *Ray*, 20 O. R. 212, *contra R.* v. *Creamer*, 10 L. C. R. 404.

First marriage took place in Toronto, the second in the United States.

*Held*, that it was incumbent on the crown to charge and prove that at the time of the commission of the offence, the prisoner was a British subject, resident in Canada, that he left Canada with intent to commit offence. It was a misdirection to withdraw from the jury the question of his having left with intent.

*Per* Wilson, C.J., the indictment did not sufficiently charge the offence. It is a question whether the trial should not be declared a nullity. *R.* v. *Pierce*, 7 Occ. N. 191; 13 O. R. 226.

And *held*, on motion for arrest of judgment, that the word "elsewhere" in the statute, gives to the court its jurisdiction regarding offences committed in the United States by British subjects, but that the allegation that the accused was a British subject was necessary to support the indictment, and that he was or is a resident in the province, and that he had left the same with intent to commit the offence: *R.* v. *McQuiggan*, 2 L. C. R. 340.

In an indictment for bigamy, it is incumbent upon the Crown to prove that a person marrying a second time, whose husband or wife has been continually absent from such person for seven years then previous, knew that the other consort was living within that time. *R.* v. *Fontaine*, 15 L. C. J. 141; *R.* v. *Debay*, 3 N. S. D. 540; *R.* v. *Curgenuen*, 10 Cox C. C. 152; *R.* v. *Jones*, 15 Cox C. C. 284.

In order to prove the second marriage, which took place in Michigan, the testimony of the officiating minister was tendered, that he had solemnized this marriage according to the laws of that state.

*Held*, that this was admissible evidence to prove the validity of the marriage, even assuming that such ought not to be presumed. Above section, *intra vires*. *R.* v. *Brierly*, 7 Occ. N. 333; 14 O. R. 535; *R.* v. *Allan*, 2 Old. (N. S.) 373.

See *In re Bigamy* sections (1897), C. C. 172; 27 S. C. R. 461; *R.* v. *Plowden*, 25 O. R. 655, overruled. And see *Macleod* v. *Atty-Gen. of N. S. Wales* [1891] A. C. 455, 17 Cox C. C. 341; *R.* v. *Topping*, 7 Cox C. C. 103.

The Crown established the fact of the two marriages, which were over seven years apart.

It was *held*, that the onus of proving that the prisoner did not know of the existence of the first wife at the time of the second marriage, rested upon the defence, and that it was not incumbent upon

the Crown to establish the prisoner's knowledge of the first wife's existence at the time of the second marriage. *R.* v. *Dwyer*, 27 L. C. J. 201; 6 L. N. 66.

See *R.* v. *Willshire*, 14 Cox C. C. 541; *R.* v. *Moore*, 13 Cox C. C. 544.

"How is it possible for any man to prove a negative? 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: *R.* v. *Heaton*, 3 F. & F. 819.

The witness called to prove the first marriage swore that it was solemnized by a J. P. in the state of New York, who had power to marry, but this witness was not a lawyer, nor inhabitant of the United States, and did not state whence the authority of the justice was derived,

*Held*, insufficient. *R.* v. *Smith*, 14 U. C. R. 565.

Where the prisoner relies upon the first wife's lengthened absence, and his ignorance of her being alive, he must show enquiries made and that he had reason to believe her dead, more especially when he has deserted her; and this, notwithstanding that the first wife may have married again. *R.* v. *Smith*, *supra*.

The first wife is not admissible as a witness to prove that her marriage with the prisoner was invalid. *R.* v. *Madden*, 14 U. C. R. 588; *R.* v. *Fontaine*, 15 L. C. J. 141. The evidence of the first wife is not admissible, nor is that of the second until the first marriage is proved. *R.* v. *Tubbee*, 1 P. R. 98; *R.* v. *Agley*, 15 Cox C. C. 328.

It is not necessary that marriages be solemnized in a church. *R.* v. *Seeker*, U. C. R. 604.

A Canadian marriage is not dissolved by a foreign court where the domicile of both parties is Canadian, although they both resided for a short time in the foreign country previous to the making of the decree. *Magurn* v. *Magurn*, 3 O. R. 570, 11 A. R. 178, and *Lemesurier* v. *Lemesurier*, [1895] A. C. 517, followed. *R.* v. *Woods*, 23 Occ. N. 220, 6 O. L. R. 41, 2 O. W. R. 338.

See *R.* v. *Tolson*, 16 Cox C. C. 629, 23 Q. B. D. 168, Warb. Lead. Cas. 72.

*R.* v. *Turner* (1862), 9 Cox C. C. 145.

*R.* v. *Horton* (1871), 11 Cox C. C. 670.

*Indictment.*— that J. S. on at the parish of in the did marry one A. C., spinster, and her the said A. C. then and there had for his wife; and that the said J. S. afterwards, and whilst he was so married to the said A. C., as aforesaid, to wit, on the day at 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. C., his former wife, being then alive.

**308.** PUNISHMENT OF BIGAMY.—Every one who commits bigamy is guilty of an indictable offence and liable to seven years' imprisonment.

2. SECOND OFFENCES.—Every one who commits this offence after a previous conviction for a like offence shall be liable to fourteen years' imprisonment. 55-56 V., c. 29, s. 276.

**309.** FEIGNED MARRIAGES.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who procures a feigned or pretended marriage between himself

and any woman, or who knowingly aids and assists in procuring such feigned or pretended marriage. 55-56 V., c. 29, s. 277.

See section 1002 as to evidence on a prosecution under this enactment.

**310.** POLYGAMY—PENALTY.—Every one is guilty of an indictable offence and liable to imprisonment for five years, and to a fine of five hundred dollars,—

(*a*) PRACTISING OR CONTRACTING—who practises, or, by the rites, ceremonies, forms, rules, or customs of any denomination, sect or society, religious or secular, or by any form of contract, or by mere mutual consent, or by any other method whatsoever, and whether in a manner recognized by law as a binding form of marriage or not, agrees or consents to practise or enter into

(i) POLYGAMY—any form of polygamy,

(ii) CONJUGAL UNION—any kind of conjugal union with more than one person at the same time, or

(iii) SPIRITUAL MARRIAGES—what among the persons commonly called Mormons is known as spiritual or plural marriage; or,

(*b*) COHABITATION IN CONJUGAL UNION—who lives, cohabits, or agrees or consents to live or cohabit in any kind of conjugal union with a person who is married to another or with a person who lives or cohabits with another or others in any kind of conjugal union; or,

(*c*) CELEBRATING RITE—celebrates, is a party to, or assists in any rite or ceremony which purports to make binding or to sanction any of the sexual relationships mentioned in paragraph (*a*) of this section; or,

(*d*) ASSISTING IN COMPLIANCE—procures, enforces, enables, is a party to, or assists in the compliance with, or carrying out of, any form, rule or custom which so purports; or,

(*e*) PROCURING CONTRACT—procures, enforces, enables, is a party to, or assists in the execution of, any form

of contract which so purports, or the giving of any consent which so purports. 63-64 V., c. 46, s. 3.

For evidence under s.-s. (b), (c), and (d): see s. 948.

See *R.* v. *Labrie* (1891), M. L. R. 7 Q. B. 211, where it was held that mere cohabitation is not an offence punishable under this enactment. Also *The People* v. *Mosher*, 2 Parker 195. In *R.* v. *Liston*, Toronto, April, 1893 (unreported), Armour, C. J., also held that adultery is not indictable under the above enactment.

An Indian who according to the marriage customs of his tribe takes two women at the same time as his wives and cohabits with them, is guilty of an offence under above section: *R.* v. *Bear's Shin Bone* (1899), 3 Can. C. C. 329; 4 Terr. L. R. 173.

*Unlawful Solemnization of Marriage.*

**311.** PENALTY.—Every one is guilty of an indictable offence and liable to a fine or to two years' imprisonment, or to both, who,—

(*a*) WITHOUT AUTHORITY—without lawful authority, the proof of which shall lie on him, solemnizes or pretends to solemnize any marriage; or,

(*b*) PROCURING UNLAWFUL MARRIAGE—procures any person to solemnize any marriage knowing that such person is not lawfully authorized to solemnize such marriage, or knowingly aids or abets such person in performing such ceremony. 55-56 V., c. 29, s. 279.

Limitation 2 years, section 1140.

See *R.* v. *Ellis*, 16 Cox C. C. 469.

"The Re-organized Church of Jesus Christ of Latter Day Saints" is a religious denomination within the meaning of R. S. O., (1886), c. 131, s. 1, and that a duly ordained priest thereof was a minister authorized to solemnize the ceremony of marriage, and could not be convicted under this section for so doing. *Semble*, the words of the statute "church" and "religious denomination" should not be construed so as to confine them to Christian bodies: *R.* v. *Dickout*, (1893), 24 O. R. 250.

*Indictment.*— that A. B., on at without lawful authority, did unlawfully solemnize (*or pretend to solemnize*) a marriage between one C. D. and one M. N.

**312.** MARRIAGE CONTRARY TO LAW.—Every one is guilty of an indictable offence and liable to a fine, or to one year's imprisonment, who, being lawfully authorized, knowingly and wilfully solemnizes any marriage in violation of the laws of the province in which the marriage is solemnized. 55-56 V., c. 29, s. 280.

A limitation of two years has not been re-enacted.

*Indictment.*— that A. B., at on be ing a clergyman of and lawfully authorized to marry, did unlawfully solemnize a marriage between one C. D., and one E. F., before proclamation of banns in violation of the laws of the Province of in which the said marriage was solemnized.

## *Abduction.*

**313.** ABDUCTION OF A WOMAN.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who, with intent to marry or carnally know any woman, whether married or not, or with intent to cause any woman to be married to or carnally known by any other person, takes away or detains any woman of any age against her will. 55-56 V., c. 29, s. 281.

A verdict for assault or for an attempt to commit the offence charged, may be given, if the evidence warrants it: ss. 949, 951, *post*.

On a trial for taking an unmarried girl aged less than sixteen years out of the possession of her guardian, evidence of cruel treatment of the girl by the guardian is inadmissible.

Interference of a witness on the way to court to give evidence in order to prevent her testimony from being given, is a contempt of court.

Secondary evidence of the age of the child abducted may be permitted to go to the jury.

Where a child was taken from motives of benevolence, from a barn wherein she had sought refuge, the barn not being on the property or premises of the guardian, and was then placed by the persons who had come to her relief in the charge of defendant as secretary of a society for the protection of women and children, the secretary could not be found guilty of taking out of the possession of the guardian: *R.* v. *Hollis*, 8 L. N. 229.

Where it appeared that the girl, under sixteen years of age, had left her guardian's house for a particular purpose, with his consent, it was held that she did not cease to be in his possession under the statute: *R.* v. *Mondelet*, 21 L. C. J. 154.

The indictment should set forth the interest of the woman in the property.

It is a substantial fact which the prisoner has a right to rebut. He cannot do so unless the nature of the interest is disclosed.

When the interest is set forth in the indictment, it must be proved as laid.

Verbal evidence of interest in property cannot, generally, sustain such an indictment. *R.* v. *Kaylor*, 4 L. N. 196; 1 Q. B. R. 364; 26 L. C. J. 36.

It is not necessary for the crown to prove that the prisoner knew of the interest of the female in the property. *Ibid.*

*Indictment.*— unlawfully did take away (*or detain*) one A.B., against her will, with intent her, the said A.B., to marry. (*or* ) (*If the intent is doubtful, add a count stating it to be to "carnally know," or to cause 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, etc.*): 1 Burn, 12.

**314.** OFFENCE—PENALTY—INTENT.—Every one is guilty of an indictable offence and liable to fourteen years' imprison-

ment who, with intent to marry or carnally know any woman, or with intent to cause any woman to be married or carnally known by any person,—

(*a*) Abduction of Heiress—from motives of lucre takes away or detains against her will any woman of any age who has any interest, whether legal or equitable, present or future, absolute, conditional or contingent, in any real or personal estate, or who is a presumptive heiress or co-heiress or presumptive next of kin to any one having such interest; or,

(*b*) Alluring away Against Will of Parent—fraudulently allures, takes away or detains any woman, being under the age of twenty-one 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, with intent to marry or carnally know her.

2. Effect of Conviction on Property.—Every one convicted of any offence defined in this section is 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 interest, or which comes to her as such heiress, co-heiress or next of kin; and if any such marriage takes place such property shall upon such conviction, be settled in such manner as any court of competent jurisdiction, upon any information at the instance of the Attorney-General, appoints. 55-56 V., c. 29, s. 282.

Attorney-General defined, section 2.

Under s. 949 the prisoner may be found guilty of an attempt to commit the offence charged and punished under s. 570.

Under s. 951 the prisoner may be found guilty of an assault, if the evidence warrants such finding.

The intent of the person accused of having abducted an heiress may either be shewn by his own acts and statements, or may be inferred from the circumstances of the case: *R.* v. *Barratt* (1840), 9 C. & P. 387.

Upon an indictment under par. (b) of s.-s. 1 of this section, it is not necessarily incumbent upon the prosecution to prove that the accused knew that the person abducted was an heiress: *R.* v. *Kaylor* (1881), 1 Dorion's Q. B. R. 364.

On the trial of an indictment for an offence under s-s. (*b*) of this section, it is not necessary to prove that the accused knew that the girl he had abducted had an interest in any property: *R.* v. *Kaylor*, 1 Dor. Q. B. R. 364.

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 any other person.

*Indictment under (a).*— from motives of lucre, did unlawfully 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* ). (*Add a count stating generally the nature of some part of the property and, if the intent be doubtful, add counts varying the intent.*) See another form, in 3 Chit. C. L. 818.

*Indictment under (b).*— 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.*) (*Add counts, if necessary, varying the statement as to the property, possession, or intents.*)

**315.** Abduction of Girl Under Sixteen.—Every one is guilty of an indictable offence and liable to five years' imprisonment who unlawfully takes or causes to be taken any any unmarried girl, who is 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.

2. Consent Immaterial.—It is immaterial whether the girl is taken with her own consent or at her own suggestion or not.

3. Belief of Offender.—It is immaterial whether or not the offender believed the girl to be of or above the age of sixteen. 55-56 V., c. 29, s. 283.

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. 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: *R.* v. *Mankletow* (1853), 6 Cox C. C. 143, 1 Russ. 954, Dears. 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 Russ. 952; *R.* v. *Robins*, 1 C. & K. 456. It is not necessary that the taking away should be for a permanency; it is sufficient if for the temporary keeping of the girl: *R.* v. *Timmins* (1860), Bell, C. C. 276; 8 Cox C. C. 401.

On an indictment for abducting a girl under sixteen years of age it appeared that the girl, when abducted, had left her guardian's house for a particular purpose with his sanction: *Held*, that she had not ceased to be in his possession under the statute: *R.* v. *Mondelet*, 21 L. C. J. 154; see *R.* v. *Henkers*, 16 Cox C. C. 257.

Prisoner was indicted for having unlawfully caused to be taken an unmarried girl under the age of 16 years, out of the possession of her father and against his will. The girl was induced, by persuasion of letters written by the prisoner, to leave her father's house and meet the prisoner, when he suggested that it was not too late for her to return home, but she declined; then they went to a near by house

where they spent the night together: *Held*, that it was essential to the offence that the girl should have been in the possession of her father at the time of the taking, and that upon the facts, when she met the prisoner, she had already abandoned that possession; that the reception by the girl of the letters was the motive cause of her abandoning her father's possession, and therefore a material factor in the offence, which in part took place out of the jurisdiction of Canadian Courts; that the letters, so far as they held out the inducement, should not have been admitted in the evidence at the trial: *R.* v. *Blythe* (1895), 4 B. C. R. 276, 1 Can. C. C. 363.

A girl under sixteen, who was living in her father's house, was induced by the accused to go to a chaplain, to be married to the former. She was only away from her home for a few hours, and after her return continued to live with her father as before, he being ignorant of what had taken place. The marriage was never consummated. It was held that there was sufficient evidence of her being taken out of her father's possession to constitute the crime: *R.* v. *Baillie* (1859), 8 Cox, C. C. 238.

On a trial for taking an unmarried girl under the age of sixteen out of the possession of her guardian: *Held*, 1st. That evidence of her being badly treated by her guardian is inadmissible. 2nd. That secondary evidence of the age of the child is admissible. 3rd. That in this case the defendant was not guilty of taking the child out of the possession of the guardian: *R.* v. *Hollis*, 8 L. N. 229.

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: *R.* v. *Green* (1862), 3 F. & F. 274; *R.* v. *Hibbert* (1869), 11 Cox C. C. 246.

If a man, by previous promises to a girl under sixteen years of age as to what he will do if she will leave her parents' house and go to live with him, induces her at length to do so, and then receives and harbours her secretly, he is liable to be convicted for taking her out of the possession of her parents, even although he does not meet her by any previous arrangement, and is not otherwise actually a party to her act in leaving: *R.* v. *Robb* (1864), 4 F. & F. 59.

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 any bad motive in taking her away, nor means of ascertaining her age, and although she was willing to go: *R.* v. *Booth*, 12 Cox C. C. 231; *R.* v. *Kipps*, 4 Cox C. C. 167.

The defence in Booth's 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: *R.* v. *Mycock* (1871), 12 Cox C. C. 28; *R.* v. *Olifier* (1866), 10 Cox C. C. 402; *R.* v. *Miller*, 13 Cox C. C. 179; *R.* v. *Robins* (1844), 1 Car. & K. 456.

To take away a natural child, who is under the age mentioned, from her putative father, is equally a breach of this section: *R.* v. *Sweeting* (1766), 1 East P. C. 457.

It is no defence to an indictment under this section that the prisoner believed the girl to be eighteen: *R.* v. *Prince*, 13 Cox C. C. 138, Warb. Lead. Cas. 89.

It was held in *R.* v. *Bishop*, 5 Q. B. D. 259, that under a statute which prohibits the receiving of lunatics for treatment in a house not duly licensed, the owner of a house who had received lunatics was guilty of the offence created by the statute, though the jury found that he believed honestly and on reasonable grounds that the persons received were not lunatics.

"I do not think that the maxim as to the *mens rea* has so wide an application as it is sometimes considered to have. In old time, and as applicable to the common law or to earlier statutes, the maxim may have been of general application; but a difference has arisen owing to the greater precision of modern statutes. It is impossible now to apply the maxim generally to all statutes, and it is necessary to look at the object of each act to see whether and how far knowledge is of the essence of the offence created": *Per* Stephen, J., in *Cundy* v. *LeCocq*, 13 Q. B. D. 207.

See *R.* v. *Tolson*, 16 Cox C. C. 629; 23 Q. B. D. 168, as to *mens rea;* also *Betts* v. *Armstead*, 16 Cox C. C. 418, 20 Q. B. D. 771; *Ford* v. *Wiley*, 16 Cox C. C. 683, 23 Q. B. D. 203; *Wood* v. *Burgess*, 16 Cox C. C. 729; *Pain* v. *Boughtwood*, 16 Cox C. C. 747; and cases under s. 14, *ante*.

See *R.* v. *Johnson* (1884), 15 Cox C.C. 481, Warb. Lead. Cas. 91; and *R.* v. *Barrett*, 15 Cox C. C. 658.

*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 , etc. *(If necessary 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).*

**316.** PENALTY—CHILD—INTENT.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, with intent to deprive any parent or guardian of any child under the age of fourteen years, of the possession of such child, or with intent to steal any article about or on the person of such child, unlawfully,—

(*a*) ABDUCTION—takes or entices away or detains any child; or,

(*b*) HARBOURING ABDUCTED CHILD—receives or harbours any such child, knowing it to have been unlawfully taken, enticed away or detained with intent aforesaid.

2. POSSESSION IN GOOD FAITH. — Nothing in this section shall extend to any one who gets possession of any child, claiming in good faith a right to the possession of the child. 63-64 V., c. 46, s. 3.

Upon the trial of any offence contained in this section the defendant may, under s. 949, be convicted of an attempt to commit the same.

All those claiming a right to the possession of the child are specially exempted from the operation of this section, by s.-s. 2.

On decree for absolute divorce custody of five-year-old child was given to the mother with permission to father to take it out in day time, returning it the same day. Father having taken it out and carried it to Canada committed an offence under this section for which he was extradited: *Rex* v. *Watts*, 3 O. L. R. 368; 22 Occ. N. 165; 1 O. W. R. 133.

*Indictment.*— unlawfully did take away (*take away, 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 jurors that the said afterwards, to wit, on the day and year aforesaid, unlawfully did take away (*or, etc.*), 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 to steal, take and carry divers articles, that is to say then being upon and about the person of the said child. (*Add counts stating that the defendant did entice away, or did detain, if necessary*).

## *Defamatory Libel.*

**317.** DEFINITION.—A defamatory libel is matter published, without legal justification or excuse, likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or designed to insult the person of or concerning whom it is published.

2. MANNER OF EXPRESSING.—Such matter may be expressed either in words legibly marked upon any substance whatever, or by any object signifying such matter otherwise than by words, and may be expressed either directly or by insinuation or irony. 55-56 V., c. 29, s. 285; 63-64 V., c. 46, s. 3.

Indictment for offence not stating that accused intended to injure reputation of person libelled by exposing him to hatred, contempt or ridicule, or to insult him, is bad, cannot be amended and must be set aside: *R.* v. *Cameron*, Q. R. 7 Q. B. 162.

**318.** PUBLISHING DEFINED.—Publishing a libel is exhibiting it in public, or causing it to be read or seen, or showing or delivering it, or causing it to be shown or delivered, with a view to its being read or seen by the person defamed or by any other person. 55-56 V., c. 29, s. 286.

See *R.* v. *Brooke* (1856), 7 Cox C. C. 251.

So far as the law is concerned, a libel is *prima facie* deemed to be published so soon as the manuscript containing the same has passed out of the possession and control of the person responsible therefor.

*R.* v. *Burdett* (1820), 4 B. & Ald. 143.

*R.* v. *Lovett* (1893), 9 C. & P. 462.

**319.** PUBLISHING UPON INVITATION.—No one commits an offence by publishing defamatory matter on the invitation or challenge of the person defamed thereby, nor if it is necessary to publish such defamatory matter in order to refute some other defamatory statement published by that person concerning the alleged offender, if such defamatory matter is believed to be true, and is relevant to the invitation, challenge or required refutation and the publishing does not in manner or extent exceed what is reasonably sufficient for the occasion. 55-56 V., c. 29, s. 287.

See *Smith* v. *Wood* (1812), 3 Campbell 322.
*Weatherston* v. *Hawkins* (1786), 1 T. R. 110.
*Whitely* v. *Adams* (1863), 15 C. B. (N. S.) 392.
*Force* v. *Warren* (1864), 15 C. B. (N. S.) 806.
As to what may be published in rebuttal of charges previously made see *Laughton* v. *Bishop of Sodor and Man*, (1872), L. R. 4 P. C. 495.
*Dwyer* v. *Esmonde* (1878), 2 L. R., (IR) 243.
*Koenig* v. *Ritchie* (1862), 3 F. & F. 413.
*R.* v. *Veley* (1867), 4 F. & F. 1117.
*Huntley* v. *Ward* (1859), 6 C. B. (N. S.) 514.

**320.** PUBLISHING PROCEEDINGS OF COURTS OF JUSTICE.—No one commits an offence by publishing any defamatory matter, in any proceeding held before or under the authority of any court exercising judicial authority, or in any inquiry made under the authority of any statute or by order of His Majesty, or of any of the departments of government, Dominion or provincial. 55-56 V., c. 29, s. 288.

Slandering a person in a public restaurant is not an offence under this section: *Mercier* v. *Plamondon*, Q. R. 20 S. C. 288.

**321.** PARLIAMENTARY PAPERS—GOOD FAITH.—No one commits an offence by publishing to either the Senate, or House of Commons, or to any Legislative Council, Legislative Assembly or House of Assembly, defamatory matter contained in a petition to the Senate, or House of Commons, or to any such Council or Assembly, or by publishing by order or under the authority of the Senate, or House of Commons, or of any such Council or Assembly, any paper containing defamatory matter, or by publishing, in good faith and without ill-will to the person defamed, any abstract from or abstract of any such paper. 55-56 V., c. 29, s. 289.

**322.** FAIR REPORTS OF PROCEEDINGS OF PARLIAMENT AND COURTS.—No one commits an offence by publishing in good

faith, for the information of the public, a fair report of the proceedings of the Senate or House of Commons, or any committee thereof, or of any Council or Assembly aforesaid, or any committee thereof, or of the public proceedings preliminary or final heard before any court exercising judicial authority, nor by publishing, in good faith, any fair comment upon any such proceedings. 55-56 V., c. 29, s. 290.

**323.** Fair Reports of Public Meetings.—No one commits an offence by publishing in good faith in a newspaper, a fair report of the proceedings of any public meeting if the meeting is lawfully convened for a lawful purpose and open to the public, and if such report is fair and accurate, and if the publication of the matter complained of is for the public benefit, and if the defendant does not refuse to insert in a conspicuous place in the newspaper in which the report appeared a reasonable letter or document of explanation or contradiction by or on behalf of the prosecutor. 55-56 V., c. 29, s. 291.

**324.** Public Benefit.—No one commits an offence by publishing any defamatory matter which he, on reasonable grounds, believes to be true, and which is relevant to any subject of public interest, the public discussion of which is for the public benefit. 55-56 V., c. 29, s. 292.

**325.** Fair Comments on Public Person.—No one commits an offence by publishing fair comments upon the public conduct of a person who takes part in public affairs.

2. Fair Comments on Literary or Art Productions.—No one commits an offence by publishing fair comments on any published book or other literary production, or on any composition or work of art or performance publicly exhibited, or on any other communication made to the public on any subject, if such comments are confined to criticism on such book or literary production, composition, work of art, performance or communication. 55-56 V., c. 29, s. 293.

**326.** Publication in Good Faith Seeking Redress.—No one committs an offence by publishing defamatory matter for the purpose, in good faith, of seeking remedy or re-

dress for any private or public wrong or grievance from a person who has, or is reasonably believed by the person publishing to have, the right or to be under obligation to remedy or redress such wrong or grievance, if the defamatory matter is believed by the person publishing the same to be true, and is relevant to the remedy or redress sought, and such publishing does not in manner or extent exceed what is reasonably sufficient for the occasion. 55-56 V., c. 29, s. 294.

**327.** Answer to Inquiries—Intent—Condition.—No one commits an offence by publishing, in answer to inquiries made of him defamatory matter relating to some subject as to which the person by whom, or on whose behalf, the inquiry is made has, or on reasonable grounds is believed by the person publishing to have, an interest in knowing the truth, if such matter is published for the purpose, in good faith, of giving information in respect thereof to that person, and if such defamatory matter is believed to be true, and is relevant to the inquiries made, and also if such publishing does not in manner or extent exceed what is reasonably sufficient for the occasion. 55-56 V., c. 29, s. 295.

**328.** Giving Information — Intent—Condition.—No one commits an offence by publishing to another person defamatory matter for the purpose of giving information to that person with respect to some subject as to which he has, or is, on reasonable grounds, believed to have, such an interest in knowing the truth as to make the conduct of the person giving the information reasonable under the circumstances, if such defamatory matter is relevant to such subject, and is either true, or is made without ill-will to the person defamed, and in the belief, on reasonable grounds, that it is true. 55-56 V., c. 29, s. 296.

**329.** Proprietor of Newspaper Presumed Responsible.—Every proprietor of any newspaper is presumed to be criminally responsible for defamatory matter inserted and published therein, but such presumption may be rebutted by proof that the particular defamatory matter was inserted in such newspaper without such proprietor's cognizance, and without negligence on his part.

2. General Authority to Managers not Negligence Unless with Intent.—General authority given to the person actually inserting such defamatory matter to manage or conduct, as editor or otherwise, such newspaper, and to insert therein what he in his discretion thinks fit, shall not be negligence within this section unless it be proved that the proprietor, when originally giving such general authority, meant that it should extend to inserting and publishing defamatory matter, or continued such general authority knowing that it had been exercised by inserting defamatory matter in any number or part of such newspaper.

3. Selling Newspapers.—No one is guilty of an offence by selling any number or part of such a newspaper, unless he knew either that such number or part contained defamatory matter, or that defamatory matter was habitually contained in such newspaper. 55-56 V., c. 29, s. 297.

What is libel? Duties of grand jurors on an indictment for libel: 10 L. N. 361.

Information for a libel: *Ex parte Guay*, 8 L. C. R. 353.

Defence that defamatory matter was inserted without proprietor's cognizance. Crown may prove prior publication of similar libels by same editor and accused may be liable for retaining latter: *R.* v. *Molleur*, Q. R. 14 K. B. 556.

Where an indictment for libel contained a general allegation that the newspaper in which it appeared was circulated in the district of Montreal, the court refused to allow evidence of the publication of the article in Montreal, or to allow an amendment of the indictment: *R.* v. *Hickson* (1880), 3 L. N. 139.

A defendant committed for trial on a charge of libel, subsequently published other libellous matter concerning the prosecutor after the depositions had been put on file in the Supreme Court, and it would be the duty of the presiding judge thereof at the next sitting of the court to submit the matter to the grand jury. The libels were published on the 30th December, 1885, and the 20th January, 1886. A motion for attachment for contempt was not made until March 27th, 1886.

*Held*, that defendant had committed a punishable offence, as the proceedings were at the time so far pending in the court as to enable it to act summarily by attachment to punish, if necessary, the offence committed. The main object of the application being to punish for the libellous publications, not to punish for the past offence, it was held not to have been made too late: *R.* v. *Woodworth*, 7 Occ. N. 246.

Evidence that the defendant in a criminal prosecution is, at the time of the trial, editor and proprietor of a journal in which the libel was printed, is insufficient. The defendant should be proved to have been a proprietor or publisher at the date of publication: *R.* v. *Sellars*, 6 L. N. 197.

In a case of libel it is no ground to change the venue that many of the defendant's witnesses reside at a distance, and the defendant has no funds to bring them to that venue: *R.* v. *Casey*, 13 Cox C. C. 614.

As to right of the Crown to set aside jurors in cases of libel: see *R.* v. *Patteson*, 36 U. C. R. 129, and *R.* v. *Maguire*, 13 J. L. R. 99.

As to what constitutes a guilty knowledge under s. 333 and that it is for the jury to decide under a plea of justification if the statement complained of is true, and if it was published for the public benefit: see *R.* v. *Tassé*, 8 L. N. 98.

No action for libel by a wife against her husband: *R.* v. *Lord Mayor*, 16 Q. B. D. 772, 16 Cox C. C. 81.

On an accusation for libel it is no defence that the libel was published with "no personal malice": *R.* v. "*The World*," 13 Cox, 305.

The truth of a seditious or blasphemous libel cannot be pleaded to an indictment for such libel. Section 331, *ante*, of the Act does not apply to such libels, but s. 329 applies: *R.* v. *Bradlaugh*, 15 Cox C. C. 217: *R.* v. *Ramsey*, 15 Cox C. C. 231: *Ex parte O'Brien*, 15 Cox C. C. 180.

*Held*, 1. A criminal information (for libel) will not be granted except in case of a libel on a person in authority, and in respect of duties pertaining to his office.

2. Where a libel was directed against M., who was at the time attorney general, but alleged improper conduct upon his part when he was a judge, an information was refused.

3. The applicant for a criminal information must rely wholly upon the court for redress, and must come there entirely free from blame.

4. Where there is foundation for a libel, though it falls far short of justification, an information will not be granted: *R.* v. *Biggs*, 2 Man. L. R. 18.

See ss. 910 & 956, p. 347, *post*, as to plea of justification and trial, and *R.* v. *Adams*, 16 Cox C. C. 544, 22 Q. B. D. 66, where an obscene letter sent to a young woman was held to constitute a defamatory libel.

See *R.* v. *Holbrook* (1877), L. R. 3 Q. B. D. 60; 4 Q. B. D. 42; 13 Cox C. C. 650; 14 Cox C. C. 185.

**330.** Selling Books Containing Defamatory Libel.—No one commits an offence by selling any book, magazine, pamphlet or other thing, whether forming part of any periodical or not, although the same contains defamatory matter, if, at the time of such sale, he did not know that such defamatory matter was contained in such book, magazine, pamphlet or other thing.

2. Sale by Servant.—Master Exempt Unless Authorizing.—The sale by a servant of any book, magazine, pamphlet or other thing, whether periodical or not, shall not make his employer criminally responsible in respect of defamatory matter contained therein unless it be proved that such employer authorized such sale, knowing that such book, magazine, pamphlet or other thing contained defamatory matter, or, in case of a number or part of a periodical, that defamatory matter was habitually contained in such periodical. 55-56 V., c. 29, s. 298.

**331.** When Truth a Defence.—It shall be a defence to an indictment or information for a defamatory libel that the

publishing of the defamatory matter in the manner in which it was published was for the public benefit at the time when it was published, and that the matter itself was true. 55-56 V., c. 29, s. 29.

Under s. 331 the magistrate has no jurisdiction to receive evidence of the truth of the libel upon an information: *R.* v. *Carden*, 5 Q. B. D. 1, 14 Cox C. C. 359.

Facts relied on to show alleged libel was true and published for public benefit should be set out in plea: *R.* v. *Creighton*, 19 O. R. 339.

Plea quashed on summary motion instead of demurrer. *Ib.*

Plea should set out the facts showing that publication was for public benefit, but not evidence: *R.* v. *Grenier* (1897), Q. R. 6 Q. B. 31; 1 Can. C. C. 55.

Generally on an indictment for libel the defendant cannot plead the truth of the libel: *R.* v. *Dougall*, 18 L. C. J. 85; Q. B. 1874.

Nor can the existence of rumors be proved in justification of the libel. *Ib.*

To an indictment for libel, it is necessary to plead not only that the publication was true, but that it was made for the public good: *R.* v. *Hickson* (1889), 3 L. N. 139; *R.* v. *Laurier*, 11 R. L. 184.

Offence not triable at quarter sessions, s. 585.

**332.** EXTORTION BY LIBEL.—Every one is guilty of an indictable offence and liable to two years' imprisonment, or to a fine not exceeding six hundred dollars, or to both, who publishes or threatens to publish, or offers to abstain from publishing, or offers to prevent the publishing of, a defamatory libel with intent to extort any money, or to induce any person to confer upon or procure for any person any appointment or office of profit or trust, or in consequence of any person having been refused any such money, appointment or office. 55-56 V., c. 29, s. 300.

**333.** PUNISHMENT OF LIBEL KNOWN TO BE FALSE.—Every one is guilty of an indictable offence and liable to two years' imprisonment, or to a fine not exceeding four hundred dollars, or to both, who publishes any defamatory libel knowing the same to be false. 55-56 V., c. 29, s. 301.

Defamatory matter is always presumed to be false, and the burden is upon the defendant to show that it was true, that it dealt with a matter of public interest, and that its publication was for the public good.

*R.* v. *Newman* (1852), 1 E. & B. 268.
*Edsall* v. *Russell* (1842), 4 M. & Gr. 1090.
*Blake* v. *Stevens* (1864), 4 F. & F. 239.
*Watkin* v. *Hall* (1868), L. R., 3 Q. B. 396.

**334.** PUNISHMENT OF DEFAMATORY LIBEL.—Every one is guilty of an indictable offence and liable to one year's im-

prisonment, or to a fine not exceeding two hundred dollars, or to both, who publishes any defamatory libel. 55-56 V., c. 29, s. 302.

*Indictment for a false defamatory libel.*— that J. S., unlawfully, and maliciously intending to injure, and prejudice one J. N., and to deprive him of his good name and reputation, and to bring him into public contempt or ridicule and disgrace, on . . . . unlawfully and maliciously did write and publish, and cause and procure to be written and published, a false and defamatory libel, in the form of a letter directed to the said J. N. (*or, if the publication were in any other manner, omit the words, "in the form," etc.*), containing divers false and defamatory matters and things of and concerning the said J. N., and of and concerning, etc., (*here insert such of the subjects of the libel as it may be necessary to refer to by the innuendoes, in setting out the libel*), according to the tenor and effect following, that is to say (*here set out the libel, together with such innuendoes as may be necessary to render it intelligible*), he, the said J. S., then well knowing the said defamatory libel to be false.

*Indictment for threatening to publish a defamatory libel, etc., with intent to extort money under s. 332.*— unlawfully did threaten one J. N., to publish a certain libel of and concerning him the said J. N. ("*if any person publishes, or threatens to publish, any libel upon any other person, or offers to abstain from publishing, or offers to prevent the publishing of a defamatory libel*"), with intent thereby to extort money from the said J. N. ("*with intent to extort any money, or with intent to induce any person to confer upon or procure for any person any appointment or office of profit or trust, or in consequence of any person having been refused any such money, appointment or office*"). If it be doubtful whether the matter threatened to be published be libellous, add a count charging that the defendant "did propose to the said J. N. to abstain from printing and publishing a certain matter and thing touching the said J. N. (*or one J. F.*) with intent, etc."

## PART VII.

### OFFENCES AGAINST RIGHTS OF PROPERTY AND RIGHTS ARISING OUT OF CONTRACTS, AND OFFENCES CONNECTED WITH TRADE.

#### *Interpretation.*

**335.** DEFINITIONS.—In this Part, unless the context otherwise requires,—

(*a*) 'ACT,' for the purposes of the sections relating to offences connected with trade and breaches of contract, includes a default, breach or omission;

(*b*) 'ADMIRALTY' means the Lord High Admiral of the United Kingdom, or the Commissioners for executing the office of Lord High Admiral;

(*c*) 'BREAK' means to break any part, internal or external, of a building, or to open by any means whatever (includ-

ing lifting, in the case of things kept in their places by their own weight), any door, window, shutter, cellar-flap or other thing intended to cover openings to a building, or to give passage from one part of it to another;

(*d*) 'COVERING' includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame or wrapper, and 'LABEL' includes any band or ticket;

(*e*) 'DWELLING-HOUSE' means a permanent building, the whole or any part of which is kept by the owner or occupier for the residence therein of himself, his family or servants, or any of them, although it may at intervals be unoccupied;

(*f*) 'DOCUMENT' means any paper, parchment or other material used for writing or printing, marked with matter capable of being read, but does not include trade marks on articles of commerce, or inscriptions on stone or metal or other like material;

(*g*) 'EVERY ONE, ETC.'—'every one,' 'vendor,' 'purchaser,' 'merchant,' 'agent' or 'person,' for the purposes of the sections relating to trading stamps, includes any partnership, or company, or body corporate;

(*h*) 'EXCHEQUER BILL' includes exchequer bonds, notes, debentures and other securities issued under the authority of the Parliament of Canada, or under the authority of the legislature of any province forming part of Canada, whether before or after such province so became a part of Canada.

(*i*) 'EXCHEQUER BILL PAPER'—means any paper provided by the proper authority for the purpose of being used as exchequer bills, exchequer bonds, notes, debentures or other securities issued under the authority of the Parliament of Canada, or under the authority of the legislature of any province forming part of Canada, whether before or after such province became a part of Canada;

(*j*) 'FALSE DOCUMENT' means

(i) a document, the whole or some material part of which purports to be made by or on behalf of any person who did not make or authorize the making thereof,

or which, though made by, or by the authority of, the person who purports to make it, is falsely dated as to time or place of making, where either is material, or

(ii) a document, the whole or some material part of which purports to be made by or on behalf of some person who did not in fact exist, or

(iii) a document which is made in the name of an existing person, either by that person or by his authority, with the fraudulent intention that the document should pass as being made by some person, real or fictitious, other than the person who makes or authorizes it;

(*k*) 'FALSE NAME OR INITIALS' means, as applied to any goods, any name or initials of a person which

(i) are not a trade mark or part of a trade mark;

(ii) are identical with, or a colourable imitation of, the name or initials of a person carrying on business in connection with goods of the same description, and not having authorized the use of such name or initials,

(iii) are either those of a fictitious person or of some person not *bonâ fide* carrying on business in connection with such goods;

(*l*) 'FALSE TRADE DESCRIPTION' means a trade description which is false in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement or otherwise, where that alteration makes the description false in a material respect; and the fact that a trade description is a trade mark, or part of a trade mark, shall not prevent such trade description being a false trade description within the meaning of this Part;

(*m*) 'GOODS,' for the purpose of the sections relating to forgery of trade marks and fraudulent marking of merchandise, means anything which is merchandise or the subject of trade or manufacture;

(*n*) 'NAME' includes any abbreviation of a name;

(*o*) 'PERSON,' 'manufacturer,' 'dealer' or 'trader' and 'proprietor,' for the purposes of the sections relating to

forgery of trade marks and fraudulent marking of merchandise, include any body of persons, corporate or not corporate;

(*p*) 'REVENUE PAPER' means any paper provided by the proper authority for the purpose of being used for stamps, licenses or permits, or for any other purpose connected with the public revenue;

(*q*) 'SEAMAN' means every person, not being a commissioned, warrant or subordinate officer, who is in or belongs to His Majesty's navy, and is borne on the books of any one of His Majesty's ships in commission, and every person not being an officer as aforesaid, who, being borne on the books of any hired vessel in His Majesty's service, is by virtue of any Act of Parliament of the United Kingdom for the time being in force for the discipline of the navy, subject to the provisions of such Act;

(*r*) 'SEAMAN'S PROPERTY' means any clothes, slops, medals, necessaries or articles usually deemed to be necessaries for sailors on board ship, which belong to any seaman;

(*s*) 'TRADE MARK' means a trade mark or industrial design registered in accordance with the Trade Mark and Design Act, and the registration whereof is in force under the provisions of the said Act, and includes any trade mark which, either with or without registration, is protected by law in any British possession or foreign state to which the provisions of section one hundred and three of the Act of the United Kingdom, known as *The Patents, Designs and Trade Marks Act*, 1883, are in accordance with the provisions of the said Act, for the time being applicable.

(*t*) 'TRADE DESCRIPTION' means any description, statement or other indication, direct or indirect,

(i) as to the number, quantity, measure, gauge or weight of any goods,

(ii) as to the place or country in which any goods are made or produced,

(iii) as to the mode of manufacturing or producing any goods,

(iv) as to the material of which any goods are composed,

(v) as to any goods being the subject of an existing patent, privilege or copyright;

(*u*) 'TRADING STAMPS' includes, besides trading stamps commonly so-called, any form of cash receipt, receipt, coupon, premium ticket or other device, designed or intended to be given to the purchaser of goods by the vendor thereof or his employee or agent, and to represent a discount on the price of such goods or a premium to the purchaser thereof, which is redeemable either

(i) by any person other than the vendor, or the person from whom he purchased the goods, or the manufacturer of the goods, or

(ii) by the vendor, or the person from whom he purchased the goods, or the manufacturer of the goods, in cash or goods not his property, or not his exclusive property, or

(iii) by the vendor elsewhere than in the premises where such goods are purchased;

or which does not show upon its face the place of its delivery and the merchantable value thereof, or is not redeemable at any time;

(*v*) 'WATCH,' for the purposes of the next succeeding section, means all that portion of a watch which is not the watch case.

2. AN OFFER NOT A TRADING STAMP.—An offer, printed or marked by the manufacturer upon any wrapper, box or receptacle in which goods are sold, of a premium or reward for the return of such wrapper, box or receptacle, is not a trading stamp within the meaning of this Part. 55-56 V., c. 29, ss. 383, 392, 407, 419, 420, 421, 433, 443, 444, and 519; 4-5 E. VII., c. 9, s. 1.

**336.** WORDS OR MARKS ON WATCH CASES.—Where a watch case has thereon any words or marks which constitute, or are by common repute considered as constituting, a description of the country in which the watch was made, and the watch bears no such description, those words or marks shall *prima facie* be deemed to be a description of that country within the meaning of this Part, and the provisions of this Part

with respect to goods to which a false description has been applied, and with respect to selling or exposing, or having in possession, for sale for any purpose of trade or manufacture, goods with a false trade description, shall apply accordingly. 55-56 V., c. 29, s. 444.

**337.** TRADE DESCRIPTION.—The use of any figure, word or mark which, according to the custom of the trade, is commonly taken to be an indication of any of the matters hereinbefore referred to in the interpretation of the expression 'trade description,' is a trade description within the meaning of this Part. 55-56 V., c. 29, s. 443.

**338.** FALSE DOCUMENT.—To constitute a false document it is not necessary that the fraudulent intention should appear on the face of the document, but it may be proved by external evidence. 55-56 V., c. 29, s. 421.

**339.** OUTBUILDING WHEN TO BE PART OF DWELLING-HOUSE.—A building occupied with, and within the same curtilage with, any dwelling-house should be deemed to be part of the said dwelling-house if there is between such building and dwelling-house a communication, either immediate or by means of a covered and inclosed passage, leading from the one to the other, but not otherwise. 55-56 V., c. 29, s. 407.

The word "curtilage" means a courtyard enclosure or piece of land near and belonging to a dwelling-house: *Pilbrow* v. *St. Leonards* (1885), L. R. 1 Q. B. 33 and 433.

**340.** ENTRANCE INTO BUILDING DEFINED.—An entrance into a building is made as soon as any part of the body of the person making the entrance, or any part of any instrument used by him, is within the building.

2. ENTERING BY ARTIFICE OR BREAKING.—Every one who obtains entrance into any building by any threat or artifice used for that purpose, or by collusion with any person in the building, or who enters any chimney or other aperture of the building permanently left open for any necessary purpose, shall be deemed to have broken and entered that building. 55-56 V., c. 29, s. 407.

*Application of Part.*

**341.** As to Provisions Relating to False Trade Descriptions.—The provisions of this Part respecting the application of a false trade description to goods extend to the application to goods of any such figures, words or marks, or arrangement or combination thereof, whether including a trade mark or not, as are reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are.

2. Idem.—The provisions of this Part respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, extend to the application to goods of any false name or initials of a person, and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description. 55-56 V., c. 29, s. 443.

**342.** Idem—Proviso.—The provisions of this Part with respect to false trade descriptions do not apply to any trade description which, on the twenty-second day of May, in the year one thousand eight hundred and eighty-eight, was lawfully and generally applied to goods of a particular class, or manufactured by a particular method, to indicate the particular class or method of manufacture of such goods: Provided that where such trade description includes the name of the place or country, and is calculated to mislead as to the place or country where the goods to which it is applied were actually made or produced, and the goods are not actually made or produced in that place or country, such provisions shall apply unless there is added to the trade description, immediately before or after the name of that place or country, in an equally conspicuous manner with that name, the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there. 55-56 V., c. 29, s. 455.

**343.** As to Trading Stamps.—The provision of this Part with respect to trading stamps shall not apply to any trading

stamp issued by a manufacturer or vendor before the first day of November, one thousand nine hundred and five. 4-5 E. VII., c. 9, s. 2.

*Theft Defined.*

**344.** THINGS CAPABLE OF BEING STOLEN—PROVISO.—Every inanimate thing whatever which is the property of any person, and which either is or may be made movable, is capable of being stolen as soon as it becomes movable, although it is made movable in order to steal it: Provided that nothing growing out of the earth of a value not exceeding twenty-five cents shall, except in cases hereinafter provided, be deemed capable of being stolen. 55-56 V., c. 29, s. 303.

Section 374, *post*, provides for the stealing of trees of a value not exceeding twenty-five cents.

The fact that the sum stolen was described in brackets as "legal tender notes" is unimportant, as the coin or note need not be specified: *R.* v. *Paquet*, 2 L. N. 140.

**345.** LIVING CREATURES CAPABLE OF BEING STOLEN.—All tame living creatures, whether tame by nature or wild by nature and tamed, shall be capable of being stolen: Provided that tame pigeons shall be capable of being stolen so long only as they are in a dovecot or on their owner's land.

2. LIVING CREATURES WILD BY NATURE.—All living creatures wild by nature, such as are not commonly found in a condition of natural liberty in Canada, shall, if kept in a state of confinement, be capable of being stolen, not only while they are so confined but after they have escaped from confinement.

3. IDEM.—All other living creatures wild by nature shall, if kept in a state of confinement, be capable of being stolen so long as they remain in confinement or are being actually pursued after escaping therefrom, but no longer.

4. IDEM.—A wild living creature shall be deemed to be in a state of confinement so long as it is in a den, cage or small inclosure, stye or tank, or is otherwise so situated that it cannot escape and that its owner can take possession of it at pleasure.

5. IDEM.—Wild creatures in the enjoyment of their natural liberty shall not be capable of being stolen, nor shall the

taking of their dead bodies by, or by the orders of, the person who killed them before they are reduced into actual possession by the owner of the land on which they died, be deemed to be theft.

6. Parts of living Creatures.—Everything produced by or forming part of any living creature capable of being stolen, shall be capable of being stolen. 55-56 V., c. 29, s. 304.

**346.** Oysters.—Oysters and oyster brood shall be capable of being stolen when in oyster beds, layings, or fisheries which are the property of any person, and sufficiently marked out or known as such property. 55-56 V., c. 29, s. 304.

**347.** Theft Defined.—Theft or stealing is the act of fraudulently and without colour of right taking, or fraudulently and without colour of right converting to the use of any person, anything capable of being stolen, with intent,—

(*a*) to deprive the owner, or any person having any special property or interest therein, temporarily or absolutely of such thing or of such property or interest; or,

(*b*) to pledge the same or deposit it as security; or

(*c*) to part with it under a condition as to its return which the person parting with it may be unable to perform; or,

(*d*) to deal with it in such a manner that it cannot be restored in the condition in which it was at the time of such taking and conversion.

2. Time when Theft.—Theft is committed when the offender moves the thing or causes it to move or to be moved, or begins to cause it to become movable, with intent to steal it.

3. Secrecy.—The taking or conversion may be fraudulent, although effected without secrecy or attempt at concealment.

4. Purpose of Taking.—It is immaterial whether the thing converted was taken for the purpose of conversion, or whether it was, at the time of the conversion, in the lawful possession of the person converting. 55-56 V., c. 29, s. 305.

**Lapse of time—Circumstantial evidence — Possession of stolen goods—Offer to settle:** *R.* v. *Starr*, 40 U. C. R. 268.

Hire of horse without criminal intent—Subsequent conversion: *R.* v. *Tweedy*, 23 U. C. R. 120.

Unstamped promissory note not note or valuable security under the Criminal Act: *R.* v. *Scott*, 2 S. C. R. 349. *Contra*, *R.* v. *Dewitt*, 21 N. B. R. 17.

Partners — Dissolution — Division of assets—Insurance monies — Physical possession: *Mooney* v. *R.*, 3 Steph. Dig. (Que.) 224.

Indictment for theft will not lie against partner on account of partnership money: *R.* v. *Lowenbruck*, 18 L. C. J. 212.

A market clerk who collects money from persons exchanging stalls on the false representation that it was due the city, is not guilty of theft: *R.* v. *Tessier*, Q. R. 10 K. B. 45.

"Unlawfully did steal" in an information sufficiently describes the offence of taking "fraudulently and without colour or right:" *R.* v. *George*, 35 N. S. R. 42.

An indictment for larceny on board of a British vessel "upon the sea" is sufficient, without saying "upon the high seas": *R.* v. *Sprungli* (1878), 4 Q. L. R. 110.

The accused gave in part payment of the amount due for certain goods purchased a receipt note, by the terms of which the ownership in the goods was to remain in the vendors until the note was paid. The vendors discounted the note at their bank, and when it was not taken up at maturity they paid it by giving in its place a renewal note, the original one being then returned to them. The renewal note was paid, and the vendors then seized the goods, by virtue of the first note. The accused regained possession of the goods, and a charge was then laid against him under this section. On behalf of the accused the point was raised that since the original note had been paid by the giving of a renewal note, the property in the goods had thereby passed to the makers of the note; or, if that was not so, then that the endorsement to the bank constituted an equitable assignment, and that the bank was therefore the only party which had any right to make a seizure. This objection was upheld by the Court: *R.* v. *Walker* (1896), 32 C. L. J. 300.

The mere fact of a person converting to his own use goods found by him does not of itself as a matter of law make him guilty of theft: *R.* v. *Slavin*, 35 N. B. R. 388.

Discharge of accused at preliminary inquiry—Subsequent committal by same magistrates—Indictment—Validity — Depositions at first inquiry not before grand jury: *R.* v. *Hannay* (B.C.), 2 W. L. R. 543.

Evidence of former offence — Acquittal—Judge's charge: *R.* v. *Menard*, 2 O. W. R. 900.

On a charge of theft of goods from a store, evidence of the finding in the prisoner's house of the goods and of keys fitting the store doors, and of the fact that the goods were in the store exposed for sale at the time of the alleged theft and had not been sold, is sufficient to put the onus upon the prisoner of accounting for his possession. In such circumstances, it is not necessary for the Crown to prove that the goods had not passed from the possession of the owners by some means other than sale: *R.* v. *Theriault*, 11 B. C. R. 117.

**348.** AGENT PLEDGING GOODS NOT THEFT WHEN.—No factor or agent shall be guilty of theft by pledging or giving a lien on any goods or document of title to goods entrusted to him for the purpose of sale or otherwise, for any sum of money not greater than the amount due to him from his principal at the time of pledging or giving a lien on the same, together with the amount of any bill of exchange accepted by him for or on account of his principal.

2. SERVANT WHEN NOT GUILTY OF THEFT.—Any servant contrary to the orders of his master, taking from his possession any food for the purpose of giving the same or having the same given to any horse or other animal belonging to or in the possession of his master, shall not, by reason thereof, be guilty of theft. 55-56 V., c. 29, s. 305.

**349.** THEFT OF THINGS SEIZED UNDER PROCESS OF LAW.—Every one commits theft and steals the thing taken or carried away who, whether pretending to be the owner or not, secretly or openly takes or carries away, or causes to be taken or carried away, without lawful authority, any property under lawful seizure and detention by any peace officer or public officer in his official capacity. 63-64 V., c. 46, s. 3.

A guest at an hotel whose effects have been seized for non-payment, is guilty of theft if he takes any of them away without the landlord's authority: *R.* v. *Hollingsworth* (1899), 2 Can. C. C. 291.

**350.** KILLING ANIMALS.—Every one commits theft and steals the creature killed who kills any living creature capable of being stolen with intent to steal the carcass, skin, plumage or any part of such creature. 55-56 V., c. 29, s. 307.

Punishment, section 386.

*Indictment.*— one sheep of the goods and chattels of I. N. unlawfully did steal.

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.* v. *Clay*, R. & R. 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 court held the conviction right: *R.* v. *Sutton*, 8 C. & P., 291. It is immaterial whether the intent was to steal the whole or part only of the carcase: *R.* v. *Williams*, 1 Moo. 107.

Any one killing cattle with intent to steal the carcase, should be indicted under s. 510, *post*.

**351.** THEFT OF ELECTRICITY.—Every one commits theft who maliciously or fraudulently abstracts, causes to be wasted or diverted, consumes or uses any electricity. 57-58 V., c. 39, s. 10.

**352.** THEFT BY OWNER.—Theft may be committed by the owner of anything capable of being stolen against a person having a special property or interest therein, or by a person

having a special property or interest therein against the owner thereof, or by a lessee against his reversioner, or by one of several joint owners, tenants in common, or partners of or in any such thing against the other persons interested therein, or by the directors, public officers or members of a public company, or body corporate, or of an unincorporated body or society associated together for any lawful purpose, against such public company or body corporate or unincorporated body or society. 55-56 V., c. 29, s. 311.

Punishment, section 386.
See *R.* v. *Robson*, Warb. Lead. Cas. 139.
*Indictment.*— 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 unlawfully did steal: *R.* v. *Butterworth*, 12 Cox C. C. 132.

See *R.* v. *Balls*, 12 Cox C. C. 96, for an indictment against a partner for embezzlement, now theft, of partnership property; also, *R.* v. *Blackburn*, 11 Cox C. C. 157.

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: *R.* v. *Webster*, L. & C. 77; *R.* v. *Burgess*, L. & C. 299; *R.* v. *Moody*, L. & C. 173; that is when the property is stolen from another person in whose custody it is, and who is responsible for it. See also *R.* v. *Diprose*, 11 Cox C. C. 185, and *R.* v. *Rodoc*, 13 Cox C. C. 17.

A covenant for the payment of money given by an accused person in order to suppress a prosecution for the alleged embezzlement of partnership property is not enforceable: *Mayor* v. *McCravey* (1898), 2 Can. C. C. 547.

See *also*, *Ex parte Seitz* (1899), 3 Can. C. C. 54 & 127.

**353.** By Defrauding Partner in Mining Claim.—Every one commits theft who, with intent to defraud his co-partner, co-adventurer, joint tenant or tenant in common, in any mining claim, or in any share or interest in any such claim, secretly keeps back or conceals any gold or silver found in or upon or taken from such claim. 55-56 V., c. 29, s. 312.

Punishment under s. 386, *post*.
As to search warrant, section 637, *post*.

**354.** Husband and Wife—Theft while Living Apart. No husband shall be convicted of stealing during co-habitation, the property of his wife, and no wife shall be convicted of stealing, during co-habitation, the property of her husband;

but while they are living apart from each other either shall be guilty of theft if he or she fraudulently takes or converts anything which is, by law, the property of the other in a manner which, in any other person, would amount to theft.

2. THEFT.—Every one commits theft who, while a husband and wife are living together, knowingly,—

(*a*) BY ASSISTING SPOUSE—assists either of them in dealing with anything which is the property of the other in a manner which would amount to theft if they were not married; or,

(*b*) RECEIVING PROPERTY OF SPOUSE—receives from either of them anything, the property of the other, obtained from that other by such dealing as aforesaid. 55-56 V., c. 29, s. 313.

**355.** THEFT BY PERSON REQUIRED TO ACCOUNT.—Every one commits theft who, having received any money or valuable security or other thing whatsoever, on terms requiring him to account for or pay the same, or the proceeds thereof, or any part of such proceeds, to any other person, though not requiring him to deliver over in specie the identical money, valuable security or other thing received, fraudulently converts the same to his own use or fraudulently omits to account for or pay the same or any part thereof, or to account for or pay such proceeds or any part thereof, which he was required to account for or pay as aforesaid.

2. ENTRY IN ACCOUNT.—If it be part of the said terms that the money or other thing received, or the proceeds thereof, shall form an item in a debtor and creditor account between the person receiving the same and the person to whom he is to account for or pay the same, and that such last mentioned person shall rely only on the personal liability of the other as his debtor in respect thereof, the proper entry of such money or proceeds or any part thereof, in such account, shall be a sufficient accounting for the money or proceeds, or part thereof, so entered.

3. EFFECT.—In such case no fraudulent conversion of the amount accounted for shall be deemed to have taken place. 55-56 V., c. 29, s. 308.

Officers of Trinity House—Special fund—Property of Her Majesty: *R.* v. *David*, 17 L. C. J. 310.

Negotiable securities—Possession for purpose of retiring notes—Conversion of securities or proceeds: *R.* v. *Barnett*, 17 O. R. 649.

"Terms" not "terms imposed by person paying money" but "terms on which accused when he receives it, holds it: *R.* v. *Ungar* (1894), 14 Oce. N. 294; 30 C. L. J. 428.

Broker—Failure to sell stocks as instructed—Loss to customer: *R.* v. *Bastien*, Q. R. 15 K. B. 16.

*Indictment under s. 355.*— that A. B. on did receive from C. D., a sum of one thousand dollars, the property of the said C. D. on terms requiring him the said A. B. to pay the said sum of one thousand dollars to one M. N. and that the said A. B. afterwards, in violation of good faith and contrary to his obligation, fraudulently did convert the said sum to his own use and benefit and did thereby steal the same.

**356.** THEFT BY PERSONS HOLDING POWER OF ATTORNEY.—Every one commits theft who, being entrusted, either solely or jointly with any other person, with any power of attorney for the sale, mortgage, pledge or other disposition of any property, real or personal, whether capable of being stolen or not, fraudulently sells, mortgages, pledges or otherwise disposes of the same or any part thereof, or fraudulently converts the proceeds of any sale, mortgage, pledge or other disposition of such property, or any part of such proceeds, to some purpose other than that for which he was entrusted with such power of attorney. 55-56 V., c. 29, s. 309.

Valuable security defined, section 2.

Must be written power of attorney: *R.* v. *Chouinard*, 4 Q. L. R. 220.

See *R.* v. *Fulton* (1900), R. J. Q. 10 Q. B. 1.

*Indictment under s. 356.*— that A. B. on being intrusted by C. D. with a power of attorney for the sale of a certain piece of land having afterwards sold the same did fraudulently convert the proceeds of the said sale, to wit, the sum of to some purpose other than that for which he was intrusted with such power of attorney by unlawfully applying the said proceeds to his own use and benefit, and did thereby steal the said proceeds, to wit, the said sum of

*Indictment under s. 356.*— that A. B. on did give a power of attorney and thereby intrust to C. D., one hundred bales of cotton, of the value of four thousand dollars, 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, four hundred dollars, by the said C. D., then borrowed and received of and from the said E. F., and that the said C. D. did thereby steal the said one hundred bales of cotton of the goods and chattels of the said A. B.

See *R.* v. *Barnett*, 17 O. R. 649.

**357.** MISAPPROPRIATION PROCEEDS HELD UNDER DIRECTION.—Every one commits theft, who, having received, either

solely or jointly with any other person, any money or valuable security or any power of attorney for the sale of any property, real or personal, with a direction that such money, or any part thereof, or the proceeds, or any part of the proceeds of such security, or such property, shall be applied to any purpose or paid to any person specified in such direction, in violation of good faith and contrary to such direction, fraudulently applies to any other purpose or pays to any other person such money or proceeds, or any part thereof.

2. DIRECTION IN WRITING WHEN NECESSARY.—When the person receiving such money, security or power of attorney, and the person from whom he receives it, deal with each other on such terms that all money paid to the former would, in the absence of any such direction, be properly treated as an item in a debtor and creditor account between them, this section shall not apply, unless such direction is in writing. 55-56 V., c. 29, s. 310.

"Valuable security" defined, s. 2.

What was embezzlement is now theft purely and simply.

Under s. 357 the direction need not be in writing (except as *per proviso*) as it was needed to be in s. 60 of the repealed statute. But the power of attorney mentioned in s. 356 must be in writing: *R.* v. *Chouinard*, 4 Q. L. R. 220; and the power of attorney mentioned in s. 357 would have also to be in writing. As to who is an agent: see *R.* v. *Cosser*, 13 Cox C. C. 187; *R.* v. *Cronmire*, 16 Cox C. C. 42.

The indictment under these three sections may be drawn in the usual short form for simply theft, but care must be taken at the trial that the evidence brings the facts within the statute: *R.* v. *Haigh*, 7 Cox C. C. 403.

*Indictment under s. 357*—, that A. B. on did intrust C. D. with a certain large sum of money, to wit, the sum of four hundred dollars, with a direction to the said C. D. to pay the said sum of money to a certain person specified in the said direction, and that the said C. D. afterwards, to wit, on in violation of good faith and contrary to the terms of such direction, fraudulently did convert to his own use and benefit the said sum of money so to him intrusted as aforesaid, and that the said C. D. thereby did steal the said money of the goods and chattels of the said A. B. (*A count should be added stating particularly to whom the money was to be paid*).

See *R.* v. *Cooper*, 12 Cox C. C. 600; *R.* v. *Tatlock*, 13 Cox C. C. 328; *R.* v. *Fullagar*, 14 Cox C. C. 370; *R.* v. *Brownlow*, 14 Cox C. C. 216; *Ex parte Piot*, 15 Cox C. C. 208; *R.* v. *Bowerman*, 17 Cox C. C. 151, (1891), 1 Q. B. 112, Warb. Lead. Cas. 177; *Ex parte Bellencontre*, 17 Cox C. C. 253, [1891] 2 Q. B. 122.

All criminal breaches of common law trusts are now either theft under the preceding sections, or punishable under s. 390, *post*, and the distinctions of larceny by bailees, or embezzlements or frauds by agents, bankers, factors, attorneys, etc., are superseded. The imperfections in the English law alluded to by the Judges in *Ex parte Bellencontre*, 17 Cox C. C. 253, (1891), 2 Q. B. 122, have now been removed in Canada.

*Punishment of Theft.*

**358.** PENALTY UNDER LAST THREE SECTIONS.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who steals anything by any act or omission amounting to theft under the provisions of the three last preceding sections. 55-56 V., c. 29, s. 320.

**359.** PENALTY.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who,—

(*a*) THEFT BY CLERK—being a clerk or servant, or being employed for the purpose or in the capacity of a clerk or servant, steals anything belonging to or in the possession of his master or employer; or,

(*b*) THEFT BY CASHIER—being a cashier, assistant cashier, manager, officer, clerk or servant of any bank, or savings bank, steals any bond, obligation, bill obligatory or of credit, or other bill or note, or any security for money, or any money or effects of such bank, or lodged or deposited with any such bank; or,

(*c*) BY GOVERNMENT EMPLOYEE—being employed in the service of His Majesty, or of the Government of Canada or the government of any province of Canada, or of any municipality, steals anything in his possession by virtue of his employment. 55-56 V., c. 29, s. 319; 57-58 V., c. 57, s. 1.

Municipality defined, section 2.

Officer of Trinity House — Special fund — Property of Her Majesty: *R.* v. *David*, 17 L. C. J. 330.

General deficiency—Unlawful appropriation—Clerk guilty though no precise sum paid by any particular person is taken: *R.* v. *Glass*, 1 L. N. 41.

Treasurer of municipality may be indicted for illegal appropriation of funds, though sanctioned by resolution of council: *Mun. of East Nissouri* v. *Horseman*, 16 Q. B. 576.

A market clerk who collects money from persons exchanging stalls, falsely representing it to be due the city, does not steal the property of his employer (s.-s. a), nor anything in his possession by virtue of his employment (c): *R.* v. *Tessier*, Q. R. 10 K. B. 45.

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 to any other person. *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: *R.* v. *Negus* (1873), 12 Cox C. C. 492; 43 L. J. (M. C.), 65; Warb. Lead. Cas. 185; *R.* v. *Coley*, 16 Cox C. C. 226.

*R.* v. *Foulkes* (1875), 44 L. J. (M. C.) 65.

*Indictment under (a).*— 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 forty dollars, ten yards of linen cloth, and one hat, of and belonging to the said J. N., his master, unlawfully did steal.

*Indictment under (b).*— being employed in the public service of Her Majesty, and being intrusted, 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 unlawfully did steal: *R. v. Cummings*, 16 U. C. R. 15.

**360.** By Tenants and Lodgers.—Every one who steals any chattel or fixture let to be used by him in or with any house or lodging is guilty of an indictable offence and liable to two years' imprisonment, and, if the value of such chattel or fixture exceeds the sum of twenty-five dollars, to four years' imprisonment. 55-56 V., c. 29, s. 322.

**361.** Of Testamentary Instruments.—Every one is guilty of an indictable offence and liable to imprisonment for life who, either during the life of the testator or after his death, steals the whole or any part of a testamentary instrument, whether the same relates to real or personal property, or to both. 55-56 V., c. 29, s. 323.

"Testamentary instrument" defined, s. 2.

*Indictment.*— a certain will and testamentary instrument of one J. N. unlawfully did steal. (*And counts varying description of the will, etc.*)

**362.** Of Documents of Title to Lands or Goods.—Every one is guilty of an indictable offence and liable to three years' imprisonment who steals the whole or any part of any document of title to lands or goods. 55-56 V., c. 29, s. 324.

See s. 2 for definitions of "title to lands or goods."

*Indictment.*— a certain document of title to lands, 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, unlawfully did steal.

**363.** Of Judicial or Official Documents.—Every one is guilty of an indictable offence and liable to three years' imprisonment who steals the whole or any part of any record, writ, return, affirmation, recognizance, *cognovit actionem*, bill, petition, answer, decree, panel, process, interrogatory, deposition, affidavit, rule, order or warrant of attor-

ney, or of any original document whatsoever of or belonging to any court of justice, 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 His Majesty, and being or remaining in any office appertaining to any court of justice, or in any government or public office. 55-56 V., c. 29, s. 325.

Prisoner indicted for stealing "an original document, to wit, an act or deed of transfer," made before notaries, and, on a second count, with stealing a certain notarial minute, to wit, "an authentic copy of an act or deed of transfer."

*Held*, that, by statute in force in Canada, it is not an offence to steal an authentic copy of an act or deed passed before a notary: *R.* v. *McGinnis*, 7 L. C. J. 311, Q. B. 1862.

*Indictment for stealing a record.*— a certain judgment-roll of the Court of Our Lord the King, before the King himself, unlawfully did steal.

**364.** PENALTY.—Every one is guilty of an indictable offence and liable to imprisonment for life, or for any term not less than three years, who steals,—

(*a*) POST LETTERS, ETC.—a post letter bag; or,

(*b*) a post letter from a post letter bag or from any post office, or from any officer or person employed in any business of the post office of Canada, or from a mail; or,

(*c*) a post letter containing any chattel, money or valuable security; or,

(*d*) any chattel, money or valuable security from or out of a post letter. 55-56 V., c. 29, s. 326.

"Valuable security" defined, s. 2.

See s. 869, *post*, as to indictment.

A letter delivered to a letter carrier, even in the post office, is a "post letter:" *R.* v. *Trepanier*, Q. R. 10 K. B. 222; *R.* v. *Ryan*, 5 O. W. R. 125; 9 O. L. R. 137.

To unlawfully open a post letter bag is punishable by five years: ss. 82, 89, c. 35, R. S. C.: see *R.* v. *Jones*, 1 Den. 188; *R.* v. *Pearce*, 2 East P. C. 603; *R.* v. *Poynton*, L. & C. 247.

*Indictment.*— that A. B., on unlawfully did steal one post letter, the property of the post master-general, from a post letter bag (*or from a post office*) (*or a post letter containing a sum of money*) (*or a sum of money out of a post letter*).

**365.** PENALTY.—Every one is guilty of an indictable offence and liable to imprisonment for any term not exceeding seven years, and not less than three years, who steals,—

(*a*) IDEM—any post letter, other than post letters referred to in the last preceding section;

(*b*) any parcel sent by parcel post, or any article contained in any such parcel; or,

(*c*) any key suited to any lock adopted for use by the Post Office Department, and in use on any Canada mail or mail bag. 55-56 V., c. 29, s. 327.

**366.** STEALING MAILABLE MATTER.—Every one is guilty of an indictable offence and liable to five years' imprisonment who steals any printed vote or proceeding, newspaper, printed paper or book, packet or package of patterns or samples of merchandise or goods, or of seeds, cuttings, bulbs, roots, scions or grafts, or any post card or other mailable matter, other than a post letter, sent by mail. 55-56 V., c. 29, s. 328.

See *R.* v. *James* (1890), L. R. 24, Q. B. D. 439.

**367.** ELECTION DOCUMENTS.—Every one is guilty of an indictable offence and liable to a fine in the discretion of the court, or to seven years' imprisonment, or to both fine and imprisonment, who steals, or unlawfully takes from any person having the lawful custody thereof, or from its lawful place of deposit for the time being, any writ of election, or any return to a writ of election, or any indenture, poll-book, voters' list, certificate, affidavit or report, ballot, or any document or paper made, prepared or drawn out according to or for the requirements of any law in regard to Dominion, provincial, municipal or civic elections. 55-56 V., c. 29, s. 329.

**368.** RAILWAY TICKETS.—Every one is guilty of an indictable offence and liable to two years' imprisonment who steals any tramway, railway or steamboat ticket, or any order or receipt for a passage on any railway or in any steamboat or other vessel. 55-56 V., c. 29, s. 330.

Conductor of train taking money from passengers and allowing free transportation — Jurisdiction of justices — Conviction—Suspended sentence—Costs: *R.* v. *McLennan* (N.W.T.), 2 W. L. R. 227.

**369.** CATTLE.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who steals any cattle. 55-56 V., c. 29, s. 331.

If a person go to an inn, and direct the hostler to bring out his horse, and point out the prosecutor's horse as his, and the hostler 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.* v. *Pitman*, 2 C. & P. 423.

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: *R.* v. *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: *R.* v. *Crump*, 1 C. & P. 658.

Obtaining a horse under the pretense of hiring it for a day, and immediately selling it, is a felony at common law if the jury find the hiring was *animo furandi*: *R.* v. *Pear*, 1 Leach, 212; *R.* v. *Charlewood*, 1 Leach, 409; see now s. 347, *ante*. 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, if the jury found that he intended so to do at the time of receiving them from the owner: *R.* v. *Stock*, 1 Moo. 87; see now s. 347, *ante*. 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.* v. *Rawlins*, 2 East P. C. 617. See also, *R.* v. *Brewster* (1896), 4 Can. C. C. 34.

*Indictment.*— that J. S. on at one horse of the goods and chattels of J. N. unlawfully did steal. (*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.* v. *Beaney*, R. & R. 416.

**370.** Dogs, Birds, Beasts and Other Animals.—Every one who steals any dog, or any bird, beast or other animal ordinarily kept in a state of confinement or for any domestic purpose, or for any lawful purpose of profit or advantage, is, if the value of the property stolen exceeds twenty dollars, guilty of an indictable offence and liable to a penalty not exceeding fifty dollars over and above the value of the property stolen, or to two years' imprisonment, or to both, and if the value of the property stolen does not exceed twenty dollars, is guilty of an offence and liable upon summary conviction to a penalty not exceeding twenty dollars over and above such value, or to one month's imprisonment with hard labour.

2. Subsequent Conviction.—Every one who, having been previously convicted of an offence under this section, is summarily convicted of another offence thereunder, is liable to three months' imprisonment with hard labour. 63-64 V., c. 46, s. 3.

**371.** Oysters.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who steals oysters or oyster brood.

2. Using Dredge or other Means to Take Oysters.—Every one is guilty of an indictable offence and liable to three

months' imprisonment who unlawfully and wilfully uses any dredge or net, instrument or engine whatsoever, for the purpose of taking oysters or oyster brood, within the limits of any oyster bed, laying or fishery the property of any other person, and sufficiently marked out or known as such, although none are actually taken, or unlawfully and wilfully with any net, instrument or engine, drags upon the grounds of any such bed, laying or fishery.

3. SAVING.—Nothing in this section applies to any person fishing for or catching any swimming fish within the limits of any oyster fishery with any net, instrument or engine adapted for taking swimming fish only. 55-56 V., c. 29, s. 334.

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 forty-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 favour of the prosecutor: *R.* v. *Downing*, 11 Cox C. C. 580.

*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 unlawfully did steal.

*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.

**372.** STEALING THINGS FIXED TO BUILDINGS OR IN LAND. —Every one is guilty of an indictable offence and liable to seven years' imprisonment who steals 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, 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. 55-56 V., c. 29, s. 335.

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.* v. *Munday*, 2 Leach, 850.

The prisoners were found guilty of having stolen a copper sundial fixed upon a wooden post in a churchyard. Conviction held right: *R.* v. *Jones*, Dears. & B. 555.

The ownership of the building from which the fixture is stolen must be correctly laid in the indictment: 2 Russ. 255. If necessary, is may now be amended at the trial, and if not laid in the indictment at all the omission will not vitiate it. See *R.* v. *Worrall* (1856), 7 C. & P. 516; *R.* v. *Rice* (1859), 28 L. J. (M. C.) 64.

*Indictment for stealing metal, etc.*— two hundred pounds weight of iron, the property of J. N., then fixed in a certain land then being private property, to wit, in a garden of the said J. N., situate did unlawfully steal.

**373.** TREES, ETC., OF THE VALUE OF TWENTY-FIVE DOLLARS — OF THE VALUE OF FIVE DOLLARS.—Every one is guilty of an indictable offence and liable to two years' imprisonment who steals the whole or any part of any tree, sapling or shrub, or any underwood, the thing stolen being of the value of twenty-five dollars, or of the value of five dollars, if the thing stolen grows in any park, pleasure ground, garden, orchard or avenue, or in any ground adjoining or belonging to any dwelling-house. 55-56 V., c. 29, s. 336.

The words "grounds adjoining" mean grounds 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.* v. *Hodges* (1829), 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: *R.* v. *Whiteman* (1854), Dears. 353; 23 C. J. (M.C.) 120. The respective values of several trees, or of the damage thereto, may be added to make up the twenty-five dollars, in case the trees were cut down, or the damage done as part of one continuous transaction: *R.* v. *Shepherd*, 11 Cox C. C. 119.

*Indictment for stealing trees, etc., in parks, etc., of a 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 park, unlawfully did steal.

*Indictment under first 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, unlawfully did steal.

**374.** TREES, ETC., OF THE VALUE OF TWENTY-FIVE CENTS.—Every one who steals the whole or any part of any tree, sapling or shrub, or any underwood, the value of the article stolen, or the amount of the damage done being twenty-five cents at the least, is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty-five dollars over and above the value of the article stolen or the amount of the injury done.

2. SECOND OFFENCE.—Every one who, having been convicted of any such offence, afterwards commits any such offence, is liable, on summary conviction, to three months' imprisonment with hard labour.

3. SUBSEQUENT OFFENCE.—Every one who, having been twice convicted of any such offence, afterwards commits any such offence, is guilty of an indictable offence and liable to five years' imprisonment. 55-56 V., c. 29, s. 337.

Cordwood not "the whole or any part of a tree" under this section: *R.* v. *Caswell*, 35 U. C. R. 303.

An indictment does not lie against an Indian for stealing because of his having cut and removed wood from an Indian reserve and upon land of which he had possession. The proper recourse is by summary prosecution: *R.* v. *Johnson*, 8 Oce. N. 334.

In *Robichaud* v. *La Blanc* (1888), 34 C. L. J. 324, the defendant was accused under this section of having stolen seven trees which belonged to the plaintiff. It appeared that while defendant was cutting wood on his own lot he cut the trees in question on the other side of the line which the plaintiff claimed divided his land from that of the defendant, but on his own side of the boundary line according to defendant's contention. The stipendiary magistrate held that the criminal intent was proved and that the question in the title to the land did not *bona fide* arise. Upon an appeal taken under section 706, a majority of the Court held that the conviction was erroneous in point of law, that the title to the land was *bona fide* in dispute, and that therefore the magistrate had no jurisdiction; and finally that no criminal intent was proved.

See also, *R.* v. *Beals* (1896), 1 Can. C. C. 235.

*Indictment under s.s. 3.*— 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, and the jurors 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 His said Majesty's justices of her peace for the said district of for that he, the said J. S., on (*as in the first conviction*); 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. And the jurors 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 His 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, 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 unlawfully did steal.

**375.** PLANTS, ETC., GROWING IN GARDEN.—Every one who steals any plant, root, fruit or vegetable production growing in any garden, orchard, pleasure ground, nursery ground, hothouse, green-house or conservatory is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty dollars over and above the value of the article so

stolen or the amount of the injury done, or to one month's imprisonment with or without hard labour.

2. SUBSEQUENT OFFENCE.—Every one who, having been convicted of any such offence, afterwards commits any such offence, is guilty of an indictable offence and liable to three years' imprisonment. 55-56 V., c. 29, s. 341.

A party cannot be prosecuted for stealing fruit "growing in a garden," unless the bough of the tree upon which the said fruit is hanging be within the garden; it is not sufficient that the root of the tree be within the garden: *McDonald* v. *Cameron*, 4 Q. B. 1.

The words *plant* and *vegetable production* do not apply to young fruit trees: *R.* v. *Hodges*, M. & M. 341.

*Indictment under s.-s. 2.*— 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; and the jurors 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 said district of for that he, the said J. S., on (*as in the previous conviction*) 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 value 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, 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 unlawfully did steal.

**376.** CULTIVATED PLANTS, ETC., GROWING ELSEWHERE.—Every one who steals 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, pleasure ground or nursery ground, is guilty of an offence and liable, on summary conviction, to a penalty not exceeding five dollars over and above the value of the article so stolen or the amount of the injury done, or to one month's imprisonment with hard labour.

2. SUBSEQUENT OFFENCE.—Every one who, having been convicted of any such offence, afterwards commits any such offence, is liable to three months' imprisonment with hard labour. 55-56 V., c. 29, s. 342.

Clover has been held to be a cultivated plant: *R.* v. *Brumby*, 3 C. & K. 315; but it was doubted whether grass were so: *Morris* v. *Wise*, 2 F. & F. 51.

**377.** FENCES, STILES OR GATES.—Every one who steals 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, is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty dollars over and above the value of the article or articles so stolen or the amount of the injury done.

2. SUBSEQUENT OFFENCE.—Every one who, having been convicted of any such offence, afterwards commits any such offence is liable, on summary conviction, to three months' imprisonment with hard labour. 55-56 V., c. 29, s. 339.

**378.** ORES OR MINERALS FROM MINES.—Every one is guilty of an indictable offence and liable to two years' imprisonment who steals the ore of any metal, or any quartz, lapis calaminaris, manganese, or mundic, or any piece of gold, silver or other metal, or any wad, black cawk, or black lead, or any coal, or cannel coal, or any marble, stone or other mineral, from any mine, bed or vein thereof respectively.

2. SAVING.—It is not an offence to take, for the purposes of exploration or scientific investigation, any specimens of any ore or mineral from any piece of ground uninclosed and not occupied or worked as a mine, quarry or digging. 55-56 V., c. 29, s. 343.

See *R.* v. *Webb*, 1 Moo. 431; *R.* v. *Holloway*, 1 Den. 370; *R.* v. *Poole*, Dears. & B. 345; would now fall under s. 354, *post*. It must be alleged and proved that the ore was stolen from the mine: *R.* v. *Trevenner*, 2 M. & Rob. 476.

*Indictment,*— twenty pounds' weight of copper ore, property of J. N., from a certain mine of copper ore of the said J. N., situate unlawfully did steal.

**379.** STEALING FROM THE PERSON.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who steals any chattel, money or valuable security from the person of another. 55-56 V., c. 29, s. 344.

Offence of stealing $3.48 from the person is indictable, though it may come under the provisions for speedy trials and full penalty under this section may be imposed: *R.* v. *Conlin* (1897), 29 O. R. 28.

A. asked B. what time it was, and B. took out his watch to tell him, holding it loosely in both hands. A. caught hold of the ribbon and key attached to the watch and snatched it from B. and went away with it. *Held*, that this was not robbery but stealing from the person. *R.* v. *Walls* (1845), 2 Car & K. 214; See also *R.* v. *Thomp-*

son (1825), 1 Moody's Criminal Cases, 78; *R.* v. *Hamilton* (1837) 8 C. & P. 49; *R.* v. *Selway* (1859), 8 Cox, C. C. 234.

*Indictment for stealing from the person.*— one watch, one pocket-book and one pocket handkerchief of the goods and chattels of J.N., from the person of the said J.N., unlawfully did steal.

**380.** PENALTY.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who,—

(*a*) STEALING IN DWELLING-HOUSE—steals in any dwelling-house any chattel, money or valuable security to the value in the whole of twenty-five dollars or more; or,

(*b*) WITH THREATS OR MENACES—steals any chattel, money or valuable security in any dwelling-house, and by any menace or threat puts any one therein in bodily fear. 55-56 V., c. 29, s. 345.

*Indictment under (a).*— 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 unlawfully did steal.

*Indictment under (b).*— 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 unlawfully did steal; one A.B. then, to wit, at the time of the committing of the offence 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.

**381.** STEALING BY PICK-LOCKS, ETC.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who, by means of any pick-lock, false key or other instrument steals anything from any receptacle for property locked or otherwise secured. 55-56 V., c. 29, s. 346.

*Indictment.*— that A.B. on at unlawfully did steal by means of a picklock (*false key or other instrument*) the sum of *ten dollars*, of the goods and chattels of C.D., from a receptacle for property locked and secured.

**382.** PENALTY.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who,—

(*a*) STEALING FROM VESSELS—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,

(*b*) FROM WHARFS—Steals any goods or merchandise from any dock, wharf or quay adjacent to any such haven, port, river, canal, creek or basin. 55-56 V., c. 29, s. 349.

*Indictment for stealing in a vessel on a navigable river.*— on 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, unlawfully did steal.

*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, unlawfully did steal.

**383.** WRECK.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who steals any wreck. 55-56 V., c. 29, s. 350.

*Indictment.*— that on at a certain ship, the property of a person or persons to the jurors unknown (*or of* ) was stranded, and that A.B., on the said day, ten pieces of oak planks, being parts of the said ship (*or twenty pounds weight of cotton of the goods and merchandise of a shipwrecked person belonging to the said ship*), unlawfully did steal.

**384.** ON RAILWAY.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who steals anything in or from any railway station or building, or from any engine, tender or vehicle of any kind on any railway. 55-56 V., c. 29, s. 351.

The accused had, on a summary trial before the stipendiary magistrate for the city of Halifax, been convicted under this section for stealing certain property of the value of nine dollars "in and from a certain railway building, to wit, a certain building," and was sentenced for such offence to be imprisoned in the city prison of the said City of Halifax for the space of nine months. It was held by a majority of the Supreme Court of Nova Scotia that only one crime was thus charged, and that the place of detention named in the conviction was a proper place within the meaning of the law: *R.* v. *White* (1901), 37 C. L. J., 320.

*Indictment.*— that A.B., at on unlawfully did steal a leather portmanteau of the goods and chattels of C. D. in (*or from*) a railway station, to wit, the station there situate belonging to the Canadian Pacific Railway.

**385.** THINGS DEPOSITED IN INDIAN GRAVES.—Every one who steals, or unlawfully injures or removes, any image, bones, article or thing deposited in or near any Indian grave, is guilty of an offence and liable, on summary conviction, for a first offence, to a penalty not exceeding one hundred dollars or to three months' imprisonment, and for a subsequent of-

fence to the same penalty and to six months' imprisonment with hard labour. 55-56 V., c. 29, s. 352.

See *R.* v. *Goldstaub* (1895), 10 Man. L. R. 497.

**386.** Things not Otherwise Provided for.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who steals anything for the stealing of which no punishment is otherwise provided or commits in respect thereof any offence for which he is liable to the same punishment as if he had stolen the same.

2. Subsequent Offence.—The offender is liable to ten years' imprisonment if he has been previously convicted of theft. 55-56 V., c. 29, s. 356.

**387.** Value of Things Stolen over $200.—If the value of anything stolen, or in respect of which any offence is committed for which the offender is liable to the same punishment as if he had stolen it, exceeds the sum of two hundred dollars, the offender is liable to two years' imprisonment, in addition to any punishment to which he is otherwise liable for such offence. 55-56 V., c. 29, s. 357.

**388.** Goods in Process of Manufacture.—Every one is guilty of an indictable offence and liable to five years' imprisonment who 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 such materials mixed with each other or mixed with any other material, while laid, placed or exposed, during any stage, process or progress of manufacture, in any building, field or other place. 55-56 V., c. 29, s. 347.

The proprietor of a quantity of broom corn delivered it to defendant under an agreement that, when defendant should have manufactured it into brooms, he should not sell them, but that the clerk of the plaintiff should sell them on his, plaintiff's account, and when that was done, he would deduct his advances from the proceeds of the sale, and defendant should have the balance. Defendant, having supplied the smaller material requisite, manufactured the brooms and converted them to his own use and profit, and on being indicted for a theft—*Held*, that the delivery of the broom corn to defendant was a bailment to him, and that fraudulently converting the brooms to his own use was theft: *R.* v. *Lebeuf* (1874), 9 L. C. J. 245.

*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 unlawfully did steal,

whilst the same were laid, placed and exposed in the same building, during a certain state, process and progress of manufacture. (*Other counts may be added, stating the particular process and progress of manufacture in which the goods were when stolen.*)

*Offences Resembling Theft.*

**389.** FRAUDULENTLY DISPOSING OF THINGS ENTRUSTED FOR MANUFACTURE.—Every one is guilty of an indictable offence and liable to two years' imprisonment, when the offence is not within the last preceding section, who, having been entrusted with, 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 or silk, or any such materials mixed with one another, or having been so entrusted, as aforesaid, with any other article, materials, fabric or thing, or with any tools or apparatus for manufacturing the same, fraudulently disposes of the same or any part thereof. 55-56 V., c. 29, s. 348.

*Indictment.*— that A.B. on at having been intrusted with, for the purpose of manufacture, a large quantity of, to wit of felt, of the goods and chattels of C.D., fraudulently disposed of the same (*or any part thereof*).

**390.** CRIMINAL BREACH OF TRUST.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, being a trustee of any property for the use or benefit, either in whole or in part, of some other person, or for any public or charitable purpose, with intent to defraud, and in violation of his trust, converts anything of which he is trustee to any use not authorized by the trust. 55-56 V., c. 29, s. 363.

*Indictment.*— that A. B., at on then being the trustee of certain property under the will of for a certain public (or charitable) purpose, to wit, for unlawfully, with intent to defraud and in violation of his trust, did convert and appropriate the same to a use not authorized by the said trust, and for a purpose other than the said public (or charitable) purpose, contrary to s. 390 of the Criminal Code. See *R.* v. *Cox*, 16 O. R. 228; *R.* v. *Stansfeld*, 8 L. N. 123.

**391.** PUBLIC SERVANTS REFUSING TO DELIVER UP PROPERTY LAWFULLY DEMANDED.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment

who, being employed in the service of His Majesty or of the Government of Canada or the Government of any province of Canada, or of any municipality, and entrusted by virtue of such employment with the keeping, receipt, custody, management or control of any chattel, money, valuable security, book, paper, account or document, refuses or fails to deliver up the same to any one authorized to demand it. 55-56 V., c. 29, s. 321.

*Indictment.*— that A.B. on at being employed in the service of the Government of Canada as a and intrusted by virtue of such employment with the books and papers of his office, did unlawfully refuse *(or fail)* to deliver up the said books and papers to C.D., then and there duly authorized to demand the said books and papers.

**392.** PENALTY.—Every one is guilty of an indictable offence and liable to three years' imprisonment who,—

(*a*) FRAUDULENTLY TAKING CATTLE—without the consent of the owner thereof fraudulently takes, holds, keeps in his possession, conceals, receives, appropriates, purchases or sells, or fraudulently causes or procures, or assists in the taking possession, concealing, appropriating, purchasing or selling of any cattle which are found astray; or,

(*b*) FRAUDULENTLY REFUSING TO DELIVER UP CATTLE—fraudulently refuses to deliver up any such cattle to the proper owner thereof, or to the person in charge thereof on behalf of such owner, or authorized by such owner to receive such cattle; or,

(*c*) DEFACING BRAND ON CATTLE—without the consent of the owner, fraudulently, wholly or partially obliterates, or alters or defaces, or causes or procures to be obliterated, altered or defaced, any brand or mark on any cattle, or makes or causes or procures to be made any false or counterfeit brand or mark on any cattle. 1 E. VII., c. 42, s. 2.

**393.** UNLAWFULLY INJURING PIGEONS.—Every one who unlawfully and wilfully kills, wounds or takes any house-dove or pigeon, under such circumstances as do not amount to theft, is guilty of an offence and liable, upon complaint of

the owner thereof, on summary conviction, to a penalty not exceeding ten dollars over and above the value of the bird. 55-56 V., c. 29, s. 333.

**394.** PENALTY.—Every one is guilty of an indictable offence and liable to three years' imprisonment who,—

(*a*) without the consent of the owner thereof,

(i) FRAUDULENTLY TAKING, POSSESSING, ETC., DRIFT TIMBER—fraudulently takes, holds, keeps in his possession, collects, conceals, receives, appropriates, purchases, sells or causes or procures or assists to be taken possession of, collected, concealed, received, appropriated, purchased or sold, any timber, mast, spar, saw-log or other description of lumber which is found adrift in, or cast ashore on the bank or beach of, any river, stream or lake, or

(ii) DEFACING MARK ON SAME—wholly or partially defaces or adds or causes or procures to be defaced or added, any mark or number on any such timber, mast, spar, saw-log or other description of lumber, or makes or causes or procures to be made any false or counterfeit mark on any such timber, mast, spar, saw-log or other description of lumber; or,

(*b*) REFUSING TO DELIVER TO OWNER—refuses to deliver up to the proper owner thereof, or to the person in charge thereof, on behalf of such owner, or authorized by such owner to receive the same, any such timber, mast, spar, saw-log or other description of lumber. 55-56 V., c. 29, s. 338.

**395.** POSSESSING TREES, ETC., WITHOUT BEING ABLE TO ACCOUNT THEREFOR.—Every one who, having in his possession, or on his premises with his knowledge, 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, of the value of twenty-five cents at the least, is taken or summoned before a justice of the peace, and does not satisfy such justice that he came lawfully by the same, is guilty of an offence and liable, on summary conviction, to a penalty not exceeding ten dollars

over and above the value of the article so in his possession or on his premises. 55-56 V., c. 29, s. 340.

**396.** Destroying Documents of Title.—Every one who destroys, cancels, conceals or obliterates any document of title to goods or lands, or any valuable security, testamentary instrument, or judicial, official or other document, for any fraudulent purpose, is guilty of an indictable offence and liable to the same punishment as if he had stolen such document, security or instrument. 55-56 V., c. 29, s. 353.

*Indictment under s. 396.*— on a certain valuable security, to wit, one bill of exchange for the payment of one hundred dollars (*drawn* ) unlawfully did, for a fraudulent purpose, destroy and cancel (*conceal or obliterate*), the said bill of exchange, being then due and unsatisfied. (*In another count detail the purpose.*)

**397.** Concealing anything Capable of being Stolen.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, for any fraudulent purpose, takes, obtains, removes or conceals anything capable of being stolen. 55-56 V., c. 29, s. 354.

Fraud on post office—Money orders—Form of indictment—Not necessary to allege intent to defraud any particular person: *R.* v. *Dessaurer*, 21 U. C. R. 231.

*Indictment.*— on did unlawfully take (*or obtain, remove or conceal*) ten bushels of oats, the property of of the value of five dollars, for a fraudulent purpose, to wit, for the purpose of

**398.** Bringing Stolen Property into Canada.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, having obtained elsewhere than in Canada any property by any act which if done in Canada would have amounted to theft, brings such property into or has the same in Canada. 55-56 V., c. 29, s. 355.

The prisoner, being the agent of the American Express Company, in the State of Illinois, received a sum of money which had been collected by them for a customer, and put it into their safe, but made no entry in their books of its receipt, as it was his duty to do, and afterwards absconded with it to Ontario, where he was arrested. *Held*, that he was guilty of larceny, and was properly convicted: *R.* v. *Hennessy*, 35 Q. B. 603.

*Receiving Stolen Goods.*

**399.** Receiving Property Obtained by Crime.—Every one is guilty of an indictable offence and liable to fourteen

years' imprisonment, who receives or retains in his possession anything obtained by any offence punishable on indictment, or by any acts wheresoever committed, which, if committed in Canada, would have constituted an offence punishable upon indictment, knowing such thing to have been so obtained. 55-56 V., c. 29, s. 314.

Possession without evidence of theft by another person will not support indictment for receiving goods knowing them to be stolen: *R.* v. *Perry*, 26 L. C. J. 24.

Bailee or trustee—Executor intending to steal money of estate gave it to prisoner, who absconded. Prisoner convicted of receiving: *R.* v. *McIntosh*, 23 S. C. R. 180.

Accessary to theft may be convicted of receiving: *R.* v. *Hodge*, 12 Man. L. R. 319.

On a charge of burglary only, the prisoner cannot be convicted of receiving stolen goods, and a verdict under such circumstances will be quashed on writ of error. *R.* v. *Laurent*, 1 Q. B. R. 302.

A thief introduced himself to F. His story was that he had come to purchase horses. He deposited with F. a parcel of bank notes and a small bag containing money and a watch. On his return to his boarding house the thief was arrested. On the return of the employer of F. he was informed of the circumstances by F., his clerk, and that the package had been placed in the vaults for safe keeping during the evening. F., at the request of L., took the parcel out of the vault. It was proved that at this time L. knew who it was made the deposit and that he had before been condemned for theft and similar offences. *Held*, that under the above circumstances, the defendants were guilty or receiving stolen goods knowing them to be stolen, and the fact that they derived no benefit from the theft did not relieve them from the responsibility of concealing it. *R.* v. *Fournier et al.*, 10 Q. L. R. 35.

Upon an indictment for receiving stolen goods, knowing them to be stolen, the evidence shewed that all the goods were found on the defendant's premises, some in the stable and some concealed. The prisoner denied all knowledge of the articles, but, when told that the officer had a search warrant to search the premises he was seen to wink at one of his servants in a suspicious manner. *Held*, that, although evidence of possession might support an indictment for larceny, it would not suffice to convict of feloniously receiving the goods; and it was necessary to prove that the property was unlawfully in the possession of some one else before it came to the prisoner. The conviction was therefore quashed: *R.* v. *Perry*, 1879, 3 L. N. 12; 10 R. L. 65; 26 L. C. J. 24.

The prisoner was charged in the indictment with having received stolen goods on a certain day, and it was proved that the receiving extended over a period exceeding six months. *Held*, that the Crown was not bound to elect on which of the receivings it intended to proceed: *R.* v. *Suprani*, 6 L. N. 269, 13 R. L. 557.

*Indictment for receiving stolen goods.*— Prior conviction for stealing—Right to inspect information and depositions: *In re Chantler and Clerk of Peace of Middlesex*, 24 Occ. N. 355, 8 O. L. R. 111, 3 O. W. R. 761.

A conviction for receiving stolen goods cannot be sustained where the charge was housebreaking accompanied with theft. *R.* v. *Lamourcux* (1900), 21 Occ. N. 49, Q. R. 10 Q. B. 15, 4 Can. C. C. 101.

The goods must be stolen goods when they are received. If the owner has resumed possession, though the receiver does not know it, there is no receiving of stolen property: *R.* v. *Villensky* [1892], 2 Q. B. 597: see s. 403 *post*: *R.* v. *Schmidt*, Warb. Lead. Cas. 180.

*Indictment against a receiver of stolen goods.*— that A. F., on at one silver tankard, of the goods and chat-

tels of J.N. before then unlawfully stolen, did unlawfully 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 stolen.

*Indictment against the principal and receiver jointly.*— that C.D. on at one silver spoon and one table-cloth, of the goods and chattels of A.B., unlawfully did steal, and the jurors aforesaid, do further present, that J. S. afterwards on the goods and chattels aforesaid, so as aforesaid stolen, unlawfully did receive and have, he the said J.S. then well knowing the said goods and chattels to have been stolen.

*Indictment against the receiver as accessory, the principal having been convicted.*— 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, upon their oath aforesaid, do further present, that A.B. after the committing of the said theft as aforesaid, to wit, on the goods and chattels aforesaid, so as aforesaid stolen, unlawfully did receive and have, he the said A.B. then well knowing the said goods and chattels to have been stolen.

*Indictment against a receiver where the principal offence is obtaining under false pretenses.*— 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 pretenses, 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 pretenses.

**400.** RECEIVING STOLEN PROPERTY.—Every one is guilty of an indictable offence and liable to five years' imprisonment who receives or retains in his possession, any post letter or post letter bag, or any chattel, money or valuable security, parcel or other thing, the stealing whereof is hereby declared to be an indictable offence, knowing the same to have been stolen. 55-56 V., c. 29, s. 315.

See *R.* v. *White*, 21 Occ. N. 310; 34 N. S. R. 436.

*Indictment.*— that A.B., on at one post letter the property of the postmaster-general before then, from and out a certain post letter bag unlawfully stolen, unlawfully did receive and retain in his possession, he, the said A.B., then well knowing the said letter to have been stolen.

**401.** RECEIVING PROPERTY OBTAINED BY OFFENCE PUNISHABLE ON SUMMARY CONVICTION.—Every one who receives or retains in his possession anything, knowing the same to have been unlawfully obtained, the stealing of which is punishable on summary conviction, either for every offence, or for the first and second offence only, is guilty of an offence and liable on summary conviction, for every first, second or subsequent offence of receiving, to the same punishment as of he were guilty of a first, second or subsequent offence of stealing the same. 55-56 V., c. 29, s. 316.

**402.** When Receiving is Complete.—The act of receiving anything unlawfully obtained is complete as soon as the offender has, either exclusively or jointly with the thief or any other person, possession of or control over such thing, or aids in concealing or disposing of it. 55-56 V., c. 29, s. 317.

To constitute the offence of receiving stolen goods the stolen goods must have been taken and stolen by a person other than the person accused of the receiving: *R.* v. *Lamoreaux* (1900), 21 Occ. N. 49, Q. R. 10 Q. B. 15, 4 Can. C. C. 101.

**403.** Receiving after Restoration to Owner. — When the thing unlawfully obtained has been restored to the owner, or when a legal title to the thing so obtained has been acquired by any person, a subsequent receiving thereof shall not be an offence although the receiver may know that the thing had been previously unlawfully obtained. 55-56 V., c. 29, s. 318.

See *R.* v. *Villensky*, L. R. (1892), 2 Q. B. D. 597.

*False Pretenses.*

**404.** Definition.—A false pretense is a representation, either by words or otherwise, of a matter of fact either present or past, which representation is known to the person making it to be false, and which is made with a fraudulent intent to induce the person to whom it is made to act upon such representation.

2. Exaggeration.—Exaggerated commendation or depreciation of the quality of any thing is not a false pretense, unless it is carried to such an extent as to amount to a fraudulent misrepresentation of fact.

3. Question of Fact.—It is a question of fact whether such commendation or depreciation does or does not amount to a fraudulent misrepresentation of fact. 55-56 V., c. 29, s. 358.

**405.** Obtaining by False Pretense.—Every one is guilty of an indictable offence and liable to three years' imprisonment who, with intent to defraud, by any false pretense, either directly or through the medium of any contract obtained by

such false pretense, obtains anything capable of being stolen, or procures anything capable of being stolen to be delivered to any other person than himself. 55-56 V., c. 29, s. 359.

Discharged employee—Obtaining goods in employer's name: *R.* v. *Robinson*, 9 L. C. R. 278.

Shareholder cannot obtain money of company by: *R.* v. *St. Louis*, 10 L. C. R. 34.

Payment under existing obligation induced by false pretence, no offence: *R.* v. *Lavallee*, 16 R. L. 299.

Order for goods—Promise to pay cash: *R.* v. *McDonald*, 2 L. C. J. 34.

Obtaining cheque on bank: *R.* v. *Parkinson*, 41 U. C. R. 545.

Obtaining cheque from accountant of court—Fraud: *R.* v. *Maynard* (1879), 2 L. N. 357.

Non-transferable railway passes: *R.* v. *Abraham*, 24 L. C. J. 325.

Municipal relief—Procuring order by false pretence—Indictment: *R.* v. *Campbell*, 18 U. C. R. 413.

Post office orders—Intent to defraud: *R.* v. *Dessauer*, 21 U. C. R. 231.

Taking bill to change—Evidence: *R.* v. *Gemmell*, 26 U. C. R. 317.

Payment by note of third party—Assumption of assurance of validity: *R.* v. *Davis*, 18 U. C. R. 180.

Procurement of goods by—False pretence not inducement—Transfer of property as security—Value misrepresented: *R.* v. *Durocher*, 12 R. L. 697.

Obtaining money by false statement as to ownership of property: *R.* v. *Judah*, 7 L. N. 385, 8 L. N. 124.

Indictment for obtaining $1,200 from A. by false pretenses not supported by proof of obtaining A.'s note for such sum which A. paid before maturity: *R.* v. *Brady*, 26 U. C. R. 13.

Payee of note receiving payment on threatening to sue after sale of note to third party: *R.* v. *Lee*, 23 U. C. R. 340.

Obtaining loan on representation that vacant lot offered as security had brick house on it: *R.* v. *Humpel*, 21 U. C. R. 281.

Where a person acting in collusion with police authorities met by appointment the prisoner, who had offered to sell him counterfeit notes, and on receiving a parcel said to contain such notes gave prisoner his watch and $50, immediately after which prisoner was arrested, the latter was convicted of obtaining the watch and money by false pretences: *R.* v. *Corry*, 22 N. B. R. 543.

Obtaining credit at bank by false statement of financial position not indictable under this section: *R.* v. *Boyd*, Q. R. 5 Q. B. 1.

Person present when false representation is made by another acting with him, who knows it to be false and gets part of the money obtained, is indictable under this section: *R.* v. *Cadden* (1899), 4 Terr. L. R. 304; 20 Occ. N. 185.

On an indictment charging the accused with having obtained goods by false pretences from a company named, with intent to defraud, so soon as it has been proved that he did the act charged, evidence of false representations made to persons other than the president and general manager of such company, on other and distinct occasions, is admissible to shew that the accused, at the time he made the false representations to the president and general manager of the company, on whose information the prosecution was brought, was pursuing a course of similar acts, and to prove guilty knowledge of the falsity of the pretence charged in the indictment and the intention with which the act charged was done. *R.* v. *Komiensky*, Q. R. 12 K. B. 463.

Where the defendant hired a bicycle, of the value of $20, representing that he wished to use it to go to L., for the purpose of visiting his sister, and, instead of returning the bicycle, sold it to C.: *Held*, that evidence which shewed these facts was not sufficient to support a conviction for having "unlawfully, and by false pretenses,

obtained from L. one bicycle, of the value of $20," the prosecutor not having been induced and not intending to part with his right of property in the goods, but merely with the possession of them, and there being no representation as to a present or past matter of fact: *R.* v. *Youc*, 36 N. S. Reps. 531.

The prisoner, at Seaforth, in the County of Huron, falsely represented to the agent of a sewing machine company that he owned a lot of land, and thus induced the agent to sell machines to him, which were sent to Toronto, in the County of York, and delivered to him at Seaforth. *Held*, that the offence was complete in Huron, and could not be tried in York: *R.* v. *Feithenheimer*, 26 C. P. 139.

Procuring registration as a physician by false or fraudulent representation. See *R.* v. *College of Physicians*, 44 Q. B. 146.

In an indictment for obtaining goods by false pretences, it is not necessary to mention the false pretences. *R.* v. *Lavigne* (1872), 4 R. L. 411, Q. B.

On an indictment for false pretenses the prosecutor is not bound to deliver to the defendant the particulars of the crime charged against him, on which the indictment is founded. *R.* v. *Senecal* (1862), 8 L. C. J. 246, Q. B.

An indictment that defendant by false pretenses did obtain board of the goods and chattels of the prosecution. *Held*, bad, the term "board" being too general. *R.* v. *McQuarrie*, 22 Q. B. 600.

The prisoner several times called at H. & F.'s with a note, obtained goods, and had the amount endorsed on the note. Afterwards he called without the note and got goods, on his promising to bring the note within a day or two to have the amount endorsed thereon. Prisoner saw D. the day after, and directed him not to pay anything more than the amounts endorsed on the note, and he never after presented the note to have the amount endorsed thereon. *Held*, that there was no false representation or pretence of an existing fact, but a mere promise of defendant, which he failed to perform. *R.* v. *Bertles*, 13 C. P. 607.

The indictment charged one B. with obtaining by false pretense, from one J.T., two horses, with intent to defraud, and that the defendant was present aiding and abetting the said B. the misdemeanour aforesaid to commit. *Held*, good. *R.* v. *Connor*, 14 C. P. 529.

See *R.* v. *Ewing*, 21 Q. B. 523.

To constitute the offence of obtaining goods by false pretenses three elements are necessary. 1st, the statement upon which the goods are obtained must be untrue; 2nd, the prisoner must have known at the time he made the statement that it was untrue; 3rd, the goods must have been obtained by reason and on the representation of that false statement: *R.* v. *Burton*, 16 Cox C. C. 62; see *R.* v. *Buckmaster* and *R.* v. *Solomon's*, Warb. Lead. Cas. 158, 160; *R.* v. *Russett*, 17 Cox C. C. 534.

*Indictment.*— that J.S., on unlawfully, and with a fraudulent intent, did falsely pretend to one A.B. that he, 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 he, 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 pretenses, the said J.S. did then unlawfully and fraudulently obtain from the said A.B. five yards of superfine woolen cloth.

**406.** EXECUTION OF VALUABLE SECURITY OBTAINED BY FRAUD.—Every one is guilty of an indictable offence and liable to three years' imprisonment who, with intent to defraud or injure any person by any false pretense, causes or induces any person to execute, make, accept, endorse or de-

stroy the whole or any part of any valuable security, or to write, impress or affix any name or seal on any paper or parchment in order that it may afterwards be made or converted into or used or dealt with as a valuable security. 55-56 V., c. 29, s. 360.

Procuring security—Promissory note—Promise to pay debt out of proceeds: *R.* v. *Pickup*, 10 L. C. J. 310.

Signing contract to pay for goods—Subsequent execution of note—Indictment: *R.* v. *Rymal*, 17 O. R. 227.

Order for goods—Procuring note by false representations—Evidence of similar frauds: *R.* v. *Hope*, 17 O. R. 463.

Security must be valuable to person parting with it—Procuring execution of mortgage not obtaining valuable security: *R.* v. *Brady*, 26 U. C. R. 13.

Indictment lies for inducing person to write his name on papers which may afterwards be dealt with as valuable securities: *R.* v. *Burke*, 24 O. R. 64.

An ordinary "lien note" is a "valuable security" within the meaning of s. 406 of the Criminal Code: *R.* v. *Wagner*, 5 Terr. L. R. 119, 6 Can. C. C. 113.

So also is an ordinary promissory note a valuable security: *R.* v. *Gordon*, 23 Q. B. D. 354.

*Indictment.*— that A.B. on unlawfully, knowingly and designedly did falsely pretend to one J.N., that by means of which false pretense 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 five hundred dollars, with intent thereby then to defraud and injure the said J.N., whereas, in truth and in fact (*here negative the false pretenses*).

**407.** FALSELY PRETENDING TO INCLOSE MONEY IN LETTER.—Every one is guilty of an indictable offence and liable to three years' imprisonment who, wrongfully and with wilful falsehood, pretends or alleges that he inclosed and sent, or caused to be inclosed and sent, in any post letter any money, valuable security or chattel, which in fact he did not so inclose and send or cause to be inclosed and sent therein. 55-56 V., c. 29, s. 361.

*Personation.*

**408.** OFFENCE—PENALTY.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment, who, with intent fraudulently to obtain any property, personates any person, living or dead, or the administrator, wife, widow, next of kin or relation of any person. 55-56 V., c. 29, s. 456.

Property defined, section 2.

See *R.* v. *Lake* (1869), 11 Cox, C. C. 333; *R.* v. *Cramp* (1817), R. & R. 327; *R.* v. *Potts* (1818), R. & R. 353.

*Indictment.*— unlawfully, falsely, and deceitfully did personate one J.N. with intent fraudulently to obtain

**409.** PERSONATION AT EXAMINATIONS. — Every one is guilty of an indictable offence, and liable, on indictment or summary conviction, to one year's imprisonment, or to a fine of one hundred dollars, who falsely, with intent to gain some advantage for himself or some other person, personates a candidate at any competitive or qualifying examination, held under the authority of any law or statute, or in connection with any university or college, or who procures himself or any other person to be personated at any such examination, or who knowingly avails himself of the results of such personation. 55-56 V., c. 29, s. 457.

**410.** PENALTY.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who falsely and deceitfully personates,—

(*a*) PERSONATING OWNER OF GOVERNMENT STOCK—any owner of any share or interest of or in any stock, annuity or other public fund transferable in any book of account kept by the Government of Canada or of any province thereof, or by any bank for any such Government; or,

(*b*) COMPANY STOCK—any owner of any share or interest of or in the debt of any public body, or of or in the debt or capital stock of any body corporate, company, or society; or,

(*c*) DIVIDENDS—any owner of any dividend, coupon, certificate or money payable in respect of any such share or interest as aforesaid; or,

(*d*) GRANT OF LAND OR SCRIP—any owner of any share or interest in any claim for a grant of land from the Crown, or for any scrip or other payment or allowance in lieu of such grant of land; or,

(*e*) PERSON UNDER POWER OF ATTORNEY—any person duly authorized by any power of attorney to transfer any such share or interest, or to receive any dividend, coupon, certificate or money on behalf of the person entitled thereto;

TRANSFER UNDER PERSONATION—and thereby transfers or endeavours to transfer any share or interest belonging to such

owner, or thereby obtains or endeavours to obtain, as if he were the true and lawful owner or were the person so authorized by such power of attorney, any money due to any such owner or payable to the person so authorized, or any certificate, coupon or share warrant, grant of land, or scrip, or allowance in lieu thereof, or other document which, by any law in force, or any usage existing at the time, is deliverable to the owner of any such stock or fund, or to the person authorized by any such power of attorney. 55-56 V., c. 29, s. 158.

*Indictment.*— unlawfully, falsely, and deceitfully did 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. on the said stock annuities, as if he, the said A.B., were then the true and lawful owner thereof.

**411.** ACKNOWLEDGING INSTRUMENT IN FALSE NAME.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, without lawful authority or excuse, the proof of which shall lie on him, acknowledges, in the name of any other person, before any court, judge or other person lawfully authorized in that behalf, any recognizance of bail, or any *cognovit actionem*, or consent for judgment, or judgment, or any deed or other instrument. 55-56 V., c. 29, s. 459.

Falsely personating a voter at a municipal election is not an indictable offence. Remarks as to the form of indictment in such a case. *R.* v. *Hogg* (1865), 25 U. C. R. 66.

See *R.* v. *Fox* (1887), 16 Cox C. C. 166; *R.* v. *Quinn*, 6 O. W. R. 1011; 11 O. L. R. 242; *Re Denison, R.* v. *Case*, 6 O. L. R. 104, 2 O. W. R. 152, 512; *R.* v. *Coulter*, 6 O. L. R. 114, 2 O. W. R. 523.

*Indictment.*— on did without lawful authority or excuse, before (*the said then being lawfully authorized in that behalf*) unlawfully acknowledge fraudulently a certain recognizance of bail in the name of in a certain cause then pending in wherein A. B. was plaintiff and C. D. defendant.

*Fraud and Fraudulent Dealing with Property.*

**412.** OBTAINING PASSAGE BY FALSE TICKET.—Every one is guilty of an indictable offence and liable to six months' imprisonment who, by means of any false ticket or order, or of any other ticket or order, fraudulently and unlawfully ob-

tains or attempts to obtain any passage on any carriage, tramway or railway, or in any steam or other vessel. 55-56 V., c. 29, s. 362.

See *R.* v. *McLennan*, under section 368.

**413.** PENALTY.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, being a director, manager, public officer or member of any body corporate or public company, with intent to defraud,—

(*a*) OFFICIAL DESTROYING SECURITY — destroys, alters, mutilates or falsifies any book, paper, writing or valuable security belonging to the body corporate or public company; or,

(*b*) MAKING FALSE ENTRY IN BOOK—makes, or concurs in making, any false entry, or omits or concurs in omitting to enter any material particular, in any book of account or other document. 55-56 V., c. 29, s. 364.

An indictment charging an insolvent person with making away with and concealing his goods, with intent to defraud his creditors, without specifying what goods and what value, was held to be bad, and was quashed on motion. *R.* v. *Patoille* (1872), 4 R. L. 131, Q. B.; *R.* v. *Hurst*, 22 Occ. N. 68; 13 Man. L. R. 584.

The fraudulent removal of goods by a tenant, is a crime; and a conviction therefor was consequently quashed with costs against the landlord, because the defendant had been compelled to give evidence on the prosecution. *R.* v. *Lackie*, 7 O. R. 431; 5 Occ. N. 130.

To cheat and defraud private individuals is not necessarily a penal offence: *R.* v. *Roy* (1867), 11 L. C. J. 89, Q. B.

See *R.* v. *James*, "re Fruit Marks Act," 1 O. W. R. 520; 22 Occ. N. 369; 4 O. L. R. 537.

See *R.* v. *Fulton*, "re Fraudulent Conversion," Q. R. 10 K. B. 1.

*Indictment against a director for destroying or falsifying books, etc.*— 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.

**414.** FALSE PROSPECTUS, ETC., BY DIRECTORS, ETC.—Every one is guilty of an indictable offence and liable to five years' imprisonment who, being a promoter, director, public officer, or manager of any body corporate or public company, either existing or intended to be formed, makes, circulates, or publishes, or concurs in making, circulating or publishing any prospectus, statement or account which he knows to be false in any material particular, with intent to induce persons whether ascertained or not to become shareholders or partners,

or with intent to deceive or defraud the members, shareholders or creditors, or any of them, whether ascertained or not, of such body corporate or public company, or with intent to induce any person to entrust or advance any property to such body corporate or public company, or to enter into any security for the benefit thereof. 55-56 V., c. 29, s. 365.

"Property" and "public officer" defined, section 2.
See *R. v. Gillespie* (1898), 1 Can. C. C. 551.
*R. v. Gillespie* (No. 2) (1898), 2 Can. C. C. 309.
*R. v. Girdwood* (1776), 2 East P. C. 1120.
*R. v. Cooke* (1858), 1 F. & F. 64.
*R. v. Holmes* (1883), 15 Cox C. C. 343.
*Indictment 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 circulate and publish a certain statement and account, which said statement was false in certain material particulars, that it 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* ). (*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*).

**415.** PENALTY.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, being or acting in the capacity of an officer, clerk, or servant, with intent to defraud,—

(*a*) OFFICIAL ALTERING OR MUTILATING OF BOOK—destroys, alters, mutilates or falsifies any book, paper, writing, valuable security or document which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or concurs in the same being done; or,

(*b*) MAKING FALSE ENTRY—makes or concurs in making, any false entry in, or omits or alters, or concurs in omitting or altering, any material particular from or in, any such book, paper, writing, valuable security or document. 55-56 V., c. 29, s. 366.

*Indictment.*— that A. B., on, &c., at, &c., being then clerk (*officer, servant, or any person employed or acting in the capacity of a clerk, officer, or servant*) to C. D., did then and whilst he was such clerk to the said C. D. as aforesaid, unlawfully, wilfully, and with intent to defraud, destroy, to wit, by burning the same (*destroy, alter, mutilate, or falsify*) a certain book (*any book, paper, writing, valu-*

*able security, or document*), to wit, a cash-book, which said book then belonged to (*which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer*) the said C. D., his employer.

*Second Count.*—That the said A. B., on the day and in the year aforesaid, being then clerk to the said C. D., did then and whilst he was such clerk to the said C. D., as aforesaid, unlawfully, wilfully, and with intent to defraud, make (*make or occur in making any false entry in, or omit, or alter, or concur in omitting, or altering any material particular*) certain false entry in a certain book (*from, or in any such book, paper, writing, valuable security, or document*), to wit, a cash book which said book then belonged to the said C. D., his employer, by falsely entering in such books under the date of , a sum of , as having been paid on that day to one E. F., whereas in truth and in fact the said sum of was not paid on the said day to the said E. F. as he, the said A. B., well knew at the time when he made such false entry as aforesaid, and which said entry was in the words and figures following (*setting it out*); *see R. v. Batt*, 15 Cox C. C. 564.

**416.** False Return by Public Officer.—Every one is guilty of an indictable offence and liable to five years' imprisonment, and to a fine not exceeding five hundred dollars, who, being an officer, collector or receiver, entrusted with the receipt, custody or management of any part of the public revenues, knowingly furnishes any false statement or return of any sum of money collected by him or entrusted to his care, or of any balance of money in his hands or under his control. 55-56 V., c. 29, s. 367.

**417.** Penalty.—Every one is guilty of an indictable offence and liable to a fine of eight hundred dollars and to one year's imprisonment who,—

(*a*) Disposal of Property, etc., with Intent to Defraud Creditors—with intent to defraud his creditors, or any of them,

(i) makes or causes to be made any gift, conveyance, assignment, sale, transfer or delivery of his property, or

(ii) removes, conceals or disposes of any of his property; or,

(*b*) Receiving Property—with the intent that any one shall so defraud his creditors, or any of them, receives any such property; or,

(*c*) Being a Trader Fails to Keep Accounts—being a trader and indebted to an amount exceeding one thousand dollars, is unable to pay his creditors in full, and has not, for five years next before such inability, kept

such books of account as, according to the usual course of any trade or business in which he may have been engaged, are necessary to exhibit or explain his transactions, unless he be able to account for his losses to the satisfaction of the court or judge and to show that the absence of such books was not intended to defraud his creditors. 55-56 V., c. 29, s. 368; 4 E. VII., c. 7, s. 1.

Indictment lies for assignment with intent to defraud a creditor whose debt is not due: *R.* v. *Henry*, 21 O. R. 113.

**418.** Destroying or Falsifying Books to Defraud Creditors.—Every one is guilty of an indictable offence and liable to ten years' imprisonment who, with intent to defraud his creditors or any of them, destroys, alters, mutilates or falsifies any of his books, papers, writings or securities, or makes, or is privy to the making of, any false or fraudulent entry in any book of account or other document. 55-56 V., c. 29, s. 369.

Assignment of all debtor's property, with preferences to certain creditors, not an offence under this section: *R.* v. *Shaw* (1895), 31 N. S. R. 534.

**419.** Vendor Concealing Deeds or Encumbrances or Falsifying Pedigrees.—Every one is guilty of an indictable offence and liable to a fine, or two years' imprisonment, or to both, who, being a seller or mortgagor of land, or of any chattel, real or personal, or chose in action, or the solicitor or agent of any such seller or mortgagor (and having been served with a written demand of an abstract of title by or on behalf of the purchaser or mortgagee before the completion of the purchase or mortgage) conceals any settlement, deed, will or other instrument material to the title, or any encumbrance, from such purchaser or mortgagee, or falsifies any pedigree upon which the title depends, with intent to defraud and in order to induce such purchaser or mortgagee to accept the title offered or produced to him. 55-56 V., c. 29, s. 370.

**420.** Fraudulent Registration of Titles.—Every one is guilty of an indictable offence and liable to three years' imprisonment who, acting either as principal or agent, in any proceeding to obtain the registration of any title to land or

otherwise, or in any transaction relating to land which is, or is proposed to be, put on the register, knowingly and with intent to deceive makes or assists or joins in, or is privy to the making of, any material false statement or representation, or suppresses, conceals, assists or joins in, or is privy to the suppression, withholding or concealing from any Judge or registrar, or any person employed by or assisting the registrar, any material document, fact or matter of information. 55-56 V., c. 29, s. 371.

**421.** FRAUDULENT SALES OF PROPERTY.—Every one is guilty of an indictable offence and liable to one year's imprisonment, and to a fine not exceeding two thousand dollars, who, knowing the existence of any unregistered prior sale, grant, mortgage, hypothec, privilege or encumbrance of or upon any real property, fraudulently makes any subsequent sale of the same, or of any part thereof. 55-56 V., c. 29, s. 372.

**422.** FRAUDULENT HYPOTHECATION OF REAL PROPERTY.—Every one who pretends to hypothecate, mortgage or otherwise charge any real property to which he knows he has no legal or equitable title is guilty of an indictable offence and liable to one year's imprisonment, and to a fine not exceeding one hundred dollars.

2. BURDEN OF PROOF.—The proof of the ownership of the real estate rests with the person so pretending to deal with the same. 55-56 V., c. 29, s. 373.

**423.** FRAUDULENT SEIZURES OF LAND UNDER EXECUTION.—Every one is guilty of an indictable offence and liable to one year's imprisonment who, in the Province of Quebec, wilfully causes or procures to be seized and taken in execution any lands and tenements, or other real property, not being at the time of such seizure, to the knowledge of the person causing the same to be taken in execution, the *bona fide* property of the person or persons against whom, or whose estate the execution is issued. 55-56 V., c. 29, s. 374.

**424.** PENALTY.—Every one is guilty of an indictable offence and liable to two years' imprisonment, who,—

(*a*) HOLDER OF LEASE OF GOLD OR SILVER MINE DEFRAUDING OWNER—being the holder of any lease or license issued under the provisions of any Act relating to gold or silver mining, or by any persons owning land supposed to contain any gold or silver, by fraudulent device or contrivance defrauds or attempts to defraud His Majesty, or any person, 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; or,

(*b*) UNLAWFUL SALE OF QUARTZ, GOLD OR SILVER—not being the owner or agent of the owners of mining claims then being worked, and not being thereunto authorized in writing by the 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; or,

(*c*) UNLAWFUL PURCHASE OF QUARTZ, GOLD OR SILVER—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, 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 with such proper officer within twenty days next after the date of such purchase. 55-56 V., c. 29, s. 375.

**425.** PENALTY.—Every one is guilty of an indictable offence and liable to three years' imprisonment, who,—

(*a*) WAREHOUSEMAN, ETC., DELIVERING RECEIPT FOR GOODS WITHOUT RECEIVING THEM—being the keeper of any warehouse, or a forwarder, miller, master of a vessel, wharfinger, keeper of a cove, yard, harbour or other place, or in any such place about which he is employed, or

curer or packer of pork, or dealer in wool, carrier, factor, agent or other person, or a clerk or other person in his employ, knowingly and wilfully gives to any person a writing purporting to be a receipt for, or an acknowledgment of, any goods or other property as having been received into his warehouse, vessel, cove, wharf, or other place, or in any such place about which he is employed, or in any other manner received by him, or by the person in or about whose business he is employed, before the goods or other property named in such receipt, acknowledgment or writing have been actually delivered to or received by him as aforesaid, with intent to mislead, deceive, injure or defraud any person, although such person is then unknown to him; or,

(*b*) ACCEPTING, ETC., FALSE RECEIPT—knowingly and wilfully accepts, transmits or uses any such false receipt or acknowledgment or writing. 55-56 V., c. 29, s. 376.

**426.** PENALTY.—Every one is guilty of an indictable offence and liable to three years' imprisonment, who, —

(*a*) FRAUDULENT DISPOSAL OF MERCHANDISE AS TO WHICH MONEY HAS BEEN ADVANCED OR SECURITY GIVEN BY CONSIGNEE—having, in his name, shipped or delivered to the keeper of any warehouse, or to any other factor, agent or carrier, to be shipped or carried, any merchandise upon which the consignee has advanced any money or given any valuable security, afterwards, with intent to deceive, defraud or injure such consignee, in violation of good faith, and without the consent of such consignee, makes any disposition of such merchandise different from and inconsistent with the agreement made in that behalf between him and such consignee at the time when or before such money was so advanced or such security given; or,

(*b*) AIDING IN DISPOSAL—knowingly and wilfully aids and assists in making such disposition for the purpose of deceiving, defrauding or injuring such consignee.

2. SAVING.—No person commits an offence under this section who, before making such disposition of such merchandise, pays or tenders to the consignee the full amount of any advance made thereon. 55-56 V., c. 29, s. 377.

**427.** PENALTY.—Every one is guilty of an indictable offence and liable to three years' imprisonment who,—

(*a*) FRAUDULENT RECEIPTS UNDER THE BANK ACT—wilfully makes any false statement in 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 Bank Act; or,

(*b*) FRAUDULENTLY ALIENATING PROPERTY COVERED BY RECEIPT—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 such receipt, certificate or acknowledgment for any such grain, timber or other goods or property, or 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 owner of such receipt, certificate or acknowledgment, the grain, timber, goods or other property therein mentioned. 55-56 V., c. 29, s. 378.

**428.** INNOCENT PARTNERS.—If any offence mentioned in any of the three sections last preceding is committed by the doing of anything in the name of any firm, company or copartnership of persons, the person by whom such thing is actually done, or who connives at the doing thereof, is alone guilty of the offence. 55-56 V., c. 29, s. 379.

**429.** SELLING VESSEL OR WRECK WITHOUT TITLE.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, not having lawful title thereto, sells any vessel or wreck fround within the limits of Canada. 55-56 V., c. 29, s. 380.

**430.** Every one who,—

(*a*) SECRETING WRECK, ETC.—secretes any wreck, or defaces or obliterates the marks thereon, or uses means to disguise the fact that it is wreck, or in any manner con-

ceals the character thereof, or the fact that the same is wreck, from any person entitled to inquire into the same; or,

(*b*) SALE OF WRECK—offers for sale or otherwise deals same to be wreck, from any person other than the owner thereof or the receiver of wrecks, and does not within forty-eight hours inform the receiver thereof; or,

(*c*) SALE OF WRECK — offers for sale or otherwise deals with any wreck, knowing it to be wreck, not having a lawful title to sell or deal with the same; or,

(*d*) KEEPING WRECK—keeps in his possession any wreck, knowing it to be wreck, without a lawful title so to keep the same, for any time longer than the time reasonably necessary for the delivery of the same to the receiver; or,

(*e*) BOARDING WRECKED VESSEL—boards any vessel which is wrecked, stranded or in distress against the will of the master, unless the person so boarding is, or acts by command of the receiver;

PENALTY—is guilty of an offence punishable on indictment with two years' imprisonment, and on summary conviction before two justices with a penalty of four hundred dollars or six months' imprisonment with or without hard labour. 55-56 V., c. 29, s. 381.

**431.** PURCHASING OLD MARINE STORES FROM PERSON UNDER SIXTEEN.—Every person dealing in old marine stores of any description, including anchors, cables, sails, junk, iron, copper, brass, lead or other marine stores, who, by himself or his agent, purchases any old marine stores from any person under the age of sixteen years, is guilty of an offence and liable, on summary conviction, to a penalty of four dollars for the first offence, and of six dollars for every subsequent offence.

2. RECEIVING OLD MARINE STORES.—Every such person who, by himself or his agent, purchases or receives any old marine stores into his shop, premises or place of deposit, except in the daytime between sunrise and sunset, is guilty of an offence and liable, on summary conviction, to a penalty of five dollars for the first offence, and of seven dollars for every subsequent offence.

3. HAVING IN POSSESSION.—Every person, purporting to be a dealer in old marine stores, on whose premises any such stores which have been stolen are found secreted, is guilty of an indictable offence and liable to five years' imprisonment. 55-56 V., c. 29, s. 382.

**432.** MARKS TO BE USED ON PUBLIC STORES.—The marks specified in this section in that behalf may be applied in or on any public stores to denote His Majesty's property in such stores.

*Marks appropriated for His Majesty's use in or on Naval, Military, Ordnance, Barrick, Hospital and Victualling Stores.*

| STORES. | MARKS. |
|---|---|
| Hempen cordage and wire rope. | White, black or coloured 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. |

*Marks appropriated for use on stores, the property of His Majesty in the right of his Government of Canada.*

| STORES. | MARKS. |
|---|---|
| Public stores. | The name of any public department, or the word 'Canada,' either alone or in combination with a Crown or the Royal Arms. |
| Militia stores. | The broad arrow within the letter C. |

2. APPLICATION BY OFFICER.—It shall be lawful for any public department, and the contractors, officers and workmen of such department, to apply such marks, or any of them, in or on any such stores. 55-56 V., c. 29, s. 384; 6-7 Edw. VII. c. 7, s. 1.

**433.** UNLAWFULLY APPLYING MARKS.—Every one is guilty of an indictable offence and liable to two years' imprisonment, who, without lawful authority the proof of which shall lie on him, applies any of the said marks in or on any public stores. 55-56 V., c. 29, s. 385.

*Indictment.*— that A. B., on the day of , 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 bunting.

**434.** OBLITERATING MARKS FROM PUBLIC STORES.—Every one is guilty of an indictable offence and liable to two years' imprisonment, who, with intent to conceal His Majesty's property in any public stores, takes out, destroys or obliterates, wholly or in part, any of the said marks. 55-56 V., c. 29, s. 386.

*Indictment.*— The jurors for our Lord the King present that J. S., on the first day of June, in the year of our Lord , unlawfully, with intent to conceal His Majesty's property in the stores hereinafter mentioned, took out ("*takes out, destroys, or obliterates, wholly or in part*") from 100 yards of canvas, which said canvas was then stores of and belonging to His Majesty, and under the care, superintendence and control of the (*as the case may be*), a certain mark, to wit, a blue line in a serpentine form, which said mark was then applied on the said canvas in order to denote His said Majesty's property therein.

**435.** UNLAWFUL POSSESSION, SALE, ETC., OF PUBLIC STORES.—Every one who, without lawful authority the proof of which lies on him, receives, possesses, keeps, sells or delivers any public stores bearing any such mark as aforesaid, knowing them to bear such mark, is guilty of an offence punishable on indictment or on summary conviction, and liable, on conviction on indictment, to one year's imprisonment, and, if the value thereof does not exceed twenty-five dollars, on summary conviction before two justices, to a fine of one hundred dollars or to six months' imprisonment with or without hard labour. 55-56 V., c. 29, s. 387.

*Indictment.*— that T. V., on the day of , without lawful authority, unlawfully possessed ("*receives, possesses, keeps, sells, or delivers*") five hundred yards of canvas, which said canvas was then naval stores of and belonging to His Majesty, and then bore a certain mark ("*any such mark as aforesaid,*"), to wit, a blue line in a serpentine form, then applied thereon, in order to denote His Majesty's property in naval stores so marked, the said T. V., then well knowing the said canvas to bear the said mark.

**436.** BEING IN POSSESSION WITHOUT BEING ABLE TO JUSTIFY.—Every one, not being in His Majesty's service, or a dealer in marine stores or a dealer in old metals, in whose possession any public stores bearing any such mark are found who, when taken or summoned before two justices, does not satisfy such justices that he came lawfully by such stores, is guilty of an offence and liable, on summary conviction, to a fine of twenty-five dollars.

2. Summoning Former Possessors.—If any such person satisfies such justices that he came lawfully by the stores so found, the justices, in 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.

3. Every Unlawful Possessor Liable.—Every one who has had possession thereof, who does not satisfy such justices that he came lawfully by the same, is liable, on summary conviction, of having had possession thereof, to a fine of twenty-five dollars, and in default of payment to three months' imprisonment with or without hard labour. 55-56 V., c. 29, s. 388.

**437.** Searching for Stores Near His Majesty's Vessels, Wharfs or Docks.—Every one who, without permission in writing from the Admiralty, or from some person authorized by the Admiralty in that behalf, creeps, sweeps, dredges, or otherwise searches for stores in the sea, or any tidal or inland water, within one hundred yards from any vessel belonging to His Majesty or in His Majesty's service, or from any mooring place or anchoring place appropriated to such vessels, or from any mooring belonging to His Majesty, or from any of His Majesty's wharfs or docks, or victualling or steam factory yards, is guilty of an offence and liable, on summary conviction before two justices, to a fine of twenty-five dollars, or to three months' imprisonment, with or without hard labour. 55-56 V., c. 29, s. 389.

**438.** Every one who,—

(*a*) Receiving Clothing or Furniture from Soldiers or Deserters—buys, exchanges or detains, or otherwise receives from any soldier, militiaman or deserter any arms, clothing or furniture belonging to His Majesty, or any such articles belonging to any soldier, militiaman or deserter as are generally deemed regimental necessaries according to the custom of the army; or,

(*b*) Changing the Colour—causes the colour of such clothing or articles to be changed; or,

(*c*) Receiving Provisions from Soldier—exchanges, buys or receives from any soldier or militiaman, any pro-

visions, without leave in writing from the officer commanding the regiment or detachment to which such soldier belongs;

OFFENCE—PENALTY—is guilty of an offence punishable on indictment or on summary conviction, and liable on conviction on indictment to five years' imprisonment, and on summary conviction before two justices to a penalty not exceeding forty dollars, and not less than twenty dollars and costs, and, in default of payment, to six months' imprisonment with or without hard labour. 55-56 V., c. 29, c. 390.

**439.** RECEIVING NECESSARIES FROM SEAMEN OR MARINES. —Every one who buys, exchanges, or detains, or otherwise receives from any seaman or marine, upon any account whatsoever, or has in his possession any arms or clothing, or any articles, belonging to any seaman, mariner, or deserter, as are generally deemed necessaries according to the custom of the navy, is guilty of an offence punishable on indictment or on summary conviction and liable on conviction on indictment to five years' imprisonment, and an summary conviction before two justices to a penalty not exceeding one hundred and twenty dollars, and not less than twenty dollars and costs, and in default of payment to six months' imprisonment. 55-56 V., c. 29, s. 391.

Penalty, section 1042.

**440.** RECEIVING SEAMEN'S PROPERTY UNLESS IN IGNORANCE OR ON SALE BY AUTHORITY.—Every one who detains, buys, exchanges, takes on pawn or receives, from any seaman or any person acting for a seaman, any seaman's property, or solicits or entices any seaman, or is employed by any seaman to sell, exchange or pawn any seaman's property, unless he acts in ignorance of the same being a seaman's property, or of the person with whom he deals being or acting for a seaman, or unless the same is sold by the order of the Admiralty or commander in chief, is guilty of an offence punishable on indictment or on summary conviction and liable on conviction on indictment to five years' imprisonment, and on summary conviction for a first offence to a penalty not exceeding one hundred dollars; and on summary conviction for a second

offence, to the same penalty, or in the discretion of the justice, six months' imprisonment, with or without hard labour. 55-56 V., c. 29, s. 392.

**441.** NOT JUSTIFYING POSSESSION OF SAME.—Every one in whose possession any seaman's property is found who does not satisfy the justice before whom he is taken or summoned that he came by such property lawfully is liable, on summary conviction, to a fine of twenty-five dollars. 55-56 V., c. 29, s. 393.

**442.** CHEATING AT PLAY.—Every one is guilty of an indictable offence and liable to three years' imprisonment who, with intent to defraud any person, cheats in playing at any game or in holding the stakes, or in betting on any event. 55-56 V., c. 29, s. 395.

See *R.* v. *Moss*, Dears. & B. 104; *R.* v. *Hudson*, Bell C. C. 263; *R.* v. *Rogier*, 2 D. & R. 431; *R.* v. *Bailey*, 4 Cox C. C. 392; *R.* v. *O'Connor*, 15 Cox C. C. 3.

*Indictment.*— that A. B., on in playing at and with cards (*any game*) unlawfully did, with intent to defraud C. D., and others, cheat, (*or unlawfully did by fraud and cheating win from the said C. D. a sum of one hundred dollars.*)

**443.** PRETENDING TO PRACTISE WITCHCRAFT, ETC.—Every one is guilty of an indictable offence and liable to one year's imprisonment who pretends to exercise or use any kind of witchcraft, sorcery, enchantment or conjuration, or undertakes to tell fortunes, or pretends from his skill or knowledge in any occult or crafty science, to discover where or in what manner any goods or chattels supposed to have been stolen or lost may be found. 55-56 V., c. 29, s. 396.

See *R.* v. *Milford*, 20 O. R. 306.

**444.** CONSPIRACY TO DEFRAUD.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who conspires with any other person, by deceit or falsehood or other fraudulent means, to defraud the public or any person, ascertained or unascertained, or to affect the public market price of stocks, shares, merchandise, or anything else publicly sold, whether such deceit or falsehood or other fraudulent means would or would not amount to a false pretense as hereinbefore defined. 55-56 V., c. 29, s. 394.

Conspiracy to permit persons to travel free on railway an offence: *R.* v. *Defries* (1894), 25 O. R. 645.

Indictment lies for abortive conspiracy: *R.* v. *Frawley* (1897), 25 O. R. 431.

One conspirator may be indicted alone and convicted though the other is within the jurisdiction at the time: *Ib.*

As to what constitutes conspiracy: See *R.* v. *Downie*, 13 R. L. 429.

*Indictment.*— that A. B. and C. D., on unlawfully, fraudulently and deceitfully did conspire and agree together to defraud the public by falsely : 3 Chit. 1139, 1164.

## *Robbery and Extortion.*

**445.** ROBBERY DEFINED. — Robbery is theft accompanied with violence or threats of violence to any person or property used to extort the property stolen, or to prevent or overcome resistance to its being stolen. 55-56 V., c. 29, s. 397.

**446.** PENALTY.—Every one is guilty of an indictable offence and liable to imprisonment for life and to be whipped who,—

(*a*) ROBBERY WITH VIOLENCE—robs any person and at the time of, or immediately before or immediately after, such robbery, wounds, beats, strikes, or uses any personal violence to, such person; or,

(*b*) JOINT ROBBERY—being together with any other person or persons robs, or assaults with intent to rob, any person; or,

(*c*) ROBBERY WHILE ARMED—being armed with an offensive weapon or instrument robs, or assaults with intent to rob, any person. 55-56 V., c. 29, s. 398.

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. unlawfully did make an assault, and him the said D. in bodily fear and danger of his life then unlawfully did put, and a sum of money, to wit, the sum of ten dollars, of the moneys of the said D., then unlawfully and violently did steal .

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. unlawfully 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 unlawfully and violently to steal .

3. *Indictment for robbery by two or more persons in company* that A. B. and D. H. together, in and upon one J. N. unlawfully did make an assault, and him the said J. N. in bodily

fear and danger of his life then and there together unlawfully 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. M. then unlawfully and violently together did steal. *(If only one of them be apprehended it will charge him by name together with a certain other person, or*

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.*— that J. N. at on , in and upon one A. M. unlawfully did make an assault, and him the said A. M. in bodily fear and danger of his life then unlawfully did put, and the moneys of the said A. M. to the amount of ten dollars 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 unlawfully and violently did steal, and that the said J. N. immediately before he so robbed the said A. M. as aforesaid, the said A. M. did unlawfully wound.

*(It will be immaterial, in any of these indictments, if the place where the robbery was committed be stated incorrectly.)*

The observations, *ante*, applicable to robbery generally, apply to these offences.

Under indictment No. 1 the defendant may be convicted of the robbery only, or of an assault with intent to rob. The same, under indictments numbers 3 and 5. And wherever a robbery with aggravating 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: *R.* v. *Mitchell*, 2 Den. 468, and remarks upon it, in Dears. 19.

**447.** PENALTY FOR ROBBERY.—Every one who commits robbery is guilty of an indictable offence and liable to fourteen years' imprisonment. 55-56 V., c. 29, s. 399.

The words "together" is not essential in an indictment for robbery against two persons to show that the offence was a joint one: *R.* v. *Provost*, M. L. R. 1 Q. B. 477.

*Indictment for robbery.*— in and upon one J. N. unlawfully did make an assault, and him, the said J. N., in bodily fear and danger of his life then did put, and the moneys of the said J. N., to the amount of ten dollars, from the person and against the will of the said J. N. then unlawfully and violently did steal.

**448.** ASSAULT WITH INTENT TO ROB.—Every one who assaults any person with intent to rob him is guilty of an indictable offence and liable to three years' imprisonment. 55-56 V., c. 29, s. 400.

See *R.* v. *Huxley*, Car. 2 M. 596; *R.* v. *O'Neil*, 11 R. L. 334.

*Indictment.*— in and upon one C. D., unlawfully did make an assault with intent the moneys, goods and chattels of the said C. D., from the person and against the will of the said C. D. unlawfully and violently to steal.

**449.** STOPPING THE MAIL WITH INTENT TO ROB.—Every one is guilty of an indictable offence and liable to imprison-

ment for life, or for any term not less than five years, who stops a mail with intent to rob or search the same. 55-56 V., c. 29, s. 401.

*Indictment.*— a certain mail for the conveyance of post letters, unlawfully did stop with intent to rob the same.

**450.** COMPELLING EXECUTION OF DOCUMENT BY FORCE WITH INTENT TO DEFRAUD.—Every one is guilty of an indictable offence and liable to imprisonment for life who, with intent to defraud or injure, by unlawful violence to, or restraint of the person of another, or by the threat that either the offender or any other person will employ such violence or restraint, unlawfully compels any person to execute, make, accept, endorse, alter or destroy the whole or any part of any valuable security, or to write, impress or affix any name or seal upon any paper or parchment, in order that it may be afterwards made or converted into or used or dealt with as a valuable security. 55-56 V., c. 29, s. 402.

See *R.* v. *John* (1875) 13 Cox C. C. 100.

**451.** LETTERS DEMANDING PROPERTY WITH MENACES.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who sends, delivers or utters, or directly or indirectly causes to be received, knowing the contents thereof, any letter or writing demanding of any person with menaces, and without any reasonable or probable cause, any property, chattel, money, valuable security or other valuable thing. 55-56 V., c. 29, s. 403.

Delivering letter demanding with menaces—Trial—Misdirection: *R.* v. *Collins*, 33 N. B. R. 429.

Sending threatening letter—Admission of evidence — Comparison of handwriting: *R.* v. *Dixon*, 29 N. S. R. 462.

"Without reasonable or probable cause" apply to the money demanded, and not to the accusation threatened to be made: *R.* v. *Mason*, 24 U. C. C. P. 58.

*Indictment for sending a letter, demanding money with menaces.* that J. S., on unlawfully 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*). And the jurors aforesaid, do further present, that the said J. S. on the day and in the year aforesaid, unlawfully 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*).

**452.** DEMANDING WITH INTENT TO STEAL.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, with menaces, demands from any person, either for himself or for any other person, anything capable of being stolen with intent to steal it. 55-56 V., c. 29, s. 404.

Collection of debt—Intent—Threat of imprisonment—Procuring goods—Debtor and creditor: *R.* v. *Lyon*, 29 O. R. 497; *Talon* v. *Piché*, 9 L. N. 380.

Words "without reasonable or probable cause" apply only to demand: *R.* v. *Mason*, 24 C. P. 58.

What necessary to constitute offence: *R.* v. *Tranchant*, 9 L. N. 333; *Talon* v. *Piché*, 9 L. N. 380.

Menace need not be of character to excite alarm to be within this section: *R.* v. *Gibbons*, 12 Man. L. R. 154.

*Indictment.*— unlawfully with menaces did demand of A. B. the money of him the said A. B. with intent the said money from the said A. B. unlawfully to steal.

**453.** PENALTY—INTENT TO EXTORT.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who, with intent to extort or gain anything from any person,—

(*a*) ACCUSATION OF CRIME—accuses or threatens to accuse either that person or any other person, whether the person accused or threatened with accusation is guilty or not, of

(i) any offence punishable by law with death or imprisonment for seven years or more,

(ii) any assault with intent to commit rape, or any attempt or endeavour to commit a rape, or any indecent assault,

(iii) carnally knowing or attempting to know any child so as to be punishable under this Act,

(iv) any infamous offence, that is to say, buggery, an attempt or assault with intent to commit buggery, or any unnatural practice, or incest,

(v) counselling or procuring any person to commit any such infamous offence; or,

(*b*) THREATS—threatens that any person shall be so accused by any other person; or,

(*c*) THREATENING DOCUMENT—causes any person to receive a document containing such accusation or threat, knowing the contents thereof;

COMPELLING EXECUTION OF DOCUMENT—or who by any of the means aforesaid compels or attempts to compel any person to execute, make, accept, endorse, alter or destroy the whole or any part of any valuable security, or to write, impress or affix any name or seal upon or to any paper or parchment, in order that it may be afterwards made or converted into or used or dealt with as a valuable security. 55-56 V., c. 29, s. 405.

Intent to extort by—Accusation may be by laying criminal information: *R.* v. *Kempel*, 31 O. R. 631.

Threat to accuse of abortion for which there is no minimum punishment, not threat to accuse of crime punishable with imprisonment for seven years or more: *R.* v. *Popplewell*, 20 O. R. 305.

The test is whether or not the menace is such as a firm and prudent man might and ought to have resisted: *R.* v. *McDonald*, 8 Man. L. R. 491.

*Indictment.*— that J. S., on unlawfully 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 said letter, and which said letter is as follows, to wit (*here set out the letter verbatim*).

*Indictment.*— unlawfully did threaten one J. N., to accuse him the said J. N., of having attempted and endeavoured to commit the abominable crime of buggery with the said J. S., with a view and intent thereby then to extort and gain money from the said J. N.

**454.** PENALTY.—Every one is guilty of an indictable offence and liable to imprisonment for seven years who,—

(*a*) INTENT TO EXTORT — ACCUSATION OF CRIME—with intent to extort or gain anything from any person accuses or threatens to accuse either that person or any other person of any offence other than those specified in the last section, whether the person accused or threatened with accusation is guilty or not of that offence; or,

(*b*) THREATS—with such intent as aforesaid, threatens that any person shall be so accused by any person; or,

(*c*) THREATENING DOCUMENT—causes any person to receive a document containing such accusation or threat, knowing the contents thereof;

COMPELLING EXECUTION OF DOCUMENT—or who by any of the means aforesaid, compels or attempts to compel any person to execute, make, accept, endorse, alter or destroy the whole or any part of any valuable security, or to write, im-

press or affix any name or seal upon or to any paper or parchment, in order that it may be afterwards made or converted into, or used or dealt with as a valuable security. 55-56 V., c. 29, s. 406.

"Offence" includes offences against Provincial law: *R. v. Dixon*, 28 N. S. R. 82.

*Burglary and Housebreaking.*

**455.** BREAKING PLACE OF WORSHIP AND COMMITTING OFFENCE.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who breaks and enters any place of public worship and commits any indictable offence therein, or who, having committed any indictable offence therein, breaks out of such place. 55-56 V., c. 29, s. 408.

*Indictment for breaking and entering a church and stealing therein.*— a place of public worship, to wit, the church of the parish of in the county of unlawfully did break and enter, and there, in the said church, one silver cup of the goods and chattels of unlawfully did steal.

*Indictment for stealing in and breaking out of a church.*— that at A. B., one silver cup, of the goods and chattels of in a place of public worship, to wit, the church of the said parish there situate, unlawfully did steal, and that the said (*defendant*) so being in the said church as aforesaid, afterwards, and after he had so committed the said offence in the said church, as aforesaid, on the day and year aforesaid, unlawfully did break out of the said church.

**456.** BREAKING WITH INTENT TO COMMIT OFFENCE.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who breaks and enters any place of public worship, with intent to commit any indictable offence therein. 55-56 V., c. 29, s. 409.

**457.** PENALTY.—Every one is guilty of an indictable offence and liable to imprisonment for life who,—

(*a*) BREAKING DWELLING BY NIGHT—breaks and enters a dwelling-house by night with intent to commit any indictable offence therein; or,

(*b*) BREAKING OUT OF DWELLING BY NIGHT—breaks out of any dwelling-house by night, either after committing an indictable offence therein, or after having entered

such dwelling-house, either by day or by night, with intent to commit an indictable offence therein.

2. COMMITTING THE OFFENCE WHEN ARMED.—Every one convicted of an offence under this section who when arrested, or when he committed such offence, had upon his person any offensive weapon, shall, in addition to the imprisonment above prescribed, be liable to be whipped. 63-64 V., c. 46, s. 3.

*Indictment for burglary and larceny to the value of twenty-five dollars.*— 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 unlawfully and burglariously did break and enter, with intent the goods and chattels of one K. O. in the said dwelling-house then being, unlawfully and burglariously to steal; and then in the said dwelling-house, one silver sugar basin, of the value of ten dollars, six silver table-spoons of the value of ten dollars, and twelve silver tea-spoons of the value of ten dollars, of the goods and chattels of the said K. O. in the said dwelling-house then being found, unlawfully and burglariously did steal.

If no indictable offence 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, unlawfully 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 unlawfully and burglariously to steal.

*Indictment for burglary by breaking out.*— 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 ten dollars, six silver table-spoons of the value of ten dollars, and twelve silver tea-spoons of the value of ten dollars, 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, unlawfully did steal, and that he, the said J. S., being so as aforesaid in the said dwelling-house, and having committed the offence 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, unlawfully and burglariously did break out of the said dwelling-house of the said K. O.

**458.** PENALTY.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who,—

(*a*) BREAKING DWELLING BY DAY—breaks and enters any dwelling-house by day and commits any indictable offence therein; or,

(*b*) BREAKING OUT OF DWELLING BY DAY—breaks out of any dwelling-house by day after having committed any indictable offence therein. 55-56 V., c. 29, s. 411.

*Indictment.*— the dwelling-house of J. N., situate unlawfully did break and enter, by day with intent the goods and chattels of the said J. N., in the said dwelling-house then being, unlawfully to steal, 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 unlawfully did steal.

**459.** BREAKING WITH INTENT TO COMMIT OFFENCE.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, by day, breaks and enters any dwelling-house with intent to commit any indictable offence therein. 55-56 V., c. 29, s. 412.

*Indictment.*— on the dwelling-house of J. N., situate unlawfully did break and enter by day with intent to commit an indictable offence therein, to wit, the goods and chattels of the said J. N., in the said dwelling-house there being, then to steal.

**460.** BREAKING SHOP, ETC., AND COMMITTING INDICTABLE OFFENCE.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who, either by day or night, breaks and enters and commits any indictable offence in a school-house, shop, warehouse or counting-house, or any building within the curtilage of a dwelling-house, but not so connected therewith as to form part of it under the provisions hereinbefore contained. 55-56 V., c. 29, s. 413.

See *R.* v. *Carter* (1843), 1 C. & K. 173.

*Indictment.*— a certain building of one J. N., situate unlawfully 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 to steal, 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. did steal.

**461.** BREAKING SHOP, ETC., WITH INTENT.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, either by day or night, breaks and enters any of the buildings mentioned in the last preceding section with intent to commit any indictable offence therein. 55-56 V., c. 29, s. 414.

**462.** BEING FOUND IN DWELLING-HOUSE AT NIGHT.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who unlawfully enters, or is in, any dwelling-house by night with intent to commit any indictable offence therein. 55-56 V., c. 29, s. 415.

*Indictment.*— that J. S., on about the hour of eleven in the night of that same day, the dwelling of K. O., situate unlawfully did enter, with intent the goods and chattels of the said K. O., in the said dwelling-house then being, to steal.

**463.** PENALTY.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who is found,—

(*a*) ARMED WITH INTENT TO BREAK BY DAY—armed with any dangerous or offensive weapon or instrument by day, with intent to break or enter into any dwelling-house, and to commit any indictable offence therein; or,

(*b*) WITH INTENT TO BREAK BY NIGHT—armed as aforesaid by night, with intent to break into any building and to commit any indictable offence therein. 55-56 V., c. 29, s. 416.

*Indictment under s. 463, for being found by night armed.*—that A. B. on about the hour of eleven of the night of the same day at was found unlawfully armed with a certain dangerous and offensive weapon (*or instrument*), with intent to break and enter into a dwelling-house (*or any other building*) of C. D. there situate, and the goods and chattels in the said dwelling-house (*or any other building*), then being, unlawfully to steal.

**464.** PENALTY.—Every one is guilty of an indictable offence and liable to five years' imprisonment who is found,—

(*a*) HAVING HOUSEBREAKING INSTRUMENTS BY NIGHT—having in his possession by night, without lawful excuse, the proof of which shall lie upon him, any instrument of housebreaking; or,

(*b*) BY DAY—having in his possession by day any such instrument with intent to commit any indictable offence; or,

(*c*) DISGUISED BY NIGHT—having his face masked or blackened, or being otherwise disguised, by night, without lawful excuse, the proof whereof shall lie on him; or,

(*d*) DISGUISED BY DAY—having his face masked or blackened, or being otherwise disguised by day, with intent to commit any indictable offence. 55-56 V., c. 29, s. 417.

*Indictment under s. 464 (a) 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 (to wit ).

*Indictment under s. 464 (d) for being found by day with a disguised face with intent to commit an indictable offence.*—that at on A. B. was found by day, then and there having his face blackened (*masked, blackened or otherwise disguised*) with intent then and there to kill and murder one C. D.

**465.** Punishment after Previous Conviction.—Every one who, after a previous conviction for any indictable offence, is convicted of an indictable offence specified in this Part for which the punishment on a first conviction is less than fourteen years' imprisonment, is liable to fourteen years' imprisonment. 55-56 V., c. 29, s. 418.

*Forgery and Preparation Therefor.*

**466.** Definition.—Forgery is the making of a false document, knowing it to be false, with the intention that it shall in any way be used or acted upon as genuine, to the prejudice of any one whether within Canada or not, or that some person should be induced by the belief that it is genuine, to do or refrain from doing anything, whether within Canada or not.

2. Making False Document.—Making a false document includes altering a genuine document in any material part, or making any material addition to it or adding to it any false date, attestation, seal or other thing which is material, or making any material alteration in it, either by erasure, obliteration, removal or otherwise.

3. When Forgery Complete.—Forgery is complete as soon as the document is made with such knowledge and intent as aforesaid, though the offender may not have intended that any particular person should use or act upon it as genuine, or be induced, by the belief that it is genuine, to do or refrain from doing anything.

4. False Document may be Incomplete.—Forgery is complete although the false document may be incomplete, or may not purport to be such a document as would be binding in law, if it be so made and is such as to indicate that it was intended to be acted on as genuine. 55-56 V., c. 29, s. 422.

Forgery or alteration of municipal assessment roll not indictable: *R.* v. *Preston*, 21 U. C. R. 86.

Filling in drafts signed in blank, without authority and for fraudulent purpose, is forgery: *In re Hoke*, 15 R. L. 92.

A simple lie reduced to writing is not necessarily forgery: *R.* v. *Blackstone*, 7 Occ. N. 179.

But in such an indictment it is not necessary to allege that the prisoner committed the offence with intent to defraud any particular person: *R.* v. *Hathaway*, 8 L. C. J. 285.

**467.** Uttering Forged Documents.—Every one is guilty of an indictable offence who, knowing a document to be forged, uses, deals with, or acts upon it, or attempts to use, deal with, or act upon it, or causes or attempts to cause any person to use, deal with or act upon it, as if it were genuine, and is liable to the same punishment as if he had forged the document.

2. Wherever Forged.—It is immaterial where the document was forged. 55-56 V., c. 29, s. 424.

Notes drawn by boys in play—Attempt to destroy—Finding by prisoner: *R.* v. *Dunlop*, 15 U. C. R. 118.

Knowledge of accused that instrument was forged is essential, and must be stated in indictment—Not necessary to prove intent to defraud any particular person: *R.* v. *Weir*, Q. R. 9 Q. B. 253; *In re Debaum*, 4 L. N. 323.

It is not necessary to allege that the indorsement in question had been declared false by any competetent authority, etc., nor that it was obtained with intent to convert the note or paper-writing into money: *R.* v. *Boucher*, 10 R. L. 183, 1880.

In an indictment for forging a receipt it must be alleged that such receipt was either for goods or money: *R.* v. *McCorkell*, 8 L. C. J. 283.

Prisoner was indicted for forging an order for the delivery of goods. The only witnesses examined were the person whose name was forged, and the person to whom the order was addressed, and who delivered the goods thereon; and there was no corroborative testimony: *R.* v. *Giles*, 6 U. C. C. P. 84.

*Indictment.*— that A. B. on unlawfully did forge, knowing it to be false, a certain (*here name the document*) which said forged document is as follows that is to say (*here set out the document verbatim*) with intent thereby to defraud, and with intent that the said document should be used as genuine (*or acted upon as genuine*) to the prejudice of (*name, as the case may be*) or of any one who would accept, take, or deal with the said forged document.

And the jurors aforesaid do further present, that the said J. S. afterwards, to wit, on the day and year aforesaid, unlawfully and knowingly 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; and that the said document should be used as genuine (*or acted upon as genuine*) to the prejudice of any one who thereafter would accept, take or deal with or come by the said forged document.

And the jurors aforesaid do further present, that the said J. S. afterwards, to wit, on the day and year aforesaid, unlawfully did utter, offer, dispose of, and put off, as if it were genuine (*use, deal with, or attempt to use, etc.*, s. 467), a certain forged document, which said forged document 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 document as aforesaid, well knowing the same to be forged.

**468.** Forgery.—Every one who commits forgery of,—

(*a*) Public Seal—any document having impressed thereon or affixed thereto any public seal of the United King-

dom or any part thereof, or of Canada or any part thereof, or of any dominion, possession or colony of His Majesty; or,

(*b*) SIGNATURE OF GOVERNOR—any document bearing the signature of the Governor-General, or of any administrator, or of any deputy of the Governor, or of any lieutenant-governor or any one at any time administering the government of any province of Canada; or,

(*c*) DOCUMENTARY TITLE—any document containing evidence of, or forming the title or any part of the title to, any land or hereditament, or to any interest in or to any charge upon any land or hereditament, or evidence of the creation, transfer or extinction of any such interest or charge; or,

(*d*) ENTRY IN REGISTER—any entry in any register or book, or any memorial or other document made, issued, kept or lodged under any Act for or relating to the registering of deeds or other instruments respecting or concerning the title to or any claim upon any land or the recording or declaring of titles to land; or,

(*e*) REGISTRATION DOCUMENT—any document required for the purpose of procuring the registering of any such deed or instrument or the recording or declaring of any such title; or,

(*f*) DOCUMENT EVIDENCE OF REGISTRATION—any document which is made, under any Act, evidence of the registering or recording or declaring of any such deed, instrument or title; or,

(*g*) AFFECTING THE TITLE—any document which is made by any Act, evidence affecting the title to land; or,

(*h*) NOTARIAL ACT—any notarial act or document or authenticated copy or any procès-verbal of a surveyor or authenticated copy thereof; or,

(*i*) REGISTER OF BIRTHS, DEATHS, ETC.—any register of births, baptisms, marriages, deaths or burials authorized or required by law to be kept, or any certified copy of any entry in or extract from any such register; or,

(*j*) COPY OF REGISTER—any copy of any such register required by law to be transmitted by or to any registrar or other officer; or,

(*k*) WILL OR PROBATE—any will, codicil or other testamentary document, either of a dead or living person, or any probate or letters of administration, whether with or without the will annexed; or,

(*l*) TRANSFER OF GOVERNMENT STOCK—any transfer or assignment of any share or interest in any stock, annuity or public fund of the United Kingdom or any part thereof, or of Canada or any part thereof, or of any dominion, possession or colony of His Majesty, or of any foreign state or country, or receipt or certificate for interest accruing thereon; or,

(*m*) TRANSFER OF COMPANY STOCK—any transfer or assignment of any share or interest in the debt of any public body, company or society, British, Canadian or foreign, or of any share or interest in the capital stock of any such company or society, or receipt or certificate for interest accruing thereon; or,

(*n*) TRANSFER OF GRANT AS SCRIP—any transfer or assignment of any share or interest in any claim to a grant of land from the Crown, or to any scrip or other payment or allowance in lieu of any such grant of land; or,

(*o*) POWER OF ATTORNEY—any power of attorney or other authority to transfer any interest or share hereinbefore mentioned, or to receive any dividend or money payable in respect of any such share or interest; or,

(*p*) ENTRY EVIDENCE OF STOCK—any entry in any book or register, or any certificate, coupon, share, warrant or other document which by any law or any recognized practice is evidence of the title of any person to any such stock, interest or share, or to any dividend or interest payable in respect thereof; or,

(*q*) EXCHEQUER BILL—any exchequer bill or endorsement thereof or receipt or certificate for interest accruing thereon; or,

(*r*) BANK NOTE—any bank note or bill of exchange, promissory note or cheque, or any acceptance, endorsement or assignment thereof; or,

(*s*) SCRIP—any scrip in lieu of land; or,

(*t*) EVIDENCE OF TITLE TO GOVERNMENT DEBT—any document which is evidence of title to any portion of the

debt of any dominion, colony or possession of His Majesty, or of any foreign state, or any transfer or assignment thereof; or,

(*u*) Document Security for Money — any deed, bond, debenture, or writing obligatory, or any warrant, order, or other security for money or payment of money, whether negotiable or not, or endorsement or assignment thereof; or,

(*v*) Receipt for Money or Goods—any accountable receipt or acknowledgment of the deposit, receipt, or delivery of money or goods, or endorsement or assignment thereof; or,

(*w*) Shipping Document—any bill of lading, charter-party, policy of insurance, or any shipping document accompanying a bill of lading, or any endorsement or assignment thereof; or,

(*x*) Warehouse Receipt—any warehouse receipt, dock warrant, dock-keeper's certificate, delivery order, or warrant for the delivery of goods, or of any valuable thing, or any endorsement or assignment thereof; or,

(*y*) Document Used as Evidence of Right to Goods —any other document used in the ordinary course of business as proof of the possession or control of goods, or as authorizing, either on endorsement or delivery, the possessor of such document to transfer or receive any goods;

Penalty—is guilty of an indictable offence and liable to imprisonment for life if the document forged purports to be, or was intended by the offender to be understood to be or to be used as genuine. 55-56 V., c. 29, s. 423.

Alteration of $2 to $20: *R.* v. *Bail*, 7 O. R. 228.

81 raised to 85—Alteration—Onus: *R.* v. *Portis*, 40 U. C. R. 214.

Promissory note drawn by prisoner—Alteration after indorsement forgery of note: *R.* v. *Craig* (1857), 7 U. C. C. P. 239.

Filling in drafts signed in blank without authority: *In re Hoke*, 15 R. L. 92.

No conviction on indictment for forging an indorsement where maker had not signed note at the time of forgery: *R.* v. *McVee*, 7 Occ. N. 74; 13 O. R. 8. Nor on indictment for forgery of note in which blank is left for payee's name: *R.* v. *Cormack*, 21 O. R. 213.

Statement from one bank to another containing acknowledgment of receipt of money to be accounted for is an "accountable receipt:" *In re Debaum*, 11 L. N. 323.

A forged paper purporting to be a bank note, is a promissory note, even though there is no such bank as that named: *R.* v. *McDonald*, 12 Q. B. 543.

Indictment for uttering forged order for payment of money — Evidence of uttering order with forged indorsement — Conviction quashed: *R.* v. *Cunningham* (1886), 8 C. Dig. 401, revg. 18 N. S. R. 31.

Orders for payment of money and not mere request: *R.* v. *Steel*, 13 U. C. C. P. 619; *R.* v. *Tuke*, 17 U. C. R. 269.

Mere request, not order: *R.* v. *Reapelle*, 20 U. C. R. 260.

Writing not addressed to any one may be order for payment: *R.* v. *Parker*, 15 U. C. C. P. 15.

Deed—Power of attorney—Attorney assuming to be principal: *R.* v. *Gould* (1839), 20 U. C. C. P. 154.

**469.** FORGERY.—Every one who commits forgery of,—

(*a*) PROPERTY REGISTRATION—any entry or document made, issued, kept or lodged under any Act for or relating to the registry of any instrument respecting or concerning the title to, or any claim upon, any personal property; or,

(*b*) PUBLIC REGISTER—any public register or book not hereinbefore mentioned appointed by law to be made or kept, or any entry therein;

PENALTY—is guilty of an indictable offence and liable to fourteen years' imprisonment if the document forged purports to be, or was intended by the offender to be understood to be, or to be used as genuine. 55-56 V., c. 29, s. 423.

**470.** FORGERY.—Every one who commits forgery or,—

(*a*) RECORD OF COURT OF JUSTICE—any record of any court of justice, or any document whatever belonging to or issuing from any court of justice, or being or forming part of any proceeding therein; or,

(*b*) DOCUMENTARY EVIDENCE—any certificate, office copy, or certified copy, or other document which, by any statute in force for the time being, is admissible in evidence; or,

(*c*) DOCUMENT ISSUED BY COURT—any document made or issued by any judge, officer or clerk of any court of justice, or any document upon which, by the law or usage at the time in force, any court of justice or any officer might act; or,

(*d*) MAGISTRATE PROCESS — any document which any magistrate is authorized or required by law to make or issue; or,

(*e*) ENTRY IN REGISTER—any entry in any register or book kept, under the provisions of any law, in or under the authority of any court of justice or magistrate acting as such; or,

(*f*) LETTERS PATENT—any copy of any letters patent, or of the enrolment or enregistration of letters patent, or of any certificates thereof; or,

(*g*) LICENSE—any license or certificate for or of marriage; or,

(*h*) CONTRACT—any contract or document which, either by itself or with others, amounts to a contract or is evidence of a contract; or,

(*i*) POWER OF ATTORNEY—any power or letter of attorney or mandate; or,

(*j*) ORDERS FOR MONEY OR GOODS—any authority or request for the payment of money, or for the delivery of goods, or of any note, bill or valuable security; or,

(*k*) RECEIPT OR DISCHARGE — any acquittance or discharge, or any voucher of having received any goods, money, note, bill or valuable security, or any instrument which is evidence of any such receipt; or,

(*l*) DOCUMENTARY EVIDENCE—any document to be given in evidence as a genuine document in any judicial proceeding; or,

(*m*) RAILWAY TICKET—any ticket or order for a free or paid passage on any carriage, tramway or railway, or any steam or other vessel; or,

(*n*) OTHER DOCUMENTS—any documents not mentioned in this or the last preceding sections;

PENALTY—is guilty of an indictable offence and liable to seven years' imprisonment if the document forged purports to be, or was intended by the offender to be understood to be, or to be used as genuine. 55-56 V., c. 29, s. 423.

**471.** PENALTY.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who, without lawful authority or excuse, the proof whereof shall lie on him,—

(*a*) MACHINERY FOR EXCHEQUER BILL PAPER—makes, begins to make, uses or knowingly has in his possession,

any machinery or instrument or material for making exchequer bill paper, revenue paper or paper intended to resemble the bill paper of any firm or body corporate, or person carrying on the business of banking; or,

(*b*) ENGRAVING FOR BILL OR NOTE—engraves or makes upon any plate or material anything purporting to be, or apparently intended to resemble, the whole or any part of any exchequer bill or bank note; or,

(*c*) USING THE SAME—uses any such plate or material for printing any part of any such exchequer bill or bank note; or,

(*d*) POSSESSING THE SAME—knowingly has in his possession any such plate or material as aforesaid; or,

(*e*) MAKING EXCHEQUER OR OTHER BILL PAPER—makes, uses or knowingly has in his possession any exchequer bill paper, revenue paper, or any paper intended to resemble any bill paper of any firm, body corporate, company or person carrying on the business of banking, or any paper upon which is written or printed the whole or any part of any exchequer bill, or any bank note; or,

(*f*) ENGRAVING FOR GOVERNMENT BOND—engraves or makes upon any plate or material anything intended to resemble the whole or any distinguishing part of any bond or undertaking for the payment of money used by any dominion, colony or possession of His Majesty, or by any foreign prince or state, or by any body corporate, or other body of the like nature, whether within His Majesty's dominions or without; or,

(*g*) USING THE SAME—uses any such plate or other material for printing the whole or any part of such bond or undertaking; or,

(*h*) POSSESSING THE SAME—knowingly offers, disposes of or has in his possession any paper upon which such bond or undertaking, or any part thereof, has been printed, 55-56 V., c. 29, s. 434.

*Offences Resembling Forgery.*

**472.** COUNTERFEITING GOVERNMENT SEALS.—Every one is guilty of an indictable offence and liable to imprisonment

for life who unlawfully makes or who counterfeits any public seal of the United Kingdom or any part thereof, or of Canada or of any part thereof, or of any dominion, possession or colony of His Majesty, or the impression of any such seal, or uses any such seal or impression, knowing the same to be so unlawfully made or counterfeited. 55-56 V., c. 29, s. 425.

*Indictment.*— that A. B., on the seal of the Dominion of Canada, falsely and lawfully did counterfeit.
*(Add a count for uttering, using, dealing with or knowing the same to be so counterfeit.)*

**473.** Counterfeiting Seals of Courts or Registry or Burial Boards.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who unlawfully makes or who counterfeits any seal of a court of justice, or any seal of or belonging to any registry office or burial board, or the impression of any such seal, or uses any such seal or impression knowing the same to be so unlawfully made or counterfeited. 55-56 V., c. 29, s. 426.

**474.** Unlawfully Printing Counterfeit Proclamation.—Tendering Same in Evidence.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who prints any proclamation, order, regulation or appointment, or notice thereof, and causes the same falsely to purport to have been printed by the King's Printer for Canada, or the Government Printer for any province of Canada, as the case may be, or tenders in evidence any copy of any proclamation, order, regulation or appointment which falsely purports to have been printed as aforesaid, knowing that the same was not so printed. 55-56 V., c. 29, s. 427.

**475.** Sending Telegrams in False Names.—Every one is guilty of an indictable offence who, with intent to defraud, causes or procures any telegram to be sent or delivered as being sent by the authority of any person knowing that it is not sent by such authority, with intent that such telegram should be acted on as being sent by that person's authority, and is liable, upon conviction thereof, to the same punishment as if he had forged a document to the same effect as that of the telegram. 55-56 V., c. 29, s. 428.

*Indictment.*— that A. B., at on unlawfully, with intent to defraud, did cause a telegram purporting to be an order for money, to be sent to as being sent by authority of one C. D., knowing that it was not sent by the authority of the said C. D., with intent that such telegram should be acted on as being sent by the said C. D.

**476.** SENDING FALSE TELEGRAMS.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, with intent to injure or alarm any person, sends, causes, or procures to be sent any telegram or letter or other message containing matter which he knows to be false. 55-56 V., c. 29, s. 429.

The clause seems to cover the case of a telegram or letter sent to one person with intent to injure or alarm any other person, as well as the person to whom it is sent.

The prisoner, at Woodstock, with intent to defraud, wrote out a telegraph message purporting to be sent by one C. at Hamilton, to McK. at Woodstock, authorizing McK. to furnish the prisoner with funds, which was delivered to McK., and upon the faith of it McK. endorsed a draft for $85, drawn by the prisoner on C., on which the prisoner obtained the money.

*Held*, that the prisoner was guilty of forgery: *R.* v. *Stewart*, 25 U. C. C. P. 440.

*Indictment.*— that A. B., on at unlawfully did send (*cause or procure to be sent*) a telegram to one C. D. containing matter which he, the said A. B., knew to be false, with intent to injure (*or alarm*) the said C. D. (*Add another count giving the telegram in full if possible* ).

**477.** DRAWING DOCUMENT WITHOUT AUTHORITY.—Every one is guilty of an indictable offence who, with intent to defraud and without lawful authority or excuse, makes or executes, draws, signs, accepts or endorses, in the name or on the account of another person, by procuration or otherwise, any document, or makes use of or utters any such document knowing it to be so made, executed, signed, accepted or endorsed, and is liable to the same punishment as if he had forged such document. 55-56 V., c. 29, s. 431.

An indictment may be laid under this section for unlawfully, and with intent to defraud, signing a promissory note made by procuration, although the name signed is the name of a testamentary succession or of an estate in liquidation; but if the indictment does not disclose the particulars, the Crown will be ordered to furnish particulars of the persons who represented such succession or estate at the time when the offence was alleged to have been committed; and the order will also direct that the defendants be not arraigned until such particulars have been delivered.

*R.* v. *Weir et al.* (1889), 3 Can. C. C. 155.

When the offence of uttering a forged instrument is alleged, the indictment must aver that the accused made use of or uttered the instrument knowing it to have been forged.

*R.* v. *Weir* (1900), 3 Can. C. C. 499.

A count of an indictment charging the defendants with having, with intent to defraud, unlawfully made use of and uttered a promissory note alleged to have been made and signed by one of the defendants by procuration, without lawful authority or excuse, and with intent to defraud, is defective if it does not also allege that the defendants knew it to have been so made and signed, and such a defect is one of substance and cannot be amended under section 629.

*R.* v. *Weir* (1900), 3 Can. C. C. 499.

The words "any document" instead of the enumeration contained in the repealed clause are an extension: see *R.* v. *Kay*, 11 Cox C. C. 529, L. R. 1 C. C. R. 257. "Document" defined, s. 449; *R.* v. *White*, 1 Den. 208 cannot now be followed.

**478.** PENALTY.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment, who,—

(*a*) OBTAINING ANYTHING BY FORGED INSTRUMENT OR BY PROBATE OF FORGED WILL—demands, receives, or obtains anything, or causes or procures anything to be delivered or paid to any person, under, upon, or by virtue of any forged instrument knowing the same to be forged, or under, upon, or by virtue of any probate or letters of administration, knowing the will, codicil or testamentary writing on which such probate or letters of administration were obtained to be forged, or knowing the probate or letters of administration to have been obtained by any false oath, affirmation or affidavit; or,

(*b*) ATTEMPT—attempts to do any such thing as aforesaid. 55-56 V., c. 29, s. 432.

**479.** PENALTY.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who,—

(*a*) COUNTERFEITING STAMP—fraudulently counterfeits any stamp, whether impressed or adhesive, used for the purpose of revenue by the Government of the United Kingdom or of Canada, or by the Government of any province of Canada, or of any possession or colony of His Majesty, or by any foreign prince or state; or,

(*b*) DISPOSAL OF SAME—knowingly sells or exposes for sale, or utters or uses any such counterfeit stamp; or,

(*c*) MAKING, ETC., DIE FOR SAME—without lawful excuse, the proof whereof shall lie on him, makes, or has knowingly in his possession, any die or instrument capable of making the impression of any such stamp as aforesaid, or any part thereof; or,

(*d*) Removing Stamp—fraudulently cuts, tears or in any way removes from any material any such stamp, with intent that any use should be made of such stamp or of any part thereof; or,

(*e*) Mutilating Stamp—fraudulently mutilates any such stamp with intent that any use should be made of any part of such stamp; or,

(*f*) Using Stamp Fraudulently—fraudulently fixes or places upon any material, or upon any stamp aforesaid, any stamp or part of a stamp which, whether fraudulently or not, has been cut, torn, or in any other way removed from any other material or out of or from any other stamp; or,

(*g*) Erasing Marks on Stamped Material — fraudulently erases, or otherwise, either really or apparently, removes, from any stamped material any name, sum, date, or other matter or thing thereon written, with the intent that any use should be made of the stamp upon such material; or,

(*h*) Possessing Mutilated or Erased Stamp — knowingly and without lawful excuse, the proof whereof shall lie upon him, has in his possession any stamp or part of a stamp which has been fraudulently cut, torn, or otherwise removed from any material, or any stamp which has been fraudulently mutilated, or any stamped material out of which any name, sum, date, or other matter or thing has been fraudulently erased or otherwise, either really or apparently, removed; or,

(*i*) Counterfeiting Government Mark or Brand—without lawful authority makes or counterfeits any mark or brand used by the Government of the United Kingdom of Great Britain and Ireland, the Government of Canada, or the Government of any province of Canada, or by any department or officer of any such Government for any purpose in connection with the service or business of such Government, or the impression of any such mark or brand, or sells or exposes for sale or has in his possession any goods having thereon a counterfeit of any such mark or brand, knowing the same to be a counterfeit, or affixes any such mark or brand to any goods re-

quired by law to be marked or branded other than those to which such mark or brand was originally affixed. 55-56 V., c. 29, s. 435.

See *R.* v. *Collicott*, R. & R. 212, and *R.* v. *Field*, 1 Leach, 383, and general remarks on forgery. The words "with intent to defraud" are not necessary in the indictment since the statute does not contain them: *R.* v. *Asplin*, 12 Cox C. C. 391.

It was held, in *R.* v. *Ogden*, 6 C. & P. 631, under a similar statute, that a fraudulent intent was not necessary.

**480.** PENALTY.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who,—

(*a*) INJURING REGISTER OF BIRTHS AND DEATHS—unlawfully destroys, defaces or injures any register of births, baptisms, marriages, deaths or burials required or authorized by law to be kept in Canada, or any part thereof, or any copy of such register, or any part thereof required by law to be transmitted to any registrar or other officer; or,

(*b*) MAKING FALSE ENTRY IN SAME—unlawfully inserts in any such register, or any such copy thereof, any entry, known by him to be false, of any matter relating to any birth, baptism, marriage, death or burial, or erases from any such register or document any material part thereof. 55-56 V., c. 29, s. 436.

*R.* v. *Bowen*, 1 Den. 22; see *R.* v. *Asplin*, 12 Cox C. C. 391; *R.* v. *Mason*, 2 C. & K. 622.

*Indictment*,— that A. B., on at unlawfully did destroy, deface and injure a certain register of which said register was then and there kept as the register of marriages of the parish of , and as such was then and there in the lawful custody of .

**481.** PENALTY.—Every one is guilty of an indictable offence and liable to ten years' imprisonment who,—

(*a*) FALSE CERTIFICATE OF COPY—being a person authorized or required by law to give any certified copy of any entry in any register in the last preceding section mentioned, certifies any writing to be a true copy or extract, knowing it to be false, or knowingly utters any such certificate; or,

(*b*) FRAUDULENTLY CONCEALING REGISTER — unlawfully and for any fraudulent purpose takes any such register or certified copy from its place of deposit or conceals it; or,

(*c*) PERMITTING CONCEALMENT—being a person having the custody of any such register or certified copy, permits it to be so taken or concealed. 55-56 V., c. 29, s. 437.

**482.** PENALTY.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who,—

(*a*) FALSE CERTIFICATE OF ENTRY—being by law required to certify that any entry has been made in any such register, makes such certificate knowing that such entry has not been made; or,

(*b*) OF PARTICULARS—being by law required to make a certificate or declaration concerning any particular required for the purpose of making entries in such register, knowingly makes such certificate or declaration containing a falsehood; or,

(*c*) UTTERING FALSE COPY OF RECORD—being an officer having custody of the records of any court, or being the deputy of any such officer, wilfully utters a false copy or certificate of any record; or,

(*d*) FALSE SIGNATURE—not being such officer or deputy fraudulently signs or certifies any copy of certificate of any record, or any copy of any certificate, as if he were such officer or deputy. 55-56 V., c. 29, s. 438.

See *R.* v. *Powner*, 12 Cox C. C. 235.

**483.** PENALTY.—Every one is guilty of an indictable offence and liable to two years' imprisonment who,—

(*a*) KNOWINGLY CERTIFYING FALSE COPY BY OFFICIAL—being an officer required or authorized by law to make or issue any certified copy of any document or of any extract from any document, wilfully certifies, as a true copy of any document or of any extract from any such document, any writing which he knows to be untrue in any material particular; or,

(*b*) FALSE SIGNATURE—not being such officer as aforesaid fraudulently signs or certifies any copy of any document, or of any extract from any document, as if he were such officer. 55-56 V., c. 29, s. 439.

**484.** PENALTY.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who, with intent to defraud,—

(*a*) FALSE ENTRY IN GOVERNMENT ACCOUNT BOOKS—makes any untrue entry or any alteration in any book of account kept by the Government of Canada, or of any province of Canada, or by any bank for any such Government, in which books are kept the accounts of the owners of any stock, annuity or other public funds transferable for the time being in any such books, or who, in any manner, wilfully falsifies any of the said books; or,

(*b*) TRANSFER BY PERSON OTHER THAN OWNER—makes any transfer of any share or interest of or in any stock, annuity or public fund, transferable for the time being at any of the said banks, in the name of any person other than the owner of such share or interest. 55-56 V., c. 29, s. 440.

Where a bank clerk made certain false entries in the bank books under his control, for the purpose of enabling him to obtain the money of the bank improperly, *Held*, that he was not guilty of forgery: *R.* v. *Blackstone*, 4 Man. L. R. 286.

*Indictment for making false entries of stock.*— unlawfully 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.

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

**485.** FALSE DIVIDEND WARRANTS.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, being in the employment of the Government of Canada, or of any province of Canada, or of any bank in which any books of account mentioned in the last preceding section are kept, with intent to defraud, makes out or delivers any dividend warrant, or any warrant for the payment of any annuity,

interest or money payable at any of the said banks, for an amount greater or less than that to which the person on whose account such warrant is made out is entitled. 55-56 V., c. 29, s. 441.

*Indictment.*— then being a clerk of and employed and intrusted by the said unlawfully 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 dollars; whereas, in truth and in fact, the said J. N. was then entitled to the sum of one hundred dollars only, with intent thereby then to defraud.

*Forgery of Trade Marks and Fraudulent Marking of Merchandise.*

**486.** FORGERY.—Every one is deemed to forge a trade mark who either,—

(*a*) SIMULATING TRADE MARK—without the assent of the proprietor of the trade mark makes that trade mark or a mark so nearly resembling it as to be calculated to deceive; or,

(*b*) FALSIFYING TRADE MARK—falsifies any genuine trade mark, whether by alteration, addition, effacement or otherwise.

2. FORGED TRADE MARK—Any trade mark or mark so made or falsefied is, in this Part, referred to as a forged trade mark. 55-56 V., c. 29, s. 445.

Limitation 3 years, section 1140.

**487.** APPLYING TRADE MARKS.—Every one is deemed to apply a trade mark, or mark, or trade description to goods who,—

(*a*) TO GOODS—applies it to the goods themselves; or

(*b*) TO COVERING FOR GOODS—applies it to any covering, label, reel, or other thing in or with which the goods are sold or exposed or had in possession for any purpose of sale, trade or manufacture; or,

(*c*) BY PLACING GOODS IN COVERING—places, incloses or annexes any goods which are sold or exposed or had in possession for any purpose of sale, trade or manufacture

in, with or to any covering, label, reel, or other thing to which a trade mark or mark or trade description has been applied; or,

(*d*) By Fraudulent Use of Trade Mark—uses a trade mark or mark or trade description in any manner calculated to lead to the belief that the goods in connection with which it is used are designated or described by that trade mark or mark or trade description.

2. By Connecting with other Article.—A trade mark or mark or trade description is deemed to be applied whether it is woven, impressed or otherwise worked into, or annexed or affixed to, the goods, or to any covering, label, reel, or other thing.

3. Falsely Applying.—Every one is deemed to falsely apply to goods a trade mark or mark who, without the assent of the proprietor of the trade mark, applies such trade mark, or a mark so nearly resembling it, as to be calculated to deceive. 55-56 V., c. 29, s. 446.

Limitation 3 years, section 1140.

The use of the words "quadruple plate" in an advertisement of sale of silver-plated ware, may constitute a false trade description under this section. And it is not necessary, under this section, that a false trade description should be physically connected with the goods, or that it should accompany the same; and oral evidence is admissible to connect the description of the goods in the advertisement with the goods afterwards sold: *R.* v. *The T. Eaton Co.* (1899), 3 Can. C. C. 421, 31 O. R. 276.

**488.** Forging, etc., Trade Marks.—Every one is guilty of an indictable offence who, with intent to defraud,—

(*a*) forges any trade mark; or,

(*b*) falsely applies to any goods any trade mark, or any mark so nearly resembling a trade mark as to be calculated to deceive; or,

(*c*) makes any die, block, machine or other instrument, for the purpose of forging, or being used for forging, a trade mark; or,

(*d*) applies any false trade description to goods; or,

(*e*) disposes of, or has in his possession, any die, block, machine, or other instrument, for the purpose of forging a trade mark; or,

(*f*) causes any of such things to be done.

2. BURDEN OF PROOF.—On any prosecution for forging a trade mark the burden of proof of the assent of the proprietor shall lie on the defendant. 55-56 V., c. 29, ss. 447 and 710.

Limitation 3 years, section 1140.

Sub-sec. 2 does not apply to case of falsely applying, and on indictment for falsely applying trade mark prosecution must show that assent of proprietor of trade mark was not given: *R.* v. *Howarth*, 1 Can. C. C. 243.

*Indictment.*— that A. B. on , with intent to defraud unlawfully did forge a certain trade mark, to wit (*or unlawfully did falsely apply to certain goods to wit*) (*any goods*) a certain trade mark to wit (*or a mark so nearly resembling a certain trade mark, to wit*) as to be calculated to deceive. (*Add a count charging "did cause to be forged or, falsely applied"* (*as the case may be*).

**489.** SELLING GOODS FALSELY MARKED.—Every one is guilty of an indictable offence who sells or exposes, or has in his possession, for sale, or any purpose of trade or manufacture, any goods or things to which any forged trade mark or false trade description is applied, or to which any trade mark, or mark so nearly resembling a trade mark as to be calculated to deceive, is falsely applied, as the case may be, unless he proves,—

(*a*) SAVING—that having taken all reasonable precaution against committing such an offence he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark, mark or trade description; and,

(*b*) that on demand made by or on behalf of the prosecutor he gave all the information in his power with respect to the persons from whom he obtained such goods or things; and,

(*c*) that otherwise he had acted innocently. 55-56 V., c. 29, s. 448.

Limitation 3 years, section 1140.

Prosecution must be by indictment—Prohibition granted against summary proceeding: *R.* v. *T. Eaton Co.* (1899), 29 O. R. 591, 3 Can. C. C. 421.

Resemblance between goods of accused and those of proprietor of trade mark need not be such as to deceive persons making critical examination. It is sufficient if it would deceive an incautious or unwary purchaser: *R.* v. *Authier* (1897), Q. R. 6 Q. B. 146, 1 Can. C. C. 68.

See *Leather Cloth Co.* v. *American Cloth Co.* (1865), 11 H. L. C., at p. 539; *Wotherspoone* v. *Currie* (1872), L. R. 5 E. & I. Appeals 519.

In *Seixo* v. *Provezende* (1866), 1 Chy. Appeals, L. R. 192 at p. 196, Lord Cranworth, L.C., said, "It would be a mistake to suppose that the resemblance must be such as would deceive persons who would see the two marks placed side by side."

**490.** DEFACING TRADE MARK.—Every one is guilty of an indictable offence who,—

(*a*) wilfully defaces, conceals or removes the trade mark duly registered, or name of another person upon any cask, keg, bottle, siphon, vessel, can, case, or other package, unless such cask, keg, bottle, siphon, vessel, can, case or other package has been purchased from such other person, if the same shall have been so defaced, concealed or removed without the consent of, and with intention to defraud such other person;

(*b*) USING TRADE MARKS OF OTHERS BY TRAFFICKING IN BOTTLES—being a manufacturer, dealer or trader, or bottler, trades or traffics in any bottle or siphon which has upon it the trade mark duly registered or name of another person, without the written consent of such other person, or without such consent fills such bottle or siphon with any beverage for the purpose of sale or traffic.

2. USING BOTTLES—PRIMA FACIE EVIDENCE.—The using by any manufacturer, dealer or trader or bottler, other than such other person, of any bottle or siphon for the sale therein of any beverage, or the having by any such manufacturer, dealer, trader or bottler upon any bottle or siphon such trade mark or name of such other person, or the buying, selling or trafficking in any such bottle or siphon without such written consent of such other person, or the fact that any junk-dealer has in his possession any bottle or siphon having upon it such a trade mark or name without such written consent, shall be *prima facie* evidence of trading or trafficking within the meaning of paragraph (*b*) of this section. 63-64 V., c. 46, s. 3.

Limitation 3 years, section 1140.

**491.** PENALTY WHERE NONE SPECIFIED. — Every one is guilty of an offence defined in this Part in respect to trade marks or names, or in respect to trade descriptions or false trade descriptions for which no penalty is in this Part otherwise provided, is liable,—

(*a*) On Indictment—on conviction on indictment, to two years' imprisonment, with or without hard labour, or to a fine, or to both imprisonment and fine; and,

(*b*) On Summary Conviction—on summary conviction, to four months' imprisonment, with or without hard labour, or to a fine not exceeding one hundred dollars; and, in case of a second or subsequent conviction, to six months' imprisonment, with or without hard labour, or to a fine not exceeding two hundred and fifty dollars.

2. Forfeiture.—In any case every chattel, article, instrument or thing, by means of, or in relation to which, the offence has been committed, shall be forfeited. 55-56 V., c. 29, s. 450.

Limitation 3 years, section 1140.

**492.** Falsely Representing that Goods are Manufactured for His Majesty.—Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding one hundred dollars, who falsely represents that any goods are made by a person holding a royal warrant, or for the service of His Majesty or any of the royal family, or any government department of the United Kingdom or of Canada. 55-56 V., c. 29, s. 451.

Limitation 3 years, section 1140.

**493.** Unlawful Importation of Goods Liable to Forfeiture.—Every one is guilty of an offence and liable, on summary conviction, to a penalty of not more than five hundred dollars nor less than two hundred dollars who imports or attempts to import any goods which, if sold, would be forfeited under the provisions of this Part, or any goods manufactured in any foreign state or country which bear any name or trade mark which is or purports to be the name or trade mark of any manufacturer, dealer or trader in the United Kingdom or in Canada, unless such name or trade mark is accompanied by a definite indication of the foreign state or country in which the goods were made or produced; and such goods shall be forfeited. 55-56 V., c. 29, s. 452.

Limitation 3 years, section 1140.

**494.** MAKING INSTRUMENTS FOR FORGING TRADE MARKS. —Any one who is charged with making any die, block, machine or other instrument for the purpose of forging, or being used for forging, a trade mark, or with falsely applying to goods any trade mark, or any mark, so nearly resembling a trade mark as to be calculated to deceive, or with applying to goods any false trade description, or causing any of the things in this section mentioned to be done, and proves,—

(*a*) DEFENCE—that in the ordinary course of his business he is employed, on behalf of other persons, to make dies, blocks, machines or other instruments for making or being used in making trade marks, or, as the case may be, to apply marks or descriptions to goods, and that in the case which is the subject of the charge he was so employed by some person resident in Canada, and was not interested in the goods by way of profit or commission dependent on the sale of such goods; and,

(*b*) that he took reasonable precaution against committing the offence charged; and,

(*c*) that he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark, mark or trade description; and,

(*d*) that he gave to the prosecutor all the information in his power with respect to the person by or on whose behalf the trade mark, mark or description was applied;

DISCHARGE—shall be discharged from the prosecution, but is liable to pay the costs incurred by the prosecutor, unless he has given due notice to him that he will rely on the above defence. 55-56 V., c. 29, s. 453.

Limitation 3 years, section 1140.

**495.** SERVANT NOT LIABLE.—No servant of a master, resident in Canada, who *bona fide* acts in obedience to the instructions of such master, and, on demand made by or on behalf of the prosecutor, gives full information as to his master, is liable to any prosecution or punishment for any offence defined in this Part. 55-56 V., c. 29, s. 454.

Limitation 3 years, section 1140.

*Offences Connected with Trade and Breaches of Contract.*

**496.** Conspiracy in Restraint of Trade.—A conspiracy in restraint of trade is an agreement between two or more persons to do or procure to be done any unlawful act in restraint of trade. 55-56 V., c. 29, s. 516.

**497.** Acts in Restraint not Unlawful.—The purposes of a trade union are not, by reason merely that they are in restraint of trade, unlawful within the meaning of the last preceding section. 55-56 V., c. 29, s. 517.

See *R.* v. *Gibson*, 16 O. R. 704.

**498.** Penalty for Conspiracy.—Every one is guilty of an indictable offence and liable to a penalty not exceeding four thousand dollars and not less than two hundred dollars, or to two years' imprisonment, or, if a corporation, is liable to a penalty not exceeding ten thousand dollars, and not less than one thousand dollars, who conspires, combines, agrees or arranges with any other person, or with any railway, steamship, steamboat, or transportation company,—

(*a*) To Limit Transportation Facilities—to unduly limit the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any article or commodity which may be a subject of trade or commerce; or,

(*b*) Restrain Commerce—to restrain or injure trade or commerce in relation to any such article or commodity; or,

(*c*) Lessen Manufacturing—to unduly prevent, limit, or lessen the manufacture or production of any such article or commodity, or to unreasonably enhance the price thereof; or,

(*d*) Lessen Competition—to unduly prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation or supply of any such article or commodity, or in the price of insurance upon person or property.

2. SAVING.—Nothing in this section shall be construed to apply to combinations of workmen or employees for their own reasonable protection as such workmen or employees. 63-64 V., c. 46, s. 3.

Not triable at Quarter Sessions, section 583.

By section 581, accused may be tried by jury or by judge, at his option.

52 V. c. 41, ss. 4 and 5, which are unrepealed, may be referred to in connection with this section.

Up to Jan. 1, 1901, this section had the word "unlawfully" at the end of the first paragraph thereof, and did not include the present s.-s. 2. Under this section, as it thus read formerly, it was held that to constitute the offence mentioned therein, the combination had to be formed with a view of unlawfully attaining any one or more of the restrictions of trade mentioned in the section.

*R.* v. *The American Tobacco Co. of Canada* (1897), 3 Rev. de Jurispr. 453.

In the same case it was decided that a manufacturer was entitled to dispose of his goods in the way he deemed best for his own interests, even though this way might perhaps be detrimental to other people in the same line of business, as this amounted only to the ordinary competition of trade, and it did not constitute an unlawful combination under this section.

It was also held that it was not unlawful for a manufacturer of goods to agree with as many persons as possible that they should sell his goods exclusively.

*R.* v. *The American Tobacco Co. of Canada* (1897), 3 Rev. de Jurispr. 453.

**499.** PENALTY.—Every one is guilty of an offence punishable on indictment on summary conviction before two justices and liable on conviction to a penalty not exceeding one hundred dollars or to three months' imprisonment, with or without hard labour, who,—

(*a*) WILFULLY BREAKING CONTRACT WITH DANGER TO LIFE OR PROPERTY—wilfully breaks any contract made by him knowing, or having reasonable cause to believe, that the probable consequences of his so doing, either alone or in combination with others, will be to endanger human life, or to cause serious bodily injury, or to expose valuable property, whether real or personal, to destruction or serious injury; or,

(*b*) WILFULLY BREAKING CONTRACT CONNECTED WITH SUPPLY OF POWER, LIGHT, GAS OR WATER—being bound, agreeing or assuming, under any contract made by him with any municipal corporation or authority, or with any company, to supply any city or any other place, or any part thereof, with electric light or power, gas or water, wilfully breaks such contract knowing, or having reasonable cause to believe, that the probable consequences

of his so doing, either alone or in combination with others, will be to deprive the inhabitants of that city or place, or part thereof, wholly or to a great extent, of their supply of power, light, gas or water; or,

(*c*) WILFULLY BREAKING CONTRACT WITH RAILWAY UNDER AGREEMENT TO CARRY MAILS—being bound, agreeing or assuming, under any contract made by him with a railway company, or with His Majesty, or any one on behalf of His Majesty, in connection with a government railway on which His Majesty's mails, or passengers or freight are carried, to carry His Majesty's mails, or to carry passengers or freight, wilfully breaks such contract knowing, or having reason to believe that the probable consequences of his so doing, either alone or in combination with others, will be to delay or prevent the running of any locomotive engine, or tender, or freight or passenger train or car, on the railway.

2. MUNICIPALITY OR COMPANY SUPPLYING LIGHT, POWER, GAS OR WATER WILFULLY BREAKING CONTRACT.—Every municipal corporation or authority or company, bound, agreeing or assuming to supply any city, or any other place, or any part thereof, with electric light or power, gas or water, which wilfully breaks any contract made by such municipal corporation, authority, or company, knowing or having reason to believe that the probable consequences of its so doing will be to deprive the inhabitants of that city or place or part thereof wholly, or to a great extent, of their supply of electric light or power, gas or water, is liable to a penalty not exceeding one thousand dollars.

3. RAILWAY COMPANY BREAKING CONTRACT.—Every railway company, bound, agreeing or assuming to carry His Majesty's mails, or to carry passengers or freight, which wilfully breaks any contract made by such railway company, knowing or having reason to believe that the probable consequences of so doing will be to delay or prevent the running of any locomotive engine or tender, or freight or passenger train or car on the railway, is liable to a penalty not exceeding one hundred dollars.

4. MALICE NOT AN ELEMENT.—It is not material whether any offence defined in this section is committed from malice

conceived against the person, corporation, authority or company with which the contract is made or otherwise. 55-56 V., c. 29, s. 521.

**500.** THIS AND PRECEDING SECTION TO BE POSTED UP.—Every such municipal corporation, authority, or company, shall cause to be posted up at the electrical works, gas works, or water works, or railway stations, as the case may be, belonging to such corporation, authority or company, a printed copy of this and the preceding section in some conspicuous place, where the same may be conveniently read by the public; and as often as such copy becomes defaced, obliterated or destroyed shall cause it to be removed with all reasonable despatch.

2. PENALTY FOR DEFAULT.—Every such municipal corporation, authority or company which makes default in complying with such duty is liable to a penalty not exceeding twenty dollars for every day during which such default continues.

3. DEFACING SAME.—Every person unlawfully injuring, defacing or covering up any such copy so posted up is liable on summary conviction to a penalty not exceeding ten dollars. 55-56 V., c. 29, s. 522.

**501.** INTIMIDATION.—Every one is guilty of an offence punishable, at the option of the accused, on indictment or on summary conviction before two justices and liable on conviction to a fine not exceeding one hundred dollars, or to three months' imprisonment with or without hard labour, who, wrongfully and without lawful authority, with a view to compel any other person to abstain from doing anything which he has a lawful right to do, or to do anything from which he has a lawful right to abstain,—

(*a*) BY VIOLENCE—uses violence to such other person, or his wife or children, or injures his property; or,

(*b*) BY THREATS—intimidates such other person or his wife or children, by threats of using violence to him, her or any of them, or of injuring his property; or,

(*c*) BY FOLLOWING—persistently follows such other person about from place to place; or,

(*d*) By Hiding Property—hides any tools, clothes or other property owned or used by such other person, or deprives him of, or hinders him in, the use thereof; or,

(*e*) By Following Disorderly—with one or more other persons, follows such other person, in a disorderly manner, in or through any street or road; or,

(*f*) By Watching House—besets or watches the house or other place where such other person resides or works, or carries on business or happens to be. 55-56 V., c. 29, s. 523; 4-5 E. VII., c. 9, s. 3.

In a conviction for following in a disorderly manner with a view to compel any other person to abstain from doing any act which he has a legal right to do, the acts which the defendant attempted to obstruct must be specified: *R.* v. *McKenzie* [1892] 2 Q. B. 519, 17 Cox C. C. 542.

A threat to an employer that his men will strike if he employs non-union men, or a threat to an employee that his fellow-employees will strike unless he joins a union, is not intimidation within the meaning of this section.

*Connor* v. *Kent; Gibson* v. *Lawson; Curran* v. *Treleaven* (1891), 2 Q. B. D. 545.

See *Smith* v. *Thomasson*, 16 Cox C. C. 740, Warb. Lead. Cas. 205, and cases there cited, and *Connor* v. *Kent*, 17 Cox C. C. 354.

*Indictment for picketing.*— that A., B., C., D., and E. F., unlawfully and wickedly, and unjustly devising, contriving and intending to injure and aggrieve one G. H. and I. J., carrying on business as (*stating the business*) and obstruct them in the business of their lawful calling and business, did on the day of , conspire to molest and obstruct the said G. H. and I. J., then being such (*stating the business*), in their lawful calling, by watching and besetting the house where the said G. H. and I. J. carried on their said business, situate as aforesaid, with a view to cause them to dismiss and cease to employ divers workmen, to wit (*naming them*).

*Second count* that the said A. B., C. D., and E. F., unlawfully contriving and intending to injure and aggrieve the workmen then being employed by the said G. H. and I. J., and obstruct them in the pursuit of their lawful calling, unlawfully did on the day and at the place aforesaid conspire to molest and obstruct K. L. and other workmen in their lawful calling, by watching and besetting the house and place of business situate as aforesaid wherein the said G. H. and I. J. then carried on their said business, wherein the said K. L. and other workmen happened to be, with a view to coerce the said K. L. and other workmen, and induce them to quit their said employment.

INTIMIDATION OF WORKMEN.

*Indictment.*— that heretofore, before and at the time of committing the offence hereinafter in this count mentioned, A. B. carried on trade and business as a (*stating his trade*) at in the county of , and that C. D. and E. F. were workmen, and were hired and employed by and worked as workmen for the said A. B. in his said trade and business. And the jurors aforesaid do further present that (*naming all the defendants*) on the day of did unlawfully by threats and intimidation endeavour to force one C. D. and E. F., then being workmen hired and employed

by and working for the said A. B. in his said trade and business as aforesaid, to depart from their said hiring and employment and work.

*Second count* and the jurors aforesaid, do further present that heretofore and at the time of the committing the offence hereinafter in this count mentioned, the said A. B. carried on his said trade and business (*state his trade*) aforesaid, in the county aforesaid, and that the said C. D. and E. F. were workmen, and were hired and employed by and worked as workmen for the said A. B. in his said trade and business as aforesaid. And the jurors aforesaid, do further present that the said (*naming the defendants*) on the day and year aforesaid, did by unlawfully molesting and obstructing the said C. D. and E. F., endeavour to force the said C. D. and E. F., so being such workmen hired and employed by and working for the said A. B., in his said trade and business as aforesaid, to depart from their said hiring, employment and work.

**502.** INTIMIDATION TO PREVENT WORKING AT ANY TRADE. —Every one is guilty of an indictable offence and liable to two years' imprisonment who, in pursuance of any unlawful combination or conspiracy to raise the rate of wages, or of any unlawful combination or conspiracy respecting any trade, business or manufacture, or respecting any person concerned or employed therein, unlawfully assaults any person, or, in pursuance of any such combination or conspiracy, uses any violence or threat of violence to any person, with intent to hinder him from working or being employed at such trade, business or manufacture. 55-56 V., c. 29, s. 524.

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, was an unlawful combination by threats to force the prosecutor to limit the description of his workmen: *Walsby* v. *Anley*, 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, was unlawful: *In re Perham*, 5 H. & N. 30. So also was 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'Neill* v. *Longman*, 4 B. & S. 376. But those cases are not now law. 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: *In re Perham*, *supra*.

See *R.* v. *Rowlands*, 2 Den. 364.

*Indictment for an assault in pursuance of a conspiracy to raise wages.*— 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. (*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.*)

**503.** Penalty.—Every one is guilty of an offence punishable on indictment, or on summary conviction before two justices, and liable on conviction to a fine not exceeding one hundred dollars, or to three months' imprisonment with or without hard labour, who,—

(*a*) Using Violence to Hinder Buying Grain, etc.—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 any wheat or other grain, flour, meal, malt, or potatoes, or other produce or goods, in any market or other place; or,

(*b*) To Prevent Conveyance of Same — 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, while on the way to or from any city, market, town or other place with intent to stop the conveyance of the same; or,

(*c*) By Violence Hinders Seamen, etc., Exercising Lawful Calling—by force or threats of violence, or by any form of intimidation whatsoever, hinders or prevents, or attempts to hinder or prevent any seaman, stevedore, ship carpenter, ship labourer of other person employed to work at or on board any ship or vessel, or to do any work connected with the loading or unloading thereof, from working at or exercising any lawful trade, business, calling or occupation in or for which he is so employed; or with intent so to hinder or prevent, besets or watches such ship, vessel or employee; or,

(*d*) Using Violence with Intent to Hinder—beats or uses any violence to, or makes any threat of violence against, any such person with intent to hinder or prevent him from working at or exercising such trade, business, calling or occupation or on account of his having worked at or exercised the same. 55-56 V., c. 29, s. 525.

**504.** Intimidation to Prevent Bidding on Public Lands.—Every person is guilty of an indictable offence and liable to a fine not exceeding four hundred dollars, or to two years' imprisonment, or to both, who, before or at the time of the public sale of any Indian lands, or public lands of

Canada, or of any province of Canada, by intimidation, or illegal combination, hinders or prevents, or attempts to hinder or prevent, any person from bidding upon or purchasing any lands so offered for sale. 55-56 V., c. 29, s. 526.

*Trading Stamps.*

**505.** ISSUING TRADING STAMPS.—Every one is guilty of an indictable offence and liable to one year's imprisonment, and to a fine not exceeding five hundred dollars, who, by himself or his employee or agent, directly or indirectly, issues, gives, sells or otherwise disposes of, or offers to issue, give, sell or otherwise dispose of trading stamps to a merchant or dealer in goods for use in his business. 4-5 E. VII., c. 9, s. 1.

**506.** GIVING TO A PURCHASER.—Every one is guilty of an indictable offence and liable to six months' imprisonment, and to a fine not exceeding two hundred dollars, who, being a merchant or dealer in goods, by himself or his employee or agent, directly or indirectly, gives or in any way disposes of, or offers to give or in any way dispose of, trading stamps to a purchaser from him of any such goods. 4-5 E. VII., c. 9, s. 1.

**507.** EXECUTIVE OFFICERS OF OFFENDING COMPANY LIABLE.—Any executive officer of a corporation or company guilty of an offence under the two last preceding sections who in any way aids or abets in or counsels or procures the commission of such offence, is guilty of an indictable offence and liable to the punishment stated in the said sections respectively. 4-5 E. VII., c. 9, s. 1.

**508.** RECEIVING TRADING STAMPS.—Every one is guilty of an offence and liable, on summary conviction, to a fine not exceeding twenty dollars, who, being a purchaser of goods from a merchant or dealer in goods, directly or indirectly, receives or takes trading stamps from the vendor of such goods or his employee or agent. 4-5 E. VII., c. 9, s. 1.

## PART VIII.

### WILFUL AND FORBIDDEN ACTS IN RESPECT OF CERTAIN PROPERTY.

*Interpretation.*

**509.** WILFULLY DEFINED.—Every one who causes any event by an act which he knew would probably cause it, being reckless whether such event happens or not, is deemed for the purposes of this Part to have caused it wilfully. 55-56 V., c. 29, s. 481.

*Mischief.*

**510.** PENALTY.—Every one is guilty of the indictable offence of mischief who wilfully destroys or damages any of the property in this section mentioned, and is liable to the punishment in this section specified, that is to say:—

(*A*) To imprisonment for life if the object damaged is,—

(*a*) DAMAGE TO HOUSE, SHIP OR BOAT—a dwelling-house, ship or boat, and the damage is caused by an explosion, and any person is in such dwelling-house, ship or boat; and the damage causes actual danger to life; or,

(*b*) BANK, DYKE OR SEA-WALL—a bank, dyke or wall of the sea, or of any inland water, natural or artificial, or any work in, on, or belonging to any port, harbour, dock or inland water, natural or artificial, and the damage causes actual danger of inundation; or

(*c*) BRIDGE, VIADUCT OR AQUEDUCT—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, and the damage is done with intent to render and does 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; or,

(*d*) RAILWAY—a railway damaged with the intent of rendering and so as to render such railway dangerous or impassable;

(*B*) PENALTY.—To fourteen years' imprisonment if the object damaged is,—

(*a*) DAMAGE TO SHIP—a ship in distress or wrecked, or any goods, merchandise or articles belonging thereto; or,

(*b*) TO CATTLE—any cattle or the young thereof, and the damage is caused by killing, maiming, poisoning or wounding;

(*C*) PENALTY.—To seven years' imprisonment if the object damaged is,—

(*a*) DAMAGE TO SHIP—a ship damaged with intent to destroy or render useless such ship; or,

(*b*) SIGNAL—a signal or mark used for purposes of navigation; or,

(*c*) BANK, DYKE OR WALL—a bank, dyke or wall of the sea or of any inland water or canal, or any materials fixed in the ground for securing the same, or any work belonging to any port, harbour, dock, or inland water or canal; or,

(*d*) RIVER OR CANAL—a navigable river or canal damaged by interference with the flood gates or sluices thereof or otherwise, with intent and so as to obstruct the navigation thereof; or,

(*e*) FLOOD GATE OR SLUICE—the flood gate or sluice of any private water with intent to take or destroy, or so as to cause the loss or destruction of, the fish therein; or,

(*f*) PRIVATE FISHERY—a private fishery or salmon river damaged by lime or other noxious material put into the water thereof with intent to destroy fish therein or to be put therein; or,

(*g*) FLOOD GATE—the flood gate of any mill pond, reservoir or pool cut through or destroyed; or,

(*h*) GOODS—goods in process of manufacture damaged with intent to render them useless; or,

(*i*) MACHINES—agricultural or manufacturing machines, or manufacturing implements, damaged with intent to render them useless; or,

(*j*) HOP BIND—a hop bind growing in a plantation of hops, or a grape vine growing in a vineyard; or,

(*D*) PENALTY.—To five years' imprisonment if the object damaged is,—

(*a*) DAMAGING TREE OR SHRUB—a tree, shrub or underwood growing in a park, pleasure ground or garden, or in any land adjoining or belonging to a dwelling-house, injured to an extent exceeding in value five dollars; or,

(*b*) LETTER BAG, ETC.—a post letter bag or post letter; or,

(*c*) LETTER BOX, ETC.—any street letter box, pillar box or other receptacle established by the authority of the Postmaster-General for the deposit of letters or other mailable matter; or,

(*d*) MAILABLE MATTER—any parcel sent by parcel post, any packet or package of patterns or samples of merchandise or goods, or of seeds, cuttings, bulbs, roots, scions or grafts, or any printed vote or proceeding, newspaper, printed paper or book or other mailable matter, not being a post letter, sent by mail; or,

(*e*) ANY OTHER PROPERTY BY NIGHT—any property, real or personal, corporeal or incorporeal, for damage to which no special punishment is by law prescribed, damaged by night to the value of twenty dollars;

(*E*) PENALTY—ANY OTHER PROPERTY.—To two years' imprisonment if the object damaged is any property, real or personal, corporeal or incorporeal, for damage to which no special punishment is by law prescribed, damaged to the value of twenty dollars. 55-56 V., c. 29, s. 499.

*Indictment for damaging a river bank* (*A*) (*b*):—
a certain part of the bank of a certain river, called the river , situate , unlawfully and wilfully, without legal justification or excuse, and without colour of right, did cut down and break down, by means whereof certain lands were then overflowed and damaged (*or were in actual danger of being inundated*). As to verdict for an attempt to commit the offence charged upon an indictment for the offence itself, in certain cases, see s. 949.

INJURIES TO BRIDGES, ETC. (A) (c).

This clause by the words *whether over any stream of water or not* does away with the difficulties raised in *R.* v. *Oxfordshire*, 1 B. & Ad. 289, and *R.* v. *Derbyshire*, 2 Q. B. 745.

*Indictment for destroying a bridge.*— a certain bridge, situate unlawfully and wilfully, without legal justification or excuse, and without colour of right, did destroy, with intent, and so as to render the said bridge impassable.

*Indictment for damaging a bridge.*— unlawfully and wilfully, without legal justification or excuse, and without colour of right, did damage a certain bridge, situate with intent, and so as to thereby render the said bridge dangerous and impassable.

KILLING OR WOUNDING CATTLE. (B) (b).

*Indictment for killing, or wounding, a horse.*— one horse of the goods and chattels of J. N. unlawfully and wilfully, without legal justification or excuse, and without colour of right, did kill (*or wound*).

A verdict for the attempt, punishable under next section, may be given if the evidence warrants it, section 949.

The particular species of cattle killed, maimed, wounded or poisoned must be specified; an allegation that the prisoner maimed certain cattle is not sufficient: *R.* v. *Chalkley*, R. & R. 258. "Cattle" defined, section 2, sub-sec. 5, *ante*.

No malice against the owner is necessary. The words "or injured" as to cattle were in the repealed clause. Other acts of administering poison to cattle are admissible in evidence to show the intent with which the drug is administered: *R.* v. *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.* v. *Haywood*, 2 East, P. C. 1076, R. & R. 16.

In *R.* v. *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: *R.* v. *Bullock*, 11 Cox C. C. 125. Upon a case reserved, in *R.* v. *Owens*, 1 Moo. 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.* v. *Haughton*, 5 C. & P. 555.

The prisoner by a reckless and cruel act caused the death of a mare. The jury found that he did not intend to kill, maim or wound the mare, but that he knew that what he did would or might kill, maim or wound the mare, and that he nevertheless did the act recklessly, and not caring whether the mare was injured or not. *Held*, that there was sufficient malice to support the conviction: *R.* v. *Welch*, 13 Cox C. C. 121.

*Indictment for breaking down the flood-gate of a fish pond* (B) (e).— the flood-gate of a certain private fish-pond of one J. N., situate , unlawfully and wilfully, without legal justification or excuse, and without colour of right, did break down, damage and destroy with intent thereby to take and destroy the fish in the said pond then being.

*Indictment for putting lime into a salmon river* (B) (f).— unlawfully and wilfully, without legal justification or excuse and without colour of right, did by putting a large quantity, to wit, ten bushels of lime into it, damage a certain salmon river, situate with intent thereby then to destroy the fish in the said river then being.

INJURIES TO MANUFACTURING MACHINES, ETC. (C) (i).

Taking away part of a frame and thereby rendering it useless, *R.* v. *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: *R.* v. *Fisher*, 10 Cox C. C. 146, Warb. Lead Cas. 195, are damaging within the Act, although no permanent injury be done. If a threshing machine be taken to pieces and separated by the owner the destruction of any part of it is within the statute: *R.* v. *Mackrel*, 4 C. & P. 448. So is the destruction of a water-wheel by which a threshing machine is worked: *R.* v. *Fidler*, 4 C. & P. 449. So though the sideboards of the machine be wanting, without which it will act but not perfectly, it is within the statute. 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 the statute: *R.* v. *West*, 2 Russ. 1087. It is not necessary that any part of the machine should be broken; a dislocation or disarrangement is sufficient: *R.* v. *Foster*, 6 Cox C. C. 25.

*Indictment under (D) (a).* two elm trees, the property of J. N., then growing in a certain park of the said J. N., situate in unlawfully and wilfully, without legal justification or excuse and without colour of right, 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. (*A count may be added for cutting with intent to steal the trees, under s. 373.*

*Indictment under (D) (c).* ten elm trees, the property of J. N., then growing in a certain close of the said J. N., situate unlawfully and wilfully, without legal justification or excuse and without colour of right, did cut and damage by night, 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. (*Add a count under s. 373.*)

See s. 949, 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 (*D*) (*a*), that the tree was growing in a park, and that the damage done exceeds five dollars.

Under (*D*) (*c*) the damage must not be less than twenty dollars and must have been done by night. 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 *consequential* damage would exceed twenty dollars: *R.* v. *Whiteman*, Dears. 353; see *R.* v. *Lewis*, 2 Russ. 1067, as to indictment: *R.* v. *Williams*, 9 Cox C. C. 338; *R.* v. *Thomas*, 12 Cox C. C. 54.

Defendant was indicted for unlawfully and maliciously committing damage upon a window in the house of the prosecutor. 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: *R.* v. *Pembliton*, 12 Cox C. C. 607; see on this last case and *R.* v. *Latimer*, 16 Cox C. C. 70.

*R.* v. *Welsh*, 13 Cox C. C. 121; *R.* v. *Faulkner*, 13 Cox C. C. 550;

The words "real or personal property" mean actual, tangible property, not a mere legal right: *Laws* v. *Eltringham*, 15 Cox C. C. 22, 8 Q. B. D. 283.

Two indictments were preferred against defendants for feloniously destroying the fruit trees respectively of M. and C. The offences charged were proved to have been committed on the same night, and the injury complained of was done in the same manner in both cases. Defendants were put on trial on the charge of destroying the trees of M. and evidence relative to the offence charged in the other indictment was admitted as showing that the offences had been committed by the same persons.

*Held*, that such evidence was properly received: *R.* v. *McDonald*, 10 O. R. 553.

## *Arson.*

**511.** OFFENCE—PENALTY.—Every one is guilty of the indictable offence of arson and liable to imprisonment for life who wilfully sets fire to any building or structure, whether such building or structure is completed or not, or to any stack of vegetable produce or of mineral or vegetable fuel, or to any mine or well of oil or other combustible substance, or to any ship or vessel, whether completed or not, or to any timber or materials placed in any shipyard for building or repairing or fitting out any ship, or to any of His Majesty's stores or munitions of war. 55-56 V., c. 29, s. 482.

Intent to defraud insurance company—Evidence—Previous fire: *R.* v. *Beardsley*, 5 O. W. R. 584, 805.

Remains of dwelling-house—Previous fire—Repair—"Building:" *R.* v. *Labadie*, 32 U. C. R. 429. And see *R.* v. *Smith*, 14 U. C. R. 546.

Intent — Averment — Concealment of murder—Evidence: *R.* v. *Greenwood*, 23 U. C. R. 250.

Intent—Prisoner's own property — Motive — Insurance: *R.* v. *Bryans*, 12 U. C. C. P. 161.

*Indictment.*— that A. B., on at unlawfully and wilfully, without legal justification or excuse, and without colour or right did set fire to a certain building, to wit, a dwelling-house of C. D.: see *R.* v. *Turner*, 1 Moo. 239; *R.* v. *Lewis*, 2 Russ. 1067.

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. 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 under 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.

The time stated in the indictment need not be proved as laid; if the offence be proved to have been committd at any time before or after, provided it be same 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: see now ss. 882, 883, 885, 889, *post*. 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 neighbours 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, 625; *R.* v. *Tivey*, 1 C. & K. 704; *R.* v. *Philp*, 1 Moo. 263.

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 burned, the defendant 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.

Upon an indictment for any offence mentioned in this part the jury may, under s. 949, 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 in an indictment for such attempt: ss. 570, 571.

See *R.* v. *Newboult*, 12 Cox C. C. 148, and *R.* v. *Farrington*, 1 R. & R. 207, as to intent.

It is immaterial whether the building, house, etc., 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 alleged and proved by other evidence. In *R.* v. *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."

Defendant was charged with having set fire to a building, the property of one J. H., "with intent to defraud." The case opened by the Crown was that the prisoner intended to defraud several insurance companies, but the legal proof of the policies was wanting, and an amendment was allowed by striking out the words "with intent to defraud." The evidence showed that several persons were interested as mortgagees of the building, a large hotel, and J. H. as owner of the equity of redemption. It was left to the jury to say whether the prisoner intended to injure any of those interested. They found a verdict of guilty. *Held*, that the amendment was authorized and proper, and the conviction was warranted by the evidence. The indictment in such a case is sufficient without alleging any intent, there being no such averment in the statutory form: but an intent to injure or defraud must be shown on the trial: *R.* v. *Cronin*, 36 U. C. R. 342.

An indictment for setting fire to a stack of beans, *R.* v. *Woodward*, 1 Moo. 323; or barley, *R.* v. *Swatkins*, 4 C. & P. 548, is good; for the court will take notice that beans are pulse, and barley, corn: s. 487, *post*. 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.* v. *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.* v. *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.* v. *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: *R.* v. *McKeever*, 5 Ir. R. C. L. 86. 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 V. c. 97, s. 17 (Imp.), (19 of our repealed statute), and the setting fire thereto wilfully and maliciously is not felony: *R.* v. *Satchwell*, 12 Cox C. C. 449; s. 516 *post*.

Section 19 of repealed statute did not apply to manufactured lumber: *R.* v. *Berthé*, 16 C. L. J. 251.

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: *R.* v. *Jones*, 2 Moo. 293.

As to setting fire to ships.—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.* v. *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.* v. *Smith*, 4 C. & P. 569. The burning of a ship of which the defendant was a part owner is within the statute: *R.* v. *Wallace*, 2 Moo. 200.

In *R.* v. *Philp*, 1 Moo. 263, there was no proof of malice against the owners, and the ship was insured for more than its value, but the court thought that the defendant must be taken to contemplate the consequences of his act, and held that, as to this point, the conviction was right: see *R.* v. *Newill*, 1 Moo. 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: *R.* v. *Philp*, 1 Moo. 263. The underwriters of 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.* v. *Gilson*, R. & R. 138.

A sailor goes on a ship to steal rum. While tapping the casks a lighted match held by him set the rum on fire, and a conflagration ensued which destroyed the vessel. *Held*, that a conviction for arson of the ship could not be upheld: *R.* v. *Faulkner*, 13 Cox C. C. 550.

**512.** ATTEMPT TO COMMIT ARSON.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who wilfully attempts to set fire to anything mentioned in the last preceding section, or who wilfully sets fire to any substance so situated that he knows that anything mentioned in the last preceding section is likely to catch fire therefrom. 55-56 V., c. 29, s. 483.

See *R.* v. *Child*, Warb. Lead. Cas. 193, and cases there cited.

"Wilfully attempt" in this section is not a happy expression. Can any one be said to *not wilfully attempt*?

*Indictment*,— at unlawfully and wilfully did attempt, without legal justification or excuse and without colour of right, to set fire to a certain dwelling-house (building) of F. N.

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: *R.* v. *Batstone*, 10 Cox C. C. 20.

A person maliciously sets 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: *R.* v. *Nattrass*, 15 Cox C. C. 73; *R.* v. *Harris*, 15 Cox C. C. 73. But see now s. 509.

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: *R.* v. *Heseltine*, 12 Cox C. C. 404.

The words "with intent to injure or defraud" have been left out of these sections.

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: *R.* v. *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: *R.* v. *Clayton*, 1 C. & K. 128.

Preparing materials—Failure to catch fire—Conviction: *R.* v. *Goodman*, 22 U. C. C. P. 338.

*Setting Other Fires.*

**513.** PENALTY.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who wilfully sets fire to,—

(*a*) CROP—any crop, whether standing or cut down, or any wood, forest, coppice or plantation, or any heath, gorse, furze or fern; or,

(*b*) TREES, ETC., DAM OR SLIDE—any tree, lumber, timber, logs or floats, boom, dam or slide, and thereby injures or destroys the same. 55-56 V., c. 29, s. 484.

*Indictment* under s. 12 of repealed statute quashed, for want of the words "so as to injure or to destroy:" *R.* v. *Berthé*, 16 C. L. J. 251. Such an indictment bad, even after verdict: *R.* v. *Bleau*, 7 R. L. 571.

See form of indictment under s. 511, to which add for an offence under s.-s. (*b*), "and thereby injured (*or destroyed*) the same," or "injured *and* destroyed the same."

**514.** ATTEMPT.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who wilfully attempts to set fire to anything mentioned in the last pre-

ceding section, or who wilfully sets fire to any substance so situated that he knows that anything mentioned in the last preceding section is likely to catch fire therefrom. 55-56 V., c. 29, s. 485.

**515.** Recklessly Setting Fire to Forests.—Every one is guilty of an indictable offence and liable to two years' imprisonment, who, by such negligence as shows him to be reckless or wantonly regardless of consequences, or in violation of a provincial or municipal law of the locality, sets fire to any forest, tree, manufactured lumber, square timber, logs or floats, boom, dam or slide, on the Crown domain, or on land leased or lawfully held for the purpose of cutting timber, or on private property on any creek or river, or rollway, beach or wharf, so that the same is injured or destroyed.

2. May be Tried Summarily.—The magistrate investigating any such charge may, in his discretion, if the consequences have not been serious, dispose of the matter summarily, without sending the offender for trial, by imposing a fine not exceeding fifty dollars, and in default of payment by the commital of the offender to prison for any term not exceeding six months, with or without hard labour. 55-56 V., c. 29, s. 486.

*Indictment,*— that A. B. on at acting with reckless negligence and wantonly regardless of consequences *(or in violation of a provincial "or" municipal law)* did unlawfully set fire to a forest then and there situate on the Crown domain, so that the said forest was injured *(or destroyed)*.

**516.** Threats to Burn.—Every one is guilty of an indictable offence and liable to ten years' imprisonment who sends, delivers or utters, or directly or indirectly causes to be received, knowing the contents thereof, any letter or writing threatening to burn or destroy any building, or any rick or stack of grain, hay or straw or other agricultural produce, or any grain, hay or straw or other agricultural produce in or under any building, or any ship or vessel. 55-56 V., c. 29, s. 487.

A verbal threat made by one person to burn the buildings belonging to another is not an indictable offence, and only gives rise to proceedings to force the offender to give security to keep the peace in the manner specified in sec. 748.
*Ex parte Welsh* (1898), 2 Can. C. C. 35.

A threat to burn standing corn is not within the statute; *R.* v. *Hill*, 5 Cox C. C. 233; See *R.* v. *Jepson*, 2 East, P. C. 1115, *note* (*a*), as to what constitutes a threat. See s. 748 *post*, as to articles of the peace.

*Railways, Mines and Electric Plant.*

**517.** INJURIES AFFECTING RAILWAYS, LIKELY TO ENDANGER PROPERTY.—Every one is guilty of an indictable offence and liable to five years' imprisonment who, in manner likely to cause danger to valuable property, without endangering life or person,—

(*a*) places any obstruction upon any railway, or takes up, removes, displaces, breaks or injures any rail, sleeper or other matter or thing belonging to any railway; or,

(*b*) shoots or throws anything at an engine or other railway vehicle; or,

(*c*) interferes without authority with the points, signals or other appliances upon any railway; or,

(*d*) makes any false signal on or near any railway; or,

(*e*) wilfully omits to do any act which it is his duty to do; or,

(*f*) does any other unlawful act.

2. WITH INTENT.—Every one who does any of the acts in this section mentioned with intent to cause such danger is liable to imprisonment for life. 55-56 V., c. 29, s. 489.

**518.** OBSTRUCTING RAILWAYS.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, by any act or wilful omission, obstructs or interrupts, or causes to be obstructed or interrupted, the construction, maintenance or free use of any railway or any part thereof, or any matter or thing appertaining thereto or connected therewith. 55-56 V., c. 29, s. 490.

**519.** PENALTY.—Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty dollars over and above the value of the goods or liquors so destroyed or damaged or to one month's imprisonment with or without hard labour, or to both, who,—

(*a*) DAMAGING GOODS ON RAILWAY, ETC.—wilfully destroys or damages anything containing any goods or

liquors in or about any railway station or building or any vehicle of any kind on any railway, or in any warehouse, ship or vessel, with intent to steal or otherwise unlawfully to obtain or to injure the contents, or any part thereof; or,

(*b*) WASTING LIQUORS—unlawfully drinks or wilfully spills or allows to run to waste any such liquors, or any part thereof. 55-56 V., c. 29, s. 491.

See s. 949 as to a verdict of attempt to commit the offence charged in certain cases.

The prisoners were indicted in several courts for wilfully and maliciously placing a stone upon the North Woolwich Railway, with intent to damage, injure, and obstruct the carriages travelling upon it.

It appeared that the prisoners, who were respectively aged thirteen and fourteen, had placed a stone on the railway in such a way as to interfere with the machinery of the points, and prevent them from acting properly, so that if a train had come up while the stone remained as placed by the prisoners it would have been thrown off the line, and a serious accident must have been the consequence. Gutteridge held up the points whilst Upton dropped in the stone.

Wightman, J., told the jury that in order to convict the prisoners it was necessary, in the first place, to prove that they had wilfully placed the stone in the position stated upon the railway: and secondly, that it was done maliciously, and with the purpose of causing mischief. It was his duty to inform them that it was not necessary that the prisoners should have entertained any feelings of malice against the railway company, or against any person travelling upon it; it was quite enough to support the charge if the act was done with a view to some mischievous consequence or other, and if that fact was made out the jury would be justified in finding the prisoners guilty, notwithstanding their youth. They were undoubtedly very young, but persons of their age were just as well competent to form an opinion of the consequences of an act of this description as an adult person. *Verdict*, guilty upon the counts charging an intent to obstruct the engine: *R.* v. *Upton* (*Greaves, Lord Campbell's Acts, Appendix*).

*Indictment under s.-s. 1.*— unlawfully 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, and in manner likely to cause danger to such engine and carriages. (*The intent may be laid in different ways, in different counts, if necessary.*)

**520.** PENALTY.—WITH INTENT TO INJURE MINE OR OIL WELL.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, with intent to injure a mine or oil well, or obstruct the working thereof,—

(*a*) CONVEYING SUBSTANCE INTO—causes any water, earth, rubbish or other substance to be conveyed into the mine or oil well or any subterranean channel communicating with such mine or well; or,

(*b*) DAMAGING SHAFT—damages any shaft or any passage of the mine or well; or,

(*c*) DAMAGING APPARATUS—damages, with intent to render useless, any apparatus, building, erection, bridge or road belonging to the mine or well, whether the object damaged be complete or not; or,

(*d*) HINDERING WORKING OF—hinders the working of any such apparatus; or,

(*e*) DAMAGING TACKLE—damages or unfastens, with intent to render useless, any rope, chain or tackle used in any mine or well or upon any way or work connected therewith. 55-56 V., c. 29, s. 498.

*Indictment under (a).*— unlawfully and without legal justification or excuse and without colour of right, did cause a quantity of water to be conveyed into a certain mine of J. N., situate with intent thereby then to injure the said mine and obstruct the working thereof.

Acts causing the damages mentioned in this section done in the *bona fide* exercise of a supposed right and without a wicked mind are not indictable: *R.* v. *Matthews*, 14 Cox C. C. 5; *R.* v. *Jones*, 2 Moo. 293; *R.* v. *Fisher*, Warb. Lead. Cas. 195.

*Indictment under (c).*— a certain steam engine, the property of J. N. for the draining and working of a certain mine of the said J. N. and belonging to the said mine, unlawfully did, without legal justification or excuse, and without colour of right, damage with intent to render it useless and to injure the said mine and obstruct the working thereof.

See s. 949 as to a verdict for attempt to commit the offence charged in certain cases.

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.* v. *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 the section: *R.* v. *Norris*, 9 C. & P. 241. 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* v. *Winterstoke*, 14 C. B. 704.

The intent must be alleged in the indictment: *R.* v. *Smith*, 4 C. & P. 569.

**521.** PENALTY.—Every one is guilty of an indictable offence and liable to two years' imprisonment who,—

(*a*) DAMAGING TELEGRAPH, TELEPHONE OR FIRE ALARM—destroys, removes or damages anything which forms part of, or is used or employed in or about any electric or magnetic telegraph, electric light, telephone or fire alarm, or in the working thereof, or for the transmission of electricity or other lawful purposes; or,

(*b*) OBSTRUCTING COMMUNICATION—prevents or obstructs the sending, conveyance or delivery of any communication by any such telegraph, telephone or fire-alarm, or the transmission of electricity for any such electric light, or for any such purpose as aforesaid.

2. ATTEMPTS.—PENALTY.—Every one who wilfully, by any overt act, attempts to commit any such offence is guilty of an offence and liable, on summary conviction, to a penalty not exceeding fifty dollars, or to three months' imprisonment with or without hard labour. 55-56 V., c. 29, s. 492.

*Vessels and Rafts.*

**522.** PENALTY.—Every one is guilty of an indictable offence and liable to imprisonment for life who wilfully,—

(*a*) CASTING AWAY SHIP—casts away or destroys any ship, whether complete or unfinished; or,

(*b*) ANY ACT TENDING—does any act tending to the immediate loss or destruction of any ship in distress; or,

(*c*) INTERFERING WITH SIGNAL—interferes with any marine signal, or exhibits any false signal, with intent to bring a ship or boat into danger. 55-56 V., c. 29, s. 493.

**523.** ATTEMPT TO WRECK.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who attempts to cast away or destroy any ship, whether complete or unfinished. 55-56 V., c. 29, s. 494.

Upon an indictment under s. 522 (*a*) a verdict may be given for the offence covered by s. 523; s. 949.

See *R.* v. *Tower*, 4 P. & B. (N. B.) 168.

*Indictment for exhibiting false signals.*— that before and at the time of committing the offence 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, wilfully and unlawfully did exhibit a false light, with intent thereby to bring the said ship into danger.

**524.** PENALTY—PREVENTING OR IMPEDING.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who wilfully prevents or impedes, or endeavours to prevent or impede,—

(*a*) SAVING VESSELS—the saving of any vessel that is wrecked, stranded, abandoned or in distress; or,

(*b*) PERSON TRYING TO SAVE—any person in his endeavour to save such vessel.

2. SAVING WRECK.—Every one who wilfully prevents or impedes, or endeavours to prevent or impede, the saving of any wreck is guilty of an offence punishable on indictment or on summary conviction, and liable, on conviction or indictment, to two years' imprisonment, and, on summary conviction before two justices, to a fine of four hundred dollars or six months' imprisonment with or without hard labour. 55-56 V., c. 29, s. 496.

Wreck defined, section 2, sub-section 41.

**525.** PENALTY.—Every one is guilty of an indictable offence and liable to two years' imprisonment who wilfully,—

(*a*) INJURING DAM, CHAIN OR RAFT, ETC.—breaks, injures, cuts, loosens, removes or destroys, in whole or in part, any dam, pier, slide, boom or other such work, or any chain or other fastening attached thereto, or any raft, crib of timber or saw logs; or,

(*b*) BLOCKING UP CHANNEL—impedes or blocks up any channel or passage intended for the transmission of timber. 55-56 V., c. 29, s. 497.

*Indictment.*— that A. B. on in unlawfully and wilfully, without legal justification or excuse and without colour of right, 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 .

## *Public Property.*

**526.** INTERFERING WITH MARINE SIGNALS.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who wilfully alters, removes or conceals, or attempts to alter, remove or conceal, any signal, buoy or other sea mark used for the purposes of navigation.

2. MOORING VESSEL TO.—Every one who makes fast any vessel or boat to any such signal, buoy or sea mark is liable, on summary conviction, to a penalty not exceeding ten dollars,

and in default of payment to one month's imprisonment. 55-56 V., c. 29, s. 495.

No intent need be charged in the indictment. This section includes the offence and the attempt to commit the offence.

*Indictment.*— that J. S., on upon the river called unlawfully did wilfully remove a certain buoy then used for the purpose of navigation.

Verdict of attempt may be given if the evidence warrants it: s. 949.

**527.** REMOVING NATURAL BAR NECESSARY FOR A HARBOUR. Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding fifty dollars, who wilfully and without the permission of the Minister of Marine and Fisheries, the burden of proving which permission shall lie on the accused, removes any stone, wood, earth or other material forming a natural bar necessary to the existence of a public harbour, or forming a natural protection to such bar. 56 V., c. 32, s. 1.

**528.** PENALTY.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who wilfully,—

(*a*) INJURING—destroys, injures or obliterates, or causes to be destroyed, injured or obliterated; or,

(*b*) ERASURE IN—makes or causes to be made any erasure, addition of names or interlineation of names in or upon;

ELECTION DOCUMENTS—any writ of election, or any return to a writ of election, or any indenture, poll-book, voters' list, certificate, affidavit or report, or any document, ballot or paper made, prepared or drawn out according to any law in regard to Dominion, provincial, municipal or civic elections. 55-56 V., c. 29, s. 503.

*Indictment.*— that A. B. at on unlawfully and wilfully, without legal justification or excuse, and without colour of right, did destroy (*injure or obliterate*) a certain writ of election (*describe*) prepared and drawn out according to a law of the Dominion of Canada, to wit, the Act (*as the case may be*).

To destroy any ballot *or* paper is by the above section punishable by *seven* years. To destroy any *ballot paper*, or a ballot box, or a packet of ballot papers is punishable by any term not exceeding *six* months.

*Buildings, Fences and Land Marks.*

**529.** PENALTY.—TO THE PREJUDICE OF OWNER, ETC., OF BUILDING OCCUPIED BY OFFENDER.—Every one is guilty of an indictable offence and liable to five years' imprisonment who, being possessed of any dwelling-house or other building, or part of any dwelling-house or other building, which is built on lands subject to a mortgage or which is held for any term of years or other less term, or at will, or held over after the termination of any tenancy, wilfully and to the prejudice of the mortgagee or owner,—

(*a*) INJURING OR REMOVING BUILDING—pulls down or demolishes, or begins to pull down or demolish the same or any part thereof, or removes or begins to remove the same or any part thereof from the premises on which it is erected; or,

(*b*) FIXTURE—pulls down or severs from the freehold any fixture fixed in or to such dwelling-house or building, or part of such dwelling-house or building. 55-56 V., c. 29, s. 504.

*Indictment.*— , that on A. B. was possessed of a certain dwelling-house, situate then held by him as tenant for a term of years then unexpired; and that the said A. B., being so possessed as aforesaid, on the day and year aforesaid, did wilfully, to the prejudice of C. D., the owner, without legal justification or excuse, and without colour of right, pull down and demolish the said dwelling-house (*or begin to pull down "or" demolish the said dwelling-house or any part thereof*).

**530.** INJURIES TO FENCES, WALL, STILE OR GATE.—Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty dollars over and above the amount of the injury done, who wilfully destroys or damages any fence, or any wall, stile or gate, or any part thereof respectively, or any post or stake planted or set up on any land, marsh, swamp, or land covered by water, on or as the boundary or part of the boundary line thereof, or in lieu of a fence thereto.

2. SUBSEQUENT OFFENCE.—Every one who, having been convicted of any such offence, afterwards commits any such offence, is liable, on summary conviction, to three months' imprisonment with hard labour. 55-56 V., c. 29, s. 507.

The act must have been done *maliciously* (wilfully) to be punishable under this clause: *R.* v. *Bradshaw*, 38 U. C. R. 564; see s. 509, *ante*.

**531.** Injuring or Removing Marks Indicating Boundaries of Province, County, etc.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who wilfully pulls down, defaces, alters or removes any mound, land mark, post or monument lawfully erected, planted or placed to mark or determine the boundaries of any province, county, city, town, township, parish or other municipal division. 55-56 V., c. 29, s. 505.

**532.** Injuring or Removing Other Boundary Marks.—Every one is guilty of an indictable offence and liable to five years' imprisonment, who wilfully defaces, alters or removes any mound, land mark, post or monument lawfully placed by any land surveyor to mark any limit, boundary or angle of any concession, range, lot or parcel of land.

2. Saving.—It is not an offence for any land surveyor in his operations to take up such posts or other boundary marks when necessary, if he carefully replaces them as they were before. 55-56 V., c. 29, s. 506.

The words "*pull down*" in s. 531 are omitted from s. 532. So are the words "*erected or planted*."

The words "*by any land surveyors*" in s. 532 are not in s. 531.

The offence mentioned in s. 532 can only be committed in relation to boundaries or land marks which have been *legally* placed by a land surveyor: *R.* v. *Austin*, 11 Q. L. R. 76.

The punishment for the offence covered by s. 532 was three months' imprisonment, or a fine of one hundred dollars or both, by the repealed clause.

*Trees, Vegetables, Roots and Plants.*

**533.** Injuries to Trees, etc.—Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty-five dollars over and above the amount of the injury done, or to two months' imprisonment, with or without hard labour, who wilfully destroys or damages the whole or any part of any tree, sapling or shrub, or any underwood, wheresoever the same is growing, the injury done being to the amount of twenty-five cents, at the least.

2. SECOND OFFENCE.—Every one who, having been convicted of any such offence, afterwards commits any such offence is liable, on summary conviction, to a penalty not exceeding fifty dollars over and above the amount of the injury done, or to four months' imprisonment with hard labour.

3. SUBSEQUENT OFFENCE.—Every one who, having been twice convicted of any such offence, afterwards commits any such offence, is guilty of an indictable offence and liable to two years' imprisonment. 55-56 V., c. 29, s. 508.

If the injury does not amount to twenty-five cents the defendant may be punished under s. 539, *post*.

See s. 725, *post*, where it has been forgotten that the words "cut, break, root up" of the repealed clause have been left out in s. 533.

*Indictment after two previous convictions for cutting or damaging trees to the value of twenty-five cents whereseever 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 wilfully, without legal justification or excuse, and without colour of right, did destroy and damage, thereby then doing injury to the said J. N., to the amount of forty cents. And the jurors aforesaid do say, that heretofore and before the committing of the offence hereinbefore mentioned (*stating the two previous convictions and concluding as in form p. 428, ante*). See ss. 851 and 963 as to indictments and procedure in indictable offences committed after previous convictions, and for which a greater punishment may be inflicted on that account.

If in answer to a charge under this section, the defendant sets up a *bona fide* claim of right, the justices of the peace have no jurisdiction; *R.* v. *O'Brien*, 5 Q. L. R. 161.

**534.** INJURIES TO VEGETABLE PRODUCTIONS IN GARDENS.—Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty dollars over and above the amount of the injury done, or to three months' imprisonment with or without hard labour, who wilfully destroys, or damages with intent to destroy, any vegetable production growing in any garden, orchard, nursery ground, house, hot-house, green-house or conservatory.

2. SUBSEQUENT OFFENCE.—Every one who, having been convicted of any such offence, afterwards commits any such offence is guilty of an indictable offence, and liable to two years' imprisonment. 55-56 V., c. 29, s. 509.

*Indictment under s. 534 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 wilfully, without legal justification or excuse, and without colour of right, did destroy. And the jurors aforesaid do say that heretofore and before the committing of the offence hereinbefore mentioned (*state the pre-*

*vious conviction*). And so, the jurors 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, unlawfully and wilfully, without legal justification or excuse, and without colour of right, did destroy.

**535.** INJURIES TO ROOTS OR PLANT GROWING ELSEWHERE.—Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding five dollars over and above the amount of the injury done, or to one month's imprisonment with or without hard labour, who wilfully 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.

2. SUBSEQUENT OFFENCE.—Every one who, having been convicted of any such offence, afterwards commits any such offence is liable, on summary conviction, to three months' imprisonment with hard labour. 55-56 V., c. 29, s. 510.

*Cattle and Other Animals.*

**536.** PENALTY.—Every one is guilty of an indictable offence and liable to two years' imprisonment who wilfully,—

(*a*) ATTEMPTS TO INJURE CATTLE—attempts to kill, maim, wound, poison or injure any cattle, or the young thereof; or,

(*b*) POISON CATTLE—places poison in such a position as to be easily partaken of by any such animal. 55-56 V., c. 29, s. 500.

"Cattle" defined s. 2. See remarks under preceding section. The punishment was not defined in the repealed clause.

As to attempts generally see remarks under s. 72. This s. 536 has no other effect than to reduce the punishment, which, without it, would be seven years under ss. 510-570.

**537.** INJURIES TO OTHER ANIMALS.—Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding one hundred dollars over and above the amount of injury done, or to three months' imprisonment with or without hard labour, who wilfully kills, maims, wounds, poisons or injures any dog, bird, beast, or other animal, not

being cattle, but being either the subject of larceny at common law, or being ordinarily kept in a state of confinement, or kept for any lawful purpose.

2. SUBSEQUENT OFFENCE.—Every one who, having been convicted of any such offence, afterwards commits any offence under this section, is guilty of an indictable offence, and liable to a fine or imprisonment, or both, in the discretion of the court. 55-56 V., c. 29, s. 501.

Section 345 specifies the classes of animals which are capable of being stolen.

No punishment being provided for the crime specified in s.-s. 2 of this section, a person guilty thereof will be punishable by five years' imprisonment, by virtue of s. 1052.

A person guilty of an offence under this section cannot be sentenced to imprisonment with hard labour in default of payment of the penalty and compensation of costs.

*R.* v. *Horton* (1897), 31 N. S. R. 217.

The words *or kept for any lawful purpose* cover all animals kept in a circus, menagerie, etc.

**538.** THREATS BY LETTERS TO INJURE CATTLE.—Every one is guilty of an indictable offence and liable to two years' imprisonment who sends, delivers or utters, or directly or indirectly causes to be received, knowing the contents thereof, any letter or writing threatening to kill, maim, wound, poison or injure any cattle. 55-56 V., c. 29, s. 502.

See *ante*, under s. 516.

"Cattle" defined, s. 2, s.s. 5.

The punishment was *ten* years by the repealed clause. It is still *ten* years, under s. 516, for sending a letter threatening to burn any building, stack of grain, etc. Why it should be *two* years under this section and *ten* under s. 516 is not clear.

*Cases not Specially Provided for.*

**539.** INJURIES TO OTHER PROPERTY—PENALTY—DAMAGE.—Every one who wilfully commits any damage, injury or spoil to or upon any real or personal property, either corporeal or incorporeal, and either of a public or private nature, for which no punishment is hereinbefore provided, is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty dollars, and such further sum, not exceeding twenty dollars, as appears to the justice to be a reasonable compensation for the damage, injury or spoil so committed, to be paid in the case of private property to the person aggrieved.

2. IMPRISONMENT.—If such sums of money, together with the costs, if ordered, are not paid either immediately after the conviction, or within such period as the justice at the time of the conviction appoints, the justice may cause the offender to be imprisoned for any term not exceeding two months, with or without hard labour. 55-56 V., c. 29, s. 511.

Bona fide belief of right—Must be good grounds for belief: *R.* v. *Davy* (1900), 27 A. R. 508, 4 Can. C. C. 28, overruling: *R.* v. *Bradshaw*, 38 U. C. R. 564.

*Limitation.*

**540.** Nothing in the last preceding section extends to,—

(*a*) FAIR CLAIM OF RIGHT—any case where the person acted under a fair and reasonable supposition that he had a right to do the act complained of; or,

(*b*) SPORTING—any tresspass, not being wilful and malicious, committed in hunting or fishing, or in the pursuit of game. 55-56 V., c. 29, s. 511.

A conviction hereunder is not good unless it specifies a particular act of injury, and the nature and quality of the property damaged: *R.* v. *Spain* (1889), 18 O. R. 385.

**541.** COLOUR OF RIGHT.—Nothing shall be an offence under any of the foregoing provisions of this Part unless it is done without legal justification or excuse, and without colour of right.

2. PARTIAL INTEREST.—Where the offence consists in an injury to anything in which the offender has an interest, the existence of such interest, if partial, shall not prevent his act being an offence, and if total, shall not prevent his act being an offence, if done with intent to defraud. 55-56 V., c. 29, s. 481.

*Cruelty to Animals.*

**542.** PENALTY.—Every one is guilty of an offence and liable, on summary conviction before two justices, to a penalty not exceeding fifty dollars, or to three months' imprisonment, with or without hard labour, or to both, who,—

(*a*) ILL-TREATING ANIMAL—wantonly, cruelly, or unnecessarily beats, binds, ill-treats, abuses, overdrives or tortures any cattle, poultry, dog, domestic animal or bird, or any wild animal or bird in captivity; or,

(*b*) INJURES BY ILL-USAGE—while driving any cattle or other animal is, by negligence or ill-usage in the driving thereof, the means whereby any mischief, damage or injury is done by any such cattle or other animal; or,

(*c*) FIGHTING OF ANIMAL—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. 55-56 V., c. 29, s. 512; 58-59 V., c. 40, s. 1.

Limitation 3 months, section 1140.
Penalty recoverable under section 1043.

The ill-usage must be such as there is no need for. There are cases in which the infliction of pain is justified by the surrounding circumstances, and the general rule is that any act done with the object of making an animal more serviceable for the purposes for which it is generally used, even though such act cause the animal pain, does not come within this section. Thus it has been held that the castration of horses is not cruelty.

*Lewis* v. *Fermor* (1887), L. R., 18 Q. B. D. 534.

A person who through an error of judgment, and without any intention to do so, drives a horse to death, would not be guilty of cruelty to animals under this section.

In a case in which a charge of cruelty to animals was brought on account of the use of a check rein, it was held that the check was necessary to manage the horse, and that it was lawful to use the same in order to give better appearance to the horse and thus increase the value of its owner's property, although the rein caused a certain amount of discomfort to the animal.

*Society for the Prevention of Cruelty to Animals* v. *Lowry* (1894), 17 L. N. 118.

The Imperial Act on cruelty to animals is 12 & 13 V. c. 92, amended by 17 & 18 V. c. 60, and 39 & 40 V. c. 77: see *Elliott* v. *Osborn*, 17 Cox C. C. 36. As to dehorning cattle see *Ford* v. *Wiley*, 16 Cox C. C. 683, 23 Q. B. L. 203; *Callaghan* v. *The Society*, 16 Cox C. C. 101; and *R.* v. *McDonagh*, 28 L. R. Ir. 204.

**543.** KEEPING OF COCK-PIT.—Every one is guilty of an offence and liable, on summary conviction before two justices, to a penalty not exceeding fifty dollars, or to three months' imprisonment, with or without hard labour, or to both, who builds, makes, maintains or keeps a cock-pit on premises belonging to or occupied by him, or allows a cock-pit to be built, made, maintained or kept on premises belonging to or occupied by him.

2. CONFISCATION.—All cocks found in any such cock-pit, or on the premises wherein such cock-pit is, shall be confiscated and sold for the benefit of the municipality in which such cock-pit is situated. 55-56 V., c. 29, s. 513.

Limitation 3 months, section 1140.
Penalty recoverable under section 1043.

**544.** CONVEYANCE OF CATTLE WITHOUT PROPER REST AND NOURISHMENT BY RAILWAYS, ETC.—No railway company within Canada whose railway forms any part of a line of road over which cattle are conveyed from one province to another province, or from the United States to or through any province, or from any part of a province to another part of the same, and no owner or master of any vessel carrying or transporting cattle from one province to another province, or within any province, or from the United States to or through any province, shall confine the same in any car, or vessel of any description, for a longer period than twenty-eight hours without unlading the same for rest, water and feeding for a period of at least five consecutive hours, unless prevented from so unlading and furnishing water and food by storm or other unavoidable cause, or by necessary delay or detention in the crossing of trains.

2. RECKONING PERIOD.—In reckoning the period of confinement, the time during which the cattle have been confined without such rest, and without the furnishing of food and water, on any connecting railway or vessels from which they are received, whether in the United States or Canada, shall be included.

Limitation 3 months, section 1140.

3. SAVING.—The foregoing provisions as to cattle being unladen shall not apply when cattle are carried in any car or vessel in which they have proper space and opportunity for rest, and proper food and water.

4. CARE NECESSARY—LIEN FOR FOOD.—Cattle so unloaded shall be properly fed and watered during such rest by the owner or person having the custody thereof, or, in case of his default in so doing, by the railway company, or owner or mas-

ter of the vessel transporting the same, at the expense of the owner or person in custody thereof; and such company, owner or master shall in such case have a lien upon such cattle for food, care and custody furnished and shall not be liable for any detention of such cattle.

5. Sanitary Precautions. — Where cattle are laden from cars for the purpose of receiving food, water and rest, the railway company then having charge of the cars in which they have been transported shall, except during a period of frost, clear the floors of such cars, and litter the same properly with clean sawdust or sand before reloading them with live stock.

6. Penalty.—Every railway company, or owner or master of a vessel, having cattle in transit, or the owner or person having the custody of such cattle, as aforesaid, who knowingly and wilfully fails to comply with the foregoing provisions of this section, is liable for every such failure, on summary conviction, to a penalty not exceeding one hundred dollars. 55-56 V., c. 29, s. 514.

**545.** Search of Premises. — Any peace officer or constable may at all times enter any premises where he has reasonable grounds for supposing that any car, truck or vehicle as to which any company or person has failed to comply with the provisions of the last preceding section, is to be found, or enter on board any vessel in respect whereof he has reasonable grounds for supposing that any company or person has, on any occasion, so failed.

2. Obstructing Officer. — Every one who refuses admission to such peace officer or constable is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty dollars and not less than five dollars, and costs, and in default of payment, to thirty days' imprisonment. 55-56 V., c. 29, s. 515.

**Limitation 3 months, section 1140.**

## PART IX.

### OFFENCES RELATING TO BANK NOTES, COIN AND COUNTERFEIT MONEY.

*Interpretation.*

**546.** DEFINITIONS.—In this Part, unless the context otherwise requires,—

(*a*) 'CURRENT GOLD OR SILVER COIN' includes any gold or silver coin of any of His Majesty's mints, or gold or silver coin of any foreign prince or state or country, or other gold or silver coin lawfully current, by virtue of any proclamation or otherwise, in any part of His Majesty's dominions;

(*b*) 'CURRENT COPPER COIN' includes copper coin coined in any of His Majesty's mints, or lawfully current, by virtue of any proclamation or otherwise, in any part of His Majesty's dominions;

(*c*) 'COUNTERFEIT' means false, not genuine;

(*d*) 'GILD' and 'SILVER' applied to coin, include casing with gold or silver respectively, and washing and colouring by any means whatsoever with any wash or materials capable of producing the appearance of gold or silver respectively;

(*e*) 'UTTER' includes 'tender' and 'put off';

(*f*) 'COUNTERFEIT TOKEN OF VALUE' means any spurious or counterfeit coin, paper money, inland revenue stamp, postage stamp or other evidence of value, by whatever technical, trivial or deceptive designation the same may be described, and includes also any coin or paper money, which although genuine has no value as money. 55-56 V., c. 29, s. 460; 63-64 V., c. 46, s. 3.

**547.** COUNTERFEIT RAISING OF DENOMINATION.—Any genuine coin prepared or altered so as to resemble or pass for any current coin of a higher denomination is a counterfeit coin.

2. COUNTERFEIT REDUCING OF SIZE.—A coin fraudulently filed or cut at the edges so as to remove the milling, and on which a new milling has been added to restore the appearance of the coin, is a counterfeit coin. 55-56 V., c. 29, s. 460.

*Certain Offences—When Complete.*

**548.** COMPLETE ALTHOUGH INTENDED COUNTERFEITING NOT PERFECTED.—Every offence of making any counterfeit coin, or of buying, selling, receiving, paying, tendering, uttering or putting off, or of offering to buy, sell, receive, pay, utter or put off, any counterfeit coin, is deemed to be complete although the coin so made or counterfeited, or bought, sold, received, paid, tendered, uttered or put off, or offered to be bought, sold, received, paid, tendered, uttered or put off, was not in a fit state to be uttered, or the counterfeiting thereof was not finished or perfected. 55-56 V., c. 29, s. 461.

See *R.* v. *Hermann* (1879) L. R. 4 Q. B. D. 284; *R.* v. *Bradford*, 2 C. & D. 41.

**549.** COIN, ETC., GENUINE BUT VALUELESS — MUST BE KNOWLEDGE AND FRAUDULENT INTENT.—In the case of coin or paper money which, although genuine, has no value as money, it is necessary in order to constitute an offence under this Part that there should be knowledge on the part of the person charged that such coin or paper money was of no value as money, and a fraudulent intent on his part in his dealings with or with respect to the same. 63-64 V., c. 46, s. 3.

*Bank Notes.*

**550.** PURCHASING, RECEIVING OR POSSESSING FORGED BANK NOTES.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who, without lawful authority or excuse, the proof whereof shall lie on him, purchases or receives from any person, or has in his custody or possession, any forged bank note, or forged blank bank note, whether complete or not, knowing it to be forged. 55-56 V., c. 29, s. 430.

As to what constitutes a criminal possession see s. 2.
In *R.* v. *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.

Upon the trial for an offence of purchasing forged notes under this section the jury may, if the evidence warrants it, under s. 949, convict the prisoner of an attempt to commit the same.

*Indictment.*—The Jurors for Our Lord the King present, that A. B. on unlawfully 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.

**551.** PRINTING CIRCULARS, ETC., IN LIKENESS OF NOTES.—Every one is guilty of an offence and liable, on summary conviction before two justices, to a fine of one hundred dollars or three months' imprisonment, or both, who designs, engraves, prints or in any manner makes, executes, utters, issues, distributes, circulates or uses any business or professional card, notice, placard, circular, hand-bill or advertisement in the likeness or similitude of any bank note, or any obligation or security of any government or any bank. 55-56 V., c. 29, s. 442.

*Coin.*

**552.** PENALTY.—Every one is guilty of an indictable offence and liable to imprisonment for life who,—

(*a*) MAKING COUNTERFEIT GOLD OR SILVER COIN—makes or begins to make any counterfeit coin resembling, or apparently intended to resemble or pass for, any current gold or silver coin; or,

(*b*) CHANGING INTO COUNTERFEIT—gilds or silvers any coin resembling or apparently intended to resemble or pass for, any current gold or silver coin; or,

(*c*) GILDING TO RESEMBLE COIN — gilds or silvers any piece of silver or copper, or of coarse gold or coarse silver, or of any metal or mixture of metals respectively, being of a fit size and figure to be coined, and with intent that the same shall be coined into counterfeit coin resembling, or apparently intended to resemble or pass for, any current gold or silver coin; or,

(*d*) GILDING SILVER COIN — gilds any current silver coin, or files or in any manner alters such coin, with intent to make the same resemble or pass for any current gold coin; or,

(*e*) GILDING OR SILVERING COPPER COIN—gilds or silvers any current copper coin, or files or in any manner alters such coin, with intent to make the same resemble or pass for any current gold or silver coin. 55-56 V., c. 29, s. 462.

*Indictment.*— that J. S., on 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 unlawfully did make and counterfeit.

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 King'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 King's coin generally: 1 Hale, 214; they may, likewise, now all be indicted as principals under s. 69, *ante*.

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 resemblence 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.* v. *Varley*, 1 East, P. C. 164, the defendant had counterfeited the semblance 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.* v. *Harris*, 1 Leach, 135, 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 s. 548 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: s. 980. 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, etc.: 1 Hale, 196, 212, 213. It is not necessary to prove that the counterfeit coin was uttered or attempted to be uttered: *R.* v. *Robinson*, 10 Cox C. C. 107; *R.* v. *Connell*, 1 C. & K. 199; *R.* v. *Byrne*, 6 Cox C. C. 475.

By s. 949, if upon the trial 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.

**553.** PENALTY.—Every one is guilty of an indictable offence and liable to imprisonment for life who, without lawful authority or excuse, the proof whereof shall lie on him,—

(a) BUYING, SELLING OR TRADING IN COUNTERFEIT GOLD [illegible] buys, sells, receives, pays or puts off, or offers to buy, sell, receive, pay or put off, at or for a lower rate or value than the same imports, or was apparently intended to import, any counterfeit coin resembling or apparently intended to resemble or pass for any current gold or silver coin; or,

(b) IMPORTING OR RECEIVING INTO CANADA—imports or receives into Canada any counterfeit coin resembling or apparently intended to resemble or pass for, any current gold or silver coin knowing the same to be counterfeit. 55-56 V., c. 29, s. 463.

DEALING IN, IMPORTING COUNTERFEIT COIN.

*Indictment under (a).*— ten pieces of counterfeit coin, each piece thereof resembling a piece of the current gold coin, called a sovereign, falsely, deceitfully and unlawfully, 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.

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

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 Russ. 135.

*Indictment under (b).*— ten thousand pieces of counterfeit coin, each piece thereof resembling a piece of the current silver coin called a shilling, falsely, deceitfully and unlawfully, 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 counterfeit coin, well knowing the same to be counterfeit.

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

**554.** MANUFACTURING OR IMPORTING COPPER COIN.—Every one who manufactures in Canada any copper coin, or imports into Canada any copper coin, other than current copper coin, with the intention of putting the same into circulation as current copper coin, is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty dollars for every pound troy weight thereof; and all such copper coin so manufactured or imported shall be forfeited to His Majesty. 55-56 V., c. 29, s. 464.

**555.** EXPORTATION OF COUNTERFEIT COIN.—Every one is guilty of an indictable offence and liable to two years' impris-

onment who, without lawful authority or excuse the proof whereof shall lie on him, 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 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 counterfeit. 55-56 V., c. 29, s. 465.

The clause covers the attempt to export in certain cases. Sections 571 and 949 would cover other cases of attempts.

*Indictment.*— one hundred pieces of counterfeit coin, each piece thereof resembling a piece of the current coin called a sovereign, falsely, deceitfully and unlawfully, without lawful authority or excuse, did export from Canada, he the said C. D. at the time when he so exported the said pieces of counterfeit coin, then well knowing the same to be counterfeit.

**556.** MAKING OR POSSESSING, ETC.—Every one is guilty of an indictable offence and liable to imprisonment for life who, without lawful authority or excuse the proof whereof shall lie on him, makes or mends, or begins or proceeds to make or ment, or buys or sells, or has in his custody or possession,—

(*a*) MATRIX, ETC., FOR COINAGE—any puncheon, counter puncheon, matrix, stamp, die, pattern or mould, in or upon which there is made or impressed, or which will make or impress, or which is adapted and intended 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,

(*b*) EDGERS, ETC.—any edger, edging or other tool, collar, instrument or engine adapted and intended for the marking of coin round edges with letters, grainings, or other marks or figures apparently resembling those on the edges of any such coin, knowing the same to be so adapted and intended; or,

(*c*) PRESS FOR COINAGE—any press for coinage, or any cutting machine 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 in-

tended to be used for or in order to the false making or counterfeiting of any such coin. 55-56 V., c. 29, s. 466.

Foreign coin not current in Canada—Possessing dies to counterfeit current silver coin of United States—Not necessary to allege that it was not current: *R.* v. *Tierney*, 29 U. C. R. 181.

*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 unlawfully, and without lawful authority or excuse, did make.

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 is made or impressed" apply to the puncheon which being convex bears upon it the figure of the coin; and the words "which will make or impress" apply to the counter puncheon 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.* v. *Lennard*, 1 Leach, 90. 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.* v. *Sutton*, 2 Str. 1074, where the instrument was capable of making the sceptre only cannot now occur: see *R.* v. *Heath*, R. & R. 184.

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: *R.* v. *Foster* (1836), 7 C. & 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.* v. *Ridgeley* (1778), 1 East, P. C. 171, 1 Leach, C. C. 225. 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.* v. *Bannen* (1844), 2 Moo. 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 misdemeanour at common law: *R.* v. *Roberts*, Dears. 539; 1 Russ. 100. A galvanic battery is a machine within the section: *R.* v. *Gover*, 9 Cox C. C. 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 unlawfully and without lawful authority or excuse, had in his custody and possession.

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.* v. *Richmond*, 1 C. & K. 240.

As to evidence of possession, see s. 3, *ante*; *R.* v. *Rogers*, 2 Moo. 85. 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: *R.* v. *Weeks*, L. & C. 18. In *R.* v. *Harvey* (1871), 11 Cox C. C. 662, L. R. 1 C. C. R. 284, 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 making 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 unlawfully, 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.

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

It must be remarked that the said clause expressly applies to tools for marking foreign coin, as well as current coin.

**557.** Conveying out of Mint into Canada—Every one is guilty of an indictable offence and liable to imprisonment for life who, without lawful authority or excuse the proof whereof shall lie on him, knowingly conveys out of any of His 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 articles aforesaid, or any coin, bullion, metal or mixture of metals. 55-56 V., c. 29, s. 467.

**558.** Clipping Current Gold or Silver Coin.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who 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. 55-56 V., c. 29, s. 468.

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

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, etc. 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 carried 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.

**559.** DEFACING CURRENT COIN.—Every one is guilty of an indictable offence and liable to one year's imprisonment who 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. 55-56 V., c. 29, s. 469.

*Indictment for defacing coin.*— one piece of the current silver coin, called a half-crown, unlawfully did deface, by then stamping thereon certain names and words, to wit:

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.

**560.** POSSESSING CLIPPINGS, ETC., OF CURRENT GOLD OR SILVER COIN.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who 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. 55-56 V., c. 29, s. 470.

"Having in possession" defined, s. 2.

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 had been no evidence to prove that any particular coin had been impaired. This clause is intended to meet such cases."

**561.** PENALTY — POSSESSING WITH INTENT TO UTTER.—Every one is guilty of an indictable offence and liable to three

years' imprisonment who has in his custody or possession, knowing the same to be counterfeit, and with intent to utter the same or any of them,—

(*a*) COUNTERFEIT GOLD OR SILVER COIN—any counterfeit coin resembling or apparently intended to resemble or pass for, any current gold or silver coin; or,

(*b*) COUNTERFEIT COPPER COIN—three or more pieces of counterfeit coin resembling, or apparently intended to resemble or pass for, any current copper coin. 55-56 V., c. 29, s. 471.

Having in possession defined, s. 2.
Search warrant, s. 636.
*Indictment for having in possession counterfeit gold or silver coin with intent, etc.* unlawfully, falsely and deceitfully had in his custody and possession four pieces of counterfeit coin, resembling the current silver coin called , with intent to utter the said pieces of counterfeit coin, he the said J. S. then well knowing the said pieces of counterfeit coin to be counterfeit.
See *R.* v. *Hermann*, 4 Q. B. D. 284, 14 Cox C. C. 279, Warb. Lead. Cas. 77.

**562.** PENALTY.—Every one is guilty of an indictable offence and liable to three years' imprisonment who,— —

(*a*) MAKING COUNTERFEIT COPPER COIN—makes, or begins to make, any counterfeit coin resembling, or apparently intended to resemble or pass for, any current copper coin; or,

(*b*) without lawful authority or excuse, the proof of which shall lie on him, knowingly

(i) MAKING, ETC., TOOLS FOR COPPER COINAGE—makes or mends, or begins or proceeds to make or mend, or buys or sells, or has in his custody or possession, any instrument, tool or engine adapted and intended for counterfeiting any current copper coin,

(ii) DEALING IN COUNTERFEIT COPPER COIN — buys, sells, receives, pays or puts off, or offers to buy, sell, receive, pay or put off, any 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. 55-56 V., c. 29, s. 472.

**563.** PENALTY.—Every one is guilty of an indictable offence and liable to three years' imprisonment who,—

(*a*) MAKING COUNTERFEIT GOLD OR SILVER FOREIGN COIN—makes, or begins to make, any counterfeit coin or silver 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; or,

(*b*) without lawful authority or excuse, the proof of which shall lie on him,

(i) BRINGING INTO CANADA—brings or receives in Canada any such counterfeit coin, knowing the same to be counterfeit,

(ii) HAVING IN POSSESSION—has in his custody or possession any such counterfeit coin, knowing the same to be counterfeit, and with intent to put off the same; or,

(*c*) UTTERING—utters any such counterfeit coin; or,

(*d*) MAKING COUNTERFEIT FOREIGN COPPER COIN—makes any counterfeit coin resembling, or apparently intended to resemble or pass for, any copper coin of any foreign prince, state or country, not being current coin. 55-56 V., c. 29, s. 473.

Having in possession defined, s. 2.

It is essential to prove that the coins offered in evidence of guilty knowledge, on an accusation of having counterfeit coins in one's possession, are themselves counterfeit: *R.* v. *Beuham* (1899), R. J. Q. 8 Q. B. 448.

Indictment for possessing counterfeit coin, each piece resembling a piece of the current coin of the United States of the value of fifty cents and called therein half a dollar—*Held*, bad for not alleging that it resembled some gold or silver coin of the United States: *R.* v. *Tierney*, 29 U. C. R. 181.

**564.** UTTERING COUNTERFEIT GOLD OR SILVER COIN.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who utters any counterfeit coin resembling, or apparently intended to resemble or pass for, any current gold or silver coin, knowing the same to be counterfeit. 55-56 V., c. 29, s. 474.

If it be proved that the accused uttered, either on the day on which he is alleged to have uttered the coin in question, or at other times, either before or after, other counterfeit money, either to the same or to a different person, the jury may infer therefrom that he knew that the money he is accused of uttering was counterfeit. And the same inference may be drawn from the fact that the accused had other pieces of base coin about his person at the time he uttered the counterfeit money in regard to which the indictment has been made: *R.* v. *Whiley* (1804), 2 Leach 983. (The decision of the twelve judges in Tattersall's case was adopted in this decision. See also *R.* v. *Foster* (1855), 24 L. J. M. C. 134.

*Indictment,*— one piece of 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 then well knowing the same to be counterfeit.

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 pretense 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.* v. *Franks*, 2 Leach, 644. 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: *R.* v. *Page*, 8 C. & P. 122. But this case has been overruled: *R.* v. *Ion*, (1852), 2 Den. 475, 21 L. J. M. C. 166; 1 Russ. 126; see *R.* v. ———, 1 Cox, 250.

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: *R.* v. *Welch* (1851), 20 L. J. M. C. 101, 2 Den. 78. The prisoner and J. were indicted for a misdemeanour 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 prisoner was rightly convicted as a principal, there being no accessories in a misdemeanour: *R.* v. *Greenwood*, 2 Den. 453. 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: *R.* v. *Hurse*, 2 M. & Rob. 360; see *R.* v. *Hermann*, 4 Q. B. D. 284, Warb. Lead. Cas. 77.

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.* v. *Price*, 8 C. & P. 19; see now s. 21, *ante*.

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: 1 Russ. 127.

**565.** Penalty.—Every one is guilty of an indictable offence and liable to three years' imprisonment who,—

(*a*) Uttering Light Gold or Silver Coin—utters, 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; or,

(*b*) Uttering False Gold or Silver Coin—with intent to defraud utters, 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 uttered, such coin, medal or piece of metal or mixed metals so uttered being of less value than the current coin as or for which the same is so uttered; or,

(*c*) UTTERING COUNTERFEIT COPPER COIN — utters any counterfeit coin resembling or apparently intended to resemble or pass for any current copper coin, knowing the same to be counterfeit. 55-56 V., c. 29, s. 475.

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; it was held that there was sufficient evidence that the medal resembled, in figure, as well as size and colour, a half sovereign: *R.* v. *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.

**566.** UTTERING DEFACED COIN.—Every one who utters any coin defaced by having stamped thereon any names or words is guilty of an offence, and liable, on summary conviction before two justices, to a penalty not exceeding ten dollars. 55-56 V., c. 29, s. 476.

See s. 559.

No prosecution without the consent of the Attorney-General, s. 598.

**567.** UTTERING UNCURRENT COPPER COIN. — Every one who utters, or offers in payment, any copper coin, other than current copper coin, is guilty of an offence and liable, on summary conviction, to a penalty of double the nominal value thereof, and in default of payment of such penalty to eight days' imprisonment. R. S., c. 167, s. 33; 55-56 V., c. 29, s. 477.

Penalty, s. 1041.

**568.** SECOND OFFENCE.—Every one who, after a previous conviction for any offence relating to the coin under this or any other Act, is convicted of any offence specified in this Part is liable,—

(*a*) PENALTY—to imprisonment for life, if fourteen years is the longest term of imprisonment to which he would have been liable had he not been so previously convicted;

(*b*) PENALTY—to fourteen years' imprisonment, if seven years is the longest term of imprisonment to which he would have been liable had he not been so previously convicted;

(*c*) PENALTY—to seven years' imprisonment, if he would not have been liable to seven years' imprisonment had he not been so previously convicted. 55-56 V., c. 29, s. 478.

See *R.* v. *Thomas*, 13 Cox C. C. 52.

See ss. 851 and 853 as to procedure when a previous offence is charged, corresponding to s. 116 of the Imperial Larceny Act, and s. 37 of the Imperial Coin Act: *R.* v. *Martin*, 11 Cox C. C. 343.

This enactment is intended to provide for a subsequent *indictable* offence after a previous conviction for an *indictable* offence. Unfortunately, the section does not say what it means, and any one convicted, for instance, of uttering defaced coin under s. 566.

### *Advertising Counterfeit Money.*

**569.** PENALTY.—Every one is guilty of an indictable offence and liable to five years' imprisonment who,—

(*a*) ADVERTISING COUNTERFEIT MONEY — prints, writes, utters, publishes, sells, lends, gives away, circulates or distributes any letter, writing, circular, paper, pamphlet, handbill or any written or printed matter, advertising, or offering or purporting to advertise or offer for sale, loan, exchange, gift or distribution, or to furnish, procure or distribute, any counterfeit token of value, or what purports to be a counterfeit token of value, or giving or purporting to give, either directly or indirectly, information where, how, of whom or by what means any counterfeit token of value, or what purports to be a counterfeit token of value, may be procured or had; or,

(*b*) USING ANY FICTITIOUS NAME OR ADDRESS—in executing, operating, promoting or carrying on any scheme or device to defraud, by the use or by means of any papers, writings, letters, circulars or written or printed matters concerning the offering for sale, loan, gift, distribution or exchange of counterfeit tokens of value, uses any ficti-

tious, false or assumed name or address, or any name or address other than his own right, proper and lawful name; or,

(*c*) TAKING FROM THE MAILS ANY LETTER TO A FICTITIOUS ADDRESS—in the execution, operating, promoting or carrying on, of any scheme or device offering for sale, loan, gift, or distribution, or purporting to offer for sale, loan, gift or distribution or giving or purporting to give information, directly or indirectly, where, how, of whom or by what means any counterfeit token of value may be obtained or had, knowingly receives or takes from the mails, or from the post office, any letter or package addressed to any fictitious, false or assumed name or address, or name other than his own right, proper or lawful name; or,

(*d*) PURCHASING COUNTERFEIT MONEY — purchases, exchanges, accepts, takes possession of or in any way uses, or offers to purchase, exchange, accept, take possession of or in any way use, or negotiates or offers to negotiate with a view to purchasing or obtaining or using any such counterfeit token of value, or what purports so to be. 55-56 V., c. 29, s. 480.

See s. 981 as to evidence.

By definition of "counterfeit token of value," in s. 546 (*f*), it would now be an offence.

Documents not counterfeits, but so made as to resemble United States government notes, are counterfeit token of value under this section: *R.* v. *Carey*, 33 N. B. R. 81.

On indictment for offering to purchase counterfeit tokens of value prisoner cannot be convicted on evidence that notes which he offered to purchase were not counterfeit but genuine bank notes unsigned, though he offered to purchase in belief that they were counterfeit: *R.* v. *Attwood*, 20 O. R. 574.

## PART X.

### ATTEMPTS—CONSPIRACIES—ACCESSORIES.

**570.** ATTEMPT TO COMMIT CERTAIN INDICTABLE OFFENCES.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who attempts, in any case not hereinbefore provided for, to commit any indictable offence for which the punishment is imprisonment for life, or for fourteen years, or for any term longer than fourteen years. 55-56 V., c. 29, s. 528.

**571.** ATTEMPT TO COMMIT OTHER INDICTABLE OFFENCES.—Every one who attempts to commit any indictable offence for committing which the longest term to which the offender can be sentenced is less than fourteen years, and no express provision is made by law for the punishment of such attempt, is guilty of an indictable offence and liable to imprisonment for a term equal to one-half of the longest term to which a person committing the indictable offence attempted to be committed may be sentenced. 55-56 V., c. 29, s. 529.

**572.** ATTEMPT TO COMMIT STATUTORY OFFENCES.—Every one is guilty of an indictable offence and liable to one year's imprisonment who attempts to commit any offence under any statute for the time being in force and not inconsistent with this Act, or incites or attempts to incite any person to commit any such offence, and for the punishment of which no express provision is made by such statute. 55-56 V., c. 29, s. 530.

See s. 22, *ante*, and ss. 949 and 942, *post*, and notes thereunder.

Attempts to commit offences punishable under the code by summary convictions are not covered by these sections. Neither is the inciting to commit any indictable offence. Section 572 makes it an *indictable* offence to attempt to commit, or to incite, or attempt to incite any one to commit an offence punishable *under summary conviction* under any other statute.

When an offence is not triable at quarter sessions, the attempt to commit that offence is likewise not triable at quarter sessions: s. 583.

If the person incited or advised does not commit the crime in question, the person so inciting or advising him is nevertheless guilty of an attempt to commit it: *R. v. Gregory* (1867), 10 Cox C. C. 459.

See *R. v. Ransford*, 13 Cox C. C. 9, and cases there cited. The punishment falls under s. 1052, *post*.

Inciting to murder is covered by s. 266, and inciting to mutiny by s. 81.

*Indictment at common law for inciting to commit an offence.*—

that A. B. on falsely, wickedly and unlawfully did solicit and incite one C. D. unlawfully to steal of the goods and chattels of E. F.

**573.** CONSPIRACY TO COMMIT INDICTABLE OFFENCE.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, in any case not hereinbefore provided for, conspires with any person to commit any indictable offence. 55-56 V., c. 29, s. 527.

To bribe member of legislature — Common law offence — Contempt: *R. v. Bunting*, 7 O. R. 524.

To procure by fraud return of member to legislature—Not necessary to prove meeting to concert proceedings: *R. v. Fellowes*, 19 U. C. R. 48.

Members of trade-union conspiring to injure non-unionist workman by depriving him of his employment guilty of indictable offence. What they conspired to do was not for purposes of their trade combination as defined in s. 2 (38): *R.* v. *Gibson*, 16 O. R. 704.

At a trial for conspiracy, acts similar to those charged, but committed in respect of different persons, may be proved in order to show guilty knowledge on the part of the accused: *R.* v. *McCullough and McGillis* (1900), 7 Revue de Jurisprudence, 2.

To rob—Withdrawal of one conspirator who was willing to share in profits—No attempt to prevent crime—King's evidence: *R.* v. *Harris*, 8 C. Dig. 405.

As to what constitutes conspiracy: See *R.* v. *Bowmic*, 13 R. L. 429.

Conspiracy to deprive person of proper care and nursing whereby his death was caused not a conspiracy to commit indictable offence: *R.* v. *Goodfellow*, 11 O. L. R. 359. Nor conspiracy to effect cure by unlawful means, thereby causing death: *Ib.*

See *R.* v. *Rowlands*, 3 Den. 364 and *R.* v. *Whitchurch*, 16 Cox C. C. 743, for forms of indictment.

Treasonable conspiracies are provided for by ss. 76 & 78; conspiracies to intimidate a legislature, by s. 79; seditious conspiracies by s. 133; conspiracies to bring false accusations, by s. 178; conspiracies to defile women, by s. 218; conspiracies to murder, by s. 266; conspiracies to defraud, by s. 444; conspiracies in restraint of trade with assault or threats of violence by s. 502.

Conspiracies to commit any of the offences which are not triable at quarter sessions are themselves not triable at quarter sessions; s. 583.

The result of this enactment of s. 573 is that, in a number of instances, the conspiracy to commit an offence, whether that offence was committed or not, is more severely punished than the offence itself would be. To obtain passage on a railway by a false ticket for instance, is punishable by *six months* (s. 412), but the conspiracy by two or more persons to do so is punishable by *seven years'* imprisonment.

Conspiracy is a combination of two or more persons to accomplish some unlawful purpose, or a lawful purpose by unlawful means. This is the definition of conspiracy as given by Lord Denman in *R.* v. *Seward*, 1 A. & E. 706; and though questioned by the learned judge himself in *R.* v. *Peck*, 9 A. & E. 686, as an antithetical definition, and in *R.* v. *King*, 7 Q. B. 782, as not sufficiently comprehensive, it seems to be so far adopted as the most correct definition of this offence: *R.* v. *Jones*, 4 B. & Ad. 345; 3 Russ. 116. Bishop, 2 Cr. L. 171, has in clear and concise terms said "Conspiracy is the corrupt agreeing together of two or more persons to do, by concerted action, something unlawful, either as a means or an end." See also *R.* v. *Bunn*, 12 Cox C. C. 316; *R.* v. *Fellowes*, 19 L. C. R. 48; *Mogul S. S. Co.* v. *McGregor*, 23 Q. B. D. 598; *Connor* v. *Kent*, 17 Cox C. C. 354, and *R.* v. *de Kromme*, 14 Cox C. C. 492; *R.* v. *McGreevy*, 17 Q. L. R. 196.

But the word "unlawful" used in these definitions of conspiracy does not mean "indictable" or "criminal" only. The combining to injure another by fraud, or to do a civil wrong or injury to another, is an indictable conspiracy. So in a case where the prisoner and L. were in partnership, and there being notice of dissolution prisoner conspired with W. & P. in order to cheat L. on a division of assets at the dissolution, by making it appear by entries in the books that P. was a creditor of the firm, and by reason thereof partnership property was to be abstracted for the alleged object of satisfying P., it was held that this was an indictable conspiracy: *R.* v. *Warburton*, 11 Cox C. C. 584; *see R.* v. *Aspinall*, 13 Cox C. C. 231 and 563; *R.* v. *Orman*, 14 Cox C. C. 381; Warb. Lead. Cas. 81.

Mr. Justice Drummond, in *R.* v. *Roy*, 11 C. L. J. 89, has given the following definition of conspiracy: "A conspiracy is an agreement by two persons (not being husband and wife), or more, to do

or cause to be done an act prohibited by penal law, or to prevent the doing of an act ordered under legal sanction by any means whatsoever, or to do or cause to be done an act whether lawful or not by means prohibited by penal law: *R.* v. *Boulton*, 12 Cox C. C. 87, *R.* v. *Parnell*, 1 Cox C. C. 508, *R.* v. *Taylor*, 15 Cox C. C. 265, 268.

On an indictment for conspiracy to defraud by obtaining goods on false pretenses, the false pretenses need not be set up: *R.* v. *Gill*, 2 B. & Ald. 204; *Thayer* v. *R.*, 5 L. N. 162

An indictment for conspiracy with intent to defraud,—declared insufficient: *R.* v. *Sternberg*, 8 L. N.122.

What are the necessary allegations in an indictment for conspiracy: *R.* v. *Downie*, 13 R. L. 429; see also *Defoy* v. *R.*, Ramsay's App. Cas. 193.

Acts done to coerce others to quit their employment in pursuance of a conspiracy are indictable: *R.* v. *Hibbert*, 13 Cox C. C. 82; *R.* v. *Bauld*, 13 Cox C. C. 282.

Where two persons are indicted for conspiracy together, and they are tried together, both must be acquitted or both convicted: *R.* v. *Manning*, 12 Q. B. D. 241, Warb. Lead. Cas. 84.

**574.** ACCESSORIES AFTER THE FACT IN CERTAIN CASES — Every one is guilty of an indictable offence and liable to seven years' imprisonment who, in any case where no express provision is made by this Act for the punishment of an accessory, is accessory after the fact to any indictable offence for which the punishment is, on a first conviction, imprisonment for life, or for fourteen years, or for any term longer than fourteen years. 55-56 V., c. 29, s. 531.

**575.** ACCESSORIES AFTER THE FACT IN OTHER CASES — Every one who is accessory after the fact to any indictable offence for committing which the longest term to which the offender can be sentenced is less than fourteen years, if no express provision is made for the punishment of such accessory, is guilty of an indictable offence and liable to imprisonment for a term equal to one-half of the longest term to which a person committing the indictable offence to which he is accessory may be sentenced. 55-56 V., c. 29, s. 532.

If several persons are tried upon a single indictment, some being charged as principal offenders, and others as accessories after the fact, and the former are (as is permissible by virtue of s. 713) found guilty not of the offence charged but of some offence included therein, the persons charged as accessories may be convicted as accessories after the fact to the offence of which the principals are actually found to be guilty: *R.* v. *Richards* (1877), L. R. 2 Q. B. D. 311.

A person accused of being an accessory after the fact must be proved to have known of the commission of the principal offence, and this knowledge may be presumed from the circumstances of the case: *R* v. *Burridge* (1735), 3 P. Wms. 439.

A person who employs another to assist or relieve a principal offender is guilty of an accessory after the fact: *R.* v. *Jarvis* (1837), 2 M. & R. 40.

When an offence is not triable at quarter sessions, the offence of being an accessory after the fact to that offence is likewise not triable at quarter sessions: s. 583. See s. 71, *ante*, for definition; as to indictments, s. 849, *post*.

*Indictment against an accessory after the fact with the principal.* After stating the offence of the principal.— And the jurors aforesaid do further present that C. D. well knowing the said A. B. to have done and committed the said offence in form aforesaid, afterwards to wit, on the day and year aforesaid, him the said A. B. unlawfully did receive, harbour, comfort and assist in order to enable him the said A. B. to escape.

*Indictment against an accessory after the fact, the principal being convicted. After stating the offence of the principal and the conviction, charge the accessory thus.*— And the jurors aforesaid do further present that C. D. well knowing the said A. B. to have done and committed the said offence after the same was committed as aforesaid, to wit, on the day and year aforesaid, him the said A. B. did unlawfully receive, harbour, comfort and assist in order to enable him the said A. B. to escape.

*Against an accessory after the fact when the principal is unknown.*

The jurors present that some person or persons to the jurors aforesaid unknown, on unlawfully did steal of the goods and chattels of E. F. And the jurors aforesaid do further present that C. D. well knowing the said person to have done and committed the said offence, afterwards did unlawfully receive, harbour, comfort and assist the said person in order to enable him to escape.

See *R.* v. *Blackson*, 8 C. & P. 43; *R.* v. *Pulham*, 9 C. & P. 280.

When the principal is, as allowed by ss. 949 & 951, found guilty of another offence than the one directly charged, the accessories after the fact jointly tried with him may also be found guilty of being accessories to the offence so found against the principal: *R.* v. *Richards*, 13 Cox C. C. 611.

On an indictment charging a man as a principal offender only he cannot be convicted of being an accessory after the fact: *R.* v. *Fallon* (1862), L. & C. 217, 32 L. J. M. C. 66; the two offences are separate and distinct: *R.* v. *Brannon*, 14 Cox C. C. 394.

The accessory may always controvert the guilt of the principal: 1 Russ. 75. But when the principal has been convicted the record of the conviction throws upon the defendant the burden of proving the principal's innocence: 1 Chit. Cr. L. 273; 2 Bish. Cr. Proc. c. 12; *R.* v. *Turner*, 1 Moo. 347.

## PART XI.

### JURISDICTION.

### *Rules of Court.*

**576.** Power to Make Rules.—Every superior court of criminal jurisdiction may at any time, with the concurrence of a majority of the judges thereof present at any meeting held for the purpose, make rules of court, not inconsistent with any statute of Canada, which shall apply to all proceedings relating to any prosecution, proceeding or action instituted in relation to any mattter of a criminal nature, or resulting from or incidental to any such matter, and in particular,—

(*a*) REGULATING SITTINGS—for regulating the sittings of the court or of any division thereof, or of any judge of the court sitting in chambers, except in so far as the same are already regulated by law;

(*b*) REGULATING PRACTICE — for regulating in criminal matters the pleading, practice and procedure in the court, including the subjects of *mandamus*, *certiorari*, *habeas corpus*, prohibition, *quo warranto*, bail and costs, and the proceedings on application to a justice to state and sign a case for the opinion of the courts as to a conviction, order, determination or other proceeding before him; and,

(*c*) GENERAL—generally for regulating the duties of the officers of the court and every other matter deemed expedient for better attaining the ends of justice and carrying the provisions of the law into effect.

2. TO BE LAID BEFORE PARLIAMENT, ETC.—Copies of all rules made under the authority of this section shall be laid before both Houses of Parliament at the session next after the making thereof, and shall also be published in the *Canada Gazette*.

3. AUTHORITY IN ONTARIO FOR MAKING.—In the Province of Ontario the authority for the making of rules of court applicable to superior courts of criminal jurisdiction in the province is vested in the supreme court of judicature, and such rules may be made by the said court at any time with the concurrence of a majority of the judges thereof present at a meeting held for the purpose. 55-56 V., c. 29, s. 533; 63-64 V., c. 46, s. 3.

*General.*

**577.** JURISDICTION OF COURTS GENERALLY.—Unless otherwise specially provided in this Act, every court of criminal jurisdiction in any province is competent to try any crime or offence within the jurisdiction of such court to try, wherever committed within the province, if the accused is found or apprehended or is in custody within the jurisdiction of such court or if he has been committed for trial to such court or ordered to be tried before such court, or before any other

court, the jurisdiction of which has by lawful authority been transferred to such first mentioned court under any Act for the time being in force. 55-56 V., c. 29, s. 640.

Provisional judicial district—Commission to judge to hold court of oyer and terminer—Royal prerogative: *R* v. *Ames*, 12 U. C. R. 391.

**578.** CERTAIN PERSONS NOT TO TRY CASE UNDER S. 501.—No person who is a master, or the father, son or brother of a master in the particular manufacture, trade or business, in or in connection with which any offence under section five hundred and one is charged to have been committed, shall act as a magistrate or justice, in any case of complaint or information under that section, or as a member of any court for hearing any appeal in any such case. R. S., c. 173, s. 12.

*Indictable Offences.*

**579.** QUESTIONS RAISED AT TRIAL MAY BE RESERVED FOR DECISION.—Any judge or other person presiding at the sittings of a court at which any person is tried for an indictable offence under this Act, whether he is the judge of such court or is appointed by commission or otherwise to hold such sittings, may reserve the giving of his final decision on questions raised at the trial; and his decision, whenever given, shall be considered as if given at the time of the trial. 55-56 V., c. 29, s. 753.

**580.** JURISDICTION OF SUPERIOR COURTS.—Every superior court of criminal jurisdiction and every judge of such court sitting as a court for the trial of criminal causes, and every court of oyer and terminer and general gaol delivery has power to try any indictable offence. 55-56 V., c. 29, s. 538.

Superior courts defined, s. 2, s.-s. 35.

The County Courts of New Brunswick are not courts of Oyer and Terminer and General Gaol Delivery: *R.* v. *Wight* (1896), 2 Can. C. C. 83.

**581.** OPTION FOR TRIAL WITHOUT JURY IN TRADE CONSPIRACY CASES.—Where an indictment is found against any person for any of the offences mentioned in section four hundred and ninety-eight, the defendant or person accused shall have the option to be tried before the judge presiding at the

court at which the indictment is found, or the judge presiding at any subsequent sitting of such court, or at any court where the indictment comes on for trial, without the intervention of a jury; and in the event of such option being exercised the proceedings subsequent thereto shall be regulated in so far as may be applicable by Part XVIII. 52 V., c. 41, s. 4.

**582.** JURISDICTION OF SESSIONS AND CERTAIN OTHER COURTS.—Every court of general or quarter sessions of the peace, when presided over by a superior court judge, or a county or district court judge, or in the cities of Montreal and Quebec by a recorder or judge of the sessions of the peace, and in the province of New Brunswick every county court judge has power to try any indictable offence except as hereinafter provided. 55-56 V., c. 29, s. 539; 56 V., c. 32, s. 1.

**583.** IDEM.—No court mentioned in the last preceding section has power to try any offence under sections,—

(*a*) Seventy-four, treason; seventy-six, accessories after the fact to treason; seventy-seven, seventy-eight and seventy-nine, treasonable offences; eighty, assaults on the King; eighty-one, inciting to mutiny; eighty-five, unlawfully obtaining and communicating official information; eighty-six, communicating information acquired in office; or,

(*b*) one hundred and twenty-nine, administering, taking or procuring the taking of oaths to commit certain crimes; one hundred and thirty, administering, taking or procuring the taking of other unlawful oaths; one hundred and thirty-four, seditious offences; one hundred and thirty-five, libels on foreign sovereigns; one hundred and thirty-six, spreading false news; or,

(*c*) one hundred and thirty-seven to one hundred and forty inclusive, piracy; or,

(*d*) one hundred and fifty-six, judicial, etc., corruption; one hundred and fifty-seven, corruption of officers employed in prosecuting offenders; one hundred and fifty-eight, frauds upon the Government; one hundred and sixty, breach of trust by a public officer; one hundred and

sixty-one, municipal corruption; one hundred and sixty-two (*a*), selling offices; or,

(*e*) two hundred and sixty-three, murder; two hundred and sixty-four, attempt to murder; two hundred and sixty-five, threat to murder; two hundred and sixty-six, conspiracy to murder; two hundred and sixty-seven, accessory after the fact to murder; or,

(*f*) two hundred and ninety-nine, rape; three hundred, attempt to commit rape; or,

(*g*) three hundred and seventeen to three hundred and thirty-four, defamatory libel; or,

(*h*) four hundred and ninety-eight, combination in restraint of trade; or,

(*i*) conspiring or attempting to commit, or being accessory after the fact to any of the offences in this section before mentioned; or,

(*j*) any indictment for bribery or undue influence, personation or other corrupt practice under the Dominion Elections Act. 55-56 V., c. 29, s. 540; 57-58 V., c. 57, s. 1; 63-64 V., c. 46, s. 3.

Quære. Is provision as to county courts in New Brunswick intra vires. *Ex parte Wright* (1896), 2 Can. C. C. 83, 34 N. B. R. 127.

### *Special Jurisdiction.*

**584.** For the purposes of this Act,—

(*a*) ON WATER BETWEEN JURISDICTIONS—where the offence is committed in or upon any water, tidal or other, or upon any bridge, between two or more magisterial jurisdictions, such offence may be considered as having been committed in either of such jurisdictions;

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

(*c*) In Respect to Mail on Vehicle or Vessel Passing Through Several Jurisdictions—where the offence is committed on or in respect to a mail, or a person conveying a post letter bag, post letter or anything sent by post, or on any person, or in respect of any property, in or upon any vehicle employed in a journey, or on board any vessel employed on any navigable river, canal or other inland navigation, the person accused shall be considered as having committed such offence in any magisterial jurisdiction through which such vehicle or vessel passed in the course of the journey or voyage during which the offence was committed; and where the centre or other part of the road, or any navigable river, canal or other inland navigation along which the vehicle or vessel passed in the course of such journey or voyage, is the boundary of two or more magisterial jurisdictions, the person accused of having committed the offence may be considered as having committed it in any one of such jurisdictions. 55-56 V., c. 29, s. 553; 63-64 V., c. 46, s. 3.

(1) A justice of the peace who illegally issues a warrant without having received a sworn information in respect of the charge in question, is liable in trespass for the arrest made thereunder, and he cannot justify the ordering of a constable to make the arrest by showing that he (the justice) had a reasonable suspicion that an offence had been committed.

(2) If a justice of the peace is not himself personally arresting the offender on view, or upon suspicion, or personally acting in effecting the arrest by calling someone to his assistance in making the same, he can legally direct the arrest only by a warrant issued upon a written complaint or information upon oath.

(3) Although the arrest has been illegally made under an invalid warrant, jurisdiction attaches to the magistrate when the person arrested is brought before him; and the subsequent detention and commitment may be justified under the order then made by the magistrate.

*McGuiness* v. *Defoe* (1896), 3 Can. C. C. 139.

See also *McGuiness* v. *Defoe* (1895), 27 O. R. 117.

Offence begun in one, and completed in another district: *R.* v. *Hogle* (1896), Q. R. 5 Q. B. 59.

If commenced in one province and completed in another it may be tried in either: *Ex parte Gillespie*, Q. R. 7 Q. B. 422; *R.* v. *Gillespie* (1898), Q. R. 8 Q. B. 8.

A commitment signed by a justice of the peace purporting to act as a justice of the peace in and for the county of Labelle, will be quashed, as there are no justices of the peace with such a designation, and as the officials in question should have acted as justices of the peace in and for the district of Ottawa.

*Ex parte Mary Welsh* (1898), 2 Can. C. C. 35.

*Dagenais* v. *Ellis* (1897), 3 Revue de Jurisp. 96.

Semble, on a writ of *habeas corpus* in such a case based upon the insufficiency of the commitment, the committing justices may furnish the jailer with a legal warrant and so defeat the writ.

*Ex parte Mary Welsh* (1888) 2 Can. C. C. 35.
*Dagenais* v. *Ellis* (1897) 3 R. J. 96.

Semble, on a writ of *habeas corpus* in such a case based upon the insufficiency of the commitment, the committing justices may furnish the jailer with a legal warrant and so defeat the writ.
*Ex parte Mary Welsh, supra.*

Sub-section (*b*) is taken from the 7 Geo. IV., c. 64, s. 12 of the Imperial Acts, with the substitution of five hundred yards for one mile.

That distance is to be measured in a direct line from the border, and not by the nearest road: *R.* v. *Wood*, 5 Jur. 225.

This clause does not enable the prosecutor to *lay* the offence in one county and *try* it in the other, but only to lay *and* try it in either: *R.* v. *Mitchell*, 2 Q. B. 636. See also on this clause: *R.* v. *Jones*, 1 Den. 551; *R.* v. *Leech*, Dears. 642.

Murder, like all other offences, must regularly, according to the common law, be inquired of in the county in which it was committed. It appears, however, to have been a matter of doubt at the common law whether, when a man died in one county of a stroke received in another, the offence could be considered as having been completely committed in either county; but by the 2 & 3 Edw. VI. c. 24, s. 2, it was enacted that the trial should be in the county where the death happened.

Under the said s.-s. (*b*), where the blow is given in one county, and the death takes place in another, the trial may be in either of these counties: 1 Russ. 753. This applies to coroners, when a felony has been committed, but not when the death is the result of an accident: *R.* v. *Great Western Railway Company*, 3 Q. B. 333 and note by Greaves, 1 Russ. 754; *R.* v. *Grand Junction R. Co.*, 11 A. & E.

Sub-section (*c*) is taken from the 7 Geo. IV. c. 64, s. 13 of the Imperial Statutes.

This enactment is not confined in its operation to the carriages of common carriers or to public conveyances, but if property is stolen from any carriage employed on any journey the offender may, by virtue of the above section, be tried in any county through any part whereof such carriage shall have passed in the course of the journey during which such offence shall have been committed: *R.* v. *Sharpe*, Dears. 415.

As to the effect of the words "in or upon" in this section, see *R.* v. *Sharpe*, 2 Lewin 233.

Where the evidence is consistent with the fact of an article having been abstracted from a railway carriage, either in the course of the journey through the county of A., or after its arrival at its ultimate destination in the county of B., and the prisoner is indicted under the above section, the case must go to the jury, who are to say whether they are satisfied that the larceny was committed in the course of the journey or afterwards: *R.* v. *Pierce*, 6 Cox C. C. 117.

**585.** OFFENCES IN UNORGANIZED TRACTS IN ONTARIO.—All offences committed in any of the unorganized tracts of country in the province of Ontario, including lakes, rivers and other waters therein, not embraced within the limits of any organized county, or within any provisional judicial district, may be laid and charged to have been committed and may be inquired of, tried and punished within any county of such province; and such offences shall be within the jurisdiction of any court having jurisdiction over offences of the like nature committed within the limits of such county, be-

fore which court such offences may be prosecuted; and such court shall proceed therein to trial, judgment and execution or other punishment for such offence, in the same manner as if such offence had been committed within the county where such trial is had.

2. PROVISIONAL DISTRICTS OR NEW COUNTIES WITHIN.—When any provisional judicial district or new county is formed and established in any such unorganized tracts, all offences committed within the limits of such provisional judicial district or new county, shall be inquired of, tried and punished within the same, in like manner as such offences would have been inquired of, tried and punished if this section had not been passed.

3. WHERE COMMITTED TO GAOL.—Any person accused or convicted of any offence in any such provisional district may be committed to any common gaol in the province of Ontario. 55-56 V., c. 29, s. 555.

Offences on great inland lakes are as though committed on high seas. Any magistrate may inquire into an offence committed on one of said lakes, even in American waters: *R.* v. *Sharp*, 5 P. R. 135.

**586.** OFFENCES COMMITTED NORTH OF ONTARIO AND QUEBEC.—All offences committed in any part of Canada not in a province duly constituted as such and not in the Yukon Territory may be inquired of and tried within any district, county or place in any province so constituted or in the Yukon Territory as may be most convenient.

2. JURISDICTION.—Such offences shall be within the jurisdiction of any court having jurisdiction over offences of the like nature committed within the limits of such district, county or place.

3. PROCEDURE.—Such court shall proceed to trial, judgment and execution or other punishment for any such offence in the same manner as if such offence had been committed within the district, county or place where such trial is had. 62-63 V., c. 47, s. 1; 6-7 Ed. VII, c. 8, s. 2.

**587.** PROVINCIAL COURTS COMPETENT.—The several courts of criminal jurisdiction in the provinces aforesaid and in the Yukon Territory, including justices, shall have the same powers, jurisdiction and authority in case of such

offences, as they respectively have with reference to offences within their ordinary jurisdiction as provincial or territorial courts. 62-63 V., c. 47, s. 2; 6-7 Ed. VII, c. 8, s. 2.

**588.** OFFENCES COMMITTED IN THE DISTRICT OF GASPÉ.—Whenever any offence is committed in the district of Gaspé, the offender, if committed to gaol before trial, may be committed to the common gaol of the county in which the offence was commiteed, or may, in law, be deemed to have been committed, and if tried before the Court of King's Bench, he shall be so tried at the sitting of such court held in the county to the gaol of which he has been committed, and if imprisoned in the common gaol after trial he shall be so imprisoned in the common gaol of the county in which he has been tried. 55-56 V., c. 29, s. 556.

## PART XII.

### SPECIAL PROCEDURE AND POWERS.

*Offences Requiring Statute.*

**589.** OFFENCES AGAINST IMPERIAL STATUTES.—No person shall be proceeded against for any offence against any Act of the Parliament of England, of Great Britain, or of the United Kingdom of Great Britain and Ireland, unless such Act is, by the express terms thereof, or of some other Act of such Parliament, made applicable to Canada or some portion thereof as part of His Majesty's dominions or possessions. 55-56 V., c. 29, s. 5.

By 28-29 V. c. 63 (Imp.), any colonial law repugnant to any Act of the Imperial Parliament is, to the extent of that repugnancy, void.

**590.** PROSECUTIONS FOR TRADE CONSPIRACY.—No prosecution shall be maintainable against any person for conspiracy in refusing to work with or for any employer or workman, or for doing any act or causing any act to be done for the purpose of a trade combination, unless such act is an offence punishable by statute. 55-56 V., c. 29, s. 518.

*Cases Requiring Consent.*

**591.** OFFENCES WITHIN THE JURISDICTION OF THE ADMIRALTY.—Proceedings for the trial and punishment of a

person who is not a subject of His Majesty, and who is charged with any offence committed within the jurisdiction of the Admiralty of England, shall not be instituted in any court in Canada except with the leave of the Governor-General and on his certificate that it is expedient that such proceedings should be instituted. 55-56 V., c. 29, s. 542.

"If any British subject commits any crime or offence on board any British ship, or on board any foreign ship to which he does not belong, any court of justice in His Majesty's Dominions, which would have had cognizance of such crime or offence if committed on board a British ship within the limits of the ordinary jurisdiction of such court shall have jurisdiction to hear and determine the case as if the said crime or offence had been committed as last aforesaid."

See *R.* v. *Armstrong*, 13 Cox C. C. 184.

A prisoner is "found," within the meaning of s. 21, of 18 & 19 V. c. 91, *ubi supra*, wherever he is actually present, and the court, where he is present, under that Act, has jurisdiction to try him, even if he has been brought there by force as a prisoner: *R.* v. *Lopez*. *R.* v. *Sattler* (1858), Dears. & B. 525; 27 L. J. M. C. 48.

On jurisdiction as to offences committed within the limits of the Admiralty see Archbold, 33; 1 Russ. 762; 1 Burn. 42, and *R.* v. *Keyn* (1876), 13 Cox C. C. 403; *R.* v. *Carr* (1882), 15 Cox C. C. 139; *R.* v. *Anderson* (1868), 11 Cox C. C. 198.

By 41 & 42 V. c. 73 (Imp.), *The Territorial Waters Jurisdiction Act* of 1878, above mentioned, the decision in *R.* v. *Keyn*, *ubi supra*, is not now to be allowed. The large inland lakes of Ontario are within the jurisdiction of the Admiralty: *R.* v. *Sharp*, 5 P. R. 135.

Where a person dies in this Province from ill-treatment received on board a British ship at sea, the trial for manslaughter against the person who ill-treated him must take place in the district where the man died, not where he was apprehended: *R.* v. *Moore*, 2 Dor. Q. B. R. 52; but see now s. 640, *post*. On an indictment for an offence committed on board a British ship upon the high seas, it is not necessary in order to prove the nationality of the ship to produce its register, but the fact that she sailed under the British flag is sufficient: *R.* v. *Moore*, 2 Dor. Q. B. D. 52; see *R.* v. *Bjornsen* (1885), 10 Cox C. C. 74, 520.

And the fact that a foreigner is illegally brought on board his ship does not affect his amenability to the laws of England for an offence there subsequently committed, unless it was one done merely for the purpose of freeing himself from the unlawful restraint.

*R.* v. *Seberg* (1870), L. R. 1 C. C. R. 264, 11 Cox C. C. 520.

In an indictment for a larceny committed on board a British vessel, it is sufficient to say *upon the sea*, without saying upon the *high seas*: *R.* v. *Sprungli*, 4 O. L. R. 110.

As to offences committed by British subjects in foreign countries, "the laws of Great Britain affect her own subjects everywhere," says Dr. Lushington, in the Zollverein, 1 Sw. Adm. Rep. 96; and "an offence may be cognizable, triable and justiciable in two places, *e.g.*, a murder by a British subject in a foreign country. A British subject who commits a murder in the United States of America may be tried and punished here by our municipal law, which is made to extend to its citizens in every part of the world." *Per* Cockburn, C.J., *Re Tivnan*, 5 B. & S. 679.

**592.** DISCLOSING OFFICIAL SECRETS.—No person shall be prosecuted for the offence of unlawfully obtaining and com-

municating official information, without the consent of the Attorney-General or of the Attorney-General of Canada. 55-56 V., c. 29, s. 543.

**593.** JUDICIAL CORRUPTION.—No one holding any judicial office shall be prosecuted for the offence of judicial corruption, without the leave of the Attorney-General of Canada. 55-56 V., s. 29, s. 544.

**594.** MAKING EXPLOSIVE SUBSTANCES.—If any person is charged under section one hundred and thirteen, before a justice with the offence of making or having explosive substances, no further proceeding shall be taken against such person without the consent of the Attorney-General except such as the justice thinks necessary, by remand or otherwise, to secure the safe custody of such person. 55-56 V., c. 29, s. 545.

**595.** SENDING UNSEAWORTHY SHIP TO SEA.—No person shall be prosecuted for the offence of sending an unseaworthy ship to sea on a voyage without the consent of the Minister of Marine and Fisheries. 56 V., c. 32, s. 1.

**596.** CRIMINAL BREACH OF TRUST.—No proceeding or prosecution against a trustee for a criminal breach of trust shall be commenced without the sanction of the Attorney-General. 55-56 V., c. 29, s. 547.

**597.** FRAUDULENT ACTS OF VENDOR OR MORTGAGOR.—No prosecution for concealing any settlement, deed, will, or other instrument material to any title, or any encumbrance, or falsifying any pedigree upon which any title depends, shall be commenced without the consent of the Attorney-General given after previous notice to the person intended to be prosecuted of the application to the Attorney-General for leave to prosecute. 55-56 V., c. 29, s. 548.

**598.** UTTERING DEFACED COIN.—No proceeding or prosecution for the offence of uttering any coin defaced by having stamped thereon any names or words, shall be taken without the consent of the Attorney-General. 55-56 V., c. 29, s. 549.

The words "Attorney-General" mean the Attorney-General or the Solicitor-General of the Province, s. 2.

Where the previous consent of the Attorney-General or some other officer is required for a prosecution, that applies to the preliminary proceedings before the magistrate.

See *R.* v. *Allison*, 16 Cox C. C. 559; *Knowlden* v. *R.*, 9 Cox C. C. 483; *Boaler* v. *R.*, 16 Cox C. C. 488; *R.* v. *Barnett*, 17 O. R. 649.

Section 598 requires the consent of the Attorney-General for a prosecution under the summary convictions clauses.

The power to give consent in question in these sections cannot be delegated: *R.* v. *Abrahams*, 6 S. C. R. 10.

*Provisions as to Ontario and Nova Scotia.*

**599.** Practice in High Court of Justice in Ontario.—The practice and procedure in all criminal cases and matters in the High Court of Justice of Ontario which are not provided for by this Act, shall be the same as the practice and procedure in similar cases and matters heretofore. 55-56 V., c. 29, s. 754.

**600.** Commission of Court of Assize, etc.—If any general commission for the holding of a court of assize and *nisi prius*, oyer and terminer or general gaol delivery is issued by the Governor-General for any county or district in the province of Ontario, such commission shall contain the names of the justices of the Supreme Court of Judicature for Ontario, and may also contain the names of the judges of any of the county courts in Ontario, and of any of His Majesty's counsel learned in the law duly appointed for the province of Upper Canada, or for the province of Ontario, and if any such commission is for a provisional judicial district such commission may contain the name of the judge of the district court of the said district.

2. Who Shall Preside.—The said courts shall be presided over by one of the justices of the said Supreme Court, or in their absence by one of such county court judges or by one of such counsel, or in the case of any such district by the judge of such district court. 55-56 V., c. 29, s. 755.

**601.** Gaol Delivery by Court of General Sessions.—It shall not be necessary for any court of general sessions in the province of Ontario to deliver the gaol of all prisoners who are confined upon charges of theft, but the court may leave any such cases to be tried at the next court of oyer and terminer and general gaol delivery, if, by reason of the diffi-

culty or importance of the case, or for any other cause, it appears to it proper so to do. 55-56 V., c. 29, s. 756.

**602.** Calendar of Criminal Cases in Nova Scotia.—In the province of Nova Scotia a calendar of the criminal cases shall be sent by the Clerk of the Crown to the grand jury in each term, together with the depositions taken in each case and the names of the different witnesses. 63-64 V., c. 46, s. 3.

In Nova Scotia, an indictment need not have the words "a true bill" indorsed thereon: *R.* v. *Townshend* (1896), 28 N. S. R. 468.

Nor need the names of witnesses examined before the grand jury be initialled by the foreman, under sec. 876: *Ib.*

See *R.* v. *Hamilton* (1898), 2 Can. C. C. 178.

**603.** Sentences in Nova Scotia.—A judge of the Supreme Court of Nova Scotia may sentence convicted criminals on any day of the sittings at Halifax, as well as in term time. 55-56 V., c. 29, s. 761.

*Powers General of Certain Officials.*

**604.** Officials with Powers of Two Justices.—The Judge of the Sessions of the Peace for the city of Quebec, the Judge of the Sessions of the Peace for the city of Montreal, and every recorder, police magistrate, district magistrate or stipendiary magistrate appointed for any territorial division, and every magistrate authorized by the law of the province in which he acts to perform acts usually required to be done by two or more justices, may do alone whatever is authorized by this Act to be done by any two or more justices. 55-56 V., c. 29, s. 541.

**605.** Clerk of the Peace, Montreal.—In the district of Montreal the Clerk of the Peace or Deputy Clerk of the Peace shall have all the powers of a justice under Parts XIII. and XIV., and under sections six hundred and twenty-nine to six hundred and forty-three, inclusive. 58-59 V., c. 40, s. 1.

**606.** Jurisdiction as to Prize Fights.—Every judge of a superior court or of a county court, judge of the sessions of the peace, stipendiary magistrate, police magistrate, and commissioner of police of Canada, shall, within the limits of his jurisdiction as such judge, magistrate or commissioner,

have all the powers of a justice with respect to offences against provisions of this Act as to prize fights. R.S., c. 153, s. 10.

**607.** PRESERVING ORDER IN COURT.—Every judge of the sessions of the peace, chairman of the court of general sessions of the peace, police magistrate, district magistrate or stipendiary magistrate, shall have such and like powers and authority to preserve order in courts held by them during the holding thereof, and by the like ways and means as now by law are or may be exercised and used in like cases and for the like purposes by any court in Canada, or by the judges thereof, during the sittings thereof. 55-56 V., c. 29, s. 908.

**608.** RESISTANCE TO EXECUTION OF PROCESS.—Every judge of the sessions of the peace, chairman of the court of general sessions of the peace, recorder, police magistrate, district magistrate or stipendiary magistrate, whenever any resistance is offered to the execution of any summons, warrant of execution or other process issued by him, may enforce the due execution of the same by the means provided by the law for enforcing the execution of the process of other courts in like cases. 55-56 V., c. 29, s. 909; 56 V., c. 32, s. 1.

*Special Powers and Duties of Certain Officials.*

**609.** PERSONS CARRYING WEAPON IN PROCLAIMED DISTRICT. ARREST OF.—Any commissioner, or justice, constable or peace officer, or any person acting under a warrant, in aid of any constable or peace officer, may arrest and detain any person employed on any public work, found carrying any weapon, within any place in which Part III. is, at the time, in force, at such time and in such manner as, in the judgment of such commissioner, justice, constable or peace officer, or person acting under a warrant, afford just cause of suspicion that it is carried for purposes dangerous to the public peace.

2. COMMITTAL.—The justice or commissioner arresting such person, or before whom he is brought, may commit him for trial unless he gives sufficient bail for his appearance at the next term or sitting of the court before which the offence can be tried, to answer to any indictment to be then preferred against him. R.S., c. 151, s. 7.

**610.** Search Warrant for Weapon.—Any commissioner or any justice having authority within any place in which Part III. is at the time in force, upon oath before him of belief of the deponent that any weapon is in the possession of any person or in any house or place contrary to the provisions of Part III. may issue his warrant to any constable or peace officer to search for and seize the same.

2. Seizure of Same.—Such constable or peace officer, or any person in his aid, may seach for and seize the same in the possession of any person, or in any such house or place. R. S., c. 151, s. 8.

**611.** Right of Entry for Search.—If admission to any such house or place is refused after demand, such constable or peace officer and any person in his aid, may enter the same by force, by day or by night, and seize any such weapon and deliver it to such commissioner or justice.

2. Confiscation of Weapon.—Unless the person in whose possession or in whose house or premises the same is found, within four days next after the seizure, proves, to the satisfaction of such commissioner or justice that the weapon so seized was not in his possession or in his house or place contrary to the provisions of Part III., such weapon shall be forfeited to the use of His Majesty. R. S., c. 151, s. 9.

**612.** Disposal of Forfeited Arms.—All weapons declared forfeited under Part III. shall be sold or destroyed under the direction of the commissioner or justice by whom or by whose authority the same are seized, or before whom the same are brought, and the proceeds of such sale, after deducting necessary expenses, shall be received by such commissioner and paid over by him to the Minister of Finance for the public uses of Canada. R. S., c. 151, s. 10.

**613.** Search for and Seizure of Liquors in Proclaimed District.—If any person makes oath or affirmation before any such commissioner or justice, that he has reason to believe, and does believe, that any intoxicating liquor with respect to which a violation of the provisions of section one hundred and fifty has been committed or is intended to be committed is on board of any steam boat, vessel, boat, canoe, raft or other craft, or in any railway carriage or freight car

or in any carriage, vehicle or other conveyance, or in any railway station, freight shed or other railway building, or in or about any other building or premises, or in any other place within the limits specified in any proclamation under the said Part, the commissioner or justice shall issue a search warrant to any sheriff, police officer, constable or bailiff, who shall forthwith proceed to search the steamboat, vessel, boat, canoe, raft, or other craft, or the railway carriage, freight car or the carriage, vehicle or conveyance, or the railway station, freight shed, or other railway building, or the other building or premises, or the place described in such search warrant.

2. Seized Liquor Securely Kept.—If any intoxicating liquor is found therein or thereon the person executing such search warrant shall seize the intoxicating liquor and the barrels, casks, jars, bottles or other packages in which it is contained, and shall keep it and them secure until final action is had thereon.

3. Information when there is no Shop or Bar.—No dwelling-house in which, or in part of which, or on the premises whereof, a shop or bar, is not kept, shall be searched, unless the said informant also makes oath or affirmation that some offence in violation of the provisions of the said section has been committed therein or therefrom within one month next preceding the time of making his said information for a search warrant. R. S., c. 151, s. 16; 6-7 Ed. VII. c. 9, s. 4.

**614.** Owner to be Summoned.—The owner, keeper or person in possession of the intoxicating liquor so seized, if he is known to the officer seizing it, shall be brought forthwith before the commissioner or justice who issued the search warrant, and if it appears to the satisfaction of the commissioner or justice that a violation of the provisions of the said section has been committed, or was intended to be committed, with respect to such intoxicating liquor, it shall be declared forfeited, with any package in which it is contained, and shall be destroyed by authority of the written order to that effect of the commissioner or justice, and in the presence of some person appointed by him to witness the destruction thereof.

3. ATTESTATION OF DESTRUCTION.—Such commissioner or justice, or the person so appointed by him, and the officer by whom the said intoxicating liquor has been destroyed, shall jointly attest, in writing upon the back of the said order, the fact that it has been destroyed. R. S., c. 151, s. 16; 6-7 Ed. VII. c. 9, s. 5.

SEIZURE OF LIQUOR.—Every officer appointed under Part III. of *The Criminal Code*, and every constable appointed under any law of Canada, may seize upon view anywhere within the limits specified in any proclamation under the said Part, any intoxicating liquor in respect of which he has reason to believe that a violation of the provisions of the said Part is intended, and he shall forthwith convey any liquor so seized, together with the owner or person in possession thereof, before a commissioner or justice, who shall thereupon proceed as is provided in section 641. 6-7 Ed. VII. c. 9, s. 6.

**615.** OWNER, KEEPER OR POSSESSOR MAY BE CONVICTED AT ONCE.—The owner, keeper or person in possession of any intoxicating liquor so seized and forfeited may be convicted of an offence against the said section without any further information laid or trial had, and shall be liable to the penalties mentioned in section one hundred and fifty-one. R. S., c. 151, s. 16.

**616.** PROCEDURE IF OWNER IS UNKNOWN.—If the owner, keeper or possessor of intoxicating liquor seized as aforesaid, is unknown to the officer seizing the same, it shall not be condemned and destroyed until the fact of such seizure, with the number and description of the packages, as near as may be, has been advertised for two weeks by posting up a written or a printed notice and description thereof, in at least three public places, in the place where it was seized.

2. WHEN LIQUOR MAY BE DELIVERED TO OWNER.—If it is proved within such two weeks to the satisfaction of the commissioner or justice by whose authority such intoxicating liquor was seized, that with respect to such intoxicating liquor no violation of the provisions of section one hundred and fifty has been committed or is intended to be committed, it shall not be destroyed, but shall be delivered to the owner, who shall give his receipt therefor in writing upon the back of the

search warrant, which shall be returned to the commissioner or justice who issued the same.

3. Forfeiture and Destruction in other Cases.—If after such advertisement as aforesaid, it appears to such commissioner or justice that a violation of the provisions of the said section has been committed or is intended to be committed, then such intoxicating liquor, with any package in which it is contained, shall be forfeited and destroyed as hereinbefore provided. R. S., c. 151, s. 17.

**617.** Evidence of Precise Description of Liquor not Necessary.—In any prosecution under this Act for any offence with respect to intoxicating liquor, it shall not be necessary that any witness should depose directly to the precise description of the liquor with respect to which the offence has been committed, or to the precise consideration therefor, or to the fact of the offence having been committed with his participation or to his own personal and certain knowledge; but the commissioner or justice trying the case, so soon as it appears to him that the circumstances in evidence sufficiently establish the offence complained of, shall put the defendant on his defence, and in default of such evidence being rebutted, shall convict the defendant accordingly. R. S., c. 151, s. 19.

**618.** Summary Convictions.—Any commissioner or justice may hear and determine, in manner provided by Part XV., any case arising within his jurisdiction.

2. Part to Apply.—All the provisions of Part XV. shall, in so far as they are not inconsistent with this Part, apply to every commissioner or justice mentioned in this Part or empowered to try offenders against Part III.

3. Commissioner a Justice under Part XV.—Every such commissioner shall be deemed a justice within the meaning of Part XV., whether he is or is not a justice for other purposes. R. S., c. 151, ss. 20 and 21.

**619.** Justices may Disarm Persons Attending Meeting.—Any justice within whose jurisdiction any public meeting is appointed to be held may demand, have and take of and from any person attending such meeting, or on his way to attend the same, without his consent and against his will, by such force as is necessary for that purpose, any offensive

weapon, such as firearms, swords, staves, bludgeons, or the like, with which any such person is so armed, or which any such person has in his possession. R. S., c. 152, s. 1.

**620.** RESTITUTION OF WEAPONS.—Upon reasonable request to any justice to whom any such weapon has been peaceably and quietly delivered as aforesaid, made on the day next after the meeting has finally dispersed, and not before, such weapon shall, if of the value of one dollar or upwards, be returned to such justice to the person from whom the same was received. R. S., c. 152, s. 2.

**621.** NO LIABILITY IN CASE OF ACCIDENTAL LOSS. — No such justice shall be held liable to return any such weapon, or make good the value thereof, if the same, by unavoidable accident, has been actually destroyed or lost out of the possession of such justice without his wilful default. R. S., c. 152, s. 3.

**622.** WEAPON, NOT A PISTOL, TO BE IMPOUNDED. — The court or justice before whom any person is convicted of any offence against the provisions of sections one hundred and twenty to one hundred and twenty-four inclusive, shall impound the weapon for carrying which such person is convicted, and if the weapon is not a pistol, shall cause it to be destroyed.

2. IF PISTOL, TO BE HANDED OVER TO MUNICIPALITY.—If the weapon is a pistol, the court or justice shall cause it to be handed over to the corporation of the municipality in which the conviction takes place, for the public uses of such corporation.

3. TO LIEUTENANT-GOVERNOR, WHEN.—If the conviction takes place where there is no municipality, the pistol shall be handed over to the lieutenant-governor of the province in which the conviction takes place, for the public uses thereof in connection with the administration of justice therein. R. S., c. 148, s. 7.

**623.** SEIZURE OF COPPER COIN UNLAWFULLY IMPORTED.—Any two or more justices, on oath that any copper coin has been unlawfully manufactured or imported, shall cause the

same to be seized and detained, and shall summon the person in whose possession the same is found, to appear before them.

2. FORFEITURE ON PROOF.—If it appears to their satisfaction, on evidence, that such copper coin has been manufactured or imported in violation of this Act, such justices shall declare the same forfeited, and shall place the same in safe keeping to await the disposal of the Governor-General, for the public uses of Canada. R. S., c. 167, s. 29.

**624.** KNOWLEDGE—PENALTY.—If it appears, to the satisfaction of such justices, that the person in whose possession such copper coin was found, knew the same to have been so unlawfully manufactured or imported, they may condemn him to pay the penalty provided by Part IX., for manufacturing or importing copper coin, with costs, and may cause him to be imprisoned for a term not exceeding two months, if such penalty and costs are not forthwith paid. R. S., c. 167, s. 30.

Penalty, section 1041.

**625.** RECOVERY OF PENALTY FROM THE OWNER IN CERTAIN CASES.—If it appears, to the satisfaction of such justices, that the person in whose possession such copper coin was found was not aware of it having been so unlawfully manufactured or imported, the penalty may be recovered from the owner thereof by any person who sues for the same in any court of competent jurisdiction. R.S., c. 167, s. 31.

Penalty, section 1041.

**626.** OFFICER OF CUSTOMS MAY SEIZE THE COIN.—Any officer of customs may seize any copper coin imported or attempted to be imported into Canada in violation of this Act, and may detain the same as forfeited, to await the disposal of the Governor-General, for the public uses of Canada R. S., c. 167, s. 32.

Penalty, section 1041.

**627.** PROCEEDINGS WHEN PRIZE-FIGHT ANTICIPATED—ARREST.—If, at any time, the sheriff of any county, place or district in Canada, any chief of police, any police officer, or any constable or other peace officer has reason to believe that

any person within his bailiwick or jurisdiction is about to engage as principal in any prize-fight within Canada, he shall forthwith arrest such person and take him before a justice, and shall forthwith make complaint in that behalf, upon oath, before such justice.

2. RECOGNIZANCE.—Such justice shall inquire into the charge, and if he is satisfied that the person so brought before him was, at the time of his arrest, about to engage as a principal in a prize-fight, he shall require him to enter into a recognizance, with sufficient sureties, in a sum not exceeding five thousand dollars and not less than one thousand dollars, conditioned that he will not engage in any such fight within one year from and after the date of such arrest.

3. COMMITMENT IN DEFAULT.—In default of such recognizance, the justice before whom the accused has been brought shall commit the accused to the gaol of the county, district or city within which such inquiry takes place, or if there is no common gaol there, then to the common gaol nearest to the place where such inquiry is had, there to remain for the space of one year or until he gives such recognizance with such sureties. R. S., c. 153, s. 6.

**628.** SHERIFF MAY SUMMON POSSE.—If any sheriff has reason to believe that a prize-fight is taking place or is about to take place within his jurisdiction as such sheriff, or that any persons are about to come into Canada at a point within his jurisdiction, from any place outside of Canada, with intent to engage in, or to be concerned in, or to attend any prize-fight within Canada, he shall forthwith summon a force of the inhabitants of his district or county sufficient for the purpose of suppressing and preventing such fight.

2. PREVENT THE FIGHT AND ARREST PERSONS PRESENT.—Such sheriff shall with their aid, suppress and prevent the same, and arrest all persons present thereat, or who come into Canada as aforesaid, and shall take them before a justice to be dealt with according to law. R. S., c. 153, s. 7.

**629.** INFORMATION FOR SEARCH WARRANT — FORM.—Any justice who is satisfied by information upon oath in form 1, that there is reasonable ground for believing that there is in any building, receptacle, or place,—

(*a*) anything upon or in respect of which any offence against this Act has been or is suspected to have been committed; or,

(*b*) anything which there is reasonable ground to believe will afford evidence as to the commission of any such offence; or,

(*c*) anything which there is reasonable ground to believe is intended to be used for the purpose of committing any offence against the person for which the offender may be arrested without warrant;

SEARCH WARRANT—may at any time issue a warrant under his hand authorizing some constable or other person named therein to search such building, receptacle or place, for any such thing, and to seize and carry it before the justice issuing the warrant, or some other justice for the same territorial division to be by him dealt with according to law. 55-56 V., c. 29, s. 569.

A warrant to search for stolen goods was addressed to "all or any of the constables or other peace officers in the county of Cape Breton," and it authorized any one of the constables or peace officers to enter during the daytime into the dwelling-house of five persons mentioned by name, "or any other house at Little Glace Bay if there is any suspicion that said goods and wares be in such house." It was held that this warrant was a general one and was void, and that it afforded no justification to the officer acting under it.

*McLeod* v. *Campbell* (1894), 26 N. S. R. 458.

*Held*, that the warrant above referred to was bad, since it delegated to an officer the duties of the justice, by enabling him to act on suspicions arising in his mind after the issue of the warrant.

*McLeod* v. *Campbell*, *supra*.

FORM 1.

INFORMATION TO OBTAIN A SEARCH WARRANT.

Canada,
Province of
County of

The information of A. B., of , in the said county (*yeomen*) taken this day of , in the year , before me, J. S., Esquire, a justice of the peace, in and for the district (or county, etc.,) of , who says that (*describe things to be searched for and offence in respect of which search is made*), and that he has just and reasonable cause to suspect, and suspects, that the said goods and chattels, or some part of them are concealed in the (*dwelling-house, &c.*) of C. D. of in the said county, (*here add the causes of suspicion, whatever they may be*): Wherefore (*he*) prays that a search warrant may be granted to him to search the (*dwelling-house, &c.*), of the said C. D., as aforesaid, for the said goods and chattels so feloniously stolen, taken and carried away as aforesaid.

Sworn (*or* affirmed) before me the day and year first above mentioned, at , in the said county of .

J. S.,
*J. P., (Name of district or county, etc.)*

63-64 V. c. 64. Form v.

**630.** EXECUTION OF SEARCH WARRANT.—Every search warrant shall be executed by day, unless the justice shall by the warrant authorize the constable or other person to execute it at night.

2. FORM.—Every search warrant may be in form 2, or to the like effect. 55-56 V., c. 29, s. 569.

(*Section* 630.)

FORM 2.

WARRANT TO SEARCH.

Canada,
Province of .
County of .

To all or any of the constables and other peace officers in the said county of .

Whereas it appears on the oath of A. B. of , that there is reason to suspect that (*describe things to be searched for and offence in respect of which search is made*) are concealed in at .

This is, therefore, to authorize and require you to enter between the hours of (*as the justice shall direct*) into the said premises, and to search for the said things, and to bring the same before me or some other justice.

Dated at , in the said county of , this day of , in the year .

J. S.,
J. P., (*Name of county*).

To of .

55-56 V., c. 29, sch. 1, form 1.

**631.** DEFINITION OF THINGS SEIZED. — When any such thing is seized and brought before a justice, he may detain it, taking reasonable care to preserve it till the conclusion of the investigation; and, if any one is committed for trial, he may order it further to be detained for the purpose of evidence on the trial.

2. RESTORATION.—If no one is committed, the justice shall direct such thing to be restored to the person from whom it was taken, except in the cases next hereinafter mentioned, unless he is authorized or required by law to dispose of it otherwise. 55-56 V., c. 29, s. 569.

**632.** FORGED BANK NOTE, ETC., FOUND MAY BE DESTROYED. —If under any such warrant there is brought before any justice any forged bank note, bank note-paper, instrument or other thing, the possession whereof in the absence of lawful

excuse is an offence under any provision of this or any other Act, the court to which any such person is committed for trial or, if there is no commitment for trial, such justice may cause such thing to be defaced or destroyed.

2. COUNTERFEIT COIN TO BE DEFACED.—If under any such warrant there is brought before any justice, any counterfeit coin or other thing the possession of which with knowledge of its nature and without lawful excuse is an indictable offence under any provision of Part IX., every such thing so soon as it has been produced in evidence, or so soon as it appears that it will not be required to be so produced, shall forthwith be defaced or otherwise disposed of as the justice or the court directs. 55-56 V., c. 29, s. 569.

**633.** SEIZURE OF EXPLOSIVES.—Every person acting in the execution of any such warrant may seize any explosive substance which he has good cause to suspect is intended to be used for any unlawful object, and shall, with all convenient speed, after the seizure, remove the same to such proper place as he thinks fit, and detain the same until ordered by a judge of a superior court to restore it to the person who claims the same.

2. FORFEITURE. — Any explosive substance so seized shall in the event of the person in whose possession the same is found, or of the owner thereof, being convicted of any offence under any provision of Part II., relating to explosive substances, be forfeited; and the same shall be destroyed or sold under the direction of the court before which such person is convicted.

3. APPLICATION OF PROCEEDS.—In the case of sale, the proceeds arising therefrom shall be paid to the Minister of Finance, for the public uses of Canada. 55-56 V., c. 29, s. 569.

**634.** OFFENSIVE WEAPONS SEIZED.—If offensive weapons believed to be dangerous to the public peace are seized under a search warrant the same shall be kept in safe custody in such place as the justice directs, unless the owner thereof proves, to the satisfaction of such justice, that such offensive weapons were not kept for any purpose dangerous to the public peace.

2. Restoration or Safe Custody. — Any person from whom any such offensive weapons are so taken may, if the justice upon whose warrant the same are taken, upon application made for that purpose, refuses to restore the same, apply to a judge of a superior or county court for the restitution of such offensive weapons, upon giving ten days' previous notice of such application to such justice; and such judge shall make such order for the restitution or safe custody of such offensive weapons as upon such application appears to him to be proper. 55-56 V., c. 29, s. 569.

**635.** Suspected Goods, Instruments or Things Seized. —If goods or things by means of which it is suspected that an offence has been committed against any provision of Part VII. relating to forgery of trade marks and fraudulent marking of merchandise, are seized under a search warrant, and brought before a justice, such justice and one or more other justice or justices shall determine summarily whether the same are or are not forfeited under the said Part.

2. When Owner cannot be Found.—If the owner of any goods or things which, if the owner thereof has been convicted, would be forfeited under this Act, is unknown or cannot be found, an information or complaint may be laid for the purpose only of enforcing such forfeiture, and the said justice may cause notice to be advertised stating that unless cause is shown to the contrary at the time and place named in the notice, such goods or things will be declared forfeited.

3. Forfeiture.—At such time and place the justice, unless the owner, or some person on his behalf, or other person interested in the goods or things, shows cause to the contrary, may declare such goods or things, or any of them, forfeited. 55-56 V., c. 29, s. 569.

**636.** Search for Public Stores by Peace Officer Deputed.—Any constable or other peace officer, if deputed by any public department, may, within the limits for which he is such constable or peace officer, stop, detain and search any person reasonably suspected of having or conveying in any manner any public stores, stolen or unlawfully obtained, or any vessel, boat or vehicle in or on which there is reason to suspect that any public stores stolen or unlawfully obtained may be found.

2. When Deemed Deputed.—A constable or other peace officer shall be deemed to be deputed within the meaning of this section if he is deputed by any writing signed by the person who is the head of such department, or who is authorized to sign documents on behalf of such department. 55-56 V., c. 29, s. 570.

**637.** Search Warrant for Gold, Silver, Ore or Quartz.—On complaint in writing made to any justice of the county, district or place, by any person interested in any mining claim, that mined gold or gold-bearing quartz, or mined or unmanufactured silver or silver ore, is unlawfully deposited in any place, or held by any person contrary to law, a general search warrant may be issued by such justice, as in the case of stolen goods, including any number of places or persons named in such complaint.

2. Restoration.—If, upon search, any such gold or gold-bearing quartz or silver or silver ore is found to be unlawfully deposited or held, the justice shall make such order for the restoration thereof to the lawful owner as he considers right.

3. Appeal.—The decision of the justice in such case is subject to appeal as in ordinary cases coming within the provisions of Part XV. 55-56 V., c. 29, s. 571.

**638.** Search for Timber, etc., Unlawfully Detained.—If any constable or other peace officer has reasonable cause to suspect that any timber, mast, spar, saw-log or other description of lumber, belonging to any lumberman or owner of lumber, and bearing the registered trade mark of such lumberman or owner of lumber, is kept or detained in any saw-mill, mill-yard, boom or raft, without the knowledge or consent of the owner, such constable or other peace officer may enter into or upon such saw-mill, mill-yard, boom or raft, and search or examine for the purpose of ascertaining whether such timber, mast, spar, saw-log or other description of lumber is detained therein without such knowledge or consent. 55-56 V., c. 29, s. 572.

**639.** Search for Liquor Near His Majesty's Vessels—Forfeiture.—Any officer in His Majesty's service, any warrant or petty officer of the navy, or any non-commissioned

officer of marines, with or without seamen or persons under his command, may search any boat or vessel which hovers about or approaches or which has hovered about or approached any of his Majesty's ships or vessels mentioned in section one hundred and forty-one, and may seize any intoxicating liquor found on board such boat or vessel; and the liquor so found shall be forfeited to the Crown. 55-56 V., c. 29, s. 573.

**640.** SEARCH FOR WOMEN IN HOUSE OF ILL-FAME—WARRANT.—Whenever there is reason to believe that any woman or girl mentioned in section two hundred and sixteen of this Act, has been inveigled or enticed to a house of ill-fame or assignation, then upon complaint thereof being made under oath by the parent, husband, master or guardian of such woman or girl, or in the event of such woman or girl having no known parent, husband, master or guardian in the place in which the offence is alleged to have been committed, by any other person, to any justice, or to a judge of any court authorized to issue warrants in cases of alleged offences against the criminal law, such justice or judge may issue a warrant to enter, by day or night, such house of ill-fame or assignation, and if necessary use force for the purpose of effecting such entry whether by breaking open doors or otherwise, and to search for such woman or girl, and bring her and the person or persons in whose keeping and possession she is, before such justice or judge, who may, on examination, order her to be delivered to her parent, husband, master or guardian, or to be discharged, as law and justice require. 55-56 V., c. 29, s. 574.

See *Lea* v. *Charrington*, 16 Cox C. C. 704, 23 Q. B. D. 45.

**641.** SEARCH IN GAMING HOUSE—ORDER FOR SEARCH IN WRITING.—If the chief constable or deputy chief constable of any city, town, incorporated village or other municipality or district, organized or unorganized, or place, or other officer authorized to act in his absence, reports in writing to any of the commissioners of police or to the mayor or chief magistrate or to the police, stipendiary or district magistrate of such city, town, incorporated village or other municipality, district or place, or to any police, stipendiary or district magistrate having jurisdiction there, or if there be no such mayor, or chief magistrate, or police, stipendiary or district

magistrate, to any justice having such jurisdiction, that there are good grounds for believing, and that he does believe that any house, room or place within the said city or town, incorporated village or other municipality, district or place, is kept or used as a common gaming or betting house, as defined in sections two hundred and twenty-six and two hundred and twenty-seven, or is used for the purpose of carrying on a lottery, or for the sale of lottery tickets, or for the purpose of conducting or carrying on any scheme, contrivance or operation for the purpose of determining the winners in any lottery contrary to the provisions of section two hundred and thirty-six, whether admission thereto is limited to those possessed of entrance keys or otherwise, such commissioner, mayor, chief magistrate, police, stipendiary or district magistrate or justice may, by order in writing, authorize the chief constable, deputy chief constable, or other officer as aforesaid, to enter any such house, room or place, with such constables as are deemed requisite by him, and if necessary to use force for the purpose of effecting such entry, whether by breaking open doors or otherwise, and to take into custody all persons who are found therein, and to seize, as the case may be, all tables and instruments of gaming or betting, and all moneys and securities for money, and all instruments or devices for the carrying on of such lottery, or of such scheme, contrivance or operation, and all lottery tickets found in such house or premises, and to bring the same before the person issuing such order or any justice, to be by him dealt with according to law.

2. Search and Seizure.—The chief constable, deputy chief constable or other officer making such entry, in obedience to any such order, may, with the assistance of one or more constables, search all parts of the house, room or place which he has so entered, where he suspects that tables or instruments of gaming or betting, or any instruments or devices for the carrying on of such lottery or of such scheme, contrivance or operation, or any lottery tickets, are concealed, and all persons whom he finds in such house or premises, and seize all tables and instruments of gaming or betting, or any such instruments of gaming or betting, or any such instruments or devices or lottery tickets as aforesaid, which he so finds.

3. Destruction of Property Seized.—The person issuing such order or the justice before whom any person is taken

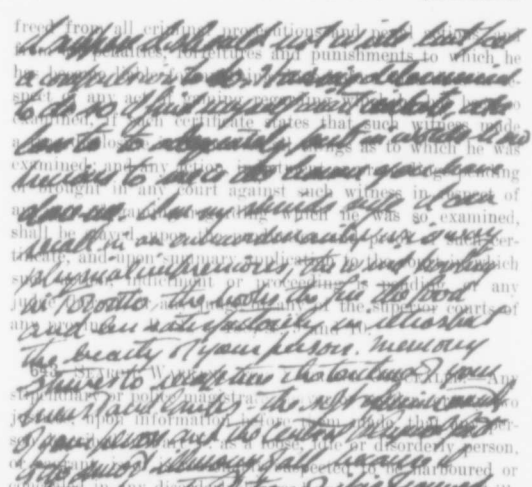
Dear H., — I know I suppose I should
not write but feel at the same time a
compulsion to do so. Life would be so
simple and easy and yet somehow I am
attracted if it would fall into easy
compartments both physical and mental
and if all concerned would see it. [illegible]
myself in a [illegible] and clutching
at the memory of your sweetness and
your [illegible]
in [illegible] your beauty and
feeling again the [illegible]
the [illegible] your [illegible]
[illegible]
my [illegible] at the [illegible]
[illegible] at the [illegible]
[illegible] of [illegible]
you [illegible] which might
not [illegible]
At the [illegible]
[illegible]
[illegible]
[illegible]
adds to [illegible] and [illegible]
a distraction [illegible]
[illegible]
to [illegible]
entirely physically [illegible]

by virtue of an order under this section, may direct any cards, [illegible] other instruments of gaming or used in playing any game [illegible] ments or devices for the carrying on of a lottery [illegible] carrying on of any such scheme, contrivance or [illegible] tickets, so seized as aforesaid, to be forthwith destroyed [illegible] shall be forfeited to the Crown for the public uses of [illegible]

Report need not come from officer having exact title of chief or deputy chief constable [illegible] of such officer, as the deputy high constable of Montreal, and even though [illegible] v. [illegible] Canada, 26 [illegible] C. R. 122.

642. MAGISTRATE MAY [illegible] PRE[illegible] EXAMINED ON OATH—PUNISHMENT [illegible] PER[illegible] EVIDENCE.—The person issuing such order or the justice [illegible] been found in any house, room or place entered in [illegible] preceding section, or taken by virtue of such order [illegible] examined on oath and to give evidence touching any unlawful gaming in such house [illegible] or touching any act done for the purpose of preventing [illegible] into such house, room or place, or any part thereof [illegible] stable [illegible] authorized to make such entry; and any such person so required to be examined [illegible] accordingly, or to answer any question, shall be subject [illegible] with [illegible] person appearing as a witness before any justice or court [illegible] a [illegible] may, by law, be dealt with.

2. [illegible] ERY TO BE FREE FROM ALL PENALTIES [illegible] TIFICATE.—Every person so required to be examined as a witness, who upon such examination, makes true disclosure, to the best of his [illegible] as to which he is examined shall receive from the judge, justice, magistrate, examiner or other judicial officer before whom such proceeding is had, a certificate in writing to that effect, and shall be



[illegible]

PART XIII.

COMPELLING APPEARANCE OF ACCUSED BEFORE JUSTICES.

*Arrest without Warrant.*

646. By ANY PERSON IN CASE OF FLAGRANT CRIME.—Any person may arrest without warrant any one who is found committing any criminal offence, and may take him before a justice of the peace to be dealt with according to law.

(2) By PEACE OFFICER WHERE OFFENCE IS ON REASONABLE GROUNDS.—Any peace officer may arrest without warrant any one who has committed or who on reasonable grounds he believes has committed or is about to commit any indictable offence, whether such offence was committed or is about to be committed within the limits of the jurisdiction over which the officer exercises his functions or elsewhere, and may take him before a justice of the peace to be dealt with according to law.

(3) By OWNER OR PERSON IN CHARGE OF PROPERTY.—Any owner or person in charge of property may arrest without warrant any one who has committed or who on reasonable grounds he believes has committed or is about to commit any indictable offence on or with respect to such property, and may take him before a justice of the peace to be dealt with according to law.

(4) By PEACE OFFICER ON INFORMATION.—Any peace officer may arrest without warrant any one who has committed or who on reasonable grounds he believes has committed or is about to commit any indictable offence, on information that any other person has committed or is about to commit such offence, and may take him before a justice of the peace to be dealt with according to law.

(5) By PEACE OFFICER OF OFFENCE AGAINST PEACE.—Any peace officer may arrest without warrant any one who has committed or who on reasonable grounds he believes has committed or is about to commit any offence against the peace in his presence, and may take him before a justice of the peace to be dealt with according to law.

(6) By PEACE OFFICER OF BREACH OF RECOGNIZANCE.—Any peace officer may arrest without warrant any one who has committed or who on reasonable grounds he believes has committed or is about to commit a breach of any recognizance, and may take him before a justice of the peace to be dealt with according to law.

(7) By PEACE OFFICER OF OFFENCE AGAINST PROCESS.—Any peace officer may arrest without warrant any one who has committed or who on reasonable grounds he believes has committed or is about to commit any offence against any process issued by any court or justice, and may take him before a justice of the peace to be dealt with according to law.

(8) By PEACE OFFICER OF OFFENCE AGAINST PUBLIC PEACE.—Any peace officer may arrest without warrant any one who has committed or who on reasonable grounds he believes has committed or is about to commit any offence against the public peace, and may take him before a justice of the peace to be dealt with according to law.

(9) By PEACE OFFICER OF OFFENCE AGAINST PUBLIC PEACE.—Any peace officer may arrest without warrant any one who has committed or who on reasonable grounds he believes has committed or is about to commit any offence against the public peace, and may take him before a justice of the peace to be dealt with according to law.

(10) By PEACE OFFICER OF OFFENCE AGAINST PUBLIC PEACE.—Any peace officer may arrest without warrant any one who has committed or who on reasonable grounds he believes has committed or is about to commit any offence against the public peace, and may take him before a justice of the peace to be dealt with according to law.

(11) By PEACE OFFICER OF OFFENCE AGAINST PUBLIC PEACE.—Any peace officer may arrest without warrant any one who has committed or who on reasonable grounds he believes has committed or is about to commit any offence against the public peace, and may take him before a justice of the peace to be dealt with according to law.

(12) By PEACE OFFICER OF OFFENCE AGAINST PUBLIC PEACE.—Any peace officer may arrest without warrant any one who has committed or who on reasonable grounds he believes has committed or is about to commit any offence against the public peace, and may take him before a justice of the peace to be dealt with according to law.

(13) By PEACE OFFICER OF OFFENCE AGAINST PUBLIC PEACE.—Any peace officer may arrest without warrant any one who has committed or who on reasonable grounds he believes has committed or is about to commit any offence against the public peace, and may take him before a justice of the peace to be dealt with according to law.

(14) By PEACE OFFICER OF OFFENCE AGAINST PUBLIC PEACE.—Any peace officer may arrest without warrant any one who has committed or who on reasonable grounds he believes has committed or is about to commit any offence against the public peace, and may take him before a justice of the peace to be dealt with according to law.

(15) By PEACE OFFICER OF OFFENCE AGAINST PUBLIC PEACE.—Any peace officer may arrest without warrant any one who has committed or who on reasonable grounds he believes has committed or is about to commit any offence against the public peace, and may take him before a justice of the peace to be dealt with according to law.

(16) By PEACE OFFICER OF OFFENCE AGAINST PUBLIC PEACE.—Any peace officer may arrest without warrant any one who has committed or who on reasonable grounds he believes has committed or is about to commit any offence against the public peace, and may take him before a justice of the peace to be dealt with according to law.

(17) By PEACE OFFICER OF OFFENCE AGAINST PUBLIC PEACE.—Any peace officer may arrest without warrant any one who has committed or who on reasonable grounds he believes has committed or is about to commit any offence against the public peace, and may take him before a justice of the peace to be dealt with according to law.

(18) By PEACE OFFICER OF OFFENCE AGAINST PUBLIC PEACE.—Any peace officer may arrest without warrant any one who has committed or who on reasonable grounds he believes has committed or is about to commit any offence against the public peace, and may take him before a justice of the peace to be dealt with according to law.

(19) By PEACE OFFICER OF OFFENCE AGAINST PUBLIC PEACE.—Any peace officer may arrest without warrant any one who has committed or who on reasonable grounds he believes has committed or is about to commit any offence against the public peace, and may take him before a justice of the peace to be dealt with according to law.

(20) By PEACE OFFICER OF OFFENCE AGAINST PUBLIC PEACE.—Any peace officer may arrest without warrant any one who has committed or who on reasonable grounds he believes has committed or is about to commit any offence against the public peace, and may take him before a justice of the peace to be dealt with according to law.

(b) ninety-two, offences respecting the [illegible] of the Post Office; ninety-three, offences relating to [illegible]; ninety-seven, riotous damage to property;

(c) [illegible] administering, taking [illegible] certain crimes; one hundred and thirty-[illegible] taking [illegible] the taking of other unlawful oaths;

(d) [illegible] one hundred and [illegible] and three, [illegible] seventy-nine, piracy with violence;

(e) [illegible] being at large while [illegible] seven, [illegible] prison [illegible] from custody or from prison; one hundred and [illegible] penal custody;

(f) two hundred and two, unnatural offence;

(g) two hundred and sixty-three, murder; two hundred and sixty-four, attempt to murder; two hundred and sixty-seven, being accessory after the fact to murder; two hundred and sixty-eight, manslaughter; two hundred and seventy, attempt to commit suicide;

(h) two hundred and seventy-three, wounding with intent to do bodily harm; two hundred and seventy-four, wounding; two hundred and seventy-six, stupefying in order to commit an indictable offence; two hundred and seventy-nine and two hundred and eighty, injuring or attempting to injure by explosive substances; two hundred and eighty-two, intentionally endangering persons on railways; two hundred and eighty-three, wantonly endangering persons on railway; two hundred and eighty-six, preventing escape from wreck;

(i) two hundred and ninety-nine, rape; three hundred, attempt to commit rape; three hundred and one, defiling children under fourteen;

(j) three hundred and thirteen, abduction of a woman;

(k) three hundred and fifty-eight, theft by agents and others; three hundred and fifty-nine, theft by clerks, servants and others; three hundred and sixty, theft by tenants and lodgers; three hundred and sixty-one, theft of testamentary instruments; three hundred and sixty-

(*l*) [illegible] ninety-nine, receiving property obtained by crime;

(*m*) four hundred and ten, personation of certain persons;

(*n*) four hundred and forty-six, aggravated robbery; four hundred and forty-seven, robbery; four hundred and forty-eight, assault with intent to rob; four hundred and forty-nine, stopping the mail; four hundred and fifty, compelling execution of documents by force; four hundred and fifty-one, sending letter demanding with menaces; four hundred and fifty-two, demanding with intent to steal; four hundred and fifty-three, extortion by certain threats;

(*o*) four hundred and fifty-five, breaking place of worship and committing an indictable offence; four hundred and fifty-six, breaking place of worship with intent to commit an indictable offence; four hundred and fifty-seven, burglary; four hundred and fifty-eight, housebreaking and committing an indictable offence; four hundred and fifty-nine, housebreaking with intent

to commit an indictable offence; four hundred and sixty, breaking shop and committing an indictable offence; four hundred and sixty-one, breaking shop with intent to commit an indictable offence; four hundred and sixty-two, being found in a dwelling-house by night; four hundred and sixty-three, being armed, with intent to break a dwelling house; four hundred and sixty-four, being disguised or in possession of housebreaking instruments;

(*p*) four hundred and sixty-eight, four hundred and sixty-nine and four hundred and seventy, forgery; four hundred and sixty-seven, uttering forged documents; four hundred and seventy-two, counterfeiting seals; four hundred and seventy-eight, using probate obtained by forgery or perjury; five hundred and fifty, possessing forged bank notes;

(*q*) four hundred and seventy-one, making, having or using instrument for forgery or having or uttering forged bond or undertaking; four hundred and seventy-nine, counterfeiting stamps; four hundred and eighty, injuring or falsifying registers;

(*r*) one hundred and twelve, attempt to damage by explosives; five hundred and ten, mischief; five hundred and eleven, arson; five hundred and twelve, attempt to commit arson; five hundred and thirteen, setting fire to crops; five hundred and fourteen, attempting to set fire to crops; five hundred and seventeen, mischief on railways; five hundred and twenty, mischief to mines; five hundred and twenty-one, injuries to electric telegraphs, magnetic telegraphs, electric lights, telephones and fire alarms; five hundred and twenty-two, wrecking; five hundred and twenty-three, attempting to wreck; five hundred and twenty-six, interfering with marine signals;

(*s*) five hundred and fifty-two, counterfeiting gold and silver coin; five hundred and fifty-six, making instruments for coining; five hundred and fifty-eight, clipping current coin; five hundred and sixty, possessing clippings of current coin; five hundred and sixty-two, counterfeiting copper coin; five hundred and sixty-three,

I know I should not write but no doubt
to assure you of my safe arrival
I have only manifested myself
words are entirely inadequate to express you
how I detest the manner you
fallaway and a complete disappointed
during the short time you
messrs Kerby Rathbone
my expectations I taught but
which cooled my love and caused to be
all the circumstances your fair
received was very close and taught
the golden rule to be more in the
heart which cooled Stiles and
beside such little things
sex of the wretch on the navy I'm
Ireland the best and tenderest of a man
queen glass, the table of book the last
effects, the pen entitled pamphlet of my
and the private letter total absence
I care of concern about
Your fortunes future, music themes
and colour are dear and the blood
becomes cold - Your fine faithful lovely
I cannot be sure a little more
explanation. Do write frequently and
the receipt by the next of kindness de-

650. [illegible]

651. [illegible]

652. [illegible]

653. [illegible]

654. Information or complaint.—Any person who, on reasonable and probable grounds, believes that any person has committed an indictable offence may lay an information in writing and under oath before any magistrate or justice having jurisdiction to issue a warrant or summons against such accused person in respect of such offence.

2. Form.—Such complaint or information may be in form 3, or to the like effect. 55-56 V., c. 29, s. 558.

As to warrants, see section 659.

FORM 3.

(*Section* 654.)

INFORMATION AND COMPLAINT FOR AN INDICTABLE OFFENCE.

Canada,
Province of
County of

The information and complaint of C. D. of , (*woman*), taken this day of , in the year before the undersigned (*one*) of His Majesty's justices of the peace in and for the said county of , who saith that (*etc., stating the offence*).

Sworn before (*me*), the day and year first above mentioned, at .

J. S.,
*J. P., (Name of county).*

55-56 V., c. 29, sch. 1, form C.

655. Summons or Warrant Thereon.—Upon receiving any such complaint or information the justice shall hear and consider the allegations of the complainant, and if of opinion that a case for so doing is made out, he shall issue a summons, or warrant, as the case may be, in manner hereinafter provided.

2. Process Compulsory.—Such justice shall not refuse to issue such summons or warrant only because the alleged offence is one for which an offender may be arrested without warrant. 55-56 V., c. 29, s. 559.

656. WARRANT IN CASE OF OFFENCE COMMITTED ON THE HIGH SEAS. Whenever any indictable offence is committed on the high seas or in any creek, harbour, haven or place in which the Admiralty of England have or claim to have jurisdiction, or whenever any person does any act on the high seas which is an indictable offence according to the laws of Canada, and afterwards comes into Canada, any justice may issue his warrant for the apprehension of such person to be dealt with as hereinafter mentioned.

FORM 4.

WARRANT TO APPREHEND A PERSON CHARGED WITH AN INDICTABLE OFFENCE ON THE HIGH SEAS OR ABROAD.

For offences committed on the high seas the warrant may be the same as for ordinary cases down to the words "has been committed" on the high seas, one of the body of any district or county of Canada, and proceed to the justice, Adding thereto as follows:

"And it appears to me [or us] that the said person has committed the said offence on the high seas [or in a foreign country or place, as the case may be] within the jurisdiction of the Admiralty of England [or, as the case may be, out of Canada, the warrant may be in the same form as in ordinary cases, but describing the offence as having been committed on land out of Canada, and] is [or is supposed or suspected to be] in [or on the way to] Canada [or, as the case may be, in the county of , in the province of , or, as the case may be, in the district of , in the North-West Territories, or in the island of , in the West Indies, or as the case may be]."

55-56, V., c. 29, sch. 1, form D.

657. ARREST OF SUSPECTED DESERTER. Every one who is reasonably suspected of being a deserter from His Majesty's service may be apprehended and brought, for examination before any justice, and if it appears that he is a deserter he shall be confined in gaol until claimed by the military or naval authorities or discharged according to law.

658. ARREST OF DESERTER WITHOUT WARRANT. Any officer, non-commissioned officer or private soldier of His Majesty's service may, without warrant, apprehend a deserter unless he has obtained a warrant for that purpose from a justice, founded on affidavit that there is reason to

## FORM 5.

(Section 658.)

## SUMMONS TO A PERSON CHARGED WITH AN INDICTABLE OFFENCE.

Canada,
Province of
County of

To A. B. of (labourer):

Whereas you have this day been charged before the undersigned , a justice of the peace in and for the said county of , for that you on , at (stating shortly the offence). These are therefore to command you, in His Majesty's name, to be and appear before (me) on at o'clock in the (fore) noon, at , or before such other justice or justices of the peace for the same county as shall then be there, to answer to the said charge, and to be further dealt with according to law. Herein fail not.

Given under (my) hand and seal, this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. P., (Name of county).

55-56 V., c. 29, sch. 1, form E.

**659. WARRANT FOR APPREHENSION.**—The warrant issued by a justice for the apprehension of the person against whom an information or complaint has been laid as provided in section six hundred and fifty-four may be in form 6, or to the like effect.

2. FORM IN BLANK.—No such warrant shall be signed in blank. 55-56 V., c. 29, s. 563.

## FORM 6.

(Section 659.)

## WARRANT IN THE FIRST INSTANCE TO APPREHEND A PERSON CHARGED WITH AN INDICTABLE OFFENCE.

Canada,
Province of
County of

To all or any of the constables and other peace officers in the said county of

Whereas A. B., of , has this day been charged upon oath before the undersigned , a justice of the peace in and for the said county of , for that he, on , at , did (etc., stating shortly the offence): These are therefore to command you, in His Majesty's name, forthwith to apprehend the said A. B., and to bring him before (me) or some other justice of the peace in and for the said county of , to answer unto the said charge, and to be further dealt with according to law.

Given under (my) hand and seal, this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. P., (Name of county).

55-56 V., c. 29, sch. 1, form F.

---

men of pleasant [illegible]. For myself I am
mostly proud and happy over our
adventures and want to amuse you
of my Dare devil [illegible] as
it is and I do value the place on the
honour you have of me-me.
[illegible] you will forgive this [illegible]
fully pompous and self-centred
memo. Actually I can also in my
mind's eye see myself [illegible]
a [illegible] to the [illegible] dawn, [illegible]
a [illegible], dreadfully conscious of
noise and noises. From a certain
point of view certainly a humorous
sight. The stars [illegible] their
courses and where [illegible]
[illegible] and I would not
wish it otherwise.
I enclose a little [illegible]
for remembrance sake. You don't
need it to arouse the heart in me
[illegible]
inconspicuous though it were a
[illegible] but really needs new boots
which is perhaps as healthy and
sound a phrase to close on as I
could look to find.
There's a very [illegible]
[illegible] though [illegible] and
[illegible].
Perhaps when I come over

660. [illegible] warrant shall be under the hand and seal of the justice issuing the same, and may be directed, either to any constable by name, or to such constables or other persons within the territorial jurisdiction of the justice issuing it, or generally to all constables within such jurisdiction [illegible] shortly the offence for which it is issued, and shall name or otherwise describe the offender, and it shall order the officer or officers to whom it is directed to apprehend the offender and bring him before the justice or justices issuing the warrant, or before some other justice or justices, to answer to the charge contained in the information or complaint, and to be further dealt with according to law.

3. No Return Day.—It shall not be necessary to make such warrant returnable at any particular time, but the same shall remain in force until it is executed.

4. Summons not to Prevent Warrant.—The fact that a summons has been issued shall not prevent any justice from issuing a warrant at any time before or after the time mentioned in the summons for the appearance of the accused.

5. Warrant in Default—Form.—In case the service of the summons has been proved and the accused does not appear, or when it appears that the summons cannot be served, a warrant in form 7 may issue. 55-56 V., c. 29, s. 563.

FORM 7.

G.—(*Section* 660.)

WARRANT WHEN THE SUMMONS IS DISOBEYED.

Canada.
Province of .
County of .

To all or any of the constables and other peace officers in the said county of .

Whereas on the day of , instant *or* last past) A. B., of , was charged before (*me* or *us*,) the undersigned (*or name the justice or justices, or as the case may be*), (*a*) justice of the peace in and for the said county of , for that (*etc., as in the summons*); and whereas I (*or* he *the said justice of the peace, or* we *or* they *the said justices of the peace* did then issue (*my, our, his* or *their*) summons to the said A. B., commanding him, in His Majesty's name, to be and appear before (*me*) on at o'clock in the (fore) noon, at , or before such other justice or justices of the peace as should then be there, to answer to the said charge and to be further dealt with according to law; and whereas the said A. B. has neglected to be or appear at the time and place appointed in and by the said summons, although it has now been proved to (*me*) upon oath that the

said summons was duly served upon the said A. B.: These are therefore to command you the said constables and every of you, that you bring the said A. B. and to bring him before me or some other justice of the peace in and for the said county, to answer unto the said charge, and to be further dealt with according to law.

Given under my hand and seal this ... day of ... in the year ...

661. WHERE AND BY WHOM EXECUTED.—Every such warrant may be executed by arresting the accused wherever he is found in Canada, by virtue of the same, and he shall be brought before a justice by whom the warrant is issued or some other justice within the territorial division within which the offence appears to have been committed, and may be detained in custody or released on bail pending his appearance before such justice.

2. Such warrant may be executed by any constable named therein or by any one of the constables to whom it is directed, whether or not the place in which it is executed is within the limits of the jurisdiction of the justice by whom it is issued.

3. The provisions of this section shall be subject to the provisions of section 30 of the Act respecting extradition with foreign states, chapter 155 of the Revised Statutes, 1906.

The conduct of a preliminary inquiry before a magistrate is a legal proceeding, and if the prisoner shall not appear at the time and place where a prisoner was committed for trial at a preliminary investigation, he may be arrested on a warrant issued by a judge and he should be discharged.

And on such a case the affidavit of the prisoner may be received in evidence, shewing that the preliminary examination took place on a Sunday.

See also *Bainbridge's case*, 3 Can. Cr. Cas. 15; *Re Ex parte* ... 3 Can. Cr. Cas. 17.

662. ENDORSEMENT OF WARRANT.—If the person against whom such warrant is issued cannot be found within the jurisdiction of the justice by whom the same was issued, but is or is suspected to be in any other part of Canada, any justice within the jurisdiction of whom the person against whom such warrant was issued shall be found, upon proof being made upon oath or affirmation of the handwriting of the justice who issued the same, shall make an endorsement on the warrant signed with his name, authorizing the execution thereof within his jurisdiction.

2. EFFECT OF.—Such endorsement shall be sufficient authority to the person bringing the warrant and to all other persons to whom the same was originally directed, and also to

all constables of the territorial division where the warrant has been so endorsed to execute the same therein and to carry the person against whom the same issued, when apprehended, before the justice who issued the warrant, or before some other justice for the same territorial division.

See FORM I. for endorsement [illegible]. 55-56 V., c. 29, s. 565.

[illegible] a constable who executes a warrant in good faith outside the territorial district of the magistrate issuing the same, without procuring the endorsement of a magistrate of the county until the arrest is made, is entitled to notice of action, and to the protection [illegible] 88, c. [illegible]; a notice of action which wrongly states the name of the township and the county in [illegible] is sufficient.

*Herrick* v. *Humphrey* (1899), 29 O. R. 427.

FORM I.

ENDORSEMENT IN BACKING WARRANT.

Canada,
Province of
County of

[illegible], a justice of the peace in and for the said county of [illegible], that the name [illegible] subscribed, is of the handwriting of the justice of the peace within mentioned: I do therefore hereby authorize W. [illegible] warrant and all other persons to whom this warrant was originally directed, or by whom it may be lawfully [illegible] peace officers [illegible] to execute the same within the said last mentioned county.

[illegible] hand, this day of , in the year, at , in the county aforesaid.

J. L., [SEAL.]
*J. P., (Name of county).*

55-56 V., c. 29, sch. 1, form H.

Dear G. — This will be a ~~[illegible]~~ silly
letter glad to hear you are well & perfectly
[illegible] since you written before
now but I [illegible] myself a bit
when I think of your love in spirit
[illegible] selfishness and a curious
mixture of altruism - when I think
of you altruistically & what you'd
wish/want to do I think I should
leave you alone but I imagine my
altruism is based just on fear - being
a [illegible] and not daring to offend
[illegible] (because [illegible])
[illegible] the [illegible] to altruistically
decide what you may think you may
want to do. Selfishly [illegible]
I want to see you and [illegible]
meaning of my fear for your safety
And [illegible]

**663.** PROCEDURE ON ARREST UNDER ENDORSED WARRANT. —If the prosecutor or any of the witnesses for the prosecution are in the territorial division where such person has been apprehended upon a warrant endorsed as provided in the last preceding section, the constable or other person or persons who have apprehended him may, if so directed by the justice endorsing the warrant, take him before such justice, or before some other justice for the same territorial division; and the said justice may thereupon take the examination of such prosecutor or witnesses, and proceed in every respect as if he had himself issued the warrant. 55-56 V., c. 29, s. 566.

This section has been held to show that the word "taken" is synonymous with the word "apprehended."

*R.* v. *Hughes* (1895, 2 Can C. C. 332.

**664.** PROCEDURE IN OTHER CASES OF PERSON ARRESTED ON WARRANT.—When any person is arrested upon a warrant he shall, except in the case provided for in the last preceding section, be brought as soon as is practicable before the justice who issued it or some other justice for the same territorial division, and such justice shall either proceed with the inquiry or postpone it to a future time, in which latter case he shall either commit the accused person to proper custody or admit him to bail or permit him to be at large on his own recognizance according to the provisions hereinafter contained. 55-56 V., c. 29, s. 567.

**665.** PRELIMINARY INQUIRY. — The preliminary inquiry may be held either by one justice or by more justices than one.

2. OFFENCE COMMITTED OUT OF JURISDICTION—PROCEEDINGS.—If the accused person is brought before any justice charged with an offence committed out of the limits of the jurisdiction of such justice, such justice may, after hearing both sides, order the accused at any stage of the inquiry to be taken by a constable before some justice having jurisdiction in the place where the offence was committed.

3. OFFENDER TAKEN BEFORE JUSTICE WHERE OFFENCE COMMITTED.—The justice so ordering shall give a warrant for that purpose to a constable, which may be in form 9, or to the like effect, and shall deliver to such constable the information, depositions and recognizances, if any, taken under the provisions of this Act, to be delivered to the justice before whom the accused person is to be taken, and such depositions and recognizances shall be treated to all intents as if they had been taken by the last-mentioned justice. 55-56 V., c. 29, s. 557.

FORM 9.

(*Section* 665.)

WARRANT TO CONVEY BEFORE A JUSTICE OF ANOTHER COUNTY

Canada, }
Province of . }
County of . }

To all or any of the constables and other peace officers in the said county of .

Whereas information upon oath was this day made before the undersigned that A. B., of , on the day of , in the year , at , in the county of (*state the charge*).

And whereas I have taken the deposition of X. Y. as to the said offence.

And whereas the charge is of an offence committed in the county of .

This is to command you to convey the said (*name of accused*), of , before some justice of the last-mentioned county, near the above place, and to deliver to him this warrant and the said deposition.

Dated at , in the said county of , this day of , in the year .

J. S.,
*J. P., (Name of county).*

To of .

55-56 V., c. 29, sch. 1, form A.

666. IDEM—FORM.—Upon the constable delivering to the justice the warrant, information, if any, depositions and recognizances, and proving on oath or affirmation, the handwriting of the justice who has subscribed the same, such justice, before whom the accused is produced, shall thereupon furnish such constable with a receipt or certificate in form 10, of his having received from him the body of the accused, together with the warrant, information, if any, depositions and recognizances, and of his having proved to him, upon oath or affirmation, the handwriting of the justice who issued the warrant.

2. IDEM.—If such justice does not commit the accused for trial, or hold him to bail, the recognizances taken before the first mentioned justice shall be void. 55-56 V., c. 29, s. 557.

FORM 10.

(*Section* 666.)

RECEIPT TO BE GIVEN TO THE CONSTABLE BY THE JUSTICE FOR THE COUNTY IN WHICH THE OFFENCE WAS COMMITTED.

Canada, }
Province of , }
County of , }

I, J. L., a justice of the peace in and for the county of , hereby certify that W. T., peace officer of the county of , has, on this day of , in the year , by virtue of and in obedience to a warrant of J. S., Esquire, a justice of the peace in and for the county of , produced before me one A. B., charged before the said J. S., with having (*etc., stating shortly the offence*), and delivered him into the custody of , by my direction, to answer to the said charge, and further to be dealt with according to law, and has also delivered unto me the said warrant, together with the information (*if any*) in that behalf, and the deposition (*s*) of C. D. (*and of* ), in said warrant mentioned, and that he has also proved to me, upon oath, the handwriting of the said J. S. subscribed to the same.

Dated the day and year first above mentioned, at , in the said county of .

J. L.,
*J. P., (Name of county).*

55-56 V., c. 29, sch. 1, form B.

**667.** CORONER'S INQUISITION — WARRANT OR RECOGNIZANCE.—Every coroner, upon any inquisition taken before him whereby any person is charged with manslaughter or murder, shall, if the person or persons, or either of them, affected by the verdict or finding is not already charged with the said offence before a magistrate or justice, by warrant under his hand, direct that such person be taken into custody and be conveyed, with all convenient speed, before a magistrate or justice; or such coroner may direct such person to enter into a recognizance before him, with or without a surety or sureties, to appear before a magistrate or justice.

2. TRANSMITTING DEPOSITIONS.—In either case, it shall be the duty of the coroner to transmit to such magistrate or justice the depositions taken before him in the matter.

3. PROCEDURE.—Upon any such person being brought or appearing before any such magistrate or justice, he shall proceed in all respects as though such person had been brought or had appeared before him upon a warrant or summons. 55-56 V., c. 29, s. 568.

## PART XIV.

### PROCEDURE ON APPEARANCE OF ACCUSED BEFORE JUSTICE.

*Jurisdiction.*

**668.** INQUIRY BY JUSTICE.—When any person accused of an indictable offence is before a justice, whether voluntarily or upon summons, or after being apprehended with or without warrant, or while in custody for the same or any other offence, the justice shall proceed to inquire into the matters charged against such person in the manner hereinafter directed. 55-56 V., c. 29, s. 577.

**669.** IRREGULARITY OR VARIANCE NOT TO AFFECT VALIDITY.—No irregularity or defect in the substance or form of the summons or warrant, and no variance between the charge contained in the summons or warrant and the charge contained in the information, or between either and the evidence adduced on the part of the prosecution at the inquiry, shall affect the validity of any proceeding at or subsequent to the hearing. 55-56 V., c. 29, s. 578.

**670.** ADJOURNMENT IN CASE OF.—If it appears to the justice that the person charged has been deceived or misled by any such variance in any summons or warrant, he may adjourn the hearing of the case to some future day, and in the meantime may remand such person, or admit him to bail as hereinafter mentioned. 55-56 V., c. 29, s. 579.

*Procuring Attendance of Witnesses.*

**671.** SUMMONS FOR WITNESS.—If it appears to the justice that any person being or residing within the province is likely to give material evidence either for the prosecution or for the accused, on such inquiry he may issue a summons under his hand, requiring such person to appear before him at a time and place mentioned therein to give evidence respecting the charge, and to bring with him any documents in his possession or under his control relating thereto.

2. FORM.—Such summons may be in form 11, or to the like effect. 55-56 V., c. 29, s. 580.

FORM 11.

(*Section* 671.)

SUMMONS TO A WITNESS.

Province of . }
County of . }

To E. F., of , (labourer):

Whereas information has been laid before the undersigned , a justice of the peace in and for the said county of , that A. B. (*&c., as in the summons or warrant against the accused*), and it has been made to appear to me that you are likely to give material evidence for (*the prosecution or for the accused*): These are therefore to require you to be and to appear before me on next, at o'clock in the (fore) noon, at , or before such other justice or justices of the peace of the same county of , as shall then be there, to testify what you know concerning the said charges so made against the said A. B. as aforesaid. Herein fail not.

Given under my hand and seal, this day of the year , at , in the county aforesaid.

J. S., [SEAL.]
*J. P., (Name of county).*

55-56 V., c. 29, sch. 1, form K. 58-59 V., c. 40 s. 1.

**672.** SERVICE OF SUMMONS FOR WITNESS. — Every such summons shall be served by a constable or other peace officer upon the person to whom it is directed either personally, or, if such person cannot conveniently be met with, by leaving

it for him at his last or most usual place of abode with some inmate thereof apparently not under sixteen years of age. 55-56 V., c. 29, s. 581.

**673.** WARRANT FOR WITNESS AFTER SUMMONS.—If any one to whom such last mentioned summons is directed does not appear at the time and place appointed thereby, and no just excuse is offered for such non-appearance, then after proof upon oath that such summons has been served as aforesaid, or that the person to whom the summons is directed is keeping out of the way to avoid service, the justice before whom such person ought to have appeared, if satisfied by proof on oath that such person is likely to give material evidence, may issue a warrant under his hand to bring such person at a time and place to be therein mentioned before him or any other justice in order to testify as aforesaid.

2. FORM.—The warrant may be in form 12, or to the like effect.

3. EXECUTION—ENDORSEMENT.—Such warrant may be executed anywhere within the territorial jurisdiction of the justice by whom it is issued, or, if necessary, endorsed as provided in section six hundred and sixty-two and executed anywhere in the province out of such jurisdiction. 55-56 V., c. 29, s. 582.

Right to search and confine in cell: *Gordon* v. *Denison*, 22 A. R. 315, rev'g 24 O. R. 576.

FORM 12.

(*Section 673.*)

WARRANT WHEN A WITNESS HAS NOT OBEYED THE SUMMONS.

Canada,
Province of .
County of .

To all or any of the constables and other peace officers in the said county of .

Whereas information having been laid before , justice of the peace, in and for the said county of , that A. B. (*etc., as in the summons*); and it having been made to appear to (*me*) upon oath that E. F. of (*labourer*), was likely to give material evidence for (*the prosecution*), (*I*) duly issued (*my*) summons to the said E. F., requiring him to be and appear before (*me*) on , at , or before such other justice or justices of the peace for the said county, as should then be there, to testify what he knows respecting the said charge so made against the said A. B., as aforesaid; and whereas proof has this day been made upon oath before (*me*) of such summons having been

duly served upon the said E. F.: and whereas the said E. F. has neglected to appear at the time and place appointed by the said summons, and no just excuse has been offered for such neglect: These are therefore to command you to bring and have the said E. F. before *(me)* on at o'clock in the (fore) noon, at , or before such other justice or justices for the said county, as shall then be there, to testify what he knows concerning the said charges so made against the said A. B. as aforesaid.

Given under *(my)* hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]

*J. P., (name of county.)*

55-56 V., c. 29, sch. 1, form L.

**674.** PROCEDURE AGAINST DEFAULTING WITNESS. — If a person summoned as a witness under the provisions of this Part is brought before a justice on a warrant issued in consequence of refusal to obey the summons, such person may be detained on such warrant before the justice who issued the summons, or before any other justice in and for the same territorial division who shall then be there, or in the common gaol, or any other place of confinement, or in the custody of the person having him in charge, with a view to secure his presence as a witness on the day fixed for the trial, or, in the discretion of the justice, released on recognizance, with or without sureties, conditioned for his appearance to give evidence as therein mentioned, and to answer as for contempt for his default in not attending upon the said summons.

2. PENALTY FOR CONTEMPT.—The justice may, in a summary manner, examine into and dispose of the charge of contempt against such person, who, if found guilty, shall be liable to a fine not exceeding twenty dollars, or to imprisonment in the common gaol, without hard labour, for a term not exceeding one month, or to both such fine and imprisonment, and may also be ordered to pay the costs incident to the service and execution of the said summons and warrant and of his detention in custody.

3. FORM OF CONVICTION.—The conviction under this section may be in form 13. 55-56 V., c. 29, s. 582.

FORM 13.

(*Sections* 674 *and* 842.)

CONVICTION FOR CONTEMPT.

Canada,
Province of
County of

Be it remembered that on the day of , in the year in the county of E. F. is convicted before me, for that he the said E. F. did not attend be-

fore me to give evidence on the trial of a certain charge against one A. B. of *(theft, or as the case may be)*, although duly subpœnaed *(or* bound by recognizance to appear and give evidence in that behalf, *as the case may be)* but made default therein, and has not shown before me any sufficient excuse for such default., and I adjudge the said E. F., for his said offence to be imprisoned in the common gaol of the county of , at , for the space of , there to be kept at hard labour *(and in case a fine is also intended to be imposed, then proceed)* and I also adjudge that the said E. F. do forthwith pay to and for the use of His Majesty a fine of dollars, and in default of payment, that the said fine, with the cost of collection, be levied by distress and sale of the goods and chattels of the said E. F. *(or in case a fine alone is imposed, then the clause of imprisonment is to be omitted)*.

Given under my hand at , in the said county of , the day and year first above mentioned.

O. K.,
*Judge.*

55-56 V., c. 29, sch. 1, form PP.

**675.** WARRANT FOR WITNESS IN FIRST INSTANCE.—If the justice is satisfied by evidence on oath that any person within the province, likely to give material evidence either for the prosecution or for the accused, will not attend to give evidence without being compelled so to do, then instead of issuing a summons, he may issue a warrant in the first instance.

2. FORM, ETC.—Such warrant may be in form 14, or to the like effect, and may be executed anywhere within the jurisdiction of such justice, or, if necessary, endorsed as provided in section six hundred and sixty-two and executed anywhere in the province out of such jurisdiction. 55-56 V., c. 29, s. 583.

FORM 14.

*(Section 675.)*

WARRANT FOR A WITNESS IN THE FIRST INSTANCE.

Canada.
Province of
County of

To all or any of the constables and other peace officers in the said county of .

Whereas information has been laid before the undersigned , a justice of the peace, in and for the said county of , that *(etc., as in the summons)*; and it having been made to appear to *(me)* upon oath, that E. F. of , *(labourer)*, is likely to give material evidence for the prosecution, and that it is probable that the said E. F. will not attend to give evidence unless compelled to do so: These are therefore to command you to bring and have the said E. F. before *(me)* on , at o'clock in the (fore) noon, at , or before such other justice or justices of the peace for the same county as shall then be there, to testify what he knows concerning the said charge so made against the said A. B. as aforesaid.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S., [SEAL]
*J. P. (Name of County.)*

55-56 V. c. 29, Sch. 1, form M.

**676.** WITNESS BEYOND JURISDICTION — SUBPOENA. — If there is reason to believe that any person residing anywhere in Canada out of the province who is not within the province, is likely to give material evidence either for the prosecution or for the accused, any judge of a superior court or a county court, on application therefor by the informant or complainant, or the Attorney-General, or by the accused person or his solicitor or some person authorized by the accused, may cause a writ of subpœna to be issued under the seal of the court of which he is a judge, requiring such person to appear before the justice before whom the inquiry is being held or is intended to be held at a time and place mentioned therein, to give evidence respecting the charge and to bring with him any documents in his possession or under his control relating thereto.

2. SERVICE AND PROOF.—Such subpœna shall be served personally upon the person to whom it is directed, and an affidavit of such service by a person effecting the same purporting to be made before a justice, shall be sufficient proof thereof. 55-56 V., c. 29, s. 584.

**677.** WARRANT FOR DEFAULTING WITNESS.—If the person served with a subpœna as provided by the last preceding section, does not appear at the time and place specified therein and no just excuse is offered for his non-appearance, the justice holding the inquiry, after proof upon oath that the subpœna has been served, may issue a warrant under his hand directed to any constable or peace officer in the district, county or place where such person is, or to all constables or peace officers in such district, county or place, directing him, them or any of them to arrest such person and bring him before the said justice or any other justice at a time and place mentioned in such warrant in order to testify as aforesaid.

2. FORM—ENDORSEMENT.—The warrant may be in form 15, or to the like effect; and if necessary, may be endorsed in the manner provided by section six hundred and sixty-two and executed in a district, county or place other than the one therein mentioned. 55-56 V., c. 29, s. 584.

In an **Ontario** case it was held that it was competent for a judge of the **High Court or a judge of the County Court** to make an order for the issue of a subpœna to witnesses in another province to com-

pel their attendance upon an appeal to the General Sessions from the action of justices of the peace under ss. 748 and 752: *R. v. Gillespie* (1894), 16 P. R. 155.

FORM 15.

(*Section* 677.)

WARRANT WHEN A WITNESS HAS NOT OBEYED THE SUBPOENA.

Canada,
Province of ,
County of ,

To all or any of the constables and other peace officers in the said county of .

Whereas information having been laid before , a justice of the peace, in and for the said county, that A. B. (*etc., as in the summons*); and there being reason to believe that E. F. of , in the province of (*labourer*), was likely to give material evidence for (*the prosecution*), a writ of subpœna was issued by order of , judge of (*name of court*) to the said E. F., requiring him to be and appear before (*me*) on at or before such other justice or justices of the peace for the same county as should then be there, to testify what he knows respecting the said charge so made against the said A. B., as aforesaid; and whereas proof has this day been made upon oath before (*me*) of such writ of subpœna having been duly served upon the said E. F., and whereas the said E. F. has neglected to appear at the time and place appointed by the said writ of subpœna, and no just excuse has been offered for such neglect: These are therefore to command you to bring and have the said E. F. before (*me*) on at o'clock in the (fore) noon, at , or before such other justice or justices for the same county as shall then be there, to testify what he knows concerning the said charge so made against the said A. B. as aforesaid.

Given under (*my*) hand and seal this day of , in the year , at in the county aforesaid.

J. S., [SEAL.]
*J. P. (Name of county.)*

55-56 V. c. 29, sch. 1, form N.

## *Hearing and Connected Procedure.*

**678.** WITNESS REFUSING TO BE EXAMINED—COMMITMENT TO GAOL.—Whenever any person appearing, either in obedience to a summons or subpœna, or by virtue of a warrant, or being present and being verbally required by the justice to give evidence, refuses to be sworn, or having been sworn, refuses to answer such questions as are put to him, or refuses or neglects to produce any documents which he is required to produce, or refuses to sign his depositions without in any such case offering any just excuse for such refusal, such justice may adjourn the proceedings for any period not exceeding eight clear days, and may in the meantime by warrant in form 16, or to the like effect, commit the person so refusing to gaol, unless he sooner consents to do what is required of him.

2. FURTHER COMMITMENT.—If such person, upon being brought up upon such adjourned hearing, again refuses to do what is required of him, the justice, if he sees fit, may again adjourn the proceedings, and commit him for the like period, and so again from time to time until such person consents to do what is required of him.

3. SAVING.—Nothing in this section shall prevent such justice from sending any such case for trial, or otherwise disposing of the same in the meantime, according to any other sufficient evidence taken by him. 55-56 V., c. 29, s. 585.

Question must be relevant to issue: *In re Ayotte*, 15 Man. L. R. 156.

## FORM 16.

(*Section* 678.)

### WARRANT OF COMMITMENT OF A WITNESS FOR REFUSING TO BE SWORN OR TO GIVE EVIDENCE.

Canada,
Province of ,
County of .

To all or any of the constables and other peace officers in the said county of , and to the keeper of the common gaol at , in the said county of .

Whereas A. B. was lately charged before , a justice of the peace in and for the said county of , for that (*etc., as in the summons*); and it having been made to appear to (*me*) upon oath that E. F. of , was likely to give material evidence for the prosecution (*I*) duly issued (*my*) summons to the said E. F., requiring him to be and appear before me on , at , or before such other justice or justices of the peace for the same county as should then be there, to testify what he knows concerning the said charge so made against the said A. B. as aforesaid; and the said E. F. now appearing before (*me*) (*or* being brought before (*me*) by virtue of a warrant in that behalf), to testify as aforesaid, and being required to make oath or affirmation as a witness in that behalf, now refuses so to do (*or* being duly sworn as a witness now refuses to answer certain questions concerning the premises which are now here put to him, and more particularly the following ) without offering any just excuse for such refusal:

These are therefore to command you, the said constables of peace officers, or any one of you, to take the said E. F. and him safely to convey to the common goal at , in the county aforesaid, and there to deliver him to the keeper thereof, together with this precept: And (*I*) do hereby command you, the said keeper of the said common gaol to receive the said E. F. into your custody in the said common gaol, and him there safely keep for the space of days, for his said contempt, unless in the meantime he consents to be examined, and to answer concerning the premises; and for your so doing, this shall be your sufficient warrant.

Given under (*my*) hand and seal, this day of in the year , at , in the county aforesaid.

J. S., [SEAL.]
*J. P. (Name of county.)*

55-56 V., c. 29, sch. 1, form O.

**679.** Preliminary Inquiry.—A justice holding a preliminary inquiry may in his discretion,—

(*a*) Powers of Justice—Addresses—permit or refuse permission to the prosecutor, his counsel or attorney, to address him in support of the charge, either by way of opening or summing up the case, or by way of reply upon any evidence which may be produced by the person accused;

(*b*) Further Evidence—receive further evidence on the part of the prosecutor after hearing any evidence given on behalf of the accused;

(*c*) Adjournment of Hearing—adjourn the hearing of the matter from time to time, and change the place of hearing, if from the absence of witnesses, the inability of a witness who is ill to attend at the place where the justice usually sits, or from any other reasonable cause, it appears desirable to do so, and may remand the accused, if required, by warrant in form 17: Provided that no such remand shall be for more than eight clear days, the day following that on which the remand is made being counted as the first day;

(*d*) Inquiry may be Private — order that no person other than the prosecutor and accused, their counsel and solicitors shall have access to or remain in the room or building in which the inquiry is held, if it appears to him that the ends of justice will be best answered by so doing;

(*e*) Regulating Course of Inquiry — regulate the course of the inquiry in any way which may appear to him desirable, and which is not inconsistent with the provisions of this Act.

2. Verbal Remand for Three Days—Custody of Accused.—If any remand under this section is for a time not exceeding three clear days the justice may verbally order the constable or other person in whose custody the accused then is, or any other constable or person named by the justice in that behalf, to keep the accused person in his custody and to bring him before him or such other justice as shall then be acting at the time appointed for continuing the examination. 55-56 V., c. 29, s. 586.

FORM 17.

WARRANT REMANDING A PRISONER.

Canada, )
Province of , )
County of , )

To all or any of the constables and other peace officers in the said county of , and to the keeper of the common gaol at , in the said county.

Whereas A. B. was this day charged before the undersigned , a justice of the peace in and for the said county of , for that *(etc., as in the warrant to apprehend)*, and it appears to *(me)* to be necessary to remand the said A. B.: These are therefore to command you, the said constables and peace officers, or any of you, in His Majesty's name, forthwith to convey the said A. B. to the common gaol at , in the said county, and there to deliver him to the keeper thereof, together with this precept: And I hereby command you the said keeper to receive the said A. B. into your custody in the said common gaol, and there safely keep him until the day of *(instant)*, when I hereby command you to have him at , at o'clock in the (fore) noon of the same day before *(me)* or before such other justice or justices of the peace for the said county as shall then be there, to answer further to the said charge, and to be further dealt with according to law, unless you shall be otherwise ordered in the meantime.

Given under *(my)* hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]
*J. P. (Name of county.)*

55-56 V, c. 29, sch. 1, form P.

**680.** HEARING MAY BE RESUMED DURING TIME OF REMAND.—The justice may order the accused person to be brought before him, or before any other justice for the same territorial division, at any time before the expiration of the time for which such person has been remanded, and the gaoler or officer in whose custody he then is shall duly obey such order. 55-56 V., c. 29, s. 588.

Where the evidence is commenced before one justice of the peace and finished before two justices of the peace, a committal by the two is irregular, as both have not heard all the evidence: *Re Munn* (1899), 2 Can. C. C. 429.

**681.** BAIL ON REMAND.—If the accused is remanded as aforesaid, the justice may discharge him, upon his entering into a recognizance in form 18, with or without sureties in the discretion of the justice, conditioned for his appearance at the time and place appointed for the continuance of the examination. 55-56 V., c. 29, s. 587.

FORM 18.

(Section 681.)

RECOGNIZANCE OF BAIL INSTEAD OF REMAND ON AN ADJOURNMENT OF EXAMINATION.

Canada. }
Province of . }
County of . }

Be it remembered that on the day of , in the year , A. B., of , *(labourer)*, L. M. of , *(grocer)*, and N. O. of .. , *(butcher)*, personally came before me, , justice of the peace for the said county, and severally acknowledged themselves to owe to our Sovereign Lord the King, his heirs and successors, the several sums following, that is to say: The said A. B. the sum of ; and the said L. M., and N. O., the sum of , each, of good and lawful current money of Canada, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said Lord the King, his heirs and successors, if he, the said A. B., fails in the condition endorsed (*or* hereunder written).

Taken and acknowledged the day and year first above mentioned, at , before me.

J. S. [SEAL.]
*J. P. (Name of county.)*

*Condition.*

The condition of the within (*or* above) written recognizance is such that whereas the within bounden A. B. was this day (*or* on last past) charged before me for that (*etc., as in the warrant*); and whereas the examination of the witnesses for the prosecution in this behalf is adjourned until the day of (*instant*): If therefore, the said A. B. appears before me on the said day of (*instant*), at o'clock in the (fore) noon, or before such other justice or justices of the peace for the said county as shall then be there, to answer (*further*) to the said charge, and to be further dealt with according to law, the said recognizance to be void, otherwise to stand in full force and virtue.

55-56 V., c. 29, sch. 1, form Q.

**682.** EVIDENCE FOR PROSECUTION TO BE TAKEN. — When the accused is before a justice holding an inquiry, such justice shall take the evidence of the witnesses called on the part of the prosecution.

2. UPON OATH—CROSS-EXAMINATION. — The evidence of the said witnesses shall be given upon oath and in the presence of the accused; and the accused, his counsel or solicitor, shall be entitled to cross-examine them.

3. IN WRITING.—The evidence of each witness shall be taken down in writing in the form of a deposition, which may be in form 19, or to the like effect.

4. READ OVER AND SIGNED.—Such deposition shall in the presence of the accused, and of the justice, at some time be-

fore the accused is called on for his defence, be read over to and signed by the witness and the justice.

5. WHERE SIGNED.—The signature of the justice may either be at the end of the deposition of each witness, or at the end of several or of all the depositions in such a form as to show that the signature is meant to authenticate each separate deposition. 55-56 V., c. 29, s. 590.

Reading and signing of depositions under sub-sec. 4 is matter of procedure not affecting justice's jurisdiction: *Ex parte Doherty*, 32 N. B. R. 479.

FORM 19.

(Section 682.)

DEPOSITION OF A WITNESS.

Canada,
Province of }
County of }

The deposition of X. Y., of , taken before the undersigned, a justice of the peace for the said county of , this day of , in the year , at (*or*, after notice to C. D., who stands committed for ) in the presence and hearing of C. D., who stands charged that (*state the charge*). The said deponent saith on his (*oath or affirmation*) as follows: (*Insert deposition as nearly as possible in words of witness.*)

(*If depositions of several witnesses are taken at the same time, they may be taken and signed as follows*):

The depositions of X. of , Y. of , Z of , etc., taken in the presence and hearing of C. D., who stands charged that

The deponent X. (*on his oath or affirmation*) says as follows:
The deponent Y. (*on his oath or affirmation*) says as follows:
The deponent Z. (*on his oath, etc., etc.*)

(*The signature of the justice may be appended as follows*):

The depositions of X., Y., Z., etc., written on the several sheets of paper, to the last of which my signature is annexed, were taken in the presence and hearing of C. D., and signed by the said X., Y., Z., etc., respectively in his presence. In witness whereof I have in the presence of the said C. D. signed my name.

J. S.,
J. P. (name of county.)

55-56 V., c. 29, sch. 1, form 8.

**683.** DEPOSITIONS IN WRITING OR BY STENOGRAPHER—PROVISO.—Every justice holding a preliminary inquiry shall cause the depositions to be written in a legible hand and on one side only of each sheet of paper on which they are written: Provided that the evidence upon such inquiry or any part of the same may be taken in shorthand by a stenographer who may be appointed by the justice and who before acting shall make oath that he shall truly and faithfully report the evidence.

2. In Latter Case, How Authenticated.—Where evidence is so taken, it shall not be necessary that such evidence be read over to or signed by the witness, but it shall be sufficient if the transcript be signed by the justice and be accompanied by an affidavit of the stenographer that it is a true report of the evidence. 55-56 V., c. 29, s. 590.

**684.** Depositions in General to be Read to Accused.—After the examination of the witnesses produced on the part of the prosecution has been completed, and after the depositions have been signed as aforesaid, the justice unless he discharges the accused person, shall ask him whether he wishes the depositions to be read again, and unless the accused dispenses therewith shall read or cause them to be read again.

2. Accused to be Addressed.—When the depositions have been again read, or the reading dispensed with, the accused shall be addressed by the justice in these words, or to the like effect:

In These Words.—'Having heard the evidence, do you wish to say anything in answer to the charge? You are not bound to say anything, but whatever you do say will be taken down in writing and may be given in evidence against you at your trial. You must clearly understand that you have nothing to hope from any promise of favour and nothing to fear from any threat which may have been held out to you to induce you to make any admission or confession of guilt, but whatever you now say may be given in evidence against you upon your trial notwithstanding such promise or threat.'

3. Statement of Accused — Form. — Whatever the accused then says in answer thereto shall be taken down in writing in form 20, or to the like effect, and shall be signed by the justice and kept with the depositions of the witnesses and dealt with as hereinafter provided. 55-56 V., c. 29, s. 591.

FORM 20.

(Section 684.)

STATEMENT OF THE ACCUSED.

Canada,
Province of
County of

A. B. stands charged before the undersigned , a justice of the peace in and for the county aforesaid, this day of , in the year , for that the said A. B.

on , at *(etc., as in the captions of the depositions)*; and the said charge being read to the said A. B., and the witnesses for the prosecution, C. D. and E. F., being severally examined in his presence, the said A. B. is now addressed by me as follows:

Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so; but whatever you say will be taken down in writing, and may be given in evidence against you at your trial. You must clearly understand that you have nothing to hope from any promise of favour, and nothing to fear from any threat which may have been held out to induce you to make any admission or confession of guilt, but whatever you now say may be given in evidence against you upon your trial, notwithstanding such promise or threat.' Whereupon the said A. B. says as follows: *(Here state whatever the prisoner says and in his very words, as nearly as possible. Get him to sign if he will).*

A. B.

Taken before me, at , the day and year first above mentioned.

J. S. [SEAL.]
*J. P. (name of county.)*

55-56 V., c. 29, sch. 1, form T.

**685.** CONFESSION OR ADMISSION OF ACCUSED. — Nothing herein contained shall prevent any prosecutor from giving in evidence any admission or confession, or other statement, made at any time by the person accused or charged, which by law would be admissible as evidence against him. 55-56 V., c. 29, s. 592.

**686.** WITNESSES FOR THE DEFENCE.—After the proceedings required by section six hundred and eighty-four are completed the accused shall be asked if he wishes to call any witnesses.

2. EVIDENCE TO BE TAKEN DOWN.—Every witness called by the accused who testifies to any fact relevant to the case shall be heard, and his deposition shall be taken in the same manner as the depositions of the witnesses for the prosecution. 55-56 V., c. 29, s. 593.

*Adjudication and Subsequent Steps and Bail.*

**687.** ACCUSED DISCHARGED IF NO CASE.—When all the witnesses on the part of the prosecution and the accused have been heard the justice shall, if upon the whole of the evidence he is of opinion that no sufficient case is made out to put the accused upon his trial, discharge him.

2. RECOGNIZANCES VOID.—In such case any recognizances taken in respect of the charge shall become void, unless some person is bound over to prosecute under the provisions of the next following section. 55-56 V., c. 29, s. 594.

**688.** PROSECUTOR MAY BE BOUND OVER TO PROSECUTE.—If the justice discharges the accused, and the person preferring the charge desires to prefer an indictment respecting the said charge, he may require the justice to bind him over to prefer and prosecute such an indictment, and thereupon the justice shall take his recognizance to prefer and prosecute an indictment against the accused before the court by which such accused would be tried if such justice had committed him, and the justice shall deal with the recognizance, information and depositions in the same way as if he had committed the accused for trial.

2. RECOGNIZANCE.—Such recognizance may be in form 21, or to the like effect. 55-56 V., c. 29, s. 595.

FORM 21.

(Section 688.)

*Form of Recognizance where the Prosecutor requires the Justice to bind him over to prosecute after the charge is dismissed.*

Canada.
Province of
County of

Whereas C. D. was charged before me upon the information of E. F. that C. D. (*state the charge*), and upon the hearing of the said charge I dismissed the said C. D., and the said E. F. desires to prefer an indictment against the said C. D. respecting the said charge, and has required me to bind him over to prefer such an indictment at (*here describe the next practicable sitting of the court by which the person discharged should be tried if committed.*)

The undersigned E. F. hereby binds himself to perform the following obligation, that is to say, that he will prefer and prosecute an indictment respecting the said charge against the said C. D. at (*as above*). And the said E. F. acknowledges himself bound to forfeit to the Crown the sum of $ in case he fails to perform the said obligation.

E. F.

Taken before me.

J. S.,
J. P. (name of county.)

55-56 V., c. 29, sch. 1, form U.

**689.** PROSECUTOR ORDERED TO PAY COSTS, WHEN.—If the prosecutor so bound over at his own request does not prefer and prosecute such an indictment, or if the grand jury does not find a true bill, or if the accused is not convicted upon

the indictment so preferred, the prosecutor shall, if the court so direct, pay to the accused person his costs, including the costs of his appearance on the preliminary inquiry.

2. SECURITY FOR COSTS MAY BE ORDERED.—The court before which the indictment is to be tried or a judge thereof may in its or his discretion order that the prosecutor shall not be permitted to prefer any such indictment until he has given security for such costs to the satisfaction of such court or judge. 55-56 V., c. 29, s. 595.

**690.** COMMITTAL OF ACCUSED FOR TRIAL.—If a justice holding a preliminary inquiry thinks that the evidence is sufficient to put the accused on his trial, he shall commit him for trial by a warrant of commitment, which may be in form 22, or to the like effect. 55-56 V., c. 29, s. 596.

Commitment on Sunday is a nullity: *R. v. Carelier*, 11 Man. L. R. 333.

FORM 22.

(Section 690.)

WARRANT OF COMMITMNT.

Canada, )
Province of , )
County of , )

To all or any of the constables and other peace officers of and to the keeper of the (*common* gaol) at , in the said county of .

Whereas A. B. was this day charged before me, J. S., one of His Majesty's justices of the peace in and for the said county of , on the oath of C. D. of , (*farmer*), and others, for that (*etc., stating shortly the offence*): These are therefore to command you the said constable to take the said A. B., and him safely to convey to the (*common gaol*) at aforesaid, and there to deliver him to the keeper thereof, together with this precept; And I do hereby command you the said keeper of the said (*common gaol*) to receive the said A. B. into your custody in the said (*common gaol*), and there safely keep him until he shall be thence delivered by due course of law.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]
*J. P. (Name of county.)*

55-56 V., c. 29, sch. 1, form V.

**691.** ACCUSED ENTITLED TO COPY OF DEPOSITIONS.—Every one who has been committed for trial, whether he is bailed out or not, shall be entitled at any time before the trial to have copies of the depositions, and of his own statement, if

any, from the officer who has charge thereof, on payment of a reasonable sum not exceeding five cents for each folio of one hundred words. 55-56 V., c. 29, s. 597.

**692.** RECOGNIZANCES TO PROSECUTE OR GIVE EVIDENCE.—When any one is committed for trial the justice holding the preliminary inquiry may bind over to prosecute some person willing to be so bound, and bind over every witness whose deposition has been taken, and whose evidence in his opinion is material, to give evidence at the court before which the accused is to be indicted.

2. CONTENTS OF.—Every recognizance so entered into shall specify the name and surname of the person entering into it, his occupation or profession, if any, the place of his residence and the name and number, if any, of any street in which it may be, and whether he is owner or tenant thereof or a lodger therein.

3. FORMS.—Such recognizance may be either at the foot of the deposition or separate therefrom, and may be in form 23, 24 or 25, or to the like effect, and shall be acknowledged by the person entering into the same, and be subscribed by the justice or one of the justices before whom it is acknowledged.

4. OBLIGATION OF RECOGNIZANCE.—Every such recognizance shall bind the person entering into it to prosecute or give evidence (both or either as the case may be), before the court by which the accused shall be tried. 55-56 V., c. 29, s. 598.

FORM 23.

(Section 692.)

RECOGNIZANCE TO PROSECUTE.

Canada,
Province of ,
County of .

Be it remembered that on the day of , in the year , C. D. of , in the of in the said county of (*farmer*), personally came before me , a justice of the peace in and for the said county of , and acknowledged himself to owe to our Sovereign Lord the King, his heirs and successors, the sum of , of good and lawful current money of Canada, to be made and levied of his goods and chattels, lands and tenements, to the use of our said Sovereign Lord the King, his heirs and successors, if the said C. D. fails in the condition endorsed (or hereunder written).

Taken and acknowledged the day and year first above mentioned at , before me.

J. S.,
J. P. (name of county.)

*Condition to Prosecute.*

The condition of the within (or above) written recognizance is such that whereas one A. B. was this day charged before me, J. S., a justice of the peace within mentioned, for that (*etc., as in the caption of the depositions*); if, therefore, he the said C. D. appears at the court by which the said A. B. is or shall be tried * and there duly prosecutes such charge then the said recognizance to be void, otherwise to stand in full force and virtue.

55-56 V., c. 29, sch. 1, form W.

FORM 24.

(Section 692.)

RECOGNIZANCE TO PROSECUTE AND GIVE EVIDENCE.

(*Same as the last form, to the asterisk,* and then thus*):—And there duly prosecutes such charge against the said A. B. for the offence aforesaid, and gives evidence thereon, as well to the jurors who shall pass upon the trial of the said A. B., then the said recognizance to be void, or else to stand in full force and virtue.

55-56 V., c. 29, sch. 1, form X.

FORM 25.

(Section 692.)

RECOGNIZANCE TO GIVE EVIDENCE.

(*Same as form 23 to the asterisk,* and then thus*):—And there gives such evidence as he knows upon the charge to be then and there preferred against the said A. B. for the offence aforesaid, then the said recognizance to be void, otherwise to remain in full force and virtue.

55-56 V., c. 29, sch. 1, form Y.

**693.** WARRANT FOR ARREST OF ABSCONDING WITNESS.—Whenever any person is bound by recognizance to give evidence before a justice, or any criminal court, in respect of any offence under this Act, any justice, if he sees fit, upon information being made in writing and on oath, that such person is about to abscond, or has absconded, may issue his warrant for the arrest of such person.

2. COMMITTAL TO GIVE EVIDENCE.—If such person is arrested, any justice, upon being satisfied that the ends of justice would otherwise be defeated, may commit such person to prison until the time at which he is bound by such recognizance to give evidence, unless in the meantime he produces sufficient sureties.

3. COPY OF INFORMATION.—Any person so arrested shall be entitled on demand to receive a copy of the information upon which the warrant for his arrest was issued. 55-56 V., c. 29, s. 598.

**694.** WITNESS REFUSING TO BE BOUND OVER.—Any witness who refuses to enter into or acknowledge any such recognizance as aforesaid may be committed by the justice holding the inquiry by a warrant in form 26, or to the like effect, to the prison for the place where the trial is to be had, there to be kept until after the trial, or until the witness enters into such recognizance as aforesaid before a justice having jurisdiction in the place where the prison is situated.

2. DISCHARGE OF WITNESS.—If the accused is afterwards discharged any justice having such jurisdiction may order any such witness to be discharged by an order which may be in form 27, or to the like effect. 55-56 V., c. 29, s. 599.

FORM 26.

(Section 694.)

COMMITMENT OF A WITNESS FOR REFUSING TO ENTER INTO THE RECOGNIZANCE.

Canada,
Province of
County of

To all or any of the peace officers in the said county of , and to the keeper of the common gaol of the said county of , at , in the said county of .

Whereas A. B. was lately charged before the undersigned (*name of the justice of the peace*), a justice of the peace in and for the said county of , for that (*etc., as in the summons to the witness*), and it having been made to appear to (*me*) upon oath that E. F., of , was likely to give material evidence for the prosecution, (*I*) duly issued (*my*) summons to the said E. F., requiring him to be and appear before (*me*) on , at or before such other justice or justices of the peace as should then be there, to testify what he knows concerning the said charge so made against the said A. B. as aforesaid; and the said E. F. now appearing before (*me*) (*or* being brought before (*me*) by virtue of a warrant in that behalf to testify as aforesaid, has been now examined before (*me*) touching the premises, but being by (*me*) required to enter into a recognizance conditioned to give evidence against the said A. B., now refuses so to do: These are therefore to command you the said peace officers, or any one of you, to take the said E. F. and him safely convey to the common gaol at , in the county aforesaid, and there deliver him to the said keeper thereof, together with this precept: And I do hereby command you, the said keeper of the said common gaol, to receive the said E. F. into your custody in the said common gaol, there to imprison and safely keep him until after the trial of the said A. B. for the offence aforesaid, unless in the meantime the said E. F. duly enters into such

recognizance as aforesaid in the sum of before some one justice of the peace for the said county, conditioned in the usual form to appear at the court by which the said A.B. is or shall be tried, and there to give evidence upon the charge which shall then and there be preferred against the said A. B. for the offence aforesaid.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]

*J. P. (Name of county.)*

55-56 V., c. 29, sch. 1, form Z.

FORM 27.

(Section 694.)

ORDER DISCHARGING WITNESS, WHEN ACCUSED DISCHARGED.

Canada,
Province of
County of

To the keeper of the common gaol at in the county of aforesaid.

Whereas by (*my*) order dated the day of (*instant*) reciting that A. B. was lately before then charged beforesaid, (*me*) for a certain offence therein mentioned, and that E. F. having appeared before (*me*) and being examind as a witness for the prosecution on that behalf, refused to enter into recognizance to give evidence against the said A. B., and I therefore thereby committed the said E. F. to your custody, and required you safely to keep him until after the trial of the said A. B. for the offence aforesaid, unless in the meantime he should enter into such recognizance as aforesaid; and whereas for want of sufficient evidence against the said A. B. the said A. B. has not been committed or holden to bail for the said offence, but on the contrary thereof has been since discharged, and it is therefore not necessary that the said E. F. should be detained longer in your custody: These are therefore to order and direct you the said keeper to discharge the said E. F. out of your custody, as to the said commitment, and suffer him to go at large.

Given under my hand and seal this day of , in the year at , in the county aforesaid.

J. S. [SEAL.]

J. P. (name of county.)

55-56 V., c. 29, sch., 1, form AA.

**695.** TRANSMISSION OF RECORD TO CLERK OF COURT.—The information, if any, the depositions of the witnesses, the exhibits thereto, the statement of the accused, and all recognizances entered into, and also any depositions taken before a coroner if any such have been sent to the justice, shall as soon as may be after the committal of the accused, be transmitted to the clerk or other proper officer of the court by which the accused is to be tried.

2. TO OTHER OFFICER WHEN PLACE OF TRIAL CHANGED. —When any order changing the place of trial is made the person obtaining it shall serve it, or an office copy of it, upon the person then in possession of the said documents, who shall

thereupon transmit them and the indictment, if found, to the officer of the court before which the trial is to take place. 55-56 V., c. 29, s. 600.

**696.** RULE AS TO BAIL—WHEN TWO JUSTICES MAY ADMIT.—When any person appears before any justice charged with an indictable offence punishable by imprisonment for more than five years, other than treason or an offence punishable with death or an offence under any of the sections, seventy-six to eighty-six inclusive, and the evidence adduced is, in the opinion of such justice, sufficient to put the accused on his trial, but does not furnish such a strong presumption of guilt as to warrant his committal for trial, the justice, jointly with some other justice, may admit the accused to bail upon his procuring and producing such surety or sureties as, in the opinion of the two justices, will be sufficient to ensure his appearance at the time and place when and where he ought to be tried for the offence; and thereupon the two justices shall take the recognizances of the accused and his sureties, conditioned for his appearance at the time and place of trial, and that he will then surrender and take his trial and not depart the court without leave.

2. ONE JUSTICE MAY ADMIT, WHEN.—In any case in which the offence committed or suspected to have been committed is an offence punishable by imprisonment for a term less than five years, any one justice before whom the accused appears may admit to bail in manner aforesaid, and such justice or justices may, in his or their discretion, require such bail to justify upon oath before him or them as to their sufficiency.

3. COMMITTAL ON DEFAULT.—In default of such person procuring sufficient bail, such justice or justices may commit him to prison, there to be kept until delivered according to law.

4. FORM.—The recognizance mentioned in this section shall be in form 28. 55-56 V., c. 29, s. 601.

General rule—Matters to be considered: *R.* v. *Byrnes*, 8 C. L. J. 76; *R.* v. *Cox*, 16 O. R. 228; *R.* v. *Mullady*, 4 P. R. 314; *Ex parte Huot*, 8 Q. L. R. 28; *R.* v. *Fortier*, Q. R. 13 K. B. 251.

Will generally be refused after true bill for murder: *R.* v. *Keeler*, 7 P. R. 117; *R.* v. *Murphy*, James (N.S.) 158. But was granted where jury disagreed: *Ex parte Baker*, 3 R. C. 45

Recognizance—Mode of acknowledgment—Estreat: *In re Talbot's Bail*, 23 O. R. 65.

Ontario rule as to recognizances prior to Criminal Code still in force: *R.* v. *Robinet*, 16 P. R. 49.

Rescinding order—Fictitious bail—Powers of judge—Terms: *R.* v. *Mason*, 5 P. R. 125.

Provisions of C. S. L. C., c. 95, relating to bail in case of felony where trial has been delayed applies in case of all indictable offences under the Criminal Code: *R.* v. *Cameron*, J. R. 6 Q. B. 158.

Where the conviction of a prisoner on bail is set aside and a new trial ordered, he need not appear for sentence pursuance to his recognizance, and the sureties are not bound for his appearance: *R.* v. *Hamilton*, 12 Man. L. R. 507.

FORM 28.

(Section 696.)

RECOGNIZANCE OF BAIL.

Canada,
Province of
County of

Be it remembered that on the day of , in the year , A. B. of (*labourer*), L. M. of (*grocer*), and N. O. of (*butcher*), personally came before (*us*) the undersigned two justices of the peace for the the county of , and severally acknowledged for themselves to owe to our Sovereign Lord the King, his heirs and successors, the several sums following, that is to say: the said A. B., the sum of , and the said L. M. and N. O. the sum of , each, of good and lawful current money of Canada, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said Sovereign Lord the King, his heirs and successors, if he, the said A. B., fails in the condition endorsed (*or* hereunder written).

Taken and acknowledged the day and year first above mentioned, at , before us,

J. S.,
J. N.,
J. P. (name of county.)

The condition of the within (*or* above) written recognizance is such that whereas the said A. B. was this day charged before (*us*), the justices within mentioned for that (*etc., as in the warrant*); if, therefore, the said A. B. appears at the next superior court of criminal jurisdiction (*or* court of general or quarter sessions of the peace) to be holden in and for the county of , and there surrenders himself into the custody of the keeper of the common gaol (*or* lock-up house) there, and pleads to such indictment as may be found against him by the grand jury, for and in respect to the charge aforesaid, and takes his trial upon the same, and does not depart the said court without leave, then the said recognizance to be void, otherwise to stand in full force and virtue.

63-64 V., c. 46, form BB.

**697.** APPEARANCE AT COURT OF SESSIONS OF THE PEACE.—Where the offence is one triable by the court of general or quarter sessions of the peace and the justice is of opinion that it may better or more conveniently be so tried, the condition of the recognizance may be for the appearance of the accused

at the next sittings of that court notwithstanding that a sitting of a superior court of criminal jurisdiction capable of trying the offence intervenes. 63-64 V., c. 46, s. 3.

**698.** Bail after Committal—Order for—By Two Justices—Warrant.—In case of any offence other than treason or an offence punishable with death, or an offence under any of the sections, seventy-six to eighty-six inclusive, where the accused has been finally committed as herein provided, any judge of any superior or county court, having jurisdiction in the district or county within the limits of which the accused is confined, may, in his discretion, on application made to him for that purpose, order the accused to be admitted to bail on entering into a recognizance with sufficient sureties before two justices, in such amount as the judge directs, and thereupon the justices shall issue a warrant of deliverance as hereinafter provided, and shall attach thereto the order of the judge directing the admitting the accused to bail.

2. Form.—Such warrant of deliverance shall be in form 29. 55-56 V., c. 29, s. 602.

FORM 29.

(Section 698.)

WARRANT OF DELIVERANCE ON BAIL BEING GIVEN FOR A PRISONER ALREADY COMMITTED.

Canada,
Province of ,
County of .

To the keeper of the common gaol of the county of
at , in the said county.

Whereas A. B., late of *(labourer)*, has before *(us)* *(two)* justices of the peace in and for the said county of entered into his own recognizance, and found sufficient sureties for his appearance at the next superior court of criminal jurisdiction *(or* court of general or quarter sessions of the peace*)*, to be holden in and for the county of , to answer our Sovereign Lord the King, for that *(etc., as in the commitment)*, for which he was taken and committed to your said common gaol: These are therefore to command you, in His Majesty's name, that if the said A. B. remains in your custody in the said common gaol for the said cause, and for no other, you shall forthwith suffer him to go at large.

Given under our hands and seals, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. N. [SEAL.]
J. P. (name of county.)

63-64 V., c. 46, form CC.

**699.** BAIL BY SUPERIOR COURT.—No judge of a county court or justices shall admit any person to bail accused of treason or an offence punishable with death, or an offence under any of the sections, seventy-six to eighty-six inclusive, nor shall any person be admitted to bail, except by order of a superior court of criminal jurisdiction for the province in which the accused stands committed, or of one of the judges thereof, or, in the province of Quebec, by order of a judge of the Court of King's Bench or Superior Court. 55-56 V., c. 29, s. 603.

Refusal in serious charge where no depositions taken and bail refused by magistrate: *R.* v. *Cox*, 16 O. R. 228.

**700.** BAIL AFTER COMMITTAL — NOTICE TO JUSTICE.—When any person has been committed for trial by any justice, the prisoner, his counsel, solicitor or agent may notify the committing justice that he will, as soon as counsel can be heard, move before a superior court of the province in which such person stands committed, or one of the judges thereof, or the judge of the county court, if it is intended to apply to such judge, under section six hundred and ninety-eight, for an order to the justice to admit such prisoner to bail.

2. RECORD TO BE TRANSMITTED.—Such committing justice shall, as soon as may be, after being so notified, transmit to the clerk of the Crown, or the chief clerk of the court, or the clerk of the county court, or other proper officer, as the case may be, endorsed under his hand and seal, a certified copy of all informations, examinations and other evidence touching the offence wherewith the prisoner has been charged, together with a copy of the warrant of committment, and the packet containing the same shall be handed to the person applying therefor for transmission, and it shall be certified on the outside thereof to contain the information concerning the case in question.

3. PENALTY FOR NEGLECT.—If any justice neglects to comply with the foregoing provisions of this section, according to the true intent and meaning thereof, the court, to whose officer any such information, examination, other evidence, or warrant of commitment ought to have been delivered, shall, upon examination and proof of the offence in a summary

manner, impose such fine upon such justice as the court thinks fit. 55-56 V., c. 29, s. 604.

Copies of information, etc., certified by county crown attorney and not by committing justice may be received: *R.* v. *Chamberlain*, 1 C. L. J. 157.

**701.** Order upon Application for Bail.—Upon application for bail as aforesaid to any such court or judge the same order concerning the prisoner being bailed or continued in custody, shall be made as if the prisoner was brought up upon a *habeas corpus*. 55-56 V., c. 29, s. 604.

**702.** Warrant of Deliverance.—Whenever any justice or justices admit to bail any person who is then in any prison charged with the offence for which he is so admitted to bail, such justice or justices shall send to or cause to be lodged with the keeper of such prison, a warrant of deliverance under his or their hands and seals, requiring the said keeper to discharge the person so admitted to bail if he is detained for no other offence, and upon such warrant of deliverance being delivered to or lodged with such keeper, he shall forthwith obey the same. 55-56 V., c. 29, s. 605.

**703.** Warrant for the Arrest of Person Bailed about to Abscond.—Whenever a person charged with any offence has been bailed in manner aforesaid, it shall be lawful for any justice, if he sees fit, upon the application of the surety or of either of the sureties of such person and upon information being made in writing and on oath by such surety, or by some person on his behalf, that there is reason to believe that the person so bailed is about to abscond for the purpose of evading justice, to issue his warrant for the arrest of the person so bailed, and afterwards, upon being satisfied that the ends of justice would otherwise be defeated, to commit such person when so arrested to gaol until his trial or until he produces another sufficient surety or other sufficient sureties, as the case may be, in like manner as before. 55-56 V., c. 29, s. 606.

**704.** Delivery of Accused to Keeper under Warrant.—The constable or any of the constables, or other person to whom any warrant of commitment authorized by this or any

other Act or law is directed, shall convey the accused person therein named or described to the gaol or other prison mentioned in such warrant, and there deliver him, together with the warrant, to the keeper of such gaol or prison, who shall thereupon give the constable or other person delivering the prisoner into his custody, a receipt for the prisoner, setting forth the state and condition of the prisoner when delivered into his custody.

2. FORM.—Such receipt shall be in form 30. 55-56 V., c. 29, s. 607.

FORM 30.

(Section 704.)

GAOLER'S RECEIPT TO THE CONSTABLE FOR THE PRISONER.

I hereby certify that I have received from W. T., constable, of the county of , the body of A. B., together with a warrant under the hand and seal of J.S., Esquire, justice of the peace for the said county of , and that the said A. B. was sober (*or as the case may be*), at the time he was delivered into my custody.

P. K.,
*Keeper of the common gaol of the said county.*

55-56 V., c. 29, sch. 1, form DD.

## PART XV.

### SUMMARY CONVICTIONS.

*Interpretation.*

**705.** DEFINITIONS.—In this Part, unless the context otherwise requires,—

(*a*) 'TERRITORIAL DIVISION' — 'territorial division' means district, county, union of counties, township, city, town, parish or other judicial division or place;

(*b*) 'THE COURT'—'the court' in the sections of this Part relating to justices stating or signing cases means and includes any superior court of criminal jurisdiction for the province in which the proceedings in respect of which the case is sought to be stated are carried on;

(*c*) 'DISTRICT,' 'COUNTY'—'district' or 'county' includes any territorial or judicial division or place in and

for which there is such judge, justice, justice's court, officer or prison as is mentioned in the context;

(*d*) 'COMMON GAOL,' 'PRISON' — 'common gaol' or 'prison' for the purpose of this Part means any place other than a penitentiary in which persons charged with offences are usually kept and detained in custody;

(*e*) 'CLERK OF THE PEACE'—'clerk of the peace' includes the proper officer of the court having jurisdiction in appeal under this Part, and, in the province of Saskatchewan or Alberta, and in the North-West Territories, means the clerk of the Supreme Court of the judicial district within which conviction under this Part takes place or an order is made. R. S., c. 50, s. 102; 55-56 V., c. 29, ss. 839 and 900.

A "lock-up" or small room for the temporary detention of prisoners is not a "common gaol" or "prison": *In re Burke* (1894), 27 N. S. .t. 286.

When an accused person is summoned to appear before a justice of the peace having jurisdiction to conduct the proceedings without associate justices, other justices of the peace are not entitled to interfere in the preliminary inquiry or summary trial, or to be associated with the summoning justice, except at the latter's request; and a summary conviction by the magistrate who summoned the accused and heard the charge will be supported, although three other magistrates attended the hearing and purported to dismiss the charge, if the latter magistrates sat without the request or consent of the summoning magistrate: *R.* v. *McRae* (1897), 2 Can. C. C. 49.

*Application of Part.*

**706.** Subject to any special provision otherwise enacted with respect to such offence, act or matter, this part shall apply to,—

(*a*) TO ALL CASES OF SUMMARY CONVICTION—every case in which any person commits, or is suspected of having committed, any offence or act over which the Parliament of Canada has legislative authority, and for which such person is liable, on summary conviction, to imprisonment, fine, penalty or other punishment;

(*b*) TO ALL CASES WHERE AN ORDER CAN BE MADE SUMMARILY—every case in which a complaint is made to any justice in relation to any matter over which the Parliament of Canada has legislative authority, and

with respect to which such justice has authority by law to make any order for the payment of money or otherwise. 55-56 V., c. 29, s. 840.

As to provincial Criminal statutes passed before Confederation, see *R.* v. *Halifax Electric Tramway Co.* (1898), 1 Can. C. C. 424.

The offence of forcibly and unlawfully passing a turnpike gate without paying the legal toll is an offence against a provincial law, and concerning a subject which is under the exclusive control of the provincial legislature, and therefore in such a case no appeal lies from a conviction by a magistrate under s. 879, which only applies to offences over which the Federal Parliament has legislative authority: *Lecours* v. *Hurtubise* (1889), R. J. Q., 8 Q. B. 439.

*Jurisdiction.*

**707.** HEARING TO BE BY ONE OR MORE JUSTICES.—Every complaint and information shall be heard, tried, determined and adjudged by one justice or two or more justices as directed by the Act or law upon which the complaint or information is framed or by any other Act or law in that behalf.

2. MAY BE BY ONE JUSTICE UNLESS SPECIAL ACT PROVIDES OTHERWISE.—If there is no such direction in any Act or law then the complaint or information may be heard, tried, determined and adjudged by any one justice for the territorial division where the matter of the complaint or information arose: Provided that every one who aids, abets, counsels or procures the commission of any offence punishable on summary conviction, may be proceeded against and convicted either in the territorial division or place where the principal offender may be convicted, or in that in which the offence of aiding, abetting, counselling or procuring was committed. 55-56 V., c. 29, s. 842.

**708.** ONE JUSTICE MAY DO ALL ACTS BEFORE HEARING.—Any one justice may receive the information or complaint, and grant a summons or warrant thereon, and issue his summons or warrant to compel the attendance of any witnesses for either party, and do all other acts and matters necessary preliminary to the hearing, even if by the statute in that behalf it is provided that the information or complaint shall be heard and determined by two or more justices.

2. AND AFTER HEARING.—After a case has been heard and determined one justice may issue all warrants of distress or commitment thereon.

3. NEED NOT BE SAME JUSTICE.—It shall not be necessary for the justice who acts before or after the hearing to be the justice or one of the justices by whom the case is to be or has been heard and determined.

4. JUSTICES MUST BE PRESENT TOGETHER WHEN ACTING.—If it is required by any Act or law that an information or complaint shall be heard and determined by two or more justices, or that a conviction or order shall be made by two or more justices, such justices shall be present and acting together during the whole of the hearing and determination of the case. 55-56 V., c. 29, s. 842.

**709.** TITLE TO LANDS COMING INTO QUESTION.—No justice shall hear and determine any case of assault or battery, in which any question arises as to the title to any lands, tenements, hereditaments, or any interest therein or accruing therefrom, or as to any bankruptcy or insolvency, or any execution under the process of any court of justice. 55-56 V., c. 29, s. 842.

*Information and Complaint.*

**710.** WHEN COMPLAINT NEED NOT BE IN WRITING.—It shall not be necessary that any complaint upon which a justice may make an order for the payment of money or otherwise shall be in writing, unless it is so required by the particular Act or law upon which such complaint is founded.

2. OR UNDER OATH.—Every complaint upon which a justice is authorized by law to make an order, and every information for any offence or act punishable on summary conviction, may, unless it is by this Part or by some particular Act or law otherwise provided, be made or had without any oath or affirmation as to the truth thereof.

3. FOR ONE OFFENCE OR MATTER.—Every complaint shall be for one matter of complaint only, and not for two or more matters of complaint, and every information shall be for one offence only, and not for two or more offences.

4. MAY BE LAID BY AGENT.—Every complaint or information may be laid or made by the complainant or informant

in person, or by his counsel or attorney or other person authorized in that behalf. 55-56 V., c. 29, s. 845.

A conviction for using profane language on a public street is invalid unless the words complained of are therein set out: *R. v. Smith* (1899), 31 N. S. R. 411.

A conviction for a second offence under the Canada Temperance Act must show that a second offence was committed after the information had been laid for the first offence: *Ex parte LeBlanc* (1895), 1 Can. C. C. 12.

See also *Laliberte* v. *Fortin* (1893), R. J. Q. 3, S. C. 385. Reversed in Appeal, R. J. Q. 2 Q. B. 578.

In *R. v. Hazen* (1893), 20 A. R. 633, the question arose whether an information which stated that the accused "within the space of 30 days last past, to wit on the 30th and 31st days of July, 1892, did unlawfully sell intoxicating liquor without the license therefor by law required," contravened the provisions of this section. The Court of Appeal was evenly divided as to whether or not this information charged two offences or only one. But it was held by the whole Court that even if the information as worded did contravene s.-s. 3 of this section, the defect was one "in substance or in form" within the meaning of s. 847, and that it did not invalidate an otherwise valid conviction for a single offence.

Where an information charged the accused with having sold intoxicating liquor to two persons on the 5th of July, and to two persons on the 8th of July, in contravention of the Indian Act, and the justices, although the defendant's counsel objected to the information as so laid, heard evidence in respect of all the offences charged, then amended the information by substituting the 8th August for the 8th July, heard further evidence in respect of the substituted charges, and dismissed them and convicted the accused for selling to two persons on the 5th of July, the conviction was quashed.

In this case it was said that it was the duty of the justices when the objection was taken to have amended the information by striking out one or other of the charges, and to have heard the evidence applicable to the remaining charge alone: *R. v. Alward* (1894), 25 O. R. 519.

*Summons and Warrant.*

**711.** COMPELLING APPEARANCE — PROVISO — COPY OF WARRANT TO BE SERVED.—The provisions of Parts XIII. and XIV. relating to compelling the appearance of the accused before the justice receiving an information for an indictable offence and the provisions respecting the attendance of witnesses on a preliminary inquiry and the taking of evidence thereon, shall, so far as the same are applicable, except as varied by the sections immediately following, apply to any hearing under the provisions of this Part: Provided that whenever a warrant is issued in the first instance against a person charged with an offence punishable under the provisions of this Part, the justice issuing it shall furnish a copy or copies thereof, and cause a copy to be served on the person arrested at the time of such arrest.

2. SUMMONS NECESSARY WHEN.—Nothing herein contained shall oblige any justice to issue any summons to procure the attendance of a person charged with an offence by information laid before such justice whenever the application for any order may, by law, be made *ex parte*. 55-56 V., c. 29, s. 843.

The service of a summons at the defendant's usual place of abode while he is without the province is void, and the justice has no jurisdiction to convict in such a case: *Ex parte Donovan* (1894), 32 N. B. R. 374.

See also *Ex parte Doherty* (1894), 32 N. B. R. 375.

In an Ontario case, it was held that by virtue of the provisions of this section and of s. 584, a judge of the High Court or a County Court Judge may order a subpœna to issue to witnesses in another province to compel their attendance upon an appeal to the General Sessions from the action of justices of the peace under ss. 879-881: *R.* v. *Gillespie* (1894), 16 P. R. 155.

An information under oath which, on its face, purports to be the information of a person other than the person who has signed and sworn to the same is bad; and where a warrant of arrest based upon such defective information, has been issued to enforce the attendance of the accused before a magistrate, and the magistrate at the opening of the trial amends the information by inserting therein, in the presence and with the consent of the person who had signed and sworn to the information, the latter's name, or, in the place of the name so appearing thereon, it is necessary that the information should be resworn: *R.* v. *McNutt* (1896), 3 Can. C. C. 184.

**712.** BACKING WARRANTS.—The provisions of section six hundred and sixty-two relating to the indorsement of warrants shall apply to the case of any warrant issued under the provisions of this Part against the accused, whether before or after conviction, and whether for the apprehension or imprisonment of any such person. 55-56 V., c. 29, s. 844.

**713.** SUMMONS FOR WITNESS OUT OF JURISDICTION.—A summons may be issued to procure the attendance, on the hearing of any charge under the provisions of this Part of a witness who resides out of the jurisdiction of the justice before whom such charge is to be heard.

2. SUMMONS AND WARRANT SERVED BY PEACE OFFICER.—Every such summons and every warrant issued to procure the attendance of a witness, whether in consequence of refusal by such witness to appear in obedience to a summons or otherwise, may be respectively served and executed by the constable or other peace officer to whom the same is delivered or by any other person, as well beyond as within the territorial division of the justice who issued the same. 55-56 V., c. 29, s. 848.

*Trial.*

**714.** HEARING IN OPEN COURT.—The room or place in which the justice sits to hear and try any complaint or information shall be deemed an open and public court, to which the public generally may have access so far as the same can conveniently contain them. 55-56 V., c. 29, s. 849.

**715.** COUNSEL FOR DEFENDANT.—The person against whom the complaint is made or information laid shall be admitted to make his full answer and defence thereto, and to have the witnesses examined and cross-examined by counsel, solicitor or agent on his behalf.

2. OR FOR COMPLAINANT OR INFORMANT.—Every complainant or informant in any such case shall be at liberty to conduct the complaint or information, and to have the witnesses examined and cross-examined, by counsel or attorney on his behalf. 55-56 V., c. 29, s. 850.

The accused is not denied the right to make "full answer and defence" to the charge by reason of the magistrate having stated, after hearing the evidence for the prosecution, that a denial on oath by the accused would not alter his opinion as to her guilt: *R.* v. *McGregor* (1895), 2 Can. C. C. 419.

A refusal to examine witnesses for the defence and to permit a cross-examination of the witnesses for the prosecution, is a clear miscarriage of justice, and a clear excess of jurisdiction which invalidates the conviction: *R.* v. *Sproule* (1887), 14 O. R. 375 at p. 384.

And see *R.* v. *Holland* (1875), 37 U. C. Q. B. 214; *R.* v. *Washington* (1881), 46 U. C. Q. B. 221, at p. 225.

Where it is desired on behalf of the defence to show that a magistrate has an interest in the prosecution, the accused is entitled to call the magistrate as a witness, and if the latter refuses to be sworn, and the associate magistrate refuses to use his authority to compel him to be sworn, the defendant is thereby denied the right of making a "full answer and defence:" *R.* v. *Sproule* (1887), 14 O. R. 375.

Where the presiding magistrate is called as a witness for the defence, but refuses to be sworn, a summary conviction made without his evidence should not be quashed unless it is shown that the request to have the magistrate called as a witness was made in good faith, that the magistrate could give material evidence, and that the accused was therefore prejudiced by his refusal: *Ex parte Flannagan* (1897) 2 Can. C. C. 513.

Where, in summary proceedings, it is desired to call the presiding magistrate as a witness, the application should be supported by an affidavit, stating not only that the magistrate is a necessary and material witness, and that the application is made in good faith, but also disclosing specifically what the party proposes to prove by the magistrate's testimony; and where on an application to quash a summary conviction on the ground that the magistrate refused to give evidence on the trial before himself, the Court is satisfied from the justice of the peace's affidavit, and from the evidence taken in the case, that the magistrate was not a material witness, and that the

application to have him sworn as a witness was not made *bona fide*, the conviction will not be disturbed: *Ex parte Hebert* (1898), 4 Can. C. C. 153.

**716.** Evidence to be on Oath.—Every witness at any hearing shall be examined upon oath or affirmation, by the justice before whom such witness appears for the purpose of being examined.

2. Commission to Take Evidence Outside of Canada in Certain Cases—Proviso.—A judge of any superior or county court may appoint a commissioner or commissioners to take the evidence upon oath of any person who resides out of Canada and is stated to be able to give material information relating to an offence for which a prosecution is pending under this Part, or relating to any person accused of such offence, in the circumstances and in the manner, *mutatis mutandis*, in which he might do so under section nine-hundred and ninety-seven; and all the provisions of the said section, in respect of matters arising thereunder, shall apply *mutatis mutandis* to matters arising under this section: Provided that no such appointment shall be made without the consent of the Attorney-General. 55-56 V., c. 29, s. 851; 6 E. VII., c. 5, s. 1.

**717.** Prosecutor Need not Prove Negative.—If the information or complaint in any case negatives any exemption, exception, proviso or condition in the statute on which the same is founded it shall not be necessary for the prosecutor or complainant to prove such negative, but the defendant may prove the affirmative thereof in his defence if he wishes to avail himself of the same. 55-56 V., c. 29, s. 852.

Both the service and the mode of service of the summons should be sworn to, and the judge should on reasonable grounds have come to the conclusion that there has been a sufficient interval since the service to permit the accused to obey it, before proceedings are allowed to be taken in the absence of the accused: *R.* v. *Smith* (1875), L. R. 10 Q. B. 604; *R.* v. *Mabee* (1889), 17 O. R. 194; *Read* v. *Hunter* (1888), 8 Oce. N. 428.

It was held that the generality of the prohibition contained in a provincial statute, prohibiting the having in possession of certain game for the purposes of export, etc., was not to be limited by way of inference to game killed within the province: *R.* v. *Strauss* (1897), 5 B. C. R. 486. See also *Price* v. *Bradley* (1885), L. R. 16 Q. B. D. 148.

The existence of an exception nominated in the description of an offence created by statute must be negatived in order to maintain the

charge; but if a statute creates an offence in general, with an exception by way of proviso in favour of certain persons or circumstances, the onus is on the accused to plead and prove himself within the proviso: *R.* v. *Strauss* (1897), 5 B. C. R. 486.

Where the defence to a summary prosecution for selling liquor without a license is that the accused was entitled to do so under a statutory exception respecting registered druggists, and by statute the onus is expressly cast on the accused to prove himself within the exception, and provision is made for proving the register by the production of a printed copy thereof, the oral testimony of the accused that he is a duly registered druggist is not competent evidence of the fact, and the magistrate may disregard the same, although no objection was taken to the admission of such testimony: *R.* v. *Herrell* (1899), 3 Can. C. C. 15.

As to the distinction between a proviso and an exception, see *Simpson* v. *Ready* (1844), 12 M. & W. 736, whereat p. 739, Baron Alderson said "there is a manifest distinction between a proviso and an exception. If an exception occurs in the description of the offence in the statute, the exception must be negatived, or the party will not be brought within the description. But if the exception comes by way of proviso, and does not alter the offence, but merely states what persons are to take advantage of it, then the defence must be specially pleaded, or may be given in evidence under the general issue according to circumstances."

**718.** Non-appearance of Accused—Ex Parte Hearing — Warrant to Procure Attendance of Accused.—In case the accused does not appear at the time and place appointed by any summons issued by a justice on information before him of the commission of an offence punishable on summary conviction, then, if it appears to the satisfaction of the justice that the summons was duly served a reasonable time before the time appointed for appearance, such justice may proceed *ex parte* to hear and determine the case in the absence of the defendant, as fully and effectually, to all intents and purposes, as if the defendant had personally appeared in obedience to such summons, or the justice may, if he thinks fit, issue his warrant as provided by sections six hundred and fifty-nine and six hundred and sixty, and adjourn the hearing of the complaint or information until the defendant is apprehended. 55-56 V., c. 29, s. 853; 56 V., c. 32, s. 1.

**719.** Non-appearance of Prosecutor—Dismissal or Adjournment.—If, upon the day and at the place so appointed, the defendant appears voluntarily in obedience to the summons in that behalf served upon him, or is brought before the justice by virtue of a warrant, then, if the complainant or informant, having had due notice, does not appear by himself, his counsel, solicitor or agent, the justice shall dismiss

the complaint or information unless he thinks proper to adjourn the hearing of the same until some other day upon such terms as he thinks fit. 55-56 V., c. 29, s. 854.

**720.** Proceedings when Both Parties Appear.—If both parties appear, either personally or by their respective counsel, solicitors or agents, before the justice who is to hear and determine the complaint or information, such justice shall proceed to hear and determine the same. 55-56 V., c. 29, s. 855.

The absence of counsel for accused from the adjourned sittings at which the magistrate pronounced his judgment, the evidence having been closed at the former sittings at which counsel appeared, was held not to affect the power of the magistrate to convict, notwithstanding that at the previous sitings counsel for accused had objected to the hearing being proceeded with on the ground of irregularity in the service of the summons: *R.* v. *Doherty* (1899), 3 Can. C. C. 505.

See also *R.* v. *The Cinque Ports* (1886), L. R. 17. Q. B. D. 191.

**721.** Arraignment of Accused.—If the defendant is personally present at the hearing the substance of the information or complaint shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted, or why an order should not be made against him, as the case may be.

2. Conviction or Order if Charge Admitted.—If the defendant thereupon admits the truth of the information or complaint, and shows no sufficient cause why he should not be convicted, or why an order should not be made against him, as the case may be, the justice present at the hearing shall convict him or make an order against him accordingly.

3. If Charge not Admitted.—If the defendant does not admit the truth of the information or complaint, the justice shall proceed to inquire into the charge and for the purposes of such inquiry shall take the evidence of witnesses both for the complainant and accused in the manner provided by Part XIV. in the case of a preliminary inquiry.

4. Evidence in Reply.—The prosecutor or complainant is not entitled to give evidence in reply if the defendant has not adduced any evidence other than as to his general character.

5. Witnesses Need not Sign.—In a hearing under this Part the witnesses need not sign their depositions. 55-56 V., c. 29, s. 856.

See *R.* v. *McRae* (1897), 2 Can. C. C. 49.

**722.** Adjournment.—Before or during the hearing of any information or complaint the justice may, in his discretion, adjourn the hearing of the same to a certain time or place to be then appointed and stated in the presence and hearing of the party or parties, or of their respective counsel, solicitors or agents then present, but no such adjournment shall be for more than eight days.

2. Hearing at Time to which Adjourned.—If, at the time and place to which the hearing or further hearing is adjourned, either or both of the parties do not appear, personally or by his or their counsel, solicitors or agents respectively, before the justice or such other justices as shall then be there, the justice who is then there may proceed to the hearing or further hearing as if the party or parties were present.

3. Prosecutor not Appearing.—If the prosecutor or complainant does not appear the justice may dismiss the information, with or without costs as to him seems fit.

4. Defendant may go at Large, be Committed or Put Under Recognizance.—Whenever any justice adjourns the hearing of any case he may suffer the defendant to go at large or may commit him to the common gaol or other prison within the territorial division for which such justice is then acting, or to such other safe custody as such justice thinks fit, or may discharge the defendant upon his recognizance, with or without sureties at the discretion of such justice, conditioned for his appearance at the time or place to which such hearing or further hearing is adjourned.

5. In Event of Non-appearance Warrant May Issue.—Whenever any defendant who is discharged upon recognizance, or allowed to go at large, does not appear at the time mentioned in the recognizance or to which the hearing or further hearing is adjourned the justice may issue his warrant for his apprehension. 55-56 V., c. 29, s. 857.

*Defects and Objections.*

**723.** Proceedings not Objectionable on Certain Grounds.—No information, complaint, warrant, conviction or other proceeding under this Part shall be deemed objectionable or insufficient on any of the following grounds, that is to say,—

(*a*) that it does not contain the name of the person injured, or intended or attempted to be injured; or,

(*b*) that it does not state who is the owner of any property therein mentioned; or,

(*c*) that it does not specify the means by which the offence was committed; or,

(*d*) that it does not name or describe with precision any person or thing.

2. Particulars may be Ordered.—The justice may, if satisfied that it is necessary for a fair trial, order that a particular, further describing such means, person, place or thing, be furnished by the prosecutor.

3. Description of Offence in Words of Act.—The description of any offence in the words of the Act or any order, by-law, regulation or other document creating the offence, or any similar words, shall be sufficient in law. 63-64 V. c. 46, s. 3.

**724.** Variance or Defect.—No objection shall be allowed to any information, complaint, summons or warrant for any alleged defect therein, in substance or in form, or for any variance between such information, complaint, summons or warrant and the evidence adduced on the part of the informant or complainant at the hearing of such information or complaint.

2. Not Material as to Time When.—Any variance between the information for any offence or act punishable on summary conviction and the evidence adduced in support thereof as to the time at which such offence or act is alleged to have been committed, shall not be deemed material if it is proved that such information was, in fact, laid within the time limited by law for laying the same.

3. Not Material as to Place Where.—Any variance between the information and the evidence adduced in support

thereof, as to the place in which the offence or act is alleged to have been committed, shall not be deemed material if the offence or act is proved to have been committed within the jurisdiction of the justice by whom the information is heard and determined.

4. If Misleading, Adjournment.—If any such variance, or any other variance between the information, complaint, summons or warrant, and the evidence adduced in support thereof, appears to the justice present and acting at the hearing to be such that the defendant has been thereby deceived or misled, the justice may, upon such terms as he thinks fit, adjourn the hearing of the case to some future day. 55-56 V., c. 29, s. 847.

Though evidence and findings established commission of an offence against the Code, a conviction on a charge not formulated, as to which evidence was not addressed and defendant was not called to make defence, is bad and defendant should be discharged: *R.* v. *Mines*, 25 O. R. 577.

**725.** Proceedings not Objectionable on Certain Other Grounds.—No information, summons, conviction, order or other proceeding shall be held to charge two offences, or shall be held to be uncertain on account of its stating the offence to have been committed in different modes, or in respect of one or other of several articles, either conjunctively or disjunctively, for example, in charging an offence under section five hundred and thirty-three it may be alleged that 'the defendant unlawfully did cut, break, root up and otherwise destroy or damage a tree, sapling or shrub;' and it shall not be necessary to define more particularly the nature of the act done, or to state whether such act was done in respect of a tree, or a sapling, or a shrub. 55-56 V., c. 29, s. 907.

*Adjudication.*

**726.** Convict, Make Order, or Dismiss. — The justice, having heard what each party has to say, and the witnesses and evidence adduced, shall consider the whole matter, and, unless otherwise provided, determine the same and convict or make an order against the defendant, or dismiss the information or complaint, as the case may be. 55-56 V., c. 29, s. 858.

**727.** Memo. of Conviction or Order — Forms.—If the justice convicts or makes an order against the defendant, a

minute or memorandum thereof may then be made, for which no fee shall be paid, and the conviction or order, in such case, shall afterwards be drawn up by the justice on parchment or on paper, under his hand and seal, in such one of the forms of conviction or of orders from 31 to 36 inclusive as is applicable to the case, or to the like effect. 55-56 V., c. 29, s. 859.

FORM 31.

(Section 727.)

CONVICTION FOR A PENALTY TO BE LEVIED BY DISTRESS, AND IN DEFAULT OF SUFFICIENT DISTRESS, BY IMPRISONMENT.

Canada, )
Province of . )
County of . )

Be it remembered that on the day of , in the year , at , in the said county, A. B. is convicted before the undersigned, a justice of the peace for the said county, for that the said A. B. (*etc., stating offence, and the time and place when and where committed*), and I adjudge the said A. B. for his said offence to forfeit and pay the sum of $ (*stating the penalty, and also the compensation, (if any)*, to be paid and applied according to law, and also to pay to the said C. D. the sum of , for his costs in this behalf; and if the said several sums are not paid forthwith, (*or* on or before the of next), * I order that the same be levied by distress and sale of the goods and chattels of the said A. B., and in default of sufficient distress, * I adjudge the said A. B. to be imprisoned in the common gaol of the said county, at , in the said county of , (there to be kept at hard labour, *if such is the sentence*) for the term of , unless the said several sums and all costs and charges of the said distress (and of the commitment and conveying of the said A. B. to the said gaol) are sooner paid.

Given under under my hand and seal, the day and year first above mentioned, at , in the county aforesaid.

J. S. [SEAL.]
*J. P., (Name of county).*

* *Or when the issuing of a distress warrant would be ruinous to the defendant and his family, or it appears he has no goods whereon to levy a distress, then instead of the words between the asterisks* * * say, "inasmuch as it is now made to appear to me that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B. and his family," (*or*, "that the said A. B. has no goods or chattels whereon to levy the said sums by distress").
55-56 V., c. 29, sch. 1, form VV.

FORM 32.

(Section 727.)

CONVICTION FOR A PENALTY, AND IN DEFAULT OF PAYMENT, IMPRISONMENT.

Canada, )
Province of . )
County of . )

Be it remembered that on the day of , in the year , at , in the said county, A. B.

is convicted before the undersigned, , a justice of the peace for the said county, for that he the said A. B. (*etc., stating the offence, and the time and place when and where it was committed*), and I adjudge the said A. B. for his said offence to forfeit and pay the sum of (*stating the penalty and the compensation, if any*) to be paid and applied according to law; and also to pay to the said C. D. the sum of for his costs in this behalf; and if the said several sums are not paid forthwith (*or*, on or before next), I adjudge the said A. B. to be imprisoned in the common gaol of the said county, at , in the said county of (and there to be kept at hard labour, *if the Act or law authorizes this, and it is so adjudged*) for the term of , unless the said sums and the costs and charges of the commitment and of the conveying of the said A. B. to the said common gaol are sooner paid.

Given under my hand and seal, the day and year first above mentioned at , in the county aforesaid.

J. S. [SEAL.]
*J. P., (Name of county.)*

55-56 V., c. 29, sch. 1, form WW.

## FORM 33.

(Section 727.)

### CONVICTION WHEN THE PUNISHMENT IS BY IMPRISONMENT, ETC.

Canada,
Province of ,
County of ,

Be it remembered that on the day of , in the year at , in the said county, A. B. is convicted before the undersigned, , a justice of the peace in and for the said county, for that he the said A. B. (*etc., stating the offence, and the time and place when and where it was committed*); and I adjudge the said A. B. for his said offence to be imprisoned in the common gaol of the said county, at , in the county of , (and there to be kept at hard labour, *if the Act or law authorizes this, and it is so adjudged*) for the term of ; and I also adjudge the said A. B. to pay to the said C. D. the sum of , for his costs in this behalf, and if the said sum for costs is not paid forthwith (*or* on or before next), then* I order that the said sum be levied by distress and sale of the goods and chattels of the said A. B.; and in default of sufficient distress in that behalf,* I adjudge the said A. B. to be imprisoned in the said common gaol (and kept there at hard labour, *if the Act or law authorizes this, and it is so adjudged*) for the term of , to commence at and from the expiration of the term of his imprisonment aforesaid, unless the said sum for costs and the costs and charges of the commitment and of the conveying of the said A. B. to gaol are sooner paid.

Given under my hand and seal, the day and year first above mentioned at , in the county aforesaid.

J. S. [SEAL.]
*J. P., (Name of county).*

*Or when the issuing of a distress warrant would be ruinous to the defendant and his family, or it appears that he has no goods whereon to levy a distress, then, instead of the words between the asterisks * * say,* 'inasmuch as it is now made to appear to me that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B. and his family,' (*or*, 'that the said A. B. has no goods or chattels whereon to levy the said sum for costs by distress'),

55-56 V., c. 29, sch. 1, form XX.

FORM 34.

(Section 727.)

ORDER FOR PAYMENT OF MONEY TO BE LEVIED BY DISTRESS, AND IN DEFAULT OF DISTRESS, IMPRISONMENT.

Canada, }
Province of . }
County of . }

Be it remembered that on , a complaint was made before The undersigned, , a justice of the peace in and for the said county of , for that (*stating the facts entitling the complainant to the order, with the time and place when and where they occurred*), and now at this day, to wit, on , at , the parties aforesaid appear before me the said justice (*or* the said C. D. appears before me the said justice, but the said A. B., although duly called, does not appear by himself, his counsel or attorney, and it is now satisfactorily proved to me on oath that the said A. B. was duly served with the summons in this behalf, which required him to be and appear here on this day before me or such justice or justices of the peace for the county, as should now be here, to answer the said complaint, and to be further dealt with according to law); and now having heard the matter of the said complaint, I do adjudge the said A. B. to pay to the said C. D. the sum of forthwith (*or* on or before next, *or as the Act or law requires*), and also to pay to the said C. D. the sum of for his costs in this behalf; and if the said several sums are not paid forthwith (*or* on or before next), then, * I hereby order that the same be levied by distress and sale of the goods and chattels of the said A. B. and in default of sufficient distress in that behalf * I adjudge the said A. B. to be imprisoned in the common gaol of the said county, at , in the said county of , (and there kept at hard labour, *if the Act or law authorizes this, and it is so adjudged*) for the term of unless the said several sums and all costs and charges of the said distress and of the commitment and of the conveying of the said A. B. to the said common gaol are sooner paid.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]
*J. P., (Name of county).*

* *Or when the issuing of a distress warrant would be ruinous to the defendant and his family, or it appears that he has no goods whereon to levy a distress, then, instead of the words between the asterisks* * * *say*, 'inasmuch as it is now made to appear to me that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B. and his family,' (*or* 'that the said A. B. has no goods or chattels whereon to levy the said sums by distress').

55-56 V., c. 29, sch. 1, form YY.

FORM 35.

(Section 727.)

ORDER FOR PAYMENT OF MONEY, AND IN DEFAULT OF PAYMENT, IMPRISONMENT.

Canada. }
Province of . }
County of . }

Be it remembered that on , complaint was made before the undersigned, , a justice of the peace in and for

the said county of , for that (*stating the facts entitling the complainant to the order, with the time and place when and where they occurred*), and now this day, to wit on at , the parties aforesaid appear before me the said justice (*or* the said C. D. appears before me the said justice, but the said A. B., although duly called, does not appear by himself, his counsel or attorney, and it is now satisfactorily proved to me upon oath that the said A. B. was duly served with the summons in this behalf, which required him to be and appear here this day before me, or such justice or justices of the peace for the said county, as should now be here, to answer to the said complaint, and to be further dealt with according to law), and now having heard the matter of the said complaint, I do adjudge the said A. B. to pay to the said C. D. the sum of forthwith (*or* on or before next, *or as the Act or law requires*), and also to pay to the said C. D. the sum of for his costs in this behalf; and if the said several sums are not paid forthwith (*or* on or before next), then I adjudge the said A. B. to be imprisoned in the common gaol of the said county at , in the said county of , (there to be kept at hard labour, *if the Act or law authorizes this, and it is so adjudged*) for the term of , unless the said several sums and the costs and charges of the commitment and of the conveying of the said A. B. to the said common gaol are sooner paid.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]

*J. P., (Name of county.)*

55-56 V., c. 29, sch. 1, form ZZ.

## FORM 36.

(Section 727.)

### ORDER FOR ANY OTHER MATTER WHERE THE DISOBEYING OF IT IS PUNISHABLE WITH IMPRISONMENT.

Canada,
Province of ,
County of .

Be it remembered that on , complaint was made before the undersigned, , a justice of the peace in and for the said county of , for that (*stating the facts entitling the complainant to the order, with the time and place where and when they occurred*); and now on this day, to wit, on , at , the parties aforesaid appear before me the said justice (*or* the said C. D. appears before me the said justice, but the said A. B., although duly called, does not appear by himself, his counsel or attorney, and it is now satisfactorily proved to me, upon oath, that the said A. B. was duly served with the summons in this behalf, which required him to be and appear here this day before me, or such justice or justices of the peace for the said county, as should now be here, to answer to the said complaint and to be further dealt with according to law); and now having heard the matter of the said complaint, I do adjudge the said A. B. to (*here state the matter required to be done*), and if, upon a copy of the minute of this order being served upon the said A. B., either personally or by leaving the same for him at his last or most usual place of abode, he neglects or refuses to obey the same, in that case I adjudge the said A. B. for such his disobedience, to be imprisoned in the common gaol of the said county, at , in the said county of , (there to be kept at hard labour, *if the Act or law authorizes this, and it is so adjudged*) for the term of , unless the said

order is sooner obeyed, and I do also adjudge the said A. B. to pay to the said C. D. the sum of for his costs in this behalf, and if the said sum for costs is not paid forthwith (*or* on or before next), I order the same to be levied by distress and sale of the goods and chattels of the said A. B., and in default of sufficient distress in that behalf I adjudge the said A. B. to be imprisoned in the said common gaol (there to be kept at hard labour, *if the Act or law authorizes this, and it is so adjudged*) for the space of , to commence at and from the termination of his imprisonment aforesaid, unless the said sum for costs is sooner paid.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]

*J. P., (Name of county.)*

55-56 V., c. 29, sch. 1, form AAA.

**728.** DISPOSAL OF PENALTIES WHEN JOINT OFFENDERS.—When several persons join in the commission of the same offence, and upon conviction thereof each is adjudged to pay a penalty which includes the value of the property or the amount of the injury done, no further sum shall be paid to the person aggrieved than such amount or value and costs, if any, and the residue of the penalties imposed shall be applied in the same manner as other penalties imposed by a justice are directed to be applied. 55-56 V., c. 29, s. 860.

**729.** FIRST CONVICTION IN CERTAIN CASES — DISCHARGE ON PAYMENT OF DAMAGES AND COSTS.—Whenever any person is summarily convicted before a justice of any offence against Part VI., or Part VII., except section four hundred and nine and sections four hundred and sixty-six to five hundred and eight inclusive, or against Part VIII., except sections five hundred and forty-two to five hundred and forty-five inclusive, and it is a first conviction, the justice may, if he thinks fit, discharge the offender from his conviction upon his making such satisfaction to the person aggrieved, for damages and costs, or either of them, as are ascertained by the justice. 55-56 V., c. 29, s. 861.

**730.** ORDER OF DISMISSAL—CERTIFICATE OF DISMISSAL—FORM.—If the justice dismisses the information or complaint he may, when required so to do, make an order of dismissal in form 37, and he shall give the defendant a certificate in form 38 which, upon being afterwards produced, shall without further proof, be a bar to any subsequent information or complaint for the same matter, against the same defendant. 55-56 V., c. 29, s. 862.

FORM 37.

(Section 730.)

FORM OF ORDER OF DISMISSAL OF AN INFORMATION OR COMPLAINT.

Canada,
Province of
County of

Be it remembered that on , information was laid (*or* complaint was made) before the undersigned, , a justice of the peace in and for the said county of , for that (*etc., as in the summons of the defendant*); and now at this day, to wit, on , at , (*if at any adjournment insert here*; 'to which day the hearing of the case was duly adjourned ,of which the said C. D. had due notice,) both the said parties appear before me in order that I should hear and determine the said information (*or* complaint) (*or* the said A. B. appears before me, but the said C. D., although duly called, does not appear); [whereupon the matter of the said information (*or* complaint) being by me duly considered, it manifestly appears to me that the said information (*or* complaint) is not proved, and] (*if the informant or complainant does not appear, these words may be omitted,*) I do therefore dismiss the same, and do adjudge that the said C. D. do pay to the said A. B. the sum of , for his costs incurred by him in defence in his behalf; and if the said sum for costs is not paid forthwith (*or* on or before ), I order that the same be levied by distress and sale of the goods and chattels of the said C. D., and in default of sufficient distress in that behalf, I adjudge the said C. D. to be imprisoned in the common gaol of the said county of , at , in the said county of (and there kept at hard labour, *if the Act or law authorizes this, and it is so adjudged*) for the term of , unless the said sum for costs, and all costs and charges of the said distress and of the commitment and of the conveying of the said C. D. to the said common gaol are sooner paid.

Given under my hand and seal, this day of in the year , at , in the county aforesaid.

J. S. [SEAL.]
*J. P., (Name of county.)*

55-56 V., c. 29, sch. 1, form BBB.

FORM 38.

(Section 730.)

FORM OF CERTIFICATE OF DISMISSAL.

Canada,
Province of
County of

I hereby certify that an information (*or* complaint) preferred by C. D. against A. B. for that (*etc., as in the summons*) was this day considered by me, a justice of the peace in and for the said county of , and was by me dismissed (with costs).

Dated at , this day of , in the year .

J. S.,
*J. P., (Name of county.)*

55-56 V., c. 29, sch. 1, form CCC.

**731.** MINUTE OF ORDER TO BE SERVED.—Whenever, by any Act or law, authority is given to commit a person to prison,

or to levy any sum upon his goods or chattels by distress, for not obeying an order of a justice, the defendant shall be served with a copy of the minute of the order before any warrant of commitment or of distress is issued in that behalf.

2. NO PART OF WARRANT.—The order or minute shall not form any part of the warrant or commitment or of distress. 55-56 V., c. 29, s. 863.

**732.** ASSAULT.—Whenever any person is charged with common assault any justice may summarily hear and determine the charge.

2. DUTY WHEN MORE THAN COMMON ASSAULT. — If the justice finds the assault complained of to have been accompanied by an attempt to commit some other indictable offence, 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. 63-64 V., c. 46, s. 3.

**733.** DISMISSAL OF COMPLAINT FOR ASSAULT.—If the justice, upon the hearing of any case of assault or battery upon the merits where the information is laid by or on behalf of the person 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, he shall dismiss the complaint and shall forthwith make out a certificate under his hand stating the fact of such dismissal, and shall deliver such certificate to the person against whom the complaint was preferred. 55-56 V., c. 29, s. 865.

Provision that further proceedings shall be barred is *intra vires*: *Flick* v. *Brisbin*, 26 O. R. 423.

**734.** RELEASE FROM FURTHER PROCEEDINGS.—If the person against whom any such information has been laid, by or on behalf of the person aggrieved, obtains such certificate, or, having been convicted, pays the whole amount adjudged to be paid or suffers the imprisonment, or imprisonment with

hard labour, awarded, he shall be released from all further or other proceedings, civil or criminal, for the same cause. 55-56 V., c. 29, s. 866.

Information for "shooting and wounding with intent, &c."—Justices of their own motion changed it to common assault and convicted—No objection by complainant—As the change was not authorized, certificate of conviction and payment was no bar to action for damages: *Miller* v. *Lea*, 25 A. R. 428.

Provision applies to case tried under sec. 732 without regard to consent: *Nevills* v. *Ballard*, 1 Can. C. C. 434; 28 O. R. 588.

**735.** COSTS ON CONVICTION OR ORDER.—In every case of a summary conviction, or of an order made by a justice, such justice may, in his discretion, award and order in and by the conviction or order that the defendant shall pay to the prosecutor or complainant such costs as to the said justice seem reasonable in that behalf, and not inconsistent with the fees established by law to be taken on proceedings had by and before justices. 55-56 V., c. 29, s. 867.

**736.** COSTS ON DISMISSAL.—Whenever the justice, instead of convicting or making an order, dismisses the information or complaint, he may, in his discretion, in and by his order of dismissal, award and order that the prosecutor or complainant shall pay to the defendant such costs as to the said justice seem reasonable and consistent with law. 55-56 V., c. 29, s. 868.

**737.** RECOVERY OF COSTS WITH PENALTY.—The sums so allowed for costs shall, in all cases, be specified in the conviction or order, or order of dismissal, and the same shall be recoverable in the same manner and under the same warrants as any penalty, adjudged to be paid by the conviction or order, is to be recovered. 55-56 V., c. 29, s. 869.

**738.** RECOVERY OF COSTS ONLY.—Whenever there is no such penalty to be recovered such costs shall be recoverable by distress and sale of the goods and chattels of the party, and in default of distress, by imprisonment, with or without hard labour, for any term not exceeding one month. 55-56 V., c. 29, s. 870.

**739.** CONVICTION OR ORDER INVOLVING PAYMENT OF MONEY—JUSTICE MAY ADJUDGE.—Whenever a conviction ad-

judges a pecuniary penalty or compensation to be paid, or an order requires the payment of a sum of money, whether the Act or law authorizing such conviction or order does or does not provide a mode of raising or levying the penalty, compensation or sum of money, or of enforcing the payment thereof, the justice by his conviction, or order after adjudging payment of such penalty, compensation or sum of money, with or without costs, may order and adjudge,—

(*a*) Distress and Imprisonment in Default—that in default of payment thereof forthwith, or within a limited time, such penalty, compensation or sum of money and costs, if the conviction or order is made with costs, shall be levied by distress and sale of the goods and chattels of the defendant, and, if sufficient distress cannot be found, that the defendant be imprisoned in the manner and for the time directed by the Act or law authorizing such conviction or order or by this Act, or for any period not exceeding three months, if the Act or law authorizing the conviction or order does not specify imprisonment, or does not specify any term of imprisonment, unless such penalty, compensation or sum of money and costs, if the conviction or order is made with costs, and the costs and charges of the distress and of the commitment and of the conveying of the defendant to gaol are sooner paid; or,

(*b*) Imprisonment in the First Instance in Default—that in default of payment of the said penalty, compensation or sum of money, and costs, if any, forthwith or within a limited time, the defendant be imprisoned in the manner and for the time mentioned in the said Act or law, or for any period not exceeding three months, if the Act or law authorizing the conviction or order does not specify imprisonment, or does not specify any term of imprisonment, unless the same and the costs and charges of the distress and of the commitment and of the conveying of the defendant to gaol are sooner paid.

2. Hard Labour.—Whenever under such act or law, imprisonment with hard labour may be ordered or adjudged in the first instance as part of the punishment for the offence

of the defendant, the imprisonment in default of distress or of payment may be with hard labour. 55-56 V., c. 29, s. 872; 57-58 V., c. 57, s. 1; 63-64 V., c. 46, s. 3.

**740.** IMPRISONMENT WHEN ORDERED IN ADDITION TO FINE.—Where, by virtue of an Act or law so authorizing, the justice by his conviction adjudges against the defendant payment of a penalty or compensation, and also imprisonment, as punishment for an offence, he may, if he thinks fit, order that the imprisonment in default of distress or of payment, shall commence at the expiration of the imprisonment awarded as a punishment for the offence.

2. THIS AND LAST SECTION CONSTRUED AS IF IN SPECIAL ACT.—The like proceeding may be had upon any conviction or order made in accordance with this or the last preceding section as if the Act or law authorizing the conviction or order had expressly provided for a conviction or order in the terms permitted by this or the last preceding section. 55-56 V., c. 29, s. 872.

*Enforcing Adjudication.*

**741.** DISTRESS WARRANT.—The justice making the conviction or order mentioned in paragraph (*a*) of section seven hundred and thirty-nine may issue a warrant of distress in form 39 or 40, as the case requires, and in the case of a conviction or order under paragraph (*b*) of the said section, a warrant in one of the forms 41 or 42 may issue.

2. WARRANT OF COMMITMENT.—If the warrant of distress is issued and the constable or peace officer charged with the execution thereof returns (form 43) that he can find no goods or chattels whereon to levy thereunder, the justice may issue a warrant of commitment in form 44. 55-56 V., c. 29, s. 872.

FORM 39.

(Section 741.)

WARRANT OF DISTRESS UPON A CONVICTION FOR A PENALTY.

Canada,
Province of
County of

To all or any of the constables and other peace officers in the said county of

Whereas A. B., late of , (*labourer*), was on this day (*or* on last past) duly convicted before

a justice of the peace, in and for the said county of , for that (*stating the offence, as in the conviction*), and it was thereby adjudged that the said A. B. should for such his offence, forfeit and pay (*etc., as in the conviction*), and should also pay to the said C. D. the sum of , for his costs in that behalf; and it was thereby ordered that if the said several sums were not paid (forthwith) the same should be levied by distress and sale of the goods and chattels of the said A. B., and it was thereby also adjudged that the said A. B., in default of sufficient distress, should be imprisoned in the common gaol of the said county, at , in the said county of (and there kept at hard labour *if the conviction so adjudges*) for the space of , unless the said several sums and all costs and charges of the said distress, and of the commitment and conveying of the said A. B. to the said common gaol were sooner paid: *And whereas the said A. B., being so convicted as aforesaid, and being (now) required to pay the said sums of and has not paid the same or any part thereof, but therein has made default: These are, therefore, to command you in His Majesty's name forthwith to make distress of the goods and chattels of the said A. B.; and if within days next after the making of such distress, the said sums, together with the reasonable charges of taking and keeping the distress, are not paid, then to sell the said goods and chattels so by you distrained, and to pay the money arising from such sale unto me, the convicting justice (*or* one of the convicting justices), that I may pay and apply the same as by law directed, and may render the overplus, if any, on demand, to the said A. B.; and if no such distress is found, then to certify the same unto me, that such further proceedings may be had thereon as to law appertain.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]

*J. P., (Name of county.)*

55-56 V., c. 29 sch., form DDD.

## FORM 40.

(Section 741.)

### WARRANT OF DISTRESS UPON AN ORDER FOR THE PAYMENT OF MONEY.

Canada,
Province of ,
County of .

To all or any of the constables and other peace officers in the said county of .

Whereas on , last past, a complaint was made before , a justice of the peace in and for the said county, for that (*etc., as in the order*), and afterwards, to wit, on , at , the said parties appeared before (*as in the order*), and thereupon the matter of the said complaint having been considered, the said A. B. was adjudged to pay to the said C. D. the sum of , on or before then next, and also to pay to the said C. D. the sum of , for his costs in that behalf; and it was ordered that if the said several sums were not paid on or before the said then next, the same should be levied by distress and sale of the goods and chattels of the said A. B.; and it was adjudged that in default of sufficient distress in that behalf, the said A. B. should be imprisoned in the common gaol of the said county, at , in the said county of (and there kept at hard labour

*if the order so directs*) for the term of , unless the said several sums and all costs and charges of the distress (and of the commitment and conveying of the said A. B. to the said common gaol) were sooner paid; *And whereas the time in and by the said order appointed for the payment of the said several sums of , and has elapsed, but the said A. B. has not paid the same, or any part thereof, but therein has made default: These are therefore to command you, in His Majesty's name, forthwith to make distress of the goods and chattels of the said A. B.; and if within the space of days after the making of such distress, the said last mentioned sums, together with the reasonable charges of taking and keeping the said distress, are not paid, then to sell the goods and chattels so by you distrained, and to pay the money arising from such sale unto me (*or some other of the convicting justices, as the case may be*), that I (or he) may pay or apply the same as by law directed, and may render the overplus, if any, on demand to the said A. B.; and if no such distress can be found, then to certify the same unto me, to the end that such proceedings may be had therein, as to law appertain.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]

*J. P., (Name of county.)*

55-56 V., c. 29, sch. 1, form EEE.

## FORM 41.

(Section 741.)

### WARRANT OF COMMITMENT UPON A CONVICTION FOR A PENALTY IN THE FIRST INSTANCE.

Canada, )
Province of , )
County of , )

To all or any of the constables and other peace officers in the said county of , and to the keeper of the common gaol of the said county of , at , in the said county of .

Whereas A. B., late of , (*labourer*), was on this day convicted before the undersigned, , a justice of the peace in and for the said county, for that (*stating the offence, as in the conviction*), and it was thereby adjudged that the said A. B., for his offence, should forfeit and pay the sum of (*etc., as in the conviction*), and should pay to the said C. D. the sum of , for his costs in that behalf: and it was thereby further adjudged that if the said several sums were not paid (forthwith) the said A. B. should be imprisoned in the common gaol of the county, at , in the said county of (and there kept at hard labour *if the conviction so adjudges*) for the term of , unless the said several sums and the costs and charges of the commitment and of the conveying of the said A. B. to the said common gaol were sooner paid: And whereas the time in and by the said conviction appointed for the payment of the said several sums has elapsed, but the said A. B. has not paid the same, or any part hereof, but therein has made default: These are, therefore, to command you, the said peace officers, or any one of you, to take the said A. B., and him safely to convey to the common gaol at aforesaid, and there to deliver him to the said keeper thereof, together with this precept: And I do hereby command you, the said keeper of the said common gaol, to receive the said A. B. into your custody in the said common gaol, there to imprison him (and keep him at hard labour *if the conviction so adjudges*) for the

term of , unless the said several sums and the costs and charges of the commitment and of the conveying of the said A. B. to the said common gaol are sooner paid unto you, the said keeper; and for your so doing, this shall be your sufficient warrant.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]

*J. P., (Name of county.)*

55-56 V., c. 29, sch. 1, form FFF.

## FORM 42.

(Section 741.)

### WARRANT OF COMMITMENT ON AN ORDER IN THE FIRST INSTANCE.

Canada, )
Province of . )
County of . )

To all or any of the constables and other peace officers in the said county of , and to the keeper of the common gaol of the county of , at , in the said county of .

Whereas, on last past, complaint was made before the undersigned , a justice of the peace in and for the said county of , for that (*etc., as in the order*), and afterwards, to wit, on the day of , at A. B. and C. D. appeared before me, the said justice (*or as it is in the order*), and thereupon having considered the matter of the complaint, I adjudged the said A. B. to pay the said C. D. the sum of , on or before the day of then next, and also to pay to the said C. D. the sum of , for his costs in that behalf; and I also thereby adjudged that if the said several sums were not paid on or before the day of then next, the said A. B. should be imprisoned in the common gaol of the county of , at , in the said county of (and there be kept at hard labour *if the order so directs*) for the term of , unless the said several sums and the costs and charges of the commitment and of the conveying of the said A. B. to the said common gaol, were sooner paid: And whereas the time in and by the said order appointed for the payment of the said several sums of money has elapsed, but the said A. B. has not paid the same, or any part thereof, but therein has made default: These are, therefore, to command you, the said peace officers, or any of you, to take the said A. B. and him safely to convey to the said common gaol, at aforesaid, and there to deliver him to the keeper thereof, together with this precept: And I do hereby command you, the said keeper of the said common gaol, to receive the said A. B. into your custody in the said common gaol, there to imprison him (and keep him at hard labour *if the order so directs*) for the term of unless the said several sums and the costs and charges of the commitment and of conveying him to the said common gaol are sooner paid unto you the said keeper; and for your so doing, this shall be your sufficient warrant.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]

*J. P., (Name of county.)*

55-56 V., c. 29, sch. 1, form GGG.

FORM 43.

(Section 741.)

CONSTABLE'S RETURN TO A WARRANT OF DISTRESS.

I, W. T., constable of , in the county of , hereby certify to J. S., Esquire, a justice of the peace in and for the county of , that by virtue of this warrant I have made diligent search for the goods and chattels of the within mentioned A. B., and that I can find no sufficient goods or chattels of the said A. B. whereon to levy the sums within mentioned.

Witness my hand, this day of , one thousand nine hundred and .

55-56 V., c. 29, sch. 1, form III.

FORM 44.

(Section 741.)

WARRANT FOR COMMITMENT FOR WANT OF DISTRESS.

Canada, )
County of , )
Province of , )

To all or any of the constables and other peace officers in the county of , and to the keeper of the common gaol of the said county of , at , in the said county.

Whereas (*etc., as in either of the foregoing distress warrants 39 or 40, to the asterisks, * and then thus*): And whereas, afterwards on the day of , in the year aforesaid, I, the said justice, issued a warrant to all or any of the peace officers of the county of , commanding them, or any of them to levy the said sums of and by distress and sale of the goods and chattels of the said A. B.: And whereas it appears to me, as well by the return of the said warrant of distress by the peace officer who had the execution of the same, as otherwise, that the said peace officer has made diligent search for the goods and chattels of the said A. B., but that no sufficient distress whereon to levy the sums above mentioned could be found: These are, therefore, to command you, the said peace officers, or any one of you, to take the said A. B., and him safely to convey to the common gaol at aforesaid, and there deliver him to the said keeper, together with this precept: And I do hereby command you, the said keeper of the said common gaol, to receive the said A. B. into your custody, in the said common gaol, there to imprison him (and keep him at hard labour *if the order so directs*) for the term of , unless the said several sums, and all the costs and charges of the said distress and of the commitment and of the conveying of the said A. B. to the said common gaol are sooner paid unto you, the said keeper; and for so doing this shall be your sufficient warrant.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]

*J. P., (Name of county.)*

55-56 V., c. 29, sch. 1, form JJJ.

**742.** DISTRESS AND COMMITMENT FOR COSTS.—When any information or complaint is dismissed with costs the justice may issue a warrant of distress on the goods and chattels of

the prosecutor or complainant, in form 45, for the amount of such costs; and, in default of distress, a warrant of commitment in form 46 may issue.

2. TERM.—The term of imprisonment in such case shall not exceed one month. 55-56 V., c. 29, s. 873.

FORM 45.

(Section 742.)

WARRANT OF DISTRESS FOR COSTS UPON AN ORDER FOR DISMISSAL OF AN INFORMATION OR COMPLAINT.

To all or any of the constables and other peace officers in the said county of .

Canada, )
Province of )
County of , )

Whereas on last past, information was laid (*or* complaint was made) before , a justice of the peace in and for the said county of , for that (*etc., as in the order of dismissal*) and afterwards, to wit, on , at , both parties appearing before (*me*) , in order that (*I*) should hear and determine the same, and the several proofs adduced to (*me*) in that behalf, being by (*me*) duly heard and considered, and it manifestly appearing to (*me*) that the said information (*or* complaint) was not proved, (*I*) therefore dismissed the same and adjudged that the said C. D. should pay to the said A. B. the sum of , for his costs incurred by him in his defence in that behalf; and (*I*) ordered that if the said sum for costs was not paid (forthwith) the same should be levied on the goods and chattels of the said C. D., and (*I*) adjudged that in default of sufficient distress in that behalf the said C. D. should be imprisoned in the common gaol of the said county of , at , in the said county of (and there kept at hard labour *if the order so directed*) for the space of unless the said sum for costs, and all costs and charges of the said distress and of the commitment and of the conveying of the said A. B. to the said common gaol, were sooner paid; *And whereas the said C. D. being now required to pay to the said A. B. the said sum for costs, has not paid the same, or any part thereof, but therein has made default: These are, therefore, to command you, in His Majesty's name, forthwith to make distress of the goods and chattels of the said C. D., and if within the term of days next after the making of such distress, the said last mentioned sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, then to sell the said goods and chattels so by you distrained, and to pay the money arising from such sale to (*me*) that (*I*) may pay and apply the same as by law directed, and may render the overplus (if any) on demand to the said C. D., and if no distress can be found, then to certify the same unto (*me*) (*or* to any other justice of the peace for the said county), that such proceedings may be had therein as to law appertain.

Given under my hand and seal, this day of , in the year , at day of

J. S. [SEAL.]
*J. P., (Name of county.)*

55-56 V., c. 29, sch. 1, form KKK.

FORM 46.

(Section 742.)

WARRANT OF COMMITMENT FOR WANT OF DISTRESS.

Canada, )
Province of . )
County of . )

To all or any of the constables and other peace officers in the said county of , and to the keeper of the common gaol of the said county of , at , in the said county of .

Whereas (*etc., as in form 45 to the asterisk,* and then thus*): And whereas afterwards, on the day of , in the year aforesaid, I the said justice, issued a warrant to all or any of the peace officers of the said county, commanding them, or any one of them to levy the said sum of , for costs, by distress and sale of the goods and chattels of the said C. D.; And whereas it appears to me, as well by the return to the said warrant of distress of the peace officer charged with the execution of the same, as otherwise, that the said peace officer has made diligent search for the goods and chattels of the said C. D., but that no sufficient distress whereon to levy the sum above mentioned could be found: These are, therefore, to command you, the said peace officers, or any one of you, to take the said C. D., and him safely convey to the common gaol of the said county, at aforesaid, and there deliver him to the keeper thereof, together with this precept: And I hereby command you, the said keeper of the said common gaol, to receive the said C. D. into your custody in the said common gaol, there to imprison him (and keep him at hard labour *if the order so directed*) for the term of , unless the said sum, and all the costs and charges of the said distress and of the commitment and of the conveying of the said C. D. to the said common gaol are sooner paid unto you the said keeper; and for your so doing, this shall be your sufficient warrant.

Given under my hand and seal, this day of in the year , at in the county aforesaid.

J. S. [SEAL.]
*J. P., (Name of county.)*

55-56 V., c. 29, sch. 1, form LLL.

**743.** ENDORSEMENT OF WARRANT FOR DISTRESS.—If, after delivery of any warrant of distress issued under this Part to the constable or constables to whom the same has been directed to be executed, sufficient distress cannot be found within the limits of the jurisdiction of the justice granting the warrant, then upon proof being made upon oath or affirmation of the handwriting of the justice granting the warrant, before any justice of any other territorial division, such justice shall thereupon make an endorsement on the warrant, signed with his hand, authorizing the execution of the warrant within the limits of his jurisdiction, by virtue of which warrant and endorsement the penalty or sum and costs, or so much thereof as has not been before levied or paid, shall be

levied by the person bringing the warrant, or by the person or persons to whom the warrant was originally directed, or by any constable or other peace officer of the last mentioned territorial division, by distress and sale of the goods and chattels of the defendant therein.

2. FORM.—Such endorsement shall be in form 47. 55-56 V., c. 29, s. 874.

FORM 47.

(Section 743.)

ENDORSEMENT IN BACKING A WARRANT OF DISTRESS

Canada. )
Province of . )
County of . )

Whereas proof upon oath has this day been made before me , a justice of the peace in and for the said county, that the name of J. S., to the within warrant subscribed is of the handwriting of the justice of the peace within mentioned, I do therefore authorize W. T., who brings me this warrant, and all other persons to whom this warrant was originally directed, or by whom the same may be lawfully executed, and also all peace officers in the said county of , to execute the same within the said county

Given under my hand, this day of , one thousand nine hundred and .

O. K.,
*J. P., (Name of county.)*

55-56 V., c. 29, sch. 1, form HHH.

**744.** WHEN DISTRESS WOULD BE RUINOUS TO DEFENDANT OR FAMILY.—Whenever it appears to any justice that the issuing of a distress warrant would be ruinous to the defendant and his family, or whenever it appears to the justice, by the confession of the defendant or otherwise, that he has no goods and chattels whereon to levy such distress, then the justice, if he deems fit, instead of issuing a warrant of distress, may commit the defendant to the common gaol or other prison in the territorial division, there to be imprisoned, with or without hard labour, for the time and in the manner he would have been committed in case such warrant of distress has issued and no sufficient distress had been found. 55-56 V., c. 29, s. 875.

**745.** PROCEEDINGS PENDING EXECUTION OF DISTRESS WARRANT.—Whenever a justice issues a warrant of distress as hereinbefore provided, he may suffer the defendant to go at large, or verbally, or by a written warrant in that behalf,

may order the defendant to be kept and detained in safe custody, until return has been made to the warrant of distress, unless the defendant gives sufficient security, by recognizance or otherwise, to the satisfaction of the justice, for his appearance, at the time and place appointed for the return of the warrant of distress, before him or before such other justice for the same territorial division as shall then be there. 55-56 V., c. 29, s. 876.

**746.** COMMITMENT WHEN PARTY IN PRISON.—Whenever a justice, upon any information or complaint, adjudges the defendant to be imprisoned, and the defendant is then in prison undergoing imprisonment upon conviction for any other offence, the warrant of commitment for the subsequent offence shall be forthwith delivered to the gaoler or other officer to whom it is directed.

2. CUMULATIVE PUNISHMENT.—The justice who issued the same, if he thinks fit, may award and order therein that the imprisonment for the subsequent offence shall commence at the expiration of the imprisonment to which the defendant was previously sentenced. 55-56 V., c. 29, s. 877.

**747.** TENDER OR PAYMENT IN DISTRESS WARRANT.—Whenever a warrant of distress has issued against any person, and such person pays or tenders to the peace officer having the execution of the same, the sum or sums in the warrant mentioned, together with the amount of the costs and charges of the distress up to the time of payment or tender, the peace officer shall cease to execute the same.

2. PAYMENT WHEN PARTY IN PRISON TO KEEPER.—Whenever any person is imprisoned for non-payment of any penalty or other sum, he may pay or cause to be paid to the keeper of the prison in which he is imprisoned, the sum in the warrant of commitment mentioned, together with the amount of the costs and charges therein also mentioned, and the keeper shall receive the same, and shall thereupon discharge the person, if he is in his custody for no other matter.

3. BY HIM TO JUSTICE.—Such keeper shall forthwith pay over any moneys so received by him to the justice who issued the warrant. 55-56 V., c. 29, s. 901.

*Sureties to Keep the Peace.*

**748.** RECOGNIZANCE TO KEEP THE PEACE.—Whenever any person is charged before a justice with any offence triable under this Part which, in the opinion of such justice, is directly against the peace, and the justice after hearing the case is satisfied of the guilt of the accused, and that the offence was committed under circumstances which render it probable that the person convicted will be again guilty of the same or some other offence against the peace unless he is bound over to good behaviour, such justice may, in addition to, or in lieu of, any other sentence which may be imposed upon the accused, require him forthwith to enter into his own recognizance, or to give security to keep the peace and be of good behaviour for any term not exceeding twelve months.

2. IN CASE OF COMPLAINT IF THREATS MADE. — Upon complaint by or on behalf of any person that on account of threats made by some other person or on any other account, he, the complainant, is afraid that such other person will do him, his wife or child some personal injury, or will burn or set fire to his property, the justice before whom such complaint is made, may, if he is satisfied that the complainant has reasonable grounds for his fears, require such other person to enter into his own recognizance, or to give security, to keep the peace, and to be of good behaviour, for a term not exceeding twelve months.

3. PROCEDURE.—The provisions of this Part shall apply, so far as the same are applicable, to proceedings under this section, and the complainant and defendant and witnesses may be called and examined, and cross-examined, and the complainant and defendant shall be subject to costs as in the case of any other complaint.

4. IMPRISONMENT IN DEFAULT OF SURETIES.—If any person so required to enter into his own recognizance or give security as aforesaid, refuses or neglects so to do, the same or any other justice may order him to be imprisoned for any term not exceeding twelve months.

5. FORMS.—The forms 48, 49 and 50, with such variations and additions as the circumstances may require, may be used in proceedings under this section. 55-56 V., c. 29, s. 959; 56 V., c. 32, s. 1.

Commitment requiring defendant to furnish sureties must fix the amount: *In re Doe*, Q. R. R. Q. B. 600.

Warrant of commitment for default in finding sureties must state that complainant feared bodily injury and complaint was not made from malice or ill-will: *R.* v. *McDonald*, 2 Can. C. C. 64.

## FORM 48.

(Section 748.)

### COMPLAINT BY THE PARTY THREATENED, FOR SURETIES FOR THE PEACE.

Canada,
Province of
County of

The information (or complaint) of C. D., of , in the said county of , (*labourer*), (*if preferred by an attorney, or agent, say*—by D. E. his duly authorized agent (*attorney*), in this behalf, taken upon oath, before me, the undersigned, a justice of the peace, in and for the said county of , at in the said county of , this day of , in the year , who says that A. B., of , in the said county, did, on the day of (instant or last past), threaten the said C. D. in the words or to the effect following, that is to say: (*set them out, with the circumstances under which they were used*); and that from the above and other threats used by the said A. B. towards the said C. D., he, the said C. D., is afraid that the said A. B. will do him some bodily injury, and therefore prays that the said A. B. may be required to find sufficient sureties to keep the peace and be of good behaviour towards him, the said C. D.; and the said C. D. also says that he does not make this complaint against nor require such sureties from the said A. B. from any malice or ill-will, but merely for the preservation of his person from injury.

55-56 V., c. 29, sch. 1, form WWW.

## FORM 49.

(Sections 748 and 1058.)

### FORM OF RECOGNIZANCE TO KEEP THE PEACE.

Canada,
Province of
County of

Be it remembered that on the day of , in the year , A. B. of , (*labourer*), L. M. of , (*grocer*, and N. O. of (*butcher*), personally came before (*us*) the undersigned, (*two*) justices of the peace for the county of , and severally acknowledged themselves to owe to our Lord the King the several sums following, that is to say: the said A. B. the sum of , and the said L. M. and N. O. the sum of , each, of good and lawful money of Canada, to be made and levied of their goods and chattels, lands and tenements respectively, to the use of our said Lord the King, his heirs and successors, if he, the said A. B. fail in the condition endorsed (or hereunder written).

Taken and acknowledged the day and year first above mentioned at before us.

J. S.,
J. T.,
*J. P. (Name of county.)*

The condition of the within (*or* above) written recognizance is such that if the within bound A. B. (of, etc.), keeps the peace and is of good behaviour towards His Majesty and his liege people, and specially towards C. D. (of, etc.) for the term of now next ensuing, then the said recognizance to be void, otherwise to stand in full force and virtue.

55-56 V., c. 29, sch. 1, form XXX.

FORM 50.

(Section 748.)

FORM OF COMMITMENT IN DEFAULT OF SURETIES.

Canada, )
Province of , :
County of . )

To all or any of the constables and other peace officers in the county of , and to the keeper of the common gaol of the said county, at , in the said county.

Whereas, on the day of (*instant*), complaint on oath was made before the undersigned (*or* J. L., Esquire), a justice of the peace in and for the said county of , by C. D., of , in the said county (*labourer*), that A. B., of (etc.), on the day of , at aforesaid, did threaten (*etc., follow to the end of complaint, as in form above, in the past tense, then*): And whereas the said A. B. was this day brought and appeared before me, the said justice (*or* J. L., Esquire, a justice of the peace in and for the said county of ), to answer unto the said complaint; and having been required by me to enter into his own recognizance in the sum of , with two sufficient sureties in the sum of each, to keep the peace and be of good behaviour towards His Majesty and his liege people, and especially towards the said C. D., has refused and neglected, and still refuses and neglects, to find such sureties: These are, therefore, to command you, and each of you, to take the said A. B., and him safely to convey to the common gaol at aforesaid, and there to deliver him to the keeper thereof, together with this precept: And I do hereby command you, the said keeper of the said common gaol, to receive the said A. B. into your custody in the said common gaol, there to imprison him for the space of , or until he shall otherwise be discharged in due course of law, unless he, in the meantime, finds sufficient sureties to keep the peace as aforesaid.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. T. [Seal.]
*J. P. (Name of county.)*

55-56 V., c. 29, sch. 1, form YYY.

*Appeal.*

**749.** UNLESS OTHERWISE PROVIDED IN SPECIAL ACT.—Unless it is otherwise provided in any special Act under which a conviction takes place or an order is made by a justice for the payment of money or dismissing an information or complaint, any person who thinks himself aggrieved by any such

conviction or order or dismissal, the prosecutor or complainant, as well as the defendant, may appeal,—

(*a*) ONTARIO—in the province of Ontario, when the conviction adjudges imprisonment only, to the Court of General Sessions of the Peace; and in all other cases to the Division Court of the division of the county in which the cause of the information or complaint arose;

(*b*) QUEBEC—in the province of Quebec, to the Court of King's Bench, Crown side;

(*c*) NOVA SCOTIA, NEW BRUNSWICK, MANITOBA—in the provinces of Nova Scotia, New Brunswick and Manitoba, to the county court of the district or county where the cause of the information or complaint arose;

(*d*) BRITISH COLUMBIA—in the province of British Columbia, to the county court, at the sitting thereof which shall be held nearest to the place where the cause of the information or complaint arose;

(*e*) P. E. ISLAND—in the province of Prince Edward Island, to the Supreme Court;

(*f*) SASKATCHEWAN AND ALBERTA—in the province of Saskatchewan or Alberta, to a judge of the Supreme Court of the North-West Territories pending the abolition of that court by the legislature of the province, and thereafter to a judge of such court in either of the said provinces as may in respect of that province be substituted by the legislature thereof for the Supreme Court of the Northwest Territories;

(*g*) NORTHWEST—In the Northwest Territories, to a stipendiary magistrate; and,

(*h*) YUKON—in the Yukon Territory, to a judge of the Territorial Court.

2. NIPISSING.—In the district of Nipissing such person may appeal to the Court of General Sessions of the Peace for the county of Renfrew, when the conviction adjudges imprisonment only, and in all other cases to the Division Court of the county of Renfrew held nearest to the place where the cause of the information or complaint arose.

3. SASKATCHEWAN, ALBERTA, NORTHWEST AND YUKON, NO JURY.—In the case of the province of Saskatchewan and

Alberta, and of the Northwest Territories and the Yukon Territory, the judge or stipendiary magistrate hearing any such appeal shall sit without a jury at the place where the cause of the information or complaint arose, or at the nearest place thereto where a court is appointed to be held. 55-56 V., c. 29, s. 879; 4-5 E. VII., c. 3, s. 16; c. 10, ss. 1 and 2; c. 27, s. 8; c. 42, s. 16.

Judge may order issue of subpœna under ss. 676 and 711 to person in another Province to compel attendance on appeal to quarter sessions: *R.* v. *Gillespie*, 16 P. R. 155.

**750.** Procedure.—Unless it is otherwise provided in the special Act,—

(*a*) if a conviction or order is made more than fourteen days before the sittings of the court to which an appeal is given, such appeal shall be made to the next sittings of such court; but if the conviction or order is made within fourteen days of the sittings of such court, then to the second sittings next after such conviction or order;

(*b*) Notice of Intention—the appellant shall give notice of his intention to appeal by filing in the office of the clerk of the court appealed to, and serving the respondent with a copy thereof, a notice in writing setting forth with reasonable certainty the conviction appealed against and the court appealed to, within ten days after the conviction complained of, and shall, at least five days before the hearing of such appeal, serve upon the respondent or his solicitor a notice setting forth the grounds of such appeal;

(*c*) Appellant Remains in Custody or Gives Recognizance—the appellant, if the appeal is from a conviction adjudging imprisonment, shall either remain in custody until the holding of the court to which the appeal is given, or shall enter into a recognizance in form 51 with two sufficient sureties, before a county judge, clerk of the peace, or justice of the peace for the county in which such conviction has been made, conditioned personally to appear at the said court, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as are awarded by the

court; and upon such recognizance being given, the justice before whom such recognizance is entered into, shall liberate such person, if in custody;

(*d*) RECOGNIZANCE TO VALUE OF PROPERTY, WHEN—in case of an appeal from the order of a justice, pursuant to section six hundred and thirty-seven, for the restoration of gold or gold-bearing quartz, or silver or silver ore, the appellant shall give security by recognizance to the value of the said property to prosecute his appeal at the next sitting of the court and to pay such costs as are awarded against him. 55-56 V., c. 29, s. 880; 4-5 E. VII., c. 10, ss. 3 and 4.

Discretion as to costs cannot be reviewed: *R.* v. *McIntosh*, 28 O. R. 603.

FORM 51.

(Section 750.)

FORM OF RECOGNIZANCE TO TRY THE APPEAL.

Canada.
Province of
County of

Be it remembered that on , A. B., of , (*labourer*), and L. M., of , (*grocer*), and N. O. of , (*yeoman*) personally came before the undersigned , a justice of the peace in and for the said county of , and severally acknowledged themselves to owe to our Sovereign Lord the King, the several sums following, that is to say, the said A. B. the sum of , and the said L. M. and N. O. the sum of , each, of good and lawful money of Canada, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said Lord the King, his heirs and successors, if he the said A. B. fails in the condition endorsed (*or* hereunder written).

Taken and acknowledged the day and year first above mentioned at , before me,

J. S.,
*J. P. (Name of county.)*

The condition of the within (*or* the above) written recognizance is such that if the said A. B. personally appears at the (next General Sessions of the Peace (*or other court discharging the functions of the Court of General Sessions, as the case may be*), to be holden at , on the day of , next, in and for the said county of , and tries an appeal against a certain conviction, bearing date the day of , (*instant*), and made by (*me*) the said justice, whereby he, the said A. B., was convicted, for that he, the said A. B., did, on the day of , at , in the said county of , (*here set out the offence as stated in the conviction*); and also abides by the judgment of the court upon such appeal and pays such costs as are by the court awarded, then the said recognizance to be void, otherwise to remain in full force and virtue.

*Form of Notice of such Recognizance to be given to the Appellant and his Sureties.*

Take notice, that you, A. B., are bound in the sum of , and you, L. M., and N. O., in the sum of each, that you the said A. B. will personally appear at the next General Sessions of the Peace to be holden at , in and for the said county of , and try an appeal against a conviction (*or* order) dated the day of , (*instant*), whereby you A. B. were convicted of (*or ordered, etc.*), (*stating offence or the subject of the order shortly*), and abide by the judgment of the court upon such appeal and pay such costs as are by the court awarded, and unless you the said A. B. personally appear and try such apppal and abide by such judgment and pay such costs accordingly, the recognizance entered into by you will forthwith be levied on you, and each of you.

Dated at , this day of , one thousand nine hundred and .

55-56 V.,c. 29, sch. 1, form OOO.

**751.** HEARING OF APPEAL.—The court to which such appeal is made shall thereupon hear and determine the matter of appeal and make such order therein, with or without costs to either party, including costs of the court below, as seems meet to the court, and, in case of the dismissal of an appeal by the defendant and the affirmance of the conviction or order, shall order and adjudge the appellant to be punished according to the conviction or to pay the amount adjudged by the order, and to pay such costs as are awarded, and shall, if necessary, issue process for enforcing the judgment of the court.

2. DEPOSIT UNDER FORMER PRACTICE.—In any case where a deposit was made on appeal previously to the twentieth day of July in the year of our Lord one thousand nine hundred and five, if the conviction or order is affirmed, the court may order that the sum thereby adjudged to be paid, together with the costs of the conviction or order, and the costs of the appeal, shall be paid out of the money deposited, and that the residue, if any, shall be repaid to the appellant; and, if the conviction or order is quashed, the court shall order the money to be repaid to the appellant.

3. ADJOURNING HEARING.—The court to which such appeal is made shall have power, if necessary, from time to time, by order endorsed on the conviction or order, to adjourn the hearing of the appeal from one sittings to another, or others, of the said court.

4. Memo. of Quashing.—Whenever any conviction or order is quashed on appeal, the clerk of the peace or other proper officer shall forthwith endorse on the conviction or order a memorandum that the same has been quashed.

5. Evidence of Quashing.—Whenever any copy or certificate of such conviction or order is made, a copy of such memorandum shall be added thereto, and shall, when certified under the hand of the clerk of the peace, or of the proper officer having the custody of the same, be sufficient evidence, in all courts and for all purposes, that the conviction or order has been quashed. 55-56 V., c. 29, s. 880; 4-5 E. VII., c. 10, s. 4.

**752.** Judgment Final. — When an appeal against any summary conviction or order has been lodged in due form, and in compliance with the requirements of this Part, the court appealed to shall try, and shall be the absolute judge, as well of the facts as of the law, in respect to such conviction or order.

2. Either Party may Call Witnesses.—Any of the parties to the appeal may call witnesses and adduce evidence whether such witnesses were called or evidence adduced at the hearing before the justice or not, either as to the credibility of any witness, or as to any other fact material to the inquiry.

3. Using Evidence Taken Below.—Any evidence taken before the justice at the hearing below, certified by the justice, may be read on such appeal, and shall have the like force and effect as if the witness was there examined if the court appealed to is satisfied by affidavit or otherwise, that the personal presence of the witness cannot be obtained by any reasonable efforts. 55-56 V., c. 29, s. 881.

**753.** Appeals on Matters of Form — Objection must have been Taken Below.—No judgment shall be given in favour of the appellant if the appeal is based on an objection to any information, complaint or summons, or to any warrant to apprehend a defendant issued upon any such information, complaint or summons, for any alleged defect therein in substance or in form, or for any variance between such in-

formation, complaint, summons or warrant and the evidence adduced in support thereof at the hearing of such information or complaint, unless it is proved before the court hearing the appeal that such objection was made before the justice before whom the case was tried, and by whom such conviction, judgment or decision was given, nor unless it is proved that notwithstanding it was shown to such justice that by such variance the person summoned and appearing or apprehended had been deceived or misled, such justice refused to adjourn the hearing of the case to some further day, as in this Part provided. 55-56 V., c. 29, s. 882.

**754.** Judgment to be upon the Merits—May Confirm, Reverse or Modify.—In every case of appeal from any summary conviction or order had or made before any justice, the court to which such appeal is made shall, notwithstanding any defect in such conviction or order, and notwithstanding that the punishment imposed or the order made may be in excess of that which might lawfully have been imposed or made, hear and determine the charge or complaint on which such conviction or order has been had or made, upon the merits, and may confirm, reverse or modify the decision of such justice, or may make such other conviction or order in the matter as the court thinks just, and may by such order exercise any power which the justice whose decision is appealed from might have exercised, and may make such order as to costs to be paid by either party as it thinks fit.

2. Enforcing Conviction. — Such conviction or order shall have the same effect and may be enforced in the same manner as if it had been made by such justice.

3. By Process of Court.—Any conviction or order made by the court on appeal may also be enforced by process of the court itself. 55-56 V., c. 29, s. 883.

**755.** Costs when Appeal not Prosecuted.—The court to which an appeal is made, upon proof of notice of the appeal to such court having been given to the person entitled to receive the same, whether such notice has been properly given or not, and though such appeal has not been afterwards prosecuted or entered, may, if such appeal has not been abandoned

according to law, at the same sittings for which such notice was given, order to the party or parties receiving the same such costs and charges as are thought reasonable and just by the court, to be paid by the party or parties giving such notice.

2. How Recoverable.—Such costs shall be recoverable in the manner provided by this Act for the recovery of costs upon an appeal against an order or conviction. 55-56 V., c. 29, s. 884; 57-58 V., c. 57, s. 1.

**756.** Proceedings when Appeal Fails. — If an appeal against a conviction or order is decided in favour of the respondents, the justice who made the conviction or order, or any other justice for the same territorial division, may issue the warrant of distress or commitment for execution of the same, as if no appeal had been brought. 55-56 V., c. 29, s. 885.

**757.** Conviction to be Transmitted to Appeal Court. —Every justice before whom any person is summarily tried, shall transmit the conviction or order to the court to which the appeal is by this Part given, in and for the district, county or place wherein the offence is alleged to have been committed, before the time when an appeal from such conviction or order may be heard, there to be kept by the proper officer among the records of the court.

2. Presumption.—The conviction or order shall be presumed not to have been appealed against, until the contrary is shown.

3. Evidence of Conviction.—Upon any indictment or information against any person for a subsequent offence, a copy of such conviction, certified by the proper officer of the court, or proved to be a true copy, shall be sufficient evidence to prove a conviction for the former offence.

4. Clerk of Court to Remit Papers in Certain Cases. —In any case when a conviction or order is required by this Part after appeal to be enforced by any justice, the clerk of the court to which the appeal was had or other proper officer shall remit such conviction or order and all papers therewith sent to the court of appeal, excepting any notice of intention

to appeal and recognizance to such justice, to be by him proceeded upon as in such case directed by this Part. 55-56 V., c. 29, s. 888.

**758.** ORDER AS TO COSTS.—If upon any appeal the court trying the appeal orders either party to pay costs, the order shall direct the costs to be paid to the clerk of the peace or other proper officer of the court, to be paid over by him to the person entitled to the same, and shall state within what time the costs shall be paid. 55-56 V., c. 29, s. 897.

**759.** RECOVERY OF COSTS—CERTIFICATE.—If such costs are not paid within the time so limited, and the person ordered to pay the same has not been bound by any recognizance conditioned to pay such costs, the clerk of the peace or his deputy, on application of the person entitled to the costs, or of any person on his behalf, and on payment of any fee to which he is entitled, shall grant to the person so applying, a certificate that the costs have not been paid.

2. DISTRESS COMMITMENT.—Upon production of the certificate to any justice in and for the same territorial division, such justice may enforce the payment of the costs by warrant of distress, and in default of distress may by warrant commit the person against whom the warrant of distress has issued, for any term not exceeding one month, unless the amount of the costs and all costs and charges of the distress and also the costs of the commitment and of the conveying of the party to prison, if the justice thinks fit so to order, are sooner paid.

3. FORM.—The said certificate shall be in form 52 and the warrants of distress and commitment in forms 53 and 54 respectively. 55-56 V., c. 29, s. 898.

FORM 52.

(Section 759.)

CERTIFICATE OF CLERK OF THE PEACE THAT THE COSTS OF AN APPEAL ARE NOT PAID.

Office of the clerk of the peace for the county of .

*Title of the Appeal.*

I hereby certify that at a Court of General Sessions of the Peace, *(or other court discharging the functions of the Court of General Sessions, as the case may be)*, holden at , in

and for the said county, on last past, an appeal by A. B. against a conviction (*or order*) of J. S., Esquire, a justice of the peace in and for the said county, came on to be tried, and was there heard and determined, and the said Court of General Sessions (*or other court, as the case may be*) thereupon ordered that the said conviction (*or order*) should be confirmed or quashed), and that the said (appellant) should pay to the said (respondent) the sum of , for his costs incurred by him in the said appeal, and which sum was thereby ordered to be paid to the clerk of the peace for the said county, on or before the day of (*instant*), to be by him handed over to the said (respondent), and I further certify that the said sum for costs has not, nor has any part thereof been paid in obedience to the said order.

Dated at , this day of , one thousand nine hundred and

G. H.,
*Clerk of the Peace.*

55-56 V., c. 29, sch. 1, for PPP.

## FORM 53.

(Section 759.)

### WARRANT OF DISTRESS FOR COSTS OF AN APPEAL AGAINST A CONVICTION OR ORDER.

Canada, )
Province of , )
County of , )

To all or any of the constables and other peace officers in the said county of .

Whereas (*etc., as in the warrants of distress, forms 39 or 40, and to the end of the statement of the conviction or order, and then thus*): And whereas the said A. B. appealed to the Court of General Sessions of the Peace (*or other court discharging the functions of the Court of General Sessions, as the case may be*), for the said county, against the said conviction or order, in which appeal the said A. B. was the appellant, and the said C. D. (*or* J. S., Esquire), the justice of the peace who made the said conviction (*or* order) was the respondent, and which said appeal came on to be tried and was heard and determined at the last General Sessions of the Peace (*or other court, as the case may be*) for the said county, holden at , on , and the said court thereupon ordered that the said conviction (*or order*) should be confirmed (*or* quashed) and that the said (appellant) should pay to the said (respondent) the sum of , for his costs incurred by him in the said appeal, which said sum was to be paid to the clerk of the peace for the said county, on or before the day of , one thousand nine hundred and , to be by him handed over to the said C. D.; and whereas the clerk of the peace of the said county has, on the day of (*instant*), duly certified that the said sum for costs had not been paid: *These are, therefore, to command you, in His Majesty's name, forthwith to make distress of the goods and chattels of the said A. B., and if, within the term of days next after the making of such distress, the said last mentioned sum, together with the reasonable charges of taking and keeping the said distress, are not paid, then to sell the said goods and chattels so by you distrained, and to pay the money arising from such sale to the clerk of the peace for the said county of , that he may pay and apply the same as by law directed; and if no such distress can be found, then to certify the same unto me or any other justice of the peace for the said county, that such proceedings may be had therein as to law appertain.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

O. K., [SEAL.]
J. P. (*Name of County.*)

55-56 V., c. 29, sch. 1, form QQQ.

FORM 54.

(Section 759.)

WARRANT OF COMMITMENT FOR WANT OF DISTRESS IN THE LAST CASE.

Canada, )
Province of , )
County of , )

To all or any of the constables and other peace officers in the said county of , and to the keeper of the common gaol of the said county at , in the said county.

Whereas (*etc., as in form 53, to the asterisk * and then thus*): And whereas, afterwards, on the day of , in the year aforesaid, I, the undersigned, issued a warrant to all or any of the peace officers in the said county of , commanding them, or any of them, to levy the said sum of , for costs, by distress and sale of the goods and chattels of the said A. B.; And whereas it appears to me, as well by the return to the said warrant of distress of the peace officer who was charged with the execution of the same, as otherwise, that the said peace officer has made diligent search for the goods and chattels of the said A. B., but that no sufficient distress whereon to levy the said sum above mentioned could be found: These are, therefore, to command you, the said peace officers, or any one of you, to take the said A. B., and him safely to convey to the common gaol of the said county of , at aforesaid, and there deliver him to the said keeper thereof, together with this precept: And I do hereby command you, the said keeper of the said common gaol, to receive the said A. B. into your custody in the said common gaol, there to imprison him for the term of , unless the said sum and all costs and charges of the said distress and of the commitment and of the conveying of the said A. B. to the said common gaol, are sooner paid unto you, the said keeper; and for so doing this shall be your sufficient warrant.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

O. K., [SEAL.]
J. P. (*Name of County.*)

55-56 V., c. 29, sch. 1, form RRR.

**760.** ABANDONMENT OF APPEAL.—An appellant may abandon his appeal by giving to the opposite party notice in writing of his intention six clear days before the sitting of the court appealed to, and thereupon the costs of the appeal shall be added to the sum, if any, adjudged against the appellant by the conviction or order, and the justice shall proceed on the conviction or order as if there had been no appeal. 55-56 V., c. 29, s. 899.

*Stating a Case.*

**761.** STATEMENT OF CASE BY JUSTICES FOR REVIEW.—Any person aggrieved, the prosecutor or complainant as well as the defendant, who desires to question a conviction, order, determination or other proceeding of a justice under this Part, on the ground that it is erroneous in point of law, or is in excess of jurisdiction, may apply to such justice to state and sign a case setting forth the facts of the case and the grounds on which the proceeding is questioned, and if the justice declines to state the case, may apply to the court for an order requiring the case to be stated.

2. REGULATED BY RULES.—The application shall be made and the case stated within such time and in such manner as is, from time to time, directed by rules or orders under section five hundred and seventy-six. 55-56 V., c. 29, s. 900.

Magistrate cannot state case for alleged offence against an Ontario statute not involving its constitutionality, as under Ontario legislation there is an appeal to the sessions in such case: *R.* v. *Robert Simpson Co.*, 28 O. R. 231.

**762.** RECOGNIZANCE BY APPLICANT FOR A CASE—FEES.—The appellant at the time of making such application, and before a case is stated and delivered to him by the justice, shall, in every instance, enter into a recognizance before such justice or some other justice exercising the same jurisdiction, with or without surety or sureties, and in such sum as to the justice seems meet, conditioned to prosecute his appeal without delay, and to submit to the judgment of the court and pay such costs as are awarded by the same; and the appellant shall, at the same time, and before he shall be entitled to have the case delivered to him, pay to the justice such fees as he is entitled to.

2. DISCHARGE OF APPLICANT FROM CUSTODY.—The appellant, if then in custody, shall be liberated upon the recognizance being further conditioned for his appearance before the same justice, or such other justice as is then sitting, within ten days after the judgment of the court has been given, to abide such judgment, unless the judgment appealed against is reversed. 55-56 V., c. 29, s. 900.

Cash deposit cannot be accepted in lieu of recognizance; *R.* v. *Geiser*, 5 Can. C. C. 154; *R.* v. *Joseph*, Q. R. 11 K. B. 211.

**763.** Refusal to State a Case—Exception.—If the justice is of opinion that the application is merely frivolous, but not otherwise, he may refuse to state a case, and shall on the request of the applicant sign and deliver to him a certificate of such refusal: Provided that the justice shall not refuse to state a case where the application for that purpose is made to him by or under the direction of the Attorney-General of Canada, or of any province. 55-56 V., c. 29, s. 900.

**764.** Application to Compel Case—Rule Therefor.—Where the justice refuses to state a case it shall be lawful for the applicant to apply to the court, upon an affidavit of the facts, for a rule calling upon the justice, and also upon the respondent, to show cause why such case should not be stated; and such court may make such rule absolute, or discharge the application, with or without payment of costs, as to the court seems meet.

2. Case to be Stated.—The justice upon being served with such rule absolute, shall state a case accordingly, upon the appellant entering into such recognizance as hereinbefore provided. 55-56 V., c. 29, s. 900.

**765.** Hearing of Case Stated—Order Final.—The court to which a case is transmitted shall hear and determine the question or questions of law arising thereon, and shall thereupon affirm, reverse or modify the conviction, order or determination in respect of which the case has been stated, or remit the matter to the justice with the opinion of the court thereon, and may make such other order in relation to the matter, and such orders as to costs, as to the court seems fit; and all such orders shall be final and conclusive upon all parties.

2. No Costs Against Justice.—No justice who states and delivers a case shall be liable to any costs in respect or by reason of such appeal against his determination. 55-56 V., c. 29, s. 900.

**766.** Amendment of Case.—The court for the opinion of which a case is stated shall have power, if it thinks fit, to cause the case to be sent back for amendment; and there-

upon the same shall be amended accordingly, and judgment shall be delivered after it has been amended.

2. JUDGE AT CHAMBERS HAS POWER OF COURT.—The authority and jurisdiction of the court for the opinion of which a case is stated may, subject to any rules and orders of court in relation thereto, be exercised by a judge of such court sitting in chambers, and as well in vacation as in term time. 55-56 V., c. 29, s. 900.

**767.** ENFORCEMENT OF CONVICTION BY JUSTICE.—After the decision of the court in relation to any case stated for their opinion, the justice in relation to whose determination the case has been stated, or any other justice exercising the same jurisdiction, shall have the same authority to enforce any conviction, order or determination which has been affirmed, amended or made by such court as the justice who originally decided the case would have had to enforce his determination if a case had not been stated.

2. BY PROCESS OF COURT.—If the court deems it necessary or expedient any order of the court may be enforced by its own process. 55-56 V., c. 29, s. 900.

**768.** NO CERTIORARI REQUIRED.—No writ of *certiorari* or other writ shall be required for the removal of any conviction, order or other determination in relation to which a case is stated as aforesaid for obtaining the judgment or determination of a superior court on such case. 55-56 V., c. 29, s. 900.

**769.** STATEMENT OF CASE PRECLUDES APPEAL.—Every person for whom a case is stated as aforesaid in respect of any determination of a justice from which he is entitled to an appeal under section seven hundred and forty-nine, shall be taken to have abandoned his said right of appeal finally and conclusively and to all intents and purposes.

2. NO CASE TO BE STATED WHEN NO APPEAL.—Where, by any special Act, it is provided that there shall be no appeal from any conviction or order, no proceedings shall be taken to have a case stated or signed as aforesaid in any case to which such provision as to appeal in such special Act applies. 55-56 V., c. 29, s. 900.

*Fees.*

**770.** FEES.—The fees mentioned in the following tariff and no others shall be and constitute the fees to be taken on proceedings before justices under this Part:—

*Fees to be taken by Justices of the Peace or their Clerks.*

| | | |
|---|---|---|
| 1. | Information or complaint and warrant or summons | $0 50 |
| 2. | Warrant where summons issued in first instance | 0 10 |
| 3. | Each necessary copy of summons or warrant | 0 10 |
| 4. | Each summons or warrant to or for a witness or witnesses. (Only one summons on each side to be charged for in each case, which may contain any number of names. If the justice of the case requires it, additional summonses shall be issued without charge) | 0 10 |
| 5. | Information for warrant for witness and warrant | 0 50 |
| 6. | Each necessary copy of summons or warrant for witness | 0 10 |
| 7. | For every recognizance | 0 25 |
| 8. | For hearing and determining case | 0 50 |
| 9. | If case lasts over two hours | 1 00 |
| 10. | Where one justice alone cannot lawfully hear and determine the case the same fee for hearing and determining to be allowed to the associate justice. | |
| 11. | For each warrant of distress or commitment | 0 25 |
| 12. | For making up record of conviction or order where the same is ordered to be returned to sessions or on *certiorari* | 1 00 |
| | But in all cases which admit of a summary proceeding before a single justice and wherein no higher penalty than $20 can be imposed, there shall be charged for the record of conviction not more than | 0 50 |

13. For copy of any other paper connected with any case, and the minutes of the same if demanded., per folio of 100 words . . . . . $0 05

14. For every bill of costs when demanded to be made out in detail . . . . . 0 10

(Items 13 and 14 to be chargeable only when there has been an adjudication.)

*Constables' Fees.*

1. Arrest of each individual upon a warrant . . . . 1 50

2. Serving summons . . . . . 0 25

3. Mileage to serve summons or warrant, per mile (one way) necessarily travelled . . . . . 0 10

4. Same mileage when service cannot be effected, but only upon proof of due diligence.

5. Mileage taking prisoner to gaol, exclusive of disbursements necessarily expended in his conveyance . . . . . 0 10

6. Attending justices on trial, for each day necessarily employed in one or more cases, when engaged less than four hours . . . . . 1 00

7. Attending justices on trial, for each day necessarily employed in one or more cases, when engaged more than four hours . . . . . 1 50

8. Mileage travelled to attend trial (when public conveyance can be taken, only reasonable disbursements to be allowed) one way per mile . . 0 10

9. Serving warrant of distress and returning same. 1 00

10. Advertising under warrant of distress . . . . . 1 00

11. Travelling to make distress or to search for goods to make distress, when no goods are found (one way) per mile . . . . . 0 10

12. Appraisements, whether by one appraiser or more —two cents in the dollar on the value of the goods.

13. Commission on sale and delivery of goods—five cents in the dollar on the net proceeds.

*Witnesses' Fees.*

1. Each day attending trial . . . . . $0 75
2. Mileage travelled to attend trial (one way) per mile. . . . . 0 10

55-56 V., c. 29, s. 871; 57-58 V., c. 57, s. 1.

## PART XVI.

### SUMMARY TRIAL OF INDICTABLE OFFENCES.

*Interpretation.*

**771.** DEFINITIONS.—In this Part, unless the context otherwise requires,—

(*a*) 'MAGISTRATE'—means and includes,

(i) in the provinces of Ontario, Quebec and Manitoba, any recorder, judge of a county court if a justice of the peace, commissioner of police, judge of the sessions of the peace, and police magistrate, district magistrate, or other functionary or tribunal, invested by the proper legislative authority with the power to do alone such acts as are usually required to be done by two or more justices, and acting within the local limits of his or of its jurisdiction,

(ii) in the provinces of Nova Scotia and New Brunswick, any recorder, judge of a county court, stipendiary magistrate or police magistrate, acting within the local limits of his jurisdiction, and any commissioner of police and any functionary, tribunal or person invested by the proper legislative authority with power to do alone such acts as are usually required to be done by two or more justices of the peace,

(iii) in the provinces of British Columbia and Prince Edward Island, any two justices sitting together, and any functionary or tribunal having the powers of two justices,

(iv) in the province of Saskatchewan or Alberta, any judge of the Supreme Court of the North-west Territories, pending the abolition of that court by the

legislature of the province, and thereafter any judge of such court in either of the said provinces as may in respect of that province be substituted by the legislature thereof for the Supreme Court of the North-west Territories; any two justices sitting together, and any functionary or tribunal having the powers of two justices,

(v) in the North-west Territories, any stipendiary magistrate, any two justices sitting together and any functionary or tribunal having the powers of two justices,

(vi) in the Yukon Territory, any judge of the Territorial Court, any two justices sitting together and any functionary or tribunal having the powers of two justices,

(vii) in all the provinces where the defendant is charged with any of the offences mentioned in paragraphs (*a*) and (*f*) of section seven hundred and seventy-three, any two justices sitting together;

(*b*) 'THE COMMON GAOL OR OTHER PLACE OF CONFINEMENT,' in the case of any offender whose age at the time of his conviction does not, in the opinion of the magistrate, exceed sixteen years, includes any reformatory prison provided for the reception of juvenile offenders in the province in which the conviction referred to takes place, and to which by the law of that province the offender may be sent; and,

(*c*) 'PROPERTY'—'property' includes everything within the meaning of 'valuable security,' as defined by this Act.

2. VALUABLE SECURITY, HOW RECKONED.—In any case where the value of any valuable security is necessary to be determined it shall be reckoned in the manner prescribed by section four. 55-56 V., c. 29, s. 782; 58-59 V., c. 40, s. 1.

*Application of Part.*

**772.** PART XVII. NOT AFFECTED.—Nothing in this Part shall affect the provisions of Part XVII., and this Part shall

not extend to persons punishable under that Part so far as regards offences for which such persons may be punished thereunder. 55-56 V., c. 29, s. 808.

*Jurisdiction.*

**773.** OFFENCES.—Whenever any person is charged before a magistrate,—

(*a*) THEFT NOT EXCEEDING TEN DOLLARS—with theft, or obtaining money or property by false pretenses, or unlawfully receiving stolen property, where the value of the property does not, in the judgment of the magistrate, exceed ten dollars; or,

(*b*) ATTEMPT—with attempt to commit theft; or,

(*c*) AGGRAVATED ASSAULT—with unlawfully wounding or inflicting grievous bodily harm upon any other person, either with or without a weapon or instrument; or,

(*d*) INDECENT ASSAULT—with indecent assault upon a male person whose age does not, in the opinion of the magistrate, exceed fourteen years, when such assault is of a nature which cannot, in the opinion of the magistrate, be sufficiently punished by a summary conviction before him under any other Part; or with indecent assault upon a female, not amounting, in the magistrate's opinion, to an assault with intent to commit a rape; or,

(*e*) ASSAULT ON PEACE OFFICER—with assaulting or obstructing any public or peace officer engaged in the execution of his duty, or any person acting in aid of such officer; or,

(*f*) INMATE OF HOUSE OF ILL-FAME—with keeping or being an inmate, or habitual frequenter of any disorderly house, house of ill-fame or bawdy-house; or,

(*g*) OFFENCE UNDER S. 235—with any offence under section two hundred and thirty-five;

SUMMARY HEARING — the magistrate may, subject to the subsequent provisions of this Part, hear and determine the charge in a summary way. 55-56 V., c. 29, s. 783.

Nature of evidence to prove charge of being inmate of house of ill-fame, s-s. (f): *R.* v. *St. Clair*, 27 A. R. 308; *R.* v. *Osberg*, 15 Man. L. R. 147.

No appeal to general sessions from conviction under s. 781 of being such inmate: *R.* v. *Nixon*, 19 Can. C. C. 344.

On information for keeping or frequenting house of ill-fame magistrate has option to proceed summarily or commit—Mandamus will not lie to compel summary trial: *In re Macrae*, 4 B. C. R. 18.

Conviction of aggravated assault and payment of fine a bar to civil action: *Hardigan* v. *Graham*, 1 Can. C. C. 437.

The "disorderly house" mentioned in s-s. (f) means a house of the character of a house of ill-fame or bawdy house. The subsection does not cover the offence of keeping or frequenting a common gaming house: *R.* v. *France*, Q. R. 7 Q. B. 83.

Offence under s-s. (e) can only be tried on consent of a prisoner, though s. 169 makes it punishable on summary conviction: *R.* v. *Crossen*, 12 Man. L. R. 571.

**774.** ABSOLUTE JURISDICTION IN RESPECT TO HOUSES OF ILL-FAME.—The jurisdiction of such magistrate is absolute in the case of any person charged with keeping or being an inmate or habitual frequenter of any disorderly house, house of ill-fame or bawdy-house, and does not depend on the consent of the person charged to be tried by such magistrate, nor shall such person be asked whether he consents to be so tried.

2. NOT TO AFFECT OTHER JURISDICTION.—The provisions of this Part shall not affect the absolute summary jurisdiction given to any justice or justices in any case by any other Part of this Act. 55-56 V., c. 29, s. 784.

**775.** ABSOLUTE JURISDICTION AS TO SEAFARING PERSON.—The jurisdiction of the magistrate is absolute in the case of any person who, being a seafaring person and only transiently in Canada, and having no permanent domicile therein, is charged, either within the city of Quebec as limited for the purpose of the police ordinance, or within the city of Montreal as so limited, or in any other seaport city or town in Canada where there is such magistrate, with the commission therein of any of the offences in this Part previously mentioned, and also in the case of any other person charged with any such offence on the complaint of any such seafaring person whose testimony is essential to the proof of the offence.

2. NO CONSENT NECESSARY.—Such jurisdiction does not depend on the consent of any such person to be tried by the magistrate, nor shall such person be asked whether he consents to be so tried. 55-56 V., c. 29, s. 784.

**776.** JURISDICTION ABSOLUTE IN CERTAIN PROVINCES—EXCEPTION.—The jurisdiction of the magistrate in the pro-

vinces of British Columbia, Prince Edward Island, Saskatchewan and Alberta, and in the Northwest Territories and Yukon Territory, under this Part, is absolute without the consent of the party charged, except in cases coming within the provisions of section seven hundred and seventy-seven, and except in cases under sections seven hundred and eighty-two and seven hundred and eighty-three, where the person charged is not a person who under section seven hundred and seventy-five, can be tried summarily without his consent. 63-64 V., c. 46, s. 3.

**777.** SUMMARY TRIAL IN CASES IN ONTARIO.—If any person is charged in the province of Ontario before a police magistrate or before a stipendiary magistrate in any county, district or provisional county in such province, with having committed any offence for which he may be tried at a court of general sessions of the peace, or if any person is committed to a gaol in the county, district or provisional county, under the warrant of any justice, for trial on a charge of being guilty of any such offence, such person may, with his own consent, be tried before such magistrate, and may, if found guilty, be sentenced by the magistrate to the same punishment as he would have been liable to if he had been tried before the court of general sessions of the peace.

2. APPLIES TO POLICE MAGISTRATES, ETC., IN CITIES AND TOWNS IN OTHER PROVINCES.—This section shall apply also to police and stipendiary magistrates of cities and incorporated towns in every other part of Canada, and to recorders where they exercise judicial functions: Provided that when the magistrate has jurisdiction by virtue of this section only, no person shall be summarily tried thereunder without his own consent.

3. EXCEPTIONS.—Sections seven hundred and eighty and seven hundred and eighty-one do not extend or apply to cases tried under this section. 63-64 V., c. 46, s. 3.

Section applies in New Brunswick, though there is no court of general sessions there: *In re Vancini*, 36 N. B. R. 456, 34 S. C. R. 621.

*Procedure.*

**778.** PROCEEDINGS ON ARRAIGNMENT.—Whenever the magistrate, before whom any person is charged as aforesaid,

proposes to dispose of the case summarily under the provisions of this Part, such magistrate, after ascertaining the nature and extent of the charge, but before the formal examination of the witnesses for the prosecution, and before calling on the person charged for any statement which he wishes to make, shall state to such person the substance of the charge against him.

2. ACCUSED PUT TO ELECTION.—If the charge is not one that can be tried summarily without the consent of the accused the magistrate shall then address him in these words, or words to the like effect: 'Do you consent that the charge against you shall be tried by me, or do you desire that it shall be sent for trial by a jury at the' (*naming the court at which it can probably soonest be tried*).

3. CHARGE REDUCED TO WRITING.—If the person charged consents to the charge being summarily tried and determined as aforesaid, or if the power of the magistrate to try it does not depend on the consent of the accused, the magistrate shall reduce the charge to writing and read the same to such person, and shall then ask him whether he is guilty or not of such charge.

4. PROCEEDINGS ON CONFESSION—IF ACCUSED PLEADS NOT GUILTY. — If the person charged confesses the charge the magistrate shall then proceed to pass such sentence upon him as by law may be passed in respect to such offence, subject to the provisions of this Act; but if the person charged says that he is not guilty, the magistrate shall then examine the witnesses for the prosecution, and when the examination has been completed, the magistrate shall inquire of the person charged whether he has any defence to make to such charge, and if he states that he has a defence the magistrate shall hear such defence, and shall then proceed to dispose of the case summarily. 55-56 V., c. 29, s. 786.

**After consent, new charge substituted and trial proceeded without fresh consent—Conviction quashed:** *R. v. Goodman*, 3 O. R. 18.

**779.** PROCEEDINGS WHEN ACCUSED IS A MINOR.—Whenever the person charged appears to be of, or about, or under the age of sixteen years, and is not represented by counsel present at the time, the magistrate shall not proceed under the last preceding section without first asking the person charged what his age is.

2. Notice to Parents or Guardian.—If such person then states his age as being sixteen years or less, the magistrate shall defer any further action, and shall at once cause notice to be given to the parent or parents of such person, living in the province, if any, or if he has no such parents, or if his parents are unknown, then to the guardian or householder, if any, with whom he ordinarily resides, of such person having been so charged, and of the time and place when such person will be called on to make his election as to whether he will be tried by the said magistrate.

3. Reasonable Time.—Such notice shall allow reasonable time for the said parents, guardian or householder to be present and advise the said person charged before he is called on to so elect.

4. Procedure if Notice cannot be Given.—At the time fixed by such notice, or if it appears to the satisfaction of the magistrate that there is no person for whom notice is provided as aforesaid, or that all reasonable means to give such notice have been taken without success, then, at the earliest convenient time, the magistrate shall proceed as in the last preceding section provided.

5. Advice to be Given.—If any person notified as aforesaid is present at the time so fixed, the magistrate shall afford him an opportunity to advise the person charged before he is called upon to elect.

6. Notice how Given.—The notice provided for by this section may be given by registered letter, if the person to be notified does not reside in the city, town or municipality where the proceedings are had. 4 E. VII., c. 8, s. 1.

**780.** Penalty under (*a*) or (*b*) of s. 773.—In the case of an offence charged under paragraph (*a*) or (*b*) of section seven hundred and seventy-three, the magistrate, after hearing the whole case for the prosecution and for the defence, shall, if he finds the charge proved, convict the person charged and commit him to the common gaol or other place of confinement, there to be imprisoned, with or without hard labour, for any term not exceeding six months. 55-56 V., c. 29, s. 787.

**Quashed for imposing penalty of imprisonment for more than six months:** *R.* v. *Randolph*, 32 O. R. 212.

**781.** Conviction — Penalty.—In any case summarily tried under paragraphs (*c*), (*d*), (*e*), (*f*), (*g*), (*h*) or (*i*) of section seven hundred and seventy-three, if the magistrate finds the charge proved, he may convict the person charged and commit him to the common gaol or other place of confinement, there to be imprisoned, with or without hard labour, for any term not exceeding six months, or may condemn him to pay a fine not exceeding, with the costs in the case, one hundred dollars, or to both fine and imprisonment not exceeding the said sum and term.

2. Enforcing Conviction.—Such fine may be levied by warrant of distress under the hand and seal of the magistrate, or the person convicted may be condemned, in addition to any other imprisonment on the same conviction, to be committed to the common gaol or other place of confinement for a further term not exceeding six months, unless such fine is sooner paid. 55-56 V., c. 29, s. 788.

No appeal to general sessions from conviction for offence against s. 773 (f): *R.* v. *Nixon*, 19 Occ. N. 344.

**782.** Theft, False Pretenses and Receiving Stolen Property Exceeding Ten Dollars — Procedure.—When any person is charged before a magistrate with theft or with having obtained property by false pretenses, or with having unlawfully received stolen property, and the value of the property stolen, obtained or received exceeds ten dollars, and the evidence in support of the prosecution is, in the opinion of the magistrate, sufficient to put the person on his trial for the offence charged, such magistrate, if the case appears to him to be one which may properly be disposed of in a summary way, shall reduce the charge to writing, and shall read it to the said person, and, unless such person is one who, under section seven hundred and seventy-five, can be tried summarily without his consent, shall then put to him the question mentioned in section seven hundred and seventy-eight, and shall explain to him that he is not obliged to plead or answer before such magistrate, and that if he does not plead or answer before him, he will be committed for trial in the usual court. 63-64 V., c. 46, s. 3.

**783.** Consent and Trial.—If the person charged as mentioned in the last preceding section consents to be tried by

the magistrate, the magistrate shall then ask him whether he is guilty or not guilty of the charge, and if such person says that he is guilty, the magistrate shall then cause a plea of guilty to be entered upon the proceedings, and sentence him to the same punishment as he would have been liable to if he had been convicted upon indictment in the ordinary way; and if he says that he is not guilty, he shall be remanded to gaol to await his trial before him in the usual course. 63-64 V., c. 46, s. 3.

**784.** MAGISTRATE MAY DECIDE NOT TO PROCEED SUMMARILY.—If, in any proceeding under this Part, it appears to the magistrate that the offence is one which, owing to a previous conviction of the person charged, or from any other circumstances, ought to be made the subject of prosecution by indictment rather than to be disposed of summarily, such magistrate may, before the accused person has made his defence, decide not to adjudicate summarily upon the case; but a previous conviction shall not prevent the magistrate from trying the offender summarily, if he thinks fit so to do. 55-56 V., c. 29, s. 791.

**785.** ELECTION OF TRIAL BY JURY TO BE STATED ON WARRANT OF COMMITTAL.—If, when his consent is necessary, the person charged elects to be tried before a jury, the magistrate shall proceed to hold a preliminary inquiry as provided in Parts XIII. and XIV., and if the person charged is committed for trial, shall state in the warrant of committal the fact of such election having been made. 55-56 V., c. 29, s. 792.

**786.** FULL DEFENCE ALLOWED.—In every case of summary proceedings under this Part the person accused shall be allowed to make his full answer and defence, and to have all witnesses examined and cross-examined by counsel or solicitor. 55-56 V., c. 29, s. 793.

**787.** PROCEEDING IN OPEN COURT.—Every court held by a magistrate for the purposes of this Part shall be an open public court. 55-56 V., c. 29, s. 794.

**788.** PROCURING ATTENDANCE OF WITNESSES.—The magistrate before whom any person is charged under the provisions

of this Part may, by summons or, by writing under his hand, require the attendance of any person as a witness upon the hearing of the case, at a time and place to be named in such summons, and such magistrate may bind, by recognizance, all persons whom he considers necessary to be examined, touching the matter of such charge, to attend at the time and place appointed by him and then and there to give evidence upon the hearing of such charge.

2. By Warrant if Summons Disobeyed.—If any person so summoned, or required or bound as aforesaid, neglects or refuses to attend in pursuance of such summons or recognizance, and if proof is made of such person having been duly summoned as hereinafter mentioned, or bound by recognizance as aforesaid, the magistrate before whom such person should have attended may issue a warrant to compel his appearance as a witness. 55-56 V., c. 29, s. 795.

**789.** Service of Summons.—Every summons issued under the provisions of this Part may be served by delivering a copy of the summons to the person summoned, or by delivering a copy of the summons to some inmate of such person's usual place of abode apparently over sixteen years of age.

2. Writing Sufficient.—Every person required by any writing under the hand of the magistrate to attend and give evidence as aforesaid shall be deemed to have been duly summoned. 55-56 V., c. 29, s. 796.

**790.** Dismissal of Charge. — Whenever the magistrate finds the offence not proved, he shall dismiss the charge, and make out and deliver to the person charged a certificate under his hand stating the fact of such dismissal. 55-56 V., c. 29, s. 797.

**791.** Effect of Conviction.—Every conviction under this Part shall have the same effect as a conviction upon indictment for the same offence. 55-56 V., c. 29, s. 798.

**792.** Certificate of Dismissal or Conviction.—Every person who obtains a certificate of dismissal or is convicted under the provisions of this Part, shall be released from all

further or other criminal proceedings for the same cause. 55-56 V., c. 29, s. 799.

Certificate of dismissal or conviction under this section does not bar civil proceedings: *Nevills* v. *Ballard*, 28 O. R. 588.

**793.** RESULT OF HEARING TO BE FILED IN COURT OF SESSIONS.—The magistrate adjudicating under the provisions of this Part shall transmit the conviction, or a duplicate of the certificate of dismissal, with the written charge, the depositions of witnesses for the prosecution and for the defence, and the statement of the accused, to the clerk of the peace or other proper officer for the district, city, county or place wherein the offence was committed, there to be kept by the proper officer among the records of the general or quarter sessions of the peace or of any court discharging the functions of a court of general or quarter sessions of the peace. 63-64 V., c. 46, s. 3; 1 E. VII., c. 42, s. 2.

**794.** EVIDENCE OF CONVICTION OR DISMISSAL.—A copy of such conviction, or of such certificate of dismissal, certified by the proper officer of the court, or proved to be a true copy, shall be sufficient evidence to prove a conviction or dismissal for the offence mentioned therein in any legal proceedings. 55-56 V., c. 29, s. 802.

**795.** RESTITUTION OF PROPERTY. — The magistrate by whom any person has been convicted under the provisions of this Part may order restitution of the property stolen, or taken or obtained by false pretenses, in any case in which the court, before whom the person convicted would have been tried but for the provisions of this Part, might by law order restitution. 55-56 V., c. 29, s. 803.

See s. 1050.

**796.** REMAND BY JUSTICE TO MAGISTRATE — PROVISO.—Whenever any person is charged before any justice or justices, with any offence mentioned in section seven hundred and seventy-three, and in the opinion of such justice or justices the case is proper to be disposed of summarily by a magistrate, as in this Part provided, the justice or justices before whom such person is so charged may, if he or they see fit,

remand such person for trial before the nearest magistrate in like manner in all respects as a justice or justices are authorized to commit an accused person for trial at any court: Provided that no justice or justices, in any province, shall so remand any person for trial before any magistrate in any other province.

2. JURISDICTION.—Any person so remanded for trial before a magistrate in any city, may be examined and dealt with by the said magistrate or any other magistrate in the same city. 55-56 V., c. 29, s. 804.

**797.** PROVISION OF PART XV. AS TO APPEALS APPLIES—EXCEPTION.—When any of the offences mentioned in paragraphs (*a*) or (*f*) of section seven hundred and seventy-three is tried in any of the provinces under this Part an appeal shall lie from a conviction for the offence in the same manner as from summary convictions under Part XV., and all provisions of that Part relating to appeals shall apply to every such appeal: Provided that in the province of Saskatchewan or Alberta there shall be no appeal if the conviction is made by a judge of a superior court. 58-59 V., c. 40, s. 1.

**798.** PART XV. OR PROVISIONS AS TO PRELIMINARY INQUIRIES NOT TO APPLY.—Except as specially provided for in the two last preceding sections, neither the provisions of this Act relating to preliminary inquiries before justices, nor of Part XV., shall apply to any proceedings under this Part. 55-56 V., c. 29, s. 808.

**799.** FORMS TO BE USED—MAY BE ALTERED.—A conviction or certificate of dismissal under this Part may be in the form 55, 56 or 57 applicable to the case or to the like effect; and whenever the nature of the case requires it, such forms may be altered by omitting the words stating the consent of the person to be tried before the magistrate, and by adding the requisite words, stating the fine imposed, if any, and the imprisonment, if any, to which the person convicted is to be subjected, if the fine is not sooner paid. 55-56 V., c. 29, s. 807.

FORM 55.

(Section 799.)

CONVICTION.

Canada, )
Province of , )
County of . )

Be it remembered that on the day of , in the year , at , A. B., being charged before me, the undersigned, , of the said (*city*) (and consenting to my trying the charge summarily), is convicted before me, for that he, the said A. B., (*etc., stating the offence, and the time and place when and where committed*), and I adjudge the said A. B., for his said offence, to be imprisoned in the (and there kept at hard labour, *if it is so adjudged*) for the term of .

Given under my hand and seal, the day and year first above mentioned, at aforesaid.

G. F., [SEAL.]
Police magistrate
for
(*or as the case may be.*)

55-56 V., c. 29, sch. 1, form QQ.

FORM 56.

(Section 799.)

CONVICTION UPON A PLEA OF GUILTY.

Canada, )
Province of , )
County of . )

Be it remembered that on the day of in the year , at , A. B., being charged before me, the undersigned, of the said (*city*) (and consenting to my trying the charge summarily), for that he, the said A. B., (*etc., stating the offence, and the time and place when and where committed*), and pleading guilty to such charge, he is thereupon convicted before me of the said offence; and I adjudge him, the said A. B., for his said offence, to be imprisoned in the (and there kept at hard labour, *if it is so adjudged*) for the term of .

Given under my hand and seal, the day and year first above mentioned, at aforesaid.

G. F., [SEAL.]
Police magistrate
for
(*or as the case may be.*)

55-56 V., c. 29, sch. 1, form RR.

FORM 57.

(Section 799.)

CERTIFICATE OF DISMISSAL.

Canada, )
Province of , )
County of . )

I, the undersigned, , of the city (*or as the case may be*) of , certify that on the day of , in the year , at aforesaid A. B., being charged before me (and consenting to my trying the charge summarily), for that he, the said A. B. (*etc., stating the*

*offence charged, and the time and place when and where alleged to have been committed*), I did, after having summarily tried the said charge, dismiss the same.

Given under my hand and seal, this day of , in the year , at aforesaid.

G. F., [SEAL.]
Police magistrate,
for
(*or as the case may be.*)

55-56 V., c. 29, sch. 1, form 88.

## PART XVII.

### TRIAL OF JUVENILE OFFENDERS FOR INDICTABLE OFFENCES.

*Interpretation.*

**800.** DEFINITIONS.—In this Part, unless the context otherwise requires,—

(*a*) 'TWO OR MORE JUSTICES,' OR 'THE JUSTICES'—'two or more justices,' or 'the justices,' includes,

(i) in the provinces of Ontario and Manitoba, any judge of the county court being a justice, police magistrate or stipendiary magistrate, or any two justices, acting within the limits of their respective jurisdictions,

(ii) in the province of Quebec, any two or more justices, the sheriff of any district, except Montreal and Quebec, the deputy sheriff of Gaspé, and any recorder, judge of the sessions of the peace, police magistrate, district magistrate or stipendiary magistrate, acting within the limits of their respective jurisdictions,

(iii) in the provinces of Nova Scotia, New Brunswick, Prince Edward Island and British Columbia, any functionary or tribunal invested by the proper legislative authority with power to do acts usually required to be done by two or more justices,

(iv) in the province of Saskatchewan or Alberta, any judge of the Supreme Court of the Northwest Territories, pending the abolition of that Court by the legislature of the province, and thereafter any judge of such court in either of the said provinces as may in respect of that province be substituted by the legislature thereof for the Supreme Court of the North-

west Territories; any two justices sitting together, and any functionary or tribunal having the powers of two justices,

(v) in the Northwest Territories, any stipendiary magistrate, any two justices sitting together, and any functionary or tribunal having the powers of two justices, and

(vi) in the Yukon Territory, any judge of the Territorial Court, any two justices sitting together, and any functionary or tribunal having the powers of two justices;

(*b*) "COMMON GAOL"—"the common gaol or other place of confinement" includes any reformatory prison provided for the reception of juvenile offenders in the province in which the conviction referred to takes place, and to which, by the law of that province, the offender may be sent. 55-56 V., c. 29, s. 809.

*Application of Part.*

**801.** NOT TO CERTAIN OFFENCES IN B. C. OR P. E. I.—The provisions of this Part shall not apply to any offence committed in the province of British Columbia or Prince Edward Island, punishable by imprisonment for two years and upwards; and in such provinces it shall not be necessary to transmit any recognizance to the clerk of the peace or other proper officer. 55-56 V. c. 29, s. 829.

*Jurisdiction.*

**802.** THEFT BY PERSON NOT OVER SIXTEEN.—Every person charged with having committed, or having attempted to commit any offence which is theft, or punishable as theft, and whose age, at the period of the commission or attempted commission of such offence, does not, in the opinion of the justice before whom he is brought or appears, exceed the age of sixteen years, shall, upon conviction thereof in open court, upon his own confession or upon proof, before any two or more justices, be committed to the common gaol or other place of confinement within the jurisdiction of such justices, there to be imprisoned, with or without hard labour, for any term

not exceeding three months, or, in the discretion of such justices, shall forfeit and pay such sum, not exceeding twenty dollars, as such justices adjudge. 55-56 V., c. 29, s. 810.

Conviction need not show that offender was under age of 16: *R.* v. *Brine*, 33 N. S. R. 43.

**803.** No Imprisonment in Reformatory in Ontario.—The provisions of this Part shall not authorize two or more justices to sentence offenders to imprisonment in a reformatory in the province of Ontario. 55-56 V., c. 29, s. 830.

**804.** Not to Prevent Summary Conviction.—Nothing in this Part shall prevent the summary conviction of any person who may be tried thereunder before one or more justices, for any offence for which he is liable to be so convicted under any other Part of this Act or under any other Act. 55-56 V., c. 29, s. 831.

*Procedure.*

**805.** Procuring Appearance of Accused.—Whenever any person, whose age is alleged not to exceed sixteen years, is charged with any offence mentioned in section eight hundred and two, on the oath of a credible witness, before any justice, such justice may issue his summons or warrant, to summon or to apprehend the person so charged, to appear before any two justices, at a time and place to be named in such summons or warrant. 55-56 V., c. 29, s. 811.

**806.** Remand of Accused.—Any justice, if he thinks fit, may remand for further examination or for trial, or suffer to go at large, upon his finding sufficient sureties, any such person charged before him with any offence aforesaid.

2. Sureties Bound by Recognizances. — Every such surety shall be bound by recognizance conditioned for the appearance of such person before the same or some other justice or justices for further examination, or for trial before two or more justices as aforesaid, or for trial by indictment at the proper court of criminal jurisdiction, as the case may be.

3. Recognizances Enlarged.—Every such recognizance may be enlarged, from time to time, by any such justice or justices to such further time as he or they appoint; and every

such recognizance not so enlarged shall be discharged without fee or reward, when the person has appeared according to the condition thereof. 55-56 V., c. 29, s. 812.

**807.** Election.—The justices before whom any person is charged and proceeded against under the provisions of this Part, before such person is asked whether he has any cause to show why he should not be convicted, shall address the person so charged in these words, or words to the like effect:—

'We shall have to hear what you wish to say in answer to the charge against you; but if you wish to be tried by a jury, you must object now to our deciding upon it at once.'

2. Objection of Accused or Parent or Guardian.—And if such person, or a parent or guardian of such person, then objects, no further proceedings shall be had under the provisions of this Part; but the justices may deal with the case according to the provisions set out in Parts XIII. and XIV., as if the accused were before them thereunder. 55-56 V., c. 29, s. 813.

**808.** When Accused shall not be Tried Summarily.—If the justices are of opinion, before the person charged has made his defence, that the charge is, from any circumstance, a fit subject for prosecution by indictment, or if the person charged, upon being called upon to answer the charge, objects to the case being summarily disposed of under the provisions of this Part, the justices shall not deal with it summarily, but may proceed to hold a preliminary inquiry as provided for in Parts XIII. and XIV.

2. Election to be Stated in Warrant.—In case the accused has elected to be tried by a jury, the justices shall state in the warrant of commitment the fact of such election having been made. 55-56 V., c. 29, s. 814.

**809.** Summons to Witness.—Any justice may, by summons or by writing under his hand, require the attendance of any person as a witness upon the hearing of any case before two justices, under the authority of this Part, at a time and place to be named in such summons. 55-56 V., c. 29, s. 815.

**810.** Binding Over Witness.—Any such justice may require and bind by recognizance every person whom he con-

siders necessary to be examined, touching the matter of such charge, to attend at the time and place appointed by him and then and there to give evidence upon the hearing of such charge. 55-56 V., c. 29, s. 816.

811. WARRANT WHEN WITNESS DISOBEYS SUMMONS.—If any person summoned or required or bound, as aforesaid, neglects or refuses to attend in pursuance of such summons or recognizance, and if proof is given of such person having been duly summoned, as hereinafter mentioned, or bound by recognizance, as aforesaid, either of the justices before whom any such person should have attended, may issue a warrant to compel his appearance as a witness. 55-56 V., c. 29, s. 817.

812. SERVICE OF SUMMONS.—Every summons issued under the authority of this Part may be served by delivering a copy thereof to the person, or to some inmate, apparently over sixteen years of age, at such person's usual place of abode, and every person so required by any writing under the hand or hands of any justice or justices to attend and give evidence as aforesaid, shall be deemed to have been duly summoned. 55-56 V., c. 29, s. 818.

813. DISCHARGE OF ACCUSED—SURETIES FOR GOOD BEHAVIOUR.—If the justices upon the hearing of the case deem the offence not proved, or that it is not expedient to inflict any punishment, they shall dismiss the person charged, and make out and deliver to him a certificate in the form 58, or to the like effect, under the hands of such justices, stating the fact of such dismissal: Provided that if the dismissal shall be on account only of it being deemed inexpedient to inflict any punishment the accused shall be discharged only on his finding sureties for his good behaviour. 55-56 V., c. 29, s. 819.

FORM 58.

(Section 813.)

CERTIFICATE OF DISMISSAL.

Canada,
Province of
County of

, justices of the peace for the of
(*or if a recorder, etc.*, I, a , of the

of , *as the case may be*), do hereby certify that on the day of , in the year at , in the said of , A. B. was brought before us, the said justices (*or* me, the said ), charged with the following offence, that is to say (*here state briefly the particulars of the charge*), and that we, the said justices, (*or I*, the said ) thereupon dismissed the said charge.

Given under our hands and seal (*or* my hand and seal), this day of , in the year , at aforesaid.

J. P. [SEAL.]
J. R. [SEAL.]
*or* S. J. [SEAL.]

55-56 V., c. 29, sch. 1, form TT.

**814.** FORM OF CONVICTION.—The justices before whom any person is summarily convicted of any offence in this Part previously mentioned, may cause the conviction to be drawn up in form 59, or in other form to the same effect, and the conviction shall be good and effectual to all intents and purposes. 55-56 V., c. 29, s. 820.

FORM 59.

(Section 814.)

CONVICTION.

Canada,
Province of ,
County of .

Be it remembered that on the day of , in the year , at , in the county of , A. B. is convicted before us, J. P. and J. R., justices of the peace for the said county (*or*, me, S. J., recorder, of the , of , (*or as the case may be*) for that he, the said A. B., did (*specify the offence and the time and place when and where the same was committed, as the case may be, but without setting forth the evidence*), and we, the said J. P. and J. R. (*or* I, the said S. J.), adjudge the said A. B., for his said offence, to be imprisoned in the with (*or* without) hard labour (*in the discretion of the justice*) for the space of , (*or* we) (*or I*) adjudge the said A. B., for his said offence, to forfeit and pay (*here state the penalty actually imposed*), and in default of immediate payment of the said sum, to be imprisoned in the with (*or* without) hard labour (*in the discretion of the justice*) for the term of , unless the said sum is sooner paid.

Given under our hands and seals (*or* my hand and seal), the day and year first above mentioned.

J. P. [SEAL.]
J. R. [SEAL.]
*or* S. J. [SEAL.]

55-56 V., c. 29, sch. 1, form UU.

**815.** FURTHER PROCEEDING BARRED.—Every person who obtains such certificate of dismissal, or is so convicted, shall be released from all further or other criminal proceedings for the same cause. 55-56 V., c. 29, s. 821.

**816.** CONVICTION AND RECOGNIZANCES TO BE FILED.—The justice before whom any person is convicted under the provisions of this Part shall forthwith transmit the conviction and recognizances to the clerk of the peace or other proper officer, for the district, city, county or union of counties wherein the offence was committed, there to be kept by the proper officer among the records of the court of general or quarter sessions of the peace, or of any other court discharging the functions of a court of general or quarter sessions of the peace. 55-56 V., c. 29, s. 822.

**817.** RESTITUTION OF PROPERTY. — No conviction under the authority of this Part shall be attended with any forfeiture, except such penalty as is imposed by the sentence; but whenever any person is adjudged guilty under the provisions of this Part, the presiding justice may order restitution of property in respect of which the offence was committed, to the owner thereof or his representatives.

2. VALUE OF PROPERTY ORDERED TO BE PAID. — If such property is not then forthcoming, the justices, whether they award punishment or not, may inquire into and ascertain the value thereof in money; and, if they think proper, order payment of such sum of money to the true owner, by the person convicted, either at one time or by instalments, at such periods as the justices deem reasonable.

3. RECOVERY OF SAME.—The person ordered to pay such sum may be sued for the same as a debt in any court in which debts of the like amount are, by law, recoverable, with costs of suit, according to the practice of such court. 55-56 V., c. 29, s. 824.

See s. 1050.

**818.** PROCEEDINGS WHERE PENALTY IS NOT PAID.—Whenever the justices adjudge any offender to forfeit and pay a pecuniary penalty under the authority of this Part, and such penalty is not forthwith paid, they may, if they deem it expedient, appoint some future day for the payment thereof, and order the offender to be detained in safe custody until the day so appointed, unless such offender gives security to the satisfaction of the justices, for his appearance on such

day; and the justices may take such security by way of recognizance or otherwise in their discretion.

2. COMMITMENT TO GAOL.—If at any time so appointed such penalty has not been paid, the same or any other justices may, by warrant under their hands and seals, commit the offender to the common gaol or other place of confinement within their jurisdiction, there to remain for any time not exceeding three months, reckoned from the day of such adjudication. 55-56 V., c. 29, s. 825.

**819.** COSTS—ORDER FOR PAYMENT.—The justices before whom any person is prosecuted or tried for any offence cognizable under this Part may, in their discretion, at the request of the prosecutor or of any other person who appears on recognizance or summons to prosecute or give evidence against such person, order payment to the prosecutor and witnesses for the prosecution, of such sums as to them seem reasonable and sufficient, to reimburse such prosecutor and witnesses for the expenses they have severally incurred in attending before them, and in otherwise carrying on such prosecution, and also to compensate them for their trouble and loss of time therein, and to the constables and other peace officers payment for the apprehension and detention of any persons so charged.

2. WHEN NO CONVICTION.—The justices may, although no conviction takes place, order all or any of the payments aforesaid to be made, when they are of opinion that the persons, or any of them, have acted in good faith. 55-56 V., c. 29, s. 826.

**820.** COSTS TO BE CERTIFIED BY JUSTICES.—The amount of expenses of attending before the justices and the compensation for trouble and loss of time therein, and the allowances to the constables and other peace officers for the apprehension and detention of the offender, and the allowances to be paid to the prosecutor, witnesses and constables for attending at the trial or examination of the offender, shall be ascertained by and certified under the hands of such justices.

2. LIMIT.—The amount of the costs, charges and expenses attending any such prosecution, to be allowed and paid as aforesaid, shall not in any one case exceed the sum of eight dollars. 55-56 V., c. 29, s. 828.

**821.** ORDER FOR PAYMENT—ON OFFICER.—Every such order of payment to any prosecutor or other person, after the amount thereof has been certified by the proper justices as aforesaid, shall be forthwith made out and delivered by the said justices or one of them, or by the clerk of the peace or other proper officer, as the case may be, to such prosecutor or other person, upon such clerk or officer being paid his lawful fee for the same, and shall be made upon the officer to whom fines imposed under the authority of this Part are required to be paid over in the district, city, county or union of counties in which the offence was committed, or was supposed to have been committed.

2. OFFICER MUST PAY ON SIGHT OF ORDER.—Such officer shall upon sight of every such order, forthwith pay to the person named therein, or to any other person duly authorized to receive the same on his behalf, out of any moneys received by him under this Part, the money in such order mentioned, and he shall be allowed the same in his accounts of such moneys. 55-56 V., c. 29, s. 828.

## PART XVIII.

### SPEEDY TRIALS OF INDICTABLE OFFENCES.

*Application of Part.*

**822.** PART ONLY OF CANADA.—The provisions of this Part do not apply to the province of Saskatchewan or Alberta, or to the North-west Territories or the Yukon Territory. 55-56 V., c. 29, s. 762.

*Interpretation.*

**823.** DEFINITIONS.—In this Part, unless the context otherwise requires,—

(*a*) 'JUDGE' means and includes,

(i) in the province of Ontario, any judge of a county or district court, junior judge or deputy judge authorized to act as chairman of the general sessions of the peace,

(ii) in the province of Quebec, in any district wherein there is a judge of the sessions, such judge of sessions, and in any district wherein there is no judge of sessions but wherein there is a district magistrate, such district magistrate, and in any district wherein there is neither a judge of sessions nor a district magistrate, the sheriff of such district,

(iii) in each of the provinces of Nova Scotia, New Brunswick and Prince Edward Island, any judge of a county court,

(iv) in the province of Manitoba, the Chief Justice, or a puisne judge of the Court of King's Bench, or any judge of a county court,

(v) in the province of British Columbia, the Chief Justice or a puisne judge of the Supreme Court, or any judge of a county court;

(*b*) 'County Attorney' or 'Clerk of the Peace' includes, in the province of Ontario, the County Crown Attorney, in the provinces of Nova Scotia, New Brunswick and Prince Edward Island, any clerk of a county court, and in the province of Manitoba, any Crown Attorney, the prothonotary of the Court of King's Bench, and any deputy prothonotary thereof, any deputy clerk of the peace, and the deputy clerk of the Crown and pleas for any district in the said province. 55-56 V., c. 29, s. 763; 58-59 V., c. 40, s. 1; 63-64 V., c. 46, s. 3.

Meaning of expression "any judge of a county court": *In re County Courts of British Columbia*, 21 S. C. R. 446.

County court judge cannot hold speedy trial beyond limits of his territorial jurisdiction without authority from Provincial legislature: *Ib.*

*Jurisdiction.*

**824.** Judge a Court of Record.—The judge sitting on any trial under this Part, for all the purposes thereof and proceedings connected therewith or relating thereto, shall be a court of record, and in every province of Canada, except the province of Quebec, such court shall be called the County Court Judge's Criminal Court of the county or union of counties or judicial district in which the same is held.

2. Record to be Filed.—The record in any such case shall be filed among the records of the court over which the judge presides, and as part of such records. 55-56 V., c. 29, s. 764.

825. Offences Triable Under this Part by Consent.—Every person committed to gaol for trial on a charge of being guilty of any of the offences which are mentioned in section five hundred and eighty-two as being within the jurisdiction of the general or quarter sessions of the peace, may, with his own consent, be tried in any province except Saskatchewan and Alberta, and, if convicted, sentenced by the judge.

2. Entry of Consent.—An entry shall be made of such consent at the time the same is given.

3. Trial Out of Sessions and Term.—Such trial shall be had under and according to the provisions of this Part out of sessions and out of the regular term or sittings of the court, and whether the court before which, but for such consent, the said person would be triable for the offence charged or the grand jury thereof is or is not then in session.

4. Committed for Trial.—A person who has been bound over by a justice or justices under the provisions of section six hundred and ninety-six, and has been surrendered by his sureties, and is in custody on the charge, or who is otherwise in custody awaiting trial on the charge, shall be deemed to be committed for trial within the meaning of this section. 63-64 V., c. 46, s. 3.

Where prisoner is arraigned on two or more distinct charges he is entitled to a separate trial on each: *R.* v. *McBerny*, 29 N. S. R. 327.

Provisions only apply to "persons committed to gaol for trial".—Where on information for assault the magistrate held accused to bail but neglected to commit him for trial, a conviction against him was quashed: *R.* v. *Gibson*, 29 N. S. R. 4; *R.* v. *Smith*, 31 N. S. R. 411: *Contra*, *R.* v. *Lawrence*, 5 B. C. R. 160.

Prisoner was tried on a charge of larceny and acquitted. Prosecuting counsel asked leave to prefer another charge on which prisoner consented to be tried and was convicted. The conviction was quashed as prisoner was not committed for trial on the fresh charge and his consent could not give the judge jurisdiction: *R.* v. *Lonar*, 25 N. S. R. 124. But see *R.* v. *Brown*, 31 N. S. R. 401.

*Procedure.*

826. Sheriff to Notify Judge after Committal of Accused.—Every sheriff shall, within twenty-four hours after

any prisoner charged as aforesaid is committed to gaol for trial, notify the judge in writing that such prisoner is so confined, stating his name and the nature of the charge preferred against him, whereupon, with as little delay as possible, such judge shall cause the prisoner to be brought before him.

2. Notice to Prosecuting Officer when Judge does not Reside in County.—Where the judge does not reside in the county in which the prisoner is committed, the notification required by this section may be given to the prosecuting officer, instead of to the judge, and the prosecuting officer shall in such case, with as little delay as possible, cause the prisoner to be brought before him. 55-56 V., c. 29, s. 766; 63-64 V., c. 46, s. 3.

**827.** Arraignment.—The judge or such prosecuting officer upon having obtained the depositions on which the prisoner was so committed, shall state to him,—

(*a*) The Charge—that he is charged with the offence, describing it;

(*b*) The Option—that he has the option to be forthwith tried before a judge without the intervention of a jury, or to remain in custody or under bail, as the court decides, to be tried in the ordinary way by the court having criminal jurisdiction.

2. Early Day for Trial.—If the prisoner has been brought before the prosecuting officer, and consents to be tried by the judge, without a jury, such prosecuting officer shall forthwith inform the judge, and the judge shall thereupon fix an early day for the trial and communicate the same to the prosecuting officer.

3. Prosecuting Officer Prefers Charge—Plea of Guilty.—In such case or if the prisoner has been brought before the judge and consents to be tried by him without a jury, the prosecuting officer shall prefer the charge against him for which he has been committed for trial, and if, upon being arraigned upon the charge, the prisoner pleads guilty, the prosecuting officer shall draw up a record as nearly as may be in form 60.

4. Entered on Record—Sentence.—Such plea shall be entered on the record, and the judge shall pass the sentence

of the law on such prisoner, which shall have the same force and effect as if passed by a court having jurisdiction to try the offence in the ordinary way. 63-64 V., c. 46, s. 3.

County court judge's criminal court being a court of record, its proceedings cannot be reviewed on habeas corpus: *R.* v. *Murray*, 28 O. R. 549; *R.* v. *St. Denis*, 8 P. R. 16.

Validity of trial affected by fact that prisoner was committed for trial and confined in gaol on a void warrant: *R.* v. *Murray*, 28 O. R. 549.

Prisoner on bail may elect for speedy trial after surrender, and, if he does, subsequent indictment against him will be quashed: *R.* v. *Burke*, 24 O. R. 64.

After plea to indictment Judge refused to allow prisoner to be taken before a Judge of Session to declare for speedy trial: *R.* v. *Wener*, Q. R. 12 K. B. 320. And also after indictment found and before plea: *R.* v. *Komiensky*, Q. R. 12 K. B. 329.

FORM 60.

(Section 827.)

FORM OF RECORD WHEN THE PRISONER PLEADS GUILTY.

Canada,
Province of
County of

Be it remembered that A. B., being a prisoner in the gaol of the said county, on a charge of having on the day of , in the year , stolen, etc., *(our cow the property of C. D., or as the case may be, stating briefly the offence)*, and being brought before me *(describe the judge)* on the day of , in the year , and asked by me if he consented to be tried before me without the intervention of a jury, consented to be so tried; and that the said A. B., being then arraigned upon the said charge, he pleaded guilty thereof, whereupon I sentenced the said A. B. to *(here insert such sentence as the law allows and the judge thinks right)*.

Witness my hand this day of , in the year .

O. K.,
*Judge*.

55-56 V., c. 29, sch. 1, form NN.

**828.** DEMAND OF JURY TRIAL.—If the prisoner on being brought before the prosecuting officer or before the judge as aforesaid demands a trial by jury, he shall be remanded to gaol.

2. RE-ELECTION.—Any prisoner who has elected to be tried by jury may, notwithstanding such election, at any time before such trial has commenced, and whether an indictment has been preferred against him or not, notify the sheriff that he desires to re-elect, and it shall thereupon be the duty of the sheriff and judge or prosecuting officer to proceed as directed by section eight hundred and twenty-six.

3. PROCEDURE THEREON.—Thereafter, unless the judge, or the prosecuting officer acting under sub-section two of section eight hundred and twenty-six, is of opinion that it would not be in the interests of justice that the prisoner should be allowed to make a second election, the prisoner shall be proceeded against as if his said first election had not been made. 63-64 V., c. 46, s. 3.

Prisoner electing to be tried by jury may abandon election and have speedy trial: *R.* v. *Prevost*, 4 B. C. R. 326.

He cannot abandon election for speedy trial: *R.* v. *Keefer*, 5 Can. C. C. 122.

Where prisoner elects for jury trial under mistake, or qualifies his election, sheriff need not notify judge again under sec. 826, or bring prisoner before him to re-elect: *R.* v. *Ballard*, 28 O. R. 489.

**829.** PERSONS JOINTLY ACCUSED.—If one of two or more prisoners charged with the same offence demands a trial by jury, and the other or others consent to be tried by the judge without a jury, the judge, in his discretion, may remand all the said prisoners to gaol to await trial by a jury. 55-56 V., c. 29, s. 768.

**830.** ELECTION UNDER PARTS XVI. OR XVII.—If under Part XVI. or Part XVII., any person has been asked to elect whether he would be tried by the magistrate or justices, as the case may be, or before a jury, and he has elected to be tried by a jury, and if such election is stated in the warrant of committal for trial, the sheriff, prosecuting officer or judge shall not be required to take the proceedings directed by this Part.

2. RE-ELECTION.—If such person, after his said election to be tried by a jury, has been committed for trial he may, at any time before the regular term or sittings of the court at which such trial by jury would take place, notify the sheriff that he desires to re-elect.

3. PROCEDURE IN SUCH CASE.—In such case it shall be the duty of the sheriff to proceed as directed by section eight hundred and twenty-six, and thereafter the person so committed shall be proceeded against as if his said election in the first instance had not been made. 55-56 V., c. 29, s. 769.

**831.** CONTINUANCE OF PROCEEDINGS BEFORE ANOTHER JUDGE.—Proceedings under this Part commenced before any

judge may, where such judge is for any reason unable to act, be continued before any other judge competent to try prisoners under this Part in the same judicial district, and such last mentioned judge shall have the same powers with respect to such proceedings as if such proceedings had been commenced before him, and may cause such portion of the proceedings to be repeated before him as he shall deem necessary. 55-56 V., c. 29, s. 770.

**832.** ELECTION AFTER COMMITTAL UNDER PARTS XVI. OR XVII.—If, on the trial under Part XVI. or Part XVII. of any person charged with any offence triable under the provisions of this Part, the magistrate or justices decide not to try the same summarily, but commit such person for trial, such person may afterwards, with his own consent, be tried under the provisions of this Part. 55-56 V., c. 29, s. 771.

**833.** TRIAL OF ACCUSED—CONVICTIONS.—If the prisoner upon being arraigned under this Part consents as aforesaid and pleads not guilty the judge shall appoint an early day or the same day, for his trial, and the county attorney or clerk of the peace shall subpœna the witnesses named in the depositions, or such of them and such other witnesses as he thinks requisite to prove the charge, to attend at the time appointed for such trial, and the judge may proceed to try such prisoner, and if he be found guilty sentence as aforesaid shall be passed upon him.

2. ACQUITTAL—DISCHARGE.—If he be found not guilty the judge shall immediately discharge him from custody, so far as respects the charge in question.

3. FORM OF RECORD.—The prosecuting officer in such case shall draw up a record as nearly as may be in form 61. 55-56 V., c. 29, s. 772.

FORM 61.

(Section 833.)

FORM OF RECORD WHEN THE PRISONER PLEADS NOT GUILTY.

Canada,
Province of
County of

Be it remembered that A. B. being a prisoner in the gaol of the said county, committed for trial on a charge of having on the day of , in the year stolen, etc., *(one cow, the property of C. D., or as the case may be, stating briefly the offence)*

and having been brought before me (*describe the judge*) on the day of , in the year , and asked by me if he consented to be tried before me without the intervention of a jury, consented to be so tried; and that upon the day of , in the year , the said A. B., being again brought before me for trial, and declaring himself ready, was arraigned upon the said charge and pleaded not guilty; and after hearing the evidence adduced, as well in support of the said charge as for the prisoner's defence (*or as the case may be*), I find him to be guilty of the offence with which he is charged as aforesaid, and I accordingly sentence him to (*there insert such sentence as the law allows and the judge thinks right*), (*or* I find him not guilty of the offence with which he is charged, and discharge him accordingly.)

Witness my hand at , in the county of this day of , in the year

O. K.,
*Judge.*

55-56 V., c. 29, sch. 1, form MM.

**834.** PREFERRING CHARGES OTHER THAN THOSE FOR WHICH ACCUSED IS COMMITTED.—The county attorney or clerk of the peace or other prosecuting officer may, with the consent of the judge, prefer against the prisoner a charge or charges for any offence or offences for which he may be tried under the provisions of this Part other than the charge or charges for which he has been committed to gaol for trial, although such charge or charges do not appear or are not mentioned in the depositions upon which the prisoner was so committed.

2. SUBSEQUENT PROCEEDINGS THEREON.—Any such charge may thereupon be dealt with, prosecuted and disposed of, and the prisoner may be remanded, held for trial or admitted to bail thereon, in all respects as if such charge had been the one upon which the prisoner was committed for trial. 55-56 V., c. 29, s. 773.

**835.** POWERS OF JUDGE ON TRIAL.—The judge shall, in any case tried before him, have the same power as to acquitting or convicting, or convicting of any other offence than that charged, as a jury would have in case the prisoner were tried by a court having jurisdiction to try the offence in the ordinary way, and may render any verdict which might be rendered by a jury upon a trial at a sitting of any such court. 55-56 V., c. 29, s. 774.

**836.** BAIL IF TRIAL BY JUDGE.—If the prisoner elects to be tried by a judge without the intervention of a jury the

judge may, in his discretion, admit him to bail to appear for his trial, and extend the bail, from time to time, in case the court be adjourned or there is any other reason therefor.

2. Before Clerk of the Court.—Such bail may be entered into and perfected before the clerk of the court. 55-56 V., c. 29, s. 775.

**837.** Bail if Trial by Jury.—If a prisoner elects to be tried by a jury the judge may, instead of remanding him to gaol, admit him to bail, to appear for trial at such time and place and before such court as is determined upon, and such bail may be entered into and perfected before the clerk of the court. 55-56 V., c. 29, s. 776.

**838.** Adjournment.—The judge may adjourn any trial from time to time until finally terminated. 55-56 V., c. 29, s. 777.

**839.** Powers of Amendment.—The judge shall have all the powers of amendment which are possessed by any court before which an indictment may be tried under this Act. 55-56 V., c. 29, s. 778.

**840.** Recognizance to Prosecute or Give Evidence—Obligatory—Notice.—Any recognizance taken under section six hundred and ninety-two, for the purpose of binding a prosecutor or a witness, shall, if the person committed for trial elects to be tried under the provisions of this Part, be obligatory on each of the persons bound thereby, as to all things therein mentioned with reference to the trial by the judge under this Part, as if such recognizance had been originally entered into for the doing of such things with reference to such trial: Provided that at least forty-eight hours' notice in writing shall be given, either personally or by leaving the same at the place of residence of the persons bound by such recognizance as therein described, to appear before the judge at the place where such trial is to be had. 55-56 V., c. 29, s. 779.

**841.** Witnesses to Attend Throughout Trial.—Every witness, whether on behalf of the prisoner or against him,

duly summoned or subpœnaed to attend and give evidence before the judge sitting on any such trial on the day appointed for the same, shall be bound to attend and remain in attendance throughout the trial.

2. CONTEMPT.—If he fails so to attend he shall be held guilty of contempt of court, and may be proceeded against therefor accordingly. 55-56 V., c. 29, s. 780.

**842.** WARRANT MAY ISSUE FOR WITNESS.—Upon proof to the satisfaction of the judge of the service of a subpœna upon any witness who fails to attend before him as required by such subpœna, and upon such judge being satisfied that the presence of such witness before him is indispensable to the ends of justice, he may, by his warrant, cause the said witness to be apprehended and forthwith brought before him to give evidence as required by such subpœna, and to answer for his disregard of the same.

2. DETENTION THEREUNDER OR RELEASE ON RECOGNIZANCE.—Such witness may be detained on such warrant before the said judge, or in the common gaol, with a view to secure his presence as a witness; or, in the discretion of the judge, such witness may be released on recognizance with or without sureties, conditioned for his appearance to give evidence as therein mentioned, and to answer for his default in not attending upon the said subpœna, as for contempt.

3. CONTEMPT.—The judge may, in a summary manner, examine into and dispose of the charge of contempt against any such witness who, if found guilty thereof, may be fined or imprisoned, or both, such fine not to exceed one hundred dollars, and such imprisonment to be in the common gaol, with or without hard labour, and not to exceed the term of ninety days, and he may also be ordered to pay the costs incident to the execution of such warrant and of his detention in custody.

4. FORMS.—Such warrant may be in form 62 and the conviction for contempt in form 13, and the same shall be authority to the persons and officers therein required to act to do as they are therein respectively directed. 55-56 V., c. 29, s. 781.

FORM 13.

(Sections 674 and 842.)

CONVICTION FOR CONTEMPT.

Canada,
Province of
County of

Be it remembered that on the day of in the year , in the county of , E. F. is convicted before me, for that he the said E. F. did not attend before me to give evidence on the trial of a certain charge against one A. B. of theft (*or as the case may be*), although duly subpœnaed (*or* bound by recognizance to appear and give evidence in that behalf, (*as the case may be*) but made default therein, and has not shown before me any sufficient excuse for such default, and I adjudge the said E. F., for his said offence, to be imprisoned in the common gaol of the county of , at , for the space of , there to be kept with (*or* without) hard labour (*as may be authorized and determined, and in case a fine is also intended to be imposed, then proceed*) and I also adjudge that the said E. F. do forthwith pay to and for the use of His Majesty a fine of dollars, and in default of payment, that the said fine, with the costs of collection, be levied by distress and sale of the goods and chattels of the said E. F. (*or in case a fine alone is imposed, then the clause of imprisonment is to be omitted*).

Given under my hand at , in the said county of , the day and year first above mentioned.

O. K.,
*Judge.*

55-56 V., c. 29, sch. 1, form PP.

FORM 62.

(Section 842.)

WARRANT TO APPREHEND WITNESS.

Canada,
Province of
County of

To all or any of the constables and other peace officers in the said county of .

Whereas it having been made to appear before me, that E. F., of , in the said county of , is likely to give material evidence on behalf of the prosecution (*or* defence, *as the case may be*) on the trial of a certain charge of (*as theft, or as the case may be*), against A. B., and that the said E. F. was duly subpœnaed (*or* bound under recognizance) to appear on the day of , in the year , at , in the said county at o'clock (forenoon *or* afternoon, *as the case may be*), before me, to testify what he knows concerning the said charge against the said A. B.

And whereas proof has this day been made before me, upon oath of such subpœna having been duly served upon the said E. F., (*or* of the said E. F. having been duly bound under recognizance to appear before me, *as the case may be*); and whereas the said E. F. has neglected to appear at the trial and place appointed, and no just excuse has been offered for such neglect: These are, therefore, to command you to take the said E. F., and to bring him and have him forthwith before me, to testify what he knows concerning the said charge against the said A. B., and also to answer his contempt for such neglect.

Given under my hand this day of , in the year .

O. K.,
*Judge.*

55-56 V., c. 29, sch. 1, form QQ.

## PART XIX.

### PROCEDURE BY INDICTMENT.

*General Provisions as to Indictments.*

**843.** NEED NOT BE ON PARCHMENT.—It shall not be necessary for any indictment or any record or document relative to any criminal case to be written on parchment. 55-56 V., c. 29, s. 608.

**844.** STATEMENT OF VENUE.—It shall not be necessary to state any venue in the body of any indictment, and the district, county or place named in the margin thereof shall be the venue for all the facts stated in the body of the indictment.

2. LOCAL DESCRIPTION.—If local description is required such local description shall be given in the body of the indictment. 55-56 V., c. 29, s. 609.

**845.** UNNECESSARY STATEMENT.—It shall not be necessary to state in any indictment that the jurors present upon oath or affirmation.

2. FORM.—It shall be sufficient if an indictment begins according to form 63, or to the like effect.

3. MISTAKE IN HEADING IMMATERIAL.—Any mistake in the heading shall upon being discovered be forthwith amended, and whether amended or not shall be immaterial. 55-56 V., c. 29, s. 610.

FORM 63.

(Sections 845 and 856.)

HEADINGS OF INDICTMENT.

In the (*name of the court in which the indictment is found*).
The jurors for our Lord the King present that
(*Where there are more counts than one, add at the beginning of each count*):
'The said jurors further present that .'

55-56 V., c. 29, sch. 1, form EE.
As to forms generally, see section 1152.

*Special Cases.*

**846.** INDICTMENT FOR PRETENDING TO SEND MONEY, ETC., IN LETTER.—It shall not be necessary to allege, in any indictment against any such person for wrongfully and wilfully

pretending or alleging that he inclosed and sent, or caused to be inclosed and sent, in any post letter, any money, valuable security or chattel, or to prove on the trial that the act was done with intent to defraud. 55-56 V., c. 29, s. 618.

**847.** INDICTMENT FOR TREASON, ETC.—Every indictment for treason, or for an offence against any of the sections, seventy-six to eighty-six inclusive, shall state overt acts, and no evidence shall be admitted of any overt act not stated unless it is otherwise relevant as tending to prove some overt act stated.

2. AMENDMENT.—The power of amending indictments in this Part contained shall not extend to authorize the court to add to the overt acts stated in the indictment. 55-56 V., c. 29, s. 614.

**848.** INDICTMENT FOR STEALING BY TENANT OR LODGER.—An indictment may be preferred against any person who steals any chattel let to be used by him in or with any house or lodging, or who steals any fixture so let to be used, in the same form as if the offender was not a tenant or lodger, and in either case the property may be laid in the owner or person letting to hire. 55-56 V., c. 29, s. 625.

See section 360 *ante*.

**849.** ACCESSORIES AFTER THE FACT AND RECEIVERS.—Every one charged with being an accessory after the fact to any offence, or with receiving any property knowing it to have been stolen, may be indicted, whether the principal offender or other party to the offence or person by whom such property was so obtained has or has not been indicted or convicted, or is or is not amenable to justice, and such accessory may be indicted either alone as for a substantive offence or jointly with such principal or other offender or person.

2. JOINING RECEIVERS.—When any property has been stolen any number of receivers at different times of such property, or of any part or parts thereof, may be charged with substantive offences in the same indictment, and may be tried together, whether the person by whom the property was so obtained is or is not indicted with them, or is or is not in custody or amenable to justice. 55-56 V., c. 29, s. 627.

**850.** Indictment in Respect to Post Office Employees.—In any indictment against any person employed in the post office of Canada for any offence against this Act, or against any person for an offence committed in respect of any person so employed, it shall be sufficient to allege that the offender, or such other person, was employed in the post office of Canada at the time of the commission of such offence, without stating further the nature or particulars of his employment. 55-56 V., c. 29, s. 624.

**851.** Indictment Charging Previous Convictions.—In any indictment for an indictable offence, committed after a previous conviction or convictions for any indictable offence or offences, or for any offence or offences, for which a greater punishment may be inflicted by reason of such previous conviction, it shall be sufficient, after charging the subsequent offence, to state that the offender was at a certain time and place, or at certain times and places, convicted of an indictable offence or offences, or of an offence or offences, as the case may be, and to state the substance and effect only, omitting the formal part of the indictment and conviction, or of the summary conviction, as the case may be, for the previous offence or offences, without otherwise describing the previous offence or offences. 55-56 V., c. 29, s. 628.

See *R.* v. *Martin*, 11 Cox C. C. 343; *R.* v. *Thomas*, 13 Cox C. C. 52; *R.* v. *Harley*, 8 L. C. J. 280; form of indictment under s. 337, p. 379 *ante*, and Greaves' *note*, in 2nd edit. of this work, p. 754.

In *R.* v. *Clark*, Dears. 398, it was held that any number of previous convictions may be alleged in the same indictment, and, if necessary, proved against the prisoner; by the aforesaid section this is undoubtedly also allowed.

In *R.* v. *Fox*, 10 Cox C. C. 502, upon a writ of error by the Crown to increase the sentence, the Irish court of criminal appeal perceived that it appeared from the record that the provisions of s. 116 of the Larceny Act, under which the indictment had been tried, as to the arraigning of the prisoner, etc., had been neglected, and, thereupon, quashed the conviction.

In *R.* v. *Spencer*, 1 C. & K. 159, it was held that the indictment need not state the judgment, but the introduction of the words given in italics *supra*, in 851, seems to require the statement of the judgment. It will certainly be more prudent to allege it.

The certificate, s. 982, must state that judgment was given for the previous offence and not merely that the prisoner was convicted: *R.* v. *Ackroyd*, 1 C. & K. 158; *R.* v. *Stonnell*, 1 Cox C. C. 142; for the judgment might have been arrested, and the statute says the certificate is to contain the substance and *effect* of the indictment and conviction for the previous offence; until the sentence there is no perfect conviction.

At common law a subsequent offence is not punishable more severely than a first offence; it is only when a statute declares that a punishment may be greater after a previous conviction that this 851 applies. So in an indictment for a misdemeanour, as for obtaining

money by false pretenses, a previous conviction for felony cannot be charged: *R.* v. *Garland*, 11 Cox C. C. 224. And then this clause does not prevent the prosecution from disregarding, if it chooses, the fact of a previous conviction and from proceeding as for a first offence. But the court cannot take any notice of a previous conviction, unless it were alleged in the indictment and duly proved on the trial, for giving a greater punishment than allowed by law for the first offence: *R.* v. *Summers*, 11 Cox C. C. 248; *R.* v. *Willis*, 12 Cox C. C. 192.

To complete the proof required on a previous conviction charged in the indictment, when the prisoner does not admit it, it must be proved that he is the same person that is mentioned in the certificate produced, but it is not necessary for this to call any witness that was present at the former trial; it is sufficient to prove that the defendant is the person who underwent the sentence mentioned in the certificate: *R.* v. *Crofts*, 9 C. & P. 219; 2 Russ. 322.

By s. 964, *post*, it is enacted that if upon such a trial for a subsequent offence, the defendant gives evidence of his good character, it shall be lawful for the prosecutor to give in reply evidence of the previous conviction before the verdict on the subsequent offence is returned, and then the previous conviction forms part of the case for the jury on the subsequent offence.

It has been held on this proviso that if the prisoner cross-examines the prosecution's witnesses, to show that he has a good character, the previous conviction may be proved in reply: *R.* v. *Gadbury*, 8 C. & P. 676.

This doctrine was confirmed in *R.* v. *Shrimpton*, 2 Den. 319, where Lord Campbell, C.J., delivering the judgment of the court, said: "It seems to me to be the natural and necessary interpretation to be put upon the words of the proviso in the statute, that if, whether by himself or by his counsel, the prisoner attempts to prove a good character, either directly, by calling witnesses, or indirectly, by cross-examining the witnesses for the Crown, it is lawful for the prosecutor to give the previous conviction in evidence for the consideration of the jury." In the course of the argument Lord Campbell said that, however, he would not admit evidence of a previous conviction if a witness for the prosecution, being asked by the prisoner's counsel some question which has no reference to the character, should happen to say something favourable to the prisoner's character.

It is said in 2 Russ. 354: "It is obvious, that where the prisoner gives evidence of his good character the proper course is for the prosecutor to require the officer of the court to charge the jury with the previous conviction, and then to put in the certificate and prove the identity of the prisoner in the usual way. If the prisoner gives such evidence during the course of the case for the prosecution then this should be done before the case for the prosecution closes; but if the evidence of character is given after the case for the prosecution closes then the previous conviction must be proved in reply." See s. 1053, *post*, as to punishment in certain cases.

### *General Provisions as to Counts.*

**852.** Substance of Offence Stated.—Every count of an indictment shall contain, and shall be sufficient if it contains in substance, a statement that the accused has committed some indictable offence therein specified.

2. In Popular Language.—Such statement may be made in popular language without any technical averments or any allegations of matter not essential to be proved.

3. In the Words of the Enactment or Otherwise.—Such statement may be in the words of the enactment describing the offence or declaring the matter charged to be an indictable offence, or in any words sufficient to give the accused notice of the offence with which he is charged.

4. Form.—Form 64 affords examples of the manner of stating offences. 55-56 V., c. 29, s. 611.

An indictment for uttering a forged instrument, not stating that accused knew it was forged, is bad, and the defect cannot be corrected: *R.* v. *Weir*, Q. R. 9 Q. B. 253.

Indictment under "Bank Act" for making wilfully false and deceptive statement in a return to Minister of Finance: See *R.* v. *Weir*, Q. R. 8 Q. B. 521.

FORM 64.

(Section 852.)

EXAMPLES OF THE MANNER OF STATING OFFENCES.

(*a*) A. murdered B. at , on

(*b*) A. stole a sack of flour from a ship called the , at , on .

(*c*) A. obtained by false pretences from B., a horse, a cart and the harness of a horse at , on .

(*d*) A. committed perjury with intent to procure the conviction of B. for an offence punishable with penal servitude, namely robbery, by swearing on the trial of B. for the robbery of C. at the Court of Quarter Sessions for the county of Carleton, held at Ottawa, on the day of , 190 ; first, that he, A. saw B. at Ottawa, on the day of ; secondly, that B. asked A. to lend B. money on a watch belonging to C.; thirdly, etc.

*or*

(*e*) The said A. committed perjury on the trial of B. at a Court of Quarter Sessions held at Ottawa, on for an assault alleged to have been committed by the said B. on C. at Ottawa, on the day of by swearing to the effect that the said B. could not have been at Ottawa, at the time of the alleged assault, inasmuch as the said A. had seen him at that time in Kingston.

(*f*) A., with intent to maim, disfigure, disable or do grievous bodily harm to B. or with intent to resist the lawful apprehension or detainer of A. (*or* C.), did actual bodily harm to B. (*or* D.).

(*g*) A., with intent to injure or endanger the safety of persons on the Canadian Pacific Railway, did an act calculated to interfere with an engine, a tender, and certain carriages on the said railway on at by (*describe with so much detail as is sufficient to give the accused reasonable information as to the acts or omissions relied on against him, and to identify the transaction*).

(*h*) A. published a defamatory libel on B. in a certain newspaper, called the , on the day of 190 , which libel was contained in an article headed or commencing (*describe with so much detail as is sufficient to give the accused reasonable information as to the part of the publication to be relied on against him*), and which libel was written in the sense imputing that the said B. was (*as the case may be*).

55-56 V., c. 29, sch. 1, form FF.

**853.** Details of Circumstances—Proviso.—Every count of an indictment shall contain so much detail of the circumstances of the alleged offence as is sufficient to give the accused reasonable information as to the act or omission to be proved against him, and to identify the transaction referred to: Provided that the absence or insufficiency of such details shall not vitiate the count.

2. Reference to Section of Statute.—A count may refer to any section or subsection of any statute creating the offence charged therein, and in estimating the sufficiency of such count the court shall have regard to such reference.

3. Single Transaction.—Every count shall in general apply only to a single transaction. 55-56 V., c. 29, s. 611.

**854.** Offences may be Charged in the Alternative.—A count shall not be deemed objectionable on the ground that it charges in the alternative several different matters, acts or omissions which are stated in the alternative in the enactment describing any indictable offence or declaring the matters, acts or omissions charged to be an indictable offence, or on the ground that it is double or multifarious. 55-56 V., c. 29, s. 612.

Two indictments, one for conspiracy to procure signature to notes, the other for fraudulently inducing person to sign documents. Several offences were not set up in each count: *R.* v. *Burke*, 24 O. R. 64.

**855.** Count not Objectionable or Insufficient on Ground of Omission of Certain Statements.—No count shall be deemed objectionable or insufficient for the reason only,—

(*a*) that it does not contain the name of the person injured, or intended, or attempted to be injured; or,

(*b*) that it does not state who is the owner of any property therein mentioned; or,

(*c*) that it charges an intent to defraud without naming or describing the person whom it was intended to defraud; or,

(*d*) that it does not set out any document which may be the subject of the charge; or,

(*e*) that it does not set out the words used where words used are the subject of the charge; or,

(*f*) that it does not specify the means by which the offence was committed; or,

(*g*) that it does not name or describe with precision any person, place or thing; or,

(*h*) that it does not in cases where the consent of any person, official or authority is required before a prosecution can be instituted, state that such consent has been obtained.

2. NOT TO RESTRICT GENERAL PROVISIONS OF SS. 852 AND 853.—No provision contained in this Part as to matters which are not to render any count objectionable or insufficient shall be construed as restricting or limiting in any way the general provisions of sections eight hundred and fifty-two and eight hundred and fifty-three. 55-56 V., c. 29, ss. 613 and 616; 56 V., c. 32, s. 1.

Two or more names laid under alias dictus — Not necessary to prove all: *R.* v. *Jacobs*, 16 S. C. R. 433.

Amendment—Ownership of property: *R.* v. *Jackson*, 19 U. C. C. P. 280.

Intent need not be alleged—Amendment: *R.* v. *Cronin*, 36 U. C. R. 342.

Defect patent on face of indictment—Mode of objection: *R.* v. *Mason*, 22 U. C. C. P. 246.

Wrong owner of property stated: *R.* v. *Quinn*, 29 U. C. R. 158.

**856.** JOINDER OF COUNTS—PROVISO.—Any number of counts for any offences whatever may be joined in the same indictment, and shall be distinguished in the manner shown in form 63, or to the like effect: Provided that to a count charging murder no count charging any offence other than murder shall be joined. 55-56 V., c. 29, s. 626.

Theft and previous conviction for lesser offence: *R.* v. *Mason*, 22 U. C. C. P. 246.

Count charging prisoner as citizen of United States with another charging him as British subject—Crown not obliged to elect: *R.* v. *School*, 26 U. C. R. 212.

FORM 63.

(Sections 845 and 856.)

HEADINGS OF INDICTMENT.

In the (*name of the court in which the indictment is found*).

The jurors for our Lord the King present that

(*Where there are more counts than one, add at the beginning of each count*):

The said jurors further present that

55-56 V. c. 29, sch. 1, form EE.

As to forms generally, see section 1152.

**857.** Each Count Separate.—When there are more counts than one in an indictment each count may be treated as a separate indictment.

2. Separate Trial—Provision as to Theft.—If the court thinks it conducive to the ends of justice to do so, it may direct that the accused shall be tried upon any one or more of such counts separately: Provided that, unless there be special reasons, no order shall be made preventing the trial at the same time of any number of distinct charges of theft, not exceeding three, alleged to have been committed within six months from the first to the last of such offences, whether against the same person or not. 55-56 V., c. 29, s. 626.

**858.** Order for Trial Separately.—Any order for trial upon one or more counts of an indictment separately may be made either before or in the course of the trial, and if it is made in the course of the trial the jury shall be discharged from giving a verdict on the counts on which the trial is not to proceed.

2. Procedure on Each Count as if Separate Indictment.—The counts in the indictment as to which the jury are so discharged shall be proceeded upon in all respects as if they had been found in a separtae indictment. 55-56 V., c. 29, s. 626.

*Particulars.*

**859.** May be Ordered in Case of Perjury, etc.—The court may, if satisfied that it is necessary for a fair trial, order that the prosecutor shall furnish a particular,—

(*a*) of what is relied on in support of any charge of perjury, the making of a false oath or of a false statement, fabricating evidence or subornation, or procuring the commission of any such offences;

(*b*) of any false pretenses or any fraud charged;

(*c*) of any attempt or conspiracy by fraudulent means;

(*d*) stating what passages in any book, pamphlet, newspaper or other printing or writing are relied on in support of a charge of selling or exhibiting an obscene book, pamphlet, newspaper, printing or writing;

(*e*) further describing any document or words the subject of a charge;

(*f*) further describing the means by which any offence was committed;

(*g*) further describing any person, place or thing referred to in any indictment. 55-56 V., c. 29, ss. 613, 615 and 616.

Libel—Innuendo—If defendant does not demand particulars he cannot object to evidence in support of innuendo: *R.* v. *Molleur*, Q. R. 14 K. B. 556.

**860.** Copy to be Furnished.—When any particular as aforesaid is delivered a copy shall be given without charge to the accused or his solicitor, and it shall be entered in the record, and the trial shall proceed in all respects as if the indictment had been amended in conformity with such particular.

2. Regard to Depositions.—In determining whether a particular is required or not, and whether a defect in the indictment is material to the substantial justice of the case or not, the court may have regard to the depositions. 55-56 V., c. 29, s. 617.

*Special Cases.*

**861.** Libel, etc.—Sufficiency.—No count for publishing a blasphemous, seditious, obscene or defamatory libel, or for selling or exhibiting an obscene book, pamphlet, newspaper or other printed or written matter, shall be deemed insufficient on the ground that it does not set out the words thereof.

2. Specifying Sense.—A count for libel may charge that the matter published was written in a sense which would make the publishing criminal, specifying that sense without any prefatory averment showing how the matter was written in that sense.

3. Proof Necessary.—On the trial it shall be sufficient to prove that the matter published was criminal either with or without such innuendo. 55-56 V., c. 29, s. 615.

**862.** Perjury.—Statements Unnecessary.—No count charging perjury, the making of a false oath or of a false statement, fabricating evidence or subornation, or procuring

the commission of any of these offences, shall be deemed insufficient on the ground that it does not state the nature of the authority of the tribunal before which the oath or statement was taken or made, or the subject of the inquiry, or the words used or the evidence fabricated, or on the ground that it does not expressly negative the truth of the words used. 55-56 V., c. 29, s. 616.

**863.** False Pretences.—No count which charges any false pretense, or any fraud, or any attempt or conspiracy by fraudulent means, shall be deemed insufficient because it does not set out in detail in what the false pretenses or the fraud or fraudulent means consisted. 55-56 V., c. 29, s. 616.

*How and in whom Property may be Laid.*

**864.** Statements Sufficient in Certain Cases.—An indictment shall be deemed sufficient in the cases following:—

(*a*) If it be necessary to name the joint owners of any real or personal property, whether the same be partners, joint tenants, parceners, tenants in common, joint stock companies or trustees, and it is alleged that the property belongs to one who is named, and another or others, as the case may be;

(*b*) If it is necessary for any purpose to mention such persons and one only is named;

(*c*) If the property in a turnpike road is laid in the trustees or commissioners thereof without specifying the names of such trustees or commissioners;

(*d*) If the offence is committed in respect to any property in the occupation or under the management of any public officer or commissioner, and the property is alleged to belong to such officer or commissioner without naming him;

(*e*) If for an offence under section three hundred and seventy-one the oyster bed, laying or fishery is described by name or otherwise, without stating the same to be in any particular county or place. 55-56 V., c. 29, s. 619.

**865.** Property of Body Corporate.—All property, real or personal, whereof any body corporate has, by law, the management, control or custody, shall, for the purpose of any indictment or proceeding against any other person for any offence committed on or in respect thereof, be deemed to be the property of such body corporate. 55-56 V., c. 29, s. 620.

**866.** Stealing Ores or Minerals.—In any indictment for any offence mentioned in sections three hundred and seventy-eight and four hundred and twenty-four it shall be sufficient to lay the property in His Majesty, or in any person or corporation, in different counts in such indictment. 55-56 V., c. 29, s. 621.

**867.** Indictment for Offences in Respect of Postal Cards, etc.—In any indictment for any offence committed in respect of any postal card, postage stamp or other stamp issued or prepared for issue by the authority of the Parliament of Canada, or of the legislature of any province of Canada, or by, or by the authority of, any corporate body for the payment of any fee, rate or duty whatsoever, the property therein may be laid in the person in whose possession, as the owner thereof, it was when the offence was committed, or in His Majesty if it was then unissued or in the possession of 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. 55-56 V., c. 29, s. 622.

**868.** Theft by Public Servants.—In every case of theft or fraudulent application or disposition of any chattel, money or valuable security under section three hundred and fifty-nine, paragraph (*c*), or three hundred and ninety-one, the property in any such chattel, money or valuable security may, in any warrant by the justice before whom the offender is charged, and in the indictment preferred against such offender, be laid in His Majesty, or in the municipality, as the case may be. 55-56 V., c. 29, s. 623.

**869.** Offences Respecting Letter Bags, etc.—When an offence is committed in respect of a post letter bag, or a post letter, or other mailable matter, chattel, money or valuable se-

curity sent by post, the property of such post letter bag, post letter, or other mailable matter, chattel, money, or other valuable security may, in the indictment preferred against the offender, be laid in the Postmaster-General; and it shall not be necessary to allege in the indictment, or to prove upon the trial or otherwise, that the post letter bag, post letter or other mailable matter, chattel or valuable security was of any value.

2. MAY BE LAID IN CROWN.—The property of any chattel or thing used or employed in the service of the post office, or of moneys arising from duties of postage shall, except in the cases aforesaid, be laid in His Majesty, if the same is the property of His Majesty, or if the loss thereof would be borne by His Majesty, and not by any person in his private capacity. 55-56 V., c. 29, s. 624.

*Preferring Indictment.*

**870.** ORDER FOR BY JUDGE WHEN PERJURY COMMITTED BEFORE HIM.—Any judge of any court of record before whom any inquiry or trial is held, and which he is by law required or authorized to hold, may, if 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 proceeding made or taken before him, direct such person to be prosecuted for such perjury, if there appears to such judge a reasonable cause for such prosecution.

2. COMMITMENT IN SUCH CASE.—Such judge may commit such person 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 permit him to enter into a recognizance, with one or more sufficient sureties, conditioned for his appearance at such next term, sittings or session, and that he will then surrender and take his trial and not depart the court without leave.

3. RECOGNIZANCE MAY BE REQUIRED.—Such judge may require any person he thinks fit, to enter into a recognizance conditioned to prosecute or give evidence against the person so directed to be prosecuted. R.S., c. 154, s. 4.

**871.** Any One Bound Over May Prefer Indictment.—Any one who is bound over to prosecute any person, whether committed for trial or not, may prefer a bill of indictment for the charge on which the accused has been committed, or in respect of which the prosecutor is so bound over, or for any charge founded upon the facts or evidence disclosed on the depositions taken before the justice.

2. Application to Quash.—The accused may at any time before he is given in charge to the jury apply to the court to quash any count in the indictment on the ground that it is not founded on such facts or evidence, and the court shall quash such count if satisfied that it is not so founded.

3. Quashing During Trial.—If at any time during the trial it appears to the court that any count is not so founded, and that injustice has been or is likely to be done to the accused in consequence of such count remaining in the indictment, the court may then quash such count and discharge the jury from finding any verdict upon it. 63-64 V., c. 46, s. 3.

Variance between indictment and committal — Amendment at trial—Prisoner not misled nor prejudiced: *R.* v. *Patterson*, 26 O. R. 656.

**872.** Crown Counsel may Prefer Indictment.—The counsel acting on behalf of the Crown at any court of criminal jurisdiction may prefer against any person who has been committed for trial at such court a bill of indictment for the charge on which the accused has been so committed or for any charge founded on the facts or evidence disclosed in the depositions taken before the justice. 63-64 V., c. 46, s. 3.

**873.** Attorney-General may Prefer Indictment.—The Attorney-General or any one by his direction or any one with the written consent of a judge of any court of criminal jurisdiction or of the Attorney-General, may prefer a bill of indictment for any offence before the grand jury of any court specified in such consent.

2. Any One by Order.—Any person may prefer any bill of indictment before any court of criminal jurisdiction by order of such court.

3. STATEMENT OF CONSENT.—It shall not be necessary to state such consent or order in the indictment and an objection to an indictment for want of such consent or order must be taken by motion to quash the indictment before the accused person is given in charge.

4. NOT OTHERWISE PREFERRED.—Except as in this Part previously provided no bill of indictment shall be preferred in any province of Canada. 63-64 V., c. 46, s. 3.

**873 A.** In the provinces of Saskatchewan and Alberta, it shall not be necessary to prefer any bill of indictment before a grand jury, but it shall be sufficient that the trial of any person charged with a criminal offence be commenced by a formal charge in writing setting forth as in an indictment the offence with which he is charged.

"2. Such charge may be preferred by the Attorney-General or an agent of the Attorney-General, or by any person with the written consent of the judge of the court or of the Attorney-General, or by order of the court" 6-7 Ed. VII. c. 8, s. 2.

*Proceedings before the Grand Jury.*

**874.** EVIDENCE.—It shall not be necessary for any person to take an oath in open court in order to qualify him to give evidence before any grand jury. 55-56 V., c. 29, s. 643.

**875.** OATH ADMINISTERED BY FOREMAN.—The foreman of the grand jury or any member of the grand jury who may, for the time being, act on behalf of the foreman in the examination of witnesses, may administer an oath to every person who appears before such grand jury to give evidence in support of any bill of indictment; and every such person may be sworn and examined upon oath by such grand jury touching the matters in question. 55-56 V., c. 29, s. 644.

**876.** NAMES OF WITNESSES ENDORSED ON BILL.—The name of every witness examined, or intended to be examined, shall be endorsed on the bill of indictment; and the foreman of the grand jury, or any member of the grand jury so acting for him, shall write his initials against the name of each witness sworn by him and examined touching such bill of indictment. 55-56 V., c. 29, s. 645.

Failure of foreman to initial names does not vitiate indictment: *R.* v. *Townshend*, 28 N. S. R. 468; *R.* v. *Buchanan*, 12 Man. L. R. 190; *R.* v. *Holmes*, 9 B. C. R. 294. *Contra*, *R.* v. *Belanger*, Q. R. 12 K. B. 69.

**877.** NAMES OF WITNESSES TO BE SUBMITTED TO GRAND JURY.—The name of every witness intended to be examined on any bill of indictment shall be submitted to the grand jury by the officer prosecuting on behalf of the Crown, and no others shall be examined by or before such grand jury unless upon the written order of the presiding judge. 55-56 V., c. 29, s. 646.

**878.** FEES FOR SWEARING WITNESSES.—Nothing in this Act shall affect any fees by law payable to any officer of any court for swearing witnesses, but such fees shall be payable as if the witnesses had been sworn in open court. 55-56 V., c. 29, s. 647.

*Proceedings when Person Indicted at Large.*

**879.** BENCH WARRANT.—When any one against whom an indictment has been duly preferred and has been found, and who is then at large, does not appear to plead to such indictment, whether he is under recognizances to appear or not, the court before which the accused ought to have been tried may issue a warrant for his apprehension, which may be executed in any part of Canada.

2. CERTIFICATE OF INDICTMENT BEING FOUND.—The officer of the court at which said indictment is found, or, if the place of trial has been changed, the officer of the court before which the trial is to take place shall, at any time after the time at which the accused ought to have appeared and pleaded, grant to the prosecutor, upon application made on his behalf and upon payment of twenty cents, a certificate of such indictment having been found which may be in form 65, or to the like effect. 55-56 V., c. 29, s. 648.

(Section 879.) FORM 65.

CERTIFICATE OF INDICTMENT BEING FOUND.

Canada,
Province of
County of

I hereby certify that at a Court of (Oyer and Terminer, or General Gaol Delivery, or General Sessions of the Peace) holden

in and for the county of , at , in the said (county), on , a bill of indictment was found by the grand jury against A. B., therein described as A. B., late of , (*labourer*), for that he (*etc., stating shortly the offence*), and that the said A. B. has not appeared or pleaded to the said indictment.

Dated this day of , in the year .

Z. X.
(*Title of officer.*)

55-56 V., c. 29, sch. 1, form GG.

**880.** WARRANT BY JUSTICE ON CERTIFICATE.—Upon production of such certificate to any justice for the county or place in which the indictment was found, or in which the accused is or resides or is suspected to be or reside, such justice shall issue his warrant to apprehend him, and to cause him to be brought before such justice, or before any other justice for the same county or place, to be dealt with according to law.

2. FORM.—The warrant may be in the form 66, or to the like effect. 55-56 V., c. 29, s. 648.

FORM 66.

(Section 880.)

WARRANT TO APPREHEND A PERSON INDICTED.

Canada,
Province of
County of .

To all or any of the constables and other peace officers in the said county of .

Whereas it has been duly certified by J. D., Clerk of the (*name the court*) (or E. G., deputy clerk of the Crown or clerk of the peace, or *as the case may be*), in and for the county of , that (*etc., stating the certificate*): These are, therefore, to command you in His Majesty's name forthwith to apprehend the said A. B., and to bring him before (*me*) or some other justice or justices of the peace in and for the said county, to be dealt with according to law.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]
*J. P. (Name of county.)*

55-56 V., c. 29, sch. 1, form HH.

**881.** COMMITTAL OF ACCUSED OR ADMISSION TO BAIL—PROVISO.—If it is proved upon oath before such justice that any one apprehended and brought before him on such warrant is the person charged and named in such indictment, such justice shall, without further inquiry or examination, either commit him to prison by a warrant which may be in

form 67, or to the like effect, or admit him to bail as provided in other cases: Provided that if it appears that the accused has without reasonable excuse broken his recognizance to appear he shall not in any case be bailable as of right. 55-56 V., c. 29, s. 648.

FORM 67.

(Section 881.)

WARRANT OF COMMITMENT OF A PERSON INDICTED.

Canada,
Province of .
County of .

To all or any of the constables and other peace officers in the said county of , and the keeper of the common gaol, at , in the said county of .

Whereas by a warrant under the hand and seal of , (*a*) justice of the peace in and for the said county of , dated , after reciting that it had been certified by J. D. (*etc., as in the certificate*), the said justice of the peace commanded all or any of the constables or peace officers of the said county, in His Majesty's name, forthwith to apprehend the said A. B., and to bring him before (*him*) the said justice of the peace or before some other justice or justices in and for the said county, to be dealt with according to law; and whereas the said A. B. has been apprehended under and by virtue of the said warrant, and being now brought before (*me*) it is hereupon duly proved to (*me*) upon oath that the said A. B. is the same person who is named and charged as aforesaid in the said indictment: These are, therefore, to command you, the said constables, and peace officers, or any other of you, in His Majesty's name, forthwith to take and convey the said A. B. to the said common gaol at , in the said county of , and there to deliver him to the keeper thereof, together with this precept: And (*I*) hereby command you the said keeper to receive the said A. B. into your custody in the said gaol, and him there safely to keep until he shall thence be delivered by due course of law.

Given under (*my*) hand and seal, this day of , in the year , at , in the said county aforesaid.

J. S., [SEAL.]
*J. P. (Name of county.)*

55-56 V., c. 29, sch. 1, form 11.

**882.** WARRANT WHEN ACCUSED IN GAOL.—If it is proved before the justice upon oath that any such accused person is at the time of such application and production of the said certificate as aforesaid confined in any prison for any other offence than that charged in the said indictment, such justice shall issue his warrant directed to the warden or gaoler of the prison in which such person is then confined as aforesaid, commanding him to detain him in his custody until by lawful authority he is removed therefrom.

2. FORM.—Such warrant may be in form 68, or to the like effect. 55-56 V., c. 29, s. 648.

FORM 68.

(Section 882.)

WARRANT TO DETAIN A PERSON INDICTED WHO IS ALREADY IN CUSTODY FOR ANOTHER OFFENCE.

Canada,
Province of
County of

To the keeper of the common gaol at , in the said county of .

Whereas it has been duly certified by J. D., clerk of the (*name the court*) (*or* deputy clerk of the Crown *or* clerk of the peace of and for the county of , (*or as the case may be*), that (*etc., stating the certificate*); And whereas (*I am*) informed that the said A. B. is in your custody in the said common gaol at aforesaid, charged with some offence, or other matter; and it being now duly proved upon oath before (*me*) that the said A. B., so indicted as aforesaid, and the said A. B., in your custody, as aforesaid, are one and the same person: These are, therefore, to command you, in His Majesty's name, to detain the said A. B. in your custody in the common gaol aforesaid, until by a writ of *habeas corpus* he shall be removed therefrom, for the purpose of being tried upon the said indictment, or until he shall otherwise be removed or discharged out of your custody by due course of law.

Given under (*my*) hand and seal, this day of , in the year , at in the county aforesaid.

J. S., [SEAL.]
*J. P. (Name of county.)*

55-56 V., c. 29, sch. 1, form JJ.

*Place of Trial.*

**883.** ORDER FOR REMOVAL OF PRISONER TO PLACE OF TRIAL. — If after removal by the Governor in Council or the Lieutenant-Governor in Council of any province of any person confined in any gaol to any other place for safe keeping or to any other gaol, a true bill for any indictable offence is returned by any grand jury of the county or district from which any such person is removed against any such person, the court into which such true bill is returned may make an order for the removal of such person from the place for safe keeping or gaol in which he is then confined to the gaol of the county or district in which such court is sitting for the purpose of his being tried in such county or district. 55-56 V., c. 29, s. 650.

**884.** CHANGE OF VENUE—ORDER.—Whenever it appears to the satisfaction of the court or judge hereinafter mentioned, that it is expedient to the ends of justice that the trial of any person charged with an indictable offence should be held in some district, county or place other than that in which the offence is supposed to have been committed, or would otherwise be triable, the court before which such person is or is liable to be indicted may, at any term or sitting thereof, and any judge who might hold or sit in such court may, at any other time, either before or after the presentation of a bill of indictment, order that the trial shall be proceeded with in some other district, county or place within the same province, named by the court or judge in such order.

2. CONDITIONS AS TO EXPENSE.—Such order shall be made upon such conditions as to the payment of any additional expense thereby caused to the accused as the court or judge thinks proper to prescribe. 55-56 V., c. 29, s. 651.

Committal for one offence—Change of venue—Indictment for two offences—Court may try both: *R.* v. *Coleman*, 30 O. R. 93.

Attempt to procure false affidavit by letter dated in one county and addressed to, and received, in another—Case could be tried in latter: *R.* v. *Clement*, 26 U. C. R. 297.

Change of venue valid without provision for expenses if prisoner pleads and trial proceeds without objection: *In re Sproule*, 12 S. C. R. 140.

Motion for change refused—It must plainly appear that fair and impartial trial cannot be had without, and mere apprehension, belief and opinion will not justify it: *R.* v. *Ponton*, 18 P. R. 219.

Where crowd collected around the court house while jury were deliberating and tried to intimidate them and influence them in prisoner's favour, and afterwards made riotous demonstrations against the judge, the venue was changed for a second trial: *R.* v. *Ponton*, 18 P. R. 429.

Affidavits filed by Crown to show that jury were influenced by conduct of crowd—Affidavits of jurors denying intimidation received in answer: *Ib.*

**885.** TRANSMISSION OF RECORD.—Forthwith upon such order being made by the court or judge, the indictment, if any has been found against the prisoner, and all inquisitions, informations, depositions, recognizances and other documents relating to the prosecution against him, shall be transmitted by the officer having the custody thereof to the proper officer of the court at the place where the trial is to be had, and all proceedings in the case shall be had, or, if previously commenced, shall be continued in such district, county or place, as if the case had arisen or the offence had been committed therein. 55-56 V., c. 29, s. 651.

**886.** Order Sufficient Authority for Removal of Prisoner.—The order of the court, or of the judge, made as aforesaid, shall be a sufficient warrant, justification and authority, to all sheriffs, gaolers and peace officers, for the removal, disposal and reception of the prisoner, in conformity with the terms of such order; and the sheriff may appoint and empower any constable to convey the prisoner to the gaol in the district, county or place in which the trial is ordered to be had.

2. Recognizance Binding—Notice to be Given.—Every recognizance entered into for the prosecution of any person, and every recognizance, as well of any witness to give evidence, as of any person for any offence, shall, in case of any such order, be obligatory on each of the persons bound by such recognizances as to all things therein mentioned with reference to the trial at the place where such trial is so ordered to be had, in like manner as if such recognizance had been originally entered into for the doing of such things at such last mentioned place: Provided that notice in writing shall be given either personally or by leaving the same at the place of residence of the persons bound by such recognizance, as therein described, to appear before the court, at the place where such trial is ordered to be had. 55-56 V., c. 29, s. 651.

**887.** Order in Quebec for Changing Place of Trial.—Whenever, in the province of Quebec, it has been decided by competent authority that no term of the Court of King's Bench, holding criminal pleas, is to be held, at the appointed time, in any district in the said province within which a term of the said court should be then held, any person charged with an indictable offence whose trial should by law be held in the said district, may in the manner hereinbefore provided obtain an order that his trial be proceeded with in some other district within the said province, named by the court or judge.

2. Three Preceding Sections Apply.—All provisions contained in the three last preceding sections shall apply to the case of a person so applying for and obtaining a change of venue as aforesaid. 57-58 V., c. 57, s. 1.

**888.** Offence Committed in one Province not Triable in Another—Exception.—Nothing in this Act authorizes

any court in one province of Canada to try any person for any offence committed entirely in another province: Provided that every proprietor, publisher, editor or other person charged with the publication in a newspaper of any defamatory libel, shall be dealt with, indicted, tried and punished in the province in which he resides, or in which such newspaper is printed. 55-56 V., c. 29, s. 640.

*Amendments.*

**889.** In Case of Variance.—If on the trial of any indictment there appears to be a variance between the evidence given and the charge in any count in the indictment, either as found or as amended, or as it would have been if amended in conformity with any particular furnished as provided in section eight hundred and fifty-nine, the court before which the case is tried may, if of opinion that the accused has not been misled or prejudiced in his defence by such variance, amend the indictment or any count in it or any such particular so as to make it conformable with the proof.

2. Where Indictment Under Wrong Act or Contains Defective Statement.—If it appears that the indictment has been preferred under some other Act of Parliament instead of under this Act, or under this instead of under some other Act, or that there is in the indictment, or in any count in it, an omission to state or a defective statement of anything requisite to constitute the offence, or an omission to negative any exception which ought to have been negatived, but that the matter omitted is proved by the evidence, the court before which the trial takes place, if of opinion that the accused has not been misled or prejudiced in his defence by such error or omission, shall amend the indictment or count as may be necessary.

3. Trial Proceeds.—The trial in either of these cases may then proceed in all respects as if the indictment or count had been originally framed as amended. 55-56 V., c. 29, s. 723.

Indictment for abduction—Change in name: *Cornwall* v. *R.*, 23 U. C. R. 106. And see *R.* v. *Bisonnette*, 23 L. C. J. 249.

For theft—Amendment as to ownership of property: *R.* v. *Jackson*, 19 U. C. R. 280.

For arson. Averment of intent struck out: *R.* v. *Cronin*, 36 U. C. R. 342.

Amendment allowed of indictment for unlawfully taking and applying property of bank: *R.* v. *Paquet*, 2 L. N. 140.

**890.** Adjournment if Accused Prejudiced.—If the court is of the opinion that the accused has been misled or prejudiced in his defence by any such variance, error, omission or defective statement, but that the effect of such misleading or prejudice might be removed by adjourning or postponing the trial, the court may in its discretion make the amendment and adjourn the trial to a future day in the same sittings, or discharge the jury and postpone the trial to the next sittings of the court, on such terms as it thinks just.

2. How Determined.—In determining whether the accused has been misled or prejudiced in his defence the court which has to determine the question shall consider the contents of the depositions, as well as the other circumstances of the case.

3. Question for the Court.—The propriety of making or refusing to make any such amendment shall be deemed a question for the court, and the decision of the court upon it may be reserved for the Court of Appeal, or may be brought before the Court of Appeal by appeal like any other question of law. 55-56 V., c. 29, s. 723.

**891.** Amendment to be Endorsed on the Record.—In case an order for amendment as provided for in the two last preceding sections is made it shall be endorsed on the record; and all other rolls and proceedings connected therewith shall be amended accordingly by the proper officer and filed with the indictment, among the proper records of the court. 55-56 V., c. 29, s. 724.

**892.** Application to Amend or Divide Counts.—The accused may at any stage of the trial apply to the court to amend or divide any count of an indictment which charges in the alternative different matters, acts or omissions, stated in the alternative in the enactment describing the offence or declaring the matters, acts or omissions charged to be an indictable offence, or which is double or multifarious on the ground that it is so framed as to embarrass him in his defence.

2. Order for Amendment or Division.—The court, if it is satisfied that the ends of justice require it, may order any such count to be amended or divided into two or more counts; and on such order being made such count shall be so divided or amended and thereupon a formal commencement may be inserted before each of the counts into which it is divided. 55-56 V., c. 29, s. 612.

**893.** Amendment at the Trial when Property Wrongly Laid.—Upon a prosecution for any offence under section three hundred and seventy-eight or four hundred and twenty-four, any variance when the property is laid in a person or corporation, between the statement in the indictment and the evidence adduced, may be amended at the trial.

2. No Owner Proved.—If no owner is proved, the indictment may be amended by laying the property in His Majesty. 55-56 V., c. 29, s. 621.

*Inspection and Copies of Documents.*

**894.** Right of Accused to Inspect Depositions and have Indictment Read.—Every accused person shall be entitled at the time of his trial to inspect, without fee or reward, all depositions, or copies thereof, taken against him and returned into the court before which such trial is had, and to have the indictment on which he is to be tried read over to him if he so requires. 55-56 V., c. 29, s. 653.

**895.** Copy of Indictment.—Every person indicted for any offence shall, before being arraigned on the indictment, be entitled to a copy thereof on paying the clerk five cents per folio of one hundred words for the same, if the court is of opinion that the same can be made without delay to the trial, but not otherwise. 55-56 V., c. 29, s. 654.

**896.** Copy of Depositions.—Every person indicted shall be entitled to a copy of the depositions returned into court on payment of five cents per folio of one hundred words for the same.

2. When no Delay Caused.—If a copy is not demanded before the opening of the assizes, term, sittings or sessions,

the person indicted shall be entitled to such copy if the court is of opinion that the same can be made without delay to the trial, but not otherwise.

3. TRIAL POSTPONED.—The court may, if it sees fit, postpone the trial on account of such copy of the depositions not having been previously had by the person charged. 55-56 V., c. 29, s. 655.

**897.** DOCUMENTS DELIVERED IN CASE OF TREASON, ETC.—When any one is indicted for treason, or for being accessory after the fact to treason, there shall be delivered to him after the indictment has been found, and at least ten days before his arraignment,—

(*a*) a copy of the indictment;

(*b*) a list of the witnesses to be produced on the trial to prove the indictment; and,

(*c*) a copy of the panel of the jurors who are to try him returned by the sheriff.

2. DETAILS.—The list of the witnesses and the copy of the panel of the jurors must mention the names, occupations, and places of abode of the said witnesses and jurors.

3. WITNESSES TO DELIVERY. — The documents aforesaid must all be given to the accused at the same time and in the presence of two witnesses.

4. EXCEPTION.—This section shall not apply to cases of treason by killing His Majesty, or to cases where the overt act alleged is any attempt to injure his person in any manner whatever, or to the offence of being accessory after the fact to any such treason. 55-56 V., c. 29, s. 658.

*Objections, Pleas and Record.*

**898.** OBJECTIONS BEFORE PLEA—AMENDMENTS.—Every objection to any indictment for any defect apparent on the face thereof shall be taken by demurrer, or motion to quash the indictment, before the defendant has pleaded, and not afterwards, except by leave of the court or judge before whom the trial takes place, and every court before which any such objection is taken may, if it is thought necessary, cause the indictment to be forthwith amended in such particular, by

some officer of the court or other person, and thereupon the trial shall proceed as if no such defect had appeared.

2. No Motion in Arrest of Judgment.—No motion in arrest of judgment shall be allowed for any defect in the indictment which might have been taken advantage of by demurrer, or amended under the authority of this Act. 55-56 V., c. 29, s. 629.

If indictment is held bad on demurrer, judgment is to quash not to discharge prisoner: *R. v. Tierney*, 29 U. C. R. 181.

If prisoner on bail elects for speedy trial after surrender, subsequent indictments against him will be quashed without motion or demurrer: *R.* v. *Burke*, 24 O. R. 64.

**899.** No Plea in Abatement. — No plea in abatement shall be allowed.

2. Constitution of Grand Jury.—Any objection to the constitution of the grand jury may be taken by motion to the court, and the indictment shall be quashed if the court is of opinion both that such objection is well founded and that the accused has suffered or may suffer prejudice thereby, but not otherwise. 55-56 V., c. 29, s. 656.

**900.** Pleas.—When the accused is called upon to plead he may plead either guilty or not guilty, or such special plea as is in this Part subsequently provided for.

2. Refusal to Plead.—If the accused wilfully refuses to plead, or will not answer directly, the court may order the proper officer to enter a plea of not guilty. 55-56 V., c. 29, s. 657.

**901.** Time to Plead to Indictment.—No person prosecuted shall be entitled as of right to traverse or postpone the trial of any indictment preferred against him in any court, or to imparl, or to have time allowed him to plead or demur to any such indictment.

2. Allowing Further Time to Plead or Demur—Bail. —If the court before which any person is so indicted, upon the application of such person or otherwise, is of opinion that he ought to be allowed a further time to plead or demur or to prepare for his defence, or otherwise, such court may grant such further time and may adjourn the trial of such person to a future time in the sittings of the court, or to the next or

any subsequent session or sittings of the court, and upon such terms, as to bail or otherwise, as to the court seem meet, and may, in the case of adjournment to another session or sittings, respite the recognizances of the prosecutor and witnesses accordingly.

3. Witnesses to Attend.—In such case the prosecutor and witnesses shall be bound to attend to prosecute and give evidence at such subsequent session or sittings without entering into any fresh recognizances for that purpose. 55-56 V., c. 29, s. 630.

**902.** Time to Plead in Ontario.—If any person is prosecuted in any division of the High Court of Justice for Ontario for any indictable offence, by information there filed, or by indictment there found or removed into such court, and appears therein in term time in person, or, in case of a corporation, by attorney, to answer to such information or indictment, such defendant, upon being charged therewith, shall not imparl to a following term, but shall plead or demur thereto within four days from the time of his appearance; and in default of his pleading or demurring within four days as aforesaid judgment may be entered against such defendant for want of a plea. 55-56 V., c. 29, s. 757.

**903.** When Defendant Appears by Attorney—Allowing Further Time.—If such defendant appears to such information or indictment by attorney, he shall not imparl to a following term, but a rule, requiring him to plead, may forthwith be given and served, and a plea to such information or indictment may be enforced, or judgment in default may be entered in the same manner as might have been done formerly in cases in which the defendant had appeared to such information or indictment by attorney in a previous term; but the court, or any judge thereof, upon sufficient cause shown for that purpose, may allow further time for such defendant to plead or demur to such information or indictment. 55-56 V., c. 29, s. 758.

**904.** Delay in Prosecution Instituted by Attorney-General of Ontario—Remedy of Accused.—If any prosecution for an indictable offence, instituted by the Attorney-

General for Ontario in the said court, is not brought to trial within twelve months next after the plea of not guilty has been pleaded thereto, the court in which such prosecution is depending, upon application made on behalf of any defendant in such prosecution, of which application twenty days' previous notice shall be given to such Attorney-General, may made an order authorizing such defendant to bring on the trial of such prosecution; and thereupon such defendant may bring on such trial accordingly unless a *nolle prosequi* is entered to such prosecution. 55-56 V., c. 29, s. 759.

**905.** Special Pleas.—The following special pleas and no others may be pleaded according to the provisions hereinafter contained, that is to say, a plea of *autrefois acquit*, a plea of *autrefois convict*, a plea of pardon, and such pleas in cases of defamatory libel as are hereinafter mentioned.

2. Not Guilty.—All other grounds of defence may be relied on under the plea of not guilty. 55-56 V., c. 29, s. 631.

**906.** Special Pleas Together.—The pleas of *autrefois acquit*, *autrefois convict*, and pardon may be pleaded together, and if pleaded shall be disposed of before the accused is called on to plead further.

2. Not Guilty Afterwards.—If every such plea is disposed of against the accused he shall be allowed to plead not guilty.

3. Statement Sufficient. — In any plea of *autrefois acquit* or *autrefois convict* it shall be sufficient for the accused to state that he has been lawfully acquitted or convicted, as the case may be, of the offence charged in the count or counts to which such plea is pleaded, indicating the time and place of such acquittal, or conviction. 55-56 V., c. 29, s. 631.

**907.** Issue on Pleas of Autrefois Acquit and Autrefois Convict.—On the trial of an issue on a plea of *autrefois acquit* or *autrefois convict* to any count or counts, if it appear that the matter on which the accused was given in charge on the former trial is the same in whole or in part as that on which it is proposed to give him in charge, and that he might on the former trial, if all proper amendments had been made which might then have been made, have been convicted of all

the offences of which he may be convicted on the count or counts to which such plea is pleaded, the court shall give judgment that he be discharged from such count or counts.

2. WHAT DETERMINES.—If it appear that the accused might on the former trial have been convicted of any offence of which he might be convicted on the count or counts to which such plea is pleaded, but that he may be convicted on any such count or counts of some offence or offences of which he could not have been convicted on the former trial, the court shall direct that he shall not be convicted on any such count or counts of any offence of which he might have been convicted on the former trial, but that he shall plead over as to the other offence or offences charged. 55-56 V., c. 29, s. 631.

On indictment for homicide, verdict of coroner's jury of accidental death does not entitle prisoner to plead *autrefois acquit*: *R.* v. *Labelle*, Q. R. 2 Q. B. 289.

Prisoner indicted as American citizen for levying war, acquitted on proving himself a British subject. On indictment as latter he could not plead *autrefois acquit*: *R.* v. *Magrath*, 26 U. C. R. 385.

**908.** EVIDENCE TO PROVE IDENTITY OF CHARGES.—On the trial of an issue on a plea of *autrefois acquit* or *autrefois convict* the depositions transmitted to the court on the former trial, together with the judge's and official stenographer's notes if available, and the depositions transmitted to the court on the subsequent charge, shall be admissible in evidence to prove or disprove the identity of the charge. 55-56 V., c. 29, s. 632.

**909.** INDICTMENT CHARGING SUBSTANTIALLY SAME OFFENCE, WITH CIRCUMSTANCES OF AGGRAVATION.—When an indictment charges substantially the same offence as that charged in the indictment on which the accused was given in charge on a former trial, but adds a statement of intention or circumstances of aggravation tending if proved to increase the punishment, the previous acquittal or conviction shall be a bar to such subsequent indictment.

2. MURDER—MANSLAUGHTER.—A previous conviction or acquittal on an indictment for murder shall be a bar to a second indictment for the same homicide charging it as manslaughter; and a previous conviction or acquittal on an in-

dictment for manslaughter shall be a bar to a second indictment for the same homicide charging it as murder. 55-56 V., c. 29, s. 633.

**910.** Plea of Justification in Case of Libel.—Every one accused of publishing a defamatory libel may plead that the defamatory matter published by him was true, and that it was for the public benefit that the matters charged should be published in the manner and at the time when they were published.

2. In Two Senses or in Either Sense.—Such plea may justify the defamatory matter in the sense specified, if any, in the count, or in the sense which the defamatory matter bears without any such specification; or separate pleas justifying the defamatory matter in each sense may be pleaded separately to each as if two libels had been charged in separate counts.

3. Plea in Writing.—Every such plea must be in writing, and must set forth the particular fact or facts by reason of which it was for the public good that such matters should be so published.

4. Reply.—The prosecutor may reply generally denying the truth thereof. 55-56 V., c. 29, s. 634; 56 V., c. 32, s. 1.

**911.** Plea of Justification Necessary to Try Truth.—The truth of the matters charged in an alleged libel shall in no case be inquired into without the plea of justification aforesaid unless the accused is put upon his trial upon any indictment or information charging him with publishing the libel knowing the same to be false, in which case evidence of the truth may be given in order to negative the allegation that the accused knew the libel to be false.

2. Not Guilty in Addition.—The accused may, in addition to such plea, plead not guilty and such pleas shall be inquired of together.

3. Effect of Plea on Punishment.—If, when such plea of justification is pleaded, the accused is convicted, the court may, in pronouncing sentence, consider whether his guilt is aggravated or mitigated by the plea. 55-56 V., c. 29, s. 634.

**912.** Publication by Order of a Legislative Body—Certificate of Speaker or Clerk.—Every person against whom any criminal proceedings are commenced or prosecuted in any manner for or on account of or in respect of the publication of any report, paper, votes or proceedings, by such person or by his servant, by order or under the authority of any legislative council, legislative assembly or house of assembly, may submit to the court in which such proceedings are so commenced or prosecuted, or before any judge of the same, upon twenty-four hours' notice of his intention so to do, to the prosecutor in such proceedings, or to his attorney or solicitor, a certificate under the hand of the speaker or clerk of such legislative council, legislative assembly or house of assembly, as the case may be, verified by affidavit, stating that the report, paper, votes or proceedings, as the case may be, in respect whereof such criminal proceedings are commenced or prosecuted, was or were published by such person, or by his servant, by order or under the authority of the legislative council, legislative assembly or house of assembly, as the case may be.

2. Stay of Proceedings and Dismissal.—Such court or judge shall, upon such certificate being so submitted, immediately stay such criminal proceedings, and the same shall thereupon be deemed finally ended, determined and superseded. R. S., c. 163, s. 6.

**913.** Copy of Report may be Laid Before the Court—Stay of Proceedings and Dismissal.—In any criminal prosecution for or on account or in respect of the publication of any copy of such report, paper, votes or proceedings, the defendant may submit to the court or judge before which or whom such prosecution is pending a copy of such report, paper, votes or proceedings, verified by affidavit, and the court or judge shall immediately stay such criminal prosecution, and the same shall thereupon be deemed to be finally ended, determined and superseded. R. S., c. 163, s. 7.

**914.** Form of Record of Conviction or Acquittal.—In making up the record of any conviction or acquittal on any indictment it shall be sufficient to copy the indictment with the plea pleaded thereto, without any formal caption or heading.

2. Entry of Record.—The statement of the arraignment and the proceedings subsequent thereto shall be entered of record in the same manner as heretofore, subject to any such alterations in the forms of such entry as are, from time to time, prescribed by any rule or rules of the superior courts of criminal jurisdiction respectively.

3. Inferior Courts.—Such rules shall also apply to such inferior courts of criminal jurisdiction as are therein designated. 55-56 V., c. 29, s. 726.

**915.** Form of Record in Case of Amendment.—If it becomes necessary to draw up a formal record, in any case in which an amendment has been made, such record shall be drawn up in the form in which the indictment remained after the amendment, without taking any notice of the fact of such amendment having been made. 55-56 V., c. 29, s. 725.

*Proceedings in Case of Corporations.*

**916.** Corporations may Appear by Attorney.—Every corporation against which a bill of indictment is found at any court having criminal jurisdiction shall appear by attorney in the court in which such indictment is found and plead or demur thereto. 55-56 V., c. 29, s. 635.

**917.** Certiorari not Required—Distringas not Necessary.—No writ of *certiorari* shall be necessary to remove any such indictment into any superior court with the view of compelling the defendant to plead thereto; nor shall it be necessary to issue any writ of *distringas*, or other process, to compel the defendant to appear and plead to such indictment. 55-56 V., c. 29, s. 636.

**918.** Notice to Corporation.—The prosecutor, when any such indictment is found against a corporation, or the clerk of the court when such indictment is founded on a presentment of the grand jury, may cause a notice thereof to be served on the mayor or chief officer of such corporation, or upon the clerk or secretary thereof, stating the nature and purport of such indictment, and that, unless such corpora-

tion appears and pleads thereto in two days after the service of such notice, a plea of not guilty will be entered thereto for the defendant by the court, and that the trial thereof will be proceeded with in like manner as if the said corporation had appeared and pleaded thereto. 55-56 V., c. 29, s. 637.

**919.** Proceeding on Default.—If such corporation does not appear in the court in which the indictment has been found, and plead or demur thereto within the time specified in the said notice, the judge presiding at such court may, on proof to him by affidavit of the due service of such notice, order the clerk or proper officer of the court to enter a plea of not guilty on behalf of such corporation, and such plea shall have the same force and effect as if such corporation had appeared by its attorney and pleaded such plea. 55-56 V., c. 29, s. 638.

**920.** Trial may Proceed in Absence of Defendant.—The court may, whether such corporation appears and pleads to the indictment, or a plea of not guilty is entered by order of the court, proceed with the trial of the indictment in the absence of the defendant in the same manner as if the corporation had appeared at the trial and defended the same; and in case of conviction, may award such judgment and take such other and subsequent proceedings to enforce the same as are applicable to convictions against corporations. 55-56 V., c. 29, s. 639.

*Juries.*

**921.** Qualification of Juror.—Every person qualified and summoned as a grand or petit juror, according to the laws in force for the time being in any province of Canada, shall be duly qualified to serve as such juror in criminal cases in that province.

2. Seven may Find Bill.—Seven grand jurors, instead of twelve, may find a true bill in any province where the panel of grand jurors is not more than thirteen. 55-56 V., c. 29, s. 662; 57-58 V., c. 57, s. 1.

Provision adopting laws of Province not ultra vires: *R.* v. *O'Rourke*, 32 U. C. C. P. 388; 1 O. R. 464.

Qu. Is selection and summoning of juries a matter of procedure, or does it relate to the constitution and organization of criminal courts?

Ontario jury law—Summoning jury—Separation of united counties—Jury de medietate linguæ: *R.* v. *Kennedy*, 26 U. C. R. 326.

Venire facais—Oyer and terminer — General gaol delivery — Ontario Act: *R.* v. *Whelan*, 28 U. C. R. 2.

**922.** JURY DE MEDIETATE LINGUAE. ABOLISHED.—No alien shall be entitled to be tried by a jury *de medietate linguæ*, but shall be tried as if he was a natural born subject. 55-56 V., c. 29, s. 663.

**923.** MIXED JURIES IN QUEBEC.—In those districts in the province of Quebec in which the sheriff is required by law to return a panel of petit jurors composed, one-half of persons speaking the English language, and one-half of persons speaking the French language, he shall in his return specify separately those jurors whom he returns as speaking the English language, and those whom he returns as speaking the French language respectively; and the names of the jurors so summoned shall be called alternately from such lists. 55-56 V., c. 29, s. 664.

After verdict in case tried by mixed jury, it was discovered that one of the French half was not skilled in the French language, and the verdict was set aside: *R.* v. *Chamaillard*, 18 L. C. J. 149.

Where prisoner asked that half of jury be composed of persons speaking language of defence, six jurors speaking that language may be first sworn: *R.* v. *Dougall*, 18 L. C. J. 85. But see *R.* v. *Maguire*, 33 Q. L. R. 99.

Prisoner who applies for mixed jury not bound to divide challenges: *R.* v. *Beaulé*, Q. R. 1 S. C. 273.

And having obtained mixed jury, he has no right to abandon it, but judge may revoke the order: *R.* v. *Shechan*, Q. R. 6 Q. B. 139.

**924.** MIXED JURIES IN MANITOBA.—Whenever any person who is arraigned before the Court of King's Bench for Manitoba demands a jury composed, for the one-half at least, of persons skilled in the language of the defence, if such language is either English or French, he shall be tried by a jury composed for the one-half at least of the persons whose names stand first in succession upon the general panel and who, on appearing and not being lawfully challenged, are found, in the judgment of the court, to be skilled in the language of the defence.

2. WHEN PANEL EXHAUSTED. ADDITIONAL JURORS.—Whenever, from the number of challenges or any other cause,

there is in any such case a deficiency of persons skilled in the language of the defence, the court shall fix another day for the trial of such case, and the sheriff shall supply the deficiency by summoning, for the day so fixed, such additional number of jurors skilled in the language of the defence as the court orders, and as are found inscribed next in succession on the list of petit jurors. 55-56 V., c. 29, s. 665.

**925.** CHALLENGING THE ARRAY.—Either the accused or the prosecutor may challenge the array on the ground of partiality, fraud, or wilful misconduct on the part of the sheriff or his deputies by whom the panel was returned, but on no other ground.

2. IN WRITING.—Such challenge shall be by way of objection in writing, and shall state that the person returning the panel was partial, or was fraudulent, or wilfully misconducted himself, as the case may be.

3. OBJECTION IN WRITING.—Such objection may be in form 69, or to the like effect. 55-56 V., c. 29, s. 666.

That prosecutor was uncle to sheriff who summoned grand jury is good ground for challenge: *R.* v. *Roulcau*, 16 Q. L. R. 322.

Demurrer to challenge overruled—Permission to traverse—Discretion of judge: *R.* v. *Mailloux*, 3 Pugs. (N.B.), 493.

Inclusion of names of unqualified persons not ground for challenge: *Ib.*

FORM 69.

(Section 925.)

CHALLENGE TO ARRAY.

Canada,
Province of .
County of .

The King v. C. D. } The said A. B., who prosecutes for our Lord the King (or the said C. D., *as the case may be*) challenges the array of the panel on the ground that it was returned by X. Y., sheriff of the county of (or E. F., deputy of X. Y., sheriff of the county of *(as the case may be)* and that the said X. Y. (or E. F., *as the case may be*), was guilty of partiality (or fraud, or wilful misconduct) on returning said panel.

55-56 V., c. 29, sch. 1, form KK.

**926.** TRIAL OF GROUND OF CHALLENGE. — If partiality, fraud or wilful misconduct, as the case may be, is denied, the court shall appoint any two indifferent persons to try whether the alleged ground of challenge is true or not.

2. New Panel, When.—If the triers find that the alleged ground of challenge is true in fact, or if the party who has not challenged the array admits that the ground of challenge is true in fact, the court shall direct a new panel to be returned. 55-56 V., c. 29, s. 666.

**927.** Names of Jurors on Cards.—The name of each juror on a panel returned, with his number on the panel and the place of his abode, shall be written on a distinct piece of card, and all such pieces of card shall be as nearly as may be of equal size.

2. Put by Officers in Box.—The cards shall be delivered to the officer of the court by the sheriff or other officer returning the panel, and shall, under the direction and care of the officer of the court, be put together in a box to be provided for that purpose and shall be shaken together.

3. To be Drawn by Officer of the Court.—If the array is not challenged or if the triers find against the challenge, the officer of the court shall in open court draw out the said cards, one after another, and shall call out the name and number upon each such card as it is drawn, until such a number of persons have answered to their names as in the opinion of the court will probably be sufficient to provide a full jury after allowing for challenges of jurors and directions to stand by.

4. Each Juror to be Sworn.—The officer of the court shall then proceed to swear the jury, each juror being called to swear in the order in which his name is so drawn, until after subtracting all challenges allowed and jurors directed to stand by, twelve jurors are sworn.

5. Further Names to be Drawn, When.—If the number so answering is not sufficient to provide a full jury, such officer shall proceed to draw further names from the box, and call the same in manner aforesaid, until, after challenges allowed and directions to stand by, twelve jurors are sworn. 55-56 V., c. 29, s. 667.

**928.** Calling the Jurors who have Stood By—Proviso—Other Jurors becoming Available.—If, by challenges and directions to stand by, the panel is exhausted without leaving a sufficient number to form a jury, those who have

been directed to stand by shall be again called in the order in which they were drawn, and shall be sworn, unless challenged by the accused, or unless the prosecutor challenges them and shows cause why they should not be sworn: Provided that if before any such juror is sworn other jurymen in the panel become available, the prosecutor may require the names of such jurymen to be put into and drawn from the box in the manner hereinbefore prescribed, and such jurors shall be sworn, challenged or ordered to stand by, as the case may be, before the jurors originally ordered to stand by are again called. 55-56 V., c. 29, s. 667.

**929.** Who shall be the Jury—Return of Names to the Box.—The twelve men who in manner aforesaid are ultimately drawn and sworn shall be the jury to try the issues on the indictment, and the names of the men so drawn and sworn shall be kept apart by themselves until such jury give in their verdict or until they are discharged; and then the names shall be returned to the box, there to be kept with the other names remaining at that time undrawn, and so *toties quoties* as long as any issue remains to be tried.

2. Same Jury may Try another Issue by Consent.—If the prosecutor and accused do not object thereto, the court may try any issue with the same jury that has previously tried or been drawn to try any other issue, without their names being returned to the box and redrawn, or if the parties, or either of them, object to some one or more of the jurors forming such jury, or the court excuses any one or more of them, then the court may order such persons to withdraw, and may direct the requisite number of names to make up a complete jury to be drawn, and the persons whose names are so drawn shall be sworn.

3. Sections Directory.—An omission to follow the directions of this or the two last preceding sections shall not affect the validity of the proceedings. 55-56 V., c. 29, s. 667.

**930.** Ground of Challenge, Names not on Panel. Tried upon Voir Dire.—If the ground of challenge is that the jurors' names do not appear on the panel, the issue shall be tried by the court on the *voir dire* by the inspection of the panel, and such other evidence as the court thinks fit to receive. 55-56 V., c. 29, s. 668.

**931.** Trial of Challenge upon other Grounds.—If the ground of challenge be other than as last aforesaid, the two jurors last sworn, or if no jurors have then been sworn, then two persons present whom the court may appoint for that purpose shall be sworn to try whether the juror objected to stands indifferent between the King and the accused, or has been convicted as hereinafter specified or is an alien, as the case may be.

2. Juror Sworn.—If the court or the triers find against the challenge, the juror shall be sworn.

3. Not Sworn.—If they find for the challenge he shall not be sworn.

4. If Triers do not Agree.—If, after what the court considers a reasonable time, the triers are unable to agree, the court may discharge them from giving a verdict, and may direct other persons to be sworn in their place. 55-56 V., c. 29, s. 668.

**932.** Peremptory Challenges by Accused.—Every one indicted for treason or for any offence punishable with death is entitled to challenge twenty jurors peremptorily.

2. Twelve in Certain Cases.—Every one indicted for any offence other than treason, or an offence punishable with death, for which he may be sentenced to imprisonment for more than five years, is entitled to challenge twelve jurors peremptorily.

3. Four in Other Cases.—Every one indicted for any other offence is entitled to challenge four jurors peremptorily. 55-56 V., c. 29, s. 668.

Indictment for murder—Juror challenged for cause, but in deference to erroneous ruling of judge at once challenged peremptorily, forms one of the twenty entitled to be so challenged: *Whelan* v. *R.*, 28 U. C. R. 2, 108.

Prisoner who applies for mixed jury on trial for misdemeanour not bound to divide challenges: *R.* v. *Beaulé*, Q. R. 1 S. C. 273.

Peremptory challenge once taken cannot be withdrawn: *R.* v. *Lalonde*, Q. R. 7 Q. B. 201.

**933.** By Crown—Standing Aside.—The Crown shall have power to challenge four jurors peremptorily, and may direct any number of jurors not peremptorily challenged by the accused to stand by until all the jurors have been called who are available for the purpose of trying that indictment.

2. ACCUSED CHALLENGES FIRST IF REQUIRED.—The accused may be called upon to declare whether he challenges any jurors peremptorily or otherwise, before the prosecutor is called upon to declare whether he requires such juror to stand by, or challenges him either for cause or peremptorily. 55-56 V., c. 29, s. 668.

Crown not entitled to cause jurors to stand aside a second time when panel is exhausted without obtaining a full jury: *R.* v. *Boyd*, Q. R. 5 Q. B. 1; *R.* v. *Morin*, 18 S. C. R. 407, overruling *R.* v. *Lacombe*, 13 L. C. J. 259.

Where several persons are jointly indicted and tried Crown has only the number of peremptory challenges allowed on trial of one person: *R.* v. *Lalonde*, Q. R. 7 Q. B. 260.

**934.** NO RIGHT IN LIBEL TO STAND ASIDE BY THE CROWN.—The right of the Crown to cause any juror to stand aside until the panel has been gone through shall not be exercised on the trial of any indictment or information by a private prosecutor for the publication of a defamatory libel. 55-56 V., c. 29, s. 669.

Right of Crown to cause jurors to stand aside in all cases of defamatory libel on individuals as distinguished from seditious or blasphemous libels: *R.* v. *Patteson*, 36 U. C. R. 129.

May be exercised when prosecution conducted by counsel representing Attorney-General: *Ib.*

**935.** CHALLENGES FOR CAUSE.—Every prosecutor and every accused person is entitled to any number of challenges on the ground,—

(*a*) that any juror's name does not appear in the panel: Provided that no misnomer or misdescription shall be a ground of challenge if it appears to the court that the description given in the panel sufficiently designates the person referred to; or,

(*b*) that any juror is not indifferent between the King and the accused; or,

(*c*) that any juror has been convicted of any offence for which he was sentenced to death or to any term of imprisonment with hard labour or exceeding twelve months;

(*d*) that any juror is an alien.

2. NO OTHER GROUND.—No other ground of challenge for cause than those mentioned in this section shall be allowed. 55-56 V., c. 29, s. 668.

After challenge juror stood aside by consent—Subsequent trial of challenge: *R.* v. *Smith*, 38 U. C. R. 218.
Grounds for challenge: *R.* v. *Chasson*, 3 Pugs. (N.B.) 546.

**936.** CHALLENGE IN WRITING.—If a challenge on any of the grounds aforesaid is made, the court may, in its discretion, require the party challenging to put his challenge in writing.

2. FORM.—The challenge may be in form 70, or to the like effect.

3. DENIAL.—The other party may deny that the ground of challenge is true. 55-56 V., c. 29, s. 668.

FORM 70.

(Section 936.)

CHALLENGE TO POLL.

Canada,
Province of
County of

The King v. C. D. } The said A. B., who prosecutes, *etc.* (*or* the said C. D., *as the case may be*) challenges G. H., on the ground that his name does not appear in the panel, [*or* that he is not indifferent between the King and the said C. D., *or* that he was convicted and sentenced to (death, *or* penal servitude, *or* imprisonment with hard labour, *or* exceeding twelve months, *or* that he is disqualified as an alien.]

55-56 V., c. 29, sch. 1, form LL.

**937.** PEREMPTORY CHALLENGE IN CASE MIXED JURY.—Whenever a person accused of an offence for which he would be entitled to twenty or twelve peremptory challenges as hereinbefore provided, elects to be tried by a jury composed one-half of persons skilled in the language of the defence, under sections nine hundred and twenty-three or nine hundred and twenty-four, the number of peremptory challenges to which he is entitled shall be divided, so that he shall only have the right to challenge one-half of such number from among the English speaking jurors, and one-half from among the French speaking jurors. 55-56 V., c. 29, s. 670.

**938.** ACCUSED PERSONS JOINING OR SEVERING IN THEIR CHALLENGES.—If several accused persons are jointly indicted and it is proposed to try them together, they or any of them may either join in their challenges, in which case the persons who so join shall have only as many challenges as a single

person would be entitled to, or each may make his challenge in the same manner as if he were intended to be tried alone. 55-56 V., c. 29, s. 671.

**939.** Panel Exhausted, Further Jurors Summoned.—Whenever after the proceedings hereinafter provided for the panel has been exhausted, and a complete jury cannot be had by reason thereof, then, upon request made on behalf of the Crown, the court may order the sheriff or other proper officer forthwith to summon such number of persons, whether qualified jurors or not, as the court deems necessary and directs in order to make a full jury; and such jurors may, if necessary, be summoned by word of mouth.

2. Names Added to the Panel.—The names of the persons so summoned shall be added to the general panel, for the purposes of the trial, and the same proceedings shall be taken as to calling and challenging such persons and as to directing them to stand by as are hereinbefore provided for with respect to the persons named in the original panel. 55-56 V., c. 29, s. 672.

*Arraignment and Trial.*

**940.** Coroner's Inquisition.—No one shall be tried upon any coroner's inquisition. 55-56 V., c. 29, s. 642.

**941.** Bringing Prisoner up for Arraignment.—If any person against whom any indictment is found is at the time confined for some other cause in the prison belonging to the jurisdiction of the court by which he is to be tried, the court may by order in writing, without a writ of *habeas corpus*, direct the warden or gaoler of the prison or sheriff or other person having the custody of the prisoner to bring up the body of such person as often as may be required for the purposes of the trial, and such warden, gaoler, sheriff or other person shall obey such order. 55-56 V., c. 29, s. 652.

**942.** Right to Full Defence.—Every person tried for any indictable offence shall be admitted, after the close of the case for the prosecution, to make full answer and defence thereto by counsel learned in the law. 55-56 V., c. 29, s. 659, c. 29, s. 660.

**943.** Presence of the Accused at Trial.—Every accused person shall be entitled to be present in court during the whole of his trial unless he misconducts himself by so interrupting the proceedings as to render their continuance in his presence impracticable.

2. Permission to be out of Court.—The court may permit the accused to be out of court during the whole or any part of any trial on such terms as it thinks proper. 55-56 V., c. 29, s. 660.

**944.** Prosecutor's Right to Sum up.—If an accused person, or any one of several accused persons being tried together, is defended by counsel, such counsel shall, at the end of the case for the prosecution, declare whether he intends to adduce evidence or not on behalf of the accused person for whom he appears; and if he does not thereupon announce his intention to adduce evidence, the counsel for the prosecution may address the jury by way of summing up..

2. Accused may Open, Close Case and Call Witnesses.—Upon every trial for an indictable offence, the counsel for the accused, or the accused if he is not defended by counsel, shall be allowed, if he thinks fit, to open the case for the defence, and after the conclusion of such opening to examine such witnesses as he thinks fit, and when all the evidence is concluded to sum up the evidence.

3. Accused's Right of Reply—Proviso.—If no witnesses are examined for the defence the counsel for the accused, or the accused in case he is not defended by counsel, shall have the privilege of addressing the jury last, otherwise such right shall belong to the counsel for the prosecution: Provided, that the right of reply shall be always allowed to the Attorney-General or Solicitor-General, or to any counsel acting on behalf of either of them. 55-56 V., c. 29, s. 661.

Conspiracy — Evidence called by one defendant only enures to benefit of both, and general reply is with the Crown: *R.* v. *Connolly*, 25 O. R. 151.

Crown prosecutor instructed by Attorney-General of Province has right of reply, though defence calls no witnesses: *R.* v. *Martin*, 9 O. L. R. 218; *R.* v. *King*, 9 Can. C. C. 426 (N.W.T.).

**945.** Continuous Trial.—The trial shall proceed continuously subject to the power of the court to adjourn it.

2. Adjournment.—The court may adjourn the trial from day to day, and if in its opinion the needs of justice so require, to any other day in the same sittings.

3. Jury Kept Together.—Upon every adjournment of a trial under this section, or under any other section, the court may, if it thinks fit, direct that during the adjournment the jury shall be kept together, and proper provision made for preventing the jury from holding communication with any one on the subject of the trial.

4. In Case of Capital Offence.—Such direction shall be given in all cases in which the accused may upon conviction be sentenced to death.

5. Separation in Other Cases.—In other cases, if no such direction is given, the jury shall be permitted to separate.

6. Formal Adjournment Unnecessary.—No formal adjournment of the court shall hereafter be required, and no entry thereof in the Crown book shall be necessary. 58-59 V., c. 40, s. 1.

**946.** Jurors may have Fire and Refreshments.—Jurors, after having been sworn, shall be allowed at any time before giving their verdict the use of fire and light when out of court, and shall also be allowed reasonable refreshment. 55-56 V., c. 29, s. 674.

**947.** Libel for Publishing Extract from or Abstract of Paper Published by Legislative Body—Defence.—In any criminal proceeding commenced or prosecuted for publishing any extract from, or abstract of, any paper containing defamatory matter, which has been published by order or under the authority of the Senate, House of Commons or any legislative council, legislative assembly or house of assembly, such paper may be given in evidence, and it may be shown that such extract or abstract was published in good faith and without ill-will to the person defamed, and if such is the opinion of the jury, a verdict of not guilty shall be entered for the defendant. 56 V., c. 32, s. 1.

**948.** Evidence in Case of Polygamy.—In the case of any indictment under section three hundred and ten (*b*), (*c*) and

(*d*), no averment or proof of the method in which the sexual relationship charged was entered into, agreed to or consented to, shall be necessary in any such indictment, or upon the trial of the person thereby charged; nor shall it be necessary upon such trial to prove carnal connection had or intended to be had between the persons implicated. 55-56 V., c. 29, s. 706.

**949.** FULL OFFENCE CHARGED, ATTEMPT PROVED.—When the complete commission of an offence charged is not proved but the evidence establishes an attempt to commit the offence, the accused may be convicted of such attempt and punished accordingly. 55-56 V., c. 29, s. 711.

**950.** ATTEMPT CHARGED, FULL OFFENCE PROVED.—When an attempt to commit an offence is charged but the evidence establishes the commission of the full offence, the accused shall not be entitled to be acquitted, but the jury may convict him of the attempt, 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 the complete offence.

2. RES JUDICATA.—After a conviction for such attempt the accused shall not be liable to be tried again for the offence which he was charged with attempting to commit. 55-56 V., c. 29, s. 712.

**951.** OFFENCE CHARGED, PART ONLY PROVED.—Every count shall be deemed divisible; and if the commission of the offence charged, as described in the enactment creating the offence or as charged in the count, includes the commission of any other offence, the person accused may be convicted of any offence so included which is proved, although the whole offence charged is not proved; or he may be convicted of an attempt to commit any offence so included.

2. CONVICTION FOR MANSLAUGHTER ON CHARGE OF MURDER.—On a count charging murder, if the evidence proves manslaughter but does not prove murder, the jury may find the accused not guilty of murder but guilty of manslaughter, but shall not on that count find the accused guilty of any other offence. 55-56 V., c. 29, s. 713.

On indictment for murder or manslaughter, cannot convict of assault: *R.* v. *Ganes*, 22 U. C. C. P. 185; *R.* v. *Dingman*, 22 U. C. R. 283; *R.* v. *Smith*, 34 U. C. R. 552.

Indictment for shooting with felonious intent—Conviction of common assault: *R.* v. *Cronan*, 24 U. C. C. P. 106.

Prisoner indicted for forgery may be convicted of uttering: *R.* v. *Parton*, 3 C. L. J. 117; 10 L. C. J. 212.

On indictment for house breaking accompanied with theft, prisoner cannot be convicted of receiving stolen goods: *R.* v. *Lamourcaux*, Q. R. 10 Q. B. 15.

**952.** On Indictment for Murder, Conviction may be of Concealment of Birth.—If any person tried for the murder of any child is acquitted thereof, the jury by whose verdict such person is acquitted may 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, endeavor to conceal the birth thereof, and thereupon the court may pass such sentence as it might have passed if such person had been convicted upon an indictment for the concealment of birth. 55-56 V., c. 29, s. 714.

**953.** Charge for Stealing, Conviction for Fraudulently Dealing with Cattle.—When an offence under section three hundred and sixty-nine is charged and not proved, but the evidence establishes an offence under section three hundred and ninety-two, the accused may be convicted of such latter offence and punished accordingly. 1 E. VII., c. 42, s. 2.

**954.** Trial of Joint Receivers.—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, the jury may convict, upon such indictment, such of the said persons as are proved to have received any part or parts of such property. 55-56 V., c. 29, s. 715.

**955.** Trial for Coinage Offences—General Resemblance Sufficient.—Upon the trial of any person accused of any offence respecting the currency or coin, or against the provisions of Part IX. relating to coin, 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. 55-56 V., c. 29, s. 718.

**956.** Verdict in Cases of Libel may be Guilty or not Guilty Generally—Or Special.—On the trial of any indictment or information for the making or publishing of any defamatory libel, on the plea of not guilty pleaded, the jury sworn to try the issue may give a general verdict of guilty or not guilty upon the whole matter put in issue upon such indictment or information, and shall not be required or directed, by the court or judge before whom such indictment or information is tried, to find the defendant guilty merely on the proof of publication by such defendant of the paper charged to be a defamatory libel, and of the sense ascribed to the same in such indictment or information; but the court or judge before whom such trial is had shall, according to the discretion of such court or judge, give the opinion and direction of such court or judge to the jury on the matter in issue as in other criminal cases; and the jury may, on such or special issue, find a special verdict if they think fit so to do.

2. Arrest of Judgment.—The defendant, if found guilty, may move in arrest of judgment on such ground and in such manner as heretofore. 55-56 V., c. 29, s. 719.

**957.** Destroying Counterfeit Coin.—If any false or counterfeit coin is produced on any trial for an offence against the provisions of Part IX. relating to coin, the court shall order the same to be cut in pieces in open court, or in the presence of a justice, and then to be delivered to or for the lawful owner thereof, if such owner claims the same. 55-56 V., c. 29, s. 721.

**958.** View.—On the trial of any person for an offence against this Act, the court may, if it appears expedient for

the ends of justice, at any time after the jurors have been sworn to try the case and before they give their verdict, direct that the jury shall have a view of any place, thing or person, and shall give directions as to the manner in which, and the persons by whom, the place, thing or person shall be shown to such jurors, and may for that purpose adjourn the trial, and the costs occasioned thereby shall be in the discretion of the court.

2. DIRECTIONS PREVENTING COMMUNICATION—DIRECTORY.—When such view is ordered, the court shall give such directions as seem requisite for the purpose of preventing undue communication with such jurors: Provided that no breach of any such directions shall affect the validity of the proceedings. 55-56 V., c. 29, s. 722.

**959.** JURY CONSIDER VERDICT—NO COMMUNICATION WITH THEM.—If the jury retire to consider their verdict they shall be kept under the charge of an officer of the court in some private place, and no person other than the officer of the court who has charge of them shall be permitted to speak or to communicate in any way with any of the jury without the leave of the court.

2. DIRECTORY.—Disobedience to the directions of this section shall not affect the validity of the proceedings.

3. EMPANELLING NEW JURY.—If such disobedience is discovered before the verdict of the jury is returned the court, if it is of opinion that such disobedience might lead to a miscarriage of justice, may discharge the jury and direct a new jury to be sworn or empanelled during the sitting of the court, or postpone the trial on such terms as justice may require. 55-56 V., c. 29, s. 727.

**960.** JURY DISCHARGED IF UNABLE TO AGREE.—If the court is satisfied that the jury are unable to agree upon their verdict, and that further detention would be useless, it may in its discretion discharge them and direct a new jury to be empanelled during the sittings of the court, or may postpone the trial on such terms as justice may require.

2. REVIEW.—It shall not be lawful for any court to review the exercise of this discretion. 55-56 V., c. 29, s. 728.

**961.** Proceeding on Sunday, etc., not Invalid.—The taking of the verdict of the jury or other proceeding of the court shall not be invalid by reason of its happening on Sunday or on any other holiday. 63-64 V., c. 46, s. 3.

**962.** Stay by Attorney-General after Indictment.—The Attorney-General may, at any time after an indictment has been found against any person for any offence and before judgment is given thereon, direct the officer of the court to make on the record an entry that the proceedings are stayed by his direction, and on such entry being made all such proceedings shall be stayed accordingly.

2. Delegation of Power.—The Attorney-General may delegate such power in any particular court to any counsel nominated by him. 55-56 V., c. 29, s. 732.

**963.** Previous Offence Charged—Arraignment on Subsequent Offence.—Upon any indictment for committing any offence after a previous conviction or convictions, the offender shall, in the first instance, be arraigned upon so much only of the indictment as charges the subsequent offence, and if he pleads not guilty, or if the court orders a plea of not guilty to be entered on his behalf, the jury shall be charged, in the first instance, to inquire concerning such subsequent offence only; and if the jury finds him guilty, or if, on arraignment, he pleads guilty, he shall then, and not before, be asked whether he was so previously convicted as alleged in the indictment.

2. Trial as to Previous Offence.—If he answers that he was so previously convicted, the court may proceed to sentence him accordingly, but if he denies that he was so previously convicted, or stands mute of malice, or will not answer directly to such question, the jury shall then be charged to inquire concerning such previous conviction or convictions, and in such case it shall not be necessary to swear the jury again, but the oath already taken by them shall, for all purposes, be deemed to extend to such last mentioned inquiry. 55-56 V., c. 29, s. 676.

**964.** Evidence of Character in Such Case.—If upon the trial of any person for any such subsequent offence, such

person gives evidence of his good character, the prosecutor may, in answer thereto, give evidence of the conviction of such person for the previous offence or offences, before such verdict of guilty is returned, and the jury shall inquire concerning such previous conviction or convictions at the same time that they inquire concerning such subsequent offence. 55-56 V., c. 29, s. 676.

**965.** SAVING OF POWER OF COURT.—Nothing in this Act shall alter, abridge or affect any power or authority which any court or judge has hitherto had, or any existing practice or form in regard to trials by jury, jury process, juries or jurors, except in cases where such power or authority, practice or form is expressly altered by or is inconsistent with the provisions of this Act. 55-56 V., c. 29, s. 675.

*Defence of Insanity.*

**966.** INSANITY OF ACCUSED AT TIME OF OFFENCE—ISSUE.—Whenever evidence is given upon the trial of any person charged with an indictable offence, that such person was insane at the time of the commission of such offence, the jury, if they acquit such person, shall be required to find, specially, whether such person was insane at the time of the commission of such offence, and to declare whether he is acquitted by it on account of such insanity.

2. CUSTODY AFTER FINDING BY JURY.—If the jury finds that such person was insane at the time of committing such offence, the court before which such trial is had shall order such person to be kept in strict custody in such place and in such manner as to the court seems fit, until the pleasure of the lieutenant-governor is known. 55-56 V., c. 29, s. 736.

See section 19 *ante*.

**967.** AT THE TIME OF ARRAIGNMENT OR TRIAL—ISSUE.—If at any time after the indictment is found, and before the verdict is given, it appears to the court that there is sufficient reason to doubt whether the accused is then, on account of insanity, capable of conducting his defence, the court may direct that an issue shall be tried whether the accused is or is not then, on account of insanity, unfit to take his trial.

2. Trial of Issue.—If such issue is directed before the accused is given in charge to a jury for trial on the indictment, such issue shall be tried by any twelve jurors.

3. As an Additional Issue.—If such issue is directed after the accused has been given in charge to a jury for trial on the indictment, such jury shall be sworn to try this issue in addition to that on which they are already sworn.

4. If Sane Trial Proceeds.—If the verdict on this issue is that the accused is not then unfit to take his trial, the arraignment or the trial shall proceed as if no such issue had been directed.

5. If Insane Jury Discharged.—If the verdict is that he is unfit on account of insanity, the court shall order the accused to be kept in custody till the pleasure of the lieutenant-governor of the province shall be known, and any plea pleaded shall be set aside and the jury shall be discharged.

6. Subsequent Trial.—No such proceeding shall prevent the accused being afterwards tried on such indictment. 55-56 V., c. 29, s. 737.

**968.** Insanity of Person to be Discharged for Want of Prosecution.—If any person charged with an indictable offence is brought before any court before which such person might be tried for such offence to be discharged for want of prosecution, and such person appears to be insane, the court shall order a jury to be empanelled to try the sanity of such person, and if the jury so empanelled finds him insane, the court shall order such person to be kept in strict custody, in such place and in such manner as to the court seems fit until the pleasure of the lieutenant-governor is known. 55-56 V., c. 29, s. 739.

**969.** Custody of Insane Persons.—In all cases of insanity so found, the lieutenant-governor may make an order for the safe custody of the person so found to be insane, in such place and in such manner as to him seems fit. 55-56 V., c. 29, s. 740.

**970.** Insanity of Person Imprisoned—Return to Imprisonment when Sane.—The lieutenant-governor, upon

such evidence of the insanity of any person imprisoned in any prison other than a penitentiary for an offence, or imprisoned for safe custody charged with an offence, or imprisoned for not finding bail for good behaviour or to keep the peace, as the lieutenant-governor considers sufficient, may order the removal of such insane person to a place of safe keeping; and such person shall remain there, or in such other place of safe keeping as the lieutenant-governor from time to time orders, until his complete or partial recovery is certified to the satisfaction of the lieutenant-governor, who may then order such insane person back to imprisonment, if then liable thereto, or otherwise to be discharged. 55-56 V., c. 29, s. 741.

*Witnesses and Attendance.*

**971.** ATTENDANCE OF WITNESSES.—Every witness duly subpœnaed to attend and give evidence at any criminal trial before any court of criminal jurisdiction shall be bound to attend and remain in attendance throughout the trial. 55-56 V., c. 29, s. 677.

**972.** COMPELLING ATTENDANCE OF WITNESSES—WARRANT.—Upon proof to the satisfaction of the judge of the service of the subpœna upon any witness who fails to attend or remain in attendance, or upon its appearing that any witness at the preliminary examination has entered into a recognizance to appear at the trial, and has failed so to appear, and that the presence of such witness is material to the ends of justice, the judge may, by his warrant, cause such witness to be apprehended and forthwith brought before him to give evidence and to answer for his disregard of the subpœna.

2. DETENTION ON WARRANT.—Such witness may be detained on such warrant before the judge or in the common gaol, with a view to secure his presence as a witness, or, in the discretion of the judge, he may be released on a recognizance, with or without sureties, conditioned for his appearance to give evidence and to answer for his default in not attending or not remaining in attendance.

3. DISPOSING OF CHARGE OF CONTEMPT.—The judge may, in a summary manner, examine into and dispose of the charge

against such witness, who, if he is found guilty thereof, shall be liable to a fine not exceeding one hundred dollars, or to imprisonment, with or without hard labour, for a term not exceeding ninety days, or to both. 55-56 V., c. 29, s. 678.

**973.** Warrant against Witness in the First Instance.—Either before or during the sittings of any court of criminal jurisdiction, the court, or any judge thereof, or any judge of any superior or county court, if satisfied by evidence upon oath that any person within the province likely to give material evidence, either for the prosecution or for the accused, will not attend to give evidence at such sittings without being compelled so to do, may, by his warrant, cause such witness to be apprehended and forthwith brought before such court or judge, and such witness may be detained on such warrant before such court or judge or in the common gaol, with a view to secure his presence as a witness, or, in the discretion of the court or judge, may be released on a recognizance, with or without sureties, conditioned for his appearance to give evidence. 63-64 V., c. 46, s. 3.

**974.** Witness in Canada but beyond Jurisdiction of Court—Subpœna.—If any witness in any criminal case, cognizable by indictment in any court of criminal jurisdiction at any term sessions or sittings of any court in any part of Canada, resides in any part of Canada, not within the ordinary jurisdiction of the court before which such criminal case is cognizable, such court may issue a writ of subpœna, directed to such witness, in like manner as if such witness was resident within the jurisdiction of the court. 55-56 V., c. 29, s. 679.

**975.** Proceedings when Subpœna Disobeyed.—If such witness does not obey such writ of subpœna the court issuing the same may proceed against such witness for contempt or otherwise, or bind over such witness to appear at such days and times as are necessary, and upon default being made in such appearance may cause the recognizances of such witness to be estreated, and the amount thereof to be sued for and recovered by process of law, in like manner as if such witness was resident within the jurisdiction of the court. 55-56 V., c. 29, s. 679.

**976.** COURTS AUXILIARY—JUDGMENT OF ONE COURT ACTED ON BY ANOTHER.—The courts of the several provinces and the judges of the said courts respectively shall be auxiliary to one another for the purposes of this Act; and any judgment, decree or order made by the court issuing such writ of subpœna upon any proceeding against any witness for contempt or otherwise may be enforced or acted upon by any court in the province in which such witness resides in the same manner and as validly and effectually as if such judgment, order or decree had been made by such last mentioned court. 63-64 V., c. 46, s. 3.

**977.** PROCURING ATTENDANCE OF WITNESS WHO IS A PRISONER—ORDER.—When the attendance of any person confined in any prison in Canada, or upon the limits of any gaol, is required in any court of criminal jurisdiction in any case cognizable therein by indictment, the court before whom such prisoner is required to attend, or any judge of such court or of any superior court or county court, or any chairman of General Sessions, may, before or during any such term or sittings at which the attendance of such person is required, make an order upon the warden or gaoler of the prison, or upon the sheriff or other person having the custody of such prisoner,—

(*a*) to deliver such prisoner to the person named in such order to receive him; or,

(*b*) to himself convey such prisoner to such place.

2. PRISONER CONVEYED ACCORDING TO TERMS OF ORDER.—The warden, gaoler or other person aforesaid, having the custody of such prisoner, when so required by order as aforesaid, upon being paid his reasonable charges in that behalf, or the person to whom such prisoner is required to be delivered as aforesaid, shall, according to the exigency of the order, convey the prisoner to the place at which he is required to attend and there produce him, and then to receive and obey such further order as to the said court seems meet. 63-64 V., c. 46, s. 3.

*Evidence on the Trial.*

**978.** ADMISSION ON TRIAL.—Any accused person on his trial for any indictable offence, or his counsel or solicitor, may

admit any fact alleged against the accused so as to dispense with proof thereof. 55-56 V., c. 29, s. 690.

**979.** Certificate of Former Trial upon Trial of Indictment for Perjury—Evidence.—A certificate containing the substance and effect only, omitting the formal part, of the indictment and trial for any offence, 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 the trial of an indictment for perjury or subornation of perjury, be sufficient evidence of the trial of such indictment without proof of the signature or official character of the person appearing to have signed the same. 55-56 V., c. 29, s. 691.

**980.** Evidence of Coin being False or Counterfeit.—When, upon the trial of any person, 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 His Majesty's mint, or other person employed in producing the lawful coin in His Majesty's dominions or elsewhere, whether the coin counterfeited is 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 counterfeited by the evidence of any witness. 55-56 V., c. 29, s. 692.

**981.** Evidence on Proceedings for Advertising Counterfeit Money.—On the trial of any person charged with any of the offences mentioned in section five hundred and sixty-nine, any letter, circular, writing or paper offering or purporting to give information, directly or indirectly, where, how, of whom or by what means any counterfeit token of value may be obtained or had, or concerning any similar scheme or device to defraud the public, shall be *prima facie* evidence of the fraudulent character of such scheme or device. 55-56 V., c. 29, s. 693.

**982.** Proof of Previous Conviction.—A certificate containing the substance and effect only, omitting the formal

part, of any previous indictment and conviction for any indictable offence, or a copy of any summary conviction, purporting to be signed by the clerk of the court or other officer having the custody of the records of the court before which the offender was first convicted, or to which such summary conviction was returned, or by the deputy of such clerk or officer, shall, upon proof of the identity of the person of the offender, be sufficient evidence of such conviction without proof of the signature or official character of the person appearing to have signed the same. 55-56 V., c. 29, s. 694.

Is certificate of *primâ facie* proof of identity? *R.* v. *Edgar*, 15 O. R. 142.

Evidence of, goes to matter of punishment not to general character: *R.* v. *Triganzie*, 15 O. R. 294.

**983.** EVIDENCE AT TRIAL FOR CHILD-MURDER.—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 the like rules of evidence and presumption as are by law used and allowed to take place in respect to other trials for murder. 55-56 V., c. 29, s. 697.

**984.** PROOF OF AGE OF CHILD, BOY, ETC.—ENTRY OR RECORD.—To prove the age of a boy, girl, child or young person for the purposes of sections two hundred and eleven, two hundred and fifteen, two hundred and forty-two, two hundred and forty-three, two hundred and forty-five, two hundred and ninety-four, three hundred and one, three hundred and two, three hundred and fifteen and three hundred and sixteen, any entry or record by an incorporated society or its officers having had the control or care of the boy, girl, child or young person at or about the time of the boy, girl, child or young person being brought to Canada, if such entry or record has been made before the alleged offence was committed, shall be *prima facie* evidence of such age.

2. INFERENCE AS TO AGE FROM APPEARANCE.—In the absence of other evidence, or by way of corroboration of other evidence, the judge, or, in cases where an offender is tried with a jury, the jury before whom an indictment for the offence is tried, or the justice before whom a preliminary in-

quiry thereinto is held, may infer the age from the appearance of the boy, girl, child or young person. 63-64 V., c. 46, s. 3.

**985.** PRESENCE OF GAMING INSTRUMENTS PROOF OF GAMING CHARACTER OF HOUSE. — When any cards, dice, balls, counters, tables or other instruments of gaming used in playing any unlawful game are found in any house, room or place suspected to be used as a common gaming house, and entered under warrant or order issued under this Act, or about the person of any of those who are found therein, it shall be *prima facie* evidence, on the trial of a prosecution under section two hundred and twenty-eight or section two hundred and twenty-nine, that such house, room or place is used as a common gaming house, and that the persons found in the room or place where such instruments of gaming are found were playing therein, although no play was actually going on in the presence of the officer entering the same under such warrant or order, or in the presence of the persons by whom he is accompanied. 63-64 V., c 46, s. 3.

**986.** EVIDENCE OF GAMING HOUSE.—In any prosecution under section two hundred and twenty-eight for keeping a common gaming house, or under section two hundred and twenty-nine for playing or looking on while any other person is playing in a common gaming house, it shall be *prima facie* evidence that a house, room or place is used as a common gaming house, and that the persons found therein were unlawfully playing therein,—

(*a*) OBSTRUCTION OF CONSTABLE—if any constable or officer authorized to enter such house, room or place, is wilfully prevented from, or obstructed or delayed in entering the same or any part thereof; or,

(*b*) FITTED FOR GAMING OR FOR CONCEALING INSTRUMENTS—if any such house, room or place is found fitted or provided with any means or contrivance for unlawful gaming, or with any means or contrivance for concealing, removing or destroying any instruments of gaming. 63-64 V., c. 46, s. 3.

**987.** EVIDENCE OF GAMING IN STOCKS OR MERCHANDISE.—Whenever, on the trial of a person charged with making an

agreement for the sale or purchase of shares, goods, wares or merchandise in the manner set forth in section two hundred and thirty-one, it is established that the person so charged has made or signed any such contract or agreement of sale or purchase, or has acted, aided or abetted in the making or signing thereof, the burden of proof of the *bona fide* intention to acquire or to sell such goods, wares or merchandise, or to deliver or to receive delivery thereof, as the case may be, shall rest upon the person so charged. 55-56 V., c. 29, s. 704.

**988.** Evidence of Stealing Ores or Minerals.—In any prosecution, proceeding or trial for stealing ores or minerals the possession, contrary to the provisions of any law in that behalf, of any smelted gold or silver, or any gold-bearing quartz, or any unsmelted or otherwise unmanufactured gold or silver, by any operator, workman or labourer actively engaged in or on any mine, shall be *prima facie* evidence that the same has been stolen by him. 55-56 V., c. 29, s. 707.

**989.** Evidence of Property in Cattle.—In any criminal prosecution, proceeding or trial, the presence upon any cattle of a brand or mark, which is duly recorded or registered under the provisions of any Act, ordinance or law, shall be *prima facie* evidence that the same is the property of the registered owner of such brand or mark.

2. Possession of Timber with Mark Prima Facie Evidence of Theft.—When a person is charged with theft of cattle, or with an offence under paragraph (*a*) or paragraph (*b*) of section three hundred and ninety-two respecting cattle, possession by such person or by others in his employ or on his behalf of such cattle bearing such a brand or mark of which the person charged is not the registered owner, shall throw upon the accused the burden of proving that such cattle came lawfully into his possession or into the possession of such others in his employ or on his behalf, unless it appears that such possession by others in his employ or on his behalf was without his knowledge and without his authority, sanction or approval. 1 E. VII., c. 42, s. 2.

**990.** Evidence of Property in Timber.—In any prosecution, proceeding or trial for any offence under section three

hundred and ninety-four a timber mark, duly registered under the provisions of the Timber Marking Act, on any timber, mast, spar, saw-log or other description of lumber, shall be *prima facie* evidence that such timber is the property of the registered owner of such timber mark.

2. Possession of Cattle with Brand Prima Facie Evidence of Theft.—Possession by the accused, or by others in his employ or on his behalf, of any such timber, mast, spar, saw-log or other description of lumber so marked, shall, in all cases, throw upon him the burden of proving that such timber, mast, spar, saw-log or other description of lumber came lawfully into his possession, or into the possession of such others in his employ or on his behalf. 55-56 V., c. 29, s. 708.

**991.** Evidence of Enlistment in Cases as to Public Stores.—In any prosecution, proceeding or trial under sections four hundred and thirty-three to four hundred and thirty-seven inclusive, for offences relating to public stores, proof that any soldier, seaman or marine was actually doing duty in His Majesty's service shall be *prima facie* evidence that his enlistment, entry or enrolment has been regular.

2. Presumption when Accused Dealer in Stores.—If the person charged with the offence relating to public stores mentioned in section four hundred and thirty-five was, at the time at which the offence is charged to have been committed, in His Majesty's service or employment, or a dealer in marine stores, or a dealer in old metals, knowledge on his part that the stores to which the charge relates bore the marks described in section four hundred and thirty-two shall be presumed until the contrary is shown. 55-56 V., c. 29, s. 709.

**992.** Evidence in Cases of Fraudulent Marks on Merchandise.—In any prosecution, proceeding or trial for any offence under Part VII. relating to fraudulent marks on merchandise, if the evidence relates to imported goods, evidence of the port of shipment shall be *prima facie* evidence of the place or country in which the goods were made or produced. 55-56 V., c. 29, s. 710.

**993.** Proceedings against Receivers — Possession of other Stolen Property—Notice.—When proceedings are

taken against any person for having received goods knowing them to be stolen, or for having in his possession stolen property, evidence may be given, at any stage of the proceedings, that there was found in the possession of such person other property stolen within the preceding period of twelve months, and such evidence may be taken into consideration for the purpose of proving that such person knew the property which forms the subject of the proceedings taken against him to be stolen, if not less than three days' notice in writing has been given to the person accused that proof is intended to be given of such other property, stolen within the preceding period of twelve months, having been found in his possession.

2. CONTENTS OF NOTICE.—Such notice shall specify the nature or description of such other property, and the person from whom the same was stolen. 55-56 V., c. 29, s. 716.

**994.** RECEIVING STOLEN GOODS—POSSESSION — PREVIOUS CONVICTION—NOTICE.—When proceedings are taken against any person for having received goods knowing them to be stolen, or for having in his possession stolen property, and evidence has been given that the stolen property has been found in his possession, then if such person has, within five years immediately preceding, been convicted of any offence involving fraud or dishonesty, evidence of such previous conviction may be given at any stage of the proceedings, and may be taken into consideration for the purpose of proving that the person accused knew the property which was proved to be in his possession to have been stolen, if not less than three days' notice in writing has been given to the person accused that proof is intended to be given of such previous conviction.

2. NEED NOT BE CHARGED IN INDICTMENT.—It shall not be necessary, for the purposes of this section, to charge in the indictment the previous conviction of the person so accused. 55-56 V., c. 29, s. 717.

*Evidence taken Apart from Trial.*

**995.** EVIDENCE OF PERSON DANGEROUSLY ILL MAY BE TAKEN UNDER COMMISSION.—Whenever it is made to appear at the instance of the Crown, or of the prisoner or defendant,

to the satisfaction of a judge of a superior court, or a judge of a county court having criminal jurisdiction, that any person who is dangerously ill, and who, in the opinion of some licensed medical practitioner, is not likely to recover from such illness, is able and willing to give material information relating to any indictable offence, or relating to any person accused of any such offence, such judge may, by order under his hand, appoint a commissioner to take in writing the statement on oath or affirmation of such person.

2. Evidence to be Sent to Proper Officer when Trial Outstanding.—Such commissioner shall take such statement and shall subscribe the same and add thereto the names of the persons, if any, present at the taking thereof, and if the deposition relates to any indictable offence for which any accused person is already committed or bailed to appear for trial, shall transmit the same, with the said addition, to the proper officer of the court at which such accused person is to be tried.

3. In other Cases to Clerk of the Peace.—In every other case he shall transmit the same to the clerk of the peace of the county, division or city in which he has taken the same, or to such other officer as has charge of the records and proceedings of a superior court of criminal jurisdiction in such county, division or city.

4. Evidence to be Kept for Use.—Such clerk of the peace or other officer shall preserve the same and file it of record, and upon the order of the court or a judge transmit the same to the proper officer of the court where the same shall be required to be used as evidence. 55-56 V., c. 29, s. 681.

**996.** Presence of Prisoner when such Evidence is Taken.—Whenever a prisoner in actual custody is served with or receives notice of an intention to take the statement mentioned in the last preceding section, the judge who has appointed the commissioner may, by an order in writing, direct the officer or other person having the custody of the prisoner to convey him to the place mentioned in the said notice for the purpose of being present at the taking of the statements; and such officer or other person shall convey the prisoner accordingly, and the expenses of such conveyance

shall be paid out of the funds applicable to the other expenses of the prison from which the prisoner has been conveyed. 55-56 V., c. 29, s. 682.

**997.** EVIDENCE MAY BE TAKEN OUT OF CANADA UNDER COMMISSION.—Whenever it is made to appear, at the instance of the Crown, or of the prisoner or defendant, to the satisfaction of the judge of any superior court, or the judge of a county court having criminal jurisdiction, that any person who resides out of Canada is able to give material information relating to any indictable offence for which a prosecution is pending, or relating to any person accused of such offence, such judge may, by order under his hand, appoint a commissioner or commissioners to take the evidence, upon oath, of such person.

2. RULES AND PRACTICE SAME AS IN OTHER CASES.—Until otherwise provided by rules of court, the practice and procedure in connection with the appointment of commissioners, under this section, the taking of depositions by such commissioners, and the certifying and return thereof, and the use of such depositions as evidence, shall be as nearly as practicable the same as those which prevail in the respective courts in connection with like matters in civil causes.

3. DEPOSITIONS EVIDENCE.—The depositions taken by such commissioners may be used as evidence at the trial.

4. MAY BE READ BEFORE GRAND JURY.—Subject to such rules of court or to the practice or procedure aforesaid, such depositions may, by the direction of the presiding judge, be read in evidence before the grand jury. 55-56 V., c. 29, s. 683; 58-59 V., c. 40, s. 1; 63-64 V., c. 46, s. 3.

Order for may be made at any time after information laid and used at any stage—Necessary material—Sworn statement of what witness is expected to prove: *R.* v. *Verral*, 16 P. R. 444. Affd. 17 P. R. 61.

*Admission on Trial of Evidence Previously Taken.*

**998.** DEPOSITION MAY BE READ IN EVIDENCE—NOTICE OF INTENTION TO READ AND OPPORTUNITY OF CROSS-EXAMINATION.—If the statement of a sick person has been taken by a commissioner as provided in section nine hundred and ninety-five, and upon the trial of any offender for any offence to

which the same relates, the person who made the statement is proved to be dead, or if it is proved that there is no reasonable probability that such person will ever be able to attend at the trial to give evidence, such statement may, upon the production of the judge's order appointing the commissioner, be read in evidence, either for or against the accused, without further proof thereof, if the same purports to be signed by the commissioner by or before whom it purports to have been taken, and it is proved to the satisfaction of the court that reasonable notice of the intention to take such statement was served upon the person, whether prosecutor or accused, against whom it is proposed to be read in evidence, and that such person or his counsel or solicitor had, or might have had, if he had chosen to be present, full opportunity of cross-examining the person who made the same. 55-56 V., c. 29, s. 686.

**999.** Deposition on Preliminary Inquiry may be Read in Evidence in Certain Events.—If upon the trial of an accused person such facts are proved upon oath or affirmation that it can be reasonably inferred therefrom that any person, whose evidence was given at any former trial upon the same charge or whose deposition has been theretofore taken in the investigation of the charge against such accused person, is dead, or so ill as not to be able to travel, or is absent from Canada, and if it is proved that such evidence was given or such deposition was taken in the presence of the person accused, and that he or his counsel or solicitor if present had a full opportunity of cross-examining the witness, then if the evidence or deposition purports to be signed by the judge or justice before whom the same purports to have been taken, it shall be read as evidence in the prosecution, without further proof thereof, unless it is proved that such evidence or deposition was not in fact signed by the judge or justice purporting to have signed the same. 63-64 V., c. 46, s. 3.

Absent witness—Proof of absence: *R.* v. *Nelson*, 1 O. R. 500.
Coroner's abstract of evidence of witness at inquest, not read to nor signed by latter, not a deposition under this section: *R.* v. *Graham*, Q. R. 8 Q. B. 167.

**1000.** Depositions may be Used in Trial for other Offences.—Depositions taken in the preliminary or other investigation of any charge against any person may be read

as evidence in the prosecution of such person for any other offence, upon the like proof and in the same manner, in all respects, as they may, according to law, be read in the prosecution of the offence with which such person was charged when such depositions were taken. 55-56 V., c. 29, s. 688.

The deposition of a witness against him on his trial if he is subsequently charged with a crime: *R. v. Coate*, 12 Cox, C. C. 557, L. R. 4 P. C. 599; see *R. v. Buckley*, 13 Cox, C. C. 293.

**1001.** STATEMENT BY ACCUSED.—The statement made by the accused person before the justice may, if necessary, upon the trial of such person, be given in evidence against him without further proof thereof, unless it is proved that the justice purporting to have signed the same did not in fact sign the same. 55-56 V., c. 29, s. 689.

As to confession under inducements see *R. v. Fennell*, Warb. Lead. Cas. 250 and cases there cited.

See *R. v. Histed*, 19 Cox, C. C. 16; *R. v. Soucie*, 3 P. & B. (N.B.) 611.

Read section 684 in connection with above section.

*Corroboration.*

**1002.** NECESSARY IN CERTAIN CASES.—No person accused of any offence under any of the hereunder mentioned sections shall be convicted upon the evidence of one witness, unless such witness is corroborated in some material particular by evidence implicating the accused:—

(*a*) Treason, Part II., section seventy-four.

(*b*) Perjury, Part IV., section one hundred and seventy-four;

(*c*) Offences under Part V., sections two hundred and eleven to two hundred and twenty inclusive;

(*d*) Procuring feigned marriage, Part VI., section three hundred and nine;

(*e*) Forgery, Part VII., sections four hundred and sixty-eight to four hundred and seventy inclusive. 55-56 V., c. 29, s. 684; 56 V., c. 32, s. 1.

But evidence of girl's pregnancy, of having been a servant at residence of accused, and of facts showing a strong probability that no other man could have been responsible for her condition, is not corroborative evidence: *R. v. Vahey* (1899), 2 Can. C. C. 258.

Admission of girl after she became sixteen that prisoner had connected with her before, is corroborative evidence implicating him in the offence of seduction under s. 217: *R.* v. *Wyse* (1895), 1 Can. C. C. 6.

Seduction under promise of marriage—Evidence of prisoner's declaration to relatives of girl that he had always intended to marry her, is corroborative of her evidence: *R.* v. *Dann*, 12 O. L. R. 227.

Not required by Act—Accomplice — Cautioning jury—Rule of practice: *R.* v. *Andrews*, 12 O. R. 184, following *R.* v. *Beckwith*, 8 U. C. C. P. 274; *R.* v. *Smith*, 38 U. C. R. 218.

Soliciting to steal — Uncorroborated evidence of accomplice — Conviction against direction of judge: *R.* v. *Seddons*, 16 U. C. C. P. 389.

As to evidence in cases of forgery, required corroboration only of an interested witness; see *R.* v. *Rhodes*, 22 O. R. 480.

Forgery of indorsements to notes. Parties whose names were forged deny signatures—Sufficient corroboration: *R.* v. *Houle*, Q. R. 15 K. B. 170.

Forgery of prosecutor's name as indorser. Prosecutor denied indorsement and swore that he was a marksman. His son also swore he was a marksman. *Held*, sufficient corroboration of prosecutor's evidence: *R.* v. *Baumerman*, 43 U. C. R. 547.

Forgery—Evidence of witness that forged documents were written by accused. Proof by same witness that names in a book in same hand as forged documents were written by accused, not sufficient corroboration: *R.* v. *McBride* (1895), 2 Can. C. C. 544; 26 O. R. 639; 15 Occ. N. 274.

**1003.** Evidence of Child not under Oath Received in Certain Cases.—Where, upon the hearing or trial of any charge for carnally knowing or attempting to carnally know a girl under fourteen or of any charge under section two hundred and ninety-two for indecent assault, the girl in respect of whom the offence is charged to have been committed, or any other child of tender years who is tendered as a witness, does not, in the opinion of the court or justices, understand the nature of an oath, the evidence of such girl or other child of tender years may be received though not given upon oath if, in the opinion of the court or justices, as the case may be, such girl or other child of tender years is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth.

2. Corroboration.—But no person shall be liable to be convicted of the offence, unless the testimony admitted by virtue of this section and given on behalf of the prosecution, is corroborated by some other material evidence in support thereof implicating the accused.

3. If False, Perjury.—Any witness whose evidence is admitted under this section is liable to indictment and punishment for perjury in all respects as if he or she had been sworn. 55-56 V., c. 29, s. 685.

The provision applies to the trial of offences under ss. 292, 301, and 310.

See *R.* v. *Wealand*, 16 Cox C. C. 402, 20 Q. B. D. 827; *R.* v. *Paul*, 17 Cox C. C. 111, 25 Q. B. D. 202; *R.* v. *Prunley*, 16 Cox C. C. 344.

The evidence so given would be evidence to support any verdict allowed in virtue of s. 951 on an indictment for any of the offences provided for in ss. 292, 301, and 310. Held in that sense in *R.* v. *Grantyers*, (1893), Q. J. R. 2 Q. B. 376.

*Sentence, Arrest of Judgment and Appeal.*

**1004.** Accused Found Guilty—Question before Sentence.—If the jury find the accused guilty, or if the accused pleads guilty, the judge presiding at the trial shall ask him whether he has anything to say why sentence should not be passed upon him according to law: Provided that the omission so to ask shall have no effect on the validity of the proceedings. 55-56 V., c. 29, s. 733.

**1005.** Sentence Justified by any Count.—If one sentence is passed upon any verdict of guilty on more counts of an indictment than one, the sentence shall be good if any of such counts would have justified it. 55-56 V., c. 29, s. 626.

Each count must by itself disclose an offence, and allegations in one count cannot help the other counts: *R.* v. *Samuels*, 16 R. L. 576.

**1006.** Where Sentence Carried out when Venue Changed.—When any sentence is passed upon any person after a trial had under an order for changing the place of trial, the court may in its discretion, either direct the sentence to be carried out at the place where the trial was had or order the person sentenced to be removed to the place where his trial would have been had but for such order, so that the sentence may be there carried out. 55-56 V., c. 29, s. 733.

**1007.** Motion in Arrest of Judgment. — The accused may at any time before sentence move in arrest of judgment on the ground that the indictment does not, after amendment, if any, state any indictable offence.

2. Deciding or Reserving.—The court may in its discretion either hear and determine the matter during the same sittings or reserve the matter for the court of appeal as hereinafter provided.

3. DISCHARGE.—If the court decides in favour of the accused, he shall be discharged from that indictment.

4. SENTENCE DURING SITTING OF COURT.—If no such motion is made, or if the court decides against the accused upon such motion, the court may sentence the accused during the sittings of the court, or the court may in its discretion discharge him on his own recognizance, or on that of such sureties as the court thinks fit, or both, to appear and receive judgment at some future court or when called upon.

5. SENTENCE SUBSEQUENTLY.—If sentence is not passed during the sittings, the judge of any superior court before which the person so convicted afterwards appears or is brought, or if he was convicted before a court of general or quarter sessions, the court of general or quarter sessions at a subsequent sittings may pass sentence upon him or direct him to be discharged. 55-56 V., c. 29, s. 733.

Section 1014, *et seq.*, provide for reserving a case for the Court of Appeal. The court has no power to make any amendment on a motion in arrest of judgment. Section 886, sub-section (2) relates to a change of venue.

The defendant, after conviction, may move at any time in arrest of judgment before the sentence is actually pronounced upon him. This motion can be grounded only on some objection arising on the face of the record itself, and no defect in the evidence, or irregularity at the trial, can be urged at this stage of the proceedings. But any want of sufficient certainty in the indictment, as in the statement of time or place (where material), or of the facts and circumstances constituting the offence, by omitting to state or not stating definitely anything requisite to constitute the offence, or by omitting to negative any exception which ought to have been negatived or otherwise, will be a ground for arresting the judgment, if not amended before verdict or cured by the verdict.

The court will, *ex proprio motu*, arrest the judgment, even if the defendant omits to move for it, when it is satisfied that the defendant has not been found guilty of any offence in law. If a substantial ingredient of the offence does not appear on the face of the indictment the court will arrest the judgment: *R.* v. *Carr*, 26 L. C. J. 61. Judgment will also be arrested if the court does not appear by the indictment to have had jurisdiction over the offence charged: 8th Crim. L. Com. Report, 162; *R.* v. *Fraser*, 1 Moo. 407; *R.* v. *Lynch*, 20 L. C. J. 187.

A party convicted of felony must be present in court, in order to move in arrest of judgment; so a party convicted of a misdemeanour unless his presence be dispensed with at the discretion of the court: 1 Chit. 663: Cr. L. Com. Rep. *loc. cit.*

If the judgment be arrested the indictment and all the proceedings thereupon are set aside and judgment of acquittal is given by the court, but such acquittal is no bar to a fresh indictment: Archbold, 170; 8th Cr. L. Com. Rep. 163; 3 Burn, 58.

See *R.* v. *Harris* (1898), 2 Can. C. C. 75, and sections 889, 898, 890, and 1017.

**1008.** WOMAN SENTENCED TO DEATH WHILE PREGNANT.—If sentence of death is passed upon any woman she may move in arrest of execution on the ground that she is pregnant.

2. Inquiry as to Pregnancy.—If such a motion is made the court shall direct one or more registered medical practitioners to be sworn to examine the woman in some private place, either together or successively, and to inquire whether she is with child of a quick child or not.

3. Arresting Execution.—If upon the report of any of them it appears to the court that she is so with child, execution shall be arrested until she is delivered of a child, or until it is no longer possible in the course of nature that she should be so delivered. 55-56 V., c. 29, s. 730.

**1009.** Jury de Ventre Inspiciendo.—No jury *de ventre inspiciendo* shall be empanelled or sworn. 55-56 V., c. 29, s. 731.

**1010.** Judgment not to be Stayed or Reversed on Certain Grounds.—Judgment, after verdict upon an indictment for any offence against this Act, shall not be stayed or reversed,—

(*a*) for want of a *similiter;*

(*b*) by reason that the jury process has been awarded to a wrong officer, upon an insufficient suggestion;

(*c*) for any misnomer or misdescription of the officer returning such process, or of any of the jurors; or,

(*d*) because any person has served upon the jury who was not returned as a juror by the sheriff or other officer.

2. Indictment Sufficient after Verdict Notwithstanding Certain Objections.—Where the offence charged is an offence created by any statute, or subjected to a greater degree of punishment by any statute, the indictment shall, after verdict, be held sufficient, if it describes the offence in the words of the statute creating the offence, or prescribing the punishment, although they are disjunctively stated or appear to include more than one offence, or otherwise. 55-56 V., c. 29, s. 734.

Judgment will not be arrested on ground that a juror at the trial had not been returned as such: *R.* v. *Brisebois*, 15 S. C. R. 421.

**1011.** Direction as to Jury or Jurors' Directory.—No omission to observe the directions contained in any Act as

respects the qualification, selection, balloting or distribution of jurors, the preparation of the jurors' book, the selecting of jury lists, the drafting of panels from the jury lists or the striking of special juries, shall be a ground for impeaching any verdict, or shall be allowed for error upon any appeal to be brought upon any judgment rendered in any criminal case. 55-56 V., c. 29, s. 735; 56 V., c. 32, s. 1.

**1012.** Appeal from Conviction by Judge of Trade Conspiracy.—An appeal upon all issues of law and fact shall lie from any conviction by the judge without the intervention of a jury for any offence mentioned in section four hundred and ninety-eight to the court of appeal in the province where such conviction is made; and the evidence taken upon the trial shall form part of the record in appeal, and, for that purpose, the court before which the case is tried shall take note of the evidence, and of all legal objections thereto. 52 V., c. 41, s. 5.

**1013.** Appeal in other Cases of Indictable Offences.—An appeal from the verdict or judgment of any court or judge having jurisdiction in criminal cases, or of a magistrate proceeding under section seven hundred and seventy-seven, on the trial of any person for an indictable offence, shall lie upon the application of such person if convicted, to the court of appeal in the cases hereinafter provided for, and in no others.

2. Decision Final when.—Whenever the judges of the court of appeal are unanimous in deciding an appeal brought before the said court their decision shall be final.

3. Appeal in Case of Dissent.—If any of the judges dissent from the opinion of the majority, an appeal shall lie from such decision to the Supreme Court of Canada as hereinafter provided. 55-56 V., c. 29, s. 742.

The right to appeal under this section and section 1024 to the Supreme Court of Canada is restricted to cases where there has been an affirmance by the Court of Criminal Appeal, and where such affirmance is not unanimous but dissented from by one or more of the judges of the latter court: *R.* v. *Viau* (1898), 2 Can. C. C. 540; R. J. Q. 7 Q. B. 362; 29 S. C. R. 90.

In sub-section 3 "opinion" means judgment or decision: *R.* v. *Viau*, *supra*.

**1014.** Error.—No proceeding in error shall be taken in any criminal case.

2. Question of Law Reversed.—The court before which any accused person is tried may, either during or after the trial, reserve any question of law arising either on the trial or on any of the proceedings preliminary, subsequent, or incidental thereto, or arising out of the direction of the judge, for the opinion of the court of appeal in manner hereinafter provided.

3. Application.—Either the prosecutor or the accused may, during the trial, either orally or in writing, apply to the court to reserve any such question as aforesaid, and the court, if it refuses so to reserve it, shall nevertheless take a note of such objection.

4. Trial Proceeds.—After a question is reserved the trial shall proceed as in other cases.

5. Execution of Sentence may be Respited.—If the result is a conviction, the court may in its discretion respite the execution of the sentence or postpone sentence till the question reserved has been decided, and shall in its discretion commit the person convicted to prison or admit him to bail with one or two sufficient sureties, in such sums as the court thinks fit, to surrender at such time as the court directs.

6. Case Stated.—If the question is reserved, a case shall be stated for the opinion of the court of appeal. 55-56 V., c. 29, s. 743.

On trial for murder, by committing an abortion, it appeared in evidence that a *post portem* examination of the girl had been made by a medical man, which was confined to the pelvic organs and was inconclusive as to the cause of death, but there was other evidence pointing to the inference that death was caused by the operation. The jury found verdict of guilty. *Held*, that there is no rule that the cause of death must be proved by *post mortem* examination: *R.* v. *Garrow*, 5 B. C. R. 61.

Right of crown to cause jurors to stand aside in case of defamatory libel may be reserved: A judge may reserve though he allowed the Crown to exercise the right: *R.* v. *Patterson*, 36 U. C. R. 127.

Whether a judge had jurisdiction to summarily convict a defendant is a question of law and may be the subject of a reserved case, and a reserved case may be granted at any time however remote from date of trial if it is possible that some benefit will result to the prisoner by a decision in his favour: *R.* v. *Paquin* (1898), 2 Can. C. C. 134.

Whether a judge may take a view of the premises is a question of law that may be reserved: *R.* v. *Petrie*, 20 O. R. 317.

A challenge of the array is not a question of law that may be reserved. *R.* v. *O'Rourke*, 32 U. C. C. P. 38. Qu.: Right to have jurors stand aside a second time: *Morin* v. *R.*, 18 S. C. R. 407.

Objection to mode of empanelling a jury not a question of law: *R.* v. *Smith*, 38 U. C. R. 218, at p. 235. Nor question as to sufficiency of evidence: *R.* v. *Lloyd*, 19 O. R. 352. Nor sufficiency of indictment on motion to quash: *R.* v. *Gibson*, 16 O. R. 704.

**1015.** Appeal from Refusal to Reserve.—If the court refuses to reserve the question, the party applying may move the court of appeal as hereinafter provided.

2. Notice of Motion.—The Attorney-General or party so applying may, on notice of motion to be given to the accused or prosecutor, as the case may be, move the court of appeal for leave to appeal.

3. Decision.—The court of appeal may, upon the motion and upon considering such evidence, if any, as it thinks fit to receive, grant or refuse such leave. 63-64 V., c. 46, s. 3.

**1016.** Proceedings on Appeal Granted.—If leave to appeal is granted, a case shall be stated for the opinion of the court of appeal as if the question had been reserved.

2. Motion for Proper Sentence.—If the sentence is alleged to be one which could not by law be passed, either party may, without leave, upon giving notice of motion to the other side, move the court of appeal to pass a proper sentence.

3. By Prosecutor.—If the court has arrested judgment, and refused to pass any sentence, the prosecutor may without leave make such motion. 55-56 V., c. 29, s. 744.

**1017.** Evidence for Court of Appeal—Judge's Notes.—On any appeal or application for a new trial, the court before which the trial was had shall, if it thinks necessary or if the court of appeal so desires, send to the court of appeal a copy of the whole or of such part as may be material of the evidence or the notes taken by the judge or presiding justice at the trial.

2. Other Evidence.—The court of appeal may, if only the judge's notes are sent and it considers such notes defective, refer to such other evidence of what took place at the trial as it thinks fit.

3. Sending Back Case.—The court of appeal may, in its discretion, send back any case to the court by which it was stated to be amended or restated. 55-56 V., c. 29, s. 745.

See *R.* v. *Giles* (1894), 31 C. L. J. 33.

**1018.** Powers of Court of Appeal upon Hearing.—Upon the hearing of any appeal under the powers hereinbefore contained, the court of appeal may,—

(*a*) confirm the ruling appealed from; or,

(*b*) if of opinion that the ruling was erroneous, and that there has been a mis-trial in consequence, direct a new trial; or,

(*c*) if it considers the sentence erroneous or the arrest of judgment erroneous, pass such sentence as ought to have been passed or set aside any sentence passed by the court below, and remit the case to the court below with a direction to pass the proper sentence; or,

(*d*) if of opinion in a case in which the accused has been convicted that the ruling was erroneous, and that the accused ought to have been acquitted, direct that the accused shall be discharged, which order shall have all the effects of an acquittal, or direct a new trial; or,

(*e*) make such other order as justice requires. 55-56 V., c. 29, s. 746.

Where Court of Appeal directs a new trial, no appeal lies to Supreme Court of Canada: *R.* v. *Vian* (1898), 2 Can. C. C. 540, R. J. Q. 7 Q. B. 363, 29 S. C. R. 90.

For misdirection in murder case: *R.* v. *Brennan*, 27 O. R. 659. And for improper rejection of evidence: *R.* v. *Brown*, 21 U. C. R. 330.

**1019.** No Substantial Wrong Conviction Stands.—Proviso.—No conviction shall be set aside nor any new trial directed, although it appears that some evidence was improperly admitted or rejected, or that something not according to law was done at the trial or some misdirection given, unless, in the opinion of the court of appeal, some substantial wrong or miscarriage was thereby occasioned on the trial: Provided that if the court of appeal is of opinion that any challenge for the defence was improperly disallowed, a new trial shall be granted. 55-56 V., c. 29, s. 746.

**1020.** Only One Count Affected Sentence as to Rest.—If it appears to the court of appeal that such wrong or miscarriage affected some count only of the indictment, the court may give separate directions as to each count, and may pass sentence on any count unaffected by such wrong or

miscarriage which stands good, or may remit the case to the court below with directions to pass such sentence as justice may require.

2. Order of Court of Appeal.—The order or direction of the court of appeal shall be certified under the hand of the presiding chief justice or senior puisné judge to the proper officer of the court before which the case was tried, and such order or direction shall be carried into affect. 55-56 V., c. 29, s. 746.

**1021.** Leave to Apply for New Trial.—After the conviction of any person for any indictable offence the court before which the trial takes place may, either during the sitting or afterwards, give leave to the person convicted to apply to the court of appeal for a new trial on the ground that the verdict was against the weight of evidence.

2. May Grant New Trial.—The court of appeal may, upon hearing such motion, direct a new trial if it thinks fit.

3. Leave by Person Presiding at Sessions.—In the case of a trial before a court of general or quarter sessions such leave may be given, during or at the end of the session, by the judge or other person who presided at the trial. 55-56 V., c. 29, s. 747.

On lease—No appeal to Supreme Court: *R.* v. *Viau* (1898), 2 Can. C. C. 540, R. J. Q. 7 Q. B. 363, 29 S. C. R. 90.

Leave to appeal for new trial only granted when there is absolute failure of evidence to support conviction, and failure to challenge a hostile juror is not grounds for a new trial: *R* v. *Harris* (1898), 2 Can. C. C. 75, Q. R. 7 Q. B. 569.

Where jury failed to regard uncorroborated evidence of accused, leave to appeal refused: *R.* v. *Mallens*, Q. R. 15 K. B. 1.

**1022.** New Trial by Order of Minister of Justice.—If upon any application for the mercy of the Crown on behalf of any person convicted of an indictable offence, the Minister of Justice entertains a doubt whether such person ought to have been convicted, he may, instead of advising His Majesty to remit or commute the sentence, after such inquiry as he thinks proper, by an order in writing direct a new trial at such time and before such court as he may think proper. 55-56 V., c. 29, s. 748.

**1023.** SUSPENSION OF SENTENCE IN CASE OF APPEAL.—The sentence of a court shall not be suspended by reason of any appeal, unless the court expressly so directs, except where the sentence is that the accused suffer death or whipping.

2. SUSPENSION IN CASE OF SENTENCE OF DEATH OR WHIPPING.—The production of a certificate from the officer of the court that a question has been reserved, or that leave has been given to apply for a new trial, or of a certificate from the Minister of Justice that he has directed a new trial, shall be a sufficient warrant to suspend the execution of any sentence of death or whipping.

3. BAIL.—In all cases it shall be in the discretion of the court of appeal in directing a new trial to order the accused to be admitted to bail. 55-56 V., c. 29, s. 749.

**1024.** APPEAL TO SUPREME COURT OF CANADA—PROVISO—NONE IF COURT UNANIMOUS.—Any person convicted of any indictable offence, whose conviction has been affirmed on an appeal taken under section ten hundred and thirteen, may appeal to the Supreme Court of Canada against the affirmance of such conviction: Provided that no such appeal can be taken if the Court of Appeal is unanimous in affirming the conviction, nor unless notice of appeal in writing has been served on the Attorney-General within fifteen days after such affirmance or such further time as may be allowed by the Supreme Court of Canada or a judge thereof.

2. ORDER OF SUPREME COURT OF CANADA.—The Supreme Court of Canada shall make such rule or order thereon, either in affirmance of the conviction or for granting a new trial, or otherwise, or for granting or refusing such application, as the justice of the case requires, and shall make all other necessary rules and orders for carrying such rule or order into effect.

3. HEARING OF APPEAL—ABANDONMENT.—Unless such appeal is brought on for hearing by the appellant at the session of the Supreme Court during which such affirmance takes place, or the session next thereafter if the said court is not then in session, the appeal shall be held to have been abandoned, unless otherwise ordered by the Supreme Court or a judge thereof.

4. JUDGMENT FINAL.—The judgment of the Supreme Court shall, in all cases, be final and conclusive. 55-56 V., c. 29, s. 750.

No appeal from order for new trial: *R.* v. *Viau* (1898), 2 Can. C. C. 540, R. J. Q. 7 Q. B. 363, 29 S. C. R. 90.
See *Amer* v. *R.*, 2 S. C. R. 592; *it.* v. *Cunningham*, Cass. Dig. 107.
Reserved case moved for on two grounds—Court of Appeal refused with dissent as to one ground only—No appeal to Supreme Court as to the other ground: *R.* v. *McIntosh*, 2 Can. C. C. 114, 28 O. R. 603, 17 Occ. N. 407, 23 S. C. R. 198.

**1025.** APPEALS TO PRIVY COUNCIL ABOLISHED.—Notwithstanding any royal prerogative, or anything contained in the Interpretation Act or in the Supreme Court Act, no appeal shall be brought in any criminal case from any judgment or order of any court in Canada to any court of appeal or authority, by which in the United Kingdom appeals or petitions to His Majesty in Council may be heard. 55-56 V., c. 29, s. 751.

## PART XX.

### PUNISHMENTS, FINES, FORFEITURES, COSTS, AND RESTITUTION OF PROPERTY.

*Interpretation.*

**1026.** DEFINITION 'COURT' IN SS. 1081, 1082 AND 1083.—In the sections of this Part relating to suspended sentences, unless the context otherwise requires, 'court' means and includes any superior court of criminal jurisdiction, any judge or court within the meaning of Part XVIII, and any magistrate within the meaning of Part XVI. 55-56 V., c. 29, s. 974.

*Punishment Generally.*

**1027.** PUNISHMENT ONLY AFTER CONVICTION.—Whenever a person doing a certain act is declared to be guilty of any offence, and to be liable to punishment therefor, it shall be understood that such person shall only be deemed guilty of such offence and liable to such punishment after being duly convicted of such act. 55-56 V., c. 29, s. 931.

**1028.** Degrees in Punishment—Discretion.—Whenever it is provided that the offender shall be liable to different degrees or kinds of punishment, the punishment to be inflicted shall, subject to the limitations contained in the enactment, be in the discretion of the court or tribunal before which the conviction takes place. 55-56 V., c. 29, s. 932.

Where a statute of Canada imposes both a fine and imprisonment, the punishment is in discretion of the Court, and it is not bound to inflict both, but, may inflict either, or both: *Brabant* v. *Robidoux* (1898) R. J. Q. 7 Q. B. 527.

**1029.** Fine or Penalty in Discretion of Court.—Whenever a fine may be awarded or a penalty imposed for any offence, the amount of such fine or penalty shall, within such limits, if any, as are prescribed in that behalf, be in the discretion of the court or person passing sentence or convicting, as the case may be. 55-56 V., c. 29, s. 934.

Where a corporation is convicted under s. 284, the punishment in lieu of imprisonment is a fine under s. 920, and the amount of which is in the discretion of the Court: *R.* v. *Union Colliery Co.* (1900) 3 Can. C. C. 523. Affirmed in 31 S. C. R. 81.

*Punishments Abolished.*

**1030.** Outlawry.—Outlawry in criminal cases is abolished. 55-56 V., c. 29, s. 962.

**1031.** Solitary Confinement or Pillory.—The punishment of solitary confinement or of the pillory shall not be awarded by any court. 55-56 V., c. 29, s. 963.

**1032.** Deodand.—There shall be no forfeiture of any chattels, which have moved to or caused the death of any human being, in respect of such death. 55-56 V., c. 29, s. 964.

**1033.** Attainder—Penalty—Forfeiture.—No confession, verdict, inquest, conviction or judgment of or for any treason or indictable offence or *felo de se* shall cause any attainder or corruption of blood, or any forfeiture or escheat: Provided that nothing in this section shall affect any penalty or fine imposed on any person by virtue of his sentence, or any forfeiture in relation to which special provision is made by any Act of the Parliament of Canada. 55-56 V., c. 29, s. 965.

*Disabilities.*

**1034.** Conviction of Public Official Vacates Office.—If any person hereafter convicted of treason or any indictable offence for which he is sentenced to death, or imprisonment for a term exceeding five years, holds at the time of such conviction any office under the Crown or other public employment, or is entitled to any pension or superannuation allowance payable by the public, or out of any public fund, such office or employment shall forthwith become vacant, and such pension or superannuation allowance or emolument shall forthwith determine and cease to be payable, unless such person receives a free pardon from His Majesty, within two months after such conviction, or before the filling up of such office or employment, if given at a later period.

2. Official Incompetent until Punishment Undergone or Pardon.—Every such person sentenced to imprisonment as aforesaid or on whom sentence of death has been passed which has been commuted to imprisonment, shall become, and, until he undergoes the imprisonment aforesaid or suffers such other punishment as by competent authority is substituted for the same, or receives a free pardon from His Majesty, shall continue incapable of holding any office under the Crown, or other public employment, or of being elected, or sitting, or voting, as a member of either House of Parliament, or of exercising any right of suffrage or other parliamentary or municipal franchise.

3. Removing Disability.—The setting aside of a conviction by competent authority shall remove the disability by this section imposed. 55-56 V., c .29, s. 961.

*Fines and Forfeitures.*

**1035.** Fines in Lieu of other Punishment.—Any person convicted by any magistrate under Part XVI. or by any court of an indictable offence punishable with imprisonment for five years or less, may be fined in addition to, or in lieu of, any punishment otherwise authorized, in which case the sentence may direct that in default of payment of his fine the person so convicted shall be imprisoned until such fine is paid, or for a period not exceeding five years, to commence

at the end of the term of imprisonment awarded by the sentence, or forthwith as the case may require.

2. FINES IN ADDITION TO OTHER PUNISHMENT.—Any person convicted of an indictable offence punishable with imprisonment for more than five years may be fined in addition to, but not in lieu of, any punishment otherwise ordered, and in such case, also, the sentence may in like manner direct imprisonment in default of payment of any fine imposed. 63-64 V., c. 46, s. 3.

**1036.** FINES, PENALTIES AND FORFEITURES GO TO PROVINCIAL TREASURER.—Whenever no other provision is made by any law of Canada for the application of any fine, penalty or forfeiture imposed for the violation of any law or of the proceeds of an estreated recognizance, the same shall be paid over by the magistrate or officer receiving the same to the treasurer of the province in which the same is imposed or recovered, to be by him paid over to the municipal or local authority, if any, which wholly or in part bears the expenses of administering the law under which the same was imposed or recovered, or to be applied in any other manner deemed best adapted to attain the objects of such law and secure its due administration, except that,—

(*a*) EXCEPTION, REVENUE LAWS, ETC.—All fines, penalties and forfeitures imposed in respect of the breach of any of the revenue laws of Canada, or imposed upon any officer or employee of the Government of Canada in respect of any breach of duty or malfeasance in his office or employment, and the proceeds of all recognizances estreated in connection with proceedings for the prosecution of persons charged with such breaches or malfeasance; and,

(*b*) WHERE COSTS OF PROSECUTION BORNE BY CANADA.—all fines, penalties and forfeitures imposed for whatever cause in any proceeding instituted at the instance of the Government of Canada or of any department thereof in which that Government bears the cost of prosecution, and the proceeds of all recognizances estreated in connection with such proceedings, shall belong to His Majesty for the public uses of Canada, and

shall be paid by the magistrate or officer receiving the same to the Minister of Finance and form part of the Consolidated Revenue Fund of Canada.

2. Right of Private Prosecutor.—Nothing in this section contained shall effect any right of a private person suing as well for His Majesty as for himself, to the moiety of any fine, penalty or forfeiture recovered in his suit. 63-64 V., c. 46, s. 3.

**1037.** Direction to Pay Fine, Penalty or Forfeiture to Municipality.—The Governor in Council may, from time to time, direct that any fine, penalty or forfeiture, or any portion thereof, which would otherwise belong to the Crown for the public uses of Canada, be paid to any provincial, municipal or local authority, which wholly or in part bears the expenses of administering the law under which such fine, penalty or forfeiture is imposed, or that the same be applied in any other manner deemed best adapted to attain the objects of such law and to secure its due administration. 55-56 V., c. 29, s. 928.

See *In re Baker* (1899), 20 Occ. N. 16.

**1038.** Recovering by Civil Action when no Other Provision.—Whenever any pecuniary penalty or any forfeiture is imposed for any violation of any Act, and no other mode is prescribed for the recovery thereof, such penalty or forfeiture shall be recoverable or enforceable, with costs, in the discretion of the court, by civil action or proceeding at the suit of His Majesty only, or of any private party suing as well for His Majesty as for himself in any form of action allowed in such case by the law of the province in which it is brought, and before any court having jurisdiction, to the amount of the penalty in cases of simple contract.

2. Moiety to Private Party when no Other Provision.—If no other provision is made for the appropriation of any penalty or forfeiture so recovered or enforced, one moiety shall belong to His Majesty, and the other moiety shall belong to the private party suing for the same, if any, and if there is none, the whole shall belong to His Majesty. 55-56 V., c. 29, s. 929.

**1039.** Goods Forfeited Under Part VII.—Reimbursement of Innocent Party.—Any goods or things forfeited under any provision of Part VII. relating to forgery of trade marks and the fraudulent marking of merchandise, may be destroyed or otherwise disposed of in such manner as the court by which the same are declared forfeited, directs; and the court may, out of any proceeds realized by the disposition of such goods, after all trade marks and trade descriptions are obliterated, award to any innocent party any loss he may have innocently sustained in dealing with such goods. 51 V., c. 41, s. 15.

**1040.** Costs in Such Prosecutions.—On any prosecution under this Act relating to the said last mentioned provisions, the court may order costs to be paid to the defendant by the prosecutor, or to the prosecutor by the defendant, having regard to the information given by and the conduct of the defendant and prosecutor respectively. 51 V., c. 41, s. 16.

**1041.** Application of Fines in Relation to Coin.—A moiety of any of the penalties imposed under sections five hundred and sixty-seven, six hundred and twenty-four, six hundred and twenty-five and six hundred and twenty-six, shall belong to the informer or person who sues for the same, and the other moiety shall belong to His Majesty for the public uses of Canada. R.S. c. 167, s. 34.

**1042.** Application of Fines in Relation to Deserters or their Effects.—One moiety of the amount of any penalty recovered under sections eighty-two, eighty-three, four hundred and thirty-eight, four hundred and thirty-nine or six hundred and fifty-seven, 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. R.S., c. 169, s. 9.

**1043.** Application of Fines in Relation to Cruelty to Animals.—One moiety of every pecuniary penalty recovered with respect to any offence under section five hundred and forty-two or five hundred and forty-three shall be

paid over 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 the justice seems proper. R.S. c. 172, s. 7.

*Costs, Pecuniary Compensation and Restitution of Property.*

**1044.** Costs and Expenses of Prosecution may be Ordered to be Paid by Party Convicted.—Any court by which and any judge under Part XVIII., or magistrate under Part XVI., by whom judgment is pronounced or recorded, upon the conviction of any person for treason or any indictable offence, in addition to such sentence as may otherwise by law be passed, may condemn such person to the payment of the whole or any part of the costs or expenses incurred in and about the prosecution and conviction for the offence of which he is convicted, if to such court or judge it seems fit so to do.

2. Also Allowance for Loss of Time.—Such court or judge may include in the amount to be paid such moderate allowance for loss of time as the court or judge, by affidavits or other inquiry and examination, ascertains to be reasonable.

3. Source from which Payment Obtained.—The payment of such costs and expenses, or any part thereof, may be ordered by the court or judge to be made out of any moneys taken from such person on his apprehension, if such moneys are his own, or may be enforced at the instance of any person liable to pay or who has paid the same in such and the same manner, subject to the provisions of this Act, as the payment of any costs ordered to be paid by the judgment or order of any court of competent jurisdiction in any civil action or proceeding may for the time being be enforced.

4. Payable from Official Fund—Reimbursement.—In the meantime, until the recovery of such costs and expenses from the person so convicted as aforesaid, or from his estate, the same shall be paid and provided for in the same manner as if this section had not been passed; and any money which is recovered in respect thereof from the person so con-

victed, or from his estate, shall be applicable to the reimbursement of any person or fund by whom or out of which such costs and expenses have been paid or defrayed. 63-64 V., c. 46, s. 3.

**1045.** Defendant Recovers Costs in Case of Libel.—In case of an indictment or information by a private prosecutor for the publication of a defamatory libel, if judgment is given for the defendant, he shall be entitled to recover from the prosecutor the costs incurred by him by reason of such indictment or information, either by warrant of distress issued out of the said court, or by action or suit as for an ordinary debt. 55-56 V., c. 29, s. 833.

See section 334.

*Nolle prosequi* entered by Attorney-General is a judgment for defendant who may recover costs from private prosecutor: *R.* v. *Blackley*, Q. R. 13 K. B. 472.

**1046.** Imprisonment in Default of Payment of Costs on Conviction for Assault.—If a person convicted on an indictment for assault, whether with or without battery and wounding, is ordered to pay costs as aforesaid, he shall be liable, unless the said costs are sooner paid, to three months' imprisonment, in addition to the terms of imprisonment, if any, to which he is sentenced for the offence, and the court may, by warrant in writing, order the amount of such costs to be levied by distress and sale of the goods and chattels of the offender, and paid to the prosecutor, and the surplus, if any, arising from such sale, to the owner.

2. Release on Levy.—If such sum is so levied, the offender shall be released from such imprisonment. 55-56 V., c. 29, s. 834.

**1047.** Taxation of Costs on Lowest Scale.—Any costs ordered to be paid by a court pursuant to the foregoing provisions shall, in case there is no tariff of fees provided with respect to criminal proceedings, be taxed by the proper officer of the court according to the lowest scale of fees allowed in such court in a civil suit.

2. Scale in Civil Suits.—If such court has no civil jurisdiction, the fees shall be those allowed in civil suits in a superior court of the province according to the lowest scale. 55-56 V., c. 29, s. 835.

This section is in conformity with the remarks of the judges in *R.* v. *Roberts*, 12 Cox C. C. 574.

The Imperial Act is 30 & 31 V. c. 35, s. 9. The Imperial Act does not expressly provide for the case of goods obtained by false pretenses. The section provides for the case of a *sale* only of the stolen property: see *R.* v. *Stancliffe*, 11 Cox C. C. 318.

See *R.* v. *St. Louis* (1897), R. J. Q. 6 Q. B. 389.

**1048.** COMPENSATION FOR LOSS OF PROPERTY.—A court on the trial of any person on an indictment may, if it thinks fit, upon the application of any person aggrieved and immediately after the conviction of the offender, award any sum of money, not exceeding one thousand dollars, by way of satisfaction or compensation for any loss of property suffered by the applicant through or by means of the offence of which such person is so convicted.

2. AWARD AND JUDGMENT.—The amount awarded for such satisfaction or compensation shall be deemed a judgment debt due to the person entitled to receive the same from the person so convicted, and the order for payment of such amount may be enforced in such and the same manner as in the case of any costs aforesaid ordered by the court to be paid. 55-56 V., c. 29, s. 836.

"Property" defined, s. 2, s.-s. 32.

This section is new. It enables any person aggrieved to get a judgment from the Court, without a jury, for any amount up to one thousand dollars against the party convicted, even where that Court has no jurisdiction in civil matters.

"The discretionary power given by this section is far more extensive than the power conferred by 24 & 25 V. c. 96, s. 100 (s. 1050, *post*), and if it is exercised in every case to which it may in strictness be applicable, will compel a criminal court at the close of many trials for felony to enter upon complicated inquiries involving the expenditure of a large amount of time and labour."

"It is probable, however, that criminal courts will decline to exercise the powers thus conferred upon them except in very simple cases, and will, in the majority of instances, leave the applicant to enforce his rights by the ordinary civil procedure."

"In the case of serious personal injuries, caused by a felonious act, no compensation could be awarded under this section in respect of the personal injuries. And even where the personal injuries, caused by the felonious act, had incapacitated the prosecutor from earning his livelihood, it would seem that this would not be such a loss of property as would form the subject of compensation under this section." Archbold.

**1049.** COMPENSATION TO BONA FIDE PURCHASERS OF STOLEN PROPERTY.—When any prisoner has been convicted, either summarily or otherwise, of any theft or other offence, including the stealing or unlawfully obtaining any property,

and it appears to the court, by the evidence, that the prisoner sold such property or part of it to any person who had no knowledge that it was stolen or unlawfully obtained, and that money has been taken from the prisoner on his apprehension, the court may, on application of such purchaser and on restitution of the property to its owner, order that out of the money so taken from the prisoner, if it is his, a sum not exceeding the amount of the proceeds of the sale be delivered to such purchaser. 55-56 V., c. 29, s. 837.

**1050.** RESTITUTION OF STOLEN PROPERTY.—If any person who is guilty of an indictable offence in stealing, or knowingly receiving, any property, is indicted for such offence, by or on behalf of the owner of the property, or his executor or administrator, and convicted thereof, or is tried before a judge or justice for such offence under any of the foregoing provisions and convicted thereof, the property shall be restored to the owner or his representative.

2. WRITS OF RESTITUTION.—In every such case the court or tribunal before which such person is tried for any such offence, shall have power to award, from time to time, writs of restitution for the said property or to order the restitution thereof in a summary manner.

3. RESTITUTION ALTHOUGH NO CONVICTION.—The court or tribunal may also, if it sees fit, award restitution of the property taken from the prosecutor, or any witness for the prosecution, by such offence, although the person indicted is not convicted thereof, if the jury declares, as it may do, or if, in case the offender is tried without a jury, it is proved to the satisfaction of the court or tribunal by whom he is tried, that such property belongs to such prosecutor or witness, and that he was unlawfully deprived of it by such offence.

4. RESTITUTION NOT ORDERED IN CASE OF VALUABLE SECURITY WHEN RIGHTS OF THIRD PARTIES INTERVENE.—If it appears before any award or order is made, that any valuable security has been *bona fide* paid or discharged by any person liable to the payment thereof, or being a negotiable instrument, has been *bona fide* taken or received by transfer or delivery, by any person, for a just and valuable consideration, without any notice or without any reasonable cause to suspect that the same had, by any indictable offence, been

stolen, or if it appears that the property stolen has been transferred to an innocent purchaser for value who has acquired a lawful title thereto, the court or tribunal shall not award or order the restitution of such security or property.

5. SAVING.—Nothing in this section contained shall apply to the case of any prosecution of any trustee, banker, merchant, attorney, factor, broker or other agent entrusted with the possession of goods or documents of title to goods, for any indictable offence under sections three hundred and fifty-eight or three hundred and ninety of this Act. 55-56 V., c. 29, s. 838; 56 V., c. 32, s. 1.

Sections 796 and 817 also provide for restitution of stolen property in certain cases.

The prisoners were convicted of feloniously stealing certain property. The judge 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: *R. v. Pierce*, Bell C. C. 235; *R. v. Corporation of London*, E. B. & E. 509.

The case of *Walker v. Mayor of London*, 11 Cox C. C. 280, has no application in Canada. In *R. v. Stancliffe*, 11 Cox C. C. 318, it was held that the repealed section applied to cases of false pretences as well as felony, and that the fact that the prsoner parted with the goods to a *bona fide* pawnee did not disentitle the original owner to the restitution of the goods: see 2 Russ. 355.

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: *R. v. Smith*, 12 Cox C. C. 597.

It was held, on this clause: *R. v. Atkin*, 18 L. C. J. 213; 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: see *R. v. Macklin*, 5 Cox C. C. 216.

Restitution can be ordered to the owner only: *R. v. Jones*, 14 Cox C. C. 528.

See 1 Hale, 543; 4 Blacks. 363.

A. Blenkarn took premises at 37 Wood street, and wrote to the plaintiffs at Belfast ordering goods of them. The letters were dated 37 Wood street, and signed A. Blenkarn & Co.," there being an old established firm of Blenkiron & Sons at 123 Wood street. One of the plaintiffs knew something of that firm, and the plaintiffs entered into a correspondence with Blenkarn, and ultimately supplied the goods ordered, addressing them to "A. Blenkiron & Co., 37 Wood street.

The fraud having been discovered, Blenkarn was indicted and convicted for obtaining goods by falsely pretending that he was Blenkiron & Sons.

Before the conviction, the defendant had purchased some of the goods *bona fide* of Blenkarn without notice of the fraud, and resold them to other persons. The plaintiffs having brought an action for the conversion of the goods: *Held*, that the plaintiffs intended to deal with Blenkiron & Sons, and therefore there was no contract with Blenkarn; that the property of the goods never passed from the

plaintiffs; and that they were accordingly entitled to recover in the action: *Lindsay* v. *Cundy*, 13 Cox C. C. 583, 2 Q. B. D. 96, 3 A. C. 459.

The plaintiff had stolen money of the defendant, and had been prosecuted for it but acquitted on a technical ground. The plaintiff had, previously to the prosecution, converted the money into goods, which were now in the possession of the defendant as being the proceeds of the money stolen from him by the plaintiff. The plaintiff brought an action to claim the said goods. *Held*, that he had no right of action: *Cattley* v. *Loundes*, 34 W. R. 139.

A thief's money in the hands of the police after his conviction is not a debt of the police to the thief, and cannot be attached under garnishee proceedings: *Rice* v. *Jarvis*, 49 J. P. 264.

Under this section the court can order the restitution of the proceeds of the goods as well as of the goods themselves, if such proceeds are in the hands of the criminal or of an agent who holds them for him: *R.* v. *Justices*, 16 Cox C. C. 143, 196.

A man was convicted of stealing cattle, which he had sold since in market overt and had been resold immediately also in market overt, the purchasers being in good faith. Restitution ordered to the person from whom they had been stolen: *R.* v. *Horan*, 6 Ir. R. C. L. 263; but see now s.-s. 3 of above section.

M. was indicted for stealing $95 in bank notes and acquitted. He applied to have $37 in notes, found on his person when arrested, returned to him, which the prosecutor resisted. The statute of P. E. I., 6 Wm. IV, c. 22, s. 38, enacts that "when a prisoner is not convicted the court may, if it sees fit, order restitution of the property where it clearly appears to have been stolen from the owner. When arrested prisoner had the money sewed up in his trousers and among the notes was a $5 note, bank of N. B., $5 note, bank of Halifax, and a $5 note, bank of Montreal. Prisoner said he put the money there to hide it from the police. Prosecutor had sworn that he had carefully counted the money before the robbery, and that it included a $5 bank of N. B. note, and a $5 bank of Halifax note.

*Held*, that the evidence was not sufficient to identify the notes as the prosecutor's, and the application must be granted: *R.* v. *McIntyre*, 2 P. E. I. Rep. 154.

## *Imprisonment.*

**1051.** OFFENCES NOT CAPITAL, HOW PUNISHED. — Every one who is convicted of any offence not punishable with death, shall be punished in the manner, if any, prescribed by the statute especially relating to such offence. 55-56 V., c. 29, s. 950.

**1052.** WHEN NO PROVISION — INDICTABLE OFFENCE.— Every person convicted of any indictable offence for which no punishment is specially provided, shall be liable to imprisonment for five years.

2, SUMMARY CONVICTION.—Every one who is summarily convicted of any offence for which no punishment is specially provided, shall be liable to a penalty not exceeding fifty dollars, or to imprisonment, with or without hard labour, for a term not exceeding six months, or to both. 55-56 V., c. 29, s. 951; 56 V., c. 32, s. 1.

**1053.** Punishment for Second Offence. — Every one who is convicted of an indictable offence not punishable with death, committed after a previous conviction for an indictable offence, is liable to imprisonment for ten years, unless some other punishment is directed by any statute for the particular offence.

2. Fixed by Statute.—In such latter case the offender shall be liable to the punishment directed, and not to any other. 55-56 V., c. 29, s. 952.

**1054.** Maximum Term Shortened—Minimum Term.—Every one who is liable to imprisonment for life, or for any term of years, or other term, may be sentenced to imprisonment for any shorter term: Provided that no one shall be sentenced to any shorter term of imprisonment than the minimum term, if any, prescribed for the offence of which he is convicted. 55-56 V., c. 29, s. 953.

**1055.** Cumulative Punishments.—When an offender is convicted of more offences than one, before the same court or person at the same sitting, or when any offender, under sentence or undergoing punishment for one offence, is convicted of any other offence, the court or person passing sentence may, on the last conviction, direct that the sentences passed upon the offender for his several offences shall take effect one after another. 55-56 V., c. 29, s. 954.

**1056.** Imprisonment Less than Two Years, in Gaol, etc.—Proviso.—Every one who is sentenced to imprisonment for a term less than two years shall, if no other place is expressly mentioned, be sentenced to imprisonment in the common gaol of the district, county or place in which the sentence is pronounced, or if there is no common gaol there, then in that common gaol which is nearest to such locality, or in some lawful prison or place of confinement, other than a penitentiary, in which the sentence of imprisonment may be lawfully executed: Provided that,—

(*a*) Where other Sentence at same Sittings, to Penitentiary—when any one is sentenced to imprisonment in a penitentiary, and at the same sittings or term of the court trying him is sentenced for one or

more other offences to a term or terms of imprisonment less than two years each, he may be sentenced for such shorter terms to imprisonment in the same penitentiary, such sentences to take effect from the termination of his other sentence; and,

(*b*) OR IF TERM IN PENITENTIARY RUNNING—when any one is sentenced for any offence who is, at the date of such sentence, serving a term of imprisonment in a penitentiary for another offence, he may be sentenced for a term shorter than two years to imprisonment in the same penitentiary, such sentence to take effect from the termination of his existing sentence or sentences;

(*c*) IN MANITOBA, TO ANY COMMON GAOL—in the province of Manitoba, any one sentenced to imprisonment for a term less than two years may be sentenced to imprisonment in any one of the common gaols in that province unless a special prison is provided by law. 55-56 V., c. 29, s. 955; 63-64 V., c. 46, s. 3; 1 E. VII., c. 42, s. 2.

**1057.** IMPRISONMENT WITH OR WITHOUT HARD LABOUR.—Imprisonment in a common gaol, or a public prison, other than a penitentiary or the Central Prison for the province of Ontario, the Andrew Mercer Ontario Reformatory for females of any reformatory prison for females in the province of Quebec, shall be with or without hard labour, in the discretion of the court or person passing sentence, if the offender is convicted on indictment, or under the provisions of Parts XVI. or XVIII., or, in the province of Saskatchewan or Alberta, before a judge of a superior court, or in the Northwest Territories, before a stipendiary magistrate or in the Yukon Territory, before a judge of the Territorial Court.

2. HARD LABOUR PART OF PUNISHMENT.—In other cases such imprisonment may be with hard labour, if hard labour is part of the punishment for the offence of which such offender is convicted, and if such imprisonment is to be with hard labour, the sentence shall so direct. 55-56 V., c. 29, s. 955.

Imprisonment with hard labour may be imposed, in default of payment of a fine and costs upon a summary trial of an indictable offence: *R.* v. *Burtress* (1900), 3 Can. C. C. 536.

*Provisions as to Sureties.*

**1058.** PERSONS CONVICTED MAY BE BOUND OVER TO KEEP THE PEACE — COMMITTAL IN DEFAULT.—Every magistrate under Part XVI. and every court of criminal jurisdiction before whom any person is convicted of an offence and is not sentenced to death, shall have power, in addition to any sentence imposed upon such person, to require him forthwith to enter into his own recognizances, or to give security to keep the peace, and be of good behaviour for any term not exceeding two years, and that such person in default shall be imprisoned for not more than one year after the expiry of his imprisonment under his sentence, or until such recognizances are sooner entered into or such security sooner given.

2. Any such recognizance may be in form 49. 63-64 V., c. 46, s. 3.

The accused was sentenced to three months imprisonment on a charge of larceny. It was contended upon return of a writ of *habeas corpus* that the sentence was imprisonment only in default of payment of an imposed fine for which there was no authority. Held, not tenable under this section. *R.* v. *Mooney* (1898), 19 Occ. N. 17.

The accused was convicted of assaulting a police officer and was sentenced to one month in gaol and a fine of $50. Argued s. 238 covered the case and above penalty could not be imposed. *Held*, this section gave power so to do: *Ex parte McClements* (1895), 32 C. L. J. 39. See also *R.* v. *Great West Laundry Co.* (1900), 3 Can. C. C. 514.

FORM 49.

(Section 1058.)

FORM OF RECOGNIZANCE TO KEEP THE PEACE.

Canada, )
Province of , )
County of , )

Be it remembered that on the day of , in the year , A. B. of , *(labourer)*, L. M. of , *(grocer)*, and N. O. of , *(butcher)*, personally came before *(us)*, the undersigned, *(two)* justices of the peace for the county of , and severally acknowledged themselves to owe to our Lord the King the several sums following, that is to say: the said A. B. the sum of , and the said L. M. and N. O. the sum of , each, of good and lawful money of Canada, to be made and levied of their goods and chattels, lands and tenements respectively, to the use of our said Lord the King, his heirs and successors, if he, the said A. B. fails in the condition endorsed (*or* hereunder written).

Taken and acknowledged the day and year first above mentioned, at , before us,

J. S.,
J. T.,
J. P., (*Name of county.*)

The condition of the within (or above) written recognizance is such that if the within bound A. B. (of, etc.), keeps the peace and is of good behaviour towards His Majesty and his liege people, and specially towards C. D. (of, etc.), for the term of now next ensuing, then the said recognizance to be void, otherwise to stand in full force and virtue.

55-56 V. c. 29, sch. 1, form XXX.

**1059.** PROCEEDINGS WHEN PARTY REMAINS IN PRISON FOR TWO WEEKS.—Whenever any person who has been required to enter into a recognizance with sureties, to keep the peace and be of good behaviour, or not to engage in any prize-fight, has, on account of his default therein, remained imprisoned for two weeks, the sheriff, gaoler or warden shall give notice, in writing, of the facts, to a judge of a superior court, or to a judge of the county court of the county or district in which such gaol or prison is situate, or, in the cities of Montreal and Quebec, to a judge of the sessions of the peace for the district, or, in the Northwest Territories, to a stipendiary magistrate.

2. PROCEDURE WHEN BROUGHT UP.—Such judge or magistrate may order the discharge of such person, thereupon or at a subsequent time, upon notice to the complaint or otherwise, or may make such other order as he sees fit, respecting the number of sureties, the sum in which they are to be bound and the length of time for which such person may be bound. 55-56 V., c. 29, s. 960.

*Whipping.*

**1060.** SENTENCE OF PUNISHMENT BY WHIPPING.—Whenever whipping may be awarded for any offence, the court may sentence the offender to be once, twice or thrice whipped, within the limits of the prison, under the supervision of the medical officer of the prison, or if there be no such officer, or if the medical officer be for any reason unable to be present, then, under the supervision of a surgeon or physician to be named by the Minister of Justice, in the case of prisons under the control of the Dominion, and in the case of other prisons by the attorney-general of the province in which such prison is situated.

2. NUMBER OF STROKES—INSTRUMENT.—The number of strokes shall be specified in the sentence; and the instrument

to be used for whipping shall be a cat-o'-nine-tails unless some other instrument is specified in the sentence.

3. When Whipping to Take Place.—Whenever practicable, every whipping shall take place not less than ten days before the expiration of any term of imprisonment to which the offender is sentenced for the offence.

4. Not on Female.—Whipping shall not be inflicted on any female. 63-64 V., c. 46, s. 3.

*Capital Punishment.*

**1061.** Punishment to be the same on Conviction by Verdict or by Confession.—Every one who is indicted as principal or accessory for any offence made capital by any statute, shall be liable to the same punishment, whether he is convicted by verdict or on confession, and this as well in the case of accessories as of principals. 55-56 V., c. 29, s. 935.

**1062.** Form of Sentence of Death.—In all cases where an offender is sentenced to death, the sentence or judgment to be pronounced against him shall be that he be hanged by the neck until he is dead. 55-56 V., c. 29, s. 936.

A judgment may be altered at any time during the assizes; and a reprieve may be granted or taken off by a judge, although the session may be adjourned or finished, and this, by reason of common usage: 2 Hale, 412; Dyer, 205.

**1063.** Sentence of Death to be Reported to Secretary of State.—In the case of any prisoner sentenced to the punishment of death, the judge before whom such prisoner has been convicted shall forthwith make a report of the case to the Secretary of State, for the information of the Governor-General; and the day to be appointed for carrying the sentence into execution shall be such as, in the opinion of the judge, will allow sufficient time for the signification of the Governor's pleasure before such day.

2. Judge may Grant Reprieve in Certain Cases.—If the judge thinks such prisoner ought to be recommended for the exercise of the royal mercy, or if, from the non-decision of any point of law reserved in the case, or from any other cause, it becomes necessary to delay the execution, he, or any other judge of the same court, or any judge who might have

held or sat in such court, may, from time to time, either in term or in vacation, reprieve such offender for such period or periods beyond the time fixed for the execution of the sentence as are necessary for any of the purposes aforesaid. 55-56 V., c. 29, s. 937.

**1064.** PRISONER UNDER SENTENCE OF DEATH TO BE CONFINED APART.—Every one who is sentenced to suffer death shall, after judgment, be confined in some safe place within the prison, apart from all other prisoners; and no person except the gaoler and his servants, the medical officer or surgeon of the prison and a chaplain or a minister of religion, shall have access to any such convict, without permission, in writing, of the court or judge before whom such convict has been tried, or of the sheriff. 55-56 V., c. 29, s. 938.

**1065.** PLACE OF EXECUTION.—Judgment of death to be executed on any prisoner shall be carried into effect within the walls of the prison in which the offender is confined at the time of execution. 55-56 V., c. 29, s. 939.

**1066.** PERSONS WHO SHALL BE PRESENT AT EXECUTION.—The sheriff charged with the execution, and the gaoler and medical officer or surgeon of the prison, and such other officers of the prison and such persons as the sheriff requires, shall be present at the execution. 55-56 V., c. 29, s. 940.

**1067.** PERSONS WHO MAY BE PRESENT AT EXECUTION.—Any justice for the district, county or place to which the prison belongs, and such relatives of the prisoner or other persons as it seems to the sheriff proper to admit within the prison for the purpose, and any minister of religion who desires to attend, may also be present at the execution. 55-56 V., c. 29, s. 941.

**1068.** CERTIFICATE OF DEATH BY SURGEON.—As soon as may be after judgment of death has been executed on the offender, the medical officer or surgeon of the prison shall examine the body of the offender, and shall ascertain the fact of death, and shall sign a certificate thereof, in form 71, and deliver the same to the sheriff.

2. DECLARATION BY SHERIFF AND GAOLER.—The sheriff and the gaoler of the prison, and such justices and other persons present, if any, as the sheriff requires or allows, shall also sign a declaration in form 72 to the effect that judgment of death has been executed upon the offender. 55-56 V., c. 29, s. 942.

As to a false certificate of execution, see s. 184.

FORM 71.

(Section 1068.)

CERTIFICATE OF EXECUTION OF JUDGMENT OF DEATH.

I, A. B., surgeon (*or as the case may be*) of the (*describe the prison*), hereby certify that I, this day, examined the body of C. D. on whom judgment of death was this day executed in the said prison; and that on such examination I found that the said C. D. was dead.

(Signed), A. B.

Dated this day of , in the year .

55-56 V., c. 29, sch. 1, form UUU.

FORM 72.

(Section 1068.)

A DECLARATION OF SHERIFF AND OTHERS.

We, the undersigned, hereby declare that judgment of death was this day executed on C. D., in the (*describe the prison*) in our presence.

Dated this day of , in the year .

E. F., Sheriff of
I., M., Justice of the Peace for .
G. H., Gaoler of .
etc., etc.

55-56 V., c. 29, sch. 1, form VVV.

**1069.** DEPUTIES MAY ACT.—The duties imposed upon the sheriff, gaoler, medical officer or surgeon by the three sections last preceding, may be, and, in his absence, shall be performed by his lawful deputy or assistant, or other officer or person ordinarily acting for him, or conjointly with him, or discharging the duties of any such officer. 63-64 V., c. 46, s. 3.

**1070.** INQUEST.—A coroner of a district, county or place to which the prison belongs wherein judgment of death is executed on any offender shall, within twenty-four hours after the execution, hold an inquest on the body of the offender.

2. IDENTITY AND DEATH.—The jury at the inquest shall inquire into and ascertain the identity of the body, and whether judgment of death was duly executed on the offender.

3. IN DUPLICATE.—The inquisition shall be in duplicate, and one of the originals shall be delivered to the sheriff.

4. JURORS.—No officer of the prison and no prisoner confined therein shall, in any case, be a juror on the inquest. 55-56 V., c. 29, s. 944.

**1071.** PLACE OF BURIAL.—The body of every offender executed shall be buried within the walls of the prison within which judgment of death is executed on him, unless the Lieutenant-Governor in Council orders otherwise. 55-56 V., c. 29, s. 945.

**1072.** CERTIFICATE TO BE SENT TO SECRETARY OF STATE AND EXHIBITED AT PRISON.—Every certificate and declaration, and a duplicate of the inquest required by this Part, shall in every case be sent with all convenient speed by the sheriff to the Secretary of State, or to such other officer as is, from time to time, appointed for the purpose by the Governor in Council.

2. COPIES EXHIBITED IN PRISON.—Printed copies of such several instruments shall, as soon as possible, be exhibited and shall, for twenty-four hours at least, be kept exhibited on or near the principal entrance of the prison within which judgment of death has been executed. 55-56 V., c. 29, s. 946.

As to a false certificate, see s. 184.

**1073.** OMISSION NOT TO MAKE EXECUTION ILLEGAL.—The omission to comply with any provision of the preceding sections of this Part shall not make the execution of judgment of death illegal in any case in which such execution would otherwise have been legal. 55-56 V., c. 29, s. 947.

**1074.** FORMS OF PROCEDURE IN OTHER RESPECTS.—Except in so far as is hereby otherwise provided, judgment of death shall be carried into effect in the same manner as if the above provisions had not been passed. 55-56 V., c. 29, s. 948.

**1075.** RULES AND REGULATIONS AS TO EXECUTIONS.—The Governor in Council may, from time to time, make such rules and regulations to be observed on the execution of judgment of death in every prison, as he, from time to time, deems expedient for the purpose, as well of guarding against any abuse in such execution, as of giving greater solemnity to the same, and of making known without the prison walls the fact that such execution is taking place.

2. LAID BEFORE PARLIAMENT.—All such rules and regulations shall be laid upon the tables of both Houses of Parliament within six weeks after the making thereof, or (if Parliament is not then sitting), within fourteen days after the next meeting thereof. 55-56 V., c. 29, s. 949.

Of course, when possible, it seems better that the sentence of death, and, in fact, any sentence, be passed by the judge who held the trial; but it is not an absolute necessity, and any judge of the same court may pronounce the sentence: 2 Hale, 405; 1 Chit. 697; *R.* v. *Camplin*, 1 Den. 89, as cited in *R.* v. *Fletcher*, Bell C. C. 65.

If a case reserved is undecided, or if a writ of error is still pending, or if the Governor has not yet given his decision upon the case, or if a woman sentenced to death is pregnant, or if the prisoner becomes insane after the sentence, a reprieve may be granted either by the Governor, or any judge of the court where the trial was held, in term or in vacation: 1 Chit. 758; 2 Hale, 412.

It is clear that if, from any mistake or collusion, the criminal is cut down before he is totally dead, and afterwards revives, he ought to be hanged again, for the judgment being "to be hanged by the neck till he be dead," is satisfied only by the death of the criminal: 1 Chit. 788, 2 Hale, 412.

*Pardon.*

**1076.** ANY PERSON IMPRISONED UNDER STATUTE ALTHOUGH FOR NON-PAYMENT OF MONEY.—The Crown may extend the royal mercy to any person sentenced to imprisonment by virtue of any statute, although such person is imprisoned for non-payment of money to some other person than the Crown.

2. DISCHARGE UNDER PARDON WITH PERFORMANCE OF CONDITIONS IF ANY HAS EFFECT OF PARDON UNDER GREAT SEAL.—Whenever the Crown is pleased to extend the royal mercy to any offender convicted of an indictable offence punishable with death or otherwise, and grants to such offender either a free or conditional pardon, by warrant under the royal sign manual, countersigned by one of the principal Secretaries of State, or by warrant under the hand and seal-

at-arms of the Governor-General, the discharge of such offender out of custody, in case of a free pardon, and the performance of the condition in the case of a conditional pardon, shall, as to the offence of which he has been convicted, have the same effect as a pardon of such offender under the great seal.

3. No Effect on Punishment for Subsequent Offence.—No free pardon, nor any discharge in consequence thereof, nor any conditional pardon, nor the performance of the condition thereof, in any of the cases aforesaid, shall prevent or mitigate the punishment to which the offender might otherwise be lawfully sentenced on a subsequent conviction for any offence other than that for which the pardon was granted. 55-56 V., c. 29, s. 966.

**1077.** Commutation of Sentence. — The Crown may commute the sentence of death passed upon any person convicted of a capital offence to imprisonment in the penitentiary for life, or for any term of years not less than two years, or to imprisonment in any gaol or other place of confinement for any period less than two years, with or without hard labour.

2. Instrument under Hand and Seal of Governor, or Letter, etc., from Secretary of State Sufficient for Commutation.—An instrument under the hand and seal-at-arms of the Governor-General, declaring such commutation of sentence, or a letter or other instrument under the hand of the Secretary of State or of the Under Secretary of State, shall be sufficient authority to any judge or justice, having jurisdiction in such case, or to any sheriff or officer to whom such letter or instrument is addressed, to give effect to such commutation, and to do all such things and to make such orders, and to give such directions, as are requisite for the change of custody of such convict, and for his conduct to and delivery at such gaol or place of confinement or penitentiary, and his detention therein, according to the terms on which his sentence has been commuted. 55-56 V., c. 29, s. 967.

As to powers of the Lieutenant-Governors of the various provinces to constitute or remit sentence for offences against provincial laws, see *Atty.-Gen. for Canada* v. *Atty.-Gen. for Ontario*, 20 O. R. 222; 19 A. R. 31; 23 S. C. R. 458.

**1078.** UNDERGOING SENTENCE EQUIVALENT TO A PARDON.—When any offender has been convicted of an offence not punishable with death, and has endured the punishment adjudged, or has been convicted of an offence punishable with death and the sentence of death has been commuted, and the offender has endured the punishment to which his sentence was commuted, the punishment so endured shall, as to the offence whereof the offender was so convicted, have the like effect and consequences as a pardon under the great seal.

2. NO EFFECT ON PUNISHMENT FOR SUBSEQUENT OFFENCE.—Nothing in this section contained, nor the enduring of such punishment, shall prevent or mitigate any punishment to which the offender might otherwise be lawfully sen- 56 V., c. 29, s. 968.

See *Leyman v. Latimer*, 14 Cox C. C. 51.

**1079.** RELEASE FROM ALL FURTHER PROCEEDINGS FOR SAME OFFENCE.—When any person convicted of any offence has paid the sum adjudged to be paid, together with costs, if any, 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 discharged from his conviction by the justice in any case in which such justice may discharge such person, he shall be released from all further or other criminal proceedings for the same cause. 55-56 V., c. 29, s. 969.

See *R. v. Miles*, 17 Cox C. C. 9; 24 Q. B. D. 423; Warb. Lead. Cas. 230 and cases there cited. This enactment applies only to summary convictions and creates a bar to ulterior criminal, not to civil proceedings.

**1080.** ROYAL PREROGATIVE.—Nothing in this Part shall in any manner limit or affect His Majesty's royal prerogative of mercy. 55-56 V., c. 29, s. 970.

*Suspended Sentence.*

**1081.** SUSPENSION OF SENTENCE BY COURT WHEN IMPRISONMENT NOT MORE THAN TWO YEARS.—In any case in which a person is convicted before any court of any offence punish-

able with not more than two years' imprisonment, and no previous conviction is proved against him, if it appears to the court before which he is so convicted, that, regard being had to the age, character, and antecedents of the offender, to the trivial nature of the offence, and to any extenuating circumstances under which the offence was committed, it is expedient that the offender be released on probation of good conduct, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a recognizance, with or without sureties, and during such period as the court directs, to appear and receive judgment when called upon, and in the meantime to keep the peace and be of good behaviour.

2. When More than Two Years.—Where the offence is punishable with more than two years' imprisonment the court shall have the same power as aforesaid with the concurrence of the counsel acting for the Crown in the prosecution of the offender.

3. Special Directions in such Cases.—The court may, if it thinks fit, direct that the offender shall pay the costs of the prosecution, or some portion of the same, within such period and by such instalments as the court directs. 63-64 V., c. 46, s. 3.

**1082.** Conditions of Release.—The court, before directing the release of an offender under the last preceding section, shall be satisfied that the offender or his surety has a fixed place of abode or regular occupation in the county or place for which the court acts, or in which the offender is likely to live during the period named for the observance of the conditions. 55-56 V., c. 29, s. 972.

**1083.** Warrant when Recognizance not Observed.—If a court having power to deal with such offender in respect of his original offence or any justice is satisfied by information on oath that the offender has failed to observe any of the conditions of his recognizance, such court or justice may issue a warrant for his apprehension.

2. On Arrest, Remand for Judgment.—An offender, when apprehended on any such warrant, shall, if not brought

forthwith before the court having power to sentence him, be brought before the justice issuing such warrant or before some other justice in and for the same territorial division, and such justice shall either remand him by warrant until the time at which he was required by his recognizance to appear for judgment, or until the sitting of a court having power to deal with his original offence, or admit him to bail, with a sufficient surety, conditioned on his appearing for judgment.

3. COMMITTAL—TO BE BROUGHT BEFORE COURT.—The offender when so remanded may be committed to a prison, either for the county or place in or for which the justice remanding him acts, or for the county or place where he is bound to appear for judgment; and the warrant of remand shall order that he be brought before the court before which he was bound to appear for judgment, or to answer as to his conduct since his release. 55-56 V., c. 29, s. 973.

*Remitting Penalties.*

**1084.** GOVERNOR IN COUNCIL MAY REMIT.—The Governor in Council may at any time remit, in whole or in part, any pecuniary penalty, fine or forfeiture imposed by any Act of the Parliament of Canada, whether such penalty, fine or forfeiture is payable to His Majesty or to some other person, or in part to His Majesty and in part to some other person, and whether it is recoverable on indictment, information or summary conviction, or by action or otherwise. 2 E. VII., c. 26, s. 1.

**1085.** TERMS OF REMISSION—COSTS.—Such remission may, in the discretion of the Governor in Council, be on terms as to the payment of costs or otherwise: Provided that where proceedings have been instituted by private persons costs already incurred shall not be remitted. 2 E. VII., c. 26, s. 2.

# PART XXI.

## RENDER BY SURETIES AND RECOGNIZANCES.

### *Interpretation.*

**1086.** DEFINITION—'COGNIZOR'—In the sections of this Part relating exclusively to the Province of Quebec, unless the context otherwise requires, 'cognizor' includes any number of cognizors in the recognizance whether as principals or sureties. 55-56 V., c. 29, s. 926.

### *Division of Part.*

**1087.** CERTAIN SECTIONS APPLY ONLY TO QUEBEC, AND OTHERS NOT TO QUEBEC.—Sections ten hundred and eighty-eight to eleven hundred and one inclusive are general in their application. Sections eleven hundred and two to eleven hundred and twelve inclusive do not apply to the province of Quebec. Sections eleven hundred and thirteen to eleven hundred and nineteen inclusive apply to the province of Quebec only. 55-56 V., c. 29, s. 926.

### *General.*

**1088.** RENDER OF ACCUSED BY SURETY.—Any surety for any person charged with any indictable offence may, upon affidavit showing the grounds therefor, with a certified copy of the recognizance, obtain from a judge of a superior court or from a judge of a county court having criminal jurisdiction, or in the province of Quebec from a district magistrate, an order in writing under his hand, to render such person to the common gaol of the county where the offence is to be tried.

2. ARREST BY SURETIES.—The sureties, under such order, may arrest such person and deliver him, with the order, to the gaoler named therein, who shall receive and imprison him in the said gaol, and shall be charged with the keeping of such person until he is discharged by due course of law. 55-56 V., c. 29, s. 910.

A judge's order under this section authorizing the sureties to render the accused to gaol is not equivalent to an order of commitment to gaol for trial for the purpose of the speedy trial clauses. *R.* v. *Gibson* (1896), 3 Can. C. C. 451.

**1089.** Bail after Render—Order.—The person rendered may apply to a judge of a superior court, or in cases in which a judge of a county court may admit to bail, to a judge of a county court, to be again admitted to bail, who may on examination allow or refuse the same, and make such order as to the number of the sureties and the amount of recognizance as he deems meet.

2. Like Conditions.—Such order shall be dealt with in the same manner as the first order for bail, and so on as often as the case requires. 55-56 V., c. 29, s. 911.

**1090.** Discharge of Recognizance.—On due proof of such render, and certificate of the sheriff, proved by the affidavit of a subscribing witness, that such person has been so rendered, a judge of a superior or county court, as the case may be, shall order an entry of such render to be made on the recognizance by the officer in charge thereof, which shall vacate the recognizance, and may be pleaded or alleged in discharge thereof. 55-56 V., c. 29, s. 912.

**1091.** Render of Accused in Court by Sureties.—The sureties may bring the person charged as aforesaid into the court at which he is bound to appear, during the sitting thereof, and then, by leave of the court, render him in discharge of such recognizance at any time before trial, and such person shall be committed to gaol, there to remain until discharged by due course of law; but such court may admit such person to bail for his appearance at any time it deems meet. 55-56 V., c. 29, s. 913.

**1092.** Sureties Responsible for His Appearance.—The arraignment or conviction of any person charged and bound as aforesaid, shall not discharge the recognizance, but the same shall be effectual for his appearance for trial or sentence, as the case may be.

2. Committal or New Sureties.—The court may nevertheless commit such person to gaol upon his arraignment or

trial, or may require new or additional sureties for his appearance for trial or sentence, as the case may be, notwithstanding such recognizance.

3. EFFECT.—Such commitment shall be a discharge of the sureties. 55-56 V., c. 29, s. 914.

See *R.* v. *Hamilton* (1899), 3 Can. C. C. 1.

**1093**. RIGHT OF SURETY TO RENDER NOT AFFECTED.—Nothing in the foregoing provisions shall limit or restrict any right which a surety now has of taking and rendering to custody any person charged with any such offence, and for whom he is such surety. 55-56 V., c. 29, s. 915.

**1094**. OFFICER TO PREPARE LIST OF PERSONS UNDER RECOGNIZANCE MAKING DEFAULT.—If any person bound by recognizance for his appearance to prosecute or give evidence on the trial of any indictable offence, or to answer for any common assault, or to articles of the peace, or for whose appearance any other person has become so bound, makes default, the officer of the court by whom estreats are made out, shall prepare a list in writing, specifying the name of every person so making default, and the nature of the offence in respect of which such person, or his surety, was so bound, together with the residence, trade, profession or calling of every such person and surety.

2. DETAILS IN LIST.—Such officer shall, in such list, distinguish the principals from the sureties, and shall state the cause, if known, why each such person did not appear, and whether, by reason of the non-appearance of such person, the ends of justice have been defeated or delayed. 55-56 V., c. 29, s. 917.

**1095**. PROCEEDINGS ON FORFEITED RECOGNIZANCE.—Every such officer shall, before any such recognizance is estreated, lay such list before the judge or one of the judges who presided at the court, or if such court was not presided over by a judge, before two justices who attended at such court, and such judge or justices shall examine such list, and make such order touching the estreating or putting in process any such recognizance as appears just, subject, in the province of Quebec, to the provisions hereinafter contained.

2. No Estreat without Order.—No officer of any such court shall estreat or put in process any such recognizance without the written order of the judge or justices before whom respectively such list has been laid. 55-56 V., c. 29, s. 918.

See *In re Cohen's Bail* (1896), 32 C. L. J. 412; 16 Occ. N. 217.

**1096.** Proceedings for Enforcing Recognizance on Certiorari.—The like proceedings may be had for enforcing the condition of a recognizance taken under section eleven hundred and twenty-six as might be had for enforcing the condition of a recognizance taken under the Act of the Parliament of the United Kingdom, passed in the fifth year of the reign of His Majesty King George the Second, and chaptered nineteen. 55-56 V., c. 29, s. 893.

See *R.* v. *Nunn*, 10 P. R. (Ont.) 395, and *R.* v. *Swalwell*, 12 O. R. 391.

**1097.** Justices to Certify Default.—Whenever a person gives security by or is discharged upon recognizance and does not afterwards appear at the time and place mentioned in the recognizance, or whenever the conditions or any of them in any recognizance entered into by an applicant to whom a case stated by a justice under this Act has been delivered, have not been complied with, the justice who took the recognizance or any justice who is then present, having certified upon the back of the recognizance the non-appearance of the person or the non-compliance with the condition, as the case may be, may transmit such recognizance to the proper officer in the province appointed by law to receive the same, to be proceeded upon in like manner as other recognizances.

2. Evidence.—Such certificate shall be *prima facie* evidence of such non-appearance or non-compliance.

3. Form.—Such certificate shall be in form 73. 55-56 V., c. 29, ss. 805, 878 and 900; 58-59 V. c. 40, s. 3; 63-64 V., c. 46, s. 3.

No notice of intention to estreat or to produce accused necessary. If necessary it is but a ministerial act and for convenience of parties: *In re McArthur's Bail*, 3 Can. C. C. 195, 17 Occ. N. 301, 33 C. L. J. 630, *sub nom.*: *R.* v. *McArthur*.

FORM 73.

(Section 1097.)

CERTIFICATE OF NON-APPEARANCE TO BE ENDORSED ON THE DEFENDANT'S RECOGNIZANCE.

I hereby certify that the said A. B. has not appeared at the time and place in the said condition mentioned, but therein has made default, by reason whereof the within written recognizance is forfeited.

Dated at

J. S., [SEAL.]
*J. P., (name of county.)*

55-56 V., c. 29, sch. 1, forms R and MMM.

**1098.** CLERK OF THE PEACE THE PROPER OFFICER IN ONTARIO.—The proper officer to whom the recognizance and certificate of default are to be transmitted in the Province of Ontario, shall be the clerk of the peace of the county for which such justice is acting.

2. THE COURT TO ORDER ESTREAT.—The court of general sessions of the peace for such county shall, at its then next sitting, order all such recognizances to be forfeited and estreated and the same shall be enforced and collected in the same manner and subject to the same conditions as any fines, forfeitures or amercements imposed by or forfeited before such court. 58-59 V., c. 40, s. 3; 63-64 V., c. 46, s. 3.

**1099.** OFFICER IN BRITISH COLUMBIA.—In the province of British Columbia, such proper officer shall be the clerk of the county court having jurisdiction at the place where such recognizance is taken and such recognizance shall be enforced and collected in the same manner and subject to the same conditions as any fines, forfeitures or amercements imposed by or forfeited before such county court.

2. IN THE OTHER PROVINCES.—In the other provinces of Canada such proper officer shall be the officer to whom like recognizances have been heretofore accustomed to be transmitted under the law heretofore in force; and such recognizances shall be enforced and collected in the same manner as like recognizances have heretofore been enforced and collected. 58-59 V., c. 40, s. 3; 63-64 V., c. 46, s. 3.

**1100.** MANNER OF ESTREAT.—All recognizances taken or entered into under any provision of this Act which are for-

feited or in respect to which the conditions of such recognizances, or any of them, have not been complied with, shall be liable to be estreated in the same manner as any forfeited recognizance to appear is by law liable to be estreated by the court before which the principal party thereto was bound to appear. 55-56 V., c. 29, ss. 598 and 900.

**1101.** Proceeds Paid to Finance Minister.—The sheriff or other officer shall, without delay, pay over all moneys collected under the provisions of this Part by him, to the Minister of Finance, or other authority or person entitled to receive the same. 55-56 V., c. 29, s. 925.

*Provisions not Applicable to the Province of Quebec.*

**1102.** Entry of Fines, Amercements and Recognizances on a Roll.—Unless otherwise provided, all fines, issues, amercements and forfeited recognizances, the disposal of which is within the legislative authority of the Parliament of Canada, set, imposed, lost or forfeited before any court of criminal jurisdiction shall, within twenty-one days after the adjournment of such court be fairly entered and extracted on a roll by the clerk of the court, or in case of his death or absence, by any other person, under the direction of the judge who presided at such court, which roll shall be made in duplicate and signed by the clerk of the court, or in case of his death or absence, by such judge. 55-56 V., c. 29, s. 916.

**1103.** Affidavit.—The clerk of the court shall, at the foot of each roll made out as herein directed, make and take an affidavit in the following form, that is to say:

Form.—'I, A. B. (*describing his office*), make oath that this roll is truly and carefully made up and examined, and that all fines, issues, amercements, recognizances and forfeitures which were set, lost, imposed or forfeited, at or by the court therein mentioned, and which, in right and due course of law, ought to be levied and paid, are, to the best of my knowledge and understanding, inserted in the said roll; and that in the said roll are also contained and expressed all such fines as have been paid to or received by me, either in court or otherwise, without any wilful discharge, omission, misnomer or defect whatsoever. So help me God.'

2. OATH.—Any justice for the county is hereby authorized to administer such oath. 55-56 V., c. 29, s. 916.

**1104.** FILING OF ROLLS IN CERTAIN COURTS.—If such court is a superior court having criminal jurisdiction, one of such rolls shall be filed with the clerk, prothonotary, registrar or other proper officer,—

(*a*) in the province of Ontario, of the High Court of Justice;

(*b*) in the provinces of Nova Scotia, New Brunswick and British Columbia, of the Supreme Court of the Province;

(*c*) in the province of Prince Edward Island, of the Supreme Court of Judicature of that province;

(*d*) in the province of Manitoba, of the Court of King's Bench of that province;

(*e*) in the province of Saskatchewan and Alberta, of the Supreme Court of the Northwest Territories pending the abolition of that court by the legislature of the province, and thereafter, of such court in either of the said provinces as may in respect of that province be substituted by the legislature thereof for the Supreme Court of the Northwest Territories; and,

(*f*) in the Yukon Territory, of the Territorial Court; on or before the first day of the term next succeeding the court by or before which such fines or forfeitures were imposed or forfeited. 55-56 V., c. 29, s. 916; 63-64 V., c. 46, s. 3.

**1105.** FILING OF ROLLS IN SESSIONS.—If such court is a court of general sessions of the peace, or a county court, one of such rolls shall remain deposited in the office of the clerk of such court.

2. WRIT OF FIERI FACIAS AND CAPIAS ISSUED.—The other of such rolls aforesaid shall, as soon as the same is prepared, be sent by the clerk of the court making the same, or in case of his death or absence, by such judge as aforesaid, with a writ of *fieri facias* and *capias*, according to form 74, to the sheriff of the county in and for which such court was holden. 55-56 V., c. 29, s. 916.

FORM 74.

WRIT OF *FIERI FACIAS*.

Edward VII., by the Grace of God, etc.

To the sheriff of , greeting:

You are hereby commanded to levy of the goods and chattels, lands, and tenements, of each of the persons mentioned in the roll or extract to this writ annexed, all and singular the debts and sums of money upon them severally imposed and charged, as therein is specified; and if any of the said several debts cannot be levied, by reason that no goods or chattels, lands or tenements can be found belonging to the said persons, respectively, then, and in all such cases, that you take the bodies of such persons, and keep them safely in the gaol of your county, there to abide the judgment of our court (*as the case may be*) upon any matter to be shown by them, respectively, or otherwise to remain in your custody as aforesaid, until such debt is satisfied unless any of such persons respectively gives sufficient security for his appearance at the said court, on the return day hereof, for which you will be held answerable; and what you do in the premises make appear before us in our court (*as the case may be*), on the day of term next, and have then and there this writ. Witness, etc., G. H., clerk (*as the case may be*).

55-56 V. c. 29, sch. 1, form TTT.

**1106.** Levy Under Writ—Arrest Under Writ.—Such writ shall be authority to the sheriff for proceeding to the immediate levying and recovering of such fines, issues, amercements and forfeited recognizances, on the goods and chattels, lands and tenements of the several persons named therein, or for taking into custody the bodies of such persons respectively, in case sufficient goods and chattels, lands or tenements cannot be found, whereof the sums required can be made.

2. Committal to Gaol.—Every person so taken shall be lodged in the common gaol of the county, until satisfaction is made, or until the court into which such writ is returnable upon cause shown by the party, as hereinafter mentioned, makes an order in the case and until such order has been fully complied with. 55-56 V., c. 29, s. 916.

**1107.** Sale of Lands by Sheriff.—If upon any writ issued under section eleven hundred and five, the sheriff takes lands or tenements in execution, he shall advertise the same in like manner as he is required to do before the sale of lands in execution in other cases; and no sale shall take place in less than twelve months from the time the writ comes to the hands of the sheriff. 55-56 V., c. 29, s. 920.

**1108.** Court may Forbear to Order Estreat.—Except in the case of persons bound by recognizance for their appearance, or for whose appearance any other person has become bound to prosecute or give evidence on the trial of any indictable offence, or to answer for any common assault, or to articles of the peace, in every case of default whereby a recognizance becomes forfeited, if the cause of absence is made known to the court in which the person was bound to appear, the court, on consideration of such cause, and considering also, whether, by the non-appearance of such person the ends of justice have been defeated or delayed, may forbear to order the recognizance to be estreated.

2. Order that Sum Forfeited be not Levied.—With respect to all recognizances estreated, if it appears to the satisfaction of the judge who presided at such court that the absence of any person for whose appearance any recognizance was entered into, was owing to circumstances which rendered such absence justifiable, such judge may make an order directing that the sum forfeited upon such estreated recognizance shall not be levied.

3. Minute by the Judge to that Effect.—The clerk of the court shall, for such purpose, before sending to the sheriff any roll, with a writ of *fieri facias* and *capias*, as directed by section eleven hundred and five, submit the same to the judge who presided at the court, and such judge may make a minute on the said roll and writ of any such forfeited recognizances and fines as he thinks fit to direct not to be levied.

4. Sheriff shall Observe Minute.—The sheriff shall observe the direction in such minute written upon such roll and writ, or endorsed thereon, and shall forbear accordingly to levy any such forfeited recognizance or fine so directed not to be levied. 55-56 V., c. 29, s. 919.

**1109.** Discharge from Custody on Giving Security.—Writ of Fieri Facias and Capias on Non-appearance.—If any person on whose goods and chattels a sheriff, bailiff or other officer is authorized to levy any such forfeited recognizance, gives security to the said sheriff or other officer for his appearance at the return day mentioned in the writ, in the court into which such writ is returnable, then and there to abide the decision of such court, and also to pay such for-

feited recognizance, or sum of money to be paid in lieu or satisfaction thereof, together with all such expenses as are adjudged and ordered by the court, such sheriff or officer shall discharge such person out of custody, and if such person does not appear in pursuance of his undertaking, the court may forthwith issue a writ of *fieri facias* and *capias* against such person and the surety or sureties of the person so bound as aforesaid. 55-56 V., c. 29, s. 921.

**1110.** DISCHARGE OF FORFEITED RECOGNIZANCE.—The court into which any writ of *fieri facias* and *capias* issued under the provisions of this Part is returnable, may inquire into the circumstances of the case, and may in its discretion, order the discharge of the whole of the forfeited recognizance, or sum of money paid or to be paid in lieu or satisfaction thereof, and make such order thereon as to such court appears just; and such order shall accordingly be a discharge to the sheriff, or to the party, according to the circumstances of the case. 55-56 V., c. 29, s. 922.

An order made under this section for the discharge of a forfeited recognizance is a civil and not a criminal proceeding, and the discretionary order for such discharge must be made by court in banc and not by a single judge: *Re McArthur's Bail*, 3 Can. C. C. 195; 33 C. L. J. 630; 17 Occ. N. 301; see *In re Talbot's Bail*, 23 O. R. 65.

**1111.** RETURN OF WRIT BY SHERIFF. — The sheriff, to whom any writ is directed under this Part, shall return the same on the day on which the same is made returnable, and shall state, on the back of the roll attached to such writ, what has been done in the execution thereof; and such return shall be filed in the court into which such return is made. 55-56 V., c. 29, s. 923.

**1112.** ROLL AND RETURN TO MINISTER OF FINANCE.—A copy of such roll and return, certified by the clerk of the court into which such return is made, shall be forthwith transmitted to the Minister of Finance, with a minute thereon of any of the sums therein mentioned, which have been remitted by order of the court, in whole or in part, or directed to be forborne, under the authority of section eleven hundred and eight. 55-56 V., c. 29, s. 924.

*Provisions Applicable only to the Province of Quebec.*

**1113.** Estreat on Default — Minute made when Recognizance Oral.—Whenever default is made in the condition of any recognizance lawfully entered into or taken in any criminal case, proceeding or matter, in the province of Quebec, within the legislative authority of the Parliament of Canada, so that the penal sum therein mentioned becomes forfeited and due to the Crown, such recognizance shall thereupon be estreated or withdrawn from any record or proceeding in which it then is, or, where the recognizance has been entered into orally in open court, a certificate or minute of such recognizance, under the seal of the court, shall be made from the records of such court. 55-56 V., c. 29, s. 926.

**1114.** Transmission of Recognizance, etc., to Superior Court—Certificate Evidence of Forfeiture.—Such recognizance, certificate or minute, as the case may be, shall be transmitted by the court, recorder, justice, magistrate or other functionary before whom the cognizor, or the principal cognizor, where there is a surety or sureties, was bound to appear, or to do that by his default to do which the condition of the recognizance is broken, to the Superior Court in the district in which the place where such default was made is included for civil purposes, with the certificate of the court, recorder, justice, magistrate or other functionary as aforesaid, of the breach of the condition of such recognizance, of which, and of the forfeiture to the Crown of the penal sum therein mentioned, such certificate shall be conclusive evidence. 55-56 V., c. 29, s. 926.

**1115.** Judgment to be Entered—Execution to Issue.—The date of the receipt of such recognizance or minute and certificate by the prothonotary of the said court shall be endorsed thereon by him, and he shall enter judgment in favour of the Crown against the cognizor for the penal sum mentioned in such recognizance, and execution may issue therefor after the same delay as in other cases, which shall be reckoned from the time the judgment is entered by the prothonotary of the said court. 55-56 V., c. 29, s. 926.

**1116.** EXECUTION ON FIAT—COSTS.—Such execution shall issue upon fiat or *præcipe* of the Attorney-General, or of any person thereunder authorized in writing by him; and the Crown shall be entitled to the costs of execution and to costs on all proceedings in the case subsequent to execution, and to such costs, in the discretion of the court, for the entry of the judgment, as are fixed by any tariff.

2. IMPRISONMENT.—The cognizor shall be liable to coercive imprisonment for the payment of the judgment and costs. 55-56 V., c. 29, s. 926; 57-58 V., c. 57, s. 1.

**1117.** INSUFFICIENT GOODS OR LANDS—ARREST OF COGNIZOR.—When sufficient goods and chattels, lands or tenements cannot be found to satisfy the judgment against a cognizor and the same is certified in the return of the writ of execution or appears by the report of distribution, a warrant of commitment addressed to the sheriff of the district may issue upon the fiat or *præcipe* of the Attorney-General, or of any person thereunto authorized in writing by him, and such warrant shall be authority to the sheriff to take into custody the body of the cognizor so in default and to lodge him in the common gaol of the district until satisfaction is made, or until the court which issues such warrant, upon cause shown as hereinafter mentioned, makes an order in the case and such order has been fully complied with.

2. RETURN OF WARRANT.—Such warrant shall be returned by the sheriff on the day on which it is made returnable and the sheriff shall state in his return what has been done in execution thereof.

3. DISCHARGE OF COGNIZOR—ORDER MAY BE MADE.—On petition of the cognizor, of which notice shall be given to the clerk of the Crown of the district, the court may inquire into the circumstances of the case and may in its discretion order the discharge of the amount for which he is liable or make such order with respect thereto and to his imprisonment as may appear just, and such order shall be carried out by the sheriff. 57-58 V., c. 57, s. 1.

**1118.** PROCESS ON RECOGNIZANCE.—When a person has been arrested in any district for an offence committed within the limits of the province of Quebec, and a justice has taken

recognizances from the witnesses heard before him or another justice, for their appearance at the next session or term of the court of competent criminal jurisdiction, before which such person is to undergo his trial there to testify and give evidence on such trial and such recognizances have been transmitted to the office of the clerk of such court, the said court may proceed on the said recognizances in the same manner as if they had been taken in the district in which such court is held. 55-56 V., c. 29, s. 926.

**1119.** RECOVERY BY ACTION.—Whenever any sum forfeited by the non-performance of the conditions of a recognizance cannot for any reason be recovered in the manner provided in the last four preceding sections, the same shall be recoverable, with costs, by action in any court having jurisdiction in civil cases to the amount, at the suit of the Attorney-General of Canada or of Quebec, or other person or officer authorized to sue for the Crown; and in any such action it shall be held that the person suing for the Crown is duly empowered so to do, and that the conditions of the recognizance were not performed, and that the sum therein mentioned is, therefore, due to the Crown, unless the defendant proves the contrary.

2. IMPRISONMENT.—The cognizor for the recovery of the judgment in any such action shall be liable to coercive imprisonment in the same manner as a surety is in the case of judicial suretyship in civil matters. 55-56 V., c. 29, s. 926; 57-58 V., c. 57, s. 1.

## PART XXII.

### EXTRAORDINARY REMEDIES.

**1120.** DETENTION OF PERSON ACCUSED ON INQUIRY AS TO LEGALITY OF IMPRISONMENT.—Whenever any person in custody charged with an indictable offence has taken proceedings before a judge or criminal court having jurisdiction in the premises by way of *certiorari*, *habeas corpus* or otherwise, to have the legality of his imprisonment inquired into, such judge or court may, with or without determining the question, make an order for the further detention of the person

accused, and direct the judge or justice, under whose warrant he is in custody, to take any proceedings, hear such evidence, or do such further act as in the opinion of the court or judge may best further the ends of justice. 55-56 V., c. 29, s. 752.

This section applies only to cases where the *habeas corpus* issues in the same province in which the magistrate's warrant of arrest or commitment has issued; so that a court or judge in Ontario would have no jurisdiction over a justice in Quebec, whereby the latter could or would be required or compelled "to take any proceedings, hear such evidence," etc.: *R. v. Defrics*, and *R. v. Tamblyn* (1894), 1 Can. C. C. 207; 25 O. R. 645; 14 Occ. N. 543.

Where a conviction was quashed for imposing unauthorized penalty, order for further detention was refused: *R. v. Randolph* (1900), 4 Can. C. C. 165; 32 O. R. 212. See S. C. under ss. 1124, 1130.

A prisoner is not entitled to a discharge on *habeas corpus* because he was not arraigned at the sitting of the court at which he should have been tried: *R. v. Wright* (1886), 2 Can. C. C. 83.

See *Brenan's Case* (1847), 10 Q. B. 502; *Re Sproule*, 12 S. C. R. 140; *Re Ferguson* (1891), 24 N. S. R. 106; *R. v. Burke* (1898), 1 Can. C. C. 529.

**1121.** Conviction Affirmed on Appeal, or Warrant not to be Held Invalid When.—No conviction or order made on summary conviction which has been affirmed, or affirmed and amended, in appeal, shall be quashed for want of form, or be removed by *certiorari* into any superior court, and no warrant or commitment shall be held void by reason of any defect therein, provided it is therein alleged that the defendant has been convicted, and there is a good and valid conviction to sustain the same. 55-56 V., c. 29, s. 886.

Notice of appeal from a summary conviction is sufficient when addressed to the convicting magistrate only and need not be addressed to the prosecutor or complainant: *Keohan v. Cook* (1887), 1 Terr. L. R. 125, but *see contra*: *R. v. Kennedy*, (1894) 10 Man. L. R. 338; *Ex parte Kavanagh* (1886), 2 Can. C. C. 267.

**1122.** Certiorari not to Lie when Appeal is Taken.—No writ of *certiorari* shall be allowed to remove any conviction or order had or made before any justice if the defendant has appealed from such conviction or order to any court to which an appeal from such conviction or order is authorized by law, or shall be allowed to remove any conviction or order made upon such appeal. 55-56 V., c. 29, s. 887.

Taking writ of *certiorari* is waiver or right to appeal, but if time for appealing has not expired, opposite party may ask that *certiorari* be suspended until it has: *Benault v. Robida*, Q. R. 10 S. C. 199.

See *Ex parte Ross* (1896), 1 Can. C. C. 175; *Ex parte Levesque* (1893), 32 N. B. R. 174; *Ex parte Young* (1893), 32 N. B. R. 178; *R.* v. *Herrell* (1899), 3 Can. C. C. 15.

**1123.** CONVICTION, ETC., OR WARRANT UNDER JUVENILE OFFENDERS' PART.—No conviction under Part XVII. shall be quashed for want of form or be removed by *certiorari* or otherwise into any court of record; and no warrant of commitment under the said Part shall be held void by reason of any defect therein, if it is therein alleged that the person has been convicted and there is a good and valid conviction to sustain the same. 55-56 V., c. 29, s. 820.

**1124.** CONVICTION, ETC., OR WARRANT IN OTHER CASES—RECTIFYING ERROR.—No conviction or order made by any justice, and no warrant for enforcing the same, shall, on being removed by *certiorari*, be held invalid for any irregularity, informality or insufficiency therein, if the court or judge before which or whom the question is raised, upon perusal of the depositions, is satisfied that an offence of the nature described in the conviction, order or warrant, has been committed, over which such justice has jurisdiction, and that the punishment imposed is not in excess of that which might have been lawfully imposed for the said offence: Provided that the court or judge, where so satisfied, shall, even if the punishment imposed or the order made is in excess of that which might lawfully have been imposed or made, have the like powers in all respects to deal with the case as seems just as are by section seven hundred and fifty-four conferred upon the court to which an appeal is taken under the provisions of section seven hundred and forty-nine.

2. SUFFICIENCY OF STATEMENT.—Any statement which, under this Act or otherwise, would be sufficient if contained in a conviction, shall also be sufficient if contained in an information, summons, order or warrant. 55-56 V., c. 29 s. 889.

See cases cited under s. 727. A conviction bad for uncertainty on its face, should not be amended by the court to which it is removed by *certiorari*, except when such court can conclude on the evidence that an offence is thereby proved: *R.* v. *Coulson*, 1 Can. C. C. 114; *R.* v *Herrell*, 1 Can. C. C. 510; *R.* v. *Hughes*, 2 Can. C. C. 5.

Finding of facts by a magistrate are not open to review on motion in *certiorari* proceedings to quash conviction; if there was

evidence to sustain the conclusions drawn by him: *Ex parte Coulson*, 1 Can. C. C. 31. See *Ex parte Daley*, 27 N. B. R. 129, and *Re Girard*, R. J. Q. 14 S. C. 237.

The provisions in above section *re* reducing a punishment by a justice where the same is in excess of that allowed by law apply only to cases of "summary convictions," and not to "summary trials" by a police magistrate: *R.* v. *Randolph* (1900), 4 Can. C. C. 165, 32 O. R. 212. See S. C. under ss. 1120, 1130.

**1125.** Irregularities within Last Section.—The following matters amongst others shall be held to be within the provisions of the last preceding section:—

(*a*) The statement of the adjudication, or of any other matter or thing, in the past tense instead of in the present;

(*b*) The punishment imposed being less than the punishment by law assigned to the offence stated in the conviction or order, or to the offence which appears by the depositions to have been committed;

(*c*) The omission to negative circumstances, the existence of which would make the act complained of lawful, whether such circumstances are stated by way of exception or otherwise in the section under which the offence is laid, or are stated in another section.

2. But Generally not Restricted.—Nothing in this section contained shall be construed to restrict the generality of the wording of the last preceding section. 55-56 V., c. 29, s. 890.

**1126.** General Order for Security by Recognizance—Or Deposit.—The court having authority to quash any conviction, order or other proceeding by or before a justice may prescribe by general order that no motion to quash any conviction, order or other proceeding by or before a justice, brought before such court by *certiorari*, shall be entertained unless the defendant is shown to have entered into a recognizance with one or more sufficient sureties, before a justice or justices of the county or place within which such conviction or order has been made, or before a judge or other officer, as may be prescribed by such general order, or to have made a deposit to be prescribed in like manner, with a condition to prosecute such writ of *certiorari* at his own costs and charges, with effect, without any wilful or affected delay,

and, if ordered so to do, to pay the person in whose favour the conviction, order or other proceeding is affirmed, his full costs and charges to be taxed according to the course of the court where such conviction, order or proceeding is affirmed. 55-56 V., c. 29, s. 892.

A recognizance is required only where the conviction is brought before the court by a writ of *certiorari*, and no recognizance is required where such a writ is not necessary, or is dispensed with: *R. v. Ashcroft* (1899), 2 Can. C. C. 385.

**1127.** No Procedendo Necessary on Discharge of Motion to Quash.—If a motion or rule to quash a conviction, order or other proceeding is refused or discharged, it shall not be necessary to issue a writ of *procedendo*, but the order of the court refusing or discharging the application shall be a sufficient authority for the registrar or other officer of the court forthwith to return the conviction, order or proceeding to the court or justice from which or whom they were removed, and for proceedings to be taken thereon for the enforcement thereof, as if a *procedendo* has issued, which shall forthwith be done. 55-56 V., c. 29, s. 895.

Accused was convicted under s. 174 of the Manitoba Liquor License Act. Conviction and information upon which it was based were removed by *certiorari* into a higher court where the conviction was quashed on the ground that the original summons had not been personally served on the defendant, and that she had not authorized any person to appear for her on its return. The presiding judge, under the supposed authority of this section, ordered that the information should be returned to the justice, who issued a second summons upon it, it being too late for the prosecutor to lay a second information in respect of the offence. On motion for prohibition, held that this section does not give the judge authority to order return of information to convicting justice after quashing the conviction, as the section only applies to cases where before this section a *procedendo* would have been issued to send back a record. *Held*, the information was not properly before the justice when he issued his second summons, and he had no jurisdiction: *R. v. Zickrick* (1[illegible]), 11 Man. L. R. 542.

**1128.** Conviction, etc., not Set Aside for Want of Proof of Order in Council.—No order, conviction or other proceeding made by any justice or stipendiary magistrate shall be quashed or set aside, and no defendant shall be discharged, by reason of any objection that evidence has not been given of a proclamation or order of the Governor in Council, or of any rules, regulations, or by-laws made by the Governor in Council in pursuance of a statute of Canada, or of the publication of such proclamation, order, rules, regulations or by-laws in the *Canada Gazette*.

2. JUDICIAL NOTICE.—Such proclamation, order, rules, regulations and by-laws and the publication thereof shall be judicially noticed. 55-56 V., c. 29, s. 894.

**1129.** CONVICTION NOT TO BE SET ASIDE FOR DEFECT IN FORM.—Whenever it appears by any conviction made by a justice or stipendiary magistrate that the defendant has appeared and pleaded, and the merits have been tried, and the defendant has not appealed against the conviction, where an appeal is allowed, or if appealed against, the conviction has been affirmed, such conviction shall not afterwards be set aside or vacated in consequence of any defect of form whatever, but the construction shall be such a fair and liberal construction as will be agreeable to the justice of the case. 55-56 V., c. 29, s. 896.

A conviction will not be quashed where an apparent variance between an information and a conviction is satisfactorily explained by the magistrate where by mistake, on information against the same defendant on another charge for unlawfully selling intoxicating liquor, is returned on a *certiorari* to remove the proceedings in respect of a conviction for an offence of keeping liquor for sale.

Nor where a variance in the date of the offence as it appeared in the information returned with the conviction upon a *certiorari*, is a clerical error on its face, and the other proceedings are regular: *Ex parte Kavanagh* (1886), 2 Can. C. C. 264.

Where a conviction for keeping a house of ill-fame was defective in form and did not show whether the magistrate acted under the "summary trials" clauses or the "summary conviction" clauses, the court will treat it as a summary conviction, by virtue of the above section and amend it, reducing the sentence where it exceeds that which is authorized by law: *R.* v. *Spooner* (1900), 4 Can. C. C. 289.

See also *Champagne* v. *Simard et al.* (1895), R. J. Q. 7 S. C. 40.

**1130.** PROCEEDINGS UNDER SUMMARY TRIALS PART NOT QUASHED FOR WANT OF FORM OR HELD VOID.—No conviction, sentence or proceeding under Part XVI. shall be quashed for want of form; and no warrant of commitment upon a conviction under the said Part shall be held void by reason of any defect therein, if it is therein alleged that the offender has been convicted and there is a good and valid conviction to sustain the same. 55-56 V., c. 29, s. 899.

A warrant of commitment cannot be amended when on a summary trial a magistrate imposes a longer sentence than is allowed by law, as there is not a valid conviction to be sustained: *R.* v. *Randolph* (1900), 4 Can. C. C. 165; 32 O. R. 212. See S. C. under sections 1120, 1124.

A commitment recited a conviction for "unlawfully procuring or attempting to procure a girl of 17 years to become, without Can-

ada, a common prostitute, or with intent that she might become an inmate elsewhere," was held void as it recited a conviction which was invalid for duplicity and uncertainty. *Held*, also, that the commitment could not under above section 1130, be supported as alleging a conviction, because there was no valid conviction to sustain it. The conviction was returned under *habeas corpus* proceedings as no offence was disclosed under section 216 upon which the prosecution was based: *R.* v. *Gibson* (1898), 2 Can. C. C. 392; 29 O. R. 699.

Upon a summary trial of an indictable offence, a magistrate ordered the accused to pay a fine of $5 in addition to imprisonment, the fine to be paid and applied according to law. The conviction was held invalid for want of any adjudication of forfeiture of the fine and the accused should be discharged from imprisonment: *R.* v. *Burtress* (1899), 3 Can. C. C. 536. See also, *R.* v. *Crowell* (1897), 1 Can. C. C. 34.

**1131.** No Action against Official when Conviction Quashed.—If an application is made to quash a conviction, order or other proceeding made or had by or before a justice or stipendiary magistrate, on the ground that such justice or stipendiary has exceeded his jurisdiction, the court or judge to which or whom the application is made, may, as a condition of quashing the conviction, order or other proceeding, if the court or judge thinks fit so to do, provide that no action shall be brought against the justice or stipendiary by or before whom such conviction, order or other proceeding was made or had, or against any officer acting thereunder or under any warrant issued to enforce any such conviction or order. 55-56 V., c. 29, s. 891.

A conviction having been quashed, counsel for accused asked for costs against informant, the court refused costs, but added that the accused might recover costs in an action: *R.* v. *Somers* (1893), 24 O. R. 244. See also, *R.* v. *Johnston* (1876), 38 U. C. R. 549.

A motion to quash a conviction was unopposed, no costs were allowed and the court laid down that no action should be brought by accused against the convicting magistrate: *R.* v. *McLeod* (1897), 1 Can. C. C. 10.

**1132.** Proceedings Relating to Part III. not Void for Defect of Form.—No action or other proceeding, warrant, judgment, order or other instrument or writing, authorized by any provisions of Part XII. relating to Part III. or necessary to carry out its provisions, shall be held void or be allowed to fail for defect of form. R. S., c. 151, s. 23.

## PART XXIII.

### RETURNS.

**1133.** RETURNS CONCERNING CONVICTIONS AND MONEYS RECEIVED.—Every justice shall, quarterly, on or before the second Tuesday in each of the months of March, June, September and December in each year, make to the clerk of the peace or other proper officer of the court having jurisdiction in appeal, as herein provided, a return in writing, under his hand, of all convictions made by him, and of the receipt and application by him of the moneys received from the defendants.

2. EXTENT OF RETURN.—Such return shall include all convictions and other matters not included in some previous return, and shall be in form 75.

3. JOINT RETURN.—If two or more justices are present, and join in the conviction, they shall make a joint return.

4. SUPPLEMENTARY RETURN.—Every justice, to whom any such moneys are afterwards paid, shall make a return of the receipt and application thereof, to the court having jurisdiction in appeal as hereinbefore provided, which shall be filed by the clerk of the peace or the proper officer of such court with the records of his office.

5. TIME IN PRINCE EDWARD ISLAND FOR RETURN.—In the province of Prince Edward Island such return shall be made to the clerk of the court of assize of the county in which the convictions are made, and on or before the fourteenth day next before the sitting of the said court next after such convictions are so made.

6. RETURN IN NIPISSING.—Every such return shall be made in the district of Nipissing, in the province of Ontario, to the clerk of the peace for the county of Renfrew, in the said province. 55-56 V., c. 29, s. 902.

FORM 74.

(Section 1133.)

JUSTICE'S RETURN.

RETURN of conviction made by me (*or* us, *as the case may be*), during the quarter ending , 19 .

| Name of the Prosecutor. | Name of Defendant. | Nature of the Charge. | Date of Conviction. | Name of Convicting Justice. | Amount of Penalty. Fine or Damage. | Time when paid or to be paid to the said Justice. | To whom paid over by the said Justice. | If not paid, why not, and general observations if any. |
|---|---|---|---|---|---|---|---|---|
| | | | | | | | | |

J. S., Convicting Justice,
*or*
J. S. and O. K., Convicting Justices (*as the case may be*).

55-56 V., c. 29, sch. 1, form 88S.

**1134.** NEGLECT OR FALSE RETURN OR TAKING UNLAWFUL FEES—PENALTY.—Every justice before whom any conviction takes place, or who receives any such moneys, who neglects or refuses to make such return thereof, or wilfully makes a false, partial or incorrect return, or wilfully receives a larger amount of fees than by law he is authorized to receive, and every justice who upon or in connection with, or under colour or pretense of, any information, complaint or judicial proceeding or inquiry had or taken before him, wilfully exacts, receives, appropriates or retains any fees, moneys or payments which he is not by law authorized to receive or to be paid, shall incur a penalty of eighty dollars, together with costs of suit, in the discretion of the court, which may be recovered by any person who sues for the same by action of debt or information in any court of record in the province in which such return ought to have been or is made.

2. Disposition of Penalty.—One moiety of such penalty shall belong to the person suing, and the other moiety to His Majesty for the public uses of Canada.

3. Saving.—Nothing in this section shall have the effect of preventing any person aggrieved from prosecuting, by indictment, any justice, for any offence, the commission of which would have subjected him to indictment immediately before the first day of July, one thousand eight hundred and ninety-three. 55-56 V., c. 29, ss. 902 and 905; 4 E. VII., c. 9, s. 1.

**1135.** Return by Justice of Certificates under Part III.—When any certificate is granted under section one hundred and eighteen of this Act, the justice granting it shall forthwith make a return thereof to the proper officer in the county, district or place in which such certificate has been granted for receiving returns under this Part.

2. Penalty for Default.—On default of making such return within ninety days after a certificate is granted, the justice shall be liable, on summary conviction, to a penalty of not more than ten dollars. 55-56 V., c. 29, s. 105.

**1136.** Monthly Returns under Part III.—Every commissioner under Part III. of this Act shall make a monthly return to the Secretary of State of all weapons delivered to him, and by him detained under Part III. R. S., c. 151, s. 12.

**1137.** Posting up Returns.—The clerk of the peace of the district or county to whom returns under this Part are made, or the proper officer, other than the clerk of the peace, to whom such returns are made, shall, within seven days after the adjournment of the then next ensuing general or quarter sessions, or of the term or sitting of such other court having jurisdiction in appeal as aforesaid, cause the said returns to be posted up in the court-house of the district or county, and also in a conspicuous place in the office of such clerk of the peace, or other proper officer, for public inspection, and the same shall continue to be so posted up and exhibited until the end of the next ensuing general or quarter sessions of the peace, or for the term or sitting of such other court as aforesaid.

2. FEE.—For every schedule so made and exhibited by such clerk or officer, he shall be allowed such fee as is fixed by competent authority.

3. COPY OF RETURNS TO FINANCE MINISTER.—Such clerk of the peace or other officer of each district or county, within twenty days after the end of each general or quarter sessions of the peace, or the sitting of such court as aforesaid, shall transmit to the Minister of Finance a true copy of all such returns made within his district or county.—55-56 V., c. 29, s. 903.

**1138.** MISTAKE NOT TO VITIATE RETURN.—No return purporting to be made by any justice under this Act shall be vitiated by the fact of its including, by mistake, any convictions or orders had or made before him in any matter over which any provincial legislature has exclusive jurisdiction, or with respect to which he acted under the authority of any provincial law. 55-56 V., c. 29, s. 906.

**1139.** RETURNS UNDER PART XVII.—Every clerk of the peace or other proper officer shall transmit to the Minister of Agriculture a quarterly return of the names of offenders, the offences and punishments mentioned in convictions transmitted to him under Part XVII. of this Act. 55-56 V., c. 29, s. 823.

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## PART XXIV.

### LIMITATION OF ACTIONS.

*Prosecutions for Crimes.*

**1140.** TIME FOR COMMENCEMENT.—No prosecution for an offence against this Act, or action for penalties or forfeiture, shall be commenced,—

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

(i) treason, except treason by killing His Majesty, or where the overt act alleged is an attempt to injure the person of His Majesty—section seventy-four.

(ii) treasonable offences—section seventy-eight.

(iii) any offence against Part VII. relating to the fraudulent marking of merchandise; or,

(*b*) Two Years—after the expiration of two years from its commission if such offence be

(i) a fraud upon the government—section one hundred and fifty-eight,

(ii) a corrupt practice in municipal affairs—section one hundred and sixty-one,

(iii) unlawfully solemnizing marriage—section three hundred and eleven; or,

(*c*) One Year—after the expiration of one year from its commission if such offence be

(i) opposing reading of Riot Act and continuing together after proclamation—section ninety-two,

(ii) refusing to deliver weapon to justice—section one hundred and twenty-six,

(iii) coming armed near public meeting—section one hundred and twenty-seven,

(iv) lying in wait near public meeting—section one hundred and twenty-eight,

(v) seduction of girl under sixteen—section two hundred and eleven,

(vi) seduction under promise of marriage—section two hundred and twelve,

(vii) seduction of a ward or employee—section two hundred and thirteen,

(viii) parent or guardian procuring defilement of girl—section two hundred and fifteen,

(ix) unlawfully defiling women, procuring, etc.—section two hundred and sixteen,

(x) householders permitting defilement of girls on their premises—section two hundred and seventeen; or,

(*d*) Six Months—after the expiration of six months from its commission if the offence be

(i) unlawful drilling—section ninety-eight,

(ii) being unlawfully drilled—section ninety-nine.

(iii) having possession of offensive weapons for purposes dangerous to the public peace—section one hundred and fifteen,

(iv) proprietor of newspaper publishing advertisement offering reward for recovery of stolen property—section one hundred and eighty-three, paragraph (*d*); or,

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

(i) cruelty to animals—sections five hundred and forty-two and five hundred and forty-three,

(ii) railways and vessels violating provisions relating to conveyance of cattle—section five hundred and forty-four,

(iii) refusing peace officer or constable admission—section five hundred and forty-five; or,

(*f*) ONE MONTH—after the expiration of one month from its commission if the offence be improper use of offensive weapons under sections one hundred and sixteen and one hundred and eighteen to one hundred and twenty-four inclusive.

2. SIX DAYS.—No person shall be prosecuted, under the provisions of section seventy-four or seventy-eight of this Act, for any overt act of treason expressed or declared by open and advised speaking, unless information of such overt act, and of the words by which the same was expressed or declared, is given upon oath to a justice within *six days* after the words are spoken and a warrant for the apprehension of the offender is issued within *ten days* after such information is given. 55-56 V., c. 29, s. 551.

The laying of the information and subsequent proceedings are the commencement of the prosecution. So, if a statute enacts that an offence must be prosecuted within a certain time, the information must be within that time, but not necessarily the indictment: *R.* v. *Barret*, 1 Salk. 383; *R.* v. *Austin* (1845), 1 C. & K. 621; *R.* v. *Brooks* (1847), 2 C. & K. 402; 1 Dow. 217; *R.* v. *Kerr*, 26 U. C. C. P. 214, and cases there cited; *R.* v. *Casbolt* (1869), 11 Cox. C. C. 385; *R.* v. *Parker* (1864), 33 L. J. M. C. 135; *R.* v. *Smith*, L. & C. 131; *R.* v. *Carbray*, 14 Q. L. R. 223.

The common law rule is that the Crown is not precluded from prosecuting proceedings by any length of time and that rule applies in all cases in which the time for bringing the prosecution is not specially limited by the Code.

In criminal cases it is not necessary for a defendant relying on a statute of limitation to plead it in bar: sec. 905 under the plea of not guilty. It devolves upon the prosecuting power to show by legal evidence that the prosecution was commenced within the statutory period, if the indictment appears to have been found after the expiration of that period; Bish. Stat. Cr. par. 264; *R.* v. *Phillips* (1818), R. & R. 369; 1 Chit. 283, 385; even where the enactment limiting the time is contained in a clause separate from the clause creating the offence.

In a case of *The People* v. *Santvoord*, 9 Cowen 655, the Supreme Court of New York held that though the crime appears by the indictment itself to be barred by the statute of limitation, this is no ground for arresting judgment. That decision cannot be supported where the statute is absolute and without restrictions.

See *R.* v. *Hull*, 2 F. & F. 16; *R.* v. *Wallace*, 1 East, P. C. 186; *R.* v. *Killminster*, 7 C. & P. 228.

**1141.** PENALTY OR FORFEITURE BY ACTION WITHIN TWO YEARS.—No action, suit or information shall be brought or laid for any penalty or forfeiture under any Act, except within two years after the cause of action arises or after the offence for which such penalty or forfeiture is imposed is committed, unless the time is otherwise limited by any Act or by-law. 55-56 V., c. 29, s. 930.

**1142.** SUMMARY CONVICTION SIX MONTHS — TWELVE MONTHS.—In the case of any offence punishable on summary conviction, if no time is specially limited for making any complaint, or laying any information, in the Act or law relating to the particular case, the complaint shall be made, or the information laid, within six months from the time when the matter of complaint or information arose, except in the Northwest Territories and the Yukon Territory, in all which Territories the time within which such complaint may be made, or such information laid, shall be twelve months from the time when the matter of the complaint or information arose. 55-56 V., c. 29, s. 841; R. S., c. 50, s. 81; 61 V., c. 6, s. 9; 6-7 Ed. VII. c. 8, s. 2.

This section applies only to the summary conviction clauses.

The laying of the complaint or the making of the information should be followed up—within the limited time—by useful proceedings in the shape of a warrant or summons and the arrest of or otherwise bringing the accused before the magistrate or justice.

An indictment for rape includes the lesser charge of assault and a verdict thereon of common assault (which might have been tried summarily) was properly followed by a conviction provided the information had been laid within six months after the offence was committed and although that period had expired before the information for rape was laid: *R.* v. *Edwards* (1898), 2 Can. C. C. 96; 29 O. R. 451. See also, *R.* v. *West* (1898), 1 Q. B. D. 174, *Wrayton* v. *Naylor*, 24 S. C. R. 205; *Picton Bank* v. *Harvey*, 14 S. C. R. 617.

*Actions against Persons Administering the Criminal Law.*

**1143.** TIME AND PLACE OF ACTION.—Every action and prosecution against any person for anything purporting to be done in pursuance of any Act of the Parliament of Canada relating to criminal law, shall, unless otherwise provided, be laid and tried in the district, county or other judicial division where the act was committed, and not elsewhere, and shall not be commenced except within six months next after the act committed. 55-56 V., c. 29, s. 975.

**1144.** NOTICE IN WRITING.—Notice in writing of such action and of the cause thereof, shall be given to the defendant one month at least before the commencement of the action. 55-56 V., c. 29, s. 976.

**1145.** GENERAL ISSUE.—In any such action the defendant may plead the general issue, and give the provisions of this title and the special matter in evidence at any trial had thereupon. 55-56 V., c. 29, s. 977.

**1146.** TENDER OR PAYMENT INTO COURT.—No plaintiff shall recover in any such action if tender of sufficient amends is made before such action brought, or if a sufficient sum of money is paid into court by or on behalf of the defendant after such action brought. 55-56 V., c. 29, s. 978.

**1147.** JUDGMENT IF ACTION NOT BROUGHT IN TIME, ETC. —COSTS.—If such action is commenced after the time limited as aforesaid for bringing the same, or is brought or the venue laid in any other place than as aforesaid, a verdict shall be found or judgment shall be given for the defendant; and thereupon, or if the plaintiff becomes nonsuit, or discontinues any such action after issue joined, or if upon demurrer or otherwise judgment is given against the plaintiff, the defendant shall, in the discretion of the court, recover his full costs as between solicitor and client, and shall have the like remedy for the same as any defendant has by law in other cases.

2. NO COSTS UNLESS ACTION APPROVED.—Although a verdict or judgment is given for the plaintiff in any such action,

such plaintiff shall not have costs against the defendant, unless the judge before whom the trial is had certifies his approval of the action. 55-56 V., c. 29, s. 979.

**1148.** OTHER PROTECTING ACTS REMAIN.—Nothing herein shall prevent the effect of any Act in force in any province of Canada, for the protection of justices or other officers from vexatious actions for things purporting to be done in the performance of their duty. 55-56 V., c. 29, s. 980.

**1149.** ACTIONS UNDER PART III., SIX MONTHS—VENUE. —Every action brought against any commissioner under Part III. of this Act or any justice, constable, peace officer or other person, for anything done in pursuance of the said Part, shall be commenced within six months next after the alleged cause of action arises; and the venue shall be laid or the action instituted in the district or county or place where the cause of action arose; and the defendant may plead the general issue and give this Act and the special matter in evidence.

2. JUDGMENT IF ACTION NOT BROUGHT IN TIME, ETC.—DOUBLE COSTS.—If such action is brought after the time limited, or the venue is laid or the action brought in any other district, county or place than in this section prescribed, the judgment or verdict shall be given for the defendant; and in such case, or if the judgment or verdict is given for the defendant on the merits, or if the plaintiff becomes nonsuited or discontinues after appearance is entered, or has judgment rendered against him on demurrer, the defendant shall be entitled to recover double costs. R. S., c. 151, s. 24.

**1150.** ACTIONS FOR PENALTIES UNDER SECTION 1134 WITHIN SIX MONTHS — COSTS. — All actions for penalties arising under the provisions of section eleven hundred and thirty-four shall be commenced within six months next after the cause of action accrues, and the same shall be tried in the district, county or place wherein such penalties have been incurred; and if a verdict or judgment passes for the defendant, or the plaintiff becomes non-suit, or discontinues the action after issue joined, or if, upon demurrer or otherwise, judgment is given against the plaintiff, the defendant shall, in the discretion of the court, recover his costs of suit, as

between solicitor and client, and shall have the like remedy for the same as any defendant has by law in other cases. 55-56 V., c. 29, s. 904.

**1151.** Enforcing Conviction under Section 765, no Action.—No action or proceeding shall be commenced or had against a justice for enforcing a conviction, order or determination affirmed, amended or made by the court under section seven hundred and sixty-five. 55-56 V., c. 29, s. 900.

## PART XXV.

### FORMS.

**1152.** As in this Part may be Varied as to Officials.—The several forms in this Part, varied to suit the case, or forms to the like effect, shall be deemed good, valid and sufficient in the cases thereby respectively provided for; and may, when made for one class of officials, be varied so as to apply to any other class having the same jurisdiction. 55-56 V., c. 29, ss. 541 and 982.

The forms are inserted under the sections to which they respectively apply.

Some of the forms are nothing but "snares to entrap persons." The form of indictment, for instance, in schedule one, 64 *d*. (see under 852, *ante*), for the offence provided for by s. 174, s-s. 2, cannot be followed. The words "penal servitude" in it are nonsensical. There is no such punishment in Canada. The form in the Imperial draft Code of 1879 has been slavishly copied, without paying attention to the differences in the punishments in England and Canada.

See *R.* v. *Johnson*, 8 Q. B. 102; *R.* v. *Kimber*, 3 Cox. C. C. 223. Compare *Barnes* v. *White*, 1 C. B. 192; *In re Allison*, 10 Ex. 561; *R.* v. *Sansome*, 1 Den. 545; *Eggington's case*, 5 E. & B. 100; *Charter* v. *Greame*, 13 Q. B. 216; *R.* v. *Bain*, Ramsay's App. Cas. 191; *R.* v. *Davis*, 18 U. C. R. 180; *R.* v. *Shaw*, 23 U. C. R. 616; *Moffat* v. *Barnard*, 24 U. C. R. 498; *R.* v. *Turner*, 1 Moo. 239, 4 B. & Ald. 510; *R.* v. *Bent*, 1 Den. 157; *R.* v. *Cox*, 1 Leach 71; *R.* v. *Ryan*, 2 Moo. 15; *R.* v. *Lewis*, 2 Russ. 1067; *R.* v. *Cummings*, 16 U. C. R. 15; *R.* v. *McLaughlin*, 3 Allen, (N.B.), 159.

# CHAPTER 147.

## An Act respecting Penitentiaries.

SHORT TITLE.

Short title.

**1.** This Act may be cited as the Penitentiary Act. 6 E. VII., c. 38, s. 1.

INTERPRETATION.

Definitions.

**2.** In this Act, unless the context otherwise requires,—

*(a)* 'Minister' means the Minister of Justice;

*(b)* 'Inspectors' means the Inspectors of Penitentiaries appointed under this Act;

*(c)* 'officer' means and includes any officer, or employee of any of the classes mentioned in the schedule to this Act, or any servant in the employ of the penitentiary;

*(d)* 'trade instructors' includes bakers, blacksmiths, carpenters, masons, millers, shoemakers, stonecutters, tailors and persons employed to superintend any industrial department or to direct and instruct convicts in any branch of labour.

Powers of Inspectors.

2. Where by this Act any power or duty is conferred upon the Inspectors of Penitentiaries, such power may be executed or such duty discharged by the Inspectors or either of them. 6 E. VII., c. 38, ss. 2 and 17.

CONTROL OF PENITENTIARIES.

Administered by Minister of Justice.

**3.** All the penitentiaries in Canada and such other prisons and public institutions as are, from time to time, designated for that purpose by the Governor in Council, by proclamation in the *Canada Gazette*, and all prisoners and other persons confined therein and inmates thereof, shall be under the control of the Minister, who shall exercise over them complete administrative power. 6 E. VII., c. 38, s. 3.

Annual report.

**4.** The Minister shall submit to the Governor in Council an annual report upon the penitentiaries, prisons and other institutions under his control, to be laid before both Houses of Parliament within the first twenty-one days of each session thereof, showing the state of each penitentiary, prison or other

other institution, and the amounts received and expended in respect thereof, with such further information as he deems requisite. 6 E. VII., c. 38, s. 4.

PENITENTIARIES AND THEIR LIMITS, ETC.

Kingston. **5.** The penitentiary situate near the city of Kingston, in the province of Ontario, known as the Kingston Penitentiary;

St. Vincent de Paul. The penitentiary situate at St. Vincent de Paul, in the province of Quebec, known as the St. Vincent de Paul Penitentiary;

Dorchester. The penitentiary situate at Dorchester, in the province of New Brunswick, known as the Dorchester Penitentiary;

Manitoba. The penitentiary situate in the county of Lisgar, in the province of Manitoba, known as the Manitoba Penitentiary;

British Columbia. The penitentiary situate in the district of New Westminster, in the province of British Columbia, known as the British Columbia Penitentiary; and,

Alberta. The penitentiary situate in the city of Edmonton, in the province of Alberta, known as the Alberta Penitentiary;

together with all lands appertaining to the said penitentiaries respectively, according to the respective metes and bounds thereof as now known and defined, and all the buildings and property thereon belonging to the same, are hereby declared to be and continue to be penitentiaries of Canada. 6 E. VII., c. 38, s. 5.

Penitentiaries of Canada.

Maintained as prisons for confinement of convicts. **6.** The Kingston Penitentiary, for the province of Ontario;

The St. Vincent de Paul Penitentiary, for the province of Quebec;

The Dorchester Penitentiary, for the provinces of Nova Scotia, New Brunswick and Prince Edward Island;

The Manitoba Penitentiary, for the province of Manitoba, and all that part of the territories of Canada situate east of the province of Saskatchewan and the one hundred and second west meridian;

The British Columbia Penitentiary, for the province of British Columbia; and,

The Alberta Penitentiary, for the provinces of Alberta and Saskatchewan, and for all that part of the territories of Canada, except the Yukon Territory, situate west of the one hundred and second west meridian;

shall each be maintained as a prison for the confinement and reformation of persons lawfully convicted of crime before the courts of criminal jurisdiction of the province, territory or district for which it is the penitentiary and sentenced to confinement for life, or for any term not less than two years. 6 E. VII., c. 38, s. 6.

Term not less than 2 years.

Territory for each penitentiary **7.** The portion of Canada for which a penitentiary is the penitentiary shall be subject to alteration from time to time by

proclamation of the Governor in Council, and by such proclamation the Governor in Council may attach to the territory or province for which any one of the above named penitentiaries is the penitentiary, any tract or territory forming a portion or the whole of the territory or province, for which some other of the said penitentiaries is the penitentiary. fixed by proclamation.

2. Any person thereafter convicted of crime and sentenced as aforesaid by any court within the limits of the tract or territory so attached shall undergo in the former penitentiary the imprisonment to which he is sentenced. 6 E. VII., c. 38, s. 7. Where sentence shall be served.

**8.** Every lock-up, guard-room, guard-house or place of confinement provided by or for or under the direction of the Royal Northwest Mounted Police, or the regular military force, or a municipal body, or by the Commissioner or Commissioner in Council of the Yukon Territory, shall be a penitentiary, gaol, and place of confinement for all persons sentenced to imprisonment in the Territory. Yukon.

2. The Commissioner of the Territory shall direct in which such penitentiary, gaol or place of confinement any person sentenced to imprisonment shall be imprisoned. 6 E. VII., c. 38, s. 8. Idem.

**9.** The Governor in Council may declare, from time to time, by proclamation, to be published in the *Canada Gazette*, that any tract of land within Canada, of which the boundaries shall be described in the proclamation, is a penitentiary, and is to be so held within the meaning of this Act, and by such proclamation may declare for what part of Canada the same shall be a penitentiary. Governor in Council may proclaim penitentiary.

2. The Governor in Council, by any proclamation published as aforesaid, may declare that any tract of land established as a penitentiary under the provisions of this Act, or by any other law, or by proclamation under this section, from and after a certain day to be named in such proclamation, shall cease to be a penitentiary, or a penitentiary for a part of Canada named in such proclamation, and such tract of land shall cease to be a penitentiary, or a penitentiary for such part of Canada, accordingly. 6 E. VII., c. 38, s. 9. Or abandon.

**10.** Every penitentiary now established, or hereafter established by virtue of this Act, shall be deemed to include,— What penitentiary shall include

*(a)* all carriages, wagons, sleighs and other vehicles for land carriage, and all boats, scows and other vessels for water carriage, which belong to such penitentiary, or are employed by hire or otherwise in its service; and,

*(b)* every wharf at or near the penitentiary, which, although not within the limits mentioned in the proclamation establishing the penitentiary, is used for the accommodation of such boats, scows or other vessels, when the same are

are employed in or about any work or labour connected with the penitentiary. 6 E. VII., c. 38, s. 10.

Streets and thoroughfares used by convicts, part of penitentiary.

**11.** Every street, highway or thoroughfare of any kind along or across which it is necessary or convenient that convicts should pass in going to or returning from their work, or upon which it may be deemed necessary or expedient that convicts should be employed, shall be considered, while so used, as a portion of the tract of land forming the penitentiary.

Escapes and rescues.

2. Every escape, or attempt at escape, and every rescue, or aid in rescue, which takes place on such street, highway or thoroughfare, while so used, or on or from any wharf, boat, scow or other vessel which a penitentiary is by this Act declared to include, shall have the same effect as if such escape, or attempt at escape, or such rescue, or aid in rescue, had taken place within the prison walls or penitentiary limits. 6 E. VII., c. 38, s. 11.

Rail and tram roads.

**12.** The Minister may authorize the warden of any penitentiary to construct rail or tram roads to communicate between any one part of the penitentiary and any other part, and to carry the same across, upon or along any public road or street intervening, in such manner as to cause the least possible inconvenience to passengers or carriages using such road or street; but the warden of such penitentiary shall not break ground upon any public road or street for the purpose of constructing such rail or tram roads, in virtue of such authority, until after the lapse of one month after a copy of the writing giving such authority, certified by the warden, together with a plan showing the line which such rail or tram roads are to occupy, has been served upon the officer or person charged with the care or supervision of such public road. 6 E. VII., c. 38, s. 12.

Construction and repairs.

**13.** The construction and repairs of buildings and other works in the penitentiaries shall be under the control of the Minister. 6 E. VII., c. 38, s. 13.

INSPECTORS.

Two inspectors.

**14.** The Governor in Council may appoint two inspectors of penitentiaries and of such other prisons and public institutions as are, from time to time, designated by the Governor in Council; and each of the Inspectors shall hold office during pleasure, and shall be an officer of the Department of Justice, and, as inspector, shall act as the representative of the Minister. 6 E. VII., c. 38, s. 14.

Their duties.

**15.** The Minister may, from time to time, assign to the Inspectors respectively such of the duties by this Act required to be performed by the Inspectors as he may think proper; and

he may at any time require either of the Inspectors to perform any duty assigned to or usually performed by the other of them. 6 E. VII., c. 38, s. 16.

To examine and report.

**16.** The Inspectors, under direction from the Minister, shall visit, examine and report to him, upon the state and management of all the penitentiaries, and the suggestions which the wardens thereof make for the improvement of the penitentiaries. 6 E. VII., c. 38, s. 18.

To be justices of the peace.

**17.** The Inspectors, by virtue of their office, without any property qualification, shall be justices of the peace for every district, county, city or town of Canada, but shall have power to act in matters connected with the criminal law of Canada only. 6 E. VII., c. 38, s. 19.

To make rules.

**18.** The Inspectors shall, subject to the approval of the Minister, make rules and regulations for the administration, management, discipline and police of the penitentiaries; and the wardens of the penitentiaries, and every other officer employed in or about the same, shall be bound to obey such rules and regulations. 6 E. VII., c. 38, s. 20.

Annual report.

**19.** The Inspectors shall make an annual report to the Minister on or before the first day of September in each year, which shall contain a full and accurate statement of the state, condition and management of the penitentiaries under their control and supervision for the preceding fiscal year, together with such suggestions for the improvement of the same as they deem necessary and expedient, accompanied by copies of the annual reports of the officers of the penitentiaries, and by such financial and statistical statements and tables as they deem useful or as the Minister directs. 6 E. VII., c. 38, s. 21.

Inspectors to report defects.

**20.** If the Inspectors at any time find that any penitentiary is out of repair, or does not possess the proper and requisite sanitary arrangements, or has become unsafe or unfit for the confinement of prisoners, or that it does not afford sufficient accommodation for the number of prisoners confined therein, or the requisite accommodation for the proper industrial employment of the prisoners, they shall forthwith report the facts to the Minister. 6 E. VII., c. 38, s. 22.

EXAMINATIONS AND INVESTIGATIONS.

Inspectors to have free access.

**21.** The Inspectors may, at all times, enter into and remain within any penitentiary or other public institution placed under their control as aforesaid, and have access to every part of the same, and examine all papers, documents, vouchers, records and books of every kind belonging thereto.

Control of penitentiary by inspector.

2. The Inspectors may at any time assume control of any penitentiary and exercise the powers and functions of warden with respect to the control and management of such penitentiary and of all its concerns. 6 E. VII., c. 38, s. 23.

May investigate conduct.

**22.** The Inspectors may investigate the conduct of any officer or servant employed in or about any penitentiary, or other such public institution, as aforesaid, or of any person found within the precincts thereof; and, for that purpose, may summon by subpœna any person, and examine such person upon oath, and may compel the production of papers and writings.

Summon witnesses.

Punish for contempt.

2. If any person duly summoned neglects or refuses to appear at the time and place specified in the subpœna legally served upon him, or refuses to give evidence or to produce the papers demanded of him, the Inspectors may cause the said person, by their warrant, to be taken into custody and to be imprisoned in the common gaol of the locality, as for contempt of court, for a period not exceeding fourteen days. 6 E. VII., c. 38, s. 24.

Special report.

**23.** The Minister, at any time when he deems it necessary, may appoint one or more persons to make a special report on the state and management of any penitentiary, and in such case the person or persons so appointed, in order to enable him or them to make such special report, shall have the powers given to the Inspectors by the two sections last preceding. 6 E. VII., c. 38, s. 25.

DEPARTMENTAL STAFF.

Officers of penitentiary branch of Department of Justice.

**24.** The Governor in Council may appoint a parole officer, an accountant, an architect, and such other officers as are necessary, to perform the work in connection with the penitentiary branch of the Department of Justice, who shall be officers of the Department, and perform such duties as the Minister directs. 6 E. VII., c. 38, s. 26.

WARDENS AND OTHER OFFICERS.

Appointments by Governor in Council.

**25.** The Governor in Council may appoint, for any penitentiary, a warden and a deputy warden, who shall hold their offices during pleasure.

By the Minister.

2. The Minister may appoint, or authorize the appointment, of such other officers as may be necessary for the proper administration and police of any penitentiary. 6 E. VII., c. 38, s. 27.

Suspension.

**26.** The Inspectors may suspend any officer of a penitentiary, and the warden may suspend any officer of inferior rank, pending the decision of the Minister in each case. 6 E. VII., c. 38, s. 27.

**27.** The warden of a penitentiary shall be the chief executive officer of the same; and as such shall have the entire executive control and management of all its concerns, subject to the rules and regulations duly established, and the written instructions of the Inspectors, or of the Minister. Warden to have executive control.

2. In all cases not provided for, and where the Inspectors cannot readily be consulted, the warden shall act in such manner as he deems most advantageous for the penitentiary. In cases not provided for.

3. He shall be responsible for the faithful and efficient administration of the affairs of every department of the penitentiary, and he shall reside at the penitentiary. 6 E. VII., c. 38, s. 28. Responsibility of warden.

**28.** In the absence or during the incapacity of the warden, the deputy warden shall exercise all the disciplinary powers and perform all the necessary duties of the warden; and in the absence or during the incapacity of the deputy warden, the chief keeper, or in his absence the senior keeper present, shall exercise all the disciplinary powers and perform all the duties of the deputy warden, including the disciplinary powers and duties of the warden when he also is absent or incapacitated. 6 E. VII., c. 38, s. 28. If warden absent or incapacitated.

**29.** Every warden, deputy warden, accountant, storekeeper, steward and every such other officer as is, from time to time, designated by the Minister, shall give and enter into a bond or bonds for the faithful performance of the duties of his office according to law, and in such sum, and with such sufficient surety or sureties, as the Minister approves. Security. By bond.

2. The Minister may require that the security to be given in such cases, or in any such case, may be by bond or policy of a guarantee company, and may direct that the premiums payable upon such bonds or policies shall be paid by His Majesty. 6 E. VII., c. 38, s. 29. By guarantee company.

**30.** Every warden, and every other officer employed permanently in a penitentiary, shall severally take and subscribe, in a book to be kept for that purpose, the oath of allegiance to His Majesty, and an oath of office in the form following, that is to say:— Oaths.

'I (A.B.) do promise and swear that I will faithfully, diligently and justly serve and perform the duties assigned me as an officer in the Penitentiary, to the best of my abilities; and that I will carefully observe and carry out all the regulations of the Penitentiary. So help me God.' Form.

2. Either of the Inspectors or the warden may administer such oaths. 6 E. VII., c. 38, s. 30. Who may administer.

**31.** No officer, on the permanent staff of a penitentiary, shall carry on any trade or calling of profit or emolument other than Warden, etc., not to

exercise any other calling.

than his employment in the penitentiary, except by consent of the Governor in Council: Provided that in cases where such exemption is granted a reduction of at least twenty per centum shall be made from the salary attached to the office or position held by such officer. 6 E. VII., c. 38, s. 32.

SALARIES.

Salaries fixed by Minister.

**32.** The Minister shall fix the salary to be paid to each officer or employee: Provided that such salary shall not exceed that prescribed by schedule A to this Act.

2. The Minister may, for cause, authorize a deduction from the salary of any officer not exceeding one month's pay.

3. The salary of any officer suspended by the Inspectors, or by the warden, shall cease during the period of his suspension; but the Minister may direct payment of the same. 6 E. VII., c. 38, ss. 27 and 33.

GRATUITIES.

To retiring officers.

**33.** To any officer whose conduct has been good, and who has been faithful in the discharge of his duties, who,—

*(a)* is compelled to retire from the service on account of some mental or physical infirmity or injury which unfits him for the performance of his duty; or,

*(b)* may be retired to promote efficiency or economy; and,

*(c)* is not entitled to a superannuation allowance under the rules in that behalf in force;

Rate.

a gratuity, or retiring allowance may be given, calculated at the rate of a half month's salary for each year of his service, up to five years, and a month's salary for each year of service in excess of five years, based on the salary that such officer was in receipt of at the time of his retirement.

May be increased.

2. Such retiring allowance may be increased by one-half the amount thereof if the infirmity or injury which compels such officer to retire from the service is occasioned by any hurt received by him in the performance of his duty, without fault or negligence on his part, at the hands of any convict, or in preventing an escape or rescue, or in suppressing a revolt.

Additional to civil service superannuation or retiring allowance.

3. The eligibility of any officer to be paid such a gratuity shall not be affected by his promotion heretofore or hereafter to an office which makes him a member of the Civil Service, as defined for the purpose of the Civil Service Superannuation and Retirement Act, or by his having otherwise become or becoming a member of the Civil Service as so defined; but such officer, upon retirement from the service, under circumstances which would have rendered him eligible for a gratuity, may be paid a gratuity based upon his services up to the date of such promotion or of his becoming a member of the Civil Service as aforesaid, in addition to any superannuation allowance or gratuity or other payment or benefit for which he may be

eligible or to which he may be entitled under the said Act. 6 E. VII., c. 38, s. 34.

**34.** If any officer dies in the service leaving a widow or any person who in his lifetime was dependent on him, a gratuity may be paid to such widow, if any, and if not, to any person or persons in the lifetime of such officer dependent on him, or to any person or corporation in trust for any such person or persons so dependent on him. To widows, etc., of deceased officers.

2. No such gratuity shall exceed the amount of the salary of such officer,— Limits.

*(a)* for the two months next preceding his death, if he was appointed by the Governor in Council;

*(b)* for the three months next preceding his death, if he was appointed by the Minister or warden.

3. Such gratuity may be increased by one-half the amount thereof if the death of such officer is occasioned by any injury received by him in the performance of his duty, without fault or negligence on his part, at the hands of any convict, or in preventing an escape or rescue, or in suppressing a revolt. 6 E. VII., c. 38, s. 34. Increase.

PERQUISITES.

**35.** No officer shall be allowed any perquisite except as follows:— What allowable.

*(a)* Wardens and deputy wardens shall be entitled to free residence or quarters, and to such allowance of heat, light and water as the Minister deems necessary therefor;

*(b)* The ornamental grounds attached to the residence or quarters of a warden or deputy warden may be kept in order and cultivated by convict labour, but otherwise no convict labour shall be employed in keeping in order or cultivating any grounds occupied by an officer;

*(c)* Any officer whose duties require him and who is directed by the Minister to reside on the penitentiary reserve may, during the will of the Minister, occupy free of rent any house or quarters, with any grounds attached, which form part of the penitentiary property;

*(d)* Any officer who wears uniform may be allowed such uniform as the Inspectors, with the concurrence of the Minister, prescribe. 6 E. VII., c. 38, s. 35.

PENITENTIARY PROPERTY, CONTRACTS, ETC.

**36.** The warden shall be a corporation sole known by the name of 'The Warden of the Penitentiary,' (designating the place as named in this Act, or named in the proclamation establishing it as a penitentiary), and by that name he, and his successors, shall have perpetual succession, and Warden a corporation.

and may sue and be sued, and may plead and be pleaded unto, in any of His Majesty's courts. 6 E. VII., c. 38, s. 36.

All transactions in his corporate name.

**37.** All dealings and transactions on account of any penitentiary, and all contracts for goods, wares or merchandise necessary for maintaining and carrying on the penitentiary, or for the sale of goods prepared or manufactured in the penitentiary, shall be entered into and carried out in the corporate name of the warden.

2. All personal property belonging to the penitentiary shall be held in the corporate name of the warden for His Majesty. 6 E. VII., c. 38, s. 37.

Property vested in His Majesty.

**38.** The real property of every penitentiary, as well as all books, records and the other property thereto belonging, shall be vested in His Majesty; but the warden and his successors in office shall have the custody and care thereof under the provisions of this Act. 6 E. VII., c. 38, s. 38.

Arbitration of differences.

**39.** Whenever any difference arises between the warden and any person having dealings with him on account of the penitentiary, such difference may, by order of the Inspectors, and with the consent of such person, be referred either to one arbitrator, selected by the warden and such person, or to three arbitrators, one of whom shall be named by the warden, and another by such other person, and a third by the two so named as aforesaid.

Award final.

2. In the one case, the award of the arbitrator, and, in the other case, the award of any two of the arbitrators, shall be final. 6 E. VII., c. 38, s. 39.

Warden to collect debts.

**40.** The warden of a penitentiary shall exercise due diligence in enforcing the payment of debts due to the penitentiary, and with as little expense as possible; and, on the report of the Inspectors, approved by the Minister, he may accept of such security from any debtor on granting time, or such composition in full settlement, as is thought conducive to the interests of the penitentiary. 6 E. VII., c. 38, s. 40.

PRIVILEGED VISITORS.

Who entitled to be.

**41.** The following persons, other than the Inspectors or persons specially appointed by the Minister, may visit any penitentiary during business hours, that is to say:—the Governor General of Canada, the Lieutenant Governor of any province of Canada, any member of the King's Privy Council for Canada, any member of the executive council of any of the said provinces, any member of the Parliament of Canada, and any judge of any court of record in Canada or in any of the said provinces; but no other person shall be permitted to enter within the walls wherein the prisoners are confined, except by

the special permission of the warden, and under such regulations as the Inspectors prescribe. 6 E. VII., c. 38, s. 41.

IMPRISONMENT OF CONVICTS.

**42.** Every one who is sentenced to imprisonment for life, or for a term of years, not less than two, shall be sentenced to imprisonment in the penitentiary for the province in which the conviction takes place. 55-56 V., c. 29, s. 955. For life, or 2 years and upwards.

**43.** Every one who is sentenced to imprisonment in a penitentiary shall be subject to the provisions of the statutes relating to such penitentiary, and to all rules and regulations lawfully made with respect thereto. Subject to regulations.

2. The term of imprisonment in pursuance of any sentence shall, unless otherwise directed in the sentence, commence on and from the day of passing such sentence; but no time during which the convict is out on bail shall be reckoned as part of the term of imprisonment to which he is sentenced. 55-56 V., c. 29, s. 955. Commencement of sentence.

CONVEYANCE, RECEIPT AND REMOVAL OF CONVICTS.

**44.** The sheriff or deputy sheriff of any county or district, or any bailiff, constable, or other officer, or other person, by his direction or by the direction of a court, or any officer appointed by the Governor in Council and attached to the staff of a penitentiary for that purpose, may convey to the penitentiary named in the sentence, any convict sentenced or liable to be imprisoned therein, and shall deliver him to the warden thereof, without any further warrant than a copy of the sentence taken from the minutes of the court before which the convict was tried, and certified by a judge or by the clerk or acting clerk of such court. 6 E. VII., c. 38, s. 42. Who may convey convicts.

**45.** Whenever a prisoner is ordered, by competent authority to be conveyed to any penitentiary from any other penitentiary, or from a reformatory prison, or from a gaol, there shall be delivered to the warden of the penitentiary receiving such prisoner, together with all other necessary documents, a certificate signed by the medical officer of the institution from which such prisoner has been taken, and countersigned by the official in charge of the penitentiary, reformatory or gaol from which such prisoner has been taken, declaring that such prisoner is free from any putrid, infectious or contagious disease, and that he is fit to be removed. 6 E. VII., c. 38, s. 43. Medical certificate.

**46.** The warden shall receive into the penitentiary every convict legally certified to him as sentenced to imprisonment therein, Convict must be

legally certified.

therein, unless certified by the surgeon of the penitentiary to be suffering from a dangerously infectious or contagious disease, and shall there detain him, subject to the rules, regulations and discipline thereof, until the term for which he has been sentenced is completed, or until he is otherwise legally discharged. 6 E. VII., c. 38, s. 44.

Warrant for removal.

**47.** The Minister may, by warrant under his hand, direct the removal of any convict from any one penitentiary to another, or from one territorial gaol to another; and the warden, or gaoler, having the custody of any convict so ordered to be removed, when required so to do, shall deliver up the said convict to the constable or other officer or person who produces the said warrant, together with a copy, attested by the said warden, or gaoler, of the sentence and date of conviction of such convict as given to him on reception of such convict into his custody.

Execution thereof.

2. The constable or other officer or person shall give a receipt to the warden, or gaoler, for the convict, and shall thereupon, with all convenient despatch, convey and deliver up such convict, with the said attested copy, into the custody of the warden, or gaoler, mentioned in the warrant, who shall give a receipt in writing for every convict so received into his custody, to such constable or other officer or person, as his discharge.

Custody of convict.

3. The convict shall be kept in custody in the penitentiary or gaol to which he is so removed, until his removal to another penitentiary or gaol, or until the termination of his sentence, or until his discharge by law.

Deemed in custody of warden from date of sentence.

4. For the purposes of this section any convict sentenced to be imprisoned in any penitentiary shall be deemed to be in the custody of the warden of that penitentiary immediately upon such sentence; and the sheriff or other officer in whose custody he then is shall, upon receiving a receipt therefor, deliver up the convict, together with a copy of the sentence taken from the minutes of the court and certified by a judge or by the clerk or acting clerk thereof, to any constable or other officer or person who produces a warrant under this section for the removal of such convict from such penitentiary to any other penitentiary, and the like action shall thereupon be had and taken as in other cases under this section.

Convicts sentenced to certain gaols may be removed.

5. Any convict confined in a gaol in the Northwest Territories, or in the custody of the Royal Northwest Mounted Police, if his sentence of imprisonment is for a term of two years or longer, may be removed to a penitentiary, or, if the sentence is for less than two years, to a territorial gaol, in the manner provided by this section for the removal of a convict from one penitentiary to another; and the sheriff or other person in charge of such gaol, or the officer in command of the Royal Northwest Mounted Police at the post where such convict is in custody, shall be substituted, in the application of this

Proceedings therefor.

this section to such cases, for the warden of the penitentiary from which a convict is removed. 6 E. VII., c. 38, s. 45.

Authority of sheriff or officer conveying convict.

**48.** The sheriff or other officer or person employed by competent authority to convey any convict to any penitentiary to which such convict is ordered to be taken, either by sentence of a court or by order of the Minister, as in the last preceding section mentioned, may secure and convey him through any county or district through which he has to pass in any of the provinces of Canada.

Idem.

2. Until the convict has been delivered to the warden of such penitentiary, such sheriff, officer or person shall, in all territorial divisions or parts of Canada through which it may be necessary to convey such convict, have the same authority and power over and with regard to such convict, and to command the assistance of any person in preventing his escape, or in recapturing him in case of an escape, as the sheriff of the territorial division in which he was convicted would himself have, in conveying him from one part of that division to another. 6 E. VII., c. 38, s. 46.

Commutation of death sentence.

**49.** If sentence of death has been passed upon any convict by any court in Canada, and the Governor General, on behalf of His Majesty, has been pleased to commute such sentence to imprisonment for life, or for any term of years, such commutation shall have the same effect as the judgment of a competent court legally sentencing such convict to such imprisonment for life or other term.

Conveyance of convict in such case.

2. The sheriff, or other officer, or other person having such convict in custody, on receipt of a letter from the Secretary of State, notifying him of the fact of such commutation, and directing him to convey such convict to a penitentiary therein named, shall forthwith convey such convict thereto, and shall have the same rights and powers, in conveying such convict to such penitentiary, as if the conveyance took place by virtue of the sentence of a competent court. 6 E. VII., c. 38, s. 47.

Authority of warden in case of such commutation.

**50.** A letter signed by the Secretary of State, notifying the warden of the fact of the commutation of any sentence of death to imprisonment for life or for a term of years, and of the term of years or life term to which the sentence has been commuted, shall be sufficient authority to the warden to receive such convict into the penitentiary, and to deal with him as if he had been sentenced by a competent court to confinement therein for the period or life term in the said letter mentioned.

Copy of pardon not required.

2. It shall not be necessary, for the purpose of commuting such sentence, or of authorizing the conveyance of a prisoner to any penitentiary, or for his reception and detention therein for the term to which such sentence is commuted, that the warden should have in his possession a copy of any pardon. 6 E. VII., c. 38, s. 48.

TRANSFER OF JUVENILE OFFENDERS FROM AND TO REFORMATORY PRISONS.

If certified incorrigible, may be transferred to penitentiary.

**51.** If a juvenile offender has been ordered by competent authority to be imprisoned in any reformatory prison, and after being imprisoned therein has become incorrigible, and is so certified by the superintendent of such reformatory prison, or, in the province of Quebec, by one of the inspectors of prisons for the province, the lieutenant governor of the province in which the reformatory prison is situated, by a warrant under his hand, addressed to the superintendent of such reformatory prison, setting forth the sentence or order under which the juvenile offender was imprisoned therein, and the fact that he is incorrigible, may direct that such juvenile offender be removed to any penitentiary named in the said warrant.

Authority of officers.

2. Any officer of the prison, or any other person authorized by the superintendent, shall have the same powers in conveying such juvenile offender to such penitentiary as are hereinbefore given to a sheriff or other person in like cases.

Duty of warden.

3. The warden of the penitentiary named in the warrant shall receive such juvenile offender, and deal with him for the unexpired term of the sentence or order under which he was ordered to be imprisoned in such reformatory prison, as if he had been sentenced to such penitentiary by a competent court: Provided that, together with the said offender, a copy of the said sentence or order, attested by the superintendent of the reformatory prison, and also an order from the lieutenant governor directing the warden of such penitentiary to receive such juvenile offender, shall be delivered to the warden of the penitentiary. R.S., c. 183, s. 52; 6 E. VII., c. 38, s. 49.

Transfer to reformatory.

**52.** The Minister may, at any time, in his discretion, by warrant under his hand, cause any convict in a penitentiary who appears to the inspector to be under sixteen years of age, and susceptible of reformation, to be transferred, for the remainder of his term of imprisonment, to a reformatory prison, if there is one, of the province where such convict was sentenced. 6 E. VII., c. 38, s. 50.

INSANE CONVICTS.

If insane when received at penitentiary.

**53.** If at any time within three months after the receipt at a penitentiary of any convict sentenced to imprisonment therein, it is established to the satisfaction of the Minister, either by the written certificate of the surgeon of such penitentiary or otherwise, that the convict is insane and was insane at the time when he was received at the penitentiary, the Minister may, after giving reasonable notice of his intention to the attorney general of the province within which such insane convict was convicted, by warrant under his hand, direct the removal of such insane convict from the penitentiary to the

Returned to former custody.

gaol or other place of confinement from which such insane convict came to the penitentiary.

2. Such warrant shall be sufficient authority to the warden or any other officer of the penitentiary to remove such insane convict from the penitentiary to such gaol or place of confinement and there to deliver him to the keeper thereof. 6 E. VII., c. 38, s. 51. Authority of officers.

**54.** The Minister may direct the warden of any penitentiary to set apart a portion thereof for the reception, confinement and treatment of insane convicts; and the portion so set apart shall be used for such purposes accordingly, and shall be known as the ward for the insane. 6 E. VII., c. 38, s. 52. Ward for insane.

**55.** If at any time it appears to a surgeon of a penitentiary that any convict confined therein is insane and ought to be removed to the ward for the insane, he shall report the same in writing to the warden with a view to the removal of such convict to the ward for the insane. Surgeon to report.

2. If the surgeon shall at any time thereafter certify to the warden that such convict has recovered his reason, and is in a fit state to be removed from the ward for the insane, the warden shall remove such convict therefrom. 6 E. VII., c. 38, s. 53. If convict recovers.

**56.** When a surgeon of a penitentiary reports in writing to the warden that any convict confined in such penitentiary is insane, and ought to be removed to an asylum for the insane, the warden shall report the facts to the Inspectors. Removal to asylum for insane.

2. The Minister may thereupon, if an arrangement exists with the lieutenant governor of any province for the maintenance of such convict in an asylum for the insane of the province, by warrant under his hand, direct the removal of such insane convict to the custody of the keeper or person in charge of such asylum, for the unexpired portion of his sentence. Warrant for removal to provincial asylum.

3. The warden of the penitentiary, when required so to do, shall deliver up to the constable or other officer or person who produces such warrant, the insane convict, together with a copy, attested by the warden, of the sentence and date of his conviction, as given to the warden on reception of the convict into his custody; and the constable or other officer or person shall give a receipt therefor, and shall thereupon, with all convenient despatch, convey and deliver up such convict, with such attested copy, into the custody of the keeper or person in charge of such asylum, who shall give a receipt therefor. How executed.

4. The convict shall be kept in custody in such asylum under his sentence, until the expiration or sooner determination thereof, or until his removal elsewhere under the provisions of this Act, or his discharge by law. Convict to remain in custody.

Re-transfer to penitentiary.

5. If, before the expiration of his sentence, any convict so detained in any asylum recovers his reason, and such recovery is certified to by the surgeon or medical officer in charge of such asylum, the Minister may in like manner direct the removal of such convict from such asylum to the penitentiary from which he came, or to some other penitentiary; and thereupon such convict may in like manner be removed and delivered again to the warden of such penitentiary, where he shall be kept in custody under his sentence. 6 E. VII., c. 38, s. 54.

Upon expiry of sentence.

**57.** If the term of imprisonment of any convict expires, or is determined by remission of sentence or otherwise, while such convict is detained as insane in the ward for the insane, he may continue to be detained therein pending the proceedings authorized by this Act; and in such case the surgeon shall forthwith certify to the warden whether the convict is sane or insane.

Discharge if sane.

2. If the surgeon certifies that such convict is not insane, he shall be forthwith discharged. 6 E. VII., c. 38, s. 55.

If insane, report to lieutenant governor.

**58.** If the surgeon certifies that the person is insane, the warden shall report the fact to the Inspectors; and the Minister shall thereupon communicate the fact to the lieutenant governor of the province within which the person was sentenced, so that he may be removed to a place of safe keeping.

Lieutenant governor may order removal to place of safe keeping.

2. The lieutenant governor may, thereupon, order the removal of the person to a place of safe keeping within the province, and he shall, upon such order, be delivered to the person therein designated for transport to such place, and he shall remain and be detained there, or in such other place of safe keeping as the lieutenant governor, from time to time, orders, until it appears to the lieutenant governor that he is of sound mind, when the lieutenant governor may order him to be discharged; but if, at any time after his removal to such place of safe keeping, and before his complete recovery, the lieutenant governor thinks fit to order that he shall be given up to any person by him named, he shall be given up accordingly. 6 E. VII., c. 38, s. 56.

If arrangements exist with Ontario.

**59.** If the lieutenant governor of the province within which any such person was sentenced has made arrangements with the Lieutenant Governor of the province of Ontario for the safe keeping of any such person in Ontario, and such arrangements have been communicated to the Minister by the lieutenant governor of the province concerned, the Minister shall, in the case of any such person, communicate, under the last preceding section, with the Lieutenant Governor of Ontario, who shall, in such cases, have all the powers thereby given.

If lieutenant governor does not

2. If the Lieutenant Governor does not, within one month after the Minister has communicated, as provided by the last preceding

preceding section, cause the person to be removed under the provisions thereof, the Minister may direct the convict to be removed for safe keeping to the gaol in which he was last confined previous to his transfer to the penitentiary, or to any other gaol in the province within which he was sentenced; and, after such removal, all the provisions of the last preceding section shall apply to this case. 6 E. VII., c. 38, s. 57. Act. convict returned to gaol.

**60.** If any question arises as to the sanity of any convict, the Minister may order an inquiry and report to be made by one or more medical men, in conjunction with the surgeon, and may, upon such report, direct such action as he deems necessary to carry out the provisions of this Act. 6 E. VII., c. 38, s. 58. Inquiry and report as to sanity.

TREATMENT OF CONVICTS.

**61.** Every convict shall, during the term of his confinement, be clothed, at the expense of the penitentiary, in suitable prison garments. Clothing.

2. He shall be supplied with a sufficient quantity of wholesome food. Food.

3. He shall be provided with a bed and sufficient covering, varied according to the season. Bedding.

4. He shall, except in case of sickness, be kept in a cell by himself at night. 6 E. VII., c. 38, s. 59. Separate confinement.

EMPLOYMENT OF CONVICTS.

**62.** Imprisonment in a penitentiary shall be with hard labour, whether so directed in the sentence by which such imprisonment is adjudged or not. Hard labour.

2. Every convict, except during sickness or other incapacity, shall be kept constantly at hard labour, of a kind determined by the warden, during at least ten hours, if possible, exclusive of hours for meals, of every day, except Sunday, Good Friday, Christmas Day, and such other days as the Governor General sets apart for days of fasting or thanksgiving, and such days as are designated in the rules made by the Inspectors in that behalf; but no convict shall be compelled to labour on any of the obligatory holidays of the religious denomination to which he adheres. Hours of labour.

3. The convicts may be employed in labour under the control of the Crown; but no labour shall be let out to any company or person. 55-56 V., c. 29, s. 955; 6 E. VII., c. 38, s. 60. Labour not to be let out.

FEMALE CONVICTS.

**63.** The female convicts shall be kept in a separate ward, secluded from the male convicts, and shall be under the charge of a matron, with such and so many female officers as the Minister orders to be employed. 6 E. VII., c. 38, s. 61. Separate confinement.

REMISSION.

Remission for industry and good conduct.

**64.** The Inspectors, subject to the approval of the Minister, may make regulations, under which a record may be kept of the daily conduct of every convict in any penitentiary, noting his industry and the strictness with which he observes the prison rules, with a view to permit such convict to earn a remission of a portion of the time for which he is sentenced to be confined, not exceeding six days for every month during which he is exemplary in conduct and industry.

Rate of remission

2. When any convict has earned and has at his credit seventy-two days of remission, he may be allowed, for every subsequent month during which his conduct and industry continue satisfactory, ten days' remission for every month thereafter.

If convict unable to work.

3. If any convict, by reason of sickness or any other infirmity, not intentionally produced by himself, is unable to labour, he shall be entitled, by good conduct, to such portion of the remission from his sentence to which he would otherwise be entitled as the warden, with the concurrence of the Minister, deems proper.

Escape, etc.

4. Every convict who escapes, attempts to escape, breaks prison, attempts to break prison, breaks out of his cell, or makes any breach therein with intent to escape, or assaults any officer or servant of the penitentiary, or being the holder of a license under the Ticket of Leave Act, forfeits such license, shall forfeit the whole of the remission which he has earned. 6 E. VII., c. 38, s. 62.

Forfeiture of remission.

PRISON OFFENCES.

Prison offences.

**65.** The Inspectors shall draw up a list of prison offences, and the list shall be printed, and a copy thereof placed in each cell of the penitentiary. 6 E. VII., c. 38, s. 63.

OFFENCES AND PENALTIES.

If officer of Department of Justice, inspector, warden, etc., acts as contractor.

**66.** Any officer of the Department of Justice, or any warden, or other officer employed in a penitentiary, who, either in his own name or in the name of, or in connection with any other person, provides, furnishes or supplies any materials, goods or provisions for the use of any penitentiary, or is concerned directly or indirectly in furnishing or supplying the same, or in any contract relating thereto, shall incur a penalty of five hundred dollars, recoverable, with costs, by any person who sues for the same in any court of competent jurisdiction. 6 E. VII., c. 38, s. 31.

Penalty.

Conveying forbidden articles to or from convicts; improper employment of convicts, etc.

**67.** Any officer or servant of any penitentiary, or territorial gaol, or other person who,—

*(a)* gives or in any way conveys to any convict any article or thing not allowed by the rules of the penitentiary or gaol to be so given or conveyed; or,

*(b)* leaves any such article anywhere with intent that any convict shall get the same; or,

*(c)* does any other act with intent that any convict shall get any such article; or,

*(d)* takes or receives or carries out from any convict, for any purpose, any article not allowed by the rules of the penitentiary or gaol to be so taken, received or carried out; or,

*(e)* buys from or sells to or for any convict anything whatsoever; or,

*(f)* takes or receives for his own use, or for that of any other person, any fee or gratuity from any convict or visitor; or,

*(g)* without proper authority employs any convict in work for the personal benefit of himself or any other person; or,

*(h)* endeavours to do or knowingly allows to be done any of the acts in this section mentioned;

shall, on summary conviction, be liable to a penalty not exceeding one hundred dollars, or imprisonment with hard labour for a term not exceeding three months. 6 E. VII., c. 38, s. 64. Penalty.

**68.** Any convict who is, upon his discharge or release from the penitentiary, furnished, at the expense of the penitentiary, with money or with tickets for transportation, in pursuance of the provisions hereinafter contained, and who uses such money or tickets for any purpose other than the purpose for which the money or tickets were so furnished, is guilty of an offence, and liable on summary conviction to imprisonment for a term not exceeding three months. 6 E. VII., c. 38, s. 65. Improper use of money or tickets furnished to convicts. Penalty.

**69.** Every person who,—

*(a)* is found trespassing upon any grounds, buildings, yards, offices or other premises whatsoever, belonging or appertaining to any penitentiary or territorial gaol; or, Trespassing.

*(b)* who enters the same, or who may be found loitering upon the street or highway adjacent thereto, not being an officer or servant of the penitentiary or gaol, or authorized by the warden or gaoler;

shall, on summary conviction, for a first offence, be liable to a penalty not exceeding ten dollars, and in default of payment to imprisonment, with or without hard labour, for a term not exceeding one month. Penalty.

2. For a subsequent offence he shall be liable to a penalty not exceeding fifty dollars, and in default of payment to imprisonment, with or without hard labour, for a term not exceeding three months. 6 E. VII., c. 38, s. 66. Subsequent offence.

**70.** Every person who moors or anchors, or causes to be moored or anchored, any raft, boat, vessel or craft of any kind within Mooring vessel near penitentiary.

within three hundred feet of the shore or wharf bounding the lands of any penitentiary towards any lake, arm of the sea, bay or river, without the permission of the warden of such penitentiary, shall, on summary conviction, be liable to a penalty of twenty dollars, and in default of payment of such penalty and costs, to imprisonment with hard labour, for a term not exceeding two months, or to such imprisonment in addition to payment of the said pecuniary penalty and costs.

Penalty.

Vessel liable

2. The amount of such penalty may be levied upon such raft, boat, vessel or craft, in whomsoever the property thereof may be, as well as on the offender's own goods and chattels. 6 E. VII., c. 38, s. 67.

Warden and deputy to be justices of the peace.

**71.** The warden of the penitentiary shall *ex officio* be, and have the powers and authority of, a justice of the peace, with respect to any offence or charge of an offence under the four sections last preceding, and for all purposes connected with any such offence or charge.

Guards to be constables.

2. Each and every keeper and guard of the penitentiary shall, for all the said purposes, *ex officio* be, and have the powers and authority of, a constable. 6 E. VII., c. 38, s. 68.

DISCHARGE OF CONVICTS.

Conditions for discharge.

**72.** No convict shall be discharged from a penitentiary on the termination of his sentence, or otherwise, unless at his own request, during the months of December, January or February; but such convict may remain in the penitentiary until the first day of March following the termination of his sentence.

In case of disease.

2. No convict who, at the expiration of his sentence, is found to be suffering from any acute, dangerous, contagious or infectious disease, shall be discharged unless and until in the opinion of the warden such discharge may safely be made.

Discipline to continue until discharged.

3. A convict remaining from any cause in a penitentiary after the termination of his sentence, shall be under the same discipline and control as if his sentence were still unexpired.

Order of discharge.

4. On the first day of March, a list shall be made of all the prisoners whose sentences have expired during the three preceding months, and who are still in prison, according to the dates when their sentences expired; and according to such order they shall be discharged, one convict on the said first day of March, and one on every day thereafter, until the whole are discharged.

Not discharged on Sunday.

5. Whenever the term of any prisoner's sentence expires on a Sunday or a statutory holiday he shall be discharged on the day preceding, unless he desires to remain until the day following.

Clothing furnished upon discharge.

6. Every convict under sentence for a term not less than two years, shall, upon his discharge or release, either by expiration of sentence, conditional liberation or otherwise, be furnished, at

at the expense of the penitentiary, with a suit of clothing other than prison clothing, and with transportation to the place at which he received his sentence, and such other sum in addition, not exceeding ten dollars, as the warden deems proper. And transportation.

7. If the warden is of opinion that a convict, on being discharged, does not intend to return to the place at which he received his sentence, but intends to go to some other place nearer to the penitentiary, such convict shall be furnished with transportation to such nearer place, and not to the place at which he received his sentence. Transportation.

8. Every convict who is furnished, pursuant to this section, with money for the payment of travelling expenses, or with a ticket or tickets for transportation, shall be deemed to be in the custody of the warden until his departure by railway or other means of transportation for his destination, and it shall be the duty of the warden to take such action as may be necessary to ensure such departure. 6 E. VII., c. 38, s. 69. Transportation expenses; ensuring of convict's departure.

PRISONERS' EFFECTS.

**73.** Every article found upon the person of a convict at the time of his reception into the penitentiary shall be taken from him, and a description of every article which is considered by the warden to be worth preservation shall be entered in a book kept for that purpose; and if the convict does not see fit otherwise to dispose of it at the time, it shall be carefully put away until the day of his discharge, when it shall be delivered up to him again in the state in which it then is. Convict's property to be kept for him.

2. The warden shall not be liable for any deterioration which takes place in such article in the interval. Warden not liable for damage.

3. If, at the time of his reception, the convict desires to dispose of any such article and it is so disposed of, a memorandum of the fact shall be noted in the said book, and signed by the proper officer who has charge thereof, and also by the convict; and any money received therefor shall be placed to his credit. 6 E. VII., c. 38, s. 70. Articles may be sold at convict's request.

CONVICTS' LETTERS, ETC.

**74.** The warden of a penitentiary, or any officer thereof deputed by him for the purpose, may,— Powers of warden and officers.

*(a)* open and examine any letter, parcel or mail matter received at the penitentiary, through the mail or otherwise, addressed to or intended for any convict;

*(b)* open and examine any letter, parcel or mail matter which any convict desires to have sent out by mail or otherwise;

*(c)* withhold from a convict any such letter, parcel or mail matter addressed to him or intended for him, or destroy it,

it, or otherwise deal with it as required or authorized by the rules and regulations;

*(d)* detain or destroy, or remove or obliterate objectionable contents of, or otherwise deal with, any letter, parcel or mail matter which a convict desires to have sent out from the penitentiary. 6 E. VII., c. 38, s. 71.

DECEASED CONVICTS.

If convict dies.

**75.** If a convict dies in a penitentiary, and the inspector, warden or surgeon has reason to believe that the death of such convict may have arisen from any other than ordinary causes, he shall call upon a coroner having jurisdiction to hold an inquest upon the body of such deceased convict.

Coroner to act upon request of officer.

2. Upon such requisition by one or more of the aforesaid officers, the said coroner shall hold such inquest, and, for that purpose, he and all other persons necessarily attending such inquest, shall have admittance to the prison. 6 E. VII., c. 38, s. 72.

Body to relatives.

**76.** The body of every convict who dies in a penitentiary shall, if claimed by his relatives, be given up to and shall be taken away by them.

If not claimed, may go to inspector of anatomy, etc.

2. If it is not so claimed, the body may be delivered to an inspector of anatomy, duly appointed under any Act authorizing such appointment, or to the professor of anatomy in any college wherein medical science is taught.

Otherwise to be interred.

3. If it is not claimed by his relatives or delivered to an inspector of anatomy, the body shall be decently interred at the expense of the penitentiary. 6 E. VII., c. 38, s. 73.

## SCHEDULE A.

| | |
|---|---|
| KINGSTON PENITENTIARY— | |
| Warden (with free quarters, heated and lighted) | $ 2,600 00 |
| Deputy warden (with free quarters, heated and lighted) | 1,500 00 |
| Matron (with free quarters, heated and lighted) | 600 00 |
| Deputy matron (with free quarters, heated and lighted) | 450 00 |
| Protestant chaplain | 1,200 00 |
| Roman Catholic chaplain | 1,200 00 |
| Surgeon and medical superintendent of the asylum for the insane | 2,400 00 |
| Accountant and clerk of cordage industry | 1,700 00 |
| Warden's clerk | 900 00 |
| Storekeeper | 1,000 00 |
| Assistant storekeeper | 700 00 |
| Steward and baker | 1,000 00 |
| Assistant steward | 700 00 |
| Hospital overseer and school instructor | 900 00 |
| Assistant hospital overseer and school instructor | 700 00 |
| Messenger | 600 00 |
| Engineer | 1,200 00 |
| Electrician | 900 00 |
| Assistant electrician | 700 00 |
| Firemen | 600 00 |
| Superintendent of cordage industry | 1,200 00 |
| Chief trade instructor | 1,000 00 |
| Trade instructors | 800 00 |
| Chief keeper | 1,000 00 |
| Chief watchman | 800 00 |
| Gate keeper and armourer | 700 00 |
| Keepers | 700 00 |
| Watchmen | 650 00 |
| Guards | 600 00 |
| Stable guards | 600 00 |
| Temporary guards | 500 00 |
| ST. VINCENT DE PAUL PENITENTIARY— | |
| Warden (with free quarters, heated and lighted) | $ 2,400 00 |
| Deputy warden (with free quarters, heated and lighted) | 1,500 00 |
| Roman Catholic chaplain | 1,200 00 |
| Protestant chaplain | 1,200 00 |
| Surgeon | 1,600 00 |
| Accountant | 1,400 00 |
| Warden's clerk and French school instructor | 1,000 00 |
| Hospital overseer and English school instructor | 900 00 |
| Storekeeper | 900 00 |

| | |
|---|---|
| ST. VINCENT DE PAUL PENITENTIARY—*Concluded.* | |
| Assistant storekeeper | $ 700 00 |
| Steward and baker | 1,000 00 |
| Assistant steward | 700 00 |
| Messenger | 600 00 |
| Engineer | 1,000 00 |
| Electrician | 800 00 |
| Firemen | 600 00 |
| Chief trade instructor | 1,000 00 |
| Trade instructors | 800 00 |
| Chief keeper | 1,000 00 |
| Chief watchman | 800 00 |
| Gate keeper and armourer | 700 00 |
| Keepers | 700 00 |
| Watchmen | 650 00 |
| Guards | 600 00 |
| Stable guards | 600 00 |
| Temporary guards | 500 00 |
| DORCHESTER PENITENTIARY— | |
| Warden (with free quarters, heated and lighted) | 2,200 00 |
| Deputy warden (with free quarters, heated and lighted) | 1,500 00 |
| Matron (with free quarters, heated and lighted) | 600 00 |
| Deputy matron (with free quarters, heated and lighted) | 450 00 |
| Protestant chaplain | 1,000 00 |
| Roman Catholic chaplain | 1,000 00 |
| Surgeon | 1,500 00 |
| Accountant | 1,200 00 |
| Storekeeper and warden's clerk | 800 00 |
| Steward and baker | 900 00 |
| Hospital overseer and school instructor | 900 00 |
| Messenger | 600 00 |
| Engineer | 1,000 00 |
| Firemen | 600 00 |
| Chief trade instructor | 1,000 00 |
| Trade instructors | 800 00 |
| Chief keeper | 900 00 |
| Chief watchman | 800 00 |
| Keepers | 700 00 |
| Watchmen | 650 00 |
| Guards | 600 00 |
| Stable guards | 600 00 |
| Temporary guards | 500 00 |
| MANITOBA PENITENTIARY— | |
| Warden (with free quarters, heated and lighted) | 2,200 00 |
| Deputy warden (with free quarters, heated and lighted) | 1,500 00 |

| | |
|---|---|
| MANITOBA PENITENTIARY—*Concluded.* | |
| Roman Catholic chaplain | $ 1,000 00 |
| Protestant chaplain | 1,000 00 |
| Surgeon | 1,500 00 |
| Accountant | 1,200 00 |
| Storekeeper and warden's clerk | 900 00 |
| Steward and baker | 900 00 |
| Hospital overseer and school instructor | 900 00 |
| Engineer and blacksmith instructor | 1,000 00 |
| Chief trade instructor | 1,000 00 |
| Trade instructors | 800 00 |
| Keepers | 800 00 |
| Guards | 700 00 |
| Chief watchman | 900 00 |
| Watchmen | 750 00 |
| Temporary guards | 600 00 |
| BRITISH COLUMBIA PENITENTIARY— | |
| Warden (with free quarters, heated and lighted) | 2,200 00 |
| Deputy warden (with free quarters, heated and lighted) | 1,500 00 |
| Protestant chaplain | 1,000 00 |
| Roman Catholic chaplain | 1,000 00 |
| Surgeon | 1,500 00 |
| Accountant | 1,200 00 |
| Storekeeper | 900 00 |
| Steward and baker | 900 00 |
| Hospital overseer and school instructor | 900 00 |
| Engineer and blacksmith instructor | 1,000 00 |
| Chief trade instructor | 1,000 00 |
| Trade instructors | 800 00 |
| Keepers | 800 00 |
| Guards | 700 00 |
| Chief watchman | 900 00 |
| Watchmen | 750 00 |
| Temporary guards | 600 00 |
| ALBERTA PENITENTIARY— | |
| Warden (with free quarters, heated and lighted) | 2,200 00 |
| Deputy warden (with free quarters, heated and lighted) | 1,500 00 |
| Matron (with free quarters, heated and lighted) | 500 00 |
| Protestant chaplain | 1,000 00 |
| Roman Catholic chaplain | 1,000 00 |
| Surgeon | 1,500 00 |
| Accountant and storekeeper | 1,200 00 |
| Steward and baker | 900 00 |
| Hospital overseer and school instructor | 900 00 |
| Engineer and blacksmith instructor | 1,000 00 |
| Chief trade instructor | 1,000 00 |

ALBERTA PENITENTIARY—*Concluded.*

| | |
|---|---|
| Trade instructors | $ 800 00 |
| Keepers | 800 00 |
| Guards | 700 00 |
| Chief watchman | 900 00 |
| Watchmen | 750 00 |
| Temporary guards | 600 00 |

6 E. VII., c. 38, sch.

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# CHAPTER 148.

## An Act respecting Public and Reformatory Prisons.

SHORT TITLE.

Short title.

**1.** This Act may be cited as the Prisons and Reformatories Act.

INTERPRETATION.

Definitions.

**2.** In this Act, unless the context otherwise requires,—

*(a)* 'lieutenant governor' means the lieutenant governor in council;

*(b)* 'court' includes a police or stipendiary magistrate, but, except as otherwise defined in Part V. of this Act, does not include one or more justices of the peace;

*(c)* 'refuge' means any institution for the care of the young or of adult females to which they may by law be sentenced by a court;

*(d)* 'superintendent' includes the matron, superior or other head or person in charge of any refuge. R.S., c. 183, ss. 1 and 18; 57-58 V., c. 60, s. 1.

## PART I.

GENERAL.

### *Term of Imprisonment.*

Commencement and duration.

**3.** The term of imprisonment in pursuance of any sentence shall, unless otherwise directed in the sentence, commence on and from the day of passing such sentence, but no time during which the convict is out on bail shall be reckoned as part of the term of imprisonment to which he is sentenced. 55-56 V., c. 29, s. 955.

### *Insecure Prisons.*

Removal of prisoners.

**4.** The Governor in Council or the lieutenant governor of any province may, if, from the insecurity or unfitness of any gaol of any county or district for the safe custody of prisoners, or for any other cause, he deems it expedient so to do, order any person charged with an indictable offence confined in such gaol, or for whose arrest a warrant has been issued,

issued, to be removed to any other place for safe keeping, or to any gaol, which place or gaol shall be named in such order, there to be detained until discharged in due course of law, or removed for the purpose of trial to the gaol of the county or district in which the trial is to take place.

Authority for removal.

2. A copy of such order, certified by the clerk of the King's Privy Council for Canada, or the clerk of the executive council, or by any person acting as such clerk of the Privy Council or executive council, shall be sufficient authority to the sheriffs and gaolers of the counties or districts respectively named in such order, to deliver over and to receive the body of any person named in such order. 55-56 V., c. 29, s. 649.

Powers of Governor in Council or Lieutenant Governor in Council.

**5.** The Governor in Council or a lieutenant governor may, in any such order, direct the sheriff in whose custody the person to be removed then is, to convey the said person to the place or gaol in which he is to be confined, and in case of removal to another county or district shall direct the sheriff or gaoler of such county or district to receive the said person, and to detain him until he is discharged in due course of law, or is removed for the purpose of trial to any other county or district.

Idem.

2. The Governor in Council or a lieutenant governor may make an order, as hereinbefore provided, in respect of any person under sentence of imprisonment or under sentence of death.

In case of death sentence.

3. If such an order is made in respect of a person under sentence of death, the sheriff to whose gaol the prisoner is removed shall obey any direction given by the said order or by any subsequent order in council, for the return of such prisoner to the custody of the sheriff by whom the sentence is to be executed. 55-56 V., c. 29, s. 649.

Substitution of neighbouring gaol by proclamation.

**6.** The lieutenant governor of any province of Canada may, by proclamation published in the official gazette of the province, and in the *Canada Gazette*, declare that the common gaol of any district, county or place in such province is insecure, and may name the gaol of any adjoining district, county or place as the gaol to which offenders within such first mentioned district, county or place, may, from and after a time stated, be committed or sentenced. R.S., c. 183, s. 2.

Transfer of prisoners thereto.

**7.** The lieutenant governor may, after the issue of such proclamation, from time to time direct the sheriff to transfer such of the prisoners then confined in such insecure gaol, as the lieutenant governor thinks proper, to the gaol so named, as aforesaid.

Authority therefor.

2. Such order shall be a sufficient authority to the respective sheriffs and officers to deliver and receive, and to the keeper of such last mentioned gaol to detain therein, any such prisoner,

according to the exigency of the warrant or sentence under which he was confined in such insecure gaol. R.S., c. 183, s. 3.

After proclamation, prisoners to be sentenced to gaol named therein.

**8.** During the continuance in force of such proclamation any person who would otherwise be committed to or sentenced to imprisonment in the common gaol so declared insecure, shall be committed to or sentenced to imprisonment in the gaol named in the proclamation for the purpose, and the respective sheriffs and officers shall have authority to deliver and receive such person.

Warrant.

2. A warrant directed to the gaoler of the insecure gaol shall be a sufficient authority for the gaoler of the gaol named in such proclamation to detain therein the person named in such warrant, according to the exigency of the warrant, or until he is removed, as hereinafter provided. R.S., c. 183, s. 4.

As to place of trial.

**9.** Every person so confined in the gaol named in such proclamation, may be tried in the district, county or place in the gaol whereof he is confined, unless the judge or other person presiding at the court at which it is proposed to try such person, or a judge of a court having jurisdiction to try the offence, otherwise directs.

Powers of court.

2. The court of general gaol delivery or general sessions of the peace, or other court having like powers, held in such district, county or place, and every judge or other person presiding thereat, shall have jurisdiction to make, in reference to any person committed in default of sureties for good behaviour or to keep the peace, the like order as such court, judge or other person might make if the court was being held in the district, county or place in which such person was committed. R.S., c. 183, s. 5.

Proclamation may be superseded.

**10.** The lieutenant governor may, at any time, by his proclamation published in the official gazette of the province, and in the *Canada Gazette*, declare that any proclamation issued as hereinbefore provided, shall, from and after a time stated, cease to have effect; and such proclamation shall cease to have effect accordingly. R.S., c. 183, s. 6.

Re-transfer of prisoners.

**11.** The lieutenant governor may, after the issue of such last mentioned proclamation, direct the sheriff to transfer so many of the prisoners then confined in the gaol so named as aforesaid, as the lieutenant governor thinks proper, to the gaol of the district, county or place in which, but for the operation of the preceding sections, such prisoners would have been confined.

Authority therefor.

2. Such order shall be sufficient authority to the respective sheriffs and officers to deliver and receive, and to the keeper of such last mentioned gaol to detain therein, any such prisoners, according to the exigency of the warrant or sentence under which they were originally confined. R.S., c. 183, s. 7.

*Employment of Prisoners.*

Subject to statutes, rules and regulations.

**12.** Every one who is sentenced to imprisonment in any gaol, or other public or reformatory prison, shall be subject to the provisions of the statutes relating to gaol or prison, and to all rules and regulations lawfully made with respect thereto.

Hard labour.

2. Imprisonment in the Central Prison for the province of Ontario, in the Andrew Mercer Ontario Reformatory for females, and in any reformatory prison for females in the province of Quebec, shall be with hard labour, whether so directed in the sentence or not. 55-56 V., c. 29, s. 955.

Regulations by Lieutenant Governor.

**13.** The lieutenant governor of any province may, from time to time, make regulations for the purpose of preventing escapes and preserving discipline in the case of prisoners in any common gaol or prison employed beyond the limits of such common gaol or prison. R.S., c. 183, ss. 8 and 59.

Employment of prisoners outside gaol.

**14.** After such regulations are made, the lieutenant governor may, from time to time, direct or authorize the employment, upon any specific work or duty, beyond the limits of any common gaol or prison, of any prisoner who is sentenced to be imprisoned with hard labour in such gaol, for any offence against any law of Canada. R.S., c. 183, s. 9.

Discipline of gaol.

**15.** Every such prisoner shall, during such employment, be subject to such regulations and to all the rules, regulations and discipline of the gaol or prison, so far as applicable. R.S., c. 183, s. 10.

Supervision.

**16.** No such prisoner shall be so employed, except under the strictest care and supervision of officers appointed to that duty. R.S., c. 183, ss. 11 and 23.

*Improved Prisons.*

Conditions on which the three sections following may be declared in force.

**17.** If, in any province, there is at any time a prison of such a character as to render practicable the application of the three sections next following to such province, and if the lieutenant governor makes rules for keeping a correct record of the daily conduct of every prisoner in such prison, noting his behaviour, industry, diligence and faithfulness, and the strictness with which he observes the prison regulations, and if such prison, and the rules so made, are, by the Governor in Council, declared adequate, the Governor in Council may, by proclamation published in the *Canada Gazette*, reciting the premises, and describing the prison, declare such sections in force within such province from and after a day named in such proclamation. R.S., c. 183, s. 13.

Term of sentence.

**18.** Any judge sentencing any prisoner to imprisonment in any prison named in the proclamation in the last preceding

section mentioned, may sentence such prisoner for a term not more than one-sixth longer than the maximum term at present prescribed by law for the offence; and any such sentence may be carried out in such prison, although it is for any term not exceeding two years and four months. R.S., c. 183, s. 14.

Partial remission of penalty.

**19.** Every prisoner sentenced to such prison shall be entitled to earn a remission of a portion of the time for which he is sentenced, not exceeding five days for every month during which he is exemplary in behaviour, industry and faithfulness, and does not violate any of the prison rules; and if prevented from labour by sickness, not intentionally produced by himself, he shall be entitled to earn, by good conduct, a remission not exceeding two and one-half days for every such month. R.S., c. 183, s. 15.

Forfeiture of remission.

**20.** Every such prisoner who commits any breach of the laws or of the prison regulations shall, besides any other penalty to which he is liable, be liable to forfeit the whole or any part of any remission which he has so earned. R.S., c. 183, s. 16.

*Escapes and Rescues.*

Place of work part of gaol.

**21.** Every street, highway or public thoroughfare of any kind along or across which prisoners pass in going to or returning from their work, and every place where they are so employed, shall, while so used, be considered as a portion of the gaol or prison, and any escape or attempt at escape, and any rescue or attempt at rescue, made on such street, highway or thoroughfare, shall be held to have been made within or from such gaol or prison. R.S., c. 183, s. 12.

Escape.

Escape or attempt to escape.

**22.** Every one sentenced to imprisonment or to be detained in any reformatory prison, reformatory school, industrial refuge, industrial home or industrial school, who escapes or attempts to escape therefrom, may, at any time, be apprehended without warrant and brought before any magistrate, who, upon proof of his identity, and of the escape or attempt to escape, if the escape or attempt to escape be from a reformatory prison or a reformatory school, shall remand him thereto for the remainder of his original term of imprisonment or detention. 53 V., c. 37, s. 1.

Escape from industrial refuge.

**23.** If the escape or attempt to escape be from an industrial refuge, industrial home or industrial school, the magistrate may remand the offender thereto for the remainder of his original term of imprisonment or detention; or if the officer in charge of such refuge, home or school certifies in writing that the removal of the offender to a place of safer or stricter imprisonment is desirable, and if the governing body of such refuge, home or school applies for such removal, and if sufficient cause therefor is

is shown to the satisfaction of such magistrate, the magistrate may order the offender to be removed to and to be kept imprisoned, for the remainder of his original term of imprisonment or detention, in any reformatory prison, or reformatory school, in which by law such offender might be imprisoned for an indictable offence, and when there is no such reformatory prison or reformatory school, the magistrate may order the offender to be removed to and to be so kept imprisoned in any other place of imprisonment to which the offender may be lawfully committed. 53 V., c. 37, s. 1.

Further imprisonment for escape.

**24.** In the case of any escape or attempt to escape aforesaid, whether the term of imprisonment or detention has expired or not, the magistrate may sentence the offender to such additional term of imprisonment or detention, as the case may be, not exceeding one year, as to such magistrate seems a proper punishment for the escape or attempt to escape. 53 V., c. 37, s. 1.

*Incorrigible Offenders.*

Bringing insubordinate prisoner before magistrate.

**25.** Every one sentenced to imprisonment or detention in or ordered to be detained in any industrial refuge, industrial home or industrial school, by reason of incorrigible or vicious conduct, or with reference to the general discipline of the institution, who is beyond the control of the officer in charge of such institution, may, at any time before the expiration of his term of imprisonment or detention, be brought without warrant before any magistrate. 53 V., c. 37, s. 2.

Transfer of offender to reformatory.

**26.** If the officer in charge of such refuge, home or school certifies in writing that the removal of such offender to a place of stricter imprisonment is desirable, and if the governing body of such refuge, home or school applies for such removal, and if sufficient cause therefor is shown to the satisfaction of such magistrate, he may order the offender to be removed to and to be kept imprisoned, for the remainder of his original term of imprisonment or detention, in any reformatory prison or reformatory school in which by law such offender may be imprisoned for an indictable offence; and when there is no such reformatory prison or school, the magistrate may order the offender to be removed to and to be kept imprisoned in any other place of imprisonment to which the offender may be lawfully committed. 53 V., c. 37, s. 2.

Or other place of imprisonment.

Additional term of imprisonment.

**27.** The magistrate may, upon conviction for any such incorrigible or vicious conduct, sentence the offender to such additional term of imprisonment, not exceeding one year, as to such magistrate seems a proper punishment for the incorrigible conduct of the offender. 53 V., c. 37, s. 2.

*Juvenile Offenders and Vagrants.*

Imprisonment of persons under 16.

**28.** Young persons apparently under the age of sixteen years who are,—

*(a)* arrested upon any warrant; or,

*(b)* committed to custody at any stage of a preliminary inquiry into a charge for an indictable offence; or,

*(c)* committed to custody at any stage of a trial, either for an indictable offence or for an offence punishable on summary conviction; or,

*(d)* committed to custody after such trial, but before imprisonment under sentence;

Separation from older offenders.

shall be kept in custody separate from older persons charged with criminal offences and separate from all persons undergoing sentences of imprisonment, and shall not be confined in the lock-ups or police stations with older persons charged with criminal offences or with ordinary criminals. 57-58 V., c. 58, s. 2.

Imprisonment in reformatory.

**29.** The court or person before whom any offender whose age at the time of his trial does not, in the opinion of the court, exceed sixteen years, is convicted, whether summarily or otherwise, of any offence punishable by imprisonment, may sentence such offender to imprisonment in any reformatory prison in the province in which such conviction takes place, subject to the provisions of any Act respecting imprisonment in such reformatory.

Term limited.

2. In no case shall the sentence be less than two years' or more than five years' confinement in such reformatory prison.

In lieu of other imprisonment.

3. Such imprisonment shall be substituted, in such case, for the imprisonment in the penitentiary or other place of confinement by which the offender would otherwise be punishable under any Act or law relating thereto: Provided, that in every case where the term of imprisonment is fixed by law to be more than five years, then such imprisonment shall be in the penitentiary.

Labour.

4. Every person imprisoned in a reformatory shall be liable to perform such labour as is required of such person.

Application of section.

5. This section shall apply to the Halifax Industrial School and Saint Patrick's Home at Halifax, although the age of the offender exceeds sixteen years, if it does not exceed eighteen years; and in any case of imprisonment in the said School or Home the sentence may be for a term of one year or more, but not exceeding five years. 55-56 V., c. 29, s. 956; 2 E. VII., c. 13, s. 4.

To what place of confinement vagrants shall be committed.

**30.** If provision is made therefor by the laws of the province in which the conviction takes place, any person convicted of being a loose, idle or disorderly person may, instead of being committed to the common gaol or other public prison, be committed

mitted to any house of industry or correction, alms house, work house or reformatory prison. R.S., c. 157, s. 8.

*Custody Pending Transfer to Prison, etc.*

Detention in gaol pending demand of proper authority.

**31.** Any sheriff or other person having the custody of any offender sentenced to imprisonment in any prison, reformatory, refuge or industrial school, may detain the offender in the common gaol of the county or district in which such offender is sentenced, or other place of confinement in which such offender is, until some person lawfully authorized in that behalf requires such offender's delivery for the purpose of being conveyed to such prison or reformatory. R.S., c. 183, s. 42; 53 V., c. 37, s. 39.

If prisoner in bad health he may be detained in common gaol until recovery.

**32.** If any offender sentenced to be confined in any prison or refuge is in such a weak state of health that he cannot safely or conveniently be removed thereto, he may be detained in the common gaol or other place of confinement in which he is, until he is sufficiently recovered to be safely and conveniently removed to such prison or refuge. R.S., c. 183, s. 29; 53 V., c. 37, s. 39; 56 V., c. 33, s. 8.

If unable to perform hard labour.

**33.** If the gaol surgeon, or other medical practitioner acting in that behalf, certifies that any offender sentenced to any prison or refuge is in such a weak state of health that such offender is unable to perform hard labour, such offender may be detained in the common gaol or other place of confinement in which such offender is, until he is sufficiently recovered to be employed at hard labour. R.S., c. 183, s. 43.

Computation of time.

**34.** The time for which any person, sentenced to imprisonment in any prison or refuge, is held in custody, under the three last preceding sections, shall be reckoned in computing the time served by such person in such prison or refuge. R.S., c. 183, s. 44.

Conveyance of prisoners through different districts or counties.

**35.** Any offender who, under the provisions of this Act, is liable to be removed from any common gaol to any prison or refuge, or from any prison or refuge back to any gaol or to any penitentiary, may be conveyed for that purpose through any county, district or other territorial division in the province in which such offender has been convicted, and shall be deemed to be in lawful custody while being so conveyed.

Authority of officers.

2. Any person lawfully authorized to convey such offender as aforesaid shall, until such offender has been delivered to the warden or superintendent, or other head of such prison or refuge, or the warden of the penitentiary, as the case may be, have the same authority and power over and with regard to such offender and for preventing escape, and recapturing such offender in case of escape, as the sheriff of the county, district

or other territorial division in which such offender was convicted would himself have in conveying such offender from one part of that county, district or other territorial division to another. R.S., c. 183, s. 57; 56 V., c. 33, s. 7; 57-58 V., c. 60, s. 7.

Offenders in provisional judicial districts of Ontario.

**36.** The constable or other officer having charge of any person accused or convicted of any offence in any provisional judicial district in the province of Ontario committed to any common gaol in the Province, and entrusted with his conveyance to any such common gaol, may pass through any county in the Province with such person in his custody.

Custody in transit.

2. The keeper of the common gaol of any county in the province of Ontario in which it is found necessary to lodge for safe keeping any such person so being conveyed through such county in custody, shall receive such person and safely keep and detain him in such common gaol for such period as is reasonable or necessary.

Duty of gaoler.

3. The keeper of any common gaol in the Province, to which any such person is committed as aforesaid, shall receive such person and safely keep and detain him in such common gaol under his custody until discharged in due course of law, or bailed in cases in which bail may be by law taken. 55-56 V., c. 29, s. 555.

*Discharge and Recommittal.*

Prisoner not to be discharged in certain cases of disease.

**37.** No prisoner shall be discharged from any prison, or from any refuge for females at the termination of his or her term of confinement, if then labouring under any contagious or infectious disease, or under any acute or dangerous illness, but he or she shall be permitted to remain in such prison or refuge until he or she recovers from the disease or illness.

But to remain under prison discipline.

2. Any person remaining for any such cause in such prison or refuge shall be under the same discipline and control as if his or her term was still unexpired. R.S., c. 183, s. 30; 53 V., c. 37, s. 39; 56 V., c. 33, s. 9; 57-58 V., c. 60, s. 11.

If term expires on Sunday.

**38.** Whenever the time of any offender's sentence in any prison or refuge under any law within the legislative authority of the Parliament of Canada expires on a Sunday, such offender shall be discharged on the previous Saturday, unless such offender desires to remain until the Monday following. R.S., c. 183, s. 45; 53 V., c. 37, s. 39; 56 V, c. 33, s. 10; 57-58 V., c. 60, s. 10.

Transfer if confinement is for non-payment of fine.

**39.** Any person who, under the provisions of this Act, is liable to be removed from any prison or refuge, may be so removed notwithstanding that such imprisonment, or any part thereof, is imposed in default of the payment of a fine or penalty in

in money, and that such person is entitled to be discharged upon payment of such fine or penalty.

If fine paid. 2. If the fine or penalty is paid after the removal of the offender, the same shall be paid to the proper officer of such Application. prison or refuge, to defray the expenses of the removal of the said offender, and otherwise for the uses of such prison.

Saving. 3. Nothing in this section contained shall affect the right of any private person to such fine or penalty, or any part thereof. R.S., c. 183, ss. 21 and 33; 54-55 V., c. 55, s. 3; 57-58 V., c. 60, s. 3

Re-commitment in case of discharge upon probation. **40.** The judge of any county court or any police magistrate may, upon satisfactory proof that any boy or girl who was sentenced under the provisions of any Act of the Parliament of Canada, and who has been discharged on probation, has violated the conditions of his or her discharge, order such boy or girl to be recommitted to the refuge, and thereupon such boy or girl shall be detained therein under his or her original sentence, as if such boy or girl had never been discharged. R.S., c. 183, s. 48.

Regulations as to discharge. **41.** The Governor in Council may make such regulations as he considers advisable for the discharge, after the expiration of the fixed term of sentence, of prisoners confined in any refuge under any Act of the Parliament of Canada; and such discharge may be either absolute or upon probation, subject to such conditions as are imposed under the authority of the said regulations. R.S., c. 183, s. 47.

## PART II.

### ONTARIO.

*Application of Part.*

To Ontario. **42.** This Part applies only to the province of Ontario. R.S., c. 183, s. 17.

*Interpretation.*

'Certified industrial school' defined. **43.** In this Part, unless the context otherwise requires, 'certified industrial school' means any industrial school in the province of Ontario certified under the Act passed by the legislature of the Province intituled *The Industrial Schools Act*, and includes for all the purposes of this Act, the Ontario Reformatory for Boys. 3 E. VII., c. 51, ss. 1 and 2.

*The Central Prison for the Province of Ontario.*

Imprisonment in **44.** Every court in the province of Ontario, before which any person is convicted for an offence against the laws of



R.S., 1906.

Canada, punishable by imprisonment in the common gaol for the term of two months, or for any longer time, may sentence such person to imprisonment in the Central Prison for the province of Ontario, instead of the common gaol of the county or judicial district where the offence was committed, or was tried. R.S., c. 183, s. 19. Central Prison.

**45.** Every person confined in any one of the common gaols of the Province, under sentence of imprisonment for any offence against the laws of Canada, may, by the direction of the Provincial Secretary, be transferred from such common gaol to the Central Prison, there to be imprisoned for the unexpired portion of the term of imprisonment to which such person was originally sentenced. Transfer to Central Prison.

2. Such person shall thereupon be imprisoned in the Central Prison for the residue of such term, unless in the meantime he is lawfully discharged or removed, and shall be subject to all the rules and regulations of the Central Prison. R.S., c. 183, s. 20. Custody there.

**46.** The warden of the Central Prison shall receive into the said prison every offender legally certified to him as sentenced to imprisonment therein; and shall detain him, subject to all the rules, regulations and discipline thereof, until the term for which he has been sentenced is completed, or until he is otherwise discharged in due course of law. R.S., c. 183, s. 22. Warden to receive and detain prisoners.

**47.** The Lieutenant Governor may, from time to time, authorize, direct or sanction the employment upon any specific work or duty, without or beyond the walls or limits of the Central Prison, of any of the prisoners confined or sentenced to be imprisoned therein. Employment of prisoners.

2. All such prisoners shall, during such last mentioned employment, be subject to all the rules, regulations and discipline of such prison, so far as the same are applicable, and to such other regulations, for the purpose of preventing escapes, and otherwise, as are approved by the Lieutenant Governor in that behalf. R.S., c. 183, s. 23. Discipline.

**48.** The Lieutenant Governor may, from time to time, by warrant signed by the Provincial Secretary, or by such other officer as is authorized by the Lieutenant Governor in that behalf, direct the removal of any offender from the Central Prison to the Ontario Reformatory for Boys, or from the Central Prison to the common gaol of the county in which he was sentenced, or to any other gaol, or from the Reformatory to the Central Prison. R.S., c. 183, s. 24. Transfer to reformatory or other prisons.

*Certified Industrial Schools for Boys.*

**49.** If any boy, who, at the time of his trial, appears to the court to be under the age of sixteen years, is convicted of any offence What prisoners

committed thereto.

offence against a law of Canada for which a sentence of imprisonment for a period of three months or longer, but less than five years, may be imposed upon an adult convicted of the like offence, and the court before which such boy is convicted is satisfied that a due regard for the material and moral welfare of the boy manifestly requires that he should be committed to a certified industrial school, then such court may sentence the boy to be imprisoned in any certified industrial school, for such

Term.

term as the court thinks fit, not being greater than the term of imprisonment which could be imposed upon an adult for the like offence; and may further sentence such boy to be kept in such certified industrial school for an indefinite time after the expiration of such fixed term: Provided, that the whole period of confinement in such certified industrial school shall not

Not more than 5 years.

exceed five years from the commencement of his imprisonment. R.S., c. 183, s. 25; 3 E. VII., c. 51, s. 1

Boys under 16 may be committed to certified industrial school.

**50.** If any boy, apparently under the age of sixteen years, is convicted of any offence against a law of Canada punishable on summary conviction, and thereupon is sentenced and committed to prison in any common gaol for a period not less than fourteen days, any judge of any one of the superior courts, or any judge of a county court, in any case occurring within

Inquiry.

his county, may examine and inquire into the circumstances of such case and conviction, and when he considers that the material and moral welfare of the boy requires such sentence, he may, as an additional sentence for such offence, sentence such boy to be sent either forthwith or at the expiration of his imprisonment in such gaol, to any certified industrial school, to be there detained for the purpose of his industrial and moral

Term.

education, for an indefinite period, not exceeding in the whole five years, from the commencement of his imprisonment in the common gaol. R.S., c. 183, s. 26; 3 E. VII., c. 51, s. 1.

Transfer of boys under 13 years to industrial schools.

**51.** The Governor General, by warrant under his hand, may, at any time in his discretion (the consent of the Provincial Secretary of Ontario having been first obtained), cause any boy who is imprisoned in a reformatory or gaol in the Province, under sentence for an offence against a law of Canada, and who is certified by the court, judge or magistrate by whom he was tried to have been, in the opinion of such court, judge or magistrate, at the time of his trial, of or under the age of thirteen years, to be transferred for the remainder of his term of imprisonment to a certified industrial school in the Province. 53 V., c 37, s. 32.

Boys under 13 years.

**52.** Where, under any law of Canada, any boy is convicted, whether summarily or otherwise, of any offence punishable by imprisonment, and the court, judge, stipendiary or police magistrate by whom he is so convicted is of opinion that such

boy does not exceed the age of thirteen years, such court, judge or magistrate may sentence such boy to imprisonment in a certified industrial school for any term not exceeding five years and not less than two years: Provided that no such boy shall be detained in any certified industrial school beyond the age of seventeen years. Term.

2. No boy shall be sentenced to any such school, unless public notice has been given in the official gazette of Ontario, and has not been countermanded, that such school is ready to receive and maintain the boys sentenced under laws of the Dominion. 53 V., c. 37, s. 33. School must be advertised.

**53.** Every boy sentenced or transferred to a certified industrial school shall be detained therein until the expiration of the fixed term, if any, of his sentence, unless sooner discharged by lawful authority, and thereafter shall, subject to the provisions hereof and to any regulations made, as hereinbefore provided, be detained in such certified industrial school, for a period not to exceed five years from the commencement of his imprisonment, for the purpose of his industrial and moral education. R.S., c. 183, s. 27. Detention for reform after sentence expires.

**54.** A copy of the sentence of the court, duly certified by the proper officer, or the warrant or order of the judge or other magistrate by whom any boy is sentenced to confinement in such certified industrial school, shall be a sufficient authority to the sheriff, constable or other officer who is directed, verbally or otherwise, so to do, to convey such boy to the common gaol of the county where such sentence is pronounced, and for the gaoler of such gaol to receive and detain such boy, until some person, lawfully authorized, requires the delivery of such boy for removal to the certified industrial school. R.S., c. 183, s. 28; 3 E. VII, c. 51, s. 1. Commitment of boy to gaol until sent to industrial school.

*The Andrew Mercer Ontario Reformatory for Females.*

**55.** Every court before which any female is convicted of an offence against the laws of Canada, punishable by imprisonment in the common gaol for a term of two months, or for any longer time, may sentence such female to imprisonment in the Andrew Mercer Ontario Reformatory for Females, instead of the common gaol of the county or judicial district where the offence was committed or was tried. R.S., c. 183, s. 31. When females may be sentenced to Mercer's Reformatory.

**56.** Any female, from time to time, confined in any common gaol, under sentence of imprisonment for any offence against the laws of Canada, may, by direction of the Provincial Secretary, be transferred from such common gaol to the Reformatory, to be imprisoned for the unexpired portion of the term of imprisonment to which such female was originally sentenced or committed to the common gaol. Transfer of females to such reformatory.

2. Such female shall thereupon be imprisoned in the Reformatory for the residue of the said term, and shall be subject to all the rules and regulations of the Reformatory. R.S., c. 183, s. 32.

Term of imprisonment in certain cases.

**57.** Whenever any female is convicted under section two hundred and thirty-nine of the Criminal Code, or is convicted under Part XVI. of the Criminal Code, of an offence triable under that Part, she may be sentenced to the Reformatory for any term less than two years.

Fine.

2. If any term exceeding six months is inflicted, no fine shall be imposed in addition. R.S., c. 183, s. 34.

Conveyance of prisoners.

**58.** Any officer appointed by the Lieutenant Governor, or other officer or person, by his direction or by direction of the court or other lawful authority, may convey to the Reformatory any convict sentenced, or liable to be imprisoned therein, and deliver her to the superintendent or keeper thereof, without any further warrant than a copy of the sentence taken from the minutes of the court by which the offender was tried, and certified by a judge or the clerk or acting clerk of such court. R.S., c. 183, s. 35.

Superintendent to receive and retain offenders.

**59.** The Superintendent of the Reformatory shall receive into the same every offender legally certified to her as sentenced to imprisonment therein, and shall there detain her, subject to all the rules, regulations and discipline thereof, until the term for which she has been sentenced is completed, or until she is otherwise discharged in due course of law. R.S., c. 183, s. 36.

Transfer to common gaol.

**60.** The Lieutenant Governor may, from time to time, by warrant signed by the Provincial Secretary, or by such other officer as is authorized by the Lieutenant Governor in that behalf, direct the removal from the Reformatory back to the common gaol, or to any other gaol in Ontario, of any person removed to the Reformatory under this Act. R.S., c. 183, s. 37.

Delivery of offender by the Superintendent.

**61.** The Superintendent of the Reformatory, or the keeper of any common gaol, having the custody of any offender ordered to be removed, shall, when required so to do, deliver up to the constable or other officer or person who produces the said warrant, such offender, together with a copy, attested by the said Superintendent or keeper, of the sentence and date of conviction of such offender, as given on the reception of the offender into the custody of such Superintendent or keeper. R.S., c. 183, s. 38.

*Industrial Refuge for Girls.*

Girls under 14 sentenced to refuge

**62.** If any girl who at the time of her trial appears to the court to be under the age of fourteen years is convicted of any

offence for which a sentence of imprisonment for a term of one month or longer, but less than five years, may be imposed upon an adult convicted of the like offence, and the court before which the girl is convicted is satisfied that a due regard for her material and moral welfare manifestly requires that she should be committed to the Industrial Refuge for Girls of Ontario, such court may sentence such girl to be imprisoned therein, for such fixed term as the court thinks fit, not being greater than the term of imprisonment which could be imposed upon an adult for the like offence, and may further sentence the said girl to be kept in such Industrial Refuge for an indefinite time after the expiration of such fixed term: Provided that the whole term of confinement in the Industrial Refuge shall not exceed five years from the commencement of her imprisonment. R.S., c. 183, s. 39. for certain offences. Term. Limit.

**63.** If any girl, apparently under the age of fourteen years, is convicted of any offence punishable by law on summary conviction, and thereupon is sentenced and committed to prison in any common gaol for a term of not less than fourteen days, any judge of one of the superior courts, or any judge of a county court, in any case occurring within his county, may examine and inquire into the circumstances of such case and conviction, and if he considers the material and moral welfare of the girl requires it, he may, as an additional sentence for such offence, sentence such girl to be sent either forthwith, or at the expiration of her imprisonment in such gaol, to the Industrial Refuge for Girls, to be there detained for the purpose of her industrial and moral education for an indefinite period, not exceeding in the whole five years from the commencement of her imprisonment in the common gaol. R.S., c. 183, s. 40. Detention for reform after expiry of sentence. Term.

**64.** Every girl so sentenced shall be detained in the Refuge until the expiration of the fixed term of her sentence, unless sooner discharged by lawful authority; and such girl thereafter shall, and every girl sentenced under the last preceding section shall, subject, in both cases, to the provisions of this Part, and to any regulations made as in this Part hereafter provided, be detained in the Refuge for a term not exceeding five years from the commencement of her imprisonment, for the purpose of her industrial and moral education. R.S., c. 183, s. 41. Detention in the Refuge.

*Apprenticeship.*

**65.** If any respectable and trustworthy person is willing to undertake the charge of any boy committed to any certified industrial school, when such boy is over the age of twelve years, or of any girl committed to the Industrial Refuge for Girls, as an apprentice to the trade or calling of such person, or for the purpose How authorized.

purpose of domestic service, and such boy or girl is confined in the certified industrial school or Refuge by virtue of a sentence or order pronounced under the authority of any Act of the Parliament of Canada, the superintendent of the certified industrial school or refuge may, with the consent and in the name of the Inspector of prisons and public charities of Ontario, bind the said boy or girl to such person for any term not to extend, without his or her consent, beyond a term of five years, from the commencement of his or her imprisonment.

Discharge.

2. The Inspector shall thereupon order that such boy or girl shall be discharged from the said school or refuge on probation, to remain so discharged, provided his or her conduct during the residue of the term of five years, from the commencement of his or her imprisonment, continues good, and such boy or girl shall be discharged accordingly.

Wages.

3. Any wages reserved in any indenture of apprenticeship made under this section shall be payable to such boy or girl, or to some other person for his or her benefit. R.S., c. 183, s. 46.

*Other Provisions as to Juvenile Offenders.*

Discharge on probation.

**66.** No boy or girl shall be discharged under the last preceding section, except on probation, as aforesaid, until after the fixed term of his or her sentence has elapsed, unless by the authority of the Governor General. R.S., c. 183, s. 46.

How child under 14 years dealt with.

**67.** If any child, appearing to the court or justice before whom the child is tried, to be under the age of fourteen years, is convicted of any offence against the law of Canada, whether indictable or punishable on summary conviction, such court or justice, instead of sentencing the child to any imprisonment provided by law in such case, may order that the child shall be committed to the charge of any home for destitute or neglected children, or to the charge of any children's aid society duly organized and approved by the Lieutenant Governor of Ontario in Council, or to any certified industrial school. 57-58 V., c. 58, s. 3.

How boy under 12 years and girl under 13 dealt with.

**68.** Whenever an information or complaint is laid or made against any boy under the age of twelve years, or girl under the age of thirteen years, for the commission of any offence against the law of Canada, whether indictable or punishable on summary conviction, the court or justice seized thereof shall

Children's aid society.

give notice thereof in writing to the executive of the children's aid society, if there be one in the county, and shall allow him opportunity to investigate the charges made, and may also notify the parents of the child, or either of them, or other person apparently interested in the welfare of the child.

Consideration.

2. The court or justice may advise and counsel with the said officer and with the parents or such other person, and may consider any report made by the said officer upon the charges.

Powers of judge.

3. If, after such consultation and advice, and upon consideration of any report so made, and after hearing the matter of information or complaint, the court or justice is of opinion that the public interest and the welfare of the child will be best served thereby, then, instead of committing the child for trial or sentencing the child, as the case may be, the court or justice may, by order,—

*(a)* authorize the said officer to take the child and, under the provisions of the law of Ontario, bind the child out to some suitable person until the child has attained the age of twenty-one years, or any less age; or,

*(b)* place the child out in some approved foster-home; or,

*(c)* impose a fine not exceeding ten dollars; or,

*(d)* suspend sentence for a definite period or for an indefinite period; or,

*(e)* if the child has been found guilty of the offence charged or is shown to be wilfully wayward and unmanageable, commit the child to a certified industrial school, or to the Ontario Reformatory for Boys, or to the Refuge for Girls, as the case may be, and in such cases, the report of the said officer shall be attached to the warrant of commitment. 57-58 V., c. 58, s. 4.

Law of Ontario to apply.

**69.** Whenever an order has been made under either of the two sections last preceding, the child may thereafter be dealt with under the law of the province of Ontario, in the same manner, in all respects, as if such order had been lawfully made in respect of a proceeding instituted under authority of a statute of the province of Ontario. 57-58 V., c. 58, s. 5.

Religion of child to be respected.

**70.** Except in the case of children cared for in a shelter or temporary home established under the Act of the Legislature of the province of Ontario, passed in the fifty-sixth year of the reign of Her late Majesty, and intituled *An Act for the Prevention of Cruelty to and better Protection of Children,* in a municipality in which there is but one children's aid society, no Protestant child shall, under the three sections last preceding, be committed to the care of any Roman Catholic children's aid society, or be placed in any Roman Catholic family as its foster-home; nor shall any Roman Catholic child, under the said sections, be committed to the care of any Protestant children's aid society, or be placed in any Protestant family as its foster-home. 57-58 V., c. 58, s. 6.

Protestants.

Roman Catholics.

*Houses of Refuge for Females.*

Committal of females to house of refuge.

**71.** All females sentenced to, or confined from time to time in any of the common gaols of the province of Ontario, under sentence of imprisonment by a police magistrate of any city, for any offence against any Act of the Parliament of Canada,

may be committed to any refuge situate in the county or union of counties, city or town in which such females respectively were convicted, or may be transferred, by order of such police magistrate, from such common gaol to such refuge, to be there respectively imprisoned for the whole or the unexpired portions of the terms of imprisonment for which such females were originally sentenced or committed respectively to such common gaol.

Imprisonment therein.

2. Such females shall thereupon be imprisoned in such refuges for the whole or the residue of their respective terms of imprisonment, and shall be subject to all the rules and regulations of such refuges respectively.

Protestants and Roman Catholics.

3. No Protestant female shall, under this Part, be committed or transferred to a Roman Catholic institution, and no Roman Catholic to a Protestant institution. 57-58 V., c. 60, s. 2.

Transfer to gaols.

**72.** The police magistrate may, from time to time, direct the removal of any such offender from any house of refuge to the common gaol, to which such offender had been originally sentenced, or from which she had been before removed, or to any other place of imprisonment to which the offender may be removed according to law. 57-58 V., c. 60, s. 4.

Copy of sentence sufficient warrant.

**73.** Any officer to whom the magistrate's warrant in that behalf is directed may convey to the house of refuge for females named in his warrant in that behalf, any offender liable to be imprisoned therein, and deliver her to the superintendent without any further warrant than a copy of the sentence or warrant of commitment against such offender from the proper court in that behalf, certified under the hand of the gaoler to whom the same is directed. 57-58 V., c. 60, s. 5.

Superintendent or gaoler to deliver up prisoners.

**74.** The superintendent of the refuge, or the keeper of any common gaol, having the custody of any offender ordered to be removed from a refuge to a common gaol or other place of imprisonment, or from the common gaol to a refuge, shall, when required so to do, deliver up to the constable or other officer or person who produces the said warrant, the offender named therein, together with a copy certified by him or her, of the warrant of commitment of the offender, or of the copy thereof as given him or her on the reception of the offender into his or her custody. 57-58 V., c. 60, s. 6.

Receipt for prisoners.

**75.** The officer or other person aforesaid shall give a receipt to the said superintendent or gaoler for the offender, and shall thereupon, with all convenient speed, convey and deliver up the offender with the said certified copy of the warrant into the custody of the superintendent of the refuge or keeper of the gaol or other place of imprisonment mentioned in the warrant, who shall give a receipt in writing for every offender so received into his or her custody to such officer or other person as his or

her discharge; and the offender shall be kept in custody in the refuge or gaol or other place of imprisonment to which she may have been so removed, until the termination of her sentence or until her pardon or release or discharge by law, unless she is in the meantime again removed under competent authority. 57-58 V., c. 60, s. 8. Custody.

**76.** Any offender who escapes from any such refuge before her sentence therein has expired, may be again arrested without any warrant by any sheriff, sheriff's bailiff or constable of the county, city, town or village in which she may be found and conveyed to the refuge from which she escaped, or to the county gaol of the county from which she was first removed, and she shall there be confined in such refuge or gaol for the balance of the period of her sentence which remained unexpired at the time of her escape. 57-58 V., c. 60, s. 9. Recapture of escaped prisoners.

**77.** No prisoner shall be committed to any refuge without the consent of the superintendent thereof in that behalf. 57-58 V., c. 60, s. 12. Consent of superintendent to committal.

## PART III.

QUEBEC.

### *Application of Part.*

**78.** This Part applies only to the province of Quebec. R.S., c. 183, s. 49. To Quebec.

### *Reformatory Schools for Boys.*

**79.** Every person apparently under the age of sixteen years, who is convicted before any court of criminal jurisdiction or before any judge of the sessions of the peace, recorder, district or police magistrate, of any offence for which he would be liable to imprisonment, may be sentenced, on such conviction, to be detained in a certified reformatory school for any term not less than two years and not more than five years, or he may be sentenced to be first imprisoned in the common gaol for a term not in any case exceeding three months, and at the expiration of his sentence, to be sent to a certified reformatory school, and to be there detained for a term of not less than two years and not more than five years. R.S., c. 183, s. 50. Offenders under 16 years. Term.

**80.** The Lieutenant Governor may, at any time in his discretion, order that any offender detained in such reformatory school, under a summary conviction, be discharged. R.S., c. 183, s. 51. Power to discharge.

Detention previous to trial.

**81.** A person apparently under the age of sixteen years, arrested on a charge of having committed any offence not capital shall not, while awaiting trial for such offence, be detained in any common gaol, if there is a certified reformatory school within three miles of such gaol, but shall be detained in such reformatory school while awaiting trial.

In nearest reformatory school.

2. If there is more than one such school, within such distance, the person so charged shall be detained in that one of them which is conducted most nearly in accordance with the religious belief to which his parents belong, or in which he has been educated. R.S., c. 183, s. 53.

Punishment for breaking the rules.

**82.** Every offender detained in a certified reformatory school, who wilfully neglects or refuses to conform to the rules thereof, shall, on summary conviction before a justice of the peace having jurisdiction in the place or district in which the school is situate, be imprisoned with hard labour, for any term not exceeding three months.

Imprisonment with hard labour. Afterwards to be returned to the school.

2. At the expiration of the term of his imprisonment, he shall, by and at the expense of the managers of the school, be brought back to the school from which he was taken, there to be detained during a period equal to so much of his period of detention as remained unexpired at the time of his being sent to the prison. R.S., c. 183, s. 54.

*Reformatory Prisons for Females.*

Establishment of reformatory prisons.

**83.** Whenever the Lieutenant Governor of the province of Quebec has declared, by proclamation published in the official gazette of the Province, that suitable arrangements have been made in any district in the Province, for the detention and proper government and discipline of female convicts in any separate building or separate portion of the common gaol in such district, as a reformatory prison for such convicts, and has, by such proclamation, declared that such separate building or portion of a common gaol shall be a reformatory prison for the purposes hereof, any female person convicted in the said province of any offence, not capital, and for which she would, without this Part, be punishable by imprisonment for any term not less than two years, but not exceeding seven years, shall be punishable by imprisonment in the female reformatory prison for any term less than seven, but not less than five years, and she may be sentenced to such imprisonment accordingly, although she would not be liable to imprisonment in the penitentiary for so long a term as that for which she may be so sentenced to imprisonment in the female reformatory prison. R.S., c. 183, s. 55.

Committal to same.

Committal by consent in certain cases.

**84.** If, after such proclamation, any female is convicted of any indictable offence punishable by imprisonment for any term less than two years, or of any offence under section two hundred

and thirty-nine of the Criminal Code, then, unless it is proved that she has been previously convicted and imprisoned twice or oftener as aforesaid, such convict shall be asked, by the judge, recorder, judge of the sessions of the peace, commissioner of police, district, police or stipendiary magistrate, mayor, warden or the two justices of the peace, or other functionary before whom the conviction is had, whether she consents, instead of the imprisonment to which she is otherwise liable, to be sentenced to imprisonment for a term of five years in the female reformatory prison.

If no consent.

2. If she refuses to give such consent, sentence shall be passed upon her as if this Part had not been passed, but if she gives such consent, or it is proved that she has been twice convicted as aforesaid, the fact shall be duly recorded or entered on the proceedings in the case, and she shall be sentenced accordingly to imprisonment in the female reformatory prison for a term of five years. R.S., c. 183, s. 56.

In what prison sentence is carried out.

**85.** If, at the time of the passing of any such sentence, there is more than one female reformatory prison in the Province, the imprisonment under such sentence shall be in that one of such reformatory prisons which is in the same district as the place at which the sentence is passed, or if there is no reformatory prison in such district, then in the reformatory prison nearest to such place; but if there is not more than one such reformatory prison in the Province, then such imprisonment shall be in it. R.S., c. 183, s. 57.

Such prison a house of correction.

**86.** Each such female reformatory prison as aforesaid, shall be a house of correction and a public reformatory prison, within the meaning of the sixth enumeration of the ninety-second section of *The British North America Act, 1867*, and subject to such laws as the legislature of the Province makes with respect to the establishment, maintenance and management thereof. R.S., c. 183, s. 58.

*Employment of Prisoners.*

Hard labour inside or outside the walls.

**87.** Every sheriff or gaoler in the province of Quebec, being thereunto authorized by the Lieutenant Governor, or in such manner as any Act of the Legislature of the Province provides, and under such regulations as the Legislature makes or authorizes to be made in that behalf, may employ any male convict sentenced to hard labour in such prison, at hard labour outside the walls or precincts of the prison, and may exercise the same powers of restraint and discipline, and for preventing escape, while the convict is so outside of the walls or precincts, as if he was inside the same, and whether his labour is so employed directly by the Government of the Province or

by any contractor to whom such labour is let or hired out by the Government, or by any competent authority.

Sentence to include such employment.

2. The sentence of any such male convict shall be understood to include such employment as aforesaid.

Computation of time served.

3. Any time during which a convict is so employed shall be reckoned as part of the term for which he was sentenced to be confined in such prison. R.S., c. 183, s. 59.

*Common Gaols.*

Gaols, houses of correction.

**88.** Every common gaol shall be a house of correction, reformatory prison and place of detention. R.S., c. 183, s. 60.

## PART IV.

NOVA SCOTIA.

*Application of Part.*

To Nova Scotia.

**89.** This Part applies only to the province of Nova Scotia.

*The Halifax Industrial School.*

Boys under 18 sentenced to Halifax Industrial School.

**90.** Whenever any boy, who is a Protestant and apparently under the age of eighteen years, is convicted in Nova Scotia of any offence, for which by law he is liable to imprisonment, the judge, stipendiary magistrate, justice or justices by whom he is so convicted may sentence such boy to be detained in the Halifax Industrial School for any term not exceeding five years and not less than one year. 2 E. VII., c. 13, ss. 1 and 4.

School open to inspection.

**91.** The Industrial School shall, at all times, be open to inspection by the Mayor and Aldermen and the Stipendiary Magistrate of the city of Halifax, or any of them. R.S., c. 183, s. 63.

Boys educated and taught trades.

**92.** The Committee of the Industrial School shall be bound to teach and instruct each boy so sentenced and detained as aforesaid, in reading and writing, and in arithmetic as far as the rule of three, and also to teach each such boy such one of the trades or occupations which are, from time to time, taught in the said school, as the committee deems most adapted to his capabilities. R.S., c. 183, s. 64.

*St. Patrick's Home, Halifax.*

Roman Catholic boys under 18 sentenced to Home.

**93.** Whenever any boy, who is a Roman Catholic and apparently under the age of eighteen years, is convicted in Nova Scotia of any offence for which by law he is liable to imprisonment, the judge, stipendiary magistrate, justice or justices by whom

whom he is so convicted may sentence such boy to be detained in Saint Patrick's Home at Halifax for any term not exceeding five years and not less than one year. 2 E. VII., c. 13, s. 3.

Limitation of number.

**94.** The Superintendent of the Home may at any time notify the mayor, warden or other chief magistrate of any municipality that no prisoners, beyond those already under sentence in the Home, will be received therein.

Not to be exceeded.

2. After such notification no boy shall be sentenced in such municipality to be detained in the Home until notice has been received by such mayor, warden or chief magistrate, from the Superintendent, that prisoners will again be received in the Home. 53 V., c. 37, s. 37.

Inspection.

**95.** The Home shall, at all times, be open to inspection by any officer appointed by the Governor in Council to inspect the same, and, when and so long as any pecuniary aid is received from the city of Halifax, it shall be open to inspection by the Mayor, Aldermen and Stipendiary Magistrate of the City, or any of them. R.S., c. 183, s. 67.

Boys educated and taught trades.

**96.** The governing body of the Home shall be bound to teach and instruct each boy so sentenced and detained as aforesaid in reading and writing, and in arithmetic to the end of the rule of three, and also to teach each such boy such one of the trades or occupations which are, from time to time, taught in the Home, as such governing body deems most adapted to his capabilities. R.S., c. 183, s. 68.

Ticket of leave.

**97.** If any boy so sentenced and detained in the Home has, in the opinion of the governing body of the Home, so conducted himself during a term of six consecutive months by good behaviour, diligence and industry as to warrant his being set at large and no longer detained in the Home, and if the Police Court or Stipendiary Magistrate of the city of Halifax concurs with the said governing body in recommending the issue of a license to such boy to be at large, then the Minister of Justice, or such person as he appoints to issue such licenses, may issue a license to such boy to be at large in the province of Nova Scotia, or in such part thereof as is specified in the license.

Revocation.

2. The license may be revoked or altered at pleasure by the Minister of Justice, or by such person as he appoints as aforesaid.

Regulations.

3. The Minister of Justice may make such regulations as he sees fit as to the form of such licenses, and conditions of enjoyment and forfeiture thereof, and for ascertaining that the conditions are duly complied with.

If license contravened.

4. Upon information on oath that the holder of any such license has contravened any of the conditions thereof, the Police Court or Stipendiary Magistrate of the city of Halifax may issue

issue a warrant for his arrest, wherever in the Dominion of Canada he may be, and cause him to be brought before such Court or Magistrate, and upon conviction of such contravention, shall remand him to the Home, there to serve the remainder of his original sentence, with such additional term, not exceeding one year, as to the Court or Magistrate seems proper. R.S., c. 183, s. 70.

*Good Shepherd Reformatory for Females.*

Roman Catholic females over 16 may be sentenced to reformatory.

**98.** Every judge, stipendiary magistrate or magistrate in the Province before whom any female person being a Roman Catholic above the age of sixteen is convicted of an offence against the law of Canada, punishable by imprisonment in a city prison or common gaol for the term of two months or for any longer time, may sentence such female person to an extended or substituted imprisonment in the Good Shepherd Reformatory at Halifax, subject to the following conditions:—

Conditions.

*(a)* If such female person is under the age of twenty-one years, such extended imprisonment may be until she attains the age of twenty-one years or for any shorter or longer term, not less than two and not more in the whole than four years;

*(b)* If such female person is of the age of twenty-one years or upwards, such extended imprisonment may be for any term not less than one year and not more than two years. 54-55 V., c. 55, s. 1; 58-59 V., c. 43, s. 1.

Transfer from gaol to Reformatory.

**99.** Any female Roman Catholic aged more than sixteen years, confined in any city prison or common gaol in the Province, under sentence of imprisonment for any offence against the law of Canada, may, by direction of the Provincial Secretary, be transferred from such city prison or common gaol to the Reformatory, to be imprisoned for the unexpired portion of the term of imprisonment to which such female person was originally sentenced or committed to such city prison or common gaol.

Confinement.

2. Such female person shall thereupon be imprisoned in the Reformatory for the residue of the said term, and shall be subject to all the rules and regulations of the Reformatory. 54-55 V., c. 55, s. 2.

Certain offences.

**100.** Any female Roman Catholic, convicted under section two hundred and thirty-nine of the Criminal Code, or under Part XVI. of the Criminal Code, of any offence triable under

Term.

that Part, may be sentenced to the Reformatory for any term less than two years.

Fine.

2. If any term exceeding six months is inflicted, no fine shall be imposed in addition. 54-55 V., c. 55, s. 4.

Copy of sentence sufficient warrant.

**101.** Any officer appointed by the Lieutenant Governor, or other officer or person, by his direction or by direction of the judge, stipendiary magistrate, magistrate or other lawful authority, may convey to the Reformatory any convict sentenced, or liable to be imprisoned therein, and deliver her to the Superintendent, without any further warrant than a copy of the sentence, taken from the minutes of the court before which the offender was tried and certified by a judge, magistrate or justice, or the clerk or acting clerk of such court. 54-55 V., c. 55, s. 5.

Conditions of reception and detention of offenders.

**102.** Subject to the provisions hereinafter contained, the Superintendent of the Reformatory shall receive into the same every offender legally certified to her as sentenced to imprisonment therein, and shall there detain her, subject to all the rules, regulations and discipline thereof, until the term for which she has been sentenced is completed, or until she is otherwise discharged in due course of law. 54-55 V., c. 55, s. 6.

Transfer from Reformatory to prison.

**103.** The Lieutenant Governor may, from time to time, by warrant signed by the Provincial Secretary, or by such other officer as is authorized by the Lieutenant Governor in that behalf, direct the removal from the Reformatory back to the city prison or common gaol, or to any other gaol in Nova Scotia, of any person removed to the Reformatory under this Part. 54-55 V., c. 55, s. 7.

Delivery of offender by Superintendent.

**104.** The Superintendent of the Reformatory, or the keeper of a city prison or common gaol, having the custody of any offender ordered to be removed, shall, when required so to do, deliver up to the constable or other officer or person who produces the said warrant, such offender, together with a copy, attested by the Superintendent, or keeper, of the sentence and date of conviction of such offender, as given on the reception of the offender into the custody of the Superintendent or keeper. 54-55 V., c. 55, s. 8.

*Good Shepherd Industrial Refuge.*

Roman Catholic girls under 16.

**105.** When any Roman Catholic girl, apparently under the age of sixteen years, is convicted of any offence for which by law she is liable to imprisonment, the judge, stipendiary magistrate, justice or justices by whom she is so convicted, may, subject to the provisions hereinafter contained, sentence such girl to be detained in the Good Shepherd Industrial Refuge at Halifax for any term not exceeding five years, and not less than two years. 54-55 V., c. 55, ss. 1 and 9.

Term.

Maintenance of offenders.

**106.** Unless with the written consent of the Superintendent of the Industrial Refuge first had and obtained, no such sentence as

as is mentioned in the last preceding section shall be pronounced, unless or until provision has been made by the municipality within which such conviction is had, out of its funds, for the support of girls so sentenced, at the rate of not less than sixty dollars per annum for each girl. 54-55 V., c. 55, s. 10.

Instruction.

**107.** The Sisters of the Good Shepherd shall be bound to teach and instruct each girl so sentenced and detained in the Industrial Refuge as aforesaid in reading and writing, and in arithmetic to the end of simple proportion, and also to teach each such girl such one of the trades or occupations taught in such refuge, as they deem most adapted to her capabilities. 54-55 V., c. 55, s. 11.

Apprenticeship.

**108.** If any respectable and trustworthy Roman Catholic is willing to undertake the charge of any girl above the age of twelve years committed to the Industrial Refuge, as an apprentice to the trade or calling of such person, or for the purpose of domestic service, and such girl is confined to the Refuge by virtue of a sentence or order pronounced under the authority of any Act of the Parliament of Canada, the Superintendent of the Refuge may, with the consent of the Stipendiary Magistrate of the city of Halifax, bind such girl to such person for any term not to extend, without her consent, beyond a term of five years from the commencement of her imprisonment, and the Stipendiary Magistrate shall thereupon order that such girl be discharged from the Refuge on probation.

Wages.

2. Any wages reserved in any indenture of apprenticeship made under this section shall be payable to such girl, or to some other person for her benefit, and in no case shall any such girl be bound beyond the term of her sentence of imprisonment. 54-55 V., c. 55, s. 13.

*Provisions Applicable to Reformatory and Refuge.*

Refusal of prisoners.

**109.** The Superintendent of the Good Shepherd Reformatory or of the Good Shepherd Industrial Refuge may at any time notify the mayor, warden or other chief magistrate of any city, town or other municipality, that no prisoners beyond those already under sentence in the Reformatory or Industrial Refuge will be received therein from such municipality.

No sentences until further notice.

2. After such notification no person shall be sentenced in such municipality to be detained in the Reformatory or Industrial Refuge until notice has been received by such mayor, warden or chief magistrate, from the Superintendent, that prisoners will again be received in the Reformatory or Refuge. 54-55 V., c. 55, s. 14.

**110.** The Reformatory and Industrial Refuge shall, at all times, be severally open to inspection by the Inspectors of Penitentiaries and any other officer appointed by the Governor in Council to inspect the same. Inspection by government.

2. When and so long as any pecuniary aid is received from the city of Halifax by either or both of such institutions, the Reformatory and Industrial Refuge, or that one of them so receiving aid, shall be open to inspection by the Mayor, Aldermen and Stipendiary Magistrate of the City, or any of them. 54-55 V., c. 55, s. 15. By city officials.

**111.** No rule or regulation made for the conduct or government of the Good Shepherd Reformatory or the Good Shepherd Industrial Refuge shall have any force or effect, unless approved by the Governor in Council. 54-55 V., c. 55, s. 15. Approval of regulations by Governor in Council.

**112.** If any girl sentenced and detained in the Good Shepherd Reformatory or the Good Shepherd Industrial Refuge, has, in the opinion of the Superintendent thereof, so conducted herself during a term of six consecutive months by good behaviour, diligence and industry as to warrant her being set at large and no longer detained in the Refuge, and if the Police Court or Stipendiary Magistrate of the city of Halifax concurs with the Superintendent in recommending the issue of a license to such girl to be at large, then the Minister of Justice, or such person as he appoints to issue such license, may issue a license to such girl to be at large in the province of Nova Scotia, or in such part thereof as is specified in the license. Ticket of leave.

2. The license may be revoked or altered at pleasure by the Minister of Justice, or by such person as he appoints as aforesaid. Revocation.

3. The Minister of Justice may make such regulations as he sees fit as to the form of such licenses, the conditions of enjoyment and forfeiture thereof, and for ascertaining that such conditions are duly complied with. Regulations.

4. Upon information on oath that the holder of any such license has contravened any of the conditions thereof, a judge or stipendiary magistrate may issue a warrant for her arrest, wherever in the Dominion of Canada she may be, and cause her to be brought before such judge or magistrate, and, upon conviction of such contravention, shall remand her to such industrial refuge, there to serve the remainder of her original sentence, with such additional term, not exceeding one year, as to such judge or magistrate seems proper. 54-55 V., c. 55, s. 12. Contravention of license. Remand. Term.

*Jurisdiction.*

**113.** The jurisdiction of the Police Court and of the Stipendiary Magistrate of the city of Halifax and of the policemen Jurisdiction of police court.

men and other officers of such Court or Magistrate, shall, for the purposes of this Part, extend to every person convicted or sentenced thereunder in any place in the county of Halifax, although beyond the limits of the city of Halifax. R.S., c. 183, s. 71; 54-55 V., c. 55, s. 18.

## PART V.

### NEW BRUNSWICK.

*Application of Part.*

To New Brunswick.

**114.** This Part applies only to the province of New Brunswick.

*Interpretation.*

'Court.'

**115.** In the sections of this Part relating to the Good Shepherd Reformatory at St. John, in the province of New Brunswick, 'court' includes a police or stipendiary magistrate or justice of the peace. 3 E. VII., c. 25, s. 1.

*Industrial Home for Boys.*

Boys under 16 years.

**116.** If any boy, who, at the time of his trial, appears to the court to be under the age of sixteen years, is convicted of any offence for which a sentence of imprisonment for a period of three months or longer may be imposed upon an adult convicted of the like offence, the court before whom such boy is convicted may, if satisfied that a due regard for the material and moral welfare of the boy manifestly requires that he should be committed to the Industrial Home for Boys, established in the Province, sentence the boy to be imprisoned in the Home for such term not greater than the term of imprisonment which could be imposed upon an adult for the like offence as the court thinks fit.

Term.

Further indefinite term.

2. Such court may further sentence such boy to be kept in the Industrial Home for an indefinite time after the expiration of such fixed term: Provided, that the whole period of confinement in the Industrial Home shall not exceed five years from the commencement of his imprisonment. 56 V., c. 33, s. 3.

Additional imprisonment for purposes of reform.

**117.** If any boy, apparently under the age of sixteen years, is convicted of an offence punishable by law on summary conviction, and thereupon is sentenced and committed to prison in any common gaol for a period of not less than fourteen days, any judge of the Supreme Court or a county court, in any case occurring within the county or counties for which he is such judge, may examine and inquire into the circumstances of such case and conviction, and when he considers that the material and moral welfare of the boy requires such sentence, he may,

as an additional sentence for such offence, sentence such boy, either forthwith or at the expiration of his imprisonment in such gaol, to the Industrial Home, to be there detained for the purpose of his industrial and moral education for an indefinite period, not exceeding in the whole five years from the commencement of his imprisonment in the common gaol. 56 V., c. 33, s. 4. Term.

**118.** Every boy so sentenced shall be detained in the Industrial Home until the expiration of the fixed term, if any, of his sentence, unless sooner discharged by lawful authority, and thereafter shall, subject to the provisions of this Part and to any regulations made as hereinafter provided, be detained in the Industrial Home for the purpose of his industrial and moral education for a period not to exceed five years from the commencement of his imprisonment. 56 V., c. 33, s. 5. Boy to remain in custody. Term.

**119.** The clergymen of all religious denominations shall, at all convenient hours and subject to the rules or regulations governing the Industrial Home, be admitted therein for the purpose of giving spiritual advice and instruction to the inmates therein of their respective denominations. 56 V., c. 33, s. 5. Clergymen visitors.

**120.** The chairman of the governing board of the Industrial Home may issue a warrant under his official seal requiring the sheriff or a constable or other officer to deliver any boy sentenced to be confined therein to the Superintendent of the Industrial Home. Chairman's warrant for delivery to Industrial Home.

2. A copy of the sentence of the court, duly certified by the proper officer, or the warrant or order of the judge or magistrate by whom the boy is sentenced to such confinement, shall be sufficient authority to the sheriff, constable or other officer, if he is directed verbally or otherwise so to do, to convey the boy to the common gaol of the county where the sentence is pronounced, and for the gaoler of such gaol to receive the boy and retain him until such warrant is presented to the gaoler. 56 V., c. 33, s. 6. Copy of sentence sufficient warrant for confinement in gaol.

**121.** If any respectable or trustworthy person is willing to undertake the charge of any boy committed to the said Industrial Home, when such boy is over the age of twelve years, as an apprentice to the trade or calling of such person, and such boy is confined in the Industrial Home by virtue of a sentence or order pronounced under the authority of any Act of the Parliament of Canada, the Superintendent of the Industrial Home may, with the consent of the parent or guardian of the boy, and in the name of the governing board of the Industrial Home, bind the said boy to such person for any term not to extend without his consent, beyond a term of five years from the commencement of his imprisonment. Boy may be bound as apprentice. Term.

Discharge on probation.

2. The said governing board shall thereupon order that such boy shall be discharged from the said Industrial Home on probation, to remain so discharged, provided his conduct during the residue of the term of five years, from the commencement of his imprisonment, continues good, and such boy shall be discharged accordingly.

Wages.

3. Any wages reserved in any indenture of apprenticeship made under this section shall be payable to such boy, or to some other person for his benefit. 56 V., c. 33, s. 11.

Sanction of Governor General.

**122.** No boy shall be discharged under the last preceding section until after the fixed term of his sentence has elapsed, unless by the authority of the Governor General. 56 V., c. 33, s. 12.

Regulations by Governor in Council for discharge.

**123.** The Governor in Council may make such regulations as he considers advisable for the discharge, after the expiration of the fixed term of sentence, of prisoners confined in the Industrial Home under any Act of the Parliament of Canada, and such discharge may be either absolute or upon probation, subject to such conditions as are imposed under the authority of the said regulations. 56 V., c. 33, s. 13.

Recommittal for violation of conditions of discharge.

**124.** The judge of any county court or police magistrate may, upon satisfactory proof that any boy who was sentenced under the provisions of any Act of the Parliament of Canada, and who has been discharged on probation, has violated the conditions of his discharge, order such boy to be recommitted to the Industrial Home, and thereupon such boy shall be detained therein under his original sentence as if he had never been discharged. 56 V., c. 33, s. 14.

Transfer from Dorchester Penitentiary to Industrial Home.

**125.** The Governor General, by warrant under his hand, may, at any time in his discretion, on the application of the Attorney General of the province of New Brunswick, cause any boy who is imprisoned in the Dorchester Penitentiary, or in any gaol in the Province, for an offence against the law of Canada, and who is certified by any judge of the Supreme Court, or of the county court, to have been, in the opinion of such judge, at the time of his trial under the age of fifteen years, to be transferred to the said Industrial Home in the Province, for the remainder of his term of imprisonment, and for such further term in addition thereto as the Governor General, on the report and recommendation of such judge, deems expedient: Provided that the whole term of imprisonment shall not exceed five years from the commencement of the imprisonment in such penitentiary or gaol. 57-58 V., c. 59, s. 1.

Proviso.

Transfer from Home

**126.** The Governor General, by warrant under his hand, may, at any time in his discretion, on the application of the

Attorney General of the province of New Brunswick, cause any boy who is imprisoned in the said Industrial Home under sentence for an offence against any law of Canada, and for a term of years for which he might have been sentenced to imprisonment in the penitentiary, to be transferred to the Dorchester Penitentiary for the remainder of his term of imprisonment. 3 E. VII., c. 30, s. 1. to penitentiary.

*Good Shepherd Reformatory, Saint John.*

**127.** Whenever any woman or girl, who is a Roman Catholic, is convicted in the city or county of Saint John, in the province of New Brunswick, of any offence against any law of Canada, punishable by imprisonment for a maximum term of less than two years, the court may sentence such woman or girl to imprisonment in the Good Shepherd Reformatory in the said city of Saint John instead of the common gaol or other prison. 3 E. VII., c. 25, s. 2. Roman Catholic females.

**128.** Whenever any such woman or girl is convicted in the said city or county of Saint John,— In case of certain offences.

*(a)* under section two hundred and twenty-eight of the Criminal Code of keeping a common bawdy house; or,

*(b)* under the said section, of being an inmate or habitual frequenter of a common bawdy house; or,

*(c)* under section two hundred and thirty-nine of the Criminal Code, of an offence under that section; or,

*(d)* under Part XVI. of the Criminal Code, of an offence triable under that Part;

she may be sentenced to imprisonment in the Good Shepherd Reformatory for any term less than two years.

2. If a term exceeding six months is inflicted, no fine shall be imposed in addition. 3 E. VII., c. 25, s. 3. Fine.

**129.** Any officer appointed by the Lieutenant Governor, or other officer or person by his direction or by direction of the court or other lawful authority, may convey to the Good Shepherd Reformatory any convict sentenced to be imprisoned therein, and deliver her to the Superintendent or keeper thereof, without any further warrant than a copy of the sentence, taken from the minutes of the court before which the offender was tried and certified by a judge, or the clerk, or acting clerk of such court. 3 E. VII., c. 25, s. 4. Conveyance of convicts. Warrant.

**130.** The Superintendent or keeper of the Good Shepherd Reformatory shall receive therein every offender legally certified to her as sentenced to imprisonment therein, and shall there detain her, subject to all the rules, regulations and discipline thereof, until the term for which she has been sentenced is completed, or until she is otherwise discharged in due course of law. 3 E. VII., c. 25, s. 5. Superintendent to receive offenders.

## PART VI.

PRINCE EDWARD ISLAND.

### *Application of Part.*

To P. E. Island.

**131.** This Part applies only to the province of Prince Edward Island.

### *Reformatory for Juvenile Offenders.*

Prisoners under 16 years.

**132.** As soon as a proclamation has been issued by the Lieutenant Governor of the province of Prince Edward Island declaring that a reformatory for juvenile offenders has been established and made ready for the confinement of prisoners, any person, apparently under the age of sixteen, who is convicted in the Province before the Supreme Court or a stipendiary magistrate, of any offence for which, by law, he is liable to imprisonment, may, by the Court or stipendiary magistrate, be sentenced to be detained in the said reformatory for any term not exceeding five years and not less than two years, as to the Court or magistrate appears proper. R.S., c. 183, s. 72.

Offenders awaiting trial.

**133.** Any person, apparently under the age of sixteen years, thereafter arrested on a charge of having committed any offence within the said Province, not capital, shall not, while awaiting trial for such offence, be detained in any common gaol, but shall be detained in such reformatory. R.S., c. 183, s. 73.

Punishment for violating rules.

**134.** If any offender, detained in such reformatory, wilfully neglects to conform to the rules thereof, he may, upon summary conviction, be imprisoned in the common gaol, with hard labour, for any term not exceeding three months; and at the expiration of his term of imprisonment he shall be brought back to the reformatory, there to be detained during a term equal to so much of his term of imprisonment as remained unexpired at the time of his being sent to the prison. R.S., c. 183, s. 74.

### *Removal of Prisoners to the Gaol of Queen's County.*

Removal may be ordered.

**135.** The Supreme Court of the province of Prince Edward Island, or any judge thereof, may, on the application of the Attorney General or other Crown officer of such Province, whenever any prisoner is sentenced to any term of imprisonment, with hard labour, in either Prince County or King's County, make an order or give directions for the transfer and removal of such prisoner from the gaol of the county in which the conviction of such prisoner takes place, to the gaol of Queen's County, and such order may be made or directions given at the time of passing sentence. R.S., c. 183, s. 75.

**136.** Whenever such order is made or directions given, the sheriff of the county in which the conviction takes place shall cause such prisoner to be removed with all convenient despatch to the gaol of Queen's County, pursuant to such order or direction. R.S., c. 183, s. 76. Sheriff to carry out order of court.

**137.** Upon such removal, such prisoner shall be subject to the same authority and jurisdiction as if he had been convicted in Queen's County. R.S., c. 183, s. 77. Authority to which prisoners subject.

## PART VII.

### MANITOBA.

*Application of Part.*

**138.** This Part applies only to the province of Manitoba, and shall come into force upon a day to be named by proclamation of the Governor in Council. 53 V., c. 37, s. 40. To Manitoba. Proclamation.

*Reformatory for Boys.*

**139.** If any boy, who, at the time of his trial, appears to the court to be under the age of sixteen years, is convicted of any offence for which a sentence of imprisonment for a period of three months or longer, but less than five years, may be imposed upon an adult convicted of the like offence, and the court before which such boy is convicted is satisfied that a due regard for the material and moral welfare of the boy manifestly requires that he should be committed to the Manitoba Reformatory for Boys, then such court may sentence the boy to be imprisoned in such Reformatory for such term as the court thinks fit, not being greater than the term of imprisonment which could be imposed upon an adult for the like offence, and may further sentence such boy to be kept in the Reformatory for an indefinite time after the expiration of such fixed term: Provided that the whole period of confinement in the Reformatory shall not exceed five years from the commencement of his imprisonment. 53 V., c. 37, s. 39. Boys under 16 years. Term. Proviso.

**140.** If any boy, apparently under the age of sixteen years, is convicted of any offence punishable by law on summary conviction, and thereupon is sentenced and committed to prison in any common gaol for a period of not less than fourteen days, any judge of any one of the superior courts, or any judge of the county court for the county in which the conviction is had, may examine and inquire into the circumstances of the case and conviction, and may, as an additional sentence for such offence, when he considers that the material and moral welfare of the boy so requires, sentence such boy to be sent either forthwith or at the expiration of his imprisonment in such gaol, to the said Reformatory, to be there detained for the purpose of his industrial Additional imprisonment for reform.

trial and moral education, for an indefinite period, not exceeding in the whole five years from the commencement of his imprisonment in the common gaol. 53 V., c. 37, s. 39.

Period of detention.

**141.** Every boy so sentenced shall be detained in the Reformatory until the expiration of the fixed term, if any, of his sentence, unless sooner discharged by lawful authority, and thereafter shall, subject to the provisions hereof and to any regulations made as hereinbefore provided, be detained in the Reformatory for a period not to exceed five years from the commencement of his imprisonment, for the purpose of his industrial and moral education. 53 V., c. 37, s. 39.

Imprisonment of offenders until sent to Reformatory.

**142.** A copy of the sentence of the court, duly certified by the proper officer, or the warrant or order of the judge or other magistrate by whom any boy is sentenced to confinement in the Reformatory, shall be a sufficient authority to the sheriff, constable or other officer who is directed, verbally or otherwise, so to do, to convey such boy to the common gaol of the county where such sentence is pronounced, and for the gaoler of such gaol to receive and detain such boy until some person, lawfully authorized, requires the delivery of such boy for removal to the Reformatory. 53 V., c. 37, s. 39.

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# CHAPTER 150.

## An Act to provide for the Conditional Liberation of Convicts.

SHORT TITLE.

Short title.

**1.** This Act may be cited as the Ticket of Leave Act. 63-64 V., c. 48, s. 2.

TICKET OF LEAVE.

Granting of license to convicts.

**2.** The Governor General by an order in writing under the hand and seal of the Secretary of State may grant to any convict, under sentence of imprisonment in a penitentiary, gaol or other public or reformatory prison, a license to be at large in Canada, or in such part thereof as in such license shall be mentioned, during such portion of his term of imprisonment, and upon such conditions in all respects as to the Governor General may seem fit.

Revocation or alteration of same.

2. The Governor General may from time to time revoke or alter such license by a like order in writing. 62-63 V., c. 49, s. 1; 63-64 V., c. 48, s. 1.

Sentence deemed to continue although execution is suspended.

**3.** The conviction and sentence of any convict to whom a license is granted under this Act shall be deemed to continue in force while such license remains unforfeited and unrevoked, although execution thereof is suspended; but, so long as such license continues in force and unrevoked or unforfeited, such convict shall not be liable to be imprisoned by reason of his sentence, but shall be allowed to go and remain at large according to the terms of such license. 62-63 V., c. 49, ss. 2 and 10.

Form of license.

**4.** A license under this Act may be in the form A in the schedule to this Act, or to the like effect, or may, if the Governor General thinks proper, be in any other form different from that given in the schedule which he may think it expedient to adopt, and contain other and different conditions.

Deposit of conditions before Parliament.

2. A copy of any conditions annexed to any such license, other than the conditions contained in form A shall be laid before both Houses of Parliament within twenty-one days after

after the making thereof, if Parliament be then in session, or if not, then within fourteen days after the commencement of the next session of Parliament. 62-63 V., c. 49, s. 4.

REVOCATION AND FORFEITURE.

Forfeiture of license.

**5.** If any holder of a license under this Act is convicted of any indictable offence his license shall be forthwith forfeited. 62-63 V., c. 49, s. 5.

Convicting justice to forward certificate in form B to Secretary of State.

**6.** When any holder of a license under this Act is convicted of an offence punishable on summary conviction under this or any other Act, the justice or justices convicting the prisoner shall forthwith forward by post a certificate in the form B in the schedule to this Act to the Secretary of State, and thereupon the license of the said holder may be revoked in manner aforesaid. 62-63 V., c. 49, s. 9.

Action upon forfeiture.

**7.** If any such license is revoked or forfeited, it shall be lawful for the Governor General by warrant under the hand and seal of the Secretary of State to signify to the Commissioner of Dominion Police at Ottawa that such license has been revoked or forfeited, and to require the Commissioner to issue his warrant under his hand and seal for the apprehension of the convict, to whom such license was granted, and the Commissioner shall issue his warrant accordingly.

Execution of warrant of police commissioner.

2. Such warrant shall and may be executed by the constable to whom the same is given for that purpose in any part of Canada, and shall have the same force and effect in all parts of Canada as if the same had been originally issued or subsequently endorsed by a justice or other lawful authority having jurisdiction in the place where the same is executed.

Bringing of licensed convict before justice of the peace.

3. Any holder of a license apprehended under such warrant, shall be brought as soon as conveniently may be before a justice of the peace of the county in which the warrant is executed, and such justice shall thereupon make out his warrant under his hand and seal for the recommitment of such convict to the penitentiary, gaol or other public or reformatory prison from which he was released by virtue of the said license, and such convict shall be so recommitted accordingly, and shall thereupon be remitted to his original sentence, and shall undergo the residue of such sentence which remained unexpired at the time his license was granted: Provided that if the place where such convict is apprehended is not within the province, territory or district to which such penitentiary, gaol or other public or reformatory prison belongs, such convict shall be committed to the penitentiary, gaol, or other public or reformatory prison for the province, territory or district, within which he is so apprehended, and shall there undergo the residue of his sentence as aforesaid. 62-63 V., c. 49, s. 3.

Proviso.

**8.** When any such license is forfeited by a conviction of an indictable offence or other conviction, or is revoked in pursuance of a summary conviction or otherwise, the person whose license is forfeited or revoked shall, after undergoing any other punishment to which he may be sentenced for any offence in consequence of which his license is forfeited or revoked, further undergo a term of imprisonment equal to the portion of the term to which he was originally sentenced and which remained unexpired at the time his license was granted. Convict whose license is forfeited to undergo term of imprisonment for the time of sentence unexpired.

2. If the original sentence in respect of which the license was granted was to a penitentiary, the convict shall for the purpose of serving the term equal to the residue of such original sentence be removed from the gaol or other place of confinement in which he is, if it be not a penitentiary, to a penitentiary by warrant under the hand and seal of any justice having jurisdiction at the place where he is confined. Confinement in a penitentiary.

3. If he is confined in a penitentiary, he shall undergo a term of imprisonment in that penitentiary equal to the residue of the original sentence. Term of imprisonment.

4. In every case such convict shall be liable to be dealt with in all respects as if such term of imprisonment had formed part of his original sentence. 62-63 V., c. 49, s. 11. In all respects same as original.

REPORTING TO POLICE.

**9.** Every holder of a license who is at large in Canada shall notify the place of his residence to the chief officer of police, or the sheriff of the city, town, county or district in which he resides, and shall, whenever he changes such residence within the same city, town, county or district, notify such change to the said chief officer of police or sheriff, and, whenever he is about to leave a city, town, county or district, he shall notify such his intention to the chief officer of police or sheriff of that city, town, county or district, stating the place to which he is going, also, if required, and so far as is practicable, his address at that place, and whenever he arrives in any city, town, county or district he shall forthwith notify his place of residence to the chief officer of police or the sheriff of such last-mentioned city, town, county or district. Notice by holder of license to police authorities as to place of abode.

2. Every male holder of such a license shall, once in each month, report himself at such time as may be prescribed by the chief officer of police or sheriff of the city, town, county or district in which such holder may be, either to such chief officer or sheriff himself, or to such other person as he may direct, and such report may, according as such chief officer or sheriff directs, be required to be made personally or by letter. Report of male holder of license to police authorities.

3. The Governor General may, by order under the hand of the Secretary of State, remit any of the requirements of this section either generally or in the case of any particular holder of a license. 62-63 V., c. 49, s. 6. Remittance of requirements.

OFFENCES AND PENALTIES.

Failing to comply with last preceding section.

**10.** If any person to whom the last preceding section applies fails to comply with any of the requirements thereof, he shall in any such case be guilty of an offence against this Act, unless he proves to the satisfaction of the court before which he is tried, either that being on a journey he tarried no longer in the place in respect of which he is charged with failing to notify his place of residence than was reasonably necessary, or that, otherwise, he did his best to act in conformity with the law.

Penalty on summary conviction.

2. On summary conviction of any such offence the offender shall be liable, in the discretion of the justice, either to forfeit his license, or to imprisonment with or without hard labour for a term not exceeding one year. 62-63 V., c. 49, s. 6.

Failing to produce license.

**11.** Any holder of a license who,—

*(a)* fails to produce the same whenever required so to do by any judge, police or other magistrate, or justice of the peace, before whom he may be brought charged with any offence, or by any peace officer in whose custody he may be, and fails to make any reasonable excuse for not producing the same; or,

Or breaking conditions of license.

*(b)* breaks any of the other conditions of his license by an act which is not of itself punishable either upon indictment or upon summary conviction;

Penalty.

is guilty of an offence upon summary conviction of which he shall be liable to imprisonment for three months with or without hard labour. 62-63 V., c. 49, s. 7.

Arrest of licensed convict without a warrant.

**12.** Any peace officer may take into custody without warrant any convict who is the holder of such a license,—

*(a)* whom he reasonably suspects of having committed any offence; or,

*(b)* if it appears to such peace officer that such convict is getting his livelihood by dishonest means;

and may take him before a justice to be dealt with according to law.

Forfeiture of license.

2. If it appears from the facts proved before the justice that there are reasonable grounds for believing that the convict so brought before him is getting his livelihood by dishonest means such convict shall be deemed guilty of an offence against this Act, and his license shall be forfeited.

Conviction of convict brought before justice of the peace.

3. Any convict so brought before a justice of the peace may be convicted of getting his livelihood by dishonest means although he has been brought before the justice on some other charge, or not in the manner provided for in this section. 62-63 V., c. 49, s. 8.

ADMINISTRATION.

Minister of Justice to advise.

**13.** It shall be the duty of the Minister of Justice to advise the Governor General upon all matters connected with or

affecting the administration of this Act. 62-63 V., c. 49, s. 12.

## SCHEDULE.

### FORM A.

LICENSE.

OTTAWA, day of 19 .

His Excellency the Governor General is graciously pleased to grant to , who was convicted of at the for the on the , and was then and there sentenced to imprisonment in the penitentiary, gaol or prison *(as the case may be)* for the term of , and is now confined in the , license to be at large from the day of his liberation under this order during the remaining portion of his term of imprisonment, unless the said shall before the expiration of the said term be convicted of an indictable offence within Canada, or shall be summarily convicted of an offence involving forfeiture, in which case such license will be immediately forfeited by law, or unless it shall please His Excellency sooner to revoke or alter such license.

This license is given subject to the conditions endorsed upon the same upon the breach of any of which it will be liable to be revoked, whether such breach is followed by a conviction or not.

And His Excellency hereby orders that the said be set at liberty within thirty days from the date of this order.

Given under my hand and seal at the day of 19 } *Secretary of State.*

CONDITIONS.

1. The holder shall preserve his license and produce it when called upon to do so by a magistrate or a peace officer.
2. He shall abstain from any violation of the law.
3. He shall not habitually associate with notoriously bad characters, such as reputed thieves and prostitutes.
4. He shall not lead an idle and dissolute life without visible means of obtaining an honest livelihood.

If his license is forfeited or revoked in consequence of a conviction for any offence he will be liable to undergo a term of imprisonment equal to the portion of his term of years which remained unexpired when his license was granted, viz.:—the term of years.

## Form B.

FORM OF CERTIFICATE OF CONVICTION.

I do hereby certify that A.B., the holder of a license under the Ticket of Leave Act was on the day of in the year duly convicted by and before of the offence of and sentenced to

J.P., Co.

OTTAWA: Printed by SAMUEL EDWARD DAWSON, Law Printer to the King's most Excellent Majesty.

# CHAPTER 152.

## An Act respecting the traffic in Intoxicating Liquors.

SHORT TITLE.

Short title.

**1.** This Act may be cited as the Canada Temperance Act. R.S., c. 106, s. 1.

INTERPRETATION.

Interpretation.

**2.** In this Act, unless the context otherwise requires,—

'Intoxicating liquors.'

*(a)* 'intoxicating liquors' includes every spirituous or malt liquor, and every wine, and any and every combination of liquors or drinks that is intoxicating, and any mixed liquor capable of being used as a beverage, and part of which is spirituous or otherwise intoxicating;

'Electors.'

*(b)* 'electors' means persons qualified and competent to vote at an election of a member of the House of Commons in the county or city in respect to which the expression is used;

'Form.'

*(c)* 'form' means a form in the schedule of this Act;

'County.'

*(d)* 'county' includes every town, township, parish and other division or municipality, except a city, within the territorial limits of the county, and also a union of counties united for municipal purposes;

'County' in Ontario.

*(e)* as respects the province of Ontario, or any other province in which provisional or temporary judicial districts exist, 'county' includes such provisional or temporary judicial districts;

'County' in Manitoba.

*(f)* as respects the province of Manitoba, 'county' means the electoral districts therein, as designated by the Representation Act;

'County' in B. C.

*(g)* as respects the province of British Columbia, until the Province shall have been divided into counties and a regular municipal organization established in each of such counties, 'county' means an electoral district therein, in accordance with the division of the Province for election of members of the House of Commons of Canada, and includes every town, township, parish and other division or municipality within the territorial limits of such electoral district, or within a union of electoral districts where

united for municipal purposes. R.S., c. 106, s. 2; 51 V., c. 34, ss. 2 and 4.

Attendance of agents.

**3.** Whenever in Part I. of this Act any expressions are used, requiring or authorizing any act to be done, or from which it may be inferred that any act or thing is to be done, in the presence of the agent of the persons interested, such expressions shall be deemed to refer to the presence of such agents as are authorized to attend, and as have, in fact, attended at the time and place where such act and thing is being done. R.S., c. 106, s. 24.

DIVISION OF ACT.

Into 3 parts.

**4.** This Act is divided into three Parts. Part I. relates to proceedings for bringing Part II. into force. Part II. relates to the prohibition of traffic in intoxicating liquors. Part III. relates to penalties and prosecutions for offences against Part II. R.S., c. 106, s. 3.

## PART I.

PROCEEDINGS FOR BRINGING PART II. OF THIS ACT INTO FORCE.

*Mode of Obtaining Poll.*

Petition to Governor in Council.

**5.** Proceedings for the bringing of Part II. of this Act into force in any county or city shall be commenced by petition to the Governor in Council which may be in form A or in words to the same effect. R.S., c. 106, s. 4.

Form of notice of desire to have votes of electors taken.

**6.** Such petition may be embodied as in form A in a notice in writing addressed to the Secretary of State of Canada and signed by electors of the county or city, to the effect that the signers desire that the votes of all of such electors be taken for and against the adoption of the petition. R.S., c. 106, s. 5.

Deposit of notice.

**7.** Such notice embodying such petition may be deposited for public examination,—

In general.

*(a)* in the office of the sheriff or registrar of deeds of or in the county or city to which it relates, and where in any county there is more than one office of a registrar of deeds, in any one of such offices;

In provisional or temporary districts.

*(b)* in the province of Ontario, or in any other province in which provisional or temporary judicial districts exist, so far as relates to such provisional or temporary judicial districts, in the registry office, or in one of the registry offices,

offices, if more than one, for the respective provisional or temporary judicial districts;

*(c)* in the province of Manitoba in any registry office or in any sheriff's office in the respective electoral districts. In Manitoba.

2. In the province of British Columbia, until the Province shall have been divided into counties and a regular municipal organization established in each of such counties, such notice embodying such petition shall be deposited, for Cariboo electoral district, in the office of the registrar of voters at the village of Barkerville; for Yale electoral district, in the office of the registrar of voters at the village of Kamloops; for New Westminster electoral district, in the office of the registrar of voters at the city of New Westminster; for Victoria electoral district, in the office of the registrar of voters at the city of Victoria; and for Vancouver electoral district, in the office of the registrar of voters at the city of Nanaimo. R.S., c. 106, s. 6; 51 V., c. 34, ss. 1, 3 and 4. In British Columbia.

**8.** There shall be laid before the Secretary of State, together with or in addition to every such notice embodying such petition, evidence,— Evidence.

*(a)* that there are appended to it the genuine signatures of at least one-fourth in number of all the electors in the county or city named in it; One-fourth of electors.

*(b)* that such notice has been deposited, as provided by the last preceding section, for public examination by any person for ten days previous to its being so laid before the Secretary of State; and, Deposit for examination.

*(c)* that two weeks previous notice of such deposit has been given in two newspapers published in or nearest to the county or city to which such notice embodying such petition relates, and by at least two insertions in each such paper. R.S., c. 106, s. 6. Notice of deposit.

**9.** If it appears by evidence to the satisfaction of the Governor in Council that any such notice has appended to it the genuine signatures of one-fourth or more of all the electors in the county or city named in it, and has been duly deposited as aforesaid, after notice as aforesaid, the Governor in Council may issue a proclamation under this Part. R.S., c. 106, s. 7. Case in which proclamation may issue.

**10.** Such proclamation shall be inserted at least three times in the *Canada Gazette*, and three times in the official gazette of the province in which the county or city is situate. R.S., c. 106, s. 8. Proclamation to be published.

**11.** In such proclamation there may be set forth,— Contents.

*(a)* the notice in full, with the proposed petition embodied in it; Notice.

Signatures. *(b)* the number of the signatures to the notice;

Day of poll. *(c)* the day on which the poll for taking the votes of the electors for and against the petition will be held;

Hours. *(d)* that such votes will be taken by ballot between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of that day;

Name of returning officer. *(e)* the name of the sheriff, registrar or other person appointed returning officer for the purpose of taking, on that day, the votes of the electors for and against the petition, and of afterwards summing up the same and making a return of the result to the Governor in Council;

Appointment of deputies. *(f)* the power of the returning officer to appoint a deputy returning officer, at and for each polling place or station;

Appointment of representatives. *(g)* the place where, and the day and hour when, the returning officer will appoint persons to attend at the various polling stations, and at the final summing up of the votes on behalf of the persons interested in, and promoting or opposing respectively the adoption of, the petition;

Date and place of final summing up. *(h)* the place where, and the day and hour when, the votes of the electors will be summed up, and the result of the polling declared by the returning officer;

Date when Part II. will go into effect. *(i)* the day on which, in the event of the petition being adopted by the electors, Part II. of this Act will go into force in the county or city in question; and,

Further particulars. *(j)* any such further particulars, with respect to the taking and summing up of the votes of the electors, as the Governor in Council sees fit to insert therein. R.S., c. 106, s. 9.

No polling on day of any other election. **12.** No polling of votes under this Act shall be held in any city or county on the same day that any election takes place in such county or city for a member to serve in the Parliament of Canada, or in any provincial legislature. R.S., c. 106, s. 9.

*Returning officers and their Duties.*

Who may be appointed. **13.** Either the sheriff or the registrar of deeds, or one of the sheriffs, or one of the registrars of deeds, for the county or city or for a portion of the county or city in which the poll is to be held, or the nearest sheriff or registrar, or any other person, may be appointed returning officer in any case under this Part.

Evidence of appointment. 2. The naming of any person in any proclamation issued under this Part shall be a sufficient appointment, and sufficient evidence of the appointment of such person as returning officer, for the purposes mentioned in the proclamation. R.S., c. 106, s. 10.

Oath of returning officer. **14.** On receiving a copy of the proclamation, the returning officer shall forthwith endorse thereon the date on which he receives

receives the same; and, before taking any further action thereon, he shall take, before a justice of the peace, the oath of office in form B. R.S., c. 106, s. 11.

Qualification of voters.

**15.** All persons qualified to vote at an election of a member of the House of Commons, in the county or city to which any proclamation issued under this Act relates, on the day on which a poll is held in compliance with such proclamation, and no others, shall be qualified to vote and to have their votes polled on that day, for or against the adoption of the petition mentioned in such proclamation. R.S., c. 106, s. 12.

Ascertainment of qualified voter.

**16.** The returning officer shall ascertain the number or probable number of persons qualified to vote in each town, parish, township, ward, local municipality, or other locality in the county, or ward in the city, where voters are so entitled to vote,—

From lists.

*(a)* from the lists of voters which, under the provisions of this Part, are to be used at the polling of votes;

From information.

*(b)* in any county or city where there are voters entitled to vote but no lists of voters, from such information as is within his reach.

To subdivide localities into polling districts.

2. If such town, parish, township, ward, local municipality or other locality or ward, has not been subdivided for electoral purposes into polling districts by the legislature, or by the local authorities under the legislation of the province wherein such county or city is situate, or by the returning officer at the last previous election of a member of the House of Commons in the county or city, the returning officer shall subdivide such town, parish, township, ward, local municipality or other locality in the county, or ward in the city, into polling districts in a convenient manner, so that there shall be at least one polling district for every two hundred voters; and he shall also fix a polling station in a central and convenient place in each polling district.

Fix polling station.

Additional polling places.

3. The returning officer may, in his discretion, grant such additional polling places in such polling districts as the extent of the district and the remoteness of any body of its voters from the polling place renders necessary, although the voters thereof are less than the number hereinbefore specified. R.S., c. 106, s. 13.

Notices indicating polling places and limits of polling districts.

**17.** The returning officer shall, at least eight days before the day on which the poll for taking the votes of the electors for and against the petition is to be held, by a notice under his hand, indicate with reference to the holding of such poll, the several polling stations fixed by him, and the territorial limits to which they shall respectively apply, and shall cause the said notice to be posted up at four of the most prominent

and conspicuous places in each polling district. R.S., c. 106, s. 14.

Deputy returning officer to be appointed.

**18.** Every person so appointed returning officer shall,—

*(a)* appoint, by a commission under his hand, in form C, one deputy returning officer for each polling district, comprised in the county or city, who shall, before acting as such take, before the returning officer or a justice of the peace, the oath of office, in form D;

List of voters to be furnished.

*(b)* furnish each deputy returning officer with a copy of the list or of such portion of the list of voters as contains the names arranged alphabetically, of the electors qualified to vote at the election of a member of the House of Commons, at the polling station in the polling district for which he is appointed, certified by himself or by the proper custodian of the lists from which such copies are taken;

Ballot boxes to be supplied.

*(c)* deliver to each deputy returning officer, eight days at least before the polling day, a ballot box to receive the ballot papers of the voters, which shall be made of some durable material, with one lock and key, and a slit or narrow opening in the top, and so constructed that the ballot papers may be introduced therein, but cannot be withdrawn therefrom, unless the box is unlocked;

Ballot papers to be furnished.

*(d)* furnish each deputy returning officer with a sufficient number of ballot papers to supply the number of voters on the list of such polling district, and with the necessary materials for voters to mark their ballot papers;

Directions to be furnished.

*(e)* furnish to each deputy returning officer, at least ten copies of printed directions, for the guidance of voters in voting.

Ballot papers alike.

2. Such ballot papers shall be of the same description, and as nearly as possible alike.

Posting up of directions.

3. The deputy returning officer shall, before or at the opening of the poll, on the day of polling, cause such printed directions to be posted up in some conspicuous places outside of the polling station, and also in each compartment of the polling station. R.S., c. 106, s. 15.

List of voters to be used.

**19.** The lists of voters which would be used at an election of a member of the House of Commons, in the same district at the same time, shall be the lists of voters which shall be used at every polling of votes under the provisions of this Act.

To be obtained from custodian.

2. The returning officer shall obtain the different lists of voters, or copies or extracts thereof, from the registrars, city or town clerks, clerks of the peace, clerks of the municipalities or such other officers as are, by law, the proper custodians of such lists or of duly certified duplicates or copies thereof. R.S., c. 106, s. 16.

Ballot boxes to be made.

**20.** Whenever the returning officer fails to furnish to the deputy returning officer in any polling district the ballot box within

within the time prescribed by this Part, such deputy returning officer shall cause one to be made. R.S., c. 106, s. 17.

Form of ballot paper.

**21.** The ballot of each voter shall be a printed paper, in this Part called a ballot paper, with a counterfoil, and the ballot paper and counterfoil shall be according to form E. R.S., c. 106, s. 18.

Form of directions.

**22.** The printed directions to be furnished to the deputy returning officers shall be according to form F. R.S., c. 106, s. 19.

Agents.

**23.** At the place and time named for that purpose in the proclamation, the returning officer shall, by an instrument in writing signed by him, appoint as agents on behalf of the persons interested in and desirous of promoting the adoption of the petition, from and out of such persons as apply to him to be so appointed, one person to attend at each polling station, and two persons to attend at the final summing up of the votes, and as agents on behalf of the persons interested in, and desirous of opposing the adoption of the petition, one person to attend at each polling station, and two persons to attend at the final summing up of the votes. R.S., c. 106, s. 20.

Promoting adoption.

Opposing adoption.

Form of oath of person to be appointed agent.

**24.** Before any person is so appointed, he shall make and subscribe before the returning officer or any deputy returning officer, a declaration in form G to the effect that he is interested in and desirous of promoting, or opposing, as the case may be, the adoption of the petition. R.S., c. 106, s. 21.

Agent to produce appointment.

**25.** Every person so appointed, before being admitted to the polling station, or to the final summing up of the votes, as the case may be, shall produce to the deputy returning officer his written appointment. R.S., c. 106, s. 22.

Appointment and oath of substitute for agent.

**26.** In the absence of any person authorized, as aforesaid, to attend at any polling station, or at the final summing up of the votes, any elector in the same interest as the person so absent may, upon making and subscribing before the deputy returning officer at the polling station, or the returning officer at the final summing up of the votes, as the case may be, a declaration in form G, be admitted to the polling station, or to the final summing up of the votes, as the case may be, to act for the person so absent. R.S., c. 106, s. 23.

Attendance of agents.

**27.** The non-attendance of any agents or agent in whose presence any act is by this Part required or authorized to be done, at any time or place specified by this Part in that behalf, shall not, if the act or thing is otherwise duly done, invalidate, in any wise, such act or thing. R.S., c. 106, s. 24.

*The Poll.*

Poll.
Votes by ballot.

**28.** On the day and at the hour fixed by proclamation, a poll shall be held at each polling station in the county or city to which the proclamation relates, and the votes shall be taken by ballot. R.S., c. 106, s. 25.

Description of buildings in which poll held.

**29.** The poll shall be held in each polling district in a room or building of convenient access, with an outside door for the admittance of the voters, and having, if possible, another door through which they may leave after having voted; and one or two compartments shall be made within the room, so arranged that each voter may be screened from observation, and may, without interference or interruption, mark his ballot paper. R.S., c. 106, s. 26.

Hours for opening and closing polls.

**30.** Each deputy returning officer shall open the poll assigned to him at the hour of nine of the clock in the forenoon, and keep the same open until five of the clock in the afternoon; and shall, during that time, receive, in the manner hereinafter prescribed, the votes of the electors duly qualified to vote at such polling place. R.S., c. 106, s. 27.

Who may be present at the polling of the votes.

**31.** In addition to the deputy returning officer, such persons as have been appointed or admitted under this Act as agents, and no others, shall be permitted to remain in the room where the votes are given, during the time the poll remains open. R.S., c. 106, s. 28.

Agent's oath of secrecy.

**32.** Every agent, on being admitted to the polling station, shall take an oath to keep secret the space on the ballot paper in which any voter marks his ballot paper in his presence, as hereinafter required.

Form.

2. Such oath shall be in form H. R.S., c. 106, s. 29.

Opening, examining and locking ballot box.

**33.** At the hour fixed for opening the poll the deputy returning officer shall, in the presence of such of the electors and agents as are present, open the ballot box and ascertain that there are no ballots or other papers in the same, after which the box shall be locked, and the deputy returning officer shall keep the key thereof. R.S., c. 106, s. 30.

Asking electors to vote.

**34.** Immediately after the ballot box is locked, as aforesaid, the deputy returning officer shall call upon the electors to vote. R.S., c. 106, s. 31.

Place of voting.

**35.** Each elector shall vote at the polling station of the polling district in which he is qualified to vote and at no other.

Opportunity to vote.

2. The deputy returning officer shall provide for the admittance of every elector into the polling station, and see that he is not impeded or molested at or about the polling station. R.S., c. 106, s. 32.

Deputy returning officer or agent entitled to vote.

**36.** The returning officer, on the request of any elector entitled to vote at one of the polling stations, who is appointed deputy returning officer, or who is appointed to attend as agent at a polling station other than the one where he is entitled to vote, shall give to such elector a certificate that such elector is entitled to vote at such polling of votes at the polling station where such elector is stationed during the polling day.

Certificate.

2. On the production of such certificate such elector shall have the right to vote at the polling station where he is placed during the polling day, instead of at the polling station of the polling district where he would otherwise have been entitled to vote.

Right under certificate.

3. No such certificate shall entitle any such elector to vote at such polling station unless he has been actually engaged as such deputy returning officer or agent during the day of polling. R.S., c. 106, s. 33.

Entering polling station.

**37.** Electors desiring to vote shall be introduced, one at a time for each compartment, into the room where the poll is held.

Proceedings on voting.

2. Every such elector so introduced shall declare his name, surname and addition, which shall be entered or recorded in the voters' list to be kept for that purpose by the deputy returning officer, and if the same is found on the list of electors for the polling district of such polling station, he shall receive from the deputy returning officer a ballot paper, with the initials of such deputy returning officer previously placed by him on the back thereof in such manner that when the ballot is folded they can be seen without opening it, and with a number corresponding to that opposite the voter's name on the voters' list placed by him on the counterfoil thereof. R.S., c. 106, s. 34.

Elector may be sworn.

**38.** Such elector, if required by the deputy returning officer or by any elector or agent, as aforesaid, present, shall, before receiving his ballot paper, take the oath or oaths of qualification required by the laws in force in the province where the election is held from a voter at an election of a member of the House of Assembly of that province, with the words *House of Commons of Canada* substituted for *House of Assembly*, or with such other change as is required to make the oath applicable to the election of a member of the House of Commons of Canada.

Administering oath.

2. The deputy returning officer is authorized to administer such oath or oaths.

Deputy returning officer to instruct elector.

3. The deputy returning officer shall instruct every elector voting, how and where to affix his mark, and how to fold his ballot paper, but without inquiring or seeing whether the elector intends to vote for or against the petition, except in cases where the elector is unable to read, or is incapable by blindness, or

other physical cause, from voting in the manner prescribed by this Part without the assistance provided herein in that behalf. R.S., c. 106, s. 34.

Voting where no lists.

**39.** If the county or city is one, in or for which the election law of the province where such county or city is situate does not require lists of voters to be made to entitle them to vote, any elector claiming his ballot paper shall declare his name, surname, addition and qualification, which shall be entered on a list kept for that purpose by the deputy returning officer.

Oath of qualification.

2. Before receiving his ballot paper such elector may be required by the deputy returning officer, or any elector or agent present to take the oath of qualification provided for in the last preceding section, to be administered by the deputy returning officer. R.S., c. 106, s. 35.

Mode of voting.

**40.** The elector on receiving the ballot paper, shall forthwith proceed into one of the compartments of the polling station and there mark his ballot paper, by making a cross in any part of the upper space if he votes for the petition, and in any part of the lower space if he votes against the petition, after which he shall fold it up, so that the initials on the back can be seen without opening it, and hand it to the deputy returning officer, who shall without unfolding it, ascertain by examining his initials and the number upon the counterfoil, that it is the same ballot he furnished to the elector.

Counterfoil to be destroyed.

2. The deputy returning officer shall then detach and destroy the counterfoil, and immediately, and in the presence of the elector, place the ballot paper in the ballot box. R.S., c. 106, s. 36.

Electors to vote without delay.

**41.** Every elector shall vote without undue delay, and shall quit the polling station so soon as his ballot paper has been put into the ballot box. R.S., c. 106, s. 37.

As to ballot paper.

**42.** No elector shall be allowed to take his ballot paper out of the polling station. R.S., c. 106, s. 38.

Voter unable to mark his ballot paper.

**43.** The deputy returning officer, on application of any voter who is unable to read or is incapacitated by blindness or other physical cause from voting in the manner prescribed by this Act, shall assist such voter by marking his ballot paper in the manner directed by such voter, in the presence of the sworn agents or of the sworn electors representing them in the polling station, and of no other person, and by placing such ballot paper in the ballot box. R.S., c. 106, s. 39.

Such voter to be sworn.

**44.** The deputy returning officer shall require the voter making such application, before voting, to make oath of his

incapacity to vote without such assistance, in the form following:—

Form of oath.

'I solemnly swear (*or if he is one of the persons entitled by law to affirm in civil cases,* solemnly affirm) that I am unable to read and to understand the ballot papers so as to mark the same (*or* that I am incapacitated by physical cause from voting *as the case may be*) without the assistance of the deputy returning officer.' R.S., c. 106, s. 39.

Interpreter in certain cases.

**45.** Whenever the deputy returning officer does not understand the language spoken by any elector claiming to vote, he shall swear an interpreter, who shall be the means of communication between him and such elector, with reference to all matters required to enable such elector to vote. R.S., c. 106, s. 39.

List of such voters to be kept.

**46.** The returning officer shall cause a list to be kept of the names of voters whose ballot papers have been marked with the assistance as aforesaid of the deputy returning officer, stating the reason why each ballot paper was so marked.

Reason for marking to be entered

2. The deputy returning officer shall enter opposite the names of the voters whose ballots have been so marked, in addition to what is required in the next following section, the reason why each ballot paper was marked by him. R.S., c. 106, s. 39.

Entry of names of electors voting on voters' list.

**47.** The deputy returning officer shall enter on the voters' list to be kept by him in form I., opposite the name of each elector voting, the word *Voted,* as soon as his ballot paper has been deposited in the ballot box; and he shall enter on the same list the word *Sworn* or *Affirmed* opposite the name of each elector to whom the oath or affirmation of qualification has been administered, and the words *Refused to be sworn,* or *Refused to affirm,* opposite the name of each elector who has refused to take the oath or to affirm. R.S., c. 106, s. 40.

Entry when no lists required by law.

**48.** When no lists of voters are required by the law in force in the county or city for which the voting takes place, the deputy returning officer shall cause the name, surname, and addition of every voter to be entered on a list to be made and kept for that purpose.

Entries.

2. He shall enter on such list the word *Voted,* or *Sworn* or *Affirmed,* or *Refused to be sworn,* or *Refused to affirm,* as the case may be, as provided in the case of lists furnished by the returning officer. R.S., c. 106, s. 41.

Voter refusing to swear or affirm not to vote.

**49.** No voter who has refused to take the oath or affirmation of qualification required as aforesaid by this Act, when requested so to do, shall receive a ballot paper or be admitted to vote. R.S., c. 106, s. 42.

No elector to vote more than once.

**50.** No person shall vote more than once at the same polling of votes under the provisions of this Act. R.S., c. 106, s. 43.

Second vote on the same name.

**51.** If a person, representing himself to be a particular elector named on the register or list of voters, applies for a ballot paper after another person has voted as such elector, the applicant, upon taking the oath in form J and otherwise establishing his identity to the satisfaction of the deputy returning officer, shall be entitled to receive a ballot paper, on which the deputy returning officer shall put his initials, together with a number corresponding to a number entered on the list of voters opposite the name of such voter, and shall be entitled to vote in like manner as any other elector.

Entry on list.

2. The name of such voter shall be entered on the list of voters, and a note shall be made of his having voted on a second ballot issued under the same name, and of the oath or affirmation of identification having been required and made, as well as of any objections made by any of the agents. R.S., c. 106, s. 44.

Second ballot paper delivered when.

**52.** A voter who has inadvertently dealt with the ballot paper given him in such manner that it cannot be conveniently used, may, on delivering the same to the deputy returning officer, obtain another ballot paper in the place of that so delivered up. R.S., c. 106, s. 45.

*Proceedings after close of the Poll.*

Counting votes at close of poll.

**53.** Immediately after the close of the poll, the deputy returning officer shall, in the presence of the agents, and if the agents are absent, then in the presence of at least three electors, open the ballot box and proceed to count the number of votes given for and against the petition.

Certain ballot papers rejected.

2. In so doing he shall reject all ballot papers which have not been supplied by the deputy returning officer, and all those upon which there is any writing or mark by which the voter could be identified.

Proceedings as to remainder.

3. He shall count all the other ballot papers and keep lists of the number of votes given for, and of the number of votes given against the petition, and of the number of rejected ballot papers, and shall put all the ballot papers indicating the votes given for, and the votes given against the petition, respectively, into separate envelopes or parcels, and those rejected, those spoiled and those unused, respectively, into separate envelopes or parcels, and shall endorse all such parcels, so as to indicate their contents, and put them into the ballot box. R.S., c. 106, ss. 46 and 47.

Objection to ballot papers.

**54.** The deputy returning officer shall take a note of any objection made by any agent or any elector present, to any

ballot paper found in the ballot box, and shall decide any question arising out of the objection.

2. The decision of such deputy returning officer shall be final, subject only to reversal on a scrutiny as hereinafter provided. R.S., c. 106, s. 48. Decision final.

**55.** Each objection to a ballot paper shall be numbered, and a corresponding number placed on the back of the ballot paper and initialed by the deputy returning officer. R.S., c. 106, s. 49. Each objection to be numbered and initialed.

**56.** The deputy returning officer shall make out a statement of the accepted ballot papers, of the number of votes given each way, of the rejected ballot papers, of the spoiled and returned ballot papers, and of such as are unused and returned by him; and he shall make and keep a copy of such statement, and inclose in the ballot box the original statement, together with the voters' list and certificate, at the foot of each list, of the total number of electors who voted on such list, and such other lists and documents as have been used at such election. Statement of accepted ballot papers. Copy. Papers to be inclosed in ballot box.

2. The ballot box shall then be locked and sealed, and shall be delivered to the returning officer, who shall collect or receive the same. Delivery to returning officer.

3. In case the returning officer shall be unable to collect or receive the ballot boxes, the same shall be collected and received by, and delivered to one or more persons specially appointed for that purpose by the returning officer, and shall on delivering the ballot boxes to the returning officer, take the oath in form K. R.S., c. 106, s. 50. Or to person appointed to receive the same.

**57.** The deputy returning officer shall take the oath in form L, which shall be annexed to the statement aforesaid. R.S., c. 106, s. 51. Oath to be annexed to statement.

**58.** The several deputy returning officers, on being requested so to do, shall deliver to each of the agents, or in the absence of such agents, to the electors present, a certificate of the number of votes given in each interest, and of the number of rejected ballot papers. R.S., c. 106, s. 52. Certificates delivered to agents.

*Summing up the Votes and Returns.*

**59.** The returning officer, at the place, day and hour, appointed by the proclamation, and after having received all the ballot boxes, shall proceed to open them in the presence of the agents, if present, and of at least three electors if the agents are not present, and to add together the number of votes given in each interest, from the statements contained in the ballot boxes returned by the deputy returning officer. R.S., c. 106, s. 53. Returning officer shall sum up statements.

Adjournment if ballot boxes not returned.

**60.** If the ballot boxes are not all returned on the day fixed for adding up the number of votes given, the returning officer shall adjourn the proceedings to a subsequent day which shall not be more than a week later than the day originally fixed, for the purpose of adding up the votes. R.S., c. 106, s. 54.

Statements and certificates used for summing up votes.

**61.** If the ballot boxes, or any of them, have been destroyed or lost, or for any other reason are not forthcoming, on or before such subsequent day, the returning officer shall ascertain the cause of the disappearance of such ballot boxes, and shall call on each of the deputy returning officers whose ballot boxes are missing, or on any other person having the same, for the lists, statements and certificates, or copies of the lists, statements and certificates, of the number of votes given in each interest, required by this Act, the whole of which shall be verified on oath administered by the returning officer.

When not obtainable other evidence used.

2. If such lists or statements, or any of them, or copies thereof, cannot be obtained, the returning officer shall ascertain by such evidence as he is able to obtain, the total number of votes given in each interest at the several polling places, and he shall make his return accordingly, and shall mention specially in his report to be sent with the return, the circumstances accompanying the disappearance of the ballot boxes, and the mode by which he ascertained the number of votes given in each interest. R.S., c. 106, s. 55.

Petition not adopted.

**62.** If one-half or more of all the votes polled are against the petition, the same shall be deemed not to have been adopted; and the returning officer shall make his return to the Governor in Council accordingly. R.S., c. 106, s. 56.

Petition adopted.

**63.** If more than half of all the votes polled are for the petition, the same shall be deemed to have been adopted; and the returning officer shall make his return to the Governor in Council accordingly. R.S., c. 106, s. 57.

Return.

**64.** Within two weeks after the summing up of the votes, if no judge has appointed a day or place within the county or city for entering into a scrutiny of the ballot papers, as hereinafter provided, and in case of a scrutiny being entered into, then forthwith after the judge has determined whether the majority of the votes given was or was not in favour of the petition, the returning officer shall transmit his return to the Secretary of State, and shall send with it a report of his proceedings, in which he shall make any observations he thinks proper as to the state of the ballot boxes or ballot papers as received by him.

After scrutiny.

2. In the event of a judge having determined, after a scrutiny of the ballot papers, that the majority of the votes given was or was not in favour of the petition, such return shall be based

based upon, and shall be conformable to such decision. R.S., c. 106, s. 58.

What shall be transmitted with return.

**65.** The returning officer shall also transmit to the Secretary of State, with his return, the original statements, inclosed in the ballot boxes, of the several deputy returning officers, of the accepted ballot papers, of the number of votes given each way, of the rejected ballot papers, of the spoiled and returned ballot papers, and of the unused and returned ballot papers, together with the voters' lists used in the several polling districts, and any other lists and documents used or required at such election, or which have been transmitted to him by the deputy returning officers.

How transmitted.

2. Such return and report shall be sent through the post office, by registered letter or parcel. R.S., c. 106, s. 59.

Property in ballot boxes.

**66.** The property of the ballot boxes, ballot papers, and marking instruments procured for, or used at any polling of votes under this Act shall be in His Majesty. R.S., c. 106, s. 60.

*Scrutiny.*

Application to judge.

**67.** Within one week after the returning officer has summed up the votes and declared the result of the voting, any elector may apply for a scrutiny upon petition,—

In Quebec.

*(a)* in the province of Quebec, to any judge of the Superior Court ordinarily discharging his duties in any judicial district in which the county or city is situate, in whole or in part;

In British Columbia.

*(b)* in the province of British Columbia, to a judge of the Supreme Court of that province, or to a judge of the county court of any county or district within which the county or city is situate, in whole or in part;

In any other province.

*(c)* in any other province, except Saskatchewan and Alberta, to the judge of the county court of any county or district within which the county or city for which the polling of votes takes place is situate, in whole or in part. R.S., c. 106, s. 61.

Notice to be given.

**68.** The petitioner shall give such notice of the application and to such persons as the judge directs, and shall show, by affidavit to the judge, reasonable grounds for entering into a scrutiny of the ballot papers.

And recognizance entered into.

2. The petitioner shall also enter into a recognizance to His Majesty before the judge in the sum of one hundred dollars, with two sureties, to be allowed as sufficient by the judge upon affidavit of justification, in the sum of fifty dollars each, conditioned to prosecute the petition with effect, and to pay any costs which are adjudged against the petitioner, or shall

Or deposit.

deposit with the prothonotary or clerk of such court the sum of one hundred dollars as a security for such costs.

Appointment.

3. The judge shall thereupon appoint a day and place within the county or city for entering into the scrutiny.

Notice of scrutiny.

4. At least one week's notice of the scrutiny shall be given by the petitioner to such persons as the judge directs. R.S., c. 106, s. 61.

Proceedings at scrutiny.

**69.** On the day and at the hour and place appointed, the returning officer shall attend before the judge, with the ballot papers in his custody, and the judge upon inspecting the ballot papers and hearing such evidence as he deems necessary, and on hearing the parties, or such of them as attend, or their counsel, shall, in a summary manner, determine whether the majority of the votes given was, or was not, in favour of the petition to the Governor in Council. R.S., c. 106, s. 62.

Decision final. Costs.

**70.** The decision of the judge shall be final, and the costs shall be in his discretion, or he may apportion the costs as to him seems just. R.S., c. 106, s. 63.

*Secrecy of Voting.*

Provisions for maintaining.

**71.** Every officer and agent in attendance at a polling place shall maintain and aid in maintaining the secrecy of the voting at such polling place; and shall not communicate, before the poll is closed, to any person any information as to whether any person on the voters' list has or has not applied for a ballot paper, or voted at that polling place.

No interference.

2. No officer or agent, and no person whosoever, shall interfere with or attempt to interfere with a voter when marking his vote, or otherwise attempt to obtain, at the polling place, information as to how any voter at such polling place is about to vote, or has voted.

No information to be communicated.

3. No officer or agent or other person shall communicate, at any time, to any person, any information obtained at a polling place, as to how any voter at such polling place is about to vote or has voted. R.S., c. 106, s. 64.

Secrecy at counting of votes.

**72.** Every officer and agent in attendance at the counting of the votes shall maintain, and aid in maintaining the secrecy of the voting, and shall not attempt to ascertain, at such counting, or communicate any information obtained at such counting, as to how any vote is given in any particular ballot paper. R.S., c. 106, s. 64.

Inducing voters to display their ballots.

**73.** No person shall, directly or indirectly, induce any voter to display his ballot paper after he has marked the same, so as to make known to any person how he has so marked his ballot paper. R.S., c. 106, s. 64.

*Preservation of peace and good order.*

Officers to be conservators of the peace.

**74.** Every returning officer and every deputy returning officer, from the time he takes the oath of office until the day after the summing up of the votes, shall be a conservator of the peace, invested with all the powers appertaining to a justice of the peace. R.S., c. 106, s. 65.

May require assistance and swear in special constables.

**75.** Such returning officer or deputy returning officer may require the assistance of justices of the peace, constables or other persons present, to aid him in maintaining peace and good order at such polling; and may also, on a requisition made in writing by any agent, or by any two electors, swear in such special constables as he deems necessary. R.S., c. 106, s. 66.

May arrest disturbers of the peace.

**76.** Such returning officer or deputy returning officer may arrest or cause to be arrested, by verbal order, and place in the custody of any constables or other persons, any person disturbing the peace and good order at the polling, and may cause such person to be imprisoned under an order signed by him until any hour on that day, not later than the close of the poll. R.S., c. 106, s. 67.

May demand offensive weapons.

**77.** The returning officer or deputy returning officer may during any day whereon any poll is begun, holden or proceeded with, require any person within half a mile of the polling station, to deliver to him any firearm, sword, staff, bludgeon, or other offensive weapon in the hands or personal possession of such person. R.S., c. 106, s. 68.

Entering polling district armed.

**78.** Except the returning officer or his deputy, or one of the constables or special constables appointed by the returning officer or his deputy, for the orderly conduct of the poll and the preservation of the public peace thereat, no person who has not had a stated residence in the polling district for at least six months next before the day of such polling, shall come, during any part of the day upon which the poll is to remain open, into such polling district armed with offensive weapons of any kind as firearms, swords, staves, bludgeons or the like.

Approaching polling station armed.

2. No person being in such polling district shall arm himself during any part of the day with any such offensive weapons, and thus armed, approach within the distance of one mile of the place where the poll for such polling district is held, unless called upon by lawful authority so to do. R.S., c. 106, s. 70.

Treating electors forbidden.

**79.** No person shall, at any polling, either provide or furnish drink or other refreshments at the expense of such person, to any elector during such polling, or pay for, procure or engage to pay for, any such drink or other refreshment. R.S., c. 106, s. 71.