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SOMMAIRE

I — Page

Acte de l'Am. britannique du Nord, et Index 412

II

" " " " Jurisprudence 364

III

Amendements de 1917, au Code 565

IV

Falsifications, Loi des 258

V

Habeas Corpus, L'Acte 330

VI

" " Jurisprudence 302

VII

Jurisprudence en matière criminelle 1

VIII

Loi du Service Militaire, 1917 228

CONTENTS

I. Page

Adulteration Act.....259

II.

Amendments of 1917 to the Code.....565

III.

British North America Act, with Index.....413

IV.

British North America Act,—Cases.....364

V.

Criminal Cases..... 1

VI.

Habeas Corpus Act.....331

VII.

Habeas Corpus Cases.....302

VIII.

The Military Service Act, 1917.....229

JURISPRUDENCE.

SECTION **2**, (13.)

Whether the word "person" in a statute can be treated as including a corporation must depend on a consideration of the object of the statute, and of the enactments passed with a view to carry that object into effect. The 31 & 32 Vict., c. 121, was passed to protect the public against the sale by incompetent persons of poisonous drugs, and in the 1st section enacts "that it shall be unlawful for any person to sell, or keep open shop for retailing, dispensing, or compounding poisons, or to assume or use the title of chemist and druggist, &c, or pharmacist, &c, unless such person shall be a pharmaceutical chemist, &c, within the meaning of this Act, and be registered under this Act." A small body of persons had obtained a registration under the Companies Acts, 1862-1867. One only of these persons was a qualified, certified, and registered chemist. His share in the company was very small: he was the person who appeared in the shop and conducted the sales, and he received a salary for his labour in dispensing the drugs, which were sold for the profit of the company:—*Held*, that, under these circumstances, the word "person" in the 1st and 15th sections of the statute did not apply so as to make this incorporated company liable to the penalty. But the actual seller must be a qualified person.

Pharmaceutical Society v. London and Prov. S. Ass. L. R. 5 A. C. 857.

SECTION **13.**

L'article 534 du code criminel: "Nul recours civil pour un acte "ou une omission ne sera suspendu ou affecté parce que cet acte "ou cette omission constituerait un acte criminel," est-il *ultra vires* en autant que la province de Québec est concernée, et si l'on décide ainsi, quelle est la règle à suivre en pareil cas?

JUGÉ:—Que l'article 534 paraît être, de l'avis même du législateur, insuffisant pour lier les tribunaux civils de la province et que la règle qui doit les guider en pareil cas devrait être celle en vigueur en Angleterre en 1774 (date de l'introduction des lois anglaises en ce pays), qui veut que, au moins dans les cas de félonie,

le *procès* criminel soit instruit avant le *procès* civil. Mais comme le ministre de la justice a droit d'être entendu, lorsque la constitutionnalité d'un acte du Canada est soulevée, l'appel est permis afin de permettre au tribunal lui-même de décider la question.

Paquet v. Lavoie, 7, R. J. Q. B. R. 277.

SECTION **15.**

A municipal by-law is *ultra vires* where it purports to provide a penalty for the identical offence which is already subject to penalty under a provision of the criminal law.

Laughton, (1912,) 20, C. C. C. 30.

Any question of *res judicata* under Cr. Code sec. 15, in favour of the accused, because of a prior conviction and not covered by a plea of *autrefois convict* will be barred by a plea of guilty entered for the accused after the dismissal of the plea of *autrefois convict.* (Dictum *per* Harvey, C. J.)

Pope, (1914,) 22, C. C. C. 327.

1. Le cumul d'offenses dans une plainte devant les juges de paix pour infraction aux arts. 5484 et suivants, S. R. Q., concernant les beurreries et fromageries, est une irrégularité à laquelle le tribunal inférieur peut remédier et dont il est compétent à connaître.

2. Les articles suscités et les pénalités qu'ils imposent s'appliquent indistinctement à toutes les beurreries et fromageries, incorporées d'après les dispositions du statut ou autrement.

McNeil & Chouinard, 2, R. J. Q. B. R. 548.

The fact that a court trying a charge of assault doubled the fine which it was about to impose on getting information that the defendant was at the time under recognizance to keep the peace given on complaint of threats to another party unconnected with the subsequent assault, will not bar the estreating of the recognizance; binding to good behaviour is not by way of punishment and the increase in the fine and the subsequent estreat of the recognizance are not two punishments for the same thing.

Walker, (1913,) Cross, J. 23, C. C. C. 179.

SECTION **19.**

Homicide by shooting a person unknown to the accused, done without premeditation when the latter was temporarily insane from excessive drinking is not murder but manslaughter; a sentence of fifteen years was imposed because the jury made a recommendation to mercy, but without that recommendation life imprisonment would have been the appropriate punishment.

Kane, (1916,) 25, C. C. C. 443.

Where there was evidence to go to the jury on a murder trial that the defendant took up a gun at the suggestion of the deceased (his brother) during a drunken orgie in which both participated, and that he pointed it at the deceased and fired, although the brothers were on friendly terms and no motive was apparent for the act, the jury should be instructed that if the drunkenness of the accused prevented his forming an intention to do serious harm with the gun, he would be guilty only of manslaughter and not of murder.

The presumption in a criminal case that a man intends the natural consequences of his acts may be rebutted, in the case of a man who was drunk when he committed the offence, by shewing his mind to have been so affected by drink that he was at the time incapable of knowing that what he was doing was likely to inflict serious injury.

Wilson, (1911,) 21, C. C. C. 448.

The rule as to presumption of sanity "until the contrary is proved" (Cr. Code 1906, sec. 19), as applied to a defence of insanity in a criminal case merely requires proof of insanity by a preponderance of evidence to the satisfaction of the jury.

Answers to questions put to a prisoner in custody by a police physician who put the questions merely for the purpose of forming an opinion upon his mental condition are admissible to prove him sane where they were not in the nature of admissions or confessions as regards the charge against him, although no warning was given the accused that what he might say could be used in evidence against him.

Anderson, (1914,) 22, C. C. C. 455.

SECTION **20.**

Compulsion is not a defence when the crime is of a heinous character unless the compulsory act is such as to make the accused person a mere inert physical instrument; the making of threats of immediate death or grievous bodily harm to be inflicted upon the accused should he fail to immediately comply with the direction to commit or participate in committing a heinous crime, *ex. gr.* murder, does not constitute an excuse in law.

Farduto, (1912,) 21, C. C. C. 144.

SECTION **28.**

A city policeman appointed by a justice of the peace under the Constables Ordinance, Alta. (C. O. 1905), and paid by the city to carry on his duties as a police constable, especially within the boundaries of the city, but at the same time having jurisdiction throughout the province, is not a servant of the municipality

in the ordinary sense, and the municipality is not liable under the doctrine of "*respondeat superior*" for an arrest wrongfully made by the constable without a warrant.

A police constable paid by the city has no claim for indemnity against the city for damages awarded against him in an action for false arrest where a person charged with a criminal offence was arrested without warrant under circumstances in which a warrant was necessary, the warrant being afterwards granted but the charge being finally dismissed.

Pon Yin, (1915,) 24, C. C. C. 327.

SECTION **30.**

A peace officer is justified under Cr. Code sec. 30, in arresting without warrant a person who, on reasonable and propable grounds, he believes has committed an indictable offence for which the law provides that the offender may be arrested without warrant, but in acting under sec. 30, it is essential that the officer should stand indifferent so that he may act without bias or partiality in deciding whether or not there are reasonable and probable grounds for the arrest; consequently sec. 30 cannot apply where the officer is himself the person specially aggrieved by the offence.

Belyea, (1915,) 24, C. C. C. 395.

SECTION **56.**

A defence to a criminal charge of wilfully killing a dog which was trespassing on the property of the accused is made out if it be shewn that the dog was killed under necessity for the purpose of protecting the defendant's hens in the stable where the dog had gone; and where it is shewn that the defendant's property was in peril from the dog at the moment when the shot was fired because of the probability that the dog would attack the hens, it was not obligatory on the defendant to await the actual attack before shooting the trespassing animal.

Therrien, (1915,) 25 C. C. C. 110.

SECTION **57.**

Held, that under Roman-Dutch as well as English law a prosecution instituted without malice and with reasonable and probable cause does not amount to an act of aggression; that an *animus injuriae* (malice) cannot be inferred from the mere fact that the prosecution has failed; and that the onus of proving malice rests on the plaintiff. In an action for malicious prosecution against the respondent in that he had charged the appellant with theft, criminal trespass, and the forcible removal of his goods it appeared that the real charge was that of criminal

trespass, that the conversion of the charge of removal of goods into that of theft was not done recklessly, that the respondent took action under legal advice in defence of his title to his property in the *bonâ fide* belief that the appellant had trespassed and forcibly removed his goods, and that there was no proof of indirect motive or malice of any kind on the respondent's part:—*Held*, that the Appellate Court was right in reversing the District Judge's decree for damages, and that the appeal therefrom must be dismissed.

Peiris, L. R. (1909,) A. C. 549.

SECTION **69.**

Where the person accused of receiving has, in addition, aided and abetted the committing of the theft and is for that reason indictable as a principal under Cr. Code, sec. 69, it is permissible to join in the one indictment a count for theft and a count for receiving but if only one offence has been committed the accused person should be punished for that one offence only, although he has been found guilty on several counts founded on that one offence. (Per Perdue, J. A.)

Kelly, (1916,) 27, C. C. C. 140.

An aider and abetter may be tried and convicted as a principal. The evidence in such case must show a common criminal intent with the principal and an actual or constructive participation in the commission of the offence.

Graham, 1898), 8, Q. J. R. K. B. 169.

An accessory before the fact to the crime of murder is an accomplice with his principal within the rule requiring the corroboration of his testimony against the latter. (*Per* Newlands, and Brown, JJ.)

Raty, (1913,) 21, C. C. C. 343.

Compulsion by threats of immediate death or grievous bodily harm from a person actually present at the commission of the offence, does not in point of law acquit of the crime the party so under compulsion to assist in a murder, where no actual physical force is exercised upon the person of the compelled party, nor is the nature of the offence thereby reduced; so, where matter relied upon as a confession of the accused included an exculpatory statement by him that he had been forced by an alleged third party to hand over a razor to him, with which then and there to cut the throat of the murdered person under a threat by the third party that if the accused did not give up the razor the third party would forthwith shoot the accused, and that the

noise of the shooting would bring the police, it is not error for the trial Judge to instruct the jury that such part of the prisoner's story, even if believed, formed no excuse in law and that his participation would make him an accessory liable as for the principal offence under sec. 69 of the Crim. Code, 1906.

Farduto, (1912,) 21, C. C. C. 144.

SECTION 71.

Where the jury found that the prisoner, a married woman, had acted under her husband's control in the commission of an offence, for which they were jointly charged but separately tried, but it appeared that there was no evidence to that effect, and that the question should not have been left to the jury:—*Held*, that whatever the true effect of s. 24 of the New Zealand Cr. Code as to marital compulsion, leave to appeal from an order affirming the conviction had been granted under a misapprehension of fact, and that the appeal must be dismissed.

Brown v. Atty-General for New Zealand, L. R. (1898.) A. C. 234.

SECTION 72.

Where an intention to defraud must be established as an essential ingredient of the offence, evidence of a similar criminal act sufficiently related in point of time to the alleged offence to shew a common design in both, is admissible in proof of the intent to defraud; and this rule applies notwithstanding that there is already evidence to go to the jury which is relied on by the Crown to prove the intention to defraud, apart from any other similar act of the accused.

Wilson, (1911,) 21. C. C. C. 105.

An attempt to commit a crime is an act done with intent to commit that crime, and forming part of a series of acts which would constitute its actual commission if it were not interrupted.

Snyder, (1915,) 24 C. C. C. 101.

SECTION 74.

Semble: a company incorporated in the United Kingdom and carrying on business here or in a neutral country by properly authorized agents resident here or in the neutral country is *prima facie* to be regarded as a friend; but it will assume an enemy character if its agents or the persons *de facto* in control of its affairs are resident in an enemy country, or, wherever resident, are adhering to the enemy or taking instructions from or acting under the control of enemies; and any person knowingly dealing with a company in such a case is trading with the enemy. The

character of individual shareholders cannot of itself affect the character of the company; but the enemy character of individual shareholders and their conduct may be material on the question whether the company's agents or the persons *de facto* in control of its affairs are in fact adhering to, taking instructions from, or acting under the control of enemies. A company incorporated in the United Kingdom but carrying on business in an enemy country is to be regard as an enemy.

Daimler Co., L. R. (1916,) 2, A. C. 307.

A resident alien within British territory owes allegiance to the Crown, and if he assists invaders during the absence of State forces for strategical or other reasons he is rightly convicted of high treason. Special leave to appeal from a judgment to that effect refused. There is no sufficient authority for the doctrine that the alien's duty of alligiance ceases if an enemy makes good his military occupation of the district in which the alien resides.

DeJager, L. R. (1907) A. C. 326.

The overt act of assisting another to aid a public enemy is in itself a treasonable act; the Criminal Code (Canada) does not contemplate such an offence as an attempt to commit treason.

Bleiler, (1917,) 28, C. C. C. 9.

An indictment for treason under sec. 74, sub-sec. (*i*), of the Can. Crim. Code must be so framed as to afford notice to the accused in terms which he cannot mistake of the acts with which he is charged and which the Crown intends to establish by evidence. An indictment under that section should be quashed where it fails to state the name of the public enemy the accused is charged with assisting, and does not in sufficient terms state any definite overt act of treason.

Fehr, (1916,) 26, C. C. C. 245.

A conviction for an attempt to assist a public enemy with which His Majesty is at war agreeing to ferry four enemy aliens over the Niagara River to the United States whence they might proceed to join the enemey's forces, is not sustainable where there was no incitement by the accused and the enemy aliens had no intention of leaving Canada and no knowledge that the purpose of their being brought to the accused was that they should be ferried across the river, the fact being that they were being used in the make-up of a police trap to get evidence against the accused because of a suspicion that he had committed similar offences; the aliens could not be said to have been "assisted" without a desire or willingness on their part to be assisted, and the sham plot having been terminated by the arrest of the accused after he took the consideration money paid in advance by another person who had solicited the accused in furtherance of the plot arranged by the authorities

and the transportation not having begun, there was no evidence of an attempt.

Snyder, (1915,) 24, C. C. C. 101.

SECTION 75A.

Assisting an enemy alien to leave Canada to join the enemy's forces is treason under Cr. Code sec. 74 sub-sec. (*i*); a mere attempt so to assist is not treason but is indictable under Cr. Code secs. 72 and 570, where an intention to assist the enemy is manifested by any over act.

[By the Code Amendment, 1915, assisting alien enemies "to leave Canada" is made an offence if the circumstances do not exclude the possibility that assistance to the enemy is an intended object and if the assisting does not amount to treason. This is new, sec. 75A of the Code.]

Snyder, (1915,) 24, C. C. C. 101.

A jury trying a charge under Cr. Code, sec. 75A for assisting an enemy alien to leave Canada may properly infer that the person assisted is an alien enemy on his testimony that his earliest recollections are of residence in the enemy country and proof that he had registered in Canada as an alien enemy.

Where an enemy alien starts for the boundary line with the intention of leaving Canada he is to be considered as in the act of leaving Canada on every part of the journey, and any person knowing such intention on his part and doing any act in furtherance of that intention thereby assists such enemy alien within the meaning of Cr. Code, sec. 75A, whether the latter got across the boundary line or not.

Oma, (1915), 25, C. C. C. 73.

A conviction against the husband only upon an indictment of husband and wife, upon which the wife was acquitted, for conspiracy to aid and comfort a public enemy at war with the King by inciting and assisting a subject of the enemy country to leave Canada and join the enemy's forces, is not sustainable where there was no evidence of the husband conspiring with any person other than the person named in the indictment as the person incited and assisted, although the indictment charged that the two defendants did maliciously and traitorously conspire, confederate and agree with each other "and with others," for if it had been intended to cover a charge of a conspiracy with the assisted alien he should have been specifically named; the words "with others" must, in that connection, be construed as excluding the person specifically named as the alien who was assisted to leave Canada and as referring to persons unknown.

Nerlich, (1915,) 24, C. C. C. 256.

SECTION **79.**

A member of the Legislative Assembly of New South Wales having committed an assault on a member within the precincts of the House, while the Assembly was sitting, the Attorney General laid an information against the assaulting member alleging that the assault was in contempt of the said Assembly. A general demurrer was made against the information and was allowed by the Supreme Court.

The Judicial Committee, reversing this judgment, held, that the information was good, as the alleged contempt of the Legislative Assembly was charged only as a matter of aggravation, and could be rejected as surplusage, and the information was sustainable for an assault.

MacPherson, New South Wales, VII Moore n-s. 49.

SECTION **102.**

In an action for damages for assault and false imprisonment it appeared that the plaintiff had contracted with the defendants to enter their wharf and stay there till the boat should start and then be taken by the boat to the other side. No breach of the defendants' undertaking was alleged, but the plaintiff after entry changed his mind and desired to effect an exist from their wharf without payment of the prescribed toll for exit, and was for a time forcibly prevented:—*Held*, that he ought to have been nonsuited. The toll imposed was reasonable and the defendants were entitled to resist a forcible evasion.

Robinson, L. R. (1910,) A. C. 295.

Where a person having the legal title to land is in actual possession of it, the attempt to eject him by force brings the person who makes it within the provisions of the statute against forcible entry.—It will do so though the possession of the person having such legal title has only just commenced, though he may himself have obtained it by forcing open a lock, though his ejection has not been made by a "multitude" of men, nor attended with any great use of violence, and though the person who attempts to eject him may even set up a claim to the possession of the land.

Lows v. Telford, L. R. 1, A. C. 414.

SECTION **132.**

Defamatory words likely to stir up and excite public discontent and disaffection will constitute a seditions libel under Cr. Code sec .132 as being "expressive of a seditious intention", if they are found to have been published with intent to have the seditious

effect alleged; the question of the existence of such intention in any particular case is one for the jury, and while it may be inferred by them from the nature of the publication, the verdict against the accused must be set aside and a new trial ordered if the trial Judge declined to charge the jury in any way as to the intention of the accused .

Giesinger, (1916), 27, C. C. C. 53.

On an indictment for speaking seditious words with intent, etc., an objection that neither the words nor their purport were set out in the count, will not be made the subject of a reserved case where no objection was taken at the trial and where no application had been made to the trial Judge to order particulars; failure to supply reasonable particulars if demanded might have constituted a mistrial, but, where not demanded, the objection was cured by verdict.

The Court will take judicial notice of the existence of a state of war between His Britannic Majesty and a foreign power on a trial for using seditious language.

To constitute the crime of uttering seditious words, more must appear than the expression of disloyal and unpatriotic sentiments in a private conversation .

Trainor, (1916), 27, C. C. C. 232.

Under Cr. Code, secs, 132 and 134, it is an indictable offence to speak seditious words, *i. e.*, words expressive of a seditious intention, and a conviction will be sustained if the words were a slander on the British Government and were uttered either, with the intent of raising disaffection and discontent among His Majesty's subjects, or with intent to promote public disorder by insulting and annoying the hearers so that a breach of the peace is a probable consequence .

Felton, (1915), 25, C. C. C. 207.

SECTION **134.**

On a charge under Cr. Code sec. 134, of speaking seditious words, the question of seditious intent is one for the jury.

Manshrick, (1916), 27, C. C. C. 17.

A charge of speaking seditious words with intent in contravention of Cr. Code sec. 134 may be supported by evidence of seditious words openly expressed in a public place to a mere acquaintance, although others were not in a position to overhear what was said; the jury is entitled to draw inferences both as to the probability of the conversation being repeated by the person addressed and as to the possible effect on such person's loyalty.

Cohen, (1916), 25, C. C. C. 302.

On a charge of speaking seditious words (Cr. Code, sec. 134), it is always open to the jury, or to the judge if trying the case without a jury, to infer the seditious intention from the words and the circumstances under which they were spoken.
Felton, (1915), 25, C. C. C. 207.

SECTION **150.**

A conviction for selling intoxicating liquor in violation of law on one of the days mentioned, is good under an information charging illegal sale on the 24th or 25th days of December inclusively.
Teed, (1913), 21, C. C. C. 255.

Upon a conviction for selling liquor without a license when the defence has been that only non-intoxicating liquor has been sold, it is a good ground for quashing the conviction that the magistrate refused to allow the liquor found on the premises to be analysed.
Stephenson, (1912), 20, C. C. C. 297.

Where evidence was irregularly given of a previous offence, and the penalty imposed by a summary conviction was in excess of that authorized for a first offence, the Court reviewing the conviction on certiorari for illegal importation of liquor into prohibited territory will decline to amend the conviction by reducing the penalty, if it is not satisfied by the depositions that the accused was guilty of the offence which was then being tried, although neither the information nor the conviction purported to be for other than a first offence.
L'Hirondelle, (1916), 26, C. C. C. 71.

A statutory presumption of illegal sale of liquor is raised under sec. 204 of the Liquor License Act, Man., against the person on whose premises is found more intoxicating liquor than is reasonably required for the use of a person not licensed to sell; and by virtue of sec. 215 such presumption will support a conviction for illegal sale without license as being an offence under the same statute although the information was only for unlawful possession of liquors in a local option district and did not allege a sale by the accused.
Palmer, (1915), 24, C. C. C. 20.

It is not an offence under the Nova Scotia Temperance Act (1910), as amended 1911, for the purchaser of liquor bought in a county under license to personally receive it from the express company on its arrival by railway at the town in which he resides where the prohibition clauses of that Act are in effect; sec. 30 of the Act which prohibits sending liquor or bringing or causing

it to be sent or brought applies to the person or agent sending the liquor by a common carrier to the person in the municipality which is not under license and to the person carrying liquor for another at either end of the transit, but not to the purchaser personally taking delivery from the carrier as the consignee of liquor bought in a licensed district.

Publicover, (1915), 24, C. C. C. 1.

The act of a bartender in selling liquor to Indians in contravention of the Indian Act, R. S. C. 1906, ch. 81, is one within the scope of his ostensible authority and the hotelkeeper who employed him may be convicted for it.

Labrie, (1914), 23, C. C. C. 349.

The keeper of a boarding house who permits a boarder to bring an excessive quantity of intoxicants upon the premises for unlawful consumption is properly convicted of "having" intoxicating liquor for sale in a local option district because of the statutory presumption of sec. 102 (2) of the Liquor License Act, R. S. O. 1914, ch. 215, making possession of an excessive quantity of liquor "conclusive evidence" that it was kept for sale in contravention of the Act.

Kurtemi, (1916), 27, C. C. C. 223.

The Sales of Liquor Act (Sask.) specifically declares by sec. 2, sub-sec. 1, that every spirituous and every fermented and every malt liquor is within the prohibition of the Sales of Liquor Act, and it is therefore unnecessary as to such spirituous, fermented or malted liquors to prove that they are intoxicating or that they contain more than one per cent of alcohol and should therefore be conclusively deemed to be intoxicating under that sub-section.

McPherson, (1915), 25. C. C. C. 62.

The statutory presumption of keeping liquor for sale raised against the occupant of premises where liquor is found by officers executing a search warrant under the Nova Scotia Temperance Act has reference not merely to the arrest of the occupant in that event, which sec. 46 authorizes, but applies also against such occupant on being charged with unlawfully keeping the liquor for sale.

Hoare, (1915), 24, C. C. C. 279.

SECTION **157** (a).

Though it appears that a magistrate was guilty of illegal acts in the performance of his duties, a criminal information will not be ordered to be exhibited against him unless it is made to appear that he did such acts from corrupt motives.

McMicken, (1912), 20, C. C. C. 334.

SECTION **158.**

If an order-in-council were passed with a fraudulent and unlawful design by a provincial government authorizing certain payments for government work to be made to the contractor which in fact were not earned or intended to be earned by him but represented a fund out of which the public were to be defrauded by means of false estimates and progress certificates, by connivance with certain members of the provincial government, neither the conniving ministers of the government nor the contractor charged with false pretences and receiving would be protected from criminal proceedings because of a statute giving to all the orders-in-council the like effect to that of a statute.

Kelly, (1916), 27, C. C. C. 140.

SECTION **162** (b.)

An attempt to improperly procure the appointment of another to the position of Chief of Police for a city by promising a reward to a member of the appointing board for his influence, will not support a charge under sub-section (*b*) of Code sec. 162 making it an indictable offence directly or indirectly to give a reward for the purchase of an appointment to an office or to agree or promise to do so; such facts do not disclose an attempted sale or purchase of an office under sec. 162 (*b*), but may sustain a count laid for an attempted offence under sec. 163 (*b*) relating to giving or procuring rewards "for any interest, request or negotiation about any office".

Hogg, (1914,) 23, C. C. C. 228.

Bribery is an act to which it is necessary that two persons be parties, the briber and the corrupted party, and an information for the completed offence should include the names of both as parties charged; but, if only an attempt to bribe is alleged, the offence is unilateral and the information is sufficient, if it charges only the person making the attempt.

Marsil, (1914), Charbonneau, J., 25, C. C. C. 223.

SECTION **163.**

To corruptly offer to give a sum of money to a member of the Police Commission appointed for a city by its municipal council from amongst its members, for the purpose of inducing such Commissioner to use his official position to aid in procuring the appointment of a third party as Chief of Police by the Board of Police Commissioners in an indictable offence under sec. 163 of the Criminal Code.

Hogg, (1914), 23, C. C. C. 228.

SECTION **164.**

A proceeding by indictment at common law for the violation of a statute providing a penalty, but not pointing out the method of its enforcement, is not precluded by sec. 164 of the Criminal Code, 1906, which declares in general terms that wilful disobedience of a statute shall be indictable, unless some penalty or other mode of punishment is expressly provided by law; the section of the Code does not go so far as the common law, and the latter remains operative in cases to which the Code does not extend.
(*Per* Maclaren, J. A.)
Durocher, (1913,) 21, C. C. C. 382.

SECTION **165.**

A Judge of the Court of Queen's Bench in Lower Canada, whilst sitting alone in the exercise of the Criminal jurisdiction, has, under the authority conferred on him by sect. 72 of ch. 77 of the Consolidated Statutes of Canada, no power to pronounce a Counsel in contempt for publishing two letters reflecting upon the conduct of such Judge, or to impose a fine.
Ramsay, L. R. 3, P. C. App. 427.

Contempt of court is a criminal proceeding and unless it comes within sec. 68 of the Supreme Court Act an appeal does not lie to this court from a judgment in proceedings therefor.
Ellis v. The Queen, 22, S. C. R. 7.

When a Judge, in the legitimate exercise of his jurisdiction, is defiantly disobeyed, he may commit the offender instantly to prison for contempt of Court.
Watt v. Ligertwood, L. R. 2, S. & D. App. 361.

A contempt of Court being a criminal offence, no person can be punished for such unless the specific offence charged against him be distinctly stated, and an opportunity given him of answering.
Pollard, L. R. 2 P. C. App. 106.

Commitment for contempt by a Court of Justice is a matter of discretion with which, as a general rule, no other court should interfere.
Beaumont, Jamaica, 1836 June 17, 1 Moore 59.

Leave having been given by the Judicial Committee (on an *ex parte* application) to appeal to Her Majesty in Council, against an Order of commitment for contempt, and a judgment refusing leave to appeal from such Order, made by the Supreme Court of Civil Justice of British Guiana, without prejudice to the question

of the competency of Her Majesty to entertain an appeal from an Order of commitment made by a Court of Record inflicting punishment by fine or imprisonment for contempt; the Appellant objected, *inter alia*, that the Supreme Court of Civil Justice in British Guiana was not a Court of Record, and had no such power of committing as had been exercised. The Judicial Committee considering the question of jurisdiction a preliminary question, limited the argument to that point: and upon a review of the Orders in Council and Ordinances establishing the Civil and Criminal Courts in British Guiana was of opinon; (1) that the Supreme Court of Civil Justice of that Colony was constituted a Court of Record, and had power to commit for contempt, and (2) that the exercise of such a power being discretionary was not the subject of appeal, and that the leave given therefore ought not to have been granted.

McDermott, L. R. 2, P. C. App. 341.

An Order suspending an Attorney and Barrister of the Supreme Court of Nova Scotia from practising in that Court, for having adressed a letter to the Chief Justice, reflecting on the Judges and the administration of justice generally in the Court, discharged by the Judicial Committee, as it substituted a penalty and mode of punishment which was not appropriate and fitting punishment for the offence.

The letter, though a contempt of Court, and punishable by fine and imprisonment, having been written by a Practitioner in his individual and private capacity as a suitor, in respect of a supposed grievance as a suitor, of an injury done to him as such suitor, and having no connection whatever with his professiona. character, or anything done by him professionally, either as an Attorney or Barrister, it was not competent for the Supreme Court to go further than award to the offence the customary punishment for contempt of Court; or to inflict a professiona. punishment of indefinite suspension for an act not done professionally, and which, *per se*, did not render the party committing it unfit to remain a Practitioner of the Court.

Wallace, L. R. 1. P. C. App. 283.

THE SECRET COMMISSIONS ACT.

Where a railway conductor was charged under the Secret Commissions Act, Can., 1909, for taking money for his own use from a farmer for "spotting" cars required under the Grain Act, Can., and which it was the conductor's duty to place at a station where there was no agent, and the defence developed on cross-examination of the Crown witnessses was that the amounts paid to him by the farmer at various times were tips or gratuities made

after the location of the cars and not sums bargained for, it is competent for the Crown to adduce evidence in rebuttal of the suggested defence by calling other farmers who had at approximately the same time made similar payments to him for the allocation of cars to them for an agreed consideration; such evidence, although not admissible to prove the main facts of the case, was admissible to rebut by anticipation the indicated defence of innocent motive and want of design and to shew the state of mind of the parties with regard to the facts proved, although no witnesses were called for the defence

Howes, (1914,) 23, C. C. C. 358.

Where by collusion between the seller and the buyer's employee whose duty it was to fix the prices at which the buyer would purchase, such prices were systematically doubled or trebled over the ordinary rates, and these prices were re-stated in the seller's account copied from the buyer's order form, and the employee so dishonestly crediting fictitious prices was receiving cash presents from the seller as a share or bribe for the continuance of the fraud, charges under the Secret Commissions Act, Can. 1909, are sustainable against the seller, not only in respect of the corrupt gifts, but for issuing a statement of account false and erroneous in a material particular intended to mislead, and also in respect of the fraudulent order form as to his privity to the use of same to deceive the buyer.

Rabinovitch, (1915,) 24 C. C. C. 350.

SECTION **169.**

The methods of procedure by summary conviction (Part XV) and by summary trials (Part XVI) for the offence of obstructing a peace officer (Cr. Code sec. 169) are alternative methods, and where a summary conviction is sought and the procedure of Part XV followed, the defendant need not be asked for his consent to summary trial under Cr. Code sec. 778 even where the magistrate is one having jurisdiction under Cr. Code sec. 773.

West, (1915), 25, C. C. C. 145.

The offence of obstructing a peace officer in the execution of his duty (Cr. Code, sec. 169), is one which may be prosecuted under the "summary convictions" procedure of Part XV, of the Code, or under the "summary trials" procedure of Part XVI., if taken before a magistrate having jurisdiction under both procedures; if the procedure of Part XVI is followed his jurisdiction will be subject to the consent provided for in Cr. Code, sec. 778, in a province where consent is not dispensed with; but if the procedure of Part XV (summary convictions), is followed throughout, the magistrate has jurisdiction to try the case and impose

the punishment applicable to a "summary conviction," without asking the consent of the accused under Cr. Code, sec. 778.

McAdam, (1915), 25, C. C. C. 365.

Where the officer charged with the execution of process of a civil court has power to employ a deputy or subordinate officer to act for him in making a seizure of goods, such deputy or subordinate officer is within the protection of Cr. Code sec. 169, sub-sec. (a), making it an offence to resist or wilfully obstruct him in the execution of his duty, the person so employed being within the statutory definition of "peace officer" given by Cr. Code sec. 3, sub-sec. (26), as well as a person acting "in the lawful execution of process" within Code sec. 169, sub-sec. (*b*).

Polsky, (1916), 27, C. C. C. 319.

SECTION **170.**

The corroboration required on a charge of perjury need only be as to the falsity of the previous deposition, although the circumstances may be such that to prove guilt a further element must be shewn such as the knowledge of the accused that the party with whom he claimed he had entered into a contract on behalf of another had in fact no authority to do so.

Nash, (1914,) 23, C. C. C. 38.

The appellant D. charged one R. with having committed a trespass by forcible entry on his land. The charge was apparently laid under the Agricultural Act which restricts the hearing of such cases to a magistrate residing in the county where the offence was committed. The case was tried before the Recorder of Valleyfield, who was not a resident of the county in which the offence was committed, but was vested *ex officio* with the power of two magistrates throughout the whole district in which the county is situated. The appellant being convicted in the Criminal Court, of perjury, for false statements made in his deposition as a witness, the question was reserved whether the technical objection to the competency of the Recorder to sit in the case of trespass prevented the commission of the legal offence of perjury.

Under section 145 of the Criminal Code of Canada ,the technical objection to the jurisdiction of the magistrate did not prevent the commission of perjury by false swearing before a *de facto* legal tribunal, more particularly in a proceeding instituted by the appellant himself before a Court of his own selection.

Drew v. The King, 11 Q. J. R. K. B, 477. (affirmed by the Sup. C. 33, S. C. R. 228.)

The appellants, having been summarily committed to prison by the Chief Justice under Hong Kong Supreme Court Ordinance

3 of 1873, s 31, for wilful and corrupt perjury before the Bankruptcy Court, moved unsuccessfully for a discharge of the order on the grounds that they had not been informed by the Chief Justice what statements made by them constituted the perjury and that they had had no opportunity of shewing cause before sentence. *Held*, (1), that the Ordinance did not contemplate the accusation being formulated in a series of specific allegations of perjury and that its gist had been made sufficiently clear; (2), that as the Ordinance did not dispense with giving the appellants an opportunity before sentence of explaining or correcting misapprehensions of their statements, it was essential that it should be accorded to them.

Piggott, L. R. (1909), A. C. 312.

Perjury is not chargeable in respect of a Court bailiff's certificate purporting to be made under his "oath of office" previously administered on his appointment; *ex. gr.* in Quebec a *procès-verbal* of service certifying the distance travelled in order to serve Court process.

Tremblay, (1916), 28, C. C. C. 21 .

Where a man presents himself as a witness before a duly constituted judicial tribunal, holds up his hand by way of assenting to the terms of an oath administered to him in the usual solemn formula concluding with the actual test words "so help me God" as binding on his conscience, and then proceeds with deliberate knowledge and for the purpose of deceiving the court to make a series of false statements by which the tribunal is materially misled and a serious miscarriage of justice is caused; this man is estopped, on a subsequent assignment of perjury against him under sec. 170 of the Criminal Code 1906), based upon such false statements, from denying that he assented to the oath so administered, and a conviction of perjury on the evidence so given will not be disturbed. (*Per* Russell and Drysdale, JJ.)

Curry, (1913), 21, C. C. C. 273.

On a charge of perjury against a witness speaking in a foreign tongue, it is not essential that the prosecution should prove that every word uttered by the witness in the witness-box had been translated by the interpreter and repeated by him in English so as to be placed upon the official stenographer's notes; it is enough that the court is satisfied on the interpreter's testimony in the perjury trial that he repeated in English all that was material of what the accused had said in a foreign language.

Bogh Singh, (1913,) 21, C. C. C. 323.

An indictment for perjury contained two counts, charging perjury to have been committed by the Defendant on two different

occasions, one in the progress of a trial, the other in an affidavit in Chancery. Both acts of perjury had the same object in view:—*Held*, 1. That they were distinct offences, and a punishment might be inflicted in respect of each.—2. That though the offence were in this way distinct, they might both be included in the same indictment, and that a general finding of guilty on the charges contained in both counts was good.—3. That the full punishment of seven years' penal servitude might be inflicted for each offence, and that the second term of penal servitude was properly made to begin at the termination of the first term.

Castro v. The Queen, L. R. 6 A. C. 229.

On a charge of perjury the material particular for which corroboration is required is not the fact that the accused had sworn to the tatement but that the statement itself was false.

Peterson, (1916), 27, C. C. C. 3.

It is error constituting ground for setting aside the acquittal of the accused and for ordering a new trial upon a charge of perjury before a statutory commissioner that the judge trying the case without a jury (speedy trials clauses) declined to take cogniance of the original record of a superior court produced by its officer for inspection unless the latter would deliver the same up to be filed, where such record was material to prove the proceedings in which the perjury was charged to have been committed and the prosecutor tendered a copy for filing.

Judge, (1915,) 24, C. C. C. 354.

When a witness without objection takes the oath in the form ordinarily administered to persons of his race or belief, he is under obligation to speak the truth under penalty of punishment for perjury, although there may not have been an invocation of a deity or any express admission by the witness that his conscience was bound.

Shajoo Ram, (1914,) 23, C. C. C. 334.

Where the deposition containing the false statement charged as perjury forms part of the record of a superior Court of record, and is certified and attested by the official stenographer, it is proved by the production of such record; the additional oral testimony of a witness that he had heard the accused make, under oath, the statements charged to be false, is not made necessary by Cr. Code, sec. 1002.

Spires, (1915), 25, C. C. C. 172.

The hearing of a charge by a magistrate, assuming to act as a justice of the peace having authority to hear it, is a judicial

proceeding within the meaning of s. 145 of the Cr. Code and a person swearing falsely upon such hearing may be properly convicted of perjury, notwithstanding that the magistrate had no jurisdiction over the subject matter of the complaint.

Drew v. The King, 33, S. C. R. 228.

Where a Hindoo witness in a criminal case is sworn through an interpreter by solemnly promising with uplifted hand to tell the truth, the whole truth, and nothing but the truth, and he assents to such ceremony as the appropriate and usual one in swearing men of his nationality and class with intent that his evidence should be received and acted upon as evidence given under oath, and thereupon answers affirmatively an interrogation whether the "oath" he had taken was binding upon his conscience, he must be taken to have invoked his deity by such ceremony even though it does not appear that express words of invocation were uttered in connection with his solemn promise to tell the truth, and such witness is properly convicted of perjury if his testimony proves false.

Shajoo Ram, (1915), 25, C. C. C. 69.

SECTION **171.**

Where a person acted *de facto* as a registrar under the Manhood Suffrage Act, 7 Edw VII, (Ont.) ch. 5, without objection and under colour of right as having been appointed by the only statutory member of the Board of Registrars then officially acting, the administration of the qualification oath by the registrar so appointed to an applicant applying to be registered as a voter takes place in "judicial proceedings" within the meaning of sec. 171 of the Criminal Code, 1906, so as to found a charge of perjury in respect of wilfully false and misleading statements sworn to by the applicant, whether or not such *de facto* registrar had been regularly appointed.

Mitchell, (1913,) 21, C. C. C. 193.

SECTION **172.**

D., in answering to Faits et Articles on the contestation of a saisie-arrêt, or attachment, stated, among other things "1st, that he, D., owed nothing for his board; 2nd, that he, D., from about the beginning of 1880 to towards the end of the year 1881, had paid the board of one F. the rent of his room, and furnished him with all the necessaries of life with scarcely any exception; 3th, that he, F., during all that time, 1880 and 1881, had no means of support whatever." D. being charged with perjury, in the assignments, of perjury and in the negative averments the fact sworn to by D. in his answers were distinctly negatived,

in the terms in which they were made. *Held*, that under the general terms of the negative averments it was competent for the prosecution to prove special facts to establish the falsity of the answers given by D. in his answers on Faits et Articles, and the conviction could not be set aside because of the admission of such proof. Even if the evidence was inadmissible there being other charges in the same count which were pleaded to, a judgment given on a general verdict of guilty on that count would be sustained.

Downie v. The Queen, 15, S. C. R. 358.

SECTION **175.**

A statutory declaration, made in the form provided by the Canada Evidence Act, by the assured, wherein he states the loss by fire, of the goods insured under a fire insurance policy and assigns a value to same is a "solemn declaration", which the assured is "required or authorized by law" to make, within the terms of Cr. Code, sec. 175, and the declarant is liable to conviction under sec. 175, if statements therein contained would amount to perjury if made in a judicial proceeding, the same being known by him to be false and being intended by him to mislead the insurance company or its adjuster. (*Per* Harvey, C. J., and Scott, J.)

A conviction under Cr. Code, sec. 175, for making a false solemn declaration in an extra judicial proceeding, may be supported in respect of a statutory declaration authorized by the Canada Evidence Act, and taken with the formalities which the latter Act requires, although the formal charge was that the accused "being required or authorized by law, to wit, by the Alberta Insurance Act, Alta. 1915, ch. 16, to make a solemn declaration," made the false statements with knowledge, etc., "contrary to sec. 175 of the Criminal Code," the reference to the Alberta Insurance Act being treated as surplusage. (*Per* Harvey, C. J., and Scott, J.)

Nier, (1915,) 25, C. C. C. 241.

SECTION **177.**

On the trial of a murder charge the construction of a letter written by the accused and placed in evidence is for the Judge and not for the jury, and where the letter itself is a request to make false statements in aid of his defence, the trial Judge may tell the jury that they should take into consideration the prisoner's action in endeavouring to manufacture evidence to mislead the Court by concocting the scheme as disclosed in his letter, to account for the money found on him.

Haynes, (1914,) 23, C. C. C. 101.

SECTION **180.**

The provision contained in Cr. Code sec. 180 to the effect that every one is guilty of an indictable offence and liable to two years' imprisonment who 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," contemplates that the person to be dissuaded must be one who is required to give evidence; it was not intended to apply where the dissuasion was from giving evidence before a person having no proper authority to take the same.

To warrant a conviction under sec. 180 of the Criminal Code, upon a charge that the accused did unlawfully attempt to dissuade certain witnesses from giving evidence before members of a Royal Commission appointed to investigate a certain charge where the facts merely established an attempt to dissuade the witnesses from giving evidence before a special commissioner appointed by said Royal Commissioners to take such evidence, it must be shown that the Royal Commissioners were acting within the scope of their commission in appointing such special commissioner.

Rosen, (1916,) 27, C. C. C. 259.

In the course of a trial for murder by shooting the jury attended church in charge of a constable, and the clergymen directly addressed them, referring to the case of a man hung for murder in P. E. I. and urging them if they had the slightest doubt of the guilt of the prisoner they were trying, to temper justice with equity. The prisoner was convicted. *Held*, affirming the judgment, of the Court of Crown Cases reserved in Nova Scotia, that, although the remarks of the clergyman were highly improper, it could not be said that the jury were so influenced by them as to affect their verdict.

Preeper v. The Queen, 15, S. C. R. 401.

SECTION **181.**

The termination of a prosecution by withdrawal of the charge before the justice may be proved without any formal record or certificate as a basis for an action for malicious prosecution.

In the absence of proof that the withdrawal of the prosecution was brought about by a compromise or arrangement to which the accused was a party proof of such withdrawal is a termination of the prosecution in favour of the accused.

Tamblyn, (1914,) 23, C. C. C. 391.

SECTION **196.**

Where a person under sentence for an indictable offence was

improperly given his liberty by taking bail for an appeal where no appeal lay, the time during which the convict was at liberty between the giving of bail and the quashing of the appeal does not run in his favour, although he had served a part of the sentence before bail was accepted; the period of the bail in such case is within sec. 3 of the Prisons and Reformatories Act, R. S. C. 1906, ch. 148, enacting that the time during which a convict is "out on bail" shall not be reckoned as part of his sentence; and his continuance at liberty after the quashing of the appeal constitutes an "escape" under Cr. Code sec. 196, and on being re-taken he must serve the remainder of the time for which his sentence was to run.
Rapp, (1914,) 23, C. C. C. 203.

SECTION **197** (c.)

An hotel is not a "public place" within the meaning of sec. 13 of 2 Geo. V, ch. 55, amending the Liquor License Act (Ont.); such a "public place" must be a street, square, park or other open place.
Cook, (1912,) 20, C. C. C. 201.

SECTION **201.**

A person who enters a hall, leased by a religious association or body, while a meeting for religious worship is being held in it, under the direction of officers of the association, and addressing himself to the assemblage, says he is a Catholic and a French Canadian, as most of them are, that they should not stay where they are, and calls upon them to leave, is guilty of the offence of disturbing a religious meeting under article 173.
Gauthier, (1905,) 14 Q. J. R. K. B. 530.

SECTION **204.**

On an indictment for incest, proof of relationship between the parties must be established according to the rules of the civil law.
Garneau, (1899), 68 Q. J. R. K. B. 447.

Under s. 4 of the Criminal Evidence Act 1898, the wife of a person charged with an offence to which the section applies is not compellable to give evidence against her husband.
Leach, L. R. (1912), A. C. 305.

Evidence of penetration and emission is not essential to the proof of a charge of incest.
On the trial of a prisoner for incest with his daughter, formal proof of his marriage to the girl's mother is not essential; the marriage may be proved by evidence of reputation and of cohabitation.
Lindsay, (1916), 26, C. C. C. 163.

The defendants, who were brother and sister, were indicted under the Punishment of Incest Act, 1908, for having had carnal knowledge of each other during stated periods in 1910. Evidence was given on behalf of the prosecution to the effect that, at the times specified in the indictment, the defendants were seen together at night in the same house, which contained only one furnished bedroom ; and that there was in the bedroom a double bed which bore signs of two persons having occupied it. The witnesses for the prosecution were not cross-examined. The prosecution then tendered evidence of previous acts of the defendants, with the view of shewing what were the relations between them. The evidence was objected to, but was admitted. The evidence was to the effect that the male defendant in November 1907, took a house to which he brought the female defendant as his wife; that they lived there as husband and wife for about sixteen months; that at the end of March, 1908, the female defendant gave birth to a child, and that she registered the birth, describing herself as the mother and the male defendant as the father. The defendants having been convicted, they appealed, and the Court of Criminal Appeal quashed the conviction and directed a "judgment and verdict of acquittal to be entered", on the ground that the evidence objected to was not in the first instance admissible, and that nothing had occurred in the conduct of the defence to render it admissible as evidence in rebuttal:—*Held*, by the House of Lords, reversing the order of the Court of Criminal Appeal, that the evidence objected to was admissible on the issue; for the object of that evidence was to establish that the defendants had a guilty passion towards each other and to rebut the defence of innocent association as brother and sister. *Held*, by the Court of Criminal Appeal, that the Court has no power to hold a defendant, whose conviction has been quashed, to bail or to keep him in custody pending an application by the Director of Public Prosecutions or the prosecutor to the Attorney-General, under s. 1, sub-s. 6, of the Criminal Appeal Act, 1907, for his certificate that the decision of the Court involves a point of law of exceptional public importance and that it is desirable that a further appeal should be brought to the House of Lords, or pending an appeal if the certificate is granted. *Held*, also, by the Court of Criminal Appeal, that the Court had power to give effect to the decision of the House of Lords by making an order dismissing the original appeal against the conviction and restoring the conviction, and to issue a warrant for the arrest of the defendant who had been discharged from custody.

Ball, L. R. (1911,) A. C. 47.

SECTION 205.

A summary conviction for that the accused did "at various times

and in public places unlawfully commit acts of indecency" at a named city within a period of two months specified is invalid for uncertainty and as including several offences, and no amendment is permissible on certiorari, if the evidence at the hearing included several distinct offences within the period named in the conviction and the magistrate had neither indicated any particular occasion regarding which he found the accused guilty nor found him guilty in respect of all of such occasions.

Roach, (1914), 23, C. C. C. 28.

It is not sufficient, in an information laid under article 177 of the Criminal Code, to allege the "unlawful" commission of an indecent act. It is essential that the accused be charged with having committed it "wilfully".

A commitment based on an information which merely alleges that the act was committed "unlawfully" will be quashed, and the prisoner discharged.

Ex parte O'Shaughnessy, 13 Q. J. R. K. B. 178.

SECTION **207.**

No public good, sufficient to absolve a person from liability under sec. 207 of the Criminal Code as amended, for circulating obscene printed matter tending to corrupt public morals, is shewn from the facts that the purpose of the circulation among the clergymen of a city of printed matter containing grossly disgusting details of an obscene character, describing a theatrical performance, was to arouse public sentiment leading to the suppression of performances of such character.

The onus of shewing that the circulation of a grossly disgusting description of an obscene nature, describing a theatrical performance, was for the public welfare, rests on the person circulating it.

Even if the circulation among the clergymen of a city of printed matter containing grossly disgusting details of an obscene character, describing a theatrical performance, was to serve the public good by arousing public sentiment leading to the suppression of performances of such character, the person who circulates it will be liable to prosecution under the Criminal Code for any excess in the publication beyond what the public welfare demanded.

To have in possession and to circulate among the clergymen of a city, as well as four laymen, printed matter containing grossly disgusting details of an obscene character, describing a theatrical performance, is a violation of sec. 207 of the Criminal Code, as amended, relating to the possession and circulation of printed matter tending to corrupt public morals.

St. Clair, (1913,) 21, C. C. C. 350.

In order to warrant a conviction under sec. 207 of Criminal Code, R. S. C. 1906, ch. 146, as amended by 8 and 9 Edw. VII, ch. 9, for selling or exposing for sale an obscene book, it must be proved that the accused was aware of its obscene character and that it was sold or exposed for sale with his knowledge.

In an information for exposing for sale and selling obscene books under sec. 207 of Crim. Code (1906), as amended by 8 and 9 Edw. VII, ch. 9, it is necessary to allege that it was knowingly done, and an allegation that it was done "contrary to law" and "contrary to the form of the statutes," is not sufficient.

The owner of a book store containing thousand of books, cannot be convicted of knowingly exposing for sale an obscene book under sec. 207, of the Crim. Code, where a few copies which had been purchased by a clerk without defendant's knowledge, were found in a cellar where stock was kept, and to which the public was not admitted.

The proprietor of a book store cannot be convicted, under sec. 207 of the Crim. Code, of knowingly selling an obscene book, where he did not have knowledge as to the contents of the book, a few copies of which had been, without his knowledge, purchased by a clerk and kept among stock in a cellar to which the public was not admitted.

Britnell, (1912,) 20, C. C. C. 85.

SECTION **209** (a.)

In the interpretation of sub-sec. (a) of Cr. Code, sec. 209 as to mailing indecent prints, etc., the words "or other publication" are to be construed as referring to matters *ejusdem generis* with the books, pamphlets, etc., which are previously mentioned in the sub-section and do not include indecent matter written in a private letter sent sealed; the sending of such a letter would, however, be an offence under Cr. Code secs. 317 and 318 (defamatory libel) if sent without the permission of, and if designed to insult, the addressee; the words "matter or thing" which follow the word "publication" in sec. 209 (a) refer to some other object such as a statute or carving.

Goyer, (1916), 27, C. C. C. 10.

SECTION **211.**

Where the girl was physically chaste, a conviction for her seduction when under the age of sixteen may be supported under Cr. Code (1906) sec. 211, although the circumstances indicated a fixed intention on her part, by arrangement with an intermediary, to surrender herself to the man for a stipulated price.

Rioux, (1914,) 22, C. C. C. 323.

On the trial of a charge under Cr. Code sec. 211 for seducing a girl between fourteen and sixteen, of previously chaste character, testimony is admissible on behalf of the accused to prove prior specific acts of illicit intercourse between the girl and another man.

Pieco, (1916,) 27, C. C. C. 435.

SECTION 212.

The girl's own statement of her age as nineteen is not competent evidence on a charge under Code sec. 212 of seduction of a girl under twenty-one under promise of marriage, nor does Code sec. 984 (2) enable the jury to infer a girl's age from her appearance except in charges of crimes against children under sixteen years of age referred to in sec. 984.

Where the girl had been seduced by the accused in a foreign country and came to Canada with him, the resumption of illicit intercourse in Canada under promise of marriage will not support a charge under Cr. Code, sec. 212, of seducing a female of "previously chaste character" unless there is evidence that between the two acts of seduction there was such conduct and behaviour on her part as to imply reform and self-rehabilitation in chastity.

Hauberg, (1915,) 24, C. C. C. 297.

Apart from any question of corroboration a promise of marriage cannot be predicated upon a mere question by the accused to the complainant asking if she loved him enough to live with him as he had money enough for two and her assent by answering "yes", so as to support a charge under Cr. Code sec. 212 of seduction under promise of marriage.

Spray, (1914,) 24, C. C. C. 152.

On a criminal charge of seduction of a girl under twenty-one where the evidence of the girl's parents is not available, the girl's own testimony that her age was nineteen and the testimony to the like effect given by the woman under whose care she had been when a small child based upon information then received and upon personal observation is admissible in proof of her age being under twenty-one.

Spera, (1915), 25, C. C. C. 180.

SECTION 216.

The word "prostitution" in Cr. Code sec. 216 (amendment of 1913) means promiscuous sexual intercourse with men, and is negatived where the magistrate finds that the intent of the accused man was only that the woman should become his mistress and

not to bring about sexual connection between the woman and other men.

Cardell, (1914,) 23, C. C. C. 271.

Notwithstanding the special inclusion of attempts in the preceding clauses of sec. 216 of the Criminal Code (1906), dealing with the offence of procuring, an indictment will lie under Code sec. 571, dealing generally with attempts to commit indictable offences, for the offence of attempted procuring by false pretences within Cr. Code sec. 216, clause (*j*) as re-enacted by the Criminal Code Amendment Act, 1913, as to which sec. 216 omits any special mention of attempts; the doctrine of "*expressio unius*, etc.," does not apply to exclude the attempt of the principal offence as against the express language of sec. 571.

Wing, (1913,) 22, C. C. C. 426.

On a criminal trial an instruction is not erroneous by which the jury were told, in substance, that the accused would be guilty of the offence of procuring under Cr. Code (1906), sec. 216 (*f*), only if they found that, at the time the accused induced a woman to enter a brothel she was not already an inmate of such a place.

Mah Hung, (1912,) 20, C. C. C. 40.

SECTION **217.**

The effect of Cr. Code, sec. 217, in making it an offence for a householder to permit a girl under 18 to be upon the premises for the purpose of illicit intercourse with any man "whether with any particular man or generally," is to exclude from its operation the case of the girl coming to the house for the purpose of illicit intercourse with the householder himself.

Sam Jon, (1914,) 24, C. C. C. 334.

SECTION **221.**

A nuisance maintained by a company which operates a street railway on city streets by the systematic and continued overcrowding of cars through failure to put on a proper equipment is none the less a public or common nuisance and indictable as such, although only a portion of the general public who used the cars had their comfort or property endangered by the overcrowding.

Judgment for the abatement of it, on a conviction for a public nuisance, cannot be given unless the nuisance continues at the time of the indictment.

Toronto Ry. Co., (1915), 25, C. C. C. 183. (See L. R. 1917 A. C. *contra*).

To justify conviction of a railway company under sec. 394 of the Railway Act (Can.) for obstructing a street crossing by allowing

cars to stand across the street, it must be shewn by the prosecution that the obstruction was wilful, and where the crossing was protected by gates and the only evidence was of the times when the gates remained closed against street traffic for periods in excess of five minutes, a conviction should be quashed where it was not shewn that any one train or car caused the obstruction, nor was it shewn that the delay was not attributable to the gateman rather than to the trainmen; sec. 394 of the Railway Act does not apply to obstruction caused by the gateman's neglect at a street crossing.

Grand Trunk R. Co., (1913), 23, C. C. C. 80.

A tramway company after a heavy fall of snow cleared their track by means of a snow-plough and heaped up the snow upon the sides of the streets: they then scattered salt upon the rails and in the vecinity; the town council did not take any immediate steps to remove the briny slush so produced, and it was left upon the streets:—*Held*, reversing the decision of the Second Division, that a legal nuisance had been committed which was not sanctioned by either the special or the general Tramways Acts, and that the default, if any, of the town council did not affect the primary liability of the tramway company.

Ogston v. Aberdeen District Co., L. R. (1897), A. C. 111.

The respondent, who owned a savage horse which he knew to be dangerous to mankind, put it, without giving any warning, into a field of which he was the occupier and which he knew the public were in the habit of crossing without leave on their way to a railway station. The appellant in crossing the field was attacked, bitten, and stamped on by the horse. The county court judge found as a fact that the respondent was guilty of negligence in putting a horse which he knew to be ferocious into a field which he knew to be habitually crossed by the public, and gave judgment for the appellant and 100*l* damages:—*Held*, that the effect of the learned judge's finding being that the appellant was in the field without express leave, but with the permission of the respondent, the appellant was entitled to recover.

Walker, L. R. (1911), A. C. 10.

To give a householder a right of injunction against a neighbour for carrying on a noisy business in a trade district the noise must amount to a nuisance, regard being had to the nature and habits of the neighbourhood and to the preexisting noises.

Rushmer, L. R. (1907), A. C. 121.

SECTION **223.**

The intention of sec. 223 of the Cr. Code, 1906 (Cr. Code, 1892,

sec. 193), which was taken from sec. 152 of the English draft Criminal Code, is to leave untouched the common law right to proceed by indictment or information as a remedy for a public nuisance not involving public safety or public health or occasioning injury to the person of an individual (Cr. Code sec. 222), but which merely endangers the property or comfort of the public; Cr. Code 221); the latter remains a crime, but the remedy is now restricted by Cr. Code sec. 223 to that of abatement.

Toronto Ry. Co., (1915), 25, C. C. C. 183.

SECTION **225.**

Evidence of the general reputation of a house as being a house of ill-fame is not alone sufficient to convict the person whose residence it is of keeping a common bawdy-house without proof that the people who go there are of ill-fame or that prostitution is there carried on.

Sands, (1915), 25, C. C. C. 120.

The intention of Code sec. 225 in defining a common bawdy house as applied to the letting of rooms in a hotel is that it should appear that rooms were habitually let with knowledge that they would be used for purposes of prostitution; the fact of such habitual letting may be proved by direct evidence or may be inferred where the circumstances surrounding the letting on a single occasion for use by a known prostitute would *primâ facie* show the existence of a habit or custom in that regard and no attempt is made at explanation or excuse on the part of the accused.

Davidson, (1917,) 28, C. C. C. 44.

A man cannot be convicted, under secs. 225, 228 and 238 of the Criminal Code, of being an inmate of a bawdy house, since such sections apply to female inmates only.

Knowles, (1913,) Beck, J., 21, C. C. C. 321.

SECTION **226.**

An automatic vending machine so equipped that the repeated operation thereof introduces the element of chance and offers the inducement to hazard further deposits of coin in the hope of getting out of the varying returns something of much more value than the money deposited, is a gaming machine the keeping of which for use is in contravention of the Cr. Code.

Smith, (1916), 26, C. C. C. 398.

A *bonâ fide* club where members frequently play games of chance and skill, and form a pool from the money staked to ex-

pend for refreshments supplied to them by the club, is not a common gaming house within the definition of sec. 226 of the Code, and the stewart should not be convicted as a "keeper" under sec. 228 of the Code, if he derives no personal gain from the money so voluntarily contributed for refreshments.
Riley, (1916), 26 C. C. C. 402.

The fact that slot machines are licensed in Quebec Province, under the authority of the Act 5 Geo. V, (1915), ch. 23, (Que.) has not the effect of making the use of them legal if operated for gambling prohibited by criminal law.
Bernier, (1916,) 27, C. C. C. 225.

SECTION **227.**

Upon a trial for keeping a common betting house in violation of secs. 227 and 228 of the Criminal Code, R. S. C. 1906, ch. 146, articles for recording bets which were seized upon the premises by police officers, are admissible in evidence against the prisoner, irrespective of a claim by the accused that the alleged search warrant was illegal and that the police officers had obtained possession of the articles by means of their own trespass.
A person charged under secs. 227 and 228 Criminal Code, 1906, ch. 146, with keeping a common betting house, may without his consent, under secs. 641 773 and 774 of the Code, as amended by 8 and 9 Edw. VII., be summarily tried by a police magistrate, absolute jurisdiction to try such offence without a jury having been conferred upon such official by secs. 641, 673 and 674 of the Cr. Code, 1906.
Honan, (1912), 20, C. C. C. 10.

SECTION **228.**

An information in a summary proceeding charging the keeping of "a bawdy house" and omitting to describe such as a "common" bawdy house is bad as not disclosing a legal offence; that it is a "common bawdy house" is an essential ingredient of the offence under Cr. Code sec. 228 which declares a "common bawdy house" to be a disorderly house the keeping of which is punishable thereunder.
Re Léonard, (1917), *Ex parte*, Dugas, J. No. 396, S. C. Montreal.

A person who leases his house to another to be used for purposes of prostitution, or who leases his house knowing that it is to be so used, makes himself under the provisions of paragraph (b) of sec. 61, a party to and guilty of the offence of keeping a disorderly house, committed by his lessee subsequently to the

lease of the premises, although the lessor was not himself the keeper; and he can be prosecuted, tried, convicted and punished for such offence in the same manner as the actual keeper.

Roy, (1900), 9, Q. J. R. K. B. 312.

1. (By the whole court.) An information charging the defendant with having "unlawfully kept a disorderly house, that is to say, a common gaming house", is sufficient in law.

2. (Bossé, J., *dissentiente.*) The judge of the Sessions of the Peace has no jurisdiction to try summarily a charge of keeping a common gaming house, laid under articles 196 and 198 of the Criminal Code—either with or without the consent of the accused—under the provisions of Part 55. Such case, under Part 54, may be tried summarily before a judge of the sessions of the Peace by consent of the accused, instead of by a jury before the Court of Queen's Bench, but such option can only be exercised by the accused after a preliminary inquiry and committal for trial.

Paragraph (f) of Art. 783, which says that whenever any person is charged before a magistrate "(f) with keeping or being an inmate or habitual frequenter of any disorderly house, house of ill-fame or bawdy-house," the magistrate may hear and determine the charge in a summary way, does not apply to the offence of keeping a common gaming house,—the meaning of the words "disorderly house" in par. (f) of Art. 783, and in Art. 784, being governed by the rule "*noscitur a sociis*", and being of a house of ill-fame or bawdy house, associated therewith. It is immaterial whether the generic term precedes or follows the specific terms which are used; in either case the general word must take its meaning and be presumed to embrace only things or persons of the kind designated in the specific words.

France, 7, Q. J. R. K. B. 83.

A conviction for the indictable offence of "keeping" a common gaming house (Cr. Code sec. 228) based upon the playing of a game of chance by others in a store operated by the defendant can be maintained against the latter only in the event of its being proved that he participated in the rake-off of the game or otherwise obtained a gain by permitting such gambling on his premises.

Charlie Yee, (1917), 27, C. C. C. 441.

A man who knowingly permits prostitutes to resort to his house for the purpose of prostitution may be convicted of keeping a bawdy-house although he made no charge for the use of his rooms.

Fabri, (1917), 28, C. C. C. 6.

Although a bank is kept in the game of fan tan, which is one

of mixed chance and skill, it is not within the prohibition of secs. 226 and 228 of the Criminal Code, unless one player acts as banker to the exclusion of the others.

Hung Gee, (1913,) 21, C. C. C. 404.

Keeping a common gaming-house and keeping a common betting-house, either of which are declared to constitute the indictable offence of keeping a disorderly house by the same section of the Criminal Code. (Cr. Code 1906, sec. 228) are distinct offences.

Mah Sam, (1910,) 19, C. C. C. 1.

Pretended negotiations by persons in the pay of the police made merely for the purpose of getting evidence against the accused woman and with no intent of returning at the time appointed by her for purposes of prostitution will not support a charge against her of keeping a common bawdy-house.

Sands, (1915), 25, C. C. C. 120.

A person does not keep a common gaming house under Cr. Code secs. 228 and 986, because of the maintenance of a chewing-gum vending machine with a varying premium feature automatically operated in connection therewith whereby the exact result of the next operation of the machine is indicated immediately following its last operation; the fact that the inducement is thereby held out that in some future play of the machine the operator may receive something more than an adequate return for his money, does not introduce the element of chance essential to constitute the crime.

Stubbs, (1915,) 24, C. C. C. 303.

The offence, under Cr. Code sec. 228, of keeping a bawdy house, being punishable, upon indictment, there is no limitation of time for commencement of a prosecution for it by indictment, although the keeper is also declared by the Criminal Code, sec. 239, to be a loose, idle or disorderly person or vagrant, punishable in this character upon summary conviction, subject to the six months' limitation of Cr. Code 1142. (*Per* Magee, J.)

The fact that another person, who had been separately charged with the like offence, in respect of the same house, and at the same time, was convicted thereof, is no defence to an indictment for keeping a disorderly house.

Sovereen, (1912,) 20, C. C. C. 103.

A place certain should be specified so as to identify the house in question upon a conviction for keeping a disorderly house; but a summary conviction which specifies merely that such keeping was within a named municipality may be amended in that

respect in certiorari proceedings to conform to the evidence by virtue of Cr. Code sec. 1124.

Evidence as to a general reputation of the house is admissible upon a charge of keeping a disorderly house.

Demetrio, (1912,) 20, C. C. C. 316.

A charge of keeping a common gaming house is maintainable against the proprietor of a cigar store who keeps in the store an automatic gum vending machine operated as a nickel-in-the-slot device where the machine issues trade checks along with certain purchases and not with others, in such a manner as to constitute a contrivance for unlawful gaming, if the keeper of the store was entitled to a share of the profits from the operation of the machine although the machine belonged to another who alone had the keys with which to open it.

O'Meara, (1915), 25, C. C. C. 16.

The secretary and treasurer in active control and management of an incorporated social club which maintains for gain a common gaming house for its members are punishable under Cr. Code sec. 228 (2), as amended in 1913, as keepers of a disorderly house, although the real owner and keeper was the incorporated club.

Merker, (1916,) 27, C. C. C. 113.

A woman who continues to have unlawful sexual relations with one man only is not a prostitute within the terms of the Cr. Code; but if she successively becomes the mistress of several men within the limitation period of six months covered by a charge of vagrancy brought under Cr. Code, sec. 238, sub-sec. (1), without having other means of subsistence and in such a manner as to create a public scandal in the locality where she happens to reside, she may be convicted of vagrancy by reason of her supporting herself by the avails of prostitution.

Bédard, (1916), 26, C. C. C. 99. Rehé, 6. Q. J. R. K. B. 274.

In the absence of proof that the person occupying a house knowingly kept therein persons of bad reputation or guilty of lewd conduct, general evidence that the keeper of the house was of evil reputation, or guilty of lewd conduct, is insufficient to support a conviction for keeping a house of "ill-fame".

Trépanier, 12, S. C. R. 111; Mcdonald, 27, S. C. R. 683. Richard, 38, S. C. R. 394.

SECTION 229A.

The answer of the accused on a charge of frequenting a disorderly house contrary to sec. 238 of the Criminal Code, sub-

section (*k*) that he "was there if that made him guilty," is not equivalent to a plea of guilty.

Swett, (1914,) 23, C. C. C. 272.

A charge of being an inmate of a common bawdy house under Cr. Code, sec. 229A, which is tried by a magistrate under Cr. Code, sec. 774, without the consent of the accused, is not invalid because the precise locality of the house is not designated in addition to the town or territory over which the magistrate had jurisdiction, but the magistrate may order the prosecution to give particulars.

James, (1915,) 25, C. C. C. 23.

SECTION **231.**

In option deals by a customer on a stock exchange his broker has implied authority to act, in the execution of his express authority, according to the custom and usages of the exchange, except as to any custom or usage which is unreasonable and of which the customer had no notice.

A person buying and selling options on a stock exchange which employs a clearing house association, is taken to accept the usage of putting the transactions through the clearing house with the result that the association will, in the ordinary course become the opposite party in each contract he makes, while he will be represented by his own broker as the nominal principal.

Where neither the customer or the broker, in respect of transactions of purchases and sales to be made on a "grain exchange," has in contemplation that delivery of the grain sold should be made or taken under the agreements purporting to be contracts for the sale or purchase of the grain, as the case may be, but it was intended to meet the obligation to deliver by an off-set of a contract to purchase a like quantity of grain and to adjust the differences between the selling and buying prices, the dealing in such differences to make gain or profit by an anticipated rise or fall in the price of the grain is illegal under Cr. Code, sec. 231.

The customer buying and selling options through a broker on a grain exchange in connection with which there was a clearing house association, of which his broker was a member, but which association did not include all the members of the "exchange," is not to be assumed to have authorized his broker to close transactions through the clearing house under a system the effect of which would be that no one but his broker became directly responsible to him and that the so-called purchases and sales on the exchange made by the broker were set-off one against the other so that they became closed by an adjustment of accounts between the clearing house and the broker without regard to the

customer; and apart from the question of illegality under Cr. Code, sec. 231, and as regards a customer having no notice of the methods employed, there was a failure to carry out what the broker was commissioned to do under the customer's orders to buy and sell grain on margin for future delivery although it was stipulated that "all purchases and sales are made in accordance with and subject to the rules, regulations and customs of the Winnipeg Grain Exchange."

[Richardson v. Beamish, 21 Can. Cr. Cas. 487, 13 D. L. R. 400, 23 Man. L. R. 306, reversed on appeal.]

"Bucket shops," inhibited by virtue of sec. 231 of the Criminal Code (Can.) 1906, ch. 146, are places where bets are made against the rise or fall of stocks or commodities and where the pretended transactions of purchase or sale are fictitious.

The provisions of sec. 231 of the Criminal Code (Can.) 1906, ch. 146, are directed toward the suppression of "bucket shops" and not against regular transactions by way of buying and selling options on a stock exchange, the true test as to the inhibition of any such transaction being whether it is real or only fictitious.

Beamish, (1913,) 21, C. C. C. 487.

The ordinary buying and selling of stocks by a broker on margin is a legitimate business. Where the broker's interest is limited to his commission, it is not a gaming contract, even in the absence of actual transfer of the certificate of stock bought and sold. The Criminal Code, article 231, does not prohibit a transaction of the above nature.

Shapiro, (1916,) 49, Q. J. R. S. C. 350.

SECTION **235.**

A person charged before a Police Magistrate with a contravention of sec. 235 of the Criminal Code (as re-enacted by 9 & 10 Edw. VII, ch. 10, sec. 3), dealing with betting, wagering, pool-selling, etc., has the right to elect to be tried by a jury, and cannot without his consent be tried summarily by the Police Magistrate.

Helliwell, (1914,) 23, C. C. C. 146.

Adjacent to a racecourse there was an uncovered inclosure of about a quarter of an acre, fenced in by iron rails, to which when racemeeting were held the public were admitted by the owners of the racecourse on payment of an entrance fee. Among the five hundred to two thousand persons so admitted were always one or two hundred professional bookmakers, and most of the persons admitted, other than the bookmakers, went for the purpose of backing horses with the bookmakers, but some did not

bet at all. The bookmakers, who were accompanied by their clerks, did not use any apparatus such as a desk, stool, umbrella, or tent, but any particular bookmaker was usually to be found in or near the same part of the inclosure, calling out the odds to attract backers. In some cases the backers were required by the bookmakers to deposit their stakes; in others credit was allowed. This use of the inclosure was known to and permitted by the owners thereof:—*Held*, affirming the decision of the Court of Appeal, that the inclosure so used was not "a place opened, kept or used" for the purposes prohibited by the Betting Act, 1853.

Held, *contra* (by Lords Hobhouse and Davey), that the inclosure was "a place kept and used" by the owners for the purpose of the bookmakers who used it betting with persons resorting thereto, and (by Lord Davey) for the purpose also of the bookmakers receiving deposits of money on bets and that the case fell within the Act.

Powell v. Kempton Park Co. L. R. (1899), A. C. 143.

R. S. C. c. 159, s. 9, provides inter alia that "every one becomes the custodian or depositary of any money.....staked, wagered or pledged upon the result of any political or municipal election.....is guilty of a misdemeanour" and a sub-section says that "nothing in this section shall apply to.....bets between individuals". *Held*, reversing the decision of the Court of Appeal, Taschereau, J., dissenting, that the sub-section is not to be construed as meaning that the main section does not apply to a depositary of money bet between individuals on the result of an election; such depositary is guilty of a misdemeanour, and the bettors are accessories to the offence, and liable as principal offenders. Reg. v. Dillon, (10 Ont. P. R. 352), overruled.—After the election, when the money has been paid to the winner of the bet, the loser cannot recover from the stakeholder the amount deposited by him, the parties being *in pari delicto*, and the illegal act having been performed.

Walsh v. Trebilcock, 23, S. C. R. 695.

The term "gambling, wagering or betting machine" as used in Cr. Code, sec. 235, sub-sec. (b) is not restricted by its context to apparatus for the recording of bets or wagers or pool selling; any "gambling machine" is within the prohibition of sub-sec. (b) as enacted by 3 Geo. V., Can., ch. 13, sec. 13, and this will include an automatic gum vending machine so contrived as to entice patrons to gamble by holding out the chance of getting, along with the gum for a five cent coin, something with much more under a process of chance drawing.

Bareham, (1916), 26, C. C. C. 211.

A perambulating booth used on the race-course of an incor-

porated racing association for the purpose of making bets is an "office" or "place" used for betting between persons resorting thereto as defined in s. 197 of the Cr. Code, 1892 (Cr. Code, 1906, s. 227).—Sub-section 2 of s. 204 of the former Code (now s. 235) which exempts from the provisions of the main section (dealing with the recording or registering of bets, etc.,) bets made on the race-course of an incorporated association does not apply to the offence of keeping a common betting-house. Girouard and Davies, JJ., dissenting.—Judgment of the Court of Appeal (12 Ont. L. R. 615) affirmed.

Saunders v. The King, 38, S. C. R. 382.

SECTION **236.**

Per Girouard, J., dissenting. In Canada before the Cr. Code, 1892, lotteries were mere offences or contraventions and not crimes, and consequently the Act of the Quebec Legislature was constitutional.

L'Ass. St-Jean-Baptiste v. Brault, 30, S. C. R. 598.

The giving of an automobile by a department store under an advertised scheme whereby all purchasers of $1 worth of goods or more obtained a free coupon belonging to a series from which one particular number had been selected as the winning number to be disclosed after the close of the competition, is an offence under the lottery clauses of the Cr. Code; and the advertisement and management of such scheme are punishable under sub-sect. (a) and (c) respectively of Cr. Code sec. 236.

Hudson's Bay Co. (1915), 25, C. C. C. 1.

A society constituted (avowedly) for the benefit of its members, making certain of them entitled to particular benefits by the process of periodical drawings, does not come within the Lottery Acts.

Wallingford v. Mutual Society L. R. 5, A. C. 685.

SECTION **238.**

Vagrancy under Cr. Code secs. 238 and 239 being the subject of summary conviction proceedings and not of indictment, Code sec. 652 does not apply to justify an arrest on suspicion by a peace officer without warrant where the peace officer did not find the accused committing the particular act relied upon as constituting statutory vagrancy (Cr. Code sec. 648).

There is a misjoinder which nullifies the information and the summons thereon where three persons are jointly charged with a vagrancy offence as being a night walker. (Cr. Code sec. 238, subsec. (i).

Lachance, (1915,) 24, C. C. C. 421.

Where it appears on a charge of vagrancy under Code sec. 238 (1) that the accused had six months previously left off working at his trade and that his only means of livelihood since were the running a gambling resort and obtaining the rake-off on poker games, he may properly be convicted under the statutory definition of vagrancy, although he had not failed to support his family or himself.

Kolotyla, (1911,) 19, C. C. C. 25.

A commitment under Cr. Code sec. 238 for vagrancy does not disclose an offence where it recites that the prisoner was a "loose, idle person found wandering abroad and not giving a good account of himself, thereby being a vagrant," unless it is also recited that he had no visible means of subsistence, and a discharge will be ordered on habeas corpus where the conviction on which the commitment was based was similarly defective.

Kolenczuk, (1914,) 23, C. C. C. 265.

A summary conviction by a city police magistrate under the vagrancy clauses, Cr. Code R. S. C. 1906, ch. 146, secs. 238 and 239, may be quashed for irregularity on proceedings in *habeas corpus* and *certiorari* in aid taken on behalf of the defendant committed under such summary conviction, and is, in that respect, distinguishable from convictions made by city police magistrates for indictable offences under their extended jurisdiction under Cr. Code sec. 777.

Johnson, (1912,) 20, C. C. C. 8.

Where the defendant was convicted of begging on a charge brought under a municipal by-law, and on the same day was charged and convicted of vagrancy as being without visible means of maintenance, it will not be assumed that both conviction are for the same offence.

A conviction for vagrancy in being without visible means of maintaining himself is justified in respect of a person who solicits alms for himself on the streets without the official certificate mentioned in Code sec. 238 (d) on a claim that he is unable to work and who had no way of maintaining himself without becoming a public burden or a nuisance on the public streets.

The possession of a sum of money sufficient for the maintenance of the accused for several days will not bar his conviction as a vagrant if it appears that the money had been obtained for the most part by the defendant's begging in the public streets.

Monroe, (1911,) 19, C. C. C. 86.

The mere fact of holding a meeting in a street does not necessarily implied the impeding or incommoding of peaceable pass-

engers and proof of actual impeding or incommoding is essential to justify a conviction.

Article 207 of the Criminal Code does not apply to persons of general good character, but is intended to apply to loose, idle and disorderly persons (aux vagabonds, aux désoeuvrés ou aux débauchés.)

The King v. Kneeland, 11, Q. J. R. K. B. 85.

La description d'une infraction comme suit: "of being a loose, idle or disorderly person or a vagrant within the meaning of the statute, for that she, on the 23th day of March instant, at the said city, being then a night-walker, did unlawfully wander by night, between ten and eleven o'clock in the evening, in a public street of the said city, St. Dominique St. and did not then and there render a satisfactory account of herself when required to do so by the constable Paul Hill, contrary to the statute in such case made and provided", satisfait aux exigences de la loi.

Gagnon, 2 R. J. Q. B. R. 287.

A woman who is kept by a married man, and who surrenders herself to sexual intercourse with him alone, does not come under the purview of par. (1) Art. 207 of the Criminal Code, which declares any one to be a vagrant who, having no peaceable profession or calling to maintain herself by, for the most part supports herself by the avails of prostitution.

R. v. Rehé, 6, Q. J. R. K. B. 274. Bédard, (1916), 26, C. C. C. 99.

When a son lives at home and is supported by his parents, the fact of living without employment does not constitute an offence under paragraph (a) of article 207 respecting vagrancy.

Riley, 7, Q. J. R. K. B. 198.

A person who is able to work and thereby, or by other means, to maintain his wife, and who is charged with vagrancy for refusing or neglecting to do so when his wife had left the matrimonial abode, without his consent and without judicial authorization or other valid reason, cannot be convicted, if he was willing and offered to receive her, while she on her part refused to return and live with him.

Leclair, 7, Q. J. R. K. B. 287.

Code sec. 723 applies to validate a summary conviction of a woman for vagrancy as a night-walker if the offence is stated in the words of sub-section (i) of Code sec. 238; and a warrant of commitment in the like terms will not be held bad because it does not recite expressly that the accused was first asked to give an account of herself.

Campbell, (1916), 26, C. C. C. 196.

A conviction under a town by-law for creating a disturbance on a public street based on an assault, will sustain a plea of autrefois convict to a subsequent prosecution for the same assault instituted by the injured person even where such conviction followed a charge laid by the police and although the injured person was not called as a witness because the accused pleaded guilty.
McIntyre, (1913), 21, C. C. C. 216.

It is a ground for dismissing a charge of vagrancy on a summary hearing under Part XV. of the Code that the complaint alleges distinct offences under different sub-sections of Code sec. 238, and is, therefore multifarious.
St Armand, (1915), 25, C. C. C. 103.

A woman who continues to have unlawful sexual relations with one man only is not a prostitute within the terms of the Cr. Code; but if she successively becomes the mistress of several men within the limitation period of six months covered by a charge of vagrancy brought under Cr. Code, sec. 238 (1), without having other means of subsistence and in such a manner as to create a public scandal in the locality where she happens to reside, she may be convicted of vagrancy by reason of her supporting herself by the avails of prostitution.
Bédard, (1916), 26, C. C. C. 99.

Though a woman cannot be convicted as a vagrant under sec. 238 (i) of the Criminal Code unless she has failed to give a proper account of herself on being asked to do so, when found wandering at night in the public streets, the absence from the conviction of the allegation that she was asked to do so is not fatal to its validity, where the offence is charged in the language of sec. 723 (3) of the Criminal Code, 1906.
A conviction and warrant of commitment issued by a police magistrate charging a woman with vagrancy in that she is "a common prostitute or night walker" without stating to which of these two classes she belongs, is not void for duplicity, since at most this is a mere defect in form within the meaning of the curative provisions of sec. 724 of the Criminal Code (1906), especially where the offence is described in the words of sec. 238 (i) of the Code.
The "minute of conviction" made by a justice of the peace for an offence under the Vagrancy Clauses, Cr. Code 1906, secs. 238 and 239, upon directing imprisonment for the offence is not a minute of an "order" of a justice so as to require service of a copy thereof under Code sec. 731 before issuing a warrant of commitment.
Brady, (1913), 21, C. C. C. 123.

The Indian Act, R. S. C. 1906, ch. 81, does not empower an In-

dian agent to include hard labour in a sentence of imprisonment imposed on summary conviction under sec. 139 of the Act for being drunk on an Indian reserve.
Atkinson, (1914,) 23, C. C. C. 149.

An information for using obscene language is defective if it does not set out the language used, but the defect may be cured by defendant's appearance and plea without taking exception thereto at the hearing.
Ballentine, (1914,) 22, C. C. C. 385.

The wife separated as to bed and board by a judgment of the Court, is not obliged to renounce such a judgment and to go back and live with her husband before bringing a criminal prosecution against him for his neglect to provide her with necessaries.
Buteau, (1915,) 24, C. C. C. 53.

SECTION **239.**

Where a prisoner was convicted of being a vagrant and sentenced to six months' imprisonment, and no provision was made for "hard labour" and thereafter the words "hard labour" were added in the absence of the accused, and as so changed the commitment was made out to conform to it, such change is invalid and the commitment will be set aside on habeas corpus proceedings.
Kirwin, (1910), 20, C. C. C. 181.

SECTION **241.**

A son who has received his aged father into his household and undertaken his care and support may be convicted of manslaughter if the father dies from exposure while under the son's charge and from insufficient care and food where the son had the means to supply the food and the means to prevent the father from suffering from exposure, but was reckless whether the father died or not and was wickedly negligent with respect to the duty owed to the father who was incapacitated by old age, infirmity and illness from looking after himself or from withdrawing himself from the son's charge, the charge is one imposed upon the son "by law" within the meaning of Cr. Code sec. 241, under such circumstances.
Dalke, (1915), 25, C. C. C. 98.

SECTION **242.**

It must be established, in order to convict a husband under sec. 242 of the Criminal Code, for failing to provide necessaries for his wife or children, whereby their death resulted, that the ar-

ticles or things which, without excuse, he omitted to furnish were "necessaries" within the meaning of such section of the Code, and also that the death of his wife or children followed as a result of his omission to provide them.

A husband's failure to follow his wife and bring her back to his house, which she left in anger, on a bitterly cold night, and, being thinly clad, was frozen to death, does not render him criminally liable under sec. 242 of the Crim. Code, for failure to furnish her with "necessaries," where he provided a home according to his station in life and supplied his wife, who was in possession of all her faculties, with plenty of warm clothing, and, when she left his home, he had reason to believe that she had gone to a neighbour's but instead she got lost on the way.

Sidney, (1912,) 20, C. C. C. 376.

A person who is able to work and thereby, or by other means, to maintain his wife, and who is charged with vagrancy for refusing or neglecting to do so when his wife had left the matrimonial abode, without his consent and without judicial authorization or other valid reason, cannot be convicted, if he was willing and offered to receive her, while she on her part refused to return and live with him.

Leclair, 7 Q. J. R. K. B. 287.

Where the deserted wife had been compelled to work continuously at menial labour to support herself and child and required rest and surgical treatment for organic disease to stop the breaking down of her health, but was unable to obtain such surgical treatment and rest without being dependent on charity such facts will support a special finding by the jury that the wife's health is likely to be permanently injured from the husband's neglect to provide necessaries for her which neglect in such event is an indictable offence under Cr. Code (1906), sec. 242.

Wood, (1911,) 19, C. C. C. 15.

A father is not criminally liable under sec. 242 of the Crim. Code for failing to provide necessaries for a child ten years of age, who was taken by its mother, in anger, from the father's house on a bitterly cold night, and who was, with its mother, frozen to death, where the father, who had provided a home according to his station in life, had reason to believe that the mother and child had gone to a neighbour's, but, instead, they were lost on the way, since the father did not have reason to anticipate that the mother would expose the child to such danger.

"Necessaries" for failing to provide which for his wife or children, a husband is liable under sec. 242 of the Criminal Code, are such things as are essential to preserve life, since such word is not in its ordinary legal sense, and what will constitute necessa-

ries must be determined in view of the circumstances of each particular case.

Sidney, (1912,) 20, C. C. C. 376.

SECTION 242A.

A plea of guilty to a charge intended to be framed under sec. 242A of the Criminal Code (amendment of 1913), but not specifically referring to that section, will not support a summary conviction thereunder where the information upon which the plea was taken did not sufficiently disclose an offence, the form of same being that the defendant did "neglect his wife."

Chitnita, (1914,) Scott, J., 22, C. C. C. 344.

For the purposes of a prosecution under Cr. Code sec. 242A (Code Amendment of 1913), for the summary conviction offence of non-support of a wife living in destitute or necessitous circumstances, it is no answer that the wife is being provided for by her parents, if she has no legal claim against her parents for her support, and if they are little able to provide that support.

Tracey, (1916), 26, C. C. C. 178.

The evidence of the wife is not admissible against her husband on the hearing before a magistrate of a charge under Code sec. 242A (amendment of 1913) whereby it was made an offence punishable on summary conviction for a husband to neglect without lawful excuse to provide for his wife and children when destitute, as no corresponding amendment was made to the Canada Evidence Act when sec. 242A was added to the Code.

Section 242A of the Criminal Code which was inserted by the Code Amendment Act, 1913, is not to be considered a sub-section of section 242, but as an entirely independent section.

(See Amendment of 1917, to the Code.)

Allen, (1913,) 23, C. C. C. 67.

The wife separated as to bed and board by a judgment of the Court, is not obliged to renounce such a judgment and to go back and live with her husband before bringing a criminal prosecution against him for his neglect to provide her with necessaries.

Buteau, (1915), 24, C. C. C. 53.

SECTION 242B.

Habit and repute is not a mode of constituting but of proving a marriage; and when a true and undivided habit and repute is shewn, a presumption of the marriage arises by the Law of Scotland.—Per Lord Cairns, L. C.: The presumption of marriage is much stronger than the presumption in regard to other facts.—

When a matrimonial ceremony took place in Scotland, the parties being ignorant of an impediment, afterwards removed, and when, believing themselves to be validly married, they lived together continously for years as husband and wife, and were regarded as such by all who knew them, the marriage was held to have been established by the force of habit and repute, without any proof of mutual consent by verbal declaration.—It must be inferred that the matrimonial consent was interchanged as soon as the parties were enabled, by the removal of the impediment, to enter into the contract.—The onus of rebutting a marriage by habit and repute is thrown on those who deny it.—Per Lord Chelmsford: The ceremony which took place, although invalid, was undoubtedly a consent by the parties to live together as husband and wife. And their subsequent cohabitation was a proof of continued consent.

De Thoren v. The Atty-General, L. R. 1, A. C. 686.

Held, that proof of the certificate of the marriage, coupled with the fact of the child being always acknowledged by him, and received as the offspring of the Husband and Wife, was sufficient evidence, without any formal recognition of paternity by the Father.

La Cloche v. La Cloche, L. R. 4, P. C. A. 325.

In a criminal conversation action there need not be evidence of the validity of the marriage ceremony, but there must be strong evidence of the marriage itself going beyond mere evidence of cohabitation and reputation, and the best proof that could be given on an actual marriage is by some person actually present at the solemnity.

Shatney, (1912), 20, C. C. C. 205.

SECTION **247.**

Under s. 213 of the Cr. Code a corporation may be indicted for omitting, without lawful excuse, to perform the duty of avoiding danger to human life from anything in its charge or under its control. The fact that the consequence of the omission to perform such duty might have justified an indictment for manslaughter in the case of an individual is not a ground for quashing the indictment. As s. 213 provides no punishment for the offence the common law punishment of a fine may be imposed on a corporation indicted under it.

Union Colliery, Co. v. The Queen, 31, S. C. R. 81.

SECTION **252.**

A man engaged in a criminal act is liable for its indirect as well as for its direct consequences, and a verdict of manslaughter

for the death of a young girl under the age of consent will be supported if it appears that the accused had induced her to go alone with him to a secluded apartment and there had criminal sexual intercourse with her, following which she had jumped from the window to the street to get away from him and was instantly killed by the fall.

Valade, (1915), 26, C. C. C. 233.

SECTION **259.**

On a charge of murder and a defence of insanity at the time of the commission of the offence, the onus is upon the accused of proving that she was at the time she committed the act in such a state of mind that she was incapable of appreciating the nature and quality of her act and of knowing that it was wrong; and whether statements made to the accused by her husband as to his acts of infidely with the deceased and other women would have a tendency to make her temporarily insane is a question of fact as to which expert testimony must first be offered before proof of any such statements by the husband becomes relevant.

Jennie Hawkes, (1915), 25, C. C. C. 29.

When on a murder trial, homicide by the accused is proved, it is for the latter, if he claims to justify his act as one of self-defence, to prove that the mode of defence that he employed was necessary.

Shayanez, (1916), 26, C. C. C. 438.

A witness was called at the trial to give evidence as a medical expert and in answer to the Crown prosecutor he said, "there are *indicia* in medical science from which it can be said at what distance small shot were fired at the body. I have studied this—not personal experience, but from books." He was not cross-examined as to the grounds of this statement and no medical witnesses were called by the prisoner to confute it. The witness then stated the distance from the murdered man at which the shot must have been fired in the case before the court, and on what he based his opinion as to it, giving the result of his examination of the body. *Held*, Strong and Fournier, JJ., dissenting, that by his preliminary statement, the witness had established his capacity to speak as a medical expert, and it not having been shown by cross-examination, or other testimony, that there were no such *indicia* as stated, his evidence as to the distance at which the shot was fired was properly received.

Preeper v. The Queen, 15 S. C. R. 401.

Where defendants are charged with homicide as resulting from the physical act of the deceased himself, but alleged to have been caused by the unlawful acts in which the accused were then en-

gaged towards the deceased, not involving physical force or compulsion on their part against him, they are not guilty of culpable homicide unless the act of the deceased from which death resulted (i. e., in this case using as a club a gun reversed) was induced by threats or fear of violence, or by deception.

Graves, (1913), 21, C. C. C. 44.

Lorsque, dans un procès pour meurtre, une preuve d'homicide est faite contre l'accusé, c'est à ce dernier, s'il prétend justifier son acte par la nécessité de sa défense personnelle, qu'il incombe de prouver que le mode de défense employé était nécessaire.

Il n'y a pas lieu d'infirmer un verdict ou d'en permettre l'appel du fait, que le juge, présidant les assises, aurait, dans son allocution au jury, commenté erronément des faits secondaires, à moins que de l'avis du tribunal d'appel l'accusé en ait souffert préjudice.

Le Roi v. Shayanez, 25, R. J. Q. B. R. 316.

On a trial for murder, where the accused for the purpose of robbery induced the deceased by false pretences to leave his companion and accompany him to a lonely spot where the dead body was afterwards found, evidence of an assault and robbery of the companion made by the accused an hour after the separation is admissible if it tends to shew that the murder had taken place in furtherance of a scheme by the accused to rob both the deceased and his companion and for such purpose to get them separated, and this notwithstanding that it shews the commission of another crime.

Where the person accused of a murder committed in connection with a robbery is shewn to have suddenly become possessed of a sum of money, although previously he was entirely out of money and out of work, and the prosecution allege that such money is made up in part of money taken from the murdered person, but the accused giving evidence on his own behalf swears that the money was received in one sum from a third party not produced as a witness, it is competent for the prosecution to discredit such testimony by shewing that the excess over and above what was in the possession of the murdered man was obtained by robbing the latter's companion and so accounting for the difference in the amount of money of which the accused had suddenly become possessed, and the much smaller sum which the deceased had in his possession when robbed and murdered.

Gibson, (1913,) 21, C. C. C. 477.

Upon a trial for murder, upon a request for a charge of manslaughter upon the alleged ground that the accused shot the deceased while "in the heat of passion caused by sudden provocation," the charge was properly refused where nothing was said in the evidence as to the accused having been aroused to a heat of passion

and the circumstances were, in the view most favourable to the defendant: (1) that he was on the scene with the criminal intent to steal; (2) that he believed the deceased to be a secret police officer; (3) that the only provocation suggested by the defence was that such officer came up to the accused at a place where he was lurking under circumstances justifying suspicion and thereupon pointed a pistol toward him and told him "to go to hell."

Upon a trial of a murder charge the trial judge is justified in not submitting the question of manslaughter to the jury where there is no more than mere surmise or conjecture on which to rest such a finding.

Eberto, (1912,) 20. C. C. C. 262.

Where the judge in a trial for murder concludes his charge thus: "the verdict of the jury is generally resumed in a few words, in the solemn words of guilty or not guilty", he is not supposed to direct the jury to bring in but one of the two verdicts of guilty or not guilty of murder, he has sufficiently pointed out the distinction between murder and manslaughter, and instructed them as to their duty to find whether the prisoner acted with or without intent to kill.

Where the judge considers that no doubt exists, he is not obliged to instruct the jury that the prisoner is entitled to any doubt they may entertain, such a course being more likely to impede then to assist them in the discharge of their duty.

Fouquet, (1905), 14, Q. J. R. K. B. 87.

A conviction for murder will not be set aside because the evidence of witnesses for the prosecution, given in a language of which the defendant was ignorant, was not translated to him, where he was defended by counsel speaking and thoroughly acquainted with the language of the witnesses, and where neither the defendant nor his counsel asked that the evidence be translated.

The King v. Long, 11, Q. J. R. K. B. 328.

SECTION **261.**

The prisoner was convicted of manslaughter in killing his wife, who died on the 10th November 1881. The immediate cause of her death was acute inflammation of the liver, which the medical testimony proved might be occasioned by a blow or a fall against a hard substance. On 17th October preceding her death, the prisoner had knocked his wife down with a bottle; she fell against a door, and remained on the floor insensible for some time; she was confined to her bed soon afterwards and never recovered. Evidence was given of frequent acts

of violence committed by the prisoner upon his wife within a year of her death, by knocking her down and kicking her in the side. The reserved questions were whether the evidence of assaults and violence prior to 10th November of 17th October, 1881 was properly received, and whether there was any evidence to leave to the jury to sustain the charge in the first count of the indictment? *Held*, affirming the judgment appealed from, that the evidence was properly received, and that there was evidence to submit to the jury that the decease, which caused her death was produced by the injuries inflicted by the prisoner.

Theal v. The Queen, 7, S. C. R. 397.

SECTION **264.**

It is lawful for the judge, in charging the jury in a trial for an attempt to murder, to instruct them that they may draw an inference as to the prisoner's intent to kill from the circumstances of his being a stranger loitering in a street or park, between four and five o'clock in the morning with a loaded revolver and burglar's tool in his possession.

On the trial of a person accused of attempt to murder by shooting, evidence that he had burglar's tools in his possession at the time is admissible, as tending to prove criminal intent.

An indictment that "A. B. attempted to kill and murder C. D." sufficiently discloses an indictable offence, and the Court has the power to allow it to be amended so as to read that "A. B. intent to commit murder, shot at C. D.".

Mooney, (1905), 15, Q. J. R. K. B. 57.

SECTION **273.**

On the trial of an indictment for shooting with intent to murder, it is proper that the jury be directed that if the evidence so warrants, a verdict may be rendered of shooting with intent to maim or to do grievous bodily harm.

Kerr, (1912,) 20, C. C. C. 70.

On an indictment for wounding with intent a verdict of "guilty without malicious intent" is an acquittal.

Slaughenwhite v. The King, 35, S. C. R. 607.

SECTION **283.**

Though a Plaintiff may have been guilty of negligence, and although that negligence may, in fact, have contributed to the accident which is the subject of the action, yet, if the Defendant could, in the result, by the exercise of ordinary care and dili-

gence, have avoided the mischief which happened, the Plaintiff's negligence will not excuse him.

Radley v. London & N-Western Ry. L. R. 1, A. C. 754.

Any person who obstructs or impedes an officer of a Railway Company, in the execution of his duty upon any of the premises of the company, is liable to fine or imprisonment under section 291 of the Railway Act, 1903 (Can.).

The King v. Leclaire, 15, Q. J. R. K. B. 214.

SECTION 285.

Evidence of the driver of an automobile and of his wife, as to the speed of the car, based on a shewing of a speedometer, is to be preferred in a prosecution for operating a motor vehicle at an unlawful speed, to mere opinion evidence.

Barker, (1913,) 21 C. C. C. 267.

SECTION 290.

A conviction for a common assault may be sustained under an indictment for shooting at a person with intent to kill, where an accused person, when within shooting distance, pointed a gun at another, the bullet from which struck a horse the latter was riding.

Chartrand, (1912,) 20, C. C. C. 116.

Evidence of the identity of the accused as the person who assaulted the complainant may be given by the latter's identification of the voice of the accused when taken into custody as being the voice of the man who spoke when the assault took place and whom he could not otherwise identify.

Murray, (1916,) 27, C. C. C. 247.

Where the assaults charged separately against two persons took place as part of one and the same occurrence, and the evidence would have been identical in each case, it is not a ground for quashing the summary conviction in either case that the two cases were tried together, particularly where no exception was taken at the trial.

Tally, (1915,) 23, C. C. C. 449.

SECTION 291.

An information charging that the accused "threatened" the complainant with an axe, "contrary to sec. 291 of the Cr. Code", is sufficient to charge the offence of common assault for which that section of the Cr. Code provides.

Tally, (1915,) 23, C. C. C. 449.

SECTION **292.**

If the evidence in support of a charge of unlawful carnal knowledge of a woman without her consent shews that the latter was in such a condition of imbecility that the jury might reasonably find that she was incapable of giving her consent to the act, a verdict of guilty will not be disturbed.
Walebek, (1913,) 21, C. C. C. 131.

An act which otherwise would have no indecent import and would constitute a common assault only, may by reason of the surrounding circumstances and by words spoken at the time, constitute an indecent assault.
Louie Chong, (1914,) 23, C. C. C. 250.

SECTION **295.**

A charge of assault occasioning actual bodily harm under Crim. Code, sec. 295, is one which two justices would have power to try only under the Summary Trials clauses, Pt. XVI of the Criminal Code; and if the information be not amended so as to charge common assault and they proceed to make a summary conviction for common assault only, the payment of the fine and costs by the accused will not bar a civil action for damages for the assault under Crim. Code sec. 734, it not being competent for the justices to treat the case as triable under the Summary Convictions clauses (Pt. XV of the Code) so as to affect the prosecutor's civil rights without his consent.
Curry, (1915,) 24, C. C. C. 438.

Where an information is laid for an assault occasioning actual bodily harm to the complainant (Cr. Code, sec. 295), and on the return of process issued thereon, two justices illegally proceed to try the charge instead of holding a preliminary enquiry (Cr. Code, sec. 668), the complainant who has by such illegality been deprived of the right to have her complaint dealt with according to law, is a "person aggrieved" by an illegal conviction, made by the justices for common assault and is entitled to apply for a certiorari to quash such conviction.
Law, (1915,) 25, C. C. C. 251.

SECTION **296** (b.)

A constable may at the time of an assault with bodily harm committed upon him arrest the person so assaulting him, and he may also arrest him in fresh pursuit while there is danger of the guilty person escaping; no warrant is in such case required, but

he is not justified, after the lapse of several months, in arresting without a warrant in a case in which he is the injured party.
Belyea, (1915,) 24, C. C. C. 395.

An assault on a constable attempting to serve a summons issued by a magistrate on information charging violation of the Canada Temperance Act is an assault on a peace officer in the due execution of his duty and indictable under R. S. C. c. 162, s. 34.
On the trial of an indictment for such assault the wife of the defendant is not a competent witness on his behalf.
McFarlane v. The Queen, 16 S. C. R. 393.

SECTION **298.**

Upon a charge of unlawful carnal knowledge of a woman under Cr. Code 1906, sec. 298, the fact that the woman was not the wife of the accused may be inferred from the difference in the respective surnames appearing upon the evidence at the trial.
Walebek, (1913,) 21 C. C. C. 130.

An assault with intent to commit a felony is an attempt to commit such felony within the meaning of s. 183 of R. S. C. c. 174. On an indictment for rape a conviction for assault with intent to commit rape is valid. On such conviction the prisoner was held properly sentence to imprisonment under R. S. C. c. 162, s. 38.
John v. The Queen, 15 S. C. R. 384.

The prosecutrix, in an indictment for rape, after she had declared she had not previously had connection with a man other than the prisoner, was ask in cross-examination whether she remembered having been in the milkhouse of G. with two persons named M. one after the other. *Held*, that the witness might have objected, or the judge might, in his discretion, have told the witness that she was not bound to answer the question; but the court ought not to have refused to allow the question to be put because counsel for the prosecution objected to the question. *Held*, also, that since the passing of 32 & 33 Vict. c. 20, s. 80, repealing so much of C. S. L. C. c. 77, as would authorize any court in Quebec to order a new trial in a criminal case; and of 32 & 33 Vict. c. 36, repealing C. S. L. C., c. 77, s. 63, the Court of Queen's Bench (Que.), has no power to grant a new trial.
Laliberté v. The Queen, 1, S. C. R. 117.

On a trial for rape, the fact that the injured person made a complaint and the particulars or detail of the complaint, are admissible as evidence in chief for the prosecution to confirm the testimony of the injured person and disprove consent on her part; and among the particulars the name of the person whom she ac-

cused of the offence may be stated. Evidence that civil suits for damages, based on the alleged commission of rape, have been instituted by the tutor of the injured person (a minor) on her behalf, and also by her mother, is properly excluded as irrelevant on the trial for rape, unless it be first proved that the injured person and her mother had stated, or let it be inferred, that the prisoner was innocent of the offence charged, and that they had appeared to be desirous of extorting money from him. In such case the fact that civil actions had been instituted would be corroborative evidence. Evidence of a quarrel or wrangle between the injured person and her mother a week after the alleged offence, and of an assault committed by the daughter upon her mother, was properly excluded.

The Queen v. Riendeau, 9 Q. J. R. K. B. 147.

The word "man" and "woman" in article 266 of the Cr. Code which defines the crime of rape, are to be taken in a general or generic sense as indicating all males and females of the human race, and not in a restricted sense as opposed to boys and girls.

An indictment for rape under articles 266 and 267 of the Cr. Code, lies against one who ravished a female under the age of fourteen years against her will, notwithstanding the provisions of articles 269, which enacts that 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.

Riopel, (1898,) 8, Q. J. R. K. B. 181.

While the injured person should make her complaint as soon as possible after the commission of the offence, yet no specific time being fixed therefore by law, evidence may be admitted of a complaint made to her mother seven days after the offence; but the jury may and should weigh the interval which elapsed before complaint was made, when considering the probability of his truth.

Riendeau, (1900,) 9, Q. J. R. K. B. 147.

SECTION **303.**

Where a count under Code sec. 303 for unlawfully administering noxious drugs to procure a miscarriage are joined with a count manslaughter for the death alleged to have been occasioned thereby, such added count should be withdrawn if the prosecution uses the woman's dying declaration as evidence in the manslaughter charge, and a new trial will be ordered where this was refused and the jury found the accused guilty of unlawfully administering but disagreeing on the manslaughter count.

Inkster, (1915,) 24, C. C. C. 294.

An indictment for conspiracy to procure an abortion is sufficient under secs. 303, 852 of the Criminal Code, 1906, where it alleges that the defendants did, at a place in the Province of Ontario, at a given time, conspire, combine, confederate, and agree together to commit a certain indictable offence, to wit, the crime of abortion, by then and there conspiring, combining, confederating, and agreeing together to procure the miscarriage of a named woman, thereby committing an indictable offence, contrary to the Criminal Code.

Bachrack, (1913,) 21, C. C. C. 257.

A conviction for procuring an abortion (Cr. Code, sec. 303), made against the person performing the illegal operation, may be founded on the testimony of the woman on whom the operation was performed, although her testimony is not corroborated, there being no statutory requirement of corroboration in such case.

Sadick Bey, (1914,) 25, C. C. C. 259.

SECTION **307.**

Section 275 and 276 of the Cr. Code, 1892, respecting the offence of bigamy, are intra vires of the Parliament of Canada. Strong, C. J., *contra.*

In the matter of, The Cr. Code, 27, S. C. R. 461.

A foreign tribunal has no authority, so far as any consequences in England are concerned, to pronounce a decree of divorce à vinculo in the case of an English marriage between English subjects, unless such subjects are, at the time of such decree pronounced, bonâ fide domiciled in the country where that tribunal has jurisdiction, and the suit is prosecuted without collusion.

Shaw v. Gould, L. R. 3, E. & Ir. App. 55.

A copy of a marriage license and of a return shewing the performance of a ceremony thereunder, is admissible in evidence without further proof, under sec. 23 of the Canada Evidence Act, when certified under the seal of a Court of record of a state of the United States.

A conviction of bigamy cannot be sustained where the sole proof of the second marriage is an admission of the accused that he and the woman "went through a form of marriage."

Hutchins, (1913,) 22, C. C. C. 27.

The continuous absence referred to in Cr. Code sec. 307 (3) as an answer or excuse to a bigamy charge is absence from the person, and it is not essential to a defence under that heading that the absence of the spouse should have been either out of Canada or out of the province in which the first marriage took place and

in which both parties were domiciled until their separation ten years before the alleged bigamous marriage.
Penal, (1915,) 25, C. C. C. 161.

By the offences against the Person Act, 1861, s. 57, "Whosoever being married shall marry any other person during the life of the former husband or wife, whether the second marriage shall have taken place in England or Ireland or elsewhere, shall be guilty of felony:—*Held*, that the section extends to a case where the second marriage is celebrated beyond the King's dominions.
Trial or Earl Russell, L. R. (1901,) A. C. 446.

A decree of divorce granted in a foreign country at the suit of the husband will not absolve him in Canada from criminal responsibility under sec. 242 of the Cr. Code (1906), for neglect to provide necessaries for the wife whom he had deserted in Canada, if the husband had not in fact changed his domicile from Canada to the foreign country but had gone there merely for the purpose of living there long enough to enable him to obtain the divorce and of then returning to Canada.
Wood, (1911,) 19, C. C. C. 15.

SECTION **316.**

Where husband and wife have separated and the wife and young child had become domiciled with the accused without objection on the part of the husband, a demand by the latter on the wife's death for the custody of the child, so as to change its domicile, should not be prosecuted by means of a criminal charge under Cr. Code sec. 316, for unlawful detention until the question of the rightful custody under the changed conditions had first been submitted to and decided by the competent civil Court.
Cummings, (1915,) 26, C. C. C. 304.

SECTION **317.**

An order of Court directing a defendant to plead to an information (or other analogous proceeding), for libel, and directing that having pleaded he should be tried without a jury, is not a definitive sentence within the meaning of the Order in Council of 13th May, 1572. Special leave to appeal therefrom refused.—*Quaere*, as to granting special leave to appeal in criminal cases in Jersey, or where there has been no definitive sentence.
Esnouf v. Atty-General for Jersey, L. R. 8, A. C. 304.

Action by an Assistant Master of the Government School at St. Helena, against the Commanding Officer, a member of the Executive Government in that Island, for a libel contained in a

Letter written by the Defendant to the Colonial Secretary of the Island, stating that the Plaintiff was drunk and disorderly at a certain time and place. At the trial the Letter was not given in evidence, or the publication proved, but the Judge told the Jury that they had to find, whether it was a privileged communication or not, and directed them to decide whether or not the Defendant had taken sufficient care to ascertain the truth of the statement made to the Colonial Secretary, and upon this it would be for him to decide whether the Defendant's communication was a privileged one or not. The jury found for the Plaintiff with damages, and the Judge, a few days afterwards, gave judgment concurring with the verdict:—*Held*, that the proceedings were altogether irregular, and judgment arrested, the Judge having taken upon himself the functions of the jury, first, in leaving it to them to determine whether the alleged libel was contained in an official document and a privileged communication; and, secondly, in not having it to them to say whether the Letter, if published, was *bonâ fide;* and if so found, then it was for him to determine whether, under all the circumstances, it was not a privileged communication.

The Defendant did not apply to the Court below for a new trial, but upon special application for leave, the Judicial Committee, after hearing Counsel on both sides, allowed the appeal on the ground of the Judge's misdirection:—*Held*, that it was too late at the hearing to object, that the Appellant ought to have applied to the Court below for a new trial.

Griffith, L. R. 2, P. C. App. 420.

Committal for contempt of court is to be used only with reference to the administration of justice, not for the vindication of the judge as a person. The publication of scandalous matter may amount to contempt of court. There was no duty on the appellant to make himself acquainted with the contents of the paper before parting with it, and he was not guilty of contempt of court.

McLeod, (1899,) 81, L. T. R. 158.

A corporation cannot be held to be incapable of malice so as to be relieved of liability for malicious libel when published by its servant acting in the course of his employment. Although the servant may have had no actual authority, express or implied, to write the libel complained of, containing statements against the plaintiff which he knew to be untrue, if he did so in the course of an employment which is authorized, the corporation is liable.

Brown, L. R. (1904,) A. C. 423.

The privilege which protects a witness from an action of slander

in respect of his evidence in the box also protects him against the consequence of statements made to the client and solicitor in preparing the proof for trial.

Watson v. Jones, L. R. (1905,) A. C. 480.

A verdict for damages having been obtained in an action for libel against the respondents, who carried on the business of a trade protection society, that is, of obtaining information with reference to the commercial standing and position of persons in New South Wales and elsewhere, and in communicating such information confidentially to subscribers to the agency in response to their specific and confidential inquiries, the Full Court of New South Wales ordered a new trial, and the High Court of Australia entered judgment for the respondents:—*Held*, that the orders of both Courts must be reversed. The occasion was privileged if the communication injurious to the plaintiff's character was made in the general interest of society and from sense of duty; not so, if it was made from motives of self-interest by those who for the convenience of a class trade for profit in the characters of other person, and who offer for sale information which, however cautiously and discreetly sought, may have been improperly obtained.

Dun, L. R. (1908,) A. C. 390.

In an action for libel it is no defence to shew that the defendant did not intend to defame the plaintiff, if reasonable people would think the language to be defamatory of the plaintiff. The appellants, owners and publishers of a newspaper, published in an article defamatory statements of a named person believed by the author of the article and the editor of the paper to be a fictitious personage with an unusual name. The name was that of the respondent, who was unknown to the author and the editor.

In an action for libel against the appellants it was admitted that neither the writer nor the editor nor the appellants intended to defame the respondent, but evidence was given by his friends that they thought the article referred to him:—*Held*, that the plaintiff was entitled to maintain the action.

Jones, L. R. (1910,) A. C. 20.

In an action for libel brought by a tradesman in Scotland against the proprietors of a trade journal known as Stubbs' Weekly Gazette, the defenders admitted that in a certain issue of their journal the pursuer's name had erroneously appeared in the weekly list of persons against whom decrees in absence had been obtained in the small debts courts, the fact being that the debt had been paid and the action dismissed. This list was headed by a note explaining that in no case did the publication of the decree imply inability to pay on the part of any one named. The

pursuer averred that the entry falsely and calumniously represented that he was unable to pay his debts, and the Court approved an issue for the trial embodying this innuendo:—*Held*, that the entry, when read in connection with the explanatory note, was incapable of bearing the defamatory meaning ascribed to it, and consequently that there was no question to go to the jury, and the issue ought to have been disallowed.

Stubbs Ltd, v. Russell, L. R. (1913,) A. C. 386.

In an action for libel the judge misdirected the jury in favour of the plaintiff upon a material part of the libel and the jury gave a verdict for large damages. The Court of Appeal thought that the nature of the libel was such that the jury would have been entitled to give, and would probably have given, the same verdict, even if the direction had been the other way, and refused the defendant's application for a new trial on the ground that in their opinion no "substantial wrong or miscarriage" had been occasioned by the misdirection, within the meaning of Order XXXIX, r. 6:—

Held, reversing the decision of the Court of Appeal, that since the assessment of damages is the peculiar province of the jury in an action for libel, and since the jury had not had the defendant's real case submitted to them and might, in assessing the damages, have been influenced by the misdirection, there had been a substantial wrong or miscarriage within Order XXXIX, r. 6 and that there must be a new trial.

Bray v. Ford, L. R. (1896,) A. C. 44.

An indictment which does not set up in the statement of the charge all the essential ingredients, is defective and cannot be sustained. An indictment charging the publication of a defamatory libel, which does not state that the accused intended to injure the reputation of the libelled person and to bring him into public contempt or ridicule or to expose him to public hatred, or to insult him, is bad by reason of the omission of an essential ingredient of the offence; and it cannot be amended and must be set aside and quashed.

Cameron, 7, Q. J. R. K. B. 162.

The appellant acted for some time as agent to an insurance company at his own offices. After some correspondence as to a change of terms upon which the parties could not agree, the company's secretary sent to persons who insured through the appellant a circular stating that the agency of the appellant at his offices had "been closed by the directors". The appellant having brought an action for libel against the company the judge ruled that the statement was capable of a defamatory meaning but that the occasion was privileged. The jury found a verdict for

the plaintiff, that the statement was a libel, that it was untrue, and that the defendants had exceeded the privilege, but did not find actual malice:—*Held*, that the judgment must be for the company, on the grounds that the statement was not capable of a defamatory meaning, that it was true, that the occasion was privileged, that the finding of the jury as to excess of privilege was insufficient, and that there was no evidence of malice for the jury.

Nevill v. Fine Art Co. L. R. (1897,) A. C. 68.

It was held that the Court had power to suspend from practice a member of the English Bar who had been admitted as an advocate of the court; and that the fact that an advocate had written and published, in a periodical of which he was editor. an article which was a libel reflecting on the judges of the High Court in their official capacity, though professing to be a vindication of his own professional conduct, amounted to a contempt of court which was a reasonable cause for suspending him from practice.

Allahabad, (1906,) 95, L. T. R. 894.

The Chief Justice of a colony wrote two letters to a newspaper in which he discussed questions affecting the sanitary condition of the town. An anonymous letter was published commenting in sarcastic language on the letters.

The letter in question not being calculated to obstruct or interfere with the course of justice or the due administration of the law did not amount to a contempt of court: And the editor was not guilty of contempt in refusing to give up the name of the writer of the manuscript.

Moseley, (1893,) 68, L. T. R. n. s., 105.

In an action to recover damages for libel it appeared that the appellants had in their newspaper falsely charged the respondent, a public officer, with specific acts of misconduct in the execution of the duties of his office, had vouched the truth of those charges, and on the assumption of their truth, commented on his proceedings in highly offensive and injurious language.—*Held*, that they were liable. The privilege which covers fair and accurate reports of proceedings in parliament and in courts of justice does not extend to fair and accurate reports of statements made to the editors of newspapers.

Davis v. Shepstone, L. R. 11, A. C. 187.

Leave to file a criminal information for libel can only be granted by the Full Court in Nova Scotia, *i. e.*, the provincial Supreme Court, sitting *en banc;* a single Judge, although presiding a Court

for the disposal of criminal business in a county, has no jurisdiction to grant the leave.

Burgess, (1915,) 23, C. C. C. 424.

1. Le journaliste, poursuivi en diffamation à raison d'articles ou d'écrits qu'il a publiés, ne peut faire valoir, pour dégager sa responsabilité, l'immunité relative dont jouit la presse sous le droit anglais (*defence of justification and fair comment*), qu'en établissant la vérité des faits imputés, la bonne foi et la loyauté de ses commentaires et l'opportunité de la publication, dans l'intérêt public.

2. Les tribunaux d'appel ne doivent réduire le montant d'une condamnation pour dommages résultant d'un quasi-délit que s'il est excessif au point de répugner à l'intelligence d'une personne raisonnable.

LAVERGNE, J., *dissentiente* quant aux faits.—CROSS, J., *dissentiente* quant au montant de la condamnation qu'il serait d'avis de réduire à $100.

L'Evènement & Létourneau, 22, R. J. Q. B. R. 152.

L'immunité relative (*qualified privilege*) en matière de responsabilité pour diffamation accordée à celui qui, par des motifs d'intérêt public, publie un commentaire sur des faits est sujette à la condition rigoureuse que ces faits soient vrais. Il ne suffit pas que l'écrivain soit de bonne foi, ou même qu'il ait de bonnes raisons de croire à la vérité de ce qu'il écrit. Par suite, l'adresse au jury dans laquelle le juge déclare qu'il ne s'agit pas dans la cause de la vérité des faits imputés, mais de savoir si le défendeur était de bonne foi et avait de justes motifs de croire ce qu'il a écrit, est erronée et si le demandeur y a formé objection, le verdict négatif du jury doit de ce chef être cassé, et un nouveau procès doit être ordonné.

La Cie de Pulpe de Chicoutimi & Price, 22 R. J. Q. B. R. 393.

In an action of libel the defamatory words set out in the declaration must be proved as laid, and it is a fatal variance if the words as alleged are materially qualified by evidence of words not contained in the declaration, although such words as qualified are still libellous.

Rainy v. Bravo, L. R. 4, P. C. A. 287.

H. & Sons were in the habit of receiving, in payment from their customers, cheques on various branches of a bank, which the bank cashed for the convenience of H. & Sons at a particular branch. Having had a squabble with the manager of that branch H. & Sons sent a printed circular to a large number of their customers (who knew nothing of the squabble)—"H. & Sons hereby give

notice that they will not receive in payment cheques drawn on any of the branches of the bank." The circular became known to other persons: there was a run on the bank and loss inflicted. The bank having brought an action against H. & Sons for libel, with an innuendo that the circular imputed insolvency:—*Held*, affirming the decision of the Court of Appeal (Lord Penzance dissenting) that in their natural meaning the words were not libellous: that the inference suggested by the innuendo was not the inference with reasonable persons would draw; that the onus lay on the bank to shew that the circular had a libellous tendency; that the evidence, consisting of the circumstances attending the publication, failed to show it; that there was no case to go to the jury; and that the defendants were entitled to judgment.

Capital and Counties Bank v. Henty, L. R. 7, A. C. 741.

SECTION **320.**

To support a charge of contempt of Court against a newspaper editor for published comment about a pending case, the comment must be such as to manifest that the object is to taint the source of justice and to obtain a result of legal proceedings different from that which would follow in the ordinary course.

The disciplinary power of the Court to punish for contempt the publisher of a newspaper making improper comment on a pending case is to be sparingly and carefully exercised, and it must be shewn that it was probable that the publication would substantially interefere with a fair trial.

Walters, (1915,) Boyd, C., 24, C. C. C. 364.

Leave to appeal given from an Order of the Supreme Court of Civil Justice of British Guiana, committing the publisher of a local journal to prison for six months for an alleged contempt of Court, in publishing in such journal comments on the administration of Justice by that Court, with liberty to the Judges of the Supreme Court to object to the competency of such appeal at the hearing.

McDermott, L. R. 1. P. C. App. 260.

For a newspaper to falsely publish pending the prosecution of a criminal charge that the Crown prosecutor had proceeded with the preliminary enquiry without the authority of the Attorney-General and that he was engaged in prosecution and seeking notoriety in the matter, is contempt of Court punishable summarily on a motion to the Superior Court of criminal jurisdiction by committal or fine, as tending to impair the administration of justice; the article could not be considered as one directed to a criticism

of the Attorney-General's Department as a branch of the public service so as to be exempt on that score.
Whiteside, (1915,) 25, C. C. C. 49.

Where a letter published in a colonial newspaper contained criticisms on the conduct of the Chief Justice of the colony of such a nature that it might have been made the subject of proceedings for libel, but was not in the circumstances calculated to obstruct or interfere with the course of justice or the due administration of the law:—*Held*, that the same did not constitute a contempt of court.—It appearing that the editor had, on notice from the Court, refused to discover the name of the writer, and had thereupon been sentence to fine and imprisonment during pleasure for the publication, and to fine or imprisonment for the refusal, but had been released by order of the Governor:—*Held*, (1), that the Chief Justice had no legal authority to require either the name of the writer or the manuscript of the letter; (2). That the Governor had, under his commisssion, power in the circumstances to remit the sentence.—There may not be imported into a case of this kind any matter which was not in evidence against the defendant nor will their Lordships permit any such matter to be laid before them.
In the Matter of a Special reference from the Bahama Islands, L. R. (1893,) A. C. 138.

An order was made at the instance of the petitioner in a nullity suit, which was practically undefended, for the hearing of the cause in camera. After a decree nisi had been pronounced the petitioner, through her soliciter, obtained a transcript of the official shorthand writer's notes of the proceedings at the hearing of the cause and sent copies of this transcript to certain persons in defence of her reputation. Upon a motion by the respondent to commit for contempt of Court the petitioner and her solicitor for publishing copies of this transcript in contravention of the order directing that the cause should be heard in camera, Bargrave Deane, J., held that the petitioner and her solicitor were guilty of a contempt of Court and ordered them to pay the costs of the motion, and an appeal from this order was dismissed as incompetent:—*Held*, (1), that the order to hear in camera was made without jurisdiction; (2), that the order, assuming that there was jurisdiction to make it, did not prevent the subsequent publication of the proceedings; (3), that the order to pay costs was not a judgment in a criminal cause or matter within s. 47 of the Judicature Act, 1873, so that no appeal would lie from it.
Scott, L. R. (1913), A. C. 417.

Contempt of Court may be committed by publication of scandalous matter respecting the Court after adjudication as well

as pending a case before it. In England committals for such contempts have become obsolete; in small colonies consisting principally of coloured populations they may still be necessary in proper cases:—But *held*, that where the appellant was neither printer nor publisher nor writer of such scandalous matter, but had innocently lent the paper containing it to a friend without knowledge of its contents, he was neither constructively nor necessarily guilty of contempt of Court, and that the judge who committed him must pay the costs of appeal to Her Majesty in Council.

McLeod v. St. Aubyn, L. R. (1899,) A. C. 549.

By Lord Halsbury, L. C.:—If the report of a judge's judgment or summing-up to a jury did not in fact give reasonable opportunities to the reader to form his own judgment as to what conclusion should be drawn from the evidence given, the publication of such partial, and in that respect inaccurate, representations of the evidence might be the subject of an action for libel to which the supposed privilege in what was said by a judge would be no answer. There is no presumption one way or the other as to whether a judge's judgment does or does not give such a complete and substantially accurate account of the matters upon which he is adjudicating as to bring it within the privilege. If it be so, it must be proved to be so by evidence, and certainly not inferred as a presumption of law.

Macdougall v. Knight, L. R. 14, A. C. 194.

SECTION **322.**

The Nova Scotia House of Assembly has statutory power to adjudicate that wilful disobedience to its order to attend in reference to a libel reflecting on its members is a breach of privilege and contempt, and to punish that breach by imprisonment.

Fielding v. Thomas, L. R. (1896,) A. C. 600.

SECTION **329.**

Lorsqu'un acte d'accusation pour libelle diffamatoire composé de paroles inoffensives en elles-mêmes, mais comportant, par ironie, une imputation déshonorante, contient, outre l'énoncé des paroles incriminées, une allégation du sens dans lequel elles ont dû être comprises, la Couronne peut administrer la preuve des circonstances extrinsèques qui font attacher ce sens aux paroles. Il n'est pas nécessaire que ces circonstances soient énumérées à l'acte d'accusation et l'accusé est assez protégé contre une surprise, par le droit qu'il a de demander les particularités de l'accusation. Faute de le faire, il ne sera pas admis à s'opposer à la preuve ci-haut mentionnée et il n'y aura pas lieu de réserver, à l'opinion de la Cour d'Appel, la question de sa légalité.

Lorsque l'accusé, en matière de libelle diffamatoire dans un journal, a recours à la défense de l'art. 297 C. Cr., que la publication du libelle a été faite hors sa connaissance, la Couronne est admise à prouver la publication antérieure d'autres libelles du même genre, par le même rédacteur, afin de fixer la responsabilité de l'accusé résultant, aux termes de l'article précité, de sa persistance à maintenir ce rédacteur dans la conduite du journal.
Le Roi vs Molleur, 14, R. J. Q. B. R., 556.

SECTION **335.**

A deed of conveyance executed by a married man, who procured a woman with whom he cohabited as his common law wife to join therein as his wife, in fraud of the dower rights of his lawful wife, is a "false document" and "forgery" within the meaning of secs. 335 (j) and 466 of the Criminal Code.
Ford and Frary, (1916,) 26, C. C. C. 430.

A voting ticket given by a trader to each purchaser of goods to enable the latter to become a contestant for prizes to be distributed in a voting contest or to aid another contestant by voting for him or by transferring the ticket to him, is a "trading stamp" within Cr. Code secs. 335 (u) and 505.
Pollock, (1916,) 26, C. C. C. 24.

SECTION **347.**

It is a question to be passed upon by the jury upon a charge of theft in repossessing a sewing machine under a hire purchase contract in default of payment, whether the accused, acting under the instructions of the conditional vendor, took possession under colour of right and in the honest belief that the contract so authorized, where he re-possessed the machine in the absence of the conditional vendee, and without a demand for its return in terms of the contract, although the contract stipulated for entry and re-possession without resort to legal process in case of default of payment, and of failure to deliver back the machine upon demand; and it is a substantial wrong entitling the accused to a reversal of the conviction or a new trial—Cr. Code, 1019—, if the trial Judge in such case practically withdrew that question from the jury by an instruction that if no demand had been made for the machine itself, as distinguished from the arrears of the hire-purchase price, the prisoner ought to be found guilty.
Comeau, 1914), 25, C. C. C. 165.

The prisoner was charged before the County Court Judges' Criminal Court with unlawfully stealing goods, but the charge did not allege that the offence was committed fraudulently and with-

out colour of right:—*Held*, affirming the decision appealed from, that the offence of which the prisoner was accused was sufficiently stated in the charge.

George v. The King, 35, S. C. R. 376.

A payment made by a passenger to a railway conductor for his own use of a much lower sum than the regular fare by way of bribe for not collecting the fare which it was the conductor's duty to collect for the railway company is not money received "on terms requiring him to account" for or pay the same to the company, and will not support a charge of theft in respect of his wilful failure to turn in the amount with his returns of money and tickets to the company; but, *semble*, there was an offence by both giver and receiver under the Secret Commission Act, 8 and 9 Edw. VII, (Can.), ch. 33.

Thompson, (1911), 21, C. C. C. 80.

A sheriff who has seized under a writ of execution for debt a number of hogs in possession of the execution debtor and who at the latter's request takes a bond from the debtor and his surety for the purpose of continuing the seizure without the expense of leaving a man in possession has a special property or interest in the hogs sufficient to make the selling of the same by the accused while under such bond a theft thereof under Cr. Code, secs. 347 and 386; the seizure was valid as against those who had notice of it and the accused could not justify by setting up the alleged title of another and the latter's authorization to sell on his behalf.

Hryczink, 1915), 24, C. C. C. 283.

On a charge of theft proof of ownership in someone other than the accused is essential because it is only by indicating the owner that it can be established that the taking or conversion (Cr. Code sec. 347) was against the will of the owner.

Hamilton, (1916), 26, C. C. C. 270.

Although a conviction has improperly been made against the same defendant for both stealing and receiving, and had a case been reserved the Court of Appeal would have quashed the conviction on the count for receiving and supported the conviction on the count for theft, yet it need not grant leave to appeal and direct a case to be stated, if no additional punishment was imposed by reason of the conviction for receiving.

A conviction under s. 85 of the Larceny Act for unlawfully obtaining property, is good, though the prisoner, according to the evidence, might have been convicted of a criminal breach of trust under s. 65.

McIntosh v. The Queen, 23, S. C. R. 180.

On a charge of theft the presumption arising from recent possession of the stolen goods may be applied against the accused in conjunction with direct evidence.

McClain, (1915), 23, C. C. C. 488.

On a charge of theft the prosecution must not only give satisfactory proof of the *corpus delicti* by shewing that the offence charged had been committed by someone, but must prove that the accused was the person who committed the offence; the *animus furandi* is not established unless it be proved that the taking or conversion was against the consent of someone having ownership whether absolute or special, and even where the owner may be unknown there must be some evidence from which he can be individualized by description and an inference drawn that there was no consent on his part. (Per Beck, J.).

Carswell, (1916), 26, C. C. C. 288.

S. was indicted, tried and convicted for stealing a note for the payment and value of $258.33, the property of A. McC. and another. The evidence shewed that the note was drawn by A. McC, and C. R., and made payable to S.'s order and was given by mistake to S., it being supposed that $258.33 was due to him, instead of $175.00. The mistake being immediately discovered S. returned the note to the drawers, unstamped and unindorsed, in exchange for another note of $175.00, but S. afterwards, on the same day stole the note, caused it to be stamped, indorsed it, and tried to collect it. *Held*, reversing the judgment of the Court of Queen's Bench for Lower Canada (appeal side), that S. was not guilty of larceny of "a note" or of "a valuable security" within the meaning of the statute, and that the offence of which he was guilty was not correctly described in the indictment.

Scott v. The Queen, 2, S. C. R. 349.

If a person gets another to give him money to which he has no right or claim, knowing the giver to be an imbecile and that consequently the latter could have no will to give the money to him, he is properly convicted of theft. (Per Harvey, C. J., and Simmons, J., in a divided Court.)

Wallace, (1915), 24, C. C. C. 95.

The same person cannot be convicted both of the theft and of receiving unless he had parted with the stolen article, as by selling it, and had afterwards received it.

Although a conviction has improperly been made against the same defendant for both stealing and receiving, and had a case been reserved the Court of Appeal would have quashed the conviction on the count for receiving and supported the conviction on the count for theft, yet it need not grant leave to appeal and

direct a case to be stated, if no additional punishment was imposed by reason of the conviction for receiving.
Carmichael, (1915), 26 C. C. C. 443.

A fraudulent appropriation by a principal and a fraudulent receiving by an accessory may take place at the same time and by the same act.
McIntosh v. The Queen, 23, S. C. R. 180.

A conviction for theft of an entire sum, although it may have been taken in numerous small amounts at different times during the deficiency period, may be supported without proving the taking of each or any of such several amounts and the case treated as one continuous act of the theft although there were a number of distinct takings, if a deficiency had occurred equal to the amount by which the accused had falsified an entry in his employer's books at or about the date at which he is charged with having embezzled the sum, if the evidence adduced also warrants the inference that the money stolen had reached his hands and had been misappropriated by him.
Minchin, (1914), 23, C. C. C. 414.

Any person who, however innocently, obtains possession of the goods of a person who has been fraudulently deprived of them, and disposes of them, whether for his own benefit or that of any other person, is guilty of a conversion. Where therefore, B. had fraudulently obtained cotton from F., and H. (whose ordinary business was that of a cotton broker, and who was utterly ignorant of the fraud of B.) purchased it from B. in the belief and expectation that M., one of his ordinary clients, would accept it, and M. did afterwards accept it, though H. only received from M. a broker's commission and not a trade profit on the sale.
Hollins v. Fowler, L. R. 7. E. & Ir. App. 757.

Upon a charge of theft it is not competent for the prosecution to adduce evidence tending to shew that the accused had been guilty of a theft subsequent to that for which he is being tried, and not connected with it, where no evidence as to character has been offered by the prisoner. The introduction of such evidence, even though not objected to by counsel for the accused, will invalidate the conviction, if it may have operated prejudicially to the accused, and this notwithstanding that prisoner's counsel re- examined the witness as to the alleged subsequent offence.
Doyle, (1916), 26, C. C. C. 197.

SECTION **352.**

Where the terms of an agricultural tenancy are such that the landlord is to receive an aliquot part of the crop as his rent, *ex.*

gr., a one-third share to be taken to a grain elevator by the tenant and stored on account of the landlord and in the landlord's name as owner thereof, the landlord does not become the owner of any specific portion of the crop until it is divided, notwithstanding the provision in Manitoba statutes 1915, ch. 13, sec. 2, giving the landlord in such case certain preferential civil rights in regard thereto. The tenant who sells the entire crop in fraud of his landlord is not subject to indictment on a charge of stealing the number of bushels of wheat which would have constituted the landlord's share had a division actually been made; but, *quaere*, whether Cr. Code sec. 352 would not apply to the statutory right declared by the Manitoba statute upon an indictment for theft of the undivided one-third share.

Hassall, (1916,) 27, C. C. C. 322.

SECTION **355**

The offence of fraudulent conversion of the proceeds of a valuable security, mentioned in Art. 308, does not consist in one act, but in a continuity of acts—the reception of the valuable security, the collection of the proceeds, the conversion of the proceeds, and lastly, the failure to account for the proceeds; and where the beginning of the operation is in one district and the continuation and completion are in another district, the accused may be arrested and proceed against in either district. So, a committal and conviction in the district of Iberville, on the charge of fraudulent conversion of the proceeds of a promissory note which was received by the prisoner in that district, but collected by him in the district of Bedford, was held good.

Reg. v. Hogle, 5, Q. J. R. K. B. 59.

Where a principal entrusts an agent with securities and instructs him to raise a certain sum upon them, and the agent borrows a larger sum upon the securities and fraudulently appropriates the difference (the lender acting *bonâ fide* and in ignorance of the limitation), the principal cannot redeem the securities without paying the lender all he has lent, although the agent has obtained the loan by fraud and forgery, and although the lender did not know that the agent had authority to borrow at all, and made no inquiry.

Brocklesby v. Temp. Building Soc. L. R. (1895) A. C. 173.

The defendant, a market clerk in the employment of the City of Montreal, had collected divers sums from persons exchanging market stalls, by representing that these sums were due and payable to the city on the exchange of their stalls for others. No such sums were payable to the city, and none were paid over to the

city, by the defendant. On conviction of the defendant for theft from the city of Montreal.

The conviction could not be sustained. To constitute the offence of stealing, whether under article 305, or article 319*a*, or article 319*c*, of the Criminal code, there must be a right existing at the time of the taking, either to the ownership or to the possession of the property taken, which right the City of Montreal did not possess in the present case.

Tessier, (1909,) 10, Q. J. R. K. B. 45.

SECTION **356.**

A power of attorney gave to the holders authority "for the purposes aforesaid to sign for me and in my name and on my behalf any and every contract or agreement, acceptance or other documents," the purposes aforesaid being "from time to time to negotiate, make sale, dispose of, assign, and transfer" Government promissory notes, and "to contract for, purchase, and accept the transfer" of the same:—*Held*, that upon the true construction of this power the holders were authorized to sell or purchase such notes, but not to pledge them.

Jonmenjoy Coondoo v. Watson, L. R. 9 A. C. 561.

The defendant was indicted for theft. The indictment set out that being intrusted by E. R. H., with a power of attorney, he did fraudulently sell certain bank shares belonging to said E. R. H., and did fraudulently convert the proceeds of the sale to a purpose other than that for which he was intrusted with the power of attorney. After the conviction, the defendant moved in arrest of judgment because it was not stated in the indictment that the power of attorney was for the sale, etc., of any property, real or personal, as provided by article 309, Criminal code. The judge presiding at trial reserved the question for the decision of the Court of Appeal.

The indictment was sufficient, it not being necessary to describe the whole power of attorney; and, further, the alleged omission was only a partial omission, and any defect resulting therefrom was cured by verdict.

The fraudulent sale and the fraudulent conversion did not constitute two offences, but one specific offence, viz. that of theft. Cr. c. 309, 611, 733.

The Queen v. Fulton, 10, Q. J. R. K. B. 1.

SECTION **357.**

The appellant, a director of a banking company, opened a "trust account" irregularly, and without the consent of the board, and had from time to time considerable overdrafts on the account.

The bank stopped payment, and at that time a large sum was due from the appellant on such overdrafts, but he was solvent at the time such overdrafts were made.

It was held under the circumstances there was no evidence of fraudulent misappropriation of the funds of the bank.

Nelson v. The King, (1902), 86, L. T. R. 164.

Cr. Code sec. 357 declaring the offence of theft by misappropriating proceeds held "under direction" has reference to cases other than those for theft or embezzlement by a clerk or servant.

McDonald, (1915), 25, C. C. C. 106.

SECTION **359.**

Where, in answer to questions to a Crown witness by counsel for the accused on the trial of a charge of theft, the witness divulges facts tending to prove another theft of about the same time from the same employer, and no objection is taken to the admission of that part of the testimony, the admission of the same will not constitute a ground for appeal against the verdict against the accused, and, semble, the evidence was admissible, as in answer to the plan of defence which was to throw the crime upon a fellow employee.

Rivet, (1915), 25, C. C. C. 235.

Where a cheque is drawn by a real drawer who designates an existing person as the payee and intends him to receive the proceeds, the payee is not "a fictitious person" within the Bills of Exchange Act, 1882, s. 7, sub-s. 3. The drawer of a cheque induced by the fraud of W. drew the cheque to the order of K., an existing person, and intended him to be the payee. W. forged K's indorsement, and paid the cheque into his own account at his bankers', who received the amount of the cheque from the drawer's bank:—*Held*, that the drawer could recover the amount of the cheque from W.'s bankers.

Irvine, L. R. (1908), A. C. 137.

Conviction of fraudulently appropriating the moneys of a bank set aside, it appearing that there was no evidence of the convict director, who had overdrawn on a so-called trust account irregularly opened in his name, having misappropriated any one draft to his own use in fraud (within the meaning of the Act) of the bank's right to have the money.

Nelson v. The King, L. R. (1902), A. C. 250.

SECTION **364.**

Aux termes de l'Acte 52 Vict.(Can.), ch. 20, sect. 2, une lettre

remise à un facteur, dans le bureau de poste même, sera censée être une lettre, "confiée à la poste" (post letter) et que celui qui aura volé une telle lettre pourra être mis en accusation en vertu de l'article 326 (*e*) du code criminel.

Le Roi v. Trépanier, 10, R. J. Q. B. R. 222.

SECTION **369.**

To rescue cattle from the custody of a poundkeeper while he is taking the cattle to the pound is a criminal offence in Manioba by virtue of the Imperial statute 6 & 7 Vict. ch. 30 there in force (Cr. Code of Canada 1906, sec 12), and the provisions of that statute supersede the provisions of any municipal by-law purporting to impose penalties for the like offence.

Laughton, (1912), 20, C. C. C. 30.

SECTION **373.**

The stealing of trees of the value of $25, being declared an indictable offence by section 336 Cr. C., and the stealing the whole or any part of any tree, etc., of the value of $0.25 at least being declared an offence punishable on summary conviction only, by section 337, it follows by necessary implication, from the combination of the two section, that the stealing of trees, of the value of $14, is an offence punishable on summary conviction only, and is not an indictable offence cognizable by the Court of King's Bench.

Beauvais, (1904), 14, Q. J. R. K. B. 498.

SECTION **374.**

Where it is sought to make a summary conviction under Cr. Code sec. 374 for stealing growing trees or shrubs of less value than $25, the value should appear in the information, it being essential to the jurisdiction of the Justice that the amount of the damage be at least twenty-five cents; the inclusion, as part of the penalty, of the sum of one dollar for the damage or injury done does not establish the Justice's jurisdiction to make a conviction where no value was proved before him; nor could the conviction be supported as for the indictable offence of theft under $10 triable under Cr. Code sec. 773 by a magistrate having summary trials jurisdiction under sec. 771, as there was no proof that the value of the property stolen did not exceed $10 nor did the record shew that the accused, who had pleaded "not guilty," was put to his election of mode of trial under Cr. Code sec. 778, as would be necessary for the indictable offence of theft of the wood after cutting the trees into firewood.

Legere, (1915), 24, C. C. C. 377.

SECTION 394.

Neither malice or want of reasonable and probable cause are necessary inferences against the informant in a criminal charge for theft of timber, because of such informant having first instituted civil proceedings against the trespasser with the sole purpose of recovering the price and before being advised by his solicitor that the facts justified a prosecution for theft, if the informant later instituted criminal proceedings in pursuance of his solicitor's advice and the charge was dismissed.

McGuire, (1915), 25, C. C. C. 139.

SECTION 396.

The Seychelles Penal Code provides: "Embezzlement, s. 216 (1): whoever embezzles, squanders away, or destroys, or attempts to embezzle, squander away, or destroy, to the prejudice of the owner, possessor, or holder thereof, any goods, money, valuable security, bill, acquittance, or other document containing or creating an obligation or discharge which has been delivered to such person merely in pursuance of any lease or hiring, deposit, agency, pledge, loan (prêt à usage) or for any work, with or without a promise of remuneration, with the condition that the same be returned or produced or be used or employed for a specific purpose, shall be punished with imprisonment, and a fine not exceeding three thousand rupees (Rs. 3000)." The appellant was convicted of an offence under the above section. *Held*:—(1), that the offence defined by the above section is not limited to cases in which the accused is under a legal duty to return the specific goods, money, or document delivered to him; to constitute the offence, however, there must have been a wilful appropriation, squandering, or destruction of the property of another. (2), that the conviction of the appellant and the sentence upon him should be set aside upon the ground that the facts did not on any just or legal view warrant a conviction, and that justice had gravely and injuriously miscarried.

Lanier, L. R. (1914), A. C. 221.

SECTION 399.

In appeal, affirming the judgment of Wurtele, J.:—1. A conviction for feloniously receiving a sum of money, knowing it to have been fraudulently misappropriated, is good, though the person from whom the prisoner received the money had, as executor, a legal right to its custody, where at the time when the fraudulent appropriator got the money he intended to misappropriate it, and the prisoner was aware of the misappropriation when he received it.

2. A conviction for unlawfully receiving such money is good, notwithstanding the fact that the prisoner was part owner of the money for an undivided and indefinite share, it being the undivided property of heirs of whom he was one as representing his wife.

3. A conviction under sect. 85 of the Larceny Act, R. S. C. ch. 164, for unlawfully appropriating money so as to deprive of the advantage, etc., thereof, is good, although the accused might, upon the evidence, have been convicted of a fraudulent conversion as trustee, under sect. 65 of the same Act,—the object of s. 85 being not so much to enact that a particular offence not previously recognized as such, should be punishable, as to facilitate prosecutions for fraud by doing away with the necessity of proving the exact character of the accused's possession and the exact time and manner of the fraudulent conversion.

R. v. McIntosh, 3, Q. J. R. K. B. 287.

It is not essential to the offence of retaining stolen goods in possession that the goods should have been found in the possession of the accused; unlawful possession and knowledge of the theft may be shewn from the secret meetings between the defendant and the gang of young boys who stole these and similar goods and sold them to him from time to time.

Medres, (1916), 26, C. C. C. 241.

SECTION **400.**

Criminal Code sec. 400 originated with the Post Office Act while the preceding sec. 399, originated in the Larceny Act, and in reconciling the language of these two sections which in their ordinary meaning might seem to apply different punishments for the same offence, the words "hereby declared to be an indictable offence" contained in sec. 400, must be limited at least to stolen property as to which the offence has been declared to be theft by some specific reference in the Code apart from the general declaration of sec. 399, if indeed it may not be further limited to such chattels, parcels or other things, the stealing whereof was specially punishable under the Post Office Act.

Nimchonok, (1915), 25, C. C. C. 66.

SECTION **404.**

A person may be convicted of obtaining the return to himself of his own promissory notes from the payee if such return is obtained under false pretences, and it is not a ground of defence that the notes were overdue when so obtained.

Abeles, (1915), 24, C. C. C. 308.

Where goods are obtained on the faith of the buyer's cheque given in payment therefor, a charge of false pretence of an existing or present fact, as distinguished from a future event, is sustainable, although there may have been funds in the bank to the credit of the drawer at the precise time of delivery of the cheque or of the receipt of the goods, if it be shewn that the drawer issued other cheques at about the same time, the payment of which had been planned to so reduce the fund that the cheque in question would be dishonoured and that the drawer had no credit arrangements with the bank for an overdraft.

A charge of obtaining goods by false pretences through the giving in payment by his agent of a worthless cheque against the principal's account will lie against the principal if it be shewn that the latter deliberately planned that the cheque should not be paid for lack of funds at his credit in the bank and had re-sold the goods and applied the proceeds to his own use, and this whether or not the agent was aware of the fraud.

Garten, (1913), 22, C. C. C. 21.

The offence of making a false representation for the purpose of obtaining a certificate of competency as master of a passenger steamer under the Canada Shipping Act, R. S. C. 1906, ch. 113, is negatived if it appears that there was no guilty knowledge or intent on the part of the accused and that the only error in his application papers was that believing that service as second mate counted in like manner as would service as first mate, he represented that he had served as mate "on a certain boat for a year whereas a part of the time had been served as second mate and the remainder as mate (*i. e.*, first mate), particularly where the examining officer when called as a witness testified that he would have passed the applicant's papers had the actual facts been shewn.

Wright, (1912), 20, C. C. C. 23.

A director of a limited company knew that a prospectus issued by the directors did not disclose a contract and a resolution of the board of directors which were in fact material but which he was advised were not, and which he honestly believed not to be material. A shareholder who had subscribed for shares in the company having brought an action against the director for misrepresentation:—*Held*, that though the director was not in fact fraudulent, he must be "deemed to be fraudulent" within s. 38 of the Companies Act, 1867, and that proof that the plaintiff took shares upon the faith of the prospectus would make the director liable both under the Act of 1867 and the Directors Liability Act, 1890, s. 3, sub-s. 1.

Broome, L. R. (1904,) A. C. 342.

In an action of deceit the plaintiff must prove that the untrue

statement made by the defendant was made with a fraudulent intent. Where the verdict completely absolved the defendant from the fraud attributed to him, that is, making an untrue statement to a broker in order to depress for his own advantage shares in a company of which he was a director:—*Held*: that the Court below was right in refusing a new trial on the ground of misdirection, as it appeared that the trial judge had properly instructed the jury on the material issue of fraudulent intent.

Tackey, L. R. (1912), A. C. 166.

Per Viscount Haldane L. C.: Derry v. Peek (1889), 14 App. Cas. 337, which establish that proof of a fraudulent intention is necessary to sustain an action of deceit whether the claim is dealt with by a Court of Law or by a Court of Equity in the exercise of its concurrent jurisdiction, does not narrow the scope of the remedy in actions within the exclusive jurisdiction of a Court of Equity, which though classed under the head of fraud, do not necessarily involve the existence of a fraudulent intention, as, for example, an action for indemnity for loss arising from a misrepresentation made in breach of a special duty imposed by the Court by reason of the relationship of the parties.

Held, (1), that in the circumstances the Court of Appeal was not justified in reversing the finding of fact of the judge of first instance; but (2), that the plaintiff was not precluded by the form of his pleading from claiming relief on the footing of breach of duty arising from fiduciary relationship and that he was entitled to relief on that footing.

Decision of the Court of Appeal affirmed on different grounds.

Nocton, L. R. (1914), A. C. 932.

To prove that the board of a Bank has acted on the faith of the false representation made, it is not necessary to examine one or more of the directors, if the fact can be proved by other competent witnesses. Evidence is admissible of facts which are subsequent to the false representation, to prove the insolvency of the defendants a very short time after the false representation had been made, as an evidence of their knowledge of its falsity when they made it.

Boyd, 5 Q. J. R. K. B. 1.

Fraud is proved when it is shewn that a false representation has been knowingly, or without belief in its truth, or recklessly, without caring whether it be true or false. A false statement, made through carelessness and without reasonable ground for believing it to be true, may be evidence of fraud but does not necessarily amount to fraud.

Derby v. Peek, L. R. 14, A. C. 337.

The owner of goods, induced by fraud, parted with them under a voluntary contract of sale which vested the property in the fraudulent purchasers. The goods were then sold in market overt to a purchaser without notice of the fraud. The fraudulent purchasers were afterwards, upon the prosecution of the original owner, convicted of obtainig the goods by false pretences. The judge before whom the prisoners were tried refused to make an order of restitution.—*Held*, affirming the decision of the Court of Appeal, that under 24 & 25 Vict. c. 96, s. 100, the property in the goods revested in the original owner upon conviction, and that he was entitled to recover them from the innocent purchaser.

Bentley v. Vilmont, L. R. 12, A. C. 471.

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 show 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.

The King v. Komiensky, 12, Q. J. R. K. B. 463.

Where an employee makes representations to his employer to the effect that a tender for the supply of goods to the latter is an actual *bonâ fide* one from an independent tenderer, whereas it was in fact, although unknown to the employer, the employee's own tender, submitted in a different trade name through such employee's nominee, the employee may properly be convicted of obtaining by false pretences the additional money which, by means of such tender and his employer's reliance on the same as independently made, he obtained for the goods supplied over and above the amount for which the employer would have obtained them by acceptance of a competitive tender which the employee fraudulently caused to be rejected.

Leverton, (1917), 28, C. C. C. 61.

False pretences may be founded on the false idea conveyed fraudulently by the accused; it is not requisite that the false pretence should be made in express words.

Holderman, (1914), 23, C. C. C. 369.

Where payment is obtained from a debtor by one who falsely represents that he is agent of the creditor, upon whom a fraud

is thereby committed, if the creditor ratifies and confirms the payment he adopts the agency of the person receiving the money and makes the payment equivalent to one to an authorized agent.—The payment may be ratified and the agency adopted, even though the person receiving the money has, by his false representations, committed an indictable offence.

Scott v. Bank of New-Brunswick, 23, S. C. R. 277.

By an Order of the High Court of Judicature in Bengal an Attorney and Proctor of that Court was struck off the Rolls for inserting in a Deed of Conveyance a false recital as to the consideration money, knowing the same to be false, and for attesting the execution of the Deed, and signing his name as a witness to the receipt of the consideration money, knowing that no such consideration had passed, or was intented to pass. Such Order, on appeal, discharged, the Judicial Committee being of opinion, that although the preparation of such Deed, and the knowledge of such facts, would be circumstances of great weight against an Attorney cognizant of them in the event of such a Deed, upon or soon after its execution, being used as an instrument of fraud, yet, as the circumstances of its preparation were capable of being explained, and no fraudulent use of the instrument had been made or attempted, no fraudulent motive alleged, and no injury directly or indirectly occasioned by it, the mis-statement upon the face of such a deed could not be considered sufficient in itself to warrant the striking an Attorney off the Rolls of the Court.

Stewart, L. R. 3, P. C. App. 88.

SECTION **405**.

A charge that the accused through false pretences induced the complainant to subscribe for shares and thereby obtained a promissory note and cash in payment therefor is within Code sec. 405 as charging that the security was obtained through the pretence of a contract fraudulent in fact.

Daigle, (1914), 23, C. C. C. 92.

SECTION **405**A.

The "prospectus, statement or account," the fraudulent issue of which by a director is made indictable under Cr. Code sec. 414, where done, *inter alia*, with intent to induce any person to advance any money to the company, does not include a statement made to a bank of his private affairs by a director offered by the company as its surety on obtaining a line of credit for the company, where the statement did not concern the financial standing or affairs of the company itself; but if the defendant obtained a credit for himself on his guaranty, although the money was actual-

ly paid to the company and he benefited by it, a charge may be laid under Cr. Code sec. 405A, for obtaining such credit under false pretences, and, *semble*, that since the enactment of Code sec. 407A (Code Amendment of 1913), it is an indictable offence for a person knowingly to make false statement in writing, with intent that it shall be relied upon, respecting his financial condition for the purpose of procuring a loan or credit for a company in which he is interested.

Cohen, (1914), 24, C. C. C. 238.

On an indictment for the offence of having obtained money by false pretences, the defendants cannot be convicted of the full offence when it is proved that by the discount of their promissory note they had only obtained a credit in account, such credit in account being a thing not capable of being stolen; but they might, if the evidence should establish an attempt to obtain the money, be convicted of such attempt.

Boyd, 5 Q. J. R. K. B. 1.

Where criminal prosecutions are pending against an insolvent on charges under Cr. Code sec. 405A of obtaining credit by false pretences as to his financial standing, the insolvent will not be compelled, on an examination at the instance of the assignee for benefit of creditors under the Ontario Assignments and Preferences Act, to answer questions which would tend to enable the prosecutors to get convicting evidence against him.

Ginsberg, (1917), 27, C. C. C. 447.

The evidence of the accused upon his examination taken under sec. 52 of the Assignments Act, Alta., following his assignment for the benefit of creditors, is admissible against him on the trial of a criminal charge of obtaining credit on false pretences unless on the examination he has objected to answer upon the ground that the answer would tend to criminate him or upon some other of the grounds referred to in the Canada Evidence Act, R. S. C. ch. 145, sec. 5 or in the Alberta Evidence Act, 1910, Alta., 2nd session, ch. 3, sec. 7, and this although the examination proceedings may have been irregular.

Graham, (1915), 24, C. C. C. 54.

SECTION **406.**

A cheque on a bank is a "valuable security" within the statutory definition of that term under Cr. Code, sec. 2 (40), although not covering the entire fund against which it is drawn, as regards the offence under Cr. Code, sec. 406, of inducing the execution of a valuable security by fraud.

Prentice, (1914), 23, C. C. C. 436.

Il n'y a pas lieu dans une poursuite criminelle pour obtention frauduleuse, sous de faux prétextes, de deux billets, de réserver pour la Cour d'appel les questions suivantes: 1. Refus par le juge d'ajourner la cause sur l'absence d'un témoin essentiel; 2. Absence de faux prétextes, lorsque l'accusé n'a pas obtenu du plaignant de l'argent, mais seulement un crédit, vu que le crédit ne peut faire l'objet d'un vol. 3. Le fait que les billets ne pouvaient faire l'objet d'un vol, parce qu'ils étaient en souffrance, n'avaient aucune valeur pour le plaignant, et n'était que la reconnaissance d'une dette.

Abeles v. Rex, (1915), 24, R. J. Q. B. R. 260.

SECTION **407**A.

The "prospectus, statement or account," the fraudulent issue of which by a director is made indictable under Cr. Code sec, 414, where done, *inter alia*, with intent to induce any person to advance any money to the company, does not include a statement made to a bank of his private affairs by a director offered by the company as its surety on obtaining a line of credit for the company, where the statement did not concern the financial standing or affairs of the company itself; but if the defendant obtained a credit for himself on his guaranty, although the money was actually paid to the company and he benefited by it, a charge may be laid under Cr. Code sec. 405A, for obtaining such credit under false pretences, and, *semble*, that since the enactment of Code sec. 407A (Code Amendment of 1913), it is an indictable offence for a person knowingly to make false statement in writing, with intent that it shall be relied upon, respecting his financial condition for the purpose of procuring a loan or credit for a company in which he is interested.

Cohen, (1914), 24, C. C. C. 238.

SECTION **414**.

A charge against a company director under Cr. Code sec. 414 for concurring in the making of a false statement with intent to induce the public to become shareholders will not be quashed for failure to set out the alleged statement; but such details may properly be made the subject of an order for particulars under Cr. Code secs. 859 and 860. (*Per* Harvey, C. J., and Beck, J., affirming the conviction on an equal division).

Buck, (1916), 27, C. C. C. 427.

The "prospectus, statement or account," the fraudulent issue of which by a director is made indictable under Cr. Code sec, 414, where done, *inter alia*, with intent to induce any person to advance any money to the company, does not include a statement made

to a bank of his private affairs by a director offered by the company as its surety on obtaining a line of credit for the company, where the statement did not concern the financial standing or affairs of the company itself; but if the defendant obtained a credit for himself on his guaranty, although the money was actually paid to the company and he benefited by it, a charge may be laid under Cr. Code sec. 405A, for obtaining such credit under false pretences, and, *semble*, that since the enactment of Code sec. 407A (Code Amendment of 1913), it is an indictable offence for a person knowingly to make false statement in writing, with intent that it shall be relied upon, respecting his financial condition for the purpose of procuring a loan or credit for a company in which he is interested.

Cohen, (1914), 24, C. C. C. 238.

SECTION **415.**

Where evidence of falsification of books of account is directly relevant to the question at issue on a trial for theft, as where money had been misappropriated by an employee and the books falsified by an entry made by him to cover the deficiency in the employer's books, the falsification of the books although a crime in itself is none the less admissible on a charge of theft laid as for one offence of the aggregate sum misappropriated during a defined period although it may have been taken in numerous small amounts at different times during that period.

Minchin, (1914), 23, C. C. C. 414.

SECTION **417.**

Actual concealment of property in anticipation of bankruptcy, and failure to disclose the whereabouts of himself or the property, after the bankruptcy, are sufficient grounds for granting the extradition of the bankrupt, when demanded by a foreign state, upon a charge of fraudulently concealing while bankrupt, from his trustee, property of his estate. It is not necessary that the evidence should be sufficient to justify a conviction.

Goodman, (1916), 26, C. C. C. 254.

A plaintiff or petitioner who institutes and insists in a process before the bankruptcy or any other court, in circumstances which make it an abuse of the remedy sought, or a fraud upon the court, cannot be said to have acted in that proceeding either with reasonable or probable cause.

But to constitute an abuse of process or a fraud upon the court, mere motive, however reprehensible, will not be sufficient; it must be shown that the remedy should be unsuitable and would

enable the person obtaining it fraudulently to defeat the rights of others.

Henderson, L. R. (1898), App. Cas. 720.

Where a statute enacts that in case any person in insolvent circumstances voluntarily or by collusion with a creditor gives a confession of judgment, *cognovit actionem*, or warrant of attorney to confess judgment, with intent to defraud or delay his creditors or to give undue preference to a particular creditor, pressure by such creditor is no answer to a case which alleges collusion. Collusion in such an enactment means agreement or acting in concert.

Edison General Electricity Co. (1896), 66, L. J. R. n. s., 36.

SECTION **420.**

The fraud which must be proved in order to invalidate the title of a registered purchaser for value, must be brought home to the person whose title is impeached, or to his agents. He cannot be affected by the fraud of persons through whom he claims unless knowledge of it is brought home to him or his agents.

Asseth Company, (1905), 92, L. T. R. 397.

SECTION **436.**

The offence of receiving property stolen from a navy yard in Canada under the control of the British Admiralty is cognizable by a Canadian court of criminal jurisdiction, particularly where the accused is not subject to court-martial by the Admiralty authorities.

Day, (1911), 20, C. C. C. 325.

SECTION **443.**

An intent to deceived is essential to the offence of fortune telling under Cr. Code, sec. 443, but it is not necessary that the attempted deception should have been successful; a conviction may be supported, although the accused had taken from the persons whose fortunes were told a writing to the effect that they understood that what was being done was merely an examination of the lines of their hands and giving information in respect thereof in accordance with books on the subject of palmistry, if it be found that the taking of such writing was a mere sham and intended to evade the law.

Keller, (1916), 26, C. C. C. 1.

SECTION 444.

The acts, conduct and statements of a co-conspirator are properly admissible in evidence upon a charge if they relate to the common design; they are in such case a part of the *res gestae* in the execution of the purpose of the conspiracy.

On a charge of conspiracy to defraud by setting fire to defendant's own store building and contents so as to obtain the proceeds of an excessive insurance, where it appears that the insurance has been largely increased during the month preceding the fire, the defendant's signed statements of assets and liabilities submitted from time to time for the purpose of obtaining advances from a bank within a period of three months before the fire are properly admissible for the purpose of shewing the acts and conduct of the accused with respect to his financial affairs at a time not too remote te be connected with the offence.

Wilson, (1911), 21, C. C. C. 105.

On a charge under Criminal Code sec. 444 of conspiracy to defraud the public, if there is no direct proof of the existence of the unlawful agreement between the defendant and the acts proved are not such as to show from their very nature that they are parts of a common scheme, the jury must separately consider the case of each defendant and determine from his conduct whether there is evidence of the conspiracy alleged; it is only after the conspiracy has been proved that the acts of the one become evidence against the other.

McCutcheon, (1916), 25, C. C. C. 310.

1. Sous une accusation pour conspiration, on peut prouver des tentatives de frauder ou duper d'autres personnes que celles mentionnées à l'acte d'accusation.

2. La production d'un contrat par écrit, bien que constituant un des éléments de preuve de la conspiration, ne fait pas obstacle à une preuve testimoniale supplémentaire de fausses représentations antérieures ou postérieures à ce contrat.

Sheppard, 4, R. J. Q. B. R. 470.

On a trial for conspiracy to defraud a railway company by fraudulently obtaining information of the secret audits about to be made and furnishing the same to conductors of cars to enable them to be prepared for the audits, proof that information of this nature might be given by one conductor to another for purposes other than to defraud the company, was properly excluded, because such questions could not disprove the object of the conspiracy or throw any doubt on the evidence which had been adduced to show the object which the parties had in view.

Carlin, (1903), 12, Q. J. R. K. B. 483.

SECTION 458.

Under section 713 of the Criminal code of Canada, a conviction for receiving stolen goods cannot be rendered against a person who is charged with housebreaking accompanied with theft.
Lamoureux, 10, Q. J. R. K. B. 15.

SECTION 466.

Contracts which may be impeached on the ground of fraud are not void, but voidable only at the option of the party who is or may be injured by the fraud, subject to the condition that the other party if the contract be disaffirmed, can be remitted to his former state.
Urquhart v. Macpherson, L. R. 3, A. C. 831.

Though it is not necessary that the signature of a party should (within the Statute of Fraud) be place in any particular part of a written instrument, it is necessary that it should be so introduced as to govern or authenticate every material and operative part of the instrument. Where, therefore, the name of the party against whom specific performance was sought to be enforced appeared in different parts of the paper, but only in such a way that, in each case, it merely referred to the particular part where it was found, and that part was in the form of reference or description, and not of undertaking:—*Held*, that the paper did not constitute a contract signed within the provisions of the Statute of Fraud.
Caton v. Caton, L. R. 2, E. & Ir. App. 127.

Where a writ and declaration alleged that the defendant had been guilty of wilful deceit, and had fraudulently effected a transference of fire insurance in his books after a fire had occured, from a company of which he was agent, to the appellants, of whom he was also agent, with a specific fraudulent purpose, and such charges of fraud and deceit failed.—*Held*, that the appellants could not be allowed in final appeal to contend for the first time that the pleadings and evidence disclosed such negligence or breach of duty by the respondent as their agent as is in law sufficient to infer his liability for the amount paid by them under the insurance so transferred. Fraud was the essence of the declaration, and the evidence of the respondent directed to that issue cannot be accepted as representing all that he would have brought forward to rebut a charge of negligence nor had the points connected with that issue been submitted to the Courts below.
Connecticut Fire Ins v. Kavanagh, L. R. (1892), A. C. 473.

Langelier, J. S. P. held that to make the accused liable as an accessory before the fact to an alleged forgery, criminal intention and a prejudice to someone are two essential ingredients of the offence. On a review of the evidence he found there was neither *mens rea* nor prejudice of any one. Furthermore the alleged principal offender was not being prosecuted. The commission of the principal crime was not proved. The signing of the pay cheque by Gagnon in the name of Beaudoin whom he had replaced in the service was irregular, but there is a great difference between an irregularity and a crime so serious as forgery.

Pariseault, (1917), 28, C. C. C. 112.

A man who procures a woman other than his lawful wife to sign a bar of dower as his wife, although she uses her own Christian name and not that of the lawful wife, in completing a mortgage of his property in which his lawful wife would have a legal claim to inchoate dower is, under Code sec. 69, a party to her offence of forgery by making a false document knowing it to be false and with intent that it should be acted upon (Cr. Code sec. 466), and punishable as a principal.

Ford and Frary, (1916), 26, C. C. C. 430.

SECTION **467.**

Where the person charged with attempting to utter forged documents is not implicated with the commission of the alleged forgery, his statement made subsequent to his attempt to pass the document that the same is a forgery and that he "knew they were forged" is not necessarily a sufficient admission that he knew them to be forged at the time when he attempted to utter them; the admission is an equivocal one which has to be construed with reference to the surrounding circumstances, and if these indicate merely that he had formed an opinion from knowledge acquired after the attempt that the documents were forged, it affords no proof either of the forging itself or of knowledge of the forgery at the time of the alleged offence of attempting to utter forged documents.

A conviction for uttering or attempting to utter a forged document cannot properly be made unless it be shewn that the document in question was really forged; it is not enough to shew that the accused believed it to be forged and yet attempted to pass it.

Girvin, (1916), 27, C. C. C. 265.

In the crime of uttering a forged instrument, the knowledge by the utterer that the instrument uttered was forged and had been made with intent to defraud, is an essential element, and as every count of an indictment must contain a statement of

all the essential ingredients which together constitute the offence charged in it, the omission of such essential averment renders the count, null and void, and the defect cannot be corrected by the Court.

Upon the trial of an indictment for forging an instrument, it is not necessary to prove an intent to defraud any particular person; it is sufficient to allege and prove that the accused did the act charged with an intent to defraud, and when the fraud has been carried out it need not appear on the face of the indictment in what manner and by what means the fraud was consummated.

Weir, (1900), 9, Q. J. R. K. B. 253.

SECTION **468.**

Held, that the mere fact that a cheque is drawn with spaces which can be utilized for the purpose of fraudulent alteration is not by itself any violation of duty by the customer to his banker.

Marshall, L. R. (1906), A. C. 559.

A son carried to bankers of whom he, as well as his father, was a customer, certain promissory notes with his father's name upon them as indorser. These indorsements were forgeries. On one occasion the father's attention was called to the fact that a promissory note of his son with his (the father's) name on it, was lying at the bankers dishonoured. He seemed to have communicated the fact to the son, who immediately redemed it; but there was no direct evidence to shew whether the father did or did not really understand the nature of the transaction. The fact of the forgery was afterwards discovered; the son did not deny it; the bankers insisted (though without any direct threat of a prosecution) on a settlement, to which the father was to be a party; he consented, and executed an agreement to make an equitable mortgage of his property. The notes, with the forged indorsements, were then delivered up to him:—*Held*, that the agreement was invalid.

A father appealed to, under such circumstances, to take upon himself a civil liability, with the knowledge that, unless he does so, his son will be exposed to a criminal prosecution, with a moral certainty of a conviction, even though that is not put forward by any party as the motive for the agreement, is not a free and voluntary agent, and the agreement he makes under such circumstances is not enforceable in equity.

William v. Bayley, L. R. 1, E. & Ir. App. 200.

SECTION 486.

Where the first producer of an article of manufacture has identified with it a particular name, whether his own name or a name which is a word descriptive of the article itself, such name becomes a trade-mark, and cannot be adopted and employed by another person in advertising a similar article.

"Singer" Mft. v. Wilson, L. R. 3, A. C. 376.

Where the appellants, in 1889, registered in the Colony under the Trade Marks Act, 1865, the word "Maizena", which they had invented in 1856, registered and enforced in other countries, but had for a quarter of a century allowed to be used in the Colony as a term descriptive of the article, and not of their own manufacture thereof:—*Held*, that the word had thereby become *publici juris*, and was no longer registerable as a trade-mark.—Where the respondents had applied the word to their own manufacture, but did not try to pass the same off as that of the appellants by the use of labels and packets calculated to deceive the public on that point; stating, on the contrary, the name of the maker, place of manufacture, and other necessary particulars. *Held*, that they could not be restrained from so doing.

National Starch Mft. v. Munn's Patent Maisena Co. L. R. (1894), A. C. 275.

A word which is "an invented word" may be registered as a trade-mark, although it "has reference to the character or quality of the goods" within clause (e) Clauses (d) are independent of each other.

The word "Solio" *held* to be capable of registration as a trade-mark under class 39 in respect of protographic paper, and the decision of the Court of Appeal reversed.

Eastman Photo, Co. v. Comptroller-Gen. of Patents, L. R. (1898), A. C. 571.

An application to register in class 43 for gin a trade-mark consisting of a pictorial label, of which the prominent feature was the representation of a cat in a sitting posture got up as a puss in boots, was opposed by the registered proprietors of an old trade-mark for gin, consisting of the device of a cat standing on a barrel, on the ground that under this trade-mark in the Eastern markets, where the opponents had acquired a great reputation, their goods had become known as "Cat" goods, and that the registration must cause confusion. The device of a cat *per se* had become *publici juris* in this country in connection with gin, and the applicants disclaimed any right to the exclusive use thereof:—*Held*, that the applicants' mark was not calculated to deceive,

there being no resemblance between the two marks, and that the mere possibility of confusion arising from the insufficient description of the opponents' mark by ignorant people in foreign markets was not a ground for refusing registration.
Bagots, Hutton & Co., L. R. (1916), 2, A. C. 382.

Matchboxes, belonging to the respondents, stamped "New Zealand" but filled with London Matches, thus bearing a false trade description, were seized on arrival in New Zealand as contraband. It was conceded that there was no fraudulent intention, or any intention to transgress the law of the Colony. In an action against the appellant contesting the legality of the seizure:—*Held*, that under ss. 89 and 104 of the New Zealand Patents, Designs, and Trade Marks Acts, 1889, reproducing the Imperial Merchandise Marks Act, 1887, ss. 2, 16, the seizure must be upheld as of goods whose importation was prohibited. The only remedy was under s. 267 of the Customs Laws Consolidation Act, 1882, by means of an application to the Governor.
Bell, L. R. (1902), A. C. 563.

Previously to the year 1904 two brothers had carried on a small business at Kilmarnock, Scotland, under the style of R. & J. F. Dunlop, the principal business of this firm being that of selling and repairing bicycles, tricycles, and motors. In 1904 the two brothers registered a company called the Dunlop Motor Company with a capital of 500*l*. This company took over from R. & J. F. Dunlop the motor business and the purposes of the company were the sale on commission and the repairing of motors, motor cycles, and the parts thereof, the actual business consisting principally in executing repairs and selling petrol. The pursuers, the Dunlop Pneumatic Tyre Company, of Regent Street, London, who deal in tyres, pumps and other adjuncts of motors and other vehicles, sought an injunction to restrain the Dunlop Motor Company from carrying on its business under the name of the "Dunlop Motor Company":—*Held*, (affirming the decision of the Second Division of the Court of Session, (1906) 8 F. 1146), that on the evidence there was no proof that any one would be misled into thinking that the two companies were the same; and secondly, that the pursuers had no exclusive use of the name of "Dunlop".
Dunlop Motor Coy, L. R. (1907), A. C. 430.

Motor cab proprietors in London applied for registration as trade marks for motor vehicles of two marks used by them for about three years on and in connection with their motor cabs in London. One mark consisted of the letters "W" and "G" (joined by the copulative symbol "&") written in a running hand with a distorted tail to the "G" ending up under the "W". The other

mark consisted of "W. & G" in ordinary block letters. These marks had become in fact distinctive in the London district but not elsewhere. The registrar refused the application:—*Held*, that the marks were not distinctive within the meaning of the word in s. 9 subs-s. 5 of the Trade Marks Act, 1905, and were therefore not registrable.

Du Cros, Ltd. L. R. (1913), A. C. 624.

In an action against the defendant company charging that it had infringed the plaintiffs' trade-mark, consisting of the word "Standard", and was passing off its goods as and for those of the plaintiffs:—*Held*, (1), that the word "standard", being a common English word having reference to the character and quality of the goods in connection with which it is used and having no reference to anything else, could not be an apt or appropriate instrument for distinguishing the goods of one trader from those of another, and was not a valid trade mark within the meaning of the Canadian Trade Mark and Design Act, 1879, (42 Vict. c. 22), under which the plaintiffs had registered it: (2), that on the evidence the defendant company had not passed off the plaintiffs' goods as its own, and the word "standard" had not acquired a secondary signification so as to mean goods manufactured by the plaintiffs when applied to the articles of toilet use the subject of the action.

Standard Ideal Coy, L. R. (1911), A. C. 78.

The Manchester Brewery Coy, Ltd, had carried on business under that name for years. The appellants bought an old business called "The North Cheshire Brewery Company, Limited", and then (without intending to deceive) got themselves incorporated and registered under the name, "The North Cheshire and Manchester Brewery Company, Limited":—*Held*, upon the evidence that as a matter of fact the name of the appellant company was calculated to deceive and that the appellants must therefore be restrained by injunction in the usual way.

Manchester Brewery Co. L. R. (1899), A. C. 83.

The Patents, Designs, and Trade Marks Act of 1883 (46 & 47 Vict. c. 57), consolidates the law relating to the copyright of designs, and by sec. 60 "design" is defined as meaning "any design applicable to any article of manufacture or to any substance", "whether the design is applicable for the pattern, or for the shape or configuration, or for the ornament thereof".—The pursuers registered a design for the shape of a kitchen-range fire-door with a moulding on the top which had the effect of closing the range to cold air. The defenders manufactured a range fire-door with a moulding on the top which had the same effect. *Held*,

first, that the Court of Session in considering whether there had been an infringement of the copyright in the design for the shape of the fire-door were wrong in taking into account the question whether the defenders' design accomplished the same useful object (i. e., that of excluding cold air as the design of the pursuers; but secondly, affirming the decision of the Court of Session, that there had been in fact an obvious imitation of the registered design and therefore an infringement of the copyright.

Hecla Foundry Co. v. Walker, Hunter Co. L. R. 14, A. C. 550.

The respondent had for years manufactured and sold under the name "Yorshire Relish" a sauce made according to a secret recipe, and the term "Yorshire Relish" had come to mean that particular manufacture. The appellants began to make a sauce, nearly resembling the respondent's sauce, which they sold as Yorkshire Relish so as to induce purchasers to believe that it was the respondent's "Yorkshire Relish", although the purchasers did not in fact know the name of the respondent in connection with the sauce:—*Held*, that the respondent was entitled to an injunction restraining the appellants from using the words "Yorkshire Relish" in connection with their sauce without clearly distinguishing it from the respondent's sauce.

Birmingham Vinegar Co. v. Powell, L. R. (1897), A. C. 710.

Before the passing of the Trade Marks Reg. Act, 1875, the appellants used the words "Perry Davis Vegetable Pain Killer" as their trade-mark for a medecine manufactured and sold by them. After the passing of the Act they registered the words "Pain Killer" as their trade-mark under sec. 10. Upon a motion to amend the registrar:—*Held*, affirming the decision of the Court of Appeal, that the entry must be removed from the register, the words "Pain Killer" not having been used alone before the passing of the Act:—*Held*, also, by Lord Halsbury, L. C., and Lord Morris, that the words "Pain Killer" were not special and distinctive words within the meaning of sect. 10, there being nothing to distinguish goods manufactured by the appellants from goods manufactured by other persons.

Perry Davis v. Harbord, L. R. 15, A. C. 316.

The Patents, Designs, and Trade Marks Act, 1883, confers upon the comptroller a discretion whether to register a trade-mark or not, and he ought to refuse registration where it is not clear that deception may not result.—The respondent applied to register the words "Dunn's Fruit Salt Baking Powder" as a trade-mark for baking pawder. The Appellant, who had for many years used the words "Fruit Salt" as his trade-mark for a powder used in producing an effervescing drink, opposed the application:—

Held, by Lords Watson, Herschell, and Macnaghten (Lord Halsbury, L. C., and Lord Morris dissenting), that upon the evidence the proposed words were as a matter of fact calculated to deceive the public, that the case therefore fell within sect. 73 of the Patents, Designs, and Trade Marks Act, 1883, and that the trade-mark ought not to be registered.

Eno v. Dunn, L. R. 15, A. C. 252.

Where the plaintiffs without relying on their registered trade-mark, consisted in part of the term "Flaked Oatmeal", claimed that they had by user so intimately identified the term with their goods that the use of it by the defendants in their trade-mark had the effect of passing off their goods as the plaintiffs' goods: *Held*, that the term being one of ordinary and not exclusive description, and being applicable to the defendants' goods as well as the plaintiffs' and the defendants' user thereof not having been proved to have had or to be calculated to have the above effect, the suit must be dismissed with damages resulting from the grant of an interim injunction.

Parsons v. Gillespie, L. R. (1898), A. C. 239.

In an action by the appellant who had registered his English trade-mark of "Club Soda" in Jamaica, it appeared that the respondents persisted in selling their goods under the same name in a way calculated to deceive:—

Held, that the appellant was not disentitled to relief merely because he had printed on his label the words "manufactured in Ireland by H. M. Royal Letters Patent". These words, explained by the evidence to relate to patented machinery, did not necessarily represent or induce belief contrary to the fact that the ingredients of their article were patented.

Cochrane v. Macnish, L. R. (1896), A. C. 225.

Where the applicant is in the same trade as the person who has registered the trade-mark, and where the existence of the entry upon the register would or might limit the legal rights of the applicant so that he could not lawfully do that which he could otherwise have lawfully done, he has *a locus standi* to be heard as a "person aggrieved". So, *held*, affirming the decisions of Chitty, J., and the Court of Appeal.

Powell v. Birmingham Vinegar Co., L. R. (1894), A. C. 8.

No trader has a right to use a trade-mark so nearly resembling that of another trader as to be calculated to mislead incautious purchasers. The use of such a trade-mark may be restrained by injunction, although no purchaser has actually been misled; for the very life of a trade-mark depends upon the promptitude with

which it is vindicated. So *Held*, affirming the decision of the Court of Appeal.

Johnson v. Orr Ewing, L. R. 7, A. C. 219.

A trader has a right to make and sell machines similar in form and construction to those made and sold by a rival trader, and in describing and advertising his own machines to refer to his rival's machines and his rival's name, provided he does this in such a way as to obviate any reasonable possibility of misunderstanding or deception.

Singer Mft. Co. v. Loog, L. R. 8, A. C. 15 .

SECTION **487.**

Where a foreign manufacture has acquired a reputation in England it is beyond the power of a foreign Court or foreign legislature to prevent the manufacturers from availing themselves in England of the benefit of that reputation or to extend or communicate the benefit to any rival or competitor in the English market.

Lecouturier, L. R. (1910), A. C. 262.

SECTION **489.**

Where a trade-mark is complained of as being forged, and as infringing the rights of the proprietor of a duly registered trade-mark, any resemblance of a nature to mislead an incautious or unwary purchaser, or calculated to lead persons to believe that the goods marked are the manufacture of some person other than the actual manufacturer, is sufficient to bring the person using such trade-mark under the purview of Art. 448, which prohibits the sale of goods falsely marked. In such case it is not necessary that the resemblance should be such as to deceive persons who might see the two marks placed side by side, or who might examine them critically.

The Canadian law respecting trade-marks being derived from English legislation reference for its interpretation should be had to English decisions, more especially as the law extends throughout the Dominion, and it is desirable that the jurisprudence should be uniform.

Authier, 6, Q. J. R. K. B. 146.

SECTION **490.**

In order to constitute a ground for interference by a Court of Equity to protect a manufacturer against the use, by another person, of the particular name of his manufactured article ,it is not

necessary that there should be a mala mens towards the first purchaser of the article thus imitatively designated.

Where a trade-mark is not actually copied, the existence of a fraudulent intention is a necessary element in the consideration of a case of this description. The party complained of must be proved to have done the act with the fraudulent design of passing off his own goods as those of the Plaintiff. It is not necessary, however, to shew an exact resemblance between the original and the counterfeit—it is sufficient if there is such a resemblance as will mislead an unwary purchaser.

Wotherspoon v. Currie, L. R. 5, E. & Ir. App. 508.

SECTION **496.**

A contract in restraint of trade which is unenforceable at common law, or a combination in restraint of trade which, if embodied in a contract, would be unenforceable at common law, are neither of them necessarily "to the detriment of the public" within the meaning of the Australian Industries Preservation Act, 1906, ss. 4 and 7, and a party to a contract or combination of that character cannot, merely because he is a party thereto, be taken to have intended this detriment. In a prosecution under either of those sections the wrongful intent must be proved by proper evidence. For this purpose the prosecutor may tender proof that the evils against which the Act is directed were the natural and necessary consequence of the contract or combination, monopoly or attempt to monopolize, and that those evils have in fact ensued. He cannot plead the evidence upon which he hopes to establish wrongful intention and rely on s. 15A of the Act as rendering proof of what he pleads unnecessary. The principles of the law as to monopolies and contracts in restraint of trade prior to the passing of the above Act considered.

Adelaide Steamship Coy, L. R. (1913), A. C. 781.

Agreements in restraint of trade are against public policy and void, unless the restraint they impose is partial only, and reasonable in relation to the objects of the contract; and also unless they are made upon a real and *bonâ fide* consideration.

Collins v. Locke, L. R. 4, A. C. 674.

SECTION **498.**

The respondent, a coal merchant carrying on both a home and an export business, sold the home business to the appellants and covenanted with them that he would not "solely or jointly with any other person either directly or indirectly carry on or be concerned or interested in the coal trade in any part of Great Bri-

tain or the Isle of Man". He afterwards sold the export business to a company and took the purchase-money in shares. The company afterwards sold the export business to a firm, the purchase-money being payable to the company by instalments lasting over several years. The firm having begun to carry on both a home and an export business, the appellants brought an action against the respondent for breach of covenant:—*Held*, that the respondent was not "concerned or interested in" the home business in the business sense which must be attributed to those words, and that there was no breach of covenant.

Harrison, L. R. (1906), A. C. 274.

A price restriction agreement between the wholesaler and the retail dealer whereby the latter was to sell certain goods bought from the wholesaler only at prices therein stated, will not be enforced because of its illegality under Criminal Code sec. 498, if its stipulations are such as unreasonably to enhance the price of the goods to the purchasing public.

Avery, (1915), 24, C. C. C. 339.

An agreement between a company owning coal areas and the company operating its mines on a royalty rental to purchase the mines of their sole local competitor for the purpose of closing them and so of obtaining a virtual monopoly in the district is an illegal combination in restraint of trade under Cr. Code sec. 498 (*d*) in unduly preventing or lessening competition in a commercial commodity if the purchase was not reasonably necessary for the protection of the business interests of the parties to it; nor is it sufficient to protect the transaction that otherwise the high rate of earnings and the consequent dividend rate of the purchasing companies might not be maintainable.

Thorpe, (1916), 27, C. C. C. 409.

In 1905, M. and his two brothers entered into a contract with R. by which they gave him exclusive control of their salt works with some reservations as to local trade. R. assigned the contract to the Dominion Salt Agency, a partnership consisting of his firm and two salt manufacturing companies, which agency thereafter controlled about ninety per cent. of the output of manufacturers in Canada.—*Held*, that the contract was not *ex facio* illegal and as the Canadian output was exceeded by the quantity imported which may have competed with it, and the price was not enhanced by reason of this control by the Agency, the Court should not hold that it had the effect of unduly restraining the trade in salt or that it contravened the provisions of s. 498 of the Cr. Code. In 1914, M., as administrator of his father's estate, brought action against the estate of C. who, in his lifetime, had

been president of the Dominion Salt Agency and president of and largest shareholder in one of the companies composing it. This action was based on an alleged agreement by C. in connection with the settlement of a prior action against the three partners in the Agency, by which he promised to pay five-sixteenths of the difference between the amount claimed and that paid on settlement. Evidence of the agreement was given by the plaintiff's solicitor in the former action and by defendants' solicitor also.—*Held*, reversing the judgment of the Appellate Division (36 Ont. L. R. 244), Fitzpatrick, C. J., and Duff, J., dissenting, that the settlement of the action was good consideration for C.'s contract; that his agreement was not a promise to answer for the debt of another and did not need to be in writing; that it was sufficiently proved; and that the evidence of the plaintiffs' solicitor in the former action was corroborated (R. S. O. (1914), ch. 76, s. 12) by that of the solicitor for the defendants.—*Per* Anglin and Brodeur, JJ.—The solicitor was not an interested party and corroboration was not required for that reason; if required for any other it was furnished. The original agreement transferring the salt business to R. was executed by the three brothers "as representing the estate of M. deceased". The action which was settled was brought by the same three persons. After the settlement letters of administration to M.'s estate were taken out.—*Held*, that the present action was properly brought in the name of the administrator but, if necessary for defendants' protection, his two brothers might be added as plaintiffs.

MacEwan v. Toronto General Trusts Co., 54, S. C. R. 381.

An agreement between two dealers in junk aimed to destroy all competition in that business in the territory in which they were operating and aimed to lower prices paid by them for the stuff and indirectly to raise prices paid to them by their customers, the profits resulting to be divided between them, is not void at common law as being in restraint to trade.

An agreement between two dealers in junk aimed to destroy all competition in that business in the territory in which they were operating and aimed to lower prices paid by them for the stuff and indirectly to raise prices paid to them by their customers, the profits resulting to be divided between them, is void and unenforcible under the Criminal Code of 1906, sec. 498, declaring everyone to be guilty or an indictable offence who conspires, combines, agrees or arranges with any other person to unduly prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation or supply of any article or commodity which may be a subject of trade or commerce.

Weidman, (1912), 20, C. C. C. 117.

SECTION **501.**

Workmen who, in carrying out the regulations of a trade union forbidding them to work at a trade in company with non-union workmen, without threats, violence, intimidation or other illegal means, take such measures as result in preventing a non-union workman from obtaining employment at his trade in establishments where union-workmen are engaged, do not thereby incur liability to an action for damages.

Perrault v. Gauthier et al., 28, S. C. R. 241.

In an action for damages for a conspiracy to induce workmen to break their contracts with the plaintiff the defendant cannot refuse to discover the material documents on the ground that they may tend to incriminate him.

Smithies, L. R. (1906), A. C. 434.

Where workmen strike in breach of their contracts those who help to maintain the strike by money and counsel are not liable to pay damages to the employers merely because losses are thereby caused to the employers. A trade union having been sued for damages on the ground that workmen had been induced to break their contracts with their employers by officials of the union, and that the union had ratified and adopted the acts of their officials.—*Held*, that the union was not liable, those who procured the strike not having been authorized by the rules or by the action of the union.

Yorkshire Miners Ass. L. R. (1906), A. C. 384.

SECTION **508**A.

The word "author" is used in the statute 5 & 6 Vict. c. 45, without limitation or restriction, and is therefore equally applicable to foreigners as to British subjects. An alien friend who, during the time of his temporary residence in a British Colony, publishes, in the United Kingdom, a book of which he is the author, is, under the 5 & 6 Vict. c. 45, entitled to the benefit of English copyright.

Routledge v. Low, L. R. 3 E. & Ir. App. 100.

A professor of a university who delivers orally in his classroom lectures which are his own literary composition does not communicate such lectures to the whole world, so as to entitle any one to republish them without the permission of the author.

Caird v. Sime, L. R. 12, A. C. 326.

Celui qui supprime le nom de l'auteur d'une pièce de théâtre écrite par un étranger, mais protégée par le statut impérial (1886)

49-50 Vict., ch. 33, "Convention de Berne", sans le consentement de cet auteur et qui la fait représenter sur un théâtre en Canada, se rend coupable d'une offense criminelle tombant sous les articles 508*a* 508*b* du Code criminel.

Daoust, 49, R. J. Q. C. S. 65.

An infringement of the registered copyright of the music of an opera may be committed where the opera itself has not been published, and so no copy of it could be deposited, and where that music having been made the subject of two piano "arrangements", one without the voice, another for the voice, and, those arrangements having been published, the infringer has used them for his own production. In such a case the question of what was intended to be registered will be considered with reference to all the parts of the register, and if certain portions of the forms of registry are, in the particular case, unnecessary and unmeaning, the introduction of them will not affect those portions of the register which are correct.

Fairlie v. Boosey, L. R. 4, A. C. 711.

There cannot be a violation of the 3 & 4 Will. 4. c. 15, s. 2, where the matter or thing taken from the first work and introduced into the second is not material and substantial. A. had produced a drama on the tale as written, and the play as acted, of "The Wandering Jew" the authorship of M. Eugène Sue, but had introduced two scenic representations into his production, not to be found in the French original; and B. afterwards produced a drama on the same subject, in which these two scenic representations were also introduced; an arbitrator had found "that two scenes or points had been taken direct from the drama of the Plaintiff's, but that the drama of the Defendant is not, except in these respects, a copy from or a colourable imitation of the drama of the Plaintiff's," and had directed the verdict to be entered for the Defendant:—*Held*, that the finding was conclusive.—The words in the statute "production ör any part thereof" must receive a reasonable construction, and are to be treated as implying some part that is substantial and material.

Chatterton v. Cave, L. R. 3, A. C. 483.

SECTION **511.**

Where a person under conviction for arson is called by the Crown on the trial of another person on the charge of willfully setting the same fire, to prove that the latter had instigated him to commit the offence, the testimony of the convict that he had caused the fire at the instance and direction of accused may be rebutted by the testimony of other prisoners that the convict had

admitted to them that the accused had nothing to do with the fire, on the convict denying having made such admissions.
Webb, (1914), 22, C. C. S. 424.

A conviction of two persons jointly charged with arson will be set aside where the evidence warrants a finding that the act was committed either by one or the other of them but does not enable the court to determine which one committed the offence nor justify a finding implicating them both.
Upton, (1915), 25, C. C. C. 28.

SECTION **512.**

The intent of the offence of arson is similar to the intent of the offence of a conspiracy to commit arson, so that evidence of an attempt to commit the former offence at a prior date not too remote may be shewn as a similar act to that charged in proof of the design with which the latter was committed.
Wilson, (1911), 21, C. C. C. 105.

SECTION **536.**

An indictment purporting to charge an offence under Cr. Code sec. 536, sub-sec. (*b*), in laying out poison, but which charged that the poison was wilfully placed in such a position as to be easily partaken of by "animals" instead of by "cattle" (Code sec. 536), should not have been quashed on defendant's motion, but should have been amended or a new indictment in due form preferred.
Goulet, (1914), 23, C. C. C. 327.

SECTION **537.**

On a charge under Code sec. 537 for wilfully killing a dog, reference may be had to the rules of the common law under Code sec. 16 for ascertaining whether the dog was killed under circumstances amounting to a legal justification or excuse, and by sec. 541 a conviction is not to be made unless the killing of the dog was done not only without legal justification or excuse but without colour of right.
Therrien, (1915), 25, C. C. C. 110.

SECTION **540.**

Where rural municipalities had a statutory right to open temporary roads across private property and the municipal council had passed a resolution purporting to give the defendant and her agents the right to cross the informant's land in pursuance of

which defendant instructed her agent to cross the land with a load of hay, believing that she had the right to do so, an inference is raised that the defendant acted under a fair and reasonable supposition of right (Cr. Code sec. 540), displacing the liability to summary proceedings under Cr. Code sec. 539 for wilful injury to property; and where there was no evidence to the contrary, the justices were without jurisdiction and their summary conviction of defendant was quashed on certiorari.

Adamson, (1916), 25, C. C. C. 440.

SECTION **541** (2).

The fact that the accused charged with conspiracy in burning down his own store for the insurance had eight months before the alleged conspiracy unsuccessfully attempted to induce a third person to burn down another building owned by the accused and had told him that it was insured, taken in conjunction with the circumstances that such other building was in fact burned down a few weeks prior to the burning of the store in question, is properly admissible in proof of the design or intention of the accused as regards the offence being tried, as under sec. 541 (2) of the Criminal Code, 1906, the burning of the accused of his own building would constitute the statutory offence of arson only if done "with intent to defraud."

Wilson, (1911), 21, C. C. C. 105.

SECTION **552.**

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.

Benham, (1899), 8, Q. J. R. K. B. 448.

SECTION **573.**

Proof of acts of his co-conspirators in furtherance of the common design may be given in evidence against the accused although the charge against him was for the ultimate crime and not for the conspiracy to commit it.

Kelly, (1916), 27, C. C. C. 140.

SECTION **576.**

The criminal rules (Ont. Crown rules 1279-1288) as to certiorari passed in 1908 by the Supreme Court of Judicature for Ontario under the authority of Cr. Code, sec. 576, remain in effect as to the "Supreme Court of Ontario" since the reorganization of the former Court so far as they are applicable, although there

is no longer a "Divisional Court" to which by Crown rule 1287 an appeal is given by leave.

It is competent for a Court authorized under Cr. Code sec. 576 to make rules of procedure *inter alia* as to certiorari, to substitute a practice by notice of motion for the former process by writ and order *nisi*.

Titchmarsh, (1914), 24, C. C. C. 38.

SECTION **577.**

Cr. Code, sec. 577, applies to give jurisdiction to a city police magistrate to try with the consent of the accused, under sec. 777 (2) an offence committed outside of his territorial jurisdiction but within the same province, as to which the accused is found or apprehended within such territorial jurisdiction.

Thornton, (1915), 26, C. C. C. 120.

If a person is brought before a justice of the peace charged with an offence committed within the province, but out of the limits of the jurisdiction of such justice, the latter, in his discretion, may either order the accused to be taken before some justice having jurisdiction in the place where the offence was committed, or may proceed as if it has been committed within his own jurisdiction.

Seeley, 41 S. C. R. 5.

SECTION **582.**

The court of general sessions of the peace at Montreal, sometimes called the court of quarter sessions, has powr to hear and determine all matters relating to the preservation of the peace, and its jurisdiction may be exercised by the other court known as the "Court of the Sessions of the Peace" established by article 3259 R. S. Q.; there is in strictness no "police magistrate's court," the acts of the magistrate are not acts of "a court" although the place of hearing is by Code sec. 714 to be deemed an open court.

Walker, (1913), Cross, J., 23, C. C. C. 179 .

SECTION **584.**

1. An offence which was commenced in one province and completed in another, is triable in either province.

2. On a writ of *habeas corpus*, the judge merely examines whether the committing magistrate had jurisdiction, whether the committal is legal and whether any crime known to the law has been committed. If the committing magistrate had the necessary power or jurisdiction, the manner of his exercise of such power or jurisdiction will not be inquired into.

3. A warrant of commitment for making a false statement,

under Art. 365 of the Criminal Code, which states that the prisoner made, circulated and published the statement in question while he was the president and manager of the company, without alleging that he was a director, is legal and sufficient.

Ex parte Gillespie, 7, Q. J. R. K. B. 422.

Where an offence has been committed within 500 yards of the boundary between two magistrate jurisdictions, Cr. Code, sec. 584 (*b*), will not enable the prosecutor to lay it in one jurisdiction and try it in another; he may both lay and try the offence in either jurisdiction.

Jack, (1915), 24, C. C. C. 385.

SECTION **629.**

A search warrant will be quashed if the information for same taken under Cr. Code, sec. 629, fails to allege the causes of suspicion as required by Code form No. 1.

A search warrant will be quashed if the information for same, taken under Cr. Code, sec. 629, fails to allege any criminal offence.

Frain, (1915), 24, C. C. C. 389.

A search warrant for liquors under the Canada Temperance Act will be quashed if the information therefor does not disclose facts and circumstances shewing the causes of suspicion.

Bender, (1916), 26, C. C. C. 393.

SECTION **641.**

1. An action claiming the ownership of money found in a common gaming-house is a matter governed by the ordinary rules which apply to civil proceedings in this province, and hence the Canada Evidence Act does not apply.

2. Art. 575 of the Criminal Code of Canada, enacting that money found and seized in a common gaming-house shall be forfeited to the Crown, is within the legislative powers of the Parliament of Canada, such forfeiture being part of the punishment of the offence.

3. The high constable of the district of Montreal is a chief constable within the meaning of Art. 575 of the Criminal Code, and his deputy is a deputy chief constable.

4. The acts of a *de facto* officer, in the exercise of his functions, are valid so far as the interests of the public and of third persons are concerned.

O'Neil & Tupper, 4, Q. J. R. K. B. 315.

Where a liquor law permits the issue of a search warrant under which the person charged in the information therefor as being

suspected of keeping liquor for sale may be arrested concurrently with the seizure of liquor found on his premises, the defendant, although not arrested but summoned before the magistrate on a charge of keeping liquor for sale on a date prior to the seizure, waives the lack of process in respect of the keeping for sale on the date of seizure by appearing and taking his trial without objection upon evidence directed wholly to the latter date. (*Per* Graham, C. J., and Longley, J.)
Smith, (1916), 27, C. C. C. 340.

Where windows are barred and special efforts made to hide what is going on in a building used by Chinamen as a club-house in which it was rumoured gambling was being carried on, such cause of suspicion may be shewn in justification of a warrant of search under Cr. Code sec. 641 in a civil action against the chief constable; it is not a sufficient ground for removing the suspicion or for shewing the grounds of suspicion unreasonable, to prove that only members of the club had access to the premises, and this apart from any necessity for finding that there had been any infraction of the law in the manner of conducting the club.
Wah Kie, (1914), 23, C. C. C. 325.

A police magistrate has jurisdiction under secs. 641, 773, and 774 of the Criminal Code (1906), as amended 1909, on a charge of keeping a common gaming house in violation of sec, 228 of the Code, to summarily try the accused without permitting him to elect whether he will go before a jury.
Jung Lee, (1913), 22, C. C. C. 63.

Under the Canada Temperance Act, 1888 (51 Vict. c. 34) a search warrant was issued and duly executed, and large quantities of intoxicating liquor found on the hotel and premises searched and a conviction of the appellant subsequently obtained in regard thereto, with a consequent order for the destruction of the liquor:—*Held*, that, the Supreme Court having dismissed applications for writs of certiorari to remove into the said Court the record of the said search warrant and destruction order, special leave to appeal therefrom must be refused. The decision was plainly right, having regard to s. 10 of the Act under which the warrant was issued.
Cox, L. R. (1907), A. C. 514.

Section 575 of the Cr. Code, authorizing the issue of a warrant to seize gaming implements on the report of "the chief constable or deputy chief constable" of a city or town, does not mean that the report must come from an officer having the exact title mentioned, but only from one exercising such functions and duties as will bring him within the designation used in the statute.

Therefore, the warrant could properly issue on the report of the deputy high constable of the City of Montreal. Girouard, J., dissenting.—The warrant would be good if issued on the report of a person who filled *de facto* the office of deputy high constable though he was not such *de jure*.

O'Neil v. Atty-Gen. of Can. 26, S. C. R. 122.

In the execution of a search warrant on a gaming-house charge under Cr. Code, sec. 641, where the place is not a dwelling house or part of a dwelling house, the police officer executing it must have the search warrant with him in order to exhibit it for inspection if asked for, but it is not obligatory where it is not a dwelling house that the officer should first demand an entrance or signify the cause of his coming before breaking in.

An officer executing a search warrant is protected only in so far as he uses no more force than under the circumstances is reasonably necessary.

Cuddy, (1914), 23, C. C. C. 383.

SECTION **646.**

Where a defendant was illegally arrested without a warrant on a charge of keeping a disorderly house, and is brought before the magistrate having power of summary trial without the consent of the accused (Code sec. 774, as amended, 1909), there is a lack of jurisdiction over the person, which may be effectively raised by an objection, but which it is competent for the accused to waive.

Miller, (1913), 25, C. C. C. 151.

The fact that the accused had been illegally arrested without a warrant on a charge which was dismissed, and that pending the hearing another charge was laid for a different offence, will not deprive the magistrate having jurisdiction in respect of time and place over the latter offence from proceeding to trial and conviction where objection was raised only in that case and not in the case upon the prior charge which was dismissed.

Hurst, (1914), 23, C. C. C. 389.

SECTION **648.**

The fact that the constable making the arrest for a continuing offence, such as peddling without a license contrary to a provincial statute, might have arrested without a warrant because of his finding the accused still infringing the statute, does not constitute a justification if the magistrate who illegally issued a warrant without a sworn information and is sued for false arrest.

Jamer, (1912), 21, C. C. C. 116.

Vagrancy under Cr. Code secs. 238 and 239 being the subject of summary conviction proceedings and not of indictment. Code sec. 652 does not apply to justify an arrest on suspicion by a peace officer without warrant where the peace officer did not find the accused committing the particular act relied upon as constituting statutory vagrancy (Cr. Code sec. 648).
Lachance, (1915), 24, C. C. C. 421.

When a person has been arrested, has pleaded not guilty, and has been tried and convicted in a summary conviction matter, it is too late for him then to raise the objection that he was illegally arrested without a warrant.
Langlois, (1911), 20, C. C. C. 183.

A municipal corporation in the Province of Quebec may be held liable in damages for an unlawful arrest made by constables in the employ of the municipality where no information had been laid or warrant issued and where there were no circumstances to justify an arrest without warrant.
City of Lachine, (1916), 27, C. C. C. 313.

The Glasgow Police Act, 1866, s. 88 empowers constables within the city to take into custody without any other authority than the Act any person "who is either accused or reasonably suspected of having committed" a penal offence.
In an action of damages for wrongful apprehension against two Glasgow constables who had arrested the pursuer on suspicion without a warrant:—*Held*, that malice in fact need not be proved by the pursuer; and an issue whether the defenders "wrongfully and illegally and without reasonable grounds of suspicion" apprehended the pursuer approved.
Shields, L. R. (1914), A. C. 808.

A person illegally apprehended without warrant in a matter triable under the summary conviction procedure cannot demand to be discharged solely on the ground of the illegality of the apprehension; his remedy is by civil action of damages for the unlawful arrest.
Papillo, (1911), 20, C. C. C. 329.

SECTION **652.**

Vagrancy under Cr. Code secs. 238 and 239 being the subject of summary conviction proceedings and not of indictment. Code sec. 652 does not apply to justify an arrest on suspicion by a peace officer without warrant where the peace officer did not find the accused committing the particular act relied upon as constituting statutory vagrancy (Cr. Code sec. 648).
Lachance, (1915), 24, C. C. C. 421.

SECTION 653.

When a magistrate has become seized of a case by taking the information for an indictable offence no other magistrate having general concurrent jurisdiction with him can acquire jurisdiction to intervene and preside at a preliminary enquiry, even with the consent of the first magistrate, except in so far as such course is authorized by statute in special circumstances such as illness or absence of the first magistrate.
Holman, (1912), 21, C. C. C. 11.

SECTION 654.

If the reasonable or probable grounds for believing that an offence has been committed are anything less than the actual knowledge of an eye-witness the written and sworn information under Cr. Code, 654 should be worded accordingly and the informant not allowed to take a positive oath that the offence was committed.
White, (1915), Haultain, C. J., 24, C. C. C. 85.

Where an act not an offence at common law is prohibited by statute without the procedure for its enforcement being pointed out, it may be prosecuted by indictment.
Durocher, (1913), 21, C. C. C. 382.

A conviction under the statute will not be quashed, because no mention is made in the information or complaint, that the prosecutor is a british subject, if that fact is proved at the trial.
Couture v. Panos, 17, Q. J. R. K. B. 560.

The justice of the peace who issues a warrant of arrest to bring the accused in custody for a preliminary enquiry has the right to order him to appear before himself or any other justice or magistrate having jurisdiction in the district, and the enquiry may, therefore, be taken in such case before another magistrate who replaces the first.
Daigle, (1914), 23, C. C. C. 92.

SECTION 655.

A magistrate who unlawfully issues a warrant of arrest without the sworn information required by law acts without jurisdiction and is liable in damages in an action for false arrest.
Jamer, (1912), 21, C. C. C. 116.

Sec. 655 of the Crim. Code as amended 1909 does not make it essential that witnesses should be produced on an application

to a justice for a warrant of arrest, but requires that if any witnesses are produced their evidence must be given upon oath and taken down in writing by the justice.
White, (1915), Haultain, C. J., 24, C. C. C. 85.

The issue of a warrant for arrest upon a sworn information, is in itself a ministerial act of the magistrate, but his preliminary decision under Cr. Code sec. 655 on the question whether a warrant or summons, is the more appropriate, or whether in fact any offence is disclosed in the information, is a judicial act.
Marsil, (1914), Charbonneau, J., 25, C. C. C. 223.

Les mandats d'arrestation sont émis en vertu de l'art. 655, sur la plainte ou dénonciation du plaignant, sans qu'il soit nécessaire d'examiner plus particulièrement ce dernier et ses témoins et de rédiger leurs dépositions sous serment.
Tierney, 17, R. J. Q. B. R. 486.

SECTION **658.**

The Court will quash a summary conviction as made without jurisdiction on being satisfied by affidavit that the defendant was out of the province from a date prior to the laying of the information until after the hearing and had not authorized the appearance of counsel who had applied on his behalf for an adjournment, although the summons had been served substitutionally on defendant's wife at his last place of abode (Cr. Code, sec. 658).
Dimond, (1916), 25, C. C. C. 317.

An affidavit of the service of a summons in a summary conviction matter must be taken before a Justice of the Peace (Cr. Code sec. 658) in order to give the magistrate jurisdiction to proceed *ex parte*, and a conviction made in the absence of the defendant where the affidavit of the service of the summons was taken before a commissioner of the Supreme Court is bad and will be set aside on *certiorari*.
Service of a summons is good if made by a *de facto* constable, such as one continuing to act after the expiration of his term and before a new appointment had been made.
Pelley, (1915), 27, C. C. C. 405.

SECTION **661.**

Cr. Code sec. 661, as to the execution of warrants on Sunday, being in terms limited to warrants authorized by the Code, does not apply to search warrants issued under the Canada Temperance Act; nor does Part XV. of the Code, which by sec. 135 of the Canada Temperance Act is to be read into the latter Act, contain

any enactment which would validate the execution on Sunday of a search warrant under the Canada Temperance Act.
Willis, (1916), 27, C. C. C. 383.

SECTION **664.**

A commitment to gaol by a magistrate of a woman arrested under a warrant, made without having her brought before him, upon a verbal unsworn statement that she had shown signs of insanity, and in order that a medical examination might be had, is illegal. The first duty of a magistrate dealing with a person arrested upon his warrant is to have such person brought before him as soon as practicable, and then make such order as the case requires. The express enactment of the criminal code sec. 567, must be followed in this respect, although the form of remand in connection with it has no mention of the presence of the prisoner.
Sarrault, (1905), 15, Q. J. R. K. B. 3.

SECTION **667.**

The verdict of a coroner's jury finding the petitioner guilty of manslaughter by negligence will not be quashed on *certiorari* for the coroner's failure to make the preliminary declaration of belief that the death was caused by violence, negligence or unlawful means, as required by the Quebec statute 4 Geo. V., 1914, ch. 38, or for omission to follow other merely directory regulations contained in that statute.
Robin, (1915), Lafontaine, J., 27, C. C. C. 407.

SECTION **671.**

A witness may well excuse himself for not bringing with him and producing documents which he has under trust, and the right to which is, or may become, the subject of litigation. He is not bound to search for them, if he shews that they are in a place to which across on his part is both legally and physically impossible.
Campbell v. Earl of Dalhousie, L. R. 1, S. & D. App. 462.

SECTION **679.**

Where a preliminary enquiry is being held and the prisoner is orally remanded for a time exceeding three clear days, the justice exceeds his jurisdiction, as a warrant of remand is required under Criminal Code sec. 679, where the remand is for more than three days.
Goulet, (1911), 20, C. C. C. 191.

An objection that the preliminary enquiry in a criminal case was not conducted according to law will not avail where the accused, who had been committed for trial, pleaded not guilty and stood trial without questioning the regularity of the preliminary proceedings.
Séguin, (1912), 20, C. C. C. 69.

The object of a preliminary inquiry is not to establish the guilt or innocence of the accused, but merely to ascertain whether he should be committed for trial or not. Hence, irregularities thereat afford no grounds for quashing an indictment subsequently preferred, such as the hearing of one of the witnesses in the absence of the accused.
Rex. v. Eliasoph et al., Cross, J., 19, Q. J. R. K. B. 232.

When a magistrate has become seized of a case by taking the information for an indictable offence no other magistrate having general concurrent jurisdiction with him can acquire jurisdiction to intervene and preside at a preliminary enquiry, even with the consent of the first magistrate, except in so far as such course is authorized by statute in special circumstances such as illness or absence of the first magistrate.
Holman, (1912), 21, C. C. C. 11.

The magistrate who holds the preliminary investigation on a charge preferred against an accused person, may commit him on any other on or more charges disclosed by the evidence.
The King v. Mooney, 15, Q. J. R. K. B. 57.

The Criminal Code (sec. 679) in stating that the accused cannot be detained in prison more than eight clear days between two adjournments ipso facto permits an adjournment until the ninth day, as the statute expressly provides that the day following the remand is to be counted as the first day.
Dick, (1911), 19, C. C. C. 44.

SECTION **682.**

Depositions taken at a preliminary inquiry, in the absence of the magistrate before whom the case is proceeding, have no legal value whatever; and therefore the commitment by the magistrate of a prisoner for trial, the bill of indictment founded on his illegal commitment or on the illegal depositions, and the true bill and indictment reported by the grand jury are null and void.
The King v. Traynor, 10 Q. J. R. K. B. 63.

The certificate of the justice who administered the oath to

the stenographer makes proof that the latter had been duly sworn, notwithstanding that the stenographer did not himself sign the oath.

It is not necessary that there should be a certificate signed by the justice on each deposition.

An accused can be asked if he wishes the depositions to be read again, even before they have been signed or the stenographer's transcript has been made.

McDonald v. The King, 25, Q. J. R. K. B. 322.

SECTION **683.**

It is not an objection that depositions taken in a preliminary inquiry have no formal caption to indicate the case in which they were taken if such depositions returned into the superior Court are physically attached to a document called the "statement of accused," which sets forth the charge and date of hearing and that the charge was read to the accused and that on being given the statutory warning he made no statement, and it further appears from the depositions themselves that they refer to the charge so recited in the "statement of accused."

McClain, (1915), 23, C. C. C. 488.

1. Un acte d'accusation soumis au grand jury et trouvé fondé n'est pas nécessairement illégal du fait que l'enquête préliminaire, qui a servi de base au *commitment*, contient des irrégularités. Ainsi, l'omission par le magistrat de signer les dépositions à l'enquête préliminaire n'affecte pas la validité de l'acte d'accusation.

2. Si, par mesure de prudence, un second acte d'accusation pour la même offence est soumis, avec l'autorisation spéciale du procureur général, à un nouveau grand jury et trouvé fondé, l'accusé peut demander que la couronne opte pour l'un des deux actes d'accusation, mais il n'en doit pas moins subir son procès; et s'il est trouvé coupable et condamné, il n'y a pas lieu, vu l'absence de préjudice, de lui accorder un pourvoi d'appel.

La Roi v. Morin, (1917), 26, R. J. Q. B. R. 428.

The fact that the stenographer who took down the evidence at the trial before a magistrate under the Ontario Liquor License Act was not sworn in conformity with R. S. O. 1914, ch. 215, sec. 87 (2) will not affect the validity of the conviction, if the magistrate himself made full notes of the depositions and there was no evidence to prove that either these or the stenographer's extended notes were incorrect.

Bosak, (1916), 26, C. C. C. 374.

It is not necessary that the deposition of each witness on a preliminary enquiry should be separately certified; all may be included in one certificate.

The fact that the stenographer appointed by the justice to take down the depositions on a preliminary enquiry was duly sworn (Cr. Code sec. 683, as amended 1913), may be proved by the justice's certificate, although the stenographer did not sign the oath.
McDonald, (1916), 26, C. C. C. 175.

The omission to swear the stenographer appointed to take the evidence on a preliminary inquiry before a magistrate, as required by Criminal Code, Sec. 683, as amended in 1913, is a matter of jurisdiction and not a mere defect of form, and convictions made by the magistrate on such evidence will be quashed.
Limerick, (1916), 27, C. C. C. 309.

SECTION **684.**

A statement made by the accused upon a preliminary enquiry and reduced to writing and signed by the accused under sec. 684 (3) of the Cr. Code 1906, is none the less admissible under Cr. Code sec. 1001, at the subsequent trial because the Crown tenders the evidence of the magistrate that it was taken through an interpreter, nor is the onus cast upon the Crown to prove that the interpreter correctly interpreted to the accused the statutory warning and the written statement as translated into the language spoken by the accused upon his signing it in English.
Walebek, (1913), 21, C. C. C. 130.

The statement or admission of the accused in the words, "I won't do it again," may constitute an implied admission of guilt of the particular crime of which he is charged, by inferences drawn from the circumstances under which the statement was made to identify what it was that his promise had reference to and to shew, in the absence of direct evidence, that the person to whom the exclamation was addressed must have charged accused with the crime immediately prior to the making of such statement.
Whistnant, (1912), 20, C. C. C. 322.

The reading of the depositions on the part of the prosecution to the accused on the preliminary enquiry in conformity with Cr. Code sec. 684, may be proceeded with from the shorthand notes without the delay incident to transcribing them.
McDonald, (1916), 26, C. C. C. 175.

Cr. C. 684 is imperative and must be observed. If it is not, then the preliminary inquiry is null and void.—The accused may avail himself of this informality before the assizes by motion to quash the indictment.

The King v. Beaulieu, (1917), 26, Que. K. B. 151.

SECTION **688.**

Where a private prosecutor institutes the proceedings on a criminal charge and has himself bound over to prefer an indictment at the Court of General Sessions, the Crown Attorney for the county has the statutory right in Ontario under the Crown Attorney's Act, R. S. O. 1914, ch. 91, sec. 8, to "assume wholly the conduct of the case where justice towards the accused seems to demand his interposition," and upon his taking charge of the prosecution after a true bill has been found, the private prosecutor has no right to take part in the proceedings at the trial, at least where the case does not present more of the features of a private injury than of a public offence. (Crown Attorney's Act, R. S. O. 1914, ch. 91, sec. 8 (c).)

Fraser, (1914), 23, C. C. C. 140.

The right of the accused to security for his costs, under § 4, sect. 595 Cr. c., will be enforced, upon motion, after the finding of a true bill under the circumstances stated above.

King v. Yoke et al., 14, Q. J. R. K. B. 540.

SECTION **690.**

Un mandat de dépôt émis en vertu de l'art. 690 c. cr., pour incarcérer l'accusé en attendant son procès devant la Cour du Banc du Roi, est valable, nonobstant l'absence, dans la plainte, des éléments de l'offense.

2. Un prisonnier détenu en vertu de deux mandats réguliers ne peut invoquer un renvoi irrégulier sous l'article 679 c. cr. (excédant huit jours, dans l'instruction préliminaire d'une des accusations, pour se faire libérer par voie d'*habeas corpus*.

3. La détention d'un prisonnier en vertu de deux mandats émis pour deux offenses contradictoires (dans l'espèce, bigamie et refus de pourvoir), supplée un moyen de réponse en droit (*demurrer*) aux accusations, mais ne donne pas ouverture au recours de l'*habeas corpus*.

Ex parte Beaudoin, 22, R. J. Q. B. R. 562.

SECTION **696.**

On the order being made under Code sec. 696 that the accused shall give bail to answer any indictment at the jury court upon

the charge, in lieu of a committal for trial thereon, the accused may, without waiting for an indictment, elect speedy trial without a jury upon the charge.

Where an order is made on a preliminary enquiry that the accused give bail under Code sec. 696 to appear for trial, but no committal for trial is made as the magistrate does not consider the case sufficiently strong to order committal, the recognizance of bail acknowledged before the magistrate of two justices and duly signed, is the only necessary record to go before the trial Court with the depositions and information; and a speedy trial without jury on defendant's subsequent election of same is not annulled by the lack of a formal order signed by the magistrate to further evidence the direction to give such bail.

Daigle, (1914), 23, C. C. C. 92.

SECTION 698.

All superior courts of criminal jurisdiction or one of their judges, and also, in the province of Quebec, a judge of the Superior Court, have authority to admit to bail persons accused of any crime whatsoever, including treason and capital offences, but as respects indictable offences which, before the enacting of the Criminal code, were felonies, it is within their discretion to grant or refuse the application for bail.

With respect to indictable offences which were formerly misdemeanours, the accused is entitled to be admitted to bail as a matter of right.

The propriety of admitting to bail for indictable offences, which were formerly classed as felonies, should be determined with reference to the accused person's opportunities for escape, and to the probability of his appearing for trial.

To determine this point it is proper to consider the nature of the offence charged and its punishment, the strength of the evidence against the accused, his character, means and standing.

Where a serious doubt exists as to his guilt the application for bail should be granted.

If, on the evidence, it stands indifferent whether he is guilty or innocent, the rule generally is to admit him to bail; but if his guilt is beyond dispute the general rule is not to grant the application for bail unless the opportunities to escape do not appear to be possible and it is consequently almost certain that he will appear for trial.

The fact that the application for bail is not opposed either by the attorney general or the private prosecutor may also be taken into account by the Court or judge. C. c., 602.

The King v. Fortier, 13, Q. J. R. K. B. 251.

SECTION 699.

When a prisoner, charged with wilful murder, has been tried, found guilty and sentenced to death but, upon appeal, has obtained a reversal of the conviction on the technical grounds, and stands committed for a second trial, this Court will not admit him to bail, especially when the Crown appears to proceed with due diligence.

McCraw v. The King, 16, Q. J. R. K. B. 505.

The general rule is that a person committed for trial on a charge of murder will not be granted bail.

Gentile, (1915), 24, C. C. C. 342.

SUMMARY CONVICTIONS

PART XV.

SECTION 705.

In the absence of a special enactment the Court of King's Bench has no concurrent jurisdiction to try offences punishable on summary conviction.

Beauvais, (1904), 14, Q. J. R. K. B. 498.

SECTION 706.

The right of appeal in a summary conviction matter conferred by sec. 749 *et seq.* of the Cr. Code is limited by the effect of Cr. Code, sec. 706, to matters over which the Parliament of Canada has legislative authority; this refers to the Dominion Parliament and, in the absence of provincial legislation adopting the Code provisions as to appeal or making other provision therefor, an appeal will not lie from the dismissal of a charge under a statute of the former Province of Canada in force in the present Province of Quebec which relates wholly to matters over which the Quebec Legislature now has exclusive jurisdiction.

Paradis, (1915), 24, C. C. C. 343.

SECTION 707.

In summary conviction matters the justices are not to mix up two or more criminal charges and convict or acquit in any one of them with any reference to the facts appearing in the others;

but the justices may for reasons of justice arising out of the circumstances of the case and for its better determination, postpone their decision in one or more cases and before deciding them proceed with the trial of other similar charges against the same accused so long as their discretion in so postponing is honestly exercised and is not used directly or indirectly with a view of bringing in facts or evidence which have no legitimate bearing upon their decision.
Richard, (1914), 24, C. C. C. 183.

In a complaint charging unlawful sale of intoxicating liquors, it is unnecessary to declare that the accused was not the holder of a license.—In proceedings of this nature, one Justice of the Peace has sufficient authority to act alone except during the hearing and to render judgment.
Huot v. Truchon, (1916), 26, Que. K. B. 199.

A summary conviction will be quashed where there was no evidence before the magistrate that the locality at which the offence was committed was within his territorial jurisdiction, the only reference to the place of the offence being in such general terms as "the landing" and the "coal company's offices."
Picard, (1913), 21, C. C. C. 250.

It is not a bar to the granting of prohibition to a magistrate for exceeding his territorial jurisdiction that an alternative remedy of appeal was available to correct the absence or excess of jurisdiction.
Jack, (1915), 24, C. C. C. 385.

SECTION **708** (3.)

The provision of sub-sec. 3 of sec. 708 which declares that it shall not be necessary for the justice who acts before the hearing, *ex. gr.*, in issuing the summons or warrant, to be the justice by whom the case is to be heard, applies only to summary conviction proceedings under Part XV and not to preliminary enquiries for indictable offences.
Holman, (1912), 21, C. C. C. 11.

SECTION **709.**

The defendant raising the objection to the justice's jurisdiction in a summary conviction matter on the ground that the title to land comes into question must satisfy the justice that there is some reasonable ground for his assertion of title; and there must be some show of reason in the claim of title in order to oust the justice of jurisdiction under Cr. Code sec. 709.
Kane, (1915), 26, C. C. C. 156.

SECTION 710.

An objection to summary conviction proceedings for misjoinder of three persons accused under one complaint for an offence several in its nature will be maintained even after plea as it forms a ground of nullity of the proceedings and not a mere irregularity which might be waived.
Lachance, (1915), 24, C. C. C. 421.

If a statute provides that summary prosecutions for a certain offence shall be brought only in the name of certain officials, the trial upon a prosecution in contravention of that restriction would be a nullity; the accused in such case has not been placed in jeopardy so as to bar a second prosecution instituted by the proper official after the first prosecutor had consented to the charge being withdrawn.
Ethier, (1916), 27, C. C. C. 12.

The necessities of justice as well as the provision contained in sec. 710 of the Criminal Code require that a summary conviction must be for a single and certain charge; and where there is no need for giving evidence of other offences to prove intent, the charge and the evidence at any one trial should be confined to a single offence.
Roach, (1914), 23, C. C. C. 28.

An information for using obscene language is defective if it does not set out the language used, but the defect may be cured by defendant's appearance and plea without taking exception thereto at the hearing.
Ballentine, (1914), 22, C. C. C. 385.

While fair information and reasonable particularity as to the nature of the offence under the summary conviction sections of the Criminal Code, 1906, must be given in informations and convictions, this merely means that such particulars as to the time, place and subject matter of the charge must be given as, with the statutory description of the offence, will shew upon the face of the conviction exactly what it is for; especially since such sections are administered generally by a body of men without special legal training or experience.
Brady, (1913), 21, C. C. C. 123.

Prohibition will be granted against a magistrate enforcing a summary conviction where the accused had been tried summarily under a previous information and, after all the evidence for the prosecution had been taken and the case closed, the magistrate improperly allowed the prosecutor to withdraw the charge and

lay a new information for the same offence, on the hearing of which he convicted the accused of the offence charged upon new evidence.

Chew Deb, (1913), 21, C. C. C. 20.

It is not essential that an information before a magistrate should be re-sworn after being amended at the hearing, if the amendment merely gives greater particularity or certainty to the charge without changing the charge to an offence of a different kind or alleging it as of a time or place materially different from that first alleged.

An irregularity in not re-swearing an information in a summary conviction matter when materially amended at the hearing is waived by proceeding with the trial without taking the objection.

Tally, (1915), 23, C. C. C. 449.

The duty of the justice on being applied to for a summons in a summary proceeding is to satisfy himself that there is sufficient cause for his interference by summons; he may be satisfied with the information or complaint alone although not sworn, but, if not, he may take the evidence under oath of any witness in support of the information.

Dolan, (1911), 26, C. C. C. 171.

Where a complaint in a summary conviction matter was invalid as disclosing no offence known to the law and not shewing on its face the authorization to prosecute which was an essential under the particular statute invoked, certiorari lies at the instance of the accused to quash the conviction made upon his plea of guilty to such defective complaint and this although he might have taken an appeal to another tribunal.

Richard, (1916), 26, C. C. C. 166.

SECTION **711.**

The accused, represented by counsel at a justice's trial under Part XV, tacitly waives the taking of the deposition in writing, if he takes part in the hearing by proceeding with the cross-examinations without objecting to the omission.

Bédard, (1916), 26, C. C. C. 99.

The omission of the magistrate on the trial of a summary conviction matter to swear the stenographer before taking the evidence, is a matter of substance and goes to the jurisdiction of the magistrate so as to invalidate a conviction.

Johnson, (1912), 20, C. C. C. 8.

The jurisdiction of the county of Lake St. John and of the district of Roberval being territorially co-extensive, a Justice of the Peace for the district may issue his warrant over the whole county.—Failure to serve a copy of a warrant is not ground for prohibition.
Sorgius v. Bouchard, (1916), 26 Que. K. B. 242.

A distinction is to be made between the jurisdiction to take cognizance of an offence and the jurisdiction to issue particular process to compel the accused to answer it (*ex. gr.* a warrant of arrest); and unless a statute specifically requires it, a provision for an information under oath is to be read as merely giving cumulative powers in order to compel the attendance of the accused by the process which it enables the magistrate to issue upon it, and not as a condition precedent to his exercise of his trial jurisdiction upon the acused being brought before him without a warrant in a summary conviction matter.
Papillo, (1911), 20, C. C. C. 329.

SECTION **715.**

In a summary conviction matter, the accused may appear by counsel instead of personally and the magistrate has jurisdiction to proceed without requiring the accused to be personally present.
Romer, (1914), 23, C. C. C. 235.

Where, as in Alberta, justices of the peace are appointed with territorial jurisdiction extending over the entire province, an objection that the charge was not laid before the nearest justice will not be a ground for quashing the summary conviction unless there has been a gross abuse of authority in compelling the attendance of the accused at a far distant and inconvenient place of trial, notwithstanding the availability of a justice at a convenient place of trial, under circumstances amounting to a denial of the right of the accused to make his "full answer and defence". (Cr. Code, sec. 715).
Tally, (1915), 23, C. C. C. 449.

As secs. 715 and 720 of the Cr. Code pertaining to the appearance of counsel at trial before a magistrate are made applicable by sec. 17 of the Prohibition Act. P. E. I., 1907, to prosecutions thereunder, counsel may appear and enter for an absent defendant a plea of guilty for a violation of the latter Act.
McDonald, (1913), 21, C. C. C. 229.

A summary conviction for that the accused did "at various times and in public places unlawfully commit acts of indecency" at a named city within a period of two months specified is in-

valid for uncertainty and as including several offences, and no amendment is permissible on certiorari, if the evidence at the hearing included several distinct offences within the period named in the conviction and the magistrate had neither indicated any particular occasion regarding which he found the accused guilty nor found him guilty in respect of all of such occasions.
Roach, (1914), 23, C. C. C. 28.

Unless it appears that the refusal of a magistrate to grant an adjournment of the hearing results in the accused being prevented from making his "full answer and defence". (Cr. Code sec. 715), the magistrate's *bona fide* exercise of discretion cannot be reviewed.
Tally, (1915), 23, C. C. C. 449.

The words "full answer and defence" used in Code secs. 715, 786, and 942, mean that the accused can invoque every means both in law and in fact to meet the charge, the word "answer" being specially applicable to a defence on the facts and the word "defence" applying both to matters of testimony and matters of law.
Romer, (1914), 23, C. C. C. 235.

The fact that the evidence for the prosecution was sufficient to warrant a summary conviction and that no evidence was given for the defence will not support a commitment where no formal conviction was ever drawn up and the minute of adjudication in which the accused was found guilty contained a suspension of sentence which had not been regularly superseded.
Knight, (1916), 27, C. C. C. 111.

Where the accused has appeared in person to defend the charge an opportunity must be given him to put in his own evidence and that of other witnesses, and he should be distinctly asked by the magistrate whether he desires to give evidence.
Curry, (1915), 24, C. C. C. 340.

As the provisions of the Criminal Code, Part XV (Summary Convictions), are in terms applicable to prosecution under the Nova Scotia Temperance Act, 1910, counsel may appear before the magistrate and plead guilty for the accused without the personal attendance of the latter in respect of an illegal sale of intoxicating liquor in contravention of the Act.
Thompson, (1915), 23, C. C. C. 463.

SECTION 718.

A summary conviction made on default of defendant's appear-

ance to an alleged copy of summons served upon him may be set aside if it be shown that the summons was not signed by the magistrate and that in consequence the defendant had not been legally cited to appear.

Lanctot et al., (1916), 25, C. C. C. 449.

SECTION **720.**

As secs. 715 and 720 of the Criminal Code 1906, pertaining to the appearance of counsel at trial before a magistrate are made applicable by sec. 17 of the Prohibition Act, P.E.I., 1907, to prosecutions thereunder, counsel may appear and enter for an absent defendant a plea of guilty for a violation of the latter Act.

Mc Donald, (1913), 21, C. C. C. 229.

SECTION **721.**

The defendant's appearance by counsel in answer to a summons in a summary proceeding under Part XV. of the Code is equivalent to his personal appearance, and the plea of not guilty entered by counsel for defendant in the latter's absence without objection to an alleged irregularity in the information and proceedings upon which the summons was founded, is a waiver of the irregularity and a submission to the jurisdiction of the justice.

Dolan, (1911), 26, C. C. C. 171.

In proceedings under Part XV. Criminal Code (summary convictions) the sentence or judgment does not form part of the hearing and consequently the limit of eight days for adjournment provided by section 722 of the Criminal Code, 1906, or thirty days under the Quebec license law, art. 1117, R. S. Q. does not apply to the delay which may elapse after the hearing is finished and before judgment is rendered.

The justice is not obliged to fix a date in writing at the conclusion of the hearing for the rendering of judgment, but may render judgment when ready upon giving notice to the parties.

Cliche, (1911), 20, C. C. C. 186.

In the absence of prejudice to the accused, a summary conviction by a justice is valid, although there had been an adjournment without any date fixed for rendering judgment, if the magistrate beforehand has given notice to the solicitor for the accused.

Bédard, (1916), 26, C. C. C. 99.

The indefinite suspension of proceedings in the trial under the summary convictions clauses, is prohibited as prejudicial to tne accused in his defence; however, if the suspension is by agree-

ment between the Crown and the accused to the effect that the trial should be delayed so long as the accused remains away from a particular place, such suspension constitutes rather an adjournment of which the accused cannot complain, since he himself determines its duration.
Bédard, (1916), 26, C. C. C. 99.

In a summary conviction matter, the accused may appear by counsel instead of personally and the magistrate has jurisdiction to proceed without requiring the accused to be personally present.
Romer, (1914), 23, C. C. C. 235.

A magistrate has jurisdiction to proceed with the hearing of a charge punishable on summary conviction if the accused is in fact present, although he may have been brought there by irregular means, if the magistrate has jurisdiction over the person and offence.
Goguen, (1916), 27, C. C. C. 423.

SECTION **722.**

Where a person was brought before a magistrate upon a written complaint for an assault upon his wife, who, in her deposition, swore that the accused had twice been confined in an insane asylum, and that since his release therefrom he had continually threatened her with death, and the magistrate remanded the accused to goal after directing an examination to be made by experts as to his sanity, the magistrate has discretion under subsec. 4 of sec. 722 of the Crim. Code (1906), eight days later, on their report not having been made, to sign another remand in the absence of the accused.
Bouchard, (1912), 20, C. C. C. 95.

SECTION **723.**

It is not an objection to an information under the Medical Profession Act, 1906, Alta., ch. 28, for practising medecine without being licensed, that the acts which constitute the practising are not set out in the information as Code, sec. 723, made applicable under the Alberta laws to offences under the provincial statutes, makes a description of the offence sufficient if it is in the words of the section of the statute which creates it.
Wagner, (1916), 25, C. C. C. 406.

Statutory proceedings authorized to be taken before a justice of the peace will not be set aside because of failure to describe the magistrate in the record of proceedings by the words "justice of the peace," if he is designated therein as stipendiary magistrate

for the county and consequently is an *ex officio* justice of the peace by virtue of a provincial statute.
Seriesky, (1912), 21, C. C. C. 140.

A mistake by misdescription of the official capacity of the magistrate in the proceedings before the final adjudication whereby a "commissioner of police" having the authority of two justices of the peace was wrongly described in the preliminary proceedings as a "justice of the peace" will not invalidate a summary conviction made by him as a commissioner of police if he was correctly designated as such both in the memorandum of adjudication and in the formal conviction.
Fitzgerald, (1911), 19, C. C. C. 39.

Where a summons calls upon the defendant to answer an information under the Canada Temperance Act recited therein to have been laid at a date more than three months after the offence charged, and the statute limits the time for laying the information to three months, the defendant is not bound to appear as the summons shews on its face that the justice has no jurisdiction to hear the charge; such a defect is not within the curative provision of the Cr. Code 1906, secs. 723 and 724, or of the Canada Temperance Act, R. S. C. 1906, ch. 152.
Leblanc, (1911), 21, C. C. C. 221.

Code sec. 723 applies to validate a summary conviction of a woman for vagrancy as a night-walker if the offence is stated in the words of sub-section (i), of Code sec. 238; and a warrant of commitment in the like terms will not be held bad because it does not recite expressly that the accused was first asked to give an account of herself.
Campbell, (1916), 26, C. C. C. 196.

The affixing of stamps on judicial proceedings enjoined by sections 1167 and following R. S. Q. is not required on proceedings by the Crown. But even if it were, the omission to affix a stamp to a warrant of arrest would not affect the validity of the proceedings subsequent to the execution of the same. Cr. c., 578, 669.
The King v. Hamelin, 16, Q. J. R. K. B. 501.

A fatal objection to an information in a summary proceeding cannot be cured by the testimony adduced where the defendant does not appear.
Rowluk, (1914), 24, C. C. C. 127.

Unless the accused who has been brought before a magistrate to answer a charge punishable on summary conviction objects before the magistrate to the illegal method whereby his attendance

has been compelled, *ex. gr.*, by an arrest without warrant where a warrant is essential, the objection is considered as waived.
Paul, (1912), 20, C. C. C. 161.

SECTION 724.

If the depositions in a summary conviction matter establish such facts as warranted the justice in convicting of the offence indicated by the information, although not stated in the latter in correct form, Code sec. 724 applies to validate the conviction regardless of the defect in the information.
Tally, (1915), 23, C. C. C. 449.

A conviction and warrant of commitment issued by a police magistrate charging a woman with vagrancy in that she is "a common prostitute or night walker" without stating to which of these two classes she belongs, is not void for duplicity, since at most this is a mere defect in form within the meaning of the curative provisions of sec. 724 of the Cr. Code, especially where the offence is described in the words of sec. 238 (i) of the Code.
Brady, (1913), 21, C. C. C. 123.

An irregularity in not re-swearing an information in a summary conviction matter when materially amended at the hearing is waived by proceeding with the trial without taking the objection.
Tally, (1915), 23, C. C. C. 449.

Defects in a summons in a summary conviction matter are cured by a personal appearance by the defendant and going to trial on the merits.
Holyoke, (1913), 21, C. C. C. 422.

When a person has been arrested, has pleaded not guilty, and has been tried and convicted in a summary conviction matter, it is too late for him then to raise the objection that he was illegally arrested without a warrant.
Langlois, (1911), 20, C. C. C. 183.

Where a summons calls upon the defendant to answer an information under the Canada Temperance Act recited therein to have been laid at a date more than three months after the offence charged, and the statute limits the time for laying the information to three months, the defendant is not bound to appear as the summons shews on its face that the justice has no jurisdiction to hear the charge; such a defect is not within the curative provisions of the Cr. Code 1906, secs. 723 and 724, or of the Canada Temperance Act, R. S. C. 1906, ch. 152.
Leblanc, (1911), 21, C. C. C. 221.

SECTION 725.

A conviction for an offence against the Liquor License Ordinance cannot be sustained under an information and warrant describing the accused as "Big Boy of Calgary, Alberta," where, before the accused pleaded to it, the information was amended, without being re-sworn to, by striking out the words "Big Boy" and substituting therefor the name of the accused, William Davis, and where his objection to the jurisdiction of the police magistrate to try him on the ground that no sworn information had been laid against him, was overruled and the trial proceeded with.
Davis, (1912), 20, C. C. C. 293.

Section 725 of the Criminal Code 1906 (former sec. 907 of Cr. Code 1892) applies to validate a summary conviction stating the offence to have been committed in one or other of the different modes specified in the statute whereby a single offence is declared, *ex. gr.*, under the Inspection and Sale Act (Can.) the offering for sale, the exposing for sale or the having in possession for sale.
Brouse, (1913), 21, C C. C. 17.

SECTION 726.

In summary conviction matters the justices are not to mix up two or more criminal charges and convict or acquit in any one of them with any reference to the facts appearing in the others; but the justices may for reasons of justice arising out of the circumstances of the case and for its better determination, postpone their decision in one or more cases and before deciding them proceed with the trial of other similar charges against the same accused so long as their discretion in so postponing is honestly exercised and is not used directly or indirectly with a view of bringing in facts or evidence which have no legitimate bearing upon their decision.
Richard, (1914), 24, C. C. C. 183.

It is a ground for certiorari that a judgment of summary conviction was pronounced in the absence of the accused at a date later than that at which the evidence was concluded but without formal announcement to the parties of the time when judgment would be delivered.
Pelchat, (1915), 26, C. C. C. 75.

A summary conviction by two justices following a reservation of judgment to a fixed date is not invalid because then delivered by one of them in the unavoidable absence of the other, where

both had met on a prior day and had then concurred in written reasons for judgment and signed the formal conviction.
Armstrong, (1916), 26, C. C. C. 151.

SECTION 727.

The fact that the evidence for the prosecution was sufficient to warrant a summary conviction and that no evidence was given for the defence will not support a commitment where no formal conviction was ever drawn up and the minute of adjudication in which the accused was found guilty contained a suspension of sentence which had not been regularly superseded.
Knight, (1916), 27, C. C. C. 111.

A justice making a summary conviction and imposing a fine and costs to an amount then stated may, at least before making his minute of adjudication or the formal conviction, correct in the presence of defendant an error in the calculation of the costs although the sum first mentioned is increased.
Dicery, (1915), 25, C. C. C. 55.

A summary conviction under the Liquor License Act, C. S. N. B., 1903, ch. 22, will not be quashed on the ground that the amount of the costs of the prosecution and of the costs of commitment and conveying to gaol were first fixed in the formal conviction and that the "minute of conviction," which the magistrate is directed to make by sec. 29, adjudged the fine "besides costs" and in default three months' imprisonment, without specifying either the amount of such costs or the costs of commitment and conveying to gaol in the event of the fine and costs not being paid; *semble*, the minute of conviction was not defective, but, if it were, the defect was cured by sec. 89 of that Act (similar to Cr. Code, sec. 1124, so far as the conviction was concerned, where the latter was in due form.
Paulin, (1914), 25, C. C. C. 173.

It is not a valid objection to a warrant of commitment that the committing magistrate in signing and sealing the warrant wrote after his name merely the letters "P.M." instead of spelling out his official designation of "police magistrate." where his official capacity was recited in full in the body of the warrant.
Brady, (1913), 21, C. C. C. 123.

The fact that a formal summary conviction was not signed until some time after the sentence was pronounced does not deprive the accused of his right of appeal which lies as soon as the sentence is pronounced.
In proceedings by way of summary conviction the conviction

consists in the pronouncement of sentence; the drawing up and signing of the conviction according to Form 32 of the Criminal Code, 1906, only establishes the conviction in proper form and is not a prerequisite to the signing of a warrant of commitment (Form 41, Crim. Code).

Langlois, (1911), 20, C. C. C. 183.

SECTION **730.**

Where on the trial of summary conviction proceedings the evidence produced is insufficient to prove the charge, the duty of the magistrate is to dismiss it and grant a certificate of the dismissal as provided by the Cr. Code, 1906.

Chew Deb, (1913), 21, C. C. C. 20.

Prohibition to an inferior court will not be refused on the ground that the proceedings in that court are at an end by the dismissal of the case therein, so long as anything remains to be done to complete the proceedings sought to be prohibited, *ex. gr.*, the granting of a statutory certificate of dismissal so as to enable the dismissal to be pleaded in bar to any future proceeding.

Holman, (1912), 21, C. C. C. 11.

SECTION **731.**

The "minute of conviction" made by a justice of the peace for an offence under the Vagrancy Clauses, Cr. Code sec 1906, secs. 238 and 239, upon directing imprisonment for the offence is not a minute of an "order" of a justice so as to require service of a copy thereof under Cr. Code sec. 731 before issuing a warrant of commitment.

Sec. 731, Cr. Code 1906, applies only to "orders" as distinguished from "summary convictions" made by justices although the procedure as to both is regulated by Part XV. of the Code.

Brady, (1913), 21, C. C. C. 123.

Secs. 733 and 734 of the Criminal Code do not permit the maintenance of a prosecution at the instance of the person injured by an assault after the conviction of the offender for an offence involving the same element in a prosecution instituted by some other person.

McIntyre, (1913), 21, C. C. C. 216.

SECTION **732.**

Where the assaults charged separately against two persons took place as part of one and the same occurrence, and the evidence

would have been identical in each case, it is not a ground for quashing the summary conviction in either case that the two cases were tried together, particularly where no exception was taken at the trial.

Tally, (1914), 23, C. C. C. 449.

SECTION **734.**

A charge of assault occasioning actual bodily harm, is one which two justice would have power to try only under the Summary Trials clauses, Pt. XVI; and if the information be not amended so as to charge common assault and they proceed to make a summary conviction for common assault only, the payment of the fine and costs by the accused will not bar a civil action for damages for the assault under sec. 734, it not being competent for the justices to treat the case as triable under the Summary Convictions clauses, Pt. XV, so as to affect the prosecutor's civil rights without his consent.

Curry, (1915), 24, C. C. C. 438.

SECTION **737.**

Where the statute under which the summary conviction is made directs that the fine shall be payable to the convicting magistrate, there is no necessity for a direction in the formal conviction that the fine should be paid to him.

Schilling, (1915), 23, C. C. C. 380.

When a warrant for commitment to jail in default of paying a fine has been issued with an overcharge in the costs of conveyance to the common jail, it will be quashed on habeas corpus and the prisoner discharged as the warrant is indivisible.

Msadaquis, (1914), Bruneau, J., 24, C. C. C. 384.

SECTION **739.**

The expenses of conveying to prison persons who are committed to prison either for punishment or to take their trial and are unable to pay those expenses are "expenses incurred in respect of the maintenance of prisoners", within ss. 4 and 57 of the Prison Act, 1877 (40 & 41 Vict. c. 21), and those sections transfer the liability for such expenses from county rates to moneys provided by Parliament.

Mullins v. Treasurer of the County of Surrey, L. R. 7, A. C. 1.

A summary conviction for illegally selling intoxicants to an Indian in contravention of the Indian Act (Can.) may, under Cr.

Code, sec. 739, properly adjudge costs of commitment and conveying to gaol in default of payment of the fine.
Verdi, (1914), 23, C. C. C. 47.

The restrictions of Code sec. 739 (1*b*), by which imprisonment "not exceeding three months" may be ordered in default of payment of a fine on summary conviction Part XV., do not apply to a conviction made on a "summary trial" under Part XVI, for an indictable offence; the imposition of imprisonment in default is a "proceeding" within Code sec. 798, and the effect of sec. 798 is, therefore, to exclude the operation of sec. 739 to such a case.
Davidson, (1917), 28, C. C. C. 44.

Where a statute prescribes as the punishment for an offence both fine and imprisonment, the punishment is in the discretion of the Court, which is not bound to inflict both, but may inflict either one or the other of the two kinds of punishment.
Brabant v. Robidoux, 7, Q. J. R. K. B. 527.

1. The precept of a warrant of commitment must conform strictly to the directions of the statute which authorizes an incarceration, with respect to the conditions upon which a prisoner can obtain his discharge before the expiration of the term to which he has been condemned.
2. When the authorizing statute states that a person who is condemned to a term of imprisonment in default of the payment of a fine and costs, can obtain his discharge before the expiration of such term upon the payment of the fine, it is illegal to require in addition the payment of the costs of the prosecution and of the charges of his conveyance to prison.
3. In such case the warrant of commitment is bad and illegal, not only as regards the part in which such costs and charges are mentioned but in whole, and must be quashed.
Ex parte Lon Kai Long et al., 6, Q. J. R. K. B. 301.

SECTION **740.**

Where a defendant on summary conviction is sentenced to imprisonment for a certain term by a magistrate, the period of imprisonment is to be calculated from the time the actual imprisonment commences.
Gregg, (1913), 22, C. C. C. 51.

SECTION **748.**

Proceedings for the forfeiture and estreat of a recognizance to keep the peace which had been required on proof of threats under sub-section (2) of Code sec. 748 may in the province of Quebec,

be taken at the instance of another individual than the first complaining party or the party threatened, as the case may be; and this without the intervention of any public authority or Crown officer.

Where a person under recognizance to keep the peace ordered by a justice under Code sec. 748 (2) on complaint of threats made, is afterwards guilty of a breach of the peace, though towards a person other than the complainant, the recognizance may be forfeited, and the same justice may give the certificate of default after written notice to the defendant and his sureties to shew cause, although the second conviction was before the court of sessions not presided over by the justice who ordered the recognizance.

Walker, (1914), Cross, J., 23, C. C. C. 179.

The petitioner was convicted of assault by a justice of the peace, and was adjudged to pay a fine of $1 and costs, and in default of immediate payment to be imprisoned for eight days. It was, at the same time, adjudged that he should give security to keep the peace for the term of one year. The warrant of commitment directed the gaoler to keep the petitioner for the term of eight days, "and until the said John Doe do furnish" good and sufficient securities as hereinbefore adjudged." The petitioner having undergone imprisonment for eight days, petitioned to be discharged.

Held:—Under Art. 959 of the Criminal Code of Canada, when a justice of the peace requires any one to give security to keep the peace he must fix the amount of the bond to be given, and order him to be imprisoned for a term to be mentioned, not exceeding twelve months, in case he should refuse or neglect to give such security. The justice of the peace must afterwards establish and record the defendant's refusal or neglect to furnish the security, and he can only issue his warrant of commitment after such refusal or neglect. A commitment, therefore, which requires the defendant to furnish security to keep the peace, but does not fix the amount, is illegal.

Doe, 2, Q. J. R. K. B. 600.

APPEAL.

SECTION **749.**

There is no right of appeal to the Court of Queen's Bench, Crown side, from a conviction by the Recorder's Court, Montreal,

on a matter which is under the exclusive legislative authority of the legislature of the province of Quebec. Section 503 of the Montreal city charter,62 Vict., ch. 58, does not confer such right of appeal.

Superior v. The City of Montreal, 9, Q. J. R. K. B. 138.

An appeal lies to the Court of King's Bench, from an order of a justice of the peace, dismissing an information or complaint on a plea of autrefois convict.

Bombardier, 15, Q. J. R. K. B. 7.

On an appeal, under sect. 879, Criminal Code, by several defendants from a summary conviction, the recognizance must be that of two sureties besides the appellant, and the appeal will be quashed if the recognizance be given with only one surety. An appeal not being a common law right, the conditions precedent imposed by the statute must be strictly complied with.

The giving of security is an essential part of the appeal, and unless it be done in the manner required by statute, the giving of a notice of appeal will be unavailing and the conviction may be prosecuted as if no notice had been given.

Queen v. Joseph et al. 11, Q. J. R. K. B. 211.

An appeal does not lie to the Court of Queen's Bench, Crown side, under Art. 870 Criminal Code, from a summary conviction of neglect to repair a road, against a municipal corporation of a city or town, under Art. 4616 R. S. Q., inasmuch as the Parliament of Canada has no legislative authority over such an offence (Art. 840, Criminal Code).

Corporation of Scottstown & Beauchesne, 5, Q. J. R. K. B. 554.

Where the appeal given by Cr. Code sec. 749 is to a specified Court at a particular sittings thereof, a notice of appeal intituled in the proper Court and stating that the appeal is made to a named Judge thereof and made returnable at the proper sittings, may be accepted by another Judge holding such sittings; the naming of the Judge in the notice is irregular but the respondent cannot object if he has not been misled by the irregularity.

Bezançon, (1916), 27, C. C. C. 388.

Where the magistrate's jurisdiction is attacked, certiorari will not be refused merely because an appeal might have been taken from the summary conviction in question, unless some express statutory prohibition so directs.

Pelchat, (1915), 26, C. C. C. 75.

A plea of guilty operates as an estoppel against the accused from calling upon the prosecution to produce evidence to establish

that he is guilty, and *quâ* the facts alleged in the information or indictment, he is barred from a trial *de novo* which in certain cases is available on an appeal from two justices holding a summary trial on notice of appeal being given by a person aggrieved (Code secs. 749 and 797, as amended in 1913); any objection to be taken must then be to the form of the conviction.

Gillis, (1914), 23, C. C. C. 160.

Where an appeal from a summary conviction under the Criminal Code has been entered on the records of a District Court, the validity of the entry of the appeal is not subject to collateral attack, and until quashed by the District Court or held invalid by a superior Court in a proceeding such as prohibition upon which the question is raised on a direct and substantive application, the stay of proceedings incident to the appeal must be held to be operative so as to invalidate an arrest under the conviction appealed from, made before the disposal of the appeal.

Gregg, (1913), 22, C. C. C. 51.

Upon an appeal from a summary conviction for common assault, it is not essential that the notice of appeal shall state explicitly in the language of Crim. Code, sec. 749, that the defendant is a "person aggrieved."

McKay, (1913), 21, C. C. C. 211.

The findings of a county court judge upon an appeal from a summary conviction, where such appeal is in effect a re-hearing of the witnesses, and a trial *de novo* will not be disturbed on a further appeal, unless it appears that the county court judge was clearly wrong on the merits; and this doctrine applies where the county court judge preferred to follow the line of testimony discredited by the magistrate and consequently has reversed the latter's finding of fact.

Barker, (1913), 21, C. C. C. 267.

The right of appeal in a summary conviction matter conferred by sec. 749 is limited by the effect of Cr. Code, sec. 706, to matters over which the Parliament of Canada has legislative authority; this refers to the Dominion Parliament and, in the absence of provincial legislation adopting the Code provisions as to appeal or making other provision therefor, an appeal will not lie from the dismissal of a charge under a statute of the former Province of Canada in force in the present Province of Quebec which relates wholly to matters over which the Quebec Legislature now has exclusive jurisdiction.

Paradis, (1915), 24, C. C. C. 343.

Notwithstanding sec. 1122, certiorari will lie to review the ju-

risdiction of a district Court judge to hear an appeal under Cr. Code, sec. 749, from a summary conviction.
Fauchaux, (1915), 25, C. C. C. 76.

Appeal and not *certiorari* is the appropriate procedure affording an adequate remedy for reviewing a summary conviction on the merits where the question involved is one of fact only and not of jurisdiction.
Keenan, (1913), 21, C. C. C. 467.

Il n'y a pas d'appel à la Cour du banc du roi, siégeant en appel, d'un jugement rendu dans la même cour par un de ses juges siégeant en Cour criminelle, sur un exposé de faits dans une cause où l'appelant avait été condamné par un magistrat de police pour voies de fait avec annulation de son cautionnement de garder la paix.
Waller v. Le Roi, 24, R. J. Q. B. R. 127.

L'appel qui est donné par l'article 749 du Code criminel n'est que pour les infractions aux lois fédérales. En conséquence, cet appel n'existe pas pour une poursuite intentée pour avoir passé une barrière de péage sans avoir au préalable payé le péage, ce qui est une offense du ressort de la législature provinciale.
Burrough v. Paradis, 24, R. J. Q. B. R. 318.

On an appeal from a summary conviction under the Liquor License Act, R. S. S. 1909, ch. 130, all the facts necessary to shew that the offence has been committed must be proved before the district Judge hearing the appeal; and where the appeal is from a conviction as for a second offence with increased penalties the alleged former conviction must be proved and it is not sufficient that the magistrate in the conviction appealed from had included a statement that the accused had been previously convicted giving the alleged particulars thereof, where neither the prior conviction nor formal proof thereof was produced on the appeal.
Curran, (1914), 22, C. C. C. 388.

An information under the Special War Revenue Act, 1915, Can., may be laid in the name of the Minister of Inland Revenue by an authorized revenue officer, and an appeal from the dismissal of the complaint may thereupon be taken in the name of the Minister as the "prosecutor" under Cr. Code sec. 749.
Thornton et al, (1917), 28, C. C. C. 3.

Where the summary conviction appealed from by the defendant under Cr. Code, sec. 750, as amended 1909 and 1913, adjudges payment of a fine and imprisonment in default, it is insufficient to give jurisdiction to hear the appeal that the defendant, when

placed under arrest to answer the charge, had deposited with the chief of police, who was the complainant in the proceedings, a sum as cash bail, the equivalent of which was afterwards imposed as the fine, and had before the hearing of the appeal but not within 10 days after the conviction, deposited with the magistrate, the sum fixed by the latter as security for costs of the appeal; the appellant should have filed a recognizance to perfect his appeal.

Mack Sing, (1915), 25, C. C. C. 158.

A notice of appeal given under Cr. Code, sec. 750, by the person convicted and which shows on its face that he appeals as such from the summary conviction made against him, need not specifically state that he is the "person aggrieved".

Hatt, (1915), 25, C. C. C. 263.

The meaning of rule, O.-LVII., r. 3 (Nova Scotia), which stipulates that "the notice of appeal shall be served within ten days from the day that the appellant or his solicitor first had notice that the order upon the decision appealed from had been made," is not ten days from the service of the order nor ten days from the filing of the order, but ten days from "notice" of it, and for this purpose notice by telegram is effective.

Pelton, (1912), 20, C. C. C. 239.

The proviso in sect. 3, chapter 148 R. S. C., 1906, that no time during which a party convicted is out on bail shall be reckoned as part of the term of imprisonment to which he is sentenced, applies to cases of release on bail in appeal, under sect. 750*c* Cr. C. Hence, when the appealing convict has been out on bail and the conviction has been affirmed, it may be enforced by the appellate Court, although, when originally made, it contained no express direction that it should be suspended by an appeal. Sect. 1023 Cr. C.

Collette v. The King, 19 Q. J. R. K. B. 124.

The effect of the words "the prosecutor or complainant as well as the defendant" which are used in Cr. Code, sec. 749, in reference to the appeal given to "any person who thinks himself aggrieved" is to limit the right of appeal from the dismissal of an information in a summary conviction proceeding to the prosecutor or complainant.

It is ground for quashing an appeal under Cr. Code sec. 749, from the dismissal of a summary conviction proceeding that the appellant has not shown upon the appeal that he is the complainant and so within the limitation of Code sec. 749 as a party aggrieved by the order of dismissal;

A notice of appeal taken in a summary conviction matter under

Cr. Code, sec. 749, by a person entitled to appeal thereunder need not state on its face that the appellant is a "person aggrieved" nor recite such facts as would show legal grounds for his being aggrieved.

Renner, (1915), 24, C. C. C. 122.

SECTION 750.

Where a summary conviction directs payment of a fine and, in default of distress, imprisonment, the defendant's recognizance on an appeal therefrom under Cr. Code 750 need not cover the fine and costs, the imprisonment fixed in default of payment being sufficient security for that; the basis on which the amount of the recognizance should be fixed in such case is what the probable costs of the appeal would be.

The period of ten days limited by Code sec. 750 (as amended 1909 and 1913) for filing a notice of appeal from a summary conviction does not apply to the service of notice on the respondent and the justices; it is sufficient that the service was made in sufficient time to perfect the appeal.

McDermott, (1914), 23, C. C. C. 252.

It is sufficient that a notice of appeal from a summary conviction to which the procedure of the Criminal Code is applicable should be proved by affidavit and not by calling a witness on the return of the appeal to prove the service.

Curran, (1914), 22, C. C. C. 388.

It is sufficient that a notice of appeal under Crim. Code, sec. 750 (*b*) (amendment of 1909) shall be filed in the office of the clerk of the court appealed to and a copy served on the justice who tried the case, without also serving a copy on the respondent.

Where the defendant desires to appeal from a summary conviction which awards imprisonment and enters into a recognizance in lieu of remaining in custody pending the appeal, the appeal of which due notice has been given will not be quashed on the ground that no return of the recognizance was made by the magistrate into the court to which the appeal was taken, such return being beyond the control of the appellant and within the duty of the magistrate whose neglect should not prejudice the rights of the appellant.

McKay, (1913), 21, C. C. C. 211.

Upon an appeal from a summary conviction the notice of appeal may be served either upon the justice or upon the respondent under Cr. Code 750 (amendment of 1909), but where the respondent is not served, more must be shewn than service upon a person to whom the witness, called in proof of service, had been

directed on enquiry for a man bearing the same surname and initials as the justice; the appellant should prove that the person served was the justice who tried the case.
Pahkala, (1912), 20, C. C. C. 247.

A person upon trial for a crime has a right to hear all the evidence adduced against him and to insist, as a matter of right, that the formalities of the law as to criminal trials are complied with; and when formal proceedings are in strict law required, *ex. gr.*, an arraignment upon a specific charge made known to the prisoner at the hearing before a magistrate, the absence of the required proceedings is a ground for setting aside the conviction without regard to the question whether or not any substantial injustice had resulted to the accused.
Roach, (1914), 23, C. C. C. 28.

The words "sitting of the Court" in article 880, § a, criminal code, mean a term of the Court as fixed by law and not a sitting had in virtue of an order of adjournment.
Bombardier, 15, Q. J. R. K. B. 7.

Service of notice of appeal from a conviction under sec. 750 (*b*) of the Criminal Code, need not be made upon the respondent and convicting Justices within the ten days within which the notice must be filed in the Appeal Court; the limit applies only to the filing of the notice.
Gallagher, (1916), 27, C. C. C. 360.

Where a summary conviction is appealed against under the procedure of Cr. Code, secs. 749 and 750, and the appeal was allowed without any evidence being taken, on the sole ground that the information was insufficient, such decision, even if erroneous under Cr. Code, sec. 753, because the objection had not been raised in the magistrate's Court from which the appeal was taken, is not a decision upon a mere preliminary point, but one upon the merits; and mandamus will not lie, even with the consent of the County Judge, who had so decided, to compel him to reopen the appeal.
McLeod, (1912), 25, C. C. C. 230.

Mandamus will not lie to a district court judge because of his allowance of an appeal taken under Cr. Code, sec. 750, on the failure of the prosecutor or of the Attorney-General to appear in opposition thereto, the writ not being intended to direct in what manner the trial below shall be conducted, but merely that the inferior court shall exercise its jurisdiction in the event of its erroneously declining so to do.
Wong Tun, (1916), 26, C. C. C. 8.

The notice of appeal by the informant, under Cr. Code, sec. 750, from the dismissal of the complaint laid by him on behalf of an association of which he was an officer, for infringement of a law the enforcement of which would specially benefit such association, need not specifically state that such informant is a "person aggrieved" by the dismissal order. (Cr. Code sec. 749.)
Austin, (1916), 25, C. C. C. 446.

Where there is any question as to the correct date of a summary conviction it is open for the appellant to shew that date by extrinsic evidence and support his appeal taken within 10 days therefrom as in time, although the conviction itself bears a prior date which would make it appear that the notice of appeal was late. (Dictum *per* Elwood, J.)
Prokopate, (1914), 23, C. C. C. 189.

Where the Justice's jurisdiction was not in question nor was any exceptional reason set up, such as gross perversion of justice the Court will exercise its discretion by refusing to quash a summary conviction removed on certiorari, if the accused might have appealed from the conviction had he given notice of appeal in due time under Cr. Code, sec. 750.
Doucet, (1915), 24, C. C. C. 347.

In order to perfect his appeal from a summary conviction, which ordered imprisonment in default of paying a fine, the appellant, who has given a recognizance under Cr. Code, sec. 750, before a justice, is under a duty to see that the justice promptly transmits the recognizance to the Court which is to hear the appeal, and if he has taken no steps to see that the recognizance is transmitted in time by the magistrate, the observance of which duty might be enforced by a mandamus against the latter, there is no jurisdiction to hear an appeal on a recognizance filed on the day of the opening of the Court when the appeal was to come on for hearing.
Hewa, (1915), 25, C. C. C. 386.

Where the grounds of appeal are set forth in the notice of appeal given under Cr. Code sec. 750, they may be referred to for identification of the summary conviction or order from which the appeal is taken and which by Cr. Code sec. 750 (*b*) must be set forth "with reasonable certainty" in the notice of appeal.

A notice of appeal from a summary conviction or order need not specify whether the appeal is against the finding of fact or against the award by way of sentence or penalty or against both.

On an appeal from a summary conviction the notice of appeal need not be "addressed" to any one and a notice regularly served

on both the justice and the respondent (Cr. Code sec. 750) but addressed to the justice only, is not thereby invalidated.

A notice of appeal under Cr. Code sec. 750 may be subscribed in the name of the "solicitor for the appellant" with the addition of words so describing his representative capacity; no formal signature is necessary if the notice otherwise shews by whom it is given.

If the justice accepts as cash the unmarked cheque of the appellant for the deposit required on appeal under Cr. Code sec. 750 (*c*) and the cheque was endorsed by the justice and transmitted to the clerk of the District Court appealed to and was cashed by the bank on presentation by the clerk, an objection first raised by the respondent on the return of the appeal to the regularity of such deposit will not be allowed.

Bezançon, (1916), 27, C. C. C. 388.

SECTION **751.**

Where an appellate court is permanent and continuing, it has inherent power to adjourn from one sittings to another and in a proper case "to enter continuances" from court to court, *nunc pro tunc*, by virtue of which a pending appeal may, where a hearing day has been allowed to pass, be revived and brought to a hearing.

Gregg, (1913), 22, C. C. C. 51.

Where the appellant has filed his recognizance in the statutory form on an appeal from a summary conviction he thereby submits to an award of costs against him on the quashing of the appeal for failure to prove compliance with the statutory prerequisites, and this apart from the power given under Cr. Code 751.

Although Cr. Code, sec. 755 applies to authorize an order against the appellant for costs of an appeal not prosecuted or entered only in case a valid notice of appeal has been given from a summary conviction, the Court has power under Code sec. 751 to award costs where the appeal is brought on for hearing, but the defendant (respondent) succeeds in having the same quashed or dismissed upon objection taken that notice of appeal had not been served upon him and that there was no sufficient proof of compliance with an alternative method of service available to the appellant, *viz.*, service upon the trial justice.

Pahkala, (1912), 20, C. C. C. 247.

While Cr. Code, sec. 751, gives the Court hearing an appeal from a summary conviction a discretionary power to allow costs, this is to be interpreted as giving the power to allow only such costs as are strictly just and reasonable.

On an appeal to the County Court from a summary conviction, the Judge of the County Court is *functus officio* on the entry of

his judgment allowing the appeal with costs and the adjournment of the Court *sine die;* and subsequent orders of the Judge purporting to adjourn the appeal to a fixed date and on the later date purporting to allow counsel-fees or other costs not covered by the former order, will be set aside on certiorari as having been made without jurisdiction.

Wilson, (1916), 26, C. C. C. 224.

On a summary conviction awarding imprisonment for four months for a second offence against a liquor law, the defendant who had been allowed at the time of sentence to go at large upon his recognizance to appear when called upon, is not entitled to have the period for which he was so at liberty prior to arrest upon a warrant of commitment counted as part of the four months' term.

Morris, (1909), 23, C. C. C. 209.

SECTION **752.**

The word "law" in Cr. Code, sec. 752, where it is declared that the court appealed to should try and shall be the absolute judge "as well of the facts as of the law," in respect to the conviction or order appealed from refers to the law applicable to the facts adduced in support of or against the proof of the charge; the appeal being a re-hearing, is a submission to the jurisdiction of the district Court to which an appeal is taken under Cr. Code, sec. 797, from a summary trial for the indictable offence of keeping a disorderly house (Cr. Code, secs, 228 and 773 (f) and 774), and the district Court may re-hear on the merits notwithstanding the want of jurisdiction of the magistrate below, by reason of the illegality of the arrest, nor does Code, sec. 753 as to objections taken below, apply other than to the cases it specifically mentions.

Miller, (1913), 25, C. C. C. 151.

SECTION **753.**

Where a summary conviction is appealed against under the procedure of Cr. Code, secs. 749 and 750, and the appeal was allowed without any evidence being taken, on the sole ground that the information was insufficient, such decision, even if erroneous under Cr. Code, sec. 753, because the objection had not been raised in the magistrate's Court from which the appeal was taken, is not a decision upon a mere preliminary point, but one upon the merits; and mandamus will not lie, even with the consent of the County Judge, who had so decided, to compel him to reopen the appeal.

McLeod, (1912), 25, C. C. C. 230.

Sec. 753 of the Criminal Code, 1906, does not prevent one who pleads guilty before a justice of the peace on a summary proceeding for the violation of a municipal by-law, from attacking its validity on appeal, notwithstanding such objection was not raised before the justice of the peace.

Upton, (1912), 21, C. C. C. 190.

Sec. 753 of the Cr. Code, does not prevent one who pleads guilty before a justice of the peace on a summary proceeding for the violation of a municipal by-law, from attacking its validity on appeal, notwithstanding such objection was not raised before the justice of the peace.

Brown, (1912), 21, C. C. C. 190.

SECTION **754.**

The re-hearing on an appeal under sec. 754 (summary convictions clauses), is to be "upon the merits," and this permits the district Court by which the appeal is heard to reduce the punishment if it sees fit to do so.

Where the conviction appealed from under Code, sec. 754, awards imprisonment in default of paying a fine and costs, the defendant is subject to have the costs of the appeal included in a new order for conditional imprisonment, made by the district Court on the appeal on entering a substituted conviction against him.

Miller, (1913), 25, C. C. C. 151.

An appeal from a summary conviction can ordinarily only be disposed of by (*a*) quashing, (*b*) formal abandonment, or (*c*) a hearing; and the appeal being a re-hearing (Cr. Code 1906, secs. 751-754), the respondent, who is the prosecutor, must prove his case although the appellant does not appear.

Gregg, (1913), 22, C. C. C. 51.

SECTION **755.**

Although Cr. Code sec. 755 applies to authorize an order against the appellant for costs of an appeal not prosecuted or entered only in case a valid notice of appeal has been given from a summary conviction, the Court has power under Code sec. 751 to award costs where the appeal is brought on for hearing, but the defendant (respondent) succeeds in having the same quashed or dismissed upon objection taken that notice of appeal had not been served upon him and that there was no sufficient proof of compliance with an alternative method of service available to the appellant, viz., service upon the trial justice.

Pahkala, (1912), 20, C. C. C. 247.

SECTION **757.**

It is ground for quashing an appeal under Cr. Code, sec. 749, from the dismissal of a summary conviction proceeding that the appellant has not shown upon the appeal that he is the complainant and so within the limitation of Code sec. 749 as a party aggrieved by the order of dismissal; the Court to which the appeal is taken under a notice of appeal which does not state the appellant to be the complainant in the proceedings, below is not bound to look at the information transmitted under Cr. Code, sec. 757, to ascertain whether the appellant was such complainant if the information was not put in evidence on the appeal.
Renner, (1915), 24, C. C. C. 121.

SECTION **761.**

Where an appeal by stated case from a summary conviction and forfeiture of a recognizance to keep the peace, has been taken on a point of law under Cr. Code sec. 761, there is no further appeal from the decision affirming such conviction and forfeiture; Cr. Code, secs, 1013 *et seq.*, do not give jurisdiction to the Court of Criminal Appeal to grant leave to appeal and to receive a case stated by the Superior Court of Criminal Jurisdiction hearing the appeal from the magistrate's decision.
Waller, (1915), 24, C. C. C. 393.

1. Lorsqu'un procès, en matière criminelle, a lieu devant la Cour du banc du roi, avec jury, les questions qui peuvent être réservées pour être soumises à la Cour d'appel ne doivent être que des questions de droit se rapportant aux procédures préliminaires, actuelles ou subséquentes au procès, ou qui découlent de l'allocution du juge au jury ou touchent à la juridiction du tribunal. La procédure par voie de cas réservés, "stated case", ne peut jamais s'étendre aux faits de la cause.

2. Dans les procès par jury, il appartient au juge de dire s'il y a preuve; et au jury d'apprécier cette preuve.

3. Le juge qui préside à un procès par jury peut commenter les faits, mais un verdict ne peut être annulé parce que ces commentaires seraient erronés, le jury pouvant toujours définitivement rendre son verdict sur les faits.

4. Les remarques que le juge fait, pour diriger un jury, dans un procès criminel, ne doivent être sténographiés que dans le cas de meurtre, la loi n'en fait pas une obligation pour les autres offenses.

5. Bien qu'en général, l'on ne puisse faire la preuve que l'accusé a commis un autre crime pour démontrer qu'il était capable de commettre celui dont il est accusé, il y a, néanmoins, des

exceptions à cette règle; ainsi cette preuve pourra être admise dans les circonstances mentionnées aux remarques ci-dessous.
Rivet v. Le Roi. (1915), 24, R. J. Q. B. R. 559.

SECTION **763.**

Where the magistrate making a conviction on summary trial refuses to reserve a case for the consideration of the Court of Appeal as to the sufficiency of the evidence, the remedy of *certiorari* is still applicable to quash the conviction on the ground that the magistrate did not have the evidence reduced to writing.
Perron, (1915), 26, C. C. C. 442.

SUMMARY TRIAL OF INDICTABLE OFFENCES.

PART XVI.

SECTION **771.**

The probable effect of Part XVI. of the Criminal Code, R. S. C. ch. 146, dealing with summary trials of indictable offences, is to give to the magistrate trying such an offence without indictment the same powers of amendment as are given to the Courts upon the trial of the same offence under an indictment.
Crawford, (1912), 20, C. C. C. 49.

A police magistrate sitting as such under Part 16, and summarily trying an indictable offence, has no right during the trial to take a view of the land in respect of a transaction in which the charge of fraud was made which he was trying as such magistrate, at least where there is no consent of both the Crown and the accused to his so doing.
Crawford, (1913), 21, C. C. C. 70.

SECTION **773.**

A conviction by two justices sitting together and having the powers of a magistrate for summary trial without the consent of the accused for an offence under Cr. Code, sec. 773, is not invalid because the information was taken before one only of the two Justices, as by Cr. Code, sec. 796, one Justice has power to remand before two Justices for the purposes of a summary trial under Part XVI of the Cr. Code.
James, (1915), 25, C. C. C. 23.

An information charging the keeping of a disorderly house between certain dates, the last which was the date of the information, excludes the latter date and, *semble*, also the first date mentioned.
Emery, (1916), 27, C. C. C. 116.

The methods of procedure by summary conviction (Part XV) and by summary trials (Part XVI) for the offence of obstructing a peace officer (Cr. Code sec. 169) are alternative methods, and where a summary conviction is sought and the procedure of Part XV. followed, the defendant need not be asked for his consent to summary trial under Cr. Code sec. 778 even where the magistrate is one having jurisdiction under Cr. Code sec. 773.
West, (1915), 25, C. C. C. 145.

An information for theft of property of less value than $10 may be laid and preliminary enquiry held before a justice of the peace in New Brunswick in his capacity as such, although he was also a county stipendiary magistrate with power of summary trial under Part XVI of the Cr. Code (Code sec. 773), without any obligation to give the accused an opportunity to elect for a summary trial before such county stipendiary magistrate.
Howe, (1913), 24, C. C. C. 215.

Evidence that the woman keeping the house and another woman living with her had together offered to have illicit sexual intercourse with two men for a consideration will support a magistrate's conviction against the former for keeping a bawdy house, although there was no other evidence of bad repute.
Emery, (1916), 27, C. C. C. 116.

No person can be arrested without a warrant on a charge of keeping a disorderly house.
Young Kee, (1917), 2, W. W. R. 442.

The person who has laid the complaint in a summary proceeding for keeping a disorderly house and who thereafter declares under oath before the magistrate that she laid the charge without understanding it and under duress of detectives may be permitted to withdraw it and so terminate the proceedings.
Rousseau, (1915), 24, C. C. C. 390.

The jurisdiction to try summarily conferred by Code sec. 773 as to certain indictable offences, is expressly subject to the subsequent provisions of Part XVI., and depends upon the consent of the accused as to all of the offences mentioned in the section, except those as to which, and the cases in which, it is expressly

provided that jurisdiction does not depend upon the consent of the person charged.
Helliwell, (1914), 23, C. C. C. 146.

The consent of the accused is essential for the summary trial by a magistrate under Cr. Code sec. 773 (*a*) of a charge under sec. 379 of the Criminal Code (1906), of theft from the person of less than $10.
Bonin, (1911), 20, C. C. C. 180.

Upon the summary trial of a charge of keeping a disorderly house, the magistrate has power to amend the information during the course of the trial, by changing the street number of the alleged disorderly house, without having the information re-sworn.
Crawford, (1912), 20, C. C. C. 49.

A conviction made by a magistrate for keeping a bawdy house will not be quashed because it is not expressly shewn in the depositions that the street address referred to in the depositions was in fact in the city which was named as the place of the offence in both the information and the formal conviction, although the magistrate's jurisdiction was limited to that city.
Marceau, (1915), 23, C. C. C. 456.

Where a police magistrate proceeds with a charge of keeping a disorderly house or common betting house (Code sec. 228 as amended 1909 and 1913) without taking the defendant's election, it is to be assumed that the magistrate is proceeding under Code secs. 773 (*f*), 774 and 781 under which the defendant's election is not required on a summary trial for keeping a disorderly house, but the amount of the fine must not exceed, with the costs of the case, $200, by virtue of Code sec. 781 as amended 1913.
Booth, (1914), 23, C. C. C. 224.

The magistrate summarily trying a charge for keeping a disorderly house under Code sec. 773 (*f*) and imposing a fine may under sec. 781, sub-sec. (2), order imprisonment up to six months in default of payment, and this imprisonment may under sec. 1057 be ordered to be "with hard labour."
Davidson, (1917), 28, C. C. C. 44.

Costs ordered under Cr. Code, sec. 871, on a conviction for keeping a disorderly house, made under the summary trials clauses (Code, secs. 773 (*f*) and 774), are to be awarded to the prosecutor and not to the clerk of the police court where he is not the prosecutor.
Miller, (1913), 25, C. C. C. 151.

A charge of keeping a bawdy house is cumulative, and evidence of particular acts and the particular time of doing them is admissible, although the charge is in general terms only.

Johnson, (1914), 23, C. C. C. 136.

Several persons may be convicted of the one offence of keeping a house of ill fame, and that either jointly or severally. (Dictum *per* Beck, J.)

A husband and wife may be charged jointly with keeping a house of ill fame.

Bloom, (1913), 22, C. C. C. 205.

Two justices, having jurisdiction under Cr. Code, sec. 773 (*c*), to summarily try, with the consent of the accused, a charge of unlawfull wounding or inflicting grievous bodily harm (Cr. Code, sec. 274), are without jurisdiction to proceed with a summary trial under Part XVI if the charge is laid for an "assault occasioning actual bodily harm" (Cr. Code, sec. 295), and a conviction made by them for the lesser offence of common assault upon a charge so laid will be set aside.

Law, (1915), 25, C. C. C. 251.

The word "law" in Cr. Code, sec. 752, where it is declared that the court appealed to should try and shall be the absolute judge "as well of the facts as of the law", in respect to the conviction or order appealed from refers to the law applicable to the facts adduced in support of or against the proof of the charge; the appeal being a re-hearing, is a submission to the jurisdiction of the district Court to which an appeal is taken under Cr. Code sec. 797, from a summary trial for the indictable offence of keeping a disorderly house, and the district Court may re-hear on the merits notwithstanding the want of jurisdiction of the magistrate below, by reason of the illegality of the arrest, nor does Code, sec. 753 as to objections taken below, apply other than to the cases it specifically mentions.

Miller, (1913), 25, C. C. C. 151.

The theft of a bundle of tied letters by one act is a single offence, and where it appears by the evidence on the summary trial before two justices exercising the limited jurisdiction of sec. 773 of the Criminal Code, 1906, as to theft not exceeding $10, that the cheque for $10, as to which alone the charge was laid before the magistrates, was the enclosure in one letter of the bundle stolen by the one act and that the value of the enclosure in the entire bundle of registered letters was more than $10, the justices have no jurisdiction to proceed further with a summary trial, but

should proceed only with a preliminary inquiry and committal of the accused for trial before a court of competent jurisdiction.
Pope, (1914), 22, C. C. C. 327.

A conviction made by a magistrate under the Summary trials clauses of the Code (Part XVI.) for "keeping a house of ill-fame" will be amended, when brought up on certiorari, to include in terms the statutory phrase "disorderly house" used in Code secs. 228 and 774, which include a common bawdy-house or house of ill-fame; such an amendment is authorized by Cr. Code sec. 1124.
Darroch, (1916), Boyd, C., 27, C. C. C. 402.

An information in a summary proceeding charging the keeping of "a bawdy house" and omitting to describe such as a "common" bawdy house is bad as not disclosing a legal offence; that it is a "common bawdy house" is an essential ingredient of the offence under Cr. Code sec. 228 which declares a "common bawdy house" to be a disorderly house the keeping of which is punishable thereunder.
Léonard, (1917), *Ex parte*, Dugas, J. No. 396, S. C. Montreal.

SECTION 774.

Where trials for keeping a disorderly house and for frequenting a common bawdy house are held before a magistrate having jurisdiction to proceed to a summary conviction under the vagrancy clauses (Cr. Code, sec. 228) or to a summary trial without consent under Code sec. 774 (amendment of 1909), it will be taken in the absence of any express statement in the record of proceedings to indicate which procedure was being followed, that the magistrate acted under the power of summary conviction from which an appeal would lie rather than that he acted under the powers of Code sec. 774 upon summary trial from which there would be no appeal.
Belmont, (1914), 23, C. C. C. 89.

The absolute jurisdiction conferred upon a police magistrate to try certain indictable offences upon summary trial without the consent of the accused is exercisable where the accused is present, whether or not an information had been sworn in respect of the offence which is the subject of the trial, if the "charge" is reduced to writing and is read to the accused and a full opportunity is given for making defence thereto.
Crawford, (1912), 20, C. C. C. 49.

If the accused has been illegally arrested without a warrant on a charge of keeping a disorderly house and on being brought before the magistrate for summary trial takes objection to his

jurisdiction, he will have no authority to proceed with the trial notwithstanding Cr. Code sec. 774 declaring the jurisdiction of the magistrate to be absolute for that offence and not dependent on the consent of the accused to summary trial.

Wilson, (1915), 24, C. C. C. 370.

SECTION 777.

Cr. Code sec. 577 applies to enable a police magistrate to hold a summary trial under Part XVI. of the Code upon a charge of theft of less than $10 committed in another county, but as to which the proceedings for arrest were instituted before such magistrate and to answer which the accused was taken into custody within the territorial jurisdiction of the magistrate; the police magistrate of a city of over 25,000 population has absolute jurisdiction in such case without the consent of the accused, such consent being dispensed with under sec 777 (5), as added by the Code amendment of 1909, if, in the judgment of the city police magistrate, the value of the property stolen does not exceed $10.

Sinclair, (1916), 27, C. C. C. 327.

The absolute jurisdiction of a police magistrate in Saskatchewan, of a city having a population of over 2,500 is retained under Code secs. 776, and 777 as to the offences specified in Code. Sec. 773 (including that of unlawful wounding), and the consent of the accused to summary trial is required by Code secs. 777 and 778, only in those cases in which there is additional jurisdiction under sec. 777.

Worrell, (1915), 24, C. C. C. 92.

SECTION 778.

The option which under Code sec. 778, as amended 1909, is given the accused under Part XVI. of the Code to be tried by the magistrate without the intervention of a jury or to remain in custody or under bail to be tried "in the ordinary way by the Court having criminal jurisdiction" includes upon an election of the latter alternative the prisoner's right after having been brought before the County Court Judge or other officer under the speedy trials clauses (Part XVIII.) to decide whether he will take a "speedy trial" without a jury or be tried at the jury Court; and, since the amendment of 1909, this right is not affected by Code sec. 830 as the election against summary trial by the magistrate is no longer an election "to be tried by a jury." (Code sec. 830).

Price, (1914), 23, C. C. C. 285.

Where there is already a written information in respect of the charge of an indictable offence, which a magistrate is about to

try under Part XVI, such information may be adopted as a "charge in writing", which he shall read to the accused, and it is not in such case necessary for the magistrate to again reduce the charge to writing; but if the accused were before the magistrate without any preliminary information having been laid for the offence which is to be subject of the summary trial, it would then be the magistrate's duty to write out the charge.

James, (1915), 25, C. C. C. 23.

1. An accused party, charged before two justices of the peace with wilfully obstructing a peace officer in the execution of his duty, cannot be tried summarily by them without his consent, after being put to election as provided in sect. 778 Cr. C. A summary conviction of the accused by the justices, without his consent, is irregular and will be quashed on appeal.

2. The court to which an appeal is taken by the accused from a summary conviction so made, shall hear and determine *de novo* the charge upon which it was made and make such other conviction or order as it thinks just. Sect. 754 Cr. C.

Von Koolberger & Lapointe, Cross, J., 19, Q. J. R. K. B. 240.

The failure of a magistrate on taking an election of a summary trial to state to the accused conformably to the provisions of sec. 778 of the Criminal Code that he has the option of being tried forthwith by the magistrate without a jury, or to remain in custody or under bail as the court decides, to be tried in the ordinary way by a court having criminal jurisdiction, renders void a conviction on a plea of guilty.

Davis, (1913), Guerin, J., 22, C. C. C. 34.

Where a person is charged before a magistrate authorized to hold a summary trial and elects to be summarily tried by such magistrate for an indictable offence, a preliminary commitment for trial is unnecessary to give the magistrate jurisdiction under Cr. Code sec. 777 (amendment of 1909).

Davis, (1913), 22, C. C. C. 34.

An information in a summary trial proceeding under Cr. Code secs. 773 or 777 for keeping a disorderly house is by sec. 2 (16), to be considered as a "count" or "indictment" as regards formal and other objections cured by the general provisions as to counts (Code secs. 852-858), and such information is not objectionable on the ground that it charges in the alternative several different matters, acts or omissions which are stated in the alternative in the statute by which the offence is defined.

Mah Sam, (1910), 19, C. C. C. 1.

By sec. 785 of the Cr. Code, any person charged before a police

magistrate in Ontario with an offence which might be tried at the General Sessions of the Peace, may, with his own consent, be tried by the magistrate and sentenced, if convicted, to the same punishment as if tried at the General Sessions. By an amendment in 1900, the provisions of said section were extended to police and stipendiary magistrate of cities and towns in other parts of Canada:—*Held*, that though there are no courts of General Sessions except in Ontario, the amending act is not, therefore, inoperative but gives to a magistrate in any other province the jurisdiction created for Ontario by s. 785.
Vancini, 34, S. C. R. 621.

Sec. 777 of the Criminal Code, giving extended jurisdiction of summary trial by consent before certain magistrates, applies only to cases which in Ontario would be triable at General Sessions other than cases listed in sec. 773. (*Per* Stuart and Beck, JJ.)
Davidson, (1917), 28, C. C. C. 56.

SECTION **781.**

It is for the magistrate or other official holding a summary trial under Part XVI. of the Code to fix the costs imposed upon a conviction, the tariff of costs provided for summary conviction proceedings under Part XV. being excluded from operation under Part XVI. by virtue of Code sec. 798; and the Court will not interfere on *certiorari* with the amount awarded if they are fixed within reason and are not shewn to include anything which ought not to have been included.
Emery, (1916), 27, C. C. C. 116.

It is not necessary to impose imprisonment as well as a fine to make sub-sec. (2) of Code sec. 781 applicable; the words "in addition to" and "a further term" in that sub-section are intended to make it clear that even where imprisonment in the first instance, as well as a fine, is imposed, then further imprisonment in default of payment of the fine can be given up to six months.
Davidson, (1917), 28, C. C. C. 44.

A conviction upon summary trial before a police magistrate for keeping a disorderly house may be amended in *certiorari* proceedings, if the Court is satisfied as to the proof, by reducing the illegal fine of $100 and costs to the limit provided by Cr. Code sec. 781 of $100 including costs; the amount of the costs in such case remaining in the amended conviction but the $100 penalty being reduced by the amount of the costs so that the total shall not exceed $100.
Crawford, (1912), 20, C. C. C. 49.

Where a penalty in excess of the statutory limit of Cr. Code sec. 781 (amendment of 1913) is imposed on a summary trial without consent (Code secs. 773 and 774) on a charge of keeping a disorderly house, the remedy is by certiorari (Cr. Code secs. 599, 797 (2) [amendment of 1913] 1124 and 1126) and not by a motion under Cr. Code sec. 1016 (2) to the Court of criminal appeal to pass the proper sentence; the latter clause applies only where an appeal may be taken to the Court of Appeal under sec. 1013.

Booth, (1914), 23, C. C. C. 224.

SECTION **786.**

The words "full answer and defence" used in Code secs, 715, 786 and 942, mean that the accused can invoke every means both in law and in fact to meet the charge; the word "answer" being specially applicable to a defence on the facts and the word "defence" applying both to matters of testimony and matters of law.

Romer, (1914), 23, C. C. C. 235.

SECTION **793.**

Where a magistrate holds a summary trial under Part XVI of the Criminal Code for an indictable offence and the accused pleads not guilty, it is obligatory that the depositions should be taken down in writing, and where there are no notes of the evidence the conviction will be set aside on certiorari; the absence of any notes of evidence is irreconcilable with secs. 793 and 1124, which latter section is made applicable by Cr. Code, sec. 797 (2).

Perron, (1915), 24, C. C. C. 358.

SECTION **797.**

The words "two justices of the peace sitting together" as used in sec. 797 of the Criminal Code (amendment of 1913) do not include a police magistrate exercising the power of two justices on a summary trial of an indictable offence; consequently, no appeal lies from a conviction made by a police magistrate where the accused was charged under Code, sec, 228 with being the keeper of a disorderly house.

Robertson, (1915), 26, C. C. C. 239.

Where an appeal is permitted under Code, sec. 797, from a conviction on summary trial for keeping a common bawdy house and the accused takes the appeal instead of proceeding by certiorari, the district Court, acquires jurisdiction over the person of the appellant and may proceed to a re-hearing "upon the merits," notwithstanding defendant's objection taken before the magis-

trate, that the latter had no jurisdiction because the arrest was illegally made without a warrant.

[By the Cr. Code amendment, 1913, ch. 13, appeals by way of re-hearing in disorderly house cases under Code, sec. 773 (*f*), are now limited to trials before two justices of the peace, sitting together.]

Miller, (1913), 25, C. C. C. 151.

Lavergne, J., held that the right of appeal which formerly existed under sec. 797 of the Criminal Code 1906, from a conviction on summary trial for keeping a disorderly house is abrogated as to appeals from a Recorder's Court by the amendment made to sec. 797 by the Criminal Law Amendment Act, 1913. By virtue of the amending Act, appeals under sec. 797 for offences under paragraphs (*a*) or (*f*) of sec. 773 are maintainable only where the trial takes place before two justices of the peace sitting together.

Dubuc, (1914), 22, C. C. C. 426.

An appeal under Code sec. 797, as amended in 1913, does not lie from a summary trial for keeping a disorderly house except in the special case of two Justices of the Peace sitting together; the amended sec. 797 does not permit an appeal from a Police Magistrate or other functionary having the powers of two Justices.

Merker, (1916), 27, C. C. C. 113.

The intention of Cr. Code 797, as amended 1913, ch. 13, is to limit the right of appeal by way of re-hearing in respect of summary trial convictions for keeping a disorderly house so that there should be no such appeal where a police magistrate or other functionary having the powers of two justices had made the conviction; and the right of appeal given by sec. 797 is limited to cases where two persons who are justices of the peace are sitting together as a summary trial Court under Part XVI. for the trial of an offence within sub-secs. (*a*) or (*f*) of Cr. C. sec. 773, *i. e.*, theft or receiving where under $10 or keeping a disorderly house.

Brown, (1916), 26, C. C. C. 97.

SPEEDY TRIALS.

PART XVIII.

SECTION 822.

As bigamy is one of the offences that may, under secs. 822-842 of the Criminal Code relating to speedy trials, be tried by a

Court of General Sessions of the Peace, a police magistrate of a city having not less then 2,500 population may also, under sec. 777 of the Criminal Code, with the consent of an accused person, try him summarily for such offence.

Davis, (1913), 22, C. C. C. 34.

SECTION **823.**

The sheriff of a district for which there is a district magistrate has no jurisdiction to try a prisoner under the provisions of Part LIV relating to speedy trials of indictable offences.

Paquin, 7, Q. J. R. K. B. 319.

SECTION **825.**

The entry on the court records required to be made under Cr. Code sec. 825 of the consent of the accused to be tried without a jury for an indictable offence under the speedy trial clauses (Cr. Code Part 18) at a County Judge's Criminal Court may be made by the clerk of the peace acting as clerk of such court and need not be made by the judge in person.

Day, (1911), 20, C. C. C. 325.

The Court of Sessions at Montreal has jurisdiction to try a charge for which the accused was arrested in Montreal and committed for trial there, although upon an information laid in another judicial district of the same province; it is not essential that the accused shall, on his arrest, be sent for trial to the local venue at which the information was laid.

McKeown, (1912), 20, C. C. C. 492.

SECTION **826.**

Where an accused person who is out on bail after commitment for trial voluntarily appears at a County Judge's Criminal Court and there elects a speedy trial without a jury, such election of the mode of trial may be accepted, although the accused was not brought in by the sheriff for election (Cr. Code sec. 826), nor was any written notice given to the judge by the sheriff under sec. 826 of the Criminal Code.

An election of speedy trial under Cr. Code secs. 826 and 827 (amendment of 1909) is not invalid because of the absence of the sheriff from the County Judge's Criminal Court at which such election is accepted.

Day, (1911), 20, C. C. C. 325.

SECTION 827.

A person sent up for trial for an indictable offence within the scope of the speedy trials clauses of the Criminal Code and against whom, while out on bail allowed by the magistrate, a true bill is found by the grand jury on the same charge, is entitled, on being taken into custody under a bench warrant in respect of such indictment, to the benefit of the speedy trials clauses and to elect thereunder for trial without a jury before the county court judge's criminal court if he has not pleaded to the indictment; and a mandamus will lie to the latter court to enforce such right where the county judge before whom the prisoner was brought had ruled that he had no jurisdiction because of the indictment to permit the accused to elect for trial without a jury.

Walsh, (1914), 23, C. C. C. 7.

The validity of a speedy trial at a County Court Judge's Criminal Court at which counsel professed to act for the Crown is not affected by the lack of proof that he had been appointed "prosecuting officer" and was therefore entrusted with the statutory duty under Cr. Code sec. 827 (amendment of 1909), of preferring the charge on which the accused had been committed for trial; the maxim *omnia praesumunter*, etc., applies where the contrary does not appear; and (per Martin and McPhillips, JJ. A.), it is to be assumed notwithstanding the unnecessary signature of a Crown counsel to the written charge that the same is being prosecuted by the duly appointed clerk of the peace for the county whose duty it is, under the provincial statute constituting the court, "to issue all process, arraign prisoners, record verdicts," etc.

Jun Goon, (1915), 25, C. C. C. 415.

A prisoner who has duly elected in favor of a speedy trial before a county Judge without a jury has no right thereafter to re-elect in favor of a jury trial.

Howe, (1913), 24, C. C. C. 215.

The accused Wener & al, after a preliminary enquiry, were committed for trial for conspiracy to defraud, but no bill of indictment was preferred to the grand jury on such charge. A bill of indictment, however, was preferred by the Crown counsel with the written consent of the judge presiding in the Court of King's Bench, charging the four accused and two other persons with conspiracy. Two additional bills were preferred against the six persons, charging them with having committed other indictable offences, and the grand jury declared the three bills well founded and returned them into Court as true bills. The

accused, when arraigned, severally pleaded not guilty on the three indictments, but when the Court was proceeding to fix a day for the trials, they moved that an order be made allowing them to be taken before a judge of sessions to declare their option for speedy trial on the indictments.—*Held*:— That in order to waive a trial by jury and to elect to be tried by a judge of sessions, an information must have been laid before a justice of the peace, a preliminary enquiry must have been made, depositions giving evidence concerning the offence charged must have been taken, and the accused must have been committed for trial. Whenever an accused party neglects to take the necessary steps to elect for a trial without a jury, in the special Court for speedy trials, before an indictment is found against him and returned into Court his plea to such indictment will conclude against him and he cannot afterwards elect for a speedy trial without a jury. His plea to the indictment conclusively and exclusively fixes the form.

The King v. Wener & al, 12 Q. J. R. K. B. 320.

When, in the ordinary course, an indictment has been found for an offence with which a person who is either in custody or on bail, has been charged, and such indictment has been returned into Court and has been filed of record, the Court is regularly and exclusively seized of the case, and the accused has no right then to ask for a speedy trial and to remove the case and the indictment and the other documents forming the record to the special Court for speedy trials.

The King v. Komiensky, 12, Q. J. R. K. B. 463.

(Distinguished R. v. Thompson, 14, C. C. C. 27, 30; followed in R. v. Hebert, 10, C. C. C. 289; referred to R. v. Sovereen, 20, C. C. C. 109.)

1. Lorsqu'un accusé est dénoncé directement par le grand jury sur accusation de vol, sans plainte préalable devant un magistrat et sans enquête préliminaire, il peut, après que l'accusation a été trouvée fondée par le grand jury, après avoir plaidé non coupable et avoir fourni un cautionnement pour sa comparution, valablement opter pour un procès expéditif devant la Cour des sessions spéciales.

2. Dans ce cas, l'ordonnance du juge, présidant la Cour du banc du roi (juridiction criminelle), appuyée par le consentement du substitut du procureur général accordant à l'accusé la permission d'opter pour un procès expéditif, confère à la Cour des sessions spéciales juridiction pour entendre et juger cette cause.

3. Sur les questions de faits, la Cour d'appel ne peut que décider s'il y a eu quelque preuve de fait devant le tribunal de première instance, ou s'il y a eu absence complète de preuve.

Giroux, (1916), 26, R. J. Q. B. R. 323.

The jurisdiction of speedy trial under Part XVIII. at a County Judge's Criminal Court attaches where the defendant had been committed to gaol for trial but was subsequently released on bail to appear at the County Judge's Criminal Court, if he attends and elects speedy trial under part XVIII., although he may not have been formally taken into custody by the sheriff before the trial commenced.

Jun Goon, (1915), 25, C. C. C. 415.

On taking the prisoner's election to be tried before a judge, without a jury, under the "Speedy trials," part of the Criminal Code, it is essential under Cr. Code, sec 827, that the prisoner should be informed that he may remain in gaol or under bail if the court should so decide, in the event of his electing a jury trial, but if the conviction returned to a writ of habeas corpus recites in conformity with Code form 60, that the prisoner, "on being brought before the judge and asked if he consented to be tried before such judge without the intervention of a jury, consented to be so tried," and the conviction further shows that the prisoner pleaded guilty of an offence, which was properly triable under Part XVIII (Speedy trials), it is not an objection to same on habeas corpus, that it did not further recite the giving of the statutory information; the effect of Code form 60 and of Cr. Code, sec. 1152, as to forms is to make the conviction sufficient in that respect to show jurisdiction, without reciting therein all of the requisites of jurisdiction under Code 827: the prisoner's remedy if he desired to show that the statutory information under Code sec. 827, was not given is to appeal by way of reserved or stated case under Cr. Code, sec. 1014, et seq.

Therrien, (1915), Cross, J., 25, C. C. C. 275.

SECTION **828.**

If no election has been made before an indictment is returned founded on the facts disclosed by the depositions taken at the preliminary inquiry, the accused has no statutory right to demand a trial before a Judge of Sessions without a jury and avoid a trial on the indictment.

Sovereen, (1912), 20, C. C. C. 103.

SECTION **833.**

A magistrate has no right to dispose of a case before the hour set for trial in the absence of the prosecutor, although the accused appears before him and pleads guilty.

Though a magistrate acts beyond his jurisdiction in bringing a case on before the hour fixed, such action will not be taken as indicative of a corrupt motive if it appears that the magistrate

did not know the hour for which the trial of the case had been fixed and had taken the case at the earlier hour for the convenience of counsel for the accused, where the magistrate erroneously supposed that it was not necessary to have the prosecutor represented at the hearing, as defendant's counsel had informed the magistrate that the accused person would plead guilty and the accused did so plead at the hearing.

McMicken, (1912), 20, C. C. C. 334.

SECTION **835.**

On a speedy trial without a jury under Part XVIII of the Criminal Code, the trial Judge is entitled to make the same inferences from the facts as a jury might make had the accused elected for a jury trial, and his finding will not be disturbed if the evidence shewed a *prima facie* case which on a jury trial could not have been withdrawn from the jury.

Ward, (1913), 24, C. C. C. 75.

Criminal process is designed to secure the trial and punishment of criminal offences, but not to procuring specific performance of legal or natural obligations.

It is not for a Court of Sessions to try the validity of a parent's title to custody of his child. Therefore, process before the Court is not appropriate or available to punish a refusal to transfer the custody of a child which has been on the lawful custody of one person to the custody of another person who might be entitled to the custody when the former does not admit that his right to custody has ended.

In such cases the right to custody must be first decided by the competent civil courts, at the request of the complainant. It is not for the person who already has the custody to apply for *habeas corpus*.

Cummings v. Rex, 25, Q. J. R. K. B. 237.

SECTION **841.**

The Judge trying a criminal case without a jury has a discretion to refuse to re-call one of the accused who had given evidence on his own behalf for the purpose of giving further evidence tendered merely to confirm the credibility of one of his own witnesses as to a circumstance brought out on the latter's cross-examination which was not relevant to any fact in issue.

Prentice, (1914), 23, C. C. C. 436.

TRIAL BY JURY.

PART XIX.

SECTION **844.**

The venue mentioned in sec. 609 of the Cr. Code, 1892, means the place where the crime is charged to have been committed and, in cases where local description is not required, there is an implied allegation that the offence was committed at the place mentioned in the venue in the margin of the record. It is of no consequence whether or not the trial court should be considered an inferior court.

Smitheman v. The King, 35, S. C. R. 490.

SECTION **847.**

The Criminal Code does not contemplate such an offence as an attempt to commit treason; the attempt, however, furnishes the necessary overt act which undoubtedly is an offence known to our law; *Rex* v. *Snyder*, 34, O. L. R. 318, considered.

Bleiler, (1917), 28, C. C. C. 9.

SECTION **848.**

Where a landlord is to receive a share of the crop as rent of a farm no property in any of the crop vests in him until the tenant has divided it and delivered the landlord's share to him: (*Hayden* v. *Crawford*, 3 U. C. R. 583; *Campbell* v. *McKinnon*, 14 M. R. 42; *Robinson* v. *Lott*, 2 Sask. L. R. 276, followed), and a tenant selling all of the crop is not guilty of theft.

Hassell, (1917), 27, C. C. C. 322.

SECTION **849.**

Where two persons were jointly charged with theft and one pleaded guilty, and the other not guilty, the former may be called as a witness against the latter although sentence had not yet been passed upon the plea of guilt; in such a matter it must be left to the discretion of the presiding Judge to decide what is the fairest and most convenient course to pursue in the particular case, and whether there should be an adjournment of the trial or an immediate sentence of the accomplice; and where he is holding the trial without a jury, it is not error for the Judge to take cognizance of the accomplice's evidence before sentencing

him, although in receiving the testimony the Judge expressed a view favouring a different course, had there been a jury.
McClain, (1915), 23, C. C. C. 488.

1. L'accusation de vol ne renferme pas implicitement celle du recel de la chose volée. L'accusé qui en est acquitté reste donc sujet à l'accusation de recel et ne peut opposer à celle-ci, à raison de son acquittement, la défense *d'autrefois acquit.*
2. Dans une accusation de recel par H. G. d'une somme volée par J. S., le ministère public n'est pas tenu d'établir préalablement l'offense du voleur ainsi désigné. La mention de son nom à l'acte d'accusation de recel est superflu (*surplusage*) et ne fait pas obstacle à la conviction du receleur par application de l'art. 849 C. C.
Le Roi v. Groulx, 18, R. J. Q. B. R. 118.

SECTION **851.**

Section 851 et 963 of the Criminal Code, as to the procedure in case of a charge for a second or subsequent offence involving an increased penalty, apply only to indictable offences.
Cruikshanks, (1914), 23, C. C. C. 23.

SECTION **852.**

In an indictment under the Bank Act, 53 Vict. (D.) ch. 31, ss. 85 and 99, for making a wilful, false and deceptive statement in a return, it being sufficient in indictments to charge in substance the offence created by the statute, and clerical errors or faulty grammatical construction not vitiating the indictment, the allegation that the defendant unlawfully made and sent to the Minister of Finance and Receiver-General a monthly report of and concerning the affairs of the bank, adding, by way of paraphrase, to characterize the term "monthly report," the word "a wilful, false "and deceptive statement of and concerning the affairs of the said "bank," and finally, that such monthly report was made with intent to deceive and mislead, sufficiently sets forth ingredients of the offence, and the indictment was maintained. C. cr. 611.
The Queen v. Weir et al, 8, Q. J. R. K. B. 521.

An indictment or charge for obtaining money under a false pretence is not bad for not setting out what the false pretence was or stating to whom it was made. (Code secs. 852, 1152, Code form 64 (*c*).)
Leverton, (1917), 28, C. C. C. 61.

Acts and declarations of those charged with the crime of conspiracy to procure the performance of an abortion, occurring immediately after its commission and made while procuring care for

the person upon whom the abortion was performed, are admissible as tending to establish the conspiracy.
Bachrack, (1913), 21, C. C. C. 257.

When an indictment or a charge under the Speedy Trials clauses alleges perjury in that the accused had previously voted on an election day and with intent to vote again on that day had sworn that he had not already voted, there is implied in such allegation that he is charged with making the false oath "wilfully and corruptly" or "knowingly", and the form of the charge will be sufficient under such circumstances as the charge contains in substance a "statement that the accused has committed some indictable offence therein specified" (Cr. Code sec. 852), although it does not in terms state the offence as done "wilfully and corruptly" (Cr. Code sec. 172) or "with knowledge of the falsity of the assertion" (Cr. Code sec. 170).
Morrison, (1916), 26, C. C. C. 26.

The effect of sub-sections (2) and (3) of Code sec. 852, is to permit the use in an indictment of the popular word under which the offence is known instead of setting forth in detail all of the legal elements of the offence which such word indicates; for example, a charge of theft by fraudulent conversion without color of right may be laid simply as theft by charging that the accused "did steal" a specified article and naming as the owner the person in fraud of whom the accused converted the article to his own use.
Trainor, (1916), 27, C. C. C. 232.

SECTION **853.**

Where there are several overt acts charged in a count, and a judgment is given on a general verdict of guilty on that count, such judgment will be sustained, though some of the matters alleged as overt acts may be improperly so alleged, provided that the count contains allegations of overt acts that are sufficient and are sufficiently alleged.
Semble, no objection to the caption of an indictment for an allegation that the grand jurors were "sworn and affirmed" can be sustained without shewing that those who were sworn were persons who ought to have affirmed, or that those who were affirmed were persons who ought to have been sworn.
Mulcahy v. The Queen, L. R. 3, E. & Ir. App. 306.

The proviso in Code sec. 853 (1) that the absence or insufficiency of details shall not vitiate an indictment, does not dispense with the right of the accused to demand particulars of the time, place and matter of the offence sufficient to identify the transaction complained of; the count will not be quashed for the absence of

these details, nor is there any mis-trial on that account where no objection was raised at the trial and where the indictment followed a preliminary enquiry, the depositions upon which gave reasonable information to enable the accused to know what he had to answer.

Trainor, (1916), 27, C. C. C. 232.

SECTION **854.**

A count of an indictment charging the use of seditious language with intent "to raise disaffection among His Majesty's subjects, *or* to promote feelings of ill-will and hostility between different classes of His Majesty's subjects" will not, on appeal, be held invalid for duplicity where no objection was taken to same at the trial.

Trainor, (1916), 27, C. C. C. 232.

SECTION **855.**

The true name of the person against whom the offence was alleged to have been committed may be substituted by the Court in an indictment after the grand jury has found a true bill, where the name originally in the indictment was that by which the same party was commonly known.

Faulkner, (1911), 19, C. C. C. 47.

Where an indictment for conspiracy has been framed in which acts of larceny are charged as overt acts of the conspiracy, the prosecution are not estopped from treating them as distinct and independent acts of larceny.

Gaynor & al, (1905), 92, L. T. R. 276.

SECTION **856.**

Where the evidence would support a charge either of theft under the Criminal Code, or of false pretences, the prosecutor is justified in including counts for both in the indictment, but, on conviction for both in respect of the one transaction, one penalty only will be imposed.

Kelly, (1916), 27, C. C. C. 140.

An indictment contained two counts, one charging murder, the other manslaughter of the same person, on the same day. Upon "a true bill", found, a motion to quash the indictment for misjoinder was refused, the prosecutor electing to proceed on the first count only, and the prisoner was found guilty of manslaughter. *Held*, affirming the Supreme Court of New-Brunswick (5, P. & B. 449), that the indictment was good and that as the crime charged

in the second count was involved in that charged by the first count the prisoner could not be prejudiced and the trial had been regular.

Theal v. The Queen, 7, S. C. R. 397.

An indictment for perjury contained two counts, charging perjury to have been committed by the Defendant on two different occasions, one in the progress of a trial, the other in an affidavit in Chancery. Both acts of perjury had the same objects in view:—*Held*, 1. That they were distinct offences, and a punishment might be inflicted in respect of each.—2. That though the offences were in this way distinct, they might both be included in the same indictment, and that a general finding of guilty on the charges contained in both counts was good.—3. That the full punishment of seven years' penal servitude might be inflicted for each offence, and that the second term of penal servitude was properly made to begin at the termination of the first term.

Castro v. The Queen, L. R. 6, A. C. 229.

Where various counts for theft and receiving, and of obtaining money by false pretences relate to one continuous set of transactions, the trial Judge will properly exercise his discretion under Cr. Code, sec. 856, by trying them together but directing a separate trial upon an additional count for perjury relating to the same transactions. (Per Howell, C. J. M.).

Kelly, (1916), 27, C. C. C. 140.

SECTION **857.**

Where evidence is tendered in support of one count of an indictment which while admissible thereon is not admissible in proof of another count of the same indictment, the defendant's remedy is to apply under Cr. Code sec. 857 to have each count tried separately if he fears that, notwithstanding the direction which would properly be given by the judge to the jury to disregard such evidence in considering the second count, the jury would unconsciously be influenced thereby to the prejudice of the accused.

Strong, (1915), 24, C. C. C. 430.

SECTION **864.**

Motion for leave to appeal from a conviction for theft on the ground that the indictment was too vague, and insufficiently particularized.

Lavergne, J., said that the indictment disclosed the date of the offence, the name of the person from whom the money was stolen, and the amount stolen. Such indictment disclosed the

offence charge quite sufficiently to enable the accused to defend himself properly .

Lemelin, (1912), 23, C. C. C. 171.

SECTION **872.**

The Crown Prosecutor may prefer indictments for as many different offences as he finds disclosed by the depositions, and also for the charge set out in the commitment for trial.

Montminy, (1912), 20, C. C. C. 63.

A bill of indictment preferred by the Crown prosecutor under Cr. Code, sec. 872, for a charge founded on the evidence taken before the committing justice, need not in addition to the signature of the Attorney-General's representative include a statement that he was in fact such representative.

Gagnon, (1911), 24, C. C. C. 51.

Where an indictment has been preferred by counsel acting on behalf of the Crown at a Court of criminal jurisdiction, it will not be presumed that he would not have preferred it but for the direction of the Attorney-General or acting Attorney-General written threon, and the indictment may be sustained under the general powers conferred upon Crown counsel under Code sec. 872 if for the same charge as that upon which the accused was committed for trial, whether or not the Attorney-General's direction under Code sec. 873 was regularly given.

Faulkner, (1911), 19, C. C. C. 47.

SECTION **873.**

An "acting Attorney-General" is the Attorney-General pro tem., and as such may give a direction to Crown counsel for the preferment of a bill of indictment under Cr. Code sec. 873.

Such direction to prefer an indictment may be in general terms written upon the bill authorizing counsel acting for the Crown at a specified Assize sittings to prefer the same.

Faulkner, (1911), 19, C. C. C. 47.

The actual procedure of trying the defendant commences with the preferring of the bill of indictment.

Montminy, (1912), 20, C. C. C. 63.

The Court of Queen's Bench, Crown side, will not make an order under Art. 641, paragraph 2, Cr. C., that an indictment be preferred against a party accused of an offence for which the justices before whom the preliminary investigation was held failed

to commit him, and only signed a declaration to the effect that they were unable to agree. The proper course for the prosecutor, in such a case, is to apply to the Attorney-General who can either prefer an indictment himself, or direct one to be preferred, and exercise his supervisory powers over the justices if they have failed in their duty.

Hanning, 5, Q. J. R. K. B. 549.

Where a prosecution for a criminal offence was instituted by a private prosecutor and he is still in charge of the prosecution, he has the same right to be heard on the trial, both as to the question of guilt and the quantum of punishment as the Attorney-General would have on a Crown prosecution.

McMicken, (1912), 20, C. C. C. 334.

Under 32-33 Vict. c. 29, s. 28, the Attorney-General cannot delegate to the judgment and discretion of another the power which he is authorized personally to exercise in directing that an indictment for obtaining money by false pretences should be laid before the grand jury; and it being admitted that the Attorney-General gave no directions with reference to the indictment, in the case reserved, a motion to quash should have been granted. (The judgment appealed from (1 Dor. Q. B. 126) was reversed and the conviction set aside).

Abrahams v. The Queen, 6, S. C. R. 10.

The Attorney-General may prefer an indictment although there may have been no charge laid before a magistrate.

Kelly, (1916), 27, C. C. C. 140.

The Criminal Code does not prescribe that an accused can elect to be tried without a jury when without a preliminary inquiry, or a committal, or an admission to bail, a bill of indictment has been preferred against him by the Crown Attorney with the written consent of a Judge of a Court of criminal jurisdiction.

Where the depositions and the committal for trial were both ignored by the prosecution, and instead, the County Crown Attorney, under Cr. Code sec. 873, obtained the written consent of the Judge to prefer the indictment on which a true bill was returned by the grand jury, and on which the petty jury returned a verdict of "guilty" and the depositions taken before the magistrate were not made a part of the case reserved for the opinion of the Court of Appeal in respect of the regularity of a refusal of a claim by the accused to be tried without a jury under the speedy trials clauses, the Court of Appeal may properly assume that the charge in the indictment is not the same as that for which the prisoner was committed, or any other charge appear-

ing in the evidence before the magistrate, as, in either of these events, the County Crown Attorney would not, under sec. 871, have needed the consent of the Judge to prefer the indictment. (*Per* Maclaren, J. A.)

Sovereen, (1912), 20, C. C. C. 103.

SECTION 873A.

In exercising the discretion given to the provincial Attorney-General in Saskatchewan and Alberta, under Cr. Code 873A, as to whether a formal charge shall be preferred on the depositions on which there has been a committal for trial, the Attorney-General has practically to perform what would be Grand Jury functions in provinces where there is a Grand Jury system.

In provinces where there is no Grand Jury system and therefore no indictment the case is not in the provincial Supreme Court for trial until a formal charge in lieu of an indictment has been preferred, and a stay of proceedings by the Attorney-General cannot be entered under Cr. Code, sec. 962, in the event of no formal charge having been laid.

Weiss, (1915), Haultain, C. J., 23, C. C. C. 460.

SECTION 874.

Il n'est pas nécessaire que l'accusé soit présent en cour lors de l'assermentation du grand jury.

Mathurin, (1903), 12, R. J. Q. B. R. 494.

While no definite rule is laid down in the Criminal Code to compel the endorsing of the names of witnesses for the prosecution on a formal charge laid by the agent of the Attorney-General under Cr. Code sec. 873A (applicable in Alberta and Saskatchewan), the presiding Judge may give all necessary protection to the accused so that he may have a fair opportunity to defend himself; the name of any additional Crown witness not examined at the preliminary inquiry ought, as a matter of fairness, to be disclosed to the accused—at any rate if he asks for the information.

McClain, (1915), 23, C. C. C. 488.

SECTION 875.

When a person preferring a charge requires the magistrate, who has discharged the accused, to bind him over to lay and prosecute an indictment and does submit such an indictment to the grand jury, at the following sitting of the Court, he has no right to appear, by himself or through counsel, before the grand jury, without the permission of the Court.

The rule being, though not express, established by the hitherto unchallenged practice of the Court, a violation of it affords a ground for a motion to quash the indictment after a true bill has been found; but, when the question arises for a formal decision for the first time, and no injustice appears to have been caused by the irregularity, the motion will be discharged and the indictment allowed to stand.

Hoo Yoke & al, 14, Q. J. R. K. B. 540.

Where it is necessary to have an interpreter to translate the testimony of witnesses before a grand jury, the presence of such interpreter in the grand jury room during the grand jury's deliberations will not invalidate an indictment.

Gagnon, (1911), 24, C. C. C. 51.

Motions to quash four indictments on the ground that the grand jury had sworn all the witnesses for all four bills at the same time and had heard the evidence together on all four charges.

Lavergne, J., refused the motions to quash, holding that the Court could not compel disclosure of what had occured before the grand jury in its secret deliberations. If the evidence had been taken together on all four bills, such a practice was to be discouraged.

Birchenough, (1914), 22, C. C. C. 483.

SECTION **876.**

It is essential that, at the time the foreman of the grand jury is sworn the other jurors be present and hear the oath taken by their foreman. And, therefore, where it appeared that none of the other jurors were in the box at the time their foreman was sworn, that there was no certainty that the oath by him was heard by them, that the other jurors were only sworn afterwards, to observe the same oath which their foreman had taken, and that objection was duly made by motion to quash before the arraignment of the defendant, the indictment found by the grand jury was held to be null and void.

The omission by the foreman to initial the names of the witnesses examined before the grand jury, as required by law, is a fatal defect, and has the effect of annulling the indictment.

The submission of a record to the grand jury, in order that they may examine certain exhibits and verify certain statements made by witnesses examined before them, is not a fatal irregularity, where it is proved that the decision of the grand jury was arrived at without reference to the depositions contained in such record.

The objections to the indictment above mentioned are proper grounds for a reserved case.
Bélanger, (1904), 12, Q. J. R. K. B. 69.

Le grand jury est libre d'examiner les témoins de la Couroune dans l'ordre qu'il choisit, et l'examen d'un seul d'entre eux ne constitue ni une irrégularité ni une illégalité, lorsqu'il est admis que ce témoin était en état d'établir des aveux complets de la part de l'accusé.
Le Roi v. Mathurin, 12. R. J. Q. B. R. 494.

Where a grand jury improperly brought in a true bill without calling any witnesses merely upon perusal of the depositions taken at the preliminary enquiry before a magistrate, and such fact is brought to the notice of the court by the omission to initial the names of any witnesses whose names were endorsed on the bill of indictment, the court has a discretionary power to remit the case to the same grand jury to find on the bill on proper evidence only, and the grand jury is not necessarily disqualified from acting because of having read and considered the depositions.
Thurstan, (1911), 20, C. C. C. 505.

The context of secs. 874 to 876 of the Criminal Code makes sec 876 (endorsing names of witnesses on bill of indictment) inapplicable to proceedings by formal charge in a province where there is no grand jury system, notwithstanding the extended meaning given to the word "indictment" by Cr. Code sec. 2 (16); effect is to be given to the latter only in the event of the context being consistent therewith.
McClain, (1915), 23, C. C. C. 488.

The Court, in dealing with applications for change of the place of trial, is bound to act with caution, particularly, in ordering the change from the place in which the offence was committed, and to consider expediency to the ends of justice, nor is its power exhausted when once exercised. Hence, after a first order has been made to have a trial take place in another district than that in which it is charged the offence has been committed, the Court will make a further order that it be held in the latter district, on proof that the circumstances which necessitated the first order, have disappeared.
The King & Roy & al, 18, Q. J. R. K. B. 506.

An order for a change of venue in a criminal case in British Columbia is sufficiently authenticated when signed by the clerk of assize and sealed with the seal of the Supreme Court although not signed by the presiding judge.

A second order changing the place of trial at the instance of the Crown, after an abortive trial at the venue fixed by the first order on the prisoner's application, is within the discretion of the presiding judge (Cr. Code 884); and where there was not a sufficient panel of jurors for a new jury at the same assize and where the trial judge was seized of facts from which it could properly be inferred that it was expedient to the ends of justice to make the second order, his decision becomes one of fact and not one of law, and cannot be interfered with on appeal although the usual practice of putting the facts forward on affidavit was not adopted.

Spintlum, (1913), 22, C. C. C. 483.

SECTION **888.**

Where the offence charged was the making, circulation and publication of false statements of the financial position of a company, and it appeared that the statements were mailed from a place in Ontario to the parties intended to be deceived in Montreal, the offence, although commenced in Ontario, was completed in Montreal by the delivery of the letters to the parties to whom they were addressed.

In such case, the Court of Queen's Bench in Montreal has jurisdiction to try the accused, who has been duly committed for trial by a magistrate of the district.

The Queen v. Gillespie, 8, Q. J. R. K. B. 8.

SECTION **889.**

Where two or more names are laid in an indictment under an *alias dictus* it is not necessary to prove them all. J. was indicted for the murder of A. J. otherwise called K. K. and, on trial was convicted of manslaughter. Deceased was known by the name of K. K. but there was no evidence that she ever went by the other name. *Held*, affirming the Court of Crown Cases Reserved (Quebec) that this variance between the indictment and the evidence did not invalidate the conviction for manslaughter.

Jacobs v. The Queen, 16, S. C. R. 433.

Where the particular offence laid in the indictment is not of the class as to which a change of date would be tantamount to charging a different offence, the Court may order an amendment of the date of the offence to conform to the evidence even after the close of the evidence.

Véronneau, (1916), 26, C. C. C. 278.

SECTION 898.

Where the information on which the preliminary enquiry proceeded is used in place of a formal indictment or "charge" on a speedy trial, and the accused moves to quash it as such, he thereby treats it as a *de facto* indictment and cannot object to the lack of a formal document, at least where no prejudice is shewn.

An indictment will not be quashed because of the presence in the grand jury room of the constables sworn to accompany the grand jury to secure the secrecy of its deliberations.

It is not an objection to the trial of an indictment that the Crown prosecutor was present in the grand jury room during the deliberations of the grand jury upon the bill and also conducted the trial of the indictment found.

Gagnon, (1911), 24, C. C. C. 51.

An indictment setting forth an offence which is not indictable will be quashed on motion to that effect.

The King v. Beauvais, 14, Q. J. R. K. B. 498.

The absence of a properly proved transcript of the depositions is not a ground for quashing the indictment, provided such indictment sets out the same charge as the one contained in the commitment.

Montminy, (1912), 20, C. C. C. 63.

An indictment by a grand jury, in a case of perjury, cannot be quashed on motion, because one of the grand jurors was the person who laid the charge, and had declared to another juror: "c'est de valeur ce procès-là, mais au point où on en est rendu là, il va falloir que moi ou Véronneau (the accused) parte de Coaticook", it being established by evidence and the stated case that this biassed grand juror had not taken part in the deliberations of the jury on the case.

Véronneau v. The King, 25, Q. J. R. K. B. 275.

If an extradited prisoner intends to object that the indictment is for a different charge than that on which he was extradited, it is for him to prove the extradition warrant and so place on the record the fact of the variance, so that a court of criminal appeal may take cognizance of it on a case reserved.

McNamara, (1914), 22, C. C. C. 351.

It is not a ground for quashing an indictment that the complainant in the proceedings before the magistrate upon which the indictment was based was summoned and sworn as a grand juror

and was present in the jury box when the indictment was presented, if in fact he took no part in the deliberations on the bill.
Véronneau, (1916), 27, C. C. C. 211.

On a motion to quash an indictment on the ground that the grand jury finding it was not properly constituted, the objecting party must specifically set forth his grounds of objection and will not be given the benefit of a ground not specified.
Morrow, (1914), 24, C. C. C. 310.

Cr. C. 684 is imperative and must be observed. If it is not, then the preliminary inquiry is null and void.—The accused may avail himself of this informality before the asizes by motion to quash the indictment.
The King v. Beaulieu, (1917), 26, Que. K. B. 151.

Proof that an improper communication reflecting on the accused had been made to the grand jurors who returned the bill of indictment would not be a ground for quashing the indictment.
Véronneau, (1916), 26, C. C. C. 278.

SECTION **901.**

An application by the accused to postpone a criminal trial because of the absence of his witnesses is to be made after plea pleaded, and although in an ordinary case an affidavit in common form is sufficient, yet where from the nature of the case, or from the affidavit on the opposite side, the court has reason to suspect that the application is not made *bonâ fide* for the purpose of obtaining material evidence but merely for delay, the court will require to be satisfied specially by affidavit, (*a*) that the persons are material witnesses; (*b*) that there has been no neglect in omitting to apply to them and endeavouring to procure their attendance, and (*c*) that there is reasonable expectation of counsel being able to procure their attendance at the future date if a postponement be granted.
Where the Court on an application under Cr. Code section 901 has, in the exercise of judicial discretion, refused to allow a postponement of a criminal trial, there can be no review of the decision by an appeliate Court and the question presented does not constitute a question of law upon which there may be a reserved case under the provisions of section 1014 of the Criminal Code.
Mulvihill, (1914), 23, C. C. C. 194.

SECTION **905.**

A plea of *autrefois convict* based on a conviction on summary trial by magistrates for theft of a cheque for $10 enclosed in a

post letter is not sustainable as against subsequent charges of having stolen other letters which at the time of the taking by the accused mail clerk were tied together and with a "letter bill" comprised the bundle of registered mail which the accused mail clerk had thrown into his own valise with intent to misappropriate the contents.

Pope, (1914), 22, C. C. C. 327.

A conviction under a town by-law for creating a disturbance on a public street based on an assault, will sustain a plea of *autrefois convict* to a subsequent prosecution for the same assault instituted by the injured person even where such conviction followed a charge laid by the police and although the injured person was not called as a witness because the accused pleaded guilty.

McIntyre, (1913), 21, C. C. C. 216.

A conviction by a magistrate or magistrates upon an information or complaint charging an offence for which a previous information against the same defendant has been made before another magistrate, and while the same is pending, is null and void and will not avail in support of a plea of *autrefois convict* to the said previous conviction or complaint. Hence, an order dismissing the latter on such a plea will be quashed in appeal.

Bombardier, (1905), 15, Q. J. R. K. B. 7.

Le fait que le jury du coroner a rapporté un verdict de mort accidentelle dans l'affaire du prisonnier, accusé d'homicide, ne justifie pas un plaidoyer d'autrefois acquit de la part de ce dernier.

Labelle, 2, R. J. Q. B. R. 289.

An accused person is to be held not to have been in former jeopardy for the same offence, where, by reason of some defect in the record. In the former proceeding, he was not liable to suffer judgment for the offence charged on that proceeding.

Weiss, (1913), 21, C. C. C. 438.

SECTION **907.**

Where a conviction on summary trial has been quashed in *certiorari* proceedings on the ground that there was no evidence upon which the magistrate could convict, the result is as if no conviction had been made, and a plea of *autrefois acquit* will not avail in a subsequent charge setting up another legal aspect of the same facts where the original charge could not properly have been amended to the charge for which the second prosecution was brought (Cr. Code 1906, sec. 907).

Weiss, (1913), 21, C. C. C. 438.

SECTION 910.

1. A plea of justification to an indictment for defamatory libel must allege that the defamatory matter published is true and that it was for the public benefit that the alleged libel was published, and must then set forth concisely the particular facts by reason of which its publication was for the public good, but it must not contain the evidence by which it is proposed to prove such facts, nor any statements purely of comment or argument.

2. A plea of justification which embodies a number of letters which it is proposed to use as evidence, and contains paragraphs of which the matter consists merely of comments and argument, is irregular and illegal, and the illegal averments should be struck, or the plea itself should be rejected from the record and the defendant allowed to plead anew.

R. v. Grenier, 6, Q. J. R. K. B. 31.

Upon a plea that a libel was published on a privileged occasion it is for the judge to determine whether the occasion is privileged and whether the privilege has been exceeded.

Where a libel contains defamatory matter not referable to the duty or interest which gives rise to the privileged occasion, such matter is outside the occasion and is not protected; and such excess of privilege in part of a defamatory publication may also be evidence of malice as to the whole of it. Excessive language in regard to a matter within the privileged occasion is material only as evidence of malice, and, *semble*, in determining whether such language is evidence of malice, it will not be subjected to strict scrutiny.

A public official who, acting under the direction of the principals, signs and publishes a libel takes the benefit of the privilege of his principals and is liable for their malice; and, *semble*, evidence of malice on his part is irrelevant.

Held: (1). That the occasion was privileged and that there was no evidence of malice on the part of either the Council or the defendant: (2), that, having regard to the circumstances under which the plaintiff's charge was made, the publication of the libel was not unreasonably wide; (3), (Earl Loreburn doubting but not dissenting) that in the special circumstances of the case the defamatory statements were strictly relevant to the vindication of the General, and that the whole of the letter was protected.

Decision of the C. A. (1915), 31, T. L. R. 299 affirmed.

Adam v. Ward, (1, 1917), A. C. 309.

1. Une motion ou requête sommaire demandant l'émission gratuite de subpoenas pour les témoins d'un accusé ne doit mentionner que deux faits; que les témoins y nommés sont nécessaires pour la défense, et que l'accusé est pauvre et nécessiteux.

2. Dans une poursuite pour libelle dans laquelle l'accusé a plaidé justification, le fait de recevoir et d'accorder une motion indiquant les faits que chaque témoin doit prouver pour établir que la publication du libelle était dans l'intérêt public, pourrait préjuger la question de l'admissibilité de cette preuve, et telle motion est donc inadmissible.

Grenier, 6, R. J. Q. B. R. 322.

1. Quand un article de journal qui contient un libelle diffamatoire, est publié par malice et avec mauvais vouloir contre la personne diffamée, l'auteur ne peut pas en justifier la publication en plaidant que les imputations sont vraies et qu'il était de l'intérêt public de publier l'article.

2. Quand un article de journal contient plusieurs imputations diffamatoires séparées, il y a autant de libelles distincts qu'il y a d'imputations, et un verdict de coupable doit être rendu quand le défendeur ne justifie pas la vérité de tous les libelles et ne prouve pas qu'ils ont tous été publiés de bonne foi dans l'intérêt public.

R. v. Grenier, 6, R. J. Q. B. R. 563.

SECTION **921.**

Where eleven grand jurors answered their names when the roll was first called, but ten only were impanelled and sworn (one having failed to answer on the second calling) the grand jury was properly formed and the accused, having suffered no prejudice thereby, cannot, on that ground, move for the rejection of the true bill found against him.

Fouquet, (1905), 14, Q. J. R. K. B. 87.

Le shérif avait par erreur assigné vingt-quatre grands jurés au lieu de douze. Les douze premiers seuls furent appelés, et, l'un d'eux se trouvant malade, onze seulement furent assermentés et rapportèrent une accusation de meurtre fondée (*true bill*) contre le prisonnier.

JUGÉ:—Que tel rapport des grands jurés est valide, la loi ne requérant plus maintenant pour cette fin que le concours de sept grands jurés, dans toutes les provinces où le nombre n'en excède pas treize. (Code criminel 629; 57-58 Vict., chap. 57, Can.).

Regina v. Poirier, 7, R. J. Q. B. R. 483.

Since the coming into force of 57-58 Vict. (Can.), ch. 57, sect. 1, enacting that seven grand jurors, instead of twelve as formerly, may find a true bill in any province where the panel of grand jurors is not more than thirteen, in the province of Quebec, where the number of grand jurors to be summoned has been reduced to twelve, if any of them fail to appear, those present may be

sworn to act as a grand jury, and find a "true bill," provided that seven of them agree to the finding.

Regina v. Girard, 7, Q. J. R. K. B. 575.

Where a true bill was brought in by a grand jury consisting of twelve jurors which number, as the law then stood for that district, was the minimum for bringing in a bill, the proceedings will not be invalidated because the grand jury had not been instructed by the court as to the number required for that purpose, where no proof is produced that the twelve were not unanimous.

Spintlum, (1913), 22, C. C. C. 483.

The English juries Act of 1865, sec. 37, gives to the prisoner a right of peremptory challenge to the extent of twenty, on trial or inquest taken before any court, wherein the Crown is a party.

It was held that this right has not been taken away by the 38th section of the same Act which provides in the case of aliens, for a jury *de medietate linguae;* and though the composition of such jury is prescribed by statute, the incidents of the trial are annexed by the Common law, and are implied and included therein. *Held* also that an alien prisoner has the right to challenge alien jurors to the extent of twenty in number.

Victoria, 1870, July 25, VII Moore N. S. 68.

SECTION **923.**

The words "language of the defence," in sub-section 2 of section 7 of the statute of the province of Canada, 27-28 Vict., ch. 41, which is still in force in the province of Quebec, mean the language of the prisoner, and not the language in which his defence is to be conducted.

The privilege of the prisoner is to claim a jury composed for one half at least of jurors speaking or skilled in his language.

Queen v. Yancey, 8, Q. J. R. K. B. 252.

When the accused asks in the province of Quebec for a mixed jury, it must be granted as a matter of right; the abandonment, by the accused, of the order for a mixed jury is not, however, a matter of right, but may be allowed by the judge.

Sheehan, 6 Q. J. R. K. B. 139.

SECTION **925.**

Le droit pénal dans cette province ne reconnaît pas aux accusés le droit de récuser le grand jury, ni par voie de récusation

du tableau (challenge to the array), ni par voie de récusation individuelle (challenge to the polls).
Mercier, 1, R. J. Q. B. R. 541.

Where several persons are jointly indicted and jointly tried, the Crown is restricted to the number of peremptory challenges allowed in the case of the trial of a single person.
Regina v. Lalonde, 7, Q. J. R. K. B. 260.

A request by defendant's counsel, in a criminal trial for arson, made at the opening of the trial, that before the jury was called he would like to ask each of the men who are called whether he is interested in a certain insurance company, which interest on his part would have, made him ineligible to serve, is prematurely made.
Pilgar, (1912), 20, C. C. C. 507.

The opposite party may demur to a challenge of the array of petit jurors on the ground that the matter relied upon is not in law a ground of challenge.
It is not the insertion of a name in the list of jurors or jury register which establishes the qualification of a juror in the Province of Quebec (R. S. Que., art. 3405 et seq., and Cr. Code, sec. 921), but the entry of the name in the municipal valuation roll (R. S. Q., art. 3406) with mention of the requisite property or rental valuation.
Morrow, (1915), 24, C. C. C. 310.

L'assermentation et l'inclusion dans le jury d'une personne assignée par erreur comme juré, mais dont le nom n'est pas inscrit au tableau des jurés et qui n'a pas les qualités voulues par la loi pour en former partie, est illégale et un verdict rendu par un jury ainsi composé est nul et doit être cassé.
McCraw, (1906), 16, R. J. Q. B. R. 193.

1. If a defendant omit to challenge a juror on the ground that such juror entertains a hostile feeling against him, he cannot after a verdict of guilty ask on that ground to get the verdict quashed and to have a new trial.
2. When a private prosecutor and one of the impanelled jurors have had an unpremeditated and innocent conversation, which could not bias the juror's opinion nor affect his mind and judgment, although such conversation is improper it cannot have the effect of avoiding the verdict and constituting ground for allowing a new trial.
3. It is the province of the jury, after taking into consideration the circumstances of a case and the character and demeanour of the witnesses, to discredit some of the witnesses and reject

their evidence and to believe others and accept their evidence; and when there is a conflict in the evidence but there is evidence to support the verdict, it cannot be judicially maintained that the verdict is against the weight of evidence.

4. When, however, there is no conflict in the evidence and it tends indubitably in a direction favorable to the defendant, or does not establish his guilt, a verdict convicting the defendant would not be supported by nor be based upon proper evidence and would manifestly be against the weight of evidence; and it is only in cases like this, where there is an absolute failure of evidence to sustain the verdict, that the court can give leave to apply to the Court of Appeal for a new trial.

Regina v. Harris, 7, Q. J. R. K. B. 569.

Where the jury lists had not been revised annually according to law by a revising board exercising ministerial duties (R. S. Que., art. 3423), but the provincial law stipulated that the old lists should remain in force until the new ones were completed or revised (R. S. Que., art. 3432), the use of a list revised by the deputy sheriff who was clerk to the revising board will not constitute a ground of challenge to the array (Cr. Code, sec. 925), although the sheriff as a member of the revising board was himself involved in the neglect to revise, unless the complainant further shows that someone not competent as a juror had been summoned or that someone competent as a juror had been left off the jury list by reason of the unauthorized revision.

Morrow, (1914), 24, C. C. C. 310.

SECTION **926.**

Depuis la mise en force du code criminel il n'est plus nécessaire que le premier juré assermenté soit adjoint aux vérificateurs chargés de juger la récusation du deuxième juré.

Mathurin, (1903), 12, R. J. Q. B. R. 494.

SECTION **927.**

The provisions of the Criminal Code (secs. 927, 933), relating to the right of the Crown to have jurors stand aside, are not inconsistent with the provisions of the North West Territories Act (Can.), as it stood immediately before September 1, 1905, and are consequently not excluded from being operative in Alberta (and Saskatchewan) under sec. 9 of the Criminal Code.

Murray, (1915), 25, C. C. C. 214.

SECTION **928.**

The Crown has not the right to direct jurors to stand by when

they are called a second time, after the panel has been exhausted by challenges and directions to stand by.

Boyd, 5, Q. J. R. K. B. 1.

The panel having been exhausted by challenges and directions to stand by without a jury having been formed, and the clerk of the Crown having proceeded to call the jurors who had been directed to stand aside, the prisoner, Joseph Lalonde, declared that he withdrew his peremptory challenge against Athanase Hébert, one of the jurors, but the Crown objected to the withdrawal of the challenge.

HELD:—That a peremptory challenge once taken, is counted against the party making it and cannot afterwards be withdrawn.

Regina v. Lalonde, 7, Q. J. R. K. B. 201.

When a panel had been gone through and a full jury had not been obtained the Crown on the second calling over the panel was permitted, against the objection of the prisoner, to direct eleven of the jurymen on the panel to stand aside a second time, and the judge presiding at the trial was not asked to reserve and neither reserved nor refused to reserve the objection. After conviction and judgment a writ of error was issued.—*Held*, per Taschereau, Gwynne and Patterson, JJ., affirming the judgment appealed from, that the question was one of law arising on the trial which could have been reserved under R. S. C. c. 174, s. 259, and the writ of error should, therefore, be quashed.—Per Ritchie, C. J., and Strong and Fournier, JJ. That the question arose before the trial commenced and could not have been reserved, and as the error of law appeared on the face of the record the remedy by writ of error was applicable. (Brisebois v. The Queen, 15, S. C. R. 421) referred to.—Per Ritchie, C. J., and Strong, Fournier and Patterson, JJ. that the Crown could not without showing cause for challenge direct a juror to stand aside a second time. The Queen v. Lacombe (13 L. C. Jur. 259) overruled.—*Per* Gwynne, J. That all the prisoner could complain of was a mere irregularity in procedure which could not constitute a mis-trial.

Morin v. The Queen, 18 S. C. R. 407.

SECTION 933.

The number of peremptory challenges by the Crown is limited to four in Alberta, both by the N. W. T. Acts as of August 31, 1905 (see. Cr. Code, sec. 9), and by Cr. Code, sec. 933.

Murray, (1915), 25, C. C. C. 214.

SECTION 935.

B. having been found guilty of feloniously administered poison

with intent to murder, moved to arrest of judgment on the ground that one the jurors who tried the case had not been returned as such. The general panel of jurors contained the names of Joseph L. and Moise L. The special panel for the term of the court, at which the prisoner was tried, contained the name of Joseph L. The sheriff served Joseph L.'s summons on Moise L., and returned Joseph L. as the party summoned. Moise L. appeared in court, answered to the name of Joseph, and was sworn as a juror without challenge when B. was tried. On a reserved case, *Held*, per Ritchie, C. J. and Taschereau, and Gwynne, JJ., that the point should not have been reserved by the judge at the trial, it not being a question arising at the trial within the meaning of R. S. C. c. 174, s. 259. *Held*, also, per Taschereau and Gwynne, JJ., affirming the judgment of the Court of Queen's Bench, that assuming the point could be reserved, R. S. C. c. 174, s. 246 clearly covered the irregularity complained of. Strong and Fournier, JJ., dissenting.

Brisebois v. The Queen, 15, S. C. R. 421.

The direction to as juror to stand by is practically a challenge for cause, and therefore the order to stand by must be given at a time when a challenge could be made and inasmuch as the right to challenge must be exercised before the juror has taken the book in order to be sworn, the direction to stand by can only be given before the juror has received the book.

Barsalou & al, 10, Q. J. R. K. B. 180.

A statute amending the law as to the selection of names to be summoned for the jury panel for criminal trials will be presumed not to affect a trial at an assize for which the panel of jurors had already been summoned under the former law then in force.

McNamara, (1914), 22, C. C. C. 351.

After a jury is empanelled and sworn it is too late to challenge for cause.

Pilgar, (1912), 20, C. C. C. 507.

A juror in a criminal case who, after he has been sworn, without objection or challenge, states that he is prejudiced against the accused will not be discharged, as objection to his qualification comes too late.

Mah Hung, (1912), 20, C. C. C. 40.

Where, therefore, a juryman was returned whose age exceeded sixty years, that fact only operated in his favour as an exemption, but was not a ground for challenge as a personal disqualification.

Mulcahy v. The Queen, L. R. 3, E. & Ir. App. 306.

It is no ground of error, either in fact or in law, that all the special jurors whose names are on the panel to try the cause have not been summoned to attend. Nor is it ground of error that the jury panel was called over before ten o'clock in the morning, the hour appointed for the sitting of the Court, and that ten special jurors only having appeared, the jury was made up with two talesmen. These are irregularities for the Court to set right on motion, if any injustice has been suffered from their occurrence.
Irwin v. Grey, L. R. 2, E. & Ir. App. 20.

SECTION 944.

The right of the prisoner's counsel at the close of the testimony on a criminal trial is to "sum up the evidence" (Cr. Code, sec. 944), and it is in the judge's discretion whether counsel will be permitted in his address to the jury to read to them extracts from legal text-books or law reports, even though the extract sought to be used may be of an English judicial opinion of accepted authority.
Cook, (1914), 23, C. C. C. 50.

Where the accused dispensed with counsel at his trial and himself addressed the jury but in doing so exceeded the proper bounds of such an address by bringing in wholly irrelevant matters, the Judge is justified in telling the jury that such irrelevant statements are not evidence and are not to be considered as such: nor is there any improper comment on the accused's failure to testify in his own behalf (Canada Evidence Act, sec 5) because of the trial Judge telling the jury that statements of alleged facts so made by the accused (who had called no witnesses) were not to be considered as they were entitled to have the guarantee of the religious sanction of an oath backing up a statement before considering it and that the only way to bring facts before the jury was to bring them out by the testimony of witnesses or by submitting proved documents.
It is within the discretion of the trial Judge to interfere if he deems the address of the prosecuting counsel to be improper as being inflammatory and tending to prejudice the jury; no question of law arises thereon which can be made the subject of a reserved case by the trial Judge.
Kelly, (1916), 27, C. C. C. 140.

Where the accused person in addressing the jury on his own behalf has made statements of alleged facts outside of the sworn testimony, the trial Judge should warn the jury against treating the statement as the equivalent of sworn testimony; such warning is not infraction of sec. 4 of the Canada Evidence Act, R. S. C. 1906, ch. 145, under which the failure of the accused to testify

is not to be made the subject of comment by the Judge or by counsel for the prosecution.

Kelly, (1916), 27, C. C. C. 282.

SECTION **945.**

Where, on the trial of a capital charge, the jury were not kept together on an adjournment over night, as directed by Code sec. 945, whereupon the trial Judge discharged the jury and empanelled a fresh jury, before which the trial was commenced *de novo*, there is no duty upon the trial Judge, on his own initiative, to exclude all the twelve jurors sworn on the first day from the second jury; and the circumstance that eight of the first jury before which testimony had been given were called and sworn on the second jury without challenge does not raise a presumption of "substantial wrong or miscarriage" to found an order for a new trial.

Luparello, (1915), 24, C. C. C. 24.

SECTION **946.**

Leave to appeal in criminal case will not be granted on the ground that the jurors were kept eight hours without food in contravention of Code sec. 946 which directs that they be allowed "reasonable refreshment," unless prejudice to the accused is shown; nor can prejudice to the accused be assumed from that delay where the jury continued their deliberations for an hour after refreshments were provided.

Murray, (1916), 27, C. C. C. 247.

SECTION **949.**

Un verdict de tentative d'assaut n'a rien d'irrégulier.

Leblanc, 2, R. J. Q. B. R. 255.

SECTION **950.**

An indictment, charging that the accused unlawfully attempted to steal from the person of an unknown person the property of such unknown person, without giving the name of the person against whom the offence was committed, or the description of the property the accused attempted to steal, is sufficient.

Where a prisoner is indicted for an attempt to steal, and the proof establishes that the offence of larceny was actually committed, the jury may convict of the attempt, unless the Court discharges the jury and directs that the prisoner be indicted for the complete offence.

Taylor, 4, Q. J. R. K. B. 226.

SECTION **951.**

On the trial of an indictment for murder the evidence was that the deceased has been killed by a gun-shot wound inflicted through the discharge of a gun in the hands of the accused and the defence was that the gun had been discharged accidentally. *Held*, that, in view of the character of the defence and the evidence in support of it, there could be no objection to a charge by the trial judge to the jury that the offence could not be reduced by them from murder to manslaughter but that their verdict should be either for acquittal or one of guilty of murder.

Gilbert v. The King, 38, S. C. R. 284.

In the circumstances disclosed in the stated case there was evidence of such relation between the prisoner's criminal act and the death of the victim, a girl under fourteen years of age, as would support a verdict of manslaughter.

Valade, (1915), 22, R. de J. 524.

SECTION **958.**

Although sec. 958 empowers the court to order that the jury on a criminal trial shall have a view of any place, person or thing, it is not to be inferred that a magistrate exercising a limit statutory power or summary trial without a jury in respect of certain indictable offences, may in like manner take a view of lands which are the subject matter of the offence charged.

Crawford, (1913), 21, C. C. C. 70.

SECTION **960.**

A court has power to discharge, by consent, a jury from giving a verdict upon any of the issues in a case; and where the jury has been discharged, and the record does not shew that it was done without consent, the discharge must be taken to be regular, and cannot be made the ground of error.

Scott v. Bennett, L. R. 5, E. & Ir. App. 234.

SECTION **962.**

Where a *nolle prosequi* has been entered by the attorney-general, upon an indictment in the name of the King at the instance of a private prosecutor, and the accused is thereupon discharged, judgment is, within the meaning of article 833 of the Criminal code, given for the defendant, and he is entitled to recover costs from the private prosecutor.

The King v. Blackley, 13, Q. J. R. K. B. 472.

The entry of a "*nolle prosequi*" may be a termination of the prosecution in favour of the accused for the purposes of his action for malicious prosecution where not entered on account of an irregularity or technicality.
Goulet, (1914), 23, C. C. C. 327.

SECTION **963.**

Pour qu'il y ait récidive, il ne suffit pas que deux infractions aient été successivement commises, il faut que la première ait été suivie d'une condamnation et que depuis cette nouvelle condamnation une nouvelle infraction ait eu lieu, et que telle condamnation soit alléguée dans l'action.
Livernois, 9 R. J. Q. B. R. 243.

Evidence tending to shew that the accused had been guilty of criminal acts other than those covered by the indictment is not admissible unless upon the issue whether the acts charged against the accused were designed or accidental, or unless to rebut a defence otherwise open to him. Where prisoners had been convicted of the wilful murder of an infant child which the evidence shewed they had received from its mother on certain representations as to their willingness to adopt it, and upon payment of a sum inadequate for its support for more than a very limited period, and whose body the evidence shewed had been found buried in the garden of a house occupied by them, *held*, that evidence that several other infants had been received by the prisoners from their mothers on like representations and on like terms, and that bodies of infants had been found buried in a similar manner in the gardens of several houses occupied by the prisoners, was relevant to the issue which had been tried by the jury: *Held*, that sect. 423 of the Criminal Amendment Act of 1883 (46 Vict. No. 17) does not on its true construction empower the Court to affirm a conviction where the evidence submitted to the jury was inadmissible and may have influenced the verdict.
Makin v. Atty-General for New South Wales, L. R. (1894), A. C. 57.

As Part XV. of the Criminal Code as to summary convictions contains no provision requiring the magistrate on the trial of a charge for a second offence involving a greater punishment than for a first, to proceed first as to the later offence charged, and not to ask the defendant whether he had been previously convicted for the like offence until after conviction for the alleged second offence, the prosecutor should allege and prove in a prosecution for a second offence under the Dental Association Act, Alta., 1906, ch. 22, the first conviction as part of his case before conviction of the subsequent offence, for that statute

contains no clause to the contrary such as is commonly found in liquor license statutes.

Cruikshanks, (1914), 23, C. C. C. 23.

SECTION **964.**

Evidence of bad character or of misconduct of the prisoner, not relevant to the issue before the Court, can only be introduced by the Crown in reply or rebuttal. The admission of such evidence as part of the case for the prosecution, before any evidence of good character has been adduced for the defence, is improper, irregular and illegal, and constitutes sufficient ground for setting aside the conviction. The illegality is not covered by the failure of the prisoner or his counsel to object to the evidence at the time, or by the fact that his counsel cross-examined the witnesses on their statements.

Even after evidence of the prisoner's good character has been made by the cross-examination of Crown witnesses, the prosecution is only entitled to prove his general reputation and not particular acts or misconduct.

The King v. Long, 11, Q. J. R. K. B. 328.

SECTION **966.**

It is misdirection to instruct the jury in a murder trial in which the defence is insanity, that such defence must be made out so as to satisfy the jury "beyond a reasonable doubt," the latter expression having, by long judicial usage, become associated with the idea that more is required than merely being "satisfied" that the fact of insanity is proved.

Anderson, (1914), 22, C. C. C. 455.

SECTION **967.**

A special verdict given under the Trial of Lunatics Act, 1883, is one and indivisible and is a verdict of acquittal.

Therefore an accused person who by the special verdict is found guilty of the fact charged but insane at the time is not a convicted person within s. 3 of the Criminal Appeal Act 1907, and cannot appeal from that part of the verdict which finds that he was insane at the time of doing the act.

Rex v. Ireland, (1910), 1, K. B. 654, overruled.

Rex v. Machardy, (1911), 2, K. B. 1144, followed, but the reasoning of the decision disapproved.

Decision of the Court of Criminal Appeal affirmed on other grounds.

Felstead v. Rex, L. R. (1914), A. C. 534.

SECTION 970.

When a pauper prisoner without a settlement becomes insane during confinement in a prison to which the Prison Act, 1877 (40 & 41 Vict. c. 21) applies, the expenses of inquiring into his sanity and of removing him to a county lunatic asylum and of his maintenance in such asylum during the currency of his sentence are, by sects. 4 and 57 of that Act, to be defrayed out of moneys provided by Parliament; and the effect of those sections is to repeal the provisions of 3 & 4 Vict. ch. 54, s. 2, which made the county liable.—So *held*, reversing the decision of the Court of Appeal.

Mews v. The Queen, L. R. 8, A. C. 339.

SECTION 971.

Le privilège d'un témoin résidant dans un district et assigné devant une cour siégeant dans un autre district, contre l'arrestation, ne peut le mettre à l'abri de l'arrestation d'une offense criminelle commise par lui, pendant le temps qu'il est éloigné de son domicile pour rendre témoignage.

Ex parte Ewan, 6, R. J. Q. B. R. 465.

A witness who is not a party to the indictment for theft submitted to the jury, cannot be excused from answering questions on the ground that he himself is indicted with another as receiver of the goods stolen, and that his answers might incriminate him; but his objection shall be noted, and his evidence shall not be used against him at his trial.

McLinehy, (1898), 2, Q. J. R. K. B. 166.

Where a witness, although accused of having been a party to the crime, has not been indicted jointly with the prisoner at the bar, and is not being tried jointly with the latter, his evidence is admissible for the prosecution.

Viau, 7, Q. J. R. K. B. 362.

No action will lie against a witness for what he says or writes when giving evidence before a Court of Justice. The rule is founded on principles of public policy.

Dawkins v. Lord Rokeby, L. R. 7, E. & Ir. App. 744.

A Judge or magistrate cannot legally refuse to give credit to testimony if the following conditions are fulfilled: (1) That the statements of the witness are not in themselves improbable or unreasonable; (2) that there is no contradiction of them; (3) that the credibility of the witness has not been attacked by evidence against his character; (4) that nothing appears in the course

of his evidence or of the evidence of any other witness tending to throw discredit upon him; and (5) that there is nothing in his demeanour while in Court during the trial to suggest untruthfulness.

Covert, (1916), 28, C. C. C. 25.

SECTION **977.**

It was competent for the Quebec legislature to amend that provision of the Quebec Code of Civil Procedure in force at Confederation by which a prisoner in a penitentiary within the province might be brought up to give evidence in a civil cause by means of a writ of *habeas corpus* issued upon the order of a judge, so as to provide, as was done by article 302 C. P. Que., that thereafter an order alone should be sufficient without the issue of a writ of *habeas corpus*.

Duval, (1912), 21, C. C. C. 201.

SECTION **978.**

The accused may make a minor confession while not fully confessing his guilt and in view of this and of Cr. Code 978 it is not error to admit either at the preliminary enquiry or at the trial depositions in similar concurrent prosecutions of others for fraudulent stock subscriptions in the same company, where the same counsel acting for all of the accused signed a consent by which the evidence at the preliminary inquiry against any one of them might be used as against any other both at the several preliminary enquiries and upon the trials.

Daigle, (1914), 23, C. C. C. 92.

La preuve qu'un accusé de meurtre s'est tu ou a répondu: "Absolument rien!" à l'agent de police qui le détenait sous arrestation et qui lui demandait ce qu'il avait à dire de l'affirmation par la veuve de la victime sur confrontation, que c'était lui (le prisonnier) qui avait tué son mari, est illégale.

Est conséquemment irrégulière et illégale l'instruction au jury par le juge siégeant au procès que le fait ainsi prouvé forme un chaînon dans la preuve de culpabilité qu'il a à peser.

Par suite, un verdict de culpabilité rendu, lorsque cette preuve a été admise et cette instruction donnée au jury, est nul et doit être cassé.

McCraw, 16, R. J. Q. B. R. 193.

A co-defendant in a criminal case cannot be compelled to testify, but he may do so if he sees fit.

Connors, 3, Q. J. R. K. B. 100.

Admissions obtained from the accused after representations made to her by persons in authority, to the effect that the evidence was very strong against her, that another person, who was her lover, was suspected, and that she knew something about the murder, and would do well to speak, are not inadmissible as not being made voluntarily, or as being procured by threat or indu cement. (Wurtele and Ouimet, JJ., dissenting on this point.)
Viau, 7, Q. J. R. K. B. 362.

SECTION **984.**

On a criminal charge of seduction of a girl under twenty-one where the evidence of the girl's parents is not available, the girl's own testimony that her age was nineteen and the testimony to the like effect given by the woman under whose care she had been when a small child based upon information then received and upon personal observation is admissible in proof of her age being under twenty-one.
Cr. Code sec. 984 does not exclude any other class of evidence that is by law admissible, but provides for another means of determining the age of the child or young person against whom the offence was committed in the specified classes of cases where the age is material, by enacting that the jury or the magistrate, as the case may be, may infer her age by the girl's appearance.
Spera, (1915), 25, C. C. C. 180.

SECTION **985.**

In the absence of evidence that a constable was armed with a warrant when he was prevented from, obstructed or delayed in entering a place supposed to be used as a common gaming house, or that the person obstructing him knew that he was a constable, no presumption arises under secs. 985 and 986 of the Criminal Code, 1906, that such place was used as a common gaming house.
Hung Gee, (1913), 21, C. C. C. 404.

The habitual use of a room in a hotel as a bawdy house may be proved by direct evidence, but it is not necessary that every fact essential to constitute the crime should be proved by direct evidence; the existence of a habit or custom of doing a certain thing may be inferred from the circumstances surrounding the doing and the manner of doing, or even of offering to do that thing on a single occasion.
Rex v. Davidson, (No. 1) [1917], 2, W. W. R. 160; 28, Can. Cr. Cas. 44.

The *primâ facie* presumption that a place is a common gaming house created by sec. 985 of the Criminal Code from the finding

by officers of certain implement of gaming therein, arises only when the officer enters the place under a warrant or order.

Where the circumstances create no statutory presumption under Cr. Code secs. 985 and 986, a conviction under sec. 228 of the Criminal Code for keeping a common gaming house cannot be sustained in the absence of evidence that a "bank" was kept by one or more of the players exclusive of the others, or that there was a gain to accrue to the accused from permitting the gaming to be carried on.

Jung Lee, (1913), 22, C. C. C. 63.

The proper construction of s. 226 (a) of the Cr. C. is that the keeper, or ostensible keeper, of the gambling house must in some way gain by the gambling, or by permitting the gambling to be carried on, and unless he does he is not liable: Reg. v. Saunders, 3 Can. C. C. 495, referred to.

Rex v. Charlie Yee, (1917), 1, W. W. R. 1307.

SECTION **986.**

The fact that an officer on seeking admittance to a place suspected of being a common gaming house, finds the door locked does not constitute a wilful prevention, obstruction or delay of his entrance sufficient to raise the *primâ facie* presumption created by sec. 986 of the Criminal Code that the place was used as a common gaming house; the presumption is created only when something active is done amounting to a wilful obstruction or prevention.

Jung Lee, (1913), 22, C. C. C. 64.

Semble, that the Criminal Code, sec. 986, as amended 1913, has the effect of making it *prima facie* evidence that a room or place is a common gaming house if it is found fitted or provided with any means or contrivance for unlawful gaming, by a constable who enters by consent of the proprietor and without any search warrant or order under Cr. Code, sec. 641, as amended 1913; and it is not necessary for the prosecutor to prove there was any resorting to the place (Cr. Code, sec. 226 (a) as part of their *prima facie* case where the provisions of Cr. Code, sec. 986, apply.

O'Meara, (1915), 25, C. C. C. 16.

SECTION **993.**

Where in a criminal charge for having possession of stolen goods, which, after a search, are not found, it is sufficient, however, to create circumstantial evidence, corroborating the testimony of the young boys who committed the larceny, that the proofs shew that a quantity of metal, stolen long before the

specific instances charged in the case, had been discovered in the accused's possession.

The King v. Medres, (1916), 22, R. L. n. s. 400.

SECTION **995.**

It is the duty of the trial Judge at a criminal trial to allow only admissible evidence to go to the jury, and he may exclude testimony taken *de bene esse* before a commissioner for use at the trial subject to all proper exceptions, if the testimony be not properly admissible although no exception was taken before the commissioner and the objection was first raised on the tender of the depositions at the trial.

Jennie Hawkes, (1915), 25, C. C. C. 29.

A commission to take evidence ex juris in a criminal case may be ordered in respect of an expert witness if the Court is satisfied that his evidence is material and that it is improbable that he would voluntarily attend within the jurisdiction.

Roblin, (1916), 26, C. C. C. 222.

Evidence of statements made by a person, since deceased, immediately after an assault upon him under apprehension of further danger and requesting assistance and protection, is admissible as part of the *res gestae*, even though the person accused of the offence was absent at the time when statements were made.

Gilbert v. The King, 38, S. C. R. 284.

A dying declaration is only admissible in the case of homicide where the death of the deceased is the subject of the charge and the circumstances which led to the death are the subject of the dying declaration.

Inkster, (1915), 24, C. C. C. 294.

SECTION **999.**

Under the Canada Evidence Act, 1893, a deposition given at a coroner's inquest is inadmissible in evidence against the deponent, in a criminal proceeding subsequently instituted against him.

Viau, 7, Q. J. R. K. B. 362.

There is nothing said in s. 999 of the Criminal Code as to the time when the evidence is to be signed by the Judge and there is no reason why it may not be signed at any time before it is admitted in evidence.

Rex v. Baugh, (1917), 38, O. L. R. 559; 33, D. L. R. 191.

1. Le coroner n'a pas le droit, lorsqu'il procède à une enquête, d'exiger une déclaration d'une personne qu'il a pu accuser ou soupçonner d'un crime et qu'il a pu arrêter en sa qualité de juge de paix, avant le verdict.
2. Une déposition prise devant la cour du coroner n'est pas admissible comme preuve contre le déposant dans une poursuite criminelle intentée ensuite contre lui.
Regina v. Lalonde, 7, R. J. Q. B. R. 204.

A deposition taken at a coroner's inquest cannot be read at a trial, unless the formalities prescribed for the taking of depositions at a preliminary inquiry have been observed.
Ciarlo, 6, Q. J. R. K. B. 142.

A jury not having agreed in a trial for felony were discharged. A fresh trial was had, at the same sittings, before another jury. Some of the witnesses having been re-sworn, the evidence given by them at the first trial was read over to them from the judge's notes, liberty being given both to the prosecution and to the prisoner to examine and cross-examine. The Supreme Court under the circumstances granted a new trial. The Judicial Committee held that the course adopted by the judge, at the new trial, was irregular and could not be cured even by the consent of the prisoner; and that according to the English criminal law, the court has no power to grant a new trial in a case of felony. The prisoner was discharged.
Bertrand, New South Wales, IV Moore, n. s. 460.

The depositions taken before justices on a preliminary inquiry are not part of the trial proceedings, though in certain circumstances the Court may give leave to have them read as evidence at the trial
Montminy, (1912), 20, C. C. C. 63.

SECTION **1000.**

A prisoner was tried by the Court in New South Wales for Felony, the jury not agreeing, were discharged, and a fresh trial had. On the second trial, at the same sittings, before another jury, some of the witnesses having been re-sworn, the evidence given by them at the first trial was read over to them from the Judge's notes, liberty being given both to the prosecution and to the prisoner to examine and cross-examine:—
Held, on appeal from a judgment of the Supreme Court at New South Wales granting, in such circumstances, a new trial:—
First, that the course adopted by the Judge at the fresh trial was irregular, and could not be cured even by the consent of the prisoner: and

Secondly, that according to the English law prevailing in New South Wales, the Supreme Court had no power to grant a new trial in a case of Felony.
Bertrand, L. R. 1. P. C. App. 520.

Where the evidence of a witness at a preliminary inquiry was given in French, but was translated and taken down in English, the deposition so taken, without having been read over and explained to the witness and signed by him, cannot be read at a trial, to establish a contradiction between the witness's former and present evidence; but the witness may be cross-examined as to any material statement made at the preliminary inquiry, to allow the defence to examine witnesses with the object of showing a contradiction.
Ciarlo, 6, Q. J. R. K. B. 144.

SECTION **1001.**

An accused person on a murder trial giving testimony on his own behalf may be asked whether or not he made a certain statement at the inquest although the original depositions are not available in court; and he has no right to demand before answering that he be informed of what was taken down in the depositions; but if use is to be made on the latter to contradict him the original deposition should be produced.
Mulvihill, (1914), 22, C. C. C. 355.

While the matter of a confession in a criminal case should go as a whole to the jury, it is within the province of the jury to accept a part of it and discredit other parts.
Farduto, (1912), 21, C. C. C. 144.

A written confession of his defalcations, signed by the accused after it had been read over and explained to him, is admissible, although no part of it but the signature was in his handwriting, if it be also shewn that no inducement was held out or threat made to obtain his signature, and that the confession was therefore a voluntary one.
De Paoli, (1915), 25, C. C. C. 256.

There is no rule of law that evidence of a statement made in the presence and hearing of the accused is not admissible as having a bearing on his conduct unless he accepts the statement; but where the accused denies the truth of the statement the presiding judge, in the absence of special circumstances, should intimate to counsel for the prosecution that, inasmuch as the evidenec, though admissible, would have little value and might un-

fairly prejudice the jury against the accused, it ought not to be admitted.

The respondent was convicted of an indecent assault upon a little boy. At the trial the boy's mother stated in evidence that, as she and her son came up to the respondent shortly after the act complained of, the little boy said in the respondent's hearing "That is the man" and described what the respondent did to him, and that the respondent replied "I am innocent." The Court of Criminal Appeal quashed the conviction upon the authority of Rex v. Norton (1910), 2, K. B. 496, on the ground that evidence of a statement made in the presence of the accused was not admissible against him unless he acknowledged the truth of the statement:—*Held*, that the evidence was admissible in law in reference to the demeanour of the respondent, and by Lord Atkinson, with the concurrence of Lord Parker, (Viscount Haldane, L. C., Lord Dunedin, Lord Moulton, and Lord Reading dissenting) as part of the act of identification.

Decision of the Court of Criminal Appeal reversed on this point, but the order quashing the conviction by the presiding judge on the question of the corroboration required by s. 30 of the Children Act, 1908. (R. v. Norton, (1910), 2, K. B. 496, considered.)
Christie, L. R. (1914), A. C. 545.

A statement made by the accused will not avail as an admission of guilt if it be an equivocal one such as a request for forgiveness for "what he had done," made at a time at which no accusation was made against him of any criminal offence, and when it did not appear that he knew that he was suspected of the alleged offence.
Blyth, (1917), 28, C. C. C. 20.

Before the Crown introduces statements made by a prisoner while in custody as evidence of an admission or confession, the onus is on the Crown to shew that there has been no inducement given to make those statements.
Bogh Singh, (1913), 21, C. C. C. 323.

An acknowledgment of a subordinate fact not directly involving guilt and not essential to the crime charged is not a "confession" within the rules by which evidence of a statement by way of confession made to a person in authority may be received only where shewn to have been made freely and voluntarily.
Hurd, (1913), 21, C. C. C. 98.

Le juge de la Cour des sessions spéciales de la paix peut admettre légalement, dans un procès qui a eu lieu en janvier 1914 pour

une offense criminelle, un aveu de l'accusé signé par lui en août 1913 après qu'il eût été lu et expliqué par un interprète.
De Paoli v. le Roi, 24, R. J. Q. B. R. 525.

When the depositions taken before the committing magistrate disclose the fact that on the preliminary enquiry evidence had been given of statements made by each of the accused in the absence of the other, which tended to implicate the one but not the other, and which might work an injustice to such other if introduced at a joint trial, the prosecuting counsel desiring to use such statements in evidence when the trial shall take place should see to it either that separate indictments are laid against the two accused or that an application to the trial Judge for a separate trial is not opposed by the prosecution. (*Per* Beck, J.)
Murray, (1916), 27, C. C. C. 247.

There is no statutory form of warning prescribed for police officers to give to a person accused of crime.
The statement to an accused by a police officer that he has nothing to fear does not constitute an inducement to confess.
Rex v. Spain, (1917), 2, W. W. R. 465.

SECTION **1002.**

The rules of evidence applicable to a criminal prosecution requiring corroboration of the testimony of the complaining witness as to the fact of rape and requiring disclosure by her of the alleged act, do not apply to a civil action for damages for assaulting and ravishing the plaintiff without her consent.
Gibson, (1912), 20, C. C. C. 195.

The corroboration required by sec. 1002 of the Cr. Code 1906, on a charge of forgery, is additional evidence that will fortify and strengthen the credibility of the main witness and justify the evidence being accepted and acted upon if it is believed and is otherwise sufficient.
Scheller, (1914), 23, C. C. C. 1.

The evidence of witnesses called for the defence may be looked at for the purpose of finding the corroboration required by statute (Cr. Code 1906, sec. 1002) for conviction of certain offences.
Wakelyn, (1913), 21, C. C. C. 111.

Where the deposition containing the false statement charged as perjury forms part of the record of a superior court of record, and is certified and attested by the official stenographer, it is proved by the production of such record; the additional oral testimony of a witness that he had heard the accused make,

under oath, the statements charged to be false, is not made necessary by Cr. Code, sec. 1002.
Spires, (1915), 25 C. C. C. 172.

Where a prisoner is charged with forgery, by writing three false signatures, as indorsements, on the back of a promissory note, and each of the parties whose signature is thus made to appear, swears that it is not his and is a forgery, there is the corroborative evidence required by article 684, criminal code, to make good a conviction. Cr. c., 442.
Houle v. The King, 15, Q. J. R. K. B. 170.

Where the accused gives evidence on his own behalf in defence of a charge of perjury, material variances in such testimony from that in respect of which the charge is brought may in themselves supply the statutory corroboration which Cr. Code, sec. 1002, requires, namely, that the accused shall not be convicted "upon the evidence of one witness, unless such witness is corroborated in some material particular by evidence implicating the accused."
Nash, (1914), 23, C. C. C. 38.

Evidence which is consistent with two views is not corroborative of either, but if the accused has denied under oath the correctness of one of such views, the evidence becomes corroborative as to the other.
Peterson, (1916), 27, C. C. C. 3.

A conviction for forgery will be quashed if there is no corroborative evidence under Cr. Code sec. 1002; *quaere*, whether the false duplication of tickets or due bills with the exception of the signature appearing on the valid tickets is in itself a forgery.
Magnolo, (1915), 26, C. C. C. 419.

La production des pièces originales d'un dossier de la Cour supérieure, ou du dossier même, peut être légalement faite devant un tribunal de juridiction criminelle. Et ce tribunal peut prendre connaissance des faits dévoilés dans ces pièces et dans ce dossier; il est même tenu de le faire.
Dans un cas d'accusation de parjure, la production d'une déposition donnée en Cour supérieure comportant l'attestation du sténographe officiel qui a pris cette déposition en sténographie que cette déposition est celle de l'accusé, est une corroboration suffisante selon l'art. 1002.
Spires v. Le Roi, 24, R. J. Q. B. R. 547.

There need not be two witnesses to prove every fact necessary

to make out an assignment of perjury, the corroboration being required merely for the perjured fact as a whole and not to every detail or constituent part of it; and where the accused had in his testimony connected two persons at different points with the one act, *e. g.* a joint attempt to bribe him for his vote at an election, evidence on the perjury charge by one of the alleged bribers negativing the bribery charge as to himself and evidence by the other to the like effect as regards himself, may establish the perjury, the one statement sufficiently corroborating the other.

Curry, (1913), 21, C. C. C. 273.

Where two charges of illicit intercourse with a girl between fourteen and sixteen years of age are brought assigning different dates, the corroborative evidence merely as to the occurrence on the later date is not effective under Cr. Code sec. 1002 as corroboration of the alleged former offence under Cr. Code sec. 211; nor is the girl's testimony affirming carnal intercourse with the accused on the first date, while she was under the influence of liquor; conclusive as negativing her previously chaste character on the second date (Cr. Code secs. 210 and 211) as to which the burden of proof is by sec 210 placed upon the accused.

Farrell, (1916), 26, C. C. C. 273.

SECTION **1003.**

Neither under Cr. Code sec. 1003 nor under sec 16 of the Canada Evidence Act, 1906, can there be corroboration of the unsworn testimony of a child of tender years who does not understand the nature of an oath, by similar unsworn testimony of another child.

McInulty, (1914), 22, C. C. C. 347.

In support of a prosecution against the defendant under s. 12 of 53 Vict., c. 37, for having committed an indecent assault upon a girl of the age of 13 years, the evidence of the girl, although not given upon oath, was admitted under the provisions of sec. 13 of the same act. The unsworn statement was corroborated by other sworn testimony.

The defendant was acquitted of indecent assault, but convicted of simple assault.

HELD:—That the conviction was valid, although the unsworn evidence of the girl, which would have been inadmissible if the defendant had been tried for simple assault, was the chief evidence against him.

R. v. Wealand, 20, Q. B. Div. 827; 16 Cox, 402, followed. Reg. v. Grantyers, 2, Q. J. R. K. B. 376.

As sec. 1003 of the Criminal Code (1906) specifically requires

that the "testimony admitted by virtue of this section" *i. e.*, a statement taken in court from a child of tender years not understanding the nature of an oath upon the trial of certain sexual crimes, must be corroborated by "some other material evidence in support thereof implicating the accused," the testimony so taken from one child of tender years cannot constitute the kind of corroboration required by the Code of the testimony similarly taken from another child of tender years. (Dictum *per* Harvey, C. J.)
Whistnant, (1912), 20, C. C. C. 322.

Where in a criminal charge for having possession of stolen goods, which, after a search, are not found, it is sufficient, however, to create circumstantial evidence, corroborating the testimony of the young boys who committed the larceny, that the proofs shew that a quantity of metal, stolen long before the specific instances charged in the case, had been discovered in the accused's possession.
Medres, (1916), 22, R. L. n. s. 400.

The Court delivered an oral judgment at the conclusion of the argument, holding that there was sufficient corroboration without considering the objection raised that the testimony not under oath of one child could not be corroboration under Cr Code sec. 1002 of the testimony of another child similarly taken without oath under sec. 1003. The accused having given evidence on his own behalf, his evidence could be looked at for the statutory corroboration, and such corroboration might consist of a circumstance admitted by the accused to which he offered an explanation of an exculpatory character but which was of an implicating character, were the testimony of the prosecutrix believed, where the Court was of opinion that the explanation offered by the accused was an unreasonable one.
Fontaine, (1914), 23, C. C. C. 159.

SECTION **1004.**

In order to enable a jury to return a verdict against the prisoner, they must be satisfied beyond any reasonable doubt of his guilt; this is a conviction created in their minds not merely as a matter of probability and if it was only an impression of probability their duty was to acquit.
Schurman, (1914), 23, C. C. C. 365.

SECTION **1005.**

In view of Cr. Code, sec. 1005, it would be no objection that one sentence has been pronounced upon a charge tried under the "Summary trials" procedure, Part XVI, of the Criminal Code

(secs. 777 and 778), for two distinct offences disclosed in the written charge on which the accused elected summary trial and pleaded guilty, provided the sentence was warranted for one of such offences.

Morgan, (1913), 25, C. C. C. 192.

SECTION **1007** (5.)

When the Judge who had presided at a criminal trial with a jury before the Court of King's Bench, Quebec was taken ill between the date of the verdict of guilty and the date to which sentence was deferred and was unable to preside on the latter date, another Judge of that Court may with the concurrence of the Chief Justice take the place of the trial Judge and pass sentence.

Bourret et al, (1914), Lavergne, J., 24, C. C. C. 65.

SECTION **1010.**

Sec. 1010 forbidding the reversal of a verdict for certain irregularities not objected to before verdict in criminal cases, is taken from the Imperial statute 7 Geo. IV, ch. 64, and not from 21, James, 1, ch. 13.

After verdict rendered and sentence passed it is too late to urge that one of the jurors who sat on the case was not qualified and that his name was not on the sheriff's list of jurors as sec. 1010 Cr. Code establishes the legal presumption that all those who rendered a verdict were competent to have served on the jury where no objection was taken at the trial of an indictment.

Battista, (1912), 21, C. C. C. 1.

SECTION **1011.**

Cr. Code, sec. 1011, which directs that certain omissions of statutory directions as to the jury or jurors shall not be a ground of impeaching any verdict nor be allowed for error upon any appeal, applies to an objection raised by challenge of the array of jurors, as well as to objections taken after verdict.

Morrow, (1914), 24, C. C. C. 310.

APPEAL BY RESERVED CASE.

SECTION **1013.**

The word "opinion" as used in the second sub-section of section 742 of the Cr. Code, 1892, must be construed as meaning a "decision" or "judgment" of the Court of Appeal in criminal cases.

Viau v. The Queen, 29, S. C. R. 90.

Pour qu'il y ait lieu à une cause réservée par la Cour d'Appel, il faut qu'il y ait eu un procès, une décision sur un point de loi et un verdict ou conviction, et, cela est nécessaire, en vertu de l'article 742 du Code criminel, pour permettre à l'accusé de porter appel.
Trépanier, (1901), 10, R. J. Q. B. R. 175.

Where an appeal by stated case from a summary conviction and forfeiture of a recognizance to keep the peace, has been taken on a point of law under Cr. Code sec. 761, there is no further appeal from the decision affirming such conviction and forfeiture; Cr. Code, secs. 1013 et seq., do not give jurisdiction to the Court of Criminal Appeal to grant leave to appeal and to receive a case stated by the Superior Court of Cr. jurisdiction hearing the appeal from the magistrate's decision.
Waller, (1915), 24, C. C. C. 393.

SECTION **1014**.

The Ontario Court of Appeal, on a criminal appeal, has no jurisdiction to intervene in a case of error or misunderstanding, its jurisdiction being limited by section 1014 of the Criminal Code in a stated case to questions of law; the application for relief in a case of error or misunderstanding being to the Minister of Justice, under sec. 1022 of the Criminal Code (1906).
Pilgar, (1912), 20, C. C. C. 507.

Whether or not there was evidence upon which the trial tribunal might make a conviction is a question of law, but where there is an acquittal on the facts in respect of a charge of an indictable offence, whether by a jury or by a Judge trying the case without a jury, the question of the sufficiency of the evidence to prove the charge is a question of fact and not of law, and cannot be raised by the prosecution as a "question of law" on an appeal under Cr. Code secs. 1014 and 1015.
White, (1914), 24, C. C. C. 74.

When it appears upon a reserved case that there was evidence upon which the jury could reasonably find as they did, the appellate Court should not grant a new trial merely because a different conclusion may appear to it to have been preferable on a consideration of the whole evidence.
Faulkner, (1911), 19, C. C. C. 47.

A verdict cannot be impeached in consequence of an observation made by the judge presiding while the trial was proceeding, unless such observation was calculated to influence the jury against the defendant;

Consequently, the fact that the presiding judge remarked to the defendant's counsel, while the jury was being sworn, "if you continue to challenge every man who reads the newspapers, we will have the most ignorant jurors selected for the trial of this cause," is not a proper ground for a reserved case, it having no tendency to influence the jury one way or the other.

An observation by the presiding judge, in his charge to the jury, to the effect that "about forty or fifty witnesses had been examined for the purpose of establishing the defendant's good character and that it was very strange that it should take forty or fifty witnesses to establish it," is not an irregularity which can constitute a ground for granting a reserved case.

A new trial should not be ordered in consequence of remarks made by a juror tending to show prejudice, unless it be shown that he was prejudiced as to be unable to give the defendant an impartial trial.

An application for a new trial on the ground of improper conduct of the jury must be supported by affidavits clearly setting forth the alleged irregularity, and in the absence of full proof under oath the presumption is that the jury performed its duty.

The King v. Carlin, 12, Q. J. R. K. B. 368.

(*Affirmed by the following judgment*:)

The Court of Appeal held that the above observations of the presiding judge are not a proper ground for granting leave to appeal to the Court of King's Bench. appeal side, such remark having no tendency to influence the jury against the defendant, and being without importance, the presiding judge having the right to express his opinion of the evidence which however, may or may not be accepted by the jury.

The essential point is that the whole evidence be submitted to the jury who decide finally as to the innocence or guilt of the accused.

Carlin, (1903), 12, Q. J. R. K. B. 483.

1. In a demand for leave to appeal from the judgment rendered by the judge of the Sessions of the Peace, upon a motion for a reserved case, the Court must take cognizance of the notes of judgment of the first judge forming part of the record, notwithstanding the fact that the Crown filed affidavits to the effect that the judge discharged the respondent only on question of law.

2. The filing of the judge's notes in the record after the judgment has been rendered is not illegal.

3. Where the judge discharged an accused, in a criminal court, on account of the insufficiency of the evidence, the Court of Appeal has no jurisdiction to grant reserved cases.

Jacobs, (1917), 26, Q. J. R. K. B. 382.

Sur les questions de faits, la Cour d'appel ne peut que décider s'il y a eu quelque preuve de faite devant le tribunal de première instance, ou s'il y a eu absence complète de preuve.
Giroux, (1916), 26, R. J. Q. B. R. 323.

Special leave to appeal from a verdict and sentence in criminal cases cannot be granted except in very exceptional cases, such as a gross miscarriage of justice or disregard of the forms of legal process.
Carew, 12 App. Cas. 459.

Her Majesty will not be advised to grant leave to appeal in criminal cases, where it is not even suggested or surmised that substantial and grave injustice has been done, either through a disregard of the forms of legal process, or by some violation of the principles of natural justice.
Deeming, L. R. (1892), A. C. 422.

Although in special and exceptional circumstances leave to appeal to in criminal cases may be granted, misdirection by a judge, either in leaving a case to a jury where there is no evidence or founded on an incorrect construction of the Penal Code, even if established, is insufficient for that purpose, especially where no miscarriage of justice has resulted.
Macrea, L. R. (1893), A. C. 346.

The Court of King's Bench, sitting as a court for the hearing of cases reserved by criminal courts, has jurisdiction only to pronounce upon a question of law, under facts proved, and mentioned in the reserved case.
Fortier, (1903), 13, Q. J. R. K. B. 308.

Depuis la passation de la 63 & 64 Vict. Can. ch. 46, s. 3, l'accusé ou son procureur peut s'adresser directement à la Cour d'Appel pour obtenir la permission d'appeler.
Trépanier, 10 R. J. Q. B. R. 222.

A reserved case may be applied for and may be stated after a trial for the opinion of the Court of Appeal on a question of law arising on the trial or on any of the proceedings incidental thereto. Whether the judge or magistrate had jurisdiction in the case is a question of law.
Paquin, 7, Q. J. R. K. B. 319.

Where a reserved case is applied for on several questions of law and granted only as to some of them by the trial Judge, the Court of Appeal, on granting leave to appeal on one of the questions which the trial Judge refused to reserve, will ordinarily

direct that the reserved case shall stand over to be considered at the same time so that the entire appeal may be disposed of in one judgment.

The Court of Appeal, in granting leave to appeal in a criminal case, may direct that the whole record should be transmitted by the trial Court, and that the latter shall add a statement declaring whether the stenographic notes of the reasons for the judgment appealed against are correct.

Giroux, (1916), 27, C. C. C. 366.

In a criminal prosecution the guilt of the accused must be established beyond reasonable doubt.

Shortall, (1917), 28, C. C. C. 98.

Where corroborative evidence is not required by statute and there is nothing to shew that the Judge trying a criminal charge without a jury had misdirected himself upon a matter of law, it is irregular to reserve for the Court of Appeal the question whether the evidence disclosed sufficient corroboration of an accomplice's evidence, such not being in such circumstances a "question of law" within Cr. Code sec. 1014.

McClain, (1915), 23, C. C. C. 488.

The discretion of the trial judge at a criminal trial in refusing to grant a postponement to enable the defence to make enquiries as to the antecedents of two Crown witnesses who had not been examined at the preliminary enquiry, is not a question of law which can be reserved under Cr. Code 1906, sec. 1014.

Mulvihill, (1914), 22, C. C. C. 354.

Resort to the writ of habeas corpus should not be permitted where there is as complete a remedy by appeal under Cr. Code sec. 1014, et seq. from the conviction attacked.

Therrien, (1915), Cross, J., 25, C. C. C. 275.

If the presiding judge on the trial of a criminal case erroneously rules at the close of the Crown's case that the prosecution has made out the corroboration required by statute for the particular offence and refuses the defendant's motion to take the case from the jury for lack of corroboration, the defence may either rest its case or adduce evidence in defence, but if it elects the latter course and sufficient corroboration is made out from the defendant's witnesses the defendant cannot, upon an appeal by case reserved, take advantage of the absence of corroborative evidence at the close of the Crown's case.

Wakelyn, (1913), 21, C. C. C. 111.

A question depending upon the weight or insufficiency of the

evidence where there is legal evidence on the point, cannot properly be made the subject of a reserved case, although where the evidence merely points to a suspicion of guilt and lacks the material ingredients necessary to constitute proof of the offence the question becomes one of the lack of legal evidence to support it (which is a question of law) rather than one as to the weight of evidence.

Howe, (1913), 24, C. C. C. 215.

By s. 1014 (3) of the Cr. Code either party may "during the trial" of a prisoner on indictment apply to have a question which has arisen reserved for adjudication by the Court of Appeal: — *Held*, that for the purposes of such provision the trial ends with the verdict after which no such application can be entertained.

Ead v. The King, 40 S. C. R. 272.

If the trial Judge should wrongly tell the jury that there was competent evidence of the offence, his direction in that respect would raise a "question of law," which could be reserved under Cr. Code, sec. 1014, for the opinion of the Court of Appeal, although the appreciation of the facts where there is competent evidence of the offence pertains exclusively to the jury. (*Per* Carroll, J.)

Rivet, (1915), 25, C. C. C. 235.

It is a rule of law that the jury must find the facts on which the question of reasonable and probable cause depends, but that the Judge must then determine whether the facts found do constitute reasonable and probable cause. No definite rule can be laid down for the exercise of the Judge's judgment.

Lister v. Perryman, L. R. 4, E. & Ir. App. 521.

The right of the "prosecutor" to appeal on a question of law by case reserved under Cr. Code 1014 (3) or by leave under Cr. Code 1015 on an acquittal of the accused, is limited to the Crown when the proceedings on the indictment are conducted by the Crown counsel; and where the Crown counsel was refused a reserved case at the trial, whereupon the informant, who had been bound over to prefer the indictment and had done so, also applied and was refused, the latter has no *locus standi* to make a subsequent application under Code sec. 1015 for leave to appeal where the Crown makes no application.

Fraser, (1914), 23, C. C. C. 140.

The question of qualification of a juror in a criminal case is a question of fact which cannot be raised after verdict rendered and the Court of Appeal has no jurisdiction to entertain a reserved case thereon.

Battista, (1912), 21, C. C. C. 1.

Where on a criminal trial a motion for a reserved case made on two grounds is refused, and on appeal to the Court of Queen's Bench (appeal side), that court is unanimous in affirming the decision of the trial judge as to one of such grounds, but not as to the other, an appeal to the Supreme Court can only be based on the one as to which there was a dissent.

McIntosh v. The Queen, 23, S. C. R. 180.

An appeal to the Suprême Court of Canada does not lie in cases where a new trial has been granted by the Court of Appeal under the provisions of the Cr. Code, 1892, ss. 742 to 750 inclusively.

Viau v. The Queen, 29, S. C. R. 90.

Lorsqu'un procès, en matière criminelle, a lieu devant la Cour du banc du roi, avec jury, les questions qui peuvent être réservées pour être soumises à la Cour d'appel ne doivent être que des questions de droit se rapportant aux procédures préliminaires, actuelles ou subséquentes au procès, ou qui découlent de l'allocution du juge au jury ou touchent à la juridiction du tribunal. La procédure par voie de cas réservés, *stated case*, ne peut jamais s'étendre aux faits de la cause.

Dans le procès par jury, il appartient au juge de dire s'il y a preuve; et au jury d'apprécier cette preuve.

Le juge qui préside à un procès par jury peut commenter les faits mais un verdict ne peut être annulé parce que ces commentaires seraient erronés, le jury pouvant toujours définitivement rendre son verdict sur les faits.

Les remarques que le juge fait, pour diriger un jury, dans un procès criminel, ne doivent être sténographiées que dans le cas de meurtre, la loi n'en fait pas une obligation pour les autres offenses.

Bien qu'en général, l'on ne puisse faire la preuve que l'accusé a commis un autre crime pour démontrer qu'il était capable de commettre celui dont il est accusé, il y a, néanmoins, des exceptions à cette règle; ainsi cette preuve pourra être admise dans les circonstances mentionnées dans le rapport de cette cause.

Rivet v. Le Roi, 24, R. J. Q. B. R. 559.

Il n'y a pas lieu dans une poursuite criminelle pour obtention frauduleuse, sous de faux prétextes, de deux billets, de réserver pour la Cour d'appel les questions suivantes: 1. Refus par le juge d'ajourner la cause sur l'absence d'un témoin essentiel; 2. Absence de faux prétextes, lorsque l'accusé n'a pas obtenu du plaignant de l'argent, mais seulement un crédit, vu que le crédit ne peut faire l'objet d'un vol; 3. Le fait que les billets ne pouvaient faire l'objet d'un vol, parce qu'ils étaient en souffrance, n'avaient aucune valeur pour le plaignant, et n'étaient que la reconnaissance d'une dette.

Abeles v. Le Roi, 24, R. J. Q. B. R. 260.

After the dismissal of a case reserved on the application of the accused, a second application, although upon new grounds, is to be discouraged; and *quaere*, whether the Court of Appeal has jurisdiction to hear a second appeal from the same conviction.
Bela Singh, (1915), 27, C. C. C. 40.

Evidence of statements made by a person, since deceased, immediately after an assault upon him under apprehension of further danger and requesting assistance and protection, is admissible as part of the *res gestae*, even though the person accused of the offence was absent at the time when such statements were made. *Reg* v. *Beddingfield*, (14 *Cox* 341); *Rex* v. *Foster*, (6 *C. & P.* 325), *and Areson* v. *Kinnaird* (6 *East* 188) followed.—Statements not coincident, in point of time, with the occurrence of the assault, but uttered in the presence and hearing of the accused and under such circumstances that he might reasonably have been expected to have made some explanatory reply to remarks in reference to them, are admissible as evidence. On the trial of an indictment for murder the evidence was that the deceased had been killed by a gun-shot wound inflicted through the discharge of a gun in the hands of the accused and the defence was that the gun had been discharged accidentally. *Held*, that, in view of the character of the defence and the evidence in support of it, there could be no objection to a charge by the trial judge to the jury that the offence could not be reduced by them from murder to manslaughter but that their verdict should be either for acquittal or one of guilty of murder. Two questions were reserved by the trial judge for the opinion of the court of appeal but he refused to reserve a third question, as to the correctness of his charge on the ground that no objection to the charge had been taken at the trial. The court of appeal took all three questions into consideration and dismissed the appeal, there being no dissent from the affirmance of the conviction on the first and third questions, but one of the judges being of opinion that the appeal should be allowed and a new trial ordered upon the second question reserved. On an appeal to the Supreme Court of Canada.—The majority of the court, being of opinion that the appeal should be dismissed, declined to express any opinion as to whether or not an appeal would lie upon questions as to which there had been no dissent in the court appealed from, but it was *held*.—per Girouard, J.—That the Supreme Court of Canada was precluded from expressing an opinion on points of law as to which there had been no dissent in the court appealed from.
Gilbert v. The King, 38, S. C. R. 284.

SECTION **1015.**

Where it is quite evident to the appellate court after a consi-

deration of the entire case that the conviction must be affirmed on the uncontradicted evidence and the law, leave to appeal, under Cr. Code 1906, sec. 1015, from a conviction on indictment or speedy trial will be refused.

Day, (1911), 20, C. C. C. 325.

The admissibility of a confession in a criminal case is to be determined by the evidence given at the trial, and where a confession had been admitted in evidence as not having been shewn to have been induced by a person in authority upon the facts then deposed to, and an application after conviction for leave to appeal upon the question of law under Crim. Code, 1906, sec. 1015, will not be granted upon the ground, supported by affidavits, that the fellow prisoner who testified to the confession by the accused had been induced to obtain the confession by a detective acting in the interests of the prosecution but not present when the confession was made.

Farduto, (1912), 21, C. C. C. 144.

A city police magistrate summarily trying a charge of keeping a disorderly house without the consent of the accused (Code secs. 774, 776) cannot grant a reserved case under secs. 1013 and 1014 in respect of the conviction nor can the Court of Appeal grant leave to appeal and direct a case to be stated under sec. 1015.

Davidson, (1917), 28, C. C. C. 56.

On a motion under Cr. Code, sec. 1015, for leave to appeal from a conviction at a County Judge's Criminal Court the court of appeal is restricted in the determination of the legal question of jurisdiction to such facts as appear on the face of the proceedings in the lower Court, as there is no appeal on questions of fact except under Cr. Code, secs. 1012 and 1021. (Per Martin and McPhillips, JJ. A.)

Jun Goon, (1915), 25, C. C. C. 415.

Where a Judge refuses to reserve a case it would be expedient that he give his reasons for refusal, and in doing so certify the facts sufficiently to shew the Court whether the question of law has a foundation in fact. In default of the trial Judge doing this, a proper course for the Court of Appeal to take on a motion for leave to appeal would be to request him to do so for the purpose of informing the Court of Appeal sufficiently to enable it to decide whether or not the trial Judge should be directed to reserve the question. (*Per* Beck, J.)

Murray, (1916), 27, C. C. C. 247.

Where the accused files a motion before the Court of Appeal for leave to appeal under Criminal Code, sec. 1015, following his

conviction for an indictable offence, but makes default in proceeding with such motion, the Court of Appeal will hear counsel for the Crown and make such disposition of the motion in the absence of the accused as it sees fit.

Abeles, (1915), 24, C. C. C. 308.

Where it is material to the hearing of a motion under Cr. Code sec. 1015 for leave to appeal from a conviction that the Court of Appeal should have a transcript of the official stenographic notes of evidence, and these are not presently available because of the stenographer having left the jurisdiction and having taken his shorthand notes with him, the Court of Appeal may direct that the Crown bring in and file a transcript within a limited time because of the failure of the Crown officers to retain the custody of the notes, and may further order that, in default, the conviction be quashed.

Hamilton, (1916), 26, C. C. C. 270.

SECTION **1016.**

On a case directed to be stated under Cr. Code sec. 1016 following the refusal of a reserved case, the Court of Appeal may proceed with the hearing of the questions which it has directed to be stated without sending them to be formally signed by the Judge below if the Crown waives technical objections; the Court of Appeal may in such case direct that the record and evidence may be referred to by the Crown in contradiction of any fact incorrectly set forth in the stated case submitted by the accused.

Belyea, (1915), 24, C. C. C. 395.

SECTION **1017.**

The statutory power conferred by sec. 1017 of the Criminal Code whereby the Court of Appeal may, on any appeal or application for a new trial, refer to such other evidence of what took place at the trial as it thinks fit in addition to what is included in the Judge's notes applies only to the notes taken by the Judge presiding at the trial, and not to the address made by the Judge to the jury, the stenographic report of which he had certified.

Di Lena, (1915), 24, C. C. C. 301.

Le juge de la Cour des sessions spéciales de la paix peut admettre légalement, dans un procès qui a eu lieu en janvier 1914 pour une offense criminelle, un aveu de l'accusé signé par lui en août 1913 après qu'il eût été lu et expliqué par un interprète.

De Paoli v. Le Roi, (1915), 24, R. J. Q. B. R. 525.

SECTION **1018.**

Where a charge of murder is based first, upon unlawful acts of the accused which the prosecution alleges were the cause of the deceased doing an act that resulted in his inflicting upon himself a gun-shot wound from which he died, and secondly, upon alleged brutal treatment accelerating the death of the deceased after the gun-shot wound, and both aspects of the case were presented to the jury upon the evidence, misdirection as to the essential constituents of the crime of murder upon either aspect of the case will entitle the accused to a new trial, although the case may have been properly presented upon the other aspect, as it is impossible to know upon which of the grounds the verdict was based or whether upon both.

Where a charge of murder is based upon a fatal gun-shot wound inflicted while the gun was in the hands of the deceased, being used by him as a club to strike one of the accused which had led to the deceased clubbing his gun and striking therewith were done with an unlawful object, the jury must be instructed that before convicting of murder they must find not merely that the conduct of the accused had, in fact, led to such act of the deceased, but also that the accused knew or ought to have known that their acts were likely to cause death; and failure to so instruct is a substantial wrong or miscarriage entitling the accused to a new trial after conviction.

Graves, (1913), 21, C. C. C. 44.

Where the Court of Appeal sets aside a verdict for misdirection and finds on a review of the whole evidence that the accused should have been acquitted because of the general weakness of the Crown's case, it will exercise its discretion under Cr. Code sec. 1018 (*d*) by ordering a discharge instead of a new trial.

Where an indictment for theft states the ownership of the property alleged to have been stolen to be in a person named, the proof of such ownership is material to the offence so long as the indictment remains unamended in that respect; and if it appear that a Judge trying the charge without a jury stated in his reasons for finding the defendant guilty that the ownership assigned was not a material part of the crime, and the Court of Appeal is of opinion that this was equivalent to a misdirection of himself which had affected the finding of guilt, the conviction will be set aside.

Carswell, (1916), 26, C. C. C. 288.

Where the trial Judge erred in his charge to the jury as to the validity of a seed grain mortgage in question on a false pretence charge, a new trial should be ordered by the appellate Court if it

considers that the jury may have been influenced to convict by that portion of the charge.

Holderman, (1914), 23, C. C. C. 369.

The Court of Appeal hearing an appeal by the Crown by way of reserved case from a ruling in favour of the accused on a criminal trial will hesitate to hear the appeal of which notice has been served on his counsel but not on the accused personally, although counsel for the accused is present to argue the appeal and admits that he had shewn the accused the notice of appeal; but an adjournment for personal service will not be necessary if the accused attends in person at the argument of the appeal.

Where on a trial for shooting with intent to murder the jury returned a verdict of acquittal after an erroneous ruling by the trial Judge that the jury could not be directed, on such indictment, to bring in a verdict for the lesser offence of shooting with intent to maim or to do grievous bodily harm, if they found such lesser offence proved, a new trial will not necessarily be granted by the Appellate Court on reversing such erroneous ruling on an appeal by the prosecution, but the Court will exercise its discretion in refusing a new trial if it considers that the evidence does not warrant it.

Kerr, (1912), 20, C. C. C. 70.

A Court of criminal appeal has the right to order a new trial when new evidence discovered before the rendering of the verdict is not allowed to be placed before the jury. After verdict rendered, however, only the Minister of Justice could order a new trial.

Manconi, (1912), 20, C. C. C. 81.

La Cour d'appel a juridiction pour décider si, dans un procès devant la Cour des sessions de la paix pour vol, il y a eu ou non une preuve de faite, ou si des soupçons ou des doutes peuvent tenir lieu de preuve, mais elle ne peut intervenir dans l'appréciation de la preuve.

Un appel peut être permis pour décider le cas suivant: "L'ac- "cusé Joseph-Emile Giroux a-t-il été trouvé coupable seulement "sur des doutes ou soupçons qui pouvaient exister contre lui, ou "sur une preuve de faits pouvant légalement servir de base à "une appréciation qui justifiait une condamnation?"

Giroux v. Le Roi, 25, R. J. Q. B. R. 505.

The failure of the trial judge to caution the jury on the trial together of two persons charged with murder, that any admission or confession made by one of the accused not in the presence of the other is only evidence against the one making such confession or admission, will not be a ground for a new trial where

the statement was brought out on the Crown's cross-examination of the latter as a witness on his own behalf and the co-defendant, now objecting had, by his counsel, dealt with it in cross-examination of such witness, if it be manifest to the appellate court from the evidence (including the objecting defendant's own testimony) that there had been no substantial wrong or miscarriage on the trial by reason of such warning not being given.
Davis, (1914), 22, C. C. C. 431.

It is not error entitling the accused to a new trial that the Crown counsel in addressing the jury in a murder case stated, as was the law, that the Crown through the Department of Justice might reduce a sentence of death, if the accused were convicted, by substituting a term of imprisonment, where such statement was elicited by a reference made by counsel for the accused in his address to the jury to the disgrace which would fall on the family of the accused where he convicted, and where the trial judge afterwards instructed the jury that they should pay no attention to what the punishment should be.
Anderson, (1914), 22, C. C. C. 455.

In instructing the jury on a criminal trial the Judge may properly direct the jury that it is for them to credit or not the exculpatory part of the story given by the accused in an implicating admission made to a fellow prisoner in the goal, if the jury consider it not to be plausible and that it is open to them at the same time to credit other portions of the admissions if they see fit.
Farduto, (1912), 21, C. C. C. 144.

The practical withdrawal from the jury of the question of manslaughter in a murder trial where there was evidence sufficient to go to the jury to reduce the charge, is a ground for a new trial under the Criminal Code (Can.), and it is not obligatory upon the court to discharge the prisoner because of the error.
Wilson, (1911), 21, C. C. C. 448.

The Judicial Committee will not interfere with the course of criminal law unless there has been such an infringement of the elementary rights of an accused as has placed him outside the pale of regular law, or unless, within that pale, there has been so manifest a violation of the principles of natural justice that their Lordships are satisfied that both they themselves and, in the absence of the irregularity complained of, the local tribunal would have arrived at a result contrary to that which was come to. In the present case, *held*, that there was no misdirection or improper exclusion of evidence, and that the appeal should be dismissed.
Arnold, L. R. (1914), A. C. 644.

Special leave to appeal is not given in a criminal case where the sentence was founded on the verdict of a jury, and there was evidence for the jury, and no special matter sufficient to countervail it.
Aldred, L. R. (1902), A.C. 81.

In an appeal by a barrister and solicitor against a verdict convicting him of perjury, and against a consequential order of Court directing him to be struck off the roll of practitioners:—*Held*, that the conviction having been obtained by directions of the judge which were improper and grievously unjust to the appellant, could not be allowed to stand, and that the consequential order must be reversed. Her Majesty will not review criminal proceedings unless it be shewn that by some violation of the principles of natural justice, or otherwise, substantial and grave injustice has been done.
Dillet, L. R. 12, A. C. 459.

No distinction can be drawn between one class of privileged communications and another; they all imply that the occasion rebuts the inference that the defendant is actuated by *mala fides*, and casts the burden of proving malice on the plaintiff.—Where the jury were told that the existence of privilege was contingent upon whether in their opinion the defendant honestly believed his volunteered communication to be true, and that the burden of proof to that effect was upon him, *held*, that this was misdirection, and that a verdict for the plaintiff must be set aside.
Jenoure v. Delmege, L. R. (1891), A. C. 73.

A new trial will be granted for the failure of a trial judge to caution the jury, on a trial for murder, against acting on the uncorroborated testimony of an accomplice, who had already been tried and convicted, where there was no corroborating evidence.
Raty, (1913), 21, C. C. C. 343.

Although the evidence of theft is contradictory and unsatisfactory in the opinion of the Court determining merely the question of law on a case reserved as to the sufficiency of the evidence to sustain a conviction, the Court will uphold the finding of guilt if supported by sufficient legal evidence.
Edmunds, (1914), 23, C. C. C. 77.

A new trial will be ordered in a criminal case on the ground that the instruction to the jury may have misled them on the question of reasonable doubt and so have led them to apply the rule as to the balancing of mere probabilities as in the civil cases.
Schurman, (1914), 23, C. C. C. 365.

Where the whole circumstances negative any reasonable inference that the accused freely and voluntarily made the confession or admission put in evidence against him, the uncontradicted evidence being all one way to shew that the accused was terrorized into making it, a conviction made in reliance upon such confession will be set aside on an appeal by case reserved; no order will be made remitting the case for a new trial if in the opinion of the Court of Appeal the interests of justice do not require it.

Mesquito, (1915), 24, C. C. C. 407.

A new trial will be ordered in a prosecution for incest if the Crown counsel in his address to the jury commented on the failure of the prisoner's wife to testify, and such comment may have affected the verdict.

Lindsay, (1916), 26, C. C. C. 163.

Where the sentence passed by the Court below is declared erroneous, the Court hearing the appeal under Cr. Code, sec. 1018, may, on setting it aside, declare what the proper sentence should be and remit the case with directions to pronounce the specific sentence declared by the Appellate Court.

Sperdakes, (1911), 40 N. B. R. 428.

It is not a ground for appeal that the trial Judge told the jury what verdict he would give if he were a juror.

It is not obligatory in other than capital offences that the Judge's charge to the jury should be taken down in shorthand.

Rivet, (1915), 25, C. C. C. 235.

The Court of Criminal Appeal in one province should follow the decision of a Court of like jurisdiction in another province in the interpretation of the Criminal Code unless very strong ground be shown for a different course.

Sam Jon, (1914), 24, C. C. C. 334.

A slight inaccuracy in the Judge's charge to the jury in referring to certain evidence as having been given at the preliminary enquiry whereas it was in fact given at the trial itself, and the depositions at the preliminary enquiry were not then put in as evidence, but the preliminary enquiry was referred to in the testimony, will not constitute a ground for setting aside a conviction, where the inaccuracy could not have prejudicially affected the prisoner.

Haynes, (1914), 23, C. C. C. 101.

A new trial will not be granted where the trial jury awarded $5,000 damages to the plaintiff in an action for damages for

assaulting and ravishing plaintiff without her consent, on the ground of excessive damages, where by reason of the outrage plaintiff became pregnant.
Gibson, (1912), 20, C. C. C. 195.

Special leave to appeal from a conviction of a Colonial Court for a misdemeanour having been given, subject to the question of the jurisdiction of Her Majesty to admit such an appeal; and it appearing, at the opening of the appeal, that since such qualified leave had been granted the prisoner had obtained a free pardon and been discharged from prison, the Judicial Committee declined to enter upon the merits of the case, or to pronounce an opinion upon the legal objections to the conviction, the prisoner having obtained the substantial benefit of a free pardon, and dismissed the appeal.
Levien v. Reg. L. R. 1, P. C. App. 536.

It is error for which a new trial will be granted that the Crown counsel in his address to the jury told them that certain material evidence for the defence which the trial judge had ruled to be admissible should not have been allowed, as the effect of counsel's statement may have been to induce the jurors to disregard such testimony.
Webb, (1914), 22, C. C. C. 424.

It is a ground for granting a new trial on a conviction for murder that the trial Judge commented on the failure of the prisoner's wife to testify for the defence although the Judge before verdict withdrew the comment.
Romano, (1915), 24, C. C. C. 30.

A conviction will not be set aside, or leave to appeal granted, because the Judge presiding at the trial had in his charge to the jury erroneously commented on secondary matters unless in the opinion of the appeal Court the accused has suffered prejudice therefrom.
Shayanez, (1915), 26, C. C. C. 438.

Upon an appeal to the Court of Appeal or an application for a new trial following a conviction, it is not permissible for the accused to read affidavits for the purpose of showing that the Judge who presided at the trial had, in his charge to the jury, made comments upon the failure of the accused to testify and so contravened the provision of sec. 4 of the Canada Evidence Act, R. S. C. 1906, ch. 145, where the trial Judge has transmitted to the Court of Appeal a report containing his charge to the jury; the Court of Appeal is in such case bound to accept such report as complete and has no power to order the taking of evidence

or to receive evidence for the purpose of showing the inaccuracy or incompleteness of such report.
Di Lena, (1915), 24, C. C. C. 301.

Where the Judge's charge leaves it, in effect, to the jury to treat as evidence, in proof of the indictment for murder, the depositions of a hostile Crown witness, previously taken before the coroner and the magistrate respectively, which are in contradiction to such witness's testimony at the trial, instead of instructing the jury that the previous statement, although under oath, could be used only to impeach the witness's testimony given at the trial, a new trial will be ordered although no objection to the charge was made by the accused at the trial.
Duckworth, (1916), 26, C. C. C. 314.

A new trial will not be granted in respect of a conviction for uttering seditious words, because of the prosecution eliciting on cross-examination of defendant's witness that the person to whom the words were uttered had repeated them to the witness on an occasion when the accused was not present.
Manshrick, (1916), 27, C. C. C. 17.

A prisoner having been tried and convicted of a capital Felony, by a Court of Oyer and Terminer in New South Wales, and sentence of death passed, and the judgment entered upon on the Record, an application was made to the Supreme Court, sitting in Banco, for a rule for a *Venire de novo*, on an affidavit which stated, that one of the jury had informed the Deponent, that pending the trial, and before the verdict, the jury having adjourned to an Hotel, had access to Newspapers which contained a report of the trial as it proceeded, with comments thereon. The Supreme Court made the rule absolute, considering, that there had been a mis-trial, and ordered, an entry to be made on the Record of the circumstances deposed to:—that the judgment on the verdict should be vacated, and a fresh trial had. On appeal to Her Majesty in Council, *held*, by the Judicial Committee, acting on the case of Reg. v. Bertrand, (L. R. 1, P. C. 520):—First, that the discretionary power of the Supreme Court to grant new trials does not extend to cases of Felony; and that a *Venire de novo* cannot be awarded after verdict upon a charge of Felony, tried upon a good indictment and by a competent Tribunal;—Secondly, that if a *Venire de novo* could be awarded upon an application by way of error on appeal, the proceeding in the Supreme Court was defective in form, and not warranted by the suggestion entered on the Record; and therefore,—Thirdly, that the Order for vacating the judgment, and for a *Venire de novo*, must be reversed.
Murphy, L. R. 2, P. C. App. 535.

SECTION 1019.

Where the appellate court is of opinion that, upon the evidence no jury could properly find that the prisoner shot the deceased while in the heat of passion caused by sudden provocation, no substantial wrong or miscarriage at the trial is shewn to warrant the appellate court in setting aside a conviction for murder or directing a new trial under the Cr. Code 1906, s. 1019, by reason of the trial judge's instruction to the jury that they were bound, upon the evidence, either to acquit the prisoner altogether or to find him guilty of murder.

Eberts, (1912), 20, C. C. C. 262.

It is for the appellant under sec. 1019 of the Cr. Code to establish that there has been a substantial wrong or miscarriage so as to entitle him to relief because of something done at the trial which was not in strict accordance with the law.

Romano, (1915), 24, C. C. C. 30.

A defendant in a criminal case giving evidence on his own behalf may have his credibility attacked by eliciting from him in cross-examination the fact he had been examined as a witness in a civil action to which he was a party and in which there were in controversy some of the issues raised on the criminal trial, and he may be asked what the issues were in the civil action and the result of the civil trial, but he should not be asked, against his objection, to state the views expressed by the trial Judge impugning his veracity and stated in the opinion or reasons for judgment delivered after the civil trial on an occasion when the defendant was not present, although he was able to answer because he had read the reasons for judgment in law reports; and where the fact of his testimony having been discredited in the civil action was emphasized in the charge to the jury in the criminal case, there is a "substantial wrong" forming ground for directing a new trial (Cr. Code sec. 1019) on an appeal from the conviction.

Baugh, (1916), 27, C. C. C. 373.

On a charge of theft in respect of the amount alleged to have been embezzled from the city's funds by a city employee it is admissible for the Crown to put in evidence the defendant's bank account shewing that about the time of the defalcation as disclosed by the audits, a deposit was credited to him by the bank of a like amount to that embezzled, but where any suggestion based on the bank deposit was met by shewing that the money was a loan procured by a discount at another bank of his own and his wife's note, there is no "substantial wrong or miscarri-

age" (Cr Code sec. 1019) to entitle the accused to a new trial or to set aside the conviction, if the Judge directed the jury that none of the deposits were shewn to have come from the city funds, and no unfair or improper use prejudicial to the accused had been made of the bank account.

While the jurisdiction of the Supreme Court of Canada on a criminal appeal may be limited to the points on which there was a dissent in the court appealed from, a reasonable latitude should be permitted to counsel on the argument of the appeal to go fully into the whole conduct of the trial for the purpose of elucidating the appealable ground and the limitations imposed by Cr. Code sec. 1019 on the appellate jurisdiction to interfere unless there has been a substantial wrong or miscarriage at the trial or an improper disallowance of a challenge. (*Per* Idington, J.)

Minchin, (1914), 23. C. C. C. 414.

Where there is clear and definite evidence of the guilt of an accused, quite apart from his statements to police officers, a substantial miscarriage at the trial by reason of the admission in evidence of such statements is out of the question and a new trial should not be ordered under s. 1019 of the Criminal Code: *Ibrahim* v. *The King*, [1914] A. C. 599, and *R.* v. *Kelly*, 54 S. C. R 220, [1917] 1 W. W. R. 463, followed.

Rex v. *Spain*, [1917], 2, W. W. R. 465.

It is a question to be passed upon by the jury upon a charge of theft in repossessing a sewing machine under a hire purchase contract in default of payment, whether the accused, acting under the instructions of the conditional vendor, took possession under colour of right and in the honest belief that the contract so authorized, where he re-possessed the machine in the absence of the conditional vendee, and without a demand for its return in terms of the contract, although the contract stipulated for entry and re-possession without resort to legal process in case of default of payment, and of failure to deliver back the machine upon demand; and it is a substantial wrong entitling the accused to a reversal of the conviction or a new trial—Cr. Code, 1019—, if the trial Judge in such case practically withdrew that question from the jury by an instruction that if no demand had been made for the machine itself, as distinguished from the arrears of the hire-purchase price, the prisoner ought to be found guilty,

Comeau, (1914), 25, C. C. C. 165.

A conviction based upon non-direction or misdirection as to the applicability of evidence is not saved on the ground that there has been no substantial wrong or miscarriage (Cr. Code sec.

1019) merely because there is ample evidence to support a conviction without the incompetent testimony; the Court of appeal should not allow the conviction to stand unless it comes to the conclusion that the jury would certainly have convicted even if the error had not intervened.
Duckworth, (1916), 26, C. C. C. 314.

On a trial for murder, if the circumstances are such that a jury might reasonably infer a case of manslaughter and not murder in the event of their negativing the defence raised, then a direction must be given to the jury as to manslaughter and its omission is a substantial wrong, under Cr. Code, sec. 1019, constituting ground for a new trial.
Singh, (1915), 25, C. C. C. 281.

In determining whether or not any "substantial wrong or miscarriage" has been occasioned on the trial within the meaning of Cr. Code, sec. 1019, as to criminal appeals, the Appellate Court hearing a case reserved upon an objection to the constitution of the grand jury which the trial Judge refused to allow on motion to quash the indictment (Cr. Code, sec. 899) must have regard also to the curative provisions of Cr Code, sec. 1011, as to the preparation of jury lists and jury panels and to the limitation made by sec. 899 (2) whereby an objection to the constitution of the grand jury is not to be allowed on a motion to quash unless the accused has suffered or may suffer prejudice by the subject matter of such objection.
Morrow, (1914), 24, C. C. C. 310.

SECTION **1020.**

Cr. Code sec. 1020 would enable the Court of Appeal on a case reserved upon a general verdict, to affirm a sentence appropriate to counts properly framed and which were supported by the evidence without regard to other counts framed upon the wrong enactment and therefore not supported by the evidence.
McDonald, (1915), 25, C. C. C. 106.

Where the majority of the Court of Appeal in deciding a reserved case on counts for three separate crimes charged on the same facts, holds that the accused at least was properly found guilty of one of such crimes, and that the penalty should be imposed as for one crime only, a direction may be given under Cr. Code sec. 1020 that the trial Judge, in passing sentence which had been postponed until after the appeal, shall impose one penalty in respect of the three counts and regulate the extent of same by the maximum which would apply to the lesser offence. The Supreme Court of Canada, on a further appeal under Cr. Code sec. 1024,

will decline to deal with the question of the validity of the conviction on the other counts as raising mere academic questions under such circumstances, if it finds the verdict for such lesser offence unassailable.

Kelly, (1916), 27, C. C. C. 282.

SECTION **1021.**

Where the defendant in a criminal conversation case was examined on discovery before the trial without objecting to testify on the ground of privilege, and where he testified in his own defence at the trial and upon cross-examination repeated substantially everything included in the discovery depositions an objection taken on appeal against the verdict on the ground that the depositions on discovery were put in evidence at the trial by the plaintiff against the defendant's objection founded on the statute 32-33 Vict. (Imp.) ch. 68, sec. 3, will not be allowed.

Shatney, (1912), 20, C. C. C. 205.

Where, in an action to recover damages for assaulting and ravishing plaintiff without her consent, the plaintiff's counsel, without objection, was allowed to urge upon the jury large damages on account of the expense plaintiff would be put to for the bringing up of a then unborn infant, while as a matter of fact the infant when born lived only a day, a new trial will not be granted, since the jury must have had in mind the possible contingency of an early death.

Gibson, (1912), 20, C. C. C. 195.

When new facts of an essential nature have been discovered by the defence in a criminal trial before verdict rendered, even after the Judge has charged the jury and the jury has retired to deliberate, the jury should be recalled to hear this additional evidence, and a new trial will be granted where the jury has not been allowed to hear such additional evidence.

Manconi, (1912), 20, C. C. C. 81.

That the conviction of one of two defendants tried jointly for burglary and theft was against the weight of evidence is no reason for granting a new trial to both under sec. 1021 of the Criminal Code; but the rule is otherwise if the defendants have been jointly convicted of conspiracy, or if a new trial will tend to the administration of justice.

The word "verdict" in sec. 1021 of the Criminal Code is confined to the findings of a jury.

Murray, (1912), 20, C. C. C. 197.

It is ground for ordering a new trial that evidence of a state-

ment made by a Crown witness to the police and taken down in writing on their inquiry into the crime was improperly admitted for the Crown on the witness' failure to indentify at the trial as belonging to the accused certain clothing which in his statement to the police he had identified as such, when there had been no finding by the trial Judge, under sec. 9 of the Canada Evidence Act, that the witness was adverse, and that such statement was read by the Crown counsel to the jury and referred to by the trial Judge as being in evidence, although the latter, in his charge, advised the jury not to base a finding on the statement so admitted.

A direction to the jury on a criminal trial that the accused had failed to account for a particular occurrence, as to which, by reason of the testimony adduced against him, the onus was cast upon him to answer, is not a comment upon the failure of the accused to testify, and does not contravene sec. 4 of the Canada Evidence Act, R. S. C. 1906, ch. 145.

May, (1915), 23, C. C. C. 469.

A new trial will not be granted under Cr. Code sec. 1021 on the ground that the finding by the Judge trying the case without a jury was against the weight of evidence, if the case is one merely of conflict of testimony upon which the Judge gave credence to the Crown witnesses rather than to those of the defence. (Per Harvey, C. J. and Scott, J. in a divided court.)

When the accused applies by leave of the trial judge to the Court of Appeal under Cr. Code sec. 1021 for a new trial on the ground that the verdict against him was against the weight of evidence, the onus is upon him to show that the verdict is against the weight of evidence, and consequently he has to establish affirmatively his contention of innocence to displace the presumption against him on account of the verdict; nor can the verdict be said to be against the weight of evidence when there was no evidence tending to a contrary result; recourse should be had to Cr. Code secs. 1014 and 1015 if it be claimed, notwithstanding the lack of evidence of innocence, that a case had not been made out by the Crown. (Per Stuart, J.)

O'Neil, (1916), 25, C. C. C. 323.

A new trial ought not to be granted on the ground that the verdict of the jury was against the weight of the evidence, unless the verdict was one which a jury, viewing the whole of the evidence reasonably, could not properly find.—Observations by Lord Halsbury on *Solomon* v. *Bitton*. (8 Q. B. D. 176.)

Metropolitan Ry. v. Wright, L. R. 11 A. C. 152.

A verdict of a jury will not be disturbed as against evidence

or the weight of evidence, unless it is one which a jury, viewing the whole of the evidence reasonably, could not properly find.
Philipps v. Martin, L. R. 15 A. C. 193.

La permission de demander un nouveau procès à la Cour d'Appel, pour le motif que le verdict est contraire à l'ensemble de la preuve (article 747 C. cr.), ne peut être accordé que s'il l'est au point de constituer un déni de justice.
On ne peut attribuer ce vice au verdict, parce que le jury, en le rendant, n'a pas tenu compte du témoignage de l'accusé de faits à sa décharge, donné sans confirmation. Le jury, dans son appréciation souveraine, était libre de ne pas y ajouter foi.
Rex vs Molleur, 15, R. J. Q. B. R. I.

Evidence making a *prima facie* case for the Crown in a criminal prosecution, if unanswered and believed by the jury, is sufficient to support a conviction of the person accused.
Girvin v. The King, 45, S. C. R. 167.

A motion for a new trial can only be made before the Court of Appeal, upon leave therefore by the Court before which the trial has taken place.
Rex vs Fouquet, 14, Q. J. R. K. B. 87.

In a civil action against a constable for trespass and false arrest upon a charge of keeping a bawdy house on which plaintiff had been acquitted, an amendment of defendant's pleadings should have been allowed at the trial so as to permit him to set up the possible defence of justification in arresting the plaintiff without warrant because of the constable's belief on reasonable and probable grounds that the accused was guilty of some offence for which an arrest without warrant is permissible; the exclusion of evidence on his behalf to prove such grounds and belief is a ground for granting a new trial.
Majury, (1916), 27, C. C. C. 398.

SECTION **1024.**

On a motion to extend the time for appealing under Cr. Code 1024 from the affirmance of a conviction for an indictable offence from a provincial appellate Court to the Supreme Court of Canada, the latter Court will enter upon the question of the competency of the appeal and if of opinion that the question is not appealable will refuse the extension.
Mulvihill, (1914), 23, C. C. C. 194.

An appeal to the Supreme Court of Canada does not lie in cases where a new trial has been granted by the Court of Appeal

under the provisions of the Cr. Code, 1892, ss. 742 to 750 inclusively.
Viau v. The Queen, 29, S. C. R. 90.

Appeals to the Supreme Court of Canada in criminal cases are regulated solely by the provisions of the Criminal Code.
Rice v. The King, 32, S. C. R. 480.

The power given by sec. 1024 of the Cr. Code to a judge of the Supreme Court of Canada to extend the time for service on the Atty-General of notice of an appeal in reserved Crown case may be exercised after the expiration of the time limited by the code for the service of such notice.
Gilbert v. The King, 38, S. C. R. 207.

SECTION **1025.**

No appeal in cases of felony lies to the Privy Council from any of the colonial courts.
Eduljee Byramjee, V. Moore, 276.

The rule of the Judicial Committee is not to grant leave to appeal in criminal cases except where some clear departure from the requirements of justice is alleged to have taken place.
Riel v. R., 10, A. C. 675.

SECTION **1037.**

Section 1037 of the Cr. Code authorising the Governor-in-Council to direct that any fine, penalty or forfeiture be "paid" to a local authority or that "the same be applied" in any other manner deemed best adapted to secure the due administration of the particular law under which it is imposed, is to be construed as applicable only to pecuniary penalties, and does not authorize a regulation under the Fisheries Act. Can., 1914, ch. 8, that fish illegally caught between licensed fishing berths by an unlicensed person shall be the property of the licensee, nor is such a regulation consistent with sec. 80 of the Fisheries Act. 1914.
Christian, (1916), 26, C. C. C. 260.

SECTION **1045.**

The verdict itself is not a "judgment for the defendant" in terms of Cr. Code, sec. 1045; but the order of the Court directing the defendant's discharge and made in the enforcement of the jury's verdict of not guilty is a "judgment" for the defendant upon which an order may be made against the private prosecutor for payment of costs in a criminal prosecution for defamatory libel.

The person who laid the information for defamatory libel, which was followed by a commitment for trial and indictment of the accused, is none the less a "private prosecutor" liable for costs of the defendant under Cr. Code, sec. 1045, on judgment going in the latter's favor, although the Crown counsel took up the proceedings after the preliminary enquiry and conducted them as Crown business.

The trial Judge may himself tax the costs payable to defendant under Cr. Code, sec. 1045, by the private prosecutor on dismissal of a criminal prosecution for defamatory libel.

Fournier, (1916), 25, C. C. C. 430.

Celui qui signe et dépose une plainte pour libelle diffamatoire commis à son égard, se plaignant qu'il porte atteinte à sa réputation et qui demande justice, doit être considéré comme partie civile, même si la cause est conduite par le substitut du procureur général sur les instructions de celui-ci.

Une recommandation faite par un jury en rendant un verdict de non culpabilité, n'affecte pas la nature du verdict et ne prive pas l'accusé libéré du droit de recouvrer ses frais.

Lorsqu'une plainte pour libelle diffamatoire est portée par une partie civile, l'accusé libéré a un droit absolu, en vertu de l'art 1045 du C. cr., de recouvrer du plaignant les frais du procès.

Un verdict du jury n'est pas un jugement: ce n'est que l'opinion du jury sur la question de fait.

Rex v. Fournier, 25. R. J. Q. B. R. 556.

SECTION **1047.**

The costs allowed were not the fees and disbursements paid by the accused St. Louis to his counsel, such payment being a matter between client and counsel, but such costs as were held by analogy with the costs allowed in civil suits to be costs recoverable from a losing party. Such costs should be taxed according to a tariff made for criminal proceedings, and in the absence of such tariff they had to be taxed in the discretion of the Judge, by implication, according to the spirit of the provisions contained in Art. 835 of the Criminal Code.

Regina v. St. Louis, 6, Q. J. R. K. B. 389.

SECTION **1048.**

Where no claim for compensation under Code sec. 1048 was made by the electric company from which the accused is found guilty of theft in fraudulently abstracting electricity (Cr. Code, sec. 351), the conviction is irregular in directing that part of the fine be paid to the electric company.

Sperdakes, (1911), 24, C. C. C. 210.

SECTION **1051.**

To render a party liable to the penalties provided by a prohibitory statute, it must be well proved that he committed the prohibited act himself, or that he had a guilty knowledge of the act being done by those under his control.

Sherwill, Gibraltar, 1836, July 11, 11 Moore 1.

SECTION **1056.**

The certified copy of sentence is sufficient warrant for the imprisonment of a convict in the penitentiary and it is not necessary that it should contain every essential averment of a formal conviction. Where the venue is mentioned in the margin of a commitment, in the case of an offence which does not require local description, it is not necessary that the warrant should describe the place where the offence was committed. A warrant of commitment need not state the time from which the term of imprisonment shall begin to run, as, under the seventh subsection of section 955 of the Cr. Code, terms of imprisonment commence on and from the day of the passing of the sentence.

Smithman, 35, S. C. R. 189.

SECTION **1057.**

Where an offender is convicted on indictment or under Parts XVI. or XVIII. of the Criminal Code or by a Superior Court Judge in Saskatchewan or Alberta, a Judge of the Territorial Court in the Yukon, or a stipendiary magistrate in the Territories, the imprisonment may be either with or without hard labour in the discretion of the Court so long as the offender is not sentenced to a penitentiary or the prison or reformatories excepted, and this apparently without regard to the terms of the statute fixing the punishment. But if the conviction is made by a lower tribunal, then hard labour may be imposed only if the statute fixing the punishment says that it may be imposed, and the sentence given must in such case specifically mention "hard labour."—Section 1057 of the Criminal Code authorizes the imposition of imprisonment with hard labour in default of payment of a fine: *R.* v. *Nelson*, 28 W. L. R. 102; 6 W. W. R. 706, approved.—There is nothing in s. 781 (2) of the Criminal Code which makes it necessary to impose imprisonment in the first instance as well as a fine before imprisonment in default of payment of the fine can be imposed.

Rex v. *Davidson* (*No.* 1), [1917] 2 W. W. R. 160; 28 Can. Cr. Cas. 44.

SECTION **1058.**

While the general rule is that a conviction in a criminal case is not proof, in civil proceedings, of the acts upon which the conviction may be grounded, it is still evidence of the particular fact which it recites; and, where it is for an assault, the conviction is admissible as proof on application before another tribunal for forfeiture and estreat of a recognizance there given by the defendant to keep the peace and be of good behaviour.

Walker, (1913), Cross, J., 23, C. C. C. 179.

SECTION **1060.**

Where a sentence of whipping imposed on a summary trial was successfully attacked as having improperly included a direction as to the times when the whipping should take place, which by statute was under the control of the prison surgeon and not of the magistrate, and pending such determination in a *habeas corpus* application the Court had stayed proceedings in respect thereof, the Court has a discretion to strike out the sentence of whipping and confirm the sentence of imprisonment if the latter is so near expiry that it would be impossible to carry out the evident intention of the convicting magistrate that the first half of the whipping should be given at a considerable interval from the second half.

Failure to set out, in the record of a conviction on summary trial under which the punishment of whipping was ordered, that the whipping should take place under the supervision of a medical officer in the terms of Code sec. 1060 will not invalidate the sentence; the directions of Code sec. 1060 cannot be varied by the magistrate and, even if they should be formally stated in the record (as to which, *quaere*) the omission is an informality only and does not affect the validity of the conviction.

Boardman, (1914), 23, C. C. C. 191.

SECTION **1064.**

Sec. 1064 of the Cr. Code giving special directions for the safe custody of a convict sentenced to death does not interfere with the powers conferred by sec. 977 upon Courts of criminal jurisdiction to order the convict to be produced as a witness on the trial of an indictable offence.

Kuzin, (1915), 24, C. C. C. 66.

SECTION **1081.**

A magistrate before exercising his discretion as to the extent of the penalty to be imposed, within the limits provided by law,

even where the accused pleads guilty to the crime charged, has no right to hear evidence in mitigation of the punishment without giving the private prosecutor having charge of the prosecution an opportunity to hear that evidence and cross-examine the parties giving it, and, if necessary, meet it with evidence on his own part in aggravation of the offence, or in contradiction of the alleged mitigating circumstances. (*Per* Richards, J. A.)
McMicken, (1912), 20, C. C. C. 334.

A magistrate holding a summary trial has power under Criminal Code sec. 1081, to suspend sentence in certain cases, but sentence cannot be suspended until there has been an adjudication of guilt.
White, (1915), 24, C. C. C. 277.

SECTION **1095.**

A judgment declaring the forfeiture of money seized cannot be collaterally impeached in an action of revendication.
O'Neil v. Atty-Gen. of Can. 26, S. C. R. 122.

The surety of an accused person may petition by *requête civile* in the Province of Quebec to have set aside a judgment given upon an order for forfeiture of the recognizance, and his petition can and should be accompanied by a writ of certiorari if it is desired to show that the order itself was irregular.
Davis, (1914), Lemieux, A. C. J. 24, C. C. C. 382.

SECTION **1100.**

Whether or not the process in execution thereof is civil and not criminal process, the order of estreat made by a county judge presiding in a criminal court on the forfeiture of bail given for the appearance of the accused before a magistrate in proceedings under the Fugitive Offenders Act, R. S. C. 1906, ch. 154, is in itself a proceeding in a criminal matter, and no appeal lies therefrom to the Court of Appeal (B. C.)
Harvie, (1913), 20, C. C. C. 369.

SECTION **1113.**

A previous notice to the bail is essential before a certificate of forfeiture can legally be issued for default of the accused to appear, where the latter and his bail were not called upon their recognizance on the day when he was bound to appear, and it is sought to estreat the recognizance at a latter date.
Edwards, (1914), 23, C. C. C. 296.

The certificate of the magistrate before whom a recognizance to keep the peace had been taken that the condition of such recognizance had been broken is conclusive evidence of breach and forfeiture in the Province of Quebec under Code secs. 1113 and 1114.
Walker, (1913), Cross, J., 23, C. C. C. 179.

Where a person is committed for trial for an offence which was formerly a misdemeanor, and is admitted to bail, and two terms are allowed to pass after his commitment without laying a bill of indictment against him before the Grand Jury, he is entitled to obtain the release of his sureties and to be discharged from his custody under bail, and have the recognizance vacated.
R. v. Cameron, 6, Q. J. R. K. B. 158.

SECTION **1114.**

A certificate of forfeiture of recognizance for appearance taken before a justice of the peace or police magistrate in Quebec is "conclusive evidence" under Cr. Code sec. 1114, and R. S. Que. article 3395, only for the purposes of the entry of the *ex parte* judgment authorized by Cr. Code sec. 1115; after such entry is made, the certificate of the breach by an "opposition to judgment" under the Quebec Code of Civil Procedure.
Edwards, (1914), 23, C. C. C. 296.

SECTION **1115.**

The *ex parte* entry of judgment by the prothonotary of the Superior Court in Quebec on a certificate of forfeiture of recognizance whether from the Court of King's Bench, criminal side, or from a magistrate's Court, is subject to attack in the Superior Court by any one of the modes of procedure authorized by its practice in regard to *ex parte* or default judgments.
Edwards, (1914), 23, C. C. C. 296.

SECTION **1120.**

Where a magistrate has proceeded to convict in a case in which he had jurisdiction only to hold a preliminary enquiry and commit for trial, the Court on quashing the conviction may, if the ends of justice require it, direct the further detention of the accused until he can be brought up for the preliminary enquiry although there was no habeas corpus application.
Manzi, (1915), 24, C. C. C. 359.

Where a conviction is quashed on *certiorari*, the amount of the fine and costs paid in the lower court by the applicant will be ordered restored him.
Hung Gee, (1913), 21, C. C. C. 411.

The general power of supervision of inferior Courts by *certiorari* process includes the right to look at the depositions taken before the convicting magistrate on a summary trial under Part XVI. of the Criminal Code and authenticated so as to become in effect a part of the record, to ascertain whether there is any evidence to support the conviction; and if there is none to order the conviction to be quashed.

Emery, (1916), 27, C. C. C. 116.

SECTION **1121.**

A commitment for a time in excess of that ordered in the conviction, is not bad on that ground, which is merely an irregularity that may be cured by amendment under ss. 1121 & 1124 Cr. C.

When a conviction is affirmed and the appellate Court further condemns the convict to pay the costs of appeal, a commitment signed by the clerk of the Court commanding the gaoler to detain the convict during the period ordered in the conviction, and, further, until he shall have paid the costs of appeal, of the distress, of the commitment and of the conveyance to gaol, is valid.

A commitment for the period ordered in the conviction and, further, until certain costs are paid, is wrong as to the latter part, in not specifying the period of detention in default of payment. This, however, is not a ground for quashing the commitment, but an irregularity that may be cured by amendment under ss. 1121 & 1124 Cr. C.

Collette v. The King, 19, Q. J. R. K. B., 124.

SECTION **1122.**

A provincial law which makes provision for appeals in summary proceedings under it and which further declares that the "proceedings on such appeals" shall in other respects be "governed" by the same rules as appeals from summary convictions or orders made by justices of the peace under the Criminal Code, does not make applicable to such appeals the provision of Cr. Code sec. 1122 forbidding a *certiorari* to remove a conviction when an appeal has been taken; Code sec. 1122 deals rather with the consequences of an appeal than with the proceedings thereon, and *semble*, even if it applied, would not prevent the granting of a *certiorari* on the question of jurisdiction.

Davis, (1915), 24, C. C. C. 160.

The Ontario Summary Convictions Act, R. S. O. 1914, c. 90, s. 10 (1), gives a right of appeal from a conviction under the Petty Trespass Act, R. S. O. 1914, c. 111, and by virtue of s.-s. 3 of s. 10 and s. 1122 of the Criminal Code, the right to *certiorari* is

taken away and this applies where the appeal is quashed through failure to give security.
R. v. Chappus, (1917), 38, O. L. R. 576.

Notwithstanding sec. 1122 of the Cr. Code, *certiorari* will lie to review the jurisdiction of a District Court Judge to hear an appeal under Cr. Code, sec. 749, from a summary conviction.
Fauchaux, (1915), 25, C. C. C. 76.

SECTION **1124.**

The word "Justice" is to be construed in sec. 1124 of the Criminal Code 1906 in a different manner from the words "justice of the peace" which were used in the corresponding section of the former Code (Cr. Code 1892, sec. 889) by reason of the statutory definition given to the word "justice" by the interpretation clause, Cr. Code 1906, sec. 4 (18) whereby police magistrates and stipendiary magistrates are included in its meaning, and also by reason of the transposition of former sec. 889 in the 1906 consolidation from the summary convictions part to the part of the 1906, Code entitled "Extraordinary Remedies," with the result that the present section 1124 as to amendment on *certiorari* applies not only to "summary convictions" but to convictions on "summary trials" held under Part XVI. of the Code.
Crawford, (1912), 20, C. C. C. 49.

Where the only legal evidence to support a summary conviction for keeping liquor in contravention of the Ontario Temperance Act does not satisfy the Court hearing a *certiorari* motion to quash the conviction that the offence was committed (Code sec. 1124), and the proceedings returned shewed that the magistrate had improperly admitted an invalid certificate of analysis which probably had influenced his finding of guilt, the conviction will be quashed.
Schooley, (1917), 27, C. C. C. 444.

An objection that a summary conviction for common assault assigns no date to the offence is cured under Cr. Code sec. 1124 if the date appears on the depositions.
Tally, (1915), 23, C. C. C. 449.

Section 1124 of the Criminal Code permits the Court itself to amend a summary conviction removed by certiorari proceedings as to certain defects, but the right of the magistrate to tender another conviction in substitution for the one attacked is one independent of Code sec 1124.
Fitzgerald, (1911), 19, C. C. C. 39.

Where a summary conviction was made by a magistrate of several persons upon a charge of unlawfully playing or looking on in a common gaming-house and the evidence returned on certiorari was sufficient for the conviction of all the defendants for unlawfully playing, the Court will not quash the conviction for duplicity and uncertainty, but will amend the conviction under Code sec. 1124 by striking out the charge of looking on.

Per Perdue and Richards, JJ. A. (Howell, C. J., *contra*, and Cameron, J. A., expressing no opinion):—Playing and looking on in a gaming-house are separate and distinct offences under Code sec. 229 and a conviction in the alternative is not validated by sec.725.

Toy Moon, (1911), 19, C. C. C. 33.

Mandamus does not lie at the instance of the prosecution to compel a magistrate who, in making a summary conviction, has imposed a lesser penalty than that fixed by the particular statute to correct the error by imposing the amount named in the Act; the fixing of the punishment is a judicial and not merely a ministerial act notwithstanding the direction of the statute.

Fields, (1916), 27, C. C. C. 51.

The Court on certiorari will not consider the weight of conflicting evidence but where there is no legal evidence at all to support the finding the conviction cannot be upheld; and a summary conviction for illegally keeping liquor for sale where there were no facts from which an inference of guilt could be drawn and where the testimony for the accused was corroborated and uncontradicted that he purchased the liquor then in transit as the agent for friends of his, and was to be reimbursed only the amount expended will be set aside notwithstanding a statutory provision such as that contained in the Sales of Liquor Act (Sask.) sec. 128, that the burden of proving the right to keep liquor shall be on the person accused of improperly or unlawfully keeping for sale.

McPherson, (1915), 25, C. C. C. 62.

Infringement of a statutory direction that, on a trial for a second offence subjecting to an increased penalty, no mention shall be made of the prior conviction until after an adjudication of guilt for the alleged second offence, will invalidate the summary conviction; but the affidavits filed must satisfy the Court that there was something more than the commencement by counsel of his address preliminary to tendering the evidence, which address was stopped by the magistrate until the latter had completed the writing of the adjudication.

Ellis, (1915), 24, C. C. C. 345.

The fixing of the time or times for punishment by whipping ordered to take place during the convict's term of imprisonment is

left by Cr. Code sec. 1060 in the discretion of the prison surgeon under whose supervision the whipping is to be done; and it is an excess of jurisdiction on the part of a magistrate holding a summary trial to order in the sentence that ten lashes be imposed six weeks after imprisonment and ten lashes six weeks before expiration of the term of six months imprisonment imposed; but the Court hearing a *habeas corpus* application may amend the conviction under Cr. Code sec. 1124 by imposing the proper sentence where satisfied of the offence.

Boardman, (1914), 23, C. C. C. 191.

Where a charge of assaulting a Crown land surveyor concluded with a statement that accused had prevented the surveyor from performing his official duties, a summary conviction made by a justice reciting the offence in the same words is bad, as the justice had no jurisdiction to deal with the alleged offence of obstructing the surveyor; the conviction was in effect for two separate charges, although they were tried as one and a single penalty was imposed, which however was excessive even for the assault because of the unauthorized order for payment of damages in addition to the fine, and the conviction could not be amended by the Court under Cr. Code 1124 on certiorari.

Dugas, (1915), 26, C. C. C. 144.

A summary conviction under a liquor license law cannot be supported in so far as it awards as an arbitrary sum, fifty dollars to the complainant for costs where no witnesses were brought from a distance, but the court on a motion to quash may amend the conviction by striking out the award of such costs.

Palmer, (1915), 24, C. C. C. 20.

The powers of amendment granted by sec. 1124 of the Canadian Criminal Code, R. S. C. ch. 146, are not confined to summary convictions, but may be exercised in the case of convictions for indictable offences.

Crawford, (1912), 20, C. C. C. 49.

Where a complaint in a summary conviction matter was invalid as disclosing no offence known to the law and as not shewing on its face the authorization to prosecute which was an essential under the particular statute invoked, certiorari lies at the instance of the accused to quash the conviction made upon his plea of guilty to such defective complaint and this although he might have taken an appeal to another tribunal.

Richard, (1916), 26, C. C. C. 166.

The Court will quashed a summary conviction as made without jurisdiction on being satisfied by affidavit that the defendant

was out of the province from a date prior to the laying of the information until after the hearing and had not authorized the appearance of counsel who had applied on his behalf for an adjournment, although the summons had been served substitutionally on defendant's wife at his last place of abode.

Dimond, (1916), 25, C. C. C. 317.

The intention of sec. 1124 of the Criminal Code, 1906, in giving the power to amend a summary conviction on a motion to quash is, that, when guilt appears upon the evidence which has been believed by the magistrate, the accused should not escape by defects in form occasioned either by the error or by the stupidity of the magistrate.

Demetrio, (1911), 20, C. C. C. 318.

On a motion for a writ of certiorari, where the practice is to hear the merits on the motion for the writ, and if granted to include an order quashing the conviction on the return being made, the Court will not permit the filing of a substituted conviction made up by the justice after notice of the certiorari application to remedy the defect of the first formal conviction in not stating any place at which the offence was committed, where the depositions themselves did not shew where the offence was committed, and consequently did not shew territorial jurisdiction of the magistrate.

Where the depositions already taken before the justice do not supply the defect which makes a summary conviction bad on its face, the justice cannot without the parties being before him and having an opportunity of being heard make up a substituted conviction or amend a defective conviction.

Aikens, (1915), 23, C. C. C. 467.

SECTION **1126.**

In municipalities where there is a prohibition by-law in existence, both the municipal corporation and the collector of revenue may take proceedings for infringement of the law.—It only becomes necessary for the collector to put the municipal corporation in default, before he takes suit, to secure his recourse against it for costs in cases taken by him after neglect by the corporation so to do.—Upon proceedings by way of *certiorari*, by a party condemned to a fine under the License Act, it is essential that the amount of the fine levied, and the costs, and a further sum of fifty dollars be deposited.

Gélinas, (1916), 27, C. C. C. 392.

SECTION **1130.**

Where there is a good and valid conviction by two Justices sitting together as a summary trial Court under Part XVI a warrant of commitment thereunder is validated under Cr. Code, sec. 1130, although signed and sealed by one of such Justices only and although it recites that the accused was convicted before the signing Justice and makes no mention of the other having participated in the trial.

James, (1915), 25, C. C. C. 23.

SECTION **1142.**

The time for laying an information for an offence punishable on summary conviction under the Adulteration Act, R. S. C. 1906, 135, is two years under sec. 50 of that Act and sec. 135 of the Inland Revenue Act, which it makes applicable; sec. 1142 of the Cr. Code does not apply.

Regina Trading Co., (1917), 28, C. C. C. 85.

The limitation of six months enacted by the Cr. Code for the prosecution of summary conviction offences (Cr. Code sec. 1142) applies only where the prosecution is under the procedure of Pt. XV relating to summary convictions; it has no application to a proceeding by way of indictment although there was an alternative method of prosecution by summay conviction under the law creating the offence.

Lortie, (1916), 25, C. C. C. 300.

LOI DU SERVICE MILITAIRE, 1917.

THE MILITARY SERVICE ACT, 1917.

LOI DU SERVICE MILITAIRE, 1917.

(7-8 *Geo. V., ch.* 19.)

(*Sanctionnée, le* 29 *août* 1917.)

Préambule.

CONSIDÉRANT qu'en vertu de l'article dix de la *Loi de Milice*, chapitre quarante-et-un des Statuts Revisés du Canada, 1906, il est statué ce qui suit:

"Tous les habitants mâles du Canada âgés de dix-huit ans et plus, et de moins de soixante ans, non exemptés ni frappés d'incapacité par la loi, et sujets britanniques, peuvent être appelés à servir dans la milice, dans le cas d'une levée en masse, le gouverneur général peut appeler au service toute la population mâle du Canada en état de porter les armes."

Et considérant qu'en vertu de l'article soixante-neuf de ladite loi il est en outre statué ce qui suit:

"Le gouverneur en conseil peut mettre la milice ou toute partie de la milice, en service actif partout dans le Canada et en dehors du Canada, pour la défense de ce dernier, en quelque temps que ce soit, où il paraît à propos de le faire à raison de circonstances critiques."

Et considérant qu'en vertu de ladite loi il est en outre statué que, si en quelque temps que ce soit, il ne se présente pas suffisamment de volontaires pour compléter les cadres nécessaires, les hommes ainsi sujets au service doivent être levés par le tirage au sort.

Et considérant qu'afin de maintenir et soutenir les Forces expéditionnaires canadiennes actuellement engagées outre-mer en service actif pour la défense et la sécurité du Canada, le salut de l'Empire et de la liberté humaine, il est nécessaire d'assurer des renforts pour lesdites Forces expéditionnaires;

Et considérant qu'il ne se présente pas suffisamment de volontaires pour assurer lesdits renforts;

Et considérant qu'en raison du grand nombre d'hommes qui ont déjà quitté leurs occupations industrielles et agricoles au Canada pour faire partie desdites Forces expéditionnaires en qualité de volontaires, et de la nécessité de soutenir dans lesdites conditions la productivité du Dominion, il est à propos de se procurer les hommes encore requis, non pas par tirage au sort suivant que stipulé dans la *Loi de Milice*, mais par levée sélective.

THE MILITARY SERVICE ACT, 1917.

(7-8 *Geo. V, ch.* 19.)

(*Assented to 29th August*, 1917.)

Preambule.

Whereas by section ten of the *Militia Act*, chapter forty-one of the Revised Statutes of Canada, 1906, it is enacted as follows:—

"All the male inhabitants of Canada, of the age of eighteen years and upwards, and under sixty, not exempt or disqualified by law, and being British subjects, shall be liable to service in the Militia: Provided that the Governor General may require all the male inhabitants of Canada, capable of bearing arms, to serve in the case of a *levée en masse*."

And whereas by section sixty-nine of the said Act it is further enacted as follows:—

"The Governor in Council may place the Militia, or any part thereof, on active service anywhere in Canada, and also beyond Canada, for the defence thereof, at any time when it appears advisable so to do by reason of emergency."

And whereas by the said Act it is further enacted that, if at any time enough men do not volunteer to complete the quota required, the men so liable to serve shall be drafted by ballot;

And whereas to maintain and support the Canadian Expeditionary Force now engaged in active service overseas for the defence and security of Canada, the preservation of the Empire and of human liberty, it is necessary to provide reinforcement, for such Expeditionary Force;

And whereas enough men do not volunteer to provide such reinforcements;

And whereas, by reason of the large number of men who have already left agricultural and industrial pursuits in Canada to join such Expeditionary Force as volunteers, and of the necessity of sustaining under such conditions the productivity of the Dominion, it is expedient to secure the men still required, not by ballot as provided in the *Militia Act*, but by selective draft; There-

A ces causes, Sa Majesté, sur l'avis et du consentement du Sénat et de la Chambre des Communes du Canada, décrète:

Titre abrégé.

1. (1) La présente loi peut être citée sous le titre de *Loi du Service Militaire*, 1917.

Définitions.

(2) En la présente loi, à moins que le contexte n'exige une interprétation différente:—

"Certificat" signifie un certificat d'exemption du service militaire sous le régime de la présente loi;

"Loi de Milice" signifie la *Loi de Milice* et tous règlements et ordonnances rendus sous le régime de ladite loi;

"Loi de l'Armée" signifie la loi dite *Army Act* qui dans le temps est en vigueur dans le Royaume-Uni, et tous règlements et ordonnances rendus sous le régime de ladite loi;

"Règlements" signifie les règlements établis par le Gouverneur en conseil sous l'autorité de la présente loi et les instructions données en vertu desdits règlements;

"Ministre" signifie le ministre de la Justice.

"Tribunal" signifie un tribunal constitué en vertu de la présente loi.

Personnes susceptibles d'être appelées au service.

2. (1) Tout sujet britannique mâle, relevant d'une des classes décrites dans l'article trois de la présente loi; et

a) qui a son domicile habituel au Canada; ou

b) qui a eu, en quelque temps que ce soit depuis le quatrième jour d'août 1914 son domicile habituel au Canada,

est susceptible d'être appelé, suivant que et dans le temps stipulé ci-après, en service actif dans les Forces expéditionnaires canadiennes pour la défense du Canada, soit au Canada, ou en dehors du Canada, à moins

a) qu'il ne relève des exceptions énoncées dans l'annexe; ou

b) atteigne l'âge de quarante-cinq ans avant que la classe ou sous-classe à laquelle il appartient, telle que décrite en l'article trois ne soit appelée.

Ce service doit être pour la durée de la présente guerre et de la démobilisation devant suivre la présente guerre.

(2) Rien dans la présente loi n'empêche tout homme de s'enrôler volontairement dans les Forces expéditionnaires canadiennes, tant que l'enrôlement volontaire dans lesdites forces est autorisé.

fore His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Short title.

1. (1) This Act may be cited as *The Militia Service Act*, 1917.

Definitions.

(2) In this Act, unless the context otherwise requires:—

"Certificate" means a certificate of exemption from military service under this Act;

"The Militia Act" means the *Militia Act* and all regulations and orders made under the authority thereof;

"The Army Act" means the *Army Act* for the time being in force in the United Kingdom and all regulations and orders made under the authority thereof;

"Regulations" means regulations made by the Governor in Council under the authority of this Act and directions made under such regulations;

"Minister" means the Minister of Justice.

"Tribunal" means a tribunal constituted under this Act.

Persons liable for service.

2. (1) Every male British subject who comes within one of the classes described in section three of this Act, and who,—

(a) is ordinarily resident in Canada; or

(b) has been at any time since the fourth day of August, 1914, resident in Canada,

shall be liable to be called out as hereinafter provided on active service in the Canadian Expeditionary Force for the defence of Canada, either in or beyond Canada, unless he

(a) comes within the exceptions set out in the Schedule; or

(b) reaches the age of forty-five before the class or subclass to which he belongs, as described in section three, is called out.

Such service shall be for the duration of the present war and of demobilization after the conclusion of the war.

(2) Nothing in this Act shall prevent any man from voluntarily enlisting in the Canadian Expeditionary Force, so long as voluntary enlistement in such Force is authorized.

Divisions par classes.

3. (1) Les hommes qui sont sujets à appel se répartissent en les six classes décrites ainsi qu'il suit:—

Classe 1—Ceux qui ont atteint l'âge de vingt ans et ne sont pas nés plus tôt qu'en l'année 1883, et qui sont célibataires, ou des veufs sans enfants.

Classe 2—Ceux qui ont atteint l'âge de vingt ans et ne sont pas nés plus tôt qu'en l'année 1883, et qui sont mariés, ou sont des veufs avec un enfant ou des enfants.

Classe 3—Ceux qui sont nés dans les années 1876 à 1882, toutes deux inclusivement, et qui sont des célibataires, ou sont des veufs sans enfant.

Classe 4—Ceux qui sont nés dans les années 1876 à 1882, toutes deux inclusivement, et qui sont mariés, ou sont des veufs ayant un enfant ou des enfants.

Classe 5—Ceux qui sont nés dans les années 1872 à 1875, toutes deux inclusivement, et qui sont des célibataires, ou sont des veufs sans enfant.

Classe 6—Ceux qui sont nés dans les années 1872 à 1875, toutes deux inclusivement, et qui sont mariés, ou sont des veufs ayant un enfant ou des enfants.

(2) Pour les objets du présent article tout homme marié après le sixième jour de juillet 1917, est censé être un célibataire.

(3) Toute classe, sauf la classe 1, comprend les hommes qui y sont transférés d'une autre classe, suivant qu'il est ci-après établi, et les hommes qui ont passé dans la classe 1 du moment où la classe précédente a été appelée.

(4) L'ordre dans lequel les classes sont décrites dans le présent article est l'ordre dans lequel elles peuvent être appelées en service actif. Néanmoins, le Gouverneur en conseil peut diviser toute classe en sous-classes, et alors les sous-classes doivent être appelées suivant l'ordre de l'âge, en commençant par les plus jeunes.

Appel par classes.

4. (1) Le Gouverneur en conseil peut de temps à autre par proclamation appeler en service actif suivant que susdit, pour la défense du Canada soit au Canada ou en dehors du Canada, toute classe ou sous-classe d'hommes décrite dans l'article trois, et tous les hommes compris dans la classe ou sous-classe ainsi appelée sont censés, à compter de la date de pareille proclamation, être des soldats enrôlés dans les forces militaires du Canada et assujétis à la loi militaire pour la durée de la présente guerre, et de la démobilisation devant suivre la présente guerre, sauf suivant qu'il est ci-après stipulé.

(2) Les hommes ainsi appelés doivent se présenter et il sont

Division into classes.

3. (1) The men who are liable to be called out shall consist of six classes described as follows:—

Class 1.—Those who have attained the age of twenty years and were born not earlier than the year 1883 and are unmarried, or are widowers but have no child.

Class 2.—Those who have attained the age of twenty years and were born not earlier than the year 1883 and are married, or are widowers who have a child or children.

Class 3.—Those who were born in the years 1876 to 1882, both inclusive, and are unmarried, or are widowers who have no child.

Class 4.—Those who were born in the years 1876 to 1882, both inclusive, and are married, or are widowers who have a child or children.

Class 5.—Those who were born in the years 1872 to 1875, both inclusive, and are unmarried, or are widowers who have no child.

Class 6.—Those who were born in the years 1872 to 1875, both inclusive, and are married, or are widowers who have a child or children.

(2) For the purposes of this section, any man married after the sixth day of July, 1917, shall be deemed to be unmarried.

(3) Any class, except Class 1, shall include men who are transferred thereto from another class as hereinafter provided, and men who have come within Class 1 since the previous class was called out.

(4) The order in which the classes are described in this section shall be the order in which they may be called out on active service, provided the Governor in Council may divide any class into subclasses, in which case the subclasses shall be called out in order of age beginning with the youngest.

Calling out by Classes.

4. (1) The Governor in Council may from time to time by proclamation call out on active service as aforesaid for the defence of Canada, either in Canada or beyond Canada, any class or subclass of men described in section three, and all men within the class or subclass so called out shall, from the date of such proclamation, be deemed to be soldiers enlisted in the Military Forces of Canada and subject to military law for the duration of the present war, and of demobilization thereafter, save as hereinafter provided.

(2) Men so called out shall report, and shall be placed on active

mis en service actif dans les Forces expéditionnaires canadiennes, suivant qu'il peut être établi dans pareille proclamation ou en des règlements, mais jusqu'à ce qu'ils soient ainsi mis en service actif ils sont censés être en congé sans toucher aucune solde.

(3) Tout homme par qui ou à l'égard de qui une demande d'exemption est faite, suivant qu'il est ci-après établi, est censé, tant que reste en suspens pareille demande ou tout appel se rattachant à pareille demande et durant le cours de toute exemption qui lui est accordée, être en congé sans toucher aucune solde.

PUNITION POUR REFUS DE SE RAPPORTER.

(4) Tout homme appelé et qui, sans excuse raisonnable, manque de se présenter suivant que susdit est coupable d'une contravention et il doit être passible sur conviction par voie sommaire, d'emprisonnement pour une période ne dépassant pas cinq ans avec travaux forcés.

Tribunaux.

5. (1) Les tribunaux suivants doivent être établis, en la manière ci-après énoncée:

a) Des tribunaux locaux;

b) Des tribunaux d'appel;

c) Un juge d'appel central.

(2) Tout tribunal peut entendre des dépositions sous serment ou autrement, suivant qu'il le juge à propos, et pour l'exécution de ses devoirs il possède tous les pouvoirs attribués à un commissaire sous le régime de la Partie I de la *Loi des Enquêtes*.

(3) Le Gouverneur en conseil, peut, sur la recommandation du juge d'appel central, passer des règlements concernant l'établissement, la constitution, les fonctions et la procédure desdits tribunaux, et lesdits règlements peuvent contenir des dispositions pour assurer l'uniformité dans l'application de la présente loi.

(4) En l'absence d'autres dispositions, la procédure du tribunal doit être celle qui est déterminée par le tribunal.

(5) Aucun membre d'un tribunal ne doit être responsable en justice de ce qu'il peut avoir fait de bonne foi dans l'exécution de ses devoirs sous le régime de la présente loi, et aucune action ne peut être intentée contre un membre d'un tribunal local ou d'un tribunal d'appel en ce qui concerne l'exécution ou la non-exécution de ses devoirs sous le régime de la présente loi, sauf avec le consentement par écrit du juge d'appel central.

(6) Nulle procédure autorisée ou pendante devant un tribunal, et nulle décision de tout tribunal ne peut, par voie d'injonction, de prohibition, *de madamus*, *de certiorari*, *d'habeas corpus* ou d'une autre procédure de même nature ou émanant autrement de

service in the Canadian Expeditionary Force as may be set out in such proclamation or in regulations, but until so placed on active service, shall be deemed to be on leave of absence without pay.

(3) Any man by or in respect of whom an application for exemption is made as hereinafter provided, shall, so long as such application or any appeal in connection therewith is pending and during the currency of any exemption granted him, be deemed to be on leave of absence without pay.

PENALTY FOR NOT REPORTING.

(4) Any man who is called out and who, without reasonable excuse, fails to report as aforesaid, shall be guilty of an offence, and shall be liable on summary conviction to imprisonment for any term not exceeding five years, with hard labor.

Tribunals.

5. (1) There shall be established in the manner hereinafter set out, the following tribunals:—

(a) Local Tribunals;

(b) Appeal Tribunals;

(c) A Central Appeal Judge.

(2) Any tribunal may hear evidence on oath or otherwise as it may deem expedient, and for the performance of its duties shall have all the powers vested in a Commissioner under Part 1 of the *Inquiries Act*.

(3) The Governor in Council may, upon the recommendation of the Central Appeal Judge, make regulations with respect to the establishment, constitution, functions and procedure of the said tribunals, and such regulations may contain provisions for securing uniformity in the application of this Act.

(4) In so far as provision is not otherwise made, the procedure of the Tribunal shall be such as is determined by the Tribunal.

(5) No member of any tribunal shall be responsible at law for anything done by him in good faith in the performance of his duties under this Act, and no action shall be taken against any member of a local tribunal or an appeal tribunal in respect of the performance or non-performance of his duties under this Act, except with the written consent of the Central Appeal Judge.

(6) No proceeding authorized or pending before any tribunal, and no decision of any tribunal, shall by means of an injunction, prohibition, *mandamus*, *certiorari*, *habeas corpus*, or other process, whether of the like kind or otherwise issuing out of any

toute cour, être interdite, arrêtée, retardée, mise de côté ou soumise à révision ou à considération pour quelque motif que ce soit résultant du prétendu défaut de juridiction du tribunal, de nullité, de vice ou d'irrégularité des procédures ou de toute autre cause quelconque, et nulle pareille procédure ou décision ne peut être discutée, révisée ou considérée incidemment dans toute action ou procédure, soit au civil ou au criminel.

TRIBUNAUX LOCAUX.

6. (1) Le Ministre peut, de temps à autre, par proclamation ou autrement, établir des tribunaux locaux aux endroits qu'il juge nécessaires, et il peut donner à chacun de ces tribunaux une désignation appropriée.

(2) Le Ministre peut, après qu'un tribunal local est établi, ordonner par proclamation ou autrement le transfert de pareil tribunal local d'un endroit à l'autre dans la même province.

Membres de tribunaux locaux.

(3) Chaque tribunal local est composé de deux membres. L'un des membres est nommé par une Commission de sélection établie sous l'autorité d'une résolution adoptée d'un commun accord par le Sénat et la Chambre des Communes; l'autre membre est nommé par les autorités suivantes:

En général.

I. Dans les provinces où il y a des cours de comté ou, des cours de District, par le juge de la cour de comté ou de la Cour de district ou, s'il y a plus d'un juge, le plus ancien juge du comté ou district dans le comté ou district où est établi le tribunal local, ou lorsque l'endroit où un tribunal local doit être établi n'est pas dans les limites territoriales d'une Cour de Comté ou de District, alors la nomination est faite par tel juge qui peut être désigné par le Ministre.

Le juge qui fait la nomination peut se nommer lui-même, ou nommer tout autre juge, ayant juridiction dans le comté ou district.

Pour les fins du présent article "juge de Cour de Comté" ou "juge de Cour de District" comprend tout juge suppléant autorisé par la loi à agir provisoirement pour tout tel juge, et comprend aussi tout juge intérimaire ainsi autorisé.

Québec.

II. Dans la province de Québec:

(*a*) dans les districts judiciaires de Montréal et de Québec,

court, be enjoined, restrained, stayed, removed, or subjected to review or consideration, upon any ground whether arising out of alleged absence of jurisdiction in the tribunal, nullity, defect or irregularity of the proceedings or any other cause whatsoever nor shall any such proceeding or decision be questioned, reviewed or considered collaterally in any action or proceeding civil or criminal.

Local Tribunals.

6. (1) The Minister may from time to time, by proclamation or otherwise, establish local tribunals at such places as he deems necessary, and give each an appropriate designation.

(2) The Minister may, after a local tribunal is established, order, by proclamation or otherwise, the removal of such local tribunal from place to place within the same province.

Membership of local tribunals.

(3) Each local tribunal shall consist of two members. One member shall be appointed by a Board of Selection to be established by joint resolution of the Senate and House of Commons; the other member shall be appointed by the following authority:—

Generally.

I. In those provinces in which there are county courts or district courts, the county court judge or district court judge, or, if more than one, the senior judge for the county or district in which the local tribunal is established, or when the place at which a local tribunal is to be established is not within the territorial limits of any county court or district court, then by such judge as may be determined by the Minister.

The judge making the appointment may appoint himself or any other judge having jurisdiction in the county or district.

For the purposes of this section, "county court judge" or "district court judge" includes any deputy judge authorized by law to act for the time being for any such judge, and also includes any acting judge so authorized.

Quebec.

II. In the province of Quebec:—

(a) In the judicial districts of Montreal and Quebec, any judge

tout juge de la Cour Supérieure de la province de Québec, qui est autorisé par le juge en chef de ladite Cour ou autorisé par le juge nommé pour exercer les fonctions de juge en chef dans le district judiciaire.

(*b*) Dans les autres districts judiciaires, le juge de la Cour Supérieure de la province de Québec préposé au district judiciaire dans les limites duquel ce tribunal local est établi.

Yukon.

III. Dans le Territoire du Yukon:

Le juge de la Cour Territoriale ou la personne nommée sous l'empire des dispositions de la *Loi du Yukon* pour remplacer ledit juge; et

Nord-Ouest.

IV. Dans les Territoires du Nord-Ouest:

Le Commissaire de la Royale Gendarmerie à cheval du Nord-Ouest.

Nomination par le Ministre si les tribunaux locaux ne sont pas formés, et vacances remplies.

(4) (*a*) Les noms et adresses de toutes les personnes nommées membres d'un tribunal local seront, conformément aux règlements qui peuvent être prescrits, communiqués au Ministre.

(*b*) Le Ministre peut, par dépêche ou autrement, nommer l'un des membres ou les deux membres, selon le cas, de tout tribunal local s'il n'a pas reçu, dans tel délai pouvant être fixé par règlement, avant la date où le tribunal doit siéger, les noms et adresses des membres dûment nommés.

(*c*) Toute vacance qui se produit est remplie par l'autorité qui a nommé le membre dont l'emploi devient vacant, et si elle n'est pas ainsi remplie et si communication de cette vacance comme susdit n'a pas été reçue par le Ministre au cours de telle période qui peut être fixée par règlement, le Ministre peut remplir telle vacance.

(5) Chaque membre d'un tribunal local, doit, à moins d'être un juge, faire le serment ou l'affirmation qu'il remplira fidèlement et impartialement ses devoirs en tant que pareil membre. Pareil serment ou affirmation peut être fait devant un juge, un juge de paix, un commissaire ayant qualité pour recevoir les déclarations sous serment ou devant telle autre personne que le ministre, en tout cas spécial, peut désigner.

Peine pour défaut d'agir.

(6) Toute personne dûment nommée membre d'un tribunal lo-

of the Superior Court of the province of Quebec who is authorized by the Chief Justice of the said Court or authorized by the judge appointed to perform the duties of Chief Justice in the judicial district.

(b) In the other judicial districts the judge of the Superior Court of the province of Quebec assigned to the judicial district within which the local tribunal is established.

Yukon.

III. In the Yukon Territory:—

The judge of the Territorial Court or the person appointed under the provisions of the *Yukon Act* to act in place of such judge; and

Northwest.

IV. In the Northwest Territories:—

The Commissioner of the Royal Northwest Mounted Police.

Appointments by Minister if local tribunals not formed, and filling of vacancies.

(4) (a) The names and addresses of all persons appointed on a local tribunal shall, as may be provided by regulations, be communicated to the Minister.

(b) The Minister may by telegraph or otherwise appoint one or both members, as the case may be, of any local tribunal, if he has not received, within such period before the tribunal is to sit as may be fixed by regulation, the names and addresses of members duly appointed.

(c) A vacancy occurring shall be filled by the authority who appointed the member vacating, and if not so filled or if communication of same as aforesaid has not been received by the Minister within such period as may be fixed by regulation, the Minister may fill such vacancy.

(5) Each member of a local tribunal shall, unless he be a judge, make oath or affirmation that he will faithfully and impartially perform his duties as such member. Such oath or affirmation may be made before a judge, a justice of the peace, a commissioner for taking affidavits, or before such other person as in any special case the Minister may direct.

Penalty for not acting.

(6) Any person duly appointed a member of a local tribunal

cal doit, à moins qu'elle n'ait été par écrit libérée par l'autorité qui l'a nommée, exercer les fonctions en qualité de tel membre, et toute personne qui, sans excuse raisonnable, manque à ce devoir, est coupable d'une contravention et passible, sur conviction sommaire, d'emprisonnement pour une période n'excédant pas deux ans et d'au moins trois mois.

Le tribunal local décide des exemptions.

(7) Chaque tribunal local entend et rend sa décision sur toutes les requêtes demandant des certificats d'exemption présentées à ce tribunal tel que prévu par l'article onze.

TRIBUNAL D'APPEL.

7. Le juge en chef de la cour de dernier ressort, dans chaque province, ou dans le cas d'absence, ou de défaut d'agir, de la part dudit juge en chef, alors un juge de cette cour désigné par le Ministre, établit pour ladite province un nombre suffisant de tribunaux d'appel et prépose à chaque pareil tribunal dans la province de Québec un juge de la Cour du Banc du Roi ou de la Cour Supérieure de ladite province, et dans les autres provinces un juge de toute cour de la province, et distribue entre lesdits tribunaux tous les appels des tribunaux locaux, et les cas mentionnés par eux aux termes du paragraphe deux de l'article dix, dont le Régistraire a reçu avis, et ces tribunaux d'appel entendent et rendent jugement séparément sur lesdits appels; sauf que les appels d'un tribunal local composé d'un ou de plusieurs juges doivent être entendus et décidés par un tribunal d'appel présidé par un juge d'une cour plus élevée.

(2) Le juge de la cour territoriale, ou la personne nommée pour le remplacer en vertu de la *Loi du Yukon*, constitue le tribunal d'appel pour le territoire du Yukon.

TRIBUNAL DE DERNIER RESSORT.

Juge d'appel central.

8. Le Gouverneur en conseil peut nommer l'un des juges de la Cour Suprême du Canada pour être juge d'appel central.

REGISTRAIRES.

Registraire pour chaque province.

9. Un Registraire pour chaque province peut être nommé par le Gouverneur en conseil.

shall, unless relieved in writing by the authority appointing him, perform his duties as such member, and any person who without reasonable excuse fails so to do shall be guilty of an offence and liable on summary conviction to imprisonment for any term not exceeding two years and not less than three months.

Local tribunal to decide on exemptions.

(7) Each local tribunal shall hear and decide applications for certificates of exemption made to such tribunal as provided in section eleven.

APPEAL TRIBUNALS.

7. (1) The Chief Justice of the court of last resort in each province, or in case of his absence, or failure to act, then, a judge of that court designated by the Minister, shall establish for such province a sufficient number of Appeal Tribunals, and shall assign to each such tribunal in the province of Quebec one judge of the Court of King's Bench or Superior Court of said province, and in the other provinces one judge of any court of such province, and shall distribute among such tribunals all appeals from, and cases stated under subsection two of section ten by local tribunals of which the Registrar has notice, and such Appeal Tribunals shall severally hear and decide the same: Provided that appeals from a local tribunal on which sits one or more judges shall be heard and decided by an appeal tribunal constituted of a judge of a higher court.

(2) The Judge of the Territorial Court, or the person appointed in the place of the said judge under the provisions of the *Yukon Act*, shall constitute the Appeal Tribunal for the Yukon Territory.

FINAL TRIBUNAL.

Central appeal judge.

8. The Governor in Council may appoint one of the judges of the Supreme Court of Canada to be the Central Appeal Judge.

REGISTRARS.

Registrar for each province.

9. A Registrar for each Province may be appointed by the Governor in Council.

APPELS.

10. (1) Toute personne lésée par la décision d'un tribunal local, et toute personne autorisée par le Ministre de la Milice et de la Défense peut en appeler de toute pareille décision.

Cause soumise à décision.

(2) Si les deux membres d'un tribunal local ne peuvent s'entendre sur une décision qu'ils doivent rendre, ils exposent immédiatement par écrit le cas qui doit être décidé et font expédier cet exposé au Registraire pour la province dans laquelle le tribunal est établi.

Appel au juge d'appel central.

(3) (*a*) Subordonnément aux dispositions de l'alinéa (*b*) du présent paragraphe, il a appel de tout tribunal d'appel au juge d'appel central.

Règlements pour ces appels.

(*b*) Le Gouverneur en conseil, sur la recommandation du juge d'appel central, peut faire des règlements régissant le droit et fixant les conditions d'appel d'un tribunal d'appel au juge d'appel central.

Nominations de juges adjoints.

(4) Le juge d'appel central est le tribunal de dernier ressort et le Gouverneur en conseil peut, sur sa recommandation, nommer un ou plusieurs autres juges de toute cour supérieure pour aider le dit juge d'appel central dans l'exercice de ses fonctions, et définir leurs pouvoirs.

EXEMPTIONS.

Demandes d'exemptions et raisons.

11. (1) En tout temps avant la date devant être fixée par la proclamation mentionnée dans l'article quatre, une requête peut être faite par ou au sujet de tout homme qui se trouve dans la classe ou sous-classe appelée par la dite proclamation à un tribunal local établi dans la province dans laquelle est situé le domicile ordinaire de cet homme, demandant un certificat d'exemption pour l'une quelconque des raisons suivantes:

a) Que, dans l'intérêt national, il est opportun que cet homme, au lieu d'être employé au service militaire, soit occupé à d'autres travaux auxquels il est habituellement occupé;

APPEALS.

10. (1) Any person aggrieved by the decision of a local tribunal, and any person authorized by the Minister of Militia and Defence, may appeal against any such decision.

Submitting case for decision.

(2) If the two members of a local tribunal cannot agree as to any decision to be made by them, they shall forthwith state in writing the case to be decided and cause the statement to be sent to the Registrar for the province in which the tribunal is established.

Appeal to central appeal judge.

(3) (a) Subject to the provisions of paragraph (b) of this subsection there shall be an appeal from any appeal tribunal to the Central Appeal Judge.

Regulations for such appeals.

(b) The Governor in Council, on the recommendation of the Central Appeal Judge, may make regulations governing the right to and fixing the conditions of appeal from an appeal tribunal to the Central Appeal Judge.

Appointment of assistant judges.

(4) The Central Appeal Judge shall be the tribunal of last resort, and the Governor in Council may, on his recommendation, appoint one or more other judges of any superior court to assist the said Central Appeal Judge in the discharge of his duties, and define their powers.

EXEMPTIONS.

Application for, and grounds of exemption.

11. (1) At any time before a date to be fixed in the proclamation mentioned in section four, an application may be made, by or in respect of any man in the class or subclass called out by such proclamation, to a local tribunal established in the province in which such man ordinarily resides, for a certificate of exemption on any of the following grounds.—

(a) That it is expedient in the national interest that the man should, instead of being employed in military service, be engaged in other work in which he is habitually engaged;

b) Que, dans l'intérêt national, il est opportun que cet homme, au lieu d'être employé au service militaire, soit occupé à d'autres travaux auxquels il désire être occupé et pour lesquels il a des aptitudes spéciales;

c) Que, dans l'intérêt national, il est opportun qu'au lieu d'être employé au service militaire, il continue à s'instruire ou à s'entraîner à tels travaux pour lesquels il est alors occupé à recevoir l'instruction ou l'entraînement;

d) Qu'un tort sérieux résulterait, si cet homme était mis en activité de service, à cause de ses obligations exceptionnelles au point de vue financier ou commercial ou de sa situation domestique;

e) mauvaise santé ou infirmité;

f) Que sa conscience s'oppose à ce qu'il entreprenne le service de combattant et que cela lui est défendu par les dogmes et articles de foi, en vigueur le sixième jour de juillet 1917, de toute confession religieuse organisée, existante et bien reconnue en Canada à telle date et à laquelle il appartient de bonne foi;

et si l'une quelconque des raisons de cette demande est établie un certificat d'exemption est accordé à cet homme.

Certificats conditionnels.

(2) (*a*) Un certificat peut être conditionnel quant au temps ou autrement, et s'il est accordé uniquement pour des raisons de conscience, il doit déclarer que telle exemption s'applique uniquement au service de combattant.

(*b*) Un certificat accordé pour des fins de continuation d'instruction ou d'entraînement ou pour des raisons d'obligations exceptionnelles au point de vue financier ou commercial ou de la situation domestique du requérant est un certificat exclusivement conditionnel.

(*c*) Nul certificat n'est conditionnel lorsque celui à qui il est accordé continue ou commence à exercer un emploi au service de tout patron désigné ou dans tout endroit ou établissement spécifiés.

(*d*) Un certificat peut transférer un homme d'une classe à la classe suivante dans l'ordre numérique.

(*e*) Lorsqu'un certificat conditionnel est accordé, les conditions doivent être énoncées dans le certificat.

Punition.

(*f*) Il est du devoir de tout détenteur d'un certificat conditionnel, dans un délai de trois jours après que les conditions énoncées dans le certificat ont cessé d'exister ou après que son exemption a pris fin, de donner avis par écrit de ce fait au Régistraire de la province dans laquelle il est ordinairement domicilié; et s'il manque de le faire sans une excuse raisonnable, il est cou-

(b) That it is expedient in the national interest that the man should, instead of being employed in military service, be engaged in other work in which he wishes to be engaged and for which he has special qualifications;

(c) That it is expedient in the national interest, that, instead of being employed in military service, he should continue to be educated or trained for any work for which he is then being educated or trained;

(d) That serious hardship would ensue, if the man were placed on active service, owing to his exceptional financial or business obligations or domestic position;

(e) Ill health or infirmity;

(f) That he conscientiously objects to the undertaking of combatant service and is prohibited from so doing by the tenets and articles of faith, in effect on the sixth day of July, 1917, of any organized religious denomination existing and well recognized in Canada at such date, and to which he in good faith belongs;

and if any of the grounds of such application be established, a certificate of exemption shall be granted to such man

Conditional certificates.

(2) (a) A certificate may be conditional as to time or otherwise, and, if granted solely on conscientious grounds, shall state that such exemption is from combatant service only.

(b) A certificate granted on the ground of the continuance of education or training, or on the ground of exceptional financial or business obligations or domestic position, shall be a conditional certificate only.

(c) No certificate shall be conditional upon a person to whom it is granted continuing in or entering into employment under any specified employer or in any specified place or establishment.

(d) A certificate may transfer a man to the class next in numerical order.

(e) When a conditional certificate is granted the conditions shall be stated on the certificate.

Penalty.

(f) It shall be the duty of any man holding a conditional certificate within three days after the conditions stated therein cease to exist or after his exemption terminates, to give notice in writing of such fact to the Registrar of the province in which he ordinarily resides; and if he fails without reasonable excuse to do so, he shall be guilty of an offence and liable on summary

pable d'une contravention et passible, sur conviction sommaire, d'une amende n'excédant pas deux cent cinquante dollars.

Renouvellement, modification ou retrait des certificats.

(3) (*a*) Subordonnément à telles conditions, quant à la requête et à l'avis, qui peuvent être prescrits par des règlements, et subordonnément aussi à l'alinéa (*b*) du présent paragraphe, un certificat peut, au cours de sa durée, être renouvelé, modifié ou retiré en tout temps par le tribunal local qui l'a délivré.

(*b*) Lorsqu'une décision d'un tribunal local ou d'un tribunal d'appel a été modifiée sur appel à un tribunal d'appel ou au juge d'appel central, un certificat accordé d'après cette modification doit subséquemment, subordonnément à telles conditions, quant à la requête et à l'avis qui peuvent être prescrits par des règlements, être renouvelé, modifié ou retiré, mais seulement au cours de sa durée et seulement par le tribunal d'appel ou le juge qui l'a accordé.

Punition pour fausses représentations.

(4) Quiconque, dans le but d'obtenir un certificat ou une condition dans un certificat pour lui-même ou pour toute autre personne ou dans le but d'obtenir le renouvellement, la modification ou le retrait d'un certificat, fait une fausse déclaration ou représentation, est coupable d'une contravention et passible, sur conviction sommaire, de l'emprisonnement pour un terme n'excédant pas douze mois avec ou sans travaux forcés.

Peine si l'on s'adresse à plus d'un tribunal local pour avoir un certificat.

(5) (*a*) Tout homme qui, ayant présenté une requête devant un tribunal local pour qu'il lui soit accordé un certificat, présente sans l'autorisation du Ministre une requête pour un certificat devant un autre tribunal local, et toute personne qui, sachant ou ayant raison de croire qu'une requête pour un certificat a été présentée ou est présentée devant un tribunal local par un homme ou pour lui, fait ou aide ou engage à faire ou à instituer une requête sans pareille autorisation par un tel homme ou pour lui devant un autre tribunal local, est coupable d'une contravention et passible, sur conviction par voie sommaire d'une amende de cent dollars au moins et de mille dollars au plus.

(*b*) Sont nulles et non avenues toutes requêtes et toutes procédures prises sur des demandes de certificats présentées sans l'autorisation du Ministre par un homme ou à son sujet devant un tribunal local autre que le tribunal local devant lequel la première requête a été présentée par cet homme ou à son sujet.

conviction to a penalty not exceeding two hundred and fifty dollars.

Renewal variation or withdrawal of certificates.

(3) (a) Subject to such conditions as to application and notice as may be provided by regulations, and subject also to paragraph (b) of this sub-section, a certificate may, during the currency thereof, be renewed, varied or withdrawn at any time by the local tribunal issuing the same.

(b) Where a decision of a local or appeal tribunal has been varied on appeal to an appeal tribunal or to the Central Appeal Judge, a certificate granted upon such variation shall thereafter, subject to such conditions as to application and notice as may be provided by regulations, be renewed, varied or withdrawn, but only during the currency thereof and only by the appeal tribunal or judge who granted the certificate.

Penalty for false representation.

(4) Any person who, for the purpose of obtaining a certificate or a condition in a certificate for himself or for any other person, of for the purpose of obtaining the renewal, variation or withdrawal of a certificate, makes any false statement or representation, shall be guilty of an offence and liable on summary conviction to imprisonment for any term not exceeding twelve months with or without hard labour.

Penalty for applying to more than one local tribunal for certificate.

(5) (a) Any man who, having applied to any local tribunal for the issue to him of a certificate, applies without the leave of the Minister to any other local tribunal for a certificate, and any person who, knowing or having reason to believe that an application for a certificate has been made or is being made by or in respect of a man to a local tribunal, makes or aids or abets in the making or establishing of an application without such leave by or in respect of such man to another local tribunal, shall be guilty of an offence, and shall be liable on summary conviction to a penalty of not less then one hundred dollars and not more than one thousand dollars.

(b) All applications and all proceedings taken on applications for certificates, made without the leave of the Minister, by or in respect of a man before a local tribunal other than the local tribunal before which the first application by or in respect of such man was made, shall be null and void.

(*c*) Nonobstant tout ce que contient le présent article, le Gouverneur en conseil peut par règlement abolir tout tribunal local, et déférer ses fonctions et attributions à tout autre tribunal local.

Altération ou modification des certificats ou fausse représentation.

(6) Quiconque altère ou modifie un certificat ou, dans le but d'éluder la présente loi, se représente faussement comme étant une personne à qui un certificat a été accordé, ou, s'il lui a été accordé un certificat, permet, dans un pareil but, à toute autre personne d'en prendre possession, est coupable d'une contravention et passible, sur conviction par voie sommaire, d'emprisonnement pour une période de six mois au plus.

Certificats détruits ou détériorés.

(7) Lorsqu'un certificat est perdu, détruit ou détérioré, le tribunal qui l'a accordé, sur requête de l'homme en faveur duquel le certificat a été accordé, et sur paiement d'un droit de cinquante cents, lui remet un double de ce certificat.

REGLEMENTS.

12. (1) Le Gouverneur en conseil peut établir des règlements pour garantir l'opération entière, effective et expéditive et la mise en vigueur de la présente loi, et en particulier, mais non de manière à restreindre la généralité de ce qui précède, il peut

a) définir les fonctions des registraires et fixer leur rémunération;

b) autoriser les officiers et les tribunaux à donner des ordres qui ne sont pas incompatibles avec les dispositions de la présente loi;

c) sur la recommandation du juge d'appel central prescrire les conditions quant à l'époque ou autrement d'après lesquelles des demandes de certificats peuvent être faites, ou des demandes différées peuvent être reçues, ou des appels peuvent être interjetés et entendus et de nouvelles auditions accordées, et prescrire des formules;

d) prescrire la manière de tenir et transmettre les registres;

e) nommer les officiers de la paix ou autres officiers et leur donner les pouvoirs et leur imposer les fonctions qui peuvent être jugées nécessaires;

f) pourvoir aux frais et à la rémunération des officiers;

g) stipuler les peines qu'encourront les officiers de la paix ou d'autres officiers nommés sous l'autorité de la présente loi, sur conviction de négligence ou de refus de remplir leur devoir sans excuse raisonnable.

(c) Notwithstanding anything in this section contained, the Governor in Council may by regulations abolish any local tribunal, and transfer its duties and powers to any other local tribunal.

Altering or tampering with certificates, or false representation.

(6) Any person who alters or tampers with a certificate or, for the purpose of evading this Act, falsely represents himself to be a person to whom a certificate has been granted, or, if granted a certificate, allows, for like purpose, any other person to have possession thereof, shall be guilty of an offence and liable on summary conviction to imprisonment for any term not exceeding six months.

Lost or defaced certificates.

(7) When a certificate is lost, destroyed or defaced, the tribunal by whom it was granted shall, upon the application of the man to whom it was granted and upon payment of a fee of fifty cents, issue to him a duplicate of such certificate.

REGULATIONS.

12. (1) The Governor in Council may make regulations to secure the full, effective and expeditious operation and enforcement of this Act, and in particular, but not to limit the generality of the foregoing, may,—

(a) define the duties of Registrars and fix their remuneration;

(b) authorize officers and tribunals to give directions not inconsistent with this Act;

(c) on the recommendation of the Central Appeal Judge prescribe the conditions as to time or otherwise under which applications for certificates may be made, deferred applications received, appeals entered and heard and re-hearings had, and prescribe forms;

(d) prescribe for the keeping and transmission of records;

(e) appoint such peace officers or other officers and give them such powers and impose on them such duties as may be deemed necessary;

(f) make provision for expenses and the remuneration of officers;

(g) prescribe penalties for peace officers or other officers appointed under the authority of this Act, who are convicted of neglect or refusal to perform duty without reasonable excuse.

Publication.

(2) Tous les règlements et proclamations doivent être immédiatement publiés dans la *Gazette du Canada*, et de toute autre manière, s'il en est, que le Gouverneur en conseil peut juger nécessaire pour en donner sûrement la connaissance aux personnes intéressées, et doivent être immédiatement présentés devant le Parlement s'il est alors en session et, sinon, dans les dix jours qui suivent la réunion suivante dudit Parlement.

Interprétation.

(3) Tous les règlements auront la même vigueur et le même effet que s'ils faisaient partie de la présente loi.

DISPOSITIONS GÉNÉRALES.

Application de la loi de la Milice et de l'Army Act.

13. (1) La *Loi de Milice*, la loi dite *Army Act* les *King's Regulations* et les ordres pour l'armée s'appliquent à la présente loi et en font partie en tant qu'ils ne sont pas incompatibles avec la présente loi.

Exceptions.

(2) L'article douze et le paragraphe deux de l'article quarante et la réserve de l'article quarante-cinq de la *Loi de Milice* ne s'appliquent pas aux hommes susceptibles d'être appelés sous le régime de la présente loi.

Transfert au Service Naval.

(3) Le Ministre de la Milice et de la Défense peut transférer au Service Naval tout homme qui s'est présenté pour le service sous les dispositions de la présente loi.

Limite de 100,000 hommes.

(4) A moins d'autorisation ultérieure par le Parlement les renforts prévus sous le régime de la présente loi ne doivent pas dépasser cent mille hommes.

Pénalité prévue par d'autres lois non affectée.

(5) Rien de contenu dans la présente loi n'est censé limiter ni atténuer la peine décrétée par tout autre acte ou loi pour le délit d'aider à l'ennemi, non plus que les pouvoirs du Gouver-

Publication.

(2) All proclamations and regulations shall be published forthwith in the *Canada Gazette* and in such other manner, if any, as the Governor in Council may think necessary to ensure knowledge thereof by all persons concerned, and shall forthwith be laid before Parliament if then in session, and if not in session within ten days after the next meeting thereof.

Construction.

(3) All regulations shall have the same force and effect as if they formed part of this Act.

GENERAL PROVISIONS.

Application of Militia and Army Acts.

13. (1) The *Militia Act*, *the Army Act* and the King's Regulations and Orders for the Army, shall, so far as not inconsistent therewith, apply to and form part of this Act.

Exceptions.

(2) Section twelve, and subsection two of section forty, and the proviso to section forty-five, of the *Militia Act*, shall not apply to men liable to be called out under this Act.

Transfer to Naval Service.

(3) The Minister of Militia and Defence may transfer to the Naval Service any man who has reported for duty under the provisions of this Act.

Limit of 100,000 *men.*

(4) Unless further authorized by Parliament the reinforcements provided under this Act shall not exceed one hundred thousand men.

Punishment provided by other Acts not affected.

(5) Nothing in this Act contained shall be held to limit or affect the punishment provided by any other Act or law for the

neur en conseil sous le régime de la *Loi des mesures de guerre*, 1914.

A qui incombe la preuve à fournir.

14. Lorsque, dans une poursuite sous le régime de la présente loi, il s'élève une question qui a trait à l'un des sujets ci-après mentionnés le poids de la preuve incombe à la personne poursuivie qui doit établir par des témoignages satisfaisants,

a) qu'elle n'est pas visée par l'une des classes spécifiées qui a été appelée.

b) qu'elle s'est dûment présentée conformément à l'article quatre,

c) qu'elle est visée par l'une quelconque des exceptions énoncées à l'annexe de la présente loi.

d) qu'elle a été dûment exemptée sous le régime de l'article onze.

Et à défaut de pareille preuve le contraire doit être présumé d'une manière décisive.

Production de certificat et peines pour défaut de se conformer à cette prescription.

15. (1) Chaque homme qui est visé par les classes décrites en l'article trois doit, dès que la classe ou sous-classe est tenue de se présenter, ainsi que le prescrit l'article quatre, lorsqu'il en est requis par un officier de la paix ou par toute personne autorisée à cet effet, produire son certificat s'il en a un, et il doit répondre d'une manière véridique à toutes demandes tendant à établir s'il s'est conformé ou non aux dispositions de la présente loi.

(2) Tout pareil homme qui manque de se conformer au présent article est, chaque fois qu'il fait ainsi défaut, coupable d'une contravention et passible, sur conviction par voie sommaire, d'une amende de cent dollars au plus, ou d'emprisonnement pour une période d'un an au plus.

Contraventions à la loi.

16. (1) Quiconque se trouve compris dans l'une des classes énumérées en l'article trois et enfreint l'une des dispositions de la présente loi ou des règlements, contravention pour laquelle il n'est pas par les présentes imposé d'autre peine, est coupable d'une contravention et doit être passible, sur conviction par voie sommaire, d'une amende de dix dollars au moins et de cinq cents dollars au plus ou d'emprisonnement pour une période d'au plus douze mois, ou à la fois de l'amende et de l'emprisonnement.

offence of assisting the enemy nor the powers of the Governor in Council under *The War Measures Act*, 1914.

Burden of proof.

14. If in any prosecution under this Act any question shall arise in respect of the matters hereinafter mentioned, the burden of proof shall be upon the person charged to establish by satisfactory evidence.

(a) that he does not come within any specified class called out;

(b) that he has duly reported in accordance with section four;

(c) that he comes within any of the exceptions set out in the Schedule hereto;

(d) that he has been duly exempted under section eleven.

And in the absence of such evidence the contrary shall be conclusively presumed.

Production of certificate, and penalty for failing to comply.

15. (1) Every man within the classes described in section three shall, after his class or subclass is required to report, as provided in section four, whenever required by a peace officer or by any person who has authority for the purpose, produce his certificate if he has one, and shall answer truthfully all inquiries bearing on the question of his compliance or non-compliance with any provision of this Act.

(2) Any such man who fails to comply with this section shall, in respect of each failure, be guilty of an offence, and liable on summary conviction to a penalty not exceeding one hundred dollars or to imprisonment for a term not exceeding one year.

Contraventions of Act.

16. (1) Any person who comes within any of the classes set out in section three, and who contravenes any of the provisions of this Act or of regulations for which contravention no other penalty is herein provided, shall be guilty of an offence and shall be liable upon summary conviction to a penalty of not less than ten dollars nor more than five hundred dollars, or to imprisonment for a term not exceeding twelve months, or to both fine and imprisonment.

Conseil par écrit ou oral d'enfreindre.

(2) Quiconque, par le moyen de toute communication écrite ou imprimée, publication ou article, ou par toute communication orale, ou par toutes paroles ou discours prononcés en public.

a) conseille ou incite les hommes décrits dans l'article trois à enfreindre la présente loi ou les règlements, ou

b) résiste ou met obstacle à dessein ou tente de résister ou de mettre obstacle ou persuade ou induit ou tente de persuader ou d'induire toute personne ou classe de personnes à résister ou mettre obstacle à l'application ou la mise en vigueur de la présente loi; ou

Peine.

c) dans le but de résister ou de mettre obstacle à la mise en vigueur ou à l'application de la présente loi persuade ou induit ou tente de persuader ou d'induire toute personne ou classe de personnes à s'abstenir de faire les demandes de certificats d'exemption ou de soumettre les preuves s'y rapportant est coupable d'une contravention et doit être passible sur mise en accusation ou sur conviction par voie sommaire de l'emprisonnement pour une période d'au moins un an et d'au plus cinq ans.

Suppression de publication pour contravention.

(3) Tout journal, livre, périodique, ou toute brochure ou publication imprimée contenant des matières prohibées par le paragraphe deux du présent article, et soit que l'imprimeur ou l'éditeur des susdits ait été antérieurement condamné ou non, peuvent être sommairement supprimés, et l'impression ou publication ultérieure des susdits et de toute édition future d'un journal ou périodique qui a contenu pareilles matières peut être prohibée pour toute période n'excédant pas la durée de la présente guerre; toutefois, aucune action ne doit être intentée sous le régime du présent paragraphe ou sous le régime du paragraphe deux du présent article sans l'approbation du juge d'appel central.

Autorisation du procureur général pour condamnation.

(4) Aucune condamnation ne sera prononcée par une cour chargée de l'administration de la justice criminelle pour une infraction à la présente loi ou aux règlements édictés en conformité de cette loi, à moins que la poursuite n'ait été autorisée ou approuvée par le procureur général du Canada.

Dépenses.

17. Toutes les dépenses faites en vertu ou pour les fins de la

Written or oral advice, etc., to contravene.

(2) Any person who by means of any written or printed communication, publication or article, or by any oral communication or by any public speech or utterance,

(a) advises or urges that men described in section three shall contravene this Act or regulations, or

(b) wilfully resists or impedes, or attempts wilfully to resist or impedes or persuades or induces or attempts to persuade or induce any person or class of persons to resist or impede the operation or enforcement of this Act, or

Penalty.

(c) for the purpose of resisting or impeding the enforcement or operation of this Act, persuades or induces or attempts to persuade or induce any person or class of persons to refrain from making applications for Certificates of Exemption or submitting evidence in respect thereof, shall be guilty of an offence and shall be liable upon indictment or upon summary conviction to imprisonment for a term not less than one year nor more than five years.

Suppression of publication for contravention.

(3) Any newspaper, book, periodical, pamphlet or printed publication containing matter prohibited by subsection two of this section may, whether the printer or publisher thereof be previously convicted or not, be summarily suppressed and further printing or publication thereof and of any further issue of a newspaper or periodical which has contained such matter may be prohibited for any term not exceeding the duration of the present war; provided no action shall be taken under this subsection or under subsection two of this section without the approval of the Central Appeal Judge.

Consent of Attorney General.

(4) "No conviction in a court of criminal jurisdiction for an offence against this Act, or the regulations made thereunder, shall be had, unless the prosecution has been consented to or approved by the Attorney General of Canada."

Expenses.

17. All expenditure under or for the purposes of this Act shall

présente loi seront payées à même les deniers que le Parlement pourra affecter à cette fin.

ANNEXE.

Exceptions.

1. Les hommes qui détiennent un certificat accordé sous le régime de la présente loi et se trouvant en vigueur, autre qu'un certificat d'exemption du service de combattant seulement.

2. Les membres des forces régulières, de réserve ou des forces auxiliaires de Sa Majesté, tel que défini par la loi dite *Army Act*.

3. Les membres des forces militaires levées par les gouvernements de l'une quelconque des autres possessions de Sa Majesté ou par le gouvernement de l'Inde.

4. Les hommes servant dans la Marine Royale ou dans la Royale infanterie de marine ou dans le Service Naval du Canada, et les membres de la Force expéditionnaire canadienne.

5. Les hommes qui, depuis le 4 août 1914, ont servi dans les Forces militaires ou navales de la Grande-Bretagne ou de ses alliés sur n'importe quel théâtre réel de la guerre et qui ont été honorablement licenciés.

6. Le clergé, y compris les membres de tout ordre reconnu comme ayant un caractère exclusivement religieux et les ministres de toutes les confessions religieuses existantes au Canada à la date de l'adoption de la présente loi.

7. Les personnes exemptées du service militaire par l'arrêté en Conseil du 13 août 1873 et par l'arrêté en Conseil du 6 décembre 1898.

be paid out of such moneys as Parliament may appropriate for the purpose.

SCHEDULE.

Exceptions.

1. Men who hold a certificate granted under this Act and in force, other than a certificate of exemption from combatant service only.

2. Members of His Majesty's regular, or reserve, or auxiliary forces, as defined by the *Army Act*.

3. Members of the military forces raised by the Governments of any of His Majesty's other dominions or by the Government of India.

4. Men serving in the Royal Navy or in the Royal Marines, or in the Naval Service of Canada, and members of the Canadian Expeditionary Force.

5. Men who have since August 4th, 1914, served in the Military or Naval Forces of Great Britain or her allies in any theatre of actual war and have been honourably discharged therefrom.

6. Clergy, including members of any recognized order of an exclusively religious character, and ministers of all religious denominations existing in Canada at the date of the passing of this Act.

7. Those persons exempted from Military Service by Order in Council of August 13th, 1873, and by Order in Council of December 6th, 1898.

LOI DES FALSIFICATIONS.

(S. R. C. 1906, c. 133.)

TITRE ABRÉGÉ.

1. La présente loi peut être citée sous le titre: Loi des falsifications.

INTERPRÉTATION.

2. En la présente loi, à moins que le contexte n'exige une interprétation différente,—

(*a*) "Ministre" signifie le ministre du Revenu de l'intérieur;

(*b*) "substance alimentaire" comprend tout article servant de nourriture ou de breuvage à l'homme ou aux animaux et toute substance destinée à être mêlée à la nourriture ou au breuvage de l'homme ou des animaux pour quelque fin que ce soit;

(*c*) "drogue" comprend tous les médicaments d'un usage interne ou externe pour l'homme ou pour les animaux;

(*d*) "engrais agricole" comprend tout engrais naturel ou artificiel, contenant de l'acide phosphorique, de l'azote ou de la potasse, excepté le fumier ordinaire d'étable; (Am. 1914).

(*e*) "préposé" signifie tout employé du Revenu de l'intérieur, ou toute personne autorisée, en vertu de la présente loi ou de la loi des engrais, à se procurer des échantillons de substances alimentaires, de drogues ou d'engrais agricoles, et à les soumettre à l'analyse;

(*f*) "analyste" signifie analyste public et comprend tout membre du conseil d'examen nommé sous l'autorité de la présente loi, et aussi le directeur des analyses et le sous-directeur des analyses. (Am. 1907).

(*g*) "emballage" comprend tout baril, panier, réceptacle, sac, ou toute boîte, bouteille, boîte en fer-blanc, caisse, ou enveloppe ou autre chose quelconque dans laquelle quelque article est placé ou emballé. (Am. 1914).

3. *Ce qui est réputé substance alimentaire falsifiée.*—Les substances alimentaires sont réputées "falsifiées" au sens de la présente loi,—

(*a*) si quelque substance y a été mélangée de manière à en réduire ou affaiblir la qualité ou la force, ou à les altérer d'une manière nuisible;

(*b*) si quelque substance inférieure ou de moindre valeur a été totalement ou partiellement substituée à l'article;

THE ADULTERATION ACT.

(R. S. C., 1906, c. 133.)

SHORT TITLE.

1. This Act may be cited as the Adulteration Act.

INTERPRETATION.

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

(*a*) 'Minister' means the Minister of Inland Revenue;

(*b*) 'food' includes every article used for food or drink by man or cattle, and every ingredient intended for mixing with the food or drink of man or cattle for any purpose whatsoever;

(*c*) 'drug' includes all medicines for internal or external use for man or for cattle;

(*d*) 'Agricultural fertilizer' includes every natural or artificial manure containing phosphoric acid, nitrogen, or potash, except ordinary stable manure. (Am. 1914).

(*e*) 'officer' means any officer of Inland Revenue or any person authorized under this Act of the Fertilizers Act to procure samples of food, drugs, agricultural fertilizers or other articles and to submit them for analysis;

(*f*) 'analyst' means public analyst and includes any member of the examining board appointed under the authority of this Act, and also the chief analyst and the assistant chief analyst. (Am. 1907).

(*g*) 'package' includes any box, bottle, basket, tin, barrel, case, receptacle, sack, bag, wrapper, or other thing in which any article is placed or packed. (Am. 1914).

3. *Adulterated food.*—Food shall be deemed to be adulterated within the meaning of this Act,—

(*a*) if any substance has been mixed with it so as to reduce or lower or injuriously affect its quality or strength;

(*b*) if any inferior or cheaper substance has been substituted wholly or in part for the article;

(*c*) si quelque principe important de l'article en a été entièrement ou partiellement enlevé;

(*d*) si l'article est une imitation ou s'il est vendu sous le nom d'un autre article;

(*e*) si l'article, soit manufacturé soit non manufacturé, consiste, totalement ou partiellement, de quelque substance animale ou végétale malsaine, décomposée, putréfiée ou corrompue;

(*f*) si l'article contient quelque addition d'ingrédients vénéneux, ou quelque ingrédient qui le rende nuisible à la santé des personnes ou des animaux qui le consommeraient;

(*g*) si sa force ou sa pureté tombent au-dessous de celles de l'article type, ou s'il s'y trouve des éléments constituants en quantité dépassant les limites de la variabilité tolérée, établies par le gouverneur en conseil, ainsi que ci-après prévu;

(*h*) s'il est coloré, ou enduit, ou poli, ou poudré de manière à en cacher le dommage, ou s'il est arrangé de manière à paraître meilleur ou de plus grande valeur qu'il ne l'est en réalité;

(*i*) dans le cas du lait ou du beurre, s'il provient d'un animal malade, ou d'un animal nourri avec des aliments malsains.

4. *Nuisibles à la santé.*—Les articles qui suivent vendus, offerts ou mis en vente sont censés avoir été frelatés de façon à être nuisibles à la santé:—

(*a*) *Lait.*—Du lait dont on a extrait quelque partie constituante importante, ou qui a été étendu d'eau, ou qui provient d'un animal malade ou nourri avec des aliments malsains;

(*b*) *Vinaigre.*—Du vinaigre, s'il y a été ajouté quelque acide minéral, ou s'il contient quelque sel soluble à base de cuivre ou de plomb, soit que cet acide minéral ou ce sel ait été ajouté pendant la fabrication ou après;

(*c*) *Liqueurs.*—Des liqueurs alcooliques ou fermentées, ou toutes autres liqueurs potables qui contiennent quelqu'une des substances mentionnées dans la première annexe de la présente loi, ou quelque substance ultérieurement ajoutée à cette liste par le gouverneur en conseil.

5. *Miel.*—Le fait de donner, sauf pour les nourrir, aux abeilles du sucre, de la glucose ou toute autre substance sucrée autre que celle que les abeilles recueillent à des sources naturelles, avec l'intention que les abeilles emploient cette substance à faire du miel, ou d'exposer quelqu'une de ces substances dans la même intention, est réputé une falsification volontaire du miel au sens de la présente loi.

6. *Engrais agricole.*—Tout engrais agricole vendu, offert ou mis en vente est réputé falsifié aux termes de la présente loi,—

(*a*) si son analyse chimique montre un déficit de plus d'un pour cent de quelqu'une des substances chimiques dont les pro-

(*e*) if any valuable constituent of the article has been wholly or in part abstracted;

(*d*) if it is an imitation of or is sold under the name of another article;

(*e*) if it consists wholly or in part of a diseased or decomposed or putrid or rotten animal or vegetable substance, whether manufactured or not;

(*f*) if it contains any added poisonous ingredient or any ingredient which may render such an article injurious to the health of persons or cattle consuming it;

(*g*) if its strength or purity falls below the standard, or its constituents are present in quantity not within the limits of variability fixed by the Governor in Council as hereinafter provided;

(*h*) if it is so coloured or coated or polished or powdered that damage is concealed, or if it is made to appear better or of greater value than it really is;

(*i*) in the case of milk or butter, if it is the produce of a diseased animal or of an animal fed upon unwholesome food.

4. *Injurious to health.*—The following articles sold, offered or exposed for sale shall be deemed to have been adulterated in a manner injurious to health:—

(*a*) *Milk.*—Milk, after any valuable constituent of the article has been abstracted therefrom, or water added thereto, or when it is the product of a diseased animal, or of an animal fed upon unwholesome food;

(*b*) *Vinegar.*—Vinegar, if any mineral acid or any soluble salt having copper or lead as its base has been added thereto, either during the process of manufacture or subsequently;

(*c*) *Liquors.*—Alcoholic, fermented or other potable liquors containing any of the article mentioned in the first schedule to this Act, or any article hereafter added thereto by the Governor in Council.

5. *Honey.*—Feeding bees with sugar, except for the purpose of being consumed by them as food, or with glucose or any sweet substance other than such bees gather from natural sources, with the intent that the same shall be used by the bees in the making of honey, or, excepting as aforesaid, the exposing of any such substance with such intent, shall be deemed a wilful adulteration of honey within the meaning of this Act.

6. *Agricultural fertilizer.*—Every agricultural fertilizer sold, offered or exposed for sale shall be deemed to be adulterated within the meaning of this Act,—

(*a*) if the chemical analysis thereof shows a deficiency of more than one per centum of any of the chemical substances the per-

portions doivent être spécifiées dans le certificat que la loi des engrais prescrit de représenter à l'inspecteur, si l'engrais est en vrac; ou,

(*b*) s'il contient une proportion de ces substances inférieure au minimum du percentage que, d'après les prescriptions de la dite loi, ces engrais doivent contenir.

7. *Drogues.*—Toute drogue est réputée frelatée dans le sens de la présente loi, si sa force, sa qualité ou sa pureté tombe au-dessous du type reconnu sous lequel elle est vendue, ou si lorsqu'elle est vendue, offerte ou mise en vente sous un nom,—

(*a*) reconnu par l'édition de 1898 de la pharmacopée britannique; ou,

(*b*) reconnu par une pharmacopée étrangère, telle que le *Codex Medicamentarius* de France, ou la pharmacopée des Etats-Unis, avec le nom de cette pharmacopée étiqueté d'une manière évidente sur la drogue; ou,

(*c*) qui n'est reconnu par aucune pharmacopée, mais qui se trouve dans quelque autre ouvrage faisant généralement autorité sur la matière médicale ou sur la chimie;

elle diffère du type de force, de qualité ou de pureté qui lui est attribué.

ANALYSE.

8. *Nomination des analystes.*—Le Gouverneur en conseil peut nommer une ou plusieurs personnes analystes publics pour analyser les substances alimentaires, les drogues, les engrais agricoles et autres produits, et il peut aussi nommer un directeur des analyses et un sous-directeur des analyses.

"2. Le Gouverneur en conseil peut assigner un analyste public à un district spécial et peut déterminer les limites territoriales de ce district.

"3. Le directeur des analyses, le sous-directeur des analyses et les autres analystes publics désignés par le Gouverneur en conseil sont attachés au personnel du ministère du Revenu de l'Intérieur, à Ottawa.

"4. Le sous-directeur des analyses a les mêmes pouvoirs que confère la présente loi au directeur des analyses. (Am. 1907).

9. *Examen d'aptitude.*—Nul analyste ne peut être nommé avant d'avoir subi un examen devant un conseil spécial d'examinateurs nommé par le gouverneur en conseil, ni avant d'avoir obtenu de ce conseil un certificat attestant qu'il est en état de remplir les devoirs attachés à l'emploi d'analyste.

10. *Examinateurs de substances alimentaires.*—Le gouverneur en conseil peut, sur proposition du conseil de toute cité, ville,

centages whereof are to be specified in the certificate required by the Fertilizers Act to be produced to the inspector if the agricultural fertilizer is in bulk, or, if not in bulk, required to be affixed to each barrel, box, sack or package containing any such fertilizer; or,

(*b*) if it contains less than the minimum percentage of such substances required by the said Act to be contained in such fertilizer.

7. *Drugs.*—Every drug shall be deemed to be adulterated within the meaning of this Act if its strength, quality or purity falls below the professed standard under which it is sold, or if, when offered or exposed for sale under or by a name,—

(*a*) recognized in the edition of 1898 of the British Pharmacopoeia; or,

(*b*) recognized in any foreign pharmacopoeia, such as *Le Codex Medicamentarius* in France, or the Pharmacopoeia of the United States, with the name of such pharmacopoeia plainly labelled upon it; or,

(*c*) which is not recognized in any pharmacopoeia, but is found in some generally recognized standard work on *materia medica* or chemistry;

it differs from the standard of strength, quality or purity laid down therein.

ANALYSIS.

8. *Appointment of analyst.*—The Governor in Council may appoint one or more persons as public analysts to analyse food, drugs, agricultural fertilizers, and other articles, and may also appoint a chief analyst and an assistant chief analyst.

"2. The Governor in Council may assign a public analyst to a particular district, and may fix the territorial limits of such district.

"3. The chief analyst, the assistant chief analyst, and such other public analyst as the Governor in Council directs, shall be attached to the staff of the Department of Inland Revenue at Ottawa.

"4. The assistant chief analyst shall have the same powers as are conferred by this Act upon the chief analyst." (Am. 1907.)

9. *Examining board.*—No analyst shall be appointed until he has undergone an examination before a special examining board appointed by the Governor in Council, nor until he has obtained from such board a certificate setting forth that he is duly qualified to perform the duties attached to the office of analyst.

10. *Food examiners to be appointed by Governor in Council.* The Governor in Council may, on the nomination of the council

comté ou township, ou autre municipalité, nommer pour cette municipalité des examinateurs de substances alimentaires, qui sont chargés d'examiner celles des substances alimentaires qui sont désignées par le gouverneur en conseil; mais cette nomination n'est pas faite à moins ni avant que la personne ainsi préposée n'ait subi un examen devant le conseil d'examinateurs ci-haut mentionné, et qu'elle n'ait obtenu de ce conseil un certificat attestant qu'elle a les capacités nécessaires pour faire cet exament et pour attester la nature et la pureté des substances alimentaires qu'elle est chargée d'examiner; et dans ce cas, son certificat d'analyse au sujet de ces substances a la même valeur et le même effet que ceux des analystes officiels nommés en vertu de la présente loi.

11. *Leur rémunération.*—Le gouverneur en conseil peut fixer la rétribution à payer à l'analyste en chef et aux autres analystes, et cette rétribution, qu'elle soit sous forme d'honoraires ou d'appointements, ou partie sous une forme et partie sous l'autre, peut leur être payée sur toutes sommes votées par le parlement pour les fins de la présente loi.

12. *Echantillons pour l'analyse.*—Les préposés du Revenu de l'intérieur, les inspecteurs et sous-inspecteurs des poids et mesures, et les inspecteurs et sous-inspecteurs agissant en vertu de la loi des inspections et de la vente, et chacun d'eux doivent, quand ils en sont requis par un règlement établi à cet effet par le Ministre, se procurer des échantillons des substances alimentaires, drogues ou engrais agricoles que l'on soupçonne d'être falsifiés ou frelatés et les soumettre aux analystes nommés en vertu de la présente loi pour être analysés par eux, et rien de contenu en la loi du service civil n'est censé empêcher les fonctionnaires qui rendent des services sous l'empire du présent article d'être payés un traitement supplémentaire ou une rémunération additionnelle pour ces services.

13. *Inspecteurs.*—Le conseil de toute cité, ville, comté ou village peut nommer un ou plusieurs inspecteurs des substances alimentaires, drogues et engrais agricoles; et ces inspecteurs ont, pour les fins de la présente loi, tous les pouvoirs par le présent conférés aux préposés du Revenu de l'intérieur; et tout inspecteur peut requérir tout analyste officiel d'analyser les échantillons de substances alimentaires, de drogues ou d'engrais agricoles qu'il a recueillis, pourvu que ces échantillons aient été obtenus conformément aux prescriptions de la présente loi.

2. *Analyses.*—Sur l'offre des honoraires fixés par le gouverneur en conseil pour l'analyse des articles de la catégorie dont il peut s'agir, l'analyste doit immédiatement faire l'analyse et en donner un certificat à l'inspecteur.

of any city, town, county or township, or other municipality, appoint food examiners for such municipality, to examine such articles of food as are determined by the Governor in Council; but such appointment shall not be made unless and untill the person so nominated has undergone an examination before the examining board herein above mentioned, and has obtained from such board a certificate setting forth that he is competent and duly qualified to examine and certify as to the nature and purity of the articles of food for the examination of which he is to be appointed, in which case his certificate of analysis with regard to such articles shall have like force and effect as those of the official analyst appointed under this Act.

11. *Remuneration.*—The Governor in Council may cause such remuneration to be paid to the Chief Analyst and to such analysts as he deems proper, and such remuneration, whether by fees or salary, or partly in one way and partly in the other, may be paid to them out of any sums voted by Parliament for the purposes of this Act.

12. *Procuring samples.*—The officers of Inland Revenue, the inspectors and assistant inspectors of weights and measures, and the inspectors and deputy inspectors acting under the Inspection and Sale Act, or any of them, shall, when required so to do by any regulation made in that behalf by the Minister, procure and submit samples of food, drugs or agricultural fertilizers suspected to be adulterated, or of the articles mentioned in the fourth and fifth schedules to this Act, suspected to be falsely marked, to be analysed by the analysts appointed under this Act, and nothing contained in the Civil Service Act shall be deemed to prevent officers rendering service under this section from receiving extra salary or additional remuneration for such services.

13. *Inspectors.*—The council of any city, town, county or village may appoint one or more inspectors of food, drugs and agricultural fertilizers and of the articles mentioned in the fourth and fifth schedules to this Act; and such inspectors shall, for the purposes of this Act, have all the powers by this Act vested in officers of Inland Revenue; and any such inspector may require any public analyst to analyse any samples of food, drugs, agricultural fertilizers or other articles collected by him, if such samples have been collected in accordance with the requirements of this Act.

2. *Analysis.*—Such analyst shall, upon tender of the fees fixed for the analysis of such class of articles by the Governor in Council, forthwith analyse the same and give the inspector a certificate of such analysis.

3. *Poursuites.*—Cet inspecteur peut poursuivre toute personne qui fabrique, vend, expose ou met en vente dans les limites de la cité, du comté, de la ville ou du village pour lequel ou pour laquelle il a été nommé inspecteur, tout article alimentaire, drogue ou engrais agricole que l'analyste officiel a certifié avoir été falsifié ou frelaté au sens de la présente loi.

4. Nonobstant toute autre disposition de la présente loi à l'égard de l'emploi des amendes, toutes les amendes qui sont imposées et recouvrées à la poursuite d'un inspecteur sont versées à la caisse des revenus de la cité, du comté, de la ville ou du village dont le conseil a nommé cet inspecteur, et elles peuvent être distribuées de la manière que le conseil de la cité, du comté, de la ville ou du village prescrit par un règlement.

14. *Comment se procurer des échantillons.*—Tout préposé peut se procurer des échantillons de substances alimentaires, de drogues ou d'engrais agricoles qui n'ont pas été déclarés exceptés de l'application de la présente loi, de toute personne qui a ces articles en sa possession dans le but de les vendre, ou qui en vend ou en expose en vente; et il peut se procurer ces échantillons soit en les achetant, soit en requérant cette personne de lui montrer et de lui permettre d'examiner tous les articles de cette espèce qu'elle a en sa possession, ainsi que le local ou les locaux où ils sont emmagasinés, et de lui donner des échantillons des mêmes articles sur paiement ou offre de leur valeur.

15. *Divisions des échantillons. Distribution des parties.*—Le fonctionnaire qui achète quelque article dans le but de le faire soumettre à l'analyse doit, après l'avoir acheté, prévenir sur-le-champ le vendeur ou son agent qui lui a vendu cet article, de son intention de le faire analyser par un analyste public; et hors les cas spéciaux pour lesquels peuvent être établies des dispositions spéciales par le Gouverneur en conseil, il divise l'article en trois parties, sur le lieu même, et marque chaque partie et la scelle ou en fait un paquet lié, selon la nature de l'objet.

2. Le fonctionnaire remet une de ces parties au vendeur ou à son agent, s'il en est par lui requis; il transmet une autre de ces parties au Ministre pour qu'elle soit soumise au directeur des analyses ou au sous-directeur des analyses, en cas d'appel; et il soumet la partie restante à l'analyste public que désigne le Ministre ou le sous-ministre, ou toute personne à ce dûment autorisée. (Am. 1907).

16. *Protection des échantillons.*—La personne de qui tout échantillon est obtenu sous le régime de la présente loi peut enjoindre au fonctionnaire l'obtenant d'apposer sur le contenant ou emballage renfermant la partie de l'échantillon que la présente loi lui prescrit de transmettre au Ministre, le nom et l'a-

3. *Prosecution.*—Such inspector may prosecute any person manufacturing, selling or offering or exposing for sale within the city, county, town or village for which he is appointed inspector, any article of food, drug, agricultural fertilizer or other article which has been certified by any public analyst to have been adulterated or falsely marked within the meaning of this Act.

4. Notwithstanding any other provision of this Act in respect of the disposition of penalties, all penalties imposed and recovered at the suit of any such inspector shall be paid into the revenue of the city, county, town or village by the council of which such inspector was appointed, and may be distributed in such manner as the council of such city, county, town or village by by-law directs.

14. *Procuring samples.*—Any officer may procure samples of food, drugs or agricultural fertilizers which have not been declared exempt from the provision of this Act, or samples of the articles mentioned in the fourth and fifth schedules to this Act, from any person who has such articles in his possession for the purpose of sale, or who sells or exposes the same for sale; and he may procure such samples either by purchasing the same or by requiring the person in whose possession they are to show him and allow him to inspect all such articles in his possession and the place or places in which such articles are stored and to give him samples of such articles on payment or tender of the value of such samples.

15. *Division of samples.*—The officer purchasing any article with the intention of submitting it to be analysed, shall, after the purchase has been completed, forthwith notify the seller or his agent selling the article, of his intention to have it analysed by a public analyst, and shall, except in specific cases, respecting which special provision may be made by the Governor in Council, divide the article into three parts, to be then and there separated, and each part to be marked and sealed up or fastened up, as its nature permits.

2. *Distribution of parts.*—Such officer shall deliver one of such parts to the seller or his agent if required by him so to do; he shall transmit another of such parts to the Minister for submission to the chief analyst or the assistant chief analyst in case of appeal; and he shall submit the remaining part to such public analyst as the Minister or the Deputy Minister or any person duly authorized in that behalf directs." (Am. 1907).

16. *Protection of samples.*—The person from whom any sample is obtained under this Act may require the officer obtaining it to annex to the vessel or package containing the part of the sample which he is hereby required to transmit to the Minister, the name and address of such person, and to secure with a seal

dresse de cette personne, et de sceller avec un cachet ou des cachets lui appartenant le contenant ou emballage renfermant cette partie de l'échantillon, et portant l'adresse, de telle manière qu'on ne puisse ouvrir le contenant ou l'emballage, ni enlever le nom et l'adresse, sans briser ces cachets; et le certificat de l'analyste en chef ou de l'adjoint de l'analyste en chef doit indiquer le nom et l'adresse ainsi apposés sur le contenant ou emballage, et attester que le contenant ou emballage n'a pas été ouvert, et que les cachets fixant au contenant ou à l'emballage le nom et l'adresse de cette personne n'avaient pas été rompus avant qu'il eût lui-même ouvert le contenant ou l'emballage pour faire l'analyse; et alors aucun certificat ne sera admissible comme preuve à moins de contenir une déclaration de ce genre ou une déclaration ayant le même effet. (Am. 1914).

17. *Analyse.*—Quand le préposé s'est procuré, par l'un ou l'autre des moyens susdits, des échantillons des articles à analyser, il les fait analyser par l'un des analystes nommés en vertu de la présente loi, et s'il paraît à l'analyste que l'échantillon est falsifié ou faussement marqué au sens de la présente loi, il certifie ce fait, spécifiant dans ce certificat, quand il s'agit d'un article alimentaire ou d'une drogue, si cette falsification est de nature à nuire à la santé de la personne consommant cet article; et le certificat ainsi donné est admis à titre de preuve dans toutes procédures intentées contre toute personne en vertu de la présente loi, sauf le droit de toute personne contre laquelle ces procédures sont intentées d'exiger la comparution de l'analyste, pour lui faire subir un contre-interrogatoire. (Am. 1914).

2. *Frais de l'analyse.*—Si après examen, l'analyste découvre que quelque échantillon est falsifié au sens de la présente loi, et s'il fait rapport à cet effet au Ministre, le Ministre peut, s'il le juge à propos, faire communiquer au vendeur le résultat de l'analyse et le requérir de payer, au taux spécifié dans la deuxième annexe de la présente loi, les frais faits pour obtenir et analyser cet échantillon; et si le vendeur refuse ou néglige de le faire, le Ministre peut alors instituer des procédures légales contre lui, ainsi que ci-après prévu.

18. *Appel à l'analyste en chef.*—Si le vendeur de l'article à l'égard duquel le certificat mentionné à l'article qui précède a été donné se croit lésé par là, il peut, dans les quarante-huit heures de la réception de la première notification de l'intention du préposé ou autre acheteur de le poursuivre,—soit que cette notification lui ait été faite par l'acheteur ou suivant les formes légales ordinaires,—signifier au préposé ou à l'acheteur, par écrit, qu'il veut en appeler de la décision de l'analyste au jugement de l'analyste en chef; et, dans ce cas, le préposé ou l'acheteur communique cette signification à l'analyste en chef; et ce dernier doit, avec

or seals, belonging to him, the vessel or package containing such part of the sample, and the address annexed thereto, in such manner that the vessel or package cannot be opened, or the name and address taken off without breaking such seals; and the certificate of the chief analyst or of the assistant chief analyst shall state the name and address so annexed to the vessel or package, that the vessel or package was not open and that the seals, securing to the vessel or package the name and address of such person, were not broken until such time as he opened the vessel or package for the purpose of making his analysis; and in such case no certificate shall be receivable in evidence unless there is contained therein such statement as above or a statement to the like effect. (Am. 1914).

17. *Analysis.*—When the officer has, by either of the means aforesaid, procured samples of the articles to be analysed, he shall cause the same to be analysed by one of the analysts appointed under this Act, and if it appears to the analyst that the sample is adulterated or falsely marked within the meaning of this Act, he shall certify such fact, stating in such certificate, in the case of an article of food or a drug, whether such adulteration is of a nature deemed to be injurious to the health of the person consuming the same; and the certificate so given shall be received as evidence in any proceedings taken against any person in pursuance of this Act, subject to the right of such person to require the attendance of the analyst, for the purpose of cross-examination. (Am. 1914).

2. *Expenses of analysis.*—Should any sample on examination be found by the analyst to be adulterated or falsely marked within the meaning of this Act, and be so reported to the Minister, the said Minister may, at his discretion, cause the result of the analysis to be communicated to the vendor, and require him to pay, at the rate specified in the second schedule to this Act, the cost of procuring and analysing the said sample; and should the said vendor refuse or neglect so to do, the Minister may then cause legal proceedings to be taken against him, as hereinafter provided.

18. *Appeal to Chief Analyst.*—If the vendor of the article respecting which the certificate referred to in the last preceding section is given, deems himself aggrieved thereby, he may, within forty-eight hours of the receipt of the first notification of the intention of the officer or other purchaser to take proceedings against him (whether such notification is given by the purchaser or by the ordinary process of law) notify the said officer or purchaser in writing that he intends to appeal from the decision of the analyst to the judgment of the Chief analyst; and in such case the officer or purchaser shall transmit such notification to the

toute la diligence convenable, analyser la partie de l'échantillon transmise au Ministre dans ce but, et adresser son rapport au dit Ministre; et la décision de l'analyste en chef est définitive, et son certificat a le même effet que le certificat de l'analyste mentionné en l'article qui précède.

FORME DE CERTIFICAT.

18A. Le certificat de l'analyste ou de l'analyste en chef peut être en la forme A dans la septième annexe de la présente loi. (Am. 1914).

19. *Rapport par les analystes au Ministre.*—Tout analyste nommé en vertu de la présente loi doit faire rapport, tous les trois mois, au Ministre, pour lui rendre compte du nombre d'échantillons de substances alimentaires, de drogues et d'engrais agricoles analysés par lui, en exécution de la présente loi, pendant le trimestre qui a précédé, et il spécifie la nature et l'espèce des falsifications découvertes dans ces substances, drogues et engrais agricoles; et tous ces rapports, ou des résumés de ces rapports, indiquant les noms des vendeurs ou des personnes de qui ces articles ont été obtenus, et des fabricants, s'ils sont connus, sont imprimés et publiés pour l'information du public, au moment et de la manière que le prescrit le dit Ministre, et ils sont aussi soumis au parlement sous forme d'annexe au rapport annuel du dit ministre.

FALSIFICATION.

20. *Prohibition.*—Sauf les exceptions ci-après prévues, nul ne peut fabriquer ni exposer, ni mettre en vente ni vendre aucune substance alimentaire, drogue ni engrais agricole qui est réputé falsifié ou frelaté au sens de la présente loi.

21. *Fausses marques*—Personne ne doit marquer, étamper, ni étiqueter aucun des articles ni aucun colis contenant quelqu'un des articles mentionnés dans la première colonne de l'annexe A de la présente loi, des mots "pur", "véritable", "naturel", ou de mots équivalents, ni ne peut vendre, ni offrir ni exposer en vente aucun article ou colis ainsi marqué, timbré ou étiqueté, à moins que cet article ou le contenu de ce colis ne soit pur dans le sens indiqué à la seconde colonne de la dite annexe.

22. *Vente illégale.*—Personne ne peut vendre, ni offrir ni exposer en vente, aucun article ni aucune substance pour usage domestique sous le nom ou la désignation contenue dans la première colonne de la cinquième annexe de la présente loi, à moins que cet article ou cette substance ne soit exempte de falsifica-

Chief Analyst, and the Chief Analyst, shall, with all convenient speed, analyse the part of the sample transmitted to the Minister for that purpose, and shall report thereon to the said Minister; and the decision of the Chief Analyst shall be final, and his certificate thereof shall have the same effect as the certificate of the analyst mentioned in the last preceding section.

FORM OF CERTIFICATE.

18A. *Form of Certificate.*—The certificate of the analyst or chief analyst may be in the form A in the seventh schedule to this Act. (Am. 1914).

19. *Analysts to report to Minister.*—Every analyst appointed under this Act shall report quarterly to the Minister the number of articles of food, drugs and agricultural fertilizers and other articles analysed by him under this Act during the preceding quarter, and shall specify the nature and kind of adulterations detected in such articles; and all such reports, or a synopsis of them, and the names of the vendors or persons from whom obtained, and of the manufacturers when known, shall be printed and published for the information of the public at such times and in such manner as the said Minister directs, and shall also be laid before Parliament as an appendix to the annual report of the said Minister.

ADULTERATION.

20. *Prohibition.*—Except as hereinafter provided, no person shall manufacture, sell, expose or offer for sale any food, drug or agricultural fertilizer which is adulterated within the meaning of this Act.

21. *False marking.*—No person shall mark, brand or label any article or any package containing any article mentioned in the first column of the fourth schedule to this Act, with the word *Pure*, *Genuine*, or any word equivalent thereto, or sell, or offer or expose for sale, any such article or package so marked, branded, stamped or labelled, unless such article or the contents of such package are pure within the meaning of the second column of the said schedule.

22. *Illegal sale.*—No person shall sell, or offer or expose for sale, any article or any substance for domestic use under the name or designation contained in the first column of the fifth schedule to this Act, unless such article or substance is free from

tion ou de mélange de matière étrangère, et à moins qu'il ne possède les éléments et caractères distinctifs dans la seconde colonne de la dite annexe.

23. *Lait écrémé.*—Du lait d'où la crème a été retirée par l'écrémage ou au moyen d'un séparateur ou d'un écrémoir peut être vendu comme lait écrémé, s'il est contenu dans des bidons qui portent en lettres d'au moins deux pouces de hauteur le mot "écrémé", et s'il est servi dans des mesures semblablement marquées; mais nul individu qui fournit du lait écrémé ne peut, à moins que cette qualité de lait n'ait été demandée par l'acheteur, invoquer le présent article comme moyen de défense ou d'atténuation en cas de poursuite pour violation de la présente loi.

24. *Exceptions.*—Nonobstant toutes dispositions de la présente loi, nulle substance alimentaire et nulle drogue ne peuvent être censées falsifiées dans les cas qui suivent:—

(*a*) *Mélanges.*—Si quelque matière ou ingrédient non nuisible à la santé a été ajouté à la substance alimentaire ou à la drogue parce que cette addition était nécessaire à sa production ou préparation comme article de commerce, en l'état convenable pour le transport ou pour la consommation, et non pour augmenter frauduleusement le volume, le poids ou la mesure de la substance alimentaire ou de la drogue ni pour en cacher la qualité inférieure, et si chaque colis, rouleau, paquet, ou vaisseau qui contient chacun de ces articles fabriqués, vendus ou mis en vente, porte une étiquette indiquant distinctement que c'est un mélange, en caractères apparents qui font partie intégrante du corps de l'étiquette, et porte aussi le nom et l'adresse du fabricant,—

(*b*) *Médecines brevetées.*—Si la substance alimentaire ou la drogue est un médicament dont le droit de propriété est garanti au propriétaire, ou si elle fait l'objet d'un brevet d'invention en vigueur, et si on la fournit dans l'état voulu par la description annexée au brevet;

(*c*) Si la substance alimentaire ou la drogue est inévitablement mélangée de quelque matière étrangère dans l'opération de sa récolte ou de sa préparation;

(*d*) Si des articles alimentaires non nuisibles à la santé des consommateurs sont mélangés, et vendus ou mis en vente comme composés, et si chaque colis, rouleau, paquet ou vaisseau qui contient ces articles porte une étiquette indiquant distinctement que ce sont des mélanges en caractères apparents qui font partie intégrante du corps de l'étiquette, et porte aussi le nom et l'adresse du fabricant.

25. *Exemptions.*—Le gouverneur en conseil peut en tout temps déclarer que certains articles ou préparations sont exceptés, totalement ou partiellement, des dispositions de la présente loi, et

adulteration or admixture of foreign matter and unless it possesses the composition and distinguishing characteristics stated in the second column of the said schedule.

23. *Skim milk.*—Milk from which the cream has been removed by skimming, or by a separator or creamer, may be sold as skim milk, if contained in cans bearing upon their exterior the word *Skimmed* in letters of not less than two inches in length and served in measures also similarly marked: Provided that any person supplying such skim milk, unless such quality of milk has been asked for by the purchaser, shall not be protected by this section from any prosecution on account of any violation of this Act.

24. *Exceptions.*—Notwithstanding anything in this Act contained, no food or drug shall be deemed to be adulterated in the following cases:—

(*a*) *Mixtures.*—Where any matter or ingredient not injurious to health has been added to the food or drug, in case such matter or ingredient is required for the production or preparation thereof as an article of commerce in a state fit for carriage or consumption, if the same has not been fraudulently added to such food or drug for the purpose of increasing the bulk, weight or measure thereof, or to conceal its inferior quality, and each package, roll, parcel or vessel containing every such article of food or drug manufactured, sold or exposed for sale is distinctly labelled as a mixture in conspicuous characters forming an inseparable part of a general label thereon bearing the name and address of the manufacturer;

(*b*) *Patent medicines.*—Where the food or drug is a proprietary medicine or is the subject of a patent in force, and is supplied in the state required by the specification of the patent;

(*c*) Where the food or drug is unavoidably mixed with some extraneous matter in the process of collecting or preparation;

(*d*) *Compounds.*—Where any articles of food not injurious to the health are mixed together as a compound, and sold or offered for sale as such, with each package, roll, parcel or vessel containing such articles distinctly labelled as a mixture in conspicuous characters forming an inseparable part of a general label bearing the name and address of the manufacturer.

25. *Exemptions.*—The Governor in Council may, from time to time, declare certain articles or preparations exempt in whole or in part from the provisions of this Act, and may add to the

il peut ajouter à la première annexe de la présente loi toute autre substance ou ingrédient, lorsqu'il juge cette addition nécessaire dans l'intérêt public; et tout arrêté en conseil à cet effet est publié dans la *Gazette du Canada* et est exécutoire à l'expiration de trente jours après la date de cette publication.

26. *Types de qualité.*—Le gouverneur en conseil doit, de temps à autre, faire préparer et publier des listes des articles, mélangés ou composés qui ont été exceptés des dispositions de la présente loi conformément à l'article qui précède, et il doit aussi au besoin, établir un type de qualité pour toute substance alimentaire, drogue ou mélange, dont le type n'est établi par aucune pharmacopée ni aucun ouvrage faisant autorité ainsi qu'il a été dit ci-dessus, et déterminer les limites de la variabilité tolérée dans tout tel article; et les arrêtés en conseil rendus à ce sujet sont publiés dans la *Gazette du Canada* et sont exécutoires à compter de trente jours après leur publication.

LAIT ET SES PRODUITS.

1. Le *lait*, à moins de spécifications contraires, est le produit frais, sain et intact, obtenu par la traite complète et ininterrompue, dans des conditions sanitaires convenables, d'une ou plusieurs vaches saines, convenablement nourries et entretenues, à l'exclusion de celui obtenu pendant les quinze jours précédant et suivant la parturition. Il doit contenir au moins trois et un quart (3.25) p.c. de matières grasses et au moins huit et demi (8.50) p. c. de matières solides autres que matières grasses ou butyreuses.

2. Le *lait écrémé* est celui dont on a enlevé une partie de la crème ou toute la crème. Ce lait contient au moins huit et demi (8.50) p.c. de matières solides autres que matières grasses.

3. Le *lait pasteurisé* est le lait chauffé au-dessous du degré d'ébullition, mais suffisamment, cependant, pour détruire la plupart des organismes actifs présents. Il est ensuite immédiatement refroidi à 45o F., ou plus bas, et tenu à une température ne s'élevant pas plus haut que 45o F., jusqu'à livraison au consommateur, alors qu'il ne devra pas contenir plus que 10,000 bactéries par centimètre cube.

4. Le *lait stérilisé* est le lait qui a été chauffé à la température de l'eau bouillante, ou plus, durant le temps nécessaire pour détruire tous les organismes présents, et il doit être livré au consommateur dans une condition stérile. Le lait stérilisé ne sera vendu ou offert en vente que dans des récipients hermétiquement fermés portant ces mots: "Ce lait devra être consommé dans les douze (12) heures qui suivront l'ouverture du contenant."

5. Le lait vendu comme *lait certifié* devra être conforme aux conditions suivantes:

first schedule to this Act any article or ingredient, the addition of which is by him deemed necessary in the public interest; and every order in council in that behalf shall be published in the *Canada Gazette*, and shall take effect at the expiration of thirty days from the date of such publication.

26. *Standards of quality.*—The Governor in Council shall, from time to time, cause to be prepared and published, lists of the articles, mixtures or compounds declared exempt from the provisions of this Act, in accordance with the last preceding section, and shall also, from time to time, establish a standard of quality for, and fix the limits of variability permissible in any article of food or drug or compound, the standard of which is not established by any such pharmacopoeia or standard work as is hereinbefore mentioned; and the orders in council fixing the same shall be published in the *Canada Gazette*, and shall take effect at the expiration of thirty days after the publication thereof.

MILK AND ITS PRODUCTS.

1. *Milk*, unless otherwise specified, is the fresh, clean and unaltered product, obtained by the complete, uninterrupted milking, under proper sanitary conditions, of one or more healthy cows, properly fed and kept, excluding that obtained within two weeks before and one week after calving, and contains not less than three and one quarter (3.25) per cent, of milk fat, and not less than eight and one half (8.50) per cent of milk solids, other than fat.

2. *Skim Milk* is milk from which a part or all of the cream has been removed, and contains not less than eight and one half (8.50) per cent of non-fat milk solids.

3. *Pasteurized Milk* is milk that has been heated below boiling, but sufficiently to kill most of the active organisms present; and immediately cooled to 45o F., or lower, and kept at a temperature not higher than 45o F., until delivered to the consumer, at which time it shall not contain more than 10,000 bacteria per cubic centimetre.

4. *Sterilized Milk* is milk that has been heated at the temperature of boiling water, or higher, for a length of time sufficient to kill all organisms present; and must be delivered to the consumer in a sterile condition. Sterilized milk shall not be sold or offered for sale, except in hermetically closed containers bearing the words "This milk should be used within twelve (12) hours after opening the container."

5. *Certified Milk.* Milk sold as certified milk shall comply with the following requirements:—

(*a*) Il devra provenir de vaches ayant subi deux fois par année l'épreuve de la tuberculine, et n'ayant donné aucune réaction.

(*b*) Il ne devra pas contenir plus que 10,000 bactéries par centimètre cube, de juin à septembre, et pas plus que 5,000 bactéries par centimètre cube d'octobre à mai inclusivement.

(*c*) Il ne devra contenir aucune trace de sang, de pus ou d'organismes susceptibles de provoquer des maladies.

(*d*) Il ne devra avoir aucune odeur ni aucun goût désagréable.

(*e*) Il ne devra avoir été ni pasteurisé ni stérilisé, ni contenir aucun préservatif chimique.

(*f*) Il devra avoir été refroidi à 45o F., dans l'intervalle d'une demi-heure après la traite, et tenu à cette température jusqu'à livraison au consommateur.

(*g*) Il devra contenir 12 à 13 p.c. de matières solides du lait, dont au moins 3.5 p.c. sont des matières grasses.

(*h*) Il devra provenir d'une ferme dont le troupeau est inspecté mensuellement par le vétérinaire, et dont les employés sont examinés tous les mois par un médecin.

6. Le *lait évaporé* est le lait dont une partie considérable d'eau a été évaporée. Il contient au moins 26 p.c. de matières solides du lait, et au moins 7,20 p.c. de matières grasses.

7. Le *lait condensé* est le lait dont une partie considérable d'eau a été évaporée, et auquel du sucre a été ajouté. Il contient au moins 28 p. c. de matières solides du lait, et au moins 7.7 p.c. de matières grasses.

8. Le *lait condensé et écrémé* est le lait dont une partie considérable d'eau a été évaporée, avec ou sans addition de sucre.

9. Le *lait de beurre* est le produit qui reste après que le beurre a été séparé, par l'opération habituelle du barattage, de la crème venue à maturité; ou un produit semblable, obtenu par le traitement convenable du lait écrémé.

10. Le *lait de chèvre*, le *lait de brebis*, etc., sont les sécrétions lactées, fraîches et saines, sans colostrum, obtenues par la traite complète d'animaux sains autres que les vaches, et convenablement nourris et entretenus. Ces laits doivent être conformes aux noms des animaux d'où ils proviennent.

CREME.

1. La *crème* est la partie du lait, riche en matières butyreuses, qui remonte, au repos, à la surface du lait, ou qui en est détachée par la force centrifuge. Cette crème doit être fraîche et propre et contenir (sauf les dispositions contraires) au moins dix-huit (18) p.c. de matières grasses du lait.

2. Quand le lait est garanti contenir un autre pour-cent de matières grasses du lait que dix-huit (18) p. c., il devra être conforme à cette garantie.

3. La crème ne doit contenir aucune trace de gélatine, sucrate

(*a*) It shall be taken from cows semi-annually subjected to the tuberculin test, and found without reaction.

(*b*) It shall contain not more than 10,000 bacteria per cubic centimetre from June to September; and not more than 5,000 bacteria per cubic centimetre from October to May, inclusive.

(*c*) It shall be free from blood, pus, or disease producing organisms.

(*d*) It shall be free from disagreable odour or taste.

(*e*) It shall have undergone no pasteurization or sterilization, and be free from chemical preservatives.

(*f*) It shall have been cooled to 45o F., within half an hour after milking, and kept at that temperature until delivered to the consumer.

(*g*) It shall contain 12 to 13 per cent of milk solids, of which at least 3.5 per cent is fat.

(*h*) It shall be from a farm whose herd is inspected monthly by the veterinarian, and whose employees are examined monthly by a physician.

6. *Evaporated Milk* is milk from which a considerable portion of water has been evaporated, and contains not less than 26 per cent of milk solids, and not less than 7.20 per cent of milk fat.

7. *Condensed Milk* is milk from which a considerable portion of water has been evaporated, and to which sugar has been added. It contains not less than 28 per cent of milk solids, and not less than 7.7 per cent of milk fat.

8. *Condensed Skim Milk* is skim milk from which a considerable portion of water has been evaporated, with or without the addition of sugar.

9. *Buttermilk* is the product that remains when butter is separated from ripened cream, by the usual churning processes; or a similar product, made by appropriate treatment of skimmed milk.

10. *Goat's Milk, Ewe's Milk, &c.*, are the fresh, clean, lacteal secretions, free from colostrum, obtained by the complete milking of healthy animals other than cows, properly fed and kept, and conform in name to the species of animals from which they are obtained.

CREAM.

1. *Cream* is that portion of milk, rich in milk fat, which rises to the surface of milk on standing, or is separated from it by centrifugal force, is fresh and clean, and contains (unless otherwise specified) not less than eighteen (18) per cent of milk fat.

2. *When guaranteed to contain* another percentage of milk fat than eighteen (18) per cent, it must conform to such guarantee.

3. *Cream* must be entirely free from gelatine, sucrate of

de chaux, gommes ou autres substances ajoutées dans le but de donner de la consistance,de la densité ou une épaisseur apparente à l'article.

4. La *crème évaporée, fouettée ou condensée*, ou toute autre préparation offerte comme crème spéciale, excepté la crème à la glace, doit être conforme à la définition de la crème et doit contenir au moins vingt-cinq (25) p.c. de matières grasses du lait.

MATIERES GRASSES DU LAIT OU MATIERES BUTYREUSES.

1. Les *matières grasses du lait* ou matières butyreuses en sont les matières riches en beurre. Les matières doivent avoir un titre Reichert-Meisl d'au moins vingt-quatre (24) et une gravité spécifique d'au moins 0.905 $\left\{\frac{40°C.}{40°C.}\right.$

BEURRE.

1. Le *beurre* est le produit pur et sans rancidité obtenu en réunissant en une seule masse, et de quelque manière que ce soit, les matières grasses du lait frais ou venu à maturité ou de la crème, matières contenant aussi une petite partie des constituants du lait, avec ou sans sel. Il doit contenir au moins quatre-vingt-deux et cinq dixièmes (82.5) p. c. de matières butyreuses, et au plus (16) p. c. d'eau. Le beurre peut aussi contenir des matières colorantes d'un caractère inoffensif.

FROMAGE.

1. Le *fromage* est le produit sain, compact et mûri provenant du lait ou de la crème, par coagulation de la caséine avec de la présure ou de l'acide lactique, avec ou sans addition de ferments et d'assaisonnements. Il contient, à l'état sec, au moins quarante-cinq (45) p.c. de matières grasses du lait. Le fromage peut aussi contenir des matières colorantes d'un caractère inoffensif.

2. Le *fromage de lait écrémé* est le produit sain, compact et mûri provenant du lait écrémé, par coagulation de la caséine avec de la présure ou acide lactique, avec ou sans addition de ferments et d'assaisonnements.

3. Les *fromages de chèvre, de brebis*, etc., sont les produits sains et mûris provenant des laits des animaux spécifiés, par coagulation de la caséine de ces laits avec de la présure ou de l'acide lactique, avec ou sans addition de ferments et d'assaisonnements.

CREMES A LA GLACE.

1. La *crème à la glace* est un produit congelé fait avec de la crème et du sucre, avec ou sans substances inoffensives aromati-

lime, gums, or other substances added with a view to give density, consistency or apparent thickness to the article.

4. *Cream* must contain no preservatives of any kind, nor any colouring matter, other than is natural to milk.

5. *Evaporated Cream, Clotted Cream, Condensed Cream* or any other preparation purporting to be a special cream, except ice-cream, must conform to the definition of cream, and must contain at least twenty-five (25) per cent of milk fat.

MILK FAT OR BUTTER FAT.

1. *Milk Fat, Butter Fat*, is the fat of milk and has a Reichert-Meissl number not less than twenty-four (24) and a specific gravity not les than 0.905 $\left\{\frac{40°C.}{40°C.}\right.$

BUTTER

1. *Butter*, is the clean non-rancid product made by gathering in any manner the fat of fresh or ripened milk or cream into a mass, which also contains a small portion of the other milk constituents, with or without salt, and contains not less than eighty-two and five-tenths (82.5) per cent milk fat, and not more than sixteen (16) per cent of water. Butter may also contain added colouring matter of harmless character .

CHEESE.

1. *Cheese* is the sound, solid, and ripened product made from milk or cream by coagulating the caseine thereof with rennet or lactic acid, with or without the addition of ripening ferments and seasoning, and contains, in the water-free substance, not less than forty five per cent of milk fat. Cheese may also contain added colouring matter of harmless character.

2. *Skim Milk Cheese* is the sound, solid and ripened product made from skim milk by coagulating the caseine thereof with rennet or lactic acid, with or without the addition of ripening ferments and seasoning.

3. *Goat's Milk Cheese, Ewe's Milk Cheese, &c.*, are the sound, ripened products made from the milks of the animals specified, by coagulating the caseine thereof with rennet or lactic acid with or without the addition of ripening ferments and seasoning

ICE CREAM.

1. *Ice-Cream* is a frozen product, made from cream and sugar with or without harmless flavouring and colouring materials and

santes et colorantes, et avec ou sans gélatine, gomme adragante, ou autres substances épaississantes inoffensives, en quantités ne dépassant pas deux (2) pour cent. Cette crème doit contenir au moins (14) p.c. de matières grasses du lait.

2. La *glace aux fruits* est un produit congelé, obtenu comme la crème à la glace, mais contenant des fruits sains, propres et mûrs. Cette glace doit contenir au moins douze (12) p.c. de matières grasses du lait.

3. La *glace aux amandes* est un produit congelé obtenu comme la crème à la glace, mais contenant des amandes saines et n'ayant aucun goût de rancidité. Cette glace doit contenir au moins douze (12) p.c. de matières grasses du lait.

PRODUITS DIVERS TIRÉS DU LAIT.

1. Le *petit-lait* est le résidu du lait, après enlèvement des matières grasses et de la caséine du lait pour la fabrication du fromage.

2. Le *kumiss* est le produit obtenu par la fermentation alcoolique du lait de vache ou de jument.

3. La *poudre lactée* est la poudre soluble obtenue du lait. Cette poudre contient, sauf les dispositions contraires, au moins quatre-vingt-quinze (95) p.c. de matières solides du lait, et au moins vingt-six (26) p.c. de matières grasses du lait.

4. La *poudre de lait écrémé ou séparé* est la poudre soluble obtenue du lait écrémé. Cette poudre contient au moins quatre-vingt-quinze (95) p.c. de matières solides du lait.

Les étalons ou types réglementaires ci-dessus décrits seront en vigueur le 12e jour de décembre, 1910.

27. *Pouvoirs du gouverneur en conseil.*—Le gouverneur en conseil peut ajouter tous articles aux annexes quatre et cinq de la présente loi, et établir leur degré de pureté, et il peut aussi retrancher tous articles de ces annexes; et l'arrêté en conseil à cet effet est publié dans quatre numéros successifs de la *Gazette du Canada*, après quoi il a le même effet qui si ces articles eussent été inclus dans les annexes primitives.

2. Tout arrêté en conseil fait en vertu des dispositions du présent article n'est exécutoire que jusqu'à la fin de la session alors suivante du parlement.

28. *Saisie.*—Lorsqu'un analyste fait rapport que quelque substance alimentaire, drogue ou engrais agricole est falsifié au sens de la présente loi, le Ministre peut, s'il le juge à propos, ordonner que cet article et tous les autres articles de même espèce et qualité qui étaient dans le même lieu que l'article analysé, lorsque celui-ci a été analysé, soient saisis par un préposé des douanes ou du Revenu de l'intérieur, et détenus par lui jusqu'à ce qu'une analyse d'échantillons du tout ait été faite par l'analyste en chef,

with or without gelatine gum tragacanth, or other harmless stiffening materials, in amount less than two (2) per cent; and contains not less than fourteen (14) per cent of milk fat.

2. *Fruit Ice-Cream* is a frozen product, made as described under ice-cream, but containing sound, clean and mature fruit. It must contain not less than twelve (12) per cent of milk fat.

3. *Nut Ice-Cream*, is a frozen product, made as described under ice-cream, but containing sound, non-rancid nuts. It must contain not less than twelve (12) per cent of milk fat.

MISCELLANEOUS MILK PRODUCTS.

1. *Whey* is the product remaining after the removal of fat and caseine from milk in the process of cheese-making.

2. *Kumiss* is the product made by the alcoholic fermentation of mare's milk or cow's milk.

3. *Milk Powder* is the soluble powder product made from milk and contains, unless otherwise specified, not less than ninety-five (95) per cent of milk solids, and not less than twenty-six (26) per cent of milk fat.

4. *Skim Milk Powder, Separated Milk Powder* is the soluble powder product made from skim milk, and contains not less than ninety-five (95) per cent of milk solids.

The standards above defined take effect on the 12th day of December 1910.

27. *Powers of Governor in Council.*—The Governor in Council may add any articles to the fourth and fifth schedules to this Act, and determine the standard of purity therefor, and may remove any articles from the said schedules; and the order in council in that behalf shall be published in four successive issues of the *Canada Gazette*, after which it shall have like effect as if such articles had been included in the said original schedules.

2. Any order in council made under the provisions of this section shall have effect only until the end of the next succeeding session of Parliament.

28. *Seizure.*—Whenever any article of food, any drug, or any agricultural fertilizer is reported by any analyst as being adulterated within the meaning of this Act, the Minister may, if he thinks fit, order such article, and all other articles of the same kind and quality which were in the same place at the time the article analysed was obtained, to be seized by any officer of Customs or Inland Revenue, and detained by him until an analysis of samples of the whole is made by the Chief Analyst.

29. *Confiscation.*—Si l'analyste en chef fait rapport au Ministre que la totalité ou partie de ces articles est falsifiée, le Ministre peut déclarer ces articles ou la partie de ces articles que l'analyste en chef rapporte comme falsifiée confisquée à la Couronne; et il est ensuite disposé de ces articles de la manière que l'ordonne le Ministre.

SUCRE ET SIROP D'ÉRABLE.

29A. Personne ne doit fabriquer pour la vente, tenir en vente, offrir ou exposer en vente, ou vendre quelque article alimentaire qui ressemble à du sucre d'érable ou du sirop d'érable ou qui en est une imitation, ou qui est composée en partie de sucre d'érable ou du sirop d'érable purs.

2. Tout sucre d'érable ou sirop d'érable qui n'est pas conforme à l'étalon prescrit par la sixième annexe de la présente loi, ou, si cet étalon est changé par le Gouverneur en conseil, conforme à l'étalon que le Gouverneur en conseil peut prescrire de temps à autre, est réputé falsifié au sens de la présente loi.

3. Le mot "érable" ne doit pas être employé, soit isolément soit en combinaison avec tout autre mot ou tous autres mots, ou lettre ou lettres, sur l'étiquette ou autre marque, vignette ou légende d'un contenant renfermant quelque article alimentaire ou sur quelque article alimentaire même qui n'est pas du sucre d'érable pur ou du sirop d'érable pur, et tout article alimentaire étiqueté ou marqué en contravention du présent paragraphe doit être considéré falsifié au sens de la présente loi. (Am. 1915).

MIEL.

30. Le mot "miel" ne doit pas être employé, soit isolément soit en combinaison avec tout autre mot ou tous autres mots, sur l'étiquette ou autre marque, vignette ou légende de quelque emballage contenant quelque article alimentaire qui est ou qui ressemble à du miel, et qui n'est pas du pur miel fait par des abeilles; et nul colis contenant quelque article alimentaire qui n'est pas du miel pur, ne doit être étiqueté ou marqué de manière à faire vraisemblablement croire aux personnes que c'est du miel pur, et tout article alimentaire étiqueté ou marqué en contravention du présent article doit être considéré falsifié au sens de la présente loi.

2. Les dispositions du présent article ne s'appliquent à aucun sirop ou composé fabriqué et vendu pour des fins médicinales seulement.

La présente loi entrera en vigueur le premier jour de janvier mil neuf cent quinze. (Am. 1914).

ETALON.

Le miel est entièrement le produit du travail des abeilles absor-

29. *Forfeiture.*—If the Chief Analyst reports to the Minister that the whole or any part of such articles are adulterated, the Minister may declare such articles, or so much thereof as the Chief Analyst reports as being adulterated, to be forfeited to the Crown; and such articles shall thereupon be disposed of as the Minister directs.

MAPLE SUGAR OR SYRUP.

29A. No person shall manufacture for sale, keep for sale, offer or expose for sale, or sell, any article of food resembling or being an imitation of maple sugar or maple syrup, or which is composed partly of maple sugar or maple syrup, and which is not pure maple sugar or pure maple syrup.

2. Any maple sugar or maple syrup which is not up to the standard prescribed by the sixth schedule to this Act, or, if such standard is changed by the Governor in Council, to such standard as the Governor in Council may from time to time prescribe, shall be deemed to be adulterated within the meaning of this Act.

3. The word "maple" shall not be used, either alone or in combination with any other word or words, or letter or letters, on the label or other mark, illustration or device on a package containing any article of food, or on any article of food itself, which is not pure maple sugar or pure maple syrup, and any article of food labelled or marked in violation of this subsection shall be deemed to be adulterated within the meaning of this Act. (Am. 1915).

HONEY.

30. The word "honey" shall not be used either alone or in combination with any other word or words on the label or other mark, illustration or device on any package containing any article of food which is or which resembles honey and which is not pure honey made by bees, and no package containing any article of food which is not pure honey shall be labelled or marked in such a manner as is likely to make persons believe it is pure honey, and any article of food labelled or marked in violation of this section shall be deemed to be adulterated within the meaning of this Act.

2. The provisions of this section shall not apply to any syrup or compound manufactured and sold for medical purposes only.

This Act shall come into force on the first day of January 1915. (Am. 1914).

STANDARD.

Honey is entirely the product of the work of bees operating

bant le nectar des fleurs et autres exudations saccharines des plantes; et contient au plus vingt-cinq (25) pour cent d'eau; au plus huit (8) pour cent de saccharose (sucre de canne); au plus vingt-cinq centièmes (0.25) de un pour cent de cendres; et au plus soixante (60) pour cent de sucre interverti.

L'étalon ci-dessus défini prendra effet le 25 Novembre 1912.

OFFENSES ET PÉNALITÉ.

31. *Falsification volontaire.*—Quiconque falsifie sciemment quelque article alimentaire ou drogue ou ordonne à quelque autre personne de le faire, encourt,—

(*a*) *Nuisible ou non nuisible.*—Si cette falsification est, au sens de la présente loi, réputée nuisible à la santé, pour une première contravention, une amende n'excédant pas cinq cents dollars et les frais ou six mois d'emprisonnement, ou les deux peines à la fois, et d'au moins cinquante dollars et les frais; et pour chaque récidive, une amende n'excédant pas mille dollars et les frais, ou un an d'emprisonnement, ou les deux peines à la fois, et d'au moins cent dollars et les frais;

(*b*) si cette falsification n'est pas, au sens de la présente loi, réputée nuisible à la santé, une amende n'excédant pas deux cents dollars et les frais ou trois mois d'emprisonnement ou les deux peines à la fois, et d'au moins vingt-cinq dollars et les frais; et pour chaque récidive, une amende n'excédant pas cinq cents dollars et les frais ou six mois d'emprisonnement, ou les deux peines à la fois et d'au moins cent dollars et les frais. (Am. 1915).

32. *Vente d'articles falsifiés.*—Quiconque directement ou par son agent vend, ou expose ou met en vente, quelque substance alimentaire ou drogue falsifiée au sens de la présente loi, encourt,—

(*a*) *Si la falsification est nuisible, ou non-nuisible. Peine.*—Si cette falsification est, au sens de la présente loi, réputée nuisible à la santé, pour la première contravention, une amende n'excédant pas deux cents dollars et les frais, ou trois mois d'emprisonnement, ou les deux peines à la fois, et d'au moins cinquante dollars et les frais; et pour chaque récidive, une amende n'excédant pas cinq cents dollars et les frais, ou six mois d'emprisonnement ou les deux peines à la fois, et d'au moins cinquante dollars et les frais;

(*b*) Si cette falsification n'est pas, au sens de la présente loi, réputée nuisible à la santé, une amende, pour la première contravention, n'excédant pas cent dollars et les frais, ou trois mois d'emprisonnement, ou les deux peines, et d'au moins vingt-cinq dollars et les frais; et pour chaque récidive, une amende ne dépassant pas deux cents dollars et les frais, ou six mois d'empri-

upon the Nectar of Flowers, and other saccharine exudations of plants: and contains not more than twenty-five (25) per cent of water; not more than eight (8) per cent of Sucrose (Cane Sugar); not more than twenty-five hundredths (0.25) of one per cent of ash; and not less than sixty (60) per cent of Invert Sugar.

The Standard above defined takes effect on the 25th November, 1912.

OFFENCES AND PENALTIES.

31. *Wilful adulteration.*—Every person who wilfully adulterates any article of food or any drug, or orders any other person so to do, shall

(*a*) *Injurious. Penalty.*—If such adulteration is, within the meaning of this Act, deemed to be injurious to health, for a first offence, incur a penalty not exceeding five hundred dollars and costs, or six months' imprisonment, or both, and not less than fifty dollars and costs; and for each subsequent offence, a penalty not exceeding one thousand dollars and costs, or one year's imprisonment, or both, and not less than one hundred dollars and costs;

(*b*) *Not injurious. Penalty.*—If such adulteration is, within the meaning of this Act, deemed not to be injurious to health, incur a penalty not exceeding two hundred dollars and costs, or three months' imprisonment, or both, and not less than twenty-five dollars and costs, and for each subsequent offence, a penalty not exceeding five hundred dollars and costs, or six months' imprisonment, or both, and not less than one hundred dollars and costs. (Am. 1915).

32. *Sale of adulterated articles.*—Every person who, by himself or his agent, sells, offers for sale, or exposes for sale, any article of food or any drug which is adulterated within the meaning of this Act shall

(a) *Injurious Penalty.—If* such adulteration is, within the meaning of this Act, deemed to be injurious to health, for the first offence incur a penalty not exceeding two hundred dollars and costs, or three months' imprisonment, or both, and not less than fifty dollars and costs; and for each subsequent offence a penalty not exceeding five hundred dollars and costs, or six months' imprisonment, or both, and not less than fifty dollars and costs;

(*b*) *Not injurious. Penalty.*—If such adulteration is, within the meaning of this Act, deemed not to be injurious to health, incur, for the first offence, a penalty not exceeding one hundred dollars and costs, or three months in jail, or both, and not less than twenty-five dollars and costs, and for each subsequent offence a penalty not exceeding two hundred dollars and costs, or

sonnement, ou les deux peines, et d'au moins cinquante dollars et les frais. (Am. 1915).

33. *Connaissance de l'accusé. Libéré de la poursuite, mais passible des frais.*—Mais si l'accusé prouve à la cour devant laquelle il est traduit, qu'il avait acheté l'article en question comme étant de même nature, substance et qualité que l'article à lui demandé par l'acheteur ou par l'inspecteur, avec garantie à cet effet par écrit,—laquelle garantie, rédigée suivant la formule de la troisième annexe de la présente loi, est produite au procès,—et qu'il a vendu l'article tel que lui-même l'avait acheté, et qu'il n'aurait pu, en usant de raisonnable diligence, en connaître la falsification,—il est libéré de la poursuite, mais il est passible des frais faits par le poursuivant, à moins qu'il ne lui ait donné dûment avis de son intention d'invoquer les moyens de défense ci-dessus, et qu'il n'ait appelé la personne de qui il a acheté le dit article dans la cause, ainsi que le prescrit la présente loi, auquel cas le Ministre peut, ainsi qu'il y est ci-dessus autorisé, déclarer que cet article ou que la portion de cet article que l'analyste en chef a déclaré avoir été falsifiée soit confisqué à la Couronne.

34. *Assignation d'un tiers.*—La personne qui présente ces moyens de défense peut, sur sa déclaration faite sous serment qu'elle a acheté l'article de bonne foi et ainsi qu'il est prévu en l'article qui précède, obtenir une sommation pour appeler cette tierce personne dans la cause; et la cour entend en même temps toutes les parties et prononce sur le mérite entier de la cause, non seulement à l'égard de la personne en premier lieu accusée mais aussi à l'égard de la tierce partie ainsi mise en cause.

35. *Refus de donner un échantillon.*—Si la personne qui a en sa possession des substances alimentaires, des drogues ou de engrais agricoles qui n'ont pas été déclarés exempts des dispositions de la présente loi, ou quelques-uns des articles mentionnés dans la quatrième et la cinquième annexe de la présente loi, ou son agent, ou son serviteur, refuse ou manque d'admettre le préposé, ou refuse ou omet de lui montrer la totalité ou partie de ces articles, ou l'endroit où ils sont emmagasinés, ou de permettre au préposé de les examiner, ou de lui en donner des échantillons, ou de lui fournir la lumière et l'aide dont il a besoin, lorsqu'il le demande en conformité de la présente loi, est passible de la même amende que s'il avait volontairement vendu ou mis en vente des articles falsifiés ou frelatés.

36. *Possession illégale.*—Tout fabricant, marchand, ou débi-

six months in jail, or both, and not less than fifty dollars and costs. (Am. 1915).

33. *Want of knowledge.*—If the person accused proves to the court before which any prosecution is brought for selling, offering or exposing for sale any article of food or drug that has been adulterated, that he purchased the article in question for and as an article of the same nature, substance and quality as that demanded of him by the purchaser or inspector, with a warranty to that effect according to the form in the third schedule to this Act, and produces the said warranty at the trial had on such prosecution, and also proves that he sold it in the same state as when he purchased it, and that he could not, with reasonable diligence, have obtained knowledge of its adulteration, he shall be discharged from such prosecution, but shall be 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 and has called the party from whom he purchased the said article into the case as provided for in this Act, in which case the Minister may, as hereinbefore authorized, declare such article, or so much thereof as the Chief Analyst reports as being adulterated to be forfeited to the Crown.

34. *Calling in third party.*—If the person presenting such defence shall, upon his sworn declaration that he purchased the article in good faith and as provided for in the last preceding section, obtain a summons to call such third party into the case, the court shall at the same time hear all the parties and decide upon the entire merits of the case, not only as regards the person originally accused, but also as regards the third party so brought into the case.

35. *Refusal of access.*—If the person who has in his possession any food, drugs or agricultural fertilizers which have not been declared exempt from the provisions of this Act, or any of the articles mentioned in the fourth and fifth schedules to this Act, shall, when required so to do by any officer in pursuance of the provisions of this Act, refuse or omit to show the officer the place in which any such articles are stored, or shall refuse or fail to admit the officer into every such place, or shall refuse or omit to show such officer all or any of such articles in his possession, or to permit the officer to inspect the same, or to give any sample thereof, or to furnish such officer with any light or assistance he requires for any of such purposes, he shall be liable to the same penalty as if he knowingly sold or exposed for sale adulterated articles.

36. *Illegal possession.*—Every compounder or dealer in, and

tant de mélanges enivrants ou de liqueurs enivrantes, qui a en sa possession ou dans quelque partie de l'établissement occupé par lui, en cette qualité, soit une liqueur frelatée, la sachant frelatée, soit un ingrédient délétère mentionné dans la première annexe de la présente loi, ou ajouté à cette loi par le gouverneur en conseil, s'il n'en peut justifier la possession d'une manière estimée satisfaisante par la cour devant laquelle il a été traduit, est réputé avoir sciemment exposé en vente une substance alimentaire falsifiée, et encourt, pour la première contravention, une amende n'excédant pas cent dollars, et pour chaque récidive, une amende n'excédant pas quatre cents dollars.

37. *Apposer une étiquette fausse, ou négligence d'en apposer.* Quiconque appose sciemment sur quelque substance alimentaire ou drogue une étiquette désignant faussement l'article vendu, ou mis ou exposé en vente, ou qui néglige ou refuse d'étiqueter ou marquer quelque article alimentaire ou drogue conformément aux exigences de la présente loi, encourt une amende, pour la première contravention, n'excédant pas deux cents dollars et d'au moins vingt-cinq dollars, ou deux mois d'emprisonnement, ou les deux peines, et pour chaque récidive, une amende ne dépassant pas trois cents dollars et d'au moins cinquante dollars, ou quatre mois d'emprisonnement, ou les deux peines. (Am. 1915).

38. *Moitié de cette amende appartient au poursuivant, et l'autre moitié à la Couronne.*—Quiconque marque, estampille ou étiquette un article ou un colis contenant quelqu'un des articles mentionnés en la première colonne de la quatrième annexe de la présente loi, des mots *Pur*, *Véritable*, *Naturel*, ou de mots équivalents, ou vend ou offre ou expose en vente quelque article ou colis ainsi marqué, estampillé ou étiqueté, à moins que cet article ou le contenu de ce colis ne soit pur dans le sens indiqué à la seconde colonne de la dite annexe, est passible, pour chaque contravention, d'une amende de cent dollars au plus.

2. Moitié de cette amende appartient au poursuivant, et l'autre moitié, à la Couronne.

39. *Vente illégale.*—Quiconque vend ou offre en vente un article ou une substance pour usage domestique sous le nom ou sous la désignation contenue dans la première colonne de la cinquième annexe de la présente loi, à moins que cet article ou cette substance ne soit exempte de falsification ou de mélange de matière étrangère, et à moins qu'elle ne possède les éléments et caractère distinctifs énoncés dans la seconde colonne de la dite annexe, est passible, pour chaque contravention, d'une amende d'au plus cent dollars.

2. Moitié de cette amende appartient au poursuivant, et l'autre moitié, à la Couronne.

every manufacturer of intoxicating liquors, who has in his possession or in any part of the premises occupied by him as such, any adulterated liquor, knowing it to be adulterated, or any deleterious ingredient specified in the first schedule to this Act, or added to such schedule by the Governor in Council, for the possession of which he is unable to account to the satisfaction of the court before which the case is tried, shall be deemed knowingly to have exposed for sale adulterated food, and shall incur for the first offence a penalty not exceeding one hundred dollars, and for each subsequent offence a penalty not exceeding four hundred dollars.

37. *False label or neglect to label. Penalty.*—Every person who knowingly attaches to any article of food or any drug any label which falsely describes the article sold, or offered or exposed for sale, or who neglects or refuses to label or mark any article of food or drug in accordance with the requirements of this Act, shall incur a penalty for the first offence not exceeding two hundred dollars and not less than twenty-five dollars, or two months in jail, or both, and for each subsequent offence a penalty not exceeding three hundred dollars and not less than fifty dollars, or four months in jail, or both. (Am. 1915).

38. *False marking.*—Every person who marks, brands or labels any article or any package containing any article mentioned in the first column of the fourth schedule to this Act with the word *Pure*, or *Genuine*, or any word equivalent thereto, or sells or offers or exposes for sale any such article or package so marked, branded, stamped or labelled, unless such article or the contents of such package are pure within the meaning of the second column of the said schedule, shall, for every violation, be liable to a penalty not exceeding one hundred dollars.

2. A moiety of such penalty shall belong to the prosecutor and the other moiety to the Crown.

39. *Illegal sale.*—Every person who sells, offers or exposes for sale any article or any substance for domestic use under the name or designation contained in the first column of the fifth schedule to this Act, unless such article or substance is free from adulteration or admixture of foreign matter and unless it possesses the composition and distinguishing characteristics stated in the second column of the said schedule, shall, for every violation, be liable to a penalty not exceeding one hundred dollars.

2. A moiety of such penalty shall belong to the prosecutor and the other moiety to the Crown.

40. *Application des amendes.*—Sous l'empire de tels règlements que peut établir le Ministre, un montant n'excédant pas une moitié des amendes imposées et recouvrées sous le régime de la présente loi peut être versé à la personne qui a donné le renseignement ou qui a autrement aidé à recouvrer l'amende, et l'autre partie de l'amende doit être versée au Ministre des Finances, et forme partie du Fonds du Revenu Consolidé du Canada. (Am. 1915).

DISPOSITIONS GÉNÉRALES.

41. *Devoir de l'analyste.*—Il est du devoir de tout fonctionnaire chargé de veiller à l'exécution de la présente loi, lorsque quelqu'un le lui demande, d'acheter du vendeur de tout article vendu ou mis en vente, un échantillon de cet article et d'en faire faire une analyse en conformité des dispositions de la présente loi, pourvu que celui qui lui demande de faire cet achat et analyse remette à ce fonctionnaire, en faisant cette demande, une somme suffisante pour payer cet échantillon et l'analyse.

2. Si, lors de l'analyse, il est découvert que cet article est falsifié au sens de la présente loi, la personne à l'instance de qui l'analyse est faite peut poursuivre le vendeur de cet article, ou requérir ce fonctionnaire de le poursuivre, en déposant vingt-cinq dollars entre les mains du percepteur du Revenu de l'intérieur, à titre de garantie des frais de poursuite; et quiconque poursuit ainsi a droit à la moitié de l'amende imposée à l'accusé, s'il est condamné.

3. Rien de ce qui est contenu au présent article n'empêche ce fonctionnaire, ni le ministère du Revenu de l'intérieur, de poursuivre le vendeur de l'article ainsi falsifié; pourvu qu'une deuxième poursuite ne puisse être intentée pour la même contravention.

42. *Emploi d'un analyste officiel.*—Rien dans la présente loi n'est censé empêcher qui que ce soit de soumettre tout échantillon de substance alimentaire, de drogue ou d'engrais agricole, à un analyste officiel, pour qu'il en fasse l'analyse, ni de poursuivre le vendeur si l'on découvre que cet article est falsifié aux termes de la présente loi.

43. *Honoraires.*—Tout analyste officiel doit analyser cet échantillon sur le paiement de l'honoraire fixé, pour l'article présenté ou la classe d'articles à laquelle il appartient, par le gouverneur en conseil.

44. *Partage en trois parties de l'article à analyser.*—La personne qui achète quelque article dans l'intention d'en faire faire l'analyse doit, après que l'achat est terminé, notifier immédiatement le vendeur ou son agent qui a vendu cet article, de son in-

40. *Application of penalties.*—Under such regulations as may be made by the minister, an amount not exceeding one-half of the penalties imposed and recovered under this Act may be paid to any person who has given information or otherwise aided in effecting the recovery of the penalty, and the other portion of the penalty shall be paid to the Minister of Finance, and shall form part of the Consolidated Revenue Fund of Canada.—(Am. 1915).

GENERAL.

41. *Duty of officers.*—It shall be the duty of any officer entrusted with the enforcement of this Act, when he is required thereto by any person, to purchase from the vendor of any article sold or exposed for sale a sample thereof and submit it for analysis in accordance with the provisions of this Act, provided the person so requiring such purchase and analysis deposits with such officer at the time such a demand is made, a sum of money sufficient to pay for such sample and analysis.

2. If, upon analysis, such article is found to be adulterated within the meaning of this Act, the person at whose instance the analysis is made, may prosecute the vendor of the article, or may require such officer to prosecute the vendor upon making a deposit of twenty-five dollars with the collector of Inland Revenue, as security for the costs of such prosecution, and every person so prosecuting shall be entitled to a moiety of the penalty imposed, upon conviction of the person accused.

3. Nothing herein contained shall be held to preclude such officer, or the Department of Inland Revenue, from prosecuting the vendor of such article so adulterated: Provided that a second prosecution shall not be instituted for the same offence.

42. *Any person may proceed for adulteration.*—Nothing herein contained shall be held to preclude any person from submitting any sample of food, drug, or agricultural fertilizer for analysis to any public analyst, or from prosecuting the vendor thereof, if it is found to be adulterated within the meaning of this Act.

43. *Duty of public analyst.*—Any public analyst shall analyse such sample on payment of the fee prescribed with respect to such article or class of articles by the Governor in Council.

44. *Division of article by purchaser.*—The person purchasing any article with the intention of submitting it to analysis, shall after the purchase is completed forthwith notify to the seller or his agent selling the article his intention to have it analysed

tention d'en faire faire l'analyse par un analyste officiel, et lui offrir de partager l'article en trois parties qui doivent être séparées sur le champ, chaque partie devant être marquée et scellée ou attachée selon que sa nature le permet, et elle doit, si elle en est requise, agir en conséquence, et elle en remet une partie au vendeur ou à son agent, en garde une pour pouvoir la comparer plus tard, et remet la troisième partie à l'analyste, s'il juge à propos que l'analyse soit faite.

45. *Partage par l'analyste.*—Si le vendeur ou son agent n'accepte pas l'offre de l'acheteur de partager en sa présence l'article acheté, l'analyste qui reçoit cet article pour en faire l'analyse le partage en deux parties, et scelle ou attache l'une de ces parties et la fait remettre, soit lorsqu'il reçoit l'échantillon, soit lorsqu'il donne son certificat, à l'acheteur, lequel garde cette partie pour la produire comme pièce à conviction dans le cas où des procédures seraient instituées plus tard à ce sujet.

46. *Paiement des frais d'analyse, etc.*—Toutes dépenses occasionnées par l'obtention et par l'analyse de quelque substance alimentaire, drogue ou engrais agricole, en conformité de la présente loi, sont—si la personne de qui l'échantillon a été obtenu est convaincue d'avoir en sa possession, de vendre, de mettre ou d'exposer en vente des substances alimentaires, des drogues ou des engrais agricoles falsifiés, en contravention à la présente loi, censées faire partie des frais des procédures intentées contre elle, et sont payées par elle en conséquence; et dans tous autres cas ces dépenses sont payées comme partie des dépenses du préposé, ou par la personne qui s'est procuré l'échantillon, selon le cas.

47. *Frais de poursuite.*—Ces frais de poursuite comprennent aussi pour l'avocat, un honoraire raisonnable laissé à la discrétion du juge; et, dans le cas d'un poursuivant privé, si l'action est renvoyée comme ayant été intentée sans cause raisonnable ni probable, les frais de la défense sont taxés contre le poursuivant.

48. *Règlements.*—Le gouverneur en conseil peut en tout temps faire les règlements qui lui paraissent nécessaires pour la mise à effet des dispositions de la présente loi.

49. *L'Acte du Revenu de l'intérieur s'appliquera.*—Les dispositions de la loi du Revenu de l'intérieur, tant celles qui ont trait spécialement à une industrie ou à un commerce en particulier, que celles qui sont relatives généralement à la perception du revenu, ou à la prévention, à la découverte ou à la punition de la fraude ou de la négligence en matière de revenu, s'appliquent, s'interprètent et sortent leurs effets à l'égard de la présente loi comme si mention spéciale y était faite des matières et choses prévues par la présente loi.

by the public analyst, and shall offer to divide the article into three parts to be then and there separated, each part to be marked and sealed or fastened up in such manner as its nature will permit of, and shall, if required to do so, proceed accordingly, and he shall deliver one of the parts to the seller or his agent, retain one of the parts for future comparison, and submit the third part to the analyst, if he deems it right to have the article analysed.

45. *Division by analyst.*—If the seller or his agent does not accept the offer of the purchaser to divide in his presence the article purchased, the analyst receiving the article for analysis shall divide it into two parts, and shall seal or fasten one of those parts, and shall cause it to be delivered, either upon receipt of the sample or when he supplies his certificate, to the purchaser, who shall retain such part for production in case proceedings are afterwards taken in the matter.

46. *Expenses.*—Any expenses incurred in procuring and analysing any food, drug or agricultural fertilizer, in pursuance of this Act, shall, if the person from whom the sample is taken is convicted of having in his possession, selling, offering or exposing for sale, adulterated food, drugs or agricultural fertilizers, in violation of this Act, be deemed to be a portion of the costs of the proceedings against him, and shall be paid by him accordingly; and in all other cases such expenses shall be paid as part of the expenses of the officer, or by the person who procured the sample, as the case may be.

47. *Counsel fee.*—Such expenses of prosecution shall also include a reasonable counsel fee, in the discretion of the judge; and in the case of a private prosecutor, if the prosecution is dismissed as being instituted without reasonable and probable cause, the costs of defence shall be taxed against such prosecutor.

48. *Regulations.*—The Governor in Council may, from time to time, make such regulations as to him seem necessary, for carrying the provisions of this Act into effect.

49. *Inland Revenue Act.*—The provisions of the Inland Revenue Act, whether enacted with special reference to any particular business or trade, or with general reference to the collection of the revenue, or the prevention, detection or punishment of fraud or neglect in relation thereto, shall extend, apply and be construed and shall have effect with reference to this Act, as if they had been enacted with special reference to the matters and things herein provided for.

50. *Recouvrement des amendes.*—Toute amende imposée sous l'empire de la présente loi peut être recouvrée et appliquée comme si elle était imposée en vertu de la loi du Revenu de l'intérieur; et tout fabricant de mélanges, ainsi que les appareils dont il se sert, le local ou l'établissement dans lequel il exerce ses opérations, et les articles faits ou mélangés par lui, ou les substances employées dans la composition de ces articles, sont "sujets à l'accise" en vertu de la dite loi.

51. *Autres recours.*—Rien de contenu en la présente loi ne porte atteinte au pouvoir de procéder par voie de mise en accusation, ni n'enlève d'autres recours contre un contrevenant à la présente loi.

ANNEXES.

PREMIERE ANNEXE.

Coque du Levant, chlorure de sodium (autrement dit sel de cuisine), couperose, opium, poivre de Cayenne, acide picrique, chanvre de l'Indre, strychnine, tabac, grain d'ivraie, extrait de bois de campêche, sels de zinc, de cuivre ou de plomb, alun, alcool méthylique et ses dérivés, alcool amylique, et tout extrait ou composé des ingrédients ci-dessus.

DEUXIEME ANNEXE.

Lait	$ 8 00
Pain, bonbons et tous articles non mentionnés dans cette annexe, chacun	9 00
Beurre, fromage, liqueurs de malt, cidre, vins, liqueurs alcooliques, teintures, pharmaceutiques, liqueurs, condiments, épices, drogues, huiles, graisses, médicaments particuliers, aliments pour les enfants et les invalides, lait concentré, et engrais agricoles, chacun	12 00
Thé, café, tabac, cacoa, chocolat, opium, liqueurs pharmaceutiques, extraits fluides, médicaments et eaux préparés par les pharmaciens, chacun	14 00

TROISIEME ANNEXE.

Formule de garantie.

Je garantis par le présent que les articles ci-dessous mentionnés, fabriqués par moi-même ou par des personnes qui me sont connues, et que j'ai vendus à aux dates

50. *Procedure under Inland Revenue Act.*—Every penalty imposed under this Act may be enforced and dealt with as if imposed under the Inland Revenue Act, and every compounder, and the apparatus used by him, and the place in which his business is carried on, and the articles made or compounded by him, or used in compounding any such article, shall be subject to excise under the said Act.

51. *Other remedies.*—Nothing in this Act contained shall affect the power of proceeding by indictment or take away any other remedy against any offender under this Act.

SCHEDULES.

FIRST SCHEDULE.

Cocculus indicus, chloride of sodium (otherwise common salt), copperas, opium, cayenne pepper, picric acid, salicylic acid, indian hemp, strychnine, tobacco, darnel seed, extract of logwood, salts of zinc, copper or lead, alum, methyl alcohol and its derivatives, amyl alcohol, and any extract or compound of any of the above ingredients.

SECOND SCHEDULE.

Milk	$ 8 00
Bread, sweets and any other articles not mentioned in this schedule, each	9 00
Butter, cheese, malt liquors, cider, wines, alcoholic liquors, tinctures, liqueurs, condiments, spices drugs, oils, fats, proprietary medicines, infants' and invalids' foods, condensed milk and fertilizers, each	12 00
Tea, coffee, tobacco, cocoa, chocolate, opium, pharmaceutical liquors, fluid extracts, dispensed medicines and waters, each	14 00

THIRD SCHEDULE.

Form of Warranty.

I hereby warrant that the undermentioned articles manufactured by myself or by persons known to me and sold by me to on the dates opposite thereto,

mises en regard de ces articles, sont purs et non falsifiés au sens de la loi des falsifications.

Date.	Article.

(*Signature du fabricant ou du vendeur.*)

QUATRIEME ANNEXE.

(Am. 1913.)

CINQUIEME ANNEXE.

1	2
Vert de Paris.....	Insecticide contenant au moins 50 pour 100 d'acide arsénieux et au moins 30 pour 100 d'oxyde de cuivre, et complètement soluble dans l ammoniaque aqueux.
Vinaigre.....	Liquide plus ou moins coloré, consistant essentiellement en acide acétique impur dilué, obtenu par l'oxydation du vin, de la bière, du cidre ou d'autre liquide alcoolique.

SIXIEME ANNEXE.

ETALON POUR LE SUCRE D'ERABLE.

"Le sucre d'érable doit être entièrement le produit solide résultant de l'évaporation de la sève d'érable, ou du sirop d'érable, et contenir au plus dix (10) pour cent d'eau; et donner au moins six dixièmes (0.6) de un pour cent de cendres, calculées sur la matière sèche du sucre quand il est incinéré de manière à assurer que les matières terreuses soient présentes comme sels et non comme oxydes, et au moins douze centièmes (0.12) de un pour

are pure and unadulterated within the meaning of the Adulteration Act.

Date.	Article.

(*Signature of manufacturer or vendor*).

FOURTH SCHEDULE.

(Am. 1913).

FIFTH SCHEDULE.

1	2
Paris green.....	An insecticide containing at least fifty per centum of arsenious acid and at least thirty per centum of cupric oxide and being completely soluble in aqueous ammonia.
Vinegar.....	A more or less coloured liquid, consisting essentially of impure dilute acetic acid obtained by the oxidation of wine, beer, cider or other alcoholic liquid.

SIXTH SCHEDULE.

STANDARD FOR MAPLE SUGAR.

Maple sugar shall be entirely the solid product resulting from the evaporation of maple sap, or of maple syrup, and contain not more than ten (10) per cent of water; and yield not less than six-tenths (0.6) of one per cent of ash, reckoned on the dry, matter of the sugar when incinerated in such a way as to assure the earths being present as salts and not as oxides, and not less than twelve one-hundredths (0.12) of one per cent of ash, insoluble in

cent de cendres, insolubles dans l'eau, employés comme il est décrit plus loin et donnant un indice de plomb d'au moins un et sept dixièmes (1.7) avec traitement par la méthode canadienne, et d'au moins un et deux dixièmes (1.2) avec traitement par la méthode Winton.

Les menues traces de substances telles que la gélatine, l'albumen, la colle de poisson, etc., qui peuvent avoir été employées comme agents de raffinage ou de clarification, ne seront pas considérées comme agents de falsification." (Am. 1914.)

ETALON POUR LE SIROP D'ERABLE.

" Le sirop d'érable est le sirop résultant de l'évaporation de la sève d'érable, ou de la solution du sucre d'érable dans l'eau, et il doit contenir au plus trente-cinq (35) pour cent d'eau ; et un gallon de sirop d'érable, mesuré à la température ordinaire de l'air, doit peser au moins treize livres et trois onces. La matière sèche du sirop d'érable doit être conforme à tous les étalons précédents pour le sucre d'érable."

Cependant le Gouverneur en conseil peut de temps à autre varier et changer les étalons pour le sucre d'érable et le sirop d'érable. (Am. 1914.)

SEPTIEME ANNEXE.

A

CERTIFICAT D'ANALYSE.

Je ..... analyste ..... public, pour le district de ..... ou analyste en chef ou analyste officiel, à ce dûment autorisé par le ministre du Revenu de l'Intérieur, suivant qu'il y ait lieu, et dûment nommé et agissant en vertu de l'autorité de la Loi des Falsifications, certifie par les présentes :—

1. Que j'ai reçu de la part de ..... de ..... le ..... jour de ..... 191 ..... un échantillon décrit comme ..... ainsi qu'il suit :—

(*Suit une description particulière de l'article, avec mention du mode d'emballage et de la sorte de marque.*)

2. Qu'apposés sur ledit échantillon étaient les nom et adresse qui suivent,—

.....

.....

(*Ce paragraphe ne doit être employé que lorsque l'échantillon est scellé suivant les prescriptions de l'article* 16.)

3. Que le contenant ou emballage sur lequel le nom est apposé n'a pas été ouvert quand il a été ainsi reçu par moi, et que les ca-

water, employed as described below and yielding a lead number not less than one and seven-tenths (1.7) when worked by the Canadian method, nor less than one and two-tenths (1.2) when worked by the Winton method.

Minute traces of substances such as gelatine, albumen, isinglass, etc., which may have been employed as refining or clarifying agents in manufacture, shall not be regarded as adulterants. (Am. 1914).

STANDARD FOR MAPLE SYRUP.

Maple syrup shall be syrup by the evaporation of maple sap, or by the solution of maple concrete in water, and contain not more than thirty-five (35) per cent of water and an imperial gallon of maple syrup, measured at ordinary temperature of the air, shall weigh not less than thirteen pounds three ounces. The dry substance of maple syrup shall meet all the above standards for maple sugar.

Provided always that the Governor in Council may from time to time vary and change the said standards for maple sugar and maple syrup. (Am. 1914).

SEVENTH SCHEDULE.

A.

CERTIFICATE OF ANALYSIS.

I. ..... Public Analyst, for the District of .... (*or* Chief Analyst, *or* public analyst hereunto duly authorized by the Minister of Inland Revenue, *as the case may be*,) duly appointed and acting under the authority of the Adulteration Act do hereby certify:—

1. That I received from .... of ..... on the .... day of ... . 191... a sample described as ..... follows:—

(*Here should follow a particular description of the sample, stating how it is enclosed and marked*).

2. That annexed to the said sample was the following name and address,—

....
....

(*This paragraph to be used only when the sample is sealed as provided in section* 16).

3. That the vessel or package containing the name was not opened when it was so received by me, and that the seals se-

chets fixant audit contenant ou emballage le nom et l'adresse susdits n'avaient pas été rompus avant que j'eusse ouvert le contenant ou emballage afin de faire mon analyse.

(*Ce paragraphe ne doit être employé que lorsque l'échantillon est scellé suivant les prescriptions de l'article* 16.)

4. Que j'ai dûment analysé ledit échantillon; et je certifie que ledit échantillon était (*indiquer si "falsifié" ou "faussement marqué"*) au sens de la Loi des Falsifications, et contient:—

5. Que la falsification dudit échantillon est d'une nature considérée être (non) nuisible à la santé de la personne consommant ledit article. (*Ce paragraphe ne doit être employé que lorsque l'échantillon est un article alimentaire ou une drogue.*)

Je certifie et affirme en outre que le certificat ci-dessus d'analyse est exact au meilleur de ma connaissance et de mon savoir.

.....

(Analyste en chef.
ou Adjoint de l'analyste en chef
ou Analyste officiel, selon le cas.)

(Am. 1914.)

curing to the said vessel or package the name and address aforesaid were not broken until such time as I opened the vessel or package for the purpose of making my analysis.

(*This paragraph to be used only when the sample is sealed as provided in section* 16).

4. That I duly analysed the said sample; and I certify that the said sample was (*state whether "adulterated" or "falsely marked"*) within the meaning of the Adulteration Act and contains.

5. That the adulteration of the said sample is of a nature deemed to be (not) injurious to the health of the person consuming the same. (*This paragraph to be used only where the sample is an article of food or a drug*).

I do also certify and say that the above certificate of analysis is true to the best of my knowledge and skill.

.....

(Chief Analyst *or* Assistant Chief Analyst *or* Public Analyst *as the case may be*).

(Am. 1914).

HABEAS CORPUS CASES.

(1911-1917).

INDEX.

Absence of a sworn information, 27.
Absence of summary of nature of offence, 11.
Adjournment, 1.
Aliens—Immigration Act, 42, 72, 80, 84, 89.
Amendment of information—Failure to re-swear, 27.
Amendment of sentence, 14.
Appeal—From Discharge on habeas corpus, 70.
" —*On case reserved*, 63.
" —*Right of C. of King's Bench to refer to C. of App*, 13.
" —*Supreme Court of Canada*, 33.
" —*Telegram as notice*, 26.
" —*Time for taking appeal—N. S. rules*, 26.
Applicant out on bail, 50.
Application prior to committal for trial, 44.
Arrest without warrant, 18.

Bail and recognizance, 4, 44.
Bigamy, 43.

Changing to "hard labour", 23.
Cognizance of proceedings, 12.
Commitment, 60.
Commitment for trial—Illegality, 24.
Commitment on summary conviction, 9.
Committal for trial and subsequent plea before district Judge, 67.
Common law writ, 9, 65.
Compelling attendance of witnesses, 35.
Concurrent preliminary hearings, 3.
Conflict of dates as to time of offence, 28.
Contempt of Court, 88.
Co-ordinate jurisdiction, 47.
Construction of foreign statute, 15.
Correction of judgment, 39.
Costs of conveying to jail—Excess, 57, 60.
Courts—Jurisdiction, 49, 76.
Criminal jurisdiction of magistrate, 39.
Curative statute, 31.

Custody of Infant, 75.

Deportation, 89.
Depositions, 1, 10, 16, 60, 82.
Desertion and refusal to do duty, 66.
Detention, 87.
Determining sanity of accused, 17.
Discharge of prisoner, 24.
Discontinuance on prisoner's application, 40.
Disorderly house cases, 61, 78, 78*a*.
Disproving plea of guilty stated in Sum. Conv. 52.
Disproving recital of consent to Sum. Trial, 8.

Electing mode of trial, 8.
Election of summary trial, 65, 67, 71.
Enlistment of minor, 69.
Evidence, 15.
Excessive sentence, 21, 39, 62.
Existence of other remedies, 63, 65.
Extension of time for appealing—Academic questions, 26.
Extradition proceedings, 28, 73, 79, 85, 86.

Failure to inform prisoner as to right—Effect, 43, 45, 63.
Foreign depositions, 28.
Formalities of election, 67.
Former jeopardy, 38.
Function of Judge, 15.

Habeas corpus ad resp. to bring up prisoner, 35, 59.
" " " —*Power to issue—Masters of N. S. Sup. C.* 34.
" " " —*Scope of writ*, 37, 38, 43, 45.
" " " —*When proper remedy*, 17.
Hard labour, 7, 62.
House-breaking, 13.

Illegal detention, not illegal caption, the ground of discharge, 68.
Illegal handing over of Person detained, 77.
Illegal method of compelling attendance to answer charge, 18.
Illegal proceedings, 27.
Illegitimate Child, 75.
Impossibility of obeying writ, 77.
Indictment and information, 1.
Information—Verification by oath, 27.
Information—Sufficiency of allegations, 28.
Internment of alien enemy, 58, 84.
Intoxicating liquors—Penalty—Whether discretionary, 21.
Irregular plea, 52.
Irregularities not going to the jurisdiction, 65.

Issuance of proper warrant—Officers, 11.
Issue of Writ against Person who has no longer Custody of Person detained, 77.

Judge's order to penitentiary warden, 35.
Judges of same Court, 47.
Jurisdiction of police magistrate, 27.
Jurisdiction on common law writ, 70, 76.
Justice of the peace—Appointment and official title, 31.

Keeping liquor, "Criminal" offence when, 32.

Lack of jurisdiction to review after discharge, 70.

Master of Sup. Court exceeding jurisdiction, 36.
Military custody, 55.
Military Service Act, (Eng.), 87.
Militia, 69.
Misapprehension of magistrate, 20.

Notice of motion, 52, 81.

Oath of Court stenographer, 60.
Objection to illegal process—Waiver, 18.
Objections to preliminary proceedings, 31.
Offences triable by Colonial C. under their admiralty jurisdiction, 74.
Offences under shipping laws, 66.
Omission to prove Order in Council, 86.
Omitting to administer oath to stenographer, 2, 16.
One sentence for several offences, 63.
Order for further detention, 40, 63.
Order on habeas corpus, 44, 76.
Ordering further detention notwithstanding valid commitment, 39.
Overseas service, 69.

Partial remission of sentence, 51.
Parties—Status, 40.
Person committed for trial but not indicted at next assize, 37.
Place of offence, 1.
Plea of autrefois acquit, 38.
Plea of guilty on arraignment, 67.
Police magistrate's powers, 16.
Powers of amending informal warrant of commitment, 11.
Power of justice to commit for trial, 24.
Power to revoke or forfeit, 51.
Preliminary inquiry when accused under remand for sentence on another charge, 59.
Prior discharge on habeas corpus, 46.

Prisoner's opposition to his own liberation, 41.
Procedure, 17.
Producing copy of warrant, 5.
Proving warrant by affidavit, 6.

Reasonable grounds for suspicion, 15.
Regularity of summary conviction by magistrate, 9.
Release upon recognizance before application, 31.
Remand in absence of accused, 17.
Remitter to magistrate—Discretion, 25.
Renewal of application on same grounds, 19, 43, 65, 83.
Restriction of powers of amending conviction, 7.
Return of amended commitment, 62.
Return to writ, 64, 78.
Review of commitment by habeas corpus, 21.
Review of extradition commitment, 15.
Review of proceedings, 28.
Rights of Mother of illegitimate child, 75.
Right to discharge, 11.
Right to test constitutionality on habeas corpus, 42.

Sentence and imprisonment—Power to alter, 23, 90.
Service notice on Atty-General, 52.
Serving original writ, 42.
Several commitments, 64.
Single offence, 66.
Soldier on active service, 54, 55.
Speedy trial, 65.
"Spotter" sent by police, 61.
Stating possibility of bail, 63.
Statutory information, 65.
Stay of proceedings, 36.
Subsequent arrest and committal for the same offence, 85.
Substitution of name of accused, 27.
Successive application, 19, 43, 65, 83.
Sufficiency of petition, 41.
Summary trial—Bringing up for election after committal, 53.
Summary trial by consent, 8.
Supreme Court (Can.)—Habeas corpus jurisdiction, 29.

Theft—With breaking and entering, 29.
Trial by consent, 45.
Trial de novo, 45.
Two offences found on one act, 38.

Unsworn stenographer, 2, 16.

Validity of committal, 85.

Validity of detention under one warrant, 64.

Waiver of depositions in proceedings below, 56.
War measures Act, 1914, 55, 58.
Warrant of commitment defective, 11.
When prisoner is legally committed, 22.
When proper remedy, 48.
Who may demand, 48.
Witness in custody—Habeas corpus or judge's order for production, 35.
Wrongful sentence, 13.

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1. An objection on the ground that the information for an indictable offence did not mention the place where the offence was committed is not a ground for habeas corpus upon the committal of the accused for trial.
Dick, (1911), Laurendeau, J. 19 C. C. C. 44.

2. The petitioner's affidavit in support of an application for habeas corpus that the stenographer who transcribed the evidence at the preliminary enquiry had not been sworn will not be credited as against the certificate of oath signed by the magistrate and filed in the record.
Dick, (1911), Laurendeau, J. 19 C. C. C. 44.

3. That the magistrate proceeded with the hearing of the evidence on preliminary enquiries for two offences at the same time, against the same accused, is not a ground for habeas corpus in respect of his committal for trial.
Dick, (1911), Laurendeau, J. 19 C. C. C. 44.

4. Where it appears from the record on a habeas corpus application that the applicant is held in custody on a committal for trial and that the offence is one for which he should be admitted to bail, but the question of the validity of the commitment cannot be decided for failure of the applicant to produce a copy of the warrant, the Court may, nevertheless, make an order for bail.
Aubin, (1911), Pouliot, J., 19 C. C. C. 94.

5. An application for a writ of habeas corpus in a criminal matter will not be entertained without the production of the warrant of commitment, or a copy thereof, or proof that a copy could not be obtained for the prisoner.
Aubin, (1911), Pouliot, J., 19 C. C. C. 94.

6. On an application for a writ of habeas corpus with cer-

tiorari in aid, it is primâ facie sufficient that the warrant be proved by an affidavit of the gaoler, and that the fact that the applicant is not detained for any other cause be proved by an affidavit of the applicant instead of proving both by the affidavit of the prisoner.

Ching How, (1912), Brown, J., 19 C. C. C. 176.

7. Neither a proceeding to quash a summary conviction by way of certiorari, nor a motion to discharge on habeas corpus with certiorari in aid constitutes an "appeal," and where the powers of amendment of a conviction under a provincial statute are limited to "appeals" from convictions and orders, a conviction which illegally imposed hard labour for an offence against the provincial liquor laws cannot be amended on the habeas corpus motion and the prisoner is entitled to be discharged.

Ching How, (1912), Brown, J., 19 C. C. C. 176.

8. The recital of consent contained in Code form 55 is the method prescribed by law of shewing a magistrate's jurisdiction to summarily try for an indictable offence under Part XVI. of the Criminal Code 1906, and where such a recital is contained in the conviction there is, in the absence of anything to impeach such record, a necessary implication that conditions precedent were observed.

Mali, (1912), Robson, J., 19 C. C. C. 188.

9. The regularity of a summary conviction for a vagrancy offence (Cr. Code 1906, sec. 238) is properly enquired into upon *habeas corpus* when the proceedings before the magistrate are brought up upon a writ of certiorari in aid of the *habeas corpus* writ.

Johnson, (1912), Prendergast, J., 19 C. C. C. 203.

10. The omission to swear the stenographer appointed to take down the evidence at the hearing of a prosecution under the summary conviction clauses of the Criminal Code (1906), as required by Code sec. 683, is a matter of jurisdiction and not a mere defect of form and the depositions taken by the unsworn stenographer are invalid.

As regards summary convictions the jurisdiction to review commitments thereunder on *habeas corpus* is not limited to the statutory powers founded on Imperial statute 31 Car. II. ch. 2, and the writ may be supported also upon the jurisdiction at common law.

Johnson, (1912), Prendergast, J., 19 C. C. C. 203.

11. A warrant of commitment is invalid which does not contain even a summary of the nature and gravity of the offence

charged against a prisoner, nor give the name of the presiding magistrate who committed him.

A prisoner confined under an informal warrant of commitment may be held in custody upon a proper warrant being subsequently issued.

Lafleur, (1912), Gervais, J., 19 C. C. C. 362.

12. A Court sitting under the Habeas Corpus Act may, without inquiring the justice of a sentence imposed on a person, take notice of the minutes of proceedings against him in order to satisfy itself that the provisions of the law relating to the warrant of commitment have been observed.

Lafleur, (1912), Gervais, J., 19 C. C. C. 362.

13. A formal commitment of a person under art. 459 of the Criminal Code, 1906, for house-breaking, on a trial and conviction under art. 464 of the Code with having a house-breaking instrument in his possession, is illegal as being upon a charge different than that which was tried, and the prisoner will be discharged on *habeas corpus*.

Hoolahan, (1912), Gervais, J., 19 C. C. C. 405.

14. The Quebec Court of King's Bench cannot, in lieu of quashing a sentence upon a writ of *habeas corpus* and discharging the prisoner, refer the matter to the Court of Appeal for amendment of the sentence, since that would amount to forcing an appeal upon the accused for the benefit of the Crown.

Hoolohan, (1912), Gervais, J., 19 C. C. C. 405.

15. The function of a judge upon the return of a writ of *habeas corpus* in the case of one who has been committed for extradition is not to sit in appeal from the Extradition Commissioner, but simply to decide whether he had jurisdiction to order the committal, and evidence offering reasonable grounds of suspicion against the accused will be sufficient for a refusal of his discharge.

Webber, (1912), Ritchie, J., 20 C. C. C. 6.

16. A summary conviction by a city police magistrate under the vagrancy clauses, may be quashed for irregularity on proceedings in Habeas Corpus and Certiorari in aid taken on behalf of the defendant committed under such summary conviction, and is, in that respect, distinguishable from convictions made by city police magistrates for indictable offences under their extended jurisdiction under Cr. Code sec. 777.

Johnson, (1912), Prendergast, J., 20 C. C. C. 8.

17. Habeas corpus, and not an application to a magistrate

for the release of a person remanded by him to custody, is the proper mode of inquiry as to whether his detention was illegal.
Bouchard, (1912), Langelier, J. S. P., 20 C. C. C. 95.

18. A prisoner whose attendance for trial by a magistrate in a summary conviction matter has been compelled by arrest without warrant, in a case where a warrant is required by law, will be discharged upon *habeas corpus* from the commitment following conviction, if he protested before the magistrate against the illegal procedure.
Paul, (1912), Beck, J., 20 C. C. C. 161.

19. Subject to any statutory restriction of the right, an application for a writ of *habeas corpus* for the discharge of a prisoner from custody may be renewed before another judge of co-ordinate jurisdiction, notwithstanding that a similar application upon the same grounds had been refused by the judge to whom the application was first made.
Paul, (1912), Beck, J., 20 C. C. C. 161.

20. An application for the discharge of defendant from gaol, under an order in the nature of a habeas corpus, based upon the one ground that the committing magistrate, in sentencing defendant for a second offence against the provisions of the Nova Scotia Temperance Act, 1910, as amended by Acts of 1911, ch. 33, sec. 8, was under a misapprehension as to his powers and sentenced the defendant for a longer term (three months) than he would have done if he had any discretion in the matter as shewn by an affidavit of the magistrate, will not be entertained as it was not competent for the magistrate to make such an affidavit, or for the Court to consider such a question, the only question being whether or not the defendant was legally detained in custody.
Fraser, (1912), Townshend (Sir), C. J., 20 C. C. C. 167.

21. The court cannot on an application for the discharge of a prisoner from custody by way of habeas corpus review the action of the magistrate on the merits, or send the prisoner back to the magistrate to impose a lighter sentence where the sentence actually imposed was not in excess of what the law authorized.
Fraser, (1912), Townshend (Sir), C. J., 20 C. C. C. 167.

22. A prisoner is legally detained where a gaoler has returned a good warrant, based upon a conviction which was not attacked, and which was apparently regular, the law justifying the sentence imposed.
Fraser, (1912), Townshend (Sir), C. J., 20 C. C. C. 167.

23. Where a prisoner was convicted of being a vagrant and sentenced to six months' imprisonment, and no provision was made for "hard labour" and thereafter the words "hard labour" were added in the absence of the accused, and as so changed the commitment was made out to conform to it, such change is invalid and the commitment will be set aside on *habeas corpus* proceedings.

Kirwin, (1910), Saint-Pierre, J., 20 C. C. C. 181.

24. The fact that a warrant of committal for trial was illegally issued on a charge of assault and occasioning actual bodily harm after the justices before whom the accused had been brought to answer the charge had with his consent entered upon a summary trial thereof, which trial had proceeded to the close of the evidence for the defence, is a ground for discharge upon *habeas corpus*.

Hicks, (1912), Walsh, J., 20 C. C. C. 192.

25. Where the court has power upon *habeas corpus* instead of discharging a prisoner from custody under an invalid commitment to remit the case to the magistrate under section 1120 of the Criminal Code (1906), consideration will be given to the imprisonment already suffered and to the costs to which the accused has been put in moving against the illegal warrant of commitment.

Hicks, (1912), Walsh, J., 20 C. C. C. 192.

26. Where the prisoner had since been discharged upon *habeas corpus* by a judge of the Supreme Court having undoubted jurisdiction and any question as to whether a Master of the court had power to discharge would be merely academic, there is no merit that would call for indulgence by extending the time for appealing from a prohibition order in respect of the Master's previous decision upon a similar application made on the prisoner's behalf.

Pelton, (1912), Graham, E. J., 20 C. C. C. 239.

27. An accused person in an application on the return of a summons for a *habeas corpus*, may avail himself of an objection to the jurisdiction of a police magistrate to try him for an offence against the Liquor License Ordinance, on the ground that no sworn information had been lodged against him and that he was therefore improperly brought before the magistrate, under a warrant of arrest, where his objection before the magistrate was overruled, the trial proceeded with, and the accused found guilty.

Davis, (1912), Walsh, J., 20 C. C. C. 293.

28. Where the accused is committed under a warrant of com-

mitment for extradition based on an information alleging the offence as of a year prior to the date shewn by the commitment, the information is not a sufficient basis for the commitment, and the prisoner will be discharged in a *habeas corpus* proceeding.

Upon an application on habeas corpus for the discharge of a prisoner from custody, where it appears that in extradition proceedings he was committed upon the charge that he did "on or about the 8th day of February, 1912," obtain a promissory note from a certain party by false pretences with intention to cheat and defraud, and where the proceedings were begun by an information which stated that the offence had been committed on "the 8th day of rebruary, 1911," and where throughout all the documents forwarded from the foreign jurisdiction up to the date of the present application the offence is alleged as of "the 8th of February, 1911"; the warrant of commitment is invalid.

Staggs, (1912), Stuart, J., 20 C. C. C. 306.

29. A judge of the Supreme Court of Canada has concurrent jurisdiction with provincial courts to grant a writ of *habeas Corpus* under the Supreme Court Act, R. S. C. (1906) ch. 139, sec. 62, in respect of a commitment in a criminal case where the commitment is in respect of some act which is made a criminal offence solely by virtue of a statute of the Dominion Parliament, and not where it was already a crime at common law or under the statute law in force in the province on its admission into the Canadian Confederation and which had not been repealed by the Federal Parliament .

Dean, (1913), Duff, J., 20 C. C. C. 374.

30. Where it appears upon an application for a writ of habeas corpus made in respect of a summary conviction and commitment thereunder that the applicant is properly in custody under an order of remand in an entirely separate proceeding upon another charge, a writ of habeas corpus may be refused as, if issued, the prisoner's discharge could not be ordered in view of the other valid commitment; the proper course in such case is to attack the commitment upon the summary conviction by certiorari proceedings to quash the conviction and the warrant of commitment.

Hazelwood, (1911), Wetmore, J., 20 C. C. C. 488.

31. A writ of habeas corpus *cum causa* in respect of an alleged illegal arrest and a subsequent detention order made by a justice will not be granted when the accused has obtained a release upon giving bail and remains at liberty under the recognizance; such habeas corpus process is intended to give relief only to persons in actual custody under illegal process.

Seriesky, (1912), White, J., 21 C. C. C. 140.

32. The Supreme Court Act, R. S. C. 1906, ch. 139, sec. 39 (*c*), which gives the Supreme Court of Canada jurisdiction of an appeal "from the judgment in any case of proceedings for or upon a writ of *habeas corpus* . . . not arising out of a criminal charge," does not give the Supreme Court of Canada jurisdiction of an appeal from a judgment of a provincial court affirming a judgment refusing to discharge appellant from imprisonment on a conviction for keeping liquor for sale in violation of a provincial liquor law. (*Per* Fitzpatrick, C. J., Davies and Anglin, JJ., on the ground that the process was one on a "criminal charge"; *per* Idington and Brodeur, JJ., on the ground that the proceeding was not "for or upon a writ of *habeas corpus*," but upon a motion under an alternative practice authorized by a provincial law.)
McNutt, (1912), Fitzpatrick, (Sir), C. J., 21 C. C. C. 157.

33. Where on an application to discharge the accused from imprisonment under a summary conviction for keeping liquor for sale contrary to the provisions of the Nova Scotia Temperance Act, 1910, the order is issued under the Liberty of the Subject Act, R. S. N. S. (1900), ch. 181, such order is not a proceeding "for or upon a writ of *habeas corpus*" from which an appeal could lie under sec. 39 (*c*) of the Supreme Court Act. (*Per* Idington and Brodeur, JJ.)
McNutt, (1912), Fitzpatrick, (Sir), C. J., 21 C. C. C. 157.

34. The effect of Nova Scotia practice Rule 2 (*b*) of Order LIV., by which it is provided that Masters of the Supreme Court of Nova Scotia shall exercise the jurisdiction of a judge in Chambers "except in causes or matters belonging to a prothonotary's office in the district for which he is a County Court judge," is to exclude jurisdiction to order the release in *habeas corpus* proceedings of a prisoner held in custody under a commitment for violation of the Canada Temperance Act, R. S. C. 1906, ch. 152, such commitment not being a matter belonging to a prothonotary's office.
Woodworth, (1912), Russell, J., 21 C. C. C. 187.

35. A writ of *habeas corpus* is not necessary in the Province of Quebec to compel the attendance of a penitentiary convict as a witness in a civil cause; an order to the warden by a judge of the Superior Court of Quebec made under article 302 C. P. Que., accompanied by the payment of a proper sum for the warden's charges of bringing the prisoner from the penitentiary into court is valid for that purpose.
Duval, (1912), Beaudin, J., 21 C. C. C. 201.

36. The Supreme Court of Nova Scotia can stay the action of

a judge of a County Court, when acting as a Master of the Supreme Court, in releasing without authority a person from custody under the Liberty of the Subject Act, R. S. N. S. 1900, ch. 181, since a county judge acting as Master of the Supreme Court is an officer thereof, and, under 54, may be restrained on motion from any unauthorized exercise of power.

Crouse, (1913), Townshend, (Sir), C. J., 21 C. C. C. 231.

37. A person committed for trial but not indicted at the following Assize, is not entitled to his discharge on *habeas corpus*, under sec. 7 of the B. C. Habeas Corpus Act of 1897, his only right under such Act being to make application for release on bail.

Dean, (1913), Gregory, J., 21 C. C. C. 310.

38. The court has jurisdiction upon *habeas corpus* to examine into the legality of a commitment for trial made by a justice upon a criminal charge, and in a proper case to order the discharge of the accused.

Weiss, (1913), Beck, J., 21 C. C. C. 438.

39. Where the magistrate illegally proceeded to try the accused for an indictable offence for which he had no jurisdiction to hold a summary trial either with or without the consent of the accused, the court on *habeas corpus* may properly decline to order the further detention of the accused by remanding him to custody for a preliminary enquiry before such magistrate under sec. 1120 of the Cr. Code (1906), thus leaving it open for the prosecutor to take such steps as may be available to renew the prosecution after the discharge under the illegal commitment.

Alexander, (1913), Beck, J., 21 C. C. C. 473.

40. A prisoner who applies for and obtains a writ of *habeas corpus*, alleging unjust detention, has the right to discontinue and desist from his petition, and the court will give effect to an application for the discontinuance of the proceedings, and order the prisoner's return to jail.

Where the application for the issue of a writ of *habeas corpus* is made by the prisoner himself, the party who laid the information upon which the prisoner was originally arrested has no status to appear in the *habeas corpus* proceedings, and ask for the liberation of the prisoner, although such party claims that the prisoner has been illegally arrested.

Thaw, (1913), Globensky, J., 22 C. C. C. 1.

41. Any person is entitled to institute proceedings to obtain a writ of *habeas corpus* for the purpose of liberating another from illegal imprisonment.

No legal relationship is required to exist between the prisoner and the person making the application for a writ of *habeas corpus* for the prisoner's release.

The petition for a writ of *habeas corpus* issued under authority of ch. 95 of the Consol. Stat. of L. C., (which extend the provisions of the English Habeas Corpus Act to the Province of Quebec) can validly be made by the party who illegally caused the arrest of the prisoner, although the prisoner may by intervention oppose the application, and by affidavit declare the same is so made without his authority, the prisoner further declaring that he desires to remain in jail.

The term "on behalf of," when used in an application for a *habeas corpus*, means "in the name of," "on account of," "for the advantage of," or "in the interests of" another.

Thaw, (1913), Hutchinson, J., 22 C. C. C. 3.

42. A writ of *habeas corpus* can be properly served only by delivering the original writ to the person to whom it is addressed, or to the principal person where there are more than one; and where only copies of the writ had been served the irregularity is a ground for quashing the writ, although the original had been exhibited to the persons to whom it was addressed at the time when the copies were left with them.

The provisions of the Immigration Act (Can.) depriving an alien ordered to be deported of any right to apply to the courts to review, quash, reverse, restrain, or otherwise interfere with an order of deportation made "under the authority and in accordance with the provisions of the Act" may prevent a writ of prohibition to the Immigration officers, but it does not remove the right of the person detained to obtain a writ of *habeas corpus* to test the constitutionality of the statute; on due service of such writ the immigration officers would be bound, under penalty for contempt, to make return thereto with reasons assigned for the detention.

Thaw, (1913), Archambault (Sir), C. J., 22 C. C. C. 8.

43. A prisoner will be discharged on *habeas corpus* from imprisonment under a conviction on a plea of guilty in a summary trial proceeding where the magistrate did not, as required by sec. 778 of the Criminal Code, inform the accused that he might, at his option, be tried forthwith without a jury, or remain in custody or under bail as the court might decide, to be tried in the ordinary way by a court having criminal jurisdiction.

Davis, (1913), Guérin, J., 22 C. C. C. 34.

44. Although sec. 698 of the Criminal Code does not confer jurisdiction upon a judge of a superior court to grant bail in

respect of an indictable offence until the accused has been committed for trial, a defendant has his remedy by way of *habeas corpus* upon the return of which the court may order bail pending a remand by a magistrate, and this remedy is applicable as well where the charge upon which the remand was made is a subject of summary conviction and not indictable.

Fair, (1913), Middleton, J., 22 C. C. C. 98.

45. On quashing on *habeas corpus* a conviction before a police magistrate on a summary trial, because of his failure to inform the prisoner, as required by sec. 778 (*b*) of the Criminal Code, as amended by 8-9 Edw. VII. ch. 9, of his option to be tried forthwith by the magistrate, or to remain in custody or under bail as the court might decide, for trial in the ordinary manner by a court having criminal jurisdiction, the discharge of the prisoner may be refused and he may be remanded to custody so that he may again be taken before the magistrate on proceedings *de novo* on which his election can be taken in proper form.

Fuerst, (1913), Black, J., 22 C. C. C. 183.

46. An indictment may regularly be laid at the instance of the Attorney-General against a person who had been arrested for the same offence in proceedings before a magistrate, but who had been set at liberty on a writ of habeas corpus allowed for irregularities in essential parts of the procedure before magistrates and not on the merits as to conviction.

Dick, (1913), Pouliot, J., 22 C. C. C. 188.

47. Each successive judge to whom a *habeas corpus* application is made must act upon his own view of the law applicable to it, and where an application of this character is made before a judge of the Alberta Supreme Court, the fact that the same application had previously been dismissed by each of two other justices of the same court, all vested with co-ordinate jurisdiction, is in no sense a bar to the *de novo* hearing and determination of the third *habeas corpus* application on its merits.

Jackson, (1914), Walsh, J., 22 C. C. C. 215.

48. A warrant of commitment issued under sec. 690 of the Cr. Code 1906, remanding the accused to prison to stand his trial before the King's Bench, is not invalid merely on the ground that the elements of the offence are not recited in the warrant, if an indictable offence be disclosed in the depositions.

A prisoner in custody under two warrants of commitment for trial for different offences cannot set up the irregularity of a remand under sec. 679 Cr. Code, because of an adjournment exceeding 8 days, during the preliminary inquiry on one of the

charges, as a ground for a motion for his release on *habeas corpus*.

Beaudoin, (1913), Carroll, J., 22 C. C. C. 319.

49. While an order for further detention may be justified under Cr. Code sec. 1120 on a *habeas corpus* application allowed because of a technical error which rendered the conviction bad, it should not be made where the official who purported to make the commitment was not of the class of magistrates to whom extended jurisdiction had been given in respect of such offences as that on which the conviction was improperly made.

Kolember, (1914), Black, J., 22 C. C. C. 341.

50. The essential and leading theory of *habeas corpus* procedure is the immediate determination of the right to the applicant's freedom; and when a *habeas corpus* is obtained without disclosing so material a fact as that the applicant was not in custody at the time of the application, as he had been released on bail, it will be set aside.

Singh, (1914), Morrison, J., 23 C. C. C. 5.

51. A convict in a penitentiary may provisionally earn a remission of part of his sentence by good conduct duly certified in pursuance of the Penitentiary Regulations of November, 1898; but remissions so earned are subject to forfeiture under such Rules and this without any hearing in the nature of a trial or any right of the convict to be heard.

Primâ facie the warden and officers of a penitentiary are to determine questions of remission of part of sentence under the Penitentiary Regulations of November, 1898, for good conduct of the convict while in the prison, and also questions of the forfeiture of remissions earned, subject to review and sanction by the Minister of Justice under such Regulations; it is not open to the Court on *habeas corpus* to enquire into the validity of a direction contained in a report duly approved by the Minister forfeiting on the ground of misconduct the periods of remission previously earned by the convict.

Huckle, (1914), Middleton, J., 23 C. C. C. 73.

52. A notice of motion for a writ of habeas corpus required under Alberta Crown Practice Rule to be served "upon the Attorney-General" need not be served personally upon that official; it is enough that service is made at the Attorney-General's office in Edmonton, but service on his local agent elsewhere will not be allowed as its equivalent without proof of the local agent's authority to receive service in the particular case or a waiver by the Attorney-General of regular service.

On a habeas corpus motion attacking a summary conviction as upon a plea of guilty for a vagrancy offence, the defendant's affidavit is admissible to shew that he did not plead guilty but had admitted only one of the essential circumstances which must concur to constitute an offence.

Swett, (1914), Stuart, J., 23 C. C. C. 272.

53. Where a committal for trial for an offence alleged to have been committed in a city to which sub-sec. 2 of sec. 777 applies has been made by a county stipendiary not authorized to hold a summary trial in Nova Scotia under sec. 777, sub-sec. 2, the Superior Court may enable the prisoner to elect trial before the city stipendiary magistrate having the extended jurisdiction of sec. 777 by granting his application for writs of habeas corpus and recipias corpus to transfer him from the gaol to the city magistrate's court.

Foley, (1914), Graham, J., 24 C. C. C. 150.

54. A soldier of the Canadian forces under orders for overseas service is not subject to arrest in proceedings under the Bastardy Act, R. S. N. S., ch. 51, and when held in custody on a remand in such proceedings he will be discharged on habeas corpus.

[The Army Act (Imp.), sec. 145, and the Militia Act, R. S. C. 1906, ch. 41, sec. 74 applied.]

Hughes, (1915), Wallace, J., 24 C. C. C. 222.

55. A prisoner held in military custody as an alien enemy must have the consent of the Minister of Justice before he can claim to be released in *habeas corpus* proceedings in support of which he adduces proof that he is a British subject by naturalization; he cannot be released upon bail or otherwise discharged or tried without the consent of the Minister of Justice under the War Measures Act, 1914, 5 Geo. V., Can. ch. 2.

Beranek, (1915), Meredith, C. J., C. P., 24, C. C. C. 252.

56. It is not a ground for discharge on habeas corpus where the accused was arrested for default under a filiation order under R. S. N. S. 1900, ch. 51, that no depositions had been taken in the filiation proceedings, if he had consented to the filiation order for he thereby effectively waived the taking of evidence.

Locke, (1915), Meagher, J., 24 C. C. C. 337.

57. When a warrant for commitment to jail in default of paying a fine has been issued with an overcharge in the costs of conveyance to the common jail, it will be quashed on habeas corpus and the prisoner discharged as the warrant is indivisible.

Msadaquis, (1914), Bruneau, J., 24 C. C. C. 384.

58. The judgment of a registrar of alien enemies as to the necessity of the internment of a resident alien enemy under the War Measures Act 1914, and under the statutory regulations made thereunder, is not subject to review by the Courts on habeas corpus without the consent of the Minister of Justice.

An alien enemy has no right at common law to a writ of habeas corpus.

Gusetu, (1915), Maclennan, J., 24 C. C. C. 427.

59. A prisoner convicted by a magistrate on a summary trial and remanded for sentence to a fixed date may be brought up in the meantime for preliminary enquiry, upon another criminal charge by means of a writ of habeas corpus *ad respondendum* ordered by a Superior Court on the prosecutor's application.

Henry, (1915), Drysdale, J., 25 C. C. C. 86.

60. The fact that the stenographer acting at the magistrate's direction, in taking the evidence in a summary conviction matter, makes affidavit that he was sworn to "transcribe" the evidence, while the statute requires that he be sworn to "report" the evidence is not conclusive in support of an objection that the trial was irregular in that respect; and the court on *habeas corpus* may affirm the conviction where the magistrate could not remember whether the stenographer was sworn or not, and it was not clear that the oath taken by the stenographer was not in substance to "report" the evidence, the stenographer disclaiming that he was sworn other than in the usual form and probably using the word "transcribe" as the equivalent of "report."

A warrant of commitment in default which is drawn in strict conformity with a statutory form will not be set aside on *habeas corpus* although it does not fix the costs of conveying to gaol which the defendant must pay as a condition of his release; so a commitment in default of giving security in filiation proceedings under the Illegitimate Children's Act, R. S. M. 1913, ch. 92, is valid if issued in form 10 of that Act for the term of six months or until defendant gives the statutory bond or makes the cash deposit and pays "the costs and charges attending the commitment and conveying to gaol."

Book, (1915), Galt, J., 25 C. C. C. 89.

61. The questions open to consideration on a habeas corpus application are whether the commitment is legal, whether any offence known to the law is charged, and whether the magistrate had the necessary power or jurisdiction; but it is not for the Judge hearing such application to determine whether the committing magistrate's decision in convicting and sentencing the accused is in accordance with the evidence or is proper or improper on the merits of the case.

Sands, (1915), Galt, J., 25 C. C. C. 116.

62. An amended warrant of commitment and an amended conviction may be returned to a writ of habeas corpus, so as to omit an unauthorized imposition of hard labour which the justice, making the summary conviction, had no jurisdiction to impose for the particular offence, and this, notwithstanding that the adjudication imposing hard labour had been acted upon; but the unauthorized portion of original commitment and of the original conviction brought before the court may be quashed.

Muschik, (1915), Elwood, J., 25 C. C. C. 170.

63. Where the Magistrate or Judge, taking the election of the prisoner for summary trial under the "Summary trials" procedure, Part XVI. of the Criminal Code, places before the accused only the option of remaining in custody until the sittings of the jury Court and omits to inform him that he would be at liberty, in case he did not choose a summary trial, to apply for release on bail to answer the charge at the jury Court, such omission goes to the jurisdiction of summary trial, and the subsequent proceedings and sentence, although upon a plea of guilty, will be set aside.

The right of appeal by reserved case or by leave, as to questions of law arising upon the judgment of a magistrate upon a summary trial held by him under the extended jurisdiction conferred by Cr. Code, sec. 777, does not bar the remedy of the accused to seek his discharge on habeas corpus on the ground of the magistrate's omission to give the statutory information required by Cr. Code, sec. 778, as amended in 1909, on taking the prisoner's election of summary trial, the summary trial Court not being a Court of record, although presided over by a Judge of the Court of Sessions constituted under R. S. Q. 1909, art. 3260.

A Judge of the Superior Court of the Province of Quebec has concurrent jurisdiction with a Judge of the King's Bench, on habeas corpus, respecting a commitment in a criminal matter.

The provisions of Cr. Code, sec. 1120, as to ordering on habeas corpus the further detention of a "person in custody, *charged* with an indictable offence," do not apply to a person already sentenced, although the sentence was made without jurisdiction; and the prisoner will be discharged from imprisonment adjudged even upon a plea of guilty if the magistrate has proceeded with a summary trial under Cr. Code, sec. 778, on defendant's election of that mode of trial without informing him of his privilege of applying for bail should he choose to be tried in the ordinary way, by the Court having criminal jurisdiction, in the manner directed by Cr. Code, sec 778, sub-sec. (2), as amended in 1909 by 8-9 Edw VII (Can.), ch. 9.

Morgan, (1913), Saint-Pierre, J., 25 C. C. C. 192.

64. Although it is usual in the Province of Quebec for the

gaoler to make his return under oath to a writ of habeas corpus, a valid return may be made without its being sworn to.

The Court hearing a habeas corpus application without a certiorari, need not enquire into the validity of one of several commitments, in execution of several convictions, if the remaining commitments are found to be valid.

Evans, (1915), Beaudin, J., 25 C. C. C. 239.

65. The restriction imposed by 23 Vict., ch. 57, sec. 27 (C. S. L. C., ch. 95, sec. 28) in habeas corpus matters in Quebec, whereby an application once refused should not be renewed before another judge, except on new facts, but the applicant might apply to the court of Queen's Bench in appeal, applies to the statutory habeas corpus and not to the common law writ, consequently a writ of habeas corpus at common law to examine into the legality of detention under a conviction by an inferior court for a criminal offence may be issued by a judge of the King's Bench, after the refusal of an application upon the same grounds, made before a judge of the Quebec Superior Court.

If the court of record, making the conviction possesses the requisite jurisdiction no matter what errors or irregularities occur in the proceedings or judgments provided they are not of such a character as to render them void, its action cannot be reviewed or examined into on habeas corpus.

Therrien, (1915), Cross, J., 25 C. C. C. 275.

66. It is not a ground for discharge on habeas corpus that the summary conviction and commitment purported to include as one offence the desertion of a seaman and also his refusal to do duty which are declared to be offences by the Canada Shipping Act, R. S. C. 1906, ch. 113, sec. 287, as amended 1907 .

Where a summary conviction of a seaman for desertion under the Canada Shipping Act, R. S. C. 1906, ch. 113, sec. 287, as amended by 1907, Canada Statutes, ch. 46, does not show that the ship was registered in one of the provinces at the time of the offence, the defendant will be discharged in habeas corpus proceedings from custody under the commitment following such conviction.

Dalton, (1916), Drysdale, J., 26 C. C. C. 142.

67. A conviction on a "speedy trial" (Part XVIII. of the Criminal Code), need not recite that the presiding Judge on taking the prisoner's election of trial without a jury had stated to him that he had the alternative of remaining in gaol until the jury Court or being admitted to bail as the Court might decide; in the absence of any proof appearing in the record that this statutory statement had been made to the prisoner in con-

formity with Cr. Code, Sec. 827 (Amendment of 1909), the presumption is that the statement was regularly made.

A district Judge or other official, qualified under Cr. Code sec. 823 to hold a "speedy trial" under Part XVIII. of the Criminal Code after a committal for trial, acquires jurisdiction to hear and determined the case if the accused has given his consent under Code sec. 827, notwithstanding that the accused had, when arraigned before a city magistrate with jurisdiction of "summary trial" under Code sec. 777, offered a plea of guilty without being put to his election under Cr. Code sec. 778 of trial before the magistrate.

Therrien, (1915), Greenshields, J., 26 C. C. C. 309.

68. The right to discharge on habeas corpus does not depend on the legality or illegality of the prisoner's caption but on the legality or illegality of his detention.

Gage, (1916), Latchford, J., 26 C. C. C. 385.

69. The military discipline and control to which a soldier enlisted for active service is subject, along with his fellow soldiers, is not in law a detention or restraint upon liberty upon which to base a habeas corpus application made by the soldier's parent or other person having civil control over him during his minority for the purpose of having the soldier released from military service which he had voluntarily entered during minority.

A minor under eighteen years, who understands the nature and consequences of enlistment and who is certified by the proper authorities to be qualified may waive the exemption in favour of youths under 18 contained in the Canadian order-in-council of August 20, 1915, and his enlistment for overseas service will be valid without his father's consent.

Fournier, (1916), Lemieux, (Sir), C. J., 26 C. C. C. 405.

70. There is no appeal in Manitoba from an order discharging a prisoner on *habeas corpus;* nor can the provincial Court of Appeal after the prisoner's release review by way of rule *nisi* the validity of the discharge order made in the King's Bench in respect of a committal for contempt made by a commissioner in extra-judicial proceedings not brought up by *certiorari.*

A superior Court Judge upon a common law writ of *habeas corpus* in respect of a committal by a commissioner holding extra-judicial proceedings not removed by *certiorari* may decide upon extrinsic evidence that the committal was made without jurisdiction and may direct the prisoner's discharge, but he has no jurisdiction upon such *habeas corpus* proceedings alone to set aside the commissioner's order upon which the committal was founded.

A Court of superior jurisdiction will not entertain a motion to set aside a writ of *habeas corpus* and the proceedings thereunder, where the prisoner has been discharged thereunder from a commitment made in extra-judicial proceedings, as the setting aside of the *habeas corpus* proceedings would not replace in custody the person so discharged and the Court has in such case no power to issue a warrant for his re-arrest and detention.

Beck, (1916), Perdue, J. A., 27 C. C. C. 331.

71. The procedure of taking the election of the accused for summary trial as enacted by Cr. Code sec. 778 applies to the offence of theft by a servant or agent under Cr. Code sec. 359 although the value is alleged to be under $10; it is not enough that the accused pleaded not guilty where his consent to summary trial was not asked in conformity with sec. 778.

De la Durantaye, (1916), Allard, J., 27 C. C. C. 395.

72. A German-born resident left his country in 1898 and had remained abroad ever since. After residing uninterruptedly for fifteen years in England, where he carried on business, he, being then aged thirty-two, was interned in a war camp as an alien enemy, whereupon he moved for a writ of habeas corpus.

By the North German Nationality Law of June 1, 1870, as extended by a statute of 1873 to the whole German Empire, Germans who remained abroad for an interrupted period of ten years thereby lost their nationality. By a German military statute of 1874 Germans who had lost their nationality and had not acquired any other were bound, on returning to Germany in order to take up their permanent residence there, to present themselves for military service, provided that they were not bound to serve in time of peace after the completion of their thirty-first year:—*Held*, that the appellant had not so completely lost his German nationality that he could be treated for the purposes of the application as having ceased to be a German citizen, and that the application failed. Whether the Courts of this Country will recognize a person as having no nationality, *quaere*.

Order of the Court of Appeal (1916), 1 K. B. 280, n., affirmed.

Weber, L. R. (1, 1916), A. C. 421.

73. *Held*, that the words "crime or offence" must be limited to those ordinary crimes and offences which are punishable by the laws of all nations, and which are not peculiar to the laws of China, such as murder, robbery, theft, or arson, committed by a Chinese within Chinese territory, or in Chinese ships on the high seas; piracy, moreover, in certain circumstances would come within the Ordinance, as for example if a Chinese went from the Chinese coast to plunder ships at sea, returning again to China

with his plunder. One of these coolies who had taken refuge at Hong Kong, had been imprisoned with a view to being surrendered to the Chinese Government on the ground of his having feloniously seized the ship at sea and murdered some of the crew, and had been brought up on a writ of Habeas Corpus, and discharged by the Chief Justice of Hong Kong. Thereupon, he was again arrested on a warrant for piracy *jure gentium*. On being brought up again on a writ of habeas corpus, he was again discharged by the Chief Justice, on the ground that he had been committed a second time for the same offence. On appeal it was—*Held*, by the Judicial Committee, that the first order of discharge should be upheld, but that the second order of discharge should be reversed.

Atty-Gen. for Hong Kong v. Kwog-a-Sing, L. R. 5 P. C. 179.

74. M. and M. convicted at the sessions of the Supreme Criminal Court of Victoria, of manslaughter committed on board a British ship on the high seas, were sentenced to penal servitude for fifteen years, and were subsequently detained in a public gaol within the meaning of the Colonial Act, the Statute of Gaols, 1864. On a return to a writ of habeas corpus, to the effect that M. and M. were detained "for the cause and to the end that they may undergo the sentence aforesaid," the Court ordered that the prisoners "be discharged from their imprisonment and set at large," on the ground that, by 16 & 17 Vict. c. 99, s. 6, sentence of penal servitude could not be carried into execution in the colony without the intervention of the Secretary of State. *Held*, by the Privy Council that the return was sufficient, and that in any case the Court erred in not remanding the prisoners until it was clear that no lawful means of executing the sentence could be found.

The Queen v. Mount, L. R. 6 P. C., 283.

75. An appeal lies from an order of the Queen's B. Div. directing the issue of a writ of habeas corpus to bring before the Court an infant in order to determine who is to have the custody of and control over such infant.—In determining who is to have the custody of and control over an illegitimate child the Court in exercising its jurisdiction with a view to the benefit of the child will primarily consider the wishes of the mother. By Lords Herschell and Fields: The authorities do not establish the proposition that the legal rights of the mother of an illegitimate child as to its custody are the same as those of the father of a legitimate child.

Barnardo, L. R. (1891), A. C. 388.

76. Where a person has been discharged from custody by an order of the High Court under a habeas corpus the Court of

appeal has no jurisdiction to entertain an appeal under the Judicature Act 1873.

Cox v. Hakes, L. R. 15 P. C. 506.

77. On an application by the parent for a writ of habeas corpus in respect of a child, directed to the head of an institution for destitute children in which the child had been placed, it appeared that before the proceedings began he had without authority from the parent handed over the child to another person to be taken to Canada, and he alleged that he did not know the address of such person or where he or the child was . The Court of Appeal affirmed an order absolute of the Queen's B. Div., that the writ should issue: *Held*, that such an order is an order within the meaning of sect 19 of the Judicature Act 1873, and that an appeal lies from it to the Court of Appeal: *Held* also, affirming the decision of the Court of appeal (24 Q. B. D. 283) but without expressing any opinion as to the circumstances under which the child was sent to Canada, that the writ ought to issue on the grounds that the applicant was entitled to require a return to be made to the writ, in order that the facts might be more fully investigated.

Gossage's Case, L. R. (1892), A. C. 326.

78. Il n'est pas nécessaire, bien que ce soit l'usage, pour un geôlier de faire son rapport sous serment en réponse à un bref d'habeas corpus.

Evans, (1915), Beaudin, J., 48 R. J. C. S., 469.

78A. An information in a summary proceeding charging the keeping of "a bawdy house" and omitting to describe such as a "common" bawdy house is bad as not disclosing a legal offence; that it is a "common bawdy house" is an essential ingredient of the offence under Cr. Code sec. 228 which declares a "common bawdy house" to be a disorderly house the keeping of which is punishable thereunder.

Re Léonard, (1917), *Ex parte*, Dugas, J., No. 396 S. C. Montreal.

79. A prisoner, committed by a judge under the Extradition Act, cannot set up an irregularity in his arrest as a ground for habeas corpus.

Stone, (1911), Weir, J., 39 Q. J. R. S. C. 424.

80. Reg. 14B of the Defence of the Realm (Consolidation Regulations, 1914, which empowers the Secretary of State to order the internment of any person "of hostile origin or associations", where on the recommendation of a competent naval or military authority it appears to him expedient for securing the public safety or the defence of the realm, is authorized by the Defence

of the Realm Consolidation Act, 1914, s. 1, sub-s. 1, which confers upon the King in Council power during the continuance of the war "to issue regulations for securing the public safety and the defence of the realm"; therefore an order made in accordance with reg. 14B for the internment of a naturalized British subject of German birth is valid.

Rex v. Halliday, (1, 1917), A. C. 260.

81. By Lord Halsbury:—It was not a proceeding in a suit but was a summary application by the person detained. No other party to the proceeding was necessarily before or represented before the Judge except the person detaining, and that person only because he had the custody of the applicant and was bound to bring him before the Judge to explain and justify, if he could, the fact of imprisonment. It was as Lord Coke described it, *festinum remedium*.

Hawkes, L. R. 15 A. C. 515.

82. Where a person, accused of theft, asks for a summary trial before a district magistrate and is found guilty, he cannot afterwards secure his freedom by a writ of habeas corpus for the reason that the depositions of the witnesses were not taken down in writing, in view of the fact that Cr. C. 682, which requires that the depositions be taken in writing, is without application in summary trials.

Britt, (1916), 51 Que. S. C. 448.

83. No appeal lies to the King's Bench in matters of habeas corpus.—But a demand for the writ may be made to the King's Bench, upon refusal by the Superior Court. In such case the King's Bench acts as a trial Court, and not as an appelate tribunal.

Duperron v. Jacques, (1917), 26 Que. K. B. 258.

84. A German subject resident in the United Kingdom who, in the opinion of the Executive Government, is a person hostile to the welfare of this country and is on that account interned may, having regard to the methods adopted by certain German subjects during the war, be properly described as a prisoner of war, and may be interned as a prisoner of war, although not a combatant or a spy, and being a prisoner of war he is not entitled to obtain a writ of habeas corpus with a view to his release.

Liebmann, (1915), 25 Cox 179.

85. By sect. 6 of the Habeas Corpus Act, 1679, no person who shall be delivered or set at large upon any *habeas corpus* shall be again imprisoned or committed for the same offence; by the

extradition treaty with Germany in 1872 no person was to be extradited who "has already been tried and discharged or punished" for the crime for which his extradition is demanded; by sect. 17 of the Gaming Act, 1845 any person who by cheating at cards "wins from any other person.....any sum of money or valuable thing.....by a false pretence", and the crime of obtaining money or goods by false pretences was one of the crimes specified in the treaty and in the Extradition Act, 1870.

Upon proceedings in the nature of *habeas corpus* the High Court in Calcutta ordered the discharged of S. on the ground that he was illegally detained by reason of the refused of the magistrate to allow him an opportunity for defence. S. then came to England and was arrested in London under the original warrant; he was brought before a magistrate, who held that a *prima facie* case was proved and committed him for extradition.

Upon an application for a writ of *habeas corpus*: *Held*, that as the accused had been set at liberty by the Court in India merely upon the ground of the error in procedure and not upon the trial of the case, sect. 6 of the Habeas Corpus Act, 1679, did not apply and was no bar to the subsequent proceedings; that as he was not tried on the merits he was not "tried and discharged" within the meaning of art. 4 of the treaty.
Ex parte Stallmann, (1912), 23 Cox 192.

86. An Italian subject was, on the request of the Italian Government, arrested in England on a warrant charging him with forgery committed in Italy, and on proceedings being taken for his extradition the magistrate made an order for his committal.

Upon an application for a writ of *habeas corpus* upon the ground that the Order in Council was not proved before the magistrate and that the magistrate had therefore no jurisdiction to commit: *Held;* that in the circumstances the writ of *habeas corpus* should not be granted merely because formal proof of the Order in Council had not been given in court in presence of the accused.

Per Scrutton, J.: In all such cases the Order in Council should be proved before the committing magistrate; and *per* Bailhache, J.: It is an essential fact to be proved in order to found the magistrate's jurisdiction to commit.
Ex parte Servini, (1913), 23 Cox 713.

87. By s. 1, sub-s. 1, of the Military Service Act, 1916 (Session 2), every male British subject who is for the time being ordinary resident in Great Britain and within certain specified limits of age is, with certain exceptions, deemed to have been duly enlisted in His Majesty's forces and to have been transferred to the reserve.

An Irishman who had temporarily got work in England was

brought before a magistrate for failing to comply with an order calling him up from the reserve for permanent service. In pursuance of powers conferred upon him the magistrate handed him over to the military authorities as being a person who for the time being was ordinarily resident in Great Britain and as such deemed to be enlisted and transferred to the reserve. The military authorities detained him:—*Held*, that a writ of *habeas corpus* would not lie to question the decision of the magistrate. *Rex* v. *Bolton*, (1841) 1 Q. B. 66 applied.

Ex parte Ferguson, L. R. (1917) 1 K. B. 176.

88. A Judge of the Court of King's Bench or a Judge of the Court of Appeal acting *ex officio* as a Judge of the former Court has power to direct the issue of a writ of habeas corpus in respect of a prisoner in custody returnable immediately before himself in Chambers: *Re Sproule* (1886) 12 S. C. R. 140, at p. 183; *Leonard Watson's Case*, (1839) 9 Ad. & E. 731, 736-746; *Bacon's Abr. vol.* 4, p. 592, and he may thereupon immediately order the release of the prisoner, without calling upon the Crown or the prosecutor to show cause against it. He has no power, however then or thereafter, upon habeas corpus proceedings alone, to quash the conviction of the prisoner or the warrant of commitment under which the imprisonment took place: *Hale, Pl. of Cr., vol.* 2, p. 211.

Whenever the Judge has released the prisoner upon *habeas corpus*, the purpose of the writ has been accomplished and the proceeding is at an end, and neither he nor the Court of Appeal can undo the order made and re-commit the prisoner. *Cox* v. *Hakes*, (1890), 15 A. C., 506, followed.

Re Sproule, *supra*, distinguished.

A rule nisi, therefore, obtained by counsel for the Crown, calling upon a person so released to show cause why the writ of habeas corpus and all proceedings thereunder should not be quashed, will be discharged.

Beck, (1916), 27, Man. R. 288.

89. By art. 12 of the Aliens Restriction (Consolidation) Order, 1914, made under the Aliens Restrictions Order, 1914, a Secretary of State may order the deportation of any alien:—*Held*, that the article is within the power conferred by the Aliens Restriction Act, 1914, upon His Majesty in Council in time of war or imminent national danger or great emergency to impose restrictions on aliens. *Semble* that, if it appears to the Court that a misuse of the power conferred upon the Executive is imminent, the Court can, upon an application for a writ of habeas corpus, deal with the matter, even though, in the form in which the application is made, the point is not technically before the Court and the Executive alleges that the applicant is in legal custody.

An alien who is suspected of being of immoral and criminal character may be a person against whom an order of deportation under the article may properly be made as being necessary or expedient with a view to the safety of the realm. *Quaere* whether the Executive or the alien has the right to choose the country to which he is to be deported. An affidavit in support of an application for a writ of habeas corpus contained a statement by the applicant that he "escaped from Russia for political reasons" at a date when he was about seventeen years of age:—*Held*, that the bare statement of the applicant that he was a political refugee, unsupported by any evidence, was not sufficient to entitle the Court to order the writ to issue.

Ex parte Sarno, (1916), L. R. 2 K. B. D. 742.

90. Le prévenu, qui a été condamné à l'emprisonnement sans option d'amende pour une troisième infraction à la loi des licences, peut être incarcéré *instanter*, nonobstant la disposition de l'article 1159 de la même loi; qui statue que "l'exécution d'un jugement rendu par la Cour de circuit peut avoir lieu à l'expiration de deux jours à compter de sa date".

2. Lorsqu'il y a conflit évident entre l'esprit et la lettre de la loi, les tribunaux doivent, par une interprétation logique, s'appliquer à donner effet à l'intention du législateur, en la faisant prévaloir sur des textes incompatibles avec l'objet de la loi.

Bouchard, (1917), Drouin, J., 52, R. J. Q. C. S. 456.

ACTE DE L'HABEAS CORPUS.

HABEAS CORPUS ACT.

ACTE DE L'HABEAS CORPUS.

(S. R. C. 1861, ch. 95.)

Acte concernant le bref d'*Habeas Corpus*, l'admission à caution, et les autres dispositions de la loi pour garantir la liberté du sujet.

EN MATIERES CRIMINELLES.

Qui peut obtenir le Bref et comment.

1. Toutes personnes emprisonnées ou détenues dans aucune prison dans le Bas Canada pour aucune offense criminelle ou supposée criminelle, auront le droit de demander et d'obtenir de la cour du banc de la Reine ou de la cour supérieure, ou d'aucun des juges de l'une ou de l'autre des dites cours, le bref d'*Habeas Corpus*, avec tous les bénéfices et soulagements en résultant, en tout temps, et d'une manière aussi ample, entière et avantageuse à tous égards, et à toutes fins, intentions et effets que les sujets de Sa Majesté dans le royaume d'Angleterre, emprisonnés ou détenus dans aucune prison du dit royaume, ont droit à ce bref, et aux bénéfices qui en découlent, par la loi commune et les statuts du dit royaume. 24 G. 3, c. 1, s. 1,—1 G. 4, c. 8,—7 V. c. 17, s. 15,—12 V. c. 37, s. 41,—12 V. c. 38, s. 98,—12 V. c. 40, s. 3,—20 V. c. 44, ss. 13, 35.

Pour empêcher les délais auxquels ces brefs pourront être sujets.

2.—*Frais de transport. Rapport à faire et comment.*—Et pour prévenir les délais dont pourraient user les shérifs, geoliers et autres officiers et personnes sous la garde desquels des sujets de Sa Majesté sont emprisonnés ou détenus pour des matières criminelles ou supposées criminelles, pour faire les rapports des brefs d'*Habeas Corpus* à eux adressés,—chaque fois qu'aucune personne apporte un bref d'*Habeas Corpus* adressé à aucun shérif, geolier, ministre (*minister*) ou autre personne quelconque pour une personne sous sa garde, et que le dit bref est signifié à tel officier, ou laissé à la prison à aucun des sous-officiers, sous gardiens, ou députés des dits officiers ou gardiens, alors le dit officier ou les dits officiers, son ou leurs sous-officiers, sous-gardiens, députés ou autres personnes, feront rapport de tel bref, sous trois jours après la signification susdite d'icelui (à moins

HABEAS CORPUS ACT.

(R. S. C. 1861, ch. 95.)

An Act respecting the Writ of *Habeas Corpus*, Bail and other provisions of law for securing the Liberty of the Subject.

IN CRIMINAL MATTERS.

Who may obtain the Writ and how.

1. All person committed or detained in any prison within Lower Canada, for any criminal or supposed criminal offence, shall of right be entitled to demand and obtain from the Court of Queen's Bench or from the Superior Court or any one of the Judges of either of the said Courts, the writ of *habeas corpus*, with all the benefit and relief resulting therefrom, at all such times, and in as full, ample, perfect and beneficial a manner, and to all intents, uses, ends and purposes, as Her Majesty's subjects within the realm of England, committed or detained in any prison within that realm, are there entitled to that writ and to the benefit arising therefrom, by the common and statute laws thereof. 24 G. 3, c. 1, s. 1,—1 G. 4, c. 8,—7 V. c. 17, s. 15,—12 V. c. 37, c. 41,—12 V. c. 38, s. 98,—12 V. c. 40, s. 3,—20 C. c. 44, ss. 13, 35.

For preventing delays to returns of such writs.

2. *Return to be made and in what manner.*—And for the prevention of delays which may be used by sheriffs, gaolers, and other officers and persons to whose custody any of Her Majesty's subjects are committed or detained, for criminal or supposed criminal matters, in making returns of writs of *habeas corpus* to them directed,—Whenever any person brings any writ of *habeas corpus* directed to any sheriff, gaoler, minister, or other person whatsoever, for any person in his custody, and the said writ is served upon the said officer, or left at the gaol or prison with any of the under officers, under keepers, or deputies of the said officers or keepers, then the said officer or officers, his or their under officers, under keepers, deputies or other persons, shall, within three days after the service thereof as aforesaid (unless the commitment was for treason or felony plainly

que l'emprisonnement ne soit pour trahison ou félonie pleinement et spécialement exprimée dans le mandat d'emprisonnement,) sur paiement ou offre des frais de transport du dit prisonnier à être déterminés par le juge qui accorde le bref, et endossés sur le dit bref, et n'excédant pas soixante centins par lieue, et sur caution donnée, sous sa propre obligation, de payer les frais de transport pour le retour du prisonnier, s'il est renvoyé en prison par la cour, ou par le juge devant lequel il est amené, et qu'il ne s'échappera pas en chemin, et produiront ou feront produire le corps de la partie ainsi emprisonnée ou détenue devant un des juges de la dite cour d'où le bref aura émané, ou devant tel autre juge devant lequel le bref est rapportable, conformément à l'ordre y contenu, et certifieront également les causes véritables de sa détention ou emprisonnement, à moins que le lieu de l'emprisonnement de la partie ne soit dans un endroit éloigné d'au-delà de dix lieues de celui où se trouve telle cour ou juge,—et si c'est au-delà de dix lieues, mais pas à plus de trente lieues, alors dans l'espace des dix jours,—et si c'est au-delà de trente lieues et pas à plus de soixante lieues, alors dans l'espace de vingt jours,—et si c'est au-delà de soixante lieues, et pas à plus de cent lieues, alors dans l'espace de quarante jours,—et si c'est au-delà de cent lieues, alors dans l'espace de trois mois, si c'est depuis le premier de Mars jusqu'au vingt de Septembre, autrement dans l'espace de huit mois, après telle livraison et signification du bref comme susdit et pas plus longtemps:

2. *Le prisonnier ne sera pas amené s'il n'est pas fait paiement des frais.*—Mais si tel paiement ou offre n'est pas fait par le personne apportant le bref au shérif, geolier, ministre, ou autre personne comme susdit, tel shérif, geolier, ministre ou autre personne, rapportera le bref avec les causes véritables de l'emprisonnement ou détention, sans produire ou faire produire le corps de la personne emprisonnée ou détenue comme il y est ordonné, et certifiera au dos d'icelui, que le défaut de tel paiement ou offre est la cause que le corps de la personne n'est pas en même temps produit, ce qui sera considéré être un rapport suffisant. 24 G. 3, c. 1, s. 2.

Comment les brefs seront marqués et signés.

3. Et afin qu'aucun shérif, geolier ou autre officier ne puisse prétendre cause d'ignorance de la portée d'aucun tel bref,—tous tels brefs seront marqués de cette manière: "*En vertu du chapitre quatre-vingt-quinze des Statuts Refondus pour le Bas Canada,*"—et signés par la personne qui les accorde. 24 G. 3, c. 1, s. 3, *partie.*

and specially expressed in the warrant of commitment)—upon payment or tender of the charges of bringing the said prisoner, to be ascertained by the Judge who awards the writ, and endorsed upon it, not exceeding sixty cents per league, and upon security given, by his own bond, to pay the charges of bringing back the prisoner, if he is remanded by the court or judge before whom he is brought, and that he will not make any escape by the way,—make return of such writ, and bring, or cause to be brought, the body of the party so committed or detained unto or before one of the judges of the said court whence the writ issues, or before any other judge before whom the writ is made returnable, according to the command thereof, and shall then likewise certify the true causes of the detainer or imprisonment,—unless the commitment of the party be in any place beyond the distance of ten leagues from the place where such court or judge is or resides,—and if beyond the distance of ten leagues, and not above thirty leagues, then within the space of ten days,—and if beyond the distance of thirty leagues, and not above sixty leagues, then within the space of twenty days,—and if beyond the distance of sixty leagues, and not above one hundred leagues, then within the space of forty days,—and if beyond the distance of one hundred leagues, then within the space of three months, if from the first day of March to the twentieth of September, otherwise in the space of eight months, after such delivery and service of the writ as aforesaid, and not longer:

2. *Body of prisoner not to be produced unless payment of charges of so doing to be made.*—But if such payment or tender is not made by the person bringing the writ to the sheriff, gaoler, minister, or other person as aforesaid, such sheriff, gaoler, minister, or other person, shall return the writ with the true causes of the imprisonment or detainer, without bringing or causing to be brought the body of the person committed or detained as thereby commanded, and shall certify on the back thereof, that a default of such payment or tender is the cause why the body of the person is not brought therewith; which shall be deemed a sufficient return. 24 G. 3, c. 1, s. 2.

How writs shall be marked and signed.

3. And that no sheriff, gaoler, or other officer, may pretend ignorance of the import of any such writ:—all such writs shall be marked in this manner,—***By virtue of chapter ninety-five of the Consolidated Statutes for Lower Canada,***—and shall be signed by the person who awards the same. 24 G. 3, c. 1, s. 3.—*part.*

Bref accordé sur production de la copie du mandat ou sur l'affidavit que telle copie a été refusée.

4. Et si une personne est emprisonnée ou détenue, comme susdit, pour aucun crime (si ce n'est pour félonie ou trahison pleinement exprimée dans le mandat (*warrant*) d'emprisonnement), dans la vacance et hors de terme ou de sessions, telle personne (n'étant pas condamnée ou en exécution sur un ordre légal), ou une autre pour elle, pourra se plaindre à l'un des juges des cours du banc de la Reine ou de la cour supérieure, qui, sur le vu de la copie du mandat (*warrant*) d'emprisonnement et détention, ou autrement sur serment prêté par la personne, sous la garde de laquelle le prisonnier est détenu, a refusé de donner telle copie, accordera, sur demande par écrit de telle personne ou d'aucune autre pour elle, attestée et souscrite par deux témoins présents à sa présentation, un bref d'*habeas corpus*, sous le sceau de la cour dont tel juge est membre, adressé à l'officier ou partie sous la garde de laquelle se trouve la personne ainsi emprisonnée ou détenue, rapportable immédiatement devant le dit juge:

2. *Le prisonnier sera amené devant le juge.*—Et sur la signification du bref d'*habeas corpus*, comme susdit, l'officier ou son sous-officier, ou député, sous la garde duquel la partie est ainsi emprisonnée ou détenue, amènera et produira le prisonnier dans les différents temps ci-dessus limités, devant le dit juge devant lequel le dit bref est rapportable, ou, en son absence, devant aucun autre juge de la même cour, avec le rapport de tel bref et les causes véritables de l'emprisonnement et détention;

3. *Le juge élargira le prisonnier qui donnera cautions. Exception.*—Et là-dessus, dans les deux jours après que la partie aura été amenée devant lui, le juge, devant qui le prisonnier est amené, comme susdit, élargira le prisonnier et le libérera de son emprisonnement, en prenant sa reconnaissance avec une caution ou plus, pour une somme qui ne sera pas excessive, à sa discrétion, ayant égard à la qualité du prisonnier et à la nature de l'offense, pour sa comparution à la cour du banc de la Reine, au terme suivant, ou d'évacuation générale des prisons, dans et pour le district où l'emprisonnement a eu lieu, ou dans lequel l'offense a été commise, ou à toute autre cour à laquelle il appartient de connaître de telle offense, suivant le cas, et certifiera alors le dit bref avec le rapport d'icelui et la dite reconnaissance à la cour où telle comparution doit être faite,—à moins qu'il n'apparaisse au dit juge que la partie ainsi emprisonnée est détenue sur un ordre ou mandat légal d'une cour ayant juridiction en matières criminelles, ou en vertu de quelque mandat, signé et scellé, soit par l'un des juges de la dite cour du banc de la Reine ou de la cour supérieure, ou par quelque juge

Writ to be granted on view of copy of warrant, or on affidavit that such copy has been denied.

4. And if any person is committed or detained as aforesaid, for any crime (unless for felony or treason plainly expressed in the warrant of commitment) in the vacation time, and out of term or sessions, such person (not being convicted or in execution by legal process) or any one on his behalf, may complain to one of the Judges of the Court of Queen's Bench or Superior Court, who upon view of the copy of the warrant or warrants of commitment and detainer, or otherwise upon oath made, that such copy was denied to be given by the person in whose custody the prisoner is detained, shall, upon request made in writing by such person, or any one on his behalf, attested and subscribed by two witnesses present at the delivery of the same, award and grant a writ of *habeas corpus* under the seal of the court of which such judge is a member, directed to the officer or person, in whose custody the party so committed or detained, is returnable *immediatè* before the said Judge:

2. *Person in custody to be brought before the judge.*—And upon service of the writ as aforesaid, the officer or his under officer or deputy, in whose custody the party is so committed or detained, shall, within the times respectively before limited, bring such prisoner before the Judge, before whom the said writ is made returnable, and in case of his absence, before any other Judge of the same court, with the return of such writ and the true causes of the commitment and detainer;

3. *Judge to discharge prisoner and take his recognizance.*—And thereupon, within two days after the party, shall be brought before him, the judge, before whom the prisoner is brought as aforesaid, shall discharge the said prisoner from his imprisonment, taking his recognizance, with one or more surety or sureties, in any sum which shall not be excessive, according to his discretion, having regard to the quality of the prisoner and nature of the offence, for his appearance in the Court of Queen's Bench, at the next term, or general gaol delivery, in and for the district where the commitment was, or where the offence was committed, or in such other court where the offence is properly cognizable, as the case requires, and then shall certify the said writ with the return thereof, and the said recognizance into the court where such appearance is to be made,—unless it appears, unto the said judge, that the party so committed is detained upon a legal process, order or warrant out of some court that hath jurisdiction of criminal matters, or by some warrant signed and sealed with the hand and seal, either of one of the judges of the said Court of Queen's Bench

de paix, pour telles matières ou offenses pour lesquelles le prisonnier ne peut pas, par la loi, être admis à caution. 24 G. 3, c. 1, s. 3.

En certains cas, le bref ne sera pas accordé dans la vacance.

5. Si une personne a volontairement néglige, pendant deux termes entiers de la cour du banc de la Reine, dans et pour le district où tel emprisonnement ou détention a lieu, après son emprisonnement, de demander un bref d'*habeas corpus* pour son élargissement, elle n'obtiendra pas un tel bref d'*habeas corpus*, dans la vacance, sous l'autorité du présent acte. *Ibid.* s. 4.

Peines infligées aux personnes qui ne se conforment pas au bref, ou refusent de délivrer copie du mandat d'emprisonnement, etc.

6. Si aucun officier, son sous-officier, sous-gardien ou député, ou autre personne, néglige ou refuse de faire le rapport susdit, ou de produire le corps d'aucun prisonnier conformément à l'ordre contenu dans le bref, dans les différents temps ci-dessus spécifiés, ou si, sur la demande faite par aucun tel prisonnier ou une personne pour lui, il refuse de délivrer, ou si dans l'espace de six heures après telle demande, il ne délivre pas à la personne la demandant, une vraie copie du mandat d'emprisonnement et détention de tel prisonnier (laquelle copie il est par le présent requis de délivrer en conséquence),—tous et chacun les chefs-geoliers et gardiens de telles prisons, et telle autre personne ou personnes sous la garde desquels le prisonnier est détenu, paieront, pour la première offense, au prisonnier, ou à la partie lésée, la somme de cent louis sterling, et pour la seconde offense, la somme de deux cents louis sterling, et seront et sont par les présentes déclarés incapables de tenir et exécuter leurs charges:

2. *Comment seront recouvrées les amendes.*—Les dites amendes pourront être recouvrées par le prisonnier ou la partie lésée, ses exécuteurs ou administrateurs, de tel contrevenant, ses exécuteurs ou administrateurs, par action de dette, poursuite, bill, plainte ou information, dans la cour supérieure pour le Bas Canada, ou toute autre cour de record ayant juridiction en première instance dans le Bas Canada, dans laquelle aucun privilége, protection, inhibition ou arrêt de poursuite par *non vult ulterius prosequi*, ou autrement, ne sera admis ou accordé, ni aucun ajournement ou remise pour une période excédant trois mois;—et tout recouvrement ou jugement à la poursuite d'une partie lésée sera une conviction suffisante pour la première offense;—et tout recouvrement ou jugement à la poursuite d'une partie lésée pour aucune offense après le premier jugement, sera une conviction

or of the Superior Court, or of some justice of the peace, for such matters or offences for which, by the law, the prisoner is not bailable. 24 G. 3, c. 1, s. 3.

In certain cases no writ to be granted in vacation.

5. If any person has wilfully neglected, by the space of two whole terms of the Court of Queen's Bench, in and for the district where such detention or imprisonment is, after his imprisonment, to pray a writ of *habeas corpus* for his enlargement, such person shall not have a writ of *habeas corpus* to be granted in vacation time, in pursuance of this Act. *Ibid.* s. 4.

Penalties against persons disobeying the writ, or refusing copies of commitment, &c.

6. If any officer, his under officer, under keeper or deputy, or other person, neglects or refuses to make the return aforesaid, or to bring the body of any prisoner according to the command of the writ, within the respective times aforesaid, or, upon demand made by the prisoner or any person in his behalf, refuses to deliver, or within the space of six hours after demand, does not deliver to the person so demanding, a true copy of the warrant or warrants of commitment and detainer of such prisoner (which he is hereby required to deliver accordingly)—such head gaoler or keeper or the person or persons in whose custody the prisoner is detained, shall, for the first offence, forfeit to the prisoner or party grieved, the sum of one hundred pounds sterling, and for the second offence, the sum of two hundred pounds sterling, and shall be incapable to hold or execute his said office:

2. *How the penalty may be recovered.*—The said penalties may be recovered by the prisoner or party grieved, his executors or administrators, against such offender, his executors or administrators, by any action of debt, suit, bill, plaint or information in the Superior Court for Lower Canada, or any other court of record, having original jurisdiction within Lower Canada, wherein no privilege, protection, injunction or stay of prosecution by *non cult ulterius prosequi*, or otherwise, shall be admitted or allowed, or any imparlance or continuance for a longer period than three months; and any recovery or judgment at the suit of any party grieved shall be a sufficient conviction for the first offence, and any after recovery or judgment at the suit of a party grieved, for any offence after the first judgment, shall be

suffisante pour faire encourir aux officiers ou autre personne l'amende pour la seconde offense. 24 G. 3, c. 1, s. 5.

DE L'ADMISSION AU CAUTIONNEMENT.

Personnes détenues pour trahison ou félonie et demandant à subir leur procès dans la première semaine des sessions ou termes, seront mises en liberté sous caution si elles ne sont pas mises en accusation au terme suivant.

7. Si une personne est emprisonnée pour haute trahison ou pour félonie, pleinement et spécialement exprimée dans le mandat d'emprisonnement, et si sur sa demande ou requête faite ou présentée, cour tenante, dans la première semaine de la session ou terme de la cour du banc de la reine, ou d'oyer et terminer, ou d'évacuation générale des prisons dans le district, d'être amenée à procès, elle n'est pas mise en accusation (*indicted*) dans la session ou le terme suivant de la cour du banc de la reine, d'oyer et terminer, ou d'évacuation générale des prisons, après tel emprisonnement, l'un des juges de la dite cour ou le juge ou les juges tenant ladite cour, sur motion faite, cour tenante, soit par le prisonnier ou par quelqu'un pour lui, le dernier jour de la session ou du terme de la cour du banc de la reine, ou d'oyer et terminer, ou d'évacuation générale des prisons, mettra le prisonnier en liberté sur cautionnement;—à moins qu'il n'apparaisse à tel juge ou juges, sous serment prêté, que les témoins pour la couronne ne peuvent être produits durant la même session ou terme de la dite cour ou d'évacuation générale des prisons:

2. *Admission à caution ou élargissement du prisonnier qui ne subit pas son procès dans un certain délai.*—Et si une personne emprisonnée comme susdit, sur sa demande ou requête cour tenante, dans la première semaine de la session ou du terme de la cour du banc de la reine, oyer et terminer, et d'évacuation générale des prisons, tenue dans et pour le district dans lequel telle personne est emprisonnée, d'être amenée à procès, n'est pas mise en accusation (*indicted*) et ne subit pas son procès dans la seconde session ou terme de la cour du banc de la reine et d'oyer et terminer ou d'évacuation générale des prisons, après son emprisonnement, ou que sur son procès fait elle soit acquittée, elle sera élargie de son emprisonnement. 24 G. 3, c. 1, s. 8.

Personnes accusées comme complices de félonies avant le fait ne pourront être admises à caution autrement qu'en la manière permise par la loi.

8. Et comme il arrive souvent que des personnes accusées de félonies, ou comme complices d'icelles, sont emprisonnées sur

a sufficient conviction to bring the officers or person within the said penalty for the second offence. 24 G. 3, c. 1, s. 5.

OF ADMISSION TO BAIL.

Persons committed for treason or felony and requesting a trial in the first week of the sessions or terms shall, if not indicted in the ensuing term, be released on bail.

7. If any person is committed for high treason or felony, plainly and specially expressed in the warrant of commitment, and upon his prayer or petition in open court, in the first week of the sessions or term of the Court of Queen's Bench, oyer and terminer or of general gaol delivery for the district, to be brought to his trial, is not indicted some time in the next sessions or term of the Court of Queen's Bench, oyer and terminer or general gaol delivery, after such commitment, any one of the Judges of the said Court, or the Judge or Judges holding the said Court, shall, upon motion made in open court on the last day of the sessions or term of the Court of Queen's Bench, oyer and terminer or general gaol delivery, either by the prisoner or any one in his behalf, set at liberty the prisoner upon bail;—unless it appears to such Judge or Judges upon oath made, that the witnesses for the Crown could not be produced during the same sessions or term or general gaol delivery:

2. *Bail or discharge of prisoner not tried within a certain time.*—And if any person committed as aforesaid, upon his prayer in open court the first week of the sessions or term of the Court of Queen's Bench, oyer and terminer and general gaol delivery, held in and for the district where such person is committed, to be brought to his trial, is not indicted and tried the second sessions or term of the court of Queen's Bench, oyer and terminer and general gaol delivery after his commitment, or upon his trial is acquitted, he shall be discharged from his imprisonment. 24 G. 3, c. 1, s. 8.

Persons charged as accessories before the fact to felony not bailable otherwise than according to law.

8. And because many times, persons charged with felony, or as accessories thereunto, are committed upon suspicion only,

soupçon seulement, auquel cas elles peuvent ou non être admises à cautions, suivant les circonstances qui rendent le soupçon plus ou moins grave, ce qui est mieux connu des juges de paix qui ont emprisonné telles personnes et ont devant eux les dépositions, ou d'autres juges de paix dans le district où telles personnes sont emprisonnées:—à ces causes, lorsqu'il paraîtra qu'une personne a été emprisonnée par aucun juge ou juge de paix, et accusée comme complice d'une félonie avant le fait, ou sous soupçon de telle complicité, ou sous soupçon de félonie, laquelle félonie est pleinement et spécialement exprimée dans le mandat d'emprisonnement, telle personne ne sera pas renvoyée ou admise à caution en vertu du présent acte en aucune autre manière que celle permise par la loi commune d'Angleterre. 24 G. 3, c. 1, s. 17.—4, 5 V. c. 27, s. 2.

Pour empêcher que le procès ne soit évité.

9. Et afin que personne ne puisse éviter son procès à la session ou terme de la cour du banc de la Reine, d'oyer et terminer ou d'évacuation générale des prisons, en obtenant son renvoi avant la session ou terme de la dite cour, tenue dans et pour le district où il est emprisonné, dans un temps où il ne pourrait plus être ramené à la dite cour pour y subir son procès;—dans le cours de telle période avant la proclamation ou annonce de la tenue de la session ou terme de la cour du banc de la Reine comme celle où elle ne peut être ainsi ramenée pour subir son procès comme susdit, ou après la proclamation ou annonce de la tenue de la session d'oyer et terminer ou d'évacuation générale des prisons pour le district dans lequel la personne est détenue, aucune personne ne sera renvoyée de la prison commune du district sur aucun *Habeas Corpus* accordé en conformité du présent acte, mais elle pourra être amenée sur aucun tel *Habeas Corpus* devant le juge ou les juges tenant la dite cour, cour tenante, et là-dessus le ou les dits juges feront ce qu'en justice il doit être fait:

2. Mais lorsque la session sera terminée, toute personne détenue dans une prison commune, pourra obtenir son bref d'*Habeas Corpus* conformément aux directions et à l'intention du présent acte. 24 G. 3, c. 1, ss. 15, 16.

Rien dans le présent acte n'entravera les poursuites au civil.

10. Rien dans le présent acte n'aura l'effet d'élargir de prison aucune personne qui y est détenue pour dette ou autre action, ou sur un ordre dans une cause civile; mais après qu'elle a été élargie de son emprisonnement pour telle offense criminelle, elle sera tenue sous garde suivant la loi pour telle autre poursuite. 24 G. 3, c. 1, s. 9.

whereupon they are bailable or not, according as the circumstances making out that suspicion are more or less weighty, which are best known to the justices of the peace who may have committed such persons and have the examinations before them, or to other justices of the peace in the district where such prisoners are committed:—therefore, where any person appears to be committed by any judge, or justice of the peace, and charged as accessory before the fact to any felony, or upon suspicion thereof, or with suspicion of felony, which felony is plainly and specially expressed in the warrant of commitment, such person shall not be removed or bailed by virtue of this Act in any other manner than by the common law of England he may be. 24 G. 3, c. 1, s. 17,—4, 5 V. c. 27, s. 2.

To prevent collusive evasion of trial.

9. And to the intent that no person may avoid his trial at the sessions or term of the Court of Queen's Bench, oyer and terminer or general gaol delivery, by procuring his removal before the sessions or term of the said court in and for the district where he is committed, at such time that he cannot be brought back to receive his trial there;—Within such period before the sessions or term of the Court of Queen's Bench, as that he cannot be so brought back for trial as aforesaid, or after the sessions of oyer and terminer or general gaol delivery, proclaimed or advertised for the district where the prisoner is detained, no person shall be removed from the common gaol of the district upon any *habeas corpus* granted in pursuance of this Act, but upon any such *habeas corpus*, shall be brought before the Judge or Judges holding the said court, in open court, who shall thereupon do what to justice appertains:

2. But after the sessions are ended, any person detained in any common gaol may have his writ of *habeas corpus* according to the direction and intention of this Act. 24 G. 3, c. 1, ss. 15, 16.

But nothing herein to affect civil proceedings.

10. Nothing in this Act shall extend to discharge out of prison, any person charged in debt or other action, or with process in any civil cause, but after he is discharged from his imprisonment for such criminal offence, he shall be kept in custody according to the law for such other suit. 24 G. 3, c. 1, s. 9.

Effets de la libération sur Habeas Corpus.

11. Et afin de prévenir toute vexation injuste par des emprisonnements réitérés pour la même offense;—nulle personne élargie ou mise en liberté sur un *habeas corpus* ne pourra, en aucun temps après, être emprisonnée de nouveau pour la même offense, par aucune autorité quelconque, autrement que par un ordre légal de la cour à laquelle elle est tenue par une reconnaissance de comparaître, ou d'une autre cour ayant juridiction sur la cause:

2. *Amende dans le cas d'emprisonnement pour la même offense.*—Et quiconque sciemment et contrairement au présent acte, emprisonne de nouveau ou fait emprisonner de nouveau pour la même offense ou prétendue offense aucune personne élargie ou mise en liberté comme susdit, ou aide ou assiste sciemment à le faire, paiera au prisonnier ou à la partie lésée, la somme de cinq cents louis, monnaie légale de la Grande-Bretagne, laquelle sera recouvrée comme susdit; nonobstant tout prétexte spécieux ou variante dans le mandat d'emprisonnement. 24 G. 3, c. 1, s. 7.

Sous quelles circonstances le prisonnier sera transféré d'une prison à une autre.

12. Si un sujet de Sa Majesté est emprisonné dans aucune prison, ou sous la garde d'aucun officier ou officiers quelconques, pour aucune matière criminelle ou supposée criminelle, il ne sera pas transféré de la dite prison et garde, pour être mis sous la garde d'aucun autre officier ou officiers,—à moins que ce ne soit par *habeas corpus* ou autre bref légal,—ou lorsque le prisonnier est livré au constable, huissier ou autre officier inférieur, pour être conduit à quelque prison commune,—ou lorsqu'une personne est envoyée, par l'ordre d'un juge d'une cour de juridiction criminelle, ou juge de paix, à aucune maison commune de travail (*common work-house*), ou maison de correction, —ou lorsque le prisonnier est tranféré d'une prison ou place à une autre, dans le même district, pour subir son procès ou être libéré, suivant le cours de la loi,—ou dans le cas d'un incendie subit ou de maladie contagieuse ou d'autre nécessité,—ou en vertu de quelque disposition expresse du présent acte ou de tout autre acte ou loi:

2. *Peine infligée aux personnes qui enfreindront cette section.*—Et si, après tel emprisonnement, aucune personne fait et signe ou contresigne un mandat, pour tel déplacement ou changement susdit, contrairement au présent acte, celui qui a fait, ou signé ou contresigné tel mandat, de même que l'officier qui y obéit ou l'exécute, souffriront et encourront les peines et amendes ci-dessus mentionnées dans le présent acte, pour la première et pour la seconde offenses, respectivement, lesquelles seront re-

Effect of liberation on habeas corpus.

11. And for preventing unjust vexation by reiterated commitments for the same offence,—no person, delivered or set at large upon *habeas corpus* shall, at any time thereafter, be again imprisoned or committed for the same offence by any authority whatsoever, other than the legal process and order of the court wherein he is bound by recognizance to appear, or other court having jurisdiction of the cause:

2. *Penalty for recommitting any one so released for the same offence.*—And if any person, knowingly, contrary to this Act, recommits, or imprisons, or knowingly procures or causes to be recommitted or imprisoned, for the same offence or pretended offence, any person delivered or set at large as aforesaid, or knowingly aids or assists therein, then he shall forfeit to the prisoner or party grieved, the sum of five hundred pounds, lawful money of Great Britain, to be recovered as aforesaid; any colourable pretence or variation in the warrant or warrants of commitment notwithstanding. 24 G. 3, c. 1, s. 7.

Under what circumstances only a prisoner may be removed from one prison to another.

12. If any subject of Her Majesty is committed to any prison or in custody of any officer or officers whomsoever, for any criminal or supposed criminal matter, such person shall not be removed from the said prison and custody into the custody of any other officer or officers,—unless it be by *habeas corpus* or some other legal writ,—or where the prisoner is delivered to the constable, bailiff, or other inferior officer to carry such prisoner to some common gaol,—or where any person is sent by order of any judge of a court of criminal jurisdiction, or justice of the peace to any common work-house or house of correction,—or where the prisoner is removed from some one prison or place to another within the same district, in order to his trial or discharge in due course of law,—or in case of sudden fire or infection, or other necessity,—or under some express provision of this Act or of any other Act or Law:

2. *Penalty on persons contravening this section.*—And if any person, after such commitment aforesaid, makes out and signs or countersigns any warrant or warrants for such removal aforesaid, contrary to this Act, as well he that makes or signs or countersigns such warrant as any officer who obeys or executes the same, shall suffer and incur the pains and forfeitures in this Act before mentioned, both for the first and second offence re-

couvrées par la partie lésée en la manière susdite. 24 G. 3, c. 1, s. 6.—*Et voir Stats. Ref Can.* cc. 107, 108, 111, etc.

En certains cas, le gouverneur pourra ordonner le transfert des prisonniers d'une prison dans une autre.

13. Mais si le shérif d'un district considère qu'une prison, dans son district, n'est pas suffisamment sûre pour la détention des prisonniers, ou qu'elle est trop encombrée de détenus, il rapportera le fait au gouverneur, qui pourra autoriser la translation des prisonniers détenus dans telle prison, ou d'aucun d'eux, à toute autre prison dans le Bas Canada, pour y être détenus jusqu'à ce qu'ils soient dûment élargis, suivant la loi, ou jusqu'à ce qu'ils soient de nouveau ramenés dans la prison d'où ils ont été ainsi transportés, soit pour subir leur procès dans la cour compétente ou être détenus encore dans telle prison, lorsqu'elle aura été mise en meilleur état de sûreté ou qu'elle ne sera plus encombrée:

2. *Comment cet ordre sera transmis—son effet.*—Une lettre du secrétaire provincial, autorisant la translation ou le retour des dits prisonniers, sera suffisante, et, en vertu d'icelle et du présent acte, le shérif pourra transporter ou ramener les dits prisonniers, suivant le cas, et lui ou ses députés, en agissant ainsi, auront, relativement aux prisonniers dans le district auquel ils sont transportés, et dans tout district qu'ils traversent avec eux, les pouvoirs qu'ils auraient dans leur propre district; et le shérif et le geolier du district, dans la prison duquel les prisonniers sont transportés, et leurs députés, auront sur eux, depuis le temps où ils auront été remis aux dits shérif ou geolier, les mêmes pouvoirs qu'ils auraient eus si les dits prisonniers eussent été emprisonnés en premier lieu dans la prison du district, mentionné en dernier lieu. 20 V. c. 44, s. 137.

Si l'emprisonnement a lieu dans un district autre que celui où l'offense doit être jugée.

14. Si l'emprisonnement d'une personne qui a commis un crime ou offense a lieu dans un autre district que celui dans lequel le procès pour telle offense doit avoir lieu, les juges de la cour du banc de la reine ou de la cour supérieure, ou aucun d'eux, émettront, sur la demande du procureur ou du solliciteur général de Sa Majesté, et à défaut de telle demande, sur celle de tel contrevenant, un bref d'*Habeas Corpus*, commandant au gardien de la prison dans laquelle tel contrevenant est ainsi emprisonné, de produire le corps de tel contrevenant devant eux ou aucun d'eux à des temps et lieu convenables qui seront spécifiés dans tel bref, avec ensemble la vraie cause de son emprisonnement et détention:

spectively, to be recovered by the party grieved in manner aforesaid. *Ibid.* s. 6, *and see* Con. Stat. Can. cc. 107, 108, 111, &c.

The Governor in certain cases may authorize the transfer of prisoners from one gaol to another.

13. But if the sheriff of any district deems any gaol therein unsafe for the custody of prisoners, or over crowded, he shall report the fact to the Governor, who may authorize the removal of the prisoners in such gaol, or any of them, to any other gaol in Lower Canada, there to be kept until discharged in due course of law, or until they are again brought back to the gaol from which they were so removed, either for trial at the proper court, or to be again kept in such gaol when it has been made safe or is not over crowded:

2. *How such authorization shall be conveyed—effect thereof.*—And a letter from the Provincial Secretary, authorizing the removal or the bringing back of any such prisoners, shall be sufficient, and by virtue thereof and of this Act, the sheriff may remove or bring back such prisoners, as the case requires, and he or his deputies shall, while so doing, have the same powers with regard to them in the district to which they are conveyed, and in any district through which he passes with them, as he would have in his own district; and the sheriff and gaoler of the district, to the gaol in which they are conveyed, and their deputies, shall have the same powers with respect to them from the time of their delivery to such sheriff or gaoler as they would have if such prisoners had been originally committed to the gaol in such last mentioned district. 20 V. c. 44, s. 137.

If commitment be in a district other than that in which the offence is to be tried.

14. If the commitment of any person, who has committed any crime or offence, be in a district other than that in which the offence is to be tried, the Judges of the Court of Queen's Bench or of the Superior Court, or any one of them, upon application of Her Majesty's attorney or solicitor general, and in default of such application, upon the application of such offender, shall issue a writ of *habeas corpus*, commanding the keeper of the gaol in which such offender is so imprisoned, to have the body of such offender before them or any one of them, at a convenient time and place to be specified in such writ, together with the true cause of his commitment and detainer:

2. *Par un habeas corpus les juges pourront faire transférer le prisonnier dans la prison du district où le procès doit avoir lieu.*—Et si sur cela il appert que tel contrevenant est détenu par tel emprisonnement comme susdit, pour aucun crime ou offense commis dans un autre district, les juges de chacune des dites cours, ou aucun d'eux, devant le ou lesquels tel bref d'*Habeas Corpus* est ainsi rapportable, prendront des mesures pour faire transférer immédiatement tel contrevenant à la prison commune du district dans lequel doit se faire le procès de tel contrevenant pour tel crime ou offense, par mandat (*warrant*), sous leurs seings et sceaux, adressé au gardien de la prison et au shérif du district dans lequel tel contrevenant est ainsi emprisonné, et au gardien de la prison du district dans lequel le procès de tel contrevenant doit se faire, autorisant la livraison du corps de tel contrevenant de la prison du district dans lequel il est ainsi emprisonné, et commandant au shérif de tel district de transférer le corps de tel contrevenant immédiatement, avec tout le soin et la diligence possible, à la prison du district dans lequel le procès de tel contrevenant doit se faire, et commandant au gardien de la prison du district dans lequel doit se faire le procès du contrevenant, de recevoir tel contrevenant sous sa garde dans la prison du dit district, pour y demeurer jusqu'à ce qu'il soit délivré suivant le cours de la loi, et tel mandat sera mis à exécution par le dit shérif, et les gardiens de telle prison comme susdit. 35 G. 3, c. 1, s. 5,—20 V. c. 44, s. 30.

Les prisonniers ne seront pas envoyés hors du Bas Canada, excepté en certains cas.

15. Et afin de prévenir les emprisonnements illégaux dans des prisons hors du Bas Canada, ou au-delà des mers:

1. Nul sujet de Sa Majesté, habitant, ou résidant dans le Bas Canada, ne sera envoyé comme prisonnier dans aucune province, ou dans aucun état ou endroit hors la province du Canada, ou dans aucuns lieux, garnisons, îles ou endroits au-delà des mers, dans ou hors les domaines ou la souveraineté de Sa Majesté; et tout tel emprisonnement ou déportation est déclaré illégal par le présent;

2. *En tel cas, le prisonnier pourra intenter une action pour faux emprisonnement.*—Et tout tel sujet, ainsi emprisonné, pourra maintenir, en vertu du présent acte, pour tout tel emprisonnement, une ou des actions pour faux emprisonnement contre la partie par laquelle il a été ainsi emprisonné, détenu, envoyé prisonnier ou déporté, contrairement au présent acte, et contre toute personne qui a projeté, concerté, écrit, scellé ou contresigné aucun mandat ou écrit pour tel emprisonnement, détention, ou déportation, ou qui l'a conseillé ou y a aidé et assisté;

2. *Judges, by habeas corpus, to obtain removal of prisoner to the gaol of the district in which the trial is to be had.*—And if it then appears that such offender is detained upon such commitment as aforesaid, for any crime or offence committed in another district, the Judges of each of the said courts, or any one of them, before whom such writ of *habeas corpus* is made returnable, shall take course for the immediate removal of such offender to the common gaol of the district in which the trial of such offender for such crime or offence is to be had, by warrant under his or their hands and seals, directed to the keeper of the gaol and to the Sheriff of the district in which such offender is so imprisoned, and to the keeper of the gaol of the district in which the trial of such offender is to be had, authorizing the deliverance of the body of such offender from the gaol of the district in which such offender is so imprisoned, and commanding the sheriff of such district to remove the body of such offender forthwith, with all care and diligence, to the gaol of the district in which the trial of such offender is to be had, and commanding the keeper of the gaol of the district in which the trial of such offender is to be had, to receive such offender into his custody in the gaol of the said district, there to remain till he be thence delivered in due course of law, which warrant the said sheriff and the keepers of such gaol as aforesaid shall execute. 35 G. 3, c. 1, s. 5,—20 V. c. 44, s. 30.

Prisoners not to be sent out of Lower Canada except in certain cases.

15. And for preventing illegal imprisonments in prisons without Lower Canada, or beyond the seas:—

1. No subject of Her Majesty being an inhabitant or resident of Lower Canada, shall be sent prisoner into any province, or in any state or place without the Province of Canada, or into any parts, garrisons, islands or places beyond the seas, within or without the dominions of Her Majesty, and every such imprisonment or transportation is hereby declared illegal;

2. *In such case prisoner may maintain an action of false imprisonment.*—And any such subject so imprisoned may, for every such imprisonment, maintain, by virtue of this Act, an action or actions of false imprisonment against the person by whom he has been so committed, detained, imprisoned, sent prisoner or transported, contrary to this Act, and against any person framing, contriving, writing, sealing or countersigning any warrant or writing for such commitment, detainer, imprisonment or transportation, or advising, aiding or assisting in the same, or any of them;

3. *Le demandeur, en ce cas, obtiendra jugement pour triples dépens, outre les dommages.*—Et le demandeur dans toute telle action obtiendra jugement pour ses triples dépens, outre les dommages, lesquels dommages à être ainsi accordés ne seront pas moindres que cinq cents louis, monnaie légale de la Grande-Bretagne; dans laquelle action aucun délai, suspension ou arrêt de procédure par règle, ordre ou commandement, ni aucune inhibition, protection ou privilége quelconques, ni plus d'un ajournement ou remise (conformément à la pratique de la cour) ne seront accordés, excepté telle règle que la cour, devant laquelle l'action est pendante, jugerait nécessaire de faire, cour tenante, pour une cause spéciale exprimée dans telle règle; 24 G. 3, c. 1, s. 11.

4. *Le présent acte ne s'étendra pas aux personnes qui seront transportées d'après leur volonté.*—Mais rien dans le présent acte n'aura l'effet de donner un tel avantage à aucune personne qui conviendra, par un contrat par écrit, avec un marchand, ou propriétaire de plantation ou autre personne quelconque, d'être transportée dans aucune province ou à tous endroits au-delà des mers, et qui reçoit des arrhes sur telle convention, quoique par la suite telle personne renonce à tel contrat; *Ibid*, s. 12.

5. *Le présent ne modifie en rien les lois qui s'appliquent à tout le Canada.*—Et rien dans le présent acte ne modifiera l'effet d'aucune disposition prescrite dans les Statuts Refondus du Canada, ou dans tout acte s'appliquant à toute la province du Canada, mais le présent sera toujours interprété d'accord avec telle disposition.

De la translation d'un prévenu dans un autre pays sous la domination de Sa Majesté, où il a commis une offense criminelle, pour y subir son procès.

16. Mais si une personne, résidant, en aucun temps, dans le Bas Canada, a commis une offense capitale dans la Grande-Bretagne, l'Irlande, ou aucune province, île ou plantation ou colonie de Sa Majesté, où elle devrait subir son procès pour telle offense, telle personne pourra être envoyée à tel endroit pour y subir tel procès, de la même manière qu'on aurait pu le faire par la loi commune d'Angleterre avant le vingt-neuvième jour d'avril, mil sept cent quatre-vingt-quatre; nonobstant aucune chose contenue au contraire dans le présent acte. 24 G. 3, c. 1, s. 14.

Personnes contre lesquelles il aura été émis des mandats dans le N.-Brunswick pourront être appréhendées dans le Bas Canada.

17. Et considérant qu'il peut arriver que des félons et autres malfaiteurs, ayant commis des crimes dans la province du Nouveau-Brunswick, se sauvent dans le Bas Canada, et que par ce moyen leurs offenses peuvent rester impunies, faute d'une

3. *Plaintiff in such case to have treble costs, besides damages.*—And the plaintiff in every such action shall have judgment to recover his treble costs besides damages, which damages so to be given shall not be less than five hundred pounds, lawful money of Great Britain, in which action no delay, stay or stop of proceeding by rule, order or command, nor any injunction, protection or privilege whatsoever, nor any more than one imparlance or continuance (according to the practice of the court) shall be allowed, excepting such rule of the court wherein the action depends, made in open court, as is thought in justice necessary, for special cause to be expressed in said rule; 24 G. 3, c. 1, s. 11.

4. *This Act not to extend to persons carried away by their own agreement.*—But nothing in this Act shall extend to give such benefit to any person who, by contract in writing, agrees with any merchant or owner of any plantation or other person whatsoever, to be carried to any province or to parts beyond the seas, and receives earnest upon such agreement, although that afterwards such person renounces such contract; 24 G. 3, c. 1, s. 12.

5. *Not to affect any Law applying to all Canada.*—And nothing in this Act shall impair the effect of any provision in the Consolidated Statutes of Canada, or in any Act applying to the whole Province of Canada, but this Act shall always be construed, subject to every such provision.

Of the removal of an offender to another part of Her Majesty's Dominions, where he has committed a criminal offence—To undergo his trial.

16. But if any person, at any time resident within Lower Canada, has committed any capital offence in Great Britain, Ireland or any province, island or plantation of Her Majesty, where he ought to be tried for such offence, such person may be sent to such place, there to receive such trial, in such manner as the same might have been done by the common laws of England before the twenty-ninth day of April, 1874, anything herein contained to the contrary notwithstanding. 24 G. 3, c. 1, s. 14.

Persons against whom warrants have issued in New Brunswick may be apprehended in Lower Canada.

17. And whereas it may happen that felons and other malefactors, having committed crimes in the province of New Brunswick, may escape into Lower Canada, and their offences thereby remain unpunished, for want of a provision by law for

disposition de la loi pour arrêter tels contrevenants en cette province, et les envoyer dans l'endroit où leurs offenses ont été commises: à ces causes,—si une personne contre laquelle il est émis un mandat, par aucun juge de la cour du banc de la reine, ou par aucun juge de paix agissant dans la province du Nouveau-Brunswick, pour aucun crime ou offense contre les lois de la dite province, s'échappe, vient, réside ou est dans aucune partie du Bas Canada, tout juge de paix du district, ou lieu où telle personne s'échappe, est venue, reside ou se trouve, pourra endosser son nom sur le dit mandat, (l'écriture du magistrat l'émettant étant préalablement et dûment prouvée,) lequel mandat, ainsi endossé sera une autorité suffisante à la personne qui l'apporte, et à toutes personnes auxquelles il a été originairement adressé, et aussi à tous constables du district ou lieu où tel mandat est ainsi endossé, de l'exécuter, en arrêtant la personne contre laquelle il est accordé, et de la conduire dans la dite province du Nouveau-Brunswick, devant un juge de paix agissant dans la dite province, pour qu'elle soit traitée suivant la loi. 36 G. 3, c. 12.

Peine imposée au juge qui refuse d'accorder le bref d'Habeas Corpus en vacance.

18. Tout prisonnier peut demander et obtenir son bref d'*Habeas Corpus*, dans la cour du banc de la Reine, ou dans la cour supérieure en la manière ci-dessus prescrite, devant tout juge de l'une ou l'autre cour tant en vacance qu'en terme; et si un juge de la dite cour du banc de la Reine ou de la dite cour supérieure, refuse en vacance, et sur le vu de la copie ou copies du mandat d'emprisonnement, ou détention, ou sur serment prêté que telle copie ou copies ont été refusées comme susdit, d'accorder aucun *Habeas Corpus* que le présent acte lui ordonne d'accorder, (et demandé comme susdit) il paiera au prisonnier ou à la partie lésée, la somme de cinq cents louis sterling, laquelle sera recouvrée en la manière susdite. 24 G. 3, c. 1, s. 10,—12 V. c. 37, s. 41,—12 V. c. 38, s. 98.

Poursuites pour contravention au présent acte.

Durée des poursuites pour contravention au présent acte.

19. Aucune personne ne sera actionnée, poursuivie, molestée ou inquiétée pour aucune contravention au présent acte, à moins que telle personne contrevenante ne soit actionnée ou poursuivie pour telle contravention, dans deux années au plus après que la contravention a été commise, au cas que la partie lésée ne soit point alors en prison, et si elle est en prison, alors dans l'espace de deux années après le décès de la personne emprison-

apprehending such offenders in this Province, and transmitting them to the place in which their offences were committed:— therefore, — if any person, against whom a warrant is issued by any other judge of the Court of Queen's Bench, or any justice of the peace, acting in the Province of New Brunswick, for any crime or offence against the laws of the said Province, escapes, comes into, resides or is in any part of Lower Canada any justice of the peace of the district or place, where such person escapes, comes into, resides or is, may endorse his name on the said warrant, (due proof being first made of the handwriting of the magistrate issuing the same,) which warrant so endorsed shall be a sufficient authority to the person bringing such warrant, and to all persons to whom such warrant was originally directed, and also to all constables of the district or place where such warrant is so endorsed, to execute the same by apprehending the person against whom such warrant is granted, and to convey him to the said Province of New Brunswick, and before one of the justices of the peace acting in the said Province, to be there dealt with according to law. 36 G. 3, c. 12.

Penalty on Judges refusing the writ of habeas corpus in vacation.

18. Any prisoner may move for and obtain his writ of *habeas corpus* out of the Court of Queen's Bench or the Superior Court as hereinbefore provided, before any Judge of either Court, in vacation as well as in term,—and if any Judge of the said Court of Queen's Bench or Superior Court, in the vacation time, and upon view of the copy or copies of the warrant or warrants of commitment or detainer, or upon oath made that such copy or copies were denied as aforesaid, denies any *habeas corpus* by this Act required to be granted (being moved for as aforesaid,) every such Judge shall severally forfeit to the prisoner or party grieved the sum of five hundred pounds sterling, to be recovered in manner aforesaid. 24 G. 3, c. 1, s. 10,— 12 V. c. 37, s. 41,—12 V. c. 38, s. 98.

Actions for offences against this Act.

Limitation of actions for offences against this Act.

19. No person shall be sued, impleaded, molested or troubled, for any offence against this Act, unless the party offending be sued or impleaded for the same within two years, at the most, after the offence committed, in case the party grieved is not then in prison, and if he is in prison, then within the space of

née, ou son élargissement de prison; les dites deux années à compter de celui de ces deux évènements qui arrivera le premier:

2. *Dans telle poursuite le défendeur pourra plaider par dénégation générale.*—Et si une information, poursuite ou action est exhibée ou portée contre aucune personne pour quelque contravention au présent acte, le défendeur pourra plaider par dénégation générale (*general issue,*) qu'il n'est pas coupable, ou qu'il ne doit rien, ou pourra plaider spécialement, suivant l'usage et la pratique de la cour où la poursuite sera pendante; et si c'est sur le plaidoyer de non coupable, ou qu'il ne doit rien, alors il pourra prouver les matières spéciales qui, si elles avaient été plaidées plus spécialement, auraient été bonnes et suffisantes en loi pour acquitter et absoudre le dit défendeur de la dite information, poursuite ou action; et les dites matières ainsi prouvées sous l'un ou l'autre des dits plaidoyers généraux, lui seront alors aussi profitables à tous égards, que s'il eût plaidé les mêmes matières par exception péremptoire (*in bar or discharge*) à telle information, poursuite ou action;

3. *Cette section n'invalidera l'effet d'aucun acte fixant l'époque où des poursuites pourront être intentées contre des officiers publics.*—Mais rien dans la présente section n'empêchera l'effet d'aucun acte fixant une période plus courte que celle dans laquelle une poursuite ou action doit être intentée contre un juge de paix ou autre officier public, pour aucune chose faite en exécution de ses devoirs publics. 24 G. 3, c. 1, ss. 18, 19,—*Voir* 14, 15 V. c. 54, ss. 1. 8, 9,—12 V. c. 10, s. 5, *par.* 20.

HABEAS CORPUS AD SUBJICIENDUM EN MATIERES CIVILES.

Bref d'habeas corpus ad subjiciendum pourra émaner durant la vacance.

20. Lorsqu'une personne est emprisonnée ou privée de sa liberté pour toute autre chose que pour quelque matière criminelle, ou supposée criminelle, l'un des juges de la cour du banc de la Reine ou de la cour supérieure, sur plainte faite à lui par ou au nom de la personne ainsi emprisonnée ou détenue,—s'il appert par un affidavit (ou une affirmation, dans les cas où une affirmation est permise par la loi,) qu'il y a une cause probable et raisonnable pour telle plainte, — accordera, en vacance, un bref d'*habeas corpus ad subjiciendum*, sous le sceau de la cour, dont il est un des juges, adressé à la personne sous la garde ou le pouvoir de laquelle est la partie ainsi emprisonnée ou détenue, rapportable *immediatè*, devant le juge qui l'a ainsi accordé, ou devant aucun autre juge de la cour, sous le sceau de laquelle le dit bref a émané. 52 G. 3, c. 8, s. 1,—1 G. 4, c. 8,—7 V. c. 17, ss. 14, 15,—12 V. c. 37, s. 41,—12 V. c. 38, s. 98,—12 V. c. 40, s. 3,—20 V. c. 44, ss. 13, 35.

two years after the decease of the person imprisoned, or his delivery out of prison whichever first happens:

2. *Defendant in such suit may plead the general issue.*—And if any information, suit or action, is brought or exhibited against any person for any offence committed against this Act, such defendant may plead the general issue, that he is not guilty, or that he owes nothing, or may plead specially, according as may be the course and practice of the Court where such suit may be; and in case it be upon the said plea of not guilty, or that he owes nothing, then he may give such special matter in evidence, which, if it had been pleaded more specially, would have been good and sufficient matter of law to discharge the said defendant against the said information, suit or action; and the said matter so given in evidence under either of the said general pleas, shall be then and there as available to him to all intents and purposes, as if he had sufficiently pleaded, set forth or alleged the same matters in bar or discharge of such information, suit or action;

3. *But this section not to affect any Act fixing the period for bringing suits against public officers.*—But nothing in this section shall prevent the effect of any Act fixing a shorter period as that within which any suit or proceeding must be brought against any justice of the peace or other public officer, for any act done in the discharge of his public duty. 24 G. 3, c. 1, ss. 18, 19.—*See* 14, 15 V. c. 54, ss. 1, 8, 9,—12 V. c. 10, s. 5, *par.* 20.

HABEAS CORPUS AD SUBJICIENDUM IN CIVIL MATTERS.

Writ of habeas corpus ad subjiciendum may be awarded in vacation

20. When any person is confined or restrained of his liberty, otherwise than for some criminal or supposed criminal matter, any one of the Judges of the Court of Queen's Bench or of the Superior Court, shall, upon complaint made to him by or on the behalf of the person so confined or restrained,—if it appears by affidavit (or affirmation in cases where by law an affirmation is allowed,) that there is a probable and reasonable ground for such complaint,—award, in vacation time, a writ of *habeas corpus ad subjiciendum*, under the seal of the court whereof he is one of the judges, to be directed to the person in whose custody or power the party so confined or restrained is, returnable, *immediatè*, before the judge awarding the same, or before any other judge of the court under the seal of which the said writ is issued. 52 G. 3, c. 8, s. 1,—1 G. 4, c. 8,—7 V.c. 17, ss. 14, 15,—12 V. c. 37, s. 41,—12 V. c. 38, s. 98,—12 V. c. 40, s. 3, *and* 20 V. c. 44, ss. 13, 35.

Désobéissance à tel bref regardée comme mépris de cour.

21. Si la personne à laquelle aucun tel bref d'*habeas corpus* est adressé, après que tel bref lui a été signifié, soit en le délivrant à elle personnellement, ou en le laissant dans l'endroit où la partie est emprisonnée ou détenue, entre les mains d'aucun domestique ou agent de la personne qui emprisonne ou détient ainsi telle partie,—néglige volontairement ou refuse de faire un rapport ou d'y obéir, elle sera regardée comme coupable de mépris envers la cour sous le sceau de laquelle tel bref a été donné, et le juge devant lequel tel bref est rapportable, sur preuve donnée de telle signification, pourra décerner, dans la vacance, un décret de prise de corps pour mépris, sous le sceau de telle cour, contre la personne coupable de tel mépris, rapportable devant lui-même, dans la vacance, et procèdera sur icelui ainsi que la loi et la justice en ordonneront:

2. *En certain cas le bref pourra être rapportable un certain jour du terme ou de la vacance prochaine.*—Mais si tel bref d'*habeas corpus* est accordé dans un temps si avancé de la vacance, par un juge, qu'à son opinion le dit bref ne peut pas être convenablement exécuté pendant telle vacance, le dit bref sera rapportable, à sa discrétion, dans la cour, sous le sceau de laquelle il a été donné, à un jour fixé dans le terme prochain, et la dite cour procèdera sur icelui et décernera un décret de prise de corps pour mépris, en cas de désobéissance à icelui, de la même manière que si tel bref d'*habeas corpus* avait été originairement accordé par telle cour; et si tel bref d'*habeas corpus* est accordé (comme il peut l'être sur telle plainte et tel affidavit comme susdit) par la dite cour du banc de la Reine ou la cour supérieure, pendant le terme, mais dans un temps si avancé, qu'au jugement de la cour qui accorde ainsi tel bref, il ne peut pas être convenablement exécuté pendant tel terme, tel bref sera rapportable, à la discrétion de la cour qui l'accorde, à un jour fixé dans la vacance suivante, devant aucun juge de la cour qui accorde ainsi tel bref, lequel juge procèdera sur icelui de la manière ordonnée par les trois sections suivantes du présent acte, concernant les brefs d'*habeas corpus* accordés et rapportables pendant la vacance. 52 G. 3, c. 8, s. 2.

JUGEMENTS ET AUTRES PROCEDURES.

Le juge devra examiner la vérité des faits allégués dans tel rapport

22. Dans les cas prévus par les deux sections précédentes, bien que le rapport du bref d'*habeas corpus* soit bon et valable en loi, le juge devant lequel tel bref est rapportable, procèdera, néanmoins, aussitôt qu'il le pourra faire convenablement à examiner la vérité des faits allégués dans tel rapport, ainsi que

Disobedience to such writ to be deemed a contempt of Court.

21. If the person to whom any such writ of *habeas corpus* is directed, — upon service of such writ, either by the actual delivery thereof to him, or by leaving the same at the place where the party is confined or restrained, with any servant or agent of the person so confining or restraining, — wilfully neglects or refuses to make a return or pay obedience thereto, he shall be deemed guilty of a contempt of the court under the seal whereof such writ issues, and the judge, before whom such writ is returnable, upon proof made of such service, may award, in vacation, process of contempt under the seal of such court, against the person guilty of such contempt, returnable before himself in the vacation time, who shall proceed thereon as to law and justice shall appertain:

2. *In certain cases the writ may be made returnable at a day certain in the next term or vacation.*—But if such writ of *habeas corpus* is awarded so late in the vacation by any judge that, in his opinion, obedience thereto cannot be conveniently paid during such vacation, the same shall, at his discretion, be made returnable in the court under the seal whereof the writ issues, at a day certain in the next term, and the said court shall proceed thereupon, and award process of contempt in case of disobedience thereto, in like manner as if such writ of *habeas corpus* had been originally awarded by such court; and if such writ of *habeas corpus* is awarded (as it may be upon such complaint and affidavit as aforesaid) by the said Court of Queen's Bench or by the Superior Court, in term but so late that in the judgment of the court awarding such writ, obedience thereto cannot be conveniently paid during such term, the same shall, at the discretion of the court so awarding such writ, be made returnable at a day certain in the then next vacation, before any judge of the court so awarding such writ, who shall proceed thereupon in such manner as by the three following sections of this Act is directed concerning writs of *habeas corpus* issuing in and made returnable during vacation. 52 G. 3, c.8, s. 2.

JUDGMENT AND OTHER PROCEEDINGS.

Judge to examine as to the truth of the facts set forth in the return

22. In the cases provided for by the two next preceding sections, although the return to the writ of *habeas corpus* be good and sufficient in law, the judge, before whom such writ is returnable, shall, as soon as conveniently may be, proceed to examine into the truth of the facts set forth in such return

la cause de tel emprisonnement ou détention, par affidavit ou affirmation, (dans les cas où une affirmation est permise par la loi,) et ordonnera sur icelui conformément à la justice:

2. *S'il doute de la vérité des faits le juge pourra admettre à caution le prisonnier.*—Et si le rapport de tel bref est fait devant un des dits juges en vacance, et s'il lui paraît douteux, après tel examen, que les principaux faits allégués dans le dit rapport soient vrais ou non, alors tel juge pourra admettre à caution la personne emprisonnée ou détenue, en prenant sa reconnaissance avec une ou plusieurs cautions, ou dans les cas de minorité, ou de femme sous puissance de mari, sous la reconnaissance d'une somme raisonnable, pour comparaître en la cour sous le sceau de laquelle tel bref a été donné, à un jour fixé dans le terme alors prochain, et ainsi de jour en jour, comme telle cour l'ordonnera, et d'obéir aux ordres que telle cour donnera, concernant les matières susdites;

3. *Le juge transmettra ensuite le dit bref à la cour qui l'a émis.* Et tel juge transmettra à la cour, sous le sceau de laquelle tel bref d'*habeas corpus* a été donné, le dit bref d'*habeas corpus* et le rapport, avec la reconnaissance, les affidavits et affirmations, et alors la cour procèdera, déterminera, et ordonnera, conformément à la justice, sur l'élargissement, le cautionnement ou le renvoi de telle personne ainsi emprisonnée ou détenue, soit sommairement par affidavit ou affirmation, ou en ordonnant un ou plusieurs plaidoyers (*issues*) pour juger des faits allégués dans tel rapport ou aucuns d'eux; et alors il sera procédé de la même manière que dans le cas où des plaidoyers (*issues*) sont ordonnés par la cour du banc de la reine de Sa Majesté en Angleterre, par les lois qui y étaient en vigueur le dix-neuvième jour de mai, 1812. 52 G. 3, c. 8, s. 3.

Même procédure dans toute cour pour contester la vérité du rapport.

23. La cour du banc de la reine, et la cour supérieure, respectivement, suivront la même forme de procéder dans le terme pour contester la vérité du rapport de tous brefs d'*habeas corpus*, accordés en faveur d'aucune personne emprisonnée ou détenue pour toute autre chose que pour quelque matière criminelle ou supposée criminelle, par affirmation ou autrement, quoique tel bref ait été accordé par la cour, ou, y soit rapportable. 52 G. 3, c. 8, s. 4.

La cour etc., pourra donner tel ordre à l'égard des frais de transport de la partie concernée qu'elle jugera à propos.

24. La cour ou le juge qui procèdera sur aucun bref d'*habeas corpus ad subjiciendum* accordé dans les cas d'emprisonnement qui ne seront point pour matières criminelles ou supposées cri-

and into the cause of such confinement or restraint, by affidavit, (or by affirmation, in cases where an affirmation is allowed by law,) and shall do therein as to justice shall appertain:

2. *And if there be doubt as to truth of the facts, the Judge may let the party confined to bail.*—And if such writ is returned before one of the said judges in vacation, and it appears doubtful to him, on such examination, whether the material facts set forth in the said return, or any of them, be true or not, in such case such judge may let to bail the person confined or restrained, upon his entering into recognizance with one or more sureties, or in case of infancy or coverture, upon security by recognizance in a reasonable sum, to appear in the court under the seal whereof such writ has issued, upon a day certain in the term then next following, and so from day to day, as such court shall require, and to abide such order as such court shall make in and concerning the premises;

3. *Judge then to transmit to the Court whence it issued.*—And such judge shall transmit into the court under the seal whereof such writ issued, the said writ of *habeas corpus* and return, together with the recognizance, affidavits and affirmations; and such court thereupon shall proceed, order and determine touching the discharging or bailing or remanding such person so confined or restrained as to justice appertains either in a summary way by affidavit or affirmation, or by directing one or more issues for the trial of the facts set forth in such return or any of them, whereupon such proceedings shall be had as in cases of issues directed by Her Majesty's Court of Queen's Bench in England, under the laws in force there on the nineteenth day of May, 1812. 52 G. 3, c. 8, s. 3.

Like proceedings to be had in all the Courts for controverting the truth of the return.

23. The like proceedings shall be had in term in the Court of Queen's Bench and Superior Court, respectively, for controverting the truth of the return to all writs of *habeas corpus* awarded for or on behalf of any person confined or restrained of his or her liberty, otherwise than for some criminal or supposed criminal matter, by affidavit, affirmation or otherwise, although such writ be awarded by the court or be returnable therein. *Ibid*, s. 4.

Court, &c., may make order for expenses of bringing up the party concerned.

24. The court or judge proceeding on any writ of *habeas corpus ad subjiciendum* awarded in cases of confinement not for criminal or supposed criminal matter, may make such order

minelles, pourra donner tel ordre à l'égard du paiement des frais et dépenses pour amener la partie ainsi emprisonnée ou détenue, ou pour la reconduire dans son lieu d'emprisonnement ou de détention dans le cas où elle y sera renvoyée, que telle cour ou juge, après examen, jugera convenable, et à défaut de paiement d'iceux, pourra décerner un décret de prise de corps pour mépris, et alors il sera procédé de la même manière que dans les autres cas de mépris pour le non-paiement des frais. 52 G. 3, c. 8, s. 5.

Les cinq dernières sections ne devront pas s'appliquer aux personnes emprisonnées pour dette.

25. Rien de contenu dans les cinq sections précédentes n'aura l'effet d'élargir qui que ce soit emprisonné pour dette ou sur des actions ou sur aucun bref ou ordre en toutes affaires civiles. 52 G. 3, c. 8, s. 6.

Certaines dispositions applicables aux brefs émis sous l'autorité de l'acte anglais.

Elles s'appliqueront aux brefs émis en vertu de l'acte 31 *Charles II.*

26. Les différentes dispositions prescrites par les sections en dernier lieu mentionnées du présent acte, pour rendre les brefs d'*habeas corpus*, accordés dans la vacance, rapportables dans la cour du banc de la reine ou dans la cour supérieure ou pour rendre tels brefs accordés pendant les termes rapportables dans le temps des vacances, suivant que le cas pourra y échoir, et aussi pour décerner des décrets de prise de corps pour mépris, dans la vacance, contre la personne ou les personnes qui négligent ou refusent de faire rapport de tels brefs, ou d'y obéir, s'étendront à tous brefs d'*habeas corpus* accordés conformément à l'acte passé dans la trente-unième année du règne du Roi Charles Second, intitulé: *Acte pour la plus grande sûreté de la liberté du sujet, et pour empêcher les emprisonnements au-delà des mers*, et aux précédentes sections du présent acte relatives à l'obtention de brefs d'*habeas corpus* en matières criminelles, d'une manière aussi ample et aussi avantageuse que si tels brefs et les cas qui s'élèveront sur iceux, eussent été spécialement mentionnés et prévus dans le présent acte. 52 G. 3, c. 8, s. 7.

Dispositions générales applicables tant aux causes civiles qu'aux causes criminelles.

Lorsqu'il n'y aura pas de juge dans un district—le bref d'habeas corpus pourra s'obtenir dans un autre district.

27. Lorsqu'il n'y a pas de juge dans les limites d'un district, toute personne, qui désirera obtenir un bref d'*habeas*

in regard to the payment of the charges and expenses of bringing up the party so confined or restrained, and for carrying him or her back to his or her place of confinement or restraint, in case of remanding, as to such court, or judge, upon examination thereof, seems meet, and may, for non payment thereof, award process of contempt, whereupon such proceedings shall be had as in other cases of contempt for non payment of costs. 52 G. 3, c. 8, s. 5.

Last five sections not to apply to persons charged in debt.

25. Nothing in the five next preceding sections contained shall extend to discharge out of prison any person charged in debt or other action, or with process in any civil suit. *Ibid*, s. 6.

Certain provisions to apply to writs issued under the English Act.

The said sections to apply to writs issued under the Act 31st Charles II.

26. The several provisions made by the last mentioned sections of this Act, touching the making writs of *habeas corpus* issuing in time of vacation returnable in the aforesaid several Court of Queen's Bench, or Superior Court, or for making such writs awarded in term time returnable in vacation, as the case may respectively happen, and also for awarding process of contempt in time of vacation against the person or persons neglecting or refusing to make return of such writs or to pay obedience thereto, shall extend to all writs of *habeas corpus* awarded in pursuance of the Act passed in the thirty-first year of King Charles the Second, intituled: *An Act for the better securing the liberty of the subject and for prevention of imprisonment beyond seas*, and of the foregoing sections of this act respecting the obtaining of writs of Habeas Corpus in criminal matters in as ample and beneficial a manner as if such writs and the said cases arising thereon, had been hereinbefor especially named and provided for. *Ibid*, s. 7.

General provisions applying both to civil and criminal cases.

When there is no Judge in any District, Habeas Corpus may be obtained in another District.

27. If at any time there is no Judge within the limits of a District, any person desirous of obtaining a writ of *Habeas*

corpus, pourra s'adresser à un juge qualifié et autorisé à accorder tel bref, dans tout district adjacent ou à l'un des juges à l'une ou à l'autre des cités de Québec ou Montréal, selon que les causes en appel du district dans lequel le requérant est détenu devront, en vertu de la vingt-deuxième section du chapitre soixante-dix-sept de ces Statuts Refondus, être plaidées et jugées à l'une ou à l'autre de ces cités; et tout ordre rendu sur toute telle demande par un juge en dehors du district, et toute procédure en dehors du district, soit avant soit après telle demande ou ordre, seront aussi valables que si tout tel ordre, demande ou procédure avaient eu lieu dans les limites du district où le requérant est détenu:

2. *Disposition quand la personne est détenue au-delà des limites du district dans lequel l'ordre est fait.*—Et toutes les fois que l'émission d'un bref d'*habeas corpus* est ordonnée en faveur d'une personne détenue au-delà des limites du district dans lequel est fait tel ordre, le juge pourra ordonner que telle personne soit amenée devant un juge de paix, dans le district dans lequel telle personne est détenue, et admise à caution par tel juge de paix, qui prendra les cautionnements de toute telle personne et de deux cautions, chacune pour les sommes respectives qui seront fixées dans le dit ordre, dans lequel seront énoncés les termes et conditions qui devront être insérés dans le cautionnement, qui sera ainsi donné par l'accusé et par ses cautions, et la cour devant laquelle, et l'époque et l'endroit auxquels l'accusé devra comparaître, pour répondre à l'accusation portée contre lui; et si tel juge de paix est satisfait de tout tel cautionnement ainsi donné il ordonnera que l'accusé soit mis en liberté, s'il n'est détenu pour aucune autre cause; et, dans le cas où le requérant devra être élargi sans cautionnement, l'ordre du juge prescrira au juge de paix de mettre tel requérant en liberté. 23 V. c. 57, s. 26.

L'Habeas Corpus une fois refusé par un juge ne pourra être accordé par un autre juge,—mais il peut être accordé par la cour du Banc de la Reine.

28. Lorsqu'un bref d'*habeas corpus* aura été une fois refusé par un juge, il ne sera pas loisible de renouveler la demande devant lui à moins que de nouveaux faits ne soient allégués, ou devant tout autre juge; mais la demande pourra, dans tout tel cas, être faite de nouveau à la cour du banc de la Reine, qui est par le présent autorisée à connaître, entendre et juger telle demande, à sa séance la plus prochaine en appel, soit à Québec, soit à Montréal, selon que les causes en appel du district dans lequel le requérant est détenu, devront, en vertu de la dite vingt-deuxième section du chapitre soixante-dix-sept, être plaidées et jugées à l'une ou à l'autre de ces cités, et tout

Corpus, may apply to any Judge qualified and authorized to grant such writ, in any adjoining District, or to any Judge at either of the Cities of Quebec or Montreal, according as cases in appeal from the District in which the applicant is confined, are, under the twenty-second section of chapter seventy-seven of these Consolidated Statutes, to be heard and determined at either of those Cities; and any order given on any such application by a Judge out of the District, and all proceedings out of the District, had either before or after such application or order, shall be as good and valid as if given or had within the limits of the District in which the applicant is confined:

2. *Provision when the person confined is beyond the limits of the district where the order is made.*—And whenever the issuing of a Writ of *Habeas Corpus* is ordered in favor of a person confined beyond the limits of the District in which such order is made, the Judge may direct that such person be brought before a Justice of the Peace in the District in which such person is confined and may order such Justice of the Peace to admit to Bail the person so confined, himself and two sureties, each in respective sums to be specified in the said order, in which there shall be stated the terms and conditions to be inserted in the Recognizance to be so entered into by the party accused and his sureties, and the Court, place and time before and at which the party accused shall appear to answer the charge brought against him; and upon such recognizance being entered into, to the satisfaction of such Justice of the Peace, he shall order the party accused to be released from custody, if detained for no other cause; and in any case in which the applicant is to be discharged without bail, the Judge's order to the Justice of the Peace shall require him to discharge such applicant from confinement. 23 V. c. 57, s. 26.

Habeas Corpus refused by one Judge not to be granted by another, but may be granted by Court of Q. B.

28. Whenever a writ of *habeas corpus* has been once refused by any one Judge, it shall not be lawful to renew the application before him, unless any new facts are stated, or before any other Judge; but application may, in any such case, be made anew to the Court of Queen's Bench, which is hereby authorized to entertain, hear, and determine such application, at its next sitting in appeal either in Quebec or Montreal, according as cases in appeal from the District in which the applicant is confined, are, under the said twenty-second section of chapter seventy-seven, to be heard and determined at either

ordre rendu par la cour du banc de la Reine, sur toute telle demande, et toute procédure, en dehors du district, soit avant, soit après telle demande ou ordre, seront aussi valables que si tout tel ordre, demande ou procédure avaient eu lieu dans les limites du district où le requérant est détenu:

2. *Disposition quand la personne est détenue au-delà des limites du district dans lequel l'ordre est fait.*—Et toutes les fois que l'émission d'un bref d'*habeas corpus* est ordonné en faveur d'une personne détenue au-delà des limites du district dans lequel est fait tel ordre, le juge ou la cour du banc de la reine pourra ordonner que telle personne soit amenée devant un juge de paix, dans le district dans lequel telle personne est détenue, et admise à caution par tel juge de paix, qui prendra les cautionnements de toute telle personne et de deux cautions, chacune pour les sommes respectives qui seront fixées dans le dit ordre, dans lequel seront énoncés les termes et conditions qui devront être insérés dans le cautionnement, qui sera ainsi donné par l'accusé et par ses cautions à la cour devant laquelle, et l'époque et l'endroit auxquels l'accusé devra comparaître, pour répondre à l'accusation portée contre lui; et si tel juge de paix est satisfait de tout tel cautionnement ainsi donné, il ordonnera que l'accusé soit mis en liberté, s'il n'est détenu pour aucune autre cause; et, dans le cas où le requérant devra être élargi sans cautionnement, l'ordre prescrira au juge de paix de mettre tel requérant en liberté. 23 V. c. 57, s. 27.

Interprétation.

29. Le mot "juge" dans le présent acte, comprend le juge en chef—le mot "officier", ou la désignation d'une personne par le titre officiel de sa charge, comprend tout nombre de personnes ayant ou exerçant telle charge,—et l'acte d'interprétation, eu égard au présent acte, s'appliquera de la manière la plus avantageuse pour garantir la liberté du sujet.

of those Cities, and any order made by the Court of Queen's Bench, on any such application, and all proceedings had out of the District, either before or after such application or order, shall be as good and valid as if made or had within the limits of the District in which the applicant is confined:

2. *Provision when the person confined is beyond the limits of the district where the order is made.*—And whenever the issuing of a Writ of *Habeas Corpus* is ordered in favor of a person confined beyond the limits of the District in which such order is made, the Judge of the Court of Queen's Bench may direct that such person be brought before a Justice of the Peace in the District in which such person is confined, and may order such Justice of the Peace to admit to bail the person so confined, himself and two sureties in such respective sums as shall be specified in such order, in which there shall be stated the terms and conditions to be inserted in the recognizance to be entered into, by the party accused and his sureties, and the Court, place and time, before and at which the party accused is to appear to answer the charge brought against him; and upon such recognizance being entered into, to the satisfaction of such Justice of the Peace, he shall order the party accused to be released from custody, if detained for no other cause; and in any case in which the applicant is to be discharged without bail, the order to the Justice of the Peace shall require him to discharge such applicant from confinement. 23 V. c. 57, s. 27.

Interpretation.

29. The word "Judge" in this Act, includes the Chief Justice,—the word "Officer" or the designation of any person by his name of office, includes any number of persons holding or exercising such office,—and the *Interpretation Act* shall be so applied in construing this Act as best to secure the liberty of the subject.

THE BRITISH NORTH AMERICA ACT, 1867

as interpreted by

THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL AND BY THE SUPREME COURT OF CANADA.

(1874-1917.)

INDEX OF CASES.

(*Reference is to the case number.*)

Action for debt, 103.
Administration of justice, 80.
Administration of the laws of Canada, 79.
Aggregate population of Canada, 4, 5.
"*Alberta Local Improvement Act*," 105.
Appeal to the Governor-General in Council, 88.
Appellate Jurisdiction of Supreme C. of Canada, 91.
Assessment and taxation, 44, 45, 87, 103, 104, 105.

Bankruptcy and insolvency, 22.
Banking and incorporation of banks, 22.
Boom company, 68.
Brewers' Licenses, 50.
British Columbia "Coal Mines Reg. Act, 1890", 63.
British Columbian Cattle Protection Acts, 75.
British Columbia Prov. Elections Act, 30.
British Columbian Water Clauses Cons. Act, 64.
B. N. A. Act, 1867—*Policy of the Act*, 90.

Can. Supreme and Exchequer C. Act, 78.
Canada Temperance Act, 11, 15.
Canonical decrees, 32.
Canadian waters, 17, 95.
Chinamen—Naturalization, 63.

Civil Code, s. 1994, 107.
Civil Procedure Code, s. 611, 107.
Civil rights existing and enforceable outside the province, 74.
Civil rights, 32, 76.
Colonial Courts of Admiralty Act, 78.
Company incorporated by Dom. Parliament, 13, 67a, 69.
Common School Act, 1859, 86.
Contract with Crown, 15a.
Conflict between the Codes, 107.
Constitution of Courts, 79.
Conviction under provincial statute, 37.
Conveyance of "Public Lands," 97a.
Copyright, 27.
Criminal law, 34, 36, 37, 80.
Crown lands, 28, 64, 104.
Crossing Dominion Railway, 57.

Damage, 2.
Debts of Province of Canada, 100.
Denominational Schools, 85, 86, 87, 89.
Devolution of estates, 93.
Direct Taxation, 10, 49, 50, 52a.
Distribution of Legislative Power, 25, 46.
Divorce—Jurisdiction of the Supreme Court, 33.
Dominion lands, 93.
Dominion license, 67.
Dominion overrides Provincial Legislation, 70.
Dominion Railway Act, 41.
Driving lumber, 15a.
Droit d'accès et de sortie, 2.
Duty upon Exhibits, 7.

"Early closing by-law", 83.
Education, 67a, 87.
Effect of confederation on trust, 108.
Election Petitions, 77.
Electric Light Company, 59.
Employment of white females, 37.
Enactment ancillary to bankruptcy Law, 24.
English—French Schools, 85, 86.
Escheat, 92, 93.
Exclusive right of the Crown to Fishing, 20.
Exemptions from taxation, 44, 103.
Extension of boundaries of Manitoba, 44.

Fishing by foreign vessels, 17.

Fisheries and Fishing Rights, 19, 20, 96.
Foreign company doing business in Canada, 67.
Foreign reprints—Copyright, 27.
Free Miner's Certificate, 109.
French Law in Quebec, 2.

Grant of Water Right in Public Lands conveyed to the Dom. 15a, 64.

Harbours, 19, 95.
House of Assembly—Immunities of its Members, 1.

Illegal consideration of contract, 35.
Imperial Acts in force in Canada, 27.
Imprisonment of criminals, 39.
Imprisonment with Hard Labour, 9.
Incorporation "with provincial objects", 66.
Independence of Judges, 79.
"*Indian lands*", 28, 97, 99, 102.
Indictable offences, 35.
Insurance against fire, 16.
Insurance, 67.
Inter-provincial and international ferries, 21.
"*Interest*", 81.
Interest of deceased partner, 45.
Intestacy, 93.
Invalidity of Quebec Act, (38 *Vict.*, *c.* 64), 106.
Irrigation Act, 104.

Judgment of Supreme C. exercising Admiralty Jurisdiction, 78.
Jurisdiction of Board of Railway Commissioners, 65.
Jurisdiction of Parliament, 79.
Jurisdiction of Provincial Courts, 103.
Jurisdiction of Provincial House of Assembly, 1.
Jurisdiction of Provincial Legislatures, 68.
Jurisdiction of Superior Court, 77.

Land subsidies of the C. P. Ry, 44.
"*Land*", 104.
Lands reserved to the Indians, 99.
Lands in Ontario surrendered by the Indians, 29.
Law of Nova Scotia, 1.
Lease of Crown lands, 103.
Legislative Assembly, 3.
Legislative authority, 13.
Legislation authorizing the putting of Questions to the Courts, 90.

Legislation respecting Orientals, 37.
Legislative jurisdiction, 22, 38, 60, 64, 67a, 80, 83, 87.
Legislative powers, 35, 81.
Letters Patent, 59.
Letters Patent in respect of Lands, 20.
Lex Domicilii, 51.
Liabilities of province at Confederation, 101.
Licence, 21, 49.
Liquor Laws—Power of Prohibition, 11.
Liquor License Act of 1877, *c.* 181, *R. S. O.* 9.
Local, municipal and police regulations, 36, 83.
Local Undertakings extended beyond Prov. Limits, 61.
Local works and undertakings, 60.
Locality of Simple Contract Debts, 51.
Lord's Day Act, 36.
Lottery, 35.

Manitoba Liquor Act, 84.
Manitoba Municipal Act, 81.
Manitoba Public Schools Act, 88, 89.
Manitoban Act, (*R. S. M. c.* 110, *s.* 36) 91.
Marriage and Divorce, 32.
Mines and Minerals, 109.
Municipality, 59.
Municipal affairs, 83.
Municipal Code of Quebec, 40.
Municipal corporation, 104.
Municipal legislation affecting Dom. Railway, 40.
Municipal taxation, 14.

Naturalization and Aliens, 30, 63.
Naturalized British Subject, 37.
Navigable Rivers, 2, 96.
Negligence, 15a.
Negotiability of Warehouse receipts, 23.
New-Brunswick Succession Duty Act, 51.
Non-resident, 103.

Obstructions to navigation, 2, 68.
Ontario Act to prevent the Profanation of the Lord's Day, 34.
Ottawa Separate Schools, 85, 86.
Ontario Succession Duty Act, 48.
"*Owner*"—"*Occupant*", 104.
Owners not domiciled in Province, 45.

Pardoning power of Lieutenant-Governors, 6.

Parliament of Canada, 60.
Partnership property, 45.
Penitentiaries, 39.
"*Person*", 41.
Petition of right, 100.
Powers of Board of Railway Comm. 65.
Powers of Dominion and Provincial Legislatures, 26, 52a, 74.
Powers of Parliament, 21, 69.
Powers of Speaker, 3.
Power of Synod, 106.
Power of the Dom. to legislate for Prov. Crown Property, 94.
Power to grant Fishing Rights, 96.
Power to erect Electric Wires and Poles in Streets, 59, 72.
Power to expel and deport Aliens, 31.
Power to issue Patents of Precedence, 43.
Power to take Lands of Dominion Railway, 57.
Practice on references by the Gov-Gen. in Council, 39.
Precious Metals Case, 97a, 109.
Precincts of House of Assembly, 3.
Prerogative of the Crown to admit Appeals, 26.
Prerogative of the Crown, 98.
Private Bills, 67a.
Privileges conferred or withheld after Naturalization, 30.
Prohibition of theatrical performances, 36.
Property outside Province, 52a.
Property in civil rights, 8, 37, 83.
Property in foreshores, 95.
Property of Canada and provinces, 28.
Province of Manitoba, 89.
Provincial Bar, 43.
Provincial companies' powers, 16.
Provincial courts, 80.
Provincial Foreshore, 94.
Provincial grant to Dominion, 64.
Provincial legislative jurisdiction, 79.
Provincial mining company, 66.
Provincial penal legislation, 6.
Provincial railway, 57, 65.
Provincial Taxation of Property, 48.
Public Harbours, 19, 95.

Quebec Act, (43 & 44 *Vict., c.* 9), 7.
Quebec Succession Duty Act, 52a, 53.
Quebec "Sunday Act", 36.
Quebec Taxes apply to Quebec Successions, 53.

Railway Belt, 96.
Railway Companies, 65, 72, 76.
Readjustment of Representation, 5.
Reckless driving—"Rivers and Streams Act", 15a.
References by Gov.-General in Council, 79.
Regulation of Trade and Commerce, 8, 83.
Relations between Crown and Provinces, 98.
Religious belief, 32.
Remedies against Provincial Legislation, 88.
Representation of provinces in House of Commons, 4.
Restriction of Corporate Rights in Province, 13.
Revenue, 52a.
Rights in navigable Waters, 15a.
Rights of contractor, 15a.
Rights of Fishing, 19, 20.
Rights of the Crown in Lower Canada, 107.
Right to erect Poles, 59, 72.
Right to sue, 106.
Rivers and Lake Improvements, 15a, 19.
River navigable and floatable, 20.
Royalty, 93.

Sale by commissioner, 28.
School Boards, 87.
Sea-coast fisheries, 17, 95.
Seizure on high seas, 17.
Separate Schools, 85, 86, 87, 89.
"Solemnization of marriage", 32.
Stamps, 49.
Statutory Conditions of Policies of Insurance, 8.
Succession Duties, 45, 52a.
Suit by the Dom. against the Province of Ont. for Contribution as respects Lands within the Province, 97.
Sunday Observance, 36, 38.
"Supreme Court Act", 79.

Taxation, 44, 45, 87, 103, 104, 105.
Taxation on income, 14.
Taxes payable by incorporated companies, 87.
Territorial limitation, 66.
Territorial Waters, 96.
Three-mile-zone, 17.
"Through traffic", 65.
Tidal and navigable rivers, 68, 96.
Toll bridge, 100.
Trade and Commerce, 8, 83.

Tramway, 65.
Trustees, 85.

Vancouver Island Settlers' Rights Act, 62.
Validity of Canada Temperance Act, 15.
Validity of Dominion Bank Act, 23.

Water-records within "Railway Belt", 64.
Winding-up of Bank, 98.

SECT. **18.**

1.—The Nova Scotia House of Assembly has statutory power to adjudicate that wilful disobedience to its order to attend in reference to a libel reflecting on its members is a breach of privilege and contempt, and to punish that breach by imprisonment.
Fielding v. Thomas, (1896) A. C. 600.

SECT. **36.**

2.—In an action for damages and to obtain the demolition of a bridge constructed by the Corporation of *Quebec* across the Little river *St. Charles*, on the ground that the bridge obstructed the navigation of the river and thereby caused damage to the plaintiff as the owner of riparian land; it appeared that another bridge existed a short distance higher up the river, that the river was tidal beyond the higher bridge, and navigable for boats, flats, and rafts, and that it was possible at exceptionally high tides to float barges as far as the higher bridge, but that the difficulties and risks which from natural causes attended the navigation of craft of this description were so great that the river in its present state did not admit of their use in a practical and profitable manner; that the small boats, flats, and rafts, could be navigated as before, unobstructed by the bridge, although masted barges could not pass it without lowering their masts; that the Plaintiff's land was situated between the two bridges and was used as a farm, but was not proved to have been depreciated in value by reason of the bridge complained of, and that the Plaintiff was not proved to have sustained damage from actual interruption of traffic.

Held, that although there may be "*droit d'accès et de sortie*", belonging, according to French law as it prevails in *Quebec*, to riparian land as to a house in a street which, if interfered with, would at once give the proprietor a right of action; yet this

right is confined to what it is expressed to be, "*accès*", or the power of getting from the water-way to and upon the land (and the converse) in a free and uninterrupted manner; that such right had not on the evidence been violated; and that supposing the bridge complained of to cause some obstruction to the navigation, the action could not be maintained in respect of it without proof of actual and special damage.

Bell v. Quebec, 5 App. Cas. 84.

SECT. **46.**

3.—The public have access to the Legislative Chamber and precincts of the House of Assembly, as a matter of privilege only, under license either tacit or express which can be revoked whenever necessary in the interest of order and decorum.—The power of the Speaker and officers of the House to preserve order may be exercised during the intervals of adjournment between sittings as well as when the House is in session.

Payson v. Hubert, 34 Can., S. C. R. 400.

SECT. **51.**

4. In determining the number of representatives to which Ontario, Nova Scotia, and New-Brunswick are respectively entitled after each decennial census, the words "aggregate population of Canada" in s. -s. 4 of s. 51 of the B. N. A. Act, 1867, mean the whole population of Canada including that of provinces which have been admitted subsequently to the passing of that Act. The special terms on which the Province of Prince Edward Island was admitted into the Dominion do not except that province from the general operation of the clauses of the B. N. A. Act, 1867, as to representation in the House of Commons as above stated.

In re Representation in the House of Commons of Canada, 33 Can., S. C. R. 475; 594.

5.—*Held*, on a case submitted to the Supreme Court of Canada as to whether New Brunswick was protected from reduction of its members, that on the true construction of sub-s. 4 the expression "aggregate population of Canada" relates to the whole of Canada as constituted by the Act, and therefore includes, not merely the four provinces constituted by proclamation issued under s. 3, but also all the provinces subsequently incorporated and admitted into the Union by Order in Council under s. 146.

Held, also, with regard to the province of Prince Edward Island, which had under s. 146 been admitted into the Union by Order in Council directing that it should have six members, its representation to be readjusted from time to time under the pro-

visions of the Act of 1867, that sub-s. 4 on its true construction did not protect that number from reduction until an increase thereof had been previously effected.

Atty-Gen. for P. E. Island v. Atty-Gen. for Canada, (1905) A. C. 37.

SECT. 65.

6.—The local Legislature have the right and power to impose punishments by fine and imprisonment as sanction for laws which they have power to enact.—The lieutenant-Governor of a province is as much the representative of Her Majesty the Queen for all purposes of provincial government as the Governor-General himself is for all purposes of the Dominion Government.—Inasmuch as the Act 51 Vict. c. 5 (O.) declares that in matters within the jurisdiction of the Legislature of the province all powers, etc., which were vested in or exercisable by the Governors or Lieutenant-Governors of the several provinces before Confederation shall be vested in and exercisable by the Lieutenant-Governor of that province, if there is no proceeding in dispute which has been attempted to be justified under 51 Vict. c. 5 (O.), it is impossible to say that the powers to be exercised by the said Act by the Lieutenant-Governor are unconstitutional.—*Quaere*, Is the power of conferring by legislation upon the representative of the Crown, such as a Colonial Governor, the prerogative of pardoning in the Imperial Parliament only or, if not, in what legislature does it reside?—Gwynne, J., dissenting, was of opinion that 51 Vict. c. 5 (O), is *ultra vires* of the Provincial Legislature.

Attorney-General of Can. v. Attorney-General of Ontario, 23 Can., S. C. R. 458.

7.—*Held*, that Quebec Act (43 & 44 Vict. c. 9) which imposed a duty of ten cents upon every exhibit filed in Court in any action depending therein is *ultra vires* of the provincial legislature.

Atty-Gen. of Quebec v. Reed, 10 App. Cas. 141.

SECT. 91, sub-s. 2.

8.—Sects. 91 and 92 of the British N. Am. Act, 1867, must, in regard to the classes of subjects generally described in sect. 91, be read together, and the language of one interpreted and, where necessary, modified by that of the other, so as to reconcile the respective powers they contain and give effect to all of them. Each question should be decided as best it can, without entering more largely than is necessary upon an interpretation of the statute.

Held, that:—In No. 13 of sect. 92, the words "property and civil rights in the province" include rights arising from contract (which

are not in express terms included under sect 91) and are not limited to such rights only as flow from the law, e. g., the status of persons.

In No. 2 of sect. 91, the words "regulation of trade and commerce' include political arrangements in regard to trade requiring the sanction of parliament, regulation of trade in matters of interprovincial concern, and, it may be, general regulation of trade affecting the whole dominion; but do not include the regulation of the contracts of a particular business or trade such as the business of fire insurance in a single province, and therefore do not conflict with the power of property and civil rights conferred by sect. 92, No. 13.

Citizens' Ins. Co. v. Parsons, 7 App. Cas. 96.

9.—*Held*, that "The Liquor License Act of 1877, c. 181 Revised Statutes of Ontario", which in respect of sects. 4 and 5, makes regulations in the nature of police or municipal regulations of a merely local character for the good government of taverns, &c., does not in respect of those sections interfere with "the general regulation of trade or commerce", but comes within Nos. 8, 15, and 16, of sect. 92 of the Act of 1867, and is within the powers of the provincial legislature.

Held, further, that the local legislature had power by the said Act of 1867 to entrust to a Board of Commissioners authority to enact regulations of the above character, and thereby to create offences and annex penalties thereto.

Hodge v. The Queen, 9 App. Cas. 117.

10.—*Held*, that Quebec Act, 45 Vict. c. 22, which imposes certain direct taxes on certain commercial corporations carrying on business in the province, is *intra vires* of the provincial legislature.

A tax imposed upon banks which carry on business within the province, varying in amount with the paid-up capital and with the number of its offices, whether or not their principal place of business is within the province, is direct taxation within clause 2 of sect. 92 of the British N. Am. Act, 1867, the meaning of which is not restricted in this respect by either clause 2, 3, or 15, of sect. 91.

Similarly, with regard to insurance companies taxed in a sum specified by the Act

Bank of Toronto v. Lambe, 12 App. Cas. 575.

11.—The general power of legislation conferred upon the Dominion Parliament by s. 91, in supplement of its therein enumerated powers, must be strictly confined to such matters as are unquestionably of national interest and importance; and must not

trench on any of the subjects enumerated in s. 92 as within the scope of provincial legislation, unless they have attained such dimensions as to affect the body politic of the Dominion. Dominion enactments, when competent, override but cannot directly repeal provincial legislation. Whether they have in a particular instance effected virtual repeal by repugnancy is a question for adjudication by the tribunals, and cannot be determined by either the Dominion or provincial legislature. Accordingly the Canada Temperance Act, 1886, so far as it purported to repeal the prohibitory clauses of the old provincial Act of 1864 (27 & 28 Vict. c. 18) was *ultra vires* the Dominion. Its own prohibitory provisions are, however, valid when duly brought into operation in any provincial area, as relating to the peace, order, and good government of Canada; *Russell v. Reg.* (7 App. Cas. 829) followed, but not as relating trade and commerce within s. 91, sub-s. 2, of the Act of 1867. *Citizens' Ins. Co. v. Parsons* (7 App. Cas. 98) distinguished and *Municipal Corp. of Toronto v. Virgo* followed.

Held, also, that the local liquor prohibitions authorized by the Ontario Act (53 Vict. c. 56, s. 18), are within the powers of the provincial legislature. But they are inoperative in any locality which adopts the provisions of the Dominion Act of 1886.

Atty-Gen. of Ont. v. Atty-Gen. for Canada, (1896) A. C. 348.

12.—By s. 4 of the Insurance Act 1910, enacted by the Parliament of Canada, "in Canada, except as otherwise provided by this Act, no company or underwriters or other person shall solicit or accept any risk, or issue or deliver any receipt or policy of insurance, or grant any annuity on a life or lives, or collect or receive any premium, or inspect any risk, or adjust any loss, or carry on any business of insurance, or prosecute or maintain any suit, action or proceeding, or file any claim in insolvency relating to such business, unless it be done by or on behalf of a company or underwriters holding a licence from the Minister". Sect. 70 provided that any contravention of s. 4 should be punishable for a first offence by fine, and for a second or subsequent offence by imprisonment with hard labour:—*Held*, that the above legislation was *ultra vires* of the Parliament of Canada, since the authority conferred by the British N. Am. Act. s. 91, head (2), to legislate as to "the regulation of trade and commerce" does not extend to the regulation by a licensing system of a particular trade in which Canadians would otherwise be free to engage in the provinces, and since it could not be enacted under the general power conferred by s. 91 to legislate for the peace, order, and good government of Canada, as it trenched upon the legislative authority conferred on the provinces by s. 92, head (13), to make laws as to "civil rights in the province".

The principle illustrated by *Russell* v. *The Queen* (1882), 7 App.

Cas. 829, that subjects which is one aspect come within the authority of the provincial Legislatures may in another aspect fall within the authority of the Dominion Legislature, is well established, but ought to be applied with great caution. *Held*, further, that it would be competent to the Parliament of Canada under s. 91, heads (2), and (25), by properly framed legislation, to prohibit an insurance company incorporated by a foreign State from carrying on business in Canada, if the company did not hold a licence from the Minister, even if the business carried on was confined to a single province.

Atty-Gen. for Canada v. Atty-Gen. for Alberta, (1, 1916) A. C. 598.

13.—The authority of the Parliament of Canada to legislate for "the regulation of trade and commerce" conferred by s. 91, enumeration 2, of the British N. Am. Act, enables that Parliament to prescribe the extent and limits of the powers of companies the objects of which extend to the entire Dominion; the status and powers of a Dominion company as such cannot be destroyed by a provincial Legislature.

Part VI. of the Companies Act of British Columbia (R. S. B. C., 1911, c. 39), which in effect provides that companies incorporated by the Dominion Parliament shall be licensed or registered under that Act as a condition of carrying on business in the Province or maintaining proceedings in its Courts, is therefore *ultra vires* the provincial Legislature under the British N. Am. Act.

John Deere Plow Co. v. Wharton, (1915) A. C. 330.

SECT. **91**, sub-s. 8.

14.—Sub-section 2 of s. 92, B. N. A. Act, 1867, giving a provincial legislature exclusive powers of legislation in respect to "direct taxation within the province, etc.," is not in conflict with s.-s. 8 of s. 91, which provides that Parliament shall have exclusive legislative authority over "the fixing of and providing for the salaries and allowances of civil and other officers of the Government of Canada". Girouard, J. *contra.*—*Held*, therefore, Girouard J. dissenting, that a civil or other officer of the Government of Canada may be lawfully taxed in respect to his income as such by the municipality in which he resides.

Abbott v. City of St. John, 40 Can., S. C. R. 597.

SECT. **91**, sub-ss. 9, 13, 16.

15.—*Held*, that the Canada Temperance Act, 1878, which in effect, wherever throughout the Dominion it is put in force, uniformly prohibits the sale of intoxicating liquors except in whole-

sale quantities or for certain specified purposes, regulates the traffic in the excepted cases, makes sales of liquors in violation of the prohibitions and regulations contained in the Act criminal offences, punishable by fine and for the third or subsequent offence by imprisonment, is within the legislative competence of the Dominion Parliament.

Russell v. The Queen, 7 App. Cas. 829.

SECT. **91**, sub-s. 10.

15*a*.—In 1910 Parliament voted money for "Montreal River Improvements above Latchford" and the Crown, through the Minister of Public Works, gave a contract to H. in connection with the work. In performance of the work L. placed a cofferdam on each side of the river leaving an opening between them some 200 feet wide. In the spring of 1911 the cofferdam on the north side was covered by three feet of water and the logs of B. being driven down through the opening, were allowed to rest against a pier a few hundred feet below and formed a jam the rear of which was over the cofferdam. Either by weight of the jam or increased pressure by breaking it, in the ordinary mode, the destruction of the cofferdam was caused. *Held*, Fitzpatrick, C. J., and Duff, J., dissenting, that B. was responsible for the injury so caused; that with more care in driving the formation of the jam might have been avoided; that, if breaking the jam in the ordinary way was likely to cause damage, another mode should have been adopted even if it would cause delay and greater expense; and that the employees of B. acted with a wilful disregard of the contractors' rights and caused "unnecessary damage". *Held*, *per* Davies, Anglin and Brodeur, JJ., that, in the absence of Dominion legislation to the contrary, the rights of lumbermen under the Ontario "Rivers and Streams Act" (pre-Confederation legislation) are not subordinate but equal to those of persons acting for the Dominion Government in matters respecting navigation. *Per* Davies and Duff JJ., Anglin J. *dubitante*.—The cofferdam was a "structure" and subject to the provisions of sec. 4 of the "Rivers and Streams Act." *Per* Davies and Anglin JJ.,—Even if not a "structure" as it was placed in the river under sanction of Dominion legislation B.'s rights were restricted practically as they would be under sec. 4.

Judgment of the Appellate Division (37 Ont. L. R. 17) reversing that at the trial (34 Ont. L. R. 204), affirmed.

John R. Booth v. Lowery, 54 Can., S. C. R. 421.

SECT. **91**, sub-s. 11.

16.—*Held*, *per* Idington, Maclennan and Duff, JJ., Fitzpatrick C. J. and Davies J. *contra*:—That a company incorporated under

the authority of a provincial legislature to carry on the business of fire insurance is not inherent incapable of entering outside the boundaries of its province of origin into a valid contract of insurance relating to property also outside of those limits. *Per* Fitzpatrick C. J. and Davies J.—Sub-section 11 of s. 92, B. N. A. Act, 1867, empowering a legislature to incorporate "companies for provincial objects", not only creates a limitation as to the objects of a company so incorporated but confines its operations within the geographical area of the province creating it. And the possession by the company of a license from the Dominion Government under 51 Viet. c. 28 (R. S. C. 1906, c. 34, s. 4), authorizing it to do business throughout Canada is of no avail for the purpose.—Girouard J. expressed no opinion on this question.

Can. Pacific Ry v. Ottawa Fire Ins. Co. 39 Can., S. C. R. 405.

SECT. **91**, sub-s. 12.

17.—Under the provisions of the B. N. A. Act 1867, s. 91, s.-s. 12, the Parliament of Canada has exclusive jurisdiction to legislate with respect to fisheries within the three-mile-zone off the sea-coats of Canada. A foreign vessel found violating the fishery laws of Canada within three marine miles off the sea-coasts of the Dominion may be immediately pursued beyond the three-mile-zone and lawfully seized on the high seas. Girouard, J., dissenting. The judgment appealed from (11 B. C. Rep. 473), was affirmed.

The Ship "North" v. The King, 37 Can., S. C. R. 385.

18.—*Held*, affirming the judgment of the Exchequer Court, 1. That the general power of regulating and protecting the fisheries under the B. N. A. Act, 1867, s. 91 is in the Parliament of Canada, but that the license granted by the Minister of the *locus in quo* was void, because said Act only authorizes the granting of leases "where the exclusive right of fishing does not already exist by law", and in this case the exclusive right of fishing belonged to the owners of the land through which that portion of the Miramichi River flows.—2. That although the public may have in a river, such as the one in question, an easement or right to float rafts or logs down, and a right of passage up and down in Canada, &c., wherever the water is sufficiently high to be so used, such right is not inconsistent with an exclusive right of fishing or with the right of the owners of property opposite their respective lands *ad medium filum aquae*.—3. That the rights of fishing in a river, such as is that part of the Miramichi from Price's Bend to its source, are an incident to the grant of the land through which such river flows, and where such grants have been made, there is no authority given by the B. N. A. Act, 1867, to grant a right to fish, and the Dominion Par-

liament has no right to give such authority. *Per* Ritchie, C. J., and Strong, Fournier and Henry, JJ., reversing the judgment of the Exchequer Court on the 8th question submitted, that the ungranted lands in the Province of New-Brunswick being in the Crown for the benefit of the people of New-Brunswick, the exclusive right to fish follows as an incident, and is in the Crown as trustee for the benefit of the people of the province, and therefore a license by the Minister of Marine and Fisheries to fish in streams running through provincial property would be illegal.

The Queen v. Robertson, 6 Can., S. C. R. 52.

19.—Whatever proprietary rights vested in the provinces at the date of British N. Am. Act, 1867, remained so unless by its express enactments transferred to the Dominion. Such transfer is not to be presumed from the grant of legislative jurisdiction to the Dominion in respect of the subject-matter of those proprietary rights. *Held*, that the transfer by s. 108 and the 5th clause of its schedule to the Dominion of "rivers and lakes improvements" operates on its true construction in regard to the improvements only both of rivers and lakes, and not in regard to the entire rivers. Such construction does no violence to the language employed, and is reasonably and probably in accordance with the intention of the Legislature:—*Held*, that the transfer of "public harbours" operates on whatever is properly comprised in that term having regard to the circumstances of each case, and is not limited merely to those portions on which public words had been executed.

With regard to fisheries and fishing rights:—

Held, (1) that s. 91 did not convey to the Dominion any proprietary rights therein, although the legislative jurisdiction conferred by the section enables it to affect those rights to an unlimited extent, short of transferring them to others. (2) a tax by way of license as a condition of the right to fish is within the powers conferred by sub-ss. 4 and 12. (3) the same power is conferred on the Provincial Parliament by s. 92. (4) Revised Statutes of Canada, c. 95, s. 4, so far as it empowers the grant of exclusive fishing rights over provincial property, is *ultra vires* the Dominion. (5) Revised Statutes of Ontario, c. 24, s. 47, is with a specific exception *intra vires* the province. *Held*, further, that the Dominion Legislature had power to pass Revised Statutes of Canada, c. 92, intituled "An Act respecting certain Works constructed in or over Navigable Waters".

Atty-Gen. of Can. v. Atty-Gen. of Ont (1898) A. C. 700.

20.—The appellants were grantees of lands on both sides of a river which was shewn by the evidence to be navigable and floatable at such locality and from thence to its mouth:—

Held, that the right of fishing in the river vested exclusively in the Crown and that, as the letters patent to the appellants in 1883 granting the said lands were plain and unambiguous in their terms and did not specifically grant rights of fishing in the river opposite thereto, the patentees could not claim such rights under previous or subsequent correspondence as enlarging the terms of the grants, or by reason of such rights having been exercised by them continuously from the date of the patents without hindrance or interference.

Wyatt v. Atty-Gen. for Quebec, (1911) A. C. 489.

SECT. **91**, sub-s. 13.

21.—The Parliament of Canada has authority to, or to authorize the Governor-General in Council to establish or create ferries between a province and any British or foreign country or between two provinces. The Governor-General in Council, if authorized by Parliament, may confer, by license or otherwise, an exclusive right to any such ferry.

International and Inter-Provincial Ferries, 36 Can., S. C. R. 206.

SECT. **91**, sub-s. 15.

22.—In 1866 the Bank of Upper Canada became insolvent and assigned all its property and assets to trustees. By 31 Vict. c. 17 the Dominion Parliament incorporated said trustees giving them authority to carry on the business of the bank so far as was necessary for winding up the same. By 33 Vict. c. 40, all the property of the bank vested in the trustees was transferred to the Dominion Government which became seized of all the powers of the trustees. *Held*, affirming the judgment appealed from (*sub nom. The Queen* v. *County of Wellington*, 17 *Ont. App. R.* 421) that these Acts were *intra vires* of the Dominion Parliament.—*Per* Ritchie, C. J., that the legislative authority of Parliament over "banking and the incorporation of banks" and over "bankruptcy and insolvency" empowered it to pass said Acts.—*Per* Strong, Taschereau, and Patterson JJ., the authority to pass said Acts cannot be referred to the legislative jurisdiction of Parliament over "banking and incorporation of banks" but to that over "bankruptcy and insolvency" only.—After the property of the bank became vested in the Dominion Government a piece of land included therein was sold and a mortgage taken for the purchase money, the mortgagor covenanting to pay the taxes. Not having done so, the land was sold for non-payment. In an action to set aside the tax sale.—*Held*, affirming the judgment appealed from, that the Crown having a beneficial interest in the land it was exempt from taxation as Crown lands.

Quirt v. The Queen, 19 Can. S. C. R. 510.

23.—Although warehouse receipts granted to itself by a firm which has not the custody of any goods but its own are not negotiable instruments within the meaning of the Mercantile Amendment Act, (c. 122 of the Revised Statutes), *held*, that the Dominion Bank Act (46 Vict. c. 120), while it was in force dispensed with that limitation, validated such receipts, and transferred to the indorsees thereof the property comprised therein:—

Held, further, that the Bank Act was *intra vires* of the Dominion Parliament.

Sect. 91, sub-sect. 15, of the British N. Am. Act, 1867, gives to that parliament power to legislate over every transaction within the legitimate business of a banker, notwithstanding that the exercise of such power interferes with property and civil rights in the province—see sect 92, sub-sect. 13—, and confers upon a bank privileges as a lender which the provincial law does not recognize.

The legislation of the Dominion Parliament, so long as it strictly relates to the subjects enumerated in sect. 91, is of paramount authority even though it trenches, upon the matters assigned to the provincial legislature by sect. 92.

Tennant v. Union Bank of Can. (1894) A. C. 31.

SECT. **91**, sub-s. 21.

24.—*Held*, that the provisions of sect. 9 of Ontario "Act respecting assignments and preferences by insolvent persons" (Revised Statutes of Ont. c. 124), which relate to assignments purely voluntary, and postpone thereto judgments and executions not completely executed by payment, are merely ancillary to bankruptcy law, and as such are within the competence of the provincial legislature so long as they do not conflict with any existing bankruptcy legislation of the Dominion Parliament.

Atty-Gen. of Ont. v. Atty-Gen. for Can. (1894) A. C. 189.

25.—*Held*, that the Act of the Provincial Legislature of Quebec (33 Vict. c. 58) which purported to relieve by legislation the appellant society, appearing on the face of the Act to have been in a state of extreme financial embarrassment, is within the legislative capacity of that Legislature. The Act related expressly to "a matter merely of a local or private nature in the province," which, by the 92nd sect. of the *British North Am. Act* 1867, passed by the Imperial Parliament, is assigned to the exclusive competency of the provincial legislature; and does not fall within the category of bankruptcy and insolvency, or any other class of subjects by the 91st section of the last mentioned Act reserved for the exclusive legislative authority of the Parliament of Canada.

L'Union St. Jacques de Montréal v. Dame Bélisle, L. R. 6 P. C. 31.

26.—The *British N. Am. Act*, 1867, s. 91, in assigning to the Dominion Parliament the subjects of bankruptcy and insolvency, intended to confer and did confer on it legislative power to interfere with property, civil rights, and procedure within the provinces, so far as these latter might be affected by a general law relating to those subjects. Consequently the Dominion enactment 40 Vict. c. 41, s. 28, amending the *Canadian Insolvent Act*, and providing that the judgment of the Court of Appeal in matters of insolvency should be final *i. e.*, not subject to the appeal as of right to Her Majesty in Council allowed by the *Civil Procedure Code*, art. 1178, is within the competence of the *Canadian Parliament*, and does not infringe the exclusive powers given to the Provincial Legislatures by sect. 92 of the Imperial statute. Neither does it infringe the Queen's prerogative, for it only limits the right of appeal as given by the Code.

The section, according to the true construction of the word "final", therein, excludes appeals to Her Majesty: but contains no words which purport to derogate from the prerogative of the Queen to allow such appeals as an act of grace. It, therefore, does not interfere with the prerogative of the Crown; and, *quaere*, what powers may be possessed by the Parliament of Canada so to do.

Cushing v. Dupuy, 5 App. Cas. 409.

SECT. **91**, sub-s. 23.

27.—The judgment appealed from (8 Ont. L. R. 9), was affirmed, the court however, declining to decide whether or not the doctrine laid down in *Smiles* v. *Belford* (1, O. App. R. 436) was rightly decided. (Leave to appeal to Privy Council refused; May, 1905).

Imperial Book Co. v. Black, 35 Can., S. C. R. 488.

SECT. **91**, sub-s. 24.

28.—*Per Curiam.*—The "Indian Act," 39 Vict., c. 18, does not prohibit the sale by the Crown to an "Indian" of public lands which have, on surrender to the Crown, ceased to be part of an Indian "reserve", nor prevent an individual of Indian blood, who is a member of a band or tribe of Indians, from acquiring title in such lands. The use of the word "person" in the provisions of the "Indian Act" (39 Vict., c. 18, s. 31; R. S. C. 1886 c. 48, s. 42), relating to sales of Indian lands, has not the effect of excluding Indians from the class entitled to become purchasers of such lands on account of the definition of that word in the interpretation clauses of the statutes in question.

The Atty-Gen. for Canada v. Pierre Giroux and Onésime Bouchard, 53 Can., S. C. R. 172.

29.—Lands in Ontario surrendered by the Indians by the treaty of 1873 belong in full beneficial interest to the Crown as representing the province, subject only to certain privileges of the Indians reserved by the treaty. The Crown can only dispose thereof on the advice of the Ministers of the province and under the seal of the province.

St. Catherine's Milling Co. v. *Reg.*, (1888) 14 App. Cas. 46 followed.

The Dominion Government having purported, without the consent of the province, to appropriate part of the surrendered lands under its own seal as a reserve for the Indians in accordance with the said treaty:—*Held*, that this was *ultra vires* the Dominion, which had by s. 91 of the British N. Am Act, exclusive legislative authority over the lands in question, but had no proprietary rights therein.

Ontario Mining Co. v. Seybold, (1903) A. C. 73.

30.—Sect. 91, sub-s. 25, reserves to the exclusive jurisdiction of the Dominion Parliament the subject of naturalization—that is, the right to determine how it shall be constituted. The provincial legislature has the right to determine, under s. 92, sub-s. 1, what privileges, as distinguished from necessary consequences, shall be attached to it. Accordingly, the British Columbia Provincial Elections Act (1897), c. 67, s. 8) which provides that no Japanese, whether naturalized or not, shall be entitled to vote, is not *ultra vires*.

Cunningham v. Tomey Homma, (1903) A. C. 151.

31.—*Held*, that s. 6 of the Dominion statute 60 & 61 Vict. c. 11, as amended by 1 Edw. 7, c. 13, s. 13, is *intra vires* of the Dominion Parliament.

The Crown undoubtedly possessed the power to expel an alien from the Dominion of Canada, or to deport him to the country whence he entered it. The above Act, assented to by the Crown, delegated that power to the Dominion Government, which includes and authorizes them to impose such extra-territorial constraint as is necessary to execute the power.

Atty-Gen. for Canada v. Cain, (1906) A. C. 542.

SECT. **91**, sub-s. 26.

32.—Under ss. 91 and 92 of the British N. Am. Act, the exclusive power conferred on the provincial Legislature to make laws relating to the solemnization of marriage in the province operates by way of exception to the exclusive jurisdiction as to its validity conferred upon the Dominion, and enables the provincial Legislature to enact conditions as to solemnization, and in particular as

to the right to perform the ceremony, which may affect the validity of the contract.

re Marriage Reference, (1912) A. C. 880.

33.—The Supreme Court of British Columbia has jurisdiction to entertain a petition for divorce between persons domiciled in that Colony and in respect of matrimonial offences alleged to have been committed therein.

Watts v. Watts, (1908) A. C. 573.

SECT. **91,** sub-s. 27.

34.—*Held*, that "An Act to prevent the Profanation of the Lord's Day" (Revised Statutes of Ontario, 1897, c. 246) treated as a whole is *ultra vires* of the Ontario Legislature.

The criminal law in its widest sense is reserved by s. 91, sub-s. 27, for the exclusive authority of the Dominion Parliament; and an infraction of the above Act is an offence against criminal law.

Atty-Gen. of Ontario v. Hamilton Street Ry. (1903), A. C. 524.

35.—The Provincial Legislatures have no jurisdiction to permit the operation of lotteries forbidden by the criminal statutes of Canada.—A contract in connection with a scheme for the operation of a lottery forbidden by the criminal statutes of Canada is unlawful and cannot be enforced in a court of justice. The illegality which vitiates such a contract cannot be waived or condoned by the conduct of pleas of the party against whom it is asserted and it is the duty of the courts, *ex mero motû*, to notice the nullity of such contracts at any stage of the case and without pleading.—*Per* Girouard, J., (dissenting). In Canada before the Criminal Code, 1892, lotteries were mere offences or contraventions and not crimes, and consequently the Act of the Quebec Legislature was constitutional.

L'Association St. Jean-Baptiste v. Brault, 30 Can., S. C. R. 598.

36.—The Act. 7 Edw. VII. (Que.) ch. 42, as amended by the statute 9 Edw. VII. (Que.) ch. 51, which, among other things, prohibits, under penalty, the giving of theatrical performances on Sunday for gain except in case of necessity or urgency, is void because it is criminal legislation which, under sec. 91, sub-sec. 27 of the British North American Act, is exclusively within the power of the Dominion Parliament to enact.

Ouimet v. Bazin, (1912), 20 C. C. C. 458.

37.—The provisions of the statute of the Province of Saskatchewan, 2 Geo. V, ch. 17, containing a prohibition against the employment of white female labour in places of business and amusement kept or managed by Chinamen, sanctioned by fine and im-

prisonment, is *intra vires* of the Provincial Legislature. *Union Colliery Co.* v. *Bryden* (1899) A. C. 580), and *Cunningham* v. *Tomey Homma* (1903) A. C. 151), referred to.—*Per* Duff J.,—The imposition of penalties for the purpose of enforcing the provisions of a provincial statute does not, in itself, amount to legislation on the subject-matter of criminal law within the meaning of item 27 of the 91st section of the B. N. A. Act, 1867. *Hodge* v. *The Queen* (9 *App. Cas.* 117), *the Atty-Gen. of Ont.* v. *The Atty-Gen. for the Dom.* (1896) *A. C.* 348, *and The Atty-Gen. of Manitoba* v. *The Manitoba License Holders' Association* (1902) A. C. 73, referred to.—The judgment appealed from (4 West W. R. 1135) was affirmed, Idington J. Dissenting.—(Leave to appeal to the Privy Council refused, 19th May, 1914).

Quong-Wing v. The King, 49 Can., S. C. R. 440.

38.—Legislation to prohibit on Sunday the performance of work and labour, transaction of business, engaging in sport for gain or keeping open places of entertainment is within the jurisdiction of the Parliament of Canada.

In re Legislation respecting Abstention from Labour on Sunday, 35 Can., S. C. R. 581.

SECT. **91,** sub-s. 28.

39.—The legislative jurisdiction of the Parliament of Canada in respect to the establishment, maintenance and management of penitentiaries, cannot be in any way limited, restricted or affected by any provincial legislation in the Province of New-Brunswick, either previous or subsequent to the confederation of the provinces under the B. N. A. Act, 1867.—Where no Dominion statute authorizes the confinement in a penitentiary of certain classes of convicts, who, before the B. N. A. Act, 1867, came into force, might, under the laws then in force, have been sentenced to imprisonment and confined in the Saint John Penitentiary, there is no obligation upon the Government of Canada to make provision for their imprisonment and maintenance, at the expense of the Dominion, in the penitentiary.—*Semble*, that, on references by the Governor-General in Council, it is improper for the Supreme Court of Canada to express opinions upon cognate subjects not failing within the terms of the questions as submitted for consideration.

In re New-Brunswick Penitentiary, Cout. Cas. 24.

SECT. **91,** sub-s. 29.

40.—By the true construction of British N. Am. Act, 1867, s. 91, sub-s. 29, and s. 92, sub-s. 10, the Dominion Parliament has exclusive right to prescribe regulations for the construction, re-

pair, and alteration of the appellant railway; and the provincial legislature has no power to regulate the structure of a ditch forming part of its authorized works:—

But *held*, that the provisions of the municipal code of Quebec, which prescribe the cleaning of the ditch and the removal of an obstruction which had caused inundation on neighbouring land, are *intra vires* of the provincial legislature.

C. P. Ry. v. N-D. de Bonsecours Corporation, (1899) A. C. 367.

41.—The Railway Committee of the Privy Council of Canada, by order made under ss. 187 and 188 of the Dominion Ry. Act. (51 Vict., c. 29), directed certain measures to be taken for safeguarding the respondents' railway, which is a through railway, and for the protection of the public in traversing it at certain level crossings where it passes across public streets at points within or immediately adjoining the boundary of the appellant city, and directed the cost thereof to be borne in equal proportions by the railway and the city.

In a suit by the railway after the execution of works as directed to recover the apportioned amount from the corporation:—

Held, that ss. 187 and 188 were *intra vires* of the Dominion Legislature by force of the British N. Am. Act, s. 91, sub-s. 29, and s. 92, sub-s. 10 (a).

Held, also, that, having regard to s. 7, sub-s. 2, of the Interpretation Act (R. S. C. 1886, c. 1), "person" in s. 188 includes a municipality.

Toronto v. C. P. Ry, (1908) A. C. 54.

42.—A declaration made by the Parliament of Canada under s. 92, sub-s. 10 (c), of the British N. Am. Act, that a provincial work or undertaking is for the general advantage of Canada, whereby under s. 91, sub-s. 29, of that Act the work or undertaking becomes subject to the exclusive legislative authority of the Dominion, can be repealed or varied by a subsequent Act of that Parliament, and thereupon the work or undertaking ceases to be under Dominion authority, or ceases to be so save to the extent then declared.

Hamilton, Grimsby, and Beamsville Ry. v. Atty-Gen. for Ontario, (2, 1916) A. C. 583.

SECT. **92**, sub-ss. 1, 4, 14.

43.—*Held*, that, according to the true construction of the British N. Am. Act, 1867, s. 92, sub-ss. 1, 4, and 14, Revised Statutes of Ontario, 1877, c. 139, which empowers the Lieutenant-Governor of the province to confer precedence by patents upon such mem-

bers of the bar of the province as he may think fit to select, is *intra vires* of the provincial legislature.
Atty-Gen. of Can. v. Atty-Gen. of Ont. (1898) A. C. 247.

SECT. **92**, sub-s. 2.

44.—The land subsidy of the Canadian Pacific Railway Company authorized by the Act, 44 Vict. c. 1 (D), is not a grant *in praesenti* and, consequently, the period of twenty years of exemption from taxation of such lands provided by the sixteenth section of the contract for the construction of the Canadian Pacific Railway begins from the date of the actual issue of letters patent of grant from the Crown, from time to time, after they have been earned, selected, surveyed allotted and accepted by the Canadian Pacific Railway Company.—The exemption was from taxation "by the Dominion, or any province hereafter to be established or any municipal corporation therein". *Held*, that when, in 1881, a portion of the North-West Territories in which this exemption attached was added to Manitoba the latter was a province "thereafter established" and such added territory continued to be subject to the said exemption from taxation.
C. P. Ry. v. Springdale, 35 Can., S. C. R. 550.

45.—By s. 5 of the "Succession Duties Act" of British Columbia (R. S. B. C. (1911) ch. 217.) on the death of any person his property in the province "and any interest therein or income therefrom.....passing by will or intestacy" is subject to succession duty whether such person was domiciled in the province or elsewhere at the time of his death.—*Held*, that the imposition of the duty, if taxation, was "direct taxation within the province" and within the competence of the Legislature of British Columbia.
Boyd v. Atty-Gen. of British Columbia, 54 Can., S. C. R. 532.

46.—*Held*, that the Act of the provincial legislature of *New-Brunswick* (33 Vict. c. 47), intituled "an Act to authorize the issuing of debentures on the credit of the lower district of the parish of *St. Stephen*, in the county of *Charlotte*", which empowered the majority of the inhabitants of that parish to raise by local taxation a subsidy, designed to promote the construction of a railway extending beyond the limits of the province, but already authorized by statute, is within the legislative capacity of that legislature.
Dow v. Black, L. R. 6 P. C. 272.

47.—*Held*, that Quebec Act, (43 & 44 Vict. c. 9) which imposed a duty of ten cents upon every exhibit filed in Court in any action depending therein is *ultra vires* of the provincial legislature.
Atty-Gen. of Quebec v. Reed, 10 App. Cas. 141.

48.—It is *ultra vires* the Legislature of Ontario to tax property not within the province.

Held, accordingly, that the Succession Duty Act (R. S. O. 1897, c. 24) does not include within its scope movable properties locally situated outside the province of Ontario which it was alleged that the testator, a domiciled inhabitant of the province, had transferred in his lifetime with intent that the transfers should only take effect after his death.

Blackwood v. *Reg.*, (1883), 8 App. Cas. 82, followed.

Woodruff v. Atty-Gen. of Ont. (1908) A. C. 508.

49.—The clause of Act 39 Vict. c. 7 (passed by the Legislature of Quebec), which impose a tax upon certain policies of assurance and certain receipts or renewals, are not authorized by the British N. Am. Act, 1867, s. 92, sub-ss. 2, 9.

A license Act by which a licensee is compelled neither to take out nor to pay for a license, but which merely provides that the price of a license shall consist of an adhesive stamp, to be paid in respect of each transaction, not by the licensee but by the person who deals with him, is virtually a Stamp Act and not a License Act.

Atty-Gen. of Quebec v. Queen Ins. Co., 3 App. Cas. 1090.

50.—*Held*, that the Liquor License Act (Revised Statutes of Ontario, c. 194), s. 51, sub-s. 2, which requires every brewer and distiller to obtain a license thereunder to sell wholesale within the province, is *intra vires* of the provincial legislature—(a) as being direct taxation within sub-s. 2, s. 92, of the British N. Am. Act, 1867. *Bank of Toronto* v. *Lambe*, (1887), 12 App. Cas. 575, followed.

(b) as comprised within the term "other licenses" in sub-s. 9, of the same section.

Brewers and Maltsters Ass. v. Atty-Gen. of Ont. (1897) A. C. 231,

51.—By New Brunswick Succession Duty Act, 1896, s. 1 (5), all property situate within the province is liable to succession duty whether the deceased was domiciled there or not; such duty being assimilated by other provisions of the same Act to a probate duty payable for local administration.

The testator, resident and domiciled in the Province of Nova Scotia, at the date of his death was possessed of $90,351 deposited in the New Brunswick branch of the Bank of British North America, the head office of which is in London; and the amount was paid to his executors after they had obtained ancillary probate in New Brunswick:—

Held, reversing the judgment of the Supreme Court, that the executors were liable to pay succession duty.

Blackwood v. *Reg.* (1882), 8 App. Cas. 82, followed.

The King v. Lovitt, (1912), A. C. 212.

52.—The Quebec License Act, 41 Vict. c. 3, is *intra vires* of the Legislature of the Province of Quebec. (*Hodge* v. *The Queen*, 9 *App. Cas.* 117, *followed*), and does not interfere with the existing rights and powers of incorporated cities. A by-law of the City of Three Rivers, in virtue of its charter, 20 Vict. c. 129, and 38 Vict. c. 76, imposing a license fee on the sale of intoxicating liquors, is within the powers of the corporation.—Judgment appeal from (5 Legal News 331) affirmed.

Sulte v. City of Three Rivers, 11 Can., S. C. R. 25.

52*a*.—*Held*, (1), that neither the Quebec Succession Duties Act of 1906 nor the Succession Duties Act of that Province passed in 1892 upon its true construction imposes any duty upon the transmission of movable property outside the Province; (2) that the taxation imposed by the Quebec Succession Duties Act of 1906 is not "direct taxation" within the meaning of the British N. Am. Act, s. 92, and is consequently *ultra vires* the Legislature of the Province.

Cotton v. The King, (1914) A. C. 176.

53.—*Held*, that taxes imposed on movable property by the Quebec Succession Duty Act of 1892 and the amending Acts apply only to property which the successor claims under or by virtue of Quebec law; and have no application to the several items in this case, which formed part of a succession devolving under the law of Ontario.

Lambe v. Manuel, (1903), A. C. 68.

54.—By the Public Schools Act, 1892 (Ontario), s. 4, "No municipal by-law hereafter passed for exemption any portion of the rateable property of a municipality from taxation, in whole or in part, shall be held or construed to exempt such property from school rates of any kind whatsoever". In 1904 the respondents passed a by-law fixing the assessment of the appellants' property at 100,000 dollars for the next twenty years. This by-law required statutory confirmation, since it had not received the assent of two-thirds of the voters, as provided by the Consolidated Municipal Act, 1903, s. 591a. By an Act of the Ontario Legislature the by-law was "declared to be legal, valid and binding notwithstanding anything in any Act to the contrary":—

Held, that the confirming Act gave statutory effect to the by-law subject to the construction imposed upon it by the Public Schools Act, 1892, and that the property could be assessed at over 100,000 dollars in respect of school rates.

Ontario Power Co. v. Stamford Municipal Corporation, (1, 1916) A. C. 529.

SECT. **92**, sub.-ss. 9, 13, 16.

55.—*Held*, that the Canada Temperance Act, 1878, which in effect, wherever throughout the Dominion it is put in force, uniformly prohibits the sale of intoxicating liquors except in wholesale quantities or for certain specified purposes, regulates the traffic in the excepted cases, makes sales of liquors, in violation of the prohibitions and regulations contained in the Act criminal offences, punishable by fine and for the third or subsequent offence by imprisonment, is within the legislative competence of the Dominion Parliament.

Russell v. The Queen, 7 App. Cas. 829.

56.—The Act 37 Vict. c. 32 Ont. is *ultra vires*, of the Legislature of Ontario.—Taxation and regulation of the brewer's trade is in restraint of trade and commerce and within the exclusive jurisdiction of the Parliament of Canada under s. 91 B. N. A. Act. It is not in the exercise of police regulations, nor a matter of a local or municipal character within the authority conferred upon Provincial Legislatures by s.-s. 9, s. 92, B. N. A. Act, and the expression "other licenses" therein does not extend to brewers' licenses or other licenses which are not of a local or municipal character. *Reg.* v. *Taylor*, (36 U. C. Q. B. 218) overruled. Ritchie and Strong, JJ., dissenting.

Severn v. The Queen, 2 Can. S. C. R. 70.

SECT. **92**, sub-s. 10.

57.—The Alberta Railway Act. s. 82, by sub-ss. 1 and 2, provides that a railway company authorized by that Act may, subject to the approval, order, or direction of the Lieutenant-Governor, take possession of, use, or occupy the lands belonging to any other railway company.

Sect. 7 of c. 15 of the Acts of the Legislature of Alberta for 1912 amends s. 82 above mentioned by adding sub-s. 3, which purports to apply its provisions to the lands of every railway company authorized otherwise than under the legislative authority of the Province, "in so far as the taking of such lands does not unreasonably interfere with the construction and operation" of the railway whose lands are taken:—

Held, (1), that s. 7 above mentioned is *ultra vires* a provincial Legislature under the British N. Am. Act, and that it would not be *intra vires* if the word "unreasonably" were omitted; (2), that in a suitable case, having regard to the interests of the public, the Board of Railway Commissioners, acting under s. 8 of the Railway Act, may grant permission for a provincial railway to

cross a Dominion railway, the crossing being regulated in accordance with those interests.

Atty-Gen. of Alberta v. Atty-Gen. of Can. (1915) A. C. 363.

58.—On an application by the City of Vancouver, the Board of Railway Commissioners for Canada authorized the Corporation of the City of Vancouver to construct overhead bridges across the tracks of a Dominion railway company, which had been laid down during the years 1909 and 1910 on certain streets in the city, and ordered that a portion of the cost of construction of two of these bridges and of the depression of the tracks at the crossings thereof by the Dominion railway should be borne by a tramway company which derived its powers through provincial legislation and an agreement with the city pursuant to such legislation under which it operated its tramways upon these streets. By the agreement the tramway company became entitled to use the city streets with reciprocal obligations by the city and the company respecting their grading, repair and maintenance, and it was provided that the city should receive a share of the gross earnings of the tramway company. On appeal to the Supreme Court of Canada from the order of the Board.—*Held*, Duff and Brodeur, JJ., dissenting, that, in virtue of sections 8 (a), 39, 237, and 238 of the "Railway Act." R. S. C. 1906, ch. 37, as amended by ch. 32 of 8 & 9 Edw. VII., the Board of Railway Commissioners for Canada had jurisdiction to determine the "interested parties" in respect of the proposed works and to direct what proportion of the cost thereof should be borne by each of them. *The City of Toronto* v. *C. P. R.* (1908) *A. C.* 54; *C. P. R.* v. *Parish of N-D. de Bonsecours*, (1899) *A. C.* 367; *City of Toronto* v. *G. T. R.* 37 *Can., S. C. R.* 232; *County of Carleton* v. *City of Ottawa*, 41 *Can., S. C. R.* 552, *and Re C. P. R. and York*, 25 *Ont. App. R.* 65. *followed.*—*Per* Duff and Brodeur JJ., dissenting.—(1) The Parliament of Canada, when it assumes jurisdiction, under the provisions of item 10 of s. 92 of the B. N. A. Act, 1867 in respect of a provincial railway, *quâ* railway, must assume such jurisdiction over the work or undertaking "as an integer". (2) The order of the Board cannot be sustained as being made in the exercise of the Dominion power of taxation. (3) As there is no Dominion interest concerned in the provisions of the order under appeal, and the Dominion Parliament has no power to compel the provincial company to assume the burden of the cost of the proposed works, or any portion thereof, the Board of Railway Commissioners had no jurisdiction to assess a proportion of their cost upon the railway company. (4) The cases cited above must be distinguished as they do not sustain, as a valid exercise of ancillary power by Dominion authority, any enactment professing to control a provincial railway company.

(Leave to appeal to the Privy Council was granted on 14th July, 1913).

B. C. Electric Railway Co. v. V. V. and E. Railway and Nav., Co. and the City of Vancouver, 48 Can., S. C. R. 98.

59.—The appellants were incorporated by letters patent under R. S. Ont., 1877, c. 150, and 45 Vict. (Ont.) c. 19. The letters patent authorized them to lay down and maintain in, upon, and under the streets of Toronto all wires, poles, &c., to enable them to distribute electric light and power. By s. 2 of 45 Vict (Ont.) c. 19, every company incorporated under that Act may conduct electricity by any means through, under, or along the streets of the municipalities named by its letters patent, but only upon and subject to such agreement in respect thereof as should be made between the company and the municipalities respectively:—

Held, (1), that an agreement to be implied from acts of acquiescence by the respondents was not sufficient to satisfy s. 2 above mentioned, but that the section required a formal agreement as a condition precedent to the appellants' right to enter upon the streets of the city and construct its works; (2), that the respondents had an absolute right to prohibit the appellants from constructing any works through, under, or along the streets, and not merely a right to regulate by agreement the manner in which the work should be carried out.

Toronto Electric Light Co. v. Toronto Corporation, (1, 1917) A. C. 84.

60.—In construing an Act of the Parliament of Canada, there is a presumption in law that the jurisdiction has not been exceeded.—Where the subject matter of legislation by the Parliament of Canada, although situate wholly within a province, is obviously beyond the powers of the local legislature, there is no necessity for an enacting clause specially declaring the works to be for the general advantage of Canada or for the advantage of two or more of the provinces. *Semble*, per Sedgewick and Davis JJ., (Girouard and Idington JJ., *contra*). A recital in the preamble to a special private Act, enacted by the Parliament of Canada, is not such a declaration as that contemplated by sub-s. 10 (c) of s. 92 of the British N. Am. Act in order to bring the subject matter of the legislation within the jurisdiction of Parliament. A motion made, while the case was standing for judgment, to have the case remitted back to the courts below for the purpose of the adduction of newly-discovered evidence as to the refusal of Parliament to make the above-mentioned declaration was refused with costs.

Hewson v. Ontario Power Co., 36 Can., S. C. R. 596.

61.—*Held*, that under its Dominion incorporating Act, (43 Vict. c. 67) the respondent telephone company was entitled, without the consent of the municipal corporation, to enter upon the streets and highways of the city of Toronto and to construct conduits or lay cables thereunder, or to erect poles with wires affixed thereto upon or along such streets or highways. The scope of the respondent's business contemplated by the said Act and involving its extension beyond the limits of any one province was within the express exception made by s. 92, sub-s. 10 (a), of the British N. Am. Act, from the class of local works and undertakings assigned thereby to provincial legislatures. Accordingly, Act, 43 Vict. c. 67 was within the exclusive competence of the Dominion Parliament under s. 91.

Ontario Act 45 Vict. c. 71, passed to authorize the exercise of the above powers within the province, subject to the consent of the corporation, was held to be *ultra vires*, and could not by reason of having been passed on the application of the respondent company be validated as a legislative bargain.

Toronto v. Bell Telephone Co., (1905), A. C. 52.

62.—The British Columbia Vancouver Island Settlers' Rights Act, 1904 directed that a grant in fee simple without any reservations as to mines and minerals should be issued to settlers therein defined, and thereunder a grant was made to the appellant of the lot in suit.

By an Act of the same Legislature in 1883, land which included the said lot had been granted with its mines and minerals to the Dominion Government in aid of the construction of the respondents' railway, and in 1887 had been by it granted to the respondents under the provisions of a Dominion Act Passed in 1884:—

Held, that the Act of 1904 on its true construction legalized the grant thereunder to the appellant, and superseded the respondents' title.

McGregor v. Esquimault & Nanaimo Ry, (1907) A. C. 462.

63.—*Held*, that s. 4 of the British Columbian "Coal Mines Regulation Act, 1890" which prohibits Chinamen of full age from employment in underground coal workings, is in that respect *ultra vires* of the provincial legislature.

Regarded merely as a coal-working regulation, it would come within s. 92 sub-s. 10, or s. 92 sub-s. 13, of the British N. Am. Act. But its exclusive application to Chinamen who are aliens or naturalized subjects establishes a statutory prohibition which is within the exclusive authority of the Dominion Parliament conferred by s. 91, sub-s. 25, in regard to "naturalization and aliens".

Union Colliery v. Bryden, (1899) A. C. 580.

64.—Certain water rights in lands known as the Railway Belt for British Columbia were granted to the appellants by water Commissioners who purported to act under the British Columbian Water Clauses Consolidation Act, 1897 (61 Vict. c. 190, s. 4).

On an information filed by the Dominion claiming that the grant was invalid and conveyed no interest to the appellants:—

Held, that (1), the Railway Belt having been conveyed by the Province to the Dominion by provincial statutes for railway purposes as contemplated by the 11th article of the Terms of Union, it resulted that the proprietary rights therein, which before the transfer belonged to the Crown in right of the Province, after the transfer belonged to the Crown in right of the Dominion for a public purpose; (2), being public lands both before and after the transfer, they were public property within the meaning of s. 91 of the British N. Am. Act, and as such were under the exclusive authority of the Dominion Parliament; (3), the above Water Clauses Consolidation Act could not affect the waters upon those lands and on its true construction (sec. s. 2) did not purport to do so.

Burrard Power Co. v. The King, (1911), A. C. 87.

65.—*Held*, that s. 8, sub-s. (b), of the Railway Act of Canada (1906, R. S. C. c. 37), which subjects any provincial railway (although not declared by Parliament to be a work for the general advantage of Canada) to those of its provisions which relate to through traffic, is *ultra vires* of the Dominion Parliament.

Montreal v. Mont. Street Ry., (1912) A. C. 333.

SECT. **92**, sub-s. 11.

66.—Sect. 92 of the British N. Am. Act, confines the actual powers and rights which a provincial Government can bestow upon a company, either by legislation or through the Executive to powers and rights exercisable within the province, but does not preclude a province either from keeping alive the then existing power of the Executive to incorporate by charter so as to confer a general capacity analogous to that of a natural person, or to legislate so as to create, by or by virtue of a statute, a corporation with this general capacity. The power of incorporation by charter transferred to the Lieutenant-Governor of the province of Ontario by s. 65 of the above mentioned Act has not been abrogated or interfered with by the Ontario Companies Act. (R. S. Ont., 1897, c. 191.)

The doctrine of *Ashbury Railway Carriage and Iron Co.* v. *Riche* (1875) L. R. 7 H. L. 653 does not apply to a company which derives its existence from the act of the Sovereign and not merely from the regulating statute:—

Held, therefore, that a company incorporated by letters patent, issued by the Lieutenant-Governor of Ontario under the Ontario Companies Act (R. S. Ont., 1897, c. 191), s. 9, with the object of carrying on the business of mining, has a status and capacity which enable it to accept and exercise mining leases and rights in the Yukon Territory conferred by the authorities of the Dominion and the Yukon Territory. *Held*, further, that a company incorporated under the Ontario Companies Act is "incorporated under a Canadian charter" within the meaning of the regulations governing the issue of a free miner's certificate in the Yukon Territory.

Bonanza Creek Gold Mining Co. v. Rex, (1, 1916) A. C. 566.

67.—*Held*, per Fitzpatrick C. J. and Davies J., that sections 4 and 70 of the Act 9 & 10 Edw VII, ch. 32, (The Insurance Act., 1910) are not *ultra vires* of the Parliament of Canada, Idington, Duff, Anglin and Brodeur JJ., *contra.*—*Held*, *per* Fitzpatrick C. J., and Davies J., that section 4 of said Act operates to prohibit an insurance company incorporated by a foreign state from carrying on its business within Canada if it does not hold a license from the Minister under the said Act and if such carrying on of the business is confined to a single province.—*Per* Idington J.—Section 4 does so prohibit if, and so far as it may be possible to give any operative effect to a clause bearing upon the alien foreign companies as well as others within the terms of which is embraced so much that is clearly *ultra vires.*—*Per* Duff, Anglin and Brodeur JJ.—The section would effect such prohibition if it were *intra vires.*

In re "Insurance Act, 1910". 48 Can., S. C. R. 260.

67*a.*—The incorporation of a society as a company of teachers for the Dominion of Canada is *ultra vires* of the Parliament of Canada.—*Per* Ritchie C. J. It is doubtful whether the judges of the Supreme Court of Canada should express opinions as to the constitutional right of Parliament to pass a private bill, in virtue of the provisions of s. 53 of the Supreme and Exchequer Courts Act, 38 Vict. c. 11 (D).

The Brothers of the Christian Schools in Canada. Cout. Cas. 1.

68.—Although a Provincial Legislature may incorporate a boom company, it can not give it power to obstruct a tidal navigable river, and therefore the Act, 45 Vict. c. 100 (N. B.) so far as it authorized erecting booms and other works in the Queddy River, obstructing its navigation, *was ultra vires* of the New-Brunswick Legislature.

Queddy River Driving Boom Co. v. Davidson, 10 Can., S. C. R. 222.

69.—*Held*, that Canadian Act, 37 Vict. c. 103, which created a corporation with power to carry on certain definite kinds of business within the Dominion was within the legislative competence of the Dominion Parliament. The fact that the corporation chose to confine the exercise of its powers to one province and to local and provincial objects did not affect its status as a corporation, or operate to render its original incorporation illegal as *ultra vires* of the said Parliament.

Held, further, that the corporation could not be prohibited generally from acting as such within the province; nor could it be restrained from doing specified acts in violation of the provincial law upon a petition not directed and adapted to that purpose.

Colonial Building and Investment Ass. v. Atty-Gen. of Quebec, 9 App. Cas. 157.

70.—Where a given field of legislation is within the competence both of the Dominion and provincial Legislatures, and both have legislated, the Dominion enactment must prevail:—

Held, accordingly, that the respondent company, which under Dominion Act. 60 & 61 Vict. c. 72 was empowered to supply, sell, and dispose of gas and electricity, with other powers, could not be restrained from operating thereunder at the suit of the appellants, who under later Quebec statutes had exclusive power of so operating in the locality chosen by the respondents.

La Cie Hydraulique v. Continental Heat Co., (1909) A. C. 194.

71.—Questions referred to the Supreme Court of Canada as to the power and capacity of companies incorporated under provincial legislative authority and as to the power of the provincial Legislatures to restrict the operations of companies incorporated under Dominion legislative authority answered by reference to the judgments of the Board in *John Deere Plow Co.* v. *Wharton* (1915) A. C. 330; *Bonanza Creek Gold Mining Co.* v. *Rex* (1916) A. C. 566; *and Atty-Gen. for Canada* v. *Atty-Gen. for Alberta* (1916) A. C. 588.

Atty-Gen. for Ontario v. Atty-Gen. for Canada, (1, 1916) A. C. 598.

72.—*Held*, that by ss. 12 and 13 of their incorporating Dominion Act, 2 Edw. 7, c. 107, the appellants were empowered to enter upon the streets of the town of North Toronto without the consent of its municipal council for the purpose of erecting poles to carry power lines for the conveyance of electricity.

Held, further, that s. 90 of the Railway Act of 1888 as amended by the Railway Act of 1899 and by s. 247 of the Railway Act of 1906, the effect of which would be to give the respondents a veto upon the appellants' exercise of their powers, is inconsistent with the said ss. 12 and 13 of the special Act, and consequently by s. 21

thereof is rendered inapplicable to the appellants. Sect. 247, moreover, applies only to companies within the definition clause of the Act of 1906, that is, to railway companies; while ss. 3 and 4 thereof save the appellants' powers under their special Act.

Toronto and Niagara Power Co., v. North Toronto, (1912) A. C. 834.

73.—A man domiciled in Quebec, while travelling on the appellants' railway in charge of cattle, was killed in Ontario by the negligence of the appellants' servants. The cattle were consigned by the employers of the deceased man under the appellants' form of live stock contract, which provided that if a man was allowed to travel in charge of the cattle at less than full fare the appellants were to be under no liability for his death, injury, or damage, whether caused by negligence or otherwise. A pass at less than full fare was issued to the deceased, who placed his signature below conditions printed thereon. One of the conditions was that the appellants should be entirely free from liability for any damage, injury, or loss to the deceased, whether caused by negligence or otherwise. The form of the live stock contract had been approved by the Railway Board under s. 340 of the Railway Act, but the form of the pass had not been specifically so approved.

The widow of the deceased sued the appellants in Quebec for damages under art. 1056 of the Civil Code of Lower Canada. Under the Fatal Accidents Act (1 Geo. V, c. 33, Ontario) she could not have maintained an action in Ontario if her husband would have been precluded by his contract from doing so : the cause of action under art. 1056 is not thus limited:—

Held, (1), that, upon the evidence, the deceased must be taken to have assented to the condition in the pass; (2), that the approval of the Railway Board to the form of the live stock contract validated the form of the pass; (3), that upon the principles of private international law the appellants were under no common law liability in Quebec, since they were neither civilly nor criminally liable in Ontario; (4), that the presumption was that art. 1056 applied only to offences or quasi-offences committed within the legislative jurisdiction of that province, and there was no sufficient ground for holding that it had a wider effect.

C. P. Ry. v. Parent, (1, 1917) A. C. 195.

74.—*Held*, that the bondholders having subscribed their money for a purpose which had failed were entitled to recover their money from the bank at its head office in Montreal, that this was a civil right existing and enforceable outside the province, and that the province could not validly legislate in derogation of that right.

Royal Bank v. The King, (1913) A. C. 283.

75.—The provision in the British Columbian Cattle Protection Act, 1891, as amended in 1895, to the effect that a Dominion railway company, unless they erect proper fences on their railway, shall be responsible for cattle injured or killed thereon, is *ultra vires* of the provincial parliament.

C. P. R. v. Corp. Notre-Dame de Bonsecours, (1899) A. C. 367, distinguished.

Madden v. Nelson and Fort Sheppard Ry, (1899) A. C. 626.

76.—*Held*, that the Dominion Parliament is competent to enact s. 1 of Canadian statute 4 Edw. 7, c. 31, which prohibits "contracting out" on the part of railway companies within the jurisdiction of the Dominion Parliament from the liability to pay damages for personal injury to their servants.

That section is *intra vires* the Dominion as being a law ancillary to through railway legislation, notwithstanding that it affects civil rights which, under the British N. Am. Act, s. 92, sub-s. 13, are the subject of provincial legislation.

G. T. Ry. v. Atty-Gen. for Can. (1907) A. C. 65.

SECT. **92,** sub-s. 14.

77.—The *Dominion Controverted Elections Act* of 1874 (Can. Statute, 37 Vict. c. 10) does not contravene sect. 92 sub-s. 14 of the *British N. Am. Act.* 1867.

The said sub-section does not relate to election petitions, while sect. 41 of the same Act reserved to the Parliament of *Canada* the power of creating a jurisdiction to determine them.

The Parliament of *Canada* has power to commit such jurisdiction to existing Provincial Courts.

Valin v. Langlois, 5 App. Cas. 115.

78.—Notwithstanding the provisions of the Canadian Supreme and Exchequer Courts Act, 1875, s. 47, with respect to the finality of the judgments of the Supreme Court, an appeal lies as of right under s. 6 of the Colonial Courts of Admiralty Act, 1890, from a judgment of the said Court when pronounced in an appeal thereto from a decree of the Colonial Court of Admiralty constituted in pursuance of and exercising jurisdiction under the said Act.

Richelieu & Ont. Nav. Co. v. Owners of "SS. Cape Breton", (1907) A. C. 112.

79.—*Per* Fitzpatrick C. J., and Davies, Duff and Anglin JJ.—The provisions of section 60 of the "Supreme Court Act", R. S. C. (1906) ch. 139, are within the legislative jurisdiction of the Parliament of Canada.—*Per* Girouard and Idington JJ.—The pro-

visions of that section assuming to authorize references by the Governor-General in council to the judges of the Supreme Court of Canada for their opinions in respect to matters within privincial legislative jurisdiction are *ultra vircs* of the Parliament of Canada; but, if the governments of the Dominion and of a province unite in the submission of the questions so referred the judges of the Supreme Court of Canada should entertain the reference.—*Per* Idington J.—The administration of justice in each province having been assigned exclusively to it the power of Parliament in regard to the same is limited to creating a court of appeal and courts for the administration of the laws of Canada.—*Per* Idington J.—Parliament has no power to authorize the interrogation of the Supreme Court of Canada except where the question submitted relates to some subject or matter respecting which it is competent for Parliament to legislate and respecting which it has legislated and competently constituted judicial authority in that court to administer or aid in administering the laws so enacted.—*Per* Idington J.—*Quaere.* As to the constitutionality of adopting a system of interrogations of the judiciary even when the questions are confined to subjects of the kind thus indicated.

In re References by the Governor-General in Council, 43 Can., S. C. R. 536.

80.—The power given to the Provincial Governments by the B. N. A. Act, 1867, s. 92, s.-s. 14, to legislate regarding the constitution, maintenance and organization of provincial courts includes the power to define the jurisdiction of such courts territorially as well as in other respects and also to define the jurisdiction of the judges who constitute such courts.—By the Dominion statute, 51 Vict. c. 47, "The Speedy Trials Act", jurisdiction is given to "any judge of the County Court," to try certain criminal offences.—*Held*, that the expression, "any judge of the County Court", in such Act means any judge having by force of the provincial law regulating the constitution and organization of County Courts, jurisdiction in the particular locality in which he may hold a "speedy trial". The statute would not authorize a County Court judge to hold a "speedy trial" beyond the limits of his territorial jurisdiction without authority from the Provincial Legislature to do so.—"The Speedy Trials Act" is not a statute conferring jurisdiction, but is an exercise of the power of Parliament to regulate criminal procedure.—*Per* Taschereau, J. It is doubtful if Parliament had power to pass those sections of 54 & 55 Vict. c. 25, which empower the Governor-General-in-Council to refer certain matters to the Supreme Court of Canada for an opinion.

Re County Court Judges (B. C.) 21 Can., S. C. R. 446.

SECT. **92**, sub-s. 15.

81.—The Mun. Act of Manitoba provides that persons paying taxes shall be allowed 10 per cent. discount; and after a certain time 10 per cent. on the original amount shall be added to delinquent taxes. *Held*, reversing the court below, Gwynne, J., dissenting, that the 10 per cent. added is only an additional rate or taxe imposed as a penalty for non-payment which the local legislature, under its authority to legislate with respect to municipal institutions, had power to impose, and it was not "interest" within the meaning of s. 91 of the B. N. A. Act. *Ross* v. *Torrance* (2 Legal News 186) overruled. *Lynch* v. *Canada N. W. Land Co.*; *South Dufferin* v. *Morden*.

Gibbins v. Barber, 19 Can., S. C. R. 204.

82.—Provincial Legislatures, passing statutes of which the principal matter is within one of the classes of subjects assigned to the provinces by the British North America Act, may include, under the authority of sub-sec. 15 of sec. 92 of the Act, provisions of a criminal character; and when such "provincial criminal law" is enacted, an accusation thereunder is a "criminal charge," notwithstanding the jurisdictional provisions of sub-sec. 27 of sec. 91 of the B. N. A. Act. (*Per* Fitzpatrick, C. J., and Davies, and Anglin, JJ.)

McNutt, (1912) 21 C. C. C. 157.

SECT. **92**, sub-s. 16.

83.—Provincial legislation authorizing a municipality to regulate the closing of shops of a particular character within its limits is a subject which falls within the classes of matters enumerated as being within the exclusive jurisdiction of provincial legislatures under sub-section 13 of sub-section 16 of section 92 of the B. N. A. Act, 1867, and is not an interference with the exclusive legislative jurisdiction of the Parliament of Canada conferred by the second sub-section of section 91 of that Act.—Unless a by-law, enacted in good faith under the authority of the Quebec statutes, 57 Vict. c. 50, and 4 Edw. VII, c. 39, appears to be unreasonable, unfair or oppressive as to be a plain abuse of the powers conferred upon the municipal council it should not be set aside.—Judgment appealed from (Q. R. 17 K. B. 420) reversed.

City of Montreal v. Beauvais, 42 Can., S. C. R. 211.

(Leave to appeal to Privy Council refused).

84.—The Manitoba Liquor Act of 1900 for the suppression of the liquor traffic in that province is within the powers of the provincial legislature, its subject being and having been dealt with as a

matter of a merely local nature in the province within the meaning of British N. Am. Act, s. 92, sub-s. 16, notwithstanding that in its practical working it must interfere with Dominion revenue, and indirectly at least with business operations outside the province.

Atty-Gen. for Ont. v. *Atty-Gen. for Can.*, (1896) A. C. 348, followed.

Atty-Gen. of Manitoba v. Manitoba Liquor License Holders Ass. (1902) A. C. 73.

SECT. **93**, sub-s. 1.

85.—The appellants were elected under s. 2 of the Separate Schools Act, 1863 (26 Vict. c. 5, Upper Canada), by the supporters of the Roman Catholic separate schools in Ottawa to be the trustees for those schools, and had powers to manage them, subject to regulations. They refused to conduct the schools in accordance with regulations validly made by the Department of Education for the province, and failed to open the schools at the date appointed by law, and to provide or pay qualified teachers. The Legislature of Ontario thereupon passed an Act, 5 Geo. V, c. 45, which, after re-affirming the regulations and the statutory duties of the appellants, provided by s. 3 that if in the opinion of the Minister of Education the appellant board should fail to comply with any of the provisions of the Act he should have power, with the approval of the Lieutenant-Governor in Council, to appoint a Commission and to vest in it all or any of the powers vested by statute in the board, and to suspend or withdraw all, or any part of, the rights and privileges of the board until he should think proper.

The British N. Am. Act, s. 93, enacts that for each province the Legislature may exclusively make laws in relation to education, but provides, by sub-s. 1, "nothing in any such laws shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the province at the Union":—*Held*, that s. 3 of 5 Geo. 5 ,c. 45, above mentioned, was *ultra vires* and invalid under s. 93, sub-s. 1, of the British N. Am. Act, since it prejudicially affected the right or privilege conferred by the Act of 1863 upon the supporters of the Roman Catholic separate schools in Ottawa (a section of a class of persons within the meaning of the sub-section) to elect trustees for the management of the schools.

Ottawa Roman Catholic Schools Trustees v. Ottawa Corporation, (1, 1917) A. C. 76.

86.—In Ontario there are two classes of free primary schools, namely, public schools and separate schools, the latter being denominational schools established under the Separate Schools Act,

1863 (26 Vict. c. 5, Upper Canada). The appellants were the elected trustees of the Roman Catholic separate schools in Ottawa, and under the above Act had power to determine the "kind and description" of separate schools to be established therein and power to manage them. In 1913 the Department of Education for the province, under provincial statutory powers to make regulations, issued a regulation restricting the use of French in schools, whether public or separate, in which French was a language of instruction and communication.

Sect. 93 of the British N. Am. Act, enacts that for each province the Legislature may exclusively make laws in relation to education, but by sub-s. 1 provides that "nothing in any such laws shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have in the province at the Union". The appellants contended that the regulation was invalid under the above sub-section and was not binding upon them:—

Held, (1), that the class of persons for whom the protection of the sub-section is claimed must be a class determined by religious belief and not by race or language; (2), that the power of the appellants as trustees to determine the "kind and description" of schools did not extend to determining whether English or French should be the language of instruction; (3), that the regulation did not prejudicially affect any right or privilege secured by law at the Union to Roman Catholics in the province, and that it was consequently valid and binding upon the appellants.

Ottawa Roman Catholic Schools Trustees v. Mackell, (1, 1917) A. C. 62.

87.—The Chief Justice and Anglin J., *contra.*—*Per* Idington J.—The enactment of sec. 93a was *ultra vires* of the Legislature of Saskatchewan. *Per* Fitzpatrick C. J. and Anglin J.—The Legislature of Saskatchewan had jurisdiction to enact sec. 93a of the "School Assessment Act", and the taxes payable by the companies in question should be apportioned between the public and the separate school boards in shares corresponding with the total assessed value of assessable property assessed to persons other than incorporated companies for public school purposes and the total assessed value of property assessed to persons other than incorporated companies for separate school purposes respectively.—Judgment appealed from (7 West. W. R. 7), reserved, the Chief Justice and Anglin J. dissenting.

Regina Public School District v. Gratton Separate School District, 50 Can., S. C. R. 589.

88.—Where the Roman Catholic minority of Manitoba appealed to the Governor General in Council against the Manitoba Education

Acts of 1890, on the ground that their rights and privileges in relation to education had been affected thereby:—*Held*, reversing the judgment of the Supreme Court on a case submitted to it:—

(a) That such appeal lay under sect. 22, sub-sect. 2, of the Manitoba Act, 1870, which applies to rights and privileges acquired by legislation in the province after the date thereof.

(b) That the Roman Catholics having acquired by such legislation the right to control and manage their denominational schools, to have them maintained out of the general taxation of the province, to select books for their use, and to determine the character of the religious teaching therein, were affected as regards that right by the Acts of 1890, under which State aid was withdrawn from their schools, while they themselves remained liable to local assessment in support of non-sectarian schools to which they conscientiously objected.

(c) That the Governor-General in Council has power to make remedial orders in the premises within the scope of sub-sect. 3 of sect. 22 *c. g.*, by supplemental rather than repealing legislation.

Brophy v. Atty-Gen. for Manitoba, (1895) A. C. 202.

89.—*Held*, that the Act of 1890, which abolished the denominational system of public education established by law since the Union, but which did not compel the attendance of any child at a public school, or confer any advantage in respect of attendance other than that of free education, and at the same time left each denomination free to establish, maintain, and conduct its own schools, did not contravene the above proviso; and that accordingly certain by-laws of a municipal corporation which authorized assessments under the Act were valid.

Winnipeg v. Barrett, (1892) A. C. 445.

SECT. **101.**

90.—In 1875, 1891, and 1906 Acts were passed by the Dominion Parliament authorizing the Executive Government of the Dominion to obtain by direct request answers from the Supreme Court of Canada on questions both of law and fact; and nearly all the provinces have passed Acts in similar terms requiring their own Courts to answer questions put by the provincial Governments:—

Held, that it was *intra vires* of the respective Legislatures to impose this duty on the Courts. Though powers to that effect were not granted in express terms by the British N. Am. Act, they were not repugnant thereto, but incidental to the complete self-government of Canada which was contemplated by that Act. The answers are only advisory, and by giving them it cannot be said that a Court ceases to be such a judiciary as the Act provides for.

Atty-Gen. of Ont. v. Atty-Gen. for Can. (1912) A. C. 571.

91.—By s. 101 of the British N. Am. Act, the Parliament of Canada was authorized to establish the Supreme Court of Canada, the existing statute being R. S. C. 1906, c. 139, ss. 35 and 36 of which define its appellate jurisdiction in respect of any final judgment of the highest Court of final resort now or hereafter established in any province of Canada.

The Manitoban Mechanics' and Wage Earners' Lien Act (R. S. M. c. 110, s. 36) applies to the suit under appeal and enacts that in suits relating to liens the judgment of the Manitoban Court of King's Bench shall be final and that no appeal shall lie therefrom:—

Held, that the provincial Act could not circumscribe the appellate jurisdiction granted by the Dominion Act.

Crown Grain Co. v. Day, (1908) A. C. 504.

SECT. **102.**

92.—*Held*, that lands in Canada escheated to the Crown for defect of heirs belong to the province in which they are situated, and not to the Dominion.

Atty-Gen. of Ont. v. Mercer, 8 App. Cas. 767.

93.—In 1911, certain lands of the Dominion of Canada, situate in the Province of Alberta, were granted in fee to a person who died, in 1912, intestate and without heirs, being still seized in fee simple of the lands.—*Held*, Idington and Brodeur JJ., dissenting that the right of escheat arising in consequence of the intestacy and failure of heirs was a royalty reserved to the Dominion of Canada by virtue of the 21st section of the "Alberta Act", 4 & 5 Edw. VII., ch. 3, and belonged to the Crown for the purposes of Canada. *Atty-Gen. of Ont. v. Mercer* (8 *App. Cas.* 767) followed.—*Per* Davies and Anglin JJ. It was not competent for the Legislature of the Province of Alberta, by the statute of 1915, 5 Geo. V., ch. 5, relating to the property of intestates dying without next of kin, to affect the rights so reserved to the Dominion of Canada.—*Per* Idington and Brodeur JJ. Upon the grant of the lands in question by the Dominion Government they ceased to be Crown lands of the Dominion and royalties reserved to the Dominion could not attach thereto. Further, the effect of section 3 of the Dominion statute, 51 Vict. ch. 20, amending the "Territories Real Property Act", R. S. C. 1886, ch. 51, and declaring that lands in the North-West Territories should go to the personal representatives of the deceased owner thereof in the same manner as personal estate, constituted an absolute renunciation of all such claims to royalties by the Crown in the right of the Dominion of Canada. The appeal from the judgment of the Exchequer Court of Canada (15 Ex. C. R. 403), was dismissed.

Trusts and Guarantee Co. v. The King, 54 Can., S. C. R. 107.

SECT. 108.

94.—Sect. 108 of the British N. Am. Act, empowers the Dominion Parliament to legislate for any land, including foreshore, which is proved to form part of a public harbour. Sects. 91 and 92, read together, empower the Dominion to dispose of provincial Crown lands, and therefore of a provincial foreshore, for the purposes of the respondent railway, which is a trans-continental railway connecting several provinces:—

Held, that s. 18 (a) of the respondents' incorporating Dominion Act, (44 Vict. c. 1) is not controlled by the Consolidated Railway Act, 1879, and applies to provincial as well as Dominion Crown lands. Power given thereunder to appropriate the foreshore in question includes a power to obstruct any rights of passage previously existing across it.

Atty-Gen. of British Columbia v. C. P. Ry., (1906) A. C. 204.

95.—The terms "public harbours" in item 2 of the third schedule of the B. N. A. Act, 1867, is not intended to describe or include portions of the sea coast of Canada having merely a natural conformation which may render them susceptible of use as harbours for shipping; such potential harbours or havens of refuge are not property of the class transferred to the Dominion of Canada by s. 108 of the B. N. A. Act, 1867. The term used refers only to public harbours existing as such at the time when the provinces became part of the Dominion of Canada. *Per* Davies, Idington, Anglin and Brodeur JJ. As that part of Burrard Inlet, on the coast of British Columbia known as "English Bay", was not in use as a harbour at the time of the admission of British Columbia into the Dominion of Canada, in 1871, it did not become the property of the Dominion as a "public harbour" within the meaning of s. 108 and the third schedule of the B. N. A. Act, 1867; consequently the Province of British Columbia retained the property in the bed and foreshore thereof and could validly grant the right of removing sand therefrom. *Per* Davies, Idington and Anglin JJ. Inasmuch as the proclamation, by the Dominion Government, on the 3rd of December, 1912, and the Dominion statute, c. 54 of 3 & 4 Geo. V., deal merely with the establishment of the port and the incorporation of the Vancouver Harbour Commissioners, they had not the effect of transferring English Bay from the control of the Provincial Government to that of the Dominion Government nor of giving to the Dominion Government any right of property in the bed or foreshore of that bay. Judgment appealed from (20 B. C. R. 333) affirmed.—Leave to appeal to the Privy Council was granted, 20th December, 1915).

Atty-Gen. for Canada v. Ritchie Contracting and Supply Co. 52 Can., S. C. R. 78.

SECT. 109.

96.— *Held*, (1). It is not competent to the Legislature of British Columbia to authorize the Government of that Province to grant the exclusive right of fishing in either the tidal or the navigable non-tidal waters within the railway belt; so far as those waters are tidal the right of fishing in them is a public right subject only to regulation by the Dominion Parliament; so far as they are not tidal, whether navigable or not, they are matters of private property and under the grant became vested in the Crown in the right of the Dominion. (2). It is not competent to the Legislature of British Columbia to authorize the Government of that Province to grant the exclusive right of fishing in the sea, including arms of the sea and estuaries of rivers; the right of fishing in the sea is a public right, not dependent upon any proprietary right, and the Dominion has the exclusive right of legislating with regard to it. (3). The right of the public to fish in the sea does not depend upon any title in the Crown to the subjacent lands. The question whether the shore below low water mark to within three miles of the coast forms part of the territory of the Crown, or is merely subject to special powers for protective and police purposes, is not one which belongs to municipal law alone, and it is not at present desirable that any municipal tribunal should pronounce upon it.

Atty-Gen. of British Columbia v. Atty-Gen. for Can. (1914) A. C. 153.

97.—By a treaty dated October 3, 1873, the Dominion Government, acting in the interests of the Dominion as a whole, secured to the Salteaux tribe of the Ojibeway Indians certain payments and other rights, at the same time extinguishing by consent their interest over a large tract of land about 50,000 square miles in extent, the greater part of which was subsequently ascertained to lie within the boundaries of the Province of Ontario. It having been decided that the release of the Indian interest effected by the treaty enured to the benefit of Ontario, the Dominion Government sued in the Exchequer Court for a declaration that it was entitled to recover from and be paid by the Province of Ontario a proper proportion of annuities and other moneys paid and payable under the treaty:—

Held, affirming the judgment of the Supreme Court, that, having regard to the jurisdiction conferred upon the Exchequer Court, the action must be dismissed as unsustainable on any principle of law. In making the treaty although it resulted in direct advantage to the province, the Dominion Government did not act as agent or trustee for the province or with its consent, or for the benefit of the lands, but with a view to great national interests—that is, for

distinct and important interests of their own—in pursuance of powers derived from the British North Am. Act.

St. Catherine's Milling and Lumber Co. v. *The Queen*, (1888) 14 App. Cas. 46, considered.

Atty-Gen. for Can. v. Atty-Gen of Ont. (1910) A. C. 637.

97a.—*Held*, that a conveyance by the Province of British Columbia to the Dominion of "Public lands", being in substance an assignment of its right to appropriate the territorial revenues arising therefrom, does not imply any transfer of its interest in revenues arising from the prerogative rights of the Crown. The precious metals in, upon, and under such lands are not incidents of the land but belong to the Crown, and, under sect. 109 of the British North Am. Act of 1867, beneficially to the Province, and an intention to transfer them must be expressed or necessarily implied.

British Columbia v. Canada, 14 App. Cas. 295.

98.—The British North Am. Act, 1867, has not severed the connection between the Crown and the provinces; the relation between them is the same as that which subsists between the Crown and the Dominion in respect of the powers executive and legislative, public property and revenues, as are vested in them respectively. In particular, all property and revenues reserved to the provinces by sects. 109 and 126 are vested in Her Majesty as sovereign head of each province.

Held, affirming a judgment of the Supreme Court of Canada, that the provincial government of New-Brunswick, being a simple contract creditor of the Maritime Bank of the Dominion of Canada in respect of public moneys of the province deposited in the name of the Receiver-General of the province, is entitled to payment in full over the other depositors and simple contract creditors of the bank, its claim being for a Crown debt to which the prerogative attaches.

Liquidators' Maritime Bank v. Receiver-General of N. B. (1892) A. C. 437.

99.—*Held*, that by force of the proclamation the tenure of the Indians was a personal and usufructuary right dependent upon the goodwill of the Crown; that the lands were thereby, and at the time of the union, vested in the Crown, subject to the Indian title, which was "an interest other than that of the Province in the same", within the meaning of sect. 109.

Held, also, that by force of the said surrender the entire beneficial interest in the lands subject to the privilege was transmitted to the Province in terms of sect. 109. The Dominion power of le-

gislation over lands reserved for the Indians is not inconsistent with the beneficial interest of the Province therein.

St. Catherine's Milling Co. v. The Queen, 14 App. Cas. 46.

SECT. 111.

100.—A toll bridge with its necessary buildings and approaches was built and maintained by Y. at Chambly, in the Province of Quebec, in 1845 under a franchise granted to him by an Act (8 Vict. c. 90) of the late Province of Canada, in 1845, on the condition therein expressed that on the expiration of the term of fifty years the works should vest in the Crown as a free bridge for public use and that Y. or his representatives should then be compensated therefor by the Crown, provision being also made for ascertaining the value of the works by arbitration and award. *Held*, affirming the judgment of the Exchequer Court of Canada (6 Ex. C. R. 103), that the claim of the suppliants for the value of the works at the time they vested in the Crown on the expiration of the fifty years' franchise was a liability of the late Province of Canada coming within the operation of s. 111 of the B. N. A. Act, 1867, and thereby imposed on the Dominion; that there was no lien or right of retention charged upon the property; and that the fact that the liability was not presently payable at the date of the passing of the British North America Act, 1867, was immaterial. *The Atty-Gen. of Canada* v. *The Atty-Gen. of Ont.* (1897) *A. C.* 199; 25 *Can. S. C. R.* 434) followed. *Held*, also, that the arbitration provided for by s. 3 of the Act, 8 Vict. c. 90, did not impose the necessity of obtaining an award as a condition precedent but merely afforded a remedy for the recovery of the value of the works at a time when the parties interested could not have resorted to the present remedy by petition of right, and that the suppliants' claim for compensation under the provisions of that Act (8 Vict. c. 90), was a proper subject for petition of right within the jurisdiction of the Exchequer Court of Canada.

The Queen v. Yule, 30 Can., S. C. R. 24.

(The Privy Council refused leave to appeal).

101.—Among the assets of the Province of Canada at Confederation were certain special funds, namely, U. C. Grammar School Fund, U. C. Building Fund and U. C. Improvement Fund, and the province was a debtor in respect thereto and liable for interest thereon. By s. 111 of the B. N. A. Act, 1867, the Dominion of Canada succeeded to such liability and paid the Province of Ontario interest thereon at five per cent. up to 1904. In the award made in 1870 and finally established in 1878, on the arbitration, under s. 142 of the Act to adjust the debts and assets of Upper and Lower Canada, it was adjudged that these funds were the property

of Ontario. In 1904 the Dominion Government claimed the right to reduce the rate of interest to four per cent. or if that was not acceptable to the Province to hand over the principal. On appeal from the judgment of the Exchequer Court in an action asking for a declaration as to the rights of the province in respect to said funds.—*Held*, affirming said judgment (10 Ex. C. R. 292), Idington J., dissenting, that, though before the said award the Dominion was obliged to hold the funds and pay the interest thereon to Ontario, after the award the Dominion had a right to pay over the same with any accrued interest to the province and thereafter be free from liability in respect thereof.—

Held, also, that until the principal sum was paid over, the Dominion was liable for interest thereon at the rate of five per cent. *per annum*.

Atty-Gen. of Ont. v. Atty-Gen. of Canada, 39 Can., S. C. R. 14.

SECT. **112.**

102.—By treaties in 1850 the Governor of Canada, as representing the Crown and the provincial government, obtained the cession from the Ojibeway Indians of lands occupied as Indian reserves, the beneficial interest therein passing to the provincial government, together with the liability to pay to the Indians certain perpetual annuities:—*Held*, that, these lands being within the limits of the Province of Ontario, created by the British North Am. Act, 1867, the beneficial interest therein vested under s. 109 in that province. The perpetual annuities having been capitalised on the basis of the amounts specified in the treaties, the Dominion assumed liability in respect thereof under s. 111. Thereafter the amounts of these annuities were increased according to the treaties: *Held*, that liability for these increased amounts was not so attached to the ceded lands and their proceeds as to form a charge thereon in the hands of the province, under s. 109. They must be paid by the Dominion with recourse to the provinces of Ontario and Quebec conjointly, under ss. 111 and 112; in the same manner as the original annuities.

Atty-Gen. for Can. v. Atty-Gen. of Ont. (1897) A. C. 199.

SECT. **125.**

103.—By the British N. Am. Act, s. 125, "no lands or property belonging to Canada or any province shall be liable to taxation.

The appellant was assessed under Saskatchewan statutes, 6 Edw. 7, c. 36, and 7 Edw. 7, c. 3, and their amendments, in respect of Dominion land of which he held grazing leases from the Crown. Land is defined for the purpose of those statutes as including any estate or interest therein:—

Held, that the statutes could be read as imposing the tax upon the appellant's interest in the land, and should be so read in order to make them consistent with s. 125, above mentioned.

Smith v. Council of the Rural Municipality of Vermillion Hills. Atty-Gen. for Canada and for Saskatchewan, Intervenants. (2, 1916) A. C. 569.

104.—Under sections 249, 250 and 251 of the Alberta "Rural Municipality Act", 3 Geo. V., chap. 3, as amended by s. 30 of the statutes of Alberta, 4 Geo. V., c. 7, a purchaser of lands for irrigation purposes, under the "Irrigation Act", R. S. C. 1906, c. 61, entitled to possession and to complete the purchase and take title thereof, (such lands remaining in the maintime, Crown lands of the Dominion of Canada), is an "occupant" of "lands" within the meaning of those terms as defined by the interpretation clauses of the "Rural Municipality Act," and has therein a beneficial and equitable interest in respect of which municipal taxation may be imposed and levied. Such interest is not exempt from taxation under sub-s. 1 of s. 250 of the "Rural Municipality Act", nor under s. 125 of the B. N. A. Act, 1867. *Calgary and Edmonton Land Co.* v. *Atty-Gen. of Alberta* (45 *Can. S. C. R.* 170), *and Smith* v. *Rural Municipality of Vermilion Hills* (49, *Can. S. C. R.* 563), applied. The Chief Justice and Duff J. dissenting. *Per* Fitzpatrick C. J.—Sections 250 and 251 of the Alberta "Rural Municipality Act" make no provision for the assessment and taxation of an interest held in lands exempted from taxation. *Per* Anglin J.—The provisions of the Alberta "Rural Municipality Act" relating to assessment and taxation which could affect such lands as those in question deal only with interests therein other than those of the Crown and their value. Judgment appealed from, 23 D. L. R. 88; 31 West. L. R. 725, affirmed, Fitzpatrick C. J. and Duff J. Dissenting.

The Southern Alberta Land v. The Rural Municipality of McLean, 53 Can., S. C. R. 151.

105.—Provincial legislatures may authorize the taxation of beneficial or equitable interests acquired in lands wherein the Crown, in the right of the Dominion of Canada, holds some interest and the legal estate. The legislature of a province may provide for the levy and collection of taxes so imposed by the transfer of the interests affected by such taxes.

Calgary & Edmonton Land Co. v. Atty-Gen. of Alberta, 45 Can., S. C. R. 170.

SECT. **129.**

106.—The powers conferred by the British N. Am. Act. 1867, s.

129, upon the provincial Legislatures of Ontario and Quebec, to repeal and alter the statutes of the old Parliament of Canada, are precisely co-extensive with the powers of direct legislation with which those bodies are invested by the other clauses of the Act of 1867.

Held, that 22 Vict. c. 66 (of the Parliament of Canada), which created a corporation, having its corporate existence and rights in the provinces of Quebec and Ontario, could not be repealed or modified by the Legislature of either province or by the conjoint operation of both, but only by the Parliament of Canada. *Held*, further, that the Quebec Act, 38 Vict. c. 64, which assumed to repeal and amend the said 22 Vict. c. 66, and (1) to destroy a corporation created by the Canadian Parliament and substitute a new one; (2) to alter materially the class of persons interested in the corporate funds, and not merely to impose conditions upon the transaction of business by the corporation within the province, was invalid.

Dobie v. Temporalities Board, 7 App. Cas. 136.

107.—*Held*, that the Crown is bound by the two Codes of Lower Canada, and can claim no priority except what is allowed by them. Being an ordinary creditor of a bank in liquidation, it is not entitled to priority of payment over its other ordinary creditors.

Prior to the Codes the law relating to property in the province of Quebec was, except in special cases, the French law, which only gave the King priority in respect of debts due from "comptables", that is, officers who received and were accountable for the King's revenues.

Art. 1994 of the Civil Code must be construed according to the technical sense of "comptables". And art. 611 of the Civil Procedure Code, giving to the Crown priority for all its claim, must be modified so as to be in harmony therewith. Accordingly, by its true construction, the intention of the Legislature was that "in the absence of any special privilege the Crown has a preference over unprivileged chirographic creditors for sums due to it by the defendant being a person accountable for its money.

Exchange Bank v. The Queen, 11 App. Cas. 157.

SECT. **142.**

108.—The arbitrators appointed in 1870, under s. 142 of the B. N. A. Act, 1867 were authorized to "divide" and "adjust" the accounts in dispute between the Dominion of Canada and the Provinces of Ontario and Quebec, respecting the former Province of Canada. In dealing with the common school fund established under 12 Vict. c. 20 (Can.), they directed the principal of the fund to be retained by the Dominion and the income therefrom paid

to the provinces.—*Held*, that even if there was no ultimate "division and adjustment", such as the statute required, yet the ascertainment of the amount was a necessary preliminary to such "division and adjustment", and therefore *intra vires* of the arbitrators. *Held*, further, that there was a division of the beneficial interest in the fund, and a fair adjustment of the rights of the provinces in it which was a proper exercise of the authority of the arbitrators under the statute.—By 12 Vict. c. 200, s. 3 (Can.), one million acres of the public lands of the Province of Canada were to be set apart to be sold, and the proceeds applied to the creation of the "common school fund", provided for in s. 1. The lands so set apart were all in the present Province of Ontario. *Held*, that the trust in these lands created by the Act for the common schools of Canada did not cease to exist at confederation, so that the unsold lands and proceeds of sales should revert to Ontario, but such trust continued in favour of the common schools of the new Provinces of Ontario and Quebec.—In the agreement of reference to the arbitrators appointed under Acts passed in 1891, to adjust the said accounts questions respecting the Upper Canada improvement fund were excluded, but the arbitrators had to determine and award upon the accounts as rendered by the Dominion to the two provinces up to January, 1889.—*Held*, that the arbitrators could pass upon the right of Ontario to deduct a proportion of the schools lands, the amount of which was one of the items in the accounts so rendered.

Provinces of Ont. and Quebec v. Dom. of Canada; *In re* Common School Fund and Lands, 28 Can., S. C. R. 609.

SECT. **146.**

109.—By s. 3 of the British Columbia Act (47 Vict. c. 14), land was granted to the Dominion Government, the appellant company's predecessor in title, "including all mines, minerals, and substances whatsoever thereupon, therein, and thereunder:—

Held, in an action for wrongful ejectment by the holder of a free miner's certificate under the "British Columbia Placer Mining Act 1891" (54 Vict. c. 26), applicable to a part of the land granted, that he was entitled to mine for gold and other precious metals thereon, the above words not being sufficiently precise to transfer to the appellant's predecessor the right of the provincial legislature to administer the precious metals in the lands assigned.

Esquimault & Nanaimo Ry. v. Bainbridge, (1896) A. C. 561.

ACTE DE L'AMERIQUE BRITANNIQUE DU NORD, 1867.

30 VICTORIA.

CHAPITRE 3.

Acte concernant l'Union et le gouvernement du Canada, de la Nouvelle-Ecosse et du Nouveau-Brunswick, ainsi que les objets qui s'y rattachent.

[29 *Mars* 1867.]

CONSIDERANT que les provinces du Canada, de la Nouvelle-Ecosse et du Nouveau-Brunswick ont exprimé le désir de contracter une Union Fédérale pour ne former qu'une seule et même Puissance (*Dominion*) sous la couronne du Royaume-Uni de la Grande-Bretagne et d'Irlande, avec une constitution reposant sur les mêmes principes que celle du Royaume-Uni;

Considérant de plus qu'une telle union aurait l'effet de développer la prospérité des provinces et de favoriser les intérêts de l'Empire Britannique;

Considérant de plus qu'il est opportun, concurremment avec l'établissement de l'union par autorité du parlement, non-seulement de décréter la constitution du pouvoir législatif de la Puissance, mais aussi de définir la nature de son gouvernement exécutif;

Considérant de plus qu'il est nécessaire de pourvoir à l'admission éventuelle d'autres parties de l'Amérique Britannique du Nord dans l'union;

A ces causes, Sa Très Excellente Majesté la Reine, de l'avis et du consentement des Lords Spirituels et Temporels et des Communes, en ce présent parlement assemblés, et par leur autorité, décrète et déclare ce qui suit:

THE BRITISH NORTH AMERICA ACT, 1867.

30 VICTORIA.

CHAPTER 3.

An Act for the Union of Canada, Nova Scotia and New Brunswick, and the Government thereof, and for Purposes connected therewith.

[29*th March*, 1867.]

WHEREAS the Provinces of Canada, Nova Scotia and New Brunswick have expressed their Desire to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in Principle to that of the United Kingdom:

And whereas such a Union would conduce to the Welfare of the Provinces and promote the Interest of the British Empire:

And whereas on the Establishment of the Union by Authority of Parliament it is expedient, not only that the Constitution of the Legislative Authority in the Dominion be provided for, but also that the Nature of the Executive Government therein be declared:

And whereas it is expedient that Provision be made for the eventual Admission into the Union of other Parts of British North America:

Be it therefore enacted and declared by the Queen's Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the Authority of the same, as follows:

I—PRÉLIMINAIRES

1. Le présent acte pourra être cité sous le titre "L'acte de l'Amérique Britannique du Nord, 1867."

Application des dispositions relatives à la Reine.

2. Les dispositions du présent acte relatives à Sa Majesté la Reine s'appliquent également aux héritiers et successeurs de Sa Majesté, Rois et Reines du Royaume-Uni de la Grande-Bretagne et d'Irlande.

II—UNION

Etablissement de l'Union.

3. Il sera loisible à la Reine, de l'avis du Très-Honorable Conseil Privé de Sa Majesté, de déclarer par proclamation, qu'à compter du jour y désigné,—mais pas plus tard que six mois après la passation du présent acte.—les provinces du Canada, de la Nouvelle-Ecosse et du Nouveau-Brunswick ne formeront qu'une seule et même Puissance sous le nom de Canada, et dès ce jour, ces trois provinces ne formeront, en conséquence, qu'une seule et même Puissance sous ce nom.

4. Les dispositions subséquentes du présent acte, à moins que le contraire n'y apparaisse explicitement ou implicitement, prendront leur pleine vigueur dès que l'union sera effectuée, c'est-à-dire, le jour à compter duquel, aux termes de la proclamation de la Reine, l'union sera declarée un fait accompli; dans les mêmes dispositions, à moins que le contraire n'y apparaisse explicitement ou implicitement, le nom de Canada signifiera le Canada tel que constitué sous le présent acte.

Quatre provinces.

5. Le Canada sera divisé en quatre provinces dénommées:—Ontario, Québec, Nouvelle-Ecosse et Nouveau-Brunswick.

Provinces d'Ontario et de Québec.

6. Les parties de la province du Canada (telle qu'existant à la passation du présent acte) qui constituaient autrefois les provinces respectives du Haut et du Bas-Canada, seront censées séparées et formeront deux provinces distinctes. La partie qui constituait autrefois la province du Haut-Canada formera la province d'Ontario; et la partie qui constituait la province du Bas-Canada, formera la province de Québec.

I.—PRELIMINARY.

1. This Act may be cited as the British North America Act, 1867.

Application of Provisions referring to the Queen.

2. The Provisions of this Act referring to Her Majesty the Queen extend also to the Heirs and Successors of Her Majesty, Kings and Queens of the United Kingdom of Great Britain and Ireland.

II.—UNION.

Declaration of Union.

3. It shall be lawful for the Queen, by and with the Advice of Her Majesty's Most Honourable Privy Council, to declare by Proclamation that, on and after a Day therein appointed, not being more than Six Months after the passing of this Act, the Provinces of Canada, Nova Scotia and New Brunswick shall form and be One Dominion under the name of Canada; and on and after that Day those Three Provinces shall form and be One Dominion under that Name accordingly.

4. The subsequent Provisions of this Act shall, unless it is otherwise expressed or implied, commence and have effect on and after the Union, that is to say, on and after the Day appointed for the Union taking effect in the Queen's Proclamation; and in the same Provisions, unless it is otherwise expressed or implied, the Name Canada shall be taken to mean Canada as constituted under this Act.

Four Provinces.

5. Canada shall be divided into Four Provinces, named, Ontario, Quebec, Nova Scotia, and New Brunswick.

Provinces of Ontario and Quebec.

6. The Parts of the Province of Canada (as it exists at the passing of this Act) which formerly constituted respectively the Provinces of Upper Canada and Lower Canada shall be deemed to be severed, and shall form Two Separate Provinces. The Part which formerly constituted the Province of Upper Canada shall constitute the Province of Ontario; and the Part which formerly constituted the Province of Lower Canada shall constitute the Province of Quebec.

Provinces de la Nouvelle-Ecosse et du Nouveau-Brunswick.

7. Les provinces de la Nouvelle-Ecosse et du Nouveau-Brunswick auront les mêmes délimitations qui leur étaient assignées à l'époque de la passation du présent acte.

Recensement décennal.

8. Dans le recensement général de la population du Canada qui, en vertu du présent acte, devra se faire en mil huit cent soixante et onze, et tous les dix ans ensuite, il sera fait une énumération distincte des populations respectives des quatre provinces.

III—POUVOIR EXECUTIF

La Reine est investie du pouvoir exécutif.

9. A la Reine continueront d'être et sont par le présent attribués le gouvernement et le pouvoir exécutifs du Canada.

Application des dispositions relatives au Gouverneur-Général.

10. Les dispositions du présent acte relatives au gouverneur-général s'étendent et s'appliquent au gouverneur-général du Canada, ou à tout autre Chef Exécutif ou Administrateur pour le temps d'alors, administrant le gouvernement du Canada, au nom de la Reine, quel que soit le titre sous lequel il puisse être désigné.

Constitution du Conseil Privé.

11. Il y aura, pour aider et aviser, dans l'administration du gouvernement du Canada, un conseil dénommé le Conseil Privé de la Reine pour le Canada; les personnes qui formeront partie de ce conseil seront, de temps à autre, choisies et mandées par le gouverneur général et assermentées comme conseillers privés; les membres de ce conseil pourront, de temps à autre, être révoqués par le gouverneur-général.

Pouvoirs conférés au Gouverneur-Général, en conseil ou seul.

12. Tous les pouvoirs, attributions et fonctions qui,—par aucun acte du parlement de la Grande-Bretagne, ou du parlement du Royaume-Uni de la Grande-Bretagne et d'Irlande, ou de la législature du Haut-Canada, du Bas-Canada, du Canada, de la Nouvelle-Ecosse ou du Nouveau-Brunswick, lors de l'union,—sont conférés aux gouverneurs ou lieutenants-gouverneurs respectifs de ces provinces ou peuvent être par eux exercés de l'avis ou de l'avis et du consentement des conseils exécutifs de ces provinces ou

Provinces of Nova Scotia and New Brunswick.

7. The Provinces of Nova Scotia and New Brunswick shall have the same Limits as at the passing of this Act.

Decennial Census.

8. In the General Census of the Population of Canada, which is hereby required to be taken in the Year One thousand eight hundred and seventy-one, and in every Tenth Year thereafter, the respective Populations of the Four Provinces shall be distinguished.

III.—EXECUTIVE POWER.

Declaration of Executive Power in the Queen.

9. The Executive Government and Authority of and over Canada is hereby declared to continue and be vested in the Queen.

Application of Provisions referring to the Governor General.

10. The Provisions of this Act referring to the Governor General extend and apply to 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 Queen, by whatever Title he is designated.

Constitution of Privy Council of Canada.

11. There shall be a Council to aid and advise the Government of Canada, to be styled the Queen's Privy Council for Canada; and the Persons who are to be Members of that Council shall be from Time to Time chosen and summoned by the Governor General and sworn in as Privy Councillors, and Members thereof may be from Time to Time removed by the Governor General.

All Powers under Acts to be exercised by Governor General with advice of Privy Council, or alone.

12. All Powers, Authorities and Functions which under any Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of Upper Canada, Lower Canada, Canada, Nova Scotia or New Brunswick, are at the Union vested in or exerciseable by the respective Governors or Lieutenant-Governors of those Provinces, with the Advice, or with the Advice and Consent, of the respective Executive Councils thereof, or in conjunction with those Coun-

avec la coopération de ces conseils, ou d'aucun nombre de membres de ces conseils, ou par ces gouverneurs ou lieutenants-gouverneurs individuellement, seront,—en tant qu'ils continueront d'exister et qu'ils pourront être exercés après l'union, relativement au gouvernement du Canada,—conférés au gouverneur-général et pourront être par lui exercés, de l'avis ou de l'avis et du consentement ou avec la coopération du conseil privé de la Reine pour le Canada ou d'aucun de ses membres, ou par le gouverneur-général individuellement, selon le cas; mais ils pourront, néanmoins (sauf ceux existant en vertu d'actes de la Grande-Bretagne ou du parlement du Royaume-Uni de la Grande-Bretagne et d'Irlande), être révoqués ou modifiés par le parlement du Canada.

Application des dispositions relatives au gouverneur-général en conseil.

13. Les dispositions du présent acte relatives au gouverneur-général en conseil seront interprétées de manière à s'appliquer au gouverneur-général agissant de l'avis du conseil privé de la Reine pour le Canada.

Le gouverneur-général autorisé à s'adjoindre des députés.

14. Il sera loisible à la Reine, si Sa Majesté le juge à propos, d'autoriser le gouverneur-général, à nommer de temps à autre une ou plusieurs personnes, conjointement ou séparément, pour agir comme son ou ses députés dans aucune partie ou parties du Canada, pour, en cette capacité, exercer, durant le plaisir du gouverneur-général, les pouvoirs, attributions et fonctions du gouverneur-général, que le gouverneur-général jugera à propos ou nécessaire de lui ou leur assigner, sujet aux restrictions ou instructions formulées ou communiquées par la Reine; mais la nomination de tel député ou députés ne pourra empêcher le gouverneur-général lui-même d'exercer les pouvoirs, attributions, ou fonctions qui lui sont conférés.

Commandement des armées.

15. A la Reine continuera d'être et est par le présent attribué le commandement en chef des milices de terre et de mer et de toutes les forces militaires et navales en Canada.

Siége du gouvernement du Canada.

16. Jusqu'à ce qu'il plaise à la Reine en ordonner autrement, Ottawa sera le siège du gouvernement du Canada.

cils, or with any Number of Members thereof, or by those Governors or Lieutenant-Governors individually, shall, as far as the same continue in existence and capable of being exercised after the Union in relation to the Government of Canada, be vested in and exerciseable by the Governor-General, with the Advice or with the Advice and Consent of or in conjunction with the Queen's Privy Council for Canada, or any Members thereof, or by the Governor General individually, as the Case requires, subject nevertheless (except with respect to such as exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland) to be abolished or altered by the Parliament of Canada.

Application of Provisions referring to Governor General in Council.

13. The Provisions of this Act referring to the Governor General in Council shall be construed as referring to the Governor General acting by and with the Advice of the Queen's Privy Council for Canada.

Power to Her Majesty to authorize Governor General to appoint Deputies.

14. It shall be lawful for the Queen, if Her Majesty thinks fit, to authorize the Governor General from Time to Time to appoint any Person or Persons jointly or severally to be his Deputy or Deputies within any Part or Parts of Canada, and in that Capacity to exercise during the Pleasure of the Governor General such of the Powers, Authorities and Functions of the Governor General as the Governor General deems it necessary or expedient to assign to him or them, subject to any Limitations or Directions expressed or given by the Queen; but the Appointment of such a Deputy or Deputies, shall not affect the Exercise by the Governor General himself of any Power, Authority, or Function.

Command of Armed Forces to continue to be vested in the Queen.

15. The Command-in-Chief of the Land and Naval Militia, and of all Naval and Military Forces, of and in Canada, is hereby declared to continue and be vested in the Queen.

Seat of Government of Canada.

16. Until the Queen otherwise directs, the Seat of Government of Canada shall be Ottawa.

IV—POUVOIR LEGISLATIF

Constitution du parlement du Canada.

17. Il y aura, pour le Canada, un parlement qui sera composé de la Reine, d'une chambre haute appelée le Sénat, et de la Chambre des Communes.

Priviléges, etc., des Chambres.

18. Les privilèges, immunités et pouvoirs que posséderont et exerceront le Sénat, la Chambre des Communes et les membres de ces corps respectifs, seront ceux prescrits de temps à autre par acte du parlement du Canada; ils ne devront, cependant, jamais excéder ceux possédés et exercés, lors de la passation du présent acte, par la Chambre des Communes du Parlement du Royaume-Uni de la Grande-Bretagne et d'Irlande et par les membres de cette chambre.*

Première session du parlement.

19. Le parlement du Canada sera convoqué dans un délai de pas plus de six mois après l'Union.

Session annuelle du parlement.

20. Il y aura une session du parlement du Canada une fois au moins chaque année, de manière à ce qu'il ne s'écoule pas un intervalle de douze mois entre la dernière séance d'une session du parlement et sa première séance dans la session suivante.

LE SÉNAT.

Nombre de sénateurs.

21. Sujet aux dispositions du présent acte, le Sénat se composera de soixante et douze membres, qui seront appelés Sénateurs.

Représentation des provinces au Sénat.

22. En ce qui concerne la composition du Sénat, le Canada sera censé comprendre trois divisions:

1. Ontario;
2. Québec;
3. Les Provinces Maritimes, la Nouvelle-Ecosse et le Nouveau-Brunswick;

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*Voyez "l'Acte du Parlement du Canada, 1875," (Statut Impérial, 38, 39 Vic., ch. 38, sec. 1.)

IV.—LEGISLATIVE POWER.

Constitution of Parliament of Canada.

17. There shall be one Parliament for Canada, consisting of the Queen, an Upper House styled the Senate, and the House of Commons.

Privileges, &c., of Houses.

18. The Privileges, Immunities, and Powers to be held, enjoyed and exercised by the Senate and by the House of Commons and by the Members thereof respectively, shall be such as are from Time to Time defined by Act of the Parliament of Canada, but so that the same shall never exceed those at the passing of this Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland and by the Members thereof.*

First Session of the Parliament of Canada.

19. The Parliament of Canada shall be called together not later than Six Months after the Union.

Yearly Session of the Parliament of Canada.

20. There shall be a Session of the Parliament of Canada once at least in every Year, so that Twelve Months shall not intervene between the last sitting of the Parliament in one Session and its first Sitting in the next Session.

THE SENATE.

Number of Senators.

21. The Senate shall, subject to the Provisions of this Act, consist of Seventy-two Members, who shall be styled Senators.

Representation of Provinces in Senate.

22. In relation to the Constitution of the Senate, Canada shall be deemed to consist of Three Divisions—

1. Ontario;
2. Quebec;
3. The Maritime Provinces, Nova Scotia and New Brunswick;

which three Divisions shall (subject to the Provisions of this

*See "the Parliament of Canada Act, 1875," (Imperial Statute, 38, 39 Vic., ch. 38, sec. 1.)

Ces trois divisions seront, sujettes aux dispositions du présent acte, également représentées dans le Sénat, comme suit: Ontario par vingt-quatre sénateurs; Québec par vingt-quatre sénateurs et les Provinces Maritimes par vingt-quatre sénateurs, douze desquels représenteront la Nouvelle-Ecosse, et douze le Nouveau- Brunswick.

En ce qui concerne la province de Québec, chacun des vingt-quatre sénateurs la représentant sera nommé pour l'un des vingt-quatre colléges électoraux du Bas Canada, énumérés dans la cédule A, annexée au chapitre premier des Statuts Refondus du Canada.

Qualités exigées des sénateurs.

23. Les qualifications d'un sénateur seront comme suit:

1. Il devra être âgé de trente ans révolus;
2. Il devra être sujet-né de la Reine, ou sujet de la Reine naturalisé par acte du parlement de la Grande-Bretagne, ou du parlement du Royaume-Uni de la Grande-Bretagne et d'Irlande, ou de la législature de l'une des provinces du Haut-Canada, du Bas-Canada, du Canada, de la Nouvelle-Ecosse, ou du Nouveau-Brunswick, avant l'union, ou du parlement du Canada, après l'union.
3. Il devra posséder, pour son propre usage et bénéfice, comme propriétaire en droit ou en équité, des terres ou tènements tenus en franc et commun socage,—ou être en bonne saisine ou possession, pour son propre usage et bénéfice, de terres ou tènements tenus en franc-alleu ou en roture dans la province pour laquelle il est nommé, de la valeur de quatre mille piastres en sus de toutes rentes, dettes, charges, hypothèques, et redevances, qui peuvent être attachées, dues et payables sur ces immeubles ou auxquelles ils peuvent être affectés;
4. Ses propriétés mobilières et immobilières devront valoir, somme toute, quatre mille piastres, en sus de toutes ses dettes et obligations;
5. Il devra être domicilié dans la province pour laquelle il est nommé;
6. En ce qui concerne la province de Québec, il devra être domicilié ou posséder sa qualification foncière dans le collège électoral dont la représentation lui est assignée.

Nomination des sénateurs.

24. Le gouverneur-général mandera de temps à autre au Sénat, au nom de la Reine et par instrument sous le grand sceau du Canada, des personnes ayant les qualifications voulues; et, sujettes aux dispositions du présent acte, les personnes ainsi mandées deviendront et seront membres du Sénat et sénateurs.

Act) be equally represented in the Senate as follows: Ontario by Twenty-Four Senators; Quebec by Twenty-four Senators; and the Maritime Provinces by Twenty-four Senators, Twelve thereof representing Nova Scotia, and Twelve thereof representing New Brunswick.

In the Case of Quebec each of the Twenty-four Senators representing that Province shall be appointed for one of the Twenty-four Electoral Divisions of Lower Canada specified in Schedule A, to Chapter One of Consolidated Statutes of Canada.

Qualifications of a Senator.

23. The Qualifications of a Senator shall be as follows:—

(1.) He shall be of the full Age of Thirty Years.

(2.) He shall be either a Natural-born Subject of the Queen, or a Subject of the Queen naturalized by an Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of One of the Provinces of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick, before the Union or of the Parliament of Canada after the Union.

(3.) He shall be legally or equitably seized as of Freehold for his own Use and Benefit of Lands or Tenements held in free and Common Socage, or seized or possessed for his own use and Benefit of Lands or Tenements held in Franc-alleu or in Roture, within the Province for which he is appointed, of the value of Four Thousand Dollars, over and above all Rents, Dues, Debts, Charges, Mortgages and Incumbrances due or payable out of, or charged on or affecting the same:

(4.) His Real and Personal Property shall be together worth Four Thousand Dollars over and above his debts and Liabilities;

(5.) He shall be resident in the Province for which he is appointed;

(6.) In the Case of Quebec, he shall have his Real Property Qualification in the Electoral Division for which he is appointed, or shall be resident in that Division.

Summons of Senator.

24. The Governor-General shall from Time to Time, in the Queen's Name, by Instrument under the Great Seal of Canada, summon qualified persons to the Senate; and, subject to the Provisions of this Act, every person so summoned shall become and be a Member of the Senate and a Senator.

Nomination des premiers sénateurs.

25. Les premières personnes appelées au Sénat seront celles que la Reine, par mandat sous le seing manuel de Sa Majesté, jugera à propos de désigner, et leurs noms seront insérés dans la proclamation de la Reine décrétant l'union.

Nombre de sénateurs augmenté en certains cas.

26. Si en aucun temps, sur la recommandation du gouverneur-général, la Reine juge à propos d'ordonner que trois ou six membres soient ajoutés au Sénat, le gouverneur-général pourra, par mandat adressé à trois ou six personnes (selon le cas) ayant les qualifications voulues, représentant également les trois divisions du Canada, les ajouter au Sénat.

Réduction du Sénat au nombre régulier.

27. Dans le cas où le nombre des sénateurs serait ainsi, en aucun temps augmenté, le gouverneur-général ne mandera aucune personne au Sénat sauf sur pareil ordre de la Reine donné à la suite de la même recommandation, tant que la représentation de chacune des trois divisions du Canada ne sera pas revenue au nombre fixe de vingt-quatre sénateurs.

Maximum du nombre de sénateurs.

28. Le nombre des sénateurs ne devra en aucun temps excéder soixante-et-dix-huit.

Sénateurs nommés à vie.

29. Sujet aux dispositions du présent acte, le sénateur occupera sa charge dans le Sénat, à vie.

Les sénateurs peuvent se démettre de leurs fonctions.

30. Un sénateur pourra, par écrit revêtu de son seing et adressé au gouverneur-général, se démettre de ses fonctions au Sénat; après quoi son siège deviendra vacant.

Cas dans lesquels les siéges des sénateurs deviendront vacants.

31. Le siège d'un sénateur deviendra vacant dans chacun des cas suivants:

1. Si, durant deux sessions consécutives du parlement, il manque d'assister aux séances du Sénat;

Summons of First Body of Senators.

25. Such persons shall be first summoned to the Senate as the Queen by Warrant under Her Majesty's Royal Sign Manual thinks fit to approve, and their Names shall be inserted in the Queen's Proclamation of Union.

Addition of Senators in certain cases.

26. If at any Time, on the Recommendation of the Governor-General, the Queen thinks fit to direct that Three or Six Members be added to the Senate, the Governor-General may, by Summons to Three or Six Qualified Persons (as the Case may be), representing equally the Three Divisions of Canada, add to the Senate accordingly.

Reduction of Senate to normal number.

27. In case of such addition being at any Time made, the Governor-General shall not summon any person to the Senate, except on a further like Direction by the Queen on the like Recommendation, until each of the Three Divisions of Canada is represented by Twenty-four Senators, and no more.

Maximum number of Senators.

28. The number of Senators shall not at any Time exceed Seventy-Eight.

Tenure of place in Senate.

29. A Senator shall, subject to the Provisions of this Act, hold his Place in the Senate for life.

Resignation of place in Senate.

30. A Senator may, by writing under his hand, addressed to the Governor-General, resign his place in the Senate, and thereupon the same shall be vacant.

Disqualification of Senators.

31. The Place of a Senator shall become vacant in any of the following cases:—

(1.) If for Two Consecutive Sessions of the Parliament he fails to give his Attendance in the Senate:

2. S'il prête un serment, ou souscrit une déclaration ou reconnaissance d'allégéance, obéissance ou attachement à une puissance étrangère, ou s'il accomplit un acte qui le rend sujet ou citoyen, ou lui confère les droits et les privilèges d'un sujet ou citoyen d'une puissance étrangère;

3. S'il est déclaré en état de banqueroute ou de faillite, ou s'il a recours au bénéfice d'aucune loi concernant les faillis, ou s'il se rend coupable de concussion;

4. S'il est atteint de trahison ou convaincu de félonie, ou d'aucun crime infamant;

5. S'il cesse de posséder la qualification reposant sur la propriété ou le domicile; mais un sénateur ne sera pas réputé avoir perdu la qualification reposant sur le domicile par le seul fait de sa résidence au siège du gouvernement du Canada, pendant qu'il occupe sous ce gouvernement une charge qui y exige sa présence.

Nomination en cas de vacance.

32. Quand un siége deviendra vacant au Sénat par démission, décès ou toute autre cause, le gouverneur-général remplira la vacance en adressant un mandat à quelque personne capable et ayant les qualifications voulues.

Questions quant aux qualifications et vacances, etc.

33. S'il s'élève quelque question au sujet des qualifications d'un sénateur ou d'une vacance dans le Sénat, cette question sera entendue et décidée par le Sénat.

Orateur du Sénat.

34. Le gouverneur-général pourra, de temps à autre par instrument sous le grand sceau du Canada, nommer un sénateur comme orateur du Sénat, et le révoquer et en nommer un autre à sa place.

Quorum du Sénat.

35. Jusqu'à ce que le parlement du Canada en ordonne autrement, la présence d'au moins quinze sénateurs, y compris l'orateur, sera nécessaire pour constituer une assemblée du Sénat dans l'exercice de ses fonctions.

(2.) If he takes an Oath or makes a Declaration or Acknowledgment of Allegiance, Obedience or Adherence to a Foreign Power, or does an Act whereby he becomes a Subject or Citizen, or entitled to the Rights or Privileges of a Subject or Citizen of a Foreign Power:

(3.) If he is adjudged Bankrupt or Insolvent, or applies for the benefit of any Law relating to Insolvent Debtors, or becomes a public defaulter:

(4.) If he is attainted of Treason, or convicted of Felony or of any infamous Crime:

(5.) If he ceases to be qualified in respect of Property or of Residence: provided that a Senator shall not be deemed to have ceased to be qualified in respect of Residence by reason only of his residing at the Seat of the Government of Canada while holding an office under that Government requiring his Presence there.

Summons on vacancy in Senate.

32. When a Vavancy happens in the Senate, by Resignation, Death, or otherwise, the Governor-General shall, by Summons to a fit and qualified Person, fill the Vacancy.

Questions as to qualifications and vacancies in Senate.

33. If any Question arises respecting the Qualification of a Senator or a Vacancy in the Senate, the same shall be heard and determined by the Senate.

Appointment of Speaker of Senate.

34. The Governor-General may from Time to Time, by Instrument under the Great Seal of Canada, appoint a Senator to be Speaker of the Senate, and may remove him and appoint another in his Stead.

Quorum of Senate.

35. Until the Parliament of Canada otherwise provides, the Presence of at least Fifteen Senators, including the Speaker, shall be necessary to constitute a Meeting of the Senate for the exercise of its Powers.

Votation dans le Sénat.

36. Les questions soulevées dans le Sénat seront décidées à la majorité des voix, et dans tous les cas, l'orateur aura voix délibérative; quand les voix seront également partagées, la décision sera considérée comme rendue dans la négative.

LA CHAMBRE DES COMMUNES.

Constitution de la Chambre des Communes.

37. La Chambre des Communes sera, sujette aux dispositions du présent acte, composée de cent quatre-vingt-un membres, dont quatre-vingt-deux représenteront Ontario, soixante-et-cinq Québec, dix-neuf la Nouvelle-Ecosse, et quinze le Nouveau-Brunswick.

Convocation de la Chambre des Communes.

38. Le gouverneur-général convoquera, de temps à autre, la Chambre des Communes au nom de la Reine, par instrument sous le grand sceau du Canada.

Exclusion des sénateurs de la Chambre des Communes.

39. Un sénateur ne pourra ni être élu, ni siéger, ni voter comme membre de la Chambre des Communes.

Districts électoraux des quatre provinces.

40. Jusqu'à ce que le parlement du Canada en ordonne autrement, les provinces d'Ontario, de Québec, de la Nouvelle-Ecosse et du Nouveau-Brunswick seront—en ce qui concerne l'élection des membres de la Chambre des Communes—divisées en districts électoraux comme suit:

1—ONTARIO.

La province d'Ontario sera partagée en comtés, divisions de comtés, (*Ridings*), cités, parties de cités, et villes, tels qu'énumérés dans la première cédule annexée au présent acte; chacune de ces divisions formera un district électoral, et chaque district désigné dans cette cédule aura droit d'élire un membre.

Voting in Senate.

36. Questions arising in the Senate shall be decided by a majority of Voices, and the Speaker shall in all Cases have a Vote, and when the voices are equal the Decision shall be deemed to be in the Negative.

THE HOUSE OF COMMONS.

Constitution of House of Commons in Canada.

37. The House of Commons shall, subject to the Provisions of this Act, consist of One hundred and eighty-one Members, of whom Eighty-two shall be elected for Ontario, Sixty-five for Quebec, Nineteen for Nova Scotia, and Fifteen for New Brunswick.

Summoning of House of Commons.

38. The Governor-General shall, from Time to Time, in the Queen's Name, by Instrument under the Great Seal of Canada, summon and call together the House of Commons.

Senators not to sit in House of Commons.

39. A Senator shall not be capable of being elected or of sitting or voting as a Member of the House of Commons.

Electoral Districts of the four Provinces.

40. Until the Parliament of Canada otherwise provides, Ontario, Quebec, Nova Scotia and New Brunswick shall, for the Purposes of the Election of Members to serve in the House of Commons, be divided into Electoral Districts as follows:

1.—ONTARIO.

Ontario shall be divided into the Counties, Ridings of Counties, Cities, Parts of Cities, and Towns enumerated in the First Schedule to this Act, each whereof shall be an Electoral District, each such District as numbered in that Schedule being entitled to return One Member.

2.—QUÉBEC.

La province de Québec sera partagée en soixante-et-cinq districts électoraux, comprenant les soixante-et-cinq divisions électorales en lesquelles le Bas-Canada est actuellement divisé en vertu du chapitre deuxième des Statuts Refondus du Canada, du chapitre soixante-et-quinze des Statuts Refondus pour le Bas-Canada et de l'acte de la province du Canada, de la vingt-troisième année du règne de Sa Majesté la Reine, chapitre premier, ou de tout autre acte les amendant et en force à l'époque de l'union, de telle manière que chaque division électorale constitue, pour les fins du présent acte, un district électoral ayant droit d'élire un membre.

3—NOUVELLE-ECOSSE.

Chacun des dix-huit comtés de la Nouvelle-Ecosse formera un district électoral. Le comté d'Halifax aura droit d'élire deux membres, et chacun des autres comtés, un membre.

4—NOUVEAU-BRUNSWICK.

Chacun des quatorze comtés dont se compose le Nouveau-Brunswick, y compris la cité et le comté de St-Jean, formera un district électoral. La cité de St-Jean constituera également un district électoral par elle-même. Chacun de ces quinze districts électoraux aura droit d'élire un membre.

Continuation des lois actuelles d'élection.

41. Jusqu'à ce que le parlement du Canada en ordonne autrement,—toutes les lois en force dans les diverses provinces, à l'époque de l'union, concernant les questions suivantes ou aucune d'elles, savoir:—l'éligibilité ou l'inégibilité des candidats ou des membres de la Chambre d'Assemblée ou Assemblée législative dans les diverses provinces,—les votants aux élections de ces membres,—les serments exigés des votants,—les officiers-rapporteurs, leurs pouvoirs et leurs devoirs,—le mode de procéder aux élections,—le temps que celles-ci peuvent durer,—la décision des élections contestées et les procédures y incidentes,—les vacations des siéges en parlement et l'exécution de nouveaux brefs dans les cas de vacations occasionnées par d'autres causes que la dissolution,—s'appliqueront respectivement aux élections des membres envoyés à la Chambre des Communes par ces diverses provinces.

2.—QUEBEC.

Quebec shall be divided into Sixty-five Electoral Districts, composed of the Sixty-five Electoral Divisions into which Lower Canada is at the passing of this Act divided under Chapter Two of the Consolidated Statutes of Canada, chapter seventy-five of the Consolidated Statutes for Lower Canada, and the Act of the Province of Canada of the Twenty-third year of the Queen, Chapter One, or any other Act amending the same in force at the Union, so that each such Electoral Division shall be for the Purposes of this Act an Electoral District entitled to return One Member.

3.—NOVA SCOTIA.

Each of the Eighteen Counties of Nova Scotia shall be an Electoral District. The County of Halifax shall be entitled to return Two Members, and each of the other Counties One Member.

4.—NEW BRUNSWICK.

Each of the Fourteen Counties into which New Brunswick is divided, including the City and County of St. John, shall be an Electoral District. The City of St. John shall also be a separate Electoral District. Each of those Fifteen Electoral Districts shall be entitled to return One Member.

Continuance of existing Election Laws until Parliament of Canada otherwise provides.

41. Until the Parliament of Canada otherwise provides, all laws in force in the several Provinces at the Union relative to the following Matters or any of them, namely,—the Qualifications and Disqualifications of Persons to be elected or to sit or vote as Members of the House of Assembly or Legislative Assembly in the several Provinces, the Voters at Elections of such Members, the Oaths to be taken by Voters, the Returning Officers, their Powers and Duties, the Proceedings at Elections, the Periods during which Elections may be continued, the trial of Controverted Elections, and Proceedings incident thereto, the vacating of Seats of Members, and the Execution of new Writs in case of Seats vacated otherwise than by Dissolution,—shall respectively apply to Elections of Members to serve in the House of Commons for the same several Provinces.

Mais, jusqu'à ce que le parlement du Canada en ordonne autrement, à chaque élection d'un membre de la Chambre des Communes pour le district d'Algoma, outre les personnes ayant droit de vote en vertu de la loi de la province du Canada, tout sujet anglais du sexe masculin, âgé de vingt-et-un ans ou plus et tenant feu et lieu, aura droit de vote.

Brefs pour la première élection.

42. Pour la première élection des membres de la Chambre des Communes, le gouverneur-général fera émettre les brefs par telle personne et selon telle forme qu'il jugera à propos, et les fera adresser aux officiers-rapporteurs qu'il désignera.

La personne émettant les brefs, sous l'autorité de la présente section, aura les même pouvoirs que possédaient, à l'époque de l'union, les officiers chargés d'émettre des brefs pour l'élection des membres de la Chambre d'Assemblée ou Assemblée Législative de la province du Canada, de la Nouvelle-Ecosse ou du Nouveau-Brunswick; et les officiers-rapporteurs auxquels ces brefs seront adressés, en vertu de la présente section, auront les mêmes pouvoirs que possédaient, à l'époque de l'union, les officiers chargés de rapporter les brefs pour l'élection des membres de la Chambre d'Assemblée ou Assemblée Législative, respectivement.

Vacances accidentelles.

43. Survenant une vacance dans la représentation d'un district électoral à la Chambre des Communes, antérieurement à la réunion du parlement ou subséquemment à la réunion du parlement, mais, avant que le parlement ait statué à cet égard, les dispositions de la section précédente du présent acte s'étendront et s'appliqueront à l'émission et au rapport du bref relativement au district dont la représentation est ainsi vacante.

Orateur de la Chambre des Communes.

44. La Chambre des Communes, à sa première réunion après une élection générale, procédera, avec toute la diligence possible, à l'élection de l'un de ses membres comme orateur.

Quand la charge d'orateur deviendra vacante.

45. Survenant une vacance dans la charge d'orateur, par décès, démission ou autre cause, la Chambre des Communes procé-

Provided that, until the Parliament of Canada otherwise provides, at any Election for a Member of the House of Commons for the District of Algoma, in addition to Persons qualified by the Law of the Province of Canada to vote, every male British Subject, aged Twenty-one Years or upwards, being a Householder, shall have a Vote.

Writs for first Election.

42. For the First Election of Members to serve in the House of Commons the Governor-General shall cause Writs to be issued by such Person, in such Form, and addressed to such Returning Officers as he thinks fit.

The Person issuing Writs under this Section shall have the like Powers as are possessed at the Union by the Officers charged with the issuing of Writs for the Election of Members to serve in the respective House of Assembly or Legislative Assembly of the Province of Canada, Nova Scotia, or New Brunswick; and the Returning Officers to whom Writs are directed under this Section shall have the like Powers as are possessed at the Union by the Officers charged with the returning of Writs for the Election of Members to serve in the same respective House of Assembly or Legislative Assembly.

As to Casual Vacancies.

43. In case a Vacancy in the Representation in the House of Commons of any Electoral District happens before the Meeting of the Parliament, or after the Meeting of the Parliament before Provision is made by the Parliament in this Behalf, the Provisions of the last foregoing Section of this Act shall extend and apply to the issuing and returning of a Writ in respect of such vacant District.

As to Election of Speaker of House of Commons.

44. The House of Commons, on its first assembling after a general Election, shall proceed with all practicable speed to elect One of its Members to be Speaker.

As to filling up Vacancy in Office of Speaker

45. In case of a Vacancy happening in the Office of Speaker, by Death, Resignation, or otherwise, the House of Commons shall,

dera, avec toute la diligence possible, à l'élection d'un autre de ses membres comme orateur.

L'orateur exerce la présidence.

46. L'orateur présidera à toutes les séances de la Chambre des Communes.

En cas d'absence de l'orateur, la Chambre le remplace.

47. Jusqu'à ce que le parlement du Canada en ordonne autrement,—si l'orateur, pour une raison quelconque, quitte le fauteuil de la Chambre des Communes pendant quarante-huit heures consécutives, la Chambre pourra élire un autre de ses membres pour agir comme orateur; le membre ainsi élu aura et exercera, durant l'absence de l'orateur, tous les pouvoirs, priviléges et attributions de ce dernier.

Quorum de la Chambre des Communes.

48. La présence d'au moins vingt membres de la Chambre des Communes sera nécessaire pour constituer une assemblée de la Chambre dans l'exercice de ses pouvoirs; à cette fin, l'orateur sera compté comme un membre.

Votation dans la Chambre des Communes.

49. Les questions soulevées dans la Chambre des Communes seront décidées à la majorité des voix, sauf celle de l'orateur; mais lorsque les voix seront également partagées—et en ce cas seulement—l'orateur pourra voter.

Durée de la Chambre des Communes.

50. La durée de la Chambre des Communes ne sera que de cinq ans, à compter du jour du rapport des brefs d'élection, à moins qu'elle ne soit plus tôt dissoute par le gouverneur-général.

Répartition décennale de la représentation.

51. Immédiatement après le recensement de mil huit cent soixante-et-onze, et après chaque autre recensement décennal, la

with all practicable speed, proceed to elect another of its Members to be Speaker.

Speaker to preside.

46. The Speaker shall preside at all Meetings of the House of Commons.

Provision in case of absence of Speaker.

47. Until the Parliament of Canada otherwise provides, in case of the Absence, for any Reason, of the Speaker from the Chair of the House of Commons for a period of Forty-eight Consecutive Hours, the House may elect another of its Members to act as Speaker, and the Member so elected shall, during the Continuance of such Absence of the Speaker, have and execute all the Powers, Privileges, and Duties of Speaker.

Quorum of House of Commons.

48. The Presence of at least Twenty Members of the House of Commons shall be necessary to constitute a Meeting of the House for the Exercise of its Powers; and for that Purpose the Speaker shall be reckoned as a Member.

Voting in House of Commons.

49. Questions arising in the House of Commons shall be decided by a Majority of Voices other than that of the Speaker, and when the Voices are equal, but not otherwise, the Speaker shall have a Vote.

Duration of House of Commons.

50. Every House of Commons shall continue for Five Years from the day of the Return of the Writs for choosing the House (subject to be sooner dissolved by the Governor-General, and no longer.

Decennial Re-adjustment of Representation.

51. On the completion of the Census in the Year one thousand eight hundred and seventy-one, and of each subsequent de-

représentation des quatre provinces sera répartie de nouveau, par telle autorité, de telle manière et à dater de telle époque que pourra, de temps à autre, prescrire le parlement du Canada, d'après les règles suivantes:

1. Québec aura le nombre fixe de soixante-et-cinq représentants;

2. Il sera assigné à chacune des autres provinces un nombre de représentants proportionné au chiffre de sa population (constaté par tel recensement), comme le nombre soixante-et-cinq le sera au chiffre de la population de Québec (ainsi constaté);

3. En supputant le nombre des représentants d'une province, il ne sera pas tenu compte d'une fraction n'excédant pas la moitié du nombre total nécessaire pour donner à la province droit à un représentant; mais toute fraction excédant la moitié de ce nombre équivaudra au nombre entier;

4. Lors de chaque nouvelle répartition, nulle réduction n'aura lieu dans le nombre des représentants d'une province, à moins qu'il ne soit constaté par le dernier recensement que le chiffre de la population de la province par rapport au chiffre de la population totale du Canada à l'époque de la dernière répartition du nombre des représentants de la province, n'ait décru dans la proportion d'un vingtième ou plus;

5. Les nouvelles répartitions n'auront d'effet qu'à compter de l'expiration du parlement alors existant.

Augmentation du nombre des membres de la Chambre des Communes.

52. Le nombre des membres de la Chambre des Communes pourra, de temps à autre, être augmenté par le parlement du Canada, pourvu que la proportion établie par le présent acte dans la représentation des provinces reste intacte.

LÉGISLATION FINANCIERE—SANCTION ROYALE.

Bills pour lever des crédits et des impôts.

53. Tout bill ayant pour but l'appropriation d'une portion quelconque du revenu public, ou la création de taxes ou d'impôts, devra originer dans la Chambre des Communes.

Recommandation des crédits.

54. Il ne sera pas loisible à la Chambre des Communes d'adopter aucune résolution, adresse ou bill pour l'appropriation d'une partie quelconque du revenu public, ou d'aucune taxe ou impôt, à

cennial Census, the Representation of the Four Provinces shall be re-adjusted by such Authority, in such a manner, and from such Time as the Parliament of Canada from Time to Time provides, subject and according to the following Rules:—

(1.) Quebec shall have the fixed Number of Sixty-five Members.

(2.) There shall be assigned to each of the other Provinces such a number of Members as will bear the same proportion to the Number of its Population (ascertained at such Census) as the Number Sixty-five bears to the Number of the Population of Quebec (so ascertained):

(3.) In the Computation of the Number of Members for a Province, a fractional Part not exceeding One-half of the whole number requisite for entitling the Province to a Member shall be disregarded; but a fractional Part exceeding One half of that number shall be equivalent to the whole number:

(4.) On any such Re-adjustment the Number of Members for a Province shall not be reduced unless the Proportion which the number of the Population of the Province bore to the Number of the aggregate population of Canada at the then last preceding Re-adjustment of the Number of Members for the Province is ascertained at the then latest Census to be diminished by One Twentieth Part or upwards:

(5.) Such Re-adjustment shall not take effect until the Termination of the then existing Parliament.

Increase of number of House of Commons.

52. The Number of Members of the House of Commons may be from Time to Time increased by the Parliament of Canada, provided the proportionate Representation of the Province prescribed by this Act is not thereby disturbed.

MONEY VOTES; ROYAL ASSENT.

Appropriation and Tax Bills.

53. Bills for appropriating any part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons.

Recommendation of money votes.

54. It shall not be lawful for the House of Commons to adopt or pass any Vote, Resolution, Address, or Bill for the Appropriation of any Part of the Public Revenue, or of any Tax or Im-

un objet qui n'aura pas au préalable, été recommandé à la Chambre par un message du gouverneur-général durant la session pendant laquelle telle résolution, adresse ou bill est proposé.

Sanction royale aux bills, etc.

55. Lorsqu'un bill voté par les Chambres du parlement sera présenté au gouverneur-général pour la sanction de la Reine, le gouverneur-général devra déclarer, à sa discrétion, mais sujet aux dispositions du présent acte et aux instructions de Sa Majesté, ou qu'il le sanctionne au nom de la Reine, ou qu'il refuse cette sanction, ou qu'il réserve le bill pour la signification du bon plaisir de la Reine.

Désaveu par ordonnance rendue en conseil, des actes sanctionnés par le gouverneur-général.

56. Lorsque le gouverneur-général aura donné sa sanction à un bill, au nom de la Reine, il devra, à la première occasion favorable, transmettre une copie authentique de l'acte à l'un des principaux secrétaires d'Etat de Sa Majesté; si la Reine en conseil, dans les deux ans après que le secrétaire d'Etat l'aura reçu, juge à propos de le désavouer, ce désaveu,—accompagné d'un certificat du secrétaire d'Etat, constatant le jour où il aura reçu l'acte,—étant signifié par le gouverneur-général, par discours ou message, à chacune des Chambres du parlement, ou par proclamation, annulera l'acte, à compter du jour de telle signification.

Signification du bon plaisir de la Reine quant aux bills réservés.

57. Un bill réservé à la signification du bon plaisir de la Reine n'aura ni force ni effet avant et à moins que dans les deux ans à compter du jour où il aura été présenté au gouverneur-général pour recevoir la sanction de la Reine, ce dernier ne signifie, par discours ou message, à chacune des deux Chambres du parlement, ou par proclamation, qu'il a reçu la sanction de la Reine en conseil.

Ces discours, messages ou proclamations seront consignés dans les journaux de chaque Chambre, et un double dûment certifié en sera délivré à l'officier qu'il appartient pour qu'il le dépose parmi les archives du Canada.

post, to any Purpose that has not been first recommended to that House by Message of the Governor-General in the Session in which such Vote, Resolution, Address, or Bill is proposed.

Royal Assent to Bills, &c.

55. Where a Bill passed by the Houses of the Parliament is presented to the Governor-General for the Queen's Assent, he shall declare, according to his discretion, but subject to the Provisions of this Act and to Her Majesty's Instructions, either that he assents thereto in the Queen's Name, or that he withholds the Queen's Assent, or that he reserves the Bill for the Signification of the Queen's Pleasure.

Disallowance by Order in Council of Act assented to by Governor General.

56. Where the Governor-General assents to a Bill in the Queen's Name, he shall by the first convenient Opportunity send an authentic Copy of the Act to One of Her Majesty's Principal Secretaries of State, and if the Queen in Council within Two Years after receipt thereof by the Secretary of State thinks fit to disallow the Act, such Disallowance (with a certificate of the Secretary of State of the Day on which the Act was received by him) being signified by the Governor-General, by speech or Message to each of the Houses of the Parliament or by Proclamation, shall annul the Act from and after the Day of such Signification.

Signification of Queen's pleasure on Bill reserved.

57. A Bill reserved for the Signification of the Queen's Pleasure shall not have any Force unless and until within Two Years from the day on which it was presented to the Governor-General for the Queen's Assent, the Governor-General signifies, by Speech or Message to each of the Houses of the Parliament or by Proclamation, that it has received the Assent of the Queen in Council.

An Entry of every such Speech, Message, or Proclamation, shall be made in the Journal of each House, and a Duplicate thereof duly attested shall be delivered to the proper officer to be kept among the Records of Canada.

V—CONSTITUTIONS PROVINCIALES.

Pouvoir Exécutif.

Lieutenants-gouverneurs des provinces.

58. Il y aura, pour chaque province, un officier appelé lieutenant-gouverneur, lequel sera nommé par le gouverneur-général en conseil par instrument sous le grand sceau du Canada.

Durée des fonctions des lieutenants-gouverneurs.

59. Le lieutenant-gouverneur restera en charge durant le bon plaisir du gouverneur-général; mais tout lieutenant-gouverneur nommé après le commencement de la première session du parlement du Canada, ne pourra être révoqué dans le cours des cinq ans qui suivront sa nomination, à moins qu'il n'y ait cause; et cette cause devra lui être communiquée par écrit, dans le cours d'un mois après qu'aura été rendu l'ordre décrétant sa révocation, et l'être aussi par message au Sénat et à la Chambre des Communes, dans le cours d'une semaine après cette révocation, si le parlement est alors en session, sinon, dans le délai d'une semaine après le commencement de la session suivante du parlement.

Salaires des lieutenants-gouverneurs.

60. Les salaires des lieutenants-gouverneurs seront fixés et payés par le parlement du Canada.

Serments, etc., du lieutenant-gouverneur.

61. Chaque lieutenant-gouverneur, avant d'entrer dans l'exercice de ses fonctions, prêtera et souscrira devant le gouverneur-général ou quelque personne à ce par lui autorisée, les serments d'allégéance et d'office prêtés par le gouverneur-général.*

Application des dispositions relatives au lieutenant-gouverneur.

62. Les dispositions du présent acte relatives au lieutenant-gouverneur s'étendent et s'appliquent au lieutenant-gouverneur de

*Voyez "l'Acte des Serments Promissoires, 1868," (Statut Impérial, 31, 32 Vic., ch. 72. sec. 2) et les instructions de la Reine au gouverneur-général, du 5 Octobre, 1878.

V.—PROVINCIAL CONSTITUTIONS.

Executive Power.

Appointment of Lieut.-Governors of Provinces.

58. For each Province there shall be an Officer, styled the Lieutenant-Governor, appointed by the Governor-General in Council by Instrument under the Great Seal of Canada.

Tenure of office of Lieutenant Governor.

59. A Lieutenant Governor shall hold Office during the pleasure of the Governor General; but any Lieutenant-Governor appointed after the Commencement of the First Session of the Parliament of Canada shall not be removable within Five Years, from his appointment, except for cause assigned, which shall be communicated to him in Writing, within One Month after the Order for his Removal is made, and shall be communicated by Message to the Senate and to the House of Commons within One Week thereafter if the Parliament is then sitting, and if not then within One Week after the Commencement of the next Session of the Parliament.

Salaries of Lieutenant Governors.

60. The Salaries of the Lieutenant-Governors shall be fixed and Provided by the Parliament of Canada.

Oaths &c., of Lieutenant Governor.

61. Every Lieutenant-Governor shall, before assuming the Duties of his office, make and subscribe before the Governor-General or some Person authorized by him, Oaths of Allegiance and Office similar to those taken by the Governor General.*

Application of provisions referring to Lieutenant Governor.

62. The Provisions of this Act referring to the Lieutenant-Governor extend and apply to the Lieutenant-Governor for the

*See the "Promissory Oaths Act, 1868," (Imperial Statute 31, 32 Vic., ch. 72, sec. 2) and the Queen's Instructions to the Governor General, of the 5th October, 1878.

chaque province ou à tout autre chef exécutif ou administrateur pour le temps d'alors, administrant le gouvernement de la province, quel que soit le titre sous lequel il est désigné.

Conseils exécutifs d'Ontario et de Québec.

63. Le conseil exécutif d'Ontario et de Québec se composera des personnes que le lieutenant-gouverneur jugera, de temps à autre, à propos de nommer, et en premier lieu, des officiers suivants, savoir: le procureur-général, le secrétaire et régistraire de la province, le trésorier de la province, le commissaire des terres de la Couronne, et le commissaire de l'agriculture et des travaux publics, et—dans la province de Québec—l'orateur du conseil législatif et le solliciteur général.**

Gouvernement exécutif de la Nouvelle-Ecosse et du Nouveau Brunswick.

64. La constitution de l'autorité exécutive dans chacune des provinces du Nouveau-Brunswick et de la Nouvelle-Ecosse continuera, sujette aux dispositions du présent acte, d'être celle en existence lors de l'union, jusqu'à ce qu'elle soit modifiée sous l'autorité du présent acte.

Pouvoirs conférés au lieutenant-gouverneur d'Ontario ou Québec, en conseil ou seul.

65. Tous les pouvoirs, attributions et fonctions qui—par aucun acte du parlement de la Grande-Bretagne, ou du parlement du Royaume-Uni de la Grande-Bretagne et d'Irlande, ou de la législature du Haut-Canada, du Bas-Canada ou du Canada, avant ou lors de l'union—étaient conférés aux gouverneurs ou lieutenants-gouverneurs respectifs de ces provinces, ou pouvaient être par eux exercés, de l'avis, ou de l'avis et du consentement des conseils exécutifs respectifs de ces provinces, ou avec la coopération de ces conseils ou d'aucun nombre de membres de ces conseils, ou par ces gouverneurs ou lieutenants-gouverneurs individuellement, seront—en tant qu'ils pourront être exercés après l'union, relativement au gouvernement d'Ontario et de Québec respectivement,—conférés au lieutenant-gouverneur d'Ontario et de Québec respectivement, et pourront être par lui exercés, de l'avis, ou de l'avis et du consentement, ou avec la coopération des conseils exécutifs respectifs ou d'aucun de leurs membres, ou par le lieutenant-gou-

**Voyez le Statut de la Province, 45 Vic., ch. 2.

time being of each Province or other the Chief Executive Officer or Administrator for the Time being carrying on the Government of the Province, by whatsoever Title he is designated.

Appointment of Executive Officers for Ontario and Quebec.

63. The Executive Council of Ontario and Quebec shall be composed of such Persons as the Lieutenant-Governor from Time to Time thinks fit, and in the first instance, of the following Officers, namely: the Attorney-General, the Secretary and Registrar of the Province, the Treasurer of the Province, the Commissioner of Crown Lands, and the Commissioner of Agriculture and Public Works, with, in Quebec, the Speaker of the Legislative Council and the Solicitor-General.**

Executive Government of Nova Scotia and New Brunswick.

64. The Constitution of the Executive Authority in each of the Provinces of Nova Scotia and New Brunswick shall, subject to the Provisions of this Act, continue as it exists at the Union until altered under the Authority of this Act.

Powers to be exercised by Lieutenant Governor of Ontario or Quebec with advice or alone.

65. All Powers, Authorities and Functions which under any Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of Upper Canada, Lower Canada, or Canada, were or are before or at the Union vested in or exerciseable by the respective Governors or Lieutenant-Governors of those Provinces, with the Advice, or with the Advice and Consent, of the respective Executive Councils thereof, or in conjunction with those Councils or with any Number of Members thereof, or by those Governors or Lieutenant-Governors individually shall, as far as the same are capable of being exercised after the Union in relation to the Government of Ontario, and Quebec respectively, be vested in and shall or may be exercised by the Lieutenant-Governor of Ontario and Quebec respectively with the Advice or with the Advice and Consent of or in conjunction with the respective Executive Councils, or any Members thereof, or by the Lieutenant-Governor individually, as the Case requires, subject, nevertheless (except with respect to

**See the Provincial Statute, 45 Vic., c. 2.

verneur individuellement, selon le cas; mais ils pourront, néanmoins (sauf ceux existant en vertu d'actes de la Grande-Bretagne et d'Irlande), être révoqués ou modifiés par les législatures respectives d'Ontario et de Québec.

Application des dispositions relatives aux lieutenants-gouverneurs en conseil.

66. Les dispositions du présent acte relatives au lieutenant-gouverneur en conseil seront interprétées comme s'appliquant au lieutenant-gouverneur de la province agissant de l'avis de son conseil exécutif.

Administration en l'absence, etc., du lieutenant-gouverneur.

67. Le gouverneur-général en conseil pourra, au besoin, nommer un administrateur qui remplira les fonctions de lieutenant-gouverneur durant l'absence, la maladie ou autre incapacité de ce dernier.

Siéges des gouvernements provinciaux.

68. Jusqu'à ce que le gouvernement exécutif d'une province en ordonne autrement, relativement à telle province, les siéges du gouvernement des provinces seront comme suit, savoir: pour Ontario, la cité de Toronto: pour Québec, la cité de Québec; pour la Nouvelle-Ecosse, la cité d'Halifax; et pour le Nouveau-Brunswick, la cité de Frédéricton.

POUVOIR LEGISLATIF.

1—ONTARIO.

69. Il y aura, pour Ontario, une législature composée du lieutenant-gouverneur et d'une seule Chambre, appelée l'Assemblée Législative d'Ontario.

Districts électoraux.

70. L'Assemblée Législative d'Ontario sera composée de quatre-vingt-deux membres, qui devront représenter les quatre-vingt-deux districts électoraux énumérés dans la première cédule annexée au présent acte.

such as exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland), to be abolished or altered by the respective Legislatures of Ontario and Quebec.

Application of provisions referring to Lieutenant-Governor in Council.

66. The Provisions of this Act referring to the Lieutenant-Governor in Council shall be construed as referring to the Lieutenant-Governor of the Province acting by and with the Advice of the Executive Council thereof.

Administration in absence, &c., of Lieutenant-Governor.

67. The Governor General in Council may from Time to Time appoint an Administrator to execute the Office and Functions of Lieutenant-Governor during his Absence, Illness or other Inability.

Seats of Provincial Government.

68. Unless and until the Executive Government of any Province otherwise directs with respect to that Province, the Seats of Government of the Provinces shall be as follows, namely,—of Ontario, the City of Toronto; of Quebec, the City of Quebec; of Nova Scotia, the City of Halifax; and of New Brunswick, the City of Fredericton.

LEGISLATIVE POWER.

1.—ONTARIO.

69. There shall be a Legislature for Ontario consisting of the Lieutenant-Governor and of One House, styled the Legislative Assembly of Ontario.

Electoral Districts.

70. The Legislative Assembly of Ontario shall be composed of Eighty-two Members, to be elected to represent the Eighty-two Electoral Districts set forth in the First Schedule to this Act.

2.—QUEBEC.

Législature de Québec.

71. Il y aura, pour Québec, une législature composée du lieutenant-gouverneur et de deux Chambres, appelées le Conseil Législatif de Québec et l'Assemblée Législative de Québec.

Constitution du Conseil législatif.

72. Le Conseil Législatif de Québec se composera de vingt-quatre membres, qui seront nommés par le lieutenant-gouverneur au nom de la Reine, par instrument sous le grand sceau de Québec, et devront, chacun, représenter l'un des vingt-quatre collèges électoraux du Bas-Canada mentionnés au présent acte; ils seront nommés à vie, à moins que la législature de Québec n'en ordonne autrement sous l'autorité du présent acte.

Qualités exigées des conseillers législatifs.

73. Les qualifications des conseillers législatifs de Québec seront les mêmes que celles des sénateurs pour Québec.

Cas dans lesquels les siéges des conseillers législatifs deviennent vacants.

74. La charge de conseiller législatif de Québec deviendra vacante dans les cas, *mutatis mutandis*, où celle de sénateur peut le devenir.

Vacances.

75. Survenant une vacance dans le Conseil Législatif de Québec, par démission, décès ou autre cause, le lieutenant-gouverneur, au nom de la Reine, nommera, par instrument sous le grand sceau de Québec, une personne capable et ayant les qualification voulues pour la remplir.

Questions quant aux vacances, etc.

76. S'il s'élève quelque question au sujet des qualifications d'un conseiller législatif de Québec ou d'une vacance dans le Conseil

2.—QUEBEC.

Legislature for Quebec.

71. There shall be a Legislature for Quebec consisting of the Lieutenant-Governor and Two Houses, styled the Legislative Council of Quebec and the Legislative Assembly of Quebec.

Constitution of Legislative Council.

72. The Legislative Council of Quebec shall be composed of Twenty-four Members, to be appointed by the Lieutenant-Governor in the Queen's Name by Instrument under the Great Seal of Quebec, one being appointed to represent each of the Twenty-four Electoral Divisions of Lower Canada in this Act referred to, and each holding office for the term of his Life, unless the Legislature of Quebec otherwise provides under the Provisions of this Act.

Qualification of Legislative Councillors.

73. The Qualifications of the Legislative Councillors of Quebec shall be the same as those of the Senators for Quebec.

Resignation, Disqualification, &c.,

74. The Place of a Legislative Councillor of Quebec shall become vacant in the Cases *mutatis mutandis*, in which the Place of Senator becomes vacant.

Vacancies.

75. When a vacancy happens in the Legislative Council of Quebec by Resignation, Death or otherwise, the Lieutenant-Governor, in the Queen's Name, by Instrument under the Great Seal of Quebec, shall appoint a fit and qualified Person to fill the Vacancy.

Questions as to Vacancies, &c.

76. If any Question arises respecting the Qualification of a Legislative Councillor of Quebec, or a vacancy in the Legislative

Législatif de Québec, elle sera entendue et décidée par le Conseil Législatif.

Orateur du Conseil Législatif.

77. Le lieutenant-gouverneur pourra, de temps à autre, par instrument sous le grand sceau de Québec, nommer un membre du Conseil Législatif de Québec, comme orateur de ce corps, et également le révoquer et en nommer un autre à sa place.*

Quorum du Conseil Législatif.

78. Jusqu'à ce que la législature de Québec en ordonne autrement, la présence d'au moins dix membres du Conseil Législatif, y compris l'orateur, sera nécessaire pour constituer une assemblée du Conseil dans l'exercice de ses fonctions.

Votation dans le Conseil Législatif de Québec.

79. Les questions soulevées dans le Conseil Législatif de Québec seront décidées à la majorité des voix, et, dans tous les cas, l'orateur aura voix délibérative; quand les voix seront également partagées, la décision sera considérée comme rendue dans la négative.

Constitution de l'Assemblée législative de Québec.

80. L'Assemblée Législative de Québec se composera de soixante-et-cinq membres, qui seront élus pour représenter les soixante-et-cinq divisions ou districts électoraux du Bas-Canada, mentionnés au présent acte, sauf toute modification que pourra y apporter la législature de Québec; mais il ne pourra être présenté au lieutenant-gouverneur de Québec, pour qu'il le sanctionne, aucun bill à l'effet de modifier les délimitations des divisions ou districts électoraux énumérés dans la deuxième cédule annexée au présent acte, à moins qu'il n'ait été passé à ses deuxième et troisième lectures dans l'Assemblée Législative avec le concours de la majorité des membres représentant toutes ces divisions ou districts électoraux; et la sanction ne sera donnée à aucun bill de cette nature à moins qu'une adresse n'ait été présentée au lieutenant-gouverneur par l'Assemblée Législative déclarant que tel bill a été ainsi passé.

*Voyez le Statut de la Province, 45 Vic., ch. 3.

Council of Quebec, the same shall be heard and determined by the Legislative Council.

Speaker of Legislative Council.

77. The Lieutenant-Governor may from Time to Time, by Instrument under the Great Seal of Quebec, appoint a Member of the Legislative Council of Quebec to be Speaker thereof, and may remove him and appoint another in his stead.*

Quorum of Legislative Council.

78. Until the Legislature of Quebec otherwise provides, the Presence of at least Ten Members of the Legislative Council, including the Speaker, shall be necessary to constitute a Meeting for the Exercise of its Powers.

Voting in Legislative Council.

79. Questions arising in the Legislative Council of Quebec shall be decided by a Majority of Voices, and the Speaker shall in all cases have a Vote, and when the Voices are equal the Decision shall be deemed to be in the negative.

Constitution of Legislative Assembly of Quebec.

80. The Legislative Assembly of Quebec shall be composed of Sixty-five Members, to be elected to represent the Sixty-five Electoral Divisions or Districts of Lower Canada in this Act referred to, subject to the Alteration thereof by the Legislature of Quebec: Provided that it shall not be lawful to present to the Lieutenant-Governor of Quebec for Assent Any Bill for altering the limits of any of the Electoral Divisions or Districts mentioned in the Second Schedule to this Act, unless the Second and Third Readings of such Bill have been passed in the Legislative Assembly with the Concurrence of the Majority of the Members representing all those Electoral Divisions or Districts, and the Assent shall not be given to such Bill unless an Address has been presented by the Legislative Assembly to the Lieutenant-Governor stating that it has been so passed.

*See the Provincial Statute, 45 Vic., ch. 3.

3—ONTARIO ET QUÉBEC.

Première session des législatures.

81. Les législatures d'Ontario et de Québec, respectivement, devront être convoquées dans le cours des six mois qui suivront l'union.

Convocation des assemblées législatives.

82. Le lieutenant-gouverneur d'Ontario et de Québec devra, de temps à autre, au nom de la Reine, par instrument sous le grand sceau de la province, convoquer l'Assemblée Législative de la province.

Restriction quant à l'élection des personnes ayant des emplois.

83. Jusqu'à ce que la législature d'Ontario ou de Québec en ordonne autrement—quiconque acceptera ou occupera dans la province d'Ontario ou dans celle de Québec, une charge, commission ou emploi, d'une nature permanente ou temporaire, à la nomination du lieutenant-gouverneur, auquel sera attaché un salaire annuel ou quelque honoraire, allocation, émolument ou profit d'un genre ou montant quelconque payé par la province, ne sera pas éligible comme membre de l'Assemblée Législative de cette province, ni ne devra y siéger ou voter en cette qualité; mais rien de contenu dans cette section ne rendra inéligible aucune personne qui sera membre du conseil exécutif de chaque province respective ou qui remplira quelqu'une des charges suivantes, savoir: celles de procureur général, secrétaire et régistraire de la province, trésorier de la province, commissaire des terres de la couronne et commissaire de l'agriculture et des travaux publics, et, dans la province de Québec, celle de solliciteur général,—ni ne la rendra inhabile à siéger ou à voter dans la Chambre pour laquelle elle est élue, pourvu qu'elle soit élue pendant qu'elle occupera cette charge.*

Continuation des lois actuelles d'élection.

84. Jusqu'à ce que les législatures respectives de Québec et d'Ontario en ordonnent autrement,—toutes les lois en force dans ces provinces respectives à l'époque de l'union, concernant les questions suivantes ou aucune d'elles, savoir: l'éligibilité ou l'inéligibilité des candidats ou des membres de l'Assemblée du Cana-

*Voyez les Statuts de la Province, 32 Vic., ch. 3; 36 Vic., ch. 4; et 45 Vic., ch. 2.

3.—ONTARIO AND QUEBEC.

First Session of Legislatures.

81. The Legislatures of Ontario and Quebec respectively shall be called together not later than Six Months after the Union.

Summoning of Legislative Assemblies.

82. The Lieutenant-Governor of Ontario and of Quebec shall, from time to time, in the Queen's name, by Instrument under the Great Seal of the Province, summon and call together the Legislative Assembly of the Province.

Restriction on election of holders of offices.

83. Until the Legislature of Ontario or of Quebec otherwise provides, a Person accepting or holding in Ontario or in Quebec, any Office, Commission or Employment, permanent or temporary, at the nomination of the Lieutenant-Governor, to which an annual Salary, or any Fee, Allowance, Emolument, or profit of any kind or Amount whatever from the Province is attached, shall not be eligible as a Member of the Legislative Assembly of the respective Province, nor shall he sit or vote as such; but nothing in this Section shall make ineligible any Person being a Member of the Executive Council of the respective Province, or holding any of the following offices, that is to say: The offices of Attorney-General, Secretary and Registrar of the Province, Treasurer of the Province, Commissioner of Crown Lands, and Commissioner of Agriculture and Public Works, and in Quebec Solicitor-General, or shall disqualify him to sit or vote in the House for which he is elected, provided he is elected while holding such office.*

Continuance of existing election laws.

84. Until the Legislatures of Ontario and Quebec respectively otherwise provide, all Laws which at the Union are in force in those Provinces respectively, relative to the following matters or any of them, namely:—the Qualifications and Disqualifications of Persons to be elected or to sit or vote as Members of the As-

*See the Provincial Statutes, 32 Vic., ch. 3; 36 Vic., ch. 4; and 45 Vic., ch. 2.

da,—les qualifications et l'absence des qualifications requises des votants, les serments exigés des votants,— les officiers-rapporteurs, leurs pouvoirs et leurs devoirs,—le mode de procéder aux élections,—le temps que celles-ci peuvent durer, la décision des élections contestées et les procédures y incidentes,—les vacations des siéges en parlement et l'émission et l'exécution de nouveaux brefs dans les cas de vacations occasionnées par d'autres causes que la dissolution,—s'appliqueront respectivement aux élections des membres élus pour les assemblées législatives d'Ontario et de Québec respectivement.

Mais, jusqu'à ce que la législature d'Ontario en ordonne autrement, à chaque élection d'un membre de l'assemblée législative d'Ontario pour le district d'Algoma, outre les personnes ayant droit de vote en vertu de la loi de la province du Canada, tout sujet anglais du sexe masculin âgé de vingt-et-un ans ou plus, et tenant feu et lieu, aura droit de vote.

Durée des assemblées législatives.

85. La durée de l'assemblée législative d'Ontario et de l'assemblée législative de Québec ne sera que de quatre ans, à compter du jour du rapport des brefs d'élection, à moins qu'elle ne soit plus tôt dissoute par le lieutenant-gouverneur de la province.*

Session annuelle de la législature.

86. Il y aura une session de la législature d'Ontario et de celle de Québec une fois au moins chaque année, de manière à ce qu'il ne s'écoule pas un intervalle de douze mois entre la dernière séance d'une session de la législature dans chaque province, et sa première séance dans la session suivante.

Orateur, quorum, etc.

87. Les dispositions suivantes du présent acte, concernant la Chambre des Communes du Canada, s'étendront et s'appliqueront aux assemblées législatives d'Ontario et de Québec, savoir: les dispositions relatives à l'élection d'un orateur en première instance et lorsqu'il surviendra des vacances,—aux devoirs de l'orateur,—à l'absence de ce dernier,—au quorum et au mode de votation,—tout comme si ces dispositions étaient ici décrétées et expressément rendues applicables à chaque assemblée législative.

*Voyez le Statut de la Province, 44, 45 Vic., ch. 7.

sembly of Canada, the Qualifications or Disqualifications of Voters, the Oaths to be taken by Voters, the Returning Officers, their Powers and Duties, the Proceedings at Elections, the Periods during which such Elections may be continued, and the Trial of Controverted Elections and the Proceedings incident thereto, the vacating of the Seats of Members, and the issuing and execution of new Writs in case of Seats vacated otherwise than by Dissolution, shall respectively apply to Election of Members to serve in the respective Legislative Assemblies of Ontario and Quebec.

Proviso as to Algoma.

Provided that until the Legislature of Ontario otherwise provides, at any Election for a Member of the Legislative Assembly of Ontario for the District of Algoma, in addition to persons qualified by the Law of the Province of Canada to vote, every male British Subject aged Twenty-one Years or upwards, being a Householder, shall have a vote.

Duration of Legislative Assemblies.

85. Every Legislative Assembly of Ontario and every Legislative Assembly of Quebec shall continue for four years from the Day of the Return of the Writs for choosing the same (subject, nevertheless, to either the Legislative Assembly of Ontario, or the Legislative Assembly of Quebec being sooner dissolved by the Lieutenant Governor of the Province), and no longer.*

Yearly Session of Legislature.

86. There shall be a Session of the Legislature of Ontario and of that of Quebec once at least in every Year, so that Twelve Months shall not intervene between the last Sitting of the Legislature in each Province in one Session and its first sittings in the next Session.

Speaker, quorum, &c.

87. The following provisions of this Act respecting the House of Commons of Canada, shall extend and apply to the Legislative Assemblies of Ontario and Quebec, that is to say, the Provisions relating to the Election of a Speaker originally and on Vacancies, the Duties of the Speaker, the Absence of the Speaker, the Quorum, and the Mode of Voting, as if those Provisions were here re-enacted and made applicable in terms to each such Legislative Assembly.

*See the Provincial Statute, 44, 45 Vic., ch. 7.

4—NOUVELLE-ECOSSE ET NOUVEAU-BRUNSWICK.

88. La constitution de la législature de chacune des provinces de la Nouvelle-Ecosse et du Nouveau-Brunswick continuera, sujette aux dispositions du présent acte, d'être celle en existence à l'époque de l'union, jusqu'à ce qu'elle soit modifiée sous l'autorité du présent acte; et la Chambre d'Assemblée du Nouveau-Brunswick en existence lors de la passation du présent acte devra, à moins qu'elle ne soit plus tôt dissoute, continuer d'exister pendant la période pour laquelle elle a été élue.

5—ONTARIO, QUÉBEC ET NOUVELLE-ECOSSE.

Première élection.

89. Chacun des lieutenants-gouverneurs d'Ontario, de Québec et de la Nouvelle-Ecosse devra faire émettre des brefs pour la première élection des membres de l'assemblée législative, selon telle forme et par telle personne qu'il jugera à propos, et à telle époque et adressés à tel officier-rapporteur que prescrira le gouverneur-général, de manière à ce que la première élection d'un membre de l'assemblée pour un district électoral ou une subdivision de ce district puisse se faire aux mêmes temps et lieux que l'élection d'un membre de la Chambre des Communes du Canada pour ce district électoral.

6—LES QUATRE PROVINCES.

Application aux législatures des dispositions relatives aux crédits, etc.

90. Les dispositions suivantes du présent acte, concernant le parlement du Canada, savoir: les dispositions relatives aux bills d'appropriation et d'impôts, à la recommandation de votes de deniers, à la sanction des bills, au désaveu des actes et à la signification du bon plaisir quant aux bills réservés, s'étendront et s'appliqueront aux législatures des différentes provinces, tout comme si elles étaient ici décrétées et rendues expressément applicables aux provinces respectives et à leurs législatures, en substituant toutefois le lieutenant-gouverneur de la province au gouverneur-général, le gouverneur-général à la Reine et au secrétaire d'Etat, un an à deux ans, et la province au Canada.

VI—DISTRIBUTION DES POUVOIRS LÉGISLATIFS.

POUVOIRS DU PARLEMENT.

Autorité législative du parlement du Canada.

91. Il sera loisible à la Reine, de l'avis et du consentement du

4.—NOVA SCOTIA AND NEW BRUNSWICK.

88. The Constitution of the Legislature of each of the Provinces of Nova Scotia and New Brunswick shall, subject to the Provisions of this Act, continue as it exists at the Union until altered under the Authority of this Act; and the House of Assembly of New Brunswick existing at the passing of this Act shall, unless sooner dissolved, continue for the period for which it was elected.

5.—ONTARIO, QUEBEC AND NOVA SCOTIA.

First elections.

89. Each of the Lieutenant-Governors of Ontario, Quebec and Nova Scotia, shall cause Writs to be issued for the first Election of Members of the Legislative Assembly thereof in such Form and by such Person as he thinks fit, and at such Time and addressed to such Returning Officer as the Governor-General directs, and so that the first Election of Member of Assembly for any Electoral District or any Subdivision thereof, shall be held at the same Time and at the same Places as the Election for a Member to serve in the House of Commons of Canada for that Electoral District.

6.—THE FOUR PROVINCES.

Application to Legislatures of provisions respecting money votes &c.

90. The following Provisions of this Act respecting the Parliament of Canada, namely,—the Provisions relating to Appropriation and Tax Bills, the Recommendation of Money Votes, the Assent to Bills, the Disallowance of Acts and the Signification of Pleasure on Bills reserved,—shall extend and apply to the Legislatures of the several Provinces as if those Provisions were here re-enacted and made applicable in Terms to the respective Provinces and the Legislatures thereof, with the Substitution of the Lieutenant-Governor of the Province for the Governor-General, of the Governor-General for the Queen, and for a Secretary of State, of One Year for Two Years, and of the Province of Canada.

VI.—DISTRIBUTION OF LEGISLATIVE POWERS.

POWERS OF THE PARLIAMENT.

Legislative Authority of Parliament of Canada.

91. It shall be lawful for the Queen, by and with the Advice

Sénat et de la Chambre des Communes, de faire des lois pour la paix, l'ordre et le bon gouvernement du Canada, relativement à toutes les matières ne tombant pas dans les catégories de sujets par le présent acte exclusivement assignés aux législatures des provinces; mais, pour plus de garantie, sans toutefois restreindre la généralité des termes ci-haut employés dans cette section, il est par le présent déclaré que (nonobstant toute disposition contraire énoncée dans le présent acte) l'autorité législative exclusive du parlement du Canada s'étend à toutes les matières tombant dans les catégories de sujets ci-dessous énumérés, savoir:

1. La dette et la propriété publiques;
2. La réglementation du trafic et du commerce;
3. Le prélèvement de deniers par tous modes ou systèmes de taxation;
4. L'emprunt de deniers sur le crédit public;
5. Le service postal;
6. Le recensement et les statistiques;
7. La milice, le service militaire et le service naval et la défense du pays;
8. La fixation et le paiement des salaires et honoraires des officiers civils et autres du gouvernement du Canada;
9. Les amarques, les bouées, les phares et l'île de Sable;
10. La navigation et les bâtiments ou navires (*shipping*);
11. La quarantaine et l'établissement et maintien des hôpitaux de marine;
12. Les pêcheries des côtes, de la mer et de l'intérieur;
13. Les passages d'eau (*ferries*) entre une province et tout pays britannique ou étranger, ou entre deux provinces;
14. Le cours monétaire et le monnayage;
15. Les banques, l'incorporation des banques et l'émission du papier-monnaie;
16. Les caisses d'épargne;
17. Les poids et mesures;
18. Les lettres de change et les billets promissoires;
19. L'intérêt de l'argent;
20. Les offres légales;
21. La banqueroute et la faillite;
22. Les brevets d'invention et de découverte;
23. Les droits d'auteur;
24. Les Sauvages et les terres réservées pour les Sauvages;
25. La naturalisation et les aubains;

and Consent of the Senate and House of Commons, to make laws for the Peace, Order and good Government of Canada, in relation to all matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated, that is to say:

1. The Public Debt and Property.
2. The Regulation of Trade and Commerce.
3. The Raising of Money by any Mode or System of Taxation.
4. The borrowing of Money on the Public Credit.
5. Postal Service.
6. The Census and Statistics.
7. Militia, Military and Naval Service and Defence.
8. The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada.
9. Beacons, Buoys, Lighthouses, and Sable Island.
10. Navigation and Shipping.
11. Quarantine and the Establishment and Maintenance of Marine Hospitals.
12. Sea Coast and Inland Fisheries.
13. Ferries between a Province and any British or Foreign Country or between Two Provinces.
14. Currency and Coinage.
15. Banking, Incorporation of Banks, and the Issue of Paper Money.
16. Savings Banks.
17. Weights and Measures.
18. Bills of Exchange and Promissory Notes.
19. Interest.
20. Legal Tender.
21. Bankruptcy and Insolvency.
22. Patents of Invention and Discovery.
23. Copyrights.
24. Indians and Lands reserved for the Indians.
25. Naturalization and Aliens.

26. Le mariage et le divorce;

27. La loi criminelle, sauf la constitution des tribunaux de juridiction criminelle, mais y compris la procédure en matière criminelle;

28. L'établissement, le maintien et d'administration des pénitenciers;

29. Les catégories de sujets expressément exceptés dans l'énumération des catégories de sujets exclusivement assignés par le présent acte aux législatures des provinces.

Et aucune des matières énoncées dans les catégories de sujets énumérés dans cette section ne sera réputée tomber dans la catégorie des matières d'une nature locale ou privée comprises dans l'énumération des catégories de sujets exclusivement assignés par le présent acte, aux législatures des provinces.

POUVOIRS EXCLUSIFS DES LEGISLATURES PROVINCIALES.

92. Dans chaque province, la législature pourra exclusivement faire des lois relatives aux matières tombant dans les catégories de sujets ci-dessous énumérés, savoir:

1. L'amendement, de temps à autre, nonobstant toute disposition contraire énoncée dans le présent acte, de la constitution de la province, sauf les dispositions relatives à la charge de lieutenant-gouverneur;

2. La taxation directe dans les limites de la province, dans le but de prélever un revenu pour des objets provinciaux;

3. Les emprunts de deniers sur le seul crédit de la province;

4. La création et la tenure des charges provinciales, et la nomination et le paiement des officiers provinciaux;

5. L'administration et la vente des terres publiques appartenant à la province, et des bois et forêts qui s'y trouvent;

6. L'établissement, l'entretien et l'administration des prisons publiques et des maisons de réforme dans la province;

7. L'établissement, l'entretien et l'administration des hôpitaux, asiles, institutions et hospices de charité dans la province, autres que les hôpitaux de marine;

8. Les institutions municipales dans la province;

9. Les licences de boutiques, de cabarets, d'auberges, d'encanteurs et autres licences, dans le but de prélever un revenu pour des objets provinciaux, locaux ou municipaux;

10. Les travaux et entreprises d'une nature locale, autres que ceux énumérés dans les catégories suivantes:

26. Marriage and Divorce.

27. The Criminal Law, except the Constitution of the Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.

28. The Establishment, Maintenance, and Management of Penitentiaries.

29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

EXCLUSIVE POWERS OF PROVINCIAL LEGISLATURES.

92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say:—

1. The Amendment from Time to Time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant-Governor.

2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.

3. The borrowing of Money on the sole Credit of the Province,

4. The Establishment and Tenure of Provincial Offices, and the Appointment and Payment of Provincial Officers.

5. The Management and Sale of the Public Lands belonging to the Province, and of the Timber and Wood thereon.

6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.

7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.

8. Municipal Institutions in the Province.

9. Shop, Saloon, Tavern, Auctioneer, and other Licences, in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.

10. Local Works and Undertakings, other than such as are of the following Classes:—

(*a*) Lignes de bateaux à vapeur ou autres bâtiments, chemins de fer, canaux, télégraphes et autres travaux et entreprises reliant la province à une autre ou à d'autres provinces, ou s'étendant au-delà des limites de la province;

(*b*) Lignes de bateaux à vapeur entre la province et tout pays dépendant de l'empire britannique ou tout pays étranger;

(*c*) Les travaux qui, bien qu'entièrement situés dans la province, seront avant ou après leur exécution déclarés par le parlement du Canada être pour l'avantage général du Canada, ou pour l'avantage de deux ou d'un plus grand nombre des provinces;

11. L'incorporation des compagnies pour des objets provinciaux;

12. La célébration du mariage dans la province;

13. La propriété et les droits civils dans la province;

14. L'administration de la justice dans la province, y compris la création, le maintien et l'organisation des tribunaux de justice pour la province, ayant juridiction civile et criminelle, y compris la procédure en matières civiles dans ces tribunaux:

15. L'infliction de punitions par voie d'amende, pénalité ou emprisonnement, dans le but de faire exécuter toute loi de la province décrétée au sujet des matières tombant dans aucune des catégories de sujets énumérés dans cette section;

16. Généralement toutes les matières d'une nature purement locale ou privée dans la province.

Education.

93. Dans chaque province, la législature pourra exclusivement décréter des lois relatives à l'éducation, sujettes et conformes aux dispositions suivantes:—

1. Rien dans ces lois ne devra préjudicier à aucun droit ou privilége conféré, lors de l'union, par la loi, à aucune classe particulière de personnes dans la province, relativement aux écoles séparées (*denominational*);

2. Tous les pouvoirs, priviléges et devoirs conférés et imposés par la loi dans le Haut-Canada, lors de l'union, aux écoles séparées et aux syndics d'écoles des sujets catholiques romains de Sa Majesté, seront et sont par le présent étendus aux écoles dissidentes des sujets protestants et catholiques romains de la Reine dans la province de Québec;

3. Dans toute province où un système d'écoles séparées ou dissidentes existera par la loi, lors de l'union, ou sera subséquemment établi par la législature de la province,—il pourra être interjeté appel au gouverneur-général en conseil de tout acte ou décision d'aucune autorité provinciale affectant aucuns des droits ou priviléges de la minorité protestante ou catholique romaine des sujets de Sa Majesté relativement à l'éducation;

a. Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province:

b. Lines of Steamships between the Province and any British or Foreign Country:

c. Such Works as, although wholly situate within the Province, are, before or after their Execution, declared by the Parliament of Canada to be for the general advantage of Canada, or for the advantage of Two or more of the Provinces.

11. The Incorporation of Companies with Provincial Objects.

12. The Solemnization of Marriage in the Province.

13. Property and Civil Rights in the Province.

14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.

15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of subjects enumerated in this Section.

16. Generally all matters of a merely local or private nature in the Province.

Education.

93. In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following Provisions:—

(1.) Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union;

(2.) All the Powers, Privileges and Duties at the Union by Law conferred and imposed in Upper Canada on the Separate Schools and School Trustees of the Queen's Roman Catholic Subjects, shall be and the same are hereby extended to the Dissentient Schools of the Queen's Protestant and Roman Catholic Subjects in Quebec;

(3.) Where in any Province a System of Separate or Dissentient Schools exists by Law at the Union, or is thereafter established by the Legislature of the Province, an Appeal shall lie to the Governor General in Council from any Act or Decision of any Provincial Authority affecting any right or Privilege of the Protestant or Roman Catholic Minority of the Queen's Subjects in relation to Education;

4. Dans le cas où il ne serait pas décrété telle loi provinciale que, de temps à autre, le gouverneur-général en conseil jugera nécessaire pour donner suite et exécution aux dispositions de la présente section,—ou dans le cas où quelque décision du gouverneur-général en conseil, sur appel interjeté en vertu de cette section, ne serait pas mise à exécution par l'autorité provinciale compétente,—alors et en tout tel cas, et en tant seulement que les circonstances de chaque cas l'exigeront, le parlement du Canada pourra décréter des lois propres à y remédier pour donner suite et exécution aux dispositions de la présente section, ainsi qu'à toute décision rendue par le gouverneur-général en conseil sous l'autorité de cette même section.

Uniformité des lois dans Ontario, la Nouvelle-Ecosse et le Nouveau-Brunswick.

94. Nonobstant toute disposition contraire énoncée dans le présent acte, le parlement du Canada pourra adopter des mesures à l'effet de pourvoir à l'uniformité de toutes les lois ou de parties des lois relatives à la propriété et aux droits civils dans Ontario, la Nouvelle-Ecosse et le Nouveau-Brunswick, et de la procédure dans tous les tribunaux ou aucun des tribunaux de ces trois provinces; et depuis et après la passation d'aucun acte à cet effet le pouvoir du parlement du Canada de décréter des lois relatives aux sujets énoncés dans tel acte, sera illimité, nonobstant toute chose au contraire dans le présent acte; mais tout acte du parlement du Canada pourvoyant à cette uniformité n'aura d'effet dans une province qu'après avoir été adopté et décrété par la législature de cette province.

Agriculture et Immigration.

95. Dans chaque province, la législature pourra faire des lois relatives à l'agriculture et à l'immigration dans cette province; et il est par le présent déclaré que le parlement du Canada pourra de temps à autre faire des lois relatives à l'agriculture et à l'immigration dans toutes les provinces ou aucune d'elles en particulier; et toute loi de la législature d'une province relative à l'agriculture ou à l'immigration n'y aura d'effet qu'aussi longtemps et que tant qu'elle ne sera pas incompatible avec aucun des actes du parlement du Canada.

VII—JUDICATURE.

Nomination des juges.

96. Le gouverneur-général nommera les juges des cours su-

(4.) In case any such Provincial Law as from Time to Time seems to the Governor General in Council requisite for the due Execution of the Provisions of this Section is not made, or in case any decision of the Governor General in Council on any Appeal under this Section is not duly executed by the proper Provincial Authority in that behalf, then and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial Laws for the due Execution of the Provisions of this Section, and of any Decision of the Governor General in Council under this Section.

Uniformity of Laws in Ontario, Nova Scotia and New Brunswick.

94. Notwithstanding anything in this Act, the Parliament of Canada may make Provision for the Uniformity of all or any of the Laws relative to Property and Civil Rights in Ontario, Nova Scotia and New Brunswick, and of the Procedure of all or any of the Courts in those Three Provinces, and from and after the passing of any Acts in that behalf, the Power of the Parliament of Canada to make Laws in relation to any matter comprised in any such Act shall, notwithstanding anything in this Act, be unrestricted; but any Act of the Parliament of Canada making Provision for such Uniformity shall not have effect in any Province unless and until it is adopted and enacted as Law by the Legislature thereof.

Agriculture and Immigration.

95. In each Province the Legislature may make Laws in relation to Agriculture in the Province, and to Immigration into the Province; and it is hereby declared that the Parliament of Canada may from Time to Time make Laws in relation to Agriculture in all or any of the Provinces, and to Immigration into all or any of the Provinces; and any Law of the Legislature of a Province, relative to Agriculture or to Immigration, shall have effect in and for the Province, as long and as far only as it is not repugnant to any Act of the Parliament of Canada.

VII.—JUDICATURE.

Appointment of Judges.

96. The Governor General shall appoint the Judges of the Su-

périeures, de district et de comté, dans chaque province, sauf ceux des cours de vérification dans la Nouvelle-Ecosse et le Nouveau-Brunswick.

Choix des juges dans Ontario, etc.

97. Jusqu'à ce que les lois relatives à la propriété et aux droits civils dans Ontario, la Nouvelle-Ecosse et le Nouveau-Brunswick, et à la procédure dans les cours de ces provinces, soient rendues uniformes, les juges des cours de ces provinces qui seront nommés par le gouverneur-général devront être choisis parmi les membres des barreaux respectifs de ces provinces.

Choix des juges dans Québec.

98. Les juges des cours de Québec seront choisis parmi les membres du barreau de cette province.

Conditions auxquelles les juges des cours supérieures exerceront leurs fonctions.

99. Les juges des cours supérieures resteront en charge durant bonne conduite, mais ils pourront être démis de leurs fonctions par le gouverneur-général sur une adresse du Sénat et de la Chambre des Communes.

Salaires, etc., des juges.

100. Les salaires, allocations et pensions des juges des cours supérieures, de district et de comté (sauf les cours de vérification dans la Nouvelle-Ecosse et le Nouveau-Brunswick) et des cours de l'Amirauté, lorsque les juges de ces dernières sont alors salariés, seront fixés et payés par le parlement du Canada.

Cour générale d'appel, etc.

101. Le parlement du Canada pourra, nonobstant toute disposition contraire énoncée dans le présent acte, lorsque l'occasion le requerra, adopter des mesures à l'effet de créer, maintenir et organiser une cour générale d'appel pour le Canada, et établir des tribunaux additionnels pour la meilleure administration des lois du Canada.

VIII—Revenus, Dettes, Actif, Taxes.

Création d'un fonds consolidé de revenu.

102. Tous les droits et revenus que les législatures respecti-

perior, District and County Courts in each Province, except those of the Courts of Probate in Nova Scotia and New Brunswick.

Selection of Judges in Ontario, &c.

97. Until the Laws relative to Property and Civil Rights in Ontario, Nova Scotia and New Brunswick, and the Procedure of the Courts in those Provinces are made uniform, the Judges of the Courts of those Provinces appointed by the Governor General shall be selected from the respective Bars of those Provinces.

Selection of Judges in Quebec.

98. The Judges of the Courts of Quebec, shall be selected from the Bar of that Province.

Tenure of office of Judges of Superior Courts.

99. The Judges of the Superior Courts shall hold office during good behaviour, but shall be removable by the Governor General on Address of the Senate and House of Commons.

Salaries &c., of Judges.

100. The Salaries, Allowances and Pensions of the Judges of the Superior, District and County Courts (except the Courts of Probate in Nova Scotia and New Brunswick), and of the Admiralty Courts in cases where the Judges thereof are for the time being paid by Salary, shall be fixed and provided by the Parliament of Canada.

General Court of Appeal, &c.

101. The Parliament of Canada may, notwithstanding anything in this Act, from Time to Time, provide for the Constitution, Maintenance and Organization of a General Court of Appeal for Canada, and for the Establishment of any additional Courts for the better Administration of the Laws of Canada.

VIII.—REVENUES; DEBTS; ASSETS; TAXATION.

Creation of Consolidated Revenue Fund.

102. All Duties and Revenues over which the respective Le-

ves du Canada, de la Nouvelle-Ecosse et du Nouveau-Brunswick, avant et à l'époque de l'union, avaient le pouvoir d'approprier, — sauf ceux réservés par le présent acte aux législatures respectives des provinces, ou qui seront perçus par elles conformément aux pouvoirs spéciaux qui leur sont conférés par le présent acte, — formeront un fonds consolidé de revenu pour être approprié au service public du Canada de la manière et soumis aux charges prévues par le présent acte.

Frais de perception, etc.

103. Le fonds consolidé du revenu du Canada sera permanemment grevé des frais, charges et dépenses encourus pour le percevoir, administrer et recouvrer, lesquels constitueront la première charge sur ce fonds et pourront être soumis à telles révision et audition qui seront ordonnées par le gouverneur-général en conseil jusqu'à ce que le parlement y pourvoie autrement.

Intérêt des dettes publiques provinciales.

104. L'intérêt annuel des dettes publiques des différentes provinces du Canada, de la Nouvelle-Ecosse et du Nouveau-Brunswick, lors de l'union, constituera la seconde charge sur le fonds consolidé de revenu du Canada.

Traitement du gouverneur-général.

105. Jusqu'à modification par le parlement du Canada, le salaire du gouverneur-général sera de dix mille louis, cours sterling du Royaume-Uni de la Grande-Bretagne et d'Irlande; cette somme sera acquittée sur le fonds consolidé de revenu du Canada et constituera la troisième charge sur ce fonds.

Emploi du fonds consolidé.

106. Sujet aux différents paiements dont est grevé par le présent acte le fonds consolidé de revenu du Canada, ce fonds sera approprié par le parlement du Canada au service public.

Transfert des valeurs, etc.

107. Tous les fonds, argent en caisse, balances entre les mains des banquiers et valeurs appartenant à chaque province à l'épo-

gislatures of Canada, Nova Scotia and New Brunswick before and at the Union had and have power of Appropriation, except such Portions thereof as are by this Act reserved to the respective Legislatures of the Provinces, or are raised by them in accordance with the special Powers conferred on them by this Act, shall form One Consolidated Revenue Fund, to be appropriated for the Public Service of Canada in the Manner and subject to the Charges in this Act provided.

Expenses of collection, &c.

103. The Consolidated Revenue Fund of Canada shall be permanently charged with the Costs, Charges and Expenses incident to the Collection, Management, and Receipt thereof, and the same shall form the First Charge thereon, subject to be reviewed and audited in such Manner as shall be ordered by the Governor General in Council until the Parliament otherwise provides.

Interest on Provincial public debts.

104. The annual Interest of the Public Debts of the several Provinces of Canada, Nova Scotia, and New Brunswick at the Union shall form the Second Charge on the Consolidated Revenue Fund of Canada.

Salary of Governor General.

105. Unless altered by the Parliament of Canada, the Salary of the Governor General shall be Ten Thousand Pounds Sterling Money of the United Kingdom of Great Britain and Ireland, payable out of the Consolidated Revenue Fund of Canada, and the same shall form the Third Charge thereon.

Appropriation from time to time.

106. Subject to the several Payments by this Act charged on the Consolidated Revenue Fund of Canada, the same shall be appropriated by the Parliament of Canada for the above Public Service.

Transfer of Stocks, &c.

107. All stocks, Cash, Bankers' Balance, and Securities for Money belonging to each Province at the Time of the Union, except

que de l'union, sauf les exceptions énoncées au présent acte, deviendront la propriété du Canada et seront déduits du montant des dettes respectives des provinces lors de l'union.

Transfert des propriétés énumérées dans la cédule.

108. Les travaux et propriétés publics de chaque province, énumérés dans la troisième cédule annexée au présent acte, appartiendront au Canada.

Propriété des terres, mines, etc.

109. Toutes les terres, mines, minéraux et réserves royales appartenant aux différentes provinces du Canada, de la Nouvelle-Ecosse et du Nouveau-Brunswick lors de l'union, et toutes les sommes d'argent alors dues ou payables pour ces terres, mines, minéraux et réserves royales, appartiendront aux différentes provinces d'Ontario, Québec, la Nouvelle-Ecosse et le Nouveau-Brunswick, dans lesquelles ils sont sis et situés ou exigibles, restant toujours soumis aux charges dont ils sont grevés, ainsi qu'à tous intérêts autres que ceux que peut y avoir la province.

Actif et dettes provinciales.

110. La totalité de l'actif inhérent aux portions de la dette publique assumée par chaque province, appartiendra à cette province.

Responsabilité des dettes provinciales.

111. Le Canada sera responsable des dettes et obligations de chaque province existantes lors de l'union.

Responsabilité quant aux dettes d'Ontario et Québec.

112. Les provinces d'Ontario et Québec seront conjointement responsables envers le Canada de l'excédant (s'il en est) de la dette de la province du Canada, si, lors de l'union, elle dépasse soixante-et-deux millions cinq cent mille piastres, et tenues au paiement de l'intérêt de cet excédant au taux de cinq pour cent par année.*

*Voyez les Statuts du Canada, 36 V., ch. 30 et 47 V., ch. 4.

as in this Act mentioned, shall be the Property of Canada, and shall be taken in reduction of the amount of the respective Debts of the Province at the Union.

Transfer of property in Schedule.

108. The Public Works and Property of each Province enumerated in the Third Schedule to this Act shall be the Property of Canada.

Property in lands, &c.,

109. All Lands, Mines, Minerals and Royalties belonging to the Several Provinces of Canada, Nova Scotia and New Brunswick at the Union, and all sums then due or payable for such Lands, Mines, Minerals or Royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia and New Brunswick in which the same are situate or arise, subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same.

Assets connected with Provincial debts.

110. All Assets connected with such Portions of the Public Debt of each Province as are assumed by that Province shall belong to that Province.

Canada to be liable for Provincial debts.

111. Canada shall be liable for the Debts and Liabilities of each Province existing at the Union.

Debts of Ontario and Quebec.

112. Ontario and Quebec conjointly shall be liable to Canada for the amount (if any) by which the Debt of the Province of Canada exceeds at the Union Sixty-two Million five hundred thousand Dollars, and shall be charged with Interest at the Rate of Five per centum per annum thereon.*

*See the Statutes of Canada, 36 Vic. ch. 30, and 47 Vic., ch. 4.

Actif d'Ontario et Québec.

113. L'actif énuméré dans la quatrième cédule annexée au présent acte, appartenant, lors de l'union, à la province du Canada, sera la propriété d'Ontario et Québec conjointement.

Dette de la Nouvelle-Ecosse.

114. La Nouvelle-Ecosse sera responsable envers le Canada de l'excédant (s'il en est) de sa dette publique, si, lors de l'union, elle dépasse huit millions de piastres, et tenue au paiement de l'intérêt de cet excédant au taux de cinq pour cent par année.

Dette du Nouveau-Brunswick.

115. Le Nouveau-Brunswick sera responsable envers le Canada de l'excédant (s'il en est) de sa dette publique, si, lors de l'union, elle dépasse sept millions de piastres, et tenu au paiement de l'intérêt de cet excédant au taux de cinq pour cent par année.

Paiement d'intérêt à la Nouvelle-Ecosse et au Nouveau-Brunswick.

116. Dans le cas où, lors de l'union, les dettes publiques de la Nouvelle-Ecosse et du Nouveau-Brunswick seraient respectivement moindres que huit millions et sept millions de piastres, ces provinces auront droit de recevoir, chacune du gouvernement du Canada, en paiement semi-annuels et d'avance, l'intérêt au taux de cinq pour cent par année sur la différence qui existera entre le chiffre réel de leurs dettes respectives et le montant ainsi arrêté.

Propriétés publiques provinciales.

117. Les diverses provinces conserveront respectivement toutes leurs propriétés publiques dont il n'est pas autrement disposé dans le présent acte,—sujettes au droit du Canada de prendre les terres ou les propriétés publiques dont il aura besoin pour les fortifications ou la défense du pays.

Subventions aux provinces.

118. Les sommes suivantes seront annuellement payées par le Canada aux diverses provinces pour le maintien de leurs gouvernements et législatures:

Assets of Ontario and Quebec.

113. The Assets enumerated in the Fourth Schedule to this Act, belonging at the Union to the Province of Canada, shall be the Property of Ontario and Quebec conjointly.

Debt of Nova Scotia.

114. Nova Scotia shall be liable to Canada for the amount (if any) by which its Public Debt exceeds at the Union Eight million Dollars, and shall be charged with the Interest at the rate of Five per Centum per Annum thereon.

Debt of New Brunswick.

115. New Brunswick shall be liable to Canada for the amount (if any) by which its Public Debt exceeds at the Union Seven million Dollars, and shall be charged with the Interest at the rate of Five per Centum per Annum thereon.

Payment of interest to Nova Scotia and New Brunswick.

116. In case the Public Debts of Nova Scotia and New Brunswick do not at the Union amount to Eight million and Seven million Dollars respectively, they shall respectively receive, by half-yearly Payments in advance from the Government of Canada, Interest at five per Centum per Annum on the Difference between the actual Amounts of their respective Debts and such stipulated Amounts.

Provincial public property.

117. The several Provinces shall retain all their respective Public Property not otherwise disposed of in this Act, subject to the Right of Canada to assume any Lands or Public Property required for Fortifications or for the Defence of the Country.

Grants to Provinces.

118. The following sums shall be paid yearly by Canada to the several Provinces for the support of their Governments and Legislatures:

Ontario	$80,000
Québec	70,000
Nouvelle-Ecosse	60,000
Nouveau-Brunswick	50,000
Total	$260,000

Et chaque province aura droit à une subvention annuelle de quatre-vingts centins par chaque tête de la population, constatée par le recensement de mil huit cent soixante-et-un, et—en ce qui concerne la Nouvelle-Ecosse et le Nouveau-Brunswick—par chaque recensement décennal subséquent, jusqu'à ce que la population de chacune de ces deux provinces s'élève à quatre cent mille âmes, chiffre auquel la subvention demeurera dès lors fixée. Ces subventions libèreront à toujours le Canada de toutes autres réclamations, et elles seront payées semi-annuellement et d'avance à chaque province; mais le gouvernement du Canada déduira de ces subventions, à l'égard de chaque province, toutes sommes d'argent exigibles comme intérêt sur la dette publique de cette province si elle excède les divers montants stipulés dans le présent acte.*

Subvention additionnelle au Nouveau-Brunswick.

119. Le Nouveau-Brunswick recevra du Canada, en paiements semi-annuels et d'avance, durant une période de dix ans à compter de l'union, une subvention supplémentaire de soixante-et-trois mille piastres par année; mais tant que la dette publique de cette province restera au-dessous de sept millions de piastres, il sera déduit sur cette somme de soixante-et-trois mille piastres, un montant égal à l'intérêt à cinq pour cent par année sur telle différence.

Forme des paiements.

120. Tous les paiements prescrits par le présent acte, ou destinés à éteindre les obligations contractées en vertu d'aucun acte des provinces du Canada, de la Nouvelle-Ecosse et du Nouveau-Brunswick respectivement, et assumés par le Canada, seront faits, jusqu'à ce que le parlement du Canada l'ordonne autrement, en la forme et manière que le gouverneur-général en conseil pourra prescrire de temps à autre.

Manufactures canadiennes, etc.

121. Tous articles du crû, de la provenance ou manufacture

*Voyez le Statut du Canada, 47 V., chapitres 4 et 8.

Ontario	$ 80,000
Quebec	70,000
Nova Scotia	60,000
New Brunswick	50,000
	$260,000

and an annual Grant in aid of each Province shall be made, equal to Eighty Cents per Head of the Population as ascertained by the Census of One Thousand eight hundred and Sixty-one, and in case of Nova Scotia and New Brunswick, by each subsequent Decennial Census until the Population of each of those two Provinces amounts to Four hundred thousand Souls, at which Rate such Grant shall thereafter remain. Such Grants shall be in full Settlement of all future Demands on Canada, and shall be paid half-yearly in advance to each Province; but the Government of Canada shall deduct from such Grants, as against any Province, all Sums chargeable as Interest on the Public Debt of that Province in excess of the several amounts stipulated in this Act.*

Further grant to New Brunswick.

119. New Brunswick shall receive, by half-yearly Payments in advance from Canada, for the Period of Ten Years from the Union, an additional Allowance of Sixty-three thousand Dollars per Annum; but as long as the Public Debt of that Province remains under Seven million dollars, a deduction equal to the Interest at Five per Centum per annum on such Deficiency shall be made from that Allowance of Sixty-three thousand Dollars.

Form of payments.

120. All Payments to be made under this Act, or in discharge of Liabilities created under any Act of the Provinces of Canada, Nova Scotia and New Brunswick respectively, and assumed by Canada, shall, until the Parliament of Canada otherwise directs, be made in such Form and Manner as may from Time to Time be ordered by the Governor General in Council.

Canadian manufactures, &c.

121. All Articles of the Growth, Produce or Manufacture of

*See the Statutes of Canada, 47 Vic., chapters 4 and 8.

d'aucune des provinces seront, à dater de l'union, admis en franchise dans chacune des autres provinces.

Continuation des lois de douane et d'accise.

122. Les lois de douane et d'accise de chaque province demeureront en force, sujettes aux dispositions du présent acte, jusqu'à ce qu'elles soient modifiées par le parlement du Canada.

Exportation et importation entre deux provinces.

123. Dans le cas où des droits de douane seraient, à l'époque de l'union, imposables sur des articles, denrées ou marchandises, dans deux provinces, ces articles, denrées ou marchandises pourront, après l'union, être importés de l'une de ces deux provinces dans l'autre, sur preuve du paiement des droits de douane dont ils sont frappés dans la province d'où ils sont exportés, et sur paiement de tout surplus de droits de douane (s'il en est) dont ils peuvent être frappés dans la province où ils sont importés.

Impôt sur les bois au Nouveau-Brunswick.

124. Rien dans le présent acte ne préjudiciera au privilége garanti au Nouveau-Brunswick de prélever sur les bois de construction les droits établis par le chapitre quinze du titre trois des statuts revisés du Nouveau-Brunswick, ou par tout acte l'amendant avant ou après l'union, mais n'augmentant pas le chiffre de ces droits; et les bois de construction des provinces autres que le Nouveau-Brunswick ne seront pas passibles de ces droits.

Terres publiques, etc., exemptées des taxes.

125. Nulle terre ou propriété appartenant au Canada ou à aucune province en particulier ne sera sujette à la taxation.

Fonds consolidé du revenu provincial.

126. Les droits et revenus que les législatures respectives du Canada, de la Nouvelle-Ecosse et du Nouveau-Brunswick avaient, avant l'union, le pouvoir d'approprier, et qui sont, par le présent acte, réservés aux gouvernements ou législatures des provinces respectives, et tous les droits et revenus perçus par elles conformément aux pouvoirs spéciaux qui leur sont conférés par le présent acte,

any one of the Provinces shall, from and after the Union, be admitted free into each of the other Provinces.

Continuance of customs and excise laws.

122. The Customs and Excise Laws of each Province, shall, subject to the Provisions of this Act, continue in force until altered by the Parliament of Canada.

Exportation and importation as between two Provinces.

123. Where Customs Duties are at the Union, leviable on any Goods, Wares or Merchandises in any Two Provinces, those Goods, Wares, and Merchandises may, from and after the Union, be imported from one of those Provinces into the other of them, on Proof of Payment of the Customs Duty leviable thereon in the Province of Exportation and on payment of such further amount (if any) of Customs Duty as is leviable thereon in the Province of Importation.

Lumber dues in New Brunswick.

124. Nothing in this Act shall affect the Right of New Brunswick to levy the Lumber Dues provided in chapter Fifteen of Title Three of the Revised Statutes of New Brunswick, or in any Act amending that Act before or after the Union, and not increasing the Amount of such Dues; but the Lumber of any of the Provinces other than New Brunswick shall not be subject to such Dues.

Exemption of public lands, &c.

125. No lands or Property belonging to Canada or any Province shall be liable for Taxation.

Provincial consolidated revenue fund.

126. Such Portions of the Duties and Revenues over which the respective Legislatures of Canada, Nova Scotia and New Brunswick had before the Union, Power of Appropriation, as are by this Act reserved to the respective Governments or Legislatures of the Provinces, and all Duties and Revenues raised by them in accordance with the Special Powers conferred upon them by this

formeront dans chaque province un fonds consolidé de revenu qui sera approprié au service public de la province.

IX.—DISPOSITIONS DIVERSES.

Conseillers législatifs des provinces devenant sénateurs.

127. Quiconque étant, lors de la passation du présent acte, membre du conseil législatif du Canada, de la Nouvelle-Ecosse ou du Nouveau-Brunswick, et auquel un siége dans le Sénat sera offert, ne l'acceptera pas dans les trente jours, par écrit revêtu de son seing et adressé au gouverneur-général de la province du Canada ou au lieutenant-gouverneur de la Nouvelle-Ecosse ou du Nouveau-Brunswick (selon le cas), sera censé l'avoir refusé; et quiconque étant, lors de la passation du présent acte, membre du conseil législatif de la Nouvelle-Ecosse ou du Nouveau-Brunswick, et acceptera un siége dans le Sénat, perdra par le fait même son siége à ce conseil législatif.

Serment d'allégeance, etc.

128. Les membres du Sénat ou de la Chambre des Communes du Canada devront, avant d'entrer dans l'exercice de leurs fonctions, prêter et souscrire, devant le gouverneur-général ou quelque personne à ce par lui autorisée,—et pareillement, les membres du conseil législatif ou de l'assemblée législative d'une province devront, avant d'entrer dans l'exercice de leurs fonctions, prêter et souscrire, devant le lieutenant-gouverneur de la province ou quelque personne à ce par lui autorisée,—le serment d'allégeance énoncé dans la cinquième cédule annexée au présent acte; et les membres du sénat du Canada et du conseil législatif de Québec devront aussi, avant d'entrer dans l'exercice de leurs fonctions, prêter et souscrire, devant le gouverneur-général ou quelque personne à ce par lui autorisée, la déclaration des qualifications énoncées dans la même cédule.

Les lois, tribunaux et fonctionnaires actuels continueront d'exister, etc.

129. Sauf toute disposition contraire prescrite par le présent acte,—toutes les lois en force en Canada, dans la Nouvelle-Ecosse ou le Nouveau-Brunswick, lors de l'union—tous les tribunaux de juridiction civile et criminelle,—toutes les commissions, pouvoirs et autorités ayant force légale,—et tous les officiers judiciaires, administratifs et ministériels, en existence dans ces provinces à l'époque de l'union, continueront d'exister dans les provinces d'Ontario, de Québec, de la Nouvelle-Ecosse et du Nouveau-Brunswick

Act, shall in each Province form One Consolidated Revenue Fund to be appropriated for the Public Service of the Province.

IX.—MISCELLANEOUS PROVISIONS.

As to Legislative Councillors of Provinces becoming Senators.

127. If any Person, being, at the passing of this Act a Member of the Legislative Council of Canada, Nova Scotia, or New Brunswick, to whom a Place in the Senate is offered does not, within Thirty Days thereafter, by Writing under his Hand, addressed to the Governor-General of the Province of Canada or to the Lieutenant-Governor of Nova Scotia or New Brunswick (as the case may be), accept the same, he shall be deemed to have declined the same; and any Person who, being at the passing of this Act a Member of the Legislative Council of Nova Scotia or New Brunswick, accepts a Place in the Senate, shall thereby vacate his seat in such Legislative Council.

Oath of allegiance, &c.

128. Every Member of the Senate or House of Commons of Canada shall, before taking his Seat therein, take and subscribe before the Governor-General or some Person authorized by him, and every Member of a Legislative Council or Legislative Assembly or any Province shall, before taking his Seat therein, take and subscribe before the Lieutenant-Governor of the Province, or some Person authorized by him, the Oath of Allegiance contained in the Fifth Schedule to this Act; and every Member of the Senate of Canada and every Member of the Legislative Council of Quebec shall also, before taking his Seat therein, take and subscribe before the Governor-General, or some Person authorized by him, the Declaration of Qualification contained in the same Schedule.

Continuance of existing laws, courts officers, &c.

129. Except as otherwise provided by this Act, all Laws in force in Canada, Nova Scotia, or New Brunswick at the Union, and all Courts of Civil and Criminal Jurisdiction, and all Legal Commissions, Powers, and Authorities, and all Officers, Judicial, Administrative, and Ministerial, existing therein at the Union, shall continue, in Ontario, Quebec, Nova Scotia, and New Brunswick respectively, as if the Union had not been made; subject nevertheless (except with respect to such as are enacted by or

respectivement, comme si l'union n'avait pas eu lieu; mais ils pourront néanmoins (sauf les cas prévus par des actes du parlement de la Grande-Bretagne ou du parlement du Royaume-Uni de la Grande-Bretagne et d'Irlande) être révoqués, abolis ou modifiés par le parlement du Canada, ou par la législature de la province respective, conformément à l'autorité du parlement ou de cette législature en vertu du présent acte.

Fonctionnaires transférés au service du Canada.

130. Jusqu'à ce que le parlement du Canada en ordonne autrement,—tous les officiers des diverses provinces ayant à remplir des devoirs relatifs à des matières autres que celles tombant dans les catégories de sujets assignés exclusivement par le présent acte aux législatures des provinces, seront officiers du Canada et continueront à remplir les devoirs de leurs charges respectives sous les mêmes obligations et pénalités que si l'union n'avait pas eu lieu.

Nomination des nouveaux officiers.

131. Jusqu'à ce que le parlement du Canada en ordonne autrement,—le gouverneur-général en conseil pourra de temps à autre nommer les officiers qu'il croira nécessaires ou utiles à l'exécution efficace du présent acte.

Obligations naissant des traités.

132. Le parlement et le gouvernement du Canada auront tous les pouvoirs nécessaires pour remplir envers les pays étrangers, comme portion de l'empire britannique, les obligations du Canada, ou d'aucune de ses provinces, naissant de traités conclus entre l'empire et ces pays étrangers.

Usage facultatif et obligatoire des langues française et anglaise.

133. Dans les Chambres du parlement du Canada et les Chambres de la législature de Québec, l'usage de la langue française ou de la langue anglaise, dans les débats, sera facultatif; mais dans la rédaction des archives, procès-verbaux et journaux respectifs de ces Chambres, l'usage de ces deux langues sera obligatoire; et dans toute plaidoirie ou pièce de procédure par devant les tribunaux ou émanant des tribunaux du Canada qui seront établis sous l'autorité du présent acte, et par devant tous les tribunaux ou émanant des tribunaux de Québec, il pourra être fait également usage, à faculté, de l'une ou de l'autre de ces langues.

exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland), to be repealed, abolished, or altered by the Parliament of Canada, or by the Legislature of the respective Province, according to the Authority of the Parliament or of that Legislature under this Act.

Transfer of officers to Canada.

130. Until the Parliament of Canada otherwise provides, all Officers of the several Provinces having Duties to discharge in relation to Matters other than those coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces, shall be Officers of Canada, and shall continue to discharge the Duties of their respective Offices under the same Liabilities, Responsibilities and Penalties, as if the Union had not been made.

Appointment of new officers.

131. Until the Parliament of Canada otherwise provides, the Governor-General in Council may from Time to Time appoint such Officers as the Governor-General in Council deems necessary or proper for the effectual Execution of this Act.

Treaty obligations.

132. The Parliament and Government of Canada shall have all Powers necessary or proper for performing the Obligations of Canada or of any Province thereof, as Part of the British Empire, towards Foreign Countries, arising under Treaties between the Empire and such Foreign Countries.

Use of English and French languages.

133. Either the English or the French Language may be used by any Person in the Debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec; and both those languages shall be used in the respective Records and Journals of those Houses; and either of those Languages may be used by any Person or in any Pleading or Process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts of Quebec.

Les actes du parlement du Canada et de la législature de Québec devront être imprimés et publiés dans ces deux langues.

Ontario et Québec.

Nomination des fonctionnaires exécutifs pour Ontario et Québec.

134. Jusqu'à ce que la législature d'Ontario ou de Québec en ordonne autrement,—les lieutenants-gouverneurs d'Ontario et de Québec pourront, chacun, nommer sous le grand sceau de la province, les fonctionnaires suivants, qui resteront en charge durant bon plaisir, savoir: le procureur-général, le secrétaire et régistraire de la province, le trésorier de la province, le commissaire des terres de la Couronne et le commissaire de l'agriculture et des travaux publics, et—en ce qui concerne Québec,—le solliciteur général; ils pourront aussi, par ordonnance du lieutenant-gouverneur en conseil, prescrire de temps à autre les attributions de ces fonctionnaires et des divers départements placés sous leurs contrôle ou dont ils relèvent, et des officiers et employés y attachés; et ils pourront également nommer d'autres fonctionnaires qui resteront en charge durant bon plaisir, et prescrire de temps à autre, leurs attributions et celles des divers départements placés sous leur contrôle ou dont ils relèvent, et des officiers et employés y attachés.*

Pouvoirs, devoirs, etc., des fonctionnaires exécutifs.

135. Jusqu'à ce que la législature d'Ontario ou de Québec en ordonne autrement,—tous les droits, pouvoirs, devoirs, fonctions, obligations ou attributions conférés ou imposés aux procureur-général, solliciteur-général, secrétaire ou régistraire de la province du Canada, ministre des finances, commissaire des terres de la Couronne, commissaire des travaux publics et ministre de l'agriculture, et receveur général, lors de la passation du présent acte, par toute loi, statut ou ordonnance du Haut-Canada, du Bas-Canada ou du Canada,—n'étant pas d'ailleurs incompatibles avec le présent acte—seront conférés ou imposés à tout fonctionnaire qui sera nommé par le lieutenant-gouverneur pour l'exécution de ces fonctions ou d'aucune d'elles; le commissaire de l'agriculture et des travaux publics remplira les devoirs et les fonctions de ministre de l'agriculture prescrits, lors de la passation du présent acte, par la loi de la province du Canada, ainsi que ceux de commissaire des travaux publics.

*Voyez le Statut de la Province, 45 V., ch. 2:

The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those Languages.

Ontario and Quebec.

Appointment of executive officers for Ontario and Quebec.

134. Until the Legislature of Ontario or of Quebec otherwise provides, the Lieutenant-Governors of Ontario and Quebec may each appoint, under the Great Seal of the Province, the following officers, to hold office during pleasure, that is to say,—the Attorney-General, the Secretary and Registrar of the Province, the Treasurer of the Province, the Commissioner of Crown Lands and the Commissioner of Agriculture and Public Works, and, in the case of Quebec, the Solicitor-General, and may, by Order of the Lieutenant-Governor in Council from Time to Time prescribe the Duties of those Officers and of the several Departments over which they shall preside or to which they shall belong, and of the Officers and Clerks thereof, and may also appoint other and additional Officers to hold Office during Pleasure, and may from Time to Time prescribe the Duties of those Officers, and of the several Departments over which they shall preside or to which they shall belong, and of the Officers and Clerks thereof.*

Powers, duties, &c., of executive officers.

135. Until the Legislature of Ontario or Quebec otherwise provides, all Rights, Powers, Duties, Functions, Responsibilities or Authorities at the passing of this Act vested in or imposed on the Attorney-General, Solicitor-General, Secretary and Registrar of the Province of Canada, Minister of Finance, Commissioner of Crown Lands, Commissioner of Public Works and Minister of Agriculture and Receiver-General, by any Law, Statute or Ordinance of Upper Canada, Lower Canada or Canada, and not repugnant to this Act, shall be vested in or imposed on any officer to be appointed by the Lieutenant-Governor for the Discharge of the same or any of them; and the Commissioner of Agriculture and Public Works shall perform the Duties and Functions of the Office of Minister of Agriculture at the passing of this Act imposed by the Law of the Province of Canada, as well as those of the Commissioner of Public Works.

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*See the Provincial Statute, 45 Vic., ch. 2.

Grands sceaux.

136. Jusqu'à modification par le lieutenant-gouverneur en conseil, les grands sceaux d'Ontario et de Québec respectivement seront les mêmes ou d'après le même modèle que ceux usités dans les provinces du Haut et du Bas-Canada respectivement avant leur union comme province du Canada.

Interprétation des actes temporaires.

137. Les mots "et de là jusqu'à la fin de la prochaine session de la législature," ou autres mots de la même teneur, employés dans aucun acte temporaire de la province du Canada non-expiré avant l'union, seront censés signifier la prochaine session du parlement du Canada, si l'objet de l'acte tombe dans la catégorie des pouvoirs attribués à ce parlement et définis dans la présente constitution, sinon, aux prochaines sessions des législatures d'Ontario et de Québec respectivement, si l'objet de l'acte tombe dans la catégorie des pouvoirs attribués à ces législatures et définis dans le présent acte.

Citations erronées.

138. Depuis et après l'époque de l'union, l'insertion des mots "Haut-Canada" au lieu "d'Ontario," ou "Bas-Canada" au lieu de "Québec," dans tout acte, bref, procédure, plaidoirie, document, matière ou chose, n'aura pas l'effet de l'invalider.

Proclamations ne devant prendre effet qu'après l'union.

139. Toute proclamation sous le grand sceau de la province du Canada, lancée antérieurement à l'époque de l'union, pour avoir effet à une date postérieure à l'union, qu'elle ait trait à cette province ou au Haut-Canada ou au Bas-Canada, et les diverses matières et choses y énoncées, auront et continueront d'y avoir la même force et le même effet que si l'union n'avait pas eu lieu.

Proclamations lancées après l'union.

140. Toute proclamation dont l'émission sous le grand sceau de la province du Canada est autorisée par quelque acte de la législature de la province du Canada,—qu'elle ait trait à cette province ou au Haut-Canada ou au Bas-Canada,—et qui n'aura pas été lancée avant l'époque de l'union, pourra l'être par le lieutenant-

Great Seals.

136. Until altered by the Lieutenant-Governor in Council, the Great Seals of Ontario and Quebec respectively shall be the same, or of the same Design, as those used in the Provinces of Upper Canada and Lower Canada respectively before their Union as the Province of Canada.

Construction of temporary Acts.

137. The words "and from thence to the end of the then next ensuing Session of the Legislature," or words to the same effect used in any temporary Act of the Province of Canada not expired before the Union, shall be construed to extend and apply to the next Session of the Parliament of Canada, if the subject matter of the Act is within the powers of the same as defined by this Act, or to the next Sessions of the Legislatures of Ontario and Quebec respectively, if the subject matter of the Act is within the powers of the same as defined by this Act.

As to errors in names.

138. From and after the Union, the use of the words "Upper Canada" instead of "Ontario," or "Lower Canada" instead of "Quebec," in any Deed, Writ, Process, Pleading, Document, Matter or Thing, shall not invalidate the same.

As to issue of Proclamations before Union, to commence after Union

139. Any Proclamation under the Great Seal of the Province of Canada, issued before the Union, to take effect at a time which is subsequent to the Union, whether relating to that Province or to Upper Canada, or to Lower Canada, and the several matters and things therein proclaimed, shall be and continue of like force and effect as if the Union had not been made.

As to issue of Proclamations after Union.

140. Any Proclamation which is authorized by any Act of the Legislature of the Province of Canada, to be issued under the Great Seal of the Province of Canada, whether relating to that Province or to Upper Canada, or to Lower Canada, and which is not issued before the Union, may be issued by the Lieutenant

gouverneur d'Ontario ou de Québec (selon le cas), sous le grand sceau de la province; et, à compter de l'émission de cette proclamation, les diverses matières et choses y énoncées auront et continueront d'avoir la même force et le même effet dans Ontario ou Québec que si l'union n'avait pas eu lieu.

Pénitencier.

141. Le pénitencier de la province du Canada, jusqu'à ce que le parlement du Canada en ordonne autrement, sera et continuera d'être le pénitencier d'Ontario et de Québec.

Dettes renvoyées à l'arbitrage.

142. Le partage et la répartition des dettes, crédits, obligations, propriétés et de l'actif du Haut et du Bas-Canada seront renvoyés à la décision de trois arbitres, dont l'un sera choisi par le gouvernement d'Ontario, l'un par le gouvernement de Québec et l'autre par le gouvernement du Canada; le choix des arbitres n'aura lieu qu'après que le parlement du Canada et les législatures d'Ontario et de Québec auront été réunies; l'arbitre choisi par le gouvernement du Canada ne devra être domicilié ni dans Ontario ni dans Québec.

Partage des archives.

143. Le gouverneur-général en conseil pourra de temps à autre ordonner que les archives, livres et documents de la province du Canada qu'il jugera à propos de désigner, soient remis et transférés à Ontario ou à Québec, et ils deviendront dès lors la propriété de cette province; toute copie ou extrait de ces documents, dûment certifiée par l'officier ayant la garde des originaux, sera reçue comme preuve.

Etablissement de townships dans Québec.

144. Le lieutenant-gouverneur de Québec pourra de temps à autre, par proclamation sous le grand sceau de la province devant venir en force au jour y mentionné, établir des townships dans les parties de la province de Québec dans lesquelles il n'en a pas encore été établi, et en fixer les tenants et aboutissants.

Governor of Ontario or of Quebec, as its subject matter requires, under the Great Seal thereof; and from and after the issue of such Proclamation, the same and the several matters and things therein proclaimed, shall be and continue of the like force and effect in Ontario or Quebec as if the Union had not been made.

Penitentiary.

141. The Penitentiary of the Province of Canada shall, until the Parliament of Canada otherwise provides, be and continue the Penitentiary of Ontario and of Quebec.

Arbitration respecting debts, &c.

142. The Division and Adjustment of the Debts, Credits, Liabilities, Properties and Assets of Upper Canada and Lower Canada shall be referred to the arbitrament of the Three Arbitrators, One chosen by the Government of Ontario, One by the Government of Quebec and One by the Government of Canada; and the Selection of the Arbitrators shall not be made until the Parliament of Canada and the Legislatures of Ontario and Quebec have met; and the Arbitrator chosen by the Government of Canada shall not be a resident either in Ontario or Quebec.

Division of records.

143. The Governor General in Council may from Time to Time order that such and so many of the Records, Books, and Documents of the Province of Canada as he thinks fit shall be appropriated and delivered either to Ontario or to Quebec, and the same shall thenceforth be the property of that Province; and any copy thereof or extract therefrom, duly certified by the Officer having charge of the original thereof, shall be admitted as Evidence.

Constitution of townships in Quebec.

144. The Lieutenant Governor of Quebec may from Time to Time, by Proclamation under the Great Seal of the Province, to take effect from a day to be appointed therein, constitute Townships in those Parts of the Province of Quebec in which Townships are not then already constituted, and fix the Metes and Bounds thereof.

X—CHEMIN DE FER INTERCOLONIAL.

Obligation du gouvernement du Canada de construire ce chemin de fer.

145. Considérant que les provinces du Canada, de la Nouvelle-Ecosse et du Nouveau-Brunswick ont, par une commune déclaration, exposé que la construction du chemin de fer Intercolonial était essentielle à la consolidation de l'union de l'Amérique Britannique du Nord et à son acceptation par la Nouvelle-Ecosse et le Nouveau-Brunswick, et qu'elles ont en conséquence arrêté que le gouvernement du Canada devait l'entreprendre sans délai; à ces causes: pour donner suite à cette convention, le gouvernement et le parlement du Canada seront tenus de commencer, dans les six mois qui suivront l'union, les travaux de construction d'un chemin de fer reliant le fleuve Saint Laurent à la cité d'Halifax, dans la Nouvelle-Ecosse, et de les terminer sans interruption et avec toute la diligence possible.

XI—ADMISSION DES AUTRES COLONIES.

146. Il sera loisible à la Reine, de l'avis du très-honorable conseil privé de Sa Majesté, sur la présentation d'adresses de la part des Chambres du parlement du Canada et des Chambres des législatures respectives des colonies ou provinces de Terreneuve, de l'Ile du Prince-Edouard et de la Colombie-Britannique, d'admettre ces colonies ou provinces, ou aucune d'elles, dans l'union et, sur la présentation d'adresses de la part des Chambres du parlement du Canada, d'admettre la Terre de Rupert et le Territoire du Nord-Ouest, ou l'une ou l'autre de ces possessions, dans l'union, aux termes et conditions, dans chaque cas, qui seront exprimés dans les adresses et que la Reine jugera convenable d'approuver, conformément au présent; les dispositions de tous ordres en conseil rendus à cet égard auront le même effet que si elles avaient été décrétées par le parlement du Royaume-Uni de la Grande-Bretagne et d'Irlande.

Représentation de Terreneuve et de l'Ile du Prince-Edouard au Sénat

147. Dans le cas de l'admission de Terreneuve et de l'île du Prince-Edouard, ou de l'une ou de l'autre de ces colonies, chacune aura droit d'être représentée par quatre membres dans le Sénat du Canada; et (nonobstant toute disposition contraire énoncée dans le présent acte) dans le cas de l'admission de Terreneuve, le nom-

X.—INTERCOLONIAL RAILWAY.

Duty of Government and Parliament of Canada to make Railway herein described.

145. Inasmuch as the Provinces of Canada, Nova Scotia and New Brunswick have joined in a Declaration that the Construction of the Intercolonial Railway is essential to the Consolidation of the Union of British North America, and to the Assent thereto of Nova Scotia and New Brunswick, and have consequently agreed that Provision should be made for its immediate construction by the Government of Canada; Therefore, in order to give effect to that Agreement, it shall be the Duty of the Government and Parliament of Canada to provide for the Commencement, within Six Months after the Union, of a railway connecting the River St. Lawrence with the City of Halifax in Nova Scotia, and for the Construction thereof without Intermission, and the Completion thereof with all practicable Speed.

XI.—ADMISSION OF OTHER COLONIES.

Power to admit Newfoundland, &c., into the Union.

146. It shall be lawful for the Queen, by and with the Advice of Her Majesty's Most Honourable Privy Council, on Addresses from the Houses of the Parliament of Canada, and from the Houses of the respective Legislatures of the Colonies or Provinces of Newfoundland, Prince Edward Island, and British Columbia, to admit those Colonies or Provinces, or any of them, into the Union, and on Address from the Houses of Parliament of Canada to admit Rupert's Land and the North-western Territory, or either of them, into the Union, on such Terms and Conditions in each Case as are in the Addresses expressed and as the Queen thinks fit to approve, subject to the Provisions of this Act; and the Provisions of any Order in Council in that Behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland.

As to Representation of Newfoundland and Prince Edward Island in Senate.

147. In case of the Admission of Newfoundland and Prince Edward Island, or either of them, each shall be entitled to a Representation, in the Senate of Canada, of Four Members, and (notwithstanding anything in this Act) in case of the Admission of Newfoundland, the Normal number of Senators shall be Seventy-

bre normal des sénateurs sera de soixante-et-seize et son maximum de quatre-vingt-deux; mais lorsque l'Ile du Prince-Edouard sera admise, elle sera censée comprise dans la troisième des trois divisions en lesquelles le Canada est, relativement à la composition du Sénat, partagé par le présent acte; et, en conséquence, après l'admission de l'Ile du Prince-Edouard, que Terreneuve soit admise ou non, la représentation de la Nouvelle-Ecosse et du Nouveau-Brunswick dans le Sénat, au fur et à mesure que des siéges deviendront vacants, sera réduite de douze à dix membres respectivement; la représentation de chacune de ces provinces ne sera jamais augmentée au delà de dix membres, sauf sous l'autorité des dispositions du présent acte relatives à la nomination de trois ou six sénateurs supplémentaires en conséquence d'un ordre de la Reine.

six and their maximum Number shall be Eighty-two; but Prince Edward Island, when admitted, shall be deemed to be comprised in the third of the Three Divisions into which Canada is, in relation to the Constitution of the Senate, divided by this Act, and accordingly, after the Admission of Prince Edward Island, whether Newfoundland is admitted or not, the Representation of Nova Scotia and New Brunswick in the Senate shall, as Vacancies occur, be reduced from Twelve to Ten Members respectively, and the Representation of each of those Provinces shall not be increased at any Time beyond Ten, except under the Provisions of this Act, for the appointment of Three or Six additional Senators under the Direction of the Queen.

SCHEDULES.

THE FIRST SCHEDULE.

Electoral Districts of Ontario.

A.

EXISTING ELECTORAL DIVISIONS.

COUNTIES.

1. Prescott.
2. Glengarry.
3. Stormont.
4. Dundas.
5. Russell.
6. Carleton.
7. Prince Edward.
8. Halton.
9. Essex.

RIDINGS OF COUNTIES.

10. North Riding of Lanark.
11. South Riding of Lanark.
12. North Riding of Leeds and North Riding of Grenville.
13. South Riding of Leeds.
14. South Riding of Grenville.
15. East Riding of Northumberland.
16. West Riding of Northumberland (excepting therefrom the Township of South Monaghan).
17. East Riding of Durham.
18. West Riding of Durham.
19. North Riding of Ontario.
20. South Riding of Ontario.
21. East Riding of York.
22. West Riding of York.
23. North Riding of York.
24. North Riding of Wentworth.

25. South Riding of Wentworth.
26. East Riding of Elgin.
27. West Riding of Elgin.
28. North Riding of Waterloo.
29. South Riding of Waterloo.
30. North Riding of Brant.
31. South Riding of Brant.
32. North Riding of Oxford.
33. South Riding of Oxford.
34. East Riding of Middlesex.

Cities, Parts of Cities and Towns.

35. West Toronto.
36. East Toronto.
37. Hamilton.
38. Ottawa.
39. Kingston.
40. London.
41. Town of Brockville, with the Township of Elizabethtown thereto attached.
42. Town of Niagara, with the Township of Niagara thereto attached.
43. Town of Cornwall, with the Township of Cornwall thereto attached.

B.

New Electoral Divisions.

44. The Provisional Judicial District of Algoma.

The County of Bruce, divided into two Ridings, to be called respectively the North and South Ridings:—

45. The North Riding of Bruce to consist of the Townships of Bury, Lindsay, Eastnor, Albermarle, Amabel, Arran, Bruce, Elderslie, and Langeen, and the Village of Southampton.

46. The South Riding of Bruce to consist of the Townships of Kin-

cardine (including the Village of Kincardine), Greenock, Brant, Huron, Kinloss, Culross, and Carrick.

The County of Huron, divided into Two Ridings, to be called respectively the North and South Ridings:—

47. The North Riding to consist of the Townships of Ashfield, Wawanosh, Turnberry, Howick, Morris, Grey, Colborne, Hullett (including the Village of Clinton), and McKillop.

48. The South Riding to consist of the Town of Goderich, and the Townships of Goderich, Tuckersmith, Stanley, Hay, Usborne, and Stephen.

The County of Middlesex, divided into Three Ridings, to be called respectively the North, West, and East Ridings:—

49. The North Riding to consist of the Townships of McGillivray and Biddulph (taken from the County of Huron), and Williams East, Williams West, Adelaide and Lobo.

50. The West Riding to consist of the Townships of Delaware, Carradoc, Metcalfe, Mosa and Ekfrid, and the Village of Strathroy.

[TheEast Riding to consist of the Townships now embraced therein, and be bounded as it is at present.]

51. The County of Lambton to consist of the Townships of Bosanquet, Warwick, Plympton, Sarnia, Moore, Enniskillen and Brooke, and the Town of Sarnia.

52. The County of Kent to consist of the Townships of Chatham, Dover, East Tilbury, Romney, Raleigh and Harwich, and the Town of Chatham.

53. The County of Bothwell to consist of the Townships of Sombra, Dawn and Euphemia (taken from the County of Lambton), and the Townships of Zone, Camden with the Gore thereof Orford and Howard (taken from the County of Kent.)

The County of Grey, divided into Two Ridings, to be called respectively the South and North Ridings:—

54. The South Riding to consist of the Townships of Bentinck,

Glenelg, Artemesia, Osprey, Normanby, Egremont, Proton, and Melancthon.

55. The North Riding to consist of the Townships of Collingwood, Euphrasia, Holland, St. Vincent, Sydenham, Sullivan, Derby and Keppel, Sarawak and Brooke, and the Town of Owen Sound.

The County of Perth, divided into Two Ridings, to be called respectively the South and North Ridings:—

56. The North Riding to consist of the Townships of Wallace, Elma, Logan, Ellice, Mornington and North Easthope, and the Town of Stratford.

57. The South Riding to consist of the Townships of Blanchard, Downie, South Easthope, Fullarton, Hibbert, and the Villages of Mitchell and Ste. Mary's.

The County of Wellington, divided into Three Ridings, to be called respectively North, South and Centre Ridings:—

58. The North Riding to consist of the Townships of Amaranth, Arthur, Luther, Minto, Maryborough, Peel, and the Village of Mount Forest.

59. The Centre Riding to consist of the Townships of Garafraxa, Erin, Eramosa, Nichol and Pilkington, and the Villages of Fergus and Elora.

60. The South Riding to consist of the Town of Guelph, and the Townships of Guelph and Puslinch.

The County of Norfolk, divided into Two Ridings, to be called respectively the South and North Ridings:—

61. The South Riding to consist of the Townships of Charlotteville, Houghton, Walsingham and Woodhouse, and with the Gore thereof.

62. The North Riding to consist of the Townships of Middleton, Townsend and Windham, and the Town of Simcoe.

63. The County of Haldimand to consist of the Townships of Oneida, Seneca, Cayuga North, Cayuga South, Rainham, Walpole and Dunn.

64. The County of Monck to consist of the Townships of Canborough and Moulton, and Sherbrooke, and the Village of Dunnville (taken from the County of Haldimand), the Townships of Caister and Gainsborough (taken from the County of Lincoln), and the Townships of Pelham and Wainfleet (taken from the county of Welland).

65. The County of Lincoln to consist of the Townships of Clinton, Grantham, Grimsby and Louth, and the Town of St. Catherines.

66. The County of Welland to consist of the Townships of Bertie, Crowland, Humberstone, Stamford, Thorold and Willoughby, and the Villages of Chippewa, Clifton, Fort Erie, Thorold and Welland.

67. The County of Peel to consist of the Townships of Chinguacousy, Toronto and the Gore of Toronto, and the Villages of Brampton and Streetsville.

68. The County of Cardwell to consist of the Townships of Albion and Caledon (taken from the County of Peel), and the Townships of Adjala and Mono (taken from the County of Simcoe.

The County of Simcoe, divided into Two Ridings to be called respectively the South and the North Ridings:—

69. The South Riding to consist of the Townships of West Gwillimbury, Tecumseth, Innisfil, Essa, Tossorontio, Mulmur, and the Village of Bradford.

70. The North Riding to consist of the Townships of Nottawasaga, Sunnidale, Vespra, Flos, Oro, Medonte, Orilla and Matchedash, Tiny and Tay, Balaklava, and Robinson, and the Towns of Barrie and Collingwood.

The County of Victoria, divided into Two Ridings, to be called respectively the South and North Ridings:—

71. The South Riding to consist of the Townships of Ops, Mariposa, Emily, Verulam, and the Town of Lindsay.

72. The North Riding to consist of the Townships of Anson, Bexley, Carden, Dalton, Digby, Eldon, Fenelon, Hindon, Lax-

ton, Lutterworth, Macaulay and Draper, Sommerville and Morrison, Muskoka, Monck and Watt (taken from the County of Simcoe), and any other surveyed Townships lying to the North of the said North Riding.

The County of Peterborough, divided into Two Ridings, to be called respectively the West and East Ridings:—

73. The West Riding to consist of the Townships of South Monagnan (taken from the County of Northumberland), North Monaghan, Smith and Ennismore, and the Town of Peterborough.

74. The East Riding to consist of the Townships of Asphodel, Belmont and Methuen, Douro, Dummer, Galway, Harvey, Minden, Stanhope and Dysart, Otonabee and Snowden and the Village of Ashburnham, and any other surveyed Townships lying to the north of the said East Riding.

The County of Hastings divided into Three Ridings, to be called respectively the West, East, and North Ridings:—

75. The West Riding to consist of the Town of Belleville, the Township of Sydney, and the Village of Trenton.

76. The East Riding to consist of the Townships of Thurlow, Tyendinaga and Hungerford.

77. The North Riding to consist of the Townships of Rawdon, Huntingdon, Madoc, Elzevir, Tudor, Marmora and Lake, and the Village of Stirling, and any other surveyed Townships lying to the North of the said North Riding.

78. The County of Lennox to consist of the Townships of Richmond, Adolphustown, North Fredericksburgh, South Fredericksburgh, Ernest Town and Amherst Island, and the Village of Napanee.

79. The County of Addington to consist of the Townships of Camden, Portland, Sheffield, Hinchinbrooke, Kaladar, Kennebec, Olden, Oso, Anglesea, Barrie, Clarendon, Palmerston, Effingham, Abinger, Miller, Canonto, Denbigh, Loughborough, and Bedford.

80. The County of Frontenac to consist of the Townships of Kingston, Wolfe Island, Pittsburg and Howe Island, and Storrington.

The County of Renfrew, divided into Two Ridings, to be called respectively the South and North Ridings:—

81. The South Riding to consist of the Townships of McNab, Bagot, Blithfield, Brougham, Horton, Admaston, Grattan, Matawatchan, Griffith, Lyndoch, Raglan, Radcliffe, Brudenell, Sebastopol, and the Villages of Arnprior and Renfrew.

82. The North Riding to consist of the Townships of Ross, Bromley, Westmeath Stafford, Pembrooke, Wilberforce, Alice, Petawawa, Buchanan, South Algoma, North Algoma, Fraser, McKay, Wylie, Rolph, Head, Maria, Clara, Haggerty, Sherwood, Burns, and Richards and the other surveyed Townships lying Northwesterly of the said North Riding.

Every Town incorporated Village existing at the Union, not specially mentioned in this Schedule, is to be taken as part of the County or Riding whithin which it is locally situate.

DEUXIEME CÉDULE.

Districts électoraux de Québec spécialement fixés.

COMTÉS DE

Pontiac,	Shefford,
Ottawa,	Stanstead,
Argenteuil,	Compton,
Huntingdon,	Wolfe et Richmond,
Missisquoi,	Mégantic.
Brome,	

La ville de Sherbrooke.

TROISIEME CÉDULE

Travaux et propriétés publiques de la province devant appartenir au Canada.

1. Canaux, avec les terrains et pouvoir d'eau y adjacents;
2. Havres publics.
3. Phares et quais et l'Ile de Sable;
4. Bateaux à vapeur, dragueurs et vaisseaux publics;
5. Améliorations sur les lacs et rivières;
6. Chemins de fer et actions dans les chemins de fer, hypothèques et autres dettes dues par les compagnies de chemins de fer;
7. Routes militaires;
8. Maisons de douanes, bureaux de poste et tous autres édifices publics, sauf ceux que le gouvernement du Canada destine à l'usage des législatures et des gouvernements provinciaux;
9. Propriétés transférées par le gouvernement impérial et désignées sous le nom de propriétés de l'artillerie;
10. Arsenaux, salles d'exercice militaire, uniformes, munitions de guerre et terrains réservés pour les besoins publics et généraux.

QUATRIEME CÉDULE

Actif devenant la propriété commune d'Ontario et Québec.

Fonds de bâtisse du Haut-Canada;
Asiles d'aliénés;
Ecole Normale;
Palais de justice dans le Haut-Canada, Aylmer, Montréal, Kamouraska; Bas-Canada.
Société des hommes de loi, Haut-Canada;
Commission des chemins à barrières de Montréal;
Fonds permanent de l'université;
Institution royale;
Fonds consolidé d'emprunt municipal, Haut-Canada;
Fonds consolidé d'emprunt municipal, Bas-Canada;
Société d'agriculture, Haut-Canada;
Octroi législatif en faveur du Bas-Canada;

THE THIRD SCHEDULE.

Provincial Public Works and Property to be the Property of Canada.

1. Canals with Lands and Water Power connected therewith.
2. Public Harbours.
3. Lighthouses and Piers, and Sable Island.
4. Steamboats, Dredges and Public Vessels.
5. Rivers and Lake Improvements.
6. Railways and Railway Stocks, Mortgages, and other Debts due by Railway Companies.
7. Military Roads.
8. Custom Houses, Post Offices and all other Public Buildings, except such as the Government of Canada appropriate for the use of the Provincial Legislatures and Governments.
9. Property transferred by the Imperial Government, and known as Ordnance Property.
10. Armouries, Drill Sheds, Military Clothing and Munitions of War, and Lands set apart for General Public Purposes.

THE FOURTH SCHEDULE.

Assets to be the Property of Ontario and Quebec conjointly.

Upper Canada Building Fund.
Lunatic Asylums.
Normal Schools.
Court Houses in Aylmer. Montreal. Kamouraska. } Lower Canada.
Law Society, Upper Canada.
Montreal Turnpike Trust.
University Permanent Fund.
Royal Institution.
Consolidated, Municipal Loan Fund, Upper Canada.
Consolidated Municipal Loan Fund, Lower Canada.
Agricultural Society, Upper Canada.
Lower Canada Legislative Grant.

Prêt aux incendiés de Québec;
Compte des avances, Témiscouata;
Commission des chemins à barrières de Québec;
Education—Est;
Fonds de bâtisse et des jurés, Bas-Canada;
Fonds des Municipalités;
Fonds du revenu de l'éducation supérieure, Bas-Canada.

CINQUIEME CEDULE

SERMENT D'ALLEGEANCE

Je, A. B., jure que je serai fidèle et porterai vraie allégeance à Sa Majesté la Reine Victoria.

N. B.—Le nom du roi ou de la reine du Royaume-Uni de la Grande-Bretagne et d'Irlande, alors régnant, devra être inséré, au besoin, en termes appropriés.

Déclaration des qualifications exigées.

Je, *A. B.*, déclare et atteste que j'ai les qualifications exigées par la loi pour être nommé membre du Sénat du Canada (*ou selon le cas*) et que je possède en droit ou en équité comme propriétaire, pour mon propre usage et bénéfice, des terres ou tènements en franc et commun socage [*ou* que je suis en bonne saisine ou possession, pour mon propre usage et bénéfice, de terres et tènements en franc-alleu ou en roture (*selon le cas*)] dans la province de la Nouvelle-Ecosse (*ou selon le cas*) de la valeur de quatre mille piastres, en sus de toutes rentes, dettes, charges, hypothèques et redevances qui peuvent être attachées, dues et payables sur ces immeubles ou auxquelles ils peuvent être affectés, et que je n'ai pas collusoirement ou spécieusement obtenu le titre ou la possession de ces immeubles, en tout ou en partie, dans le but de devenir membre du Sénat du Canada (*ou selon le cas*) et que mes biens mobiliers et immobiliers valent, somme toute, quatre mille piastres en sus de mes dettes et obligations.

Quebec Fire Loan.
Temiscouata Advance Account.
Quebec Turnpike Trust.
Education, East.
Building and Jury Fund, Lower Canada.
Municipalities Fund.
Lower Canada Superior Education Income Fund.

THE FIFTH SCHEDULE.

OATH OF ALLEGIANCE.

I, *A. B.*, do swear, that I will be faithful and bear true Allegiance to Her Majesty Queen Victoria.

NOTE.—*The Name of the King or Queen of the United Kingdom of Great Britain and Ireland for the Time being is to be substituted from Time to Time, with proper Terms of Reference thereto.*

Declaration of qualification.

I, *A. B.*, do declare and Testify that I am by Law duly qualified to be appointed a Member of the Senate of Canada [*or as the case may be*], and that I am legally or equitably seized as of Freehold for my own Use and Benefit of Lands or Tenements held in Free and Common Socage [*or* seized or possessed for my own Use and Benefit of Lands or Tenements held in Franc-alleu or in Roture (*as the case may be*,) in the Province of Nova Scotia [*or as the case may be*] of the Value of Four Thousand Dollars over and above all Rents, Dues, Debts, Mortgages, Charges, and incumbrances, due or payable out of or charged on or affecting the same, and that I have not collusively or colourably obtained a Title to or become possessed of the said Lands and Tenements or any Part thereof for the Purpose of enabling me to become a Member of the Senate of Canada [*or as the case may be*], and that my Real and Personal Property are together worth Four thousand Dollars over and above my Debts and Liabilities.

ACTE DE L'AMERIQUE BRITANNIQUE DU NORD, 1871.

34—35 VICTORIA

CHAPITRE 28.

Acte concernant l'établissement de Provinces dans la Puissance du Canada.

[29 *juin* 1871.]

CONSIDERANT qu'il s'est élevé des doutes relativement aux pouvoirs du parlement canadien d'établir des provinces dans les territoires admis, ou qui, par la suite, pourront être admis dans la Puissance du Canada et de pourvoir à la représentation de ces provinces dans le dit parlement, et qu'il est expédient de faire disparaître ces doutes et de conférer de tels pouvoirs au dit parlement:

Qu'il soit décrété par Sa Très-Excellente Majesté la Reine, de l'avis et du consentement des Lords spirituels et temporels et des Communes, en ce présent parlement assemblés, et par leur autorité, comme suit:—

Titre abrégé.

1. Le présent acte pourra être cité à toutes fins et intentions comme "l'Acte de l'Amérique Britannique du Nord, 1871".

Etablissement de nouvelles Provinces par le parlement du Canada; Constitution de ces provinces, etc.

2. Le parlement du Canada pourra de temps à autre établir de nouvelles provinces dans aucun des territoires faisant alors partie de la Puissance du Canada, mais non compris dans aucune province de cette Puissance, et il pourra, lors de cet établissement, décréter des dispositions pour la constitution et l'administration de toute telle province et pour la passation de lois concernant la paix, l'or-

THE BRITISH NORTH AMERICA ACT, 1871.

34—35 VICTORIA

CHAPTER 28.

An Act respecting the establishment of Provinces in the Dominion of Canada.

[29*th June*, 1871.]

WHEREAS doubts have been entertained respecting the Powers of the Parliament of Canada to establish Provinces in Territories admitted, or which may hereafter be admitted, into the Dominion of Canada, and to provide for the representation of such Provinces in the said Parliament, and it is expedient to remove such doubts, and to vest such powers in the said Parliament:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Short Title.

1. This Act may be cited for all purposes as "The British North America Act, 1871."

Parliament of Canada may establish new Provinces and provide for the constitution, &c., thereof.

2. The Parliament of Canada may from time to time establish new Provinces in any territories forming for the time being part of the Dominion of Canada, but not included in any Province thereof, and may, at the time of such establishment, make provision for the constitution and administration of any such Province, and for the passing of laws for the peace, order, and good

dre et le bon gouvernement de telle province et pour sa représentation dans le dit parlement.

Changement des limites des provinces.

3. Avec le consentement de toute province de la dite Puissance, le parlement du Canada pourra de temps à autre augmenter, diminuer ou autrement modifier les limites de telle province, à tels termes et conditions qui pourront être acceptés par la dite législature, et il pourra de même avec son consentement établir des dispositions touchant l'effet et l'opération de cette augmentation, diminution ou modification de territoire de toute province qui devra la subir.

Pouvoir du parlement Canadien de légiférer pour tout territoire non-compris dans une province.

4. Le parlement du Canada pourra de temps à autre établir des dispositions concernant la paix, l'ordre et le bon gouvernement de tout territoire ne formant pas alors partie d'une province.

Confirmation des Actes du Parlement Canadien 32 et 33 Vic. c. 3 et 33 Vic., c. 3.

5. Les actes suivants, passés par le dit parlement du Canada, et respectivement intitulés: "*Acte concernant le gouvernement provisoire de la Terre de Rupert et du Territoire du Nord-Ouest après que ces territoires auront été unis au Canada*," et "*Acte pour amender et continuer l'Acte trente-deux et trente-trois Victoria, chapitre trois, et pour établir et constituer le Gouvernement de la province de Manitoba*," seront et sont considérés avoir été valides à toutes fins à compter de la date où, au nom de la Reine, ils ont reçu la sanction du gouverneur-général de la dite Puissance du Canada.

Limites des pouvoirs du Parlement Canadien dans la législation pour une province établie.

6. Excepté tel que prescrit par la troisième section du présent acte, le parlement du Canada n'aura pas compétence pour changer les dispositions de l'acte en dernier lieu mentionné du dit parlement en ce qui concerne la province de Manitoba, ni d'aucun autre acte établissant à l'avenir de nouvelles provinces dans la dite Puissance, sujet toujours au droit de la législature de la province de Manitoba de changer de temps à autre les dispositions d'aucune loi concernant la qualification des électeurs et des députés à l'assemblée législative et de décréter des lois relatives aux élections dans la dite province.

government of such Province, and for its representation in the said Parliament.

Alteration of limits of Provinces.

3. The Parliament of Canada may from time to time, with the consent of the Legislature of any Province of the said Dominion, increase, diminish or otherwise alter the limits of such Province, upon such terms and conditions as may be agreed to by the said Legislature, and may, with the like consent, make provision respecting the effect and operation of any such increase or diminution or alteration of territory in relation to any Province affected thereby.

Parliament of Canada may legislate for any territory not included in a Province.

4. The Parliament of Canada may from time to time make provision for the administration, peace, order, and good government of any territory not for the time being included in any Province.

Confirmation of Acts of Parliament of Canada 32 & 33 *Vic.* (*Canadian*) *cap.* 3, 33 *Vic.* (*Canadian*) *cap.* 3.

5. The following Acts passed by the said Parliament of Canada, and intituled respectively: "An Act for the temporary government of Rupert's Land and the North Western Territory "when united with Canada," and "An Act to amend and continue "the Act thirty-two and thirty-three Victoria, chapter three, and "to establish and provide for the government of the Province of "Manitoba," shall be and be deemed to have been valid and effectual for all purposes whatsoever from the date at which they respectively received the assent, in the Queen's name, of the Governor General of the said Dominion of Canada.

Limitation of powers of Parliament of Canada to legislate for an established Province.

6. Except as provided by the third section of this Act, it shall not be competent for the Parliament of Canada to alter the provisions of the last mentioned Act of the said Parliament, in so far as it relates to the Province of Manitoba, or of any other Act hereafter establishing new Provinces in the said Dominion, subject always to the right of the Legislature of the Province of Manitoba to alter from time to time the provisions of any law respecting the qualifications of electors and members of the Legislative Assembly, and to make laws respecting elections in the said Province.

ACTE DU PARLEMENT DU CANADA, 1875.

38—39 VICTORIA

CHAPITRE 38.

Acte pour lever certains doutes à l'égard des pouvoirs du Parlement du Canada quant à la dix-huitième section de l'Acte de l'Amérique Britannique du Nord, 1867.

[19 *juillet* 1875.]

CONSIDERANT que par la section dix-huitième de l'Acte de l'Amérique Britannique du Nord, 1867, il est pourvu comme suit: "Les priviléges, immunités et pouvoirs que posséderont et exerceront le Sénat, la Chambre des Communes et les membres de ces corps respectifs, seront ceux prescrits de temps à autre par acte du Parlement du Canada; ils ne devront cependant jamais excéder ceux possédés et exercés, lors de la passation du présent acte, par la Chambre des Communes du Parlement du Royaume-Uni de la Grande-Bretagne et d'Irlande et par les membres de cette Chambre;

Et considérant que des doutes se sont élevés à l'égard du droit de définir par un acte du parlement du Canada, en vertu de la dite section, les dits priviléges, pouvoirs et immunités et qu'il est opportun de lever ces doutes:

A ces causes, Sa Très Excellente Majesté la Reine, de l'avis et du consentement des Lords Spirituels et Temporels et des Communes, en ce présent parlement assemblés, et par leur autorité, décrète et déclare ce qui suit:

Section 18 *abrogée.*

1. La dix-huitième section de l'Acte de l'Amérique Britannique du Nord, 1867, est par le présent abrogée, sans préjudice à ce qui a été fait en vertu de cette section, et la suivante sera substituée à celle qui est ainsi abrogée:

THE PARLIAMENT OF CANADA ACT, 1875.

38—39 VICTORIA

CHAPTER 38.

An Act to remove certain doubts with respect to the powers of the Parliament of Canada under Section Eighteen of the British North America Act, 1867.

[19*th July*, 1875.]

WHEREAS by Section Eighteen of the British North America Act, 1867, it is provided as follows:

"The privileges, immunities and Powers to be held, enjoyed and "exercised by the Senate and by the House of Commons and by "the Members respectively, shall be such as are from time to "time defined by Act of the Parliament of Canada, but so that "the same shall never exceed those at the passing of this Act, "held, enjoyed and exercised by the Commons House of Parlia- "ment of the United Kingdom of Great Britain and Ireland and "by the members thereof."

And whereas doubts have arisen with regard to the power of defining by an Act of the Parliament of Canada, in pursuance of the said section, the said privileges, powers or immunities; and it is expedient to remove such doubts:

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords, Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

New section substituted for s. 18 *of* 30 *and* 31 *Vic., c.* 3.

1. Section Eighteen of the British North America Act, 1867, is hereby repealed without prejudice to anything done under that section, and the following section shall be substituted for the section so repealed:

Substitution d'une nouvelle section.

Les priviléges, immunités et pouvoirs que posséderont et exerceront le Sénat et la Chambre des Communes et les membres de ces corps respectifs, seront ceux prescrits de temps à autre par acte du parlement du Canada, mais de manière à ce qu'aucun acte du parlement du Canada définissant tels priviléges, immunités et pouvoirs ne donnera aucuns priviléges, immunités ou pouvoirs excédant ceux qui, lors de la passation du présent acte, sont possédés et exercés par la Chambre des Communes du Parlement du Royaume-Uni de la Grande-Bretagne et d'Irlande et par les membres de cette Chambre.

Ratification de l'acte du Parlement du Canada 31 *et* 32 *Vic., c.* 24.

2. L'acte du parlement du Canada passé dans la trente et unième année du règne de Sa Majesté, chapitre vingt-quatre, intitulé: *Acte pour faire prêter serment à des témoins en certains cas pour les fins des deux Chambres du Parlement*, sera considéré comme étant valide et comme ayant été valide depuis la date de la sanction royale qui lui a été donnée par le gouverneur-général du Canada.

Titre abrégé.

3. Le présent acte pourra être cité comme "l'Acte du Parlement du Canada, 1875."

The privileges, immunities, and powers to be held, enjoyed and exercised by the Senate and by the House of Commons, and by the Members thereof, respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that any Act of the Parliament of Canada defining such privileges, immunities and powers shall not confer any privileges, immunities or powers exceeding those at the passing of such Act, held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland and by the Members thereof.

Confirmation of Act of Canadian Parliament.

2. The Act of the Parliament of Canada passed in the thirty-first year of the Reign of Her present Majesty, chapter twenty-four, intituled "An Act to provide for oaths to witnesses being administered in certain cases for the purposes of either House of Parliament," shall be deemed to be valid, and to have been valid as from the date at which the Royal assent was given thereto by the Governor General of the Dominion of Canada.

Short Title.

3. This Act may be cited as "The Parliament of Canada Act, 1875."

ACTE DE L'AMERIQUE BRITANNIQUE DU NORD, 1886.

49—50 VICTORIA

CHAPITRE 35.

Acte concernant la représentation au parlement du Canada des territoires formant partie de la Puissance du Canada, mais non compris dans aucune province.

[25 *juin*, 1886.]

CONSIDERANT qu'il est à propos d'autoriser le parlement du Canada à pourvoir à la représentation au Sénat et à la Chambre des Communes du Canada, ou à l'un ou l'autre, de tout territoire formant partie de la Puissance du Canada, mais non compris dans aucune province:—

Qu'il soit en conséquence statué par Sa Très-Excellente Majesté la Reine, par et avec l'avis et le consentement des Lords Spirituels et Temporels, et des Communes, en ce présent parlement assemblés, et par leur autorité, comme suit:—

1. Le parlement du Canada pourra, de temps à autre, pourvoir à la représentation au Sénat et à la Chambre des Communes du Canada ou à l'un ou l'autre, de tous territoires formant partie de la Puissance du Canada, mais non compris dans aucune de ses provinces.

2. Tout acte passé par le parlement du Canada avant la sanction du présent acte pour la fin mentionnée au présent, sera, s'il n'est pas désavoué par la Reine, censé avoir été valide et effectif à compter de la date à laquelle il aura reçu, au nom de Sa Majesté, la sanction du Gouverneur général du Canada.

THE BRITISH NORTH AMERICA ACT, 1886.

49—50 VICTORIA

CHAPTER 35.

An Act respecting the Representation in the Parliament of Canada of Territories which for the time being form part of the Dominion of Canada, but are not included in any Province.

[*25th June*, 1886.]

WHEREAS it is expedient to empower the Parliament of Canada to provide for the representation in the Senate and House of Commons of Canada, or either of them, of any territory which for the time being forms part of the Dominion of Canada, but is not included in any province:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. The Parliament of Canada may from time to time make provision for the representation in the Senate and House of Commons of Canada, or in either of them, of any territories which for the time being form part of the Dominion of Canada, but are not included in any province thereof.

2. Any Act passed by the Parliament of Canada before the passing of this Act for the purpose mentioned in this Act shall, if not disallowed by the Queen, be, and shall be deemed to have been, valid and effectual from the date at which it received the assent, in Her Majesty's name, of the Governor-General of Canada.

Il est par le présent déclaré que tout acte passé par le parlement du Canada, soit avant, soit après la sanction du présent acte, pour la fin mentionnée au présent acte ou dans l'*Acte de l'Amérique Britannique du Nord*, 1871, est en vigueur, nonobstant tout ce que contenu en l'*Acte de l'Amérique Britannique du Nord*, 1867; et le nombre des sénateurs ou le nombre des membres de la Chambre des Communes spécifié dans l'acte en dernier lieu cité est augmenté du nombre de sénateurs ou de députés, selon le cas, fixé par tout tel acte du parlement du Canada pour la représentation de toute province ou territoire du Canada.

3. Le présent acte pourra être cité sous le titre: *Acte de l'Amérique Britannique du Nord*, 1886.

Le présent acte de l'*Acte de l'Amérique Britannique du Nord*, 1867, et l'*Acte de l'Amerique Britannique du Nord*, 1871, seront interprétés et pourront être cités collectivement comme les *Actes de l'Amérique Britannique du Nord*, 1867 à 1886.

It is hereby declared that any Act passed by the Parliament of Canada, whether before or after the passing of this Act, for the purpose mentioned in this Act or in the British North America Act, 1871, has effect, notwithstanding anything in the British North America Act, 1867, and the number of Senators or the number of Members of the House of Commons specified in the last-mentioned Act is increased by the number of Senators or of Members, as the case may be, provided by any such Act of the Parliament of Canada for the representation of any provinces or territories of Canada.

3. This Act may be cited as the British North America Act, 1886.

This Act and the British North America Act, 1867, and the British North America Act, 1871, shall be construed together, and may be cited together as the British North America Acts, 1867 to 1886.

INDEX

DES

LOIS CONSTITUTIONNELLES ET ORGANIQUES.

Absence:

D'un sénateur pendant deux sessions consécutives entraîne la perte de son siège, 31 (1)—La même règle s'applique aux membres du conseil législatif de Québec, 74.

De l'orateur des Communes pendant 48 heures, permet d'élire un orateur *per interim*, 47—La même règle s'applique aux assemblées législatives de Québec et d'Ontario, 87.

D'un lieutenant-gouverneur, le gouverneur-général peut nommer un administrateur intérimaire, 67.

Accise:

Les lois provinciales concernant l'accise restent en vigueur jusqu'à modification par le parlement, 122.

Actif, obligations et propriétés:

Comment il en sera disposé, etc., 102 à 126, 142.

Administrateur du gouvernement:

Du Canada, 10, 14—des provinces, peut être nommé par le gouverneur-général, pour toute province, en l'absence, etc., du lieutenant-gouverneur, 67.

Administration:

Du gouvernement du Canada: V. *Conseil Privé*—
Des gouvernements d'Ontario et de Québec, 63, 134, 135.

Administration de la Justice. V. *Justice*.

Admission des autres colonies:

Dispositions applicables à l'admission des autres colonies dans la confédération, 146, 147.

INDEX

TO

CONSTITUTIONAL & ORGANIC ACTS.

Absence:

Of a Senator for 2 consecutive Sessions, involves forfeiture of seat, 31 (1).—The same applied to a Member of the L. Council of Quebec, 74.

Of Speaker of H. of Commons, for 48 hours; a Speaker *pro tem.* may be elected, 47.—The same applied to L. Assemblies of Ontario and Quebec, 87.

Of a lieut.-Governor; Governor General may appoint an Administrator for the time being, 67.

Administration:

Government of Canada:—See *Privy Council.*

Governments of Ontario and Quebec, 63, 134, 135.

Administration of Justice: See *Justice.*

Administrator of the Government:

Canada, 10, 14.—Provinces, May be appointed by the Governor General, for any Province, in absence, &c., of the Lieut.-Governor, 67.

Admiralty Courts:

The salaries of Judges thereof are fixed and provided by Parliament, 100.

Admission of other Colonies:

Provision for admission of other Colonies into the Union, 146, 147.

Agriculture:

Commissioner of Agriculture and Public Works, has a seat in the Executive Council (Ontario and Quebec), 63. See *Public Works.*

Agriculture:

Le commissaire de l'agriculture et des travaux publics est membre du conseil exécutif (Ontario et Québec), 63. V. *Travaux Publics.*

Des lois relatives à l'agriculture peuvent être décrétées par le parlement ainsi que par les législatures provinciales, pourvu qu'elles ne soient pas incompatibles avec un statut du parlement, 95.

Algoma, district d':

Tout sujet anglais y tenant feu et lieu peut voter aux élections des députés à la Chambre des Communes, 41—et à celles de l'assemblée législative, 84.

Amarques et bouées:

Placées sous le contrôle exclusif du parlement, 91 (9).

Amendements aux dispositions de l'Acte de l'A. B. du Nord, 1867:

Les localités indiquées dans l'acte comme sièges des gouvernements respectifs peuvent être changées, savoir: pour le Canada, par Sa Majesté, 16—pour toute province, par son gouvernement exécutif, 68.

Le parlement du Canada peut amender les dispositions de cet acte (ou des lois en force en vertu de cet acte) relatives aux sujets suivants: au gouverneur en conseil, 12—quorum du Sénat, 35—districts électoraux, 40—élections, cens d'éligibilité et cens électoral et décision des élections contestées, 41,—Absence de l'orateur, 47—Répartition de la représentation lors de chaque recensement décennal, 51, 52—Uniformité dans Ontario, la N. E. et le N. B. des lois relatives à la propriété et aux droits civils, 94—Traitement du gouverneur-général, 105—Lois de douanes et d'accise des provinces, 122—Pénitencier du Canada, 141.

Les législatures provinciales peuvent amender les dispositions de cet acte (ou des lois en force en vertu de cet acte) relatives aux sujets suivants: la constitution de l'autorité exécutive dans la Nouvelle-Ecosse et le Nouveau-Brunswick, 64,—dans Ontario et Québec, 65—constitution de la province généralement (sauf en ce qui concerne le lieutenant-gouverneur) 92 (1)—Exclusion des fonctionnaires publics de la législature, 83—Elections provinciales, cens d'éligibilité et cens électoral, et élections contestées, 84—Chefs des départements et leurs fonctions, 134, 135.

(*Agriculture.*—Con.)

Laws in relation to Agriculture may be enacted by Parliament and also by the Provincial Legislatures, if not repugnant to any Act of Parliament, 95.

Algoma District:

Every male householder therein, being a British subject, may vote at Elections for the House of Commons, 41.—And for the Legislative Assembly, 84.

Aliens:

Under exclusive control of Parliament, 91 (25).

Allowances to the Provinces: See *Public Revenues.*

Amendments to the Provisions of B. N. A. Act, 1867.

The places named in the Act, as the seats of the respective Governments, may be changed, *viz.*—Of Canada.—by His Majesty, 16.—Of any Province,—by the Executive Government thereof, 68.

The Parliament of Canada may amend the provisions of the Act (or of the Laws continued in force by authority thereof), in respect to—Governor in Council, 12.—Quorum of Senate, 35.—Electoral Districts, 40.—Elections, Qualification of Members and of Electors, and Trial of Controverted Elections, 41.—Absence of Speaker, 47.—Readjustment of Representation decennially, 51, 52.—Uniformity of laws relative to Property and Civil Rights, in Ontario, N. S. and N. B., 94.—Salary of Governor General, 105.—Customs and Excise Laws of the Provinces, 122.—Penitentiary of Canada, 141.

The Provincial Legislatures may amend the provisions of the Act (or of the Laws continued in force by authority thereof), in respect to.—Constitution of Executive authority in Nova Scotia and New Brunswick, 64.—In Ontario and Quebec, 65.—Constitution of the Provinces generally (except as regards the Lt.-Governor), 92 (1).—Exclusion of office-holders from the Legislature, 83.—Provincial Elections, Qualification of Candidates and Voters, and Controverted Elections, 84.—Heads of Departments, and their functions, 134, 135.

The Legislature of Quebec may also amend the same, in respect to—Term of office of a Legislative Councillor, 72.—Quorum of Legislative Council, 78.—Electoral Divisions (for the L. Assembly) set forth in section 40; but those included in the 2nd Schedule may not be altered without the concurrence of the majority of the Members of those Divisions at 2nd and 3rd readings of the Bill, 80.

(*Amendements*—Suite.)

La législature de Québec peut aussi les amender quant aux sujets suivants: durée de la charge de conseiller législatif, 72—quorum du conseil législatif, 78—divisions électorales (de l'assemblée législative) énumérées dans la section 40; celles comprises dans la 2e cédule ne peuvent être modifiées sans le concours de la majorité des députés de ces divisions, exprimé à la 2e et à la 3e lectures des bills à cet effet, 80.

Le lieutenant-gouverneur en conseil peut modifier le grand sceau de la province (Ontario et Québec), 136.

Amendes et pénalités:

Pour infraction aux lois provinciales, ressortent au contrôle provincial, 92 (15).

Amirauté, Cours d':

Les traitements des juges de ces cours sont fixés et payés par le parlement du Canada, 100.

Appel:

Au gouverneur en conseil de tout statut provincial ou décision affectant les droits de la minorité en matières scolaires, 93 (3, 4).

Appropriations, bills d': V. *Votes de crédits.*

Asiles:

Placés sous le contrôle provincial, 92 (7).

Assemblée Législative: V. *Ontario, Québec.*

Aubains:

Cette matière ressort exclusivement au parlement, 91 (25).

Auberges: V. *Licences.*

Banqueroute:

Entraîne, pour un sénateur, la perte de son siège, 31 (3)—ressort exclusivement à la juridiction du parlement, 91 (21).

Banques:

Placées sous le contrôle exclusif du parlement, 91 (15).

(*Amendments.*—Con.)
The Lieut.-Governor in Council may alter the Great Seal of the Province (Ontario and Quebec), 136.

Annual Sessions:
Of the Parliament of Canada, 20.—Of the Provincial Legislatures, 86.

Appeal:
To the Governor General in Council, from any Provincial Act or decision affecting the rights of the minority in School matters, 93 (3, 4).
Parliament may provide for the organization of a Court of Appeal for Canada, 101.

Appropriation Bills: See *Money Votes.*

Assets, Liabilities and Property:
Adjustment thereof, &c., 102 to 126, 142.

Asylums:
Are under Provincial Control, 92 (7).

Attorney General:
Has a seat in the Executive Council (Ontario and Quebec), 63.—Appointed, during pleasure, by the Lieut.-Governor, 135.—His functions and duties, 134, 135.

Auctioneers' Licences:
Are under exclusive Provincial control, 92 (9).

Banking:
Under exclusive control of Parliament, 91 (15).

Bankruptcy:
Disqualifies a Senator, 31 (3).
Under exclusive control of Parliament, 91 (21).

Beacons and Buoys:
Under exclusive control of Parliament, 91 (9).

Banques d'épargnes:
Ressortent au contrôle exclusif du parlement, 91 (16).

Bateaux à vapeur:
Les lignes internationales et intercoloniales des bateaux sont sous le contrôle du parlement, 92 (10, a, b).

Billets promissoires:
La législation qui s'y rapporte ressort au parlement, 91 (18).

Bills réservés:
Quant au parlement du Canada,—le gouverneur-général peut réserver les bills pour la signification du bon plaisir du Roi, 55.—Ces bills n'ont pas force de loi à moins que, dans les deux ans, la sanction du Roi en conseil n'ait été signifiée, 57.
Quant aux législatures provinciales, le lieutenant-gouverneur peut réserver les bills, 55, 90.—Ils n'ont pas force de loi, à moins qu'ils ne soient sanctionnés dans le cours de l'année suivante, 55, 90.

Bois de construction, droits sur les:
Peuvent être imposés dans le Nouveau-Brunswick, 124.

Bois et forêts:
Sont sous le contrôle provincial, 92 (5).

Boucés:—V. *Amarques*.

Brevets d'Invention:
Ressortent au contrôle exclusif du parlement, 91 (22).

Caisse d'Epargnes:—V. *Banques d'Epargnes*.

Canada:
Nom donné à la nouvelle Puissance, 3, 4.
Divisé en quatre provinces, 5—délimitations de chacune, 6, 7.

Canaux:
Ceux qui relient une province à une autre ou s'étendent au delà des limites d'une province, ressortent au contrôle du parlement, 92 (10, a)—ainsi que ceux qui sont déclarés être à l'avantage général du Canada ou de deux ou d'un plus grand nombre des provinces, (92 (10, c).

Bills of Exchange:

Legislation thereon is under exclusive control of Parliament, 91 (18).

Borrowing of Money:

For the Dominion.—Under control of Parliament, 91 (4).—For Provincial purposes; Under the control of the Provincial Legislature, 92 (3).

British Columbia:

Admission of, into the Union, 146.

Canada:

Declared to be the name of the New Dominion, 3, 4.
Divided into four Provinces, 5.—Limits of each defined, 6, 7.

Canals:

Such as connect one Province with another, or extend beyond the limits of a Province, are under control of Parliament, 92 (10, a).—And such, also, as are declared to be for the general advantage of Canada, or of two or more Provinces, 92 (10, c).

Casting Vote:

Speaker of Commons has a casting vote only, 49.—Of the L. Assembly, 87.—In the Senate, when the voices are equal, the decisions is deemed to be in the Negative, 36.—The same also in the Legislative Council, Quebec, 79.

Census:

To be taken in 1871, and in every tenth year thereafter, 8.—Under exclusive control of Parliament, 91 (6).
A readjustment of the Representation to be made after each Census, 51.

Charitable Institutions:

Are under Provincial control (excepting Marine Hospitals), 92 (7).

Coinage:

Under exclusive control of Parliament, 91 (14).

Commissioner of Crown Lands:

Has a seat in the Executive Council (Ontario and Quebec), 63.—Appointed, during pleasure, by the Lieut.-Governor, 134.—His functions and duties, 134, 135.

Cantons:—V. *Townships.*

Chambre des Communes:

Composée de 181 membres, savoir:—82 pour Ontario, 65 pour Québec, 19 pour la Nouvelle-Ecosse, 15 pour le Nouveau-Brunswick, 37.—Le nombre peut en être augmenté d'après la proportion voulue, 52.

Est convoquée, au besoin, par le gouverneur-général, 38.

Défendu aux sénateurs d'y siéger, 39.

Districts électoraux compris dans chaque province, 40.

Les lois électorales des différentes provinces continueront d'exister jusqu'à modification par le parlement, 41—ainsi que les lois relatives à l'émission des brefs, 42, 43.

La Chambre procède à l'élection de l'orateur dès la première séance, 44—Cas de vacance dans cette charge, 45—L'orateur exerce la présidence à toutes les réunions, 46—S'il s'absente pendant 48 heures, un orateur intérimaire peut être élu,47—L'orateur ne vote que dans le cas où les voix sont également partagées, 49.

Le quorum est de 20 députés, 48.

La durée d'un parlement de la Chambre des Communes est de 5 années, à moins qu'elle ne soit plus tôt dissoute, 50.

Répartition nouvelle de la représentation après chaque recensement décennal, 51.

Les votes de crédits doivent originer dans les Communes, 53.

Serment d'allégéance des députés, et déclaration de qualifications exigés des sénateurs et conseillers législatifs, 128. (Cédule 5).

Priviléges, immunités et pouvoirs, 18 et page 504.

Témoins assermentés devant les comités spéciaux, page 508.

Charges et officiers publics:

De la Puissance, sont sous le contrôle du parlement, 91 (8).

La création des charges provinciales et la nomination et le paiement des officiers provinciaux sont sous le contrôle provincial, 92 (4)—chefs des départements dans Ontario et Québec, 134—leurs fonctions, 135.

Officiers publics maintenus dans l'exercice de leurs fonctions, 130—de nouveaux peuvent être nommés, 131.

Chemin de fer Intercolonial:

Doit être commencé dans les six mois, 145.

Chemins de fer:

Commissioner of Public Works: See *Public Works.*

Commons, House of: See *House of Commons.*

Companies, Incorporated:
Such as relate to Provincial objects, are under Provincial control, 92 (11).—Certain exceptions specified, 92 (10).

Consolidated Revenue Fund:—See *Public Revenues.*

Copyrights:
Under exclusive control of Parliament, 91 (23).

Courts:—See *Justice, Administration of*

Courts, Procedure of:—See *Property.*

Criminal Laws:
Under exclusive control of Parliament (except constitution of Criminal Courts), 91 (27).

Currency:
Under exclusive control of Parliament, 91 (14).

Customs Laws:
Provincial Customs Laws continue in force, until altered by Parliament,122.
Importation (from one Province to another) of foreign dutiable goods, 123.

Debts, Public:—See *Public Debt.*

Defence of the Country:
Under exclusive control of Parliament, 91 (7).
Canada may assume any land required for fortifications, &c., 117.

Denominational Schools:—See *Education.*

Disallowance of Bills:
Parliament of Canada; Bills assented to by the Governor General, may be disallowed by the King within two years, 56.
Provincial Legislatures; Bills assented to by the Lieut-Governor, may be disallowed by the Governor General within one year, 56, 90.

(*Chemins de fer*—Suite.)
Ceux qui relient deux provinces ou s'étendent au delà d'une province ressortent au contrôle du parlement, 92 (10, a)—ainsi que ceux déclarés être à l'avantage général du Canada, ou de deux ou plus des provinces, 92 (10, c).

Colombie Britannique:
Son admission dans la confédération, 146.

Commerce et trafic:
Sous le contrôle exclusif du parlement, 91 (2).

Commissaire des Terres de la Couronne:
A un siège au conseil exécutif (Ontario et Québec), 63—nommé durant bon plaisir par le lieutenant-gouverneur, 134—ses fonctions et devoirs, 134, 135.

Commissaires des Travaux Publics: V. *Travaux Publics.*

Communes: V. *Chambre des Communes.*

Compagnies incorporées:
Celles qui ont pour but des objets provinciaux sont sous le contrôle provincial, 92 (11)—Exceptions, 92 (10).

Conseil Législatif: V. *Québec.*

Conseil Privé pour le Canada:
Sa constitution, 11.
Pouvoirs du gouverneur en conseil, définis, 12, 13. V. *gouverneur-général.*

Constitutions provinciales:
Pouvoir exécutif, 58 à 68—Lieutenant-gouverneur, 58 à 62—Conseil exécutif, 63, 64—Lieutenant-gouverneur en conseil, 65, 66—Un administrateur peut, au besoin, être nommé par le gouverneur-général, 67. V. *Lieutenant-Gouverneur.*
Siège du gouvernement de chaque province, fixé, sauf toute modification que pourra y apporter le gouvernement exécutif, 68.
Législatures et leurs pouvoirs, 69, à 95, 128. V. *Ontario, Québec.*
Enumération des sujets soumis au contrôle exclusif des législatures provinciales, 92, 93.—Pouvoir de décréter des lois scolaires, sauf appel au gouverneur en conseil, 93 (3)—Contrôle

Divorce:

Under exclusive control of Parliament, 91 (26).

Education:

Placed under exclusive control of Provincial Legislatures, with certain limitations, 93.

Rights conferred by law upon Denominational Schools are preserved, 93 (1, 2).—An appeal lies to Governor General in Council, from any Act or decision affecting the same, 93 (3).—Any remedial Act deemed necessary thereafter, may thereupon (failing Provincial Legislation) be passed by Parliament, 93 (4).

All the powers already conferred on Roman Catholic Separate Schools in Upper Canada, are extended to Dissentient Schools in Quebec, 93 (2).

Election of Members:

All existing laws in relation to Elections, Controverted Elections, etc., continued until altered by the Legislature to which they appertain, 41, 84.

Writs to be issued for the first Election, in such manner as the Governor General may think fit: Powers of Returning Officers, etc., to be those exercised under existing laws, 42.—To continue the same until altered by Parliament, 43.

First General Elections for Members of the L. Assemblies of Ontario, Quebec and Nova Scotia, to be simultaneous with that for H. of Commons, 89.

Electoral Divisions:

Defined (for the House of Commons) within each Province, 40 (and 1st Schedule).

The same Divisions, in Quebec, to apply to the L. Assembly, subject to alterations by the Legislature; those specified in the 2nd Schedule not to be altered without concurrence of a majority of the Members representing the same, at the 2nd and 3rd readings of the Bill, 80.

Emigration:—See *Immigration*.

English Language:—See *French and*.

Excise:

Provincial Excise Laws continued in force, until altered by Parliament, 122.

Exclusive Powers of Legislation:—See *Legislative Powers*.

(*Constitutions prov.*—Suite.)

du parlement en pareil cas, 93, (4).—Tout acte du parlement à l'effet de pourvoir à l'uniformité dans Ontario, N. E. et N. B. des lois relatives à la propriété et aux droits civils et de la procédure devant les tribunaux, n'a d'effet dans une province qu'après avoir été adopté et décrété par la législature de cette province, 94.

Constitution de la province, peut être amendée par la législature provinciale, sauf en ce qui concerne la charge de lieutenant-gouverneur, 92 (1). V. *Amendement.*

Cours et tribunaux: V. *Justice, Administration de la*

Cours et tribunaux, Procédures dans les: V. *Procédure.*

Cours monétaire :

Ressort au contrôle exclusif du parlement, 91 (14).

Crédits: V. *Votes de crédits.*

Défense du pays:

Est sous le contrôle exclusif du parlement, 91, (7).

Députés: V. *Elections, Chambre des Communes, Ontario, Québec.*

Désaveu des bills:

Quant au parlement du Canada, les bills sanctionnés par le gouverneur-général peuvent être désavoués par le Roi dans les deux ans, 56.

Quant aux législatures provinciales, les bills sanctionnés par le lieutenant-gouverneur peuvent être désavoués par le gouverneur-général dans le délai d'une année, 56, 90.

Dette publique:

La dette publique et le prélèvement de deniers par voie de taxes ou d'emprunts ressortent au parlement, 91 (1, 3, 4).

L'intérêt de la dette constitue la seconde charge sur le fonds consolidé du revenu, 104.

Le Canada est responsable de la totalité des dettes des provinces existant lors de la confédération, 111.

Responsabilité à cet égard des provinces de Québec et d'Ontario, 112—de la Nouvelle-Ecosse, 114, 116— du Nouveau-Brunswick, 115, 116.

L'intérêt de la dette publique de chaque province est déduit de sa subvention, 118.

Règlement des dettes, etc., de Québec et d'Ontario, 142.

Executive Power:
Of the Government, 9 to 16. See *Governor General. Privy Council.*
Of the Provincial Governments, 58 to 68. See *Lieut.-Governor.*

Expiring Laws:
Construction of provisions relating thereto, 137.

Felony:
Incapacitates a Senator from holding his seat, 31 (4).

Ferries:
Such as are International, or Interprovincial, are under exclusive control of Parliament, 91 (13).

Fines and Penalties:
For infraction of Provincial Laws, are under Provincial control, 92 (15).

Fisheries:
Under exclusive control of Parliament, 91 (12).

Fortification:—See *Defence of the Country.*

Free Trade:
Articles the produce of one Province are admitted free into the other Provinces, 121.

French and English Languages:
(Canada and Quebec). Either language may be used in Parliamentary debates, or in pleadings, etc., in Court; both must be used in the Journals and Statutes, 133.

Government:
Executive Power, 9 to 15.—Governor General, 10.—His Deputies, 14.—Privy Council, 11.—Governor General in Council, 12, 13.—Command of Naval, Military, and Militia Forces, 15. See *Governor General.*
Ottawa to be the Seat of Government, 16.
Legislative Power, 17 to 57.—Senate, 21 to 36.—House of Commons, 37 to 52.—Money Votes, 53, 54.—Royal Assent to Bills, 55 to 57.—Jurisdiction (classes of subjects for legislation), 91, 92 (10 a. b. c.), 93 (4).—Uniformity of Laws relative to Property and Civil Rights, 94.—Agriculture and Immigration, 95. See *House of Commons. Parliament of Canada. Senate.*

Divisions électorales:

Dans chaque province, pour ce qui concerne l'élection des députés à la Chambre des Communes, 40 (et 1ère cédule).

Les mêmes divisions s'appliquent à l'assemblée législative de Québec, sauf les modifications que pourra y apporter la législature; celles énumérées dans la 2e cédule ne peuvent être modifiées sans le concours de la majorité des députés qui les représentent, exprimé à la 2e et 3e lectures du bill à cet effet, 80.

Divorce:

Ressort au contrôle exclusif du parlement, 91 (26).

Douanes, lois concernant les:

Les lois provinciales concernant les douanes restent en vigueur jusqu'à modification par le parlement, 122.

Importation (d'une province dans une autre) d'articles frappés de droits, 123.

Droits d'auteur:

Ressortent au contrôle exclusif du parlement, 91 (23).

Echange entre les colonies: V. *Libre-échange*.

Ecoles séparées: V. *Instruction publique*.

Election des députés:

Toutes les lois en existence relativement aux élections contestées, etc., sont maintenues jusqu'à modification par la législature, 41, 84.

Les brefs pour la première élection sont émis en la manière que le gouverneur-général juge à propos; les pouvoirs des officiers-rapporteurs, etc., sont ceux exercés en vertu des lois actuelles, 42—Ces dispositions restent en vigueur jusqu'à modification par le parlement, 43.

La première élection générale des députés à l'assemblée législative d'Ontario, Québec et la Nouvelle-Ecosse, devra avoir lieu en même temps que celle pour la Chambre des Communes, 89.

Emigration: V. *Immigration*.

Employés publics: V. *Charges et Officiers Publics*.

Emprunts de deniers:

Quant à la Puissance, ressortent au contrôle du parlement, 91 (4)—quant aux provinces, ressortent au contrôle de la législature provinciale, 92 (3).

(*Government.*—Con.)
Public Debt, Revenue, etc.:—See *Public Debt. Public Property. Public Revenues. Public Works.*
Empowered to fulfil all necessary Treaty obligations towards foreign countries, 132.

Governor General:
Interpretation of provisions relating to him, 10.—Relating to the Governor General in Council, 12, 13.
May appoint Deputies, and define their powers, 14.
His duties regarding the summoning of persons to the Senate, 24 to 27, 32.—The appointment of the Speaker, 34.
To call together the House of Commons, from time to time, in the King's Name, 38.
To cause writs to be used for the first Election, 42.
May dissolve the House, 50.
No money vote may pass, that has not first been recommended by him, 54.
May give the Royal Assent to Bills or reserve them, 55.—To send copies of all such Bills to England, 56.—And to announce the giving of the Royal Assent to any Reserved Bill, 57.
Governor General in Council may disallow (within one year) Acts passed by the Provincial Legislatures, 56, 90.
Appeal to Governor General in Council, in matters affecting the rights of the minority, in regard to Education, 93 (3, 4).
Appoints the Lieut.-Governor of each Province, under the Great Seal, 58.—May appoint an Administrator to act in his temporary absence, etc., 67.
Appoints all Judges, except those of the Courts of Probate in Nova Scotia and New Brunswick, 96.—May remove any Judge of Superior Courts, on Address of the Senate and House of Commons, 99.
His salary (£10,000 stg., until altered), made a third charge on Consolidated Revenue Fund, 105.
Governor General in Council may direct the form in which all payments are made, 120.—May appoint Public Officers, 131.

Hospitals:
Are under Provincial control (excepting Marine Hospitals), 92 (7).

House of Commons:
Consists of 181 Members, *viz.*—82 for Ontario, 65 for Quebec, 19 for Nova Scotia, 15 for New Brunswick, 37.—The number may be increased, proportionately, 52.
To be called by the Governor General, from time to time, 38.
Senators disqualified from sitting therein, 39.
Electoral Districts within each Province defined, 40.

Encanteurs, Licences d':
Sont sous le contrôle provincial, 92 (9).

Excise: V. *Accise.*

Faillite:
Entraîne, pour un sénateur, la perte de son siège, 31 (3).
En matière de législation, elle ressort au contrôle exclusif du parlement, 91 (21).

Félonie:
Entraîne, pour un sénateur, la perte de son siège, 31 (4).

Fonds consolidé de revenu: V. *Revenus Publics.*

Forces Navales et militaires:
Le commandement en chef en est conféré au Roi, 15.

Forêts: V. *Bois.*

Fortifications: V. *Défense du Pays.*

Gouvernement:
Pouvoir exécutif, 9 à 15—gouverneur-général, 10—Ses députés, 14—Conseil privé, 11—Gouverneur en conseil, 12, 13—Commandement des milices de terre et de mer et des forces militaires et navales, 15.
Ottawa déclaré le siège du gouvernement, 16.
Pouvoir législatif, 17 à 54—Sénat, 21 à 36—Chambre des Communes, 37 à 52—Votes de crédits, 53, 54.—Distribution des pouvoirs législatifs (énumération des sujets auxquels s'étend l'autorité législative), 91, 92 (10, a. b. c.), 93 (4)—Uniformité des lois relatives à la propriété et aux droits civils, dans Ontario, N. E. et N. B. 94.—Agriculture et immigration, 95. V. *Chambre des Communes, Parlement du Canada, Sénat.*
Dette publique, revenus, etc.: V. *Dette Publique, Propriétés Publiques, Revenus Publics, Travaux Publics.*
Autorisé à remplir toutes les obligations naissant de traités conclus avec les pays étrangers, 132.

Gouverneur-Général:
Interprétation des dispositions relatives à cette charge, 10—et de celles relatives au gouverneur en conseil, 12, 13.

(House of Commons.—Con.)

Election Laws of the different Provinces, continued in force until altered by Parliament, 41.—And Laws relating to the issuing of writs, 42, 43.

Speaker to be elected at first sitting, 44.—And as often as a vacancy may occur, 45.—To preside at all meetings, 46.—In case of absence for 48 hours, a Speaker *pro tem.* may be elected, 47.—Speaker may vote only when the voices are equal, 49.

Quorum consists of 20 Members, 48.

Duration of House of Commons is five years, unless sooner dissolved, 50.

The Representation to be readjusted after each decennial Census, 51.

Money votes must originate in the Commons, 53.

Oath of allegiance, and declaration of qualification, to be taken by Members, 128. (Schedule 5).

Privileges, immunities and powers, 18, and page 505.

Witnesses sworn before Select Committees, page 509.

Immigration:

Laws in relation to immigration may be enacted by Parliament, and (subordinate thereto) by the Provincial Legislatures, 95.

Indians, And Indian Lands:

Under exclusive control of Parliament, 91 (24).

Insolvency:

Disqualifies a Senator, 31 (3).

Legislation thereon is under exclusive control of Parliament, 91 (21).

Intercolonial Free Trade.—See *Free Trade.*

Intercolonial Railway:

To be commenced within six months, 145.

Interest of Money:

Legislation thereon is under exclusive control of Parliament, 91 (19).

Interest of Public Debt:—See *Public Debt.*

Interpretation Clauses:

With respect to His Majesty, 2.—To the name "Canada," 4.—The Governor General, 10.—The Governor General in Council, 12, 13.—Lt.-Governor, 62, 65.—Lieut.-Governor in Council, 62, 65, 66.—Expiring Laws, 137.

(*Gouv. Général.*—Suite.)

Peut nommer des députés et définir leurs pouvoirs, 14.

Ses devoirs quant à la nomination des sénateurs, 24 à 27, 32—Nomination de l'orateur, 34.

Il convoque la Chambre des Communes, au besoin, au nom du Roi, 38.

Ordonne l'émission des brefs pour la première élection, 42.

Peut dissoudre la Chambre, 50.

Un vote de crédits ne peut devenir loi avant d'avoir été recommandé par le gouverneur, 54.

Peut sanctionner les bills ou les réserver. 55—Doit transmettre des exemplaires de ces bills en Angleterre, 56—et signifier par discours ou message que les bills réservés ont reçu la sanction royale, 57.

Le gouverneur en conseil peut désavouer (dans le délai d'un an) les lois passées par les législatures provinciales, 56, 90.

Appel au gouverneur en conseil de tout acte ou décision affectant les droits de la minorité, en matière d'instruction publique, 93 (3, 4).

Nomme le lieutenant-gouverneur de chaque province sous le grand sceau, 58—Peut nommer un administrateur chargé de le remplacer pendant son absence temporaire, etc., 67.

Nomme tous les juges, sauf ceux des cours de vérification dans la Nouvelle-Ecosse et le Nouveau-Brunswick 96—Peut démettre tout juge des cours supérieures, à la suite d'une adresse du Sénat et de la Chambre des Communes, 99.

Son salaire (£10,000 stg jusqu'à modification) constitue la 3e charge sur le fonds consolidé du revenu, 105.

Le gouverneur en conseil peut prescrire la manière dont tous les paiements doivent être faits, 120—Peut nommer des officiers publics, 131.

Hôpitaux:

Placés sous le contrôle provincial (sauf les hôpitaux de marine), 92 (7).

Hôpitaux de marine:

Sont sous le contrôle exclusif du parlement, 91, (11).

Ile du Prince-Edouard:

Son admission dans la confédération, 146, 147.

Ile de Sable:

Placée sous le contrôle exclusif du parlement, 91 (9).

Judges:

All Judges (excepting those of the Courts of Probate in Nova Scotia and New Brunswick) are appointed by Governor General, 96.—Their salaries are fixed and provided by Parliament, 100.

Judges in Nova Scotia and New Brunswick to be selected from the Bar of each Province, until the Civil Law is made uniform, 97.—Judges in Quebec to be selected from the Bar of Quebec, 98.

Judges of Superior Courts are removable on Address of Senate and House of Commons, 99.

Justice, Administration of:

The Criminal Law (except constitution of the Courts) is under exclusive control of Parliament, 91 (27).

The Administration of Justice in the Provinces, and the constitution, etc., of all Provincial Courts (including Procedure in civil matters,) are under Provincial control, 92 (14).—See *Property and Civil Rights.*

Parliament may provide for the organization of a Court of Appeal for Canada, and of additional Courts for administering the Laws of Canada, 101.

Continuance of all existing Courts, Judicial Officers, etc., 129.

Pleadings or process may be in English or French, in Courts of Canada or Quebec, 133.

King The:

Interpretation of provisions referring to His Majesty, 2.

His Majesty in Council to appoint a day (by Proclamation) upon which the Union of the Provinces shall go into effect, 3.

Executive Government and authority over Canada continues vested in the King, 9.—Administered by the Governor General in His name, 10.

Ottawa named as the seat of Government, until otherwise directed by the King, 16.

May, on the recommendation of the Governor General, summon 3 or 6 additional Senators, 26, 27.

Reservation of Bills, for the signification of His Majesty's Pleasure, 55, 57.—Disallowing of Bills to which the Royal Assent has been given by the Governor, 56.

Lieut.-Governors of Provinces act in the name of the King, 72, 75, 82.

Lands, Public:

Are under Provincial control, 92 (5), 109.—Except such as may be required for fortifications, 117.

Immigration:

Des lois relatives à l'immigration peuvent être passées par le parlement et (subordonnées au parlement) par les législatures provinciales, 95.

Institutions de bienfaisance:

Sont sous le contrôle provincial (sauf les hôpitaux de marine), 92 (7).

Institutions municipales:

Sont sous le contrôle provincial, 92 (8).

Instruction publique:

Placée sous le contrôle exclusif des législatures provinciales, sauf certaines restrictions, 93.

Maintien des droits conférés par la loi aux écoles séparées (*Denominational*), 93 (1, 2).—Appel au gouverneur en conseil de tout acte ou décision affectant les droits de la minorité, 93 (3).—Le parlement du Canada peut, à défaut de lois provinciales, décréter des lois propres à remédier aux abus, 93 (4).

Tous les priviléges antérieurement conférés aux écoles catholiques romaines séparées dans le Haut-Canada sont étendus aux écoles dissidentes dans la province de Québec, 93 (2).

Intérêt de l'argent:

La législation à cet égard ressort exclusivement au contrôle du parlement, 91 (19).

Intérêt de la dette publique: V. *Dette Publique.*

Interprétation, clauses d':

Relatives à Sa Majesté, 2—au nom de "Canada" 4—au gouverneur-général, 10—au gouverneur en conseil, 12, 13—au lieutenant-gouverneur, 62, 65—au lieutenant-gouverneur en conseil, 65, 66—aux lois expirantes, 137.

Juges:

Tous les juges (sauf ceux des cours de vérification dans la N.-Ecosse et le N.-Brunswick) sont nommés par le gouverneur-général, 96.—Leurs salaires sont fixés et payés par le parlement, 100.

Les juges de la N.-Ecosse et du N.-Brunswick sont choisis parmi les membres du barreau de chaque province, jusqu'à ce qu'il soit pourvu à l'uniformité des lois civiles, 97.—Les juges de Québec sont choisis parmi les membres du barreau de cette province, 98.

Laws:

Existing Laws continued in force, 129.

Legal Tender:

Under exclusive control of Parliament, 91 (20).

Legislative Assembly:—See *Ontario. Quebec.*

Legislative Council:—See *Quebec.*

Legislative Powers:

Parliament of Canada, 17 to 57, and page 505.—Senate, 21 to 36.—House of Commons, 37 to 52.—Money Votes, 53, 54.—Royal Assent to Bills, 55 to 57.—Legislative Powers, 91, 92 (10 a. b. c.), 93 (4).—Uniformity of Laws, relative to Property and Civil Rights in Ontario, N. S. and N. B., 94.—Agriculture and Immigration, 95.—Customs and Excise, 122. See also *Amendments.*

Ontario, 69, 70, 81 to 87, 89.—Quebec, 71 to 87, 89.—Nova Scotia, 88, 89.—New Brunswick, 88.—All the Provinces, 90, 92, 93, 95. See *Amendments.*

Licences:

For raising revenue for Provincial or Municipal purposes, are under Provincial control, 92 (9).

Lieutenant-Governor:

To be appointed, for each Province, by Governor General in Council, 58.—Interpretation clause, as to powers and duties, 62, 65, 66.

To hold office during pleasure, but (after the first Session of Parliament) not to be removable under five years, except for cause assigned, 59.

Salary to be fixed and paid by Parliament, 60.

Oaths of allegiance and office, 61.

May appoint to the Executive Council, such persons as he think fit, 63.—And prescribe their duties, 134.—Heads of Departments specified, 63, 134.—Their functions to continue as heretofore, 135.

Governor General may appoint an Administrator to act in absence, etc., of Lieut.-Governor, 67.

Constituted a Branch of the Legislature, 69, 71, 88.

To appoint the Members of the Legislative Council, in the King's Name. (Quebec), 72.—To fill up vacancies therein, 75.

(Juges.—Suite.)

Les juges des cours supérieures peuvent être démis sur une adresse du Sénat et de la Chambre des Communes, 99.

Justice, administration de la:

Les lois criminelles (sauf la constitution des tribunaux) ressortent exclusivement au parlement, 91 (27).

L'administration de la justice dans les provinces et la création de tous les tribunaux provinciaux (y compris la procédure en matières civiles) sont sous le contrôle provincial, 92 (14). V. *Propriétés et Droits Civils.*

Le parlement peut créer une cour générale d'appel pour le Canada et établir des tribunaux additionnels pour la meilleure administration des lois du Canada, 101.

Tribunaux, officiers judiciaires, etc., en existence, continués comme si la confédération n'avait pas eu lieu, 129.

Les plaidoiries ou pièces de procédure devant les tribunaux du Canada ou de Québec pourront être, à faculté, rédigées dans la langue anglaise ou française, 133.

Langues française et anglaise:

Pour le Canada et la province de Québec, usage *facultatif* de l'une ou de l'autre langue dans les débats parlementaires, plaidoiries ou pièces de procédure devant les tribunaux; mais usage *obligatoire* des deux dans la rédaction des archives, procès-verbaux, journaux et actes du parlement, 133.

Lettres de change:

La législation à cet égard ressort exclusivement au parlement 91 (18).

Libre-échange:

Les articles de la provenance d'une province sont admis en franchise dans les autres, 121.

Licences:

Celles émises pour prélever un revenu pour des objets provinciaux ou municipaux sont sous le contrôle provincial, 92 (9).

Licences d'auberges:

Celles émises pour prélever un revenu pour des objets provinciaux ou municipaux sont sous le contrôle provincial, 92 (9).

Lieutenant-gouverneur:

Nommé, pour chaque province, par le gouverneur-général en conseil, 58—Interprétation de certaines dispositions relatives à ses pouvoirs et devoirs, 62, 65, 66.

(*Lieut-Governor.*—Con.)

To appoint the Speaker of the Legislative Council, from time to time, from among the members, 77.

To convene the Legislature, 82.—Every year, 86.—May dissolve the L. Assembly, 85.

The office of Lieut.-Governor may not form the subject of legislation by the Provincial Legislatures, 92 (1). See *Amendments. Proclamations.*

Light Houses:

Under exclusive control of Parliament, 91 (9).

Local Works, &c.:

Are under Provincial control, 92 (10).—Except such as are declared to be for the general advantage of Canada, etc., 92 (10, c).

All matters of a local and private nature in the Province, are under Provincial control, 92 (16).

Lumber Dues:

May continue to be imposed by New Brunswick, 124.

Marine Hospitals:

Under exclusive control of Parliament, 91 (11).

Manitoba:

Act to provide for government of Manitoba, (33 Vic., chap. 3), confirmed, page 505.

This act cannot be altered without consent of the Legislature of the Province, page 505.

Maritime Provinces:

To be represented by 24 Senators, 22.—Provision for a temporary increase of the number, 26, 27.—For an increase of 4, on admission of Newfoundland, 147.

Marriage:

Law of Marriage is under exclusive control of Parliament, 91 (26).

Solemnization of Marriage, is under Provincial control, 92 (12).

Members:—See *Election. House of Commons. Ontario. Quebec.*

Military and Naval Forces:

The Command-in-Chief thereof remains vested in the King, 15.

(*Lieut-Gouverneur.*—Suite.)

Reste en charge durant bon plaisir, mais (après la première session du parlement) il ne peut être révoqué dans le cours des cinq ans qui suivent sa nomination, à moins qu'il n'y ait cause, 59.

Son traitement est fixé et payé par le parlement, 60.

Serments d'allégéance et d'office, 61.

Peut appeler au conseil exécutif les personnes qu'il juge à propos, 63—et leur assigner leurs devoirs, 134—Enumération des chefs de départements, 63, 134.— Leurs fonctions seront les mêmes que celles qui leur étaient ci-devant attribuées, 135.

Le gouverneur-général peut nommer un administrateur chargé de remplacer le lieutenant-gouverneur pendant son absence, etc., 67.

Il fait partie de la législature, 69, 71, 88.

Il nomme les membres du conseil législatif au nom du Roi (Québec), 72—Il remplit les vacances, 75.

Nomme l'orateur du conseil législatif, qu'il choisit parmi les membres de ce corps, 77.

Convoque la législature, 82—chaque année, 86.—Peut dissoudre l'assemblée législative, 85.

Les législatures provinciales ne peuvent passer de lois concernant la charge de lieutenant-gouverneur, 92 (1) V. *Amendements. Proclamations.*

Lignes télégraphiques: V. *Télégraphes.*

Lois:

Existantes, continuent d'être en vigueur, 129.

Lois concernant les douanes: V. *Douanes.*

Lois criminelles:

Ressortent exclusivement au parlement (sauf la constitution des tribunaux de juridiction criminelle), 91 (27).

Lois expirantes:

Interprétation des dispositions qui s'y rapportent 137.

Maisons de réforme:

Sont sous le contrôle provincial, 92 (6).

Manitoba:

Acte pour constituer le gouvernement de la province de Manitoba (33 Vic., chap. 3) confirmé, page 504. Ce statut ne peut être changé sans le consentement de la législature de la province, page 504.

Militia:

The command-in-Chief thereof remains vested in the King, 15.
Militia, Military and Naval Service, is under exclusive control of Parliament, 91 (7).

Mines and Minerals:

Are under Provincial control, 109.

Money Votes:

In Parliament: Originate in the Commons, 53.—Being first recommended by Governor General, 54.
In the Provincial Legislatures: Originate in Legislative Assembly, 53, 90.—Being first recommended by the Lieut.-Governor, 54, 90.

Municipal Institutions:

Are under Provincial control, 92 (8).

Naturalization and Aliens:

Under exclusive control of Parliament, 91 (25).

Navigation and Shipping:

Under exclusive control of Parliament, 91 (10).

New Brunswick:

Constituted one of the Province of the Dominion, 5.
Limits to remain as heretofore, 7.
To be represented by 12 Senators, 22—(or 10, after admission of P. E. Island or Newfoundland, 147).—Provision for a temporary increased, 26 to 28.
To be represented in the Commons, by 15 Members, 37.—Representation to be re-adjusted decennially, 51.
Electoral Districts defined, 40 (4).
Constitution of Executive Authority to continue until altered by the Legislature, 64, 92 (1). See *Lieut.-Governor. Provincial Constitutions.*
Constitution of the Legislature (the like), 88, 92 (1). See *Provincial Constitutions.*
Fredericton to be the Seat of Government, until otherwise directed by the Executive Government, 68.
Judges of Court of Probate are appointed and paid by provincial Authority, 96, 100.
All Judges in the Province to be selected (for the present) from the Bar thereof, 97.

Mariage:

Les lois ressortent au contrôle exclusif du parlement, 91 (26).
La célébration du mariage est sous le contrôle provincial, 92, (12).

Milice:

Le commandement en est confié au Roi, 15.
La milice et le service militaire et naval sont sous le contrôle exclusif du parlement, 91 (7).

Mines et minéraux:

Sont sous le contrôle provincial, 109.

Monnayage:

Ressort exclusivement au contrôle du parlement, 91 (14).

Municipalités: V. *Institutions municipales.*

Naturalisation et aubains:

Sont sous le contrôle exclusif du parlement, 91 (25).

Navigation et navires:

Sont sous le contrôle exclusif du parlement, 91 (10).

Navires et bâtiments:

Sont sous le contrôle exclusif du parlement, 91 (10).

Offres légales:

Sont sous le contrôle exclusif du Parlement, 91 (20).

Orateur de la Chambre des Communes (ou de l'Assemblée législative):

Il est procédé à son élection dès la première séance, 44—s'il survient une vacance dans cette charge, 45—Ces dispositions s'appliquent à l'assemblée législative, 87.
Il exerce la présidence à toutes les réunions des Communes, 46—et de l'assemblée législative, 87.
S'il s'absente pendant 48 heures, un orateur intérimaire peut être élu (Communes), 47—(assemblée législative), 87.
Il ne vote qu'au cas de partage des voix (Communes), 49 (assemblée législative), 87.

(*New-Brunswick.*—Con.)
Proportion of public debt, revenue and property. See *Public Debt. Public Property. Public Revenues. Public Works.*
Lumber dues may be imposed by Provincial Legislature, 124.

Newfoundland:
Admission of, into the Union, 146, 147.

New Provinces:—See *Provinces, New.*

North West Territory:
Admission of, into the Union, 146.

Nova Scotia:
Constituted one of the Provinces of the Dominion, 5.
Limits to remain as heretofore, 7.
To be represented by 12 Senators, 22—(or 10, after admission of P. E. Island, or Newfoundland, 147).—Provision for a temporary increase, 26 to 28.
To be represented, in the Commons, by 19 Members, 37.—Representation to be re-adjusted decennially, 51.
Electoral Districts defined, 40 (3).
Constitution of Executive Authority to continue, until altered by the Legislature, 64, 92 (1). See *Lieut.-Governor. Provincial Constitutions.*
Constitution of the Legislature (the like), 88, 92 (1). See *Provincial Constitutions.*
Halifax to be the Seat of Government, until otherwise directed by the Executive Government, 68.
First General Election to be simultaneous with that for the Commons, 89.
Judges of Court of Probate are appointed and paid, by Provincial Authority, 96, 100.
All Judges in the Province to be selected (for the present) from the Bar thereof, 97.
Proportion of public debt, revenue and property:—See *Public Debt. Public Property. Public Revenues. Public Works.*

Oaths:
Of allegiance, taken by Governor General and Lieut.-Governors, 61. By Members of Parliament, and of the Provincial Legislatures, 128, (Schedule 5).
Of office, taken by Privy Councillors, 11. By Lieutenant-Governors, 61.

Old Provinces:—See *Provinces, Old.*

Orateur du Conseil Législatif (Québec) :

Nommé de temps à autre (choisi parmi les membres de ce corps) par le lieutenant-gouverneur, 77—Il est membre du conseil exécutif, 63.

Il a voix délibérative; quand les voix sont également partagées, la décision est censée rendue dans la négative,79.

Orateur du Sénat :

Est nommé par le gouverneur-général et choisi parmi les membres du Sénat, 34.

Il a voix délibérative; quand les voix sont également partagées, la décision est censée rendue dans la négative, 36.

Papier-monnaie, émission du :

Est sous le contrôle exclusif du parlemant, 91 (15).

Parlement du Canada :

Sa constitution, 17—ses pouvoirs, 18 et page 506.

Convoqué dans les six mois après la confédération, 19—et une fois au moins par année ensuite, 20.

Le Sénat, 21 à 36. V. *Sénat.*

Chambre des communes, 37 à 54. V. *Chambre des Communes.*

Fixe le traitement des lieutenants-gouverneurs et le paie, 60.

Enumération de sujets soumis au contrôle exclusif du parlement, 91, 92 (10 a. b. c.)—Contrôle assigné au parlement en matière d'instruction publique (en certains cas seulement), 93 (4);—en matière d'immigration et d'agriculture, 95.

Les juges des cours supérieures peuvent être démis par le gouverneur-général sur adresse du Sénat et de la Chambre des Communes, 99.—Les traitements de tous les juges (sauf ceux des cours de vérification dans la Nouvelle-Ecosse et le Nouveau-Brunswick) sont fixés et payés par le parlement, 100.

Peut établir une cour d'appel pour le Canada et des tribunaux nouveaux pour l'administration des lois du Canada, 101.

A le contrôle du fonds consolidé du revenu, 106.

A tous les pouvoirs nécessaires pour remplir les obligations naissant de traités conclus avec les pays étrangers, 132.

Il peut être fait usage, *à faculté*, de la langue anglaise ou française dans les débats; mais les journaux, archives et les lois *doivent être* rédigés dans les deux langues, 133.

Actes confirmés; 32-33 Vic., chap. 3 (gouvernement de la Terre de Rupert et du Territoire du Nord Ouest) et 33 Vic., chap. 3 (gouvernement de Manitoba) page 504, et 31 Vic., chap. 24 (serment administré aux témoins assignés par l'une ou l'autre Chambre) page 508.

V. *Amendements.*

Ontario:

Constituted one of the Provinces of the Dominion, 5.
To consist of what was formerly Upper Canada, 6.
To be represented by 24 Senators, 22.—Provision for a temporary increase of the number, 26 to 28.
To be represented, in the Commons, by 82 Members, 37.—Representation to be re-adjusted decennially, 51.
Electoral Districts defined, 40 (1).
Executive Power, 58 to 68.—Constitution of Executive Council, 63.—Members of the administration and their functions, 134, 135. See *Lieut.-Governor.*
Toronto to be the Seat of Government, until otherwise directed by the Executive Government, 68.
Legislature of Ontario, how constituted, 69.—To be convened by the Lieut.-Governor, in the name of the King, 82.—Within 6 months after the Union, 81.—And at least once in each year thereafter, 86.
Legislative Assembly consists of 82 Members, 70.—Office holders (excepting Members of the Administration) ineligible thereto, 83.—Laws relating to the Elections, Qualification of Voters and Candidates, Writs, Controverted Elections, etc., continued until altered by the Legislature, 84.—Duration of Assembly to be four years, unless sooner dissolved, 85.—Quorum to be 20 Members, 48, 87.—First General Election to be simultaneous with that for the Commons, 89.—Members to take the oath of allegiance, 128.
Speaker of L. Assembly to be elected at first sitting, 44, 87.—And as often as a vacancy may occur, 45, 87.—To preside at all meetings, 46, 87.—In case of absence for 48 hours, a Speaker *pro tem.* may be elected, 47, 87.—Speaker may vote only when the voices are equal, 49, 87.
The use of the name "Upper Canada" in any deed, etc., does not invalidate it, 138.
Penitentiary, 141.
Proportion of public debt, revenue and property:—See *Public Debt. Public Property. Public Revenues. Public Works.*
Adjustment of debts, assets, etc., Ontario and Quebec, 142.—Assignment of books and records, 143. See *Amendments. Provincial Constitutions.*

Paper Money, Issue thereof:

Under exclusive control of Parliament, 91 (15).

Parliament of Canada:

How constituted, 17.—Its powers, 18, and page 507.

Passages d'eau (Ferries) :

Entre une province et tout pays britannique ou étranger, ou entre deux provinces, sont sous le contrôle exclusif du parlement, 91 (13).

Pêcheries :

sont sous le contrôle exclusif du parlement, 91 (12).

Pénitenciers :

Sont sous le contrôle exclusif du parlement, 91 (28).
Celui de la Province du Canada sera le pénitencier de Québec et d'Ontario, 141.

Phares :

Sont sous le contrôle exclusif du parlement, 91, (9).

Poids et Mesures :

Sont sous le contrôle exclusif du parlement, 91 (17).

Pouvoir exécutif :

Du gouvernement général, 9 à 15. V. *gouverneur-général, Conseil privé.*
Des gouvernements provinciaux, 58 à 67. V. *Licutenant-gouverneur.*

Pouvoirs exclusifs en matière de législation : V. *Pouvoirs législatifs* :

Pouvoirs législatifs :

Parlement du Canada, 17 à 57—Sénat, 21 à 36—Chambre des Communes, 37 à 54—Votes de crédits, 53, 54—Sanction royale donnée aux bills, 55 à 57—Pouvoirs législatifs, 91, 92 (10 a. b. c.) 93 (4)—Uniformité dans Ontario, N. E. et N. B. des lois relatives à la propriété et aux droits civils, 94—Agriculture et immigration, 95—Douane et accise, 122. V. *Amendements.*
Ontario, 69, 70, 81 à 87, 89—Québec, 71 à 87, 89—Nouvelle-Ecosse, 88, 89—Nouveau-Brunswick, 88—Toutes les provinces, 90, 92, 93, 95. V. *Amendements.*

Prince-Edouard : V. *Ile du*

Prisons :

Sont sous le contrôle provincial, 92 (6).

To be called within 6 months after the Union, 19.—And once at least in every year thereafter, 20.
The Senate, 21 to 36.. See *Senate*.
House of Commons, 37 to 54. See *House of Commons*.
To fix the salaries of Lieut.-Governors, and provide therefor, 60.
Classes of subjects under exclusive jurisdiction of Parliament, 91, 92 (10 a, b, c.).—Controlling jurisdiction assigned to Parliament, in matters relating to Education (in certain cases only), 93 (4).—Legislation for uniformity of laws in Ontario, N. S. and N. B., 94.—In matters relating to Agriculture and Immigration, 95.
Judges of the Superior Courts may be removed by the Governor General, on Address of the Senate and the House of Commons, 99.—Salaries of all Judges (except those of Probate Courts in N. S. and N. B.) are fixed and provided by Parliament, 100.
May provide for a Court of Appeal for Canada, and for additional Courts for administration of Laws of Canada, 101.
Has control over the Consolidated Revenue Fund, 106.
Has all powers necessary for performing Treaty obligations towards foreign countries, 132.
English or French may be used in the debates; Both must be used in the Journals and Statutes, 133. See *Amendments*.
Acts confirmed, 32, 33 Vic., chap. 3, (Government of Rupert's Land and N. W. Territory,) 33 Vic., chap. 3, (Government of Manitoba,) page 505; and 31 Vic., chap. 24, (Oaths to Witnesses summoned by either House,) page 509.

Patents of Invention:
Under exclusive control of Parliament, 91 (22).

Penitentiaries:
Under exclusive control of Parliament, 91 (28).
Penitentiary of Canada continues to be the Penitentiary of Ontario and Quebec, 141.

Postal Service:
Under exclusive control of Parliament, 91 (5).

Prince Edward Island:
Admission of, into the Union, 146, 147.

Prisons:
Are under Provincial control, 92 (6).

Procédure des tribunaux:

En matières criminelles ressortent au contrôle du parlement du Canada, 91 (27).

En matières civiles, ressortent au contrôle provincial, 92 (14).

V. *Propriété et Droits Civils.*

Proclamations:

Mise à effet de la confédération dans les 6 mois, par proclamation, 3—Proclamations lancées avant la confédération, restent en vigueur après la confédération, 139.

Les noms des premiers sénateurs insérés dans la proclamation, 25.

Proclamations annonçant que la sanction royale a été donnée aux bills réservés, doivent être consignées dans les journaux de chaque Chambre, 57, 90.

Les proclamations en vertu d'actes concernant le Bas ou le Haut-Canada peuvent être lancées par les lieutenants-gouverneurs de Québec ou d'Ontario, 140.

Proclamations érigeant de nouveaux townships dans Québec, 144.

Procureur-général:

Est membre du conseil exécutif (Ontario et Québec), 63.—Il est nommé, durant bon plaisir, par le lieutenant- gouverneur, 134—Ses fonctions et devoirs, 134, 135.

Propriété et Droits Civils dans les provinces:

La législation qui s'y rapporte ressort au contrôle provincial, 92 (13)—mais le parlement peut adopter des mesures à l'effet de pourvoir à l'uniformité dans Ontario, N. E. et N. B. des lois ou de la procédure devant les tribunaux, lesquelles n'auront d'effet dans une province qu'après y avoir été décrétées par la législature; après la passation d'un acte à cet effet, le pouvoir du parlement, relativement aux sujets y énoncés, sera illimité, 94. V. *Juges.*

Propriétés publiques:

Du Canada—l'argent en caisse et autres valeurs de chaque province, 107.—Certains travaux et propriétés publics, 108 (cédule 3)—Terrains nécessaires aux fortifications et à la défense, 117—Les propriétés publiques sont exemptes de taxes, 125.

Des provinces—les terres, mines, etc., dans les différentes provinces et les sommes dues à cet égard, 109;—l'actif inhérent aux parties de la dette publique assumées par chaque province, 110;—toutes propriétés publiques dont il n'est pas autrement disposé, 117.

Privy Council for Canada:

How constituted, 11.

Powers of Governor General in Council defined, 12, 13. See *Governor General.*

Procedure of the Courts:

In criminal matters, is under the control of the Parliament of Canada, 91 (27).

In Civil matters, is under Provincial control, 92 (14). But see *Property and Civil Rights.*

Proclamations:

The Union to take effect, by Proclamation, within six months, 3. Proclamations issued before the Union (in relation thereto), continue in force after the Union, 139.

The names of the first Senators to be inserted therein, 25.

Announcing the Royal Assent to any Reserved Bill, to be entered in the Journal of each House, 57, 90.

Proclamations under existing Acts affecting U. or L. Canada, may be issued by the Lieut.-Governors of Ontario and Quebec, 140.

Constituting new Townships, in Quebec, 144.

Promissory Notes:

Legislation relative thereto is under exclusive control of Parliament, 91 (18).

Property and Civil Rights, in the Provinces:

Legislation thereof is under Provincial control, 92 (13).—But Parliament may enact provisions in Ontario, N. S. and N. B., for uniformity of the Laws in reference thereto, or of the procedure of the Courts which shall not have effect in any such Province until enacted by the Legislature thereof; after which the power of Parliament in relation to any matter comprised in such Act shall be unrestricted, 94. See also *Judges.*

Provinces, New:

May be established by Parliament in Territories of the Dominion, page 503.

Limits and provisions of Acts establishing same, cannot be altered without consent of Legislatures of such new provinces, page 505.

Les propriétés appartenant aux provinces sont exemptes de taxes, 125.
D'Ontario et de Québec, 113 (cédule 4)—Leur règlement, 142.

Provinces anciennes:
Le parlement ne peut changer leurs limites sans le consentement des législatures des provinces intéressées, page 502.

Provinces Maritimes:
Représentées par 24 sénateurs, 22—Pourvu au cas de l'augmentation temporaire dans le nombre des sénateurs, 26, 27—Augmentation de 4, au cas où Terreneuve serait admise dans la confédération, 147.

Provinces nouvelles:
Peuvent être établies dans les territoires du Canada par le parlement, page 502—Les limites ainsi que les dispositions des statuts qui les érigent ne peuvent être changées sans le consentement des législatures de ces nouvelles provinces, page 504.

Qualification:
Des sénateurs, 23—Les questions qui s'y rapportent sont décidées par le Sénat, 33.
Des députés à la Chambre des Communes, ou à l'assemblée législative d'Ontario ou Québec, restent les mêmes qu'auparavant, jusqu'à modification par la loi, 41, 84.
Des électeurs (mêmes dispositions), 41, 84.
Des conseillers législatifs (Québec), 23, 73—Les questions qui s'y rapportent sont décidées par le conseil législatif, 76.

Qualités exigées des représentants, Electeurs, etc.: V. *Qualifications.*

Quarantaine:
Sous le contrôle exclusif du parlement 91 (11).

Québec:
L'une des provinces formant partie de la Puissance, 5.
Se compose de la partie qui constituait auparavant le Bas-Canada, 6.
Est représentée par 24 sénateurs, 22—Pourvu au cas où le nombre des sénateurs serait temporairement augmenté, 26 à 28.

Provinces, Old:

Limits may be altered by Parliament with the consent of the Legislatures of the Provinces concerned, page 503.

Provincial Constitutions:

Executive Power, 58 to 68.—Lieut.-Governor, 58 to 62.—Executive Council, 63, 64.—Lieut.-Governor in Council, 65, 66.—An Administrator may be appointed by the Governor General, when necessary, 67. See *Lieut.-Governor.*

Seat of Government of each Province named, subject to any change under the direction of the Executive Government thereof, 68.

Legislatures, and their powers, 69 to 95, 128. See also *Ontario, Quebec.*

Classes of subjects enumerated, on which the Provincial Legislatures have exclusive powers of legislation, 92, 93.—Power to legislate, subject to appeal to the Governor General in Council, 93 (3).—Subject to the control of Parliament, 93 (4), 95.—Any Act of Parliament for rendering uniform, in certain Provinces, the Laws relative to Property and Civil Rights, and the Procedure of the Courts, shall not have effect in any such Province, until enacted as law by the Legislature thereof, 94. See also *Amendments.*

Constitution of the Province; May be amended by Provincial Legislature, except as regards the office of Lieut.-Governor, 92 (1).

Provincial Revenues:—See *Public Revenues.*

Public Debt:

The Public Debt, and the raising of money by taxation, or loan, for general purposes, are under control of Parliament, 91 (1, 3, 4).

Interest thereon made a second charge on Consolidated Revenue Fund, 104.

Canada liable for the whole of the debts existing at the Union, 111.

Proportion for which Ontario and Quebec are liable, 112.—Nova Scotia, 114, 116.—New Brunswick, 115, 116.

The interest on their proportion of the debt, to be deducted from the grants to the respective Provinces, 118.

Adjustment of liabilities, etc., of Ontario and Quebec, 142.

Public Offices and Officers:

Of the Dominion, Under the control of Parliament, 91 (8).

Est représentée aux Communes par 65 députés, 37, 51 (1).

Ses districts électoraux, 40 (2).

Pouvoir exécutif, 58 à 67—Composition du conseil exécutif, 63—Membres de l'administration et leurs attributions, 134, 135. V. *Lieutenant-Gouverneur*.

Québec déclaré siège du gouvernement, jusqu'à ce que l'exécutif en ordonne autrement, 68.

Législature de Québec, comment constituée, 71—Est convoquée par le lieutenant-gouverneur au nom du Roi, 82—Dans les six mois après la confédération, 81—et au moins une fois par année ensuite, 86—Les membres doivent prêter serment, 128.

Conseil législatif, composé de 24 conseillers (un pour chaque collège électoral)—nommés à vie, à moins que le contraire ne soit prescrit, 72—Quant aux qualités exigées des conseillers et aux sièges vacants, mêmes dispositions que celles applicables au Sénat, 23, 30, 31, 73, 74, 128.

Orateur du conseil législatif est nommé par le lieutenant-gouverneur, 77—Il est en même temps membre du conseil exécutif, 63—Il a voix délibérative; quand les voix sont également partagées, la décision est censée rendue dans la négative, 79.

Assemblée législative, se compose de 65 députés représentant les divisions électorales mentionnées dans la sec. 40,—sauf les modifications que peut y apporter la législature; celles énumérées dans la cédule 2 ne peuvent être modifiées sans le concours de la majorité des députés les représentant, donné lors des 2e et 3e lectures du bill à cet effet, 80—Les personnes occupant des charges publiques (sauf les membres de l'administration) y sont inéligibles, 83—Les lois relatives aux élections, qualifications des électeurs et candidats, brefs, élections contestées, etc., sont continuées jusqu'à modification par la législature, 84—La durée d'un parlement est de 4 ans, à moins qu'il ne soit plus tôt dissout, 85—Quorum, fixé à 20 députés 48, 87—La première élection générale a lieu en même temps que celle pour les Communes, 89.

Orateur de l'assemblée législative—il est procédé à son élection dès la première séance, 44, 87—S'il survient une vacance dans cette charge, 45, 87—Il exerce la présidence à toutes les réunions, 46, 87—S'il s'absente pendant 48 heures, un orateur intérimaire peut être élu à sa place, 47, 87—L'orateur ne vote qu'au cas de partage égal des voix, 49, 87.

Les privilèges conférés aux écoles catholiques romaines séparées dans le H. C. sont étendus aux écoles dissidentes de la province de Québec, 93 (2).

Les juges sont choisis parmi les membres du barreau de la province, 98.

The establishment of Provincial Offices, and appointment and salaries of Officers, are under Provincial control, 92 (4).—Heads of Departments specified (Ontario and Quebec), 134.—Their functions, 135.
Public Officers continued in office, 130.—New officers may be appointed, 131.

Public Property:
Of Canada:—All cash and other assets of each Province, 107.—Certain Public Works and Property, 108, (Schedule 3).—Lands for fortifications and defence, 117.—Public Property is not liable to taxation, 125.
Of the Provinces:—All Lands, Mines, etc., in the respective Provinces, and sums dues thereon, 109.—Assets connected with any portions of the Public Debt assumed by each Province, 110.—All public property not otherwise disposed of, 117.
Of Ontario and Quebec, 113, (Schedule 4).—Adjustment thereof, 142.

Public Revenues:
Of Canada:—All revenues heretofore controlled by the Provinces, with cash and other assets, are to form a Consolidated Revenue Fund, 102, 107.—Under control of Parliament, 106.—Subject to certain charges, 103, 104, 105.
Of the Provinces:—Allowance (out of Consolidated Revenue Fund) to Ontario, 118.—To Quebec, 118.—To Nova Scotia, 118—To New Brunswick, 118, 119.
Consolidated Revenue Fund for each Province, 126.

Public Works:
Commissioner of Agriculture and Public Works has a seat in Executive Council (Ontario and Quebec), 63.—Appointed by the Lieut.-Governor, during pleasure, 134.—His functions and duties, 134, 135.
Certain classes of Public Works placed under the control respectively of Parliament, and of the Provincial Legislatures, 92 (10).
Such local works as are declared to be for the general advantage of Canada, or of two or more Provinces are under control of Parliament, 92 (10, c).
Certain Public Works assigned to Canada, 108, (and Schedule 3).

Qualification:
Of a Senator, 23.—Questions relating thereto to be determined by the Senate, 33.

L'emploi du mot "Bas-Canada" dans un acte, titre, etc., n'invalide pas ce dernier, 138.
Pénitencier, 141.
Proportion de la dette, des revenus et des propriétés publiques. V. *Dette publique*, *Propriétés publiques*, *Revenus publics*, *Travaux publics*.
Règlement des dettes, de l'actif, etc., dans Ontario et Québec, 142. —Transfert des livres et archives, 143.
Le lieutenant-gouverneur peut ériger de nouveaux townships, par proclamation, 144. V. *Amendements*, *Constitutions provinciales*.

Quorum:
Du Sénat, fixé à 15 sénateurs, 35—De la Chambre des Communes, 20 députés, 48—Du conseil législatif (Québec), 10 conseillers, jusqu'à modification par la législature, 78—De l'assemblée législative (Ontario et Québec), 20 députés, 48, 87.

Recensement:
Devra être fait en 1871 et à tous les dix ans ensuite, 8.—Est sous le contrôle exclusif du parlement, 91 (6).
Répartition nouvelle de la représentation devant avoir lieu après chaque recensement, 51.

Représentation au Parlement:
Nombre de députés fixé pour chaque province, 37—Peut être augmenté d'après la proportion voulue, 52.
Est réparti de nouveau après chaque recensement décennal, 51.

Revenus provinciaux: V. *Revenus Publics*.

Revenus publics:
Du Canada: tous les revenus que les provinces avaient ci-devant le droit d'affecter aux besoins publics ainsi que l'argent en caisse et les autres valeurs forment un fonds consolidé de revenu, 102, 107—Ce fonds est sous le contrôle du parlement, 106—Il est soumis à certaines charges, 103, 104, 105.
Des provinces, subvention (prise sur le fonds consolidé du revenu) en faveur d'Ontario, 118—de Québec, 118—de la Nouvelle-Écosse, 118—du Nouveau-Brunswick, 118, 119.
Fonds consolidé du revenu pour chaque province, 126.

Roi, Sa Majesté le:
Interprétation des dispositions relatives à Sa Majesté, 2.

Of a Member of the House of Commons, or of the Legislative Assembly of Ontario, or of Quebec, to continue as heretofore, until altered by law, 41, 84.
Of a voter (the like), 41, 84.
Of a legislative Councillor (Quebec), 23, 73.—Questions relating thereto to be determined by the L. Council, 76.

Quarantine:
Under exclusive control of Parliament, 91 (11).

Quebec:
Constituted one of the Provinces of the Dominion, 5.
To consist of what was formerly Lower Canada, 6.
To be represented by 24 Senators, 22.—Provision for a temporary increase of the number, 26 to 28.
To be represented, in the Commons, by 65 Members, 37, 51 (1).
Electoral Districts defined, 40 (2).
Executive Power, 58 to 68.—Constitution of Executive Council, 63.—Members of the Administration, and their functions, 134, 135. See *Lieut.-Governor.*
Quebec to be the Seat of Government, until otherwise directed by the Executive Government, 68.
Legislature of Quebec, how constituted, 71.—To be convened by the Lieut.-Governor in the name of the King, 82.—Within 6 months after the Union, 81.—And at least once a year thereafter, 86.—Members to be sworn, 128.
Legislative Council, consists of 24 Members (one for each Electoral Division).—Appointed for life (until otherwise provided, 72.—Same provisions in regard to qualification, and vacation of seat, as in the Senate, 23, 30, 31, 73, 74, 128.
Speaker of Legislative Council to be appointed from time to time, by the Lieut.-Governor, 77.—He is also a Member of the Executive Council, 63.—Votes as a Member only; (when the voices are equal the decision being deemed to be in the Negative), 79.
Legislative Assembly consists of 65 Members, representing the Electoral Divisions defined in sec. 40,—subject to alterations by the Legislature: those contained in Schedule 2 not to be altered without the concurrence of a majority of the Members thereof, at the 2nd and 3rd readings of the Bill, 80.—Office holders (excepting members of the Administration) ineligible thereto, 83.—Laws relative to Elections, Qualification of Voters and Candidates, Writs, Controverted Elections, etc., continued until altered by the Legislature, 84.—Duration of Assembly to be 4 years, unless sooner dissolved, 85.—Quorum to be 20 Members, 48, 87.—First General Election to be simultaneous with that for the Commons, 89.

Le Roi, en conseil, fixe par proclamation un jour à compter duquel la confédération des provinces doit prendre effet, 3.

Le gouvernement exécutif du Canada continue d'être attribué au Roi, 9—Il est administré en son nom par le gouverneur-général, 10.

Ottawa déclaré le siège du gouvernement, jusqu'à ce qu'il plaise à Sa Majesté d'en ordonner autrement, 16.

Il peut, sur la recommandation du gouverneur-général, nommer 3 ou 6 sénateurs additionnels, 26, 27.

Bills réservés pour la signification du bon plaisir de Sa Majesté, 55, 57—Désaveu des bills auxquels la sanction royale a été donnée par le gouverneur, 56.

Les Lieutenants-Gouverneurs des provinces agissent au nom du Roi, 72, 75, 82.

Rupert, terre de:

Son admission dans la confédération, 146—Acte concernant le gouvernement temporaire de la (32-33 Vic., chap. 3) confirmé, page 504.

Sanction royale donnée aux bills:

Quant au parlement du Canada, peut être donnée par le Gouverneur-Général, à sa discrétion, 55—Des exemplaires des actes sanctionnés sont envoyés en Angleterre. Les bills peuvent être désavoués dans les deux ans, 56.

Quant aux législatures provinciales, peut être donnée par le lieutenant-gouverneur, 55, 90—Les actes peuvent être désavoués par le gouverneur-général dans le cours d'une année, 56, 90.

Sauvages et terres affectées aux Sauvages:

Sous le contrôle exclusif du parlement, 91 (24).

Sceaux (grands) de la province:

Ceux usités dans le Bas et le Haut-Canada serviront pour Ontario et Québec, jusqu'à modification par le lieutenant-gouverneur en conseil, 136.

Secrétaire et régistraire de la province:

Est membre du conseil exécutif d'Ontario et Québec, 63—Nommé durant bon plaisir par le lieutenant-gouverneur, 134.—Ses devoirs et attributions, 134, 135.

Speaker of L. Assembly to be elected at first sitting, 44, 87.—And as often as a vacancy may occur, 45, 87.—To preside at all meetings, 46, 87.—In case of absence for 48 hours, a Speaker *pro tem.* may be elected, 47, 87.—Speaker may vote only when the voices are equal, 49, 87.

The privileges conferred on Roman Catholic Separate Schools in Upper Canada are extended to the Dissentient Schools in Quebec, 93 (2).

All Judges in the Province to be selected from the Bar thereof, 98.

The use of the name "Lower Canada" in any deed does not invalidate it, 138.

Penitentiary, 141.

Proportion of public debt, revenue and property:—See *Public Debt. Public Property. Public Revenues. Public Works.*

Adjustment of debts, assets, etc., Ontario and Quebec, 142.—Assignment of books and records, 143.

Lieut.-Governor may constitute new Townships, by Proclamation, 144.

See *Amendments. Provincial Constitutions.*

Quorum:

Of the Senate, consists of 35 Senators, 35.—Of the House of Commons, 20 Members, 48.—Of the Legislative Council, Quebec, (until altered by the Legislature), 10 Members, 78.—Of the L. Assembly (Ontario and Quebec), 20 Members, 48, 87.

Railways:

Such as connect two Provinces, or extend beyond the limits of a Province, are under control of Parliament 92 (10, a).—And such, also, are as declared to be for the general advantage of Canada, or of two or more Provinces, 92 (10, c).

Reformatories:

Are under Provincial control 92 (6).

Representation in Parliament:

The number of Members from each Province prescribed, 37.—May be proportionately increased, 52.—To be re-adjusted after each decennial census, 51.

Reserved Bills:

Parliament of Canada; Governor General may reserve Bills for the signification of the King's Pleasure, 55.—Such Bills have no force unless, within 2 years, the Assent of the King in Council is announced, 57.

Sénat:

Composé de 72 sénateurs, 21—24 pour Ontario, 24 pour Québec, et 24 pour les provinces maritimes, 22—et 4 pour Terreneuve après son admisssion dans la confédération, 147—Pourvu au cas où le nombre des sénateurs serait augmenté de 3 ou 6, 26—Il ne sera pas fait d'autres nominations tant que la représentation ne sera pas revenue au nombre fixe, 27—Le nombre des sénateurs ne devra jamais excéder 78, 28—Ou 82 après l'admission de Terreneuve, 147.

Qualités exigées des sénateurs, 23.

Mode d'après lequel les sénateurs seront nommés, 24, 25.

Tout ancien conseiller législatif auquel un siège au Sénat est offert, doit déclarer dans les 30 jours s'il l'accepte ou non, 127.

Serment d'allégeance et déclaration des qualifications, 128 (cédule 5).

Les sénateurs sont nommés à vie, 29;—mais peuvent se démettre de leurs fonctions, 30—Ils perdent leurs sièges pour les causes assignées, 31.

Les vacances sont remplies par le gouverneur-général, 32,

Les questions relatives aux qualifications ou aux sièges vacants sont décidées par le Sénat, 33.

L'orateur est nommé par le gouverneur-général et choisi parmi les sénateurs, 34.

Quorum, fixé à 15 sénateurs, 35.

Les questions soulevées dans le Sénat sont décidées à la majorité des voix et l'orateur a voix délibérative: quand les voix sont également partagées, la décision est censée rendue dans la négative, 36.

Les sénateurs ne peuvent être élus ni siéger ni voter comme membres des Communes, 39.

Priviléges, immunités et pouvoirs, 18 et page 506—assermentation des témoins comparaïssant à la barre ou devant un comité spécial, page 508.

Serment:

D'allégéance, prêté par le gouverneur-général et les lieutenants-gouverneurs, 61, par les membres du parlement et des législatures provinciales, 128 (cédule 5). Sénateurs, 128 (cédule 5).

Service postal:

Sous le contrôle exclusif du parlement, 91 (5).

Sessions annuelles:

Du parlement du Canada, 20;—des législatures provinciales, 86.

Provincial Legislatures; Lieutenant-Governor may reserve Bills, 55, 90.—Not to have force, unless assented to within one year thereafter, 57, 90.

Revenues, Public:—See *Public Revenues*.

Royal Assent to Bills:

Parliament of Canada; May be declared by the Governor General in his discretion, 55.—Copies thereof to be sent to England; May be disallowed within 2 years, 56.

Provincial Legislatures; May be declared by the Lieutenant-Governor, 55, 90.—May be disallowed by Governor General in Council within one year, 56, 90.

Rupert's Land:

Admission of, into the Union, 146. Act for its temporary Government (32, 33 Vic., chap. 3,) confirmed, page 505.

Sable Island:

Under exclusive control of Parliament, 91 (9).

Salaries:

Of Lieutenant-Governors, 60.—Of Public Officers of the Dominion, 91 (8).—Of Provincial Officers, 92 (4).—Of Judges, 100.—Of Governor General, 105.

Savings Banks:

Under exclusive control of Parliament, 91 (16).

Seal (Great) of the Provinces:

Those of Upper and Lower Canada to be used, until altered by Lieutenant-Governor in Council (Ontario and Quebec), 136.

Seat of Government:

Of Canada: To be in Ottawa, until otherwise directed by the King, 16.

Of each Province: To be as named, until otherwise directed by the Provincial Executive, 68.

Secretary and Registrar, Provincial:

Has a seat in the Executive Council (Ontario and Quebec), 63.—Appointed, during pleasure, by the Lieutenant-Governor, 134.—His duties and functions, 134, 135.

Siège du gouvernement:

Du Canada, Ottawa, jusqu'à ce qu'il plaise au Roi d'en ordonner autrement, 16.

De chaque province, tel qu'indiqué, jusqu'à ce que l'exécutif en ordonne autrement, 68.

Solliciteur-général (Québec):

Est membre du Conseil exécutif, 63;—nommé, durant bon plaisir par le lieutenant-gouverneur, 134.—Ses fonctions et attributions, 134, 135.

Subsides: V. *Votes de Crédits.*

Subventions accordées aux Provinces: V. *Revenus Publics.*

Taxes:

Les bills à l'effet d'imposer des taxes doivent originer dans les Communes, 53;—ou dans l'Assemblée Législative, 90—après avoir, au préalable, été recommandés par le gouverneur-général, 54;—ou le lieutenant-gouverneur, 90.

Le prélèvement de deniers par tous systèmes de taxation ressort au contrôle du parlement, 91 (3).

La taxe directe dans les limites d'une province, pour des objets provinciaux, ressort au contrôle provincial, 92 (2).

Les propriétés publiques du Canada et des provinces sont exemptes de taxes, 125.

Télégraphes, lignes de:

Reliant deux provinces ou s'étendant au delà d'une province, sont sous le contrôle du parlement, 92 (10, a) V. 92 (10, c).

Témoins:

Peuvent être assermentés lorsqu'ils sont assignés à comparaître à la barre du sénat ou devant un comité spécial de l'une ou l'autre chambre du parlement, page 508.

Terre de Rupert:

Son admission dans la confédération, 146. V. *Rupert.*

Terres publiques:

Sous le contrôle provincial 92 (5), 109—sauf celles requises pour les fortifications, 117.

Senate:

To consist of 72 members, 21.—24 to be selected from Ontario, and 24 from Quebec, and 24 from the Maritime Provinces, 22.—(with four additional from Newfoundland, when admitted, 147).—Provision for a proportionate increase of 3 or 6, 26.—No further appointments to be made until the Members are reduced to the normal number, 27.—The number of Senators never to exceed 78, 28.—Or 82 after admission of Newfoundland, 147.

Qualification of Senators, 23.

Mode of summoning qualified persons to the Senate, 24, 25.

Any (theretofore) Legislative Councillor, offered a place in the Senate, must decide within 30 days, 127.

Oath of allegiance, and declaration of qualification, 128, (Schedule 5).

A Senator holds his seat for life, 29.—But may resign the same, 30.—Or it may become vacant, for certain causes defined, 31.

Vacancies to be filled up by the Governor General, 32.

Questions respecting qualification, or vacancy, to be decided by the Senate, 33.

Speaker to be appointed, from time to time, by the Governor General, from among the Senators, 34.

Fifteen Senators to constitute a Quorum, 35.

Questions to be decided by a majority of voices, including the Speaker: When the voices are equal, the decision is deemed to be in the Negative, 36.

Senators are disqualified from sitting in the House of Commons, 39.

Privileges, immunities and powers, 18, and page 507.

Witnesses sworn at bar or before Select Committees, page 509.

Separate Schools:—See *Education*.

Shipping:

Under exclusive control of Parliament, 91 (10).

Short Title:

B. N. A. Act, 1867, page 413.—B. N. A. Act, 1871, page 501.—Parliament of Canada Act, 1875, page 507.—B. N. A. Act, 1886, page 511.

Solicitor General (Quebec):

Has a seat in the Executive Council, 63.—Appointed during pleasure, by the Lieutenant-Governor, 134.—His functions and duties, 134, 135.

Terreneuve:

Son admission dans la confédération, 146, 147.

Territoires:

Le parlement peut légiférer au sujet de tout territoire qui n'est pas compris dans une province, page 502.

Territoire du Nord-Ouest:

Son admission dans la confédération, 146.

Titre abrégé:

Acte de l'A. B. du Nord, 1867, page 412—Acte de l'A. B. du Nord, 1871, page 502—Acte du parlement du Canada, 1875, page 506—Acte de l'A. B. du Nord, 1886, page 510.

Townships:

Peuvent être érigés, par proclamation, dans la province de Québec, 144.

Trahison:

Entraîne, pour un sénateur, la perte de son siège, 31 (4).

Traitements:

Des lieutenants-gouverneurs, 60;—des officiers publics de la Puissance, 91 (8);—des officiers provinciaux, 92 (4);—des juges, 100;—du gouverneur-général, 105.

Travaux locaux:

Sont sous le contrôle provincial, 92 (10),—sauf ceux déclarés être à l'avantage général du Canada, etc., 92 (10, c.)

Toutes les matières d'une nature locale ou privée sont sous le contrôle provincial, 92 (10, 11, 16).

Travaux publics:

Le commissaire de l'Agriculture et des Travaux Publics est membre du conseil exécutif (Ontario et Québec), 63;—nommé, durant bon plaisir, par le lieutenant-gouverneur, 134—Ses fonctions et attributions, 134, 135.

Certaines classes de travaux publics placés sous le contrôle du parlement et des législatures locales, 92 (10).

Les travaux locaux déclarés être à l'avantage général du Canada, ou de deux provinces ou plus, sont sous le contrôle du parlement, 92 (10, c).

Certains travaux publics attribués au Canada, 108 (et cédule 3).

Speaker of House of Commons (or of *L. Assembly*):

To be elected at first sitting, 44.—And as often as a vacancy may occur, 45.—Applied to L. Assembly, 87.

To preside at all meetings of the House (Commons), 46.—(L. Assembly), 87.

In case of absence for 48 hours, a Speaker *pro tem.* may be elected (Commons), 47.—(L. Assembly), 87.

May vote only when the voices are equal (Commons), 49.—(L. Assembly), 87.

Speaker of Legislative Council (*Quebec*):

Appointed from time to time (from among the Members) by the Lieutenant-Governor, 77.—Has a seat in the Executive Council, 63.

Votes as a member only, (when the voices are equal, the decision being deemed to be in the Negative), 79.

Speaker of Senate:

To be appointed from time to time, by the Governor General, from among the Senators, 34.

Votes as a Senator only, (when the voices are equal, the decision being deemed to be in the Negative), 36.

Steam-Ships:

International and Interprovincial Lines of Steamers, are under control of Parliament, 92 (10 a. b.).

Supply:—See *Money Votes.*

Tavern Licences:

For raising money for Provincial, Local or Municipal purposes are under Provincial control, 92 (9).

Taxation:

Bills for imposing any tax must originate in the Commons, 53.—Or the Legislative Assembly, 90.—Being first recommended by the Governor General, 54.—Or the Lieutenant-Governor, 90.

The raising of money by any system of taxation is under exclusive control of Parliament, 91 (3).

Direct taxation within a Province, for Provincial purposes, is under Provincial control, 92 (2).

Public Property of Canada, or of any Province, not liable to taxation, 125.

Telegraph Lines:

Such as connect two Provinces, or extend beyond the limits of a Province, are under control of Parliament, 92 (10, a). See also 92 (10, c).

Traverses: V. *Passages d'Eau.*

Trésorier de la province:

Est membre du conseil exécutif (Ontario et Québec), 63;—nommé, durant bon plaisir, par le lieutenant-gouverneur, 134.—Ses devoirs et attributions, 134, 135.

Uniformité des lois: V. *Propriété et Droits Civils.*

Union des provinces:

Devant prendre effet dans un délai de 6 mois, au jour fixé par proclamation de Sa Majesté en conseil, 3.
"Canada," nom donné à la nouvelle Puissance, 3—Divisé en 4 provinces, 5;—leurs délimitations, 6, 7.

Vacances:

Dans le Sénat, par démission, 30;—pour quelqu'une des incapacités énumérées, 31—Les questions qui s'y rapportent sont décidées par le Sénat, 33—Les vacances sont remplies par le Gouverneur-Général, 32.
Dans la Chambre des Communes, émission des brefs en conséquence, 43.
Dans la charge d'orateur, une nouvelle élection a lieu, (Communes), 45—(Assemblée législative), 87.
Dans le conseil législatif (Québec), 74—les questions qui s'y rapportent sont décidées par le conseil législatif, 76—Les vacances sont remplies par le lieutenant-gouverneur, 75.

Voix prépondérante:

L'orateur des Communes n'a qu'une voix répondérante, 49,—ainsi que l'orateur de l'Assemblée Législative, 87—Au Sénat, lorsque les voix sont également partagées, la décision est censée rendue dans la négative, 36—La même règle s'applique également au Conseil législatif, Québec, 79.

Votes de crédits:

Dans le parlement, originent à la Chambre des Communes, 53. Sont, au préalable, recommandés par le gouverneur-général, 54.
Dans les législatures provinciales, originent à l'Assemblée Législative, 53, 90;—sont, au préalable recommandés par le lieutenant-gouverneur, 54, 90.

Territories:
Parliament may legislate for any territory not included in a Province, page 503.

Timber, Public:
Is under Provincial control, 92 (5).

Townships:
May be constituted, by Proclamation, (Quebec), 144.

Trade and Commerce:
Under exclusive control of Parliament, 91 (2).

Treason:
Disqualifies a Senator, 31 (4).

Treasurer of the Province:
Has a seat in the Executive Council (Ontario and Quebec), 63.—Appointed, during pleasure, by the Lieutenant-Governor, 134.—His duties and functions, 134, 135.

Uniformity of Laws:—See *Property and Civil Rights*.

Union of the Provinces:
To take effect within 6 months, on a day to be appointed by the Queen in Council, and to be declared by Proclamation, 3. "Canada" to be the name of the new Dominion thereby constituted, 4.—Divided into 4 Provinces, 5.—Limits of each defined, 6, 7.

Vacancies:
In the Senate: By resignation, 30.—Through some disqualifying cause, 31.—Questions relating thereto to be dealt with by the Senate, 33.—Vacancy to be filled up by the Governor General, 32.
In the House of Commons: Issue of writs in respect thereof, 43.
In the office of Speaker: New election to be had (Commons), 45.—Legislative Assembly, 87.
In the Legislative Council (Quebec), 74.—Questions relating thereto to be dealt with by the Legislative Council, 76.—Vacancy to be filled up by the Lieutenant-Governor, 75.

Weights and Measures:
Under exclusive control of Parliament, 91 (17).

Witnesses:
May be sworn when summoned to the bar of the Senate or before Select Committee of either House of Parliament, page 509.

AMENDEMENTS AU CODE CRIMINEL 1917.

Séduction.

213. (*a*) *qui, étant beau-père ou belle-mère, père ou mère nourricier* ou tuteur, séduit ou a un commerce illicite avec son *beau-fils ou sa belle fille, son enfant adoptif* ou pupille, ou (Am. 1917.)

Seduction.

213. (a) who, being *a step-parent or foster parent* or guardian, seduces or has illicit connection with his *step-child or foster child* or ward; or.". (Am. 1917.)

Maison de débauche publique.

225. Une maison de débauche publique est une maison, chambre, appartement ou local d'un genre quelconque tenu dans un but de prostitution, *ou pour y pratiquer des actes indécents*, ou occupé ou fréquenté par une ou plusieurs personnes pour les fins susdites. (Am. 1917.)

Common bawdy house.

225. A common bawdy house is a house, room, set of rooms or place of any kind kept for purposes of prostitution *or for the practice of acts of indecency*, or occupied or resorted to by one or more persons for such purposes." (Am. 1917.)

Fraudes par les commerçants.

417. (*c*) étant commerçant et ayant un passif de plus de mille dollars, est incapable de payer intégralement ce qu'il doit à ses créanciers, *et n'a point tenu des livres de comptes qui, dans le cours ordinaire du commerce ou du négoce qu'il peut avoir exercé, sont nécessaires pour faire connaître ou expli-*

Defrauding creditors.

417. (*c*) being a trader and indebted to an amount exceeding one thousand dollars, is unable to pay his creditors in full and has not *kept such books of account as, according to the usual course of trade or business in which he may have been engaged, are necessary to exhibit or explain his transac-*

quer ses opérations; à moins qu'il ne puisse justifier de ses pertes d'une façon satisfaisante pour la cour ou pour le juge, et prouver qu'en ne tenant pas pareils livres il n'avait aucune intention de frauder ses créanciers; *mais nul ne doit être poursuivi sous le régime des dispositions du présent alinéa pour la raison seule qu'il a négligé de tenir pareils livres de comptes à une époque de plus de cinq ans avant la date de pareille incapacité de payer ses créanciers.* (Am. 1917.)

tions, 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, *but no person shall be prosecuted under the provisions of this paragraph by reason only of his having failed to keep such books of account at a period of more than five years before the date of such inability to pay his creditors.*" (Am. 1917).

Sollicitations etc., en matières d'assurance.

508C. (1) Est coupable d'un acte criminel, quiconque, au Canada, sauf au nom ou en tant qu'agent d'une compagnie, dûment autorisée à ces fins par le Ministre des Finances, ou au nom ou en tant qu'agent ou à titre de membre d'une association de particuliers constitués sur le plan connu comme celui de Lloyd, ou d'une association de personnes constituées pour des fins d'assurance mutuelle et dûment autorisées à ces fins, sollicite ou accepte tout risque quelconque d'assurance, ou émet ou délivre tout reçu intérimaire ou police d'assurance ou accorde sur considération de tout paiement ou prime toute annuité sur une vie ou des vies, ou perçoit ou reçoit toute prime pour assurance, ou poursuit toutes affaires quelconques d'assurance, ou inspecte tout risque, ou ajuste toute perte, ou intente ou maintient toute poursuite, ac-

Soliciting or carrying on business of Insurance.

508C. (1) Every one shall be guilty of an indictable offence who, within Canada, except on behalf of or as agent for a company, thereunto duly licensed by the Minister of Finance, or on behalf of or as agent for or as a member of an association of individuals formed upon the plan known as Lloyd's or of an association of persons formed for the purpose of inter-insurance and so licensed, solicits or accepts any insurance risk, or issues or delivers any interim receipt or policy of insurance, or grants in consideration of any premium or payment any annuity on a life or lives, or collects or receives any premium for insurance, or carries on any business of insurance, or inspects any risk, or adjusts any loss, or prosecutes or maintains any suit, action or proceeding, or files any claim in insolvency relating to such business, or receives di-

tion ou procédure, ou dépose une réclamation en matière de faillite se rapportant à pareilles affaires, ou reçoit directement ou indirectement une rémunération quelconque pour l'exécution des actes susdits.

"2. *Peines.* Quiconque est reconnu coupable de tout pareil acte criminel doit pour une première contravention être passible d'une amende d'au plus cinquante dollars ou d'au moins vingt dollars, et, à défaut de paiement, d'emprisonnement avec ou sans travaux forcés pour une période d'au plus trois mois ou d'au moins un mois, et pour une seconde ou toute contravention subséquente d'une amende d'au plus cent dollars ou d'au moins cinquante dollars et en outre d'emprisonnement avec travaux forcés pour une période d'au plus six mois ou d'au moins trois mois.

"3. *Prescription.* Tout renseignement, ou toute plainte se rapportant à l'une quelconque des contraventions susdites doit être fourni ou faite dans l'intervalle d'un an après que la contravention a été commise.

"4. *Disposition de l'amende.* La moitié de toute amende mentionnée dans le présent article doit, sur recouvrement, appartenir à Sa Majesté, et l'autre moitié au dénonciateur.

Affaires autorisées.

Néanmoins, rien de contenu dans le présent article ne doit

rectly or indirectly any remuneration for doing any of the aforesaid acts.

" (2) *Penalty.* Any one convicted of any such offence shall for a first offence be liable to a penalty of not more than fifty dollars or less than twenty dollars, and, in default of payment, to imprisonment with or without hard labour for a term of not more than three months or less than one month, and for a second or any subsequent offence to a penalty of not more than one hundred dollars or less than fifty dollars, and in addition thereto to imprisonment with hard labour for a period of not more than six months or less than three months.

" (3) *Limitation.* All information or complaints for any of the aforesaid offences shall be laid or made within one year after the commission of the offence.

" (4) *Disposal of fine.* One-half of any pecuniary penalty mentioned in this section shall, when recovered, belong to His Majesty and the other half thereof to the informer.

Proviso enumerating permitted business.

Provided that nothing in this section contained shall be deem-

être considéré comme interdisant, ou affectant ou imposant une amende quelconque pour l'exécution d'aucun des actes décrits dans le présent article:

a) par ou au nom d'une compagnie constituée en corporation sous le régime des lois de toute province du Canada pour les fins de poursuite d'affaires d'assurance;

b) par ou au nom de toute société ou association de personnes spécialement autorisées à ces fins par le Ministre des Finances ou le Conseil de la Trésorerie;

c) à l'égard de toute police ou de tout risque d'assurance sur la vie émis ou assumé le ou avant le trentième jour de mars mil huit cent soixante dix-huit, par ou au nom de toute compagnie qui depuis la date en dernier lieu mentionnée n'a pas reçu une autorisation du Ministre des Finances;

d) à l'égard de toute police d'assurance sur la vie émise par une compagnie non autorisée à une personne non domiciliée au Canada à l'époque de l'émission de pareille police;

e) à l'égard de l'assurance de biens situés au Canada par toute compagnie d'assurance britannique ou étrangère non autorisée, ou par des assureurs ou des personnes qui assurent réciproquement pour protection et non pour profit, ou l'inspection de biens ainsi assurés, ou l'ajustement de toute perte encourue à l'égard desdits biens, si l'assurance est effectuée en dehors du Canada sans aucune sol-

ed to prohibit or affect or to impose any penalty for doing any of the acts in this section described,—

(*a*) by or on behalf of a company incorporated under the laws of any province of Canada for the purpose of carrying on the business of insurance;

(*b*) by or on behalf of any society or association of persons thereunto specially authorized by the Minister of Finance or the Treasury Board;

(*c*) in respect of any policy or risk of life insurance issued or undertaken on or before the thirtieth day of March, one thousand eight hundred and seventy-eight, by or on behalf of any company which has not since the last mentioned date received a license from the Minister of Finance;

(*d*) in respect of any policy of life insurance issued by an unlicensed company to a person not resident in Canada at the time of the issue of such policy;

(*e*) in respect of the insurance of property situated in Canada with any British or foreign unlicensed insurance company or underwriters, or with persons who reciprocally insure for protection and not for profit, or the inspection of the property so insured, or the adjustment of any loss incurred in respect thereof, if the insurance is effected outside of Canada without any solicitation whatsoever

licitation quelconque directement ou indirectement de la part de la compagnie, des assureurs ou des personnes par laquelle ou par lesquels l'assurance est effectuée;

f) uniquement à l'égard d'assurance maritime ou d'assurance ayant trait aux eaux intérieures.

g) à l'égard de tout contrat passé ou de tout certificat de sociétaire ou de police d'assurance délivrée avant le vingtième jour de juillet mil huit cent quatre-vingt-cinq par toute compagnie d'assurance sur la vie d'après le système de cotisations. (*Nouv.*—7-8 Geo. V. c. 26.)

directly or indirectly on the part of the company, underwriters or persons by which or by whom the insurance is made;

(*f*) solely in respect of marine or inland marine insurance;

(*g*) in respect of any contract entered into or any certificate of membership or policy of insurance issued, before the twentieth day of July, one thousand eight hundred and eighty-five, by any assessment life insurance company. (*Added by* 7-8 Geo. V, c. 26.)

Contraventions.

508D. (1) Toute compagnie d'assurance, ou tout officier, agent ou représentant d'une pareille compagnie, qui

a) établit ou permet une distinction ou une disparité en faveur d'individus parmi les assurés de la même classe et de la même perspective de durée moyenne de la vie dans le montant des primes exigées ou dans les dividendes payables sur toute police d'assurance sur la vie émise par la compagnie ou de sa part; ou

b) *Convention non comprise dans les termes de police.* Fait ou se charge de faire une stipulation ou une convention qui est destinée à fonctionner comme partie d'un contrat d'assurance auquel la compagnie est ou doit devenir partie, soit au sujet du montant, des termes ou conditions de l'assurance, de la prime

Offences.

508D. (1) Any insurance company, or any officer, agent or representative thereof, who,—

(*a*) makes or permits any distinction or discrimination in favour of individuals between the insured of the same class and equal expectation of life in the amount of premiums charged or in the dividends payable upon any policy of life insurance issued by or on behalf of the company; or,

(*b*) *Agreement outside of terms of policy.* Makes or assumes to make any stipulation or agreement which is intended to operate as a part of any insurance contract to which the company is or is to become a party, whether in respect of the amount, terms or conditions of the insurance, the premium to

à payer ou d'autre manière, sauf ce qui est explicitement exprimé dans la police émise dans ce cas; ou

c) Rabais, faveur spéciale ou autres avantages. Paye, accorde ou donne, ou offre de payer, d'accorder ou de donner, directement ou indirectement pour encouragement vers l'assurance, une diminution de la prime stipulée payable par la police, ou toute faveur spéciale ou avantage dans les dividendes ou autres bénéfices qui doivent s'accumuler sur cette police, ou tout avantage par voie de directorat consultatif ou local à moins que ce soit pour service réel accompli *bona fide*, ou tout emploi ou contrat payé pour service d'une nature quelconque ou tout encouragement que ce soit destiné à être de la nature d'une diminution de prime, ou

d) Offres d'actions, obligations, etc., à titre d'encouragement. Donne, vend ou achète à titre de pareil encouragement ou relativement à la dite assurance, des actions, obligations, ou autres valeurs d'une compagnie d'assurance, ou autre corporation, association ou société;

Accepte rabais, etc. Et toute personne qui sciemment reçoit à titre d'encouragement pour s'assurer, toute diminution de prime ou toute pareille faveur spéciale, avantage ou encouragement comme susdit,

est, pour une première contravention, passible d'une amende du double du montant de la prime annuelle exigible lors de la

be paid or otherwise, except such as is plainly expressed in the policy issued in the case; or,

(c) Rebates, special favours or other benefits. Pays, allows or gives, or offers to pay, allow or give, directly or indirectly, as inducement to insure, any rebate of the premium stipulated by the policy to be payable, or any special favour or advantage in the dividends or other benefits to accrue thereon, or any advantage by way of local or advisory directorship unless for actual service *bona fide* performed, or any paid employment or contract for service of any kind or any inducement whatever intended to be in the nature of a rebate of premium; or,

(d) Offering stocks, bonds, etc., as inducements. Gives, sells or purchases as such inducement or in connection with such insurance any stock, bonds or other securities of any insurance company, or other corporation, association or partnership;

Accepting rebates, etc. And any person who knowingly receives as an inducement to insure, any rebate of premium or any such special favour, advantage or inducement as aforesaid;

shall for a first offence be liable to a penalty of double the amount of the annual premium chargeable upon the application

demande ou police au sujet de laquelle la contravention a été commise, telle amende ne devant pas être de moins de cent dollars, et pour une deuxième ou subséquente contravention, d'une amende du double du montant de telles primes annuelles, cette dernière amende ne devant pas être de moins de deux cent cinquante dollars.

"2. *Directeurs et officiers qui consentent.* En outre, tout directeur, gérant ou autre officier de toute compagnie d'assurance qui, sciemment, consent à, ou permet la violation de l'une quelconque des dispositions du présent article par tout agent, officier, employé ou serviteur de la compagnie est passible d'une amende de cinq cents dollars.

"3. *Recouvrement des amendes.* Les amendes décrétées dans le présent article peuvent être recouvrées soit par voie de conviction sommaire en vertu de la Partie XV du code criminel, soit devant toute cour de juridiction civile compétente, à l'instance de toute personne qui intente une poursuite à ce sujet, tant pour Sa Majesté que pour elle-même; la moitié de toute telle amende une fois recouvrée doit être payée au fonds du Revenu Consolidé et l'autre moitié revient au dénonciateur ou à la personne à l'instance de laquelle l'amende a été recouvrée.

"4. *Pas d'indemnité.* Nul directeur, gérant, agent, officier ou serviteur d'une compagnie d'assurance ne doit être indemnisé, soit en tout, soit en partie, à même les fonds de la compagnie, de la police ou de la police au sujet de laquelle l'offense a été commise, telle peine ne devant pas être de moins de cent dollars, et pour une deuxième offense ou offense subséquente, une peine de double du montant de telle prime annuelle, cette dernière peine ne devant pas être de moins de deux cent cinquante dollars.

"(2) *Directors and officers consenting.* Moreover every director, manager or other officer of any insurance company who knowingly consents to or permits the violation of any of the provisions of this section by any agent, officer, employee or servant of the company shall be liable to a penalty of five hundred dollars.

"(3) *Recovery.* The penalties provided for in this section may be recovered either upon summary conviction under Part XV of the *Criminal Code*, or in any court of competent civil jurisdiction at the suit of any person suing therefor as well for His Majesty as for himself; one-half of any such penalty when recovered to be paid into the Consolidated Revenue Fund and the other half to belong to the informer or person at whose suit the same is recovered.

"(4) *No indemnification.* No director, manager, agent, officer or servant of any insurance company shall be indemnified, either in whole or in part, from the funds of the company for

pagnie, pour toute amende ou tous frais qu'il peut être condamné à payer par suite de toute infraction au présent article." (*Nouv.*—7-8 Geo. V, c. 26.)

any penalty or costs which he may be adjudged to pay on account of any offence committed against this section. (*Added by* 7-8 Geo. V, c. 26.)

Honoraires des constables.

770.

1. Arrestation de chaque individu sur mandat, ou arrestation sans mandat d'un individu qui subséquemment est trouvé coupable ou renvoyé aux assises..$ 1.50
2. Signification de sommations ou de citations 0 50
3. Frais de route pour signifier une sommation ou une citation, ou pour opérer une arrestation, par mille parcouru, dans un sens, 13 cents (lorsqu'il n'y a aucun mode de transport public, des frais raisonnables de voiture doivent être alloués).
4. Frais de route, lorsque la signification n'a pu être faite, sur preuve de suffisante diligence, par mille parcouru dans un sens 0 13
5. Pour revenir avec un prévenu, après l'arrestation, et l'amener devant un magistrat ou un juge pour instruction préliminaire ou procès, lorsque le magistrat ou le juge n'est

"Constables' Fees.

770.

1. Arrest of each individual upon a warrant, or arresting without a warrant an individual who is subsequently convicted or committed for trial. $ 1 50
2. Serving sommons or subpoena. . . . 0 50
3. Mileage to serve summons, subpoena or to make an arrest, one way, per mile, 13 cents (if no public conveyance is available reasonable livery charges to be allowed).
4. Mileage when service cannot be effected, upon proof of due diligence, one way. . 0 13
5. Returning with prisoner after arrest to bring same before a Magistrate or Justice for preliminary hearing or trial where the Magistrate or Justice is not at place where

pas à l'endroit où le mandat d'arrestation a été confié au constable, et lorsque le voyage est nécessairement par une route différente de celle qui a été suivie pour faire l'arrestation, par mille parcouru dans un sens. 0 13

6. Pour conduire un prévenu en prison, sur renvoi à une autre audience ou renvoi aux assises, par mille parcouru dans un sens. . 0 13

(Non payable s'il s'agit de ramener le prévenu qui a été conduit devant le juge, le double parcours n'étant pas exigible.)

7. Vacation auprès du magistrat ou des juges lors des procès par voie sommaire, ou pour l'interrogatoire de prévenus sur accusation d'actes criminels, pour chaque jour nécessairement employé, les honoraires d'un jour seulement quel que soit le nombre des causes. . . 2 00

8. Signification et rapport du bref de saisie. 1 50

9. Annonces à la suite d'un bref de saisie. 1 50

10. Frais de route pour opérer une saisie ou pour faire perquisition d'effets pour

warrant was handed constable, and where the journey is of necessity over a different route than that travelled to make the arrest, per mile, one way. 0 13

6. Taking prisoner to gaol on remand or committal, one way, per mile. 0 13

(Not payable if this is return journey from taking prisoner before the Justice double mileage not being chargeable).

7. Attending Magistrate or Justices on summary trials, or on examination of prisoners charged with crime, for each day necessarily employed, only one day's fees on any number of cases. 2 00

8. Serving distress warrant, and returning same. 1 50

9. Advertising under distress warrant. . 1 50

10. Travelling to make distress, or to search for goods to make distress, when no

une saisie, lorsqu'il n'est pas trouvé d'effets, par mille parcouru dans un sens. 0 13

11. Evaluation par un ou par plusieurs évaluateurs, deux cents par dollar sur la valeur des effets.

12. Commission sur la vente d'après catalogue et livraison des effets, cinq cents par dollar sur le produit net des effets".

goods are found, one way, per mile. . . 0 13

11. Appraisements, whether by one appraiser or more—two cents in the dollar on the value of the goods.

12. Catalogue sale and commission, and delivery of goods—five cents in the dollar on the net produce of the goods."

La présente loi entrera en vigueur quatre-vingt-dix jours après avoir été sanctionnée par le Gouverneur général. (*Substit.* par 7-8 Geo. V, c. 14.)

This Act shall come into force ninety days after it is assented to by the Governor General. (*Substituted by* 7-8 Geo. V, c. 14.)

Mise à l'écart par la Couronne.

Stand-asides by the Crown.

933. Par l'adjonction du dispositif suivant à la fin du premier paragraphe dudit article:

"Toutefois le nombre des jurés dont la Couronne peut ordonner la mise à l'écart, ne doit pas dépasser quarante-huit, à moins que le juge qui préside au procès, pour motif spécial démontré, n'en ordonne autrement." (*Nouv.*—7-8 Geo. V, c. 13.)

933. Is amended by adding the following proviso at the end of subsection one thereof:—

"Provided that the Crown may not direct any number of jurors to stand by in excess of forty-eight, unless the judge presiding at the trial, upon special cause shown, so orders." (*Added by* 7-8 Geo. V, c. 13.)

ACTE DE LA PREUVE

4. 2. La femme ou le mari de la personne accusée d'une infraction contre quelqu'un des articles de deux cent deux à deux cent dix inclusivement, de deux cent onze à deux cent dix-neuf inclusivement, deux cent trente-huit, deux cent trente-neuf, *deux cent quarante-deux A*, deux cent quarante-quatre, deux cent quarante-cinq, de deux cent quatre-vingt-dix-huit à trois cent deux inclusivement, de trois cent sept à trois cent onze inclusivement, de trois cent treize à trois cent seize inclusivement du code criminel est un témoin compétent et contraignable pour la poursuite sans le consentement de la personne accusée. (Am. 1917.)

EVIDENCE ACT.

4. 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-two A*, 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. (Am. 1917.)