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CHAP. 29.

An Act respecting the Criminal Law.

[*Assented to 9th July*, 1892.

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

TITLE I,

INTRODUCTORY PROVISIONS.

PART I.

PRELIMINARY.

1. Short title.
2. Commencement of Act.
3. Explanations of terms.
4. Meaning of expressions in other Acts retained.
5. Offences against statutes of England, Great Britain or the United Kingdom.
6. Consequences of committing offence.

1. Short Title.—This Act may be cited for all purposes as *The Criminal Code*, 1892.

2. Commencement of Act.—This Act shall come into force on the first day of July, 1893.

Effective

3. Explanation of Terms.—In this Act the following expressions have the meanings assigned to them in this section unless the context requires otherwise:

(a.) The expression "any Act" or "any other Act" in-

cludes any Act passed or to be passed by the Parliament of Canada, or any Act passed by the legislature of the late province of Canada, or passed or to be passed by the legislature of any province of Canada, or passed by the legislature of any province included in Canada before it was included therein; R.S.C., c. 174, s. 2 (a).

(b.) The expression "Attorney-General" means the Attorney-General or Solicitor-General of any province in Canada in which any proceedings are taken under this Act, and, with respect to the North-west Territories and the district of Keewatin, the Attorney-General of Canada; R.S.C., c. 150, s. 2 (a).

(c.) The expression "banker" includes any director or any incorporated bank or banking company; R.S.C., c. 164, s. 2 (g).

(d.) The expression "cattle" includes any horse, mule, ass, swine, sheep or goat, as well as any neat cattle or animal of the bovine species, and by whatever technical or familiar name known, and shall apply to one animal as well as to many; R.S.C., c. 172, s. 1.

(e.) The expression "Court of Appeal" includes the following courts; R.S.C., c. 174, s. 2 (h).

(i.) In the province of Ontario, the Court of Appeal for Ontario (as amended by 63-64 Vic., cap. 46, sec. 3).

(ii.) In the province of Quebec, the Court of King's Bench, appeal side;

(iii.) In the provinces of Nova Scotia, New Brunswick and British Columbia, and in the North-west Territories, the Supreme Court in banc;

(iv.) In the province of Prince Edward Island, the Supreme Court of Judicature;

(v.) In the province of Manitoba, the Court of King's Bench;

(f.) The expression "district, county or place" includes any division of any province of Canada for purposes relative to the administration of justice in criminal cases; R.S.C., c. 174, s. 2 (f).

(g.) The expression "document of title to goods" includes any bill of lading, India warrant, dock warrant, warehouse-keeper's certificate, warrant or order for the delivery or transfer of any goods or valuable thing, bought and sold note, or any other document used in the ordinary course of business as proof of the possession or control of goods,

authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of such document to transfer or receive any goods thereby represented or therein mentioned or referred to; R.S.C., c. 164, s. 2 (a).

(h.) The expression "document of title to lands" includes any deed, map, paper or parchment, written or printed, or partly written and partly printed, being or containing evidence of the title, or any part of the title, to any real property, or to any interest in any real property, or any notarial or registrar's copy thereof, or any duplicate instrument, memorial, certificate or document authorized or required by any law in force in any part of Canada respecting registration of titles, and relating to such title; R.S.C., c. 164, s. 2 (b).

(i.) The expression "explosive substance" includes any materials for making an explosive substance; also any apparatus, machine, implement, or materials used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance; and also any part of any such apparatus, machine or implement; R.S.C., c. 150, s. 2 (b).

(j.) Finding the indictment includes also exhibiting an information and making a presentment; R.S.C., c. 174, s. 2 (d).

(k.) Having in one's possession includes not only having in one's own personal possession, but also knowingly—

(i.) having in the actual possession or custody of any other person; and

(ii.) having in any place (whether belonging to or occupied by one's self or not) for the use or benefit of one's self or of any other person; R.S.C., c. 164, s. 2 (l), c. 165, s. 2; c. 167, s. 2; c. 171, s. 3; 50-51 V., c. 45, s. 2 (e).

If there are two or more persons, any one or more of whom, with the knowledge and consent of the rest, have any thing in his or their custody or possession, it shall be deemed and taken to be in the custody and possession of each and all of them; (as amended by 56 Vic., cap. 32).

(l.) The expressions "indictment" and "count" respectively include information and presentment as well as indictment, and also any plea, replication or other pleading, and any record; R.S.C., c. 174, s. 2 (c).

(m.) The expression "intoxicating liquor" means and in-

cludes any alcoholic, spirituous, vinous, fermented or other intoxicating liquor, or any mixed liquor a part of which is spirituous or vinous, fermented or otherwise intoxicating; R.S.C., c. 151, s. 1 (d).

(n.)The expression "justice" means a justice of the peace, and includes two or more justices, if two or more justices act or have jurisdiction, and also any person having the power or authority of two or more justices of the peace; R.S.C., c. 174, s. 2 (b).

(o) The expression "loaded arms" includes any gun, pistol or other arm loaded with gunpowder, or other explosive substance, and ball, shot, slug, or other destructive material, or charged with compressed air and ball, shot, slug or other destructive material;

(o-1.) The expression "military law" includes *The Militia Act* and any orders, rules and regulations made thereunder, the King's Regulations and Orders for the Army; any Act of the United Kingdom or other law applying to His Majesty's troops in Canada, and all other orders, rules and regulations of whatever nature or kind soever to which His Majesty's troops in Canada are subject;

(p.) The expression "municipality" includes the corporation of any city, town, village, county, township, parish or other territorial or local division of any province of Canada, the inhabitants whereof are incorporated or have the right of holding property for any purpose; R.S.C., c. 164, s. 2 (j).

(p-1.) In the sections of this Act relating to defamatory libel the word "newspaper" shall mean any paper, magazine or periodical containing public news, intelligence or occurrences, or any remarks or observations thereon, printed for sale and published periodically, or in parts or numbers, at intervals not exceeding twenty-one days between the publication of any two such papers, parts or numbers, and also any paper, magazine or periodical printed in order to be dispersed and made public, weekly or oftener, or at intervals not exceeding thirty-one days, and containing only or principally advertisements;

(q.) The expression "night" or "night time" means the interval between nine o'clock in the afternoon and six o'clock in the forenoon of the following day, and the expression "day" or "day time" includes the interval between six o'clock in the forenoon and nine o'clock in the afternoon of the same day;

(r.) The expression "offensive weapon" includes any gun or other firearm, or air-gun, or any part thereof, or any sword, sword-blade, bayonet, pike, pike-head, spear, spear-head, dirk, dagger, knife, or other instrument intended for cutting or stabbing, or any metal knuckles, or other deadly or dangerous weapon, and any instrument or thing intended to be used as a weapon, and all ammunition which may be used with or for any weapon; R.S.C., c. 151, s. 1 (c).

(s.) The expression "peace officer" includes a mayor, warden, reeve, sheriff, deputy sheriff, sheriff's officer, and justice of the peace, and also the warden, keeper or guard of a penitentiary and the gaoler or keeper of any prison, and any police officer, police constable, bailiff, constable or other person employed for the preservation and maintenance of the public peace, or for the service or execution of civil process;

(t.) The expressions "person," "owner" and other expressions of the same kind include His Majesty and all public bodies, bodies corporate, societies, companies, and inhabitants of counties, parishes, municipalities or other districts in relation to such acts and things as they are capable of doing and owning respectively;

Under this section it has been held, that since the word "persons" and other expressions of the same kind include corporations only "in relation to such acts and things as they are capable of doing," a company cannot be indicted for manslaughter. R. vs. Great West Laundry Co. (1900), 3 Can. C.C. 514. See also R. vs. Birmingham & Gloucester R. Co. (1842), 3 Q.B. 223; R. vs. Great North of England Railway Co. (1846), 9 Q.B. 315; R. vs. Pocock (1851), 17 Q.B. 34; Pharmaceutical Society vs. London Supply Association (1880), L.R., 5 A.C. 857.

(u.) The expression "prison" includes any penitentiary, common gaol, public or reformatory prison, lock-up, guard room or other place in which persons charged with the commission of offences are usually kept or detained in custody;

(v.) The expression "property" includes; R.S.C., c. 164, s. 2 (e).

(i.) every kind of real and personal property, and all deeds and instruments relating to or evidencing the title or right to any property, or giving a right to recover or receive any money or goods;

(ii.) not only such property as was originally in the possession or under the control of any person, but also

any property into or for which the same has been converted or exchanged and anything acquired by such conversion or exchange, whether immediately or otherwise;

(iii.) any postal card, postage stamp or other stamp issued or prepared for issue by the authority of the Parliament of Canada, or of the legislature of any province of Canada, for the payment to the Crown or any corporate body of any fee, rate or duty, and whether still in the possession of the Crown or of any person or corporation; and such postal card or stamp shall be held to be a chattel, and to be equal in value to the amount of the postage, rate or duty expressed on its face in words or figures or both;

(w.) The expression "public officer" includes any inland revenue or customs officer, officer of the army, navy, marine, militia, North-west mounted police, or other officer engaged in enforcing the laws relating to revenue, customs, trade or navigation of Canada;

(x.) The expression "shipwrecked person" includes any person belonging to, on board of or having quitted any vessel wrecked, stranded, or in distress at any place in Canada; R.S.C., c. 81, s. 2 (h).

(y.) The expression "Superior Court of Criminal Jurisdiction" means and includes the following courts:

(i.) In the province of Ontario, the High Court of Justice for Ontario (as amended by 63-64 Vic., cap. 46, sec. 3).

(ii.) In the province of Quebec, the Court of King's Bench;

(iii.) In the provinces of Nova Scotia, New Brunswick and British Columbia, and in the North-west Territories, the Supreme Court;

(iv.) In the province of Prince Edward Island, the Supreme Court of Judicature;

Repd 6 E VII c. 4, s. 4. (v.) ~~In the province of Manitoba, the Court of King's Bench (Crown side)~~;

(z.) The expression "territorial division" includes any county, union of counties, township, city, town, parish or other judicial division or place to which the context applies; R.S.C., c. 174, s. 2 (g).

(aa.) The expression "testamentary instrument" includes any will, codicil or other testamentary writing or appointment, as well during the life of the testator whose testa-

mentary disposition it purports to be as after his death, whether the same relates to real or personal property, or both; R.S.C., c. 164, s. 2 (i).

(bb.) The expression "trustee" means a trustee on some express trust created by some deed, will or instrument in writing, or by parol, or otherwise, and includes the heir or personal representative of any such trustee, and every other person upon or to whom the duty of such trust has devolved or come, whether by appointment of a court or otherwise, also an executor and administrator, and an official manager, assignee, liquidator or other like officer acting under any Act relating to joint stock companies, bankruptcy or insolvency, and any person who is, by the law of the province of Quebec, an "*administrateur*" or "*fideicommissaire*"; and the expression "trust" includes whatever is by that law in "*administration*" or "*fideicommission*"; R.S.C., c. 164, s. 2 (c).

(cc.) The expression "valuable security" includes any order, exchequer acquittance or other security entitling or evidencing the title of any person, to any share or interest in any public stock or fund, whether of Canada or of any province thereof, or of the United Kingdom, or of Great Britain or Ireland, or any British colony or possession, or of any foreign state, or in any fund of any body corporate, company or society, whether within Canada or the United Kingdom, or any British colony or possession, or in any foreign state or country, or to any deposit in any savings bank or other bank, and also includes any debenture, deed, bond, bill, note, warrant, order or other security for money or for payment of money, whether of Canada or of any province thereof, or of the United Kingdom or of any British colony or possession, or of any foreign state, and any document of title to lands or goods as hereinbefore defined wheresoever such lands or goods are situate, and any stamp or writing which secures or evidences title to or interest in any chattel personal, or any release, receipt, discharge or other instrument, evidencing payment of money, or the delivery of any chattel personal; and every such valuable security shall, where value is material, be deemed to be of value equal to that of such unsatisfied money, chattel personal, share, interest or deposit, for the securing or payment of which, or delivery or transfer or sale of which, or for the entitling or evidencing title to which, such valuable

security is applicable, or to that of such money or chattel personal, the payment or delivery of which is evidenced by such valuable security; 53 Vic., c. 37, s. 20.

(dd.) The expression "wreck" includes the cargo, stores and tackle of any vessel and all parts of a vessel separated therefrom, and also the property of shipwrecked persons;

(ee) The expression "writing" includes any mode in which, and any material on which, words or figures whether at length or abridged are written, printed or otherwise expressed, or any map or plan is inscribed.

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4. Meaning of Expressions in other Acts retained.—The expressions "mail," "mailable matter," "post letter," "post letter bag," and "post office" when used in this Act have the meanings assigned to them in *The Post Office Act*, and in every case in which the offence dealt with in this Act relates to the subject treated of in any other Act, the words and expressions used herein in respect to such offence shall have the meaning assigned to them in such other Act.

589.

5. Offences against Statutes of England, Great Britain or the United Kingdom.—No person shall be proceeded against for any offence against any Act of the Parliament of England, of Great Britain, or of the United Kingdom of Great Britain and Ireland, unless such Act is, by the express terms thereof, or of some other Act of such Parliament, made applicable to Canada or some portion thereof as part of His Majesty's dominions or possessions.

6. Consequences of Committing Offence.—Every one who commits an offence against this Act is liable as herein provided to one or more of the following punishments:—

(a.) Death;
(b.) Imprisonment;
(c.) Whipping;
(d.) Fine;
(e.) Finding sureties for future good behaviour;
(f.) If holding office under the Crown, to be removed therefrom;
(g.) To forfeit any pension or superannuation allowance;

(h.) To be disqualified from holding office, from sitting in Parliament and from exercising any franchise;
(i.) To pay costs;
(j.) To indemnify any person suffering loss of property by commission of his offence.

PART II.

MATTERS OF JUSTIFICATION OR EXCUSE.

7. General Rule under common law.
8. General Rule under this Act.
9. Children under seven.
10. Children between seven and fourteen.
11. Insanity.
12. Compulsion by threats.
13. Compulsion of Wife.
14. Ignorance of the law.
15. Execution of sentence.
16. Execution of process.
17. Execution of warrants.
18. Execution of erroneous sentence or process.
19. Sentence or process without jurisdiction.
20. Arresting the wrong person.
21. Irregular warrant or process.
22. Arrest by peace officer in case of certain offences.
23. Persons assisting peace officer.
24. Arrest of persons found committing certain offences.
25. Arrest after commission of certain offences.
26. Arrest of person believed to be committing certain offences by night.
27. Arrest by peace officer of person found committing offence.
28. Arrest of person found committing any offence at night.
29. Arrest during flight.
30. Statutory power of arrest.
31. Force used in executing sentence or process, or in arrest.
32. Duty of persons arresting.
33. Peace officer preventing escape from arrest for certain offences
34. Private person preventing escape from arrest for certain offences.
35. Preventing escape from arrest in other cases.
36. Preventing escape or rescue after arrest for certain offences.
37. Preventing escape or rescue after arrest in other cases.
38. Preventing breach of the peace.
39. Prevention by peace officers of breach of the peace.
40. Suppression of riot by magistrates.
41. Suppression of riot by persons acting under lawful orders.

42. Suppression of riot by persons without orders.
43. Protection of persons subject to military law.
44. Prevention of certain offences.
45. Self-defence against unprovoked assault.
46. Self-defence against provoked assault.
47. Prevention of insult.
48. Defence of movable property against trespasser.
49. Defence of movable property with claim of right.
50. Defence of movable property without claim of right.
51. Defence of dwelling-house.
52. Defence of dwelling-house at night.
53. Defence of real property.
54. Assertion of right to house or land.
55. Discipline of minors.
56. Discipline on ships.
57. Surgical operations.
58. Excess.
59. Consent to death.
60 Obedience to "De facto" law.

16.

7. General Rule under Common Law.—All rules and principles of the common law which render any circumstances a justification or excuse for any act, or a defence to any charge, shall remain in force and be applicable to any defence to a charge under this Act except in so far as they are hereby altered or are inconsistent herewith.

The defence of drunkenness comes under this section; and see Marsh vs. Loader, 11 W.R. 784.

8. General Rule under this Act.—The matters provided for in this part are hereby declared and enacted to be justifications or excuses in the case of all charges to which they apply.

9. Children under Seven.—No person shall be convicted of an offence by reason of any act or omission of such person when under the age of seven years.

10. Children between Seven and Fourteen.—No person shall be convicted of an offence by reason of an act or omission of such person when at the age of seven, but under the age of fourteen years, unless he was competent to know the nature and consequences of his conduct, and to appreciate that it was wrong.

This is a rebuttable presumption of incapacity. It has been held that this section refers exclusively to the mental capacity necessary to distinguish between right and wrong. R. vs. Hartland (1898), 2 Can C.C. 12. See also R. vs. Owens (1830), 4 C. & P. 236; Spigurnal's case, 1 Hale 26; R. vs. Brimilow (1840), 9 C. & P. 366. See also R. vs. Brine (1900), 33 N.S.R. 43.

R. v. Phinney (1) 6 C. Cr. Ca. 469.

11. Insanity.—No person shall be convicted of an offence by reason of an act done or omitted by him when labouring under natural imbecility, or disease of the mind, to such an extent as to render him incapable of appreciating the nature and quality of the act or omission, and of knowing that such act or omission was wrong.

The three stages of the law regarding the recognition of insanity as an excuse for crime are well illustrated, repectively, by the following cases: (1) R. vs. Arnold (1724); (2) R. vs. Bellingham (1812), 1 "Russel on Crimes" 118; (3) R. vs. McNaghten (1843), 10 Cl. and F. 200.

The present state of the law is that insanity is a good defence when it is shewn (1) that the mind of the accused was affected to such an extent that, at the time of the commission of the act complained of, he was not able to realize that he was doing wrong, or (2) that, though sane in other ways, he had certain delusions which caused him to imagine a condition of affairs, which, had it been so, would have justified his act. See R. vs. Offord (1831), 5 C. & P. 169; R. vs. Oxford (1840), 9 C. & P. 525; R. vs. Haynes (1859), 1 F. & F. 666; R. vs. Townley (1863), 3 F. F. 839.

"The delusions which indicate a defective insanity such as will relieve a person from criminal responsibility are delusions of the senses, or such as relate to facts or objects, not mere wrong notions or impressions, or of a moral nature; and the aberration must be mental, and not moral, to affect the intellect of the individual. It is not enough that they show a diseased or depraved state of mind, or an aberration of the moral feelings, and the sense of right and wrong being still, although it may be perverted, yet not destroyed; and the theory of a moral insanity, or insanity of the moral feelings, while the sense of right and wrong remains, is not to be reconciled with the legal doctrine on the subject." R. vs. Burton (1863), 3 F. & F. 772.

If an accused person sets up insanity as a ground of defence, the burden of proving that fact rests upon him. R. vs. Layton (1849), 4 Cox C.C. 149.

As to the procedure when the defence of insanity has been maintained, see sections 736 to 741.

Drunkenness is not any excuse for crime. Pierson's case (1835), 2 Lewin C.C. 144. But its existence may be taken into consideration in determining the motive and general state of mind of the accused person. R. vs. Gamlen (1858), 1 F. & F. 90; R. vs. Meakins (1836), 7 C. & P. 297; R. vs. Monkhouse (1849), 4 Cox C.C. 55; R. vs. Cruse (1838), 8 C. & P. 541; R. vs. Moore (1852), 3 C. & K. 319.

Delirium tremens caused by drinking is the same as insanity if it results in such a degree of madness as to render a person temporarily incapable of distinguishing right from wrong, and is therefore a good defence upon a criminal charge. R. vs. Davis (1881), 14 Cox C.C.C. 563.

The word "wrong" in sub-sec. 1 refers to something that is legally (as distinguished from morally) wrong.

2. A person labouring under specific delusions, but in other respects sane, shall not be acquitted on the ground of insanity, under the provisions hereinafter contained, un-

less the delusions caused him to believe in the existence of some state of things which, if it existed, would justify or excuse his act or omission.

3. Every one shall be presumed to be sane at the time of doing or omitting to do any act until the contrary is proved.

20. **12. Compulsion by Threats.**—Except as hereinafter provided, compulsion by threats of immediate death or grievous bodily harm from a person actually present at the commission of the offence shall be an excuse for the commission, by a person subject to such threats, and who believes such threats will be executed, and who is not a party to any association or conspiracy the being a party to which rendered him subject to compulsion, of any offence other than treason as defined in paragraphs a, b, c, d and e of subsection one of section sixty-five, murder, piracy, offences deemed to be piracy, attempting to murder, assisting in rape, forcible abduction, robbery, causing grievous bodily harm, and arson.

Browne v Attey Gen of New Zealand 67 L.J.P.C.7 (1857)

See R. vs. Dunnett (1844), 1 Car. and K. 425.

21. **13. Compulsion of Wife.**—No presumption shall be made that a married woman committing an offence does so under compulsion because she commits it in the presence of her husband.

This abrogates the old Common Law rule. See R. vs. Torpey (1871), 12 Cox C.C. 45.

22. **14. Ignorance of the Law.**—The fact that an offender is ignorant of the law is not an excuse for any offence committed by him.

R v Chandler 6 C.C.C. 486:

When a foreigner is charged in England with the commission of a crime there, it is no defence to plead that he did not know he was doing wrong, as the act in question was not an offence in his own country. R. vs. Esop (1836), 7 C. & P. 456.

A foreigner committing an offence known to English Law on board a British ship would be in the same position. Lopez and Sattler's case (1858), D. & B.'s Crown Cases 525.

When a person commits an act which has been made a crime so recently that he could not possibly have been aware of the fact that the act was not as innocent as it was before, he is nevertheless guilty of the commission of a crime. R. vs. Bailey (1799); Russ & Ryan 1.

23. **15. Execution of Sentence.**—Every ministerial officer of such court, whether of a civil or criminal nature, and every gaoler, and every person lawfully assisting such min-

erial officer or gaoler, is justified in executing such sen-
nce.

This section affords an illustration of homicide which is not
iminal.

16. Execution of Process.—Every ministerial officer
any court duly authorized to execute any lawful process
such court, whether of a civil or criminal nature, and
ery person lawfully assisting him, is justified in executing
e same; and every gaoler who is required under such
rocess to receive and detain any person is justified in
eceiving and detaining him.

17. Execution of Warrants.—Every one duly author-
ed to execute a lawful warrant issued by any court or
stice of the peace or other person having jurisdiction to
sue such warrant, and every person lawfully assisting him,
justified in executing such warrant; and every gaoler
ho is required under such warrant to receive and detain
ny person is justified in receiving and retaining him.

It has been held that in the execution of a criminal process, the officer charged therewith may, when necessary, break the outer door of the house. Harvey vs. Havey, L.R. (1884), 26 C.D. 644.

And a prosecution under the "Canada Temperance Act" is a criminal matter. R. vs. Calhoun (1888), 20 N.S.R. 395; Messenger vs. Parker (1885), 18 Nova Scotia R. 237.

Therfore a constable entrusted with the execution of a warrant of committent issued by a magistrate upon a conviction for a violation of that statute may lawfully break the outer door of a house, when it is necessary to do so. Vantasse vs. Trask (1894), 27 Nova Scotia R. 329.

18. Execution of Erroneous Sentence or Process.—
If a sentence is passed or process issued by a court having
jurisdiction under any circumstances to pass such a sen-
tence or issue such process, or if a warrant is issued by a
court or person having jurisdiction under any circum-
stances to issue such a warrant, the sentence passed or
process or warrant issued shall be sufficient to justify the
officer or person authorized to execute the same, and every
gaoler and person lawfully assisting in executing or carry-
ing out such sentence, process or warrant, although the
court passing the sentence or issuing the process had not
in the particular case authority to pass the sentence or to
issue the process, or although the court, justice or other
person in the particular case had no jurisdiction to issue,
or exceeded its or his jurisdiction in issuing, the warrant,

or was, at the time when such sentence was passed or process or warrant issued, out of the district in or for which such court, justice or person was entitled to act.

If the warrant has been issued by competent authority and is valid on its face, it affords complete justification to the officer executing it, although it may in fact be bad, and be subsequently set aside. Sleeth vs. Hulbert (1896), 3 Can. C.C. 197.

See also Phillips vs. Byron (1721), 1 Strange 509; Parsons vs. Lloyd, 2 Wm. Bl. 845; R. vs. Harrison (1812), 15 East 615, Note d.; Codrington vs. Lloyd (1839), 8 A. & E. 449.

27. **19. Sentence or Process without Jurisdiction.**—Every officer, gaoler or person executing any sentence, process or warrant, and every person lawfully assisting such officer, gaoler or person, shall be protected from criminal responsibility if he acts in goods faith under the belief that the sentence or process was that of a court having jurisdiction or that the warrant was that of a court, justice of the peace or other person having authority to issue warrants, and if it be proved that the person passing the sentence or issuing the process acted as such a court under colour of having some appointment or commission lawfully authorizing him to act as such a court, or that the person issuing the warrant acted as a justice of the peace or other person having such authority, although in fact such appointment or commission did not exist or had expired, or although in fact the court or the person passing the sentence or issuing the process was not the court or the person authorized by the commission to act, or the person issuing the warrant was not duly authorized so to act.

28. **20. Arresting the Wrong Person.**—Every one duly authorized to execute a warrant to arrest who thereupon arrests a person, believing in good faith and on reasonable and probable grounds that he is the person named in the warrant, shall be protected from criminal responsibility to the same extent and subject to the same provision as if the person arrested had been the person named in the warrant.

2. Every one called on to assist the person making such arrest, and believing that the person in whose arrest he is called on to assist is the person for whose arrest the warrant is issued, and every gaoler who is required to receive

nd detain such person, shall be protected to the same ex-
nt and subject to the same provisions as if the arrested
erson had been the person named in the warrant.

At Common Law, a constable executing a warrant would have been liable, if he arrested a person other than the one described in the warrant, even if the former should be the one whom it was wished to arrest. But an officer arresting for felony was justified, when no warrant was issued, even if by mistake he took the wrong person into custody. See Hore vs. Bush, 1 M. & Gr. 775; R. vs. Hood (1830), Moody's C.C.R. 281.

21. Irregular Warrant or Process.—Every one acting under a warrant or process which is bad in law on account of some defect in substance or in form apparent on the face of it, if he in good faith and without culpable ignorance and negligence believes that the warrant or process is good in law, shall be protected from criminal responsibility to the same extent and subject to the same provisions as if the warrant or process were good in law, and ignorance of the law shall in such case be an excuse: Provided, that it shall be a question of law whether the facts of which there is evidence may or may not constitute culpable ignorance or negligence in his so believing the warrant or process to be good in law.

Paul. Ethics & C Cr Q 15.

This section makes an exception to the general rule laid down in section 14.

22. Arrest by Peace Officer in case of Certain Offences.—Every peace officer who, on reasonable and probable grounds, believes that an offence for which the offender may be arrested without warrant has been committed, whether it has been committed or not, and who, on reasonable and probable grounds, believes that any person has committed that offence, is justified in arresting such person without warrant, whether such person is guilty or not.

R. v. Sabiano 7 C. Cr. Cas. 453.

This section not only justifies (i.e. protects from criminal or civil proceedings, the officer making the arrest), but also authorizes the arrest; and it applies to cases in which only a peace officer may arrest without a warrant as well as those where it can be made by others without a warrant.

But a justice of the peace who issues a warrant illegally without having received a sworn information is liable in trespass for the arrest made thereunder, and he cannot under this section justify the fact that he ordered a constable to make the arrest by showing that he had a reasonable suspicion that an offence had been committed. McGinnis vs. Dafoe (1896), 3 Can. C.C. 139.

But though the arrest is thus made under an invalid warrant, jurisdiction attaches to the magistrate as soon as the

person arrested is brought before him, and a subsequent committent will be maintained. McGinnis vs. Dafoe, supra. See also R. vs. Hughes (1879), L.R. 4 Q.B. D., 614; Re Maltby (1881), L.R., 7 Q.B.D. 18, at page 28; Grey vs. Commissioners of Customs (1884), 48 J.P. 343.

23. Persons Assisting Peace Officer.—Every one called upon to assist a peace officer in the arrest of a person suspected of having committed such offence as last aforesaid is justified in assisting, if he knows that the person calling on him for assistance is a peace officer, and does not know that there is no reasonable grounds for the suspicion.

"As to what are reasonable grounds for the suspicion." See Allen vs. Wright (1838), 8 C. & P. 522; Leete vs. Harte (1868), L. R., 3 C. P. 322.

24. Arrest of Persons found Committing Certain Offences.—Every one is justified in arresting without warrant any person whom he finds committing any offence for which the offender may be arrested without warrant, or may be arrested when found committting.

25. Arrest after Commission of Certain Offences.—If any offence for which the offender may be arrested without warrant has been committed, any one who, on reasonable and probable grounds, believes that any person is guilty of that offence is justified in arresting him without warrant, whether such person is guilty or not.

See Jordan vs. McDonald (1898), 31 N.S.R. 129.

26. Arrest of Person believed to be Committing Certain Offences by Night.—Every one is protected from criminal responsibility for arresting without warrant any person whom he, on reasonable and probable grounds, believes he finds committing by night any offence for which the offender may be arrested without warrant.

For a list of the offences for which the offender found in the act of committing may be arrested without a warrant, see section 552, sub-section 1.

"Found committing" means (1) either actually discovering the person in the commission of the offence, or (2) immediately and continuously pursuing him from the time he is seen committing the offence (even if seen by a person other than the one pursuing) until he is captured. R. vs. Curran (1828), 3 C. & P. 397; Hanway vs. Boultbee (1830), 1 M. & R. 15.

If an offender is seen committing the act in question by one person, he may be arrested by another who, although he did not see the actual commission of the offence, was immediately informed thereof by the witness, and thereupon immediately pursued the offender. R. vs. Howarth (1823), Moody's C.C.R. 207.

27. Arrest by Peace Officer of Person found Committing Offence.—Every peace officer is justified in arresting without warrant any person whom he finds committing any offence.

28. Arrest of Person found Committing any Offence at Night.—Every one is justified in arresting without warrant any person whom he finds by night committing any offence.

2. Every peace officer is justified in arresting without warrant any person whom he finds lying or loitering in any highway, yard or other place by night, and whom he has good cause to suspect of having committed or being about to commit any offence for which an offender may be arrested without warrant.

According to Sec. 3 s.s. (q), night or night-time is the interval between 9 o'clock in the evening and 6 o'clock the following morning.

29. Arrest during Flight.—Every one is protected from criminal responsibility for arresting without warrant any person whom he, on reasonable and probable grounds, believes to have committed an offence and to be escaping from and to be freshly pursued by those, whom he, on reasonable and probable grounds, believes to have lawful authority to arrest that person for such offence.

A person doing the act mentioned in this section is protected from criminal responsibility ; but he will still be liable to a civil action if he has made an error in making the arrest. If the word "justified" had been used in the section a person so arresting another one would have been protected from both criminal and civil proceedings.

30. Statutory Power of Arrest.—Nothing in this Act shall take away or diminish any authority given by any Act in force for the time being to arrest, detain or put any restraint on any person.

31. Force used in Executing Sentence or Process or in Arrest.—Every one justified or protected from criminal responsibility in executing any sentence, warrant or process, or in making any arrest, and every one lawfully assisting him, is justified, or protected from criminal responsibility, as the case may be, in using such force as

may be necessary to overcome any force used in resisting such execution or arrest, unless the sentence, process or warrant can be executed or the arrest effected by reasonable means in a less violent manner.

See Sec. 58. This section may afford an illustration of non-criminal homicide. If it is necessary to use force in effecting an arrest, and in the course of the struggle the person whom it is sought to arrest, or any of those assisting him in resisting the arest, are killed, the person thus legally attempting to make the arrest will not be liable either criminally or civilly; but, on the other hand, if in the course of the struggle the peace officer, or any one assisting him, should be killed, the person or persons so resisting and killing him will be guilty of murder. R. v. Porter (1873), 12 Cox C.C. 444.

41. **32. Duty of Persons Arresting.**—It is the duty of every one executing any process or warrant to have it with him, and to produce it if required.

2. It is the duty of every one arresting another, whether with or without warrant, to give notice, where practicable, of the process or warrant under which he acts, or of the cause of the arrest.

3. A failure to fulfil either of the two duties last mentioned shall not of itself deprive the person executing the process or warrant, or his assistants, or the person arresting, of protection from criminal responsibility, but shall be relevant to the inquiry whether the process or warrant might not have been executed, or the arrest effected, by reasonable means in a less violent manner.

Gaul v Ellice 6 C Cr Ca 15.

41. **33. Peace Officer Preventing Escape from Arrest for Certain Offences.**—Every peace officer proceeding lawfully to arrest with or without warrant any person for any offence for which the offender may be arrested without warrant, and every one lawfully assisting in such arrest, is justified, if the person to be arrested takes to flight to avoid arrest, in using such force as may be necessary to prevent his escape by such flight, unless such escape can be prevented by reasonable means in a less violent manner.

42. **34. Private Person Preventing Escape from Arrest for Certain Offences.**—Every private person proceeding lawfully to arrest without warrant any person for any of-

fence for which the offender may be arrested without warrant is justified, if the person to be arrested takes to flight to avoid arrest, in using such force as may be necessary to prevent his escape by flight, unless such escape can be prevented by reasonable means in a less violent manner: Provided, that such force is neither intended nor likely to cause death or grievous bodily harm.

A peace officer may attempt to shoot an offender who is escaping, but a private person may not; the latter being only justified in using such force as is not likely to result either in death or in grievous bodily harm.

35. Preventing Escape from Arrest in other Cases.—Every one proceeding lawfully to arrest any person for any cause other than such offence as in the last section mentioned is justified, if the person to be arrested takes to flight to avoid arrest, in using such force as may be necessary to prevent his escape by flight, unless such escape can be prevented by reasonable means in a less violent manner: Provided such force is neither intended nor likely to cause death or grievous bodily harm.

36. Preventing Escape or Rescue after Arrest for Certain Offences.—Every one who has lawfully arrested any person for any offence for which the offender may be arrested without warrant is protected from criminal responsibility in using such force in order to prevent the rescue or escape of the person arrested as he believes, on reasonable grounds, to be necessary for that purpose.

37. Preventing Escape or Rescue after Arrest in other Cases.—Every one who has lawfully arrested any person for any cause other than an offence for which the offender may be arrested without warrant is protected from criminal responsibility in using such force in order to prevent his escape or rescue as he believes, on reasonable grounds, to be necessary for that purpose: Provided that such force is neither intended nor likely to cause death or grievous bodily harm.

38. Preventing Breach of the Peace.—Every one who witnesses a breach of the peace is justified in interfering to prevent its continuance or renewal and may detain any

person committing or about to join in or renew such breach of the peace, in order to give him into the custody of a peace officer: Provided that the person interfering uses no more force than is reasonably necessary for preventing the continuance or renewal of such breach of the peace, or than is reasonably proportioned to the danger to be apprehended from the continuance or renewal of such breach of the peace.

47 **39. Prevention by Peace Officers of Breach of the Peace.**—Every peace officer who witnesses a breach of the peace, and every person lawfully assisting him, is justified in arresting any one whom he finds committing such breach of the peace, or whom he, on reasonable and probable grounds, believes to be about to join in or renew such breach of the peace.

2. Every peace officer is justified in receiving into custody any person given into his charge as having been a party to a breach of the peace by one who has, or whom such peace officer, upon reasonable and probable grounds, believes to have witnessed such breach of the peace.

48 **40. Suppression of Riot by Magistrates.**—Every sheriff, deputy sheriff, mayor or other head officer or acting head officer of any county, city, town, or district, and every magistrate and justice of the peace, is justified in using, and ordering to be used, and every peace officer is justified in using, such force as he, in good faith, and on reasonable and probable grounds, believes to be necessary to suppress a riot, and as is not disproportioned to the danger which he, on reasonable and probable grounds believes to be apprehended from the continuance of the riot.

49 **41. Suppression of Riot by Persons Acting under Lawful Orders.**—Every one, whether subject to military law or not, acting in good faith in obedience to orders given by any sheriff, deputy sheriff, mayor or other head officer or acting head officer of any county, city, town or district, or by any magistrate or justice of the peace, for the suppression of a riot, is justified in obeying the orders so given unless such orders are manifestly unlawful, and is protected from criminal responsibility in using such force

as he, on reasonable and probable grounds, believes to be necessary for carrying into effect such orders.

2. It shall be a question of law whether any particular order is manifestly unlawful or not.

42. Suppression of Riot by Persons without Orders.—Every one, whether subject to military law or not, who in good faith and on reasonable and probable grounds believes that serious mischief will arise from a riot before there is time to procure the intervention of any of the authorities aforesaid, is justified in using such force as he, in good faith and on reasonable and probable grounds, believes to be necessary for the suppression of such riot, and as is not disproportioned to the danger which he, on reasonable grounds, believes to be apprehended from the continuance of the riot.

43. Protection of Persons Subject to Military Law.—Every one who is bound by military law to obey the lawful command of his superior officer is justified in obeying any command given him by his superior officer for the suppression of a riot, unless such order is manifestly unlawful.

2. It shall be a question of law whether any particular order is manifestly unlawful or not.

Secs. 83 and 84 relate to the reading of the Riot Act, and the subsequent steps to be taken if the proclamation has no effect.

44. Prevention of Certain Offences.—Every one is justified in using such force as may be reasonably necessary in order to prevent the commission of any offence for which, if committed, the offender might be arrested without warrant, and the commission of which would be likely to cause immediate and serious injury to the person or property of any one; or in order to prevent any act being done which he, on reasonable grounds, believes would, if committed, amount to any of such offences.

45. Self-defence against Unprovoked Assault.—Every one unlawfully assaulted, not having provoked such assault, is justified in repelling, force by force, if the force he uses is not meant to cause death or grievous bodily

harm, and is no more than is necessary for the purpose of self-defence; and every one so assaulted is justified, though he causes death or grievous bodily harm, if he causes it under reasonable apprehension of death or grievous bodily harm from the violence with which the assault was originally made or with which the assailant pursues his purpose, and if he believes, on reasonable grounds, that he cannot otherwise preserve himself from death or grievous bodily harm.

R. v. Ritter 8 Can Cr Ca 31: 235 (or) 74.

Reasonable apprehension of immediate danger of grievous bodily harm to his wife and children, who are at the time in his house, justify a man in shooting a person who is one of a party who have invaded his house and have committed a wholly unprovoked assault upon him, and who have up to the time of the shooting, continued their violent and unjustifiable conduct there, and were destroying chattels in the house. R. v. Theriault (1894), 2 Can. C.C. 444. See also R. v. Smith (1837), 8 C. & P. 160. R. v. Bull (1839), 9 C. & P. 22.

54. **46. Self-defence against Provoked Assault.**—Every one who has without justification assaulted another,, or has provoked an assault from that other, may nevertheless justify force subsequent to such assault, if he uses such force under reasonable apprehension of death or grievous bodily harm from the violence of the person first assaulted or provoked, and in the belief, on reasonable grounds, that it is necessary for his own preservation from death or grievous bodily harm: Provided, that he did not commence the assault with intent to kill or do grievous bodily harm, and did not endeavour at any time before the necessity for preserving himself arose, to kill or do grievous bodily harm: Provided also, that before such necessity arose he declined further conflict, and quitted or retreated from it as far as was practicable.

2. Provocation, within the meaning of this and the last preceding section, may be given by blows, words or gestures.

A provocation given by mere words or gestures may be such as will reduce homicide to manslaughter.

In R. v. Rothwell (1871), 12 Cox C.C. 145, Blackburn J. said, "As a general rule of law, no provocation of words will reduce the crime of murder to that of manslaughter; but under special circumstances there may be such a provocation of words as will have that effect; for instance, if the husband suddenly hearing from his wife that she had committed adultery, and, he having no idea of such a thing before, were, thereupon, to kill her, it might be manslaughter. But the crime of homicide will only be reduced to manslaughter when

the person receiving the provocation acts upon it immediately. If some time is allowed to elapse between the receiving of the provocation and the commission of the deed, it will be presumed that the person committed the deed not under stress of such provocation, but with malice and with the intention to kill; and in such a case he would be guilty of murder. R. vs. Kirkham (1837) 8 C. & P. 115. See also R. vs. Smith (1837), 8 C. & P. 160. R. vs. Kelly (1848), 2 C. & K. 814. R. vs. Shaw (1834), 6 C. & P. 372.

47. Prevention of Insult.—Every one is justified in using force in defence of his own person, or that of any one under his protection, from an assault accompanied with insult: Provided, that he uses no more force than is necessary to prevent such assault, or the repetition of it: Provided also, that this section shall not justify the wilful infliction of any hurt or mischief disproportionate to the insult which the force used was intended to prevent.

48. Defence of Movable Property against Trespasser.—Every one who is in peaceable possession of any movable property or thing, and every one lawfully assisting him, is justified in resisting the taking of such thing by any trespasser, or in retaking it from such trespasser, if in either case he does not strike or do bodily harm to such trespasser; and if, after any one being in peaceable possession as aforesaid has laid hands upon any such thing, such trespasser persists in attempting to keep it or to take it from the possessor, or from any one lawfully assisting him, the trespasser shall be deemed to commit an assault without justification or provocation.

49. Defence of Movable Property with Claim of Right.—Every one who is in peaceable possession of any movable property or thing under a claim of right, and every one acting under his authority, is protected from criminal responsibility for defending such possession, even against a person entitled by law to the possession of such property or thing, if he uses no more force than is necessary.

50. Defence of Movable Property without Claim of Right.—Every one who is in peaceable possession of any moveable property or thing, but neither claims right thereto nor acts under the authority of a person claiming right

thereto, is neither justified nor protected from criminal reponsibility for defending his possession against a person entitled by law to the possession of such property or thing.

51. Defence of Dwelling-house.—Every one who is in peaceable possession of a dwelling-house, and every one lawfully assisting him or acting by his authority, is justified in using such force as is necessary to prevent the forcible breaking and entering of such dwelling-house, either by night or day, by any person with the intent to commit any indictable offence therein.

52. Defence of Dwelling-house at Night.—Every one who is in peaceable possession of a dwelling-house, and every one lawfully assisting him or acting by his authority, is justified in using such force as is necessary to prevent the forcible breaking and entering of such dwelling-house by night by any person, if he believes, on reasonable and probable grounds, that such breaking and entering is attempted with the intent to commit any indictable offence therein.

53. Defence of Real Property.—Every one who is in peaceable possession of any house or land, or other real property, and every one lawfully assisting him or acting by his authority, is justified in using force to prevent any person from trespassing on such property, or to remove him therefrom, if he uses no more force than is necessary; and if such trespasser resists such attempt to prevent his entry or to remove him such trespasser shall be deemed to commit an assault without justification or provocation.

A on entering his own house found B there. He asked him to leave, but B refused to go, and a quarrel ensued in the course of which A became excited, commenced to use force, and kicked B and so injured him that he died. It was held that since A had no right to attempt to put B out of his house in that manner, he was guilty of manslaughter. Wild's case (1837), 2 Lewin's C.C. 214. See also Hinchcliffe's case (1823), 1 Lewin's C.C. 161.

54. Assertion of Right to House or Land.—Every one is justified in peaceably entering in the day-time to take possession of any house or land to the possession of which he, or some person under whose authority he acts, is lawfully entitled.

2. If any person, not having or acting under the authority of one having peaceable possession of any such house or land with a claim of right, assaults any one peaceable entering as aforesaid, for the purpose of making him desist from such entry, such assault shall be deemed to be without justification or provocation.

3. If any person having peaceable possession of such house or land with a claim of right, or any person acting by his authority, assaults any one entering as aforesaid, for the purpose of making him desist from such entry, such assault shall be deemed to be provoked by the person entering.

55. Discipline of Minors.—It is lawful for every parent, or person in the place of a parent, schoolmaster or master, to use force by way of correction towards any child, pupil or apprentice under his care, provided that such force is reasonable under the circumstances.

See R. vs. Conner (1836), 7 C. & P. 438. R. vs. Cheeseman (1836), 7 C. & P. 455. R. vs. Hopeley (1860), 2 F. & F. 202.

56. Discipline on Ships.—It is lawful for the master or officer in command of a ship on a voyage to use force for the purpose of maintaining good order and discipline on board of his ship, provided that he believes, on reasonable grounds, that such force is necessary, and provided also that the force used is reasonable in degree.

57. Surgical Operations.—Every one is protected from criminal responsibility for performing with reasonable care and skill any surgical operation upon any person for his benefit, provided that performing the operation was reasonable, having regard to the patient's state at the time, and to all the circumstances of the case.

See Sec. 212.

58. Excess.—Every one authorized by law to use force is criminally responsible for any excess, according to the nature and quality of the act which constitutes the excess.

59. Consent to Death.—No one has a right to consent to the infliction of death upon himself; and if such consent is given, it shall have no effect upon the criminal responsibility of any person by whom such death may be caused.

66. **60. Obedience to "De Facto" Law.**—Every one is protected from criminal responsibility for any act done in obedience to the laws for the time being made and enforced by those in possession (*de facto*) of the sovereign power in and over the place where the act is done.

PART III.

PARTIES TO THE COMMISSION OF OFFENCES.

61. Parties to offences.
62. Offence committed other than the offence intended.
63. Accessory after the fact.
64. Attempts.

69. **61. Parties to Offences.**—Every one is a party to and guilty of an offence who—

(a.) actually commits it; or

(b.) does or omits an act for the purpose of aiding any person to commit the offence; or

(c.) abets any person in commission of the offence; or

(d.) counsels or procures any person to commit the offence.

2. If several persons form a common intention to prosecute any unlawful purpose, and to assist each other therein, each of them is a party to every offence committed by any one of them in the prosecution of such common purpose, the commission of which offence was, or ought to have been known to be a probable consequence of the prosecution of such common purpose.

Burgess & Sims L.J. QB. 655. 67 70. **62. Offence committed other than the Offence intended.**—Every one who counsels or procures another to be a party to an offence of which that other is afterwards guilty is a party to that offence, although it may be committed in a way different from that which was counselled or suggested.

2. Every one who counsels or procures another to be a party to an offence is a party to every offence which that other commits in consequence of such counselling or procuring, and which the person counselling or procuring knew, or ought to have known, to be likely to be committed in consequence of such counselling or procuring.

This and preceding section abolish the common law distinction between principals and accessories before the fact.

All are now principals, whether or not they are actual perpetrators of the crime.

A person who, with a guilty knowledge, assists a thief in concealing money, thereby "aids and abets" the thief, although he took no part in the theft itself, and he may therefore be convicted as a principal under sec. 61 (c).

R. vs. Campbell (1889), 2 Can. C.C. 357.

But aid rendered to a person after the former has committed the crime, does not make the person so giving the assistance liable as a principal unless he participated in what is really a continuation or completion of the offence. R. vs. Graham (1898), 2 Can. C.C. 388.

If a person is an actual aider and abettor of a theft, he cannot be convicted of the offence of having subsequently received the goods stolen. R. vs. Hodge (1898), 2 Can. C.C. 350. R. vs. Evans (1856), 7 Cox C.C. 151. R. vs. Perkins (1852), 2 Denison's C.C. 459.

But the mear fact that he counselled and procured the commission of the theft, and is thus liable to be convicted as a principal, under Sec. 61, is no bar to his conviction for having received the goods knowing them to have been stolen. R. vs. Hodge, supra.

A.'s sister, who lived in his house with him, but did not pay anything for rent or board, kept a liquor shop in the house, contrary to the provisions of the Canada Temperance Act. A was aware of this fact, but he did not receive any profit from the business. A was convicted as a principal. Ex parte McCormack (1894), 32 N.B. Reps. 272. See also ex parte William Kelly, ex parte Ellen Kelly, (1894), 32 N.B. Reps. 268.

A broker who merely acts as such for two parties, one a buyer and the other a seller, without having any pecuniary interest in the transaction beyond his fixed commission, and without any guilty knowledge on his part of the intention of the parties to gamble in stocks or merchandise, is not guilty, under this section, of being an accessory to the commission of the offences specified in Sec. 201, (a) and (b). R. vs. Dowd (1899), R.J.Q. 17 S.C. 67.

A person who rents his house to another knowing that the latter intends to maintain it as a common bawdy house, thereby assists another to commit an indictable offence, and may therefore be convicted as a principal offender.

R. vs. Roy (1900), 3 Can. C.C. 472.

63. Accessory after the Fact.—An accessory after the fact to an offence is one who receives, comforts or assists any one who has been a party to such offence in order to enable him to escape, knowing him to have been a party thereto.

2. No married person whose husband or wife has been a party to an offence shall become an accessory after the fact thereto by receiving, comforting or assisting the other of them, and no married woman whose husband has been a party to an offence shall become an accessory after the fact

thereto, by receiving, comforting or assisting in his presence and by his authority any other person who has been a party to such offence in order to enable her husband or such other person to escape.

At common law any assistance given to a felon (and not only assistance in escaping) would constitute anyone rendering it an accessory after the fact, provided he knew the person assisted was a felon.

At common law only the wife was excused for assistance rendered to the husband.

R v Taylor 5 C. Cr. Cs. 89. 72

64. Attempts.—Every one who, having an intent to commit an offence, does or omits an act for the purpose of accomplishing his object is guilty of an attempt to commit the offence intended whether under the circumstances it was possible to commit such offence or not.

2. The question whether an act done or omitted with intent to commit an offence is or is not only preparation for the commission of that offence, and too remote to constitute an attempt to commit it, is a question of law.

According to recent decisions, it is immaterial, even at Common Law, whether or not it was possible to commit the offence under the circumstances. See R. vs. Brown (1889), 16 Cox C.C. 715. R. vs. Ring (1892), 17 Cox C.C. 491.

TITLE II.

OFFENCES AGAINST PUBLIC ORDER, INTERNAL AND EXTERNAL.

PART IV.

TREASON AND OTHER OFFENCES AGAINST THE KING'S AUTHORITY AND PERSON.

65. Treason.
66. Conspiracy.
67. Accessories after the fact.
68. Levying war by subjects of a state at peace with His Majesty—Subjects assisting.
69. Treasonable offences.
70. Conspiracy to intimidate a legislature.
71. Assaults on the King.
72. Inciting to mutiny.
73. Enticing soldiers or sailors to desert.
74. Resisting execution of warrant for arrest of deserters.
75. Enticing militiamen or members of the North-West Mounted Police force to desert.
76. Interpretation.
77. Unlawfully obtaining and communicating official information.
78. Communicating information acquired by holding office.

65. Treason.—Treason is—

(a.) the act of killing His Majesty, or doing him any bodily harm tending to death or destruction, maim or wounding, and the act of imprisoning or restraining him; or

(b.) the forming and manifesting by an overt act an intention to kill His Majesty or to do him any bodily harm tending to death or destruction, maim or wounding, or to imprison or to restrain him; or

(c.) the act of killing the eldest son and heir apparent of His Majesty, or the Queen consort of any King of the United Kingdom of Great Britain and Ireland; or

(d.) the forming and manifesting, by an overt act, an intention to kill the eldest son and heir apparent of His Majesty, or the Queen consort of any King of the United Kingdom of Great Britain and Ireland; or

(e.) conspiring with any person to kill His Majesty, or to do him any bodily harm tending to death or destruction, maim or wounding, or conspiring with any person to imprison or restrain him; or

(f.) levying war against His Majesty either—

(i.) with intent to depose His Majesty from the style, honour and royal name of the Imperial Crown of the United Kingdom of Great Britain and Ireland or of any other of His Majesty's dominions or countries; or

(ii.) in order, by force or constraint, to compel His Majesty to change his measures or counsels, or in order to intimidate or overawe both Houses or either House of Parliament of the United Kingdom or of Canada; or

(g.) conspiring to levy war against His Majesty with any such intent or for any such purpose as aforesaid; or

(h.) instigating any foreigner with force to invade the said United Kingdom or Canada or any other of the dominions of His Majesty; or

(i.) assisting any public enemy at war with His Majesty in such war by any means whatsoever; or

(j.) violating, whether with his consent or not, a Queen consort, or the wife of the eldest son and heir apparent, for the time being, of the King or Queen regnant.

2. Every one who commits treason is guilty of an indictable offence and liable to suffer death.

See Sir John Kelyng's Crown cases, p. 7.
Also, R. vs. Lord George Gordon (1781), 2 Douglas 500. R. vs. Frost (1839), 9 C. & P. 129. R. vs. Gallagher (1883), 15 Cox C.C. 291. R. vs. Deasy (1883), 15 Cox C.C. 334.

Sec. 551 provides that every prosecution for treason (except that committed by killing or by an attempt to injure the person of the Sovereign) must be commenced within three years from the date of the commission of the offence. The same section (s.s. 2) provides that no person shall be prosecuted under section 65 or section 69 "for any overt act of treason expressed or declared by open and advised speaking, unless information of such overt act, and of the words by which the same was expressed or declared, is given upon oath to a justice within six days after the words are spoken, and a warrant for the apprehension of the offender is issued within ten days after such information is given."

No person can be convicted of treason upon the evidence of a single witness. See section 684.

Regarding the special procedure which obtains in trials for treason see Sec. 658.

66. Conspiracy.—In every case in which it is treason to conspire with any person for any purpose the act of so conspiring, and every overt act of any such conspiracy, is an overt act of treason.

67. Accessories after the Fact.—Every one is guilty of an indictable offence and liable to two years' imprisonment who—

(a.) becomes an accessory after the fact to treason; or

(b.) knowing that any person is about to commit treason does not, with all reasonable despatch, give information thereof to a justice of the peace, or use other reasonable endeavours to prevent the commission of the same.

68. Levying War by Subjects of a State at Peace with His Majesty—Subjects Assisting.—Every subject or citizen of any foreign state or country at peace with His Majesty, who—

(a.) is or continues in arms against His Majesty within Canada; or

(b.) commits any act of hostility therein; or

(c.) enters Canada with intent to levy war against His Majesty, or to commit any indictable offence therein for which any person would, in Canada, be liable to suffer death; and

Every subject of His Majesty within Canada who—

(d.) levies war against His Majesty in company with any of the subjects or citizens of any foreign state or country at peace with His Majesty; or

(e.) enters Canada in company with any such subjects

or citizens with intent to levy war against His Majesty, or to commit any such offence therein; or

(f.) with intent to aid and assist, joins himself to any person who has entered Canada with intent to levy war against His Majesty, or to commit any such offence therein—is guilty of an indictable offence and liable to suffer death. R.S.C., c. 146, ss. 6 and 7.

By virtue of R.S.C., c.146, secs. 6 and 7, persons accused of having committed any of the offences specified in this section may be tried by a Militia Court Martial; or, in accordance with sec. 540, by a Superior court of criminal jurisdiction.

69. Treasonable Offences.—Every one is guilty of an indictable offence and liable to imprisonment for life who forms any of the intentions hereinafter mentioned, and manifests any such intention by conspiring with any person to carry it into effect, or by any other overt act, or by publishing any printing or writing; that is to say—

(a.) an intention to depose His Majesty from the style, honour and royal name of the Imperial Crown of the United Kingdom of Great Britain and Ireland, or of any other of His Majesty's dominions or countries;

(b.) an intention to levy war against His Majesty within any part of the said United Kingdom, or of Canada, in order by force or constraint to compel him to change his measures or counsels, or in order to put any force or constraint upon or in order to intimidate or overawe both Houses or either House of Parliament of the United Kingdom or of Canada;

(c.) an intention to move or stir any foreigner or stranger with force to invade the said United Kingdom, or Canada, or any other of His Majesty's dominions or countries under the authority of His Majesty. R.S.C., c. 146, s. 3.

70. Conspiracy to Intimidate a Legislature.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who confederates, combines or conspires with any person to do any act of violence in order to intimidate, or to put any force or constraint upon, any Legislative Council, Legislative Assembly or House of Assembly. R.S.C., c. 146, s. 4.

71. Assaults on the King.—Every one is guilty of an indictable offence and liable to seven years' imprisonment, and to be whipped once, twice or thrice as the court directs, who—

(a.) wilfully produces, or has near His Majesty, any arm or destructive or dangerous thing with intent to use the same to injure the person of, or to alarm His Majesty; or

(b.) wilfully and with intent to alarm, or to injure His Majesty, or to break the public peace;

(i.) points, aims or presents at or near His Majesty any firearm, loaded or not, or any other kind of arm;

(ii.) discharges at or near His Majesty any loaded arm;

(iii.) discharges any explosive material near His Majesty;

(iv.) strikes, or strikes at, His Majesty in any manner whatever;

(v.) throws anything at or upon His Majesty; or

(c.) attempts to do any of the things specified in paragraph (b) of this section.

A conspiracy to bribe members of Parliament was a misdemeanour at common law, and as such was an indictable offence. R. vs. Bunting et al (1884), 7 O.R. 524.

81. **72. Inciting to Mutiny.**—Every one is guilty of an indictable offence and liable to imprisonment for life who, for any traitorous or mutinous purpose, endeavours to seduce any person serving in His Majesty's forces by sea or land from his duty and allegiance to His Majesty, or to incite or stir up any such person to commit any traitorous or mutinous practice.

It is worthy of note that "incitement or solicitation" is seldom mentioned in the Criminal Code, see secs. 234 and 530 for other examples. It differs from the offence of being an accessory before the fact in that the offence aimed at is never actually committed.

82. **73. Enticing Soldiers or Sailors to Desert.**—Every one is guilty of an indictable offence who, not being an enlisted soldier in His Majesty's service, or a seaman in His Majesty's naval service—

(a.) by words or with money, or by any other means whatsoever, directly or indirectly persuades or procures, or goes about or endeavours to persuade, prevail on or procure, any such seaman or soldier to desert from or leave His Majesty's military or naval service; or

(b.) conceals, receives or assists any deserter from His Majesty's military or naval service, knowing him to be such deserter.

2. The offender may be prosecuted by indictment, or summarily before two justices of the peace. In the former case he is liable to fine and imprisonment in the discretion of the court, and in the latter to a penalty not exceeding two hundred dollars, and not less than eighty dollars and costs, and in default of payment to imprisonment for any term not exceeding six months. R.S.C., c. 169, ss. 1 and 4.

"Everyone who is reasonably suspected of being a deserter from His Majesty's service may be apprehended and brought for examination before any justice of peace, and if it appears that he is a deserter, he may then be confined in goal until claimed by the Military or Naval authorites, or proceeded against according to law." See section 561.

A conviction under this section which follows the very words thereof, "conceal, receive, assist," is not bad for uncertainty. Nor is such a conviction bad because it provides that the penalty imposed thereby shall be "paid and applied according to law" (see secs. 927 and 928). Nor is it necessary that the conviction should award costs against the defendant. In re Baker (1899), 20 C.L., p. 16.

83. **74. Resisting Execution of Warrant for Arrest of Deserters.**—Every one who resists the execution of any warrant authorizing the breaking open of any building to search for any deserter from His Majesty's military or naval service is guilty of an offence and liable, on summary conviction before two justices of the peace, to a penalty of eighty dollars. R.S.C., c. 169, s. 7.

It is not, however, lawful to break open any building in order to search for a deserter, unless a warrant for that purpose, founded on affidavit, has been obtained from a justice of the peace. See section 561, s.s. 2.

An indictment for treason or for any of the other offences under Part IV., must state overt acts, and evidence will only be admitted of such overt acts as are stated in the indictment. See section 614.

84. **75. Enticing Militiamen or Members of the North-west Mounted Police Force to Desert.**—Every one is guilty of an offence and liable, on summary conviction, to six months' imprisonment with or without hard labour, who—

(a.) persuades any man who has been enlisted to serve in any corps of militia, or who is a member of or has engaged to serve in the North-west mounted police force, to desert, or attempts to procure or persuade any such man to desert; or

(b.) knowing that any such man is about to desert, aids or assists him in deserting; or

(c) knowing any such man is a deserter, conceals such man or aids or assists in his rescue. R.S.C., c. 41, s. 109; 52 V., c. 25, s. 4.

73. **76. Interpretation.**—In the two following sections, unless the context otherwise requires—

(a.) Any reference to a place belonging to His Majesty includes a place belonging to any department of the Government of the United Kingdom, or of the Government of Canada, or of any province, whether the place is or is not actually vested in His Majesty;

(b.) Expressions referring to communications include any communication, whether in whole or in part, and whether the document, sketch, plan, model or information itself or the substance or effect thereof only be communicated;

(c.) The expression "document" includes part of a document;

(d.) The expression "model" includes design, pattern and specimen;

(e.) The expression "sketch" includes any photograph or other mode of expression of any place or thing;

(f.) The expression "office under His Majesty," includes any office or employment in or under any department of the Government of the United Kingdom, or of the Government of Canada or of any province. 53 V., c. 10, s. 5.

85 **77. Unlawfully Obtaining and Communicating Official Information.**—Every one is guilty of an indictable offence and liable to imprisonment for one year, or to a fine not exceeding one hundred dollars, or to both imprisonment and fine, who—

(a.) for the purpose of wrongfully obtaining information—

(i.) enters or is in any part of a place in Canada belonging to His Majesty, being a fortress, arsenal, factory, dockyard, camp, ship, office or other like place, in which part he is not entitled to be; or

(ii.) when lawfully or unlawfully in any such place as aforesaid either obtains any document, sketch, plan, model or knowledge of anything which he is not entitled to obtain, or takes without lawful authority any sketch or plan; or

(iii.) when outside any fortress, arsenal, factory, dock-

yard or camp in Canada, belonging to His Majesty, takes, or attempts to take, without authority given by or on behalf of His Majesty, any sketch or plan of that fortress, arsenal, factory, dockyard or camp; or

(b.) knowingly having possession of or control over any such document, sketch, plan, model, or knowledge as has been obtained or taken by means of any act which constitutes an offence against this and the following section, at any time wilfully and without lawful authority communicates or attempts to communicate the same to any person to whom the same ought not, in the interests of the state, to be communicated at that time; or

(c.) after having been intrusted in confidence by some officer under His Majesty with any document, sketch, plan, model or information relating to any such place as aforesaid, or to the naval or military affairs of His Majesty, wilfully, and in breach of such confidence, communicates the same when, in the interests of the state, it ought not to be communicated; or

(d.) having possession of any document relating to any fortress, arsenal, factory, dockyard, camp, ship, office or other like place belonging to His Majesty, or to the naval or military affairs of His Majesty, in whatever manner the same has been obtained or taken, at any time wilfully communicates the same to any person to whom he knows the same ought not, in the interests of the state, to be communicated at the time;

2. Every one who commits any such offence intending to communicate to a foreign state any information, document, sketch, plan, model or knowledge obtained or taken by him, or intrusted to him as aforesaid, or communicates the same to any agent of a foreign state, is guilty of an indictable offence and liable to imprisonment for life. 53 V., c. 10, s. 1.

78. Communicating Information Acquired by Holding Office.—Every one who, by means of his holding or having held an office under His Majesty, has lawfully or unlawfully, either obtained possession of or control over any document, sketch, plan or model, or acquired any information, and at any time corruptly, or contrary to his official duty, communicates or attempts to communicate such document, sketch, plan, model or information to any person to whom the same ought not, in the interests of

the state, or otherwise in the public interest, to be communicated at that time, is guilty of an indictable offence and liable—

(a.) if the communication was made, or attempted to be made, to a foreign state, to imprisonment for life; and

(b.) in any other case to imprisonment for one year, or to a fine not exceeding one hundred dollars or to both imprisonment and fine.

2. This section shall apply to a person holding a contract with His Majesty, or with any department of the Government of the United Kingdom, or of the Government of Canada, or of any province, or with the holder of any office under His Majesty as such holder, where such contract involves an obligation of secrecy, and to any person employed by any person or body of persons holding such a contract who is under a like obligation of secrecy, as if the person holding the contract, and the person so employed, were respectively holders of an office under His Majesty. 53 V., c. 10, s. 2.

PART V.

UNLAWFUL ASSEMBLIES, RIOTS, BREACHES OF THE PEACE.

79. Definition of unlawful assembly.
80. Definition of riot.
81. Punishment of unlawful assembly.
82. Punishment of riot.
83. Reading of the Riot Act.
84. Duty of justice if rioters do not disperse.
85. Riotous destruction of buildings.
86. Riotous damage to buildings.
87. Unlawful drilling.
88. Being unlawfully drilled.
89. Forcible entry and detainer.
90. Affray.
91. Challenge to fight a duel.
92. Prize-fighting defined.
93. Challenging to fight a prize-fight, etc.
94. Engaging as principal in a prize-fight.
95. Attending or promoting a prize-fight.
96. Leaving Canada to engage in a prize-fight.
97. When the fight is not a prize-fight, discharge or fine.
98. Inciting Indians to riotous acts.

79. Definition of Unlawful Assembly.—An unlawful assembly is an assembly of three or more persons who, with intent to carry out any common purpose, assemble in such a manner or so conduct themselves when assembled as to cause persons in the neighbourhood of such assembly to fear, on reasonable grounds, that the persons so assembled will disturb the peace tumultuously, or will by such assembly needlessly and without any reasonable occasion provoke other persons to disturb the peace tumultuously.

2. Persons lawfully assembled may become an unlawful assembly if they conduct themselves with a common purpose in such a manner as would have made their assembling unlawful if they had assembled in that manner for that purpose.

3. An assembly of three or more persons for the purpose of protecting the house of any one in their number against persons threatening to break and enter such house in order to commit any indictable offence therein is not unlawful.

Query: Whether Beatty vs. Gillbanks (1882), 15 Cox 138, would be good law under this section of the Code.

80. Definition of Riot.—A riot is an unlawful assembly which has begun to disturb the peace tumultuously.

81. Punishment of Unlawful Assembly.—Every member of an unlawful assembly is guilty of an indictable offence and liable to one year's imprisonment. R.S.C., c. 147, s. 11.

82. Punishment of Riot.—Every rioter is guilty of an indictable offence and liable to two years' imprisonment with hard labour. R.S.C., c. 148, s. 13.

83. Reading the Riot Act.—It is the duty of every sheriff, deputy sheriff, mayor or other head officer, and justice of the peace, of any county, city or town, who has notice that there are within his jurisdiction persons to the number of twelve or more unlawfully, riotously and tumultuously assembled together to the disturbance of the public peace, to resort to the place where such unlawful, riotous and tumultuous assembly is, and, among the rioters, or as near to them as he can safely come, with a loud voice to command or cause to be commanded silence, and after that openly or with loud voice to make or cause to be made a proclamation in these words or to the like effect:—

"Our Sovereign Lord the King charges and commands all persons being assembled immediately to disperse and peaceably to depart to their habitations or to their lawful business, upon the pain of being guilty of an offence on conviction of which they may be sentenced to imprisonment for life."

"GOD SAVE THE KING."

2. All persons are guilty of an indictable offence and liable to imprisonment for life who—

(a.) with force and arms wilfully oppose, hinder or hurt any person who begins or is about to make the said proclamation, whereby such proclamation is not made; or

(b.) continue together to the number of twelve for thirty minutes after such proclamation has been made, or if they know that its making was hindered as aforesaid, within thirty minutes after such hindrance. R.S.C., c. 147, ss. 1 and 2.

Regarding the calling out of the active Militia, see R.S.C. c. 41, section 31.

53. **84. Duty of Justice if Rioters do not Disperse.**—If the persons so unlawfully, riotously and tumultuously assembled together as mentioned in the next preceding section, or twelve or more of them, continue together, and do not disperse themselves, for the space of thirty minutes after the proclamation is made or after such hindrance as aforesaid, it is the duty of every such sheriff, justice and other officer, and of all persons required by them to assist, to cause such persons to be apprehended and carried before a justice of the peace; and if any of the persons so assembled is killed or hurt in the apprehension of such persons or in the endeavour to apprehend or disperse them, by reason of their resistance, every person ordering them to be apprehended or dispersed, and every person executing such orders, shall be indemnified against all proceedings of every kind in respect thereof: Provided, that nothing herein contained shall, in any way, limit or affect any duties or powers imposed or given by this Act as to the suppression of riots before or after the making of the said proclamation. R.S.C., c. 147, s. 3.

Respecting the duty of Magistrates in times of riots. See the leading case of R. vs. Pinney, (1832), 5 C. & P. 254.

85. Riotous Destruction of Buildings.—All persons are guilty of an indictable offence and liable to imprisonment for life who, being riotously and tumultuously assembled together to the disturbance of the public peace, unlawfully and with force demolish or pull down, or begin to demolish or pull down, any building, or any machinery, whether fixed or movable, or any erection used in farming land, or in carrying on any trade or manufacture, or any erection or structure used in conducting the business of any mine, or any bridge, waggon-way or track for conveying minerals from any mine. R.S.C., c. 147, s. 9.

86. Riotous Damage to Buildings.—All persons are guilty of an indictable offence and liable to seven years' imprisonment who, being riotously and tumultuously assembled together to the disturbance of the public peace, unlawfully and with force injure or damage any of the things mentioned in the last preceding section.

2. It shall not be a defence to a charge of an offence against this or the last preceding section that the offender believed he had a right to act as he did, unless he actually had such a right. R.S.C., c. 147, s. 10.

At Common Law, if persons thus destroying property, really believed that it belonged to one of their number, their act was only considered to be the offence of riot. See R. vs. Langford et al (1842), Carr & Marsh 602. R. vs .Casey (1874), 8 Irish Common Law Reports 408. By sub-section 2 of the above section, however, it appears that under the Code this belief, unless it is well founded, will not in any way change the nature of the offence.

87. Unlawful Drilling.—The Governor in Council is authorized from time to time to prohibit assemblies without lawful authority of persons for the purpose of training or drilling themselves, or of being trained or drilled to the use of arms, or for the purpose of practising military exercises, movements or evolutions, and to prohibit persons when assembled for any other purpose so training or drilling themselves or being trained or drilled. Any such prohibition may be general or may apply only to a particular place or district and to assemblies of a particular character, and shall come into operation from the publication in the *Canada Gazette* of a proclamation embodying the terms of such prohibition, and shall continue in force until the like publication of a proclamation issued by the authority of the Governor-in-Council revoking such prohibition.

2. Every person is guilty of an indictable offence and liable to two years' imprisonment who, without lawful authority and in contravention of such prohibition or proclamation—

(a.) is present at or attends any such assembly for the purpose of training or drilling any other person to the use of arms or the practice of military exercises or evolutions; or

(b.) at any assembly trains or drills any other person to the use of arms or the practice of military exercises or evolutions. R.S.C., c. 147, ss. 4 and 5.

99. **88. Being Unlawfully Drilled.**—Every one is guilty of an indictable offence and liable to two years' imprisonment who, without lawful authority, attends, or is present at, any such assembly as in the last preceding section mentioned, for the purpose of being, or who at any such assembly is, without lawful authority and in contravention of such prohibition or proclamation trained or drilled to the use of arms or the practice of military exercises or evolutions. R.S.C., c., 147, s. 6.

Prosecutions under sections 87 and 88 must be commenced within six months from the date of the commission of the offence. See section 551 (D). See R. vs. Ryan (1839), 2 M. & Rob 213.

102. 103. **89. Forcible Entry and Detainer.**—Forcible entry is where a person, whether entitled or not, enters in a manner likely to cause a breach of the peace, or reasonable apprehension thereof, on land then in actual and peaceable possession of another.

2. Forcible detainer is where a person in actual possession of land, without colour of right, detains it in a manner likely to cause a breach of the peace, or reasonable apprehension thereof, against a person entitled by law to the possession thereof.

3. What amounts to actual possession or colour of right is a question of law.

4. Every one who forcibly enters or forcibly detains land is guilty of an indictable offence and liable to one year's imprisonment.

A "forcible entry" under this section is the act of going upon land with the intention of taking possession of the land itself. An entry for the purpose of taking away chattels on the land is not such a "forcible entry" as is here contemplated; it is only a trespass, even though it is made contrary to the will of the occupant, and in a manner likely to cause a breach of the peace. R. vs. Pike (1898), 2 Can. C.C. 314. See also R. vs. Smyth (1832), 5 C. & P. 201.

90. Affray.—An affray is the act of fighting in any public street or highway, or fighting to the alarm of the public in any other place to which the public have access.

2. Every one who takes part in an affray is guilty of an indictable offence and liable to one year's imprisonment with hard labour. R.S.C., c. 147, s. 14.

91. Challenge to Fight a Duel.—Every one is guilty of an indictable offence and liable to three years' imprisonment who challenges or endeavours by any means to provoke any person to fight a duel, or endeavours to provoke any person to challenge any other person so to do.

The seconds in a duel, and all other persons who are present thereat, encouraging and promoting the same, are equally guilty with the principal offender if one of the combatants are killed. R. vs. Young (1838), 8 C. & P. 644. R. vs. Cuddy (1843), 1 Car. & K. 210. R. vs. Taylor (1875), L.R., 2 C.C.R. 147.

92. Prize-fighting Defined.—In sections ninety-three to ninety-seven inclusive the expression "prize-fight" means an encounter or fight with fists or hands between two persons who have met for such purpose by previous arrangement made by or for them. R.S.C., c. 153, s. 1.

93. Challenging to Fight a Prize-fight, etc.—Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding one thousand dollars and not less than one hundred dollars, or to imprisonment for a term not exceeding six months, with or without hard labour or to both, who sends or publishes, or causes to be sent or published or otherwise made known, any challenge to fight a prize-fight, or accepts any such challenge, or causes the same to be accepted, or goes into training preparatory to such fight, or acts as trainer or second to any person who intends to engage in a prize-fight. R.S.C., c. 153, s. 2.

94. Engaging as Principal in a Prize-fight.—Every one is guilty of an offence and liable, on summary conviction, to imprisonment for a term not exceeding twelve months and not less than three months, with or without hard labour, who engages as a principal in a prize-fight. R.S.C., c. 153, s. 3.

106. **95. Attending or Promoting a Prize-fight.**—Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding five hundred dollars and not less than fifty dollars, or to imprisonment for a term not exceeding twelve months, with or without hard labour or to both, who is present at a prize-fight as an aid, second, surgeon, umpire, backer, assistant or reporter, or who advises, encourages or promotes such fight. R.S.C., c. 153, s. 5.

107. **96. Leaving Canada to Engage in a Prize-fight.**—Every inhabitant or resident of Canada is guilty of an offence and liable, on summary conviction, to a penalty not exceeding four hundred dollars and not less than fifty dollars, or to imprisonment for a term not exceeding six months, with or without hard labour or to both, who leaves Canada with intent to engage in a prize-fight without the limits thereof. R.S.C., c. 153, s. 5.

108. **97. Where the Fight is not Prize-fight, Discharge or Fine.**—If, after hearing evidence of the circumstances connected with the origin of the fight or intended fight, the person before whom the complaint is made is satisfied that such fight or intended fight was *bona fide* the consequence or result of a quarrel or dispute between the principals engaged or intended to engage therein, and that the same was not an encounter or fight for a prize, or on the result of which the handing over or transfer of money or property depended, such person may, in his discretion, discharge the accused or impose upon him a penalty not exceeding fifty dollars. R.S.C., c. 153, s. 9.

109. **98. Inciting Indians to Riotous Acts.**—Every one is guilty of an indictable offence and liable to two years' imprisonment who induces, incites or stirs up any three or more Indians, non-treaty Indians, or half-breeds, apparently acting in concert—

(a.) to make any request or demand of any agent or servant of the Government in a riotous, routous, disorderly or threatening manner, or in a maner calculated to cause a breach of the peace; or

(b.) to do any act calculated to cause a breach of the peace. R.S.C., c. 43, s. III.

PART VI.

UNLAWFUL USE AND POSSESSION OF EXPLOSIVE SUBSTANCES AND OFFENSIVE WEAPONS—SALE OF LIQUORS.

99. Causing dangerous explosions.
100. Doing anything, or possessing explosive substances with intent to cause dangerous explosions.
101. Unlawfully making or possessing explosive substances.
102. Having possession of arms for purposes dangerous to the public peace.
103. Two or more persons openly carrying dangerous weapons so as to cause alarm.
104. Smugglers carrying offensive weapons.
105. Carrying a pistol or air-gun without justification.—Certificate of exemption.—Governor in Council may suspend operation.
106. Selling pistol or air-gun to minor.
107. Having weapons on person when arrested.
108. Having weapons on the person with intent to injure any person.
109. Pointing any firearm at any person.
110. Carrying offensive weapons about the person.
111. Carrying sheath-knives in seaports.
112. Exception as to soldiers, etc.
113. Refusing to deliver offensive weapons to a justice.
114. Coming armed within two miles of public meeting.
115. Lying in wait for persons returning from public meeting.
116. Sale of arms in the North West Territories.
117. Possessing weapons near public works.
118. Sale, etc., of liquors near public works.
119. Intoxicating liquors on board His Majesty's ships.

99. Causing Dangerous Explosions.—Every one is guilty of an indictable offence and liable to imprisonment for life who wilfully causes, by any explosive substance, an explosion of a nature likely to endanger life or to cause serious injury to property, whether any injury to person or property is actually caused or not. R.S.C., c. 150, s. 3.

Sec. 3 (l) contains an interpretation of the words "Explosive Substance."

100. Doing Anything, or Possessing Explosive Substances, with Intent to Cause Dangerous Explosions.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who wilfully—

(a.) does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance, an explosion of a nature likely to endanger life, or to cause serious injury to property;

(b.) makes or has in his possession or under his control any explosive substance with intent by means thereof to endanger life or to cause serious injury to property, or to enable any other person by means thereof to endanger life or to cause serious injury to property—

whether any explosion takes place or not and whether any injury to person or property is actually caused or not. R.S.C., c. 150, s. 3.

114. **101. Unlawfully Making or Possessing Explosive Substances.**—Every one is guilty of an indictable offence and liable to seven years' imprisonment who makes or knowingly has in his possession or under his control, any explosive substance under such circumstances as to give rise to a reasonable suspicion that he is not making it, or has it not in his possession or under his control, for a lawful object, unless he can show that he made it or had it in his possession or under his control for a lawful object. R.S.C., c. 150, s. 5.

If a person is charged under this section before a justice of the peace, no further proceedings shall be taken against him without the consent of the Attorney General, except such as are necessary to secure his safe custody. See section 545.

115. **102. Having Possession of Arms for Purposes Dangerous to the Public Peace.**—Every one is guilty of an indictable offence and liable to five years' imprisonment who has in his custody or possession, or carries, any offensive weapons for any purpose dangerous to the public peace. R.S.C., c. 149, s. 4.

Prosecutions under this section must be commenced within six months from the date of the commission of the offence. See section 551 (d).

116. **103. Two or more Persons Openly Carrying Dangerous Weapons so as to Cause Alarm.**—If two or more persons openly carry offensive weapons in a public place in such a manner and under such circumstances as are calculated to create terror and alarm, each of such persons is liable, on summary conviction before two justices of the peace, to a penalty not exceeding forty dollars and not less than ten dollars, and in default of payment to imprisonment for any term not exceeding thirty days. R.S.C., c. 148, s. 8.

Prosecutions under this section must be commenced within one month from the commission of the offence. See section 551 (f).

104. Smugglers Carrying Offensive Weapons.—Every one is guilty of an indictable offence and liable to imprisonment for ten years who is found with any goods liable to seizure or forfeiture under any law relating to inland revenue, the customs, trade or navigation, and knowing them to be so liable, and carrying offensive weapons. R.S.C., c. 32, s. 213.

For the meaning of the term "OFFENSIVE WEAPON," see section 3 (r).

105. Carrying a Pistol or Air-gun without Justification—Certificate of Exemption—Governor-in-Council may Suspend Operation.—Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty-five dollars and not less than five dollars, or to imprisonment for one month, who, not being a justice or a public officer, or a soldier, sailor or volunteer in His Majesty's service, on duty, or a constable or other peace officer, and not having a certificate of exemption from the operation of this section as hereinafter provided for, and not having at the time reasonable cause to fear an assault or other injury to his person, family or property, has upon his person a pistol or air-gun elsewhere than in his own dwelling-house, shop, warehouse, or counting-house.

2. If sufficient cause be shown upon oath to the satisfaction of any justice, he may grant to any applicant therefor not under the age of sixteen years and as to whose discretion and good character he is satisfied by evidence upon oath, a certificate of exemption from the operation of this section, for such period, not exceeding twelve months, as he deems fit.

3. Such certificate, upon the trial of any offence, shall be *prima facie* evidence of its contents and of the signature and official character of the person by whom it purports to be granted.

4. When any such certificate is granted under the preceding provisions of this section, the justice granting it shall forthwith make a return thereof to the proper officer in the county, district or place in which such certificate has been granted for receiving returns under section nine hundred and two; and in default of making such return within ninety days after a certificate is granted, the justice shall be liable, on summary conviction, to a penalty of not more than ten dollars.

5. Whenever the Governor-in-Council deems it expedient in the public interest, he may by proclamation suspend the operation of the provisions of the first and second subsections of this section respecting certificates of exemption, or exempt from such operation any particular part of Canada, and in either case for such period, and with such exceptions as to the persons hereby affected, as he deems fit.

106. Selling Pistol or Air-gun to Minor.—Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding fifty dollars, who sells or gives any pistol or air-gun, or any ammunition therefor, to a minor under the age of sixteen years, unless he establishes to the satisfaction of the justice before whom he is charged that he used reasonable diligence in endeavouring to ascertain the age of the minor before making such sale or gift, and that he had good reason to believe that such minor was not under the age of sixteen.

2. Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty-five dollars who sells any pistol or air-gun without keeping a record of such sale, the date thereof, and the name of the purchaser and of the maker's name, or other mark by which such arm may be identified.

107. Having Weapons on Person when Arrested.—Every one who when arrested, either on a warrant issued against him for an offence, or while committing an offence, has upon his person a pistol or air-gun is guilty of an offence and liable, on summary conviction before two justices of the peace, to a penalty not exceeding fifty dollars and not less than twenty dollars, or to imprisonment for any term not exceeding three months, with or without hard labour. R.S.C., c. 148, s. 2.

108. Having Weapons on the Person with Intent to Injure any Person.—Every one who has upon his person a pistol or air-gun, with intent therewith unlawfully to do injury to any other person, is guilty of an offence and liable, on summary conviction before two justices of the peace to a penalty not exceeding two hundred dollars and not less than fifty dollars, or to imprisonment for any term not exceeding six months, with or without hard labour. R.S.C., c. 148, s. 3.

A charge of "procuring a revolver with intent therewith unlawfully to do injury to J.S." discloses no offence known to the law. R. vs. Mines, 1894, 25 O.R. 577.

109. Pointing any Firearm at any Person.—Every one who, without lawful excuse, points at another person any firearm or air-gun, whether loaded or unloaded, is guilty of an offence and liable, on summary conviction before two justices of the peace, to a penalty not exceeding one hundred dollars and not less than ten dollars, or to imprisonment for any term not exceeding thirty days, with or without hard labour. R.S.C., c. 148, s. 4.

110. Carrying Offensive Weapons about the Person.—Every one who carries about his person any bowie-knife, dagger, dirk, metal knuckles, skull cracker, slung shot, or other offensive weapon of a like character, or secretly carries about his person any instrument loaded at the end, or sells or exposes for sale, publicly or privately, any such weapon, or being masked or disguised carries or has in his possession any firearm or air-gun, is guilty of an offence and liable, on summary conviction before two justices of the peace, to a penalty not exceeding fifty dollars and not less than ten dollars, and in default of payment thereof to imprisonment for any term not exceeding thirty days, with or without hard labour. R.S.C., c. 148, s. 5.

111. Carrying Sheath-knives in Seaports.—Every one, not being thereto required by his lawful trade or calling, who is found in any town or city carrying about his person any sheath-knife is liable, on summary conviction before two justices of the peace, to a penalty not exceeding forty dollars and not less than ten dollars, and in default of payment thereof to imprisonment for any term not exceeding thirty days, with or without hard labour. R.S.C., c. 148, s. 6.

Prosecutions for any of the offences specified in sections 95 to 111 inclusive must be commenced within one month from the commission thereof. See section 551 (f).

112. Exception as to Soldiers, etc.—It is not an offence for any soldier, public officer, peace officer, sailor or volunteer in His Majesty's service, constable or other po-

liceman, to carry loaded pistols or other usual arms o offensive weapons in the discharge of his duty. R.S.C., c 148, s. 10.

126 **113. Refusing to Deliver Offensive Weapon to Justice.**—Every one attending any public meeting or bein on his way to attend the same who, upon demand made b any justice of the peace, within whose jurisdiction suc public meeting is appointed to be held, declines or refuse to deliver up, peaceably and quietly, to such justice of th peace, any offensive weapon with which he is armed o which he has in his possession, is guilty of an indictab offence.

2. The justice of the peace may record the refusal an adjudge the offender to pay a penalty not exceeding eigh dollars, or the offender may be proceeded against by indic ment as in other cases of indictable offences. R.S.C., 152, s. 1.

127 **114. Coming Armed within Two Miles of Publi Meeting.**—Every one, except the sheriff, deputy sheriff an justices of the peace for the district or county, or the mayo justices of the peace or other peace officer for the city o town respectively, in which any public meeting is held, an the constables and special constables employed by them or any of them, for the preservation of the public peace a such meeting, is guilty of an indictable offence, and liab to a penalty not exceeding one hundred dollars, or to im prisonment for a term not exceeding three months, or t both, who, during any part of the day upon which suc meeting is appointed to be held, comes within one mile o the place appointed for such meeing armed with any offen sive weapon. R.S.C., c. 152, s. 5.

128 **115. Lying in Wait for Persons Returning fro Public Meeting.**—Every one is guilty of an indictab offence and liable to a penalty not exceeding two hundre dollars, or to imprisonment for a term not exceeding s months, or to both, who lies in wait for any person retur ing, or expected to return, from any such public meetin with intent to commit an assault upon such person, with intent, by abusive language, opprobrious epithets other offensive demeanour, directed to, at or against suc

person, to provoke such person, or those who accompany him, to a breach of the peace. R.S.C., c. 152, s. 6.

Prosecutions under the last three preceding sections must be commenced within one year from the commission of the offence. See section 551 (c).

116. Sale of Arms in the North-west Territories.— Every one is guilty of an offence and liable, on summary conviction before two justices of the peace, to a penalty of two hundred dollars or to six months' imprisonment, or to both, who during any time when and within any place in the North-west Territories where section one hundred and one of *The North-west Territories Act* is in force--

(a.) without the permission in writing (the proof of which shall be on him) of the Lieutenant-Governor, or of a commissioner appointed by him to give such permission, has in his possession or sells, exchanges, trades, barters, or gives to or with any person, any improved arm or ammunition; or

(b.) having such permission sells, exchanges, trades, barters or gives any such arm or ammunition to any person not lawfully authorized to possess the same.

2. The expression "improved arm" in this section means and includes all arms except smooth-bore shot-guns; and the expression "ammunition" means fixed ammunition or ball cartridge. R.S.C., c. 50, s. 101.

117. Possessing Weapons near Public Works.— Every one employed upon or about any public work, within any place in which the *Act respecting the Preservation of Peace in the vicinity of Public Works* is then in force, is liable, on summary conviction, to a penalty not exceeding four dollars and not less than two dollars for every such weapon found in his possession who, upon or after the day named in the proclamation by which such Act is brought into force, keeps or has in his possession, or under his care or control, within any such place, any weapon.

2. Every one is liable, on summary conviction, to a penalty not exceeding one hundred dollars and not less than forty dollars who, for the purpose of defeating the said Act, receives or conceals, or aids in receiving or concealing, or procures to be received or concealed within any place in which the said Act is at the time in force, any weapon belonging to or in custody of any person employed on or about any public work. R.S.C., c. 151, ss. 1, 5 and 6.

150, 151, 152. **118. Sale, etc., of Liquors near Public Works.**—Upon and after the day named in any proclamation putting in force in any place *An Act respecting the Preservation of Peace in the vicinity of Public Works*, and during such period as such proclamation remains in force, no person shall, at any place within the limits specified in such proclamation, sell, barter, or directly or indirectly, for any matter, thing, profit or reward, exchange, supply or dispose of any intoxicating liquor, nor expose, keep or have in possession any intoxicating liquor intended to be dealt with in any such way.

2. The provisions of this section do not extend to any person selling intoxicating liquor by wholesale and not retailing the same, if such person is a licensed distiller or brewer.

3. Every one is liable, on summary conviction, for a first offence to a penalty of forty dollars and costs, and, in default of payment, to imprisonment for a term not exceeding three months, with or without hard labour,—and on every subsequent conviction to the said penalty and the said imprisonment in default of payment, and also to further imprisonment for a term not exceeding six months, with or without hard labour, who, by himself, his clerk, servant, agent or other person, violates any of the provisions of this or of the preceding section.

4. Every clerk, servant, agent or other person who, being in the employment of, or on the premises of, another person violates or assists in violating any of the provisions of this or of the preceding section for the person in whose employment or on whose premises he is, is equally guilty with the principal offender and liable to the same punishment. R.S.C., c. 151, ss. 1, 13, 14 and 15.

141. **119. Intoxicating Liquors on board His Majesty's Ships.**—Every one is guilty of an offence and liable, on summary conviction before two justices of the peace, to a fine not exceeding fifty dollars for each offence, and in default of payment to imprisonment for a term not exceeding one month, with or without hard labour, who, without the previous consent of the officer commanding the ship, or vessel—

(a.) conveys any intoxicating liquor on board any of His Majesty's ships or vessels; or

(b.) approaches or hovers about any of His Majesty's

ships or vessels for the purpose of conveying any such liquor on board thereof; or

(c.) gives or sells to any man in His Majesty's service, on board any such ship or vessel any intoxicating liquor. 50-51 V., c. 46, s. 1.

PART VII.

SEDITIOUS OFFENCES.

120. Oaths to commit certain offences.
121. Other unlawful oaths.
122. Compulsion in administering and taking oaths.
123. Seditious offences defined.
124. Punishment of seditious offences.
125. Libels on foreign sovereigns.
126. Spreading false news.

120. Oaths to Commit Certain Offences.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who—

(a.) administers, or is present at and consenting to the administration of, any oath or any engagement purporting to bind the person taking the same to committ any crime punishable by death or imprisonment for more than five years; or

(b.) attempts to induce or compel any person to take any such oath or engagement; or

(c.) takes any such oath or engagement.

121. Other Unlawful Oaths.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who—

(a.) administers or is present at and consenting to the administration of any oath or engagement purporting to bind the person taking the same:

(i.) to engage in any mutinous or seditious purpose;

(ii.) to disturb the public peace or commit or endeavour to commit any offence;

(iii.) not to inform and give evidence against any associate, confederate or other person;

(iv.) not to reveal or discover any unlawful combination or confederacy, or any illegal act done or to be done or any illegal oath or obligation or engagement which may have been administered or tendered to or taken by any

person, or the import of any such oath or obligation or engagement; or

(b.) attempts to induce or compel any person to take any such oath or engagement; or

(c.) takes any such oath or engagement. C.S.L.C., c. 10, s. 1.

131. **122. Compulsion in Administering and Taking Oaths.**—Any one who, under such compulsion as would otherwise excuse him, offends against either of the last two preceding sections shall not be excused thereby unless, within the period hereinafter mentioned, he declares the same and what he knows touching the same, and the persons by whom and in whose presence, and when and where, such oath or obligation or engagement was administered or taken, by information on oath before one of His Majesty's justices of the peace for the district or city or county in which such oath or engagement was administered or taken. Such declaration may be made by him within fourteen days after the taking of the oath or, if he is hindered from making it by actual force or sickness, then within eight days of the cessation of such hindrance, or on his trial if it happens before the expiration of either of those periods. C.S.L.C., c. 10, s. 2.

The three preceding sections are taken from the consolidated statutes of Lower Canada, cap. 10. The remaining sections of that act still apply to the Province of Quebec, and possibly also in British Columbia, Manitoba and the North West Territories.

These sections render illegal what are generally known as "secret societies." See the case of Grant vs. Beaudry (1881) 4 L.N. 393.

131, 133. **123. Seditious Offences Defined.**—No one shall be deemed to have a seditious intention only because he intends in good faith—

(a.) to show that His Majesty has been misled or mistaken in his measures; or

(b.) to point out errors or defects in the government or constitution of the United Kingdom, or of any part of it, or of Canada or any province thereof, or in either House of Parliament of the United Kingdom or of Canada, or in any legislature, or in the administration of justice; or to excite His Majesty's subjects to attempt to procure, by lawful means, the alteration of any matter in the state; or

(c.) to point out, in order to their removal, matters which are producing or have a tendency to produce feelings of hatred and ill-will between different classes of His Majesty's subjects.

2. Seditious words are words expressive of a seditious intention.

3. A seditious libel is a libel expressive of a seditious intention.

4. A seditious conspiracy is an agreement between two or more persons to carry into execution a seditious intention.

124. Punishment of Seditious Offences.—Every one is guilty of an indictable offence and liable to two years' imprisonment who speaks any seditious words or publishes any seditious libel or is a party to any seditious conspiracy.

125. Libels on Foreign Sovereigns.—Every one is guilty of an indictable offence and liable to one year's imprisonment who, without lawful justification, publishes any libel tending to degrade, revile or expose to hatred and contempt in the estimation of the people of any foreign state, any prince or person exercising sovereign authority over any such state.

R. vs. Most (1881), L.R. 7 Q.B.D. 244.

126. Spreading False News.—Every one is guilty of an indictable offence and liable to one year's imprisonment who wilfully and knowingly publishes any false news or tale whereby injury or mischief is or is likely to be occasioned to any public interest.

PART VIII.

PIRACY.

127. Piracy by the Law of Nations.
128. Piratical acts.
129. Piracy with violence.
130. Not fighting pirates.

127. Piracy by the Law of Nations.—Every one is guilty of an indictable offence who does any act which amounts to piracy by the law of nations, and is liable to the following punishment:—

(a.) To death, if in committing or attempting to commit such crime the offender murders, attempts to murder or wounds any person, or does any act by which the life of any person is likely to be endangered;

(b.) To imprisonment for life in all other cases.

/36. **128. Piratical Acts.**—Every one is guilty of an indictable offence and liable to imprisonment for life who, within Canada, does any of the following piratical acts, or who, having done any of the following piratical acts, comes or is brought within Canada without having been tried therefor:—

(a.) Being a British subject, on the sea, or in any place within the jurisdiction of the Admiralty of Engand, under colour of any commission from any foreign prince or state, whether such prince or state is at war with His Majesty or not, or under pretense of authority from any person whomsoever commits any act of hostility or robbery against other British subjects, or during any war is in any way adherent to or gives aid to His Majesty's enemies;

(b.) Whether a British subject or not, on the sea or in any place within the jurisdiction of the Admiralty of England, enters into any British ship, and throws overboard, or destroys, any part of the goods belonging to such ship, or laden on board the same;

(c.) Being on board any British ship on the sea or in any place within the jurisdiction of the Admiralty of England—

(i.) turns enemy or rebel, and piratically runs away with the ship, or any boat, ordnance, ammunition or goods;

(ii.) yields them up voluntarily to any pirate;

(iii.) brings any seducing message from any pirate enemy or rebel;

(iv.) counsels or procures any persons to yield up or run away with any ship, goods or merchandise, or to turn pirate or to go over to pirates;

(v.) lays violent hands on the commander of any such ship in order to prevent him from fighting in defence of his ship and goods;

(vi.) confines the master or commander of any such ship;

(vii.) makes or endeavours to make a revolt in the ship; or

(d.) Being a British subject in any part of the world, or (whether a British subject or not) being in any part of His Majesty's dominions or on board a British ship, knowingly—

(i.) furnishes any pirate with any ammunition or stores of any kind;

(ii.) fits out any ship or vessel with a design to trade with or supply or correspond with any pirate;

(iii.) conspires or corresponds with any pirate.

If full effect is given to the words "or in any place within the jurisdiction of the Admiralty of England," par. (b) is probably *ultra vires*. See section 640. See also McLeod vs. Attorney General of New South Wales, L.R. (1891), A.C. 455. R. vs. Plowman (1894), 25 O.R. 656.

Par. (c).—Foreigners are only amenable within the three mile limit. But as regards the Great Lakes, it has been settled that the territorial limit is not three miles from the shore, but the middle of the lake.

A person who is not a British subject can only be tried under this section in a Court in Canada with the leave of the Governor General, and on his certificate that such proceedings are expedient. See section 542.

129. Piracy with Violence.—Every one is guilty of an indictable offence and liable to suffer death who, in committing or attempting to commit any piratical act, assaults with intent to murder, or wounds, any person, or does any act likely to endanger the life of any person.

130. Not Fighting Pirates.—Every one is guilty of an indictable offence and liable to six months' imprisonment, and to forfeit to the owner of the ship all wages then due to him, who, being a master, officer or seaman of any merchant ship which carries guns and arms, does not, when attacked by any pirate, fight and endeavour to defend himself and his vessel from being taken by such pirate, or who discourages others from defending the ship, if by reason thereof the ship falls into the hands of such pirate.

TITLE III.

OFFENCES AGAINST THE ADMINISTRATION OF LAW AND JUSTICE.

PART IX.

CORRUPTION AND DISOBEDIENCE.

131. Judicial corruption.
132. Corruption of officers employed in prosecuting offenders.
133. Frauds upon the Government.
134. Other consequences of conviction for any such offence.
135. Breach of trust by a public officer.
136. Corrupt practices in municipal affairs.
137. Selling office appointment.
138. Disobedience to a statute.
139. Disobedience to orders of the Court.
140. Neglect of peace officer to suppress riot.
141. Neglect to aid peace officer in suppressing riot.
142. Neglect to aid peace officer in arresting offenders.
143. Misconduct of officers entrusted with execution of writ.
144. Obstructing public or peace officer in the execution of his duty.

156. **131. Judicial Corruption.**—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who—

(a.) holding any judicial office, or being a member of Parliament or of a legislature, corruptly accepts or obtains, or agrees to accept, or attempts to obtain for himself or any other person, any money or valuable consideration, office, place, or employment on account of anything already done or omitted, or to be afterwards done or omitted, by him in his judicial capacity, or in his capacity as such member; or

(b.) corruptly gives or offers to any such person or to any other person, any such bribe as aforesaid on account of any such act or omission.

Prosecutions under this section can only be taken with the leave of the Attorney General of Canada. See section 541.

157. **132. Corruption of Officers Employed in Prosecuting Offenders.**—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who—

(a.) being a justice of the peace, peace officer, or public officer, employed in any capacity for the prosecution or detection or punishment of offenders, corruptly accepts or obtains, or agrees to accept or attempts to obtain for himself, or for any other person, any money or valuable consideration, office, place or employment, with the intent to interfere corruptly with the due administration of justice, or to procure or facilitate the commission of any crime, or to protect from detection or punishment any person having committed or intending to commit any crime; or

(b.) corruptly gives or offers to any such officer as aforesaid any such bribe as aforesaid with any such intent.

Sec. 3, pars. (s) and (w) contain respectively interpretations of the terms "peace officer" and "public officer."

133. Frauds upon the Government.—Every one is guilty of an indictable offence and liable to a fine of not less than one hundred dollars, and not exceeding one thousand dollars, and to imprisonment for a term not exceeding one year and not less than one month, and in default of payment of such fine to imprisonment for a further time not exceeding six months who—

(a.) makes any offer, proposal, gift, loan or promise, or who gives or offers any compensation or consideration, directly or indirectly, to any official or person in the employment of the Government, or to any member of his family, or to any person under his control, or for his benefit, with intent to obtain the assistance or influence of such official or person to promote either the procuring of any contract with the Government, for the performance of any work, the doing of any thing, or the furnishing of any goods, effects, food or materials, the execution of any such contract, or the payment of the price, or consideration stipulated therein, or any part thereof, or of any aid or subsidy, payable in respect thereof; or

(b.) being an official or person in the employment of the Government, directly or indirectly, accepts or agrees to accept, or allows to be accepted by any person under his control, or for his benefit, any such offer, proposal, gift, loan, promise, compensation or consideration; or

(c.) in the case of tenders being called for by or on behalf of the Government, for the performance of any work, the doing of any thing, or the furnishing of any goods, effects, food or materials, directly or indirectly, by himself

or by the agency of any other person on his behalf, with intent to obtain the contract therefor, either for himself or for any other person, proposes to make, or makes, any gift, loan, offer or promise, or offers or gives any consideration or compensation whatsoever to any person tendering for such work or other service, or to any member of his family, or other person for his benefit, to induce such person to withdraw his tender for such work or other service, or to compensate or reward him for having withdrawn such tender; or

(d.) in case of so tendering, accepts or receives, directly or indirectly, or permits, or allows to be accepted or received by any member of his family, or by any other person under his control, or for his benefit, any such gift, loan, offer, promise, consideration or compensation, as a consideration or reward for withdrawing or for having withdrawn such tender; o

(e.) being an official or employee of the Government, receives, directly or indirectly, whether personally, or by or through any member of his family, or person under his control, or for his benefit, any gift, loan, promise, compensation or consideration whatsoever, either in money or otherwise, from any person whomsoever, for assisting or favouring any individual in the transaction of any business whatsoever with the Government, or who gives or offers any such gift, loan, promise, compensation or consideration; or

(f.) by reason of, or under the pretense of, possessing influence with the Government, or with any Minister or official thereof, demands, exacts or receives from any person, any compensation, fee or reward, for procuring from the Government the payment of any claim, or of any portion thereof, or for procuring or furthering the appointment of himself, or of any other person, to any office, place or employment, or for procuring or furthering the obtaining for himself or any other person, of any grant, lease or other benefit from the Government; or offers, promises or pays to such person, under the circumstances and for the causes aforesaid, or any of them, any such compensation, fee or reward; or

(g.) having dealings of any kind with the Government through any department thereof, pays any commission or reward, or within one year before or after such dealings, without the express permission in writing of the head of

the department with which such dealings have been had, the proof of which permission shall lie upon him, makes any gift, loan, or promise of any money, matter or thing, to any employee or official of the Government, or to any member of the family of such employee or official, or to any person under his control, or for his benefit; or

(h.) being an employee or official of the Government, demands, exacts or receives, from such person, directly or indirectly, by himself, or by or through any other person for his benefit, or permits or allows any member of his family, or any person under his control, to accept or receive—

(i.) any such commission or reward; or

(ii.) within the said period of one year, without the express permission in writing of the head of the department with which such dealings have been had, the proof of which permission shall lie upon him, acepts or receives any such gift, loan or promise; or

(i.) having any contract with the Government for the performance of any work, the doing of anything, or the furnishing of any goods, effects, food or materials, and having or expecting to have any claim or demand against the Government by reason of such contract, either directly or indirectly, by himself or by any person on his behalf, subscribes, furnishes or gives, or promises to subscribe, furnish or give, any money or other valuable consideration for the purpose of promoting the election of any candidate, or of any number, class or party of candidates to a legislature or to Parliament, or with the intent in any way of influencing or affecting the result of a provincial or Dominion election.

2. If the value of the amount or thing paid, offered, given, loaned, promised, received or subscribed, as the case may be, exceeds one thousand dollars, the offender under this section is liable to any fine not exceeding such value.

3. The words "the Government" in this section include the Government of Canada and the Government of any province of Canada, as well as His Majesty in the right of Canada or of any province thereof (as amended by 56 Vic., cap. 32).

Misbehaviour in public office was an indictable offence at common law. R. vs. Arnoldi (1892), 23 O.R. 201.

Prosecutions under this section must be commenced within two years from the date of the commission of the offence. See section 551 (b).

Sec. 133a - added - 6 Edw VII c 7 (1906) "Comm^rs of Transcontinental Ry"

159. **134. Other Consequences of Conviction for any such Offence.**—Every person convicted of an offence under the next preceding section shall be incapable of contracting with the Government, or of holding any contract or office with, from, or under it, or of receiving any benefit under any such contract. R.S.C., c. 173, ss. 22 and 23.

160. **135. Breach of Trust by Public Officer.**—Every public officer is guilty of an indictable offence and liable to five years' imprisonment who, in the discharge of the duties of his office, commits any fraud or breach of trust affecting the public, whether such fraud or breach of trust would have been criminal or not if committed against a private person.

161. **136. Corrupt Practices in Municipal Affairs.**—Every one is guilty of an indictable offence and liable to a fine not exceeding one thousand dollars and not less than one hundred dollars, and to imprisonment for a term not exceeding two years and not less than one month, and in default of payment of such fine to imprisonment for a further term not exceeding six months, who directly or indirectly—

(a.) makes any offer, proposal, gift, loan, promise or agreement to pay or give any money or other material compensation or consideration to any member of a municipal council, whether the same is to inure to his own advantage or to the advantage of any other person, for the purpose of inducing such member either to vote or to abstain from voting at any meeting of the council of which he is a member or at any meeting of a committee of such council, in favour of or against any measure, motion, resolution or question submitted to such council or committee; or

(b.) makes any offer, proposal, gift, loan, promise or agreement to pay or give any money or other material compensation or consideration to any member or to any officer of a municipal council for the purpose of inducing him to aid in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person; or

(c.) makes any offer, proposal, gift, loan, promise, or agreement to pay or give any money or other material compensation or consideration to any officer of a municipal council for the purpose of inducing him to perform or

abstain from performing, or to aid in procuring or preventing the performance of, any official act; or

(d.) being a member or officer of a municipal council, accepts or consents to accept any such offer, proposal, gift, loan, promise, agreement, compensation or consideration as is in this section before mentioned; or in consideration thereof, votes or abstains from voting in favour of or against any measure, motion, resolution or question, or performs or abstains from performing any official act; or

(e.) attempts by any threat, deceit, suppression of the truth or other unlawful means to influence any member of a municipal council in giving or withholding his vote in favour of or against any measure, motion, resolution or question, or in not attending any meeting of the municipal council of which he is a member, or of any committee thereof; or

(f.) attempts by any such means as in the next preceding paragraph mentioned to influence any member or any officer of a municipal council to aid in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person, or to perform or abstain from performing, or to aid in procuring or preventing the performance of, any official act. 52 V., c. 42, s. 2.

137. Selling Office, Appointment, etc.—Every one is guilty of an indictable offence who, directly or indirectly—

(a.) sells or agrees to sell any appointment to or resignation of any office, or any consent to any such appointment or resignation, or receives, or agrees to receive, any reward or profit from the sale thereof; or

(b.) purchases or gives any reward or profit for the purchase of any such appointment, resignation or consent, or agrees or promises to do so.

Every one who commits any such offence as aforesaid, in addition to any other penalty thereby incurred forfeits any right which he may have in the office and is disabled for life from holding the same.

2. Every one is guilty of an indictable offence who, directly or indirectly—

(a.) receives or agrees to receive any reward or profit for any interest, request or negotiation about any office, or under pretense of using any such interest, making any such request or being concerned in any such negotiation; or

(b.) gives or procures to be given any profit or reward, or

makes or procures to be made any agreement for the giving of any profit or reward, for any such interest, request or negotiation as aforesaid; or

(c.) solicits, recommends or negotiates in any manner as to any appointment to or resignation of any office in expectation of any reward or profit; or

(d.) keeps any office or place for transacting or negotiating any business relating to vacancies in, or the sale or purchase of, or appointment to or resignation of offices.

The word "office" in this section includes every office in the gift of the Crown or of any officer appointed by the Crown, and all commissions, civil, naval and military, and all places or employments in any public department or office whatever, and all deputations to any such office and every participation in the profits of any office or deputation.

As no punishment is provided for the offences specified in this section, any person found guilty of having committed any of them is liable to five years' imprisonment. See section 951.

164. **138. Disobedience to a Statute.**—Every one is guilty of an indictable offence and liable to one year's imprisonment who, without lawful excuse, disobeys any Act of the Parliament of Canada or of any legislature in Canada by wilfully doing any act which it forbids, or omitting to do any act which it requires to be done, unless some penalty or other mode of punishment is expressly provided by law.

This section does not apply where a Magistrate, having received an information and having heard the allegation of the informant, comes to the conclusion that what is charged does not constitute an offence. Re E. J. Parke (1899), 3 Can. C.C. 122. See also R. vs. Paynter (1857), 7 E. & B. 327. R. vs. Dayman (1857), 7 E. & B. 672. Ex parte Lewis (1888), L.R. 21 Q.B.D. 191.

165. **139. Disobedience to Orders of Court.**—Every one is guilty of an indictable offence and liable to one year's imprisonment who, without lawful excuse, disobeys any lawful order other than for the payment of money made by any court of justice, or by any person or body of persons authorized by any statute to make or give such order, unless some penalty is imposed, or other mode of proceeding is expressly provided by law.

Contempt of Court is a criminal offence, and, therefore, nothing will be inferred in aid of a charge of that offence; it must be fully proved. In re Scaife (1896), 5 B.C.R. 153.

140. Neglect of Peace Officer to Suppress Riot.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, being a sheriff, deputy sheriff, mayor, or other head officer, justice of the peace, or other magistrate, or other peace officer, of any county, city, town, or district, having notice that there is a riot within his jurisdiction, without reasonable excuse omits to do his duty in suppressing such riot.

141. Neglect to aid Peace Officer in Suppressing Riot.—Every one is guilty of an indictable offence and liable to one year's imprisonment who, having reasonable notice that he is required to assist any sheriff, deputy-sheriff, mayor, or other head officer, justice of the peace, magistrate, or peace officer in suppressing any riot, without reasonable excuse omits so to do.

142. Neglect to aid Peace Officer in Arresting Offenders.—Every one is guilty of an indictable offence and liable to six months' imprisonment who, having reasonable notice that he is required to assist any sheriff, deputy-sheriff, mayor or other head officer, justice of the peace, magistrate or peace officer, in the execution of his duty in arresting any person, or in preserving the peace, without reasonable excuse omits so to do.

R. vs. Sherlock (1866), 10 Cox's C.C. 170.

143. Misconduct of Officers Intrusted with Execution of Writs.—Every one is guilty of an indictable offence and liable to a fine and imprisonment, who, being a sheriff, deputy-sheriff, coroner, elisor, bailiff, constable or other officer intrusted with the execution of any writ, warrant or process, wilfully misconducts himself in the execution of the same, or wilfully, and without the consent of the person in whose favour the writ, warrant or process was issued, makes any false return thereto. R.S.C., c. 173, s. 29.

A person convicted under this section is liable to five years' imprisonment (see section 951); or, under section 934, to a fine of such amount as the Court in its discretion may deem fit.

144. Obstructing Public or Peace Officer in the Execution of his Duty.—Every one is guilty of an indictable offence and liable to ten years' imprisonment who resists or wilfully obstructs any public officer in the execution

of his duty or any person acting in aid of such officer.

2. Every one is guilty of an offence and liable, on indictment, to two years' imprisonment, and on summary conviction before two justices of the peace to six months' imprisonment with hard labour, or to a fine of one hundred dollars, who resists or wilfully obstructs—

(a.) any peace officer in the execution of his duty or any person acting in aid of any such officer;

(b.) any person in the lawful execution of any process against any lands or goods or in making any lawful distress or seizure. R.S.C., c. 162, s. 34.

The offence of wilfully obstructing or resisting a peace officer in the execution of his duty comes within section 783 (e), and therefore, notwithstanding the present section, a person charged with having committed that offence, can only be summarily tried by a Magistrate when he has given his consent thereto, as required by section 786. See R. vs. Monkman (1892), 13 C.L.T. 16.

PART X.

MISLEADING JUSTICE.

145. Perjury defined.
146. Punishment of perjury.
147. False oaths.
148. False statements, wilful omission in affidavit, etc.
149. Making false affidavit out of province in which it is used.
150. False statements.
151. Fabricating evidence.
152. Conspiring to bring false accusations.
153. Administering oaths without authority.
154. Corrupting juries and witnesses.
155. Compounding penal actions.
156. Corruptly taking a reward for helping to recover stolen property without using diligence to bring the offender to trial.
157. Unlawfully advertising a reward for return of stolen property.
158. Signing false declaration respecting execution of judgment of death.

145. Perjury Defined.—Perjury is an assertion as to a matter of fact, opinion, belief or knowledge, made by a witness in a judicial proceeding as part of his evidence, upon oath or affirmation, whether such evidence is given in open court, or by affidavit or otherwise, and whether such evidence is material or not, such assertion being known

to such witness to be false, and being intended by him to mislead the court, jury, or person holding the proceeding. Evidence in this section includes evidence given on the *voir dire* and evidence given before a grand jury.

2. Every person is a witness within the meaning of this section who actually gives his evidence, whether he was competent to be a witness or not, and whether his evidence was admissible or not.

3. Every proceeding is judicial within the meaning of this section which is held in or under the authority of any court of justice, or before a grand jury, or before either the Senate or House of Commons of Canada, or any committee of either the Senate or House of Commons, or before any Legislative Council, Legislative Assembly or House of Assembly or any committee thereof, empowered by law to administer an oath, or before any justice of the peace, or any arbitrator or umpire, or any person or body of persons authorized by law or by any statute in force for the time being to make an inquiry and take evidence therein upon oath, or before any legal tribunal by which any legal right or liability can be established, or before any person acting as a court, justice or tribunal, having power to hold such judicial proceeding, whether duly constituted or not, and whether the proceeding was duly instituted or not before such court or person so as to authorize it or him to hold the proceeding, and although such proceeding was held in a wrong place or was otherwise invalid.

4. Subornation of perjury is counselling or procuring a person to commit any perjury which is actually committed

There can be no conviction under this section upon the evidence of one witness "unless such witness is corroborated in some material particular by evidence implicating the accused." See section 684.

According to the law as defined in this section, a witness will only be committing perjury if he knows the statement he makes to be false. Neither the materiality of the statement, nor its admissibility as evidence are important, nor practically, is the jurisdiction of the Court.

If perjury is not actually committed, the offence would be incitement, or, perhaps, an attempt to commit perjury. See section 711.

For leading cases on this subject decided before the Code came into force, see R. vs. Aylett (1785), 1 T.R. 63; R. vs. Hughes (1844), 1 Car. & K. 519; R. vs. Townshend (1866), 10 Cox C.C. 356.

The accused was charged with having committed perjury at the inquest of inquiry before one of Her Majesty's Coroners. The inquest was held before a Coroner and a jury. Upon

a reserved question, the Court held that the count of the charge above quoted should not have been withdrawn from the jury, nor should they have been instructed to acquit the prisoner, because the inquest was held before a Coroner and jury, and not before a Coroner, as charged; the circumstances of the alleged offence being sufficiently set forth to satisfy the statute.

R. vs. Thompson (1896), 32 C.L.J. 493.

In the same case, the accused, upon a preliminary investigation before a Justice of the Peace, admitted that he had given false evidence at the Coroner's inquest. This admission was subsequently admitted as evidence at the trial, and was submitted to the jury. Held, that under sec. 5 of the "Canada Evidence Act," 1893, the evidence should not have been received.

R. vs. Thompson, supra.

174. **146. Punishment of Perjury.**—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who commits perjury or subornation of perjury.

2. If the crime is committed in order to procure the conviction of a person for any crime punishable by death, or imprisonment for seven years or more, the punishment may be imprisonment for life. R.S.C., c. 154, s. 1.

Procuring by false evidence the conviction and death of anyone is not homicide.

175. **147. False Oaths.**—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, being required or authorized by law to make any statement on oath, affirmation or solemn declaration, thereupon makes a statement which would amount to perjury if made in a judicial proceeding.

See R. vs. Skelton (1898), 18 C.L.T, 20[illegible].

172. **148. False Statement, Wilful Omission in Affidavit, etc.**—Every one is guilty of perjury who—

(a.) having taken or made any oath, affirmation, solemn declaration or affidavit where by any Act or law in force in Canada, or in any province of Canada, it is required or permitted that facts, matters or things be verified, or otherwise assured or ascertained by or upon the oath, affirmation, declaration or affidavit of any person, wilfully and corruptly, upon such oath, affirmation, declaration or affidavit, deposes, swears to or makes any false statement as to any such fact, matter or thing; or

(b.) knowingly, wilfully and corruptly, upon oath, affirmation, or solemn declaration, affirms, declares, or deposes to the truth of any statement for so verifying, assuring or ascertaining any such fact, matter or thing, or purporting so to do, or knowingly, wilfully and corruptly takes, makes, signs or subscribes any such affirmation, declaration or affidavit, as to any such fact, matter or thing,—such statement, affidavit, affirmation or declaration being untrue, in the whole or any part thereof. R.S.C., c. 154, s. 2.

Any one who falsely swears before a Deputy Returning Officer at a federal election that he is a certain person, is guilty of perjury even though he is not an elector; and R.S.C. cap. 8, sec. 45 is not to receive the limited construction that a Deputy Returning Officer has authority to administer the oath only to a person who is actually entitled to vote. R. vs. Chamberlain (1894), 10 Man. L.R. 261; R. vs. Proud (1867), L.R. 1 C.C. 71; R. vs. Holland (1894), 30 C.L.J. 428; R. vs. Lawrence (1878), 43 U.C.R. Q.B. 164; R. vs. Gibson (1896), 29 N.S.R. 88, N.S.R. 88.

149. Making False Affidavit out of Province in which it is used.—Every person who wilfully and corruptly makes any false affidavit, affirmation or solemn declaration, out of the province in which it is to be used but within Canada, before any person authorized to take the same, for the purpose of being used in any province of Canada, is guilty of perjury in like manner as if such false affidavit, affirmation or declaration were made before a competent authority in the province in which it is used or intended to be used. R.S.C., c. 154, s. 3.

150. False Statements.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, upon any occasion on which he is permitted by law to make any statement or declaration before any officer authorized by law to permit it to be made before him, or before any notary public to be certified by him as such notary, makes a statement which would amount to perjury if made on oath in a judicial proceeding.

151. Fabricating Evidence.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, with intent to mislead any court of justice or person holding any such judicial proceeding as aforesaid, fabricates evidence by any means other than perjury or subornation of perjury.

176. **152. Conspiring to bring False Accusations.**—Every one is guilty of an indictable offence who conspires to prosecute any person for any alleged offence, knowing such person to be innocent thereof, and shall be liable to the following punishment:

(a.) To imprisonment for fourteen years, if such person might, upon conviction for the alleged offence, be sentenced to death or imprisonment for life;

(b.) To imprisonment for ten years if such person might, upon conviction for the alleged offence, be sentenced to imprisonment for any term less than life.

177. **153. Administering Oaths without Authority.**—Every justice of the peace or other person who administers, or causes or allows to be administered, or receives or causes or allows to be received any oath or affirmation touching any matter or thing whereof such justice or other person has not jurisdiction or cognizance by some law in force at the time being, or authorized or required by any such law, is guilty of an indictable offence and liable to a fine not exceeding fifty dollars, or to imprisonment for any term not exceeding three months.

2. Nothing herein contained shall be construed to extend to any oath or affirmation before any justice in any matter or thing touching the preservation of the peace, or the prosecution, trial or punishment of any offence, or to any oath or affirmation required or authorized by any law of Canada, or by any law of the province wherein such oath or affirmation is received or administered, or is to be used, or to any oath or affirmation, which is required or authorized by the laws of any foreign country to give validity to an instrument in writing or to evidence designed or intended to be used in such foreign country. R.S.C., c. 141, s. 1.

180. **154. Corrupting Juries and Witnesses.**—Every one is guilty of an indictable offence and liable to two years' imprisonment who—

(a.) dissuades or attempts to dissuade any person by threats, bribes or other corrupt means from giving evidence in any cause or matter, civil or criminal; or

(b.) influences or attempts to influence, by threats or bribes or other corrupt means, any juryman in his conduct as such, whether such person has been sworn as a juryman or not; or

(c.) accepts any such bribe or other corrupt consideration to abstain from giving evidence, or on account of his conduct as a juryman; or

(d.) wilfully attempts in any other way to obstruct, pervert or defeat the course of justice. R.S.C., c. 173, s. 30.

The offence defined in sub-sec. (b) is the old common law, one of embracery.

155. Compounding Penal Actions.—Every one is guilty of an indictable offence and liable to a fine not exceeding the penalty compounded for, who, having brought, or under colour of bringing, an action against any person under any penal statute in order to obtain from him any penalty, compounds the said action without order or consent of the court, whether any offence has in fact been committed or not. R.S.C., c. 173, s. 31.

The act referred in this section is an offence under 15 Elizabeth, cap. 5.

This section applies to qui tam actions.

156. Corruptly Taking a Reward for Helping to Recover Stolen Property without using Diligence to bring Offender to Trial.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who corruptly takes any money or reward, directly or indirectly, under pretense or upon account of helping any person to recover any chattel, money, valuable security or other property which, by any indictable offence has been stolen, taken, obtained, extorted, converted or disposed of, unless he has used all due diligence to cause the offender to be brought to trial for the same. R.S.C., c. 164, s. 89.

See R. vs. Burgess (1885), 16 Q.B.D. 141 ; R. vs. Crisp (1818), 1 B. & Ald. 282 ; R. vs. Best (1840), 9 C. & P. 368 ; R. vs. Stone (1830), 4 C. & P. 379 ; Kerr vs. Leeman (1844), 6 Q.B. 308 ; Windhill Local Board of Health vs. Vint (1890), 45 C.D. 351.

157. Unlawfully Advertising a Reward for Return of Stolen Property.—Every one is liable to a penalty of two hundred and fifty dollars for each offence, recoverable with costs by any person who sues for the same in any court of competent jurisdiction, who—

(a.) publicly advertises a reward for the return of any property which has been stolen or lost, and in such advertisement uses any words purporting that no questions will be asked; or

(b.) makes use of any words in any public advertisement purporting that a reward will be given or paid for any property which has been stolen or lost, without seizing or making any inquiry after the person producing such property; or

(c.) promises or offers in any such public advertisement to return to any pawnbroker or other person who advanced money by way of loan on, or has bought, any property stolen or lost, the money so advanced or paid, or any other sum of money for the return of such property; or

(d.) prints or publishes any such advertisement. R.S.C., c. 164, s. 90.

Prosecutions under ss. (d) can only be brought within six months from the date of the commission of the offence. See sec. 551, s.s. (d), par. (iv).

164. **158. Signing False Declaration Respecting Execution of Judgment of Death.**—Every one is guilty of an indictable offence and liable to two years' imprisonment, who knowingly and wilfully signs a false certificate or declaration when a certificate or declaration is required with respect to the execution of judgment of death on any prisoner. R.S.C., c. 181, s. 19.

PART XI.

ESCAPES AND RESCUES.

159. Being at large while under sentence of imprisonment.
160. Assisting escape of prisoners of war.
161. Breaking prison.
162. Attempting to break prison.
163. Escape from custody after conviction or from prison.
164. Escape from lawful custody.
165. Assisting escape in certain cases.
166. Assisting escape in other cases.
166a. Permitting a prisoner to escape.
167. Aiding escape from prison.
168. Unlawfully procuring discharge of prisoner.
169. How escaped prisoner shall be punished.

165. **159. Being at Large while under Sentence of Imprisonment.**—Every one is guilty of an indictable offence and liable to two years' imprisonment who, having been

sentenced to imprisonment, is afterwards, and before the expiration of the term for which he was sentenced, at large within Canada without some lawful cause, the proof whereof shall lie on him.

160. Assisting Escape of Prisoners of War.—Every one is guilty of an indictable offence and liable to five years' imprisonment who knowingly and wilfully—

(a.) assists any alien enemy of His Majesty, being a prisoner of war in Canada, to escape from any place in which he may be detained; or

(b.) assists any such prisoner as aforesaid, suffered to be at large on his parole in Canada or in any part thereof, to escape from the place where he is at large on his parole.

161. Breaking Prison.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, by force or violence, breaks any prison with intent to set at liberty himself or any other person confined therein on any criminal charge.

162. Attempting to Break Prison.—Every one is guilty of an indictable offence and liable to two years' imprisonment who attempts to break prison, or who forcibly breaks out of his cell, or makes any breach therein with intent to escape therefrom. R.S.C., c. 155, s. 5.

"FORCE" is the gist of the offence specified in this section.
R.vs.Haswell (1821), R. & R. 458 .

163. Escape from Custody after Conviction or from Prison.—Every one is guilty of an indictable offence and liable to two years' imprisonment who—

(a.) having been convicted of any offence, escapes from any lawful custody in which he may be under such conviction; or

(b.) whether convicted or not, escapes from any prison in which he is lawfully confined on any criminal charge.

164. Escape from Lawful Custody.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, being in lawful custody other than as aforesaid on any criminal charge, escapes from such custody.

165. Assisting Escape in Certain Cases.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who—

(a.) rescues any person or assists any person in escaping, or attempting to escape, from lawful custody, whether in prison or not, under sentence of death or imprisonment for life, or after conviction of, and before sentence for, or while in such custody upon a charge of any crime punishable with death or imprisonment for life; or

(b.) being a peace officer and having any such person in his lawful custody, or being an officer of any prison in which any such person is lawfully confined, voluntarily and intentionally permits him to escape therefrom.

166. Assisting Escape in Other Cases.—Every one is guilty of an indictable offence and liable to five years' imprisonment who—

(a.) rescues any person, or assists any person in escaping, or attempting to escape, from lawful custody, whether in prison or not, under a sentence of imprisonment for any term less than life, or after conviction of, and before sentence for, or while in such custody upon a charge of any crime punishable with imprisonment for a term less than life; or

(b.) being a peace officer having any such person in his lawful custody, or being an officer of any prison in which such person is lawfully confined, voluntarily and intentionally permits him to escape therefrom.

166A. Permitting a Prisoner to Escape.—Every one is guilty of an indictable offence and liable to one year's imprisonment, who, by failing to perform any legal duty, permits a person in his lawful custody on a criminal charge to escape therefrom. 63-64 V., c. 46. *This section shall come into force on the 1st Jan.*, 1901).

167. Aiding Escape from Prison.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, with intent to facilitate the escape of any prisoner lawfully imprisoned, conveys or causes to be conveyed, anything into any prison.

168. Unlawfully Procuring Discharge of Prisoner.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, knowingly and unlawfully, under colour of any pretended authority directs

or procures the discharge of any prisoner not entitled to be so discharged, and the person so discharged shall be held to have escaped. R.S.C., c. 155, s. 8.

169. How Escaped Prisoner shall be Punished.—Every one who escapes from custody, shall, on being retaken, serve, in the prison to which he was sentenced, the remainder of his term unexpired at the time of his escape, in addition to the punishment which is awarded for such escape; and any imprisonment awarded for such offence may be to the penitentiary or prison from which the escape was made. R.S.C., c. 155, s. 11.

TITLE IV.

OFFENCES AGAINST RELIGION, MORALS AND PUBLIC CONVENIENCE.

PART XII.

OFFENCES AGAINST RELIGION.

170. Blasphemous libels.
171. Obstructing officiating clergyman.
172. Violence to officiating clergyman.
173. Disturbing public worship.

170. Blasphemous Libels.—Every one is guilty of an indictable offence and liable to one year's imprisonment who publishes any blasphemous libel.

2. Whether any particular published matter is a blasphemous libel or not is a question of fact. But no one is guilty of a blasphemous libel for expressing in good faith and in decent language, or attempting to establish by arguments used in good faith and conveyed in decent language, any opinion whatever upon any religious subject.

The gist of blasphemous libel is the outrage inflicted upon the religious community.
R. vs. Pelletier et al. (1900), 6 R.L. (N.S.) 116.

171. Obstructing Officiating Clergyman.—Every one is guilty of an indictable offence and liable to two years' imprisonment who—

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(a.) by threats or force, unlawfully obstructs or prevents or endeavours to obstruct or prevent, any clergyman or other minister in or from celebrating divine service, or otherwise officiating in any church, chapel, meeting-house, school-house or other place for divine worship, or in or from the performance of his duty in the lawful burial of the dead in any churchyard or other burial place. R.S.C., c. 156, s. 1.

200.

172. Violence to Officiating Clergyman.—Every one is guilty of an indictable offence and liable to two years' imprisonment who strikes or offers any violence to, or upon any civil process, or under the pretense of executing any civil process, arrests any clergyman or other minister who is engaged in or, to the knowledge of the offender, is about to engage in, any of the rites or duties in the next preceding section mentioned, or who, to the knowledge of the offender, is going to perform the same, or returning from the performance thereof. R.S.C., c. 156, s. 1.

201.

173. Disturbing Public Worship.— Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding fifty dollars and costs, and in default of payment to one month's imprisonment, who wilfully disturbs, interrupts or disquiets any assemblage of persons met for religious worship, or for any moral, social or benevolent purpose, by profane discourse, by rude or indecent behaviour, or by making a noise, either within the place of such meeting or so near it as to disturb the order or solemnity of the meeting. R.S.C., c. 156, s. 2.

PART XIII.

OFFENCES AGAINST MORALITY.

174. Unnatural offence.
175. Attempt to commit sodomy.
176. Incest.
177. Indecent acts.
178. Acts of gross indecency.
179. Publishing obscene matter.
180. Posting immoral books.
181. Seduction of girls under sixteen.
182. Seduction under promise of marriage.
183. Seduction of a ward, servant, etc.

183*a*. Burden of proving previous unchastity.
184. Seduction of females who are passengers in vessels.
185. Unlawfully defiling women.
186. Parent or guardian procuring defilement of girl.
186*a*. Meaning of word "guardian."
187. Householders permitting defilement of girls on their premises.
188. Conspiracy to defile.
189. Carnally knowing idiots, etc.
190. Prostitution of Indian women.

174. Unnatural Offence.—Every one is guilty of an indictable offence and liable to imprisonment for life who commits buggery, either with a human being or with any other living creature. R.S.C., c. 157, s. 1.

It is to be conclusively presumed that any person under fourteen years of age is physically incompetent to commit the unnatural offences specified in this section. This presumption is not affected by the provisions of sec. 10, that section referring exclusively to the mental capacity of distinguishing between right and wrong. R. vs. Hartlen (N.S. 1898), 2 Can. C.C. 12.

Although a person under fourteen years of age cannot be convicted of sodomy, he may, if the act be committed against the will of the other person, be punished for an indecent assault under sec. 260.

R. vs. Hartlen, supra.
See also R. vs. Allen (1848), 1 Dennison, C.C. 364.

175. Attempt to Commit Sodomy.—Every one is guilty of an indictable offence and liable to ten years' imprisonment who attempts to commit the offence mentioned in the next preceding section. R.S.C., c. 157, s. 1.

Section 261 provides that the consent of a child under fourteen years of age is no defence to a charge or indictment for an indecent assault upon such person.

176. Incest.—Every parent and child, every brother and sister, and every grandparent and grandchild, who cohabit or have sexual intercourse with each other, shall each of them, if aware of their consanguinity, be deemed to have committed incest, and be guilty of an indictable offence and liable to fourteen years' imprisonment, and the male person shall also be liable to be whipped: Provided that if the court or judge is of opinion that the female accused is a party to such intercourse only by reason of the restraint, fear or duress of the other party, the court or judge shall not be bound to impose any punishment on such person under this section. 53 V., c. 37, s. 8.

Incest is not a common law offence.

On an indictment for incest, proof of relationship between the accused and his alleged victim must be established according to the rules of the civil law.

R. vs. Garneau (1889), R.J.Q. 8 Q.B. 447.

It has been held in the State of Vermont that the word "brother" used in a statute of that State, providing punishment for the crime of incest, includes a brother of the half-blood.

205.

177. Indecent Acts.—Every one is guilty of an offence and liable, on summary conviction before two justices of the peace, to a fine of fifty dollars or to six months' imprisonment with or without hard labour, or to both fine and imprisonment, who wilfully—

(a.) in the presence of one or more persons does any indecent act in any place to which the public have or are permitted to have access; or

(b.) does any indecent act in any place intending thereby to insult or offend any person. 53 V., c. 37, s. 6.

206.

178. Acts of Gross Indecency.—Every male person is guilty of an indictable offence and liable to five years' imprisonment and to be whipped who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person. 53 V., c. 37, s. 5.

207.

179. Publishing Obscene Matter.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, knowingly, without lawful justification or excuse—

(a.) manufactures, or sells, or exposes for sale or to public view, or distributes or circulates, or causes to be distributed or circulated any obscene book, or other printed typewritten, or otherwise written matter, or any picture, photograph, model or other object tending to corrupt morals; or

(b.) publicly exhibits any disgusting object or any indecent show; or

(c.) offers to sell, advertises, publishes an advertisement of, or has for sale or disposal any medicine, drug or article intended or represented as a means of preventing conception or causing of abortion or miscarriage.

2. No one shall be convicted of any offence in this section mentioned if he proves that the public good was served by the acts alleged to have been done and that there was no excess in the acts alleged beyond what the public good requires.

3. It shall be a question for the court or judge whether the occasion of the manufacture, sale, exposing for sale, publishing, or exhibition is such as might be for the public good, and whether there is evidence of excess beyond what the public good requires in the manner, extent or circumstances in, to or under which the manufacture, sale, exposing for sale, publishing or exhibition is made, so as to afford a justification or excuse therefor; but it shall be a question for the jury whether there is or is not such excess.

4. The motives of the manufacturer, seller, exposer, publisher or exhibitor shall in all cases be irrelevant. 63-64 V., c. 46. (*This section came into force on 1st January, 1901*).

According to section 207, s.s. (c): Everyone who openly exposes or exhibits in any street, road, highway, or public place, any indecent exhibition, is a vagrant or a loose, idle or disorderly person, and as such is liable to the punishment provided by sec. 208.

180. Posting Immoral Books, etc.—Every one is guilty of an indictable offence and liable to two years' imprisonment who posts for transmission or delivery by or through the post—

(a.) any obscene or immoral book, pamphlet, newspaper, picture, print, engraving, lithograph, photograph or any publication, matter or thing of an indecent, immoral, or scurrilous character; or

(b) any letter upon the outside or envelope of which, or any post card or post band or wrapper upon which there are words, devices, matters or things of the character aforesaid; or

(c) any letter or circular concerning schemes devised or intended to deceive and defraud the public or for the purpose of obtaining money under false pretenses. As amended by 63-64 V., c. 46. (*This section came into force on 1st January, 1901.*

181. Seduction of Girls under Sixteen.—Every one is guilty of an indictable offence and liable to two years' imprisonment who seduces, or has illicit connection with any girl of previously chaste character, of or above the age

of fourteen years and under the age of sixteen years. R.S.C. c. 157, s. 3; 53 V., c. 37, s. 3; as amended by 56 V., cap. 32

By virtue of sec. 551 s.s. (c) no prosecution for any offence under sections 181 to 183, and secs. 185 to 187 inclusive, can be commenced after the expiration of one year from the date of the commission of such offence.

According to section 684 no person accused of an offence under sections 181 to 190 inclusive " shall be convicted upon the evidence of one witness, unless such witness is corroborated in some material particular by evidence implicating the accused.

It is to be noticed that this section refers only to the offence of having illicit connection with a girl between the ages of fourteen and sixteen years. The offence of carnally knowing a girl under the age of fourteen years is dealt with by section 269, and is punishable by imprisonment for life and whipping.

The corroborative evidence necessary under this section may consist of the admission of the accused made after the girl has attained the age of sixteen years, to the effect that he has had connection with her before that time. And a statement made by the accused before he was charged with the offence, that he had been advised that if he could get the girl to marry him he would escape " punishment," is corroborative evidence " implicating the accused," and proper to be considered by a jury or by a judge exercising the functions of a jury. R. vs. Wyse (N.W.T. 1895), 1 Can. C.C. 6.

Evidence of a girl's pregnancy, and of her having been employed in domestic service at the residence of the accused and of facts showing merely a strong probability of their having been no opportunity for any other man to have connection with her, does not constitute corroborative evidence " implicating the accused," as required by this section. R. vs. Vahey (Ont. 1899), 2 Can. C.C. 258.

Regarding the proof of the age of the girl with whom defendant is accused of having had connection, see R. vs. Weaver (1873), L.R. 2 C.C.R. 85 ; R. vs. Nicholls (1867), 10 Cox C.C. 476.

7/1. **182. Seduction under Promise of Marriage.**—Every one, above the age of twenty-one years, is guilty of an indictable offence and liable to two years' imprisonment who, under promise of marriage, seduces and has illicit connection with any unmarried female of previously chaste character and under twenty-one years of age. 50-51 V., c. 48, s. 2.

By virtue of sec. 184 s.s. 2, the subsequent marriage of the person seducing and the person seduced, is a good defence to any section under this or the two following sections.

There is misdirection when the judge tells the jury that if the seduction took place while there was an existing engagement to marry, this section applies, for the seduction contemplated by the section is one which is accomplished by means of a promise to marry. R. vs. Walker (1893), 1 N.W.T. Supreme Ct. Reps. 84.

183. Seduction of a Ward, Servant, etc.—Every one is guilty of an indictable offence and liable to two years' imprisonment—

(a.) who, being a guardian, seduces or has illicit connection with his ward; or

(b.) who seduces or has illicit connection with any woman or girl previously chaste and under the age of twenty-one years who is in his employment in a factory, mill, workshop, shop or store, or who, being in a common, but not necessarily similar employment with him in such factory, mill, workshop, shop or store, is, in respect of her employment or work in such factory, mill, workshop, shop or store, under or in any way subject to his control or direction, or receives her wages or salary directly or indirectly from him. 53 V., c. 37, s. 4; the whole as amended by 63-64 V., c. 46. (*This section came into force on 1st January*, 1901).

183A. Burden of Proving Previous Unchastity.—The burden of proof of previous unchastity on the part of the girl or woman under the three next preceding sections shall be upon the accused. 63-64 V., c. 46. (*Ibid.*)

184. Seduction of Females who are Passengers on Vessels.—Every one is guilty of an indictable offence and liable to a fine of four hundred dollars, or to one year's imprisonment, who, being the master or other officer or a seaman or other person employed on board of any vessel, while such vessel is in any water within the jurisdiction of the Parliament of Canada, under promise of marriage, or by threats, or by the exercise of his authority, or by solicitation, or the making of gifts or presents, seduces and has illicit connection with any female passenger.

2. The subsequent intermarriage of the seducer and the seduced is, if pleaded, a good defence to any indictment for any offence against this or either of the two next preceding sections except in the case of a guardian seducing his ward. R.S.C., c. 65, s. 37.

185. Unlawfully Defiling Women.—Every one is guilty of an indictable offence, and liable to two years' imprisonment with hard labour, who—

(a) procures or attempts to procure any girl or woman under twenty-one years of age, not being a common prostitute or of known immoral character, to have unlawful

carnal connection, either within or without Canada, with any other person or persons; or

(b.) inveigles or entices any such woman or girl to a house of ill-fame or assignation for the purpose of illicit intercourse or prostitution, or knowingly conceals in such house any such woman or girl so inveigled or enticed; or

(c.) procures, or attempts to procure, any woman or girl to become, either within or without Canada, a common prostitute; or

(d.) procures, or attempts to procure, any woman or girl to leave Canada with intent that she may become an inmate of a brothel elsewhere; or

(e.) procures any woman or girl to come to Canada from abroad with intent that she may become an inmate of a brothel in Canada; or

(f.) procures, or attempts to procure, any woman or girl to leave her usual place of abode in Canada, such place not being a brothel, with intent that she may become an inmate of a brothel within or without Canada; or

(g.) by threats or intimidation procures, or attempts to procure, any woman or girl to have any unlawful carnal connection, either within or without Canada; or

(h.) by false pretenses or false representations procures any woman or girl, not being a common prostitute or of known immoral character, to have any unlawful carnal connection, either within or without Canada; or

(i.) applies, administers to, or causes to be taken by any woman or girl any drug, intoxicating liquor, matter, or thing with intent to stupefy or overpower so as thereby to enable any person to have unlawful carnal connection with such woman or girl. 53 V., c. 39, s. 9; R.S.C., c. 157, s. 7.

A conviction for "unlawfully procuring *or* attempting to procure" a girl to become a prostitute without Canada, "with intent that she might become an inmate of a brothel elsewhere," does not disclose an offence under this section, but is void for duplicity and uncertainty. R. vs. Gibson (Ont. 1898), 2 Can. C.C. 302.

215. **186. Parent or Guardian Procuring Defilement of Girl.**—Every one who, being the parent or guardian of any girl or woman,—

(a.) procures such girl or woman to have carnal connection with any man other than the procurer; or

(b.) orders, is party to, permits or knowingly receives the avails of the defilement, seduction or prostitution of such girl or woman,

is guilty of an indictable offence and liable to fourteen years' imprisonment if such girl or woman is under the age of fourteen years, and if such girl or woman is of or above the age of fourteen years to five years' imprisonment. 53 V., c. 37, s. 9.

186A. Meaning of Word "Guardian."—The word "guardian" in sections 183 and 186 includes any person who has in law or in fact the custody or control of the girl or child. 63-64 V., c. 46. (*This section came into force ont 1st January*, 1901).

187. Householders Permitting Defilement of Girls on their Premises.—Every one who, being the owner or occupier of any premises, or having, or acting or assisting in the management or control thereof, induces or knowingly suffers any girl of such age as in this section mentioned, to resort to or be in or upon such premises for the purpose of being unlawfully and carnally known by any man, whether such carnal knowledge is intended to be with any particular man, or generally, is guilty of an indictable offence, and—

(a) is liable to ten years' imprisonment if such girl is under the age of 14 years; and

(b.) is liable to two years' imprisonment if such girl is of or above the age of 14 and under the age of 18 years. R.S.C., c. 157, s. 5; 53 V., c. 37, s. 3; as amended by 63-64 V., c. 46. (*This section came into force on the 1st January*, 1901).

188. Conspiracy to Defile.—Every one is guilty of an indictable offence and liable to two years' imprisonment who conspires with any other person by false pretenses, or false representations or other fraudulent means, to induce any woman to commit adultery or fornication.

189. Carnally Knowing Idiots, etc.—Every one is guilty of an indictable offence and liable to four years' imprisonment who unlawfully and carnally knows, or attempts to have unlawful carnal knowledge of, any female idiot or imbecile, insane or deaf and dumb woman or girl, under circumstances which do not amount to rape, but where the offender knew or had good reason to believe, at the time of the offence, that the woman or girl was an idiot, or imbecile, or insane or deaf and dumb. R.S.C., c.

157, s. 3; 50-51 V., c. 48, s. 1; as amended by 63-64 V., c. 46. (*This section came into force on the 1st January, 1901.*)

120. **190. Prostitution of Indian Woman.**—Every one is guilty of an indictable offence and liable to a penalty not exceeding one hundred dollars and not less than ten dollars, or six months' imprisonment—

(a.) who, being the keeper of any house, tent or wigwam, allows or suffers any unenfranchised Indian woman to be or remain in such house, tent or wigwam, knowing or having probable cause for believing that such Indian woman is in or remains in such house, tent or wigwam with the intention of prostituting herself therein; or

(b.) who, being an Indian woman, prostitutes herself therein; or

(c.) who, being an unenfranchised Indian woman, keeps, frequents or is found in a disorderly house, tent or wigwam used for any such purpose.

2. Every person who appears, acts or behaves as master or mistress, or as the person who has the care or management of any house, tent or wigwam in which any such Indian woman is or remains for the purpose of prostituting herself therein, is deemed to be the keeper thereof, notwithstanding he or she is not in fact the real keeper thereof. R.S.C., c. 43, s. 106; 50-51 V. c. 33, s. 11.

PART XIV.

NUISANCES.

191. Common nuisance defined.
192. Common nuisances which are criminal.
193. Common nuisances which are not criminal.
194. Selling things unfit for food.
195. Common bawdy-house defined.
196. Common gaming-house defined.
197. Common betting-house defined.
198. Disorderly houses.
199. Playing or looking on in gaming-house.
200. Obstructing a peace officer entering a gaming-house.
201. Gaming in stocks and merchandise.
202. Habitually frequenting places where gaming in stocks is carried on.
203. Gambling in public conveyances.
204. Betting and pool selling.
205. Lotteries.
206. Misconduct in respect to human remains.

Rex v. Toronto Ry Co 41 C.L.J. (Sep/05) p 687

191. Common Nuisance Defined.—A common nuisance is an unlawful act or omission to discharge a legal duty, which act or omission endangers the lives, safety, health, property or comfort of the public, or by which the public are obstructed in the exercise or enjoyment of any right common to all His Majesty's subjects.

A private nuisance cannot be a criminal offence; and, as will be seen by sec. 193, only such common or public nuisances as are stated to be so by sec. 192 are criminal.

The omission of an electric railway company operating their cars upon a public highway to use reasonable precautions so as to avoid endangering the lives of the public using the highway in common with the company, is a breach of a legal duty, constituting a criminal nuisance. R. vs. Toronto Railway Company (1900), 4 Can. C.C. 4.

192. Common Nuisances which are Criminal.—Every one is guilty of an indictable offence and liable to one year's imprisonment or a fine who commits any common nuisance which endangers the lives, safety or health of the public, or which occasions injury to the person of any individual.

193. Common Nuisances which are not Criminal.—Any one convicted upon any indictment or information, for any common nuisance other than those mentioned in the preceding section shall not be deemed to have committed a criminal offence; but all such proceedings or judgments may be taken and had as heretofore to abate or remedy the mischief done by such nuisance to the public right.

See R. vs. Union Colliery Co. (B.C., 1900), 3 Can. C.C. 523; affirmed in the Supreme Court of Canada, 31 S.C.R. (1900), 81.

194. Selling Things Unfit for Food.—Every one is guilty of an indictable offence and liable to one year's imprisonment who knowingly and wilfully exposes for sale, or has in his possession with intent to sell, for human food, articles which he knows to be unfit for human food. 2. Every one who is convicted of this offence after a previous conviction for the same crime shall be liable to two years' imprisonment.

R v Dungey 5 C. Cr Ca 38:

R v Shepherd 6 C. Cr Ca 663:

195. Common Bawdy-house Defined.—A common bawdy-house is a house, room, set of rooms or place of any kind kept for the purposes of prostitution.

R v Young 6 42

Rex v Osborg, C.L.J. Apl 15/05 p 379

196. Common Gaming-house Defined.—A common gaming-house is—

(a.) a house, room or place kept by any person for gain to which persons resort for the purpose of playing at any game of chance or at any mixed game of chance and skill; or

(b.) a house, room or place kept or used for playing therein at any game of chance, or any mixed game of chance and skill, in which—

(i.) a bank is kept by one or more of the players exclusively of the others; or

(ii.) in which any game is played the chances of which are not alike favourable to all the players, including among the players the banker or other person by whom the game is managed, or against whom the game is managed or against whom the other players stake, play or bet.

2. Any such house, room or place shall be a common gaming-house although part only of such game is played there and any other part thereof is played at some other place, either in Canada or elsewhere, and although the stakes played for, or any money, valuables, or property depending on such game is in some other place, either in Canada or elsewhere. 58-59 V., c. 40.

The words of an information, "Did keep a disorderly house, that is to say, a common gaming-house," are sufficient to disclose to the accused the offence charged against them, viz., that of running a lottery. And a lottery is a game of chance; and a house is a common gaming-house although part of the game is played therein, and any other part of the game is played at some other place. R. vs. France et al. (1897) 3 Revue de Jurisprudence 268.

On appeal it was held that an information charging the accused with having "unlawfully kept a disorderly house, that is to say, a common gaming-house," is sufficient in law. R. vs. France (1898), R.J.Q., 7 Q.B. 83.

Sec. 783 par. (f) stating that any person charged before a Magistrate "with keeping or being an inmate or habitual frequenter of any disorderly house, house of ill-fame or bawdy house," may be summarily tried, does not apply to a common gaming-house. The meaning of the words "disorderly house," in section 783 par. (f) and section 784, is governed by the rule *noscitur a sociis*, and is therefore restricted to houses of the nature and kind of a house of ill-fame or bawdy house. It is immaterial whether a 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 word. R. vs. France et al. (1898), R.J.Q., 7 Q.B. 83.

A place where gaming is carried on is only a "common gaming-house" within the meaning of this section when the place is kept by any person for gain, or when games of chance are played therein the chances of which are not equally favorable to all the players. But whether the place is kept by one person or by an association of persons, or whether it is open to the public or to a certain number of persons only is immaterial. R. vs. Laird (1894), 3 Revue de Jurisprudence 389.

A club known as "The Commercial Club," was maintained on the proceeds of a "rake-off" or "cagnotte" from the stakes laid in the games of cards which were played there. It was held that where such "rake-off" or "cagnotte" was used for the benefit of the establishment, the club was thereby constituted a common gaming-house, and its officers were liable to be prosecuted under s.s. 1, par. (a) of this section. R. vs. Brady (1896), R.J.Q., 10 S.C. 539.

The game of "Black Jack" is a game of chance, and a place kept or used for playing it, although not kept for gain, is a common gaming-house, under s.s. 1, par. (b) of this section. And the keeping of a house, room or place for playing a game of chance or a mixed game of chance and skill, —in which the chances of the game are in favour of the player who is the dealer or banker therein for the time being, is an indictable offence under secs. 196 and 198, if the position of dealer or banker passes from the one player to another by the chances of the game and not by rotation. R. vs. Petrie (1900), 3 Can. C.C., 439.

A room resorted to for the purpose of playing the game of poker is not shown to be kept "for gain" under s.s. 1 par. (a) of this section, when it is proved that the proprietor who participated in the game on equal terms with the others, had been allowed by consent of the players, and not as a matter of right, nor as a condition on which the playing took place, to deduct small sums from the stakes on several occasions by way of reimbursement for refreshments provided by him to the players, where such sums are not shewn to have exceeded the cost of such refreshments. R. vs. Saunders (Ont. 1900), 3 Can. C.C. 495.

The use of a gaming instrument to decide the winning of stakes laid in another country and payable there, is not, taken alone, gaming which will render the person operating the instrument liable under this section. R. vs. Wettman (1894), 1 Can. C.C. 287.

See also Jenks vs. Turpin (1884), L.R. 13, Q.B.D. 505, where the subject is discussed at length by Hawkins, J.

A place may still be a "common gaming-house" although its use be restricted to the members of a club. The meaning of the term is a place where a number of people are wont to meet for the purpose of gaming. Jenks vs. Turpin, supra.

197. Common Betting-house Defined.—A common betting-house is a house, office, room or other place—

(a.) opened, kept or used for the purpose of betting between persons resorting thereto and—

(i.) the owner, occupier, or keeper thereof;

(ii.) any person using the same;

(iii.) any person procured or employed by, or acting for or on behalf of any such person;

(iv.) any person having the care or management, or in any manner conducting the business thereof; or

(b.) opened, kept or used for the purpose of any money or valuable thing being received by or on behalf of any such person as aforesaid, as or for the consideration,

(i.) for any assurance or undertaking, express or implied, to pay or give thereafter any money or valuable thing on any event or contingency of or relating to any horse-race or other race, fight, game or sport; or

(ii.) for securing the paying or giving by some other person of any money or valuable thing on any such event or contingency;

(c.) opened, or kept for the purpose of recording or registering bets upon any contingency or event, horse-race or other race, fight, game or sport, or for the purpose of receiving money or other things of value to be transmitted for the purpose of being wagered upon any such contingency or event, horse-race, or other race, fight, sport or game, whether any such bet is recorded or registered there, or any money or other thing of value is there received to be so transmitted or not;

(d.) opened, kept or used for the purpose of facilitating or encouraging or assisting in, the making of bets upon any contingency or event, horse-race or other race, fight, game or sport, by announcing the betting upon, or announcing or displaying the results of, horse-races, or other races, fights, games or sports, or in any other manner, whether such contingency or event, horse-race or other race, fight, game or sport occurs or takes place in Canada or elsewhere ; 57-58 V., c. 57, as amended by 58-59 V., c. 40.

The defendant was in possession of and occupied a tent in a village open to and frequented by the public to the number of fifty to one hundred every day. In the tent there was a telegraph wire to an incorporated race track in the United States where horse-racing and betting were legalised. There was also a blackboard on which were the names of the horses, jockeys, etc., taking part in the race at the track in question, together with the track quotations ; and, as the race was being run, an operator called off the progress thereof, giving the name of the winner, and of the second and third horses, and marking them on the board. Duplicate tickets were furnished to applicants at a wicket in the tent, which tickets requested the defendant to telegraph B at the race-

track to plac a certain amount of money on a horse named by the applicant, at track quotations, it being agreed that upon the transmission thereof the applicant should pay the accused 10 cents, and that all liability on his part should then cease. On the tickets being handed in, one of them was stamped with the date of its receipt and returned to the applicant, the money so received was transmitted to B, and placed by him with the bookmakers on the track, B paying the accused a percentage on the moneys thus received for him and 10 cents on each application. B had an agent in another part of the village, whom he furnished with money to pay winnings, eithe rby remitting the same to him, or by giving him orders on the accused for stated sums. It was held that the accused was properly convicted of keeping a common betting-house under secs. 197 and 198. R. vs. Giles (Ont., 1895), 15 C.L.T. 178.

A bank, a telgraph office, and another office were simultaneously opened in a town. Moneys were deposited in the bank by various persons, who were given receipts therefor in the name of a person in the United States. These receipts were taken to the telegraph office, where information as to horse-races being run in the United States was furnished to the holders of the receipts, who telegraphed instructions to the person there on whose behalf the receipts were given, to place, and who did place, bets equivalent to the amounts deposited, on horses running in the races in question. If the horses upon whom the money was so wagered won, the the holders of the receipts were paid at the third office by telegraphic instructions from the person making the bets in the United States. It was held that on the evidenec and admissions to the above effect, the defendant, who was in the telegraph office, was properly convicted of keeping a common betting-house under secs. 197 and 198. Regina vs. Osborne, 27 O.R. 185.

R. v. Shepherd 6 C. Cr. Ca. 463: R. v. Seterman do 224: R. v. Young do 42: R. v. Smith 9 Can. Cr. Ca. 338

198. Disorderly Houses.—Every one is guilty of an indictable offence and liable to one year's imprisonment, who keeps any disorderly house, that is to say, any common bawdy-house, common gaming-house or common betting-house, as hereinbefore defined.

2. Any one who appears, acts, or behaves as master or mistress, or as the person having the care, government or management of any disorderly house shall be deemed to be the keeper thereof, and shall be liable to be prosecuted and punished as such, although in fact he or she is not the real owner or keeper thereof.

Sec. 575 provides for places suspected of being gaming-houses etc., being searched.

Secs. 702 and 703 state what is *prima facie* evidence of a place being a common gaming-house.

The owner of a house who leases it to another person, knowing and assenting when the lease was made to the purpose of the latter to maintain it as a common bawdy-house, thereby does an act for the purpose of aiding the lessee to commit the indictable offence of keeping a dis-

orderly house, and he may himself be indicted and convicted as a principal offender by virtue of sec. 61 (b). R. vs. Roy (P.Q. 1900), 3 Can. C.C. 472.

See also the cases cited under secs. 196 and 197; and see R. vs. Bougie (1899), 3 Can. C.C. 487.

A person who pleads guilty to a charge that she did "unlawfully appear to be the keeper of a house of ill-fame" will, on conviction, be deemed guilty of the offence of keeping a house of ill-fame. R. vs. Spooner (Ont., 1900), 21 C.L.T. 159.

229.

199. Playing or Looking on in Gaming-house.—Every one who plays or looks on while any other person is playing in a common gaming-house is guilty of an offence and liable, on summary conviction before two justices of the peace, to a penalty not exceeding one hundred dollars and not less than twenty dollars, and in default of payment to two months' imprisonment. R.S.C .,c. 158, s. 6.

Upon a case reserved as to whether the provisions of sec. 703 apply to a prosecution under this section, the Magistrate said that he entertained a grave doubt whether it did, and therefore "following the dicta in Kingston-upon-Hull Dock Co. vs. Browne (1831), 2 B. and Ad. 59; Foley vs. Fletcher (1858), 3 H. & N. 169; Lewis vs. Carr (1876), 1 Ex. D. 484, he gives the benefit of doubt to the subject and against the legislature, which had failed to explain itself, and quashed the conviction.

230.

200. Obstructing Peace Officer Entering a Gaming-house.—Every one is guilty of an offence and liable, on summary conviction before two justices of the peace, to a penalty not exceeding one hundred dollars, and to six months' imprisonment with or without hard labour who—

(a.) wilfully prevents any constable or other officer duly authorized to enter any disorderly house, as mentioned in section one hundred and ninety-eight, from entering the same or any part thereof; or

(b.) obstructs or delays any such constable or officer in so entering; or

(c.) by any bolt, chain or other contrivance secures any external or internal door of, or means of access to, any common gaming-house so authorizel to be entered; or

(d.) uses any means or contrivance whatsoever for the purpose of preventing, obstructing or delaying the entry of any constable or officer, authorized as aforesaid, into any such disorderly house or any part thereof. R.S.C., c. 158, s. 7.

231. 232.

201. Gaming in Stocks and Merchandise.—Every one

is guilty of an indictable offence and liable to five years' imprisonment, and to a fine of five hundred dollars, who, with the intent to make gain or profit by the rise or fall in price of any stock of any incorporated or unincorporated company or undertaking, either in Canada or elsewhere, or of any goods, wares or merchandise—

(a.) without the *bona fide* intention of acquiring any such shares, goods, wares or merchandise, or of selling the same, as the case may be, makes or signs, or authorizes to be made or signed, any contract or agreement, oral or written, purporting to be for the sale or purchase of any such shares of stock, goods, wares or merchandise; or

(b.) makes or signs, or authorizes to be made or signed any contract or agreement, oral or written, purporting to be for the sale or purchase of any such shares of stock, goods, wares or merchandise in respect of which no delivery of the thing sold or purchased is made or received, and without the *bona fide* intention to make or receive such delivery.

2. But it is not an offence if the broker of the purchaser receives delivery, on his behalf, of the article sold, notwithstanding that such broker retains or pledges the same as security for the advance of the purchase money or any part thereof.

3. Every office or place of business wherein is carried on the business of making or signing, or procuring to be made or signed, or negotiating or bargaining for the making or signing of such contracts of sale or purchase as are prohibited in this section is a common gaming-house, and every one who, as principal or agent occupies, uses, manages or maintains the same is the keeper of a common gaming-house. 51 V., c. 42, ss. 1 and 3.

By virtue of Sec. 704, when a person is charged with the commission of an offence under this section, the onus is upon him of proving his *bona fide* intention.

A broker, who merely acts as such for two parties, one a buyer and the other a seller, without having any pecuniary interest in the prosecution beyond his fixed commission, and without having any guilty knowledge of the intention of the contracting parties to gamble in stocks or merchandise, is not liable under this section; nor is he liable, under sec. 61, as an accessory to the commission of the offence specified in this section. R. vs. Dowd (1899), R.J.Q., 17 S.C. 67.

202. Habitually Frequenting Places where Gaming in Stocks is Carried on.—Every one is guilty of an in-

dictable offence and liable to one year's imprisonment who habitually frequents any office or place wherein the making or signing, or procuring to be made or signed, or the negotiating or bargaining for the making or signing, of such contracts of sale or purchase as are mentioned in the section next preceding is carried on. 51 V., c. 42, s. 1.

234. **203. Gambling in Public Conveyances.**—Every one is guilty of an indictable offence and liable to one year's imprisonment who—

(a.) in any railway car or steamboat, used as a public conveyance for passengers, by means of any game of cards, dice or other instrument of gambling, or by any device of like character, obtains from any other person any money, chattel, valuable security or property; or

(b.) attempts to commit such offence by actually engaging any person in any such game with intent to obtain money or other valuable thing from him.

2. Every conductor, master or superior officer in charge of, and every clerk or employee when authorized by the conductor or superior officer in charge of, any railway train or steamboat, station or landing place in or at which any such offence, as aforesaid, is committed or attempted, must, with or without warrant, arrest any person whom he has good reason to believe to have committed or attempted to commit the same, and take him before a justice of the peace, and make complaint of such offence on oath, in writing.

3. Every conductor, master or superior officer in charge of any such railway car or steamboat, who makes default in the discharge of any such duty is liable, on summary conviction, to a penalty not exceeding one hundred dollars and not less than twenty dollars.

4. Every company or person who owns or works any such railway car or steamboat must keep a copy of this section posted up in some conspicuous part of such railway car or steamboat.

5. Every company or person who makes default in the discharge of such duty is liable to a penalty not exceeding one hundred dollars and not less than twenty dollars. R.S.C., c. 160, ss. 1, 3 and 6.

235. **204. Betting and Pool-selling.**—Every one is guilty of an indictable offence, and liable to one year's imprison-

ment, and to a fine not exceeding one thousand dollars, who—

(a.) uses or knowingly allows any part of any premises under his control to be used for the purpose of recording or registering any bet or wager, or selling any pool; or

(b.) keeps, exhibits, or employs, or knowingly allows to be kept, exhibited or employed, in any part of any premises under his control, any device or apparatus for the purpose of recording any bet or wager, or selling any pool; or

(c.) becomes the custodian or depositary of any money, property, or valuable thing staked, wagered or pledged; or

(d.) records or registers any bet or wager, or sells any pool, upon the result—

(i.) of any political or municipal election;

(ii.) of any race;

(iii.) of any contest or trial of skill or endurance of man or beast.

2. The provisions of this section shall not extend to any person by reason of his becoming the custodian or depositary of any money, property, or valuable thing staked, to be paid to the winner of any lawful race, sport, game, or exercise, or to the owner of any horse engaged in any lawful race, or to bets between individuals or made on the race-course of an incorporated association during the actual progress of a race meeting. R.S.C., c. 159, s. 9.

The object of the legislature in enacting the latter part of S.S. 2 of this section apparently was to reserve to the race-courses of incorporated associations places where notice might be made during the actual progress of a race meeting, of all bettors being subject to the penalties of the section. Stratford Turf Association vs. Fitch (1897), 28 O.R. 578.

An agreement for the sale of betting and gaming privileges at a race meeting by an incorporated association, which is the lessee of an incorporated association, the owners of the race-course is not illegal. **Stratford Turf Association** vs. **Fitch**, supra.

R. Johnson 6 C.G. Ca. 48: 7 do 525.

205. Lotteries.—Every one is guilty of an indictable offence and liable to two years' imprisonment and to a fine not exceeding two thousand dollars, who—

(a.) makes, prints, advertises or publishes, or causes or procures to be made, printed, advertised or published, any proposal, scheme or plan for advancing, lending, giving, selling or in any way disposing of any property, by lots, cards, tickets, or any mode of chance whatsoever; or

(b.) sells, barters, exchanges or otherwise disposes of, or causes or procures, or aids or assists in the sale, barter, exchange or other disposal of, or offers for sale, barter or exchange, any lot, card, ticket or other means or device for advancing, lending, giving, selling or otherwise disposing of any property, by lots, tickets or any mode of chance whatsoever; or

(c.) conducts or manages any scheme, contrivance or operation of any kind for the purpose of determining who, or the holders of what lots, tickets, numbers, or chances, are the winners of any property so proposed to be advanced, loaned, given, sold, or disposed of.

2. Every one is guilty of an offence and liable, on summary conviction, to a penalty of twenty dollars, who buys, takes or receives any such lot, ticket or other device as aforesaid.

Hendrick v. Lane (1924) 1 K.B. 200; C.L.J. Mar. 15/24 p. 189

3. Every sale, loan, gift, barter or exchange of any property, by any lottery, ticket, card or other mode of chance depending upon or to be determined by chance or lot, is void, and all such property so sold, lent, given, bartered or exchanged is liable to be forfeited to any person who sues for the same by action or information in any court of competent jurisdiction.

4. No such forfeiture shall affect any right or title to such property acquired by any *bona fide* purchaser for valuable consideration without notice.

5. This section includes the printing or publishing, or causing to be printed or published, of any advertisement, scheme, proposal or plan of any foreign lottery, and the sale or offer for sale of any ticket, chance or share, in any such lottery, or the advertisement for sale of such ticket, chance or share, and the conducting or managing of any such scheme, contrivance or operation for determining the winners in any such lottery.

6. This section does not apply to—

(a.) the division by lot or chance of any property by joint tenants or tenants in common or persons having joint interests (*droits indivis*) in any such property; or

(b.) raffles for prizes of small value at any bazaar held for any charitable or religious object, if permission to hold the same has been obtained from the city or other municipal council, or from the mayor, reeve or other chief officer of the city, town or other municipality, wherein such bazaar is held and the articles raffled for thereat, have first

been offered for sale and none of them are of value exceeding fifty dollars, as amended by 1 Edward VII., c. 42.

The disposal of a lottery or any mode of chance "of any property" under this section need not be any specific article or property, and the offence will be constituted by the fact that the winner obtains the privilege of choosing one from certain prices offered. R. vs. Lorrain (1896), 28 O.R. 123.

The exception made by s.s. 6, par. (c) will not apply if money may be had by the winners instead of paintings, etc.; and this notwithstanding that the option is wholly that of a society holding the drawings to pay in money one-half the stated value of the painting. R. vs. Lorrain, supra.

206. Misconduct in Respect to Human Remains.—Every one is guilty of an indictable offence and liable to five years' imprisonment who—

(a.) without lawful excuse, neglects to perform any duty either imposed upon him by law or undertaken by him with reference to the burial of any dead human body or human remains; or

(b.) improperly or indecently interferes with or offers any indignity to any dead human body or human remains whether buried or not.

The neglect to decently bury a dead human body by a person who has undertaken to do so, and has removed the body with that expressed intent, is an indictable offence under this section, although such person was, apart from such undertaking, under no legal obligation in respect of the burial. R. vs. Newcomb (N.S. 1898), 2 Can. C.C. 255. See also R. vs. Clark (1883), 15 Cox C.C. 171.

PART XV.

VAGRANCY.

207. Vagrant defined.
208. Penalty for vagrancy.

207. Vagrant Defined.—Every one is a loose, idle or disorderly person or vagrant who—

(a.) not having any visible means of subsistence, is found wandering abroad or lodging in any barn or outhouse, or in any deserted or unoccupied building, or in any cart or wagon, or in any railway carriage or freight car, or in any

railway building, and not giving a good account of himself, or who, not having any visible means of maintaining himself, lives without employment;

(b.) being able to work and thereby or by other means to maintain himself and family wilfully refuses or neglects to do so;

(c.) openly exposes or exhibits in any street, road, highway or public place, any indecent exhibition;

(d.) without a certificate signed, within six months, by a priest, clergyman or minister of the Gospel, or two justices of the peace, residing in the municipality where the alms are being asked, that he or she is a deserving object of charity, wanders about and begs, or goes about from door to door, or places himself or herself in any street highway, passage or public place to beg or receive alms;

(e.) loiters on any street, road, highway or public place, and obstructs passengers by standing across the footpath, or by using insulting language, or in any other way;

(f.) causes a disturbance in or near any street, road, highway or public place, by screaming, swearing or singing, or by being drunk, or by impeding or incommoding peaceable passengers;

(g.) by discharging firearms, or by riotous or disorderly conduct in any street or highway, wantonly disturbs the peace and quiet of the inmates of any dwelling-house near such street or highway;

(h.) tears down or defaces signs, breaks windows, or doors or door plates, or the walls of houses, roads or gardens, or destroys fences;

(i.) being a common prostitute or night walker, wanders in the fields, public streets or highways, lanes or places of public meeting or gathering of people, and does not give a satisfactory account of herself;

(j.) is a keeper or inmate of a disorderly house, bawdy-house or house of ill-fame, or house for the resort of prostitutes;

(k.) is in the habit of frequenting such houses and does not give a satisfactory account of himself or herself; or

(l.) having no peaceable profession or calling to maintain himself by, for the most part supports himself by gaming or crime, or by the avails of prostitution.

2. The expression "public place" in this section includes any open place to which the public have or are permitted to have access and any place of public interest. R.S.C., c. 157, s. 8; as amended by 57-58 V., c. 57, and 63-64 V., c. 46.

If the person acused of being a vagrant, resides for a portion of the year with his parents at their request, they being able and willing to provide for his support, a conviction for vagrancy under this section on the ground of "not having had any visible means of maintaining himself, he had lived without employment," should be quashed. R. vs. Riley (1898), R.J.Q., 7 Q.B. 198.

Par. (b). In order to constitute a wilful refusal or neglect on the part of a husband to maintain his family, under this section it is necesary that he should be under a legal obligation to do so, and his failure to maintain his wife, who had left him without valid cause and refused to return, is not an offence thereunder. R. vs. Leclair (1898), R.J.Q., 7 Q.B. 287.

Par. (j). A conviction should not be made upon a charge of keeping, or being an inmate of a bawdy-house upon evidence of general reputation only, and the prosecution should be required to produce proof of acts or conduct from which the character of the house may be inferred; and the conduct and statements of the inmates of the alleged bawdy-house at the time of the arrest therein may properly be proved in support of the charge. R. vs. St. Clair (Ont. 1900), 3 Can. C.C. 551.

Par. (l). A woman kept by a married man, and who has sexual intercourse with him alone, cannot be convicted under this clause. R. vs. Rohe (1897), R.J.Q., 6 Q.B. 274.

The evidence on a charge of vagrancy under this clause, on the charge that the accused had chiefly supported himself by gaming and crime, must show that the gaming or crime took place during the time within or for which he is charged in the information of having been a vagrant. R. vs. Riley (1898), R.J.Q., 7 Q.B. 198.

208. Penalty for Vagrancy.—Every loose, idle or disorderly person or vagrant is liable, on summary conviction, to a fine not exceeding fifty dollars or to imprisonment with or without hard labour, for any term not exceeding six months, or to both.

Provided that no aged or infirm person shall be convicted as a loose, idle or disorderly person or vagrant for any reason coming within paragraph (a) of section 207, in the county of which he has for the two years immediately preceding been a resident, R.S.C., c. 157, s. 8, as amended by 57-58 V., c. 57, and 63-64 V., c. 46. (*This proviso came into force on 1st January*, 1901.

The six months' imprisonment provided by this section is only a substantive punishment, and if it is not imposed in the first instance it cannot be directed on account of default in payment of fine. For such default over imprisonment for three months can be imposed, under section 872. s.s. 1, par. (b). Sec. 208 would, were it not for the decisions cited infra, appear to warrant the imposition of both fine and six months' imprisonment. R. vs. Stafford (N.S. 1898), 1 Can. C.C. 219; R. vs Horton (1897), 31 N.S.R. 217.

TITLE V.

OFFENCES AGAINST THE PERSON AND REPUTATION.

PART XVI.

DUTIES TENDING TO THE PRESERVATION OF LIFE.

209. Duty to provide the necessaries of life.
210. Duty of head of family to provide necessaries.
211. Duty of masters to provide necessaries.
212. Duty of persons doing dangerous acts.
213. Duty of persons in charge of dangerous things.
214. Duty to avoid omissions dangerous to life.
215. Neglecting duty to provide necessaries.
216. Abandoning children under two years of age.
217. Causing bodily harm to apprentices or servants.

241. **209. Duty to Provide the Necessaries of Life.**—Every one who has charge of any other person unable, by reason either of detention, age, sickness, insanity or any other cause, to withdraw himself from such charge, and unable to provide himself with the necessaries of life, is, whether such charge is undertaken by him under any contract, or is imposed upon him by law, or by reason of his unlawful act, under a legal duty to supply that person with the necessaries of life, and is criminally responsible for omitting, without lawful excuse, to perform such duty if the death of such person is caused, or if his life is endangered, or his health has been or is likely to be permanently injured by such omission.

See R. vs. Coventry (1898), 3 Can. C.C. 541, infra.

242. **210. Duty of Head of Family to Provide Necessaries.**—Every one who as parent, guardian or head of a family is under a legal duty to provide necessaries for any child under the age of sixteen years is criminally responsible for omitting, without lawful excuse, to do so while such child remains a member of his or her household, whether such child is helpless or not, if the death of such child is caused, or if his life is endangered or his health is or is likely to be permanently injured, by such omission.

2. Every one who is under a legal duty to provide necessaries for his wife, is criminally responsible for omitting, without lawful excuse so to do, if the death of his wife is caused, or if her life is endangered, or her health is or is likely to be permanently injured by such omission.

3. In this section the word "guardian" has the same meaning as under section 186A, it has in sections 183 and 186; as amended by 63-64 V., c. 46. (*This sub-section came into force on 1st January*, 1901.)

A person who engages the services of a child under sixteen years of age under a contract with the guardian of the child, whereby the employer agrees that for a fixed period, he will furnish the child with board, lodging, clothing and necessaries, is not in respect of such child a "guardian or head of a family," so as to be criminally liable under this section for omitting to provide "necessaries" to such child.
R. vs. Coventry (1898), 3 Can. C.C. 541.
In R. vs. Bowman (1895), 3 Can. C.C. 410.
In R. vs. McIntyre (1898), 31 N.S.R. 422, it was held that slight evidence was sufficient under this section, the words, "likely to be permanently injured," being so indefinite as to leave the question entirely within the discretion of the trial Judge.
Upon a prosecution under this section, evidence is admissible of an agreement made at the time of the marriage between the husband and wife that the latter should not be supported by the husband until he could earn enough to provide for both. R. vs. Robinson (1897), 1 Can. C.C. 28. See also R. vs. Nasmith (1877), 42 U.C.Q.B.R. 242; R. vs. Holmes (1898), 29 O.R. 362; R. vs. Lapierre (1897), 1 Can. C.C. 413.
The accused was tried before a Magistrate, and it appeared from the evidence that the defendant had neglected to supply his wife with necessary and sufficient food and clothing, in consequence of which she had left him of her own accord, and on the same day had laid the information. The Magistrate was of the opinion that the defendant was able, and without lawful excuse neglected, to provide the complainant with necessaries. It appeared, however, that when she left him she took $5.10 of his money, and that her relations were supplying her with necessaries, as she was practically starving and destitute, and also that she had earned $6.00 in one week during a former separation, when she was living with her parents. Counsel for accused contended that, although the Magistrate might be satisfied that the evidence justified a decree for alimony, or an order for a weekly allowance under 51 V., chap. 28, yet it was not sufficient to support a conviction under this section. The Magistrate convicted the accused, but reserved the question whether the prosecution could be sustained under the Code. A Divisional Court affirmed the conviction. R. vs. Pennock (1898), 18 C.L.T. 79.

211. Duty of Masters to Provide Necessaries.—Every one who, as master or mistress, has contracted to provide necessary food, clothing or lodging for any servant or

apprentice under the age of sixteen years is under a legal duty to provide the same, and is criminally responsible for omitting, without lawful excuse, to perform such a duty, if the death of such servant or apprentice is caused, or if his life is endangered, or his health has been or is likely to be permanently injured, by such omission.

Under this section, a master is not criminally liable for failing to provide his servants with medical attendance or medicine. R. v. Coventry (1898), 3 Can. C.C. 541.

When it is necesary to amputate a child's toes by reason of their having been frozen, the Court should not infer therefrom that the child's health had thereby been, or was likely to be, "permanently injured," or that his life had been endangered thereby. R. vs. Coventry, supra.

246. **212. Duty of Persons doing Dangerous Acts.**—Every one who undertakes (except in case of necessity) to administer surgical or medical treatment, or to do any other lawful act, the doing of which is or may be dangerous to life, is under a legal duty to have and to use reasonable knowledge, skill and care in doing any such act, and is criminally responsible for omitting, with lawful excuse, to discharge that duty if death is caused by such omission.

A person who practised as a "Christian Scientist," was called in by the parents of a child suffering from diptheria. She was not retained as a medical attendant, and she did nothing but sit silently by the child, who subsequently died of the disease. She was then indicted for manslaughter. According to the medical evidence, the life of the child might have been saved or prolonged if the usual remedies had been applied. Held, that the accused could not be convicted under sec. 212 or under sec. 214. Held also, dubitante, that the father of the child could not be indicted under sections 209 and 210 for not having supplied the child with a necessary of life, namely, medical attendance, nor could the accused be indicted as an accessory, under section 61, to the father's neglect. R. vs. Mary Ellen Beer (1898), 32 C.L.J. 416.

247. **213. Duty of Persons in Charge of Dangerous Things.**—Every one who has in his charge or under his control anything whatever, whether animate or inanimate, or who erects, makes or maintains anything whatever which, in the absence of precaution or care, may endanger human life, is under a legal duty to take reasonable precautions against, and use reasonable care to avoid, such danger, and is criminally responsible for the consequences of omitting, without lawful excuse, to perform such duty.

A company which negligently operates dangerous machinery, whereby one of its employees is fatally injured, cannot be indicted under this section. R. vs. Great West Laundry Company (1900), 3 Can. C.C. 514.

"It is admitted that sections 213 and 220 of the Criminal Code merely embody what are well recognised principles of the Common Law, and that these sections do not extend the criminal responsibility of corporations beyond what it was before they were passed. Now the principles of Common Law prevail not only in England and in Canada, but throughout the United States as well, and in all these countries many fatal accidents like the one in question must have happened through the same kind of negligence on the part of corporations that is charged here, and it is a significant fact that, as Counsel for the Crown has to admit, no case can be found in which a corporation has been convicted for manslaughter.

"There are also the opinions of several eminent English judges to be found in reported cases, that a corporation cannot be indicted for such a crime as manslaughter.

"Of these cases, it will be sufficient if I refer to: R. vs. Birmingham & Gloucester Ry. Co. (1842), 3 Q.B. 223; R. vs. Great North of England Ry. Co. (1846), 9 Q.B. 315; R. vs. Pocock (1851), 17 Q.B. 34; Pharmaceutical Society vs. London Supply Association (1879), L.R., 4 Q.B. D. 313; and nearly all the leading text books both on criminal law and on corporations, contain opinions to the same effect."

Per Bain J., in R., vs. Great West Laundry Co. (1900), 3 Can. C.C., at page 521:

But although a corporation cannot be indicted for manslaughter, it may be indicted under sec. 252 for having caused grievous bodily harm by reason of its failure to maintain its machinery or works in a safe condition. In such case the punishment must, under sec. 639, be a fine instead of the two years' imprisonment mentioned in sec. 252; and the amount of the fine is in the discretion of the Court, under sec. 934.

R. vs. Union Colliery Co. (1900), 3 Can. C.C. 523.

The judgment of the Supreme Court of British Columbia in the case last cited was confirmed by the Supreme Court of Canada.

See R. vs. Union Colliery Co. (1900), 31 S.C.R. 81.

As to a corporation committing a criminal nuisance, see R. vs. Toronto Ry. Co. (1900), 4 Can. C.C. 4, cited under sec. 191.

214. Duty to Avoid Omissions Dangerous to Life.—Every one who undertakes to do any act, the omission to do which is or may be dangerous to life, is under a legal duty to do that act, and is criminally responsible for the consequences of omitting, without lawful excuse, to perform that duty.

See sec. 251.

See R. vs. Mary Ellen Beer (1895), 32 C.L.J. 416, cited under sec. 212, supra.

244. **215. Neglecting Duty to Provide Necessaries.**—Every one is guilty of an indictable offence and liable to three years' imprisonment who, being bound to perform any duty specified in sections two hundred and nine, two hundred and ten and two hundred and eleven without lawful excuse neglects or refuses to do so; unless the offence amounts to culpable homicide (as amended by 56 V., c, 32.)

240, 245. **216. Abandoning Children under Two Years of Age.**—Every one is guilty of an indictable offence and liable to three years' imprisonment who unlawfully abandons or exposes any child under the age of two years, whereby its life is endangered, or its health is permanently injured.

2. The words "abandon" and "expose" include a wilful omission to take charge of the child on the part of a person legally bound to do so, and any mode of dealing with it calculated to leave it exposed to risk without protection. R.S.C., c. 162, s. 20.

R. vs. Falkingham (1870), L.R., 1 C.C.R. 222.
R. vs. White (1871), L.R. 1 C.C.R. 311.

245. **217. Causing Bodily Harm to Apprentices or Servants.**—Every one is guilty of an indictable offence and liable to three years' imprisonment who, being legally liable as master or mistress to provide for any apprentice or servant, unlawfully does, or causes to be done, any bodily harm to any such apprentice or servant so that the life of such apprentice or servant is endangered or the health of such apprentice or servant has been or is likely to be permanently injured. R.S.C., c. 62, s. 19

The statutory citation at end of this section is clearly wrong; it should be R.S.C., cap. 162, and not 62.

PART XVII.

HOMICIDE.

218. Homicide defined.
219. When a child becomes a human being.
220. Culpable homicide.
221. Procuring death by false evidence.
222. Death must be within a year and a day.
223. Killing by influence on mind.
224. Acceleration of death.
225. Causing death which might have been prevented.
226. Causing injury the treatment of which causes death.

218. Homicide Defined.—Homicide is the killing of a human being by another, directly or indirectly, by any means whatsoever.

219. When a Child becomes a Human Being.—A child becomes a human being within the meaning of this Act when it has completely proceeded, in a living state, from the body of its mother, whether it has breathed or not, whether it has an independent circulation or not, and whether the navel string is severed or not. The killing of such child is homicide when it dies in consequence of injuries received before, during or after birth.

R. vs. West (1848), 2 Car. & K. 784.
R. vs. Senior (1832), 1 Moody's C.C.R. 346.

220. Culpable Homicide.—Homicide may be either culpable or not culpable. Homicide is culpable when it consists in the killing of any person, either by an unlawful act or by an omission, without lawful excuse, to perform or observe any legal duty, or by both combined, or by causing a person, by threats or fear of violence, or by deception, to do an act which causes that person's death, or by wilfully frightening a child or sick person.

2. Culpable homicide is either murder or manslaughter.

3. Homicide which is not culpable is not an offence.

Under this section of the Code, culpable homicide consists in one person killing another either by (1) an unlawful act; or (2) an omission without lawful excuse to perform or observe any legal duty; or (3) by causing the person either by threats of violence or by fear of violence, or by deception, to do an act which results in his death; or (4) by wilfully frightening a child or sick person.

R. vs. Towers (1814), 12 Cox C.C. 530.
R. vs. Martin (1881), 14 Cox C.C. 633.

Non-culpable homicide is either: (1) Justifiable homicide or (2) excusable homicide.

For further sub-divisions and for cases illustrating the subject, see: 4 Blackstone's Commentares, p. 178, et seq.

R. vs. Scully (1824), 1 C. & P. 319.
R. vs Huntley (1851), 3 Car. & K 142.
R. vs. Howlett (1858), 1 F. & F. 91.

221. Procuring Death by False Evidence.—Procuring by false evidence the conviction and death of any person by the sentence of the law shall not be deemed to be homicide.

See section 146, which provides that perjury committed with the intention of procuring the conviction of a person for any crime punishable by death or imprisonment for life shall be punished by imprisonment for life.

254. **222. Death must be within a Year and a Day.**—No one is criminally responsible for the killing of another unless the death takes place within a year and a day of the cause of death. The period of a year and a day shall be reckoned inclusive of the day on which the last unlawful act contributing to the cause of death took place. Where the cause of death is an omission to fulfil a legal duty the period shall be reckoned inclusive of the day on which such omission ceased. Where death is in part caused by an unlawful act and in part by an omission, the period shall be reckoned inclusive of the day on which the last unlawful act took place or the omission ceased, whichever happened last.

255. **223. Killing by Influence on the Mind.**—No one is criminally responsible for the killing of another by any influence on the mind alone, nor for the killing of another by any disorder or disease arising from such influence, save in either case by wilfully frightening a child or sick person.

256. **224. Acceleration of Death.**—Every one who, by any act or omission, causes the death of another kills that person, although the effect of the bodily injury caused to such other person be merely to accelerate his death while labouring under some disorder or disease arising from some other cause.

257. **225. Causing Death which might have been Prevented.**—Every one who, by any act or omission, causes the death of another kills that person, although death from that cause might have been prevented by resorting to proper means.

258. **226. Causing Injury the Treatment of which Causes Death.**—Every one who causes a bodily injury, which is of itself of a dangerous nature to any person, from which death results kills that person, although the immediate cause of death be treatment proper or improper applied in good faith.

See R. vs. Pym (1846), 1 Cox C.C. 339 ; R. vs. Fletcher (1841), 1 Russell on Crimes, 703; R. vs. Holland (1841), 2 Moody & R. 351.

PART XVIII.

MURDER, MANSLAUGHTER, ETC.

227. Definition of murder.
228. Further definition of murder.
229. Provocation.
230. Manslaughter.
231. Punishment of murder.
232. Attempts to commit murder.
233. Threats to murder.
234. Conspiracy to murder.
235. Accessory after the fact to murder.
236. Punishment of manslaughter.
237. Aiding and abetting suicide.
238. Attempt to commit suicide.
239. Neglecting to obtain assistance in childbirth.
240. Concealing dead body of child.

227. Definition of Murder.—Culpable homicide is murder in each of the following cases:

(a.) If the offender means to cause the death of the person killed;

(b.) If the offender means to cause to the person killed any bodily injury which is known to the offender to be likely to cause death, and is reckless whether death ensues or not;

(c.) If the offender means to cause death or, being so reckless as aforesaid, means to cause such bodily injury as aforesaid to one person, and by accident or mistake kills another person, though he does not mean to hurt the person killed;

(d.) If the offender, for any unlawful object, does an act which he knows or ought to have known to be likely to cause death, and thereby kills any person, though he may have desired that his object should be effected without hurting any one.

228. Further Definition of Murder.—Culpable homicide is also murder in each of the following cases, whether the offender means or not death to ensue, or knows or not that death is likely to ensue;

(a.) If he means to inflict grievous bodily injury for the purpose of facilitating the commission of any of the offences

in this section mentioned, or the flight of the offender upon the commission or attempted commission thereof, and death ensues from such injury; or

(b.) If he administers any stupefying or overpowering thing for either of the purposes aforesaid, and death ensues from the effects thereof; or

(c.) If he by any means wilfully stops the breath of any person for either of the purposes aforesaid, and death ensues from such stopping of the breath.

2. The following are the offences in this section referred to:—Treason and the other offences mentioned in Part IV. of this Act, piracy and offences deemed to be piracy, escape or rescue from prison or unlawful custody, resisting lawful apprehension, murder, rape, forcible abduction, robbery, burglary, arson.

The two preceding sections divide the crime of murder into acts which the offender means to cause death or to cause bodily injury which, to his knowledge, is likely to result in death; and acts done for the purpose of facilitating the commission of any of the offences specified in sec. 228, s.s. 2, and which acts cause death, whether the offender means them to have that effect or not.

By virtue of sec. 626, in an indictment for murder no other count can be joined with the one charging the murder.

Section 633, s.s. 2, reads as follows: "A previous conviction or acquittal on an indictment for murder shall be a bar to a second indictment for the same homicide charging it as manslaughter; and a previous conviction or acquittal on an indictment for manslaughter shall be a bar to a second indictment for the same homicide charging it as murder."

According to sec. 713, s.s. 2, if on a charge of murder "the evidence proves manslaughter but does not prove murder, the jury may find the accused not guilty of murder, but guilty of manslaughter, but shall not on that account find the accused guilty of any other offence."

According to section 714, upon an indictment for the murder of any child, the jury may find the person accused not guilty of such murder, but, if the evidence is to that effect, may bring in a verdict of guilty of concealment of birth.

The crime of murder is often proved by what is known as circumstantial evidence. The rule is that where a charge of murder depends upon such evidence it ought not only to be consistent with the prisoner's guilt, but inconsistent with any other rational conclusion. R. v. Hodge (1838), 2 Lewin's C.C. 227.

It was said by Hale that no person should be convicted of murder or manslaughter until the body of the alleged victim was found.

And where a girl was indicted for the murder of her child sixteen days old, it was proved that she was seen at six o'clock one evening with the child in her arms, and that between eight and nine o'clock in the same evening she arrived

at the place to which she was then going without the child. The body of a child was afterwards found in an neighbouring river, but it did not appear to be the child of accused. It was held that she must be acquitted, and that she could not by law either be called upon to account for her child, or to say where it was, unless there was evidence to show that the child was actually dead. R. v. Hopkins, (1838), 8 Car. & P. 591.

But this rule regarding the finding of the body of a person murdered need not always be strictly adhered to. The death of the person said to have been killed may be concluded from the surrounding circumstances, if incapable of being proved by other evidence. Thus it would not be necessary to find the body of a person who was said to have been murdered by having been thrown overboard into the sea. R. v. Hindmarsh, (1792), 2 Leach C.C. 569.

And the rule is also relaxed in cases where its stringency is not so apparent as in the instance above cited. If a person being attacked should, from an apprehension of immediate violence (the apprehension being well grounded and justified by the circumstances), throw himself into a river in order to escape, and thus be drowned, the person attacking him would be guilty of murder. R. v. Pitts (1842), Car. & M. 284.

On a trial for murder, the alleged motive being the obtaining of insurance moneys on policies effected by the accused on the life of the deceased, evidence of a previous attempt by the accused to insure another person for his own benefit cannot be given in evidence against him.

R. vs. Hendershott & Welter (1895), 26 O.R. 678.

A coroner's court is a criminal court, and the depositions before such court of a witness who is subsequently charged with murder, cannot, since the Canada Evidence Act, 1893, be received in evidence against him at the trial, notwithstanding the fact that privilege was not claimed by him at the inquest.

R. vs. Hendershott & Welter, supra.

The case of R. vs. Williams (1897), 28 O.R. 583, is a decision to the contrary effect :

But R. vs. Hammond (1898), 29 O.R. 211, decided by another Divisional Court in the following year, adopted the judgment of Meredith, C.J., in R. vs. Hendershott & Welter, supra.

And a decision of the Court of Queen's Bench of the Province of Quebec is to the same effect as this latter case.

See R. vs. Viau (1898), R.J.Q., 7 Q.B. 362.

At a trial for murder, if the trial judge directs the jury that imminent peril of the prisoner's own life or of the lives of his family is a ground of justification for killing, in defence of his household, one of a party committing an unprovoked assault upon him, but does not direct them that a reasonable apprehension of immediate danger of grievous bodily harm to the prisoner or to his wife and family is also a ground of justification, such omission constitutes a substantial wrong or miscarriage occasioned at the trial (see sec. 746, par. f), and a new trial will be ordered if the evidence is such as to point much more to the latter ground of justification than to the former.

R. vs. Theriault (1894), 32 N.B.R. 504.

On a charge of murder by poisoning evidence is admissible to show the administration of the same kind of poison by the prisoner to another person as proving intent. And evidence of similar symptoms of arsenical poisoning attending the

death of a former husband of the accused following his partaking of food prepared for him by the accused, is evidence of the intent as regards a charge of arsenical poisoning of a second husband, on evidence of arsenical poisoning of the latter and of similar preparation of food by the accused and her attendance on her husband during his illness. R. vs. Sternaman (1898), 29 O.R. 33.

As to evidence of intent, see also

R. vs. Geering (1849), 18 L.J. (N.S.) M C 215.

R. vs. Heesom (1878), 14 Cox C.C. 40.

Makin vs. Attorney-General for N.S.W. (1834), A.C. 57.

Upon the trial for murder by committing an abortion which resulted in the death of the person operated upon, it appeared that the post-mortem examination was insufficient, and that, so far as the medical evidence was concerned, it was possible that death might have been occasioned by some undiscovered disease which a post-mortem examination of organs other than those examined might have disclosed. None of the medical witnesses would swear positively to the cause of death, but there was other evidence tending both to prove that death was caused by a criminal operation, and also connecting the accused therewith. It was held that such last mentioned evidence was properly submitted to the jury.

R. vs. Garrow & Creech (1896), 1 Can. C.C. 246.

On an indictment for murder a dying declaration of the deceased that he was shot in the body and was "going fast," indicates a settled and hopeless consciousness that he was in a dying state, and such a declaration is therefore admissible in evidence. In deciding the preliminary question as to whether the deceased was under a sense of impending death, so as to allow evidence of his dying declaration to be admitted, the trial Judge must have regard to the whole of the surrounding circumstances, including the nature and extent of the gun charge and the immediate result of the wound. (See sec. 592.)

R. vs. Davidson (1898), 1 Can. C.C. 351.

A dying declaration is not admissible if there exists in the mind of the party making it a hope of escape from almost immediate death; but if there is a firm, settled expectation by deceased of impending death and no hope of recovery remaining in his mind, the declaration is admissible, although such belief was the result of panic and was not well founded. (See sec. 592.)

Per Weatherbe, J., in R. vs. Davidson, supra.

The fact that the person making a dying declaration subsequently entertains a hope of recovery, is irrelevant, except in so far as it may be evidence of his state of mind at the time of making the declaration. (See sec. 592.)

Per Henry, J. in R. vs. Davidson, supra.

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 same and would do well to speak, are not inadmissible as not having been made voluntarily, or as having been procured by threat or inducement. (See sec. 592.)

R. vs. Viau (1898), R.J.Q., 7 Q B. 362.

As to the admissibility in evidence of confessions made by a person accused of murder, see also

R. vs. Charcoal (1897), 34 C.L.J. 210, cited under sec. 592.

Upon the trial of a person indicted for murder no witnesses were called on behalf of the accused. It was held that notwithstanding s.s. 2 of sec. 661, the meaning of that section was that in such a case counsel for the defence should address the jury last.
R. vs. Leblanc (1873), 29 C.L.J. 729.

229. Provocation.—Culpable homicide, which would otherwise be murder, may be reduced to manslaughter if the person who causes death does so in the heat of passion caused by sudden provocation.

2. Any wrongful act or insult, of such a nature as to be sufficient to deprive an ordinary person of the power of self-control, may be provocation if the offender acts upon it on the sudden, and before there has been time for his passion to cool.

3. Whether or not any particular wrongful act or insult amounts to provocation, and whether or not the person provoked was actually deprived of the power of self-control by the provocation which he received, shall be questions of fact. No one shall be held to give provocation to another by doing that which he had a legal right to do, or by doing anything which the offender incited him to do in order to provide the offender with an excuse for killing or doing bodily harm to any person.

4. An arrest shall not necessarily reduce the offence from murder to manslaughter because the arrest was illegal, but if the illegality was known to the offender it may be evidence of provocation.

At the trial of a person accused for murder it was not denied that he had killed the person alleged to have been murdered, but it was contended that by virtue of sec. 229 his offence was only manslaughter, on the ground that it had been committed "in the heat of passion caused by sudden provocation." The evidence showed that just before committing the deed the accused had gone to the house of the deceased, and that the latter had ordered him out of the house, and had immediately laid hands on him and put him out, whereupon the accused had drawn a revolver and shot and killed the deceased. At the trial the Judge directed the jury that the deceased was, at the time he was killed, "doing that which he had a legal right to do," and that there was, therefore, no provocation, and no question of fact to be submitted to the jury as to whether the crime had been reduced to manslaughter. It was held that this was a misdirection, on the ground that whether or not the deceased was doing what he had a legal right to do at the time he was shot, depended upon whether, if the jury accepted as the truth the evidence of the defendant regarding the circumstances attending the killing, the deceased had, before laying hands upon him, ordered him

to leave his house; and whether, if he had done so, the accused had refused to leave, and whether if violence was used in putting him out it was greater than was necessary; it being clear that the deceased was not doing what he had a legal right to do if the facts were found in favor of the contention of the accused upon these points. A new trial was, therefore, ordered.

R. vs. Brennan (1896), 27 O.R. 659.

By virtue of s.s. 2, a verbal insult may be such provocation as will reduce culpable homicide, which would otherwise be murder, to manslaughter. At common law no words, no matter how grossly insulting, could have that effect.

R. vs. McDowell (1865), 25 U.C. Q.B. 108.

R. vs. Welsh (1869), 11 Cox C.C. 336.

But in order to reduce murder to manslaughter, the deed must have directly followed the provocation, and must have been done during the passion aroused by the provocation.

R. vs. Rothwell (1871), 12 Cox C.C. 145.

Otherwise it will be murder; for murder is unlawful homicide with malice aforethought; whilst manslaughter is unlawful homicide without malice aforethought.

R. vs. Doherty (1887), 16 Cox C.C. 306.

The question whether or not the deed was done in the heat of passion must be left to the jury.

R. vs. McDowell (1865), 25 U.C. Q.B. 108.

And if it is proved that the blow which caused the death was given in the heat of passion caused by sudden provocation, the inference of malice is rebutted.

R. vs. Eagle (1862), 2 F. & F. 827.

See also R. vs. Sherwood (1844), 1 C. & K. 556.

R. vs. Smith (1866), 4 F. & F. 1066.

R v Wong On (3) 8 C Ca 423: 262.
R v Aho do 453.

230. Manslaughter.—Culpable homicide, not amounting to murder, is manslaughter.

When an Indian, acting under a belief common to his race, shot at an object which he believed to be an evil spirit which had assumed human form and would attack human beings, and thereby killed some one, he was held to be guilty of manslaughter. R. vs. Machekequonabe (1897), 2 Can. C.C. 138.

A master is criminally liable if he fails to reasonably care for his servant. When a boy fourteen years of age died for want of proper treatment after having been frozen, the master, who knew the facts, was held to be guilty of manslaughter.

R. vs. Brown (1893), N.W.T. Sup. Ct. reports, Vol. 1, No. 4, p. 35.

See also R. vs. Swindall (1846), 2 C. & K. 230.

R. vs. Haines (1847), 2 C. & K. 368.

R. vs. Ledger (1862), 2 F. & F. 857.

R. vs. Longbotton (1849), 3 Cox C.C. 439.

R. vs. Harrington (1851), 5 Cox C.C. 231.

R. vs. Walker (1824), 1 C. & P. 320.

R. vs. Cavendish (1873), 8 Ir. Reports, Com. Law, 178.

R. vs. Marriott (1838), 8 C. & P. 425.

R. vs. Finney (1874), 12 Cox C.C. 625.

R. vs. Nicholls (1875), 14 Cox C.C. 75.

R. vs. Van Burchell (1829), 3 C. & P. 629.

A medical man is bound to use proper skill and caution in using a poisonous drug or dangerous instrument; and if the

death results from his failure to do so he is guilty of manslaughter. But he would be guilty of no crime if death was caused by a mere error in judgment.
R. vs. McLeod (1874), 12 Cox C.C. 534.
Contributory negligence on the part of the person killed is no defence to an indictment for manslaughter.
R. vs. Swindall (1846), 2 C. & K. 230.
R. vs. Hutchinson (1864), 9 Cox C.C. 555.
R. vs. Kew (1872), 12 Cox C.C. 355.
R. vs. Dant (1865), 34 L.J.M.C. 119.

231. Punishment of Murder.—Every one who commits murder is guilty of an indictable offence and shall, on conviction thereof, be sentenced to death. R.S.C., c. 162, s. 2.

232. Attempts to Commit Murder.—Every one is guilty of an indictable offence and liable to imprisonment for life, who does any of the following things with intent to commit murder; that is to say—

(a.) administers any poison or other destructive thing to any person, or causes any such poison or destructive thing to be so administered or taken, or attempts to administer it, or attempts to cause it to be so administered or taken; or

(b.) by any means whatever wounds or causes any grievous bodily harm to any person; or

(c.) shoots at any person, or, by drawing a trigger or in any other manner, attempts to discharge at any person any kind of loaded arms; or

(d.) attempts to drown, suffocate or strangle any person; or

(e) destroys or damages any building by the explosion of any explosive substance; or

(f.) sets fire to any ship or vessel or any part thereof, or any part of the tackle, apparel or furniture thereof, or to any goods or chattels being therein; or

(g.) casts away or destroys any vessel; or

(h.) by any other means attempts to commit murder. R.S.C., c. 162, s. 12.

"ADMINISTERING POISON."

See :—

R. vs. Harley (1830), 4 C. & P. 369.
R. vs. Michael (1840), 9 C. & P. 356.
R. vs. Cluderoy (1849), 2 C. & K. 907.
R. vs. Mogg (1830), 4 C. & P. 364.

"WOUNDING OR CAUSING GRIEVOUS BODILY HARM."

As to what constitutes a wound, see :—
R. vs. Wood (1830), 1 Moody C.C. 278.
R. vs. McLoughlin (1838), 8 C. & P. 635.
R. vs. Smith (1837), 8 C. & P. 173.
Shea vs. R. (1848), 3 Cox C.C. 141.
R. vs. Briggs (1831), 1 Moody C.C. 318.
Shooting with intent to murder :—
When a person shoots at another, wrongly supposing him to be a third person whom he desires to murder, he is guilty of an offence under this section.
R. vs. Smith (1855), 25 L.J. M.C. 29.
And if a person fires a loaded revolver at a group of people, not aiming at anyone in particular, he will be held guilty of shooting any person he may thus hit, with intent to do grievous bodily harm to that person.
R. vs. Fretwell (1864), 33 L.J. M.C. 128.

265. **233. Threats to Murder.**—Every one is guilty of an indictable offence and liable to ten years' imprisonment who sends, delivers or utters, or directly or indirectly causes to be received, knowing the contents thereof, any letter or writing threatening to kill or murder any person. R.S.C., c. 173, s. 7.

According to section 3, sub-sec. (e.e.) "the word 'writing' means any mode in which, and any material on which words or figures, whether at length or abridged, are written, printed, or otherwise expressed, or any map or plan is inscribed."
A verbal threat to take a person's life is not an offence under this section.
Exparte Welsh (1898), 2 Can. C.C. 35.

266. **234. Conspiracy to Murder.**—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment, who—

(a.) conspires or agrees with any person to murder or to cause to be murdered any other person, whether the person intended to be murdered is a subject of His Majesty or not, or is within His Majesty's dominions or not; or

(b.) counsels or attempts to procure any person to murder such other person anywhere, although such person is not murdered in consequence of such counselling or attempted procurement. R.S.C., c. 162, s. 3.

See R. vs. Most (1881), L.R., 7 Q.B. D. 244.
Paragraph (b) is one of the few places in the Code in which incitement or solicitation to commit a crime is made an offence. See also sec. 72 and sec. 530.

267. **235. Accessory After the Fact to Murder.**—Every one is guilty of an indictable offence, and liable to impri-

sonment for life, who is an accessory after the fact to murder. R.S.C., c. 162, s. 4.

236. Punishment of Manslaughter.—Every one who commits manslaughter is guilty of an indictable offence, and liable to imprisonment for life. R.S.C., c. 162, s. 5.

237. Aiding and Abetting Suicide.—Every one is guilty of an indictable offence and liable to imprisonment for life who counsels or procures any person to commit suicide, actually committed in consequence of such counselling or procurement, or who aids or abets any person in the commission of suicide.

At common law, if two persons mutually agreed to commit suicide together, and the means employed to produce death only took effect upon one of them, the survivor would be held to be guilty of the murder of the one who died, and therefore liable to be sentenced to death.
R. vs. Allison (1838), 8 C. & P. 418.
But under the Code, in such a case the survivor would only be liable to be imprisoned for life.
In R. vs. Leddington (1839), 9 C. & P. 79, it was held that one person could not be tried for inciting another to commit suicide, although the latter actually did so.

238. Attempt to Commit Suicide.—Every one who attempts to commit suicide is guilty of an indictable offence and liable to two years' imprisonment.

See R. vs. Burgess (1862), 9 Cox C.C. 247.

239. Neglecting to obtain Assistance in Childbirth.—Every woman is guilty of an indictable offence who, with either of the intents hereinafter mentioned, being with child and being about to be delivered, neglects to provide reasonable assistance in her delivery, if the child is permanently injured thereby, or dies, either just before, or during, or shortly after birth, unless she proves that such death or permanent injury was not caused by such neglect, or by any wrongful act to which she was a party, and is liable to the following punishment:

(a.) If the intent of such neglect be that the child shall not live, to imprisonment for life;

(b.) If the intent of such neglect be to conceal the fact of her having had a child, to imprisonment for seven years.

272. **240. Concealing Dead Body of Child.**—Every one is guilty of an indictable offence, and liable to two years' imprisonment, who disposes of the dead body of any child in any manner, with intent to conceal the fact that its mother was delivered of it, whether the child died before, of during, or after birth. R.S.C., c. 162, s. 49.

As to what is a "child" within the meaning of this section, see R. vs. Colmer (1864), 9 Cox C.C. 506.

Merely denying the fact of the birth will not warrant a conviction.

See R. vs. Turner (1839), 8 C. & P. 755.

The body must be found and identified as that of the child of which the mother was delivered.

See R. vs. Williams (1871), 11 Cox C.C. 684.

See also R. vs. Piche (1879), 30 U.C.C.P. 409.

R. vs. Higley (1830), 4 C. & P. 366.

R. vs. Douglas (1836), 1 Moody's C.C. 480.

PART XIX.

BODILY INJURIES, AND ACTS AND OMISSIONS CAUSING DANGER TO THE PERSON.

241. Wounding with intent.
242. Wounding.
243. Shooting at His Majesty's vessels; Wounding Customs or Inland Revenue officers.
244. Disabling or administering drugs with intent to commit an indictable offence.
245. Administering poison so as to endanger life.
246. Administering poison with intent to injure.
247. Causing bodily injuries by explosives.
248. Attempting to cause bodily injuries by explosives.
249. Setting springs-guns and man-traps.
250. Intentionally endangering the safety of persons on railways.
251. Negligently endangering the safety of persons on railways.
252. Negligently causing bodily injury to any person.
253. Injuring persons by furious driving.
254. Preventing the saving of the life of any person shipwrecked.

273. R. v. Turpin C.C.J. May 1904 p. 317.

241. Wounding with Intent.—Every one is guilty of an indictable offence and liable to imprisonment for life who, with intent to maim, disfigure or disable any person, or to do some other grievous bodily harm to any person, or with intent to resist or prevent the lawful apprehension or detainer of any person, unlawfully by any means wounds

or causes any grievous bodily harm to any person, or shoots at any person, or, by drawing a trigger, or in any other manner, attempts to discharge any kind of loaded arms at any person. R.S.C., c. 162, s. 13.

If a person intends to "wound," or to cause "grievous bodily harm to," or to "shoot at," one person with intent to maim, disfigure or disable him, and in his attempt to do so wounds or causes grievous bodily harm to another person, he may be convicted under this section.

242. Wounding.—Every one is guilty of an indictable offence and liable to three years' imprisonment who unlawfully wounds or inflicts any grievous bodily harm upon any other person, either with or without any weapon or instrument. R.S.C., c. 162, s. 14.

Justices of the Peace have no power under a preliminary investigation before them of a charge of unlawfully wounding, to reduce the same to one of assault, that being an offence over which they would have summary jurisdiction. And a conviction made in such a case upon a plea of guilty to the charge of common assault is not a bar to an indictment for unlawfully wounding, based upon the same state of facts; nor does it support a plea of "autrefois convict."
R. vs. Lee (1897), 2 Can. C.C. 233.

243. Shooting at His Majesty's Vessels; Wounding Customs or Inland Revenue Officers.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who wilfully—

(a.) shoots at any vessel belonging to His Majesty or in the service of Canada; or

(b.) maims or wounds any public officer engaged in the execution of his duty or any person acting in aid of such officer. R.S.C., c. 32, s. 213; c. 34, s. 99.

The term "a public officer" includes, according to sec. 3, s.s. (w) "any inland revenue, customs officer, officer of the army, navy, marine, militia, North West Mounted Police, or other officer engaged in enforcing the law relating to the revenue, customs, trade or navigation of Canada."

244. Disabling or Administering Drugs with Intent to Commit an Indictable Offence.—Every one is guilty of an indictable offence and liable to imprisonment for life and to be whipped, who, with intent thereby to enable himself or any other person to commit, or with intent thereby to assist any other person in committing any indictable offence—

(a.) by any means whatsoever, attempts to choke, suffocate or strangle any other person, or by any means calculated to choke, suffocate or strangle, attempts to render any other person insensible, unconscious or incapable of resistance; or

(b.) unlawfully applies or administers to, or causes to be taken by, or attempts to apply or administer to, or attempts or causes to be administered to or taken by, any person any chloroform, laudanum or other stupefying or overpowering drug, matter or thing. R.S.C., c. 162, ss. 15 and 16.

See cases cited under section 232.

277. **245. Administering Poison so as to Endanger Life.**—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who unlawfully administers to, or causes to be administered to or taken by any other person, any poison or other destructive or noxious thing, so as thereby to endanger the life of such person, or so as thereby to inflict upon such person any grievous bodily harm. R.S.C., c. 162, s. 17.

On a charge of murder by poison, evidence is admissible of the administration of the same kind of poison by the accused to another person, as proving intent; and evidence of similar symptoms of arsenical poison attending the death of the prisoner's former husband is likewise admissible on her trial for the alleged murder of her second husband for poison.

R. vs. Sternman (1897), 1 Can. C.C. 1.

See also Makin vs. Attorney General for New South Wales L.R. (1894), A.C. 57.

R. vs. Geering (1849), 18 L.J. M.C. 215.
R. vs. Garner (1863), 3 F. & F. 681; 4 F. & F. 346.
R. vs. Gray (1866), 4 F. & F. 1102.
R. vs. Heeson (1878), 14 Cox C.C. 40.
R. vs. Flannagan (1884), 15 Cox C.C. 403.

278. **246. Administering Poison with Intent to Injure.**—Every one is guilty of an indictable offence and liable to three years' imprisonment who unlawfully administers to, or causes to be administered to or taken by, any other person any poison or other destructive or noxious thing, with intent to injure, aggrieve or annoy such person. R.S.C., c. 162, s. 18.

The gist of the offence specified in this section is the intent to injure, aggrieve, or annoy, and it must be proved that the accused administered the poison in order to effect that purpose.

R. vs. Wilkins (1861), 31 L.J. M.C. 72.

But although the poison may be administered only with the intention of causing the injury, grievance or annoyance referred to in this section, yet if it endangers the life of, or inflicts grievous bodily harm upon the person to whom it is given, the person administering it would be guilty of the offence specified in section 245.

Tulley vs. Corrie (1867), 10 Cox C.C. 640.

Whether or not a drug is a "noxious thing" within the meaning of this section, may depend entirely upon the quantity administered, according to the nature of the drug.

R. vs. Hennah (1877), 13 Cox C.C. 547.

R. vs. Cramp (1880), L.R., 5 Q.B.D. 307.

R. vs. Wilkins (1861), 31 L.J. M.C. 72.

Words imputing the commission of any of the offences specified in section 245 and 246 are actionable without proof of special damage. Gamble vs. Hirschfield (1894), 26 N.S.R. 486.

247. Causing Bodily Injuries by Explosives.—Every one is guilty of an indictable offence and liable to imprisonment for life who unlawfully and by the explosion of any explosive substance burns, maims, disfigures, disables or does any grievous bodily harm to any person. R.S.C., c. 162, s. 21.

248. Attempting to Cause Bodily Injuries by Explosives.—Every one is guilty of an indictable offence and liable, in case (a) to imprisonment for life and in case (b) to fourteen years' imprisonment, who unlawfully—

(a.) with intent to burn, maim, disfigure or disable any person, or to do some grievous bodily harm to any person, whether any bodily harm is effected or not—

(i.) causes any explosive substance to explode;

(ii.) sends or delivers to, or causes to be taken or received by, any person any explosive substance, or any other dangerous or noxious thing;

(iii.) puts or lays at any place, or casts or throws at or upon, or otherwise applies to, any person any corrosive fluid, or any destructive or explosive substance; or

(b.) places or throws in, into, upon, against or near any building, ship or vessel any explosive substance, with intent to do any bodily injury to any person, whether or not any explosion takes place and whether or not any bodily injury is effected. R.S.C., c. 162, ss. 22 and 23.

According to section 8, s.s. (i), "the expression 'explosive substance' includes any materials for making an explosive substance; also any apparatus, machine, implement, or materials used, or intended to be used, or adapted for causing or aiding, in causing any explosion in or with any explosive substance; and also any part of any such apparatus, machine, or implement."

281. **249. Setting Spring-guns and Man-traps.**—Every one is guilty of an indictable offence and liable to five years' imprisonment who sets or places, or causes to be set or placed, any spring-gun, man-trap, or other engine calculated to destroy human life or inflict grievous bodily harm, with the intent that the same or whereby the same may destroy, or inflict grievous bodily harm upon, any trespasser or other person coming in contact therewith.

2. Every one who knowingly and wilfully permits any such spring-gun, man-trap or other engine which has been set or placed by some other person, in any place which is in, or afterwards comes into, his possession or occupation, to continue so set or placed shall be deemed to have set or placed such gun, trap or engine with such intent as aforesaid.

3. This section does not extend to any gun or trap usually set or placed with the intent of destroying vermin or noxious animals. R.S.C., c. 162, s. 24.

As to what instruments do, or do not, come within the terms of this section, see Jordin vs. Crump (1841), 8 M. & W. 782.

281. **250. Intentionally Endangering the Safety of Persons on Railways.**—Every one is guilty of an indictable offence and liable to imprisonment for life who unlawfully

(a.) with intent to injure or to endanger the safety of any person travelling or being upon any railway,

(i.) puts or throws on or across any such railway any wood, stone or other matter or thing;

(ii.) takes up, removes or displaces any rail, railway switch, sleeper or other matter or thing belonging to such railway, or injures or destroys any track, bridge or fence of such railway, or any portion thereof;

(iii.) turns, moves or diverts any point or other machinery belonging to such railway;

(iv.) makes or shows, hides or removes any signal or light upon or near to such railway;

(v.) does or causes to be done any other matter or thing with such intent; or

(b.) throws, or causes to fall or strike at, against, into or upon any engine, tender, carriage or truck used and in motion upon any railway any wood, stone or other matter or thing, with intent to injure or endanger the safety of any person being in or upon such engine, tender, carriage

or truck, or in and upon any other engine, tender, carriage or truck of any train of which such first mentioned engine, tender, carriage or truck forms part. R.S.C., c. 162, ss. 25 and 26.

Section 489 deals with the offence of endangering property by mischief on railways.

251. Negligently Endangering the Safety of Persons on Railways.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, by any unlawful act, or by any wilful omission or neglect of duty, endangers or causes to be endangered the safety of any person conveyed or being in or upon a railway, or aids or assists therein. R.S.C., c. 162, s. 27.

In an English case it was held that a railway which had not commenced to be used for passenger traffic, but only for carrying materials and workmen, was within the terms of an enactment similar to this section.
R. vs. Bradford (1860), Bell's C.C. 268.

252. Negligently Causing Bodily Injury to any Person.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, by any unlawful act, or by doing negligently or omitting to do any act which it is his duty to do, causes grievous bodily injury to any other person. R.S.C., c. 162, s. 33.

Whilst a corporation cannot be indicted for manslaughter (see section 213 and notes thereunder), it may, however, be indicted under this section for having caused grievous bodily injury by omitting to maintain its works in a safe condition; and the fact that death ensued immediately to the person sustaining the grievous bodily injury will not affect the criminal liability of the corporation under this section.
R. vs. Union Colliery Company (1900), 3 Can. C.C. 523.
The expression "grievous bodily injury" includes injuries immediately resulting in death, and as a corporation cannot be indicted for manslaughter, the death is merely a circumstance in aggravation of the crime, and does not enlarge the nature of the offence.
R. vs. Union Colliery Co., supra.
In such a case since a corporation cannot suffer the punishment of imprisonment laid down in this section, it may be fined under section 639, and the amount of the fine is in the discretion of the Court by virtue of the provisions of section 931.
Lord Blackburn said in the Pharmaceutical Society vs London and Provincial Supply Association, Ltd. (1880), L.R., 5 A.C. at pages 869-870, "I quite agree that a corporation cannot, in one sense, commit a crime. A corporation cannot be imprisoned if

imprisonment be the sentence for the crime; a corporation cannot be hanged or put to death if that be the punishment for the crime; and, so, in those senses, a corporation cannot commit a crime. But a corporation may be fined, and a corporation may pay damages; and, therefore, I must totally dissent, notwithstanding what Lord Justice Bramwell said, or is reported to have said. I must really say that I do not feel the slightest doubt upon that part of the case."

But see the case of ex parte Woodstock Electric Light Co. (1898), 4 Can. C.C. 107, in which it was held that the procedure of the Code relative to summary convictions does not apply to corporations [but the opposite conclusion was arrived at in R. vs. Toronto Ry. Co. (1898), 2 Can. C.C. 471, which was decided some months later], and that, as regards a criminal charge, a corporation is not within the meaning of the word "person" as used in the Interpretation Act, R.S.C. 1886, cap. 1.

245. **253. Injuring Persons by Furious Driving.**—Every one is guilty of an indictable offence and liable to two years' imprisonment who, having the charge of any carriage or vehicle, by wanton or furious driving, or racing or other wilful misconduct, or by wilful neglect, does or causes to be done any bodily harm to any person. R.S.C., c. 162, s. 28.

246. **254. Preventing the Saving of the Life of any Person Shipwrecked.**—Every one is guilty of an indictable offence and liable to seven years' imprisonment—

(a.) who prevents or impedes, or endeavours to prevent or impede any shipwrecked person in his endeavour to save his life; or

(b.) who, without reasonable cause prevents or impedes, or endeavours to prevent or impede, any person in his endeavour to save the life of any shipwrecked person. R.S.C., c. 81, s. 36; as amended by 56 V., c. 32.

According to section 3, sub-sec. (x), "the expression 'shipwrecked person' means any person belonging to, on board of, or having quitted any vessel wrecked, stranded, or in distress, at any place in Canada."

247. **255. Leaving Holes in the Ice and Excavations Unguarded.**—Every one is guilty of an offence and liable, on summary conviction, to a fine or imprisonment with or without hard labour (or both) who—

(a.) cuts or makes, or causes to be cut or made, any hole, opening aperture or place, of sufficient size or area to endanger human life, through the ice on any navigable or other water open to or frequented by the public, and leaves such hole, opening, aperture or place, while it is in a state dangerous to human life, whether the same is

frozen over or not, unenclosed by bushes or trees or unguarded by a guard or fence of sufficient height and strength to prevent any person from accidentally riding, driving, walking, skating or falling therein; or

(b.) being the owner, manager or superintendent of any abandoned or unused mine or quarry or property upon or in which any excavation has been or is hereafter made, of a sufficient area and depth to endanger human life, leaves the same unguarded and uninclosed by a guard or fence of sufficient height and strength to prevent any person from accidentally riding, driving, walking or falling thereinto; or

(c.) omits within five days after conviction of any such offence to make the inclosure aforesaid or to construct around or over such exposed opening or excavation a guard or fence of such height and strength.

2. Every one whose duty it is to guard such hole, opening, aperture or place is guilty of manslaughter if any person loses his life by accidentally falling therein while the same is unguarded. R.S.C., c. 162, ss. 29, 30, 31 and 32.

256. Sending Unseaworthy Ships to Sea.—Every one is guilty of an indictable offence and liable to five years' imprisonment who—

sends, or attempts to send, or is a party to sending, a ship registered in Canada to sea, or on a voyage on any of the inland waters of Canada, or on a voyage from any port or place on the inland waters of Canada to any port or place on the inland waters of the United States, or on a voyage from any port or place on the inland waters of the United States to any port or place on the in'and waters of Canada in such unseaworthy state, by reason of overloading or underloading or improper loading, or by reason of being insufficiently manned, or from any other cause that the life of any person is likely to be endangered thereby, unless he proves that he used all reasonable means to insure her being sent to sea or on such voyage in a seaworthy state, or that her going to sea or on such voyage in such unseaworthy state was, under the circumstances, reasonable and justifiable. 52 Vic., c. 22, s. 3; as amended by 56 V., c. 32.

257. Taking Unseaworthy Ships to Sea.—Every one is guilty of an indictable offence and liable to five years'

imprisonment who, being the master of a ship registered in Canada knowingly takes such ship to sea, or on a voyage on any of the inland waters of Canada, or on a voyage from any port or place on the inland waters of Canada to any port or place on the inland waters of the United States, or on a voyage from any port or place in the United States to any port or place on the inland waters of Canada, in such unseaworthy state, by reason of overloading or underloading or improper loading, or by reason of being insufficiently manned, or from any other cause, that the life of any person is likely to be endangered thereby, unless he proves that her going to sea or on such voyage in such unseaworthy state was, under the circumstances, reasonable and justifiable. 52 V., c. 22, s. 3.

No person can be prosecuted under secs. 256 or 257 without the consent of the Minister of Marine and Fisheries. See section 546.

PART XX.

ASSAULTS.

258. Assault defined.
259. Indecent assaults on females.
260. Indecent assaults on males.
261. Consent of child under fourteen no defence.
262. Assaults causing actual bodily harm.
263. Aggravated assault.
264. Kidnapping.
265. Common assaults.

250. **258. Assault Defined.**—An assault is the act of intentionally applying force to the person of another, directly or indirectly, or attempting or threatening, by any act or gesture, to apply force to the person of another, if the person making the threat has, or causes the other to believe, upon reasonable grounds, that he has, present ability to effect his purpose, and in either case, without the consent of the other or with such consent, if it is obtained by fraud.

The crime of assault may be committed although the party assaulted may have consented to fight.
R. vs. Buchanan (1898), 1 Can. C.C. 442.

A prisoner indicted for rape may be found guilty of common assault, though the complaint or information is not laid within six months, as provided in sec. 841.
R. vs. Edwards (1898), 29 O.R. 451.

Presenting a loaded gun at a person who is within the distance to which the gun will carry is an assault.

R. vs. St. George (1840), 9 C. & P. 483.

And this would be equally an assault even if the gun was unloaded, if the person at whom it was pointed and who was within the distance to which it would carry did not know that it was unloaded.

R. vs. St. George, supra.

By virtue of sec. 109 the pointing any firearm or air-gun, whether loaded or unloaded, at any person, without lawful excuse, is an offence punishable by fine and imprisonment, with or without hard labor.

What is termed "battery" at common law is now an assault under this section.

See Coward vs. Baddeley (1859), 4 H. & N. 478.

As to how far an assault may be justified by reason of the fact that it was committed in defence of one's belongings, see secs. 48, 49 and 50.

259. Indecent Assaults on Females.—Every one is guilty of an indictable offence and liable to two years' imprisonment, and to be whipped, who—

(a.) indecently assaults any female; or

(b.) does anything to any female by her consent which but for such consent would be an indecent assault, such consent being obtained by false and faudulent representations as to the nature and quality of the act. 53 V., c. 37, s. 12.

Sec. 685 reads as follows :—"(1) Where, upon the hearing or trial of any charge for carnally or attempting to carnally know a girl under fourteen, or of any charge under sec. two hundred and fifty-nine for indecent assault, the girl in respect of whom the offence is charged to have been committed, or any other child of tender years who is tendered as a witness, does not, in the opinion of the Court or justices, understand the nature of an oath, the evidence of such girl or other child of tender years may be received though not given upon oath, if, in the opinion of the Court or justices, as the case may be, such girl or other child of tender years is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth.

"(2) But no person shall be liable to be convicted of the offence, unless the testimony admitted by virtue of this section, and given on behalf of the prosecution, is corroborated by some other material evidence in support thereof implicating the accused."

"(3) Any witness whose evidence is admitted under this section is liable to indictment, and punishment for perjury in all respects as if he or she had been sworn."

See also sec. 25 of the Canada Evidence Act, 1893 (56 Vic., c. 31), which lays down the same rule respecting the evidence of a child of tender years for all legal proceedings.

According to section 4 of the Canada Evidence Act, 1893, a person accused of having committed an offence under this section, and also the wife of such accused person, is a competent though not compellable witness.

If on the trial of a person accused of having committed an indecent assault, the prosecutrix in the course of her cross-examination, denies having had intercourse with a third person named to her, such person cannot be called to contradict her upon this point.

R. vs. Holmes (1871), L.R., 1 C.C.R. 334.

But if, in such cross-examination, the prosecutrix denies having had previous intercourse with the accused, evidence may subsequently be given to contradict her regarding that statement.

R. vs. Riley (1887), L.R., 18 Q.B.D. 481.

Upon a charge of rape, statements made by the complainant to a police officer on the day after the offence was alleged to have been committed, and in response to his inquiries, the complainant having on the day of the offence complained to others of an attempt but not of rape, are not admissible in evidence, either as part of a res gestae or as in corroboration.

R. vs. Graham (1899), 3 Can. C.C. 22.

See also R. vs. Rush (1896), 60 J.P. 777.

But evidence may be given of a complaint of indecent assault if such complaint be made on the same day as the attempt was committed.

R. vs. Lillyman L.R. (1896), 2 Q.B.D. 167.

If, on an indictment for rape, the jury acquit the accused of the offence, but find him guilty of an indecent assault, the verdict should stand, notwithstanding the improper admission in evidence of statements made by the complainant after the alleged offence, if the other evidence in the case is ample to warrant the verdict regarding the commission of an indecent assault.

R. vs. Graham (1899), 3 Can. C.C. 22.

259. **260. Indecent Assaults on Males.**—Every one is guilty of an indictable offence and liable to ten years' imprisonment and to be whipped who assaults any person with intent to commit sodomy or who, being a male, indecently assaults any other male person. R.S.C., c. 157, s. 2; as amended by 56 V., c. 32.

260. **261. Consent of Child under Fourteen no Defence.**—It is no defence to a charge or indictment for any indecent assault on a young person under the age of fourteen years to prove that he or she consented to the act of indecency. 53 V., c. 37, s. 7.

See R. vs. Harlem (1898), 30 N.S.R. 317, cited under section 174.

261. **262. Assaults Causing Actual Bodily Harm.**—Every one who commits any assault which occasions actual bodily harm is guilty of an indictable offence and liable to three years' imprisonment. R.S.C., c. 162, s. 35.

If a person charged with having committed an offence under this section elects (under sec. 786) to be tried summarily, a conviction is a bar to further criminal proceedings by virtue of sec. 799, but does not bar civil proceedings. Civil proceedings are only barred when the charge is one which is triable summarily without regard to the consent of the accused. See secs. 864, 865 and 866.

Neville vs. Ballard (1897), 28 O.R. 588.

See also Miller vs. Lea (1898), 2 Can. C.C. 282.

But see contra Flick vs. Brisbin (1895), 26 O.R. 423.

Hardigan vs. Graham (1897), 1 Can. C.C. 437.

In a prosecution under this section it is improper to exclude evidence of statements sworn to by a witness for the prosecution at a preliminary inquiry, the record of the depositions upon which had been lost, as to what was said by the accused at the time of the assault, such statements of the witness having had reference to statements of the accused forming a part of the *res gestae*.

R. vs. Troop (1898), 2 Can. C.C. 22.

263. Aggravated Assault.—Every one is guilty of an indictable offence and liable to two years' imprisonment who—

(a.) assaults any person with intent to commit any indictable offence; or

(b.) assaults any public or peace officer engaged in the execution of his duty, or any person acting in aid of such officer; or

(c.) assaults any person with intent to resist or prevent the lawful apprehension or detainer of himself, or of any other person, for any offence; or

(d.) assaults any person in the lawful execution of any process against any lands or goods, or in making any lawful distress or seizure, or with intent to rescue any goods taken under such process, distress or seizure; or, R.S.C., c. 162, s. 34; as amended by 57-58 V., c. 57.

(e.) on any day whereon any poll for any election, parliamentary or municipal, is being proceeded with within the distance of two miles from the place where such poll is taken or held, assaults or beats any person.

Sub-s. (b). It has been held that the fact that a person assaulting a public or peace officer engaged in the execution of his duty did not know that the person assaulted was such public or peace officer is no defence to an action for the crime specified in this sub-section.

R. vs. Forbes (1865), 10 Cox C.C. 362.

A person accused of having committed an offence under this section may, by virtue of sec. 958, be punished hereunder by the imposition of a fine, as well as by imprisonment for the same offence.

Ex parte McClements (1895), 32 C.L.J. 39.

Sec. 144 deals with the offence of obstructing a public or peace officer in the execution of his duty.

257. **264. Kidnapping.**—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, without lawful authority—

(a.) kidnaps any other person with intent—

(i.) to cause such other person to be secretly confined or imprisoned in Canada against his will; or

(ii.) to cause such other person to be unlawfully sent or transported out of Canada against his will; or

(iii.) to cause such other person to be sold or captured as a slave, or in any way held in service against his will; or

(b.) forcibly seizes and confines or imprisons any other person within Canada.

2. Upon the trial of any offence under this section the non-resistance of a person so unlawfully kidnapped or confined shall not be a defence unless it appears that it was not caused by threats, duress or force, or exhibition of force. The whole as amended by 63-64 V., c. 46. (*This section came into force on 1st January, 1901.*)

R v. Harris 6 C. Cr. Ca. 238: R v Cooler C L J May 1904. p 315: R v Turpin do 317: R v Cooler 7 C Cr Ca 532.

261. **265. Common Assaults.**—Every one who commits a common assault is guilty of an indictable offence and liable, if convicted upon an indictment, to one year's imprisonment, or to a fine not exceeding one hundred dollars, and on summary conviction to a fine not exceeding twenty dollars and costs, or to two months' imprisonment with or without hard labour. R.S.C., c. 162, s. 36.

See sec. 783 as to the power of magistrates to summarily try persons accused of having committed any of the various kinds of assault.

By virtue of sec. 864 a charge of assault and battery may be tried summarily in any case where neither of the parties object. But even if there is no objection on behalf of either of the parties, the justice need not try the case summarily if he deems it advisable that there should be a prosecution by indictment; nor, according to sec. 842, s.s. 7, has he the power to try any case of assault and battery in which any title to or interest in any real property arises.

A summary conviction for assault is a bar to a subsequent indictment for a felonious stabbing alleged to have been committed at the same time.

R. vs. Stanton (1851), 5 Cox C.C. 324.

See also R. vs. Miles (1890), L.R., 24 Q.B.D. 423.

But a summary conviction for assault is not a bar to a subsequent indictment for manslaughter, where the person who was assaulted has afterwards died as a result of the assault.

R. vs. Morris (1867), L.R., 1 C.C.R. 90.

PART XXI.

RAPE AND PROCURING ABORTION.

266. Rape defined.
267. Punishment for rape.
268. Attempt to commit rape.
269. Defiling children under fourteen.
270. Attempt to commit such an offence.
271. Killing unborn child.
272. Procuring abortion.
273. Woman procuring her own miscarriage.
274. Supplying means of procuring abortion.

266. Rape Defined—Carnal Knowledge.—Rape is the act of a man having carnal knowledge of a woman who is not his wife without her consent, or with consent which has been extorted by threats or fear of bodily harm, or obtained by personating the woman's husband, or by false and fraudulent representations as to the nature and quality of the act.

2. No one under the age of fourteen years can commit this offence.

3. Carnal knowledge is complete upon penetration to any, even the slightest degree, and even without the emission of seed. R.S.C., c. 174, s. 226.

The words "man" and "woman" in this section 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 meaning men and women as opposed to boys and girls.
R. vs. Riopel (1898), R.J.Q., 8 Q.B. 181.

An indictment for rape under this section lies against anyone who has ravished a female under the age of fourteen years, against her will, notwithstanding the provisions of sec. 269, which provides that everyone is guilty of an indictable offence and liable to the punishments therein specified who carnally knows any girl under the age of fourteen years, not being his wife. R. vs. Riopel, supra.

An indictment for rape includes the lesser charge of assault, and a verdict thereon of guilty of common assault is properly followed by a conviction, although the information was not laid within six months after the offence was committed, as provided by sec. 841.
R. vs. Edwards (1898), 29 O.R. 451.

Upon a charge of rape, statements made by the complainant to a police officer on the day after the offence was alleged to have been committed, and in response to his inquiries, the com-

plainant having on the day of the offence complained to others of an assault but not of rape, are not admissible in evidence, either as part of the *res gestae* or as in corroboration.

R. vs. Graham (1899), 3 Can. C.C. 22.

See also R. vs. Rush (1896), 60 J.P. 777.

R. vs. Ingrey (1900), 64 J.P. 106.

But if the complaint was made within what is, under the circumstances of the case, a short time after the alleged indecent assault was committed, evidence of the same will be admissible. In this case it was admitted where the complaint was made upon the same day as the assault.

R. vs. Lillyman 1896) L.R. 2 Q.B.D.167.

If, on an indictment for rape, the jury acquit the accused of that offence, but find him guilty of indecent assault, the verdict should stand, notwithstanding the improper admission in evidence of statements made by the complainant after the alleged offence, if the other evidence is ample to warrant the verdict of indecent assault.

R. vs. Graham (1899), 3 Can. C.C. 22.

Upon the trial of a charge of rape the general statement made by the woman by way of complaint shortly after the alleged offence, including the name of the party complained against and the other details of the complaint, is admissible in evidence as proof of the consistency of her conduct, and as confirmatory of her testimony regarding the offence, but not as independent or substantive evidence to prove the truth of the charge.

R. vs. Riendeau (1900), 3 Can. C.C. 293.

Whether or not a complaint that rape has been committed is made within a sufficiently short time after the alleged commission of the offence as to justify the admission of evidence of the particulars of the complaint is a question to be decided by the Court according to the circumstances of the particular case, but it is nevertheless the province of the jury to take into consideration the time which intervened, in weighing the probability of its truth.

of the complaint is a question to be decided by the Court

R. vs. Riendeau, supra.

The lapse of seven days between the date of the alleged commission of the rape and the time of making the complaint thereof, was held insufficient under the circumstances to exclude testimony of the particulars of the complaint.

R. vs Riendeau, supra.

Proofs on behalf of the defence that the alleged victim of the rape or her parents have instituted civil proceedings to recover damages for the commission of the alleged rape, will be excluded upon the criminal trial as irrelevant, unless other facts have been disclosed in evidence which tend to show an intent to thereby wrongfully extort money from the accused.

R. vs. Riendeau, supra.

As to rape in which the consent of the woman has been extorted by threats or fear of bodily harm, see R. vs. Jones (1861), 4 L.T. N.S. 154.

As to consent obtained by personating the woman's husband, see R. vs. Dee (1884), 15 Cox C.C. 579.

As to consent obtained by "false and fraudulent representations as to the nature and quality of the act," see R. vs. Flattery (1877), L.R., 2 Q.B.D. 410.

A person accused of having committed the offence of rape may, upon his trial, bring forward evidence to prove the bad

character of the prosecutrix, or to prove that she has previously, and of her own free will, had connection with the accused.
R. vs. Riley (1887), L.R., 18 Q.B.D. 481.
The prosecutrix may be asked whether previously to the commission of the alleged offence the prisoner did not have intercourse with her with her own consent.
R. vs. Martin (1834), 6 Car. & P. 562.
And if the prosecutrix denies having had such connection, evidence may be adduced to contradict her.
R. vs. Riley, supra.
But the accused cannot adduce evidence to prove that the prosecutrix before the commission of the alleged offence had connection with other persons, nor is the latter obliged to answer such a question on cross-examination.
R. vs. Hodgson (1812), R. & R. 211.
The prosecutrix may on cross-examination be asked whether she had not allowed a man other than the accused to take liberties with her in the interval between the commission of the alleged offence and the first complaint made of it.
R. vs. Mercer (1842), 6 Jurist 243.
If the prosecutrix answers a question as to whether, previous to the alleged offence, she had had connection with a person named, her answer is final, and evidence cannot be adduced to contradict her if she replies in the negative.
R. vs. Holmes (1871), 12 Cox C.C. 137.
But if, on cross-examination, the prosecutrix denies that she has had connection with men other than the accused, those men may be called to contradict her.
R. vs. Robins (1843), 1 Cox C.C. 55.

267. Punishment for Rape.—Every one who commits rape is guilty of an indictable offence and liable to suffer death, or to imprisonment for life. R.S.C., c. 162, s. 37.

268. Attempt to Commit Rape.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who attempts to commit rape.

269. Defiling Children under Fourteen.—Every one is guilty of an indictable offence and liable to imprisonment for life, and to be whipped, who carnally knows any girl under the age of fourteen years, not being his wife, whether he believes her to be of or above that age or not. 53 V., c. 37, s. 12.

270. Attempt to Commit such Offence.—Every one who attempts to have unlawful carnal knowledge of any girl under the age of fourteen years is guilty of an indictable offence and liable to two years' imprisonment, and to be whipped. 53 V., c. 37, s. 12.

Sec. 685, and the Canada Evidence Act 1893, sec. 25, deal with the admission of the evidence of children of tender years.

By virtue of sec. 713, upon a trial for the offence specified in this section the accused may be found guilty of an indecent assault or of common assault.

In R. vs. Wright (1896), 34 N.B.R. 127, it was held that a County Court in N.B., which is not a Court of Oyer and Terminer and General Gaol Delivery, has jurisdiction to try a person accused of having committed an offence under this section, although the evidence discloses the offence of attempting to commit rape, as to which, according to sec. 540, such Court has no jurisdiction.

206. **271. Killing Unborn Child.**—Every one is guilty of an indictable offence and liable to imprisonment for life who causes the death of any child which has not become a human being, in such a manner that he would have been guilty of murder if such child had been born.

2. No one is guilty of any offence who, by means which he in good faith considers necessary for the preservation of the life of the mother of the child, causes the death of any such child before or during its birth.

Sec. 219 defines when a child becomes a human being.

207. **272. Procuring Abortion.**—Every one is guilty of an indictable offence and liable to imprisonment for life who, with intent to procure the miscarriage of any woman, whether she is or is not with child, unlawfully administers to her or causes to be taken by her any drug or other noxious thing, or unlawfully uses any instrument or other means whatsoever with the like intent. R.S.C., c. 162, s. 47.

208. **273. Woman Procuring her own Miscarriage.**—Every woman is guilty of an indictable offence and liable to seven years' imprisonment who, whether with child or not, unlawfully administers to herself or permits to be administered to her any drug or other noxious thing, or unlawfully uses on herself or permits to be used on her any instrument or other means whatsoever with intent to procure miscarriage. R.S.C., c. 162, s. 47.

209. **274. Supplying Means of Procuring Abortion.**—Every one is guilty of an indictable offence and liable to two years' imprisonment who unlawfully supplies or procures any drug or other noxious thing, or any instrument or thing whatsoever, knowing that the same is intended to be unlawfully used or employed with intent to procure

the miscarriage of any woman, whether she is or is not with child. R.S.C., c. 162, s. 48.

"A NOXIOUS THING."

A small quantity of savin not sufficient to do more than produce some disturbance in the stomach is not a noxious thing.
R. vs. Perry (1847), 2 Cox C.C. 223.

The thing supplied must be noxious; and if it is in fact innoxious the intention of the person supplying it is—not sufficient to constitute the offence dealt with in these sections.
R. vs. Isaacs (1862), 9 Cox C.C. 228.
See also R. vs. Hollis (1873), 12 Cox C.C. 463.
R. vs. Cramp (1880), 14 Cox C.C. 401.

"CAUSING TO BE TAKEN."

If A procures a noxious thing, and delivers it to B, both A and B intending that B should take it for the purpose of procuring abortion, and B afterwards takes it with that intent in the absence of A, A will be convicted of causing it to be taken.
R. vs. Wilson (1856), 7 Cox C.C. 190.
See also R. vs. Farrow (1857), Dearsley & B.'s C.C. 164.

A woman, who, believing herself to be with child, but not in reality being with child, conspires with other persons to administer drugs to herself or to use instruments on herself, with intent to procure abortion, is liable to be convicted of a conspiracy to procure abortion.
R .vs. Whitechurch (1890), 16 Cox C.C. 743.

PART XXII.

OFFENCES AGAINST CONJUGAL AND PARENTAL RIGHTS—BIGAMY—ABDUCTION.

275. Bigamy defined.
276. Punishment of bigamy.
277. Feigned marriages.
278. Punishment of polygamy.
279. Solemnization of marriage without lawful authority.
280. Solemnization of marriage contrary to law.
281. Abduction of a woman.
282. Abduction of an heiress.
283. Abduction of girl under sixteen.
284. Stealing children under fourteen.

275. Bigamy Defined.—Bigamy is—

(a.) the act of a person who, being married, goes through a form of marriage with any other person in any part of the world; or

(b.) the act of a person who goes through a form of marriage in any part of the world with any person whom he or she knows to be married; or

(c.) the act of a person who goes through a form of marriage with more than one person simultaneously or on the same day. R.S.C., c. 37, s. 10.

2. A "form of marriage" is any form either recognized as a valid form by the law of the place where it is gone through, or, though not so recognized, is such that a marriage celebrated there in that form is recognized as binding by the law of the place where the offender is tried. Every form shall for the purpose of this section be valid, notwithstanding any act or default of the person charged with bigamy, if it is otherwise a valid form. The fact that the parties would, if unmarried, have been incompetent to contract marriage shall be no defence upon a prosecution for bigamy.

3. No one commits bigamy by going through a form of marriage—

(a.) if he or she in good faith and on reasonable grounds believes his wife or her husband to be dead; or

(b.) if his wife or her husband has been continually absent for seven years then last past and he or she is not proved to have known that his wife or her husband was alive at any time during those seven years; or

(c.) if he or she has been divorced from the bond of the first marriage; or

(d.) if the former marriage has been declared void by a court of competent jurisdiction. R.S.C., c. 161, s. 4.

4. No person shall be liable to be convicted of bigamy in respect of having gone through a form of marriage in a place not in Canada, unless such person, being a British subject resident in Canada, leaves Canada with intent to go through such form of marriage.

On a special case referred to it by the Governor-General in Council in 1897, the Supreme Court of Canada held that secs. 275 and 276 were *intra vires* of the Parliament of Canada, and that that legislative body had jurisdiction to constitute the leaving of Canada by a British subject domiciled therein, with the intent to perform elsewhere a certain prohibited act, followed by the actual performance of that act, an indictable offence.

"In the matter of secs. 275 and 276 Criminal Code (1892), relating to Bigamy" (1897), 1 Can. C.C. 172.

It is to be observed, however, that this case was not argued at the Bar, the Crown alone being represented by counsel. Nor was the opinion of the Court unanimous, the Chief Justice (Sir Henry Strong) who dissented, adopting the judgment of the Court of Queen's Bench Division of the High Court of Justice for Ontario in the case of R. vs. Plowman (1894), 25 O.R. 656. This decision pronounced paragraphs (a) and (b) of s.s. 1 of sec 275 to be taken by themselves, *ultra vires* of the Parliament

of Canada, and void; and it was also held that they were not validated by anything contained in s.s. 4 of sec. 275.

In R. vs. Brierly (1887), 14 O.R. 525 (which was decided before R. vs. Plowman) the Chancery Division of the High Court of Justice for Ontario held that these sections were *intra vires* of the Parliament of Canada.

See also Macleod vs. Attorney-General for New South Wales, (1891), A.C. 455 (which was distinguished by the majority of the Supreme Court of Canada in the referred case above cited.)

See also R. vs. McQuiggan (1852), 2 L.C.R. 340.

R. vs. Turner (1862), 9 Cox C.C. 145.

R. vs. Horton (1871), 11 Cox C.C. 670.

276. Punishment of Bigamy.—Every one who commits bigamy is guilty of an indictable offence and liable to seven years' imprisonment.

2. Every one who commits this offence after a previous conviction for a like offence shall be liable to fourteen years' imprisonment R. S. C., c. 161, s. 4.

It is to be noticed that by virtue of sec. 690 an accused person may now be convicted of bigamy upon his own confession at the trial, without any further proof thereof being adduced.

277. Feigned Marriages.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who procures a feigned or pretended marriage between himself and any woman, or who knowingly aids and assists in procuring such feigned or pretended marriage. R.S.C., c. 161, s. 2.

278. Punishment of Polygamy.—Every one is guilty of an indictable offence and liable to imprisonment for five years, and to a fine of five hundred dollars,

(a.) who practises, or, by the rites, ceremonies, forms, rules or customs of any denomination, sect or society, religious or secular, or by any form of contract, or by mere mutual consent, or by any other method whatsoever, and whether in a manner recognized by law as a binding form of marriage or not, agrees or consents to practise or enter into

(i.) any form of polygamy;

(ii.) any kind of conjugal union with more than one person at the same time; or

(iii.) what among the persons commonly called Mormons is known as spiritual or plural marriage; or

(b.) who lives, cohabits, or agrees or consents to live or cohabit in any kind of conjugal union with a person who

is married to another, or with a person who lives or cohabits with another or others in any kind of conjugal union; or

(c.) celebrates, is a party to, or assists in any such rite or ceremony which purports to make binding or to sanction any of the sexual relationships mentioned in paragraph (a) of this section; or

(d.) procures, enforces, enables, is a party to, or assists in the compliance with, or carrying out of, any such form, rule or custom which so purports; or

(e.) procures, enforces, enables, is a party to, or assists in the execution of, any such form of contract which so purports, or the giving of any such consent which so purports. 63-64 V., c. 46. (*This section came into force on 1st January*, 1901.)

An Indian who, according to the marriage custom of his tribe, takes two women at the same time as his wives, and cohabits with them, is guilty of an offence under this section.
R. vs. Bear's Shin Bone (1899), 3 Can. C.C. 329.

The mere cohabitation between a man and a woman, each of whom is married to another, is not in itself an offence under this section. In order to bring the act within this section there must be "some form of contract between the parties which they might suppose to be binding on them, but which the law was intended to prohibit;" and the term "conjugal union," as used throughout the section, refers to a form of ceremony purporting to join the parties, that is, a marriage of some sort before cohabiting with one another.
R. vs. Labrie (1891), M.L.R., 7 Q.B. 211.

279. Solemnization of Marriage without Lawful Authority.—Every one is guilty of an indictable offence and liable to a fine, or to two years' imprisonment, or to both, who—

(a.) without lawful authority, the proof of which shall lie on him, solemnizes or pretends to solemnize any marriage; or

(b.) procures any person to solemnize any marriage knowing that such person is not lawfully authorized to solemnize such marriage, or knowingly aids or abets such person in performing such ceremony. R.S.C., c. 161, s.

By virtue of sec. 551 (b) no prosecution for any offence under this section can be commenced after the expiration of two years from the date of the commission thereof.
In R. vs. Dickout (1893), 24 O.R. 250, it was held that "the Organised Church of Jesus Christ of Latter Day Saints" was a religious denomination within the meaning of R.S.O., 1886), ch. 131, sec. 1, and that a duly ordained priest thereof was a minister authorised to solemnise the ceremony of marriage, and could not be convicted under this section for so doing. Semble

the words of the statute "church" and "religious denomination" should not be construed so as to confine them to Christian bodies.

This section has been amended by 59 Vic., c. 39 (now R.S.O., 1897, c. 162, sec. 2), which offends the power of solemnizing marriage to ministers of other denominations or sects.

280. Solemnization of Marriage Contrary to Law.—Every one is guilty of an indictable offence and liable to a fine, or to one year's imprisonment, who, being unlawfully authorized, knowingly and wilfully solemnizes any marriage in violation of the laws of the province in which the marriage is solemnized. R.S.C., c. 161, s. 3.

281. Abduction of a Woman.—Every one is guilty of an indictable offence, and liable to fourteen years' imprisonment who, with intent to marry or carnally know any woman, whether married or not, or with intent to cause any woman to be married to or carnally known by any other person, takes away or detains any woman of any age against her will. R.S.C., c. 162, s. 43.

282. Abduction of an Heiress.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who, with intent to marry or carnally know any woman, or with intent to cause any woman to be married or carnally known by any person—

(a.) from motives of lucre takes away or detains against her will any such woman of any age who has any interest, whether legal or equitable, present or future, absolute, conditional or contingent, in any real or personal estate, or who is a presumptive heiress or co-heiress or presumptive next of kin to any one having such interest; or

(b.) fraudulently allures, takes away or detains any such woman, being under the age of twenty-one years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her, with intent to marry or carnally know her.

2. Every one convicted of any offence defined in this section is incapable of taking any estate or interest, legal or equitable, in any real or personal property of such woman, or in which she has any interest, or which comes to her as such heiress, co-heiress or next of kin; and if any such marriage takes place such property shall, upon such conviction, be settled in such manner as any court of com-

petent jurisdiction, upon any information at the instance of the Attorney-General appoints. R.S.C., c. 162, s. 42.

The intent of the person accused of having abducted an heiress may either be shown by his own acts and statements, or may be inferred from the circumstances of the case.
R. vs. Barratt (1840), 9 C. & P. 387.
Upon an indictment under par. (b) of s.s. 1 of this section, it is not necessarily incumbent upon the prosecution to prove that the accused knew that the person abducted was an heiress.
R. vs. Kaylor (1881), 1 Dorion's Q.B.R. 364.

315. **283. Abduction of Girl under Sixteen.**—Every one is guilty of an indictable offence and liable to five years' imprisonment who unlawfully takes or causes to be taken any unmarried girl, being under the age of sixteen years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her.

2. It is immaterial whether the girl is taken with her own consent or at her own suggestion, or not.

3. It is immaterial whether or not the offender believed the girl to be of or above the age of sixteen. R.S.C., c. 162, s 44.

To constitute the crime of abducting a girl out of the possession and against the will of her father under this section, there must be an actual or constructive possession in the father at the time of the taking.
R. vs. Blythe (1895), 1 Can. C.C. 263.
When a girl who is resident with her father in a foreign country left without his consent and with intent to renounce his protection, and came to Canada, the father's possession ceased; and, semble, a possession *de jure* afterwards established by his following her to her place of flight is not the possession contemplated by this section.
R. vs. Blythe, supra.
If the persuasion to leave and remain away operated wholly in the foreign country, there is no jurisdiction to convict in Canada, as persuasion is a necessary element in such cases of abduction.
R. vs. Blythe, supra.
Where a girl under sixteen, having by persuasion been induced by the accused to leave her father's house, and to go away with him without the consent of her father, left her home alone by a preconcerted arrangement between them, and went to an appointed place where she was met by the accused, and from which place they went away together some distance not intending to return, it was held that there was a taking of the girl out of her father's possession; and that to constitute the "taking" contemplated by the statute which created the offence it was not necessary that any force, either actual or constructive, should be used.
R. vs. Manktelow (1853), 6 Cox C.C. 143.
A girl under sixteen, who was living in her father's house, was induced by the accused to go to a chaplain, to be married to the former. She was only away from her home for a few hours,

and after her return continued to live with her father as before, he being ignorant of what had taken place. The marriage was never consummated. It was held that there was sufficient evidence of her being taken out of her father's possession to constitute the crime.

R. vs. Bailie (1859), 8 Cox C.C. 238.

If a man, by previous promises to a girl under sixteen years of age as to what he will do if she will leave her parents' house and go to live with him, induces her at length to do so, and then receives and harbours her secretly, he is liable to be convicted for taking her out of the possession of her parents, even although he does not meet her by any previous arrangement, and is not otherwise actually a party to her act in leaving.

R. vs. Robb (1861), 4 F. & F. 59.

When a girl, under sixteen, has been found in the streets by herself and seduced away, there is not a taking out of the possession of her father, even though he is living in the place in question, and she lives with him.

R. vs. Green (1862), 3 F. & F. 274.

See also R. vs. Hibbert (1869), 11 Cox C.C. 246.

R. vs. Timmins (1860), 8 Cox C.C. 401.

Although, both by the words of the section, and by various decisions (see R. vs. Manktelow (1853), 6 Cox C.C. 143), the fact that the girl consented to go with the accused of her own free will is no defence to an action under this section, yet a man is not bound to return to her father's custody a girl who, without any inducement on his part, has left her home and has come to him.

R. vs. Olifier (1863), 10 Cox C.C. 402.

But if, at any time, he has attempted to induce her to leave home without her parents' consent, and she afterwards does so, he is guilty of the abduction of the girl, even though he disapproves of the act at the particular time at which he commits it.

R. vs. Olifier, supra.

In an action under this section it is not necessary to prove that the accused person knew the girl to be under sixteen years of age, as the burden is on him to ascertain her age, and if it chances that she is under sixteen he must take the consequences.

R. vs. Mycock (1871), 12 Cox C.C. 28.

R. vs. Robins (1844), 1 Car. & K. 456.

A girl who is away from home is still in the custody or possession of her father, if she intends to return to her home.

R. vs. Mycock, supra.

To take away a natural child, who is under the age mentioned, from her putative father, is equally a breach of this section.

R. vs. Sweeting (1766), 1 East P.C. 457.

As to the evidence necessary to sustain a conviction for an offence under this section see

R. vs. Johnson (1884), 15 Cox C.C. 481.

284. Stealing Children under Fourteen.—Every one is guilty of an indictable offence and liable to five years' imprisonment who, with intent to deprive any parent or guardian of any child under the age of fourteen years, of

the possession of such child, or with intent to steal any article about or on the person of such child, unlawfully—

(a.) takes or entices away or detains any such child; or

(b.) receives or harbours any such child knowing it to have been dealt with as aforesaid.

2. Nothing in this section shall extend to any one who gets possession of any child, claiming in good faith a right to the possesion of the child.

3. In this section the word "guardian" has the same meaning as it has in sections 183 and 186, as interpreted by section 186a. 63-64 V., c. 46. (*This section came into force 1st January*, 1901.)

PART XXIII.

DEFAMATORY LIBEL.

285. Defamatory libel defined.
286. Publishing defined.
287. Publishing upon invitation.
288. Publishing in Courts of Justice.
289. Publishing Parliamentary Papers.
290. Fair reports of proceedings of Parliament and Courts.
291. Fair reports of proceedings of public meetings.
292. Fair discussion.
293. Fair comment.
294. Seeking remedy for grievance.
295. Answer to enquiries.
296. Giving information.
297. Selling periodicals containing defamatory libel.
298. Selling books containing defamatory matter.
299. When truth is a defence.
300. Extortion by defamatory libel.
301. Punishment of defamatory libel known to be false.
302. Punishment of defamatory libel.

285. Defamatory Libel Defined.—A defamatory libel is matter published, without legal justification or excuse, likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or designed to insult the person of, or concerning whom it is published. 63-64 V., c. 46. (*This sub-section* 1 *came into force on the 1st January*, 1901.)

2. Such matter may be expressed either in words legibly marked upon any substance whatever, or by any object signifying such matter otherwise than by words, and may be expressed either directly or by insinuation or irony.

The original idea of the offence of pulishing without legal justification or excuse, matter "designed to insult the person concerning whom it is published," was that such publication would tend to cause a breach of the peace.

A plea of justification upon a charge under this section must allege that the matter complained of was true, and that it was published for the public benefit; the facts by reason of which it was for the public benefit should be succinctly stated, but neither the evidence by which it is intended to prove these facts nor any extraneous comments must be included in the plea.

R. vs. Grenier (1897), 1 Can. C.C. 55.

The accused may plead not guilty, and he may then show that the alleged libel was a fair comment upon a matter of public interest, or that the occasion of the publication was privileged, or may set up any other defence admitted by law, except that of the truth of the alleged libel.

See Odgers on Libel, 3rd. edition, page 330.

An indictment charging the publication of defamatory libel, which does not state that the same was likely to injure the reputation of the person therein referred to by exposing him to hatred, contempt or ridicule, or that it was designed to insult him, is bad, because it omits an essential ingredient of the offence, and such an indictment cannot be amended, but must be quashed, as the defect is a matter of substance.

R. vs. Cameron (1898), 2 Can. C.C. 173.

The criminal redress for libel is, in some respects, more extensive than the civil one; and the libel may be indictable, although it is not actionable.

See Odgers on Libel, 3rd edition, page 444.

See also R. vs. Topham (1791), 4 T.R. 126.

R. vs. Gathercole (1838), 2 Lewin's C.C. 237.

As illustrating how a defamatory libel may be published otherwise than by words, under sub-sec. 2, see R. vs. Eyre, R. vs. Garlick, 42 J P. 68. Du Bost vs. Beresford (1810), 2 Campbell 511.

286. Publishing Defined.—Publishing a libel is exhibiting it in public, or causing it to be read or seen, or showing or delivering it, or causing it to be shown or delivered, with a view to its being read or seen by the person defamed or by any other person.

At common law, also, there was sufficient publication of a criminal libel if it was shown only to the person referred to therein, provided that its nature was such as to be likely to cause him to break the peace.

Odgers on Libel, 3rd. edition, page 455.

R. vs. Brooke (1856), 7 Cox C.C. 251.

So far as the law is concerned, a libel is *prima facie* deemed to be published so soon as the manuscript containing the same has passed out of the possession and control of the person responsible therefor.

R. vs. Burdett (1820), 4 B. & Ald. 143.

R. vs. Lovett (1839), 9 C. & P. 462.

287. Publishing upon Invitation.—No one commits an offence by publishing defamatory matter on the invitation or challenge of the person defamed thereby, nor if it

is necessary to publish such defamatory matter in order to refute some other defamatory statement published by that person concerning the alleged offender, if such defamatory matter is believed to be true, and is relevant to the invitation, challenge or the required refutation, and the publishing does not in manner or extent exceed what is reasonably sufficient for the occasion.

According to this section, the publication of what would otherwise be a defamatory libel is no offence if it is published (1) on the invitaton or challenge of the person defamed thereby, or (2) as a necessary refutaton of a previously published defamatory statement.

AS TO PUBLICATIONS ON INVITATIONS OR CHALLENGE :—

See Smith vs. Wood (1812), 3 Campbell 322.
Weatherston vs. Hawkins (1786), 1 T.R. 110.
Whitely vs. Adams (1863), 15 C.B. (N.S.) 392.
Force vs. Warren (1864), 15 C.B. (N.S.) 806.

PUBLICATIONS IN REFUTATION :—

As to what may be published in rebuttal of charges previously made, see Laughton vs. Bishop of Sodor and Man. (1872), L.R. 4 P.C. 495.
Dwyer vs. Esmonde (1878), 2 L.R., (IR) 243.
Koenig vs. Ritchie (1862), 3 F. & F. 413.
R. vs. Veley (1867), 4 F. & F. 1117.
Huntley vs. Ward (1859), 6 C.B. (N.S.) 514.

320. **288. Publishing in Courts of Justice.**—No one commits an offence by publishing any defamatory matter in any proceeding held before or under the authority of any court exercising judicial authority, or in any inquiry made under the authority of any statute or by order of His Majesty, or of any of the departments of Government, Dominion or provincial.

321. **289. Publishing Parliamentary Papers.**—No one commits an offence by publishing to either the Senate, or House of Commons, or to any Legislative Council, Legislative Assembly or House of Assembly, defamatory matter contained in a petition to the Senate, or House of Commons, or to any such Council or Assembly, or by publishing by order or under the authority of the Senate or House of Commons, or of any such Council or Assembly, any paper containing defamatory matter or by publishing, in good faith and without ill-will to the person defamed, any extract from an abstract of any such paper.

See sec. 705.
See R.S.C., c. 163, sections 6 and 7 of that enactment are still in force, and therefore appear in this connection.

Rv. Charlton 6 C.Cr. Ca. 486.

322. **290. Fair Reports of Proceedings of Parliament and Courts.**—No one commits an offence by publishing in good faith, for the information of the public, a fair report of the proceedings of the Senate or House of Commons, or any committee thereof, or of any such Council or Assembly, or any committee thereof, or of the public proceedings preliminary or final heard before any court exercising judicial authority, nor by publishing, in good faith any fair comment upon any such proceedings.

All courts of justice, whether of record or not, come within the terms of this section.

Lewis vs. Levy (1858), 27 L.J., Q.B.D. 282.

As illustrating the gradual development of the law on this subject, see Hoare vs. Silverlock (1850), 9 C.B. 23.

Wason vs. Walter (1868), L.R., 4 Q.B. 87.

Usil vs. Hales.

Usil vs. Breezely.

Usil vs. Clarke (1878), L.R., 3 C.P.D. 206.

The Court has power to summarily commit for constructive contempt notwithstanding secs. 290, 292 and 293; but this power will not be exercised when the offence is of a trifling nature, but only when necessary to prevent interference with the course of justice.

Stoddart vs. Prentice (1898), 6 B.C.R. 308.

(1) A statement published in the editorial column of a newspaper to the effect that one of the parties to a pending suit will lose the same, is a contempt of Court.

(2) A statement to the effect that a Judge of the Court, having previously taken an active part in a general election, would now have to devote his spare moments to schooling himself into forgetfulness of his political career, is not a contempt of Court.

(3) A statement to the effect that the spectacle of such Judge trying election cases is not edifying, and that it does not produce a good impression on the mind of the public, is not a contempt of Court.

(4) A party to a suit may, without filing an affidavit, move to commit a stranger to the suit for constructive contempt, on the ground that the alleged contempt is calculated to prejudice the party in the suit.

(5) Any person may bring to the notice of the Court any alleged contempt of the Court.

Stoddart vs. Prentice (1898), 6 B.C.R. 308.

323. **291. Fair Reports of Proceedings of Public Meetings.**—No one commits an offence by publishing in good faith, in a newspaper, a fair report of the proceedings of any public meeting if the meeting is lawfully convened for a lawful purpose and open to the public, and if such report is fair and accurate, and if the publication of the matter complained of is for the public benefit, and if the defendant does not refuse to insert in a conspicuous place

in the newspaper in which the report appeared a reasonable letter or document of explanation or contradiction by or on behalf of the prosecutor.

324. **292. Fair Discussion.**—No one commits an offence by publishing any defamatory matter which he, on reasonable grounds, believes to be true, and which is relevant to any subject of public interest, the public discussion of which is for the public benefit.

As to what are matters of public interest,
See Odgers on Libel, 3rd. edition, page
The evidence taken before a Parliamentary Committee on a local gas bill is a matter of public interest.
Hedley vs. Barlow (1865), 4 F. & F. 224.
All appointments to office made by the Government are matters of public interest.
Seymour vs. Butterworth (1862), 3 F. & F. 372.
So likewise is the evidence taken before a Royal Comm'ssion.
Mulkern vs. Ward (1872), L.R., 13 Equity 619.
See also Campbell vs. Spottiswoode (1863), 3 F. & F. 421.
Davis vs. Duncan (1874), L.R., 9 C.P. 396.
Strauss vs. Francis (1866), 4 F. & F. 939, 1107.
Wilson vs. Reed (1860), 2 F. & F. 149.
Green vs. Chapman (1837), 4 Bingham (N.C.) 92.

325 **293. Fair Comment.**—No one commits an offence by publishing fair comment upon the public conduct of a person who takes part in public affairs.

2. No one commits an offence by publishing fair comments on any published book or other literary production, or any composition or work of art or performance publicly exhibited, or any other communication made to the public on any subject, if such comments are confined to criticism on such book or literary production, composition, work of art, performance or communication.

As to what is fair comment, see per Lord Ellenborough in Tabart vs. Tipper (1808), 1 Campbell 350.
See also R. vs. White (1808), 1 Campbell 359.
Hibbins vs. Lee (1864), 4 F. & F. 243
Helsham vs. Blackwood (1851), 11 C.B. 111.

326. **294. Seeking Remedy for Grievance.**—No one commits an offence by publishing defamatory matter for the purpose, in good faith, of seeking remedy or redress for any private or public wrong or grievance from a person who has, or is reasonably believed by the person publishing to have, the right or be under obligation to remedy or redress such wrong or grievance, if the defamatory matter is

believed by him to be true, and is relevant to the remedy or redress sought, and such publishing does not in manner or extent exceed what is reasonably sufficient for the occasion.

A person would be liable for defamatory statements thus made if he had no ground whatever for believing that the person to whom they were thus made had the right or was under the obligation to redress the grievance of which he complained; but it would be otherwise if, exercising a reasonable degree of care, he merely made a mistake in the person to whom he applied.

Fairman vs. Ives (1822), 5 B. & Ald. 642.
Harrison vs. Bush (1855), 5 E. & B. 344.
McIntyre vs. McBean (1885) 13 U.C., Q.B. 534.

927. **295. Answer to Inquiries.**—No one commits an offence by publishing, in answer to inquiries made of him, defamatory matter relating to some subject as to which the person by whom, or on whose behalf the inquiry is made has, or on reasonable grounds is believed by the person publishing to have, an interest in knowing the truth, if such matter is published for the purpose, in good faith, of giving information in respect thereof to that person, and if such defamatory matter is believed to be true, and is relevant to the inquiries made, and also if such publishing does not in manner and extent exceed what is reasonably sufficient for the occasion.

The privilege given by this section only extends to so much of an answer as is really necessary in order to give the reply to the inquiry, and any extraneous irrelevant matter is not protected. Any information given must be strictly in answer to a previous inquiry. Thus, when A meeting B, whom he knew to be on the point of having some business relations with C, said of his own volition, and before any question was asked, "If you have anything to do with C you will live to repent it; he is a most unprincipled man," it was held that this communication was not privileged.

Storey vs. Challands (1837), 8 C. & P. 234.

But it would have been otherwise had A.'s statement been in answer to B.'s inquiry about C, with whom he was contemplating having some business relations.

See also Godson vs. Home (1819), 1 B. & B. 7.
Beatson vs. Skene (1860), 5 H. & N. 838.
Cowles vs. Potts (1865), 34 L.J., Q.B. 247.

928. **296. Giving Information.**—No one commits an offence by publishing to another person defamatory matter for the purpose of giving information to that person with respect to some subject as to which he has, or is on reasonable grounds, believed to have, such an interest in knowing the

truth as so make the conduct of the person giving the information reasonable under the circumstances: Provided, that such defamatory matter is relevant to such subject, and that it is either true, or is made without ill-will to the person defamed, and in the belief, on reasonable grounds, that it is true.

A solicitor may, of his own volition, give his clients such information concerning third persons as he may deem it to be to their interest to know.

Davis vs. Reeves (1855), 5 (IR) C.L.R. 79.
See also Todd vs. Hawkins (1837), 8 C. & P. 88.
Coxhead vs. Richards (1846), 2 C.B. 569.
Harrison vs. Bush (1855), 5 E. & B. 344.
Whiteley vs. Adams (1863), 15 C.B. (N.S.) 392.
Laughton vs. Bishop of Sodor and Man (1872), 42 L.J. P.C. 11.

297. Selling Periodicals containing Defamatory Libel.—Every proprietor of any newspaper is presumed to be criminally responsible for defamatory matter inserted and published therein, but such presumption may be rebutted by proof that the particular defamatory matter was inserted in such newspaper without such proprietor's cognizance, and without negligence on his part.

2. General authority given to the person actually inserting such defamatory matter to manage or conduct, as editor or otherwise, such newspaper, and to insert therein what he in his discretion thinks fit, shall not be negligence within this section unless it be proved that the proprietor, when originally giving such general authority, meant that it should extend to inserting and publishing defamatory matter, or continued such general authority knowing that it had been exercised by inserting defamatory matter in any number or part of such newspaper.

3. No one is guilty of an offence by selling any number or part of such newspaper, unless he knew either that such number or part contained defamatory matter, or that defamatory matter was habitually contained in such newspaper.

Section 3, s.s. (p. 1) reads as follows :—"In the sections of this Act relating to defamatory libel, the word 'newspaper' shall mean any paper, magazine or periodical containing public news, intelligence or occurrences, or any remarks or observations thereon, printed for sale and published periodically, or in parts or numbers at intervals not exceeding thirty-one days between the publication of any such paper, parts or numbers and also any paper, magazine or periodical printed in order to be dispersed and made public, weekly or oftener, or at intervals not exceeding thirty-one days, and containing only, or principally, advertisements."

Section 640, s.s. 2, enacts that "every proprietor, publisher, editor or other person charged with the publication in a news-

paper of any defamatory libel, shall be dealt with, indicted, tried and punished in the province in which he resides, or in which such newspaper is printed."

See R. vs. Holbrook (1877), L.R., 3 Q.B.D. 60.

298. Selling Books containing Defamatory Matter.—No one commits an offence by selling any book, magazine, pamphlet or other thing whether forming part of any periodical or not, although the same contains defamatory matter, if, at the time of such sale, he did not know that such defamatory matter was contained in such book, magazine, pamphlet or other thing.

2. The sale by a servant of any book, magazine, pamphlet or other thing, whether periodical or not, shall not make his employer criminally responsible in respect of defamatory matter contained therein unless it be proved that such employer authorized such sale knowing that such book, magazine, pamphlet or other thing contained defamatory matter, or, in case of a number or part of a periodical, that defamatory matter was habitually contained in such periodical.

299. When Truth is a Defence.—It shall be a defence to an indictment or information for a defamatory libel that the publishing of the defamatory matter in the manner in which it was published was for the public benefit at the time when it was published, and that the matter itself was true. R.S.C., c. 163, s. 4.

See R. vs. Hickson (1880), 3 Legal News, 139.

See section 634 regarding the plea of justification in actions charging defamatory libel, and section 713 as to verdicts in such actions.

See section 403, which relates to the offence of sending letters demanding property with menaces.

300. Extortion by Defamatory Libel.—Every one is guilty of an indictable offence and liable to two years' imprisonment, or to a fine not exceeding six hundred dollars, or to both, who publishes or threatens to publish, or offers to abstain from publishing, or offers to prevent the publishing of, a defamatory libel with intent to extort any money, or to induce any person to confer upon or procure for any person any appointment or office of profit or trust, or in consequence of any person having been refused any such money, appointment or office. R.S.C., c. 163, s. 1.

333. **301. Punishment of Defamatory Libel known to be False.**—Every one is guilty of an indictable offence and liable to two years' imprisonment, or to a fine not exceeding four hundred dollars, or to both, who publishes any defamatory libel knowing the same to be false. R.S.C. 163, s. 2.

Defamatory matter is always presumed to be false, and the burden is upon the defendant to show that it was true, that it dealt with a matter of public interest, and that its publication was for the public good.

R. vs. Newman (1852), 1 E. & B. 268.
Edsall vs. Russell (1842), 4 M. & Gr. 1090.
Blake vs. Stevens (1864), 4 F. & F. 239.
Watkin vs. Hall (1868), L.R., 3 Q.B. 396.

By virtue of section 892, if the accused is convicted the Court may order him to pay the whole or any part of the costs of the prosecution. And the case of a private prosecutor failing to obtain judgment is provided for by section 833, which says that "if judgment is given for the defendant he shall be entitled to recover from the prosecutor the costs incurred by him by reason of such indictment or information either by warrant of distress issued out of said Court, or by action or suit as for an ordinary debt."

334. **302. Punishment of Defamatory Libel.**—Every one is guilty of an indictable offence and liable to one year's imprisonment, or to a fine not exceeding two hundred dollars, or to both, who publishes any defamatory libel. R.S.C., c. 163, s. 3.

TITLE VI.

OFFENCES AGAINST RIGHTS OF PROPERTY AND RIGHTS ARISING OUT OF CONTRACTS, AND OFFENCES CONNECTED WITH TRADE.

PART XXIV.

THEFT DEFINED.

303. Things capable of being stolen.
304. Animals capable of being stolen.
305. Theft defined.
306. Theft of things under seizure.
307. Theft of animals.
308. Theft by agent.
309. Theft by person holding a power of attorney.
310. Theft by misappropriating proceeds held under direction.
311. Theft by co-owner.
312. Concealing gold or silver with intent to defraud partner in claim.
313. Husband and wife.

R. v. Beaumont 7 C. & C. 494.

303. Things Capable of being Stolen.—Every inanimate thing whatever which is the property of any person, and which either is or may be made movable, shall henceforth be capable of being stolen as soon as it becomes movable, although it is made movable in order to steal it; Provided, that nothing growing out of the earth of a value not exceeding twenty-five cents shall (except in the cases hereinafter provided) be deemed capable of being stolen.

See sections 341 and 342, which relate to the offence of stealing plants, roots, etc.

In order to constitute "larceny" it is necessary that the person committing the alleged crime should have "had the intention of depriving the owner of his property permanently."

R. vs. Holloway (1848), 2 Car. & K. 942.
R. vs. Crump (1825), 1 C. & P. 658.
As to what is sufficient taking, see R. vs. Simpson (1854), 6 Cox C.C. 422.
R. vs. Collins (1864), 9 Cox C.C. 497.
R. vs. Cheeseman (1862), 9 Cox C.C. 100.
R. vs. Poynton (1862), 32 L.J.M.C. 29.
See also R. vs. Cabbage (1815), R. & R.'s C.C. 292.
R. vs. Brooks (1838), 8 C. & P. 295.
R. vs. Hollis (1883), 53 L.J., M.C. 38.
R. vs. Hands (1887), 16 Cox C.C. 188.

At common law, the water supplied by a water company to a consumer and standing in his pipes would be the subject of larceny.

Ferens vs. O'Brien (1883), L.R., 11 Q.B.D. 21.

And by 57 and 58 Vict., ch. 39, sec. 10, Electricity is declared capable of being stolen.

The fact that the term "larceny" is used in the Criminal Code does not, as regards an extradition convention made prior to that Act, affect the liability to extradition of a person charged with an offence which was "larceny" at common law, and which is still an offence under the Criminal Code, although it is therein termed "theft" or "stealing."

Re. Gross (1898), 2 Can. C.C. 67.

345. 346. **304. Animals Capable of being Stolen.**—All tame living creatures, whether tame by nature or wild by nature and tamed, shall be capable of being stolen; but tame pigeons shall be capable of being stolen so long only as they are in a dovecote or on their owner's land.

2. All living creatures wild by nature, such as are not commonly found in a condition of natural liberty in Canada, shall, if kept in a state of confinement, be capable of being stolen, not only while they are so confined, but after they have escaped from confinement.

3. All other living creatures wild by nature shall, if kept in a state of confinement, be capable of being stolen so long as they remain in confinement or are being actually pursued after escaping therefrom, but no longer.

4. A wild living creature shall be deemed to be in a state of confinement so long as it is in a den, cage or small inclosure, stye or tank, or is otherwise so situated that it cannot escape and that its owner can take possession of it at pleasure.

5. Oysters and oyster brood shall be capable of being stolen when in oyster beds, layings, and fisheries which are the property of any person, and sufficiently marked out or known as such property.

6. Wild creatures in the enjoyment of their natural liberty shall not be capable of being stolen, nor shall the taking of their dead bodies by, or by the orders of, the person who killed them before they are reduced into actual possession by the owner of the land on which they died be deemed to be theft.

7. Every thing produced by or forming part of any living creature capable of being stolen, shall be capable of being stolen.

347. 348. **305. Theft Defined.**—Theft or stealing is the act of fraudulently and without colour of right taking, or fraudu-

* George v Roy 8 Can Cr Cs 401; Rosen Cr Cs 621.

R v Phinney (1) 6 C Cr Ca 469: R v Hurst do 209: R v Fowler 5 do 73: R v Beauvais 7 do 454: R v Thiriault 8 do 460.

lently and without colour of right converting to the use of any person, anything capable of being stolen, with intent—

(a.) to deprive the owner, or any person having any special property or interest therein, temporarily or absolutely of such thing or of such property or interest; or

(b.) to pledge the same or deposit it as security; or

(c.) to part with it under a condition as to its return which the person parting with it may be unable to perform; or

(d.) to deal with it in such a manner that it cannot be restored in the condition in which it was at the time of such taking and conversion.

2. The taking and conversion may be fraudulent, although effected without secrecy or attempt at concealment.

3. It is immaterial whether the thing converted was taken for the purpose of conversion, or whether it was, at the time of the conversion, in the lawful possession of the person converting.

4. Theft is committed when the offender moves the thing or causes it to move or to be moved, or begins to cause it to become movable, with intent to steal it.

5. Provided, that no factor or agent shall be guilty of theft by pledging or giving a lien on any goods or document of title to goods intrusted to him for the purpose of sale or otherwise, for any sum of money not greater than the amount due to him from his principal at the time of pledging or giving a lien on the same, together with the amount of any bill of exchange accepted by him for or on account of his principal.

6. Provided, that if any servant, contrary to the orders of his master, takes from his possession any food for the purpose of giving the same or having the same given to any horse or other animal belonging to or in the possession of his master, the servant so offending shall not, by reason thereof, be guilty of theft. R.S.C., c. 164, s. 63.

A creditor who obtains possession of goods by threatening to have the debtor arrested, does not thereby commit theft if his only object is to hold the goods as security for an overdue debt, as, in such case, the taking is with "colour of right."
R. vs. Lyon (1898), 2 Can. C.C. 242.
See also R. vs. Seitz (1899), 3 Can. C.C. 54.
R. vs. Seitz (1899), 3 Can. C.C. 127.

306. Theft of Things under Seizure.—Every one commits theft and steals the thing taken or carried away

who, whether pretending to be the owner or not, secretly or openly, takes or carries away, or causes to be taken or carried away, without lawful authority, any property under lawful seizure and detention by any peace officer or public officer in his official capacity. R.S.C., c. 164, s. 50; as amended by 63-64 V., c. 46. (*This section came into force on 1st January*, 1901.)

An hotelkeeper who locks the room formerly occupied by a boarder, and containing his luggage, for non-payment of the amount then due, and then tells the boarder that he has done so, and directs him either to leave the hotel or to pay his bill, thereby places the boarder's effects under "lawful seizure and detention" in respect of his lien; and if the boarder subsequently takes away any of his effects without the permission of the landlord he is guilty of theft.

R. vs. Hollingsworth (1899), 2 Can. C.C. 291.

The fact that the landlord afterwards allows the boarder to enter the room for the purpose of taking away certain specified articles does not work an abandonment of the seizure, and the boarder will be guilty of theft if he removes any articles other than those which he has received permission to take away. Nor does the fact that the amount in respect of which the lien is claimed is in excess of the amount really due invalidate the lien.

R. vs. Hollingsworth, supra.

The accused gave in part payment of the amount due for certain goods purchased a receipt note, by the terms of which the ownership in the goods was to remain in the vendors until the note was paid. The vendors discounted the note at their bank, and when it was not taken up at maturity they paid it by giving in its place a renewal note, the original one being then returned to them. The renewal note was paid, and the vendors then seized the goods by virtue of the first note. The accused regained possession of the goods, and a charge was then laid against him under this section. On behalf of the accused the point was raised that since the original note had been paid by the giving of a renewal note, the property in the goods had thereby passed to the makers of the note; or, if that was not so, then that the endorsement to the bank constituted an equitable assignment, and that the bank was therefore the only party which had any right to make a seizure. This objection was upheld by the Court.

R. vs. Walker (1896), 32 C.L.J., 300.

See also R. vs. Hollingsworth (1899), 2 Can. C.C. 291.

No punishment being specified for the offence defined in this section, it comes under the provisions of section 356, which states that, when not otherwise provided, the punishment for stealing shall be seven years' imprisonment, or ten years' imprisonment if the guilty person has previously been convicted of theft.

Jfo. **307. Theft of Animals.**—Every one commits theft, and steals, the creature killed who kills any living creature capable of being stolen with intent to steal the carcase, skin, plumage or any part of such creature.

Regarding the punishment for this offence see sections 331, 331a and 332.

See also sec. 499, s.s. B., par. (b), and secs. 500 to 502.

308. Theft by Agent.—Every one commits theft who, having received any money or valuable security or other thing whatsoever, on terms requiring him to account for or pay the same, or the proceeds thereof, or any part of such proceeds, to any other person, though not requiring him to deliver over in specie the identical money, valuable security or other thing received, fraudulently converts the same to his own use, or fraudulently omits to account for or pay the same or any part thereof, or to account for or pay such proceeds or any part thereof, which he was required to account for or pay as aforesaid.

2. Provided, that if it be part of the said terms that the money or other thing received, or the proceeds thereof, shall form an item in a debtor and creditor account between the person receiving the same and the person to whom he is to account for or pay the same, and that such last mentioned person shall rely only on the personal liability of the other as his debtor in respect thereof, the proper entry of such money or proceeds, or any part thereof, in such account, shall be a sufficient accounting for the money, or proceeds, or part therof so entered, and in such case no fraudulent conversion of the amount accounted for shall be deemed to have taken place.

According to section 3, paragraph (cc), "the expression 'valuable security' includes any order, exchequer acquittance, or other security entitling or evidencing the title of any person to any share or interest in any public stock or fund, whether of Canada or of any province thereof, or of the United Kingdom, or of Great Britain or Ireland, or any British colony or possession, or of any foreign state, or in any fund of any body corporate, company or society, whether within Canada or the United Kingdom, or any British colony or possession, or in any foreign state or country, or to any deposit in any savings bank or other bank, and also includes any debenture, deed, bond, bill, note, warrant, order or other security for money, or for payment of money, whether of Canada or of any province thereof, or of the United Kingdom, or of any British colony or possession, or of any foreign state, and any document of title to lands or goods as hereinbefore defined wheresoever such lands or goods are situate, and any stamp or writing which secures or evidences title to or interest in any chattel personal, or any release, receipt, discharge or other instrument evidencing payment of money, or the delivery of any chattel personal."

It has been held that the word "terms" in this section means the terms upon which the accused held the money or valuable security when he received it, and that it does not refer to terms imposed by the person paying the money.

R. vs. Unger (1894), 30 C.L.J. 428.

356. **309. Theft by Person Holding a Power of Attorney.**—Every one commits theft who, being intrusted, either solely or jointly with any other person, with any power of attorney for the sale, mortgage, pledge, or other disposition of any property, real or personal, whether capable of being stolen or not, fraudulently sells, mortgages, pledges or otherwise disposes of the same or any part thereof, or fraudulently converts the proceeds of any sale, mortgage, pledge or other disposition of such property, or any part of such proceeds, to some purpose other than that for which he was intrusted with such power of attorney. R.S.C. c. 164, s. 62.

See R. vs. Fulton (1900), R.J.Q., 10 Q.B. 1.

357. **310. Theft by Misappropriating Proceeds held under Direction.**—Every one commits theft who, having received either solely or jointly with any other person, any money or valuable security or any power of attorney for the sale of any property, real or personal, with a direction that such money, or any part thereof, or the proceeds, or any part of the proceeds of such security, or such property, shall be applied to any purpose or paid to any person specified in such direction, in violation of good faith and contrary to such direction, fraudulently applies to any other purpose or pays to any other person such money or proceeds, or any part thereof.

Provided, that where the person receiving such money, security or power of attorney, and the person from whom he receives it, deal with each other on such terms that all money paid to the former would, in the absence of any such direction, be properly treated as an item in a debtor and creditor account between them; this section shall not apply unless such direction is in writing.

According to section 3, par. (v), the word "property" includes,

(1) Every kind of real and personal property, and all deeds and instruments relating to or evidencing the title or right to any property, or giving a right to recover or receive any money or goods;

(2) Not only such property as was originally in the possession or under the control of any person, but also any property into or for which the same has been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise;

(3) Any postal card, postage stamp, or other stamp issued or prepared for issue by the authority of the Parliament of Canada, or of the legislature of any province of Canada, for the payment to the Crown or any corporate body of any fee, rate or

duty, and whether still in the possession of the Crown, or of any person or corporation; and such postal card or stamp shall be held to be a chattel, and to be equal in value to the amount of the postage, rate or duty expressed on its face in words or figures, or both."

It is to be observed that the directions referred to in the first sub-sections of the above section need not be in writing.

The offences specified in the three preceding sections (308 to 310 inclusive) are punishable by fourteen years' imprisonment under section 320; but if the case is one of theft of an article the value of which exceeds $200, the offender is liable to an additional two years' imprisonment.

311. Theft by Co-owner.—Theft may be committed by the owner of anything capable of being stolen against a person having a special property or interest therein, or by a person having a special property or interest therein against the owner thereof, or by a lessee against his reversioner, or by one of several joint owners, tenants in common, or partners of or in any such thing against the other persons interested therein, or by the directors, public officers or members of a public company, or body corporate, or of an unincorporated body or society associated together for any lawful purpose, against such public company or body corporate or unincorporated body or society. R.S.C., c. 164, s. 58.

At common law theft could not be committed by one co-owner against another.

A covenant for the payment of money given by an accused person in order to suppress a prosecution for the alleged embezzlement of partnership property is not enforceable.

Major vs. McCraney (1893), 2 Can. C.C. 547.

See also ex parte Seitz (1899), 3 Can. C.C. 54.

Ex parte Seitz (1899), 3 Can. C.C. 127.

Offences under this section are punishable according to the terms of section 356.

312. Concealing Gold or Silver with Intent to Defraud Partner in Claim.—Every one commits theft who, with intent to defraud his co-partner, co-adventurer, joint tenant or tenant in common, in any mining claim, or in any share or interest in any such claim, secretly keeps back or conceals any gold or silver found in or upon or taken from such claim. R.S.C., c. 164, s. 31.

According to section 354 the offences specified in this section are punishable by two years' imprisonment.

Sec. 571 authorizes any Justice to whom a complaint in writing has been made, to issue a search warrant for any gold or silver alleged to be unlawfully deposited in any place.

313. Husband and Wife.—No husband shall be convicted of stealing, during cohabitation, the property of his

wife, and no wife shall be convicted of stealing, during cohabitation, the property of her husband; but while they are living apart from each other either shall be guilty of theft if he or she fraudulently takes or converts anything which is, by law, the property of the other in a manner which, in any other person, would amount to theft.

2. Every one commits theft who, while a husband and wife are living together, knowingly—

(a.) assists either of them in dealing with anything which is the property of the other in a manner which would amount to theft if they were not married; or

(b.) receives from either of them anything, the property of the other, obtained from that other by such dealing as aforesaid.

At common law there could be no theft between husband and wife, even when they were living apart from each other.

But at common law it was a criminal offence for a man living with another man's wife to receive her husband's property from her.

PART XXV.

RECEIVING STOLEN GOODS.

314. Receiving property dishonestly obtained.
315. Receiving stolen post letter or post letter bag.
316. Receiving property obtained by offence punishable on summary conviction.
317. When receiving is complete.
318. Receiving after restoration to owner.

314. Receiving Property Dishonestly Obtained.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who receives or retains in his possession anything obtained by any offence punishable on indictment, or by any acts wheresoever committed, which, if committed in Canada after the commencement of this Act, would have constituted an offence punishable upon indictment, knowing such thing to have been so obtained. R.S.C., c. 164, s. 82.

According to section 3 (k), "having in one's possession includes not only in one's own personal possession, but also knowingly

(1) Having in the actual possession or custody of any other person; and

(2) Having in any place (whether belonging to or occupied by oneself or not) for the use or benefit of oneself, or of any other person.

If there are two or more persons, any one or more of whom with the knowledge and consent of the rest, have anything in his or their custody or possession, it shall be deemed and taken

to be in the custody and possession of each and all of them."

By virtue of section 627 everyone charged with having received any property knowing it to have been stolen, may be indicted, whether the principal offender has or has not been indicted or convicted, or is or is not amenable to justice; and any number of the receivers of any part or parts of the stolen property may be tried together.

See also sections 715 to 717 inclusive.

If a person receives goods which he knows to have been stolen, for the mere purpose of concealment without deriving any profit therefrom, he is nevertheless guilty under this section.

R. vs. Richardson (1834), 6 Car. & P. 335.

R. vs. Davis (1833), 6 Car. & P. 177.

The evidence of the thief is admissible against the alleged receiver of stolen goods.

R. vs. Hassam (1786), 2 Leach C.C. 467.

But where there is no corroborative evidence the Judge will direct the jury to find the accused not guilty.

R. vs. Robinson (1864), 4 F. & F. 43.

And the mere fact that the goods in question were found on the prisoner's premises does not so far confirm the evidence of the thief as to make it proper to convict the accused.

R. vs. Pratt (1865), 4 F. & F. 315.

And the conviction of the thief while he is in custody is only evidence against the alleged receiver if it has been made in his presence.

R. vs. Cox (1858), 1 F. & F. 90.

Where an accused person had been found in the recent possession of some stolen sheep of which he could give no satisfactory account, and it might reasonably be inferred from the circumstances that he did not steal them himself, it was held that there was evidence from which the jury could infer that he received them knowing them to have been stolen.

R. vs. Langmead (1864), 9 Cox C.C. 464.

It is a presumption of fact, and not an implication of law, from the evidence of recent possession of stolen property unaccounted for, whether the offence of stealing or receiving has been committed.

R. vs. Langmead, supra.

See also R. vs. Wiley (1850), 20 L.J., (M.C.) 4.

R. vs. Reardon (1866), 35 L.J., (M.C.) 171.

315. Receiving Stolen Post Letter or Post Letter Bag.—Every one is guilty of an indictable offence and liable to five years' imprisonment who receives or retains in his possession, any post letter, post letter bag, or any chattel, money or valuable security, parcel or other thing, the stealing whereof is hereby declared to be an indictable offence, knowing the same to have been stolen. R.S.C., c. 35, s. 84.

Regarding the meaning of the terms "post-letter" and "post-letter bag," see section 4, and the "Post-Office Act," as amended by 1 Ed. VII. c. 19.

By virtue of sec. 624, in the case of any indictment for any offence specified in this section, the property in the thing in re-

spect of which the prosecution is taken may, in the indictment, be laid in the Postmaster General.

Sections 321 to 328 inclusive define the punishments for offences under this section.

See sections 627 and sections 715 to 717 inclusive.

401. **316. Receiving Property Obtained by Offence Punishable on Summary Conviction.**—Every one who receives or retains in his possession anything, knowing the same to be unlawfully obtained, the stealing of which is punishable, on summary conviction, either for every offence, or for the first and second offence only, is guilty of an offence and liable, on summary conviction, for every first, second or subsequent offence of receiving, to the same punishment as if he were guilty of a first, second or subsequent offence of stealing the same. R.S.C., c. 164, s. 84.

402. **317. When Receiving is Complete.**—The act of receiving anything unlawfully obtained is complete as soon as the offender has, either exclusively or jointly with the thief or any other person, possession of or control over such thing, or aids in concealing or disposing of it.

To constitute the offence of receiving stolen goods the stolen goods must have been taken and stolen by a person other than the person accused of the receiving.

R. vs. Lamoreaux (1900), 4 Can. C.C. 161.

403. **318. Receiving after Restoration to Owner.**—When the thing unlawfully obtained has been restored to the owner, or when a legal title to the thing so obtained has been acquired by any person, a subsequent receiving thereof shall not be an offence although the receiver may know that the thing had previously been dishonestly obtained.

R. vs. Villensky L.R. (1892), 2 Q.B.D. 597.

See sections 836 to 838 inclusive regarding the various ways in which a sufferer by theft may be compensated for the loss which he has sustained.

PART XXVI:

PUNISHMENT OF THEFT AND OFFENCES RESEMBLING THEFT COMMITTED BY PARTICULAR PERSONS IN RESPECT OF PARTICULAR THINGS IN PARTICULAR PLACES.

319. Clerks and servants.
320. Agents and attorneys.
321. Public servants refusing to deliver up chattels, moneys, or books, etc., lawfully demanded of them.
322. Tenants and lodgers.
323. Testamentary instruments.
324. Document of title to lands.
325. Judicial or official documents.
326. Stealing post letter bags, etc.
327. Stealing post letters, packets and keys.
328. Stealing mailable matter other than post letters.
329. Election documents.
330. Railway tickets.
331. Cattle.
331a. Fraudulently taking cattle found astray, etc.
332. Dogs, birds, beasts and other animals.
333. Pigeons.
334. Oysters.
335. Things fixed to buildings or in land.
336. Trees in pleasure grounds, etc., of five dollars value; trees elsewhere of twenty-five dollars value.
337. Trees of the value of twenty-five cents.
338. Timber found adrift.
339. Fences, stiles and gates.
340. Failing to satisfy justice that possession of tree, etc., is lawful.
341. Roots, plants, etc., growing in gardens, etc.
342. Roots, plants, etc., growing elsewhere than in gardens, etc.
343. Ores of metals.
344. Stealing from the person.
345. Stealing in dwelling-houses.
346. Stealing by picklocks, etc.
347. Stealing in manufactories, etc.
348. Fraudulently disposing of goods intrusted for manufacture.
349. Stealing from ships, wharfs, etc.
350. Stealing wreck.
351. Stealing on railways.
352. Stealing things deposited in Indian graves.
353. Destroying, etc., documents.
354. Concealing.
355. Bringing stolen property into Canada.
356. Stealing things not otherwise provided for.
357. Additional punishment when value of property exceeds two hundred dollars.

(b.) being together with any other person or persons robs, or assaults with intent to rob, any person; or

(c.) being armed with an offensive weapon or instrument robs, or assaults with intent to rob, any person. R.S.C.; c. 164, s. 34.

399. Punishment of Robbery.—Every one who commits robbery is guilty of an indictable offence and liable to fourteen years' imprisonment. R.S.C., c. 164, s. 32.

400. Assault with Intent to Rob.—Every one who assaults any person with intent to rob him is guilty of an indictable offence and liable to three years' imprisonment. R.S.C., c. 164, s. 33.

Robbery is the offence of stealing from the person with violence or threats of violence; and it is this accompaniment of violence which distinguishes the offence of robbery from that of stealing from the person.

If the accused has not completed the offence, he may be convicted either of an attempt to commit robbery under sec. 711, or of the offence of assaulting with intent to rob, or that of stealing from the person, or (by virtue of section 713), of any other offence which is included in that of robbery.

Where the accused had threatened to bring a mob from Birmingham (then in a state of riot), and burn the prosecutor's house if he did not give them money, and the latter did so under fear of this threat, it was held that they had committed robbery.

R. vs. Astley (1792), 2 East P.C. 729.

R. vs. Brown (1780), 2 East P.C. 731.

Suddenly snatching a bundle from the hands of a boy, as the accused ran past him, is only theft, there not being a sufficient degree of violence to constitute robbery.

R. vs. Macauley (1783), 1 Leach, C.C. 287.

R. vs. Steward (1690), 2 East P.C. 702.

But snatching an article from a person will constitute robbery if the thing in question is so attached to his person or clothes as to afford resistance.

R. vs. Mason (1820), R. & R. 419.

To snatch a diamond from the head-dress of a lady with such force as to remove it with part of the hair from the place in which it was fixed, is sufficient violence to constitute an offence under this section.

R. vs. Moore (1783), 1 Leach C.C. 290.

In order to constitute the offence of robbery, the article need not actually be taken from the owner's person; it is sufficient if through violence or threats thereof it is taken in his presence.

R. vs. Francis (1735), 2 Str. 1015.

Highway robbery is robbery committed in an open street, road or square, and force must be used with intent to overpower the person and prevent his resistance.

R. vs. Gnosil (1824), 1 Car. & P. 504.

And snatching property from the hand of another is not sufficient force to constitute highway robbery.
R. vs. Baker (1783), 1 Leach C.C. 324.
The threat of violence referred to in the section is one which is made either before or at the time the thing in question is taken. Where a thief stole a purse, and the loss being only discovered after the commission of the act, the thief then threatened to do violence to the person from whom it was taken, it was held that the offence was that of theft only, since the threat had been made after the taking of the purse.
Harman's Case, 1 Ha'e 534.

449. **401. Stopping the Mail.**—Every one is guilty of an indictable offence and liable to imprisonment for life, or for any term not less than five years, who stops a mail with intent to rob or search the same. R.S.C., c. 35, s. 81.

Section 4 defines the meaning of the word "mail."
By virtue of sec. 624, the property in any mailable matter may be laid in the Postmaster-General.
Regarding the offences of receiving stolen post letters, stealing post-letter bags, post letters, etc., see secs. 315, 326, 327 and 328.

450. **402. Compelling Execution of Documents by Force.**—Every one is guilty of an indictable offence and liable to imprisonment for life who, with intent to defraud, or injure, by unlawful violence to, or restraint of the person of another, or by the threat that either the offender or any other person will employ such violence or restraint, unlawfully compels any person to execute, make, accept, endorse, alter or destroy the whole or any part of any valuable security, or to write, impress or affix any name or seal upon any paper or parchment, in order that it may be afterwards made or converted into or used or dealt with as a valuable security. R.S.C., c. 173, s. 5.

See R. vs. John (1875), 13 Cox C.C. 100.

451. **403. Sending Letter Demanding Property with Menaces.**—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who sends, delivers or utters, or directly or indirectly causes to be received, knowing the contents thereof, any letter or writing demanding of any person with menaces, and without any reasonable or probable cause, any property, chattel, money, valuable security, or other valuable thing. R.S.C., c. 173, s. 1.

Sec. 3, s.s. (aa) and s.s. (ee) define, respectively, the terms "valuable security" and "writing."

Whether or not there was reasonable or probable cause is a question of fact, and the onus is on the prosecution to prove the want of it.

R. vs. Collins (1896), 1 Can. C.C. 48.

R. vs. Miard (1844), 1 Cox C.C. 22.

It is want of reasonable and probable cause for the demand, and not for the accusation, which is meant by this section; it is, therefore, immaterial whether or not the threatened accusation is true.

R. vs. Gardner (1824), 1 C. & P. 479.

R. vs. Hamilton (1843), 1 C. & K. 212.

If a person has placed the letter in a place where he knew that the person who he wishes to receive it would come, or where it has been picked up by another person and then given to the former, he is guilty of sending the letter or causing it to be received under this section. Thus, where a person dropped the letter in a vestry which was frequented by the prosecutor every Sunday morning, and was there picked up by the sexton and given to him, it was held that there had been a sufficient sending of the letter.

R. vs. Lloyd (1767), 2 East P.C. 1122.

R. vs. Wagstaff (1819), R. & R. 398.

Or it is sufficient to prove that the letter is in the handwriting of the accused, and that it came to the prosecution, in the ordinary course, through the post.

R. vs. Jepson (1798), 2 East P.C. 1115.

R. vs. Hemming (1799), 2 East P.C. 1115.

404. Demanding with Intent to Steal.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, with menaces, demands from any person, either for himself or for any other person, anything capable of being stolen with intent to steal it.

A demand of money from a hotelkeeper, under threat of prosecution for selling liquor in hours prohibited by liquor license statute if the demand be not complied with, may constitute an offence under this section. Such a threat of prosecution made to a licensee, who, to the knowledge of the prisoner, had been previously convicted of an offence under a Liquor License Act, and who was, therefore, liable to a cancellation of his license as well as to heavy penalties, is such a threat as is calculated to do him harm, and as would be likely to affect any man in a sound state of mind, and any such threat is an illegal menace.

R. vs. Gibbons (1898), 1 Can. C.C. 340.

For the purpose of proving the "intent to steal," it is sufficient if an inference of such an intent is deducible from the acts and conduct of the accused, as shown by the evidence; and a question whether there was such intent is one entirely for the jury, and cannot be determined as a question of law by the Judge. And where the trial has taken place by consent without a jury, the finding of the trial Judge of such intent should not be interfered with, unless there is no evidence thereof which could properly have been submitted to a jury.

R. vs. Gibbons, supra.

To demand and obtain possession of goods from a debtor, for the purpose of holding them as security for a debt actually owing, is not a demand with menaces made with "intent to steal," although such possession is obtained by means of an unjustifiable threat of the debtor's arrest made by the creditor's agent without any honest belief that the debtor was liable to arrest.

R. vs. Lyon (1898), 2 Can. C.C. 242.

453. **405. Extortion by certain Threats.**—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who, with intent to extort or gain anything from any person—

(a.) accuses or threatens to accuse either that person or any other person, whether the person accused or threatened with accusation is guilty or not, of

(i.) any offence punishable by law with death or imprisonment for seven years or more;

(ii.) any assault with intent to commit a rape, or any attempt or endeavour to commit a rape, or any indecent assault;

(iii.) carnally knowing or attempting to know any child so as to be punishable under this Act;

(iv.) any infamous offence, that is to say, buggery, an attempt or assault with intent to commit buggery, or any unnatural practice, or incest;

(v.) counselling or procuring any person to commit any such infamous offence; or

(b.) threatens that any person shall be so accused by any other person; or

(c.) causes any person to receive a document containing such accusation or threat, knowing the contents thereof;

(d.) by any of the means aforesaid compels or attempts to compel any person to execute, make, accept, endorse, alter or destroy the whole or any part of any valuable security, or to write, impress or affix any name or seal upon or to any paper or parchment, in order that it may be afterwards made or converted into or used or dealt with as a valuable security. R.S.C., c. 173, ss. 3, 4, 1 and 5.

The fact that the person accused, or threatened to be accused, was in reality guilty of the offence so charged, would be no justification if the intent of the threat or accusation was to extort or gain anything.

R. vs. Cracknell (1866), 10 Cox C.C. 408.

But the guilt or innocence of the person so accused or threatened may be material evidence as to the true motive for the threat or accusation.

R. vs. Richards (1838), 11 Cox C.C. 43.

A person who lays an information against another for rape, with the intent of thereby extorting money or other property from the person against whom the charge is made, thereby "accuses" such person within the meaning of this section, and is guilty of an indictable offence.

R. vs. Kempel (1900), 3 Can. C.C. 481.

A menace such as will operate upon and alarm the mind of a firm man is within this section.

R. vs. McDonald et al. (1892), 13 C.L.T. 17.

It is for the jury and not for the Court to determine whether or not a letter is a threatening one within the meaning of the section, and this point should not be withdrawn from their consideration unless the letter is such, that it could not by any possible construction, be held to contain a threat.

R. vs. Carruthers (1844), 1 Cox C.C. 138.

See also R. vs. Miard (1844), 1 Cox C.C. 22.

R. vs. Chalmers (1867), 10 Cox C.C. 450.

The intent of the accused in making a threat may be inferred from his conduct even against his declaration at the time.

R. vs. Menage (1862), 3 F. & F. 310.

454. **406. Extortion by other Threats.**—Every one is guilty of an indictable offence, and liable to imprisonment for seven years; who—

(a.) with intent to extort or gain anything from any person accuses or threatens to accuse either that person or any other person of any offence other than those specified in the last section, whether the person accused or threatened with accusation is guilty or not of that offence; or

(b.) with such intent as aforesaid, threatens that any person shall be so accused by any person; or

(c.) causes any person to receive a document containing such accusation or threat knowing the contents thereof; or

(d.) by any of the means aforesaid, compels or attempts to compel any person to execute, make, accept, endorse, alter or destroy the whole or any part of any valuable security, or to write, impress or affix any name or seal upon or to any paper or parchment, in order that it may be afterwards made or converted into, or used or dealt with as a valuable security.

The "offence" of which a person is accused or threatened to be accused with the intent to extort money from him may be an offence under a provincial law only.

R. vs. Dixon (1895), 2 Can. C.C. 58).

Where in a charge of sending a threatening letter to a person with intent to extort money, it is proved that the accused had stated that he had written a letter to such person, and that he had stated its purport in language to the like effect as the threatening letter, the Court may admit the threatening letter in evidence without further proof of handwriting, and may sub-

mit it to the jury for comparison with an exhibit, already in evidence, admittedly written by the accused.
R. vs. Dixon (1897), 3 Can. C.C. 220.
A jury may properly make a comparison of doubtful or disputed handwriting, and draw its own conclusion as to the authenticity of any document, if the admittedly genuine handwriting and the disputed handwriting are both in evidence for the same purpose, although no witness has been called in order to prove the handwriting to be the same in both.
R. vs. Dixon (1897), 3 Can. C.C. 220.
On an indictment for publishing certain matter with intent to extort money, it is not necessary that the matter in question should be libellous.
R. vs. Coghlan (1865), 4 F. & F. 316.
See also R. vs. Ogden (1863), L. & C. 288.
Regarding costs in actions under this section, see Macdonald vs. World Newspaper Co., of Toronto (1894), 16 Ont. P.R. 324.

PART XXX.

BURGLARY AND HOUSEBREAKING.

407. Definition of dwelling-house, etc.
408. Breaking place of worship and committing offence.
409. Breaking place of worship with intent to commit offence.
410. Burglary defined.
411. Housebreaking and committing an indictable offence.
412. Housebreaking with intent to commit an indictable offence.
413. Breaking shop and committing an indictable offence.
414. Breaking shop with intent to commit an indictable offence.
415. Being found in dwelling-house by night.
416. Being found armed with intent to break a dwelling-house.
417. Being disguised or in possession of housebreaking instruments.
418. Punishment after previous conviction.

335, 339, 340. **407. Definition of Dwelling-house, etc.**—In this part the following words are used in the following senses:

(a.) "Dwelling-house" means a permanent building the whole or any part of which is kept by the owner or occupier for the residence therein of himself, his family or servants, or any of them, although it may at intervals be unoccupied;

(i.) A building occupied with, and within the same curtilage with any dwelling house shall be deemed to be part of the said dwelling-house if there is between such

building and dwelling-house a communication, either immediate or by means of a covered and inclosed passage, leading from the one to the other, but not otherwise;

(b.) To "break" means to break any part, internal or external, of a building, or to open by any means whatever (including lifting, in the case of things kept in their places by their own weight, any door, window, shutter, cellar-flap or other thing intended to cover openings to the building, or to give passage from one part of it to another;

(i.) An entrance into a building is made as soon as any part of the body of the person making the entrance, or any part of any instrument used by him, is within the building;

(ii.) Every one who obtains entrance into any building by any threat or artifice used for that purpose, or by collusion with any person in the building, or who enters any chimney or other aperture of the building permanently left open for any necessary purpose shall be deemed to have broken and entered that building. R.S.C., c. 164, s. 2.

The word "curtilage" as used in par. 1 of s.s. (a) means a courtyard, enclosure, or piece of land near and belonging to a dwelling-house.

Pilbrow vs. St. Leonards (1895), L.R., 1 Q.B.D. 33 and 433.

408. Breaking Place of Worship and Committing Offence.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who breaks and enters any place of public worship and commits any indictable offence therein, or who, having committed any indictable offence therein, breaks out of such place. R.S.C., c. 164, s. 35.

409. Breaking Place of Worship with Intent to Commit Offence.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who breaks and enters any place of public worship with intent to commit any indictable offence therein. R.S.C., c. 164, s. 42.

As to what is a place of worship, see R. vs. Wheeler (1829), 3 C. & P. 585.

R. vs. Evans (1842), 1 Car. & M. 298.

410. Burglary Defined.—Every one is guilty of an indictable offence called burglary, and liable to imprisonment for life, who

(a.) breaks and enters a dwelling-house by night with intent to commit any indictable offence therein; or

(b.) breaks out of any dwelling-house by night, either after committing an indictable offence therein, or after having entered such dwelling-house, either by day or by night, with intent to commit an indictable offence therein. R.S.C., c. 164, s. 37.

2. Every one convicted of an offence under this section, who, when arrested, or when he committed such offence, had upon his person any offensive weapon, shall, in addition, to the imprisonment above prescribed, be liable to be whipped. 63-64 V., c. 46. (*This section came into force on 1st January*, 1901.)

According to sec. 3, s.s. (q), "the expression 'night' or 'night-time' means the interval between nine o'clock in the afternoon and six o'clock in the forenoon on the following day."

In order to constitute the offence of burglary there must be a breaking and an entry in the night, and the breaking must be such as will afford an opportunity of entering.

R. vs. Hughes (1785), 1 Leach C.C. 452.

But the breaking and the entry may be on different nights, provided that the breaking be done with intent to enter, and that the subsequent entrance be made with intent to commit an indictable offence. Thus, where the accused broke the glass of the door on Friday night, with intent to enter at some future time, and actually did enter on the next Sunday night, it was held that he had committed burglary.

R. vs. Smith (1820), R. & R. 417.

THE BREAKING AND ENTERING :—

Though a thief enters a house at night, through an open door or window, yet if, when within, he breaks or opens an inner door with intent to commit an indictable offence, he is guilty of burglary.

R. vs. Johnson (1786), 2 East P.C. 488.

Obtaining an entrance by means of a chimney is a breaking in of a dwelling-house

R. vs. Brice (1821), R. & R. 450.

But entering by a hole, made for the purpose of admitting light, is not a sufficient breaking and entering to constitute the crime.

R. vs. Spriggs (1834), 1 M. & Rob 357.

R. vs. Lewis (1827), 2 Car. & P. 628.

Lifting the flap of a cellar usually kept down by its own weight, is a sufficient breaking to constitute burglary.

R. vs. Russell (1781), 1 Moody's C.C. 377.

R. vs. Browne (1799), 2 East P.C. 487.

And the same rule applies to the raising of a window which is kept down by its own weight alone.

R. vs. Haines (1821), R. & R. 451.

R. vs. Hyams (1836), 8 Car. & P. 441.

If a person commits an indictable offence in a house, and breaks out of it in the night-time, he is guilty of burglary, although he may have been lawfully in the house.

R. vs. Wheeldon (1839), 8 C. & P. 747.

AS TO WHAT IS A DWELLING-HOUSE, see:—

R. vs. Thompson (1787), 2 Leach C.C. 498.
R. vs. Harris (1795), 2 Leach C.C. 808.
R. vs. Martin (1806), R. & R. 108.
R. vs. Flannagan (1810), R. & R. 187.

As to evidence from which it may be inferred whether or not the person who entered and broke in, did so with the intent to commit some indictable offence,

See R. vs. Knight (1781), 2 East P.C. 510.
R. vs. Dannelly (1816), R. & R. 310.
R. vs. Furnival (1821), R. & R. 445.

If on an indictment under this section it is not proved that the breaking and entering were in the night-time, the accused may be convicted under secs. 411 and 412 of housebreaking; or, if the breaking and entering be not proved, he may, under sec. 345, be convicted of stealing in a dwelling-house, provided that the value of the property stolen is at least $25.00, unless the accused has by threats put anyone in the house in bodily fear, in which case he may be convicted under section 345, irrespective of the value of the property stolen; or, if the offence of the person so indicted for burglary, is not provided for by sec. 345, he may be convicted of simple theft. See sec. 713, which deals with the divisibility of counts.

458. **411. Housebreaking and Committing an Indictable Offence.**—Every one is guilty of the indictable offence called house-breaking, and liable to fourteen years' imprisonment, who—

(a.) breaks and enters any dwelling-house by day and commits any indictable offence therein; or

(b.) breaks out of any dwelling-house by day after having committed any indictable offence therein. R.S.C., c. 164, s. 40.

459. **412. Housebreaking with Intent to Commit an Indictable Offence.**—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, by day, breaks and enters any dwelling-house with intent to commit any indictable offence therein. R.S.C., c. 164, s. 42.

A person indicted under this section may be convicted under sec. 345; or he may be convicted of simple theft; or, by virtue of sec. 711, he may be convicted of an attempt to commit the offence specified in the indictment.

460. **413. Breaking Shop and Committing an Indictable Offence.**—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who, either by day or night, breaks and enters and commits any indictable offence in a school-house, shop, warehouse or counting-house, or any building within the curtilage of a dwelling-house,

but not so connected therewith as to form part of it under the provisions hereinbefore contained. R.S.C., c. 164, s. 41.

See R. vs. Carter (1843), 1 C. & K. 173.

461 **414. Breaking Shop with Intent to Commit an Indictable Offence.**—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, either by day or night, breaks and enters any of the buildings mentioned in the last preceding section with intent to commit any indictable offence therein. R.S.C., c. 164, s. 42.

462 **415. Being found in Dwelling-house by Night.**—Every one is guilty of an indictable offence and liable to seven years' imprisonment who unlawfully enters, or is in, any dwelling-house by night with intent to commit any indictable offence therein. R.S.C., c. 164, s. 39.

463 **416. Being found Armed with Intent to Break a Dwelling-house.**—Every one is guilty of an indictable offence and liable to seven years' imprisonment who is found—

(a.) armed with any dangerous or offensive weapon or instrument by day, with intent to break or enter into any dwelling-house, and to commit any indictable offence therein; or

(b.) armed as aforesaid by night, with intent to break into any building and to commit any indictable offence therein. R.S.C., c. 164, s. 43.

Sec. 3, s.s. (r), defines the meaning of the term "offensive weapon."

464 **417. Being Disguised or in Possession of Housebreaking Instruments.**—Every one is guilty of an indictable offence and liable to five years' imprisonment who is found—

(a.) having in his possession by night, without lawful excuse (the proof of which shall lie upon him), any instrument of housebreaking; or

(b.) having in his possession by day any such instrument with intent to commit any indictable offence; or

(c.) having his face masked or blackened, or being otherwise disguised, by night, without lawful excuse (the proof whereof shall lie on him); or

(d.) having his face masked or blackened, or being otherwise disguised, by day with intent to commit any indictable offence. R.S.C., c. 164, s. 43.

Sec. 3, s.s. (k), defines the meaning of the term "having in possession."

418. Punishment after previous Conviction.—Every one who, after a previous conviction for any indictable offence, is convicted of an indictable offence specified in this part for which the punishment on a first conviction is less than fourteen years' imprisonment is liable to fourteen years' imprisonment. R.S.C., c. 164, s. 44.

Sections 628 and 676 relate respectively to the form of indictment and the procedure to be followed when a previous conviction is charged.

PART XXXI.

FORGERY.

419. Document defined.
420. "Bank note" and "exchequer bill" defined.
421. False document defined.
422. Forgery defined.
423. Punishment of forgery.
424. Uttering forged documents.
425. Counterfeiting seals.
426. Counterfeiting seals of courts, registry offices etc.
427. Unlawfully printing proclamation, etc.
428. Sending telegrams in false names.
429. Sending false telegrams.
430. Possessing forged bank notes.
431. Drawing document without authority.
432. Using probate obtained by forgery or perjury.

419. Document Defined.—A document means in this part any paper, parchment, or other material used for writing or printing, marked with matter capable of being read, but does not include trade marks on articles of commerce, or inscriptions on stone or metal or other like material.

420. "Bank Note" and "Exchequer Bill" Defined.—"Bank Note" includes all negotiable instruments issued by or on behalf of any person, body corporate, or company

carrying on the business of banking in any part of the world, or issued by the authority of the Parliament of Canada or of any foregin prince, or state, or government, or any governor or other authority lawfully authorized thereto in any of His Majesty's dominions, and intended to be used as equivalent to money, either immediately upon their issue or at some time subsequent thereto, and all bank bills and bank post bills;

(a.) "Exchequer bill" includes exchequer bonds, notes, debentures and other securities issued under the authority of the Parliament of Canada, or under the authority of any legislature of any province forming part of Canada, whether before or after such province so became a part of Canada.

335, 338. **421. False Document Defined.**—The expression "false document" means—

(a.) a document the whole or some material part of which purports to be made by or on behalf of any person who did not make or authorize the making thereof, or which, though made by, or by the authority of, the person who purports to make it is falsely dated as to time or place or making, where either is material: or

(b.) a document the whole or some material part of which purports to be made by or on behalf of some person who did not in fact exist; or

(c.) a document which is made in the name of an existing person, either by that person or by his authority, with the fraudulent intention that the document should pass as being made by some person, real or fictitious, other than the person who makes or authorizes it.

2. It is not necessary that the fraudulent intention should appear on the face of the document, but it may be proved by external evidence.

466.

In re Abud, 6 L.J. May 15/04 p. 348

422. Forgery Defined.—Forgery is the making of a false document, knowing it to be false, with the intention that it shall in any way be used or acted upon as genuine, to the prejudice of any one whether within Canada or not, or that some person should be induced, by the belief that it is genuine, to do or refrain from doing anything whether within Canada or not.

2. Making a false document includes altering a genuine document in any material part, and making any material addition to it or adding to it any false date, attestation,

seal or other thing which is material, or by making any material alteration in it, either by erasure, obliteration, removal or otherwise.

3. Forgery is complete as soon as the document is made with such knowledge and intent as aforesaid, though the offender may not have intended that any particular person should use or act upon it as genuine, or be induced, by the belief that it is genuine, to do or refrain from doing anything.

4. Forgery is complete, although the false document may be incomplete, or may not purport to be such a document as would be binding in law, if it be so made as, and is such as to indicate that it was intended, to be acted on as genuine.

The gist of the offence of forgery is here defined as the making of a false document, knowing it to be false, with the intent that it should be used or acted upon as genuine, to the prejudice of anyone. Whether it is thus actually used or acted upon as genuine, or whether it does in fact prejudice anyone is immaterial. It is the making of a document of that nature, with that intent, which is the offence aimed at.

A person may be guilty of forgery although the note in question was found in his possession when he was arrested, and was never in fact uttered by him.
R. vs. Crocker (1805), 2 Leach C.C. 987.

A person making a false deed in his own name may be guilty of forgery.
R. vs. Ritson (1869), L.R., 1C.C.R. 200.

If a person whose name is the same as that of the payee of a cheque, receives it by mistake, and, knowing that he is not the real payee, endorses it for the purpose of obtaining possession of the money, he is guilty of forgery.
Mead vs. Young (1790), 4 D. & E. 28.

The fraudulent alteration of the material part of a deed is forgery.
R. vs. Elsworth (1780), 2 East P.C. 986.

Altering the date of a bill of exchange after acceptance, and for the purpose of accelerating the time when its payment is due, is forgery.
Master vs Miller (1792), 1 Anstr. 225.

And changing the date upon which a bill is payable in such a manner as to give an extension of time, is likewise forgery.
R. vs. Atkinson (1837), 7 C. & P. 669.

The indorsement of a fictitious name on a bill of exchange for the purpose of giving it currency is forgery.
R. vs. Wilks (1767), 2 East P.C. 957.
R. vs. Backler (1831), 5 C. & P. 118.
R. vs. King (1832), 5 C. & P. 123.

The fact that the instrument in question is so imperfect that it would have no legal effect if it were genuine will not alter the liability of a person accused of having, within the meaning of the Code, forged the same.
R. vs. Lyon (1818), R. & R. 255.
R. vs. McIntosh (1800), 2 East P.C. 942.

A railway station-master was entrusted with the duty of paying another employee who collected and delivered parcels. The railway company supplied the station-master with forms on which to enter the amounts due to the other employees, for delivering and for collecting respectively. The station-master falsely told a certain employee that the company would no longer pay him for delivering; he afterwards, however, charged the company both for collecting and delivering, obtained from the employee's servant the receipt for the amount really paid him, and then, without his knowledge, added a receipt stamp under his name, and inserted in figures a larger sum than he had actually paid. It was held that he was guilty of forgery.

R. vs. Griffiths (1858), 4 U.C.L.J. 240.

The accused made a promissory note, payable two months after date to the order of J. S. This note was endorsed by J. S., and the accused then altered it by making it payable three months after date, and subsequently had it discounted at the bank. The accused was convicted, and counsel then moved for a new trial, alleging that if there was any forgery or uttering, it was that of a forged indorsement, as the note had been made by the accused himself, and that there was no evidence of any intent to defraud. Held, that the altering of the note by the accused, while it was in his possession, and after endorsement, was a forgery of a note, and of an endorsement, and that the fact that the accused had then given this note to a third party, who was thereby defrauded, was sufficient evidence of an intent to defraud.

R. vs. Craig (1857), 7 U.C.C.P. 239.

See also R. vs. McNevin (1867), 2 Revue Legale, 711.

A person who, having an order for delivery of wheat for the support of poor persons, is guilty of forgery if, with intent to defraud, he materially alters the order so as to increase the quantity of wheat which may be obtained thereunder.

R. vs. Campbell (1859), 18 U.C.Q.B. 416.

A person who, having a power of attorney from another, fraudulently conceals that fact, and, assuming to be the principal, executes a deed in the name of and as representing another person, with intent to defraud, commits forgery.

R. vs. Gould (1869), 20 U.C.C.P. 159.

Where a fraudulent conspiracy is entered into between two persons, in pursuance of which one of them opens an account in a bank in a fictitious name, and gives to the other a cheque drawn in a fictitious name, for which the latter knows there are no funds, and in furtherance of the conspiracy the same is negotiated by the payee, by obtaining another bank, which thinks it is genuine, to cash it, the cheque is a "false document" both under sec. 421 and at common law.

Re Murphy (1894), 2 Can. C.C. 562.

When documents filed as exhibits in a civil suit form the subject matter of indictment for forgery and uttering, they may be impounded upon the application of the Attorney-General acting for the King.

Couture vs. Fortier (1895), R.J.Q., 7 S.C. 197.

A witness who testifies that the forged signatures were written by the accused, is not corroborated in a "material particular by evidence implicating the accused," by proof that certain other signatures were in the same handwriting, when the only evidence showing that the latter's signatures were written by the accused was the testimony of the same witness who had testified to the handwriting of the signatures first examined.

R. vs McBride (1895), 2 Can. C.C. 544.
See also R. vs. Giles (1856), 6 U.C.C.P. 84.

When a document is alleged to have been forged, it must be proved that the handwriting was intended to represent that of some person whose it is proved not to be, or that it was intended as the handwriting of a person who never existed.
R. vs. Sponsonby (1784), 2 East P.C. 996.
R. vs. Downes (1789), 2 East P.C. 996 and 997.

And the evidence of a person who is expert in the detection of forgeries is admissible to prove that the writing is in a feigned hand, although he never saw the person write.
R. vs. Backler (1831), 5 C. & P. 118.
Goodtitle vs. Braham (1792), 4 D. & E. 497.
See also R. vs. Hawkes (1838), 2 Moody's C.C. 60.
R. vs. Curry (1841), 2 Moody's C.C. 218.
R. vs. Howie (1869), 11 Cox C.C. 220.
R. vs. Fitchie (1857), 26 L.J.M.C. 90.
R. vs. Jones (1785), 1 Leach 405.
R. vs. Thomas (1837), 7 C. & P. 851.
R. vs. Fitch, R. vs. Howley (1862), L. & C. 159.
R. vs. Atkinson (1841), 2 Moody's C.C. 215.

Expert Handwriting 7 C.C.C. 505.

423. Punishment of Forgery.—Every one who commits forgery of the documents hereinafter mentioned is guilty of an indictable offence and liable to the following punishment;—

(A.) To imprisonment for life if the document forged purports to be, or was intended by the offender to be understood to be or to be used as—

(a.) any document having impressed thereon or affixed thereto any public seal of the United Kingdom or any part thereof, or of Canada or any part thereof, or of any dominion, possesion or colony of His Majesty. R.S.C., c. 165, s. 4; or

(b.) any document bearing the signature of the Governor General, or of any administrator, or of any deputy of the Governor, or of any Lieutenant-Governor or any one at any time administering the government of any province of Canada; R.S.C., c. 165, s. 5; or

(c.) any document containing evidence of, or forming the title or any part of the title to, any land or hereditament, or to any interest in or to any charge upon any land or hereditament, or evidence of the creation, transfer or extinction of any such interest or charge; or

(d.) any entry in any register or book, or any memorial or other document made, issued, kept or lodged under any Act for or relating to the registering of deeds or other instruments respecting or concerning the title to or any claim upon any land or the recording or declaring of titles to land; R.S.C., c. 165, s. 38; or

(e.) any document required for the purpose of procuring the registering of any such deed or instrument or the recording or declaring of any such title. R.S.C., c. 165, s. 38; or

(f.) any document which is made, under any Act, evidence of the registering or recording or declaring of any such deed, instrument or title; R.S.C., c. 165, s. 38; or

(g.) any document which is made by any Act evidence affecting the title to land; or

(h.) any notarial act or document or authenticated copy, or any *proces-verbal* of a surveyor or authenticated copy thereof; R.S.C., c. 165, s. 38; or

(i.) any register of births, baptisms, marriages, deaths or burials authorized or required by law to be kept, or any certified copy of any entry in or extract from any such register; R.S.C., c. 165, s. 43; or

(j.) any copy of any such register required by law to be transmitted by or to any registrar or other officer; R.S.C., c. 165, s. 44; or

(k.) any will, codicil or other testamentary document, either of a dead or living person, or any probate or letters of administration, whether with or without the will annexed; R.S.C., c. 165, s. 27; or

(l.) any transfer or assignment of any share or interest in any stock, annuity or public fund of the United Kingdom or any part thereof, or of Canada or any part thereof, or of any dominion, possesion or colony of His Majesty, or of any foreign state or country, or receipt or certificate for interest accruing thereon; R.S.C., c. 165, ss. 8 and 25; or

(m.) any transfer or assignment of any share or interest in the debt of any public body, company or society, British, Canadian or foreign, or of any share or interest in the capital stock of any such company or society, or receipt or certificate for interest accruing thereon; R.S.C., c. 165, s. 8; or

(n.) any transfer or assignment of any share or interest in any claim to a grant of land from the Crown, or to any scrip or other payment or allowance in lieu of any such grant of land; R.S.C., c. 165, s. 8; or

(o.) any power of attorney or other authority to transfer any interest or share hereinbefore mentioned, or to receive any dividend or money payable in respect of any such share or interest; R.S.C., c. 165, s. 8; or

(p.) any entry in any book or register, or any certificate,

coupon, share, warrant or other document which by any law or any recognized practice is evidence of the title of any person to any such stock, interest or share, or to any dividend or interest payable in respect thereof; R.S.C., c. 165, s. 11; or

(q.) any exchequer bill or endorsement thereof, or receipt or certificate for interest accruing thereon; R.S.C., c. 165, s. 13; or

(r.) any bank note or bill of exchange, promissory note or cheque, or any acceptance, endorsement or assignment thereof; R.S.C., c. 165, ss. 18, 25 and 28; or

(s.) any scrip in lieu of land; R.S.C., c. 165, s. 13; or

(t.) any document which is evidence of title to any portion of the debt of any dominion, colony, or possesion of His Majesty, or of any foreign state, or any transfer or assignment thereof; or

(u.) any deed, bond, debenture, or writing obligatory, or any warrant, order, or other security for money or payment of money, whether negotiable or not, or endorsement or assignment thereof; R.S.C., c. 165, ss. 26 and 32; or

(v.) any accountable receipt or acknowledgment of the deposit, receipt, or delivery of money or goods, or endorsement or assignment thereof; R.S.C., c. 165, s. 29; or

(w.) any bill of lading, charter-party, policy of insurance, or any shipping document accompanying a bill of lading, or any endorsement or assignment thereof; or

(x.) any warehouse receipt, dock warrant, dock-keeper's certificate, delivery order, or warrant for the delivery of goods, or of any valuable thing, or any endorsement or assignment thereof; or

(y.) any other document used in the ordinary course of business as proof of the possession or control of goods, or as authorizing, either on endorsement or delivery, the possessor of such document to transfer or receive any goods.

(B.) To fourteen years' imprisonment if the document forged purports to be, or was intended by the offender to be understood to be, or to be used as—

(a.) any entry or document made, issued, kept or lodged under any Act for or relating to the registry of any instrument respecting or concerning the title to, or any claim upon, any personal property; R.S.C., c. 165, s. 38.

(b.) any public register or book not hereinbefore mentioned appointed by law to be made or kept, or any entry therein. R.S.C., c. 165, s. 7.

(C.) To seven years' imprisonment if the document forged purports to be, or was intended by the offender to be understood to be, or to be used as—

(a.) any record of any court of justice, or any document whatever belonging to or issuing from any court of justice, or being or forming part of any proceeding therein; or

(b.) any certificate, office copy, or certified copy or other document which, by any statute in force for the time being, is admissible in evidence; or

(c.) any document made or issued by any judge, officer or clerk of any court of justice, or any document upon which, by the law or usage at the time in force, any court of justice or any officer might act; or

(d.) any document which any magistrate is authorized or required by law to make or issue; or

(e.) any entry in any register or book kept, under the provisions of any law, in or under the authority of any court of justice or magistrate acting as such; or

(f.) any copy of any letters patent, or of the enrolment or enregistration of letters patent, or of any certificates thereof; R.S.C., c. 165, s. 6; or

(g.) any license or certificate for or of marriage; R.S.C., c. 165, s. 42; or

(h.) any contract or document which, either by itself or with others amounts to a contract, or is evidence of a contract; or

(i.) any power or letter of attorney or mandate; or

(j.) any authority or request for the payment of money, or for the delivery of goods, or of any note, bill, or valuable security; R.S.C., c. 165, s. 29; or

(k.) any acquittance or discharge, or any voucher of having received any goods, money, note, bill or valuable security, or any instrument which is evidence of any such receipt; R.S.C., c. 165, s. 29; or

(l.) any document to be given in evidence as a genuine document in any judicial proceeding; or

(m.) any ticket or order for a free or paid passage on any carriage, tramway or railway, or on any steam or other vessel; R.S.C., c. 165, s. 33; or

(n.) any document other than those above mentioned R.S.C., c. 165, s. 76.

By virtue of sec. 684, a person convicted of the offence of forgery upon the evidence of one witness unless such witness is corroborated in some material particular by evidence implicating the accused.

424. Uttering Forged Documents.—Every one is guilty of an indictable offence who, knowing a document to be forged, uses, deals with, or acts upon it, or attempts to use, deal with, or act upon it, or causes or attempts to cause any person to use, deal with, or act upon it, as if it were genuine, and is liable to the same punishment as if he had forged the document.

2. It is immaterial where the document was forged.

Upon an indictment under this section for passing a forged note, proof of the fact that the accused had uttered other forged notes would raise a presumption that he knew that the one in question was forged.

R. vs. Moore (1858), 1 F. & F. 73.
R. vs. Salt (1862), 3 F. & F. 834.
R. vs. Colclough (1882), 15 Cox C.C. 92.
R. vs. Foster (1855), 24 L.J.M.C. 134.

The mere showing of a forged receipt to a person with whom the accused is claiming credit for it, is an uttering, even though the accused refuses to part with possession of the receipt.

R. vs. Radford (1845), 1 Cox C.C. 168.

Delivering a box containing forged stamps to the accused's own servant, in order that he may carry them to an inn to be forwarded by a carrier to a customer, is an uttering.

R. vs. Collicott (1812), R. & R. 212.

See also Couture vs. Fortier (1895), R.J.Q., 7 S.C. 197.

425. Counterfeiting Seals.—Every one is guilty of an indictable offence and liable to imprisonment for life who unlawfully makes or counterfeits any public seal of the United Kingdom or any part thereof, or of Canada or any part thereof, or of any dominion, possesion or colony of His Majesty, or the impression of any such seal, or uses any such seal or impression, knowing the same to be so counterfeited. R.S.C., c. 165, s. 4.

426. Counterfeiting Seals of Courts, Registry Offices, etc.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who unlawfully makes or counterfeits any seal of a court of justice, or any seal of or belonging to any registry office or burial board, or the impression of any such seal, or uses any such seal or impression knowing the same to be counterfeited. R.S.C., c. 165, ss. 35, 38 and 43.

427. Unlawfully Printing Proclamation, etc.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who prints any proclamation, order, regulation or appointment, or notice thereof, and causes the

same falsely to purport to have beeen printed by the King's Printer for Canada, or the Government Printer for any province of Canada, as the case may be, or tenders in evidence any copy of any proclamation, order, regulation or appointment, which falsely purports to have been printed as aforesaid, knowing that the same was not so printed. R.S.C. c. 165, s. 37.

475 **428. Sending Telegrams in False Names.**—Every one is guilty of an indictable offence who, with intent to defraud, causes or procures any telegram to be sent or delivered as being sent by the authority of any person, knowing that it is not sent by such authority with intent that such telegram should be acted on as being sent by that person's authority, and is liable, upon conviction thereof, to the same punishment as if he had forged a document to the same effect as that of the telegram.

476 **429. Sending False Telegrams.**—Every one is guilty of an indictable offence and liable to two years' imprisonment who, with intent to injure or alarm any person, sends, causes, or procures to be sent any telegram or letter or other message containing matter which he knows to be false.

550 **430. Possessing Forged Bank Notes.**—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who, without lawful authority or excuse (the proof whereof shall lie on him), purchases or receives from any person, or has in his custody or possession, any forged bank note, or forged blank bank note, whether complete or not, knowing it to be forged. R.S.C., c. 165, s. 19.

Section 3, s.s. (k), defines the meaning of the term "having in possession."

477 **431. Drawing Document without Authority.**—Every one is guilty of an indictable offence who, with intent to defraud and without lawful authority or excuse, makes or executes, draws, signs, accepts or endorses, in the name or on the account of another person, by procuration or otherwise, any document, or makes use of or utters any such document knowing it to be so made, executed, signed, accepted or endorsed, and is liable to the same punishment as if he had forged such document. R.S.C., c. 165, s. 30.

Section 419 states the meaning which is to be assigned to the word "document" in this section.

An indictment may be laid under this section for unlawfully, and with intent to defraud, signing a promissory note made by procuration, although the name signed is the name of a testamentary succession or of an estate in liquidation; but if the indictment does not disclose the particulars, the Crown will be ordered to furnish particulars of the persons who represented such succession or estate at the time when the offence was alleged to have been committed; and the order will also direct that the defendants be not arraigned until such particulars have been delivered.

R. vs. Weir et al. (1899), 3 Can. C.C. 155.

When the offence of uttering a forged instrument is alleged, the indictment must aver that the accused made use of or uttered the instrument knowing it to have been forged.

R. vs. Weir (1901), 3 Can. C.C. 499.

A count of an indictment charging the defendants with having, with intent to defraud, unlawfully made use of and uttered a promissory note alleged to have ben made and signed by one of the defendants by procuration without lawful authority or excuse, and with intent to defraud, is defective if it does not also allege that the defendants knew it to have been so made and signed, and such a defect is one of substance and cannot be amended under section 629.

R. vs. Weir (1900), 3 Can C.C. 499.

478 **432. Using Probate obtained by Forgery or Perjury.**—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment, who—

(a.) demands, receives, obtains or causes, or procures to be delivered or paid to any person, anything under, upon, or by virtue of any forged instrument knowing the same to be forged, or under, upon, or by virtue of any probate or letters of administration, knowing the will, codicil, or testamentary writing on which such probate or letters of administration were obtained to be forged, or knowing the probate or letters of administration to have been obtained by any false oath, affirmation or affidavit; or

(b.) attempts to do any such thing as aforesaid. R.S.C., c. 165, s. 45.

PART XXXII.

PREPARATION FOR FORGERY AND OFFENCES RESEMBLING FORGERY.

433. Interpretation of terms.
434. Instruments of forgery.
435. Counterfeiting stamps.
436. Falsifying registers.
437. Falsifying extracts from registers.

438. Uttering certificates.
439. Forging certificates.
440. Making false entries in books relating to public funds.
441. Clerks issuing false dividend warrants.
442. Printing circulars, etc., in likeness of notes.

335 **433. Interpretation of Terms.**—In this part the following expressions are used in the following senses:

(a.) "Exchequer bill paper" means any paper provided by the proper authority for the purpose of being used as exchequer bills, exchequer bonds, notes, debentures, or other securities mentioned in section four hundred and twenty;

(b.) "Revenue paper" means any paper provided by the proper authority for the purpose of being used for stamps, licenses, or permits, or for any other purpose connected with the public revenue.

471 **434. Instruments of Forgery.**—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who, without lawful authority or excuse (the proof whereof shall lie on him)—

(a.) makes, begins to make, uses or knowingly has in his possession, any machinery or instrument or material for making exchequer bill paper, revenue paper or paper intended to resemble the bill paper of any firm or body corporate, or person carrying on the business of banking. R.S.C., c. 165, ss. 14, 16, 20 and 24; or

(b.) engraves or makes upon any plate or material anything purporting to be, or apparently intended to resemble, the whole or any part of any exchequer bill or bank note; R.S.C., c. 165, ss. 20, 22 and 24; or

(c.) uses any such plate or material for printing any part of any such exchequer bill or bank note; R.S.C., c. 165, ss. 22 and 23; or

(d.) knowingly has in his possession any such plate or material as aforesaid; R.S.C., c. 165, ss. 22 and 23; or

(e.) makes, uses or knowingly has in his possession any exchequer bill paper, revenue paper, or any paper intended to resemble any bill paper of any firm, body corporate, company, or person, carrying on the business of banking, or any paper upon which is written or printed the whole or any part of any exchequer bill, or of any bank note; R.S.C., c. 165, ss. 15, 16, 20 and 24.

(f.) engraves or makes upon any plate or material any-

thing intended to resemble the whole or any distinguishing part of any bond or undertaking for the payment of money used by any dominion, colony or possession of His Majesty, or by any foreign prince or state, or by any body corporate or other body of the like nature, whether within His Majesty's dominions or without; R.S.C., c. 165, s. 25; or

(g.) uses any such plate or other material for printing the whole or any part of such bond or undertaking; R.S.C., c. 165, s. 25; or

(h.) knowingly offers, disposes of or has in his possession any paper upon which such bond or undertaking, or any part thereof, has been printed; R.S.C., c. 165, s. 25.

476. **435. Counterfeiting Stamps.**—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who—

(a.) fraudulently counterfeits any stamp, whether impressed or adhesive, used for the purposes of revenue by the Government of the United Kingdom or of Canada, or by the Government of any province of Canada, or of any possession or colony of His Majesty, or by any foreign prince or state; or

(b.) knowingly sells or exposes for sale, or utters or uses any such counterfeit stamp; or

(c.) without lawful excuse (the proof whereof shall lie on him) makes, or has knowingly in his possession, any die or instrument capable of making the impression of any such stamp as aforesaid, or any part thereof; or

(d.) fraudulently cuts, tears or in any way removes from any material any such stamp, with intent that any use should be made of such stamp or of any part thereof; or

(e.) fraudulently mutilates any such stamp with intent that any use would be made of any part of such stamp; or

(f.) fraudulently fixes or places upon any material, or upon any such stamp, as aforesaid, any stamp or part of a stamp which, whether fraudulently or not, has been cut, torn, or in any other way removed from any other material or out of or from any other stamp; or

(g.) fraudulently erases, or otherwise, either really or apparently, removes, from any stamped material any name, sum, date, or other matter or thing thereon written, with the intent that any use should be made of the stamp upon such material; or

(h.) knowingly and without lawful excuse (the proof whereof shall lie upon him) has in his possession any stamp or part of a stamp which has been fraudulently cut, torn, or otherwise removed from any material, or any stamp which has been fraudulently mutilated, or any stamped material out of which any name, sum, date, or other matter or thing has been fraudulently erased or otherwise, either really or apparently removed; R.S.C., c. 165, s. 17; or

(i.) without lawful authority makes or counterfeits any mark or brand used by the Government of the United Kingdom of Great Britain and Ireland, the Government of Canada, or the Government of any province of Canada, or by any department or officer of any such Government for any purpose in connection with the service or business of such Government, or the impression of any such mark or brand, or sells or exposes for sale or has in his possession any goods having thereon a counterfeit of any such mark or brand knowing the same to be a counterfeit, or affixes any such mark or brand to any goods required by law to be marked or branded other than those to which such mark or brand was originally affixed.

480. **436. Falsifying Registers.**—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment, who—

(a.) unlawfully destroys, defaces or injures any register of births, baptisms, marriages, deaths or burials required or authorized by law to be kept in Canada, or any part thereof, or any copy of such register, or any part thereof required by law to be transmitted to any registrar or other officer; or

(b.) unlawfully inserts in any such register, or any such copy thereof, any entry, known by him to be false, of any matter relating to any birth, baptism, marriage, death or burial, or erases from any such register or document any material part thereof. R.S.C., c. 165, ss. 43 and 44.

See R. vs. Bowen (1844), 1 Cox C.C. 88.
R. vs. Mason (1848), 2 C. & K. 622.
R. vs. Dewitt (1849), 2 C. & K. 905.
R. vs. Asplin (1873), 12 Cox C.C. 391.

481. **437. Falsifying Extracts from Registers.**—Every one is guilty of an indictable offence and liable to ten years' imprisonment, who—

(a.) being a person authorized or required by law to give any certified copy of any entry in any such register as in

the last preceding section mentioned, certifies any writing to be a true copy or extract, knowing it to be false, or knowingly utters any such certificate;

(b.) unlawfully and for any fraudulent purpose takes any such register or certified copy from its place of deposit or conceals it;

(c.) being a person having the custody of any such register or certified copy, permits it to be so taken or concealed as aforesaid. R.S.C., c. 165, s. 44.

482. **438. Uttering Certificates.**—Every one is guilty of an indictable offence and liable to seven years' imprisonment, who—

(a.) being by law required to certify that any entry has been made in any such register as in the two last preceding sections mentioned makes such certificate knowing that such entry has not been made; or

(b.) being by law required to make a certificate or declaration concerning any particular required for the purpose of making entries in such register knowingly makes such certificate or declaration containing a falsehood; or

(c.) being an officer having custody of the records of any court, or being the deputy of any such officer, wilfully utters a false copy or certificate of any record; or

(d.) not being such officer or deputy fraudulently signs or certifies any copy or certificate of any record, or any copy of any certificate, as if he were such officer or deputy. R.S.C., c. 165, ss. 35 and 43.

483. **439. Forging Certificates.**—Every one is guilty of an indictable offence and liable to two years' imprisonment, who—

(a.) being an officer required or authorized by law to make or issue any certified copy of any document or of any extract from any document wilfully certifies, as a true copy of any document or of any extract from any such document, any writing which he knows to be untrue in any material particular; or

(b.) not being such officer as aforesaid fraudulently signs or certifies any copy of any document, or of any extract from any document, as if he were such officer.

484. **440. Making False Entries in Books relating to Public Funds.**—Every one is guilty of an indictable of-

fence and liable to fourteen years' imprisonment who, with intent to defraud—

(a.) makes any untrue entry or any alteration in any book of account kept by the Government of Canada, or of any province of Canada, or by any bank for any such Government in which books are kept the accounts of the owners of any stock, annuity or other public fund transferable for the time being in any such books, or who, in any manner, wilfully falsifies any of the said books; or

(b.) makes any transfer of any share or interest of or in any stock, annuity or public fund, transferable for the time being at any of the said banks in the name of any person other than the owner of such share or interest. R.S.C., c. 165, s. 11.

441. Clerks Issuing False Dividend Warrants.— Every one is guilty of an indictable offence and liable to seven years' imprisonment who, being in the employment of the Government of Canada, or of any province of Canada, or of any bank in which any books of account mentioned in the last preceding section are kept, with intent to defraud, makes out or delivers any dividend warrant, or any warrant for the payment of any annuity, interest or money payable at any of the said banks, for an amount greater or less than that to which the person on whose account such warrant is made out is entitled. R.S.C., c. 165, s. 12.

442. Printing Circulars, etc., in likeness of Notes.— Every one is guilty of an offence and liable, on summary conviction before two justices of the peace, to a fine of one hundred dollars or three months' imprisonment, or both, who designs, engraves, prints or in any manner makes, executes, utters, issues, distributes, circulates or uses any business or professional card, notice, placard, circular, handbill or advertisement in the likeness or similitude of any bank note, or any obligation or security of any Government or any bank. 50-51 V., c. 47, s. 2; 53 V., c. 31, s. 3.

PART XXXIII.

FORGERY OF TRADE MARKS—FRAUDULENT MARKING OF MERCHANDISE.

443. Definitions.
444. Words or marks on watch cases.
445. Definition of forgery of a trade mark.
446. Applying trade marks to goods.
447. Forgery of trade marks, etc.
448. Selling goods falsely marked; defence.
449. Selling bottles marked with trade mark without consent of owner.
450. Punishment of offences defined in this part.
451. Falsely representing that goods are manufactured for His Majesty, etc.
452. Uulawful importation of goods liable to forfeiture under this part.
453. Defence where person charged innocently in the ordinary course of business makes instruments for forging trade marks.
454. Defence where offender is a servant.
455. Exception respecting trade description lawfully applied to goods on 22nd May, 1888, etc.

443. Definitions.—In this part—

(a.) the expression "trade mark" means a trade mark or industrial design registered in accordance with *The Trade Mark and Design Act* and the registration whereof is in force under the provisions of the said Act, and includes any trade mark which, either with or without registration, is protected by law in any British possession or foreign state to which the provisions of section one hundred and three of the Act of the United Kingdom, known as *The Patents, Designs, and Trade Marks Act*, 1883, are, in accordance with the provisions of the said Act, for the time being applicable;

(b.) the expression "trade description" means any description, statement, or other indication, direct or indirect—

(i.) as to the number, quantity, measure, gauge or weight of any goods;

(ii.) as to the place or country in which any goods are made or produced;

(iii.) as to the mode of manufacturing or producing any goods;

(iv.) as to the material of which any goods are composed;

(v.) as to any goods being the subject of an existing patent, privilege or copyright;

And the use of any figure, word, or mark which, according to the custom of the trade, is commonly taken to be an indication of any of the above matters, is a trade description within the meaning of this part;

(c.) the expression "false trade description" means a trade description which is false in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement, or otherwise, where that alteration makes the description false in a material respect; and the fact that a trade description is a trade mark, or part of a trade mark, shall not prevent such trade description being a false trade description within the meaning of this part; ,

(d.) the expression "goods" means anything which is merchandise or the subject of trade or manufacture;

(e.) the expression "covering" includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame or wrapper; and the expression "label" includes any band or ticket;

(f.) the expressions "person, manufacturer, dealer, or trader," and "proprietor" include any body of persons corporate or unincorporate;

(g.) the expression "name" includes any abbreviation of a name.

2. The provisions of this part respecting the application of a false trade description to goods extend to the application to goods of any such figures, words or marks, or arrangement or combination thereof, whether including a trade mark or not, as are reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are.

3. The provisions of this part respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, extend to the application to goods of any false name or initials of a person and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description, and the expression "false name or initials" means, as applied to any goods, any name or initials of a person which—

(a.) are not a trade mark, or part of a trade mark;

(b.) are identical with, or a colourable imitation of, the

name or initials of a person carrying on business in connection with goods of the same description, and not having authorized the use of such name or initials;

(c.) are either those of a fictitious person or of some person not *bona fide* carrying on business in connection with such goods. 51 V., c. 41, s. 2.

Section 551, s.s. (a), par. 3, provides that no prosecution for any offence under this part of the Code shall be commenced after the expiration of three years from the date of the alleged commission of the offence.

Section 710 provides that "In any prosecution, proceeding or trial for any offence under Part XXXIII, relating to fraudulent marks on merchandise, if the offence relates to imported goods evidence of the port of shipment shall be *prima facie* evidence of the place or country in which the goods were made or produced."

444. Words or Marks on Watch Cases.—Where a watch case has thereon any words or marks which constitute, or are by common repute considered as constituting, a description of the country in which the watch was made, and the watch bears no such description, those words or marks shall *prima facie* be deemed to be a description of that country within the meaning of this part, and the provision of this part with respect to goods to which a false description has been applied, and with respect to selling or exposing, or having in possesion for sale, or any purpose of trade or manufacture, goods with a false trade description, shall apply accordingly; and for the purposes of this section the expression "watch" means all that portion of a watch which is not the watch case. 51 V., c. 41, s. 11.

445. Definition of Forgery of a Trade Mark.—Every one is deemed to forge a trade mark who either—

(a.) without the assent of the proprietor of the trade mark makes that trade mark or a mark so nearly resembling it as to be calculated to deceive; or

(b.) falsifies any genuine trade mark, whether by alteration, addition, effacement or otherwise.

2. And any trade mark or mark so made or falsified is, in this part, referred to as a forged trade mark. 51 V., c. 41, s. 3.

446. Applying Trade Marks to Goods.—Every one is deemed to apply a trade mark, or mark, or trade description to goods who—

(a.) applies it to the goods themselves; or

(b.) apples it to any covering, label, reel, or other thing in or with which the goods are sold or exposed or had in possession for any purpose of sale, trade or manufacture; or

(c.) places, incloses or anexes any goods which are sold or exposed or had in possession for any purpose of sale, trade or manufacture in, with or to any covering, label, reel, or other thing to which a trade mark or trade description has been applied; or

(d.) uses a trade mark or mark or trade description in any manner calculated to lead to the belief that the goods in connection with which it is used are designated or described by that trade mark or mark or trade description.

2. A trade mark or mark or trade description is deemed to be applied whether it is woven, impressed or otherwise worked into, or annexed or affixed to the goods, or to any covering, label, reel or other thing.

3. Every one is deemed to falsely apply to goods a trade mark or mark who, without the assent of the proprietor of the trade mark, applies such trade mark, or a mark so nearly resembling it as to be calculated to deceive. 51 V., c. 41, s. 4.

The use of the words "quadruple plate" in an advertisement of sale of silver-plated ware, may constitute a false trade description under this section. And it is not necessary, under this section, that a false trade description should be physically connected with the goods or that it should accompany the same and oral evidence is admissible to connect the description of the goods in the advertisement with the goods afterwards sold.
R. vs. The T. Eaton Co. (1899), 8 Can C.C. 421.
See also Budd vs. Lucas (1891), L.R., 1 Q.B.D. 408.
Coppen vs. Moore (1898), L.R., 2 Q.B.D., 300.

448. **447. Forgery of Trade Marks, etc.**—Every one is guilty of an indictable offence who, with intent to defraud—

(a.) forges any trade mark; or

(b.) falsely applies to any goods any trade mark, or any mark so nearly resembling a trade mark as to be calculated to deceive; or

(c.) makes any die, block, machine or other instrument for the purpose of forging, or being used for forging a trade mark; or

(d.) applies any false trade description to goods; or

(e.) disposes of, or has in his possession, any die, block, machine or other instrument, for the purpose of forging a trade mark; or

(f.) causes any of such things to be done. 51 V., c. 41, s. 6.

The provisions of sec. 710, s.s. (b), apply only to prosecutions for forgery of a trade mark, and not to cases of "falsely applying"; therefore, on a charge of falsely applying a trade mark, the onus of proving that the assent of the proprietor of the trade mark has not been given, is upon the prosecution, and is not shifted to the accused, as it would be in a charge of forgery of a trade mark.
R. vs. Howarth (1898), 1 Can. C.C. 243.

448. Selling Goods Falsely Marked; Defence.—Every one is guilty of an indictable offence who sells or exposes, or has in his possession, for sale, or any purpose of trade, or manufacture, any goods or things to which any forged trade mark or false trade description is applied, or to which any trade mark, or mark so nearly resembling a trade mark as to be calculated to deceive, is falsely applied, as the case may be, unless he proves—

(a.) that having taken all reasonable precaution against committing such an offence he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark, mark or trade description; and

(b.) that on demand made by or on behalf of the prosecutor he gave all the information in his power with respect to the persons from whom he obtained such goods or things; and

(c.) that otherwise he had acted innocently. 51 V., c. 41, s. 6.

The resemblance referred to in this section need not be such as to deceive a cautious person, the object being to protect the owners of the article to which the trade mark is rightly applied as regards unwary purchasers.
R. vs. Authier (1897), 1 Can C.C. 68.
Leather Cloth Co. vs. American Cloth Co. (1865), 11 H.L.C., at p. 539.
Wotherspoone vs. Currie (1872), L.R., 5 E. & I. Appeals 519.
In Seixo vs. Provezende (1866), 1 Chy. Appeals, L.R. 192 at p. 196. Lord Cranworth, L.C., said, "It would be a mistake to suppose that the resemblance must be such as would deceive persons who would see the two marks placed side by side."

449. Defacing, Concealing, Removing, or Using Trade Mark or Name of any Vessel or Package; or Selling Bottles marked with Trade Mark without consent of Owner.—Every one is guilty of an indictable offence who—

(a) without the consent of such other person wilfully defaces, conceals or removes the duly registered trade mark or name of another person upon any cask, keg, bottle, siphon, vessel, can, case or other package with intent to defraud such other person, or unless such package has been purchased from such other person;

(b.) being a manufacturer, dealer or trader, or a bottler, without the written consent of such other person, trades or traffics in any bottle or siphon which has upon it the duly registered trade mark or name of another person, or fills such bottle or siphon with any beverage for the purpose of sale or traffic.

2. The using by any manufacturer, dealer or trader other than such other person of any bottle or siphon for the sale therein of any beverage, or the having upon it such trade mark or the name of another person, buying, selling or trafficking in any such bottle or siphon without such written permission of such other person, or the fact that any junk dealer has in his possession any such bottle or siphon having upon it such a trade mark or name without such written permission, shall be *prima facie* evidence that such use, buying, selling or trafficking or possession is unlawful within the meaning of this section. 51 V., c. 41, s. 7; as amended by 63-64 V., c. 46, (*This section came into force on 1st January*, 1901.)

In R. vs. The T. Eaton Co., Ltd. (1898), 2 Can C.C. 252, it was held that magistrates had no summary jurisdiction to adjudicate upon a charge, under this section, of selling goods to which a false trade description had been applied.

450. Punishment of Offences Defined in this Part.—Every one guilty of any offence defined in this part is liable—

(a.) on conviction on indictment to two years' imprisonment, with or without hard labour, or to fine, or to both imprisonment and fine; and

(b.) on summary conviction, to four months' imprisonment, with or without hard labour, or to a fine not exceeding one hundred dollars; and in case of a second or subsequent conviction to six months' imprisonment, with or without hard labour, or to a fine not exceeding two hundred and fifty dollars.

2. In any case every chattel, article, instrument or thing by means of, or in relation to which, the offence has been committed shall be forfeited. 51 V., c. 41, s. 8.

451. Falsely Representing that Goods are Manufactured for His Majesty, etc.—Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding one hundred dollars who falsely represents that any goods are made by a person holding a royal warrant, or for the service of His Majesty or any of the royal family, or any Government department of the United Kingdom or of Canada. 51 V., c. 41, s. 21.

452. Unlawful Importation of Goods liable to Forfeiture under this Part.—Every one is guilty of an offence and liable, on summary conviction, to a penalty of not more than five hundred dollars nor less than two hundred dollars who imports or attempts to import any goods which, if sold, would be forfeited under the provisions of this part, or any goods manufactured in any foreign state or country which bear any name or trade mark which is or purports to be the name or trade mark of any manufacturer, dealer or trader in the United Kingdom or in Canada, unless such name or trade mark is accompanied by a definite indication of the foreign state or country in which the goods were made or produced; and such goods shall be forfeited. 51 V., c. 41, s. 22.

453. Defence where Person Charged Innocently in the ordinary Course of business makes Instruments for Forging Trade Marks.—Any one who is charged with making any die, block, machine or other instrument for the purpose of forging, or being used for forging, a trade mark, or with falsely applying to goods any trade mark, or any mark so nearly resembling a trade mark as to be calculated to deceive, or with applying to goods any false trade description, or causing any of the things in this section mentioned to be done, and proves—

(a.) that in the ordinary course of his business he is employed, on behalf of other persons, to make dies, blocks, machines or other instruments for making or being used in making trade marks, or, as the case may be, to apply marks or descriptions to goods, and that in the case which is the subject to the charge he was so employed by some person resident in Canada, and was not interested in the goods by way of profit or commission dependent on the sale of such goods; and

(b.) that he took reasonable precaution against committing the offence charged; and

(c.) that he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark, mark or trade description; and

(d.) that he gave to the prosecutor all the information in his power with respect to the person by or on whose behalf the trade mark, mark or description was applied;—

shall be discharged from the prosecution but is liable to pay the costs incurred by the prosecutor, unless he has given due notice to him that he will rely on the above defence. 51 V., c. 41, s. 5.

454. Defence where Offender is a Servant.—No servant of a master, resident in Canada, who *bona fide* acts in obedience to the instructions of such master, and, on demand made by or on behalf of the prosecutor gives full information as to his master, is liable to any prosecution or punishment for any offence defined in this part. 51 V., c. 41, s. 20.

455. Exception respecting Trade Description Lawfully applied to Goods on 22nd May, 1888, etc.—The provisions of this part with respect to false trade descriptions do not apply to any trade description which, on the 22nd day of May, 1888, was lawfully and generally applied to goods of a particular class, or manufactured by particular method, to indicate the particular class or method of manufacture of such goods: Provided, that where such trade description includes the name of a place or country and is calculated to mislead as to the place or country where the goods to which it is applied were actually made or produced, and the goods are not actually made or produced in that place or country, such provisions shall apply unless there is added to the trade description, immediately before or after the name of that place or country, in an equally conspicuous manner with that name, the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there. 51 V., c. 41, s. 19.

PART XXXIV.

PERSONATION.

456. Personation.
457. Personation at Examinations.
458. Personation of certain persons.
459. Acknowledging instrument in false name.

456. Personation.—Every one is guilty of an indictable offence, and liable to fourteen years' imprisonment, who, with intent fraudulently to obtain any property, personates any person, living or dead, or administrator, wife, widow, next of kin or relation of any person.

Sec. 3, s.s. (v), defines the meaning of the expression "property."
See R. vs. Lake (1869), 11 Cox C.C. 333.
R. vs. Cramp (1817), R. & R. 327.
R. vs. Potts (1818), R. & R. 353.

457. Personation at Examinations.—Every one is guilty of an indictable offence, and liable on indictment or summary conviction to one year's imprisonment, or to a fine of one hundred dollars, who falsely, with intent to gain some advantage for himself or some other person, personates a candidate at any competitive or qualifying examination, held under the authority of any law or statute or in connection with any university or college, or who procures himself or any other person to be personated at any such examination, or who knowingly avails himself of the results of such personation.

458. Personation of certain Persons.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who falsely and deceitfully personates—

(a.) any owner of any share or interest of or in any stock, annuity, or other public fund transferable in any book of account kept by the Government of Canada or of any province thereof, or by any bank for any such Government; or

(b.) any owner of any share or interest of or in the debt of any public body, or of or in the debt or capital stock of any body corporate, company, or society; or

(c.) any owner of any dividend, coupon, certificate, or money payable in respect of any such share or interest as aforesaid; or

(d.) any owner of any share or interest in any claim for a grant of land from the Crown, or for any scrip or other payment or allowance in lieu of such grant of land; or

(e.) any person duly authorized by any power of attorney to transfer any such share, or interest, or to receive any dividend, coupon, certificate or money, on behalf of the person entitled thereto—

and thereby transfers or endeavours to transfer any share or interest belonging to such owner, or thereby obtains or endeavours to obtain, as if he were the true and lawful owner or were the person so authorized by such power of attorney, any money due to any such owner or payable to the person so authorized, or any certificate, coupon, or share warrant, grant of land, or scrip, or allowance in lieu thereof, or other document which, by any law in force, or any usage existing at the time, is deliverable to the owner of any such stock or fund, or to the person authorized by any such power of attorney. R.S.C., c. 165, s. 9.

459. Acknowledging Instrument in False Name.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, without lawful authority or excuse (the proof of which shall lie on him) acknowledges, in the name of any other person, before any court, judge or other person lawfully authorized in that behalf, any recognizance of bail, or any *cognovit actionem*, or consent for judgment, or judgment, or any deed or other instrument. R.S.C., c. 165, s. 41.

PERSONATION AT ELECTIONS :—

Regarding the false personation of voters at Parliamentary elections, see The Dominion Elections Act, R.S.C., chap. 8, secs. 89, 90 and 103.

And see also R. vs. Fox (1887), 16 Cox C.C. 166.

R. vs. Hogg (1865), 25 U.C.Q.B. 66.

PART XXXV.

OFFENCES RELATING TO THE COIN.

460. Interpretation of terms.
461. When offence completed.
462. Counterfeiting coins, etc.
463. Dealing in and importing counterfeit coins.
464. Manufacture of copper coin and importation of un-

current copper coin.
465. Exportation of counterfeit coin.
466. Making instruments for coining.
467. Bringing instruments for coining from mints into Canada.
468. Clipping current gold or silver coin.
469. Defacing current coins.
470. Possessing clippings of current coin.
471. Possessing counterfeit coin.
472. Offences respecting copper coin.
473. Offences respecting foreign coins.
474. Uttering counterfeit gold or silver coins.
475. Uttering light coins, medals, counterfeit copper coins, etc.
476. Uttering defaced coin.
477. Uttering uncurrent copper coins.
478. Punishment after previous conviction.

460. Interpretation of Terms.—In this part, unless the context otherwise requires, the following words and expressions are used in the following senses:—

(a.) "Current gold or silver coin," includes any gold or silver coin coined in any of His Majesty's mints, or gold or silver coin of any foreign prince or state or country, or other coin lawfully current, by virtue of any proclamation or otherwise, in any part of His Majesty's dominions.

(b.) "Current copper coin," includes copper coin coined in any of His Majesty's mints, or lawfully current, by virtue of any proclamation or otherwise, in any part of His Majesty's dominions.

(c.) "Copper coin," includes any coin of bronze or mixed metal and every other kind of coin other than gold or silver.

(d.) "Counterfeit" means false, not genuine.

(i.) Any genuine coin prepared or altered so as to resemble or pass for any current coin of a higher denomination is a counterfeit coin.

(ii.) A coin fraudulently filed or cut at the edges so as to remove the milling, and on which a new milling has been added to restore the apearance of the coin is a counterfeit coin.

(e.) "Gild" and "silver," as applied to coin, include casing with gold or silver respectively, and washing and colouring by any means whatsoever with any wash or materials capable of producing the appearance of gold or silver respectively.

(f.) "Utter" includes "tender" and "put off." R.S.C., c. 167, s. 1.

Sec. 569 relates to the issuing of search warrants; and s.s. 6 thereof enacts that "if under any such warrant there is brought before any justice any counterfeit coin or other thing the possession of which with knowledge of its nature and without lawful excuse is an indictable offence under any provision of Part XXXV" of the Code, such thing, so soon as it is no longer required for the purposes of evidence, shall be defaced or otherwise disposed of as the justice or Court may direct.

548. **461. When Offence Completed.**—Every offence of making any counterfeit coin, or of buying, selling, receiving, paying, tendering, uttering, or putting off, or of offering to buy, sell receive, pay, utter or put off, any counterfeit coin is deemed to be complete, although the coin so made or counterfeited, or bought, sold, received, paid, tendered, uttered, or put off, or offered to be bought, sold, received, paid, tendered, uttered or put off, was not in a fit state to be uttered, or the counterfeiting thereof was not finished or perfected. R.S.C., c. 167, s. 27.

See R. vs. Hermann (1879), L.R., 4 Q.B.D. 284.

552. **462. Counterfeiting Coins, etc.**—Every one is guilty of an indictable offence and liable to imprisonment for life who—

(a.) makes or begins to make any counterfeit coin resembling, or apparently intended to resemble or pass for, any current gold or silver coin; or

(b.) gilds or silvers any coin resembling or apparently intended to resemble or pass for, any current gold or silver coin; or

(c.) gilds or silvers any piece of silver or copper, or of coarse gold or coarse silver, or of any metal or mixture of metals respectively, being of a fit size and figure to be coined, and with intent that the same shall be coined into counterfeit coin resembling, or apparently intended to resemble or pass for any current gold or silver coin; or

(d.) gilds any current silver coin, or files or in any manner alters such coin, with intent to make the same resemble or pass for any current gold coin; or

(e.) gilds or silvers any current copper coin, or files or in any manner alters such coin, with intent to make the same resemble or pass for any current gold or silver coin. R.S.C., c. 167, ss. 3 and 4.

Section 692 provides that it shall not be necessary to prove that any coin is false or counterfeit by the evidence of an

officer of the Royal Mint, or of any foreign mint where the coin is manufactured; but that the coin may be sufficiently proved to be false or counterfeit by the evidence of any other credible witness.

463. **463. Dealing in and Importing Counterfeit Coin.**—Every one is guilty of an indictable offence and liable to imprisonment for life who, without lawful authority or excuse the proof whereof shall lie on him—

(a.) buys, sells, receives, pays or puts off, or offers to buy, sell, receive, pay or put off, at or for a lower rate or value than the same imports, or was apparently intended to import, any counterfeit coin resembling or apparently intended to resemble or pass for any current gold or silver coin; or

(b.) imports or receives into Canada any counterfeit coin resembling or apparently intended to resemble or pass for, any current gold or silver coin knowing the same to be counterfeit. R.S.C., c. 167, ss. 7 and 8.

464. **464. Manufacture of Copper Coin and Importation of Uncurrent Copper Coin.**—Every one who manufactures in Canada any copper coin, or imports into Canada any copper coin, other than current copper coin, with the intention of putting the same into circulation as current copper coin, is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty dollars for every pound Troy of the weight thereof; and all such copper coin so manufactured or imported shall be forfeited to His Majesty. R.S.C., c. 167, s. 28.

Section 460, s.s. (c), states that "copper coin includes any coin of bronze or mixed metal and every other kind of coin other than gold or silver."

R.S.C., chap. 167, is unrepealed, and therefore secs. 26, 29 to 32 and 34 of that enactment may be referred to in regard to this subject.

465. **465. Exportation of Counterfeit Coin.**—Every one is guilty of an indictable offence and liable to two years' imprisonment who, without lawful authority or excuse the proof whereof shall lie on him, exports or puts on board any ship, vessel or boat, or on any railway or carriage or vehicle of any description whatsoever, for the purpose of being exported from Canada, any counterfeit coin resembling or apparently intended to resemble or pass for any current coin or for any foreign coin of any prince, country or state, knowing the same to be counterfeit. R.S.C., c. 167, s. 9.

556. **466. Making Instruments for Coining.**—Every one is guilty of an indictable offence and liable to imprisonment for life who, without lawful authority or excuse the proof whereof shall lie on him, makes or mends, or begins or proceeds to make or mend, or buys or sells, or has in his custody or possession—

(a.) any puncheon, counter puncheon, matrix, stamp, die, pattern or mould, in or upon which there is made or impressed, or which will make or impress, or which is adapted and intended to make or impress, the figure, stamp or apparent resemblance of both or either of the sides of any current gold or silver coin, or of any coin of any foreign prince, state or country, or any part or parts of both or either of such sides; or

(b.) any edger, edging or other tool, collar, instrument or engine adapted and intended for the marking of coin round the edges with letters, grainings, or other marks or figures apparently resembling those on the edges of any such coin, knowing the same to be so adapted and intended; or

(c.) any press for coinage, or any cutting engine for cutting, by force of a screw or of any other contrivance, round blanks out of gold, silver or other metal or mixture of metals, or any other machine, knowing such press to be a press for coinage, or knowing such engine or machine to have been used or to be intended to be used for or in order to the false making or counterfeiting of any such coin. R.S.C., c. 167, s. 24.

Section 3, s.s. (k), defines the meaning of the term "having in possession."

See R. vs. Harvey (1871), L.R., 1 C.C.R. 284.
R. vs. Foster (1836), 7 C. & P. 495.
R. vs. Bannen (1844), 2 Mody's C.C. 309.
R. vs. Ridgely (1778), 1 Leach C.C. 225.

557. **467. Bringing Instruments for Coining from Mints into Canada.**—Every one is guilty of an indictable offence and liable to imprisonment for life who, without lawful authority or excuse the proof whereof shall lie on him, knowingly conveys out of any of His Majesty's mints into Canada, any puncheon, counter puncheon, matrix, stamp, die, pattern, mould, edger, edging or other tool, collar, instrument, press or engine, used or employed in or about the coining of coin, or any useful part of any of the several articles aforesaid, or any coin, bullion, metal or mixture of metals. R.S.C., c. 167, s. 25.

468. Clipping Current Gold or Silver Coin.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who impairs, diminishes or lightens any current gold or silver coin, with intent that the coin so impaired, diminished, or lightened may pass for current gold or silver coin. R.S.C., c. 167, s. 5.

469. Defacing Current Coins.—Every one is guilty of an indictable offence and liable to one year's imprisonment who defaces any current gold, silver or copper coin by stamping thereon any names or words, whether such coin is or is not thereby diminished or lightened, and afterwards tenders the same. R.S.C., c. 167, s. 17.

470. Possessing Clippings of Current Coin.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who unlawfully has in his custody or possession any filings or clippings, or any gold or silver bullion, or any gold or silver in dust, solution or otherwise, which have been produced or obtained by impairing, diminishing or lightening any current gold or silver coin, knowing the same to have been so produced or obtained. R.S.C., c. 167, s. 6.

471. Possessing Counterfeit Coins.—Every one is guilty of an indictable offence and liable to three years' imprisonment who has in his custody or possession, knowing the same to be counterfeit, and with intent to utter the same or any of them—

(a.) any counterfeit coin resembling, or apparently intended to resemble or pass for, any current gold or silver coin; or

(b.) three or more pieces of counterfeit coin resembling, or apparently intended to resemble or pass for, any current copper coin. R.S.C., c. 167, ss. 12 and 16.

Section 3, s.s. (k), defines the meaning of the term "having possession."

472. Offences respecting Copper Coin.—Every one is guilty of an indictable offence and liable to three years' imprisonment who—

(a.) makes, or begins to make, any counterfeit coin resembling, or aparently intended to resemble or pass for, any current copper coin; or

(b.) without lawful authority or excuse, the proof of which shall lie on him, knowingly

(i.) makes or mends, or begins or proceeds to make or mend, or buys or sells, or has in his custody or possession, any instrument, tool or engine adapted and intended for counterfeiting any current copper coin;

(ii.) buys, sells, receives, pays or puts off, or offers to buy, sell, receive, pay or put off, any counterfeit coin resembling, or apparently intended to resemble or pass for any current copper coin, at or for a lower rate of value than the same imports or was apparently intended to import. R.S.C., c. 167, s. 15.

563. **473. Offences respecting Foreign Coins.**—Every one is guilty of an indictable offence and liable to three years' imprisonment who—

(a.) makes, or begins to make, any counterfeit coin or silver coin resembling, or apparently intended to resemble or pass for, any gold or silver coin of any foreign prince, state or country, not being current coin;

(b.) without lawful authority or excuse, the proof of which shall lie on him—

(i.) brings into or receives in Canada any such counterfeit coin, knowing the same to be counterfeit;

(ii.) has in his custody or possession any such counterfeit coin, knowing the same to be counterfeit, and with intent to put off the same; or

(c.) utters any such counterfeit coin; or

(d.) makes any counterfeit coin resembling, or apparently intended to resemble or pass for, any copper coin of any foreign prince, state or country, not being current coin. R.S.C., c. 167, ss. 19, 20, 21, 22 and 23.

It is essential to prove that the coins offered in evidence of guilty knowledge, on an accusation of having counterfeit coins in one's possession, are themselves counterfeit.
R. vs. Benham (1899), R.J.Q., 8 Q.B. 448.

564. **474. Uttering Counterfeit Gold or Silver Coins.**—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who utters any counterfeit coin resembling, or apparently intended to resemble or pass for any current gold or silver coin, knowing the same to be counterfeit. R.S.C., c. 167, s. 10.

According to sec. 460, s.s. (f), the term "utter" includes "tender" and "put off."

Offering counterfeit coin in payment, though it is refused by the person to whom it is offered, is an "uttering and putting off," and also a "tender."

R. vs. Welch (1851), 20 L.J.M.C. 101.

R. vs. Ion (1852), 21 L.J.M.C. 166.

If it be proved that the accused uttered, either on the day on which he is alleged to have uttered the coin in question, or at other times, either before or after, other counterfeit money, either to the same or to a different person, the jury may infer therefrom that he knew that the money he is accused of uttering was counterfeit. And the same inference may be drawn from the fact that the accused had other pieces of base coin about his person at the time when he uttered the counterfeit money in regard to which the indictment has been made. R. vs. Whiley (1804), 2 Leach 983. (The decision of the twelve judges in Tattersall's case was adopted in this decision). See also R. vs. Foster (1855), 24 L.J.M.C. 134.

475. Uttering Light Coins, Medals, Counterfeit Copper Coins, etc.—Every one is guilty of an indictable offence and liable to three years' imprisonment who—

(a.) utters, as being current, any gold or silver coin of less than its lawful weight, knowing such coin to have been impaired, diminished or lightened, otherwise than by lawful wear; or

(b.) with intent to defraud utters, as or for any current gold or silver coin, any coin not being such current gold or silver coin, or any medal, or piece of metal or mixed metals, resembling, in size, figure and colour, the current coin as or for which the same is so uttered, such coin, medal or piece of metal or mixed metals so uttered being of less value than the current coin as or for which the same is so uttered; or

(c.) utters any counterfeit coin resembling or apparently intended to resemble or pass for any current copper coin, knowing the same to be counterfeit. R.S.C., c. 167, ss. 11, 14 and 16.

The accused, with a guilty knowledge, passed as a half sovereign a medal somewhat resembling that coin, having on the obverse side an impression of the Queen's head as on a half sovereign, but with a different inscription. The medal was lost, and was therefore not seen by the jury, and there was no evidence as to the appearance of the reverse side. It was held, however, that there was some evidence that the medal resembled a half sovereign in size, figure and color.

R. vs. Robinson (1865), 34 L.J.M.C. 176.

476. Uttering Defaced Coin.—Every one who utters any coin defaced by having stamped thereon any names or words is guilty of an offence and liable, on summary con-

viction before two justices of the peace, to a penalty not exceeding ten dollars. R.S.C., c. 167, s. 18.

Section 549 states that no proceeding or prosecution shall be taken for the offence specified in this section without the consent of the Attorney-General.

547. **477. Uttering Uncurrent Copper Coins.**—Every one who utters, or offers in payment, any copper coin, other than current copper coin, is guilty of an offence and liable on summary conviction to a penalty of double the nominal value thereof, and in default of payment of such penalty to eight days' imprisonment. R.S.C., c. 167, s. 33.

548. **478. Punishment after previous Conviction.**—Every one who, after a previous conviction of any offence relating to the coin under this or any other Act, is convicted of any offence specified in this part is liable to the following punishment:—

(a.) to imprisonment for life if otherwise fourteen years would have been the longest term of imprisonment to which he would have been liable.

(b.) to fourteen years' imprisonment, if otherwise seven years would have been the longest term of imprisonment to which he would have been liable.

(c.) to seven years' imprisonment, if otherwise he would not have been liable to seven years' imprisonment. R.S.C., c. 167, s. 13.

Sections 628 and 676 deal respectively with the form of indictment and the procedure to be followed in cases in which a previous conviction is charged.

A person cannot be convicted as for a second offence unless that offence has been committed not only after the other offence, but also after his conviction for that offence. Nor, according to the provisions of sec. 676, can any previous conviction be given in evidence against an accused person until either he has pleaded guilty or has been found guilty of a subsequent offence.

PART XXXVI.

ADVERTISING COUNTERFEIT MONEY.

479. Definition.
480. Advertising counterfeit money and other offences connected therewith.

479. Definition.—In this part the expression "counterfeit token of value" means any spurious or counterfeit coin, paper money, inland revenue stamp, postage stamp, or other evidence of value, by whatever technical, trivial or deceptive designation the same may be described, and includes also any coin or paper money, which although genuine has no value as money, but in the case of such last mentioned coin or paper money it is necessary in order to constitute an offence under this part that there should be knowledge on the part of the person charged that such coin or paper money was of no value as money, and a fraudulent intent on his part in his dealings with or with respect to the same. 51 V., c. 40, s. 1; as amended by 63-64 V., c. 46. (*This section came into force on January 1st*, 1900.)

Papers which, though possibly not counterfeit, are spurious imitations of Government Treasury Notes, are counterfeit tokens of value within the meaning of this section, although there is no original of the same description.
R. vs. Corey (1895), 33 N.B.R. 81.
See also R. vs. Attwood (1881), 20 O.R. 574.

480. Advertising Counterfeit Money and other Offences connected therewith.—Every one is guilty of an indictable offence and liable to five years' imprisonment who—

(a.) prints, writes, utters, publishes, sells, lends, gives away, circulates or distributes any letter, writing, circular, paper, pamphlet, handbill or any written or printed matter advertising, or offering or purporting to advertise or offer for sale, loan, exchange, gift or distribution, or to furnish, procure or distribute, any counterfeit token of value, or what purports to be a counterfeit token of value, or giving or purporting to give, either directly or indirectly, information where, how, of whom, or by what means any counterfeit token of value, or what purports to be a counterfeit token of value, may be procured or had; or

R. Corey 33 N.B. 81: (b.) purchases, exchanges, accepts, takes possession of or in any way uses, or offers to purchase, exchange, accept, take possession of or in any way use, or negotiates or offers to negotiate with a view of purchasing or obtaining or using any such counterfeit token of value, or what purports so to be; or

(c.) in executing, operating, promoting or carrying on any scheme or device to defraud, by the use or by means of any papers, writings, letters, circulars or written or printed matters concerning the offering for sale, loan, gift, distribution or exchange of counterfeit tokens of value, uses any fictitious, false or assumed name or address, or any name or address other than his own right, proper and lawful name; or

(d.) in the execution, operating, promoting or carrying on, of any scheme or device offering for sale, loan, gift or distribution or purporting to offer for sale, loan, gift or distribution, or giving or purporting to give information, directly or indirectly, where, how, of whom or by what means any counterfeit token of value may be obtained or had, knowingly receives or takes from the mails, or from the post office, any letter or package addressed to any such fictitious, false or assumed name or address, or name other than his own right, proper or lawful name. 51 V., c. 40, ss. 2 and 3.

Section 693 states that upon the trial of any person charged with an offence under this section "any letter, circular, writing or paper offering or purporting to offer for sale, loan, gift or distribution, or giving or purporting to give information, directly or indirectly, where, how, of whom or by what means any counterfeit token of value may be obtained or had, or concerning any similar scheme or device to defraud the public, shall be *prima facie* evidence of the fraudulent character of such scheme or device."

PART XXXVII.

MISCHIEF.

481. Preliminary.
482. Arson.
483. Attempt to commit arson.
484. Setting fire to crops.
485. Attempt to set fire to crops.
486. Recklessly setting fire to forest, etc.
487. Threats to burn, etc.

488. Attempt to damage by gunpowder.
489. Mischief on railways.
490. Obstructing railways.
491. Injuries to packages in the custody of railways.
492. Injuries to electric telegraphs, etc.
493. Wrecking.
494. Attempting to wreck.
495. Interfering with marine signals.
496. Preventing the saving of wrecked vessels or wreck.
497. Injuries to rafts of timber and works used for the transmission thereof.
498. Mischief to mines.
499. Mischief.
500. Attempting to injure or poison cattle.
501. Injuries to other animals.
502. Threats to injure cattle.
503. Injuries to Poll-books, etc.
504. Injuries to buildings by tenants.
505. Injuries to landmarks indicating municipal divisions.
506. Injuries to other landmarks.
507. Injuries to fences, etc.
507a. Injuries to harbours, etc.
508. Injuries to trees, etc., wheresoever growing.
509. Injuries to vegetable productions growing in gardens, etc.
510. Injuries to cultivated roots and plants growing elsewhere.
511. Injuries not otherwise provided for.

481. Preliminary.—Every one who causes any event by an act which he knew would probably cause it, being reckless whether such event happens or not, is deemed to have caused it wilfully for the purposes of this part.

2. Nothing shall be an offence under any provision contained in this part unless it is done without legal justification or excuse, and without colour of right.

3. Where the offence consists in an injury to anything in which the offender has an interest, the existence of such interest, if partial, shall not prevent his act being an offence, and if total, shall not prevent his act being an offence, if done with intent to defraud. R.S.C., c. 168, ss. 60 and 61.

482. Arson.—Every one is guilty of the indictable offence of arson and liable to imprisonment for life who wilfully sets fire to any building or structure whether such building, erection or structure is completed or not, or to any stack of vegetable produce or of mineral or vegetable fuel, or to any mine or any well of oil or other combustible substance, or to any ship or vessel, whether completed or not, or to any timber or materials placed in any shipyard for building or repairing or fitting out any ship, or to any

of His Majesty's stores or munitions of war. R.S.C., c. 168, ss. 2 to 5, 7, 8, 19, 28, 46 and 47.

At Common Law the crime of arson, which was a felony, consisted of the malicious and wilful burning of the house of another person. Burning one's own house was not arson, but burning one's own house contiguous to that of others was a misdemeanour.

R. vs. Probert (1799), 2 East P.C. 1030.

R. vs. Isaac (1799), 2 East P.C. 1031.

By reason of sec. 481, s.s. 3, anyone who sets fire to a building, etc., which he himself owns, with intent to defraud, is guilty of arson. And if a person sets fire to a building, etc., in which he has only a partial interest, he is guilty of arson, whether or not he does the act with intent to defraud.

Moreover, at common law the crime of arson was the malicious and wilful burning. Thus, when a small faggot was set on fire on the boarded floors of a room, and the faggot was nearly consumed, and the boards of the floor were scorched but not burnt, it was held that there was not a sufficient burning to support an indictment for arson.

R. vs. Russell (1842), Car. & M. 541.

But, as will be seen by the wording of section 482, the act of wilfully setting fire to a building, etc., constitutes arson under the Code.

When the question arises whether the burning was accidental or wilful, evidence may be admitted tending to show that it is probable that upon another occasion the accused committed a similar offence against the same property.

R. vs. Dossett (1846), 2 C. & K. 306.

And it may also be shown that other houses which he has occupied have been burned, and that he has been paid the insurance which he claimed in respect to the loss caused by such fires.

R. vs. Gray (1866), 4 F. & F. 1102.

Where a house is robbed and burnt, evidence that some of the articles which were in the house at the time of the fire were subsequently found in the possession of the accused, is admissible as tending to prove that he had set the house on fire.

R. vs. Hickman (1789), 2 East P.C. 1034.

See also R. vs. Taylor (1851), 5 Cox C.C. 138.

R. vs. Bailey (1847), 2 Cox C.C. 311.

R. vs. Regan (1850), 4 Cox C.C. 335.

R. vs. Harris (1864), 4 F. & F. 342.

When any person is charged with having set fire to his own house, the intent to defraud must be proved by direct evidence, and cannot be inferred merely from the act itself. And when the charge is that of arson with intent to defraud an insurance company, the nature of the proceedings does not give to the accused such notice to produce the policy as to dispense with the actual notice to produce it; and no secondary evidence can, in default of notice to produce, be given of the contents of the policy.

R. vs. Kitson (1853), 6 Cox C.C. 159.

But see also, R. vs. Newboult (1872), L.R., 1 C.C.R. 344.

Where it was suggested that the accused had set fire to the building in question in order to obtain the insurance which

there was upon her property therein, evidence was admitted to show that the accused was well off, so as to negative such suggestion.

R. vs. Grant (1865), 4 F. & F. 322.

483. Attempt to Commit Arson.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who wilfully attempts to set fire to anything mentioned in the last preceding section, or who wilfully sets fire to any substance so situated that he knows that anything mentioned in the last preceding section is likely to catch fire therefrom. R.S.C., c. 168, ss. 9, 10, 20, 29 and 48.

See sec. 64 regarding "attempts" to commit any offence.

An intention to commit a crime does not amount to an attempt, but in order to constitute the offence of attempting to commit any crime something must have been done in pursuance of the intention of the accused to commit that crime.

See Holloway vs. R. (1851), 17 Q.B. 317.

R. vs. Connoly (1887), 26 U.C.Q.B. 322.

And soliciting another person to commit a crime may be an attempt to commit that crime whether or not the person so solicited actually commits it.

R. vs. Ransford (1874),13 Cox C.C. 9.

Mere preparations to commit an offence are not sufficient to constitute an attempt to commit it. It is, however, impossible to state generally what is the dividing line between the stage of preparation and that of actual attempt.

See R. vs. Taylor (1859), 1 F. & F. 511.

R. vs. Goodman (1872), 22 U.C.C.P. 338.

484. Setting Fire to Crops.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who wilfully sets fire to—

(a.) any crop, whether standing or cut down, or any wood, forest, coppice or plantation, or any heath, gorse, furze or fern; or

(b.) any tree, lumber, timber, logs, or floats, boom, dam or slide, and thereby injures and destroys the same. R.S.C., c. 168, ss. 18 and 12.

485. Attempt to Set Fire to Crops.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who wilfully attempts to set fire to anything mentioned in the last preceding section, or who wilfully sets fire to any substance so situated that he knows that anything mentioned in the last preceding section is likely to catch fire therefrom. R.S.C., c. 168, s. 20.

See R. vs. Price (1841), 9 C. & P. 729.

R. vs. Twose (1879), 14 Cox C.C. 327.

515. **486. Recklessly Setting Fire to Forest, etc.**—Every one is guilty of an indictable offence and liable to two years' imprisonment, who, by such negligence as shows him to be reckless or wantonly regardless of consequences, or in violation of a provincial or municipal law of the locality, sets fire to any forest, tree, manufactured lumber, square timber, logs or floats, boom dam or slide on the Crown domain, or land leased or lawfully held for the purpose of cutting timber, or on private property, on any creek or river, or rollway, beach or wharf so that the same is injured or destroyed.

2. The magistrate investigating any such charge may, in his discretion, if the consequences have not been serious, dispose of the matter summarily, without sending the offender for trial, by imposing a fine not exceeding fifty dollars, and in default of payment by the committal of the offender to prison for any term not exceeding six months, with or without hard labour. R.S.C., c. 168, s. 11.

516. **487. Threats to Burn, etc.**—Every one is guilty of an indictable offence and liable to ten years' imprisonment who sends, delivers or utters, or directly or indirectly causes to be received, knowing the contents thereof, any letter or writing threatening to burn or destroy any building, or any rick or stack of grain, hay or straw or other agricultural produce, or any grain, hay or straw or other agricultural produce, in or under any building, or any ship or vessel. R.S.C., c. 173, s. 8.

Section 959, s.s. 2, provides that on complaint by or on behalf of any person, that on account of threats made by some other person he is afraid that the latter will burn or set fire to his property, "the justice before whom such a complaint is made may, if he is satisfied that the complainant has reasonable grounds for his fears, require such other person to enter into his own recognizances or to give security to keep the peace and to be of good behaviour for a term not exceeding twelve months."

A verbal threat made by one person to burn the buildings belonging to another is not an indictable offence, and only gives rise to proceedings to force the offender to give security to keep the peace in the manner specified in sec. 959, s.s. 2.
Ex parte Welsh (1898), 2 Can. C.C. 35.

517. **488. Attempt to Damage by Gunpowder.**—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who wilfully places or throws any explosive substance into or near any building or ship with intent to

destroy or damage the same or any machinery, working tools, or chattels whatever, whether or not any explosion takes place. R.S.C., c. 168, ss. 14 and 49.

Section 3, s.s. (i), defines the meaning of the term "explosive substance."

489. Mischief on Railways.—Every one is guilty of an indictable offence and liable to five years' imprisonment who, in manner likely to cause danger to valuable property, without endangering life or person—

(a.) places any obstruction upon any railway, or takes up, removes, displaces, breaks or injures any rail, sleeper or other matter or thing belonging to any railway; or

(b.) shoots or throws anything at an engine or other railway vehicle; or

(c.) interferes without authority with the points, signals or other appliances upon any railway; or

(d.) makes any false signal on or near any railway; or

(e.) wilfully omits to do any act which it is his duty to do; or

(f.) does any other unlawful act.

2. Every one who does any of the acts above mentioned with intent to cause such danger is liable to imprisonment for life. R.S.C., c. 168, ss. 37 and 38.

490. Obstructing Railways.—Every one is guilty of an indictable offence and liable to two years imprisonment who, by any act or wilful omission obstructs or interrupts, or causes to be obstructed or interrupted, the construction, maintenance or free use of any railway or any part thereof, or any matter or thing appertaining thereto or connected therewith. R.S.C., c. 168, ss 38 and 39.

Section 499, s.s. (a), par. (d), also deals with the offence of damaging and obstructing a railway.

A railway which, although completed, has not yet been used for the carriage of passengers, is within the meaning of the word "railway" as used in the above section.

R. vs. Bradford (1860), 29 L.J.M.C. 171.

It has been held that a person who, without any lawful reason or excuse, uses signals to stop a train and thereby causes it to slacken its speed, is guilty of an offence under this section, even although the train does not actually stop.

R. vs. Hadfield (1870), L.R., 1 C.C.R. 253.

R. vs. Hardy (1871), L.R., 1 C.C.R. 278.

Using a hand-car on the track of a railway company, without the consent of the company, is an obstruction within the meaning of this section, although the part of the line upon which the hand-car is used is one upon which no trains are then running.

R. vs. Brownell (1887), 26 N.B.R. 579.

491. Injuries to Packages in the custody of Railways.—Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty dollars over and above the value of the goods or liquors so destroyed or damaged or to one month's imprisonment with or without hard labour, or to both, who—

(a.) wilfully destroys or damages anything containing any goods or liquors in or about any railway station or building or any vehicle of any kind on any railway, or in any warehouse, ship or vessel, with intent to steal or otherwise unlawfully to obtain or to injure the contents, or any part thereof; or

(b.) unlawfully drinks or wilfully spills or allows to run to waste any such liquors, or any part thereof. R.S.C., c. 38, s. 62; 51 V., c. 29, s. 297.

492. Injuries to Electric Telegraphs, etc.—Every one is guilty of an indictable offence and liable to two years' imprisonment who wilfully—

(a.) destroys, removes or damages anything which forms part of, or is used or employed in or about any electric or magnetic telegraph, electric light, telephone or fire-alarm, or in the working thereof, or for the transmission of electricity for other lawful purposes; or

(b.) prevents or obstructs the sending, conveyance or delivery of any communication by any such telegraph, telephone or fire-alarm, or the transmission of electricity for any such electric light or for any such purpose as aforesaid.

2. Every one who wilfully, by any overt act, attempts to commit any such offence is guilty of an offence and liable, on summary conviction, to a penalty not exceeding fifty dollars, or to three months' imprisonment, with or without hard labour. R.S.C., c. 168, ss. 40 and 41.

493. Wrecking.—Every one is guilty of an indictable offence and liable to imprisonment for life who wilfully—

(a.) casts away or destroys any ship, whether complete or unfinished; or

(b.) does any act tending to the immediate loss or destruction of any ship in distress; or

(c.) interferes with any marine signal, or exhibits any false signal, with intent to bring a ship or boat into danger. R.S.C., c. 168, ss. 46 and 51.

523. **494. Attempting to Wreck.**—Every one is guilty of an indictable offence, and liable to fourteen years' imprisonment, who attempts to cast away or destroy any ship, whether complete or unfinished. R.S.C., c. 168, s. 48.

524. **495. Interfering with Marine Signals.**—Every one is guilty of an indictable offence and liable to seven years' imprisonment who wilfully alters, removes or conceals, or attempts to alter, remove or conceal, any signal, buoy or other sea mark used for the purposes of navigation.

2. Every one who makes fast any vessel or boat to any such signal, buoy, or sea mark is liable, on summary conviction, to a penalty not exceeding ten dollars, and in default of payment to one month's imprisonment. R.S.C., c. 168, ss. 52 and 53.

524. **496. Preventing the Saving of Wrecked Vessels or Wreck.**—Every one is guilty of an indictable offence and liable to seven years' imprisonment who wilfully prevents or impedes, or endeavours to prevent or impede—

(a.) the saving of any vessel that is wrecked, stranded, abandoned or in distress; or

(b.) any person in his endeavour to save such vessel.

2. Every one who wilfully prevents or impedes, or endeavours to prevent or impede, the saving of any wreck is guilty of an indictable offence and liable, on conviction on indictment, to two years' imprisonment, and on summary conviction before two justices of the peace, to a fine of four hundred dollars or six months' imprisonment with or without hard labour. R.S.C., c. 81, ss. 36 (b.) and 37 (c.).

Section 3, s.s. (dd), defines the meaning of the word "wreck."

525. **497. Injuries to Rafts of Timber and Works used for the Transmission thereof.**—Every one is guilty of an indictable offence and liable to two years' imprisonment who wilfully—

(a.) breaks, injures, cuts, loosens, removes or destroys, in whole or in part, any dam, pier, slide, boom or other such work, or any chain or other fastening attached thereto, or any raft, crib of timber or saw-logs; or

(b.) impedes or blocks up any channel or passage intended for the transmission of timber. R.S.C., c. 168, s. 54.

526. **498. Mischief in Mines.**—Every one is guilty of an indictable offence and liable to seven years' imprisonment

who, with intent to injure a mine or oil well, or obstruct the working thereof—

(a.) causes any water, earth, rubbish or other substance to be conveyed into the mine or oil well or any subterranean channel communicating with such mine or well; or

(b.) damages any shaft or any passage of the mine or well; or

(c.) damages, with intent to render useless, any apparatus, building, erection, bridge or road belonging to the mine or well, whether the object damaged be complete or not; or

(d) hinders the working of any such apparatus; or

(e.) damages or unfastens, with intent to render useless, any rope, chain or tackle used in any mine or well or upon any way or work connected therewith. R.S.C., c. 168, ss. 30 and 31.

An act coming within those mentioned in this section is not punishable if it is done under a *bona fide* claim of right. R. vs. Matthews (1876) 14 Cox C.C. 5.

Sic. **499. Mischief.**—Every one is guilty of the indictable offence of mischief who wilfully destroys or damages any of the property hereinafter mentioned, and is liable to the punishments hereinafter specified:—

(A.) To imprisonment for life if the object damaged be—

(a.) a dwelling-house, ship or boat, and the damage be caused by an explosion, and any person be in such dwelling-house, ship or boat; and the damage causes actual danger to life; or

(b.) a bank, dyke or wall of the sea, or of any inland water, natural or artificial, or any work in, on, or belonging to any port, harbour, dock or inland water, natural or artificial, and the damage causes actual danger of inundation; or

(c.) any bridge (whether over any stream of water or not) or any viaduct, or aqueduct, over or under which bridge, viaduct or aqueduct any highway railway or canal passes, and the damage is done with intent and so as to render such bridge, viaduct or aqueduct, or the highway, railway or canal passing over or under the same, or any part thereof, dangerous or impassable; or

(d.) a railway damaged with the intent of rendering and so as to render such railway dangerous or impassable. R.S.C., c. 168, ss. 13, 32 and 49; c. 32, s. 213.

(B.) To fourteen years' imprisonment if the object damaged be—

(a.) a ship in distress or wrecked, or any goods, merchandise or articles belonging thereto; or

(b.) any cattle or the young thereof, and the damage be caused by killing, maiming, poisoning or wounding.

(C.) To seven years' imprisonment if the object damaged be—

(a.) a ship damaged with intent to destroy or render useless such ship; or

(b.) a signal or mark used for purposes of navigation; or

(c.) a bank, dyke or wall of the sea or of any inland water or canal, or any materials fixed in the ground for securing the same, or any work belonging to any port, harbour, dock, or inland water or canal; or

(d.) a navigable river or canal damaged by interference with the flood gates or sluices thereof or otherwise, with intent and so as to obstruct the navigation thereof; or

(e.) the flood gate or sluice of any private water with intent to take or destroy, or so as to cause the loss or destruction of, the fish therein; or

(f.) a private fishery or salmon river damaged by lime or other noxious material put into the water with intent to destroy fish then being or to be put therein; or

(g.) the flood gate of any mill-pond, reservoir or pool cut through or destroyed; or

(h.) goods in process of manufacture damaged with intent to render them useless; or

(i.) agricultural or manufacturing machines, or manufacturing implements, damaged with intent to render them useless; or

(j.) a hop bind growing in a plantation of hops, or a grape vine growing in a vineyard. R.S.C., c. 168, ss. 16, 17, 21, 33, 34, 50 and 52.

(D.) To five years' imprisonment if the object damaged be—

(a.) a tree, shrub or underwood growing in a park, pleasure ground or garden, or in any land adjoining or belonging to a dwelling-house, injured to an extent exceeding in value five dollars; or

(b.) a post letter bag or post letter; or

(c.) any street letter box, pillar box or other receptacle established by authority of the Postmaster-General for the deposit of letters or other mailable matter; or

(d.) any parcel sent by parcel post, any packet or package of patterns or samples of merchandise or goods, or of seeds, cuttings, bulbs, roots, scions or grafts, or any printed vote

or proceeding, newspaper, printed paper or book or other mailable matter, not being a post letter, sent by mail; or

(c.) any property, real or personal, corporeal or incorporeal, for damage to which no special punishment is by law prescribed, damaged by night to the value of twenty dollars. R.S.C., c. 168, ss. 22, 23, 38 and 58; c. 35, ss. 79, 91, 96 and 107; 53 V., c. 37, s. 17.

(E.) To two years' imprisonment if the object damaged be—

(a.) any property, real or personal, corporeal or incorporeal, for damage to which no special punishment is by law prescribed, damaged to the value of twenty dollars. R.S.C., c. 168, ss. 36, 42 and 58; 53 V., c. 37, s. 17.

S.s. (a), par. (c).—At common law a structure in order to be a bridge must have crossed a stream of water.

R. vs. Oxfordshire (1880), 1 B. & A. 289.

S.s. (b), par. (b).—According to sec. 3, s.s. (d), the "expression cattle includes any horse, mule, ass, swine, sheep or goat, as well as any neat cattle or animal of the bovine species, and by whatever technical or familiar name known, and shall apply to one animal as well as to many."

Secs. 307 and 311 deal with the offence of killing any living creature with intent to steal the carcase, skin, plumage, or any part of such creature, the punishment for such crime being fourteen years' imprisonment.

Sections 500 and 502 deal with attempts and written threats to kill or otherwise injure cattle.

"Maiming" means inflicting an injury of a permanent nature.

R. vs. Jeans (1844), 1 C. & K. 539.

R. vs. Owens (1828), 1 Moody's C.C. 205.

But in order to constitute a wounding the injury done need not be of a permanent character.

R. vs. Haywood (1801), 2 East P.C. 1076.

Upon the charge of poisoning cattle evidence of previous acts of poisoning on the part of the accused are admissible.

R. vs. Mogg (1830), 4 C. & P. 264.

S.s. (c), par. (i).—Although the destruction or damage must be done both wilfully and also with intent to render the machine or implement useless, it is not necessary in order to constitute the offence specified in this section that the damage actually done should be of a permanent nature.

R. vs. Fisher (1865), L.R., 1 C.C.R. 7.

S.s. (d), par. (a).—Sec. 508 deals with injuries to trees, etc., growing elsewhere than in a park in cases in which injury is done to the amount of twenty-five cents at the least.

According to the decision in R. vs. Hodges (1829), M. & M. 341, the words "adjoining any dwelling-house" mean ground, etc., which has actual contact with a dwelling-house, and therefore the section does not apply to ground separated from a house by a walk, wall or gate.

The amount of injury refers to the actual injury done to the tree, etc., itself, and the sum specified by the section cannot be made up by including consequential damages resulting from the act of the accused.

R. vs. Whiteman (1854), 23 L.J.M.C. 120.
But the $5.00 damages may be made up of the injuries done to several trees, etc., at the same time.
R. vs. Shepherd (1858), L.R., 1 C.C.R. 118.
S.s. (d), par. (e).—" Night " is the period between nine o'clock in the evening and six o'clock in the morning.
Sec. 511 deals with other injuries to property, real or personal, irrespective of the actual amount of damage so committed.

536. **500. Attempting to Injure or Poison Cattle.**—Every one is guilty of an indictable offence and liable to two years' imprisonment who wilfully—
(a.) attempts to kill, maim, wound, poison or injure any cattle, or the young thereof; or
(b.) places poison in such a position as to be easily partaken of by any such animal. R.S.C., c. 168, s. 44.

See sec. 64 regarding attempts to commit an offence.

537. **501. Injuries to other Animals.**—Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding one hundred dollars over and above the amount of injury done, or to three months' imprisonment with or without hard labour, who wilfully kills, maims, wounds, poisons or injures any dog, bird, beast, or other animal, not being cattle, but being either the subject of larceny at common law, or being ordinarily kept in a state of confinement, or kept for any lawful purpose.
2. Every one who, having been convicted of any such offence, afterwards commits any offence under this section, is guilty of an indictable offence, and liable to a fine or imprisonment, or both, in the discretion of the court. R.S.C., c. 168, s. 45; 53 V., c. 37, s. 16.

Sec. 304 specifies the classes of animals which are capable of being stolen.
No punishment being provided for the crime specified in s.s. 2 of this section, a person guilty thereof will be punishable by five years' imprisonment, by virtue of sec. 951.
A person guilty of an offence under this section cannot be sentenced to imprisonment with hard labor in default of payment of the penalty and compensation of costs.
R. vs. Horton (1897), 31 N.S.R. 217.

538. **502. Threats to Injure Cattle.**—Every one is guilty of an indictable offence and liable to two years' imprisonment who sends, delivers or utters, or directly or indirectly causes to be received, knowing the contents thereof, any letter or writing threatening to kill, maim, wound, poison, or injure any cattle. R.S.C., c. 173, s. 8.

357.

319. Clerks and Servants.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment, who—

(a.) being a clerk or servant, or being employed for the purpose or in the capacity of a clerk or servant, steals anything belonging to or in the possession of his master or employer; or

(b.) being a cashier, assistant cashier, manager, officer, clerk or servant of any bank, or savings bank, steals any bond, obligation, bill obligatory or of credit, or other bill or note, or any security for money, or any money or effects of such bank or lodged or deposited with any such bank; or

(c.) being employed in the service of His Majesty, or of the Government of Canada or the Government of any province of Canada, or of any municipality, steals anything in his possession by virtue of his employment. R.S.C., c. 164, ss. 51, 52, 53, 54 and 59; as amended by 57-58 V., c. 57.

The word "municipality" is defined by sec. 3.

The question whether any person is or is not a clerk or servant within the meaning of this section is one of fact for the jury.

R. vs. Negus (1873), 42 L.J., (M.C.) 62.

See also R. vs. Foulkes (1875), 44 L.J., (M.C.) 65.

358. **320. Agents and Attorneys.**—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who steals anything by any act or omission, amounting to theft under the provisions of sections three hundred and eight, three hundred and nine and three hundred and ten.

359. **321. Public Servants Refusing to Deliver up Chattels, Moneys, or Books, etc., Lawfully Demanded of Them.**—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who, being employed in the service of His Majesty or of the Government of Canada or the Government of any province of Canada, or of any municipality, and intrusted by virtue of such employment with the keeping, receipt, custody, management or control of any chattel, money, valuable security, book, paper, account or document, refuses or fails to deliver up the same to any one authorized to demand it. R.S.C., c. 164, s. 55.

360. **322. Tenants and Lodgers.**—Every one who steals any

chattel or fixture let to be used by him or her in or with any house or lodging is guilty of an indictable offence and liable to two years' imprisonment, and if the value of such chattel or fixture exceeds the sum of twenty-five dollars to four years' imprisonment. R.S.C., c. 164, s. 57.

323. Testamentary Instruments.—Every one is guilty of an indictable offence and liable to imprisonment for life who, either during the life of the testator or after his death, steals the whole or any part of a testamentary instrument, whether the same relates to real or personal property, or to both. R.S.C., c. 164, s. 14.

The term "testamentary instrument" is defined by section 3, paragraph (aa).

324. Document of Title to Lands.—Every one is guilty of an indictable offence and liable to three years' imprisonment who steals the whole or any part of any document of title to lands or goods. R.S.C., c. 164, s. 13.

Section 3, paragraph (g), reads as follows: "The expression 'document of title to' includes any Bill of Lading, India Warrant, Dock Warrant, Warehouse Keeper's Certificate, Warrant or Order for the delivery or transfer of any goods or valuable thing, bought and sold, note, or any other document used in the ordinary course of business as proof of the possession or control of goods, authorizing or purporting to authorize, either by endorsement or delivery, the possessor of such document to transfer or receive any goods thereby represented or therein mentioned or referred to."

According to section 3, paragraph (h), "the expression 'document of title to lands,' includes any deed, map, paper or parchment written or printed, or partly written and partly printed, being or containing evidence of the title, or any part of the title to any real property, or to any interest in any real property, or any notarial or registrar's copy thereof, or any duplicate instrument, memorial, certificate or document authorized or required by any law in force in any part of Canada respecting registration of titles and relating to such title."

325. Judicial or Official Documents.—Every one is guilty of an indictable offence and liable to three years' imprisonment who steals the whole or any part of any record, writ, return, affirmation, recognizance, *cognovit actionem*, bill, petition, answer, decree, panel, process, interrogatory, deposition, affidavit, rule, order or warrant of attorney, or of any original document whatsoever of or belonging to any court of justice, or relating to any cause or matter be-

gun, depending or terminated in any such court, or of any original document in any wise relating to the business of any office or employment under His Majesty, and being or remaining in any office appertaining to any court of justice, or in any government or public office. R.S.C., c. 164, s. 15.

See section 353.

364. **326. Stealing Post Letter Bags, etc.**—Every one is guilty of an indictable offence and liable to imprisonment for life, or for any term not less than three years, who steals—

(a.) a post letter bag; or

(b.) a post letter from a post letter bag, or from any post office; or from any officer or person employed in any business of the post office of Canada, or from a mail; or

(c.) a post letter containing any chattel, money or valuable security; or

(d.) any chattel, money or valuable security from or out of a post letter. R.S.C., c. 35, ss. 79, 80 and 81.

When a person accused of having stolen post-letters was induced by a false statement made to him by a detective employed by the prosecution, to the effect that he had been seen taking the letters, to make a confession of having done so, it was held that the confession was inadmissible in evidence against the accused.

R. vs. MacDona'd (1896), 2 Can. C.C. 221.

A decoy letter placed by Post-Office officials in the Post-Office for the purpose of being put in the possession of a letter-carrier who was suspected of dishonesty, and which letter was surreptitiously put into his heap of letters to be sorted, was held not to be a "post-letter" under the English "Post Office Act."

R. vs. Rathbone (1841), 2 Moody's C.C. 242.

See also R. vs. Shephard (1856), 25 L.J., (M.C.) 12.

And R. vs. Trepanier (1901), 4 Can. C.C. 259.

For definition of "post-letter" under the Canadian Post Office Act, see 1 Ed. VII., c. 19.

365. **327. Stealing Post Letters, Packets and Keys.**—Every one is guilty of an indictable offence and liable to imprisonment for any term not exceeding seven years, and not less than three years, who steals—

(a.) any post letter, except as mentioned in paragraph (b) of section three hundred and twenty-six;

(b.) any parcel sent by parcel post, or any article contained in any such parcel; or

(c.) any key suited to any lock adopted for use by the Post Office Department, and in use on any Canada mail or mail bag. R.S.C., c. 35, ss. 79, 83 and 88.

328. Stealing Mailable Matter other than Post Letters,—Every one is guilty of an indictable offence and liable to five years' imprisonment who steals any printed vote or proceeding, newspaper, printed paper or book, packet or package of patterns or samples of merchandise or goods, or of seeds, cuttings, bulbs, roots, scions or grafts, or any post card or other mailable matter (not being a post letter) sent by mail. R.S.C., c. 35, s. 90.

Section 89 of chap. 35 of the R.S.C., 1886, is still unrepealed. The part in question is as follows :—Everyone who unlawfully opens or wilfully keeps, secretes, delays or detains, or procures, or suffers to be unlawfully used, kept secreted or detained, any Post-Letter bag or any Post-Letter, whether the same came into the possession of the offender by finding or otherwise howsoever, after payment or tender of the postage thereon, if payable to the person having possession of the same, neglects or refuses to deliver up any Post-Letter to the person to whom it is addressed, or who is legally intended to receive the same, is guilty of a misdemeanour.

An offence under the section above quoted would be punishable by five years' imprisonment by virtue of section 951.

See R. vs. James (1890), L.R., 24 Q.B.D. 439.

329. Election Documents,—Every one is guilty of an indictable offence and liable to a fine in the discretion of the court, or to seven years' imprisonment, or to both fine and imprisonment who steals, or unlawfully takes from any person having the lawful custody thereof, or from its lawful place of deposit for the time being, any writ of election, or any return to a writ of election, or any indenture, poll-book, voters' list, certificate, affidavit or report, ballot or any document or paper made, prepared or drawn out according to or for the requirements of any law in regard to Dominion, provincial, municipal or civic elections. R.S.C., c. 8, s. 102; c. 164, s. 56.

By virtue of section 503, anyone who wilfully destroys, injures, obliterates, etc., any writ of election, return thereto, poll-book, voters' list, etc., whether the same be in use at a Dominion, provincial, municipal, or civic election, is guilty of an indictable offence, and liable to seven years' imprisonment.

330. Railway Tickets,—Every one is guilty of an indictable offence and liable to two years' imprisonment who steals any tramway, railway or steamboat ticket, or any order or receipt for a passage on any railway or in any steamboat or other vessel. R.S.C., c. 164, s. 16.

331. Cattle.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who steals any cattle. R.S.C., c. 164, ss. 7 and 8.

According to section 3 (d), "the expression 'cattle' includes any horse, mule, ass, swine, sheep or goat, as well as any neat cattle or animal of the bovine species, and by whatever technical or familiar name known, and shall apply to one animal as well as to many."

According to section 307, "everyone commits theft and steals the creature killed who kills any living creature capable of being stolen, with intent to sell the carcase, skin, plumage or any part of such creature." The punishment for the offence here specified is that laid down in this section, unless the animal is within the class specified by section 332, in which case the offence is punishable under that section.

Section 499, sub-section B, paragraph (b), deals with the offence of wilful killing, poisoning or wounding cattle. See also sections 500 and 502.

It is to be observed that this section deals only with the offence of stealing live cattle; that of stealing dead cattle is punishable under section 356. And in a case at common law it was held that in an indictment for stealing live animals it was not necessary to state that they were alive, as that would be presumed; on the other hand, if the animal was dead when stolen, it was necessary that the indictment should state that fact.

R. vs. Edwards (1823), R. & R. 497.
R. vs. Halloway (1823), 1 C. & P. 128.
R. vs. Williams (1825), 1 Moody's C.C. 107.

In another case it was held that where the animal was referred to by the same name whether it was alive or dead, it was not necessary to state in the indictment that it was dead.

R. vs. Puckering (1829), 1 Moody's C.C. 242.
See also R. vs. Brewster (1896), 4 Can. C.C. 34.

331A. Fraudulently Taking Cattle Found Astray, etc.—Every one is guilty of an indictable offence and liable to three years' imprisonment who—

(a) Without the consent of the owner thereof fraudulently takes, holds, keeps in his possession, conceals, receives, appropriates, purchases or sells or fraudulently causes or procures, or assists in the taking possession, concealing, appropriating, purchasing or selling of any cattle which are found astray; or

(b) fraudulently refuses to deliver up any such cattle to the proper owner thereof, or to the person in charge thereof on behalf of such owner, or authorized by such owner to receive such cattle; or

(c) without the consent of the owner, fraudulently, wholly or partially obliterates, or alters or defaces, or causes or procures to be obliterated, altered or defaced, any brand or mark on any cattle, or makes or causes or procures to be made any false or counterfeit brand or mark on any cattle. (Ed. VII., c. 42.)

370. **332. Birds, Dogs, Beasts and other Animals.**—Every one who steals any dog, or any bird, beast or other animal ordinarily kept in a state of confinement or for any domestic purpose, or for any lawful purpose of profit or advantage, is, if the value of the property stolen exceeds twenty dollars, guilty of an indictable offence and liable to a penalty not exceeding fifty dollars over and above the value of the property stolen, or to two years' imprisonment, or to both, and if the value of the property stolen does not exceed twenty dollars, is guilty of an offence and liable upon summary conviction to a penalty not exceeding twenty dollars over and above such value, or to one month's imprisonment with hard labour.

2. Every one who, having been previously convicted of an offence under this section, is summarily convicted of another offence thereunder, is liable to three months' imprisonment with hard labour. R.S.C., c. 164, s. 9; as amended by 63-64 V., c. 46. (*This section came into force on 1st January*, 1901.)

By virtue of sec. 307, anyone who kills any of the animals here referred to with intent to steal the carcase, skin, plumage or other part thereof is guilty of stealing and is punishable under section 332.
See also section 501.

373. **333. Pigeons.**—Every one who unlawfully and wilfully kills, wounds or takes any house-dove or pigeon, under such circumstances as do not amount to theft, is guilty of an offence and liable, upon complaint of the owner thereof, on summary conviction, to a penalty not exceeding ten dollars over and above the value of the bird. R.S.C., c. 164, s. 10.

According to section 304, sub-section 1, tame pigeons are "capable of being stolen so long only as they are in a dove-cot, or on their owner's land." If tame pigeons are stolen while they were in a dove-cot or on their owner's land, the offender is punishable under section 332.

374. **334. Oysters.**—Every one is guilty of an indictable offence and liable to seven years' imprisonment who steals oysters or oyster brood.

2. Every one is guilty of an indictable offence and liable to three months' imprisonment who unlawfully and wilfully uses any dredge or net, instrument or engine whatsoever, within the limits of any oyster bed, laying or fishery, being the property of any other person, and suffi-

ciently marked out or known as such, for the purpose of taking oysters or oyster brood, although none are actually taken or unlawfully and wilfully with any net, instrument or engine, drags upon the ground of any such fishery.

3. Nothing herein applies to any person fishing for or catching any swimming fish within the limits of any oyster fishery with any net, instrument or engine adapted for taking swimming fish only. R.S.C., c. 164, s. 11.

According to section 619, paragraph (e), an indictment shall be deemed sufficient for an offence under this section "if the oyster bed, laying or fishery is described by name or otherwise, without stating the same to be in any particular country, county, or place."

372. **335. Things fixed to Buildings or in Land.**—Every one is guilty of an indictable offence and liable to seven years' imprisonment who steals any glass or woodwork belonging to any building whatsoever, or any lead, iron, copper, brass or other metal, or any utensil or fixture, whether made of metal or other material, or of both, respectively fixed in or to any building whatsoever, or anything made of metal fixed in any land, being private property, or for a fence to any dwelling-house, garden or area, or in any square or street, or in any place dedicated to public use or ornament, or in any burial ground. R.S.C., c. 164, s. 17.

As to what is a building within the meaning of this section see R. vs. Worrall (1836), 7 C. & P. 516.
R. vs. Rice (1859), 28 L.J. (M.C.) 64.

373. R. v. Beauvais 7 C & C 494: **336. Trees in Pleasure Grounds, etc., of Five Dollars Value; Trees elsewhere of Twenty-five Dollars Value.**—Every one is guilty of an indictable offence and liable to two years' imprisonment who steals the whole or any part of any tree, sapling or shrub, or any underwood, the thing stolen being of the value of twenty-five dollars or of the value of five dollars if the thing stolen grows in any park, pleasure ground, garden, orchard or avenue, or in any ground adjoining or belonging to any dwelling-house. R.S.C., c. 164, s. 18.

In an English case it was held that the words "adjoining any dwelling-house" meant actual contact therewith, and that where the ground in question was separated from a house by a walk, wall or gate, it did not comply with the intent of the expression.
R. vs. Hodges (1829), M. & M. 341.

337. Trees of the Value of Twenty-five Cents.—Every one who steals the whole or any part of any tree, sapling or shrub, or any underwood, the value of the article stolen, or the amount of the damage done, being twenty-five cents at the least, is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty-five dollars over and above the value of the article stolen or the amount of the injury done.

2. Every one who, having been convicted of any such offence, afterwards commits any such offence is liable, on summary conviction, to three months' imprisonment with hard labour.

3. Every one who, having been twice convicted of any such offence, afterwards commits any such offence is guilty of an indictable offence and liable to five years' imprisonment. R.S.C., c. 164, s. 19.

The injury must be injury in fact to the tree itself, and there will be no offence under this section when the other damage committed in order to make up the amount specified has been consequential damage.

R. vs. Whiteman (1854), 23 L.J., (M.C.) 120.

In Robichaud vs. La Blanc (1898), 31 C.L.J., 324, the defendant was accused under this section of having stolen seven trees which belonged to the plaintiff. It appeared that while defendant was cutting wood on his own lot he cut the trees in question on the other side of the line which the plaintiff claimed divided his land from that of the defendant, but on his own side of the boundary line according to defendant's contention. The stipendiary magistrate held that the criminal intent was proved and that the question of the title to the land did not *bona fide* arise. Upon an appeal taken under section 900, a majority of the Court held that the conviction was erroneous in point of law, that the title to the land was *bona fide* in dispute, and that therefore the magistrate had no jurisdiction ; and finally that no criminal intent was proved.

See also R. vs. Beale (1896), 1 Can. C.C. 235.

Sections 508, 509 and 510 deal with the offences of wilfully destroying or injuring trees, vegetables, plants, etc.

338. Timber found Adrift.—Every one is guilty of an indictable offence and liable to three years' imprisonment who—

(a.) without the consent of the owner thereof:

(i.) fraudulently takes, holds, keeps in his possession, collects, conceals, receives, appropriates, purchases, sells or causes or procures or assists to be taken possession of, collected, concealed, received, appropriated, purchased or sold, any timber, mast, spar, saw-log or other description of lumber which is found adrift in, or cast ashore on the bank or beach of, any river, stream or lake;

(ii.) wholly or partially defaces or adds, or causes or procures to be defaced or added, any mark or number on any such timber, mast, spar, saw-log or other description of lumber, or makes or causes or procures to be made any false or counterfeit mark on any such timber, mast, spar, saw-log or other description of lumber; or

(b.) refuses to deliver up to the proper owner thereof, or to the person in charge thereof, on behalf of such owner, or authorized by such owner to receive the same, any such timber, mast, spar, saw-log or other description of lumber. R.S.C., c. 164, s. 87.

Section 708 defines what is sufficient evidence of ownership in a prosecution for an offence under this section.

377. **339. Fences, Stiles and Gates.**—Every one who steals any part of any live or dead fence, or any wooden post, pale, wire or rail set up or used as a fence, or any stile or gate, or any part thereof respectively, is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty dollars over and above the value of the article or articles so stolen or the amount of the injury done.

2. Every one who, having been convicted of any such offence, afterwards commits any such offence is liable, on summary conviction, to three months' imprisonment with hard labour. R.S.C., c. 164, s. 21.

378. **340. Failing to satisfy Justice that Possession of Tree, etc., is Lawful.**—Every one who, having in his possession, or on his premises with his knowledge, the whole or any part of any tree, sapling or shrub, or any underwood, or any part of any live or dead fence, or any post, pale, wire, rail, stile or gate, or any part thereof, of the value of twenty-five cents at the least, is taken or summoned before a justice of the peace, and does not satisfy such justice that he came lawfully by the same, is guilty of an offence and liable, on summary conviction, to a penalty not exceeding ten dollars, over and above the value of the article so in his possession or on his premises. R.S.C., c. 164, s. 22.

379 **341. Roots, Plants, etc., growing in Gardens, etc.**—Every one who steals any plant, root, fruit or vegetable production growing in any garden, orchard, pleasure ground,

nursery ground, hot-house, green-house or conservatory is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty dollars over and above the value of the article so stolen or the amount of the injury done, or to one month's imprisonment with or without hard labour.

2. Every one who, having been convicted of any such offence, afterwards commits any such offence is guilty of an indictable offence and liable to three years' imprisonment. R.S.C., c. 164, s. 23.

342. Roots, Plants, etc., growing elsewhere than in Gardens, etc.—Every one who steals any cultivated root or plant used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture, and growing in any land, open or inclosed, not being a garden, orchard, pleasure ground, or nursery ground, is guilty of an offence and liable, on summary conviction, to a penalty not exceeding five dollars over and above the value of the article so stolen or the amount of the injury done, or to one month's imprisonment with hard labour.

2. Every one who, having been convicted of any such offence, afterwards commits any such offence is liable to three months' imprisonment with hard labour. R.S.C., c. 164, s. 24.

343. Ores of Metal.—Every one is guilty of an indictable offence and liable to two years' imprisonment who steals the ore of any metal, or any quartz, lapis calaminaris, manganese, or mundic, or any piece of gold, silver or other metal, or any wad, black cawk, black lead, or any coal, or cannel coal, or any marble, stone or other mineral, from any mine, bed or vein thereof respectively.

2. It is not an offence to take, for the purposes of exploration or scientific investigation, any specimen or specimens of any ore or mineral from any piece of ground unenclosed and not occupied or worked as a mine, quarry or digging. R.S.C., c. 164, s. 25.

etc.— Section 571 states on what grounds search warrants for mined gold or silver unlawfully deposited can be obtained.

344. Stealing from the Person.—Every one is guilty

of an indictable offence and liable to fourteen years' imprisonment who steals any chattel, money or valuable security from the person of another. R.S.C., c. 164, s. 32.

The gist of this offence is the taking of an article from the person of the prosecutor or in his presence.

A asked B what time it was, and B took out his watch to tell him, holding it loosely in both hands. A caught hold of the ribbon and key attached to the watch and snatched it from B and went away with it. Held that this was not robbery but stealing from the person.

R. vs. Walls (1845), 2 Car. & K. 214.

See also R. vs. Thompson (1825), 1 Moody's Criminal Cases, 78.

R. vs. Hamilton (1837), 8 C. & P. 49.

R. vs. Selway (1859), 8 Cox C.C. 235.

Where an accused person, having consented to be tried by a city police magistrate, was subsequently convicted by that official of having stolen from the person a purse containing $3.48, and was sentenced therefor to three years' imprisonment, it was held upon the return of a *habeas corpus* that the offence was an indictable one under this section (whether or not it came also under the terms of sections 783-787), and that the magistrate had jurisdiction under section 785.

R. vs. Conlin (1897), 29 O.R., 28.

345. Stealing in Dwelling-houses.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who—

(a.) steals in any dwelling-house any chattel, money or valuable security to the value in the whole of twenty-five dollars or more; or

(b.) steals any chattel, money or valuable security in any dwelling-house, and by any menace or threat puts any one therein in bodily fear. R.S.C., c. 164, ss. 45 and 46.

To constitute an offence under this section either (1) The thing stolen must be of the value of $25.00 at least ; or (2) If the same be of less value, it must be stolen by menace or threats, or by putting some one in the house in bodily fear.

A person who in his own house steals from another person can be convicted under this section.

R. vs. Bowden (1843), 2 Moody's Criminal Cases, 285.

But a contrary conclusion was arrived at in the cases of R. vs. Thompson, and R. vs. Gould (1780), 2 East P.C., 644.

As to what is a Dwelling-House :—

Stealing in a bedroom over a stable in a yard, not under the same roof, nor having any direct communication with the house in which the prosecutor resides, is not stealing in his dwelling house.

R. vs. Turner (1834), 6 Car. & P. 407.

See also R. vs. Hamilton (1837), 8 Car. & P. 49.

But if goods are under the protection of the person of the prosecutor at the time they are stolen the offence is not stealing in a dwelling-house.

R. vs. Campbell (1792), 2 Leach, C.C. 612.
But otherwise when the goods are under the protection of the dwelling-house.
R. vs. Carroll (1825), 1 Moody's C.C. 89.

346. Stealing by Picklocks, etc.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who, by means of any picklock, false key or other instrument steals anything from any receptacle for property locked or otherwise secured.

347. Stealing in Manufactories, etc.—Every one is guilty of an indictable offence and liable to five years' imprisonment who steals, to the value of two dollars, any woollen, linen, hempen or cotton yarn, or any goods or articles of silk, woollen, linen, cotton, alpaca or mohair, or of any one or more of such materials mixed with each other or mixed with any other material, while laid, placed or exposed, during any stage, process or progress of manufacture, in any building, field or other place. R.S.C., c. 164, s. 47.

348. Fraudulently Disposing of Goods intrusted for Manufacture.—Every one is guilty of an indictable offence and liable to two years' imprisonment, when the offence is not within the next preceding section, who, having been intrusted with, for the purpose of manufacture, or for a special purpose connected with manufacture, or employed to make, any felt or hat, or to prepare or work up any woollen, linen, fustian, cotton, iron, leather, fur, hemp, flax or silk, or any such materials mixed with one another, or having been so intrusted, as aforesaid, with any other article, materials, fabric or thing, or with any tools or apparatus for manufacturing the same, fraudulently disposes of the same or any part thereof. R.S.C., c. 164, s. 48.

349.—Stealing from Ships, Wharfs, etc.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who—

(a.) steals any goods or merchandise in any vessel, barge or boat of any description whatsoever, in any haven or in any port of entry or discharge, or upon any navigable river or canal, or in any creek or basin belonging to or communicating with any such haven, port, river or canal; or

(b.) steals any goods or merchandise from any dock, wharf or quay adjacent to any such haven, port, river, canal, creek or basin. R.S.C., c. 164, s. 49.

"Goods or merchandise, as referred to in this section, mean such goods or merchandise as it is customary to place in vessels or on wharves."

R. vs. Leigh (1764), 1 Leach, C.C. 62.

And it has been held that a passenger's luggage which is in the hold of the steamer in which he is travelling, is within the meaning of these words.

R. vs. Wright (1835), 7 C. & P. 159.

383. **350. Stealing Wreck.**—Every one is guilty of an indictable offence and liable to seven years' imprisonment who steals any wreck. R.S.C., c. 81, s. 36 (c).

Section 3, (dd), reads as follows :—"The expression 'wreck' includes the cargo, stores and tackle of any vessel, and all parts of a vessel separated therefrom, and also the property of shipwrecked persons."

384. **351. Stealing on Railways.**—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who steals anything in or from any railway station or building, or from any engine, tender or vehicle of any kind on any railway.

In R. vs. White (1901), 37 C.L.J., 320, the accused had, on a summary trial before the stipendiary magistrate for the City of Halifax, been convicted under this section for stealing certain property of the value of nine dollars "in and from a certain railway building, to wit, a certain building," and was sentenced for such offence to be imprisoned in the city prison of the said City of Halifax for the space of nine months. It was held by a majority of the Supreme Court of Nova Scotia that only one crime was thus charged, and that the place of detention named in the conviction was a proper place within the meaning of the law.

385 **352. Stealing things deposited in Indian Graves.**—Every one who steals, or unlawfully injures or removes, any image, bones, article or thing deposited in or near any Indian grave is guilty of an offence and liable, on summary conviction, for a first offence to a penalty not exceeding one hundred dollars or to three months' imprisonment, and for a subsequent offence to the same penalty and to six months' imprisonment with hard labour. R.S.C., c. 164, s. 98.

386 **353. Destroying, etc., Documents.**—Every one who destroys, cancels, conceals or obliterates any document of title to goods or lands, or any valuable security, testamentary instrument, or judicial, official or other document, for

any fraudulent purpose, is guilty of an indictable offence and liable to the same punishment as if he had stolen such document, security or instrument. R.S.C., c. 164, s. 12.

Section 3, sub-section (g), (h), (aa) and (cc), define respectively the terms "document of title to goods," "document of title to lands," "testamentary instrument," and "valuable security."

See sections 323, 324 and 325, regarding the offences of stealing documents of title to land or goods, or judicial or official documents.

397. **354. Concealing.**—Every one is guilty of an indictable offence and liable to two years' imprisonment who, for any fraudulent purpose, takes, obtains, removes or conceals anything capable of being stolen.

Under this section an accused person was convicted for having concealed a quantity of his own goods, capable of being stolen, for the purpose of leading certain insurance companies, which had insured the same, to believe that the goods had been destroyed by a fire which had previously taken place and thereby defrauding them. A case was reserved to determine whether such conviction was maintainable in view of the fact that though the trial judge had found that the prisoner had concealed the goods with the intent and for the purpose of obtaining their value from the insurance companies, and also with the intent of keeping the goods for himself, yet it did not appear from the case whether or not the prisoner had actually made any claim under the policies. It was held that the prisoner had been properly convicted, and also that, although the goods were his own, yet they came within the meaning of the expression "things capable of being stolen," as used in this section.

R. vs. Goldstaub (1895), 10 Manitoba L.R., 497.

398. **355. Bringing Stolen Property into Canada.**—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, having obtained elsewhere than in Canada any property by any act which if done in Canada would have amounted to theft, brings such property into or has the same in Canada. R.S.C., c. 164, s. 88.

Section 3, (v), defines the meaning of the word "property."

Section 314 deals with the offence of knowingly receiving in Canada goods obtained anywhere by an act which, if committed in Canada, would have constituted an indictable offence under the Code.

R v Blanchard 7 C Cr Ca 494,

399. **356. Stealing things not otherwise provided for.**—Every one is guilty of an indictable offence and liable to seven years' imprisonment who steals anything for the stealing of which no punishment is otherwise provided or com-

mits in respect thereof any offence for which he is liable to the same punishment as if he had stolen the same.

2. The offender is liable to ten years' imprisonment if he has been previously convicted of theft. R.S.C., c. 164, ss. 5, 6 and 85.

Section 628 states what it is necessary to set forth in an indictment when the accused person is to be charged with a previous conviction ; and section 676 relates to the procedure to be followed in such cases.

357. **357. Additional Punishment when Value of Property exceeds Two Hundred Dollars.**—If the value of anything stolen, or in respect of which any offence is committed for which the offender is liable to the same punishment as if he had stolen it, exceeds the sum of two hundred dollars, the offender is liable to two years' imprisonment, in addition to any punishment to which he is otherwise liable for such offence. R.S.C., c. 164, s. 86.

PART XXVII.

OBTAINING PROPERTY BY FALSE PRETENSES AND OTHER CRIMINAL FRAUDS AND DEALINGS WITH PROPERTY.

358. Definition of false pretense.
359. Punishment of false pretense.
360. Obtaining execution of valuable security by false pretense.
361. Falsely pretending to enclose money, etc., in a letter.
362. Obtaining passage by false tickets.
363. Criminal breach of trust.

Vide R. v. King 66 L.J. Q.B. 87: R. v. Jones 67 L.J. Q.B. 41 C.C.R. 404. R. v. Cadden 5 C.Cr. Ca. 45: R. v. Nowe 8 C.Cr. Ca. 441:

358. Definition of False Pretense.—A false pretense is a representation, either by words or otherwise, of a matter of fact either present or past, which representation is known to the person making it to be false, and which is made with a fraudulent intent to induce the person to whom it is made to act upon such representation.

2. Exaggerated commendation or depreciation of the quality of anything is not a false pretense, unless it is carried to such an extent as to amount to a fraudulent misrepresentation of the fact.

3. It is a question of fact whether such commendation or

depreciation does or does not amount to a fraudulent misrepresentation of fact.

One O'Keefe brought an action and obtained judgment by default against Dorothy Mapleton for $37.45. The execution was issued on this judgment against the defendant, and was delivered the same day to Cadden, the accused, who was the baliff and the deputy sheriff, but who had no authority to execute a writ of execution unless a warrant was issued to him signed by the deputy sheriff directing him to do so. The execution in question never passed through the sheriff's office or came to his knowledge, and no warrant was ever issued to Cadden. The accused, however, met Dorothy Mapleton and showed her the execution, and told her that he was going to seize under it. She informed him that she had sent the money to the deputy clerk, and when he persisted in saying that he would still seize she spoke to O'Keefe, who, then, in the presence of Cadden, obtained from her, under the pretence that it was money due for costs, money which he knew was not so due, and which Cadden also knew was not due. There was no evidence, however, that the accused himself had made any false statement to Mapleton. Cadden was convicted, but certain questions of law were reserved for the opinion of a higher Court.

It was held by the Court that a false statement made by O'Keefe to Mapleton, upon which the conviction was made, was, under the circumstances, a false pretence within the meaning of this section. Held, further, that Cadden was liable to conviction although he did not himself actually make such false statement to Mapleton, and that the trial Judge was right in finding that Cadden was a party to the making of such false statement, and that it was made with a fraudulent intent on his part.

R. vs. Cadden (1899), 20 C.L.T. 135.

See also R. vs. Woolley (1850), 1 Dennison's C.C. 566.

R. vs. Kerrigan (1864), 33 L.J., (M.C.) 71.

C, a policy holder in a certain fire insurance, conspired with H, the local agent, to defraud the company. C gave H, for the purpose of sending to the head office of the company, an unfounded claim for a pretended loss by fire supported by his (C's) statutory declaration, the whole false to H's knowledge. C obtained the money through H from W. & Co., the general agents of the company. It was held (1) That the knowledge of their agent, H, of the falsity of the pretence could not be imputed as the knowledge of W. & Co. or of the company, so as to affect the criminal liability of C; and (2) That the fact that C and H might have been indicted for conspiracy to defraud was immaterial, and did not affect C's liability under this section.

R. vs. Clark (1892), 2 B.C.R. 191.

R. [illegible]

359. Punishment of False Pretense.—Every one is guilty of an indictable offence and liable to three years' imprisonment who, with intent to defraud, by any false pretense, either directly or through the medium of any contract obtained by such false pretense, obtains anything capable of being stolen, or procures anything capable of being

stolen to be delivered to any other person than himself. R.S.C., c. 164, s. 77.

The distinction between the offence of obtaining property by false pretences and the offence of theft is that where the owner of property is induced to part with the possession only, still intending to retain the right of property, the party thus obtaining possession will be guilty of theft; but if the owner parts not only with his possession but also with his right of property, the person thus obtaining the goods will be guilty of obtaining goods by false pretences.

See R. vs. Middleton (1873), L.R., 2, C.C.R. 38.

Powell vs. Hoyland (1851), 6 Ex-Reps. 70.

On an indictment for having obtained money by false pretences the accused cannot be convicted for such offence when it is only proved that, by the discount of their promissory notes, they had obtained a credit in account solely, a credit in account not being a thing capable of being stolen; but if it was proved that an attempt had been made to obtain money there might be a conviction therefor.

R. vs. Boyd et al. (1896), R.J.Q., 5 Q.B. 1.

In order to prove that a bank had acted on the faith of false representations made to it it is not necessary to examine the directors, if the fact can be proved by other competent witnesses; and evidence is admissible of facts which are subsequent to the false representations, to prove that the accused were insolvent very soon after the making of the false representations, as evidence of their knowledge of their falsity when they made them.

R. vs. Boyd et al., supra.

To prove a charge of obtaining goods by false pretences, where there is an interval of time between the making of the pretence and the delivery of the goods, there must be a direct connection between them, constituting the former a continuing pretence up to the time of delivery.

R. vs. Harty (18 8), 2 Can. C.C. 103.

The word "owner" following the signature of the accused in a letter written by him inviting negotiations for the charter of a vessel in his possession and managed by him, does not in itself constitute a representation by the accused that he is the registered owner.

R. vs. Harty supra.

The question whether or not the pretence is a continuing one is one of fact for the jury.

R. vs. Martin (1867), 10 Cox C.C. 383.

The false pretences referred to in this section need not be in words or writing, but may be constituted only by the conduct and acts of the accused. Thus a debtor who has made a judicial abandonment for the benefit of his creditors, whereby his property has become vested in another, and who, knowing that he no longer has any right to receive the rent, presents himself as landlord to a tenant of the property, and receives the rent as he formerly had been accustomed to do, is guilty of a false pretence by his acts and conduct.

R. vs. Letang (1899), 2 Can. C.C. 505.

Upon an application for leave to appeal from this decision the Court of Queen's Bench (Appeal Side) held that the question whether the facts disclosed in a case constitute the crime of

obtaining money by conduct amounting to false pretences is not a question of law but an issue of fact within the province of the jury, and therefore cannot be made the subject of a reserved case.

R. vs. Letang (1899), Can. C.C. at p. 511.

In an English case it was held that being garbed in a university cap and gown for the purpose of fraudulently obtaining credit constituted a false pretence.

R. vs. Barnard (1837), 7 C. & P. 784.

See also R. vs. Burrows, (1863), 11 Cox C.C. 258.

A false pretence must be the false pretence of an existing fact, and if the person to whom it is made is defrauded by it, it makes no difference that he might have known that the pretence was false, or that it is not such a pretence as would be likely to defraud a person of ordinary caution.

R. vs. Woolley (1850), 4 Cox C.C. 193.

R. vs. English (1872), 12 Cox C.C. 171.

But an indictment for obtaining money by false pretences cannot be sustained if the prosecutor, when he parted with his money, knew that the representations made to him were false.

R. vs. Mills (1857), 7 Cox C.C. 263.

At certain athletic sports at which prizes were to be given to the successful competitors, one Sims was entered for two races, the usual written forms which were sent in to the secretary of the sports containing a statement regarding the last four races in which Sims had run, and also stating that he had never won a race. He was handicapped accordingly, but being ill at the time of the races did not appear. His place was taken by one Button, who was a much better runner, and who, representing himself to be Sims, and taking the handicaps allowed to the latter, easily won both races. Upon being questioned by the handicapper, he declared that his name was Sims, and that he had never previously won a race, both statements being untrue. Upon the trial it was contended that he could not be convicted for obtaining goods by false pretences, because the representations in question were made in order to secure a good handicap, and that the object of obtaining the prizes was too remote from the false representation. The Court for Crown Cases Reserved, however, held that he had been properly convicted.

R. vs. Button (1900), L.R., 2 Q.B.D., 597.

To constitute the offence it is essential that there should be an intention to deprive the owner wholly of the property in the chattel in question, and therefore the obtaining by false pretences of the use of a chattel for a limited time only, without an intention to deprive the owner wholly of the chattel, is not an obtaining by false pretences within the meaning of this section.

R. vs. Garrett (1853), 6 Cox C.C. 260.

An indictment cannot be sustained under this section when the false pretence was made after the accused got possession of the chattel in question. Thus, where a person having obtained possession of a cask of ale which he had ordered, then said, "This is for W," it was held that an indictment for obtaining the cask by falsely pretending that he was sent out for it by W could not be sustained.

R. vs Brooks (1859), 1 F. & F. 502.

But the false pretence need not be made to the person from whom the goods or money are obtained, the mode in which the

pretence to A affected the obtaining from B being a matter of evidence.
R. vs. Brown (1847), 2 Cox C.C. 318.
A person who makes a false pretence of having a power to do something, whether the power is physical, moral or supernatural, for the purpose of obtaining money or goods, is indictable under this section.
R. vs. Giles (1865), 10 Cox C.C. 44.
A simple misrepresentation of the quality of goods is not a false pretence, provided that the goods are in kind that which they are represented to be.
R. vs. Bryan (1857), 7 Cox C.C. 312.
R. vs. Lee (1859), 8 Cox C.C. 233.
A person may be convicted under this section when he has obtained goods through having falsely represented himself to be doing a large business.
R. vs. Cooper (1877), 13 Cox C.C. 617.
R. vs. Crab (1868), 11 Cox C.C. 85.

406. **360. Obtaining Execution of Valuable Security by False Pretense.**—Every one is guilty of an indictable offence and liable to three years' imprisonment who, with intent to defraud or injure any person by any false pretense, causes or induces any person to execute, make, accept, endorse or destroy the whole or any part of any valuable security, or to write, impress or affix any name or seal on any paper or parchment in order that it may afterwards be made or converted into or used or dealt with as a valuable security. R.S.C., c. 164, s. 78.

Section 3, sub-section (cc), defines the meaning of the term "valuable security."
The offence referred to in this section is complete, although the document in question might not be of any value until it has been delivered into the hands of the accused.
R. vs Gordon (1889), 16 Cox C.C. 622.
See also R. vs. Essex (1857), 7 Cox C.C. 384.

407. **361. Falsely Pretending to Inclose Money, etc., in a Letter.**—Every one is guilty of an indictable offence and liable to three years' imprisonment who, wrongfully and with wilful falsehood, pretends or alleges that he inclosed and sent, or caused to be inclosed and sent, in any post letter any money, valuable security or chattel, which in fact he did not so inclose and send or cause to be inclosed and sent therein. R.S.C., c. 164, s. 79.

By virtue of section 618 it is not necessary to allege in an indictment for an offence under this section, or to prove at a trial therefor, that the act was committed with the intent to defraud.

362. Obtaining Passage by False Tickets.—Every one is guilty of an indictable offence and liable to six months' imprisonment who, by means of any false ticket or order, or of any other ticket or order, fraudulently and unlawfully obtains or attempts to obtain any passage on any carriage, tramway or railway, or in any steam or other vessel. R.S.C., c. 164, s. 181.

363. Criminal Breach of Trust.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, being a trustee of any property for the use or benefit, either in whole or in part, of some other person, or for any public or charitable purpose, with intent to defraud, and in violation of his trust, converts anything of which he is trustee to any use not authorized by the trust.

Section 3, s.s. (bb), reads as follows : "The expression 'trustee' means a trustee or some express trust created by some deed, will or instrument in writing, or by parol, or otherwise, and includes the heir or personal representative of any such trustee, and every other person upon or to whom the duty of such trust has devolved or come, whether by appointment of a court or otherwise, and also an executor and administrator, and an official manager, assignee, liquidator or other like officer acting under any Act relating to joint stock companies, bankruptcy or insolvency, and any person who is by the law of the Province of Quebec an 'administrateur' or 'fidei-commissaire'; and the expression 'trust' includes whatever is by that law an 'administration' or 'fidei-commission.'"

Section 547 states that no proceeding or prosecution for an offence under this section shall be commenced without the leave of the Attorney-General.

See Major vs. McCraney (1893), 2 Can. C.C. 547.

PART XXVIII.

FRAUD.

334. False accounting by official.
335. False statement by official.
336. False accounting by clerk.
337. False statement by public officer.
338. Assigning property with intent to defraud creditors.
339. Destroying or falsifying books with intent to defraud creditors.
340. Concealing deeds or encumbrances or falsifying pedigrees.
341. Frauds in respect to the registration of titles to land.
342. Fraudulent sales of property.
343. Fraudulent hypothecation of real property.

374. Fraudulent seizures of land.
375. Unlawful dealings with gold and silver.
376. Warehousemen, etc., giving false receipts; knowingly using the same.
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390. Receiving regimental necessaries, etc., from soldiers or deserters.
391. Receiving, etc., necessaries from mariners or deserters.
392. Receiving, etc., a seaman's property.
393. Not satisfying justice that possession of seaman's property is lawful.
394. Conspiracy to defraud.
395. Cheating at play.
396. Pretending to practise witchcraft.

413 **364. False Accounting by Official.**—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, being a director, manager, public officer or member of any body corporate or public company, with intent to defraud—

(a.) destroys, alters, mutilates or falsifies any book, paper, writing or valuable security belonging to the body corporate or public company; or

(b.) makes, or concurs in making, any false entry, or omits or concurs in omitting to enter any material particular, in any book of account or other document. R.S.C., c. 164, s. 68.

The Bank Act, R.S.C., chap. 31, being still in force, sections 97 to 101 of that enactment should be considered in connection with this section.

414 **365. False Statement by Official.**—Every one is guilty of an indictable offence and liable to five years' imprisonment who, being a promoter, director, public officer or manager of any body corporate or public company, either existing

or intended to be formed, makes, circulates or publishes, or concurs in making, circulating, or publishing, any prospectus, statement or account which he knows to be false in any material particular, with intent to induce persons (whether ascertained or not) to become shareholders or partners, or with intent to deceive or defraud the members, shareholders or creditors, or any of them (whether ascertained or not), of such body corporate or public company, or with intent to induce any person to intrust or advance any property to such body corporate or public company, or to enter into any security for the benefit thereof. R.S.C., c. 164, s. 69.

Section 3, s.s. (v), defines the meaning of the expression "property."

This section counteracts the decision in the case of Peek vs. Derry, L.R., 37 C.D. 541.

In considering a charge under this section against the "president" of an incorporated company for publishing a false statement, judicial notice will be taken of the statutes of another province under which the company was incorporated requiring the president to be chosen from the directors; and a warrant of commitment against the president after proof of the manner of incorporation need not allege that he was a director. R. vs. Gillespie (1898), 1 Can. C.C. 551.

A charge against the president of an incorporated trading company may be tried either in the province in which the false statement was despatched by mail to the person defrauded, or in the province in which it was received by mail at the address to which the defendant directed it. In such a case the offence commences in the province where the letter containing the statement was mailed, and is continued and completed in the province to which it is sent, and by virtue of section 553, s.s. (b) it may be considered as having been committed in either jurisdiction.

And a magistrate may, by warrant executed in the province from which the letter was despatched, compel the attendance of the accused in the province to which he directed the letter. R. vs. Gillespie (1898), 1 Can. C.C. 551.
R. vs Gillespie (No. 2) (1898), 2 Can. C.C. 309.
See also R. vs. Girdwood (1776), 2 East P.C. 1120.
R. vs Cooke (1858), 1 F. & F. 64.
R. vs. Holmes (1883), 15 Cox C.C. 343.

366. False Accounting by Clerk.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, being or acting in the capacity of an officer, clerk or servant, with intent to defraud—

(a.) destroys, alters, mutilates or falsifies any book, paper writing, valuable security or document which belongs to or is in the possession of his employer, or has been received

by him for or on behalf of his employer, or concurs in so doing; or

(b.) makes, or concurs in making, any false entry in, or omits or alters, or concurs in omitting or altering, any material particular from, any such book, paper writing, valuable security or document.

416. **367. False Statement by Public Officer.**—Every one is guilty of an indictable offence and liable to five years' imprisonment, and to a fine not exceeding five hundred dollars, who, being an officer, collector or receiver, intrusted with the receipt, custody or management of any part of the public revenues, knowingly furnishes any false statement or return of any sum of money collected by him or intrusted to his care, or of any balance of money in his hands or under his control.

417. **368. Assigning Property with Intent to Defraud Creditors.**—Every one is guilty of an indictable offence and liable to a fine of eight hundred dollars and to one year's imprisonment who—

(a.) with intent to defraud his creditors, or any of them,

(i.) makes, or causes to be made, any gift, conveyance, assignment, sale, transfer or delivery of his property;

(ii.) removes, conceals or disposes of any of his property; or

(b.) with the intent that any one shall so defraud his creditors, or any one of them, receives any such property. R.S.C., c. 173, s. 28.

418 **369. Destroying or Falsifying Books with Intent to Defraud Creditors.**—Every one is guilty of an indictable offence and liable to ten years' imprisonment who, with intent to defraud his creditors or any of them, destroys, alters, mutilates or falsifies any of his books, papers, writings or securities, or makes, or is privy to the making of, any false or fraudulent entry in any book of account or other document. R.S.C., c. 173, s. 27.

C &D purchased from L & Sons certain goods, paying part of the purchase money in cash and giving notes for the balance. Before the delivery of the goods it was agreed that C & D should give L & Sons a first bill of sale as security for the payment of the notes. The goods were delivered, C & D failed to give the bill of sale, and subsequently made an assignment of their property, including the goods in question, to S (one of

the defendants) acting as trustee for the benefit of the creditors. Defendants were convicted under sub-section (b) of this section for having received the property with intent that C & D should thereby defraud their creditors. Held, that the reception of the property by S was not an offence under this section in the absence of proof of the original fraud.

Held also that what this section contemplated was such an abstraction or doing away with property as would, if carried out, completely rob the creditors, or any of them, of any benefit whatever.

R. vs. Shaw (1895), 31 N.S.R. 534.

370. Concealing Deeds or Encumbrances or Falsifying Pedigrees.—Every one is guilty of an indictable offence and liable to a fine, or to two years' imprisonment, or to both, who, being a seller or mortgagor of land, or of any chattel, real or personal, or chose in action, or the solicitor or agent of any such seller or mortgagor (and having been served with a written demand of an abstract of title by or on behalf of the purchaser or mortgagee before the completion of the purchase or mortgage) conceals any settlement, deed, will or other instrument material to the title, or any encumbrance, from such purchaser or mortgagee, or falsifies any pedigree upon which the title depends, with intent to defraud and in order to induce such purchaser or mortgagee to accept the title offered or produced to him. R.S.C., c. 164, s. 91.

Section 548 states that no prosecution for an offence under this section shall be commenced without the leave of the Attorney-General.

371. Frauds in respect to the Registration of Titles to Land.—Every one is guilty of an indictable offence and liable to three years' imprisonment who, acting either as principal or agent, in any proceeding to obtain the registration of any title to land or otherwise, or in any transaction relating to land which is, or is proposed to be, put on the register, knowingly and with intent to deceive makes or assists or joins in, or is privy to the making of, any material false statement or representation, or suppresses, conceals, assists or joins in, or is privy to the suppression, withholding or concealing from any judge ir registrar, or any person employed by or assisting the registrar, any material document, fact or matter of information. R.S.C., c. 164, ss. 96 and 97.

372. Fraudulent Sales of Property.—Every one is guilty of an indictable offence and liable to one year's im-

prisonment, and to a fine not exceeding two thousand dollars, who, knowing the existence of any unregistered prior sale, grant, mortgage, hypothec, privilege or encumbrance of or upon any real property, fraudulently makes any subsequent sale of the same, or of any part thereof. R.S.C., c. 164, ss. 92 and 93.

422. **373. Fraudulent Hypothecation of Real Property.**—Every one who pretends to hypothecate, mortgage, or otherwise charge any real property to which he knows he has no legal or equitable title, is guilty of an indictable offence and liable to one year's imprisonment, and to a fine not exceeding one hundred dollars.

2. The proof of the ownership of the real estate rests with the person so pretending to deal with the same. R.S.C., c. 164, ss. 92 and 94.

423. **374. Fraudulent Seizures of Land.**—Every one is guilty of an indictable offence and liable to one year's imprisonment who, in the province of Quebec, wilfully causes or procures to be seized and taken in execution any lands and tenements, or other real property, not being, at the time of such seizure, to the knowledge of the person causing the same to be taken in execution, the *bona fide* property of the person or persons against whom, or whose estate, the execution is issued. R.S.C., c. 164, ss. 92 and 95.

424 **375. Unlawful Dealings with Gold and Silver.**—Every one is guilty of an indictable offence and liable to two years' imprisonment, who—

(a.) being the holder of any lease or license issued under the provisions of any Act relating to gold or silver mining or by any persons owning land supposed to contain any gold or silver, by fraudulent device or contrivance defrauds or attempts to defraud His Majesty, or any person, of any gold, silver or money payable or reserved by such lease, or with such intent as aforesaid, conceals or makes a false statement as to the amount of gold or silver procured by him; or

(b.) not being the owner or agent of the owners of mining claims then being worked, and not being thereunto authorized in writing by the proper officer in that behalf named in any Act relating to mines in force in any province of Canada, sells or purchases (except to or from such owner

or authorized person) any quartz containing gold, or any smelted gold or silver, at or within three miles of any gold district or mining district, or gold mining division; or

(c.) purchases any gold in quartz, or any unsmelted or smelted gold or silver, or otherwise unmanufactured gold or silver, of the value of one dollar or upwards (except from such owner or authorized person), and does not, at the same time, execute in triplicate an instrument in writing, stating the place and time of purchase, and the quantity, quality and value of gold or silver so purchased, and the name or names of the person or persons from whom the same was purchased, and file the same with such proper officer within twenty days next after the date of such purchase. R.S.C., c. 164, ss. 27, 28 and 29.

Sections 312 and 343 deal with the offence of stealing gold or silver with intent to defraud a partner, and the offence of stealing ores of metals respectively; and section 571 relates to the granting of search warrants for mined gold or silver unlawfully deposited in any place.

376. Warehousemen, etc., giving False Receipts; Knowingly Using the Same.—Every one is guilty of an indictable offence and liable to three years' imprisonment, who—

(a.) being the keeper of any warehouse, or a forwarder, miller, master of a vessel, wharfinger, keeper of a cove, yard, harbour or other place for storing timber, deals, staves, boards, or lumber, curer or packer of pork, or dealer in wool, carrier, factor, agent or other person, or a clerk or other person in his employ, knowingly and wilfully gives to any person a writing purporting to be a receipt for, or an acknowledgment of, any goods or other property as having been received into his warehouse,, vessel, cove, wharf, or other place, or in any such place about which he is employed, or in any other manner received by him, or by the person in and about whose business he is employed, before the goods or other property named in such receipt, acknowledgment or writing have been actually delivered to or receivd by him as aforesaid, with intent to mislead, deceive, injure or defraud any person, although such person is then unknown to him; or

(b.) knowingly and wilfully accepts, transmits or uses any such false receipt or acknowledgment or writing. R.S.C., c. 164, s. 73.

426. **377. Owners of Merchandise Disposing thereof Contrary to Agreements with Consignees who have made Advances thereon.**—Every one is guilty of an indictable offence and liable to three years' imprisonment, who—

(a.) having, in his name, shipped or delivered to the keeper of any warehouse, or to any other factor, agent or carrier, to be shipped or carried, any merchandise upon which the consignee has advanced any money or given any valuable security afterwards, with intent to deceive, defraud or injure such consignee, in violation of good faith, and without the consent of such consignee, makes any disposition of such merchandise different from and inconsistent with the agreement made in that behalf between him and such consignee at the time of or before such money was so advanced or such negotiable security so given; or

(b.) knowingly and wilfully aids and assists in making such disposition for the purpose of deceiving, defrauding or injuring such consignee.

2. No person commits an offence under this section who, before making such disposition of such merchandise, pays or tenders to the consignee the full amount of any advance made thereon. R.S.C., c. 164, s. 74.

427. **378. Making False Statements in Receipts for Property that can be used under "The Bank Act;" fraudulently dealing with Property to which such Receipts refer.**—Every person is guilty of an indictable offence and liable to three years' imprisonment, who—

(a.) wilfully makes any false statement in any receipt, certificate or acknowledgment for grain, timber or other goods or property which can be used for any of the purposes mentioned in *The Bank Act;* or

(b.) having given, or after any clerk or person in his employ has, to his knowledge, given, as having been received by him in any mill, warehouse, vessel, cove or other place any such receipt, certificate or acknowledgment for any such grain, timber or other goods or property—or having obtained any such receipt, certificate or acknowledgment, and after having endorsed or assigned it to any bank or person, afterwards, and without the consent of the holder or endorsee in writing, or the production and delivery of the receipt, certificate or acknowledgment, wilfully alienates or parts with, or does not deliver to such holder or owner of such receipt, certificate or acknowledgment, the

grain, timber, goods or other property therein mentioned. R.S.C., c. 164, s. 75.

379. Innocent Partners.—If any offence mentioned in any of the three sections next preceding is committed by the doing of anything in the name of any firm, company or copartnership of persons the person by whom such thing is actually done, or who connives at the doing thereof, is guilty of the offence, and not any other person. R.S.C., c. 164, s. 76.

380. Selling Vessel or Wreck not having Title thereto.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, not having lawful title thereto, sells any vessel or wreck found within the limits of Canada. R.S.C., c. 81, s. 36 (d).

381. Other Offences respecting Wrecks.—Every one is guilty of an indictable offence and liable, on conviction on indictment to two years' imprisonment, and on summary conviction before two justices of the peace to a penalty of four hundred dollars or six months' imprisonment, with or without hard labour, who—

(a.) secretes any wreck, or defaces or obliterates the marks thereon, or uses means to disguise the fact that it is wreck, or in any maner conceals the character thereof, or the fact that the same is such wreck, from any person entitled to enquire into the same; or

(b.) receives any wreck, knowing the same to be wreck, from any person, other than the owner thereof or the receiver of wrecks, and does not within forty-eight hours inform the receiver thereof;

(c.) offers for sale or otherwise deals with any wreck, knowing it to be wreck, not having a lawful title to sell or deal with the same; or

(d.) keeps in his possession any wreck, knowing it to be wreck, without a lawful title so to keep the same, for any time longer than the time reasonably necessary for the delivery of the same to the receiver; or

(e.) boards any vessel which is wrecked, stranded or in distress against the will of the master, unless the person so boarding is, or acts by command of, the receiver. R.S.C., c. 81, s. 37.

Section 3, s.s. (dd), defines the meaning of the word "wreck."

431. **382. Offences respecting old Marine Stores.**—Every person who deals in the purchase of old marine stores of any description, including anchors, cables, sails, junk, iron, copper, brass, lead and other marine stores, and who, by himself or his agent, purchases any old marine stores from any person under the age of sixteen years, is guilty of an offence and liable, on summary conviction, to a penalty of four dollars for the first offence and of six dollars for every subsequent offence.

2. Every such person who, by himself or his agent, purchases or receives any old marine stores into his shop, premises or places of deposit, except in the daytime betweeen sunrise and sunset, is guilty of an offence and liable, on summary conviction, to a penalty of five dollars for the first offence and of seven dollars for every subsequent offence.

3. Every person, purporting to be a dealer in old marine stores, on whose premises any such stores which were stolen are found secreted is guilty of an indictable offence and liable to five years' imprisonment. R.S.C., c. 81, s. 35.

1, 335. **383. Definitions.**—In the next six sections, the following expressions have the meaning assigned to them herein:

(a.) The expression "public department" includes the Admiralty and the War Department, and also any public department or office of the Government of Canada, or of the public or civil service thereof, or any branch of such department or office;

(b.) The expression "public stores" includes all stores under the care, superintendence or control of any public department as herein defined, or of any person in the service of such department;

(c.) The expression "stores" includes all goods and chattels, and any single store or article. 50-51 V., c. 45, s. 2.

432. **384. Marks to be used on Public Stores.**—The following marks may be applied in or on any public stores to denote His Majesty's property in such stores, and it shall be lawful for any public department, and the contractors, officers and workmen of such department, to apply such marks, or any of them, in or on any such stores:—

Marks appropriated for His Majesty's use in or on Naval, Military, Ordnance, Barrack, Hospital and Victualling Stores.

STORES.	MARKS.
Hempen cordage and wire rope.	White, black or coloured threads laid up with the yarns and the wire, respectively.
Canvas, fearnought, hammocks and seamen's bags.	A blue line in a serpentine form.
Bunting.	A double tape in the warp.
Candles.	Blue or red cotton threads in each wick, or wicks of red cotton
Timber, metal and other stores not before enumerated.	The broad arrow, with or without the letters W. D.

Marks appropriated for use on stores, the property of His Majesty in the right of his Government of Canada.

STORES.	MARKS.
Public stores.	The name of any public department, or the word "Canada," either alone or in combination with a Crown or the Royal Arms.

50-51 V., c. 45, s. 3; 53 V., c. 38.

By virtue of section 570 a constable or peace officer, duly authorised in writing by an officer of any public department competent to give such an authorisation, may search any person suspected of being in possession of public stores, or any vessel, etc., in which it is suspected public stores are contained. Section 709 relates to the proof required to support a conviction in prosecutions for offences under this section.

385. Unlawfully Applying Marks to Public Stores.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, without lawful authority the proof of which shall lie on him, applies any of the said marks in or on any public stores. 50-51 V., c. 45, s. 4.

386. Taking Marks from Public Stores.—Every one is guilty of an indictable offence and liable to two years' imprisonment who, with intent to conceal His Majesty's property in any public stores, takes out, destroys, or obliterates, wholly or in part, any of the said marks. 50-51 V., c. 45, s. 5.

387. Unlawful Possession, Sale, etc., of Public Stores.—Every one who, without lawful authority the proof of which lies on him, receives, possesses, keeps, sells or delivers any public stores bearing any such mark as afore-

said, knowing them to bear such mark, is guilty of an indictable offence and liable on conviction on indictment to one year's imprisonment and, if the value thereof does not exceed twenty-five dollars, on summary conviction, before two justices of the peace, to a fine of one hundred dollars or to six months' imprisonment with or without hard labour. 50-51 V., c. 45, ss. 6 and 8.

Section 3, s.s. (k), reads as follows, "Having in one's possession includes not only having in one's own personal possession, but also knowingly.

(1) Having in the actual possession or custody of any other person; and

(2) Having in any place (whether belonging to or occupied by one's self or not) for the use or benefit of one's self or of any other person;

If there are two or more persons, any one or more of whom, with the knowledge and consent of the rest, have any such thing in his or their custody or possession, it shall be deemed and taken to be in the custody and possession of each and all of them.

436. **388. Not Satisfying Justices that Possession of Public Stores is Lawful.**—Every one, not being in His Majesty's service, or a dealer in marine stores or a dealer in old metals, in whose possession any public stores bearing any such mark are found who, when taken or summoned before two justices of the peace, does not satisfy such justices that he came lawfully by such stores so found, is guilty of an offence and liable, on summary conviction, to a fine of twenty-five dollars; and

2. If any such person satisfies such justices that he came lawfully by the stores so found, the justices in their discretion, as the evidence given or the circumstances of the case require, may summon before them every person through whose hands such stores appear to have passed; and

3. Every one who has had possession thereof, who does not satisfy such justices that he came lawfully by the same, is liable, on summary conviction of having had possession thereof, to a fine of twenty-five dollars, and in default of payment to three months' imprisonment with or without hard labour. 50-51 V., c. 45, s. 9.

437. **389. Searching for Stores near His Majesty's Vessels.**—Every one who, without permission in writing from the Admiralty, or from some person authorized by the Admiralty in that behalf, creeps, sweeps, dredges, or otherwise searches for stores in the sea, or any tidal or inland

water, within one hundred yards from any vessel belonging to His Majesty, or in His Majesty's service, or from any mooring place or anchoring place appropriated to such vessels, or from any mooring belonging to His Majesty, or from any of His Majesty's wharfs or docks, victualling or steam factory yards, is guilty of an offence and liable, on summary conviction before two justices of the peace, to a fine of twenty-five dollars, or to three months' imprisonment, with or without hard labour. 50-51 V., c. 45, ss. 11 and 12.

438. **390. Receiving Regimental Necessaries, etc., from Soldiers or Deserters.**—Every one is guilty of an indictable offence and liable on conviction on indictment to five years' imprisonment, and on summary conviction before two justices of the peace, to a penalty not exceeeding forty dollars, and not less than twenty dollars and costs, and, in default of payment, to six months' imprisonment with or without hard labour who—

(a.) buys, exchanges or detains, or otherwise receives from any soldier, militiaman or deserter any arms, clothing or furniture belonging to His Majesty, or any such articles belonging to any soldier, militiaman or deserter as are generally deemed regimental necessaries according to the custom of the army; or

(b.) causes the colour of such clothing or articles to be changed; or

(c.) exchanges, buys or receives from any soldier or militiaman any provisions, without leave in writing from the officer commanding the regiment or detachment to which such soldier belongs. R.S.C., c. 169, ss. 2 and 4.

439. **391. Receiving, etc., Necessaries from Marines or Deserters.**—Every one is guilty of an indictable offence, and liable, on conviction on indictment to five years' imprisonment, and on summary conviction before two justices of the peace to a penalty not exceeding one hundred and twenty dollars, and not less than twenty dollars and costs, and in default of payment to six months' imprisonment, who buys, exchanges or detains, or otherwise receives, from any seaman or marine, upon any account whatsoever, or has in his possession, any arms or clothing, or any such articles belonging to any seaman, marine or deserter, as are generally deemed necessaries according to the custom of the navy. R.S.C., c. 169, ss. 3 and 4.

440. 335. **392. Receiving, etc., a Seaman's Property.**—Every one is guilty of an indictable offence who detains, buys, exchanges, takes on pawn or receives, from any seaman or any person acting for a seaman, any seaman's property, or solicits or entices any seaman, or is employed by any seaman to sell, exchange or pawn any seaman's property, unless he acts in ignorance of the same being seaman's property, or of the person with whom he deals being or acting for a seaman, or unless the same was sold by the order of the Admiralty or Commander-in-Chief.

2, The offender is liable on conviction on indictment to five years' imprisonment, and on summary conviction to a penalty not exceeding one hundred dollars; and for a second offence, to the same penalty, or, in the discretion of the justice, to six months' imprisonment, with or without hard labour.

3. The expression "seaman" means every person, not being a commissioned, warrant or subordinate officer, who is in or belongs to His Majesty's Navy, and is borne on the books of any one of His Majesty's ships in commission, and every person, not being an officer as aforesaid, who, being borne on the books of any hired vessel in His Majesty's service, is, by virtue of any Act of Parliament of the United Kingdom for the time being in force for the discipline of the Navy, subject to the provisions of such Act.

4. The expression "seaman's property" means any clothes, slops, medals, necessaries or articles usually deemed to be necessaries for sailors on board ship, which belong to any seaman.

5. The expression "Admiralty" means the Lord High Admiral of the United Kingdom, or the Commissioners for executing the office of Lord High Admiral. R.S.C., c. 171, ss. 1 and 2.

441. **393. Not Satisfying Justice that Possession of Seaman's Property is Lawful.**—Every one in whose possession any seaman's property is found who does not satisfy the justice of the peace before whom he is taken or summoned that he came by such property lawfully is liable, on summary conviction, to a fine of twenty-five dollars. R.S.C., c. 171, s. 3.

444.
R. v. Carlin (2) 6 C. Cr. Cas. 597.
R. v. Johnston 6 do 232:
R. v. Hutchinson 8 do 486.

394. Conspiracy to Defraud.—Every one is guilty of an indictable offence and liable to seven years' imprison-

ment who conspires with any other person, by deceit or falsehood or other fraudulent means, to defraud the public or any person, ascertained or unascertained, or to affect the public market price of stocks, shares, merchandise or anything else publicly sold, whether such deceit or falsehood or other fraudulent means would or would not amount to a false pretense as hereinbefore defined.

A conspiracy is the agreeing or combining together of two or more persons to accomplish some unlawful purpose or to accomplish a lawful purpose by some unlawful means.

It is to be observed that in several instances the Code allots a severer punishment for the offence of conspiring to commit a certain crime than for the commission of the crime itself. Thus the offence of spreading false news injurious to the public, which is dealt with by section 126, is punishable by one year's imprisonment; but a conspiracy to publish false news injurious to the public is, by virtue of section 527, punishable by seven years' imprisonment.

A conspiracy must necessarily be the offence of two or more persons.

Mulcahy vs. R. (1868), L.R., 3 H.L. 306.

And, therefore, one person alone cannot be convicted of the offence unless he be indicted for conspiring with other persons unknown to the jurors, or unless he is charged with conspiring with others, who have not appeared, or who have died since the commission of the offence.

R. vs. Kinnersley (1718), 1 Str. 193.

R. vs. Nicholls (1745), 2 Str. 1227.

Where two persons are indicted on a charge of conspiracy and are tried together, both must be convicted or both acquitted.

R. vs. Manning (1883), L.R., 12 Q.B.D. 241.

But one conspirator may be indicted and convicted without joining the other, though the latter may be living and within the jurisdiction.

R. vs. Frawley (1894), 25 O.R. 431.

R. vs. Connolly (1893), 25 O.R. 151.

Where an accused person is indicted for, and found guilty of, obtaining money under false pretences it is immaterial that with regard to the same act he might have been indicted with another person for conspiracy to defraud.

R. vs. Clark (1892), 2 B.C.R. 191.

The offence of conspiracy is complete when the unlawful agreement is entered into between the parties, and it is not necessary that any act should be done in pursuance of the agreement. Nor does the fact that the object of the agreement was the commission of a civil wrong only change the criminal nature of the offence of conspiring.

R. vs. Defries, and R. vs. Tamblyn (1894), 25 O.R. 645.

O'Connell vs. R. (1844), 11 Cl. & F. 155.

In a charge of conspiracy it is not necessary to prove that the parties came together and actually agreed in terms to carry out their common design; but the jury may group the detached acts of the parties severally, and view them as indicating a concerted performance on the part of all as proof of the alleged

conspiracy ; and the bare consulting of those who merely deliberate in regard to the proposed conspiracy, although they may not agree on a plan of action, is of itself an overt act.

R. vs. Connolly and McGreevy (1894), 1 Can. C.C. 468.

When the existence of the common design on the part of the defendants has been proved, evidence is then properly admissible as against both of what was said or done by either in furtherance of the common design, and the same rule will apply to admitting evidence of what was said or done in furtherance of the common design by a conspirator not charged as evidence against those who are charged as proof of the existence of the common design on the part of the accused with such conspirator.

R. vs. Connolly and McGreevy, supra.

The venue in an indictment for conspiracy may be laid either where the agreement was entered into or where any overt act was done in pursuance of the common design ; and any such overt act is to be regarded as a renewal or continuation of the original agreement made by all the conspirators, and, if committed in another jurisdiction than that in which the original concerted purpose was formed, jurisdiction will then attach to authorise the trial in such other jurisdiction.

R. vs. Connolly and McGreevy, supra.

See also R. vs. Seward (1834), 1 A. & E. 706.

R. vs. Cooke (1826), 5 B. & C. 538, at p. 545.

R. vs. Kenrick (1843), 5 Q.B. 49.

It is not necessary to prove that the accused actually met together ; it is sufficient if the jury is satisfied from the defendants' conduct that they are acting in concert.

R. vs. Fellowes (1859), 19 U.C.Q.B.R. 48.

Upon a charge of conspiracy to defraud, attempts made by the accused to defraud persons other than those mentioned in the indictment may be proved ; and the production of a contract in writing which constitutes elements of truth of the conspiracy is no bar to supplementary parol evidence of false representations made either before or after this contract.

R. vs. Sheppard et al. (1893), R.J.Q., 4 Q.B. 470.

The accused were charged with having conspired to fraudulently obtain from a certain bank various sums of money by certain false pretences. The Crown called as a witness the manager of another bank, to prove that at the same period the accused obtained other sums from that bank in the same manner. The admission of this evidence was objected to on behalf of the accused, on the ground that it was irrelevant, and that it might tend to prejudice the minds of the jurors by proving that they were then charged. It was held, that acts similar to those the accused had committed a crime other than that with which charged, but committed against other persons, might be proved in order to show that at the time of the commission of the offence charged the accused knew that they were acting unlawfully.

R. vs. McCullough & McGillis (1900), 21 C.L.T. 306.

Upon the trial of persons indicted for an offence under this of a statement made by one of the accused on oath in a prose- section evidence was offered by the Crown, and was admitted, cution before a magistrate, is which the defendant in this criminal proceeding was a complainant, and gave evidence on his own behalf, the statement in question having been made in the course of his cross-examination.

The question was reserved for the opinion of a Divisional Court whether evidence of this statement was admissible in view of 56 Vict., chap. 31, sec. 5 (The Canada Evidence Act, 1893), which provides that "no person shall be excused from answering any question upon the ground that the answer to such question may tend to criminate him, or may tend to establish his liability to a civil proceeding at the instance of the Crown or of any other person; provided, however, that no evidence so given shall be used or receivable in evidence against such person in any criminal proceeding thereafter instituted against him, other than a prosecution for perjury in giving such evidence.

Held, that as defendant did not, so far as the case showed, assert his privilege before the magistrate, the evidence was receivable at the trial.

R. vs. Madden and Bowerman (1894), 30 C.L.J. 765.

Conflicting decisions on this point were rendered by courts of co-ordinate jurisdiction. (See R. vs. Hendershott and Welter (1895), 26 O.R. 578; R. vs. Williams (1897), 28 O.R. 583; R. vs. Hammond (1898), 1 Can. C.C. 373). 61 Vict., c. 53, sec. 1, amending the Canada Evidence Act, 1893, was apparently passed with the intention of settling the matter by making necessary a formal objection on the part of the witness in order to secure his future immunity from the consequences of his answer, but it is doubtful if the enactment in question really covers the exact point.

The fact that a person thought that he himself was defrauding others will not affect his right to prosecute those with whom he thought he was conspiring, but who were in reality defrauding him.

R. vs. Hudson (1860), Bell's C.C. 263.

An indictment will lie for a conspiracy to obtain money as a reward for an appointment to an office under the Government.

R. vs. Pollman (1809), 2 Campbell 229.

It is an indictable offence to conspire on a particular day, by false rumours, to raise the price of the public Government funds with intent to injure the persons who should purchase on that day.

R. vs. de Berenger (1814), 3 M. & S. 68.

R. vs. Aspinall (1876), L.R., 2 Q.B.D. 59.

The directors of a joint stock bank, knowing it to be in a state of insolvency, issued a balance sheet showing a profit, and then declared a dividend of six per cent. They also issued advertisements inviting the public to take shares upon the faith of their representations that the bank was in a flourishing condition. It was held that they were guilty of a conspiracy to defraud.

R. vs. Brown (1858), 7 Cox C.C. 442.

See also R. vs. Warburton (1870), L.R., 1 C.C.R. 274.

R. vs. Gill (1818), 2 B. & Ald. 204.

Sections 613 and 616 relate to indictments for conspiracy. Section 66 deals with treasonable conspiracies; section 70 with conspiracies; section 152 with conspiracies to bring seditious conspiracies to intimidate a legislature; sections 128 and 124 with false accusations; section 188 with conspiracies to defile women; and section 234 with conspiracies to murder.

Section 527 reads as follows, "Everyone is guilty of an indictable offence and liable to seven years' imprisonment who, in any case not hereinbefore provided for, conspires with any person to commit any indictable offence."

442. **395. Cheating at Play.**—Every one is guilty of an indictable offence and liable to three years' imprisonment who, with intent to defraud any person, cheats in playing at any game, or in holding the stakes, or in betting on any event. R.S.C., c. 164, s. 80.

Sections 196, 197 and 199 relate to gaming and betting houses; and sections 203, 204 and 205 deal with gambling in public conveyances, betting and pool selling, and lotteries.

443. Rv. Chilcott b.C.G.Ca. 27. **396. Pretending to Practice Witchcraft.**—Every one is guilty of an indictable offence and liable to one year's imprisonment who pretends to exercise or use any kind of witchcraft, sorcery, enchantment or conjuration, or undertakes to tell fortunes, or pretends from his skill or knowledge in any occult or crafty science, to discover where or in what manner any goods or chattels supposed to have been stolen or lost may be found.

PART XXIX.

ROBBERY AND EXTORTION.

397. Robbery defined.
398. Punishment of aggravated robbery.
399. Punishment of robbery.
400. Assault with intent to rob.
401. Stopping the mail.
402. Compelling execution of documents by force.
403. Sending letter demanding property with menaces.
404. Demanding with intent to steal.
405. Extortion by certain threats.
406. Extortion by other threats.

445. **397. Robbery Defined.**—Robbery is theft accompanied with violence or threats of violence to any person or property used to extort the property stolen, or to prevent or overcome resistance to its being stolen.

446. **398. Punishment of Aggravated Robbery.**—Every one is guilty of an indictable offence and liable to imprisonment for life and to be whipped who—

(a.) robs any person and at the time of, or immediately before or immediately after, such robbery wounds, beats, strikes, or uses any personal violence to, such person; or

528. **503. Injuries to Poll-books, etc.**—Every one is guilty of an indictable offence and liable to seven years' imprisonment who wilfully—

(a.) destroys, injures or obliterates, or causes to be destroyed, injured or obliterated; or

(b.) makes or causes to be made any erasure, addition of names or interlineation of names in or upon—

any writ of election, or any return to a writ of election, or any indenture, poll-book, voters' list, certificate, affidavit or report, or any document, ballot or paper made, prepared or drawn out according to any law in regard to Dominion, provincial, municipal or civic elections. R.S.C., c., 168, s. 55.

See also R.S.C., chap. 8, sec. 102.

529. **504. Injuries to Buildings by Tenants.**—Every one is guilty of an indictable offence and liable to five years' imprisonment who, being possessed of any dwelling-house or other building, or part of any dwelling-house or other building, which is built on lands subject to a mortgage or which is held for any term of years or other less term, or at will, or held over after the termination of any tenancy, wilfully and to the prejudice of the mortgagee or owner—

(a.) pulls down or demolishes, or begins to pull down or demolish the same or any part thereof, or removes or begins to remove the same or any part thereof from the premises on which it is erected; or

(b.) pulls down or severs from the freehold any fixture fixed in or to such dwelling-house or building, or part of such dwelling-house or building.

Sec. 322 deals with the offence of theft of fixtures, etc., by tenants.

531. **505. Injuries to Land Marks indicating Municipal Divisions.**—Every one is guilty of an indictab'e offence and liable to seven years' imprisonment who wilfully pulls down, defaces, alters or removes any mound, land mark, post or monument lawfully erected, planted or placed to mark or determine the boundaries of any province, county, city, town, township, parish or other municipal division. R.S.C., c. 168, s. 6.

532. **506. Injuries to other Land Marks.**—Every one is guilty of an indictab'e offence and liable to five years' im-

prisonment, who wilfully defaces, alters or removes any mound, land mark, post or monument lawfully placed by any land surveyor to mark any limit, boundary or angle of any concession, range, lot or parcel of land.

2. It is not an offence for any land surveyor in his operations to take up such posts or other boundary marks when necessary, if he carefully replaces them as they were before. R.S.C., c. 168, s. 57.

507. Injuries to Fences, etc.—Every one is guilty of an offence and liable on summary conviction, to a penalty not exceeding twenty dollars over and above the amount of the injury done, who wilfully destroys or damages any fence, or any wall, stile or gate, or any part thereof respectively, or any post or stake planted or set up on any land, marsh, swamp or land covered by water, on or as the boundary or part of the boundary line thereof, or in lieu of a fence thereto.

2. Every one who, having been convicted of any such offence, afterwards commits any such offence is liable, on summary conviction, to three months' imprisonment with hard labour. R.S.C., c. 168, s. 27; 53 V., c. 38, s. 15.

507A.—Injuries to Harbours, etc.—Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding fifty dollars, who willfully and without the permission of the Minister of Marine and Fisheries (the burden of proving which permission shall lie on the accused), removes any stone, wood, earth or other material forming a natural bar necessary to the existence of a public harbour, or forming a natural pratection to such bar. 56 V., c. 32.

508. Injuries to Trees, etc., wheresoever growing.—Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty-five dollars over and above the amount of the injury done, or to two months' imprisonment with or without hard labour, who wilfully destroys or damages the whole or any part of any tree, sapling or shrub, or any underwood, wheresoever the same is growing, the injury done being to the amount of twenty-five cents, at the least.

2. Every one who, having been convicted of any such offence, afterwards commits any such offence is liable, on summary conviction, to a penalty not exceeding fifty dollars over and above the amount of the injury done, or to four months' imprisonment with hard labour.

3. Every one who, having been twice convicted of any such offence, afterwards commits any such offence, is guilty of an indictable offence and liable to two years' imprisonment. R.S.C., c. 168, s. 24.

534. **509. Injuries to Vegetable Productions growing in Gardens, etc.**—Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty dollars over and above the amount of the injury done, or to three months' imprisonment with or without hard labour, who wilfully destroys or damages with intent to destroy, any vegetable production growing in any garden, orchard, nursery ground, house, hot-house, green-house or conservatory.

2. Every one who, having been convicted of any such offence, afterwards commits any such offence is guilty of an indictable offence, and liable to two years' imprisonment. R.S.C., c. 168, s. 25.

535 **510. Injuries to Cultivated Roots and Plants growing elsewhere.**—Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding five dollars over and above the amount of the injury done, or to one month's imprisonment with or without hard labour, who wilfully destroys, or damages with intent to destroy, any cultivated root or plant used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture, and growing in any land, open or inclosed, not being a garden, orchard or nursery ground.

2. Every one who, having been convicted of any such offence, afterwards commits any such offence is liable, on summary conviction, to three months' imprisonment with hard labour. R.S.C., c. 168, s. 26.

S.s. 2.—Regarding the punishment upon second convictions generally, see sec. 478.

539. 540.

R v Clemens 67 L.J. 90. 482 C.C.R.: Gaab v Ellier 6 C.G.Ca. 15:

511. Injuries not otherwise provided for.—Every one who wilfully commits any damage, injury or spoil to or upon any real or personal property either corporeal or incorporeal, and either of a public or private nature, for which no punishment is hereinbefore provided, is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty dollars, and such further sum, not exceeding twenty dollars as appears to the justice to be a

reasonable compensation for the damage, injury or spoil so committed,—which last mentioned sum of money shall, in the case of private property, be paid to the person aggrieved; and if such sums of money, together with the costs, if ordered, are not paid, either immediately after the conviction, or within such period as the justice, at the time of the conviction appoints, the justice may cause the offender to be imprisoned for any term not exceeding two months, with or without hard labour.

2. Nothing herein extends to—

(a.) any case where the person acted under a fair and reasonable supposition that he had a right to do the act complained of; or

(b.) any trespass, not being wilful and malicious, committed in hunting or fishing, or in the pursuit of game. R.S.C., c. 168, s. 59; 53 V., c. 37, s. 18.

A conviction hereunder is not good unless it specifies a particular act of injury, and the nature and quality of the property damaged. R. vs. Spain (1889), 18 O.R. 336.

A magistrate's jurisdiction in respect of a charge under this section is not ousted unless the act was done under a fair and reasonable supposition of right, and the magistrate has jurisdiction to summarily try the charge notwithstanding the mere belief of the accused that he had a right to do the act complained of.

R. vs. Davy (1900), 4 Can. C.C. 28.

And the same rule applies to a charge of tresspass under R.S.O. (1897), c. 120, sec. 1.

R. vs. Davy, supra.

The honest belief of a person charged with an offence under this section, that he had the right to do the act complained of, is not sufficient to protect him; there must be fair and reasonable ground in fact for that belief. Thus, where the usual reservation in a patent of land bounded by navigable water of "free access to the shore for all vessels, boats and persons" gave a right of access only from the water to the shore, it was held that a person who had broken down fences and had driven across private property to the shore, could not maintain that he had "acted under a fair and reasonable supposition of right" in so doing.

R. vs. Davy (1900), 27 Cnt. A.R. 508.

PART XXXVIII.

CRUELTY TO ANIMALS.

512. Cruelty to animals.
513. Keeping cock-pit.
514. The conveyance of cattle.
515. Search of premises; Penalty for refusing admission to peace officer.

542 **512. Cruelty to Animals.**—Every one is guilty of an offence and liable, on summary conviction before two justices of the peace, to a penalty not exceeding fifty dollars, or to three months' imprisonment with or without hard labour, or to both, who—

R. v. Connell & Co. 46.

(a.) wantonly, cruelly or unnecessarily beats, binds, ill-treats, abuses, overdrives or tortures any cattle, poultry, dog, domestic animal or bird, or any wild animal or bird in captivity; or

(b.) while driving any cattle or other animal is, by negligence or ill-usage in the driving thereof, the means whereby any mischief, damage or injury is done by any such cattle or other animal; or

542 (c.) in any manner encourages, aids or assists at the fighting or baiting of any bull, bear, badger, dog, cock, or other kind of animal, whether of domestic or wild nature. R.S.C., c. 172, s. 2; as amended by 58-59 V., c. 40.

According to sec. 551, s.s. (e), no prosecution for an offence under this section can be commenced after the expiration of three months from the date of its alleged commission.

Sec. 3, s.s. (d), defines the meaning of the expression "cattle."

The offence of cruelty to animals is purely a statutory one, being altogether unknown to the common law.

See sec. 499, s.s. (b), par. (b).

The ill-usage must be such as there is no need for. There are cases in which the infliction of pain is justified by the surrounding circumstances, and the general rule is that any act done with the object of making an animal more serviceable for the purposes for which it is generally used, even though such act cause the animal pain, does not come within this section. Thus it has been held that the castration of horses is not cruelty.

Lewis vs. Fermor (1887), L.R.,18 Q.B.D. 534.

A person who, through an error of judgment, and without any intention to do so, drives a horse to death, would not be guilty of cruelty to animals under this section.

In a case in which a charge of cruelty to animals was brought on account of the use of a check rein, it was held that

the check was necessary to manage the horse, and that it was lawful to use the same in order to give a better appearance to the horse and thus increase the value of its owner's property, although the rein caused a certain amount of discomfort to the animal.

Society for the Prevention of Cruelty to Animals vs. Lowry (1894), 17 L.N. 118.

R.S.C. chap 172, sec. 7, which is unrepealed, applies in this connection, and reads as follows, "Every pecuniary penalty recovered with respect to any such offence shall be applied in the following manner, that is to say: one moiety thereof to the corporation of the city, town, village, township, parish or place in which the offence was committed, and the other moiety with full costs to the person who informed and prosecuted for the same, or to such other person as to the justices of the peace seems proper."

513. Keeping Cock-pit.—Every one is guilty of an offence and liable, on summary conviction before two justices of the peace, to a penalty not exceeding fifty dollars, or to three months' imprisonment, with or without hard labour, or to both, who builds, makes, maintains or keeps a cock-pit on premises belonging to or occupied by him, or allows a cock-pit to be built, made, maintained or kept on premises belonging to or occupied by him.

2. All cocks found in any such cock-pit, or on the premises wherein such cock-pit is, shall be confiscated and sold for the benefit of the municipality in which such cock-pit is situated. R.S.C., c. 172, s. 3.

514. The Conveyance of Cattle.—No railway company within Canada whose railway forms any part of a line of road over which cattle are conveyed from one province to another province, or from the United States to or through any province, or from any part of a province to another part of the same, and no owner or master of any vessel carrying or transporting cattle from one province to another province, or within any province, or from the United States through or to any province, shall confine the same in any car, or vessel of any description, for a longer period than twenty-eight hours without unlading the same for rest, water and feeding for a period of at least five consecutive hours, unless prevented from so unlading and furnishing water and food by storm, or other unavoidable cause, or by necessary delay or detention in the crossing of trains.

2. In reckoning the period of confinement, the time during which the cattle have been confined without such rest, and without the furnishing of food and water, on any connecting railways or vessels from which they are received,

whether in the United States or in Canada, shall be included.

3. The foregoing provisions as to cattle being unladen shall not apply when cattle are carried in any car or vessel in which they have proper space and opportunity for rest, and proper food and water.

4. Cattle so unloaded shall be properly fed and watered during such rest by the owner or person having the custody thereof or, in case of his default in so doing, by the railway company, or owner or master of the vessel transporting the same, at the expense of the owner or person in custody thereof; and such company, owner or master shall in such case have a lien upon such cattle for food, care and custody furnished and shall not be liable for any detention of such cattle.

5. Where cattle are unladen from cars for the purpose of receiving food, water and rest the railway company then having charge of the cars in which they have been transported shall, except during a period of frost, clear the floors of such cars, and litter the same properly with clean sawdust or sand before reloading them with live stock.

6. Every railway company, or owner or master of a vessel, having cattle in transit, or the owner or person having the custody of such cattle, as aforesaid, who knowingly and wilfully fails to comply with the foregoing provisions of this section, is liable for every such failure on summary conviction to a penalty not exceeding one hundred dollars. R.S.C., c. 172, ss. 8, 9, 10 and 11.

S45, **515. Search of Premises; Penalty for Refusing Admission to Peace Officer.**—Any peace officer or constable may, at all times, enter any premises where he has reasonable grounds for supposing that any car, truck or vehicle, in respect whereof any company or person has failed to comply with the provisions of the next preceding section, is to be found, or enter on board any vessel in respect whereof he has reasonable grounds for supposing that any company or person has on any occasion, so failed.

2. Every one who refuses admission to such peace officer or constable is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty dollars and not less than five dollars, and costs, and in default of payment, to thirty days' imprisonment. R.S.C., c. 171, s. 12.

PART XXXIX.

OFFENCES CONNECTED WITH TRADE AND BREACHES OF CONTRACT.

516. Conspiracies in restraint of trade.
517. What acts done in restra'nt of trade are not unlawful.
518. Prosecution for conspiracy.
519. Interpretation.
520. Combination in restra'nt of trade.
521. Criminal breaches of contract.
522. Posting up copies of provisions respecting criminal breaches of contract; defacing same.
523. Intimidation.
524. Intimidation of any person to prevent him from working at any trade.
525. Intimidation of any person to prevent him dealing in wheat, etc.; unlawfully preventing seamen from working.
526. Intimidation of any person to prevent him bidding for public lands.

516. Conspiracy in Restraint of Trade.—A conspiracy in restraint of trade is an agreement between two or more persons to do or procure to be done any unlawful act in restraint of trade.

See sec. 527.

517. What Acts done in Restraint of Trade are not Unlawful.—The purposes of a trade union are not, by reason merely that they are in restraint of trade, unlawful within the meaning of the next preceding section. R.S.C., c. 131, s. 22.

According to R.S.C., chap. 31, sec. 2, ("The Trade Unions Act"), the expression "Trade Union" means such combination, whether temporary or permanent, for regulating the relations between workmen and masters, or for imposing restrictive conditions on the conduct of any trade or business as would, but for this Act, have been deemed to be an unlawful combination by reason of some one or more of its purposes being in restraint of trade.

518. Prosecution for Conspiracy.—No prosecution shall be maintainable against any person for conspiracy in refusing to work with or for any employer or workman, or for doing any act or causing any act to be done for the purpose of a trade combination, unless such act is an offence punishable by statute. 53 V., c. 37, s. 19.

In a case in which it was proved that the members of a trade union had conspired together to injure a non-union workman by depriving him of his employment, it was held that the conspirators had been guilty of a misdemeanor, and that their act was not for the purpose of trade combination within the meaning of the law.
R. vs. Gibson (1889), 16 O.R. 704.

2,335. **519. Interpretation.**—The expression "trade combination" means any combination between masters or workmen or other persons for regulating or altering the relations between any persons being masters or workmen, or the conduct of any master or workman, in or in respect of his business or employment, or contract of employment or service; and the expression "act" includes a default, breach or omission. R.S.C., c. 173, s. 13.

458. **520. Combination in Restraint of Trade.**—Every one is guilty of an indictable offence, and liable to a penalty not exceeding four thousand dollars and not less than two hundred dollars, or to two years' imprisonment, or, if a corporation, is liable to a penalty not exceeding ten thousand dollars and not less than one thousand dollars, who conspires, combines, agrees or arranges with any other person, or with any railway, steamship, steamboat or transportation company—

(a.) to unduly limit the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any article or commodity which may be a subject of trade or commerce; or

(b.) to restrain or injure trade or commerce in relation to any such article or commodity; or

(c.) to unduly prevent, limit, or lessen the manufacture or production of any such article or commodity, or to unreasonably enhance the price thereof; or

(d.) to unduly prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation or supply of any such article or commodity, or in the price of insurance upon person or property.

2. Nothing in this section shall be construed to apply to combinations of workmen or employees for their own reasonable protection as such workmen or employees. 52 V., c. 41, s. 1; as amended by 63-64 V., c. 46. (*This section came into force 1st January, 1901.*)

52 Vic., chap. 41, secs 4 and 5, which are unrepealed, may be referred to in connection with this section.
Up to Jan. 1, 1901, this section had the word "unlawfully" at the end of the first paragraph thereof, and did not include

the present s.s. 2. Under this section, as it thus read formerly, it was held that to constitute the offence mentioned therein, the combination had to be formed with a view of unlawfully attaining any one or more of the restrictions of trade mentioned in the section.

R. vs. The American Tobacco Co., of Canada (1897), 3 Rev. de Jurispr. 453.

In the same case it was decided that a manufacturer was entitled to dispose of his goods in the way he deemed best for his own interests, even though this way might perhaps be detrimental to other people in the same line of business, as this amounted only to the ordinary competition of trade, and it did not constitute an unlawful combination under this section

It was also held that it was not unlawful for a manufacturer of goods to agree with as many persons as possible that they should sell his goods exclusively.

R. vs. The American Tobacco Co., of Canada (1897), 3 Rev. de Jurispr. 453.

It seems that the case above cited would also be a correct exposition of the law under this section as now amended.

521. Criminal Breaches of Contract.—Every one is guilty of an indictable offence and liable on indictment or on summary conviction before two justices of the peace, to a penalty not exceeding one hundred dollars or to three months' imprisonment, with or without hard labour, who—

(a.) wilfully breaks any contract made by him knowing, or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to endanger human life, or to cause serious bodily injury, or to expose valuable property, whether real or personal, to destruction or serious injury; or

(b.) being under any contract made by him with any municipal corporation or authority or with any company, bound, agreeing or assuming to supply any city or any other place, or any part thereof, with electric light, or power, gas or water, wilfully breaks such contract knowing, or having reasonable cause to believe, that the probable consequences of his so doing, either alone or in combination with others, will be to deprive the inhabitants of that city or place, or part thereof, wholly or to a great extent, of their supply of power, light, gas or water; or

(c.) being under any contract made by him with a railway company, bound, agreeing or assuming to carry His Majesty's mails, or to carry passengers or freight, or with His Majesty, or any one on behalf of His Majesty, in connection with a Government railway on which His Majesty's mails, or passengers or freight are carried, wilfully breaks such contract knowing, or having reason to believe that

the probable consequences of his so doing, either alone or in combination with others, will be to delay or prevent the running of any locomotive engine, or tender, or freight or passenger train or car, on the railway.

2. Every municipal corporation or authority or company which, being bound, agreeing or assuming to supply any city, or any other place, or any part thereof, with electric light or power, gas or water, wilfully breaks any contract made by such municipal corporation, authority, or company, knowing or having reason to believe that the probable consequences of its so doing will be to deprive the inhabitants of that city or place, or part thereof wholly, or to a great extent of their supply of electric light or power, gas or water, is liable to a penalty not exceeding one thousand dollars.

3. Every railway company which, being bound, agreeing or assuming to carry His Majesty's mails, or to carry passengers or freight, wilfully breaks any contract made by such railway company, knowing or having reason to believe that the probable consequences of its so doing will be to delay or prevent the running of any locomotive engine or tender, or freight or passenger train or car on the railway is liable to a penalty not exceeding one hundred dollars.

4. It is not material whether any offence defined in this section is committed from malice conceived against the person, corporation, authority or company with which the contract is made or otherwise. R.S.C., c. 173, ss. 15 and 17.

522. Posting up Copies of Provisions respecting Criminal Breaches of Contract; Defacing same.—Every such municipal corporation, authority, or company, shall cause to be posted up at the electrical works, gas works, or water-works, or railway stations, as the case may be, belonging to such corporation, authority or company, a printed copy of this and the preceding section in some conspicuous place, where the same may be conveniently read by the public; and as often as such copy becomes defaced obliterated or destroyed shall cause it to be renewed with all reasonable despatch.

2. Every such municipal corporation, authority or company which makes default in complying with such duty is liable to a penalty not exceeding twenty dollars for every day during which such default continues.

3. Every person unlawfully injuring, defacing or covering up any such copy so posted up is liable, on summary con-

viction to a penalty not exceeding ten dollars. R.S.C., c. 173, s. 19.

Sol. **523. Intimidation.**—Every one is guilty of an indictable offence and liable, on indictment or on summary conviction before two justices of the peace, to a fine not exceeding one hundred dollars or to three months' imprisonment with or without hard labour who, wrongfully and without lawful authority, with a view to compel any other person to abstain from doing anything which he has a lawful right to do, or to do anything from which he has a lawful right to abstain—

(a.) uses violence to such other person, or his wife or children, or injures his property; or

(b.) intimidates such other person, or his wife or children, by threats of using violence to him, her or any of them, or of injuring his property; or

(c.) persistently follows such other person about from place to place; or

(d.) hides any tools, clothes or other property owned or used by such other person, or deprives him of, or hinders him in, the use thereof; or

(e.) with one or more other persons, follows such other person in a disorderly manner, in or through any street or road; or

(f.) besets or watches the house or other place where such other person resides or works, or carries on business or happens to be. R.S.C., c. 173, s. 12.

A threat to an employer that his men will strike if he employs non-union men, or a threat to an employee that his fellow-employees will strike unless he joins a union, is not intimidation within the meaning of this section.

Connor vs. Kent; Gibson vs. Lawson; Curran vs. Treleaven (1891), 2 Q.B.D. 545.

Sol. **524. Intimidation of any Person to prevent Him from Working at any Trade.**—Every one is guilty of an indictable offence and liable to two years' imprisonment who, in pursuance of any unlawful combination or conspiracy to raise the rate of wages, or of any unlawful combination or conspiracy respecting any trade, business or manufacture, or respecting any person concerned or employed therein, unlawfully assaults any person, or, in pursuance of any such combination or conspiracy, uses any violence or threat of violence to any person, with a view to

hinder him from working or being employed at such trade, business or manufacture. R.S.C., c. 173, s. 9.

523. **525. Intimidation of any Person to prevent Him Dealing in Wheat, etc.; Unlawfully preventing Seamen from Working.**—Every one is guilty of an indictable offence and liable, on indictment or on summary conviction before two justices of the peace, to a fine not exceeding one hundred dollars, or to three months' imprisonment with or without hard labour, who—

(a.) beats or uses any violence or threat of violence to any person with intent to deter or hinder him from buying, selling or otherwise disposing of any wheat or other grain, flour, meal, malt or potatoes or other produce or goods, in any market or other place; or

(b.) beats or uses any such violence or threat to any person having the charge or care of any wheat or other grain, flour, meal, malt or potatoes, while on the way to or from any city, market, town or other place with intent to stop the conveyance of the same; or

(c.) by force or threats of violence, or by any form of intimidation whatsoever, hinders or prevents or attempts to hinder or prevent any seaman, stevedore, ship carpenter, ship labourer or other person employed to work at or on board any ship or vessel, or to do any work connected with the loading or unloading thereof, from working at or exercising any lawful trade, business, calling or occupation in or for which he is so employed; or with intent so to hinder or prevent, besets or watches such ship, vessel or employee; or

(d.) beats or uses any violence to, or makes any threat of violence against, any such person with intent to hinder or prevent him from working at or exercising the same, or on account of his having worked at or exercised the same. R.S.C., c. 173, s. 10; 50-51 V., c. 49.

524. **526. Intimidation of any Person to prevent Him Bidding for Public Lands.**—Every person is guilty of an indictable offence and liable to a fine not exceeding four hundred dollars, or to two years' imprisonment, or to both, who, before or at the time of public sale of any Indian lands, or public lands of Canada, or of any province of Canada, by intimidation, or illegal combination, hinders or prevents, or attempts to hinder or prevent, any person from bidding upon or purchasing any lands so offered for sale R.S.C., c. 173, s. 14.

PART XL.

ATTEMPTS—CONSPIRACIES—ACCESSORIES.

527. Conspiracy to commit an indictable offence.
528. Attempting to commit certain indictable offences.
529. Attempting to commit other indictable offences.
530. Attempting to commit statutory offences.
531. Accessories after the fact to certain indictable offences.
532. Accessories after the fact to other indictable offences.

573. **527. Conspiring to Commit an Indictable Offence.**—Every one is guilty of an inditable offence and liable to seven years' imprisonment who, in any case not hereinbefore provided for, conspires with any person to commit any indictable offence.

According to section 540, a conspiracy to commit an indictable offence cannot be tried by a Court of General Sessions of the Peace unless the indictable offence which it is alleged the accused conspired to commit, is itself triable in such Court.

Regarding conspiracies to commit specific offences, see secs. 66 and 69, sec. 70, sec. 152, sec. 188, sec. 234, sec. 394, secs. 516 and 520, and sec. 524.

At a trial for conspiracy, acts similar to those charged, but committed in respect of different persons, may be proved in order to show guilty knowledge on the part of the accused.

R. vs. McCullough and McGillis (1900), 7 Revue de Jurisprudence, 2.

574. **528. Attempting to Commit certain Indictable Offences.**—Every one is guilty of an indictable offence and liable to seven years' imprisonment who attempts, in any case not hereinbefore provided for, to commit any indictable offence for which the punishment is imprisonment for life, or for fourteen years, or for any term longer than fourteen years.

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571. **529. Attempting to Commit other Indictable Offences.**—Every one who attempts to commit any indictable offence for committing which the longest term to which the offender can be sentenced is less than fourteen years, and no express provision is made by law for the punishment of such attempt, is guilty of an indictable offence and liable to imprisonment for a term equal to one-half of the longest term to which a person committing the indictable offence attempted to be committed may be sentenced.

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By virtue of sec. 540, a person accused of having attempted to commit an indictable offence cannot be tried therefor at the Court of General Sessions of the Peace unless he could be tried for the indictable offence itself at that Court.

As to what is an attempt, see sec. 64.

According to section 711, when the complete commission of the offence charged is not proved the accused may nevertheless be convicted of an attempt to commit that offence. See also secs. 712 and 713.

572. **530. Attempting to Commit Statutory Offences.**—Every one is guilty of an indictable offence and liable to one year's imprisonment who attempts to commit any offence under any statute for the time being in force and not inconsistent with this Act, or incites or attempts to incite any person to commit any such offence, and for the punishment of which no express provision is made by such statute.

If the person incited or advised does not commit the crime in question, the person so inciting or advising him is nevertheless guilty of an attempt to commit it.

R. vs. Gregory (1867), 10 Cox C.C. 459.

But if the person incited or advised does commit the crime, the person so inciting or advising him is, by virtue of secs. 61 and 62, guilty of having committed the offence himself.

574. **531. Accessories after the fact to certain Indictable Offences.**—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, in any case where no express provision is made by this Act for the punishment of an accessory, is accessory after the fact to any indictable offence for which the punishment is, on the first conviction, imprisonment for life, or for fourteen years, or for any term longer than fourteen years.

575. **532. Accessories after the fact to other Indictable Offences.**—Every one who is accessory after the fact to any indictable offence for committing which the longest term to which the offender can be sentenced is less than fourteen years, and no express provision is made for the punishment of such accessory, is guilty of an indictable offence and liable to imprisonment for a term equal to one-half of the longest term to which a person committing the indictable offence to which he is accessory may be sentenced.

According to sec. 63, "an accessory after the fact to an offence is one who receives, comforts or assists anyone who has

been a party to such offence in order to enable him to escape, knowing him to have been a party thereto.

According to sec. 540, an accessory after the fact to an indictable offence cannot be tried before a Court of General Sessions of the Peace unless he could be there tried for the indictable offence itself in regard to which he is charged with being an accessory after the fact.

By virtue of sec. 627, a person charged with being accessory after the fact to any offence may be indicted whether the principal offender has or has not been indicted or convicted, or is or is not amenable to justice ; and, moreover, he may either be indicted alone as for a substantive offence, or jointly with the principal offender.

But if he is indicted as a principal offender only, he cannot then be convicted of having been an accessory after the fact.

R. vs. Fallon (1862), 32 L.J.M.C. 66.

If several persons are tried upon a single indictment, some being charged as principal offenders, and others as accessories after the fact, and the former are (as is permissible by virtue of sec. 713) found guilty not of the offence charged but of some offence included therein, the persons charged as accessories may be convicted as accessories after the fact to the offence of which the principals are actually found to be guilty.

R. vs. Richards (1877), L.R., 2 Q.B. D. 311.

A person accused of being an accessory after the fact must be proved to have known of the commission of the principal offence, and this knowledge may be presumed from the circumstances of the case.

R. vs. Burridge (1735), 3 P. Wms. 439.

A person who employs another to assist or relieve a principal offender is guilty as an accessory after the fact.

R. vs. Jarvis (1837), 2 M. & R. 40.

TITLE VII.

PROCEDURE.

PART XLI.

GENERAL PROVISIONS.

533. Power to make rules.
534. Civil remedy not suspended though act is a criminal offence.
535. Abolition of distinction between felony and misdemeanour.
536. Construction of Acts.
537. Construction of reference to certain Acts.

576.

Vide Rules MT 1899.

533. Power to make Rules.—Every superior court of criminal jurisdiction may at any time, with the concurrence of a majority of the judges thereof present at any meeting held for the purpose, make rules of court, not inconsistent with any statute of Canada, which shall apply to all proceedings relating to any prosecution, proceeding or action instituted in relation to any matter of a criminal nature, or resulting from or incidental to any such matter, and in particular for all or any of the purposes following:—

(a.) For regulating the sittings of the court or of any division thereof, or of any judge of the court sitting in chambers, except in so far as the same are already regulated by law.

(b.) for regulating in criminal matters the pleading, practice and procedure in the court, including the subjects of *mandamus, certiorari, habeas corpus,* prohibition, *quo warranto,* bail and costs, and the proceedings under section nine hundred of this Act.

(c.) Generally for regulating the duties of the officers of the court and every other matter deemed expedient for better attaining the ends of justice and carrying the provisions of the law into effect.

2. Copies of all rules made under the authority of this section shall be laid before both Houses of Parliament at the session next after the making thereof, and shall also be published in the *Canada Gazette.* 52 V., c. 40.

3. In the province of Ontario the authority for the making of such rules of court applicable to superior courts of criminal jurisdiction in the province is vested in the supreme court of judicature, and such rules may be made by the said court at any time with the concurrence of a majority of the judges thereof present at a meeting held for the purpose ; ss. 1, par. (b). See cases cited under sec. 880, regarding *certiorari* proceedings. 63-64 V., c. 46. *Sub-section 3 came into force 1st January*, 1901.)

534. Civil Remedy not Suspended though Act is a Criminal Offence.—After the commencement of this Act no civil remedy for any act or omission shall be suspended or affected by reason that such act or omission amounts to a criminal offence.

In the case of Paquet vs. Lavoie (1898), R.J.Q., 7 Q.B. 277, it was held that sec. 534 appears to be insufficient to bind the Civil Courts of the Province of Quebec, and that the rule which ought to guide them in such cases should be that in force in England in 1774 (the date of the introduction of English law into this country), which is to the effect that, at least in cases of felony, the criminal proceedings should be taken before the civil proceedings. But as the Minister of Justice has the right to be heard, and the constitutionality of a Dominion Act was in question, the appeal was permitted in order to allow the Court itself to decide the question.

535. Abolition of Distinction between Felony and Misdemeanour.—After the commencement of this Act the distinction between felony and misdemeanour shall be abolished, and proceedings in respect of all indictable offences (except so far as they are herein varied) shall be conducted in the same manner.

A provincial statute providing for d'scharge from imprisonment in default of indictment in the case of a person accused of a felony, now applies as well to the case of a person accused of an offence which, before this enactment, was a misdemeanor. R. vs. Cameron (1897), 1 Can. C.C. 169.

536. Construction of Acts.—Every Act shall be hereafter read and construed as if any offence for which the offender may be prosecuted by indictment (howsoever such offence may be therein described or referred to), were described or referred to as an "indictable offence"; and as if any offence punishable on summary conviction were described or referred to as an "offence"; and all provisions of this Act relating to "indictable offences" or "offences" (as the case may be) shall apply to every such offence.

2. Every commission, proclamation, warrant or other document relating to criminal procedure, in which offences

which are indictable offences or offences (as the case may be) as defined by this Act are described or referred to by any names whatsoever, shall be hereafter read and construed as if such offences were therein described and referred to as indictable offence or offences (as the case may be).

537. Construction of Reference to certain Acts.—In any Act in which reference is made to *The Speedy Trials Act* the same shall be construed, unless the context requires otherwise, as if such reference were to Part LIV. of this Act; any Act referring to *The Summary Trials Act* shall be construed, unless the context forbids it, as if such reference were to Part LV. of this Act; and every Act referring to *The Summary Convictions Act* shall be construed, unless the context forbids it, as if such reference were to Part LVIII. of this Act.

PART XLII.

JURISDICTION.

538. Superior Court.
539. Other Courts.
540. Jurisdiction in certain cases.
541. Exercising powers of two Justices.

538. Superior Court.—Every Superior Court of criminal jurisdiction and every judge of such court sitting as a court for the trial of criminal causes, and every Court of Oyer and Terminer and General Gaol Delivery has power to try any indictable offence.

The County Courts of New Brunswick are not Courts of Oyer and Terminer and General Jail Delivery.
R. vs. Wright (1896), 2 Can. C.C. 83; 34 N.B. 127.

539. Other Courts.—Every Court of General or Quarter Sessions of the Peace, when presided over by a Superior Court judge, or a County or District Court judge, or in the cities of Montreal and Quebec by a recorder or judge of the Sessions of the Peace; and in the province of New Brunswick every County Court judge has power to try any indictable offence except as hereinafter provided.

540. Jurisdiction in certain Cases.—No such court as mentioned in the next preceding section has power to try any offence under the following sections, that is to say:

Part IV.—Sections sixty-five, treason; sixty-seven, accessories after the fact to treason; sixty-eight, sixty-nine and seventy, treasonable offences; seventy-one, assault on the King; seventy-two, inciting to mutiny; seventy-seven, unlawfully obtaining and communicating official information; seventy-eight, communicating information acquired by holding office.

Part VII.—Sections one hundred and twenty, administering, taking or procuring the taking of oaths to commit certain crimes; one hundred and twenty-one, administering, taking or procuring the taking of other unlawful oaths; one hundred and twenty-four, seditious offences; one hundred and twenty-five, libels on foreign sovereigns; one hundred and twenty-six, spreading false news.

Part VIII.—Piracy; any of the sections in this part.

Part IX.—Sections one hundred and thirty-one, judicial corruption; one hundred and thirty-two, corruption of officers employed in prosecuting offenders; one hundred and thirty-three, frauds upon the Government; one hundred and thirty-five, breach of trust by a public officer; one hundred and thirty-six, corrupt practices in municipal affairs; one hundred and thirty-seven (a.), selling and purchasing offices.

Part XVIII.—Sections two hundred and thirty-one, murder; two hundred and thirty-two, attempts to murder; two hundred and thirty-three, threats to murder; two hundred and thirty-four, conspiracy to murder; two hundred and thirty-five, accessory after the fact to murder.

Part XXI:—Sections two hundred and sixty-seven, rape; two hundred and sixty-eight, attempt to commit rape.

Part XXIII.—Defamatory libel; any of the sections in this part.

Part XXXIX.—Section five hundred and twenty, combinations in restraint of trade.

Part XL.—Conspiring or attempting to commit, or being accessory after the fact to any of the foregoing offences; or any indictment for bribery or undue influence, personation or other corrupt practice under the Dominion Elections Act, 57-58 V., c. 57, s. 1; 63-64 V., c. 46, s. 3. (*This paragraph came into force 1st January, 1901.*)

A County Court of New Brunswick has jurisdiction to try the offence of attempting to have carnal knowledge of a girl under fourteen, (see sec. 270), although the evidence discloses the offence of attempting to commit rape, as to which the said Court has no jurisdiction.

R. vs. Wright (1886), 2 Can. C.C. 83.
See also ex parte Might (1896), 31 N.B.R., 127.

604, 1152. **541. Exercising Powers of Two Justices.**—The judge of the Sessions of the Peace for the city of Quebec, the judge of the Sessions of the Peace for the city of Montreal, and every recorder, police magistrate, district magistrate or stipendiary magistrate appointed for any territorial division, and every magistrate authorized by the law of the province in which he acts to perform acts usually required to be done by two or more justices of the peace, may do alone whatever is authorized by this Act to be done by any two or more justices of the peace, and the several forms in this Act contained may be varied so far as necessary to render them applicable to such case. R.S.C., c. 174, s. 7.

PART XLIII.

PROCEDURE IN PARTICULAR CASES.

542. Offences within the jurisdiction of the Admiralty of England.
543. Disclosing official secrets.
544. Judicial corruption.
545. Making explosive substances.
546. Sending unseaworthy ships to sea.
547. Trustee fraudulently disposing of money.
548. Fraudulent acts of vendor or mortgagor.
549. Uttering defaced coin.
550. Trial of minors.
550a. Exclusion of public from place of trial.
551. Time within which proceedings shall be commenced in certain cases.
552. Arrest without warrant.

591. **542. Offences within the Jurisdiction of the Admiralty of England.**—Proceedings for the trial and punishment of a person who is not a subject of His Majesty, and who is charged with any offence committed within the jurisdiction of the Admiralty of England shall not be instituted in any court in Canada except with the leave of the Governor-General and on his certificate that it is expedient that such proceedings should be instituted.

The criminal jurisdiction of the Admiralty of England extends over British ships not only on the high seas but also on rivers below the bridges where the tide ebbs and flows and where great ships go, though at a spot where the municipal authorities of a foreign country might exercise concurrent jurisdiction if invoked.
R. vs. Anderson (1868), 11 Cox C.C. 198.

Certain bonds were stolen from a British merchant ship while she was lying afloat in the ordinary course of her trading in the river at Rotterdam, Holland, moored to the dock, and were afterwards wrongfully received in England by the prisoners with the knowledge that they had been thus stolen. The place where the ship lay at the time of the theft was in the open river, sixteen or eighteen miles from the sea, but within the ebb and flow of the tide. There were no bridges between the ship and the sea, and the place where she lay was one where large vessels usually lay. It did not appear who the thief was, or under what circumstances he was on board the ship. Held, that the prisoners could be properly tried and convicted in England, as the larceny had taken place within the jurisdiction of the Admiralty of England.

R. vs. Carr (1882), 15 Cox C.C. 129.

A person on board a British ship, whether a British subject or a foreigner, is subject to the laws of Great Britain so long as his ship is on the high seas or in foreign rivers below bridges where the tide ebbs and flows and where great ships go.

R. vs. Anderson (1868), L.R., 1 C.C.R. 161.

R. vs. Lopez, R. vs. Sattler (1858), 27 L.J.M.C. 48.

R. vs. Lesley (1860), 29 L.J.M.C. 97.

And the fact that a foreigner is illegally brought on board his ship does not affect his amenability to the laws of England for an offence there subsequently committed, unless it was one done merely for the purpose of freeing himself from the unlawful restraint.

R. vs. Seberg (1870), L.R., 1 C.C.R. 264.

Formerly a foreigner on board a foreign ship could not be convicted in England even for an offence committed within the territorial waters of Great Britain.

R. vs. Keyn (1876), L.R., 2 Ex. D. 63.

This state of affairs was remedied by the Territorial Waters Jurisdiction Act, 1878, and a foreigner committing an offence on a foreign ship within one marine league from the coast of any of the King's dominions may now be tried for the same by any of His Majesty's Courts, subject, as regards the United Kingdom, and to the consent of one of the principal Secretaries of State as regards any other part of these dominions, subject to the consent of the Governor thereof.

To show that a ship is a British ship it is not necessary to produce the register or a copy thereof; it is sufficient to show orally that she belongs to British owners and carries the British flag.

R. vs. Allen (1866), 10 Cox C.C. 405.

See also R. vs. Bjornsen (1865), 10 Cox C.C. 74.

543. Disclosing Official Secrets.—No person shall be prosecuted for the offence of unlawfully obtaining and communicating official information, as defined in sections seventy-seven and seventy-eight, without the consent of the Attorney-General or of the Attorney-General of Canada. 53 V., c. 10, s. 4.

544. Judicial Corruption.—No one holding any judicial office shall be prosecuted for the offence of judicial corrup-

tion, as defined in section one hundred and thirty-one, without the leave of the Attorney-General of Canada.

545. Making Explosive Substances.—If any person is charged before a justice of the peace with the offence of making or having explosive substances, as defined in section one hundred, no further proceeding shall be taken against such person without the consent of the Attorney-General except such as the justice of the peace thinks necessary, by remand or otherwise, to secure the safe custody of such person. R.S.C., c. 150, s. 5.

546. Sending Unseaworthy Ships to Sea.—No person shall be prosecuted for any offence under section two hundred and fifty-six, or two hundred and fifty-seven, without the consent of the Minister of Marine and Fisheries. (56 V., c. 32.

547. Trustee Fraudulently Disposing of Money.—No proceeding or prosecution against a trustee for a criminal breach of trust, as defined in section three hundred and sixty-three, shall be commenced without the sanction of the Attorney-General. R.S.C., c. 164, s. 65.

548. Fraudulent Acts of Vendor or Mortgagor.—No prosecution for concealing deeds and encumbrances, as defined in section three hundred and seventy, shall be commenced without the consent of the Attorney-General, given after previous notice to the person intended to be prosecuted of the application to the Attorney-General for leave to prosecute. R.S.C., c. 164, s. 91.

549. Uttering Defaced Coin.—No proceeding or prosecution for the offence of uttering defaced coin, as defined in section four hundred and seventy-six, shall be taken without the consent of the Attorney-General.

550. Trial of Young Persons.—The trials of young persons apparently under the age of sixteen years, shall take place without publicity and separately and apart from the trials of other accused persons, and at suitable times to be designated and appointed for that purpose. 57-58 V., c. 58.

See 57-58 Vict., chap. 58, an Act respecting the Trial and Imprisonment of Youthful Offenders.

550A.—At the trial of any person charged with an offence under any of the following sections, that is to say, 174, 175, 176, 177, 178, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 195, 198, 208 in so far as it relates to paragraphs (i) (j) and (k) of 207, 259, 260, 267, 268, 269, 270, 271, 272, 273, 274, 281, and 282, or with conspiracy or attempt to commit, or being an accessory after the fact to any such offence, the court or judge may order that the public be excluded from the room or place in which the court is held during such trial; and such order may be made in any other case also in which the court or judge or justice may be of opinion that the same will be in the interests of public morals.

2. Nothing in this section shall be construed by implication or otherwise as limiting any power heretofore possessed at common law by the presiding judge or other presiding officer of any court of excluding the general public from the court room in any case when such judge or officer deems such exclusion necessary or expedient. 63-64 V., c. 46. *This section came into force 1st January, 1901.*)

551. Time within which Proceedings shall be Commenced in certain Cases.—No prosecution for an offence against this Act, or action for penalties or forfeiture, shall be commenced—

(a.) after the expiration of three years from the time of its commission if such offence be—

(i.) treason, except treason by killing His Majesty or where the overt act alleged is an attempt to injure the person of His Majesty (Part IV., section sixty-five);

(ii.) treasonable offences (Part IV., section sixty-nine);

(iii.) any offence against Part XXXIII., relating to the fraudulent marking of merchandise; nor

(b.) after the expiration of two years from its commission if such offence be—

(i.) a fraud upon the Government (Part IX., section, one hundred and thirty-three);

(ii.) a corrupt practice in municipal affairs (Part IX., section one hundred and thirty-six);

(iii.) unlawfully solemnizing marriage (Part XXII., section two hundred and seventy-nine); nor

(c.) after the expiration of one year from its commission if such offence be—

(i.) opposing reading of Riot Act and assembling after proclamation (Part V., section eighty-three);

(ii.) refusing to deliver weapon to justice (Part VI., section one hundred and thirteen);

(iii.) coming armed near public meeting (section one hundred and fourteen);

(iv.) lying in wait near public meeting (section one hundred and fifteen);

(v.) seduction of girl under sixteen (Part XIII., section one hundred and eighty-one);

(vi.) seduction under promise of marriage (section one hundred and eighty-two);

(vii.) seduction of a ward, etc. (section one hundred and eighty-three);

(viii.) unlawfully defiling women (section one hundred and eighty-five);

(ix.) parent or guardian procuring defilement of girl (section one hundred and eighty-six);

(x.) householders permitting defilement of girls on their premises (section one hundred and eighty-seven); nor

(d.) after the expiration of six months from its commission, if the offence be—

(i.) unlawful drilling (Part V., section eighty-seven);

(ii.) being unlawfully drilled (section eighty-eight);

(iii.) having possession of arms for purposes dangerous to the public peace (Part VI., section one hundred and two);

(iv.) proprietor of newspaper publishing advertisement offering reward for recovery of stolen property (Part X., section one hundred and fifty-seven, paragraph d.); nor

(e.) after the expiration of three months from its commission if the offence be cruelty to animals under sections five hundred and twelve and five hundred and thirteen, Part XXXVIII.; nor

(ii.) railways violating provisions relating to conveyance of cattle (Part XXXIX., section five hundred and fourteen);

(iii.) refusing peace officer admission to car, etc., (section five hundred and fifteen);

(f.) after the expiration of one month from its commission, if the offence be—

(i.) improper use of offensive weapons (Part VI., sections one hundred and three, and one hundred and five to one hundred and eleven inclusive).

2. No person shall be prosecuted, under the provisions of section sixty-five or section sixty-nine of this Act, for any overt act of treason expressed or declared by open and

advised speaking unless information of such overt act, and of the words by which the same was expressed or declared, is given upon oath to a justice within six days after the words are spoken and a warrant for the apprehension of the offender is issued within ten days after such information is given.

The common law rule is that the Crown is not prescribed from prosecuting proceedings by any length of time, and that rule applies in all cases in which the time for bringing the prosecution is not specially limited by the Code.

By virtue of section 631, a defence founded on the limitations of time specified in this section need not be specially pleaded.

As to what is the commencement of a prosecution, see
R. vs. Austin (1845), 1 C. & K. 621.
R. vs. Brooks (1847), 2 C. & K. 402.
R. vs. Casbolt (1869), 11 Cox C.C. 385.
R. vs. Parker (1864), 23 L.J.M.C. 135.
R. vs. Phillips (1818), R. & R. 369.

651, 652.

552. Arrest without a Warrant.—Any one found committing any of the offences mentioned in the following sections, may be arrested without warrant by any one, that is to say:

Part IV.—Sections sixty-five, treason; sixty-seven, accessories after the fact of treason; sixty-eight, sixty-nine and seventy, treasonable offences; seventy-one, assaults on the King; seventy-two, inciting to mutiny.

Part V.—Sections eighty-three, offences respecting the reading of the Riot Act; eighty-five, riotous destruction of buildings; eighty-six, riotous damage to buildings.

Part VII.—Sections one hundred and twenty, administering, taking or procuring the taking of oaths to commit certain crimes; one hundred and twenty-one, administering, taking or procuring the taking of other unlawful oaths.

Part VIII.—Sections one hundred and twenty-seven, piracy; one hundred and twenty-eight, piratical acts; one hundred and twenty-nine, piracy with violence.

Part XI.—Sections one hundred and fifty-nine, being at large while under sentence of imprisonment; one hundred and sixty-one, breaking prison; one hundred and sixty-three, escape from custody or from prison; one hundred and sixty-four, escape from lawful custody.

Part XIII.—Section one hundred and seventy-four, unnatural offence.

Part XVIII.—Sections two hundred and thirty-one, murder; two hundred and thirty-two, attempt to murder; two hundred and thirty-five, being accessory after the fact to

murder; two hundred and thirty-six, manslaughter; two hundred and thirty-eight, attempt to commit suicide.

Part XIX.—Sections two hundred and forty-one, wounding with intent to do bodily harm; two hundred and forty-two, wounding; two hundred and forty-four, stupefying in order to commit an indictable offence; two hundred and forty-seven and two hundred and forty-eight, injuring or attempting to injure by explosive substances; two hundred and fifty, intentionally endangering persons on railways; two hundred and fifty-one, wantonly endangering persons on railways; two hundred and fifty-four, preventing escape from wreck.

Part XXI.—Sections two hundred and sixty-seven, rape; two hundred and sixty-eight, attempt to commit rape; two hundred and sixty-nine, defiling children under fourteen.

Part XXII.—Section two hundred and eighty-one, abduction of a woman.

Part XXV.—Section three hundred and fourteen, receiving property dishonestly obtained.

Part XXVI.—Sections three hundred and nineteen, theft by clerks and servants, etc.; three hundred and twenty, theft by agents, etc.; three hundred and twenty-one, public servant refusing to deliver up chattels, etc.; three hundred and twenty-two, theft by tenants and lodgers; three hundred and twenty-three, theft of testamentary instruments; three hundred and twenty-four, theft of documents of title; three hundred and twenty-five, theft of judicial or official documents; three hundred and twenty-six, theft of postal matter; three hundred and twenty-seven, theft of postal matter; three hundred and twenty-eight, theft of postal matter; three hundred and twenty-nine, theft of election documents; three hundred and thirty, theft of railway tickets; three hundred and thirty-one, theft of cattle; three hundred and thirty-four, theft of oysters; three hundred and thirty-five, theft of things fixed to buildings or land; three hundred and forty-four, stealing from the person; three hundred and forty-five, stealing in dwelling-houses; three hundred and forty-six, stealing by picklocks, etc.; three hundred and forty-seven, stealing in manufactories; three hundred and forty-nine, stealing from ships, etc;. three hundred and fifty, stealing from wreck; three hundred and fifty-one, stealing on railways; three hundred and fifty-five, bringing stolen property into Canada. 58-59 V., c. 40.

Part XXIX.—Sections three hundred and ninety-eight, aggravated robbery; three hundred and ninety-nine, rob-

bery; four hundred, assault with intent to rob; four hundred and one, stopping the mail; four hundred and two, compelling execution of documents by force; four hundred and three, sending letter demanding with menaces; four hundred and four, demanding with intent to steal; four hundred and five, extortion by certain threats.

Part XXX.—Sections four hundred and eight, breaking place of worship and committing an indictable offence; four hundred and nine, breaking place of worship with intent to commit an indictable offence, four hundred and ten burglary; four hundred and eleven, housebreaking and committing an indictable offence; four hundred and twelve, housebreaking with intent to commit an indictable offence; four hundred and thirteen, breaking shop and committing an indictable offence; four hundred and fourteen, breaking shop with intent to commit an indictable offence; four hundred and fifteen, being found in a dwelling-house by night; four hundred and sixteen, being armed, with intent to break a dwelling-house; four hundred and seventeen, being disguised or in possession of housebreaking instruments.

Part XXXI.—Sections four hundred and twenty-three, forgery; four hundred and twenty-four, uttering forged documents; four hundred and twenty-five, counterfeiting seals; four hundred and thirty, possessing forged bank-notes; four hundred and thirty-two, using probate obtained by forgery or perjury.

Part XXXII.—Sections four hundred and thirty-four, making, having or using instrument for forgery or uttering forged bond or undertaking; four hundred and thirty-five, counterfeiting stamps; four hundred and thirty-six, falsifying registers.

Part XXXIV.—Section four hundred and fifty-eight, personation of certain persons.

Part XXXV.—Sections four hundred and sixty-two, counterfeiting gold and silver coin; four hundred and sixty-six, making instruments for coining; four hundred and sixty-eight, clipping current coin; four hundred and seventy, possessing clipping of current coin; four hundred and seventy-two, counterfeiting copper coin; four hundred and seventy-three, counterfeiting foreign gold and silver coin; four hundred and seventy-seven, uttering counterfeit current coin.

Part XXXVII.—Sections four hundred and eighty-two, arson; four hundred and eighty-three, attempt to commit arson; four hundred and eighty-four, setting fire to crops;

four hundred and eighty-five attempting to set fire to crops; four hundred and eighty-eight, attempt to damage by explosives; four hundred and eighty-nine, mischief on railways; four hundred and ninety-two, injuries to electric telegraphs, etc.; four hundred and ninety-three, wrecking; four hundred and ninety-four, attempting to wreck; four hundred and ninety-five, interfering with marine signals; four hundred and ninety-eight, mischief to mines; four hundred and ninety-nine, mischief.

2. A peace officer may arrest, without warrant, any one who has committed or is found committing any of the offences mentioned in the said sections or in the following sections, that is to say:

Part XXVII.—Sections three hundred and fifty-nine, obtaining by false pretense; three hundred and sixty, obtaining execution of valuable securities by false pretense.

Part XXXV.—Sections four hundred and sixty-five, exporting counterfeit coin; four hundred and seventy-one possessing counterfeit current coin; four hundred and seventy-three paragraph (b), possessing counterfeit foreign gold or silver coin; four hundred and seventy-three, paragraph (d), counterfeiting foreign copper coin.

Part XXXVII.—Sections four hundred and ninety-seven, cutting booms, or breaking loose rafts or cribs of timber or saw-logs; five hundred, attempting to injure or poison cattle.

Part XXXVIII.—Sections five hundred and twelve, cruelty to animals; five hundred and thirteen, keeping cockpit:

3. A peace officer may arrest, without warrant, any one whom he finds committing any criminal offence, and any person may arrest, without warrant, any one whom he finds committing any criminal offence by night.

4. Any one may arrest without warrant a person whom he, on reasonable and probable grounds, believes to have committed an offence and to be escaping from, and to be freshly pursued by, those whom the person arresting, on reasonable and probable grounds, believes to have lawful authority to arrest such person.

5. The owner of any property on or with respect to which any person is found committing any offence, or any person authorized by such owner, may arrest, without warrant, the person so found, who shall forthwith be taken before a justice of the peace to be dealt with according to law.

6. Any officer in His Majesty's service any warrant or

petty officer in the navy, and any non-commissioned officer of marines may arrest without warrant any person found committing any of the offences mentioned in section one hundred and nineteen of this Act.

7. Any peace officer may, without a warrant, take into custody any person whom he finds lying or loitering in any highway, yard or other place during the night, and whom he has good cause to suspect of having committed, or being about to commit, any indictable offence, and may detain such person until he can be brought before a justice of the peace, to be dealt with according to law;

(a.) No person who has been so apprehended shall be detained after noon of the following day without being brought before a justice of the peace. 58-59 V., c. 40.

Sec. 3, s.s. (s), defines the meaning of the term "peace officer." "Found committing" means either seeing a person actually committing the offence, or pursuing him immediately or continuously after he has been seen committing it.

R. vs. Curran (1828) 3 C. & P. 397.

Downing vs. Capel (1867), L.R., 2 C.P. 461.

An arrest of a person charged with obtaining goods by false pretences with intent to defraud, on a request by telegram sent from a peace officer of the province in which the offence is alleged to have been committed, to a peace officer in another province, may be justified by the peace officer making the arrest by alleging either that the prisoner has actually committed such offence, or that such officer, on reasonable and probable grounds, believed that the prisoner has committed the offence.

R. vs. Cloutier (1898), 2 Can. C.C. 43.

S.s. 7, par. (a), of this section applies only to cases coming within s s. 7, and it is not necessary in other cases to bring the person arrested before a justice of the peace before noon on the day following the arrest.

R. vs. Cloutier (1898), 2 Can. C.C. 43.

See also Mousseau vs. The City of Montreal (1896), R.J.Q., 12 S.C. 61.

PART XLIV.

COMPELLING APPEARANCE OF ACCUSED BEFORE JUSTICE.

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556. Offences committed in the district of Gaspe.
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567. Disposal of person apprehended on warrant.
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572. Search for timber, etc., unlawfully detained.
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574. Search for women in house of ill-fame.
575. Search for gaming-house.
576. Search for vagrant.

584. **553. Magisterial Jurisdiction.**—For the purposes of this Act, the following provisions shall have effect with respect to the jurisdiction of justices;

Jud. s. 983(2). (a.) Where the offence is committed in or upon any water, tidal, or other, or upon any bridge, between two or more magisterial jurisdictions, such offence may be considered as having been committed in either of such jurisdictions;

(b.) Where the offence is committed on the boundary of two or more magisterial jurisdictions, or within the distance of five hundred yards from any such boundary, or is begun within one magisterial jurisdiction and completed within another, such offence may be considered as having been committed in any one of such jurisdictions;

(c.) Where the offence is committed on or in respect to a mail, or a person conveying a post letter bag, post letter or anything sent by post, or on any person, or in respect of any property, in or upon any vehicle employed in a journey, or on board any vessel employed on any navigable river, canal or other inland navigation, the person accused shall be considered as having committed such offence in any magisterial jurisdiction through which such vehicle or vessel passed in the course of the journey or voyage during which the offence was committed; and where the centre or other part of the road, or any navigable river, canal or other inland navigation along which the vehicle or vessel passed in the course of such journey or voyage, is the boundary of two or more magisterial jurisdictions, the person accused of having committed the offence may be considered as having committed it in any one of such jurisdictions. 63-64 V., c. 46. (*Paragraph* (a) *came into force* 1st *January*, 1901.)

The offence of fraudulent conversion of the proceeds of a valuable security, under sec. 308, consists in a succession of acts, viz., the reception of the security, the collection of the proceeds, the conversion of the same and the failure to account for the same; and where this is begun in one district and continued and completed in another district, the accused may be arrested and tried in either district.

R. vs. Hogle (1896), R.J.Q., 5 Q.B. 59.

An offence which is commenced in one province and completed in another is triable in either province. Thus, where a person is charged with making, circulating and publishing false statements of the financial position of a company of which he is an officer, and these statements were mailed by him in Ontario to persons intended to be thereby deceived in Montreal, the offence although commenced in Ontario was completed in Montreal by the delivery of the letters there, and the accused, having been there duly committed for trial, may be tried by a Court of competent criminal jurisdiction in the Province of Quebec.

R. vs. Gillespie (1898), R.J.Q., 8 Q.B. 8

A commitment signed by a justice of the peace purporting to act as a justice of the peace in and for the county of Labelle, will be quashed, as there are no justices of the peace with such a designation, and as the officials in question should have acted as justices of the peace in and for the district of Ottawa.

Ex parte Mary Welsh (1898), 2 Can. C.C. 35.

Dagenais vs. Ellis (1897), 3 Revue de Jurisp. 96.

Semble, on a writ of *habeas corpus* in such a case based upon the insufficiency of the commitment, the committing justices may furnish the jailer with a legal warrant and so defeat the writ.

Ex parte Mary Welsh, supra.

(1) A justice of the peace who illegally issues a warrant without having received a sworn information in respect of the charge in question, is liable in trespass for the arrest made thereunder, and he cannot justify the ordering of a constable to make the arrest by showing that he (the justice) had a reasonable suspicion that an offence had been committed.

(2) If a justice of the peace is not himself personally arresting the offender on view, or upon suspicion, or personally acting in effecting the arrest by calling someone to his assistance in making the same, he can legally direct the arrest only by a warrant issued upon a written complaint or information upon oath.

(3) Although the arrest has been illegally made under an invalid warrant, jurisdiction attaches to the magistrate when the person arrested is brought before him; and the subsequent detention and commitment may be justified under the order then made by the magistrate.

McGuiness vs. Dafoe (1896), 3 Can. C.C. 139.

See also McGuiness vs. Dafoe (1895), 27 O.R. 117.

653. **554. When Justice may Compel Appearance.**—Every justice may issue a warrant or summons as hereinafter mentioned to compel the attendance of an accused person before him, for the purpose of preliminary inquiry in any of the following cases;

R. Brooks 5 C.C. Ca 29:

(a.) If such person is accused of having committed in any place whatever an indictable offence triable in the province in which such justice resides, and is, or is supected to be within the limits over which such justice has jurisdiction, or resides or is suspected to reside within such limits;

(b.) If such person, wherever he may be, is accused of having committed an indictable offence within such limits;

(c.) If such person is alleged to have anywhere unlawfully received property which was unlawfully obtained within such limits;

(d.) If such person has in his possession, within such limits, any stolen property.

555. Offences Committed in certain parts of Ontario.—All offences committed in any of the unorganized tracts of country in the province of Ontario, including lakes, rivers and other waters therein, not embraced within the limits of any organized county, or within any provisional judicial district, may be laid and charged to have been committed and may be inquired of, tried and punished within any county of such province; and such offences shall be within the jurisdiction of any court having jurisdiction over offences of the like nature committed within the limits of such county, before which court such offences may be prosecuted; and such court shall proceed therein to trial, judgment and execution or other punishment for such offence, in the same manner as if such offence had been committed within the county where such trial is had.

2. When any provisional judicial district or new county is formed and established in any of such unorganized tracts, all offences committed within the limits of such provisional judicial district or new county, shall be inquired of, tried and punished within the same, in like manner as such offences would have been inquired of, tried and punished if this section had not been passed.

3. Any person accused or convicted of any offence in any such provisional district may be committed to any common gaol in the province of Ontario; and the constable or other officer having charge of such person and intrusted with his conveyance to any such common gaol, may pass through any county in such province with such person in his custody; and the keeper of the common gaol of any county in such province in which it is found necessary to lodge for safe keeping any such person so being conveyed through such county in custody, shall receive such person and safely

keep and detain him in such common gaol for such period as is reasonable or necessary; and the keeper of any common gaol in such province, to which any such person is committed as aforesaid, shall receive such person and safely keep and detain him in such common gaol under his custody until discharged in due course of law, or bailed in cases in which bail may by law be taken. R.S.C., c. 174, s. 14.

62-63 Vict., chap. 47, provides for the administration of criminal justice in any part of Canada east of the Province of Manitoba and the district of Keewatin, and north of the Provinces of Ontario and Quebec. 62 Vict., (P.Q.), chap. 5, sec. 4, provides for the administration of criminal justice in certain parts of the Province of Quebec. ?

556. Offences Committed in the District of Gaspe.—Whenever any offence is committed in the district of Gaspe, the offender, if committed to gaol before trial, may be committed to the common gaol of the county in which the offence was committed, or may, in law, be deemed to have been committed, and if tried before the Court of King's Bench, he shall be so tried at the sitting of such court held in the county to the gaol of which he has been committed, and if imprisoned in the common gaol after trial he shall be so imprisoned in the common gaol of the county in which he has been tried. R.S.C., c. 174, s. 15.

557. Offence Committed out of Jurisdiction.—The preliminary inquiry may be held either by one justice or by more justices than one: Provided that if the accused person is brought before any justice charged with an offence committed out of the limits of the jurisdiction of such justice, such justice may, after hearing both sides, order the accused at any stage of the inquiry to be taken by a constable before some justice having jurisdiction in the place where the offence was committed. The justice so ordering shall give a warrant for that purpose to a constable, which may be in the form A in schedule one hereto, or to the like effect, and shall deliver to such constable the information, depositions and recognizances if any taken under the provisions of this Act to be delivered to the justice before whom the accused person is to be taken, and such depositions and recognizances shall be treated to all intents as if they had been taken by the last-mentioned justice.

2. Upon the constable delivering to the justice the warrant, information, if any, depositions and recognizances, and

proving on oath or affirmation, the handwriting of the justice who has subscribed the same, such justice, before whom the accused is produced, shall thereupon furnish such constable with a receipt or certificate in the form B in schedule one hereto, of his having received from him the body of the accused, together with the warrant, information, if any depositions and recognizances, and of his having proved to him, upon oath or affirmation, the handwriting of the justice who issued the warrant.

4. If such justice does not commit the accused for trial, or hold him to bail, the recognizances taken before the first mentioned justice shall be void.

557A. Powers of Clerk of the Peace in Montreal.—In the District of Montreal the clerk of the peace or deputy clerk of the peace shall have all the powers of a justice of the peace under Part XLIV. and XLV. 58-59 V., c. 40.

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558. Information.—Any one who, upon reasonable or probable grounds, believes that any person has committed an indictable offence against this Act may make a complaint or lay an information in writing and under oath before any magistrate or justice of the peace having jurisdiction to issue a warrant or summons against such accused person in respect of such offence.

2. Such complaint or information may be in the form C in schedule one hereto, or to the like effect.

A summons may be issued upon an information laid before a justice of the peace for an offence punishable on summary conviction, although the information has not been sworn; but a warrant to compel the attendance of the accused person can only be issued upon an information which has been made in writing and under oath. (See sec. 843 and sec. 845, s.s. 2).

R. vs. McDonald (1896), 3 Can. C.C. 287.

"If a mere summons is required no writing or oath is necessary. A bare verbal information is sufficient. If a warrant is required, then, and for that purpose only, an oath substantiating the information is required, not only by the provisions in Jervis' Act, so often referred to, but by the Common Law of which it was always a doctrine that a warrant which deprives a man of liberty ought not to issue without truth of the information."

Per Hawkins, J. in R. vs. Hughes (1879), L.R., 4 Q.B.D. 615.

The fact that an information was not sworn at such time and place as specified therein, is not such a defect that, after the accused has appeared to the summons issued thereon, and has pleaded to the charge, the proceedings thereunder will be quashed on certiorari.

Ex parte Sonier (1896), 2 Can. C.C. 121.

Ex parte Orr (1880), 20 N.B.R. 67.

R. vs. McMillan (1873), 15 N.B.R. 111.

The warrant of a magistrate is only *prima facie* evidence of the fact recited therein after an information on oath and in writing has been laid.

Friel vs. Ferguson (1865), 15 U.C.C.P. 584.

A conviction will not be quashed on certiorari because it does not describe an offence against the law, if the Court upon perusal of the depositions is of the opinion that an offence of the nature described in the conviction has been committed.

R. vs. Crandall (1896), 27 O.R. 63.

A justice of the peace, unless he is himself personally arresting an offender or is assisting in so doing, can only legally direct his arrest by a warrant issued upon a written complaint or information.

McGuiness vs. Dafoe (1896), 3 Can. C.C. 139.

Sinden vs. Brown (1889), 17 Ont. A.R. 173.

R. vs. Bolton (1841), 1 Q.B. 66.

R. vs. Millard (1853), 22 L.J.M.C. 108.

"Anyone who lays an information in writing and under oath before a magistrate against any person obviously 'accuses' that person of the offence charged against him in such information. He 'accuses' in the strictest literal meaning of that word."

Per Meredith, J. in R. vs. Kempel (1900), 3 Can. C.C. 481 at p. 484.

Where an information for rape is laid for the sole purpose of extorting money or property from the person against whom the charge is made, the informant thereby 'accuses' such person with intent to extort or gain something from him, and is guilty of an indictable offence therefor under sec. 405.

See also R. vs. Kempel, supra.

R. vs. Robinson (1837), 2 M. & Rob. 14.

R. vs. Tomlinson (1895), 1 Q.B. at p. 710 c.

S. being a holder of a promissory note endorsed to him by the payees, sued to recover the amount due thereon; his action was dismissed upon evidence proving that it had never been signed by the person whose name appeared thereon as maker, nor with his knowledge or consent, but had been signed by his son without his authority. The son's evidence at the trial was to the effect that he had never intended to sign the note, and that if he had indeed actually signed it with his father's name it was because he believed at the time that it was only a receipt for goods delivered by express. After the dismissal of the suit S. wrote to the payees asking them if they would give him any information which would help him in laying a criminal charge in order to force payment of the note and costs. He also applied to the agent of the express company by which the goods were delivered and the note procured, and was informed that there was a receipt for the goods in the delivery book, but that signature was denied and could not be proved. Without further investigation S. laid an information against the son for forgery. The police magistrate declared it to be unfounded and discharged the prisoner. Upon an action brought against S. it was held that under the circumstances the prosecution was without reasonable or probable cause, and that the plaintiff was entitled to substantial damages.

Charlebois vs. Surveyor (1897), 27 Can. S.C.R. 556.

In order that there may be probable cause for an arrest it is necessary that the fact invoked by the prosecutor be such as if true would justify a criminal prosecution. If this is lacking good faith or absence of malice is no excuse.

Gowan vs. Holland (1896), R.J.Q., 11 S.C. 75.

A person who in good faith lays an information for an offence unknown to the law before a magistrate, who thereupon, without jurisdiction, convicts and commits the accused to jail, is not liable to an action for malicious prosecution so long as he had probable cause, as he has not acted maliciously.

Grimes vs. Miller (1895), 23 Ont. A.R. 764.

Malice alone will not justify the granting of damages in an action for malicious prosecution; there must also be a want of probable cause.

Lemire vs. Duclos (1898), R.J.Q., 13 S.C. 82.

But the fact that a prosecution was instituted upon the advice of counsel is not sufficient to protect the prosecutor, if he did not exercise reasonable care and diligence in order to ascertain and lay before counsel the facts in reference to the alleged offence. But there must also be malice as well as want of reasonable and probable cause, and the question whether or not there was malice is one for the jury.

St. Denis vs. Shoultz (1897), 25 Ont. A.R. 131.

The fact that counsel's opinion has been taken tends to show that the prosecutor was not acting with malice.

Seary vs. Saxton (1896), 28 N.S.R. 278.

If a solicitor upon whose advice the prosecution in question was taken, has been joined as a defendant in the action for malicious prosecution, his case should be allowed to go to the jury with that of his co-defendant, if it is shown that he had an equal knowledge of the facts of the case before giving the advice upon which the action complained of was taken.

Seary vs. Saxton, supra.

A person may believe in a charge he makes and yet be acting maliciously in making it.

And the fact that the trial judge, although not requested to do so, omitted to instruct the jury upon that point, was held to be a sufficient reason for setting the verdict aside.

Hawkins vs. Snow (1896), 28 N.S.R. 259.

See also as to what are sufficient grounds for an action for malicious prosecution.

Lavigne vs. Lefebvre (1898), R.J.Q., 14 S.C. 275.

Lalande vs. Campeau (1899), 5 Rev. de Jurispr. 438.

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559. Hearing on Information.—Upon receiving any such complaint or information the justice shall hear and consider the allegations of the complainant, and if of opinion that a case for so doing is made out he shall issue a summons, or warrant, as the case may be, in manner hereinafter mentioned; and such justice shall not refuse to issue such summons or warrant only because the alleged offence is one for which an offender may be arrested without warrant. R.S.C., c. 174, s. 30.

A magistrate is not under a legal obligation to issue a warrant of arrest upon an information in respect of an indictable

offence if, on consideration of the complainant's allegations, he is of the opinion that a case has not been made out for a warrant, and is not bound to state his reasons for so doing; nor is the fact that he did not properly appreciate the evidence submitted upon an application for the warrant, a ground for a mandamus to compel him to grant a warrant against the opinion he has arrived at, acting in good faith.

Thompson vs. Desnoyers (1899), 3 Can. C.C. 68.

An Ontario decision to the same effect is re Parke (1899), 3 Can. C.C. 122.

See also ex parte Lewis (1888), L.R., 21 Q.B.D. 191.

An information upon oath which on its face purports to be the information of a person other than the one who has signed and sworn to the same is bad; and when a warrant of arrest, based upon such defective information, has been issued to enforce the attendance of the accused, and the magistrate, at the opening of the trial, amends the information by inserting therein, in the presence of, and with the consent of, the person who has signed and sworn thereto, the latter's name in the place of the name so appearing on the face of the information, it is necessary that the information should be re-sworn.

R. vs. McNutt (1899), 3 Can. C.C. 184.

When an accused person, having been arrested under such defective warrant, takes objection before the magistrate to the amended information upon the ground that it should be re-sworn after the amendment (and the objection has been noted) he does not waive the objection by proceeding with the trial and by cross-examining witnesses.

R. vs. McNutt, supra.

Dixon vs. Wells (1890), L.R., 25 Q.B.D. 249.

A judge of Sessions can receive affidavits or depositions in support of an information and complaint made before him before issuing the warrant, and in the absence of the accused; such affidavits or depositions are not part of the record, but are merely taken in the discretion of the magistrate for the purpose of considering the allegations of complaint, and they cannot afterwards be used as part of the preliminary inquiry.

Weir et al. vs. Choquet & al. (1900), 6 Rev. de Jur. 121.

A justice acting for a police magistrate in his illness or absence or at his request should be designated as so acting in warrants or other process, and a warrant signed by a justice of the peace so acting, in which he is described as "police magistrate," is void.

R. vs. Lyons (1892), 2 Can. C.C. 218.

The initials "J.P." following the signature of a person issuing a warrant, is not a sufficient description of such person as a justice of the peace for the city or county in which the warrant purports to have been issued.

R. vs. Lyons, supra.

See also Grenier vs. Ahern et al. (1894), 1 Rev. de Jurispr. 362.

The issuing of a summons whether in relation to an offence punishable summarily or in relation to an indictable offence is a judicial act.

R. vs. Ettinger (1899), 3 Can. C.C. 387.

560. Warrant in Cases of Offence committed on the Seas, etc.—Whenever any indictable offence is committed on the high seas, or in any creek, harbour, haven or

other place in which the Admiralty of England have or claim to have jurisdiction, and whenever any offence is committed on land beyond the seas for which an indictment may be preferred or the offender may be arrested in Canada, any justice for any territorial division in which any person charged with, or suspected of, having committed any such offence is or is suspected to be, may issue his warrant, in the form D in schedule one hereto, or to the like effect, to apprehend such person to be dealt with as herein and hereby directed. R.S.C., c. 174, s. 32.

657. **561. Arrest of Suspected Deserter.**—Every one who is reasonably suspected of being a deserter from His Majesty's service may be apprehended and brought for examination before any justice of the peace, and if it appears that he is a deserter he shall be confined in gaol until claimed by the military or naval authorities or proceeded against according to law. R.S.C., c. 169, s. 6.

2. No one shall break open any building to search for a deserter unless he has obtained a warrant for that purpose from a justice of the peace,—such warrant to be founded on affidavit that there is reason to believe that the deserter is concealed in such building, and that admittance has been demanded and refused; and every one who resists the execution of any such warrant shall incur a penalty of eighty dollars, recoverable on summary conviction in like manner as other penalties under this Act. R.S.C., c. 169, s. 7.

See secs. 73 and 74.

R.S.C., chap. 169, sec. 96, which is unrepealed, reads as follows, "One moiety of the amount of any penalty recovered under any of the preceding sections shall be paid over to the prosecutor or person by whose means the offender has been convicted, and the other moiety shall belong to the Crown."

658. R. v. Lavesque 8 Can. 505. **562. Contents of Summons. Service of Summons.**—Every summons issued by a justice under this Act shall be directed to the accused, and shall require him to appear at a time and place to be therein mentioned. Such summons may be in the form E in schedule one hereto, or to the like effect. No summons shall be signed in blank.

2. Every such summons shall be served by a constable or other peace officer upon the person to whom it is directed, either by delivering it to him personally or, if such person cannot conveniently be met with, by leaving it for him at his last or most usual place of abode with some inmate thereof apparently not under sixteen years of age.

3. The service of any such summons may be proved by the oral testimony of the person effecting the same or by the affidavit of such person purporting to be made before a justice.

As to service of a summons upon, and as to summary convictions in proceedings against corporations, see R. vs. The Toronto Ry Co. (1898), 2 Can. C.C. 471.

The service of a summons to appear before a magistrate to answer a charge of having committed an offence punishable by summary conviction is not validly made, although left with the accused's wife at his usual place of abode, if the accused was then absent from Canada, and remained until after the hearing; and in such a case it was held that the magistrate had acquired no jurisdiction over the person of the accused, and a conviction made in his absence upon such service was quashed.

Ex parte Donovan (1894), 3 Can. C.C. 286.

A copy of a summons was left with an adult person at the residence of the accused. No proof was adduced before the magistrate that this person was an inmate of the accused's usual place of abode, or that any effort had been made to serve the defendant personally. It was held that the service was insufficient, and the Court refused to admit evidence to supplement that given before the magistrate.

In re Barron (1897), 33 C.L.J. 297.

In a New Brunswick case it was held that a summons might be served in any parish within the jurisdiction of the magistrate issuing the same by a constable whose ordinary duties did not extend to that parish.

Ex parte Doherty (1894), 32 N.B.R. 375.

660. **563. Warrant for Apprehension in First Instance.**— The warrant issued by a justice for the apprehension of the person against whom an information or complaint has been laid as provided in section five hundred and fifty-eight may be in the form F in schedule one hereto, or to the like effect. No such warrant shall be signed in blank.

2. Every such warrant shall be under the hand and seal of the justice issuing the same, and may be directed, either to any constable by name, or to such constable and all other constables within the territorial jurisdiction of the justice issuing it, or generally to all constables within such jurisdiction.

3. The warrant shall state shortly the offence for which it is issued, and shall name or otherwise describe the offender, and it shall order the officer or officers to whom it is directed to apprehend the offender and bring him before the justice or justices issuing the warrant, or before some other justice or justices, to answer to the charge contained in the said information or complaint, and to be further dealt with according to law. It shall not be necessary to make such warrant returnable at any particular time, but the same shall remain in force until it is executed.

4. The fact that a summons has been issued shall not prevent any justice from issuing such warrant at any time before or after the time mentioned in the summons for the appearance of the accused; and where the service of the summons has been proved and the accused does not appear, or when it appears that the summons cannot be served, the warrant (form G) may issue. R.S.C., c. 174, ss. 43, 44 and 46.

661. **564. Execution of Warrant.**—Every such warrant may be executed by arresting the accused wherever he is found in the territorial jurisdiction of the justice by whom it is issued, or, in the case of fresh pursuit, at any place in an adjoining territorial division within seven miles of the border of the first-mentioned division. R.S.C., c. 174, ss. 47 and 48.

2. Every such warrant may be executed by any constable named therein, or by any one of the constables to whom it is directed, whether or not the place in which it is to be executed is within the place for which he is a constable.

3. Every warrant authorized by this Act may be issued and executed on a Sunday or statutory holiday. R.S.C., c. 174, ss. 47 and 48.

The conduct of a preliminary inquiry before a magistrate is a legal proceeding which cannot legally take place on Sunday, and therefore where a prisoner was committed for trial at a preliminary investigation before a magistrate on a Sunday it was held that he should be discharged.
R. vs. Caveller (1896), 11 Man. L.R., 335.
And in such a case the affidavit of the prisoner may be received in evidence to show that the investigation and commitment took place on a Sunday.
R. vs. Cavelier, supra.
See also Eggington's case (1853), 2 E. & B. 717.
Re Bailey (1854), 3 E. & B. 607.

662. **565. Proceeding when the Offender is not within the Jurisdiction of the Justice issuing the Warrant.**—If the person against whom any warrant has been issued cannot be found within the jurisdiction of the justice by whom the same was issued, but is or is suspected to be in any other part of Canada, any justice within whose jurisdiction he is or is suspected to be, upon proof being made on oath or affirmation of the handwriting of the justice who issued the same, shall make an endorsement on the warrant, signed with his name, authorizing the execution thereof within his jurisdiction; and such endorsement shall be sufficient authority to the person bringing such warrant, and to all other persons to whom the same was originally di-

rected, and also to all constables of the territorial division where the warrant has been so endorsed, to execute the same therein and to carry the person against whom the warrant issued when apprehended, before the justice who issued the warrant, or before some other justice for the same territorial division. Such endorsement may be in the form H in schedule one hereto. R.S.C., c. 174, s. 49.

In Ontario, a constable who executes a warrant in good faith outside the territorial district of the magistrate issuing the same, without procuring the endorsement of a magistrate of the county until the arrest is made, is entitled to notice of action, and to the protection afforded by R.S.O. (1887), chap. 73; and a notice of action which wrongly states the name of the township and the county in which the arrest took place is insufficient.
Alderich vs. Humphrey (1898), 29 O.R. 427.

663. **566. Disposal of Person arrested on Endorsed Warrant.**—If the prosecutor or any of the witnesses for the prosecution are in the territorial division where such person has been apprehended upon a warrant endorsed as provided in the last preceding section the constable or other person or persons who have apprehended him may, if so directed by the justice endorsing the warrant, take him before such justice, or before some other justice for the same territorial division; and the said justice may thereupon take the examination of such prosecutor or witnesses, and proceed in every respect as if he had himself issued the warrant. R.S.C., c. 174, s. 50.

This section has been held to show that the word "taken" is synonymous with the word "apprehended."
R. vs. Hughes (1895), 2 Can. C.C. 332.

664. **567. Disposal of Person Apprehended on Warrant.**—When any person is arrested upon a warrant he shall, except in the case provided for in the next preceding section, be brought as soon as is practicable before the justice who issued it or some other justice for the same territorial division, and such justice shall either proceed with the inquiry or postpone it to a future time, in which latter case he shall either commit the accused person to proper custody or admit him to bail or permit him to be at large on his own recognizance according to the provisions hereinafter contained.

667. **568. Coroner's Inquisition.**—Every coroner, upon any inquisition taken before him whereby any person is charged

with manslaughter or murder, shall (if the person or persons, or either of them, affected by such verdict or finding be not already charged with the said offence before a ma-magistrate or justice), by warrant under his hand, direct that such person be taken into custody and be conveyed, with all convenient speed, before a magistrate or justice; or such coroner may direct such person to enter into a recognizance before him, with or without a surety or sureties, to appear before a magistrate or justice. In either case, it shall be the duty of the coroner to transmit to such magistrate or justice the depositions taken before him in the matter. Upon any such person being brought or appearing before any such magistrate or justice, he shall proceed in all respects as though such person had been brought or had appeared before him upon a warrant or summons.

Sec. 642 reads as follows, "After the commencement of this Act no one shall be tried upon any coroner's inquisition."

629. 630. 631. 632. 633. 634. 635. **569. Search Warrant.**—Any justice who is satisfied by information upon oath in the form J in schedule one hereto that there is reasonable ground for believing that there is in any building, receptacle or place—

(a.) anything upon or in respect of which any offence against this Act has been or is suspected to have been committed; or

(b.) anything which there is reasonable ground to believe will afford evidence as to the commission of any such offence; or

(c.) anything which there is reasonable ground to believe is intended to be used for the purpose of committing any offence against the person for which the offender may be arrested without warrant—

may at any time issue a warrant under his hand authorizing some constable or other person named therein to search such building, receptacle or place, for any such thing, and to seize and carry it before the justice issuing the warrant, or some other justice for the same territorial division to be by him dealt with according to law. R.S.C., c. 174, ss. 51 and 52.

2. Every search warrant shall be executed by day, unless the justice shall by the warrant authorize the constable or other person to execute it at night.

3. Every search warrant may be in the form I in the schedule one hereto, or to the like effect.

4. When any such thing is seized and brought before such justice he may detain it, taking reasonable care to preserve it till the conclusion of the investigation; and, if any one is committed for trial, he may order it further to be detained for the purpose of evidence on the trial. If no one is committed, the justice shall direct such thing to be restored to the person from whom it was taken, except in the cases next hereinafter mentioned, unless he is authorized or required by law to dispose of it otherwise. In case any improved arm or ammunition in respect to which any offence under section one hundred and sixteen has been committed has been seized, it shall be forfeited to the Crown. R.S.C., c. 50, s. 101.

5. If under any such warrant there is brought before any justice any forged bank note, bank note-paper, instrument or other thing, the possession whereof in the absence of lawful excuse is an offence under any provision of this or any other Act, the court to which any such person is committed for trial or, if there is no commitment for trial, such justice may cause such thing to be defaced or destroyed. R.S.C., c. 174, s. 55.

6. If under any such warrant there is brought before any justice, any counterfeit coin or other thing the possession of which with knowledge of its nature and without lawful excuse is an indictable offence under any provision of Part XXXV. of this Act, every such thing as soon as it has been produced in evidence, or as soon as it appears that it will not be required to be so produced, shall forthwith be defaced or otherwise disposed of as the justice or the court directs. R.S.C., c. 174, s. 56.

7. Every person acting in the execution of any such warrant may seize any explosive substance which he has good cause to suspect is intended to be used for any unlawful object,—and shall, with all convenient speed, after the seizure, remove the same to such proper place as he thinks fit, and detain the same until ordered by a judge of a superior court to restore it to the person who claims the same. R.S.C., c. 150, s. 11.

8. Any explosive substance so seized shall, in the event of the person in whose possession the same is found, or of the owner thereof, being convicted of any offence under Part VI. of this Act, be forfeited; and the same shall be destroyed or sold under the direction of the court before which such person is convicted and in the case of sale, the proceeds arising therefrom shall be paid to the Minister of

Finance and Receiver General, for the public uses of Canada. R.S.C., c. 150, s. 12.

9. If offensive weapons believed to be dangerous to the public peace are seized under a search warrant the same shall be kept in safe custody in such place as the justice directs, unless the owner thereof proves, to the satisfaction of such justice, that such offensive weapons were not kept for any purpose dangerous to the public peace; and any person from whom any such offensive weapons are so taken may, if the justice of the peace upon whose warrant the same are taken, upon application made for that purpose, refuses to restore the same, apply to a judge of a superior or county court for the restitution of such offensive weapons, upon giving ten days' previous notice of such application to such justice; and such judge shall make such order for the restitution or safe custody of such offensive weapon as upon such application appears to him to be proper. R.S.C., c. 149, ss. 2 and 3.

10. If goods or things by means of which it is suspected that an offence has been committed under Part XXXIII. are seized under a search warrant, and brought before a justice, such justice and one or more other justice or justices shall determine summarily whether the same are or are not forfeited under the said Part XXXIII.; and if the owner of any goods or things which, if the owner thereof had been convicted, would be forfeited under this Act, is unknown or cannot be found, an information or complaint may be laid for the purpose only of enforcing such forfeiture, and the said justice may cause notice to be advertised stating that unless cause is shown to the contrary at the time and place named in the notice, such goods or things will be declared forfeited; and at such time and place the justice, unless the owner, or any person on his behalf, or other person interested in the goods or things, shows cause to the contrary, may declare such goods or things, or any of them, forfeited. 51 V., c. 41, s. 14.

A warrant to search for stolen goods was addressed to "all or any of the constables or other peace officers in the county of Cape Breton," and it authorised any one of the constables or peace officers to enter during the daytime into the dwelling-houses of five persons mentioned by name, "or any other house at Little Glace Bay if there is any suspicion that said goods and wares be in such house." It was held that this warrant was a general one and was void, and that it afforded no justification to the officer acting under it.

McLeod vs. Campbell (1894), 26 N.S.R. 458.

Held, that the warrant above referred to was bad, since it delegated to an officer the duties of the justice, by enabling him to act on suspicions arising in his mind after the issue of the warrant.
McLeod vs. Campbell, supra.

570. Search for Public Stores.—Any constable or other peace officer, if deputed by any public department, may, within the limits for which he is such constable or peace officer, stop, detain and search any person reasonably suspected of having or conveying in any manner any public stores defined in section three hundred and eighty-three, stolen or unlawfully obtained, or any vessel, boat or vehicle in or on which there is reason to suspect that any public stores stolen or unlawfully obtained may be found.

2. A constable or other peace officer shall be deemed to be deputed within the meaning of this section, if he is deputed by any writing signed by the person who is the head of such department, or who is authorized to sign documents on behalf of such department.

571. Search Warrant for Gold, Silver, etc.—On complaint in writing made to any justice of the county, district or place, by any person interested in any mining claim, that mined gold or gold-bearing quartz, or mined or unmanufactured silver or silver ore, is unlawfully deposited in any place, or held by any person contrary to law, a general search warrant may be issued by such justice, as in the case of stolen goods, including any number of places or persons named in such complaint; and if, upon such search, any such gold or gold-bearing quartz, or silver or silver ore is found to be unlawfully deposited or held, the justice shall make such order for the restoration thereof to the lawful owner as he considers right.

2. The decision of the justice in such case is subject to appeal as in ordinary cases coming within the provisions of Part LVIII. R.S.C., c. 174, s. 53.

See sec. 889 regarding the procedure and regulations applicable to an appeal.

572. Search for Timber, etc., Unlawfully Detained.—If any constable or other peace officer has reasonable cause to suspect that any timber, mast, spar, saw-log or other description of lumber, belonging to any lumberman or owner of lumber, and bearing the registered trade mark of such lumberman or owner of lumber, is kept or detained

in any saw-mill, mill-yard, boom or raft, without the knowledge or consent of the owner, such constable or other peace officer may enter into or upon the same, and search or examine, for the purpose of ascertaining whether such timber, mast, spar, saw-log or other description of lumber is detained therein without such knowledge and consent. R.S.C., c. 174, s. 54.

635. **573. Search for Liquors near His Majesty's Vessels.**—Any officer in His Majesty's service, any warrant or petty officer of the navy, or any non-commissioned officer of marines, with or without seamen or persons under his command, may search any boat or vessel which hovers about or approaches, or which has hovered about or approached, any of His Majesty's ships or vessels mentioned in section one hundred and nineteen, Part VI. of this Act, and may seize any intoxicating liquor found on board such boat or vessel; and the liquor so found shall be forfeited to the Crown. 50-51 V., c. 46, s. 3.

640 **574. Search for Women in House of Ill-fame.**—Whenever there is reason to believe that any woman or girl mentioned in section one hundred and eighty-five, Part XIII., has been inveigled or enticed to a house of ill-fame or assignation then upon complaint thereof being made under oath by the parent, husband, master or guardian of such woman or girl, or in the event of such woman or girl having no known parent, husband, master nor guardian in the place in which the offence is alleged to have been committed, by any other person, to any justice of the peace, or to a judge of any court authorized to issue warrants in cases of alleged offences against the criminal law, such justice of the peace or judge of the court may issue a warrant to enter, by day or night, such house of ill-fame or assignation, and if necessary use force for the purpose of effecting such entry whether by breaking open doors or otherwise, and to search for such woman or girl, and bring her, and the person or persons in whose keeping and possession she is, before such justice of the peace or judge of the court, who may, on examination, order her to be delivered to her parent, husband, master or guardian, or to be discharged, as law and justice require. R.S.C., c. 157, s. 7.

641 **575. Search in Gaming-house.**—If the chief constable or deputy chief constable of any city, town, incorporated village or other municipality or district, organized or unor-

ganized, or place, or other officer authorized to act in his absence, reports in writing to any of the commissioners of police or to the mayor or chief magistrate or to the police magistrate of such city, town, incorporated village or other municipality, district or place, or to any police magistrate having jurisdiction there, or if there be no such mayor, or chief magistrate, or police magistrate, to any justice of the peace having such jurisdiction, that there are good grounds for believing, and that he does believe that any house, room or place within the said city or town, incorporated village or other municipality, district or place is kept or used as a common gaming or betting house as defined in part XIV., sections one hundred and ninety-six and one hundred and ninety-seven, or is used for the purpose of carrying on a lottery, or for the sale of lottery tickets, or for the purpose of conducting or carrying on any scheme, contrivance or operation for the purpose of determining the winners in any lottery contrary to the provisions of part XIV., section two hundred and five, whether admission thereto is limited to those possessed of entrance keys or otherwise, the said commissioners or commissioner, mayor, chief magistrate, police magistrate or justice of the peace, may, by order in writing, authorize the chief constable, deputy chief constable, or other officer as aforesaid, to enter any such house, room or place, with such constables as are deemed requisite by him, and if necessary to use force for the purpose of effecting such entry, whether by breaking open doors or otherwise, and to take into custody all persons who are found therein, and to seize, as the case may be (1) all tables and instruments of gaming or betting and all moneys and securities for money, and (2) all instruments or devices for the carrying on of such lottery, or of such scheme, contrivance or operation, and all lottery tickets, found in such house or premises, and to bring the same before the person issuing such order or some other justice, to be by him dealt with according to law.

2. The chief constable, deputy chief constable or other officer making such entry, in obedience to any such order, may, with the assistance of one or more constables, search all parts of the house, room or place which he has so entered, where he suspects that tables or instruments of gaming or betting, or any instruments or devices for the carrying on of such lottery or of such scheme, contrivance or operation, or any lottery tickets, are concealed, and all persons whom he finds in such house or premises, and seize

all tables and instruments of gaming or betting, or any such instruments or devices or lottery tickets as aforesaid, which he so finds.

3. The justice before whom any person is taken by virtue of an order or warrant under this section, may direct any cards, dice, balls, counters, tables or other instruments of gaming, or used in playing any game, or of betting, or any such instruments or devices for the carrying on of a lottery, or for the conducting or carrying on of any such scheme, contrivance or operation, or any such lottery tickets, so seized as aforesaid, to be forthwith destroyed, and any money or securities so seized shall be forfeited to the Crown for the public uses of Canada.

4. The expression "chief constable" includes the chief of police, city marshal or other head of the police force of any such city, town, incorporated village or other municipality, district or place, and in the province of Quebec, the high constable of the district, and means any constable of a municipality, district or place which has no chief constable or deputy chief constable.

5. The expression "deputy chief constable" includes deputy chief of police, deputy or assistant marshal or other deputy head of the police force of any such city, town, incorporated village, or other municipality, district, or place, and in the province of Quebec the deputy high constable of the district: and the expression "police magistrate" includes stipendiary and district magistrates. 58-59 V., c. 40.

A high constable may legally appoint a deputy to act during his temporary absence. In any event, the acts of a *de facto* officer are legal and binding as regards all persons other than the holder of the legal title to the office.

O'Neil vs. Attorney-General of Canada (1896), 1 Can. C.C. 303.

See also R. vs Bedford Level (1805), 6 East 356.

In O'Neil vs. the Attorney-General of Canada, supra, it was held (per Strong C.J., at p. 312) that the constitutional question as to the validity of "s.s. 3 of this section" is so destitute of any reasonable foundations that it calls for no observations."

645. **576. Search for Vagrant.**—Any stipendiary or police magistrate, mayor or warden, or any two justices of the peace, upon information before them made, that any person described in part XV. as a loose, idle or disorderly person, or vagrant, is or is reasonably suspected to be harboured or concealed in any disorderly-house, bawdy-house, house of ill-fame, tavern or boarding-house, may, by warrant, authorize any constable or other person to enter at any time such

nouse or tavern, and to apprehend and bring before them or any other justices of the peace, every person found therein so suspected as aforesaid. R.S.C., c. 157, s. 8.

PART XLV.

PROCEDURE ON APPEARANCE OF ACCUSED.

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603. Bail by superior court.
604. Application for bail after committal.
605. Warrant of deliverance.
606. Warrant for the arrest of a person about to abscond.
607. Delivery of accused to prison.

577. Inquiry by Justice.—When any person accused of an indictable offence is before a justice, whether voluntarily or upon summons, or after being apprehended with or without warrant, or while in custody for the same or any other offence, the justice shall proceed to inquire into the matters charged against such person in the manner hereinafter defined.

669. **578. Irregularity in Procuring Appearance.**—No irregularity or defect in the substance or form of the summons or warrant, and no variance between the charge contained in the summons or warrant and the charge contained in the information, or between either and the evidence adduced on the part of the prosecution at the inquiry, shall affect the validity of any proceeding at or subsequent to the hearing. R.S.C., c. 174, s. 58.

670. **579. Adjournment in case of Variance.**—If it appears to the justice that the person charged has been deceived or misled by any such variance in any summons or warrant, he may adjourn the hearing of the case to some future day, and in the meantime may remand such person, or admit him to bail as hereinafter mentioned. R.S.C., c. 174, s. 59.

671. **580. Procuring Attendance of Witnesses.**—If it appears to the justice that any person being or residing within the province is likely to give material evidence either for the prosecution or for the accused on such inquiry he may issue a summons under his hand, requiring such person to appear before him at a time and place mentioned therein to give evidence respecting the charge, and to bring with him any documents in his possession or under his control relating thereto.

2. Such summons may be in the form K in schedule one hereto, or to the like effect. R.S.C., c. 174, s. 60.

672. **581. Service of Summons for Witness.**—Every such summons shall be served by a constable or other peace officer upon the person to whom it is directed either personally, or, if such person cannot conveniently be met with, by leaving it for him at his last or most usual place of abode with some inmate thereof apparently not under sixteen years of age.

673. 674. **582. Warrant for Witness after Summons.**—If any one to whom such last-mentioned summons is directed does not appear at the time and place appointed thereby, and no just excuse is offered for such non-appearance, then (after proof upon oath that such summons has been served as aforesaid, or that the person to whom the summons is directed is keeping out of the way to avoid service) the justice before whom such person ought to have appeared, being satisfied by proof on oath that he is likely to give

material evidence, may issue a warrant under his hand to bring such person at a time and place to be therein mentioned before him or any other justice in order to testify as aforesaid.

2. The warrant may be in the form L in schedule one hereto, or to the like effect. Such warrant may be executed anywhere within the territorial jurisdiction of the justice by whom it is issued, or, if necessary, endorsed as provided in section five hundred and sixty-five and executed anywhere in the province but out of such jurisdiction. R.S.C., c. 174, s. 61.

3. If a person summoned as a witness under the provisions of this part is brought before a justice on a warrant issued in consequence of refusal to obey the summons such person may be detained on such warrant before the justice who issued the summons, or before any other justice in and for the same territorial division who shall then be there, or in the common gaol, or any other place of confinement, or in the custody of the person having him in charge, with a view to secure his presence as a witness on the day fixed for the trial; or in the discretion of the justice such person may be released on recognizance, with or without sureties, conditioned for his appearance to give evidence as therein mentioned, and to answer for his default in not attending upon the said summons as for contempt; and the justice may, in a summary manner, examine into and dispose of the charge of contempt against such person, who, if found guilty thereof, may be fined or imprisoned, or both, such fine not to exceed twenty dollars, and such imprisonment to be in the common gaol, without hard labour, and not to exceed the term of one month, and may also be ordered to pay the costs incident to the service and execution of the said summons and warrant and of his detention in custody. 51 V., c. 45, s. 1.

(The conviction under this section may be in the form PP in schedule one hereto.)

583. Warrant for Witness in First Instance.—If the justice is satisfied by evidence upon oath that any person within the province, likely to give material evidence either for the prosecution or for the accused, will not attend to give evidence without being compelled so to do, then instead of issuing a summons, he may issue a warrant in the first instance. Such warrant may be in the form M in schedule one hereto, or to the like effect, and may be ex-

ecuted anywhere within the jurisdiction of such justice, or, if necessary, endorsed as provided in section five hundred and sixty-five and executed anywhere in the province but out of such jurisdiction. R.S.C., c. 174, s. 62.

676.677. **584. Procuring Attendance of Witnesses beyond Jurisdiction of Justice.**—If there is reason to believe that any person residing anywhere in Canada out of the province and not being within the province, is likely to give material evidence either for the prosecution or for the accused, any judge of a Superior Court or a County Court, on application therefor by the informant or complainant, or the Attorney-General, or by the accused person or his solicitor or some person authorized by the accused, may cause a writ of subpoena to be issued under the seal of the court of which he is a judge, requiring such person to appear before the justice before whom the inquiry is being held or is intended to be held at a time and place mentioned therein to give evidence respecting the charge and to bring with him any documents in his possession or under his control relating thereto.

2. Such subpœna shall be served personally upon the person to whom it is directed and an affidavit of such service by a person effecting the same purporting to be made before a justice of the peace, shall be sufficient proof thereof.

3. If the person served with a subpœna as provided by this section, does not appear at the time and place specified therein, and no just excuse is offered for his non-appearance, the justice holding the inquiry, after proof upon oath that the subpœna has been served, may issue a warrant under his hand directed to any constable or peace officer of the district, county or place where such person is, or to all constables or peace officers in such district, county or place, directing them or any of them to arrest such person and bring him before the said justice or any other justice at a time and place mentioned in such warrant in order to testify as aforesaid.

4. The warrant may be in the form N in schedule one hereto, or to the like effect. If necessary, it may be endorsed in the manner provided by section five hundred and sixty-five, and executed in a district, county or place other than the one therein mentioned.

In an Ontario case it was held that it was competent for a judge of the High Court or a judge of the County Court to make an order for the issue of a subpoena to witnesses in

another province to compel their attendance upon an appeal to the General Sessions from the action of justices of the peace under secs. 879 and 881.

R. vs. Gillespie (1894), 16 Ont. P.R. 155.

See also sec. 843.

578. **585. Witness Refusing to be Examined.**—Whenever any person appearing, either in obedience to a summons or subpoena, or by virtue of a warrant, or being present and being verbally required by the justice to give evidence, refuses to be sworn, or having been sworn, refuses to answer such questions as are put to him, or refuses or neglects to produce any documents which he is required to produce, or refuses to sign his depositions without in any such case offering any just excuse for such refusal, such justice may adjourn the proceedings for any period not exceeding eight clear days, and may in the meantime by warrant in form O in schedule one hereto, or to the like effect, commit the person so refusing to gaol, unless he sooner consents to do what is required of him. If such person, upon being brought up upon such adjourned hearing, again refuses to do what is so required of him, the justice, if he sees fit, may again adjourn the proceedings, and commit him for the like period, and so again from time to time until such person consents to do what is required of him.

2. Nothing in this section shall prevent such justice from sending any such case for trial, or otherwise disposing of the same in the meantime, according to any other sufficient evidence taken by him. R.S.C., c. 174, s. 63.

Notwithstanding sec. 71 of the Dominion Elections Act (R.S.C., chap. 8), a voter called as a witness in a trial on an indictment charging a criminal offence may be required to state for whom he voted, that section applying only to election petitions or to other legal proceedings questioning the election, and not to a prosecution of a deputy returning officer for fraudulently putting into a ballot-box false ballot papers.

R. vs. Saunders (1897), 3 Can. C.C. 278.

The answer of a witness in such a case stating for whom he voted is not secondary evidence because the vote was by mark upon a paper, not produced, upon which the candidates' names were printed, and on which there was or should have been nothing to identify the ballot as that marked by the voter; and such evidence is admissible without production of the ballots.

R. vs. Saunders, supra.

579. **586. Discretionary Powers of the Justice.**—A justice holding the preliminary inquiry may in his discretion—

(a.) permit or refuse permission to the prosecutor, his counsel or attorney to address him in support of the charge,

either by way of opening or summing up the case, or by way of reply upon any evidence which may be produced by the person accused;

(b.) receive further evidence on the part of the prosecutor after hearing any evidence given on behalf of the accused;

(c.) adjourn the hearing of the matter from time to time, and change the place of hearing, if from the absence of witnesses, the inability of a witness who is ill to attend at the place where the justice usually sits, or from any other reasonable cause, it appears desirable to do so, and may remand the accused if required by warrant in the form P in schedule one hereto: Provided that no such remand shall be for more than eight clear days, the day following that on which the remand is made being counted as the first day; and further provided, that if the remand is for a time not exceeding three clear days, the justice may verbally order the constable or other person in whose custody the accused then is, or any other constable or person named by the justice in that behalf, to keep the accused person in his custody and to bring him before the same or such other justice as shall be there acting at the time appointed for continuing the examination. R.S.C., c. 174, s. 65.

(d.) order that no person other than the prosecutor and accused, their counsel and solicitor shall have access to or remain in the room or building in which the inquiry is held (which shall not be an open court), if it appears to him that the ends of justice will be best answered by so doing;

(e.) regulate the course of the inquiry in any way which may appear to him desirable, and which is not inconsistent with the provisions of this Act.

587. Bail on Remand.—If the accused is remanded under the next preceding section the justice may discharge him, upon his entering into a recognizance in the form Q in schedule one hereto, with or without sureties in the discretion of the justice, conditioned for his appearance at the time and place appointed for the continuance of the examination. R.S.C., c. 174, s. 67.

588. Hearing may proceed during time of Remand.—The justice may order the accused person to be brought before him, or before any other justice for the same territorial division, at any time before the expiration of the time for which such person has been remanded, and the gaoler or officer in whose custody he then is shall duly obey such order. R.S.C., c. 174, s. 66.

Where the evidence is commenced before one justice of the peace and finished before two justices of the peace, a committal by the two is irregular, as both have not heard all the evidence. Re Munn (1899), 2 Can. C.C. 429.

589. Breach of Recognizance on Remand.—If the accused person does not afterwards appear at the time and place mentioned in the recognizance the said justice, or any other justice who is then and there present, having certified upon the back of the recognizance the non-appearance of such accused person, in the form R in schedule one hereunto may transmit the recognizance to the proper officer appointed by law, to be proceeded upon in like manner as other recognizances; and such certificate shall be *prima facie* evidence of the non-appearance of the accused person.

2. The proper officer to whom the recognizance and certificate of default are to be transmitted in the province of Ontario shall be the clerk of the peace of the county for which such justice is acting; and the Court of General Sessions of the Peace for such county shall, at its then next sitting, order all such recognizances to be forfeited and estreated, and the same shall be enforced and collected in the same manner and subject to the same conditions as any fines, forfeitures or amercements imposed by or forfeited before such court. In the province of British Columbia, such proper officer shall be the clerk of the County Court having jurisdiction at the place where such recognizance is taken, and such recognizance shall be enforced and collected in the same manner and subject to the same conditions as any fines, forfeitures or amercements imposed by or forfeited before such County Court; and in the other provinces of Canada such proper officer shall be the officer to whom like recognizances have been heretofore accustomed to be transmitted under the law in force before the passing of this Act, and such recognizances shall be enforced and collected in the same manner as like recognizances have heretofore been enforced and collected. R.S.C., c. 174, s. 68; as amended by 63-64 V., c. 46. (*This section came into force 1st January, 1901.*)

590. Evidence for the Prosecution.—When the accused is before a justice holding an inquiry, such justice shall take the evidence of the witnesses called on the part of the prosecution.

2. The evidence of the said witnesses shall be given upon oath and in the presence of the accused; and the accused,

his counsel or solicitor, shall be entitled to cross-examine them.

3. The evidence of each witness shall be taken down in writing in the form of a deposition, which may be in the form S in schedule one hereto, or to the like effect.

4. Such deposition shall, at some time before the accused is called on for his defence, be read over to and signed by the witness and the justice, the accused, the witness and justice being all present together at the time of such reading and signing.

5. The signature of the justice may either be at the end of the deposition of each witness, or at the end of several or of all the depositions in such a form as to show that the signature is meant to authenticate each separate deposition.

6. Every justice holding a preliminary inquiry is hereby required to cause the depositions to be written in a legible hand and on one side only of each sheet of paper on which they are written. R.S.C., c. 174, s. 69.

7. Provided that the evidence upon such inquiry or any part of the same may be taken in shorthand by a stenographer who may be appointed by the justice and who before acting shall make oath that he shall truly and faithfully report the evidence; and where evidence is so taken, it shall not be necessary that such evidence be read over to or signed by the witness, but it shall be sufficient if the transcript be signed by the justice and be accompanied by an affidavit of the stenographer that it is a true report of the evidence.

S.s. 3 and 4.—Notes of evidence not containing the exact words of the witness, or the depositions of a witness speaking in French, and taken down by the translator in English, but not read over or explained to the witness or signed by him, are not admissible to contradict the evidence of the same witness at a subsequent stage of the proceedings. But in any of these cases the witness may be cross-examined as to material statements made on the previous occasion, and then contradicted by means of other witnesses.

R. vs. Ciarlo (1897), 1 Can. C.C. 157.

Non-compliance with the provisions of this section requiring depositions taken before magistrates in summary proceedings to be signed by the witness does not affect the jurisdiction of the magistrates convicting.

Ex parte Doherty (1894), 3 Can. C.C. 310.

The Parliament of Canada has not jurisdiction over the Superior Court of the Province of Quebec in matters of procedure, and a deposition given before this Court may be used in support of a criminal proceeding subsequently taken against the person who made the deposition, unless the latter has done so under protest, and has reserved the right of being exempt from answering so far as his answer might tend to incriminate him.

R. vs. Chisholm et al. (1896), 2 Rev. de Jurispr. 342.
See also R. vs. Hamilton (1898), 3 Can. C.C. 390.
See also R. vs. Hamilton (1898), 3 Can. C.C. 390.
As to the meaning of the expression, "entitled to cross- (1900), 4 Can. C.C. 145.

684. **591. Evidence to be Read to the Accused.**—After the examination of the witnesses produced on the part of the prosecution has been completed, and after the depositions have been signed as aforesaid, the justice unless he discharges the accused person, shall ask him whether he wishes the depositions to be read again, and unless the accused dispenses therewith shall read or cause them to be read again. When the depositions have been again read, or the reading dispensed with, the accused shall be addressed by the justice in these words, or to the like effect:

"Having heard the evidence, do you wish to say anything in answer to the charge? You are not bound to say anything, but whatever you do say will be taken down in writing and may be given in evidence against you at your trial. You must clearly understand that you have nothing to hope from any promise or favour and nothing to fear from any threat which may have been held out to you to induce you to make any admission or confession of guilt, but whatever you now say may be given in evidence against you upon your trial nothwithstanding such promise or threat."

2. Whatever the accused then says in answer thereto shall be taken down in writing in the form T in schedule one hereto, or to the like effect, and shall be signed by the justice and kept with the depositions of the witnesses and dealt with as hereinafter mentioned. R.S.C., c. 174, ss. 70 and 71.

Sec. 689 reads as follows, "The statement made by the accused person before the justice may, if necessary, upon the trial of such person, be given in evidence against him without further proof thereof, unless it is proved that the justice purporting to have signed the same did not in fact sign the same."

685. **592. Confession or Admission of Accused.**—Nothing herein contained shall prevent any prosecutor from giving in evidence any admission or confession, or other statement, made at any time by the person accused or charged, which by law would be admissible as evidence against him. R.S.C., c. 174, s. 72.

A confession in order to be admissible must have been given voluntarily, and not under fear of any threat or under hope of any promise. Confessions obtained by saying to the person accused, "Tell me where the things are and I will be favorable to you."

R. vs. Cass (1784), 1 Leach 328.

"You had better tell me all you know" (R. vs. Kingston (1830), 4 C. & P. 387), "you had better tell where you got the property" (R. vs. Dunn (1831), 4 C. & P. 543), "you had better split and not suffer for all of them" (R. vs. Thomas (1834), 6 C. & P. 353), are inadmissible.

The test is whether the inducement held out to the prisoner "was such as might tend to make his confession an untrue one." Per Coleridge J., in R. vs. Thomas (1836), 7 C. & P. 345.

A letter given by a prisoner to a jailer to post is evidence against him.

R. vs. Derrington (1826), 2 C. & P. 418.

But if the letter is addressed to his wife it is inadmissible.

R. vs. Pamenter (1872), 12 Cox C.C. 177.

See also R. vs. Court (1836), 7 C. & P. 486.

R. vs. Doherty (1874), 13 Cox C.C. 23.

R. vs. Parker (1861), 30 L.J.M.C. 144.

R. vs. Simpson (1834), 1 Moody's C.C. 410.

R. vs. Wild (1835), 1 Moody's C.C. 452.

R. vs. Holmes (1843), 1 C. & K. 248.

R. vs. Tinckler (1781), 1 East P.C. 354.

Admissions obtained from an accused person after representations made to her by persons in authority to the effect that the evidence was very strongly against her, that another person, who was her paramour, was suspected, and that it would be to her best interests to tell what she knew, are not inadmissible as not being made voluntarily, or as being procured by threat or inducement.

R. vs. Viau (1898), R.J.Q., 7 Q.B. 362.

A person charged with having stolen a post-letter from a Post-office box had confessed after a post inspector had said to him, "There is no use you denying it. You were seen taking the letters out of the box. You may as well tell what you did with them as have it brought out in a court of law." As a matter of fact there was no evidence that accused was seen taking the letter. It was held that the confession was not free and voluntary, and was, therefore, not admissible, and that it was improper to make a false statement in order to obtain a confession.

R. vs. McDonald (1896), 2 Can. C.C. 221.

The burden is upon the Crown to prove that a confession was not obtained by threat or promise; and when an Indian agent, who was a person in authority so far as the Indians under his charge were concerned, stated in evidence that he was not prepared to say that he did not hold out any threat or inducement to a prisoner who had said to him, "I also killed a boy up the river," it was held that this confession was not admissible in evidence against the accused, and that the conviction should be quashed.

R. vs. Pah-Cah-pah-ne-cappi, alias "Charcoal" (1897), 17 C.L.T. 306.

R. vs. Rose (1898), 67 L.J., Q.B. 289.

R. vs. Thompson (1893), 2 Q.B.D. 12.

See also R. vs. Fennell (1881), L.R., 7 Q.B.D. 147.

R. vs. Romp (1889), 17 O.R. 567.

Evidence is inadmissible of a confession by the accused that he had stolen money from his employer, when such confession

was induced by a statement of the employer that it would be better for the accused to confess, and that if he did not do so he (the employer) would send for an officer.

R. vs. Jackson (1898), 2 Can. C.C. 149.

See also R. vs. Baldry (1852), 21 L.J.M.C. 130.

R. vs. Jarvis (1867), L.R. 1 C.C.R. 96.

To justify the admission in evidence in extradition proceedings of an alleged confession of the prisoner, it must be affirmatively proved that such confession was free and voluntary, and was not preceded by any inducement held out by a person in authority, or that it was until made only after such inducement had been clearly removed.

Re Ockerman (1898), 2 Can. C.C. 262.

Where an alleged confession is received in evidence after objection on behalf of the accused, and the trial judge before the conclusion of the trial reverses his ruling and strikes out the evidence of the alleged confession, it is not sufficient to direct the jury to disregard it, but the jury should be discharged and a new one impannelled; and if the trial judge refuses to impannel a new jury in such a case, a new trial will be ordered by a Court of Appeal.

R. vs. Sonyer (1898), 2 Can. C.C. 501.

But on the motion before the Court of Appeal for a new trial the Court will not determine the question of the admissibility of the alleged confession.

R. vs. Sonyer, supra.

Answers given by an accused person under arrest on a criminal charge in answer to a police officer, will be received as evidence when it is shown that they were not obtained or extorted by inducements or threats.

R. vs. Elliott (1899), 3 Can. C.C. 95.

686. **593. Evidence for the Defence.**—After the proceedings required by section five hundred and ninety-one are completed the accused shall be asked if he wishes to call any witnesses.

2. Every witness called by the accused who testifies to any fact relevant to the case shall be heard, and his deposition shall be taken in the same manner as the depositions of the witnesses for the prosecution.

If a justice of the peace neglects to ask or refuses to allow an accused person to call witnesses for his defence, and commits him for trial, it is a serious irregularity, but only relates to procedure, and will not render the proceedings null and void, so as to justify the liberation of the accused person on a writ of *habeas corpus*.

Ex parte Burke (1896), 2 Rev. de Jurispr. 151.

687. **594. Discharge of Accused.**—When all the witnesses on the part of the prosecution and the accused have been heard the justice shall, if upon the whole of the evidence he is of opinion that no sufficient case is made out to put the accused upon his trial, discharge him; and in such case any

recognizances taken in respect of the charge shall become void, unless some person is bound over to prosecute under the provisions next hereinafter contained. R.S.C., c .174, s. 73.

Justices of the Peace have no power on a preliminary investigation on a charge of unlawfully wounding, to reduce the charge to one of common assault, over which they would have summary jurisdiction.
R. vs. Lee (1897), 2 Can. C.C. 233.
But a conviction in such a case upon a plea of guilty to the charge as reduced, is not a bar to an indictment for unlawfully wounding, based upon the same state of facts, and it does not support a plea of *autrefois convict*.
R. vs. Lee, supra.

688.689. **595. Binding over Accused to Prosecute.**—If the justice discharges the accused, and the person preferring the charge desires to prefer an indictment respecting the said charge, he may require the justice to bind him over to prefer and prosecute such an indictment and thereupon the justice tice shall take his recognizance to prefer and prosecute an indictment against the accused before the court by which such accused would be tried if such justice had committed him, and the justice shall deal with the recognizance, information and depositions in the same way as if he had committed the accused for trial.

2. Such recognizance may be in the form U in schedule one hereto, or to the like effect.

3. If the prospector so bound over at his own request does not prefer and prosecute such an indictment, or if the grand jury do not find a true bill, or if the accused is not convicted upon the indictment so preferred, the prosecutor shall, if the court so direct, pay to the accused person his costs, including the costs of his appearance on the preliminary inquiry.

4. The court before which the indictment is to be tried or a judge thereof may in its or his discretion order that the prosecutor shall not be permitted to prefer any such indictment until he has given security for such costs to the satisfaction of such court or judge. R.S.C., c. 174, s. 80.

The person filling the office of Commissioner of Dominion Police has, as such, no legal capacity to represent and act on behalf of the Sovereign, and if he lays an information in which he designates himself as "Commissioner of Police" acting for the Sovereign, he will be held to have acted as a private individual and not as the legal representative of the Crown.
R. vs. St. Louis (1897), R.J.Q., 6 Q.B. 389.

In such a case where the accused had been discharged, and the Commissioner of Dominion Police then bound himself by recognizance to prefer and prosecute an indictment on the charge contained in the information, and the grand jury threw out the bill of indictment, the Commissioner was held to be personally liable for the costs incurred by the accused on the preliminary inquiry and before the Court of Queen's Bench; the costs in such case would not be the fees and disbursements made by the accused to his solicitor, but would be costs taxed according to a tariff for criminal proceedings, or in the absence of such tariff according to the provisions of sec. 835.

R. vs. St. Louis, supra.

See also R. vs. Mosher (1899), 3 Can. C.C. 312.

R. v. Ward 15 Cox 321.

690. **596. Committal of Accused for Trial.**—If a justice holding a preliminary inquiry thinks that the evidence is sufficient to put the accused on his trial, he shall commit him for trial by a warrant of commitment, which may be in the form V in schedule one hereto, or to the like effect. R.S.C., c. 174, s. 73.

A commitment for trial must describe an indictable offence; and therefore a commitment charging the accused with having verbally threatened to burn the complainant's buildings will be quashed.

Ex parte Welsh (1898), 2 Can. C.C. 35.

A warrant of commitment, signed by magistrates as "justices of the peace in and for the County of Labelle," no justices being appointed with such designation is illegal, and an application made for its amendment will be quashed, and the prisoner discharged upon *habeas corpus*.

Ex parte Welsh, supra.

See also Dagenais vs. Ellis (1896), 3 Revue de Jurisp. 96.

A magistrate's decision will not be reviewed by a judge upon its merits, as the duty of the latter is only to decide whether the committing magistrate had jurisdiction, whether the commitment was legal, and whether any crime known to the law is alleged to have been committed.

R. vs. Gillespie (1898), 1 Can. C.C. 511.

See also R. vs. Lee (1897), 2 Can. C.C. 233.

R. vs. Cavelier (1895), 11 Man. L.R. 333.

R. vs. McDearmid (1889), 19 C.L.T. 329.

R. Hatfield 13 L.N.B. 416.

691. **597. Copy of Depositions.**—Every one who has been committed for trial, whether he is bailed or not, may be entitled at any time before the trial to have copies of the depositions, and of his own statement, if any, from the officer who has custody thereof, on payment of a reasonable sum not exceeding five cents for each folio of one hundred words. R.S.C., c. 174, s. 74.

693. 1100. **598. Recognizances to Prosecute or give Evidence.**—When any one is committed for trial the justice holding the

preliminary inquiry may bind over to prosecute some person willing to be so bound, and bind over every witness whose deposition has been taken, and whose evidence in his opinion is material, to give evidence at the court before which the accused is to be indicted.

2. Every recognizance so entered into shall specify the name and surname of the person entering into it, his occupation or profession, if any, the place of his residence and the name and number, if any, of any street in which it may be, and whether he is owner or tenant thereof or a lodger therein.

3. Such recognizance may be either at the foot of the deposition or separate therefrom, and may be in the form W, X or Y in schedule one hereto, or to the like effect, and shall be acknowledged by the person entering into the same, and be subscribed by the justice or one of the justices before whom it is acknowledged.

4. Every such recognizance shall bind the person entering into it to prosecute or give evidence (both or either as the case may be), before the court by which the accused shall be tried.

5. All such recognizances and all other recognizances taken under this Act shall be liable to be estreated in the same manner as any forfeited recognizance to appear is by law liable to be estreated by the court before which the principal party thereto was bound to appear. R.S.C., c. 174, ss. 75 and 76.

6. Whenever any person is bound by recognizance to give evidence before a justice of the peace, or any criminal court, in respect of any offence under this Act, any justice of the peace, if he sees fit, upon information being made in writing and on oath, that such person is about to abscond, or has absconded, may issue his warrant for the arrest of such person; and if such person is arrested any justice of the peace, upon being satisfied that the ends of justice would otherwise be defeated, may commit such person to prison until the time at which he is bound by such recognizance to give evidence, unless in the meantime he produces sufficient sureties; but any person so arrested shall be entitled on demand to receive a copy of the information upon which the warrant for his arrest was issued. 48-49 V., c. 7, s. 9.

694. **599. Witness Refusing to be Bound Over.**—Any witness who refuses to enter into or acknowledge any such recognizance as aforesaid may be committed by the justice

holding the inquiry by a warrant in the form Z in schedule one hereto, or to the like effect, to the prison for the place where the trial is to be had, there to be kept until after the trial, or until the witness enters into such a recognizance as aforesaid before a justice of the peace having jurisdiction in the place where the prison is situated: Provided that if the accused is afterwards discharged any justice having such jurisdiction may order any such witness to be discharged by an order which may be in the form AA in the said schedule, or to the like effect. R.S.C., c. 174, ss. 78 and 79.

695. **600. Transmission of Documents.**—The following documents shall, as soon as may be after the committal of the accused, be transmitted to the clerk or other proper officer of the court by which the accused is to be tried, that is to say, the information if any, the depositions of the witnesses, the exhibits thereto, the statement of the accused, and all recognizances entered into, and also any depositions taken before a coroner if any such have been sent to the justice.

2. When any order changing the place of trial is made the person obtaining it shall serve it, or an office copy of it, upon the person then in possession of the said documents, who shall thereupon transmit them and the indictment, if found, to the officer of the court before which the trial is to take place. R.S.C., c. 174, s. 77.

696. **601. Rule as to Bail.**—When any person appears before any justice charged with an indictable offence punishable by imprisonment or more than five years other than treason or an offence punishable with death, or an offence under Part IV. of this Act, and the evidence adduced is, in the opinion of such justice, sufficient to put the accused on his trial, but does not furnish such a strong presumption of guilt as to warrant his committal for trial, the justice, jointly with some other justice, may admit the accused to bail upon his procuring and producing such surety or sureties as, in the opinion of the two justices, will be sufficient to ensure his appearance at the time and place when and where he ought to be tried for the offence; and thereupon the two justices shall take the recognizances of the accused and his sureties, conditioned for his appearance at the time and place of trial, and that he will then surrender and take his trial and not depart the court without leave; and in any case in which the offence committed or suspected to have

been committed is an offence punishable by imprisonment for a term less than five years any one justice before whom the accused appears may admit to bail in manner aforesaid, and such justice or justices may, in his or their discretion, require such bail to justify upon oath as to their sufficiency, which oath the said justice or justices may administer; and in default of such person procuring sufficient bail, such justice or justices may commit him to prison, there to be kept until delivered according to law.

2. The recognizance mentioned in this section shall be in the form BB in schedule one to this Act. R.S.C., c. 174, s. 81.

3. Where the offence is one triable by the Court of General or Quarter Sessions of the Peace and the justice is of opinion that it may better or more conveniently be so tried, the condition of the recognizance may be for the appearance of the accused at the next sittings of that court notwithstanding that a sittings of a superior court of criminal jurisdiction capable of trying the offence intervenes. 63-64 V., c. 46. *(This section came into force 1st January, 1901.)*

An accused person, committed in default of finding sureties, is not committed "for trial" but "until delivery according to law," and cannot be tried at the County Judges' Criminal Court.

R. vs. Gibson (1896), 3 Can. C.C. 451.

When an accused person is admitted to bail without being committed for trial, the depositions need not be transmitted by the justice, under sec. 600, to the officer of the Court in which an indictment is to be preferred.

R. vs. Gibson, supra.

And such a case consent alone does not confer jurisdiction, and the accused may, upon an appeal by way of case reserved, object to the jurisdiction of the tribunal which he has himself selected.

R. vs. Smith (1898), 3 Can. C.C. 467.

But in another case it was held that admission to bail does not affect the right of the accused to a speedy trial, as provided for by sec. 765.

R. vs. Lawrence (1896), 1 Can. C.C. 295.

698. **602. Bail after Committal.**—In case of any offence other than treason or an offence punishable with death, or an offence under Part IV. of this Act, where the accused has been finally committed as herein provided, any judge of any superior or county court, having jurisdiction in the district or county within the limits of which the accused is confined, may, in his discretion, on application made to him for that purpose, order the accused to be admitted to bail

on entering into recognizance with sufficient sureties before two justices, in such amount as the judge directs, and thereupon the justices shall issue a warrant of deliverance as hereinafter provided, and shall attach thereto the order of the judge directing the admitting of the accused to bail.

2. Such warrant of deliverance shall be in the form CC in schedule one to this Act. R.S.C., c. 174, s. 82.

In regard to the considerations which will prevail as to the granting of the application, and the amount to be fixed, see R. vs. Stewart et al. (1900), 4 Can. C.C. 131; R. vs. Byrnes (1862), 8 U.C.L.J. 76; R. vs. Keeler (1877), 7 Ont. P.R. 117 at p. 120; R. vs. McCormick (1864), 17 Jr. C.L.R. 411.

603. Bail by Superior Court.—No judge of a county court or justices shall admit any person to bail accused of treason or an offence punishable with death, or an offence under Part IV. of this Act, nor shall any such person be admitted to bail, except by order of a superior court of criminal jurisdiction for the province in which the accused stands committed, or of one of the judges thereof, or, in the province of Quebec, by order of a judge of the Court of King's Bench or Superior Court. R.S.C., c. 174, s. 83.

604. Application for Bail after Committal.—When any person has been committed for trial by any justice the prisoner, his counsel, solicitor or agent may notify the committing justice, that he will, as soon as counsel can be heard, move before a superior court of the province in which such person stands committed, or one of the judges thereof, or the judge of the county court, if it is intended to apply to such judge, under section six hundred and two, for an order to the justice to admit such prisoner to bail,—whereupon such committing justice shall, as soon as may be, transmit to the clerk of the Crown, or the chief clerk of the court, or the clerk of the county court or other proper officer, as the case may be, endorsed under his hand and seal, a certified copy of all informations, examinations and other evidence, touching the offence wherewith the prisoner has been charged, together with a copy of the warrant of commitment, and the packet containing the same shall be handed to the person applying therefor, for transmission, and it shall be certified on the outside thereof to contain the information concerning the case in question. R.S.C., c. 174, s. 93.

2. Upon such application to any such court or judge the same order concerning the prisoner being bailed or con-

tinued in custody, shall be made as if the prisoner was brought up upon a *habeas corpus*. R.S.C., c. 174, s. 94.

3. If any justice neglects or offends in anything contrary to the true intent and meaning of any of the provisions of this section, the court to whose officer any such examination, information, evidence, bailment or recognizance ought to have been delivered, shall, upon examination and proof of the offence, in a summary manner, impose such fine upon every such justice as the court thinks fit. R.S.C., c. 174, s. 95.

702. **605. Warrant of Deliverance.**—Whenever any justice or justices admit to bail any person who is then in any prison charged with the offence for which he is so admitted to bail, such justice or justices shall send to or cause to be lodged with the keeper of such prison, a warrant of deliverance under his or their hands and seals, requiring the said keeper to discharge the person so admitted to bail if he is detained for no other offence, and upon such warrant of deliverance being delivered to or lodged with such keeper, he shall forthwith obey the same. R.S.C., c. 174, s. 84.

703. **606. Warrant for the Arrest of a Person about to Abscond.**—Whenever a person charged with any offence has been bailed in manner aforesaid, it shall be lawful for any justice, if he sees fit, upon the application of the surety or of either of the sureties of such person and upon information being made in writing and on oath by such surety, or by some person on his behalf, that there is reason to believe that the person so bailed is about to abscond for the purpose of evading justice, to issue his warrant for the arrest of the person so bailed, and afterwards, upon being satisfied that the ends of justice would otherwise be defeated, to commit such person when so arrested to gaol until his trial or until he produces another sufficient surety or other sufficient sureties, as the case may be, in like manner as before.

704. **607. Delivery of Accused to Prison.**—The constable or any of the constables, or other person to whom any warrant of committment authorized by this or any other Act or law is directed, shall convey the accused person therein named or described to the gaol or other prison mentioned in such warrant, and there deliver him, together with the warrant, to the keeper of such gaol or prison, who shall

thereupon give the constable or other person delivering the prisoner into his custody, a receipt for the prisoner, setting forth the state and condition of the prisoner when delivered into his custody.

2. Such receipt shall be in the form DD in schedule one hereto. R.S.C., c. 174, s. 85.

PART XLVI.

INDICTMENTS.

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620. Property of body corporate.
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622. Indictment for offences in respect to postal cards, etc.
623. Indictments against public servants.
624. Indictments for offences respecting letter bags, etc.
625. Indictment for stealing by tenant or lodger.
626. Joinder of counts and proceedings thereon.
627. Accessories after the fact, and receivers.
628. Indictment charging previous conviction.
629. Objections to an indictment.
630. Time to plead to indictment.
631. Special pleas.
632. Depositions and judge's notes on former trial.
633. Second accusation.
634. Plea of justification in case of libel.

643 **608. Indictments need not be on Parchment.**—It shall not be necessary for any indictment or any record or document relative to any criminal case to be written on parchment. R.S.C., c. 174, s. 103.

Sec. 3, s.s. (l), reads as follows, "The expression 'indictment' and 'count' respectively, include information and presentment as well as indictment, and also any plea, replication or other pleading and any record."

A bill which is found to be true by the grand jury becomes an indictment.

644 **609. Statement of Venue.**—It shall not be necessary to state any venue in the body of any indictment, and the district, county or place named in the margin thereof, shall be the venue for all the facts stated in the body of the

indictment; but if local description is required such local description shall be given in the body thereof. R.S.C., c. 174, s. 104.

See sec. 613, par. (g) sec. 982.

Archbold (21st ed., p. 57) gives the following as cases in which it has been held necessary to give in the body of the indictment the local description; burglary, housebreaking, stealing in a dwelling-house, being found by night armed with intent to break into a dwelling-house and to commit an indictable offence therein, sacrilege, maliciously firing a dwelling-house, forcible entry, nuisances on highways, poaching, riotously demolishing churches, houses, machinery, etc., and malicious injuries to mill-dams or other local property.

845 **610. Heading of Indictment.**—It shall not be necessary to state in any indictment that the jurors present upon oath or affirmation.

2. It shall be sufficient if an indictment begins in one of the forms EE in schedule one hereto, or to the like effect.

3. Any mistake in the heading shall upon being discovered be forthwith amended, and whether amended or not shall be immaterial.

852. 853.

R. v. Johnston 6 C. Cr. Ca 232: R. v. Beckwith 7 do 450: R. v. Hutchinson 8 do 484

611. Form and Contents of Counts.—Every count of an indictment shall contain, and shall be sufficient if it contains, in substance a statement that the accused has committed some indictable offence therein specified.

2. Such statement may be made in popular language without any technical averments or any allegations of matter not essential to be proved.

R. v. Cornell 8 Can. Cr. Ca 416: R. v. Kupiec C.L.J. May 8/05 - 417.

3. Such statement may be in the words of the enactment describing the offence or declaring the matter charged to be an indictable offence or in any words sufficient to give the accused notice of the offence with which he is charged.

4. Every count shall contain so much detail of the circumstances of the alleged offence as is sufficient to give the accused reasonable information as to the act or omission to be proved against him, and to identify the transaction referred to: Provided that the absence or insufficiency of such details shall not vitiate the count.

5. A count may refer to any section or subsection of any statute creating the offence charged therein, and in estimating the sufficiency of such count the court shall have regard to such reference.

6. Every count shall in general apply only to a single transaction.

The indictment must state that the person accused has committed an indictable offence, but so long as the offence is described in substance, no technical expressions are necessary. If the indictment does not state the commission of an offence

which is indictable, it is defective on its face, and the accused may, under sec 629, object thereto by way of demurrer, or by motion to quash the indictment, before pleading or after pleading; and if it be before sentence he may, by virtue of sec. 733, s.s. 2, "move in arrest of judgment on the ground that the indictment does not (after any amendment which the Court is willing to, and has power, to make) state any indictable offence." Thus an indictment for assaulting an officer whilst in the discharge of his duty, would be defective if it did not show that he was an officer of the Court out of which the process issued.

R. vs. Everett (1828), 8 B. & C. 114.
See also R. vs. Earnshaw (1812), 15 East 456.
R. vs. Harvey (1871), L.R., 1 C.C.R. 284.
R. vs. Hall (1786), 1 T.R. 320.

It is not necessary that an indictment which sufficiently describes that which is, under the Code, an indictable offence, should conclude with the words "against the form of the statute in such case made and provided, and against the peace of our Sovereign Lord the King, his crown and dignity."

R. vs. Doyle (1891), 2 Can. C.C. 335.

An indictment which does not set up all the essential ingredients of an indictable offence is defective, and the defect is a matter of substance, and the indictment cannot be amended, but must be quashed. Thus, an indictment charging the publication of a defamatory libel, which does not state that the same was likely to injure the reputation of the libelled person by exposing him to hatred, contempt or ridicule, or was designed to insult him, is bad because it thereby omits the essential ingredients of the offence, and it must be quashed.

R. vs. Cameron (1898), 2 Can. C.C. 173.

Objection was taken to an indictment on the ground that it combined a charge of the offence of failing to provide a child under sixteen years of age with necessaries, as specified by sec. 210 and 215, with a charge of the offence of causing grievous bodily harm, or attempting to commit murder, as specified in sec. 232. It was held that the indictment was, in plain language, sufficient to give the accused notice of the offence with which they were charged, and that in any event there was no ground for complaint, since the trial judge had charged the jury as to the particular ground upon which they were to determine the case. It was also held, that even if the indictment was multifarious, that was merely a defect in its form, which was not fatal thereto.

R. vs. Lapierre (1897), 1 Can. C.C. 413.

In the same case it was held that the Crown could not strengthen its case by putting in evidence of irrelevant facts, although they were of the same nature as those charged in the indictment, and that when a witness made answer respecting any fact irrelevant to the issue such answer was conclusive, and that the prosecution was not entitled to call rebuttal evidence to contradict it for the mere purpose of impeaching the credit of the witness.

R. vs. Lapierre, supra.
Taylor on Evidence (9th ed.), p. 947, sec. 1435.

The charge against the accused was that of obtaining money under false pretences regarding certain goods which he had alleged to be stored in his warehouse, and in the indictment

these goods were referred to as "a large quantity of beans, to wit, 2680 bushels of beans."

It appeared from the depositions that there were in store 2680 bushels of beans, and the trial judge allowed the indictment to be amended by substituting for the words above quoted the words, "2680 bushels of beans." It was held, that although upon the indictment in its original form the charge would be merely upon a false pretence that there was in store "a large quantity of beans," since the words following the words "to wit" would not require to be proved, the variance by reason of such an amendment was not such as would mislead or prejudice the accused in his defence. (See sec. 723.)

R. vs. Patterson (1895), 2 Can. C.C. 339.

R. vs. Broad (1884), 14 U.C.C.P. 168.

An indictment is sufficient in form if it contains all the allegations essential to constitute the offence and charges, in substance, the offence created by the statute; and it is immaterial in what part of the same the averment is contained, or that words of equivalent import are used instead of the language of the statute. Thus an indictment charging a bank official with having made, in a monthly report, etc., "a wilful, false and deceptive statement" of and concerning the affairs of the bank, with intent to deceive, sufficiently charges the offence specified in sec. 99 of the Bank Act (53 Vict., cap. 31) of having made "a wilful, false, or deceptive statement in any return or report" with such intent.

R. vs. Weir (1899), 3 Can. C.C. 102.

The absence or the insufficiency of particulars does not vitiate either an indictment or an information; but if it should be made to appear that there is a reasonable necessity for more specific information, the Court or magistrate may, on the application of the accused, order that further particulars be given, but such an order is entirely a matter of judicial discretion.

R. vs. France (1898), 1 Can. C.C. 321.

It is not necessary to allege in an indictment facts which the law will necessarily infer from the proofs of other facts which are alleged. Thus, where an indictment for unlawfully writing and publishing a defamatory libel omitted to allege that the libel was published maliciously, it was held that the indictment was nevertheless good, because upon proof of the publication of the libel, the legal inference, subject to rebuttal by evidence which might afterwards be adduced by the accused, was that it was published maliciously, and therefore the allegation of malicious publication was not a necessary averment.

R. vs. Munslow (1895), 18 Cox C.C. 112.

An indictment for receiving goods, knowing the same to have been unlawfully obtained by false pretences, is good although it does not specify the false pretences, for the gist of the offence being the receipt of the goods with knowledge that they had been unlawfully obtained by some false pretence, it is sufficient to so allege without detailing the nature of the pretence.

Taylor vs. R. (1895), 1 Q.B.D. 25.

The accused was charged with having committed perjury "on the inquest of inquiry before A.J.R., one of Her Majesty's coroners in and for the N.W.T. concerning, etc." The inquest was held before the coroner and a jury, and on the investigation of the charge before a justice of the peace, the prisoner admitted that he had given false evidence at the inquest. This admis-

sion was submitted to the jury at the trial, and the accused was convicted. It was objected that the conviction was bad, as the indictment charged the accused with having committed perjury at an inquiry held before a coroner, whilst it appeared that the false testimony in question had been given before a coroner and a jury, and that therefore the inquisition offered in evidence should have been rejected. It was held, that the circumstances of the alleged offence were sufficiently described to satisfy s.s. 3 and 4 of this section, that the evidence had been properly received, and that therefore the trial judge was right in not withdrawing the case from the jury or instructing them to acquit the accused upon that ground.

R. vs. Thompson (1896), 32 C.L.J. 493.

Each count of an indictment must contain a statement of all the essential ingredients which constitute the offence charged and therefore in charging the offence of uttering a forged instrument, the indictment must aver that the defendants made use of or uttered the instrument knowing it to have been forged.

R. vs. Weir (1900), 3 Can. C.C. 493.

A count of an indictment charging the accused with having, with intent to defraud, unlawfully made use of and uttered a promissory note alleged to have been made and signed by one of the defendants by procuration without lawful authority or excuse, and with intent to defraud, is defective if it does not also allege that the accused persons knew it to have been so made and signed, and such a defect is one of substance and cannot be amended under sec. 629.

R. vs. Weir (1900), 3 Can. C.C. 499.

The forms F.F., which specially refer to this section, are intended to illustrate the provisions of this section and their effect is not confined to the offences stated in this section.

R. vs. Skelton (1898), 18 C.L.T., 205.

592. **612. Offences may be Charged in the Alternative.**—A count shall not be deemed objectionable on the ground that it charges in the alternative several different matters, acts or omissions which are stated in the alternative in the enactment describing any indictable offence or declaring the matters, acts or omissions charged to be an indictable offence, or on the ground that it is double or multifarious: Provided that the accused may at any stage of the trial apply to the court to amend or divide any such count on the ground that it is so framed as to embarrass him in his defence.

2. The court, if satisfied that the ends of justice require it, may order any count to be amended or divided into two or more counts, and on such order being made such count shall be so divided or amended, and thereupon a formal commencement may be inserted before each of the counts into which it is divided.

855. 859.

R. Stevens 8 Can Cr Ca 387: R. Hutchinson do 486.

613. Certain Objections not to Vitiate Counts.—No count shall be deemed objectionable or insufficient on any of the following grounds; that is to say:

(a.) that it does not contain the name of the person injured, or intended, or attempted to be injured; or

(b.) that it does not state who is the owner of any property therein mentioned; or

(c.) that it charges an intent to defraud without naming or describing the person whom it was intended to defraud; or

(d.) that it does not set out any document which may be the subject of the charge; or

(e.) that it does not set out the words used where words used are the subject of the charge; or

(f.) that it does not specify the means by which the offence was committed; or

(g.) that it does not name or describe with precision any person, place or thing;

(h.) Or in cases where the consent of any person, official or authority is required before a prosecution can be instituted, that it does not state that such consent has been obtained.

Provided that the court may, if satisfied that it is necessary for a fair trial, order that a particular further describing such document, words, means, person, place or thing be furnished by the prosecutor. 56 V., c. 32.

See secs. 617 and 723 referring to the practice of ordering that particulars should be furnished the accused.

Lord Coleridge said in the case of R. vs. Stapylton (1857), 8 Cox C.C. 69, "the general principle applies only to this extent, to give such information as is sufficient to enable the defendant fairly to defend himself when in Court, but, on the other hand, not to advise the prosecutor in the conduct of his case."

See also R. vs. Hodgson (1828), 3 C. & P. 422.

R. vs. Bootyman (1832), 5 C. & P. 300.

R. vs. Hamilton (1836), 7 C. & P. 448.

An indictment charging the accused with having unlawfully attempted to steal from the person of an unknown person the property of such person, without giving either the name of the person against whom the offence was committed, or any description of the property which the accused is alleged to have attempted to steal, is sufficient.

R. vs. Taylor (1895), R.J.Q., 4 Q.B. 226.

If an indictment laid under sec. 431, charging the accused with having unlawfully and with intent to defraud signed a promissory note by procuration, the name signed being that of a testamentary succession or of an estate in liquidation, does not disclose the particulars, an order will be made directing the Crown to furnish particulars of the names and capacities of the persons representing such estate at the time when the

offence is alleged to have been committed, and directing that the accused be not arraigned until after such particulars have been delivered.

R. vs. Weir (1899), 3 Can. C.C. 155.

847 **614. Indictment for High Treason or Treasonable Offence.**—Every indictment for treason or for any offence against Part IV. of this Act must state overt acts, and no evidence shall be admitted of any overt act not stated unless it is otherwise relevant as tending to prove some overt act stated.

2. The power of amending indictments herein contained shall not extend to authorize the court to add to the overt acts stated in the indictment.

860 **615. Indictments for Libel.**—No count for publishing a blasphemous, seditous, obscene or defamatory libel, or for selling or exhibiting an obscene book, pamphlet, newspaper or other printed or written matter, shall be deemed insufficient on the ground that it does not set out the words thereof: Provided that the court may order that a particular shall be furnished by the prosecutor stating what passages in such book, pamphlet, newspaper, printing or writing are relied on in support of the charge.

2. A count for libel may charge that the matter published was written in a sense which would make the publishing criminal, specifying that sense without any prefatory averment showing how that matter was written in that sense. And on the trial it shall be sufficient to prove that the matter published was criminal either with or without such innuendo.

See sec. 634 regarding the plea of justification in actions charging the accused with having committed a defamatory libel.

559 **616. Indictment for Perjury and certain other Offences.**—No count charging perjury, the making of a false oath or of a false statement, fabricating evidence or subornation, or procuring the commission of any of these offences, shall be deemed insufficient on the ground that it does not state the nature of the authority of the tribunal before which the oath or statement was taken or made, or the subject of the inquiry, or the words used or the evidence fabricated, or on the ground that it does not expressly negative the truth of the words used: Provided that the court may, if satisfied that it is necessary for a

fair trial, order that the prosecutor shall furnish a particular of what is relied on in support of the charge.

2. No count which charges any false pretense, or any fraud, or any attempt or conspiracy by fraudulent means, shall be deemed insufficient because it does not set out in detail in what the false pretenses or the fraud or fraudulent means consisted: Provided that the court may, if satisfied as aforesaid, order that the prosecutor shall furnish a particular of the above matters or any of them.

3. No provision hereinbefore contained in this part as to matters which are not to render any count objectionable or insufficient shall be construed as restricting or limiting in any way the general provisions of section six hundred and eleven. R.S.C., c. 174, s. 107.

860. **617. Particulars.**—When any such particular as aforesaid is delivered a copy shall be given without charge to the accused or his solicitor, and it shall be entered in the record and the trial shall proceed in all respects as if the indictment had been amended in conformity with such particular.

2. In determining whether a particular is required or not, and whether a defect in the indictment is material to the substantial justice of the case or not, the court may have regard to the depositions.

See sec. 613.

846. **618. Indictment for Pretending to send Money, etc., in Letter.**—It shall not be necessary to allege, in any indictment against any person for wrongfully and wilfully pretending or alleging that he inclosed and sent, or caused to be inclosed and sent, in any post letter, any money, valuable security or chattel, or to prove on the trial, that the act was done with intent to defraud. R.S.C., c. 174, s. 113.

864. **619. Indictments in certain Cases.**—An indictment shall be deemed sufficient in the cases following:

(a.) If it be necessary to name the joint owners of any real or personal property, whether the same be partners, joint tenants, parceners, tenants in common, joint stock companies or trustees, and it is alleged that the property belongs to one who is named, and another or others as the case may be;

(b) If it is necessary for any purpose to mention such persons and one only is named;

(c.) If the property in a turnpike road is laid in the trustees or commissioners thereof without specifying the names of such trustees or commissioners;

(d.) If the offence is committed in respect to any property in the occupation or under the management of any public officer or commissioner, and the property is alleged to belong to such officer or commissioner without naming him;

(e.) If, for an offence under section three hundred and thirty-four, the oyster bed, laying or fishery is described by name or otherwise, without stating the same to be in any particular county or place. R.S.C., c. 174, ss. 118, 119, 120, 121 and 123.

See secs. 613 and 723.

865. **620. Property of Body Corporate.**—All property, real and personal, whereof any body corporate has, by law, the management, control or custody, shall, for the purpose of any indictment or proceeding against any other person for any offence committed on or in respect thereof, be deemed to be the property of such body corporate. R.S.C., c. 174, s. 122.

866, 853. **621. Indictment for Stealing Ores or Minerals.**—In any indictment for any offence mentioned in sections three hundred and forty-three or three hundred and seventy-five of this Act, it shall be sufficient to lay the property in His Majesty, or in any person or corporation, in different counts in such indictment; and any variance in the latter case, between the statement in the indictment and the evidence adduced, may be amended at the trial; and if no owner is proved the indictment may be amended by laying the property in His Majesty. R.S.C., c. 174, s. 124.

867. **622. Indictment for Offences in respect to Postal Cards, etc.**—In any indictment for any offence committed in respect of any postal card, postage stamp or other stamp issued or prepared for issue by the authority of the Parliament of Canada, or of the legislature of any province of Canada, or by, or by the authority of, any corporate body for the payment of any fee, rate or duty whatsoever, the property therein may be laid in the person in whose possession, as the owner thereof, it was when the offence was committed, or in His Majesty if it was then unissued or

in the possession of any officer or agent of the Government of Canada or of the province by authority of the legislature whereof it was issued or prepared for issue. R.S.C., c. 174, c. 125.

623. Indictments against Public Servants.—In every case of theft or fraudulent application or disposition of any chattel, money or valuable security under sections three hundred and nineteen (c.) and three hundred and twenty-one of this Act, the property in any such chattel, money or valuable security may, in any warrant by the justice of the peace before whom the offender is charged, and in the indictment preferred against such offender, be laid in His Majesty, or in the municipality, as the case may be. R.S.C., c. 174, s. 126.

624. Indictments for Offences respecting Letter Bags, etc.—When an offence is committed in respect of a post letter bag, or a post letter, or other mailable matter, chattel, money or valuable security sent by post, the property of such post letter bag, post letter, or other mailable matter, chattel, money or valuable security may, in the indictment preferred against the offender, be laid in the Postmaster-General; and it shall not be necessary to allege in the indictment, or to prove upon the trial or otherwise, that the post letter bag, post letter or other mailable matter, chattel or valuable security was of any value.

2. The property of any chattel or thing used or employed in the service of the post office, or of moneys arising from duties of postage, shall, except in the cases aforesaid, be laid in His Majesty, if the same is the property of His Majesty, or if the loss thereof would be borne by His Majesty and not by any person in his private capacity.

3. In any indictment against any person employed in the post office of Canada for any offence against this Act, or against any person for an offence committed in respect of any person so employed, it shall be sufficient to allege that such offender or such other person was employed in the post office of Canada at the time of the commission of such offence, without stating further the nature or particulars of his employment. R.S.C., c. 35, s. 111.

Sec. 4 defines the terms "post-letter bag," "post-letter," and "mailable matter." See also 1 Edw. VII., cap. 42, which also defines the meaning of the word.

625. Indictment for Stealing by Tenant or Lodger.—An indictment may be preferred against any person who steals any chattel let to be used by him in or with any house or lodging, or who steals any fixture so let to be used, in the same form as if the offender was not a tenant or lodger, and in either case the property may be laid in the owner or person letting to hire. R.S.C., c. 174, s. 127.

626. Joinder of Counts and Proceedings thereon.—1. Any number of counts for any offences whatever may be joined in the same indictment, and shall be distinguished in the manner shown in the form EE in schedule one hereto, or to the like effect: Provided that to a count charging murder no count charging any offence other than murder shall be joined.

2. When there are more counts than one in an indictment each count may be treated as a separate indictment.

3. If the court thinks it conducive to the ends of justice to do so, it may direct that the accused shall be tried upon any one or more of such counts separately. Such order may be made either before or in the course of the trial, and if it is made in the course of the trial the jury shall be discharged from giving a verdict on the counts on which the trial is not to proceed. The counts in the indictment which are not then tried shall be proceeded upon in all respects as if they had been found in a separate indictment.

4. Provided that, unless there be special reasons, no order shall be made preventing the trial at the same time of any number of distinct charges of theft not exceeding three alleged to have been committed within six months from the first to the last of such offences, whether against the same person or not.

5. If one sentence is passed upon any verdict of guilty on more counts than one, the sentence shall be good if any of such counts would have justified it.

See sec. 612.

When several persons are indicted jointly, the Crown has the option of having them tried separately instead of together, but in such a case none of the accused can demand a separate trial as a matter of right.

R. vs. Weir (1899), 3 Can. C.C. 351.

R. vs. McConohy (1874), 5 Revue Legale 746.

R. vs. Littlechild (1871), L.R., 6 Q.B. 293.

But when the trial of the defendants jointly instead of separately would work an injustice to any of them, the trial judge may, on due cause being shown, exercise his discretionary right to direct a separate trial.

R. vs. Weir (1899), 3 Can. C.C. 351.

R. vs. Bradlaugh (1883), 15 Cox C.C. 217.

If at the close of the case for the prosecution, it appears that no evidence is to be given on behalf of one of the defendants, the trial judge may submit his case separately to the jury; but he is not bound to do so.

R. vs. Hambly (1859), 16 U.C., Q.B. 617.

When either the accused or the prosecution intend to call one of the accused to give evidence for or against a co-defendant, a separate trial should be demanded. Where persons are jointly indicted but are tried separately, one or other is a competent witness against the other although the defendant so called has not been tried and has not been discharged on a *nolle prosequi*, and although he has not pleaded to the indictment.

R. vs. Winsor (1865), 10 Cox C.C. 276.

Before the Canada Evidence Act, 1893, where the accused were indicted jointly but were tried separately, one of them was a competent witness on behalf of the other.

R. vs. Jerrett (1863), 22 U.C. Q.B. 499.

But if the accused were jointly indicted and jointly tried, and had been given in charge of the jury, one of them could not be called as a witness for the other.

R. vs. Payne (1872), 12 Cox C.C. 118.

Since the Canada Evidence Act, 1893, however, every person charged with the commission of any offence is, by virtue of sec. 4, a competent witness, whether he is so charged alone or jointly with some other person or persons. But if an accused person has been jointly indicted and jointly tried with another, and has been given in charge to the jury (that being a case in which, under the former law, he was neither competent nor compellable), he is not now a compellable witness, but he is a competent one, and may give evidence if he wishes to do so. If, however, he does not testify, his failure to do so shall not, according to sec. 4, s.s. 2, be made the subject of comment by the judge or by counsel for the prosecution in addressing the jury.

845. **627. Accessories after the fact and Receivers.**—Every one charged with being an accessory after the fact to any offence, or with receiving any property knowing it to have been stolen, may be indicted, whether the principal offender or other party to the offence or person by whom such property was so obtained has or has not been indicted or convicted, or is or is not amenable to justice, and such accessory may be indicted either alone as for a substantive offence or jointly with such principal or other offender or person.

2. When any property has been stolen any number of receivers at different times of such property, or of any part or parts thereof, may be charged with substantive offences in the same indictment, and may be tried together, whether the person by whom the property was so obtained is or is not indicted with them, or is or is not in custody or amenable to justice. R.S.C., c. 174, ss. 133, 136 and 138.

Secs. 715, 716 and 717 relate to proceedings against and the trial of persons accused of having received goods knowing them to have been stolen.

851. **628. Indictment Charging previous Conviction.**—In any indictment for any indictable offence, committed after a previous conviction or convictions for any indictable offence or offences or for any offence or offences (and for which a greater punishment may be inflicted on that account), it shall be sufficient, after charging the subsequent offence, to state that the offender was at a certain time and place, or at certain times and places, convicted of an indictable offence, or of an offence or offences, as the case may be, and to state the substance and effect only, omitting the formal part of the indictment and conviction, or of the summary conviction, as the case may be, for the previous offence, without otherwise describing the previous offence or offences. R.S.C., c. 174, s. 139.

In order to be punishable as such, a second offence must have been committed after the conviction of the accused person for the prior offence. See sec. 478.

And the previous conviction can only be put in evidence after the accused has pleaded guilty or has been found guilty of the commission of the second offence. See sec. 676.

R. vs. Martin(1869), L.R., 1 C.C.R. 214.

Sec. 694 relates to the proof of previous conviction.

Rex Cr Ev 214:

848. **629. Objections to an Indictment.**—Every objection to any indictment for any defect apparent on the face thereof shall be taken by demurrer, or motion to quash the indictment, before the defendant has pleaded, and not afterwards, except by leave of the court or judge before whom the trial takes place, and every court before which any such objection is taken may, if it is thought necessary, cause the indictment to be forthwith amended in such particular, by some officer of the court or other person, and thereupon the trial shall proceed as if no such defect had appeared; and no motion in arrest of judgment shall be allowed for any defect in the indictment which might have been taken advantage of by demurrer, or amended under the authority of this Act.

R. Hogan 7 C.C. 453.

Under this section, if the accused person raises the objection that the indictment is defective on its face, he must do so by demurrer, or by motion to quash made before he pleads; after pleading he can only do so by leave of the Court. And according to sec. 734, when a verdict has been given the indictment shall not be open to any objection on the ground of in-

formality. In cases of defects in substance the accused may either raise his objection by demurrer, or by motion to quash, before pleading; or, after verdict rendered, he may, under sec. 733, move in arrest of judgment on the ground that the indictment does not disclose any indictable offence. And according to sec. 723, s.s. 2, even in the case of "an omission to state, or a defective statement of, anything requisite to constitute the offence," the trial judge may, if the matter omitted has been proved by the evidence, and if he is of the opinion that the accused has not been misled or prejudiced in his defence by such error or omission, direct that the indictment or count shall be amended.

Another distinction between objections to defects apparent on the face of the indictment, and objections on account of matter in substance, is that in the former case the indictment may be amended, but that in the latter instance the fact that the demurrer is maintained or the omission to quash is allowed has the effect of setting aside the indictment. When the indictment sets forth no offence known to the law the verdict does not, under sec. 734, cure this defect.

R. vs. Aspinal (1876), L.R., 2 Q.B.D. 58.

An indictment charging the publication of a defamatory libel, which does not state that the accused intended thereby to injure the reputation of the libelled person and to bring him into public hatred, contempt or ridicule, or to insult him, is bad by reason of the omission of an essential ingredient of the offence, and the defect is one which cannot be cured by amendment, but the indictment must be quashed.

R. vs. Cameron (1898), R.J.Q., 7 Q.B. 163.

A count of an indictment charging the accused with having, with intent to defraud, unlawfully made use of and uttered a promissory note alleged to have been made and signed by one of the accused by procuration without lawful authority or excuse, and with intent to defraud, is defective in substance if it does not allege that the accused knew it to have been so made and signed, and the defect cannot be cured by amendment, but the indictment must be quashed.

R. vs. Weir (1900), 3 Can. C.C. 493.

See also R. vs. Doyle (1894), 2 Can. C.C. 335.

Notwithstanding this section, an objection to an indictment against a corporation, upon the ground that it does not disclose any offence in respect of which a corporation would be liable, must be taken by demurrer and not by motion to quash. R. vs. Toronto Ry. Co. (1900), 4 Can. C.C. 4.

Vol. **630. Time to Plead to Indictment.**—No person prosecuted shall be entitled as of right to traverse or postpone the trial of any indictment preferred against him in any court, or to imparl, or to have time allowed him to plead or demur to any such indictment: Provided always, that if the court before which any person is so indicted, upon the application of such person or otherwise, is of opinion that he ought to be allowed a further time to plead or demur or to prepare for his defence, or otherwise, such court may grant such further time and may adjourn the trial of such person to a future time of the sittings of the court or to the next or

any subsequent session or sittings of the court, and upon such terms, as to bail or otherwise, as to the court seem meet, and may, in the case of adjournment to another session or sitting, respite the recognizances of the prosecutor and witnesses accordingly, in which case the prosecutor and witnesses shall be bound to attend to prosecute and give evidence at such subsequent session or sittings without entering into any fresh recognizances for that purpose. R.S.C., c. 174, s. 141.

Secs. 758 and 759, which contain certain rules regarding the time for pleading are applicable only in the Province of Ontario.

Regarding the circumstances in consideration of which the Court will or will not grant a postponement, see

R. vs. Langhurst (1866), 10 Cox C.C. 353.
R. vs. Flannagan (1884), 15 Cox C.C. 403.
R. vs. Fitzgerald (1843), 1 C. & K. 201.
R. vs. Beardmore (1835), 7 C. & P. 497.
R. vs. Chapman (1838), 8 C. & P. 558.
R. vs. Nicholas (1846), 2 C. & K. 246.
R. vs. Heeson (1878), 14 Cox C.C. 40.
R. vs. Taylor (1882), 15 Cox C.C. 8.

631. Special Pleas.—The following special pleas and no others may be pleaded according to the provisions hereinafter contained, that is to say, a plea of *autrefois acquit*, a plea of *autrefois convict*, a plea of pardon, and such pleas in cases of defamatory libel as are hereinafter mentioned.

2. All other grounds of defence may be relied on under the plea of not guilty.

3. The pleas of *autrefois acquit*, *autrefois convict*, and pardon may be pleaded together, and if pleaded shall be disposed of before the accused is called on to plead further; and if every such plea is disposed of against the accused he shall be allowed to plead not guilty.

4. In any plea of *autrefois acquit* or *autrefois convict* it shall be sufficient for the accused to state that he has been lawfully acquitted or convicted, as the case may be, of the offence charged in the count or counts to which such plea is pleaded, indicating the time and place of such acquittal, or conviction. R.S.C., c. 174, s. 146.

5. On the trial of an issue on a plea of *autrefois acquit* or *autrefois convict* to any count or counts, if it appear that the matter on which the accused was given in charge on the former trial is the same in whole or in part as that on which it is proposed to give him in charge, and that he might on the former trial, if all proper amendments had been made which might then have been made, have been

convicted of all the offences of which he may be convicted on the count or counts to which such plea is pleaded, the court shall give judgment that he be discharged from such count or counts.

6. If it appear that the accused might on the former trial have been convicted of an offence of which he might be convicted on the count or counts to which such plea is pleaded, but that he may be convicted on any such count or counts of some offence or offences of which he could not have been convicted on the former trial, the court shall direct that he shall not be convicted on any such count or counts of any offence of which he might have been convicted on the former trial, but that he shall plead over as to the other offence or offences charged.

In order to sustain a plea of *autrefois convict* or *autrefois acquit*, it must be proved that the accused was previously convicted or acquitted of the same offence as that with which he is charged in the indictment to which he so pleads, or that he was either convicted or acquitted of an offence of which he might be convicted upon the indictment in question. In such a case it is necessary to consider whether the evidence required to maintain the second indictment would have sufficed for a conviction on the former one.

R. vs. Miles (1890), L.R., 24 Q.B.D. 423.

But the accused must actually have been put in jeopardy upon the former occasion so pleaded, and there must therefore have been an actual conviction or acquittal after trial. Where a coroner's jury has returned a verdict of accidental death, the defendant, subsequently indicted for homicide, cannot plead *autrefois acquit* because the coroner's jury returned such a verdict.

R. vs. Labelle (1882), 16 L.N. 187.

The previous conviction or acquittal must have been valid, but if the defect in the indictment was such as to have been cured by amendment, whether it was or not, a previous acquittal or conviction thereunder would support a plea of *autrefois acquit* or *autrefois convict*. A person can plead *autrefois acquit* or *autrefois convict* although the indictment of which he so pleads is one against him separately, whilst in the one to which he thus refers he was indicted jointly with others.

R. vs. Dann (1835), 1 Moody's C.C. 424.

And proof of previous conviction or acquittal by a competent court of a foreign country will support a plea of *autrefois acquit* or *autrefois convict*.

R. vs. Hutchinson (1775), 1 Leach 160.

And according to the decision in R. vs. Lea (1837), 2 Moody's C.C. 9, when once a verdict has been rendered in favor of the defendant upon a plea of *autrefois acquit* or *autrefois convict*, it cannot be set aside although the Court is of the opinion that it is clearly against the weight of evidence.

The justices of the peace before whom the accused was charged with unlawfully wounding, at the preliminary investigation, and without jurisdiction, reduced the charge to one of

common assault, over which they have summary jurisdiction, and upon a plea of guilty, convicted the accused of that offence. It was held that this conviction was not a bar to an indictment for unlawfully wounding, based upon the same state of facts, and that it did not support a plea of *autrefois convict*.

R. vs. Lee (1897), 2 Can. C.C. 233.

In R. vs. Elrington (1861), 1 B. & S. 688 (at p. 696).

Cockburn, C.J., said that it was a well-established principle that a series of charges shou'd not be preferred, and whether a party accused of a minor offence was acquitted or convicted, he should not be charged again with the same facts in a more aggravated form.

An accused person may also plead that he has been previously convicted or discharged upon a charge of the same offence at a summary trial, always provided th t the offence is one which could be summarily tried under the provisions of the Code in that behalf.

See secs. 865, 866 and 867.

But the certificate of dismi sal referred to in sec. 865 should only be issued when there has been a full hearing; if it is granted when the charge is withdrawn before hearing, it will form no bar to subsequent pr ceedin s on the same charge.

Reed vs. Nutt (1890), L.R., 24 Q.B.D. 669.

The plea of pardon by the Crown should be pleaded as soon as the defendant is afforded the opportunity of making any plea, otherwise the accused may lose the benefit thereof.

But a general pardon by statute need not be pleaded. See sec. 966, which relates to pardons by the Crown.

Jos. **632. Depositions and Judge's Notes on Former Trial.**—On the trial of an issue on the plea of *autrefois acquit* or *convict* the depositions transmitted to the court on the former trial together with the judge's and official stenographer's notes if available, and the depositions transmitted to the court on the subsequent charge, shall be admissible in evidence to prove or disprove the identity of the charges.

Jos. **633. Second Accusation.**—When an indictment charges substantially the same offence as that charged in the indictment on which the accused was given in charge on a former trial but adds a statement of intention or circumstances of aggravation tending if proved to increase the punishment, the previous acquittal or conviction shall be a bar to such subsequent indictment.

2. A previous conviction or acquittal on an indictment for murder shall be a bar to a second indictment for the same homicide charging it as manslaughter; and a previous conviction or acquittal on an indictment for manslaughter shall be a bar to a second indictment for the same homicide charging it as murder.

9-10 Ed. VII. **634. Plea of Justification in case of Libel.**—Every one accused of publishing a defamatory libel may plead that the defamatory matter published by him was true, and that it was for the public benefit that the matters charged should be published in the manner and at the time when they were published. Such plea may justify the defamatory matter in the sense specified, if any, in the count, or in the sense which the defamatory matter bears, without any such specification; or separate pleas justifying the defamatory matter in each sense may be pleaded separately to each as if two libels had been charged in separate counts.

2. Every such plea must be in writing, and must set forth the particular fact or facts by reason of which it was for the public good that such matters should be so published. The prosecutor may reply generally denying the truth thereof.

3. The truth of the matters charged in an alleged libel shall in no case be inquired into without such plea of justification unless the accused is put upon his trial, upon any indictment or information charging him with publishing the libel knowing the same to be false, in which case evidence of the truth may be given in order to negative the allegation that the accused knew the libel to be false.

4. The accused may, in addition to such plea, plead not guilty and such pleas shall be inquired of together.

5. If, when such plea of justification is pleaded, the accused is convicted, the court may, in pronouncing sentence, consider whether his guilt is aggravated or mitigated by the plea. R.S.C., c. 174, ss. 148, 149, 150 and 151; as amended by 56 V., c. 32.

A plea of justification to an indictment for defamatory libel must allege that the defamatory matter published is true, and that it was published for the public benefit.

R. vs. Grenier (1897), 1 Can. C.C. 55.

The plea of justification must set forth concisely the particular facts by reason of which its publication was for the public good, but must not contain the evidence by which it is proposed to prove such facts, nor any statements by way of comment or argument. Therefore a plea of justification embodying a number of letters which it is proposed to use as evidence, and containing paragraphs consisting merely of comments and argument, is irregular, and should be rejected from the record, or the irrelevant averments should be stricken out and the accused allowed to plead anew.

R. vs. Grenier (1897), 1 Can. C.C. 55.

The accused had pleaded justification, and after the pleadings had been closed, and at the trial, motion was made on his behalf for a commission to take the evidence of witnesses in England in support of his plea of justification. The Crown

objected that the parties having come down to trial it was too late to make such a motion. Held, that the accused was entitled to take every moment to consider whether he would put in a plea of justification, and that as the evidence proposed to be taken under the commission was only as to that plea which had just been entered, the application could not have been made before.

R. vs. Nicol (1898), 34 C.L.J. 475.

In a prosecution for an alleged defamatory libel contained in a newspaper article condemning an employer's dismissal of employees belonging to a trade union, and charging that the distribution of certain gratuities by the employer to his employees was impelled by motives of selfishness on his part, and was for the purpose of winning public approval and favorable comment through press notices thereof, a plea of justification will not be struck out on the objection that the facts therein alleged do not show that it was for the public benefit that the publication should be made, if such plea contains a charge that the press notices favorable to the complainant were published at his instance.

R. vs. Brazeau (1899), 3 Can. C.C. 89.

If the complainant in a prosecution for defamatory libel has himself called public attention to the subject matter of the alleged libel, by obtaining the publication of newspaper articles commending his conduct therein, he thereby invites public criticism thereof, and cannot object that that answer to his own is not a publication in the public interest.

R. vs. Brazeau, supra.

"Wherever a man calls public attention to his own grievances or those of his class, whether by letters in a newspaper, by speeches at public meetings, or by the publication of pamphlets, he must expect to have his assertions challenged, the existence of his grievances denied, and himself ridiculed and assailed."

Odgers on Libel (3rd ed.)p. 57.

Comments however severe upon the advertisements of a tradesman are not "libellous" if the jury is of opinion that they are fair comment, not wholly undeserved, upon a matter to which public attention was expressly invited by the tradesman himself.

Paris vs. Levy (1860), 9 C.B., N.S. 342.

And whether any subject is or is not of public interest is a question for the judge and not for the jury.

Per Coleridge, C.J., in Weldon vs. Johnson (1881), cited in Odgers on Libel, (3rd ed.) at p. 46.

PART XLVII

CORPORATIONS.

635. Corporations may appear by attorney.
636. *Certiorari*, etc., not required.
637. Notice to be served on corporation.
638. Proceedings on default.
639. Trial may proceed in absence of defendant.

916. **635. Corporations may appear by Attorney.**—Every corporation against which a bill of indictment is found at any court having criminal jurisdiction shall appear by attorney in the court in which such indictment is found and plead or demur thereto. R.S.C., c. 174, s. 155.

Proceedings upon a charge against a corporation of selling goods to which a false trade description was applied should be instituted by indictment under secs. 635 to 639, and not by a preliminary inquiry before a magistrate.

R. vs. The Eaton Co., Ltd., (1898), 2 Can. C.C. 252.

See also re Chapman vs. City of London (1890), 19 O.R. 33.

It has been held that the fact that secs. 635 to 639 specially provide for proceedings against corporations by way of indictment, is not to be taken to mean that because there is no special procedure for the summary conviction of corporations, the ordinary sections of the Code in that behalf do not apply.

R. vs. The Toronto Ry. Co. (1898), 2 Can. C.C. 471.

917. **636. "Certiorari," etc., not Required.**—No writ of *certiorari* shall be necessary to remove any such indictment into any superior court with the view of compelling the defendant to plead thereto; nor shall it be necessary to issue any writ of *distringas*, or other process, to compel the defendant to appear and plead to such indictment. R.S.C., c. 174, s. 156.

918. Ex per Woodstock Electric Light Co 34 N.B. p 463.

637. Notice to be served on Corporation.—The prosecutor, when any such indictment is found against a corporation or the clerk of the court when such indictment is founded on a presentment of the grand jury, may cause a notice thereof to be served on the mayor or chief officer of such corporation, or upon the clerk or secretary thereof, stating the nature and purport of such indictment, and that, unless such corporation appears and pleads thereto in two days after the service of such notice, a plea of not guilty will be entered thereto, for the defendant by the court, and that the trial thereof will be proceeded with in like manner as if the said corporation had appeared and pleaded thereto. R.S.C., c. 174, s. 157.

919. **638. Proceedings on Default.**—If such corporation does not appear in the court in which the indictment has been found, and plead or demur thereto within the time specified in the said notice, the judge presiding at such court may, on proof to him by affidavit of the due service of such notice, order the clerk or proper officer of the court to enter a plea of "not guilty" on behalf of such

corporation, and such plea shall have the same force and effect as if such corporation had appeared by its attorney and pleaded such plea. R.S.C., c. 174, s. 158.

920. **639. Trial may Proceed in Absence of Defendant.**—The court may—whether such corporation appears and pleads to the indictment, or whether a plea of "not guilty" is entered by order of the court—proceed with the trial of the indictment in the absence of the defendant in the same manner as if the corporation had appeared at the trial and defended the same; and in case of conviction, may award such judgment and take such other and subsequent proceedings to enforce the same as are applicable to convictions against corporations. R.S.C., c. 174, s. 159.

In R. vs. Great West Laundry Co. (1900), 3 Can. C.C. 514, it was held that there was no power under this section or otherwise to impose a fine or any other punishment in lieu of imprisonment for the offence of manslaughter, and that consequently no judgment or sentence could be pronounced applicable to a conviction of a corporation for that offence.

In R. vs. Union Colliery Co. (1900), 3 Can. C.C. 523, it was held that although a corporation could not be guilty of the crime of manslaughter, it could be indicted under sec. 252 for having caused grievous bodily injury by omitting to maintain in a safe condition one of its structures, even when death ensued at once to the person sustaining the grievous bodily injury.

It was further held in that case, that since the punishment of imprisonment mentioned in sec. 252 could not be inflicted upon a corporation, a fine was the punishment which should be substituted under sec. 639, and that, in accordance with sec. 934, the amount of such fine was in the discretion of the Court.

See also Pharmaceutical Society of G.B. vs. London and Provincial Supply Association, Ltd. (1880), L.R., 5 A.C. 869.

R. vs. Birmingham and Gloucester Ry. Co. (1842), L.R., 3 Q.B. 223.

R. vs. Great North of England Ry. Co. (1846), L.R., 9 Q.B. 315.

R. vs. Pocock (1851), L.R., 17 Q.B. 34.

PART XLVIII.

PREFERRING INDICTMENT.

640. Jurisdiction of courts.
641. Sending bill before grand jury.
642. Coroner's inquisition.
643. Oath in open court not required.
644. Oath may be administered by foreman.
645. Names of witnesses to be endorsed on bill of indictment.

646. Names of witnesses to be submitted to grand jury.
647. Fees for swearing witnesses.
648. Bench warrant and certificate.

877.888:

R. v. Bourke 5 C. Cr. Cas. 29. **640. Jurisdiction of Courts.**—Every court of criminal jurisdiction in Canada is, subject to the provisions of Part XLII., competent to try all offences wherever committed, if the accused is found or apprehended or is in custody within the jurisdiction of such court, or if he has been committed for trial to such court or ordered to be tried before such court, or before any other court the jurisdiction of which has by lawful authority been transferred to such first mentioned court under any Act for the time being in force: Provided that nothing in this Act authorizes any court in one province of Canada to try any person for any offence committed entirely in another province, except in the following case;

2. Every proprietor, publisher, editor or other person charged with the publication in a newspaper of any defamatory libel, shall be dealt with, indicted, tried and punished in the province in which he resides, or in which such newspaper is printed.

The words "wherever committed" in the first paragraph of this section probably render the same *ultra vires* of the Parliament of Canada, and must be taken to mean wherever committed in Canada, or wherever the jurisdiction of the Parliament of Canada extends.

See McLeod vs. Attorney-General of New South Wales (1891), A.C. 455. see, ex par Slipp 32 N B 4.

871.

R. v. Bertrand 7 C. Cr. Cas. 450. **641. Sending Bill before Grand Jury.**—Any one who is bound over to prosecute any person, whether committed for trial or not, may prefer a bill of indictment for the charge on which the accused has bten committed or in ehe respect of which the prosecutor is so bound over, or for any charge founded upon the facts or evidence disclosed on the depositions taken before the justice. The accused may at any time before he is given in charge to the jury apply to the court to quash any count in the indictment on the ground that it is not founded on such facts or evidence, and the court shall quash such count if satisfied that it is not so founded. And if at any time during the trial it appears to the court that any count is not so founded, and that injustice has been or is likely to be done to the accused in consequence of such count remaining in the indictment, the court may then quash such count and discharge the jury from finding any verdict upon it.

2. The counsel acting on behalf of the Crown at any court of criminal jurisdiction may prefer against any person who has been committed for trial at such court a bill of indictment for the charge on which the accused has been so committed or for any charge founded on the facts or evidence disclosed in the depositions taken before the justice.

3. The Attorney-General or any one by his direction or any one with the written consent of a judge of any court of criminal jurisdiction, or of the Attorney-General, may prefer a bill of indictment for any offence before the grand jury of any court specified in such consent; and any person may prefer any bill of indictment before any court of criminal jurisdiction by order of such court.

4. It shall not be necessary to state such consent or order in the indictment. An objection to an indictment for want of such consent or order must be taken by motion to quash the indictment before the accused person is given in charge.

5. Save as aforesaid no bill of indictment shall after the commencement of this Act be preferred in any province of Canada. 63-64 V., c. 46. (*This section came into force 1st January*, 1901.)

Under this section, an indictment which is not a consequence of a preliminary examination of a witness before a magistrate, can only be preferred by the Attorney-General, unless such examination is by order of the Court, or by the written consent of a judge of any court of criminal jurisdiction or of the Attorney-General.

And the defendant may move to have the indictment quashed upon the ground that it is not based upon anything which appears in the evidence taken before the magistrate who conducted the preliminary investigation.

The grand jury usually consists of 23 members, and twelve at least must find the indictment.

Objections to the constitution of a grand jury cannot be taken by way of challenge.

R. vs. Mercier et al. (1892), R.J.Q., 1 Q.B. 541.

R. vs. Duffy (1848), 4 Cox C.C. 172.

R. vs. Sheridan (1811), 31 State Trials 543.

Part of section 656 reads as follows, "Any objection to the constitution of the grand jury may be taken by motion to the Court, and the indictment shall be quashed if the Court is of opinion both that such an objection is well founded and that the accused has suffered or may suffer prejudice thereby, but not otherwise."

An indictment for obtaining money under the false pretence that the accused had in his warehouse certain produce belonging to the person from whom the money was obtained, will not be quashed under this section, although the offence for which the accused was committed for trial was that of selling the produce mentioned, if the facts disclosed on the depositions taken before the magistrate were sufficient to found a charge of false pretences.

R. vs. Patterson (1895), 2 Can. C.C. 339.

The written consent or direction of the Attorney-General, referred to under this section must be one with regard to the particular case, and the offence must be specified therein ; and a general direction in writing by the Attorney-General for his own counsel to take charge of the criminal prosecution for the Crown at the sittings of the Court will not suffice.

R. vs. Townsend (1896), 28 N.S.R. 468.

R. vs. Hamilton (1898), 2 Can. C.C. 178.

The Court of Queen's Bench will not make an order under s.s. 2 of this section that an indictment be preferred against a party accused of an offence over which the justices before whom a preliminary investigation was held failed to commit him, and only signed a declaration to the effect that they were unable to agree. In such a case the proper course is for the prosecutor to apply to the Attorney-General, who can then either prefer an indictment himself, or direct one to be preferred, and exercise his supervisory powers over the justices if they have failed to perform their duty.

Ex parte Hanning (1896), R.J.Q., 5 Q.B. 549.

The provincial statute prior to Confederation, providing for the discharge from imprisonment in default of indictment of a person accused of having committed a felony, will apply to cases which were misdemeanors before the Code abolished the distinction between felony and misdemeanor ; and a person admitted to bail is not accused and is constructively in gaol so as to entitle him to the benefit of such a statute.

R. vs. Cameron (1897), 1 Can. C.C. 169.

A party bound over by recognizance to prosecute need not personally attend to prefer an indictment before the grand jury unless required to give evidence, and an indictment found in his absence is valid, although no order of the Court, judge's consent, or any special direction of the Attorney-General to prefer the same was given.

R. vs. Hamilton (1898), 2 Can. C.C. 178.

In the case above cited, which was decided by a full Court, Ritchie, J., also held that the Crown prosecutor, or counsel appointed for the sittings of the Court, sufficiently represented a prosecutor so bound over, to validate the preferring of the indictment by such an officer, and that it was in such case to be considered as preferred by the prosecutor.

R. vs. Hamilton, supra.

An endorsement made and signed by the judge upon an indictment by which he "directs" that the indictment be submitted to the grand jury, is a sufficient "consent" of the judge under this section to the preferring of an indictment.

R. vs. Weir (1899), 3 Can. C.C. 155.

An accused person, against whom an indictment is preferred under the authority of a judge's consent under this section, is not entitled to have the indictment quashed by reason of the fact that a preliminary inquiry in regard to the same offence is at the same time pending before a justice, upon which the latter has not given his decision for or against committal for trial.

R. vs. Weir (1899), 3 Can. C.C. 155.

See also R. vs. St. Louis (1897), R.J.Q., 6 Q.B. 339.

R. vs. Coleman (1898), 30 O.R. 93.

An indictment may be quashed under this section upon motion at any time before the accused is given in charge to the jury

if the depositions before the magistrate have not been taken according to law, and a material provision of the law has not been complied with; and an accused person cannot be said to have been "given in charge" to the jury until the jury are sworn; his arraignment and his plea of "not guilty" do not constitute a "giving in charge."

R. vs. Lepine et al. (1900), 4 Can. C.C. 140.

A prosecution of a municipal corporation for a nuisance in not keeping a public street in repair can only be by indictment under s.s. 2 of this section.

R. vs. City of London (1900), 37 C.L.J. 74.

642. Coroner's Inquisition.—After the commencement of this Act no one shall be tried upon any coroner's inquisition.

A practising physician was called in to attend two men employed on the construction of a railroad, who had been brought in suffering from diphtheria, both of whom died shortly after they arrived, and while he was in attendance on them. The physician commenced to hold an inquest for the purpose of ascertaining the cause of death, although he was warned that he had no right to do so, since he himself would be a necessary witness. A writ of prohibition was then applied for, to prohibit him from taking the inquest, on the ground, among others, that he was a necessary and material witness upon the inquest, and that he was directly and personally interested in the inquest. It was held, that a Coroner is a Judge of a Court of Record, and that the same person cannot be both a witness and a judge, and that in this case the physician who had commenced to act as coroner was a necessary witness. The writ of prohibition was therefore granted.

In re Haney vs. Mead (1898), 34 C.L.J., 330.

A Coroner's Court is a criminal court, and the depositions of a witness before such court, who was subsequently charged with murder, cannot, since the Canada Evidence Act, 1893, be received in evidence against him at the trial, notwithstanding the fact that privilege was not claimed by him.

R. vs. Hendershott & Welter (1895), 26 O.R. 678.

But in the case of R. vs. Williams (1897), 28 O.R. 583, a Divisional Court (composed of Armour, C. J., Falconbridge and Street, J.J.) did not follow the ruling of Meredith, C.J., in R. vs. Hendershott & Welter, supra. It was held in the latter case that the depositions of a witness taken at a coroner's inquest, without objection by him that his answers might tend to criminate him, are receivable in evidence against the witness at his trial upon a subsequent charge for the commission of any offence.

But in the following year it was held by another Divisional Court (composed of Boyd C. Robertson and Meredith J.J., of whom Meredith J. dissented), that sec. 5 of 56 Vic., chap. 31, the Canada Evidence Act, 1893, which abolishes the privilege of not answering criminating questions, and provides that any evidence so given shall be receivable in evidence upon subsequent criminal proceedings against the witness other than for perjury committed in respect thereof, applies to any evidence given by a person under oath, even though he may not have claimed privilege; and that as the Coroner's Court is a criminal court this rule was applicable to evidence given at an inquest.

R. vs. Hammond (1898), 29 O.R. 211.

In R. vs. Viau (1828), R.J.Q., 79 B. 362, it was held that a deposition given at a coroner's inquest was not admissible in evidence against the witness on a subsequent criminal proceeding.

And see 56 Vic., cap. 31, sec. 5 (the Canada Evidence Act), as amended by 61 Vic., cap. 53.

See also R. vs. Lalonde et al. (1898), R.J.Q., 79 B. 204.

A deposition taken at a coroner's inquest can only be read at a trial, if all the formalities prescribed for the taking of depositions at a preliminary inquiry have been complied with.

R. vs. Ciarlo (1897), R.J.Q., 6 Q.B. 142.

A coroner is not a justice within the meaning of sec. 687.

R. vs. Graham (1898), R.J.Q., 8 Q.B. 167.

874. **643. Oath in open Court not Required.**—It shall not be necessary for any person to take an oath in open court in order to qualify him to give evidence before any grand jury. R.S.C., c. 174, s. 173.

875. **644. Oath may be Administered by Foreman.**—The foreman of the grand jury or any member of the grand jury who may, for the time being, act on behalf of the foreman in the examination of witnesses, may administer an oath to every person who appears before such grand jury to give evidence in support of any bill of indictment; and every such person may be sworn and examined upon oath by such grand jury touching the matters in question. R.S.C., c. 174, s. 174.

876. **645. Names of Witnesses to be Endorsed on Bill of Indictment.**—The name of every witness examined, or intended to be examined, shall be endorsed on the bill of indictment; and the foreman of the grand jury, or any member of the grand jury so acting for him, shall write his initials against the name of each witness sworn by him and examined touching such bill of indictment. R.S.C., c. 174, s. 175.

The provision of this section requiring the foreman to initial upon the bill of indictment the names of the witnesses sworn, is directory and not imperative, and an indictment will not be quashed because the foreman omits to do so.

R. vs. Townsend (1896), 28 N.S.R. 468.

This case was followed in R. vs. Buchanan (1898), 1 Can. C.C. 449.

See also O'Connell vs. R. (1844), 11 Cl. & F. 155.

R. vs. Vincent (1839), 9 C. & P. 91.

877. **646. Names of Witnesses to be Submitted to Grand Jury.**—The name of every witness intended to be examined on any bill of indictment shall be submitted to the grand jury by the officer prosecuting on behalf of the Crown, and

no others shall be examined by or before such grand jury unless upon the written order of the presiding judge. R.S.C., c. 174, s. 176.

The deposition of a witness who through illness is unable to attend, may be read in evidence before the grand jury, just as it may be given in evidence before a petty jury according to sec. 687. In the latter case, however, such evidence must be adduced in the presence of the accused as to lead the trial judge to the conclusion that the deposition was made with the formalities prescribed by sec. 687.

R. vs. Beaver (1866), 10 Cox C.C. 274.
R. vs. Bullard (1872), 12 Cox C.C. 363.
R. vs. Gerrans (1876), 13 Cox C.C. 158.

A witness before a grand jury may be indicted for having committed perjury in the course of his evidence.

R. vs. Hughes (1844), 1 C. & K. 519.

678. **647. Fees for Swearing Witnesses.**—Nothing in this Act shall affect any fees by law payable to any officer of any court for swearing witnesses, but such fees shall be payable as if the witnesses had been sworn in open court. R.S.C., c. 174, s. 177.

679. **648. Bench Warrant and Certificate.**—When any one against whom an indictment has been duly preferred and has been found, and who is then at large, does not appear to plead to such indictment, whether he is under recognizances to appear or not—

(a.) the court before which the accused ought to have been tried may issue a warrant for his apprehension, which may be executed in any part of Canada;

(b.) the officer of the court at which the said indictment is found or (if the place or trial has been changed) the officer of the court before which the trial is to take place, shall, at any time after the time at which the accused ought to have appeared and pleaded, grant to the prosecutor, upon application made on his behalf and upon payment of twenty cents, a certificate of such indictment having been found. The certificate may be in the form GG in schedule one hereto, or to the like effect. Upon production of such certificate to any justice of the county or the place in which the indictment was found, or in which the accused is or resides or is suspected to be or reside, such justice shall issue his warrant to apprehend him, and to cause him to be brought before such justice, or before any other justice for the same county or place, to be dealt with according to law. The warrant may be in the form HH in schedule one hereto, or to the like effect.

2. If it is proved upon oath before such justice that any one apprehended and brought before him on such warrant is the person charged and named in such indictment, such justice shall without further inquiry or examination, either commit him to prison by a warrant which may be in the form II in schedule one hereto, or to the like effect, or admit him to bail as in other cases provided; but if it appears that the accused has without reasonable excuse broken his recognizance to appear he shall not in any case be bailable as of right.

3. If it is proved before the justice upon oath that any such accused person is at the time of such application and production of the said certificate as aforesaid confined in any prison for any other offence than that charged in the said indictment, such justice shall issue his warrant directed to the warden or gaoler of the prison in which such person is then confined as aforesaid, commanding him to detain him in his custody until by lawful authority he is removed therefrom. Such warrant may be in the form JJ in schedule one hereto, or to the like effect. R.S.C., c. 174, ss. 33, 34 and 35.

At one time, when it appeared impossible to apprehend any person against whom an indictment had been found by a grand jury, the punishment of outlawry was meted out to him. But sec. 962 abolishes outlawry, and even in England, where it still exists in theory, this punishment is, in practice, now never inflicted.

PART XLIX.

REMOVAL OF PRISONERS—CHANGE OF VENUE.

649. Removal of prisoners.
650. Indictment after removal.
651. Change of venue.

4, 5. **649. Removal of Prisoners.**—The Governor-in-Council or the Lieutenant-Governor-in-Council of any province may, if, from the insecurity or unfitness of any gaol of any county or district for the safe custody of prisoners, or for any other cause, he deems it expedient so to do, order any person charged with an indictable offence confined in such gaol or for whose arrest a warrant has been issued, to be

removed to any other place for safe keeping or to any gaol, which place or gaol shall be named in such order, there to be detained until discharged in due course of law, or removed for the purpose of trial to the gaol of the county or district in which the trial is to take place; and a copy of such order, certified by the clerk of the King's Privy Council for Canada, or the clerk of the Executive Council, or by any person acting as such clerk of the Privy Council or Executive Council, shall be sufficient authority to the sheriffs and gaolers of the counties or districts respectively named in such order, to deliver over and to receive the body of any person named in such order. R.S.C., c. 174, s. 97.

2. The Governor-in-Council or a Lieutenant-Governor-in-Council may, in any such order, direct the sheriff in whose custody the person to be removed then is, to convey the said person to the place or gaol in which he is to be confined, and in case of removal to another county or district shall direct the sheriff or gaoler of such county or district to receive the said person, and to detain him until he is discharged in due course of law, or is removed for the purpose of trial to any other county or district. R.S.C., c. 174, s. 98.

3. The Governor-in-Council or a Lieutenant-Governor-in-Council may make an order as hereinbefore provided in respect of any person under sentence of imprisonment or under sentence of death,—and, in the latter case, the sheriff to whose gaol the prisoner is removed shall obey any direction given by the said order or by any subsequent order in council, for the return of such prisoner to the custody of the sheriff by whom the sentence is to be executed. R.S.C., c. 174, s. 100.

§83. **650. Indictment after Removal.**—If after such removal a true bill for any indictable offence is returned by any grand jury of the county or district from which any such person is removed, against any such person, the court into which such true bill is returned, may make an order for the removal of such person, from the gaol in which he is then confined, to the gaol of the county or district in which such court is sitting, for the purpose of his being tried in such county or district. R.S.C., c. 174, s. 99.

§84. **651. Change of Venue.**—Whenever it appears to the satisfaction of the court or judge hereinafter mentioned, that it is expedient to the ends of justice that the trial of any

person charged with an indictable offence should be held in some district, county or place other than that in which the offence is supposed to have been committed, or would otherwise be triable, the court before which such person is or is liable to be indicted may, at any term or sitting thereof, and any judge who might hold or sit in such court may, at any other time, either before or after the presentation of a bill of indictment, order that the trial shall be proceeded with in some other district, county or place within the same province, named by the court or judge in such order; but such order shall be made upon such conditions as to the payment of any additional expense thereby caused to the accused, as the court or judge thinks proper to prescribe.

2. Forthwith upon the order of removal being made by the court or judge, the indictment, if any has been found against the prisoner, and all inquisitions, informations, depositions, recognizances and other documents relating to the prosecution against him, shall be transmitted by the officer having the custody thereof to the proper officer of the court at the place where the trial is to be had, and all proceedings in the case shall be had, or, if previously commenced, shall be continued in such district, county or place, as if the case had arisen or the offence had been committed therein.

3. The order of the court, or of the judge, made under this section, shall be a sufficient warrant, justification and authority, to all sheriffs, gaolers and peace officers, for the removal, disposal and reception of the prisoner, in conformity with the terms of such order; and the sheriff may appoint and empower any constable to convey the prisoner to the gaol in the district, county or place in which the trial is ordered to be had.

4. Every recognizance entered into for the prosecution of any person, and every recognizance, as well of any witness to give evidence, as of any person for any offence, shall, in case any such order, as provided by this section, is made, be obligatory on each of the persons bound by such recognizance as to all things therein mentioned with reference to the said trial, at the place where such trial is so ordered to be had, in like manner as if such recognizance had been originally entered into for the doing of such things at such last mentioned place: Provided that notice in writing shall be given either personally or by leaving the same at the place of residence of the persons bound by such recognizance, as therein described, to appear before the court, at the

place where such trial is ordered to be had. R.S.C., c. 174, s. 102.

5. Whenever, in the province of Quebec, it has been decided by competent authority that no term of the Court of King's Bench, holding criminal pleas, is to be held, at the appointed time, in any district in the said province within which a term of the said court should be then held, any person charged with an indictable offence whose trial should by law be held in the said district, may in the manner hereinbefore provided obtain an order that his trial be proceeded with in some other district within the said province, named by the court or judge; and all the provisions contained in this section shall apply to the case of a person so applying for and obtaining a change of venue as aforesaid. 57-58 V., c, 57.

Upon an application to change the place of trial of a person accused of murder, and waiting his trial therefor, affidavits were filed to the effect that the popular prejudice against the accused in the place where he would ordinarily be tried, was such as to make it unlikely that he would obtain a fair trial there, and extracts from different local newspapers were also referred to as being in the same sense. The Crown filed contradicting affidavits. It was held, that even though the affidavits were contradictory, it was necessary to take into account the articles in the newspapers, and that it would be impossible to obtain a fair jury in a community the feelings of which had been so excited by a press which was adverse to the accused. The place of trial was therefore changed.

R. vs. Wheeler (1896), 32 C.L.J. 468.

A change of venue should not be made in a criminal case, whereby the trial would be transferred from the county in which the crime is alleged to have been committed, unless facts are proved, as distinguished from sworn opinions, plainly indicating that a fair trial cannot be had in that county. And a change of venue would not be granted on the ground of public sympathy with the prisoner, and prejudice against the prosecution, where there is nothing to show that the class of citizens from whom the jury would be drawn are likely to be prejudiced, except from those feelings which would arise from the nature of the offence, and which are common to all counties.

R. vs. Ponton (1898), 2 Can. C.C. 192.

See also R. vs. Carroll et al. (1880), decided by Sir Adam Wilson, C.J., sitting as judge of assize at London, extracts from whose judgment are given in the report of R. vs. Ponton (1898), 2 Can. C.C. 192.

A change of venue will be ordered under this section on the application of the Crown, where, at an abortive trial, at which the jury disagreed, and hostile demonstrations were made against the trial judge by a mob in the streets during a short adjournment of the trial. In such a case, the change is rendered "expedient to the ends of justice," because the conduct of

the mob tended to bring the administration of justice into contempt, and because of its possible influence upon a jury at the next trial, and this notwithstanding the sworn statements of every juror at the abortive trial that they were in no way intimidated or influenced by the mob demonstration, part of which took place within hearing of the jury during their deliberations.

R. vs. Ponton (1899), 2 Can. C.C. 417.

Affidavits from the jurors denying that they were intimidated, are properly admissible in evidence on a motion to change the venue where such intimidation is charged.

R. vs. Ponton (1899), 2 Can. C.C. 417.

An order made under this section changing the place of trial is not open to objection upon the ground that it makes no provision for the additional expense to which the accused may be put by the change, if the judge making such order was not asked to include therein some provision regarding such additional expense, and if it was not shown to such judge that additional expense would be incurred by the change.

R. vs Coleman (1898), 2 Can. C.C. 523.

Where, after an accused person has been committed for trial in one county, an order is made changing the place of trial to another county, an indictment may be preferred in the latter county, not only for the offence for which the accused was committed for trial, but for any other offence disclosed in the depositions taken before the committing justice.

R. vs. Coleman, supra.

In order to obtain a change of venue in a prosecution for defamatory libel, such facts must be shown as will satisfy the Court that a fair trial cannot be had on the present venue; and it is not sufficient that the applicant's solicitor swears to a belief that a fair trial cannot be had there because of the prosecutor's interest in political matters. And the fact that two abortive trials of the action in question have already taken place, at both of which the jury has disagreed, is not of itself a ground for ordering a change of venue.

R. vs. Nicol (1900), 4 Can. C.C. 1.

PART L.

ARRAIGNMENT.

652. Bringing prisoner up for arraignment.
653. Right of accused to inspect deposition and hear indictment.
654. Copy of indictment.
655. Copy of deposition.
656. Pleas in abatement abolished.
657. Plea; refusal to plead.
658. Special provisions in the case of treason.

941. **652. Bringing Prisoner up for Arraignment.**—If any person against whom any indictment is found is at the

time confined for some other cause in the prison belonging to the jurisdiction of the court by which he is to be tried, the court may by order in writing, without a writ of *habeas corpus*, direct the warden or gaoler of the prison or sheriff or other person having the custody of the prisoner to bring up the body of such person as often as may be required for the purposes of the trial, and such warden, gaoler, sheriff or other person shall obey such order. R.S.C., c. 174, s. 101.

894. **653. Right of Accused to Inspect Deposition and hear Indictment.**—Every accused person shall be entitled at the time of his trial to inspect, without fee or reward, all depositions, or copies thereof, taken against him and returned into the court before which such trial is had, and to have the indictment on which he is to be tried read over to him if he so requires. R.S.C., c. 174, s. 180.

895. **654. Copy of Indictment.**—Every person indicted for any offence shall, before being arraigned on the indictment, be entitled to a copy thereof on paying the clerk five cents per folio of one hundred words for the same, if the court is of opinion that the same can be made without delay to the trial, but not otherwise. R.S.C., c. 174, s. 181.

896. **655. Copy of Deposition.**—Every person indicted shall be entitled to a copy of the depositions returned into court on payment of five cents per folio of one hundred words for the same, provided, if the same are not demanded before the opening of the assizes, term, sittings or sessions, the court is of opinion that the same can be made without delay to the trial, but not otherwise; but the court may, if it sees fit, postpone the trial on account of such copy of the depositions not having been previously had by the person charged. R.S.C., c. 174, s. 182.

R. Belanger 6 C.Cr.Ca. 395: R. Hayes? 4 452:

899. **656. Pleas in Abatement Abolished.**—No plea in abatement shall be allowed after the commencement of this Act. Any objection to the constitution of the grand jury may be taken by motion to the court, and the indictment shall be quashed if the court is of opinion both that such objection is well founded and that the accused has suffered or may suffer prejudice thereby, but not otherwise.

400. **657. Plea; Refusal to Plead.**—When the accused is called upon to plead he may plead either guilty or not guilty, or such special plea as is hereinbefore provided for.

2. If the accused wilfully refuses to plead, or will not answer directly, the court may order the proper officer to enter a plea of not guilty. R.S.C., c. 174, s. 145.

See section 737.

847. **658. Special Provisions in the case of Treason.**—When any one is indicted for treason, or for being accessory after the fact to treason, the following documents shall be delivered to him after the indictment has been found, and at least ten days before his arraignment; that is to say:

(a.) a copy of the indictment;

(b.) a list of the witnesses to be produced on the trial to prove the indictment; and

(c.) a copy of the panel of the jurors who are to try him returned by the sheriff.

2. The list of the witnesses and the copy of the panel of the jurors must mention the names, occupations, and places of abode of the said witnesses and jurors.

3. The documents aforesaid must all be given to the accused at the same time and in the presence of two witnesses.

4. This section shall not apply to cases of treason by killing His Majesty, or to cases where the overt act alleged is any attempt to injure his person in any manner whatever, or to the offence of being accessory after the fact to any such treason.

PART LI.

TRIAL.

659. Right to full defence.
660. Presence of the accused at the trial.
661. Prosecutor's right to sum up.
662. Qualification of juror.
663. Jury *de medietate linguae* abolished.
664. Mixed juries in the Province of Quebec.
665. Mixed juries in Manitoba.
666. Challenging the array.
667. Calling the panel.
668. Challenges and directions to stand by.
669. Right to cause jurors to stand aside in case of libel.
670. Peremptory challenges in case of mixed jury.

671. Accused persons joining and severing in their challenges.
672. Ordering a tales.
673. Jurors shall not be allowed to separate.
674. Jurors may have fire and refreshments.
675. Saving of power of Court.
676. Proceedings when previous offence charged.
677. Attendance of witnesses.
678. Compelling attendance of witness.
678a. Witness in the Province who will not attend at the trial.
679. Witness in Canada but beyond jurisdiction of Court.
680. Procuring attendance of prisoner as witness.
681. Evidence of person dangerously ill may be taken under commission.
682. Presence of prisoner when such evidence is taken.
683. Evidence may be taken out of Canada under commission.
684. When evidence of one witness must be corroborated.
685. Evidence not under oath of child in certain cases.
686. Deposition of sick witness may be read in evidence.
687. Depositions on preliminary inquiry may be read in evidence.
688. Depositions may be used on trial for other offences.
689. Evidence of statement by accused.
690. Admission may be taken on trial.
691. Certificate of trial at which perjury was committed.
692. Evidence of coin being false or counterfeit.
693. Evidence on proceedings for advertising counterfeit money.
694. Proof of previous conviction.
695. Proof of previous conviction of witness.
696. Proof of attested instrument.
697. Evidence at trial for child murder.
698. Comparison of disputed writing with genuine.
699. Party discrediting his own witness.
700. Evidence of former written statements by witness.
701. Proof of contradictory statements by witness.
701a. Evidence of the age of a boy, etc.
702. Evidence of place being a common gaming-house.
703. Other evidence that place is a common gaming-house.
704. Evidence in case of gaming in stocks, etc.
705. Evidence in certain cases of libel.
706. Evidence in case of polygamy, etc.
707. Evidence of stealing ores or minerals.
707a. Evidence of stealing cattle.
708. Evidence of stealing timber.
709. Evidence in cases relating to public stores.
710. Evidence in case of fraudulent marks on merchandise.
711. Full offence charged, attempt proved.
712. Attempt charged, full offence proved.
713. Offence charged, part only proved.
714. On indictment for murder conviction may be of concealment of birth.
714a. Stealing cattle.
715. Trial of joint receivers.
716. Proceedings against receivers.
717. The same after previous conviction.
718. Trial for coinage offences.
719. Verdict in case of libel.
720. Impounding documents.

721. Destroying counterfeit coin.
722. View.
723. Variance and amendment.
724. Amendment to be endorsed on the record.
725. Form of formal record in such case.
726. Form of record of conviction or acquittal.
727. Jury retiring to consider verdict.
728. Jury unable to agree.
729. Proceedings on Sunday.
730. Woman sentenced to death while pregnant.
731. Jury *de ventre inspiciendo* abolished.
732. Stay of proceedings.
733. Mot'on in arrest of judgment on verdict of guilty.
734. Judgment not to be arrested for formal defects.
735. Verdict not to be impeached for certain omissions as to jurors.
736. Insanity of accused at time of offence.
737. Insanity of accused on arraignment or trial.
738. Custody of persons formerly acquitted for insanity.
739. Insanity of person to be discharged for want of prosecution.
740. Custody of insane person.
741. Insanity of person imprisoned.

942. **659. Right to full Defence.**—Every person tried for any indictable offence shall be admitted after the close of the case for the prosecution, to make full answer and defence thereto by counsel learned in the law. R.S.C., c. 174, s. 178.

943. **660. Presence of the Accused at the Trial.**—Every accused person shall be entitled to be present in court during the whole of his trial unless he misconducts himself by so interrupting the proceedings as to render their continuance in his presence impracticable.

2. The court may permit the accused to be out of court during the whole or any part of any trial on such terms as it thinks proper.

944. **661. Prosecutor's Right to Sum up.**—If an accused person, or any one of several accused persons being tried together, is defended by counsel, such counsel shall, at the end of the case for the prosecution, declare whether he intends to adduce evidence or not on behalf of the accused person for whom he appears; and if he does not thereupon announce his intention to adduce evidence, the counsel for the prosecution may address the jury by way of summing up.

2. Upon every trial for an indictable offence, whether the accused person is defended by counsel or not, he or his counsel shall be allowed, if he thinks fit, to open his case, and after the conclusion of such opening to examine such witnesses as he thinks fit, and when all the evidence is

concluded to sum up the evidence. If no witnesses are examined for the defence the counsel for the accused shall have the privilege of addressing the jury last, otherwise such right shall belong to the counsel for the prosecution: Provided, that the right of reply shall be always allowed to the Attorney-General or Solicitor-General, or to any counsel acting on behalf of either of them. R.S.C., c. 174, s. 179.

R. Martin 9 Can. C. C. 371.

Upon the trial of a person accused of murder, no witnesses were called on behalf of the prisoner. It was held, that notwithstanding the proviso contained in s.s. 2, the true meaning of this section was that in such a case as the one before the Court, counsel for the defence should have the privilege of addressing the jury last.

R. vs. Leblanc (1893), 13 C.L.T. 441.

On a joint indictment for one offence, when the evidence for one of the accused would enure to the benefit of the other, the right to a general reply is that of the prosecution, although only one accused has called witnesses in defence.

R. vs. Connolly & McGreevy (1894), 1 Can. C.C. 468.

See also R. vs. Jordan (1839), 9 C. & P. 118.

But it would appear to be otherwise if the evidence given on behalf of one of the accused was not such as to enure to the benefit of the others. In such a case, counsel for the prosecution would first reply to the counsel of such of the accused as had called witnesses, when counsel for the accused, who had not called any witnesses, would have the privilege of addressing the jury last.

R. vs. Burns (1887), 16 Cox C.C. 195.

The right to reply is seldom exercised if the only evidence adduced on behalf of the accused is as to his character; but there is no doubt that even in such a case the right of reply by counsel for the prosecution exists.

R. vs. Dowse (1865), 4 F. & F. 492.

662. Qualification of Juror.—Every person qualified and summoned as a grand or petit juror, according to the laws in force for the time being in any province of Canada, shall be duly qualified to serve as such juror in criminal cases in that province. R.S.C., c. 174, s. 160.

2. Notwithstanding any law, usage or custom to the contrary, seven grand jurors, instead of twelve, as heretofore, may find a true bill in any province where the panel of grand jurors is not more than thirteen: Provided, that this subsection shall not come into force until a day to be named by the Governor by his proclamation. 57-58 V., c. 57.

In a case in the Province of Quebec, in which twelve grand jurors were called, but one of them being ill, only eleven were sworn, and these eleven subsequently found a true bill against an accused person, it was held that this bill was good by virtue of the provisions of s s. 2 of th's section.

R. vs. Poirier (1898), R.J.Q., 7 Q.B. 483.

And in R. vs. Girard (1898), R.J.Q., 7 Q.B. 575, it was held by a judge of the same Court, that in provinces where the grand jury has been reduced to thirteen jurors or less, the failure of some of the summoned jurors to attend will not invalidate a bill to which at least seven of the jurors in attendance agree.

A provincial legislature has power to fix the number of grand jurors who shall compose the panel, that being a part of the organisation or constitution of the court; but such legislature has no power to fix the number of grand jurors necessary to find a good bill of indictment, that being a matter of criminal procedure, and as such exclusively within the jurisdiction of the Federal Parliament.

R. vs. Cox (1898), 2 Can. C.C. 207.

After the grand jury had been discharged, the court ordered the sheriff to summon a new grand jury, and this latter found a true bill against the accused, who had been committed for trial at the sittings of a circuit court of the county. It appeared, however, that the informant and chief witness was a brother of the sheriff who summoned the jury, and on this account the indictment was quashed, and a coroner was directed to summon a third jury. This jury, which comprised several of those who had been on the sheriff's jury, also found a true bill against the accused, who was subsequently convicted. On a reserved case, it was held that the court had the power, inherent in itself, to order the summoning of a second grand jury, and that the fact that several of the jurors of the last grand jury had served on the former one, would not invalidate the indictment.

R. vs. McGuire (1898), 34 C.L.J. 202.

See R. vs. Warren (1895), 15 C.L.T. 249.

Right to jury in N.W.T.

In R. vs. Pachal (1899), 20 C.L.T. 192, it was held, that though the punishment which might be awarded on a conviction for stealing cattle was greater than that which might be awarded on a conviction for stealing certain other classes of property, yet the nature of the offence and the value of the property stolen were the only matters which could be taken into consideration in ascertaining whether the charge was one which entitled the accused to be tried by a jury; and that, therefore, where the accused was charged with having stolen cattle, the value of which did not, in the opinion of the trial judge, exceed $200.00, he could be summarily tried without the intervention of a jury by virtue of sec. 66 of the North West Territories Act.

922. **663. Jury "de Medietate Linguae" Abolished.**—No alien shall be entitled to be tried by a jury *de medietate linguæ*, but shall be tried as if he was a natural born subject. R.S.C., c. 174, s. 161.

See sec. 668, s.s. 4, par. (d).

§23. **664. Mixed Juries in the Province of Quebec.**—In those districts in the province of Quebec in which the sheriff is required by law to return a panel of petit jurors composed one-half of persons speaking the English language, and one-half of persons speaking the French language, he shall in his return specify separately those jurors whom he returns as speaking the English language, and those whom he returns as speaking the French language, respectively; and the names of the jurors so summoned shall be called alternately from such lists. R.S.C., c. 174, s. 166.

See cases cited under sec. 670.

§24. **665. Mixed Juries in Manitoba.**—Whenever any person who is arraigned before the Court of King's Bench for Manitoba demands a jury composed, for the one-half at least, of persons skilled in the language of the defence, if such language is either English or French, he shall be tried by a jury composed for the one-half at least of the persons whose names stand first in succession upon the general panel and who, on appearing and not being lawfully challenged, are found, in the judgment of the court, to be skilled in the language of the defence.

2. Whenever, from the number of challenges or any other cause, there is in any such case a deficiency of persons skilled in the language of the defence the court shall fix another day for the trial of such case, and the sheriff shall supply the deficiency by summoning, for the day so fixed, such additional number of jurors skilled in the language of the defence as the court orders, and as are found inscribed next in succession on the list of petit jurors. R.S.C., c. 174, s. 167.

§25. **666. Challenging the Array.**—Either the accused or the prosecutor may challenge the array on the ground of partiality, fraud, or wilful misconduct on the part of the sheriff or his deputies by whom the panel was returned, but on no other ground. The objection shall be made in writing, and shall state that the person returning the panel was partial, or was fraudulent, or wilfully misconducted himself, as the case may be. Such objection may be in the form KK in schedule one hereto, or to the like effect.

2. If partiality, fraud or wilful misconduct, as the case may be, is denied the court shall appoint any two indifferent persons to try whether the alleged ground of challenge

is true or not. If the triers find that the alleged ground of challenge is true in fact, or if the party who has not challenged the array admits that the ground of challenge is true in fact, the court shall direct a new panel to be returned.

The challenge shou'd state the grounds upon which the objection is made, and should not be in general terms only. R. vs. Hughes (1813), 1 C. & K. 235.

927.528.929. **667. Calling the Panel.**—If the array is not challenged, or if the triers find against the challenge, the officer of the court shall proceed to call the names of the jurors in the following manner: The name of each juror on the panel returned, with his number on the panel and the place of his abode, shall be written on a distinct piece of card, such cards being all as nearly as may be of an equal size. The cards shall be delivered to the officer of the court by the sheriff or other officer returning the panel, and shall, under the direction and care of the officer of the court, be put together in a box to be provided for that purpose, and shall be shaken together.

2. The officer of the court shall in open court draw out the said cards, one after another, and shall call out the name and number upon each such card as it is drawn, until such a number of persons have answered to their names as in the opinion of the court will probably be sufficient to provide a full jury, after allowing for challenges of jurors and directions to stand by.

3. The officer of the court shall then proceed to swear the jury, each juror being called to swear in the order in which his name is so drawn, until, after subtracting all challenges allowed and jurors directed to stand by, twelve jurors are sworn. If the number so answering is not sufficient to provide a full jury such officer shall proceed to draw further names from the box, and call the same in manner aforesaid, until, after challenges allowed and directions to stand by, twelve jurors are sworn.

4. If by challenges and directions to stand by the panel is exhausted without leaving a sufficient number to form a jury those who have been directed to stand by shall be again called in the order in which they were drawn, and shall be sworn, unless challenged by the accused, or unless the prosecutor challenges them and shows cause why they should not be sworn: Provided that if before any such juror is sworn other jurymen in the panel become available the prosecutor may require the names of such jurymen

to be put into and drawn from the box in the manner hereinbefore prescribed, and such jurors shall be sworn, challenged, or ordered to stand, by, as the case may be, before the jurors originally ordered to stand by are again called.

5. The twelve men who in manner aforesaid are ultimately sworn shall be the jury to try the issues on the indictment, and the names of the men so drawn and sworn shall be kept apart by themselves until such jury give in their verdict or until they are discharged; and then the names shall be returned to the box, there to be kept with the other names remaining at that time undrawn, and so *toties quoties* as long as any issue remains to be tried.

6. Provided that when the prosecutor and accused do not object thereto the court may try any issue with the same jury that has previously tried or been drawn to try any other issue, without their names being returned to the box and redrawn, or if the parties or either of them object to some one or more of the jurors forming such jury, or the court excuses any one or more of them, then the court may order such persons to withdraw, and may direct the requisite number of names to make up a complete jury to be drawn and the persons whose names are so drawn shall be sworn.

7. Provided also, that an omission to follow the directions in this section shall not affect the validity of the proceedings.

Challenges are of two kinds : (1) To the array, that is when the whole number impannelled is objected to upon any of the grounds specified in sec. 636 ; or, (2) To the polls, when objection is taken to individual jurymen. Challenges to the polls are either peremptory or for cause. Peremptory challenges are made without any reason being given for the same, and the Court is bound to allow a certain number of them according to the provisions of sec. 668. Moreover, a challenge to the polls may either be principal or for favor. A principal challenge for cause, is one arising either from some objection to the qualification of the person as a juror, such as the fact that his name does not appear in the panel, or an objection on the ground of partiality, or such reason for presuming the same, as would afford a good ground for a principal challenge to the array on account of the conduct or sentiments of the sheriff, according to section 666. A challenge for favor, is one made where, although the person challenged is not so plainly partial as to be made the subject of a principal challenge, yet there are some reasonable grounds for suspecting that he may be prejudiced.

Whelan vs R. (1868), 28 U.C., Q.B. 29.

If there is a principal challenge to the polls, on the ground that the name of the person challenged does not appear on the panel, the question is tried by the trial judge according to

sec. 668, s.s. 7. If there is a challenge for favor, or on the ground that the person challenged is an alien, or has been convicted of an offence and sentenced to imprisonment therefor with hard labour, or to imprisonment for a term exceeding twelve months, the question is left to the "triers" appointed under the provisions of sec. 668, s.s 8.

The fact that one of the jury sworn to try an accused person did not thoroughly understand the English language, is no ground after trial and cnviction, for holding that there has been a mis-trial, or for granting a new trial; and ignorance of the English language is not, in the Province of Manitoba, a ground for challenge.

R. vs. Earl (1894), 10 Manitoba L.R., 303.

A juror cannot be challenged after he has been sworn, even if the ground for the challenge was not known at the time.

R. vs. Earl, supra.

The fact that the jurors were set aside, rejected or sworn as they were drawn without first calling the full number required for a jury, does not invalidate the trial, nor constitute a deprivation of the full right of challenge.

R. vs. Weir et al. (1899), 3 Can. C.C. 262.

930. 931. 932. 933. 935. 936.

R v Carlin (no 2) 6 C.C. Ca. 597. R v Inspin CLJ (May 1/04) 217.

668. Challenges and Directions to Stand by.—Every one indicted for treason or any offence punishable with death is entitled to challenge twenty jurors peremptorily.

2. Every one indicted for any offence other than treason, or an offence punishable with death, for which he may be sentenced to imprisonment for more than five years, is entitled to challenge twelve jurors peremptorily.

3. Every one indicted for any other offence is entitled to challenge four jurors peremptorily.

4. Every prosecutor and every accused person is entitled to any number of challenges on any of the folllowing grounds; that is to say:

(a) that any juror's name does not appear in the panel; Provided that no misnomer or misdescription shall be a ground of challenge if it appears to the court that the description given in the panel sufficiently designates the persons referred to; or

(b.) that any juror is not indifferent between the King and the accused; or

(c.) that any juror has been convicted of any offence for which he was sentenced to death or to any term of imprisonment with hard labour or exceeding twelve months; or

(d.) that any juror is an alien.

5. No other ground of challenge than those above-mentioned shall be allowed.

6. If any such challenge is made the court may in its discretion require the party challenging to put his challenge

in writing. The challenge may be in the form LL in schedule one hereto, or to the like effect. The other party may deny that the ground of challenge is true.

7. If the ground of challenge is that the jurors' names do not appear in the panel, the issue shall be tried by the court on the *voir dire* by the inspection of the panel, and such other evidence as the court thinks fit to receive.

8. If the ground of challenge be other than as last aforesaid the two jurors last sworn, or if no jurors have then been sworn then two persons present whom the court may appoint for that purpose shall be sworn to try whether the juror objected to stands indifferent between the King and the accused, or has been convicted, or is an alien, as aforesaid, as the case may be. If the court or the triers find against the challenge the juror shall be sworn. If they find for the challenge he shall not be sworn. If after what the court considers a reasonable time the triers are unable to agree the court may discharge them from giving a verdict, and may direct other persons to be sworn in their place.

9. The Crown shall have power to challenge four jurors peremptorily, and may direct any number of jurors not peremptorily challenged by the accused to stand by until all the jurors have been called who are available for the purpose of trying that indictment.

10. The accused may be called upon to declare whether he challenges any jurors peremptorily or otherwise, before the prosecutor is called upon to declare whether he requires such juror to stand by, or challenges him either for cause or peremptorily. R.S.C., c. 174, ss. 163 and 164.

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.
R. vs. Boyd et al. (1893), R.J.Q., 5 Q.B. 1.
As to the right of the Crown in this respect, see also Mansell vs. R. (1857), 8 E. & B. 54.
In a case in which the panel had been exhausted, the accused asked to be allowed to withdraw one of his peremptory challenges against a certain person. The Crown objected to the withdrawal of the challenge. It was held that a peremptory challenge of a juror when once taken must be counted against the party making it, and cannot be withdrawn when the panel is being called over a second time.
R. vs. Lalonde (1898), 2 Can. C.C. 188.
If an accused person omits to challenge a juror on the ground that such juror has a hostile feeling against him, he may not, after a verdict of guilty has been brought in, ask on that ground to have the verdict quashed.
R. vs. Harris (1898), 2 Can. C.C. 75.

934. **669. Right to cause Jurors to Stand Aside in case of Libel.**—The right of the Crown to cause any juror to stand aside until the panel has been gone through shall not be exercised on the trial of any indictment or information by a private prosecutor for the publication of a defamatory libel. R.S.C., c. 174, s. 165.

937. **670. Peremptory Challenges in case of Mixed Jury.**—Whenever a person accused of an offence for which he would be entitled to twenty or twelve peremptory challenges as hereinbefore provided elects to be tried by a jury composed one-half of persons skilled in the language of the defence under sections six hundred and sixty-four or six hundred and sixty-five, the number of peremptory challenges to which he is entitled shall be divided, so that he shall only have the right to challenge one-half of such number from among the English speaking jurors, and one-half from among the French speaking jurors. R.S.C., c. 174, ss. 166 and 167.

By virtue of 27, 28 Vic., chap. 41, an accused person arraigned for trial on a criminal charge in the Province of Quebec has the right to claim a jury composed for one-half at least of persons speaking his language, if that language be either French or English. And this right is essentially a matter of criminal procedure, and as such exclusively within the legislative authority of the Federal Parliament, and therefore a statute of the legislature of the Province of Quebec, purporting to repeal the Act conferring the right in question is *ultra vires* so far as it seeks to affect the right to a mixed jury.

R. vs. Sheehan (1897), 1 Can. C.C. 402.

R. vs. Yancey (1899), 2 Can. C.C. 320.

After having claimed a mixed jury, the order of the Court for the same having been recorded, the accused person has no absolute right to relinquish such claim, and to have the order for a mixed jury revocated; but such revocation may be ordered upon an application therefor in the discretion of the Court.

R. vs. Sheehan, supra.

In the Province of Quebec, an accused person may, upon arraignment upon a criminal charge, demand a jury composed for the one half at least of persons "skilled in the language of the defence," whether the same be English or French; but this right does not give the accused the option either of choosing either language as the language of the defence, or of having at least one-half of the jurors drawn from those skilled in the language in which counsel for the accused proposes to conduct the defence; the words "language of the defence" as used in this section mean the language habitually spoken by the accused.

R. vs. Yancey (1899), 2 Can. C.C. 320.

938. **671. Accused Persons Joining and Severing in their Challenges.**—If several accused persons are jointly indicted

and it is proposed to try them together, they or any of them may either join in their challenges, in which case the persons who so join shall have only as many challenges as a single person would be entitled to, or each may make his challenges in the same manner as if he were intended to be tried alone.

Where several persons are jointly indicted and tried, the Crown is restricted to the number of peremptory challenges allowed on the trial of one person.
R. vs. Lalonde (1898), 2 Can. C.C. 188.

739. **672. Ordering a Tales.**—Whenever, after the proceedings hereinbefore provided the panel has been exhausted, and a complete jury cannot be had by reason thereof, then, upon request made on behalf of the Crown, the court may order the sheriff or other proper officer forthwith to summon such number of persons whether qualified jurors or not as the court deems necessary and directs in order to make a full jury; and such jurors may, if necessary, be summoned by word of mouth.

2. The names of the persons so summoned shall be added to the general panel, for the purposes of the trial, and the same proceedings shall be taken as to calling and challenging such persons and as to directing them to stand by as are hereinbefore provided for with respect to the persons named in the original panel. R.S.C., c. 174, s. 168.

745. **673. Jurors shall not be allowed to Separate.**—The trial shall proceed continuously subject to the power of the court to adjourn it.

2. The court may adjourn the trial from day to day, and if in its opinion the ends of justice so require, to any other day in the same sittings.

3. Upon every adjournment of a trial under this section, or under any other section of this Act, the court may, if it thinks fit, direct that during the adjournment the jury shall be kept together, and proper provision made for preventing the jury from holding communication with any one on the subject of the trial. Such direction shall be given in all cases in which the accused may upon conviction be sentenced to death. In other cases, if no such direction is given, the jury shall be permitted to separate.

4. No formal adjournment of the court shall hereafter be required, and no entry thereof in the Crown book shall be necessary. 58-59 V., c. 40.

946. **674. Jurors may have Fire and Refreshments.**—Jurors, after having been sworn, shall be allowed at any time before giving their verdict the use of fire and light when out of court, and shall also be allowed reasonable refreshment. 53 V., c. 57, s. 21.

965 **675. Saving of Power of Court.**—Nothing in this Act shall alter, abridge or affect any power or authority, which any court or judge has when this Act takes effect, or any practice or form in regard to trials by jury, jury process, juries or jurors, except in cases where such power or authority is expressly altered by or is inconsistent with the provisions of this Act. R.S.C., c. 174, s. 170.

If one of the jury die before a verdict is arrived at, either the remaining eleven will be discharged and a new jury sworn, or another juror may be added to the eleven. If the latter course is pursued, the remaining eleven must be sworn again, and the accused will again have his right of challenging.

R. vs. Edwards (1812), R. & R. 224.

Where a juror, without permission, leaves the jury-box, and goes out of Court during the continuance of the trial, the jury will be discharged and a new one impannelled.

R. vs. Ward (1867), 10 Cox C.C. 573.

See also, R. vs. Phillips (1868), 11 Cox C.C. 142.

Where a jury was discharged when it was discovered that one of them had been in a house where some one was suffering from a contagious disease, it was held, when the case was again taken up before a new jury, that the accused had not been put in such jeopardy as to preclude his being tried by the second jury.

R. vs. Considine (1885), 8 L.N. 367.

963.964.

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676. Proceedings when previous Offence Charged.—The proceedings upon any indictment for committing any offence after a previous conviction or convictions, shall be as follows; that is to say: the offender shall, in the first instance, be arraigned upon so much only of the indictment as charges the subsequent offence, and if he pleads not guilty, or if the court orders a plea of not guilty to be entered on his behalf, the jury shall be charged in the first instance, to inquire concerning such subsequent offence only; and if the jury finds him guilty, or if, on arraignment he pleads guilty, he shall then, and not before, be asked whether he was so previously convicted as alleged in the indictment; and if he answers that he was so previously convicted, the court may proceed to sentence him accordingly, but if he denies that he was so previously convicted, or stands mute of malice, or will not answer directly to such

question, the jury shall then be charged to inquire concerning such previous conviction or convictions, and in such case it shall not be necessary to swear the jury again, but the oath already taken by them shall, for all purposes, be deemed to extend to such last mentioned inquiry: Provided, that if upon the trial of any person for any such subsequent offence, such person gives evidence of his good character, the prosecutor may, in answer thereto, give evidence of the conviction of such person for the previous offence or offences, before such verdict of guilty is returned, and the jury shall inquire concerning such previous conviction or convictions at the same time that they inquire concerning such subsequent offence.

Regarding previous convictions, see secs. 478 ad 628. Sec. 694 states what will be considered sufficient proof of a previous conviction.

677. Attendance of Witnesses.—Every witness duly subpœnaed to attend and give evidence at any criminal trial before any court of criminal jurisdiction shall be bound to attend and remain in attendance throughout the trial. R.S.C., c. 174, s. 210.

R. Carlin (No 2) 6 C.Cr.Ca. 547.

678. Compelling Attendance of Witness.—Upon proof to the satisfaction of the judge of the service of the subpœna upon any witness who fails to attend or remain in attendance, or upon its appearing that any witness at the preliminary examination has entered into a recognizance to appear at the trial, and has failed so to appear, and that the presence of such witness is material to the ends of justice, the judge may, by his warrant, cause such witness to be apprehended and forthwith brought before him to give evidence and to answer for his disregard of the subpœna; and such witness may be detained on such warrant before the judge or in the common gaol with a view to secure his presence as a witness, or, in the discretion of the judge, he may be released on a recognizance, with or without sureties,, conditioned for his appearance to give evidence and to answer for his default in not attending or not remaining in attendance; and the judge may, in a summary manner, examine into and dispose of the charge against such witness, who, if he is found guilty thereof, shall be liable to a fine not exceeding one hundred dollars, or to imprisonment, with or without hard labour, for a term not exceeding ninety days, or to both. R.S.C., c. 174, s. 211.

An affidavit in support of a motion for the gratuitous issue of subpoenas for the defendant's witnesses should mention only two facts, viz., that the witnesses therein named are necessary for the defence, and that the accused is poor and in need of assistance. If the defendant gives in addition the particular facts which the required witnesses are expected to prove, the application will be refused, as the granting of it in that form might be a pre-judging of the question of the admissibility of the evidence.

R. vs. Grenier (1897), 2 Can. C.C. 204.

In the Province of Quebec an accused person can only obtain the issue of subpoenas at the expense of the Government under R.S.Q., art. 2614, in cases of crimes which were felonies before the enactment of the Code; and, therefore, as the offence of libel was only a misdemeanor before the coming into force of the Code, the Court in such a case has no power to order the gratuitous issue of subpoenas for witnesses whom the accused wishes to call.

R. vs. Grenier, supra.

Privilege from arrest allowed to a witness summoned before a court sitting in another judicial district from that in which he lives, does not apply where he is charged with a criminal offence committed by him during the time in which he is in such district for the purpose of giving evidence.

Ex parte Robert Ewan (1897), 2 Can. C.C. 279.

973 **678A. Witness in the Province who will not Attend at the Trial.**—Either before or during the sittings of any court of criminal jurisdiction, the court, or any judge thereof, or any judge of any superior or county court, if satisfied by evidence upon oath that any person within the province is likely to give material evidence, either for the prosecution or for the accused, will not attend to give evidence at such sittings without being compelled so to do, may by his warrant cause such witness to be apprehended and forthwith brought before such court or judge, and such witness may be detained on such warrant before such court or judge, or in the common gaol with a view to secure his presence as a witness, or, in the discretion of the court or judge may be released on a recognizance, with or without sureties, conditioned for his appearance to give evidence. 63-64 V., c. 46. (*This section came into force 1st January*, 1901.)

974, 975 **679. Witness in Canada but beyond Jurisdiction of Court.**—If any witness in any criminal case, cognizable by indictment in any court of criminal jurisdiction at any term, sessions or sittings of any court in any part of Canada, resides in any part thereof, not within the ordinary jurisdiction of the court before which such criminal case is cognizable, such court may issue a writ of subpœna, directed to such witness, in like manner as if such witness was resident within the jurisdiction of the court; and if such witness

does not obey such writ of subpœna, the court issuing the same may proceed against such witness for contempt or otherwise, or bind over such witness to appear at such days and times as are necessary, and upon defau't being made in such appearance may cause the recognizances of such witness to be estreated, and the amount thereof to be sued for and recovered by process of law, in like manner as if such witness was resident within the jurisdiction of the court. R.S.C., c. 174, s. 212.

2. The courts of the various provinces and the judges of the said courts respectively shall be auxiliary to one another for the purposes of this Act; and any judgment, decree or order made by the court issuing such writ of subpœna upon any proceeding against any witness for contempt or otherwise may be enforced or acted upon by any court in the province in which such witness resides in the same manner and as validly and effectually as if such judgment, order or decree had been made by such last mentioned court. 63-64 V., c. 46, s. 3. (*This sub-section came into force 1st January, 1901.*)

77.680. Procuring Attendance of Prisoner as Witness.—When the attendance of any person confined in any prison in Canada, or upon the limits of any gaol, is required in any court of criminal jurisdiction in any case cognizable therein by indictment, the court before whom such prisoner is required to attend may, or any judge of such court or of any superior court or county court, or any chairman of General Sessions, may, before or during any such term or sittings at which the attendance of such person is required, make an order upon the warden or gaoler of the prison, or upon the sheriff or other person having the custody of such prisoner—

(a.) to deliver such prisoner to the person named in such order to receive him; and such person named shall, at the time prescribed in such order, convey such prisoner to the place at which such person is required to attend, there to do receive and obey such further order as to the said court seems meet; or

(b.) to himself convey such prisoner to such place, there to receive and obey such further order as to the said court seems meet; and in such latter case, on being served with the order and being paid or tendered his reasonable charges, such warden, gaoler, sheriff or other person shall convey the prisoner to such place and produce him there according to the exigency of the order. 63-64 V., c. 46, s. 3. (*This section came into force 1st January, 1901.*)

955. **681. Evidence of Person Dangerously Ill may be taken under Commission.**—Whenever it is made to appear at the instance of the Crown, or of the prisoner or defendant to the satisfaction of a judge of a superior court, or a judge of a county court having criminal jurisdiction, that any person who is dangerously ill, and who, in the opinion of some licensed medical practitioner, is not likely to recover from such illness, is able and willing to give material information relating to any indictable offence, or relating to any person accused of any such offence, such judge may, by order under his hand appoint a commissioner to take in writing the statement on oath or affirmation of such person.

2. Such commissioner shall take such statement and shall subscribe the same and add thereto the names of the persons, if any, present at the taking thereof, and if the deposition relates to any indictable offence for which any accused person is already committed or bailed to appear for trial shall transmit the same, with the said addition, to the proper officer of the court at which such accused person is to be tried; and in every other case he shall transmit the same to the clerk of the peace of the county, division or city in which he has taken the same, or to such other officer as has charge of the records and proceedings of a superior court of criminal jurisdiction in such county, division or city, and such clerk of the peace or other officer shall preserve the same and file it of record, and upon order of the court or of a judge transmit the same to the proper officer of the court where the same shall be required to be used as evidence. R.S.C., c. 174, s. 220.

956. **682. Presence of Prisoner when such Evidence is taken.**—Whenever a prisoner in actual custody is served with, or receives, notice of an intention to take the statement mentioned in the last preceding section the judge who has appointed the commissioner may, by an order in writing, direct the officer or other person having the custody of the prisoner to convey him to the place mentioned in the said notice for the purpose of being present at the taking of the statement; and such officer or other person shall convey the prisoner accordingly, and the expenses of such conveyance shall be paid out of the funds applicable to the other expenses of the prison from which the prisoner has been conveyed. R.S.C., c. 174, s. 221.

R. Bartlett 6 C.C. Ca. 61.

987. **683. Evidence may be taken out of Canada under Commission.**—Whenever it is made to appear, at the instance of the Crown, or of the prisoner or defendant, to the satisfaction of the judge of any superior court, or the judge of a county court, having criminal jurisdiction, that any person who resides out of Canada is able to give material information relating to any indictable offence for which a prosecution is pending, or relating to any person accused of such offence, such judge may, by order under his hand, appoint a commissioner or commissioners to take the evidence, upon oath, of such person.

2. Until otherwise provided by rules of court, the practice and procedure in connection with the appointment of commissioners under this section, the taking of depositions by such commissioners, and the certifying and return thereof, and the use of such depositions as evidence, shall be as nearly as practicable the same as those which prevail in the respective courts in connection with like matters in civil causes. 58-59 V., c. 40.

3. The depositions taken by such commissioners may be used as evidence as well before the grand jury as at the trial.

4. Subject to such rules of court or to such practice or procedure as aforesaid, such depositions by the direction of the presiding judge may be read in evidence before the grand jury. 63-64 V., c. 46. (*Sub-section 4 came into force 1st January*, 1901.)

An order for a commission to take the evidence of any person residing out of Canada, who is able to give material information relating to an indictable offence, or to any person accused thereof, may be made at any time, after an information has been laid charging such offence, and such evidence may be used at any stage of the inquiry at which evidence may be given.

R. vs. Verral (1895), 17 Ont. P.R. 61.

A person accused of the offence of libel pleaded justification and subsequently, and after such plea had been entered, and at the trial, a motion was made on his behalf for a commission to take the evidence of certain witnesses in England in support of his plea. The Crown objected, on the ground that no such motion could be made at such a late stage of the proceedings. It was held that the defendant was entitled to take every moment to consider whether he would put in a plea of justification, and that as the evidence proposed to be taken under the commission related only to that plea which had just been entered, the application could not have been made before.

R. vs. Nicol (1898), 34 C.L.J. 475.

683.684. When Evidence of one Witness must be Corroborated.—No person accused of an offence under any of the hereunder mentioned sections shall be convicted upon the evidence of one witness, unless such witness is corro-

borated in some material particular by evidence implicating the accused:

(a.) Treason, Part IV., section sixty-five;

(b.) Perjury, Part X., section one hundred and forty-six:

(c) Offences under Part XIIII., sections one hundred and eighty-one to one hundred and ninety inclusive;

(d.) Procuring feigned marriage, Part XXII., section two hundred and seventy-seven;

(e.) Forgery, Part XXXI., section four hundred and twenty-three. 56 V., c. 32.

The corroborative evidence "implicating" the accused, which is necessary under s.s. (c) of this section, to sustain a charge of having seduced a girl under sixteen years of age, may consist of the prisoner's admission, made after she attained sixteen, that he had had connection with her; and a statement made by the accused, before he was charged with the offence, that he had been advised that if he could get the girl to marry him he would escape punishment, is corroborative evidence "implicating" the accused, and proper to be considered by a jury or by a judge exercising the functions of a jury.

R. vs. Wyse (1895), 1 Can. C.C. 6.

Evidence of a girl's pregnancy, and of her having been employed in domestic service at the residence of the accused, and of facts showing merely a strong probability of there having been no opportunity at which any other man could have had connection with her, does not constitute corroborative evidence so "implicating the accused" as to sustain a conviction.

R. vs. Vahey (1899), 2 Can. C.C. 258.

A witness who testified that certain forged signatures were written by the accused, was not corroborated in a "material particular by evidence implicating the accused" by proof that certain other signatures were in the same handwriting, when the only evidence showing that the latter's signatures were written by the accused was the testimony of the same witness who had testified to the handwriting of the signatures first mentioned.

R. vs. McBride (1895), 2 Can. C.C. 544.

R. vs. Giles (1856), 6 U.C., C.P. 84.

The testimony of an accomplice must be corroborated both as to the circumstances of the crime and as to the identity of the accused.

R. vs. Farlar (1837), 8 C. & P. 106.

R. vs. Stubbs (1855), 25 L.J., M.C. 16.

If the unsworn statement of a child is admitted under this section where the accused is charged with having committed an indecent assault, and such unsworn statement is corroborated by other sworn evidence, a subsequent conviction of the accused for simple assault only is good, although the unsworn evidence of the child, which would have been inadmissible if the accused had been tried on a charge of simple assault, is the chief evidence against him.

R. vs. Grantyers (1893), R.J.Q., 2 Q.B. 376.

See also R. vs. Wealand (1888), 16 Cox C.C. 402.

1003, 685. **Evidence not under Oath of Child in certain Cases.**—Where, upon the hearing or trial of any charge for carnally knowing or attempting to carnally know a girl under fourteen or of any charge under section two hundred and fifty-nine for indecent assault, the girl in respect of whom the offence is charged to have been committed, or any other child of tender years who is tendered as a witness, does not, in the opinion of the court or justices, understand the nature of an oath, the evidence of such girl or other child of tender years may be received though not given upon oath if, in the opinon of the court or justices, as the case may be, such girl or other child of tender years is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth.

2. But no person shall be liable to be convicted of the offence, unless the testimony admitted by virtue of this section, and given on behalf of the prosecution, is corroborated by some other material evidence in support thereof implicating the accused.

3. Any witness whose evidence is admitted under this section is liable to indictment and punishment for perjury in all respects as if he or she had been sworn. 53 V., c. 37, s. 13.

1004, 686. **Deposition of Sick Witness may be read in Evidence.**—If the evidence of a sick person has been taken under commission as provided in section six hundred and eighty-one, and upon the trial of any offender for any offence to which the same relates, the person who made the statement is proved to be dead, or if it is proved that there is no reasonable probability that such person will ever be able to attend at the trial to give evidence, such statement may, upon the production of the judge's order appointing such commissioner, be read in evidence, either for or against the accused, without further proof thereof,—if the same purports to be signed by the commissioner by or before whom it purports to have been taken, and, if it is proved to the satisfaction of the court that reasonable notice of the intention to take such statement was served upon the person (whether prosecutor or accused) against whom it is proposed to be read in evidence, and that such person or his counsel or solicitor had, or might have had, if he had chosen to be present, full opportunity of cross-examining the person who made the same. R.S.C., c. 174, s. 220.

See R. vs. Shurmer (1886), L.R., 17 Q.B.D. 323.

R. Tuffy 8 Can C.C. 247. 999.
R. McCullough 4 O.R. 278
R. Pinnisky 16 Can
346.

687. Depositions on Preliminary Inquiry may be read in Evidence.—If upon the trial of an accused person such facts are proved upon the oath or affirmation of any credible witness that it can be reasonably inferred therefrom that any person whose deposition has been theretofore taken in the investigation of the charge against such person is dead, or so ill as not to be able to travel, or is absent from Canada, and if it is proved that such deposition was taken in the presence of the person accused, and that his counsel or solicitor had a full opportunity of cross-examining the witness, then if the deposition purports to be signed by the judge or justice before whom the same purports to have been taken, it shall be read as evidence in the prosecution without further proof thereof, unless it is proved that such deposition was not in fact signed by the judge or justice purporting to have signed the same.

2. In this section the word "deposition" includes the evidence of a witness given at any former trial upon the same charge. 63-64 V., c. 46. (*This section came into force 1st January*, 1901.)

In order that this section should apply to make admissible as evidence at the trial the deposition of a witness, since deceased, taken at a preliminary inquiry or other investigation of a charge against the accused before a justice of the peace, the document containing the deposition is alone to be looked at, in order to ascertain if the deposition "purports to be signed by the justice," as required by this section.

R. vs. Hamilton (1898), 2 Can. C.C. 390.

Where a deposition sought to be used had been signed by both the witness and the magistrate, and was attached at the end of depositions taken by the magistrate on a previous date named, but did not itself contain a new caption, or show the date when it was taken, or any record by the magistrate certifying that such added deposition had been taken by him, and the first depositions formed in themselves a complete document, concluding with the magistrate's note of the remand of the case, it is not to be presumed that the informal deposition is a continuation of the first depositions, or that it relates to the same charge; and in this particular case it was held that such added deposition did not "purport to be signed by the justice by or before whom the same purports to have been taken."

R. vs. Hamilton, supra.

A deposition, the caption of which sets out the name of the justice, and describes him as one of the justices of the peace for a certain named county, "purports to be signed by the justice by or before whom the same purports to have been taken," if the same is signed by the justice with his name only, without adding to it, as in form S of the Code, the initials "J.P." and the name of the county for which he is a justice; and such a deposition is *prima facie* admissible in evidence.

R. vs. Hamilton, supra.

A depositon in order to be admissible under this section must be a *verbatim* report of the witness's evidence.

R. vs. Graham (1898), 2 Can. C.C. 388.

The evidence of a constable searching for a witness to serve him with a subpoena for a trial, to the effect that he had been informed by a certain named person that the witness was absent from Canada, is not such sufficient evidence of such absence as will render the witness' deposition admissible under this section.

R. vs. Graham, supra.

A coroner is not "a justice" within the meaning of this section.

R. vs. Graham, supra.

The question as to whether there was a settled hopeless expectation of death, so as to justify the admission of a dying declaration in evidence, is one for the trial judge.

R. vs. Woods (1897), 2Can. C.C. 159.

A deposition read over to, and signed by the deponent, may be admissible in evidence as a dying declaration, although irregular and inadmissible as a deposition under this section, because taken in the absence of the accused.

R. vs. Woods, supra.

See also R. vs. Ciarlo (1897), R.J.Q., 6 Q.B. 144.

The expression "entitled to cross-examine" as used in this section, implies that the accused has the right to hear the evidence delivered in his presence, to hear the words as they are uttered by the witness, and to have an opportunity to observe his manner and demeanor whilst giving his evidence. When a deposition has been made at a preliminary inquiry to which the accused was not a party, and at which he was not present, and subsequently the person making the deposition is called as a witness against the accused, and after either affirming or correcting such deposition, is then examined thereon, and the accused is then given an opportunity to cross-examine him thereon, the accused is not thus afforded the full opportunity to cross-examine which is contemplated by this section.

R. vs. Lepine et al. (1900), 4 Can. C.C. 145.

688. Depositions may be used on Trial for other Offences.—Depositions taken in the preliminary or other investigation of any charge against any person may be read as evidence in the prosecution of such person for any other offence, upon the like proof and in the same manner, in all respects, as they may, according to law, be read in the prosecution of the offence with which such person was charged when such depositions were taken. R.S.C., c. 174, s. 224.

689. Evidence of Statement by Accused.—The statement made by the accused person before the justice may, if necessary, upon the trial of such person, be given in evidence against him without further proof thereof, unless it is proved that the justice purporting to have signed the same did not in fact sign the same. R.S.C., c. 174, s. 223.

See sec. 592.

In R. vs. Hendershot & Welter (1895), 26 O.R. 678, it was held by Meredith C.J. that a coroner's court is a criminal court, and that the depositions before such court of a witness who is afterwards arraigned on a charge of murder cannot, since the Canada Evidence Act, 1893, be received in evidence against him at the trial, notwithstanding the fact that privilege was not claimed on his behalf at the inquest.

In the case of R. vs. Williams (1897), 28 O.R. 583, a Divisional Court composed of Armour C.J., Falconbridge and Street JJ., overruled the preceding decision, and held that the depositions of a witness taken at a coroner's inquest, at which he claims no privilege, may be used in evidence against him at his trial for an offence with which he is subsequently charged.

See also the decision in R. vs. Madden (1894), 14 C.L.T. 505-6, which is to the same effect.

But in R. vs. Hammond (1898), 29 O.R. 211, a Divisional Court composed of Boyd C., Robertson and Meredith, JJ., it was held, Meredith, J., dissenting, that under section 5 of the Canada Evidence Act, 1893 (56 Vic., chap. 31) (this being prior to the amendment of 1898), it was not necessary that the witness should have objected to answering the incriminating questions put to him at a coroner's inquest, in order to render his answers thereto inadmissible on any subsequent criminal proceeding taken against him, other than for perjury.

And it appears doubtful whether the same rule could not be held to apply even apart from the amending Act above referred to. In two cases, in the Province of Quebec, it was held that a deposition given at a coroner's inquest is not admissible in evidence against the witness on any subsequent criminal proceeding taken against him, other than for perjury on the occasion in question.

R. vs. Lalonde et al. (1898), R.J.Q. 7 Q.B. 204.

R. vs. Viau (1898), R.J.Q. 7 Q.B. 362.

Notes of evidence taken by the coroner at an inquest, which do not contain the precise expressions of the witness, but only a summary of the evidence, are not admissible in contradiction of the witnesses' testimony in a subsequent proceeding, unless they are signed by the witness, or unless they have been read over to and acquiesced in by him. But, in such a case, a witness may be cross-examined regarding any material statements made by him at the inquest, and witnesses may then be called to show that he, in fact, made a different and contradictory statement.

R. vs. Ciarlo (1897), R.J.Q. 6 Q.B. 142.

Depositions of a witness speaking in French, taken down by the translator in English, at a preliminary inquiry, but not read over and explained to the witness or signed by him, are not admissible in evidence to contradict his sworn statements in a subsequent proceeding, but the witness may be cross-examined as to material statements made by him at the preliminary inquiry, and may then be contradicted by other witnesses who heard the former evidence.

R. vs. Ciarlo, supra.

The object of the statutory provision giving prisoners the right to a copy of the depositions, is to enable them to know what they have to answer on their trial, and the magistrate should, therefore, take down all that takes place before him with respect to the charge.

R. vs. Grady (1836), 7 C. & P. 650.

In a case decided (sec. 5 of the Canada Evidence Act, 1893), before the amendment of 1898, it was held that that section did not prevent evidence given by the accused in a civil proceeding, under the jurisdiction of a provincial legislature, from being used in evidence against him upon a subsequent criminal proceeding; and this rule will apply although examination in the civil proceeding was compulsory. And if the person examined in the civil proceeding did not seek to excuse himself from answering questions, on the ground that his answers might tend to criminate him, his evidence will be deemed to have been voluntary.

R. vs. Douglas (1895), 11 Man. L.R. 401.

See aslo R. vs. Coote (1873), L.R., 4 P.C. 599.

R. vs. Connolly (1893), 25 O.R. 151.

The Canada Evidence Act only excuses a witness from answering questions which may tend to criminate him when the witness is being examined in a criminal proceeding, or in some civil proceeding or matter respecting which the Dominion Parliament has authority to determine the admissibility of the evidence.

R. vs. Douglas, supra.

Evidence given by an official stenographer who identifies a deposition, to the effect that the accused person resembles the person of the same name whose deposition he had taken, and that he believes him to be the same man, but cannot swear positively to his identity, the deposition in question having been taken some three or four months previously, is properly submitted to a jury.

R. vs. Douglas, supra.

690. Admission may be taken on Trial.—Any accused person on his trial for any indictable offence, or his counsel or solicitor, may admit any fact alleged against the accused so as to dispense with proof thereof.

On a charge of being an inmate of a bawdy-house, it is competent for the accused or her counsel to consent that the evidence which has been given before the magistrate upon a concluded trial of another person for keeping the bawdy-house in question, shall be read as evidence in the case against her.

R. vs. St. Clair (1900), 3 Can. C.C. 551.

See also R. vs. Ray (1890), 20 O.R. 212.

691. Certificate of Trial at which Perjury was Committed.—A certificate containing the substance and effect only, omitting the formal part, of the indictment and trial for any offence, purporting to be signed by the clerk of the court or other officer having the custody of the records of the court whereat the indictment was tried, or among which such indictment has been filed, or by the deputy of such clerk or other officer, shall, upon the trial of an indictment for perjury or subornation of perjury, be sufficient evidence of the trial of such indictment without proof of the signature or official character of the person appearing to have signed the same. R.S.C., c. 174, s. 224.

980. **692. Evidence of Coin being False or Counterfeit.**—When upon the trial of any person, it becomes necessary to prove that any coin produced in evidence against such person is false or counterfeit, it shall not be necessary to prove the same to be false and counterfeit by the evidence of any moneyer or other officer of His Majesty's mint, or other person employed in producing the lawful coin in His Majesty's dominions or elsewhere, whether the coin counterfeited is current coin, or the coin of any foreign prince, state or country, not current in Canada, but it shall be sufficient to prove the same to be false or counterfeit by the evidence of any other credible witness. R.S.C., c. 174, s. 229.

981. **693. Evidence on Proceedings for Advertising Counterfeit Money.**—On the trial of any person charged with the offences mentioned in section four hundred and eighty, any letter, circular, writing or paper offering or purporting to offer for sale, loan, gift or distribution, or giving or purporting to give information, directly or indirectly, where, how, of whom or by what means any counterfeit token of value may be obtained or had, or concerning any similar scheme or device to defraud the public, shall be *prima facie* evidence of the fraudulent character of such scheme or device.

982. **694. Proof of Previous Conviction.**—A certificate con- Phipson Ev. 82. taining the substance and effect only, omitting the formal part, of any previous indictment and conviction for any indictable offence, or a copy of any summary conviction, purporting to be signed by the clerk of the court or other officer having the custody of the records of the court before which the offender was first convicted, or to which such summary conviction was returned, or by the deputy of such clerk or officer, shall, upon proof of the identity of the person of the offender, be sufficient evidence of such conviction without proof of the signature of official character of the person appearing to have signed the same. R.S.C., c. 174, s. 230.

C. 145. s. 12. Phipson Ev. 82, 88. **695. Proof of Previous Conviction of Witness.**—A witness may be questioned as to whether he has been convicted of any offence, and upon being so questioned, if he either denies the fact or refuses to answer, the opposite party may prove such conviction; and a certificate, as provided in the next preceding section, shall, upon proof of the identity of the witness as such convict, be sufficient

evidence of his conviction, without proof of the signature or the official character of the person appearing to have signed the certificate. R.S.C., c. 174, s. 231.

696. Proof of Attested Instrument.—It shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite; and such instrument may be proved by admission or otherwise as if there had been no attesting witness thereto. R.S.C., c. 174, s. 232.

697. Evidence at Trial for Child Murder.—The trial of any woman charged with the murder of any issue of her body, male or female, which being born alive would, by law, be bastard, shall proceed and be governed by such and the like rules of evidence and presumption as are by law used and allowed to take place in respect to other trials for murder. R.S.C., c. 174, s. 227.

698. Comparison of Disputed Writing with Genuine.—Comparison of a disputed writing with any writing proved to the satisfaction of the court to be genuine shall be permitted to be made by witnesses; and such writings, and the evidence of witnesses respecting the same, may be submitted to the court and jury as evidence of the genuineness or otherwise of the writing in dispute. R.S.C., c. 174, s. 233.

Where, upon a charge of sending a threatening letter to a person with intent to extort money, it is proved that the accused had stated that he had written a letter to such person, and that he had related its purport in language to the like effect as that of the threatening letter, the Court may admit the threatening letter in evidence, without further proof of the handwriting, and may submit it to the jury for comparison with an exhibit already in evidence, and admitted to have been written by the accused.

R. vs. Dixon (1897), 3 Can. C.C. 220.

And if a document is admitted in evidence before it is sufficiently proved, this defect may be cured by the evidence subsequently given, and it is not necessary to again tender the document after such evidence has been adduced.

R. vs. Dixon, supra.

A jury may properly make a comparison of doubtful or disputed handwriting, and draw their own conclusions as to its authenticity, if the admittedly genuine handwriting and the disputed handwriting are both in evidence for some purpose in the case, although no witness has been called to prove the handwriting to be the same in both.

R. vs. Dixon, supra.

See also Taylor on Evidence, sec. 1870.

C. 145.59. **699. Party Discrediting his own Witness.**—A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but if the witness, in the opinion of the court, proves adverse, such party may contradict him by other evidence, or, by leave of the court, may prove that the witness made at other times a statement inconsistent with his present testimony; but before such last mentioned proof can be given the circumstances of the supposed statement, sufficient to designate the particular occasion, shall be mentioned to the witness, and he shall be asked whether or not he did make such statement. R.S.C., c. 174, s. 234.

The word "adverse" as used in this section means "hostile" and not simply "unfavorable."
Greenough vs. Eccles (1859), 28 L.J., C.P. 160.
R. vs Little (1883), 15 Cox C.C. 319.

C. S. 10. **700. Evidence of former Written Statements by Witness.**—Upon any trial a witness may be cross-examined as to previous statements made by him in writing, or reduced to writing, relative to the subject-matter of the case, without such writing being shown to him; but if it is intended to contradict the witness by the writing his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him; and the judge, at any time during the trial, may require the production of the writing for his inspection, and he may thereupon make such use of it for the purposes of the trial as he thinks fit: Provided that a deposition of the witness, purporting to have been taken before a justice on the investigation of the charge and to be signed by the witness and the justice, returned to and produced from the custody of the proper officer, shall be presumed *prima facie* to have been signed by the witness. R.S.C., c. 174, s. 235.

C. S. 11. **701. Proof of Contradictory Statements by Witness.**—If a witness, upon cross-examination as to a former statement made by him relative to the subject-matter of the case and inconsistent with his present testimony, does not distinctly admit that he did make such statement, proof may be given that he did in fact make it; but before such proof can be given the circumstances of the supposed statement, sufficient to designate the particular occasion, shall be mentioned to the witness and he shall be asked whether or not he did make such statement. R.S.C., c. 174, s. 236.

The depositions of a witness speaking in French and taken down by the translator in English at a preliminary inquiry, but not read over and explained to the witness or signed by him, are not admissible to contradict his testimony at a subsequent proceeding, but in such a case the witness may be cross-examined as to material statements made by him upon the former occasion, and other witnesses may then be called to show that he has contradicted his previous testimony.

R. vs. Ciarlo (1887), R.J.Q., 6 Q.B. 144.

The answer of an accused person examined as a witness on his own behalf, given in cross-examination in reply to a question foreign to the issue, must be taken as final, and the prosecution is not entitled to call rebuttal evidence to contradict it for the mere purpose of impeaching the credit of the witness.

R. vs. Lapierre (1887), 1 Can. C.C. 413.

A witness who has been cross-examined as to an alleged previous statement, made by her under oath in judicial proceedings relating to the subject matter of the case, and who, after the circumstances connected with the particular occasion upon which she is alleged to have made such statements are recalled, has denied that she made them, may, when the depositions containing the record of what was then sworn to are lost, be contradicted by oral testimony regarding the disputed statement.

R. vs. Troop (1898), 30 N.S.R. 339.

See also Taylor on Evidence, sec. 1447.

701A. Evidence of the Age of a Boy, etc.—In order to prove the age of a boy, girl, child or young person for the purposes of sections 181, 186, 210, 211, 216, 261, 269, 270, 283, 284 and 934A, the following shall be sufficient *prima facie* evidence.

(a.) Any entry or record by an incorporated society or its officers having had the control or care of the boy, girl, child or young person at or about the time of the boy, girl, child or young person being brought to Canada, if such entry or record has been made before the alleged offence was committed.

(b.) In the absence of other evidence, or by way of corroboration of other evidence, the judge or, in cases where an offender is tried with a jury, the jury before whom an indictment for the offence is tried, or the justice before whom a preliminary inquiry thereinto is held, may infer the age from the appearance of the boy, girl, child or young person. 63-64 V., c. 46. (*This section came into force 1st January, 1901.*)

702. Evidence of Place being a Common Gaming-house.—When any cards, dice, balls, counters, tables or other instruments of gaming used in playing any unlawful game are found in any house, room or place suspected to be used as a common gaming-house, and entered under a warrant or order issued under this Act, or about the person of

any of those who are found therein, it shall be *prima facie* evidence, on the trial of a prosecution under section 198 or section 199, that such house, room or place is used as a common gaming-house, and that the persons found in the room or place where such tables or instruments of gaming are found were playing therein although no play was actually going on in the presence of the officer entering the same under such warrant or order, or in the presence of those persons by whom he is accompanied as aforesaid. 63-64 V., c. 46. (*This section came into force 1st January*, 1901.)

Sec. 575 provides for search warrants in the case of places believed to be used as common gaming or betting-houses. A house is a common gaming-house although part of the game in question is played therein and part is played at some other place; and a lottery is a game of chance, and a house in which a lottery is held is a gaming-house.

R. vs. France et al., (1897), 3 Rev. de Jurispr. 268.

In another case it was held that a house in which gaming takes place is only a "common gaming-house" when it is kept by a person for game, or when it is kept or used for the playing therein of games the chances in which are not equally favorable to all the players.

R. vs. Laird (1891), 3 Rev. de Jurispr. 389.

The mere use of a gaming instrument for deciding by chance the winning of stakes placed in a foreign country and payable there, is not gaming so as to make the house in which the instrument is operated a common gaming-house. In such a case the instrument is not being used in playing an "unlawful game."

R. vs. Wettman (1894), 25 O.R. 479.

A club was supported by means of a "rake off" from the stakes wagered in playing cards there. It was held, that as this "rake off" or "cagnotte" was used for the benefit of the house in which the game was played, it constituted the club a common gaming-house within the meaning of sec. 196, and of 58-59 Vic., chap. 40.

R. vs. Brady (1896). R.J.Q., 10 S.C. 539.

The accused was the lessee of a room the entrance to which was free to the public, and the people were wont there to play a certain game of cards called "Black Jack." There was no regular dealer—the right to deal being decided by chance, and not passing in rotation; and the dealer, who would have a certain advantage in the game, usually kept the deal for five or six minutes. The lessee got no direct advantage from the game. It was held that the lessee had been rightly convicted of keeping a common gaming-house, and that the room in question came within sec 196, because the dealer had the advantage over the other persons playing the game.

R. vs. Petrie (1900), 3 Can. C.C. 439.

703. Other Evidence that Place is a Common Gaming-house.—In any prosecution under section 198 for keeping a common gaming-house, or under section 199 for playing or looking on while any other person is playing in a common gaming-house, it shall be *prima facie* evidence

that a house, room or place is used as a common gaming-house, and that the persons found therein were unlawfully playing therein—

(a.) if any constable or officer authorized to enter any house, room or place, is wilfully prevented from, or obstructed or delayed in entering the same or any part thereof; or

(b.) if any such house, room or place is found fitted or provided with any means or contrivance for unlawful gaming, or with any means or contrivance for concealing, removing or destroying any instruments of gaming. 63-64 V., c. 46. (*This section came into force 1st January,* 1901.)

See sec. 198.

Upon a case reserved as to whether the provisions of sec. 703 applied to a prosecution under this section, the judge said that he entertained a grave doubt whether it did, and therefore "following the dicta in Kingston-upon-Hull Dock Co. vs. Browne, (1831), 2 B. & Ad. 59, Foley vs. Fletcher (1858), 28 L.J., Ex. 100, Lewis vs. Carr (1876), 1 Ex. D. 484," he gave the benefit of doubt to the subject and against the legislature which had failed to explain itself, and quashed the conviction." R. vs. Ah Dock (1899), 19 C.L.T. 369.

704. Evidence in case of Gaming in Stocks, etc.—Whenever, on the trial of a person charged with making an agreement for the sale or purchase of shares, goods, wares or merchandise in the manner set forth in section two hundred and one, it is established that the person so charged has made or signed any such contract or agreement of sale or purchase, or has acted, aided or abetted in the making or signing thereof the burden of proof of the *bona fide* intention to acquire or to sell such goods, wares or merchandise, or to deliver or to receive delivery thereof, as the case may be, shall rest upon the person so charged.

705. Evidence in certain Cases of Libel.—In any criminal proceeding commenced or prosecuted for publishing any extract from, or abstract of, any paper containing defamatory matter and which has been published by or under the authority of the Senate, House of Commons or any Legislative Council, Legislative Assembly or House of Assembly, such paper may be given in evidence, and it may be shown that such extract or abstract was published in good faith and without ill-will to the person defamed, and if such is the opinion of the jury, a verdict of not guilty shall be entered for the defendant. 56 V., c. 32.

706. Evidence in Case of Polygamy, etc.—In the case of any indictment under section two hundred and seventy-

eight (b), (c) and (d), no averment or proof of the method in which the sexual relationship charged was entered into, agreed to, or consented to, shall be necessary in any such indictment, or upon the trial of the person thereby charged; nor shall it be necessary upon such trial to prove carnal connection had or intended to be had between the persons implicated. 53 V., c. 37, s. 11.

988. **707. Evidence of Stealing Ores or Minerals.**—In any prosecution, proceeding or trial for stealing ores or minerals the possession, contrary to the provisions of any law in that behalf, or any smelted gold or silver, or any gold-bearing quartz, or any unsmelted or otherwise unmanufactured gold or silver, by any operative, workman or labourer actively engaged in or on any mine, shall be *prima facie* evidence that the same has been stolen by him. R.S.C., c. 164, s. 30.

989. **707A. Evidence of Stealing Cattle.**—In any criminal prosecution, proceeding or trial, the presence upon any cattle of a brand or mark, which is duly recorded or registered under the provisions of any Act, ordinance or law, shall be *prima facie* evidence that such cattle are the property of the registered owner of such brand or mark: and where a person is charged with theft of cattle, or with an offence under paragraph (*a*) or paragraph (*b*) of section 331A respecting cattle, possession by such person or by others in his employ or on his behalf of such cattle bearing such a brand or mark of which the person charged is not the registered owner, shall throw upon the accused the burden of proving that such cattle came lawfully into his possession or into the possession of such others in his employ or on his behalf, unless it appears that such possession by others in his employ or on his behalf was without his knowledge and without his authority, sanction or approval. 1 Ed, VII., c. 42.

990. **708. Evidence of Stealing Timber.**—In any prosecution, proceeding or trial for any offence under section three hundred and thirty-eight a timber mark, duly registered under the provisions of the *Act respecting the Marking of Timber*, on any timber, mast, spar, saw-log or other description of lumber, shall be *prima facie* evidence that the same is the property of the registered owner of such timber mark; and possession by the offender, or by others in his employ or on his behalf, of any such timber, mast, spar, saw-log or other description of lumber so marked, shall, in all cases, throw upon the offender the burden of proving that

such timber, mast, spar, saw-log or other description of lumber came lawfully into his possession, or into the possession of such others in his employ or on his behalf. R.S.C., c. 174, s. 228.

709. Evidence in Cases relating to Public Stores.—In any prosecution, proceeding or trial under section three hundred and eighty-five to three hundred and eighty-nine inclusive for offences relating to public stores proof that any soldier, seaman or marine was actually doing duty in His Majesty's service shall be *prima facie* evidence that his enlistment, entry or enrolment has been regular.

2. If the person charged with the offence relating to public stores mentioned in article three hundred and eighty-seven was, at the time at which the offence is charged to have been committed, in His Majesty's service or employment, or a dealer in marine stores, or a dealer in old metals, knowledge on his part that the stores to which the charge relates bore the marks described in section three hundred and eighty-four shall be presumed until the contrary is shown. 50-51 V., c. 45, s. 13.

710. Evidence in Case of Fraudulent Marks on Merchandise.—In any prosecution, proceeding or trial for any offence under Part XXXIII. relating to fraudulent marks on merchandise, if the offence relates to imported goods evidence of the port of shipment shall be *prima facie* evidence of the place or country in which the goods were made or produced. 51 V., c. 41, s. 13.

2. Provided that in any prosecution for forging a trade mark the burden of proof of the assent of the proprietor shall lie on the defendant.

This section applies only to cases of forgery of a trade mark, and not to cases of "falsely applying," so as to shift the onus to the defendant of proving in such cases that the assent of the proprietor of the trade mark to such application has been obtained.
R. vs. Howarth (1898), 1 Can. C.C. 243.

711. Full Offence Charged; Attempt Proved.—When the complete commission of the offence charged is not proved, but the evidence establishes an attempt to commit the offence, the accused may be convicted of such attempt and punished accordingly. R.S.C., c. 174, s. 183.

Sec. 64 states what constitutes an attempt to commit a crime. A jury may properly bring in a verdict of an attempt to commit an assault.

Leblanc vs. R. (1892), 16 L.N. 187.

On an indictment for an offence of having obtained money by false pretences, the defendants cannot be convicted therefor when it is proved that by the discount of their own promissory notes they had nearly obtained a credit in account, as such a credit is not a thing capable of being stolen. But under such circumstances they might, if the evidence established an attempt to obtain the money, be convicted of such an attempt.

R. vs. Boyd et al. (1896), R.J.Q., 5 Q.B. 1.

950. **712. Attempt Charged; Full Offence Proved.**—When an attempt to commit an offence is charged but the evidence establishes the commission of the full offence, the accused shall not be entitled to be acquitted, but the jury may convict him of the attempt, unless the court before which such trial is had thinks fit, in its discretion, to discharge the jury from giving any verdict upon such trial, and to direct such person to be indicted for the complete offence:

2. Provided that after a conviction for such attempt the accused shall not be liable to be tried again for the offence which he was charged with attempting to commit. R.S.C., c. 174, s. 184.

Where a person is indicted for an attempt to steal, and the evidence shows that a theft was actually committed, the jury may convict of the attempt, or the Court may discharge the jury and direct that the accused shall be indicted for the full offence.

R. vs. Taylor (1895), R.J.Q., 4 Q.B. 226.

951. **713. Offence Charged; Part only Proved.**—Every count shall be deemed divisible; and if the commission of the offence charged, as described in the enactment creating the offence or as charged in the count, includes the commission of any other offence the person accused may be convicted of any offence so included which is proved, although the whole offence charged is not proved; or he may be convicted of an attempt to commit any offence so included:

2. Provided, that on a count charging murder, if the evidence proves manslaughter but does not prove murder the jury may find the accused not guilty of murder but guilty of manslaughter, but shall not on that count find the accused guilty of any other offence.

The essential elements of the offence of receiving stolen goods are not included in the offence of "housebreaking and theft," since in order to constitute the former offence the stolen goods must have been taken and stolen by a person other than the person accused of the receiving; and a convic-

tion for receiving stolen goods cannot be rendered on the summary trial of a person charged only with housebreaking and theft.

R. vs. Lamoureux (1900), 4 Can. C.C. 101.

Upon an indictment for rape the accused person may be convicted of the lesser charge of assault.

R. vs. Edwards (1 98), 2 Can. C.C. 96.

Upon an indictment for assaulting and unlawfully wounding the accused may be convicted of a common assault.

R. vs. Oliver (1860), 30 L.J., M.C. 12.

R. vs. Taylor (1869), L.R., 1 C.C.R. 194.

714. On Indictment for Murder Conviction may be of Concealment of Birth.—If any person tried for the murder of any child is acquitted thereof, the jury by whose verdict such person is acquitted may find, in case it so appears in evidence, that the child had recently been born, and that such person did, by some secret disposition of such child or of the dead body of such child, endeavour to conceal the birth thereof, and thereupon the court may pass such sentence as if such person had been convicted upon an indictment for the concealment of birth. R.S.C., c. 174, s. 188.

See secs. 239 and 240.

714A. Stealing Cattle.—When an offence under section 331 is charged and not proved, but the evidence establishes an offence under section 331A, the accused may be convicted of such latter offence and punished accordingly. 1 Ed. VII., c. 42. s. 2.

715. Trial of Joint Receivers.—If, upon the trial of two or more persons indicted for jointly receiving any property, it is proved that one or more of such persons separately received any part or parts of such property, the jury may convict, upon such indictment, such of the said persons as are proved to have received any part or parts of such property. R.S.C., c. 174, s. 200.

716. Proceedings against Receivers.—When proceedings are taken against any person for having received goods knowing them to be stolen, or for having in his possession stolen property, evidence may be given, at any stage of the proceedings, that there was found in the possession of such person other property stolen within the preceding period of twelve months, and such evidence may be taken into consideration for the purpose of proving that such person knew the property which forms the subject of the proceedings taken against him to be stolen: Provided, that not less than three days' notice in writing has been given to

the person accused that proof was intended to be given, of such other property, stolen within the preceding period of twelve months, having been found in his possession; and such notice shall specify the nature or description of such other property, and the person from whom the same was stolen. R.S.C., c. 174, s. 203.

See sec. 314.

994 **717. The same after Previous Conviction.**—When proceedings are taken against any person for having received goods knowing them to be stolen, or for having in his possession stolen property, and evidence has been given that the stolen property has been found in his possession, then if such person has, within five years immediately preceding, been convicted of any offence involving fraud or dishonesty, evidence of such previous conviction may be given at any stage of the proceedings, and may be taken into consideration for the purpose of proving that the person accused knew the property which was proved to be in his possession to have been stolen: Provided, that not less than three days' notice in writing has been given to the person accused that proof is intended to be given of such previous conviction; and it shall not be necessary, for the purposes of this section, to charge in the indictment the previous conviction of the person so accused. R.S.C., c. 174, s. 204.

955 **718. Trial for Coinage Offences.**—Upon the trial of any person accused of any offence respecting the currency or coin, or against the provisions of Part XXXV., no difference in the date or year, or in any legend marked upon the lawful coin described in the indictment, and the date or year or legend marked upon the false coin counterfeited to resemble or pass for such lawful coin, or upon any die, plate, press, tool or instrument used, constructed, devised, adapted or designed for the purpose of counterfeiting or imitating any such lawful coin, shall be considered a just or lawful cause or reason for acquitting any such person of such offence; and it shall, in any case, be sufficient to prove such general resemblance to the lawful coin as will show an intention that the counterfeit should pass for it. R.S.C., c. 174, s. 205.

958 **719. Verdict in case of Libel.**—On the trial of any indictment or information for the making or publishing of any defamatory libel, on the plea of not guilty pleaded, the jury sworn to try the issue may give a general verdict

of guilty or not guilty upon the whole matter put in issue upon such indictment or information, and shall not be required or directed, by the court or judge before whom such indictment or information is tried, to find the defendant guilty merely on the proof of publication by such defendant of the paper charged to be a defamatory libel, and of the sense ascribed to the same in such indictment or information; but the court or judge before whom such trial is had shall, according to the discretion of such court or judge, give the opinion and direction of such court or judge to the jury on the matter in issue as in other criminal cases; and the jury may, on such issue, find a special verdict if they think fit so to do; and the defendant, if found guilty, may move in arrest of judgment on such ground and in such manner as he might have done before the passing of this Act. R.S.C., c. 174, s. 152.

720. Impounding Documents.—Whenever any instrument which has been forged or fraudulently altered is admitted in evidence the court or the judge or person who admits the same may, at the request of any person against whom the same is admitted in evidence, direct that the same shall be impounded and be kept in the custody of some officer of the court or other proper person for such period and subject to such conditions, as to the court, judge or person admitting the same seems meet. R.S.C., c. 174, s. 208.

721. Destroying Counterfeit Coin.—If any false or counterfeit coin is produced on any trial for an offence against Part XXXV., the court shall order the same to be cut in pieces in open court, or in the presence of a justice of the peace, and then delivered to or for the lawful owner thereof, if such owner claims the same. R.S.C., c. 174, s. 209.

722. View.—On the trial of any person for an offence against this Act, the court may, if it appears expedient for the ends of justice, at any time after the jurors have been sworn to try the case and before they give their verdict; direct that the jury shall have a view of any place, thing or person, and shall give directions as to the manner in which, and the persons by whom, the place, thing or person shall be shown to such jurors, and may for that purpose adjourn the trial and the costs occasioned thereby shall be in the discretion of the court. R.S.C., c. 174, s. 171.

2. When such view is ordered, the court shall give such directions as seem requisite for the purpose of preventing

undue communication with such jurors: Provided that no breach of any such directions shall affect the validity of the proceedings. R.S.C., c. 174, s. 171.

In a case in which the accused person was indicted for unlawfully displacing a railway switch, and was tried without a jury by a county court judge who reserved his decision, and subsequently, and before rendering judgment, who examined the switch when passing the place where it was, neither the prisoner nor his counsel being present at the time, it was held (judgment having been given finding the accused guilty) that the judge had no authority to take a "view" of the place, and that even if he had had the right to do so, it should not have been done except in the presence of the accused or of some one acting in his behalf.

R. vs. Petrie (1890), 20 O.R. 317.

889. 550. Bell v. Perrault 7 C.C.C. 465.

723. Variance and Amendment.—If on the trial of any indictment there appears to be a variance between the evidence given and the charge in any count in the indictment, either as found or as amended, or as it would have been if amended in conformity with any particular supplied as provided in sections six hundred and fifteen and six hundred and seventeen, the court before which the case is tried may, if of opinion that the accused has not been misled or prejudiced in his defence by such variance, amend the indictment or any count in it or any such particular so as to make it conformable with the proof.

2. If it appears that the indictment has been preferred under some other Act of Parliament instead of under this Act, or under this instead of under some other Act, or that there is in the indictment, or in any count in it, an omission to state or a defective statement of anything requisite to constitute the offence, or an omission to negative any exception which ought to have been negatived, but that the matter omitted is proved by the evidence, the court before which the trial takes place, if of opinon that the accused has not been misled or prejudiced in his defence by such error or omission, shall amend the indictment or count as may be necessary.

3. The trial in either of these cases may then proceed in all respects as if the indictment or count had been originally framed as amended: Provided that if the court is of opinion that the accused has been misled or prejudiced in his defence by any such variance, error, omission or defective statement, but that the effect of such misleading or prejudice might be removed by adjourning or postponing the trial, the court may in its discretion make the

amendment and adjourn the trial to a future day in the same sittings, or discharge the jury and postpone the trial to the next sittings of the court, on such terms as it thinks just.

4. In determining whether the accused has been misled or prejudiced in his defence the court which has to determine the question shall consider the contents of the depositions, as well as the other circumstances of the case.

5. Provided that the propriety of making or refusing to make any such amendment shall be deemed a question for the court, and that the decision of the court upon it may be reserved for the Court of Appeal, or may be brought before the Court of Appeal like any other decision on a point of law. R.S.C., c. 174, ss. 237, 238, 239.

Sec. 29 relates to the mode of taking objections to an indictment for any defect of the statement of the charge apparent on its face.

Secs. 733 and 734 relate to motions in arrest of judgment.

Sec. 743 relates to reserving questions of law.

An indictment which does not set up in the statement of the charge all the essential ingredients is defective. Thus an indictment charging the publication of a defamatory libel, which does not state that the same was likely to injure the reputation of the libelled personally exposing him to public hatred, contempt or ridicule, or that it was designed to insult him, is defective because it omits an essential ingredient of the offence of defamatory libel, and this defect is a matter of substance, and therefore the indictment cannot be amended but must be quashed.

R. vs. Cameron (1898), 2 Can. C.C. 173.

Where the false pretence was erroneously laid in an indictment as being that there was in store "a large quantity of beans—to wit, 2,680 bushels of beans," instead of that there was in store "2,680 bushels of beans," as appeared from the depositions taken at the preliminary inquiry, it was held that the trial judge might allow the indictment to be amended so as to conform with the proof. Although upon the indictment in its original form the charge would be merely upon a false pretence that there was in store "a large quantity of beans," and the number of bushels would not be required to be proved, the variance by reason of the amendment was not such as would mislead or prejudice the accused in his defence.

R. vs. Patterson (1895), 2 Can. C.C. 339.

See also R. vs. Doyle (1891), 2 Can. C.C. 335:

If the indictment is in such a form that it does not charge an offence the defect cannot be remedied by amendment.

R. vs. Flynn (1878), 18 N.B.R., 321.

R. vs. James (1871), 12 Cox C.C. 127.

In charging the offence of uttering a forged instrument, the indictment must aver that the accused made use of or uttered the instrument in question knowing it to have been forged.

R. vs. Weir (1900), 3 Can. C.C. 499.

Each count of an indictment must contain a statement of all the essential ingredients which constitute the offence charged; and a count of an indictment charging the accused with having, with intent to defraud, unlawfully made use of and uttered

a promissory note, alleged to have been made and signed by one of the defendants by procuration without lawful authority or excuse, and with intent to defraud, is defective if it does not also allege that the accused persons knew it to have been so made and signed.

R. vs. Weir (1900), 3 Can. C.C. 499.

Where, during the address to the jury by counsel for the accused, the counsel for the Crown makes a remark in the hearing of the jury, to the effect that the accused could have given evidence as to an alleged occurrence then being referred to, and it appears that the ascertaining of whether or not such occurrence took place is not in fact material to the issue, such comment is not a ground for ordering a new trial.

R. vs. Weir et al. (1899), 3 Can. C.C. 262.

851. **724. Amendment to be Endorsed on the Record.**—In case an order for amendment as provided for in the next preceding section is made it shall be endorsed on the record; and all other rolls and proceedings conected therewith shall be amended accordingly by the proper officer and filed with the indictment, among the proper records of the court. R.S.C., c. 174, s. 240.

915 **725. Form of Formal Record in such Case.**—If it becomes necessary to draw up a formal record in any case in which an amendment has been made as aforesaid, such record shall be drawn up in the form in which the indictment remained after the amendment was made, without taking any notice of the fact of such amendment having been made. R.S.C., c. 174, s. 243.

914 **726. Form of Record of Conviction or Acquittal.**—In making up the record of any conviction or acquittal on any indictment it shall be sufficient to copy the indictment with the plea pleaded thereto; without any formal caption or heading; and the statement of the arraignment and the proceedings subsequent thereto shall be entered of record in the same manner as before the passing of this Act, subject to any such alterations in the forms of such entry as are, from time to time, prescribed by any rule or rules of the superior courts of criminal jurisdiction respectively,—which rules shall also apply to such inferior courts of criminal jurisdiction as are therein designated. R.S.C., c. 174, s. 244.

959 **727. Jury retiring to consider Verdict.**—If the jury retire to consider their verdict they shall be kept under the charge of an officer of the court in some private place,

and no person other than the officer of the court who has charge of them shall be permitted to speak or to communicate in any way with any of the jury without the leave of the court.

2. Disobedience to the directions of this section shall not affect the validity of the proceedings: Provided that if such disobedience is discovered before the verdict of the jury is returned the court, if it is of opinion that such disobedience has produced substantial mischief, may discharge the jury and direct a new jury to be sworn or empanelled during the sitting of the court, or postpone the trial on such terms as justice may require.

960. **728. Jury Unable to Agree.**—If the court is satisfied that the jury are unable to agree upon their verdict, and that further detention would be useless, it may in its discretion discharge them and direct a new jury to be empanelled during the sittings of the court, or may postpone the trial on such terms as justice may require.

2. It shall not be lawful for any court to review the exercise of this discretion.

961. **729. Proceedings on Sunday.**—The taking of the verdict of the jury or other proceeding of the court shall not be invalid by reason of its happening on Sunday or on any other holiday. 63-64 V., c. 46. (*This section came into force 1st January, 1901.*)

The common law rule was otherwise.
See R. vs. Winsor (1866), 10 Cox C.C.
Notwithstanding this section, the conduct of a preliminary inquiry before a magistrate cannot legally be held on a Sunday. R. vs. Cavelier (1896), 1 Can. C.C. 124.

1008. **730. Woman Sentenced to Death while Pregnant.**—If sentence of death is passed upon any woman she may move in arrest of execution on the ground that she is pregnant. If such a motion is made the court shall direct one or more registered medical practitioners to be sworn to examine the woman in some private place, either together or successively, and to inquire whether she is with child of a quick child or not. If upon the report of any of them it appears to the court that she is so with child execution shall be arrested till she is delivered of a child, or until it is no longer possible in the course of nature that she should be so delivered.

1009. **731. Jury "de Ventre Inspiciendo" Abolished.**—After the commencement of this Act no jury *de ventre inspiciendo* shall be empanelled or sworn.

962. R. Blackley & Co. Co. 405. **732. Stay of Proceedings**—The Attorney-General may, at any time after an indictment has been found against any person for any offence, and before judgment is given thereon, direct the officer of the court to make on the record an entry that the proceedings are stayed by his direction, and on such entry being made all such proceedings shall be stayed accordingly.

2. The Attorney-General may delegate such power in any particular court to any counsel nominated by him.

1004. 1006. 1007. **733. Motion in Arrest of Judgment on Verdict of Guilty.**—If the jury find the accused guilty, or if the accused pleads guilty, the judge presiding at the trial shall ask him whether he has anything to say why sentence should not be passed upon him according to law; but the omission so to ask shall have no effect on the validity of the proceedings.

2. The accused may at any time before sentence move in arrest of judgment on the ground that the indictment does not (after any amendment which the court is willing to and has power to make) state any indictable offence.

3. The court may in its discretion either hear and determine the matter during the same sittings or reserve the matter for the Court of Appeal as herein provided. If the court decides in favour of the accused, he shall be discharged from that indictment. If no such motion is made, or if the court decides against the accused upon such motion, the court may sentence the accused during the sittings of the court, or the court may in its discretion discharge him on his own recognizance, or on that of such sureties as the court thinks fit or both, to appear and receive judgment at some future court or when called upon. If sentence is not passed during the sitting, the judge of any superior court before which the person so convicted afterwards appears or is brought, or if he was convicted before a court of general or quarter sessions, the court of general or quarter sessions at a subsequent sitting may pass sentence upon him or direct him to be discharged.

4. When any sentence is passed upon any person after a trial had under an order for changing the place of trial, the court may in its discretion, either direct the sentence

to be carried out at the place where the trial was had or order the person sentenced to be removed to the place where his trial would have been had but for such order, so that the sentence may be there carried out.

See secs. 629, 723 and 745.

When there is no conflict in the evidence, and it is either in favor of the accused, or does not establish his guilt, a verdict convicting the accused would not be supported by proper evidence, and would clearly be against the weight of evidence; and it is only in such cases, 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.

R. vs. Harris (1898), 2 Can. C.C. 75.

1010. **734. Judgment not to be arrested for Formal Defects.**—Judgment, after verdict upon an indictment for any offence, against this Act, shall not be stayed or reversed for want of a *similiter*,—nor by reason that the jury process has been awarded to a wrong officer, upon an insufficient suggestion,—nor for any misnomer or misdescription of the officer returning such process, or of any of the jurors,—nor because any person has served upon the jury who was not returned as a juror by the sheriff or other officer; and where the offence charged is an offence created by any statute, or subjected to a greater degree of punishment by any statute, the indictment shall, after verdict, be held sufficient, if it describes the offence in the words of the statute creating the offence, or prescribing the punishment, although they are disjunctively stated or appear to include more than one offence, or otherwise. R.S.C., c. 174, s. 246.

1011. **735. Verdict not to be Impeached for certain Omissions as to Jurors.**—No omission to observe the directions contained in any Act as respects the qualification, selection, balloting or distribution of jurors, the preparation of the jurors' book, the selecting of jury lists, the drafting panels from the jury lists or the striking of special juries, shall be a ground for impeaching any verdict, or shall be allowed for error upon any appeal to be brought upon any judgment rendered in any criminal case. R.S.C., c., 174 s. 247; as amended by 56 V., c. 32.

R. Cadin (2) 6 C.C.C. 587.

It has been held that this section has reference only to the procedure regarding the making of the jury lists and the formation of the panels under the provisions of the various provincial statutes relating to juries, but that it does not affect the procedure regarding the choosing or formation of a jury under the provisions of the Code from the panel returned by a sheriff.

R. vs. Boyd et al. (1896), R.J.Q., 2 Q.B. 284.

If an accused person omits to challenge a juror on the ground that such juror entertains a hostile feeling against him, he cannot, after a verdict of guilty has been brought in, demand on that ground to have the verdict quashed and a new trial ordered.

R. vs. Harris (1898), 2 Can. C.C. 75.

The fact that an accused person and one of the impannelled jurors have had an unpremeditated and innocent conversation, which could not bias the juror's opinion nor affect his judgment, will not void the verdict nor constitute a ground for granting a new trial, although such conversation is improper.

R. vs. Harris, supra.

See also R. vs. McGuire (1898), 34 C.L.J., 202.

966.

736. Insanity of Accused at time of Offence.—Whenever it is given in evidence upon the trial of any person charged with any indictable offence, that such person was insane at the time of the commission of such offence, and such person is acquitted, the jury shall be required to find, specially, whether such person was insane at the time of the commission of such offence, and to declare whether he is acquitted by it on account of such insanity; and if it finds that such person was insane at the time of committing such offence, the court before which such trial is had, shall order such person to be kept in strict custody in such place and in such manner as to the court seems fit, until the pleasure of the Lieutenant-Governor is known.

See sec. 11.

967. **737. Insanity of Accused on Arraignment or Trial.**—If at any time after the indictment is found, and before the verdict is given, it appears to the court that there is sufficient reason to doubt whether the accused is then, on account of insanity, capable of conducting his defence, the court may direct that an issue shall be tried, whether the accused is or is not then on account of insanity unfit to take his trial.

2. If such issue is directed before the accused is given in charge to a jury for trial on the indictment such issue shall be tried by any twelve jurors. If such issue is directed after the accused has been given in charge to a jury for trial on the indictment such jury shall be sworn to try this issue in addition to that on which they are already sworn.

3. If the verdict on this issue is that the accused is not then unfit to take his trial the arraignment or the trial shall proceed as if no such issue had been directed. If the ver-

dict is that he is unfit on account of insanity the court shall order the accused to be kept in custody till the pleasure of the Lieutenant-Governor of the province shall be known, and any plea pleaded shall be set aside and the jury shall be discharged.

4. No such proceeding shall prevent the accused being afterwards tried on such indictment. R.S.C., c. 174, ss. 252, and 255.

See sec. 657.

738. Custody of Persons formerly Acquitted for Insanity.—If any person before the passing of this Act, whether before or after the first day of July, one thousand eight hundred and sixty-seven, was acquitted of any such offence on the ground of insanity at the time of the commission thereof, and has been detained in custody as a dangerous person by order of the court before which such person was tried, and still remains in custody, the Lieutenant-Governor may make a like order for the safe custody of such person during pleasure. R.S.C., c. 174, s. 254.

739. Insanity of Person to be Discharged for want of Prosecution.—If any person charged with an offence is brought before any court to be discharged for want of prosecution, and such person appears to be insane, the court shall order a jury to be empanelled to try the sanity of such person, and if the jury so empanelled finds him insane, the court shall order such person to be kept in strict custody, in such place and in such manner as to the court seems fit, until the pleasure of the Lieutenant-Governor is known. R.S.C., c. 174, s. 256.

740. Custody of Insane Person.—In all cases of insanity so found, the Lieutenant-Governor may make an order for the safe custody of the person so found to be insane, in such place and in such manner as to him seems fit. R.S.C., c. 174, ss. 253 and 257.

741. Insanity of Person Imprisoned.—The Lieutenant-Governor, upon such evidence of the insanity of any person imprisoned in any prison other than a penitentiary for an offence, or imprisoned for safe custody charged with an offence, or imprisoned for not finding bail for good behaviour or to keep the peace, as the Lieutenant-Governor considers sufficient, may order the removal of such insane

person to a place of safe keeping; and such person shall remain there, or in such other place of safe keeping, as the Lieutenant-Governor from time to time orders, until his complete or partial recovery is certified to the satisfaction of the Lieutenant-Governor, who may then order such insane person back to imprisonment, if then liable thereto, or otherwise to be discharged. R.S.C., c. 174, s. 258.

PART LII.

APPEAL.

742. Appeal in criminal cases.
743. Reserving questions of law.
744. Appeal when no question is reserved.
745. Evidence for Court of Appeal.
746. Powers of Court of Appeal.
747. Application for a new trial.
748. New trial by order of Minister of Justice.
749. Intermediate effects of appeal.
750. Appeal to Supreme Court of Canada.
751. Appeals to Privy Council abolished.

1013.36. **742. Appeal in Criminal Cases.**—An appeal from the verdict or judgment of any court or judge having jurisdiction in criminal cases, or of a magistrate, proceeding under section seven hundred and eighty-five, on the trial of any person for an indictable offence, shall lie upon the application of such person if convicted, to the Court of Appeal in the cases hereinafter provided for, and in no others.

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2. Whenever the judges of the Court of Appeal are unanimous in deciding an apeal brought before the said court their decision shall be final. If any of the judges dissent from the opinion of the majority, an appeal shall lie from such decision to the Supreme Court of Canada as hereinafter provided.

Sec. 750 specifies the circumstances under which an appeal may be had to the Supreme Court of Canada in criminal cases. See also sec. 900, which deals with the statement of a case by justices for review.

The right of appeal in criminal cases to the Supreme Court of Canada from the decision of a Court of criminal appeal, is restricted to cases in which the conviction has been affirmed by the Court of Appeal, and then it may be had only in case one or more of the judges of the latter Court have dissented from the decision of the majority of the Court; and if, by the decision of the Court of Appeal, the conviction is set aside and

a new trial ordered, there is no appeal therefrom to the Supreme Court of Canada.

Viau vs. R. (1898), 2 Can. C.C. 540.

The dissent from the "opinion" of the majority by any of the judges of the Court of Appeal, which is necessary in order to confer the right of a further appeal to the Supreme Court of Canada, has reference to the "decision" or "judgment" of such majority in affirmance of a conviction; and where a majority of the Court of Appeal (two of them dissenting) in directing a new trial also expressed their concurrence with that part of the decision appealed from by which it was held that certain evidence was properly admitted at the trial, the latter decision is not reviewable by the Supreme Court of Canada.

Viau vs. R., supra:

The jurisdiction of a judge of the Supreme Court of Canada in matters of *habeas corpus* in any criminal case under any statute of the Dominion of Canada, is limited to an inquiry into the cause of commitment as disclosed by the warrant of commitment.

Ex parte MacDonald (1896), 3 Can. C.C. 10.

See also Re Trepannier (1885), 12 S.C.R. 111.

Re Sproule (1886), 12 S.C.R. 140.

An order made by the presiding judge of a criminal Superior Court, awarding costs against a private prosecutor in respect of an indictment for assault on which the grand jury found no bill, is not subject to review by or appeal to the Court in *banc*; and where the application for such an order has been made on the last day of the term of the criminal court, and judgment has been reserved thereon, the order may be legally made out of term *nunc pro tunc* as on the date of the application, the delay in such case being the act of the Court, and not being due to the neglect or fault of the applicant.

R. vs. Mosher (1899), 3 Can. C.C. 312.

The appeal from a summary conviction under the "Seamen's Act of Canada," for harboring and secreting a deserting seaman, comes under sec. 879, and not under this section; and in the Province of Quebec, such appeal should be taken to the Crown side, and not to the Appeal side of the Court of Queen's Bench of that province.

R. vs. O'Dea (1900), 3 Can. C.C. 410.

A reserved case can be started only by a Court or a judge having jurisdiction in criminal cases, or by a magistrate in proceedings under sec. 785.

R. vs. Hawes (1900), 37 C.L.J., 36.

The accused was a letter carrier, and being suspected of retaining letters containing money, a fictitious one was prepared, which, it was alleged, was afterwards found in his possession. He was arrested, and, after a preliminary inqury, was committed for trial. At the trial, counsel for the accused contended that the charge laid was not founded on the evidence adduced at the preliminary trial, inasmuch as the proof then taken did not show that the document stolen was a post-letter which had been deposited in the Post Office within the meaning of the Post Office Act and amendments thereto, or of sec. 326, par. (c), Criminal Code. The trial did not take place, but the trial judge reserved the question thus raised for the opinion of the Court. It was held that a question of law could only be reserved when there had been a trial and conviction.

R. vs. Trepannier (1901), 21 C.L.T., 248.

See also R. vs. Faderman, 1 Dennison C.C. 573.
R. vs. Paxton 2 L.C.J., 162.
Harris's Criminal Law p. 451.

R. v. Phinney (No 1) 6 C.C. Ca 469. 1014

743. Reserving Questions of Law.—No proceeding in error shall be taken in any criminal case begun after the commencement of this Act:

2. The court before which any accused person is tried may, either during or after the trial, reserve any question of law arising either on the trial or on any of the proceedings preliminary, subsequent, or incidental thereto, or arising out of the direction of the judge, for the opinion of the Court of Appeal in manner hereinafter provided.

3. Either the prosecutor or the accused may during the trial either orally or in writing apply to the court to reserve any such question as aforesaid, and the court, if it refuses so to reserve it, shall nevertheless take a note of such objection.

4. After a question is reserved the trial shall proceed as in other cases.

5. If the result is a conviction, the court may in its discretion respite the execution of the sentence or postpone sentence till the question reserved has ben decided, and shall in its discretion commit the person convicted to prison or admit him to bail with one or two sufficient sureties, in such sums as the court thinks fit, to surrender at such time as the court directs.

6. If the question is reserved, a case shall be stated for the opinion of the Court of Appeal.

A case may be reserved regarding an alleged defect in an indictment even after the accused person has pleaded guilty of the offence charged therein.

R. vs. Brown, L.R., 24 Q.B.D. 357.

A case was reserved for the opinion of a full Court in the following terms, "The defendant was tried before me in the above Court on the 12th day of October and the 9th day of November, 1894, upon a charge of keeping a disorderly house, to wit, a common betting-house in the village of Port Credit in the said county, on the 25th day of July 1894, within the meaning of secs. 197 and 198 of the Criminal Code 1892. The facts appear by the evidence at the trial and upon the commission issued herein; the whole of such evidence with the exhibits are attached, and form part of the case. Upon such evidence I convicted the defendant of the offence as charged, and reserved the case for the opinion of a court of appeal, being the Chancery Division of the High Court of Justice. The question for the opinion of the Court is as follows: Having regard to the evidence and the provisions of such sections, and also of the provisions of Code, ought the defendant to have been convicted? My judgment herein is attached hereto for the

information of the Court." Held, that the judge not having found the facts, and not having stated the questions of law intended to be reserved for the opinion of the Court, but reserving all the evidence adduced, the Court would not proceed with the case, but would remit it to the judge to be re-stated, with instructions to find the facts and to specify the question of law as to which he was in doubt, and which he reserved for the judgment of the Court.

R. vs. Giles (1894), 31 C.L.J., 23.

Notice of an application by the Crown for a new trial, and of the hearing of a case reserved on the Crown's application, where the accused has been acquitted at the trial, should be served upon the accused personally.

R. vs. Williams (1897), 3 Can. C.C. 9.

The authority of the solicitor acting for the accused in the trial proceedings is *prima facie* presumed to have terminated upon the latter's acquittal; and proof of service upon the solicitor in the case of an application by the Crown for a new trial, and in that of the hearing of a case reserved on the Crown's application, is insufficient in the absence of evidence rebutting such presumption.

R. vs. Williams, supra.

A reserved case may be granted under this section at any time, however remote from the date of the trial or judgment, if it is still possible that some beneficial result may accrue to the prisoner by a decision in his favor.

R. vs. Paquin (1898), 2 Can. C.C. 134.

Whether the judge presiding at a trial had jurisdiction to summarily try the accused is a "question of law" under this section, and may be the subject of a reserved case.

R. vs. Paquin, supra.

A reserved case should not be granted by the trial judge, unless he has some doubt in the matter upon which it is suggested that a question be reserved for the opinion of a Court of Appeal.

R. vs. Letang (1899), 2 Can. C.C. 505.

The question as to the order of addresses to the jury by counsel at the close of the evidence is not a question of law which may properly be reserved for the opinion of a court of appeal under this section.

Per Boyd, C. in R. vs. Connolly & McGreevy (1894), 1 Can. C.C. 468 at p. 489.

Where at a trial upon an indictment a verdict of guilty was returned, but a reserved case was granted upon a question of law, and the accused was admitted to bail, the condition of the recognizance taken being that accused would appear at the next sittings of the court "to receive sentence," the condition of the recognizance is not broken if the accused fails to appear after judgment is given on the third case quashing the conviction and ordering a new trial. The conviction having been set aside, the accused was entitled to presume that he would not be called for a witness, and the sureties were not bound for his appearance for any other purpose than to receive sentence.

R. vs. Hamilton (1899), 3 Can. C.C. 1.

See also R. vs. Whalen (1865), 1 C.L.J., 272.

R. vs. Ritchie (1865), 1 C.L.J., 272-273.

A question depending upon the facts or the weight of evidence cannot properly be made the subject of a reserved case under this section.

R. vs. McIntyre (1898), 3 Can. C.C. 413.

In a case in the Northwest Territories, a person was accused of having stolen cattle. The jury disagreed at the first trial, and the accused then asked for leave to withdraw his consent to be tried by a judge and jury, and requested that he should be tried by a judge summarily without a jury. The trial judge refused such application, and tried the accused with a jury, which brought in a verdict of guilty. Leave was then obtained to move the Court of Appeal to set aside the verdict, and for a new trial. Afterwards the trial judge reserved the following questions of law for the opinion of the Court of Appeal. (1) Whether on the facts stated the trial judge was bound to comply with the application of the accused to be tried summarily; and (2), whether under the circumstances stated the trial judge had jurisdiction to reserve this case. It was held, in answer to the first question, that the section of the Northwest Territories Act which applied, did not cast any imperative duty on a judge to try a case alone, but simply authorised him to assume the province of a jury with the consent of the accused, if he himself deemed it fit to do so; and in answer to the second question, it was held that under this section of the Code the trial judge had power on his own motion, or on the application of either party, to reserve the case.

R. vs. Brewster (1896), 32 C.L.J., 491.

The case of R. vs. Brewster, supra, was followed in R. vs Skelton (1898), 18 C.L.T. 205, where it was held that the trial judge had the right to refuse to allow the accused to withdraw his election to be tried by a jury.

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R. v. Toth 8 Can. Cr. Cas. 410.
R. v. Phinney (No. 1) 6 to 469
R. v. Parkin (No. 2) 6 to 597.
R. v. Kern 6 to 479.

744. Appeal when no Question Reserved.—If the court refuses to reserve the question, the party applying may move the Court of Appeal as hereinafter provided.

2. The Attorney-General or party so applying may, on notice of motion to be given to the accused or prosecutor, as the case may be, move the Court of Appeal for leave to appeal. The Court of Appeal may, upon the motion and upon considering such evidence (if any) as they think fit to receive, grant or refuse such leave.

3. If leave to appeal is granted, a case shall be stated for the opinion of the Court of Appeal as if the question had been reserved.

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4. If the sentence is alleged to be one which could not by law be passed, either party may without leave, upon giving notice of motion to the other side, move the Court of Appeal to pass a proper sentence.

5. If the court has arrested judgment, and refused to pass any sentence, the prosecutor may without leave make such a motion. 63-64 V., c. 46.

Where, in a charge of pocket-picking, the evidence in the opinion of a Court of Appeal goes no further than to support

a reasonable surmise or suspicion that the accused was guilty of the offence, and lacks the material ingredients necessary to establish guilt, the conviction will be quashed upon an appeal under secs. 744 and 746.

R. vs. Winslow (1899), 3 Can. C.C. 215.

A person convicted under the Summary Trial Clauses, of having kept a disorderly house constituting a nuisance, has no right of appeal other than by way of case reserved, or case stated under secs. 743 and 744.

See also R. vs. Burns (1901), 37 C.L.J., 228.

745. Evidence for Court of Appeal.—On any appeal or application for a new trial, the court before which the trial was had shall, if it thinks necessary, or if the Court of Appeal so desires, send to the Court of Appeal a copy of the whole or of such part as may be material of the evidence or the notes taken by the judge or presiding justice at the trial. The Court of Appeal may, if only the judge's notes are sent and it considers such notes defective, refer to such other evidence of what took place at the trial as it may think fit. The Court of Appeal may in its discretion send back any case to the court by which it was stated to be amended or restated. R.S.C., c. 174, s. 264.

See R. vs. Giles (1894), 31 C.L.J., 33, cited under sec. 743.

746. Powers of Court of Appeal.—Upon the hearing of any appeal under the powers hereinbefore contained, the Court of Appeal may—

(a.) confirm the ruling appealed from; or

(b.) if of opinion that the ruling was erroneous, and that there has been a mis-trial in consequence, direct a new trial; or

(c.) if it considers the sentence erroneous or the arrest of judgment erroneous, pass such a sentence as ought to have been passed or set aside any sentence passed by the court below, and remit the case to the court below with a direction to pass the proper sentence; or

(d.) if of opinion in a case in which the accused has been convicted that the ruling was erroneous, and that the accused ought to have been acquitted, direct that the accused shall be discharged, which order shall have all the effects of an acquittal; or

(e.) direct a new trial; or

(f.) make such other order as justice requires: Provided that no conviction shall be set aside nor any new trial directed, although it appears that some evidence was improperly admitted or rejected, or that something not according to law was done at the trial or some misdirection given, unless in the opinion of the Court of Appeal some

substantial wrong or miscarriage was thereby occasioned on the trial: Provided that if the Court of Appeal is of opinion that any challenge for the defence was improperly disallowed a new trial shall be granted.

2. If it appears to the Court of Appeal that such wrong or miscarriage affected some count only of the indictment the court may give separate directions as to each count and may pass sentence on any count unaffected by such wrong or miscarriage which stands good, or may remit the case to the court below with directions to pass such sentence as justice may require.

3. The order or direction of the Court of Appeal shall be certified under the hand of the presiding chief justice or senior puisne judge to the proper officer of the court before which the case was tried, and such order or direction shall be carried into effect. R.S.C., c. 174, s. 263.

An alleged confession was received in evidence after objection by the accused, but before the conclusion of the trial, the trial judge reversed his ruling, struck out the evidence of the alleged confession, and directed the jury to disregard it. Upon an appeal and application for a new trial the conviction was quashed and a new trial granted upon the ground that the judge, upon reversing his ruling, should have discharged the jury and impanneled a new one. It was also held that the Court to which the appeal was taken could not then determine the question as to the admissibility of the alleged confession.

R. vs. Sonyer (1898), 2 Can. C.C. 501.

Par. (d):—Where, in a charge of pocket-picking, the evidence in the opinion of a court of appeal goes no further than to support a reasonable surmise or suspicion that the accused was guilty of the offence, and lacks the material ingredients necessary to establish guilt, the conviction will be quashed upon an appeal under secs. 744 and 746.

R. vs. Winslow (1899), 3 Can. C.C. 215.

Par. (f):—The intention of this paragraph is that the improper admission of evidence shall not in itself constitute a sufficient reason for granting a new trial, and that such improper admission is not necessarily "a substantial wrong or miscarriage."

R. vs. Woods (1897), 2 Can. C.C. 159.

On a trial for murder, if the trial judge directs the jury that imminent peril of the prisoner's own life, or of the lives of his family, is a ground of justification for killing in defence of his household one of a number of persons committing an unprovoked assault upon him, but does not direct them that a reasonable apprehension of immediate danger of *grievous bodily harm* to the prisoner, or to his wife and family, is an equal justification, such omission constitutes a substantial wrong or miscarriage, and a new trial will be ordered, where, according to the evidence, the circumstances are such as to point much more to the latter ground of justification than to the former.

R. vs. Theriault (1894), 2 Can. C.C. 444.

An accused person has the right to have his case submitted to the jury without any comment being made by the trial judge regarding his failure to testify ; and although such comment is afterwards withdrawn, the making of the same is a substantial wrong to the accused, and if he is convicted he is entitled to a new trial by reason thereof.

R. vs. Coleman (1898), 2 Can. C.C. 523.

When a deposition of a deceased witness, taken on an inquiry before a magistrate, has been improperly admitted in evidence at the trial, and is of such a nature that it must have influenced the jury in their verdict, such improper admission is "a substantial wrong" which entitles the accused to a new trial.

R. vs. Hamilton (1898), 2 Can. C.C. 390.
See R. vs. Dixon (1897), 3 Can. C.C. 220.
Makin vs. Attorney-General for N.S.W. (1894), A.C. 57.
S.s. 3, R. vs. Hamilton (1899), 3 Can. C.C. 1.
R. vs. Earl (1894), 10 Man. L.R., 503.

R. Carlin (1902) 6 C. Cr. Ca. 557.

747. Application for a New Trial.—After the conviction of any person for any indictable offence the court before which the trial takes place may, either during the sitting or afterwards, give leave to the person convicted to apply to the Court of Appeal for a new trial on the ground that the verdict was against the weight of evidence. The Court of Appeal may, upon hearing such motion, direct a new trial if it thinks fit.

2. In the case of a trial before a Court of General or Quarter Sessions such leave may be given during or at the end of the session, by the judge or other person who presided at the trial.

It is within the province of a jury, after taking into consideration the circumstances of the case and the character and demeanor of the witnesses, to discredit some of the witnesses and reject their evidence, and to believe others and accept their evidence when there is a conflict in the evidence, but when there is any evidence to support the verdict, it will not be held by a Court of Appeal that the verdict is against the weight of evidence. When, however, there is no conflict in the evidence, and it either is undoubtedly in favor of the accused, or at least is not such as to establish his guilt, a verdict convicting him would not be supported by, nor be based upon proper evidence, but would manifestly be against the weight of evidence; and it is only in such cases, when 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.

R. vs. Harris (1898), 2 Can. C.C. 75.

In deciding whether there should be a new trial upon the ground that the verdict against the accused was against the weight of evidence, the question is whether or not the verdict is one which the jury, as reasonable men, ought not to have found ; and a new trial will not be granted merely because the trial judge is dissatisfied with the verdict, and is of the opinion that the accused should have been acquitted.

R. vs. Brewster (1896), 4 Can. C.C. 34.

1022. **748. New Trial by order of Minister of Justice.**—If upon any application for the mercy of the Crown on behalf of any person convicted of an indictable offence, the Minister of Justice entertains a doubt whether such person ought to have been convicted, he may, instead of advising His Majesty to remit or commute the sentence, after such inquiry as he thinks proper, by an order in writing direct a new trial at such time and before such court as he may think proper.

Secs. 746, 747 and 748 only deal with the right of the accused to have a new trial under certain circumstances, and do not contain any provision for a new trial at the instance of the Crown.
See R. vs. Sternaman (1898), 1 Can. C.C. 1.

1023. **749. Intermediate Effects of Appeal.**—The sentence of a court shall not be suspended by reason of any appeal, unless the court expressly so directs, except where the sentence is that the accused suffer death, or whipping. The production of a certificate from the officer of the court that a question has been reserved, or that leave has been given to apply for a new trial, or of a certificate from the Attorney-General that he has given leave to move the Court of Appeal, or of a certificate from the Minister of Justice that he has directed a new trial, shall be a sufficient warrant to suspend the execution of any sentence of death or whipping.

2. In all cases it shall be in the discretion of the Court of Appeal in directing a new trial to order the accused to be admitted to bail.

Since the coming into force of 63-64 Vic., c. 46, an Attorney-General no longer has power to grant leave to move the Court of Appeal for leave to appeal.
See sec. 744, s.s. 2, as now amended.

1024, 36. **750. Appeal to Supreme Court of Canada.**—Any person convicted of an indictable offence, whose conviction has been affirmed on an appeal taken under section seven hundred and forty-two may appeal to the Supreme Court of Canada against the affirmance of such conviction; and the Supreme Court of Canada shall make such rule or order thereon, either in affirmance of the conviction or for granting a new trial, or otherwise, or for granting or refusing such application, as the justice of the case requires, and shall make all other necessary rules and orders for carrying such rule or order into effect: Provided that no such appeal can be taken if the Court of Appeal is unanimous in affirm-

ing the conviction, nor unless notice of appeal in writing has been served on the Attorney-General within fifteen days after such affirmance or such further time as may be allowed by the Supreme Court of Canada or a judge thereof.

2. Unless such appeal is brought on for hearing by the appellant at the session of the Supreme Court during which such affirmance takes place, or the session next thereafter if the said court is not then in session, the appeal shall be held to have been abandoned, unless otherwise ordered by the Supreme Court or a judge thereof.

3. The judgment of the Supreme Court shall, in all cases, be final and conclusive. 50-51 V., c. 50, s. 1.

The right to appeal in criminal cases to the Supreme Court of Canada from the decision of a court of criminal appeal, is restricted to cases where the conviction has been confirmed by the Court of Appeal, and it then lies only if one or more of the judges of the latter court have dissented from the decision of the majority of the court; and if by the decision of the Court of Appeal the conviction is sustained, and a new trial ordered, there is no appeal therefrom to the Supreme Court of Canada.

Viau vs. R. (1898), 2 Can. C.C. 540.

The dissent from the "opinion" of the majority (see sec. 742) by any of the judges of the Court of Appeal, which is necessary in order to confer the right of a further appeal to the Supreme Court of Canada, has reference to the "decision" or "judgment" of such majority in affirmance of a conviction; and where a majority of the Court of Appeal in directing a new trial, also expressed their concurrence (two of them dissenting) with that part of the decision appealed from by which it was held that certain evidence was properly admitted, the latter decision was not reviewable by the Supreme Court of Canada.

R. vs. Viau, supra.

751. Appeals to Privy Council Abolished.—Notwithstanding any royal prerogative, or anything contained in *The Interpretation Act* or in *The Supreme and Exchequer Courts Act*, no appeal shall be brought in any criminal case from any judgment or order of any court in Canada to any court of appeal or authority, by which in the United Kingdom appeals or petitions to His Majesty in Council may be heard. 51 V., c. 43, s. 1.

PART LIII.

SPECIAL PROVISIONS.

752. Further detention of person accused.
753. Question raised at trial may be reserved for decision.
754. Practice in High Court of Justice for Ontario.
755. Commission of Court of Assize, etc.
756. Court of General Sessions.
757. Time for pleading to indictment in Ontario.
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760. Calendar of criminal cases in Nova Scotia.
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Ex par Wright 34 NB p 132. Ex par Grotian C.P.B. 100.

752. Further Detention of Person Accused.—Whenever any person in custody charged with an indictable offence has taken proceedings before a judge or criminal court having jurisdiction in the premises by way of *certiorari*, *habeas corpus* or otherwise, to have the legality of his imprisonment inquired into, such judge or court may, with or without determining the question, make an order for the further detention of the person accused, and direct the judge or justice under whose warrant he is in custody, or any other judge or justice to take any proceedings, hear such evidence, or do such further act as in the opinion of the court or judge may best further the ends of justice.

This section only applies where the *habeas corpus* has been issued in the same province in which the commitment was made. A court or judge of one province cannot direct the hearing of further evidence by a court or judge of another province.

R. vs. Defries, R. vs. Tamblyn (1894), 25 O.R. 645.

Where the warrant of arrest embodied in the return to a *habeas corpus*, shows on its face jurisdiction in the magistrate, affidavits are not admissible to controvert such fact if the offence charged be a criminal one.

R. vs. Defries, R. vs. Tamblyn, supra.

Where sentence has been passed by a court having general jurisdiction in the case, and the prisoner is detained in custody thereunder, the authority of the court to pass a sentence need not be set out by the jailer upon the return to a writ of *habeas corpus*. And even if the return does not specify such facts as show that the offence was of such a nature as to give the court in question jurisdiction to impose the punishment to which the accused person has been sentenced, the latter cannot be discharged upon *habeas corpus*.

R. vs. Burke (1898), 1 Can. C.C. 539.

See also in re Sproule 12 S.C.R. 140.
Brenan's case (1847), 10 Q.B. 502.
Re Ferguson (1891), 24 N.S.R. 106.
The failure to arraign a prisoner for trial at the sittings of the court at which he should have been tried does not entitle him to a discharge on *habeas corpus*.
R. vs. Wright (1896), 2 Can. C.C. 83.
Where at a summary trial the evidence regarding the commission of the alleged offence has been conflicting, and the term of the imprisonment imposed by the conviction has been in excess of that authorised by law, the judge before whom the case is brought on *habeas corpus*, should not exercise the powers conferred by this section, of making an order for the further detention of the accused.
R. vs. Randolph (1900), 4 Can. C.C. 165.

579. **753. Question raised at Trial may be Reserved for Decision.**—Any judge or other person presiding at the sittings of a court at which any person is tried for an indictable offence under this Act, whether he is the judge of such court or is appointed by commission or otherwise to hold such sittings, may reserve the giving of his final decision on questions raised at the trial; and his decision whenever given, shall be considered as if given at the time of the trial. R.S.C., c. 174, s. 269.

579. **754. Practice in High Court of Justice of Ontario.**—The practice and procedure in all criminal cases and matters in the High Court of Justice of Ontario which are not provided for in this Act, shall be the same as the practice and procedure in similar cases and matters heretofore. R.S.C., c. 174, s. 270.

600. **755. Commission of Court of Assize, etc.**—If any general commission for the holding of a court of assize and *nisi prius*, oyer and terminer or general gaol delivery is issued by the Governor-General for any county or district in the province of Ontario, such commission shall contain the names of the justices of the Supreme Court of Judicature for Ontario, and may also contain the names of the judges of any of the county courts in Ontario, and of any of His Majesty's counsel learned in the law duly appointed for the province of Upper Canada, or for the province of Ontario, and if any such commission is for a provisional judicial district such commission may contain the name of the judge of the district court of the said district.

2. The said courts shall be presided over by one of the justices of the said Supreme Court, or in their absence by one of such county court judges or by one of such counsel,

or in the case of any such district by the judge of such district court. R.S.C., c. 174, s. 271.

601. **756. Court of General Sessions.**—It shall not be necessary for any court of General Sessions in the province of Ontario to deliver the gaol of all prisoners who are confined upon charges of theft, but the court may leave any such cases to be tried at the next court of oyer or terminer and general gaol delivery, if, by reason of the difficulty or importance of the case, or for any other cause, it appears to it proper so to do. R.S.C., c. 174, s. 272.

602. **757. Time for Pleading to Indictment in Ontario.**—If any person is prosecuted in any division of the High Court of Justice for Ontario for any indictable offence, by information there filed, or by indictment there found or removed into such court, and appears therein in term time in person, or, in case of a corporation, by attorney, to answer to such information or indictment, such defendant, upon being charged therewith, shall not imparl to a following term, but shall plead or demur thereto within four days from the time of his appearance; and in default of his pleading or demurring within four days as aforesaid judgment may be entered against such defendant for want of a plea. R.S.C., c. 174, s. 273.

603. **758. Rule to Plead.**—If such defendant appears to such information or indictment by attorney, he shall not imparl to a following term, but a rule, requiring him to plead, may forthwith be given and served, and a plea to such information or indictment may be enforced, or judgment in default may be entered in the same manner as might have been done formerly in cases in which the defendant had appeared to such information or indictment by attorney in a previous term; but the court, or any judge thereof, upon sufficient cause shown for that purpose may allow further time for such defendant to plead or demur to such information or indictment. R.S.C., c. 174, s. 274.

604. **759. Delay in Prosecution.**—If any prosecution for an indictable offence, instituted by the Attorney-General for Ontario in the said court, is not brought to trial within twelve months next after the plea of not guilty has been pleaded thereto, the court in which such prosecution is depending, upon application made on behalf of any defendant

in such prosecution of which application twenty days' previous notice shall be given to such Attorney-General, may make an order authorizing such defendant to bring on the trial of such prosecution; and thereupon such defendant may bring on such trial accordingly unless a *nolle prosequi* is entered to such prosecution. R.S.C., c. 174, s. 275.

760. Calendar of Criminal Cases in Nova Scotia.—In the province of Nova Scotia a calendar of the criminal cases shall be sent by the Clerk of the Crown to the grand jury in each term, together with the depositions taken in each case and the names of the different witnesses. R.S.C., c. 174, s. 276; as amended by 63-64 V., c. 46. (*This section came into force 1st January*, 1901.)

See R. vs. Townshend (1896), 28 N.S.R. 468.
R. vs. Hamilton (1898), 2 Can. C.C. 178.

761. Criminal Sentence in Nova Scotia.—A judge of the Supreme Court of Nova Scotia may sentence convicted criminals on any day of the sittings at Halifax as well as in term time. R.S.C., c. 174, s. 277.

PART LIV.

SPEEDY TRIALS OF INDICTABLE OFFENCES.

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822. **762. Application.**—The provisions of this part do not apply to the North-west Territories or the district of Keewatin. 52 V., c. 47, s. 3.

823. **763. Definitions.**—In this part, unless the context otherwise requires,—

(a.) the expression "judge" means and includes,—

(i.) In the province of Ontario any judge of a county or district court, junior judge or deputy judge authorized to act as chairman of the general sessions of the peace.

(ii.) in the province of Quebec, in any district wherein there is a judge of the sessions, such judge of sessions, and in any district wherein there is no judge of sessions but wherein there is a district magistrate, such district magistrate, and in any district wherein there is neither a judge of sessions nor a district magistrate, the sheriff of such district;

(iii.) in each of the provinces of Nova Scotia, New Brunswick and Prince Edward Island, any judge of a county court;

(iv.) in the province of Manitoba the chief justice, or a puisne judge of the Court of King's Bench, or any judge of a county court;

(v.) in the province of British Columbia the chief justice or a puisne judge of the Supreme Court, or any judge of a county court;

(b.) the expression "county attorney" or "clerk of the peace" includes in the province of Ontario the County Crown Attorney, in the provinces of Nova Scotia, New Brunswick and Prince Edward Island, any clerk of a county court, and in the province of Manitoba, any Crown attorney, the prothonotary of the Court of King's Bench, and and deputy prothonotary thereof, any deputy clerk of the peace, and the deputy clerk of the Crown and pleas for any district in said province. 52 V., c. 47, s. 2; as amended by 58-59 V., c. 40, and 63-64 V., c. 46.

In the Province of Nova Scotia the County Judges' Criminal Court is not an inferior court subject to review upon *habeas corpus* of its decisions and proceedings; and the judge of such court has as to proceedings within the jurisdiction of that court the same powers as belong to a superior court judge.

R. vs. Burke (1898), 1 Can. C.C. 539.

The County Courts of New Brunswick are not Courts of Oyer and Terminer and General Jail Delivery.

R. vs. Wright (1896), 2 Can. C.C. 83.

In a district in the Province of Quebec in which there is a district magistrate the sheriff has no jurisdiction to try an

accused person under the provisions of the Code relating to the speedy trial of indictable offences.
R. vs. Paquin (1896), 2 Can. C.C. 134.

824. **764. Judge to be a Court of Record.**—The judge sitting on any trial under this part, for all the purposes thereof and proceedings, connected therewith or relating thereto, shall be a court of record, and in every province of Canada, except the province of Quebec, such court shall be called "The County Court Judge's Criminal Court" of the county or union of counties or judicial district in which the same is held.

2. The record in any such case shall be filed among the records of the court over which the judge presides, and as part of such records. 52 V., c. 47, s. 4.

825. **765. Offences Triable under this Part.**—Every person committed to gaol for trial on a charge of being guilty of any of the offences which are mentioned in section 539 as being within the jurisdiction of the General or Quarter Sessions of the Peace, may, with his own consent (of which consent an entry shall then be made of record), and subject to the provisions herein, be tried in any province under the following provisions out of sessions and out of the regular term or sittings of the court, whether the court before which, but for such consent, the said person would be triable for the offence charged, or the grand jury thereof, is or is not then in session, and if such person is convicted, he may be sentenced by the judge.

2. A person who has been bound over by a justice under the provisions of section six hundred and one and has either been unable to find bail or been surrendered by his sureties, and is in custody on such a charge, or who is otherwise in custody awaiting trial on such a charge, shall be deemed to be committed for trial within the meaning of this section, 63-64 V., c. 40. (*This section came into force 1st January*, 1901.)

This section relates to the election for a speedy trial on the part of a person already committed for trial before a Court of General or Quarter Sessions. Sec. 785 relates to cases in the Province of Ontario, in which a person accused before a police magistrate or a stipendiary magistrate may, upon being charged, elect to be tried by such magistrate. The words "committed to jail for trial," as used in this section, are not to be taken in a technical sense, and a person who has never really been received into custody at all may therefore claim the benefits of this section.
R. vs. Lawrence (1896), 1 Can. C.C. 295.
See also, R. vs. Burke (1893), 24 O.R. 64.

See also the remarks of Blackburn, L.J., in Mullins vs. Surrey (1881); 51 L.J., Q.B., 145, at p. 149.

But if, after electing for a speedy trial, his right to which is contested by the Crown, the accused takes no further steps, and is subsequently duly indicted at the next Court of Oyer and Terminer, his plea to such indictment will debar him from afterwards claiming a speedy trial under this section.

R. vs. Lawrence (1896), 1 Can. C.C. 295.

A person admitted to bail is "constructively in jail."

R. vs. Cameron (1897), 1 Can. C.C. 169.

Where, upon a preliminary inquiry, the justice finds that the evidence is sufficient to put the accused on his trial, and that it does not furnish such a strong presumption of guilt as to warrant a commitment for trial, and the accused is admitted to bail upon finding sureties for his appearance in answer to an indictment, but is subsequently rendered to the jury by the sureties under sec. 710, the person so rendered is not "committed to jail for trial" within the meaning of this section, and cannot be tried under the provisions for speedy trials at the County Judge's Criminal Court.

R. vs. Gibson (1896), 3 Can. C.C. 451.

In order that an accused person should have the right to elect to be tried without a jury at the County Judge's Criminal Court, he must have been "committed to jail for trial," and such court has no jurisdiction in a case in which the magistrate admitted the accused to bail in the first instance under sec. 601, without an order of committal.

R. vs. Smith (1898), 3 Can. C.C. 467.

The committal referred to in this section is a committal by the magistrate, and does not include a judge's order made under sec. 910, for the rendering of the accused to jail at the instance of his bondsmen.

R. vs. Smith, supra.

Consent does not confer jurisdiction, and the accused may, upon an appeal by way of case reserved, object to the jurisdiction which he himself has selected.

R. vs. Smith, supra.

It will be noticed that the Nova Scotia Court which decided the case of R. vs. Smith, did not follow the decision arrived at by a judge of the Supreme Court of British Columbia in the case of R. vs. Lawrence, cited supra.

§26. **766. Duty of Sheriff after Committal of Accused.**—Every sheriff shall, within twenty-four hours after any prisoner charged as aforesaid is committed to gaol for trial, notify the judge in writing that such prisoner is so confined, stating his name and the nature of the charge preferred against him, whereupon, with as little delay as possible, such judge shall cause the prisoner to be brought before him. 52 V., c. 47, s. 6.

2. Where the judge does not reside in the county in which the prisoner is committed, the notification required by this section may be given to the prosecuting officer, instead of to the judge, and the prosecuting officer shall in such case, with as little delay as possible, cause the prisoner to be brought

before him. 63-64 V., c. 46. (*This section came into force 1st January, 1901.*)

827 **767. Arraignment of Accused before Judge.**—The judge or such prosecuting officer upon having obtained the depositions on which the prisoner was so committed, shall state to him,—

(a.) that he is charged with the offence, describing it;

(b.) that he has the option to be forthwith tried before a judge without the intervention of a jury, or to remain in custody or under bail, as the court decides, to be tried in the ordinary way by the court having criminal jurisdiction.

2. If the prisoner has been brought before the prosecuting officer, and consents to be tried by the judge, without a jury, such prosecuting officer shall forthwith inform the judge, and the judge shall thereupon fix an early day for the trial and communicate the same to the prosecuting officer; and in such case the trial shall proceed in the manner provided by subsection 3.

3. If the prisoner has been brought before the judge and consents to be tried by him without a jury, the prosecuting officer shall prefer the charge against him for which he has been committed for trial, and if, upon being arraigned upon the charge, the prisoner pleads guilty, the prosecuting officer shall draw up a record as nearly as may be in one of the forms MM or NN in schedule one, such plea shall be entered on the record, and the judge shall pass the sentence of the law on such prisoner, which shall have the same force and effect as if passed by any court having jurisdiction to try the offence in the ordinary way.

4. If the prisoner demands a trial by jury, he shall be remanded to gaol.

5. Any prisoner who has elected to be tried by jury, may, notwithstanding such election, at any time before such trial has commenced, and whether an indictment has been preferred against him or not, notify the sheriff that he desires to re-elect, and it shall thereupon be the duty of the sheriff and judge or prosecuting officer to proceed as directed by section seven hundred and sixty-six, and thereafter unless the judge, or the prosecuting officer acting under subsection 2 of that section, is of opinion that it would not be in the interests of justice that the prisoner should be allowed to make a second election, the prisoner shall be proceeded against as if his said first election had not been made. 63-64 V., c. 46. (*This section came into force 1st January, 1901.*)

A person arraigned before a county court judge under sec. 766, and who thereupon demands a trial by jury, and elects not

to be tried forthwith by such judge without a jury, has no absolute right after remand to jury, to re-elect; nor has he any further option to elect in favor of a speedy trial, although the election made by him was made under mistake. And his reply upon arraignment, that "for the present" he elects to be tried by jury, is a sufficient election.

R. vs. Ballard (1897), 1 Can. C.C. 96.

The sheriff having once given the notice to the judge, and brought the prisoner before him, in accordance with section 766, is not bound to again do so on notice given by the prisoner that he desires to re-elect in favor of a speedy trial.

R. vs. Ballard, supra.

In R. vs. Prevost (1895), 4 B.C.R. 326, it was held that an accused person who has elected to be tried by a jury, and who has been committed to jail until the next assizes, may re-elect and have a speedy trial before a judge. An accused person had elected to be tried by a jury and had been committed for trial. On the first day of the assizes a motion was made for permission for the accused person to re-elect to be tried by the judge without a jury. The sheriff had not brought the accused person before the judge. The motion was refused.

R. vs. Williams (1898), 34 C.L.J. 429.

See also R. vs. Lawrence (1896), 5 B.C.R. 160.

It appears that as the "charge" in the County Judge's Criminal Court must under this section be prepared from the depositions, an accused person committed upon a preliminary inquiry at which he has waived the taking of depositions, has no right to elect to be tried by such court.

R. vs. Gibson (1896), 3 Can. C.C. 451.

768. Persons Jointly Accused.—If one of two or more prisoners charged with the same offence demands a trial by jury, and the other or others consent to be tried by the judge without a jury, the judge, in his discretion, may remand all the said prisoners to gaol to await trial by jury. 52 V., c. 47, s. 8.

769. Election after Refusal to be Tried by Judge.—If under Part LV. or Part LVI., any person has been asked to elect whether he would be tried by the magistrate or justices of the peace, as the case may be, or before a jury, and he has elected to be tried before a jury, and if such election is stated in the warrant of committal for trial, the sheriff and judge shall not be required to take the proceedings directed by this part. 52 V., c. 47, s. 9.

2. But if such person, after his said election to be tried by a jury, has been committed for trial he may, at any time before the regular term or sittings of the court at which such trial by jury would take place, notify the sheriff that he desires to re-elect whereupon it shall be the duty of the sheriff to proceed as directed by section seven hundred and sixty-six, and thereafter the person so committed shall be proceeded against as if his said election in the first instance had not been made. 53 V., c. 37, s. 30.

770. Continuance of Proceedings before another Judge.—Proceedings under this part commenced before any judge may, where such judge is for any reason unable to act, be continued before any other judge competent to try prisoners under this part in the same judicial district, and such last mentioned judge shall have the same powers with respect to such proceedings as if such proceedings had been commenced before him, and may cause such portion of the proceedings to be repeated before him as he shall deem necessary. 53 V., c. 37, s. 30.

771. Election after Committal under Part LV. or LVI.—If, on the trial under Part LV. or Part LVI. of this Act of any person charged with any offence triable under the provisions of this part, the magistrate or justices of the peace decide not to try the same summarily, but commit such person for trial, such person may afterwards, with his own consent, be tried under the provisions of this part. 52 V., c. 47, s. 10.

772. Trial of Accused.—If the prisoner upon being so arraigned and consenting as aforesaid pleads not guilty the judge shall appoint an early day, or the same day, for his trial, and the county attorney or clerk of the peace shall subpœna the witnesses named in the depositions, or such of them and such other witnesses as he thinks requisite to prove the charge, to attend at the time appointed for such trial, and the judge may proceeed to try such prisoner, and if he be found guilty sentence shall be passed as hereinbefore mentioned; but if he be found not guilty the judge shall immediately discharge him from custody, so far as respects the charge in question. 52 V., c. 47, s. 11.

773. Trial for Offences other than those for which Accused is Committed.—The county attorney or clerk of the peace or other prosecuting officer may, with the consent of the judge, prefer against the prisoner a charge or charges for any offence or offences for which he may be tried under the provisions of this part other than the charge or charges for which he has been committed to gaol for trial, although such charge or charges do not appear or are not mentioned in the depositions upon which the prisoner was so committed. 52 V., c. 47, s. 12.

774. Powers of Judge.—The judge shall, in any case tried before him, have the same power as to acquitting or

convicting, or convicting of any other offence than that charged, as a jury would have in case the prisoner were tried at a sitting of any court mentioned in this part, and may render any verdict which may be rendered by a jury upon a trial at a sitting of any such court. 52 V., c. 47, s. 13.

836. **775. Admission to Bail.**—If a prisoner elects to be tried by the judge without the intervention of a jury the judge may, in his discretion, admit him to bail to appear for his trial, and extend the bail, from time to time, in case the court be adjourned or there is any reason therefor; and such bail may be entered into and perfected before the clerk. 52 V., c. 47, s. 14.

837. **776. Bail in case of Election of Trial by Jury.**—If a prisoner elects to be tried by a jury the judge may, instead of remanding him to gaol, admit him to bail, to appear for trial at such time and place and before such court as is determined upon, and such bail may be entered into and perfected before the clerk. 52 V., c. 47, s. 15.

838. **777. Adjournment.**—The judge may adjourn any trial from time to time until finally terminated. 52 V., c. 47. s. 16.

An adjournment of a speedy trial may be made under this section in order to obtain the attendance of a material witness, although the party applying for the same had elected to proceed without such witness, and although the trial had commenced.

R. vs. Gordon (1898), 6 B.C.R. 160.

Notwithstanding this section, it is not competent for a judge trying a charge without a jury under the Speedy Trials sections of the Code, to postpone his decision on the first charge until he has heard the evidence on several other charges against the same accused person, and to then decide the question of guilt in all. Such a proceeding prejudices the accused in his defence, and entitles him to a new trial upon both charges. If the judge requires time for deliberation upon the first case after hearing the evidence, an adjournment may be made, but the trial of the subsequent charges must likewise be postponed.

R. vs. McBerny (1897), 3 Can. C.C. 339.

839. **778. Powers of Amendment.**—The judge shall have all powers of amendment which any court mentioned in this part would have if the trial was before such court. 52 V., c. 47, s. 17.

840. **779. Recognizance to Prosecute or give Evidence to apply to Proceedings under this Part.**—Any recog-

nizance taken under section five hundred and ninety-eight of this Act, for the purpose of binding a prosecutor or a witness, shall, if the person committed for trial elects to be tried under the provisions of this part, be obligatory on each of the persons bound thereby, as to all things therein mentioned with reference to the trial by the judge under this part, as if such recognizance had been originally entered into for the doing of such things with reference to such trial: Provided, that at least forty-eight hours, notice in writing shall be given either personally or by leaving the same at the place of residence of the persons bound by such recognizances as therein described, to appear before the judge at the place where such trial is to be had. 53 V., c. 37, s. 29.

780. Witnesses to Attend throughout Trial.—Every witness, whether on behalf of the prisoner or against him, duly summoned or subpœnaed to attend and give evidence before such judge, sitting on any such trial, on the day appointed for the same, shall be bound to attend and remain in attendance throughout the trial; and if he fails so to attend he shall be held guilty of contempt of court, and may be proceeded against therefor accordingly. 52 V., c. 47, s. 18.

781. Compelling Attendance of Witness.—Upon proof to the satisfaction of the judge of the service of subpœna upon any witness who fails to attend before him, as required by such subpœna, and upon such judge being satisfied that the presence of such witness before him is indispensable to the ends of justice, he may, by his warrant, cause the said witness to be apprehended and forthwith brought before him to give evidence as required by such subpœna, and to answer for his diregard of the same; and such witness may be detained on such warrant before the said judge; or in the common gaol, with a view to secure his presence as a witness; or, in the discretion of the judge, such witness may be released on recognizance with or without sureties, conditioned for his appearance to give evidence as therein mentioned, and to answer for his default in not attending upon the said subpœna, as for a contempt; and the judge may, in a summary manner, examine into and dispose of the charge of contempt against the said witness who, if found guilty thereof, may be fined or imprisoned, or both, such fine not to exceed one hundred dollars and such imprisonment to be in the common gaol, with or without hard labour, and not to exceed the term of ninety days, and he

may also be ordered to pay the costs incident to the execution of such warrant and of his detention in custody.

2. Such warrant may be in the form OO and the conviction for contempt in the form PP in schedule one to this Act, and the same shall be authority to the persons and officers therein required to act to do as therein they are respectively directed. 52 V., c. 47, s. 19.

PART LV.

SUMMARY TRIAL OF INDICTABLE OFFENCES.

782. Definitions.
783. Offences to be dealt with under this part.
784. When magistrate shall have absolute jurisdiction.
785. Summary trial in certain other cases.
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788. Punishment for certain other offences.
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792. Election of trial by jury to be stated on warrant of
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801. Result of hearing to be filed in court of sessions.
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805. Non-appearance of accused under recognizance.
806. Application of fines.
807. Forms to be used.
808. Certain provisions not applicable to this part.

771.

782. Definitions.—In this part, unless the context otherwise requires —

(a.) the expression "magistrate" means and includes—

(i.) in the provinces of Ontario, Quebec and Manitoba, any recorder, judge of a county court, being a justice of the peace, commissioner of police, judge of the sessions of the peace, police magistrate, district magistrate, or other functionary or tribunal, invested by the proper legis-

lative authority, with power to do alone such acts as are usually required to be done by two or more justices of the peace, and acting within the local limits of his or of its jurisdiction;

(ii.) in the provinces of Nova Scotia and New Brunswick, any recorder, judge of a county court, stipendiary magistrate or police magistrate, acting within the local limits of his jurisdiction, and any commissioner of police and any functionary, tribunal or person invested by the proper legislative authority with power to do alone such acts as are usually required to be done by two or more justices of the peace;

(iii.) in the provinces of Prince Edward Island and British Columbia and in the district of Keewatin, any two justices of the peace sitting together, and any functionary or tribunal having the powers of two justices of the peace;

(iv.) in the North-west Territories, any judge of the Supreme Court of the said territories, and any two justices of the peace sitting together, and any functionary or tribunal having the powers of two justices of the peace;

(v.) in all the provinces, where the defendant is charged with any of the offences mentioned in paragraphs (a) and (f) of section seven hundred and eighty-three, any two justices of the peace sitting together; provided that when any offence is tried by virtue of this sub-paragraph an appeal shall lie from conviction in the same manner as from summary convictions under Part LVIII., and that section eight hundred and seventy-nine and the following sections relating to appeals from such summary convictions shall apply to such appeal.

(b.) the expression "the common gaol or other place of confinement," in the case of any offender whose age at the time of his conviction does not, in the opinion of the magistrate, exceed sixteen years, includes any reformatory prison provided for the reception of juvenile offenders in the province in which the conviction referred to takes place, and to which by the law of that province the offender may be sent; and

(c.) the expression "property" includes everything included under the same expression or under the expression "valuable security," as defined by this Act, and in the case of any "valuable security," the value thereof shall be reckoned in the manner prescribed in this Act. R.S.C., c. 176, s. 2; as amended by 58-59 V., c. 40.

No appeal lies from the decision of a judge of the sessions, police magistrate, district magistrate, or other judicial officer mentioned in s.s. (a), par. (1), of this section, holding a "summary" trial under sec 783.

R. vs. Racine (1900), 3 Can. C.C. 446.

The Recorder of the City of Montreal may as a "magistrate" under s.s. (a), par. (1), of this section, summarily try and condemn a person keeping a disorderly house in a manner constituting a nuisance, to a period of imprisonment of six months and to a fine of $100.00, or, in default of payment of this fine, to six further months' imprisonment.

R. vs. Bougie (1899), 3 Can. C.C. 487.

As to the jurisdiction of a stipendiary magistrate in the Province of Nova Scotia, see R. vs. Brown (1898), 31 N.S.R., 401.

All persons appointed to judicial offices in Canada are required to take the oath of allegiance and of office before acting in their judicial capacity, and a person temporarily appointed to be Deputy Recorder of the City of Montreal is under the same obligation.

Ex parte Mainville (1898), 1 Can. C.C. 528.

If an accused person takes objection at the trial to the qualification of the magistrate to act in the case because of his failure to take such oaths, public acquiescence in his exercise of judicial functions will not avail to make his judgment binding, and he cannot claim to be in the position of a judge *de facto*. And a person convicted under section 783 under such circumstances is entitled to be released from custody upon *habeas corpus*.

Ex parte Mainville, supra.

But if the qualifications of a judicial officer who has not taken the oaths of allegiance and officer, but who is acknowledged as the duly qualified incumbent of the office in question by the public, is not contested by the accused at the trial, the judgments of such judicial officer are val'd and binding as having been rendered by a judge *de facto*.

Ex parte Curry (1898), 1 Can. C.C. 532.

773.

783. Offences to be dealt with under this Part.—Whenever any person is charged before a magistrate.—

(a.) with having committed theft, or obtained money or property by false pretenses, or unlawfully received stolen property, and the value of the property alleged to have been stolen, obtained or received, does not, in the judgment of the magistrate, exceed ten dollars; or

~~(b) with having attempted to commit theft~~

~~(c) with having committed an aggravated assault by~~

(c.) with having committed an aggravated assault by unlawfully and maliciously inflicting upon any other person, either with or without a weapon or instrument, any grievous bodily harm, or by unlawfully and maliciously wounding any other person; or

(d.) with having committed an assault upon any female whatsoever, or upon any male child whose age does not, in the opinion of the magistrate, exceed fourteen years, such assault being of a nature which cannot, in the opinion of

the magistrate, be sufficiently punished by a summary conviction before him under any other part of this Act, and such assault, if upon a female, not amounting, in his opinion, to an asault with intent to commit a rape; or

(e.) with having assaulted, obstructed, molested, or hindered any peace officer or public officer in the lawful performance of his duty, or with intent to prevent the performance thereof; or

(f.) with keeping or being an inmate, or habitual frequenter of any disorderly house, house of ill-fame or bawdy-house; or

R. v. Smith 9 Can Cr. C. 338.

(g.) with using or knowingly allowing any part of any premises under his control to be used—

(i.) for the purpose of recording or registering any bet or wager, or selling any pool; or

(ii.) keeping, exhibiting, or employing, or knowingly allowing to be kept, exhibited or employed, any device or apparatus for the purpose of recording or registering any bet or wager, or selling any pool; or

(h.) becoming the custodian or depositary of any money, property, or valuable things staked, wagered or pledged; or

(i.) recording or registering any bet or wager, or selling any pool, upon the result of any political or municipal election, or of any race, or of any contest or trial of skill or endurance of man or beast,—

the magistrate may, subject to the provisions hereinafter made, hear and determine the charge in a summary way. R.S.C., c. 176, s. 3.

S.s. (a).—There is no appeal from a conviction by a police magistrate under this clause.

See sec. 808.

R. vs. Elgin (1896), 1 Can. C.C. 112.

R. vs. Justices of London (1892), 17 Cox C.C. 526.

S.s. (c).—A magistrate summarily trying an accused person with his consent, upon a charge of aggravated assault, has jurisdiction to award costs against the accused as well as to impose both fine and imprisonment. And imprisonment with hard labor may be imposed in default of payment of a fine and costs upon a summary trial of an indictable offence under Part LV. of the Code.

R. vs. Burtress (1900), 3 Can. C.C. 536.

A conviction upon a charge of aggravated assault, tried by a magistrate with consent of the accused, and the payment of the fine thereby imposed, will constitute a bar to a civil action for damages for such assault.

Hardigan vs Graham (1897), 1 Can. C.C. 437.

In a case of re Greene (1900), 4 Can. C.C. 182, it was held that the selling of cigars on Sunday night be prohibited either directly by a provincial legislature or by municipal by-laws authorised by such legislature, and that in that case such restriction was of a merely local nature, and was to be classed as a

police or municipal regulation, and not as a matter essentially pertaining to the "criminal law," and so within the sole competence of the Parliament of Canada.

In order to constitute "grievous bodily harm" it is not necessary that the injury should be either permanent or dangerous; and such an injury as seriously interferes with comfort or health is within the meaning of the term.

R. vs. Archibald (1898), 4 Can. C.C. 159.

Per Willes, J., in R. vs. Ashman (1858), 1 F. & F. 88.

See also R. vs. Clarence (1888), L.R., 22 Q.B.D. 23.

S.s. (f).—The meaning of the words "disorderly house" as used in this sub-section, is governed by the rule *noscitur a sociis*, and is therefore restricted to houses of the nature and kind of a house of ill-fame or bawdy-house.

R. vs. France (1898), 1 Can. C.C. 321.

This sub-section does not apply to the offence of keeping a common gaming house.

R. vs. France, supra.

But in ex parte Cook (1895), 3 Can. C.C. 72, which was a case decided by the Supreme Court of British Columbia by Drake, J., it was held that the term "disorderly house," as used in this sub-section, applies only to those cases which fall within the statutory definition of the term given in sec. 198; and that upon a charge under secs. 783 and 784, of keeping a "disorderly house," in that the accused is alleged to be keeping a gaming-house, a police magistrate has jurisdiction to hear and determine the charge summarily without the consent of the accused, but that the exercise of such jurisdiction is discretionary with the magistrate, and that he may instead proceed as in a preliminary inquiry, and commit the accused for trial.

See R. vs. Bougie (1899), 3 Can. C.C. 487.

The provisions of sec. 144 fixing the punishment for which anyone guilty of obstructing a peace officer in the discharge of his duty shall be liable "on summary conviction," are controlled by secs. 783 and 786, and the charge cannot be summarily tried by a magistrate except with the consent of the accused given in conformity with sec. 786.

R. vs. Crossen (1899), 3 Can. C.C. 152.

774.775. **784. When Magistrate shall have Absolute Jurisdiction.**—The jurisdiction of such magistrate is absolute in the case of any person charged with keeping or being an inmate or habitual frequenter of any disorderly house, house of ill-fame or bawdy-house, and does not depend on the consent of the person charged to be tried by such magistrate, nor shall such person be asked whether he consents to be so tried; nor do the provisions of this part affect the absolute summary jurisdiction given to any justice or justices of the peace in any case by any other part of this Act. R.S.C., c. 176, s. 4.

2. The jurisdiction of the magistrate is absolute in the case of any person who, being a seafaring person and only transiently in Canada, and having no permanent domicile therein, is charged, either within the city of Quebec a

limited for the purpose of the police ordinance, or within the city of Montreal as so limited, or in any other seaport city or town in Canada where there is such magistrate, with the commission therein of any of the offences hereinbefore mentioned, and also in the case of any other person charged with any such offence on the complaint of any such seafaring person whose testimony is essential to the proof of the offence; and such jurisdiction does not depend on the consent of any such person to be tried by the magistrate, nor shall such person be asked whether he consents to be so tried. R.S.C., c. 176, s. 5.

3. The jurisdiction of the magistrate in the provinces of Prince Edward Island and British Columbia, and in the North-west Territories, and the district of Keewatin, under this part, is absolute without the consent of the party charged except in cases coming within the provisions of section seven hundred and eighty-five, and except in cases under sections seven hundred and eighty-nine and seven hundred and ninety, where the person charged is not a person who under section seven hundred and eighty-four, subsection two, can be tried summarily without his consent. 58-59 V., c. 40; 63-64 V., c. 46. (*Sub-section 3 came into force 1st January, 1901.*)

A summary conviction by a magistrate in respect of a charge under Part LV. of the Code, of the commission of an indictable offence which he has absolute jurisdiction to try without the consent of the accused, is subject to be enquired into upon *habeas corpus* and *certiorari* proceedings, notwithstanding the provision of sec. 798 declaring that it shall have the same effect as a conviction upon an indictment.
R. vs. St. Clair (1900), 3 Can. C.C. 551.

If there was some evidence before the magistrate which would support a conviction unless he gave credence to the evidence given on behalf of the accused, the conviction will be sustained, the weight to be attached to the evidence not being a question reviewable upon *habeas corpus* and *certiorari*.
R. vs. St. Clair, supra.

S.s. 3 of this section making the jurisdiction of a magistrate in British Columbia absolute without the consent of the accused in cases of summary trial for theft of property under $10.00, etc., under sec. 783, s.s. 1, does not prevent an appeal when two justices of the peace exercise powers of a magistrate under sec. 782. s.s. (a), pars. III. and V.
R. vs. Wirth & Reed (1896), 5 B.C.R. 114.

785. Summary Trial in certain other Cases.—If any person is charged in the province of Ontario before a police magistrate or before a stipendiary magistrate in any county, district or provisional county in such province, with having committed any offence for which he may be tried at a Court

of General Sessions of the Peace, or if any person is committed to a gaol in the county, district or provisional county, under a warrant of any justice of the peace, for trial on a charge of being guilty of any such offence, such person may, with his own consent, be tried before such magistrate, and may, if found guilty, be sentenced by the magistrate to the same punishment as he would have been liable to if he had been tried before the Court of General Sessions of the Peace.

2. This section shall apply also to police and stipendiary magistrates of cities and incorporated towns in every other part of Canada, and to recorders where they exercise judicial functions.

3. Sections seven hundred and eighty-seven and seven hundred and eighty-eight do not extend or apply to cases tried under this section; but where the magistrate has jurisdiction by virtue of this section only, no person shall be summarily tried thereunder without his own consent. 63-64 V., c. 46. (*This section came into force 1st January, 1901.*)

Theft from the person is an indictable offence (see sec. 344) and therefore though the prisoner be charged with stealing a sum less than $10.00, he may be summarily tried by a magistrate without his consent. In such a case if the accused consents to be tried by a police magistrate, and is convicted, sec. 787 does not apply, but the magistrate has jurisdiction to inflict fourteen years' imprisonment.

R. vs. Conlin (1897), 1 Can. C.C. 41.

The case above cited was decided before this section was amended by the addition of sub-sec. 2 and 3.

Where a person accused of carnally knowing a girl under fourteen years of age, consented to be tried summarily by a police magistrate, and was acquitted, it was held that the magistrate had no power to try the accused upon a new information under sec. 259, charging indecent assault on the same facts, as he might have been convicted of this offence under the first information.

Anon (1901), 37 C.L.J., 242.

See also R. vs. Gibson (1898), 2 Can. C.C. 302.

786. Proceedings on Arraignment of Accused.—Whenever the magistrate, before whom any person is charged as aforesaid, proposes to dispose of the case summarily under the provisions of this part, such magistrate after ascertaining the nature and extent of the charge, but before the formal examination of the witnesses for the prosecution, and before calling on the person charged for any statement which he wishes to make, shall state to such person the substance of the charge against him, and (if the charge is not one that can be tried summarily without the consent of the accused) shall then say to him these words, or words to the like effect: "Do you consent that the

charge against you shall be tried by me, or do you desire that it shall be sent for trial by a jury at the (*naming the court at which it can probably soonest be tried*);" and if the person charged consents to the charge being summarily tried and determined as aforesaid, or if the power of the magistrate to try it does not depend on the consent of the accused, the magistrate shall reduce the charge to writing and read the same to such person, and shall then ask him whether he is guilty or not of such charge. If the person charged confesses the charge the magistrate shall then proceed to pass such sentence upon him as by law may be passed in respect to such offence, subject to the provisions of this Act; but if the person charged says that he is not guilty, the magistrate shall then examine the witnesses for the prosecution, and when the examination has been completed, the magistrate shall inquire of the person charged whether he has any defence to make to such charge, and if he states that he has a defence the magistrate shall hear such defence, and shall then proceed to dispose of the case summarily. R.S.C., c. 176, ss. 8 and 9.

The accused was committed for trial "for that he did offer for sale a certain lottery ticket" contrary to sec. 205 (b). He was arraigned, and elected to be tried summarily. On the day set for the trial the Crown prosecutor caused an amended charge, which charged him with selling lottery tickets, and causing them to be sold, to be read to the accused for the purpose of having him plead thereto. The accused refused to plead to the amended charge, and would consent to be tried summarily only upon the original charge. The Court sustained this objection.

R. vs. Woods (1898), 19 C.L.T., 18.
See also R. vs. Brown (1898), 31 N.S.R. 401.
R. vs. Crossen (1899), 3 Can. C.C. 102.

787. Punishment for certain Offences under this Part.—In the case of an offence charged under paragraph (a) or (b) of section seven hundred and eighty-three, the magistrate, after hearing the whole case for the prosecution and for the defence, shall, if he finds the charge proved, convict the person charged and commit him to the common gaol or other place of confinement, there to be imprisoned, with or without hard labour, for any term not exceeding six months. R.S.C., c. 176, s. 10.

See R. vs. Conlin (1897), 29 O.R. 23, cited under sec. 785.

A person accused of the theft of a sum of money less than $10.00, not charged as a "stealing from the person" under sec. 344, is liable, on his summary trial with his own consent, before a police magistrate, is only liable to six months' imprisonment.

R. vs. Randolph (1900), 4 Can. C.C. 165.

no costs can be added to fines under this section.
R. Clark 2 O.R. 523.
R. Cyr 12 P.R. (Ont) 24.

781. **788. Punishment for certain other Offences.**—In any case summarily tried under paragraph (c), (d), (e), (f), (g), (h) or (i) or section seven hundred and eighty-three, if the magistrate finds the charge proved, he may convict the person charged and commit him to the common gaol or other place of confinement, there to be imprisoned, with or without hard labour, for any term not exceeding six months, or may condemn him to pay a fine not exceeding, with the costs in the case, one hundred dollars, or to both fine and imprisonment not exceeding the said sum and term: and such fine may be levied by warrant of distress under the hand and seal of the magistrate, or the person convicted may be condemned, in addition to any other imprisonment on the same conviction, to be committed to the common gaol or other place of confinement for a further term not exceeding six months, unless such fine is sooner paid. R.S.C., c. 176, s. 11.

x Ex par Mattie M. Perry per McLeod J

This section appears to authorize six months' imprisonment in default of payment of a fine, only when fine and imprisonment are conjointly imposed in the first instance.

R. vs. Stafford (1898), 1 Can. C.C. 239.

Where a person was convicted, under sec. 783, s.s. (f), of keeping a house of ill-fame, and was sentenced under this section to pay a fine of $100.00, it was held upon a motion on return of a writ of *habeas corpus* that the conviction was bad, as under this section a fine must not be for the full sum allowed thereby to be imposed for both fine and costs; and also that the conviction should have stated that there were no costs.

R. vs. Perry (1898), 35 C.L.J. 174.

See also R. vs. Cyr (1887), 12 Ont. P.R. 24.

Imprisonment with hard labor may be imposed in default of payment of a fine and upon a summary trial of an indictable offence under Part LV. of the Code.

R. vs. Burtress (1900), 3 Can. C.C. 536.

R. vs. Bougie (1899), 3 Can. C.C. 487.

x According to the decisions in R. vs. Horton (1898), 34 C.L.J. 42, and R. vs. Stafford (1898), 1 Can. C.C. 240 (see these cases cited under sec. 208), it seems that this section only authorizes both fine and six month's imprisonment in a case tried under sec. 783 s.s. (f), when both the fine and term of imprisonment are imposed together in the first instance.

By virtue of sec 783 s.s. (f), a stipendiary magistrate has power to summarily determine a charge of being an inmate of a house of ill-fame; and the punishment he may inflict therefor is that specified in this section, and is not limited by anything contained in sec. 208.

R. vs. Roberts (1901), 21 C.L.T. 314.

In R. vs. Archibald (1898), 4 Can. C.C. 159, which was decided before the Criminal Code Amendment Act of 1900 (63 Vict., chap. 46), it was held that on a charge of aggravated assault under sec. 783, sub-sec. (c), a police magistrate in Ontario, trying the case on the consent of the accused to be tried summarily, could impose as great a sentence as could have been imposed on a

trial on indictment at the General Sessions, and was not bound by this section to impose no greater sentence than six months' imprisonment.

R. Bowers (No 2) 6 C. Cr. Cas. 260.

782. **789. Proceedings for Offences in respect of Property worth over Ten Dollars.**—When any person is charged before a magistrate with theft or with having obtained property by false pretenses, or with having unlawfully received stolen property, and the value of the property stolen, obtained or received exceeds ten dollars, and the evidence in support of the prosecution is, in the opinion of the magistrate sufficient to put the person on his trial for the offence charged, such magistrate if the case appears to him to be one which may properly be disposed of in a summary way, shall reduce the charge to writing, and shall read it to the said person, and, unless such person is one who, under section seven hundred and eighty-four, subsection 2, can be tried summarily without his consent, shall then put to him the question mentioned in sei ion seven hundred and eighty-six, and shall explain to him that he is not obliged to plead or answer before such magistrate, and that it does not plead or answer before him, he will be committed for trial in the usual course. 63-64 V., c. 46. (*This section came into force 1st January, 1901.*)

R. Bowers. Supra.

783. **790. Punishment on plea of Guilty in such Case.**—If the person charged as mentioned in the next preceding section consents to be tried by the magistrate, the magistrate shall then ask him whether he is guilty or not guilty of the charge, and if such person says that he is guilty, the magistrate shall then cause a plea of guilty to be entered upon the proceedings, and sentence him to the same punishment as he would have been liable to if he had been convicted upon indictment in the ordinary way; and if he says that he is not guilty, he shall be remanded to gaol to await his trial in the usual course. 63-64 V., c. 46. (*This section came into force 1st January, 1901.*)

784. **791. Magistrate may decide not to Proceed Summarily.**—If, in any proceeding under this part, it appears to the magistrate that the offence is one which, owing to a previous conviction of the person charged, or from any other circumstance, ought to be made the subject of prosecution by indictment rather than to be disposed of summarily, such magistrate may, before the accused person has made his defence, decide not to adjudicate summarily upon the

case; but a previous conviction shall not prevent the magistrate from trying the offender summarily, if he thinks fit so to do. R.S.C., c. 176, s. 14.

A case which the magistrate has jurisdiction to try summarily without the consent of the accused, may, in his discretion, be proceeded with by way of preliminary inquiry, and the accused may then subsequently be committed for trial.
Ex parte Cook (1896), 3 Can. C.C. 72.
See In re R. vs. Burns (1901), 21 C.L.T. 236.

785. **792. Election of Trial by Jury to be stated on Warrant of Committal.**—If, when his consent is necessary, the person charged elects to be tried before a jury, the magistrate shall proceed to hold a preliminary inquiry as provided in Parts XLIV. and XLV., and if the person charged is committed for trial, shall state in the warrant of committal the fact of such election having been made. R.S.C., c. 176, s. 15.

786 **793. Full Defence Allowed.**—In every case of summary proceedings under this part the person accused shall be allowed to make his full answer and defence, and to have all witnesses examined and cross-examined by counsel or solicitor. R.S.C., c. 176, s. 16.

787. **794. Proceedings to be in open Court.**—Every court held by a magistrate for the purposes of this part shall be an open public court.

788. **795. Procuring Attendance of Witnesses.**—The magistrate before whom any person is charged under the provisions of this part may, by summons, require the attendance of any person as a witness upon the hearing of the case, at a time and place to be named in such summons, and such magistrate may bind, by recognizance, all persons whom he considers necessary to be examined, touching the matter of such charge, to attend at the time and place appointed by him and then and there to give evidence upon the hearing of such charge; and if any person so summoned, or required or bound as aforesaid, neglects or refuses to attend in pursuance of such summons or recognizance, and if proof is made of such person having been duly summoned as hereinafter mentioned, or bound by recognizance as aforesaid, the magistrate before whom such person should have attended may issue a warrant to compel his appearance as a witness. R.S.C., c. 176, s. 18.

789. **796. Service of Summons.**—Every summons issued under the the provisions of this part may be served by delivering a copy of the summons to the person summoned, or by delivering a copy of the summons to some inmate of such person's usual place of abode apparently over sixteen years of age; and every person so required by any writing under the hand of any magistrate to attend and give evidence as aforesaid, shall be deemed to have been duly summoned. R.S.C., c. 176, s. 19.

790. **797. Dismissal of Charge.**—Whenever the magistrate finds the offence not proved, he shall dismiss the charge, and make out and deliver to the person charged a certificate under his hand stating the fact of such dismissal. R.S.C., c. 176, s. 20.

791. **798. Effect of Conviction.**—Every conviction under this part shall have the same effect as a conviction upon indictment for the same offence. R.S.C., c. 176, s. 22.

A summary conviction by a magistrate of a person accused of an offence regarding which the magistrate has absolute jurisdiction without the consent of the accused, is subject to be inquired into upon *habeas corpus* and *certiorari* proceedings, notwithstanding the provision of this section. But if there was some evidence before the magistrate which would support a conviction unless he gave credence to the evidence given on behalf of the accused, the conviction will be sustained, the weight to be attached to the evidence not being a question which is reviewable upon *habeas corpus* and *certiorari*.
R. vs. St. Clair (1900), 3 Can. C.C. 551.

Clarke v Rutherford 5 C.C.C. 13.

792. **799. Certificate of Dismissal a bar to further Proceeding.**—Every person who obtains a certificate of dismissal or is convicted under the provisions of this part, shall be released from all further or other criminal proceedings for the same cause. R.S.C., c. 176, s. 23.

It has been decided in England, under a somewhat similar statute, that when a person accused of any charge has been summarily tried by a magistrate or justice, and the charge has been dismissed, the person so accused is entitled *ex debito justitiae* to the certificate of dismissal.
Hancock vs. Somes (1859), 1. E. & E. 795.
Costar vs. Hetherington (1859), 1. E. & E. 802.
But the certificate should only be given when the case has been fully heard on its merits; if it is granted in a case in which the charge has been withdrawn before the hearing it will not be a bar to later proceedings on account of the same offence.
Reed vs. Nutt (1890), L.R. 24 Q.B.D. 669.

1130. **800. Proceedings not to be Void for Defect in Form.**—No conviction, sentence or proceeding under the provisions of this part shall be quashed for want of form; and no warrant of commitment upon a conviction shall be held void by reason of any defect therein, if it is therein alleged that the offender has been convicted, and there is a good and valid conviction to sustain the same. R.S.C., c. 176, s. 24.

A conviction upon a summary trial of an indictable offence, whereby it is adjudged that, in addition to the imprisonment ordered the accused do "pay a fine of $5.00 to be paid and applied according to law," is invalid for want of any adjudication of forfeiture of the fine, and the accused imprisoned upon a warrant of commitment based thereon should be discharged upon *habeas corpus*.

R. vs. Burtress (1890), 3 Can. C.C. 536.

See also R. vs. Crowell (1897), 1 Can. C.C. 34.

In the case of R. vs. Gibson (1898), 2 Can. C.C. 302, it was held per Rose, J., that a conviction for "unlawfully procuring or attempting to procure" a girl for the purposes of prostitution, was void for duplicity and for uncertainty; and that this section did not validate a defective commitment, if it recited a conviction which was invalid on its face.

Where a conviction by a police magistrate on a summary trial of the accused under Part LV. of the code imposes a longer term of imprisonment than is authorized by law, the warrant of commitment cannot be amended, as in such a case there is not a good and valid conviction to sustain the same.

R. vs. Randolph (1900), 4 Can. C.C. 165.

1133 **801. Result of Hearing to be Filed in Court of Sessions.**—The magistrate adjudicating under the provisions of this part shall transmit the conviction, or a duplicate of the certificate of dismissal, with the written charge, the depostions of witnesses for the prosecution and for the defence, and the statement of the accused to the clerk of the peace or other proper officer for the district, city, county or place wherein the offence was committed, there to be kept by the proper officer among the records of the general or quarter sessions of the peace or of any court discharging the functions of a court of general or quarter sessions of the peace. 1 Ed. VII., c. 42.

Sub-section 2 of this section, as enacted by 63-64 Vic., c. 46, was repealed by 1 Ed. VII., c. 42, as from the first day of January, 1901.

The sub-section read as follows "This section shall not apply to police magistrates, stipendiary magistrates, or recorders of cities or incorporated towns."

If a conviction has been filed by a magistrate under this section in a Court of superior criminal jurisdiction, a motion may be made to quash the same without the necessity of a writ of *certiorari*.

R. vs. Asheroft (1899), 2 Can. C.C. 385.

See also R. vs Monaghan (1897), 2 Can. C.C. 488.

794. **802. Evidence of Conviction or Dismissal.**—A copy of such conviction, or of such certificate of dismissal, certified by the proper officer of the court, or proved to be a true copy, shall be sufficient evidence to prove a conviction or dismissal for the offence mentioned therein, in any legal proceedings. R.S.C., c. 176, s. 26.

795. **803. Restitution of Property.**—The magistrate by whom any person has been convicted under the provisions of this part may order restitution of the property stolen, or taken or obtained by false pretenses, in any case in which the court before whom the person convicted would have been tried but for the provisions of this part, might by law order restitution. R.S.C., c. 176, s. 27.

796. **804. Remand for further Investigation.**—Whenever any person is charged before any justice or justices of the peace, with any offence mentioned in section seven hundred and eighty-three, and in the opinion of such justice or justices the case is proper to be disposed of summarily by a magistrate, as herein provided, the justice or justices before whom such person is so charged may, if he or they see fit, remand such person for further examination before the nearest magistrate in like manner in all respects as a justice or justices are authorized to remand a person accused for trial at any court, under Part XLV., section five hundred and eighty-six; but no justice or justices of the peace, in any province, shall so remand any person for further examination or trial before any such magistrate in any other province. Any person so remanded for further examination before a magistrate in any city, may be examined and dealt with by any other magistrate in the same city. R.S.C., c. 176, ss. 28, 29 and 30.

797. **805. Non-appearance of Accused under Recognizance.**—If any person suffered to go at large, upon entering into such recognizance as the justice or justices are authorized, under Part XLV., section five hundred and eighty-seven, to take on the remand of a person accused, conditioned for his appearance before a magistrate, does not afterwards appear, pursuant to such recognizance, the magistrate before whom he should have appeared shall certify, under his hand on the back of the recognizance, to the clerk of the peace of the district, county or place, or other proper officer, as the case may be, the fact of such non-

appearance, and such recognizance shall be proceeded upon in like maner as other recognizances; and such certificate shall be *prima facie* evidence of such non-appearance without proof of the signature of the magistrate thereto. R.S.C., c. 176, s. 31.

1036. **806. Application of Fines.**—(Repealed by 63-64 V., c. 46, s. 9, repeal to take effect 1st January, 1901.)

744. **807. Forms to be used.**—Every conviction or certificate may be in the form QQ, RR, or SS in schedule one hereto applicable to the case, or to the like effect; and whenever the nature of the case requires it, such forms may be altered by omitting the words stating the consent of the person to be tried before the magistrate, and by adding the requisite words, stating the fine imposed, if any, and the imprisonment, if any, to which the person convicted is to be subjected if the fine is not sooner paid. R.S.C., c. 176, s. 33.

758, 772. **808. Certain Provisions not applicable to this Part.**—The provisions of this Act relating to preliminary inquiries before justices, except as mentioned in sections eight hundred and four and eight hundred and five and of Part LVIII., shall not apply to any proceedings under this part. Nothing in this part shall affect the provisions of Part LVI., and this part shall not extend to persons punishable under that part so far as regards offences for which such persons may be punished thereunder. R.S.C., c. 176, ss. 34 and 35.

This section prevents the application of any of the provisions as to appeals from summary convictions (secs. 879 to 884), to convictions under Part LV. (secs. 782 to 808).

R. vs. Egan (1896), 11 Man. L.R. 134.

"This (section) is badly expressed and wrongly punctuated, but evidently it prevents the application of any of the provisions of Part LVIII., in which are found the sections as to appeals from summary convictions, to convictions under Part LV. This is made more clear by reference to the French version of the Act, and to R.S.C. c. 176, sec. 34 from which the clause is taken, and which prevented the application of The Summary Convictions Act to proceedings under the summary Trials Act."

Per Killam, J., in R. vs. Egan, supra.

See also R. vs. Bougie (1899), 3 Can. C.C. 487.

The prisoner was serving a sentence of 60 days in jail under a conviction by a police magistrate for being an inmate of a house of ill fame. A motion was made for a mandamus requiring the magistrate to admit her to bail, under sec. 880, pending her appeal against her conviction to the Court of General Sessions of the Peace. The magistrate was of the opinion that no appeal was open to the defendant.

The latter contended that the prosecution and conviction took place under secs. 207 and 208.

Held, that the prosecution was under sec. 783 and the conviction under sec. 788, which is in Part LV. of the Code; that the right of appeal which is given by sec. 873 is in Part LVIII., the provisions of which, by virtue of this section, do not apply to any proceedings under Part LV. The motion was therefore dismissed.

R. vs. Nixon (1899), 19 C.L.T. 344.

PART LVI.

TRIAL OF JUVENILE OFFENDERS FOR INDICTABLE OFFENCES.

809. Definitions.
810. Punishment for stealing.
811. Procuring appearance of accused.
812. Remand of accused.
813. Accused to elect how he shall be tried.
814. When accused shall not be tried summarily.
815. Summons to witness.
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822. Conviction and recognizances to be filed.
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825. Proceedings when penalty imposed on accused is not paid.
826. Costs.
827. Application of fines.
828. Costs to be certified by justices.
829. Application of this part.
830. No imprisonment in reformatory under this part.
831. Other proceedings against juvenile offenders not affected.

809. Definitions.—In this part, unless the context otherwise requires,—

(a.) The expression "two or more justices," or "the justices" includes,—

(i.) in the provinces of Ontario and Manitoba any judge of the county court being a justice of the peace, police magistrate or stipendiary magistrate, or any two justices of the peace, acting within their respective jurisdictions;

(ii.) in the province of Quebec any two or more justices

of the peace, the sheriff of any district, except Montreal and Quebec, the deputy sheriff of Gaspe, and any recorder, judge of the Sessions of the Peace, police magistrate, district magistrate or stipendiary magistrate acting within the limits of their respective jurisdictions;

(iii.) in the provinces of Nova Scotia, New Brunswick, Prince Edward Island, and British Columbia, and in the district of Keewatin, any functionary or tribunal invested by the proper legislative authority with power to do acts usually required to be done by two or more justices of the peace;

(iv.) in the North-west Territories, any judge of the Supreme Court of the said territories, any two justices of the peace sitting together, and any functionary or tribunal having the powers of two justices of the peace;

(b.) The expression "the common gaol or other place of confinement" includes any reformatory prison provided for the reception of juvenile offenders in the province in which the conviction referred to takes place, and to which, by the law of that province, the offender may be sent. R.S.C., c. 177, s. 2.

A judicial officer who has not taken the oaths of allegiance and office, and whose qualifications are on that ground objected to by an accused person before trial, cannot give a valid judgment; and the fact that he is generally recognized by the public as such judicial officer will not affect the position.

Ex parte Manville (1898), 1 Can. C.C. 528.

But if the qualifications of such judicial officer are not objected to at the time of the trial, his judgment in a criminal matter is valid and binding as having been in fact rendered by a *de facto* judge.

Ex parte Curry (1898), 1 Can. C.C. 532.

810. Punishment for Stealing.—Every person charged with having committed, or having attempted to commit any offence which is theft, or punishable as theft, and whose age, at the period of the commission or attempted commission of such offence, does not, in the opinion of the justice before whom he is brought or appears, exceed the age of sixteen years, shall, upon conviction thereof in open court, upon his own confession or upon proof, before any two or more justices, be committed to the common gaol or other place of confinement within the jurisdiction of such justices, there to be imprisoned, with or without hard labour, for any term not exceeding three months, or, in the discretion of such justices, shall forfeit and pay such sum, not exceeding twenty dollars, as such justices adjudge. R.S.C., c. 177, s. 3.

805. **811. Procuring Appearance of Accused.**—Whenever any person, whose age is alleged not to exceed sixteen years, is charged with any offence mentioned in the next preceding section, on the oath of a credible witness, before any justice of the peace, such justice may issue his summons or warrant, to summon or to apprehend the person so charged, to appear before any two justices of the peace, at a time and place to be named in such summons or warrant. R.S.C., c. 177, s. 4.

806. **812. Remand of Accused.**—Any justice of the peace, if he thinks fit, may remand for further examination or for trial, or suffer to go at large, upon his finding sufficient sureties, any such person charged before him with any such offence as aforesaid.

2. Every such surety shall be bound by recognizance conditioned for the appearance of such person before the same or some other justice or justices of the peace for further examination, or for trial before two or more justices of the peace as aforesaid, or for trial by indictment at the proper court of criminal jurisdiction, as the case may be.

3. Every such recognizance may be enlarged, from time to time, by any such justice or justices to such further time as he or they appoint; and every such recognizance not so enlarged shall be discharged without fee or reward, when the person has appeared according to the condition thereof. R.S.C., c. 177, ss. 5, 6 and 7.

807. **813. Accused to Elect how he shall be Tried.**—The justices before whom any person is charged and proceeded against under the provision of this part before such person is asked whether he has any cause to show why he should not be convicted, shall say to the person so charged, these words, or words to the like effect;

"We shall have to hear what you wish to say in answer to the charge against you; but if you wish to be tried by a jury, you must object now to our deciding upon it at once."

2. And if such person, or a parent or guardian of such person, then objects, no further proceedings shall be had under the provisions of this part; but the justices may deal with the case according to the provision set out in Parts XLIV. and XLV., as if the accused were before them thereunder. R.S.C., c. 177, s. 8.

808. **814. When Accused shall not be Tried Summarily.**—If the justices are of opinion, before the person charged

has made his defence, that the charge is, from any circumstance, a fit subject for prosecution by indictment, or if the person charged, upon being called upon to answer the charge, objects to the case being summarily disposed of under the provisions of this part, the justices shall not deal with it summarily, but may proceed to hold a preliminary inquiry as provided in Parts XLIV. and XLV.

2. In case the accused has elected to be tried by a jury, the justices shall state in the warrant of commitment the fact of such election having been made. R.S.C., c. 177, s. 9.

815. Summons to Witness.—Any justice of the peace may, by summons, require the attendance of any person as a witness upon the hearing of any case before two justices, under the authority of this part, at a time and place to be named in such summons. R.S.C., c. 177, s. 10.

816. Binding over Witness.—Any such justice may require and bind by recognizance every person whom he considers necessary to be examined, touching the matter of such charge, to attend at the time and place appointed by him and then and there to give evidence upon the hearing of such charge. R.S.C., c. 177, s. 11.

817. Warrant against Witness.—If any person so summoned or required or bound, as aforesaid, neglects or refuses to attend in pursuance of such summons or recognizance, and if proof is given of such person having been duly summoned, as hereinafter mentioned, or bound by recognizance, as aforesaid, either of the justices before whom any such person should have attended, may issue a warrant to compel his appearance as a witness. R.S.C., c. 177, s. 12.

818. Service of Summons.—Every summons issued under the authority of this part may be served by delivering a copy thereof to the person, or to some inmate, apparently over sixteen years of age, at such person's usual place of abode, and every person so required by any writing under the hand or hands of any justice or justices to attend and give evidence as aforesaid, shall be deemed to have been duly summoned. R.S.C., c. 177, s. 13.

819. Discharge of Accused.—If the justices, upon the hearing of any such case deem the offence not proved, or that it is not expedient to inflict any punishment, they shall

dismiss the person charged,—in the latter case on his finding sureties for his future good behaviour, and in the former case without sureties, and then make out and deliver to the person charged a certificate in the form TT in schedule one to this Act, or to the like effect, under the hands of such justices, stating the fact of such dismissal. R.S.C., c. 177, s. 14.

820. Form of Conviction.—The justices before whom any person is summarily convicted of any offence hereinbefore mentioned, may cause the conviction to be drawn up in the form UU in schedule one hereto, or in any other form to the same effect, and the conviction shall be good and effectual to all intents and purposes.

2. No such conviction shall be quashed for want of form, or be removed by *certiorari* or otherwise into any court of record; and no warrant of commitment shall be held void by reason of any defect therein, if it is therein alleged that the person has been convicted, and there is a good and valid conviction to sustain the same. R.S.C., c. 177, ss. 16 and 17.

821. Further Proceedings Barred.—Every person who obtains such certificate of dismissal, or is so convicted, shall be released from all further or other criminal proceedings for the same cause. R.S.C., c. 177, s. 15.

822. Conviction and Recognizances to be Filed.—The justices before whom any person is convicted under the provisions of this part shall forthwith transmit the conviction and recognizances to the clerk of the peace or other proper officer for the district, city, county or union of counties wherein the offence was committed, there to be kept by the proper officer among the records of the court of General or Quarter Sessions of the Peace, or of any other court discharging the functions of a court of General or Quarter Sessions of the Peace. R.S.C., c. 177, s. 18.

823. Quarterly Returns.—Every clerk of the peace, or other proper officer, shall transmit to the Minister of Agriculture a quarterly return of the names, offences and punishments mentioned in the convictions, with such other particulars as are, from time to time, required. R.S.C., c. 177, s. 19.

824. Restitution of Property.—No conviction under the authority of this part shall be attended with any for-

feiture, except such penalty as is imposed by the sentence; but whenever any person is adjudged guilty under the provisions of this part, the presiding justice may order restitution of property in respect of which the offence was committed, to the owner thereof or his representatives.

2. If such property is not then forthcoming, the justices, whether they award punishment or not, may inquire into and ascertain the value thereof in money; and, if they think proper, order payment of such sum of money to the true owner, by the person convicted, either at one time or by instalments, at such periods as the justices deem reasonable.

3. The person ordered to pay such sum may be sued for the same as a debt in any court in which debts of the like amount are, by law, recoverable, with costs of suit, according to the practice of such court. R.S.C., c. 177, ss. 20, 21 and 22.

818. **825. Proceedings when Penalty Imposed on Accused is not Paid.**—Whenever the justices adjudge any offender to forfeit and pay a pecuniary penalty under the authority of this part, and such penalty is not forthwith paid they may, if they deem it expedient, appoint some future day for the payment thereof, and order the offender to be detained in safe custody until the day so appointed, unless such offender gives security to the satisfaction of the justices, for his appearance on such day; and the justice may take such security by way of recognizance or otherwise in their discretion.

2. If at any time so appointed such penalty has not been paid, the same or any other justices of the peace may be warrant under their hands and seals, commit the offender to the common gaol or other place of confinement within their jurisdiction, there to remain for any time not exceeding three months, reckoned from the day of such adjudication. R.S.C., c. 177, ss. 23 and 24.

819. **826. Costs.**—The justices before whom any person is prosecuted or tried for any offence cognizable under this part may, in their discretion, at the request of the prosecutor or of any other person who appears on recognizance or summons to prosecute or give evidence against such person, order payment to the prosecutor and witnesses for the prosecution, of such sums as to them seem reasonable and sufficient, to reimburse such prosecutor and wit-

nesses for the expenses they have severally incurred in attending before them, and in otherwise carrying on such prosecution, and also to compensate them for their trouble and loss of time therein,—and may order payment to the constables and other peace officers for the apprehension and detention of any person so charged.

2. The justices may, although no conviction takes place, order all or any of the payments aforesaid to be made, when they are of opinion that the persons, or any of them, have acted in good faith. R.S.C., c. 177, ss. 25 and 26.

826-827. **827.** (Repealed by 63-64 V., c. 46, repeal took effect the authority of this part shall be paid and applied as follows, that is to say:—

(a.) In the province of Ontario to the justices who impose the same or the clerk of the county court, or the clerk of the peace, or other proper officer, as the case may be, to be by him or them paid over to the county treasurer for county purposes;

(b.) In any new district in the province of Quebec to the sheriff of such district as treasurer of the building and jury fund for such district to form part of such fund, and in any other district in the province of Quebec to the prothonotary of such district, to be applied by him, under the direction of the Lieutenant-Governor-in-Council towards the keeping in repair of the court-house in such district or to be added by him to the moneys or fees collected by him for the erection of a court-house or gaol in such district, so long as such fees are collected to defray the cost of such erection;

(c.) In the provinces of Nova Scotia and New Brunswick to the county treasurer, for county purposes; and

(d.) In the provinces of Prince Edward Island, Manitoba and British Columbia to the treasurer of the province. R.S.C., c. 177, s. 27.

827.—(Repealed by 63-64 V., c. 46, repeal to take effect 1st January, 1901.)

828. **828. Costs to be Certified by Justices.**—The amount of expenses of attending before the justices and the compensation for trouble and loss of time therein, and the allowances to the constables and other peace officers for the apprehension and detention of the offender, and the allowances to be paid to the prosecutor, witnesses and con-

stables for attending at the trial or examination of the offender, shall be ascertained by and certified under the hands of such justices; but the amount of the costs, charges and expenses attending any such prosecution, to be allowed and paid as aforesaid, shall not in any one case exceed the sum of eight dollars.

2. Every such order of payment to any prosecutor or other person, after the amount thereof has been certified by the proper justices of the peace as aforesaid, shall be forthwith made out and delivered by the said justices or one of them, or by the clerk of the peace or other proper officer, as the case may be, to such prosecutor or other person, upon such clerk or officer being paid his lawful fee for the same, and shall be made upon the officer to whom fines imposed under the authority of this part are required to be paid over in the district, city, county or union of counties in which the offence was committed, or was supposed to have been committed, who, upon sight of every such order, shall forthwith pay to the person named therein, or to any other person duly authorized to receive the same on his behalf, out of any moneys received by him under this part, the money in such order mentioned, and he shall be allowed the same in his accounts of such moneys. R.S.C., c. 177, ss. 28 and 29.

801. **829. Application of this Part.**—The provisions of this part shall not apply to any offence committed in the provinces of Prince Edward Island or British Columbia, or the district of Keewatin, punishable by imprisonment for two years and upwards; and in such provinces and district it shall not be necessary to transmit any recognizance to the clerk of the peace or other proper officer. R.S.C., c. 177, s. 30.

803. **830. No Imprisonment in Reformatory under this Part.**—The provisions of this part shall not authorize two or more justices of the peace to sentence offenders to imprisonment in a reformatory in the province of Ontario, R.S.C., c. 177, s. 31.

804. **831. Other Proceedings against Juvenile Offenders not Affected.**—Nothing in this part shall prevent the summary conviction of any person who may be tried thereunder before one or more justices of the peace, for any offence for which he is liable to be so convicted under any other

part of this Act or under any other Act. R.S.C., c. 177, s. 8, part.

PART LVII.

COSTS AND PECUNIARY COMPENSATION—RESTITUTION OF PROPERTY.

832. Costs.
833. Costs in case of libel.
834. Costs on conviction for assault.
835. Taxation of costs.
836. Compensation for loss of property.
837. Compensation to *bona fide* purchaser of stolen property.
838. Restitution of stolen property.

1044. **832. Costs.**—Any court by which and any judge under Part LIV or magistrate under Part LV by whom judgment is pronounced or recorded, upon the conviction of any person for treason of any indictable offence, in addition to such sentence as may otherwise by law be passed, may condemn such person to the payment of the whole or any part of the costs or expenses incurred in and about the prosecution and conviction for the offence of which he is convicted, if to such court or judge it seems fit so to do; and the court or judge may include in the amount to be paid such moderate allowance for loss of time as the court or judge, by affidavits or other inquiry and examination, ascertains to be reasonable; and the payment of such costs and expenses, or any part thereof, may be ordered by the court or judge to be made out of any moneys taken from such person on his apprehension (if such moneys are his own), or may be enforced at the instance of any person liable to pay or who has paid the same in such and the same manner (subject to the provisions of this Act) as the payment of any costs ordered to be paid by the judgment or order of any court of competent jurisdiction in any civil action or proceeding may for the time being be enforced: Provided, that in the meantime, and until the recovery of such costs and expenses from the person so convicted as aforesaid or from his estate, the same shall be paid and provided for in the same manner as if this section had not been passed; and any money which is recovered in respect thereof from the person so convicted, or from his estate,

shall be applicable to the reimbursement of any person or fund by whom or out of which such costs and expenses have been paid or defrayed. 63-64 V., c. 46. (*This section came into force 1st January, 1901.*)

1045.

833. Costs in Case of Libel.—In the case of an indictment or information by a private prosecutor for the publication of a defamatory libel the judgment is given for the defendant, he shall be entitled to recover from the prosecutor the costs incurred by him by reason of such indictment or information either by warrant of distress issued out of the said court, or by action or suit as for an ordinary debt. R.S.C., c. 174, s.s. 153-154.

1046. **834. Costs on Conviction for Assault.**—If a person convicted on an indictment for assault whether with or without battery and wounding, is ordered to pay costs as provided in section eight hundred and thirty-two he shall be liable unless the said costs are sooner paid, to three months' imprisonment, in addition to the term of imprisonment, if any, to which he is sentenced for the offence, and the court may, by warrant in writing, order the amount of such costs to be levied by distress and sale of the goods and chattels of the offender, and paid to the prosecutor, and the surplus, if any, arising from such sale, to the owner; and if such sum is so levied, the offender shall be released from such imprisonment. R.S.C., c. 174, ss. 248 and 249.

1047.

835. Taxation of Costs.—Any costs ordered to be paid by a court pursuant to the foregoing provisions shall, in case there is no tariff of fees provided with respect to criminal proceedings, be taxed by the proper officer of the court according to the lowest scale of fees allowed in such court in a civil suit.

2. If such court has no civil jurisdiction, the fees shall be those allowed in civil suits in a superior court of the province according to the lowest scale.

See R. vs. St. Louis (1897), R.J.Q., 6 Q.B. 389.

1048.

836. Compensation for Loss of Property.—A court on the trial of any person on an indictment may, if it thinks fit, upon the application of any person aggrieved and immediately after the conviction of the offender, award any sum of money, not exceeding one thousand dollars, by way

of satisfaction or compensation for any loss of property suffered by the applicant through or by means of the offence of which such person is so convicted; and the amount awarded for such satisfaction or compensation shall be deemed a judgment debt due to the person entitled to receive the same from the person so convicted, and the order for payment of such amount may be enforced in such and the same manner as in the case of any costs ordered by the court to be paid under section eight hundred and thirty-two. 33-34 V. (U.K.), c. 23, s. 4.

837. Compensation to "Bona Fide" Purchaser of Stolen Property.—When any prisoner has been convicted, either summarily or otherwise, of any theft or other offence, including the stealing or unlawfully obtaining any property, and it appears to the court, by the evidence, that the prisoner sold such property or part of it to any person who had no knowledge that it was stolen or unlawfully obtained, and that money has been taken from the prisoner on his apprehension, the court may, on application of such purchaser and on restitution of the property to its owner, order that out of the money so taken from the prisoner (if it is his), a sum not exceeding the amount of the proceeds of the sale be delivered to such purchaser. R.S.C., c. 174, s. 251.

838. Restitution of Stolen Property.—If any person who is guilty of any indictable offence in stealing, or knowingly receiving, any property, is indicted for such offence, by or on behalf of the owner of the property, or his executor or administrator, and convicted thereof, or is tried before a judge or justice for such offence under any of the foregoing provisions and convicted thereof, the property shall be restored to the owner or his representative.

2. In every such case, the court or tribunal before which such person is tried for any such offence, shall have power to award, from time to time, writs of restitution for the said property or to order the restitution thereof in a summary manner; and the court or tribunal may also, if it sees fit, award restitution of the property taken from the prosecutor, or any witness for the prosecution, by such offence although the person indicted is not convicted thereof if the jury declares, as it may do, or if, in case the offender is tried without a jury it is proved to the satisfaction of the court or tribunal by whom he is tried, that such property

belongs to such prosecutor or witness, and that he was unlawfully deprived of it by such offence.

3. If it appears before any award or order is made, that any valuable security has been *bona fide* paid or discharged by any person liable to the payment thereof, or being a negotiable instrument, has been *bona fide* taken or received by transfer or delivery, by any person, for a just and valuable consideration, without any notice or without any reasonable cause to suspect that the same had, by any indictable offence, been stolen, or if it appears that the property stolen has been transferred to an innocent purchaser for value who has acquired a lawful title thereto, the court or tribunal shall not award or order the restitution of such security or property.

4. Nothing in this section contained shall apply to the case of any prosecution of any trustee, banker, merchant, attorney, factor, broker or other agent intrusted with the possession of goods or documents of title to goods, for any indictable offence under sections three hundred and twenty or three hundred and sixty-three of this Act. R.S.C., c. 174, s. 250; as amended by 56 V., c. 32.

PART LVIII.

SUMMARY CONVICTIONS.

839. Interpretation.
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860. Disposal of penalties on conviction of joint offenders.
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862. Certificate of dismissal.
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866. Release from further proceedings.
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874. Endorsement of warrant of distress.
875. Distress not to issue in certain cases.
876. Remand of defendant when distress is ordered.
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879. Appeal.
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881. Proceedings on appeal.
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885. Proceedings when appeal fails.
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887. *Certiorari* not to lie when appeal is taken.
888. Conviction to be transmitted to appeal court.
889. Conviction not to be held invalid for irregularities.
890. Irregularities within the preceding section.
891. Protection of justice whose conviction is quashed.
892. Condition of hearing motion to quash.
893. Imperial Act superseded.
894. Judicial notice of proclamation.
895. Refusal to quash.
896. Conviction not to be set aside in certain cases.
897. Order as to costs.
898. Recovery of costs.
899. Abandonment of appeal.
900. Statement of case by justices for review.
901. Tender and payment.
902. Returns respecting convictions and moneys received.
903. Publication, etc., of returns.
904. Prosecutions for penalties under the preceding sections.
905. Remedies saved.
906. Defective returns.
907. Certain defects not to vitiate proceedings.
908. Preserving order in court.
909. Resistance to execution of process.

839. Interpretation.—In this part, unless the context otherwise requires—

(a.) the expression "justice" means a justice of the peace and includes two or more justices if two or more justices act or have jurisdiction, and also a police magistrate, a stipendiary magistrate and any person having the power or authority of two or more justices of the peace;

(b.) the expression "clerk of the peace" includes the proper officer of the court having jurisdiction in appeal under this part, as provided by section eight hundred and seventy-nine;

(c.) the expression "territorial division" means district, county, union of counties, township, city, town, parish or other judicial division or place;

(d.) the expression "district" or "county" includes any territorial or judicial division or place in and for which there is such judge, justice, justice's court, officer or prison as is mentioned in the context;

(e.) the expression "common gaol" or "prison" means any place other than a penitentiary in which persons charged with offences are usually kept and detained in custody. R.S.C., c. 178, s. 2.

When an accused person is summoned to appear before a justice of the peace having jurisdiction to conduct the proceedings without associate justices, other justices of the peace are not entitled to interfere in the preliminary inquiry or summary trial, or to be associated with the summoning justice, except at the latter's request; and a summary conviction by the magistrate who summoned the accused and heard the charge will be supported, although three other magistrates attended the hearing and purported to dismiss the charge, if the latter magistrates sat without the request or consent of the summoning magistrate.

R. vs. McRae (1897), 2 Can. C. C. 49.

A "lock-up" or small room for the temporary detention of prisoners is not a "common jail" or "prison."

In re Burke (1894), 27 N.S.R. 286.

706.

R. v. Wipper 5 C.C.C. 17:

840. Application.—Subject to any special provision otherwise enacted with respect to such offence, act or matter, this part shall apply to—

(a.) every case in which any person commits, or is suspected of having committed, any offence or act over which the Parliament of Canada has legislative authority, and for which such person is liable, on summary conviction, to imprisonment, fine, penalty or other punishment;

(b.) every case in which a complaint is made to a justice in relation to any matter over which the Parliament of Canada has legislative authority, and with respect to which such justice has authority by law to make any order for the payment of money or otherwise. R.S.C., c. 178, s. 3.

The offence of forcibly and unlawfully passing a turnpike gate without paying the legal toll is an offence against a provincial law, and concerning a subject which is under the exclusive con-

rol of the provincial legislature, and therefore in such a case o appeal lies from a conviction by a magistrate under sec. 879, hich only applies to offences over which the Federal Parliaent has legislative authority.
Lecours vs. Hurtubise (1889), R.J.Q., 8 Q.B. 439.
As to provincial Criminal statutes passed before Confederation, see R. vs. Halifax Electric Tramway Co. (1898), 1 Can. C. 424.

841. Time within which Proceedings shall be Commenced.—In the case of any offence punishable on summary conviction if no time is specially limited for making ny complaint, or laying any information in the Act or law elating to the particular case, the comp'aint shall be made the information shall be laid within six months from the me when the matter of complaint or information arose, xcept in the North-west Territories, where the time within hich such complaint may be made, or such information ay be laid, shall be extended to twelve months from the me when the matter of the complaint or information arose. V., c. 45, s. 5.
This section applies only to proceedings under the summary nviction clauses.
An information may be laid and proceedings taken thereon the prosecution by indictment of an indictable offence, alough the case is one which might have been summarily ed by a justice had the information been laid within the months' limit specified in this section, and although that riod has expired before the laying of the information.
R. vs. Edwards (1898), 2 Can. C.C. 96.
n indictment for rape includes the lesser charge of assault, l a verdict thereon of guilty of common assault is properly lowed by a conviction, although the information was laid re than six months after the offence was committed.
. vs. Edwards, supra.
ee also R. vs. West (1898), 1 Q.B.D. 174.
708, 709.

842. Jurisdiction.—Every complaint and information ll be heard, tried, determined and adjudged by one jusor two or more justices as directed by the Act or law on which the complaint or information is framed or by other Act or law in that behalf.

2. If there is no such direction in any Act or law then complaint or information may be heard, tried, determined and adjudged by any one justice for the territorial vision where the matter of the complaint or information ose: Provided that every one who aids, abets, counsels or ures the commission of any offence punishable on sumry conviction, may be proceeded against and convicted er in the territorial division or place where the principal nder may be convicted, or in that in which the offence iding, abetting, counselling or procuring was committed.

3. Any one justice may receive the information or com
plaint, and grant a summons or warrant thereon, and issu
his summons or warrant to compel the attendance of an
witnesses for either party, and do all other acts and matte
necessary preliminary to the hearing, even if by the statu
in that behalf it is provided that the information or com
plaint shall be heard and determined by two or more ju
tices.

4. After a case has been heard and determined one justi
may issue all warrants of distress or commitment thereo

5. It shall not be necessary for the justice who acts befo
or after the hearing to be the justice or one of the justic
by whom the case is to be or was heard and determine

6. If it is required by any Act or law that an informati
or complaint shall be heard and determined by two or mo
justices, or that a conviction or order shall be made by t
or more justices, such justices shall be present and acti
together during the whole of the hearing and determinati
of the case.

7. No justice shall hear and determine any case of assa
or battery, in which any question arises as to the title
any lands, tenements, hereditaments, or any interest ther
or accruing therefrom, or as to any bankruptcy or ins
vency, or any execution under the process of any court
justice. R.S.C., c. 178, ss. 4, 5, 6, 7, 8, 9, 12 and 73.

Under the Liquor License Ordinance, 1891-1892, a single j
tice of the peace in the N.W.T., had no power to convict o
charge of selling without a license.

R. vs. Walker (1894), N.W.T. Supreme Court Reports, 80.

The consanguinity of the justice within the ninth degree
the prosecutor where such consanguinity is denied by the
tice, and was unknown to the defendant until the trial, does
disqualify the justice.

Ex parte Victory (1894), 32 N.B.R. 249.

Disqualification of a justice arising from an action pen
against him ceases when he has recovered judgment, though
execution is issued, which is unsatisfied.

Ex parte Ryan (1894), 32 N.B.R. 377.

To invalidate a conviction on the ground of bias in the
victing magistrate, it is not necessary that actual bias sh
be proved, but a conviction will be quashed if the facts ju
a reasonable apprehension of bias. If the accused is a
of the disqualifying circumstances at the time of the he
before the magistrate, he should take objection then t
magistrate acting.

R. vs. Steele (1894), 2 Can. C.C. 433.

Where the prosecutor in summary proceedings is the m
trate's father, and the statute under which the prosecuti
brought entitles the prosecutor to a share of any fine imp
the justice is disqualified from adjudicating upon the case
a conviction made under such circumstances will be qua

although there is no conflicting evidence on the summary trial.
R. vs. Steele, supra.

A magistrate is not disqualified on the ground of pecuniary interest from adjudicating upon an offence under the Canada Temperance Act because he receives a fixed appropriation voted by Municipal Council, in addition to his regular salary as magistrate, for his services in connection with the enforcement of the Canada Temperance Act, and because such appropriation is paid out of the fund created by the imposition of fines thereunder.
Ex parte McCoy (1896), 1 Can. C.C. 410.

A magistrate is not disqualified from trying a charge of unlawfully selling liquors laid by a chief license inspector, because the assistant license inspector's wife is his niece, if the assistant inspector had in fact nothing to do with the laying of the charge, and took no part in the prosecution. Nor is a magistrate disqualified by reason of his being a rate payer in a municipality into the treasury of which any fine imposed in the case would be payable when realised.
Ex parte Flannagan (1897), 2 Can. C.C. 513.
See also ex parte Driscoll (1888), 27 N.B.R. 216.
Ex parte Gorman (1898), 34 C.L.J. 175.

Where the accused was convicted of having unlawfully assaulted the complainant, a married woman, who was the daughter of the convicting justice, the relationship was held to be a good ground for quashing the conviction; but as no objection had been taken by the accused, and as it appeared that the magistrate had acted in good faith, costs were not ordered against him.
R. vs. Langford (1888), 15 O.R. 52.

The fact that one of the convicting magistrates held the office of Liquor License Inspector in a district adjoining that in which he adjudicated upon a charge under the Liquor License Act of New Brunswick is no evidence of bias.
Ex parte Michaud (1896), 32 C.L.J. 779.

The fact that a *qui tam* action is pending against the magistrate at the suit of the husband of the convicted party is a ground of bias.
Ex parte Hannah Gallagher (1897), 33 C.L.J. 547.

But a *qui tam* action at the suit of a father of an accused person is not a sufficient ground.
Ex parte Thomas Gallagher (1897), 33 C.L.J. 547.

Where a magistrate was a brother-in-law of the chief inspector of licenses, who was an informant and prosecutor in the proceedings in which the conviction was made, it was held that this relationship was not such as to disqualify the magistrate from deciding the case.
R. vs. Major (1897), 22 C.L.J. 162.

The connection of a magistrate with a society, which supplied funds, part of which were used to make the purchase upon which a prosecution for illegal sale of liquor was based, is not a ground of disqualification where the magistrate is only an honorary member of the society, and is not entitled to take any part in the conduct of its affairs.
R. vs. Herrell (1898), 1 Can. C.C. 510.

When an acused person is summoned to appear before a justice of the peace having jurisdiction to conduct proceedings without associate justices, other justices are not entitled to interfere in the preliminary inquiry or summary trial, or to be associated with the summoning justice, except at the latter's request. And a summary conviction by the magistrate who summoned the ac-

cused and heard the charge will be supported, although three of the other magistrates attended the hearing and purported to dismiss the charge, if the latter magistrates sat without the request or consent of the summoning magistrate.

R. vs. McRae (1897), 2 Can. C.C. 49.

Justices of the peace, after having heard the evidence and reserved their decision in a case, cannot declare themselves without jurisdiction, and refuse to decide the matter upon the ground that the defendants had appeared and pleaded before another magistrate, since dead, and had not appeared anew before them; and if they refused to render judgment they can be compelled to do so by mandamus.

Lacerte vs. Pepin et al. (1896), R.J.Q. 10, S.C. 542.

The Code applies to prosecutions under the Liquor License Ordinance, except where otherwise provided by the Ordinance itself.

R. vs. Wilson (1894), 1 Can. C.C. 132.

Notwithstanding this section, where a prosecution for an offence under the Canada Temperance Act, is to be proceeded with before two justices, the information must be laid before two justices.

Ex parte White (1897), 3 Can. C.C. 94.

The issue of a summons, whether in relation to an offence punishable summarily or to an indictable offence, is a judicial act.

R. vs. Ettinger (1899), 3 Can. C.C. 387.

Notwithstanding this section, all information charging an offence under the Canada Temperance Act must be laid before two justices of the peace, who must concur in directing the issue of the summons; but it is not necessary that the information of the summons issued thereonshould be signed by more than one of such justices of the peace.

R. vs. Ettinger, supra.

See also Thorpe vs. Priestnall (1897), 1 Q.B.D. 159.

Champagne vs. Simard et al. (1895), R.J.Q. 7 S. C. 40.

R v Levesque 8 C Cr Ca 505: 711

843. Hearing before Justices.—The provisions of Parts XLIV. and XLV. of this Act relating to compelling the appearance of the accused before the justice receiving an information under section five hundred and fifty-eight and the provisions respecting the attendance of witnesses on a preliminary inquiry and the taking of evidence thereon, shall, so far as the same are applicable, except as varied by the sections immediately following, apply to any hearing under the provisions of this part: Provided that whenever a warrant is issued in the first instance against a person charged with an offence punishable under the provisions of this part, the justice issuing it shall furnish a copy or copies thereof, and cause a copy to be served on the person arrested at the time of such arrest.

2. Nothing herein contained shall oblige any justice to issue any summons to procure the attendance of a person charged with an offence by information laid before such justice whenever the application for any order may, by law, be made *ex parte*. R.S.C., c. 178, ss. 13 to 17 and 21.

In an Ontario case it was held that by virtue of the provisions of this section and of section 584 a judge of the High Court or a county court judge may order a subpoena to issue to witnesses in another province to compel their attendance upon an appeal to the General Sessions from the action of justices of the peace under secs. 879-881.

R. vs. Gillespie (1894), 16 Ont. P.R. 155.

The service of a summons at the defendant's usual place of abode while he is without the province is void, and the justice has no jurisdiction to convict in such a case.

Ex parte Donovan (1894), 32 N.B.R. 374.

See also ex parte Doherty (1894), 32 N.B.R. 375.

An information under oath which, on its face, purports to be the information of a person other than the person who has signed and sworn to the same is bad; and where a warrant of arrest based upon such defective information, has been issued to enforce the attendance of the accused before a magistrate, and the magistrate at the opening of the trial amends the information by inserting therein, in the presence and with the consent of the person who had signed and sworn to the information, the latter's name, or, in the place of the name so appearing thereon, it is necessary that the information should be resworn.

R. vs. McNutt (1896), 3 Can. C.C. 184.

Where an accused person who has been arrested and brought before a magistrate upon such a warrant takes objection to the amended information upon the ground that it should be resworn after the amendment, and has the objection noted, he does not then waive the objection by proceeding with the trial and cross-examining witnesses.

R. vs. McNutt, supra.

A summons may be issued upon an information before a justice of the peace for an offence punishable on summary conviction, although the information has not been sworn; but before a warrant can be issued to compel the attendance of the accused, there must be an information in writing and under oath. See sec. 558.

R.vs. McDonald (1896), 3 Can. C.C. 287.

If a magistrate's summons is issued on an information purporting to have been sworn at a specified time and place, and the accused appears thereon and pleads to the charge, the proceedings will not be quashed on *certiorari*, because it is afterwards shown that the information was not in fact sworn at such time and place.

Ex parte Sonier (1896), 2 Can. C.C. 121.

See also R. vs. Hughes (1879), L.R. 4, Q.B.D. 614.

844. Backing Warrants.—The provisions of section five hundred and sixty-five relating to the endorsement of warrants shall apply to the case of any warrant issued under the provisions of this part against the accused, whether before or after conviction, and whether for the apprehension or imprisonment of any such person. R.S.C., c. 178, s. 22; 52 V., c. 45, s. 4.

845. Informations and Complaints.—It shall not be necessary that any complaint upon which a justice may

make an order for the payment of money or otherwise shall be in writing, unless it is so required by some particular Act or law upon which such complaint is founded.

2. Every complaint upon which a justice is authorized by law to make an order, and every information for any offence or act punishable on summary conviction, may, unless it is herein or by some particular Act or law otherwise provided, be made or had without any oath or affirmation as to the truth thereof.

3. Every complaint shall be for one matter of complaint only, and not for two or more matters of complaint, and every information shall be for one offence only, and not for two or more offences; and every complaint or information may be laid or made by the complainant or informant in person, or by his counsel or attorney or other person authorized in that behalf. R.S.C., c. 178, ss. 23, 24 and 26.

In R. vs. Hazen (1893), 20 Ont. A.R. 633, the question arose whether an information which stated that the accused "within the space of 30 days last past, to wit on the 30th and 31st days of July, 1892.... did unlawfully sell intoxicating liquor without the license therefor by law required," contravened the provisions of this section. The Court of Appeal was evenly divided as to whether or not this information charged two offences or only one. But it was held by the whole Court that even if the information as worded did contravene sub-sec. 3 of this section, the defect was one "in substance or in form" within the meaning of sec. 847, and that it did not invalidate an otherwise valid conviction for a single offence.

Where an information charged the accused with having sold intoxicating liquor to two persons on the 5th of July, and to two persons on the 8th of July, in contravention of the Indian Act, and the justices, although the defendant's counsel objected to the information as so laid, heard evidence in respect of all the offences charged, then amended the information by substituting the 8th August for the 8th July, heard further evidence in respect of the substituted charges, and dismissed them and convicted the accused for selling to two persons on the 5th of July, the conviction was quashed.

In this case it was said that it was the duty of the justices when the objection was taken to have amended the information by striking out one or other of the charges, and to have heard the evidence applicable to the remaining charge alone.

R. vs. Alward (1894), 25 O.R. 519.

A conviction for using profane language on a public street is invalid unless the words complained of are therein set out.

R. vs. Smith (1899), 31 N.S.R. 411.

A conviction for a second offence under the Canada Temperance Act must show that a second offence was committed after the information had been laid for the first offence.

Ex parte LeBlanc (1895), 1 Can. C.C. 12.

See also Laliberte vs. Fortin (1893), R.J.Q. 3, S.C. 385. Reversed in Appeal, R.J.Q. 2, Q.B. 578.

723. **846. Certain Objections not to Vitiate Proceedings.**—No information, complaint, warrant, conviction or other proceeding under this part shall be deemed objectionable or insufficient on any of the following grounds, that is to say:

(a.) that it does not contain the name of the person injured, or intended or attempted to be injured; or

(b.) that it does not state who is the owner of any property therein mentioned; or

(c.) that it does not specify the means by which the offence was committed; or

(d.) that it does not name or describe with precision any person or thing:

Provided that the justice may, if satisfied that it is necessary for a fair trial, order that a particular, further describing such means, person, place or thing, be furnished by the prosecutor.

2. The description of any offence in the words of the Act, or any order, by-law, regulation or other document creating the offence, or any similar words, shall be sufficient in law. 63-64 V., c. 46. (*This section came into force 1st January, 1901.*)

The accused was prosecuted before justices of the peace "for selling intoxicating liquors in a quantity less than two gallons, in contravention of the defendant's license." It was held, that the omission in the complaint of a description of the license referred to, and of a statement of the quantity actually sold, was at most a mere irregularity which might be cured by amendment in the original court, or might be remedied, if it resulted in failure of justice, in the Superior Court by means of *certiorari*, but that it afforded no ground for prohibition to issue.

Laliberte vs. Fortin (1893), R.J.Q., 2 Q.P. 573.

A person who is charged under a wrong name, and who pleads without objecting to the same, is not entitled after conviction to be released under a writ of *habeas corpus* on the ground that she is not the person against whom the commitment was issued. The proper time to take objection to a wrong name under which an accused person is charged is before pleading to the charge, when the mistake may be corrected by an amendment.

Ex parte Corrigan (1899), 2 Can. C.C. 591.

See Champagne vs. Simard (1895), R.J.Q., 7 S.C. 40.

See R. vs. Hazen (1893), 20 Ont. A.R. 633; and R. vs. Alward (1894), 25 O.R. 519, cited under 845.

See sec. 613.

724. **847. Variance.**—No objection shall be allowed to any information, complaint, summons or warrant for any alleged defect therein, in substance or in form, or for any variance between such information, complaint, summons or warrant and the evidence adduced on the part of the informant or

complainant at the hearing of such information or complaint.

2. Any variance between the information for any offence or act punishable on summary conviction and the evidence adduced in support thereof as to the time at which such offence or act is alleged to have been committed, shall not be deemed material if it is proved that such information was, in fact, laid within the time limited by law for laying the same.

3. Any variance between the information and the evidence adduced in support thereof, as to the place in which the offence or act is alleged to have been committed, shall not be deemed material if the offence or act is proved to have been committed within the jurisdiction of the justice by whom the information is heard and determined.

R. v. McMillan 2 Pug 110: 4. If any such variance, or any other variance between the information, complaint, summons or warrant, and the evidence adduced in support thereof, appears to the justice present and acting at the hearing to be such that the defendant has been thereby deceived or misled, the justice may, upon such terms as he thinks fit, adjourn the hearing of the case to some future day. R.S.C., c. 178, s. 28.

Ex parte Gilbert 1 Pug 231.

713. **848. Execution of Warrant.**—A summons may be issued to procure the attendance, on the hearing of any charge under the provisions of this part, of a witness who resides out of the jurisdiction of the justices before whom such charge is to be heard, and such summons and a warrant issued to procure the attendance of a witness, whether in consequence of refusal by such witness to appear in obedience to a summons or otherwise, may be respectively served and executed by the constable or other peace officer to whom the same is delivered or by any other person, as well beyond as within the territorial division of the justice who issued the same. 51 V., c. 45, ss. 1 and 3.

714. **849. Hearing to be in open Court.**—The room or place in which the justice sits to hear and try any complaint or information shall be deemed an open and public court, to which the public generally may have access so far as the same can conveniently contain them. R.S.C., c. 178, s. 33.

R. v. O'Meara 5 C.C.C. 187. 715 **850. Counsel for Parties.**—The person against whom the complaint is made or information laid shall be admitted to make his full answer and defence thereto, and to have

the witnesses examined and cross-examined by counsel or attorney on his behalf.

2. Every complainant or informant in any such case shall be at liberty to conduct the complaint or information, and to have the witnesses examined and cross-examined, by counsel or attorney on his behalf. R.S.C., c. 178, ss. 34 and 35.

The accused is not denied the right to make "full answer and defence" to the charge by reason of the magistrate having stated, after hearing the evidence for the prosecution, that a denial on oath by the accused would not alter his opinion as to her guilt.

R. vs. McGregor (1895), 2 Can. C.C. 410.

A refusal to examine witnesses for the defence and to permit a cross-examination of the witnesses for the prosecution, is a clear miscarriage of justice, and a clear excess of jurisdiction which invalidates the conviction.

R. vs. Sproule (1887), 14 O.R. 375 at p. 384.

And see R. vs. Holland (1875), 37 U.C., Q.B. 214.

R. vs. Washington (1881), 46 U.C.Q.B. 221 at p. 233.

Where it is desired on behalf of the defence to show that a magistrate has an interest in the prosecution, the accused is entitled to call the magistrate as a witness; and if the latter refuses to be sworn, and the associate magistrate refuses to use his authority to compel him to be sworn, the defendant is thereby denied the right of making a "full answer and defence."

R. vs. Sproule (1887), 14 O.R. 375.

Where the presiding magistrate is called as a witness for the defence, but refuses to be sworn, a summary conviction made without his evidence should not be quashed, unless it is shown that the request to have the magistrate called as a witness was made in good faith, that the magistrate could give material evidence, and that the accused was therefore prejudiced by his refusal.

Ex parte Flannagan (1897), 2 Can. C.C. 513.

Where, in summary proceedings, it is desired to call the presiding magistrate as a witness, the application should be supported by an affidavit, stating not only that the magistrate is a necessary and material witness, and that the application is made in good faith, but also disclosing specifically what the party proposes to prove by the magistrate's testimony; and where on an application to quash a summary conviction on the ground that the magistrate refused to give evidence on the trial before himself, the Court is satisfied from the justice of the peace's affidavit, and from the evidence taken in the case, that the magistrate was not a material witness, and that the application to have him sworn as a witness was not made *bona fide*, the conviction will not be disturbed.

Ex parte Hebert (1898), 4 Can. C.C. 153.

716 **851. Witnesses to be on Oath.**—Every witness at any hearing shall be examined upon oath or affirmation, and the justice before whom any witness appears for the purpose of being examined shall have full power and authority to administer to every witness the usual oath or affirmation. R.S.C., c. 178, s. 47.

S. 851a added—6 Edw VII c. 5. (1906)

717. **852. Evidence.**—If the information or complaint in any case negatives any exemption, exception, proviso or condition in the statute on which the same is founded it shall not be necessary for the prosecutor or complainant to prove such negative, but the defendant may prove the affirmative thereof in his defence if he wishes to avail himself of the same. R.S.C., c. 178, s. 38.

Where the defence to a summary prosecution for selling liquor without a license is that the accused was entitled to do so under a statutory exception respecting registered druggists, and by statute the onus is expressly cast on the accused to prove himself within the exception, and provision is made for proving the register by the production of a printed copy thereof, the oral testimony of the accused that he is a duly registered druggist is not competent evidence of the fact, and the magistrate may disregard the same, although no objection was taken to the admission of such testimony.

R. vs. Herrell (1899), 3 Can. C.C. 15.

Both the service and the mode of service of the summons should be sworn to, and the judge should on reasonable grounds have come to the conclusion that there has been a sufficient interval since the service to permit the accused to obey it, before proceedings are allowed to be taken in the absence of the accused.

R. vs. Smith (1875), L.R. 10, Q.B. 604.
R. vs. Mabee (1889), 17 O.R. 194.
Read vs. Hunter (1888), 8 C.L.T. 428.

The existence of an exception nominated in the description of an offence created by statute must be negatived in order to maintain the charge; but if a statute creates an offence in general, with an exception by way of proviso in favor of certain persons or circumstances, the onus is on the accused to plead and prove himself within the proviso.

R. vs. Strauss (1897), 5 B.C.R. 486.

As to the distinction between a proviso and an exception, see Simpson vs. Ready (1844), 12 M. & W. 736, whereat p. 739, Baron Alderson said "there is a manifest distinction between a proviso and an exception. If an exception occurs in the description of the offence in the statute, the exception must be negatived, or the party will not be brought within the description. But if the exception comes by way of proviso, and does not alter the offence, but merely states what persons are to take advantage of it, then the defence must be specially pleaded, or may be given in evidence under the general issue according to circumstances."

It was held that the generality of the prohibition contained in a provincial statute, prohibiting the having in possession of certain game for the purposes of export, etc., was not to be limited by way of inference to game killed within the province

R. vs. Strauss (1897), 5 B.C.R. 486.

See also Price vs. Bradley (1885), L.R. 16, Q.B.D. 148.

718.

R v Lovegrove 8 C & Cr 505

853. Non-appearance of Accused.—In case the accused does not appear at the time and place appointed by any summons issued by a justice on information before him

of the commission of an offence punishable on summary conviction then, if it apears to the satisfaction of the justice that the summons was duly served a reasonable time before the time appointed for appearance, such justice may proceed *ex parte* to hear and determine the case in the absence of the defendant, as fully and effectually, to all intents and purposes, as if the defendant had personally appeared in obedience to such summons, or the justice, may, if he thinks fit, issue his warrant as provided by section five hundred and sixty-three of this Act and adjourn the hearing of the complaint or information until the defendant is apprehended. R.S.C., c. 178, s. 39; as amended by 56 V., c. 46.

An accused person cannot, under this section, be convicted in his absence of any offence other than that charged in the original information.

Ex parte Doherty (1895), 1 Can. C.C. 84.

The service of a writ of summons to appear before a magistrate to answer a charge of having committed an offence punishable by summary conviction is not validly made although left with the defendant's wife at his usual place of abode (as provided by sec. 562, s.s. 2), if the accused person was then absent from Canada, and remained away until after the hearing; and in such a case the magistrate acquired no jurisdiction over the person of the accused, and a conviction made in his absence upon such service was quashed.

Ex parte Donovan (1894), 3 Can. C.C. 286.

The hearing before a justice trying a person for an offence punishable on summary conviction, may be adjourned from time to time under this section, although the accused be not present, provided the adjournments are made in the presence and hearing of his solicitor or agent.

Proctor vs. Parker (1899), 3 Can. C.C. 374.

See also R. vs. Toronto Ry. Co. (1898), 2 Can. C.C. 471.

And see ex parte Woodstock Electric Co. (1898), 4 Can. C.C. 107, which conflicts with the decision last cited.

854. Non-appearance of Prosecutor.—If, upon the day and at the place so appointed, the defendant appears voluntarily in obedience to the summons in that behalf served upon him, or is brought before the justice by virtue of a warrant, then, if the complainant or informant, having had due notice, does not appear by himself, his counsel or attorney, the justice shall dismiss the complaint or information unless he thinks proper to adjourn the hearing of the same until some other day upon such terms as he thinks fit. R.S.C., c. 178, s. 41.

855. Proceedings when both Parties appear.—If both parties appear, either personally or by their respective counsel or attorneys, before the justice who is to hear and deter-

mine the complaint or information such justice shall proceed to hear and determine the same. R.S.C., c. 178, s. 42.

The absence of counsel for accused from the adjourned sittings at which the magistrate pronounced his judgment, the evidence having been closed at the former sittings at which counsel appeared, was held not to affect the power of the magistrate to convict, notwithstanding that at the previous sittings counsel for accused had objected to the hearing being proceeded with on the ground of irregularity in the service of the summons.

R. vs. Doherty (1899), 3 Can. C.C. 505.

See also R. vs. The Cinque Ports (1886), L.R. 17, Q.B.D. 191.

721

Denault v Robida 8 C Cr Ca 501:

856. Arraignment of Accused.—If the defendant is present at the hearing the substance of the information or complaint shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted, or why an order should not be made against him, as the case may be.

2. If the defendant thereupon admits the truth of the information or complaint, and shows no sufficient cause why he should not be convicted, or why an order should not be made against him, as the case may be, the justice present at the hearing shall convict him or make an order against him accordingly.

3. If the defendant does not admit the truth of the information or complaint, the justice shall proceed to inquire into the charge and for the purposes of such inquiry shall take the evidence of witnesses both for the complainant and accused in the manner provided by Part XLV. in the case of a preliminary inquiry: Provided that the prosecutor or complainant is not entitled to give evidence in reply if the defendant has not adduced any evidence other than as to his general character; provided further, that in a hearing under this section the witnesses need not sign their depositions. R.S.C., c. 178, ss. 43, 44 and 45.

See R. vs. McRae (1897), 2 Can. C.C. 49.

722

R. v Wipper 5 C Cr Ca 17: Denault v Robida 8 C Cr Ca 501:

857. Adjournment.—Before or during the hearing of any information or complaint the justice may, in his discretion adjourn the hearing of the same to a certain time or place to be then appointed and stated in the presence and hearing of the party or parties, or of their respective solicitors or agents then present, but no such adjournment shall be for more than eight days.

2. If, at the time and place to which the hearing or further hearing is adjourned, either or both of the parties do

not appear, personally or by his or their counsel or solicitors, respectively, before the justice or such other justice as shall then be there, the justice who is then there may proceed to the hearing or further hearing as if the party or parties were present.

3. If the prosecutor or complainant does not appear the justice may dismiss the information, with or without costs as to him seems fit.

4. Whenever any justice adjourns the hearing of any case he may suffer the defendant to go at large or may commit him to the common gaol or other prison within the territorial division for which such justice is then acting, or to such other safe custody as such justice thinks fit, or may discharge the defendant upon his recognizance, with or without sureties at the discretion of such justice, conditioned for his appearance at the time and place to which such hearing or further hearing is adjourned.

5. Whenever any defendant who is discharged upon recognizance, or allowed to go at large, does not appear at the time mentioned in the recognizance or to which the hearing or further hearing is adjourned the justice may issue his warrant for his apprehension. R.S.C., c. 178, ss. 48, 49, 50 and 51.

A magistrate exceeds his jurisdiction if he hears one of the parties, and then pronounces sentence on a day to which the cause has not been adjourned in the manner provided by this section.

Therrien vs. McEachren et al. (1897), R.J.Q. 4, S.C. 87.

When the hearing of a case before a justice is adjourned, the justice is not bound to commence the trial at the hour to which adjournment was made, but may postpone the hearing until some later time in the day; nor is the justice bound to be at the place of hearing continuously from the hour to which the adjonrnment was made until the commencement of the hearing.

Ex parte Card. (1896), 34 N.B.R. 11.

The provision of this section that no adjournment shall be for a longer period than 8 days is only a matter of procedure and may therefore be waived; and an accused person who consents to an adjournment for more thn 8 days cannot afterwards invoke this section.

R. vs. Hazen (1893), 20 Ont. A.R. 633.

The case of R. vs. French (1887), 13 O.R. 80, was a decision to the opposite effect.

But this case was disapproved in R. vs. Hefferman (1887), 13 O.R. 616.

Where a justice, who had reserved judgment at the conclusion of the hearing without adjourning to any named time, subsequently gave judgment without any notice to the accused, although later in the same day he wrote to the solicitors of the accused stating that he had found him guilty, he thereby exceeded his jurisdiction, and the conviction was quashed.

R. vs. Mitchell (1897), 17 C.L.T. 352.
See also R. vs. Hall (1887), 12 Ont. P.R. 142.
R. vs. Morse (1891), 11 C.L.T. 342.
A conviction in the form prescribed by the Code is not bad because it also contains recitals showing certain adjournments of the hearing before the justice, but not showing that no adjournment had been made for a longer period than the eight days allowed by s.s. 1 of this section, although more than three months had elapsed from the commencement to the end of the proceedings.
Proctor vs. Parker (1899), 3 Can. C.C. 274.
An adjournment *sine die* of summary proceedings before a magistrate for the purpose of delivering judgment is illegal, and a conviction thereafter made although registered, in the absence of the accused, is void for want of jurisdiction.
R. vs. Quinn (1897), 28 O.R. 224.
The limitation of time referred to in this section applies only to an adjournment of the hearing or a further hearing of the information or complaint, which is distinct from the adjudication, or determination of the charge after the hearing is completed
R. vs. Hall (1887), 12 Ont. P.R. 142.
The eight days should be computed from and exclusive of the day of the adjournment.
Williams vs. Burgess (1840), 12 A. & E. 635.
R. vs. Collins (1887), 14 O.R. 613 at p. 617.
The intent of this section is not that there should not be more than one adjournment.
Messenger vs. Parker (1885), 18 N.S.R. 237 at p. 242.

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858. Adjudication by Justice.—The justice, having heard what each party has to say, and the witnesses and evidence adduced, shall consider the whole matter, and, unless otherwise provided, determine the same and convict or make an order against the defendant, or dismiss the information or complaint, as the case may be. R.S.C., c. 178, s. 52.

Magistrates have no jurisdiction upon the hearing on an information charging the accused with having committed an indictable offence, to summarily convict him of a lesser offence with which he is not charged.
R. vs. Mines (1894), 25 O. R. 577.
See also R. vs. Timson (1870), L.R. 5 Ex. 257.
If a city recorder refuses to pronounce judgment in a case which has been heard before him and in which he has not, in law any discretion about suspending judgment, he can be compelled to do so by mandamus.
Fournier vs. De Montigny (1896), R.J.Q. 2 S.C. 495.
See also Lacerte vs. Pepin et al. (1896), R.J.Q. 10 S.C. 542.
An adjournment *sine die* of summary proceedings before a magistrate for the purpose of delivering judgment is illegal, and a conviction thereafter made by the magistrate, in the absence of the accused, is void for want of jurisdiction.
R. vs. Quinn (1897), 28 O.R. 224.
Where evidence on a preliminary inquiry is commenced before one justice of the peace and finished before two justices, a

committal by the two is irregular unless both have heard all the evidence.

Re Munn (1899), 2 Can. C.C. 429.

See also re Guerin (1888), 16 Cox C.C. 596.

859. Form of Conviction.—If the justice convicts or makes an order against the defendant a minute or memorandum thereof shall then be made, for which no fee shall be paid, and the conviction or order shall afterwards be drawn up by the justice on parchment or on paper, under his hand and seal, in such one of the forms of conviction or of orders from VV to AAA inclusive in schedule one to this Act as is applicable to the case or to the like effect. R.S.C., c. 178, s. 53.

The precept of a warrant of commitment must conform strictly to the directions of the statute which authorizes imprisonment, 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. When the statement in question 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 charges of his conveyance to prison. 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 Lou Kai Long alias Long Wing (1897), R.J.Q. 6 Q.B. 301.

See also Prevost vs. Leclerc et al (1898), 1 Quebec Practice Reports 230.

A summary conviction by a magistrate in respect of a charge in which he has jurisdiction only upon the consent of the accused to a summary trial, is not invalid where such consent has been given, merely because it omits to state that the accused so consented; such omission is a "want of form" which is cured by sec. 800.

R. vs. Burtress (1900), 3 Can. C.C. 536.

In such a case, a magistrate summarily trying a charge of aggravated assault has jurisdiction to award costs against the accused as well as to impose both fine and imprisonment; and imprisonment with hard labor may be imposed in default of payment of fine and costs upon a summary trial of an indictable offence under Part LV.

R. vs. Burtress, supra.

A conviction upon a summary trial of an indictable offence, whereby it is adjudged that, in addition to the imprisonment ordered, the accused do "pay a fine of $5.00 to be paid and applied according to law," is invalid for want of any adjudication of forfeiture of the fine, and the accused imprisoned under a warrant of commitment based thereon will be discharged upon *habeas corpus*.

R. vs. Burtress, supra.

See also R. vs. Crowell (1897), 2 Can. C.C. 34.

Warrant of Commitment :—

Upon an application for the discharge from custody of the accused, upon the ground that no offence was disclosed by the warrant of commitment, which simply stated that the accused "did steal a certain wagon," etc., without alleging the absence of colour of right, and without laying in any person the property in the wagon, it was held that the warrant contained a sufficiently definite statement of the alleged crime.
R. vs. Leet (1900), 20 C.L.T. 46.

728 **860. Disposal of Penalties on Conviction of Joint Offenders.**—When several persons join in the commission of the same offence, and upon conviction thereof each is adjudged to pay a penalty which includes the value of the property, or the amount of the injury done, no further sum shall be paid to the person aggrieved than such amount or value, and costs, if any, and the residue of the penalties imposed shall be applied in the same manner as other penalties imposed by a justice are directed to be applied. R.S.C., c. 178, s. 54.

729 **861. First Conviction in certain Cases.**—Whenever any person is summarily convicted before a justice of any offence against Parts XX. to XXX. inclusive or Part XXXVII. of this Act and it is a first conviction, the justice may, if he thinks fit, discharge the offender from his conviction upon his making such satisfaction to the person aggrieved, for damages and costs, or either of them, as are ascertained by the justice. R.S.C., c. 178, s. 55.

730 **862. Certificate of Dismissal.**—If the justice dismisses the information or complaint he may, when required so to do, make an order of dismissal in the form BBB in schedule one hereto, and he shall give the defendant a certificate in the form CCC in the said schedule, which certificate upon being afterwards produced, shall, without further proof, be a bar to any subsequent information or complaint for the same matter, against the same defendant. R.S.C., c. 178, s. 56.

See secs. 797, 798, 799.

It has been decided in England, under a somewhat similar statute, that when a person accused of any charge has been summarily tried by a magistrate or justice, and the charge has been dismissed, the person so accused is entitled, *ex debito justitiae*, to the certificate of dismissal.
Hancock vs. Somes (1859), 1 E. & E. 795.
Costar vs. Hetherington (1859), 1 E. & E. 802.
But the certificate should only be given when the case has been fully heard on its merits; if it is granted in a case

which the charge has been withdrawn before the hearing it will not be a bar to later proceedings on account of the same offence.

Reed vs. Nutt (1890), L.R. 24 Q.B.D. 669.

863. Disobedience to Order of Justice.—Whenever, by any Act or law, authority is given to commit a person to prison, or to levy any sum upon his goods or chattels by distress, for not obeying an order of a justice, the defendant shall be served with a copy of the minute of the order before any warrant of commitment or of distress is issued in that behalf; and the order or minute shall not form any part of the warrant of commitment or of distress. R.S.C., c. 178, s. 57.

864. Assaults.—Whenever any person is charged with common assault any justice may summarily hear and determine the charge.

2. If the justice finds the assault complained of to have been accompanied by an attempt to commit some other indictable offence, or is of opinion that the same is, from any other circumstance, a fit subject for prosecution by indictment, he shall abstain from any adjudication thereupon, and shall deal with the case in all respects in the same manner as if he had no authority finally to hear and determine the same. 63-64 V., c. 46. (*This section came into force 1st January*, 1901.)

Sec. 841, limiting the time within which an information can be laid "in the case of any offence punishable on summary conviction," applies only to proceedings under the summary convictions clauses of the Code.

An information may be laid and proceedings taken thereon for the prosecution by indictment of an indictable offence, although the case is one which might have been summarily tried by a justice had the information been laid within the six months referred to in sec. 841, and although that period had expired before the laying of the information.

R. vs. Edwards (1898), 2 Can. C.C. 96.

An indictment for rape includes the lesser charge of assault, and a verdict thereon of guilty of common assault is properly followed by a conviction, although the information was laid more than six months after the offence was committed.

R. vs. Edwards, supra.

865. Dismissal of Complaint for Assault.—If the justice, upon the hearing of any case of assault or battery upon the merits where the complaint is preferred by or on behalf of the person aggrieved, under the next preceding section, deems the offence not to be proved, or finds the assault or battery to have been justified, or so trifling as not to

merit any punishment, and accordingly dismisses the complaint, he shall forthwith make out a certificate under his hand stating the fact of such dismissal, and shall deliver such certificate to the person against whom the complaint was preferred. R.S.C., c. 178, s. 74.

Clarke v Rutherford 5 C. Cr Ca 13:

734 **866. Release from further Proceedings.**—If the person against whom any such complaint has been preferred, by or on behalf of the person aggrieved, obtains such certificate, or, having been convicted, pays the whole amount adjudged to be paid or suffers the imprisonment, or imprisonment with hard labour, awarded, he shall be released from all further or other proceedings, civil or criminal, for the same cause. R.S.C., c. 178, s. 75.

The question having been raised, it was held in an Ontario case that secs. 865 and 866 are *intra vires* of the Federal Parliament.

Flick vs. Brisbin (1895), 26 O.R. 423.

In that case Boyd, C., said "the Code gives one who is assaulted the option to proceed by complaint in a summary way before a magistrate, and if he elects to take his remedy by this method of private prosecution he foregoes his right of action in respect of the same assault in order to recover damages as a civil wrong."

In an English case it was held that where an accused person was summarily convicted, but was neither fined nor imprisoned, such summary conviction was nevertheless a bar to any subsequent proceedings for the same offence by way of indictment.

R. vs. Miles (1890), L.R. 24 Q.B.D., 423.

Where a person who was sued for damages for an assault pleaded a prior conviction for the same offence, and payment of the fine imposed by such conviction, it was held that such plea was bad, because it did not show that the earlier conviction was a result of a complaint made by or on behalf of the plaintiff in the civil proceeding.

Ross vs. McQuarrie (1894), 26 N.S.R. 504.

The mere fact that a person has been convicted and condemned to pay a fine is not a bar to subsequent civil preceedings for the same offence for which the conviction was made; it must also be shown that the fine was paid.

Abinovitch vs. Legault (1895), R.J.Q. 8 S.C. 525.

This section does not apply to bar a civil action for assault after conviction and payment of the fine for the same offence where such conviction is made by a petit jury on a trial upon an indictment.

Clermont vs. Lagace (1897), 2 Can. C.C. 1.

In the Province of Quebec it has been held that a person who on the complaint of the person said to have been assaulted, has been arrested and summarily convicted, and has paid the whole amount of the fine imposed on him, is not liable to a civil action for damages for the same assault.

Hardigan vs. Graham (1897), R.J.Q. 12 S.C. 177.

But in Ontario it has been held that a summary conviction for "assault occasioning bodily harm," and the payment

fine imposed, while it is a bar to further criminal proceedings, by virtue of sec. 799, is not a bar to subsequent civil proceedings for the same assault.

Neville vs. Ballard (1897), 28 O.R. 588.

And in a later case it was held that the right to recover damages for assault by civil proceedings was not abrogated by a criminal prosecution, and the dismissal of the complaint or the punishment of the accused, unless the complaint had been preferred by or on behalf of the person assaulted. And thus, where a summons was issued by a peace officer of his own accord, and the person assaulted attended the hearing and gave evidence, it was held that his right to bring an action for damages had not been affected.

Miller vs. Lea (1898), 25 Ont. A.R. 428.

A conviction by a justice for an aggravated assault and the payment by the defendant of the fine imposed, does not form a bar to a civil proceeding for the recovery of damages for the same fault.

Grantillo vs. Caporici (1899), R.J.Q. 16 S.C. 44.

See also Peltier vs. Martin, R.J.Q., 12 S.C. 438.

735 **867. Costs on Conviction or Order.**—In every case of a summary conviction, or of an order made by a justice, such justice may, in his discretion, award and order in and by the conviction or order that the defendant shall pay to the prosecutor or complainant such costs as to the said justice seem reasonable in that behalf, and not inconsistent with the fees established by law to be taken on proceedings had by and before justices. R.S.C., c. 178, s. 58.

736 **868. Cost on Dismissal.**—Whenever the justice, instead of convicting or making an order, dismisses the information or complaint, he may, in his discretion, in and by his order of dismissal, award and order that the prosecutor or complainant shall pay to the defendant such costs as to the said justice seem reasonable and consistent with law. R.S.C., c. 178, s. 59.

737 **869. Recovery of Costs when Penalty is Adjudged.**—The sums so allowed for costs shall, in all cases, be specified in the conviction or order, or order of dismissal, and the same shall be recoverable in the same manner and under the same warrants as any penalty, adjudged to be paid by the conviction or order, is to be recovered. R.S.C., c. 178, s. 60.

738 **870. Recovery of Costs in other Cases.**—Whenever there is no such penalty to be recovered such costs shall be recoverable by distress and sale of the goods and chattels of the party, and in default of distress, by imprisonment, with or without hard labour, for any term not exceeding one month. R.S.C., c. 178, s. 61.

770.

Rv Vantassel (1) 5 C G Cr 128: **871. Fees.**—The fees mentioned in the following tariff and no others shall be and constitute the fees to be taken on proceedings before justices in proceedings under this part:—

Fees to be taken by Justices of the Peace or their Clerks.

1. Information or complaint and warrant or summons..	0 50
2. Warrant where summons issued in first instance.	0 10
3. Each necessary copy of summons or warrant.. ..	0 10
4. Each summons or warrant to or for a witness or witnesses. (Only one summons on each side to be charged for in each case, which may contain any number of names. If the justice of the case requires it, additional summonses shall be issued without charge)..	0 10
5. Information for warrant for witness and warrant.	0 50
6. Each necessary copy of summons or warrant for witness..	0 10
7. For every recognizance...	0 25
8. For hearing and determining case	0 50
9. If case lasts over two hours	1 00
10. Where one justice alone cannot lawfully hear and determine the case, the same fee for hearing and determining to be allowed to the associate justice.	
11. For each warrant of distress or commitment.. ..	0 25
12. For making up record of conviction or order where the same is ordered to be returned to sessions or on *certiorari*..	1 00
But in all cases which admit of a summary proceeding before a single justice and wherein no higher penalty than $20 can be imposed, there shall be charged for the record of conviction not more than..	0 50
13. For copy of any other paper connected with any case, and the minutes of the same if demanded, per folio of 100 words..	0 05
14. For every bill of costs when demanded to be made out in detail..	0 10
(Items 13 and 14 to be chargeable only when there has been an adjudication.)	

Constables' Fees.

	$ cts.
1. Arrest of each individual upon a warrant..	1 50
2. Serving summons..	0 25
3. Mileage to serve summons or warrant, per mile (one way) necessarily travelled..	0 10
4. Same mileage when service cannot be effected, but only upon proof of due diligence.	
5. Mileage taking prisoner to gaol, exclusive of disbursements necessarily expended in his conveyance..	0 10
6. Attending justices on trial, for each day necessarily employed in one or more cases, when engaged less than four hours..	1 00
7. Attending justices on trial, for each day necessarily employed in one or more cases, when engaged more than four hours..	1 50
8. Mileage travelled to attend trial (when public conveyance can be taken only reasonable disbursements to be allowed) one way per mile.	0 10
9. Serving warrant of distress and returning same.	1 00
10. Advertising under warrant of distress..	1 00
11. Travelling to make distress or to search for goods to make distress, when no goods are found (one way) per mile..	0 10
12. Appraisements, whether by one appraiser or more, 2 cents in the dollar on the value of the goods.	
13. Commission on sale and delivery of goods, 5 cents in the dollar on the net produce of the goods. 52 V., c. 45, s. 2 and Sch.	

Witnesses' Fees.

1. Each day attending trial..	0 75
2. Mileage travelled to attend trial (one way) per mile..	0 10

57-58 V., c. 57.

The allowance by a magistrate on a summary conviction of excessive costs in respect of mileage to the constable for serving subpoenas upon witnesses, is not a ground for quashing the conviction.

Ex parte Rayworth (1896), 34 N.B.R. 71.

See also R. vs. Brown (1888), 16 O.R. 41, at p. 47.

The making up of the costs is a ministerial act and does not

affect the jurisdiction. If the magistrate, in making up the costs, has not acted *bona fide*, he is liable to criminal proceedings, or if, acting in good faith, he has taken too much for costs, he may be made to give up the excess; but in either case the conviction will stand.

Ex parte Howard (1893), 32 N.B.R. 237.

872. Provisions respecting Convictions.—Whenever a conviction adjudges a pecuniary penalty or compensation to be paid, or an order requires the payment of a sum of money, whether the Act or law authorizing such conviction or order does or does not provide a mode of raising or levying the penalty, compensation or sum of money, or of enforcing the payment thereof, the justice by his conviction, or order after adjudging payment of such penalty, compensation or sum of money, with or without costs, may order and adjudge—

(a.) that in default of payment thereof forthwith, or within a limited time, such penalty, compensation or sum of money shall be levied by distress and sale of the goods and chattels of the defendant, and, if sufficient distress cannot be found, that the defendant be imprisoned in the manner and for the time directed by the Act or law authorizing such conviction or order or by this Act, or for any period not exceeding three months, if the Act or law authorizing the conviction or order does not specify imprisonment, or does not specify any term of imprisonment, unless such penalty, compensation or sum of money and costs, if the conviction or order is made with costs, and the expenses of the distress and of conveying the defendant to gaol are sooner paid; or

(b.) that in default of payment of the said penalty, compensation or sum of money, and costs if any forthwith or within a limited time, the defendant be imprisoned in the manner and for the time mentioned in the said Act or law, or for any period not exceeding three months, if the Act or law authorizing the conviction or order does not specify imprisonment, or does not specify any term of imprisonment, unless the said sums with the like costs and expenses are sooner paid;

(c.) Whenever under such Act or law imprisonment with hard labour may be ordered or adjudged in the first instance as part of the punishment for the offence of the defendant, the imprisonment in default of distress or of payment may be with hard labour. 63-64 V., c. 46. (*This paragraph came into force 1st January*, 1901.)

741 2. The justice making the conviction or order mentioned in the paragraph lettered (a) of subsection one of this section may issue a warrant of distress in the form DDD or EEE, as the case requires; and in the case of a conviction or order under the paragraph lettered (b) of the said subsection, a warrant in one of the forms FFF or GGG may issue;

(a.) If a warrant of distress is issued and the constable or peace officer charged with the execution thereof returns (form III) that he can find no goods or chattels whereon to levy thereunder, the justice may issue a warrant of commitment in the form JJJ.

740. 3. Where by virtue of an Act or law so authorizing the justice by his conviction adjudges against the defendant payment of a penalty or compensation, and also imprisonment, as punishment for an offence, he may, if he thinks fit, order that the imprisonment in default of distress or of payment, as provided for in this section, shall commence at the expiration of the imprisonment awarded as a punishment for the offence.

4. The like proceeding may be had upon any conviction or order made as provided by this section as if the Act or law authorizing the same had expressly provided for a conviction or order in the above terms. R.S.C., c. 178, ss. 62, 66, 67 and 68; as amended by 57-58 V., c. 57, and 63-64 V., c. 46.

Prohibition will not lie to restrain the issue and enforcement of a distress warrant by a justice of the peace upon a conviction regular on its face, and which was within the jurisdiction of the justice making it, such acts being ministerial, not judicial.

R. vs. Coursey (1895), 27 O.R. 181.

The word "penalty" generally means a pecuniary punishment, but it may also be used with reference to imprisonment.

R. vs. Gavin (1897), 1 Can. C.C. 59.

A conviction awarding 90 days' imprisonment as an alternative punishment on non-payment of a fine where the statute authorised 3 months' imprisonment is bad, as 90 days may possibly be more than 3 months.

R. vs. Gavin, supra.

Upon conviction and fine for keeping a bawdy house the powers of a magistrate for enforcing payment of the fine are limited to directing imprisonment for a period not exceeding 3 months under s.s. (b) of this section, although he might impose imprisonment for 6 months in the first instance instead of a fine. Semble, sec. 788, only applies to authorize six months' imprisonment in default of payment of a fine, when fine and imprisonment are jointly imposed in the first instance.

R. vs. Stafford (1898), 1 Can. C.C. 239.

Sec. 208 only applies to authorize 6 months' imprisonment when imposed as the substantive punishment for the offence

and not as a means of enforcing payment of a fine.

R. vs. Stafford, supra.

See also R. vs. Cyr (1887), 12 Ont. P.R. 24.

R. vs. Perry (1898), 35 C.L.J. 174.

Conviction under the Canada Temperance Act may, by virtue of s.s. (b) of this section, impose imprisonment in default of payment of the fine and costs, without any award of a distress upon the defendant's goods.

Ex parte Casson (1897), 2 Can. C.C. 483.

This section does not authorize a sentence of imprisonment *with hard labor* in default of payment of a fine, unless the Act, under which the conviction is had provides the same in respect of non-payment of the penalty; and this notwithstanding that such Act authorizes a punishment in the first instance by imprisonment with hard labor.

R. vs. Horton (1897), 31 N.S.R. 217.

A conviction under section 501, for wilfully and unlawfully killing a dog, which imposes a penalty and compensation and costs, and, in default of payment, imprisonment with hard labor, is bad, and the accused taken into custody thereunder is entitled to be discharged upon *habeas corpus*. R. vs Horton, supra.

The court may as a condition to a prisoner's discharge impose the term that he shall undertake that no action shall be brought by him against any person in respect of his prosecution and conviction or of his imprisonment thereunder.

R. vs. Horton. supra.

A summary conviction, which illegally imposes imprisonment with hard labor in default of payment of the fine, may be amended at any time before it is acted upon, by the return of an amended conviction omitting the words "with hard labour," but in other respects conforming to the adjudication. Such an amended conviction may be returned in answer to *certiorari* process, although the first conviction has been transmitted by the magistrate, pursuant to a statutory requirement, to the Court to which an appeal might be taken therefrom. Where the only record of conviction produced before the institution of *certiorari* proceedings, to quash the same is bad, and a valid amended conviction is produced in such proceedings, the costs of opposing a motion to quash should not be awarded against the applicant.

R. vs. McAnn (1896), 3 Can. C.C. 110.

A summary conviction by a justice of the peace, whereby a fine is sought to be imposed, must adjudge forfeiture of the amount as well as payment thereof; and the prisoner is entitled to be discharged under *habeas corpus* if the conviction merely adjudges that he "forthwith pay a sum named," and in default of payment thereof be imprisoned.

R. vs. Crowell (1897), 2 Can. C.C. 34.

A warrant of commitment by justices, in default of payment of a fine imposed under the Customs Act for smuggling, and under which the accused is required to pay also the expenses of being conveyed to jail, before he can obtain his liberty, is invalid if the amount of such expenses are not stated therein. And a conviction under the Customs Act, sec. 192, for clandestinely landing spirits in Canada should show on its face that the goods were subject to duty.

R. vs. McDonald (1898), 2 Can. C.C. 504.

When there is no "common jail or other temporary prison" in the territorial division, the justice may order the prisoner to be conveyed to the one nearest thereto.

In re Burke (1894), 27 N.S.R. 286.

In the case of Vantassel vs. Trask (1894), 27 N.S.R. 329, it was held, following R. vs. Calhoun (1888), 20 N.S.R. 395, that a prosecution for a violation under the "Canada Temperance Act" was a criminal proceeding; and that where a constable had been entrusted by a stipendiary magistrate with the execution of a warrant of commitment upon a conviction of a person for a violation of that Act, and the constable was refused admission to the house of the accused, he was justified in breaking and entering after having waited a reasonable time. It was also held that even if the fact that the warrant under which the constable acted contained no provision for the payment of the costs of conveying to jail, was an irregularity, the constable was still protected.

742 **873. Order as to Collection of Costs.**—When any information or complaint is dismissed with costs the justice may issue a warrant of distress on the goods and chattels of the prosecutor or complainant, in the form KKK, for the amount of such costs; and, in default of distress, a warrant of commitment in the form LLL may issue: Provided that the term of imprisonment in such case shall not exceed one month. R.S.C., c. 178, s. 70.

See R. vs. Woodyatt (1895), 17 O.R. 113.

743 **874. Endorsement of Warrant of Distress.**—If after delivery of any warrant of distress issued under this part to the constable or constables to whom the same has been directed to be executed, sufficient distress cannot be found within the limits of the jurisdiction of the justice granting the warrant, then upon proof being made upon oath or affirmation of the handwriting of the justice granting the warrant, before any justice of any other territorial division, such justice shall thereupon make an endorsement on the warrant, signed with his hand, authorizing the execution of the warrant within the limits of his jurisdiction, by virtue of which warrant and endorsement the penalty or sum and costs, or so much thereof as has not been before levied or paid, shall be levied by the person bringing the warrant, or by the person or persons to whom the warrant was originally directed, or by any constable or other peace officer of the last mentioned territorial division, by distress and sale of the goods and chattels of the defendant therein.

2. Such endorsement shall be in the form HHH in schedule one to this Act. R.S.C., c. 178, s. 63.

744 **875. Distress not in Issue in certain Cases.**—Whenever it appears to any justice that the issuing of a distress warrant would be ruinous to the defendant and his family,

or whenever it appears to the justice, by the confession of the defendant or otherwise, that he has no goods and chattels whereon to levy such distress, then the justice, if he deems it fit, instead of issuing a warrant of distress, may commit the defendant to the common gaol or other prison in the territorial division, there to be imprisoned, with or without hard labour, for the time and in the manner he would have been committed in case such warrant of distress had issued and no sufficient distress had been found. R.S.C., c. 178, s. 64.

745 876. **Remand of Defendant when Distress is Ordered.**—Whenever a justice issues a warrant of distress as hereinbefore provided, he may suffer the defendant to go at large, or verbally, or by a written warrant in that behalf, may order the defendant to be kept and detained in safe custody, until return has been made to the warrant of distress, unless the defendant gives sufficient security, by recognizance or otherwise, to the satisfaction of the justice, for his appearance, at the time and place appointed for the return of the warrant of distress, before him or before such other justice for the same territorial division as shall then be there. R.S.C., c. 178, s. 65.

746 877. **Cumulative Punishment.**—Whenever a justice, upon any information or complaint, adjudges the defendant to be imprisoned, and the defendant is then in prison undergoing imprisonment upon conviction for any other offence, the warrant of commitment for the subsequent offence shall be forthwith delivered to the gaoler or other officer to whom it is directed; and the justice who issued the same, if he thinks fit, may award and order therein that the imprisonment for the subsequent offence shall commence at the expiration of the imprisonment to which the defendant was previously sentenced. R.S.C., c. 178, s. 69.

See ex parte McManus (1894), 32 N.B.R. 481.

1097 878. **Recognizances.**—Whenever a defendant gives security by or is discharged upon recognizance and does not afterwards appear at the time and place mentioned in the recognizance, the justice who took the recognizance, or any justice who is then present, having certified upon the back of the recognizance the non-appearance of the defendant, may transmit such recognizance to the proper officer in

the province appointed by law to receive the same, to be proceeded upon in like manner as other recognizances; and such certificate shall be *prima facie* evidence of the non-appearance of the said defendant.

2. Such certificate shall be in the form MMM in schedule one to this Act.

3. The proper officer to whom the recognizance and certificate of default are to be transmitted, in the province of Ontario, shall be the clerk of the peace of the county for which such justice is acting, and the Court of General Sessions of the Peace for such county shall, as its then next sitting, order all such recognizances to be forfeited and estreated, and the same shall be enforced and collected in the same manner and subject to the same conditions as any fines, forfeitures or amercements imposed by or forfeited before such court. In the province of British Columbia, such proper officer shall be the clerk of the county court having jurisdiction at the place where such recognizance is taken, and such recognizance shall be enforced and collected in the same manner and subject to the same conditions as any fines, forfeitures or amercements imposed by or forfeited before such county court; and in the other provinces of Canada, such proper officer shall be the officer to whom like recognizances have been heretofore accustomed to be transmitted under the law in force before the passing of this Act; and such recognizances shall be enforced and collected in the same manner as like recognizances have heretofore been enforced and collected. R.S.C., c. 178, ss. 71 and 72. 58-59 V., c. 40.

749. **879. Appeal.**—Unless it is otherwise provided in any special Act under which a conviction takes place or an order is made by a justice for the payment of money or dismissing an information or complaint, any person who thinks himself aggrieved by any such conviction or order, the prosecutor or complainant, as well as the defendant, may appeal, in the province of Ontario, to the Court of General Sessions of the Peace; in the province of Quebec, to the Court of King's Bench, Crown side; in the provinces of Nova Scotia, New Brunswick and Manitoba, to the county court of the district or county where the cause of the information or complaint arose; in the province of Prince Edward Island, to the Supreme Court; in the province of British Columbia, to the county or district court, at the sitting thereof which shall be held nearest to the place where the cause of the information or complaint arose; and in the North-west Territories, to a judge of the Supreme Court of the said

territories, sitting without a jury, at the place where the cause of the information or complaint arose, or the nearest place thereto where a court is appointed to be held.

2. In the district of Nipissing such person may appeal to the Court of General Sessions of the Peace for the county of Renfrew. 51 V., c. 45, s. 7; 52 V., c. 45, s. 6.

The right of appeal is not a matter of procedure under article 503 of the Montreal City Charter, which enacts that the provisions of Part LVIII of the Criminal Code shall apply to prosecutions under the charter "as regards the mode of procedure" therein, and there is, therefore, no appeal from the Recorder's Court of the City of Montreal to the Court of King's Bench, from a conviction for carrying on the business of a pawnbroker without a license.

Superior vs. The City of Montreal (1900), 3 Can. C.C. 379.

There can be no appeal under this section to the Court of King's Bench from a summary conviction under article 4616 of the Revised Statutes of Quebec, for neglect to repair a road, since the offence is one over which the Parliament of Canada has no legislative authority.

Corporat on of the Town of Scottstown vs. Beauchesne, 1896, R.J.Q. 5 Q.B. 554.

The complainant in the last cited case, after the decision quoted had been rendered in its favor, brought an action to recover by way of damages the costs it had incurred by reason of the defendant having taken an appeal to a Court which had no jurisdiction, and it was held by a Court of Review that the defendant had thus made himself liable for all costs and expenses to which the plaintiff had been put by reason of his action in thus appealing.

Beauchesne vs. The Corporation of the Town of Scottstown (1899), R.J.Q. 16 C.S. 316.

An appeal from a summary conviction under the Seaman's Act of Canada (R.S.C. chap. 74, sec. 164), for harboring and secreting a deserting seaman is under this section, and not under sec. 742; and in the Province of Quebec the appeal should be taken to the Crown side, and not to the Appeal side of the Court of King's Bench.

Per Ouimet, J., in R. vs. O'Dea (1900), 3 Can. C.C. 402.

In the Province of Quebec an appeal under this section to the Court of King's Bench from a summary conviction can only be taken when the offence charged is one within the legislative authority of the Parliament of Canada, and not when that offence is one against a provincial enactment.

Lecours vs. Hurtubise (1899), R.J.Q. 8 Q.B. 439.

If an action is brought before the justice of the peace by an agent of a society the appeal from the judgment dismissing the action should be taken by this agent himself, and not by the society which he represents.

Canadian Society for the Prevention of Cruelty to Animals vs. Lauzon (1899), 5 Revue de Jurisprudence 259.

750. 757.

880. Conditions of Appeal.—Every right of appeal shall, unless it is otherwise provided in any special Act, be subject to the conditions following, that is to say:—

(a.) If the conviction or order is made more than fourteen days before the sittings of the court to which the

appeal is given, such appeal shall be made to the then next sittings of such court; but if the conviction or order is made within fourteen days of the sittings of such court, then to the second sittings next after such conviction or order;

(b.) The appellant shall give to the respondent, or to the justice who tried the case for him, a notice in writing, in the form NNN in schedule one to this Act, of such appeal, within ten days after such conviction or order;

(c.) The appellant, if the appeal is from a conviction adjudging imprisonment, shall either remain in custody until the holding of the court to which the appeal is given, or shall enter into a recognizance in the form OOO in the said schedule with two sufficient sureties, before a justice, conditioned personally to appear at the said court, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as are awarded by the court; or, if the appeal is against any conviction or order, whereby only a penalty or sum of money is adjudged to be paid, the appellant (although the order directs imprisonment in default of payment), instead of remaining in custody as aforesaid, or giving such recognizance as aforesaid, may deposit with the justice convicting or making the order such sum of money as such justice deems sufficient to cover the sum so adjudged to be paid, together with the costs of the conviction or order, and the costs of the appeal; and upon such recognizance beeing given, or such deposit being made, the justice before whom such recognizance is entered into, or deposit made, shall liberate such person, if in custody;

(d.) In case of an appeal from the order of a justice, pursuant to section five hundred and seventy-one, for the restoration of gold or gold-bearing quartz, or silver or silver ore, the appellant shall give security by recognizance to the value of the said property to prosecute his appeal at the next sittings of the court and to pay such costs as are awarded against him;

(e.) The court to which such appeal is made shall thereupon hear and determine the matter of appeal and make such order therein, with or without costs to either party, including costs of the court below, as seems meet to the court,—and, in case of the dismissal of an appeal by the defendant and the affirmance of the conviction or order, shall order and adjudge the appellant to be punished according to the conviction or to pay the amount adjudged by the

said order, and to pay such costs as are awarded,—and shall, if necessary issue process for enforcing the judgment of the court; and whenever, after any such deposit has been made as aforesaid, the conviction or order is affirmed, the court may order the sum thereby adjudged to be paid, together with the costs of the conviction or order, and the costs of the appeal, to be paid out of the money deposited, and the residue, if any, to be repaid to the appellant. and whenever, after any such deposit, the conviction or order is quashed, the court shall order the money to be repaid to the appellant;

(f.) The said court shall have power, if necessary, from time to time, by order endorsed on the conviction or order, to adjourn the hearing of the appeal from one sittings to another, or others, of the said court;

(g.) Whenever any conviction or order is quashed on appeal, as aforesaid, the clerk of the peace or other proper officer shall forthwith endorse on the conviction or order a memorandum that the same has been quashed; and whenever any copy or certificate of such conviction or order is made, a copy of such memorandum shall be added thereto, and shall, when certified under the hand of the clerk of the peace, or of the proper officer having the custody of the same, be sufficient evidence, in all courts and for all purposes, that the conviction or order has been quashed. 51 V., c. 45, s. 8; 53 V., c. 37, s. 24.

Certiorari proceedings :—

It is necessary to serve the convicting magistrate with notice of the application for a *certiorari*, because he is exposed to an action if the conviction should be quashed; the convicting magistrate must be notified, although the conviction has been confirmed on appeal to the Quarter Sessions to remove the conviction from which the *certiorari* is sought, and the presiding justices of the sessions as well as the complainant have been served.

R. vs. Peterman (1864), 23 U.C.Q.B.516.

According to the Imperial Statute, Geo. II., cap. 18, sec. 5, application for the *certiorari* must be made within six calendar months, next after the conviction, and six days' notice thereof must be given in writing to the justice or justices. It has been held that this statute is in force in British Columbia as well as in Ontario.

Re Plunkett (1895), 1 Can. C.C. 365.

The effect of 13 Geo II., cap. 18, sec. 5, is to imperatively require that a six days' notice shall be given, and to make the giving of it a condition precedent to the issuing of the writ, and the convicting justices are not obliged to make an independent application to quash the *certiorari* for the want of such notice, but can set up this defence in answer to the rule *nisi* obtained by the defendant to quash the conviction. Absence

of this statutory notice is a "most substantial defect."
R. vs. McAllan (1880), 45 U.C.Q.B. 402, at pp. 406 and 408.
The magistrate may, however, waive the right to take the objection regarding want of notice, and if a preliminary fact affirmed by one side is contested by the other, the objection should be taken promptly.

Where a certiorari had issued upon an affidavit of due service of notice on two magistrates sworn to have been present at the making of the order, and a whole term had elapsed after the making of the return of the *certiorari* without objection having been made, it was held that it was then too late, on an application to quash the *certiorari*, to bring in proof that one of the magistrates so served was not in fact present at the time of the written order.
R. vs. Inhabitants of Basingstoke (1849), 19 L.J.M.C. 28.
See also R. vs. Whitaker (1894), 24 O.R. 437.

Where an order *nisi* to quash a conviction has been issued, but before service of the same upon the informant prosecutor the latter dies, proceedings do not lapse, and can be properly continued by serving the magistrates. The informant in *certiorari* proceedings in criminal matters is not a party to the record, although the name appears, and although he is under liability for costs, and has given a recognizance for the same.
Semble upon quashing a conviction in such a case, no cause of action in respect of its illegality survives against the representatives of the deceased informant.
Semble, an appeal under this section to the General Sessions would not avail under similar circumstances.
R. vs. Fitzgerald (1898), 1 Can. C.C. 420.
See also, R. vs. Truelove (1880), L.R. 5 Q.B.D. 336.

But in bastardy proceedings, in which the power of the magistrates is by statute limited to cases where they have heard the testimony of the woman, and such other evidence as she may produce, no order can be made if she dies before the hearing.
R. vs. Armitage (1872), L.R. 7 Q.B. 773.

In *certiorari* proceedings the Court will not review the magistrate's finding upon all questions of fact which he is competent to try, although an affirmative finding as to such fact is essential to the validity of the conviction.
R. vs. Cunerty (1894), 2 Can. C.C. 325.
See also, R. vs. Grainger (1881), 46 U.C.Q.B. 382.

The Colonial Bank of Australasia vs. Willan (1874), L.R. 5 P. C. 417, at p. 443.

Where an appeal is pending on an order granting a writ of *certiorari*, but the writ has, notwithstanding the appeal, been issued and the conviction has been returned thereunder, the Court will postpone the hearing of a motion to quash the conviction until after the appeal is disposed of; and the same rule applies where the *certiorari* is in respect of a forfeiture order only, and the motion to quash is in respect of a conviction upon which the forfeiture order is based, and which was returned with it.
R. vs. Hurlburt (1893), 2 Can. C.C. 331.

The practice in *certiorari* proceedings of never awarding costs either in favor of or against the Crown is no longer in force in British Columbia.
R. vs. Little (1898), 2 Can. C.C. 240.
Leave to appeal to the Judicial Committee of the Privy Coun-

cil upon the question of the constitutionality of a provincial statute will, except under special circumstances, be refused to the party convicted thereof whose conviction has been confirmed in *certiorari* proceedings, if an appeal to the Privy Council is pending in a civil action between other parties in which the same question is being litigated.

R. vs. Little (1898), 2 Can. C.C. 240.

The justices may return an amended or fresh warrant of commitment with the writ of *certiorari*, and if it be sufficient the Court will not inquire into the validity of a previous warrant, upon which the prisoner was held, which was bad for not following the conviction or disclosing any offence. But costs will be refused to the justices as against the defendant in such a case where the application was justifiable at the time it was launched.

Re Plunkett (1895), 1 Can. C.C. 365.

Recognizances :—

The recognizance referred to in par. (c) must, where the appeal is by several defendants be held by two sureties besides the appellants; the appeal not being a common law right, the conditions precedent prescribed by statute must be strictly complied with, and the appeal will be quashed if the recognizance is given with only one surety. The giving of security is an essential part of the appeal, and unless it is 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.

R. vs. Joseph et al. (1900), 4 Can. C.C. 126.

The recognizance referred to in par. (c) must be filed before the opening of the case in appeal.

Bestwick vs. Bell (1889), 1 N.W.T. Reports 193.

See also R. vs. Nixon (1899), 19 C.L.T. 341.

Paragraphs (c) and (e) :—

When a statute confers an authority to do a judicial act upon the occurrence of certain circumstances, and for the benefit of an interested party, the exercise of the judicial authority so conferred is imperative and not discretionary when applied for by the interested party. And paragraph (e) of this sec., which enacts that the Court "may," if the conviction is affirmed, order the fine and costs to be paid out of the moneys deposited pursuant to par. (c) of this sec., on taking an appeal, is to be construed as giving the Court no discretion to refuse the application of the party to be benefited by the making of the order

Fenson vs. New-Westminster (1897), 2 Can. C.C. 52.

See also Macdougall vs. Paterson (1851), 11 C.B. 755.

Julius vs. Bishop of Oxford (1880), 5 Appeal Cases 214, at p. 225.

Morisse vs. Royal British Bank (1856), 7 C.B.N.S. 66.

The provisions of secs. 879 and 880 are to be taken as embodied in 52 Vict. (D), chap. 43, which is an Act relating to frauds against cheese factories, except in so far as they are varied by or are inconsistent with that Act; and they confer the power to award costs on an appeal taken under sec. 9 of that statute. Such costs are in the discretion of the judge apart from the tariff of costs applicable to other proceedings regarding justices' jurisdiction; and the allowance of costs so made by a County Court judge will not be reviewed by the High Court of Justice.

In the notice of appeal which is given to the justices of the peace according to form N.N.N., the omission of the words

"pour l'intime" is fatal, and the appeal will be dismissed upon that ground.

Canadian Society for the Prevention of Cruelty to Animals vs. Lauzon (1899), 5 Revue de Jurisprudence 259.

Objection can probably be taken at any time that the notice of appeal require by par. (b) of this section was not given in time.

Per Richards, J., in R. vs. Crouch (1874), 25 U.C. Q.B., at p. 439. See also, Kent vs. Olds (1860), 23 U.C.L.J. 21.

881. Proceedings on Appeal.—When an appeal against any summary conviction or decision has been lodged in due form, and in compliance with the requirements of this part the court appealed to shall try, and shall be the absolute judge, as well of the facts as of the law, in respect to such conviction or decision; and any of the parties to the appeal may call witnesses and adduce evidence, whether such witnesses were called or evidence adduced at the hearing before the justice or not, either as to the credibility of any witness, or as to any other fact material to the inquiry; but any evidence taken before the justice at the hearing below, signed by the witness giving the same and certified by the justice, may be read on such appeal, and shall have the like force and effect as if the witness was there examined: Provided, that the court appealed to is satisfied by affidavit or otherwise, that the personal presence of the witness cannot be obtained by any reasonable efforts. 53 V., c. 37, s. 25.

In an Ontario case it was held that under the provisions of sections 584 and 843 of the Code, it was competent for a judge of the High Court, or of a County Court, to make an order for the issue of a subpoena to witnesses in another province, to compel their attendance upon an appeal to the General Sessions from action of justices of the peace under sec. 879 and this section R. vs. Gillespie (1894), 16 Ont. P.R. 155.

In R. vs. Malloy (1900), 4 Can. C.C. 116, it was held that an appeal from a summary conviction under the Code should, in Ontario, be taken to the Court of General Sessions of the Peace, sitting without a jury, and that this section, which constitutes such court the absolute judge, not only of the law, but also of the facts in respect of the decision appealed from, is *intra vires* of the Parliament of Canada.

The statutory provision that the Court shall try the appeal from a summary conviction without a jury is one relating to the procedure, and not to the constitution of the Court.

R. vs. Malloy (1900), 4 Can. C.C. 116.

See also R. vs. Bradshaw (1876), 38 U.C. Q.B. 564.

882. Appeal on Matters of Form.—No judgment shall be given in favour of the appellant if the appeal is based on an objection to any information, complaint or summons,

or to any warrant to apprehend a defendant issued upon any such information, complaint or summons, for any alleged defect therein, in substance or in form, or for any variance between such information, complaint, summons or warrant and the evidence adduced in support thereof at the hearing of such information or complaint, unless it is proved before the court hearing the appeal that such objection was made before the justice before whom the case was tried and by whom such conviction, judgment or decision was given, or unless it is proved that notwithstanding it was shown to such justice that by such variance the person summoned and appearing or apprehended had been deceived or misled, such justice refused to adjourn the hearing of the case to some future day, as herein provided. R.S.C. c. 178, s. 79.

The accused, an expressman, was convicted under a by-law of the Board of Police Commissioners of the City of Toronto of the offence of leaving his vehicle unattended on the stand. The information disclosed an offence apart from the by-law. The accused admitted that he was an expressman duly licensed under a by-law of the Board of Police Commissioners, a copy of which was put in at the hearing; no objection was taken before the magistrate to the information, or to the production of the by-law as that under which the prosecution was proceeding. The case came on for hearing on the 9th April, was adjourned until the 11th of April, when evidence was taken, and was subsequently adjourned on various other occasions until the 4th of July, when a conviction was made. Upon a motion to quash the conviction, the point was raised that the information charged an offence against a by-law of the Corporation of the City of Toronto, while the conviction was for an offence against a by-law of the Board of Police Commissioners of that city. Held, having regard to the facts of the case, and to the provisions of this sec., that as the offence was clearly disclosed in the information, it would have been unobjectionable had the reference to the by-law been omitted; and that as a by-law had been produced at the hearing, establishing the legal prohibition which had been transgressed, and that as the accused had not been deceived or misled, and no adjournment had been refused the objection thus raised could not prevail; and the conviction was accordingly affirmed.

R. vs. Duggan (1900), 31 C.L.T. 35.

Under section 75 of the Summary Convictions Act (B.C. (which is similar to this section), an objection on an appeal from a summary conviction to the effect that the by-law under which the prosecution took place is *ultra vires* is not available unless raised on the hearing before the magistrate.

R. vs. Bowman (1898), 2 Can. C.C. 89.

On an appeal from a summary conviction, had upon a plea of guilty, the case should not be reopened and witnesses called as to the merits for the purpose of revising the punishment imposed, unless the magistrate has acted oppressivily.

R. vs. Bowman, supra.

See also the remarks made by Killam, J., in R. vs. Vrooman (1886), 3 Man. R. 509, at p. 513.

And see, R. vs. Shaw (1865), 11 Jurist, N.S. 415.

In a prosecution before justices of the peace "for selling intoxicating liquor in quantity less than two gallons in contravention of the conditions of the defendant's license," the omission, in the complaint, of a description of such license, and of a statement of the quantity actually sold, is at most a mere irregularity which may be cured by amendment in the original Court or remedied, if it result in failure of justice, in the Superior Court by means of *certiorari*. But it affords no ground for prohibition. (See secs. 845 and 846.)

Laliberte vs. Fortin (1893), R.J.Q., 2 Q.B. 573.

See also Champagne vs. Simard et al. (1895), R.J.Q. 7 S.C. 40.

883. Judgment to be upon the Merits.—In every case of appeal from any summary conviction or order had or made before any justice, the court to which such appeal is made shall, notwithstanding any defect in such conviction or order, and notwithstanding that the punishment imposed or the order made may be in excess of that which might lawfully have been imposed or made, hear and determine the charge or complaint on which such conviction or order has been had or made, upon the merits, and may confirm, reverse or modify the decision of such justice, or may make such other conviction or order in the matter as the court thinks just, and may by such order exercise any power which the justice whose decision is appealed from might have exercised, and such conviction or order shall have the same effect and may be enforced in the same manner as if it had been made by such justice. The court may also make such order as to costs to be paid by either party as it thinks fit.

2. Any conviction or order made by the court on appeal may also be enforced by process of the court itself. 53 V., c. 37, s. 26.

If, on the return to a *certiorari*, the Court is satisfied upon a perusal of the depositions that an offence of the nature described in the summary conviction has been committed, the Court may hear and determine the charge upon the merits as disclosed by the depositions, and may vary, confirm, reverse or modify the decision of the justice of the peace.

R. vs. Murdock (1900), 4 Can. C.C. 82.

Where the original conviction directed payment of a fine, and the levying of the same by distress, and in default of sufficient distress adjudged imprisonment, the Court, exercising the power of amendment conferred by this section and by sec. 889, may substitute in lieu of the distress, etc., an award of imprisonment forthwith, in case of non-payment of the fine.

R. vs. Murdock, supra.

The Court has power to so amend a summary conviction returned on *certiorari*, whether the *certiorari* is one preliminary

to a motion to quash a conviction, or is in aid of a writ of *habeas corpus.*

R. vs. Murdock, supra.

755. R. Ah Yun (2) b c Cr Ca 66:

884. Costs when Appeal not Prosecuted.—The court to which an appeal is made, upon proof of notice of the appeal to such court having been given to the person entitled to receive the same, whether such notice has been properly given or not, though such appeal was not afterwards prosecuted or entered, may, if such appeal has not been abandoned according to law, at the same sittings for which such notice was given, order to the party or parties receiving the same such costs and charges as are thought reasonable, and just by the court, to be paid by the party or parties giving such notice; and such costs shall be recoverable in the manner provided by this Act for the recovery of costs upon an appeal against an order or conviction. R.S.C., c. 178, s. 81; as amended by 57-58 V., c. 57.

Vide Clark's Manual p 288.

756. **885. Proceedings when Appeal Fails.**—If an appeal against a conviction or order is decided in favour of the respondents, the justice who made the conviction or order, or any other justice for the same territorial division, may issue the warrant of distress or commitment for execution of the same, as if no appeal had been brought. R.S.C., c. 178, s. 82.

1121. R. McDonald b c Cr Ca 1: R. Ruggles 5 Ca 163:

886. Conviction not to be Quashed for Defects of Form.—No conviction or order affirmed, or affirmed and amended, in appeal, shall be quashed for want of form, or be removed by *certiorari* into any superior court and no warrant or commitment shall be held void by reason of any defect therein, provided it is therein alleged that the defendant has been convicted, and there is a good and valid conviction to sustain the same. R.S.C., c. 178, s. 83.

Ex R. Justice 8 T R 542: 5 R C 532.

A notice of appeal from a summary conviction is insufficient when it is addressed only to the convicting magistrate, and not to the prosecutor or complainant.

Keohan vs. Cook (1887), 1 N.W.T. Reports 125.

See also ex parte Curtis (1877), L.R., 3 Q.B.D. 13.

In re Meyers and Wonnacott (1864), 23 U.C. Q.B. 611.

In re Justices of York and Peel, ex parte Mason (1863), 13 U.C. C.P. 159.

But see, contra, ex parte Doherty (1886), 6 C.L.T. 545.

See also R. vs. Kennedy (1894), 10 Man. L.R. 338.

Champagne vs. Simard et al. (1895), R.J.Q., 7 S.C. 40.

Ex parte Kavanagh (1896), 2 Can. C.C 267.

Rex v Delegarde 36 N.B. 50
Re Ruggles 5 C.C.C. 163

887. "Certiorari" not to lie when Appeal is Taken.—No writ of *certiorari* shall be allowed to remove any conviction or order had or made before any justice of the peace if the defendant has appealed from such conviction or order to any court to which an appeal from such conviction or order is authorized by law, or shall be allowed to remove any conviction or order made upon such appeal. R.S.C., c. 178, s. 84.

Where a statute makes provision for an appeal from a summary conviction, the discretion of the Court regarding the granting of a *certiorari* should be exercised by refusing to grant the same unless special reasons for doing so are shown.

Ex parte Ross (1895), 1 Can. C.C. 153.

The English rule, however, as laid down in R. vs. Jukes (1800), 8 T.R. 542, was that the right to a *certiorari* was not affected by an appeal on the part of the person applying for the *certiorari*, even although the statute authorizing the appeal gave the court to which such appeal was taken power to finally determine the matter.

In ex parte Bradlaugh (1878), L.R. 3 Q.B.D. 511, it was held that a provision taking away the right of *certiorari* (as does this section), did not apply where there was an absence of jurisdiction.

But in such a case, although the writ will be granted, the order will not be quashed unless there is clearly shown to be a lack of jurisdiction.

Colonial Bank vs. Willan (1874), L.R. 5 P.C. 417.

In ex parte Levesque (1893), 32 N.B.R. 174, a *certiorari* was granted in a case in which the convicting justice had no jurisdiction over the subject matter, although there was a remedy by review.

But in another case, decided by the same court in the same year, it was held that in a case, where there is a review, a *certiorari* should not be granted unless there are exceptional circumstances.

Ex parte Young (1893), 32 N.B.R. 178.

In R. vs. Herrell (1899), 3 Can. C.C. 15, Dubuc, J., held that where there was a right of appeal from a summary conviction, and it appeared, upon an aplication for a *certiorari* to bring up the conviction to be quashed, that the ground alleged therefor was more properly the subject of an appeal, the discretion of the court would not be exercised by refusing the *certiorari*.

888. Conviction to be Transmitted to Appeal Court.—Every justice before whom any person is summarily tried, shall transmit the conviction or order to the court to which the appeal is herein given, in or for the district, county or place wherein the offence is alleged to have been committed, before the time when an appeal from such conviction or order may be heard, there to be kept by the proper officer among the records of the court; and if such conviction or order has been appealed against, and

a deposit of money made, such justice shall return the deposit into the said court; and the conviction or order shall be presumed not to have been appealed against, until the contrary is shown.

2. Upon any indictment or information against any person for a subsequent offence, a copy of such conviction, certified by the proper officer of the court, or proved to be a true copy, shall be sufficient evidence to prove a conviction for the former offence. R.S.C., c. 178, s. 86; 51 V., c. 45, s. 9.

In R. vs. Monaghan (1897), 2 Can. C.C. 488, it was held (1) per Scott and Roulean, JJ., that a conviction returned by justices, in compliance with the statutory requirement, to the office of a Superior Court, is regularly before the Court, and can be dealt with by a motion to quash, without the necessity of a writ of *certiorari*. And, (2) per Richardson and Wetmore, JJ., that the conviction was not regularly before the Court, and a writ of *certiorari* to bring it before the Court, was necessary before a motion to quash the conviction could be properly entertained.

"It is the fact of the conviction being on the file of this Court, regularly brought there, that gives the right to move to quash it; how or at whose instance it was brought there, so long as it was brought there regularly, cannot in my opinion affect that right."

Per Armour, J., in R. vs. Whelan (1880), 30 U.C.R. 396.
See also R. vs. Levecque (1870), 30 U.C.Q.B. 509.
R. vs. McAllan (1880), 45 U.C.Q.B. 402.

889. Conviction not to be held Invalid for Irregularity.—No conviction or order made by any justice of the peace, and no warrant for enforcing the same, shall, on being removed by *certiorari* be held invalid for any irregularity, informality or insufficiency therein, provided that the court or judge before which or whom the question is raised is, upon perusal of the depositions, satisfied that an offence of the nature described in the conviction, order or warrant, has been committed, over which such justice has jurisdiction, and that the punishment imposed is not in excess of that which might have been lawfully imposed for the said offence; and any statement which, under this Act or otherwise, would be sufficient if contained in a conviction, shall also be sufficient if contained in an information, summons, order or warrant: Provided that the court or judge, where so satisfied as aforesaid shall, even if the punishment imposed or the order made is in excess of that which might lawfully have been imposed or made, have the like powers in all respects to deal with the case as seems just as are by section eight hundred and eighty-three conferred upon the court to which an appeal is taken under the provisions of section eight hundred and eighty-nine. R.S.C., c. 178,

s. 87; 53 V., c. 37, s. 27.

(The notes of the various cases decided under this and the next section, are given under this section.)

A conviction by a magistrate, under the sections of the Code relating to the summary trial of indictable offences, may be brought up for review by writs of *habeas corpus* and *certiorari*, a conviction under this section not being a matter of record in such a way as to make it reviewable only by writ of error.

R. vs. St. Clair (1900), 36 C.L.J. 314.

The writ of *certiorari* is a prerogative writ, to which, notwithstanding all statutory provisions to the contrary, a person has a right in order to control the actions of courts of inferior jurisdiction, and to restrain them within the limits fixed by law each time that there is a lack, absence, or excess of jurisdiction or where a penalty not authorized by law is imposed.

Ex parte Mathieu & Wentworth, supra.

If a statute prescribes that an action for a certain offence should be taken within a certain delay after the commission of that offence, and that one or several offences of the same nature, in contravention of the same statute, can be included in the same action, a complaint, made at a certain fixed date, for a single offence, includes all the offences against this statute up to the date of such complaint.

Ex parte Mathieu & Wentworth, supra.

If on the return to a *certiorari* the Court is satisfied upon a perusal of the depositions that an offence of the nature described in the summary conviction has been committed, the Court may hear and determine the charge upon the merits as disclosed by the depositions, and may vary, confirm, reverse, or modify the decision of the justice.

R. vs. Murdock (1900), 27 Ont. A.R. 443.

When a record is before the Superior Court by virtue of a *certiorari*, the Court may, under the Code, enter into the merits of the evidence, for the purpose of deciding regarding the justice of the conviction, when it concerns the application of federal laws and the procedure relating thereto.

Meunier vs Loupret et al. (1899), 2 Q.P.R. 126.

A conviction which states that the fine imposed shall be applied according to law is not insufficient and illegal, upon the ground that it does not mention to whom the penalty is to be paid.

Meunier vs. Loupret et al., supra.

A summary conviction which illegally imposes imprisonment *with hard labor* in default of payment of a fine, may be amended, at any time before it is acted upon, by the return of an amended conviction omitting the words "with hard labour," but in other respects conformable to the judgment. Such an amended conviction may be returned in answer to *certiorari* process, although the first conviction has been transmitted by the magistrate to the Court to which an appeal might be taken therefrom, pursuant to a statutory requirement to that effect.

R. vs. McAnn (1896), 3 Can. C.C. 110.

Where the only record of conviction produced before the institution of *certiorari* proceedings to quash the same is bad, and a valid amended conviction is produced in such proceedings the costs of opposing the motion to quash should not be awarded against the applicant.

R. vs. McAnn (1896), 3 Can. C.C. 110.

Where, on a summary convicion, the magistrate imposed imprisonment with hard labor, in default of paying the fine, upon a charge in respect of which the law does not authorise imprisonment with hard labor to be imposed, the magistrate may return, in answer to a *certiorari*, an amended conviction omitting the unauthorised part of his adjudication, and the amended conviction will not be bad by reason of such variance from the original minute of adjudication.

R. vs. Whiffin (1900), 4 Can. C.C. 141.

A conviction in due form will not be quashed because it is founded upon a minute of adjudication which does not disclose an offence in law, if the Court is satisfied upon perusal of the depositions that the offence for which the formal conviction was made was in fact committed.

R. vs. Whiffin, supra.

Under this section, the Court may adjudicate *de novo* on the evidence given before the magistrate in cases removed by *certiorari*, but the Court should not amend a conviction, if, in so doing, it has to exercise the discretion of the magistrate.

R. vs. Whiffin, supra.

Where a magistrate returns an amended conviction in *certiorari* proceedings, and the conviction is sustained only by reason of the amendment, costs of the *certiorari* proceedings should not be awarded against the applicant.

R. vs. Whiffin, supra.

See also R. vs. Hartley (1890), 20 O.R. 481.

R. vs. Richardson (1891), 20 O.R. 514.

R. vs. McCay (1893), 23 O.R. 442.

The provisions of section 889, regarding the reduction of the punishment imposed by a justice of the peace where the same is in excess of that which might lawfully have been imposed, apply only to cases of "summary convictions" under Part LVIII, and not to "summary trials," by a police magistrate under Part LV.

R. vs. Randolph (1900), 4 Can. C.C. 165.

A summary conviction, which does not show on its face that the original offence was committed within the territorial jurisdiction of the magistrate, should not be quashed, if the warrant which was issued to compel the attendance of the accused to answer the charge was returned upon the *certiorari*, and shows that the accused was charged with an offence within the magistrate's territorial jurisdiction.

R. vs. McGregor (1895), 2 Can. C.C. 410.

Semble, the "depositions," upon perusal of which the Court may be satisfied that an offence has been committed over which the justice had jurisdiction, will include the caption to the depositions; and if such caption states that the "charge" was read over to the accused, the Court may refer to the statement of the charge contained in the warrant to apprehend, in order to ascertain whether or not the evidence taken related to an alleged offence committed within the district for which the magistrate acted.

R. vs. McGregor, supra.

See also R. vs. Young, 5 O.R. 184 a.

Where the original conviction directed payment of a fine, and the levy of the same by distress, and, in default of sufficient distress, adjudged imprisonment, the Court, exercising the power of amendment given by this section and by section 883, may, instead of distress, direct imprisonment forthwith, in case

of non-payment of the fine. And the Court has power to so amend a summary conviction returned on *certiorari*, whether the *certiorari* is one preliminary to a motion to quash the conviction or is in aid of a writ of *habeas corpus*.

R. vs. Murdock (1900), 27 Ont. A.R. 443.
See also R. vs. Dunning (1887), 14 O.R. 52.
R. vs. Logan (1888), 16 O.R. 335.

It appears from the judgments in R. vs. Hughes (1898), 2 Can. C.C. 5, that the Court was of the opinion that, whether or not a conviction is good on its face, the Court, on *certiorari*, may go into the facts, where the right of appeal to the General Sessions upon both law and facts has been taken away by statute.

In default of a rule of practice to that effect, a person asking for a writ of *certiorari* cannot be required to give security for costs.

Desjardins et al. vs. Laguerrier (1899), 2 Q.P.R. 192.

The practice is not to give costs on quashing a conviction. But costs are recoverable by action where no order of protection is made.

R. vs. Somers (1893), 24 O.R. 244.
See also R. vs. McLeod (1897), 1 Can. C.C. 10.

Bias of Magistrate :—

Where the prosecutor in summary proceedings is the father of the convicting magistrate, and the former, as prosecutor, is entitled to a portion of the fine imposed, the magistrate is disqualified from adjudicating upon the case, and a conviction made by him under such circumstances will be quashed, even when there was no conflicting evidence given at the summary trial. To invalidate a conviction on the ground of bias, it is sufficient to show a reasonable apprehension of such bias; it is not necessary that actual bias should be proved.

R. vs. Steele (1895), 2 Can. C.C. 433.
See also R. vs. Langford (1888), 15 O.R. 52.
R. vs. Huggins (1895), 1 Q.B. 563.
Monson's Case (1894), 1 Q.B. 750.
R. vs. Rand (1866), L.R., 1 Q.B. 230.
R. vs. Meyer (1875), L.R., 1 Q.B.D. 173.
R. vs. Milledge (1879), L.R., 4 Q.B.D. 332.
R. vs. Handsley (1881), L.R., 8 Q.B.D. 383.

In R. vs. Gaisford (1892), 1 Q.B. 381, Mr. Justice Mathew, at p. 383, said: "It was argued on his behalf that it was incumbent on the complainant to show that the justice was in fact influenced; but, in my opinion, it is sufficient to show, as was held in R. vs. Milledge, that he might have been influenced."

In R. vs. Farrant (1887), L.R. 20 Q.B.D. 58 Mr. Justice Stephen said : "That means that the least pecuniary interest in the subject matter of the litigation will disqualify any person from acting as judge... But the law does not stop there, for there may be an interest, which has substantially the same effect as a pecuniary interest, though not of the same nature."

"Where there is a real likelihood, from kindred or any other cause, that he (i.e. the justice) may have a bias in favor of one of the parties, he ought not to act."

Per Smith, J., in R. vs. The Justices of Cumberland (1888), 58, L.T. N.S. 491.

See also ex parte William Wallace (1887), 26 N.B.R. 593.

Ex parte Margaret Wallace (1888), 27 N.B.R. 552.
Ex parte Driscoll (1888), 27 N.B.R. 216.
Ex parte Scribner (1893), 32 N.B.R. 175.
Ex parte Gallagher (1897), 33 C.L.J. 547.
R. vs. Major (1897), 33 C.L.J. 162.
Ex parte McCoy (1896), 1 Can. C.C. 410.
R. vs. Herrell (1898), 1 Can. C.C. 510.

It is competent for the parties to an action to waive an objection to the effect that the magistrate is disqualified on the ground of interest.

Wakefield vs. West Riding Ry. Co. (1865), L.R., 1 Q.B. 84.

But the objection is not waived by reason of its not having been made at the hearing, unless the party objecting was then aware of the interest so disqualifying the magistrate.

Lancashire Ry. vs. Heaton (1858), 8 Ell. & Bl. 951.

R. vs. Aberdare Canal Co. (1850), 14 Q.B. 854.

The applicant was convicted before a justice of the peace for an assault upon his nephew, and was fined accordingly. The information had been laid before another justice of the peace, who had issued the warrant upon which the applicant was arrested, but who, on the day fixed for the hearing, thinking that he was disqualified by relationship to the parties, asked the other justice to hear the matter. It was alleged that the magistrate who had thus issued the warrant assisted the prosecution by asking questions, and by advising the justice who was presiding at the hearing during the same, and that he had also helped him in making his judgment. The relationship was that the mother of the justice of the peace was a half sister to an aunt of defendant's by marriage, and that the father of the justice after the death of his wife married the said aunt. It was contended that the justice had no right to take the information and issue the warrant, and that, although the other justice had been called in, the justice who took the information had practically tried the case. Held, that the relationship as stated did not disqualify, and that if the justice had jurisdiction to hear the case, he could, without impropriety, assist the justice who was in fact hearing it.

Ex parte Doak (1899), 19 C.L.T. 405.

See R. vs. Herrell (1898), 1 Can. C.C. 510, it was held (1) That under the Liquor License Act (Man.), which provides that upon a prosecution for a certain offence thereunder the accused shall, if found guilty, and not before, be asked to admit or deny the previous conviction charged, and also provides that proof of the previous conviction may be made by a certificate of the convicting magistrate in case of denial or failure to answer, the accused must be given an opportunity of meeting the charge of prior conviction.

(2) That in the absence of an admission by the accused of the fact of previous conviction, it is essential under that Act that evidence apart from such certificate should be given of the identity of the accused with the person formerly convicted; and the magistrate can act only upon evidence adduced, and not upon his own personal knowledge as to such identity.

(3) That the connection of the magistrate with a society, which supplied funds, part of which were used to make the purchase upon which the prosecution of illegal sale of liquor was based because of his being an honorary member of the society, but not entitled to take any part in its affairs, is not a ground of disqualification.

(4) That to authorise the amendment of a conviction under this section, the court or judge must be satisfied from the depositions that, if trying the defendant in the first instance, the court or judge would have convicted upon that evidence.

(5) That a conviction for a second offence, which is defective for want of proof of any prior conviction, should not be amended under secs. 209 and 210, so as to impose the lesser penalty applicable to a first offence, unless the court is satisfied, from a perusal of the depositions, and after giving the accused the benefit of any reasonable doubt, that an offence is thereby proved.

Conviction void for Uncertainty :—

A conviction under sec. 511, for unlawfully and maliciously committing damage, injury and spoil, to and upon the real and personal property of a certain person, is not sufficient unless it alleges the particular act done by the accused which constituted such damage, injury or spoil, and what the particular nature and quality of the real and personal property was, in and upon which such damage, injury or spoil was committed.

R. vs. Spain (1889), 18 O.R. 385.

The conviction of a servant of a livery stable keeper, for unlawfully exercising the business of his ordinary calling as a cab driver on the Lord's day, contrary to the Lord's Day Act, R.S.O., cap. 203, is bad for uncertainty, a servant of a livery stable beeper not being within any of the classes of persons enumerated in sec. 1 of that Act.

R. vs. Somers (1893), 29 C.L.J. 724.

See also R. vs. Johnston (1876), 38 U.C.Q.B. 549.

Re Donelly (1869), 20 U.C.C.P. 165.

R. vs. Budway (1888), 8 C.L.T. 269.

A conviction for unlawfully practising medicine, without having registered under the Ontario Medical Act, is bad unless it specifies the particular acts constituting the alleged "practising."

R. vs. Coulson (1893), 24 O.R. 246.

A conviction bad on its face for uncertainty, should be maintained by the court to which it is removed by *certiorari*, only where such court can conclude on the evidence that an offence is thereby proved.

R. vs. Coulson, supra.

In giving judgmnt in the case last cited it was said by Armour, C.J., "Where the conviction is valid on its face, we are not to look at the evidence for the purpose of determinig whether an offence is established by it. That is a matter for the magistrate, and for the appellate court where there is an appeal. See R. vs. Wallace, 4 O.R. 127."

But in a subsequent case of R. vs. Coulson, which was decided by the Common Pleas Division of the High Court of Justice for Ontario, it was the opinion of that Court, that on *certiorari* proceedings the evidence should be taken into consideration, in order to see if there was any evidence at all to support the decision of the magistrate, even where no defect was apparent on the face of the conviction; and that if there was any such evidence, the Court should not review all the evidence.

See R. vs. Coulson (1896), 27 O.R. 59.

A summary conviction under a by-law passed in pursuance of the Ontario Municipal Act, for peddling without a license, is bad if the municipal by-law, although reciting the exceptions

contained in sec. 583 (14) of that Act, is not so limited as regards its enacting sections.

R. vs. Smith (1899), 3 Can. C.C. 583.

Such a conviction for so peddling without a license, is bad if it does not negative the exceptions contained in the proviso of the enacting clause, and it cannot be maintained unless the evidence shows whether or not the acts of the accused came within the exceptions.

R. vs. Smith, supra.

A summary conviction for selling fresh meat without a license, in contravention of a county by-law, was held to be bad upon its face, because it did not negative the exception in the statute with regard to "hawking or peddling any goods, wares or merchandise, the growth, produce or manufacture of this province." And it was further held that the conviction could not be amended under this section and section 890, because the evidence, when looked at, did not show an offence against the by-law.

R. vs. McFarlane (1897), 33 C.L.J. 119.

See also, R. vs. Petersky (1897), 1 Can. C.C. 91.

The existence of an exception, nominated in the description of an offence created by statute, must be negatived in order to maintain the charge. If a statute creates an offence in general terms, with an exception by way of proviso in favor of certain persons or circumstances, the onus is on the accused to plead and prove himself within the proviso.

R. vs. Strauss (1897), 1 Can. C.C. 103.

See also R. vs. White (1871), 21 U.C. C.P. 354.

R. vs. Nunn (1884), 10 Ont. P.R. 395.

A person whose real name was Bridget Corrigan, but who passed under the name of Kate Wilson, was arrested under the latter name for an offence against the License Act. She pleaded not guilty, and was tried and convicted under the assumed name, without objecting that it was not her real name. It was held, that after conviction it was too late to complain of the mistake, and the writ of *habeas corpus* which had been issued was therefore set aside. The proper time to take an objection to being charged under a wrong name is before pleading to the charge.

Ex parte Corrigan (1899), R.J.Q., 9 Q.B. 43.

A conviction for using profane language in a public street is void, unless the words complained of are therein set out.

R. vs. Smith (1899), 2 Can. C.C. 485.

A summary conviction of the owner of a hound, for permitting "such hound or dog to run at large in any locality where deer are usually found," contrary to the provisions of the Ontario Game Protection Act, is bad, unless it states that the dog was "known by the defendant to be accustomed to pursue deer." And that such conviction cannot be amended under this section, unless the evidence shows that the owner knew that the dog had such a habit.

R. vs. Crandall (1896), 27 O.R. 63.

A magistrate, after hearing the evidence on a motion for *certiorari* to remove a conviction for selling an intoxicant to an Indian, but before giving his decision, went alone and took a view of the place of sale. Held, that the proceeding was unwarrantable, and that the conviction must be quashed; and that this section, and section 108 of the Indian Act, did not

prevent proceedings by *certiorari* where the ground of complaint was that something had been done contrary to the fundamental principles of criminal procedure.

In re Sing Kee (1901), 31 C.L.T. 220.
See also ex parte Landry (1900), 36 C.L.J. 169.
R. vs. Kennedy (1894), 10 M.L.R. 338.
Champagne vs. Simard et al. (1895), R.J.Q., 7 S.C. 40.

890. Irregularities within the Preceding Section.— The following matters amongst others shall be held to be within the provisions of the next preceding section:—

(a.) The statement of the adjudication, or of any other matter or thing, in the past tense instead of in the present;

(b.) The punishment imposed being less than the punishment by law assigned to the offence stated in the conviction or order, or to the offence which appears by the depositions to have been committed;

(c.) The omission to negative circumstances, the existence of which would make the act complained of lawful, whether such circumstances are stated by way of exception or otherwise in the section under which the offence is laid, or are stated in another section.

2. But nothing in this section contained shall be construed to restrict the generality of the wording of the next preceding section. R.S.C., c. 178, s. 88.

891. Protection of Justice whose Conviction is Quashed.—If an application is made to quash a conviction or order made by a justice, on the ground that such justice has exceeded his jurisdiction, the court or judge to which or whom the application is made, may, as a condition of quashing the same, if the court or judge thinks fit so to do, provide that no action shall be brought against the justice who made the conviction, or against any officer acting under any warrant issued to enforce such conviction or order. R.S.C., c. 178, s. 89.

In a case in which the motion to quash a conviction was unopposed, no costs were allowed, and terms were imposed that no action should be brought by the defendant against the convicting magistrate.

R. vs. McLeod (1897), 1 Can. C.C. 10.

In R. vs. Somers (1893), 24 O.R. 244, counsel for the accused, the conviction having been quashed, asked for costs against the informant. Counsel for the informant asked that an order should be made providing that no action should be brought against the convicting magistrate or the informant. The Court refused to give costs, referring to the practice as laid down in R. vs. Johnston (1876), 38 U.C.Q.B. 549; and added that the accused could recover the costs in an action.

1126. **892. Condition of Hearing Motion to Quash.**—The court having authority to quash any conviction, order or other proceeding by or before a justice may prescribe by general order that no motion to quash any conviction, order or other proceeding by or before a justice and brought before such court by *certiorari*, shall be entertained unless the defendant is shown to have entered into a recognizance with one or more sufficient sureties, before a justice or justices of the county or place within which such conviction or order has been made, or before a judge or other officer, as may be prescribed by such general order, or to have made a deposit to be prescribed in like manner, with a condition to prosecute such writ of *certiorari* at his own costs and charges, with effect, without any wilful or affected delay, and, if ordered so to do, to pay the person in whose favour the conviction, order or other proceeding is affirmed, his full costs and charges to be taxed according to the course of the court where such conviction, order or proceeding is affirmed. R.S.C., c. 178, s. 9c.

A motion to quash a conviction must be made before a full Court; and a provincial legislature has no jurisdiction to confer upon a single judge the power to determine matters which, according to the Code, should be decided by a full Court.

R. vs. Beale (1896), 1 Can. C.C. 235.
Re Boucher (1879), 4 Ont. A.R. 191.
R. vs. McAuley (1887), 14 O.R. 643.
R. vs. Beemer (1888), 15 O.R. 266.
R. vs. Smith (1889), 1 N.W.T. Reports, part 2, p. 1.

In an Ontario case it was held that an ex parte order made by a judge of the High Court of Justice of that province in a *certiorari* proceeding in a criminal matter, was not subject to review or to be set aside by another judge of that court, sitting in "Weekly Court;" but that it was appealable to a Divisional Court of the High Court sitting in banc.

R. vs. Graham (1898), 1 Can. C.C. 405.

When there is no affidavit of justification, or other evidence of the sufficiency of the sureties, as required by the rules of Court, passed under this section, a rule *nisi* will be discharged.

R. vs. Richardson (1889), 17 O.R. 729.
R. vs. Addison (1889), 17 O.R. 729.
R. vs. Petrie (1889), 2 N.W.T. Reports 191.

But when the ends of justice demand it, the Court will allow the applicant to take a new rule in the terms of the one discharged.

R. vs. Petrie (1889), 2 N.W.T. Reports, 191.
R. vs. Inhabitants of Abergele (1836), 5 A. & E., 795.

In Ontario, a surety upon a recognizance filed on a motion to quash a summary conviction, must justify in the sum of $100.00 over and above any amount for which he may be surety, as well as over and above his debts. And a ruling of Court, passed before the enactment of the Code, under the section of the Summary Convictions Act, now incorporated in this section, as to recognizances on motions to quash convictions, remains in

force as a rule under the Code, without being passed again.
R. vs. Robinet (1894), 2 Can. C.C. 382.

But in R. vs. Ashcroft (1899), 2 Can. C.C. 385, (a case decided in the N.W.T.), it was held that an affidavit of justification upon a recognizance, given pursuant to a rule of Court passed under this section, need not state that the surety is worth the amount of the penalty over and above other sums for which he is surety; and that a rule made under this section, requiring sufficient sureties for a specific amount is complied with if the sureties justify as being possessed of property of that value, and swear that they are worth the amount over and above all their just debts and liabilities, and over and above all exemptions allowed by law. The mere filing of a recognizance by the defendant for an appeal from a summary conviction, does not deprive him of his right to a writ of *certiorari*, for the purpose of having the conviction quashed for want of jurisdiction.

This section authorizes the requisition of a recognizance only where the conviction is brought before the Court by a writ of *certiorari*, and no recognizance is required where such a writ is not necessary or is dispensed with. And if a conviction has been filed by the magistrate, under sec. 801, in a Court of superior criminal jurisdiction, a motion may be made to quash the same without the necessity of a writ of *certiorari*.
R. vs. Ashcroft, supra.

Cavanagh v. Mc Kenzie 6 C.C. C. 88.

893. Imperial Act Superseded.—The second section of the Act of Parliament of the United Kingdom, passed in the fifth year of the reign of His Majesty King George the Second, and chaptered nineteen, shall no longer apply to any conviction, order or other proceeding by or before a justice in Canada, but the next preceding section of this Act shall be substituted therefor, and the like proceedings may be had for enforcing the condition of a recognizance taken under the said section as might be had for enforcing the condition of a recognizance taken under the said Act of the Parliament of the United Kingdom. R.S.C., c. 178, s. 91.

894. Judicial Notice of Proclamation.—No order, conviction or other proceeding shall be quashed or set aside, and no defendant shall be discharged, by reason of any objection that evidence has not been given of a proclamation or order of the Governor-in-Council, or of any rules, regulations, or by-laws made by the Governor-in-Council in pursuance of a statute of Canada, or of the publication of such proclamation, order, rules, regulations or by-laws in the *Canada Gazette;* but such proclamation, order, rules, regulations and by-laws and the publication thereof shall be judicially noticed. 51 V., c. 45, s. 10.

895. Refusal to Quash.—If a motion or rule to quash a conviction, order or other proceeding is refused or dis-

charged, it shall not be necessary to issue a writ of *procedendo*, but the order of the court refusing or discharging the application shall be a sufficient authority for the registrar or other officer of the court forthwith to return the conviction, order and proceedings to the court or justice from which or whom they were removed, and for proceedings to be taken thereon for the enforcement thereof, as if a *procedendo* had issued which shall forthwith be done. R.S.C., c. 178, s. 93.

The accused was convicted by a justice of the peace under sec. 174 of the Manitoba Liquor License Act. The conviction, together with the information upon which it was based, was removed into a higher Court by *certiorari*, and the conviction was there quashed, on the ground that the original summons had not been personally served on the defendant, and that she had not authorised any person to appear for her on its return. The presiding judge, however, under the supposed authority of this section, also ordered that the information should be returned to the justice, who issued a second summons upon it, it being too late for the prosecutor to lay a second information in respect of the offence charged. On motion for prohibition, it was held that this section did not give the Judge any authority to order the return of the information to the convicting justice after the quashing of the conviction, as the section only applied to cases in which, before that section, a procedendo would have been issuel to send back a record; it was therefore furthe held, that the information was not properly before the justice when he issued the second summons thereon, and that he had no jurisdiction to proceed upon it.
R. vs. Zickrick (1897), 11 Man. L.R. 542.

1129. **896. Conviction not to be set aside in certain Cases.**—Whenever it appears by the conviction that the defendant has appeared and pleaded, and the merits have been tried, and the defendant has not appealed against the conviction, where an appeal is allowed, or if appealed against, the conviction has been affirmed, such conviction shall not afterwards be set aside or vacated in consequence of any defect of form whatever, but the construction shall be such a fair and liberal construction as will be agreeable to the justice of the case. R.S.C., c. 178, s. 94.

If, by mistake, an information against the same defendant, on another charge for unlawfully selling intoxicating liquor, is returned on a *certiorari* to remove the proceedings in respect of a conviction for an offence of keeping liquor for sale, the magistrate's affidavit may be received to explain the apparent variance between the information and the conviction, and the conviction will not be quashed if the explanation is satisfactory.
Ex parte Kavanagh (1896), 2 Can. C.C. 267.
Where the variance in the date of the offence, as it appears

in the information returned with the conviction upon a *certiorari*, is manifestly a clerical error, and the proceedings are otherwise regular, the conviction will not be quashed.

Ex parte Kavanagh, supra.

See also Champagne vs. Simard et al. (1896), R.J.Q., 7 S.C. 40.

When there is nothing upon the face of a conviction for keeping a house of ill-fame to show whether the convicting police magistrate acted under the "summary trials" clauses (under which he has absolute jurisdiction regarding that offence), or as a justice of the peace under the "summary convictions" clauses (see secs. 202 and 208), and the conviction is defective in form, and only amendable if he acted in the latter capacity, the court will treat it as a "summary conviction," and by virtue of this section, will amend it, reducing the term of imprisonment where the sentence imposed exceeds that which is authorized by law.

R. vs. Spooner (1900), 4 Can. C.C. 209.

897. Order as to Costs.—If upon any appeal the court trying the appeal orders either party to pay costs, the order shall direct the costs to be paid to the clerk of the peace or other proper officer of the court, to be paid over by him to the person entitled to the same, and shall state within what time the costs shall be paid. R.S.C., c. 178, s. 95.

The costs referred to in this and the following section (as is illustrated by Form RRR, provided for the latter section), are those dealt with by the General Sessions of the Peace when a conviction or order is affirmed or quashed on appeal, to it; but these sections do not apply as regards the costs of an unsuccessful application to a judge of the High Court to take an affidavit off the files, after a conviction has been removed by *certiorari* into that Court.

R. vs. Graham (1898), 1 Can. C.C. 405.

Proceedings by way of *certiorari* against a summary conviction do not constitute an "appeal" under this section.

R. vs. Graham, supra.

Costs awarded against a magistrate, in respect of an unsuccessful interlocutory application made by him in *certiorari* proceedings, are not governed by this section, and should be directed to be paid to the opposite party direct, instead of to the clerk of the peace or other officer of the Court which made the order.

R. vs. Graham, supra.

On an appal to the General Sessions of the Peace from a conviction made by a police magistrate, the chairman gave judgment, signing the following minute: "Appeal in this case dismissed, with costs to be taxed by the clerk of the peace within 5 days." No formal order was ever drawn up in pursuance of this minute, but the clerk of the peace afterwards taxed the costs, and on his certificate, at a subsequent sittings of the Court of General Sessions, an order was applied for and obtained for the issue of a distress warrant for the amount of such costs. Held, that under ss. 880 (e) and this section, it was necessary for a formal order to be drawn up in pursuance of the above-mentioned minute, and that, therefore, there was no

warrant or authority for the certificate of the clerk of the peace, or for the order of the Court of General Sessions directing the distress warrant, and the same should be quashed.
Bothwell vs. Burnside (1900), 36 C.L.J. 312.

In a Nova Scotia case it was held that, if the magistrate and the informant appear upon and successfully oppose an application for a writ of *certiorari* to remove a conviction, they may be ordered to pay the costs of the motion in the event of the conviction being quashed.
R. vs. Smith (1899), 2 Can. C.C. 485.
See also R. vs. McFarlane (1897), 33 C.L.J. 119.

757. **898. Recovery of Costs.**—If such costs are not paid within the time so limited, and the person ordered to pay the same has not been bound by any recognizance conditioned to pay such costs, the clerk of the peace or his deputy, on application of the person entitled to the costs, or of any person on his behalf, and on payment of any fee to which he is entitled, shall grant to the person so applying, a certificate that the costs have not been paid; and upon production of the certificate to any justice in and for the same territorial division, such justice may enforce the payment of the costs by warrant of distress in manner aforesaid, and in default of distress may commit the person against whom the warrant has issued in manner hereinbefore mentioned, for any term not exceeding one month, unless the amount of the costs and all costs and charges of the distress and also the costs of the commitment and conveying of the party to prison, if the justice thinks fit so to order (the amount thereof being ascertained and stated in the commitment), are sooner paid. The said certificate shall be in the form PPP and the warrants of distress and commitment in the forms QQQ and RRR respectively in schedule one to this Act. R.S.C., c. 178, s. 96.

The proceedings for enforcement of an order for costs provided for by this section apply only to costs dealt with by a Court of General Sessions on affirming or quashing a conviction or order, on appeal to that court.
R. vs. Graham (1898), 1 Can. C.C. 405.

760. **899. Abandonment of Appeal.**—An appellant may abandon his appeal by giving to the opposite party notice in writing of his intention six clear days before the sitting of the court appealed to, and thereupon the costs of the appeal shall be added to the sum if any adjudged against the appellant by the conviction or order, and the justice shall proceed on the conviction or order as if there had been no appeal. R.S.O. (1887), c. 74, s. 8.

Reg v Martin 3 6 B 448
R v Townsend (2) 6 C Cr
Ca 579

705. **900. Statement of Case by Justices for Review.**—In this section the expression "the court" means and includes any superior court of criminal jurisdiction for the province in which the proceedings herein referred to are carried on.

2. Any person aggrieved, the prosecutor or complainant as well as the defendant, who desires to question a conviction, order, determination or other proceeding of a justice under this part, on the ground that it is erroneous in point of law, or is in excess of jurisdiction, may apply to
761 such justice to state and sign a case setting forth the facts of the case and the grounds on which the proceeding is questioned, and if the justice declines to state the case, may apply to the court for an order requiring the case to be stated.

3. The application shall be made and the case stated within such time and in such manner as is, from time to time,
761 directed by rules or orders under section five hundred and thirty-three of this Act.

4. The appellant at the time of making such application, and before a case is stated and delivered to him by the justice, shall in every instance, enter into a recognizance before such justice or any other justice exercising the same jurisdiction, with or without surety or sureties, and in such sum as to the justice seems meet, conditioned to prosecute his appeal without delay, and to submit to the judgment of
762 the court and pay such costs as are awarded by the same; and the appellant shall, at the same time, and before he shall be entitled to have the case delivered to him, pay to the justice such fees as he is entitled to; and the appellant, if then in custody, shall be liberated upon the recognizance being further conditioned for his appearance before the same justice, or such other justice as is then sitting, within ten days after the judgment of the court has been given, to abide such judgment, unless the judgment appealed against is reversed,

R v. Gaiser 5 C Cr
Ca 154.

5. If the justice is of opinionthat the application is merely frivolous, but not otherwise, he may refuse to state a case, and shall on the request of the applicant sign and
760 deliver to him a certificate of such refusal; provided that the justice shall not refuse to state a case where the application for that purpose is made to him by or under the direction ~~province~~. of Her Majesty as Genl of Canada. or of any Province

6. Where the justice refuses to state a case, it shall be lawful for the appellant to apply to the court, upon an

~~of His Majesty's Attorney-General of Canada, or of any~~ affidavit of the facts, for a rule calling upon the justice, and also upon the respondent, to show cause why such case should not be stated; and such court may make such rule absolute, or discharge the application, with or without payment of costs, as to the court seems meet; and the justice upon being served with such rule absolute, shall state a case accordingly, upon the appellant entering into such recognizance as hereinbefore provided.

7. The court to which a case is transmitted under the foregoing provisions shall hear and determine the question or questions of law arising thereon, and shall thereupon affirm, reverse or modify the conviction, order or determination in respect of which the case has been stated, or remit the matter to the justice with the opinion of the court thereon, and may make such other order in relation to the matter, and such orders as to costs, as to the court seems fit, and all such orders shall be final and conclusive upon all parties: Provided always, that any justice who states and delivers a case in pursuance of this section shall not be liable to any costs in respect or by reason of such appeal against his determination.

8. The court for the opinion of which a case is stated shall have power, if it thinks fit, to cause the case to be sent back for amendment; and thereupon the same shall be amended accordingly, and judgment shall be delivered after it has been amended.

9. The authority and jurisdiction hereby vested in the court for the opinion of which a case is stated may, subject to any rules and orders of court in relation thereto, be exercised by a judge of such court sitting in chambers, and as well in vacation as in term time.

10. After the decision of the court in relation to any such case stated for their opinion, the justice in relation to whose determination the case has been stated, or any other justice exercising the same jurisdiction, shall have the same authority to enforce any conviction, order or determination which has been affirmed, amended or made by such court as the justice who originally decided the case would have had to enforce his determination if the same had not been appealed against; and no action or proceeding shall be commenced or had against a justice for enforcing such conviction, order or determination by reason of any defect in the same.

11. If the court deems it necessary or expedient any order

of the court may be enforced by its own process.

12. No writ of *certiorari* or other writ shall be required for the removal of any conviction, order or other determination in relation to which a case is stated under this section or otherwise, for obtaining the judgment or determination of a superior court on such case under this section.

13. In all cases where the conditions, or any of them, in any recognizance entered into in pursuance of this section have not been complied with, such recognizance shall be dealt with in like manner as is provided by section eight hundred and seventy-eight with respect to recognizances entered into thereunder.

14. Any person who appeals under the provisions of this section against any determination of a justice from which he is entitled to an appeal under section eight hundred and seventy-nine of this Act, shall be taken to have abandoned such last mentioned right of appeal finally and conclusively and to all intents and purposes.

15. Where, by any special Act, it is provided that there shall be no appeal from any conviction or order, no proceedings shall be taken under this section in any case to which such provision in such special Act applies. 53 V., c. 37, s. 28.

When the grounds taken on the motion to quash a conviction are the same as those taken and disposed of by a single judge on a stated case, the matter is *res judicata*.

R. vs. Monaghan (1897), 2 Can. C.C. 488.

The procedure by way of "stated case" under this section is a form of appeal, and as the application of the Cole to offences under Ontario statutes is declared by the Ontario Summary Convictions Act (R.S.O. 1897, c. 90, sec. 2), not to affect "procedure on appearance," there is no jurisdiction to proceed by way of stated case to review a decision of a magistrate in respect of such an offence, except where the constitutionality of provincial acts is involved. (See R.S.O. 1897, c. 91). As regards such offences the appeal, whether of the prosecutor or of the accused, is to the Court of General Sessions.

See also R. vs. O'Dea (1899 and 1900), 3 Can. C.C. 402.

R. vs. Robert Simpson Co., Ltd. (1896), 2 Can. C.C. 272.

An accused person was, by consent, tried summarily before the stipendiary magistrate for the city of Halifax, under sec. 786, and was convicted of the offence of stealing property of the value of $10.00. At the trial, the magistrate, at the request of the accused, reserved a question for the opinion of the Court under sec. 742 and the following sections. It was held (1), that under sec. 742 et seq., a reserved case can only be stated by a court or a judge having jurisdiction in criminal cases, or by a magistrate in proceedings under sec. 785; and (2), that as sec. 785 had no application to the case in question, and the provisions of sec. 900 had admittedly, not being complied with, there was no proper case before the Court upon which the Court had authority to give an opinion.

R. vs. Hawes (1900), 37 C.L.J. 36.
See also R. vs. O'Dea (1899 and 1900), 3 Can. C.C. 402.
R. vs. Strauss (1897), 5 B.C.R. 486.

747. **901. Tender and Payment.**—Whenever a warrant of distress is issued against any person, and such person pays or tenders to the peace officer having the execution of the same, the sum or sums in the warrant mentioned, together with the amount of the expenses of the distress up to the time of payment or tender, the peace officer shall cease to execute the same. R.S.C., c. 198, s. 97.

2. Whenever any person is imprisoned for non-payment of any penalty or other sum, he may pay or cause to be paid to the keeper of the prison in which he is imprisoned, the sum in the warrant of commitment mentioned, together with the amount of the costs and charges and expenses therein also mentioned, and the keeper shall receive the same, and shall thereupon discharge the person, if he is in his custody for no other matter. He shall also forthwith pay over any moneys so received by him to the justice who issued the warrant. R.S.C., c. 198, s. 98.

1133, 1134 **902. Returns respecting Convictions and Moneys Received.**—Every justice shall, quarterly, on or before the second Tuesday, in each of the months of March, June, September and December in each year, make to the clerk of the peace or other proper officer of the court having jurisdiction in appeal, as herein provided, a return in writing, under his hand, of all convictions made by him, and of the receipt and application by him of the moneys received from the defendants,—which return shall include all convictions and other matters not included in some previous return, and shall be in the form SSS in schedule one of this Act.

2. If two or more justices are present, and join in the conviction, they shall make a joint return.

3. In the province of Prince Edward Island such return shall be made to the clerk of the court of assize of the county in which the convictions are made, and on or before the fourteenth day next before the sitting of the said court next after such convictions are so made.

4. Every such return shall be made in the said district of Nipissing, in the province of Ontario, to the clerk of the peace for the county of Renfrew, in the said province. R.S.C., c. 178, s. 99.

5. Every justice to whom any such moneys are afterwards

paid shall make a return of the receipts and application thereof, to the court having jurisdiction in appeal as hereinbefore provided,—which return shall be filed by the clerk of the peace or the proper officer of such court with the records of his office. R.S.C., c. 178, s. 100.

6. Every justice, before whom any such conviction takes place or who receives any such moneys, who neglects or refuses to make such return thereof, or wilfully makes a false, partial or incorrect return, or wilfully receives a larger amount of fees than by law he is authorized to receive, shall incur a penalty of eighty dollars, together with costs of suit, in the discretion of the court, which may be recovered by any person who sues for the same by action of debt or information in any court of record in the province in which such return ought to have been or is made. R.S.C., c. 178, s. 101.

7. One moiety of such penalty shall belong to the person suing, and the other moiety to His Majesty, for the public uses of Canada.

903. Publication, etc., of Returns.—The clerk of the peace of the district or county in which any such returns are made, or the proper officer, other than the clerk of the peace, to whom such returns are made, shall, within seven days after the adjournment of the next ensuing General or Quarter Sessions, or of the term or sitting of such other court as aforesaid, cause the said returns to be posted up in the court-house of the district or county, and also in a conspicuous place in the office of such clerk of the peace, or other proper officer, for public inspection, and the same shall continue to be so posted up and exhibited until the end of the next ensuing General or Quarter Sessions of the Peace, or of the term or sitting of such other court as aforesaid; and for every schedule so made and exhibited by such clerk or officer, he shall be allowed such fee as is fixed by competent authority. R.S.C., c. 178, s. 103.

2. Such clerk of the peace or other officer of each district or county, within twenty days after the end of each General or Quarter Sessions of the Peace, or the sitting of such court as aforesaid, shall transmit to the Minister of Finance and Receiver-General a true copy of all such returns made within his district or county. R.S.C., c. 178, s. 104.

904. Prosecution for Penalties under the Preceding Section.—All actions for penalties arising under the

provisions of section nine hundred and two shall be commenced within six months next after the cause of action accrues, and the same shall be tried in the district, county or place wherein such penalties have been incurred. and if a verdict of judgment passes for the defendant, or the plaintiff becomes non-suit, or discontinues the action after issue joined, or if, upon demurrer or otherwise, judgment is given against the plaintiff, the defendant shall, in the discretion of the court, recover his costs of suit, as between solicitor and client, and shall have the like remedy for the same as any defendant has by law in other cases. R.S.C., c. 178, s. 104.

1134. **905. Remedies Saved.**—Nothing in the three sections next preceding shall have the effect of preventing any person aggrieved from prosecuting, by indictment, any justice, for any offence, the commission of which would subject him to indictment at the time of the coming into force of this Act. R.S.C., c. 178, s. 105.

1138. **906. Defective Returns.**—No return purporting to be made by any justice under this Act shall be vitiated by the fact of its including, by mistake, any convictions or orders had or made before him in any matter over which any Provincial Legislature has exclusive jurisdiction, or with respect to which he acted under the authority of any provincial law. R.S.C., c. 178, s. 106.

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R. McDonald 6 C. Cr. Ca. 1. **907. Certain Defects not to Vitiate Proceedings.**—No information, summons, conviction, order or other proceeding shall be held to charge two offences, or shall be held to be uncertain on account of its stating the offence to have been committed in different modes, or in respect of one or other of several articles, either conjunctively or disjunctively; for example, in charging an offence under section five hundred and eight of this Act, it may be alleged that "the defendant unlawfully did cut, break, root up and otherwise destroy or damage a tree, sapling or shrub"; and it shall not be necessary to define more particularly the nature of the act done, or to state whether such act was done in respect of a tree, or a sapling, or a shrub. R.S.C., c. 178, s. 107.

607. **908. Preserving Order in Court.**—Every judge of Sessions of the Peace, chairman of the Court of General

Sessions of the Peace, police magistrate, district magistrate or stipendiary magistrate, shall have such and like powers and authority to preserve order in the said courts during the holding thereof, and by the like ways and means as now by law are or may be exercised and used in like cases and for the like purposes by any court in Canada, or by the judges thereof, during the sittings thereof. R.S.C., c. 178, s. 109.

608. **909. Resistance to Execution of Process.**—Every judge of the Sessions of the Peace, chairman of the court of General Sessions of the Peace, recorder, police magistrate, district magistrate or stipendiary magistrate, whenever any resistance is offered to the execution of any summons, warrant of execution or other process issued by him, may enforce the due execution of the same by the means provided by the law for enforcing the execution of the process of other courts in like cases. R.S.C., c. 178, s. 110; as amended by 56 V., c. 46.

PART LIX.

RECOGNIZANCES.

910. Render of accused by surety.
911. Bail after render.
912. Discharge of recognizance.
913. Render in Court.
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915. Right of surety to render not affected.
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918. Proceeding on forfeited recognizance not to be taken except on order of judge, etc.
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923. Return of writ by sheriff.
924. Roll and return to be transmitted to Minister of Finance.
925. Appropriation of moneys collected by sheriff.
926. Quebec.

608. **910. Render of Accused by Surety.**—Any surety for any person charged with any indictable offence may, upon affidavit showing the grounds therefor, with a certified copy

of the recognizance, obtain from a judge of a superior court or from a judge of a county court having criminal jurisdiction, or in the province of Quebec from a district magistrate, an order in writing under his hand, to render such person to the common gaol of the county where the offence is to be tried.

2. The sureties, under such order, may arrest such person and deliver him, with the order, to the gaoler named therein, who shall receive and imprison him in the said gaol, and shall be charged with the keeping of such person until he is discharged by due course of law. R.S.C., c. 179, ss. 1 and 2.

A judge's order under this section authorizing the sureties to render the accused to jail is not equivalent to an order of commitment to jail for trial for the purpose of the speedy trials clauses.
R. vs. Gibson (1896), 3 Can. C.C. 451.

1089. **911. Bail after Render.**—The person rendered may apply to a judge of a superior court, or in cases in which a judge of a county court may admit to bail, to a judge of a county court, to be again admitted to bail, who may on examination allow or refuse the same, and make such order as to the number of the sureties and the amount of recognizance as he deems meet,—which order shall be dealt with in the same manner as the first order for bail, and so on as often as the case requires. R.S.C., c. 179, s. 3.

1090. **912. Discharge of Recognizance.**—On due proof of such render, and certificate of the sheriff, proved by the affidavit of a subscribing witness, that such person has been so rendered, a judge of the superior or county court, as the case may be, shall order an entry of such render to be made on the recognizance by the officer in charge thereof, which shall vacate the recognizance, and may be pleaded or alleged in discharge thereof. R.S.C., c. 179, s. 4.

1091. **913. Render in Court.**—The sureties may bring the person charged as aforesaid into the court at which he is bound to appear, during the sitting thereof, and then, by leave of the court, render him in discharge of such recognizance at any time before trial, and such person shall be committed to gaol, there to remain until discharged by due course of law; but such court may admit such person to bail for his appearance at any time it deems meet. R.S.C., c. 179, s. 5.

914. Sureties not Discharged by Arraignment or Conviction.—The arraignment or conviction of any person charged and bound as aforesaid shall not discharge the recognizance, but the same shall be effectual for his appearance for trial or sentence, as the case may be; nevertheless the court may commit such person to gaol upon his arraignment or trial, or may require new or additional sureties for his appearance for trial or sentence, as the case may be, notwithstanding such recognizance; and such commitment shall be a discharge of the sureties. R.S.C., c. 179, s. 6.

See R. vs. Hamilton (1899), 3 Can. C.C. 1, cited under sec. 916.

915. Right of Surety to Render not Affected.—Nothing in the foregoing provisions shall limit or restrict any right which a surety now has of taking and rendering to custody any person charged with any such offence, and for whom he is such surety. R.S.C., c. 179, s. 7.

916. Entry of Fines, etc., on Record and Recovery thereof.—Unless otherwise provided, all fines, issues, amercements and forfeited recognizances, the disposal of which is within the legislative authority of the Parliament of Canada, set, imposed, lost or forfeited before any court of criminal jurisdiction shall, within twenty-one days after the adjournment of such court be fairly entered and extracted on a roll by a clerk of the court, or in case of his death or absence, by any other person, under the direction of the judge who presided at such court, which roll shall be made in duplicate and signed by the clerk of the court, or in case of his death or absence, by such judge.

2. If such court is a superior court having criminal jurisdiction one of such rolls shall be filed with the clerk prothonotary, registrar or other proper officer.

(a.) In the province of Ontario, of the High Court of Justice: (The preceding five lines came into force 1st January, 1901.)

(b.) in the provinces of Nova Scotia, New Brunswick and British Columbia, of the Supreme Court of the province;

(c.) in the province of Prince Edward Island, of the Supreme Court of Judicature of that province;

(d.) in the province of Manitoba, of the Court of King's Bench of that province; and

(e.) in the North-west Territories, of the Supreme Court of the said territories,—

on or before the first day of the term next succeeding the court by or before which such fines or forfeitures were imposed or forfeited.

3. If such court is a court of General Sessions of the Peace, or a county court, one of such rolls shall remain deposited in the office of the clerk of such court.

4. The other of such rolls shall, as soon as the same is prepared, be sent by the clerk of the court making the same, or in case of his death or absence, by such judge as aforesaid, with a writ of *fieri facias* and *capias*, according to the form TTT in schedule one to this Act, to the sheriff of the county in and for which such court was holden; and such writ shall be authority for the sheriff for proceeding to the immediate levying and recovering of such fines, issues, amercements and forfeited recognizances, on the goods and chattels, lands and tenements of the several persons named therein, or for taking into custody the bodies of such persons respectively, in case sufficient goods and chattels, lands or tenements cannot be found, whereof the sums required can be made; and every person so taken shall be lodged in the common gaol of the county, until satisfaction is made, or that the court into which such writ is returnable, upon cause shown by the party, as hereinafter mentioned, makes an order in the case and until such order has been fully complied with.

5. The clerk of the court shall, at the foot of each roll made out as herein directed, make and take an affidavit in the following form, that is to say:

"I, A B (*describing his office*), make oath that this roll "is truly and carefully made up and examined, and that all "fines, issues, amercements, recognizances and forfeitures "which are set, lost, imposed or forfeited, at or by the "court therein mentioned, and which, in right and due "course of law, ought to be levied and paid, are, to the "best of my knowledge and understanding, inserted in "the said roll; and that in the said roll are also contained "and expressed all such fines as have been paid to or "received by me, either in court or otherwise, without any "wilful discharge, omission, misnomer or defect whatsoever. So help me God;"

Which oath any justice of the peace for the county is hereby authorized to administer. R.S.C., c. 179, ss. 8, 9 and

15; as amended by 63-64 V., c. 46.

By the recognizance the cognizors acknowledged that they severally owed Her Majesty $500.00 to be made and levied, etc., unless the person mentioned, who had been charged before a justice of the peace with theft, should personally appear "at the next sitting of the Court of competent jurisdiction, at the city of Calgary, in and for the Northern Alberta Judicial District, and there surrender himself into custody and plead to such charge." It was held that no notice of intention to estreat or to produce the accused person was necessary, and, even if necessary, the giving of such notice would be only a ministerial act, and merely for the convenience of the parties.
In re McArthur's Bail (1896), 17 C.T.L., 301.
See also R. vs. Schram (1845), 2 U.C.Q.B., 91.
Re Talbot's Bail (1892), 23 O.R., 65.

Where at a trial, upon an indictment a verdict of guilty is returned, but a reserved case is granted upon a question of law, and the accused admitted to bail, the condition of the recognizance taken being that the accused will appear at the next sittings of the Court "to receive sentence," the condition of the recognizance is not broken if the accused fails to appear after judgment is given on the reserved case quashing the conviction and ordering a new trial. The conviction having been set aside, the accused was entitled to presume that he would not be called for sentence, and the sureties were not bound for his appearance for any other purpose than to receive sentence; and in such a case a roll of estreated recognizance and a writ of *fieri facias* against the sureties thereon would be set aside on motion to the full Court.
R. vs. Hamilton (1899), 3 Can. C.C. 1.
See also R. vs. Wheeler (1865), 1 C.L.J. 272.
R. vs. Ritchie (1865), 1 C.L.J. 272.

917. Officer to Prepare Lists of Persons under Recognizance making Default.—If any person bound by recognizance for his appearance (or for whose appearance any other person has become so bound) to prosecute or give evidence on the trial of any indictable offence, or to answer for any common assault, or to articles of the peace, makes default, the officer of the court by whom the estreats are made out shall prepare a list in writing, specifying the name of every person so making default, and the nature of the offence in respect of which such person, or his surety, was so bound, together with the residence, trade, profession or calling of every such person and surety,—and shall, in such list, distinguish the principals from the sureties, and shall state the cause, if known, why each such person did not appear, and whether, by reason of the non-appearance of such person, the ends of justice have been defeated or delayed. R.S.C., c. 179, s. 10.

1095. **918. Proceeding on Forfeited Recognizance not to be taken except on Order of Judge, etc.**—Every such officer shall, before any such recognizance is estreated, lay such list before the judge or one of the judges who presided at the court, or if such court was not presided over by a judge, before two justices of the peace who attended at such court, and such judge or justices shall examine such list, and make such order touching the estreating or putting in process any such recognizance as appears just, subject, in the province of Quebec, to the provisions hereinafter contained; and no officer of any such court shall estreat or put in process any such recognizance without the written order of the judge or justices of the peace before whom respectively such list has been laid. R.S.C., c. 179, s. 11.

A recognizance entered into before the magistrate committing the accused for trial was conditioned for the appearance of the accused at the next court of competent jurisdiction to be held at Toronto. The next court was the sittings of the Court of Oyer and Terminer for the County of York, but no indictment against the accused was then preferred. The information, deposition and recognizance were transmitted to the subsequent sessions of the peace for the county of York, and an indictment having been preferred and a true bill found, and neither the prisoner nor his bail appearing, the recognizance was forfeited on the last day of the sessions, and the surety arrested, the writ of *fieri facias* having been returned *nulla bona*. It was held that the order forfeiting the recognizance, the estreat roll and the writ of *fieri facias* and capias must be quashed, and all proceedings thereon stayed.
In re Cohen's Bail (1896), 32 C.L.J. 412.

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1108. **919. Recognizance need not be Estreated in certain cases.**—Except in the cases of persons bound by recognizance for their appearance, or for whose appearance any other person has become bound to prosecute or give evidence on the trial of any indictable offence, or to answer for any common assault, or to articles of the peace, in every case of default whereby a recognizance becomes forfeited, if the cause of absence is made known to the court in which the person was bound to appear, the court, on consideration of such cause, and considering also, whether, by the non-appearance of such person the ends of justice have been defeated or delayed, may forbear to order the recognizance to be estreated; and, with respect to all recognizances, as estreated, if it appears to the satisfaction of the judge who presided at such court that the absence of any person for whose appearance any recognizance was entered into, was owing to circumstances which rendered such absence justi-

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fiable such judge may make an order directing that the sum forfeited upon such estreated recognizance shall not be levied.

2. The clerk of the court shall, for such purpose, before sending to the sheriff any roll, with a writ of *fieri facias* and *capias*, as directed by section nine hundred and sixteen, submit the same to the judge who presided at the court, and such judge may make a minute on the said roll and writ of any such forfeited recognizances and fines as he thinks fit to direct not to be levied; and the sheriff shall observe the direction in such minute written upon such roll and writ, or endorsed thereon, and shall forbear accordingly to levy any such forfeited recognizance or fine. R.S.C., c. 179, ss. 12 and 13.

1107. **920. Sale of Lands by Sheriff under Estreated Recognizance.**—If upon any writ issued under section nine hundred and sixteen, the sheriff takes lands or tenements in execution, he shall advertise the same in like manner as he is required to do before the sale of lands in execution in other cases; and no sale shall take place in less than twelve months from the time the writ came to the hands of the sheriff. R.S.C., c. 179, s. 14.

1109 **921. Discharge from custody on giving Security.**—If any person on whose goods and chattels a sheriff, bailiff or other officer is authorized to levy any such forfeited recognizance, gives security to the said sheriff or other officer for his appearance at the return day mentioned in the writ, in the court into which such writ is returnable, then and there to abide the decision of such court, and also to pay such forfeited recognizance, or sum of money to be paid in lieu or satisfaction thereof, together with all such expenses as are adjudged and ordered by the court such sheriff or officer shall discharge such person out of custody, and if such person does not appear in pursuance of his undertaking, the court may forthwith issue a writ of *fieri facias* and *capias* against such person and the surety or sureties of the person so bound as aforesaid. R.S.C., c. 179, s. 16.

1110. **922. Discharge of Forfeited Recognizance.**—The court into which any writ of *fieri facias* and *capias* issued under the provisions of this part is returnable, may inquire

into the circumstances of the case, and may in its discretion, order the discharge of the whole of the forfeited recognizance, or sum of money paid or to be paid in lieu or satisfaction thereof, and make such order thereon as to such court appears just; and such order shall accordingly be a discharge to the sheriff, or to the party, according to the circumstances of the case. R.S.C., c. 179, s. 17.

An order made under this section for the discharge of a forfeited recognizance is a civil and not a criminal proceeding; and the discretionary order for such discharge must be made by the Court in banc, and not by a single judge.
R. vs. McArthur's Bail ( ), 33 C.L.J., 630.

1111. **923. Return of the Writ by Sheriff.**—The sheriff to whom any writ is directed under this Act, shall return the same on the day on which the same is made returnable, and shall state, on the back of the roll attached to such writ, what has been done in the execution thereof; and such return shall be filed in the court into which such return is made. R.S.C., c. 179, s. 18.

1112. **924. Roll and Return to be Transmitted to Minister of Finance.**—A copy of such roll and return, certified by the clerk of the court into which such return is made, shall be forthwith transmitted to the Minister of Finance and Receiver-General, with a minute thereon of any of the sums therein mentioned, which have been remitted by order of the court, in whole or in part, or directed to be forborne, under the authority of section nine hundred and nineteen. R.S.C., c. 179, s. 19.

1101. **925. Appropriation of Moneys Collected by Sheriff.**—The sheriff or other officer shall, without delay, pay over all moneys collected under the provisions of this part by him to the Minister of Finance and Receiver-General or other person entitled to receive the same. R.S.C., c. 179, s. 20.

926. Quebec.—The provisions of sections nine hundred and sixteen and nine hundred and nineteen to nine hundred and twenty-four, both inclusive, shall not apply to the province of Quebec, and the following provisions shall apply to that province only;

2. Whenever default is made in the condition of any recognizance lawfully entered into or taken in any criminal case, proceeding or matter, in the province of Quebec,

within the legislative authority of the Parliament of Canada, so that the penal sum therein mentioned becomes forfeited and due to the Crown, such recognizance shall thereupon be estreated or withdrawn from any record or proceeding in which it then is—or where the recognizance has been entered into orally in open court—a certificate or minute of such recognizance, under the seal of the court, shall be made from the records of such court;

(a.) Such recognizance, certificate or minute, as the case may be, shall be transmitted by the court, recorder, justice of the peace, magistrate or other functionary before whom the cognizor, or the principal cognizor, where there is a surety or sureties, was bound to appear, or to do that, by his default to do which the condition of the recognizance is broken, to the Superior Court in the district in which the place where such default was made is included for civil purposes, with the certificate of the court, recorder, justice of the peace, magistrate or other functionary as aforesaid, of the breach of the condition of such recognizance, of which and of the forfeiture to the Crown of the penal sum, therein mentioned, such certificate shall be conclusive evidence;

(b.) The date of the receipt of such recognizance or minute and certificate by the prothonotary of the said court, shall be endorsed thereon by him, and he shall enter judgment in favour of the Crown against the cognizor for the penal sum mentioned in such recognizance, and execution may issue therefor after the same delay as in other cases, which shall be reckoned from the time when the judgment is entered by the prothonotary of the said court;

(c.) Such execution shall issue upon fiat or *præcipe* of the Attorney-General, or of any person thereunto authorized in writing by him; and the Crown shall be entitled to the costs of execution and to costs on all proceedings in the case subsequent to execution, and to such costs, in the discretion of the court, for the entry of the judgment, as are fixed by any tariff.

(d.) The cognizor shall be liable to coercive imprisonment for the payment of the judgment and the costs;

(e.) When sufficient goods and chattels, lands or tenements cannot be found to satisfy the judgment against a cognizor and the same is certified in the return to the writ of execution or appears by the report of distribution, a warrant of commitment addressed to the sheriff of the district may issue upon the fiat or *præcipe* of the Attorney-

General, or of any person thereto authorized in writing by him, and such warrant shall be authority to the sheriff to take into custody the body of the cognizor so in default and to lodge him in the common gaol of the district until satisfaction is made, or until the court which issued such warrant, upon cause shown as hereinafter mentioned, makes an order in the case and such order has been fully complied with;

(f.) Such warrant shall be returned by the sheriff on the day on which it is made returnable and the sheriff shall state in his return what has been done in execution thereof.

(g.) On petition of the cognizor, of which notice shall be given to the clerk of the Crown of the district, the court may inquire into the circumstances of the case and may in its discretion order the discharge of the amount for which he is liable or make such order with respect thereto and to his imprisonment as may appear just, and such order shall be carried out by the sheriff. 57-58 V., c. 57.

3. Nothing in this section contained shall prevent the recovery of the sum forfeited by the breach of any recog-
1115. nizance from being recovered by suit in the manner provided by law, whenever the same cannot, for any reason, be recovered in the manner provided in this section;

(a.) In such case the sum forfeited by the non-performance of the conditions of such recognizance shall be recoverable, with costs, by action in any court having jurisdiction in civil cases to the amount, at the suit of the Attorney-General of Canada or of Quebec, or other person or officer authorized to sue for the Crown; and in any such action it shall be held that the person suing for the Crown is duly empowered so to do, and that the conditions of the recognizance were not performed, and that the sum therein mentioned is, therefore, due to the Crown, unless the defendant proves the contrary;

(b.) The cognizor for the recovery of the judgment in any such action shall be liable to coercive imprisonment in the same manner as a surety is in the case of judicial suretyship in civil matters.

4. In this section, unless the context otherwise requires,
1086. the expression "cognizor" includes any number of cognizors in the same recognizance, whether as principals or sureties.

5. When a person has been arrested in any district for an offence committed within the limits of the province of Quebec, and a justice of the peace has taken recognizances from the witnesses heard before him or another justice of the peace, for their appearance at the next session or term of the court of competent criminal jurisdiction, before which such person is to undergo his trial, there to testify and give evidence on such trial, and such recognizances have been transmitted to the office of the clerk of such court, the said court may proceed on the same recognizances in the same manner as if they had been taken in the district in which such court is held. R.S.C., c. 179, ss. 21, 22 and 23; as amended by 57-58 V., c. 57.

Where a recognizance entered into in a criminal case becomes forfeited to the Crown, and is transmitted to the prothonotary of the Superior Court, notwithstanding sub-sec. 2 of this section, in order that judgment in favor of the Crown may be entered thereon, such proceeding is not in the nature of a trial, and the cognizor is not entitled to prior notice of the registration of the forfeiture. Such judgment may be entered by the prothonotary during the long vacation; and the recognizance does not require to be signed by the party bound.
R. vs. Corbett et al. (1894), R.J.Q., 7 S.C. 465.

Where a recognizance has been forfeited, and judgment has been entered in favor of the Crown against cognizors who are jointly and severally liable, one of the cognizors is not subject to *contrainte par corps* until it is established that sufficient goods and chattels, lands and tenements cannot be found belonging to his co-cognizor to satisfy the judgment.
R. vs. Ferris et al. (1895), R.J.Q., 9 S.C. 376.

PART LX.

FINES AND FORFEITURES.

927. Appropriation of fines, etc.
928. Application of fines, etc., by Order in Council.
929. Recovery of penalty or forfeiture.
930. Limitation of action.

927. Appropriation of Fines, etc.—Whenever no other provision is made by any law of Canada for the application of any fine, penalty or forfeiture imposed for the violation of any such law or of the proceeds of an estreated recognizance, the same shall be paid over by the magistrate or officer receiving the same to the treasurer of the province in

which the same is imposed or recovered, to be by him paid over to the municipal or local authority, if any, which wholly or in part bears the expenses of administering the law under which the same was imposed or recovered, or to be applied in any other manner deemed best adapted to attain the objects of such law and secure its due administration, except that—

(a.) all fines, penalties and forfeitures imposed in respect of the breach of any of the revenue laws of Canada, or imposed upon any officer or employee of the Government of Canada in respect of any breach of duty or malfeasance in his office or employment, and the proceeds of all recognizances estreated in connection with proceedings for the prosecution of persons charged with such breaches or malfeasance; and

(b.) all fines, penalties and forfeitures imposed for whatever cause in any proceeding instituted at the instance of the Government of Canada, or of any department thereof in which that Government bears the cost of prosecution, and the proceeds of all recognizances estreated in connection with such proceedings, shall belong to His Majesty for the public uses of Canada, and shall be paid by the magistrate or officer receiving the same to the Receiver-General and form part of the Consolidated Revenue Fund of Canada.

Provided that nothing in this section contained shall affect any right of a private person suing as well for His Majesty as for himself, to the moiety of any fine, penalty or forfeiture recovered in his suit. R.S.C., c. 180, ss 2 and 4; as amended by 63-64 V., c. 46. (*This section came into force 1st January*, 1901.)

1057. **928. Application of Fines, etc., by Order-in-Council.**—The Governor-in-Council may from time to time direct that any fine, penalty or forfeiture, or any portion thereof, which would otherwise belong to the Crown for the public uses of Canada, be paid to any provincial, municipal or local authority, which wholly or in part bears the expenses of administering the law under which such fine, penalty or forfeiture is imposed, or that the same be applied in any other manner deemed best adapted to attain the objects of such law and to secure its due administration. R.S.C., c. 180, s. 3.

See in re Baker (1899), 20 C.L.T. 16.

1058. **929. Recovery of Penalty or Forfeiture.**—Whenever any pecuniary penalty or any forfeiture is imposed for any

violation of any Act, and no other mode is prescribed for the recovery thereof, such penalty or forfeiture shall be recoverable or enforceable, with costs, in the discretion of the court, by civil action or proceeding at the suit of His Majesty only, or of any private party suing as well for His Majesty as for himself—in any form allowed in such case by the law of that province in which it is brought—before any court having jurisdiction to the amount of the penalty in cases of simple contract—upon the evidence of any one credible witness other than the plaintiff or party interested; and if no other provision is made for the appropriation of any penalty or forfeiture so recovered or enforced, one moiety shall belong to His Majesty, and the other moiety shall belong to the private party suing for the same, if any, and if there is none, the whole shall belong to His Majesty. R.S.C., c. 180, s. 1.

930. Limitation of Action.—No action, suit or information shall be brought or laid for any penalty or forfeiture under any such Act except within two years after the cause of action arises or after the offence is committed, unless the time is otherwise limited by such Act. R.S.C., c. 180, s. 5.

TITLE VIII.

PROCEEDINGS AFTER CONVICTION.

PART LXI.

PUNISHMENTS GENERALLY.

931. Punishment after conviction only.
932. Degrees in punishment.
933. Liability under different provisions.
934. Fine imposed shall be in discretion of court.

1027. **931. Punishment after Conviction only.**—Whenever a person doing a certain act is declared to be guilty of any offence, and to be liable to punishment therefor, it shall be understood that such person shall only be deemed guilty of such offence and liable to such punishment after being duly convicted of such act. R.S.C., c. 181, s. 1.

1028. **932. Degrees in Punishment.**—Whenever it is provided that the offender shall be liable to different degrees or kinds of punishment, the punishment to be inflicted shall, subject to the limitations contained in the enactment, be in the discretion of the court or tribunal before which the conviction takes place. R.S.C., c. 181, s. 2.

Where a statute of Canada imposes a fine and also imprisonment, the punishment is in the discretion of the Court, which is not bound to inflict both, but, by virtue of his section, may inflict either one or the other of the two kinds of punishment.

Brabant vs. Robidoux (1898), R.J.Q., 7 Q.B. 527: by par Rect 7 Can Cr Dyr (04) 78

16. **933. Liability under different Provisions.**—Whenever any offender is punishable under two or more Acts or two or more sections of the same Act, he may be tried and punished under any of such Acts or sections; but no person shall be twice punished for the same offence. R.S.C., c. 181, s. 3.

1029. **934. Fine Imposed shall be in Discretion of Court.**—Whenever a fine may be awarded or a penalty imposed for any offence, the amount of such fine or penalty shall

within such limits, if any, as are prescribed in that behalf, be in the discretion of the court or person passing sentence or convicting, as the case may be. R.S.C., c. 181, s. 33.

When a corporation is indicted and convicted under sec. 252, a fine is the punishment which, under sec. 639, must be substituted in lieu of the imprisonment mentioned in sec. 252; and by virtue of this section the amount of such fine is in the discretion of the Court.

R. vs. Union Colliery Co. (1900), 3 Can. C.C. 523.

The decision of the Supreme Court of British Columbia in this case was confirmed by the Supreme Court of Canada.

See Union Colliery Co., B.R. (1900), 31 S.C.R., 81.

PART LXII.

CAPITAL PUNISHMENT.

935. Punishment to be the same on conviction by verdict or by confession.
936. Form of sentence of death.
937. Sentence of death to be reported to Secretary of State.
938. Prisoner under sentence of death to be confined apart.
939. Place of execution.
940. Persons who shall be present at execution.
941. Persons who may be present at execution.
942. Certificate of death.
943. When deputies may act.
944. Inquest to be held.
945. Place of burial.
946. Certificate to be sent to Secretary of State and exhibited at prison.
947. Omissions not to invalidate execution.
948. Other proceedings in executions not affected.
949. Rules and regulations as to execution.

935. Punishment to be the same on Conviction by Verdict or by Confession.—Every one who is indicted as principal or accessory for any offence made capital by any statute, shall be liable to the same punishment, whether he is convicted by verdict or on confession, and this as well in the case of accessories as of principals. R.S.C., c. 181, s. 4.

936. Form of Sentence of Death.—In all cases where an offender is sentenced to death the sentence or judgment to be pronounced against him shall be, that he be hanged by the neck until he is dead. R.S.C., c. 181, s. 5.

1063. **937. Sentence of Death to be reported to Secretary of State.**—In the case of any prisoner sentenced to the punishment of death, the judge before whom such prisoner has been convicted shall forthwith make a report of the case to the Secretary of State, for the information of the Governor-General; and the day to be appointed for carrying the sentence into execution shall be such as, in the opinion of the judge, will allow sufficient time for the signification of the Governor's pleasure before such day, and if the judge thinks such prisoner ought to be recommended for the exercise of the royal mercy, or if, from the non-decision of any point of law reserved in the case, or from any other cause, it becomes necessary to delay the execution, he, or any other judge of the same court, or who might have held or sat in such court, may, from time to time, either in term or in vacation, reprieve such offender for such period or periods beyond the time fixed for the execution of the sentence as are necessary for the consideration of the case by the Crown. R.S.C., c. 181, s. 8.

1064. **938. Prisoner under Sentence of Death to be Confined Apart.**—Every one who is sentenced to suffer death shall, after judgment, be confined in some safe place within the prison, apart from all other prisoners; and no person except the gaoler and his servants, the medical officer or surgeon of the prison and a chaplain or a minister of religion, shall have access to any such convict, without the permission, in writing, of the court or judge before whom such convict has been tried, or of the sheriff. R.S.C., c. 181, s. 9.

1065. **939. Place of Execution.**—Judgment of death to be executed on any prisoner shall be carried into effect within the walls of the prison in which the offender is confined at the time of execution. R.S.C., c. 181, s. 10.

1066. **940. Persons who shall be Present at Execution.**—The sheriff charged with the execution, and the gaoler and medical officer or surgeon of the prison, and such other officers of the prison and such persons as the sheriff requires shall be present at the execution. R.S.C., c. 181, s. 11.

1067. **941. Persons who may be Present at Execution.**—Any justice of the peace for the district, county or place to which the prison belongs, and such relatives of the pri

soner or other persons as it seems to the sheriff proper to admit within the prison for the purpose, and any minister of religion who desires to attend, may also be present at the execution. R.S.C., c. 181, s. 12.

942. Certificate of Death.—As soon as may be after judgment of death has been executed on the offender, the medical officer or surgeon of the prison shall examine the body of the offender, and shall ascertain the fact of death, and shall sign a certificate thereof in the form UUU in schedule one hereto, and deliver the same to the sheriff.

2. The sheriff and the gaoler of the prison, and such justices and other persons present, if any, as the sheriff requires or allows, shall also sign a declaration in the form VVV in the said schedule to the effect that judgment of death has been executed on the offender. R.S.C., c. 181, ss. 13 and 14.

943. When Deputies may Act.—The duties imposed upon the sheriff, gaoler, medical officer or surgeon by the three sections next preceding, may be, and, in his absence, shall be performed by his lawful deputy or assistant, or other officer or person ordinarily acting for him, or conjointly with him, or discharging the duties of any such officer. R.S.C., c. 181, s. 15; as amended by 63-64 V., c. 46. (*This section came into force 1st January*, 1901.)

944. Inquest to be Held.—A coroner of a district, county or place to which the prison belongs, wherein judgment of death is executed on any offender, shall, within twenty-four hours after the execution, hold an inquest on the body of the offender; and the jury at the inquest shall inquire into and ascertain the identity of the body, and whether judgment of death was duly executed on the offender; and the inquisition shall be in duplicate, and one of the originals shall be delivered to the sheriff.

2. No officer of the prison and no prisoner confined therein shall, in any case, be a juror on the inquest. R.S.C., c. 181, ss. 16 and 17.

945. Place of Burial.—The body of every offender executed shall be buried within the walls of the prison within which judgment of death is executed on him, unless the Lieutenant-Governor-in-Council orders otherwise. R.S.C., c. 181, s. 18.

1072. **946. Certificate to be sent to Secretary of State and Exhibited at Prison.**—Every certificate and declaration, and a duplicate of the inquest required by this Act, shall in every case be sent with all convenient speed by the sheriff to the Secretary of State, or to such other officer as is, from time to time, appointed for the purpose by the Governor-in-Council, and printed copies of such several instruments shall as soon as possible, be exhibited and shall, for twenty-four hours at least, be kept exhibited on or near the principal entrance of the prison within which judgment of death is executed. R.S.C., c. 181, s. 20.

1073. **947. Omissions not to Invalidate Execution.**—The omission to comply with any provision of the preceding sections of this part shall not make the execution of judgment of death illegal in any case in which such execution would otherwise have been legal. R.S.C., c. 181, s. 21.

1074. **948. Other Proceedings in Execution not Affected.**—Except in so far as is hereby otherwise provided, judgment of death shall be carried into effect in the same manner as if the above provisions had not been passed. R.S.C., c. 181, s. 22.

1075. **949. Rules and Regulations as to Execution.**—The Governor-in-Council may, from time to time, make such rules and regulations to be observed on the execution of judgment of death in every prison, as he, from time to time, deems expedient for the purpose, as well of guarding against any abuse in such execution, as also of giving greater solemnity to the same, and of making known without the prison walls the fact that such execution is taking place.

2. All such rules and regulations shall be laid upon the tables of both Houses of Parliament within six weeks after the making thereof, or, if Parliament is not then sitting, within fourteen days after the next meeting thereof. R.S.C., c. 181, ss. 44 and 45.

PART LXIII.

IMPRISONMENT.

950. Offences not capital, how punished.
951. Imprisonment in cases not specially provided for.
952. Punishment for offence committed after previous conviction.
953. Imprisonment may be for shorter term than that prescribed.
954. Cumulative punishments.
955. Imprisonment in penitentiary, etc.
956. Imprisonment in reformatories.

1051. **950. Offences not Capital, how Punished.**—Every one who is convicted of any offence not punishable with death shall be punished in the manner, if any, prescribed by the statute especially relating to such offence. R.S.C., c. 181, s. 23.

1052. **951. Imprisonment in Cases not Specially Provided for.**—Every person convicted of any indictable offence for which no imprisonment is specially provided, shall be liable to imprisonment for five years.

2. Every one who is summarily convicted of any offence for which no punishment is specially provided, shall be liable to a penalty not exceeding fifty dollars, or to imprisonment, with or without hard labour, for a term not exceeding six months or to both. R.S.C., c. 181, s. 24; as amended by 56 V., c. 32.

1053. **952. Punishment for Offence Committed after Previous Conviction.**—Every one who is convicted of an indictable offence not punishable with death, committed after a previous conviction for an indictable offence, is liable to imprisonment for ten years, unless some other punishment is directed by any statute for the particular offence,—in which case the offender shall be liable to the punishment thereby awarded, and not to any other. R.S.C., c. 181, s. 25.

1054. **953. Imprisonment may be for Shorter Term than that Prescribed.**—Every one who is liable to imprisonment for life, or for any term of years, or other term, may be sentenced to imprisonment for any shorter term: Pro-

vided, that no one shall be sentenced to any shorter term of imprisonment than the minimum term, if any, prescribed for the offence of which he is convicted. R.S.C., c. 181, s. 26.

See Brabant vs. Robidoux (1898), R.J.Q., 7 Q.B. 527.
Meunier vs. Loupret and Simpson (1899), 2 Q.P.R. 126.
There is no presumption that sentences passed at the same time are concurrent; and an accused person convicted at one time of two offences against the Canada Temperance Act, and sentenced on each to three months' imprisonment without specification as to the terms being concurrent or otherwise, is not entitled to a discharge on *habeas corpus* after 3 months' imprisonment.
Ex parte Bishop (1895), 1 Can. C.C. 118.

1055. **954. Cumulative Punishments.**—When an offender is convicted of more offences than one, before the same court or person at the same sitting, or when any offender, under sentence or undergoing punishment for one offence, is convicted of any other offence, the court or person passing sentence may, on the last conviction, direct that the sentences passed upon the offender for his several offences shall take effect one after another. R.S.C., c. 181, s. 27.

The accused was convicted of the offence of applying for a ballot paper in the name of another person at a municipal election, and under sec. 167 of the Ontario Consolidated Municipal Act (55 Vict. c. 42), was sentenced to one month's imprisonment with hard labor. S.S. 3 of sec. 167 of that enactment provides for imprisonment for a term not exceeding six months with or without hard labor. Section 210 s.s. 2 (an amendment of more recent origin), provides that every one so applying, etc., shall be deemed to have committed the offence of personation, and shall incur a penalty of $200.00, and, in default of payment of the same and costs, shall be imprisoned for sixty days, unless the same is sooner paid. It was he'd that these provisions could not be read together, or reconciled as cumulative punishments for the same offence, nor could they be left to stand as alternative punishments for the one offence at the option of the magistrate, the very essence of the criminal law being that it should be certain in its action, and so clearly expressed as to be intelligible to the sense of ordinary people; and that the law which was later in date as well as later in position in the statute-book must, in case of inconsistency or repugnancy, prevail against that which was earlier in time and place.
R. vs. Rose (1896), 27 O.R. 195.
See also Robinson vs. Emerson (1866), 4 H. & C. 352.
Parry vs. Croydon (1862), 11 C.B. N.S., 579 and (1863), 13 C.B. N.S. 568.

42. **955. Imprisonment in Penitentiary, etc.**—Every one who is sentenced to imprisonment for life, or for a term of years, not less than two, shall be sentenced to imprisonment

in the penitentiary for the province in which the conviction takes place.

2. Every one who is sentenced to imprisonment for a term less than two years shall, if no other place is expressly mentioned, be sentenced to imprisonment in the common gaol of the district, county or place in which the sentence is pronounced, or if there is no common gaol there, then in that common gaol which is nearest to such locality, or in some lawful prison or place of confinement, other than a penitentiary, in which the sentence of imprisonment may be lawfully executed.

3. Provided that where any one is sentenced to imprisonment in a penitentiary, and at the same sittings or term of the court trying him is sentenced for one or more other offences to a term or terms of imprisonment less than two years each, he may be sentenced for such shorter terms to imprisonment in the same penitentiary, such sentences to take effect from the termination of his other sentence; *and provided further that where any one is sentenced for any offence who is, at the date of such sentence, serving a term of imprisonment in a penitentiary for another offence, he may be sentenced for a term shorter than two years to imprisonment in the same penitentiary, such sentence to take effect from the termination of his existing sentence or sentences.* (*The words between ** came into force 1st January*, 1901.)

4. Provided further that any prisoner sentenced for any term by any military, naval or militia court-martial, or by any military or naval authority under any Mutiny Act, may be sentenced to imprisonment in a penitentiary; and if such prisoner is sentenced to a term less than two years, he may be sentenced to imprisonment in the common gaol of the district, county or place in which the sentence is pronounced, or in such other prison or place of confinement as is provided by subsection two of this section with respect to persons sentenced thereunder.

5. Imprisonment in a penitentiary, in the Central Prison, for the province of Ontario, in the Andrew Mercer Ontario Reformatory for females, and in any reformatory prison for females in the province of Quebec, sha'l be with hard labour, whether so directed in the sentence or not.

6. Imprisonment in a common gaol, or a public prison, other than those last mentioned, shall be with or without hard labour, in the discretion of the court or person passing sentence, if the offender is convicted on indictment, or under the provisions of Parts LIV. or LV., or before a judge

of the Supreme Court of the North-west Territories, and in other cases may be with hard labour, if hard labour is part of the punishment for the offence of which such offender is convictetd,—and if such imprisonment is to be with hard labour, the sentence shall so direct.

43(2.3) 7. The term of imprisonment, in pursuance of any sentence, shall, unless otherwise directed in the sentence, commence on and from the day of passing such sentence, but no time during which the convict is out on bail shall be reckoned as part of the term of imprisonment to which he is sentenced.

43(1). 8. Every one who is sentenced to imprisonment in any penitentiary, gaol, or other public or reformatory prison, shall be subject to the provisions of the statutes relating to such penitentiary, gaol or prison, and to all rules and regulations lawfully made with respect thereto. R.S.C., c. 181, s. 28; 53 V., c. 37, s. 31; as amended by 63-64 V., c. 46.

Sec. 872, enacting that in default of payment of a fine the accused may be imprisoned "in the manner and for the time" mentioned in the Act or law authorizing the conviction, does not authorize imprisonment with hard labor in default of payment of the fine, unless the Act or law in question provides the same for non-payment of the penalty; and this notwithstanding that such Act or law authorizes a punishment in the first instance by imprisonment with hard labor.

R. vs. Horton (1897), 3 Can. C.C. 84.

A conviction under sec. 501 for wilfully and unlawfully killing a dog, which imposes a penalty and compensation and costs, and, in default of payment, imprisonment with hard labor, is bad, and the accused who has been taken into custody thereunder is entitled to be discharged upon *habeas corpus*. But the Court may, as a condition to such discharge, impose the term that the prisoner shall undertake that no action shall be brought by him against any person in respect of the prosecution and conviction or in respect of his imprisonment thereunder.

R. vs. Horton, supra.

See also R. vs. Turnbull (1886), 16 Cox C.C. 110.

Sub-section 2 :—

Imprisonment with hard labor may be imposed, in default of payment of a fine and costs, upon a summary trial of an indictable offence under Part LV.

R. vs. Burtress (1900), 3 Can. C.C. 536.

536.

Sub-section 7 :—

The term of imprisonment in pursuance of any sentence runs from the day of the passing of such sentence, without interruption, except when specially provided by law. And the license issued by virtue of 62-63 Vict. chap. 49, by which a convict undergoing a term of imprisonment is allowed at large, may be revoked by the Governor-General either with or without cause assigned; and a revocation without cause assigned works no interruption in the running of the sentence, which then terminates at the same time as if such license had never been granted.

R. vs. Johnson (1901), 4 Can. C.C. 178.

29. **956. Imprisonment in Reformatories.**—The court or person before whom any offender whose age at the time of his trial does not, in the opinion of the court, exceed sixteen years, is convicted, whether summarily or otherwise, of any offence punishable by imprisonment, may sentence such offender to imprisonment in any reformatory prison in the province in which such conviction takes place, subject to the provisions of any Act respecting imprisonment in such reformatory; and such imprisonment shall be substituted, in such case, for the imprisonment in the penitentiary or other place of confinement by which the offender would otherwise be punishable under any Act or law relating thereto: Provided, that in no case shall the sentence be less than two years' or more than five years' confinement in such reformatory prison; and in every case where the term of imprisonment is fixed by law to be more than five years, then such imprisonment shall be in the penitentiary.

2. Every person imprisoned in a reformatory shall be liable to perform such labour as is required of such person. R.S.C., c. 181, s. 29.

PART LXIV.

WHIPPING.

1060 **957. Sentence of Punishment by Whipping.**—Whenever whipping may be awarded for an offence, the court may sentence the offender to be once, twice or thrice whipped, within the limits of the prison, under the supervision of the medical officer of the prison, or if there be no such officer, or if the medical officer be for any reason unable to be present, then, under the supervision of a surgeon or physician to be named by the Minister of Justice, in the case of prisons under the control of the Dominion, and in the case of other prisons by the Attorney-General of the province in which such prison is situated.

2. The number of strokes shall be specified in the sentence; and the instrument to be used for whipping shall be a cat of nine tails unless some other instrument is specified in the sentence.

3. Whenever practicable, every whipping shall take place not less than ten days before the expiration of any term of imprisonment to which the offender is sentenced for the offence.

4. Whipping shall not be inflicted on any female. 63-64 V., c. 46. (*This section came into force 1st January, 1901.*)

PART LXV.

SURETIES FOR KEEPING THE PEACE AND FINES.

958. Persons convicted may be fined and bound over to keep the peace.
959. Recognizance to keep the peace.
960. Proceedings for not finding sureties to keep the peace.

1058. **958. Persons Convicted may be Fined and Bound over to Keep the Peace.**—Every court of criminal jurisdiction and every magistrate under Part LV. before whom any person is convicted of an offence and is not sentenced to death, shall have power in addition to any sentence imposed upon such person, to require him forthwith to enter into his own recognizances, or to give security to keep the peace, and be of good behaviour for any term not exceeding two years, and that such person in default shall be imprisoned for not more than one year after the expiry of his imprisonment under his sentence, or until such recognizances are sooner entered into or such security sooner given, and any person convicted, by any such court or magistrate, of an indictable offence punishable with imprisonment for five years or less may be fined in addition to or in lieu of any punishment otherwise authorized, in which case the sentence may direct that in default of payment of his fine the person so convicted shall be imprisoned until such fine is paid, or for a period not exceeding five years, to commence at the end of the term of imprisonment awarded by the sentence, or forthwith as the case may require.

2. Any person convicted of an indictable offence punishable with imprisonment for more than five years may be fined, in addition to, but not in lieu of, any punishment otherwise ordered, and in such case, also, the sentence may in

like manner direct imprisonment in default of payment of any fine imposed. R.S.C., c. 181, s. 31 ; as amended by 56 V., c, 32, and 63-64 V., c. 46. (*This section came into force 1st January*, 1901.).

A person accused of having assaulted a peace officer was convicted of the offence at the County Court sittings, and was sentenced to one month in jail and fined $50.00. Sec. 263 states that "every one is guilty of an indictable offence and liable to two years' imprisonment who assaults any public or peace officer, etc." Objection was taken to this conviction on the ground that both fine and imprisonment could not be imposed. It was held that this section gave power to do so.

Ex parte McClements (1895), 32 C.L.J. 39.

See R. vs. Great West Laundry Co. (1900), 3 Can. C.C. 514.

The accused was convicted of larceny and sentenced to three months' imprisonment. Upon the return of a writ of *habeas corpus* a motion was made for his discharge, upon the ground, *inter alia*, that the sentence, as expressed in the commitment, was imprisonment only in default of payment of an imposed fine for which there was no authority. Held, that this objection was not tenable under this section.

R. vs. Mooney (1898), 19 C.L.T. 17.

748. **959. Recognizance to Keep the Peace.**—Whenever any person is charged before a justice with an offence triable under Part LVIII., which, in the opinion of such justice, is directly against the peace, and the justice after hearing the case is satisfied of the guilt of the accused, and that the offence was committed under circumstances which render it probable that the person convicted will be again guilty of the same or some other offence against the peace unless he is bound over to good behaviour, such justice may, in addition to, or in lieu of, any other sentence which may be imposed upon the accused, require him forthwith to enter into his own recognizances, or to give security to keep the peace and be of good behaviour for any term not exceeding twelve months.

2. Upon complaint by or on behalf of any person that on account of threats made by some other person or on any other account, he, the complainant, is afraid that such other person will do him, his wife or child some personal injury, or will burn or set fire to his property, the justice before whom such complaint is made, may, if he is satisfied that the complainant has reasonable grounds for his fears, require such other person to enter into his own recognizances, or to give security, to keep the peace, and to be of good behaviour, for a term not exceeding twelve months.

3. The provisions of Part LVIII. shall apply so far as the

same are applicable to proceedings under this section, and the complainant and defendant and witnesses may be called and examined, and cross-examined, and the comp'ainant and defendant shall be subject to costs as in the case of any other complaint.

4. If any person so required to enter into his own recognizances or give security as aforesaid, refuses or neglects so to do, the same or any other justice may order him to be imprisoned for any term not exceeding twelve months.

5. The forms WWW, XXX and YYY, with such variations and additions as the circumstances may require, may be used in proceedings under this section. 56 V., c. 32.

A warrant of commitment by a justice under sub-sec. 2 of this section, for default in finding sureties to keep the peace, must show on its face that the complainant feared bodily injury because of the threat made by the accused, and that the complaint was not made nor sureties required by the complainant from any malice or ill-will, but merely for the preservation of his person from injury.

R. vs. McDonald (1897), 2 Can. C.C. 64.

Threats verbally made to burn the complainant's building are not indictable, and give rise only to proceedings to force the offender to give security to keep the peace.

Ex parte Welsh (1898), 2 Can. C.C. 35.

When a justice of the peace makes an order under this section, requiring a person to give security to keep the peace, he must fix the amount of the recognizance to be given; and a justice's order that the accused give security to keep the peace for one year, but not fixing any amount nor a term of imprisonment in default, will not support a commitment thereunder.

Re John Doe (1893), 3 Can. C.C. 372.

A warrant of commitment under this sction and form YYY, can only be issued after the refusal or neglect of the accused person to furnish the required security, proved and recorded subsequently to the order requiring the security; and it must recite such refusal or nglect.

Re John Doe, supra.

1059. **960. Proceedings for not finding Sureties to Keep the Peace.**—Whenever any person who has been required to enter into a recognizance with sureties to keep the peace and be of good behaviour has, on account of his default therein, remained imprisoned for two weeks, the sheriff, gaoler or warden shall give notice, in writing, of the facts to a judge of a superior court, or to a judge of the county court of the county or district in which such gaol or prison is situate, and in the cities of Montreal and Quebec to a judge of the sessions of the peace for the district, or, in the North-west Territories to a stipendiary magistrate,—and such judge or magistrate may order the discharge of such

person, thereupon or at a subsequent time, upon notice to the complainant or otherwise, or may make such other order as he sees fit, respecting the number of sureties, the sum in which they are to be bound and the length of time for which such person may be bound. R.S.C., c. 181, s. 32; 51 V., c. 47, s. 2.

PART LXVI.

DISABILITIES.

1934. **961. Consequences of Conviction of Public Official.**—If any person hereafter convicted of treason or any indictable offence for which he is sentenced to death, or imprisonment for a term exceeding five years, holds at the time of such conviction any office under the Crown or other public employment, or is entitled to any pension or superannuation allowance payable by the public, or out of any public fund, such office or employment shall forthwith become vacant, and such pension or superannuation allowance or emolument shall forthwith determine and cease to be payable, unless such person receives a free pardon from His Majesty, within two months after such conviction, or before the filling up of such office or employment, if given at a later period; and such person shall become, and (until he suffers the punishment to which he is sentenced, or such other punishment as by competent authority is substituted for the same, or receives a free pardon from His Majesty) shall continue thenceforth incapable of holding any office under the Crown, or other public employment, or of being elected, or sitting, or voting, as a member of either House of Parliament, or of exercising any right of suffrage or other parliamentary or municipal franchise. 33-34 V. (U.K.), c. 23, s. 2.

2. The setting aside of a conviction by competent authority shall remove the disability herein imposed.

PART LXVII.

PUNISHMENTS ABOLISHED.

962. Outlawry.
963. Solitary confinement; pillory.
964. Deodand.
965. Attainder.

1030. **962. Outlawry.**—Outlawry in criminal cases is abolished.

1031. **963. Solitary Confinement; Pillory.**—The punishment of solitary confinement or of the pillory shall not be awarded by any court. R.S.C., c. 181, s. 34.

1032. **964. Deodand.**—There shall be no forfeiture of any chattels, which have moved to or caused the death of any human being, in respect of such death. R.S.C., c. 181, s. 35.

1033. **965. Attainder.**—From and after the passing of this Act no confession, verdict, inquest, conviction or judgment of or for any treason or indictable offence or *felo de se* shall cause any attainder or corruption of blood, or any forfeiture or escheat: Provided that nothing in this section shall affect any fine or penalty imposed on any person by virtue of his sentence, or any forfeiture in relation to which special provision is made by any Act of Parliament of Canada. 33-34 V. (U.K.), c. 23, ss. 1, 6 and 5.

PART LXVIII.

PARDONS.

966. Pardon by the Crown.
967. Commutation of sentence.
968. Undergoing sentence equivalent to a pardon.
969. Satisfying judgment.
970. Royal prerogative.
971. Conditional release of first offenders in certain cases.
972. Conditions of release.
973. Proceeding on default of recognizance.
974. Interpretation.

966. Pardon by Crown.—The Crown may extend the royal mercy to any person sentenced to imprisonment by virtue of any statute, although such person is imprisoned for non-payment of money to some person other than the Crown.

2. Whenever the Crown is pleased to extend the royal mercy to any offender convicted of an indictable offence punishable with death or otherwise, and grants to such offender either a free or a conditional pardon, by warrant under the royal sign manual, countersigned by one of the principal Secretaries-of-State, or by warrant under the hand and seal-at-arms of the Governor-General, the discharge of such offender out of custody, in case of a free pardon, and the performance of the condition in the case of a conditional pardon, shall have the effect of a pardon of such offender, under the great seal, as to the offence for which such pardon has been granted; but no free pardon, nor any discharge in consequence thereof, nor any conditional pardon, nor the performance of the condition thereof, in any of the cases aforesaid, shall prevent or mitigate the punishment to which the offender might otherwise be lawfully sentenced, on a subsequent conviction for any offence other than that for which the pardon was granted. R.S.C., c. 181, ss. 38 and 39.

967. Commutation of Sentence.—The Crown may commute the sentence of death passed upon any person convicted of a capital offence to imprisonment in the penitentiary for life, or for any term of years not less than two years, or to imprisonment in any gaol or other place of confinement for any period less than two years, with or without hard labour and an instrument under the hand and seal-at-arms of the Governor-General, declaring such commutation of sentence, or a letter or other instrument under the hand of the Secretary of State or of the Under Secretary of State, shall be sufficient authority to any judge or justice, having jurisdiction in such case, or to any sheriff or officer to whom such letter or instrument is addressed to give effect to such commutation, and to do all such things and to make such orders, and to give such directions, as are requisite for the change of custody of such convict, and for his conduct to and delivery at such gaol or place of confinement or penitentiary, and his detention therein, according to the terms on which his sentence has been commuted. R.S.C., c. 181, s. 40.

As to the powers of the Lieutenant-Governors of the various provinces to commute or remit sentences for offences against provincial laws, see the decision of the Supreme Court in Attorney-General for Canada vs. Attorney-General of Ontario.

In Ontario a case is reported in 19 Appeal Reports, p. 31.

1078. **968. Undergoing Sentence, Equivalent to a Pardon.**—When any offender has been convicted of an offence not punishable with death, and has endured the punishment to which such offender was adjudged,—or if such offence is punishable with death and the sentence has been commuted, then if such offender has endured the punishment to which his sentence was commuted, the punishment so endured shall, as to the offence whereof the offender was so convicted, have the like effect and consequences as a pardon under the great seal; but nothing herein contained, nor the enduring of such punishment, shall prevent or mitigate any punishment to which the offender might otherwise be lawfully sentenced, on a subsequent conviction for any other offence. R.S.C., c. 181, s. 41.

1079. **969. Satisfying Judgment.**—When any person convicted of any offence has paid the sum adjudged to be paid, together with costs, if any, under such conviction, or has received a remission thereof from the Crown, or has suffered the imprisonment awarded for non-payment thereof, or the imprisonment awarded in the first instance, or has been discharged from his conviction by the justice of the peace in any case in which such justice of the peace may discharge such person, he shall be released from all further or other criminal proceedings for the same cause. R.S.C., c. 181, s. 42.

Sinden v. Brown 17 A.R. (Ont.) 73.

1080. **970. Royal Prerogative.**—Nothing in this part shall in any manner limit or affect His Majesty's royal prerogative of mercy. R.S.C., c. 181, s. 43.

1081. **971. Conditional Release of First Offenders in certain Cases.**—In any case in which a person is convicted before any court of any offence punishable with not more than two years' imprisonment and no previous conviction is proved against him, if it appears to the court before which he is so convicted, that, regard being had to the age, character, and antecedents of the offender, to the trivial nature of the offence, and to any extenuating circumstances under which the offence was committed, it is expedient that the

R. v. Sitzman b.c.c. Ca 224.

offender be released on probation of good conduct, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a recognizance, with or without sureties, and during such period as the court directs, to appear and receive judgment when called upon, and in the meantime to keep the peace and be of good behaviour.

2. Where the offence is punishable with more than two years' imprisonment the court shall have the same power as aforesaid with the concurrence of the counsel acting for the Crown in the prosecution of the offender.

3. The court may, if it thinks fit, direct that the offender shall pay the costs of the prosecution, or some portion of the same, within such period and by such instalments as the court directs. 52 V., c. 44, s. 2; as amended by 63-64 V., c. 46. (*This section came into force 1st January*, 1901.)

See Ticket of Leave Acts in appendix.

972. Conditions of Release.—The court, before directing the release of an offender under the next preceding section, shall be satisfied that the offender or his surety has a fixed place of abode or regular occupation in the county or place for which the court acts, or in which the offender is likely to live during the period named for the observance of the conditions. 52 V., c. 44, s. 4.

973. Proceeding on Default of Recognizance.—If a court having power to deal with such offender in respect of his original offence or any justice of the peace is satisfied by information on oath that the offender has failed to observe any of the conditions of his recognizance, such court or justice of the peace may issue a warrant for his apprehension.

2. An offender, when apprehended on any such warrant, shall, if not brought forthwith before the court having power to sentence him, be brought before the justice issuing such warrant or before some other justice in and for the same territorial division, and such justice shall either remand him by warrant until the time at which he was required by his recognizance to appear for judgment, or until the sitting of a court having power to deal with his original offence, or admit him to bail (with a sufficient surety) conditioned on his appearing for judgment.

3. The offender when so remanded may be committed to a prison, either for the county or place in or for which the justice remanding him acts, or for the county or place where

he is bound to appear for judgment; and the warrant of remand shall order that he be brought before the court before which he was bound to appear for judgment, or to answer as to his conduct since his release. 52 V., c. 44, s. 3.

1026. **974. Interpretation.**—In the three next preceding sections the expression "court" means and includes any superior court of criminal jurisdiction, any "judge" or court within the meaning of Part LV., and any "magistrate" within the meaning of Part LVI. of this Act. 52 V., c. 44, s. 1.

TITLE IX.

ACTIONS AGAINST PERSONS ADMINISTERING THE CRIMINAL LAW.

975. Time and place of action.
976. Notice of action.
977. Defence.
978. Tender or payment into Court.
979. Costs.
980. Other remedies saved.

1143. **975. Time and Place of Action.**—Every action and prosecution against any person for anything purporting to be done in pursuance of any Act of the Parliament of Canada relating to criminal law, shall, unless otherwise provided, be laid and tried in the district, county or other judicial division, where the act was committed, and not elsewhere, and shall not be commenced except within six months next after the act committed. R.S.C., c. 185, s. 1.

1144. **976. Notice of Action.**—Notice in writing of such action and of the cause thereof, shall be given to the defendant one month at least before the commencement of the action. R.S.C., c. 185, s. 2.

1145. **977. Defence.**—In any such action the defendant may plead the general issue, and give the provisions of this title and the special matter in evidence at any trial had thereupon. R.S.C., c. 185, s. 3.

978. Tender or Payment into Court.—No plaintiff shall recover in any such action if tender of sufficient amends is made before such action brought, or if a sufficient sum of money is paid into court by or on behalf of the defendant after such action brought. R.S.C., c. 185, s. 4.

979. Costs.—If such action is commenced after the time hereby limited for bringing the same, or is brought or the venue laid in any other place than as aforesaid, a verdict shall be found or judgment shall be given for the defendant; and thereupon or if the plaintiff becomes nonsuit, or discontinues any such action after issue joined, or if upon demurrer or otherwise judgment is given against the plaintiff, the defendant shall, in the discretion of the court, recover his full costs as between solicitor and client, and shall have the like remedy for the same as any defendant has by law in other cases; and although a verdict or judgment is given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the judge, before whom the trial is had, certifies his approval of the action. R.S.C., c. 185, s. 5.

980. Other Remedies Saved.—Nothing herein shall prevent the effect of any Act in force in any province of Canada, for the protection of justices of the peace or other officers from vexations actions for things purporting to be done in the performance of their duty. R.S.C., c. 185, s. 6.

TITLE X.

REPEAL, &c.

981. Statutes repealed.
982. Forms in schedule one to be valid.
983. Application of Act to N.W.T. and Keewatin.
Not to affect H. M.'s forces.
Not to affect certain Acts.
Construction thereof.

981. Statutes Repealed.—The several Acts set out and described in schedule two to this Act shall, from and after the date appointed for the coming into force of this Act, be repealed to the extent stated in the said schedule.

2. The provisions of this Act which relate to procedure shall apply to all prosecutions commenced on or after the day upon which this Act comes into force, in relation to any offence whensoever committed. The proceedings in respect of any prosecution commenced before the said date otherwise than under the Summary Convictions Act, shall, up to the time of committal for trial, be continued as if this Act had not been passed, and after committal or trial shall be subject to all the provisions of this Act relating to procedure so far as the same are applicable thereto. The proceedings in respect of any prosecutions commenced before the said day, under the Summary Convictions Act, shall be continued and carried on as if this Act had not been passed. 56 V., c. 32.

In the case of Major vs. McCraney (1898), it was held by the Supreme Court of Canada that all agreements to suppress criminal prosecutions were illegal in the absence of any statutory provision to the contrary; and that a move for the payment of money given by the accused and others for the purpose of stifling a prosecution for the alleged embezzlement, prior to the coming into force of the Code, of partnership property under the Larceny Act, R.S.C., c. 164, sec. 58, was not in force.

1152
R v Ah Yin (1) 6 C Cr Ca 63.

982. Forms in Schedule One to be Valid,—The several forms in schedule one of this Act, varied to suit the case or forms to the like effect, shall be deemed good, valid and sufficient in law.

983. Application of Act to N, W. T. and Keewatin—Not to Affect H. M. Forces— Not to Affect certain Acts—Construction thereof.—The provisions of this Act extend to and are in force in the North-west Territories and the district of Keewatin except in so far as they are inconsistent with the provisions of the *North-west Territories Act* or *The Keewatin Act* and the amendments thereto.

2. Nothing in this Act shall affect any of the laws relating to the government of His Majesty's land or naval forces.

3. Nothing herein contained shall affect the Acts and parts of Acts in the appendix to this Act. And in construing such parts reference may be had to the repealed portions of the Acts of which respectively they form parts, as well as to any sections of this Act which have been substituted therefor, or which deal with like matters.

SCHEDULE ONE—FORMS.

9. A.—(*Section* 557.) 665. 668.

WARRANT TO CONVEY BEFORE A JUSTICE OF ANOTHER COUNTY.

Canada,
Province of ,
County of ,

Whereas information upon oath was this day made before the undersigned that A. B. of , on the day of ,in the year , at , in the county of (*state the charge*).

And whereas I have taken the deposition of X. Y. as to the said offence.

And whereas the charge is of an offence committed in the county of .

This is to command you to convey the said (*name of accused*), of , before some justice of the last-mentioned county, near the above place, and to deliver to him this warrant and the said deposition.

Dated at , in the said county of this day of , in the year .

J. S.
J. P., (*Name of county.*)

To of .

10. B.—(*Section* 557.) ~~665~~ 666.

RECEIPT TO BE GIVEN TO THE CONSTABLE BY THE JUSTICE FOR THE COUNTY IN WHICH THE OFFENCE WAS COMMITTED.

Canada,
Province of ,
County of ,

I, J. L., a justice of the peace in and for the county of , hereby certify that W. T., peace officer of the county of , has, on this day of , in the year , by virtue of and in obedience to a warrant of J. S., Esquire, a justice of the peace in and for the county of , produced before me one A. B., charged before the said J. S. with having (*&c., stating shortly the offence*) and delivered him into the custody of , by my direction, to answer to the said charge, and further to be dealt with according to law, and has also delivered unto me the said warrant, together with the information (*if any*) in that behalf, and the deposition (*s*) of C. D. (*and of*), in the said warrant mentioned, and that he has also proved to me, upon oath, the handwriting of the said J. S. subscribed to the same.

Dated the day and year first above mentioned, at , in the said county of .

J. L.,
J. P., (*Name of county.*)

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13. C.—(*Section* 558.) 654.

INFORMATION AND COMPLAINT FOR AN INDICTABLE OFFENCE.

Canada,
Province of ,
County of ,

The information and complaint of C. D. of , (*yeoman*), taken this day of , in the

year , before the undersigned (*one*) of His Majesty's justices of the peace in and for the said county of , who saith that (*&c., stating the offence*).

Sworn before (*me*), the day and year first above mentioned at .

J. S.
J. P., (*Name of county.*)

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4. D.—(*Section* 560.) 656.

WARRANT TO APPREHEND A PERSON CHARGED WITH AN INDICTABLE OFFENCE COMMITTED ON THE HIGH SEAS OR ABROAD.

For offences committed on the high seas the warrant may be the same as in ordinary cases, but describing the offence to have been committed "on the high seas, out of the body of any district or county of Canada and within the jurisdiction of the Admiralty of England."

For offences committed abroad, for which the parties may be indicted in Canada, the warrant also may be the same as in ordinary cases, but describing the offence to have been committed "on land out of Canada, to wit: at in the Kingdom of , *or*, at , in the Island of , in the West Indies, *or*, at , in the East Indies," *or as the case may be.*

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5. E.—(*Section* 562.) 658

SUMMONS TO A PERSON CHARGED WITH AN INDICTABLE OFFENCE.

Canada,
Province of ,
County of ,

To A. B., of , (*labourer*):

Whereas you have this day been charged before the undersigned , a justice of the peace in and for the said

county of , for that you on , at , (*stating shortly the offence*): These are therefore to command you, in His Majesty's name, to be and appear before (*me*) on , at o'clock in the (fore) noon, at , or before such other justice or justices of the peace for the same county of ,as shall then be there, to answer to the said charge, and to be further dealt with according to law. Herein fail not.

Given under (*my*) hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. P., (*Name of county.*)

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6. F.—(*Section* 563.) 659. 660.

WARRANT IN THE FIRST INSTANCE TO APPREHEND A PERSON CHARGED WITH AN INDICTABLE OFFENCE.

Canada,
Province of ,
County of ,

To all or any of the constables and other peace officers in the said county of .

Whereas A. B., of , (*labourer*), has this day been charged upon oath before the undersigned ,a justice of the peace in and for the said county of , for that he, on , at , did (*&c., stating shortly the offence*): These are therefore to command you, in His Majesty's name, forthwith to apprehend the said A. B., and to bring him before (*me*) (or some other justice of the peace in and for the said county of), to answer unto the said charge, and to be further dealt with according to law.

Given under (*my*) hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. P., (*Name of county.*)

7. G.—(*Section* 563.) ~~665~~ 666.

WARRANT WHEN THE SUMMONS IS DISOBEYED.

Canada,
Province of ,
County of ,

To all or any of the constables and other peace officers in the said county of .

Whereas on the day of , (instant *or* last past) A. B., of , was charged before (*me* or *us*,) the undersigned (*or name the justice or justices, or as the case may be*), (*a*) justice of the peace in and for the said county of , for that (*&c., as in the summons*); and whereas I (*or* he *the said justice of the peace, or* we *or* they *the said justices of the peace*) did then issue (*my, our, his* or *their*) summons to the said A. B., commanding him, in His Majesty's name, to be and appear before (*me*) on , at o'clock in the (fore) noon, at , or before such other justice or justices of the peace as should then be there, to answer to the said charge and to be further dealt with according to law; and whereas the said A. B. has neglected to be or appear at the time and place appointed in and by the said summons, although it has now been proved to (*me*) upon oath that the said summons was duly served upon the said A. B.: These are therefore to command you in His Majesty's name, forthwith to apprehend the said A. B., and to bring him before (*me*) or some other justice of the peace in and for the said county of , to answer the said charge, and to be further dealt with according to law.

Given under (*my*) hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. P., (*Name of county.*)

8. H.—(*Section* 565.) 662.

ENDORSEMENT IN BACKING A WARRANT.

Canada,
Province of ,
County of ,

Whereas proof upon oath has this day been made before me , a justice of the peace in and for the said county of , that the name of J. S. to the within warrant subscribed, is of the handwriting of the justice of the peace within mentioned: I do therefore hereby authorize W. T. who brings to me this warrant and all other persons to whom this warrant was originally directed, or by whom it may be lawfully executed, and also all peace officers of the said county of , to execute the same within the said last mentioned county.

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

J. L.,
J. P., (*Name of county.*)

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9. I.—(*Section* 569.) 670.

WARRANT TO SEARCH.

Canada,
Province of ,
County of ,

Whereas it appears on the oath of A. B. of , that there is reason to suspect that (*describe things to be searched for and offence in respect of which search is made*) are concealed in at .

This is, therefore, to authorize and require you to enter between the hours of (*as the justice shall direct*) into the said

premises, and to search for the said things, and to bring the same before me or some other justice.

Dated at , in the said county of , this day of , in the year .

J. S.
J. P., (*Name of county.*)

To of .

I. J.—(*Section* 569.) 629.

INFORMATION TO OBTAIN A SEARCH WARRANT.

Canada,)
Province of ,)
County of ,)

The information of A. B., of in the said county (*yeoman*), taken this day of , in the year before me, J. S., Esquire, a justice of the peace, in and for the district (*or* county, *etc.*,) of , who says that (*describe things to be searched for and offence in respect of which search is made*), and that he has just and reasonable cause to suspect, and suspects that the said goods and chattels, or some part of them are concealed in the (*dwelling-house, &c.*) of C. D., of in the said district (*or* county, *etc.*), (*here add the causes of suspicion, whatever they may be*): Wherefore (*he*) prays that a search warrant may be granted to him to search the (*dwelling-house, &c.*), of the said C. D., as aforesaid, for the said goods and chattels so stolen, taken and carried away as aforesaid, (*or, as the case may be*).

Sworn (*or* affirmed) before me the day and year first above mentioned, at , in the said county of .
63-64 V., c. 46.

J. S.
J. P., (*name of district or county, etc.*)

K.—(*Section* 580.) 671

SUMMONS TO A WITNESS.

Canada,
Province of ,
County of ,

To E.F., of , (*labourer*):

Whereas information has been laid before the undersigned , a , a justce of the peace in and for the said county of , that A B. (*etc,, as in the summons or warrant against the accused*), and it has been made to appear to me that you are likely to give material evidence for (*the prosecution*), or for the accused ; These are therefore to require you to be and to appear before me, on next, at o'clock in the (fore) noon, at , or before such other justice or justices of the peace of the same county of , as shall then be there, to testify what you know concerning the said charge so made against the said A.B. as aforesaid. Herein fail not.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.
58-59 V., c. 40,

J. S. [SEAL.]
J. P., (*Name of county.*)

L.—(*Section* 582.) 673

WARRANT WHEN A WITNESS HAS NOT OBEYED THE SUMMONS.

Canada,
Province of ,
County of ,

To all or any of the constables and other peace officers in said county of .

Whereas information having been laid before , a justice of the peace, in and for the said county of , that A. B. (*&c., as in the summons*); and it having been

made to appear to (*me*) upon oath that E. F. of (*labourer*), was likely to give material evidence for (*the prosecution*), (*I*) duly issued (*my*) summons to the said E. F., requiring him to be and appear before (*me*) on , at , or before such other justice or justices of the peace for the same county, as should then be there, to testify what he knows respecting the said charge so made against the said A. B., as aforesaid; and whereas proof has this day been made upon oath before (*me*) of such summons having been duly served upon the said E. F.; and whereas the said E. F. has neglected to appear at the time and place appointed by the said summons, and no just excuse has been offered for such neglect. These are therefore to command you to bring and have the said E. F. before (*me*) on at o'clock in the (fore) noon, at , or before such other justice or justices for the same county, as shall then be there, to testify what he knows concerning the said charge so made against the said A. B. as aforesaid.

Given under (*my*) hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. P., (*Name of county.*)

14, M.—(*Section* 583.) 675.

WARRANT FOR A WITNESS IN THE FIRST INSTANCE.

Canada,
Province of ,
County of ,

To all or any of the constables and other peace officers in the said county of .

Whereas information has been laid before the undersigned , a justice of the peace, in and for the said county of , that (*&c., as in the summons*); and it having been made to appear to (*me*) upon oath, that E. F. of (*labourer*), is likely to give material evidence for the prosecution, and that it is probable that the said E. F. will not attend to give evidence unless compelled to do so: These are there

fore to command you to bring and have the said E. F. before (*me*) on , at o'clock in the (fore) noon, at , or before such other justice or justices of the peace for the same county, as shall then be there, to testify what he knows concerning the said charge so made against the said A. B. as aforesaid.

Given under (*my*) hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. P., (*Name of county.*)

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15 N.—(*Section* 584.) 677.

WARRANT WHEN A WITNESS HAS NOT OBEYED THE SUBPŒNA.

Canada,
Province of ,
County of ,

To all or any of the constables and other peace officers in the said county of .

Whereas information having been laid before , a justice of the peace, in and for the said county, that A. B. (*&c., as in the summons*); and there being reason to believe that E. F., of , in the province of , (*labourer*), was likely to give material evidence for (*the prosecution*), a writ of subpœna was issued by order of , judge of (*name of court*) to the said E. F., requiring him to be and appear before (*me*) on , , or before such other justice or justices of the peace for the same county, as should then be there, to testify what he knows respecting the said charge so made against the said A. B., as aforesaid; and whereas proof has this day been made upon oath before (*me*) of such writ of subpœna having been duly served upon the said E. F.; and whereas the said E. F. has neglected to appear at the time and place appointed by the said writ of subpœna, and no just excuse has been offered for such neglect: These are there-

fore to command you to bring and have the said E. F. before (*me*) on , at o'clock in the (fore) noon, at , or before such other justice or justices for the same county as shall then be there, to testify what he knows concerning the said charge so made against the said A. B. as aforesaid.

Given under (*my*) hand and seal, this day of in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. P., (*Name of county.*)

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16. O.—(*Section* 585.) 678.

WARRANT OF COMMITMENT OF A WITNESS FOR REFUSING TO BE SWORN OR TO GIVE EVIDENCE.

Canada,
Province of ,
County of ,

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

Whereas A. B. was lately charged before , a justice of the peace in and for the said county of , for that (*&c., as in the summons*); and it having been made to appear to (*me*) upon oath that E. F., of , was likely to give material evidence for the prosecution (*I*) duly issued (*my*) summons to the said E. F., requiring him to be and appear before me on , at , or before such other justice or justices of the peace for the same county as should then be there, to testify what he knows concerning the said charge so made against the said A. B. as aforesaid; and said E. F. now appearing before (*me*) (*or* being brought before (*me*) by virtue of a warrant in that behalf), to testify (*and*), and it as aforesaid, and being required to make oath or affirmation as a witness in that behalf, now refuses so to do (*or* being duly sworn as a witness now refuses to answer certain questions concerning the premises which are now here put to him, and more particularly the following

without offering any just excuse for such refusal: These are therefore to command you, the said constables or peace officers, or any one of you, to take the said E. F. and him safely to convey to the common gaol at , in the county aforesaid, and there to deliver him to the keeper thereof, together with this precept: And (*I*) do hereby command you, the said keeper of the said common gaol to receive the said E. F. into your custody in the said common gaol, and him there safely keep for the space of days, for the said contempt, unless in the meantime he consents to be examined, and to answer concerning the premises; and for your so doing, this shall be your sufficient warrant.

Given under (*my*) hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. P., (*Name of county.*)

Cr. P.—(*Section* 586.) 679.

WARRANT REMANDING A PRISONER.

Canada,
Province of ,
County of ,

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

Whereas A. B. was this day charged before the undersigned , a justice of the peace in and for the said county of , for that (*&c., as in the warrant to apprehend*), and it appears to (*me*) to be necessary to remand the said A. B,: These are therefore to command you, the said constables and peace officers, or any of you, in His Majesty's name, forthwith to convey the said A. B. to the common gaol at , in the said county, and there to deliver him to the keeper thereof, together with this pre-

cept. And I hereby command you the said keeper to receive the said A. B. into your custody in the said common gaol, and there safely keep him until the day of (*instant*), when I hereby command you to have him at , at o'clock in the (fore) noon of the same day before (*me*) or before such other justice or justices of the peace for the said county as shall then be there, to answer further to the said charge, and to be further dealt with according to law, unless you shall be otherwise ordered in the meantime.

Given under (*my*) hand and seal, this day of in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. P., (*Name of county.*)

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18. Q.—(*Section* 587.) 681.

RECOGNIZANCE OF BAIL INSTEAD OF REMAND ON AN ADJOURNMENT OF EXAMINATION.

Canada,
Province of ,
County of ,

Be it remembered that on the day of in the year , A. B., of (*labourer*) L. M., of , (*grocer*), and N. O., of , (*butcher*) personally came before me, , a justice of the peace for the said county, and severally acknowledged themselves to owe to our Sovereign Lord the King his heirs and successors, the several sums following, that is to say: the said A. B. the sum of , and the said L. M. and N. O., the sum of , each, of good and lawful current money of Canada, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said Lord the King, his heirs and successors, if he, the said A. B., fails in the condition endorsed (*or* hereunder written).

Taken and acknowledged the day and year first above mentioned, at before me.

J. S.
J. P., (*Name of county.*)

CONDITION.

The condition of the within (*or* above) written recognizance is such that whereas the within bounden A. B. was this day (*or* on last past) charged before me for that (*&c., as in the warrant*); and whereas the examination of the witnesses for the prosecution in this behalf is adjourned until the day of (*instant*); If, therefore, the said A. B. appears before me on the said day of (*instant*), at o'clock in the (fore) noon, or before such other jutice or justices of the peace for the said county as shall then be there, to answer (*further*) to the said charge, and to be further dealt with according to law, the said recognizance to be void, otherwise to stand in full force and virtue.

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73. R.—(*Section* 589.) 1097.

CERTIFICATE OF NON-APPEARANCE TO BE ENDORSED ON THE RECOGNIZANCE.

I hereby certify that the said A. B. has not appeared at the time and place in the above condition mentioned, but therein has made a default, by reason whereof the within written recognizance is forfeited.

J. S.,
J. P., (*Name of county.*)

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74. S.—(*Section* 590.) 682.

DEPOSITION OF A WITNESS.

Canada,
Province of ,
County of ,

The deposition of X. Y. of , taken before the undersigned, a justice of the peace for the said county of , this day of , in the year , (*or* after notice to C.D. who stands committed for) in the presence and hearing of C. D. who stands charged that (*state the charge*). The said deponent saith on his (*oath or affirmation*) as follows: (*Insert deposition*

as nearly as possible in words of witness).

(If depositions of several witnesses are taken at the same time they may be taken and signed as follows :)

The depositions of X. of , Y., of , Z. of . etc., taken in the presence and hearing of C. D., who stands charged that

The deponent X. (*on his oath or affirmation*) says as follows:

The deponent Y. (*on his oath, etc., etc.*)

The deponent Z. (*on his oath, etc., etc.*)

(The signature of the justice may be appended as follows :)

The depositions of X., Y., Z., etc., written on the several sheets of paper, to the last of which my signature is annexed, were taken in the presence and hearing of C. D. and signed by the said X., Y., Z., respectively in his presence. In witness whereof I have in the presence of the said C. D. signed my name.

J. S.
J. P., (*Name of county.*)

20, T.—(*Section* 591.) 684.

STATEMENT OF THE ACCUSED.

Canada,
Province of ,
County of ,

A. B. stands charged before the undersigned , a justice of the peace in and for the county aforesaid, this day of , in the year , for that the said A. B., on , at (*etc., as in the captions of the depositions*); and the said charge being read to the said A. B., and the witnesses for the prosecution, C. D. and E. F., being severally examined in his presence, the said A. B. is now addressed by me as follows : " Having heard the evidence, do you wish to " say anything in answer to the charge ? You are not " obliged to say anything unless you desire to do so ; but " whatever you say will be taken down in writing, and may " be given in evidence against you at your trial. You must " clearly understand that you have nothing to hope from any " promise of favour, and nothing to fear from any threat " which may have been held out to induce you to make any " admission or confession of guilt, but whatever you now

"say may be given in evidence against you upon your trial, "notwithstanding such promise or threat." Whereupon the said A. B. says as follows: (*Here state whatever the prisoner says and in his very words as nearly as possible. Get him to sign it if he will*),

A. B,

Taken before me, at , the day and year first above mentioned.

J. S. [SEAL.]
J. P., (*Name of county.*)

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24. U.—(*Section* 595.) 688.

FORM OF RECOGNIZANCE WHERE THE PROSECUTOR REQUIRES THE JUSTICE TO BIND HIM OVER TO PROSECUTE AFTER THE CHARGE IS DISMISSED.

Canada,
Province of ,
County of ,

Whereas C. D. was charged before me upon the information of E, F. that C. D. (*state the charge*), and upon the hearing of the said charge I discharged the said C. D., and the said E. F. desires to prefer an indictment against the said C. D. respecting the said charge, and has required me to bind him over to prefer such an indictment at (*here describe the next practicable sitting of the court by which the person discharged would be tried if committed.*)

The undersigned E. F. hereby binds himself to perform the following obligation, that is to say, that he will prefer and prosecute an indictment respecting the said charge against the said C. D. at (*as above*). And the said E. F. acknowledges himself bound to forfeit to the Crown the sum of $ in case he fails to perform the said obligation.

E. F.

Taken before me.

J. S.,
J. P., (*Name of county.*)

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22. V.—(*Section* 596.) 650.

WARRANT OF COMMITMENT.

Canada,
Province of ,
County of ,

To the constable of , and to the keeper of the (*common gaol*) at , in the said county of

Whereas A. B. was this day charged before me, J.S., one of His Majesty's justices of the peace in and for the said county of , on the oath of C. D. of , (*farmer*), and others, for that (*etc., stating shortly the offence*): These are therefore to command you the said constable to take the said A. B., and him safely to convey to the (*common gaol*) at aforesaid, and there to deliver him to the keeper thereof, together with this precept: And I do hereby command you the said keeper of the said (*common gaol*) to receive the said A. B. into your custody in the said (*common gaol*), and there safely keep him until he shall be thence delivered by due course of law.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. P., (*Name of county.*)

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23. W.—(*Section* 598.) 652.

RECOGNIZANCE TO PROSECUTE.

Canada,
Province of ,
County of ,

Be it remembered that on the day of , in the year , C. D. of , in the of , in the said county of , (*farmer*), personally came before me , a justice of the peace in and for the said county of , and acknowledged himself to owe to our Sovereign Lord the King, his heirs and successors the sum of , of good and lawful current money of Canada, to be made and levied of his goods and chattels,

lands and tenements, to the use of our said Sovereign Lord the King, his heirs and successors, if the said C. D. fails in the condition endorsed (*or* hereunder written).

Taken and acknowledged the day and year first above mentioned at , before me.

J. S.
J. P., (*Name of county.*)

CONDITION TO PROSECUTE.

The condition of the within (*or* above) written recognizance is such that whereas one A. B. was this day charged before me, J. S., a justice of the peace within mentioned, for that (*etc., as in the caption of the depositions*) : if therefore, he the said C. D. appears at the court by which the said A. B. is or shall be tried * and there duly prosecutes such charge then the said recognizance to be void, otherwise to stand in full force and virtue.

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24. X.—(*Section* 598.) 692

COGNIZANCE TO PROSECUTE AND GIVE EVIDENCE.

(*Same as the last form to the asterisk, * and then thus*):—And there duly prosecute such charge against the said A. B. for the offence aforesaid, and gives evidence thereon, as well to the jurors who shall then inquire into the said offence, as also to them who shall pass upon the trial of the said A. B., then the said recognizance to be void, or else to stand in full force and virtue.

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25. Y.—*Section* 598.) 692.

COGNIZANCE TO GIVE EVIDENCE.

(*Same as the last form but one, to the asterisk, * and then thus*):—And there gives such evidence as he knows upon the charge to be then and there preferred against the said A. B. for the offence aforesaid, then the said recognizance to be void, otherwise to remain in full force and virtue.

26. Z.—(*Section* 599.) 694.

COMMITMENT OF A WITNESS FOR REFUSING TO ENTER INTO THE RECOGNIZANCE.

Canada,
Province of ,
County of ,

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

Whereas A. B. was lately charged before the undersigned (*name of the justice of the peace*), a justice of the peace in and for the said county of , for that (*etc., as in the summons to the witness*), and it having been made to appear to (*me*) upon oath that E. F., of , was likely to give material evidence for the prosecution, (*I*) duly issued (*my*) summons to the said E. F., requiring him to be and appear before (*me*) on , at or before such other justice or justices of the peace as should then be there, to testify what he knows concerning the said charge so made against the said A. B. as aforesaid; and the said E. F. now appearing before (*me*) (or being brought before (*me*) by virtue of a warrant in that behalf to testify as aforesaid), has been now examined before (*me*) touching the premises, but being by (*me*) required to enter into a recognizance conditioned to give evidence against the said A. B., now refuses so to do: These are therefore to command you the said peace officers, or any one of you, to take the said E. F. and him safely convey to the common gaol at , in the county aforesaid, and there deliver him to the said keeper thereof, together with this precept: And I do hereby command you, the said keeper of the said common gaol, to receive the said E. F. into your custody in the said common gaol, there to imprison and safely keep him until after the trial of the said A. B. for the offence aforesaid, unless in the meantime the said E. F. duly enters into such recognizance as aforesaid, in the sum of before some one justice of the peace for the said county, conditioned in the usual form to appear at the court by which the said A. B. is or shall be tried, and there to give evidence upon the charge which shall then and there be preferred against the said A. B. for the offence aforesaid.

Given under my hand and seal this day of in the year , at , in the county aforesaid,

J. S. [SEAL.]
J. P., (*Name of county.*)

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27. AA.—(*Section* 599.) 654.

SUBSEQUENT ORDER TO DISCHARGE THE WITNESS.

Canada,
Province of ,
County of ,

To the keeper of the common gaol at , in the county of , aforesaid.

Whereas by (*my*) order dated the day of (*instant*) reciting that A. B. was lately before then charged before (*me*) for a certain offence therein mentioned, and that E. F. having appeared before (*me*) and being examined as a witness for the prosecution on that behalf, refused to enter into recognizance to give evidence against the said A. B., and I therefore thereby committed the said E. F. to your custody, and required you safely to keep him until after the trial of the said A. B. for the offence aforesaid, unless in the meantime he should enter into such recognizance as aforesaid: and whereas for want of sufficient evidence against the said A. B., the said A. B, has not been committed or holden to bail for the said offence, but on the contrary thereof has been since discharged, and it is therefore not necessary that the said E. F. should be detained longer in your custody: These are therefore to order and direct you the said keeper to discharge the said E. F. out of your custody, as to the said commitment, and suffer him to go at large.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. P,, (*Name of county.*)

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28. BB.—(*Section* 601.) 696.

RECOGNIZANCE OF BAIL.

Canada,
Province of ,
County of ,

Be it remembered that on the day of , in the year , A. of B. (*labourer*), L. M. of , (*grocer*), and N. O. of , (*butcher*), personally came before (*us*) the undersigned, (*two*) justices of the peace for the county of , and severally acknowledged themselves to owe to our Sovereign Lord the King, his heirs and successors, the several sums following, that is to say: the said A. B. the sum of , and the said L. M. and N. O. the sum of , and the said current money of Canada, to be made and levied of their several goods and chattels lands and tenements respectively, to the use of our said Sovereign Lord the King, his heirs and successors, if he, the said A. B., fails in the condition endorsed (*or* hereunder written).

Taken and acknowledged the day and year first above mentioned, at before us.

J. S.,
J. N.,
J. P., (*Name of county.*)

The condition of the within (*or* above) written recognizance, is such that whereas the said A. B. was this day charged before (*us*), the justices within mentioned for that (*etc., as in the warrant*); if, therefore, the said A. B. appears at the next Superior Court of criminal jurisdiction (*or* court of general or quarter sessions of the peace) to be holden in and for the county of , and there surrenders himself into the custody of the keeper of the common jail (*or* lock-up house) there, and pleads to such indictment as may be found against him by the grand jury, for and in respect to the charge aforesaid, and takes his trial upon the same, and does not depart the said court without leave, then the said recognizance to be void, otherwise to stand in full force and virtue."

63-64 V., c. 46.

J. S.,
J. N.,
J. P., (*Name of county.*)

29. CC.—(*Section* 602.) 658.

WARRANT OF DELIVERANCE ON BAIL BEING GIVEN FOR A PRISONER ALREADY COMMITTED.

Canada,
Province of ,
County of ,

To the keeper of the common gaol of the county of at , in the said county.

Whereas A. B. late of , (*labourer*), has before (*us*) (*two*) justices of the peace in and for the said county of , entered into his own recognizance, and found sufficient sureties for his appearance at the next Superior Court of criminal jurisdiction (*or* court of General or Quarter Sessions of the Peace), to be holden in and for the county of , to answer our Sovereign Lord the King for that (*etc., as in the commitment*), for which he was taken and committed to your said common gaol: These are therefore to command you, in His Majesty's name, that if the said A. B. remains in your custody in the said common jail for the said cause, and for no other, you shall forthwith suffer him to go at large.

Given under our hands and seals, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. N., [SEAL.]
J. P., (*Name of county.*)

63-64 V., c. 46.

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30. DD.—(*Section* 607.) 704

GAOLER'S RECEIPT TO THE CONSTABLE FOR THE PRISONER.

I hereby certify that I have received from W. T., constable, of the county of , the body of A. B., together with a warrant under the hand and seal of J. S., Esquire, justice of the peace for the said county of and that the said A. B. was sober, (*or as the case may be*), at the time he was delivered into my custody.

P. K.,
Keeper of the common gaol of the said county.

63. EE.—(*Sections* 610 *and* 626.) 845, 856.

HEADING OF INDICTMENT.

In the (*name of the court in which the indictment is found*).
The jurors for our Lord the King present that
(*Where there are more counts than one, add at the beginning of each count*):
"The said jurors further present that ."

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64. FF.—(*Section* 611,) 852.

EXAMPLES OF THE MANNER OF STATING OFFENCES.

(*a*) A. murdered B. at , on .

(*b*) A. stole a sack of flour from a ship called the , at , on .

(*c*) A. obtained by false pretenses from B., a horse, a cart and the harness of a horse at , on

(*d*) A. committed perjury with intent to procure the conviction of B. for an offence punishable with penal servitude, namely robbery, by swearing on the trial of B. for the robbery of C. at the Court of Quarter Sessions for the county of Carleton, held at Ottawa, on the day of , 1879; first, that he, A. saw B. at Ottawa, on the day of ; secondly, that B. asked A. to lend B. money on a watch belonging to C.; thirdly, etc.

or

(*e*) The said A. committed perjury on the trial of B. at a Court of Quarter Sessions held at Ottawa, on for an assault alleged to have been committed by the said B. on C. at Ottawa, on the day of by swearing to the effect that the said B. could not have been at Ottawa, at the time of the alleged assault, inasmuch as the said A. had seen him at that time in Kingston.

(*f*) A., with intent to maim, disfigure, disable or do grievous bodily harm to B. or with intent to resist the lawful apprehension or detainer of A. (*or* C.), did actual bodily harm to B. (*or* D.).

(*g*) A., with intent to injure or endanger the safety of persons on the Canadian Pacific Railway, did an act calculated to interfere with an engine, a tender, and certain carriages on the said railway on at by (*describe with so much detail as is sufficient to give the accused reasonable information as to the acts or*

omissions relied on against him, and to identify the transaction).

(*h*) A. published a defamatory libel on B. in a certain newspaper, called the , on the day of A. D. , which libel was contained in an article headed or commencing (*describe with so much detail as is sufficient to give the accused reasonable information as to the part of the publication to be relied on against him*), and which libel was written in the sense of imputing that the said B. was (*as the case may be*).

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65. GG.—(*Section* 648.) *879.*

CERTIFICATE OF INDICTMENT BEING FOUND.

Canada.
Province of ,
County of ,

I hereby certify that at a Court of (Oyer and Terminer, *or* General Gaol Delivery, *or* General Sessions of the Peace) holden in and for the county of , at , in the said (county), on , a bill of indictment was found by the grand jury against A. B., therein described as A. B., late of (*labourer*), for that he (*etc., stating shortly the offence*), and that the said A. B. has not appeared or pleaded to the said indictment.

Dated this day of , in the year

Z. X.,
(*Title of officer.*)

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66. HH.—(*Section* 648.) *880.*

WARRANT TO APPREHEND A PERSON INDICTED.

Canada,
Province of ,
County of ,

To all or any of the constables and other peace officers in the said county of

Whereas it has been duly certified by J. D., clerk of the (*name the court*) (*or* E. G., deputy clerk of the Crown *or* clerk of the peace, *or as the case may be*), in and for

the county of , that (*etc., stating the certificate*). These are therefore to command you in His Majesty's name forthwith to apprehend the said A. B,, and to bring him before (*me*) or some other justice or justices of the peace in and for the said county to be dealt with according to law.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. P., (Name of county.)

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67. II.—(*Section* 648.) 881.

WARRANT OF COMMITMENT OF A PERSON INDICTED.

Canada,
Province of ,
County of ,

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

Whereas by a warrant under the hand and seal of , (*a*) justice of the peace in and for the said county of , dated after reciting that it had been certified by J. D. (*etc., as in the certificate*), the said justice of the peace commanded all or any of the constables or peace officers of the said county, in His Majesty's name, forthwith to apprehend the said A. B., and to bring him before (*him*) the said justice of the peace or before some other justice or justices in and for the said county, to be dealt with according to law; and whereas the said A. B. has been apprehended under and by virtue of the said warrant, and being now brought before (*me*) it is hereupon duly proved to (*me*) upon oath that the said A. B, is the same person who is named and charged as aforesaid in the said indictment: These are therefore to command you, the said constables and peace officers, or any of you, in His Majesty's name, forthwith to take and convey the said A. B. to the said common gaol at , in the said county of and there to deliver him to the keeper thereof, together with this precept; and (*I*)

hereby command you the said keeper to receive the said A. B., into your custody in the said gaol, and him there safely to keep until he shall thence be delivered by due course of law.

Given under (*my*) hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. P., (*Name of county.*)

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68. JJ.—(*Section* 648.) 682.

WARRANT TO DETAIN A PERSON INDICTED WHO IS ALREADY IN CUSTODY FOR ANOTHER OFFENCE.

Canada,
Province of ,
County of ,

To the keeper of the common gaol at in the said county of .

Whereas it has been duly certified by J. D., clerk of the (*name the court*) (*or* deputy clerk of the Crown *or* clerk of the peace of and for the county of , *or as the case may be*) that (*etc., stating the certificate*): And whereas (*I am*) informed that the said A. B. is in your custody in the said common gaol at aforesaid, charged with some offence, or other matter; and it being now duly proved upon oath before (*me*) that the said A. B., so indicted as aforesaid, and the said A. B., in your custody, as aforesaid, are one and the same person: These are therefore to command you, in His Majesty's name, to detain the said A. B. in your custody in the common gaol aforesaid, until by a writ of *habeas corpus* he shall be removed therefrom, for the purpose of being tried upon the said indictment, or until he shall otherwise be removed or discharged out of your custody by due course of law.

Given under (*my*) hand and seal, this day of in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. P., (*Name of county.*)

69. KK.—(*Section* 666.) 925.

CHALLENGE TO ARRAY.

Canada,
Province of ,
County of ,

The King v. C. D. The said A. B., who prosecutes for our Lord the King (*or* the said C. D., *as the case may be*) challenges the array of the panel on the ground that it was returned by X. Y., sheriff of the county of (*or* E. F., deputy of X. Y., sheriff of the county of (*as the case may be*) and that the said X. Y. or E. F., *as the case may be*) was guilty of partiality (*or* fraud, *or* wilful misconduct) on returning said panel

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70. LL.—*Section* 668.) 936.

CHALLENGE TO FOLL,

Canada,
Province of ,
County of ,

The King v. C. D. The said A. B., who prosecutes, *etc.* (*or* the said C. D., *as the case may be*) challenges G. H., on the ground that his name does not appear in the panel, (*or* "that he is not indifferent between the King and the said C. D.," *or* ', that he was convinced and sentenced to ('death' *or* 'penal servitude,' *or* 'imprisonment with hard labour, *or* 'exceeding twelve months,'" *or* "that he is disqualified as an alien."

FORMS UNDER PART LIV.

60. MM.—*Section* 767.) 827.

FORM OF RECORD WHEN THE PRISONER PLEADS NOT GUILTY.

Canada,
Province of ,
County of ,

Be it remembered that A. B. being a prisoner in the gaol of the said county, committed for trial on a charge of having on day of , in the year ,stolen etc. (*one cow, the property of* C. D., *or as the case may be*

stating briefly the offence), and having been brought before *me* (*describe the judge*) on the day of , in the year , and asked by me if he consented to be tried before me without the intervention of a jury, consented to be so tried; and that upon the day of , in the year , the said A. B. being again brought before me for trial and declaring himself ready, was arraigned upon the said charge and pleaded not guilty; and after hearing the evidence adduced, as well in support of the said charge as for the prisoner's defence (*or as the case may be*), I find him to be guilty of the offence with which he is charged as aforesaid, and I accordingly sentence him to (*here insert such sentence as the law allows and the judge thinks right*), *or* I find him not guilty of the offence with which he is charged, and discharge him accordingly).

Witness my hand at , in the county of this day of , in the year .

O. K.,
Judge.

G. NN.—(*Section 767.*) 833.

FORM OF RECORD WHEN THE PRISONER PLEADS GUILTY.

Canada,
Province of ,
County of ,

Be it remembered that A. B. being a prisoner in the gaol of the said county, on a charge of having on the day of , in the year , stolen, etc., (*one cow, the property of* C. D. *or as the case may be, stating briefly the offence*), and being brought before me (*describe the judge*) on the day of , in the year , and asked by me if he consented to be tried before me without the intervention of a jury, consented to be so tried; and that the said A. B. being then arraigned upon the said charge, he pleaded guilty thereof, whereupon I sentenced the said A. B. to (*here insert such sentence as the law allows and the judge thinks right*),

Witness my hand this day of , in the year .

O. K.,
Judge.

62, OO.—*Section* 781.) 842.

WARRANT TO APPREHEND WITNESS.

Canada,
Province of ,
County of ,

To all or any of the constables and other peace officers in the said county of

Whereas it having been made to appear before me, that E. F., of , in the said county of , was likely to give material evidence on behalf of the prosecution (*or* defence, *as the case may be*) on the trial of a certain charge of (*as theft, or as the case may be*), against A. B., and that the said E. F. was duly subpoenaed (*or* bound under recognizance) to appear on the day of , in the year , at , in the said county at o'clock (forenoon *or* afternoon, *as the case may be*), before me, to testify what he knows concerning the said charge against the said A. B.

And whereas proof has this day been made before me upon oath of such subpoena having been duly served upon the said E. F., (*or* of the said E. F. having been duly bound under recognizance to appear before me, *as the case may be*) and whereas the said E. F. has neglected to appear at the trial and place appointed, and no just excuse has been offered for such neglect: These are therefore to command you to take the said E. F. and to bring him and have him forthwith before me to testify what he knows concerning the said charge against the said A. B., and also to answer his contempt for such neglect.

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

O. K.,
Judge.

13, PP.—(*Section* 781.) 674. 842.

CONVICTION FOR CONTEMPT.

Canada,
Province of ,
County of ,

Be it remembered that on the day of , in the year , in the county of , E. F. was convicted before me, for that he the said E. F. did not a

tend before me to give evidence on the trial of a certain charge against one A. B. of (*theft, or as the case may be*), although duly subpoenaed (*or* bound by recognizance to appear and give evidence in that behalf, *as the case may be*) but made default therein, and has not shown before me any sufficient excuse for such default, and I adjudge the said E. F., for his said offence to be imprisoned in the common gaol of the county of , at , for the space of , there to be kept at hard labour (*and in case a fine is also intended to be imposed, then proceed*) and I also adjudge that the said E. F. do forthwith pay to and for the use of His Majesty a fine of dollars, and in default of payment, that the said fine, with the cost of collection, be levied by distress and sale of the goods and chattels of the said E. F. (*or in case a fine alone is imposed, then the clause of imprisonment is to be omitted*).

Given under my hand at , in the said county of , the day and year first above mentioned.

O. K.,
Judge.

FORMS UNDER PART LV.

55, QQ.—(*Section* 807.) 799.

CONVICTION.

Canada,
County of ,
Province of ,

Be it remembered that on the day of in the year , at , A. B. being charged before me, the undersigned, , of the said (*city*) (and consenting to my trying the charge summarily), is convicted before me, for that he, the said A. B. (*etc., stating the offence, and the time and place when and where committed*), and I adjudge the said A. B., for his said offence, to be imprisoned in the (and there kept to hard labour) for the term of .

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

J. S. [SEAL.]
J. P., (*Name of county.*)

56. RR.—*Section* 807.) 799.

CONVICTION UPON A PLEA OF GUILTY.

Canada,
Province of ,
County of ,

Be it remembered that on the day of in the year , at , A. B. being charged before me , the undersigned, , of the said (*city*) (and consenting to my trying the charge summarily), for that he, the said A. B,, (*etc., stating the offence and the time and place when and where committed*),and pleading guilty to such charge, he is thereupon convicted before me of the said offence; and I adjudge him, the said A. B., for his said offence, to be imprisoned in the (and there kept to hard labour) for the term of .

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

J. S. [SEAL.]
J. P., (*Name of county.*)

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57. SS.——(*Section* 807.) 799.

CERTIFICATE OF DISMISSAL.

Canada,
Province of ,
County of ,

I,, the undersigned, of the city (*or*
I,, the undersigned, of the city (*or as the case may be*) of , certify that on the day of , in the year , at aforesaid, A. B., being charged before me (and consenting to my trying the charge summarily), for that he the said A. B., (*etc., stating the offence charged, and the time and place when and where alleged to have been committed*), I did, after having summarily tried the said charge, dismiss the same.

Given under my hand and seal, this day of , in the year , at aforesaid.

J. S., [SEAL.]
J. P., (*Name of county.*)

FORMS UNDER PART LVI.

Form TT.—(*Section* 819.) 813.

CERTIFICATE OF DISMISSAL.

Canada, Province of , County of , } the peace for the , justices of of , (*or if a recorder, etc.*, I, a , of the of , *as the case may be*), do hereby certify that on the day of , in the year at , in the said of , A. B. was brought before us, the said justices (*or* me, the said), charged with the following offence, that is to say (*here state briefly the particulars of the charge*), and that we, the said justices, (*or* I, the said) thereupon dismissed the said charge.

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

J. P. [SEAL.]
J. R. [SEAL.]
or S. J. [SEAL.]

Form UU.—(*Section* 820.) 814.

CONVICTION.

Canada, Province of , County of , }

Be it remembered that on the day of , in the year , at , in the county of , A. B. is convicted before us, J. P. and J. R., justices of the peace for the said county (*or* me, S. J., *recorder*, of the , of , *or as the case may be*) for that he, the said A. B., did (*specify the offence and the time and place when and where the same was committed*), *as the case may be, but without setting forth the evidence*), and we, the said J. P. and J. R. (or I, the said S. J.), adjudge the said A. B., for his said offence, to be im-

prisoned in the (*or* to be imprisoned in the , aud there kept at hard labour), for the space of , (*or* we) (*or* I) adjudge the said A. B., for his said offence, to forfeit and pay (*here state the penalty actually imposed*), and in default of immediate payment of the said sum, to be imprisoned in the (*or* to be imprisoned in the and kept at hard labour) for the term of , unless the said sum is sooner paid.

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

J. P. [SEAL.]
J. R. [SEAL.]
or S. J. [SEAL.]

FORMS UNDER PART LVIII.

31, VV. —(*Section* 859.) 727.

CONVICTION FOR A PENALTY TO BE LEVIED BY DISTRESS AND IN DEFAULT OF SUFFICIENT DISTRESS BY IMPRISONMENT.

Canada,
Province of ,
County of ,

Be it remembered that on the day of , in the year , at , in the said county, A. B. is convicted before the undersigned, , a justice of the peace for the said county, for that the said A. B. (*etc., stating the offence, and the time and place when and where committed*), and I adjudge the said A. B. for his said offence to forfeit and pay the sum of $ (*stating the penalty and also the compensation, if any*), to be paid and applied according to law, and also to pay to the said C. D. the sum of , for his costs in this behalf; and if the said several sums are not paid forthwith, (*or* on or before the of next), * I order that the same be levied by distress and sale of the goods and chattels of the said A. B., and in default of sufficient distress, * I adjudge the said A. B. to be imprisoned in the common gaol of the said county, at , in the said county of , (there to be kept at hard labour, *if such is the sentence*) for the term of ,

unless the said several sums and all costs and charges of the said distress (and of the commitment and conveying of the said A. B. to the said gaol) are sooner paid.

Given under my hand and seal, the day and year first above mentioned, at , in the county aforesaid.

J. S. [SEAL.]
J. P., (*Name of county.*)

* *Or when the issuing of a distress warrant would be ruinous to the defendant and his family, or it appears he has no goods whereon to levy a distress, then instead of the words between the asterisks * * say,* "inasmuch as it is now made to appear to me that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B. and his family," (*or,* "that the said A. B. has no goods or chattels wherein to levy the said sum by distress.")

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32. WW.—(*Section* 859.) 727.

CONVICTION FOR A PENALTY, AND IN DEFAULT OF PAYMENT IMPRISONMENT.

Canada,
Province of ,
County of ,

R. Bergan (2) b c to ca 56; R. Vanderbilt (1) 5 do 128; do (2) 5 do 133.

Be it remembered that on the day of in the year , at , , in the said county A. B. is convicted before the undersigned, , a justice of the peace for the said county for that he the said A. B. (*etc., stating the offence, and the time and place when and where it was committed*), and I adjudge the said A. B. for his said offence to forfeit and pay the sum of (*stating the penalty and the compensation, if any*) to be paid and applied according to law; and also to pay to the said C. D. the sum of for his costs in this behalf; and if the said several sums are not paid forthwith (*or,* on or before next), I adjudge the said A. B. to be imprisoned in the common gaol of the said county, at , in the said county of (and there to be kept at hard labour) for the term of , unless the said sums and the costs and charges of conveying the said A. B. to the said common gaol are sooner paid.

Given under my hand and seal, the day and year first above mentioned at , in the county aforesaid.

J. S. [SEAL.]
J. P., (*Name of county.*)

33 XX.—(*Section* 859.) 727.

CONVICTION WHEN THE PUNISHMENT IS BY IMPRISONMENT, ETC.

Canada,
Province of ,
County of ,

Be it remembered that on the day of , in the year at , in the said county, A. B. is convicted before the undersigned, , a justice of the peace in and for the said county, for that he the said A. B., *(etc., stating the offence and the time and place when and where it was committed)*; and I adjudge the said A. B. for his said offence to be imprisoned in the common gaol of the said county, at , in the county of , (and there to be kept at hard labour) for the term of ; and I also adjudge the said A. B. to pay to the said C. D. the sum of , for his costs in this behalf, and if the said sum for costs are not paid forthwith (*or* on or before next), then I order that the said sum be levied by distress and sale of the goods and chattels of the said A. B.; and in default of sufficient distress in that behalf, * I adjudge the said A. B. to be imprisoned in the said common gaol (and kept there at hard labour) for the term of , to commence at and from the term of his imprisonment aforesaid, unless the said sum for costs is sooner paid.

Given under my hand and seal, the day and year first above mentioned at , in the county aforesaid.

J. S. [SEAL.]
J. P., (*Name of county.*)

* *Or, when the issuing of a distress warrant would be ruinous to the defendant and his family, or it appears that he has no goods whereon to levy a distress, then, instead of the words between the asterisks * * say,* "inasmuch as it is now made to appear to me that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B. and his family, (*or,* "that the said A. B. has no goods or chattels whereon to levy the said sum for costs by distress.")

34. YY.—(*Section* 859.) 727.

ORDER FOR PAYMENT OF MONEY TO BE LEVIED BY DISTRESS AND IN DEFAULT OF DISTRESS IMPRISONMENT.

Canada,
Province of ,
County of ,

Be it remembered that on , complaint was made before the undersigned, , a justice of the peace in and for the said county of , for that (*stating the facts entitling the complainant to the order, with the time and place when and where they occurred*), and now at this day, to wit, on ,, at , the parties aforesaid appear before me the said justice (*or* the said C. D. appears before me the said justice, but the said A. B., although duly called, does not appear by himself, his counsel or attorney, and it is now satisfactorily proved to me on oath that the said A. B. was duly served with the summons in this behalf, which required him to be and appear here on this day before me or such justice or justices of the peace for the county, as should now be here, to answer the said complaint, and to be further dealt with according to law); and now having heard the matter of the said complaint, I do adjudge the said A. B. to pay to the said C. D, the sum of forthwith (*or* on or before next, *or as the Act or law requires*), and also to pay to the said C. D. the sum of for his costs in this behalf; and if the said several sums are not paid forthwith (*or* on or before next), then,* I hereby order that the same be levied by distress and sale of the goods and chattels of the said A. B. and in default of sufficient distress in that behalf * I adjudge the said A. B. to be imprisoned in the common gaol of the said county, at , in the said county of , (and there kept at hard labour) for the term of , unless the said several sums, and all costs and charges of the said distress (and the commitment and conveyance of the said A. B. to the said common gaol) are sooner paid.

Given under my hand and seal, this day of in the year , at in the county aforesaid.

J. S. [SEAL.]
J. P., (*Name of county.*)

** Or, when the issuing of a distress warrant would be ruinous to the defendant and his family, or it appears he has no goods whereon to levy a distress, then, instead of the words between the asterisks * * say,* "inasmuch as it is now made to appear to me that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B, and his family," (*or* "that the said A. B. has no goods or chattels whereon to levy the said sums by distress.")

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35. ZZ.—(*Section* 859.) 727.

ORDER FOR PAYMENT OF MONEY, AND IN DEFAULT OF PAYMENT, IMPRISONMENT.

Canada,
Province of ,
County of ,

Be it remembered that on , complaint was made before the undersigned, , a justice of the peace in and for the said county of , for that (*stating the facts entitling the complainant to the order, with the time and place when and where they occurred*), and now on this day, to wit on , at , the parties aforesaid appear before me the said justice (*or* the said C. D. appears before me the said justice, but the said A. B., although duly called does not appear by himself, his counsel or attorney, and it is now satisfactorily proved to me upon oath that the said A. B. was duly served with the summons in this behalf which required him to be and appear here this day before me, or such justice or justices of the peace for the said county, as should now be here, to answer to the said complaint and to be further dealt with according to law), and now having heard the matter of the said complaint, I do adjudge the said A. B. to pay to the said C. D. the sum of forthwith (*or* on or before next, *or as the Act or law requires*), and also to pay to the said C. D. the sum of for his costs in this behalf: and if the said several sums are not paid forthwith (*or* on or before , next), then I adjudge the said A. B. to be imprisoned in the common gaol of the said county at , in the said county of , (there to be kept at hard labour *if the Act or law authorizes this*) for the term of

unless the said several sums (and costs and charges of commitment and conveying the said A. B. to the said common gaol) are sooner paid.

Given under my hand and seal this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. P., (*Name of county.*)

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36. AAA.—(*Section* 859.) 727.

ORDER FOR ANY OTHER MATTER WHERE THE DISOBEYING OF IT IS PUNISHABLE WITH IMPRISONMENT.

Canada,
Province of ,
County of ,

Be it remembered that on , complaint was made before the undersigned, , a justice of the peace in and for the said county of , for that (*stating the facts entitling the complainant to the order, with the time and place where and when they occurred*); and now on this day, to wit, on , at , the parties aforesaid appear before me the said justice (*or* the said C. D. appears before me the said justice, but the said A. B., although duly called, does not appear by himself, his counsel or attorney, and it is now satisfactorily proved to me upon oath, that the said A. B. was duly served with the summons in this behalf, which required him to be and appear here this day before me, or such justice or justices of the peace for the said county, as should now be here to answer to the said complaint and to be further dealt with according to law; and now having heard the matter of the said complaint, I do adjudge the said A. B. to (*here state the matter required to be done*), and if, upon a copy of the minute of this order being served upon the said A. B., either personally or by leaving the same for him at his last or most usual place of abode, he neglects or refuses to obey the same, in that case I adjudge the said A. B., for such his disobedience, to be imprisoned in the common gaol of the said county, at , in the said county of , (there to be kept at hard labour, *if the statute authorizes this*), for the term

unless the said order is sooner obeyed, and I do also adjudge the said A. B. to pay to the said C. D. the sum of for his costs in this behalf, and if the said sum for costs is not paid forthwith (*or* on or before next), I order the same to be levied by distress and sale of the goods and chattels of the said A. B., and in default of sufficient distress in that behalf I adjudge the said A. B. to be imprisoned in the said common gaol (there to be kept at hard labour) for the space of , to commence at and from the termination of his imprisonment aforesaid, unless the said sum for costs is sooner paid.

Given under my hand and seal, this day of in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. P., (*Name of county.*)

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37. BBB.—(*Section* 862.) 730.

FORM OF ORDER OF DISMISSAL OF INFORMATION OR COMPLAINT.

Canada,
Province of ,
County of ,

Be it remembered that on , information was laid (*or* complaint was made) before the undersigned, a justice of the peace in and for the said county of for that (*etc., as in the summons of the defendant*) and now at this day, to wit, on , at , (*if any adjournment insert here*: "to which day the hearing of this case was duly adjourned, of which the said C. D. had due notice,") both the said parties appear before me in order that I should hear and determine the said information (*or* complaint) *or* the said A. B. appears before me, but the said C. D., although duly called, does not appear); [whereupon the matter of the said information (*or* complaint) being by me duly considered, it manifestly appears to me that the said information (*or* complaint) is not proved, and] (*if the informant or complainant does not appear, these words may be omitted*), I do therefore dismiss the same, and do adjudge that the said C. D. do pay to the said A. B. the sum of for his costs incurred by him in defence in his behalf; and i

the said sum for costs is not paid forthwith (*or* on or before), I order that the same be levied by distress and sale of the goods and chattels of the said C. D., and in default of sufficient distress in that behalf, I adjudge the said C. D. to be imprisoned in the common gaol of the said county of , at , in the said county of ,(and there kept at hard labour) for the term of , unless the said sum for costs, and all costs and charges of the said distress (and of the commitment and conveying of the said C. D. to the said common gaol) are sooner paid.

Given under my hand and seal, this day of in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. P. (*Name of county.*)

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38. CCC.—(*Section* 862.) 730.

FORM OF CERTIFICATE OF DISMISSAL.

Canada,
Province of ,
County of ,

I hereby certify that an information (*or* complaint) preferred by C, D. against A. B. for that (*etc., as in the summons*) was this day considered by me, a justice of the peace in and for the said county of , and was by me dismissed (with costs.)

Dated at , this day of , in the year .

J. S.,
J. P., (*Name of county.*)

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39. DDD.—(*Section* 872.) 741.

WARRANT OF DISTRESS UPON A CONVICTION FOR A PENALTY.

Canada,
Province of ,
County of ,

To all or any of the constables and other peace officers in the said county of .

Whereas A. B., late of , (*labourer*), was on this day (*or* on last past) duly convicted before , a

justice of the peace, in and for the said county of , for that (*stating the offence as in the conviction*), and it was thereby adjudged that the said A. B. should for such his offence, forfeit and pay (*etc., as in the conviction*), and should also pay to the said C. D. the sum of , for his costs in that behalf; and it was thereby ordered that if the said several sums were not paid (forthwith) the same should be levied by distress and sale of the goods and chattels of the said A. B., and it was thereby also adjudged that the said A. B., in default of sufficient distress, should be imprisoned in the common gaol of the said county, at , in the said county of (and there kept at hard labor) for the space of , unless the said several sums and all costs and charges of the said distress, and of the commitment and conveying of the said A. B. to the said common gaol were sooner paid; * And whereas the said A. B., being so convicted as aforesaid, and being (now) required to pay the said sums of and has not paid the same or any part thereof, but therein has made default: These are, therefore, to command you, in His Majesty's name forthwith to make distress of the goods and chattels of the said A. B., and if within days next after the making of such distress, the said sums, together with the reasonable charges of taking and keeping the distress, are not paid, then to sell the said goods and chattels so by you distrained, and to pay the money arising from such sale unto me, the convicting justice (*or* one of the convicting justices) that I may pay and apply the same as by law directed, and may render the overplus, if any, on demand, to the said A. B.; and if no such distress is found, then to certify the same unto me, that such further proceedings may be had thereon as to law appertain.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. P. (*Name of county.*)

46. EEE.—(*Section* 872.) *741.*

WARRANT OF DISTRESS UPON AN ORDER FOR THE PAYMENT OF MONEY.

Canada,
Province of ,
County of ,

To all or any of the peace officers in the said county of .

Whereas on , last past, a complaint was made before , justice of the peace in and for the said county, for that (*etc., as in the order*), and afterwards, to wit, on , at , the said parties appeared before (*as in the order*), and thereupon the matter of the said complaint having been considered the said A. B. was adjudged to pay to the said C. D. the sum of , on or before then next, and also to pay to the said C. D. the sum of , for his costs in that behalf; and it was ordered that if the said several sums were not paid on or before the said then next, the same should be levied by distress and sale of the goods and chattels of the said A. B.; and it was adjudged that in default of sufficient distress in that behalf, the said A. B. should be imprisoned in the common gaol of the said county, at in the said county of , (and there kept at hard labour) for the term of life , unless the said several sums and all costs and charges of the distress (and of the commitment and conveying of the said A, B to the said common gaol) were sooner paid ; * And whereas the time in and by the said order appointed for the payment of the said several sums of , and has elapsed, but the said A. B. has not paid the same, or any part thereof, but therein has made default : These are, therefore, to command you, in His Majesty's name, forthwith to make distress of the goods and chattels of the said A. B.; and if within the space of days after the making of such distress, the said last mentioned sums, together with the reasonable charges of taking and keeping the said distress, are not paid, then to sell the said goods and chattels so by you distrained, and to pay the money arising from such sale unto me (*or some other of the convicting justices, as the case may be*), that I (*or* he) may pay or apply the same as by law directed, and may render the overplus, if any, on demand to the said A. B.; and

if no such distress can be found, then to certify the same unto me, to the end that such proceedings may be had therein, as to law appertain.

Given under my hand and seal, this day of in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. P., (*Name of county.*)

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141. FFF.—(*Section* 872.) 741.

WARRANT OF COMMITMENT UPON A CONVICTION FOR A PENALTY IN THE FIRST INSTANCE.

R. v. Bergan (2) 6 C. & Ca 56.
R. v. Vautrouel (1) 5 do 126.
R. v. Vautrouel (2) 5 do 133

Canada,
Province of ,
County of ,

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

Whereas A. B., late of , (*labourer*), was on this da convicted before the undersigned , a justice of th peace in and for the said county, for that (*stating the offenc as in the conviction*), and it was thereby adjudged that th said A. B., for his offence, should forfeit and pay the sum (*etc., as in the conviction*), and should pay to the sa C. D. the sum of , for his costs in that behalf; and was thereby further adjudged that if the said several sum were not paid (forthwith) the said A. B. should be impriso ed in the common gaol of the county, at , in the sa county of (and there kept at hard labour) for th term of , unless the said several sums (a the costs and charges of conveying the said A. B. to t said common gaol) were sooner paid; And whereas t time in and by the said conviction appointed for the pa ment of the said several sums has elapsed, but the said A. has not paid the same, or any part thereof, but therein h made default: These are, therefore to command you, t said peace officers, or any one of you, to take the said A. and him safely to convey to the common gaol at aforesaid, and there to deliver him to the said keeper there

gether with this precept: And I do hereby command you, e said keeper of the said common gaol, to receive the said . B. into your custody in the said common gaol, there to nprison him (and keep him at hard labour) for the term of , unless the said several sums nd costs and charges of carrying him to the said common aol, amounting to the further sum of), are ooner paid unto you, the said keeper; and for your so oing, this shall be your sufficient warrant.

Given under my hand and seal, this day of the year , at , in the county aforesaid.

J. S., [SEAL.]
J. P., (*Name of county.*)

GGG.—(*Section* 872.) 741.

WARRANT OF COMMITMENT ON AN ORDER IN THE FIRST INSTANCE.

Canada, }
Province of , }
County of , }

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

Whereas, on last past, complaint was made before the undersigned , a justice of the peace and for the said county of , for that (*etc., as in the order*), and afterwards, to wit, on the y of , at A. B. and C. D. appeared fore me, the said justice (*or as it is in the order*), and thereon having considered the matter of the complaint, I adjudged the said A. B. to pay the said C. D. the sum of , on or before the day of then next, d also to pay to the said C. D. the sum of , for his sts in that behalf; and I also thereby adjudged that if the id several sums were not paid on or before the day then next, the said A. B. should be imprisoned in e common gaol of the county of , at , in the id county of , (and there be kept at hard labour)

for the term of , unless the said several sums (a
the costs and charges of conveying the said A. B. to
said common gaol, *as the case may be*) were sooner paid; A
whereas the time in and by the said order appointed for
payment of the said several sums of money has elapsed,
the said A. B. has not paid the same, or any part there
but therein has made default: These are, therefore, to co
mand you, the said peace officers, or any of you, to take
said A. B. and him safely to convey to the said comm
gaol, at aforesaid, and there to deliver him to
keeper thereof, together with this precept: And I do here
command you, the said keeper of the said common gaol,
receive the said A. B. into your custody in the said comm
gaol, there to imprison him (and keep him at hard labo
for the term of , unless the said several sums (a
the costs and charges of conveying him to the said comm
gaol, amounting to the further sum of), are soo
paid unto you the said keeper; and for your so doing,
shall be your sufficient warrant.

Given under my hand and seal, this day of
in the year , at in the county afores

J. S., [SEAL.]
J. P., (*Name of county*)

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47. HHH.—(*Section* 874.) 743.

ENDORSEMENT IN BACKING A WARRANT OF DISTRESS.

Canada,
Province of ,
County of ,

Whereas proof upon oath has this day been made be
me , a justice of the peace in and for the said co
that the name of J. S. to the within warrant subscribed i
the handwriting of the justice of the peace within mentio
I do therefore authorize W. T., who brings me this war
and all other persons to whom this warrant was origin
directed, or by whom the same may be lawfully execu
and also all peace officers in the said county of
to execute the same within the said county.

Given under my hand, this day of ,
thousand eight hundred and .

O. K.,
J. P., (*Name of county*)

FORM III—(*Section 872.*) *741.*

CONSTABLE'S RETURN TO A WARRANT OF DISTRESS.

I, W. T., constable of , in the county of , hereby certify to J, S. Esquire, a justice of the peace in and for the county of , that by virtue of this warrant I have made diligent search for the goods and chattels of the within mentioned A. B., and that I can find no sufficient goods and chattels of the said A. B. whereon to levy the sums within mentioned.

Witness my hand, this day of , one thousand eight hundred and .

W. T.

FORM JJJ.—(*Section 872.*) *741.*

WARRANT OF COMMITMENT FOR WANT OF DISTRESS.

Canada,
Province of ,
County of ,

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

Whereas (*etc., as in either of the foregoing distress warrants*, DD or EEE, *to the asterisk,* and then thus*); And whereafterwards on the day of , in the year aforesaid, I, the said justice, issued a warrant to all or any of the peace officers of the county of commanding them, or any of them, to levy the said sums of and by distress and sale of the goods and chattels of the said A. B.; And whereas it appears to me, as well by the return of the said warrant of distress, by the peace officer who had the execution of the same, as otherwise, that the said peace officer has made diligent search for the goods and chattels of the said A. B., but that no sufficient distress whereon to levy the sums above mentioned could be found: These are, therefore, to command you, the said peace officers, or any one of you, to take the said A. B., and him safely to convey to the common gaol at

, aforesaid, and there deliver him to the said keepe together with this precept : And I do hereby command yo the said keeper of the said common gaol, to receive the sa A. B. into your custody, in the said common gaol, there imprison him (and keep him at hard labour) for the term , unless the said several sums and all the co and charges of the said distress (and of the commitment a conveying of the said A. B. to the said common ga amounting to the further sum of , are soon paid unto you, the said keeper ; and for so doing this sh be your sufficient warrant.

Given under my hand and seal, this day of in the year , at , in the county aforesa

J. S., [SEAL.]
J. P., (*Name of county*

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45. KKK.—*Section* 873.) 742.

WARRANT OF DISTRESS FOR COSTS UPON AN ORDER FOR DISMISSAL OF AN INFORMATION OR COMPLAINT.

Canada,
Province of , }
District of }

To all or any of the constables and other peace officers the said county of

Whereas on last past, information was laid (*or* co plaint was made) before , a justice of the peace in for the said county of , for that (*etc., as in the orde dismissal*) and afterwards, to wit, on , at , parties appearing before , in order that (I) should h and determine the same, and the several proofs adduce (me) in that behalf, being by (me) duly heard and consi ed, and it manifestly appearing to (me) that the said info ation (*or* complaint) was not proved, (I) therefore dismi the same and adjudged that the said C. D. should pay to said A. B. the sum of , for his costs incurred by hi his defence in that behalf; and (I) ordered that if the sum for costs was not paid (forthwith) the same should levied on the goods and chattels of the said C. D., and adjudged that in default of sufficient distress in that he

the said C. D. should be imprisoned in the common gaol of the said county of , at , in the said county of (and there kept at hard labour) for the space of , unless the said sum for costs, and all costs and charges of the said distress, and of the commitment and conveying of the said A. B. to the said common gaol, were sooner paid ; * And whereas the said C. D. being now required to pay to the said A. B. the said sum for costs, has not paid the same, or any part thereof, but therein has made default : These are, therefore, to command you, in His Majesty's name, forthwith to make distress of the goods and chattels of the said C. D., and if within the term of days next after the making of such distress, the said last mentioned sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, then to sell the said goods and chattels so by you distrained, and to pay the money arising from such sale to (*me*) that (I), may pay and apply the same as by law directed, and may render the overplus (if any) on demand to the said C. D., and if no distress can be found, then to certify the same unto *me* (*or* to any other justice of the peace for the same county), that such proceedings may be had therein as to law appertain.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. P., (*Name of county.*)
J. S. [SEAL.]

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46. LLL.—(*Section* 873.) 742.

WARRANT OF COMMITMENT FOR WANT OF DISTRESS.

Canada,
Province of ,
County of ,

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

Whereas (*etc., as in form KKK to the asterisk,* * *and then thus*): And whereas afterwards, on the day of , in the year aforesaid, I, the said justice, issued a warrant to all or any of the peace officers of the said

county, commanding them, or any one of them, to levy the said sum of , for costs, by distress and sale of the goods and chattels of the said C. D.: And whereas it appears to me, as well by the return to the said warrant of distress of the peace officer charged with the execution of the same, as otherwise, that the said peace officer has made diligent search for the goods and chattels of the said C. D., but that no sufficient distress whereon to levy the sum above mentioned could be found. These are, therefore, to command you, the said peace officers, or any one of you, to take the said C. D., and him safely convey to the common gaol of the said county, at aforesaid, and there deliver him to the keeper thereof, together with this precept: And I hereby command you, the said keeper of the said common gaol, to receive the said C. D. into your custody in the said common gaol, there to imprison him (and keep him at hard labour) for the term of , unless the said sum, and all the costs and charges of the said distress (and of the commitment and conveying of the said C. D. to the said common gaol, amounting to the further sum of), are sooner paid unto you the said keeper; and for your so doing, this shall be your sufficient warrant.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. P., (*Name of county.*)

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73. MMM.—(*Section 878.*) 1097.

CERTIFICATE OF NON-APPEARANCE TO BE ENDORSED ON THE DEFENDANT'S RECOGNIZANCE.

I hereby certify that the said A. B. has not appeared at the time and place in the said condition mentioned, but therein has made default, by reason whereof the within written recognizance is forfeited.

J. S., [SEAL.]
J. P., (*Name of county.*)

NNN.—(*Section* 880.) Section 750

R. Ah Gin (1) b C Cr Cas 3: R. Jack 5 do 160.

NOTICE OF APPEAL AGAINST A CONVICTION OR ORDER.

To C. D., of , and (*the names and additions of the parties to whom the notice of appeal is required to be given*).

Take notice, that I, the undersigned, A. B., of intend to enter and prosecute an appeal at the next General Sessions of the Peace (*or other court as the case may be*) to be holden at , in and for the county of , against a certain conviction (*or* order) bearing date on or about the day of , instant, and made by (you) J. S., Esquire, a justice of the peace in and for the said county of , whereby I, the said A. B. was convicted of having (*or* was ordered) to pay , (*here state the offence as in the conviction, information, or summons, or the amount adjudged to be paid, as in the order, as correctly as possible*).

Dated at , this day of , one thousand eight hundred and

A. B.

MEMORANDUM.—*If this notice is given by several defendants, or by an attorney, it may be adapted to the case.*

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51. OOO.—(*Section* 880.) 750.

FORM OF RECOGNIZANCE TO TRY THE APPEAL.

Canada,
Province of ,
County of ,

Be it remembered that on , A. B., of , (*labourer*), and L. M., of , (*grocer*), and N. O., of , (*yeoman*), × personally came before the undersigned , a justice of the peace in and for the said county of , and severally acknowledged themselves to owe to our Sovereign Lord the King, the several sums following, that is to say, the said A. B. the sum of , and the said L. M. and N. O. the sum of , each, of good and lawful money of Canada, to be made and levied of their several goods and chattels, lands

× Rex v Wadderburn: Ex par Sprague 36 N B 213.

and tenements respectively, to the use of our Lord the King, his heirs and successors, if he the said A. B. fails in the condition endorsed (*or* hereunder written).

Taken and acknowledged the day and year first above mentioned at , before me.

J. S.,
J. P., (*Name of county.*)

The condition of the within (*or* the above) written recognizance is such that if the said A. B. personally appears at the (next) General Sessions of the Peace (*or other court discharging the functions of the Court of General Sessions, as the case may be*), to be holden at , on the day of , next, in and for the said county of , and tries an appeal against a certain conviction, bearing date the day of , (*instant*), and made by (me) the said justice, whereby he, the said A. B. was convicted, for that he, the said A. B., did, on the day of , at , in the said county of , (*here set out the offence as stated in the conviction*); and also abides by the judgment of the court upon such appeal and pays such costs as are by the court awarded, then the said recognizance to be void, otherwise to remain in full force and virtue.

FORM OF NOTICE OF SUCH RECOGNIZANCE TO BE GIVEN TO THE APPELLANT AND HIS SURETIES.

Take notice, that you, A. B., are bound in the sum of and you L. M. and N. O. in the sum of , each, that you the said A. B. will personally appear at the next General Sessions of the Peace to be holden at , in and for the said county of , and try an appeal against a conviction (*or* order) dated the day of (*instant*) whereby you A. B. were convicted of (*or* ordered, etc.), (*stating offence or the subject of the order shortly*), and abide by the judgment of the court upon such appeal and pay such costs as are by the court awarded, and unless you the said A. B. personally appear and try such appeal and abide by such judgment and pay such costs accordingly, the recognizance entered into by you will forthwith be levied on you, and each of you.

Dated at , this day of , one thousand eight hundred and .

52. PPP.—(*Section* 898.) 759.

CERTIFICATE OF CLERK OF THE PEACE THAT THE COSTS OF AN APPEAL ARE NOT PAID.

Office of the clerk of the peace for the county of

Title of the Appeal.

I herby certify that a Court of General Sessions of the Peace (*or other court discharging the functions of the Court of General Sessions as the case may be*), holden at in and for the said county, on last past, an appeal by A. B. against a conviction (*or* order) of J. S., Esquire, a justice of the peace in and for the said county, came on to be tried and was there heard and determined, and the said Court of General Sessions (*or other court as the case may be*) thereupon ordered that the said conviction (*or* order) should be confirmed (*or* quashed), and that the said (appellant) should pay to the said (respondent) the sum of , for his costs incurred by him in the said appeal, and which sum was thereby ordered to be paid to the clerk of the peace for the said county, on or before the day of (*instant*), to be by him handed over to the said (respondent), and I further certify that the said sum for costs has not, nor has any part thereof, been paid in obedience to the said order.

Dated at , this day of , one thousand eight hundred and .

G. H.,
Clerk of the Peace.

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53 QQQ.—(*Section* 898.) 759.

WARRANT OF DISTRESS FOR COSTS OF AN APPEAL AGAINST A CONVICTION OR ORDER.

Canada,
Province of ,
County of ,

To all or any of the constables and other peace officers in the said county of

Whereas (*etc., as in the warrants of distress, DDD or EEE, and to the end of the statement of the conviction or order, and then thus*). And whereas the said A. B. appealed to the Court of General Sessions of the Peace (*or other court discharging the functions of the Court of General Sessions, as the case may*

be), for the said county, against the said conviction or order in which appeal the said A. B. was the appellant, and the said C. D. (*or* J. S., Esquire, the justice of the peace who made the said conviction *or* order) was the respondent, and which said appeal came on to be tried and was heard and determined at the last General Sessions of the Peace (*or other court, as the case may be*) for the said county, holden at , on ; and the said court thereupon ordered that the said conviction (*or* order) should be confirmed (*or* quashed) and that the said (appellant) should pay to the said (respondent) the sum of , for his costs incurred by him in the said appeal, which said sum was to be paid to the clerk of the peace for the said county, on or before the day of , one thousand eight hundred and , to be by him handed over to the said C. D,; and whereas the clerk of the peace of the said county has, on the day of (*instant*), duly certified that the said sum for costs had not been paid:* These are, therefore to command you, in His Majesty's name, forthwith to make distress of the goods and chattels of the said A. B., and if, within the term of days next after the making of such distress, the said last mentioned sum together with the reasonable charges of taking and keeping the said distress, are not paid, then to sell the said goods and chattels so by you distrained, and to pay the money arising from such sale to the clerk of the peace for the said county of , that he may pay and apply the same as by law directed; and if no such distress can be found, then to certify the same unto me or any other justice of the peace for the same county, that such proceeding may be had therein as to law appertain.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

O. K., [SEAL.]

J. P., (*Name of county.*)

54, RRR.—(*Section* 898.) 757.

WARRANT OF COMMITMENT FOR WANT OF DISTRESS IN THE LAST CASE.

Canada,
Province of ,
County of ,

To all or any of the constables and other peace officers in the said county of .

Whereas (*etc., as in form QQQ, to the asterisk * and then thus*): And whereas, afterwards, on the day of in the year aforesaid, I, the undersigned, issued a warrant to all or any of the peace officers in the said county of commanding them, or any of them, to levy the said sum of , for costs, by distress and sale of the goods and chattels of the saidA. B.; And whereas it appears to me, as well by the return to the said warrant of distress of the peace officer who was charged with the execution of the same, as otherwise, that the said peace officer has made diligent search for the goods and chattels of the said A. B. but that no sufficient distress whereon to levy the said sum above mentioned could be found: These are, therefore, to command you, the said peace officer, or any one of you, to take the said A. B. and him safely to convey to the common gaol of the said county of , at aforesaid, and there deliver him to the said keeper thereof, together with this precept: And I do hereby command you, the said keeper of the said common gaol, to receive the said A. B. into your custody in the said common gaol, there to imprison him (and keep him at hard labour) for the term of , unless the said sum and all costs and charges of the said distress (and for the commitment and conveying of the said A. B. to the said common gaol, amounting to the further sum of), are sooner paid unto you, the said keeper; and for so doing this shall be your sufficient warrant.

Given under my hand and seal, this day of in the year , at , in the county aforesaid.

O. K., [SEAL.]
J. P., (*Name of county.*)

75, SSS.—(*Section* 902.) 1133.

RETURN of convictions made by me (*or* us, *as the case may be*), during the quarter ending , 19 .

Name of the Prosecutor.	Name of Defendant.	Nature of the Charge.	Date of Conviction.	Name of Convicting Justice.	Amount of Penalty. Fine or Damage.	Time when paid or to be paid to the said Justice.	To whom paid over by the said Justice.	If not paid, why not, and general observations if any.

J. S., Convicting Justice,

or

J. S. and O. K., Convicting Justices (*as the case may be*).

74, TTT.—(*Section* 916.) 1105.

WRIT OF FIERI FACIAS.

Edward VII., by the grace of God, etc.

To the sheriff of . Greeting :

You are hereby commanded to levy of the goods and chattels, lands and tenements of each of the persons mentioned in the roll or extract to this writ annexed, all and singular the debts and sums of money upon them severally imposed and charged, as therein is specified ; and if any of the said several debts cannot be levied, by reason that no goods or chattels, lands or tenements can be found belonging to the

said persons, respectively, then, and in all such cases, that you take the bodies of such persons, and keep them safely in the gaol of your county, there to abide the judgment of our court (*as the case may be*) upon any matter to be shown by them, respectively, or otherwise to remain in your custody as aforesaid, until such debt is satisfied unless any of such persons respectively gives sufficient security for his appearance at the said court, on the return day hereof, for which you will be held answerable; and what you do in the premises make appear before us in our court (*as the case may be,*) on the day of term next, and have then and there this writ. Witness, etc., G. H., clerk (*as the case may be*).

FORMS UNDER TITLE VIII.

71. UUU.—(*Section* 942.) 1068.

CERTIFICATE OF EXECUTION OF JUDGMENT OF DEATH.

I, A. B., surgeon (*or as the case may be*) of the (*describe the prison*), hereby certify that I, this day, examined the body of C. D., on whom judgment of death was this day executed in the said prison; and that on such examination I found that the said C. D. was dead.

(Signed), A. B.

Dated this day of , in the year .

72. VVV.—(*Section* 942,) 1068.

DECLARATION OF SHERIFF AND OTHERS.

We, the undersigned, hereby declare that judgment of death was this day executed on C. D., in the (*describe the prison*) in our presence.

Dated this day of , in the year .

E. F., Sheriff of———
L. M., Justice of the Peace for———
G. H., Gaoler of———
etc., etc.

48. WWW.—(*Section* 959.) 748.

COMPLAINT BY THE PARTY THREATENED, FOR SURETIES FOR THE PEACE.

R. Macdonald CLT (July/98) 70.

Canada,
Province of ,
County of ,

The information (*or* complaint) of C, D., of , in the said county of , (*labourer*), (*if preferred by an attorney or agent, say*—by D. E., his duly authorized agent, (*or* attorney), in this behalf), taken upon oath, before me, the undersigned, a justice of the peace, in and for the said county of , at in the said county of , this day of , in the year , who says that A. B., of in the said county, did, on the day of (instant *or* last past), threaten the said C. D. in the words or to the effect following, that is to say : (*set them out with the circumstances under which they were used*); and that from the above and other threats used by the said A. B. towards the said C. D., he, the said C. D., is afraid that the said A. B. will do him some bodily injury, and therefore prays that the said A. B. may be required to find sufficient sureties to keep the peace and be of good behaviour towards him, the said C. D.; and the said C. D. also says that he does not make this complaint against nor require such sureties from the said A. B. from any malice or ill-will, but merely for the preservation of his person from injury.

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49. XXX,—*Section* 959.) 748, 1058.

FORM OF RECOGNIZANCE FOR THE SESSIONS.

Canada,
Province of ,
County of ,

Be it remembered that on the day of in the year , A. B., of , (*labourer*) L. M. of , (*grocer*), and N. O. of , (*butcher*) personally came before (*us*) the undersigned, (*two*) justice of the peace for the county of , and severally acknowledged themselves to owe to our Lord the King the several sums following, that is to say : the said A. B, the

sum of , and the said L. M. and N. O. the sum of , each, of good and lawful money of Canada, to be made and levied of their goods and chattels, lands and tenements respectively, to the use of our said Lord the King, his heirs and successors, if he, the said A. B., fails in the condition endorsed (*or* hereunder written).

Taken and acknowledged the day and year first above mentioned, at before us.

J. S.,
J. T.,
J. P., (*Name of county.*)

The condition of the within (*or* above) written recognizance is such that if the within bound A. B. (of, etc.), * appears at the next Court of General Sessions of the Peace, (*or other court discharging the functions of the Court of General Sessions*), to be holden in and for the said county of , ,to do and receive what is then and there enjoined him by the court, and in the meantime * keeps the peace and is of good behaviour towards His Majesty and his liege people, and specially towards C. D, (of, etc.), for the term of now next ensuing, then the said recognizance to be void, otherwise to stand in full force and virtue.

The words between the asterisks ** to be used only where the principal is required to appear at the sessions or such other court.

Sc YYY.—(*Section* 959.) 748.

FORM OF COMMITMENT IN DEFAULT OF SURETIES.

Canada,
Province of ,
County of ,

R v Macdonald < LT (46/98) 70:

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

Whereas on the day of (*instant*), complaint on oath was made before the undersigned (*or* J. L., Esquire, a justice of the peace in and for the said county of , by C. D., of , in the said county, (*labourer*), that A. B., of (etc.), on the day of , at aforesaid, did

out, with the circumstances under which they were used): and threaten (*etc., follow to the end of complaint, as in form above in the past tense, then*) : And whereas the said A. B. was this day brought and appeared before me, the said justice (*or J.* L., Esquire, a justice of the peace in and for the said county of), to answer unto the said complaint ; and having been required by me to enter into his own recognizance in the sum of , with two sufficient sureties in the sum of each, * as well for his appearance at the next General Sessions of the Peace (*or other court discharging the functions of the Court of General Sessions, or as the case may be*), to be held in and for the said county of to do what shall be then and there enjoined him by the court, as also in the meantime * to keep the peace and be of good behaviour towards His Majesty and his liege people, and especially towards the said C, D., has refused and neglected, and still refuses and neglects, to find such sureties. These are, therefore, to command you, and each of you, to take the said A. B., and him safely to convey to the (common gaol) at aforesaid, and there to deliver him to the keeper thereof, together with this precept : And I do hereby command you, the said keeper of the said (common gaol), to receive the said A. B. into your custody in the said (common gaol), there to imprison him until the said next General Sessions of the Peace (*or the next term or sitting of the said court discharging the functions of the Court of General Sessions, or as the case may be*), unless he, in the meantime, finds sufficient sureties as well for his appearance at the said Sessions (*or* court) as in the meantime to keep the peace as aforesaid.

Given under my hand and seal, this day of in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. P., (*Name of county*).

The words between the asterisks ** to be used when the recognizance is to be so conditioned.

SCHEDULE TWO.

ACTS REPEALED.

Acts Repealed.	Title.	Extent of Repeal.
R.S.L.C., c. 10	An Act respecting seditious and unlawful Associations and oaths.	Secs. 1, 2, 3, & 4.
R. S. C., c. 32	An Act respecting the Customs.	Sec. 213.
" 34	An Act respecting the Inland Revenue.	Secs. 98 & 99.
" 35	An Act respecting the Postal Service.	Secs. 79 to 81, 83, 84, 88, 90, 91, 96, 103, 107, 110 & 111.
" 38	An Act respecting Government Railways.	Sec. 62.
" 41	An Act respecting the Militia and Defence of Canada.	Sec. 109.
" 43	An Act respecting Indians.	Secs. 106(ss.2)&111.
" 65	An Act respecting Immigration and Immigrants.	Sec. 37.
" 81	An Act respecting Wrecks, Casualties and Salvage.	Secs. 35 to 37.
" 141	An Act respecting Extra-judicial oaths.	Secs. 1 & 2.
" 145	An Act respecting Accessories.	The whole Act.
" 146	An Act respecting Treason and other offences against the King's authority.	The whole Act, except Secs. 6 & 7.
" 147	An Act respecting Riots, unlawful assemblies and breaches of the peace.	The whole Act.
" 148	An Act respecting the improper use of firearms and other weapons.	The whole Act, except Sec. 7.
" 149	An Act respecting the seizure of arms kept for dangerous purposes.	The whole Act, except Secs. 5 & 7.
" 150	An Act respecting Explosive Substances.	The whole Act.
" 152	An Act respecting the preservation of peace at Public Meetings.	The whole Act, except Secs. 1, 2 & 3.
" 153	An Act respecting Prize-fighting.	The whole Act, except Secs. 6, 7 & 10.
" 154	An Act respecting Perjury.	The whole Act, except Sec. 4.
" 155	An Act respecting Escapes and Rescues.	The whole Act.
" 156	An Act respecting offences against Religion.	The whole Act.
" 157	An Act respecting offences against Public Morals and Public Convenience.	The whole Act, except Sec. 8, Subsec. 4.

ACTS REPEALED—*Continued.*

ACTS REPEALED.	TITLE.	EXTENT OF REPEAL.
R. S. C., c. 158	An Act respecting Gaming-houses.	The whole Act, except Secs. 9 & 10.
" 159	An Act respecting Lotteries, Betting and Pool-selling.	The whole Act.
" 160	An Act respecting Gambling in public conveyances.	The whole Act.
" 161	An Act respecting offences relating to the Law of Marriage.	The whole Act.
" 162	An Act respecting offences against the Person.	The whole Act.
" 163	An Act respecting Libel.	The whole Act, except Secs. 6 & 7.
" 164	An Act respecting Larceny and similar offences.	The whole Act.
" 165	An Act respecting Forgery.	The whole Act.
" 167	An Act respecting offences relating to the Coin.	The whole Act, except Secs. 26&28 to 34 inclusive.
" 168	An Act respecting malicious injuries to Property.	The whole Act.
" 169	An Act respecting offences relating to the Army and Navy.	The whole Act, except Sec. 9.
" 171	An Act respecting the protection of property of Seamen in the Navy.	The whole Act.
" 172	An Act respecting Cruelty to Animals.	The whole Act, except Sec. 7.
" 173	An Act respecting Threats, Intimidation and other offences.	The whole Act, except Sec. 12(ss.5)
" 174	An Act respecting Procedure in Criminal Cases.	The whole Act.
" 176	An Act respecting the summary administration of Criminal Justice.	The whole Act.
" 177	An Act respecting Juvenile Offenders.	The whole Act.
" 178	An Act respecting summary proceedings before Justices of the Peace.	The whole Act.
" 179	An Act respecting Recognizances.	The whole Act.
" 180	An Act respecting Fines and Forefeitures.	The whole Act.
" 181	An Act respecting Punishments, Pardons and the Commutation of Sentences.	The whole Act.
" 185	An Act respecting Actions against persons administering the Criminal Law.	The whole Act.
50-51 V., c. 33	An Act to amend the Indian Act.	Sec. 11.
" 45	An Act respecting Public Stores.	The whole Act.
" 46	An Act respecting the conveyance of liquors on board Her Majesty's Ships in Canadian Waters.	The whole Act.
" 48	An Act to amend the Act respecting offences against Public Morals and Public Convenience.	The whole Act.

ACTS REPEALED—*Continued.*

ACTS REPEALED.	TITLE.	EXTENT OF REPEAL.
50-51 V., c. 49	An Act to amend the Revised Statutes, Chapter one hundred and seventy-three, respecting Threats, Intimidation and other offences.	The whole Act.
" 50	An Act to amend the Law respecting Procedure in Criminal Cases.	The whole Act.
51 V., c. 29	An Act respecting Railways.	Sec. 297.
" 40	An Act respecting the advertising of Counterfeit Money.	The whole Act.
" 41	An Act to amend the Law relating to Fraudulent Marks on Merchandise.	The whole Act, except Secs. 15, 16, 18, 22 & 23.
" 42	An Act respecting gaming in Stocks and Merchandise.	The whole Act.
" 43	An Act further to amend the Law respecting Procedure in Criminal Cases.	The whole Act.
" 44	An Act further to amend *The Criminal Procedure Act*.	The whole Act.
" 45	An Act to amend Chapter one hundred and seventy-eight of the Revised Statutes of Canada: *The Summary Convictions Act*.	The whole Act.
" 47	An Act to amend the Revised Statutes of Canada, Chapter one hundred and eighty-one, respecting Punishments, Pardons and Commutation of Sentences.	The whole Act.
52 V., c. 22	An Act to amend the Revised Statutes, Chapter seventy-seven, respecting the safety of Ships.	Sec. 3.
" 25	An Act to amend the Revised Statutes respecting the North-west Mounted Police Force.	Sec. 4.
" 40	An Act respecting Rules of Court in relation to Criminal Matters.	The whole Act.
" 41	An Act for the prevention and suppression of Combinations formed in restraint of Trade.	The whole Act, except Secs. 4 & 5.
" 42	An Act respecting Corrupt Practices in Municipal Affairs.	The whole Act.
" 44	An Act to permit the conditional release of first offenders in certain cases.	The whole Act.
" 45	An Act to amend *The Summary Convictions Act*, Chapter one hundred and seventy-eight of the Revised Statutes, and the Act amending the same.	The whole Act.
" 46	An Act to amend *The Summary Trials Act*.	The whole Act.

ACTS REPEALED—*Concluded.*

ACTS REPEALED.	TITLE	EXTENT OF REPEAL.
52 V., c. 47	An Act to make further provision respecting the Speedy Trial of certain Indictable Offences.	The whole Act.
53 V., c. 10	An Act to prevent the disclosure of official documents and information.	The whole Act.
" 31	An Act respecting Banks and Banking.	Sec. 63.
" 37	An Act further to amend the Criminal Law.	The whole Act, except Secs. 1, 2, 32, to end.
" 38	An Act to amend the Public Stores Act.	The whole Act.
54-55 V., c. 23	An Act respecting Frauds upon the Government.	The whole Act.

As amended 56 V., c. 32, & 57-58 V., c. 57.

APPENDIX.

ACTS AND PARTS OF ACTS WHICH ARE NOT AFFECTED BY THIS ACT.

R.S.C., CHAPTER 50.

An Act respesting the North-West Territories.

101. In this section—

(*a*) The expression "improved arm" means and includes all arms except smooth bore shot guns ;

(*b*) The expression "ammunition" means fixed ammunition or ball cartridge.

2. Every person who, in the territories,—

(*a*) Without the permission in writing (the proof of which shall be on him) of the Lieutenant Governor, or of a commissioner appointed by him to give such permission, has in his possession or sells, exchanges, trades, barters or gives to, or with any person, any improved arm or ammunition, or—

(*b*) Having such permission, exchanges, trades, barters or gives any such arm or ammunition to any person not lawfully anthorized to possess the same.—

Shall, on summary conviction before a judge of the Supreme Court or two justices of the peace, be liable to a penalty not exceeding two hundred dollars, or to imprisonment for any term not exceeding six months, or to both.

3. All arms and ammunition which are in the possession of any person, or which are sold, exchanged, traded, bartered or given to or with any person in violation of this section, shall be forfeited to the Crown, and may be seized by any constable or other peace officer : and any judge of the Supreme Court or justice of the peace may issue a search warrant to search for and seize the same, as in the case of stolen goods.

4. The Governor in Council may, from time to time, make regulations respecting :—

(*a*) The granting of permission to sell, exchange, trade, barter, give or possess arms or ammunition ;

(*b*) The fees to be taken in respect thereof ;

(*c*) The returns to be made respecting permissions granted ; and—

(*d*) The disposition to be made of forfeited arms and ammunition.

5. The provisions of this section respecting the possession of arms and ammunition shall not apply to any officer or man of His Majesty's forces, of the Militia force, or of the North-west Mounted Police force.

6. The Governor in Council may, from time to time, declare by proclamation that upon and after a day therein named this section shall be in force in the territories, or in any place or places therein in such proclamation designated, and upon and after such day but not before, the provisions of this section shall take effect and be in force accordingly.

7. The Governor in Council may, in like manner, from time to time, declare this section to be no longer in force in any such place or places, and may again, from time to time, declare it to be in force therein.

8. All courts, judges and justices of the peace shall take judicial notice of any such proclamation.

R.S.C., CHAPTER 146.

An Act respecting Treason and other Offences against the King's Authority.

6. If any person, being a citizen or subject of any foreign state or country at peace with His Majesty, is or continues in arms against His Majesty, within Canada, or commits any act of hostility therein, or enters Canada with design or intent to levy war against His Majesty, or to commit any felony therein, for which any person would, in Canada, be liable to suffer death, the Governor General may order the assembling of a militia general court-martial for the trial of such person, under *The Militia Act* ; and upon being found guilty by such court-martial of offending against the provisions of this section, such person shall be sentenced by such court-martial to suffer death, or such other punishment as the court awards.

7. Every subject of His Majesty, within Canada, who levies war against His Majesty, in company with any of the subjects or citizens of any foreign state or country then at peace with His Majesty, or enters Canada in company with any such subjects or citizens with intent to levy war on His

Majesty, or to commit any such act of felony as aforesaid, or who, with the design or intent to aid and assist, joins himself to any person or persons whomsoever, whether subjects or aliens, who have entered Canada with design or intent to levy war on His Majesty, or to commit any such felony within the same, may be tried and punished by a militia court martial, in the same manner as any citizen or subject of a foreign state or country at peace with His Majesty may be tried and punished under the next preceding section.

R.S.C., CHAPTER 148.

An Act respecting the improper use of Firearms and other Weapons.

7. The court or justice before whom any person is convicted of any offence against the provisions of the preceding sections, shall impound the weapon for carrying which such person is convicted, and if the weapon is not a pistol, shall cause it to be destroyed; and if the weapon is a pistol, the court or justice shall cause it to be handed over to the corporation of the municipality in which the conviction takes place, for the public uses of such corporation.

2. If the conviction takes place where there is no municipality, the pistol shall be handed over to the Lieutenant-Governor of the province in which the conviction takes place, for the public uses thereof in connection with the administration of justice therein.

R.S.C., CHAPTER 149.

An Act respecting the seizure of Arms kept for dangerous purposes.

5. All justices of the peace in and for any district, county, city, town or place, in Canada, shall have concurrent jurisdiction as justices of the peace with the justices of any other district, county, city, town or place, in all cases with respect to the carrying into execution the provisions of this Act, and with respect to all matters and things relating to the preservation of the public peace under this Act, as fully and effectually as if each of such justices was in the

commission of the peace, or was *ex officio* a justice of the peace for each of such districts, counties, cities, towns or places.

7. The Governor in Council may, from time to time by proclamation, suspend the operation of this Act in any province of Canada or in any particular district, county or locality specified in the proclamation; and from and after the period specified in any such proclamation, the powers given by this Act shall be suspended in such province, district, county or locality; but nothing herein contained shall prevent the Governor in Council from again declaring, by proclamation, that any such province, district, county or locality shall be again subject to this Act and the powers hereby given, and upon such proclamation this Act shall be revived and in force accordingly.

R.S.C., CHAPTER 151.

An Act respecting the Preservation of Peace in the vicinity of Public Works.

INTERPRETATION.

1. In this Act, unless the context otherwise requires:—

(*a*) The expression "this Act" means such section or sections thereof as are in force, by virtue of any proclamation, in the place or places with reference to which the Act is to be construed and applied.

(*b*) The expression "commissioner" means a commissioner under this Act;

(*c*) The expression "weapon" includes any gun or other firearm, or air-gun or any part thereof, or any sword, sword-blade, bayonet, pike,, pike-head, spear, spear-head, dirk, dagger, or other instrument intended for cutting or stabbing, or any steel or metal knuckles, or other deadly or dangerous weapon, and any instrument or thing intended to be used as a weapon, and all ammunition which may be used with or for any weapon;

(*d*) The expression "intoxicating liquor" means and includes any alcoholic, spirituous, vinous, fermented or other intoxicating liquor, or any mixed liquor, a part of which is spirituous or vinous, fermented or otherwise intoxicating.

(*e*) The expression "district, county or place," includes

any division of any province for the purposes of the administration of justice in the matter to which the context relates:

(*f*) The expression "public work" means and includes any railway, canal, road, bridge or other work of any kind, and any mining operation constructed or carried on by the Government of Canada, or of any province of Canada, or by any municipal corporation, or by any incorporated company or by private enterprise,

PROCLAMATION.

2. The Governor in Council may, as often as occasion requires, declare, by proclamation that upon and after a day shall be in force in any place or places in Canada in such proclamation designated, within the limits or in the vicinity whereof any public work is in course of construction, or in such places as are in the vicinity of any public work, within which he deems it necessary that this Act, or any section or sections thereof, should be in force, and this Act, or any such section or sections thereof, shall, upon and after the day named in such proclamation, take effect within the places designated therein.

2. The Governor in Council may, in like manner, from time to time, declare this Act, or any section or sections thereof, to be no longer in force in any such place or places, —and may again from time to time, declare this Act, or any section or sections thereof, to be in force therein.

3. No such proclamation shall have effect within the limits of any city.

4. All courts, magistrates and justices of the peace shall take judicial notice of every such proclamation.

WEAPONS.

3. On or before the day named in such proclamation, every person employed on or about any public work, to which the same relates, shall bring and deliver up, to some commissioner or officer appointed for the purposes of this Act, every weapon in his possession, and shall obtain from such commissioner or officer a receipt for the same.

4. Every weapon found in the possession of any person employed as aforesaid, after the day named in any proclamation and within the limits designated in such proclama-

tion, may be seized by any justice of the peace, commissioner, constable or other peace officer,—and shall be forfeited to the use of His Majesty.

5. Every one employed upon or about any public work within the place or places in which this Act is then in force, who, upon or after the day named in such proclamation, keeps or has in his possession or under his care or control, within any such place, any weapon, shall incur a penalty not exceeding four dollars and not less than two dollars for every such weapon found in his possession.

6. Every one who, for the purpose of defeating this Act, receives or conceals, or aids in receiving or concealing, or procures to be received or concealed, within any place in which this Act is at the time in force, any weapon belonging to or in the custody of any person employed on or about any public work, shall incur a penalty not exceeding one hundred dollars and not less than forty dollars, and a moiety of such penalty shall belong to the informer and the other moiety to His Majesty, for the public uses of Canada.

7. Any commissioner or justice of the peace, constable or peace officer, or any person acting under a warrant, in aid of any constable or peace officer, may arrest and detain any person employed on any public work, found carrying any weapon, within any place in which this Act is, at the time, in force, at such time and in such manner as, in the judgment of such commissioner, justice of the peace, constable or peace officer, or person acting under a warrant, affords just cause of suspicion that it is carried for purposes dangerous to the public peace; and every one so employed, who so carries any such weapon, is guilty of a misdemeanour,—and the justice of the peace or commissioner arresting such person, or before whom he is brought under such a warrant, may commit him for trial for a misdemeanour, unless he gives sufficient bail for his appearance at the next term or sitting of the court before which the offence can be tried, to answer to any indictment to be then preferred against him.

8. Any commissioner appointed under this Act, or any justice of the peace having authority within the place in which this Act is at the time in force, upon the oath of a credible witness that he believes that any weapon is in the possession of any person or in any house or place contrary

to the provisions of this Act, may issue his warrant to any constable or peace officer to search for and seize the same, —and he, or any person in his aid, may search for and seize the same in the possession of any person, or in any such house or place.

9. If admission to any such house or place is refused after demand, such constable or peace officer, and any person in his aid, may enter the same by force, by day or by night, and seize any such weapon and deliver it to such commissioner; and unless the person in whose possession or in whose house or premises the same is found, within four days next after the seizure, proves to the satisfaction of such commissioner or justice of the peace that the weapon so seized was not in his possession or in his house or place contrary to the meaning of this Act, such weapon shall be forfeited to the use of His Majesty.

10. All weapons declared forfeited under this Act shall be sold or destroyed under the direction of the commissioner by whom or by whose authority the same are seized, and the proceeds of such sale, after deducting necessary expenses, shall be received by such commissioner and paid over by him to the Minister of Finance and Receiver General, for the public uses of Canada.

11. Whenever this Act ceases to be in force within the place where any weapon has been delivered and detained in pursuance thereof, or whenever the owner or person lawfully entitled to any such weapon satisfies the commissioner that he is about to remove immediately from the limits within which this Act is at the time in force, the commissioner may deliver up to the owner or person authorized to receive the same, any such weapon, on production of the receipt given for it.

12. Every commissioner under this Act shall make a monthly return to the Secretary of State of all weapons delivered to him, and by him detained under this Act.

INTOXICATING LIQUOR.

13. Upon and after the day named in such proclamation and during such period as such proclamation remains in force, no person shall, at any place within the limits specified in such proclamation, sell, barter or, directly or indi-

rectly, for any matter, thing, profit or reward, exchange, supply or dispose of, any intoxicating liquor : nor expose, keep or have in possession, any intoxicating liquor intended to be dealt with in any such way.

2. The provisions of this section shall not extend to any person selling intoxicating liquor by wholesale, and not retailing the same, if such person is a licensed distiller or brewer.

14. Every one who, by himself, his clerk, servant, agent or other person, violates any of the provisions of the next preceding section, is guilty of an offence against this Act, and, on a first conviction, shall be liable to a penalty of forty dollars and costs, and, in default of payment, to imprisonment for a term not exceeding three months,—and on every subsequent conviction, to the said penalty and the said imprisonment in default of payment, and also to further imprisonment for a term not exceeding six months.

15. Every clerk, servant, agent or other person who, being in the employment of, or on the premises of another person, violates or assists in violating any of the provisions of the thirteenth section of this Act, for the person in whose employment or on whose premises he is, shall be equally guilty with the principal offender, and shall be liable to the penalties mentioned in the next preceding section.

16. If any person makes oath or affirmation before any commissioner or justice of the peace, that he has reason to believe, and does believe that any intoxicating liquor with respect to which a violation of the provisions of the thirteenth section of this Act has been committed or is intended to be committed is, within the limits specified in any proclamation by which this Act has been proclaimed to be in force, on board of any steamboat, vessel, boat, canoe, raft or other craft, or in or about any building or premises, or in any carriage, vehicle or other conveyance, or at any place, the commissioner or justice of the peace shall issue a search warrant to any sheriff, police officer, constable or bailiff who shall forthwith proceed to search the steamboat, vessel, boat, canoe, raft, other craft, building, premises, carriage, vehicle, conveyance or place described in such search warrant ; and if any intoxicating liquor is found therein or thereon the person executing such search warrant shall seize the intoxicating liquor and the barrels, casks, jars, bottles

or other packages in which it is contained and shall keep it and them secure until final action is had thereon.

2. No dwelling-house in which, or in part of which or on the premises whereof, a shop or a bar is not kept, shall be searched, unless the said informant also makes oath or affirmation that some offence in violation of the provisions of the thirteenth section of this Act has been committed therein or thereirom within one month next preceding the time of making his said information for a search warrant.

3. The owner, keeper or person in possession of the intoxicating liquor so seized, if he is known to the officer seizing the same, shall be summoned forthwith by the commissioner or justice of the peace who issued the search warrant to appear before such commissioner or justice of the peace; and if he fails so to appear, or if it appears to the satisfaction of such commissioner or justice of the peace that a violation of the provisions of the thirteenth section of this Act has been committed or is intended to be committed, with respect to such intoxicating liquor, it shall be declared forfeited, with any package in which it is contained, and shall be destroyed by authority of the written order to that effect of such commissioner or justice, and in his presence or in the presence of some person appointed by him to witness the destruction thereof; and the commissioner or justice or the person so appointed by him and the officer by whom the said intoxicating liquor has been destroyed shall jointly attest in writing upon the back of the said order, the fact that it has been destroyed.

4. The owner, keeper or person in possession of any intoxicating liquor seized and forfeited under the provisions of this section may be convicted of an offence against the thirteenth section of this Act without any further information laid or trial had, and shall be liable to the penalties mentioned in the fourteenth section of this Act.

17. If the owner, keeper or possessor of intoxicating liquor seized under the next preceding section is unknown to the officer seizing the same, it shall not be condemned and destroyed until the fact of such seizure, with the number and description of the packages, as near as may be, has been advertised for two weeks, by posting up a written or a printed notice and description thereof, in at least three public places of the place where it was seized.

2. If it is proved within such two weeks, to the satisfaction of the commissioner or justice by whose authority such in-

toxicating liquor was seized, that with respect to such intoxicating liquor no violation of the provisions of the thirteenth section of this Act has been committed or is intended to be committed, it shall not be destroyed, but shall be delivered to the owner, who shall give his receipt therefor in writing upon the back of the search warrant, which shall be returned to the commissioner or justice who issued the same ; but if, after such advertisement as aforesaid, it appears to such commissioner or justice that a violation of the provisions of the thirteenth section of this Act has been committed or is intended to be committed, then such intoxicating liquor, with any package in which it is contained, shall be forfeited and destroyed, according to the provisions of the next preceding section.

18. Any payment or compensation, whether in money or securities for money, labour or property of any kind, for intoxicating liquor sold, bartered, exchanged, supplied or disposed of, contrary to the provisions of the thirteenth section of this Act, shall be held to have been criminally received without consideration, and against law, equity and good conscience, and the amount or value thereof may be recovered from the receiver by the person making, paying or furnishing such payment or compensation ; and all sales, transfers, conveyances, liens and securities of every kind, which either in whole or in part have been made or given for or on account of intoxicating liquor sold, bartered, exchanged, supplied or disposed of contrary to the provisions of the thirteenth section of this Act, shall be void against all persons, and no right shall be acquired thereby ; and no action of any kind shall be maintained, either in whole or in part, for or on account of intoxicating liquor sold, bartered, exchanged, supplied or disposed of, contrary to the provisions of the said section.

19. In any prosecution under this Act for any offence with respect to intoxicating liquor, it shall not be necessary that any witness should depose directly to the precise description of the liquor with respect to which the offence has been committed, or to the precise consideration therefor, or to the fact of the offence having been committed with his participation or to his own personal and certain knowledge; but the commissioner or justice of the peace trying the case, so soon as it appears to him that the circumstances in evidence sufficiently establish the offence complained of, shall

put the defendant on his defence, and in default of such evidence being rebutted, shall convict the defendant accordingly.

GENERAL PROVISIONS.

20. Any commissioner or justice of the peace may hear and determine, in a summary manner ,any case arising within his jurisdiction under this Act ; and every person making complaint against any other person for violating this Act, or any provision thereof, before such commissioner or justice, may be admitted as a witness ; and the commissioner or justice of the peace before whom the examination or trial is had, may, if he thinks there was probable cause for the prosecution, order that the defendant shall not recover costs, although the prosecution fails.

21. All the provisions of every law respecting the duties of justices of the peace in relation to summary convictions and orders, and to appeals from such convictions, and for the protection of justices of the peace when acting as such, or to facilitate proceedings by or before them in matters relating to summary convictions and orders, shall, in so far as they are not inconsistent with this Act, apply to every commissioner or justice of the peace mentioned in this Act or empowered to try offenders against this Act ; and every such commissioner shall be deemed a justice of the peace within the meaning of any such law, whether he is or is not a justice of the peace for other purposes.

22. On the trial of any proceeding, matter or question under this Act, the person opposing or defending, and the wife or husband of such person, shall be competent to give evidence.

23. No action or other proceeding, warrant, judgment, order or other instrument or writing, authorized by this Act or necessary to carry out its provisions, shall be held void or be allowed to fail for defect of form.

24. Every action brought against any commissioner or justice of the peace, constable, peace officer or other person for anything done in pursuance of this Act, shall be commenced within six months next after the alleged cause of action arises; and the venue shall be laid or the action insti-

tuted in the district or county or place where the cause of action arose ; and the defendant may plead the general issue and give this Act and the special matter in evidence ; and if such action is brought after the time limited, or the venue is laid or the action brought in any other district, county or place than as above prescribed, the judgment or verdict shall be given for the defendant ; and in such case, or if the judgment or verdict is given for the defendant on the merits, or if the plaintiff becomes non-suited or discontinues after appearance is entered, or has judgment rendered against him on demurrer, the defendant shall be entitled to recover double costs.

R.S.C., CHAPTER 152.

An Act respecting the Preservation of Peace at Public Meetings.

1. Any justice of the peace within whose jurisdiction any public meeting is appointed to be held, may demand, have and take of and from any person attending such meeting, or on his way to attend the same, any offensive weapon, such as firearms, swords, staves, bludgeons, or the like, with which any such person is so armed, or which any such person has in his possession ; and every such person who, upon such demand, declines or refuses to deliver up, peaceably and quietly, to such justice of the peace, any such offensive weapon as aforesaid, is guilty of a misdemeanor, and such justice may thereupon record the refusal of such person to deliver up such weapon, and adjudge him to pay a penalty not exceeding eight dollars,—which penalty shall be levied in like manner as penalties are levied under the *Act respecting summary proceedings before Justices of the Peace*, or such person may be proceeded against by indictment or information as in other cases of misdemeanor ; but such conviction shall not interfere with the power of such justice, or any other justice of the peace, to take such weapon, or cause the same to be taken from such person without his consent and against his will, by such force as is necessary for that purpose.

2. Upon reasonable request to any justice of the peace, to whom any such weapon has been peaceably and quietly de

ivered as aforesaid, made on the day next after the meeting has finally dispersed, and not before, such weapon shall, if of the value of one dollar or upwards, be returned by such justice of the peace to the person from whom the same was received.

3. No such justice of the peace shall be held liable to return any such weapon, or make good the value thereof, if the same by unavoidable accident, has been actually destroyed or lost out of the possession of such justice without his wilful default.

R.S.C., CHAPTER 153.

An Act respecting Prize-fighting.

6. If at any time, the sheriff of any county place or district in Canada, any chief of police, any police officer, or any constable, or other peace officer, has reason to believe that any person within his bailiwick or jurisdiction is about to engage as principal in any prize-fight within Canada, he shall forthwith arrest such person and take him before some person having authority to try offences against this Act, and shall forthwith make complaint in that behalf, upon oath, before such person; and thereupon such person shall inquire into the charge, and if he is satisfied that the person so brought before him was, at the time of his arrest, about to engage as a principal in a prize-fight, he shall require the accused to enter into a recognizance, with sufficient sureties, in a sum not exceeding five thousand dollars and not less than one thousand dollars, conditioned that the accused will not engage in any such fight within one year from and after the date of such arrest; and in default of such recognizance, the person before whom the accused has been brought shall commit the accused to the gaol of the county, district or city within which such inquiry takes place, or if there is no common gaol there, then to the common gaol which is nearest to the place where such inquiry is had, there to remain until he gives such recognizance with such sureties.

7. If any sheriff has reason to believe that a prize-fight is taking place or is about to take place within his jurisdiction as such sheriff, or that any persons are about to come into

Canada at a point within his jurisdiction, from any place outside of Canada, with intent to engage in, or to be concerned in, or to attend any prize-fight within Canada, he shall forthwith summon a force of the inhabitants of his district or county sufficient for the purpose of suppressing and preventing such fight,—and he shall, with their aid, suppress and prevent the same, and arrest all persons present thereat, or who come into Canada as aforesaid, and shall take them before some person having authority to try offences against this Act, to be dealt with according to law, and fined or imprisoned, or both, or compelled to enter into recognizances with sureties, as hereinbefore provided, according to the nature of the case.

10. Every judge of a superior court or of a county court, judge of the sessions of the peace, stipendiary magistrate, police magistrate, and commissioner of police of Canada, shall, within the limits of his jurisdiction as such judge, magistrate or commissioner, have all the powers of a justice of the peace with respect to offences against this Act.

R.S.C., CHAPTER 154.

An Act respecting Perjury.

4. Any judge of any court of record, or any commissioner before whom any inquiry or trial is held, and which he is by law required or authorized to hold, may, if it appears to him that any person has been guilty of wilful and corrupt perjury in any evidence given, or in any affidavit, affirmation, declaration, deposition, examination, answer or other proceeding made or taken before him, direct such person to be prosecuted for such perjury, if there appears to such judge or commissioner a reasonable cause for such prosecution,—and may commit such person so directed to be prosecuted until the next term, sittings or session of any court having power to try for perjury, in the jurisdiction within which such perjury was committed, or permit such person to enter into a recognizance, with one or more sufficient sureties, conditioned for the appearance of such person at such next term, sittings or session, and that he will then surrender and take his trial and not depart the court without leave,—and may require any person, such judge or commissioner thinks fit, to enter into a recogizance conditioned to prosecute or give evidence against such person so directed to be prosecuted as aforesaid.

R.S.C., CHAPTER 157.

An Act respecting Offences against Public Morals and Public Convenience.

8. * * * * * * * * *

(4) If provision is made therefor by the laws of the province in which the conviction takes place, any such loose, idle or disorderly person may, instead of being committed to the common gaol or other public prison, be committed to any house of industry or correction, alms house, work house or reformatory prison.

R.S.C., CHAPTRE 167.

An Act respecting Offences relating to the Coin.

29. Any two or more justices of the peace, on the oath of a credible person, that any copper or brass coin has been unlawfully manufactured or imported, shall cause the same to be seized and detained, and shall summon the person in whose possession the same is found, to appear before them; and if it appears to their satisfaction, on the oath of a credible witness, other than the informer, that such copper or brass coin has been manufactured or imported in violation of this Act, such justice shall declare the same forfeited, and shall place the same in safe keeping to await the disposal of the Governor General, for the public uses of Canada.

30. If it appears, to the satisfaction of such justices, that the person in whose possession such copper or brass coin was found, knew the same to have been so unlawfully manufactured or imported, they may condemn him to pay the penalty aforesaid with costs, and may cause him to be imprisoned for a term not exceeding two months, if such penalty and costs are not forthwith paid.

31. If it appears, to the satisfaction of such justices, that the person in whose possession such copper or brass coin was found was not aware of it having been so unlawfully manufactured or imported, the penalty may, on the oath of

any one credible witness, other than the plaintiff, be recovered, from the owner thereof, by any person who sues for the same in any court of competent jurisdiction.

32. Any officer of His Majesty's customs may seize any copper or brass coin imported or attempted to be imported into Canada in violation of this Act, and may detain the same as forfeited, to await the disposal of the Governor General, for the public uses of Canada.

33. Every one who utters, tenders or offers in payment any copper or brass coin, other than current copper coin, shall forfeit double the nominal value thereof.

2. Such penalty may be recovered with costs in a summary manner, on the oath of one credible witness, other than the informer, before any justice of the peace, who, if such penalty and costs are not forthwith paid, may cause the offender to be imprisoned for a term not exceeding eight days.

34. A moiety of any of the penalties imposed by any of the five sections next preceding, but not the copper or brass coins forfeited under the provisions thereof, shall belong to the informer or person who sues for the same, and the other moiety shall belong to His Majesty, for the public uses of Canada.

R.S.C., CHAPTER 169.

An Act respecting Offences relating to the Army and Navy.

9. One moiety of the amount of any penalty recovered under any of the preceding sections shall be paid over to the prosecutor or person by whose means the offender has been convicted, and the other moiety shall belong to the Crown.

R.S.C., CHAPTER 172.

An Act respecting Cruelty to Animals.

7. Every pecuniary penalty recovered with respect to any such offence shall be applied in the following manner, that is to say: one moiety thereof to the corporation of the city, town, village, township, parish, or place in which the offence

was committed, and the other moiety, with full costs, to the person who informed and prosecuted for the same, or to such other person as to the justices of the peace seems proper.

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51 VICT., CHAPTER 41.

An Act to amend the law relating to fraudulent Marks on Merchandise.

15. Any goods or things forfeited under any provision of this Act may be destroyed or otherwise disposed of in such a manner as the court by which the same are declared forfeited, directs; and the court may, out of any proceeds realized by the disposition of such goods (all trade marks and trade descriptions being first obliterated), award to any innocent party any loss he may have innocently sustained in dealing with such goods.

16. On any prosecution under this Act the court may order costs to be paid to the defendant by the prosecutor, or to the prosecutor by the defendant, having regard to the information given by and the conduct of the defendant and prosecutor respectively.

18. On the sale or in the contract for the sale of any goods to which a trade mark or mark or trade description has been applied, the vendor shall be deemed to warrant that the mark is a genuine trade mark and not forged or falsely applied, or that the trade description is not a false trade description within the meaning of this Act, unless the contrary is expressed in some writing signed by or on behalf of the vendor and delivered at the time of the sale or contract to and accepted by the vendee.

22. The importation of any goods which, if sold, would be forfeited under the foregoing provisions of this Act, and of goods manufactured in any foreign state or country which bear any name or trade mark which is or purports to be the name or trade mark of any manufacturer, dealer or trader in the United Kingdom or in Canada is hereby prohibited, unless such name or trade mark is accompanied by a definite indication of the foreign state or country in which the goods

were made or produced; and any person who imports or attempts to import any such goods shall be liable to a penalty of not more than five hundred dollars, nor less than two hundred dollars, recoverable on summary conviction, and the goods so imported or attempted to be imported shall be forfeited and may be seized by any officer of the Customs and dealt with in like manner as any goods or things forfeited under this Act.

2. Whenever there is, on any goods, a name which is identical with or a colourable imitation of the name of a place in the United Kingdom of Canada, such name, unless it is accompanied by the name of the state or country in which it is situate, shall, unless the Minister of Customs decides that the attaching of such name is not calculated to deceive (of which matter the said Minister shall be the sole judge) be treated, for the purposes of this section, as if it was the name of a place in the United Kingdom or in Cnnada.

3. The Governor in Council may, whenever he deems it expedient in the public interest, declare that the provisions of the two subsections next preceding shall apply to any city or place in any foreign state or country; and after the publication in the *Canada Gazette* of the Order in Council made in that behalf, such provisions shall apply to such city or place in like manner as they apply to any place in the United Kingdom or in Canada, and may be enforced accordingly.

4. The Governor in Council may, from time to time, make regulations, either general or special, respecting the detention and seizure of goods the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and seizure, and may, by such regulations, determine the information, notices and security to be given, and the evidence necessary for any of the purposes of this section, and the mode of verification of such evidence.

5. The regulations may provide for the reimbursing by the informant to the Minister of Customs of all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent upon such detention.

6. Such regulations may apply to all goods the importation of which is prohibited by this section, or different regulations may be made respecting different classes of such goods or of offences in relation to such goods.

7. All such regulations shall be published in the *Canada Gazette* and shall have force and effect from the date of such publication.

23. This Act shall be substituted for chapter one hundred and sixty-six of the Revised Statutes, respecting the fraudulent marking of merchandise, which is hereby repealed.

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52 VICT., CHAPTER 41.

An Act for the Prevention and Suppression of Combinations formed in restraint of Trade.

4. Where an indictment is found against any person for offences provided against in this Act, the defendant or person accused shall have the option to be tried before the judge presiding at the court at which such indictment is found, or the judge presiding at any subsequent sitting of such court, or at any court where the indictment comes on for trial, without the intervention of a jury; and in the event of such option being exercised the proceedings subsequent thereto shall be regulated, in so far as may be applicable, by *The Speedy Trials Act.*

5. An appeal shall lie from any conviction under this Act by the judge without the intervention of a jury to the highest court of appeal in criminal matters in the province where such conviction shall have been made, upon all issues of law and fact; and the evidence taken in the trial shall form part of the record in appeal, and for that purpose the court before which the case is tried shall take note of the evidence and of all legal objections thereto.

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53 VICT., CHAPTER 37.

An Act further to amend the Criminal Law.

ESCAPES AND RESCUES.

1. Section nine of chapter one hundred and fifty-five of the Revised Statutes of Canada, *An Act respecting Escapes and Rescues*, is hereby repealed and the following section is substituted therefor :—

"**9**. Every one who, being sentenced to imprisonment or detention in, or being ordered to be detained in any reformatory prison, reformatory school, industrial refuge, indus-

trial home or industrial school, escapes or attempts to escape therefrom, is guilty of a misdemeanour, and may be dealt with as follows :—

"The offender may, at any time, be apprehended without warrant and brought before any magistrate, who, upon proof of his identity,—

"(*a*) In the case of an escape or attempt to escape from a reformatory prison or a reformatory school, shall remand him thereto for the remainder of his original term of imprisonment or detention ; or,—

"(*b*) In the case of an escape or attempt to escape from an industrial refuge, industrial home or industrial school,—

"(1) May remand him thereto for the remainder of his original term of imprisonment or detention ; or,—

(2) If the officer in charge of such refuge, home or school certifies in writing that the removal of such offender to a place of safer or stricter imprisonment is desirable, and if the governing body of such refuge, home or school applies for such removal, and if sufficient cause therefor is shown to the satisfaction of such magistrate, may order the offender to be removed to and to be kept imprisoned, for the remainder of his original term of imprisonment or detention, in any reformatory prison or reformatory school, in which by law such offender may be imprisoned for a misdemeanour,—and when there is no such reformatory prison or reformatory school, may order the offender to be removed to and to be so kept imprisoned in any other place of imprisonment to which the offender may be lawfully committed ;

"(*c*) And in any case mentioned in the preceding paragraphs (*a*) and (*b*) of this sub-section, or if the term of his imprisonment or detention has expired, the magistrate may, after conviction, sentence the offender to such additional term of imprisonment or detention, as the case may be, not exceeding one year, as to such magistrate seems a proper punishment for the escape or attempt to escape."

2. Every one who, being sentenced to imprisonment or detention in, or being ordered to be detained in any industrial refuge, industrial home or industrial school, by reason of incorrigible or vicious conduct, or with reference to the general discipline of the institution, is beyond the control of the officer in charge of such institution, is guilty of a misdemeanour, and may be dealt with as follows :—

(*a*) The offender may, at any time before the expiration of his term of imprisonment or detention, be brought without

warrant before any magistrate, and if the officer in charge of such refuge, home or school certifies in writing that the removal of such offender to a place of stricter imprisonment is desirable, and if the governing body of such refuge, home or school applies for such removal, and if sufficient cause therefor is shown to the satisfaction of such magistrate, he may order the offender to be removed to and to be kept imprisoned for the remainder of his original term of imprisonment or detention, in any reformatory prison or reformatory school in which by law such offender may be imprisoned for a misdemeanour ; and when there is no such reformatory prison or school the magistrate may order the offender to be removed to and to be so kept imprisoned in any other place of imprisonment to which the offender may be lawfully committed ;

(*b*) The magistrate may, after conviction, sentence the offender to such additional term of imprisonment, not exceeding one year, as to such magistrate seems a proper punishment for the incorrigible conduct of the offender.

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56 VICTORIA.

CHAPTER 31.. ann° 6 Edw VII c. 10 (1906)

An Act respecting Witnesses and Evidence.

[*Assented to 1st April*, 1893.]

HIS MAJESTY, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

1. Short Title.

This Act may be cited as *The Canada Evidence Act*, 1893.

2. Application.

This Act shall apply to all criminal proceedings, and to all civil proceedings and other matters whatsoever respecting which the Parliament of Canada has jurisdiction in this behalf.

WITNESSES.

3. No incompetency from Crime or Interest.

A person shall not be incompetent to give evidence by reason of interest or crime.

See O'Neil and the Attorney-General of Canada (1896), 26 S.C. R. 122.

4. Competency of Accused and of Wife and Husband.—Proviso: as to Communications during Marriage.

Every person charged with an offence, and the wife or husband, as the case may be, of the person so charged, shall be a competent witness, whether the person so charged is charged solely or jointly with any other person. Provided however, that no husband shall be competent to disclose any communication made to him by his wife during their marriage, and no wife shall be competent to disclose any communication made to her by her husband during their marriage.

2. The failure of the person charged, or of the wife or husband of such person, to testify, shall not be made the subject of comment by the judge or by counsel for the prosecution in addressing the jury.

See R. vs. Connors (1893), R.J.Q., 3 Q.B. 100.
R. vs. Viau (1898), R.J.Q., 7 Q.B. 362.
R. vs. Coleman (1898), 2 Can. C.C. 523.
R. vs. Corby (1898), 1 Can. C.C. 457.
R. vs. McLinchy (1898), 2 Can. C.C. 416.

5. Incriminating Answers.

1. No person shall be excused from answering any question upon the ground that the answer to such question may tend to criminate him, or may tend to establish his liability to a civil proceeding at the instance of the Crown or of any person; provided, however, that if with respect to any question the witness objects to answer upon the ground that his answer may tend to criminate him or may tend to establish his liability to a civil proceeding at the instance of the Crown or of any person, and if but for this section the witness would therefore have been excused from answering such question then, although the witness shall be compelled to answer yet the answer so given shall not be used or receivable in evidence against him in any criminal trial or other criminal proceeding against him thereafter taking place other than a prosecution for perjury in giving such evidence.

2. The proviso to sub-section 1 of this section shall, in like manner apply to the answer of a witness to any question which pursuant to an enactment of the legislature of a province such witness is compelled to answer after having objected so to do upon any ground mentioned in the said subsection and which, but for that enactment, he would upon such ground have been excused. 1 Ed. VII., cap. 36.

Before the amendment of 1898 (61 Vict., c. 53), there were various conflicting decisions under this section as it then read:—
See R. vs. Madden & Bowerman (1894), 30 C.L.J. 765.
R. vs. Hendershott & Welter (1895), 26 O.R. 678.
R. vs. Thompson (1896), 17 C.L.T. 295.
R. vs. Williams (1898), 28 O.R. 583.
R. vs. Hammond (1898), 29 O.R. 211.
R. vs. Viau (1898), R.J.Q., 7 Q.B. 362.
R. vs. Lalonde & Deguire (1898), R.J.Q., 7 Q.B. 204.

6. Evidence of Mute.

A witness who is unable to speak, may give his evidence in any other manner in which he can make it intelligible.

7. Judicial Notice to be taken of Imperial Statutes, etc.

Judicial notice shall be taken of all Acts of the Imperial Parliament, of all ordinances made by the Governor in Council, or the Lieutenant-Governor in Council of any province or colony which, or some portion of which, now forms or hereafter may form part of Canada, and of all the Acts of the legislature of any such province or colony, whether enacted before or after the passing of *The British North America Act, 1867.*

8. Proof of Proclamations, etc., of Governor-General' etc.—Canada Gazette, etc.—Copy printed by King's Printer.—Copy or Extract duly certified.

Evidence of any proclamation, order, regulation or appointment, made or issued by the Governor-General or by the Governor in Council, or by or under the authority of any minister or head of any department of the Government of Canada, may be given in all or any of the modes hereinafter mentioned, that is to say :—

(*a*) By the production of a copy of the *Canada Gazette* or a volume of the Acts of the Parliament of Canada purporting to contain a copy of such proclamation, order, regulation, or appointment or a notice thereof ;

(*b*) By the production of a copy of such proclamation, order, regulation or appointment, purporting to be printed by the King's Printer for Canada ; and—

(*c*) By the production, in the case of any proclamation, order, regulation or appointment made or issued by the Governor-General or by the Governor in Council, of a copy or extract purporting to be certified to be true by the

clerk, or assistant or acting clerk of the King's Privy Council for Canada,—and in the case of any order, regulation or appointment made or issued by or under the authority of any such minister or head of a department, by the production of a copy or extract purporting to be certified to be true by the minister, or by his deputy or acting deputy, or by the secretary or acting secretary of the department over which he presides.

9. Proof of Proclamations, etc., of Lieutenant-Governor, etc.—Official Gazette, etc.—Copy printed by Government Printer.—Copy of Extract duly certified.

Evidence of any proclamation, order, regulation or appointment made or issued by a Lieutenant-Governor or LieutenantGovernor in Council of any province, or by or under the authority of any member of the Executive Council, being the head of any department of the Government of the province, may be given in all or any of the modes hereinafter mentioned, that is to say :—

(*a*) By the production of a copy of the Official Gazette for the province, purporting to contain a copy of such proclamation, order, regulation or appointment or a notice thereof;

(*b*) By the production of a copy of such proclamation, order, regulation or appointment, purporting to be printed by the Government or King's Printer for the province ;

(*c*) By the production of a copy or extract of such proclamation, order, regulation or appointment, purporting to be certified to be true by the clerk or assistant or acting clerk of the Executive Council, or by the head of any department of the Government of a province, or by his deputy or acting deputy, as the case may be.

10. Proof of Judicial Proceedings, etc.

Evidence of any proceeding or record whatsoever of, in, or before any court in the United Kingdom, or the Supreme or Exchequer Courts of Canada, or any court, or before any justice of the peace or any coroner, in any province of Canada, or any court in any British colony or possession, or any court of record of the United States of America, or of any state of the United States of America, or of any other foreign country, may be made in any action or proceeding by an exemplification or certified copy thereof, purporting to be under the seal of such court, or under the hand or seal of such justice or coroner, as the case may be, without any proof of the authenticity of such seal or of the signature of such ju

tice or coroner, or other proof whatever; and if any such court, justice or coroner, has no seal, or so certifies, then by a copy purporting to be certified under the signature of a judge or presiding magistrate of such court or of such justice or coroner, without any proof of the authenticity of such signature or other proof whatsoever.

11. Proof of Imperial Acts, etc.

Imperial proclamations, orders in council, treaties, orders, warrants, licenses, certificates, rules, regulations, or other Imperial official records, acts or documents may be proved (*a*) in the same manner as the same may from time to time be provable in any court in England, or (*b*) by the production of a copy of the *Canada Gazette*, or a volume of the Acts of the Parliament of Canada purporting to contain a copy of the same or a notice thereof, or (*c*) by the production of a copy thereof, purporting to be printed by the King's Printer for Canada

12. Proof of Official or Public Documents.

In every case in which the original record could be received in evidence, a copy of any official or public document of Canada or of any province, purporting to be certified under the hand of the proper officer or person in whose custody such official or public document is placed, or a copy of a document, by-law, rule, regulation or proceeding, or a copy of any entry in any register or other book of any municipal or other corporation, created by charter or statute of Canada or any province, purporting to be certified under the seal of the corporation, and the hand of the presiding officer, clerk or secretary thereof, shall be receivable in evidence, without proof of the seal of the corporation, or of the signature or of the official character of the person or persons appearing to have signed the same, and without further proof thereof.

13. Copies of Public Books or Documents admissible in Evidence.

Where a book or other document is of so public a nature as to be admissible in evidence on its mere production from the proper custody, and no other statute exists which renders its contents provable by means of a copy, a copy thereof or extract therefrom shall be admissible in evidence in any court of justice, or before a person having, by law or by

consent of parties, authority to hear, receive and examin evidence, provided it is proved that it is a copy or extrac purporting to be certified to be true by the officer to whos custody the original has been entrusted.

14. Proof of Hand-writing, etc., not requisite.

No proof shall be required of the handwriting or offici position of any person certifying, in pursuance of this Ac to the truth of any copy of or extract from any proclamatio order, regulation, appointment, book or other document and any such copy or extract may be in print or in writin or partly in print, and partly in writing.

15. Order signed by Secretary of State.

Any order in writing, signed by the Secretary of State Canada, and purporting to be written by command of th Governor-General, shall be receivable in evidence as the or der of the Governor-General.

16. Copies of Notices, etc., in Canada Gazette.

All copies of official and other notices, advertisements an documents printed in the *Canada Gazette* shall be *prima faci* evidence of the originals, and of the contents thereof.

17. Copies of Entries in Books of Government Departments.

A copy of any entry in any book kept in any departmen of the Government of Canada shall be receivable as evidenc of such entry and of the matters, transactions and account therein recorded, if it is proved by the oath or affidavit of a officer of such department that such book was, at the time o the making of the entry, one of the ordinary books kept i such department, that the entry was made in the usual and ordinary course of business of such department, and tha such copy is a true copy thereof.

18. Proof of Notarial Acts in Quebec,

Any document purporting to be a copy of a notarial act or instrument made, filed or enregistered in the province o Quebec, and to be certified by a notary or prothonotary to be a true copy of the original in his possession as such notary or prothonotary, shall be received in evidence in the plac and stead of the original, and shall have the same force and

effect as the original would have if produced and proved: Provided, that it may be proved in rebuttal that there is no such original, or that the copy is not a true copy of the original in some material particular, or that the original is not an instrument of such nature as may by the law of the province of Quebec be taken before a notary or be filed, enrolled or enregistered by a notary in the said province,

19. Notice to be given to Adverse Party.

No copy of any book or other document as provided in sections ten, twelve, thirteen, fourteen, seventeen and eighteen of this Act, shall be receivable in evidence upon any trial unless the party intending to produce the same has before the trial given to the party against whom it is intended to be produced reasonable notice of such intention. The reasonableness of the notice shall be determined by the court or judge, but the notice shall not in any case be less than ten days.

20. Construction of this Act.

The provisions of this Act shall be deemed to be in addition to and not in derogation of any powers of proving documents given by any existing statute or existing at law.

21. Application of Provincial Laws of Evidence.

In all proceedings over which the Parliament of Canada has legislative authority, the laws of evidence in force in the province in which such proceedings are taken, including the laws of proof of service of any warrant, summons, subpoena or other document, shall, subject to the provisions of this and other Acts of the Parliament of Canada, apply to such proceedings.

OATHS AND AFFIRMATIONS.

22. Who may administer Oaths.

Every court and judge, and every person having, by law or consent of parties, authority to hear and receive evidence, shall have power to administer an oath to every witness who is legally called to give evidence before that court, judge or person.

23. Affirmation of Witness instead of Oath.

If a person called or desiring to give evidence, objects, on grounds of conscientious scruples, to take an oath or is objected to as incompetent to take an oath, such person may make the following affirmation :—

"I solemnly affirm that the evidence to be given by me shall be the truth, the whole truth, and nothing but the truth."

And upon the person making such solemn affirmation, his evidence shall be taken and have the same effect as if taken under oath.

24. Affirmation instead of Oath.—Perjury.

If a person required or desiring to make an affidavit or deposition in a proceeding or on an occasion whereon or touching a matter respecting which an oath is required or is lawful, whether on taking office or otherwise, refuses or is unwilling to be sworn, on grounds of conscientious scruples, the court or judge, or other officer or person qualified to take affidavits or depositions, shall permit such person instead of being sworn, to make his solemn affirmation in the words following, viz.: "I, A. B., do solemnly affirm," etc., which solemn affirmation shall be of the same force and effect as if such person had taken an oath in the usual form.

2. Any witness whose evidence is admitted or who makes an affirmation under this or the next preceding section shall be liable to indictment and punishment for perjury in all respects as if he had been sworn.

25. Evidence of Child.—Corroboration required.

In any legal proceeding where a child of tender years is tendered as a witness, and such child does not, in the opinion of the judge, justice or other presiding officer, understand the nature of an oath, the evidence of such child may be received, though not given upon oath, if, in the opinion of the judge, justice or other presiding officer, as the case may be, such child is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth.

2. But no case shall be decided upon such evidence alone, and such evidence must be corroborated by some other material evidence.

26. Solemn Declaration.

Any judge, notary public, justice of the peace, police or stipendiary magistrate, recorder, mayor, commissioner authorized to take affidavits to be used either in the Provincial or Dominion courts, or any other functionary authorized by law to administer an oath in any matter, may receive the solemn declaration of any person voluntarily making the same before him, in the form in the schedule A to this Act, in attestation of the execution of any writing, deed or instrument, or of the truth of any fact, or of any account rendered in writing.

27. Affidavits required by Insurance Companies.

Any affidavit, affirmation or declaration required by any insurance company authorized by law to do business in Canada, in regard to any loss of, or injury to, person, property, or life insured or assured therein, may be taken before any commissioner or other person authorized to take affidavits, or before any justice of the peace, or before any notary public for any province of Canada : and such officer is hereby required to take such affidavit, affirmation or declaration.

28. Repeal.

The Acts mentioned in schedule B to this Act are hereby repealed.

29. Commencement of Act.

This Act shall come into force on the first day of July, one thousand eight hundred and ninety-three.

SCHEDULE A.

I, A. B., do solemnly declare that (*state the fact or facts declared to*), and I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of *The Canada Evidence Act*, 1893.

Declared before me
at this day of A.D. 19 .

SCHEDULE B.

Acts Repealed.	Title.	Extent of Repeal.
R. S. C., c. 139..	An Act respecting Evidence...	The whole Act.
R. S. C., c. 141..	An Act respecting Extra-judicial oaths.....	The whole Act.

56 VICTORIA.

CHAPTER 37.

An Act to prevent the manufacture and sale of filled or imitation cheese, and to provide for the brandling of dairy products.

[*Assented to 1st April*, 1893.]

HIS Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

1. Short Title.

This Act may be cited as *The Dairy Products Act*, 1893.

2. Imitation Cheese Prohibited.—Penalty.

No person shall manufacture, or shall knowingly buy, sell, offer, expose or have in his possession for sale, any cheese manufactured from or by the use of skimmed milk, to which there has been added any fat which is foreign to such milk.

2. Every person who, by himself or by any other person to his knowledge, violates the provisions of this section, shall, for each offence, upon conviction thereof before any justice or justices of the peace, be liable to a fine not exceeding five hundred dollars and not less than twenty-five dollars, together with the costs of prosecution, and in default of payment of such fine and costs shall be liable to imprisonment, with or without hard labour, for a term not exceeding six months, unless such fine and the costs of enforcing it are sooner paid.

3. Skim-milk Cheese to be marked.—Mark not to be removed.—Penalty.

No person shall sell, offer, expose, or have in his possession for sale, any cheese manufactured from or by the use of milk commonly known as "skimmed-milk," or milk from which cream has been removed, or milk to which skimmed milk has been added, unless the words "skim-milk cheese" are branded, marked or stamped in a legible manner upon the side of every cheese, and also upon the outside of every box or package which contains the same, in letters not less than three-quarters of an inch high and three-quarters of an inch wide.

2. No person, with intent to misrepresent or to defraud, shall remove, or in any way efface, obliterate or alter the words "skim-milk cheese" on such cheese, or on any box or package which contains the same.

3. Every person who, by himself or by any other person to his knowledge, violates any of the provisions of this section, shall, for each offence, upon conviction thereof before any justice or justices of the peace, be liable to a fine not exceeding five dollars and not less than two dollars for every such cheese, or box or package which is sold, offered, exposed or had in his possession for sale, together with the costs of prosecution, and in default of payment of such fine and costs shall be liable to imprisonment, with or without hard labour, for a term not exceeding three months, unless such fine and the costs of enforcing it are sooner paid.

4. "Canadian" as a Brand.—Sale of Cheese so branded Falsely.—Penalty.

No person shall apply any brand, stamp or mark of the word "Canadian," "Canadien" or "Canada" as a descriptive term, mark or brand, upon any cheese or upon any box or package which contains cheese or butter, unless such cheese and butter have been produced in Canada.

2. No person shall knowingly sell, offer, expose or have in his possession for sale, any cheese or butter upon which or upon any box or package which contains the same, the word "Canadian," "Canadien or "Canada" is applied as a descriptive term, mrk or brand, unless such cheese and butter have been produced in Canada.

3. Every person who, by himself or by any other person to his knowledge, violates any of the provisions of this section, shall, for each offence, upon conviction thereof before any justice or justices of the peace, be liable to a fine not exceed-

ing twenty dollars and not less than five dollars for every such cheese or box or package, which is sold, offered, exposed or had in his possession for sale, together with the costs of prosecution, and in default of payment of such fine and costs shall be liable to imprisonment, with or without hard labour, for a term not exceeding three months, unless such fine and the costs of enforcing it are sooner paid.

5. Name of Country where produced to be marked.—Penalty.

No person shall sell, offer, expose or have in his possession for sale, any cheese or butter which is produced in any foreign country, usless the name of the country where such cheese or butter was produced, is branded, stamped or marked in a legible manner upon the outside of every box or package which contains the same, in letters not less than three-eights of an inch high and one-quarter of an inch wide.

2. Every person who, by himself or by any other person to his knowledge, violates the provisions of this section shall, for each offence, upon conviction thereof before any justice or justices of the peace, be liable to a fine not exceeding five dollars and not less than two dollars for every such cheese, or box or package of butter, which is sold, offered, exposed or had in possession for sale, together with the costs of prosecution, and in default of payment of such fine and costs shall be liable to imprisonment, with or without hard labour, for a term not exceeding three months, unless such fine and the costs of enforcing it are sooner paid.

6. Who shall be liable ?

The person on whose behalf any cheese or butter is manufactured, sold, offered, exposed or had in possession for sale, contrary to the provisions of the foregoing sections of this Act, shall be *prima facie* liable for the violation of any of the provisions of this Act.

7. Procedure.

In any complaint, information or conviction under this Act, the matter complained of may be declared, and shall be held to have arisen, within the meaning of *The Summary Convictions Act*, at the place where the cheese or butter complained of was maunfactured, sold, offered, exposed or had in possession for sale.

8. Appeal.

No appeal shall lie from any conviction under this Act except to a superior, county, circuit or district court, or the

court of the sessions of the peace, having jurisdiction where the conviction was had; and such appeal shall be brought, notice of appeal in writing given, recognizance entered into or deposit made within ten days after the date of conviction; and such appeal shall be heard, tried, adjudicated upon and decided, without the intervention of a jury, at such time and place as the court or judge hearing the same appoints, within thirty days from the date of conviction, unless the said court or judge extends the time for hearing and decision beyond such thirty days; and in all other respects not provided for in this Act the procedure under *The Summary Convictions Act*, so far as applicable, shall apply,

9. Right to make Examination of Cheese or Butter.

It shall be lawful for any person who may be charged with the enforcement of this Act to enter upon the premises of any person suspected of violating the provisions of this Act, and make an examination of cheese or butter; and any such suspected person, who obstructs or refuses to permit the making of any such examination, shall, upon conviction thereof, be liable to a penalty not exceeding five hundred dollars and not less than twenty-five dollars, together with the costs of prosecution, and in default of payment of such penalty and costs, shall be liable to imprisonment, with or without hard labour, for a term not exceeding six months, unless the said penalty and the costs of enforcing the same are sooner paid.

10. Application of Penalties.

Any pecuniary penalty imposed under this Act shall, when recovered, be payable, one-half to the informant or complainant, and the other half to His Majesty.

11. Governor in Council may make Regulations. make Regulations.

The Governor in Council may make such regulations as he considers necessary in order to secure the efficient operation of this Act; and the regulations so made shall be in force from the date of their publication in the *Canada Gazette*, or from such other date as is specified in the proclamation in that behalf.

62-63 VICTORIA.

CHAPTER 49.

An Act to provide for the Conditional Liberation of Penitentiary Convicts.

[*Assented to 11th August*, 1899.]

HIS Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

1. License to be at Large.—Revocation.

It shall be lawful for the Governor-General by an order in writing under the hand and seal of the Secretary of State to grant to any convict under sentence of imprisonment in a penitentiary a license to be at large in Canada, or in such part thereof as in such license shall be mentioned, during such portion of his term of imprisonment, and upon such conditions in all respects as to the Governor-General may seem fit; and the Governor-General may from time to time revoke or alter such license by a like order in writing.

2. Effect of License.

So long as such license continues in force and unrevoked such convict shall not be liable to be imprisoned by reason of his sentence, but shall be allowed to go and remain at large according to the terms of such license.

3. Effect of Revocation and Proceedings thereon.—Warrant for Apprehension.—Execution.—Bringing before Justice of Peace.—Recommitment to Penitentiary.

If any such license is revoked it shall be lawful for the Governor General by warrant under the hand and seal of the Secretary of State to signify to the Commissioner of Dominion Police at Ottawa that such license has been revoked, and to require the said commissioner to issue his warrant under his hand and seal for the apprehension of the convict, to whom such license was granted, and the said commissioner shall issue his warrant accordingly, and such warrant shall and may be executed by the constable to whom the same is given for that purpose in any part of Canada, and shall have the same force and effect in all parts of Canada as if the same had been originally issued or subsequently endorsed by a justice or other lawful authority having jurisdiction in the place where the same is executed, and such convict, when apprehended under such warrant, shall be brought as soon as conveniently may be before a justice of the peace of the county in which the same is executed, and such justice shall thereupon make out his warrant under his hand and seal for the recommitment of such convict to the penitentiary from which he was released by virtue of the said license, and such convict shall be so recommitted accordingly, and shall thereupon be remitted to his original sentence, and shall undergo the residue thereof as if such license had been not granted. Provided that if the place where such convict is apprehended is not within the province, territory or district for which such penitentiary is the penitentiary, such convict shall be committed to the penitentiary for the province, territory or district within which he is so apprehended and shall there undergo the residue of his sentence.

4. Form of License.—Variation in Conditions to be laid before Parliament.

A license under section 1 may be in the form A in the schedule to this Act, or to the like effect, or may, if the Governor General thinks proper, be in any other form different from that given in the schedule which he may think it expedient to adopt, and contain other and different conditions.

2. A copy of any conditions annexed to any such license other than the conditions contained in form A shall be lai

before both Houses of Parliament within twenty-one days after the making thereof, if Parliament be then in session, or if not, then within fourteen days after the commencement of the next session of Parliament.

5. Conviction to forfeit License.

If any holder of a license under this Act is convicted of any indictable offence his license shall be forthwith forfeited.

6. Holder of License to notify his Address and all Changes thereof,—Reports to Police.—Penalty.—Exceptions.—Remission of Penalties.

Every holder of such a license who is at large in Canada shall notify the place of his residence to the chief officer of police or the sheriff of the city, town, county or district in which he resides, and shall, whenever he changes such residence within the same city, town, county or district, notify such change to the said chief officer of police or sheriff, and whenever he is about to leave a city, town, county or district he shall notify such his intention to the chief officer of police or sheriff of that city, town, county or district, stating the place to which he is going, and also, if required, and so far as is practicable, his address at that place, and whenever he arrives in any city, town, county or district he shall forthwith notify his place of residence to the chief officer of police or the sheriff of such last-mentioned city, town, county or district.

2. Every male holder of such a license shall, once in each month, report himself at such time as may be prescribed by the chief officer of police or sheriff of the city, town, county or district in which such holder may be, either to such chief officer or sheriff himself, or to such other person as he may direct, and such report may according as such chief officer or sheriff directs be required to be made personally or by letter.

3. If any person to whom this section applies fails to comply with any of the requirements of this section, he shall in any such case be guilty of an offence against this Act, unless he proves to the satisfaction of the court before whom he is tried, either that being on a journey he tarried no longer in the place in respect of which he is charged with failing to notify his place of residence than was reasonably necessary, or that, otherwise, he did his best to act in conformity with

the law; and on summary conviction of such offence he shall be liable in the discretion of the justice either to forfeit his license or to imprisonment with or without hard labour for a term not exceeding one year.

4. The Governor General may, by order under the hand of the Secretary of State, remit any of the requirements of this section either generally or in the case of any particular holder of a license.

7. Offences with respect to License.—Penalty.

Any holder of a license under this Act who—

(*a*) fails to produce the same whenever required so to do by any judge, police or other magistrate, or justice of the peace, before whom he may be brought charged with any offence, or by any peace officer in whose custody he may be and fails to make any reasonable excuse for not producing the same ; or

(*b*) breaks any of the other conditions of his license by an act which is not of itself punishable either upon indictment or upon summary conviction, is guilty of an offence upon summary conviction of which he shall be liable to imprisonment for three months with or without hard labour.

8. Arrest without Warrant in certain Cases.—Trial —Forfeiture of License..

Any peace officer may take into custody without warrant any convict who is the holder of such a license,

(*a*) whom he reasonably suspects of having committed any offence, or

(*b*) if it appears to such peace officer that such convict is getting his livelihood by dishonest means.

and may take him before a justice to be dealt with according to law.

2. If it appears from the facts proved before the justice that there are reasonable grounds for believing that the convict so brought before him is getting his livelihood by dishonest means such convict shall be deemed guilty of an offence against this Act, and his license shall be forfeited.

3. Any convict so brought before a justice of the peace may be convicted of getting his livelihood by dishonest means although he has been brought before the justice for some other charge or not in the manner provided for in this section.

9. Certificate of Conviction.—Form.—Revocation of License.

When any holder of a license under this Act is convicted of an offence punishable on summary conviction under this or any other Act the justice or justices convicting the prisoner shall forthwith forward by post a certificate in the form B in the schedule to this Act to the Secretary of State, and thereupon the license of the said holder may be revoked in manner aforesaid.

10. Conviction and Sentence in Force during Period of License.

The conviction and sentence of any convict to whom a license is granted under this Act shall be deemed to continue in force while such license remains unforfeited and unrevoked, although execution thereof is suspended.

11. When License forfeited Original Term of Imprisonment to be undergone after other Punishment.

When any such license as aforesaid is forfeited by a conviction of an indictable offence or other conviction, or is revoked in pursuance of a summary conviction, or otherwise, the person whose license is forfeited or revoked shall, after undergoing any other punishment to which he may be sentenced for any offence in consequence of which his license is forfeited or revoked, further undergo a term of imprisonment equal to the portion of the term to which he was sentenced that remained unexpired at the time his license was granted, and shall for the purpose of undergoing such last mentioned punishment be removed from the jail or other place of confinement in which he is, if it be not a penitentiary to a penitentiary by warrant under the hand and seal of any justice having jurisdiction at the place where he is confined; and if he is confined in a penitentiary shall undergo such term of imprisonment in that penitentiary, and in every case such convict shall be liable to be dealt with in all respects as if such term of imprisonment had formed part of his original sentence,

12. Duty of Minister of Justice.

It shall be the duty of the Minister of Justice to advise the Governor General upon all matters connected with or affecting the administration of this Act.

SCHEDULE.

Form A.

LICENSE.

OTTAWA, day of 19 .

His Excellency the Governor General is graciously pleased to grant to , who was convicted of at the for the on the , and was then and there sentenced to imprisonment in the penitentiary for the term of , and is now confined in the , license to be at large from the day of his liberation under this order during the remaining portion of his term of imprisonment, unless the said shall before the expiration of the said term be convicted of an indictable offence within Canada, or shall be summarily convicted of an offence involving forfeiture, in which case such license will be immediately forfeited by law or unless it shall please His Excellency sooner to revoke or alter such license.

This license is given subject to the conditions endorsed upon the same upon the breach of any of which it will be liable to be revoked whether such breach is followed by a conviction or not.

And His Excellency hereby orders that the said be set at liberty within thirty days from the date of this order.

Given under my hand and seal at the , day of (18 } *Secretary of State.*

CONDITIONS,

1. The holder shall preserve his license and produce it when called upon to do so by a magistrate or a peace officer.
2. He shall abstain from any violation of the law.
3. He shall not habitually associate with notoriously bad characters, such as reputed thieves and prostitutes.

4. He shall not lead an idle and dissolute life without visible means of obtaining an honest livelihood.

If his license is forfeited or revoked in consequence of a conviction for any offence he will be liable to undergo a term of imprinsonment equal to the portion of his term of years which remained unexpired when his license was granted, viz.:—the term of years.

Form B.

FORM OF CERTIFICATE OF CONVICTION.

I do hereby certify that A. B., the holder of a license under the *Act to provide for the conditional liberation of Penitentiary Convicts* was on the day of in the year duly convicted by and before of the offence of and sentenced to

J. P., Co.

63-64 VICTORIA.

CHAPTER 48.

An Act to amend an Act to provide for the Conditional Liberation of Penitentiary Convicts.

[*Assented to 7th May*, 1900.]

HIS Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—lows :—

1. 1899, c. 49 applied to Convicts in Jails and other Public or Reformatory Prisons.

The provisions of chapter 49 of the statutes of 1899, intituled *An Act to provide for the conditional liberation of Penitentiary Convicts*, shall apply to all persons convicted of any offence and being under sentence of imprisonment in any jail or other public or reformatory prison; and the Governor General may grant to any person so convicted and being under imprisonment in any jail or other public or reformatory prison a license to be at large in Canada upon the like terms and conditions as are by the said Act prescribed and authorized with respect to penitentiary convicts.

2. Short Titles.

The said Act and this Act may be cited respectively as *The Ticket of Leave Act*, 1899, and *The Ticket of Leave Amendment Act*, 1900, and may be cited collectively as *The Ticket of Leave Acts*,

R.S.C., CHAPTER 142.

An Act respecting the Extradition of Fugitive Criminals.

HIS Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

SHORT TITLE.

1. Short Title.

This Act may be cited as "*The Extradition Act.*" 40 V., c. 25, s. 24.

INTERPRETATION.

2. Interpretation.—"Extradition arrangement."—"Extradition crime."—"Conviction."—"Convicted."—"Accused person."—"Fugitive criminal."—"Foreign state."—"Warrant."—"Judge."

In this Act, unless the context otherwise requires,—

(*a*) The expression "extradition arrangement" or "arrangement," means a treaty, convention or arrangement made by His Majesty with a foreign state for the surrender of fugitive criminals, and which extends to Canada ;

(*b*) The expression "extradition crime" may mean any crime which, if committed in Canada, or within Canadian jurisdiction, would be one of the crimes described in the first schedule to this Act—and, in the application of this Act to the case of any extradition arrangement, means any crime described in such arrangement, whether comprised in the said schedule or not ;

(*c*) The expression "conviction" and "convicted" do not include the case of a condemnation under foreign law by reason of contumacy; but the expression "accused person" includes a person so condemned;

Re Dickey (2)(1) 8 Can C.C. 318.321.

(*d*) The expressions "fugitive" and "fugitive criminal" mean a person being or suspected of being in Canada, who is accused or convicted of an extradition crime committed within the jurisdiction of any foreign state;

(*e*) The expression "foreign state" includes every colony, dependency and constituent part of the foreign state; and every vessel of any such state shall be deemed to be within the jurisdiction of and to be part of the state;

(*f*) The expression "warrant," in the case of a foreign state, includes any judicial document authorizing the arrest of a person accused or convicted of crime;

(*g*) The expression "judge" includes any person authorized to act judicially in extradition matters. 40 V., c. 25, s. 1.

By virtue of an imperial order in Council of 28 December, 1882, the Imperial Extradition Act is suspended as regards any state to which this Act applies.

See ex parte Phelan (1883), 6 L.N. 261.

See re Martin (1896), 33 C.L.J. 253.

APPLICATION OF ACT.

3. As to existing arrangements.—As to limitations, qualifications and exceptions. Imp. Act 33-34 V., c. 52.—Orders under this Act may be revoked.

In the case of any foreign state with which there is, at or after the time when this Act comes into force, an extradition arrangement, this Act shall apply during the continuance of such arrangement; but no provision of this Act, which is inconsistent with any of the terms of the arrangement, shall have effect to contravene the arrangement; and this Act shall be so read and construed as to provide for the execution of the arrangement:

2. In the case of any foreign state with respect to which the application to the United Kingdom of the Act of the Parliament of the United Kingdom, passed in the year one thousand eight hundred and seventy, and intituled "*An Act for amending the Law relating to the Extradition of Criminals,*" is made subject to any limitation, condition, qualification or exception, the Governor in Council shall make the application of this Act, by virtue of this section, subject to such limitation, condition, qualification or execution:

3. The Governor in Council may, at any time, revoke or alter, subject to the restrictions of this Act, any order made by him in council under this Act, and all the provisions of this Act with respect to the original order shall, so far as applicable, apply *mutatis mutandis* to the new order. 40 V., c, 25, s. 4.

See in re Rosebaum (1874), 18 C.L.J. 200.
Ex parte Phelan (1883), 6 L.N. 261.
The People of the U.S. vs. Debaun (1888), 16 R.L. 612.

4. If the application of this Act depends on an Order in Council.—Publication of Orders in Council.—Effect of the Publication in the "Canada Gazette."

This Act, so far as its application in the case of any foreign state, depends on or is affected by any Order in Council made under this Act or referred to therein, shall apply, or its application shall be affected from and after the time specified in the order, or, if no time is specified, after the date of the publication of the order in the *Canada Gazette :*

2. Any order of His Majesty in Council, referred to in this Act, and any Order of the Governor in Council made under this Act, and any extradition arrangement not already published in the *Canada Gazette*, shall be, as soon as possible, published in the *Canada Gazette* and laid before both Houses of Parliament :

3. The publication in the *Canada Gazette* of an extradition arrangement, or an Order in Council, shall be evidence of such arrangement or order, and of the terms thereof, and of the application of this Act pusuant and subject thereto; and the court or judge shall take judicial notice, without proof, of such arrangement or order, and the validity of the order and the application of this Act, pursuant and subject thereto, shall not be questioned. 40 V., c. 25, s. 5.

JUDGES AND COMMISSIONERS.

5. What Judges may act in Cases under this Act.—No "Habeas Corpus" Power.

All judges of the superior courts and of the county courts of any province, and all commissioners who are, from time to time, appointed for the purposes, in any province by the Governor in Council, under the Great Seal of Canada, by virtue of this Act, are authorized to act judicially in extrad-

ition matters under this Act, within the province ; and every such person shall, for the purposes of this Act, have all the powers and jurisdiction of any judge or magistrate of the province :

Nothing in this section shall be construed to confer on any judge any jurisdiction in *habeas corpus* matters. 40 V., c. 25, s, 8.

See in re Parker (1891), 19 O.R. 612.
In re Garbutt (1891), 21 O.R. 179.
Ex parte Debaun (1898), M.L.R., 4 Q.B. 145.
Ex parte Seitz (1822), 3 Can. C.C. 154.

EXTRADITION FROM CANADA.

6. On what Grounds Warrant may issue.—Report to Minister of Justice.

Whenever this Act applies, a judge may issue his warrant for the apprehension of a fugitive on a foreign warrant of arrest, or an information or complaint laid before him, and on such evidence or after such proceedings, as in his opinion would, subject to the provisions of this Act, justify the issue of his warrant if the crime of which the fugitive is accused or alleged to have been convicted had been committed in Canada :

The judge shall forthwith send a report of the fact of the issue of the warrant, together with certified copies of the evidence and foreign warrant, information or complaint, to the Minister of Justice. 40 V., c. 25, s. 11.

In order to extradite a fugitive offender from Canada to another country, it is not necessary that the charge should first have been laid and a warrant granted in that country; but the charge may be originated before a magistrate in Canada.

In re Burley (1865), 1 L.J. N.S. 34.
In re Caldwell, 5 Ontario P.R. 217.
In re Garbutt (1891), 21 O.R. 465.
In re Lazier (1899), 35 C.L.J. 171.
In re Lazier (1899), 3 Can. C.C. 167.

Nor is it necessary to obtain any warrant, either from the Governor-General or any one else, before making the arrest.

In re Burley, supra.
In re Worms (1876), 7 R.L. 319.
In re Hoke (1887), 15 R.L. 92.

The fact that an information upon which a warrant was issued committing the accused pending extradition proceedings on a charge of forgery, gives the accused a different Christian name from that appearing on the instrument alleged to have been forged, is not a material variance, since, by virtue of sec. 9 of this Act, sections 57 and 58 are applicable to extradition matters.

In re Garbutt (1891), 21 O.R. 179.
Sub-section 2 of this section is directory only, and the failure of the judge to send his report to the Minister of Justice will form no ground for ordering the discharge of the prisoner.
In re Garbutt, supra.
See also ex parte Lamirande (1866), 10 R.L. 280.

7. Execution of Warrant.

A warrant issued under this Act may be executed in any part of Canada, in the same manner as if it had been originally issued, or subsequently indorsed, by a justice of the peace having jurisdiction in the place where it is executed. 40 V., c. 25, s. 10.

8. Surrender not to depend on Time when the Offence was committed, etc.

Every fugitive criminal of a foreign state, in the case of which state this Act applies, shall be liable to be apprehended, committed and surrendered in the manner provided in this Act, whether the crime or conviction, in respect of which the surrender is sought was committed or took place before or after the date of the arrangement, or of the coming into force of this Act, or of the application of this Act in the case of such state, and whether there is or is not any criminal jurisdiction in any court of His Majesty's dominions over the fugitive, in respect of the crime. 40 V., c. 25, s. 7.

9. Fugitive to be brought before the Judge.—Evidence of the Charge.—Evidence that the Crime is not an Extradition Crime.

The fugitive shall be brought before a judge, who shall, subject to the provisions of this Act, hear the case, in the same manner, as nearly as may be, as if the fugitive was brought before a justice of the peace, charged with an indictable offence committed in Canada :

2. The judge shall receive upon oath, or affirmation, if affirmation is allowed by law, the evidence of any witness tendered to show the truth of the charge or the fact of the conviction :

3. The judge shall receive, in like manner, any evidence tendered to show that the crime of which the fugitive is accused or alleged to have been convicted is an offence of a political character, or is, for any other reason, not an extradition crime; or that the proceedings are being taken with

a view to prosecute or punish him for an offence of a political character. 40 V., c. 25, s. 12.

See in re Anderson (1860), 20 U.C. Q.B. 124.
In re Burley, 1 L.J. N.S. (Ont.), 20.
Ex parte Lamirande (1866), 10 L.C.J. 280.
Ex parte Martin (1868) 4 L.J. N.S. (Ont.), 198.
R. vs. Gould (1869), 20 U.C. C.P. 154.
In re Rosenbaum (1874), 20 L.C.J. 165.
Ex parte Taschemacher (1874), 6 R.L. 328.
Ex parte Worms (1876), 22 L.C.J. 109.
In re Hall (1882), 3 O.R. 331, affirmed on appeal (see 8 Ont. A.R. 31).

10. Depositions taken out of Canada.—When to be deemed Authenticated.

R. Crim & Can Cr Ca 251.

Depositions or statements taken in a foreign state on oath, or on affirmation, where affirmation is allowed by the law of the state, and copies of such depositions or statements, and foreign certificates of, or judicial documents stating the fact of conviction, may, if duly authenticated, be received in evidence in proceedings under this Act :

2. Such papers shall be deemed duly authenticated if authenticated in manner provided, for the time being, by law, or if authenticated as follows :—

(*a*) If the warrant purports to be signed by, or the certificate purports to be certified by, or the depositions or statements, or the copies thereof, purport to be certified to be the originals or true copies, by a judge, magistrate or officer of the foreign state ;

(*b*) And if the papers are authenticated by the oath or affirmation of some witness, or by being sealed with the official seal of the Minister of Justice, or some other minister of the foreign state, or of a colony, dependency or constituent part of the foreign state ; of which seal the judge shall take judicial notice without proof. 40 V., c. 25, s. 9.

In re Rosenbaum (1874), 18 C.L.J. 200.
In re Worms (1876), 7 R.L. 319.
R. vs. Browne (1881), 31 C.P. 484; affirmed on appeal, see 6 Ont. A.R. 386.
Ex parte Phelan (1883), 6 L.N. 261.
In re Lee (1884), 5 O.R. 583.
In re Hoke (1887), 15 R.L. 92.
The People of the U.S. vs. Debaun (1888), 16 R.L. 92.
In re Weir (1889), 14 O.R. 389.
Re Garbutt (1891), 21 O.R. 179.
Re Ockerman (1898), 2 Can. C.C. 262.
Ex parte Seitz (1899), 3 Can. C.C. 127.

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11. What Evidence shall be sufficient to justify Committal.

If, in the case of a fugitive alleged to have been convicted of an extradition crime, such evidence is produced as would, according to the law of Canada, subject to the provisions of this Act, prove that he was so convicted,—and if, in the case of a fugitive accused of an extradition crime, such evidence is produced as would, according to the law of Canada, subject to the provisions of this Act, justify his committal for trial, if the crime had been committed in Canada, the judge shall issue his warrant for the committal of the fugitive to the nearest convenient prison, there to remain until surrendered to the foreign state, or discharged according to law; but otherwise the judge shall order him to be discharged. 40 V., c. 25, s. 13.

In re Burley (1865), 1 L.J. N.S. (Ont.) 34.
Ex parte Brown (1866), 2 L.C. L.J. 23.
Ex parte Lamirande (1866), 10 L.C.J. 280.
R. vs. Gould (1869), 20 C.P. 154.
Ex parte Worms (1876), 22 L.C.J. 109.
In re Worms (1876), 7 R.L. 319.
Ex parte Zink (1880), 6 Q.L.R. 260.
In re Hoke (1887), 14 R.L. 705.
In re Hoke (1887), 15 R.L. 92-99.
Re Murphy (1894), 2 Can. C.C. 562.
Re Murphy (1895), 2 Can. C.C. 578.
Ex parte Lanctot (1896), R.J.Q., 5 Q.B. 422.

12. Judge shall give certain Information to Fugitives, and transmit Evidence to Minister of Justice.

If the judge commits a fugitive to prison, he shall, on such committal,—

(*a*) Inform him that he will not be surrendered until after the expiration of fifteen days, and that he has a right to apply for a writ of *habeas corpus*; and—

(*b*) Transmit to the Minister of Justice a certificate of the committal, with a copy of all the evidence taken before him, not already so transmitted, and such report upon the case as he thinks fit. 40 V., c. 25, s. 14.

In re Burley (1865), 1 L.J. N.S. (Ont.) 34.
Ex parte Phelan (1883), 6 L.N. 261.
In re Hoke (1887), 14 R.L. 705.
In re Hoke (1887), 15 R.L. 92-99.
Ex parte Debaun (1888), M.L.R., 4 Q.B. 145.
Re Murphy (1894), 2 Can. C.C. 562.
Re Murphy (1895), 2 Can. C.C. 578.
Re Commonwealth of Pennsylvania vs. Levi (1897), R.J.Q., 6 Q.B. 151.
In re Lazier (1899), 29 S.C.R. 630.
Ex parte Seitz (1899), 3 Can. C.C. 127.

13. By whom Requisition for Surrender may be made.

A requisition for the surrender of a fugitive criminal of a foreign state, who is, or is suspected to be in Canada, may be made to the Minister of Justice by any person recognized by him as a consular officer of that state resident at Ottawa, or by any minister of that state communicating with the Minister of Justice through the doplomatic representative of His Majesty in that state,—or if neither of those modes is convenient, then in such other mode as is settled by arrangement. 40 V., c. 25, s. 15.

Ex parte Lamirande (1866), 10 L.C.J. 280.

14. When the Fugitive shall not be liable to Surrender.

No fugitive shall be liable to surrender under this Act if it appears,—

(*a*) That the offence in respect of which proceedings are taken under this Act is one of a political character; or—

(*b*) That such proceedings are being taken with a view to prosecute or punish him for an offence of a political character. 40 V., c. 25, s. 6.

In re Burley (1865), 1 L.J. N.S. (Ont.), 34.

15. In cases specified, Minister may refuse to make Order or may cancel Order already made.

If the Minister of Justice at any time determines,—

(*a*) That the offence in respect of which proceedings are being taken under this Act is one of a political character;

(*b*) That the proceedings are, in fact, being taken with a view to try or punish the fugitive for an offence of a political character; or—

(*c*) That the foreign state does not intend to make a requisition for surrender,—

He may refuse to make an order for surrender, and may by order under his hand and seal, cancel any order made by him, or any warrant issued by a judge under this Act, and order the fugitive to be discharged out of custody, on any committal made under this Act; and the fugitive shall be discharged accordingly. 40 V., c. 25, s. 16; 45 V., c, 20, s.

16. Delay before Surrendering.—If Fugitive is an Offender under Canadian Law.

A fugitive shall not be surrendered until after the expiration of fifteen days from the date of his committal for surrender; or if a writ of *habeas corpus* is issued, until after the decision of the court remanding him :

2. A fugitive who has been accused of an offence within Canadian jurisdiction, not being the offence for which his surrender is asked, or who is undergoing sentence under a conviction in Canada, shall not be surrendered until after he has been discharged, whether by acquittal or by expiration of his sentence, or otherwise. 40 V., c. 25, s. 17.

17. Minister may order Surrender of Fugitive to Officer of a Foreign State.—Powers of Such Officer.

Subject to the provisions of this Act, the Minister of Justice, upon the requisition of the foreign state, may, under his hand and seal, order a fugitive who has been committed for surrender to be surrendered to the person or persons who he, in his opinioon, duly authorized to receive him in the name and on behalf of the foreign state, and he shall be so surrendered accordingly :

2. Any person to whom such order is directed may deliver, and the person so authorized may receive, hold in custody and convey the fugitive within the jurisdiction of the foreign state; and if he escapes out of any custody to which he is delivered, on or in pursuance of such order, he may be retaken in the same manner as any person accused or convicted of any crime against the laws of Canada may be retaken on an escape. 40 V., c. 25, s. 18,

18. Property found on Fugitive.

Everything found in the possession of the fugitive at the time of his arrest, which may be material as evidence in making proof of the crime, may be delivered up with the fugitive on his surrender, subject to all rights of third persons with regard thereto. 40 V., c. 25, s. 19.

19. Fugitive to be conveyed out of Canada within a Certain Time.—Or may be released by "Habeas Corpus."

If a fugitive is not surrendered and conveyed out of Canada within two months after his committal for surrender, or,

if a writ of *habeas corpus* is issued, within two months aft
the decision of the court on such writ, over and above,
either case, the time required to convey him from the pris
to which he has been committed, by the readiest way out
Canada, any one or more of the judges of the superior cour
of the province in which such person is confined, havin
power to grant a writ of *habeas corpus*, may, upon applicatio
made to him or them by or on behalf of the fugitive, and o
proof that reasonable notice of the intention to make suc
application has been given to the Minister of Justice, orde
the fugitive to be discharged out of custody, unless sufficien
cause is shown against such discharge. 40 V., c. 25, s. 20.

20. Forms Valid.

The forms set forth in the second schedule to this Act, o
forms as near thereto as circumstances admit of, may b
used in the matters to which such forms refer, and, whe
used, shall be deemed valid. 40 V., c. 25, s, 21.

EXTRADITION FROM A FOREIGN STATE.

21. Requisition for a Fugitive from Canada, How made.

A requisition for the surrender of a fugitive criminal fro
Canada, who is or is suspected to be in any foreign stat
with which there is an extradition arrangement, may b
made by the Minister of Justice to a consular officer of th
state resident at Ottawa, or to the Minister of Justice or an
other minister of that state, through the diplomatic repre
sentative of His Majesty in that state ; or, if neither of thos
modes is convenient, then in such other mode as is settle
by arrangement. 40 V., c. 25, s. 22.

22. Conveyance of Fugitive surrendered.

Any person accused or convicted of an extradition crim
who is surrendered by a foreign state, may, under the wa
rant for his surrender issued in such foreign state, b
brought into Canada and delivered to the proper authoritie
to be dealt with according to law.

R. vs. Aerman (1854), 4 C.P. 288.
R. vs. Cunningham (1885), Cassell's Supreme Court Digest
R. vs. Waddell (1886), 6 C.L.T. 598.

23. Fugitive surrendered by a Foreign State not punishable contrary to Arrangement.

Whenever any person accused or convicted of an extradition crime is surrendered by a foreign state, in pursuance of any extradition arrangement, such person shall not, until after he has been restored or has had an opportunity of returning to the foreign state within the meaning of the arrangement, be subject, in contravention of any of the terms of the arrangement, to any prosecution or punishment in Canada for any other offence committed prior to his surrender, for which he should not, under the arrangement, be prosecuted. 40 V., c. 25, s. 23.

LIST OF CRIMES.

24. How List of Crimes in Schedule shall be construed.

The list of crimes in the first schedule to this Act shall be construed according to the law existing in Canada at the date of the alleged crime, whether by common law or by statute made before or after the passing of this Act, and as including only such crimes, of the descriptions comprised in the list, as are, under that law, indictable offences. 40 V., c. 25, second schedule, *part.*

FIRST SCHEDULE.

List of Crimes.

(1) Murder, or attempt or conspiracy to murder ;
(2) Manslaughter ;
(3) Counterfeiting or altering money, and uttering counterfeit or altered money ;
(4) Forgery, counterfeiting or altering, or uttering what is forged, counterfeited or altered ;
(5) Larceny ;
(6) Embezzlement ;
(7) Obtaining money or goods, or valuable securities, by false pretences ;
(8) Crimes against bankruptcy or insolvency law ;

(9) Fraud by a bailee, banker, agent, factor, trustee, or by a director or member or officer of any company, which fraud is made criminal by any Act for the time being in force ;

(10) Rape ;

(11) Abduction ;

(12) Child stealing ;

(13) Kidnapping ;

(14) False imprisonment ;

(15) Burglary, housebreaking or shop-breaking ;

(16) Arson ;

(17) Robbery ;

(18) Threats, by letter or otherwise, with intent to extort;

(19) Perjury or subornation of perjury ;

(20) Piracy by municipal law or law of nations, committed on board of or against a vessel of a foreign state ;

(21) Criminal scuttling or destroying such a vessel at sea, whether on the high seas or on the great lakes of North America, or attempting or conspiring to do so ;

(22) Assault on board such vessel at sea, whether on the high seas or on the great lakes of North America, with intent to destroy life or to do grievous bodily harm ;

(23) Revolt, or conspiracy to revolt, by two or more persons on board such a vessel at sea, whether on the high seas or on the great lakes of North America, against the authority of the master ;

(24) Any offence under either of the following Acts, and not included in any foregoing portion of this schedule :—

(*a*) "*An Act respecting Offences against the Person ;*"

(*b*) "*The Larceny Act ;*"

(*c*) "*An Act respecting Forgery ;*"

(*d*) "*An Act respecting Offences relating to the Coin ;*"

(*e*) "*An Act respecting Malicious Injuries to Property ;*"

(25) Any offence which is, in the case of the principal offender, included in any foregoing portion of this schedule and for which the fugitive criminal, though not the principal, is liable to be tried or punished as if he were the principal.

40 V., c. 25, second schedule, *part.*

SECOND SCHEDULE.

FORM ONE.

Form of Warrant of Apprehension.

—— ;;

To wit :—

To all and each of the constables of

Whereas it has been shown to the undersigned, a judge under "*The Extradition Act*," that late of is accused (*or* convicted) of the crime of within the jurisdiction of .

This is therefore to command you, in His Majesty's name, forthwith to apprehend the said and to bring him before me, or some other judge under the said Act, to be further dealt with according to law; for which this shall be your warrant.

Given under my hand and seal at this day of A.D.

FORM TWO.

Form of Warrant of Committal.

—— :

To wit :—

To one of the constables of and to the keeper of the at

Be it remembered that on this day of in the year at is brought before me a judge under "*The Extradition Act*," who has been apprehended under the said Act, to be dealt with according to law; and forasmuch as I have determined that he should be surrendered in pursuance of the said Act, on the ground of his being accused (*or* convicted) of the crime of

within the jurisdiction of .

This is therefore to command you, the said constable, in His Majesty's name, forthwith to convey and deliver the said into the custody of the keeper of the at and you, the said keeper, to receive the said into your custody, and him there safely to keep until he is thence delivered pursuant to the provisions of the said Act, for which this shall be your warrant.

Given under my hand and seal at this day of A.D.

FORM THREE.

Form of Order of Minister of Justice for Surrender.

To the keeper of the at and to

Whereas late of accused (*or* convicted) of the crime of within the jurisdiction of was delivered into the custody of you, the keeper of the at by warrant dated pursuant to *"The Extradition Act."*

Now, I do hereby, in pursuance of the said Act, order you the said keeper, to deliver the said into the custody of the said ; and I command you, the said to receive the said into your custody, and to convey him within the jurisdiction of the said and there place him in the custody of any person or persons (*or* of) appointed by the said to receive him, for which this shall be your warrant.

Given under the hand and seal of the undersigned Minister of Justice of Canada, this day of A.D.

40 V., c. 25, third schedule.

LIST OF EXTRADITION TREATIES IN FORCE IN CANADA.

Between Great Britain and	Date.	Where to be found Statutes of (Can.), p.	
Argentine Republic	May 22, 1889	1894	XLII
Austria-Hungary	Dec. 3, 1873	1875	XVIII
Belgium	May 20, 1876	1877	XXXII
Belgium	July 23, 1877	1878	XIV
Belgium	Apl. 21, 1887	1888	XVIII
Bolivia	Feb. 22, 1892	1899	XIII
Brazil	Nov. 13, 1872	1875	XI
Chile	Jan. 26, 1897	1899	VI
Colombia	Oct. 27, 1888	1890	XXX
Denmark	Mar. 31, 1873		
Ecuador	Sep. 20, 1880	1887	XXXV
France	Aug. 14, 1876	1879	IX
Germany	May 14, 1872		
Germany	May 5, 1894	1895	XII
Guatemala	July 4, 1885	1887	XCII
Hayti	Dec. 7, 1874	1876	LV
Italy	Feb. 5, 1873		
Italy	May 7, 1873		
Liberia	Dec. 16, 1892	1894	LVII
Luxemburg	Nov. 24, 1880		
Mexico	Sep. 7, 1886	1889	XVI
Monaco	Dec. 17, 1891	1892	XV
Netherlands, (India only) ..	June 19, 1874	1875	XXV
Netherlands	Sep. 26, 1898	1899	XX
Orange Free State	June 20, 1890	1891	L
Portugal	Oct. 17, 1892	1894	L
Portugal	Nov. 30, 1892	1894	LVI
Roumania	Mar. 21, 1893	1894	LXIV
Russia	Nov. 24, 1886	1887	XCIX
Salvador	June 23, 1881	1883	XXVIII
San Marino	Mar. 3, 1900	1900	XI
Spain	June 4, 1878	1879	XVIII
Spain	Feb. 19, 1889	1890	XXVI
Sweden and Norway	June 26, 1873	1875	V
Switzerland	Nov. 26, 1880	1882	VIII
Tonga (1)	Nov. 29, 1879	1883	XV
Tunis	Dec. 31, 1889		
United States, Art. X.	Aug. 9, 1842	1859	C.S.C., c. 89
United States	July 12, 1889	1890	LVIII
Uruguay	Mar. 26, 1884	1885	XXXVI
Uruguay	Mar. 20, 1891	1892	IX

(1) Tonga subjects escaping to British Territories only.

An Act to extend the provisions of the Extradition Act.

PREAMBLE.

WHEREAS it is expedient to make further provision for the extradition from Canada of fugitive offenders from foreign states: Therefore His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. Fugitive Offenders may be surrendered though there is no Convention.—Provisions of R.S.C., c. 142 to govern.

In case no extradition arrangement, within the meaning of "*The Extradition Act*," exists between His Majesty and a foreign state, or in case such an extradition arrangement, extending to Canada, exists between His Majesty and a foreign state, but does not include the crimes mentioned in the schedule to this Act it shall, nevertheless, be lawful for the Minister of Justice to issue his warrant for the surrender to such foreign state of any fugitive offender from such foreign state charged with or convicted of any of the crimes mentioned in the schedule to this Act: Provided always, that the arrest, committal, detention, surrender and conveyance out of Canada of such fugitive offender shall be governed by the provisions of "*The Extradition Act*," and that all the provisions of the said act shall apply to all steps and proceedings in relation to such arrest, committal, detention, surrender and conveyance out of Canada in the same manner and to the same extent as they would apply if the said crimes were included and specified in an extradition arrangement between His Majesty and the foreign state, extending to Canada.

2. As to Costs.

All expenses connected with the arrest, committal, detention, surrender and conveyance out of Canada of any fugitive offender under this Act shall be borne by the foreign state applying for the surrender of such fugitive offender.

3. Law of Canada to govern as to Crimes.—Application of Act.

The list of crimes in the schedule to this Act shall be construed according to the law existing in Canada at the date of the commission of the alleged crime, whether by common law or by statute made before or after the coming into force of this Act, and as including only such crimes, of the description comprised in the list, as are, under that law, indictable offences.

2. The provisions of this Act shall apply to any crime mentioned in the said schedule, committed after the coming into force of this Act, as regard any foreign state as hereinafter provided.

4. Coming into force of Act.—Abrogation by Proclamation.—Day to be named.

The foregoing provisions of this Act shall not come into force, with respect to fugitive offenders from any foreign state until this act shall have been declared by proclamation of the Governor General to be in force and effect as regards such foreign state, from and after a day to be named in such proclamation ; and the provisions of this Act shall cease to have any force or effect with respect to fugitive offenders from any foreign state if by proclamation the Governor General declares this Act to be no longer in operation as regards such foreign state.

2. The day from and after which, in such case, the provisions of this Act shall cease to have force and effect shall be a day to be named in such proclamation.

5. When Warrant may not be Issued.

This Act shall not authorize the issue of a warrant for the extradition of any person under the provisions of the statute, to any state or country in which by the law in force in such state or country, such person may be tried after such extradition for any other offence than that for which he has been extradited, unless an assurance shall first have been given by the executive authority of such state or country, that the person whose extradition has been claimed shall not be tried for any other offence than that on account of which such extradition has been claimed.

SCHEDULE.

(1) Murder or attempt or conspiracy to murder ;
(2) Manslaughter ;
(3) Counterfeiting or altering money and uttering counterfeit or altered money ;
(4) Forgery, counterfeiting or altering, or uttering what is forged, counterfeited or altered ;
(5) Larceny ;
(6) Embezzlement ;
(7) Obtaining money or goods or valuable securities by false pretenses ;
(8) Rape ;
(9) Abduction ; indecent assault ;
(10) Child stealing ;
(11) Kidnapping ;
(12) Burglary, housebreaking or shop-breaking ;
(13) Arson ;
(14) Robbery ;
(15) Fraud committed by a bailee, banker, agent, factor, trustee or member or public officer of any company or municipal corporation, made criminal by any law for the time being in force ;
(16) Any malicious act done with intent to endanger persons in a railway train ;
(17) Piracy by municipal law or law of nations committed on board of or against a vessel of a foreign state ;
(18) Criminal scuttling or destroying such a vessel at sea, whether on the high seas or on the great lakes of North America, or attempting or conspiring to do so ;
(19) Assault on board such a vessel at sea, whether on the high seas or on the great lakes of North America, with intent to destroy life or to do grievous bodily harm ;
(20) Revolt or conspiracy to revolt, by two or more persons on board such a vessel at sea, whether on the high seas or on the great lakes of North America, against the authority of the master ;
(21) Administering drugs or using instruments with intent to procure the miscarriage of a woman ;
(22) Any offence which is, in the case of the principal offender, included in any foregoing portion of this schedule and for which the fugitive criminal though not the principal, is liable to be tried or punished as if he were the principal.

R.S.C., CHAPTER 143.

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

HIS Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

SHORT TITLE.

1. Short Title.

This Act may be cited as "*The Fugitive Offenders' Act*," 45 V., c. 21, s. 1.

INTERPRETATION.

2. Interpretation,—"Magistrate."—"Deposition."—"Court."

In this Act, unless the context otherwise requires,—

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

(*b*) The expression "deposition" includes every affidavit, affirmation, or statement made upon oath ;

(*c*) The expression "court" means,—in the province of Ontario, the High Court of Justice for Ontario ; in the province of Quebec, the Superior Court; in the province of Nova Scotia, the Supreme Court; in the province of New Brunswick, the Supreme Court; in the province of Prince Edward Island, the Supreme Court of Judicature; in the province of British Columbia, the Supreme Court; in the province of Manitoba, His Majesty's Court of King's Bench for Manitoba; in the North-west Territories, a judge of the Supreme Court of the North-west Territories; in the district of Keewatin, a stipendiary magistrate; and also in the said Territories and district such court or magistrate or other judicial authority as is designated, from time to time, by proclamation of the Governor in Council, published in the *Canada Gazette*. 45 V., c. 21, s. 16, *part* ; 49 V., c. 25, s. 30.

APPLICATION OF ACT.

3. To what Offence this Act applies.—Application to Acts not Offences by Canadian Law.—Application to Persons unlawfully at Large.—As to Offences committed before Commencement of Act.

This Act shall apply to the following offences, that is to say : to treason and to piracy, and to every offence, whether called felony, misdemeanour, crime or by any other name, which is for the time being punishable in the part of His Majesty's dominions in which it was committed, either on indictment or information, by imprisonment with hard labor for a term of twelve months or more, or by any greater punishment, and, for the purposes of this section, rigorous imprisonment, and any confinement in a prison combined with labor, by whatever name it is called, shall be deemed to be imprisonment with hard labor :

2. This Act shall apply to an offence, notwithstanding that, by the law of Canada, it is not an offence or not an offence to which this Act applies; and all the provisions of this Act including those relating to a provisional warrant and to a committal to prison, shall be construed as if the offence were in Canada an offence to which this Act applies :

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

4. This Act shall apply in respect to offences committed before the commencement of this Act, in like manner as if such offences were committed after such commencement. 45 V., c. 21, ss. 8, 14 *and* 15.

RETURN OF FUGITIVES.

4. Apprehension and Return of Fugitive Offenders.—Warrant.

Whenever a person accused of having committed an offence to which this Act applies in any part of His Majesty's dominions, except Canada, has left that part, such person, in this Act referred to as a fugitive from that part, if found in

Canada, shall be liable to be apprehended and returned, in the manner provided by this Act, to the part from which he is a fugitive :

2. A fugitive may be so apprehended under an indorsed warrant or a provisional warrant. 45 V., c. 21, s. 2.

5. Proceedings in Canada on Warrant issued elsewhere.

Whenever a warrant has been issued in a part of His Majesty's dominions for the apprehension of a fugitive from that part who is or is suspected to be in or on the way to Canada, the Governor General or a judge of a court, if satisfied that the warrant was issued by some person having lawful authority to issue the same, may indorse such warrant in manner provided by this Act, and the warrant so indorsed shall be a sufficient authority to apprehend the fugitive in Canada and bring him before a magistrate. 45 V., c. 21, s. 3.

6. Issue of Provisional Warrant.—Report to Governor.—Governor may discharge.

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

2. A magistrate issuing a provisionl warrant shall forthwith send a report of the issue, together with the information or a certified copy thereof, to the Governor General ; and the Governor General may, if he thinks fit, discharge the person apprehended under such warrant. 45 V., c. 21, s. 4.

7. Fugitive to be brought before a Magistrate.—Committal of Fugitive.—Report to Governor General. Magistrate to inform Fugitive that he has Certain Rights.—Remand of Fugitive.

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

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

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

4. A fugitive apprehended on a provisional warrant may, from time to time, be remanded for such reasonable time, not exceeding seven days at any one time, as under the circumstances seems requisite for the production of an indorsed warrant. 45 V., c. 21, s. 5.

8. Order for the Return of the Fugitive.—Warrant.

Upon the expiration of fifteen days, after a fugitive has been committed to prison to await his return,— or if a writ of *habeas corpus* or other like process is issued by a court, with reference to such fugitive, after the final decision of the court in the case,—the Governor General, by warrant under his hand, if he thinks it just, may order the fugitive to be returned to the part of His Majesty's dominions from which he is a fugitive, and for that purpose to be delivered into the custody of the persons to whom the warrant is addressed, or some one or more of them, and to be held in custody, and conveyed to the said part of His Majesty's dominions, to be dealt with there, in due course of law, as if he had been there apprehended ; and such warrant shall be forthwith executed according to the tenor thereof. 45 V., c. 21, s. 6.

9. Court may discharge Fugitive if not returned within a Certain Time.

If a fugitive who, in pursuance of this Act, has been committed to prison in Canada to await his return, is not conveyed out of Canada within two months after such committal, the court, upon application, by or on behalf of the fugitive, and upon proof that reasonable notice of the intention

to make such application has been given to the Governor General, may, unless sufficient cause is shown to the contrary, order the fugitive to be discharged out of custody. 45 V., c. 21, s. 7.

10. Court may discharge Fugitive in Trivial Cases.

Whenever it is made to appear to the court that by reason of the trivial nature of the case, or by reason of the application for the return of a fugitive not being made in good faith, in the interests of justice or otherwise, it would, having regard to the distance, to the facilities for communication, and to all the circumstances of the case, be unjust or oppressive or too severe a punishment to return the fugitive either at all or until the expiration of a certain period, such court may discharge the fugitive, either absolutely or on bail, or order that he shall not be returned until after the expiration of the period named in the order or may make such other order in the premises, as to the court seems just. 45 V., c. 21, s. 9.

11. Fugitive who is undergoing Sentence, etc.

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

12. Search Warrant may be granted.

Whenever a warrant, for the apprehension of a person accused of an offence, has been indorsed in pursuance of this Act, in Canada, any magistrate in Canada shall have the same power of issuing warrant to search for any property alleged to have been stolen or to be otherwise unlawfully taken or obtained by such person, or other, to be the subject of such offence, as that magistrate would have if the property had been stolen or otherwise unlawfully taken or obtained, or the offence had been committed wholly within the jurisdiction of such magistrate. 45 V., c, 21, s. 10.

13. Exercise of Judicial Powers.

Any judge of the court may, either in term time or vacation, exercise in chambers, all the powers conferred by this Act upon the court. 45 V., c, 21, s. 16, *part.*

14. Effect of Indorsement of a Warrant.—As to Death of Signer or Indorser.

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

2. Every warrant, summons, subpoena and process, and every indorsement made in pursuance of this Act thereon, shall, for the purposes of this Act, remain in force, notwithstanding that the person signing the warrant or such indorsement dies or ceases to hold office. 45 V., c. 21, s. 11.

15. How the Fugitive may be returned.—Order to Master of Canadian Ships to convey Fugitive.—Proviso.—Indorsement upon Agreement of the Ship.—Duty of Master on Arrival at Destination.—Penalty for Non-compliance.

Whenever a fugitive or prisoner is authorized to be returned to any part of His Majesty's dominions in pursuance of this Act, such fugitive or prisoner may be sent thither in any ship registered in Canada or belonging to the Government of Canada :

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

3. The Governor General shall cause to be indorsed upon the agreement of the ship such particulars with respect to any fugitive prisoner or witness sent in her, as the Minister of Marine and Fisheries, from time to time, requires :

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

5. Every master who fails, on payment or tender of a reasonable amount for expenses, to comply with an order made in pursuance of this section, or to cause a fugitive or prisoner committed to his charge to be given into custody as required by this section, shall be liable, on summary conviction, to a penalty not exceeding two hundred dollars. 45 V., c. 21, s. 12.

EVIDENCE.

16. Depositions.

A magistrate may take depositions for the purposes of this Act, in the absence of a person accused of an offence, in like manner as he might take the same if such person was present and accused of the offence before him. 45 V., c. 21, s. 13, *part.*

17. Their Use in Evidence.

Depositions whether taken in the absence of the fugitive or otherwise and copies thereof, and official certificates of, or judicial documents stating facts, may, if duly authenticated, be received in evidence in proceedings under this Act. 45 V., c. 21, s. 13, *part.*

18. Authentication of Warrants and other Documents,—Judicial Notice of Authentication.

Warrants and depositions, and copies thereof, and official certificates of, or judicial documents stating facts, shall be deemed duly authenticated for the purposes of this Act, if they are authenticated in manner provided for the time being by law, or if they purport to be signed by or authenticated by the signature of a judge, magistrate or officer of the part of His Majesty's dominions in which the same are issued, taken or made, and are authenticated either by the oath of some witness, or by being sealed with the official seal of a Secretary of State, or with the public seal of a British possession, or with the official seal of a Governor of a British possession, or of a Colonial Secretary, or of some secretary or minister administering a department of the government of a British possession; and all courts and magistrates shall take judicial notice of every such seal as is in this section mentioned, and shall admit in evidence without further proof the documents authenticated by it. 45 V., c. 21, s. 13, *part.*

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