THE CRIMINAL CODE

137.

THE

CRIMINAL CODE OF CANADA

AS IN FORCE ON JANUARY 1ST 1901

WITH

THE REPORTED CASES

AND

APPENDICES

CONTAINING : THE CANADA EVIDENCE ACT AND THE EXTRADITION ACT AND DECISIONS ; A LIST OF THE EXTRADITION TREATIES ; THE STATUTES CONCERNING FUGITIVE OFFENDERS, HABEAS CORPUS, IDENTIFICATION OF CRIMINALS, CONDITIONAL LIBERATION OF PRISONERS, MILITIA IN AID OF CIVIL POWER, CORONERS, &c.

BY

CHARLES LANCTOT, K. C.

MEMBER OF THE BAR OF THE PROVINCE OF QUEBEC, SPECIAL LAW OFFICER OF THE CROWN, ONE OF THE AUTHORS OF THE "TRAITÉ THÉORIQUE ET PRATIQUE DU DROIT CRIMINEL", OF THE "MANUEL DU JUGE DE PAIX", ETC.

MONTREAL

W. J. WILSON, LAW PUBLISHER

4 & 6 ST. JAMES STREET

1901

TO THE

Hon. CHARLES FITZPATRICK, K. C.

Solicitor General of Canada

This work is

Respectfully dedicated

PREFACE

The object of this work is to bring together in as compact a form as possible the principal statutes, which, with the Code of 1892, constitute the Criminal Law of Canada.

To the text of the Code, embodying in their proper places the amendments enacted up to the Session of 1900, inclusively, are added, under the appropriate sections, the reported decisions of the different Provinces, affecting the Code, rendered since its coming into force.

Comprehensive Appendices will be found. In them are inserted the Evidence Act, the Extradition Act, and a list of the Extradition Treaties with relevant decisions; the statutes concerning Fugitive Offenders, Foreign Enlistment, Habeas Corpus, Identification of Criminals, Conditional Liberation of Prisoners, Courts Martial, Militia in Aid of the Civil Power, Coroners, and other statutes affecting procedure or creating offences.

It is hoped that the text and references will prove accurate and of some value to the Bench and Bar, and to the Officials who are concerned with the administration of the Criminal Law.

Quebec, February 1st 1901

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ABBREVIATIONS

B. C. R.....British Columbia Reports.
Can. Cr. Cas.....Canadian Criminal Cases.
C. L. Chambers.....Common Law Chamber Reports.
C. L. J.....Canada Law Journal.
C. L. T.....Canadian Law Times.
C. P.....Upper Canada Common Pleas Reports.
C. S. L. C.....Consolidated Statutes for Lower Canada.
L. C. J.....Lower Canada Jurist.
L. C. L. J.....Lower Canada Law Journal.
L. C. R.....Lower Canada Reports.
L. J.....Upper Canada Law Journal, Old Series.
L. J., N. S.....Upper Canada Law Journal, New Series.
L. N.....Legal News.
Man. Rep. or Man. Law Rep. Manitoba Law Reports.
M. L. R., Q. B.....Montreal Law Reports, Queen's Bench.
M. L. R., S. C.....Montreal Law Reports, Superior Court.
N. B. R.....New Brunswick Reports.
N. S. R.....Nova Scotia Reports.
Ont. A. R.....Ontario Appeal Reports.
Ont. P. R.....Ontario Practice Reports.
Ont. R.....Ontario Reports.
P. R.....Ontario Practice Reports.
R. C.....Revue Critique.
R. J.....Revue de Jurisprudence.
R. J. Q., Q. B.....Quebec Official Reports, Queen's Bench.
R. J. Q., S. C.....Quebec Official Reports, Superior Court.
R. L.....Revue Légale.
R. L., N. S.....Revue Légale, Nouvelle Série.
R. P. Q.....Quebec Practice Reports.
R. S. C.....Revised Statutes of Canada.
R. S. O.....Revised Statutes of Ontario.
R. S. Q.....Revised Statutes of Quebec.
Q. L. R.....Quebec Law Reports.
Q. P. R.....Quebec Practice Reports.
S. C. R.....Supreme Court of Canada Reports.
U. C. Q. B.....Upper Canada Queen's Bench Reports.

TABLE OF CASES

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.

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

1. (*a.*) A provincial statute relating to criminal law passed before Confederation becomes as to that province a part of the criminal law of Canada, and is subject to repeal or amendment by a Dominion statute only.

(*b.*) If it appears that provincial legislation deals with public wrongs and imposes penalties in respect thereof for the enforcement of which all citizens should have an equal interest as distinguished from enactments passed for the protection of a particular class or the regulation of the dealings or business of a certain class, as for example between master and servant, such legislation as to public wrongs is within the exclusive jurisdiction of the Dominion Parliament, although similar legislation as applied to various classes only and not to the public generally would be within provincial jurisdiction as dealing with civil rights.

(*c.*) A Sunday observance law of Nova Scotia passed before Confederation which applied to individuals only, cannot be amended by the legislature of that province so as to apply to corporations, and a provincial Act purporting to so amend was held to be *ultra vires*.—Supreme Court, (N.S.), 1898. R. *vs* Halifax Electric Tramway Co., 1 Can. Cr. Cas., 424; McDonald, C. J., Ritchie, Townshend, JJ., Graham, E. J.

2. Commencement of Act.

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

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," includes any Act passed or to be passed by the Parliament of Canada, or any Act passed by the legislature of the late province of Canada, or passed or to be passed by the legislature of any province of Canada, or passed by the legislature of any province 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 of 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 [1] ; 58-59 V., c. 40, s. 1 ; 63-64 V., c. 46, s. 3 ;

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

(iii.) In the provinces of Nova Scotia, New Brunswick and

[1] *Up to the 1st January 1901, this paragraph shall read as follows:* "(*i*) In the province of Ontario, any Divisional Court of the High Court of Justice. 58-59 V., c. 40, s. 1."

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 Queen'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; 56 V., c. 32, s. 1.

(*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 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; 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

Queen's Regulations and Orders for the Army; any Act of the United Kingdom or other law applying to Her Majesty's troops in Canada, and all other orders, rules and regulations of whatever nature or kind soever to which Her 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 thirty-one days between the publication of any two such papers, parts or numbers, and also any paper, magazine or periodical printed in order to be dispersed and made public, weekly or oftener, or at intervals not exceeding thirty-one days, and containing only or principally advertisements.

(*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 Her 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.

(*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, mili-

tia, North-west mounted police, or other officer engaged in enforcing the laws relating to the 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 [1]; 63-64 V., c. 46, s. 3;

(ii.) In the province of Quebec, the Court of Queen'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;

(v.) In the province of Manitoba, the Court of Queen'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 testamentary 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,

[1] *Up to the 1st January 1901, this paragraph shall read as follows:* "(*i*) In the province of Ontario the three divisions of the High Court of Justice."

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 "*fidéicommissaire*"; and the expression "trust" includes whatever is by that law an "*administration*" or "*fidéicommission*"; 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 V., 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.

1. The plaintiff claimed damages for the defendant's failure to execute a warrant of distress issued by two justices of the peace under the Master and Servant's Act. The warrant was addressed to all or any of the constables or other peace officers in the district of Carberry, and was handed to the defendant, a sheriff's bailiff. He at first undertook to execute it, but afterwards on taking advice refused to go on with it, and returned it to the plaintiff's attorney.

Held,—That a sheriff's bailiff is not a general but a special agent of the sheriff who employs him, and cannot be treated as a public officer or as a peace officer within the meaning of subsection (*s*) of section 3 of the Criminal Code, 1892, and that the defendant had no right to execute the warrant entrusted to him, and could not be made liable for refusing to do so.—Queen's Bench, (Man.), 1894. Latta *vs* Owens, 10 Man. Law Rep., 153; Dubuc, J.

2. B. was convicted by the stipendiary magistrate of the municipality of Springhill, in the county of Cumberland, of a violation of the Canada Temperance Act, and fined. In default of payment of the fine a warrant was issued, directing a constable of the municipality to take B. and convey him to the common jail at Amherst, and there deliver him to the keeper thereof. There was a lock-up, or room, for the temporary detention of prisoners at Springhill but no common jail or prison in which prisoners were usually confined. Amherst was the county town of the county of Cumberland, and the "common jail" of the county, nearest the locality where the order for imprisonment was made, was situated there.

Held,—That the imprisonment was properly ordered. *Also*, that the constable, in the execution of the warrant, was protected in conveying the prisoner beyond the boundaries of the municipality to the jail at Amherst. Interpretation Act, R. S. C., c. 1, s. 7, s.s. 38, Criminal Code, art. 3.—Supreme Court, (N.S.), 1894. *In re* Burke, 27 N. S. R., 286; McDonald, C. J., Ritchie, Townshend, Graham, Meagher, Henry, JJ.

3. *See* R. *vs* Great West Laundry, section 213, No. 1.

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.

4a. Carnal knowledge.

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 ; 56 V., c. 32, s. 1.

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 Her 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.

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.

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 of the age of seven, but under the age of fourteen years, unless he was competent to know the nature and consequences of his conduct, and to appreciate that it was wrong.

1. *See* R. *vs* Hartlen, section 174, No. 1.

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.

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

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

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.

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.

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.

15. Execution of sentence.

Every ministerial officer of any court authorized to execute a lawful sentence, and every gaoler, and every person lawfully assisting such ministerial officer or gaoler is justified in executing such sentence.

16. Execution of process.

Every ministerial officer of any court duly authorized to execute any lawful process of such court, whether of a civil or

criminal nature, and every person lawfully assisting him, is justified in executing the same; and every gaoler who is required under such process to receive and detain any person is justified in receiving and detaining him.

17. Execution of warrants.

Every one duly authorized to execute a lawful warrant issued by any court of justice of the peace or other person having jurisdiction to issue such warrant, and every person lawfully assisting him, is justified in executing such warrant ; and every gaoler who is required under such warrant to receive and detain any person is justified in receiving and retaining him.

1. Though the officer executing a warrant for an offence less than felony must have it in his possession at the time, the arrest need not be by his hand, nor need he be actually in sight, but he must be so near as to be near at hand and acting in the arrest.

A former conviction is not a bar to a prosecution under the Canada Temperance Act, unless the offence proved in each case is identical. *Ex parte Whalen*, N. B. R., vol. 32, p. 274, followed.

Semble:—A defendant may be detained under a commitment on a summary conviction, though, at the time it was lodged with the gaoler, he was in custody under a commitment in another case, on which he had been illegally arrested.—Supreme Court, (N.B.), 1894. *Ex parte* McManus, 32 N. B. R., 481; Tuck, J.

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 sentence or issue such process, or if a warrant is issued by a court or person having jurisdiction under any circumstances 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 carrying out such sentence, process or warrant, although the court passing the sentence or issuing the process had not in the particular case authority to pass the sentence or to issue the process, or although the court, justice or other person in the particular case had no jurisdiction to issue, or exceeded its or his jurisdiction in issuing, the warrant, or was, at the time when such sentence was passed or process or

warrant issued, out of the district in or for which such court, justice or person was entitled to act.

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 good faith under the belief that the sentence or process was that of a court having jurisdiction or that the warrant was that of a court, justice 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.

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 asist is the person for whose arrest the warrant is issued, and every gaoler who is required to receive and detain such person, shall be protected to the same extent and subject to the same provisions as if the arrested person had been the person named in the warrant.

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.

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.

1. *Held:*—A constable in the service of a municipality is not justified in taking a person into custody and depriving him of his liberty, on a criminal charge, without any sworn complaint having been made, and without a warrant issued by competent authority—more especially where there was no reason to suspect that he would attempt to evade arrest. Unsworn statements made to the officer, to the effect that the person had committed a larceny on the previous day, are insufficient. But where the officer has acted in good faith, and on information which excuses him to some extent, these facts should be taken into consideration in the award of damages.—Superior Court, (Que.), 1896. Mousseau *vs* the City of Montreal, R. J. Q., 12 S. C., 61; Doherty, J.

2. The plaintiff and defendant had a disagreement on the London market. Defendant telephoned for a policeman, who soon arrived, and said to the defendant: "Is this the man?" The constable after hearing both sides of the dispute, said to plaintiff: "You will have to come along with me to the police station". No other words were used, and no resistance offered. Plaintiff, defendant and policeman walked down together to the station, and talk the matter over there with the chief. No information was laid, and plaintiff was not further detained. The constable swore he did not arrest plaintiff. As to this, Rose, J., ruled that that was a question of law; that if an officer, known to be such, took charge of a man, and the man reasonably thought he was under arrest

from the conduct of the officer, this is an arrest.—High Court of Justice, (Ont.), 1895. Forsythe *vs* Goden, 32 C. L. J., 288; Rose, J.

3. (*a.*) The arrest of a person, charged with obtaining goods by false pretences with intent to defraud, on a request by telegram from another province of Canada, where the offence is alleged to have been committed, may be justified by a peace officer by alleging either that the prisoner has actually committed such offence or that such officer, on reasonable and probable grounds, believes that the prisoner has committed the offence charged.

(*b.*) Crim. Code, sec. 22, operates not merely to protect the officer from civil or criminal proceedings, but also to authorize the arrest and make it lawful; and it applies, not only when the arrest could be made by any person without a warrant, but also to cases in which a peace officer only may so arrest.

(*c.*) Crim. Code, sec. 552 (7*a*), applies only to cases coming within subsection 7, and it is not necessary in other cases to bring the person arrested before a justice of the peace before noon of the day following the arrest.—Queen's Bench, (Man.), 1898. R. *vs* Cloutier, 2 Can. Cr. Cas., 43; 12 Man. R., 183; Dubuc, Killam, Bain, JJ.

4. *See* McGuiness & Dafoe, section 554, No. 4.

5. It is not necessary to the execution of a warrant of commitment by a constable that he should actually lay hands on or physically interfere with the person to be arrested. It is an arrest if the person to be arrested asks for and peruses the warrant and agrees to accompany the constable; and, *semble*, it is sufficient if he agrees to accompany the constable on his statement that he has the warrant in his possession.—Alderich *vs* Humphrey, 29 Ont. R., 427.

23. Persons assisting peace officer.

Every one called upon to asssist 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.

1. *See* McGuiness & Dafoe, section 554, No. 4.

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 committing.

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.

1. The Criminal Code, sec. 25, enacts that 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:—*Held*, that the words "may be," in sec. 25, refer to those provisions of the code which authorize arrest without warrant, and include the offence of unlawfully wounding, under s. 242, that being one of the "following sections" referred to in s. 552, which provides for arrest without warrant in certain cases. Defendant, a policeman in and for the Town of Windsor, in the county of Hants, arrested plaintiff at Halifax, in the county of Halifax, on the charge of having unlawfully assaulted, beaten, wounded and ill-treated P. a police officer, while in the discharge of his duty, occasioning actual bodily harm. Defendant, at the time, held a warrant for the plaintiff's arrest but it had not been indorsed for service out of the jurisdiction. Apart from the warrant, defendant had actual knowledge of the commission of the offence for which the arrest was made. In an action by plaintiff claiming damages for unlawful arrest and imprisonment:—*Held*, setting aside the verdict for plaintiff with costs, and ordering a new trial, that it was competent for defendant to contend that the arrest was made independently of the warrant, and to justify such arrest by shewing that, at the time the arrest was made, he was aware that plaintiff had committed the offence of unlawfully wounding.—That the question whether the arrest was, in fact, made under the warrant, was one that should have been submitted to the jury, and that the trial judge acted improperly in excluding it from their consideration.—That there was no distinction in principle between the position of the defendant in this case, and the position of a constable who holds two warrants, one of which is defective.—That the trial judge erred in leaving it open to the jury to understand that they were at liberty to give vindictive damages in the absence of evidence of malice, oppression, or misconduct on defendant's part.—That the trial judge erred in rejecting evidence offered to shew that plaintiff had wounded P. in the assault for the commission of which the warrant was issued. —Jordan *vs* McDonald, 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.

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.

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.

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.

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.

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.

34. Private person preventing escape from arrest for certain offences.

Every private person proceeding lawfully to arrest without warrant any person for any offence for which the offender may be arrested without warrant is justified, if the person to be arrested takes to flight to avoid arrest, in using such force as may be necessary to prevent his escape by flight, unless such escape can be 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.

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 reason-

able 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.

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 reaonable 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.

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.

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 sup-

pression 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.

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.

1. Where on an indictment for murder there was evidence that the prisoner acted under a reasonable apprehension of grievous bodily harm to his wife and family, but the judge did not direct the jury's attention to any other ground of excuse than that of eminent peril to the prisoner's life or the lives of his family, the conviction was set aside and a new

trial granted, though the prisoner's counsel did not ask at the trial to have the omission supplied. Such a conviction cannot be sustained under the Criminal Code, sec. 746, subsec. (*f*.)

Per Barker, J. In civil cases a party is not deprived of his right to a new trial on the ground of misdirection by his omission to call the judge's attention to his mistake at the time.—Supreme Court, (N.B.), 1894. The Queen *vs* Thériault, 32 N. B. R., 504; 2 Can. Cr. Cas., 444; Barker, Hanington, Tuck, Landry, JJ.

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.

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 movable property or thing, but neither claims right thereto nor acts under the authority of a person claiming right thereto, is neither justified nor protected from criminal responsibility for defending his possession against a person entitled by law to the possession of such property or thing.

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 witout justification or provocation.

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 peaceably entering as aforesaid, for the purpose of making him desist from such entry, such assault shall be deemed to be without justification or provocation.

3. 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.

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.

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.

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.

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.

1. (*a.*) An aider and abettor may be tried and convicted as a principal.

(*b.*) The evidence in such case must show a common criminal intent with the principal, and an actual or constructive participation in the commission of the offence.—Queen's Bench, Crown Side, (Que.), 1898, Regina *vs* Graham, R. J. Q., 8 Q. B., 169; 2 Can. Cr. Cas., 388; Ouimet, J.

2. (*a*) Although the crime of theft is usually complete when the thief takes and carries away the thing which he had formed the design to steal, the act of carrying the object away may be continued until it is concealed somewhere so as not to be found upon him; and any one who knowingly assists a thief to conceal stolen property which he is in the act of carrying away, renders aid to the actual perpetrator and becomes an accessory to the crime; and, under the provisions of art. 61 (*c*) of the Criminal Code, may be dealt with as a principal.

(*b*) A person may be lawfully convicted of aiding and abetting, on evidence that he received stolen money from the thief immediately after the commission of the crime, for the purpose of finding a safe place of deposit for it, and subsequently returned it to the thief.

(*c*) On an indictment charging the prisoner, by a first count, with theft, and, by a second count, with having received the thing knowing it to have been stolen, a general verdict of "guilty" may properly be recorded under the direction of the Court, where the jury were of opinion that the prisoner merely aided and abetted the principal party.—Queen's Bench, (Que.), 1899. The Queen *vs* Patrick Campbell, R. J. Q., 8 Q. B., 322; 2 Can. Cr. Cas., 357; Würtele, J.

3. Per Palmer, J., Tuck, J. (*contra*), that the principal and his agent are not each liable to the penalty for a violation by the agent of the Canada Temperance Act, and cannot be proceeded against separately.—Supreme Court (N.B.), 1894. *Ex parte* William Kelly, *Ex parte* Ellen Kelly, 32 N. B. R., 268.

4. The defendant's sister who lived in the same house with him, but did not pay board, sold liquor contrary to the Canada Temperance Act in a shop in the house. The defendant swore that the shop was kept by his sister with his permission, and that he was not interested in the shop business and derived no profit at all from it. His sister did not give evidence.

Held, That a conviction of the defendant ought not to be disturbed. —Supreme Court, (N.B.), 1894. *Ex parte* McCormack, 32 N. B. R., 272; Tuck, J.

5. (*a*) The receiving of goods merely as an act done in the commission of the theft does not constitute a separate offence of receiving stolen property knowing it to have been stolen.

(*b*) If the accused were not an aider and abetter or a principal in the second degree in the commission of the theft, the circumstance that he was an accessory before the fact by counselling and procuring the commission of the theft, and therefore liable under sec. 61 of the Criminal Code to be convicted as a principal, does not prevent his conviction for the substantive offence of afterwards receiving the stolen property knowing it to have been stolen.

(*c*) Such an accessory before the fact who afterwards becomes a receiver of the stolen property, may be legally convicted both of the theft and of "receiving."—Queen's Bench, (Man.), 1898. R. *vs* Hodge; 2 Can. Cr. Cas., 350; 12 Man. R., 319; Dubuc, Killam & Bain, JJ.

6. *See* R. *vs* Mary Ellen Beer, section 212, No. 1.

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.

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 esape, 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.

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.

TITLE II

OFFENCES AGAINST PUBLIC ORDER, INTERNAL AND EXTERNAL

PART IV

TREASON AND OTHER OFFENCES AGAINST THE QUEEN'S AUTHORITY AND PERSON

65. Treason.

Treason is :

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

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

(*c.*) the act of killing the eldest son and heir apparent of Her 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 inten-

tion to kill the eldest son and heir apparent of Her 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 Her Majesty, or to do her any bodily harm tending to death or destruction, maim or wounding, or conspiring with any person to imprison or restrain her ; or

(*f.*) levying war against Her Majesty either—

(i.) with intent to depose Her 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 Her Majesty's dominions or countries ; or

(ii.) in order, by force or constraint, to compel Her Majesty to change her 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 Her 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 Her Majesty ; or

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

(*j.*) violating, whether with her 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. 57-58 V., c. 57.

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 Her Majesty. Subjects assisting.

Every subject or citizen of any foreign state or country at peace with Her Majesty, who—

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

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

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

Every subject of Her Majesty within Canada who—

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

(*e.*) enters Canada in company with any such subjects or citizens with intent to levy war against Her 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 Her 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.

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 Her 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 Her Majesty's dominions or countries ;

(*b.*) an intention to levy war against Her Majesty within any part of the said United Kingdom, or of Canada, in order by force or constraint to compel her to change her 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 Her Majesty's dominions or countries under the authority of Her Majesty. R.S.C., c. 146, s. 3.

1. *See* R. *vs* Sheppard *et al.*, section 394, No. 1.

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 Queen.

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 Her Majesty, any arm or destructive or dangerous thing with intent to use the same to injure the person of, or to alarm, Her Majesty ; or

(*b.*) wilfully and with intent to alarm or to injure Her Majesty, or to break the public peace :

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

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

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

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

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

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

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 Her Majesty's forces by sea or land from his duty and allegiance to Her Majesty, or to incite or stir up any such person to commit any traitorous or mutinous practice.

73. Enticing soldiers or sailors to desert.

Every one is guilty of an indictable offence who, not being an enlisted soldier in Her Majesty's service, or a seaman in Her 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 Her Majesty's military or naval service ; or

(*b*.) conceals, receives or assists any deserter from Her 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.

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 Her 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.

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.

76. Interpretation.

In the two following sections, unless the context otherwise requires—

(*a.*) Any reference to a place belonging to Her 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 Her 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 Her 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.

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 Her 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, dockyard or camp in Canada, belonging to Her Majesty, takes, or attempts to take, without authority given by or on behalf of Her 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 Her Majesty with any document, sketch, plan, model or information relating to any such place as aforesaid, or to the naval or military affairs of Her 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 Her Majesty, or to the naval or military affairs of Her 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 entrusted to him as aforesaid, or communicates the same to any agent of a foreign state, is guilty of an indictable offence and liable to imprisonment for life. 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 Her 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 Her 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 Her 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 Her Majesty. 53 V., c. 10, s. 2.

PART V

UNLAWFUL ASSEMBLIES, RIOTS, BREACHES OF THE PEACE

79. Definition of unlawful assembly.

A 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.

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 and with loud voice to make or cause to be made a proclamation in these words or to the like effect :—

"Our Sovereign Lady the Queen 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 QUEEN."

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.

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 of after the making of the said proclamation. R.S.C., c. 147, s. 3.

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.

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.

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.

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 aprehension 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.

1. (*a.*) To constitute a "forcible entry" on land under the Criminal Code, sec. 89, the act of going upon the land must be done with the intention of taking possession of the land itself.

(*b.*) An entry upon land for the purpose of seizing and taking away chattels thereon is not a "forcible entry" under sec. 89 of the Criminal Code, although made contrary to the will of the occupant and in a manner likely to cause a breach of the peace.

(*c.*) Such an entry is a mere trespass.—Queen's Bench, (Man.), 1898. R. *vs* Pike, 2 Can. Cr. Cas., 314; Dubuc, Killam, Bain, JJ.

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.

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, &c.

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.

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. 154, s. 5.

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.

97. Where the fight is not a prize-fight, discharge or fine.

If, after hearing evidence of the circumstances connected with the origin of the fight or intended fight, the person before whom the complaint is made is satisfied that such fight

or intended fight was *bonâ 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.

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 manner 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. 111.

PART VI

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

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.

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.

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.

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.

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.

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. 216.

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 Her 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 *primâ 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.

Everyone 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.

1. *See* R. *vs* Mines, section 858, No. 3.

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.

112. Exception as to soldiers, &c.

It is not an offence for any soldier, public officer, peace officer, sailor or volunteer in Her Majesty's service, constable or other policeman, to carry loaded pistols or other usual arms or offensive weapons in the discharge of his duty. R.S.C., c. 148, s. 10.

113. Refusing to deliver offensive weapon to a justice.

Every one attending any public meeting or being on his way to attend the same who, upon demand made by any justice of the peace within whose jurisdiction such public meeting is appointed to be held, declines or refuses to deliver up, peaceably and quietly, to such justice of the peace, any offensive weapon with which he is armed or which he has in his possession, is guilty of an indictable offence.

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

114. Coming armed within two miles of public meeting.

Every one, except the sheriff, deputy sheriff and justices of the peace for the district or county, or the mayor, justices of the peace or other peace officer for the city or town respectively, in which any public meeting is held, and the constables and special constables employed by them, or any of them, for the preservation of the public peace at such meeting, is guilty of an indictable offence, and liable to a penalty not exceeding one hundred dollars, or to imprisonment for a term not exceeding three months, or to both, who, during any part of the day upon which such meeting is appointed to be held, comes within one mile of the place appointed for such meeting armed with any offensive weapon. R.S.C., c. 152, s. 5.

115. Lying in wait for persons returning from public meeting.

Every one is guilty of an indictable offence and liable to a

penalty not exceeding two hundred dollars, or to imprisonment for a term not exceeding six months, or to both, who lies in wait for any person returning, or expected to return, from any such public meeting, with intent to commit an assault upon such person, or with intent, by abusive language, opprobrious epithets or other offensive demeanour, directed to, at or against such person, to provoke such person, or those who accompany him, to a breach of the peace. R.S.C., c. 152, s. 6.

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.

118. Sale, &c., 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.

119. Intoxicating liquors on board Her 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 Her Majesty's ships or vessels ; or

(*b.*) approaches or hovers about any of Her 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 Her 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.

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 commit 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.

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 Her 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

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 Her Majesty has been misled or mistaken in her 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 Her 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 Her 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.

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.

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.

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 England, under colour of any commission from any foreign prince or state, whether such prince or state is at war with Her 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 Her 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 Her 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.

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.

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.

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.

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 con-

tract 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 ; or

(*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, accepts 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 Her Majesty in the right of Canada or of any province thereof. 56 V., c. 32.

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.

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.

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 compensa-

tion 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.

1. *See also* R. S. Q., 4645; 58 V., (Q.), c. 42; 60 V., (Q.), c. 42; S. R. Q., 596; 59 V., (Q.), c. 11.

137. Selling office, appointment, &c.

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.

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.

1. *See* R. *vs* Holland, section 154, No. 1.

2. *See in re* Parke, section 559, No. 4.

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.

1. Contempt of court being a criminal offence, on the hearing of an application to commit nothing will be inferred, and it is necessary to prove the charge with particularity.—*In re* Scaife, 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.

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.

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.

1. The provisions of Cr. Code 144 fixing the punishment for which any one guilty of obstructing a peace officer shall be liable "on summary conviction," are controlled by Code sections 783 and 786, and the charge cannot be summarily tried by a magistrate except with the consent of the accused given in conformity with section 786.—Queen's Bench, (Man.), 1899. R. *vs* Crossen, 3 Can. Cr. Cas., 152; Killam, C. J., Bain & Richards.

PART X

MISLEADING JUSTICE

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, Legislataive 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.

1. The prisoner was charged before Wetmore, J., on the following and another count:—"That he had committed perjury on the inquest or inquiry before Andrew J. Rutledge, Esq., one of Her Majesty's coroners in and for the North-west Territories, concerning, etc." The said inquest was held before the coroner and a jury, and on the preliminary investigation of the charge before a justice of the peace, the prisoner admitted that he had lied when making a certain statement at the coroner's inquest. Upon the trial the evidence of the prisoner's admissions in his testimony before the justice was admitted and submitted to the jury. The prisoner was convicted and sentenced on both counts. Upon objection that as the inquest was held before the coroner and a jury, and not before the coroner alone, as charged, the prisoner was not guilty of perjury before the tribunal he actually gave his evidence, the following questions of law were reserved for the decision of the Court en banc:—

(*a.*) Should the inquisition offered in evidence have been received?

(*b.*) Should the above count have been withdrawn from the jury, or they instructed to acquit the prisoner, on the ground that the inquest was before a coroner and jury, and not before a coroner, as charged?

(*c.*) Whether the evidence of the prisoner's admissions in his testimony on the preliminary investigation of the charge ought to have been struck out or withdrawn from the jury's consideration.

Held, in answer to question (*a.*), that the circumstances of the alleged offence were sufficiently described under sec. 611, (3) and (4), of the Criminal Code, and the evidence properly received. In answer to question (*b.*), that for the same reasons the count should not have been withdrawn from the jury, or they instructed to acquit the prisoner. In answer to question (*c.*), that under s. 5 of the Canada Evidence Act, 1893, the evidence should not have been received.—Supreme Court, (N.W.T.), 1896. Regina *vs* Thompson, 32 C. L. J., 493; C. L. T., 295.

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.

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.

148. False statement, wilful omission in affidavit, &c.

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 affimation, 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.

1. The prisoner was convicted on an indictment for perjury, in having sworn before the deputy returning officer at an election for member of the House of Commons for the City of Winnipeg, that he was the person whom he represented himself to be, named on the list of electors for the polling subdivision. He was not an elector, or entitled to vote in the constituency.

At the trial, prisoner's counsel contended that there was no authority for the deputy returning officer, under s. 45 of the Dominion Election Act, R.S.C., c. 8, to administer an oath to any person but an elector, and the judge reserved a case for the opinion of the court as to whether the prisoner had been properly convicted.

Held, That the statute must receive a reasonable construction, that authority was intended to be conferred upon the officer to administer the oath to any person presenting himself and claiming to be an elector entitled to vote, and that under s. 148 of the Criminal Code, 1892, prisoner had been properly convicted of perjury.

Tribunals of limited jurisdiction have implied authority to receive proof of the facts on which their right to exercise their jurisdiction depends.

Regina *vs* Proud, L. R., 1 C. C., 71 followed.—Queen's Bench, (Man.), 1894. Regina *vs* Chamberlain, 10 Man. Law Reports, 261; Killam, C. J., Dubuc, Taylor, JJ.

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.

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.

1. *See* R. *vs* Sheppard *et al*, section 394, No. 1.

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.

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.

1. Crown case reserved. Indictment and conviction of the defendant under s. 154 of the Criminal Code for attempting by corrupt means to dissuade a man from giving evidence upon certain prosecutions of the de-

fendant, and another for offences against the Liquor License Act, R.S.O., c. 194. The question reserved was whether s. 84 of the Liquor License Act was now *ultra vires* of the Ontario Legislature, and, if not, whether the defendant could properly be convicted under s. 154 of the Code. For the defendant, it was contended that s. 154 was not now *ultra vires*, s. 138 of the Code having given it efficiency, and that the defendant should have been indicted under it and not under s. 154 of the Code. For the Crown, it was contended that *Regina vs Lawrence*, 43 U.C.R., 164, was still law; that s. 138 of the Code was passed merely to cover any case not otherwise provided for in the Code. The court held, following *Regina vs Lawrence*, that s. 84 was *ultra vires*, and that the conviction should be affirmed.—High Court of Justice, (Ont.), 1894. Regina *vs* Holland, 30 C.L.J., 428.

2. Defendant was convicted in a summary way before two justices of the peace under sect. 21 of the Canada Temperance Act for tampering with a witness subpœnaed on the trial of a charge of violating the second part of said Act, by endeavouring to induce such witness to absent himself from the trial:—

Held, affirming the conviction and dismissing the appeal with costs that the special provision contained in the section of the Act under which the conviction was made, was not repealed by the Criminal Code, section 154, or by other provisions of the Code.—R. *vs* Gibson, 29 N.S.R., 88.

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. 34.

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.

157. Unlawfully advertising a reward for return of stolen property.

Every one is liable to a penalty of two hundred and fifty dol-

lars 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.

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.

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 Her 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.

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 intentionnally 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, s. 3. *(Section 166a shall come into force on the 1st of January 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 prisoners 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.

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.

1. *Jugé*:—Que celui qui publie un écrit concernant la personne de Notre-Seigneur Jésus-Christ dans des termes obcènes, indécents, railleurs ou sarcastiques, se rend coupable de l'offence appelée "libelle blasphé-

matoire."—Sessions de la Paix, (Que.), 1900. La Reine *vs* Pelletier & Pelletier, 6 R. L., N. S., 116; Desnoyers, J. S.

171. Obstructing officiating clergyman.

Every one is guilty of an indictable offence and liable to two years' imprisonment who—

(*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 church-yard or other burial place. R.S.C., c. 156, s. 1.

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.

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.

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.

1. Defendant, a boy under the age of fourteen years, was tried before the judge of the county court for the county of Halifax, and convicted of the offence of committing an unnatural offence upon the person of a younger boy.

Held, That at common law (which, in this particular, was unchanged by anything in the Criminal Code), defendant was incapable of committing the offence charged, and that the conviction must therefore be set aside.

Per Ritchie, J.: If the act was committed against the will of the other party, defendant could be punished for an assault under sec. 260 of the Code.—Supreme Court, (N.S.), 1898. R. *vs* Hartlen, 34 C.L.J., 93; 2 Can. Cr. Cas., 12; 30 N.S.R., 317.

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.

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.

1. On an indictment for incest, proof of relationship between the parties must be established according to the rules of the civil law.—Queen's Bench, (Que.), 1899. Regina *vs* Pierre Garneau, R.J.Q., 8 Q.B., 447; Archibald, J.

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.

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.

179. Publishing obscene matter.

Every ons 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, s. 3. *(Section 179 shall come into force on the 1st of January 1901.)*

1. *Up to January 1st 1901, section 179 shall read as follows:*—

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

(*a.*) publicly sells, or exposes for public sale or to public view, any obscene book, or other printed or 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;

(*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 abortion.

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.

3. It shall be a question of law whether the occasion of the 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 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 seller, publisher or exhibitor shall in all cases be irrelevant."

180. Posting immoral books, &c.

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 pub-

lication, 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. 63-64 V., c. 48, s. 3. *(Section 180 shall come into force on the 1st of January 1901.)*

1. *Up to the 1st of January 1901, section 180 shall read as follows:—*
" 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 other publication, matter or thing of an indecent or immoral 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. R.S.C., c. 35, s. 103."

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; 56 V., c. 32.

1. *See* R. *vs* Wyse, section 684, No. 2.

2. *See* R. *vs* Vahey, section 684, No. 3.

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.

183. Seduction of a ward, servant, &c.

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 as illicit connection with any woman or girl previously chaste and under the age of twenty-one years who is in his employment in a factory, mill, workshop, shop or store, or who, being in a common, but not necessarily similar, employment with him in such factory, mill, workshop, shop or store, is, in respect of her employment or work in such factory, mill, workshop, shop or store, under or in any way subject to his control or direction, or receives her wages or salary directly or indirectly from him. 63-64 V., c. 46, s. 3. *(Section 183 shall come into force on the 1st of January 1901.)*

1. *Up to the 1st of January 1901, section 183 shall read as follows:*—"Every one is guilty of an indictable offence and liable to two years' imprisonment who, being a guardian, seduces or has illicit connection with his ward, and every one who seduces or has illicit connection with any woman or girl of previously chaste character and under the age of twenty-one years who is in his employment in a factory, mill or workshop, or who, being in a common employment with him in such factory, mill or workshop, is, in respect of her employment or work in such factory, mill or workshop, under or in any way subject to his control or direction. 53 V., c. 37, s. 4."

183a. Burden of proof of 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, s. 3. *(Section 183a shall come into force on the 1st of January 1901.)*

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 se-

duced 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.

1. *See* R. *vs* Gibson, section 800, No. 1.

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. Guardian defined.

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, s. 3. *(Section 186a shall come into force on the 1st of 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. 63-64 V., c. 46, s. 3. *(Section 187 shall come into force on the 1st of January 1901.)*

1. *Up to the 1st of January 1901, section 187 shall read as follows:*—
"Every one who, being the owner and 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 fourteen years; and
(*b.*) is liable to two years' imprisonment if such girl is of or above the age of fourteen and under the age of sixteen years. R.S.C., c. 157, s. 5; 53 V., c. 37, s. 3."

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.

1. *See* R. *vs* Sheppard *et al*, section 394, No. 1.

189. Carnally knowing idiots, &c.

Every one is guilty of an indictable offence and liable to four years' imprisonment who unlawfully and carnally knows, or attempts to have unlawful carnal knowledge of, any female idiot or imbecile, insane or deaf and dumb woman or girl, under circumstances which do not amount to rape but where the offender knew or had good reason to believe, at the time of the offence, that the woman or girl was an idiot, or imbecile, or insane or deaf and dumb. 63-64 V., c. 46, s. 3. *(Section 189 shall come into force on the 1st of January 1901.)*

1. *Up to the 1st of January 1901, section 189 shall read as follows:*—
"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 which prove that the offender knew, 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."

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.

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 Her Majesty's subjects.

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.

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.

195. Common bawdy-house defined.

A common bawdy-house is a house, room, set of rooms or place of any kind kept for purposes of prostitution.

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 58-59 V., c. 40, s. 1.

(*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 stake 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, s. 1.

1. (*a.*) The words in an information: "did keep a disorderly house, that is to say a common gaming-house," are sufficient to disclose to the defendants the offence charged against them, viz.: of running a lottery;

(*b.*) 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 places;

(*c.*) A lottery is a game of chance;

(*d.*) The house in which a lottery is held is a gaming-house;

(*e.*) A gaming-house is a disorderly house;

(*f.*) The keeper of a disorderly house is liable to be prosecuted summarily without his consent by a stipendiary magistrate under the dispositions of articles 782 and following of the Criminal Code, 1892.—The Queen *vs* France *et al.*, 3 R. J., 268; Desnoyers, J. S.

2. (*a.*) (*By the whole Court*):—An information charging the defendant with having "unlawfully kept a disorderly house" that is to say, a common gaming-house," is sufficient in law.

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

(*c.*) Paragraph (*f*) of art. 783 of the Criminal Code, which says that whenever any person is charged before a magistrate "(*f*) with keeping or being an inmate or habitual frequenter of any disorderly house, house of ill-fame or bawdy-house," the magistrate may hear and determine the charge in a summary way, does not apply to the offence of keeping a common gaming-house.—the meaning of the words "disorderly house" in § (*f*) of Art. 783, and in Art. 784, being governed by the rule "*noscitur a sociis*," and being therefore restricted to houses of the nature and kind

of a house of ill-fame or bawdy-house, associated therewith. It is immaterial whether the generic term precedes or follows the specific terms which are used; in either case the general word must take its meaning and be presumed to embrace only things or persons of the kind designated in the specific words.—Queen's Bench, Appeal Side, (Que.), 1898. The Queen *vs* France *et al.*, R. J. Q., 7 Q. B., 83 ; 1 Can. Cr. Cas., 321 ; Lacoste, C. J., Bossé, Blanchet, Hall & Würtele, JJ.

3. Under statutory law in Canada, gaming, in itself, is not forbidden, and a house, room or place where gaming takes place is a "common gaming-house" only when falling under either or both of the following conditions : (*a.*) when the place is kept by any person for gain, or (*b.*) is kept or used for the playing therein of games the chances of which are not alike favorable to all the players. In any case it is immaterial whether the resort be kept by a single individual or an association of persons and be open to the public or to a limited number of persons only. 1894.—The Queen *vs* John Laird *et al.*, 3 R.J., 389; Dugas, J. S.

4. In a betting game called "policy," the actual betting and payment of the money, if won, took place in the United States; all that was done in Canada being the happening of the chance, on which the bet was staked, by means of implements operated in the house of the defendant:—*Held:*—There was no offence under sec. 198 of the Criminal Code, 1892, of keeping a common gaming-house within that section.—High Court of Justice, (Ont.), 1894. Regina *vs* Wettman, 25 Ont. R., 459; 1 Can. Cr. Cas., 287; Rose, McMahon, JJ.

5. Prisoner was lessee of a room to which the public had free access, and in which several people congregated and played the game called black jack. There was no constant dealer (banker) and the lessee got no benefit. The dealer (who is chosen on commencing by cutting the cards) has an advantage, and as a rule, can keep the deal five or six minutes. Prisoner was convicted under s. 196 of the Code, of keeping a common gaming-house and the Court of Criminal Appeal confirmed the conviction, holding that as the dealer had an advantage over the other players, the game came under the provisions of s. 196.—Supreme Court, (B.C.), 1900.—Regina *vs* Petrie, 36 C.L.J., 357.

6. An institution known as "The Commercial Club" was maintained by the proceeds of *cagnotte* or "rake-off" in card playing:—*Held*, that the *cagnotte* or "rake-off" used for the benefit of the establishment, constituted the club a common gaming-house and its officers were liable to prosecution under section 196 (*a*) of the Criminal Code, and the Act amending it, 58-59 Vict., c. 40.—Police Court, (Que.), 1896. The Queen *vs* Brady, R.J.Q., 10 S. C., 539; Dugas, J. S.

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 ; or

(*c.*) opened, or kept for the purpose of recording or registering bets upon any contingency or event, horse-race or other race, fight, game or sport, or for the purpose of receiving money or other things of value to be transmitted for the purpose of being wagered upon any such contingency or event, horse-race, or other race, fight, 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 ; 58-59 V., c. 40, s. 1 ; or

(*d.*) opened, kept or used for the purpose of facilitating, or encouraging or assisting in, the making of bets upon any contingency or event, horse-race or other race, fight, game or sport, by announcing the betting upon, or announcing or displaying the results of, horse-races or other races, fights, games or sports, or in any other manner, whether such contingency or event, horse-race or other race, fight, game or sport occurs or takes place in Canada or elsewhere. 58-59 V., c. 40, s. 1.

1. The defendant occupied a tent in a village open to and frequented by the public, in which there was a telegraph wire to an incorporated race-track in the United States, where horse-racing and betting was legalized. In the tent was a blackboard on which were the names of the horses and jockeys taking part in the race, with the weights and 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 marked them on the board. Duplicate tickets were furnished in the tent to applicants, which requested defendant to telegraph one B. at the race-track to place a certain amount of money on a horse named by the applicant at track quotations, and upon transmission thereof, the applicant agreed to pay defendant ten cents, and that all liability on defendant's part should cease. On the tickets being handed in, one of them was stamped with the date of its receipt and returned to the applicant. The aggregate amount of the money so received was notified by telegram to B. and placed by him before the race with bookmakers on the track, B. paying defendant a percentage on the moneys received for him and ten cents on each application. B. had an agent in another part of the village whom he furnished with money to pay any winnings by remitting same to him or giving him orders on defendant for stated sums:—

Held, That the defendant was properly convicted under sections 197 and 198 of the Code, of keeping a common betting-house, the place in question being open and kept for the reception of money by defendant on behalf of B. as consideration for an undertaking to pay money thereafter to the depositor on the event of a horse-race.—High Court of Justice, (Ont.), 1895. Regina *vs* Giles, 26 Ont. R., 586; Boyd, C., Meredith & Robertson, JJ.

2. A bank, a telegraph 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, which 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, for whom the receipts were given to place and who placed bets equivalent to the amounts deposited, on horses running in the races, and on their winning the amounts won were paid to the holders of the receipts at the third office by telegraphic instructions from the persons making the bets in the United States:—

Held:—On the evidence and admissions to the above effect, that the defendant who kept the telegraph office was properly convicted of keeping a common betting-house under sections 197 and 198 of the Criminal Code.—High Court of Justice, (Ont.), 1895. Regina *vs* Osborne, 27 Ont. R., 185; Armour, C. J., Falconbridge & Street, JJ.

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.

1. *See* R. *vs* France *et al.*, section 196, Nos. 1 and 2.
2. *See* R. *vs* Laird *et al.*, section 196, No. 3.
3. *See* R. *vs* Wettman, section 196, N. 4.
4. *See* R. *vs* Giles, section 197, No. 1.
5. *See* R. *vs* Osborne, section 197, No. 2.
6. *See* R. *vs* Perry, section 208, No. 2.
7. *See* R. *vs* Petrie, section 196, No. 5.
8. *See Ex parte* Cook, section 783, No. 7.
9. *See* R. *vs* Brady, section 196, No. 6.

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.

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 authorized 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.

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 *bonâ fide* intention of acquiring any such shares, goods, wares or merchandise, or of selling the same, as the case may be, makes or signs, or authorizes to be made or signed, any contract or agreement, oral or written, purporting to be for the sale or purchase of any 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 witten, purporting to be for the sale or purchase of any such shares of stock, goods, wares or merchandise in respect of which no delivery of the thing sold or purchased is made or received, and without the *bonâ fide* intention to make or receive such delivery.

2. 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.

202. Habitually frequenting places where gaming in stocks is carried on.

Every one is guilty of an indictable offence and liable to one year's imprisonment who habitually frequents any office or

place wherein the making or signing, or procuring to be made or signed, or the negotiating or bargaining for the making or signing, of such contracts of sale or purchase as are mentioned in the section next preceding is carried on. 51 V., c. 42, s. 1.

203. Gambling in public conveyance.

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 dis-

charge 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.

204. Betting and pool-selling.

Every one is guilty of an indictable offence, and liable to one year's imprisonment, and to a fine not exceeding one thousand dollars, who—

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

(*b.*) keeps, exhibits, or employs, or knowingly allows to be kept, exhibited or employed, in any part of any premises under his control, any devise 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.

1. (*a.*) The object of the Legislature in enacting the latter part of subsec. 2 of sec. 204 of the Criminal Code apparently was to reserve the race courses of incorporated associations to places where bets might be made during the actual progress of a race meeting, without the bettors being subject to the penalties of that section.

(*b.*) An agreement for the sale of betting and gaming privileges at a race meeting by an incorporated association, who are the lessees of an incorporated association, the owners of the race course, is not illegal.—

High Court of Justice, (Ont.), 1897. Stratford Turf Association *vs* Fitch, 28 Ont. R., 579; Armour, C. J.

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. 58-59, V., c. 40, s. 1.

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.

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 *bonâ 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. 58-59 V., c. 40, s. 1.

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 religions object, if permission to hold the same has been obtained from the city or other municipal council, or from the mayor, reeve or other chief officer of the city, town or other municipality, wherein such bazaar is held and the articles, raffled for thereat, have first been offered for sale and none of them are of a value exceeding fifty dollars ; or

(*c.*) the Crédit Foncier du Bas-Canada, or the Crédit Foncier Franco-Canadien. 63-64 V., c. 46, s. 3. *(Subsection 6 shall come into force on the 1st of January 1901.)*

1. *Up to the 1st of January 1901, subsection 6 shall read as follows:*
"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 object, if permission to hold the same has been obtained from the city or other municipal council, or from the mayor, reeve or other chief officer of the city, town or other municipality, wherein such bazaar is held and the articles raffled for thereat have first been offered for sale and none of them are of a value exceeding fifty dollars; or

(*c.*) any distribution by lot among the members or ticket holders of any incorporated society established for the encouragement of art, of any paintings, drawings or other work of art produced by the labour of the members of, or published by or under the direction of, such incorporated society;

(*d.*) the Crédit Foncier du Bas-Canada, or to the Crédit Foncier Franco-Canadien."

2. The defendant, an agent of an incorporated art society, was convicted by a police magistrate for that he did "unlawfully sell and barter a certain card and ticket for advancing, selling, and otherwise disposing

of certain property: to wit, pictures or one half the stated value of each picture in money by lots, tickets, and modes of chance:"—

Held:—That "property" in subsec. (*b*) of sec. 205 of the Code is not necessarily to be read "*specific* property," the essence of the enactment being in the disposal of *any* property by any mode of chance;

Held also:—There being evidence of an option reserved to the society to give money instead of pictures to the winning tickets, this destroyed the privilege in favour of works of art under subsec. 6 (*c*) of the Code. Conviction affirmed.—High Court of Justice, (Ont.), 1896. Regina *vs* Lorrain, 28 Ont. R., 123; 2 Can. Cr. Cas., 144; Boyd, C., Meredith, J.

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.

1. 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 Criminal Code, sec. 206, although such person was, apart from such undertaking, under no legal obligation in respect of the burial.—County Court Judges' Criminal Court for King's County, (N.S.), 1898. R. *vs* Newcomb, 2 Can. Cr. Cas., 255; Chipman, County J.

PART XV

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 ; 63-64 V., c. 46, s. 3. *(Subsection (a) shall come into force on the 1st of January 1901.)*

(*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. R.S.C., c. 157, s. 8.

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 resort. 57-58, V., c. 57, s. 1 ; 63-64 V., c. 46, s. 3.

1. *Up to the 1st of January 1901, paragraph* (*a*) *shall read as follows:*

"(*a.*) not having any visible means of maintaining himself lives without employment;"

2. A woman who is kept by a married man and who surrenders herself to sexual intercourse with him alone, does not come under the purview of § (*l.*), article 207 of the Criminal Code, which declares any one to be a vagrant who having no peaceable profession or calling to maintain herself by, for the most part supports herself by the avails of prostitution.—Queen's Bench, (Que.), 1897. The Queen *vs* Elise Rehe, R.J.Q., 6 Q. B., 274; 1 Can. Cr. Cas., 63; 3 R. J., 229; Würtele, J.

3. When a son lives at home and is supported by his parents, the fact of living without employment does not constitute an offence under paragraph (*a*) of article 207 of the Criminal Code respecting vagrancy. —Queen's Bench, Crown Side, (Que.), 1898. The Queen *vs* Hugh Riley, R. J. Q., 7 Q. B., 198; 2 Can. Cr. Cas., 128; Würtele, J.

4. A person who is able to work and thereby, or by other means, to maintain his wife, and who is charged with vagrancy for refusing or neglecting to do so when his wife had left the matrimonial abode, without his consent and without judicial authorization or other valid reason, cannot be convicted, if he was willing and offered to receive her, when she on her part refused to return and live with him.—Queen's Bench, Crown Side, (Que.), 1898. The Queen *vs* Wilfrid Leclair, R.J.Q., 7 Q.B., 287; 2 Can. Cr. Cas., 287; Würtele, J.

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. R.S.C., c. 157, s. 8 ; 57-58, V., c. 57, s. 1.

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. 63-64 V., c. 46, s. 3. *(This proviso comes into force on the 1st of January 1901.)*

1. As to place of detention, *See* R. S. C., c. 157, s. 8, § 4.

2. The prisoner was convicted of keeping a house of ill-fame under s. 783 (*f*) of the Criminal Code, and was condemned under s. 788 to pay a fine of $100. Upon a motion on the return of a writ of *habeas corpus* to discharge the prisoner:—*Held*, following *Reg. vs Cyr*, 12 P.R., 24, that the conviction was bad, as, under s. 788, a fine must not be in the full sum allowed for fine and costs; and also that the conviction should have disclosed that there were no costs.—Supreme Court, (N.B.), 1898. Reg. *vs* Perry, 35 C. L. J., 174; McLeod, J.

3. *See* R. *vs* Stafford, section 872, No. 7.

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.

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.

1. *See* R. *vs* Mary Ellen Beer, section 212, No. 1.

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 186 A, it has in sections 183 and 186. 63-64, V., c. 46, s. 3. *(Subsection 3 shall come into force on the 1st of January 1901.)*

1. Upon an indictment of the prisoner under sec. 210, s.s. 2 of the Criminal Code, 1892, for omitting without lawful excuse to provide necessaries for his wife, evidence is admissible on behalf of the prisoner of an agreement between him and the person who became his wife, at the time of the marriage, that they were to live at their respective homes and be supported as before the marriage until the prisoner obtained a situation where he could earn sufficient for their maintenance; Street, J., dissenting.—High Court of Justice, (Ont.), 1897. Regina *vs* Robinson, 28 Ont. R., 407; 1 Can. Cr. Cas., 28; Armour, C. J., Falconbridge, J.

2. *See* R. *vs* Lapierre & Roy, section 611, No. 2.

3. The defendant, on the complaint of his wife, was convicted under s.s. 2 of sec. 210 of the Code, of refusing to provide necessaries for her. The evidence shewed the parties were married in 1890, but that the complainant had been married to another person in 1886, though she had never lived with him; that in 1888 she had received a letter stating he was dying in the United States, and that that was the last she heard of him, save that about a year after her marriage to the defendant she again heard that he was dead. No further proof of the death of the first husband was given:—*Held*, that there was evidence to go to the jury of the death of the first husband and that the defendant was properly convicted. —High Court of Justice, (Ont.), 1898. Regina *vs* Holmes, 29 Ont. R., 362; 2 Can. Cr. Cas., 131; Armour, C. J., Falconbridge, Street, JJ.

4. Defendant was tried and convicted by the judge of the County Court for district No. 1 on a charge preferred under the Code, s. 210, s.s. 2, for having omitted, without lawful excuse, to provide necessaries for his wife, in consequence of which her health was likely to be permanently injured. The evidence showed that defendant who was

in regular receipt of wages amounting to six dollars per week, refused to make any provision for his wife, at a time she was pregnant and incapacitated for work. *Held*:—

(*a*.) There was evidence upon which the judge could properly find against the accused.

(*b*.) The words "likely to be permanently injured" have no technical meaning, and that in every case it is purely a question of fact whether the acts proved are of such a character that the health of the wife is likely by reason of those acts to be permanently injured.

(*c*.) As to the excuse set up, that was a question of fact as to the sufficiency of which the judge had to decide.—Supreme Court, (N.S.), 1898. Regina *vs* Bowman, 35 C. L. J., 35; 31 N. S. R., 403.

5. The prisoner was tried and convicted under the Code, s. 210, s.s. 2, on a charge of neglecting to provide necessaries for his wife, whereby her health was likely to be permanently injured:—*Held*, affirming the conviction, that slight evidence was sufficient, the words "likely to be permanently injured," being so indefinite as to leave the question entirely in the discretion of the trial judge. *Held*, that there is no appeal from criminal trials before the County Court judge, but by way of case reserved, and that the judge cannot reserve a case or submit any question depending upon the facts or weight of evidence.—The Queen *vs* McIntyre, 31 N. S. R., 422.

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 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.

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, without lawful excuse, to discharge that duty if death is caused by such omission.

1. The prisoner, who practiced as a Christian Scientist, was called in by the parents of a child suffering from diphtheria. She was not expected and was not retained as a medical attendant. She did nothing but sit silently by the child, without giving any medical and other treatment of any kind. The child died of the disease, and the prisoner was

indicted for manslaughter. According to the medical evidence the life of the child might have been saved or prolonged if the usual medical remedies had been applied.

Held, That the prisoner could not be convicted under sec. 212 or 214 of the Criminal Code.

Held also (*dubitante*) that the father of the child could not be indicted, under secs. 209 and 210, for not having supplied the child with a necessary of life viz., medical aid nor could the prisoner be indicted as an accessory (under sec. 61) to the father's neglect.—Toronto Assizes, 1895. Regina *vs* Mary Ellen Beer, 32 C. L. J., 416; Falconbridge, J.

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.

1. The defendant company was indicted, under sections 213 and 220 of the Criminal Code, 1892, for negligence in maintaining machinery in a condition dangerous to life, resulting in the death of one of its employees. There was also a count for manslaughter. Defendant demurred to the indictment.

Held, that notwithstanding s.s. (*t.*) of s. 3 of the Code, by virtue of which sections 213 and 220 generally apply to corporations as well as to individuals, an indictment will not lie against a corporation for manslaughter, and even if a corporation were indicted and convicted of such an offence, there is no provision of law under which any punishment could be imposed.

The punishment for manslaughter being imprisonment for life under section 236 of the Code, section 958 does not apply, and a fine cannot be imposed in lieu of imprisonment. The general provision of section 639 that in case of the conviction of a corporation, the court "may award such judgment and take such other and subsequent proceedings to enforce the same as are applicable to convictions against corporations," could not be interpreted so as to affect or modify the positive enactment of section 236.—Queen's Bench, (Man.), 1900. Regina *vs* Great West Laundry Co., 36 C. L. J., 317; Bain, J.

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.

1. *See* R. *vs* Mary Ellen Beer, section 212, No. 1.

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. 56 V., c. 32, s. 1.

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. 16, s. 20.

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.

PART XVII

HOMICIDE

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 naval 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.

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.

1. *See* R. *vs* Great West Laundry, section 213, No. 1.

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.

222. Death must be within a year and a day.

No one is criminally responsible for the killing of another unless the death take 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.

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.

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.

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.

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.

PART XVIII

MURDER, MANSLAUGHTER, &c.

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 afore-

said 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.

1. On a trial for murder, the alleged motive being the obtaining of insurance moneys on policies effected by the prisoner on the life of the deceased, evidence of a previous attempt by the prisoner to insure another person for his own benefit cannot be given in evidence against him. —High Court of Justice, (Ont.), 1895. Regina *vs* Hendershott & Welter, 26 Ont. R., 678; Meredith, C. J.

2. *See also* R. *vs* Hendershott & Welter, section 689, No. 5.

3. The prisoner was tried upon an indictment for murder. It was not denied that he killed the deceased, but it was urged that by sec. 229 of the Criminal Code, the offence was reduced to manslaughter, as having been committed "in the heat of passion caused by sudden provocation." There was evidence that just before the killing the prisoner had called at the house of the deceased to see the latter who ordered him out and immediately laid hands on him and put him out of the house when the prisoner drew a revolver and shot deceased. The judge at the trial directed the jury that 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 to reduce the crime to manslaughter:—*Held*, misdirection; for whether or not the deceased at the time he was shot, was doing what he had a legal right to do depended upon whether, if the jury accepted as true the statement of the defendant given in evidence as to the circumstances attending the shooting, the deceased had, before laying hands upon him, ordered him to leave his house, and whether if he had done so, the prisoner had refused to leave, and whether if violence was used in putting him out, it was greater than was necessary; and the deceased was clearly not doing what he had a legal right to do if the facts were found in favour of the prisoner's contention on these points. New trial directed, upon an appeal under sec. 744 of the Criminal Code.—High Court of Justice, (Ont.), 1896. Regina *vs* Brennan, 27 Ont. R., 659 ; Meredith, C. J., Rose, MacMahon, JJ.

4. Upon the trial of the prisoner for the murder of her husband, who was living with and attended by her in his last illness, it was proved that his death was due to arsenical poisoning. In order to show that the poisoning was designed and not accidental, the Crown offered evidence to prove that a former husband of the prisoner had been taken suddenly ill after eating food prepared by her, and that the circumstances and symptoms attending his illness and death were similar to those attending the illness and death of the second husband, and that such symptoms were of arsenical poisoning:—*Held*, that the evidence was admissible.—High Court of Justice, (Ont.), 1898. Regina *vs* Olive A. Sternaman, 29 Ont. R., 33; 1 Can. Cr. Cas., 1; Boyd, C., Rose & Falconbridge, JJ.

5. (*a.*) Section 5 of the Canada Evidence Act, 1893, 56 V., c. 31 (D.),

which abolishes the privilege of not answering criminating questions, and provides that no evidence so given shall be receivable in evidence in subsequent criminal proceedings against the witness, other than for perjury in respect thereof, applies to any evidence given by a person under oath, though he may not have claimed privilege. Meredith, J., dissenting. Regina *vs* Williams, (1897), 28 Ont. R., 583, not followed.

(*b.*) On a charge of wife murder, the Crown sought to prove that the prisoner had been with evil design accumulating insurance on his wife's life: *Held*, that evidence of various applications for insurance, though in some cases resulting in rejection of the risk, was admissible, all being made practically at the same time and forming part of one transaction which could be properly given in evidence as a whole.

(*c.*) The Coroner's Court is a criminal court.

(*d.*) As the Court of Appeal for criminal cases is now constituted the decision of the judges of one court is not binding on judges sitting as another court of coordinate jurisdiction.—High Court of Justice, (Ont.), 1898. The Queen *vs* Hammond, 29 Ont. R., 211; 1 Can. Cr. Cas., 373; Boyd, C., Robertson & Meredith, JJ.

6. *See* R. *vs* Thériault, section 45, No. 1.

7. *See* R. *vs* Leblanc, section 661, No. 1.

8. *See* R. *vs* C. Viau, section 592, No. 1.

9. *See* R. *vs* Charcoal, section 592, No. 3.

10. In a trial for murder by committing an abortion resulting in the girl's death, 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 other organs than those examined might have disclosed, and none of the medical men would swear positively to the cause of death; but there was other evidence tending to show that death was caused by a criminal operation, and connecting the prisoners therewith. *Held*, that such last mentioned evidence was properly submitted to the jury.—Supreme Court, (B.C.), 1896. R. *vs* Garrow & Creech, 1 Can. Cr. Cas., 246; Davie, C. J., McCreight, Walkern, JJ.

11. (*a.*) 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 his declaration is admissible in evidence.

(*b.*) 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.

(*c.*) Per Weatherbe, J.—A dying declaration is not admissible if there existed in the mind of the party making it a hope of recovery or 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 not well founded.

(*d.*) Per Henry, J.—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 the declaration.—Supreme Court, (N.S.), 1898. R. *vs* Davidson, 1 Can. Cr. Cas., 351; McDonald, C. J., Weatherbe, Ritchie, Townshend, JJ., Graham, E. J., Henry, J.

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 lawful custody, resisting lawful apprehension, murder, rape, forcible abduction, robbery, burglary, arson.

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 provo-

cation 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.

1. *See* R. *rs* Brennan, section 227, No. 3.

230. Manslaughter.

Culpable homicide, not amounting to murder, is manslaughter.

1. A pagan Indian who, believing in an evil spirit in human shape called a Wendigo, shot and killed another Indian under the impression that he was the Wendigo, was held properly convicted of manslaughter. —High Court of Justice, (Ont.), 1897. Regina *rs* Machekequonabe, 28 Ont. R., 309 ; 2 Can. Cr. Cas., 138 ; Armour, C. J., Falconbridge, Street, JJ.

2. *See* R. *rs* Garrow & Creech, section 227, No. 10.

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.

1. *See* R. *vs* Lapierre & Roy, section 611, No. 2.

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.

1. *See Ex parte* Mary Welsh, section 596, No. 2.

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 Her Majesty or not, or is within Her 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.

1. *See* R. *vs* Sheppard *et al*, section 394, No. 1.

235. Accessory after the fact to murder.

Every one is guilty of an indictable offence, and liable to imprisonment 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.

238. Attempt to commit suicide.

Every one who attempts to commit suicide is guilty of an indictable offence and liable to two years' imprisonment.

239. Neglecting to obtain assistance in child-birth.

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.

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, or during, or after birth. R.S.C., c. 162, s. 49.

PART XIX

BODILY INJURIES, AND ACTS AND OMISSIONS CAUSING DANGER TO THE PERSON

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.

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

1. (*a.*) Justices of the peace have no power on a preliminary investigation before them of a charge of unlawfully wounding, to reduce the charge to one of common assault, over which they would have summary jurisdiction.

(*b.*) A conviction recorded by justices 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 does not support a plea of autrefois convict.—Court of General Sessions for the County of York, (Ont.), 1897. R. *vs* Lee, 2 Can. Cr. Cas., 233; McDougall, County J.

243. Shooting at Her 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 Her 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.

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, 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.

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.

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.

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., 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.

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 gin or trap usually set or placed with the intent of destroying vermin or noxious animals. R.S.C., c. 162, s. 24.

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 upon or across 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 or 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.

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.

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.

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.

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 ; 56 V., c. 32.

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, uninclosed by bushes or trees or unguarded by a guard or fence of sufficient height and strength to prevent any person from accidentally riding, driving, walking, skating or falling therein ; or

(*b.*) 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 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 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 ; 56 V., c. 32, s. 1.

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.

PART XX

ASSAULTS

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.

1. *See* R. *vs* Edwards, section 266, No. 2.

2. *Held*, on a case reserved for the opinion of the Court, that the crime of assault may be committed although the party assaulted may have consented to fight.—Queen's Bench, (Man.), R. *vs* Buchanan, 34 C. L. J., 474.

3. *See* R. *vs* Buchanan, section 645, No. 1.

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 fraudulent representations as to the nature and quality of the act. 53 V., c. 37, s. 12.

1. (*a.*) 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 enquiries, the complainant 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 gestæ* or as in corroboration.

(*b.*) 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 so made by the complainant after the alleged offence, if the other evidence in the case is ample to warrant the verdict of indecent assault.—High Court of Justice (Ont.), 1899. R. *vs* Graham, 3 Can. Cr. Cas., 22; Boyd, C., Robertson, J.

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. 56 V., c. 32, s. 1.

1. *See* R. *vs* Hartlen, section 174, No. 1.

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.

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.

1. *See* Neville *vs* Ballard, section 866, No. 6.

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 ; 57-58, V., c. 57, s. 1.

(*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.

1. *See Ex parte* McClements, section 958, No. 2.

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 to 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. 63-64 V., c. 46, s. 3. *(Section 264 shall come into force on the 1st of January 1901.)*

1. *Up to the 1st of January 1901, section 264 shall read as follows:—*
"Every one is guilty of an indictable offence and liable to seven years' imprisonment who, without lawful authority, forcibly seizes and

confines or imprisons any other person within Canada, or kidnaps any other person with intent—

(*a.*) to cause such other person to be secretly confined or imprisoned in Canada against his will; or

(*b.*) to cause such other person to be unlawfully sent or transported out of Canada against his will; or

(*c.*) to cause such other person to be sold or captured as a slave, or in any way held to service against his will.

2. Upon the trial of any offence under this section the non-resistance of the person so kidnapped or unlawfully confined thereto shall not be a defence, unless it appears that it was not caused by threats, duress or force or exhibition of force. R.S.C., c. 162, s. 46."

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.

PART XXI

RAPE AND PROCURING ABORTION

266. Rape defined.

Rape is the act of a man having carnal knowledge of a woman who is not his wife without her consent, or with consent which has been extorted by threats or fear of bodily harm, or obtained by personating the woman's husband, or by false and fraudulent representations as to the nature and quality of the act.

2. No one under the age of fourteen years can commit this offence. R.S.C., c. 174, s. 226; 56 V., 32, s. 1.

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

(*b.*) An indictment for rape under articles 266 and 267 of the Criminal Code lies against one who has ravished a female under the age of fourteen years against her will, notwithstanding the provisions of article 269.

which enacts that every one is guilty of an indictable offence and liable to imprisonment for life, and to be whipped, who carnally knows any girl under the age of fourteen years, not being his wife.—Queen's Bench, Crown Side, (Que.), 1898. The Queen *vs* Zénophile Riopel, R. J. Q., 8 Q. B., 181; 5 R. J., 78; 2 Can. Cr. Cas., 225; Würtele, J.

2. A prisoner indicted for rape may be found guilty of common assault notwithstanding the complaint or information is not laid within six months under section 841 of the Criminal Code.—High Court of Justice, (Ont.), 1898. Regina *vs* Edwards, 29 Ont. R., 451; 2 Can. Cr. Cas., 96; Ferguson, Robertson, Meredith, JJ.

3. *See* R. *vs* Graham, section 259, No. 1.

4. (*a.*) Upon the trial of a charge of rape the whole 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.

(*b.*) Whether or not the complaint was made within a time sufficiently short after the commission of the offence as to admit evidence of the particulars of the complaint, is a question to be decided by the court under 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.

(*c.*) The lapse of seven days between the date of the offence and the time of making complaint thereof was held insufficient under the circumstances to exclude testimony of the particulars of the complaint.

(*d.*) Proof on behalf of the defence that the injured party or her parents had instituted civil proceedings to recover damages arising from the commission of the alleged rape is properly 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.

(*e.*) The failure of the trial judge, *ex mero motu* to direct the jury to give to the prisoner the benefit of any reasonable doubt, is not a good ground for interfering with the verdict in a case where the evidence does not point to any reduced or lesser offence.—Queen's Bench, (Que.), 1900. R. *vs* Riendeau, 3 Can. Cr. Cas., 293; Würtele, J.

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.

1. *See* decisions under section 266.

268. Attempt to commit rape.

Every one is guilty of an indictable offence and liable to seven years' imprisonment who attempts to commit rape.

1. *See* R. *vs* Wright, section 270, No. 1.

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.

1. *See* R. *rs* Riopel, section 266, No. 1.

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.

1. (*a.*) The County Courts of New Brunswick are not Courts of Oyer and Terminer and general goal delivery.

(*b.*) 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.*

(*c.*) A County Court in New Brunswick has jurisdiction to try the offence of attempting to have carnal knowledge of a girl under fourteen (Cr. Code 270), although the evidence discloses the offence of attempting to commit rape, as to which said court has no jurisdiction (Cr. Code 540).—Supreme Court, (N.B.), 1896. R. *rs* Wright, 2 Can. Cr. Cas., 83; 34 N. B. R., 127.

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.

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.

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.

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.

PART XXII

OFFENCES AGAINST CONJUGAL AND PARENTAL RIGHTS—BIGAMY—ABDUCTION

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.

1. Conviction for bigamy quashed where the second marriage took place in a foreign country, and there was evidence that the defendant, who was a British subject, resident in Canada, left there with the intent to commit the offence. The provisions of sec. 275 of the Criminal Code making such a marriage an offence are *ultra vires* of the Parliament of Canada. Macleod *vs* Attorney General for New South Wales, (1891), A. C. 455, followed—High Court of Justice, (Ont.), 1894. R. *vs* Plowman, 25 Ont. R., 656; Armour, C. J., Falconbridge, J.

2. (*a.*) The Parliament of Canada has jurisdiction to constitute the leaving Canada by a British subject resident therein with an intent to perform elsewhere a prohibited act, an indictable offence, upon the act itself being performed.

(*b.*) A British subject domiciled in Canada, and only temporarily absent, continues to owe to Her Majesty, in relation to her Government of Canada, an obligation to refrain from the completion, whilst absent without any *animus manendi*, of a prohibited act, a material part of which is committed by him in Canada.—Supreme Court, (Can.), 1897. In the matter of ss. 275 and 276, Cr. Code, 1892, relating to Bigamy, 1 Can. Cr. Cas., 172; Strong, C. J., Gwynne, Sedgewick, King, Girouard, JJ.

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.

1. *See* R. *vs* Plowman, section 275, No. 1.

2. *See* in the matter of ss. 275 and 276 Criminal Code, 1892, section 275, No. 2.

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 practice 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, s. 3. *(Section 278 shall come into force on the 1st of January 1901.)*

1. *Up to the 1st of January 1901, section 278 shall read as follows:—*

" Every one is guilty of an indictable offence and liable to imprisonment for five years, and to a fine of five hundred dollars, who—

(*a.*) 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;

(iii.) what among the persons commonly called Mormons is known as spiritual or plural marriage;

(iv.) 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

(*b.*) 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

(*c.*) 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

(*d.*) 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. 53 V., c. 37, s. 11."

2. An Indian who according to the marriage customs of his tribe takes two women at the same time as his wives, and cohabits with them, is guilty of an offence under sec. 278 of the Criminal Code.—Supreme Court, (N.W.T.), 1899. R. *vs* "Bear's Shin Bone," 3 Can. Cr. Cas., 329; Rouleau, J.

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 persons 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. 1.

1. "The Reorganized Church of Jesus Christ of Latter-Day Saints" is a religious denomination within the meaning of R.S.O., ch. 131, sec. 1; and a duly ordained priest thereof is a minister authorized to solemnize the ceremony of marriage. Upon a case reserved, a conviction of such a priest for unlawfully solemnizing a marriage was quashed. *Semble*, the words of the statute "church and religious denomination" should not be construed so as to confine them to christian bodies.—High Court of Justice, (Ont.), 1893. Regina *vs* Dickout, 24 Ont. R., 250; Armour, C. J.

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 lawfully 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 estatae or interest, legal or equitable, in any real or personal property of such woman, or in which she has any interest, or which comes to her as such heiress, co-heiress or next of kin ; and if any such marriage takes place such property shall, upon such conviction, be settled in such manner as any court of competent jurisdiction, upon any information at the instance of the Attorney-General appoints. R.S.C., c. 162, s. 42.

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.

1. (*a.*) To constitute the crime of abducting a girl out of the possession of and against the will of her father under Cr. Code, sec. 283, there

must be an actual or constructive possession *de facto*, in the father at the time of the taking.

(*b.*) When the girl who was 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 the place of flight is not the possession contemplated by Cr. Code, sec. 283.

(*c.*) If the persuasion to leave and to 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.—Supreme Court, (B.C.), 1895. *R. vs* Blythe, 1 Can. Cr. Cas., 263; Davie, C. J., Crease, McCreight, Walkern, Drake, JJ.

284. Stealing children under fourteen.

Every one is guilty of an indictable offence and liable to seven years' imprisonment who, with intent to deprive any parent or guardian of any child under the age of fourteen years, of the possession of such child, or with intent to steal any article about or on the person of such child, unlawfully—

(*a.*) 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 possession 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, s. 3. *(Section 284 shall come into force on the 1st of January 1901.)*

1. *Up to the 1st of January 1901, section 284 shall read as follows:*—"Every one is guilty of an indictable offence and liable to seven years' imprisonment who, with intent to deprive any parent or guardian, or other person having the lawful charge, 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 possession of the child. R.S.C., c. 162, s. 45."

PART XXIII

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, s. 3. *(Subsection 1 shall come into force on the 1st of 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.

1. *Up to the 1st of January 1901, subsection 1 of section 285 shall read as follows:*—

"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 design to insult the person to whom it is published."

2. (*a.*) Quand un article de journal qui contient un libelle diffamatoire est publié par malice et avec mauvais vouloir contre la personne diffamée, l'auteur ne peut pas en justifier la publication en plaidant que les imputations sont vraies et qu'il était de l'intérêt public de publier l'article.

(*b.*) Quand un article de journal contient plusieurs imputations diffamatoires séparées, il y a autant de libelles distincts qu'il y a d'imputations, et un verdict de coupable doit être rendu quand le défendeur ne justifie pas la vérité de tous les libelles et ne prouve pas qu'ils ont tous été publiés de bonne foi dans l'intérêt public.—Queen's Bench, Crown Side, (Que.), 1897. La Reine *vs* W. A. Grenier, R. J. Q., 6 Q. B. R., 563; Würtele, J.

3. *See* R. *vs* H. B. Cameron, section 611, No. 1.

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.

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.

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 Her Majesty, or of any of the departments of Government, Dominion or provincial.

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 or abstract of any such paper.

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.

1. Motion by respondent to commit W. H. Ellis and C. H. Lugrin, manager and editor of the "Victoria Daily Colonist," for contempt of court, in writing, publishing and procuring to be published in the said newspaper, in the issues of 22nd October, 17th and 22nd November, 1898, articles commenting upon the proceedings herein, and intended and calculated to scandalize the court and to prejudice or interfere with the fair trial of the petition; and further, that the said comments were intended, by means of calumniating Mr. Justice Martin, to deter him from hearing or determining any questions arising herein and from determining the questions now pending before him for determination herein. On an application to dismiss the petition coming up before Mr. Justice Martin, he said that he would prefer some other judge to hear it, as he himself had taken an active part in the late provincial election, but as counsel on both sides desired it and there being no other judge available, he consented to hear the application.

The newspaper in commenting on the matter in an editorial said inter alia: "Judge Martin will have to devote his spare moments to schooling himself into forgetfulness of his political career." Then, on 17th November, in an editorial, it said: "Mr. Prentice was certain to loose his seat," and on 22nd November: "that the spectacle just presented of election cases being disposed of by a judge who was an active partisan in the recent contest is not edifying;" and "does not produce a good impression upon the public mind."

Sec. 7 of the Supreme Court Act of British Columbia provides that: "Any barrister of not less than ten years' standing, and who has been in actual practice at the bar of the court for ten years, shall be qualified to be appointed a judge of the court."

The objection was taken that the appointment by the Dominion Government of Mr. Martin as a Judge of Supreme Court was *ultra vires* of this section, as Mr. Martin was only called to the Bar in British Columbia on 30th July 1894.

Held, (*a*.) The Supreme Court has no power to decide the validity of the appointment of one of its members.

(*b*.) The court has power summarily to commit for constructive contempt notwithstanding ss. 290, 292 and 293 of the Criminal Code; but the court will not exercise the power where the offence is of a trifling nature, but only when necessary to prevent interference with the course of justice.

(*c*.) A statement in a newspaper editorial to the effect that one of the parties to a pending suit will lose the case is a contempt of court.

(*d*.) A statement to the effect that a judge of the court, having taken an active part in a general election, would have to devote his spare moments to schooling himself into forgetfulness of his political career, is not a contempt.

(*e*.) 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 in the public mind, is not a contempt.

(*f*.) A party to a suit has status to move to commit a stranger to the suit for constructive contempt, although no affidavit is filed by him or on his behalf, to the effect that the alleged contempt is calculated to prejudice him in his suit.

(*g*.) Any person may bring to the notice of the court any alleged

contempt.—Supreme Court, (B.C.), 1898. Stoddard *vs* Prentice, 35 C. L. J., 207; 6 B.C.R., 308; Drake, J.

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.

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.

293. Fair comment.

No one commits an offence by publishing fair comments 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.

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.

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 or extent exceed what is reasonably sufficient for the occasion.

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 to 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.

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.

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.

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.

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., c. 163, s. 2.

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.

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.

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.

305. Theft defined.

Theft or stealing is the act of fraudulently and without co-

lour of right taking, or fraudulently and without colour of right converting to the use of any person, anything capable of being stolen, with intent—

(*a.*) to deprive the owner, or any person having any special property or interest therein, temporarily or absolutely of such thing or of such property or interest ; or

(*b.*) to pledge the same or deposit it as security ; or

(*c.*) to part with it under a condition as to its return which the person parting with it may be unable to perform ; or

(*d.*) to deal with it in such a manner that it cannot be restored in the condition in which it was at the time of such taking and conversion.

2. The taking or 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.

1. *See* R. *vs* Taylor, section 613, No. 1, et section 712, No. 1.

2. *See* R. *vs* Campbell, section 61, No. 2.

3. (*a.*) Under the Extradition Convention of 1889 between Great Britain and the United States by which "larceny" was made an extraditable crime, whatever was then larceny both in Canada and in the state in which the alleged crime was committed, was thereby made an extradition offence.

(*b.*) The abandonment of the term "larceny" in Canadian jurisprudence on the enactment of the Criminal Code of Canada subsequent to an extradition convention including such offence, does not affect the liability to extradition of a person charged with what was larceny at common law and is by the Criminal Code still an offence in Canada, under the name of "theft" or "stealing".—Court of Appeal, (Ont.), 1898. *Re* Gross; 2 Can. Cr. Cas., 67; 25 Ont. A. R., 83; Sir George Burton, C. J., Osler, MacLennan & Moss, JJ.

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. 63-64 V., c. 46, s. 3. *(Section 306 shall come into force on the 1st of January 1901.)*

1. *Up to the 1st of January 1901, section 306 shall read as follows:*—"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. R.S.C., c. 164, s. 50."

2. Prisoner and three others purchased goods from the W. M. Company, giving in part payment a receipt note, by the terms of which the ownership of the property remained in the company until payment of the note. The evidence showed that the note was discounted by the company in the bank as an ordinary promissory note, and, not being met at maturity, the company paid it by substituting a renewal and had the original note returned to them. The renewal note not being paid when due, the company sent out their bailiff, who seized the property under the original note. The prisoner, with assistance, retook the goods, and a charge was laid against him under s. 306 of the Code. On objection at trial that the original note being paid by the renewal, the property became vested in, and the ownership passed to the makers, or, if not, the endorsement to the bank constituted an equitable assignment and the bank was the only party who could have legally made the seizure. Objection sustained, and prisoner acquitted.—Supreme Court, (N.W.T.), 1895. R. *vs* Walker, 32 C.L.J., 300; Richardson, J.

3. (*a.*) An hotelkeeper who locks up the room of a guest containing the latter's baggage and effects, for non-payment of charges for board

and lodging, and who notifies the guest thereof, and requires him to leave the hotel on the same day or pay the bill, thereby places the guest's baggage, etc., under "lawful seizure and detention," in respect of the landlord's common law lien; and the taking away of such baggage by the guest without the landlord's authority is "theft" under sec. 306 of the Criminal Code.

(b.) The landlord does not by afterwards granting permission to the guest to remove some specified articles, and by allowing him free access to the room for that purpose, abandon such seizure and detention as regards the other effects; and the owner who removes any baggage as to which the permission does not extend, is guilty of "stealing" the same under sec. 306 of the Criminal Code.

(c.) The fact that the amount in respect of which a lien is claimed is in excess of the amount legally due does not dispense with the necessity of a tender of the amount legally due nor invalidate the lien.—Supreme Court, (N.W.T.), 1899. R. *vs* Hollingsworth, 2 Can. Cr. Cas., 291; Rouleau, J.

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.

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 thereof so entered, and

in such case no fraudulent conversion of the amount accounted for shall be deemed to have taken place.

1. *See* R. *vs* Hogle, section 553, No 2.

2. Crown case reserved. Indictment and conviction of the defendant under s. 308 of the Criminal Code for receiving from one Snelgrove $338.46, the property of one Scott, on terms requiring the defendant to account for it or pay it over to Scott and, instead thereof, fraudulently converting it to his own use. For the defendant, it was contended that as no terms were imposed by Snelgrove, there was no offence under the Code. The Court held that the section does not mean terms imposed by the person paying the money, but terms on which the defendant, when he receives it, holds it. Conviction affirmed.—High Court of Justice, (Ont.), 1894. Regina *vs* Unger, 30 C. L. J., 428.

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.

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.

2. 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.

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.

1. *See* Major *vs* McCraney, section 981, No. 1.

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.

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.

PART XXV

RECEIVING STOLEN GOODS

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.

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.

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 punish-

ment as if he were guilty of a first, second or subsequent offence of stealing the same. R.S.C., c. 164, s. 84.

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.

318. Receiving after restauration 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.

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.

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 57-58 V., c 57, s. 1.

(*c*.) being employed in the service of Her 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.

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.

321. Public servants refusing to deliver up chattels, moneys, or books, &c., 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 Her 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.

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.

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.

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 begun, depending or terminated in any such court, or of any original document in any wise relating to the business of any office or employment under Her Majesty, and being or remaining in any office appertaining to any court of justice, or in any government or public office. R.S.C., c. 164, s. 15.

326. Stealing post letter bags, &c.

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.

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.

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.

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.

331a. Fraudulently taking cattle found astray, &c.

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, conceals, receives, appropriates, purchases or sells, or fraudulently causes or procures, or assists in taking possession of, concealing, appropriating, purchasing or selling any cattle which are found astray ; or

(ii.) fraudulently, wholly or partially obliterates, or alters or defaces, or causes or procures to be obliterated, altered or defaced, any brand, mark or vent brand on any such cattle, or makes or causes or procures to be made any false or counterfeit brand, mark or vent brand on any such cattle ; or

(*b.*) without reasonable cause 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. 63-64 V., c. 46, s. 3. *(Section 331a shall come into force on the 1st of January 1901.)*

332. Dogs, birds, beasts and other animals.

Every one who steals any dog, or any bird, beast or other animal ordinarily kept in a state of confinement or for any domestic purpose, or for any lawful purpose of profit or advantage, is, if the value of the property stolen exceeds twenty dollars, guilty of an indictable offence and liable to a penalty not exceeding fifty dollars over and above the value of the property stolen, or to two years' imprisonment, or to both, and if the value of the property stolen does not exceed twenty dollars is guilty of an offence and liable upon summary conviction to a penalty not exceeding twenty dollars over and above such value, or to one month's imprisonment with hard labour.

2. Every one who, having been previously convicted of an offence under this section, is summarily convicted of another offence thereunder, is liable to three months' imprisonment with hard labour. 63-64 V., c. 46, s. 3. *(Section 332 shall come into force on the 1st of January 1901.)*

1. *Up to the 1st of January 1901, section 332 shall read as follows:*—"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 property stolen, or to one month's imprisonment with hard labour, 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.

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. 9."

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.

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 sufficiently 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.

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.

336. Trees in pleasure grounds, &c., 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.

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.

1. *See* R. *vs* Beale, section 892, No. 2.

2. *See* Robichaud *vs* La Blanc, section 842, No. 5.

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.

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.

340. Failing to satisfy justice that possession of tree, &c., 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.

341. Roots, plants, &c., growing in gardens, &c.

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, &c., growing elsewhere than in gardens, &c.

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 gruond, 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 metals.

Every one is guilty of an indictable offence and liable to two years' imprisonment who steals the ore of any metal, or any quartz, lapis calaminaris, manganese, or mundic, or any piece of gold, silver or other metal, or any wad, black cawk, or black lead, or any coal, or cannel coal, or any marble, stone or other mineral, from any mine, bed or vein thereof respectively.

2. 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 uninclosed and not occupied or worked as a mine, quarry or digging. R.S.C., c. 164, s. 25.

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.

1. *See* R. *vs* Conlin, section 785, No. 1.

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.

346. Stealing by picklocks, &c.

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, &c.

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, &c.

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.

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 (*e*).

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.

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.

353. Destroying, &c., 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. 19.

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.

1. Under s. 354 of the Criminal Code, 1892, which declares that every one is guilty of an indictable offence who, for any fraudulent purpose, takes, obtains, removes or conceals anything capable of being stolen, the prisoner was convicted on the charge that he had concealed a quantity of his own goods capable of being stolen, for the purpose of defrauding the insurance companies which had insured the goods, and leading the companies to believe that the goods had been destroyed by a fire which had previously taken place.

In a case reserved for the opinion of the Court as to whether such conviction was proper, the judge at the trial found as a fact that the prisoner had concealed the goods with the intent and purpose of obtaining from the insurance companies their value and also keeping the goods for himself, but it did not appear by the case stated whether the prisoner had actually made any claim under the policies or not.

Held, that the prisoner was properly convicted, and also that although the goods were his own goods, they came within the meaning of the expression "things capable of being stolen."—Queen's Bench, (Man.), 1895. Regina *vs* Goldstaub, 10 Man. Law Rep., 497 ; Taylor, C. J., Dubuc, Bain, JJ.

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 property into or has the same in Canada. R.S.C., c. 164, s. 88.

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 commits 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.

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.

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 fact.

3. It is a question of fact whether such commendation or depreciation does or does not amount to a fraudulent misrepresentation of fact.

1. *See* R. *vs* Boyd, section 968, No. 1.

2. *See* R. *vs* Lêtang, section 359, No. 4.

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.

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

(*b.*) To prove that the board of a bank had acted on the faith of the false representation made, it is not necessary to examine one or more of the directors, if the fact can be proved by other competent witnesses.

(*c.*) Evidence is admissible of facts which are subsequent to the false representation, to prove the insolvency of the defendants a very short time after the false representation had been made, as an evidence of their knowledge of its falsity when they made it.—Queen's Bench, Appeal Side, (Que.), 1896. The Queen *vs* Boyd *et al.*, R.J.Q., 5 Q. B., 1; Lacoste, C. J., Bossé, Hall, Würtele, JJ.

2. *See* R. *vs* Boyd & Somerville, section 668, No. 6, and section 735, No. 2.

3. (*a.*) To prove a charge of obtaining goods by false pretenses, where there is a lapse of time between the making of the pretense and the delivery of the goods, there must be a direct connection between them constituting the former a continuing pretense up to the time of delivery.

(*b.*) 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."—Supreme Court, (N.S.), 1898. R. *vs* Harty, 2 Can. Cr. Cas., 103; McDonald, C.J., Ritchie, J., Graham, E. J., Meagher & Henry, JJ.

4. (*a.*) A charge of obtaining money under false pretenses may be supported by showing a false pretense by the conduct and acts of the accused, and such pretense need not be in words or writing.

(*b.*) A debtor who has made a judicial abandonment for the benefit of his creditors whereby his property becomes vested in another, and who, knowing that he no longer had any right to receive the rent, presents himself afterwards as landlord to a tenant of the property, and receives the rent as he had formerly been accustomed to do, is guilty of a false pretense by his acts and conduct.

(*c.*) 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.

(*d.*) Per Court of Appeal.—The question whether the facts disclosed in a case constitute the crime of obtaining money by conduct amounting to false pretenses, is not a question of law but an issue of fact within the province of a jury and cannot be made the subject of a reserved case. —Queen's Bench, Crown Side, (Que.), 1899. R. *vs* Létang, 2 Can. Cr. Cas., 505; Würtele, J.

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.

361. Falsely pretending to inclose money, &c., 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.

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. 81.

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.

1. *See* Major *vs* McCraney, section 981, No. 1.

PART XXVIII

FRAUD

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 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.

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.

1. *See Ex parte* Gillespie, section 596, No. 1.

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.

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.

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.

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.

1. C & D purchased from L. & Sons an engine and boiler for the sum of $1,840. Of this amount they paid $1,000 in cash, and gave notes for the balance, payable in 6 and 12 months. Before the delivery of the boiler and engine, C. & D. agreed with L. & Sons to give the latter a first bill of sale as security for the payment of the notes. C. & D. failed to give the security agreed, and, being pressed by creditors, made an assignment of their property, including the engine and boiler, to S., one of the defendants, as trustee for the benefit of creditors. Defendants were convicted under the Criminal Code, s. 369, s.-s. (*b*) for having received

the property in question with intent that C. & D. should defraud their creditors.—*Held*, that the reception of the property by the defendant S., was not an offence under the section of the Code in question in the absence of proof of the original fraud.—*Held*, also, that what was contemplated by the section 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.—The Queen *vs* Shaw, 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.

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 or 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 imprisonment, and to a fine not exceeding two thousand dollars, who, knowing the existence of any unregistered prior sale, grant, mortgage, hypothec, privilege or encumbrance of or upon any real property, fraudulently makes any subsequent sale of the same, or of any part thereof. R.S.C., c. 164, ss. 92 and 93.

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.

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 *bonâ 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.

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 Her 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.

376. Warehousemen, &c., 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 or about whose business he is employed before the goods or other property named in such receipt, acknowledgment or writing have been actually delivered to or received by him as aforesaid, with intent to mislead, deceive,

injure or defraud any person, although such person is then unknown to him ; or

(*b.*) knowingly and wilfully accepts, transmits or uses any such false receipt or acknowledgment or writing. R.S.C., c. 164, s. 73.

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 wherehouse, 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.

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 acknowledgement 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 em-

ploy 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 manner conceals the character thereof, or the fact that the same is such wreck, from any person entitled to inquire 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.

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 between sunrise and sunset, is guilty of an offence and liable, on summary conviction, to a penalty of five dollars for the first offence and of seven dollars for every subsequent offence.

3. 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.

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.

384. Marks to be used on public stores.

The following marks may be applied in or on any public stores to denote Her 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 Her 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 Her Majesty in the right of Her 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.

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 Her 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, &c., of public stores.

Every one who, without lawful authority the proof of which lies on him, receives, possesses, keeps, sells or delivers any public stores bearing any such mark as aforesaid, knowing them to bear such mark, is guilty of an 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.

388. Not satisfying justices that possession of public stores is lawful.

Every one, not being in Her 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.

389. Searching for stores near Her Majesty's vessels.

Every one who, without permision 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 Her Majesty, or in Her Majesty's service, or from any mooring place or anchoring place appropriated to such vessels, or from any mooring belonging to Her Majesty, or from any of Her Majesty's 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.

390. Receiving regimental necessaries, &c., 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 exceeding forty dollars, and not less than twenty dollars and costs, and, in default of payment, to six months' imprisonment with or without hard labour who—

(*a.*) buys, exchanges or detains, or otherwise receives from any soldier, militiaman or deserter any arms, clothing or furniture belonging to Her 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.

391. Receiving, &c., necessaries from mariners 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.

392. Receiving, &c., 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 Her Majesty's Navy, and is borne on the books of any one of Her 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 Her 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.

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.

394. Conspiracy to defraud.

Every one is guilty of an indictable offence and liable to seven years' imprisonment who conspires with any other person, by deceit or falsehood or other fraudulent means, to defraud the public or any person, ascertained or unascertained, or to affect the public market price of stocks, shares, merchandise or anything else publicly sold, whether such deceit or falsehood or other fraudulent means would or would not amount to a false pretence as hereinbefore defined.

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

(*b.*) La production d'un contrat par écrit, bien que constituant un des éléments de preuve de la conspiration ne fait pas obstacle à une preuve testimoniale supplémentaire de fausses représentations antérieures ou postérieures à ce contrat.—Queen's Bench, Crown Side, (Que.), 1893. La Reine *vs* Sheppard *et al.*, R. J. Q., 4 Q. B., 470 ; Taschereau, J.

2. A conspiracy to defraud is indictable, even though the conspirators are unsuccessful in carrying out the fraud.

One of two conspirators can be tried on an indictment against him alone charging him with conspiring with another to defraud, the other conspirator being known in the country.—High Court of Justice, (Ont.), 1894. Regina *vs* Frawley, 25 Ont. R., 431; 1 Can. Cr. Cas., 253; Rose, McMahon, JJ.

3. A conspiracy to defraud is indictable although the object was to commit a civil wrong, and although, if carried out the act agreed upon would not constitute a crime.—High Court of Justice, (Ont.), 1894. R. *vs* Defries and R. *vs* Tamblyn, 1 Can. Cr. Cas., 207; 25 Ont. R., 64; MacMahon, J.

4. *See* also R. *vs* Defries and R. *vs* Tamblyn, section 752, No. 1.

5. Crown case reserved. The prisoners were indicted under s. 394 of the Cr. Code for a conspiracy to defraud. Upon their trial, evidence was offered by the Crown, and received, of a statement made by one of the defendants upon oath, in a prosecution before a magistrate in which this defendant was a complainant and gave evidence on his own behalf. The statement was made upon cross-examination of this defendant in the proceedings before the magistrate. The question submitted for the opinion of the Court was whether evidence of the statement was properly received, having regard to s. 5 of 56 Vic. (*C*), c. 31, an "Act respecting witnesses and evidence," which provides: "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 the defendant did not, so far as the case showed, assert his privilege before the magistrate, the evidence was receivable. —High Court of Justice, (Ont.), 1894. R. *vs* Madden & Bowerman, 30 C. L. J., 765; Armour, C. J., Street, J.

6. (*a.*) 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 purpose on the part of all as proof of the alleged conspiracy.

(*b.*) 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.

(*c.*) When the existence of the common design on the part of the defendants has been proved, evidence is then properly receivable as against both of what was said or done by either in furtherance of the common design.

(*d.*) The same rule will apply to admit 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, after proof of the existence of the common design on the part of the defendants with such conspirator.

(*e.*) 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 persuance of the common design.

(*f.*) Any such overt act is to be viewed as a renewal or continuation of the original agreement made by all of the conspirators, and, if done in another jurisdiction than that in which the original concerted purpose was formed, jurisdiction will then attach to authorize the trial of the charge in such other jurisdiction.

(*g.*) On a joint indictment for one offence, when the evidence for the one would enure to the benefit of the other, the right to a general reply is with the prosecution, though only one defendant called witnesses in defence.

(*h.*) *Semble* (per Boyd, C.) 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 proper to be reserved for the opinion of a Court of Appeal under Criminal Code, sec. 743.—High Court of Justice, (Ont.), 1894. R. *vs* Connolly & McGreevy, 1 Can. Cr. Cas., 468; Boyd, C., Ferguson, Meredith, JJ.

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.

396. Pretending to practise 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.

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.

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

(*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.

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.

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.

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.

1. (*a.*) On a charge of delivering a letter demanding property with menaces and without reasonable and probable cause, (Code, sec. 403), the question as to whether the demand was made without reasonable or probable cause is one of fact.

(*b.*) The onus of proof is upon the prosecution to prove a want of reasonable or probable cause.

(*c.*) A new trial should be ordered, if the judge's charge was so ambiguous that the jury *may* have been misled into thinking that a material issue of fact was withdrawn from their consideration as being a matter of law.—Supreme Court, (N.B.), 1895. R. *vs* Collins, 1 Can. Cr. Cas., 48; 33 N. B. R., 429.

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.

1. By sec. 404, Criminal Code, 1892, "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." The defendant was convicted by a magistrate of an offence against this enactment. The evidence was that the defendant went, as agent for others, to the complainant's abode to collect a debt from him; that the defendant threatened the complainant that if the latter did not pay the debt he would have him arrested; that the defendant demanded certain goods, part of which had been sold to the complainant by the defendant's principals, and on account of which the debt accrued, but upon which they had no lien or charge; and the complainant as he swore, being frightened by the threats and conduct of the defendant, acquiesced in the demand for the goods, part of which the defendant took away and delivered to his principals, who themselves took the remainder. The defendant swore that he demanded and took the goods as security for the debt which he was seeking to collect; but the complainant said nothing as to this:—

Held, Meredith, C. J., dissenting, that there was no evidence of intent to steal.

Conviction quashed.—High Court of Justice, (Ont.), 1898. Regina

vs Lyon, 29 Ont. R., 497; 2 Can. Cr. Cas., 242; Meredith, C. J., Rose, MacMahon, JJ.

2. (*a.*) A demand of money from a hotel-keeper under threat of prosecution for selling intoxicating liquor in prohibited hours contrary to a Liquor License Statute if the demand be not complied with, may constitute the offence under Criminal Code, 404, of demanding money with menaces, "with intent to steal the same."

(*b.*) For the purpose of proving the "intent to steal," it is sufficient if an inference of such intent is deducible from the acts and conduct of the prisoner as shewn by the evidence.

(*c.*) The question of "intent to steal" in a charge of demanding with menaces and with such intent is one entirely for the jury, and cannot be determined as a question of law by the judge.

(*d.*) *Per* Bain, J.: Where the trial takes place by consent without a jury, the finding by the trial judge of such intent should not be interfered with unless there is no evidence thereon which could properly be submitted to a jury.

(*e.*) Such a threat of prosecution made to a licensee, who to the knowledge of the prisoner has been previously convicted of an offense under the Liquor License Laws, and who was therefore liable to a cancellation of the 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 and healty state of mind, and any such threat is an illegal menace.—Queen's Bench, (Man.), 1898. R. *vs* Gibbons, 1 Can. Cr. Cas., 340; Dubuc, Killam, Bain, JJ.

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.

1. The word "accuses" in s. 405 of the Criminal Code, providing for the punishment of anyone who, with intent to extort or gain anything from any person, *accuses* that person or any other person of certain offences, includes the accusing of a person by laying an information under s. 558 of the Code.—High Court of Justice, (Ont.), 1900. Regina *vs* Kempel, 36 C. L. J., 312; Boyd, C., Robertson, Meredith, JJ.

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.

1. The "offence" to accuse, or threaten to accuse, a person whereof with intent to extort or gain anything from him is made an indictable offence by Criminal Code, sec. 406, need not be an offence under the

Code or other Dominion law, but may be an offence under a provincial law.—Supreme Court, (N.S.), 1895. R. *vs* Dixon, 2 Can. Cr. Cas., 589; Ritchie & Meagher, JJ., Graham, E. J. and Henry, J.

2. (*a.*) 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, it is not error for the court to admit the threatening letter in evidence without further proof of the hand-writing, and to submit to the jury for comparison with an exhibit, already in evidence, admittedly written by the accused.

(*b.*) A jury may properly make a comparison of doubtful or disputed handwriting, and draw their own conclusion 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 was called to prove the handwriting to be the same in both.

(*c.*) An error in receiving in evidence a document insufficiently proved may be cured by the subsequent evidence in the case; and it is not necessary to again tender the document after the evidence necessary to complete its proof has been disclosed.—Supreme Court, (N.S.), 1897. R. *vs* Dixon; 3 Can. Cr. Cas., 220; 29 N.S.R., 462; McDonald, C. J., Weatherbe, Townshend, Meagher, Henry, JJ.

PART XXX

BURGLARY AND HOUSEBREAKING

407. Definition of dwelling-house, &c.

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.

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.

410. Burglary defined.

Every one is guilty of the 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.

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, s. 3. *(Section 410 shall come into force on the 1st of January 1901.)*

1. *Up to the 1st of January 1901, section 410 shall read as follows:*—"Every one is guilty of the 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."

411. Housebreaking and committing an indictable offence.

Every one is guilty of the indictable offence called housebreaking, 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.

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.

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.

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.

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.

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.

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.

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.

PART XXXI

FORGERY

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 or 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 foreign prince, or state, or government, or any governor or other authority lawfully authorized thereto in any of Her 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.

421. False documents 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 of 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.

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.

1. *Held.*—When documents filed as exhibits in a civil suit form the subject matter of indictment for forgery and uttering, they may be impounded on application of the Attorney-General *pro Regina.*—Superior Court, (Que.), 1895. Couture *vs* Fortier, R. J. Q., 7 S. C., 197; Andrews, J.

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, possession or colony of Her 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 *procès-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, possession or colony of Her 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 possession of Her 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., 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 busi-

ness 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 enrolement 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.

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.

1. *See* Couture *vs* Fortier, section 422, No. 1.

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, possession or colony of Her 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, &c.

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, &c.

Every one is guilty of an indictable offence and liable to seven years' imprisonment who prints any proclamation, order, regulation or appointment, or notice thereof, and causes the same falsely to purport to have been printed by the Queen'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.

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.

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 ther message containing matter which he knows to be false.

430. Possessing forged bank notes.

Every one is guilty of an indictable offence and liable to four-

teen 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.

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.

1. *See* R. *vs* Weir, section 641, No. 9.

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.

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.

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 ex-

chequer 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 anything intended to resemble the whole or any distinguishing part of any bond or undertaking for the payment of money used by any dominion colony or possession of Her Majesty, or by any foreign prince or state, or by any body corporate, or other body of the like nature, whether within Her 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.

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 Her 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.

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.

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.

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.

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.

440. Making false entries in books relating to public funds.

Every one is guilty of an indictable offence 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, &c., 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, hand-bill 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-MARK—FRAUDULENT MARKING OF MERCHANDISE

443. Definitions.

In this part—

(*a*.) the expressions "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 *bonâ fide* carrying on business in connection with such goods. 51 V., c. 41, s. 2.

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 *primâ 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 possession, 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.*) applies it to any covering, label, reel, or other thing in or with which the goods are sold or exposed or had in possession for any purpose of sale, trade or manufacture ; or

(*c.*) places, incloses or annexes any goods which are sold or exposed or had in possession for any purpose of sale, trade or manufacture in, with or to any covering, label, reel, or other thing to which a trade-mark or 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.

1. (*a.*) 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.

(*b.*) Criminal Code, sec. 710, applies only to cases of forgery of a trade-mark and not to cases of "falsely applying" to shift the onus to the defendant of proving such assent.—Court of General Sessions for the County of York, (Ont.), 1898. R. *vs* Howarth, 1 Can. Cr. Cas., 243; McDougall, J.

447. Forgery of trade-marks, &c.

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.

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 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.

1. (*a.*) Where a trade-mark is complained of as being forged and as infringing the rights of the proprietor of a duly registered trade-mark, any ressemblance of a nature to mislead an incautious or unwary purchaser, or calculated to lead persons to believe that the goods marked are the manufacture of some person other than the actual manufacturer, is sufficient to bring the person using such trade-mark under the purview of article 448 of the Criminal Code, which prohibits the sale of goods falsely marked.

(*b.*) In such case it is not necessary that the ressemblance should be such as to deceive persons who might see the two marks placed side by side, or who might examine them critically.

(*c.*) The Canadian law respecting trade-marks being derived from English legislation, reference for its interpretation should be had to English decisions, more especially as the law extends throughout the Dominion, and it is desirable that the jurisprudence should be uniform.—Queen's Bench, Crown Side, (Que.), 1897. The Queen *vs* Authier, R. J. Q., 6 Q. B., 146; Würtele, J.

2. A prosecution under section 448 of the Criminal Code for selling goods to which a false trade description is applied must be by indictment. Prohibition granted to restrain summary proceedings before a magistrate. High Court of Justice, (Ont.), 1898. Regina *vs* The T. Eaton Co., Limited, 29 Ont. R., 591; 2 Can. Cr. Cas., 252; Rose, J.

3. (*a.*) The use of the words "quadruple plate" in an advertisement of sale of silverplated ware may constitute a false trade description, the application of which is an offence under Cr. Code, sec. 446.

(*b.*) It is not necessary that a false trade description under C. Code, sec. 446, 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.—High Court of Justice, (Ont.), 1899. R. *vs* The T. Eaton Co., Limited, 3 Can. Cr. Cases, 421; Meredith, C. J., Rose, McMahon, JJ.

449. 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. 63-64 V., c. 46, s. 3. *(Section 449 shall come into force on the 1st of January 1901.)*

1. *Up to the 1st of January 1901, section 449 shall read as follows:*—"Every one is guilty of an indictable offence who sells, or exposes or offers for sale, or traffics in, bottles marked with a trade-mark, blown or stamped or otherwise permanently affixed thereon, without the assent of the proprietor of such trade-mark. 51 V., c. 41, s. 7."

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 Her Majesty, &c.

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 Her Majesty or any of the royal family, or any Government department of the United Kingdom or of Canada. 51 Vic., 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 descrip-

tions to goods, and that in the case which is the subject of the charge he was so employed by some person resident in Canada, and was not interested in the goods by way of profit or commission dependent on the sale of such goods ; and

(*b.*) that he took reasonable precaution against committing the offence charged ; and

(*c.*) that he had, at the time of the commission of the alleged offence, no reason to suspect the genuiness 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 *bonâ 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, &c.

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 a particular method, to indicate the particular class or method of manufacture of such goods : Provided, that where such trade description includes the name of 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.

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.

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.

PART XXXV

OFFENCES RELATING TO THE COIN

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 Her Majesty's mints, or gold or silver coin of any foreign prince or state or country, or other coin lawfully current, by virtue of any proclamation or otherwise, in any part of Her Majesty's dominions.

(*b.*) "Current copper coin," includes copper coin coined in any of Her Majesty's mints, or lawfully current, by virtue of any proclamation or otherwise, in any part of Her 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 appearance 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.

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.

462. Counterfeiting coins, &c.

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.

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. 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 Her Majesty. R.S.C., c. 167, s. 28.

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.

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.

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 Her Majesty's mints into Canada, any puncheon, counter puncheon, matrix, stamp, die, pattern, mould, edger, edging or other tool, collar, instrument, press or engine, used or employed in or about the coining of coin, or any useful part of any of the several 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 coin.

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.

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 apparently intended to resemble or pass for, any current copper coin ; or

(*b.*) without lawful authority or excuse, the proof of which shall lie on him, knowingly—

(i.) 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.

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.

1. 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.—Queen's Bench, (Que.), 1899. Regina *vs* Benham, R. J. Q., 8 Q. B., 448; Archibald, J.

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.

475. Uttering light coins, medals, counterfeit copper coins, &c.

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.

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 conviction before two justices of the peace, to a penalty not exceeding ten dollars. R.S.C., c. 167, s. 18.

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.

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.

PART XXXVI

ADVERTISING COUNTERFEIT MONEY

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. 63-64 V., c. 46, s. 3. *(Section 479 shall come into force on the 1st of January 1901.)*

1. *Up to the 1st of January 1901, section 479 shall read as follows:*—"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. 51 V., c. 40, s. 1."

2. Documents or paper writings not counterfeits, but so made or executed as to resemble United States Government notes, are counterfeit tokens of value within the meaning of the Criminal Code, 1892, sec. 479.—Supreme Court. (N.B.). 1895. The Queen *vs* Corey, 33 N. B. R., 81; 1 Can. Cr. Cas., 161; Tuck, J.

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

(*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.

PART XXXVII

MISCHIEF

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 Her Majesty's stores or munitions of war. R.S.C., c. 168, ss. 2 to 5, 7, 8, 19, 28, 46 and 47.

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.

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 or 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.

486. Recklessly setting fire to forest, &c.

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.

487. Threats to burn, &c.

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.

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.

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 obs-

tructs 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.

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, &c.

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.

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.

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.

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.*)

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.

498. Mischief to 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.

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

(*e.*) 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.

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.

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.

1. *See* R. *vs* Horton, section 872, No. 11.

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.

503. Injuries to poll-books, &c.

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.

1. *See also* R. S. C., c. 8, s. 102.

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.

505. Injuries to land marks indicating municipal divisions.

Every one is guilty of an indictable offence and liable to seven years' imprisonment who wilfully pulls down, defaces, alters or removes any mound, land mark, post or monument lawfully erected, planted or placed to mark or determine the boundaries of any province, county, city, town, township, parish or other municipal division. R.S.C., c. 168, s. 56.

506. Injuries to other land marks.

Every one is guilty of an indictable offence and liable to five years' imprisonment, who wilfully defaces, alters or removes

any mound, land mark, post or monument lawfully placed by any land surveyor to mark any limit, boundary or angle of any concession, range, lot or parcel of land.

2. 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, &c.

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, &c.

Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding fifty dollars, who wilfully and without the permission of the Minister of Marine and Fisheries (the burden of proving which permission shall lie on the accused) removes any stone, wood, earth or other material forming a natural bar necessary to the existence of a public harbour, or forming a natural protection to such bar. 56 V., c. 32, s. 1.

508. Injuries to trees, &c., 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 des-

troys 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.

509. Injuries to vegetable productions growing in gardens, &c.

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, hothouse, 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.

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 dis-

tilling, 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.

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.

PART XXXVIII

CRUELTY TO ANIMALS

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—

(*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 58-59 V., c. 40, s. 1.

(*b.*) while driving any cattle or other animal is, by negligence or ill-usage in the driving thereof, the means whereby any michief, damage or injury is done by any such cattle or other animal ; or

(*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.

1. On a complaint for alleged cruelty to animals by the use of overdraw rein. *Held*:—That the check was necessary to manage the horse and that it was quite lawful to use a check to render an animal handsomer, and thus give more value to the property of the owner, although the rein caused a certain amount of annoyance to the animal.—Recorder's Court, Montreal, 1894. Society for the Prevention of Cruelty to Animals *vs* Lawry, XVII L. N., 118; De Montigny, R.

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.

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. 172, s. 12.

PART XXXIX

OFFENCES CONNECTED WITH TRADE AND BREACHES OF CONTRACT

516. Conspiracies 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.

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.

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.

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.

520. Combinations 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. 62-63 V., c. 46, s. 1 ; 63-64 V., c. 46, s. 3. *(Section 520 shall come into force on the 1st of January 1901.)*

1. *Up to the 1st of January 1901, section 520 shall read as follows:*—"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, and 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, **unlawfully**—

(*a.*) to 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 prevent, limit, or lessen the manufacture or production of any such article or commodity, or to enhance the price thereof; or

(*d.*) to 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. 52 V., c. 41, s. 1; 62-63 V., c. 46, s. 1."

2. (*a.*) To constitute the offence mentioned in article 520, Cr. Code, the combination must be formed with a view of *unlawfully* attaining any one or more of the restrictions of trade therein mentioned.

(*b.*) A party has a right to dispose of his manufactured goods in the way he thinks best for his own interest—this way may perhaps be detrimental to some other people in the same line of business, but this amounts to no more than an ordinary competition and cannot constitute by itself an *unlawful* combination under art. 520 Criminal Code.

(*c.*) It is not *unlawful* for the proprietor of certain manufactured goods (in this case *cigarettes*), in order to secure the greatest circulation for his goods, to agree with as many parties as he can find, that they consent to sell only such *cigarettes* exclusively to those of other proprietors.—Que., 1897. The Queen *vs* The American Tobacco Company of Canada, 3 R. J., 453; Dugas, J. S.

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 Her Majesty's mails, or to carry passengers or freight, or with Her Majesty, or any one on behalf of Her Majesty, in connection with a Government railway on which Her Majesty's mail, 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 Her 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 conviction, to a penalty not exceeding ten dollars. R.S.C., c. 173, s. 19.

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.

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.

525. Intimidation of any person to prevent him dealing in wheat, &c.; 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.

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 the public sale of any Indian lands, or public lands of Canada, or of any

province of Canada, by intimidation, or illegal combination, hinders or prevents, or attempts to hinder or prevent, any person from bidding upon or purchasing any lands so offered for sale. R.S.C., c. 173, s. 14.

PART XL

ATTEMPTS—CONSPIRACIES—ACCESSORIES

527. Conspiring to commit an indictable offence.

Every one is guilty of an indictable offence and liable to seven years' imprisonment who, in any case not hereinbefore provided for, conspires with any person to commit any indictable offence.

1. *See* R. *vs* Sheppard *et al.*, section 394, No. 1.

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.

1. *See* R. *vs* Taylor, section 613, No. 1, and section 712, No. 1.
2. *See* R. *vs* Boyd, section 358, No. 1.

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.

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.

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 a first conviction, imprisonment for life, or for fourteen years, or for any term longer than fourteen years.

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.

TITLE VII

PROCEDURE

PART XLI

GENERAL PROVISIONS

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. 63-64 V., c. 46. *(Subsection 3 comes into force on the 1st of 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.

1. L'article 534 du Code criminel est-il *ultra vires* en autant que la province de Québec est concernée, et si l'on décide ainsi, quelle est la règle à suivre en pareil cas?

Jugé:—Que l'article 534 paraît être, de l'avis même du législateur, insuffisant pour lier les tribunaux civils de la province et que la règle qui doit les guider en pareil cas devrait être celle en vigueur en Angleterre en 1774, (date de l'introduction des lois anglaises en ce pays), qui veut que, au moins dans les cas de félonie, le *procès* criminel soit instruit avant le *procès* civil. Mais comme le ministre de la justice a droit d'être entendu, lorsque la constitutionalité d'un acte du Canada est soulevée, l'appel est permis afin de permettre au tribunal lui-même de décider la question.—Cour du Banc de la Reine, (Que.), 1898. Paquet vs Lavoie, R. J. Q., 7 Q. B., 277; Blanchet, J.

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.

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 offences 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.

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.

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. 56 V., c. 32.

1. *See* R. *vs* Wright, section 270, No. 1.

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 Queen ; 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 cri-

mes; 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 comes into force on the 1st of January 1901.)*

1. *Quære:*—Is the Criminal Code, 1892, s. 540, relating to the jurisdiction of County Courts in criminal matters, *ultra vires?—Ex parte* Might, 34 N. B. R., 127.

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.

Proceedings for the trial and punishment of a person who is not a subject of Her 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.

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 corruption, 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, s. 1.

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 mortgager.

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 minors.

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, s. 1.

1. *57-58 Victoria, chapter 58.*—An Act respecting Trial and Imprisonment of youthful offenders.

.....

2. Young persons apparently under the age of sixteen years who are:—

(*a.*) arrested upon any warrant; or

(*b.*) committed to custody at any stage of a preliminary enquiry into a charge for an indictable offence; or

(*c.*) committed to custody at any stage of a trial, either for an indictable offence or for an offence punishable on summary conviction; or

(*d.*) committed to custody after such trial, but before imprisonment under sentence,—

shall be kept in custody separate from older persons charged with criminal offences and separate from all persons undergoing sentences of imprisonment, and shall not be confined in the lock-ups or police stations with older persons charged with criminal offences or with ordinary criminals.

3. If any child, appearing to the court or justice before whom the child is tried to be under the age of fourteen years, is convicted in the province of Ontario of any offence against the law of Canada, whether indictable or punishable on summary conviction, such court or justice instead of sentencing the child to any imprisonment provided by law in such case, may order that the child shall be committed to the charge of any home for destitute and neglected children, or to the charge of any children's aid society duly organized and approved by the Lieutenant-Governor of Ontario in Council, or to any certified industrial school.

4. Whenever in the province of Ontario, an information or complaint is laid or made against any boy under the age of twelve years, or girl under the age of thirteen years, for the commission of any offence against the law of Canada, whether indictable or punishable on summary conviction, the court or justice seized thereof shall give notice thereof in writing to the executive officer of the children's aid society, if there be one in the county, and shall allow him opportunity to investigate the charges made, and may also notify the parents of the child, or either of them, or other person apparently interested in the welfare of the child.

2. The court or justice may advise and counsel with the said officer and with the parents or such other person, and may consider any report made by the said officer upon the charges.

3. If, after such consultation and advice, and upon consideration of any report so made, and after hearing the matter of information or complaint, the court or justice is of opinion that the public interest and the welfare of the child will be best served thereby, then, instead of committing the child for trial, or sentencing the child, as the case may be, the court or justice may, by order:—

(*a.*) authorize the said officer to take the child and, under the provisions of the law of Ontario, bind the child out to some suitable person until the child has attained the age of 21 years, or any less age; or

(*b.*) place the child out in some approved foster-home; or

(*c.*) impose a fine not exceeding ten dollars; or

(*d.*) suspend sentence for a definite period or for an indefinite period; or

(*e.*) if the child has been found guilty of the offence charged or is shown to be wilfully wayward and unmanageable, commit the child to a certified industrial school, or to the provincial reformatory for boys, or

to the refuge for girls, as the case may be, and in such cases, the report of the said officer shall be attached to the warrant of commitment.

5. Whenever an order has been made under either of the two sections next preceding, the child may thereafter be dealt with under the law of the province of Ontario in the same manner in all respects, as if such order had been lawfully made in respect of a proceeding instituted under authority of a statute of the province of Ontario.

6. No protestant child dealt with under this Act shall be committed to the care of any Roman Catholic children's aid society, or be placed in any Roman Catholic family as its foster-home; nor shall any Roman Catholic child dealt with under this Act, be committed to the care of any protestant children's aid society, or be placed in any Protestant family as its foster-home. But this section shall not apply to the care of children in a temporary home or shelter, established under the Act of Ontario, fifty-six Victoria, chaper forty-five, intituled: "An Act for the prevention of cruelty to, and better protection of, children," in a municipality in which there is but one children's aid society.

550a. Exclusion of public from place of trial.

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, s. 3. *(Section 550a shall come into force on the 1st of 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 Her Majesty or where the overt act alleged is an attempt to injure the person of Her 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, &c. (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 regard 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, &c., (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.

552. Arrest without 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 to treason ; sixty-eight, sixty-nine and seventy, treasonable offences ; seventy-one, assaults on the Queen; 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 act ; 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 give 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 lands; 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, s. 1.

Part XXIX.—Sections three hundred and ninety-eight, aggravated robbery ; three hundred and ninety-nine, robbery ; 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, &c.; 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: 58-59 V., c. 40, s. 1.

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 sawlogs; five hundred, attempting to injure or poison cattle.

Part XXXVIII.—Sections five hundred and twelve, cruelty to animals; five hundred and thirteen, keeping cock-pit.

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. 58-59 V., c. 40, s. 1.

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. 58-59 V., c. 40, s. 1.

6. Any officer in Her 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.

1. *See* Mousseau *vs* the City of Montreal, section 22. No. 1.

2. *See* Forsythe *vs* Goden, section 22, No. 2.

3. *See* R. *vs* Cloutier, section 22, No. 3.

PART XLIV

COMPELLING APPEARANCE OF ACCUSED BEFORE JUSTICE

553. Magisterial jurisdiction.

For the purposes of this Act, the following provisions shall have effect with respect to the jurisdiction of justices :

(*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 ; 63-64 V., c. 46, s. 3. *(Paragraph (a) shall come into force on the 1st of January 1901.)*

(*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.

1. *Up to the 1st of January 1901, paragraph (a) shall read as follows:* "(*a.*) Where the offence is committed in any water, tidal or other, be-

tween two or more magisterial jurisdictions, such offence may be considered as having been committed in either of such jurisdictions;"

2. The offence of fraudulent conversion of the proceeds of a valuable security, mentioned in art. 308 of the Criminal Code of Canada, does not consist in one act, but in a continuity of acts—the reception of the valuable security, the collection of the proceeds, the conversion of the proceeds, and lastly, the failure to account for the proceeds; and where the beginning of the operation is in one district and the continuation and completion are in another district, the accused may be arrested and proceeded against in either district. So, a committal and conviction in the district of Iberville, on the charge of fraudulent conversion of the proceeds of a promissory note which was received by the prisoner in that district, but collected by him in the district of Bedford, was held good. —Queen's Bench, Appeal Side, (Que.), 1896. The Queen *vs* Hogle, R.J.Q., 5 Q. B., 59; Baby, Bossé, Blanchet, Hall, Würtele, JJ.

3. An offence which was commenced in one province and completed in another is triable in either province.—Queen's Bench, (Que.), 1898. *Ex parte* William E. Gillespie, R. J. Q., 7 Q. B., 422; 1 Can. Cr. Cas., 551; Würtele, J.

4. *Held* (concurring in the opinion of Würtele J., in *Ex parte Gillespie*, 7 Q. B., p. 422):—

(*a.*) Where the offence charged was the making, circulation and publication of false statements of the financial position of a company, and it appeared that the statements were mailed from a place in Ontario to the parties intended to be deceived in Montreal, the offence, although commenced in Ontario, was completed in Montreal by the delivery of the letters to the parties to whom they were addressed.

(*b.*) In such case, the Court of Queen's Bench in Montreal has jurisdiction to try the accused, who has been duly committed for trial by a magistrate of the district.—Queen's Bench, Crown Side, (Que.), 1898. The Queen *vs* Gillespie, R. J. Q., 8 Q. B., 8; 2 Can. Cr. Cas., 399; Ouimet, J.

5. (*a.*) L'intimé, bien que juge de paix, pour le district de Beauharnois, assumait une qualité que la loi ne lui reconnaissait pas en s'intitulant juge de paix pour le comté de Beauharnois.

(*b.*) Les procédures adoptées et suivies dans la cause où l'intimé avait assumé la qualité de juge de paix pour le comté de Beauharnois, étaient d'une nature judiciaire quoique nulles et illégales pour défaut de juridiction.

(*c.*) Le bref de prohibition émané en cette cause était une procédure régulière et légale aux fins de contraindre le juge de paix à discontinuer des procédures nulles et illégales.—Queen's Bench, Appeal Side, (Que.), 1897. Dagenais & Ellis & Labelle, 3 R. J., 565; Lacoste, C. J., Bossé, Blanchet, Hall, Würtele.

6. (*a.*) A commitment signed by justices of the peace purporting to act as justices of the peace in and for the county of Labelle, will be quashed as no justices are appointed with such a designation; and as they ought to have acted as justices of the peace in and for the district of Ottawa;

(*b.*) *Semble*:—On a writ of *habeas corpus* based upon the insufficiency of the commitment, the committing justices may furnish the gaoler with a legal warrant and so defeat the writ.—Superior Court, (Que.),

1898. *Ex parte* Mary Welsh, 4 R. J., 437; 2 Can. Cr. Cas., 35; Archibald, J.

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 :

(*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 suspected 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.

1. *See Ex parte* R. Ewan, section 678, No. 2.

2. *See* R. *vs* William E. Gillespie, section 553, No. 3, and section 596, No. 1.

3. A magistrate acts without jurisdiction, and so renders himself liable in trespass, where, without any written information charging another with a felony, he issues a warrant for his arrest therefor; and, while a reasonable ground for the belief that such person had committed the felony might justify the magistrate in arresting such person himself, it does not enable him to issue his warrant for his arrest by another. Ashley's Case, 6 Co., 320, followed.

The notice of action in this case alleged that the defendant on the 8th of September 1893, wrongfully, illegally and without reasonable and probable cause, issued his warrant and caused plaintiff to be arrested and kept under arrest on a charge of arson, and on said 8th of September maliciously, illegally and wrongfully, and without any reasonable and probable cause, caused plaintiff to be brought before him, and to be committed for trial, and to be confined in the common gaol, alleging the subsequent indictment of the plaintiff, his trial on the charge, and his acquittal :—

Held, a good notice of action in trespass.—High Court of Justice, (Ont.), 1895. McGuiness *vs* Dafoe, 27 Ont. R., 117; Armour, C. J., Street, J.

4. (*a.*) 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 some one 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.

(b.) A justice of the peace who illegally issues a warrant without having received a sworn information in respect of the charge is liable in trespass for the arrest made thereunder, and he cannot justify the commanding of the constable to make the arrest by showing that he, the justice, had a reasonable suspicion that an offence had been committed. (Criminal Code, s. 22.)

(c.) Although an 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. —Court of Appeal, (Ont.), 1896. McGuiness *vs* Dafoe, 3 Can. Cr. Cas., 139; Hagarty, C. J., Burton, Osler and McLennan, JJ.

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 con-

veyance 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.

1. *62-63 Victoria, chap. 37.*

An Act to provide for the Administration of Criminal Justice in the territory east of Manitoba and Keewatin and North of Ontario and Quebec.

(Assented to 11th August, 1899.)

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

1. All offences committed 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 may be laid and charged to have been committed, and may be enquired of and tried within any district, county or place in any of the said provinces; 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 district, county or place; and such court shall proceed therein to trial, judgment and execution or other punishment for any such offence in the same manner as if such offence had been committed within the district, county or place where such trial is had.

2. The several courts of criminal jurisdiction in the said provinces of Ontario, Quebec and Manitoba, including justices of the peace, are hereby constituted and established as courts having the same powers, jurisdiction and authority in case of such offences, as they respectively have with reference to offences within their ordinary jurisdiction as provincial courts.

3. This Act shall apply to past offences as well as to such as may be hereafter committed.

2. As to offences committed in the territories of Abittibi, Mistassini and Ashuanipi, in the province of Quebec, *see* Statutes of Quebec, 62 V., c. 5, s. 4.

556. Offences committed in the district of Gaspé.

Whenever any offence is committed in the district of Gaspé,

the offender, if committed to gaol before trial, may be committed to the common gaol of the county in which the offence mitted, and if tried before the Court of Queen's Bench, he shall mitted, and if tried before the Court of Queen'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. (*Sic.*) 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 parts XLIV and XLV. 58-59 V., c. 40, s. 1.

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.

1. S., being a holder of a promissory note indorsed to him by the payees, sued to recover the amount, but his action was dismissed upon evidence that it had never been signed by the person whose name appeared as maker, nor with his knowledge or consent, but had been signed by his son without his authority. The son's evidence on the trial of the suit was to the effect that he never intended to sign the note, and if he had actually signed it with his father's name, it was because he believed that it was merely a receipt for goods delivered by express. Immediately 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 express company's agent, by whom 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 the signature was denied and could not be proved. However, without further inquiry, and notwithstanding the warning of a mutual friend against taking criminal proceeding, S. laid information against the son for forgery. The police magistrate at Montreal, upon the investigation of the charge, declared it to be unfounded and discharged the prisoner:—*Held*, reversing the judgments of both courts below, that, under the circumstances, the prosecution was without reasonable or probable cause, and the plaintiff was entitled to substantial damages.—Supreme Court, (Can.), Charlebois *vs* Surveyer, 27 S. C. R., 556.

2. A complainant, 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 gaol, is not liable to an action for malicious prosecution, the essential ground for such an ac-

tion being the carrying on maliciously and without probable cause of a legal prosecution: Smith *vs* Evans, 13 U. C. C. P., 60; Stephens *vs* Stephens, 24 U. C. C. P., 424, referred to Anderson *vs* Wilson, 25 Ont. R., 91, considered. His liability in an action of trespass for such imprisonment would depend upon whether he had directly interfered in and caused the arrest, or whether the conviction and imprisonment were the acts of the magistrate alone. There was evidence upon which the jury might have reasonably found that the complainant, before laying the information assisted in arresting the plaintiff. The case was left to the jury by the trial judge as one of trespass as regarded that arrest, and of malicious prosecution as to the subsequent proceedings, and they found a general verdict in the plaintiff's favour for $200 damages. *Held*, that there must be a new trial.—Grimes *vs* Miller, 23 Ont. A. R., 764.

3. In order that there may be probable cause for an arrest it is necessary that the fact invoked by the accuser be such, as if true, would justify a criminal prosecution. If this element is wanting good faith or absence of malice is no excuse.—Superior Court in Review, (Que.) Gowan *vs* Holland, R.J.Q., 11 S.C., 75; Jetté, Loranger, Davidson, JJ.

4. In an action for malicious prosecution the trial judge, not having been requested so to do, omitted to instruct the jury that even although the defendant believed in the charge he was making, he might still be held to be acting maliciously:—*Held*, that the judge was not excused from directing the jury on a material point by the absence of a request, and that his failure to do so was a valid reason for setting the verdict aside.—Hawkins *vs* Snow, 28 N. S. R., 259.

5. An action for malicious prosecution was brought against a person who had preferred and prosecuted a constable for trespass *vi et armis*, and an indictable offence by wilfully misconducting himself in the execution of legal process. At the trial of these charges, the present defendant had abandoned the first charge, and the present plaintiff was acquitted on the second. A solicitor who had been consulted by the present defendant and had advised the prosecution of the present plaintiff on the above charges, was joined as a defendant in this action. The trial judge dismissed the action as against the solicitor on the ground that there was no evidence to go to the jury.—*Held*, that the solicitor having had the same knowledge of the facts as the other defendant, his case should have been put to the jury. The taking of legal advice, in the province of Nova Scotia, before laying a charge, while it is not the same thing as taking counsel's opinion in England, is matter for the jury, and, with some limitations, tends to upset the idea of malice.—Seary *vs* Saxton, 28 N. S. R., 278.

6. That the prosecution in question was instituted on the advice of counsel is not sufficient to protect the prosecutor if he does not exercise reasonable care to ascertain and lay before counsel the facts in reference to the alleged offence. Absence of reasonable and probable cause for the prosecution is not by itself sufficient to impose liability; malice must exist, and the question of malice must be left to the jury.—St. Denis *vs* Shoultz, 25 Ont. A. R., 131.

7. In an action for malicious prosecution brought against an insurance company by reason of an information charging the plaintiff with arson, and causing his arrest thereon, the jury found that the company's officers, who laid the charge, believed it to be true, but that such belief

was not under the circumstances reasonable, and that they did not act on it in laying the charge and causing the arrest, but were actuated by other and improper motives:—*Held*, that the first finding, being a finding that the defendants acted on their honest belief, and the evidence warranting that finding, absence of reasonable and probable cause could not be held to have been shewn simply because further inquiries might have been made or further facts shewn; that the question of malice was of no importance, and that the defendants were entitled to judgment.—Malcolm *vs* Perth Mutual Fire Insurance Co., 29 Ont. R., 406.

8. Malice alone will not justify the granting of damages in an action for malicious prosecution; there must also be a want of probable cause. Probable cause consists of a number of facts and circumstances, known to the informant, which would lead a reasonable person to believe in the truth of the information.—Lemire *vs* Duclos, R.J.Q., 13 S.C., 82.

9. Plaintiff, one of the coroners for the county of Halifax, went to the premises of defendant, an undertaker, and demanded possession of a body that was lying there, for the purpose of holding an inquest. Defendant having refused to comply with plaintiff's request, plaintiff returned subsequently in defendant's absence, and made a second demand, and, having been again refused, he entered the building by force, and removed the body in the casket in which it had been placed, and proceeded to hold the inquest. Defendant thereupon caused plaintiff to be arrested, charged with feloniously entering defendant's premises and stealing the casket. In an action brought by plaintiff against defendant, for malicious prosecution, the trial judge instructed the jury, in effect, that if the motive of defendant was resentment that would amount to malice:—*Held*, that he was right in doing so. At the argument it was contended, on behalf of defendant, that the presiding judge should have directed the jury that, if defendant honestly believed in the truth of the charge he laid before the magistrate, that would negative the existence of any indirect or improper motive on his part:—*Held*, that this contention was clearly wrong, as defendant might believe in the truth of the charge, and, at the same time, be actuated by vindictiveness or spite, or by some other improper motive which would constitute malice in law; that it was not sufficient ground for setting aside the verdict, that the presiding judge, in addressing the jury, expressed himself strongly in favour of a verdict for plaintiff, where he, at the same time, instructed the jury that they were not bound to follow his opinion, and that the responsibility of finding the facts was theirs; that it was not sufficient ground for setting aside the verdict that the presiding judge, in addressing the jury, described as an admission made by the defendant, an answer made by defendant which, without a specific admission, indicated a belief on his part that plaintiff merely took the casket as a convenient way of taking the body, the verdict appearing, in other respects, to be entirely justified by the evidence.—Per McDonald, C. J., dissenting, that while a judge, presiding at the trial of a case, has a right to state to the jury his own view of the evidence, he has no right to impress his views upon them in such a way as to prejudice the free exercise of their own individual opinions.—Hawkins *vs* Snow, 29 N.S.R., 444.

10. The plaintiff's wife assaulted and beat a person who came to ask for payment of an account, and who refused to leave the house when requested to do so. The person so assaulted caused the woman to be arrested, but the charge was dismissed by the magistrate. In an action

of damages for malicious prosecution:—*Held*, that the plaintiff, by himself or by any one acting for him, had a right to use the force necessary to expel from his house a person who refused to go when requested, but he had no right, either himself, or by any one acting for him, to fall upon him and beat him, as his wife had done in this case. Under the circumstances the complaint for assault was not laid without reasonable and probable cause.—Superior Court, (Que.), 1898. Lavigne *vs* Lefebvre, R. J. Q., 14 S. C., 275; Archibald, J.

11. Where an affidavit of justification to a bond for security for costs has been given, and the party making the same, had not sufficient goods, beyond the legal exemptions, and a prosecution for perjury has been instituted against him, even though he be discharged from the accusation, no action for damages will lie for malicious arrest, there having been probable cause for the issuing of a warrant.—Lalande *vs* Campeau, 5 R. J., 438.

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.

1. *(a.)* Dans l'espèce, le juge de paix avait devant lui une preuve suffisante pour faire assigner l'accusé, et ce, tant par le droit commun que par le Code criminel ; et il avait aussi *strictement* le droit d'examiner un ou plusieurs témoins, *ex parte*, avant d'émaner un ordre de sommation contre l'accusé.

(b.) L'irrégularité de la plainte, devant le juge de paix, n'enlevait pas, dans l'espèce, la protection que lui accordait l'art. 22 C. P. C. et 2599 S. R. P. Q.; et sa bonne foi la lui garantissait.—Magistrates' Court, (Que.), 1894. Grenier, fils, *vs* Ahern *et al.*, 1 R. J., 362; Tremblay, M.D.

2. A magistrate has a discretion to exercise as to the issue of warrants of arrest, and if, after hearing and considering the allegations of the complainant and the evidence, he refuses to issue a warrant for the apprehension of the person accused, a writ of *mandamus* will not lie to compel him to do so.—Superior Court, (Que.), 1899. Thompson *vs* Desnoyers, R. J. Q., 16 C. S., 253; 3 Can. Cr. Cas., 68; Tait, J.

3. *Held*:—*(a.)* That the judge of sessions can legally receive affidavits or depositions in support of an information and complaint made before him, before issuing of the warrant, and in the absence of the accused.

(b.) That such affidavits or depositions do not form part of a record, but are merely taken in the exercise of the magistrate's discretion, before issuing warrant, to have and consider the allegations of the complaint, and cannot be used afterwards as part of the preliminary enquiry.

—Superior Court, (Que.), 1900. Weir *et al. vs* Choquet *et al.*, 6 R. J., 121; Taschereau, J.

4. Where a police magistrate receives an information, and, after hearing and considering the allegations of the informant, decides that the statute invoked in support of the prosecution does not apply, and that what is charged does not constitute an offence, and therefore refuses to issue either a summons or warrant against the accused, a mandamus does not lie to compel him to do so.—High Court of Justice, (Ont.), 1899. *Re* E. J. Parke, 3 Can. Cr. Cas., 122; Meredith, J.

5. (*a.*) A justice of the peace acting in the illness or absence or at the request of a police magistrate should be designated as so acting, in warrants or other process, otherwise the latter will be invalid.

(*b.*) A warrant signed by a justice of the peace so acting, in which he is described as "police magistrate" is void.

(*c.*) The initials "J. P." following the signature of the person presuming to issue 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.—Court of General Sessions, County of York, (Ont.), 1892. R. *vs* Lyons, 2 Can. Cr. Cas., 218; McDougall, J.

560. Warrant in cases of offence committed on the seas, &c.

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.

561. Arrest of suspected deserter.

Every one who is reasonably suspected of being a deserter from Her Majesty's service may be apprehended and brought for examination before any justice of the peace, and if it appears that he is a deserter he shall be confined in gaol until claimed by the military or naval authorities, or proceeded against according to law. 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.

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.

1. The service of a summons under the Criminal Code, 1892, sec. 562, at the defendant's usual place of abode while he is without the province is void, and the justice has no jurisdiction to convict.—Supreme Court, (N.B.), 1894. *Ex parte* Donovan, 32 N. B. R., 374; 3 Can. Cr. Cas., 286.

2. A summons under the Criminal Code, 1892, may be served in any parish within the jurisdiction of the magistrate issuing the same, by a constable who has not been appointed for such parish.—Supreme Court, (N.B.), 1894. *Ex parte* Doherty, 32 N. B. R., 375; Palmer, J.

3. A copy of the summons was left with an adult person at the defendant's residence. There was no proof before the magistrate that this adult person was an inmate of the defendant's last or usual place of abode, or that any effort had been made to serve the defendant personally with a copy of the summons.—*Held*, that the service was insufficient. The Court refused to admit evidence to supplement that given before the magistrate.—Supreme Court, (P.E.I.). *In re* Barron, 33 C. L. J., 297.

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.

1. As to payment by the Crown of fees of constables in Quebec, *see* S. R. Q., 2593; 61 V., c. 23.

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., 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.

1. *See* Mousseau *vs* the City of Montreal, section 22, No. 1.

2. Judicial proceedings should not be conducted on Sunday, and where the prisoner was convicted for trial at a preliminary investigation before a magistrate on a Sunday,—

Held, that he was entitled to his discharge, following Mackalley's case, 9 Co., 66, and Waite *vs* Hundred of Stoke, Cro. Jac., 496.

Held, also, following Eggington's case, 2 E. & B., 717, and *Re* Bailey, 3 E. & B., 607, that the affidavit of the prisoner was receivable in evidence to show that the investigation and commitment had taken place on a Sunday.—Queen's Bench, (Man.), 1896. Regina *vs* Cavelier, 11 Man. Law Rep., 333; 1 Can. Cr. Cas., 134; Taylor, C. J.

565. Proceeding when 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 directed, and also to all constables of the territorial division where the warrant has been so endorsed, to execute the same therein and to carry the person against whom the 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.

1. A constable executing a warrant in good faith outside of the territorial jurisdiction of the magistrate issuing the same, without procuring

the indorsement of a magistrate of the county where the arrest is made, is entitled to notice of action and to the protection of R.S.O. (1887), ch. 73. A notice of action which wrongly states the name of the township in the county in which the arrest took place is insufficient. A constable in an action against him for wrongfully arresting the plaintiff without a proper indorsement of the warrant by a magistrate of the county in which the arrest is made is entitled to plead "not guilty by statute."—A constable is not entitled to the protection of 24 Geo. II. ch. 44, sec. 6, unless there is want of jurisdiction in the magistrate issuing the warrant.—Alderich *vs* Humphrey, 29 Ont. R., 427.

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.

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.

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 magistrate or justice), by warrant under his hand, direct that such person be taken into custody and be con-

veyed, 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.

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 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 weapons 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.

1. A warrant to search for stolen goods, addressed to "all or any of the constables or other peace officers in the county of Cape Breton," authorized such constables or peace officers to enter, in the day time, 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 may be in such house."

Held, that the warrant was a general warrant, and void, and afforded no justification to the officer acting under it.

Held further, that the warrant was bad as delegating to the officer the duties of the justice, by enabling him to act on suspicions arising in his mind after the adjudication and the issue of the warrant.—Supreme Court, (N.S.), 1894. McLeod *vs* Campbell, 26 N. S. R., 458; Weatherbe Graham, Meagher, JJ.

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, &c.

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 unlaw-

fully 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.

572. Search for timber, &c., 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.

573. Search for liquors near Her Majesty's vessels.

Any officer in Her 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 Her 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.

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.

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 unorganized, or place, or other officer authorized to act in his absence, reports in writing to any of the commissioners of police or to the mayor or chief magistrate or to the police 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 commis-

sioners 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 intruments 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. 57-58 V., c. 57, s. 1; 58-59 V., c. 40, s. 1.

1. Sec. 575 of the Criminal Code, authorizing the issue of a warrant to seize gaming implements on the report of "the chief constable or deputy chief constable" of a city or town, does not mean that the report must come from an officer having the exact title mentioned but only from one exercising such functions and duties as will bring him within the designation used in the statute. Therefore, the warrant could properly issue on the report of the deputy high constable of the city of Montreal. Girouard, J., dissenting.

The warrant would be good if issued on the report of a person who filled *de facto* the office of deputy high constable though he was not such *de jure*.

In an action to revendicate the moneys so seized, the rules of evidence in civil matters prevailing in the province would apply, and the plaintiff could not invoke "The Canada Evidence Act, 1893" so as to be a competent witness in his own behalf in the province of Quebec.

Per Strong, C. J.—A judgment declaring the forfeiture of money so seized cannot be collaterally impeached in an action of revendication.—Supreme Court, (Can.), 1896. George O'Neil and The Attorney General of Canada, 26 S.C.R., 122; 1 Can. Cr. Cas., 303; Strong C. J., Taschereau, Sedgewick, King, Girouard, JJ.

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 house 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

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.

1. *See* R. *vs* Cavelier, section 564, No. 2.

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.

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.

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.

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.

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 executed 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.

584. Procuring attendance of witnesses beyond jurisdiction of justice.

If there is reason to believe that any person residing any-

where 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 subpœna to be issued under the seal of the court of which he is a judge, requiring such person to appear before the justice before whom the inquiry is being held or is intended to be held at a time and place mentioned therein to give evidence respecting the charge and to bring with him any documents in his possession or under his control relating thereto.

2. 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.

1. *See* R. *vs* Gillespie, section 843, No. 3.

585. Witness refusing to be examined.

Whenever any person appearing, either in obedience to a

summons or subpœna, or by virtue of a warrant, or being present and being verbally required by the justice to give evidence, refuses to be sworn, or having been sworn, refuses to answer such questions as are put to him, or refuses or neglects to produce any documents which he is required to produce, or refuses to sign his depositions without in any such case offering any just excuse for such refusal, such justice may adjourn the proceedings for any period not exceeding eight clear days, and may in the meantime by warrant in form 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.

1. (*a.*) Notwithstanding sec. 71 of the Dominion Elections Act, 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.

(*b.*) The provision of sec. 71 applies only to election petitions or other legal proceedings questioning the election or return, and not to a prosecution of a deputy returning officer for fraudulently putting into a ballot-box false ballot-papers.

(*c.*) The answer of a witness 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 be nothing to identify the ballot as that marked by the voter, and such evidence is admissible without production of the ballots. —Queen's Bench, (Man.), 1897. R. *vs* Saunders, 3 Can. Cr. Cas., 278; Dubuc, Killam & Bain, JJ.

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.

1. *See in re* Nunn, section 858, No. 6.

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 hereto, 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 *primâ 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. 63-64 V., c. 46, s. 3. *(Section 589 shall come into force on the 1st of January 1901.)*

1. *Up to the 1st of January 1901, section 589 shall read as follows:*—"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 hereto, may transmit the recognizance to the clerk of the court where the accused person is to be tried, or other proper officer appointed by law, to be proceeded upon in like manner as other recognizance ; and such certificate shall be *prima facie* evidence of the non-appearance of the person. R.S.C., c. 174, s. 68."

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.

1. (*a.*) Les dispositions de l'acte de la preuve de 1893 ne s'appliquent qu'à la procédure criminelle et aux matières tombant sous le contrôle législatif du parlement du Canada.

(*b.*) Le Parlement du Canada n'a pas de juridiction sur la Cour Supérieure de la province de Québec, et une déposition donnée devant cette cour peut servir à l'appui d'une procédure criminelle intentée subséquemment contre celui qui a fait telle déposition, à moins que ce dernier n'ait fait cette déposition sous protêt et ait réclamé le privilège d'être exemptê de répondre en autant que sa réponse pourrait l'incriminer.

(*c.*) Le verdict du jury dans la cour civile ne peut être admis comme preuve à l'instruction préliminaire sur une procédure criminelle.—1896. La Reine *vs* Chisholm *et al.*, 2 R. J., 342; Desnoyers, J. S.

2. Sec. 590, subsec. 4, of the Criminal Code, 1892, requiring the depositions to be read over to the witness and signed by him and by the justice before the accused is called on for his defence, relates to procedure only, and non-compliance with it does not affect the justice's jurisdiction. —Supreme Court, (N.B.), *Ex parte* Doherty, 32 N. B. R., 479; 3 Can. Cr. Cas., 310; Tuck, J.

3. *See* R. *vs* Hamilton, section 687, No. 5.

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 of favour and nothing to fear from any threat which may have been held out to you to induce you to make any admission or confession of guilt, but whatever you now say may be given in evidence against you upon your trial notwithstanding such promise or threat."

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.

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.

1. (*a.*) Admissions obtained from the accused after representations made to her by persons in authority, to the effect that the evidence was very strong against her, that another person, who was her lover, was suspected, and that she knew something about the murder, and would do well to speak, are not inadmissible as not being made voluntarily, or as being procured by threat or inducement. (Würtele and Ouimet, JJ. dissenting on this part.)

(*b.*) Under the Canada Evidence Act, 1893, a deposition given at a coroner's inquest is inadmissible in evidence against the deponent in a criminal proceeding subsequently instituted against him.

(*c.*) Where a witness, although accused of having been a party to the crime, has not been indicted jointly with the prisoner at the bar, and is not being tried jointly with the latter, his evidence is admissible for the prosecution.

(*d.*) Secondary evidence of the contents of letters, of which one of the witnesses for the Crown had taken cognizance, is inadmissible, where it is not proved that it was impossible to produce the letters themselves, or even that such letters ever existed.—Queen's Bench, Appeal Side, (Que.), 1898.—The Queen *vs* Cordelia Viau, R.J.Q., 7 Q.B., 362: Bossé, Blanchet, Hall, Würtele, Ouimet, JJ. An appeal was taken from this judgment, to the Supreme Court, but this court decided that no appeal lies when the conviction is quashed by the Court of Queen's Bench. R. *vs* Viau, 2 Can. Cr. Cas., 540.

2. The accused was charged with stealing a post letter from a post office box. The Crown proposed to put in evidence a confession made by the accused to a detective and an assistant post-office inspector. It was shown in evidence that the confession had not been obtained until the inspector had stated to the accused: "There is no use your denying it. You were seen taking the letters out of the box. You may as well tell us what you did with them, as have it brought out in a court of law." It was admitted by the Crown that there was no evidence that accused was seen taking the letters.

Held, that a confession obtained by such means was not free and voluntary and therefore not admissible; that it was improper to make a false statement in order to obtain a confession, and that the statement: "You may as well tell us, as have it brought out in a court of law," was equivalent to: "If you don't tell us it will be brought out in a court of law," and such a threat made by a person in authority such as the inspector rendered any confession thereby obtained inadmissible.—Supreme Court, (N. W. T.), 1896. Regina *vs* McDonald, 2 Can. Cr. Cas., 221; 32 C. L. J., 783; Scott, J.

3. *Held*, per Wetmore, J., that the only evidence against the accused was admission made by him to James Wilson, an Indian agent, in words: "I also killed a boy up the river;" that Mr. Wilson stated he was instructed to act as legal adviser to Indians under his jurisdiction, and as a rule told them he was legal adviser to help them, and that he was not prepared to say he did not hold out any threat or inducement to prisoner to make the statement; that Mr. Wilson was a person in authority to carry out the Indian Act, and a J. P., (53 Vict., c. 29, s. 9), and it was difficult to conceive a case in which more strongly to insist upon the rules as to non-admissibility of confessions to a person in authority without sufficient previous warning than in the case of Indians. It lay on the crown to prove no inducement or threat and this was not shown satisfactorily by the evidence of James Wilson or his interpreter, though the latter said: "I can remember any statement he (prisoner) made was voluntary;" since it was not shown the interpreter knew what in law a voluntary statement was, or what in law an "inducement" amounted to, that it was not necessary to consider whether the communication was privileged at common law or under N. W. T. Act, 1869. Regina *vs* Fennell, 7 Q. B. D., 147; Regina *vs* Romp, 17 O. R., 567, and Regina *vs* Thompson, 5 Reports, Q. B. D., 393 cited in support. *Held*, further, that the conviction should be quashed, and the prisoner discharged as to this offence. Richardson, Rouleau & McGuire, JJ., concurred.—Supreme Court, (N. W. T.), 1897. Regina *vs* Pah-Cah-pah-ne-capi, alias Charcoal, 34 C. L. J., 210; 17 C. L. T., 306; Richardson, Rouleau, Wetmore, McGuire, JJ.

4. *Held*, that in accordance with the great weight of authority answers given by the prisoner under arrest on a criminal charge in response to the officer in charge, are to be received as evidence so long as they are not evoked or extorted by inducements or threats. They may be received if the presiding judge is satisfied that they were not unduly or improperly obtained which depends upon the circumstances of each case.—High Court of Justice, (Ont.), 1899. R. *vs* Elliott, 35 C. L. J., 452; 3 Can. Cr. Cas., 95; Boyd, C., and Robertson, Meredith, JJ.

5. 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.—Supreme Court, (N.S.), 1898. R. *vs* Jackson, 2 Can. Cr. Cas., 149; Graham, J.

6. 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 was not made until after such inducement had clearly been removed.—County Court of New Westminster, (B. C.), 1898. *Re* Ockerman, 2 Can. Cr. Cas., 262; 6 B. C. R., 143; Bole, J.

7. (*a.*) Where an alleged confession is received in evidence after objection by the accused and the trial judge before the conclusion of the trial reverses his ruling and strikes out the evidence of the alleged confession, at the same time directing the jury to disregard it, the jury should be discharged and a new jury impanneled.

(*b.*) 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.

(*c.*) 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.—Supreme Court, (B.C.), 1898. R. *vs* Sonyer, 2 Can. Cr. Cas., 501; McColl, C. J., Walkem, Irving & Martin, JJ.

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.

3. 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.

1. B. was charged before a J. P. with obtaining a mortgage from G. by false pretenses and representations. At the preliminary enquiry, the sitting J. Ps., after hearing the evidence for the prosecution, neglected to ask the accused if he wished to call witnesses for his defence, and in fact refused to hear such witnesses who were then and there offered on his behalf by the accused, and committed him for trial. *Held*:—On petition by B. for the issue of a writ of *habeas corpus* with a view to be released, that such neglect and refusal on the part of the sitting J. Ps., although an irregularity of a serious character, only relates to procedure, and does not render the proceedings absolutely null and void, so as to justify the liberation of B. on a writ of *habeas corpus;* and the writ will be refused.—Superior Court, (Que.), 1896. *Ex parte* Anthony W. Burke, 2 R. J., 151; Lynch, J.

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.

1. *See* R. *vs* Lee, section 242, No. 1.

595. Binding over accuser to prosecute.

If the justice discharges the accused, and the person preferring the charge desires to prefer an indictment respecting the said charge he may require the justice to bind him over to prefer and prosecute such an indictment and thereupon the justice shall take his recognizance to prefer and prosecute an indictment against the accused before the court by which such accused would be tried if such justice had committed him, and the justice shall deal with the recognizance, information and depositions in the same way as if he had committed the accused for trial.

2. Such recognizance may be in the form U in schedule one hereto, or to the like effect.

3. If the prosecutor 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.

1. (*a*.) The person filling the office of commissioner of the Dominion Police has, as such, no legal capacity to represent and act on behalf of Her Majesty the Queen, and in laying an information in which he designated himself as such commissioner of the Dominion Police he acted as a private individual and not as the legal representative of the Crown, although he declared that he was acting as such commissioner on behalf of Her Majesty the Queen.

(*b.*) The accused having been discharged and the commissioner, having bound himself by recognizance to prefer and prosecute an indictment on the charge contained in his information, and the grand jury having thrown out the bill of indictment, the commissioner was held, under art. 595 of the Criminal Code, to be personally liable for the costs incurred by the accused on the preliminary inquiry and before the Court of Queen's Bench.

(*c.*) The costs allowed were not the fees and disbursements paid by the accused St. Louis to his counsel, such payment being a matter between client and counsel, but such costs as were held by analogy with the costs allowed in civil suits to be costs recoverable from a losing party.

(*d.*) Such costs should be taxed according to a tariff made for criminal proceedings, and in the absence of such tariff they had to be taxed in the discretion of the judge, by implication, according to the spirit of the provisions contained in article 835 of the Criminal Code.—Queen's Bench, Crown Side, (Que.), 1897. The Queen *vs* Emmanuel St. Louis, R. J. Q., 6 Q. B., 389; 1 Can. Cr. Cas., 141; Würtele, J.

2. *See* R. *vs* Lee, section 242, No. 1.

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.

1. (*a.*) On a writ of *habeas corpus*, the judge merely examines whether the committing magistrate had jurisdiction, whether the committal is legal, and whether any crime known to the law has been committed. If the committing magistrate had the necessary power or jurisdiction, the manner of his exercise of such power or jurisdiction will not be inquired into.

(*b.*) A warrant of commitment for making a false statement, under article 365 of the Criminal Code, which states that the prisoner made, circulated and published the statement in question while he was the president and manager of the company, without alleging that he was a director, is legal and sufficient.—Queen's Bench, (Que.), 1898. *Ex parte* William E. Gillespie, R. J. Q., 7 Q. B., 422; 1 Can. Cr. Cas., 551; Würtele, J.

2. (*a.*) A commitment for trial must contain a sufficient description of an indictable offence. Thus a commitment charging the offender with having verbally threatened to burn the complainant's hay-stack and buildings will be quashed.

(*b.*) A commitment signed by justices of the peace purporting to act as justices of the peace in and for the *county* of Labelle will be quashed as no justices are appointed with such a designation, and as they ought to have acted as justices of the peace in and for the district of Ottawa.

(*c.*) *Semble.*—On a writ of *habeas corpus* based upon the insufficiency of the commitment, the committing justices may furnish the gaoler with

a legal warrant and so defeat the writ.—Superior Court, (Que.), 1898. *Ex parte* Mary Welsh, 4 R. J., 437; 2 Can. Cr. Cas., 35; Archibald, J.

3. *See* R. *vs* Cavelier, section 564, No. 2.

4. *See* R. *vs* Lee, section 242, No. 1.

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.

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 man-

ner 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.

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.

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.

601. Rule as to bail.

When any person appears before any justice charged with an indictable offence punishable by imprisonment of 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, s. 3. *(Subsection 3 comes into force on the 1st of January 1901.)*

1. *See In re* Cohen's Bail, section 918, No. 1.

2. *See In re* McArthur's Bail, section 916, No. 2.

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.

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 Queen'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 continued 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.

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.

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.

607. Delivery of accused to prison.

The constable or any of the constables, or other person to whom any warrant of commitment authorized by this or any other Act or law is directed, shall convey the accused person therein named or described to the gaol or other prison mentioned in such warrant, and there deliver him, together with the warrant, to the keeper of such gaol or prison, who shall thereupon give the constable or other person delivering the prisoner into his custody, a receipt for the prisoner, setting forth the state and condition of the prisoner when delivered into his custody.

2. Such receipt shall be in the form DD in schedule one hereto. R.S.C., c. 174, s. 85.

PART XLVI

INDICTMENTS

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.

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.

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.

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.

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.

1. (*a.*) An indictment which does not set up in the statement of the charge all the essential ingredients, is defective and cannot be sustained.

(*b.*) An indictment charging the publication of a defamatory libel, which does not state that the accused intended to injure the reputation of the libelled person and to bring him into public contempt or ridicule or to expose him to public hatred, or to insult him, is bad by reason of the omission of an essential ingredient of the offence; and it cannot be amended and must be set aside and quashed.—Queen's Bench, Crown Side, (Que.), 1898. The Queen *vs* Hugh Blaine Cameron, R.J.Q., 7 Q.B., 162; 2 Can. Cr. Cas., 173; Würtele, J.

2. (*a.*) Irrelevant facts, although of the same nature as those forming the basis of an indictment, cannot be put in evidence by the Crown to fortify the testimony in support of the charge laid.

(*b.*) A witness in cross-examination cannot be questioned upon facts foreign to the issue for the mere purpose of contradicting him later. The answer of a witness regarding such foreign facts is final and conclusive and witnesses in rebuttal will not be heard on such facts.

(*c.*) An indictment is not bad because it is multifarious, and it cannot be considered misleading, when the Court has instructed the jury as to the count upon which they are to try the prisoners.—Queen's Bench, Crown Side, (Que.), 1897. The Queen *vs* Thomas Lapierre & Rebecca Roy, 4 R.J., 1; 1 Can. Cr. Cas., 413; Curran, J.

3. In an indictment under the Bank Act, 53 Vict. (*D*), ch. 31, ss. 85 and 99, for making a wilfully false and deceptive statement in a return, it being sufficient in indictments to charge in substance the offence created by the statute, and clerical errors or faulty grammatical construction not vitiating the indictment, the allegation that the defendant unlawfully made and sent to the Minister of Finance and Receiver General a monthly report of and concerning the affairs of the bank, adding, by way of paraphrase, to characterize the term "monthly report," the words "a wilful, false and deceptive statement of and concerning the affairs of the said bank," and finally that such monthly report was made with intent to deceive and mislead,—sufficiently sets

forth the ingredients of the offence, and the indictment was maintained. —Queen's Bench, Crown Side, (Que.), 1899. The Queen *vs* William Weir *et al.*, R.J.Q., 8 Q.B., 521; 3 Can. Cr. Cas., 102; Würtele, J.

4. *See* R. *vs* Patterson, section 641, No. 6.

5. A motion was made to quash an indictment for breaking and entering with intent to steal, and for stealing certain goods described, because, charging statutable offences, it did not conclude with the words "against the form of the statute in such case made and provided, and against the peace of Our Lady the Queen, Her Crown and Dignity." *Held*, that the indictment was good.—Supreme Court, (N.S.), 1894. The Queen *vs* Doyle, 27 N.S.R., 294; 2 Can. Cr. Cas., 335; McDonald, C. J., Weatherbe, Ritchie & Meagher, JJ.

6. *See* R. *vs* Thompson, section 145, No. 1.

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.

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 ; or

(*h.*) 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. 56 V., c. 32, *s.* 1.

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.

1. An indictment, charging that the accused unlawfully attempted to steal from the person of an unknown person the property of such unknown person, without giving the name of the person against whom the offence was committed, or the description of the property the accused attempted to steal, is sufficient.—Queen's Bench, Appeal Side, (Que.), 1895. R. *vs* Taylor, R.J.Q., 4 Q.B., 226; Baby, Bossé, Blanchet, Hall & Würtele.

2. *See* R. *vs* Weir, section 641, No. 9.

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.

615. Indictments for libel.

No count for publishing a blasphemous, seditious, obscene or defamatory libel, or for selling or exhibiting an obscene book, pamphlet, newspaper or other printed or written matter, shall be deemed insufficient on the ground that it does not set out

the words thereof: 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.

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.

1. *See* R. *vs* Patterson, section 641, No. 6.

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.

618. Indictment for pretending to send money, &c., 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.

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 name to be in any particular county or place. R.S.C., c. 174, ss. 118, 119, 120, 121 and 123.

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.

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 Her 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 Her Majesty. R.S.C., c. 174, s. 124.

622. Indictment for offences in respect to postal cards, &c.

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 Her 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, s. 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 Her Majesty, or in the municipality, as the case may be. R.S.C., c. 174, s. 126.

624. Indictments for offences respecting letter bags, &c.

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 Her Majesty, if the same is the property of Her Majesty, or if the loss thereof would be borne by Her 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.

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.

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.

1. (*a*.) Where several persons are indicted jointly, the Crown has the option of having them tried separately instead of together.

(*b*.) Where several persons are indicted jointly, none of them can demand a separate trial as a matter of right.

(*c*.) When the trial of the defendants jointly instead of separately would work an injustice to any of them, the presiding judge may, on

due cause being shown, exercise his discretionary right to direct a separate trial.

(*d.*) Grounds upon which a separate trial is usually allowed, considered.—Queen's Bench, Crown Side, (Que.), 1899. R. *vs* Weir *et al.*, 3 Can. Cr. Cas., 331; Würtele, J.

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 to 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.

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.

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.

1. *See* R. *vs* H. B. Cameron, section 611, No. 1.

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.

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 amendements 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 any offence of which he might be convicted on the count or counts to which such plea is pleaded, but that he may be convicted on any such count or counts of some offence or offences of which he could not have been convicted on the former trial, the court shall direct that he shall not be convicted on any such count or counts of any offence of which he might have been convicted on the former trial, but that he shall plead over as to the other offence or offences charged.

1. *See* R. *vs* Lee, section 242, No. 1.

632. Depositions and judge's notes on former trial.

On the trial of an issue on a 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.

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.

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 ; 56 V., c. 32, s. 1.

1. (*a.*) A plea of justification to an indictment for defamatory libel must allege that the defamatory matter published is true and that it was for the public benefit that the alleged libel was published, and must then set forth concisely the particular facts by reason of which its publication was for the public good, but it must not contain the evidence by which it is proposed to prove such facts, nor any statement purely of comment or argument.

(*b.*) A plea of justification which embodies a number of letters which it is proposed to use as evidence, and contains paragraphs of which the matter consists merely of comments and argument, is irregular and illegal, and the illegal averments should be struck, or the plea itself should be rejected from the record and the defendant allowed to plead anew.—Queen's Bench, Crown Side, (Que.), 1897. The Queen *vs* Wm. A. Grenier, R.J.Q., 6 Q.B., 31; Can. Cr. Cas., 55; Würtele, J.

2. *See* R. *vs.* Nicol, section 683, No. 3.

3. (*a.*) 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 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.

(*b.*) 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 the answer to his own articles is not a publication in the public interest.—Queen's Bench, (Que.), 1899. R. *vs* Brazeau, 3 Can. Cr. Cas., 89; Ouimet, J.

PART XLVII

CORPORATIONS

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.

636. Certiorari, &c., 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.

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.

1. *See* R. *vs* The Toronto Railway Co., section 858, No. 5.

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.

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.

1. *See* R. *vs* Great West Laundry Co., section 213, No. 1.

PART XLVIII

PREFERRING INDICTMENT

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.

1. As to jurisdiction over offences committed in the territory east of Manitoba and Keewatin and north of Ontario and Quebec, *See* 62-63 V., c. 47, under section 555.

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 been committed, or in respect of which the prosecutor is so bound over, or for any charge founded upon the facts or evidence disclosed on the depositions taken before the justice. 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, s. 3. *(Section 641 shall come into force on the 1st of January 1901.)*

1. *Up to the 1st of January 1901, section 641 shall read as follows:*—"Any one who is bound over to prosecute any person, whether committed for trial or not, may prefer a bill of indictment for the charge on which the accused has been committed, or in respect of which the prosecutor is so bound over, or for any charge founded upon the facts or evidence disclosed on the depositions taken before the justice. 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 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.

3. 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.

4. Save as aforesaid no bill of indictment shall after the commencement of this Act be preferred in any province of Canada."

2. The Court of Queen's Bench, Crown Side, will not make an order under Art. 641, § 2, Cr. Code, that an indictment be preferred against a party accused of an offence for which the justices before whom the preliminary investigation was held failed to commit him, and only signed a declaration to the effect that they were unable to agree. The proper course for the prosecutor, in such a case, is to apply to the Attorney-General who can either prefer an indictment himself, or direct one to be preferred, and exercise his supervisory powers over the justices if they have failed in their duty.—Queen's Bench, Crown Side, (Que.), 1896. *Ex parte* R. Hanning, R.J.Q., 5 Q.B., 549; White, J.

3. Where a person is committed for trial for an offence which was formerly a misdemeanor, and is admitted to bail, and two terms are allowed to pass after his commitment without laying a bill of indict-

ment against him before the grand jury, he is entitled to obtain the release of his sureties and to be discharged from his custody under bail, and have the recognizance vacated.—Queen's Bench, Crown Side, (Que.), 1897. The Queen *vs* H. B. Cameron, R.J.Q., 6 Q.B., 158; 1 Can. Cr. Cas., 169; Würtele, J.

4. *See* R. *vs* St-Louis, section 595, No. 1.

5. *See* R. *vs* Coleman, section 651, No. 4.

6. On a charge of stealing 2,200 bushels of beans for which he was committed for trial, the evidence before the magistrate disclosed that the prisoner had obtained certain cheques on the false pretence that "there were 2,680 bushels of beans" in his warehouse. At the assizes he was indicted for obtaining the cheques on the false pretense "that there was then a large quantity of beans, to wit, 2,680 bushels" in his warehouse. During the progress of the trial the indictment was amended by stricking out the words "a large quantity of beans, to wit," and the prisoner was convicted thereon:—

Held,—No such variation as prevented the indictment being preferred for a charge founded upon the facts or evidence disclosed within the meaning of section 641 of the Criminal Code, 1892;

Held also,—that the prisoner not having been misled or prejudiced by the amendment, it was properly made.—High Court of Justice (Ont.), 1895. Regina *vs* Patterson, 26 Ont. R., 656; 2 Can. Cr. Cas., 339; Meredith, C. J., & Rose, J.

7. Defendant was committed for trial on a charge of assaulting, wounding and doing grievous bodily harm to W., and W. was bound over in regular form to prosecute. At the next term of the Supreme Court, the grand jury found an indictment against the defendant. W was not present and was not examined as a witness. The Attorney-General was not present, and no one had any special directions from him to prefer an indictment. No one had the written consent of a judge, and no order of court was made to prefer an indictment. The point was reserved whether the indictment should not be quashed because it was not preferred by any of the persons authorized by s. 641 of the Criminal Code. Under an act of the Provincial Legislature crimes such as that for which defendant was indicted are prosecuted by an officer or public prosecutor appointed by the Attorney-General at each term of the court, or, in default of such appointment, by the court.

Held,—per Townshend and Ritchie, JJ., (McDonald, C. J., concurring) that under these circumstances the presence of the prosecutor was not necessary, and no special direction from the Attorney-General, or written consent of a judge, or order of the court, was necessary to make the indictment valid. *Quære*, whether s. 641 of the code is applicable to the procedure before the grand jury in any county of Nova Scotia, except Halifax. Per Weatherbe, and Graham, E. J., (Henry, J., concurring) that the indictment not having been preferred in accordance with the provisions of the Code, s. 641, the conviction was bad and should be quashed.—Supreme Court, (N.S.), 1898. Regina *vs* Hamilton, 34 C.L.J., 132; 2 Can. Cr. Cas., 178; 30 N.S.R., 322.

8. (*a*.) Where the preferring of an indictment is authorized solely upon the ground that a direction of the Attorney-General has been given therefore (Cr. Code 641), the written consent or direction must be one with regard to the particular case, and the offence must be spe-

cified therein; and a general direction in writing by the Attorney-General authorizing counsel to take charge of the criminal prosecutions for the Crown, at the sittings of the court will not suffice.

(*b.*) Cr. Code, sec. 645, which enacts that the foreman, or some member of the grand jury acting for him, shall initial on the bill of indictment the name of each witness, sworn and examined, and which requires that the name of every witness examined, or intended to be examined, shall be endorsed on the bill, is directory only, and the omission to so initial does not invalidate the indictment.

(*c.*) The provisions of Cr. Code, sec. 760, directing that in Nova Scotia (Halifax excepted), an indictment shall not be made out until the grand jury so directs, make it unnecessary in that province (Halifax excepted), that the words "true bill" as well as the signature of the foreman of the grand jury should be endorsed upon a bill of indictment, and the endorsation of the words "indictment for an assault, etc.," shortly describing the offence, and followed by the foreman's signature, is sufficient.—Supreme Court, (N.S.), 1896. R. *vs* Townshend, 3 Can. Cr. Cas., 29; 28 N.S.R., 468; Weatherbe, J., Townshend, J., Graham, E. J., Meagher and Henry, JJ.

9. (*a.*) 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 Criminal Code, sec. 641, to the preferring of the indictment.

(*b.*) An accused against whom an indictment is preferred, under the authority of a judge's consent under Criminal Code, sec. 641, is not entitled to have the indictment quashed by reason of the fact that a preliminary enquiry in regard to the same offence was at the same time pending before a justice of the peace, upon which the latter had not given his decision for or against committal for trial.

(*c.*) An indictment may be laid under Criminal Code, sec. 431, for unlawfully and with intent to defraud signing a promissory note by procuration, although the name signed is the name of a testamentary succession or of an estate in liquidation (*e.g.*, "Estate John Doe"), but, if the indictment does not disclose the particulars, any order will be made against 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 defendants be not arraigned until after the particulars have been delivered.—Queen's Bench, Crown Side, (Que.), 1899. R. *vs* Weir, 3 Can. Cr. Cas., 155; Würtele, J.

642. Coroner's inquisition.

After the commencement of this Act no one shall be tried upon any coroner's inquisition.

1. *See* R. *vs* Ciarlo, section 689, No. 1.
2. *See* R. *vs* Lalonde & Déguire, section 689, No. 2.
3. *See* R. *vs* Graham, section 687, No. 3.
4. *See* R. *vs* Hendershott & Welter, section 689, No. 5.
5. *See* R. *vs* Williams, section 689, No. 6.
6. *See* R. *vs* Hammond, section 227, No. 5.

7. This was an application of M. J. H., manager of construction of Crow's Nest Railway, for a writ of prohibition to prohibit Dr. M. of Pincher Creek, from further proceeding with an inquest in connection with the deaths of two men from diphtheria, employed by a contractor on the said railway. The grounds upon which the application was made were :—

(*a.*) That the coroner had no jurisdiction to hold such inquest. (*b.*) That he was a necessary and material witness upon said investigation and inquest. (*c.*) That he was directly and personally interested in said inquest and investigation. The facts as set out in the affidavits read on the application were that the two men in question were brought in the company's ambulance to the end of the track, and Dr. M., the said coroner, was immediately called in to attend them. Both men died the night after their arrival, while under M.'s care. M. then proceeded to hold an inquest upon the said deaths, although it had been pointed out to him by counsel for applicant, that having been in professional attendance upon the men at the time of their death, he would be a necessary witness, and it was not proper for him to act in the dual capacity of judge and witness:

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 in a cause which is on trial before him; and that in this case the coroner was a necessary witness. In delivering judgment the judge said: "In this case there is a dangerous precedent to be avoided. A physician, who is at the same time a coroner, in order to avoid prosecution for malpractice, would only have to call a jury and hold an inquest on the body of his victim, and the law would be powerless to prevent him." Order granted for writ of prohibition.—*In re* Haney *vs* Mead, 34 C.L.J., 330.

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.

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.

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.

1. *Held*,—on a case reserved for the opinion of the court, that the omission of the foreman of the grand jury to put his initials opposite the names of the Crown witnesses on the back of the bill of indictment, as required by s. 645 of the Criminal Code, 1892, is not fatal to the indictment, and that notwithstanding the language of the Interpretation Act, R.S.C., c. 1, s. 7 (4), the word "shall" in that provision is not imperative in the sense that a failure to observe the direction will invalidate the proceedings. O'Connell *vs* The Queen, 11 C. & F., 155; Queen *vs* Townshend, 28 N. S., 468, followed.—Queen's Bench, (Man.), 1898. Regina *vs* Buchanan, 1 Can. Cr. Cas., 442; 34 C.L.J., 474.

2. *See* R. *vs* Townshend, section 641, No. 8.

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.

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. 176.

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 of trial has been changed) the officer of the court before which the trial is to take place, shall, at any time after the time at which the accused ought to have ap-

peared 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 for the county or place in which the indictment was found, or in which the accused is or resides or is suspected to be or reside, such justice shall issue his warrant to apprehend him, and to cause him to be brought before such justice, or before any other justice for the same county or place, to be dealt with according to law. 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.

PART XLIX

REMOVAL OF PRISONERS—CHANGE OF VENUE

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 Queen'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.

1. *See* also S.R.Q., 2723, 2724, as to removal of prisoners.

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.

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 cus-

tody 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., 174, s. 102.

5. Whenever, in the province of Quebec, it has been decided by competent authority that no term of the Court of Queen'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, s. 1.

1. Defendant being under arrest and awaiting trial at Digby in the county of Digby, for murder of A. K., his counsel now moved to change the place of trial. Numerous affidavits were read showing great popular prejudice existing at Digby against prisoner, making it unlikely that he would obtain a fair trial there. To these were exhibited various local newspapers containing comments on the murder adverse to the prisoner. Affidavits directly contradicting these were read by the Crown.

Held, that while the affidavits from their contradictory character necessarily left a doubt as to the true state of feeling existing in the county towards the prisoner, the evidence furnished by the newspapers annexed could not be disregarded; that it would be impossible to obtain an untainted jury, when the feelings of the community whence the jury must be taken had been so excited and worked upon by the press, always to the disadvantage of the accused; that the place of trial accordingly should be changed to the town of K., in the county of Kings.—Supreme Court, (N.S.), 1896. Regina *vs* Wheeler, 32 C.L.J., 458; Townshend, J.

2. Upon a motion made by the Crown under s. 651, of the Criminal Code to change the venue for the trial of three persons charged with the offence of breaking into a bank in the town of Napanee, and stealing money therefrom, from the town of Napanee to some other place, upon the ground that the sympathy felt for two of the accused in the town, and in the county of Lennox and Addington, of which it is the county town, was such that a fair trial could not be had.

Held, that the rule that all cases should be tried in the county where the crime is supposed to have been committed ought never to be infringed unless it plainly appears that a fair and impartial trial cannot be had in that county; and mere apprehension, belief, and opinion, are not to be relied on as evidence. Under the circumstances appearing upon affidavits filed, the motion was refused.—High Court of Justice, (Ont.), 1898. R. *vs* Ponton, 34 C.L.J., 698; 2 Can. Cr. Cas., 192; Robertson, J.

3. (*a.*) A change of venue may be ordered under Criminal Code 651, on the application of the Crown, where at an abortive trial, at which the jury disagreed, a hostile demonstration was made against the judge by a mob assembled in the streets during a short adjournment of the trial.

(*b.*) The change is rendered "expedient to the ends of justice" (Cr. Code, 651), because the conduct of the mob tended to bring the administration of justice into contempt and because of its possible influence on 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.

(*c.*) Affidavits from the jurors denying intimidation are properly admissible in evidence on a motion to change the venue where such intimidation is charged.—High Court of Justice, (Ont.), 1899. R. *vs* Ponton, 2 Can. Cr. Cas., 417; 18 Ont. P. R., 429; Robertson, J.

4. (*a.*) An order for change of the place of trial (Cr. Code, 651), is not open to objection on the ground that it makes no provision for the additional expense to which the accused might be put by the change, if the judge making such order was not asked to make an order as to such additional expense, and if it was not shewn to such judge that additional expense would be occasioned.

(*b.*) Where, after a committal for trial for an offence under the Criminal Code, 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.

(*c.*) An accused person has the right to have his case submitted to the jury without any comment on his failure to testify, being made by the trial judge, and although such comment is afterwards withdrawn, the making of same is a substantial wrong to the accused, and if he is convicted he is entitled to a new trial by reason thereof.

(*d.*) Perjury may be assigned in respect of statements given in evidence in open court, although the oath was administered to the witness by a person temporarily acting in the place of the proper officer at such officer's request.—High Court of Justice, (Ont.), 1898. R. *vs* Coleman, 2 Can. Cr. Cas., 523; 30 Ont. R., 93; Meredith, C. J., Rose & MacMahon, JJ.

PART L.

ARRAIGNMENT

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.

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.

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.

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.

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.

1. Defendant was arrested and committed for trial for theft during the sitting of the Carleton Circuit Court, and after the grand jury had been discharged the court ordered the sheriff to summon a new grand jury, which found a true bill. It transpired that the informant and principal witness in the case was a brother of the sheriff who summoned the jury and His Honour for this reason quashed the indictment and ordered a coroner to summon the third jury. This jury, comprising several men who had been on the sheriff's jury which found a true bill on the indictment that was quashed, also found a true bill, and the prisoner was convicted.

Held, on a case reserved, that the court had the power, inherent in itself, to order the summoning of a second grand jury.

Held, also, that the fact of several of the jurors of the last panel having served on a previous grand jury in the same case would not invalidate the indictment.

Held, also, that the order for the coroner's jury need not go to and for the return to be made by one coroner.—Supreme Court, (N.B.), 1898. Regina *vs* McGuire, 34 C. L. J., 202.

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.

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 Her Majesty, or to cases where the overt act alleged is any attempt to injure her 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.

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.

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.

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.

1. The prisoner was indicted for murder. After the case for the Crown was closed, the prisoner called no witness. The attention of the Court was drawn to s. 661 of the Criminal Code, s.-s. 2. *Held:* That in spite of the proviso, the meaning of the section was that in such a case as the present counsel for the defence should address the jury last.—Queen's Bench, (Man.), 1893. R. *vs* Leblanc, 29 C.L.J., 729; Taylor, C. J.

2. *See* R. *vs* McGreevey & Connolly, section 394, No. 6.

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, s. 1.

1. Le shérif avait par erreur assigné vingt-quatre grands jurés au lieu de douze. Les douze premiers seuls furent appelés, et, l'un d'eux se trouvant malade, onze seulement furent assermentés et rapportèrent une accusation de meurtre fondée (*true bill*) contre le prisonnier. *Jugé*:—Que tel rapport des grands jurés est valide, la loi ne requérant plus maintenant pour cette fin que le concours de sept grands jurés, dans toutes les provinces où le nombre n'en excède pas treize. (Code criminel 662; Stat. Q. 59 Vict., chap. 25; 57-58 Vict., chap. 57, Can.)—Queen's Bench, Crown Side, (Que.), 1898. La Reine *vs* Poirier, R.J.Q., 7 Q.B., 483; Caron, J.

2. Since the coming into force of 57-58 Vict. (Can.), ch. 57, sect. 1, enacting that seven grand jurors, instead of twelve as formerly, may find a true bill in any province where the panel of grand jurors is not more than thirteen, in the province of Quebec where the number of grand jurors to be summoned has been reduced to twelve, if any of them fail to appear, those present may be sworn to act as a grand jury, and find a "true bill," provided that seven of them agree to the finding. —Queen's Bench, Crown Side, (Que.), 1898. The Queen *vs* Girard, R.J.Q., 7 Q.B., 575; Ouimet, J.

3. (*a.*) It is within the power of a provincial legislature to fix the number of the grand jurors, who should compose the panel, that being part of the organization or constitution of the Court.

(b.) A provincial 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 exclusively within the powers of the Dominion Parliament.—Supreme Court, (N.S.), 1898. R. *vs* Cox, 2 Can. Cr. Cas., 207; 31 N.S.R., 311; McDonald, C. J., Weatherbe, Ritchie, Townshend, Meagher & Henry, JJ.

663. Jury 'de medietate linguæ' 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.

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.

1. *See* R. *vs* Sheenan, section 670, No. 1.

2. *See* R. *vs* Yancey, section 670, No. 2.

665. Mixed juries in Manitoba.

Whenever any person who is arraigned before the Court of Queen'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.

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.

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.

1. *See* R. *vs* Lalonde & Déguire, section 668, No. 3, and section 671, No. 1.

2. The fact that one of the jury sworn to try the prisoner did not thoroughly understand the English language is no ground after trial and conviction, for holding that there has been a mistrial or for granting a new trial.

It is too late to challenge a juror after he has been sworn, even if the ground for challenge was not known at the time.

Ignorance of the English language would not, in this province be a ground of challenge of a juror.

The provisions of section 746 of the Criminal Code respecting the granting of a new trial, when it is imperative, and when discretionary, explained.—Queen's Bench, (Man.), 1894. Regina *vs* Earl, 10 Man. Law Rep., 303; Taylor, C. J., Killam, Bain, JJ.

3. 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.—Queen's Bench, Crown Side, (Que.), 1899. R. *vs* Weir, 3 Can. Cr. Cas., 262; Würtele, J.

4. *See* R. *vs* Weir, section 723, No. 3.

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 following 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 Queen 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 Queen 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.

1. 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.—Queen's Bench, Appeal Side, (Que.), 1896. R. *vs* Boyd *et al.*, R.J.Q., 5 Q.B., 1; 2 R.J., 284; Lacoste, C. J., Bossé, Blanchet, Hall, Würtele, JJ.

2. *See also* R. *vs* Boyd, section 359, No. 1.

3. The panel having been exhausted by challenges and directions to stand by without a jury having been formed, and the clerk of the Crown having proceeded to call the jurors who had been directed to stand aside, the prisoner Joseph Lalonde declared that he withdrew his peremptory challenge against Athanase Hébert, one of the jurors, but the Crown objected to the withdrawal of the challenge.

Held: That a peremptory challenge once taken, is counted against the party making it and cannot afterwards be withdrawn.—Queen's Bench, Crown Side, (Que.), 1898. The Queen *vs* Joseph Lalonde & Gédéon Déguire, R.J.Q., 7 Q.B., 201; Würtele, J.

4. *See* R. *vs* Lalonde & Déguire, section 671, No. 1.

5. *See* R. *vs* Harris, section 747, No. 1.

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.

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.

1. (*a.*) A prisoner arraigned for trial in Quebec has the right to claim a jury composed for one half at least of persons speaking his language if French or English.

(*b.*) The right to a mixed jury in Quebec conferred by 27-28 Vict., c. 41 (Province of Canada) in criminal cases is essentially a matter of criminal procedure and as such within the legislative authority of the Federal Parliament only, and not within the scope of provincial legislation under the heading of "the constitution and organization of the Courts" B. N. A. Art. 92, (14.)

(*c.*) A statute of the province of Quebec purporting to repeal the Act conferring such right is *ultra vires*, so far as such right to a mixed jury is sought to be affected.

(*d.*) After having claimed a mixed jury and the recording of the order therefor by the court, the prisoner has no absolute right to relinquish such claim and to have the order for a mixed jury superseded, but revocation may be ordered on such an application in the discretion of the court.—Queen's Bench, (Que.), 1897. R. *vs* Sheenan, 1 Can. Cr. Cas., 402; R. J. Q., 6 Q. B., 139; Würtele, J.

2. The words "language of the defence," in subsection 2 of section 7 of the statute of the province of Canada, 27-28 Vict., ch. 41, which is still in force in the province of Quebec, mean the language of the prisoner, and not the language in which his defence is to be conducted. The privilege of the prisoner is to claim a jury composed for one half at least of jurors speaking or skilled in his language.—Queen's Bench, Crown Side, (Que.), 1899. The Queen *vs* Yancey, R.J.Q., 8 Q.B., 252; 2 Can. Cr. Cas., 32; Würtele, J.

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.

1. Where several persons are jointly indicted and jointly tried, the Crown is restricted to the number of peremptory challenges allowed in the case of the trial of a single person.— Queen's Bench, Crown Side, (Que.), 1898. The Queen *vs* Joseph Lalonde & Gédéon Déguire, R.J.Q., 7 Q. B., 260; Würtele, J.

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.

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 directions 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, s. 1.

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. 37, s. 21.

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.

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.

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.

1. *See* R. *vs* Saunders, section 585, No. 1.

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.

1. (*a.*) Une motion ou requête sommaire demandant l'émission gratuite de *subpœnas* pour les témoins d'un accusé ne doit mentionner que deux faits: que les témoins y nommés sont nécessaires pour la défense, et que l'accusé est pauvre et nécessiteux.

(*b.*) Dans une poursuite pour libelle dans laquelle l'accusé a plaidé justification, le fait de recevoir et d'accorder une motion indiquant les faits que chaque témoin doit prouver pour établir que la publication du libelle était dans l'intérêt public, pourrait préjuger la question de l'admissibilité de cette preuve, et telle motion est donc inadmissible.

(c.) D'après l'article 2614 des Statuts refondus de Québec, un accusé ne peut obtenir l'émission de *subpœnas* aux dépens du gouvernement que dans le cas d'un crime qui était une félonie avant le Code criminel.

(d.) Dans l'espèce, comme le libelle avant le Code criminel n'était qu'un délit, la cour n'est pas autorisée à ordonner l'émission gratuite des *subpœnas* demandés par l'accusé.—Queen's Bench, Crown Side, (Que.), 1897. La Reine *vs* W. A. Grenier, R.J.Q., 6 Q.B., 322; 2 Can. Cr. Cas., 294; Würtele, J.

2. Le privilège d'un témoin résidant dans un district et assigné devant une cour siégeant dans un autre district contre l'arrestation, ne peut le mettre à l'abri de l'arrestation à raison d'une offense criminelle commise par lui pendant le temps qu'il est éloigné de son domicile pour rendre témoignage.—Queen's Bench, Crown Side, (Que.), 1897. *Ex parte* Robert Ewan, R.J.Q., 6 Q.B., 465, 2 Can. Cr. Cas., 279; Ouimet, J.

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 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 jail with a view to secure his presence as a witness, or, in the discretion of the court or judge, may be released on a recognizance, with or without sureties, conditioned for his appearance to give evidence. 63-64 V., c. 46, s. 3. *(Section 678a shall come into force on the 1st of January 1901.)*

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 default being made in such appearance may cause the recognizances of such witness to be estreated, and the amount thereof to be sued for and recovered by process of law, in like manner as if such witness was resident within the jurisdiction of the court. 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. *(Subsection 2 comes into force on the 1st of January 1901.)*

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 jail, 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 jailer 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 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, jailer, 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. *(Section 680 shall come into force on the 1st of January 1901.)*

1. *Up to the 1st of January 1901, section 680 shall read as follows:*—"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 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, to deliver such prisoner to the person named in such order to receive him; and such person shall, at the time prescribed in such order, convey such prisoner to the place at which such person is required to attend, there to receive and obey such further order as to the said court seems meet. R.S.C., c. 174, s. 213."

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 liable 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.

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.

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, s. 1.

3. The depositions taken by such commissioners may be used as evidence as well before the grand jury as at the trial. 58 59 V., c. 40, s. 1.

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, s. 3. *(Subsection 4 shall come into force on the 1st of January, 1901.)*

1. A prosecution for an indictable offence is pending within the meaning of sec. 683 of the Criminal Code, 1892, when an information had been laid charging such an offence; and a commission to take evidence abroad for use before a magistrate upon a preliminary inquiry may then be ordered. But the discretion of the judge in ordering the issue of a commission is to be exercised upon a sworn statement of what it is expected the witnesses can prove, and he must be satisfied as to the materiality of the evidence. And, under the circumstances of this case, a commission was granted to take the evidence of only one of three witnesses whom the Crown proposed to examine, it appearing that the other two had not been asked to come into the jurisdiction and that their evidence would be in corroboration only of a statement of the third witness that he was with the defendant upon a certain occasion.—High Court of Justice, (Ont.), 1895. Regina *vs* Verral, 16 Ont. P. R., 444 : MacMahon, J.

2. An order for a commission, under sec. 683 of the Criminal Code, 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.

Decision of McMahon, J., 16 P. R., 444, affirmed, but the other issue thereon varied.—High Court of Justice, (Ont.), 1895. Regina *vs* Verral, 17 Ont. P. R., 61 : Armour, C. J., Falconbridge & Street, JJ.

3. On motion made on behalf of defendant upon close of the pleadings in which a plea of justification had been entered, motion was made at the trial on behalf of defendant for a commission to take evidence of witnesses in England in support of the plea of justification. It was objected on behalf of the Crown that as the parties had come down to trial the application was too late. *Held*, that defendant was entitled to take every moment to consider whether he would put in a plea of justification, and 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.—Supreme Court, (B.C.), 1898. Regina *vs* Nicol, 34 C. L. J., 475; McColl, J.

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 corroborated 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 XIII, sections one hundred and eighty-one to one hundred and ninety inclusive ; 56 V., c. 32, s. 1.

(*d.*) Procuring feigned marriage, Part XXII, section two hundred and seventy-seven ;

(*e.*) Forgery, Part XXXI, section four hundred and twenty-three.

1. Where on a charge of forgery, in addition to evidence of one witness that the forged documents were written by the accused, it was also proved by the same witness that certain names in a book written by the same hand as the forged documents, were in the handwriting of the accused:—*Held*, that this was not sufficient corroboration under section 684 of the Criminal Code, 1892.—High Court of Justice, (Ont.), 1895. Regina *vs* McBride, 26 Ont. R., 639; Meredith, C. J., Rose, J.

2. (*a.*) The corroborative evidence "implicating" the accused which is made necessary by Criminal Code, sec. 684, to sustain a charge of seduction of a girl under sixteen, may consist of the prisoner's admission made after she attained sixteen that he had had connection with her.

(*b.*) 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.—Supreme Court, (N.W.T.), 1895. R. *vs* Wyse, 1 Can. Cr. Cas., 6; Wetmore, Rouleau, McGuire, Scott, JJ.

3. Evidence of the girl's pregnancy, and of her having been employed in domestic service at the defendant's residence and of facts shewing merely a strong probability of there having been no opportunity at which any other man could have been responsible for her condition, does not constitute corroborative evidence "implicating the accused" required by Criminal Code, sec. 684, in order to sustain a conviction.—High Court of Justice, (Ont.), 1899. R. *vs* Vahey, 2 Can. Cr. Cas., 258; Rose & McMahon, JJ.

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 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. 53 V., c. 37, s. 13.

1. In support of a prosecution against the defendant, under s. 12 of 53 V., c. 37, for having committed an indecent assault upon a girl of the age of 13 years, the evidence of the girl, although not given upon oath, was admitted under the provisions of section 13 of the same Act, (now s. 685 of the Criminal Code). The unsworn statement was corroborated by other sworn testimony. The defendant was acquitted of indecent assault but convicted of simple assault.

Held:—That the conviction was valid, although the unsworn evidence of the girl, which would have been inadmissible if the defendant had been tried for simple assault, was the chief evidence against him. R. *vs* Wealand, 20 Q.B. Div., 827; 16 Cox, 402, followed.—Queen's Bench, Appeal Side, (Que.), 1893. R. *vs* Grantyers, R.J.Q., 2 Q.B., 376; Baby, Bossé, Blanchet, Hall, Würtele, JJ.

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.

1. *See* R. *vs* P. Ciarlo, section 689, No. 2.

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 therefore 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, s. 3. *(Section 687 shall come into force on the 1st of January 1901.)*

1. *Up to the 1st of January 1901, section 687 shall read as follows:*—"If upon the trial of any accused person it is proved upon the oath or affirmation of any credible witness that any person whose deposition has been taken by a justice in the preliminary or other investigation of any charge is dead, or so ill as not to be able to travel, or is absent from Canada, and if it is also proved that such deposition was taken in the presence of the person accused, and that he, his counsel or solicitor, had a full opportunity of cross-examining the witness, then if the deposition purports to be signed by the justice by or 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 justice purporting to have signed the same. R.S.C., c. 174, s. 222."

2. *See* R. *vs* P. Ciarlo, section 689, No. 2.

3. (*a.*) The evidence of a constable, to the effect that he had been informed that a certain witness examined at a coroner's inquest had left the country—without producing the person who gave him the information—is not sufficient to prove the absence of the witness.

(*b.*) An abstract made by a coroner of the evidence given by a witness at an inquest—the abstract being in a language not spoken by the witness—is not a deposition within the meaning of Art. 687 of the Criminal Code of Canada, such abstract not being a *verbatim* record of the witness's evidence, and moreover not having been read to or signed by him.

(*c.*) A coroner is not a justice within the meaning of Art. 687 Criminal Code.—Queen's Bench, Crown Side, (Que.), 1898. Regina *vs* Graham, R. J. Q., 8 Q. B. 167; Ouimet, J.

4. (*a.*) 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 for the presiding judge at the trial.

(*b.*) The intention of sec. 746 of the Criminal Code is that the improper admission of evidence shall not in itself constitute a sufficient reason for granting a new trial, and is not necessarily a "substantial wrong or miscarriage." Makin *vs* New South Wales, (1894), A. C., 57 distinguished.

(*c.*) A deposition read over to and signed by the deponent may be admissible in evidence as a dying declaration, although irregular as a deposition under Criminal Code 687, because taken in the absence of the accused.—Supreme Court (B.C.), 1897. R. *vs* Woods, 2 Can. Cr. Cas., 159; 5 B. C. R., 585; Davie, C. J., McCreight, Drake, JJ.

5. (*a*) In order that sec. 687 of the Criminal Code should apply to make admissible as evidence at the trial the deposition of a witness, since deceased, taken on 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 to ascertain if the deposition "purports to be signed by the justice," as is required by that section.

(*b.*) Where the 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 the date when 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 docu-

ment concluding with the magistrate's note of the remand of the case, it is not to be presumed that the informal deposition following the formal document is a continuation of the first deposition (in which appeared no reference to the added deposition), or that it relates to the same charge, and 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." (Cr. Code 687.)

(c.) 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 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 8 of the Code, the initials "J. P." and the name of the county for which he is a justice; and such a deposition is *primâ facie* admissible in evidence, (Cr. Code 687.)

(*d.*) Where 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 nature that it must have influenced the jury in their verdict, its improper admission is a "substantial wrong" entitling the accused to a new trial. (Cr. Code 746.)

(*e.*) *Per* Killam, J.—The deposition of a deceased witness may be used in evidence apart from sec. 687 Cr. Code, although it does not "purport to be signed by the justices by or before whom the same purports to have been taken," but, where it is not admissible by virtue of sec. 687, it must be affirmatively shown that all the formalities required to be observed in taking depositions, (Cr. Code 590), have been complied with.—Queen's Bench, (Man.), 1898. R. *vs* Hamilton, 2 Can. Cr. Cas., 390; Dubuc, Killam & Bain, JJ.

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.

1. **A deposition taken at a coroner's inquest cannot be read at a trial, unless the formalities prescribed for the taking of depositions at a preliminary inquiry have been observed.**—Queen's Bench, Crown Side, (Que.),

1897. The Queen *vs* Pasquelo Ciarlo, R. J. Q., 6 Q. B., 142; 1 Can. Cr. Cas., 157; Würtele, J.

2. When the evidence of a witness at a preliminary inquiry was given in French, but was translated and taken down in English, the deposition so taken, without having been read over and explained to the witness and signed by him, cannot be read at a trial, to establish a contradiction between the witness's former and present evidence; but the witness may be cross-examined as to any material statement made at the preliminary inquiry, to allow the defence to examine witnesses with the object of showing a contradiction.—Queen's Bench, Crown Side, (Que.), 1897. The Queen *vs* Pasquelo Ciarlo, R.J.Q., 6 Q.B., 144; 1 Can. Cr. Cas., 157; Würtele, J.

3. (*a.*) Le coroner n'a pas le droit, lorsqu'il procède à une enquête, d'exiger une déclaration d'une personne qu'il a pu accuser ou soupçonner d'un crime et qu'il a pu arrêter en sa qualité de juge de paix, avant le verdict.

(*b.*) Une déposition prise devant la cour du coroner n'est pas admissible comme preuve contre le déposant dans une poursuite criminelle intentée ensuite contre lui.—Queen's Bench, Crown Side, (Que.), 1898. La Reine *vs* Lalonde et Gédéon Déguire, R. J. Q., 7 Q. B., 204; Würtele, J.

4. Under the Canada Evidence Act, 1893, a deposition given at a coroner's inquest is inadmissible in evidence against the deponent in a criminal proceeding, subsequently instituted against him.—Queen's Bench, Appeal Side, (Que.), 1898. R. *vs* C. Viau, R. J. Q., 7 Q. B., 362; Bossé, Blanchet, Hall, Würtele, Ouimet, JJ.

5. A coroner's court is a criminal court, and the depositions of a witness before such court who is subsequently charged with murder cannot, since the Canada Evidence Act, 1893, be received in evidence against him at the trial, notwithstanding privilege was not claimed by him at the inquest.—High Court of Justice, (Ont.), 1895. R. *vs* Hendershott & Welter, 26 Ont. R., 678; Meredith, C. J.

6. The depositions of a witness taken at a coroner's inquest without objection by him that his answers may tend to criminate him, and who is subsequently charged with an offence are receivable in evidence against him at the trial. Regina *vs* Hendershott & Welter, 26 O. R., 678, overruled.—High Court of Justice, (Ont.), 1897. Regina *vs* Williams, 28 Ont. R., 583; Armour, C. J., Falconbridge & Street, JJ.

7. Section 5 of the Canada Evidence Act, which abolishes the privilege of not answering criminating questions, and provides that no evidence so given shall be receivable in evidence in subsequent criminal proceedings against the witness other than for perjury in respect thereof applies to any evidence given at a coroner's inquest, by a person under oath though he may not have claimed privilege.—High Court of Justice, (Ont.), 1898. R. *vs* Hammond, 29 Ont. R., 211; 1 Can. Cr. Cas., 373; Boyd, C., Robertson, Meredith, JJ.

8. At the trial of the prisoner, an official stenographer from the province of Quebec verified the deposition of John S. Douglas taken in a civil action before the Superior Court at Montreal, and stated that the prisoner resembled the person whose deposition he had taken in Montreal, but as this took place over six months previously, he could not suf-

ficiently remember his face to swear positively that the prisoner was really the same man, but stated, however, that to the best of his knowledge he was the same man, and that he had no doubt that he was the same man.

Held, (*a.*) following Reg. *vs* Coote, L. R., 4 P. C., 599; and Reg. *vs* Connolly, 25 O. R., 151, that the deposition in question was admissible in evidence, and could not be excluded under section 5 of the Canada Evidence Act, 1893.

(*b.*) That there was sufficient evidence of the identity of the prisoner with the person whose deposition was put in to warrant the judge in submitting the deposition to the jury, the question of identity being one entirely for them.—Queen's Bench, (Man.) Regina *vs* Douglas, 11 Man. Law Rep., 401; 1 Can. Cr. Cas., 221; Taylor, C. J., Killam & Bain, JJ.

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.

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. 225.

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 Her Majesty's mint, or other person employed in producing the lawful coin in Her 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.

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 *primâ facie* evidence of the fraudulent character of such scheme or device.

694. Proof of previous conviction.

A certificate containing the substance and effect only, omitting the formal part, of any previous indictment and conviction for any indictable offence, or a copy of any summary conviction purporting to be signed by the clerk of the court or other officer having the custody of the records of the court before which the offender was first convicted, or to which such summary conviction was returned, or by the deputy of such clerk or officer, shall, upon proof of the identify of the person of the offender, be sufficient evidence of such conviction without proof of the signature or official character of the person appearing to have signed the same. R.S.C., c. 174, s. 230.

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.

1. *See* R. *vs* Dixon, section 406, No. 2.

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.

700. Evidence of former written statements by witness.

Upon any trial a witness may be cross-examined as to pre-

vious 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 *primâ facie* to have been signed by the witness. R.S.C., c. 174, s. 235.

701. Proof of contradictory statement 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.

1. *See* R. *vs* P. Ciarlo, section 689, No. 2.

2. *See* R. *vs* Lapierre & Roy, section 611, No. 2.

3. Defendant was indicted, tried and convicted for an assault committed upon S., causing actual bodily harm. At the trial, counsel for defendant, who gave evidence on his own behalf, proposed to ask certain questions with the view of showing that one of the principal witnesses for the prosecution, when examined before the committing magistrate, made statements at variance with her testimony as given upon the trial of the indictment. The depositions before the magistrate, including that of the witness, were admitted to have been lost. The trial judge having rejected the evidence,

Held, that he erred in doing so, and that there should be a new trial. The statement proposed to be given in evidence was one made by the witness as to what she and the accused said at the time the assault was alleged to have been committed.

Held, that this was material to the matter in issue, and part of the *res gestæ*, and could be contradicted under the statute. Code ss. 700-701.—Supreme Court, (N.S.), 1898. R. *vs* Troop, 2 Can. Cr. Cas., 22; 30 N. S. R., 339; 34 C. L. J., 93.

701a. Evidence of the age of a boy, &c.

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 *primâ 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, s. 3. *(Section 701a shall come into force on the 1st of 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 *primâ 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, s. 3. *(Section 702 shall come into force on the 1st of January 1901.)*

1. *Up to the 1st of January 1901, section 702 shall read as follows:*—
"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 *primâ facie* evidence, on the trial of a prosecution under section one hundred and ninety-eight, 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 chief constable, deputy chief constable or other officer entering the same under a warrant or order issued under this Act, or in the presence of those persons by whom he is accompanied as aforesaid. R.S.C., c. 158, s. 4."

2. *See* decisions under section 196.

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 *primâ 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, s. 3. *(Section 703 shall come into force on the 1st of January 1901.)*

1. *Up to the 1st of January 1901, section 703 shall read as follows:*—
"It shall be *primâ facie* evidence in any prosecution for keeping a common gaming-house under section one hundred and ninety-eight of this Act 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 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. R.S.C., c. 158, s. 8."

704. Evidence in case of gaming in stocks, &c.

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 *bonâ 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, s. 1.

706. Evidence in case of polygamy, &c.

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.

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 *primâ facie* evidence that the same has been stolen by him. R.S.C., c. 164, s. 30.

707a. Evidence of stealing cattle.

In any prosecution, proceeding or trial for any offence under section 331A, a brand or mark, duly recorded or registered under the provisions of any Act, ordinance or law, on any cattle shall be *primâ facie* evidence that such cattle are the property of the registered owner of such brand or mark, and possession by the person charged, or by others in his employ or on his behalf, of any such cattle marked with such a brand or mark of which he is not himself 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. 63-64 V., c. 46, s. 3. *(Section 707a shall come into force on the 1st of January, 1901.)*

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 *primâ 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 sections 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 Her Majesty's service shall be *primâ 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 Her 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 *primâ 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.

1. *See* R. *vs* Howarth, section 446, No. 1.

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.

1. *See* R. *vs* Boyd & Somerville, section 359, No. 1; section 668, No. 6, and section 735, No. 2.

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.

1. Where a prisoner is indicted for an attempt to steal, and the proof establishes that the offence of larceny was actually committed, the jury may convict of the attempt, unless the court discharges the jury and directs that the prisoner be indicted for the complete offence.—Queen's Bench, Appeal Side, (Que.) R. *vs* Taylor; R.J.Q., 4 Q.B., 226; Baby, Bossé, Blanchet, Hall, Würtele, JJ.

2. *See* R. *vs* Taylor, section 613, No. 1.

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.

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 dis-

position 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.

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 is 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.

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.

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.

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.

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 opinion that the accused has not been misled or prejudiced in his defence by such error or omission, shall amend the indictment or count as may be necessary.

3. 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 post-

pone 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.

1. *See* R. *rs* H. B. Cameron, section 611, No. 1.

2. *See* R. *rs* Patterson, section 641, No. 6.

3. (*a.*) The court may, at the trial, amend an indictment if the amendment does not change the character or nature of the charge, and if the accused cannot be prejudiced by the change either as regards the evidence applicable or the defence raised.

(*b.*) If the amendment asked would substitute a different transaction from that first alleged, or would render a different plea necessary, it ought not to be made.

(*c.*) Where, during the address to the jury by the prisoner's counsel, the counsel for the Crown interjects a remark, in the hearing of the jury, intimating that the prisoner could have given evidence as to an alleged occurrence then being referred to, and it appears that the ascertainment 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.—Queen's Bench, Crown Side, (Que.), 1899. R. *rs* Weir, 3 Can. Cr. Cas., 262; Würtele, J.

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 connected 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.

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.

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.

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.

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.

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, s. 3. *(Section 729 shall come into force on the 1st of January 1901.)*

1. *Up to the 1st of January 1901, section 729 shall read as follows:*— "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."

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.

731. Jury 'de ventre inspiciendo' abolished.

After the commencement of this Act no jury *de ventre inspiciendo* shall be empanelled or sworn.

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.

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 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.

1. The accused was convicted by a jury of a criminal offence, but the judge reserved a case as to the admissibility of certain evidence and admitted the prisoner to bail. The condition of the recognizance entered

into was that the prisoner would appear at the next sitting of the court to receive sentence. Afterwards the Full Court quashed the conviction and ordered a new trial. The accused did not appear at the next sitting and proceedings were taken to estreat the recognizance and for the collection of the named penalties.

Held, following Queen *vs* Wheeler, 1 C. L. J., N. S., 272, and Queen *vs* Ritchie, 1 C. L. J., N. S., 272, that the condition of the recognizance was not broken, and that the purpose of the accused's attendance having failed, the sureties were not bound for his appearance. Roll of estreated recognizance and *fi. fa.* issued thereon set aside.—Queen's Bench, (Man.), 1899. Queen *vs* Hamilton, 35 C. L. J., 470; 3 Can. Cr. Cas., 1; 12 Man. R., 507; Killam, C. J., Bain & Richards, JJ.

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.

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; 56 V., c. 32, s. 1.

1. *See* R. *vs* Harris, section 747, No. 1.

2. Article 735 Cr. Code refers merely to the procedure with respect to the making of the jury lists, and the formation of the panels under

the provisions of the provincial statutes respecting jurors and juries, but does not in any way, apply to the chosing or formation of a jury under the provisions of the Criminal Code from the panel returned by the sheriff.—Queen's Bench, Appeal Side, (Que.), 1896. R. *vs* Boyd & Somerville, 2 R. J., 284; Lacoste, C. J., Bossé, Blanchet, Hall, Würtele, JJ.

3. *See* R. *vs* McGuire, section 656, No. 1.

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.

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 verdict is that he is unfit on account of insanity the court shall order

the accused to be kept in custody till the pleasure of the Lieutenant-Governor of the province shall be known, and any plea pleaded shall be set aside and the jury shall be discharged.

4. No such proceeding shall prevent the accused being afterwards tried on such indictment. R.S.C., c. 174, ss. 252 and 255.

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.

1. As to the removal from prison of an insane prisoner and his return to prison in Quebec,—*See* S. R. Q., 3209, as replaced by 56 V., c. 31, s. 9, and amended by 57 V., c. 33, s. 17; 58 V., c. 35, s. 1; and 60 V., c. 38, s. 1.

2. For the removal of an insane convict from a penitentiary if it is established within three months of his arrival thereat that he is insane and was insane at the time when he was received at the penitentiary.—*See* 62-63 V., (*C.*), c. 48, s. 7.

3. As to the manner in which insane convicts confined in a penitentiary are dealt with in other cases. *See* S. R. C., c. 182, ss. 67-74; 58-59 V., (*C.*) c. 41, s. 3.

PART LII

APPEAL

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.

2. Whenever the judges of the Court of Appeal are unanimous in deciding an appeal 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.

1. (*a.*) 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 where the conviction has been affirmed by the Court of Appeal, and then only in case one or more of the judges of the latter court has dissented from the decision of the majority of the court. 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.

(*b.*) The dissent from the "opinion" of the majority (Cr. Code 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 (Cr. Code 750); 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 is not reviewable by the Supreme Court of Canada.—Supreme Court, (Can.), 1898. Viau & R., 2 Can. Cr. Cas., 540; 29 S.C.R., 90; Strong, C. J., Taschereau, Sedgewick, King, Girouard, JJ.

2. (*a.*) The jurisdiction of a judge of the Supreme Court of Canada in matters of *habeas corpus* in any criminal case under any statute of Canada is limited to an inquiry into the cause of commitment as disclosed by the warrant of commitment.

(*b.*) The courts will take judicial notice of the local divisions, such as counties, municipalities and polling sections, into which their country is divided for purposes of political government.—Supreme Court, (Can.), 1896. *Ex parte* Macdonald, 3 Can. Cr. Cas., 10; Girouard, J.

3. (*a.*) An order made by the presiding judge of a criminal superior court awarding costs against the 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 *en banc*.

(*b.*) Where the application for such an order has been made on the last day of the term of the criminal court and judgment reserved thereon the order may be legally made out of the term *nunc pro tunc* as of 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.—Supreme Court, (N.S.), 1899. R. *vs* Mosher, 3 Can. Cr. Cas., 312; 32 N.S.R., 139; Ritchie, J., Graham, E. J., Meagher and Henry, JJ.

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 been decided, and shall in its discretion commit the person convicted to prison or admit him to bail with one or two sufficient sureties, in such sums as the court thinks fit, to surrender at such time as the court directs.

6. If the question is reserved, a case shall be stated for the opinion of the Court of Appeal.

1. (*a.*) A reserved case may be applied for and may be stated after a trial for the opinion of the Court of Appeal on a question of law arising on the trial or on any of the proceedings incidental thereto.

(*b.*) Whether the judge or magistrate had jurisdiction in the case is a question of law.—Queen's Bench, Appeal Side, (Que.), 1898. R. *vs* Paquin, R. J. Q., 7 Q. B. 319; 2 Can. Cr. Cas., 134; Lacoste, C. J., Bossé, Blanchet, Würtele, Ouimet, JJ.

2. *See* R. *vs* Paquin, section 763, No. 2.

3. The case reserved was as follows:—"The defendant was tried before me in the above court, on the 12th day of October, and 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 ss. 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 a case for the opinion, of the 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 the said sections and also the provisions of s. 204 of the said 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 question of law intended to be reserved for the opinion of the court, but referring to all the evidence adduced, the court would not proceed on the case, and would remit it to the judge to be restated with instructions to find the facts and specify the question of law as to which he is in doubt, and reserves for the judgment of the court.—High Court of Justice, (Ont.), 1894. R. *vs* Giles, 31 C. L. J., 33.

4. On January 7th, 1896, B. was charged with having stolen cattle of value of about $800. He elected to be tried by a judge with the intervention of a jury. The jury failed to agree on a verdict and were discharged, the accused being remanded until February 19th, 1896. On that date he was again brought up, when he applied to withdraw his former consent to be tried by a judge and jury, and to substitute therefor his consent to be tried by a judge summarily without a jury, and requested to be so tried. This application the trial judge refused and tried the accused with the intervention of a jury.

The jury having brought in a verdict of guilty and sentence having been postponed, the accused obtained leave to move the Court of Appeal to set aside the verdict and for a new trial. Subsequently on application of prisoner's counsel, approved of by the Crown prosecutor, the trial judge reserved the following questions of law for the opinion of the Court of Appeal.

(*a.*) Whether on the facts stated on the trial being resumed on the 19th of February, the trial judge was bound to comply with and grant the accused's application to be tried summarily; and therefor whether the trial by jury was a mis-trial.

(*b.*) Whether, under the circumstances stated the trial judge had jurisdiction to reserve this case.

Held, (*a.*) That sec. 67 of the North-west Territories Act casts no imperative duty on a judge to assume the undivided responsibility of trying a case alone, but simply authorizes him, on an accused so consenting, to assume the province of a jury if he thinks fit; and

(*b.*) That under sec. 743, s-s. 2 of the Criminal Code, the trial judge had power on his own motion, or on application of either party, to reserve the case.—Supreme Court, (N.W.T.), 1896. Queen *vs* Brewster, 32 C. L. J., 491.

5. *See* R. *vs* Thompson, section 145, No. 1.

6. *See* R. *vs* Garrow & Creech, section 227, No. 10.

7. *See* R. *vs* Blythe, section 283, No. 1.

8. *See* R. *vs* McGreevey & Connolly, section 394, No. 6.

9. *See* R. *vs* Lôtang, section 359, No. 4.

10. (*a.*) 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.

(*b.*) The authority of the solicitor acting for the accused in the trial proceedings is *primâ facie* to be presumed to have terminated upon the latter's acquittal, and proof of service upon the solicitor is insufficient in the absence of evidence rebutting such presumption.—High Court of Justice, (Ont.), 1897. R. *vs* Williams, 3 Can. Cr. Cas., 9; Armour, C. J., Falconbridge and Street, JJ.

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. 63-64 V., c. 46, s. 3.

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. 63-64 V., c. 46, s. 3. *(Subsections 1 and 2 shall come into force on the 1st of January 1901.)*

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.

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.

1. *Up to the 1st of January 1901, subsections 1 and 2 of section 744 shall read as follows:—*

"If the court refuses to reserve the question, the party applying may, with the leave in writing of the Attorney-General, move the Court of Appeal as hereinafter provided. The Attorney-General may in his discretion give or refuse such leave.

2. The Attorney-General, or any person to whom such leave as aforesaid is given, 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 require, grant or refuse such leave."

2. *See* R. *vs* Thériault, section 45, No. 1.

3. *See* R. *vs* Woods, section 687, No. 4.

4. *See* R. *vs* Winslow, section 746, No. 7.

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.

1. *See* R. *vs* Giles, section 743, No. 3.

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.

1. *See* R. *vs* Earl, section 667, No. 2.

2. *See* R. *vs* Thériault, section 45, No. 1.

3. *See* R. *vs* Woods, section 687, No. 4.

4. *See* R. *vs* Hamilton, section 687, No. 5.

5. *See* R. *vs* Sonyer, section 592, No. 7.

6. *See* R. *vs* Coleman, section 651, No. 4.

7. 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 Cr. Code, secs. 744 and 746.—Queen's Bench, (Man.), 1899. R. *vs* Winslow, 3 Can. Cr. Cas., 215; Killam, C. J., Dubuc & Bain, JJ.

8. *See* R. *vs* Dixon, section 406, No. 2.

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.

1. (*a*.) If a defendant omit to challenge a juror on the ground that such juror entertains a hostile feeling against him, he cannot after a

verdict of guilty ask on that ground to get the verdict quashed and to have a new trial.

(*b.*) When a private prosecutor and one of the impanelled jurors have had an unpremedited and innocent conversation which could not bias the juror's opinion nor affect his mind and judgment, although such conversation is improper it cannot have the effect of avoiding the verdict and constituting ground for allowing a new trial.

(*c.*) It is the province of the jury, after taking into consideration the circumstances of a case and the character and demeanour of the witnesses, to discredit some of the witnesses and reject their evidence and to believe others and accept their evidence; and when there is a conflict in the evidence but there is evidence to support the verdict it cannot be judicially maintained that the verdict is against the weight of evidence.

(*d.*) When, however, there is no conflict in the evidence and it tends indubitably in a direction favorable to the defendant, or does not establish his guilt, a verdict convicting the defendant would not be supported by nor be based upon proper evidence and would manifestly be against the weight of evidence; and it is only in cases like this, where there is an absolute failure of evidence to sustain the verdict, that the court can give leave to apply to the Court of Appeal for a new trial.—Queen's Bench, Crown Side, (Que.), 1898. The Queen *vs* Lee Harris, R.J.Q., 7 Q.B., 569; 2 Can. Cr. Cas., 75; Würtele, J.

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 Her 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.

1. *See* R. *vs* Earl, section 667, No. 2.

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, (1) 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.

1. By 63-64 V., c. 46, the power conferred by section 744 on the Attorney-General to grant leave to move the Court of Appeal for leave to appeal, has been taken away; the reference to the Attorney-General in this article should in consequence have been amended.

750. Appeal to Supreme Court of Canada.

Any person convicted of any 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 affirming the conviction, nor unless notice of appeal in writing has been served on the Attorney-General within fifteen days after such affirmance or such further time as may be allowed by the Supreme Court of Canada or a judge thereof.

2. 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.

1. *See* C. Viau & Regina, section 742, No. 1.

751. Appeals to Privy Council abolished.

Notwithstanding any royal prerogative, or anything contained in *The Interpretation Act* or in *The Supreme and Ex-*

chequer 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 Her Majesty in Council may be heard. 51 V., c. 43, s. 1.

PART LIII

SPECIAL PROVISIONS

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.

1. (*a.*) Where the warrant of arrest embodied in the return to a *habeas corpus*, on its face shews jurisdiction in the magistrate, affidavits are not admissible to controvert such fact, if the offence charged be a Criminal one.

(*b.*) A court of one province has no jurisdiction to direct an enquiry before a justice or a judge in another province, and the hearing of further evidence under the Criminal Code, s. 752, to controvert the allegation of jurisdiction.

(*c.*) Criminal Code, s. 752 is to be applied only to cases where the *habeas corpus* issues in the same province in which the commitment is made.—High Court of Justice, (Ont.), 1894. R. *vs* Defries & R. *vs* Tamblyn, 1 Can. Cr. Cas., 207; 25 Ont. R., 645; MacMahon, J.

2. *See* R. *vs* Defries & R. *vs* Tamblyn, section 394, No. 3.

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.

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.

755. Commission of court of assize, &c.

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 Her 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.

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 and 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.

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.

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.

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. 63-64 V., c. 46, s. 3.

(Section 760 shall come into force on the 1st of January 1901.)

1. *Up to the 1st of January 1901, section 760 shall read as follows:*—

"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, and the indictments shall not be made out, except in Halifax, until the grand jury so directs. R.S.C., c. 174, s. 276."

2. *See* R. *vs* Townshend, section 641, No. 8.

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

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.

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; 58-59 V., c. 40.

(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 Queen'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 (1) ; 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 Queen's Bench, and any deputy prothonotary thereof, any deputy clerk of the peace, and the deputy clerk of the Crown and pleas for any district in the said province. 52 V., c. 47, s. 2 ; 63-64 V., c. 46, s. 3.

1. The words, "in the province of Ontario, the county Crown attorney" in paragraph (*b*) come into force on the 1st of January 1901.

2. The sheriff of a district for which there is a district magistrate has no jurisdiction to try a prisoner under the provisions of Part LIV of the Criminal Code, relating to speedy trials of indictable offences.—Queen's Bench, Appeal Side, (Que.), 1898. The Queen *vs* Paquin, R. J. Q., 7 Q. B., 319; 2 Can. Cr. Cas., 134; Lacoste, C. J., Bossé, Blanchet, Würtele & Ouimet, JJ.

3. (*a*.) The County Judge's Criminal Court is not an inferior court subject to review upon *habeas corpus* of its decisions and proceedings.

(*b*.) The judge of the County Judge's Criminal Court is invested as to proceedings within the jurisdiction of that court with the like powers as belong to a superior court judge.

(*c*.) Where sentence has been passed by a court having general jurisdiction of the case such as the County Judge's Criminal Court has in

cases of theft, and the prisoner is detained in custody thereunder, the authority of the court to pass the sentence need not be set out by the jailer upon the return to a writ of *habeas corpus*.

(*d*.) If the return is of a warrant of commitment for theft which, however, does not specify such facts as would show on its face that the theft was of such a nature as to give jurisdiction to the County Judge's Criminal Court to impose the imprisonment stated, still the prisoner cannot be discharged upon *habeas corpus*.—Supreme Court, (N.S.), 1898. R. *vs* Burke, 1 Can. Cr. Cas., 539; Townshend, J.

4. *See* R. *vs* Wright, section 270, No. 1.

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.

765. Offences triable under this part.

Every person committed to jail 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 601 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. 46, s. 3. (*Section 765 shall come into force on the 1st of January 1901.*)

1. *Up to the 1st of January 1901, section 765 shall read as follows:*—"Every person committed to gaol for trial on a charge of being guilty of any of the offences which are mentioned in section five hundred and thirty-nine 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. 52 V., c. 47, s. 5."

2. *See* R. *vs* Jesse France *et al.*, section 196, No. 1 and 2.

3. Defendant, after preliminary enquiry before the stipendiary magistrate for the City of Halifax, was put upon her trial, but was admitted to bail, conditioned to appear at the next court of Oyer and Terminer and General Jail Delivery, and surrender herself to the keeper of the jail and plead to such indictment as might be preferred against her by the grand jury. Before the meeting of the Supreme Criminal Court, defendant was surrendered by her surety, and, while in jail, was brought before the judge of the county court for district No. 1, and, having elected to be tried by him, was tried and convicted.

Held, following The Queen *vs* Gibson, 29 N.S.R., 4, that the judge of the county court had no jurisdiction to try the defendant and that the conviction must therefore be set aside.

Held, that the "committal to gaol for trial" referred to in the Code, and which confers jurisdiction upon the judge of the county court to try, is a committal by the magistrate, and not a committal by order of the judge of the county court when the party is surrendered by his bail, the latter not being a committal for trial, but a committal for want of sureties to appear and take his trial.—Supreme Court, (N.S.), 1898. The Queen *vs* Smith, 35 C.L.J., 117; 31 N.S.R., 411.

4. (*a.*) The admission to bail under Cr. Code, sec. 691 does not deprive the accused of the right to a speedy trial under Cr. Code, sec. 765.

(*b.*) The words "committed to gaol for trial", used in Cr. Code, sec. 765, should be construed as including any case where the accused is found in custody charged with an offence in respect of which he has the right to elect in favor of a speedy trial, and although he is so in custody by reason of his surrender for the purpose of appearing before the judge to elect a speedy trial after having been admitted to bail.

(*c.*) If the accused, after electing in favor of a speedy trial, his right to which is disputed by the Crown, takes no further steps to obtain that right and is then indicted at the next Court of Oyer and Terminer, his plea to such indictment will conclude him, as to the mode of trial, and he cannot afterwards elect for a speedy trial without a jury under Cr. Code, sec. 765.

(*d.*) Consent given in such case by the Crown to the withdrawal of plea to the indictment, upon a statement by the counsel for the accused that the plea was made inadvertently.—Supreme Court, (B.C.), 1896. R. *vs* Lawrence, 1 Can. Cr. Cas., 295; 5 B.C.R., 160; McColl, J.

5. Defendants were brought before a justice of the peace charged with an assault upon a peace officer in the discharge of his duty. There was a preliminary enquiry, after which defendants were admitted to bail under Criminal Code, s. 601, on giving a bond conditioned for their appearance at the time and place of trial, but, subsequently, on application of one of the sureties an order was made by a County Court judge, under Criminal Code, s. 910, under which defendants were committed to jail, and they were subsequently tried and convicted:—*Held*, that the defendants not having been committed for trial under Criminal Code, s. 596, the judge of the County Court had no jurisdiction to try them and the conviction must be set aside. (Per Meagher and Ritchie, JJ.) That a constable *de facto*, while acting in the discharge of his duty is entitled to the same measure of protection as if his title to the office he professes to fill were undisputed:—*Semble* that defendants could be indicted and tried in the Supreme Court.—R. *vs* James Gibson, 29 N. S. R., 4.

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, s. 3. *(Subsection 2 shall come into force on the 1st of January 1901.)*

1. When a prisoner is brought before a county judge under section 766 of the Criminal Code, and elects to be tried by a jury and is thereupon remanded under section 767 to await such trial, although his election is made under a mistake or qualified by using the words "at present," there is no duty upon the sheriff to notify the judge a second time under section 766, or to bring the prisoner again before him to enable the prisoner to re-elect to be tried by the judge.—High Court of Justice, (Ont.), 1897. Regina *vs* Ballard, 28 Ont. R., 489; 1 Can. Cr. Cas., 96; Moss, J. A.

2. The prisoner was on a statutory holiday committed for trial by a magistrate upon a charge of attempting to steal from the person, and on being brought before the County Court judge, in compliance with s. 766 of the Criminal Code, 1892, consented to be tried by the judge without a jury, and, being so tried, was convicted and sentenced to a term of imprisonment;—

Held, upon the return to a writ of *habeas corpus*, that the fact that the prisoner was committed for trial and confined in gaol on a warrant that was a nullity could not affect the validity of the trial before the judge under the Speedy Trials Act.

Upon appeal the Court of Appeal held that the County Court Judge's Criminal Court being a court of record, its proceedings were not reviewable upon *habeas corpus*, but only upon writ of error.—High Court of Justice, (Ont.), 1897. Regina *vs* Murray, 28 Ont. R., 549; 1 Can. Cr. Cas., 452; MacMahon, J.

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 jail.

5. Any prisoner who has elected to be tried by jury, may, not-

withstanding 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 766, 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, s. 1. *(Section 767 shall come into force on the 1st of January 1901.)*

1. *Up to the 1st of January 1901, section 767 shall read as follows:*—"The judge, 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 such 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 demands a trial by jury the judge shall remand him to gaol; but if he consents to be tried by the judge without a jury the county solicitor, clerk of the peace or other 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 to this Act, 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. 52 V., c. 47, s. 7."

2. *See* R. *vs* Ballard, section 766, No. 1.

3. For the prisoner, who had been committed for trial on the charge of theft, and had previously elected to be tried by jury, it was moved on the day of the opening of the assizes at Victoria, for leave to abandon such election, and to re-elect to be tried by a judge without a jury. Reg. *vs* Prevost, 4 B.C.R., 326, and Reg. *vs* Lawrence, 5 B.C.R., 160, were cited. The sheriff had been notified to produce the prisoner before the judge, but under instructions had not done so. It was objected that the prisoner not being before the judge, and the case differing in this respect from Reg *vs* Prevost, no order could be made, and that Reg. *vs* Ballard, 28 O. R., 489, 1 Can. Crim. Cases, 96, showed there were no means of securing his presence. The application was refused.—Supreme Court, (B.C.), 1898. Reg. *vs* Williams, 34 C.L.J., 429; McColl, J.

4. A prisoner who has elected to be tried by a jury and committed to

custody until the next assizes, may abandon such election, and have a speedy trial before a judge—R. *vs* Prevost, 4 B.C.R., 326.

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 a 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 proceed 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.

1. Defendant was brought before the judge of the County Court for the county of Halifax under the Act relating to Speedy Trials (Code ss. 762-781), for trial, charged with four distinct and separate offences. On the conclusion of the first trial, defendant's solicitor asked for a verdict, but the learned judge, not being prepared to determine the case, proceeded with the trial of the other charges, and when all had been heard, rendered verdicts of guilty in all four cases. On a Crown case reserved:—

Held, that the judge had no power to so withhold his verdicts; that, having done so, the prisoner was wrongly convicted in all four cases, and that the verdicts must be set aside and new trials ordered.

Held also, that on the trial of a prisoner charged with a criminal act, evidence of the commission by him of other acts of a like character, is receivable to show intent.—Supreme Court, (N.S.), 1897. Regina *vs* McBerney, 33 C.L.J., 124; 29 N.S.R., 327; 3 Can. Cr. Cas., 339. McDonald, C. J., Weatherbe, Ritchie, Townshend, Meagher, Henry, JJ.

2. *See* R. *vs* Gordon, section 777, No. 1.

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.

1. *See* R. *vs* Brennan, section 227, No. 3.

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 other reason therefor; and such bail may be entered into and perfected before the clerk. 52 V., c. 47, s. 14.

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.

777. Adjournment.

The judge may adjourn any trial from time to time until finally terminated. 52 V., c. 47, s. 16.

1. An adjournment of a speedy trial may be made under Cr. Code 777, in order to obtain the attendance of a material witness, although the party applying for same had elected to proceed without such witness,

and although the trial had commenced.—Supreme Court, (B.C.), 1898. R. *vs* Gordon, 2 Can. Cr. Cas., 141; 6 B.C.R., 160; Walkem, J.

2. *See* R. *vs* McBerney, section 772, No. 1.

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.

779. Recognizance to prosecute or give evidence to apply to proceedings under this part.

Any recognizance 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 recognizance 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 disregard 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.

1. *See* R. *vs* Burke, section 763, No. 3.

PART LV

SUMMARY TRIAL OF INDICTABLE OFFENCES

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 legislative 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, 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 783, any two justices of the peace sitting together; provided that when any offence is tried by virtue of this subparagraph an appeal shall lie from a conviction in the same manner as from summary convictions under part LVIII. and that section 879 and the following sections relating to appeals from such summary convictions shall apply to such appeal. 58-59 V., c. 40, s. 1.

(*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

(*e*.) 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.

1. Defendant was brought before the stipendiary magistrate for the city of Halifax charged with being the receiver of a sum of stolen money, the offence having been committed on McNab's Island, in Halifax Harbour. The defendant was committed to the Supreme Court for trial, but elected to be tried summarily before the judge of the County Court for District No. 1, and was tried and convicted.

On a case reserved as to whether the stipendiary magistrate had power to commit for such an offence, and as to whether the facts of the prisoner being in goal and being brought before the judge of the County Court, and electing to be tried by him gave the judge jurisdiction to try the case;

Held, that the stipendiary magistrate had power to hold the inquiry and make the committal.

Per Townshend, J., Henry, J., dissenting:—*Held*. The prisoner having appeared and consented to be tried by the County Court judge his objection to the jurisdiction came too late.—Supreme Court, (N.S.), 1898, Reg. *vs* Brown, 35 C.L.J., 37; 31 N.S.R., 401.

2. *See* R. *vs* Wirth and Reed, section 784, No. 2.

3. (*a*.) All persons appointed to judicial offices in Canada are required to take the oaths of allegiance and of office before acting in their judicial capacity, and a person temporarily appointed to be deputy recorder of Montreal, is under the same obligation.

(*b*.) If the accused 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 adjudication binding, and he cannot claim to be in the position of a judge *de facto*.

(*c*.) The accused convicted under Cr. Code 783, under such circumstances is entitled to be released from custody upon *habeas corpus*.—Queen's Bench, (Que.), 15th Aug. 1898. *Ex parte* Mainville, 1 Can. Cr. Cas., 528; Würtele, J.

4. The failure of a judicial officer to take the oath of allegiance, and the oath of office, where he has acted as the holder of the office and has been acknowledged and accepted as the duly qualified incumbent thereof by the public, does not invalidate his judgments in criminal cases where his qualification has not been contested at the time of the trial, and such judgments are valid and binding as having been rendered by a judge *de facto*.—Queen's Bench, (Que.), 22nd Aug. 1898. *Ex parte* Curry, 1 Can. Cr. Cas., 532; Würtele, J.

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; or

(*c.*) with having committed an aggraved 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 assault 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

(*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 thing 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.

1. *See* R. *vs* Jesse France *et al.*, section 196, Nos. 1 and 2.

2. *See* R. *vs* Conlin, section 785, No. 2.

3. *See* R. *vs* Egan, section 808, No. 1.

4. *See* R. *vs* Perry, section 208, No. 2.

5. *See* R. *vs* Wirth & Reed, section 784, No. 2.

6. *See* R. *vs* Stafford, section 872, No. 7.

7. (*a.*) The term "disorderly house" in Cr. Code, 783, (*f*), applies only to those cases which fall within the statutory definition of that term given in Cr. Code 198.

(*b.*) Upon a charge under Cr. Code 783 and 784 of keeping a "disorderly house" in that the accused is alleged to be keeping a gaming-house, the police magistrate has jurisdiction to hear and determine the charge summarily without the consent of the accused, but the exercise of that jurisdiction is discretionary with the magistrate, and he may instead proceed as with a preliminary inquiry, and commit the accused for trial.—Supreme Court, (B.C.), 1895. *Ex parte* Cook, 3 Can. Cr. Cas., 72; Drake, J.

8. *See* R. *vs* Crossen, section 144, No. 1.

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 as limited for the pur-

pose 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 Northwest 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 789, and except in cases under sections 789 and 790 where the person charged is not a person who under section 784, subsection 2, can be tried summarily without his consent. 63-64 V., c. 46, s. 3. *(Subsection 3 shall come into force on the 1st of January 1901.)*

1. *Up to the 1st of January 1901, subsection 3 shall read as follows:*—"3. The jurisdiction of the magistrate in the provinces of Prince Edward Island and British Colombia, and in the district of Keewatin, under this part, is absolute, without the consent of the person charged. 58-59 V., c. 40."

2. Criminal Code, s. 784 (3), making the jurisdiction of the magistrate absolute in British Columbia, Prince Edward Island, etc., without the consent of the accused, in cases of summary trial for theft under $10, etc., under sec. 783, has not the effect of preventing an appeal when two justices of the peace exercise the powers of a magistrate under Cr. Code, sec. 782 (*a*. III) and 782 (*a*. V).—County Court, (New Westminster, B.C.). R. *vs* Wirth and Reed, 1 Can. Cr. Cas., 231; 5 B.C.R., 114; Bole, J.

3. *See Ex parte* Cook, section 783, No. 7.

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 jail in the county, district or provisional county, under the 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 787 and 788 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, s. 3.

(Section 785 shall come into force on the 1st of January 1901.)

1. *Up to the 1st of January 1901, section 785 shall read as follows:*—"If any person is charged, in the province of Ontario before a police magistrate or before a stipendiary magistrate in any county, district or provisional county in such province, with having committed any offence for which he may be tried at a Court of General Sessions of the Peace, or if any person is committed to a gaol in the county, district or provisional county, under the warrant of any justice 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. R.S.C., c. 176, s. 7."

2. The prisoner consented to be tried, and was tried and convicted by the police magistrate for a city, for stealing a purse containing $3.48 from the person, and was sentenced to three years' imprisonment:—*Held*, upon the return of a *habeas corpus*, that the offence was an indictable one under sec. 344 of the Criminal Code, whether or not it fell also under the provisions of secs. 783 and 787, and was punishable by imprisonment for any period up to fourteen years, and the magistrate had jurisdiction by virtue of sec. 785.—High Court of Justice, (Ont.), 1897. Regina *vs* Conlin, 29 Ont. R., 28; 1 Can. Cr. Cas., 41; Boyd, C., Ferguson & Robertson, JJ.

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.

1. *See* R. *vs* Brown, section 782, No. 1.

2. *See* R. *vs* Crossen, section 144, No. 1.

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.

788. Punishment for certain other offences.

In any case summarily tried under paragraph (*c*), (*d*), (*e*), (*f*), (*g*), (*h*) or (*i*) of 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.

1. *See* R. *vs* Perry, section 208, No. 2.

2. *See* R. *vs* Stafford, section 872, No. 7.

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 784, subsection 2, can be tried summarily without his consent, shall then put to him the question mentioned in section 786, and shall explain to him that he is not obliged to plead or answer before him, he will be committed for trial in the usual course.

63-64 V., c. 46, s. 3. *(Section 789 shall come into force on the 1st of January 1901.)*

1. *Up to the 1st of January 1901, section 789 shall read as follows:*—"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, and may be adequately punished by virtue of the powers conferred by this part, shall reduce the charge to writing, and shall read it to the said person, and, unless such person is one who can be tried summarily without his consent, shall then put to him the question mentioned in section seven hundred and eighty-six, and shall explain to him that he is not obliged to plead or answer before such magistrate, and that if he does not plead or answer before him, he will be committed for trial in the usual course. R.S.C., c. 176, s. 12."

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 jail to await his trial in the usual course. 63-64 V., c. 46, s. 3. *(Section 790 shall come into force on the 1st of January 1901.)*

1. *Up to the 1st of January 1901, section 790 shall read as follows:*—"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, the magistrate shall proceed as provided in section seven hundred and eighty-six. 52 V., c. 46, s. 2."

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 convic-

tion 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.

1. *See Ex parte* Cook, section 783, No. 7.

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.

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.

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.

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, neg-

lects 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.

796. Service of summons.

Every summons issued under the provisions of this part may be served by delivering a copy of the summons to the person summoned, or by delivering a copy of the summons to some inmate of such person's usual place of abode apparently over sixteen years of age; 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.

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.

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.

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.

1. *See* Neville *vs* Ballard, section 866, No. 6.

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.

1. A commitment of the defendant to gaol recited a conviction for "unlawfully procuring or attempting to procure a girl of seventeen years to become without Canada, a common prostitute, or with intent that she might become an inmate of a brothel elsewhere:"—*Held*, that the commitment was bad on its face as it recited a conviction which was invalid for duplicity and uncertainty.

The commitment, although it alleged a conviction, could not be supported under sec. 800 of the Criminal Code, because there was not a good and valid conviction to sustain it; the conviction returned being that the prisoner, at H., etc., did unlawfully procure a girl of seventeen years, I. D., to become, without Canada, an inmate of a brothel to wit, a brothel kept by the prisoner at L., in the State of New-York, one of the United States of America; which did not come within any of the provisions of sec. 185 of the Code.

The words "a court of record" in the exception in sec. 1 of the *Habeas Corpus* Act, R.S.O., ch. 83, include only superior courts of record, and do not include a magistrate's court exercising the power conferred by sec. 785 of the Criminal Code.—High Court of Justice, (Ont.), 1898. Regina *vs* Gibson, 29 Ont. R., 660; 2 Can. Cr. Cas., 302; Armour, C. J.

2. *See* R. *vs* Murray, section 766, No. 2.

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 depositions of witnesses for the prosecution and for the defence, and the statement of the accused, to the clerk of the peace or other proper officer for the district, city, county or place wherein the offence was committed, there to be kept by the proper officer among the records of the General or Quarter Sessions of the Peace or of any court discharging the functions of a court of General or Quarter Sessions of the Peace.

2. This section shall not apply to police magistrates, stipendiary magistrates, or recorders of cities or incorporated towns. 63-64 V., c. 46, s. 3. *(Section 801 shall come into force on the 1st of January 1901.)*

1. *Up to the 1st of January 1901, section 801 shall read as follows:*—"The magistrate adjudicating under the provisions of this part shall

transmit the conviction, or a duplicate of a certificate of dismissal, with the written charge, the depositions of witnesses for the prosecution and for the defence, and the statement of the accused, to the next court of General or Quarter Sessions of the Peace or to the court discharging the functions of a court of General or Quarter Sessions of the Peace, for the district, county or place, there to be kept by the proper officer among the records of the court. R.S.C., c. 176, s. 25."

2. *See* R. *vs* Ashcroft, section 892, No. 3.

3. *See* R. *vs* Monaghan, section 888, No. 1.

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.

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.

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.

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 manner as other recognizances; and such certificate shall be *primâ facie* evidence of such non-appearance without proof of the signature of the magistrate thereto. R.S.C., c. 176, s. 31.

806. Application of fines.

(Repealed by 63-64 V., c. 46, s. 3, repeal to take effect on the 1st of January 1901.)

1. *Up to the 1st of January 1901, section 806 reads as follows:*—

"Every fine and penalty imposed under the authority of this part shall be paid as follows, that is to say:—

(*a.*) In the province of Ontario, to the magistrate who imposed the same, or to the clerk of the court or clerk of the peace, as the case may be, to be paid over by him 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 if in any other district in the said province, 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 and fees collected by him for the erection of a court-house and 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. 176, s. 32.

Provided, as regards the provinces of Ontario, Nova Scotia and New Brunswick, that the Governor in Council may from time to time direct that any fine or penalty which would otherwise under this section be

payable to the county treasurer for county purposes, or any portion thereof, be paid to any municipal or local authority which wholly or in part bears the expenses of the administration of justice under the provisions of this part, or that the same be applied in any other manner deemed best adapted to secure its due administration of such provisions. 57-58 V., c. 57."

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.

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.

1. The first clause of section 808 of the Criminal Code, 1892, should be read as if it were framed thus: "The provisions of this Act relating to preliminary inquiries before justices, except as mentioned in sections 804 and 805, and the provisions of part LVIII, shall not apply to any proceedings under this part," and, so construed, it prevents an appeal from the decision of a police magistrate on a summary trial under part LV of the Code. *Held*, accordingly, that a mandamus to compel a magistrate to take a recognizance on an appeal from a conviction for theft under section 783, subsection (*a*), of the Code should be refused.—Queen's Bench, (Man.), 1896. Regina *vs* Egan, 11 Man. Law Rep., 134; 1 Can. Cr. Cas., 112; Killam, J.

PART LVI

TRIAL OF JUVENILE OFFENDERS FOR INDICTABLE OFFENCES

809. Definitions.

In this part, unless the context otherwise requires,—

(*a.*) The expression "two or more justices," or "the justices" includes,—

(i.) in the province 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 Gaspé, and any recorder, judge of the Sessions of the Peace, police magistrate, district magistrate or stipendiary magistrate acting within the limits of their respective jurisdictions ;

(iii.) in the provinces of Nova Scotia, New Brunswick, Prince Edward Island, and British Columbia, 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.

1. *See Ex parte* Mainville, section 782, No. 3.

2. *See Ex parte* Curry, section 782, No. 4.

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.

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.

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.

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.

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 accuse 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 at-

tendance 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 proceeding barred.

Every person who obtains such certificate of dismissal, or is so convicted, shall be released from all further or other criminal proceedings for the same cause. 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 forfeiture, except such penalty as is imposed by the sentence; but whenever any person is adjudged guilty under the provisions of this part, the presiding justice may order restitution of property in respect of which the offence was committed, to the owner thereof or his representatives.

2. 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.

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, by warrant under their hands and seals, commit the offender to the common gaol or other place of confinement within their jurisdiction, there to remain for any time not exceeding three months, reckoned from the day of such adjudication. R.S.C., c. 177, ss. 23 and 24.

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 witnesses for the expenses they have severally incurred in attending before them, and in otherwise carrying on such prosecution, and also to compensate them for their trouble and loss of time therein,—and 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.

827. Application of fines.

(Repealed by 63-64 V., c. 46, repeal to take effect on the 1st of January 1901.)

1. *Up to the 1st of January 1901, section 827 reads as follows:*—

"Every fine imposed under 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."

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 constables 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.

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.

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.

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.

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 or any indictable offence, in addition to such sentence as may otherwise by law be passed, may condemn such person to the payment of the whole or any part of the costs or expenses incurred in and about the prosecution and conviction for the offence of which he is convicted, if to such court or judge it seems fit so to do; 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 pay-

ment 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, s. 3. *(Section 832 shall come into force on the 1st of January 1901.)*

1. *Up to the 1st of January 1901, section 832 shall read as follows:*—"Any court by which and any judge under Part LIV or magistrate under LV by whom judgment is pronounced or recorded, upon the conviction of any person for treason or any indictable offence, in addition to such sentence as may otherwise by law be passed, may condemn such person to the payment of the whole or any part of the costs or expenses incurred in and about the prosecution and conviction for the offence of which he is convicted, if to such court it seems fit so to do; and the payment of such costs and expenses, or any part thereof, may be ordered by the court 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. 33-34 V. (U.K.,) c. 23, s. 3."

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 if judgment is given for the defendant, he shall be entitled to recover from the prosecutor the costs incurred by him by reason of such indictment or information either by warrant of distress issued out of the said court, or by action or suit as for an ordinary debt. R. S.C., c. 174, ss. 153 and 154.

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.

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.

1. *See* R. *vs* St-Louis, section 595, No. 1.

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 'bonâ 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.

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 *bonâ fide* paid or discharged by any person liable to the payment thereof, or being a negotiable instrument has been *bonâ 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; 56 V., c. 32.

PART LVIII

SUMMARY CONVICTIONS

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.

1. *See in re* Burke, section 3, No. 2.
2. *See Ex parte* Mainville, section 782, No. 3.
3. *See Ex parte* Curry, section 782, No. 4.
4. *See* R. *vs* McRae, section 842, No. 7.

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 any justice in relation to any matter over which the Parliament of Canada has legislative authority, and with respect to which such justice has authority by law to make any order for the payment of money or otherwise. R.S.C., c. 178, s. 3.

1. *See* The Corporation of the Town of Scottstown *vs* Beauchesne, section 879, No. 1.
2. *See* R. *ex rel* Brown *vs* Simpson, section 879, No. 6.
3. *See* Lecours *vs* Hurtubise, section 879, No. 3.

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 any complaint, or laying any information in the Act or law relating to the particular case, the complaint shall be made, or the information shall be

laid within six months from the time when the matter of complaint or information arose, except in the North-west Territories, where the time within which such complaint may be made, or such information may be laid, shall be extended to twelve months from the time when the matter of the complaint or information arose. 52 V., c. 45, s. 5.

1. *See* R. *rs* Edwards, section 266, No. 2.

842. Jurisdiction.

Every complaint and information shall be heard, tried, determined and adjudged by one justice or two or more justices as directed by the Act or law upon which the complaint or information is framed or by any other Act or law in that behalf.

2. If there is no such direction in any Act or law then the complaint or information may be heard, tried, determined and adjudged by any one justice for the territorial division where the matter of the complaint or information arose: Provided that every one who aids, abets, counsels or procures the commission of any offence punishable on summary conviction, may be proceeded against and convicted either in the territorial division or place where the principal offender may be convicted, or in that in which the offence of aiding, abetting, counselling or procuring was committed.

3. Any one justice may receive the information or complaint, and grant a summons or warrant thereon, and issue his summons or warrant to compel the attendance of any witnesses for either party, and do all other acts and matters necessary preliminary to the hearing, even if by the statute in that behalf it is provided that the information or complaint shall be heard and determined by two or more justices.

4. After a case has been heard and determined one justice may issue all warrants of distress or commitment thereon.

5. It shall not be necessary for the justice who acts before or after the hearing to be the justice or one of the justices by whom the case is to be or was heard and determined.

6. If it is required by any Act or law that an information or complaint shall be heard and determined by two or more justices, or that a conviction or order shall be made by two or more justices, such justices shall be present and acting together during the whole of the hearing and determination of the case.

7. No justice shall hear and determine any case of assault or battery, in which any question arises as to the title to any lands, tenements, hereditaments, or any interest therein or accruing therefrom, or as to any bankruptcy or insolvency, or any execution under the process of any court of justice. R.S.C., c. 178, ss. 4, 5, 6, 7, 8, 9, 12 and 73.

1. Les juges de paix saisis d'une plainte ne peuvent plus, après avoir entendu la preuve et ajourné la décision, se déclarer sans juridiction et refuser de décider la cause, sur le motif que les défendeurs avaient comparu et plaidé devant un autre magistrat, mort depuis, et n'avaient pas comparu de nouveau devant eux. Et s'ils refusent de rendre jugement sur la plainte, ils peuvent y être contraints par voie de *mandamus*.

Si la défense au *mandamus* met en question le droit au bref, ne permettant pas ainsi au requérant d'obtenir jugement sans preuve, les défendeurs doivent payer les frais rendus nécessaires par leur faute; et ce, nonobstant leur déclaration qu'ils s'en remettent à justice.—Revision, (Qué.), 1896. Lacerte *vs* Pépin *et al.*, R.J.Q., 10 S. C., 542; Casault, C.J., Routhier, Andrews, JJ.

2. (*a.*) En matières d'offenses punis-ables sommairement, la plainte est suffisante en loi si elle renferme les éléments essentiels de l'offense imputée dans des termes équivalents à ceux du statut invoqué.

(*b.*) Dans l'espèce, le juge de paix avait juridiction pour recevoir seul la plainte et émaner seul la sommation.

(*c.*) Les mots "devant moi ou tels juges de paix qui seront présents, etc.," dans la sommation, sont au plus une irrégularité, ne donnant pas ouverture au remède extraordinaire d'un bref de prohibition.

(*d.*) L'émanation d'une sommation n'est d'ailleurs qu'un acte ministériel qui ne peut être attaqué par bref de prohibition; les seuls actes judiciaires *ultra vires* d'un tribunal peuvent être ainsi prévenus et prohibés.

(*e.*) Dans l'espèce, le défaut de juridiction, s'il existait, n'était pas apparent à la face de la procédure, et ne pouvant être constaté avant le rapport de la sommation et l'immixtion du ou des juges de paix dans la cause comme tribunal, le bref de prohibition était prématuré.

(*f.*) Un plaidoyer préalable déclinatoire à la juridiction du tribunal inférieur, ou du juge de paix était nécessaire avant l'émanation du bref.

(*g.*) Le bref de prohibition est un remède extraordinaire et discrétionnaire que les tribunaux supérieurs n'accordent que dans les cas d'injustice grave et de défaut absolu de juridiction, et un tribunal de revision ou d'appel ne doit intervenir que si l'injustice et le défaut de juridiction sont évidents.—Revision, (Qué.), 1895. Champagne *vs* Simard *et al.*, R.J.Q., 7 C.S., 40; Routhier, Andrews, Larue, JJ.

3. The consanguinity of the justice within the ninth degree to the prosecutor where such consanguinity is denied by the justice, and was unknown to the defendant until the trial, does not disqualify the justice.—Supreme Court, (N.B.), 1894. *Ex parte* Victory, 32 N.B.R., 249; Allen, C. J.

4. The disqualification of a justice arising from an action pending against him ceases when he has recovered judgment, though an execution has issued which is unsatisfied.—Supreme Court, (N.B.), 1894. *Ex parte* Ryan, 32 N.B.R., 377; Tuck, Landry, Barker, JJ.

5. Defendant was convicted before a stipendiary magistrate under s. 337 of the Criminal Code, of stealing seven trees, the property of the plaintiff. The parties owned and occupied adjoining farms in the rear of which the lands were covered with wood and the dividing line was not distinct. Defendant while cutting wood on his own lot, cut seven trees over the line claimed by the plaintiff, but within a line which he (defendant) alleged to be the dividing line, and hauled them away. The magistrate found that the criminal intent was proved and that the title to land did not *bonâ fide* arise. Defendant appealed under s. 900 of the Criminal Code. *Held*, per Tuck, C. J., Barker and Hanington, JJ., that the conviction could be attacked on appeal as "erroneous in point of law," that the title to land was *bonâ fide* in issue and the magistrate ousted of jurisdiction, and that, under the circumstances no criminal intent was proved. *Held*, by Van Wart, J., that the magistrate having found against the *bonâ fides* of the defendant, the conviction could not be attacked on appeal as "erroneous in point of law," and that the title to land did not *bonâ fide* arise. *Held*, by Landry, J., that the evidence justified the conviction. McLeod, J., took no part.—Supreme Court, (N.B.), 1898. Robichaud *vs* La Blanc, 34 C.L.J., 324.

6. (*a.*) The Canada Criminal Code applies to prosecutions under the Liquor License Ordinance (N. W. T.), 1891-92, for the enforcement of penalties thereunder.

(*b.*) The hearing of the charge under that Ordinance must be before two justices of the peace, except where otherwise provided by the Ordinance itself.—Supreme Court, (N.W.T.), 1894. R. *vs* Wilson, 1 Can. Cr. Cas., 132; Wetmore, Rouleau, McGuire, JJ.

7. (*a.*) 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 enquiry or summary trial, or to be associated with the summoning justice, except at the latter's request.

(*b.*) 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.—High Court of Justice, (Ont.), 1897. R. *vs* McRae, 2 Can. Cr. Cas., 49; 28 Ont. R., 569; Armour, C. J., Falconbridge & Street, JJ.

8. (*a.*) A magistrate is not disqualified from trying a charge laid by a chief license inspector of unlawfully selling liquors, because of the assistant license inspector's wife being a niece of the magistrate, if the assistant inspector had in fact nothing to do with the laying of the charge, and took no part in the prosecution.

(*b.*) A magistrate is not disqualified from adjudicating upon an information by reason of his being a ratepayer of a municipality into whose treasury any fine imposed in the case would be payable when realized.

(*c.*) A conviction in extended form if drawn up at the time when the "minute of adjudication" should be made and in lieu of it, is a sufficient compliance with a statutory requirement of a minute of adjudication.—Supreme Court, (N.B.), 1899. *Ex parte* Flannagan, 2 Can. Cr. Cas., 513; 34 N.B.R., 326; Van Wart, J.

9. *See* R. *vs* Flannagan, section 850, No. 2.

10. Notwithstanding section 842, of the Criminal Code, where a prosecution for an offence under the Canada Temperance Act is to be proceeded with before two justices of the peace, the information must be laid before two justices.—Supreme Court, (N.B.), 1897. *Ex parte* White, 3 Can. Cr. Cas., 94; 34 N.B.R., 333; Van Wart, J.

11. On the 14th October, 1898, defendant was convicted before two justices of the peace for the county of H. of an offence against the provisions of the Canada Temperance Act. On the 15th of November of the same year, an order was granted for a writ of *certiorari* to remove into this court the conviction, and all things touching the same, on the ground that the information was laid on its face, not having been laid before two justices, but before one only in the absence of the other justice named in the summons, who was one of those that made the conviction:—*Held*, dismissing the appeal taken by the inspector, that the two justices must be present when the information is laid, and must concur in directing the issue of the summons, that being a judicial act; also, that the information should shew on its face that it was laid before the two justices, and their names should appear therein, and the summons should follow the information. The Queen *vs* Brown, 25 N.S.R., 21, followed. *Held*, also, that the words "if such prosecution is brought" in s. 105 of the act, as amended by Dom. Acts of 1888, c. 34, can apply only to the laying of the information or the issuing of the summons. *Held*, per Meagher, J., that defendant was estopped from taking the objection to the jurisdiction of the justices by whom the conviction was made, by having appeared to the summons, and gone on with the trial, and examination and cross-examination of witnesses, and by failing to take any objection to the jurisdiction, until after the prosecutor had rested his case.—The Queen *vs* Ettinger, 32 N.S.R., 176.

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.

1. As to jurisdiction over offences committed in the territory east of Manitoba and Keewatin, and North of Ontario and Quebec. *See* 62-63 V., c. 47.

2. *See* R. *vs* McGregor, section 889, No. 6.

3. Under the provisions of sections 584 and 843 of the Criminal Code, 1892, it is competent for a judge of the High Court or County Court to make an order for the issue of a subpœna 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 sections 879 and 881.—High Court of Justice, (Ont.), 1894. R. *vs* Gillespie, 16 Ont. P. R., 155; Boyd, C.

4. *See Ex parte* Donovan, section 562, No. 1.

5. *See Ex parte* Doherty, section 562, No. 2.

6. *See Ex parte* Doherty, section 590, No. 2.

7. If a magistrate's summons is issued on an information purporting to have been sworn at a specified time and place, and the defendant appears thereon and pleads to the charge, the proceedings will not be quashed on certiorari, because it is afterwards shewn that the information was not in fact sworn at such time and place.—Supreme Court, (N.B.), 1896. *Ex parte* Sonier, 2 Can. Cr. Cas., 121; Tuck, Hanington, Barker, Van Wart, JJ.

8. (*a.*) 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.

(*b.*) 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 of and with the consent of the person who had signed and sworn to the information 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.

(*c.*) Where the defendant has been arrested under the warrant and when brought before the magistrate takes objection to the amended information upon the ground that it should be re-sworn after the amend-

ment, and has the objection noted, he does not waive the objection by proceeding with the trial and cross-examining witnesses.—Supreme Court, (N.S.), 1896. R. *vs* McNutt, 3 Can. Cr. Cas., 184; Townshend, J., Graham, E. J., Meagher, Henry, JJ.

9. 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 (Cr. Code 843, 845 (2); but before a warrant can be issued to compel the attendance of the accused, there must be an information in writing and under oath. (Cr. Code 558, 843).—Supreme Court, (N.S.), 1896. R. *vs* McDonald, 3 Can. Cr. Cas., 287; Ritchie, J., Graham, E. J., and Meagher and Henry, JJ.

10. *See* R. *vs* Lyons, section 559, No. 5.

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.

1. (*a*.) Le percepteur du revenu ayant confié un blanc de plainte signé à son procureur, celui-ci en le remplissant, y a paraphé des initiales

du percepteur certains renvois en marge. *Jugé*, que cette irrégularité n'était pas fatale ni suffisante pour faire déclarer les juges de paix sans juridiction. *Semble*, que le procureur aurait pu valablement signer ces paraphes de ses propres initiales. S.R.Q., 1036; S.R.C., ch. 178, sec. 26.

(*b.*) Lorsque l'objection que le tribunal inférieur n'a pas juridiction est prise *in limine*, le défendeur peut se pourvoir par prohibition, soit avant soit après conviction, même lorsque cette absence de juridiction est latente.

(*c.*) Dans le cas d'une plainte pour une seconde offense, entraînant, pour cette raison, une condamnation spéciale, l'énonciation de la première doit l'indiquer en termes aussi exprès et précis que la seconde, avec date et nom du tribunal qui l'a prononcée.

(*d.*) La plainte peut contenir plusieurs offenses distinctes, commises à des époques différentes. S.R.Q., 1031, 1040.

(*e.*) L'usage des mots "liqueurs spiritueuses" au lieu de "liqueurs enivrantes," dont se sert la loi, ne vicie pas la plainte, lorsque le plaignant fait suivre cette qualification générale par l'énonciation spéciale des liqueurs.

(*f.*) Dans les poursuites sous l'acte des licences, qui sont quasi criminelles, l'offense doit être mentionnée dans les termes exprès du statut ou dans des termes correspondants et ne peut pas s'inférer.

(*g.*) Lorsque l'offense créée par le statut est, pour celui ayant une licence pour vente en gros, la vente de moins de deux gallons, mesure impériale, à la fois, les juges de paix n'ont pas juridiction pour connaître d'une plainte qui ne mentionne ni que le vendeur avait cette licence ni qu'il a vendu moins de deux gallons, mesure impériale.—Revision, (Qué.), 1893. Laliberté *vs* Fortin, R.J.Q., 3 C.S., 385; Casault, Routhier, Caron, JJ.

2. *See* Laliberté *vs* Fortin, section 846, No. 3.

3. When an information laid against the defendant under the Indian Act charged that he sold intoxicating liquor to two persons on the 5th July, and to two persons on the 8th July, and the justices, notwithstanding that the defendant's counsel objected to the information on this ground, proceeded and heard evidence in respect of all the offences so charged, then amended the information by substituting the 8th August for the 8th July, proceeded and heard evidence in respect of the substituted charges and dismissed it, and convicted the defendants for selling to two persons on the 5th July, the conviction was quashed.—Regina *vs* Hazen, 20 Ont. A.R., 633, distinguished.

Per Street, J.—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 only.—High Court of Justice, (Ont.), 1894. R. *vs* Alward, 25 Ont. R., 519; Armour, C. J., Falconbridge, Street, JJ.

4. An information stated that the defendant "within the space of thirty 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":—

Per Hagarty, C. J. O., and Boyd, C.:—Such an information does not charge two offences but only the single offence of selling unlawfully within the thirty days.

Per Osler and MacLennan, JJ. A.:—Such an information does charge

two offences and is in contravention of section 845 (3) of the Criminal Code, 1892.

But *per Curiam* assuming that an information so worded does contravene the provisions of section 845 (3) of the Criminal Code, 1892, the defect is one "in substance or in form" within the meaning of the curative section (847), and does not invalidate an otherwise valid conviction for a single offence.

The provision of section 857, that no adjournment shall be for more than eight days is matter of procedure and may be waived, and a defendant who consents to an adjournment for more than eight days cannot afterwards complain in that respect.—High Court of Justice (Ont.), 1893. Regina *vs* Hazen, 20 Ont. A. R., 633; Hagarty, C. J., Boyd, C., Osler, MacLennan, JJ.

5. *See* R. *vs* Smith, section 889, No. 23.

6. A conviction for a second offence under the Canada Temperance Act must shew that the second offence was committed after the information had been laid for the first offence.—Supreme Court, (N.B.), 1895. Leblanc, *ex parte*, 1 Can. Cr. Cas., 12 ; Tuck, J.

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, s. 3. *(Section 846 shall come into force on the 1st of January 1901.)*

1. *Up to the 1st of January 1901, section 846 shall read as follows:*— "No information, complaint, warrant, conviction or other proceed-

ing 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. *See* Champagne *vs* Simard *et al.*, section 842, No. 2.

3. In a prosecution before justices of the peace "for selling intoxicating liquors in quantity less than two gallons, in contravention 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 Cour by means of certiorari. It affords no ground for prohibition.—Queen's Bench, Appeal Side, (Que.), 1893. Laliberté *vs* Fortin, R.J.Q., 2 Q.B., 573; Lacoste, C. J., Baby, Blanchet, Würtele, JJ.

4. *See* Meunier *vs* Loupret & Simpson, section 889, No. 3.

5. A person whose real name was Bridget Corrigan, but who kept house under the name of Kate Wilson, was arrested under the latter name for an offence under the License Acts, pleaded not guilty, and was tried and convicted under the assumed name, without objecting that it was not her real name.—*Held:*—That it was too late after conviction to complain of the mistake, and the writ of *habeas corpus* which had been issued was set aside.—Queen's Bench, (Que.), 1899. *Ex parte* Corrigan, R.J.Q., 9 Q.B., 43; 2 Can. Cr. Cas., 591; Ouimet, J.

6. *See* R. *vs* Somers, section 889, No. 13.

7. *See* R. *vs* McRae, section 842, No. 7.

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.

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.

1. *See* Champagne *vs* Simard *et al.*, section 842, No. 2.

2. *See* R. *vs* Alward, section 845, No. 3.

3. *See* R. *vs* Hazen, section 845, No. 4.

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.

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.

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.

1. *See* R. *vs* McGregor, section 889, No. 6.

2. 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 by the defence, that the magistrate could give material evidence, and that the accused was therefore prejudiced.—Supreme Court, (N.B.), 1897. *Ex parte* Flannagan, 2 Can. Cr. Cas., 513; 34 N.B.R., 326; Van Wart, J.

3. *See* R. *vs* Flannagan, section 842, No. 8.

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.

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.

1. *See* R. *vs* Herrell, section 887, No. 4.

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 appears to the satisfaction of the justice that the summons was duly served a reasonable time before the time appointed for appearance, such justice may proceed *ex parte* to hear and determine the case in the absence of the defendant, as fully and effectually, to all intents and purposes, as if the defendant had personally appeared in obedience to such summons, or the justice, may, if he thinks fit, issue his warrant as provided by 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; 56 V., c. 32.

1. *See* R. *vs* The Toronto Railway Co., section 858, No. 5.

2. (*a.*) An amendment of a charge of selling liquor to a charge of keeping liquor for sale cannot be made if the accused does not appear at the trial.

(*b.*) No such amendment is authorized in respect of proceedings under the Canada Temperance Act, for the magistrate cannot determine in the defendant's absence whether or not the latter has been "materially misled" by the variance, (sec. 116.)

(*c.*) The Criminal Code, sec. 853, authorizing a magistrate to determine the case in the defendant's absence on his default in appearance, must be restricted to the particular charge in the original information and cannot cover a distinct offence.—Supreme Court, (N.B.), 1895. *Ex parte* Doherty, 1 Can. Cr. Cas., 84; Barker, J.

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 determine the complaint or information such justice shall proceed to hear and determine the same. R.S.C., c. 178, s. 42.

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.

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 respec-

tively, 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.

1. (*a.*) Nonobstant les dispositions de l'art. 1074 de la loi des licences de Québec, il y a lieu au bref de prohibition si le magistrat a excédé sa juridiction.

(*b.*) Le magistrat excède sa juridiction s'il entend une des parties puis prononce sentence un jour auquel la cause n'aura pas été ajournée conformément à l'art. 857 du Code criminel.—Cour Supérieure, (Que.), 1897. Therrien & E. Therrien *vs* McEachren & Loupret, 4 R. J., 87; Bélanger, J.

2. The provision of section 857, that no adjournment shall be for more than eight days, is matter of procedure and may be waived, and a defendant who consents to an adjournment for more than eight days cannot afterwards complain in that respect.—High Court of Justice, (Ont.) R. *vs* Hazen, 20 Ont. A. R., 633; Hagarty, C. J., Boyd, C., Osler, MacLennan, JJ.

3. *See also* R. *vs* Hazen, section 845, No. 4.

4. On an application for a certiorari and to quash a summary conviction, one of the grounds was that the convicting justice, having reserved judgment at the conclusion of the hearing, without adjourning to any stated time, subsequently gave judgment without any notice to the defendant, though later in the day he

wrote to the defendant's advocates stating that he had found the defendant guilty, etc.:—*Held*, an excess of jurisdiction. It may be necessary for the proper protection of his interests that the defendant should be present or represented by counsel when judgment is given, *e. g.*, in order that he may know within what time he ought to give notice of appeal. In the present case notice was given on the same day, but the validity of the conviction cannot be dependent on a subsequent act. The justice having returned the record, an order was made quashing the conviction, certiorari being unnecessary. Reg. *vs* Hall, 12 Ont. P. R., 142 and Reg. *vs* Morse, 11 C. L. T., 342, referred to.—The Queen *vs* Mitchell, 17 C.L. T., 352.

5. When the hearing of a case before a justice is adjourned, the justice is not bound to commence the trial at the hour of adjournment, but may postpone the hearing until a later hour in the day, nor is the justice bound to be at the place of hearing continuously from the hour of adjournment until the commencement of the hearing.—*Ex parte* Card, 34 N. B. R. 11.

6. A conviction in the form prescribed by the Criminal Code will not be held bad because it also contains recitals shewing certain adjournments of the hearing before the justice, but not shewing that no adjournment had been made for a longer period than the eight days allowed by s. 857, s.-s. 1, of the Criminal Code, although more than three months had elapsed from the commencement to the end of the proceedings. It is not necessarily to be inferred from the statement of certain facts, which were not required to be stated, that other circumstances, necessary to the jurisdiction of the magistrate, did not exist. The hearing before a justice trying a person for an offence punishable on summary conviction may be adjourned from time to time under s. 853 of the Code, although the accused be not present, provided the adjournments are made in the presence and hearing of the solicitors or agents of the parties. —Proctor *vs* Parker, 12 Man. R., 528.

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.

1. *See* Lacerte *vs* Pepin *et al.*, section 842, No. 1.

2. S'il y a refus de la part du recorder de la cité de Montréal de prononcer jugement dans une cause qui lui a été soumise, et dans laquelle il n'a point, en loi, de discrétion pour suspendre tel jugement, il peut y être contraint par voie de *mandamus*.—Cour Supérieure, (Que.), 1896. Fournier *vs* De Montigny, 2 R. J., 495; Charland, J.

3. The defendant was brought before justices of the peace on an information charging him with the indictable offence of shooting with intent to murder, and they, not finding sufficient evidence to warrant them in committing for trial, of their own motion, at the close of the

case, summarily convicted the defendant for that he did "procure a revolver with intent therewith unlawfully to do injury to one J. S." It appeared by the evidence that the weapon was bought and carried and used by the defendant personally.

By the Criminal Code, sec. 108, it is matter of summary conviction if one has on his person a pistol with intent therewith unlawfully to do any injury to another person.

The return to a writ of *habeas corpus* shewed the detention of the defendant under a warrant of commitment based upon the above conviction; and upon a motion for his discharge.

Held, that the detention was for an offence unknown to the law; and, although the evidence and the finding shewed an offence against sec. 108, the motion should not be enlarged to allow the magistrates to substitute a proper conviction for it was unwarrantable to convict on a charge not formulated, as to which the evidence was not addressed, upon which the defendant was not called to make his defence, and as to which no complaint was laid; and the prisoner should, therefore, be discharged.—High Court of Justice, (Ont.), 1894. Regina *vs* Mines, 25 Ont. R., 577; 1 Can. Cr. Cas., 217; Boyd, C.

4. A justice of the peace in summary proceedings before him cannot adjourn *sine die* for the purpose of considering his judgment. Conviction quashed.—High Court of Justice, (Ont.), 1897. Regina *vs* Quinn, 28 Ont. R., 224; 2 Can. Cr. Cas., 224; Meredith, C. J., Rose & MacMahon, JJ.

5. (*a.*) The procedure of the Criminal Code as to summary convictions applies as well to corporations as to natural persons.

(*b.*) The fact that a portion of the remedy provided for the recovery of the penalty and cost is personal imprisonment, does not prevent the application of the summary procedure in other respects to corporations.

(*c.*) Notice of a summons by justice, under the summary conviction clauses of the Criminal Code may be given in a manner similar to a notice of indictment under Criminal Code 637.—High Court of Justice, (Ont.), 1898. R. *vs* The Toronto Railway Company, 2 Can. Cr. Cas., 471; Falconbridge, Street, JJ.

6. Where evidence 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.—Supreme Court, (B.C.), 1899. Re Nunn, 2 Can. Cr. Cas., 429; Walkem, J.

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 applicable to the case or to the like effect. R.S.C., c. 178, s. 53.

1. *See Ex parte* John Doe, section 959, No. 1.

2. (*a.*) The precept of a warrant of commitment must conform strictly to the directions of the statute which authorizes an incarceration, with respect to the conditions upon which a prisoner can obtain his discharge before the expiration of the term to which he has been condemned.

(*b.*) When the authorizing statute states that a person who is condemned to a term of imprisonment in default of the payment of a fine and costs, can obtain his discharge before the expiration of such term upon the payment of the fine, it is illegal to require in addition the payment of the costs of the prosecution and of the charges of his conveyance to prison.

(*c.*) 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.—Queen's Bench, (Que.), 1897. *Ex parte* Lon Kai Long, alias Long Wing; Tom Hop Lee; and Hum Chung Lung, R.J.Q., 6 Q.B., 301; 1 Can. Cr. Cas., 120; Würtele, J.

3. (*a.*) Lorsqu'une amende est infligée par la Cour du Recorder de la cité de Montréal à la suite d'une poursuite prise par un particulier, la condamnation doit indiquer spécialement à qui l'amende doit être payée;

(*b.*) Si la condamnation obtenue par un particulier porte simplement que l'amende sera "payée et employée conformément à la loi," il y aura lieu à se pourvoir par certiorari contre la décision de la Cour du Recorder—Cour Supérieure, (Québ.), 1898. Prévost *vs* Leclerc & De Montigny, 1 R. P. Q., 230; Mathieu, J.

4. *See* R. *vs* McGregor, section 889, No. 6.

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. R.S.C., c. 178, s. 54.

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.

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.

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, s. 1. *(Section 864 shall come into force on the 1st of January 1901.)*

1. *Up to the 1st of January 1901, section 864 shall read as follows:*—"Whenever any person unlawfully assaults or beats any other person, any justice may summarily hear and determine the charge, unless at the time of entering upon the investigation the person aggrieved or the person accused objects thereto.

2. If such justice is of opinion that the assault or battery complained of is, from any other circumstance, a fit subject for prosecution by in-

dictment, 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. R.S.C., c. 178, s. 73."

865. Dismissal of complaints 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.

1. *See* decisions under section 866.

866. Release from further proceedings.

If the person against whom any such complaint has been preferred, by or on the 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.

1. Where a person at the instance of the party aggrieved, has been arrested on a charge of assault, and being summarily convicted by a justice, has paid the whole amount of the fine imposed on him, he is not liable to a civil action of damages for the same assault.—Superior Court, (Que.), 1897. Hardigan *vs* Graham, R. J. Q., 12 S. C., 177; 3 R. J. 554; 1 Can. Cr. Cas., 437; Archibald, J.

2. L'article 866 du Code criminel, qui porte que si la personne contre laquelle plainte a été faite pour voie de fait, par la personne lésée ou en son nom, ayant été convaincue du fait, paye le montant entier adjugé, ou si elle subit l'emprisonnement, ou l'emprisonnement aux travaux forcés, elle ne pourra plus être poursuivie, soit au civil soit au criminel, pour le même fait,—ne s'applique que lorsqu'il s'agit de simples voies de fait qui peuvent être jugées sommairement. Le défendeur, poursuivi au civil pour voies de fait graves qui ne peuvent être jugées au criminel sommairement qu'avec le consentement du défendeur, ne peut invoquer cette condamnation criminelle et le paiement de l'amende adjugée, pour échapper à la responsabilité civile résultant de son fait.—Revision, (Qué.), 1895. Peltier *vs* Martin, R.J.Q., 12 C.S., 438; de Lorimier, J.

3. A declaration, in an action of damages resulting from an assault

and battery, is not demurrable merely because it appears thereby that the defendant was arrested and convicted of the assault, and condemned to pay a fine,—the mere conviction and condemnation to a fine not constituting, under article 866 of the Criminal Code of Canada, a ground for releasing the person so condemned from all other proceedings, civil and criminal, unless he has paid the fine.—Superior Court, (Que.), 1895. Abinovitch *vs* Legault, R.J.Q., 8 S.C., 525; Doherty, J.

4. The conviction of a person by a justice for an aggravated assault and the payment by him of the amount adjudged to be paid, does not release him from a civil proceeding for the recovery of damages for the same cause, Art. 866, Criminal Code, not applying to such case.—Superior Court, (Que.), 1899. Grantillo *vs* Caporici, R.J.Q., 16 C.S., 44; Lynch, J.

5. Sections 865 and 866 of the Criminal Code, 1892, whereby it is enacted that a person who has obtained a certificate of the justice, who tried the case, that a charge against him of assault and battery has been dismissed, or who has paid the penalty or suffered the imprisonment awarded, shall be released from all further proceedings, civil or criminal for the same cause, are *intra vires* of the Dominion Parliament.—High Court of Justice, (Ont.), 1895. Flick *vs* Brisbin, 26 Ont. R., 423; Boyd, C., Ferguson, J.

6. Where a charge under section 262 of the Criminal Code, 55-56 Vict., ch. 29 (*D*), of assault causing actual bodily harm is brought under Part 55 of the Code, by the election of the defendant under section 786 to be tried summarily, a conviction releases, under section 799 from further criminal proceedings, but does not bar civil proceedings. Flick *vs* Brisbin, 26 O.R., 423, distinguished.—High Court of Justice, (Ont.), 1897. Neville *vs* Ballard, 28 Ont. R., 588; 1 Can. Cr. Cas., 434; Boyd, C. Ferguson & Meredith, JJ.

7. To an action by plaintiff seeking to recover damages for an assault, defendant pleaded a prior conviction for the same offence, and payment of the amount adjudged in said conviction.

Held, bad because it was not averred that the complaint, which resulted in the prior conviction, was preferred by or on behalf of the plaintiff.—Supreme Court, (N.S.), 1894. Ross *vs* McQuarrie, 26 N.S.R., 504; Weatherbe, Ritchie, Graham & Meagher, JJ.

8. The civil right of action to recover damages for assault is not taken away by the criminal prosecution and dismissal or punishment of the offender, unless the complaint has been preferred by or on behalf of the person aggrieved. Where a summons is issued by a peace officer of his own motion, and the person aggrieved attends the hearing and gives evidence, the right of action remains. Judgment of a Divisional Court reversed.—High Court of Justice, (Ont.), 1898. Miller *vs* Lea, 34 C.L.J., 782; 25 Ont. App., 428; 2 Can. Cr. Cas., 282.

9. Criminal Code, 866, does not apply to bar a civil action for assault, after conviction and payment of the fine, where such conviction is by a petit jury on a trial upon an indictment.—Superior Court, (Que.), 1897. Clermont *vs* Lagacé, 2 Can.Cr.Cas., 1; Lynch, trial J.; Taschereau, Mathieu, Loranger, JJ.

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.

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.

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.

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.

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

	$ cts.
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

	$ cts.
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 summons shall be issued without charge)....	0 10
5. Information for warrant for witness and warrant...	0 50
6. Each necessary copy of summons or warrant for witness....	0 10
7. For every recognizance...	0 25
8. For hearing and determining case...	0 50
9. If case lasts over two hours...	1 00
10. Where one justice alone cannot lawfully hear and determine the case, the same fee for hearing and determining to be allowed to the associate justice.	
11. For each warrant of distress or commitment... ...	0 25
12. For making up record of conviction or order where the same is ordered to be returned to sessions or on *certiorari*...	1 00
But in all cases which admit of a summary proceeding before a single justice and wherein no higher penalty than $20 can be imposed, there shall be charged for the record of conviction not more than...	0 50
13. For copy of any other paper connected with any case, and the minutes of the same if demanded, per folio of 100 words...	0 05
14. For every bill of costs when demanded to be made out in detail...	0 10
(Items 13 and 14 to be chargeable only when there has been an adjudication.)	

Constables' Fees

1. Arrest of each individual upon a warrant... ...	1 50
2. Serving summons...	0 25

	$ cts.
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, s. 1.

1. *See* as to fees payable in provincial courts, 54-55 V. (C), c. 28, s. 5.

2. *See* as to tariff of fees payable to certain officers in Quebec, S.R.Q., 2478 and 2585; Canada Gazette, 1864, p. 328, and Quebec Official Gazette, 1891, p. 1627.

3. The allowance by the magistrate, on a summary conviction, of excessive costs in respect of mileage to the constable for serving sub-

penas upon witnesses, is not a ground for quashing the conviction.—Supreme Court, (N.B.), 1896. *Ex parte* Rayworth, 2 Can. Cr. Cas., 230; 34 N.B.R., 74; Tuck, Hanington, Barker & Van Wart, JJ.

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 ; 57-58 V., c. 57, s. 1; 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. 57-58 V., c. 57, s. 1.

(*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. *(Paragraph (c.) shall come into force on the 1st of January 1901.)*

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.

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.

1. *See* Meunier *vs* Loupret & Simpson, section 889, No. 3.

2. 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. Judgment of Rose, J., 26, O.R., 685, reversed.—High Court of Justice, (Ont.), 1895. Regina *vs* Coursey, 27 Ont. R., 181; Armour, C. J., Falconbridge, J.

3. *See* Latta *vs* Owens, section 3, No. 1.

4. Defendant, a policeman of the town of D., was entrusted with the execution of a warrant of commitment by the stipendiary magistrate of D., on a conviction of plaintiff for a violation of the Canada Temperance Act. Defendant went to plaintiff's house and demanded admission, stating that he had a Scott Act commitment against plaintiff. After

waiting a reasonable time, and admission being refused, defendant broke and entered.

Held, that he was justified in doing so.

Also, that a prosecution of this nature constitutes a criminal case; Queen *vs* Calhoun, 20 N.S.R., 325.

Plaintiff evaded arrest in the first instance by escaping from the house. Defendant returned in pursuit and entered.

Held, that a further demand was unnecessary under such circumstances.

The warrant under which defendant acted contained no provision for payment of the costs of conveying to jail.

Held, assuming this to be an irregularity, that defendant was still protected.

Held, further, per McDonald, C. J., and Townshend, J., that notice to the constable was a condition precedent to the bringing of the action. —Supreme Court, 1894. Vantassel *vs* Trask, 27 N.S.R., 329; McDonald, C. J., Weatherbe, Townshend, Graham & Henry, JJ.

5. (*a.*) The word "penalty," although generally applied to pecuniary punishment, as by fine, includes also punishment by imprisonment.

(*b.*) A conviction awarding ninety days' imprisonment as an alternative punishment on non-payment of a fine where the statute authorized three months imprisonment is bad, as ninety days may possibly be more than three months.

(*c.*) Such a conviction under the Canada Temperance Act cannot be amended under sec. 117, because it imposes a "greater penalty than is authorized."—Supreme Court, (N.S.), 1897. R. *vs* Gavin, 1 Can. Cr. Cas., 59; McDonald, C. J., Townshend, Graham, Henry, JJ.

6. *See* R. *vs* Perry, section 208, No. 2.

7. (*a.*) 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 three months under Cr. Code, sec. 872, (*b*), although he might impose imprisonment for six months in the first instance instead of a fine.

(*b.*) *Semble*, sec. 788 Cr. Code only applies to authorize six months' imprisonment in default of payment of a fine when fine and imprisonment are conjointly imposed in the first instance.

(*c.*) Cr. Code, sec. 208 only applies to authorize six months' imprisonment when imposed as the substantive punishment for the offence and not as a means of enforcing payment of a fine.—Supreme Court, (N.S.), 1898. R. *vs* Stafford, 1 Can. Cr. Cas., 239; Townshend, J.

8. (*a.*) 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.

(*b.*) 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 be imprisoned.—Supreme Court, (N.S.), 1897. R. *vs* Crowell, 2 Can. Cr. Cas., 34; Meagher, J.

9. A conviction under the Canada Temperance Act may by virtue of Cr. Code, sec. 872 (*b*) direct imprisonment in default of payment of the fine and costs, without any award of a distress upon the defendant's goods.—Supreme Court, (N.B.), 1897. *Ex parte* Casson, 2 Can. Cr. Cas., 483; Van Wart, J.

10. (*a.*) 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 gaol before he can obtain his liberty, is invalid if the amount of such expenses are not stated therein.

(*b.*) A conviction under section 192 of the Customs Act for clandestinely landing spirits in Canada, should show on its face that the goods were subject to duty.—Supreme Court, (N.S.), 1898. R. *vs* Thomas McDonald, 2 Can. Cr. Cas., 504; Graham, E. J.

11. (*a.*) Criminal Code, sec. 872 enacting that in default of payment of a fine the defendant may be imprisoned "in the manner and for the time" mentioned in the Act or law authorizing the conviction, does not authorize an award of imprisonment *with hard labor* in default of payment of the fine, unless the Act or law under which the conviction is had provides the same in respect of the non-payment of the penalty; and this notwithstanding such Act or law authorizes a punishment in the first instance by imprisonment with hard labor.

(*b.*) A conviction made under Cr. Code, sec 501 for wilfully and unlawfully killing a dog, and which adjudges 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*.

(*c.*) 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 the prosecution and conviction or of his imprisonment thereunder.—Supreme Court, (N.S.), 1897. R. *vs* Horton, 3 Can. Cr. Cas., 84; 31 N.S.R., 217; McDonald, C. J., Townsend, J., Graham, E. J., and Meagher, J.

12. *See* R. *vs* McAnn, section 889, No. 24.

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.

1. Where after the issue of a writ of certiorari for the removal of a conviction made by a magistrate for the purpose of quashing it, which, though served on the clerk of the peace, did not come to the magistrate's notice or knowledge, who enforced the conviction by issue of a distress warrant.

Held, that the magistrate could not be held to be guilty of contempt, so as to justify a writ of attachment being issued against him.—High Court of Justice, (Ont.), 1895. Regina *vs* Woodyatt, 32 C.L.J., 120; 27 Ont. R., 113; Armour, C. J., Falconbridge, Street, JJ.

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.

875. Distress not to 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.

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.

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.

1. *See Ex parte* McManus, section 17, No. 1.

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 *primâ 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. 58-59 V., c. 40, s. 1.

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, 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. 178, ss. 71 and 72; 58-59 V., c. 40, s. 1.

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 Queen'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.

1. An appeal does not lie to the Court of Queen's Bench, Crown Side, under Art. 879, Criminal Code, from a summary conviction of neglect to repair a road, against a municipal corporation of a city or town, under Art. 4616 R.S.Q., inasmuch as the Parliament of Canada has no legislative authority over such an offence.—Queen's Bench, Crown Side, (Que.), 1896. The Corporation of the Town of Scottstown *vs* Beauchesne, R. J.Q., 5 Q.B., 554; White, J.

2. The present defendant took an appeal, under the provisions of the Criminal Code, to the Court of Queen's Bench, Crown Side, from a conviction by a district magistrate for failing to keep in repair a certain road. This appeal was quashed for want of jurisdiction. Costs were not granted. The present action was brought by the complainant in the previous proceeding, to recover by way of damages the expenses to which the plaintiff had been subjected by the appeal. The Court below awarded $50. *Held*, (modifying the judgment of Lemieux, J., as to the amount of damages, and granting $200):—That the defendant by bringing an appeal in a case in which the Court of Queen's Bench had no jurisdiction, became liable for all legitimate costs and expenses incurred by the present plaintiff in resisting the appeal, including fees of counsel, taxation of witnesses, service of subpœnas, and travelling expenses. (Davidson, J., dissenting, was of opinion to confirm the judgment).

Quære as to the power of the court to grant costs where an appeal is quashed for want of jurisdiction.—Review, (Que.), 1899. Beauchesne *vs* the Corporation of the Town of Scottstown, R.J.Q., 16 C.S., 316; Gill, Davidson, Pagnuelo, JJ.

3. The offence of forcibly and unlawfully passing a turnpike gate without first having paid the legal toll being an offence under a provincial law, and concerning a matter under the exclusive authority of the provincial legislature, no appeal lies from a conviction by a magistrate to the court of Queen's Bench, Crown Side, under art. 879 of the Criminal Code, this article only applying to offences or matters over which the Parliament of Canada has legislative authority. (Art. 840, Criminal Code).—Queen's Bench, Crown Side, (Que.), 1899. Lecours & Hurtubise, R. J. Q., 8 Q. B., 439; Würtele, J.

4. (*a.*) Si une poursuite a été intentée devant les juges de paix par un agent d'une société, l'appel du jugement renvoyant la poursuite doit être pris par cet agent lui-même, et non pas par la société qu'il représente.

(*b.*) Dans l'avis, l'appel est donné aux juges de paix pour l'intimé suivant la cédule NNN., l'omission des mots "pour l'intimé" est

fatale, et l'appel sera renvoyé sur ce motif, même s'il est prouvé que l'intimé a quitté le pays et n'a pu être assigné, et que son avocat connaissait la date du procès.—Queen's Bench, (Que.), 1899. The Canadian Society for the prevention of cruelty to animals & Lauzon, 5 R. J., 259; Bélanger, J.

5. *See* R. *vs* Gillespie, section 843, No. 3.

6. An incorporated company, carrying on business as a departmental store, and having a drug department under the management of a duly qualified and registered pharmaceutical chemist, who had obtained his certificate under the Pharmacy Act, R.S.O., c. 151, were charged with a breach of s. 24 of the Pharmacy Act, in unlawfully keeping open shop for retailing, dispensing and compounding poisons, etc., before a police magistrate, who dismissed the charged, but at the request of the prosecutor he stated a special case for the opinion of a division of the High Court.

Held, that there was no power to state a case, for the alleged offence being for the breach of an Ontario statute, the procedure provided for by the Ontario legislation applied, which was by way of appeal to the sessions, and not the stating of a case under s. 900 of the Criminal Code.—High Court of Justice, (Ont.), 1896. R. *ex rel.* Brown *vs* Simpson, 33 C.L.J., 116; 28 Ont. R., 231; 2 Can. Cr. Cas., 272; Boyd, C., Ferguson, Robertson, JJ.

7. *See* R. *vs* Nixon, section 880, No. 5.

8. *See* R. *vs* Monaghan, section 888, No. 1.

9. A 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 consequently no appeal from the Recorder's Court of Montreal to the Court of Queen's Bench, from a conviction for carrying on the business of a pawnbroker without a license.—Queen's Bench, (Que.), 1900. Superior *vs* City of Montreal, 3 Can. Cr. Cas., 379; Würtele, J.

10. (*a.*) *Per* Ouimet, J.—Upon a prosecution for harboring a deserting seaman the procedure to be followed and the punishment to be imposed are governed by the Seamen's Act of Canada if the offence was committed in Canada by a resident of Canada, and section 711 of the Imperial Merchant Shipping Act, 1894, is confirmatory of such rule as regards cases coming within the latter Act.

(*b.*) *Per* Ouimet, J.—The appeal from a summary conviction under the Seamen's Act of Canada for harboring and secreting a deserting seaman is under section 879, and not under section 742 of the Criminal Code, 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 Queen's Bench of that province.

(*c.*) *Per* Würtele, J.—Where the information sets up in general terms that the accused had harbored and secreted a seaman who had deserted from a vessel named, but contains no allegation that the vessel was a duly registered British ship, the necessary intendment is that the prosecution is brought under the Seamen's Act of Canada.

(*d.*) *Per* Würtele, J.—In such case it is necessary for the accused to

plead and prove the vessel to be a duly registered British ship before jurisdiction under the Seamen's Act of Canada is ousted on the ground that the Imperial Merchant Shipping Act governs the case, the punishment provided in the latter statute being limited to cases of desertion from registered British ships, while the Canadian statute applies to ships of all nationalities and whether registered or not.—Queen's Bench, (Que.), 1900. R. *vs* O'Dea, 3 Can. Cr. Cas., 402; Ouimet, Würtele, JJ.

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 being 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 adjuged 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 cer-

tificate 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.

1. *See* The Canadian Society for the prevention of cruelty to animals *vs* Lauzon, section 879, No. 4.

2. On an appeal to a county judge from a summary conviction under the Act to provide against frauds in the supplying of milk to cheese, butter and condensed milk factories (52 Vict., ch. 43, sec. 9), the judge has the same powers to award costs as the Sessions of the Peace under sections 879-880 of the Criminal Code (55-56 Vict., ch. 29, *D.*).

Under the Criminal Code, section 880, the court may, on appeal, award such costs, including solicitor's fee, as it may deem proper, and there is no power in the High Court to review such discretion.—In Chambers, 1897. Regina *vs* McIntosh, 28 Ont. R., 603; 2 Can. Cr. Cas., 114; Rose, J.

3. (*a.*) Where an order *nisi* to quash a conviction has been issued, but before service of same upon the informant prosecutor the latter died, the proceedings do not lapse and can be properly continued by serving the magistrates.

(*b.*) The informant in certiorari proceedings in criminal matters is not a party to the record although his name appears and although he is under liability for costs and has given recognizance for same.

(*c.*) *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.

(*d.*) *Semble* an appeal, under Cr. Code 880, to the General Sessions would not abate under similar circumstances.—High Court of Justice, (Ont.), 1898. R. *vs* Fitzgerald, 1 Can. Cr. Cas., 420; Meredith, C. J., Rose, McMahon, JJ.

4. (*a.*) 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.

(*b.*) Criminal Code, sec. 880 (*e*) enacting that the court "may" order the fine and costs to be paid out of moneys deposited pursuant to sec. 880 (*c*), on taking an appeal, if the conviction is affirmed, 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.—Supreme Court, (B.C.), 1897. Fenson *vs* New Westminster, 2 Can. Cr. Cas., 52; Bole, C. J.

5. Motion for a mandamus requiring the police magistrate for the city of Toronto, to admit to bail the defendant, Mary Nixon, now serving a sentence of sixty days in gaol under a conviction by the said magistrate for being an inmate of a house of ill-fame, as required by s. 880 of the Criminal Code, 1892, pending her appeal against her conviction to the Court of General Sessions of the Peace for the County of York.

The magistrate was of the opinion that an appeal was not open to the defendant, and the only question upon the motion was whether or not the right of appeal existed. The defendant contended that the prosecution and conviction took place under the provisions of ss. 207 and 208 of the code, which are in part XV commonly spoken of as the Vagrancy Act.

Held, that the prosecution was under the provisions of s. 783, and the conviction under s. 788, which are in part LV of the Code. In such a case as this, s. 784 provides that the jurisdiction of the magistrate is absolute and does not depend upon the consent of the person charged to be tried by the magistrate and that such person shall not be asked whether he or she consents to be so tried.

The right of appeal is given by s. 879, which as well as the sections following it, which point out the manner of conducting the appeal, is in part LVIII. Section 808, which is in part LV, provides that the provisions of part LVIII shall not apply to any proceedings under part LV.

By 58 and 59 Vict., c. 40, s. 782 of the Code, which shews what the expression "magistrate" in part LV means and includes, is amended by adding a subsection providing that when the defendant is charged with any of the offences mentioned in paragraphs (*a*) and (*f*) of s. 783, (*f*)—being the one defining the charge in this case—any two justices of the peace sitting together shall be added to the list of persons falling within the meaning of the expression "magistrate" as used in part LV, and the amendment also provides that when any offence is tried by virtue of the sub-paragraph an appeal shall be from the conviction in the same manner as from summary convictions under part LVIII. This affords an indication that Parliament had it in mind that an appeal did not before lie in cases where the prosecution was for an offence by s.-s. (*a*) or (*f*) of s. 783; and the appeal in such cases lies now only where the case is heard and determined by two justices of the peace sitting together. However that may be, this prosecution having taken place under s. 783, and not under the part known as the Vagrancy Act, by reason of the provisions of s. 808 an appeal is precluded.—High Court of Justice, (Ont.), 1899. Regina *vs* Nixon, 35 C.L.J., 636; Ferguson, J.

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.

1. *See* R. *vs* Gillespie, section 843, No. 3.

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 further day, as herein provided. R.S.C., c. 178, s. 79.

1. *See* Champagne *vs* Simard *et al.*, section 842, No. 2.

2. *See* Lalibertê *vs* Fortin, section 845, No. 1.

3. *See* Lalibertê *vs* Fortin, section 846, No. 3.

4. (*a.*) Under the Summary Convictions Act, (B.C.), sec. 75, (similar to Cr. Code 882), an objection on an appeal from a summary conviction that the by-law under which the prosecution took place is *ultra vires* is not available unless raised on the hearing before the magistrate.

(*b.*) On an appeal from a summary conviction had upon a plea of guilty, the case should not be re-opened and witnesses called as to the merits for the purpose of revising the punishment imposed, if the magistrate has not acted oppressively.—Supreme Court, (B.C.), 1898. R. *vs* Bowman, 2 Can. Cr. Cas., 89; Martin, J.

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.

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; 57-58 V., c. 57.

1. An action against a justice of the peace by a party against whom an information is laid, does not necessarily disqualify the justice. The court will inquire into the circumstances and ascertain if they reasonably lead to the inference of bias.

Where the bias arises out of the wrong of the party, he cannot object to it.—Supreme Court, (N.B.), 1893. *Ex parte* Scribner, 32 N. B. R., 175.

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.

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.

1. *See* Champagne *vs* Simard *et al.*, section 842, No. 2.

2. *See* R. *vs* Kennedy, section 889, No. 10.

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.

1. Where the convicting justice had no jurisdiction over the subject matter, a certiorari was granted, though there was a remedy by review.—Supreme Court, (N.B.), 1893. *Ex parte* Levesque, 32 N. B. R., 174; Allen, C. J.

2. Where there is a review a certiorari should not be granted unless under exceptional circumstances.—Supreme Court, (N.B.), 1893. *Ex parte* Young, 32 N. B. R., 178; Allen, C. J.

3. Where a statute makes provision for an appeal from a summary conviction, the discretion of the court, as to granting a certiorari should be exercised by refusing the latter unless special circumstances are shewn therefor.—Supreme Court, (N.B.), 1895. *Ex parte* Ross, 1 Can. Cr. Cas., 153.

4. (*a*.) 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 made for proving the register by the production of a printed copy thereof, the *viva voce* 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.

(*b.*) *Per* Dubuc, J.—Where there is a right of appeal from a summary conviction, and it appears upon an application for a certiorari to bring up the conviction to be quashed that the ground alleged therefor is more properly the subject of an appeal, the discretion of the Court should be exercised by refusing the certiorari.—Queen's Bench, (Man.), 1899. R. *vs* Herrell, 3 Can. Cr. Cas., 15; Killam, C. J.; Dubuc, Bain, JJ.

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 and for the district, county or place wherein the offence is alleged to have been committed, before the time when an appeal from such conviction or order may be heard, there to be kept by the proper officer among the records of the court; 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.

1. (*a.*) *Per* Scott and Rouleau, JJ.—A conviction returned by justices in compliance with a statutory requirement to the office of a superior court is regularly before the court and can be dealt with on a motion to quash, without the necessity of a writ of certiorari.

(*b.*) *Per* Richardson and Wetmore, JJ.—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.

(*c.*) *Per curiam.*—The grounds taken on the motion to quash the conviction being the same as those taken and disposed of by a single judge on a stated case, the matter was *res judicata*.—Supreme Court. (N. W. T.). 1897. R. *vs* Monaghan, 2 Can. Cr. Cas., 488; Richardson, Rouleau, Wetmore and Scott, JJ.

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 seventy-nine. R.S.C., c. 178, s. 87; 53 V., c. 37, s. 27.

1. *See* Champagne *vs* Simard *et al.*, section 842, No. 2.

2. *See Ex parte* Corrigan, section 846, No. 5.

3. (*a.*) Le percepteur du revenu peut poursuivre en son nom toute infraction aux dispositions de l'acte du Revenu de l'Intérieur, en vertu du 4ème article du dit acte et même toute personne quelconque peut se porter dénonciatrice ou plaignante pour une offense en vertu de l'art. 334 du dit acte du Revenu de l'Intérieur, cette offense étant déclarée délit par la loi.

(*b.*) Une offense décrite dans la dénonciation et le bref de sommation comme suit, savoir: "That .... C. M. not being a licensed tobacco or "cigar manufacturer, did then and there unlawfully have in possession, "in his store, a certain quantity of cigarettes not put up in packages "and stamped in accordance with the provisions of law, and the provi- "sions of the Inland Revenue Act, to wit: Two boxes containing one "hundred packages of cigarettes "Sweet Caporal" without any stamp or "stamps whatever of the Inland Revenue of Canada affixed thereon"—est l'offense telle que décrite par l'art. 334 du dit acte du Revenu, et est la reproduction du texte même créant l'offense—et par conséquent suffisante.

(*c.*) Le Code criminel de 1892 autorise la Cour Supérieure, lorsqu'un dossier est devant elle en vertu d'un certiorari, et pourvu qu'il y ait lieu à certiorari, à entrer dans le mérite et l'appréciation de la preuve pour juger de la justice de la conviction quand il s'agit de l'application de lois fédérales et des procédures qui s'y rattachent.

(*d.*) Le magistrat de district décidant une accusation poursuivie en vertu de l'acte concernant les convictions sommaires a le pouvoir de condamner le défendeur à un emprisonnement d'un mois à défaut de paiement immédiat de l'amende et des frais,—ou de le condamner à un emprisonnement d'un mois à défaut de meubles et effets pour payer l'amende et les frais; ou, sur l'insuffisance de meubles et effets pour les payer.

(*e.*) Une conviction déclarant que l'amende sera prélevée et employée conformément à la loi, n'est pas insuffisante et illégale pour la raison qu'elle ne mentionne pas à qui la pénalité doit être payée.

(*f.*) Pour l'offense précitée, le terme de l'emprisonnement indiqué à l'art. 113 du dit acte du Revenu est de six mois, mais l'art. 953 du Code criminel donne au magistrat le pouvoir discrétionnaire d'abréger une incarcération de cette nature.—Cour Supérieure, (Qué.), 1899. Meunier *vs* Loupret & Simpson, 2 R.P.Q., 126; Charland, J.

4. A défaut de règle de pratique à cet effet, le requérant certiorari ne peut être forcé à donner un cautionnement pour les frais.—Superior Court (Que.), 1899. Desjardins *vs* Lauzon & Leguerrier, 2 R.P.Q., 192; Taschereau, J.

5. (*a.*) Le bref de certiorari est un bref de prérogative auquel, nonobstant toute disposition statutaire à ce contraire, on a droit d'avoir recours pour contrôler l'action des juridictions inférieures, et les ramener dans les limites assignées par la loi, chaque fois qu'il y a un manque, une absence ou un excès de juridiction, et de plus, chaque fois qu'une pénalité non autorisée a été imposée.

(*b.*) Si un statut prescrit qu'une poursuite pour certaine offense doit être prise dans un certain délai après la commission de cette offense, et qu'une ou plusieurs offenses de même nature, contre le même statut, peuvent être insérées dans la même poursuite, alors une plainte faite à une date déterminée pour une seule offense est présumée faite et comprend toutes les offenses contre ce statut jusqu'à la date de cette plainte. —Cour Supérieure, (Qué.), 1899. *Ex parte* J. L. Mathieu et W. Wentworth, R. J. Q., 15 C. S., 504; Lemieux, J.

6. Upon a motion for a rule *nisi* to quash a summary conviction of the defendant by a stipendiary magistrate for selling liquor without a license:—

Held:—That although the conviction did not shew on its face that the offence was committed at a place within the territorial jurisdiction of the magistrate, yet, as the warrant for the defendant's apprehension, which was returned upon certiorari, shewed the complaint to be that the defendant sold liquor at a place within the magistrate's jurisdiction, and it was to be inferred that the evidence returned was directed to that complaint, sufficient appeared to satisfy the court that an offence of the nature described in the conviction was committed, over which the magistrate had jurisdiction, and therefore the conviction should not, having regard to sec. 889 of the Criminal Code, 1892, be held invalid.

Held also, that, by the combined effect of secs. 843 and 859 of the code it was discretionary with the magistrate to issue either a summons or a warrant, as he might deem best; and therefore it was not a valid objection to the conviction that the magistrate included in the costs which the defendant was ordered to pay, the costs of arresting and bringing her before the magistrate under the warrant.

Upon the defendant tendering herself as a witness on her own be-

half, the magistrate stated that, in view of the evidence adduced by the prosecutor, a denial by the defendant on oath would not alter his opinion of her guilt, upon which her counsel did not further press for her examination; but her husband was examined, and gave evidence denying the sale of the liquor:—

Held, that there was no denial of the right of the defendant, under sec. 859 of the code, to make her full answer and defence.

The defendant was a married woman, and the sale of the liquor took place in the presence of her husband; but the evidence shewed that she was the more active party, and she was the occupant of the premises on which the sale took place:—

Held, having regard to R.S.O., ch. 194, sec. 112, subsec. 2, that, even if the presumption that the sale was made through the compulsion of the husband had not been removed by sec. 13 of the code, it would have been rebutted by the circumstances. Regina *vs* Williams, 42 U. C. R., 462, distinguished.—High Court of Justice, (Ont.), 1895. R. *vs* McGregor, 26 Ont. R., 115; 2 Can. Cr. Cas., 410; Meredith, C. J., Rose, J.

7. Where the convicting justice was the son of the complainant, and the latter was entitled to one half of the penalty imposed, a summary conviction was quashed, on the ground that the justice had such an interest as made the existence of real bias likely, or gave ground for a reasonable apprehension of bias, although there was no conflict of testimony. The Queen *vs* Huggins, (1895), 1 Q. B., 563, followed. Dictum of Rose, J., in Regina *vs* Langford, 15 Ont. R., 52, approved.

Costs of quashing conviction withheld from successful defendant, where he filed no affidavit denying his guilt, or casting doubt upon the correctness of the magistrate's conclusion upon the facts.—High Court of Justice, (Ont.), 1895. R. *vs* Steele, 26 Ont. R., 540; 2 Can. Cr. Cas., 453; Meredith, C. J., and Rose, J.

8. When a summary conviction is removed by certiorari, and a motion made to quash it, it is the duty of the court to look at the evidence taken by the magistrate, even where the conviction is valid on its face, to see if there is any evidence whatever shewing an offence, and, if there is none, to quash the conviction as made without jurisdiction; but if there is any evidence at all, it is not the province of the court to review it as upon an appeal. Regina *vs* Coulson, 24 O.R., 246, not followed.

The defendant was convicted under the Ontario Medical Act R.S.O., ch. 148, sec. 45 for practising medecine for hire. The evidence shewed that when the complainant went to the defendant he told him his symptoms; that he did not know what was the matter with himself; that he left it to the defendant to choose the medicine, after learning the symptoms; and that upon the advice of the defendant, he took his medecine, went under a course of treatment extending over some months and paid the price agreed upon:—

Held, that there was evidence to support the conviction. Regina *vs* Coulson, 24 O. R., 246, distinguished. Regina *vs* Howarth, followed.—High Court of Justice, (Ont.), 1897. Regina *vs* Coulson, 27 Ont. R., 59; Meredith, C. J., Rose, J.

9. A summary conviction of the owner of a hound or other dog 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 cannot be amended

under sec. 889 of the Criminal Code unless the evidence shews knowledge of the owner of such habit of the dog. A statement in a deposition that "dogs were at large on defendant's premises" is not evidence that they were either running or permitted to run at large contrary to the statute.

Costs withheld, as the *bona fides* of the magistrate had been unsuccessfully attacked.—High Court of Justice, (Ont.), 1896. Regina *vs* Crandall, 27 Ont. R., 63; Meredith, C. J., Rose, J.

10. A warrant of commitment signed by an Indian agent, under the provisions of the Indian Act, must clearly show that the agent had jurisdiction at the place where the offence was committed, and although by s. 8 of c. 32 of 57-58 Vic. (*D*), substituted for s. 117 of the Indian Act, the agent would have jurisdiction all over Manitoba, there is no ground for assuming that the offence was committed in Manitoba when no place is specified.

Such a warrant could only be supported under s. 108, s.-s. 2 of the Indian Act or section 886 or 889 of the Criminal Code, 1892, or amended if a proper conviction where shown.

The prisoner was in custody under a warrant defective in this respect, and offered some evidence to show that the conviction was equally defective.

Held, That a *habeas corpus* should be issued to enable him to apply for his release.—Queen's Bench, (Man.), 1894. Regina *vs* Kennedy, 10 Man. Law Rep., 338; Killam, J.

11. *See Ex parte* Lévesque, section 887, No. 1.

12. *See Ex parte* Scribner, section 884, No. 1.

13. A servant of a livery-stable keeper is not within any of the classes of persons enumerated in s. 1 of the Lord's Day Act R.S.O., c. 203, and cannot be lawfully convicted thereunder for driving a cab on Sunday.

Conviction of the defendants under the Act for unlawfully exercising the wordly business of his ordinary calling as a cab-driver on the Lord's day. *Held*:—Bad for uncertainty. The practice is not to give costs on quashing a conviction. Regina *vs* Johnston, 38 U.C.R., 549, followed.—High Court of Justice, (Ont.), 1893. R. *vs* Somers, 29 C.L.J., 724.

14. *See* R. *vs* MacFarlane, section 890, No. 2.

15. In Michaelmas term applicant moved for rule *nisi* for certiorari to remove several convictions for assault against him and others, the motion being in the alternative to take out a separate rule against each conviction or a joint rule against all jointly, as he should decide. The motion being granted, he subsequently took out a joint rule against all the convictions.

Held, on motion to make the rule absolute, that a separate rule should have been taken out in each case. Rule discharged.—Supreme Court, (N.B.), 1900. *Ex parte* Landry, 36 C.L.J., 169.

16. A conviction by a magistrate under the sections of the Criminal 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 those sections not being matter of record in such sense as to make it reviewable only by writ of error.

Upon the hearing of a charge under these sections, evidence in other proceedings against another prisoner is admissible upon the consent of the accused's counsel. Judgment of Falconbridge, J., affirmed.—Court

of Appeal, (Ont.), 1900. Regina *vs* St. Clair, 36 C.L.J., 304; Falconbridge, J.

17. (*a.*) A motion to quash a conviction being unopposed, no costs were allowed, and terms were imposed that no action should be brought by defendant.

(*b.*) One magistrate has no jurisdiction to convict on a charge of using abusive language under R. S. Nova Scotia, 5th series, c. 103, and 1889 N.S., c. 36.—Supreme Court, (N.S.), 1897. R. *vs* McLeod, 1 Can. Cr. Cas., 10; McDonald, C. J., Townshend, Graham, Meagher, JJ.

18. ..... (*a.*) Cost of quashing a conviction are recoverable by action where no order of protection is made.—High Court of Justice, (Ont.), 1893. R. *vs* Somers, 1 Can. Cr. Cas., 46; Armour, C. J., Falconbridge, Street, JJ.

19. Findings of fact by the magistrate are not open to review on motion to quash conviction in certiorari proceedings, if there was evidence from which he might draw the conclusion he did.—Supreme Court, (N. B.), 1895. *Ex parte* Coulson, 1 Can. Cr. Cas., 31; Van Wart, J.

20. (*a.*) A conviction for unlawfully practising medicine without being registered under the Ontario Medical Act is bad unless it specifies the particular act constituting the alleged "practising."

(*b.*) A conviction bad on its face for uncertainty should be amended by the Court, to which removed by certiorari, only when such court can conclude on the evidence that an offence is thereby proved.—High Court of Justice, (Ont.), 1893. R. *vs* Coulson, 1 Can. Cr. Cas., 114; 24 Ont. R., 246; Armour, C. J., Falconbridge, Street, JJ.

21. (*a.*) Under the Liquor License Act (Man.), which provides that upon a prosecution for a second 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.

(*b.*) In the absence of an admission by the accused of the fact of previous conviction, it is essential under the Manitoba Liquor License Law that evidence apart from such certificate should be given of the identity of the accused with the person formerly convicted.

(*c.*) The magistrate can act only upon evidence adduced, and not upon his own personal knowledge as to such identity.

(*d.*) 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.

(*e.*) To authorize the amendment of a conviction under Cr. Code, sec. 889, the court or judge must, from the depositions be satisfied that, if trying the defendant in the first instance, the court or judge would have convicted upon that evidence.

(*f.*) A conviction for a second offence which is defective for want of proof of any prior conviction should not be amended under the Liquor License Act, secs. 209, 210, so as to impose the lesser penalty applicable to a first offence, unless the court is satisfied, from a perusal of the depo-

sitions and after giving the accused the benefit of any reasonable doubt, that an offence is thereby proved.—Queen's Bench, (Man.), 1898. R. *vs* Herrell, 1 Can. Cr. Cas., 510; Taylor, C. J., Killam & Bain, JJ.

22. (*a.*) The steward of an incorporated club placed in charge of liquors purchased by the club for the use of the members and authorized to allow members only to withdraw liquor from the stock upon payment according to a rate fixed by the directors as sufficient to replace the quantity withdrawn, is, in carrying out such instructions without a liquor license, guilty of illegally keeping liquor for sale contrary to the Ontario Liquor License Act.

(*b.*) A withdrawal of liquor from stock by a member or shareholder is under such circumstances a sale by the corporation to him.

(*c.*) *Semble* that, whether or not a conviction be good on its face, the court may on certiorari go into the facts, where the right of appeal to the General Sessions upon both law and fact has been taken away by statute.—High Court of Justice, (Ont.), 1898. R. *vs* Hughes, 2 Can. Cr. Cas., 5; Boyd, C., Robertson, J.

23. (*a.*) A conviction for using profane language on a public street is invalid unless the words complained of are therein set out.

(*b.*) In Nova Scotia, if the magistrate and the informant appear upon and unsuccessfuliy 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.—Supreme Court, (N. S.), 1899. R. *vs* Smith, 2 Can. Cr. Cas., 485; 31 N.S.R., 468; McDonald, C. J., Ritchie, Meagher, Henry, JJ.

24. (*a.*) 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.

(*b.*) 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.

(*c.*) 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.—Supreme Court, (B.C.), 1896. R. *vs* McAnn, 3 Can. Cr. Cas., 110; Davie, C. J., McCreight, Walkem, Drake, JJ.

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.

1. *See* Champagne *vs* Simard *et al.*, section 842, No. 2.

2. Rule to quash a summary conviction of the defendant by two justices of the peace for the county of Halton, for alleged breach of a by-law of the county regulating hawkers and peddlars in selling fresh meat without a license. The by-law was passed pursuant to s. 495 of the Municipal Act. The court held that the conviction was bad upon its face, because it did not negative the exception in s. 495, sub-sec. 3 with regard to "hawking or peddling any goods, wares or merchandise, the growth, produce or manufacture of this province"; and that it could not be amended under ss. 889 and 890 of the Criminal Code, because the evidence, when looked at, did not show an offence against the by-law; and as to costs, that, as the prosecutor was not discharging a public duty, there was no reason why he should not be ordered to pay costs.—High Court of Justice, (Ont.), 1897. Regina *vs* MacFarlane, 33 C.L.J., 119; Meredith, C. J., Rose, MacMahon, JJ.

3. (*a.*) The existence of an exception nominated in the description of an offence created by statute must be negatived in order to maintain the charge.

(*b.*) If a statute creates an offence in general terms with an exception by way of proviso in favour of certain persons or circumstances, the onus is on the accused to plead and prove himself within the proviso.

(*c.*) The generality of the prohibition contained in the statute (sec. 7), against purchasers having in possession with intent to export, causing to be exported, etc., game, etc., is not to be limited by inference to game killed within the province.—Supreme Court, (B.C.), 1897. R. *vs* Strauss, 1 Can. Cr. Cas., 103; Walkem, J.

4. *See* R. *vs* Herrell, section 889, No. 21.

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.

1. *See* R. *vs* McLeod, section 889, No. 17.

2. *See* R. *vs* Somers, section 889, No. 18.

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. 90.

1. Where the affidavit accompanying a recognizance filed on a motion for a rule *nisi* to quash a conviction did not negative the fact of the sureties being sureties in any other matter, and omitted to state that they were worth $100 over and above any amount for which they might be liable as sureties, it was held insufficient.

The rule in force as to recognizance prior to the passing of the Criminal Code is still in force.—High Court of Justice, (Ont.), 1894. Regina *vs* Robinet, 16 Ont. P. R., 49; 2 Can. Cr. Cas., 382; Galt, C. J., Rose, MacMahon, JJ.

2. An application to quash a conviction under section 337 of the Criminal Code must be made to the full court and not to a single judge. The provincial legislature having no authority to make laws respecting criminal procedure, the practice introduced by the Queen's Bench Act, 1895, Rule 162, cannot apply to proceedings under the Criminal Code. *Re* Boucher, 4 A. R., 191, and Reg. *vs* McAuley, 14 O. R., 643, followed.

Held, also, that such an application must be made by summons or rule *nisi* and not by notice of motion, and that in the rule for the certiorari the grounds for moving must be specified:—Paley on Convictions

(6th ed.), 457.—Queen's Bench. (Man.), 1896. Regina *vs* Beale, 11 Man. Law Rep., 448; Taylor, C. J.

3. (*a.*) An affidavit of justification upon a recognizance given pursuant to rule of court passed under sec. 892 of the Criminal Code, need not state that the surety is worth the amount of the penalty over and above other sums for which he is surety.

(*b.*) A rule made under sec. 892 of the Criminal Code 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.

(*c.*) 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.

(*d.*) If a conviction has been filed by the magistrate under sec. 801 of the Criminal Code, in a court of superior criminal jurisdiction, a motion may be made to quash the same without the necessity of a writ of certiorari.

(*e.*) Section 892 of the Criminal Code authorizes the requiring 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.—Supreme Court, (N.W.T.), 1899. R. *vs* Asheroft, 2 Can. Cr. Cas., 385; Rouleau, J.

893. Imperial Act superseded.

The second section of the Act of the Parliament of the United Kingdom, passed in the fifth year of the reign of His Majesty King George the Second, and chaptered nineteen, 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 discharged, it shall not be necessary to issue a writ of *procedendo*, but the order of the court refusing or discharging the application shall be a sufficient authority for the registrar or other officer of the court forthwith to return the conviction, order 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.

1. The conviction of defendant by a justice of the peace under section 174 of the Liquor License Act of Manitoba, having, together with the information on which it was based, been removed into this court, by certiorari, was quashed on the ground that the original summons had not been personally served on the defendant, and that she had not authorized any person to appear for her on its return.

At the same time the judge who quashed the conviction, relying on section 895 of the Criminal Code, 1892, 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.

Held, on motion for prohibition, that there was no authority for the return of the information to the convicting justice after the quashing of the conviction, as the section of the Criminal Code referred to only applies in cases where before that section a *procedendo* would have been issued to send back a record; that the information was, therefore, not properly before the justice when he issued the second summons thereon and that he had no jurisdiction to proceed upon it.

Review of cases in which a record filed in a superior court upon a certiorari may be sent back to the inferior court by a *procedendo*.

Appeal from judgment of Bain, J., refusing prohibition allowed, and prohibition granted without costs.—Queen's Bench, (Man.), 1897. Regina *vs* Zickrick, 11 Man. Law Rep., 452; Taylor, C. J., Dubuc, Killam, JJ.

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.

1. *See* Champagne *vs* Simard *et al.*, section 842, No. 2.

2. (*a.*) 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 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 should not be quashed if the explanation is satisfactory.

(*b.*) 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 should not be quashed.

(*c.*) An order made for the forfeiture of intoxicating liquor seized under a search warrant in proceedings under the Canada Temperance Act is bad unless there was an information upon which to base the search warrant.—Supreme Court, (N.B.), 1896. *Ex parte* Kavanagh, 2 Can. Cr. Cas., 267; Tuck, J.

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.

1. The costs referred to in secs. 897 and 898 of the Criminal Code 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 the above sections are not applicable to 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 moved by certiorari into that court.

After the removal of a conviction into the High Court, the convicting magistrate moved to have an affidavit filed by the defendant, removed from the files of the court, which was refused with costs payable by the magistrate to the defendant. Subsequently, under the belief that secs. 897-898 of the code applied, the defendant obtained an *ex parte* order varying the previous order by making the costs payable to the clerk of the peace and then to the defendant, and an appeal from such amended order by the magistrate to the judge sitting in Weekly Court was dismissed; the magistrate then appealed to the Divisional Court from the order of the judge of the Weekly Court, and, also, by leave, direct from the above amended order, when the former appeal was dismissed and the latter allowed.

The judge sitting in Weekly Court has no jurisdiction to entertain an appeal from an order of a judge of the High Court made in a criminal proceeding.—High Court of Justice, 1898. Regina *vs* Graham, 29 Ont. R., 193; 1 Can. Cr. Cas., 405; Meredith, C. J., Rose & MacMahon, JJ.

2. On an appeal to the General Sessions of the Peace from the conviction of 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 five 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 897, 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 must be quashed.

Appeals from summary convictions and the costs payable in respect thereof are founded upon the statute law, and the provisions of the law regarding them in England and in this country are essentially different. In this country in view of section 880 (*e*) and (*f*) of the Criminal Code, the necessary formal order in pursuance of the above minute might be drawn up at a future sittings of the Court of General Sessions, which is a continuing court, and the costs included therein *nunc pro tunc* if necessary; and the power to grant costs and determine what costs are just and reasonable is not with us as it is in England confined to the justices at the same General Sessions at which the appeal is heard.—High Court of Justice, (Ont.), 1900. Bothwell *vs* Burnside, 36 C. L. J., 312; Armour, C. J., Street, J.

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.

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 cost 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.

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 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, 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 with-

out surety or sureties, and in such sum as to the justice seems meet, conditioned to prosecute his appeal without delay, and to submit to the judgment of the court and pay such costs as are awarded by the same; and the appellant shall, at the same time, and before he shall be entitled to have the case delivered to him, pay to the justice such fees as he is entitled to; 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.

5. If the justice is of opinion that the application is merely frivolous, but not otherwise, he may refuse to state a case, and shall on the request of the applicant sign and deliver to him a certificate of such refusal; provided that the justice shall not refuse to state a case where the application for that purpose is made to him by or under the direction of Her Majesty's Attorney-General 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 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.

1. A magistrate has no power to state a case under section 900 of the Criminal Code, for an alleged offence against an Ontario statute, not involving the constitutionality of the statute, the procedure by way of appeal to the sessions provided for by Ontario legislation applying in such a case.—High Court of Justice, (Ont.), 1896. Regina *ex rel.* Brown *vs* The Robert Simpson Company, 28 Ont. R., 231; 2 Can. Cr. Cas., 272; Boyd, C., Ferguson & Robertson, JJ.

2. *See* R. *vs* Monaghan, section 888, No. 1.

901. Tender and payment.

Whenever a warrant of distress has issued against any person, and such person pays or tenders to the peace officer having the execution of the same, the sum or sums in the warrant mentioned, together with the amount of the 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.

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 888 in schedule one to 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 Her Majesty, for the public uses of Canada.

903. Publication, &c., 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. Prosecutions for penalties under the preceding sections.

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 or judgment passes for the

defendant, or the plaintiff becomes non-suit, or discontinues the action after issue joined, or if, upon demurrer or otherwise, judgment is given against the plaintiff, the defendant shall, in the discretion of the court, recover his costs of suit, as between solicitor and client, and shall have the like remedy for the same as any defendant has by law in other cases. R.S.C., c. 178, s. 102.

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.

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.

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.

1. *See* Champagne *vs* Simard, section 842. No. 2.

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.

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 ; 56 V., c. 32.

PART LIX

RECOGNIZANCES

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.

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.

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.

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.

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, &c., 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 the clerk of the court, or in case of his death or absence, by any other person, under the direction of the judge who presided at such court, which roll shall be made in duplicate and signed by the clerk of the court, or in case of his death or absence, by such judge.

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 ; 63-64 V., c. 46, s. 3. *(The preceding five lines come into force on the 1st of 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 Queen'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 to the sheriff for proceeding to the immediate levying and recovering of such fines, issues, amercements and forfeited recognizances, on the goods and chattels, lands and tenements of the several persons named therein, or for taking into custody the bodies of such persons respectively, in case sufficient goods and chattels, lands or tenements cannot be found, whereof the sums required can be made ; and every person so taken shall be lodged in the common gaol of the county, until satisfaction is made, or until the court into which such writ is returnable, upon cause shown by the party, as hereinafter mentioned, makes an order in the case, and until such order has been fully complied with.

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 "were set, lost, imposed or forfeited, at or by the court therein "mentioned, and which, in right and due course of law, ought "to be levied and paid, are, to the best of my knowledge and "understanding, inserted in the said roll ; and that in the "said roll are also contained and expressed all such fines as have

"been paid to or received by me, either in court or otherwise, "without any wilful discharge, omission, misnomer or defect "whatsoever. So help me God ;"

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.

1. *Up to the 1st of January 1901, the first five lines of subsection 2 shall read as follows:—*

"2. If such court is a superior court of 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 a division of the High Court of Justice."

2. By the recognizance the cognizors acknowledged that they severally owed Her Majesty $500 to be made and levied, etc., unless one M. who had been charged before a justice of the peace with theft, should personally appear "at the next sitting of a 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:"—*Held*, that no notice of intention to estreat or to produce M. was necessary, and, even if necessary, the giving of such notice would be but a ministerial act, and merely for the convenience of the parties. Reg. *vs* Schram, 2 U.C.Q.B., 91, and *Re* Talbot's Bail, 23 Ont. R., 65, followed. —*Held, also*, that the Crown Office Rules adopted in England in 1886 had no application nor had rule 124 of such Rules, or anything like it, previously been in force in England. R. *vs* Clark, 5 B. & Ald., 728, referred to:—*Held*, further, that the "next sitting" was the next regular sitting of the Supreme Court which had, under section 53 of the N. W. Territories Act, been previously fixed by the Lieutenant-Governor and announced to the public.—Supreme Court, (N.W.T.) *In re* McArthur's bail, 17 C.L.T., 301; and *sub nom.* The Queen *vs* McArthur, 33 C.L.J., 659.

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.

918. Proceeding on forfeited recognizance not to be taken except on order of judge, &c.

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.

1. Where a recognizance entered into before the magistrate committing the prisoner for trial was conditioned for the prisoner to appear at the next court of competent jurisdiction to be holden at Toronto, and the next court was the sittings of the Court of Oyer and Terminer for the county of York, commencing on April 30th, 1896, but no indictment against the prisoner was then preferred, but the information, depositions and recognizance were transmitted to the Sessions of the Peace for the county of York, commencing on May 14th 1895, where an indictment having been preferred and a true bill found, and neither the prisoner nor his bail appearing, the recognizance was on the last day of the sessions forfeited and the surety arrested the writ of *fieri facias* having been returned *nulla bona*. *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.—High Court of Justice, (Ont.), 1896. *In re* Cohen's Bail, 32 C.L.J., 412; Armour, C. J., Falconbridge & Street, JJ.

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 estreated, if it appears to the satisfaction of the judge who presided at such court that the absence of any person for whose appearance any recognizance was entered into, was owing to circumstances which rendered such absence justifiable, such judge may make an order directing that the sum forfeited upon such estreated recognizance shall not be levied.

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.

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.

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 adjuged 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.

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.

1. (*a.*) An order made under Cr. Code, sec. 922 for the discharge of a forfeited recognizance is a civil and not a criminal proceeding.

(*b.*) The discretionary order for the discharge of a forfeited recognizance authorized by section 922 of the Criminal Code to be made by the Court into which any writ of *fieri facias* and *capias* issued under part LIX of the Code is returnable, must be made by the court en banc, and not by a single judge.—Supreme Court, (N.W.T.), 1897. *Re* McArthur's bail, 3 Can. Cr. Cas., 195.

923. Return of 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.

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.

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 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 jail 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, s. 1.

3. Nothing in this section contained shall prevent the recovery of the sum forfeited by the breach of any recognizance 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. 57-58 V., c. 57, s. 1.

4. In this section, unless the context otherwise requires, 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 said 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.

1. (*a.*) Where a recognizance entered into in a criminal case becomes forfeited to the Crown, and is transmitted to the prothonotary of the Superior Court in pursuance of the provisions of the Cr. Code of Canada, section 926, subsection 2, in order that judgment in favour 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 in the civil tribunal.

(*b.*) The recognizance does not require to be signed by the party bound.

(*c.*) Such judgment may be entered by the prothonotary during the long vacation.—Superior Court, (Que.), 1894. The Queen *vs* Thomas Corbett *et al.*, and Thomas Corbett *et al.*, petitioners. R.J.Q., 7 S.C., 465; Davidson, J.

2. 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.—Superior Court, (Que.), 1895. The Queen *vs* John M. Ferris *et al.*, and Johnson, petitioner. R.J.Q., 9 S.C., 376; De Lorimier, J.

PART LX

FINES AND FORFEITURES

927. Appropriation of fines, &c.

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 Her 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 Her Majesty as for himself, to the moiety of any fine, penalty or forfeiture recovered in his suit. 63-64 V., c. 46, s. 3. *(Section 927 shall come into force on the 1st of January 1901.)*

1. *Up to the 1st of January 1901, section 927 shall read as follows:*—"Wenever 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, the same shall belong to the Crown for the public uses of Canada.

2. Any duty, penalty or sum of money, or the proceeds of any forfeiture, which is, by any Act, given to the Crown, shall, if no other provision is made respecting it, form part of the Consolidated Revenue Fund of Canada, and shall be accounted for and otherwise dealt with accordingly. R.S.C., c. 180, ss. 2 and 4."

928. Application of fines, &c., 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.

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 Her Majesty only, or of any private party suing as well for Her 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 Her 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 Her 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.

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.

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.

1. Where a statute prescribes as the punishment for an offence both fine and imprisonment, the punishment is in the discretion of the Court, which is not bound to inflict both, but may inflict either one or the other of the two kinds of punishment.—Queen's Bench, Crown Side, 1898. Gilbert N. Brabant *vs* Pierre Robidoux, R. J. Q., 7 Q. B., 527 ; 2 Can. Cr. Cas., 19 ; Würtele, J.

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.

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.

PART LXII

CAPITAL PUNISHMENT

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.

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. 181, s. 8.

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 prisoner; and no person except the gaoler and his servants, the medical officer or surgeon of the prison and a chaplain or 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.

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.

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.

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 prisoner or other persons as it seems to the sheriff proper to admit within the prison for the purpose, and any minister of religion who desires to attend, may also be present at the execution. 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, jailer, 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. 63-64 V., c. 46, s. 3. *(Section 943 shall come into force on the 1st of January 1901.)*

1. *Up to the 1st of January 1901, section 943 shall read as follows:*—"The duties imposed upon the sheriff, gaoler, medical officer or surgeon by the two 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."

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.

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.

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.

948. Other proceedings in executions 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.

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.

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.

951. Imprisonment in cases not specially provided for.

Every person convicted of any indictable offence for which no punishment is specially provided, shall be liable to imprisonment for five years. 56 V., c. 32, s. 1.

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.

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.

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: Provided, that no one shall be sentenced to any shorter term of imprisonment than the minimum term, if any, prescribed for the offence of which he is convicted. R.S.C., c. 181, s. 26.

1. *See* Meunier *vs* Loupret & Simpson, section 889, No. 3.

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.

1. (*a.*) A prisoner convicted at the 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 three months' imprisonment.

(*b.*) There is no presumption that sentences passed at the one time are to be concurrent.—Supreme Court, (N.B.), 1895. *Ex parte* Bishop, 1 Can. Cr. Cas., 118.

955. Imprisonment in penitentiary, &c.

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.* 63-64 V., c. 46, s. 3. *(The words between ** come into force on the 1st of 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, shall 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 convicted,—and if such imprisonment is to be with hard labour, the sentence shall so direct.

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.

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.

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

957. Sentence of punishment by whipping.

Whenever whipping may be awarded for any offence, the court may sentence the offender to be once, twice or thrice whipped, within the limits of the prison, under the supervision of the medical officer of the prison, or if there be no such officer, or if the medical officer be for any reason unable to be present, then, under the supervision of a surgeon or physician to be named by the Minister of Justice, in the case of prisons under the control of the Dominion, and in the case of other prisons by the Attorney-General of the province in which such prison is situated.

2. 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, s. 3. *(Section 957 shall come into force on the 1st of January 1901.)*

1. *Up to the 1st of January 1901, section 957 shall read as follows:*—"Whenever whipping may be awarded for any offence, the court may sentence the offender to be once, twice or thrice whipped, within the limits of the prison, under the supervision of the medical officer of the prison; and the number of strokes and the instrument with which they shall be inflicted shall be specified by the court in the sentence; and, 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.

2. Whipping shall not be inflicted on any female. R.S.C., c. 181, s. 30."

PART LXV

SURETIES FOR KEEPING THE PEACE AND FINES

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. 63-64 V., c. 46, s. 3. *(Section 958 shall come into force on the 1st of January 1901.)*

1. *Up to the 1st of January 1901, section 958 shall read as follows:*—"Every court of criminal jurisdiction and every magistrate under Part LV before whom any person shall be convicted of an offence and shall not be 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 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. R.S.C., c. 181, s. 31; 56 V., c. 32, s. 1."

2. M. was convicted at the County Court sittings of having assaulted a peace officer, and the presiding judge imposed a fine of $50, and also sentenced M. to one month in jail. Sec. 263 of the Criminal Code provides that "every one is guilty of an indictable offence and liable to two years' imprisonment who assaults any public or peace officer, etc." A *habeas corpus* order to show cause why M. should not be released on the ground that both fine and imprisonment could not be awarded, was obtained; on the return of the writ it was—*Held* that section 958 of the Criminal Code gave such power.—Supreme Court, (N.B.), 1895. *Ex parte* McClements, 32 C.L.J., 39.

3. *See* R. *vs* Great West Laundry, section 213, No. 1.

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 complainant 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, s. 1.

1. The petitioner was convicted of assault by a justice of the peace, and was adjudged to pay a fine of $1. and costs, and in default of immediate payment to be imprisoned for eight days. It was, at the same time, adjudged that he should give security to keep the peace for the term of one year. The warrant of commitment directed the gaoler to keep the petitioner for the term of eight days "and until the said John Doe do furnish good and sufficient securities as hereinbefore adjudged." The petitioner having undergone imprisonment for eight days, petitioned to be discharged.

Held:—Under art. 959 of the Criminal Code of Canada, when a justice of the peace requires any one, to give security to keep the peace he must fix the amount of the bond to be given, and order him to be imprisoned for a term to be mentioned, not exceeding twelve months, in case he should refuse or neglect to give such security. The justice of the peace must afterwards establish and record the defendant's refusal or neglect to furnish the security, and he can only issue his warrant of commitment after such refusal or neglect. A commitment, therefore, which requires the defendant to furnish security to keep the peace, but does not fix the amount, is illegal.—Queen's Bench, (Ont.), 1893. *Ex parte* John Doe, R.J.Q., 2 Q.B., 601; 3 Can. Cr. Cas., 370; Würtele, J.

2. A warrant of commitment by a justice under Cr. Code, 959, (4), for default in finding sureties to keep the peace must shew on its face that the complainant feared bodily injury because of the defendant's threat, 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. (Code form WWW.)—Supreme Court,

(N.S.), 1897. R. *vs* John McDonald, 2 Can. Cr. Cas., 64 ; Johnston, County J.

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

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 Her Majesty, within two months after such conviction, or before the filling up of such office or em-

ployment, 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 Her 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.

Outlawry in criminal cases is abolished.

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.

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.

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 the Parliament of Canada. 33-34 V. (U. K.), c. 23, ss. 1, 6 and 5.

PART LXVIII

PARDONS

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 manuel, 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.

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.

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.

970. Royal prerogative.

Nothing in this part shall in any manner limit or affect Her Majesty's royal prerogative of mercy. R.S.C., c. 181, s. 43.

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 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. 63-64 V., c. 46, s. 3. *(Section 971 shall come into force on the 1st of January 1901.)*

1. *Up to the 1st of January 1901, section 971 shall read as follows:*—"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 youth, character, and antecedents of the offender, to the trivial nature of the offence, and to any extenuating circumstances under which the offence was committed, it is expedient that the offender be released on probation of good conduct, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a recognizance, with or without sureties, and during such period as the court directs, to appear and receive judgment when called upon, and in the meantime to keep the peace and be of good behaviour.

2. 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."

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 aprehended 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.

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.

1. *62-63 Victoria, chap. 49.*

An Act to Provide for the Conditional Liberation of Penitentiary Convicts.

[Assented to August 11th, 1899.]

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

1. 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. 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. 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. 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.

(*b.*) A copy of any conditions annexed to any such license, other than the conditions contained in form A shall be laid before both Houses

of Parliament within twenty-one days after 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. If any holder of a license under this Act is convicted of any indictable offence his license shall be forthwith forfeited.

6. 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 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. 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. 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 on some other charge, or not in the manner provided for in this section.

9. 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. 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 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. 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 18

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 imprisonment equal to the portion of his term of years which remained unexpired when his license was granted, viz.:—the term of years.

Form B

FORM OF CERTIFICATE OF CONVICTION

I do hereby certify that A. B., the holder of a license under the *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.

2. *63-64 Victoria, chap. 48.*

An Act to amend an Act to provide for the Conditional Liberation of Penitentiary Convicts.

[Assented to 7th May, 1900.]

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

1. 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. 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*.

TITLE IX

ACTIONS AGAINST PERSONS ADMINISTERING THE CRIMINAL LAW

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.

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.

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 suf-

ficient 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 non-suit, 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 vexatious 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.

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 for 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, s. 1.

1. (*a.*) All agreements to suppress criminal prosecutions are illegal in the absence of any statutory provision to the contrary.

(*b.*) A covenant 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 Criminal Code, of partnership property under the Larceny Act, R.S.C., c. 164, s. 58 (see Criminal Code, 311), is not enforceable.

(*c.*) The Imperial Act 20 and 21 Vict., c. 54, s. 12, if it be still in force in British Columbia, which it did not become necessary to decide, applies only to trustees guilty of misappropriation of property held upon express trusts, and validates an agreement or security given by such a defaulting trustee himself, having for its object the restoration or repayment of any trust property misappropriated, and not an agreement or security given by third parties under no civil obligation to the party wronged, for the purpose of stifling the prosecution.—Supreme Court, (Can.), 1898. Major *vs* McCraney, 2 Can. Cr. Cas., 547; Strong, C. J., Taschereau, Sedgewick, King & Girouard, JJ.

982. Forms in schedule one to be valid.

The several forms in schedule one to 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 Her 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

A.—*(Section 557)*

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

B.—*(Section 557)*

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.)

C.—*(Section 558)*

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 Her 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.)

D.—(Section 560)

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.*

E.—*(Section 562)*

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 Her 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.)

F.—*(Section 563)*

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 Her 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.)

G.—*(Section 563)*

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 Her 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 Her 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.)

ENDORSEMENT IN BACKING A WARRANT

H.—*(Section 565)*

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.)

I.—*(Section 569)*

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 .

J.—*(Section 569)*

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 .

J. S.,

J.P., *(name of district or county, etc)*.

63-64 V., c. 46, s. 3. *(Form J comes into force on the 1st of January 1901).*

1. *Up to the 1st of January 1961, Form J. shall read as follows:—*

"J.—(*Section 569*)

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 county (*describe things to be searched for and offence in respect of which search is made*), of who says that and that he has just and reasonable cause to suspect, and suspects, that the said goods and chattels, or some part of them are concealed in the (*dwelling-house, &c.*) of C. D., of , in the said county, (*here add the causes of suspicion, whatever they may be*): Wherefore (*he*) prays that a search warrant may be granted to him to search the (*dwelling-house, &c.*), of the said C. D., as aforesaid, for the said goods and chattels so feloniously stolen, taken and carried away as aforesaid.

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

J. S.,
J. P., (Name of County.)"

K.—(*Section 580*)

SUMMONS TO A WITNESS

Canada,
Province of ,
County of .

To E. F., of , (*labourer*):

Whereas information has been laid before the undersigned , a justice of the peace in and for the said county of , that A. B. (*&c., as in the summons or warrant against the accused*), and it has been made to appear to me, that you are likely to give material evidence for (*the prosecution*) or for the accused; These are therefore to require you to be and to appear before me, on next, at o'clock in the (fore) noon, at , or before such other justice

or justices of the peace of the same county of , as shall then be there, to testify what you know concerning the said 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.

J. S., [SEAL.]
J. P., (Name of county.)

58-59 V., c. 40, s. 1.

L.—*(Section 582)*

WARRANT WHEN A WITNESS HAS NOT OBEYED THE SUMMONS

Canada,
Province of ,
County of .

To all or any of the constables and other peace officers in the said county of .

Whereas information having been laid before , 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.)

M.—*(Section 583)*

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 therefore to command you to bring and have the said E. F. before *(me)* on , at o'clock in the (fore) noon, at , or before such other justice or justices of the peace for the same county, as shall then be there, to testify what he knows

concerning the said charge so made against the said A. B. as aforesaid.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]

J. P., (Name of county.)

N.—*(Section 584)*

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 , at or before such other justice or justices of the peace for the same county, as should then be there, to testify what he knows respecting the said charge so made against the said A. B., as aforesaid ; and whereas proof has this day been made upon oath before *(me)* of such writ of subpœna having been duly served upon the said E. F. ; and whereas the said E. F. has neglected to appear at the time and place appointed by the writ of subpœna, and no just excuse has been offered for such neglect :

These are therefore to command you to bring and have the said E. F. before *(me)* on at o'clock in the (fore) noon, at , or before such other justice or justices for the same county as shall then be there, to testify what he knows concerning the said charge so made against the said A. B. as aforesaid.

Given under *(my)* hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]

J. P., (Name of county.)

O.—*(Section 585)*

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 the said E. F. now appearing before *(me)* *(or* being brought before *(me)* by

virtue of a warrant in that behalf), to testify as aforesaid, and being required to make oath or affirmation as a witness in that behalf, now refuses so to do (*or* being duly sworn as a witness now refuses to answer certain questions concerning the premises which are now here put to him, and more particularly the following) without offering any just excuse for such refusal: These are therefore to command you, the said constables 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 his said contempt, unless in the meantime he consents to be examined, and to answer concerning the premises; and for your so doing, this shall be your sufficient warrant.

Given under (*my*) hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]

J. P., (Name of county.)

P.—*(Section 586)*

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 ap-*

prehend), 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 Her Majesty's name, forthwith to convey the said A. B. to the common gaol at , in the said county, and there to deliver him to the keeper thereof, together with this precept : And I hereby command you the said keeper to receive the said A. B. into your custody in the said common gaol, and there safely keep him until the day of *(instant)*, when I hereby command you to have him at , at o'clock in the (fore) noon of the same day before *(me)* or before such other justice or justices of the peace for the said county as shall then be there, to answer further to the said charge, and to be further dealt with according to law, unless you shall be otherwise ordered in the meantime.

Given under my hand and seal, this day of in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. P., (Name of county.)

Q.—*(Section 587)*

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 Lady the Queen, her 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 Lady the Queen, her 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. L.,

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 justice or justices of the peace for the said county as shall then be there, to answer *(further)* to the said charge, and to be further dealt with according to law, the said recognizance to be void, otherwise to stand in full force and virtue.

R.—*(Section 589)*

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. L.,
J. P., (Name of county.)

S.—*(Section 590)*

DEPOSITION OF A WITNESS

Canada,
Province of ,
County of .

The deposition of X. Y. of , taken before the undersigned, a justice of the peace for the said county of , this day of , in the year , at *(or* after notice to C.D. who stands committed for) in the presence and hearing of C.D. who stands charged that *(state the charge)*. The said deponent saith on his *(oath or affirmation)* as follows : *(Insert deposition as nearly as possible in words of witness.)*

(If depositions of several witnesses are taken at the same time, they may be taken and signed as follows :)

The depositions of X. of , Y. of , Z. of , &c., taken in the presence and hearing of C.D., who stands charged that

The deponent X. *(on his oath or affirmation)* says as follows :

The deponent Y. *(on his oath or affirmation)* says as follows :

The deponent Z. *(on his oath, &c., &c.)*

(The signature of the justice may be appended as follows :)

The depositions of X., Y., Z., &c., 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.)

T.—*(Section 591)*

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 *(&c., 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.)

U.—*(Section 595)*

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.)

V.—*(Section 596)*

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 Her 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 *(&c., 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.)

W.—*(Section 598)*

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 Lady the Queen, her 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 Lady the Queen, her 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 *(&c., 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 prosecute such charge then the said recognizance to be void, otherwise to stand in full force and virtue.

X.—*(Section 598)*

COGNIZANCE TO PROSECUTE AND GIVE EVIDENCE

(Same as the last form, to the asterisk, and then thus)* :—And there duly prosecutes such charge against the said A. B. for the offence aforesaid, and gives evidence thereon, as well to the jurors who shall 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.

Y.—*(Section 598)*

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.

Z.—*(Section 599)*

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 *(&c., 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.)

AA.—*(Section 599)*

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.)

BB.—*(Section 601)*

RECOGNIZANCE OF BAIL

Canada,
Province of ,
County of .

Be it remembered that on the day of , in the year , A.B. of *(labourer)* L. M. of , *(grocer)*, and N. O. of , *(butcher)*, personally came before *(us)* the undersigned, *(two)* justices of the peace for the county of , and severally acknowledged themselves to owe to our Sovereign Lady the Queen, her heirs and successors, the several sums following, that is to say : the said A.B. the sum of , and the said L.M. and N.O. the sum of , each, of good and lawful current money of Canada, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said Sovereign Lady the Queen, her 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 *(&c., 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, s. 3. *(Form BB. comes into force on the 1st of January 1901.)*

Up to the 1st of January 1901, Form BB. shall read as follows:—

"BB.—*(Section 601)*

RECOGNIZANCE OF BAIL

Canada,
Province of ,
County of .

Be it remembered that on the day of , in the year , A. B. of , *(labourer)*, L. M. of , *(grocer)*, and N. O. of , *(butcher)*, personally came before *(us)* the undersigned, *(two)* justices of the peace for the county of , and severally acknowledged themselves to owe to our Sovereign Lady the Queen, her heirs and successors, the several sums following, that is to say: the said A. B. the sum of ,

and the said L. M. and N. O. the sum of , each, of good and lawful current money of Canada, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said Sovereign Lady the Queen, her 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.)

CONDITION

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 (*&c., as in the warrant*); if, therefore, the said A. B. appears at the next court of oyer and terminer (*or* general gaol delivery *or* court of General or Quarter Sessions of the Peace) to be holden in and for the county of , and there surrenders himself into the custody of the keeper of the common gaol (*or* lock-up house) there, and pleads to such indictment as may be found against him by the grand jury, for and in respect to the charge aforesaid, and takes his trial upon the same, and does not depart the said court without leave, then the said recognizance to be void, otherwise to stand in full force and virtue."

CC.—*(Section 602)*

WARRANT OF DELIVERANCE ON BAIL BEING GIVEN FOR A PRISONER ALREADY COMMITTED

Canada,
Province of ,
County of .

To the keeper of the common jail 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 Lady the Queen, for that (*&c., as in the*

commitment), for which he was taken and committed to your said common jail: These are therefore to command you, in Her 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, s. 3. *(Form CC. comes into force on the 1st of January 1901.)*

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1. *Up to the 1st of January 1901, Form CC. shall read as follows:—*

"CC.—(*Section 602*)

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 court of oyer and terminer or general gaol delivery (*or* court of General or Quarter Sessions of the Peace), to be holden in and for the county of , to answer our Sovereign Lady the Queen, for that (*&c., as in the commitment*), for which he was taken and committed to your said common gaol: These are therefore to command you, in Her Majesty's name, that if the said A. B. remains in your custody in the said common gaol for the said cause, and for no other, you shall forthwith suffer him to go at large.

Given under our hands and seals, this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]
J. N., [SEAL.]
J. P., (Name of County.)"

DD.—*(Section 607)*

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.

EE.—*(Sections 610 and 626)*

HEADING OF INDICTMENT

In the *(name of the court in which the indictment is found)*.
The jurors for our Lady the Queen present that
(Where there are more counts than one, add at the beginning of each count) :
"The said jurors further present that

FF.—*(Section 611)*

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, &c.

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 intend 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)*.

GG.—*(Section 648)*

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 *(&c., 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.)

HH.—*(Section 648)*

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 *(&c., stating the certificate)*. These are therefore to command you in Her 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.)

II.—*(Section 648)*

WARRANT OF COMMITMENT OF A PERSON INDICTED

Canada,
Province of ,
County of .

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

Whereas by a warrant under the hand and seal of , *(a)* justice of the peace in and for the said county of , dated , after reciting that it had been certified by J. D., *(&c., 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 Her 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 Her 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. N., [SEAL.]

J. P., (Name of county.)

JJ.—*(Section 648)*

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 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 (*&c., 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 Her Majesty's name, to detain the said A. B. in your custody in the common gaol afore-

said 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.)

KK.—*(Section 666)*

CHALLENGE TO ARRAY

Canada,
Province of ,
County of .

The Queen *v.* C.D. The said A.B., who prosecutes for our Lady the Queen *(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.

LL.—*(Section 668)*

CHALLENGE TO POLL

Canada,
Province of ,
County of .

The Queen *v.* C.D. The said A.B., who prosecutes, *&c.* (*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 Queen and the

said C.D.," *or* "that he was convicted and sentenced to ('death' *or* ' penal servitude,' *or* ' imprisonment with hard labour,' *or* 'exceeding twelve months,' *or* "that he is disqualified as an alien."

FORMS UNDER PART LIV

MM.—*(Section 767)*

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, &c. *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 acordingly).

Witness my hand at , in the county , this day of , in the year .

O. K.,
Judge.

NN.—*(Section 767)*

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, &c., (*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.

OO.—*(Section 781)*

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 subpœnaed (*or* bound under recognizance) to appear on the day of , in the year , at , in the said county at o'clock (forenoon *or* afternoon, *as the case may be*), before me, to testify what he knows concerning the said charge against the said A.B.

And whereas proof has this day been made before me, upon oath of such subpœna having been duly served upon the said E.F., (*or* of the said E.F. having been duly bound under recognizance to appear before me, *as the case may be*) ; and whereas the said E.F. has neglected to appear at the trial and place appointed, and no just excuse has been offered for such neglect : These are therefore to command you to take the said E.F. and to bring him and have him forthwith before me, to testify what he knows concerning the said charge against the said A.B., and also to answer his contempt for such neglect.

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

O. K.,
Judge.

PP.—*(Section 781)*

CONVICTION FOR CONTEMPT

Canada,
Province of ,
County of .

Be it remembered that on the day of , in the year , in the county of , E.F is convicted before me, for that he the said E. F. did not attend before me to give evidence on the trial of a certain charge against one A.B of (*theft, or as the case may be*), although duly

subpœnaed (or bound by recognizance to appear and give evidence in that behalf, *as the case may be*) but made default therein, and has not shown before me any sufficient excuse for such default, and I adjudge the said E. F., for his said offence, to be imprisoned in the common gaol of the county of , at , for the space of , there to be kept 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 Her 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

QQ.—*(Section 807)*

CONVICTION

Canada,
Province of ,
County of .

Be it remembered that on the day of , in the year , at , A. B., being charged before me, the undersigned, , of the said (*city*) (and consenting to my trying the charge summarily), is convicted before me, for that he, the said A.B., (*&c., 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 day and year first above mentioned, at aforesaid.

J. S., [SEAL.]
J. P., (Name of county.)

RR.—*(Section 807)*

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., (*&c., 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.)

SS.—*(Section 807)*

CERTIFICATE OF DISMISSAL

Canada,
Province of ,
County of .

I, the undersigned, , of the city (*or as the case may be*) of , certify that on the day of , in the year , at aforesaid, A. B., being charged before me (and consenting to my trying the charge summarily), for that he, the said A. B., (*&c., 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

TT.—*(Section 819)*

CERTIFICATE OF DISMISSAL

Canada,
Province of ,
County of .

, justices of the peace for the of (*or if a recorder, &c.*, 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.]

UU.—*(Section 820)*

CONVICTION

Canada,
Province of ,
County of .

Be it remembered that on the day of , in the year , at , in the county of , A. B. is convicted before us, J. P. and J. R., justices of the peace for the said county (*or* me, S. J., *recorder*, of the , of , *or as the case may be*) for that he, the said A.B., did (*specify the offence and the time and place when and where the same was committed, as the case may be, but without setting forth the evidence*), and we, the said J. P. and J. R. (*or* I, the said S. J.), adjudge the said A. B., for his said offence, to be imprisoned in the (*or* to be imprisoned in the and 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

VV.—*(Section 859)*

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. (*&c., 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 whereon to levy the said sums by distress").

WW.—*(Section 859)*

CONVICTION FOR A PENALTY, AND IN DEFAULT OF PAYMENT IMPRISONMENT

Canada,
Province of ,
County of .

Be it remembered that on the day of , in the year , at , in the said county, A.B. is convicted before the undersigned, , a justice of the peace for the said county for that he the said A.B. (*&c., 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.)

XX.—*(Section 859)*

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. (*&c., 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").

YY.—*(Section 859)*

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").

ZZ.—*(Section 859)*

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.*)

AAA.—*(Section 859)*

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 of unless the said order is sooner obeyed, and I do also adjudge the said A.B. to pay to the said C.D. the sum of for his costs in this behalf, and if the said sum for costs is not paid forthwith (*or* on or before next), I order the same 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.)

BBB.—*(Section 862)*

FORM OF ORDER OF DISMISSAL OF AN INFORMATION OR COMPLAINT

Canada,
Province of ,
County of .

Be it remembered that on , information was laid (*or* complaint was made) before the undersigned, a justice of the peace in and for the said county of , for that (*&c., as in the summons of the defendant*) and

now at this day, to wit, on , at (*if at any adjournment insert here*: "to which day the hearing of 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 if the said sum for costs is not paid forthwith (*or* on or before), I order that the same be levied by distress and sale of the goods and chattels of the said C.D., and in default of sufficient distress in that behalf, I adjudge the said C. D. to be imprisoned in the common gaol of the said county of , at in the said county of (and there kept at hard labour) 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 , , in the county aforesaid.

J. S., [SEAL.]
J. P., (Name of county.)

CCC.—*(Section 862)*

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 (*&c., 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.)

DDD.—*(Section 872)*

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 (*&c., as in the conviction*), and should also pay to the

said C. D. the sum of , for his costs in that behalf ; and it was thereby ordered that if the said several sums were not paid (forthwith) the same should be levied by distress and sale of the goods and chattels of the said A. B., and it was thereby also adjudged that the said A. B., in default of sufficient distress, should be imprisoned in the common gaol of the said county, at , in the said county of (and there kept at hard labour) 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 Her 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.)

EEE.—*(Section 872)*

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 , a justice of the peace in and for the said county, for that (*&c., 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 , 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 Her 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.)

FFF.—*(Section 872)*

WARRANT OF COMMITMENT UPON A CONVICTION FOR A PENALTY IN THE FIRST INSTANCE

Canada,
Province of ,
County of .

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

Whereas A. B., late of , (*labourer*), was on this day convicted before the undersigned , a justice of the peace in and for the said county, for that (*stating the offence, as in the conviction*), and it was thereby adjudged that the said A. B., for his offence, should forfeit and pay the sum of (*&c., as in the conviction*), and should pay to the said C.D. the

sum of , for his costs in that behalf ; and it was thereby further adjudged that if the said several sums were not paid (forthwith) the said A. B. should be imprisoned in the common gaol of the county, at , in the said county of (and there kept at hard labour) for the term of , unless the said several sums (and the costs and charges of conveying the said A. B. to the said common gaol) were sooner paid ; And whereas the time in and by the said conviction appointed for the payment of the said several sums has elapsed, but the said A. B. has not paid the same, or any part thereof, but therein has made default : These are, therefore, to command you, the said peace officers, or any one of you, to take the said A. B., and him safely to convey to the common gaol at aforesaid, and there to deliver him to the said keeper thereof, together with this precept : And I do hereby command you, the said keeper of the said common gaol, to receive the said A. B. into your custody in the said common gaol, there to imprison him (and keep him at hard labour) for the term of , unless the said several sums (and costs and charges of carrying him 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.)

GGG.—*(Section 872)*

WARRANT OF COMMITMENT ON AN ORDER IN THE FIRST INSTANCE

Canada,
Province of ,
County of .

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

Whereas, on last past, complaint was made before the undersigned , a justice of the peace in and for the said county of , for that (*&c., as in the order*), and afterwards, to wit, on the day of , at A. B. and C. D. appeared before me, the said justice (*or as it is in the order*), and thereupon having considered the matter of the complaint, I adjudged the said A. B. to pay the said C. D. the sum of on or before the day of then next, and also to pay to the said C. D. the sum of , for his costs in that behalf ; and I also thereby adjudged that if the said several sums were not paid on or before the day of then next, the said A. B. should be imprisoned in the common gaol of the county of , at , in the said county of (and there be kept at hard labour) for the term of , unless the said several sums (and the costs and charges of conveying the said A. B. to the said common gaol, *as the case may be*) were sooner paid ; And whereas the time in and by the said order appointed for the payment of the said several sums of money has elapsed, but the said A. B. has not paid the same, or any part thereof, but therein has made default : These are, therefore, to command you, the said peace officers, or any of you, to take the said A. B. and him safely to

convey to the said common gaol, at aforesaid, and there to deliver him to the keeper thereof, together with this precept: And I do hereby command you, the said keeper of the said common gaol, to receive the said A. B. into your custody in the said common gaol, there to imprison him (and keep him at hard labour) for the term of , unless the said several sums (and the costs and charges of conveying him 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.)

HHH.—*(Section 874)*

ENDORSEMENT IN BACKING A WARRANT OF DISTRESS

Canada,
Province of }
County of }

Whereas proof upon oath has this day been made before me , a justice of the peace in and for the said county, that the name of J. S. to the within warrant subscribed is of the handwriting of the justice of the peace within mentioned, I do therefore authorize W. T., who brings me this warrant, and all other persons to whom this warrant was originally directed, or by whom the same may be lawfully executed, and also all peace officers in the said county of , to execute the same within the said county.

Given under my hand, this day of , one thousand eight hundred and .

O. K.,
J. P., (Name of county.)

III.—*(Section 872)*

CONSTABLE'S RETURN TO A WARRANT OF DISTRESS

I, W. T., constable, of , in the county of , hereby certify to J. S., Esquire, a justice of the peace in and for the county of , that by virtue of this warrant I have made diligent search for the goods and chattels of the within mentioned A. B., and that I can find no sufficient goods or chattels of the said A. B. whereon to levy the sums within mentioned.

Witness my hand, this day of , one thousand eight hundred and .

W. T.

JJJ.—*(Section 872)*

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 (*&c., as in either of the foregoing distress warrants,* DDD or EEE, *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 county of , commanding them, or any of them, to levy the said sums of and by distress and sale of the goods and chattels of the said A. B. ; And whereas it appears to me, as well by the return of the said warrant of distress, by the peace officer who had the execution of the same, as otherwise, that the

said peace officer has made diligent search for the goods and chattels of the said A. B., but that no sufficient distress whereon to levy the sums above mentioned could be found : These are, therefore, to command you, the said peace officers, or any one of you, to take the said A. B., and him safely to convey to the common gaol at , aforesaid, and there deliver him to the said keeper, together with this precept : And I do hereby command you, the said keeper of the said common gaol, to receive the said A.B. into your custody, in the said common gaol, there to imprison him (and keep him at hard labour) for the term of , unless the said several sums, and all the costs and charges of the said distress (and of the commitment and conveying 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.

J. S., [SEAL.]
J. P., (Name of county.)

KKK.—*(Section 873)*

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 in the said county of .

Whereas on last past, information was laid (*or* complaint was made) before a justice of the peace in and for the said county of , for that (*&c., as in the order of dismissal*) and afterwards, to wit, on , at , both parties appearing before , in order that (I) should hear

and determine the same, and the several proofs adduced to (me) in that behalf, being by (me) duly heard and considered, and it manifestly appearing to (me) that the said information (*or* complaint) was not proved, (I) therefore dismissed the same and adjudged that the said C. D. should pay to the said A. B. the sum of , for his costs incurred by him in his defence in that behalf ; and (I) ordered that if the said sum for costs was not paid (forthwith) the same should be levied on the goods and chattels of the said C. D., and (I) adjudged that in default of sufficient distress in that behalf the said C. D. should be imprisoned in the common gaol of the said county of , at , in the said county of (and there kept at hard labour) 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 Her 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. S., [SEAL.]
J. P., (*Name of county.*)

LLL.—*(Section 873)*

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 (*&c., 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.)

MMM.—*(Section 878)*

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)*

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.*

OOO.—*(Section 880)*

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 Lady the Queen, the several sums following, that is to say, the said A.B. the sum of , and the said L.M. and N.O. the sum of , each, of good and lawful money of Canada, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said Lady the Queen, her 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, &c.), (*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 .

PPP.—*(Section 898)*

CERTIFICATE OF CLERK OF THE PEACE THAT THE COSTS OF AN APPEAL ARE NOT PAID

Office of the clerk of the peace for the county of .

Title of the Appeal

I hereby certify that 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.

QQQ.—*(Section 898)*

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 (*&c., 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 Her 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.)

RRR.—*(Section 898)*

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 (*&c., 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 said A. B.; And whereas it appears to me, as well by the return to the said warrant of distress of the peace officer who was charged with the execution of the same, as otherwise, that the said peace officer has made diligent search for the goods and chattels of the said A. B., but that no sufficient distress whereon to levy the said sum above mentioned could be found: These are, therefore, to command you, the said peace 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.)

888.—*(Section 902)*

RETURN of convictions made by me (*or* us, *as the case may be*), during the quarter ending , 18 .

Name of the Prosecutor.	Name of the 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*).

TTT.—*(Section 916)*

WRIT OF FIERI FACIAS

Victoria, by the Grace of God, &c.

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, &c., G. H., clerk (*as the case may be*).

FORMS UNDER TITLE VIII

UUU.—*(Section 942)*

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 .

VVV.—*(Section 942)*

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——
&c., &c.

WWW.—*(Section 959)*

COMPLAINT BY THE PARTY THREATENED, FOR SURETIES FOR THE PEACE

Canada.
Province of }
County of }

The information (*or* complaint) of C. D., of in the said county of , (*labourer*), (*if preferred by an attorney or agent, say*—by D. E., his duly authorized agent (*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.

XXX.—(*Section 959*)

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*) justices of the peace for the county of , and severally acknowledged themselves to owe to our Lady the Queen 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 Lady the Queen, her heirs and suc-

cessors, 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, &c.), * 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 Her Majesty and her liege people, and specially towards C. D. (of, &c.) 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.

YYY.—(*Section 959.*)

FORM OF COMMITMENT IN DEFAULT OF SURETIES

Canada,
Province of ,
County of .

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 (&c.), on the , day of , at aforesaid, did threaten (*&c., 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 Her Majesty and her 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
C.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 Queen'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, less s, 8, ss, 4.
" 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.

Acts Repealed	Title	Extent of Repeal
R. S., C., c. 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 & 29 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 Forfeitures.	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.
" 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.

Acts Repealed	Title	Extent of Repeal
51 V., c. 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 the 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.
" 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 by 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 respecting 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, sells, exchanges, trades, barters or gives any such arm or ammunition to any person not lawfully authorized 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 Her 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 Queen's Authority

6. If any person, being a citizen or subject of any foreign state or country at peace with Her Majesty, is or continues in arms against Her Majesty, within Canada, or commits any act

of hostility therein, or enters Canada with design or intent to levy war against Her 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 Her Majesty, within Canada, who levies war against Her Majesty, in company with any of the subjects or citizens of any foreign state or country then at peace with Her Majesty, or enters Canada in company with any such subjects or citizens with intent to levy war on Her 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 Her 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 Her 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 muni-

cipality 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 therein named, this Act, or any section or sections thereof, 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 proclamation, may be seized by any justice of the peace, commissioner, constable or

other peace officer,— and shall be forfeited to the use of Her 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 Her 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 Her 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 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 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 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 therefrom 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 jus-

tice, 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 intoxicating 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 instituted in the district or county or place where the cause of action arose; and the defendant may plead the general issue and give this Act and the special matter in evidence; 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 nonsuited or discontinues after appearance is entered, or has judgment rendered against him on demurrer, the defendant shall be entitled to recover double costs.

R.S.C., 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 misdemeanour, 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 misdemeanour ; 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 delivered

as aforesaid, made on the day next after the meeting has finally dispersed, and not before, such weapon shall, if of the value of one dollar or upwards, be returned 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 recognizance 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., CHAPTER 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 Her 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 Her 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 or in 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 Canada.

3. The Governor in Council may, whenever he deems it expedient in the public interest, declare that the provisions of the two sub-sections 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 Res-*

cases, 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, industrial 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 subsection, or if the term of his im-

prisonment 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.

PUBLIC AND REFORMATORY PRISONS

Certified Industrial Schools, Ontario

32. The Governor General, by warrant under his hand, may, at any time in his discretion (the consent of the Provincial Secretary of Ontario having been first obtained), cause any boy who is imprisoned in a reformatory or gaol in that province, under sentence for an offence against a law of Canada, and who is certified by the court, judge or magistrate by whom he was tried to have been, in the opinion of such court, judge or magistrate, at the time of his trial, of or under the age of thirteen years, to be transferred for the remainder of his term of imprisonment to a certified industrial school in the province.

33. Where, under any law of Canada, any boy is convicted in Ontario, whether summarily or otherwise, of any offence punishable by imprisonment, and the court, judge, stipendiary or police magistrate by whom he is so convicted is of opinion that such boy does not exceed the age of thirteen years, such court, judge or magistrate may sentence such boy to imprisonment in a certified industrial school for any term not exceeding five years and not less than two years: Provided, that no boy shall be sentenced to any such school unless public notice has been given in the *Ontario Gazette* and has not been countermanded, that such school is ready to receive and maintain boys sentenced under laws of the Dominion; Provided also, that no such boy shall be detained in any certified industrial school beyond the age of seventen years.

Halifax Industrial School

34. Section sixty-one of chapter one hundred and eighty-three of the Revised Statutes, intituled: *An Act respecting Public and Reformatory Prisons*, is hereby repealed and the following substituted therefor:—

"**61.** Whenever any boy, who is a Protestant and a minor apparently under the age of sixteen years, is convicted in Nova

Scotia of any offence for which by law he is liable to imprisonment, the judge, stipendiary magistrate, justice or justices by whom he is so convicted may sentence such boy to be detained in the Halifax Industrial School for any term not exceeding five years, and not less than two years."

35. Section sixty-two of the said Act is hereby repealed and the following substituted therefor :—

"**62.** No such sentence shall be pronounced unless or until provision has been made by the municipality within which such conviction is had, out of its funds, for the support of boys so sentenced, at the rate of not less than sixty dollars per annum for each boy."

St. Patrick's Home, Halifax

36. Section sixty-five of the said Act is hereby repealed and the following substituted therefor :—

"**65.** Whenever any boy, who is a Roman Catholic and apparently under the age of sixteen years, is convicted in Nova Scotia of any offence for which by law he is liable to imprisonment, the judge, stipendiary magistrate, justice or justices by whom he is so convicted may sentence such boy to be detained in St. Patrick's Home at Halifax for any term not exceeding five years, and not less than two years; but no such sentence shall be pronounced unless or until provision has been made by the municipality within which such conviction is had, out of its funds, for the support of boys so sentenced, at the rate of not less than sixty dollars per annum for each boy."

37. Section sixty-six of the said Act is hereby repealed and the following substituted therefor :—

"**66.** The superintendent, or head of the said home, may at any time notify the mayor, warden or other chief magistrate of any municipality, that no prisoners, beyond those already under sentence in such home, will be received therein ; and after such notification no such sentence shall be pronounced in such municipality until notice has been received by such mayor,

warden or chief magistrate, from the said superintendent or head, that prisoners will again be received in the said home."

38. The six preceding sections shall not, nor shall any of them, come into force until the same shall have been proclaimed by the Governor in Council.

39. The said Act is hereby further amended by adding at the end thereof the following sections:—

"PART VI

"MANITOBA

"*Manitoba Reformatory for Boys*

"**78.** If any boy, who, at the time of his trial, appears to the court to be under the age of sixteen years, is convicted of any offence for which a sentence of imprisonment for a period of three months or longer, but less than five years, may be imposed upon an adult convicted of the like offence, and the court before which such boy is convicted is satisfied that a due regard for the material and moral welfare of the boy manifestly requires that he should be committed to the Manitoba reformatory for boys, then such court may sentence the boy to be imprisoned in such reformatory for such term as the court thinks fit, not being greater than the term of imprisonment which could be imposed upon an adult for the like offence, and may further sentence such boy to be kept in such reformatory for an indefinite time after the expiration of such fixed term; Provided, that the whole period of confinement in such reformatory shall not exceed five years from the commencement of his imprisonment.

"**79.** If any boy, apparently under the age of sixteen years, is convicted of any offence, punishable by law on summary conviction, and thereupon is sentenced and committed to prison in any common gaol for a period of fourteen days at the least, any judge of any one of the superior courts, or any judge of a

county court, in any case occurring within his county, may examine and inquire into the circumstances of such case and conviction, and when he considers the material and moral welfare of the boy requires such sentence, he may, as an additional sentence for such offence, sentence such boy to be sent either forthwith or at the expiration of his imprisonment in such gaol, to such reformatory, to be there detained for the purpose of his industrial and moral education for an indefinite period, not exceeding in the whole five years, from the commencement of his imprisonment in the common gaol.

"**80.** Every boy so sentenced shall be detained in such reformatory until the expiration of the fixed term, if any, of his sentences, unless sooner discharged by lawful authority, and thereafter shall, subject to the provisions hereof and to any regulations made as hereinafter provided, be detained in such reformatory for a period not to exceed five years from the commencement of his imprisonment, for the purpose of his industrial and moral education.

"**81.** A copy of the sentence of the court, duly certified by the proper officer, or the warrant or order of the judge or other magistrate by whom any boy is sentenced to confinement in such reformatory, shall be a sufficient authority to the sheriff, constable or other officer who is directed, verbally or otherwise, so to do, to convey such boy to the common gaol of the county where such sentence is pronounced, and for the gaoler of such gaol to receive and detain such boy, until some person, lawfully authorized, requires the delivery of such boy for removal to the reformatory.

"**82.** If any boy sentenced to be confined in such reformatory is in such a weak state of health that he cannot safely or conveniently be removed to the reformatory, he may be detained in the common gaol or other place of confinement in which he is, until he is sufficiently recovered to be safely and conveniently removed to the reformatory.

"**83.** No boy shall be discharged from such reformatory at

the termination of his term of confinement, if then labouring under any contagious or infectious disease, or under any acute or dangerous illness, but he shall be permitted to remain in such reformatory until he recovers from such disease or illness: Provided that any boy remaining in such reformatory for any such cause shall be under the same discipline and control as if his term was still unexpired.

"**84.** Any sheriff or other person having the custody of any offender sentenced to imprisonment in the said reformatory, may detain the offender in the common gaol of the county or district in which such offender is sentenced, or other place of confinement in which such offender is, until some person lawfully authorized in that behalf requires such offender's delivery for the purpose of being conveyed to such reformatory.

"**85.** Whenever the time of any offender's sentence in such reformatory under any law within the legislative authority of the Parliament of Canada, expires on a Sunday, such offender shall be discharged on the previous Saturday, unless such offender desires to remain until the Monday following."

40. The provisions of this Act in respect to the Manitoba reformatory for boys shall not come into force until the same shall have been proclaimed by the Governor in Council.

ADDITIONAL APPENDICES

APPENDIX I

IMPERIAL STATUTES

33-34 VICTORIA, CHAPTER 90, as amended by S.L.R. Act, 1883, 46-47 V., c. 49, and S.L.R. Act, 1893, (2), 56-57 V., c. 54.

An Act to regulate the conduct of Her Majesty's subjects during the existence of hostilities between foreign States with which Her Majesty is at peace

1. Short title of Act.

This Act may be cited for all purposes as "The Foreign Enlistment Act, 1870".

2. Application of Act.

This Act shall extend to all the dominions of Her Majesty, including the adjacent territorial waters.

3. Commencement of Act.

This Act shall be proclaimed in every British possession by the Governor thereof as soon as may be after he receives notice of this Act, and shall come into operation in that British possession on the day of such proclamation, and the time at which this Act comes into operation in any place is, as respects such place in this Act referred to as the commencement of this Act.

ILLEGAL ENLISTMENT

4. Penalty on enlistment in service of foreign state.

If any person, without the license of Her Majesty, being a British subject, within or without Her Majesty's Dominions,

accepts or agrees to accept any commission or engagement in the military or naval service of any foreign state at war with any foreign state at peace with Her Majesty, and in this Act referred to as a friendly state, or whether a British subject or not within Her Majesty's dominions, induces any other person to accept or agree to accept any commission or engagement in the military or naval service of any such foreign state as aforesaid,—

He shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

5. Penalty on leaving Her Majesty's dominions with intent to serve a foreign state.

If any person without the license of Her Majesty, being a British subject, quits or goes on board any ship with a view of quitting Her Majesty's dominions, with intent to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state, or, whether a British subject or not, within Her Majesty's dominions, induces any other person to quit or to go on board any ship with a view of quitting Her Majesty's dominions with the like intent,—

He shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishment, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

6. Penalty on embarking persons under false representations as to service.

If any person induces any other person to quit Her Majesty's dominions or to embark on any ship within Her Majesty's dominions under a misrepresentation or false representation of the service in which such person is to be engaged, with the intent or in order that such person may accept or agree to accept

any commission or engagement in the military or naval service of any foreign state at war with a friendly state,—

He shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the court before which the offender is convicted ; and imprisonment, if awarded, may be either with or without hard labour.

7. Penalty on taking illegally enlisted persons on board ship. If the master or owner of any ship, without the license of Her Majesty, knowingly either takes on board, or engages to take on board, or has on board such ship within Her Majesty's dominions, any of the following persons, in this Act referred to as illegally enlisted persons ; that is to say,

(1.) Any person who, being a British subject within or without the dominions of Her Majesty, has, without the license of Her Majesty, accepted or agreed to accept any commission or engagement in the military or naval service of any foreign state at war with any friendly state ;

(2.) Any person being a British subject who, without the license of Her Majesty, is about to quit Her Majesty's dominions with intent to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state ;

(3.) Any person who has been induced to embark under a misrepresentation or false representation of the service in which such person is to be engaged, with the intent or in order that such person may accept or agree to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state ;

Such master or owner shall be guilty of an offence against this Act, and the following consequences shall ensue ; that is to say :

(1.) The offender shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the court before which the offender is convicted; and imprison-

ment if awarded, may be either with or without hard labour ; and

(2.) Such ship shall be detained until the trial and conviction or acquittal of the master or owner, and until all penalties inflicted on the master or owner have been paid, or the master or owner has given security for the payment of such penalties, to the satisfaction of two justices of the peace, or other magistrate or magistrates having the authority of two justices of the peace ; and

(3.) All illegally enlisted persons shall immediately on the discovery of the offence be taken on shore, and shall not be allowed to return to the ship.

ILLEGAL SHIPBUILDING AND ILLEGAL EXPEDITIONS

8. Penalty on illegal shipbuilding and illegal expeditions. If any person within Her Majesty's dominions without the license of Her Majesty, does any of the following acts ; that is to say,—

(1.) Builds or agrees to build, or causes to be built any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign state at war with any friendly state ; or

(2.) Issues or delivers any commission for any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign state at war with any friendly state ; or

(3.) Equips any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be

employed in the military or naval service of any foreign state at war with any friendly state ; or

(4.) Despatches, or causes or allows to be despatched, any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign state at war with any friendly state ;

Such person shall be deemed to have committed an offence against this Act, and the following consequences shall ensue :

(1.) The offender shall be punishable by fine and imprisonment or either of such punishments, at the discretion of the courts before which the offender is convicted ; and imprisonment, if awarded, may be either with or without hard labour ;

(2.) The ship in respect of which any such offence is committed, and her equipment, shall be forfeited to Her Majesty: Provided that a person building, causing to be built, or equipping a ship in any of the cases aforesaid, in pursuance of a contract made before the commencement of such war as aforesaid, shall not be liable to any of the penalties imposed by this section in respect of such building or equipping if he satisfies the conditions following ; that is to say,

(1.) If forthwith upon a proclamation of neutrality being issued by Her Majesty, he gives notice to the Secretary of State that he is so building, causing to be built, or equipping such ship and furnishes such particulars of the contract and of any matters relating to, or done, or to be done under the contract as may be required by the Secretary of State ;

(2.) If he gives such security, and takes and permits to be taken such other measures, if any, as the Secretary of State may prescribe for ensuring that such ship shall not be despatched, delivered or removed without the license of Her Majesty until the termination of such war as aforesaid.

9. Presumption as to evidence in case of illegal ship.
Where any ship is built by order of or in behalf of any

foreign state when at war with a friendly state, or is delivered to or to the order of such foreign state, or any person who to the knowledge of the person building is an agent of such foreign state, or is paid for by such foreign state or such agent, and is employed in the military or naval service of such foreign state, such ship shall, until the contrary is proved, be deemed to have been built with a view to being so employed and the burden shall lie on the builder of such ship of proving that he did not know that the ship was intended to be so employed in the military or naval service of such foreign state.

10. Penalty on aiding the warlike equipment of foreign state.

If any person within the dominions of Her Majesty, and without the license of Her Majesty,—

By adding to the number of the guns, or by changing those on board for other guns, or by the addition of any equipment for war, increases or augments, or procures to be increased or augmented, or is knowingly concerned in increasing or augmenting the warlike force of any ship, which, at the time of her being within the dominions of Her Majesty was a ship in the military or naval service of any foreign state at war with any friendly state,—

Such person shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

11. Penalty on fitting out naval or military expeditions without license.

If any person within the limits of Her Majesty's dominions and without the license of Her Majesty,—

Prepares or fits out any naval or military expedition to proceed against the dominions of any friendly state, the following consequences shall ensue:

(1.) Every person engaged in such preparation or fitting out, or assisting therein, or employed in any capacity in such

expedition, shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

(2.) All ships, and their equipments and all arms and munitions of war, used in or forming part of such expedition, shall be forfeited to Her Majesty.

12. Punishment of accessories.

Any person who aids, abets, counsels, or procures the commission of any offence against this Act shall be liable to be tried and punished as a principal offender.

13. Limitation of term of imprisonment.

The term of imprisonment to be awarded in respect of any offence against this Act shall not exceed two years.

ILLEGAL PRIZE

14. Illegal prize brought into British ports restored.

If, during the continuance of any war in which Her Majesty may be neutral, any ship, goods or merchandise captured as prize of war within the territorial jurisdiction of Her Majesty in violation of the neutrality of this realm, or captured by any ship, which may have been built, equipped, commissioned, or despatched or the force of which may have been augmented, contrary to the provisions of this Act, are brought within the limits of Her Majesty's dominions by the captor, or any agent of the captor, or by any person having come into possession thereof with knowledge that the same was prize of war so captured as aforesaid, it shall be lawful for the original owner of such prize, or his agent or for any person authorized in that behalf by the government of the foreign state to which such owner belongs, to make application to the court of Admi-

ralty for seizure and detention of such prize, and the court shall on due proof of the facts, order such prize to be restored.

Every such order shall be executed and carried into effect in the same manner, and subject to the same right of appeal, as in case of any order made in the exercise of the ordinary jurisdiction of such court; and in the meantime and until a final order has been made on such application, the court shall have power to make all such provisional and other orders as to the care or custody of such captured ship, goods or merchandise, and (if the same be of perishable nature, or incurring risk of deterioration) for the sale thereof, and with respect to the deposit or investment of the proceeds of any such sale, as may be made by such court in the exercise of its ordinary jurisdiction.

GENERAL PROVISION

15. License by Her Majesty, how granted.

For the purposes of this Act, a license by Her Majesty shall be under the sign manual of Her Majesty, or be signified by Order in Council or by proclamation of Her Majesty.

LEGAL PROCEDURE

16. Jurisdiction in respect of offences by persons against Act.

Any offence against this Act shall, for all purposes of and incidental to the trial and punishment of any person guilty of any such offence, be deemed to have been committed either in the place in which the offence was wholly or partly committed, or in any place within Her Majesty's dominions in which the person who committed such offence may be.

17. Venue in respect of offences by persons. 24 & 25 Vic., c. 97.

Any offence against this Act may be described in any indictment or other document relating to such offence, in cases

where the mode of trial requires such a description, as having been committed at the place where it was wholly or partly committed, or it may be averred generally to have been committed within Her Majesty's dominions, and the venue or local description in the margin may be that of the county, city or place in which the trial is held.

18. Power to remove offenders for trial.

The following authorities, that is to say, in the United Kingdom any judge of a superior court, in any other place within the jurisdiction of any British court of justice, such court, or, if there are more courts than one, the court having the highest criminal jurisdiction in that place, may, by warrant or instrument in the nature of a warrant in this section included in the term "warrant", direct that any offender charged with an offence against this Act shall be removed to some other place in Her Majesty's dominions for trial in cases where it appears to the authority granting the warrant that the removal of such offender would be conductive to the interests of justice, and any prisoner so removed shall be triable at the place to which he is removed, in the same manner as if his offence had been committed at such place.

Any warrant for the purpose of this section may be addressed to the master of any ship or to any other person or persons, and the person or persons to whom such warrant is addressed shall have power to convey the prisoner therein named to any place or places named in such warrant and to deliver him, when arrived at such place or places, into the custody of any authority designated by such warrant.

Every prisoner shall, during the time of his removal under any such warrant as aforesaid, be deemed to be in the legal custody of the person or persons empowered to remove him.

19. Jurisdiction in respect of forfeiture of ships for offences against Act.

All proceedings for the condemnation and forfeiture of a ship, or ship and equipment, or arms and munitions of war, in

pursuance of this Act shall require the sanction of the Secretary of State or such chief executive authority as is in this Act mentioned, and shall be had in the Court of Admiralty, and not in any other court; and the Court of Admiralty shall in addition to any power given to the court by this Act, have in respect of any ship or other matter brought before it in pursuance of this Act all powers which it has in the case of a ship or matter brought before it in the exercise of its ordinary jurisdiction.

20. Regulations as to proceedings against the offender and against the ship.

Where any offence against this Act has been committed by any person by reason whereof a ship, or ship and equipment, or arms and munitions of war, has or have become liable to forfeiture, proceedings may be instituted contemporaneously or not, as may be thought fit, against the offender in any court having jurisdiction of the offence, and against the ship, or ship and equipment, or arms and munitions of war, for the forfeiture in the Court of Admiralty; but it shall not be necessary to take proceedings against the offender because proceedings are instituted for the forfeiture, or to take proceedings for the forfeiture because proceedings are taken against the offender.

21. Officers authorized to seize offending ships.

The following officers, that is to say,—

(1.) Any officer of customs in the United Kingdom, subject nevertheless to any special or general instructions from the Commissioners of Customs, or any officer of the Board of Trade, subject nevertheless to any special or general instructions from the Board of Trade;

(2.) Any officer of Customs or public officer in any British possession, subject nevertheless to any special or general instructions from the governor of such possession;

(3.) Any commissioned officer on full pay in the military

service of the Crown, subject nevertheless to any special or general instructions from his commanding officer ;

(4.) Any commissioned officer on full pay in the naval service of the Crown, subject nevertheless to any special or general instructions from the Admiralty or his superior officer ;

may seize or detain any ship liable to be seized or detained in pursuance of this Act, and such officers are in this Act referred to as the "local authority" ; but nothing in this Act contained shall derogate from the power of the Court of Admiralty to direct any ship to be seized or detained by any officer by whom such court may have power under its ordinary jurisdiction to direct a ship to be seized or detained.

22. Powers of officers authorized to seize ships.

Any officer authorized to seize or detain any ship in respect of any offence against this Act may, for the purpose of enforcing such seizure or detention, call to his aid any constable or officers of police, or any officers of Her Majesty's army or navy or marines, or any excise officers or officers of customs, or any harbour master or dock master, or any officers having authority by law to make seizures of ships, and may put on board any ship so seized or detained any one or more of such officers to take charge of the same, and to enforce the provisions of this Act, and any officer seizing or detaining any ship under this Act may use force, if necessary, for the purpose of enforcing seizure or detention, and if any person is killed or maimed by reason of his resisting such officer in the execution of his duties, or any person acting under his orders, such officer so seizing or detaining the ship, or other person shall be freely and fully indemnified as well against the Queen's Majesty, her heirs and successors, as against all persons so killed, maimed or hurt.

23. Special power of Secretary of State or chief executive authority to detain ship.

If the Secretary of State or the chief executive authority is satisfied that there is a reasonable and probable cause for believ-

ing that a ship within Her Majesty's dominions has been or is being built, commissioned or equipped contrary to this Act, and is about to be taken beyond the limits of such dominions, or that a ship is about to be despatched contrary to this Act, such Secretary of State or chief executive authority shall have power to issue a warrant stating that there is reasonable and probable cause for believing as aforesaid, and upon such warrant the local authority shall have power to seize and search such ship, and to detain the same until it has been either condemned or released by process of law, or in manner hereinafter mentioned.

The owner of the ship so detained, or his agent may apply to the Court of Admiralty for its release, and the court shall as soon as possible put the matter of such seizure and detention in course of trial between the applicant and the Crown.

If the applicant establishes to the satisfaction of the court that the ship was not and is not being built, commissioned or equipped, or intended to be despatched contrary to this Act, the ship shall be released and restored.

If the applicant fail to establish to the satisfaction of the court that the ship was not and is not being built commissioned or equipped or intended to be despatched contrary to this Act, then the ship shall be detained till released by order of the Secretary of State or chief executive authority.

The court may in cases where no proceedings are pending for its condemnation release any ship detained under this section on the owner giving security to the satisfaction of the court that the ship shall not be employed contrary to this Act, notwithstanding that the applicant may have failed to establish to the satisfaction of the court that the ship was not and is not being built, commissioned or intended to be despatched contrary to this Act. The Secretary of State or the chief executive authority may likewise release any ship detained under this section on the owner giving security to the satisfaction of such Secretary of State or chief executive authority that the ship shall not be employed contrary to this Act, or may release the

ship without such security if the Secretary of State or chief executive authority think fit so to release the same.

If the court be of opinion that there was not reasonable and probable cause for the detention, and if no such cause appears in the course of the proceedings, the court shall have power to declare that the owner is to be indemnified by the payment of costs and damages in respect of the detention, the amount thereof to be assessed by the court, and any amount so assessed shall be payable by the Treasury out of any moneys legally aplicable for that purpose. The Court of Admiralty shall also have power to make a like order for the indemnity of the owner, on the application of such owner to the court, in a summary way in cases where the ship is released, by the order of the Secretary of State or the chief executive authority, before any application is made by the owner or his agent to the court for such release.

Nothing in this section contained shall affect any proceedings instituted or to be instituted for the condemnation of any ship detained under this section where such ship is liable to forfeiture, subject to this provision, that if such ship is restored in pursuance of this section, all proceedings for such condemnation shall be stayed ; and where the court declares that the owner is to be indemnified by the payment of costs and damages for the detainer, all costs, charges, and expenses incurred by such owner in or about any proceedings for the condemnation of such ship shall be added to the costs and damages payable to him in respect of the detention of the ship.

Nothing in this section contained shall apply to any foreign non-commissioned ship despatched from any part of Her Majesty's dominions after having come within them under stress of weather or in the course of a peaceful voyage, and upon which ship no fitting out or equipping of a warlike character has taken place in this country.

24. Special power of local authority to detain ship.

Where it is represented to any local authority, as defined by

this Act, and such local authority believes the representation, that there is a reasonable and probable cause for believing that a ship within Her Majesty's dominions has been or is being built, commissioned or equipped contrary to this Act, and is about to be taken beyond the limits of such dominions, or that a ship is about to be despatched contrary to this Act, it shall be the duty of such local authority to detain such ship, and forthwith to communicate the fact of such detention to the Secretary of State or chief executive authority.

Upon the receipt of such communication, the Secretary of State or chief executive authority may order the ship to be released if he thinks there is no cause for detaining her, but if satisfied that there is a reasonable and probable cause for believing that such ship was built, commissioned, or equipped or intended to be despatched in contravention of this Act, he shall issue his warrant stating that there is reasonable and probable cause for believing as aforesaid, and upon such warrant being issued further proceedings shall be had as in cases where the seizure or detention has taken place on a warrant issued by the Secretary of State without any communication from the local authority.

Where the Secretary of State or chief executive authority orders the ship to be released on the receipt of a communication from the local authority without issuing his warrant, the owner of the ship shall be indemnified by the payment of costs and damages in respect of the detention, upon application to the Court of Admiralty in a summary way in like manner as he is entitled to be indemnified where the Secretary of State having issued his warrant under this Act releases the ship before any application is made by the owner or his agent to the court for such release.

25. Power of Secretary of State or executive authority to grant search warrant.

The Secretary of State or the chief executive authority may, by warrant, empower any person to enter any dockyard or other

place within Her Majesty's dominions and inquire as to the destination of any ship which may appear to him to be intended to be employed in the naval or military service of any foreign state at war with a friendly state, and to search such ship.

26. Exercise of powers of Secretary of State or chief executive authority.

Any powers or jurisdiction by this Act given to the Secretary of State may be exercised by him throughout the dominions of Her Majesty, and such powers and jurisdiction may also be exercised by any of the following officers, in this Act referred to as the chief executive authority, within their respective jurisdiction ; that is to say,

(1.) In *Ireland* by the Lord Lieutenant or the Chief Secretary ;

(2.) In *Jersey* by the Lieutenant-Governor ;

(3.) In *Guernsey*, *Alderney*, and *Sark*, and the dependent islands by the Lieutenant-Governor ;

(4.) In the *Isle of Man* by the Lieutenant-Governor ;

(5.) In any British possession by the Governor.

A copy of any warrant issued by a Secretary of State or by any officer authorized in pursuance of this Act to issue such warrant in *Ireland*, the *Channel Islands*, or the *Isle of Man* shall be laid before Parliament.

27. Appeal from Court of Admiralty.

An appeal may be had from any decision of a Court of Admiralty under this Act to the same tribunal, and in the same manner to and in which an appeal may be had in cases within the ordinary jurisdiction of the court as a Court of Admiralty.

28. Indemnity to officers.

Subject to the provisions of this Act, providing for the award of damages in certain cases, in respect of the seizure or detention of a ship by the Court of Admiralty no damages shall be payable, and no officer or local authority shall be respon-

sible, either civilly or criminally, in respect of the seizure or detention of any ship in pursuance of this Act.

29. Indemnity to Secretary of State or chief executive authority.

The Secretary of State shall not, nor shall the chief executive authority be responsible in any action or other legal proceedings whatsoever for any warrant issued by him in pursuance of this Act, or be examinable as a witness, except at his own request, in any court of justice in respect of the circumstances which led to the issue of the warrant.

INTERPRETATION CLAUSE

30. Interpretation of terms.

In this Act, if not inconsistent with the context, the following terms have the meanings hereinafter respectively assigned to them, that is to say :

Foreign State.—"Foreign State" include any foreign prince, colony, province, or part of any province or people, or any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people ;

Military service.—"Military service" shall include military telegraphy, and any other employment whatever, in or in connection with any military operation ;

Naval service.—"Naval service" shall, as respects a person, include service as a marine, employment as a pilot in piloting or directing the course of a ship of war or other ship, when such ship of war or other ship is being used in any military or naval operation, and any employment whatever on board a ship of war, transport, store ship, privateer or ship under letters of marque ; and as respects a ship, includes any user of a ship as a transport, store ship, privateer or ship under letters of marque ;

United Kingdom.—"United Kingdom" includes the *Isle of Man*, the *Channel Islands*, and the other adjacent islands ;

British possession.—"British possession" means any territory, colony, or place being part of Her Majesty's dominions, and not part of the United Kingdom as defined by this Act ;

Governor.—"The Governor" shall, as respects *India*, mean the Governor General or the Governor of any presidency, and where a British possession consists of several constituent colonies, mean the Governor General of the whole possession, or the Governor of any of the constituent colonies, and as respects any other British possession, it shall mean the officer for the time being administering the government of such possession ; also any person acting for or in the capacity of a Governor shall be included under the term "Governor" ;

Court of Admiralty.—"Court of Admiralty" shall mean the High Court of Admiralty of *England* or *Ireland*, the Court of Session of *Scotland*, or any Vice-Admiralty Court within Her Majesty's dominions ;

Ship.—"Ship" shall include any description of boat, vessel, floating battery, or floating craft ; also any description of boat, vessel or other craft or battery, made to move either on the surface of or under water, or sometimes on the surface of and sometimes under water ;

Building.—"Building" in relation to a ship shall include the doing any act towards or incidental to the construction of a ship, and all words having relation to building shall be construed accordingly ;

Equipping.—"Equipping" in relation to a ship shall include the furnishing a ship with any tackle, apparel, furniture, provisions, arms, munitions, or stores, or any other thing which is used in or about a ship for the purpose of fitting or adapting her for the sea or for naval service ; and all words relating to equipping shall be construed accordingly ;

Ship and equipment.—"Ship and equipment" shall include a ship and every thing in or belonging to a ship ;

Master.—"Master" shall include any person having the charge or command of a ship.

SAVING CLAUSES

31. (Repealed).

32. Saving as to commissioned foreign ships.

Nothing in this Act contained shall subject to forfeiture any commissioned ship of any foreign state, or give to any British court over or in respect of any ship entitled to recognition as a commissioned ship of any foreign state, any jurisdiction which it would not have had if this Act had not passed.

33. Penalties not to extend to persons entering into military service in Asia. 59 Geo. 3., c. 69, s. 12.

Nothing in this Act contained shall extend or be construed to extend to subject to any penalty any person who enters into the military service of any prince, state, or potentate in Asia, with such leave or license as is for the time being required by law in the case of subjects of Her Majesty entering into the military service of princes, states, or potentates in Asia.

APPENDIX II

STATUTES OF CANADA

56 VICTORIA, CHAPTER 31

An Act respecting Witnesses and Evidence

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

[Assented to 1st April, 1893.]

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.

1. (*a.*) Les dispositions de l'acte de la preuve de 1893 ne s'appliquent qu'à la procédure criminelle et aux matières tombant sous le contrôle législatif du parlement du Canada.

(*b.*) Le Parlement du Canada n'a pas de juridiction sur la Cour Supérieure de la province de Québec, et une déposition donnée devant cette cour peut servir à l'appui d'une procédure criminelle intentée subséquemment contre celui qui a fait telle déposition, à moins que ce dernier n'ait fait cette déposition sous protêt et n'ait réclamé le privilège d'être exempté de répondre en autant que sa réponse pourrait l'incriminer.

(*c.*) Le verdict du jury dans la cour civile ne peut être admis comme preuve à l'instruction préliminaire sur une procédure criminelle.—La Reine *vs* Chisholm *et al.*, 2 R.J., 342; Desnoyers, J. S.

3. No incompetency from crime or interest.

A person shall not be incompetent to give evidence by reason of interest or crime.

1. Sec. 575 of the Criminal Code, authorizing the issue of a warrant to seize gaming implements on the report of "the chief constable or dep-

uty chief constable" of a city or town, does not mean that the report must come from an officer having the exact title mentioned but only from one exercising such functions and duties as will bring him within the designation used in the statute. Therefore, the warrant could properly issue on the report of the deputy high constable of the city of Montreal. Girouard, J., dissenting.

The warrant would be good if issued on the report of a person who filled *de facto* the office of deputy high constable though he was not such *de jure*.

In an action to revendicate the moneys so seized, the rules of evidence in civil matters prevailing in the province would apply, and the plaintiff could not invoke "The Canada Evidence Act, 1893," so as to be a competent witness in his own behalf in the province of Quebec.

Per Strong, C. J.—A judgment declaring the forfeiture of money so seized cannot be collaterally impeached in an action of revendication. —Supreme Court, (Can.), 1896. George O'Neil and the Attorney-General of Canada, 26 S.C.R., 122; 1 Can. Cr. Cas., 303; Strong, C. J., Taschereau, Sedgewick, King & Girouard, JJ.

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.

1. A co-defendant in a criminal case cannot be compelled to testify, but he may do so if he sees fit.—Queen's Bench, Appeal Side, (Que.), 1893. The Queen *vs* Connors, R.J.Q., 3 Q. B., 100; Baby, Bossé, Blanchet, Hall, Würtele, JJ.

2. Where a witness, although accused of having been a party to the crime, has not been indicted jointly with the prisoner at the bar, and is not being tried jointly with the latter, his evidence is admissible for the prosecution.—Queen's Bench, Appeal Side, (Que.), 1898. R. *vs* Viau, R.J.Q., 7 Q.B., 362; Bossé, Blanchet, Hall, Würtele, Ouimet, JJ.

3. A witness who is not a party to the indictment for theft submitted to the jury, cannot be excused from answering questions on the ground that he himself is indicted with another as receiver of the goods stolen.

and that his answers might incriminate him ; but his objection shall be noted, and his evidence shall not be used against him at his trial.—Queen's Bench, Crown Side, (Que.), 1898. Regina *rs* McLinehy, R.J.Q., 8 Q.B., 166; 2 Can. Cr. Cas., 416; Ouimet, J.

4. (*a*) Comment by the prosecuting counsel before the jury in respect of the failure of a prisoner's wife to testify is error entitling the prisoner to a new trial.

(*b*.) The rule is to be applied notwithstanding the judge's direction to the jury to disregard it.

(*c*.) The objection is not waived, because not taken at the time, and it is sufficient if drawn to the attention of the trial judge after the jury have retired to deliberate.—Supreme Court, (N.S.), 1898. R. *rs* Corby, 1 Can. Cr. Cas., 457; McDonald, C. J., Weatherbe, Ritchie, Townshend, JJ., Graham, E. J., Henry, J.

5. An accused person has the right to have his case submitted to the jury without any comment on his failure to testify being made by the trial judge, and although such comment is afterwards withdrawn, the making of same is a substantial wrong to the accused, and if he is convicted he is entitled to a new trial by reason thereof.—High Court of Justice, (Ont.), 1898. R. *rs* Coleman, 2 Can. Cr. Cas., 523; 30 Ont. R., 93; Meredith, C.J., Rose, MacMahon, JJ.

5. Incriminating answers.

No witness shall be excused from answering any question upon the ground that the answer to such question may tend to criminate him, or may tend to establish his liability to a civil proceeding at the instance of the Crown or of any person ; 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. 61 V., c. 53, s. 1.

1. Section 5 before being replaced in 1898 by 61 V., c. 53, read as follows:—

"5. 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 evi-

dence 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.

2. By the Act of 1898, *supra*, no witness shall be excused from answering upon the ground that the answer may tend to criminate him. If however, he objects, in other words, if he claims privilege, then, *although the witness shall be compelled to answer*, the answer so given shall not be used or receivable in evidence against him in any criminal trial, etc., other than a prosecution for perjury in giving such evidence.

The answer given by a witness who is called otherwise than at his own request, or who does not voluntarily tender his evidence, may well be considered as given under compulsion, whether the witness takes the objection or not. And where he does not object, there is room for contention that the Act of 1898 does not apply further than to make compulsory the answers as to which the privilege of refusing to incriminate himself was formerly accorded to a witness, and that the evidence may still be excluded as evidence to prove his criminality because not given freely and voluntarily. The first part of the section makes it compulsory on the part of a witness to answer even if the answer incriminates. The proviso deals only with the case where objection by the witness is taken. The case where no objection is taken is not provided for. It may therefore be argued that this latter case is untouched by the amendment, and that the user of the evidence so given without objection is governed by the former law and is not covered either by express words, or necessary implication. This section, being one affecting the liberty of the subject and his rights in a criminal proceeding, must be construed strictly, 1 Can. Cr. Cas., 397.

3. The prisoner was charged before Wetmore, J., on the following and another count:—"That he had committed perjury on the inquest of inquiry before Andrew J. Rutledge, Esquire, one of Her Majesty's coroners in and for the North-west Territories, concerning, etc." The said inquest was held before the coroner and a jury, and on the preliminary investigation of the charge before a justice of the peace, the prisoner admitted that he had lied when making a certain statement at the coroner's inquest. Upon the trial the evidence of the prisoner's admissions in his testimony before the justice was admitted and submitted to the jury. The prisoner was convicted and sentenced on both counts. Upon objection that as the inquest was held before the coroner and a jury, and not before the coroner alone, as charged, the prisoner was not guilty of perjury before the tribunal he actually gave his evidence, the following questions of law were reserved for the decision of the Court en banc:—

(*a.*) Should the inquisition offered in evidence have been received?

(*b.*) Should the above count have been withdrawn from the jury, or they instructed to acquit the prisoner, on the ground that the inquest was before a coroner and jury, and not before a coroner, as charged?

(*c.*) Whether the evidence of the prisoner's admissions in his testimony on the preliminary investigation of the charge ought to have been struck out or withdrawn from the jury's consideration.

Held, in answer to question (*a.*), that the circumstances of the alleged offence were sufficiently described under sec. 611 (3) and (4) of the Criminal Code, and the evidence properly received. In answer to question (*b.*), that for the same reasons the count should not have been withdrawn from the jury, or they instructed to acquit the prisoner. In

answer to question (*c.*), that under sec. 5 of the Canada Evidence Act, 1893, the evidence should not have been received.—Supreme Court, (N. W.T.), 1896. Regina *vs* Thompson, 32 C. L. J., 493; 17 C. L. T., 295.

4. Crown case reserved. The prisoners were indicted under s. 394 of the Criminal Code for a conspiracy to defraud. Upon their trial, evidence was offered by the Crown, and received, of a statement made by one of the defendants upon oath, in a prosecution before a magistrate in which this defendant was a complainant and gave evidence on his own behalf. The statement was made upon cross-examination of this defendant in the proceedings before the magistrate. The question submitted for the opinion of the court was whether evidence of the statement was properly received, having regard to s. 5 of 56 Vict. (*C.*), c. 31, an Act respecting witnesses and evidence, which provides: "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 the defendant did not, so far as the case showed, assert his privilege before the magistrate, the evidence was receivable.—High Court of Justice, (Ont.), 1894. R. *vs* Madden and Bowerman, 30 C. L. J., 795; Armour, C. J., Street, J.

5. A coroner's court is a criminal court, and the depositions of a witness before such court who is subsequently charged with murder cannot, since the Canada Evidence Act, 1893, be received in evidence against him at the trial, notwithstanding privilege was not claimed by him at the inquest.—High Court of Justice, (Ont.), 1895. R. *vs* Hendershott & Welter, 26 Ont. R., 678; Meredith, C. J.

6. The depositions of a witness taken at a coroner's inquest without objection by him that his answers may tend to criminate him, and who is subsequently charged with an offence are receivable in evidence against him at the trial.—Regina *vs* Hendershott and Welter, 26 O. R., 678, overruled.—High Court of Justice, (Ont.), 1897. Regina *vs* Williams, 28 Ont. R., 583; Armour, C. J., Falconbridge & Street, JJ.

7. (*a.*) Section 5 of the Canada Evidence Act, 1893, 56 Vict., c. 31 (*D.*), which abolishes the privilege of not answering criminating questions, and provides that no evidence so given shall be receivable in evidence in subsequent criminal proceedings against the witness, other than for perjury in respect thereof, applies to any evidence given by a person under oath, though he may not have claimed privilege. Meredith, J., dissenting.—Regina *vs* Williams, (1897), 28 O. R., 583, not followed.

(*b.*) On a charge of wife murder, the Crown sought to prove that the prisoner had been with evil design accumulating insurance on his wife's life:—*Held*, that evidence of various applications for insurance, though in some cases resulting in rejection of the risk, was admissible, all being made practically at the same time and forming part of one transaction which could be properly given in evidence as a whole.

(*c.*) The coroner's court is a criminal court.

(*d.*) As the Court of Appeal for criminal cases is now constituted the decision of the judges of one court is not binding on judges sitting as an-

other court of coordinate jurisdiction.—High Court of Justice. (Ont.), 1898. The Queen *vs* Hammond, 29 Ont. R., 211; 1 Can. Cr. Cas., 373. Boyd, C., Robertson & Meredith, JJ.

8. (*a.*) Le coroner n'a pas le droit, lorsqu'il procède à une enquête, d'exiger une déclaration d'une personne qu'il a pu accuser ou soupçonner d'un crime et qu'il a pu arrêter en sa qualité de juge de paix, avant le verdict.

(*b.*) Une déposition prise devant la cour du coroner n'est pas admissible comme preuve contre le déposant dans une poursuite criminelle intentée ensuite contre lui.—Queen's Bench, Crown Side, (Que.), 1898. La Reine *vs* Lalonde et Gédéon Déguire, R.J.Q., 7 Q.B., 204; Würtele, J.

9. Under the Canada Evidence Act, 1893, a deposition given at a coroner's inquest is inadmissible in evidence against the deponent in a criminal proceeding subsequently instituted against him.—Queen's Bench, Appeal Side, (Que.), 1898. R. *vs* Viau, R.J.Q., 7 Q.B., 362; Bossé, Blanchet, Hall, Würtele, Ouimet, JJ.

10. At the trial of the prisoner, an official stenographer from the province of Quebec verified the deposition of John S. Douglas taken in a civil action before the Superior Court at Montreal, and stated that the prisoner resembled the person whose deposition he had taken in Montreal, but as this took place over six months previously, he could not sufficiently remember his face to swear positively that the prisoner was really the same man, but stated, however, that to the best of his knowledge he was the same man, and that he had no doubt that he was the same man.

Held, (*a.*) following Reg. *vs* Coote, L. R., 4 P. C., 599 and Reg. *vs* Connolly, 25 O.R., 151, that the deposition in question was admissible in evidence, and could not be excluded under section 5 of the Canada Evidence Act, 1893.

(*b.*) That there was sufficient evidence of the identity of the prisoner with the person whose deposition was put in to warrant the judge in submitting the deposition to the jury, the question of identity being one entirely for them.—Queen's Bench, (Man.), Regina *vs* Douglas, 11 Man. Law Rep., 401; 1 Can. Cr. Cas., 221; Taylor, C. J., Killam & Bain, JJ.

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.

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.— 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 :—

Canada Gazette, etc.

(*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 ;

Copy printed by Queen's printer.

(*b.*) By the production of a copy of such proclamation, order, regulation or appointment, purporting to be printed by the Queen's Printer for Canada ; and—

Copy of extract duly certified.

(*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 Queen'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.— Evidence of any proclamation, order, regulation or appointment made or issued by a Lieutenant-Governor or Lieutenant-Governor in Council of any province, or by or under the authority of any member of the Executive Council, being the head of any department of the Government of the province, may be

given in all or any of the modes hereinafter mentioned, that is to say :—

Official Gazette, etc.

(*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 ;

Copy printed by Government printer.

(*b.*) By the production of a copy of such proclamation, order, regulation or appointment purporting to be printed by the Government or Queen's Printer for the province ;

Copy of extract duly certified.

(*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 justice 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 Queen's Printer for Canada.

12. Proof of official or public document.

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 examine evidence, provided it is proved that it is a copy or extract purporting to be certified to be true by the officer to whose custody the original has been entrusted.

14. Proof of handwriting, etc., not requisite.

No proof shall be required of the handwriting or official position of any person certifying, in pursuance of this Act, to the truth of any copy of or extract from any proclamation, order, regulation, appointment, book or other document ; and any such copy or extract may be in print or in writing, 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 of Canada, and purporting to be written by command of the Governor General, shall be receivable in evidence as the order of the Governor General.

16. Copies of notices, etc., in Canada Gazette.

All copies of official and other notices, advertisements and documents printed in the Canada Gazette shall be *primâ facie* 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 department of the Government of Canada, shall be receivable as evidence of such entry and of the matters, transactions and accounts therein recordered, if it is proved by the oath or affidavit of an officer of such department that such book was, at the time of the making of the entry, one of the ordinary books kept in such department, that the entry was made in the usual and ordinary course of business of such department, and that such copy is a true copy thereof.

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 of Quebec, and to be certified by a notary or prothonotary to be a true copy of the original in his possession as such notary or prothonotary, shall be received in evidence in the place and stead of the original, and shall have the same force and effect as the original would have if produced and proved ; Provided that it may be proved in rebuttal that there is no such original, or that the copy is not a true copy of the original in some material particular, or that the original is not an instrument of such nature as may by the law of the province of Quebec be taken before a notary or be filed, enrolled or enregistered by a notary in the said province.

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, subpœna 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 oath.

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 disiring 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, &c."; 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 posses-ed of sufficient intelligence to justify the reception of the evidence and understand 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.

STATUTORY DECLARATIONS

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.

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.

R. S. C., CHAPTER 140

An Act respecting the taking of Evidence relating to proceedings in Courts out of Canada

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

1. Interpretation. — "Court." — "Judge." — "Cause."

In this Act, unless the context otherwise requires,—

(*a.*) The expression "court" means and includes the Supreme Court of Canada, and every superior court in any province of Canada ;

(*b.*) The expression "judge" means and includes any judge of the Supreme Court of Canada and any judge of any superior court in any province of Canada ;

(*c.*) The expression "cause" includes a proceeding against a criminal. 31 V., c. 76, s. 6, *part* ; 46 V., c. 35, s. 1, *part*.

2. Order may be made for examination in Canada of a witness in relation to a matter pending out of Canada.

Whenever, upon an application for that purpose, it is made to appear to any court or judge, that any court or tribunal of competent jurisdiction, in any other of Her Majesty's dominions, or in any foreign country, before which any civil, commercial or criminal matter is pending, is desirous of obtaining the testimony in relation to such matter, of any party or witness within the jurisdiction of such first mentioned court, or of the court to which such judge belongs or of such judge, such court or judge may, in its or his discretion, order the examination upon oath upon interrogatories, or otherwise, before any person or persons named in such order, of such party or witness accordingly, and by the same or any subsequent order may command the attendance of such party or witness for the purpose of being examined, and for the production of any writings or other documents mentioned in such order, and of any other writings or documents relating to the matter in question that are in the

possession or power of such party or witness. 31 V., c. 76, s. 1; 46 V., c. 35, s. 1, *part*.

3. Enforcement of such order

Upon the service upon such party or witness of such order and of an appointment of a time and place for the examination of such party or witness, signed by the person named in such order for taking the same, or if more than one person is named, then by one of the persons named, and upon payment or tender of the like conduct money as is properly payable upon attendance at a trial, such order may be enforced in like manner as an order made by such court or judge in a cause depending in such court or before such judge. 31 V., c. 76, s. 2.

4. Conduct money and expenses.

Every person whose attendance is required in manner aforesaid shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial. 31 V., c. 76, s. 3.

5. Witness to have like right of refusal as at a trial.

Any person examined under any order made under this Act shall have the like right to refuse to answer questions tending to criminate himself, and other questions, which a party or witness, as the case may be, in any cause pending in the court by which, or by a judge whereof, such order is made, would be entitled to, and no person shall be compelled to produce, under any such order, any writing or other document that he could not be compelled to produce at a trial of such a cause. 31 V., c. 76, s. 4.

6. Examination to be upon oath or affirmation.

Any person authorized to take the examination of parties or witnesses by any order made in pursuance of this Act, may take such examination upon the oath of the parties or witnesses, or upon affirmation, in cases in which by the law of the province wherein such examination is taken, affirmation is allowed instead of oath; and such oath or affirmation shall be administered by

the person so authorized, or, if more than one, then by one of such persons. 31 V., c. 76, s. 5, *part*.

7. Rules and orders may be made by the court.

The court may frame rules and orders in relation to procedure, to the evidence to be produced in support of the application for an order for examination of parties and witnesses under this Act, and generally for carrying this Act into effect; and in the absence of any order in relation to such evidence, letters rogatory from any court of justice in any other of the dominions of Her Majesty, or from any foreign tribunal, in which such civil, commercial or criminal matter is pending, shall be deemed and taken to be sufficient evidence in support of such application. 31 V., c. 76, s. 6, *part*; 46 V., c. 35, s. 1, *part*.

8. Powers of local Legislatures not affected.

This Act shall not be so construed as to interfere with the right of legislation of the Legislature of any province requisite or desirable for the carrying out the objects hereof. 31 V., c. 76, s. 7.

R.S.C., CHAPTER 43

An Act respecting Indians

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120. Evidence of unbelieving Indian may be received on his solemn affirmation.

Upon any inquest, or upon any inquiry into any matter involving a criminal charge, or upon the trial of any crime or offence whatsoever or by whomsoever committed, any court, judge, police or stipendiary magistrate, recorder, coroner, justice of the peace or Indian agent, may receive the evidence of any Indian or non-treaty Indian, who is destitute of the knowledge of God or of any fixed and clear belief in religion, or in a future state of rewards and punishments, without administering the usual form of oath to any such Indian or non-treaty

Indian, as aforesaid, upon his solemn affirmation or declaration to tell the truth, the whole truth and nothing but the truth, or in such form as is approved by such court, judge, magistrate, recorder, coroner, justice of the peace or Indian agent, as most binding on the conscience of such Indian or non-treaty Indian. 43 V., c. 28, s. 85; 45 V., c. 30, s. 3, *part*.

121. Substance of evidence of Indian to be reduced to writing and signed by him and by judge, and interpreter.

In the case of any inquest, or upon any inquiry into any matter involving a criminal charge, or upon the trial of any crime or offence whatsoever, the substance of the evidence or information of any such Indian or non-treaty Indian, as aforesaid, shall be reduced to writing and signed by the Indian (by mark if necessary), giving the same, and verified by the signature or mark of the person acting as interpreter, if any, and by the signature of the judge, magistrate, recorder, coroner, justice of the peace, Indian agent or person before whom such evidence or information is given. 43 V., c. 28, s. 86; 45 V., c. 30, s. 3.

122. Indian to be cautioned to tell the truth.

The court, judge, magistrate, recorder, coroner, justice of the peace or Indian agent shall, before taking any such evidence, information or examination, caution every such Indian or non-treaty Indian, as aforesaid, that he will be liable to incur punishment if he does not tell the truth, the whole truth and nothing but the truth. 43 V., c. 28, s. 87; 45 V., c. 30, s. 3.

123. Written declarations, etc., of Indians may be used as evidence as those of other persons.

The written declaration or examination so made, taken and verified of any such Indian or non-treaty Indian, as aforesaid, may be lawfully read and received as evidence upon the trial of any criminal proceeding, when under the like circumstances the written affidavit, examination, deposition or confession of any person might be lawfully read and received as evidence. 43 V., c. 28, s. 88.

124. Effect of solemn affirmation, etc., of Indian.

Every solemn affirmation or declaration, in whatsoever form made or taken, by any Indian or non-treaty Indian, as aforesaid, shall be of the same force and effect as if such Indian or non-treaty Indian had taken an oath in the usual form. 43 V., c. 28, s. 89, *part*.

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61 VICTORIA, CHAPTER 54

An Act respecting the Identification of Criminals

[Assented to 13th June, 1898.]

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

1. System for identifying criminals authorized. — Bertillon system or others. — Publication of results.

Any person in lawful custody, charged with, or under conviction of an indictable offence, may be subjected, by or under the direction of those in whose custody he is, to the measurements, processes and operations practised under the system for the identification of criminals commonly known as the Bertillon Signaletic System, or to any measurements, processes or operations sanctioned by the Governor in Council having the like object in view. Such force may be used as is necessary to the effectual carrying out, and application of such measurements, processes and operations ; and the signaletic cards and other results thereof may be published for the purpose of affording information to officers and others engaged in the execution or administration of the law.

2. Non-liability of persons concerned in operation.

No one having the custody of any such person and no one acting in his aid or under his direction, and no one concerned in such publication shall incur any liability, civil or criminal, for anything lawfully done under the provisions of section 1 of this Act.

3. Short title.

This Act may be cited as *The Criminals' Identification Act, Canada*, 1898.

54-55 VICTORIA, CHAPTER 28

An Act with respect to certain matters affecting the administration of justice

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FEES IN PROVINCIAL COURTS

5. Fees in Provincial Courts.

All fees payable on proceedings in the provincial courts imposed by Act of the Legislature of any province before such province became part of the Dominion of Canada, and all such fees purporting to be imposed by or under the authority of any Act of the Legislature of a province since such province became a part of the Dominion, shall be payable according to the provisions of such Acts respectively, and this section extends to and includes fees on civil proceedings relating to matters governed or directed by the laws of Canada as well as to such as are governed or directed by the laws of the provinces.

R. S. C., CHAPTER 158

An Act respecting Gaming-Houses

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9. Magistrate may require any of the persons apprehended to give evidence.—Punishment of persons refusing to give evidence.

The police magistrate, mayor or justice of the peace, before whom any person is brought who has been found in any house, room or place, entered in pursuance of any warrant or order is-

sued under this Act, may require any such person to be examined on oath and to give evidence touching any unlawful gaming in such house, room or place, or touching any act done for the purpose of preventing, obstructing or delaying the entry into such house, room or place, or any part thereof, of any constable or officer authorized as aforesaid ; and no person so required to be examined as a witness shall be excused from being so examined when brought before such police magistrate, mayor or justice of the peace, or from being so examined at any subsequent time by or before the police magistrate or mayor or any justice of the peace, or by or before any court, on any proceeding, or on the trial of any indictment, information, action or suit in anywise relating to such unlawful gaming, or any such acts as aforesaid, or from answering any question put to him touching the matters aforesaid, on the ground that his evidence will tend to criminate himself ; and any such person so required to be examined as a witness who refuses to make oath accordingly, or to answer any such question, shall be subject to be dealt with in all respects as any person appearing as a witness before any justice or court in obedience to a summons or subpœna and refusing without lawful cause or excuse to be sworn or to give evidence, may, by law, be dealt with ; but nothing in this section shall render any offender, under the sixth section of this Act, liable on his trial to examination hereunder. 38 V., c. 41, s. 6 ; 40 V., c. 33, s. 4, *part*.

10. Such witnesses making a full discovery to be free from all penalties, on certificate. — What the certificate must set forth.

Every person so required to be examined as a witness, who, upon such examination, makes true disclosure, to the best of his knowledge, of all things as to which he is examined shall receive from the judge, justice of the peace, magistrate, examiner or other judicial officer before whom such proceeding is had, a certificate in writing to that effect, and shall be freed from all criminal prosecutions and penal actions, and from all penalties, forfeitures and punishments to which he has become liable for anything done before that time in respect of the matters regarding

which he has been examined; but such certificate shall not be effectual for the purpose aforesaid, unless it states that such witness made a true disclosure in respect to all things as to which he was examined; and any action, indictment or proceeding pending or brought in any court against such witness, in respect of any act of gaming regarding which he was so examined, shall be stayed, upon the production and proof of such certificate, and upon summary application to the court in which such action, indictment or proceeding is pending, or any judge thereof, or any judge of any of the superior courts of any province. 38 V., c. 41, s. 7.

R. S. C., CHAPTER 163

An Act respecting Libel

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6. Publication by order of a legislative body may be pleaded. — Certificate to be produced. — Its effect.

Every person against whom any criminal proceedings are commenced or prosecuted in any manner for or on account of or in respect of the publication of any report, paper, votes or proceedings, by such person or by his servant, by or under the authority of any Legislative Council, Legislative Assembly or House of Assembly, may bring before the court in which such proceedings are so commenced or prosecuted, or before any judge of the same, first giving twenty-four hours' notice of his intention so to do, to the prosecutor in such proceeding, or to his attorney or solicitor, a certificate under the hand of the speaker or clerk of any Legislative Council, Legislative Assembly or House of Assembly, as the case may be, stating that the report, paper, votes or proceedings, as the case may be, in respect whereof such criminal proceedings have been commenced or prosecuted, was or were published by such person, or by his servant, by order or under the authority of any Legislative Council, Legislative Assembly or House of Assembly, as the case may be,

together with an affidavit verifying such certificate; and such court or judge shall thereupon immediately stay such criminal proceedings, and the same shall be and shall be deemed and taken to be finally put an end to, determined and superseded by virtue hereof. 24 V. (P.E.I.), c. 31, s. 1.

7. Copy of report, etc., with affidavit of correctness may be laid before the court.

In case of any criminal proceedings hereafter commenced or prosecuted for or on account or in respect of the publication of any copy of such report, paper, votes or proceedings, the defendant, at any stage of the proceedings, may lay before the court or judge such report, paper, votes or proceedings, and such copy, with an affidavit verifying such report, paper, votes or proceedings, and the correctness of such copy; and the court or judge shall immediately stay such criminal proceedings, and the same shall be and shall be deemed to be finally put an end to, determined and superseded by virtue hereof. 24 V. (P.E.I.), c. 31, s. 2.

R. S. C., CHAPTER 167

An Act respecting offences relating to the Coin

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26. Coin suspected to be diminished or counterfeit may be cut. — Who shall bear the loss. — Disputes, how decided. — Revenue officers to destroy such coin.

If any coin is tendered as current gold or silver coin to any person who suspects the same to be diminished otherwise than by reasonable wearing, or to be counterfeit, such person may cut, break, bend or deface such coin, and if any coin so cut, broken, bent or defaced appears to be diminished otherwise than by reasonable wearing, or to be counterfeit, the person tendering the same shall bear the loss thereof; but if the same is of due weight, and appears to be lawful coin, the person cutting, break-

ing, bending or defacing the same, shall be bound to receive the same at the rate for which it was coined :

2. If any dispute arises whether the coin so cut, broken, bent or defaced, is diminished in manner aforesaid, or counterfeit, it shall be heard and finally determined in a summary manner by any justice of the peace, who may examine, upon oath, the parties as well as any other person, for the purpose of deciding such dispute, and if he entertains any doubt in that behalf, he may summon three persons, the decision of a majority of whom shall be final :

3. Every officer employed in the collection of the revenue in Canada shall cut, break or deface, or cause to be cut, broken or defaced, every piece of counterfeit or unlawfully diminished gold or silver coin which is tendered to him in payment of any part of such revenue in Canada. 32-33 V., c. 18, s. 26.

1. SS. 29-34 of R.S.C., c. 167, though not repealed, are not inserted here as they have been reproduced in the Appendix to the Criminal Code.

R. S. C., CHAPTER 144

An Act respecting the application of the Criminal Law of England to the Provinces of Ontario and British Columbia

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

ONTARIO

1. Criminal Law of England continued in Ontario.

The criminal law of England, as it stood on the seventeenth day of September, in the year one thousand seven hundred and ninety-two, and as the same has since been repealed, altered, varied, modified or affected by any Act of the Parliament of the United Kingdom having force of law in the Province of Ontario, or by any Act of the Parliament of the late Province of Upper Canada, or of the Province of Canada, still having force of law,

or by any Act of the Parliament of Canada, shall be the criminal law of the Province of Ontario. C.S.U.C., c. 94.

BRITISH COLUMBIA

2. And in British Columbia.

The criminal law of England, as it stood on the nineteenth day of November, in the year one thousand eight hundred and fifty-eight, and as the same has since been repealed, altered, varied, modified or affected by any ordinance or Act (still having the force of law) of the colony of British Columbia, or of the colony of Vancouver Island, before the union of such colonies or of the colony of British Columbia, passed since such union, or by any Act of the Parliament of Canada, shall be the criminal law of the Province of British Columbia. R.S.B.C., c. 70, s. 2, *part*.

R. S. C., CHAPTER 50

An Act respecting the North-West Territories

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11. Laws of England on July 15, 1870, in force in Territories with certain exceptions.

Subject to the provisions of this Act, the laws of England relating to civil and criminal matters, as the same existed on the fifteenth day of July, in the year of our Lord one thousand eight hundred and seventy shall be in force in the Territories, in so far as the same are applicable to the Territories, and in so far as the same have not been, or are not hereafter repealed, altered, varied, modified, or affected by any Act of the Parliament of the United Kingdom applicable to the Territories, or of the Parliament of Canada, or by any ordinance of the Lieutenant-Governor in Council, or of the Legislative Assembly. 60-61 V., (C.), c. 28, s. 4.

61 VICTORIA, CHAPTER 6

An Act to provide for the Government of the Yukon District

.....

9. Existing laws to remain in force until altered by the proper legislative authority.

Subject to the provisions of this Act, the laws relating to civil and criminal matters, and the ordinances as the same exist in the North-West Territories at the time of the passing of this Act, shall be and remain in force in the said Yukon Territory in so far as the same are applicable thereto, until amended or repealed by the Parliament of Canada or by any ordinance of the Governor in Council or the Commissioner in Council made under the provisions of this Act.

R. S. C., CHAPTER 41

An Act respecting the Militia and Defence of Canada

.....

IN AID OF THE CIVIL POWER

34. How and in what cases active militia may be so called out. — Duty of senior officer present in the locality, on requisition of the proper civil authorities. — What the requisition must show. — Duty of officers and men, who shall be special constables. — Payment by municipality for such service. — Providing lodging and stabling. — Recovery of pay and allowances. — As to advance by Government.

The Active Militia, or any corps thereof, shall be liable to be called out for active service with their arms and ammunition, in aid of the civil power in any case in which a riot, disturbance of the peace, or other emergency requiring such service occurs, or is, in the opinion of the civil authorities hereinafter mentioned, anticipated as likely to occur, and, in either case to be beyond the powers of the civil authorities to suppress, or to pre-

vent or deal with,—whether such riot, disturbance or other emergency occurs, or is so anticipated within or without the municipality in which such corps is raised or organized :

2. The senior officer of the Active Militia present at any locality shall call out the same or such portion thereof as he considers necessary for the purpose of preventing or suppressing any such actual or anticipated riot or disturbance, or for the purpose of meeting and dealing with any such emergency as aforesaid, when thereunto required in writing by the chairman or custos of the Quarter Sessions of the Peace, or by any three justices of the peace of whom the warden, mayor, or other head of the municipality or county in which such riot, disturbance or other emergency occurs or is anticipated as aforesaid, may be one; and he shall obey such instructions as are lawfully given to him by any justice of the peace in regard to the suppression of any such actual riot or disturbance, or in regard to the anticipation of such riot, disturbance or other emergency, or to the suppression of the same, or to the aid to be given to the civil power in case of any such riot, disturbance or other emergency :

3. Every such requisition in writing, as aforesaid, shall express on the face thereof the actual occurrence of a riot, disturbance or emergency or the anticipation thereof, requiring such service of the Active Militia in aid of the civil power for the suppression thereof :

4. Every officer and man of such Active Militia, or any portion thereof, shall, on every such occasion, obey the orders of his commanding officer ; and the officers and men, when so called out, shall, without any further or other appointment, and without taking any oath of office, be special constables, and shall be considered to act as such as long as they remain so called out ; but they shall act only as a military body, and shall be individually liable to obey the orders of their military commanding officer only :

5. When the Active Militia, or any corps thereof, is so called

out in aid of the civil power, the municipality in which their services are required shall pay them, when so employed, the rates authorized to be paid for actual service to officers and men, and one dollar per diem for each horse actually and necessarily used by them, together with an allowance of one dollar to each officer, fifty cents to each man per diem in lieu of subsistence, and fifty cents per diem in lieu of forage for each horse,—and, in addition, shall provide them with proper lodging, and with stabling for their horses; and the said pay and allowances for subsistence and forage, as also the value of lodging and stabling, unless furnished in kind by the municipality, may be recovered from it by the officer commanding the corps, in his own name, and, when so recovered, shall be paid over to the persons entitled thereto:

6. Such pay and allowances of the force called out, together with the reasonable cost of transport may, pending payment by the municipality, be advanced in the first instance out of the Consolidated Revenue Fund of Canada, by authority of the Governor in Council; but such advance shall not interfere with the liability of the municipality, and the commanding officer shall at once, in his own name, proceed against the municipality for the recovery of such pay, allowances and cost of transport, and shall, on receipt thereof, pay over the amount to Her Majesty. 46 V., c. 11, s. 27, *part*.

35. Obstructing conveyance of mails by railways. — Part of expenses may be paid by Government. — Accounts in such case.

Whenever a municipality within the limits of which a railway passes whereon Her Majesty's mails are conveyed, has incurred expense by reason of the Militia being so called out in aid of the civil power, for preventing or repressing a riot or disturbance of the peace beyond the power of the civil authorities to deal with, and not local or provincial in its origin, by which riot or disturbance of the peace the conveyance of such mails might be obstructed, the Governor in Council may pay or reimburse out of any moneys which are provided by Parliament

for the purpose, such part as seems just of the proper expenses incurred by any municipality, by reason of any part of the Active Militia being so called out in aid of the civil power:

2. An account of any such expenditure shall be laid before Parliament as soon as possible thereafter. 46 V., c. 11, s. 27, *part*.

36. In case of emergency in N. W. T., or Keewatin, the Lt.-Governor of Manitoba may call out the active militia. — Duty and powers of officers and men in such case. — Orders to be obeyed. — To be special constables. — Pay and allowances. — Payable out of Con. Rev. Fund.

If it appears to the satisfaction of the Lieutenant-Governor of the province of Manitoba, that a riot, disturbance of the peace or other emergency, requiring the services of the Active Militia in aid of the civil power, has occured in the North-west Territories or in the District of Keewatin, or that such riot, disturbance or other emergency is anticipated as likely to occur, and, in either case, to be beyond the powers of the civil authorities to suppress, or to prevent or deal with, the Lieutenant-Governor may, by a writing, expressing on the face thereof the actual occurrence of such riot, disturbance or emergency, or the anticipation thereof, require the senior officer of the Active Militia present in the province of Manitoba to call out the same, or such portion thereof as he considers necessary for the purpose of preventing or suppressing any such actual or anticipated riot or disturbance, or for the purpose of meeting and dealing with any such emergency as aforesaid:

2. Such officer shall comply with such requisition and obey such instruction as are lawfully given him by the Lieutenant-Governor, or by such justice of the peace as is designated for the duty by the Lieutenant-Governor, in regard to the suppression of any such actual riot or disturbance, or in regard to the anticipation of such riot or disturbance or other emergency, or to the suppression of the same, or to the aid to be given to the civil powers in case of any such riot, disturbance or other emergency:

3. Every officer and man of such Active Militia, or any portion thereof, shall, on every such occasion, obey the orders of his commanding officer:

4. The officers and men, when so called out, shall, without any further or other appointment, and without taking any oath of office, be special constables, and shall be considered to act as such so long as they remain so called out; but they shall act only as a military body, and shall be individually liable to obey the orders of their military commanding officer only: and they shall be paid, when so employed, the rates authorized to be paid for actual service to officers and men, and one dollar per day for each horse actually and necessarily used by them, together with an allowance of one dollar to each officer, and fifty cents to each man per day, in lieu of subsistence, and fifty cents per day in lieu of forage for each horse:

5. Such pay and allowances and the reasonable costs of transport to and from the place where the services of the force are required, may be paid out of the Consolidated Revenue Fund of Canada by authority of the Governor in Council. 46 V., c. 11, s. 27, *part*.

COURTS OF INQUIRY AND COURTS MARTIAL

91. Courts of inquiry and courts martial may be convened. — Proviso.

Her Majesty may convene courts of inquiry and appoint officers of the Militia to constitute such courts for the purpose of investigating and reporting on any matter connected with the government or discipline of the Militia, and with the conduct of any officer or man of the force; and may, at any time, convene courts martial, and delegate power to convene such courts, and to appoint officers to constitute the same for the purpose of trying any officer or man of the Militia for any offence under this Act, and may also delegate power to approve, confirm, mitigate or remit any sentence of any such court; but no officer of Her Majesty's regular army on full pay shall sit on any such court martial. 46 V., c. 11, s. 72.

92. Composition and powers of courts martial. — Pay and allowances. — Attendance of witnesses. — Refusing to attend or give evidence, etc. — Offence to be certified to court of justice and punished.

The regulations for the composition of Militia courts of inquiry and courts martial, and the modes of procedure and powers thereof, shall be the same as the regulations which are at the time in force for the composition, modes of procedure and powers of courts of inquiry and courts martial for Her Majesty's regular army, and which are not inconsistent with this Act; and the pay and allowances of officers and others attending such courts may be fixed by the Governor in Council;

2. Every person required to give evidence before a court martial may be summoned, or ordered to attend;

3. If any person who is not enrolled in the Active Militia is summoned as a witness before a court martial, and after payment or tender of the reasonable expenses of his attendance, makes default in attending, or being in attendance as a witness,

(*a.*) Refuses to take an oath or affirmation lawfully required by a court martial to be taken, or—

(*b.*) Refuses to produce any document in his power or control lawfully required by a court martial to be produced by him, or—

(*c.*) Refuses to answer any question to which a court martial lawfully requires an answer, or—

(*d.*) Is guilty of any contempt of the court martial by causing any interruption or disturbance in its proceedings,—

The president of the court martial may certify the default, refusal or contempt of such person under his hand to a judge of any court of justice in the locality having power to punish persons guilty of like offences in that court; and such court may thereupon inquire into the same, and if the person is found guilty, punish him in like manner as he would be punishable in a proceeding in such court for any such default, refusal or contempt. 46 V., c. 11, s. 73.

93. Sentence of death in certain cases only. — Subject to approval of H. M.

No Militia officer or militiaman shall be sentenced to death by any court martial, except for mutiny, desertion to the enemy, or traitorously delivering up to the enemy any garrison, fortress, post or guard, or for traitorous correspondence with the enemy; —and no sentence of any general court martial shall be carried into effect until approved by Her Majesty. 46 V., c. 11, s. 74.

R. S. C., CHAPTER 142 (1)

An Act respecting the Extradition of Fugitive Criminals

Her Majesty, by and with the advice and consent of the Senate and Houses 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 Her Majesty with a foreign state for the surrender of fugitive criminals, and which extends to Canada ;

(1.) By an Order in Council (Imp.) of date the 28th December 1882, it is directed that the Imperial "Extradition Act of 1870" shall be suspended so far as it relates to any foreign state in the case of which it now applies, so long as the provisions of the "Extradition Act of 1877", (Can.), now R.S.C., c. 142, continue in force, and no longer. *See* Statutes of 1883, (Can.), p. XXVI.

(*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 expressions "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 ;

(*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.

1. As provided by s. 2 of the Extradition Act, subsec. (*b*), obtaining property under false pretenses being described in schedule 1 of said Act, and further being described in s. 3 of article 1 of the Imperial Order in Council of 1890, the same constitutes an extraditable offence, and the accused was committed.—Supreme Court, (N.W.T.), 1896. *In re* F. H. Martin, 33 C. L. J., 253; Richardson, J.

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.

1. The Ashburton Treaty contains the whole of the law of surrender as between Canada and the United States: the 3 Will. IV., c. 6, being superseded by it, and the Imperial Act 6 and 7 Vict., c. 76, and provincial statute 12 Vict., c. 19; though in relation to other foreign powers with whom no treaty or conventional arrangement existed, the 3 Will. IV., c. 6, is still in force.—R. *vs* Tubbee, 1 P. R., 98; Macaulay, J.

2. Subsection 2 of section 3 of the Imperial Extradition Act of 1870, is inconsistent with the subsisting Extradition Treaty between Great Britain and the United States, and is therefore, not in force, *quoad* any application under such treaty.—Queen's Bench, Chambers, (Que.), 1874. *In re* Rosenbaum, 18 L.C.J., 200; Ramsay, J.

3. The only existing law as to extradition of criminals between the United States and Canada, is the Imperial Act of 1870, (33-34 Vict., ch. 25 (*D.*) The Canadian Extradition Act of 1877, (40 Vict., ch. 25 (*D.*), does not apply to criminals from the United States as the operation of the Imperial Act, 1870, has not "ceased or been suspended within Canada." Proceedings taken for the extradition of the prisoner under 40 Vict., ch. 25 (*D.*), and a warrant committing him under that Act, were therefore set aside, and the prisoner discharged.—*In re* Williams, 7 P. R., 275.

4. Since the Imperial Order in Council of 28th December, 1882, (published in the Canada Gazette of the 3rd March, 1883), the operation of

the Imperial Extradition Act of 1870 has been suspended in Canada *quoad* the extradition of fugitive offenders from the United States, and the Dominion Act, 40 Vict., ch. 25 is applicable in such case, to the extent, at least, of the extradition arrangement in force with that country.—Queen's Bench, (Que.), 1883, *Ex parte* Phelan, 6 L.N., 261.

5. Le parlement fédéral peut interpréter les dispositions d'un traité d'extradition, pourvu que cette interprétation soit libérale et faite avec l'intention d'augmenter l'utilité du traité.—(Qué.), 1888. Le Peuple des Etats-Unis *vs* Debaun, 16 R.L., 612; Rioux, M.

4. If the application of this Act depends on an Order in Council. — Publication of Orders in Council. — Effect of 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 Her 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, pursuant 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 Gov-

ernor in Council, under the Great Seal of Canada, by virtue of this Act, are authorized to act judicially in extradition 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.

1. The Imperial Statute 6th and 7th Vict., ch. 76, which was suspended in this colony by the Queen's proclamation of the 28th day of March, 1850, was not revived by the passing of either of the provincial Acts 22 Vict., ch. 29, and 24 Vict., ch. 6, and, consequently, a judge of the Superior Court for Lower Canada has jurisdiction over the several classes of offences enumerated in the treaty between Great Britain and the United States, commonly known as the "Ashburton Treaty."—Superior Court, (Que.), 1865. R. *vs* Young *et al.*, 9 L.C.J., 29; Smith, J.

2. Where a commissioner has been appointed under the Great Seal of Canada (sect. 5 of the Extradition Act, R. S., ch. 142), and his appointment as such commissioner has appeared in the *Official Gazette*, and he is "thereby authorized to act judicially in extradition matters under the Extradition Act, within the Province", and he describes himself in a warrant of commitment, as "a judge under the Extradition Act",—his jurisdiction is sufficiently disclosed.—Queen's Bench, Chambers, (Que.), 1898. *Ex parte* Debaun, M.L.R., 4 Q.B., 145; Church, J.

3. The expression "all judges, etc., of the County Court" contained in sec. 5 of the Extradition Act, R.S.C., ch. 142, includes the junior judge of said court.—High Court of Justice, (Ont.), 1891. *In re* Parker, 19 Ont. R., 612; Rose, J.

4. The junior judge of the county court is "a judge of a county court", and has the functions of an extradition judge.—*Re* Parker, 19 O. R., 512, followed.—Queen's Bench, (Ont.), 1891. *In re* Garbutt, 21 Ont. R., 179; Street, MacMahon, JJ

5. (*a.*) Judges and commissioners in extradition matters can only act judicially within the province for which they have been appointed.

(*b.*) A warrant issued by an extradition commissioner under the Extradition Act of Canada, R.S.C., ch. 142, for the apprehension of a fugitive criminal, where the complaint on which the warrant was issued states and shows that at the time the complaint was laid he was in another province of the Dominion, is therefore null and of no effect.—Queen's Bench, (Que.), 1899. *Ex parte* Jean Seitz, R.J.Q., 8 Q.B., 345; 3 Can. Cr. Cas., 154; Würtele, J.

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.

1. It is not necessary to the jurisdiction of a magistrate in Canada, acting under the treaty and the Canadian statutes passed to give effect to it, either that a charge should be first laid in the United States, that a requisition should be first made by the government of the United States upon the Canadian Government, or that the Governor General of Canada should first issue his warrant requiring magistrates to aid in the arrest of the fugitives; in other words, the charge may be originated before the magistrate in Canada.—C. L. Chambers, (Ont.), 1865. *In re* Burley, 1 L. J., N. S., 34.

2. It is not necessary, under the Extradition Treaty and Act 31 Vict., ch. 94 (*D.*), that an original warrant should have been granted in the United States for the apprehension in this country of the person accused, to enable proceedings to be effectually taken against him in this province for an offence within the treaty.—C. L. Chambers, (Ont.) *In re* Caldwell, 5 P. R., 217; Wilson, J.

3. Un mandat du Gouverneur Général n'est pas nécessaire pour autoriser l'arrestation.—Queen's Bench, (Que.), 1876. *In re* Worms, 7 R. L., 319; Dorion, C. J.

4. It is not necessary to obtain a warrant prior to arrest in cases under the Extradition Act.—Queen's Bench, Crown Side, Chambers, (Que.), 1887. *In re* Hoke, 15 R. L., 92; Dorion, C. J., Cross, J.

5. It is not necessary in proceedings for a committal for extradition, to prove a demand for the fugitive from the foreign government.—Queen's Bench, (Que.), 1887. *In re* Hoke, 15 R. L., 99; Dorion, C. J., Monk, Cross, Tessier, Baby, JJ.

6. R. S. C., ch. 142, section 6, subsection 2 is directory only: and the neglect of a judge to forward to the Minister of Justice a report of the issue of a warrant, as required by the subsection, is not a ground for the discharge of the prisoner.

The information upon which a warrant issued committing a person to await extradition for forgery stated the christian name of the indorser of the forged instrument as Albert, whereas when the instrument was proved it appeared to be James:—

Held, that the variance was immaterial under sections 57 and 58 of R. S. C., ch. 174, which are made applicable to extradition proceedings

by section 9 of R.S.C., ch. 142.—Queen's Bench, (Ont.), 1891. *In re* Garbutt, 21 Ont. R., 179; Street, J.

7. In extradition cases a warrant of commitment may be issued in proceedings instituted in this province; the previous issue of a warrant in the country demanding extradition not being essential. *Re* Caldwell, 5 P. R., 217, followed.—Common Pleas. (Ont.), 1891. *In re* Garbutt, 21 Ont. R., 465; MacMahon, J.

8. It is not necessary that it should appear on the face of extradition proceedings under R. S. C., c. 142, that the informations or complaints against the prisoner were laid or made by or under the authority of the foreign government; but the extradition judge may receive the complaint of anyone who, if the alleged offence had been committed in Canada, might have made it.

Canadian enactments and practice in this regard contracted with those of the United States.—High Court of Justice, 1899. *In re* Lazier 35 C. L. J., 171; Meredith, C. J.

9. (*a.*) Proceedings in extradition may be regularly initiated in Canada before any requisition is made by the country entitled to make the demand for extradition.

(*b.*) Extradition proceedings in Canada are not void because, during the course of same, no proof was adduced to shew that the extradition complaint was laid under the direction or authorization of the country in which the alleged offence was committed; and it is sufficient that the requisition of the demanding country be made in due time after the commitment for surrender.—Court of Appeal, (Ont.), 1899. *Re* Lazier, 3 Can. Cr. Cas., 167; Burton, C. J., Osler, MacLennan, Moss, Lister, JJ.

10. In extradition proceedings the information charged that the informant "hath just cause to suspect and believe, and doth suspect and believe that H. L. Lee," the prisoner "is accused of the crime of forgery", etc., "for that the said H. L. Lee, etc., "did feloniously forge" some 78 orders for the payment of money. The 79th charge was, that the said H. L. Lee, at the aforesaid several times, etc., did feloniously utter, knowing the same to be forged, the said several orders, etc.

Held, sufficient, for that the information charged that the prisoner "did feloniously forge", etc.; and the allegation that the informant believed that the prisoner "is accused", etc., might be treated as surplusage; but even if objectionable at common law "it was good under s. 11 of 32 and 33 Vict., ch. 30, (*D.*). and 32 and 33 Vict., ch. 29, s. 27 (*D.*); and moreover the 79th charge was free from objection.

Held, also, that in these proceedings, a plea to the information is not required.—High Court of Justice, (Ont.), 1884. *In re* Lee, 5 Ont. R., 583; Wilson, C. J., Rose, Galt, JJ.

11. (*a.*) Le juge des sessions a, sous l'Acte Impérial intitulé : Acte pour amender la loi concernant l'extradition des malfaiteurs, 33 et 34 Vict., ch. 52, le pouvoir de prendre l'enquête préliminaire et d'arrêter l'accusé dont on demande l'extradition.

(*b.*) Dans l'espèce, le juge des sessions ayant par devers lui plusieurs télégrammes envoyés de France et d'Angleterre, émanant de hauts personnages dans la direction des affaires d'Etat et dans l'administration de la justice, informant la police et les conseils de France et d'Allemagne de l'évasion d'un individu, dont ils donnent le nom et le signale-

ment et qu'ils accusent d'un crime énorme, et l'affidavit du consul d'Allemagne déclarant qu'il a tout sujet de croire à la culpabilité de l'accusé, était justifiable de détenir l'accusé jusqu'à l'arrivée des témoins pour l'identifier.—Queen's Bench, Chambers, (Que.), 1874. *In re* Kolligs, 6 R. L., 213; Taschereau, J.

12. An informal translation of an *acte de renvoi* is not a judicial document equivalent to the warrant of arrest of which the party applying for the extradition, is required to be the bearer, according to the Imperial statute 6 and 7 Vict., c. 75, enacted to give effect to a treaty of extradition agreed upon between Great Britain and France, in 1843.—Queen's Bench, Crown Side, (Que.), 1866. *Ex parte* Lamirande, 10 L. C. J., 280; Drummond, J.

13. A person convicted of forgery or uttering forged paper in the United States who escaped to Canada after verdict, but before judgment, is liable to be delivered over to the authorities of the United States under the Ashburton Treaty, and the provincial statute passed to give effect to that treaty.—C. L. Chambers, (Ont.) *In re* Warner, 1 L. J., N. S., 16; Hagarty, J.

14. Application for the discharge on *habeas corpus* of prisoners charged with robbery committed in the United States, and committed at Sandwich for extradition by Mr. McMicken, a police magistrate appointed under 28 Vict., c. 20. The prisoners, it seemed, had been previously arrested at Toronto on the same charge, and been discharged by the local police magistrate, after a lengthened investigation before him :—*Held*,

(*a.*) This did not prevent another duly qualified officer from entertaining the charge against them on the same or on fresh materials.

(*b.*) Section 373 of 29 Vict., c. 51, did not preclude M. from taking the information and issuing his warrant in Toronto, where there was already a police magistrate ; for the words of the section merely excluded him from jurisdiction there in local cases.

(*c.*) The appointment of M. might well have been made under 28 Vict., c. 20, for any one of or for all the counties of Upper-Canada, including Toronto, and his powers made the same as a police magistrate in cities, except as regarded purely municipal matters; and this act was continued by 31 Vict., c. 17, s. 4 ; but as nothing was suggested impugning his authority to act, the warrant must be treated as executed by an officer possessing such authority.—Common Pleas, (Ont.), 1868. R. *vs* Morton *et al.*, 19 C. P., 10; Hagarty, C. J., Wilson, Gwynne, JJ.

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 Her 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.

1. Where a prisoner in custody under the Ashburton Treaty obtained a *habeas corpus* and *certiorari* for his discharge, it was held that the argument as to the regularity or irregularity of the initiatory proceedings, such as information, warrant, etc., was a matter of no consequence; the material question being, whether—being in custody—there was a sufficient case made out to justify the commitment for the crime charged.

It was held that certified copies of depositions sworn in the United States, after proceedings had been initiated in Canada, and after the arrest in Canada, were admissible evidence before the police magistrate. —C. L. Chambers, (Ont.), 1868. *Ex parte* Martin, 4 L. J., N. S., 198; Morrison, J.

2. (*a.*) It is not necessary that the depositions be taken before the magistrate who issued the original warrant.

(*b.*) The expressions "forgery" and "utterance of forged paper" in the Extradition Treaty include every crime falling under that description, whether it amounts to a felony or is only a simple misdemeanor.—Queen's Bench, Chambers, (Que.), 1876. *Ex parte* Worms, 22 L.C.J., 109; Dorion, C. J.

3. Where the facts in evidence, though sufficient to warrant extradition if deposed to by witnesses who could really testify to their occurrence, were sworn to from information only, the prisoner was discharged.—*In re* Parker, 9 P. R., 332; Osler, J.

4. On a charge of forgery of a promissory note, alleged to have been committed in the State of Kansas, the justice before whom the depositions were made was certified to be a justice of the peace, with power to administer oaths.

Held, that he was a magistrate or officer of a foreign state within sec. 10 of the Act; and also, that it was not necessary that he should be a federal and not a state officer; and further that the depositions need not be taken in the presence of the accused.

The depositions failed to shew that the note, alleged to be forged, was produced and identified by the deponents or any of them.

Held, that this constituted a valid ground for refusing extradition; and that there was no power to remand the accused to have further evidence taken before the extradition judge as to such identification.—High Court of Justice, (Ont.), 1890. *In re* Parker, 19 Ont. R., 612; Rose, J.

5. (*a.*) The Ashburton Treaty as to the extradition of fugitive felons, and our acts passed to give effect to it, extend to British subjects committing the offences named in the treaty, in the territory of the United States, and becoming fugitives to Canada.

(*b*) It is in the discretion of the magistrate investigating into a charge under the treaty against a person accused of one of the crimes mentioned in the treaty, to receive evidence for the defence.

(*c.*) Under the circumstances of the case as shewn as well on the part of the prosecution as of the defence, the accused, who took the property of a non-combatant citizen by violence from his person, was guilty of robbery and liable to be surrendered under the treaty.—Recorder's Court, (Toronto), 1865. *In re* Burley, 1 L. J., N. S., 20; Duggan, R.

6. Evidence offered to a magistrate by a prisoner on an examination for the purpose of extradition, by way of answer to a strong *primâ facie* case, may perhaps properly be taken, but would not justify the magistrate in discharging the prisoner. And, *quære*, whether it was not the intention of 31 Vict. to transfer to the Governor exclusively the consideration of all the evidence, that he might determine whether the prisoner should be delivered up.—C. L. Chambers, (Ont.). R. *vs* Reno *et al.*, 4 P. R., 281; Draper, J.

7. (*a.*) The magistrate should not go beyond a bare inquiry as to the *primâ facie* evidence of criminalty of the accused, and should not inquire into matters of defence which do not affect such criminalty.

(*b.*) The evidence of accomplices is sufficient to establish a charge for the purposes of extradition.

(*c.*) Where the crime comes within the treaty it is immaterial whether it is, according to the laws of the United States, only a misdemeanour or a felony.—C. L. Chambers, (Ont.) *In re* Caldwell, 5 P. R., 217; Wilson, J.

8. On a proceeding for extradition, the judge or magistrate acting in extradition has no authority to hear the prisoner's defence, though in the exercise of his discretion he may hear any evidence which may be tendered to show that the offence is of a political character, or one not comprised in the treaty, or that the accuser is not to be believed on oath or that the demand for the prisoner's extradition is the result of a conspiracy.—Queen's Bench, Chambers, (Que.), 1874. *In re* Rosenbaum, 20 L. C. J., 165; Ramsay, J.

9. (*a.*) A *primâ facie* case is sufficient to warrant extradition, and this may be established by circumstancial evidence; also, a statement by the accused, made under such circumstances as to be admissible in evidence, may be contradicted in part by the other evidence for the prosecution, and it is for the jury to decide what weight shall be attached to the various parts of such statement.

(*b.*) It is sufficient if the affidavits or depositions filed by the prosecution are read to the accused upon his voluntary examination, the same having been taken in communication by his counsel during the previous hearing. The procedure will be presumed to be regular, unless the contrary appears on the face of the record.—Queen's Bench, (Que.), 1887. *In re* Hoke, 15 R. L., 99; Dorion, C. J., Monk, Cross, Tessier, Baby, JJ.

10. (*a.*) L'altération frauduleuse d'un état de compte par une banque à une autre, contenant le détail des collections reçues et des montants déboursés constitue un faux en droit commun et sous le statut.

(*b.*) L'altération d'un état de compte faite dans le but de cacher un détournement de fonds antérieurs constitue le crime de faux.

(*c.*) Sur une accusation de faux, il suffit de prouver l'intention de frauder généralement, sans qu'il soit nécessaire de prouver l'intention de frauder une personne en particulier.

(*d.*) L'admission d'un accusé ne peut être reçue, si elle n'a pas été faite librement et volontairement.

(*e.*) L'extradition peut être demandée pour une offense, quand même les grands jurés, dans le pays qui demande l'extradition, auraient rapporté un acte d'accusation comme fondé, pour une autre offense, sur ces mêmes faits.

(*f.*) Si, dans l'examen d'une accusation, devant un magistrat, pour une certaine offense, une offense plus grave est constatée par la preuve, le prisonnier sera détenu pour la plus grave offense.

(*g.*) Sur une demande d'extradition, l'accusé ne peut faire entendre des témoins que pour prouver que l'offense dont on l'accuse est une offense politique, ou qu'elle n'est pas comprise dans le traité d'extradition. —(Que.), 1888. Le Peuple des Etats-Unis *vs* Debaun, 16 R. L., 612; 32 L. C. J., 281; Rioux, J.

11. (*a.*) (Approving the decision of Mr. Rioux). A statement of account, such as is received by a bank, from other banks having business connections with it, and containing an acknowledgment of the receipt of money to be accounted for, is an "accountable receipt" within the meaning of R.S.C., c. 165, s. 29, and the fraudulent alteration thereof is a forgery.

(*b.*) A confession as to alteration of such "accountable receipt" made by an officer of a bank, after his connection therewith has terminated, to a fellow employee, no director of the bank being present, is not made to a person in authority; and when such confession is made without any inducement being held out, and after the accused was warned not to state anything that he did not wish repeated to the directors, it is admissible in evidence.

(*c.*) In a case of forgery it is not necessary to prove the legal existence of the bank intended to be defrauded: it is sufficient to prove generally an intent to defraud; but in this case the legal existence of the bank was sufficiently proved.

(*d.*) The omission, in the jurat, of the place where the depositions were taken is not material, where the place is mentioned in the heading or margin and is otherwise certified to.

(*e*) The fact that an indictment, for embezzlement has been found against the accused, in the state from which he fled, does not prevent a demand being made for his surrender for forgery.

(*f.*) An alteration of a writing or "accountable receipt" made to cover a fraud previously committed, is a forgery, though no money was taken at that time.

(*g.*) In proceedings for the extradition of a fugitive, evidence to contradict that of the prosecution is not admissible, the accused is only entitled to show that the offence charged is not a crime mentioned in the treaty.—Queen's Bench, Chambers, (Que.), 1888. *Ex parte* Dehaun, M.L.R., 4 Q. B., 145; Church, J.

12. Where evidence is given by the prosecution before an extradition judge positively identifying the prisoner, the judge cannot receive evidence on behalf of the prisoner to shew an alibi; for that would be in effect trying the guilt or innocence of the prisoner; if the evidence given by the prosecution is sufficient to justify the committal of the prisoner, he must be committed under section 11 of the Extradition Act, R. S. C., c. 142.

Semble, that a prisoner is entitled to go into evidence to disprove his identity; but that means his identity with the person named in the warrant, not his identity with the person who actually committed the extradition crime.—Queen's Bench, (Ont.), 1891. *In re* Garbutt, 21 Ont. R., 179; Street, J.

13. A witness identifying the prisoner as the forger was the person who identified him at the bank when he procured the amount of the forged draft; but it did not appear that he had incurred any responsibility to the bank:—

Held, that no interest was shown in the witness so as to require corroboration; and further that the interest must be apparent on the face of the draft or immediately arise from the nature of the transaction or from his own acknowledgment.—Regina *vs* Hagerman, 15 O. R., 598, followed. *Semble*, in extradition cases the evidence of interested parties need not be corroborated.—Common Pleas, (Ont.), 1891. *In re* Garbutt, 21 Ont. R., 465; MacMahon, J.

14. (*a.*) Under the Ashburton Treaty between Great Britain and the United States of America of 1842, and the convention of 1890, to obtain the extradition of a fugitive charged with the commission of an extradition crime, the same evidence must be given as would justify his committal for trial if the crime had been committed in Canada, and to ob-

tain the extradition of a fugitive who has been convicted of an extradition crime, a duly authenticated copy of the record must be produced and proof of the fugitive's identity must be made.

(b.) On an application for the extradition of a fugitive, evidence to show that the offence charged is a political one, or that it is not an extradition crime, should be allowed; and if proof be made to that effect the prisoner must be discharged.

(c.) In the case of a fugitive who has been convicted the judge does not examine the evidence given at his trial, and must not revise the verdict of the jury; his duty is to see if the offence is an extradition crime, if the conviction, after a regular trial, has been duly proved, and if the prisoner has been identified.—Queen's Bench, Chambers, (Que.), 1897. In the matter of the Commonwealth of Pennsylvania *vs* Louis Lévi, R. J. Q., 6 Q. B., 151; 3 R. J., 493; 1 Can. Cr. Cas., 74; Würtele, J.

15. Where a crime for which extradition can be demanded has been established by evidence and experts as existing under the law of the country demanding extradition, and the extradition commissioner is aware from his own knowledge that the same facts establish an extradition crime in this country, although it bears a different name, the commitment is valid.—Queen's Bench, (Que.), 1899. *Ex parte* Seitz, R. J. Q., 8 Q. B., 392; 3 Can. Cr. Cas., 127; Würtele, J.

16. The judge before whom the extradition proceedings are first taken, while he may and should hear evidence which the accused brings forward to establish his innocence of the charge, is only called upon to decide if such a *primâ facie* case has been made out against him that he should be held for extradition.—Queen's Bench, (Appeal Side), 1896. *Ex parte* Lanctot, R. J. Q., 5 Q. B., 422.

17. To justify the admission of 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 was not made until after such inducement had clearly been removed.—County Court of New Westminster, (B.C.), 1898. *Re* Ockerman, 2 Can. Cr. Cas., 262; 6 B.C.R., 143; Bole, J.

18. Making false entries in the books of a bank does not constitute the crime of forgery according to the laws of England or of Canada.—Queen's Bench, Crown Side, (Que.), 1866. *Ex parte* Lamirande, 10 L. C. J., 280; Drummond, J.

19. The execution of a deed by prisoner in the name of, and representing himself to be, another, may be forgery if done with intent to defraud, even though he had a power of attorney from such person, but fraudulently concealing the fact of his being only such attorney and assuming to be the principal.—Common Pleas, (Ont.), 1869. R. *vs* Gould, 20 C. P., 154; Hagarty, C. J., Gwynne, Galt, JJ.

20. The prisoner was a clerk in the office of the comptroller of the city of Newark, New Jersey, U.S.A., his duty being to make proper entries of moneys received for taxes in the official books of the comptroller provided for that purpose. Having received a sum of money for taxes, he entered the correct amount at first, and then erasing the true figures, he inserted a less sum, with intent to benefit himself by the abstraction of the difference between the two, and to deceive the comptroller and the municipality.

Held, that the offence was forgery, and that the prisoner had been properly committed for extradition.

It is not necessary to constitute the crime of forgery that another's right shall have been actually prejudiced, the possibility of prejudice to another is sufficient; and if publication be necessary, the books in question being of a public character, the forged entry in them must be regarded as having been published as soon as made.

Semble, *per* Proudfoot, J.—It is not necessary for purposes of extradition that the crime charged should have been such an act as would have constituted that crime at the date of the Ashburton Treaty. It is sufficient if it constituted the crime in question at the date of its alleged commission.—High Court of Justice, (Ont.), 1882. *In re* Hall, 3 Ont. R., 331; Proudfoot, Ferguson, JJ.

[This judgment was afterwards carried to appeal and the appeal dismissed. 8 Ont. A. R., 31. A writ of *Habeas Corpus* was subsequently issued returnable before the Divisional Court of the Common Pleas Division, and upon the return thereto, the prisoner was remanded. 32 C. P., 498.]

21. A prisoner was arrested here for having committed in the United States the crime of forgery, by forging, coining, etc., spurious silver coin, etc.:—*Held*, that the offence as above charged, did not constitute the crime of "forgery" within the meaning of the extradition treaty, (U.S.) or Act. Definition of the term "forgery", considered.—C. L. Chambers, (Ont.)—*In re* Smith, 4 P. R., 215; Wilson, J.

22. A prisoner was committed for extradition to the United States, on a charge of having forged a resolution of a city council relating to the issue of bonds, of having forged a bond of said city, and of uttering the same:—

Held, on an application for his discharge, that the resolution being an essential preliminary to the issue of the bond, and the bond being an instrument which might be the subject of forgery, although not executed in strict accordance with the code of the State in which the bond was issued, there was a *primâ facie* case made out against the prisoner, and that he should be remanded as to the charge of forgery.—R. *vs* Hovey, 8 P. R., 345; O-ler, J.

23. The prisoner was the superintendent of an almshouse in the city of Philadelphia, U.S., which was supported by the city. Certain persons furnished goods to the almshouse and were entitled to received warrants for the price thereof. These warrants, duly prepared and signed in favor of the parties entitled, were in the hands of W., the secretary of the almshouse, to be delivered to the proper parties on their signing the counterfoils of the warrants. The prisoner obtained possession of the warrants by falsely representing to W. that he had authority to sign the names of the respective parties entitled, and by signing such names on the counterfoils. The warrants were then cashed at the city treasury.

The district attorney of Philadelphia, who was examined before the county judge, swore that, according to the Criminal Code of Pennsylvania, established by statute there, which was produced, and at common law as there interpreted, the facts shewn made out the crime of forgery.

Held, Cameron, J., dissenting.—The offence amounted to forgery within the meaning of the Ashburton Treaty, and the prisoner should be remanded for extradition.

Per Hagarty, C. J.—The evidence disclosed a *primâ facie* case of

forgery sufficient to warrant the commitment for trial of the prisoner if the crime had been committed in Canada.

Per Armour, J.—The treaty was not intended to include the crime of forgery only where that crime is common to both countries. In framing the treaty the high contracting parties were dealing both with the present and future, and the general term forgery shoud include everything in the nature of forgery, and which thereafter might be held to be forgery at common law by the decision of the courts, or might be declared to be forgery by the statute law.

Per Cameron, J.—The statutory crime of forgery is the only kind of forgery within the treaty, but it was not intended to embrace any act or offence made forgery by any statutory law of either nation passed after the execution of the treaty. The offence in this case was the obtaining a cheque by falsely pretending that the prisoner had authority to sign the counterfoil, and was not within the treaty.

Held, also, that the original warrant, within the meaning of 31 Vict., ch. 94, sec. 2, (*D*), is not the first of two or more consecutive warrants, but is any warrant issued in the United States of America.—Queen's Bench, (Ont.), 1882. *In re* Phipps, 1 Ont. R., 586.

24. P. was the superintendent of the Blocksley Almshouse, situated in and supported by the city of Philadelphia, U.S. Parties supplying provisions, etc., for the use of the charity were paid by warrants duly prepared and signed by the proper officers thereof. Three such warrants for the payment of certain persons or firms were in the hands of W., the secretary of the almshouse to be delivered to them on their respectively signing the stub or counterfoil of the warrants. P., who was well known to the secretary, applied to him for those warrants, stating that he had authority from the several parties to sign for them, which he did accordingly, and W. handed over to him the warrants which were subsequently cashed at the office of the city treasurer.

P. having fled to this province, an application was made for his extradition before the judge of the County Court of Wentworth, when expert evidence was adduced proving that according to the statute law of Pennsylvania, as also at common law as there interpreted these facts constituted the crime of forgery:

Held, on appeal, per Spragge, C. J., and Patterson, J. (affirming the judgment of the Queen's Bench Div., 1 O. R., 586), that the act amounted to the crime of forgery, and so rendered P. liable to be extradited:

Per Burton, J., and Ferguson, J., that in the absence of any suspicion of any complicity of W., in the fraud, the facts would not have made out the crime of forgery; but as the evidence afforded ground to infer that W. and P. were in collusion and had combined together for the purpose of committing the fraud by means of the false documents, and was therefore sufficient to warrant the committal of P. for the crime of forgery at common law, the order for his committal for extradition should be affirmed.

Per Spragge, C. J.—The forgery which is the subject of the treaty, cannot be confined to the statutory felony of forgery.

Per Patterson, J. A.—Remarks upon the general right of a person charged before a magistrate with an indictable offence to call witnesses for his defence and of a person whose extradition is demanded to shew by evidence that what he is charged with is not an extradition crime: *Semble*, that the evidence here offered, as stated below, was not improp-

erly rejected.—Court of Appeal, (Ont.), 1883. *In re* Phipps, 8 Ont. Ap. Rep., 77.

25. The prisoner, who was collector of the County of Middlesex, in the State of New Jersey, kept a book in which to enter the payment and receipts of all moneys received by him as such collector, and which was the principal book of account kept by him. The book was purchased with the money of the county, and was kept in the collector's office, and was left by him at the close of his term of office; it was by statute opened to the inspection of those interested in it, and contained the certificate of the county auditors as to the correctness of the matters therein contained.

Held, that the book was the public property of the county, and not the private property of the prisoner.

After the book had been examined by the proper auditors as to the amounts received and paid out by and through the prisoner as such collector, and a certificate of the same made by them, the prisoner who was a defaulter, with intent to cover up his defalcation, altered the book by making certain false entries therein of moneys received and paid out, and changing the additions to correspond. Some of these entries were by the prisoner himself, and others by his clerk under his direction, but the clerk on finding that such entries were false changed them back.

Held, that this constituted forgery at common law, as well as under our statute 32-33 Vict., ch. 19, (D.)

Held, also, that under the Extradition Act of 1877, 40 Vict., ch. 25, (D) it is essential that the offence charged should be such as if committed here would be an offence against the laws of this country. The offence, however, was also proved to be forgery by the laws of New Jersey.—High Court of Justice, (Ont.), 1883. *In re* Jarrard, 4 Ont. R., 265; Wilson, C. J., Galt, J.

26. On a demand for extradition, the warrant was in the following words:—That J. C. E., late of New York, in the State of New York, one of the United States of America, is accused of the crime of forgery and of the felonious utterance of a forged authority and order for the payment of money, within the jurisdiction of the State of New York, one of the United States of America, to wit, for that he, the said J. C. E., on the seventeenth day of January, in the year of Our Lord one thousand eight hundred and eighty-four, at the said city of New York, with intent to defraud and with intent to conceal a misappropriation of money, feloniously did draw, make and sign a certain order and authority for the payment of money, commonly called a cheque, dated at New York aforesaid, the day and year last aforesaid, for the sum of one hundred and twenty-five thousand dollars for and on account of the Second National Bank of the city of New York, and falsely pretending to so draw, make and sign said cheque as president of said Bank, the whole without lawful authority or excuse. And further that the said J. C. E. afterwards, to wit, at the said city of New York, on the day and year last aforesaid, feloniously did offer, utter and dispose of and put off a certain order and authority for the payment of money, commonly called a cheque, dated at New York aforesaid, on the day and year last aforesaid, for the sum of $125,000, with intent to defraud, drawn, made and signed for and on account of the said Second National Bank, of the city of New York, by J. C. E. who falsely pretended so to draw, make and sign said cheque, as president of the bank, the whole without lawful authority or excuse

and with intent to conceal a misappropriation of the said last mentioned sum, delivered the said bank cheque to G. and R., the payees therein named, from whom he obtained thereby money, value or credit in the sum of $125,000, named in the said bank cheque, and who thereupon endorsed the said bank cheque, and by means thereof, thereupon, at said city of New York, obtained from said Second National Bank the sum of $125,000, named in the said bank cheque, and thereupon J. C. E., with the intent to defraud and to conceal the said misappropriation of the money of the said Second National Bank, did make and cause false entries in the accounts and books of account of said Second National Bank, whereby it was made to appear that the said sum of $125,000 had been loaned or advanced by said Second National Bank to said G. & R., and F. S. S., whereas in truth no loan or advance has been made to them or either of them by said Second National Bank, but the said sum of money had been misappropriated by said J. C. E., and did with like intent to defraud and conceal said misappropriation of money, wilfully omit to make true entries of the said bank cheque or of the said sum of money for which said bank cheque was so drawn, in the accounts or book of account of the said Second National Bank, kept by him or under his direction, he, the said J. C. E., well knowing the said last mentioned cheque to have been so drawn, made and signed.

Held, maintaining the petition for *habeas corpus*, and dismissing the demand for extradition, that when the demand for extradition is for forgery, the offence must be that recognized as forgery by the Imperial Extradition Act of 1842; that according to that Act forgery is the making or uttering of writing so as to make the writing purport to be the act of some other person, which it is not, and not the making of an instrument which purports to be what it really is, but which contains false statements, and therefore false entries in the books of a bank by its cashier, do not constitute the offence of forgery according to the Extradition Act of 1842.—Superior Court, (Que.), 1884; Eno *ex parte*, 10 Q. L. R., 194; 7 L. N., 360; Caron, J.

27. (*a.*) The filling up of a bill of exchange signed in blank, with intent to defraud, unless filled up with authority, is forgery.

(*b.*) If a clerk in a bank, having, or honestly believing that he has an implied or express authority to fill up blank drafts signed by the cashier or assistant-cashier of said bank fills up such blanks for other purposes than those for which he knew them to have been signed, with intent to defraud, he thereby commits forgery.

(*c.*) The guilty intent must have been precedent to and have accompanied the fabrication of such forged instruments, and the repetition of acts of the same kind, will be admitted in evidence as proof of such guilty intent.

(*d.*) In the present case, the forgery proven being one of the crimes provided for by the Treaty of Extradition existing between Great Britain and Ireland and the United States of America, the commitment of the accused preparatory to his surrender must be ordered.—Ex. Com., (Que.), 1886.—*In re* Hoke, 14 R. L., 705; Dugas, J. S.

28. The filling up of drafts signed in blank, without authority and for fraudulent purposes, is forgery.—Queen's Bench, Crown Side, Chambers, (Que.), 1887.—*In re* Hoke, 15 R. L., 92; Dorion, C. J., Cross, J.

29. Where a person passing under an assumed name falsely represents that he is in the employment of a certain firm, and that he is authorized

to make a draft upon such firm, his signature in such assumed name to a draft upon the firm, and his fraudulent negotiation of it, constitute forgery, if the credit obtained in negotiating the bill was not personal to himself alone, without relation to his supposed employers, and if the false name, although that of a non-existent person, was assumed for the very purpose of perpetrating the fraud.—Court of Appeal, (Ont.), 1899.—*Re* Lazier; 3 Can. Cr. Cas., 167; Burton, C. J., Osler, MacLennan, Moss, Lister, JJ.

30. (*a.*) Judges are bound to construe the Ashburton Treaty, made between Great Britain and the United States of America for the extradition of fugitives from crime, in a liberal and just spirit, not labouring with legal astuteness to find flaws or doubtful meanings in its words, or in those of the legal forms required for carrying it into effect (*per* Hagerty, J.).

(*b.*) A British subject committing one of the crimes enumerated in the treaty within the jurisdiction of the United States, and afterwards fleeing to Canada, is subject to the provisions of the treaty, which provides for the surrender of "all persons" who being charged, etc.

(*c.*) Lawful acts of war against a belligerant cannot be either commenced or concluded in neutral territory.

(*d.*) Where the accused, on his examination before the magistrate, admitted the acts charged, which *primâ facie* amounted to robbery (one of the crimes enumerated in the treaty), and alleged by way of defence matter of excuse which was of an equivocal character, *Held*, that the magistrate could not try the case, but was bound to commit the accused for trial before the tribunals of the foreign country.—C. L. Chambers, (Ont.), 1865.—*In re* Burley, 1 L. J., N. S., 34.

31. Ie gouvernement français ne peut pas obtenir extradition d'une personne accusée de détournement.—Cour Supérieure, en Chambre, (Qué.), 1874.—*Ex parte* Taschemacher, 6 R. L., 328; Casault, J.

32. Burglary is not an offence within the treaty or the statutes passed to give effect to it.—C. L. Chambers, (Ont.) *In re* Beebe, 3 P.R., 273; Morrison, J.

33. The accused was charged in the State of Minnesota with having committed grand larceny in the second degree, in that he obtained cattle from one Hance, by means of a cheque issued on a bank, in which the accused had neither an account nor credit, which cheque was accepted on the representation that there were funds to meet it. On obtaining the cattle the accused disposed of them and fled to the Territories with the proceeds. He was arrested on a warrant issued in the Territories charging him with having obtained goods under false pretenses.

An objection was taken to the regularity of the proceedings on the ground that grand larceny was no offence in Canada, and therefore did not come within the term "extraditable offence". Further, it was objected that article 1 of the Imperial Order of 1890 did not cover obtaining goods by false pretenses.

Held, that though the offences were known in the State of Minnesota and in Canada by different names, nevertheless the same facts constituted and the same evidence would prove a crime in each country, and the name was immaterial.—Supreme Court, (N.W.T.), 1896.—*In re* F. H. Martin, 33 C. L. J., 253. N.B.—The fugitive was later liberated in virtue of s. 19 of the Extradition Act.

34. (*a.*) Under the Extradition Convention of 1889 between Great Britain and the United States, by which "larceny" was made an extraditable crime, whatever was then larceny both in Canada and in the state in which the alleged crime was committed, was thereby made an extradition offence.

(*b.*) The abandonment of the term "larceny" in Canadian jurisprudence on the enactment of the Criminal Code of Canada subsequent to an extradition convention, including such offence, does not affect the liability to extradition of a person charged with what was larceny at common law, and is by the Criminal Code still an offence in Canada, under the name of "theft" or "stealing."—Court of Appeal, (Ont.), 1898. *Re* Gross, 2 Can. Cr. Cas., 67 ; 25 Ont. A. R., 83 ; Sir George Burton, C.J., Osler, MacLennan & Moss, JJ. A.

35. A. being a slave in the State of Missouri, belonging to one M., had left his owner's house with the intention of escaping. Being about thirty miles from his home, he met with D., a planter, working in the field with his negroes, who told A. that as he had not a pass he could not allow him to proceed, but that he must remain until after dinner, when he, D., would go with him to the adjoining plantation where A. had told him that he was going. As they were walking towards D.'s house, A. ran off, and D. ordered his slaves, four in number, to take him. During the pursuit D., who had only a small stick in his hand, met A., and was about to take hold of him, when A. stabbed him with a knife, and as D. turned and fell, he stabbed him again. D. soon afterwards died of his wounds.

By the law of Missouri, any person may apprehend a negroe suspected of being a runaway slave, and take him before a justice of the peace: any slave found more than twenty miles from his home is declared a runaway; and a reward is given to any person who shall apprehend and return him to his master.

A. having made his escape to this province was arrested here upon a charge of murder, and the justice before whom he was brought having committed him, he was brought up in this court upon a *habeas corpus*, and the evidence returned under a *certiorari*.

It was contended that as A acted only in defence of his liberty, there was no evidence upon which to found a charge of murder if the alleged offence had been committed here, and that he could not be demanded by the treaty.

Held, that under the Ashburton Treaty and our statute for giving effect to it, C. S. C., c. 89, the prisoner was liable to be surrendered.

McLean J., dissenting, and holding that the information warrant of commitment, and evidence, (to which no objection was taken on argument), were insufficient ; that if the charge had been clearly made out the case was not within the treaty; and that the prisoner therefore was entitled to his discharge.—Queen's Bench, (Ont.), 1860. *In re* Anderson, 20 U. C. Q. B., 124; Robinson, C. J., McLean, Burns, JJ.

36. The prisoner was charged with assault with intent to commit murder, in that he had opened a railway switch, with intent to cause a collision, whereby two trains did come into collision, causing a severe injury to a person on one of them:—*Held*, that this was not an "assault" within the statute.—C. L. Chambers, (Ont.)—*In re* Lewis, 6 P.R., 236 ; Gwynne, J.

10. Depositions taken out of Canada. — When to be deemed authenticated.

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.

1. In extradition cases, the forms and technicalities with which the statute surrounds the production of affidavit evidence must be strictly complied with; and therefore—*Held*, that depositions taken in the United States cannot be read unless certified under the hand of the magistrate who issued the original warrant as being copies of the depositions upon which such warrant issued, although attested by the party producing them to be such true copies; but, *Semble*, the prisoner might be remanded to enable any properly certified copies to be produced.—C. L. Chambers, (Ont.) *In re* Lewis, 6 P. R., 236; Gwynne, J.

2. Under 31 V., c. 94, the depositions must be those upon which the original warrant was granted in the United States, certified under the hand of the person issuing, and not depositions taken subsequently to the issue of the original warrant, and without any apparent connection therewith.—C. L. Chambers, (Ont.) R. *vs* Robinson, 5 P.R., 189; Morrison, J.

3. The depositions on which the warrant issued in the United States, after the arrest in Canada, were properly admitted here as evidence of criminality, their admission being within both the letter and spirit of the 31 V., c. 94.—Common Pleas, (Ont.), 1868. R. *vs* Morton *et al.*, 19 C. P., 10; Hagarty, C. J., Wilson, Gwynne, JJ.

4. Original depositions are admissible in proceedings under the Imperial Act, 6-7 Vict., ch. 34, and can be used in evidence against a prisoner upon proof of their identity, and of their being properly taken, which in this case, upon the evidence set out, was held to be already shown.

Held, also, that they may be clearly proved by the *virâ voce* evidence of a witness competent to swear to the facts, that copies of the depositions can be proved by such testimony, as well as by the certificate identifying the copies, as copies of the original documents may be supplemented by *virâ voce* evidence, that the originals referred to in the certificate were the originals upon which the warrant issued.—R. *vs* Matthew, 1 P. R., 199.

5. The evidence against the prisoner of having uttered a forged instrument not being otherwise sufficient, the court could not look at an indictment against him found by the grand jury of an American criminal court.—R. *vs* Hovey, 8 P. R., 345; Osler J.

6. A copy of a bill of indictment found against the prisoner in the United States cannot be received as evidence.

The evidence adduced was sufficient to sustain the application.—Queen's Bench, Chambers, (Que.), 1874.—*In re* Rosenbaum, 18 L.C.J., 200 ; Ramsay, J.

7. *Held*, that the 40 Vict., ch. 25, (D.), is not in force but that the law and practice relating to the extradition of fugitive criminals between the United States and Canada, is to be found in the Ashburton Treaty, art. X., the 31 Vict., ch. 94, (D.); 33 Vict., ch. 25, (D.), and the Imp. Acts 33-34 Vict., ch. 52, and 36-37 Vict., ch. 60.—*Re* Williams, 7 P. R., 275, approved of.

On an application for the discharge of a prisoner committed for extradition under an order of the county judge of Kent, on a charge of murder;

Per Wilson, C. J., that under the above Acts, and the 32-33 Vict., ch. 30, secs. 4, 5, a certified copy of an indictment for murder found by the grand jury of Erie County, State of New York, was of itself sufficient evidence to justify the committal of such prisoner for extradition.

Per Osler, J., that such indictment was not evidence for any purpose.

Per Wilson, C. J., and Osler, J., that the other evidence taken before the county judge, documentary and *virâ voce*, set out below, was insufficient as it shewed at most that the prisoner was an accessory after the fact, which did not come within the treaty.

Per Galt, J., that if the case had turned on the indictment alone, he would have hesitated to accept it as conclusive against the accused; but that the other evidence together with the indictment, was sufficient to warrant his extradition.

The application was therefore refused.—Com. Pleas, (Ont.), 1881. R. *vs* Browne, 31 C. P., 484.

8. The judgment of the Court of C. P., 31 C. P., 484, affirmed but on different grounds.

An accessory before the fact is liable to extradition, but an accessory after the fact is not.

Upon the application to the County Judge of Kent for extradition of the defendant, who was under indictment in the State of New York for murder, the coroner, who had held the inquest there, proved by oral

testimony before the County Judge here, the original depositions taken on oath before him, and also copies of the depositions certified by him to be true copies.

Held, that under section 14 of the Imperial Extradition Act of 1870, the original depositions were properly received, as the power given therein to use the original depositions is not qualified by section 2 of 31 Vic., ch. 94; and that the evidence disclosed therein was sufficient to warrant the extradition of the prisoner as an accessory before the fact.

Held, also, that the foreign indictment was not admissible as evidence against the accused.

It was shown that the only warrant issued in this case was the warrant issued by the district attorney after the grand jury had found a true bill for murder, which did not profess to be issued upon the depositions, nor was it proved upon what evidence the bill was found.

Semble, per Patterson, J. A., that the right given by section 14 above referred to, to use copies of depositions is confined by the effect of section 2 of 31 Vic., ch. 94, to those cases in which a warrant has been issued in the United States upon the depositions.—Court of Appeal, (Ont.), 1881. R. *vs* Browne, 6 Ont. Ap. Rep., 386.

9. Des dépositions prises à Washington, devant un juge de paix, et transmises et certifiées par un autre juge de paix qui a émis le premier mandat dans les Etats-Unis, peuvent faire preuve contre le prisonnier.—Queen's Bench, (Que.), 1876. *In re* Worms, 7 R.L., 319; Dorion, C. J.

10. An affidavit sworn to before a commissioner of the United States, proved to be a magistrate having authority in the matter according to the law where taken, may be received if properly proved, as evidence against the prisoner on proceedings for extradition.—Queen's Bench, Chambers, (Que.), 1883. *Ex parte* Phelan, 6 L. N., 261.

11. Certain foreign depositions used were sworn to before E. G. a justice of the peace for Cincinnati township, Hamilton County, Ohio. A certificate was attached, commencing, "I, Daniel J. Dalton, clerk of the court of Common Pleas for said Hamilton county," certifying as to the signature of E. G., and that he was a duly qualified justice of the peace for said county, and entitled to take depositions of witnesses, etc.; and concluded "in testimony whereof I have hereunto set my hand and affixed the seal of the said court at Cincinnati," etc., D. J. Dalton, by Richard C. Rohner, deputy. To this was attached the certificate of the Governor of the State of Ohio, under the great seal of the State certifying that D. J. Dalton, " whose genuine signature and seal are affixed to the annexed attestation, was at the date thereof clerk of the said court," etc.; that "he is the proper person to make such attestation, which is in due form, and that his official acts are entitled to full faith and credit."

The court, without specially pronouncing on the question, refused to allow an objection, which as a matter of fact was not taken, to the sufficiency of the depositions under 45 Vict., ch. 25, sec. 9, subsec. 2 (*c*), (*D.*), for the official seal of D. J. Dalton is attached, and the Governor certified that he was the proper person to make such attestation; and also there was *viva voce* evidence given in proof thereof, so that the "papers were authenticated by the oath of some witness" under subsec. (*b.*)

Per Wilson, C. J.—In these proceedings, the evidence of interested

parties need not be corroborated.—High Court of Justice, (Ont.), 1884. *In re* Lee, 5 Ont. R., 583; Wilson, C. J., Rose, Galt, JJ.

12. (*a.*) Depositions taken in a foreign country are, under s. 9 of the Extradition Act of 1877, receivable in evidence in Canada, although taken in the absence of the accused, and not for the purpose of issuing or sustaining a warrant of arrest for the commission of the crimes charged in them.

(*b.*) Such depositions, purporting to have been received and sworn before a judge of a county court of a foreign State, and certified by him to be original depositions, are sufficiently authenticated and make legal proof; more particularly so when such signature is certified by the clerk of the court, and by the testimony of witnesses.

(*c.*) Such depositions, when taken according to the law of the foreign State, are sufficient, and when received before and signed by a judge, are to be presumed to be in the form in use in such State.—Ex. Com., (Que.), 1886.—*In re* Hoke, 14 R. L., 705; Dugas, J. S.

13. Statements on oath, sworn before a judge of a County Court of the State of Illinois, whose signature is certified by the clerk of the court under the seal of the court are admissible as evidence in extradition proceedings, and it is immaterial whether the witness has been sworn prior to his evidence being reduced to writing, as in a deposition, or whether he has been sworn thereto after it has been written down, as in an affidavit.—Queen's Bench, Crown Side, Chambers, (Que.), 1887.—*In re* Hoke, 15 R. L., 92; Dorion, C. J., Cross, J.

14. Des dépositions prises dans un pays étranger peuvent être reçues comme preuve, pour l'extradition d'un criminel.—Ex. Com., (Que.), 1888. Le Peuple des Etats-Unis *vs* Debaun, 16 R. L., 612; 32 L. C. J., 281; Rioux, M.

15. In extradition proceedings the information, warrant and depositions were certified under the hand and seal of a justice of the peace of Oscoda township, in the county of Josio, in the State of Michigan. There was also a certificate under the hand of the clerk of the County of Josio and the clerk of the Circuit Court for the said county, and the official seal of the said Circuit Court certifying that the said justice of the peace was, at the time of signing his certificate, a duly qualified justice of the peace, in the active discharge of the duties of the said office, and that his official seals were entitled to full credit. At the hearing before the county judge, before whom the extradition proceedings were had, S. stated he was the prosecuting attorney for Josio county, and all criminal prosecutions therein came under his care. He identified the papers, and stated that they were the depositions and copies of depositions relating to the charge; and that the justices who took the depositions were justices of the peace as alleged, and had jurisdiction in the premises.

Held, that the documents were sufficiently authenticated. "Authenticated," as used in sec. 9 of 40 Vic., ch. 25, (*D.*), is in effect the same as "attested" in sec. 2 of 31 Vict., ch. 94, (*D.*),

Held, also, that the depositions and statements admissible in evidence are not restricted to those made in respect of the charge upon which the original warrant issued.

Held, also, that the depositions, etc., before the County Court Judge disclosed sufficient evidence to warrant the defendant being placed on his trial for murder caused, as was alleged, by the defendant having

feloniously ravished the deceased while in such a state of health to hasten her death.

Per Cameron, C. J.—The Divisional Court cannot review the decision of the judicial officer having jurisdiction to hear extradition cases upon the weight of evidence.—High Court of Justice, (Ont.), 1889. *In re* Weir, 14 Ont. R., 389; Cameron, C. J., Rose, J.

16. It was objected by the prisoner that certain depositions taken abroad and put in by the prosecution were not read over to the prisoner, as required by section 70 of R. S. C., ch. 174:

Held, that the objection was not one which, as a matter of law, would entitled a prisoner to be discharged; and it should not be given effect to as a matter of discretion, because it was entirely technical in its character.—Queen's Bench, (Ont.), 1891. *Re* Garbutt, 21 Ont. R., 179; Street, J.

17. Depositions taken in the foreign state, which are certified to have been sworn to at a date subsequent to that of the foreign warrant of arrest are irregular, and extradition will not be granted on such evidence alone.—County Court of New Westminster, (B.C.), 1898. *Re* Ockerman, 2 Can. Cr. Cas., 262; 6 B. C. R., 143; Bole, J.

18. Documents authenticated by the seal of the Grand Ducal Superior Court of Baden, and also by the signature of the judge of instruction of such court, are legal evidence.—Queen's Bench, Chambers, (Que.), 1899. *Ex parte* Seitz, R.J.Q., 8 Q.B., 392; 3 Can. Cr. Cas., 127; Würtele, J.

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.

1. *Held*, that a warrant of commitment, under the Extradition Treaty, which omits to state that the accused was brought before the magistrate, or that the witnesses against him were examined in his presence, is bad upon the face of it, and must be set aside.—Queen's Bench, (Que.), 1866. *Ex parte* Brown, 2 L.C.L.J., 23; Duval, C. J., Aylwin, Meredith, Mondelet, JJ.

2. If the evidence presents several views, on any one of which there may be a conviction, if adopted by the jury, the court will direct extradi-

tion.—Common Pleas, (Ont.), 1869. R. *vs* Gould, 29 C. P., 154; Hagarty, C. J., Gwynne, Galt, JJ.

3. (*a.*) If the magistrate sitting on a similar charge if committed in Canada would commit for trial, he is equally bound to commit for trial in the foreign country when the offence, if any, has been committed there.

(*b.*) The warrant for committal till surrendered under the treaty need not set out the evidence taken before the committing magistrate, nor show any previous charge made in the foreign country, or requisition from the government of that country, or warrant from the Governor General of Canada, authorizing and requiring the magistrate to act.

(*c.*) The adjudication of the committing magistrate as to the sufficiency of the evidence for committal may be by way of recital in the warrant of commitment.—C. L. Chambers, (Ont.), 1865. *In re* Burley, 1 L. J., N. S., 34.

4. (*a.*) A warrant charging that the prisoners "did feloniously shoot at, etc., with intent, etc., to kill and murder," sufficiently charged an "assault with intent to commit murder," the words used in the treaty and statute.

(*b.*) The authority of the magistrate need not be shewn on the face of a warrant of commitment, and where the crime has been committed in a foreign country, and the committing magistrate has, (as McM. had in this case), jurisdiction in every county in Ontario, the warrant is not bad, though dated at Toronto, the county mentioned in the margin being York, but directed to the constables, etc., of the county of Essex, and being signed by the police magistrate as such for the county of Essex.

(*c.*) Under 31 V., *c.* 94, (D.), the last Extradition Act, all that the committing magistrate or the court or a judge has to do is to determine whether the evidence of criminality would, according to the laws of Ontario, justify the apprehension and committal for trial of the accused if the crime had been committed therein.

(*d.*) Such decision, if adverse to the prisoner, does not conclude him, as the question of extradition or discharge exclusively rests with the Governor General.—C. L. Chambers, (Ont.) R. *vs* Reno *et al.*, 4 P.R., 281; Draper, J.

5. The evidence of criminality to support the demand for extradition must be sufficient to commit for trial, according to the laws of the place where the fugitive is arrested and not according to the laws of the place where the offence is alleged to have been committed.—Queen's Bench, Crown Side, (Que.), 1866. *Ex parte* Lamirande, 10 L. C. J., 280; Drummond, J.

6. (*a.*) An error in the warrant of arrest in an extradition case does not affect the warrant of commitment, if the latter be in accordance with the charge and the evidence adduced.

(*b.*) The Imperial Extradition Act merely requires that the fugitive be charged with having committed, within the foreign jurisdiction, one of the crimes enumerated in the treaty, and that the evidence of criminality be such as, according to the laws of this country, would justify his apprehension and trial, if the crime had been committed here; and when the authorities in the country where the offence was committed have declared, by the issue of a warrant for the apprehension of an offender, that the act complained of constitutes an extradition offence according to their law, it only remains for the authorities here to examine whether

the same acts, if committed here, would, under our law, justify the arrest and trial of the accused for the same offence.—Queen's Bench, Chambers, (Que.), 1876. *Ex parte* Worms, 22 L.C.J., 109; Dorion, C. J.

7. A warrant of commitment issued by a magistrate under the treaty and our statute, C.S.C., c. 89, which used the words "did wilfully, maliciously, and feloniously stab and kill," and omitted the words "murder", and, with malice aforethought, "and concluded by instructing the gaoler to "there safely keep him, the prisoner, until he shall be thence delivered by due course of law", did not come within the provisions of the treaty or statute, and was consequently defective.—*In re* Anderson, 11 C. P., 9.

8. *Per* Sullivan, J.—Upon the facts, set forth in the judgment, the prisoner who had been committed for extradition by the mayor of Toronto upon an alleged crime of forgery, had been committed upon insufficient evidence, and must be discharged.

Quære:—Can a committing magistrate detain a prisoner upon evidence amounting only to a ground of suspicion, for the purpose of other evidence being imported into the case so as to bring it within the treaty.—C. L. Chambers, (Ont.)—*In re* Kermott, 1 C. L. Chambers, 253; Sullivan, J.

9. Dans un cas d'extradition pour faux, le prisonnier ne sera pas libéré sur *Habeas Corpus*, parce que le mandat d'emprisonnement ne contient pas le mot *félonicusement* qui se trouve dans le mandat d'arrestation émis dans les Etats-Unis, ni parce que le juge qui a émis le mandat d'emprisonnement y a inséré les mots, *sachant que les dits documents étaient forgés, well knowing the same to be forged*, qui ne se trouvaient pas dans l'accusation.—Queen's Bench, Chambers, (Que.), 1874.—*In re* Worms, 7 R. L., 319, Dorion, C. J.

10. A commitment for extradition for "forgery" is sufficient, and no further particularity is necessary.—Queen's Bench, Crown Side, Chambers, (Que.), 1887.—*In re* Hoke, 15 R. L., 92; Dorion, C. J., Cross, J.

11. A warrant of commitment for extradition should in its terms conform to the requirements of section 1 of the Dominion statute, 31 Vict., ch. 94, in directing the person accused to be committed until surrendered on the requisition of the proper authority or duly discharged according to law.

The judge is required to decide whether he deems the evidence adduced before him sufficient to justify the apprehension and committment for trial of the person accused if the crime had been committed in Canada. If he finds in the affirmative he should so state it in his commitment and certify the fact to the proper executive authority; his functions do not extend to determining whether the accused should be extradited, that rests with the Governor General after the evidence has been reported to him. If the judge fails to state in the commitment that he deems the evidence sufficient, the commitment will be defective and insufficient.

Where a person charged with a crime is committed in pursuance of a special authority, the commitment must be special and must exactly pursue that authority.

If the commitment does not in its face shew that the case of the accused falls within the terms of the extradition treaty, and the statutes

authorizing the proceedings in extradition, or fails to contain the proper statutory conclusions, no sufficient cause of detention will have been shewn and he will be liberated on *habeas corpus*.—Queen's Bench, Chambers, (Que.), 1889.—*Ex parte* Zink, 6 Q. L. R., 260; Cross, J.

12. The Extradition Act of Canada, 40 Vic., ch. 25, amended by 52 Vict., ch. 36, and consolidated in the Revised Statutes of Canada, ch. 142, being in full force and effect, a commitment thereunder which follows the form therein provided is valid.—Queen's Bench, 1896. *Ex parte* Lanctot, R.J.Q., 5 Q.B., 422; Lacoste, C. J., Bossé, Blanchet, Hall, Wurtele, JJ.

13. (*a.*) Where a fraudulent conspiracy was entered into between two persons in pursuance of which one of them opened an account in a bank in a fictitious name and gave the other a cheque, for which the latter knew there was no funds, drawn in the fictitious name, and the same was negotiated by the payee in furtherance of such conspiracy by obtaining another bank to cash the same on the faith of its being a genuine cheque, the cheque is a "false document" both by the Criminal Code (sec. 421), and at common law; and the uttering of same under such circumstances is an extraditable offence under the treaty with the United States of America.

(*b.*) When such a state of facts is established in an extradition proceeding under the Extradition Act of Canada as would, if their occurrence had taken place in Canada, have demanded a committal for trial, the duty to commit for extradition arises under the Extradition Act, (R. S. C., 1886, c. 142, s. 11), if the offence charged be one of the offences covered by the treaty with the foreign country.

(*c.*) It is unnecessary in such case for the prosecutor to prove that by the law of the foreign country the alleged offence is there a crime of a like designation and within the treaty.—High Court of Justice, (Ont.), 1894. *Re* Murphy, 2 Can. Cr. Cas., 562; Meredith, C. J., Rose and MacMahon, JJ.

14. (*a.*) *Per* Hagarty, C. J. O., and MacLennan, J. A.—If such a *primâ facie* case is made out in extradition proceedings as would warrant a committal for trial upon a preliminary enquiry before a magistrate under the law of Canada had the charge been that the accused had committed in Canada an offence known by the same name as the extradition crime charged, the prisoner must be extradited, although it is not proved by the prosecution that the alleged offence is a crime under the law of the demanding country.

(*b.*) *Per* Burton and Osler, JJ.—It is necessary for the prosecution to make out a *primâ facie* case that the alleged offence is a crime according to the law of the demanding country as well as under Canadian law.

(*c.*) *Per* Burton and Osler, JJ. A.—Where the facts shewn in extradition proceedings for forgery disclose a *primâ facie* case in respect of an offence which is forgery only by virtue of the extended meaning given to that term by Canadian statutes, it is necessary for the prosecution to prove that the same is also forgery under the law of the foreign country in which the alleged offence was committed.—Court of Appeal, (Ont.), 1895. *Re* Murphy, 2 Can. Cr. Cas., 578; Hagarty, C. J., Burton, Osler and MacLennan, JJ.—N.B. The Court being equally divided, the appeal in this case was dismissed with costs.

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.

1. A person committed for extradition, but not actually surrendered, is entitled to a *habeas corpus* before the full court, under C. S. L. C., c. 95, sec. 28. — Queen's Bench, (Que.), 1887. *In re* Hoke, 15 R. L., 99; Dorion, C. J., Monk, Cross, Tessier, Baby, JJ.

2. Foster was committed for extradition under the treaty to that effect with the United States. As the court would not sit at Montreal before the lapse of the 7 days after commitment, his counsel, Mr. Devlin, applied to the court at Quebec for a writ of *Habeas Corpus* returnable on the 11th December 1872, the first day of the term in Montreal.

After argument the application was granted, and the writ made returnable as prayed for, the Solicitor General opposed the issuing of the writ.

N.B.—This decision was contrary to the judgment of the Court rendered about two years previous in the case of Caldwell, where an application made under precisely similar circumstances and for the same object, was refused. From this latter decision, Badgley & Monk, JJ., dissented, and consequently concurred in granting the application in Foster's Case.—Queen's Bench, (Que.) *Ex parte* Foster, 3 R. C., 46.

3. By s. 31 of the Supreme and Exchequer Court Act (R.S.C., c. 135), "no appeal shall be allowed in any case of proceedings for or upon a writ of *habeas corpus* arising out of any claim for extradition made under any treaty." On application to the court to fix a day for hearing a motion to quash such an appeal.

Held:—That the matter was *coram non judice*, and there was no necessity for a motion to quash.—Supreme Court, (Can.), 1899. *In re* Lazier, 29 S. C. R., 630; Strong, C. J., Taschereau, Gwynne, King & Girouard, JJ.

4. (*a.*) The question whether a proceeding subsequent to an adjudication on *habeas corpus* is barred by such adjudication, is to be determined by the identity or non-identity of the question before the court or magistrate with the question adjudicated upon on *habeas corpus*. A prisoner who has been liberated upon the merits of the charge laid against him, when the conviction or order of detention found on the charge is set aside as unfounded in law, cannot be lawfully arrested and imprisoned again for the same offence, upon the same state of facts; but when he is discharged merely by reason of a defect in the commitment or in consequence of the

want or excess of jurisdiction in the committing court or in the committing magistrate, he can be again arrested and tried for the same cause before a competent court or a competent magistrate.

(*b.*) A prisoner who has been discharged upon *habeas corpus*, because the extradition commissioner had no jurisdiction to act judicially on the complaint laid before him, may be again arrested and tried before a commissioner having jurisdiction over the complaint. For an extradition commissioner to decline to exercise his jurisdiction, the fraudulent device by which the prisoner was brought within the jurisdiction must be chargeable to the adverse party.—Queen's Bench, Chambers, (Que.), 1899. *Ex parte* Seitz, R.J.Q., 8 Q.B., 392; 3 Can. Cr Cas., 127; Wurtele, J.

5. (*a.*) It is in the power of magistrate acting under the treaty with the United States and statute after issue of a writ of *habeas corpus*, but before its return, to deliver to the gaoler a second or amended warrant, which, if returned in obedience to the writ must be looked at by the court or judge before whom the prisoner is brought.

(*b*) *Quære.*—As to the power of the court or a judge on writs of *habeas corpus* and *certiorari* to review the decision of the examining magistrate under the treaty and statute.—C. L. Chambers, (Ont.) *In re* Warner, 1 L. J., N. S., 16; Hagarty, J.

6. The judges of the superior courts in the country where the fugitive is found may, on a writ of *habeas corpus* and *certiorari*, consider if there was sufficient evidence before the committing magistrate to justify the committal, and so may review the decision of the magistrate on the evidence. (*Per* Richards, C. J.)

The writ of *certiorari* to bring up the depositions cannot properly be issued in vacation, returnable before a judge in Chambers, (*per* Draper, C.J.)—C. L. Chambers, (Ont.), 1865. *In re* Burley, 1 L. J., N. S., 34.

7. (*a.*) The duty of the court or a judge on a *habeas corpus*, is to determine on the legal sufficiency of the commitment, and to review the magistrate's decision as to there being sufficient evidence of criminality.

(*b.*) Under the circumstances of this case, it was held that there was sufficient *primâ facie* evidence of the criminality of the prisoners to warrant a refusal to discharge them, and that there was evidence to go to a jury to lead to the conclusion that the intent of the prisoners was, at the time of shooting, to commit a murder.—C. L. Chambers, (Ont.) R. *ex* Reno *et al.*, 4 P. R., 281; Draper, J.

8. (*a.*) In examining, upon a petition for *habeas corpus*, whether the detention of a prisoner is lawful, the court or judge will set aside the commitment only if there be manifest error in the adjudication. If the commissioner had jurisdiction, and there was legal evidence before him, which might justify a committal, the court is not called upon to examine the sufficiency of the evidence.

(*b.*) If the first commitment be irregular, but be replaced before the return of the *habeas corpus* by a valid commitment, the prisoner will not be discharged.—Queen's Bench, Chambers, (Que.), 1888. *Ex parte* Debaun, M. L. R., 4 Q. B., 145; Church, J.

9. (*a.*) Alleged irregularity in the proceedings for his arrest, cannot, on an application for *habeas corpus* avail a prisoner committed for extradition. It is sufficient that being under arrest before proper authority, a case has been made out against him sufficient to justify his commitment.

(*b.*) Provided there has been adduced legal evidence applicable to the

case, and a prisoner has thereon been committed for extradition, a judge on an application for *habeas corpus* will not be disposed to weigh or appreciate that evidence with a view to giving the prisoner the benefit of a doubt as to its preponderance.—Queen's Bench, Chambers, (Que.), 1883. *Ex parte* Phelan, 6 L. N., 261; Cross, J.

10. Upon *habeas corpus*, the court should see that the facts alleged by the prosecution constitute an extraditable offence, and should examine the evidence so far as to see that there is such proof as would warrant a grand jury in finding a true bill, or a justice of the peace in committing for trial.—Queen's Bench, Chambers, (Que.), 1887. *In re* Hoke, 15 R. L., 92; Dorion, C. J., Cross, J.

11. On a writ of *habeas corpus* the judge must see, in the first place, whether the offence charged is or is not of a political character, or whether it is or is not an extradition crime, and then whether the proceedings are regular and justify the prisoner's committal for surrender.—Queen's Bench, Chambers, (Que.), 1897. In the matter of the Commonwealth of Pennsylvania and Levi, R.J.Q., 6 Q.B., 151; Wurtele, J.

12. When a prisoner was brought before the court upon a writ of *habeas corpus* under our statute, the warrant of commitment upon which he was detained appearing on its face to be defective, the court had no authority to remand him, such power only being possessed by the court at common law, and the prisoner not being charged with any offence for which he could be tried in this province.—Court of Common Pleas. *In re* Anderson, 11 C. P., 9; Draper, C. J., Richards, Hagarty, JJ.

13. (*a.*) Upon a commitment in extradition proceedings there is no jurisdiction other than that which is conferred by statute to take proceedings for the detention of the accused in respect of the crime charged, and the court has no inherent power to remand a prisoner held under a defective warrant.

(*b.*) Upon *habeas corpus* proceedings following a commitment under an extradition warrant, the court is not justified in referring to the depositions returned, and inferring therefrom facts material to the offence if the warrant of commitment is in itself defective in that it does not recite a finding of such facts.

(*c.*) The return to a writ of *habeas corpus* should be brought into court and there read before it is filed, and a supplementary return of a second warrant of commitment intended to remedy a defect in the first warrant may be read in conjunction with the return of the first warrant as together constituting the return to the writ.—High Court of Justice, (Ont.), 1894. *Re* Murphy, 2 Can. Cr. Cas., 562; Meredith, C. J., Rose & MacMahon, JJ.

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 Min-

ister of Justice through the diplomatic representative of Her 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.

1. Under the Imperial statute 6-7 Vict., ch. 75, enacted to give effect to a treaty of extradition agreed upon between Great Britain and France, in 1843, the Consul General of France is not competent for asking the extradition of a fugitive criminal, such consul not being an accredited diplomatic agent of the French Government.—Queen's Bench, Crown Side, (Que.), 1866. *Ex parte* Lamirande, 10 L. C. J., 280; Drummond, J.

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.

1. (*a.*) The fact that a person is charged with piracy committed in a foreign country, ought not to prevent the Government of the country where the fugitive is found surrendering him on the charge made and proven in the latter country, (*per* Richards, C. J.)

(*b.*) When surrendered to the Government of the country from which he fled, the Government of the latter are bound to try him for the offence for which he is surrendered, and not for any other or different offence, (*per* Richards, C. J.)—C. L. Chambers, 1865. *In re* Burley, 1 L. J. N. S., 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. 1.

16. Delay before surrender. — 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 are, in his opinion, duly authorized to receive him in the name and on behalf of the foreign state, and he shall be so surrendered accordingly:

3. 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 after the decision of the court on such writ, over and above, in either case, the time required to convey him from the prison to which he has been committed, by the readiest way out of Canada, any one or more of the judges of the superior courts of the province in which such person is confined, having power to grant a writ of *habeas corpus*, may, upon application made to him or them by or on behalf of the fugitive, and on proof that reasonable notice of the intention to make such application has been given to the Minister of Justice, order the fugitive to be discharged out of custody, unless sufficient 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, or forms as near thereto as circumstances admit of, may be used in the matters to which such forms refer, and, when 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 from Canada, who is or is suspected to be in any foreign state with which there is an extradition arrangement, may be made by the Minister of Justice to a consular officer of that state resident at Ottawa, or to the Minister of Justice or any other minister of

that state, through the diplomatic representative of Her 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. 22.

22. Conveyance of fugitive surrendered.

Any person accused or convicted of an extradition crime, who is surrendered by a foreign state, may, under the warrant for his surrender issued in such foreign state, be brought into Canada and delivered to the proper authorities, to be dealt with according to law.

1. A prisoner charged with forgery in Canada was arrested and surrendered by the government of the United States under the Ashburton Treaty. Upon application for bail on the ground that there was no evidence of the *corpus delicti*:—*Held*, that the surrender of the prisoner by the United States government was sufficient evidence.—C. P., (Ont.), 1854. R. *vs* Van Aerman, 4 C. P., 288; Macaulay, C. J., McLean, Richards, JJ.

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.

1. The prisoner Cunningham was indicted and tried at the October term, 1884, of the Supreme Court of Nova Scotia, at Halifax, MacDonald, C. J., presiding. There were three counts in the indictment, charging:—

(*a*.) That the said James Cunningham did feloniously offer, utter, dispose of and put off, knowing the same to be forged, a certain cheque or order for the payment of money, which said forged order is as follows, that is to say:—

No. E. 43460. Halifax, N.S., Feb. 13th. 1884.

Merchants' Bank of Halifax :

Pay William McFatridge, or order, two hundred and twenty-four dollars and seventeen cents, ($224.17).

(Signed), LONGARD BROS.

and endorsed as follows: "W. McFatridge", with intent to defraud.

(*b.*) That the said James Cunningham afterwards, to wit, on the day and year aforesaid, having in his custody and possession a certain other order for the payment of money, which said last mentioned order is as follows, that is to say:—

No. E. 43460. Halifax, N.S., Feb. 13th, 1884.

Merchants' Bank of Halifax:

Pay William McFatridge, or order, two hundred and twenty-four dollars and seventeen cents, ($224.17).

(Signed), LONGARD BROS.

He, the said James Cunningham, afterwards, to wit, on the day and year last aforesaid, at Halifax aforesaid, feloniously did forge on the back of said mentioned order a certain indorsement of said order for the payment of money, which said forged indorsement is as follows, that is to say, "W. McFatridge", with intent to defraud.

(*c.*) That the said James Cunningham afterwards, to wit, on the day and year aforesaid, feloniously did offer, utter, dispose of and put off a certain other forged order for the payment of money, which forged order is as follows, that is to say:—

No. E. 43460. Halifax, N.S., Feb. 13th, 1884.

Merchants' Bank of Halifax:

Pay William McFatridge, or order, two hundred and twenty-four dollars and seventeen cents, ($224.17).

(Signed), LONGARD BROS.

and indorsed: "W. McFatridge", with intent thereby then to defraud.

Counsel for the prisoner, before the jury were sworn, pleaded to the jurisdiction of the court on the ground that the indictment charged an offence or offences different from that for which the prisoner was extradited, to which plea the Attorney-General demurred. Judgment was pronounced sustaining the demurrer and the trial proceeded. The prisoner was convicted on the first and third counts of the indictment, and acquitted on the same.

At the close of the trial counsel for the prisoner renewed his application, and the C. J. agreed to reserve for the opinion of the judges and summitted:—

(*a.*) Whether the prisoner was indicted and tried for another and different offence, or other and different offences than that for which he was extradited at the instance of the Government of Canada; and if so, whether the court had jurisdiction to try and convict the prisoner of such offence or offences.

(*b.*) Whether the evidence on the part of the Crown, as reported herewith, is sufficient to sustain a conviction on the first and third counts of the indictment or on either of those counts. The papers put in evidence on the trial to be considered and read as part of the case.

(The majority of the Supreme Court of Nova Scotia (Rigby, Smith and Thompson, JJ., McDonald, C. J., and Weatherbe, J., dissenting), *Held* that the prisoner was properly convicted on the third count. (*See* 6 R. & G., 31).

On appeal to the Supreme Court of Canada, *held*, per Fournier, Henry and Taschereau, JJ., (Ritchie, C. J., and Strong, J., dissenting), that evidence of the uttering of a forged endorsement of a negotiable cheque or order is insufficient to sustain a conviction on a count of an indictment charging the uttering of a forged cheque or order. On the second question reserved, therefore, the judgment of the court below should be reversed and the prisoner ordered to be discharged.

Per Ritchie, C. J.—The question raised by the demurrer was not properly before the court in appeal, the court below having been unanimous with respect to it.

Per Strong, J.—The court below rightly held, on the authority of Rex *vs* Faderman, (Den. C. C., 572), that the question raised by the demurrer was not properly before the court, the C. J. having given judgment on the demurrer overruling it at the trial. Moreover, there was nothing in the law under which the prisoner was extradited to prevent the court from trying him for any offence for which he was, according to the law of the Dominion, justiciable before it. Appeal allowed.—Supreme Court, (Can.), 1885. R. *vs* Cunningham, S. C. Dig., 195.

2. The 10th article of the Treaty of Washington between Great Britain and the United States provides for the delivery up to justice of persons charged with the commission of certain crimes in one of those countries, who shall be found in the territories of the other ; and directs what shall be sufficient evidence of criminality to justify the issue of a warrant for the surrender of the fugitive. The Canadian Extradition Act, 40 Vic., ch. 25, sec. 23, enacts that when any person accused of an extradition crime is surrendered by a foreign state in pursuance of any arrangement, he shall not, until after he has been restored to, or had an opportunity of returning to the foreign state, be subject, in contravention of any terms of the arrangement, to any prosecution in Canada, for any other offence committed prior to his surrender, for which he should not, under the arrangement, be prosecuted. A person imprisoned in this province on a charge of having committed the crime of arson (an extraditable crime), escaped, and fled to the States, and on requisition, made to the Government of that country, under the Treaty of Washington, was surrendered to this province, the warrant of surrender stating that he was to be tried for the crime of which he was so accused. He was convicted here of the crime charged, and while he was a prisoner under that conviction, was tried for the breach of prison (not an extraditable offence), committed before he escaped to the United States.

Held, *per* Allen, C. J., Fraser and Tuck, JJ.; (Wetmore, Palmer and King, JJ., dissenting) :

(*i.*) That there being no provision in the Treaty of Washington on the subject, such trial was not "in contravention of any terms of the arrangements" for the surrender of fugitives, between Great Britain and the United States.

(*ii.*) That the warrant stating that the fugitive was surrendered to be tried for the crime of which he was accused, was the act of the United States authority only, and was not an "arrangement" within the Canadian Extradition Act, 1877, and therefore that the trial for prison breach was sustainable.

Per Wetmore, Palmer and King, JJ.—The trial of the prisoner for breach of prison was in contravention of the fair construction of the Treaty of Washington, as it had always been claimed by Great Britain; and was also contrary to the express terms of the warrant on which the

fugitive had been surrendered.—Supreme Court, (New Brunswick), 1886. R. *vs* Waddell, 6 C. L. T., 598.

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 pretenses ;

(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 Her 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 Her 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.		
Argentine Republic	May 22, 1889	Statutes of	1894 (Can.),	p. XLII
Austria-Hungary	Dec. 3, 1873	do	1875	XVIII
Belgium	May 20, 1876	do	1877	XXXII
Belgium	July 23, 1877	do	1878	XIV
Belgium	Apl. 21, 1887	do	1888	XVIII
Bolivia	Feb. 22, 1892	do	1899	XIII
Brazil	Nov. 13, 1872	do	1875	XI
Chile	Jan. 26, 1897	do	1899	VI
Colombia	Oct. 27, 1888	do	1890	XXX
Denmark	Mar. 31, 1873			
Ecuador	Sep. 20, 1880	do	1887	XXXV
France	Aug. 14, 1876	do	1879	IX
Germany	May 14, 1872			
Germany	May 5, 1894	do	1895	XII
Guatemala	July 4, 1885	do	1887	XCII
Hayti	Dec. 7, 1874	do	1876	LV
Italy	Feb. 5, 1873			
Italy	May 7, 1873			
Liberia	Dec. 16, 1892	do	1894	LVII
Luxemburg	Nov. 24, 1880			
Mexico	Sep. 7, 1886	do	1889	XVI
Monaco	Dec. 17, 1891	do	1892	XV
Netherlands, (India only)	June 19, 1874	do	1875	XXV
Netherlands	Sep. 26, 1898	do	1899	XX
Orange Free State	June 20, 1890	do	1891	L
Portugal	Oct. 17, 1892	do	1894	L
Portugal	Nov. 30, 1892	do	1894	LVI
Roumania	Mar. 21, 1893	do	1894	LXIV
Russia	Nov. 24, 1886	do	1887	XCIX
Salvador	June 23, 1881	do	1883	XXVIII
San Marino	Mar. 3, 1900	do	1900	XI
Spain	June 4, 1878	do	1879	XVIII
Spain	Feb. 19, 1889	do	1890	XXVI
Sweden and Norway	June 26, 1873	do	1875	V
Switzerland	Nov 26, 1880	do	1882	VIII
Tonga (1)	Nov. 29, 1879	do	1883	XV
Tunis	Dec. 31, 1889			
United States, Art. X	Aug. 9, 1842	do	1859	C.S.C., c. 89
United States	July 12, 1889	do	1890	LVIII
Uruguay	Mar. 26, 1884	do	1885	XXXVI
Uruguay	Mar. 20, 1891	do	1892	IX

(1) Tonga subjects escaping to British Territories only.

52 Victoria, Chapter 36

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 Her 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 Her Majesty and a foreign state, or in case such an extradition arrangement, extending to Canada, exists between Her 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 Her 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 (1)

An Act respecting fugitive offenders in Canada from other parts of Her Majesty's Dominions

Her 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

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(1). *See* circular relating to Fugitive Offenders in Statutes of 1883, pp. XVI *et seq.*

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, Her Majesty's Court of Queen'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 prolamation 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, misdemeanor, crime or by any other name, which is for the time being punishable in the part of Her 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 Her Majesty's dominions, of an offence committed either in Her 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 Her 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 Her 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 Her 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 provisional warrant shall forthwith send a report of the issue, together with the information or a certified copy thereof, to the Governor General ; and the Governor General may, if he thinks fit, discharge the person apprehended under such warrant. 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 with 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 Her 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 Her 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, un-

less 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 a 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, subpœna 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 Her 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 Her 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 Her 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 Her 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*.

APPENDIX III

STATUTES FOR LOWER CANADA AND OF QUEBEC

C.S.L.C., CHAPTER 95

An Act respecting the Writ of 'Habeas Corpus,' Bail, and other provisions of law for securing the Liberty of the Subject

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :—

IN CRIMINAL MATTERS

Who may obtain the Writ and how

1. All persons imprisoned for criminal offences entitled to a writ of 'habeas corpus.'

All persons committed or detained in any prison within Lower Canada, for any criminal or supposed criminal offence, shall of right be entitled to demand and obtain from the Court of Queen's Bench or from the Superior Court or any one of the judges of either of the said courts, the writ of *habeas corpus*, with all the benefit and relief resulting therefrom, at all such times, and in as full, ample, perfect and beneficial a manner, and to all intents, uses, ends and purposes, as Her Majesty's subjects within the realm of England, committed or detained in any prison within that realm, are there entitled to that writ and to the benefit arising therefrom, by the common and statute laws thereof. 24 G. 3, c. 1, s. 1,—1 G. 4, c. 8,—7 V. c. 17, s. 15,—12 V. c. 37, s. 41,—12 V. c. 38, s. 98,—12 V. c. 40, s. 3,—20 V. c. 44, ss. 13, 35.

2. For preventing delays to returns to such writs. — Mileage. — Return to be made and in what manner. — Body of prisoner not to be produced unless payment of charges of so doing to be made.

And for the prevention of delays which may be used by

sheriffs, gaolers, and other officers and persons to whose custody any of Her Majesty's subjects are committed or detained, for criminal or supposed criminal matters, in making returns of writs of *habeas corpus* to them directed.—Whenever any person brings any writ of *habeas corpus*, directed to any sheriff, gaoler, minister, or other person whatsoever, for any person in his custody, and the said writ is served upon the said officer, or left at the gaol or prison with any of the under officers, under keepers, or deputies of the said officers or keepers, then the said officer or officers, his or their under officers, under keepers, deputies or other persons, shall, within three days after the service thereof as aforesaid (unless the commitment was for treason or felony plainly and specially expressed in the warrant of commitment)—upon payment or tender of the charges of bringing the said prisoner, to be ascertained by the judge who awards the writ, and endorsed upon it, not exceeding sixty cents per league, and upon security given by his own bond, to pay the charges of bringing back the prisoner, if he is remanded by the court or judge before whom he is brought, and that he will not make any escape by the way,—make return of such writ, and bring or cause to be brought, the body of the party so committed or detained unto or before one of the judges of the said court whence the writ issues, or before any other judge before whom the writ is made returnable, according to the command thereof, and shall then likewise certify the true causes of the detainer or imprisonment, — unless the commitment of the party be in any place beyond the distance of ten leagues from the place where such court or judge is or resides, — and if beyond the distance of ten leagues, and not above thirty leagues, then within the space of ten days,—and if beyond the distance of thirty leagues, and not above sixty leagues, then within the space of twenty days,—and if beyond the distance of sixty leagues, and not above one hundred leagues, then within the space of forty days,—and if beyond the distance of one hundred leagues, then within the space of three months, if from the first day of March to the twentieth of September, otherwise

in the space of eight months, after such delivery and service of the writ as aforesaid and not longer :

2. But if such payment or tender is not made by the person bringing the writ to the sheriff, gaoler, minister, or other person as aforesaid, such sheriff, gaoler, minister, or other person, shall return the writ with the true causes of the imprisonment or detainer, without bringing or causing to be brought the body of the person committed or detained as thereby commanded, and shall certify on the back thereof, that a default of such payment or tender is the cause why the body of the person is not brought therewith ; which shall be deemed a sufficient return. 24 G. 3, c. 1, s. 2.

3. How writs shall be marked and signed.

And that no sheriff, gaoler or other officer, may pretend ignorance of the import of any such writ:—all such writs shall be marked in this manner,—"*By virtue of chapter ninety-five of the Consolidated Statutes for Lower Canada,*"—and shall be signed by the person who awards the same. 24 G. 3, c. 1, s. 3,—*part.*

4. Writ to be granted on view of copy of warrant, or on affidavit that such copy has been denied. — Person in custody to be brought before the judge. — Judge to discharge prisoner and take his recognizance. — Exception.

And if any person is committed or detained as aforesaid for any crime (unless for felony or treason plainly expressed in the warrant of commitment) in the vacation time, and out of term or sessions, such person (not being convicted or in execution by legal process) or any one on his behalf, may complain to one of the judges of the Court of Queen's Bench or Superior Court, who upon view of the copy of the warrant or warrants of commitment and detainer, or otherwise upon oath made, that such copy was denied to be given by the person in whose custody the prisoner is detained, shall, upon request made in writing by such person, or any one on his behalf, attested and subscribed by two witnesses present at the delivery

of the same, award and grant a writ of *habeas corpus* under the seal of the court of which such judge is a member, directed to the officer or person, in whose custody the party so committed or detained is returnable *immediatè* before the said judge :

2. And upon service of the writ as aforesaid, the officer or his under officer or deputy, in whose custody the party is so committed or detained, shall, within the times respectively before limited, bring such prisoner before the judge, before whom the said writ is made returnable, and in case of his absence, before any other judge of the same court, with the return of such writ and the true causes of the commitment and detainer :

3. And thereupon, within two days after the party shall be brought before him, the Judge before whom the prisoner is brought as aforesaid, shall discharge the said prisoner from his imprisonment, taking his recognizance, with one or more surety or sureties, in any sum which shall not be excessive, according to his discretion, having regard to the quality of the prisoner and nature of the offence, for his appearance in the Court of Queen's Bench, at the next term, or general gaol delivery, in and for the district where the commitment was, or where the offence was committed, or in such other court where the offence is properly cognizable, as the case requires, and then shall certify the said writ with the return thereof, and the said recognizance into the court where such appearance is to be made,—unless it appears, unto the said judge, that the party so committed is detained upon a legal process, order or warrant out of some court that hath jurisdiction of criminal matters, or by some warrant signed and sealed with the hand and seal, either of one of the judges of the said Court of Queen's Bench or of the Superior Court, or of some justice of the peace, for such matters or offences for which, by the law, the prisoner is not bailable. 24 G. 3, c. 1, s. 3.

5. In certain cases no writ to be granted in vacation.

If any person has wilfully neglected, by the space of two whole terms of the Court of Queen's Bench, in and for the

district where such detention or imprisonment is, after his imprisonment, to pray a writ of *habeas corpus* for his enlargement, such person shall not have a writ of *habeas corpus* to be granted in vacation time, in pursuance of this Act. *Ibid*, s. 4.

PENALTIES AGAINST PERSONS DISOBEYING THE WRIT OR REFUSING COPIES OF COMMITMENT, ETC.

6. Penalty on officers refusing to make a return or produce the body or to give a copy of the commitment. — How the penalties may be recovered.

If any officer, his under officer, under keeper or deputy, or other person, neglects or refuses to make the return aforesaid, or to bring the body of any prisoner according to the command of the writ, within the respective times aforesaid, or upon demand made by the prisoner or any person in his behalf, refuses to deliver, or within the space of six hours after demand, does not deliver to the person so demanding, a true copy of the warrant or warrants of commitment and detainer of such prisoner (which he is hereby required to deliver accordingly)—such head gaoler or keeper or the person or persons in whose custody the prisoner is detained, shall, for the first offence, forfeit to the prisoner or party grieved, the sum of one hundred pounds sterling, and for the second offence, the sum of two hundred pounds sterling, and shall be incapable to hold or execute his said office :

2. The said penalties may be recovered by the prisoner or party grieved, his executors or administrators, against such offender, his executors or administrators, by any action of debt, suit, bill, plaint or information in the Superior Court for Lower Canada, or any other court of record having original jurisdiction within Lower Canada, wherein no privilege, protection, injunction or stay of prosecution by *non vult ulterius prosequi*, or otherwise, shall be admitted or allowed, or any imparlance or continuance for a longer period than three months ; and any recovery or judgment at the suit of any party grieved shall be a sufficient conviction for the first offence, and any after

recovery or judgment at the suit of a party grieved, for any offence after the first judgment, shall be a sufficient conviction to bring the officers or person within the said penalty for the second offence. 24 G. 3, c. 1, s. 5.

OF ADMISSION TO BAIL

7. Persons committed for treason or felony and requesting a trial in the first week of the sessions or terms shall, if not indicted in the ensuing term, be released on bail. — Bail or discharge of prisoner not tried within a certain time.

If any person is committed for high treason or felony, plainly and specially expressed in the warrant of commitment, and upon his prayer or petition in open court, in the first week of the sessions or term of the Court of Queen's Bench, over and terminer, or of general gaol delivery for the district, to be brought to his trial, is not indicted some time in the next sessions or term of the Court of Queen's Bench, over and terminer or general gaol delivery, after such commitment, any one of the judges of the said court or the judge or judges holding the said court, shall, upon motion made in open court on the last day of the sessions or term of the Court of Queen's Bench, over and terminer or general gaol delivery, either by the prisoner or any one in his behalf, set at liberty the prisoner upon bail ;— unless it appears to such judge or judges upon oath made, that the witnesses for the Crown could not be produced during the same sessions or term or general gaol delivery :

2. And if any person committed as aforesaid, upon his prayer in open court the first week of the sessions or term of the Court of Queen's Bench, over and terminer and general gaol delivery, held in and for the district where such person is committed, to be brought to his trial, is not indicted and tried the second sessions or term of the Court of Queen's Bench, over and terminer and general gaol delivery after his commitment, or upon his trial is acquitted, he shall be discharged from his imprisonment. 24 G. 3, c. 1, s. 8.

8. Recital. — Persons charged as accessories before the fact to felony not bailable otherwise than according to law.

And because many times, persons charged with felony, or as accessories thereunto, are committed upon suspicion only, whereupon they are bailable or not, according as the circumstances making out that suspicion are more or less weighty, which are best known to the justices of the peace who may have committed such persons and have the examinations before them, or to other justices of the peace in the district where such prisoners are committed :—therefore, where any person appears to be committed by any judge or justice of the peace, and charged as accessory before the fact to any felony, or upon suspicion thereof, or with suspicion of felony, which felony is plainly and specially expressed in the warrant of commitment, such person shall not be removed or bailed by virtue of this Act in any other manner than by the common law of England he may be. 24 G. 3, c. 1, s. 17,—4, 5 V. c. 27, s. 2.

9. Recital. — To prevent collusive evasion of trial. — Proviso.

And to the intent that no person may avoid his trial at the sessions or term of the Court of Queen's Bench, oyer and terminer or general gaol delivery, by procuring his removal before the sessions or term of the said court in and for the district where he is committed, at such time that he cannot be brought back to receive his trial there ; — Within such period before the sessions or term of the Court of Queen's Bench, as that he cannot be so brought back for trial as aforesaid, or after the sessions of oyer and terminer or general goal delivery, proclaimed or advertised for the district where the prisoner is detained, no person shall be removed from the common gaol of the district upon any *habeas corpus* granted in pursuance of this Act, but upon any such *habeas corpus* shall be brought before the judge or judges holding the said court, in open court, who shall thereupon do what to justice appertains :

2. But after the sessions are ended, any person detained in any common gaol may have his writ of *habeas corpus* according

to the direction and intention of this Act. 24 G. 3, c. 1, ss. 15, 16.

10. But nothing herein to affect civil proceedings.

Nothing in this Act shall extend to discharge out of prison any person charged in debt or other action, or with process in any civil cause, but after he is discharged from his imprisonment for such criminal offence, he shall be kept in custody according to the law for such other suit. 24 G. 3, c. 1, s. 9.

EFFECT OF LIBERATION ON HABEAS CORPUS

11. Effect of release on 'habeas corpus.' — Penalty for recommitting any one so released for the same offence.

And for preventing unjust vexation by reiterated commitments for the same offence,—no person, delivered or set at large upon *habeas corpus*, shall, at any time thereafter, be again imprisoned or committed for the same offence by any authority whatsoever other than the legal process and order of the court wherein he is bound by recognizance to appear, or other court having jurisdiction of the cause:

2. And if any person, knowingly, contrary to this Act, recommits, or imprisons, or knowingly procures or causes to be recommitted or imprisoned, for the same offence or pretended offence, any person delivered or set at large as aforesaid, or knowingly aids or assists therein, then he shall forfeit to the prisoner or party grieved, the sum of five hundred pounds, lawful money of Great Britain, to be recovered as aforesaid, any colourable pretence or variation in the warrant or warrants of commitment notwithstanding. 24 G. 3, c. 1, s. 7.

12. Under what circumstances only a prisoner may be removed from one prison to another. — Penalty on persons contravening this section.

If any subject of Her Majesty is committed to any prison or in custody of any officer or officers whomsoever, for any criminal or supposed criminal matter, such person shall not be removed from the said prison and custody into the custody of any other

officer or officers—unless it be by *habeas corpus* or some other legal writ—or where the prisoner is delivered to the constable, bailiff, or other inferior officer to carry such prisoner to some common gaol,—or where any person is sent by order of any judge of a court of criminal jurisdiction, or justice of the peace to any common work-house or house of correction,—or where the prisoner is removed from some one prison or place to another within the same district, in order to his trial or discharge in due course of law,—or in case of sudden fire or infection, or other necessity,—or under some express provision of this Act or of any other Act or Law :

2. And if any person, after such commitment aforesaid, makes out and signs or countersigns any warrant or warrants for such removal aforesaid, contrary to this Act, as well he that makes or signs or countersigns such warrant as any officer who obeys or executes the same, shall suffer and incur the pains and forfeitures in this Act before mentioned, both for the first and second offence respectively, to be recovered by the party grieved in manner aforesaid. *Ibid*, s. 6 ; *And see* Con. Stat. Can. cc. 107, 108, 111, &c.

13. The Governor in certain cases may authorize the transfer of prisoners from one gaol to another. — How such authorization shall be conveyed—effect thereof.

But if the sheriff of any district deems any gaol therein unsafe for the custody of prisoners, or over crowded, he shall report the fact to the Governor, who may authorize the removal of the prisoners in such gaol, or any of them, to any other gaol in Lower Canada, there to be kept until discharged in due course of law, or until they are again brought back to the gaol from which they were so removed, either for trial at the proper court, or to be again kept in such gaol when it has been made safe or is not over crowded :

2. And a letter from the Provincial Secretary, authorizing the removal or the bringing back of any such prisoners, shall be sufficient, and by virtue thereof and of this Act, the sheriff may

remove or bring back such prisoners, as the case requires, and he or his deputies shall, while so doing, have the same powers with regard to them in the district to which they are conveyed, and in any district through which he passes with them, as he would have in his own district ; and the sheriff and gaoler of the district, to the gaol in which they are conveyed, and their deputies, shall have the same powers with respect to them from the time of their delivery to such sheriff or gaoler, as they would have if such prisoners had been originally committed to the gaol in such last mentioned district. 29 V. c. 44, s. 137.

14. If commitment be in a district other than that in which the offence is to be tried. — Judges by 'habeas corpus' to obtain removal of prisoner to the gaol of the district in which the trial is to be had.

If the commitment of any person, who has committed any crime or offence, be in a district other than that in which the offence is to be tried, the judges of the Court of Queen's Bench or of the Superior Court, or any one of them, upon application of Her Majesty's Attorney or Solicitor General, and in default of such application, upon the application of such offender, shall issue a writ of *habeas corpus*, commanding the keeper of the gaol in which such offender is so imprisoned, to have the body of such offender before them or any one of them, at a convenient time and place to be specified in such writ, together with the true cause of his commitment and detainer :

2. And if it then appears that such offender is detained upon such commitment as aforesaid, for any crime or offence committed in another district the judges of each of the said courts, or any one of them, before whom such writ of *habeas corpus* is made returnable, shall take course for the immediate removal of such offender to the common gaol of the district in which the trial of such offender for such crime or offence is to be had, by warrant under his or their hands and seals, directed to the keeper of the gaol and to the sheriff of the district in which such offender is so imprisoned, and to the keeper of the gaol of the district in which the trial of such offender is to be had.

authorizing the deliverance of the body of such offender from the gaol of the district in which such offender is so imprisoned, and commanding the sheriff of such district to remove the body of such offender forthwith, with all care and diligence, to the gaol of the district in which the trial of such offender is to be had, and commanding the keeper of the gaol of the district in which the trial of such offender is to be had, to receive such offender into his custody in the gaol of the said district, there to remain till he be thence delivered in due course of law, which warrant the said sheriff and the keepers of such gaol as aforesaid shall execute. 35 G. 3, c. 1, s. 5,—20 V. c. 44, s. 30.

PRISONERS NOT TO BE SENT OUT OF LOWER CANADA EXCEPT IN CERTAIN CASES

15. Inhabitants of L. C. not to be sent prisoners elsewhere. — In such case prisoner may maintain an action of false imprisonment. — Plaintiff in such case to have treble costs, besides damages. — This Act not to extend to persons carried away by their own agreement. — Not to affect any law applying to all Canada.

And for preventing illegal imprisonments in prisons without Lower Canada, or beyond the seas :—

1. No subject of Her Majesty, being an inhabitant or resident of Lower Canada, shall be sent prisoner into any province, or in any state or place without the Province of Canada, or into any parts, garrisons, islands or places beyond the seas, within or without the dominions of Her Majesty, and every such imprisonment or transportation is hereby declared illegal :

2. And any such subject so imprisoned may, for every such imprisonment, maintain, by virtue of this Act, an action or actions of false imprisonment against the person by whom he has been so committed, detained, imprisoned, sent prisoner or transported, contrary to this Act, and against any person framing, contriving, writing, sealing or countersigning any warrant or writing for such commitment, detainer, imprisonment or transportation, or advising, aiding or assisting in the same, or any of them :

3. And the plaintiff in every such action shall have judgment to recover his treble costs besides damages, which damages so to be given shall not be less than five hundred pounds, lawful money of Great Britain, in which action no delay, stay or stop of proceeding by rule, order or command, nor any injunction, protection or privilege whatsoever, nor any more than one imparlance or continuance (according to the practice of the court) shall be allowed, excepting such rule of the court wherein the action depends, made in open court, as is thought in justice necessary, for special cause to be expressed in said rule: 24 G. 3, c. 1, s. 11.

4. But nothing in this Act shall extend to give such benefit to any person who, by contract in writing, agrees with any merchant or owner of any plantation or other person whatsoever, to be carried to any province or to parts beyond the seas, and receives earnest upon such agreement, although that afterwards such person renounces such contract: 24 G. 3, c. 1, s. 12.

5. And nothing in this Act shall impair the effect of any provision in the Consolidated Statutes of Canada, or in any Act applying to the whole Province of Canada, but this Act shall always be construed, subject to every such provision.

OF THE REMOVAL OF AN OFFENDER TO ANOTHER PART OF HER MAJESTY'S DOMINIONS, WHERE HE HAS COMMITTED A CRIMINAL OFFENCE.—TO UNDERGO HIS TRIAL

16. Persons charged with a capital offence, out of Lower Canada, may be sent for trial to the place where the offence was committed in H. M. Dominions.

But if any person, at any time resident within Lower Canada, has committed any capital offence in Great Britain, Ireland or any province, island or plantation of Her Majesty, where he ought to be tried for such offence, such person may be sent to such place, there to receive such trial, in such manner as the same might have been done by the common laws of England before the twenty-ninth day of April, 1784, anything herein contained to the contrary notwithstanding. 24 G. 3, c. 1, s. 14.

17. Persons against whom warrants have issued in New Brunswick may be apprehended in Lower Canada.

And whereas it may happen that felons and other malefactors, having committed crimes in the province of New-Brunswick, may escape into Lower Canada, and their offences thereby remain unpunished for want of a provision by law for apprehending such offenders in this province, and transmitting them to the place in which their offences were committed :—therefore,—if any person, against whom a warrant is issued by any other judge of the Court of Queen's Bench, or any justice of the peace, acting in the province of New Brunswick, for any crime or offence against the laws of the said province, escapes, comes into, resides or is in any part of Lower Canada, any justice of the peace of the district or place, where such person escapes, comes into, resides or is, may endorse his name on the said warrant, (due proof being first made of the hand-writing of the magistrate issuing the same,) which warrant so endorsed shall be a sufficient authority to the person bringing such warrant, and to all persons to whom such warrant was originally directed, and also to all constables of the district or place where such warrant is so endorsed, to execute the same by apprehending the person against whom such warrant is granted, and to convey him to the said province of New Brunswick, and before one of the justices of the peace acting in the said province, to be there dealt with according to law. 36 G. 3, c. 12.

PENALTY ON JUDGES REFUSING THE WRIT OF HABEAS CORPUS IN VACATION

18. Penalty on judge refusing 'habeas corpus.'

Any prisoner may move for and obtain his writ of *habeas corpus* out of the Court of Queen's Bench or the Superior Court as hereinbefore provided, before any judge of either court, in vacation as well as in term,—and if any judge of the said court of Queen's Bench or Superior Court, in the vacation time, and upon view of the copy or copies of the warrant or warrants of commitment or detainer, or upon oath made that such copy

or copies were denied as aforesaid, denies any *habeas corpus* by this Act required to be granted (being moved for as aforesaid,) every such judge shall severally forfeit to the prisoner or party grieved the sum of five hundred pounds sterling, to be recovered in manner aforesaid. 24 G. 3, c. 1, s. 10,—12 V. c. 37, s. 41,—12 V. c. 38, s. 98.

ACTIONS FOR OFFENCES AGAINST THIS ACT

19. Limitation of actions for offences against this Act. — Defendant in such suit may plead the general issue. — But this section not to affect any Act fixing the period for bringing suits against public officers.

No person shall be sued, impleaded, molested or troubled, for any offence against this Act, unless the party offending be sued or impleaded for the same within two years, at the most, after the offence committed, in case the party grieved is not then in prison, and if he is in prison, then within the space of two years after the decease of the person imprisoned, or his delivery out of prison whichever first happens :

2. And if any information, suit or action, is brought or exhibited against any person for any offence committed against this Act, such defendant may plead the general issue, that he is not guilty, or that he owes nothing, or may plead specially, according as may be the course and practice of the Court where such suit may be ; and in case it be upon the said plea of not guilty, or that he owes nothing, then he may give such special matter in evidence, which, if it had been pleaded more specially, would have been good and sufficient matter of law to discharge the said defendant against the said information, suit or action ; and the said matter so given in evidence under either of the said general pleas, shall be then and there as available to him to all intents and purposes, as if he had sufficiently pleaded, set forth, or alleged the same matters in bar or discharge of such information, suit or action :

3. But nothing in this section shall prevent the effect of any Act fixing a shorter period as that within which any suit

or proceeding must be brought against any justice of the peace or other public officer, for any act done in the discharge of his public duty. 24 G. 3, c. 1, ss. 18, 19 ;—*See* 14, 15 V. c. 54, ss. 1, 8, 9,—12 V. c. 10, s. 5, *par.* 20.

GENERAL PROVISIONS APPLYING BOTH TO CIVIL AND CRIMINAL CASES

27. When there is no judge in any district, 'habeas corpus' may be obtained in another district. — Provision when the person confined is beyond the limits of the district where the order is made.

If at any time there is no judge within the limits of a district, any person desirous of obtaining a writ of *habeas corpus*, may apply to any judge qualified and authorized to grant such writ, in any adjoining district, or to any judge at either of the cities of Quebec or Montreal, according as cases in appeal from the district in which the applicant is confined, are, under the twenty-second section of chapter seventy-seven of these Consolidated Statutes, to be heard and determined at either of those cities ; and any order given on any such application by a judge out of the district, and all proceedings out of the district, had either before or after such application or order, shall be as good and valid as if given or had within the limits of the district in which the applicant is confined :

2. And whenever the issuing of a writ of *habeas corpus*, is ordered in favor of a person confined beyond the limits of the district in which such order is made, the judge may direct that such person be brought before a justice of the peace in the district in which such person is confined, and may order such justice of the peace to admit to bail the person so confined, himself and two sureties, each in respective sums to be specified in the said order, in which there shall be stated the terms and conditions to be inserted in the recognizance to be so entered into by the party accused and his sureties, and the court, place and time before and at which the party accused shall appear to answer the charge brought against him ; and

upon such recognizance being entered into, to the satisfaction of such justice of the peace, he shall order the party accused to be released from custody, if detained for no other cause; and in any case in which the applicant is to be discharged without bail, the judge's order to the justice of the peace shall require him to discharge such applicant from confinement. 23 V. c. 57, s. 26.

28. 'Habeas corpus' refused by one judge not to be granted by another,—but may be granted by Court of Q. B. — Provision when the person confined is beyond the limits of the district where the order is made.

Whenever a writ of *habeas corpus* has been once refused by any one judge, it shall not be lawful to renew the application before him, unless any new facts are stated, or before any other judge; but application may, in any such case, be made anew to the Court of Queen's Bench, which is hereby authorized to entertain, hear, and determine such application, at its next sitting in appeal either in Quebec or Montreal, according as cases in appeal from the district in which the applicant is confined are, under the said twenty-second section of chapter seventy-seven, to be heard and determined at either of those cities; and any order made by the Court of Queen's Bench, on any such application, and all proceedings had out of the district, either before or after such application or order, shall be as good and valid as if made or had within the limits of the district in which the applicant is confined:

2. And whenever the issuing of a writ of *habeas corpus* is ordered in favor of a person confined beyond the limits of the district in which such order is made, the judge or the court of Queen's Bench may direct that such person be brought before a justice of the peace in the district in which such person is confined, and may order such justice of the peace to admit to bail the person so confined, himself and two sureties in such respective sums as shall be specified in such order, in which there shall be stated the terms and conditions to be inserted in the recognizance to be entered into by the

party acused and his sureties, and the court, place and time, before and at which the party accused is to appear to answer the charge brought against him ; and upon such recognizance being entered into, to the satisfaction of such justice of the peace, he shall order the party accused to be released from custody, if detained for no other cause ; and in any case in which the applicant is to be discharged without bail, the order to the justice of the peace shall require him to discharge such applicant from confinement. 23 V. c. 57, s. 27.

INTERPRETATION

29. Interpretation.

The word "judge," in this Act, includes the chief justice,—the word "office," or the designation of any person by his name of office, includes any number of persons holding or exercising such office,—and the Interpretation Act shall be so applied in construing this Act as best to secure the liberty of the subject.

REVISED STATUTES OF QUEBEC

TITLE VI

CHAPTER SEVENTH

Officers of Justice

SECTION 1

SHERIFFS AND CORONERS

§ 2.—*Coroners*

I.—CORONERS' INQUESTS

2687. When coroner shall hold an inquest.

No inquest shall be held on the body of any deceased person unless the coroner shall, prior to the issuing of his warrant for summoning the jury, have made a declaration in writing under

oath (which oath shall be administered by a justice of the peace, a notary public, or commissioner for taking affidavits to be used in the Superior Court, and shall be returned and filed with the inquisition), stating that, from information received by the coroner,—a summary of which information shall be stated in the declaration,—he has good reason for believing that the deceased did not come to his death from natural causes or from mere accident or mischance, but came to his death from violence or unfair means or culpable or negligent conduct of others, under circumstances requiring investigation by a coroner's inquest. 55-56 V., c. 26, s. 1.

2688. Case of death of a prisoner.

Upon the death of any prisoner, the warden, gaoler, keeper or superintendent of any penitentiary, gaol, reformatory, house of correction or lock-up, in which such prisoner dies, shall immediately give notice to the coroner, detailing the circumstances connected with the death. 43-44 V., c. 10, s. 2.

II.—POST-MORTEM EXAMINATIONS

2689. 'Post-mortem' examination when to be held during an inquest.

No coroner shall direct a *post-mortem* examination of any body upon which an inquest is being held, except upon the requisition of the majority of the jury, unless the coroner shall have made a declaration in writing, (to be returned and filed with the inquisition,) that, in his opinion, the holding of a *post-mortem* examination of such body is necessary, in order to ascertain whether or not the deceased came to his death from violence or unfair means. 43-44 V., c. 10, s. 3.

2690. Statement of costs to be sent by coroner to Attorney-General.

Within fifteen days, following the holding of any inquest, the coroner shall send a detailed statement of the costs attending the same to the Attorney-General, together with a certified copy of the declaration or demand made or received by him, as the case may be. 43-44 V., c. 10, s. 4.

III.—EXPENSES OF BURIAL

2691. Human bodies in cities, etc., to be buried at expense of the corporation. — Proviso. — Bodies found in certain places excepted. — Burial of such bodies by coroner if not claimed.

Any human body, found within the limits of a city, town, incorporated village, parish or township, shall, unless it be disposed of under the provisions of section first of chapter fourth of title tenth of these Revised Statutes respecting anatomy, be buried at the expense of the corporation of such city, town, village, parish or township, but the corporation may recover such expense from the estate of the deceased. 43-44 V., c. 10, s. 5 ; 46 V., c. 30, s. 2.

2. If a human body is found upon the beach of, or floating in, the River St. Lawrence, opposite the parish of Beaumont and the parish of St. Joseph de Lévis, and is not claimed as provided for by law, the coroner shall see to its burial, and shall be reimbursed his necessary and reasonable expenses incurred thereby as for costs forming part of those of his office. 47 V., c. 12, s. 1.

IV.—TARIFF OF FEES

2692. Costs of inquest. — Chemical analysis. — Expenses to be allowed. — What physician to be employed. — Account for disbursements, etc., to be sworn to, etc. — Application of provision.

The costs of any proceeding had or taken under this subsection are regulated by the tariff, contained in the following schedule ; and the coroner shall certify to the correctness of the same :

To the coroner or physician, for every mile actually travelled by him, for the purpose of inquiring whether an inquest should be held, or of holding an inquest..	$ 0 10
To the coroner, for each inquest and return..	6 00
To the coroner, for every day exceeding two days in which he is actually engaged in holding an inquest..	3 00
To the physician, for external examination..	5 00
To the physician, for internal examination..	10 00

To the constable, summoning witnesses—each witness.. 0 30
To the constable, summoning jury.. .. .. 1 00
To the secretary or clerk, in cases of extraordinary nature—per day.. .. .. 2 00
For cheminal analysis, to comprise every analysis made on one body, or any part or parts of the same body not to exceed, for one inquest.. .. .. 20 00

Whenever a chemial analysis is deemed necessary by the jury and the coroner, the latter reports to the Attorney-General, who selects the physician by whom such analysis is to be made; and if such inquest and analysis have been specially difficult, the Attorney-General may allow a greater sum.

All reasonable expenses, such as the leasing of a place to hold the inquest, taking charge of the body, notifying the coroner, may be allowed by the coroner.

In case the services of physicians are required, they will be rendered by a physician of the locality where the inquest is held, or of the nearest locality. 43-44 V., c. 10, s. 6, and schedule A.

Every coroner shall swear to the account of his fees and disbursements, according to the above tariff, for each inquest held by him, and shall swear that the disbursements charged have been actually incurred by him, and that he had made use of the least expensive of the ordinary means of transport. This provision also applies to the accounts of a coroner in cases of inquiries not followed by an inquest. 58 V., c. 33, s. 1.

2692a. When coroner can claim fees for inquest held.

No fees shall be claimable by a coroner in respect of an inquest unless, prior to the issuing of his warrant for summoning the jury, he shall have made the declaration in writing under oath required by article 2687, and returned and filed the same with the inquisition. 55-56 V., c. 26, s. 2.

2693. Useless inquests.

If it be made to appear to the Attorney-General, that any

useless inquest has been held, he may order that no fees be paid the coroner therefor. 43-44 V., c. 10, s. 7.

2693a. Salary may be granted to Montreal coroner. — No fees thereafter.

It shall be lawful for the Lieutenant-Governor in Council to assign to the coroner of the district of Montreal a fixed salary, not to exceed the sum of two thousand four hundred dollars per annum, payable out of the Consolidated Revenue Fund of the Province.

Every such coroner shall thereafter cease to have a right to the fees set forth in article 2692. 58 V., c. 33, s. 2.

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