Technical and Bibliographic Notes / Notes techniques et bibliographiques

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

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

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

- ☐ Coloured pages / Pages de couleur
- ☐ Pages damaged / Pages endommagées
- ☐ Pages restored and/or laminated / Pages restaurées et/ou pelliculées
- ☑ Pages discoloured, stained or foxed / Pages décolorées, tachetées ou piquées
- ☐ Pages detached / Pages détachées
- ☑ Showthrough / Transparence
- ☑ Quality of print varies / Qualité inégale de l'impression
- ☐ Includes supplementary material / Comprend du matériel supplémentaire
- ☐ Pages wholly or partially obscured by errata slips, tissues, etc., have been refilmed to ensure the best possible image / Les pages totalement ou partiellement obscurcies par un feuillet d'errata, une pelure, etc., ont été filmées à nouveau de façon à obtenir la meilleure image possible.
- ☐ Opposing pages with varying colouration or discolourations are filmed twice to ensure the best possible image / Les pages s'opposant ayant des colorations variables ou des décolorations sont filmées deux fois afin d'obtenir la meilleure image possible.

☑ Additional comments / Commentaires supplémentaires: Cover title page is bound in as last page in book but filmed as first page on fiche.

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

10x	12x	14x	16x	18x	20x	22x	24x	26x	28x	30x	32x
										✓	

5th Session, 8th Parliament, 63 Victoria, 1900

THE SENATE OF CANADA.

BILL.

K

An Act further to amend the Criminal Code, 1892.

Received and read a first time, Wednesday, 21st March, 1900.
Second reading, Monday, 26th March, 1900.

Honourable Mr. MILLS.

OTTAWA
Printed by S. . DAWSON
Printer to the Queen's most Excellent Majesty
1900

THE SENATE OF CANADA.

K.] **BILL.** [1900

An Act further to amend The Criminal Code, 1892.

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

1. This Act may be cited as *The Criminal Code Amendment Act*, 1900. Short title.

2. *The Criminal Code*, 1892, is amended in the manner set forth in the following schedule :— 1892, c. 29. amended.

SCHEDULE.

NOTE.—The addition of new words to the existing sections of the Code is shown by their inclusion within square brackets.
The explanatory notes have been furnished by the Department of Justice.
The matter in plain type comprises the provisions in the Bill of last session as it passed the Senate. The matter in Italics has been since added.

Section **3**.—By repealing sub-paragraph (i) of paragraph (*e*) as that sub-paragraph is enacted by chapter 40 of the statutes of 1895, and substituting the following therefor :—

"(i.) In the Province of Ontario, [the Court of Appeal for Ontario."]

NOTE.—The sub-paragraph now reads "any Divisional Court of the High Court of Justice."

"And by repealing sub-paragraph (i) of paragraph (*y*) and substituting the following therefor :—

"(i.) In the Province of Ontario [the High Court of Justice for Ontario."]

NOTE.—This amendment is necessary because the provision as it stands relates to "Divisions" of the High Court, and under recent legislation the Divisions of the High Court have no jurisdiction as such.

By inserting the following section immediately after section 166 :—

"**166A.** 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."

NOTE.—This clause providing against negligent escape, was contained in the Bill of 1891 (see clause 167), and also in the Bill of 1892 (clause 168), but it was struck out in Committee of the Whole in the House of Commons. The suggestion was that the offence was not essentially a criminal one. From two or three quarters it has been proposed that the Code should contain such a provision. There was a corresponding provision in the pre-existing law (see Revised Statutes, chapter 155, section 7.) The clause now proposed is taken from the Criminal Code Bill (Imp.) of 1880, clause 136.

Section **179.**—By substituting the following therefor:—

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

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

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

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

2. No one shall be convicted of any offence in this section mentioned if he proves that the public good was served by the acts alleged to have been done [*and without 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."

NOTE.—This amendment omits the word "publicly" from before "sells," and "public" from before "sale," in the first line of paragraph (*a*) of subsection one. In subsection 3, the first line now reads, "It shall be a question of law, &c."

Section **180.**—By substituting the following therefor:—

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

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

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

(*c.*) any letter or circular concerning schemes devised or intended to deceive and defraud the public or for the purpose of obtaining money under false pretenses."

NOTE.—Section 180 was adapted from the P. O. Act, s. 103, which section was repealed by the Code (section 981). It contained the words which have not been copied in section 180, viz.: "seditious, disloyal, scurrilous or libellous." Of these all but "scurrilous" are probably thought to be sufficiently covered elsewhere in the Code. Scurrilous mail-matter causes serious trouble to the Post Office Department and the sending of it is a grave offence, but there is at present no provision in the Code dealing with it. The object of the amendment is to supply the omission.

Section **183.**—By substituting the following therefor:—

"**183.** Every one is guilty of an indictable offence and liable to two years' imprisonment,—

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

(*b.*) Who seduces or has illicit connection with any woman or girl previously chaste and under the age of twenty-one years who is in his employment in a factory, mill, workshop, [shop or store,] or who, being in a common, but not necessarily similar, employment with him in such factory, mill, workshop, [shop or store,] is, in respect of her employment or work in such factory, mill, workshop, [shop or store,] under or in any way subject to his control or direction, [or receives her wages or salary directly or indirectly from him."]

NOTE.—The words between square brackets make the only change except that the section has been transposed with the view of making paragraph (*b*) operative. See Reports of the National Council of the Women of Canada.

By inserting immediately after section 183 *the following section.*

["**183A.** *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."*]

By inserting the following section immediately after section 186:—

["**186A.** 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."*]

NOTE.—Section 183—Seduction of ward. Section 186—Parent or guardian procuring defilement of girl. *See Note to section 701A, post.*

Section **187.**—By substituting the following therefor:—

"**187.** 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."

NOTE.—The Bill as introduced in 1897 substituted 16 for 14, and 21 for 18. The Senate restored the present limits of age, and the only change in the clause as passed is the substitution of "or" for "and." As the section stands guilty owners would in many cases escape conviction and in other cases, guilty occupants.

Section **189.**—By substituting the following therefor:—

"**189.** 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."

NOTE.—The only change is the insertion of the words in brackets.

Section **205**.—By substituting for subsection six thereof the following:—

"6. This section does not apply to

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

(*b.*) raffles for prizes of small value at any bazaar held for any charitable [or religious] object, if permission to hold the same has been obtained from the city or other municipal council, or from the mayor, reeve or other chief officer of the city, town or other municipality, wherein such bazaar is held and the articles, raffled for thereat, have first been offered for sale and none of them are of 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 works of art produced by the labour of the members of, or published by or under the direction of such incorporated society; [if—

(i) such paintings, drawings or other works of art are themselves actually and *bonâ fide* so distributed, and

(ii) the member or ticket holder is not given the option of taking in place of any work allotted to or drawn by him a sum of money or something else of value; and

(iii) no other such distribution has taken place among the members or ticket holders for a period of six months less one day next preceding the date of, or the date fixed for, such distribution;] or

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

NOTE.—The changes are the insertion of the words within square brackets.

The attention of the authorities has been called to several societies, claiming to be art societies, but whose operations are only colourably so, they being to all intents and purposes lotteries for money prizes, as directly or indirectly they give ticket-holders an option to take money.

Section **207**.—By substituting the following for paragraph (*a.*) of subsection one thereof:—

"(*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, and not giving a good account of himself, or who, not having any visible means of maintaining himself, lives without employment.]"

Section **208**, as amended by chapter 57 of the statutes of 1894.—By adding at the end thereof the following proviso:—

"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."

Section **210**.—By adding thereto the following subsection:

"3. In this section the word "guardian" has the same meaning as, under section 186 A, it has in sections 183 and 186."

Section **261.**—By substituting the following therefor:—

"**261.** It is no defence to a charge or indictment for any indecent assault on a person under the age of [sixteen] years to prove that he or she consented to the act of indecency."

NOTE.—The age at present is 14

Section **264.**—By substituting the following therefor:—

"**264.** 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."

NOTE.—Under the section as it now stands, the intent defined in paragraph (*a*) is a necessary element of both offences. Mr. Crankshaw's suggestion.

Section **278.**—By repealing this section and substituting the following:—

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

(*a.*) who practises, or, by the rites, ceremonies, forms, rules or customs of any denomination, sect or society, religious or secular, or by any form of contract, or by mere mutual consent, or by any other method whatsoever, and whether in a manner recognized by law as a binding form of marriage or not, agrees or consents to practise or enter into

(i.) any form of polygamy;

(ii.) any kind of conjugal union with more than one person at the same time; or

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

(*b.*) who lives, cohabits, or agrees or consents to live or cohabit in any kind of conjugal union with a person who is married to another, or with a person who lives or cohabits with another or others in any kind of conjugal union; or

(*c.*) celebrates, is a party to, or assists in any such rite or ceremony which purports to make binding or to sanction any of the sexual relationships mentioned in paragraph (*a*) of this section; or

(*d.*) procures, enforces, enables, is a party to, or assists in the compliance with, or carrying out of, any such form, rule or custom which so purports; or

(*e.*) procures, enforces, enables, is a party to, or assists in the execution of, any such form of contract which so purports, or the giving of any such consent which so purports."

NOTE.—Corrects a clerical error. The paragraph lettered (b) is printed in the code as a sub-paragraph "(iv)" of paragraph (a).

Section **284.**—By substituting the following therefor :—

"**284.** 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."

NOTE.—Section 284—Stealing of children under 14.

Section **285.**—By substituting the following for subsection 1 thereof:—

"**285.** 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."

NOTE:—This clause was added by the Senate to the Bill of 1897. The subsection now has the word "to" in place of the words in square brackets.

Section **306.**—By substituting the following therefor :—

"**306.** 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."]

NOTE:—The only change is the addition of the words within square brackets.
In consequence of the absence of some such words the provisions of the section may be and have been taken advantage of to try private rights at the expense of the Crown, and even to brand as a criminal a party to a mere civil dispute arising out of a more or less doubtful question of law or fact.
The Senate in 1897 added the words "in his official capacity."

By inserting the following section immediately after section 331;—

["**331A.** 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."]

NOTE:—See Section 707A *post*.

Section **410**.—By substituting the following therefor:—

"**410.** 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."]

NOTE.—The only change is in the addition of subsection two.

It has been represented that crimes of this nature have been alarmingly frequent of late, and that in many cases they are committed by professional tramps, which class is year by year becoming a greater menace to the peace and safety of residents of small towns and of villages and rural districts. A provision such as that proposed would probably be the most effective preventive, as imprisonment alone has not sufficient terrors for the class referred to. The Code already provides the punishment of whipping for the crime of robbery with violence. See Section 398.

Section **479**.—By substituting the following therefor:—

"**479.** 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."]

NOTE.—The object of the amendment is obvious; cases not covered by the terms of the section of the Code as it now stands and requiring to be provided for have frequently been brought to the attention of the authorities, especially in the case of bills of defunct banks, and notes of the Confederate States.

Section **520**.—By substituting the following therefor:—

"**520.** 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."]

NOTE.—The change is in the addition of the second subsection. Rejected by the Senate in 1897.

Section **540.**—By adding to the section, as amended by section 1 of chapter 57 of the Statutes of 1894, the following:—

["Or any indictment for bribery or undue influence, personation or other corrupt practice under *The Dominion Elections Act.*"]

NOTE:—The 540th section provides that the Courts of General or Quarter Sessions shall not have jurisdiction in certain cases which are specified, and does not specify these offences against the Election law, but the Dominion Elections Act declares that these offences shall not be tried in those courts, and this amendment to the Criminal Code is proposed to make the Code correspond.

By adding immediately after Section 550 the following section:—

["**550A.**—At the trial of any person charged with an offence under any of the following sections, that is to say, 174, 175, 176, 177, 178, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 195, 198, 208 in so far as it relates to paragraphs (i) (j) and (k) of 207, 259, 260, 267, 268, 269, 270, 271, 272, 273, 274, 281, and 282, or with conspiracy or attempt to commit, or being an accessory after the fact to any such offence, the court or judge may order that the public be excluded from the room or place in which the court is held during such trial; and such order may be made in any other case also in which the court or judge or justice may be of opinion that the same will be in the interests of public morals.

2. Nothing in this section shall be construed by implication or otherwise as limiting any power heretofore possessed at common law by the presiding judge or other presiding officer of any court of excluding the general public from the court-room in any case when such judge or officer deems such exclusion necessary or expedient."]

NOTE.—Section 174, Unnatural offence; 175, Attempt to commit sodomy; 176, Incest; 177, Indecent acts; 178, Acts of gross indecency; 181, Seduction of girls under 16; 182, Seduction under promise of marriage; 183, Seduction of ward, servant, etc.; 184, Seduction of passengers on vessels; 185, Procuring; 186, Parent or guardian procuring; 187, Householders permitting defilement on premises; 188, Conspiracy to defile; 189, Carnally knowing idiots, etc.; 190, Prostitution of Indian women; 195 to 198, Keeping disorderly house; 207 (*i*) (*j*) and (*k*) Being common prostitute; keeping house of ill-fame; frequenting such house; 259, Indecent assault on females; 260, Indecent assault on males; 267, Rape; 268, Attempt to commit rape; 269, Defiling children under 14; 270, Attempting to defile child; 271, Killing unborn child; 272, Procuring abortion; 273, Woman procuring her own miscarriage; 274, Supplying noxious drugs, etc.; 281, Abduction of woman; 282, Abduction of heiress.

Section **553.**—By substituting the following for paragraph (*a.*) thereof:—

"(*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;"

NOTE.—This clause was added by the Senate. It supplies words which are obviously necessary to complete the sense.

NOTE.—Under the present practice the preliminary investigation, where a coroner's inquest has been held, is often a work of supererogation, and could be dispensed with advantageously at a great saving in the expense of the administration of justice.

Section **589.**—By substituting the following therefor:—

"**589.** 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."]

NOTE.—Difficulty in applying present section pointed out by the Attorney General Office, British Columbia. The change suggested adopts the practice under the Summary Convictions Part, s. 878.

[*Section* **601.** *By adding thereto to the following subsection:*

"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.*"]

NOTE.—It is doubtful whether this can be done at present, and as a consequence petty cases are frequently sent to the assizes which might very well be tried by the sessions.

Section **641.**—By substituting the following therefor:—

"**641.** 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."

NOTE.—The only amendment consists in the insertion of subsection 2. The subsequent subsections are renumbered to accord with this change.

By inserting immediately after section 678 *the following section:—*

["678A. *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.*"]

NOTE.—Intended to meet the case of absconding witnesses. Section 583 provides a similar means of securing the attendance of a witness upon a preliminary investigation, but there is no corresponding provision as to witnesses required at the sessions or assizes. An unwilling witness served with a subpœna may abscond, and there is no way of enforcing his attendance until the trial upon proof of default. See section 678.

Section **680.**—By substituting the following therefor :—

"**680.** 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."]

NOTE.—The only change is in the insertion of the words in square brackets and the addition of paragraph (*b*). See Impl. Act, 16 & 17 Vict., ch. 30; Taylor on Evidence 9th Ed., ss. 1275, 1276.

This paragraph was suggested by the late Chief Justice Davie of British Columbia, and will, especially in that province, effect a considerable saving of expense.

Section **687.**—By substituting the following therefor :—

"**687.** 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 taken in the 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 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 a trial."]

NOTE.—Under the section as it stands, it is doubtful if depositions at a previous trial can be read. See Article Canada Law Journal of Feby., 1899, p. 91.

Rejected by Senate in 1897.

By inserting the following section immediately after section 701 :—

["**701A.** In order to prove the age of a girl or child or young person for the purposes of sections 181, 186, 210, 211, 216, 261, 269, 270, 283 and 284, 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 girl at or about

the time of the girl 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 girl."]

NOTE.—The two clauses 186A and 701A are suggested to remove technical difficulties in consequence of which the law has become almost a dead letter. *See* Statutes of Ontario 1893, chap. 45; 1895, chap. 52.

Section **702.**—By substituting the following therefor:—

"**702.** 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."

NOTE.—The only material change is the insertion of the words within square brackets. This is to make certain evidence sufficient on the trial of a prosecution under section 199, as it is already on the trial of a prosecution under section 198.

Section **703.**—By substituting the following therefor:—

"**703.** 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."

NOTE.—The object of this amendment is the same as that of the amendment of 702, *supra*. The only change is that the provision is made applicable to section 199 as well as to section 198.

By inserting immediately after section 707 the following section:—

["**707A.** 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."]

NOTE.—See section 331A *ante*.

Section **729.** *By substituting the following therefor :—*

"**729.** *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.*"]

NOTE.—The words in square brackets are new and the amendment proposed is desirable to remove doubt.

Section **760.**—By substituting the following therefor :—

"**760.** 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."

NOTE.—This section applies only to Nova Scotia. The amendment consists in striking out the last two lines of the section which read thus: "And the indictments shall not be made out, except in Halifax, until the grand jury so directs." One of the judges has pointed out that the distinction thus made between Halifax and the country is not now necessary and is very inconvenient in practice. Practitioners have communicated the same view.

Section **763.**—By inserting after the word "includes" in the second line of paragraph (*b*) thereof, the following words :—

["In the province of Ontario the County Crown Attorney."]

NOTE.—The County Crown Attorney is the prosecuting officer in that province.

Section **765.**—By substituting the following therefor :—

"**765.** 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."]

NOTE.—The Supreme Court of Nova Scotia has held that the present section only applies where the person is actually and formally "committed for trial," and not to the other cases to which it is now proposed to extend it, so that in that province, the advantage of speedy trial cannot be had in those cases.

Section **766.**—By adding thereto the following subsection:

"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."

Section **767**.—By substituting the following therefor:—

"**767.** 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, notwithstanding such election, at any time before such trial has commenced, *and whether an indictment has been preferred against him or not*, notify the sheriff that he desires to re-elect, and it shall thereupon be the duty of the sheriff *and judge or prosecuting officer* to proceed as directed by section 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."]

NOTE.—It has been held that the technical effect of a prisoner's having once elected to be tried by jury is that his power to elect has been thereby exhausted, a consequence which there is no reason for maintaining except a mere technical reason. The rule delays a trial uselessly, involves increased expense to the Crown and the prisoner, and prolongs the time of imprisonment of a man who on the trial may be found not guilty. Subsection 5 therefore proposes that prisoner may re-elect. The other changes are necessitated by the change of procedure under section 766.

Section **784**.—By repealing the subsection substituted for subsection 3 thereof, by chapter 40 of the Statutes of 1895, and substituting the following:—

"3. The jurisdiction of the magistrate in the provinces of Prince Edward Island and British Columbia, [and in the North-West Territories,] and the district of Keewatin, under this Part, is absolute without the consent of the party charged

[except in cases coming within the provisions of section 785, 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."]

Section **785.**—By substituting the following therefor:—

"**785.**—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 *and recorders* of cities and incorporated towns in every other part of Canada.

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."]

NOTE.—The only change is in the addition of subsections two and three.

Section 785 at present applies to Ontario only, and it is proposed to extend it to cities and incorporated towns elsewhere.

The proposed subsection 3 is intended to make clear that where a prisoner elects to be tried under this section the punishment, if he is found guilty, is to be the same as if he were tried otherwise. This was no doubt the intention of the present section 785. Sections 787 and 788 provide for the punishment by the magistrate in ordinary cases under the Summary Trials Part. Section 785 declares that in cases under that section a prisoner may be sentenced to the same punishment to which he would have been liable if he had been tried before the Court of General Sessions of the Peace, and at such general sessions a greater punishment might by law be inflicted than where the magistrate convicts under sections 787 and 788. A doubt having been expressed whether, notwithstanding the terms of section 785, the punishment to be imposed thereunder is not limited by sections 787 and 788, it is expedient to remove any such possible doubt.

Section **789.**—By substituting the following therefor:—

"**789.**—When any person is charged before a magistrate with theft or with having obtained property by false pretences, 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 such magistrate, and that if he does not plead or answer before him, he will be committed for trial in the usual course."

NOTE.—The amendment consists in striking out the words "and may be adequately punished by virtue of the powers conferred by this Part," in lines 9,10 and 11 of the original and in the insertion of the words in square brackets.

This section gives the magistrate, under certain circumstances, jurisdiction to try theft, etc., where the value of the property exceeds $10, if he thinks the offence may be adequately punished under this part. The words struck out are no longer necessary and may be misleading, because since the passing of the Act of 52 Victoria, chapter 46, the magistrate may in such cases impose the same punishment as if the accused had been convicted upon indictment.

Section **790.**—By substituting the following therefor :—

"**790.** 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."]

NOTE.—The amendment consists in the substitution of the words within square brackets for "the magistrate shall proceed as provided in section seven hundred and eighty-six." The section now provides that if a person charged under the preceding section with theft, etc., where the value of the property exceeds $10, pleads not guilty, the magistrate shall proceed as provided in section 786. So proceeding, he can in case of conviction, impose a sentence of only six months' imprisonment, while if the prisoner pleads guilty, he can under this section impose the same punishment as if the case had been tried in the ordinary way. The amendment does away with this anomaly. It takes away the jurisdiction of the magistrate to try such cases at all where the prisoner says he is not guilty. This makes the law as it was up to the time the Code was passed. It is thought best that in such serious cases as may arise under these sections, the magistrate should have jurisdiction to try only where the accused pleads guilty. It will be seen, however, that so far as magistrates in cities and towns are concerned, this bill proposes to largely extend their jurisdiction, making it the same in all the provinces as that of magistrates in Ontario under section 785.

Section **801.**—By substituting the following therefor :—

"**801.** 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."]

NOTE.—Under section 801 the records are to be sent to the next court of General or Quarter Sessions, and that court may not meet for months. The amendment is adapted from section 822 in Part LVI., Juvenile Offenders.

Section **806.**—By repealing this section, as it is amended by Chapter 57 of the Statutes of 1894.

NOTE.—See section proposed to be substituted for section 927, and the note thereto.

Section **827.**—By repealing this section.

NOTE.—See section proposed to be substituted for section 927, and the note thereto.

Section **832.**—By substituting the following therefor :—

"**832.** 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 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."

Section **838.** *By repealing subsection* 1 *thereof and substituting the following therefor:—*

"**838.** *If any person who is [charged with] an indictable offence in stealing, or knowingly receiving, [or obtaining by false pretences,] 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.*"

And by repealing subsection 3 *thereof, and substituting the following therefor:—*

"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 received, or obtained by false pretences,] or if it appears that the property stolen, [or received, or obtained] 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.*"

NOTE.—Restitution may be ordered in England in cases where property is obtained by false pretenses on the same terms as in cases of theft or receiving, and there seems to be no good reason why it should not be so here also. See Bentley v. Vilmont, (1887) Law Reports, 12 Appeal Cases, 476.

Section **846.**—By substituting the following therefor:—

"**846.** 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."]

NOTE:—See Imperial Act 42 and 43 Vict. (1879) c. 49, s. 39; Regina *v.* Coulson, 24 Ontario Reports, 247, 249.

Section **872.**—By adding the following paragraph at the end of subsection 1 thereof:—

["(*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."]

NOTE:—Suggested by Mr. Pelton, Q.C., of Yarmouth, N.S.

916.—By striking out the first five lines of subsection 2 and substituting the following therefor:—

"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."]

NOTE:—The section as it now stands needs this alteration because the "divisions" of the High Court have been for practical purposes abolished.

Section **927.**—By substituting the following therefor:—

"**927.** 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."

NOTE:—Makes general provision covering all fines, etc. In result of correspondence with the several Provincial Governments. Ss. 806 and 827, making partial provision, it is proposed to repeal.

Section **943.**—By substituting the following therefor:—

"**943.** 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."

NOTE.—The section as it stands has "two" instead of "three" in the second line which is obviously a mistake.

Section **955.**—By adding at the end of subsection 3 thereof the following:—

["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."]

NOTE.—Suggested by Mr. Whiting, County Crown Attorney at Kingston. Would apply to attempts at escape, assaults on officers, &c.

Section **957.**—By substituting the following therefor:—

"**957.** 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."

Section **958**, *as amended by chapter* 32 *of the statutes of* 1893.—*By substituting the following therefor:—*

"**958.** *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."]

NOTE.—The words in square brackets are new. The amendment in subsection 1 is intended to remove a doubt as to whether a magistrate under the Summary Trials Part (LV) can impose a fine in lieu of imprisonment in a case within section 787. The 2nd subsection is designed especially for the Yukon Territory where the expense of maintaining long term prisoners is very great.

Section **971**.—By substituting the following therefor :—

"**971.** 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."

NOTE.—Section 971 enacts that in the case of an offence "punishable with not more than two years' imprisonment" (that is, two years being the maximum punishment for the offence) the court may under certain circumstances and on certain conditions, instead of sentencing the offender at once, direct his release on probation of good con-

duct. Previous to the statutory enactment the court had or assumed this power in the case of offences without the restriction as to two years; and it has since the statute been found that a suspended sentence may be proper in the case of an offence punishable (as a maximum) with more than two years' imprisonment. It is therefore proposed to make the statutory enactment conform to the law as it previously stood, adding only the proviso that the prosecuting counsel concur. The amendment consists in the addition of subsection 2 as shown above and in renumbering the existing subsection 2 as 3.

The Senate in 1897 changed "youth" to "age."

Schedule One, Form J.—By substituting the following therefor:—

"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*)."

NOTE.—This is to correct a manifest slip in the position of the words "(*describe things to be searched for and offence in respect of which search is made.*)"

Schedule One, Forms BB and CC.—By substituting the follow ng therefor:—

"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.

"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.*)"

NOTE.—The old courts of Oyer and Terminer and General Jail Delivery have been done away with in most of the provinces, but their names are retained in these forms. It is proposed to substitute the words in square brackets.