



No. 11.

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3RD SESSION, 3RD PARLIAMENT, 13 VICTORIA, 1850.

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**B I L L .**

**AN ACT to amend and consolidate the  
CRIMINAL LAWS of this Province.**

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Received and Read a first time, Tuesday, 21st May, 1850.

Second Reading, Monday, 3rd June, 1850.

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**HON. MR. BADGLEY.**



# CRIMINAL CODE

## OF CANADA.

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# ABBREVIATIONS

USED IN THE REFERENCES MADE TO AUTHORITIES  
IN THE FOLLOWING BILL.

- Ad. & El.....Adolphus and Ellis Reports.  
Archb. P. Q. S. ...Archbold's Practice of Courts of Quarter Sessions.  
Atk. or Atkyns.....Atkyn's Reports.  
Bac. Abr.....Bacon's Abridgment.  
B. & A..... }  
Barn. & Ad..... } Barnewall and Adolphus' Reports.  
B. & Al. .... Barnewall and Alderson's Reports.  
B. & C. .... Barnewall and Creswell's Reports.  
Bing..... Bingham's Reports.  
Bl. Rep.....Blackstone's (H.) Reports.  
Sir W. B. R.....Blackstone's (Sir W.) Reports.  
Bl. C..... }  
Bl. Com. .... } Blackstone's Commentaries,  
B. & P.....Bosanquet and Puller's Reports.  
B. N. P. .... Buller's Nisi Prius.  
Bun.....Bunbury's Reports.  
Burr.....Burrows' Reports.  
Caine's R.....Caine's New York Reports.  
Camp. .... Campbell's Reports.  
C. & K ..... Carrington and Kirwan's Reports.  
C. & M..... Carrington and Marshman's Reports.  
C. & P..... Carrington and Payno's Reports.  
Ch. C. L.....Chitty on Criminal Law.  
Co. Inst. .... Coke's Institute.  
Co. R. .... Coke's Reports.  
Con. R.....Connecticut Reports.  
Cowp. R.....Cowper's Reports.  
Cow. R.....Coven's Reports.  
Cranch R.....Cranch's Reports Supreme Court. United States.  
Cro. El..... }  
Cro. Jas..... } Croker's Reports, Times of Elizabeth, James  
Cro. Car..... } First, and Charles First.  
Cr. C. .... }  
} Crown Cases Reserved—See Russell, Ryan, Moody  
} and Jebb.  
Dallas R.....Dallas' Pennsylvanian Reports.  
Doug. R.....Douglas' Reports.  
D. & R.....Dowling and Byland's Reports.  
E. R.....East's Reports.  
E. P. C.....East's Treatises of the Pleas of the Crown.  
Esp. R.....Espinasse's Reports.  
Fost.....Foster's Report and Crown Law.  
Hale, P.C.....Hale's Pleas of the Crown.  
Harg. St. Tr.....Hargrave's Collection of State Trials.  
Hawk. P. C.....Hawkins' Pleas of the Crown.  
Hill's R. ....Hill's New York Reports.  
Holt Lib.....Holt on Libel.

How. St. Tr.....	Howell's Collection of State Trials.
Jebb's C. C. R.....	Jebb's Crown Cases Reserved in Ireland.
Johnson R. ....	Johnson's Reports, (New York).
Keb. R.....	Keble's Reports.
Kel. R.....	Kelyng's (Sir J.) Reports.
K. Com. ....	} Kent's Commentaries.
Kent C.....	
Leach .....	Leach's Cases on Crown Side.
Lev. ....	Levinz' Reports.
Lew.....	Lewin's Cases, Crown Side.
Lofft.....	Lofft's Reports.
M. & R.....	Manning and Ryland's Reports.
M. & S.....	Maule and Selwyn's Reports.
Mass. R. ....	Massachusetts Reports.
Mod. R.....	Modern Reports.
Moo. C.C.....	Moody's Crown Cases Reserved.
M. & M.....	Moody and Malkin's Reports.
N. & M.....	Neville and Manning's Reports.
N. & P.....	Neville and Perry's Reports.
Peake's Ev.....	Peake's Treatise on Evidence.
Peake's R.....	Peake's Reports.
Peters' R.....	Peters' United States Reports.
Ph. Ev.....	Phillips' Evidence.
Lord Raym.....	Raymond's (Lord) Reports.
Raym. R.....	Raymond's (Sir T.) Reports.
Rosc. Ev.....	Roscoe's Criminal Evidence.
R. & R.....	Russell and Ryan's Crown Cases Reserved.
Russ.....	Russell on Crimes.
R. & M.....	Ryan and Moody's Reports.
Salk .....	Salkeld's Reports.
Show. R. ....	Showers' Reports.
Staundf.....	Staundford's Criminal Law.
Stark. Ev.....	Starkie's Evidence.
Stark. R.....	Starkie's Reports.
Stark. C. P.....	Starkie's Criminal Pleading.
Stark. S. & L.....	Starkie on Slander and Libel.
Str. R. ....	Strange's Reports.
T. B.....	Term Reports, Durnford and East's.
Taunt. R.....	Taunton's Reports.
Vaugh. B.....	Vaughan's Reports.
Wallace .....	Wallace's United States Reports.
Wils. R.....	Wilson's Reports.



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# BILL.

## An Act to Establish a Criminal Code.

**W**HEREAS it is expedient to consolidate and amend <sup>Preamble.</sup> the Criminal Law, Be it enacted that the following provisions shall be the Criminal Code of Canada.

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### CHAPTER I.

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## PRELIMINARY DECLARATIONS AND ENACTMENTS.

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### SECTION I. DEGREES OF CRIME.

Crimes or Criminal offences are either—  
Felonies or Misdemeanours.

Felonies are such as are punished with death or imprisonment in the Penitentiary.

Misdemeanours are all other Criminal offences.

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### SECTION II. DEFINITIONS OF TERMS & EXPLANATIONS.

1. General provisions.
2. Act 12 Vict. ch. 10, applicable to this Act.
3. The term "Foreign Power."
4. " " "Foreign Country."
5. " " "Officer."
6. " " "Judicial Officer."
7. " " "Ministerial Officer."
8. " " "Woman."
9. " " "Grievous bodily harm."
10. " " "Dwelling-house."
11. " " "Offensive weapon."
12. " " "Bribe."
13. " " "Signature."
14. " " "Magistrate."
15. " " "Moveable property."
16. " " "A Writing."
17. " " "Valuable security."
18. " " "Muniment of title."
19. " " "Written instrument of justice."
20. " " "Testamentary instrument."
21. " " "Animal."
22. " " "Cattle."
23. " " "Term used signifies living animal."
24. " " "Night" or "Night time."
25. " " "Rule as to criminal possession."
26. " " "Rule as to property of two or more."
27. " " "Rule as to two different offences in one act."
28. Application of terms defined to other parts of Act.

I. The terms following, wheresoever occurring throughout this Act, shall be understood as hereinafter defined,

unless it be otherwise specially provided, or there be something in the subject or context repugnant thereto.

II. The Interpretation Act 12 Victoria, chapter 10, intituled, "*An Act for putting a legislative interpretation upon certain terms used in Acts of Parliament, and for rendering it unnecessary to repeat certain provisions and expressions therein, and for ascertaining the date and commencement thereof, and for other purposes,*" shall apply to this Act in the particulars thereof, unless it be otherwise specially provided herein, or there be something in the subject or context repugnant hereto.

III. The term "Foreign Power" shall include any Foreign Prince, State or Potentate, or any person exercising or assuming to exercise the powers of government in and over any foreign country.

IV. The term "Foreign Country" shall extend to any Foreign State, Colony, Province, or part of any Province or people.

V. The term "Officer" shall signify any person invested with authority to execute and legally bound to execute any public duty: Provided that the term "officer" shall not extend to any Member of the Legislative Council or Assembly of the Province, nor to any Ecclesiastical, Naval or Military Officer specially liable to the cognizance, jurisdiction, correction or punishment of any tribunal specially or exclusively appointed therefor.

VI. The term "Judicial Officer" shall include any Judge, Recorder, Magistrate, Commissioner or other officer invested with authority to decide matters submitted to him in the course of justice, according to law and right.

VII. The term "Ministerial Officer" shall signify any other officer than a Judicial Officer.

VIII. The term "Woman" shall signify any female human being, whatever may be her age.

IX. The term "grievous bodily harm" shall signify—

1. Any bodily harm, from which danger to life may reasonably be apprehended; or

2. Whereby any limb, member, organ of sense or mental faculty is permanently disabled, weakened or impaired; or

3. The mutilation of any part of the body, whereby permanent disfigurement is caused; or

4. The fracture or dislocation of any bone; or

5. Any bodily harm, whereby the person to whom it is caused is, during the space of twenty days at the least, in bodily pain, diseased or unable to follow his ordinary calling or pursuits.

X. The term "Dwelling-house," except in respect to burglary, shall include not only such building or portion of a building as defined in the chapter on Burglary hereinafter contained, but also any permanent and fixed building which is within the same curtilage with the dwelling-house and occupied therewith, although there be no communication between such building and dwelling-house, either immediate or by means of a covered and inclosed passage leading from the one to the other.

XI. The term "Offensive Weapon" shall include any weapon which is not in common use except as a weapon, and also any which is used for the purpose of offence or intended to be so used.

XII. The term "Bribe," where the giving, offering, promising, taking or agreeing to take any bribe is made penal by this Act, shall include any gift, gratuity, reward, benefit or advantage whatsoever, present or future, accruing or to accrue either to the person influenced or intended to be influenced, or to any other person.

XIII. The term "Signature" shall include a mark where the person cannot write, his name being written near it, and the mark being witnessed by a person who writes his own name as a witness, except to an affidavit or deposition, or a writing executed before a Judicial Officer, or before a Notary in Lower Canada, in which cases the attestation of the officer is sufficient.

XIV. The term "Magistrate" shall include all Justices of the Peace, whether so declared by any Statute, or in virtue of any office, or appointed by Commission of the Peace.

XV. The term "moveable property" shall include writings, valuable securities, muniments of title, written instruments of justice, testamentary instruments, money, animals and their produce, cattle and moveable chattels of all kinds.

XVI. The term "a writing" shall be deemed to include any material on which any words or figures at length or abridged are written, printed, or otherwise expressed, or whereon any map or plan is described.

XVII. The term "valuable security" shall be deemed to include any unsatisfied debenture, deed, bond, bill, note, warrant, order, or other security for money, or for the payment of money of this Province or of any other



country, any instrument for the delivery or transfer of any chattel personal whatsoever; any tally, order or other security entitling or evidencing title to any share or interest in any public stock or fund of any state or country, or in any fund of any body corporate, company or society, or to any deposit in any savings bank, and any other writing which secures or evidences title to or interest in any chattel personal of this Province or of any other country, or any release, receipt, discharge or other instrument evidencing payment of money or the delivery of any chattel personal, or generally which relates to any public or private right, claim, privilege or liability, or which might be when taken, or which might thereafter be, material or important to give information or be evidence of or against any right, claim or liability; 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, right, claim, privilege or liability for the securing or payment of which, or delivery or transfer or sale of which, or for the entitling to or evidencing title to which, such valuable security shall be applicable, and to that of such money or chattel personal the payment or delivery of which is evidenced by such valuable security.

N. Y. Rev. Stat. c. 126, s. 16; Roman Law D. 47, 2, 13 and 17; Roman Law D. 47, 2, 78 and 79.

XVIII. The term "muniment of title" shall be deemed to include any writing, as before defined in Art. xvi, which shall be or is evidence of the title to any real property or chattel real or any interest therein, and any Notarial act or instrument or copy purporting to be an authenticated copy thereof, whereby real estate is affected in any way; or *procès verbal* of any survey or a like copy thereof, or any authentic plan of any property made and signed by a sworn surveyor, and every memorial or entry of acknowledgment already or hereafter to be registered of any writing, judgment or recognition of or concerning any real estate or any interest therein, or any certificate or instrument of the registry of any such memorial or entry; and it shall not in any proceeding in respect of any offence relating to any muniment of title be necessary to allege any such muniment to be of any value, otherwise than by stating the property or interest or some part of the property or interest the title to which it evidences.

XIX. The term "written instrument of justice" shall be deemed to include any record or journal or any part thereof of the acts or proceedings of any judicial Court, or of the Executive Government of the Empire, or this Province, or of either branch of the legislature thereof or of any municipal, provincial or other public corporation; and any commission, record, judgment, decree, sentence, probate, letters of administration, conviction, summons, writ, return, panel, criminal, penal or civil process, bill,

answer, interrogatory, deposition, affidavit, rule, order, warrant of attorney or other original document whatsoever, relating to any cause or matter begun, depending or terminated in any court of justice, or any proceeding taken or made by virtue of any writ, warrant, commission or inquisition whatsoever.

**XX.** The term "testamentary instrument" shall be deemed to include 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 shall relate to real or personal estate or to both.

It shall not, in any proceeding in respect of any offence relating to any written instrument of justice, or testamentary instrument, be necessary to allege any such instrument to be of any value.

**XXI.** The term "animal" shall be held to include :

1. All animals, although they be usually termed wild animals or animals *feræ naturæ*, which, at the time of any offence committed in respect thereof, are deprived of their natural liberty and so confined in buildings, stalls, parks, paddocks, cages, nets, ponds or other inclosures, or in any other manner so reduced into possession, that they may be taken and used or disposed of at the will of the proprietor.

2 Russ. 151; 1 Hale, 511; 2 East, P. C. 607; T. Raym. 33;  
4 C. & P. 131; 3 Inst. 109, 110; 4 Bl. Com. 235;  
Hawk. P. C. c. 33, s. 5; 7 and 8 G. IV, c. 29, v. 26 to  
30 and 34, 35.

2. All domestic animals and all tame and reclaimed animals known to be such, although they go abroad and return at pleasure.

3. The young, eggs and produce of such animals so reduced into possession or so tamed and reclaimed.

4. The bodies and all parts of the bodies of dead animals.

1 Hale, 511, 711; 2 Russ. on Cr. 130; 4 Bl. Com. p. 234;  
7 and 8 G. IV, c. 29, s. 25; 2 East, P. C. 617; 1 Leach,  
171; Ros. C. Ev. c. 509; 3 Inst. 110.

**XXII.** The term "cattle" shall be deemed to include any horse, mule, ass, sheep, pig or goat, whatsoever be the age or sex of the animal; and also every bull, cow, calf or ox.

The term "cow" shall be deemed to include a heifer.

**XXIII.** Where the term "cattle" is used or any particular animal is mentioned by name, the term shall, unless

otherwise provided, be deemed to signify living cattle, or a living animal so named.

**XXIV.** Where the term "night" or "night time" is used, that time shall be deemed to commence at nine of the clock in the evening of each day, and to conclude at six of the clock in the morning of the next succeeding day.

**XXV.** When the having of any matter or thing in the custody or possession of any person is in any article of this Act expressed to be an offence, if any person shall have any such matter or thing in his personal custody or possession, or shall knowingly and wilfully have any such matter or thing in any dwelling-house or other building, lodging, apartment, field or other place inclosed or open, whether belonging to or occupied by himself or not, and whether such matter or thing shall be so had for his own use and benefit or for that of another, every such person shall be deemed and taken to have such matter or thing in his custody or possession within the meaning of such article: and whereof two or more persons, any one or more shall, with the knowledge and consent of the rest, have any such matter or thing in his or their custody or possession, the same shall be deemed and taken to be in the custody or possession of all such persons.

**XXVI.** Where it is essential to any offence within this Act concerning property, that the subject of the offence should be the property of some person other than the offender, no joint or part owner, or wife of any owner, or of a joint or part owner of such subject, shall, unless it be otherwise specially provided, be deemed to be guilty of such offence.

**XXVII.** Where the same Act constitutes two or more diverse and distinct offences, different in their nature and character, one not being merged in the other, the offender may be proceeded against for each, and shall not plead a conviction or acquittal for one, in bar of proceedings against him for the other.

**XXVIII.** In any case where an intent to defraud is requisite to constitute an offence, it shall be sufficient to allege in the indictment an intent to defraud, without naming therein the person or body corporate intended to be defrauded; and on the trial under such indictment it shall be sufficient, and shall not be deemed a variance, if there appear to be an intent to defraud Her Majesty, or any Municipality, District, County, City, Town, Parish or place, or any body corporate, or any public officer, in his official capacity, or any co-partnership or members thereof, or any person.

**XXIX.** All terms defined in any part of this Act shall, where they occur in any other part thereof, be understood

in their defined sense unless it be otherwise provided, or the article for the purpose of which any such term is defined be particularly specified.

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SECTION III.

GENERAL PRELIMINARY PROVISIONS.

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- 1, 2. Act applicable to omissions.
3. Special provision prevails over general.
4. Presumption stated, not conclusive unless expressed.
5. Specification of one act not to exclude another.
6. Doubt in degrees of doubt, preserves the lowest.
7. Presumption of natural consequence of act.
8. Criminal prosecution does not lessen civil remedy.
9. Hard labour is in addition to imprisonment.
10. Fine or imprisonment discretionary.
- 11, 12. Commencement of imprisonment.
13. Previous convictions.
14. Fines and forfeitures in current money.
15. Repeal of Acts repugnant.
- 16, 17. Existing offences and proceedings.
18. Repeal, not revival of Acts already repealed.

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I. The provisions of this Act, concerning Acts done and their consequences, shall, as far as such provisions are applicable, apply to unlawful omissions, and the consequences of such omissions.

II. Every provision of this Act, concerning the commission of an offence, shall be deemed to be applicable to offences, consisting wholly or partly of some unlawful omission.

III. If any special provision contained in this Act is wholly or partly inconsistent with any general provision herein contained, the special provision shall be as effectual as if such general provision or so much thereof as is inconsistent with such special provision, did not exist.

IV. Where a presumption is stated, the same shall not be conclusive, unless it be so expressed; and when such presumption is not declared to be conclusive, it may be rebutted by circumstances or by competent evidence.

V. The specification of any act as being an instigation to or attempt of any crime, does not exclude any other act from being an instigation to or attempt of such crime.

VI. When it legally appears that a person is guilty of an offence, and reasonable doubt exists in which of two or more degrees he is guilty thereof, he is presumed to be guilty of the same in the lowest of such degrees.

VII. Every person is presumed to intend the natural and plainly probable consequences of his acts.

1 East, P. C. 356; 1 Hale, 39, 472; Foster, 259; 1 Hawk. c. 29, s. 10, and c. 3. s. 38; R. and R. 207; R. and M. 263, 9 C. and P. 38.

VIII. A criminal prosecution for an offence, or any proceeding, conviction or judgment, to be had or taken thereupon, shall not prevent, lessen or impeach any remedy at law or equity, which any party aggrieved by any such offence, might or would have had if this Act had not been passed; but nevertheless the conviction of such offender shall not be received in evidence in support of any prosecution for such remedy.

IX. Where any person is convicted of any indictable offence punishable under this Act, for which imprisonment generally may be awarded, it shall be lawful for the Court to sentence the offender in addition thereto, to be kept to hard labour in the common goal or house of correction; and also to direct that the offender shall be kept in solitary confinement for any portion or portions of such imprisonment, or of such imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year; as to the Court in its discretion shall seem meet.

X. Where the punishment for any such offence is by imprisonment in the Common Jail and fine, the Court or Magistrate having jurisdiction may at its or his discretion award punishment by imprisonment without fine, or by fine without imprisonment.

XI. Any sentence of imprisonment authorized to be inflicted on any offender, for any offence committed during his imprisonment for any term under any sentence or order, shall be appointed to commence on the expiration of the term of imprisonment to which he shall then be subject.

XII. The period of imprisonment, whether in general or in the Penitentiary, shall be held to commence from the period of passing the sentence or order therefor, save as provided in the case in the last article mentioned.

XIII. Whoever, having been convicted before any Criminal Court in this Province of any criminal offence, is convicted of any such offence committed after such former conviction, or is, at the same term of the Court, convicted on three or more distinct charges of any such offence, shall be punished by an additional like punishment not exceeding by more than one-half, the punishment provided by law for the offence of which he is last so convicted, or either of the three offences of which he is so convicted at the same term of the Court; and if the

entire term of imprisonment, if such be the nature of the punishment, or part thereof, exceed three years, such imprisonment shall in all cases be suffered in the Penitentiary.

XIV. All fines, forfeitures and penalties imposed by this Act, and all sums expressed as the value of any goods, chattels or other property herein mentioned, shall be deemed and taken to be current money of this Province.

XV. All Acts or parts of Acts or provisions of Law in force in this Province or any part thereof, immediately before the time when this Act shall come in force, which shall be inconsistent with or contradictory to this Act, or which make any provision in any matter provided for by this Act, other than such as is hereby made in such matter, shall, from and after the time when this Act shall come into force, be and they are hereby repealed.

XVI. Provided that such repeal shall not affect any offence committed, or penalty or forfeiture incurred, under such repealed Acts or parts of Acts, before the time when such repeal shall take effect, but such Acts and parts of Acts shall remain in full force and effect in respect to the liability of any person to be proceeded against, tried and punished for any offence so committed or to suffer any penalty or forfeiture so incurred, except that, where any punishment, penalty or forfeiture shall have been mitigated by the provisions of this code, such provisions may be extended and applied to any judgment pronounced after such repeal shall go into effect; and except that the proceedings in respect to any such offence, penalty or forfeiture may, when necessary or convenient, be conformed to the provisions of this code.

XVII. No suit or prosecution pending at the time of the said repeal for any offence committed, or for the recovery of any penalty or forfeiture incurred under the said Acts and parts of Acts hereby repealed, shall be affected by such repeal, except that the subsequent proceedings in any such suit or prosecution may, when necessary or convenient, be conformed to the provisions of this code.

XVIII. No Law, Act or part of an Act repealed or abolished by any other Act and part of an Act hereby repealed, shall be revived by such repeal.

## SECTION IV.

## CAPACITY AND RESPONSIBILITY FOR CRIME.

- 
1. Infants.
  2. Idiots and Lunatics.
  3. Married Women.
  4. Persons under duress.
- 

I.—1. An infant under seven years of age is incompetent to commit crime.

Archb. p. 2, s. 77; Desc. 669.

2. An infant above seven and under fourteen years of age is presumed to be incapable of committing crime, until the contrary be proved.

Archb. p. 2, s. 77.

II.—1. No person shall be criminally liable for any act, who at the time of such act, by reason of any disease, disorder or delusion of mind or of weakness or unripeness of understanding, is either unconscious of what he does or unable to discern that what he does is contrary to law.

Archb. p. 2, s. 79.

*Provided, 1.* That no person shall be allowed to avail himself of the plea of any temporary insanity which he shall have wilfully or voluntarily incurred by intoxication, if he have any ground to apprehend that he may, during his intoxication, do an act which might be criminal if done by a person of sound mind.

1 Hawk. c. 1, s. 6.

*Provided, 2.* Nor a person who, while conscious of what he does and able to discern the nature and criminality of an act, entertains the intent to commit the same and does commit the same in direct pursuance and execution of such intent, though it be done in a state of unconsciousness of what he does or inability to discern that the act is contrary to law.

III. A married woman charged with the commission of any criminal offence, shall, if her husband were present at the time, be entitled to an acquittal upon proof that she acted under his coercion, but not otherwise.

IV. Where an act is committed under compulsion of threats and actual force inducing fear of death or other bodily harm, such act is not criminal.

1 Hawk. c. 1; Archb. p. 2, s. 80, 81.

## SECTION V.

## PARTIES TO A CRIME.

- 
- 1, 2, 3, 4, 5. Principals.
  6. Accessories before the fact.
  7. Union of several.
  8. Who not parties.
  9. Accessories before the fact are guilty as principals.
- 

I. All who take part in the commission of a criminal offence are principals.

II. Also all who, being present, aid, assist, abet, incite or encourage others in the commission thereof.

III. So also where several distinct acts are or an injury is essential to an offence, every one who either singly or jointly with another or others does any of such acts or causes such injury or joins therein, in order to the commission of an offence, is a principal therein.

IV. All who jointly with others or severally, being bound to perform any lawful duty unlawfully omit to perform the same, are principals in the offence.

V. All who, not themselves being present at the commission of an offence, abet another in the commission thereof or procure, counsel, incite, command or hire another to commit the same, which such other thereupon commits in pursuance thereof, are principals therein.

VI. The parties in the last section mentioned, are accessories before the fact.

1 Hale, 615; 1 Deac. 11.

VII. The union of several persons assembled together in a common design for the commission of an offence or the execution of any purpose by criminal means and endeavouring to execute such design, makes all equally guilty of any act done by one or more of them, in pursuance of and in accordance with such design.

But not for any criminal act done beyond the scope of the common design, unless privy and consenting to such act.

VIII. The merely permitting, not forbidding or interposing to prevent a crime, does not make one a party in any way to the commission thereof; nor

2 Hawk. c. 20, s. 16.

The mere concealing the intention of another to commit a crime.

1 Hale, 616; 2 Hawk. c. 29, c. 3; Deac. 11.



**IX.** All accessories before the fact to any criminal offence, whether at common law or by virtue of any statute made or to be made, are guilty of such offence, and may be indicted, tried, condemned and punished therefor, in the same manner and to the same effect as if they had been the actual parties therein.

7 and 8 Geo. 4, c. 30, s. 25.

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SECTION VI.

**ACCESSORIES AFTER THE FACT.**

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1. Accessory after the fact defined.
  2. Punishment.
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**I.** If any one, not standing in the relation of husband or wife, parent or child, or brother or sister, by consanguinity or affinity to any person guilty of any offence, either as principal or accessory before the fact, shall harbor, conceal, maintain or assist such person, with the intent that such person shall avoid or escape from detection, arrest, trial or punishment, such one is an accessory after the fact to such offence.

**II.** Whoever is accessory after the fact to treason or murder shall, where punishment for his offence is not otherwise expressly provided by law, be punished by imprisonment in the Penitentiary for not less than seven years.

**III.** For any other felony he shall, where punishment for his offence is not otherwise expressly provided by law, be punished by imprisonment for not more than three years, at the discretion of the Court where the trial is had.

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SECTION VII.

**PLACE OF TRIAL OF ACCESSORIES BEFORE AND AFTER THE FACT.**

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**I.** All accessories whether before or after the fact, to the commission of an offence may be indicted, tried, condemned and punished in any district, county or place, wherein they are so accessory, or in which the principal in such crime is or may be subject to be indicted, tried, condemned and punished.

## SECTION VIII.

## CRIMINAL INJURIES.

- 
1. Criminal Injury defined.
  2. Criminal Omissions.
  3. Wilful Injury.
  4. Malicious Injury.
  5. Negligent Injury.
  6. Accidental Injury.
  7. Consent by mistake, &c.
  8. With intent generally.
  9. When it falls upon any person.
- 

I. A criminal injury is any harm, damage or other evil consequence caused to any person or thing or other subject matter of public or private right.

II. Such injury is also the unlawful omission or breach by a person of some duty imposed upon him directly or indirectly.

The indirect imposition of such duty is where the person omitting it has by his own conduct rendered the doing of an act necessary for the prevention of injury.

III. Such injury is wilful when it was directly intended to result from the act or omission, or when it was done under the belief that such injury would result from the act or omission.

IV. Such injury is malicious when done or omitted without justification or excuse.

V. Such injury is negligent when done or omitted without reasonable caution or care in the undertaking or doing any act, either without the skill, knowledge or ability suitable to the occasion, or without due care taken to ascertain the nature or probable consequences of such act, or as regards the means used or the manner of using them for such act.

Provided that such negligent act or omission shall not be punishable unless punishable as a wilful act or omission.

VI. Such injury is accidental, when it is neither negligently nor wilfully caused.

VII. The injury done is wilful when caused to one person by mistake or accident if it would have been such if caused to another person.

VIII. The injury is wilful to whomsoever caused, when

done or committed with intent or under the belief that it would fall upon some person, but not on any one in particular.

IX. The injury is wilful when it takes effect upon the person intended or believed to be affected thereby, though it be caused in a manner not intended or believed to be probable by the offender.

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CHAPTER II.

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TREASON AND OTHER OFFENCES  
AGAINST THE STATE.

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SECTION I.

TREASON.

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1. Compassing or imagining the death of the Sovereign.
  2. Levying war against her.
  3. Risings or assemblies of people with treasonable intent.
  4. Adhering to her enemies.
  5. Treasonable intents.
  - 6, 7. Overt acts and definition thereof.
  8. Allegiance.
  9. By whom Treason may be committed.
  - 10, 11. Levying and continuing war.
  12. War, What?
  13. Peace, What?
  14. Requisites to support charge.
  15. Act sufficiently laid if supported by proof of similar act.
  16. What is not Treason.
  17. Aiding, &c.
  18. Punishment.
- 

Treason is:

I. The compassing, imagining or designing the death or destruction, or any bodily harm tending to the actual death, destruction, maiming, wounding, imprisonment or restraint of the person of the Sovereign, her heirs or successors, for any cause or purpose whatever, with the actual intention to effect the same.

II. The levying of war within this Province against Her Majesty by procuring, preparing or using force with warlike or other weapons in a warlike array, or by promoting, aiding or assisting therein.

III. Any rising or assembling of people, whether armed or arrayed in a warlike manner or not, to effect a treasonable purpose by the effect of numbers or superior force.

IV. Adhering to the enemies of the Queen within this Province or without and giving them aid and comfort.

V. The treasons contained in the preceding sections must be with the actual intent of

1. Depriving or deposing, or attempting to deprive or depose Her Majesty of Her Sovereign power or authority in and over the realm, or in and over any of her dominions, or countries under her subjection and in and over this Province in particular, or any portion thereof.

2. Usurping or attempting to usurp the powers of Government, executive, legislative or judicial in the Province.

20 St. Tr. 651; C. and P. c. 98.

3. Preventing altogether and generally the execution of the laws or of some general law affecting the people or the public tranquillity, as distinguished from some special interest or object, or some special or local law, or the execution of a law in a particular instance, or by any particular officers or persons.

1 Hale, 149; 1 Hawk. c. 17, s. 25; Fost. 219; 1 East P. C. 67, 75.

4. Intimidating or overawing the Provincial Legislature or either branch thereof to pass or repeal a law.

Dougl., 592; 21 How. St. Tr. 486.

5. Forcibly resisting or attacking with any treasonable intent or object the Queen's troops lawfully assembled and performing military service under lawful authority and command.

Hale, 146; Fost. 219; 1 East P. C. c. 66.

VI. It is essential to the commission of treason in this Province, that it be manifested by overt acts done with the intent aforesaid against the Queen or Her Government in this Province.

VII. The term "overt act" includes any act of conspiracy, consulting with, advising, persuading, counselling, commanding or inciting any person, or any other act or means whatsoever done, taken, used or assented to, towards and for the purpose of effecting the treason charged, as

1. Assuming a warlike array, with the usual military weapons or ensigns, or with such other weapons as may come to hand.

Fost., 208; Vaughan's Ca. 13 How. St. Tr., 486.

2. Assembling with intent to assume a warlike array.

Vaughan's C., above.

3. Enlisting or assembling soldiers in a warlike manner

1 East P. C. c. 69; Fost., 219.

4. Fortifying a place or holding a fortress or strong place against the legal authority of the Government.

1 Hale, 146; Fost., 219.

5. Delivering up a fortress to rebels or enemies, or holding it to assist them.

1 East., 69; Fost., 219.

6. Joining traitors or enemies, or supplying them with arms, ammunition, money, stores, provisions or necessaries, or giving aid to them.

Fost. 22, 219; 1 East P. C. 78; 1 Hale, 164; 18 How St. Tr., 425.

7. Sending to rebels or the enemy plans or intelligence in order to assist or encourage them in their hostility or defence, though the same may not reach or avail them.

1 East P. C. 79; Fost., 197, 217; 6 T. R., 527; Vaughan's C. 13 How. St. Tr., 486; Lord Preston's C., 12 How. St. Tr., 409.

8. Raising men for them or discharging or delivering up prisoners taken from them.

1 East, P. C. 78.

9. Destroying or wasting the stores of the Government in order to assist rebels or the enemy.

1 East, P. C. 66.

10. Making war or doing a hostile act against an ally of the realm carrying on a war.

1 East, P. C. 79; Fost., 220; Vaughan's C.

11. Moving, stirring or inducing any foreigner or stranger with force to invade this Province or any of Her Majesty's dominions, or any countries under Her obedience.

VIII. Allegiance is the obedience and fidelity due to the State from those under its protection.

1 East, P. C. 49; 4 Bl. Com., 74.

IX. Treason can be committed only by persons owing allegiance, as:

1. Natural born subjects, until they shall have become in good faith naturalized in some foreign but at the same time friendly country, without intention to resume their residence under the British Government.

2. Subjects naturalized by Act of the Imperial Legislature or by Act of the Legislature of this Province, or of either of the heretofore Provinces of Upper or Lower Canada.

3. Aliens during their residence in this Province, whether their native country be at war or peace with the government of this realm.

3 East, P. C. c. 52-3, 81; Fost. 183-5; 1 Hale, Hist. P. C. 59-92; 1 Hawk. c. 17, s. 5.

Except

1. Ambassadors and other public agents of Foreign States, with their families, servants and attendants in their public functions.

1 East, P. C. c. 52.

2. Voluntary adventurers not owing allegiance to Her Majesty, levying war without the sanction or authority of any Government—these are enemies.

Fost. 219.

X. Levying war includes not only raising or commencing war, but also maintaining or continuing a war.

1 East, P. C. c. 67; 1 Hale, 131—149, 153; Fost. 208, 219; 1 Hawk. c. 17, s. 23—4—5.

XI. War may be levied or continued, with respect to treason, either within or without the Province.

XII. To constitute war, it is sufficient that a state of hostility exists in fact between the Government of the Queen and the Foreign State, though it should not be formally declared.

1 Hale, 164; Fost. 219; 1 East P. C. c. 77.

XIII. To constitute peace, it is sufficient that no declaration of war is made; and no act of hostility is committed, though no treaty of peace has been made.

1 Hale, 150; Dig. 49, 15, 5.

XIV. Two or more lawful witnesses to the same overt act of treason whereof the offender stands charged, or his confession in open Court of such treason, are required to establish the charge of treason.

6 T. R. 527; 1 East, P. C. c. 60, 69, 79, 99, 129, 130; 2 Leach, c. 823; 9 C. and P. c. 142.

But two overt acts of the same species of treason, each proved by one lawful witness, are sufficient.

7 W. 3, c. 3; Fost. 237; 1 East P. C. c. 129; Sayers' C. 16; How. St. Tr. 93; 7 How. St. Tr. 543.

XV. An act laid to be an overt act shall not be deemed to be insufficient to support the charge, by reason that such act either constitutes or may properly be alleged to be an overt act of any other kind or branch of treason, provided it be in its nature or circumstances a sufficient overt act to support the charge of treason.

7 W. B. ch. 3; Fost. 237; 1 East, P. C. c. 129; 7 How. St. Tr. 643; 16 How. St. Tr. 93.

XVI. Treason does not include

1. The merely refusing assistance against rebels or enemies.

1 Hawk. c. 6, p. 65; 1 East, P. C. c. 60.

2. The mere intent or consultation without any overt act done, or without any connection with or reference to an overt act, which is thereupon done.

1 Hale 152; Fost. 218.

3. Words merely spoken, in themselves, unless they tend to effectuate a treasonable design; but they may be evidence that the speaker is a party to such an act, or of the intent with which such an act is done.

Cro. Car. 332; 1 Hale, 116; Fost. 202; 1 East P. C. c. 120.

4. Nor the making of a writing, though it be published or communicated to others or attempted to be so, unless it be actually connected with some overt act.

Fost. 198, 4 Bl. C. 80; 1 Hale 116.

5. Nor the using of force in a private quarrel, though a great number of persons may be engaged on either side.

East P. C. c. 67; 1 Hale 135; 4 Bl. C. 82.

6. Nor the delivering up of a fortress to rebels or enemies through cowardice.

1 East, P. C. c. 69; Fost. 216, 217, 219; 1 Hale 49, 96, 139.

7. Nor the joining with or assisting of traitors, through compulsion, unless the party remains or acts with them or assists them, after the compulsion has ceased, or when he can escape.

18 How. St. Tr. 391; Fost. 13; 1 East, P. C. 71.

8. Nor the joining, remaining with or assisting of traitors, through fear for his life; but the fear of anything short of life shall not relieve.

1 East P. C. 71; Fost. 13, 217; Hawk. c. 17, s. 24.

9. Nor the assembling or rising of people by reason of any illegality or generality of purpose, unless it be with one or other of the several intents above mentioned.

XVII. The punishment of treason is death, with attainder and forfeiture of the offender's goods and profits of lands.

XVIII. Whoever knowing any treason to have been committed by any person shall receive, relieve, comfort or assist such person, or shall voluntarily suffer his escape or rescue, aid, or assist in the escape of any such person from lawful custody, is guilty of treason and shall be punished by imprisonment in the Penitentiary for life.

## SECTION II.

**MISPRISION OF TREASON.**

The knowledge of the crime of treason committed or to be committed, without actually assenting thereto or aiding therein, and the concealment of the same by not revealing, disclosing and making known such treason, as soon as may be, to some Judge of one of the Superior Courts or of a District or Circuit Court, or to some Justice of the Peace, within the Province, is Misprision of treason.

The punishment of this offence is imprisonment for life in the Penitentiary.

## SECTION III.

**OFFENCES AGAINST THE QUEEN'S PERSON, AUTHORITY OR GOVERNMENT, INFERIOR TO TREASON.**

1. Contempts against the Person of Her Majesty.
2. Seditious Libels.
3. Seditious Assemblies.
4. Seditious Conspiracies.
5. Libel against Legislative Authority.

I. Contempts against the person of Her Majesty or her Royal Dignity by contumelious, insulting or disparaging acts or gestures.

II. Composing, printing or publishing any seditious libel, tending to bring into hatred or contempt the person of Her Majesty, or her Government of the Empire or of this Province, or to excite her subjects to attempt, by unlawful means, the alteration of any matters of State as by law established.

60 Geo. 3, and 1 Geo. 4, c. 8.

III. The assembling of three or more persons, or being assembled continuing together, with intent, by public speaking or other means or devices whatsoever, to excite hatred and contempt against Her Majesty or her Government aforesaid, or to excite her subjects to attempt by unlawful means, the alteration of any matter of State as by law established.

IV. The conspiring of two or more persons to effect the designs mentioned in the preceding section, otherwise than by lawful means.

V. The publishing of any libel, expressing or signifying any matter or thing tending to bring into hatred or con-



tempt the administration of the legislative, executive or judicial authority by law established.

The punishment for the offences contained in this section shall be imprisonment for not more than two years.

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SECTION IV.

OFFENCES RELATING TO THE OATHS OF ALLEGIANCE, &c.

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1. Members of either Branch of the Legislature.
  2. Any Officer.
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I. Whoever being a Member of the Legislative Council or Legislative Assembly of this Province, shall sit or vote therein during any debate, without having previously taken and subscribed the oaths, or made the solemn affirmation or declaration to the effect of such oaths, as required by law, shall be incapable of exercising any civil rights, or of suing or prosecuting in any court of law or equity, or holding any office in this Province, and shall moreover forfeit the sum of two hundred pounds; Provided, that upon taking such oaths or making such affirmation or declaration, the offender shall be relieved from the penalty, disability and incapacity aforesaid, but not so as to restore such Member to any office supplied by his voidance of the same, or to any other office, till after the expiration of one year from the taking of such oaths or making such affirmation or declaration, or to discharge him from the forfeiture aforesaid or any part thereof.

II. Whosoever shall be admitted, entered, placed, appointed or taken into an office civil or military, or any preferment, benefice or place in this Province, or who shall receive any pay, salary, fee or wages by reason of any office or of any patent or grant from Her Majesty or the Governor of the Province, and shall act therein, without having taken and subscribed the oaths required by law to be taken therefor if any there be, within one month after his admission into such office or place or the acceptance of such patent or grant, shall be subjected to the like penalties, disability, incapacity and forfeiture as in the next preceding section, but may relieve himself therefrom in the manner and to the extent mentioned in the proviso to the said section.

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## SECTION V.

OFFENCES RELATING TO THE ARMY  
AND NAVY.

Whoever shall maliciously and advisedly endeavour to seduce any person serving in Her Majesty's forces by sea or land from his duty and allegiance to Her Majesty, or to excite or stir up any such person to commit any act of mutiny, or to make or endeavour to make any mutinous assembly, or to commit any traitorous or mutinous practice whatsoever, shall be punished by imprisonment in the Penitentiary for not less than five years.

## SECTION VI.

## UNLAWFUL ARMING.

Whosoever shall be present at any meeting or assembly of persons met or assembled for the purpose of training or drilling themselves, or of being trained and drilled to the use of arms or military exercises or movements, without lawful authority therefor, or who shall at such meeting or assembly so train or drill any person or persons, or who shall be so trained or drilled at such meeting or assembly, without lawful authority, shall be punished by imprisonment in the Penitentiary for not less than three years.

## SECTION VII.

UNLAWFUL COMBINATIONS AND  
CONFEDERACIES.

1. Administering or taking oaths for seditious purpose.
2. Punishment of unlawful confederacy.
3. Permitting assembly in house, &c.

I. The administering or being present at and consenting to the administering or taking of, in any manner or form whatsoever, any oath or engagement purporting or intended to bind the person taking the same to engage in any mutinous or seditious purpose, or for the purpose of disturbing the public peace, or to be of any association or society formed for, such purposes, or to obey the orders or directions of any committee or body of men constituted for such purpose, or any leader or commander of such body of men, or not to inform or give evidence against any person connected with such association or body, or not to reveal or discover the same or any illegal act done or oath taken by such person, or the

import of such oath or engagement, shall be punished by imprisonment for not less than two years.

Provided that compulsion shall not justify or excuse the taking of such oath or engagement, unless the person so taking the same shall within four days thereafter, if not prevented by actual duress or sickness, and then within four days after such hindrance has ceased, disclose the same, together with all the particulars in any wise touching the same, and the persons by whom and in whose presence and where such oath or engagement was administered or taken, by information on oath before one of the Judges of any Court of Record, or any Magistrate in the Province, or to his commanding officer if the person taking the oath or engagement shall be in actual service in Her Majesty's Forces by sea or land.

II. Whosoever shall be guilty of such unlawful association, combination, society or confederacy for mutinous or seditious purposes, shall be punished by imprisonment for not less than two years.

III. Whosoever shall knowingly permit or suffer any meeting of such association or confederacy, for the purposes aforesaid, to be held in any house or apartment, building or other place to him belonging, or in his possession or occupancy, shall for any such offence committed after the date of conviction for such first offence, be deemed to be guilty of an unlawful association and confederacy.

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SECTION VIII.

LIBELS ON FOREIGN DIGNITARIES.

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Whosoever shall maliciously publish any libel tending to degrade, revile or defame, or to expose to hatred or contempt, any Foreign Prince, Potentate, Ambassador or other dignitary, with intent to interrupt or disturb the peace and friendship subsisting between any foreign power or country and Her Majesty's Kingdom, shall be punished by imprisonment for not less than two years.

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## CHAPTER III.

## OFFENCES AGAINST RELIGION.

## SECTION I.

## DISTURBING RELIGIOUS WORSHIP.

Where any person shall wilfully disturb, interrupt or disquiet any assemblage of persons met for religious worship, by profane discourse, by rude or indecent behaviour or by making a noise either within the place of worship or so near it as to disturb the order or solemnity of the meeting, such person shall forfeit and pay such a sum of money, not less than five pounds, or be imprisoned for not less than one month, and also be bound to good behaviour, according to the discretion of the Court or Magistrate trying the offence.

This offence shall not be tried unless the prosecution be commenced within twenty days after the commission of the offence.

## SECTION II.

## BLASPHEMY.

1. Whoever blasphemes the holy name of God; by denying, cursing or contumeliously reproaching God, His creation, government or final judging of the world, or by cursing or contumeliously reproaching Jesus Christ or the Holy Ghost; or by cursing or contumeliously reproaching the holy word of God contained in the Holy Scriptures, or exposing them to contempt and ridicule, or by composing or printing and publishing a blasphemous libel, shall be punished by imprisonment for six months, and shall also be held to good behaviour.

The prosecution for these offences must be commenced not later than two weeks after their commission.

## SECTION III.

## PROFANITY.

Whoever, having arrived at the age of discretion, profanely curses or swears shall be punished by imprisonment for one week.

The prosecution for this offence must be commenced within forty-eight hours after its commission.

## CHAPTER IV.

OFFENCES AGAINST THE EXECUTIVE  
POWER GENERALLY.

## SECTION I.

OFFENCES RELATING TO THE DISCHARGE  
OF PUBLIC DUTIES.

1. Refusal to execute an office.
- 2, 3. Officers guilty of omission.
4. Assuming to act before taking oath, &c.
5. Making false declaration of qualification.
6. Officer liable for acts of Deputy.
7. Who a Deputy.
8. Officer not lawfully appointed liable to penalty.
9. Disobedience of a Statute.
10. Disobedience of lawful warrant.

I. Whoever unlawfully refuses or omits to take upon himself and serve any public office, shall be punished by imprisonment for six months.

But not where being entitled by law or custom to compound for not serving such office, he shall render or offer to render the required composition.

II. Any Officer or his Deputy or any person bound to execute any office or public duty, wilfully omitting to execute or being negligent in the execution of such office or public duty, shall be punished by imprisonment for not less than one year.

III. The penalty of the last preceding section shall attach to any

1. Officer unlawfully omitting to discharge or perform any particular act of duty incident to his office;

2. Officer being negligent in the discharge or performance of any such act of duty;

3. Person lawfully bound to do any act for the advancement of the law, the maintenance of the peace or other public purpose, and

4. Any person lawfully required to aid any officer or other person in the execution or discharge of any public duty, in either case refusing or omitting to do such act or render such aid or being negligent therein.

IV. Any person entitled to or assuming to be entitled to any office, unlawfully doing any official act before he

shall have taken or made or subscribed, or made and subscribed respectively, the oath or declaration of office, or given the security required by law to be taken or made or subscribed or given as aforesaid before entering upon the execution of such office, shall be punished by imprisonment for not less than three months,

V. The false and corrupt making, or the making and subscribing respectively of such declaration of being qualified to act in any office, as is or may be required by law to be made or made and subscribed before entering upon the execution of such office, knowing such declaration to be untrue in every material particular, shall be punished by imprisonment for not less than a year.

VI. Every officer is liable in respect of every offence committed by his deputy or agent, provided it be committed with the consent or by the authority of such officer.

VII. A deputy is one entrusted by an officer with the performance of any official duty, whether such officer may lawfully appoint a deputy or not.

VIII. One assuming to act as an officer or deputy of an officer, shall in respect to the liability to penalties for any thing done by him, be deemed to be such officer or deputy, although he cannot legally claim to act as such officer or deputy.

IX. The wilful disobedience to any statute by doing any matter or thing prohibited to be done, or omitting to do any matter or thing commanded to be done, whereby any public injury or grievance shall or may accrue, shall be punished by imprisonment for not less than six months.

The foregoing penalties or proceedings shall not apply when any mode of proceeding shall be specially prescribed or any penalty be imposed by or in respect of disobedience by the same or some other statute.

X. The wilful disobedience to any lawful warrant or command duly made, issued or awarded by Her Majesty, or by the Governor of this Province, or by any Court, officer or other persons acting in any public capacity and duly authorized in that behalf, shall be punished by imprisonment for not less than one year.

## SECTION II.

**DIRECT OBSTRUCTIONS OF EXECUTIVE  
POWER.**

- 
1. Obstruction of Officers.
  2. Acting in contempt of a Statute.
  3. Doing violence to Magistrates, etc., in exercise of duty concerning the preservation of wrecks.
- 

I. Wilfully preventing or obstructing any officer or person lawfully acting or proceeding to act in the execution or discharge of any public office or duty from so acting or proceeding, shall be punished by imprisonment for not less than one year.

II. Preventing, defeating or obstructing by any fraud or malpractice the due execution or operation of any Statute, whereby any public injury or grievance shall accrue, shall be punished by imprisonment for not less than six months.

III. Unlawfully causing any bodily harm or doing any personal violence to any Magistrate, officer or other person lawfully authorised, on account of the exercise of his duty in or concerning the preservation of any vessel in distress, or of any vessel, goods or effects wrecked, stranded or cast on shore or lying under water, shall be punished by imprisonment in the Penitentiary for not less than three years.

## SECTION III.

**BRIBERY OF OFFICERS.**

- 
1. *Corrupt solicitation of Ministerial Officers.*
  2. Taking bribes by such Officers.
- 

I. The endeavouring by any means to force, or corruptly to persuade or procure any Ministerial officer or his deputy to do or omit to do any act in violation of his duty as such officer or deputy, shall be punished by imprisonment for not less than one year.

II. The taking or agreeing to take by any Ministerial officer of any bribe offered or promised with intent to induce him unlawfully to do or omit to do any act in violation of his official duty, shall be punished by imprisonment for not less than one year.

Whosoever corruptly gives or promises any bribe to any executive officer, whether civil, military or other, or to any legislative officer, or to any commissioner, committee-

man, appraiser, auditor, assessor, arbitrator, *expert*, referee or umpire, appointed by the public, elected or selected by authority of law, or to any *expert*, arbitrator, referee or umpire, chosen by agreement of parties, after such officer or otherfunctionary is duly chosen, appointed or selected, whether he be at the time qualified by oath or have given bond or not, or have taken his seat or place, or begun to act as such or not, any bribe, gratuity, service or benefit, with intent to influence his nomination, appointment, vote, judgement, opinion, decree, decision, award, report or other act as such, or with intent to induce him to any omission, neglect or delay in any nomination, appointment or election to office, or in any case, question, proceeding or matter pending or passing, or that may or might thereafter occur or be pending or passing within or partly or wholly appertaining to the jurisdiction, authority, duty, powers or functions of such officer or other functionary, shall be punished by imprisonment for not less than one year with hard labour.

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SECTION IV.

ABUSES OF THE EXECUTIVE POWER.

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1. Officer committing excess or abuse of authority.
  2. Abuse of official authority.
  3. Extortions by public officers.
  4. Frauds by public officers.
  5. Disclosure of official knowledge.
  6. Violation of duty by deputies.
- 

I. The wilfully committing, by any officer, of any excess or abuse of authority, to the injury of Her Majesty, or of the public, or of any private person and,

II. The doing or omitting to do, by any officer, of any act in violation of his duty, and in abuse of his authority, with intent in so doing or omitting to injure or defraud Her Majesty, or to defraud, oppress or injure any person, are severally abuses of power.

III. Any officer who shall under colour of office, unlawfully exact and obtain from any person any money that is not due to him as such officer, or more than is due or before it is due, or any other property to which he is not entitled, is guilty of public extortion.

IV. The fraudulent misapplication, by any officer, of any money or other movable thing in his possession or under his control, or the wilful and fraudulent rendering of any false account of any money or movable thing received, disbursed or applied by him, or of any balance



in his hands as such officer, or the unlawful refusal to account for any such money or movable thing, is guilty of public embezzlement.

The offences contained in the four preceding sections shall be punished by imprisonment in the penitentiary for not less than three years.

V. The unlawful publication or disclosure by any person while in office or after he shall have ceased to be in office, and contrary to his oath of office or otherwise in violation of any official or other public duty, of any matter whereof he shall have acquired the knowledge in any official or public capacity, shall be punished by imprisonment for not less than six months.

VI. Any deputy of any officer shall be liable, as such officer, in respect of any violation of duty, so far as the penalties to which such officer would be liable are applicable.

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SECTION V.

DECEITS ON PUBLIC OFFICERS.

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- 1—2. Deceiving public officers.
  3. Deceiving officers of charitable institutions.
  4. Punishment.
- 

I. The knowingly and wilfully, and whether voluntarily or under compulsion, making any false statement orally or in writing by any person to any public officer, in any matter or on any occasion where such statement is required by law to be truly made to such officer in his official capacity ;

II. The knowingly and wilfully, and whether voluntarily or under compulsion, deceiving and imposing upon or endeavouring to deceive or impose upon any public officer when acting in his official capacity, with intent to defraud or injure Her Majesty or any other person, by any false personation or by means of any forged seal or written instrument ;

III. The knowingly and wilfully deceiving or endeavouring to deceive, by any statement, orally or in writing, any officer or other person in any manner in the charge or direction of any charitable institution whether incorporated or not, upon any occasion or for any purpose in respect of which such statement, by the rules and by-laws of the institution, is required to be truly made, or the deceiving and imposing upon or endeavouring to deceive

or impose upon any such officer or person acting in his official capacity, by any false personation or by any forged seal or written instrument, with intent to evade the rules, by-laws and regulations, or cause any misappropriation of the funds or means of such institution, are severally deceits on public officers.

The punishment for the offences severally contained in the three preceding articles, shall be imprisonment for not less than one year.

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## CHAPTER V.

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### OFFENCES AGAINST THE ADMINISTRATION OF JUSTICE.

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#### SECTION I.

#### CONTEMPTS AGAINST COURTS OF JUSTICE.

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1. Contempt.
  2. Court may inflict summary punishment.
  3. Summary punishment final.
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I. Whoever is guilty of contempt of any Judicial Court :

1. By open resistance to the process, order or proceedings thereof, or of any judicial officer thereof, or by any assault on such judicial officer, or by the rescue or attempt to rescue any prisoner being in the presence of such judicial officer, in the lawful exercise of his judicial functions or authority,

2. By malicious personal violence to any juror, witness or other person, in the presence of such judicial officer so acting,

3. By insulting, contemptuous, contumelious or disorderly language, behaviour or act, or wilful disturbance or a breach of the peace, in presence or hearing of such Court while in session,

4. By wilful disobedience to or neglect of its lawful order, rule, mandate or requisition, where such disobedience is contemptuous or contumelious, or tends to a perversion of justice, or is an obstruction to the proceedings of the Court, or the administration of Justice, or to the execution of any judgment, decree, order or process, made or issued by any Court in pursuance of law,

5. By assaulting or threatening violence to any person on account of any act or thing lawfully done or performed or to be so done or performed by any person in reference to or in connection with any judicial proceeding, or the execution of any process or the custody of any prisoner; or,

6. By the offence of embracery during the session of the Court. Shall for the offences severally contained in the preceding articles be punished by imprisonment, as provided in the following article.

<sup>4</sup> Bl. Com. 283, 483, 284-6; Deac. 297, 79, 300, 298, 299, 843, 846; 1 Ld. Raym. 396; 2 Hawk. c. 21, § 4, c. 22, § 3, 16, 39, 33, 34, 36, 2, 25; 4 B. & A. 329, 218; Lewin 107; 2 Rep. Consist. Ct. 167; 1 Camp. 359; 3 Salk. 430, 698; 13 Wend. 662; 3 Johnson 260; 2 Camp. 142; 10 Johnson 393; 1 Hawk. c. 21, § 9, 14; 1 Strange 420; 3 Salk. 33; 2 Term Rep. 199; 12 Johnson 460; Blacks. Rep. 269; 4 Greenleaf 459; 2 Strange 1157; 1 Keb. 558.

II. Every judicial tribunal acting as such, and every Magistrate acting by authority of law, while acting as such, may punish contempts by a summary proceeding, viz. :

1. Superior, County and Circuit Courts by imprisonment for not more than one year.

2. Recorder's and Mayor's Courts, Courts of Probate and Police Courts, by imprisonment not more than three months.

3. Any Magistrate acting in a judicial capacity in pursuance of authority given by law, by imprisonment for not more than one month.

III. In case of a punishment for a contempt being summarily inflicted by a Court or Magistrate in respect to which or whom the same is committed, the offender is not liable to be otherwise proceeded against for the same by indictment or other criminal proceeding, unless and except in so far as the act constituting such contempt is an offence when done not in presence of a Court, and independently of its being a contempt of Court.

<sup>4</sup> B. & A. 329; 7 Cranch 32; 9 Johnson 395; 1 K. Com. 300, (Note B.)

## SECTION II.

OFFENCES BY AND CONCERNING JUDICIAL  
OR OTHER OFFICERS OF JUSTICE.

- 
1. Bribery.
  2. Corrupt Judgment.
  3. False entry of do.
  4. False Certificate.
  5. Bribery through other persons.
  6. Illegal exaction of Fees.
  7. Extortion by Gaoler.
  8. Voluntary escape by Gaoler.
  9. Refusal of Gaoler to receive into custody.
  10. Negligent escape by Gaoler.
  11. Rescue of goods seized.
  12. Refusal to serve process.
  13. " " to aid Sheriff.
  14. " " Magistrate.
  15. False personation of Officer.
  16. Resistance to apprehension.
  - 17, 18, 19, 20. Escapes by prisoner.
  - 21, 22. Rescues.
  23. Furnishing means to break prison.
  24. Escapes generally.
  25. Being at large after sentence.
  26. Suppression of evidence.
  27. Obstruction by threats of violence.
  28. " " by any other illegal means.
  29. Public Functionary, what.
  - 30, 31. Administration of unlawful oath.
  32. Compounding for offences.
  33. Mispriison of Felony.
  34. Assisting prisoner in flight.
  35. Conspiring to charge offence by false evidence
  36. Corrupt publication of proceedings pending.
  37. Custody, what.
  38. Offence committed in escape,—substantive offence
  39. Unlawful freedom from custody—an escape.
  - 40, 41. Champarty.
  - 42, 43. Barratry.
  44. Fraudulent attempt to impose on Courts.
  45. Stealing written instruments of justice.
- 

I. Any judicial officer, Master in Chancery, or person acting or summoned as a juror; or any commissioner, committee-man, appraiser, assessor, arbitrator, expert, referee or umpire, appointed by authority of law in any judicial matter, or any arbitrator, referee, expert or umpire chosen or appointed by agreement of parties in such matter, who shall corruptly accept any bribe or promise of bribe under or in pursuance of or as an inducement to an agreement or understanding express or implied that he shall, in the exercise and discharge of any function in his capacity as aforesaid, commit any excess of authority with any corrupt or injurious intention, or abuse his authority by doing or omitting to do any act or thing with

such corrupt or injurious intention, or with such intent to oppress or injure any other person, or shall so corruptly nominate, appoint, determine, vote or act in any particular manner in any cause, question, proceeding or matter coming within or appertaining wholly or partly to his jurisdiction or function, duty, power or authority, shall, where no other punishment is expressly provided by statute for the particular case, be punished by imprisonment in the Penitentiary for not less than three years.

II. Any judicial officer, master in chancery, arbitrator, expert or referee, who shall wilfully or through fear, favor or otherwise, maliciously or fraudulently adjudge, decree, award or determine contrary to law, justice and right, any matter, subject, by-law or agreement of parties to his adjudication, decree, award or determination as such judge, magistrate, master, arbitrator, expert or referee, to the loss, damage or injury of the party, or shall wilfully neglect or refuse to perform his duty in his official capacity aforesaid, shall be punished by imprisonment for not less than two years.

1 Deac. 721; 2 Atkins 2; 1 T. R. 692; 3 B. & A. 432; 5 B. & A. 612; 13 East 270; 2 Strange 1181; 1 Bun. 556; 2 Bun. 1162, 785; 3 Bun. 1716; 2 Hawk. c. 13. § 20.

III. The wilful making of any false entry of any judgment, decree, sentence, order or proceeding or official minute or memorandum thereof, of any Court of Justice, upon any register, record, roll, parchment or paper for entering the same, whereby Her Majesty or any of her subjects shall or may be prejudiced, shall be punished by imprisonment in the Penitentiary for not less than three years.

IV. The certifying or uttering as true, knowing the same to be false, by any Clerk of the Court or other officer having the custody of the records thereof or by his deputy, of any false copy or certificate of any proceeding pending before such Court or previously terminated therein, and the signing, certifying or uttering by any person other than such Clerk, officer or deputy, of any such copy or certificate, as such Clerk, officer or deputy, with a false or forged signature thereto, knowing the same to be forged or false, shall, in either case, suffer the same punishment as provided in the last preceding section.

V. The wilful appointing or allowing by a judicial officer, master in chancery, assignee in bankruptcy or other person holding any office or situation in any Court or under any Judge thereof, any person whatsoever to take for him or on his account or for or on account of any person by him named of any bribe, or sum of money other than what is allowed or directed by law to be taken and received by him for any thing done or pretended to be done

by him, relating to his office or situation, or under colour of doing such thing, shall be incapable for ever thereafter of holding any office in any Court or any public office whatever, and shall moreover be punished by a fine at the discretion of the Court awarding the same.

VI. The exacting fees from any defendant for or in regard of his discharge from arrest or imprisonment by any Clerk of Assize, Clerk of the Peace or of the Crown or Clerk of a Court, or by their deputy or other officer without indictment found, or on acquittal or on discharge by proclamation for want of prosecution, shall be punished by imprisonment for not less than one year.

VII. The extorting by any gaoler from any prisoner of any fee or gratuity for or on account of the sentence, commitment or discharge of such prisoner, or the detaining in custody of such prisoner by a gaoler for non-payment of any fee or gratuity, shall be punished as in the last preceding section.

VIII. Any gaoler or other officer who voluntarily suffers the escape of any prisoner in his custody, after conviction of any offence or upon any criminal charge, shall be punished by imprisonment in the Penitentiary, for not less than three years.

IX. Any gaoler or other officer who wilfully omits or refuses to receive into his custody any prisoner lawfully committed thereo, or on any criminal charge or conviction or lawful process, shall be punished by imprisonment for not less than one year.

X. Any gaoler or officer who through negligence suffers the escape of any prisoner in his custody, after conviction of any offence or on any criminal charge, shall be punished by imprisonment for not less than one year.

XI. Any officer authorized by law to serve or execute any lawful process to him directed and delivered or offered, requiring him to apprehend or confine any person convicted of or charged with an offence, who wilfully and corruptly or through negligence fails, refuses, neglects or delays to serve or execute such process, whereby such person shall avoid arrest and go at large, shall be punished by imprisonment for not less than three months.

XII. Any person lawfully required in the name of Her Majesty, by any sheriff, deputy sheriff, coroner or constable, to assist him in the execution of his office in any criminal case, or in the preservation of the peace, or in the apprehending or securing of any person for a breach of the peace, or in any case of escape or attempt thereof

by any person arrested on civil process, or of rescue of any person so arrested or attempt thereof, who refuses or neglects to render the assistance so required, shall be punished by imprisonment for not less than one month.

XIII. Any person lawfully required by any Magistrate, upon view of any breach of the peace or other offence proper for his cognizance, to arrest the offender and bring him before such justice, who neglects or refuses to obey such requisition, shall be punished by imprisonment for not less than one month.

And any person so required, to whom such Magistrate shall be known, or shall declare himself to be a justice of the peace, shall not be permitted to plead any excuse on pretence of ignorance of his office.

XIV. Whoever rescues a thing that is under legal seizure, attachment, arrest, distraint or detention, with intent to defeat such seizure, attachment, arrest, distraint or detention or impede, oppose or defeat the process, order, proceeding, authority, privilege, franchise or right, whereby the same is seized, attached, arrested, distrained or detained, shall be punished by imprisonment for not less than three months.

Russ. 523; Cro. Car; Camp. 665, 666; 2 Stark, Cr. Pl. 644; 2 Chit. Cr. L. 201, 204.

XV. Whoever falsely assumes or pretends to be a magistrate, sheriff, deputy sheriff, coroner or constable and takes upon himself to act as such or to require any person to aid or assist him in any matter pertaining to the duty of such pretended officer, shall be punished by imprisonment for not less than six months.

XVI. Whosoever shall resist and either prevent or endeavour to prevent the lawful arrest of himself or any other person, on any lawful charge or conviction, shall be punished by imprisonment for not less than one year, if such charge or conviction be for felony; and for not less than six months, if it be for misdemeanour or breach of the peace.

XVII. Whoever, being lawfully made prisoner or lawfully detained on charge or conviction of any offence, voluntarily escapes from such imprisonment or detention, without the consent and against the will of the officer having him in custody or detention, shall, in case the offence with which he is charged or of which he is convicted, be capital or punishable by imprisonment in the Penitentiary, be punished by imprisonment in the Penitentiary for not less than five years.

**XVIII.** In case of such escape from imprisonment on charge or conviction of any offence otherwise punishable than as aforesaid, the person so escaping shall be punished by such imprisonment for not less than three years.

**XIX.** Whoever, being a prisoner lawfully detained in the custody of any officer or other person authorized by law to detain such prisoner, in any other case than those provided for in the three last preceding articles, so voluntarily escapes, shall be punished by such imprisonment for not less than six months.

**XX.** Whoever aids any prisoner lawfully detained or imprisoned, for any of the causes mentioned in the preceding articles, to escape from the custody of any officer or person authorised by law to detain such prisoner, shall be punished by imprisonment for not less than three months.

**XXI.** Whoever rescues or endeavours to rescue any prisoner or person lawfully held on charge or conviction of any offence, whether his escape be or be not effected thereby; or conveys into any jail, house of correction or other such like place of confinement, not being the Penitentiary, any disguise, instrument, tool, weapon or other thing, adapted to facilitate and with intent to facilitate the escape therefrom of any such prisoner or person lawfully so held in confinement therein, shall, in case such prisoner or person so held in custody is confined or detained on conviction or charge of any crime, the punishment for which is capital or by such imprisonment in the Penitentiary, or in case he forcibly rescues any such prisoner, be punished by imprisonment for not less than three years.

**XXII.** In any other case, he shall be punished by imprisonment for not less than one year.

**XXIII.** Whoever delivers or procures to be delivered, or has in his possession with intent to deliver, to any convict confined in the Penitentiary, or deposits or conceals in or about the said Penitentiary or the dependencies thereof, or in any carriage or other vehicle going into the premises belonging thereto, any article or thing whatever, with intent that any convict confined therein shall receive the same; or receives from any convict any article or thing whatever with intent to convey the same out of said Penitentiary, contrary to the rules and regulations thereof and without the knowledge and permission of the Warden or Board of Commissioners thereof, shall be punished by imprisonment for not less than two years.

**XXIV.** The articles in this chapter concerning escapes and rescues shall include all escapes suffered by or escapes or rescues from any person, to whom, as princi-



pal, agent or assistant, or as an officer or a private person, or solely or jointly with others, the keeping, watching or guarding of any prisoner within the Penitentiary or any prison or place of confinement or otherwise, shall for the time lawfully belong.

XXV. Whoever having been sentenced or ordered to be banished from this Province, or having agreed to banish himself therefrom on certain conditions either for life or any number of years, shall afterwards, contrary to such sentence, order or agreement, be at large within this Province, without some lawful cause, shall be punished by imprisonment in the Penitentiary for life.

XXVI. Whoever wilfully intending to prevent the due administration of justice or the due execution of the law, or to obstruct or pervert the course of justice, shall unlawfully and wilfully prevent or endeavour to prevent, any witness from appearing and giving evidence, or producing any writing as such witness, or shall unlawfully or wilfully give any bribe or make any promise thereof, express or implied, upon any agreement or understanding, express or implied, with the intent that any one shall evade giving his testimony, or shall destroy, conceal or suppress any writing, deposition or legal evidence in any suit or proceeding in the course of justice, criminal or civil, shall be punished by imprisonment for not less than one year.

XXVII. Whoever wilfully obstructs or attempts to obstruct the due administration or execution of the law, by threats of violence against or intimidation of or endeavour to intimidate any judicial officer, or any officer, functionary or person legally charged with any duty in the administration, enforcement or execution of the law, shall be punished by imprisonment for not less than one year, with hard labour.

XXVIII. Whoever, otherwise than as specified in the preceding articles, wilfully and not in the legal exercise of any authority, power, function or right guaranteed or granted by the constitution or laws, prevents, obstructs, disturbs, defeats or perverts the public or due administration, enforcement and execution of the laws, whether by wilfully hindering any public judicial officer, commissioner or functionary in, or wilfully diverting him from the discharge of his duties, and the exercise of his rights and functions under the laws and constitution, or in any other way or by any other means not authorized by law, shall be punished by imprisonment for not less than one year, with hard labour.

XXIX. A public functionary, within the provisions of the preceding article, comprehends every one who is

required or authorized by law to do any duty, render any service or perform any act in or as auxiliary to the administration, enforcement or execution of the laws, whether he be a public officer or not.

**XXX.** Whoever shall in any manner or form administer, or assume to administer to any one, or voluntarily suffer to be administered to himself, or take any oath, engagement or obligation in nature thereof not required or authorized or prohibited by law, or purporting or intended to bind the persons taking the same to commit any offence punishable by law, shall, if such punishment be death or imprisonment for life, be punished by imprisonment in the Penitentiary for not less than three years, if for any less term in the Penitentiary, then by imprisonment for not less than two years, and if for any term of imprisonment, then by imprisonment for not less than six months.

**XXXI.** The preceding article shall not extend to an oath or affidavit administered without any intentional secrecy, to establish any claim, petition or application, by any person authorized to administer oaths, or to an oath, affidavit or deposition to verify commercial paper or papers or documents relating to property, or which may be required by any public agent, officer or tribunal of this Province, or of any other country, nor shall the said article be construed to abridge the authority of any Magistrate.

37 G. 3, c. 123, s. 1, 2.

**XXXII.** Whoever having the knowledge of the commission of any offence shall give or receive any money, service or other gratuity or reward, or make any agreement therefor, upon an agreement or understanding express or implied to compound or conceal such offence, or not to prosecute therefor, or not to give evidence thereof, shall, if such offence be punishable with death or by imprisonment for life, as aforesaid, be punished by imprisonment for not less than one year, and if otherwise he shall be punished by imprisonment for not less than six months.

Deac. 267, 268 ; 6 East, 126 ; 2 Wilson, 241 ; 5 East, 302 ; Deac. 269.

**XXXIII.** Whosoever not being a party to an offence, shall conceal or keep secret the intention of any other person to commit an offence, shall be punished as follows : If the offence is any capital felony, by imprisonment in the Penitentiary for three years ; for any other felony, by imprisonment for two years, and for any misdemeanour, by imprisonment for not less than three months.

**XXXIV.** Whosoever knowing a person to be liable to apprehension for any offence by him committed or by

virtue of any warrant of arrest, or upon any charge or suspicion against him for such offence, or by reason of any indictment, inquest, information or conviction, shall, by concealing such person or aiding him in his flight from justice, or by any means other than by resistance prevent, or endeavour to prevent his arrest, or facilitate or endeavour to facilitate his escape from justice, shall be punished by imprisonment for not less than one year.

XXXV. The conspiring by two or more persons falsely to charge any person with an offence, or by means of false evidence to procure his conviction of such offence, shall be punished by imprisonment for not less than two years.

XXXVI. Whosoever shall, pending any suit or prosecution, publish any statement concerning the same, with intent to influence the verdict of a jury or to excite any public prejudice for or against any party to such suit or prosecution shall be punished by imprisonment for not less than one year.

XXXVII. Every person shall be deemed a prisoner in lawful custody, from the time of his arrest, surrender detention or retaking, so long as he continues under lawful restraint of his personal liberty either in personal custody or by personal confinement, to the time of his delivery from such restraint by the course of law, or until his sentence or order therefor or the commutation therefor by his agreement therefor shall have been completely executed.

XXXVIII. Any offence committed by a prisoner in escaping, or endeavouring to escape, from lawful custody is a substantive and distinct offence, the punishment for which shall be ordered to commence after the expiration of the term of temporary imprisonment to which such prisoner was liable or subject at the time of his escape or endeavour to escape.

XXXIX. Any freedom from actual custody or restraint or from personal violence, for any space of time whatsoever, unlawfully obtained or voluntarily suffered, or resulting from negligence, shall be deemed as against the person obtaining, or the party suffering voluntarily or by negligence such freedom, to constitute an escape from custody.

XL. Whoever is guilty of maintenance by champarty, to wit, the knowingly purchasing or selling or the knowingly speculating or trading in the title to or right of property in the subject matter, or a share or part of the subject matter of a dispute, quarrel or controversy, on which title or right of property a suit is pending or intended to be brought; or is guilty of maintenance by officiously

and without justifiable cause, intermeddling in and promoting a suit pending or to be brought, to which he is not a party and in which he has no interest, shall severally be punished by imprisonment for not less than six months, with hard labour.

Deac. 843, 4, 6, 5; 6 Bing. 299; 3 Bac. Abr. 252; 3 Cov. 647; 4 Wend. 306, 445; Russ. Deac. 220; 4 Bl. Com. 135; 1 Hawk, c. 83, 266; s. 38, c. 84, s. 1, 4, 12, 13, 15.

**XLII.** The party selling a thing is presumed to know of there being an adverse possession, if there be such.

8 Wend. 629; 13 Johns. 426.

**XLIII.** Barratry shall be held to extend to all kinds of disturbances of the peace, and the spreading of false rumours and calumnies, whereby discord and disquiet may grow among neighbours.

Deac. 130.

**XLIV.** Whoever is guilty of common barratry or of being a common barrater, to wit, stirring up three or more suits, or bringing in the name of other three or more suits, for the purpose in either case of persecution, oppression or extortion, shall be punished by imprisonment for not less than one year.

Russ. 280; Deac. 130, 131; 2 Hawk. c. 81, § 3.

**XLV.** Whoever by any false personation, or by means of any false seal, signature or written instrument respectively practiced or used in the course of any proceeding civil or criminal shall fraudulently endeavour to deceive or impose upon any Court or judicial officer or other officer of justice, or upon any person acting as and for such officer, with intent thereby to pervert the due course of justice or defraud or injure any other person, shall be punished by imprisonment in the Penitentiary for not less than three years.

**XLVI.** Whoever shall steal, or shall for any fraudulent purpose, take from its place of deposit for the time being, or from any person having the lawful custody thereof, or shall maliciously obliterate, injure or destroy any written instrument of justice, shall be punished by imprisonment in the Penitentiary for not less than five years.

## OFFENCES BY AND CONCERNING JURORS.

- 
1. Bribery.
  2. Corrupt endeavour to influence.
  3. Procuring one's self to be returned as juror.
  4. Illegal mode of determining verdicts.
  5. Preventing persons from serving on juries.
- 

1. Whoever serving or summoned as a juror shall take or agree to take any bribe, gift, gratuity, service or benefit given or offered with intent unduly and corruptly to influence his conduct as a juror, or shall agree with or to any other person to make, pronounce or deliver any verdict for or against any party in any proceeding shall be punished by two years imprisonment.

2. Whoever shall corruptly influence or attempt to corruptly influence any one serving or summoned as a juror, in favor of or against any party to or person interested in, any suit or subject matter pending at the time, or that may thereafter come before such juror for his verdict or decision, shall be punished by imprisonment for not less than two years.

Deac. 377; 5 Ed. 3, c. 10, and 4 Geo. 4, c. 50, § 62.

The two last preceding articles shall apply, though the person so to be influenced; or taking or agreeing to take, any such bribe shall not be afterwards sworn, and although no verdict shall be given, and whether if given it be true or false.

3. Whoever shall by any indirect means or contrivance, procure himself to be returned, empannelled or sworn as a juror upon any trial, inquest or other juridical proceeding with intent to procure a verdict or any undue advantage for any person interested in such trial, inquest or proceeding, shall be punished by imprisonment for not less than one year.

4. Whoever being a juror shall by tossing up, drawing lots or other mode of chance, or by any other means contrary to his oath, determine any verdict which he shall make, pronounce or deliver as such juror, shall be punished by imprisonment for not less than one year.

5. Whoever shall unlawfully prevent or endeavour to prevent any person lawfully summoned, or otherwise lawfully bound to serve as a juror, from such service, shall be punished by imprisonment for not less than six months.

## SECTION IV.

## OFFENCES BY &amp; CONCERNING WITNESSES.

- 
1. Refusal to give evidence.
  2. Fabricating evidence.
  3. Preventing witnesses from attending.
- 

I. The unlawful refusal or neglect by any person bound or required by recognizance, subpoena, summons or otherwise, to appear and give evidence as a witness or to produce any writing on any trial, judicial proceeding or inquiry, to appear or to take such oath or make such declaration or affirmation as shall be required by law, or to answer all lawful questions or to produce such writings as upon such occasion he shall by law be bound to produce, shall be punished by six months imprisonment.

But such person shall not be liable to such punishment unless his lawful expenses shall have been tendered to him, where such tender shall be required by law.

II. The putting or depositing any moveable thing in any repository or place, or on or near to the person of any other, or the doing of any other act, with intent to create any false indication or raise any false presumption of guilt, and thereby to prejudice any party on any criminal charge then made or afterwards to be made against him, shall be punished by two years imprisonment.

III. The unlawful and wilful preventing or endeavouring to prevent any person lawfully bound to appear and give evidence or to produce any writing upon any trial or other judicial proceeding or inquiry, from so appearing or giving evidence or producing such evidence, shall be punished by imprisonment for not less than one year.

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## CHAPTER VI.

## OFFENCES AGAINST PUBLIC PEACE.

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- 1, 2, 3, 4. Unlawful assemblies.
  - 5, 6, 7. What not such.
  8. Rout.
  9. Riot.
  10. Rout and riot unlawful assemblies.
  11. What not a riot.
  12. Characteristics of such assembly, rout or riot.
  - 13, 14. Concurrence in intent.
  - 15, 16, 17. Requisites of riot.
  18. Riotously pulling down buildings.
  19. Forcible entry.
  20. Not dispersing after proclamation.
  21. Neglect of duty of Magistrates, &c.
  22. Form of proclamation.
  23. Forcible resistance thereto.
  24. Aiders and assisters at such assemblies.
  25. Presumption against persons present.
  26. Officer may command aid.
  27. Refusing aid.
  28. Calling out Military force.
  - 29, 30, 31. Proceedings by Military.
  32. Governor may proclaim local insurrections.
  33. " " revoke such proclamation.
  34. Resistance thereto.
  35. Affray.
  36. Aggravated affray.
  37. What not affray.
  38. Punishment of affray.
  39. Sending threatening letters.
  40. What amounts to sending.
- 

I. Where three or more persons are of their own authority assembled together, or being assembled shall continue together, with intent to execute without lawful authority any common purpose with disturbance, tumult, force or violence, calculated to strike terror or alarm, or tending to strike terror or alarm into others, such meeting is an unlawful assembly.

2 Hawk, c. 65; Deac. 1113; Russ. P. 350; Archb. P. S. 198.

II. So also where three or more persons are so assembled of their own authority or being assembled continue together, whether with or without disturbance, tumult, force or violence, or striking, or tending to strike terror and alarm into others, for the purpose of producing discontent and disaffection and exciting the subjects of Her Majesty to hatred of Her Government or of the Constitution of this Province, such meeting is an unlawful assembly.

3 B. and A. 505.

III. So also, where three or more persons are of their own authority assembled together, or being assembled continue together as aforesaid, for the purpose of, without lawful authority, doing an act with tumult and violence and of striking or tending to strike terror into others, and having done nothing or only in part having executed such purpose, they separate without carrying their purpose into effect, it is an unlawful assembly.

5 C. and P. 154.

IV. Where three or more persons, being of their own authority assembled together upon a sudden quarrel agree to form themselves into a party for the common purpose of mutual assistance against any others, or suddenly agree to go together to execute any common purpose with force, violence or tumult, or striking or tending to strike terror into others, it shall be deemed an unlawful assembly.

V. It is not an unlawful assembly where three or more persons shall assemble, or being assembled, shall continue together for the common purpose of assisting in the defence of the possession of the dwelling-house of any person against unlawful attempts or threats to enter such house, in order to injure the person or property of any other, nor

VI. Where such assembling or continuing assembled is for the purpose of doing any act in good faith, in pursuance of an asserted claim of right, or in defence of any such claim, whether such claim be lawful or unlawful or the act done be justifiable or not, provided the number of persons assembling or continuing together, and the force and violence intended to be used shall not be greater than are reasonably necessary for the doing of such act, nor

VII. Where such assembling or continuing assembled is for the purpose of joining in procession, without arms, but with or without banners or other emblems, and with or without music, for the purpose of celebrating or commemorating any natural anniversary or political event, and not done with tumult or violence or striking or tending to strike terror into others.

VIII. A Rout is where an unlawful assembly, moved or actuated by an intent not authorized by law, to do some act with tumult and violence, and tending to strike terror and alarm into others, make some motion; endeavour or advance towards doing the same, without doing or actually beginning to do the same.

10 Bl. Com. 146; Deac. 1113; 2 Hawk, c. 65, s. 8, 1175.

A Rout is such, that if the act intended were done in the manner intended, it would be a riot.

1 Hawk. c. 28, s. 8; 3 Stark, R. 102; 4 Bl. Com. 146.



**IX.** A Riot is where three or more being in unlawful assembly, shall without authority of law, join in doing or actually beginning to do an act with tumult and violence, and striking terror or alarm, or tending to strike terror and alarm, into others.

3 Inst. 176; 4 Bl. Com. 146; Deac. 1113.

**X.** A Riot is an unlawful assembly, as also is a rout.

2 Hawk, c. 65, s. 9; Deac. 1113.

**XI.** It is not a riot where persons being assembled for any purpose, three or more of them happen upon a sudden quarrel to commit a breach of the peace, however violent, provided it be not in execution or part execution of any previous agreement to mutually assist one another, as is mentioned in Article iv. of this Chapter.

**XII.** Menacing and turbulent language or gestures, or show of offensive weapons, or other signs or demonstrations tending to excite terror in others, are sufficient violence to characterize an unlawful assembly, rout or riot, but it is not essential to a riot that any violence to persons or property should be actually committed in the execution or part execution of the common purpose.

1 Hawk, c. 28, s. 5.

**XIII.** Concurrence in an intent of tumult and violence, and in any violent and tumultuous act tending to strike terror and alarm into others, done by any of the parties concerned, in pursuance of such intent, is a sufficient joining in intent, to constitute a riot, though the parties concerned did not previously concur in intending the same specific act.

2 Camp. 358.

**XIV.** It is in respect to a Rout or Riot, a sufficient acting upon the intent or purpose by the parties thereto other than the leaders, that they submit themselves to be swayed, moved or actuated by the intent and guidance of the leaders.

**XV.** It is essential to an unlawful assembly, rout or riot, that it should be such as is likely to strike terror and alarm into others.

1 Hawk, c. 65, s. 5; 11 Mod. 117; 2 Camp. 369; Deac. 1114.

**XVI.** It is not requisite in order to constitute an unlawful assembly, rout or riot, that the object of the meeting, or the act done or intended to be done, should of itself be unlawful. The tumult and violence tending to excite terror and alarm in the people characterize the offence, though the object of the meeting if legally pursued, or the act done or intended if performed in a proper manner, would be lawful.

2 Salk. 594; 1 Hawk. c. 28, s. 7.

**XVII.** It is not requisite to an unlawful assembly, rout or riot, that persons should have come together with a common intent, or an unlawful intent, or in an unlawful manner.

Persons having lawfully come together and being lawfully together, may thereupon become an unlawful assembly and commit a rout or riot.

1 Hawk. c. 23, s. 3; 2 Salk. 595; 19 Vin. Abr. 19 A 15; Deac. 1114.

**XVIII.** If any persons riotously and tumultuously assembled together in the disturbance of the public peace, shall unlawfully and with force demolish, pull down or destroy, or begin to demolish, pull down or destroy any place of religious worship, or any dwelling-house, or house, building or erection used in carrying on any lawful trade, business or manufacture or any branch thereof, or any machinery, fixed or moveable prepared for or employed in any manufacture or branch thereof, or any steam or other engine for sinking or working any mine or building or erection used in conducting the business of such mine, or any bridge, rail or waggon way, for conducting minerals from any mine, or demolish, break in pieces, sink or destroy any ship or vessel or the furniture, apparel or cargo thereof, shall be punished by imprisonment in the Penitentiary for not less than three years.

**XIX.** Whosoever shall forcibly and violently, or in such manner and under such circumstances as are calculated to strike terror and alarm into others, make entry into or unlawfully detain possession of any dwelling-house, land or tenement, or take any moveable thing, being in the lawful possession or custody of any other person, shall be punished by imprisonment for not less than one year.

**XX.** If any persons to the number of twelve or more, being unlawfully, riotously or tumultuously assembled to the disturbance of the public peace, shall not immediately disperse and peaceably depart to their own habitations or lawful business upon proclamation or order to that effect made by any Sheriff, or by the Mayor or other chief executive officer of any District, County or Municipality, or of any City, Town or Village, or by any Magistrate or Police Magistrate there being where such assembly shall be, shall be punished by imprisonment for not less than one year with hard labour for the first offence, and by imprisonment in the Penitentiary for not less than three years, for each subsequent offence.

**XXI.** Any Mayor, Magistrate or Sheriff aforesaid, having notice of any riot or unlawful assembly in the County, City, Town or place in which he lives, and refusing or neglecting immediately to proceed to the place

of such assembly, or as near thereto as he can with safety, and refusing or neglecting to make proclamation aforesaid, which shall be in the manner and form following, or to exercise the authority with which he is invested for suppressing such assembly, and arresting and securing the offenders, shall be punished by a fine of not less than fifty pounds currency, or imprisonment for not less than six months, or both, at the discretion of the Court trying the offence.

**XXII.** The order and form of such proclamation shall be as follows:—The person making the same shall, with a loud voice, command or cause to be commanded silence while proclamation is making, and immediately thereafter shall openly and with a loud voice make proclamation in the words or to the effect following:—“The Queen commands all persons here assembled immediately to disperse themselves and peaceably to depart to their homes or lawful business, under the penalty of law against unlawful assemblies. God save the Queen.”

**XXIII.** Whosoever shall forcibly oppose or hurt, or in any manner hinder or obstruct such person from making or attempting to make such proclamation, whereby it shall not be made, shall be punished by imprisonment in the Penitentiary for not less than three years.

**XXIV.** Persons present at a riot, rout or unlawful assembly and promoting the same, or aiding therein or abetting, encouraging or countenancing the parties concerned therein, by words, signs, acts or otherwise, are themselves parties thereto and principals therein; but where their being or remaining present, is not of itself, under the particular circumstances, an aiding in or a promoting of the same, or an abetting, encouraging or countenancing of those concerned therein, and they take and have taken directly or indirectly no part, and have and have had, directly or indirectly, no concern with the same, or in instigating or promoting the same or abetting, encouraging or countenancing those concerned therein, and have not been ordered to depart, their being so present does not render them chargeable with the offence.

II. Camp. 358.

**XXV.** Every person present in an unlawful assembly is presumed to have notice of an order given by lawful authority in lawful manner for the same to disperse.

**XXVI.** If the persons so riotously assembled and commanded to disperse, do not immediately disperse, such Sheriff, Mayor or any two Magistrates aforesaid may command the aid of a sufficient number of persons, and may proceed in such manner as in their judgment is necessary, to disperse the assembly and arrest the offenders.

**XXVII.** Any person lawfully commanded to render his assistance in suppressing a riot, and refusing or wilfully neglecting to render the same, shall be punished by imprisonment in a common gaol, for not less than three months, or a fine of not less than twenty pounds, currency.

**XXVIII.** Whensoever the civil power shall be unable to put down and disperse such riotous or unlawful assembly and the fact is made to appear by such person authorized to make proclamation as aforesaid to the commanding officer of the military force in the District, County or place where such assembly is, the officer shall order his command or any part of it, (describing the kind and number of troops,) to appear at a specified time and place to aid the civil authorities in suppressing violence and enforcing the law.

**XXIX.** The commanding officer, to whom the notice is given, must forthwith act thereon; and the troops required must appear at the time and place appointed, armed and equipped with sufficient ammunition.

**XXX.** When an armed force is called out for the purpose of suppressing such unlawful assembly, it must obey the orders in relation thereto, of the persons requiring such military assistance.

**XXXI.** The commanding officer must act entirely on the defensive, not suffering his men to fire, and permitting them to use their edged or pointed weapons only, to repel actual violence, except in one of the following cases:

1. If an attack be made on any one of the troops, by which his life is in danger, or if an attempt be made to disarm him, which he cannot otherwise avoid, he may defend himself by discharging his fire-arms:

2. If a general attack be made by the rioters upon the troops with fire-arms, missiles or other weapons, by which their lives are indiscriminately put in danger, the commanding officer may order the troops to fire.

3. If the troops cannot be placed between the rioters and the persons or property apparently intended to be attacked, and the unlawful purpose of the riot be persevered in by means evidently dangerous to the lives or property of others, although no attack be made on the troops themselves, the Sheriff, Mayor or Magistrates, or any two of them, may direct the commanding officer to disperse the rioters; which he is authorized to do by ordering the troops to fire upon them, or by such other means as he may think effectual.

The troops must not be brought up to the place, until after the magistrate or other officer has proclaimed the office which he holds, and ordered the assembly to disperse.

Every endeavour must be used, both by the magistrates and civil officers, and by the officer commanding the troops, which can be made consistently with the preservation of life, to induce or force the rioters to disperse, before an attack is made upon them by which their lives may be endangered.

**XXXII.** When the Governor is satisfied that the execution of civil or criminal process has been forcibly resisted in any District, County, City or Town, by bodies of men, or that combinations to resist the execution of process by force, exist therein, and that the civil power has been exerted and is unable to sustain the due execution of the law, he may by proclamation to be published in the *Official Gazette*, and in such papers in the District or County as he may direct, declare the same to be in a state of insurrection, and may order into the service of the Government such number and description of volunteer companies, or other militia of the Province, as he may deem necessary, to serve for such term, and under the command of such officer or officers as he may direct.

**XXXIII.** The Governor may, when he thinks proper, revoke the proclamation authorized by the last section, or declare that it shall cease, at the time and in the manner directed by him.

**XXXIV.** Whosoever shall, after the publication of the said last proclamation, resist or aid in resisting the execution of process in a District, County, City or Town declared to be in a state of insurrection, or aid or attempt the rescue or escape of another from lawful custody or confinement, or resist or aid in resisting a force ordered out by the Governor to quell or suppress an insurrection, is guilty of a felony and is punishable by imprisonment in the Provincial Penitentiary for not less than five years.

**XXXV.** An affray is the fighting in a public place of two or more persons, to the terror or alarm of the public.

Deac. 26 ; 3 Inst. 159 ; 4 Black. Com. 144 ; 2 Hawk. c. 65, s. 3.

**XXXVI.** The carrying openly of offensive weapons in any public place, to the terror or alarm of the public, shall be deemed an affray.

1. An affray having a direct tendency to some high crime or misdemeanour, or tending to interfere with and disturb the course of legislation, or the administration or

execution of the laws, or with the legal rights privileges and franchises of others, is an aggravated affray.

2. So an affray in the presence of the Governor and Council, either of the branches of the Legislature of this Province or of a Court of Justice, while either is in Session, or in a church or chapel during a religious service, is an aggravated affray.

1 Hawk. c. 21, s. 6, 10; 2 Hawk. c. 65, s. 23.

3. So also fighting with offensive weapons, to the terror of the public, is an aggravated affray.

2 Hawk. c. 63, s. 21; 1 Russ. 389, note A.

XXXVII. Mere quarrelsome words, where there is no substantial ground of terror to the people, do not amount to an affray; but if, by reason of the parties being armed or other apparent imminent violence, there be good cause of terror to the people, it is an affray, though there may be no actual violence.

2 Hawk. c. 63, s. 2, 4.

XXXVIII. Whoever is guilty of being a party concerned in an aggravated affray, shall be punished by imprisonment in a common gaol for not less than one year, and a fine of not less than ten pounds.

2. Whoever is guilty of being a party concerned in an affray, the same not being an aggravated affray, shall be punished by imprisonment in a common gaol for not less than three months, and a fine of not less than five pounds.

XXXIX. Whosoever shall knowingly send, deliver or utter any letter or writing with or without any name or signature subscribed thereto or with a fictitious name or signature, threatening to kill or murder any other person or to burn or destroy any dwelling house or other building, or any rick or stack of grain, hay or straw or other agricultural produce, shall be punished by imprisonment for not less than two years, with hard labour.

XL. Every species of parting with, placing or exposing of such letter or writing, with the intent that the same may be carried to or otherwise sent or come into the possession of the person for whom it is intended is a sending thereof within the meaning of the last preceding article.

## CHAPTER VII.

OFFENCES IN RESPECT TO THE  
CURRENT COIN.

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1. Coin is Gold or Silver, current in the Province.
  - 2, 3. Counterfeiting.
  - 4, 5, 6. Uttering.
  7. Uncurrent Gold and Silver Coin.
  8. Having materials to counterfeit.
  9. Being in confederacy with counterfeiter.
  10. Degrees of crime.
  11. Previous conviction.
  12. Punishment.
  13. Forging die for gold plate, &c.
- 

I. Coin, as used in this chapter, includes only gold or silver money, or money of which gold or silver, or both, are the principal constituent parts, current, by law or usage, in this Province.

II. The counterfeiting of coin within the meaning of the provisions of this Chapter is

1. The falsely making or assisting in the making of a resemblance of coin current in this Province; of less intrinsic value than the genuine coin of which it is a resemblance; with the intent that the same shall be uttered in this Province as and for such genuine coin,

2. The falsely impairing, diminishing or lightening coin, by chipping, filing, boring, abrading or sweating it, or otherwise taking away a part of any true and genuine coin and substituting a metal or substance of less intrinsic value in place of the part so taken away, or without such substitution, with intent that the same, so diminished in quantity or intrinsic value, shall thereupon be uttered as and for true and genuine coin of legal or customary value,

3. The falsely adding to true and genuine coin any metal or substance, so as to make it a resemblance of coin of greater intrinsic value than it really and intrinsically is, when so added to, with the intent that it shall therefore be uttered in this Province as and for the true and genuine coin current by law or usage, of which it is, when so added to, a resemblance,

4. The falsely washing, colouring or otherwise changing the appearance of true and genuine coin, so as to make it a resemblance of a coin of greater intrinsic value than it really has, with the intent that it shall thereupon be uttered in this Province as and for coin of such greater intrinsic value, and lastly

III. The falsely gilding or silvering, or washing, colouring or casing over with any materials capable of producing the colour of gold or silver as follows,

1. Of any coin resembling or apparently resembling or passing for any gold or silver coin current in this Province;

2. Of 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 or figure to be coined, and with intent that the same shall be coined into false and counterfeit coin resembling or apparently resembling or passing for any gold or silver coin current in this Province;

3. Of any of the current silver coin, or filing or in any manner altering such coin with intent to make the same resemble or pass for any of the gold coin current in this Province; or

4. Of any of the current copper coin, or filing or in any manner altering such coin.

IV. The buying, selling, receiving or putting off or offering to buy, sell, receive or put off any such false or counterfeit gold or silver coin, at or for a lower rate or value than the same by its denomination imports or was coined or counterfeited for, is uttering the same.

V. The importing into the Province from without the Province any false or counterfeit coin resembling or apparently intended to resemble or pass for any of the current coin, knowing the same to be false or counterfeit, is uttering the same.

VI. The falsely putting counterfeit coin, whether current or not, or whether it be the coin of the realm or of a foreign country, into circulation, putting it off, passing it or tendering it or offering to pass it as being true and genuine or aiding therein, knowing the same to be counterfeit, is uttering the same; so also the selling, passing, delivery of or parting with counterfeit coin as such, with the intention that the same shall be or with sufficient ground to believe that the same will be thereupon passed, tendered or offered to be passed as true and genuine, is uttering the same.

VII. The foregoing sections shall apply in every particular and provision to gold and silver coin not current, in this Province by law, but brought in for circulation therein.

VIII. The knowingly casting, stamping, engraving, making or mending, or knowingly having in his possession any mould, pattern, die, puncheon, engine, press or other



tool, instrument, machine or apparatus adapted and designed for counterfeiting coin, with intent to use or employ the same or cause or permit the same to be used or employed for counterfeiting coin.

IX. Being in confederacy with the counterfeiter is, within the meaning of this Chapter, the having a tacit or express agreement, mutual understanding, co-operation or communication with him, touching the counterfeiting of coin or uttering thereof, whether such agreement, understanding, co-operation or communication be directly and immediately with him or indirectly through or by some intermediate person or means, and whether the counterfeiter reside or the counterfeiting be done, within or without the Province, provided such agreement, understanding, co-operation or communication with the counterfeiter, be not such as to render such other party thereto indictable in this Province, as a principal in or an accessory before the fact to the counterfeiting.

X.—1. Whoever utters counterfeit coin, being in confederacy with the counterfeiters, is guilty of an offence in respect to the current coin, in the first degree.

2. Whoever counterfeits coin whether current or not current, is guilty of such offence in the second degree.

3. Whoever, having in his possession or subject to his control and disposition thereof, three or more pieces of such counterfeit coin, having received or obtained the control and disposition of the same, knowing the same to be counterfeit, utters one or more thereof, is guilty of such offence in the second degree.

4. Whoever utters counterfeit coin, whether current or not current, having received the same as counterfeit, is guilty of such offence in the third degree.

5. Whoever has in his possession, or subject to his control and disposition, three or more pieces of such counterfeit coin, received by him, or having become subject to his control and disposition as and knowing them to be counterfeit, with the intent to utter the same as true and genuine, is guilty of such offence in the fourth degree.

6. Whoever utters counterfeit coin knowing the same to be such, having received the same in good faith as true and genuine, upon legal and valid consideration or for a legal purpose, is guilty of such offence in the fifth degree.

7. Whoever is guilty of any of the offences mentioned in the eighth section is guilty of such offence in the sixth degree.

XI. Whoever, having been once convicted of any of the offences above provided against in this Chapter, shall thereafter be convicted of the same or any other of said offences, shall be subject to an additional punishment not exceeding one half of the maximum of punishment for such subsequent offence.

XII.—1. Whoever is guilty of this offence in the first degree, shall be punished by imprisonment in the Penitentiary for life.

2. Whoever is guilty of such offence in the second degree, shall be punished by such imprisonment for not less than ten years.

3. Whoever is guilty of this offence in the third degree shall be punished by such imprisonment for not less than three years.

4. The punishment of this offence in the fourth degree shall be imprisonment for not less than three years.

5. The punishment of this offence in the fifth degree, shall be imprisonment for not less than two years.

6. The punishment of this offence in the sixth degree, shall be imprisonment for not less than one year.

XIII.—1. The forging of any die, or knowingly uttering the same, which shall have been provided or used by any company of goldsmiths in the United Kingdom or by any marker or worker of gold or silver plate respectively, for marking gold or silver wares, in pursuance of any Act of the Imperial Parliament; or

2. The marking with such forged die of any such wares, or uttering, exposing to sale, or exporting out of this Province any such ware, knowing the same to be so marked; or

3. The forging or by any means whatsoever producing an imitation of or uttering, knowing the same to be forged or an imitation, any mark of any die so provided or used; or

4. The transposing or removing of any mark of any such last mentioned die from any ware of gold or silver to any other ware of gold or silver, or of base metal; or

5. The uttering of any such mark, knowing the same to have been transposed or removed; or

6. The having in his possession, without lawful excuse, the proof whereof shall lie on the party accused, of any such forged die, or any ware of gold or silver or base

metal, having thereon the mark of any such forged die, or any such forged mark or imitation thereof, or any mark so transposed or removed, knowing the same to have been forged, imitated, marked, transposed or removed; or

7. The cutting or severing from any ware of gold or silver any mark of any such die, with intent that it be placed upon or affixed to any other ware of gold or silver or base metal, or the placing upon, joining or affixing the same, so cut and severed, to or upon any wares of gold or silver or base metal; or

8. The using, with intent to defraud any other person, of any genuine die which shall have been so provided or used, shall be severally punished by imprisonment in the Penitentiary for not less than three years.

The following terms, used in the last preceding article, shall be deemed to mean as is hereinafter mentioned in this article, that is to say:

The terms "base metal" shall be deemed to mean any metal whatsoever other than gold or silver of the respective standards required by law.

The term "die" shall be deemed to mean any die, plate, tool or other instrument, whereby any mark can or shall be made upon any metal whatsoever, or any part of any such instrument.

The term "mark" shall be deemed to mean any mark, stamp or impression of and made with any die, or produced by any other means upon any thing whatsoever; and

The term "ware" shall be deemed to mean any vessel, article or manufacture of metal whatsoever.

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## CHAPTER VIII.

OFFENCES RELATING TO THE PUBLIC  
PROPERTY, REVENUE AND FUNDS.

## SECTION I.

OFFENCES RELATING TO PUBLIC CHAT-  
TELS, FORMS AND SECURITIES.

1. Embezzlement by Public Officers.
2. False statement of moneys received by officers, &c.
3. Falsifying securities, &c.
4. Forgery, transfer for stock, &c.

I. Any officer or person being entrusted by virtue of his employment with the receipt, custody, management or control of any public movable thing, or any public movable property in this Province, who shall appropriate the same or any part thereof, or in any manner fraudulently apply or dispose of the same to his own use or benefit or for any purpose whatsoever except for the public service, shall be guilty of embezzlement.

II. Any officer or person, being a collector, receiver or otherwise intrusted with the receipt, custody or management of public money or securities, who shall knowingly and wilfully make any false entry or statement or alter any word or figure in any books of account or other books or documents in which the public accounts or entries are made and kept, or shall wilfully furnish any false statement or return of the sums collected by him or entrusted to his care, or of the balance of such money in his hands or under his control, shall be guilty of embezzlement, and shall, in addition to the punishment for embezzlement, for ever be incapable of holding or enjoying office under the Crown.

III. Any person being a clerk, officer or servant or other person employed or intrusted in any department of the public service imperial or provincial, in this Province, who shall with intent to defraud Her Majesty, or any other person, knowingly make out or deliver any warrant, order for the payment of money, check, debenture or other public effects or securities, for a greater or less amount, or any greater or less amount in money, bank bills or other equivalent for money than the person on whose behalf the same shall be made out or paid is entitled to, shall make out and deliver the same to a person not entitled to receive the same, shall be punished by imprisonment in the Penitentiary for not less than three years and be for ever thereafter unable to hold any office or place of profit under the Crown.

IV. The false and fraudulent forging, with intent to defraud Her Majesty or any other person, of any transfer or acceptance of any property, share or interest in any stock, annuity or public fund, or of or in the capital stock of any body corporate, company or society which now is or hereafter may be established by charter or Act of Parliament, or of any assignment, transfer or power of attorney or other authority to assign or transfer such stock, annuity or public fund, or any dividend or interest arising or payable thereout or therefrom, shall be forgery and subject to the punishment thereof as hereinafter mentioned.

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SECTION II.

OFFENCES RELATING TO VESSELS OF WAR,  
PUBLIC STORES, AND OTHER PLACES OF  
DEPOSIT.

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1. Destroying Ships, Buildings, &c.
  2. Stealing public Stores.
  3. Being found in possession &c. without warrant.
  4. Wilfully obliterating marks.
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I. The maliciously setting on fire or burning or otherwise destroying any of Her Majesty's ships or vessels of war, whether on float or building or begun to be building, or any of Her Majesty's buildings or erections for the use of Her military, naval or victualling stores or other ammunition of war, or any place where such stores or ammunition are kept, shall be punished with imprisonment in the Penitentiary for life.

II. The stealing or embezzling of any of such military, naval or victualling stores shall be punished by such imprisonment for not less than five years.

III. The being found in possession or the concealing of any of such military or naval or victualling stores, whether the same are in an unconverted state or new, without having certificate therefor under the hand of some one of Her Majesty's Storekeepers of such stores, or without showing that they were openly purchased at public sale thereof, shall be punished by imprisonment for not less than six months and the forfeiture of such stores.

IV. The wilfully and fraudulently beating out, taking out, cutting out, defacing, obliterating or erasing wholly or in part, any public or government mark upon the stores aforesaid denoting the public property, for the

purpose of concealing the public property in such stores, shall be punished by imprisonment for not less than one year.

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SECTION III.

OFFENCES IN RELATION TO THE REVENUE  
AND THE CUSTOMS AND TO SMUGGLING.

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1. Waste or Embezzlement by officer.
  2. Falsifying or omitting to render accounts.
  3. Smuggling.
  4. Assembling to obstruct officer.
  5. Assembling and aiding smuggling.
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I. Any officer of the Customs or Revenue shall by or through any wilful misconduct make any embezzlement, waste, spoil or destruction of or in any goods or merchandize warehoused in warehouses under the authority of any law for such warehousing in this Province, he shall be punished by imprisonment in the Penitentiary for *three* years.

II. Any collector, receiver, or other person, entrusted with the collection, receipt, custody or mangement of the public revenue or any part thereof, who shall neglect or omit to keep and render his accounts in such manner and form as shall be directed by the Government or the chief officer of the particular Department of the officer accountable as aforesaid, or shall knowingly furnish or render false accounts of or relating to such revenue, collected or received by him, or to be collected or received by him, or entrusted to his care and custody, or of any balance thereof, shall be punished by imprisonment in the Penitentiary for *three* years, and be thereafter incapable of holding any office of honour or trust under the Crown.

III. The knowingly and wilfully, with intent to defraud the revenue of this Province, smuggling or clandestinely introducing into this Province of any goods subject to duty, without paying or accounting for such duty, or the making, passing, or attempting to pass through the Custom House any false, forged or fraudulent invoice, or in any way attempting to defraud the revenue by evading the payment of the duty or any part thereof on any goods, or the aiding or abetting in any of such offences, shall be punishable, in addition to any other penalty or forfeiture to which such officer shall be liable, by imprisonment for any term not exceeding one year, or a fine not exceeding *fifty* pounds, or both, in the discretion of the Court before which the conviction shall be had.

IV. The assaulting or forcibly obstructing or resisting of any officer or person employed in the collection or protection of any part of the public revenue, or for the prevention of smuggling, or of any person aiding or assisting him therein, whilst in the due execution of his office or duty, shall be punished by imprisonment for not less than one year, and upon conviction of three or more such offences, then by imprisonment in the Penitentiary for not less than *three* years.

V. The assembling of three or more persons, whether armed or not, in order to aid and assist in the illegal landing, removing or carrying away of any prohibited goods, or of any goods liable to duties upon which such duties have not been paid or secured, or in rescuing such goods after seizure thereof from the officer or person authorised to make such seizure, or from the place where the same shall have been lodged by him, or in rescuing any person apprehended for any offence relating to the Customs, or in resisting or obstructing the apprehension of such last person, shall, in each such case, be punished by imprisonment for not less than *one* year.

VI. And if three or more such persons be armed and shall be so aiding or assisting, they shall be punished by imprisonment for not less than *two* years.

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## CHAPTER IX.

### OFFENCES AGAINST THE LAW OF MARRIAGE.

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#### SECTION I.

#### BIGAMY.

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Whosoever any person, being married, shall marry any other person during the life of the former husband or wife, whether the *first* marriage shall have taken place in this Province or elsewhere, such person is guilty of Bigamy.

Any second marriage contracted out of this Province, by any other than a subject of Her Majesty, resident in this Province and leaving the same with intent to commit the offence, is not Bigamy.

Any person marrying a second time, whose husband or wife shall have been continually absent from such person for the space of seven years then last past, and shall not have been known by such person to be living within that time, is not guilty of Bigamy, nor

Any person, who, at the time of such second marriage, shall have been divorced from the bond of the first marriage, nor any person whose former marriage shall have been declared void by the sentence of any Court of competent jurisdiction.

In case of a divorce from the bond of marriage, the guilty party on account of whose crime or misconduct the divorce is had, is still a married person, within the meaning of the first section, notwithstanding such divorce.

The punishment of this offence shall be imprisonment in the Penitentiary for any term not less than *three* years.

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SECTION II.

INCEST.

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Persons within the degrees of consanguinity or affinity, within which marriage is prohibited by law, who intermarry with each other or commit an act of sexual intercourse with each other shall be punished by imprisonment in the Penitentiary for not more than *three* years.

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CHAPTER X.

OFFENCES RELATING TO PUBLIC RECORDS AND REGISTERS.

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1. Forging Signatures and Registers of Births, &c.
  1. Forging copies of Registers, &c.
  3. Wilful destruction of same.
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1. The wilfully inserting or permitting to be inserted in any public register or record, or in any register of births, baptisms, marriages, deaths or burials required by law to be made or kept, or in any certified copy thereof, any false entry of any matter relating to those registers, or the forging of any entry or certified copy of any entry in any such register, or the fraudulent altering of any certified copy, or the certifying of any writing to be a copy of any such entry knowing such entry to be forged or to be false in any part thereof, shall be punished by imprisonment for not less than *twelve* months.

II. The wilfully making for the purpose of being inserted in any such register, of any false statement touching any of the particulars required to be inserted in such Registers, shall be punished by imprisonment for not less than *six* months.



III. The wilfully destroying, defacing or injuring, or permitting the same, of any such register or record, or any certified copy thereof, or any part or certified copy of any part of any such register or record, shall be punished by imprisonment for not less than six months.

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CHAPTER XI.

OFFENCES AGAINST PUBLIC MORALS  
AND DECENCY.

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1. Obscene libel.
  2. Obscene publications.
  3. Open lewdness.
  4. Disorderly houses.
  5. Opening houses of entertainment on Sunday, &c.
  6. Lotteries.
  7. What is a common gaming house.
  8. Who held to be master of disorderly house.
  9. Drunkenness.
- 

I. The maliciously publishing of any libel expressing or signifying any obscene or immoral matter, or meaning or tending to deprave or corrupt the public morals, and

II. The importing, printing, publishing, selling, offering for sale, putting into circulation, distributing, lending, exhibiting publicly or introducing into any family, school or place of education, any pamphlet, sheet or other thing containing obscene language, obscene prints, figures, descriptions or representations, manifestly tending to the corruption of the morals of youth or of morals generally; or buying, procuring, receiving or having in possession any such book, pamphlet, sheet or other thing, with intent to sell, circulate, distribute, lend or exhibit the same, or to introduce the same into any family, school or place of education, shall in each such case be punished by imprisonment for not less than *twelve* months with hard labour.

III. The being guilty of any open lewdness or indecency in any public thoroughfare or other place of public resort, or at any window or place where such offence may be openly seen, and

IV. The keeping of any common gaming house, bawdy house or other disorderly house, room or place, shall in each such case be punished by imprisonment for not less than *six* months with hard labour.

V. Any house, room or other place which shall be opened or used for public entertainment or amusement,

or for publicly debating on any subject whatever upon any part of the Lord's Day called Sunday, and to which admission shall be obtained by payment of money or tickets sold for money, shall be deemed a disorderly house or place.

VI.—1. Setting up, managing or drawing, or otherwise promoting any lottery, not authorized by law, for money or other thing, or disposing of or promoting the disposing of any thing of value by way of lottery, or aiding in either of the said offences: or

2. Writing, printing, vending or having in possession with intent, for one's self or another, to sell or offer to sell, negotiate, exchange or dispose of any ticket, share of a ticket, writing, certificate, bill, token or device purporting or intended to entitle the holder, bearer or any other person to any prize or any share of or interest in any prize to be drawn at such lottery, whether the same be set up in or out of this Province, or aiding, assisting in or promoting any of the offences aforesaid, by printing, writing or otherwise: or

10 & 11 Will. III. c. 17; 42 Geo. III. c. 119.

3. The knowingly making, selling or having with intent to sell, exchange or negotiate, or the knowingly attempting to sell, exchange or negotiate, or the knowingly aiding by printing, writing or otherwise, in making or selling or attempting to sell, exchange or negotiate such lottery ticket or share thereof or such writing, certificate, bill, token or other device, or the receiving any money or other thing of value for any such ticket or share, or for any such writing, certificate, bill, token or other device,—shall be severally punished by imprisonment for not less than twelve months.

VII. A common gaming house is a house or place kept or used for playing therein any unlawful game, or for drawing any lottery, or where a bank is kept by one or more players exclusively of the others, or the chances of the game played therein are not alike favourable to all the players, including the banker or manager of the game against whom the others stake, play or bet.

VIII. Any person who shall appear, or act or behave himself or herself as master or mistress, or as the person having the care or management of any gaming house, bawdy house or other disorderly house, room or place, shall be deemed the keeper thereof and liable to be prosecuted and punished as such, notwithstanding he or she shall not in fact be the sole owner or keeper thereof.

The punishment of the offences severally contained in the 1st, 2nd, 3rd and 4th Articles, shall be imprisonment

for not more than *two* years, and fine not exceeding pounds.

For the offences severally contained in the 5th and 6th Articles, such imprisonment for not less than *six* months with hard labour.

IX. Whoever is guilty of drunkenness by the voluntary use of spirituous liquors, shall on the first conviction thereof, be punished by a fine of *ten* shillings, or in failure of payment, *one* week's imprisonment in the common gaol.

And for each subsequent offence the punishment shall be doubled, until the fine reach *forty* shillings or *one* month's imprisonment, after which the punishment shall be *three* months' imprisonment with hard labour.

The prosecution for this offence must be commenced within two days after its commission.

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## CHAPTER XII.

### OFFENCES AGAINST PUBLIC HEALTH.

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1. Officers offending against Quarantine Laws.
  2. Quitting vessels without licence.
  3. Exposure of infected persons.
  4. Selling unwholesome provisions.
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I. Whosoever, whose duty it is to execute any order made or to be made in this Province, concerning quarantine in the said Province, by virtue of any law in force therein, or to see the same put in execution, shall desert from his said duty, or knowingly or willingly permit any infraction of such order by any person or vessel, or in regard to any goods on board of such vessel, or shall give a false certificate of the performance of such quarantine, shall be punished by imprisonment for not less than *one* year, and fine of not less than pounds.

II. Any seaman or passenger arriving in this Province in any vessel liable to perform quarantine, and on board of which any infectious disease or distemper shall then have appeared, who shall in this Province quit or leave such vessel with intent to go on shore in this Province, without licence therefor and contrary to any order aforesaid in that respect, shall be punished by imprisonment with hard labour for not less than *six* months.

III. Whosoever shall maliciously expose himself or any other person, whilst labouring under any infectious or

contagious disease, in any public thoroughfare or other place of public resort, and

IV. Whosoever shall knowingly sell or supply on any contract of sale, or expose to sale, as for the food of man, any putrid meat or other noxious or unwholesome food or provisions, shall severally be punished by imprisonment with hard labour for not less than *three* months.

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## CHAPTER XIII.

### COMMON NUISANCE.

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1. Definition.
  - 2, 3. Essentials of offence.
  - 4, 5, 6, 7, 8, 9, 10. Nuisances.
  11. Causing groundless fear not a common nuisance.
  12. Nuisance not excused by reason of compensatory public advantage.
  13. Public—what?
  14. Few individuals suffering.
  - 15, 16. Punishments.
- 

I. The endangering of the public personal safety by any unlawful act or omission, or the doing, causing, occasioning, promoting, maintaining or continuing of what is noisome and offensive, or annoying and vexatious, or manifestly hurtful to the public, or injuring or annoying, or tending to injure or annoy the public in the enjoyment of any public right or privilege, or causing directly, or manifestly tending to cause any public calamity, mischief or disorder or any common injury, damage, inconvenience or annoyance to the public, in respect of their habitations, personal safety, health, comfort or property, the same being without authority or justification by law, is the offence of common nuisance.

Peakes E. 91, 92; Russ. 428; 2 Hawk P. C. c. 75, s. 10; 3 Bac. Abr. Nuisance; 2 Roll. Abr. 130, Cro. Car. 510; 2 Id. Raym. 1163; 2 Str. 686; 1 Ad. & E. 823; 6 C. & P. 202; 7 East 109; 3 Camp. 227; Ross. 157, 6, 458, 451, 28, 38, 39; 4 Bl. and S. 73, 272, 3 Ch. Cr. L. 636, 843, 7; 2 Str. 1107, Burn. Just. Nuisance; 2 Str. 704; 2 Camp. 89; 2 Burr. 1232; East. p. c. 208; 4 Bl. C. 167-8; 1 Burn. Just. Eaves Droppers; 1 Burr. 333, 1 Desc. 640.

II. It is not essential that such unlawful act or omission should be to the general injury of all Her Majesty's subjects; it is sufficient if it injure or prejudice a class only of those subjects.

III. Nuisance, on the ground of its being troublesome, hurtful or prejudicial to others, must be substantially hurtful or prejudicial to them, or be substantially prejudicial

to them in the enjoyment of their life, property, rights or privileges, and whether the offensiveness, annoyance or prejudice is of such degree, is a question of fact.

IV. The unlawfully injuring or damaging of any building, erection or work whatsoever, or any other matter or thing whatsoever, natural or artificial lawfully used or enjoyed, by or being or intended to be a safeguard or protection to the public, or the doing of any act whereby the public are unlawfully hindered or prevented from or obstructed in the using or enjoying of such matters and things, or whereby the use or enjoyment of any of such matters or things, or of any right, privilege or advantage thereunto appertaining, is unlawfully diminished in value or rendered less safe, secure or convenient, shall be a common nuisance.

V. The unlawfully omitting to construct, make, repair, prevent or remove, injury or damage to or obstruction of any of the matters or things mentioned in the previous article contrary to the duty of the offender in that behalf, however subject thereto, whereby the public use or enjoyment of such matters and things is hindered or prevented or diminished in value, or rendered less safe, secure or convenient, unless where the enforcement of such duty is otherwise specially and exclusively provided for, shall be deemed to be a common nuisance, provided that no person under the age of twenty-one years or under the guardianship or tutelage of another, shall be criminally subject to the responsibility of such act or omission in the preceding articles mentioned.

VI. The unlawfully obstructing or causing injury, annoyance or inconvenience to the public, using any highway, or thoroughfare, or frequenting any markets or other places of public resort, in respect of their use or enjoyment of the same, shall be a common nuisance.

4 Esp. 200; 2 Esp. 217; Russ. 491; 2 East, R. 427; Compt. 230, l.

A reasonable use of such highway, thoroughfare, market or place as such, is not an indictable nuisance.

Russ. 454; 2 Roll. Abr. 137; 2 Hawk. P. C. 76; 4 B. and Ad. 30; 2 B. and Ad. 184.

A Town-way is a highway.

2 Russ. 491; Archb. P. S. 213.

VII. The maliciously corrupting or defiling the water used and enjoyed by the public is a common nuisance;

VIII. The setting up, carrying on or continuing any noxious, unwholesome or offensive trade, business, occupation, works or process, or by any other noxious or offensive means whatever infecting or corrupting the air or

rendering it impure or unwholesome, or by such or other means causing loud and continued noises, and thereby occasioning injury or annoyance to the dwellers in the neighbourhood, in respect of their health, comfort or convenience of living or the value of their property, is a common nuisance.

But such trade or occupation or business shall not be a common nuisance: 1st, if it have been conducted, carried on or exercised in good faith for the space of three years next before the commencement of any prosecution therefor; or, 2nd, if during such space of time it has not been carried on, conducted or exercised in a manner or to an extent more detrimental or injurious than at any period previous to such space of time, though it may have been greatly increased in extent; or, 3rd, if the annoyance or injury do not extend to the inhabitants of more than ten dwelling houses at the least.

IX. The causing or suffering any ferocious animal to go at large without sufficient restraint by a chain, muzzle or other security for the prevention of mischief, to the endangerment or terror of the public, is a common nuisance.

X. The selling or having in possession with intent to sell, any rockets, squibs, crackers, serpents or other fireworks, or the firing, letting off or playing off the same, or throwing the same lighted in or near to frequented public highways or places of common resort or the dwellings of others, or otherwise to the annoyance and endangering of persons, or the endangering of, or the destruction of or injury to property, is a common nuisance, except the same are sold, had in possession or fired or thrown, by license of the Mayor or any two Justices of the Peace of the City or Town, and in conformity with such license.

XI. Occasioning a groundless fear, or merely a slight or inconsiderable annoyance or inconvenience, is not a common nuisance.

XII. No act, being a common nuisance within the meaning of any of the foregoing sections, shall be deemed to be justifiable or excusable on the ground that it is productive of some compensating public convenience or advantage.

XIII. The term "public," mentioned in the foregoing articles, shall include all persons indiscriminately; and a common nuisance is one whereby persons indiscriminately may be affected, as distinguished from private nuisance only to certain specific individuals as such, or to their particular rights or property.

XIV. Where only a few persons of many who are equally exposed, are, owing to their peculiarity of temperament or infirmity, annoyed by an act or thing, the same is not a common nuisance.

4 Esp. 200; 5 Esp. 217:

XV. The offences contained in the 1st, 4th, 5th, 6th, and 7th articles are common nuisances in the first degree and shall be punished by imprisonment for not less than six months.

XVI. The offences contained in the other articles are common nuisances in the second degree and shall be punished by imprisonment for not more than three months and a fine of not less than pounds.

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#### CHAPTER XIV.

### OFFENCES RELATING TO TRADE OR COMMERCE, THE POST OFFICE, AND PUBLIC COMMUNICATIONS.

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1. Bankrupt obtaining goods.
  2. Spreading false rumours to enhance price of goods.
  - 3, 4. Offences connected with the Post Office, and punishment.
  - Offences connected with Patents for Inventions.
  - 7, 8, 9. Offences connected with Railroads.
  10. Offences connected with shipping of seamen.
  11. Preventing seamen working.
  - 12, 13, 14, 15, 16, 17. Offences relating to seamen.
  - 18, 19. Preventing persons coming to market with grain, produce, &c.
- 

I. Whosoever shall, within one month next preceding his bankruptcy, insolvency or *déconfiture*, which shall be determined in the manner by any law or statute provided for establishing the fact of bankruptcy, or according to the bankrupt law in force in this Province, under the false colour and pretence of carrying on business and dealings in the ordinary course of trade, obtain on credit from any other person any goods or chattels, with intent to defraud the owner thereof, or shall within such time with such intent, remove, conceal or dispose of any goods or chattels so obtained, knowing them to have been so obtained, shall be punished by imprisonment for one year.

II. Whosoever with intent to enhance the price of any goods, shall knowingly and fraudulently spread any false rumour, shall be punished in the manner provided in the preceding article.

III. Any officer employed by or under the Post Office who shall contrary to his duty, open or suffer to be opened a post letter, or shall wilfully detain or delay or suffer to be detained, or delayed a post letter or printed newspaper or any other printed paper, shall be punished by imprisonment for not less than *one* year.

The last article does not extend to the opening, detaining or delaying of such letter or paper returned for want of a true direction, or of a post letter returned by reason of the death of, or refusal to receive or pay the postage of such letter by the person to whom it was sent, or that he could not be found.

IV. 1. Any such officer who shall steal, or for any purpose whatsoever shall embezzle, secrete or destroy such post letter or paper, whether it contains or not anything the subject of theft, or

2. Shall steal out of such letter any thing the subject of theft, or

3. Shall steal a post bag or post letter or paper therefrom, or a post letter or paper from a post office or from an officer of the post office, or from a mail, or shall stop a mail with intent to rob or search the same, or

4. Shall steal or unlawfully take away a post letter, bag or box sent by a post office packet, or shall steal or unlawfully take a letter or paper out of any such bag or box or shall unlawfully open any such bag or box, or

5. Shall unlawfully receive or have in his possession or keeping any such letter, paper, bag or box, or any thing the stealing, taking, embezzling or secreting whereof is criminal, knowing the same to be so stolen, taken, embezzled or secreted, and to have been sent or to have been intended to be sent by the post, or

6. Shall fraudulently retain or wilfully secrete or keep or detain, or neglect or refuse to deliver up, being required to deliver up by any officer of the post office, a post letter or paper which ought to have been delivered to any other person, or a post letter, bag or box, or post letter or paper which shall have been sent, whether the same shall have been found by the person secreting, keeping or detaining or neglecting or refusing to deliver up the same or by any other person, or

7. Shall with intent to avoid the payment of the duty of postage forge the handwriting of any person in the superscription of a post letter, or shall write or send by the post a letter the superscription whereof in whole or in part shall be forged, knowing the same to be forged,



with intent in either case to avoid the payment of postage, shall in each of the cases contained in the 3rd and 4th last preceding articles be punished by imprisonment in the Penitentiary for not less than *three* years.

V. The writing, painting, printing, moulding, casting, carving, engraving or stamping upon any thing made, used or sold by one for the sole making or selling of which he hath not obtained letters patent, the name of the patentee thereof, without the consent in writing of the patentee or his assignee or legal representative, or the writing, painting, printing, moulding, casting, carving, engraving or stamping or otherwise making or affixing upon any such thing not purchased from such patentee, assignee or representative the words "patent," "letters patent," "by the "Queen's patent," "patentee" or other equivalent words, with the view or intent to imitate or counterfeit the stamp, mark or device of the patentee, or for the purpose of deceiving the public, shall be punished by imprisonment for not less than *three* months and by fine not exceeding *fifty* pounds, or by both in the discretion of the convicting Court.

VI. All patentees and their assignees of patents to be granted, shall stamp or engrave or cause to be stamped or engraved on each article sold or offered for sale, the date of the patents, failing which he or they shall be punished as in the last preceding article is provided.

VII. Whosoever being an engine driver or other servant in the employ of any Railway Company shall be found drunk while employed upon the Railway, or shall commit any offence against any of the by-laws, rules or regulations of such Company, or shall negligently and contrary to his duty do or omit to do any act, whereby the life or limb of any person passing along or being upon the railway or the works thereof respectively, shall be or might have been injured or endangered or whereby the passage of any of the engines, carriages or trains shall be or might have been obstructed or injured, shall be punished by imprisonment for not less than *one* year.

VIII. Whosoever shall maliciously do or omit to do any act with intent to endanger or tending to endanger the personal safety of any passenger or person conveyed in or upon any carriage or engine passing along any railway, shall be punished by imprisonment for not less than *two* years.

IX. Whosoever shall maliciously do or omit to do any act with intent to obstruct or directly tending to obstruct the lawful use of any railway, shall be punished by imprisonment for not less than *two* years, with hard labour.

X. The altering or destroying or for gain or otherwise forging, transferring or trafficking in or attempting to forge, transfer or traffic in any register ticket of any seaman, issued according to law, shall be punished by imprisonment for not more than *one* year.

XI. Whosoever shall unlawfully and with force hinder any seaman from working at or exercising his lawful trade, business or occupation, or shall beat, wound or use any other violence to him, with intent to deter or hinder him from working at or exercising the same, shall be punished by imprisonment for not less than *six* months with hard labour.

XII. Whosoever shall alter or destroy, or for gain or otherwise forge, transfer or traffic in or attempt to forge, transfer or traffic in any Register ticket issued or purporting to be issued pursuant to the provisions of any Statute or Law in force in this Province for regulating the Shipping of Seamen, shall be punished by imprisonment for not less than *six* months with hard labour.

XIII. Whosoever shall falsely apply for such Register ticket, and shall give a false answer to any reasonable question which may be put to him by the Shipping Master or his Deputies or by the Collector or Comptroller of the Customs at the port where such application is made, shall be punished by imprisonment for not less than three months with hard labour.

XIV. Whosoever being the master or person acting as master and in charge of any vessel belonging to any subject of Her Majesty, shall without the previous sanction of the Shipping Master or his deputy or of the said Collector or Comptroller or in the absence of such functionaries of the written sanction of two respectable merchants resident at or within a reasonable distance of the place of discharge or abandonment, discharge, abandon and leave behind any person belonging to his ship or crew, at any place before the completion of the voyage for which such person was engaged, on the plea or pretence of unfitness or inability to proceed upon the voyage, or of desertion or disappearance from the vessel, shall be punished by imprisonment for not more than *one* year.

XV. Whosoever being such master or acting master or the mate or other officer of such vessel, shall wrongfully force on shore and leave behind or shall otherwise wilfully and wrongfully leave behind, on shore or at sea, or in any river or lake in or out of this Province any person belonging to such vessel before the completion of the voyage for which such person was engaged, or the return of such ship, vessel or steam-boat to or its arrival

at the port of completion of the voyage, shall be punished by imprisonment for not less than one year, and shall moreover be compelled to pay to such person the full amount of wages agreed to be paid for such voyage, and in default thereof or for so long as they shall remain unpaid, to remain in prison.

XVI. Whosoever being such master or acting master shall supply provisions or water on board such vessel of insufficient quantity or of bad quality and unfit for use, or not appropriate, and shall not procure a sufficiency thereof in quantity and quality, shall be punished by imprisonment for not less than three months.

XVII. The term "vessel" shall include every description of vessel or steamboat on every river or lake in this Province, or waters outside the mouths of rivers out of this Province.

XVIII. Whosoever shall beat, wound or use any other violence to any person, with intent to deter or hinder him from selling or buying any wheat or other grain, flour, meal or malt, in any market or other place, or

XIX. Whosoever shall beat, wound or use any other violence to any person having the care or charge of any wheat or other grain, flour, meal or malt, whilst on its way to or from any city, market-town or other place, with intent to stop the conveyance of the same; shall in any of the said cases, be punished by imprisonment with hard labour for not less than six months.

## CHAPTER XV.

HOMICIDE AND OTHER OFFENCES  
AGAINST THE PERSON.

## SECTION I.

## HOMICIDE.

1. Homicide, what ?
2. Killing, what ?
3. Term "unlawful omission."
4. Constituents of Homicide.
5. What not Homicide—Exceptions.
6. Subjects of Homicide.
7. Criminal Homicide.
8. Murder.
9. Murder in the first degree.
10. Murder in the second degree.
11. Manslaughter.
12. Involuntary Homicide not by misadventure.
13. Homicide when not manslaughter.
14. Homicide extenuated.
15. Homicide not extenuated.
16. Homicide not criminal.
17. Justifiable.
18. For the execution or advancement of the law.
19. Requisites to justify Homicide by or against Officer.
20. Justifiable Homicide for self-preservation.
21. Homicide by misadventure.
22. Malice presumed in Homicide.
23. Whether passion had subsided to be determined by the Jury.
24. Homicide extenuated by other circumstances than passion.
25. Justification to be determined by circumstances of the act.
26. Whether notice or warning required to be given.
27. Homicide not justified by consent of party killed.
28. Malicious injuries to the person.
29. Punishments.
30. Degree of Murder or Manslaughter for Jury.

I. Homicide is the killing of a human being.

II. Killing is the causing of the extinction of life, by means of some bodily injury, either

1. By direct violence.
2. By unlawful omission.
3. By the indirect consequences of an act done.
4. By any act the direct consequence of which is death.

III. The term "unlawful omission" comprehends every case where any one being under any legal obligation to do any act or make any provision for the sustentation of

life or prevention of injury to life, is guilty of any breach of that duty whereby death ensues.

#### IV. It is homicide

1. Where the injury done is of a dangerous character and the efficient cause of the death of one labouring under some previous injury or infirmity, which without it would not have been fatal.

5 C. & P. 128; 1 Hale 428; 1 Russell 429; Arch. 319; Rosc. 544-6; 1 Hume 283; D. 9. 2, s. 5; Pothier's Pand. 9, 2, No. 4.

2. Where the injury done accelerates the death of one labouring under some previous injury or infirmity, although if timely remedies or skilful treatment had been applied, death might have been prevented.

Edgar's C. Roscoe, 573-6; 1 Hale, 428; 1 Hawk. c. 31, s. 10; 1 East, P. C. 344; 3 Chitty, 726; 1 Russell, 428; Archbold, 319.

3. Where death is occasioned by the being compelled to do an act likely to cause death, though the compulsion be by threats only or by the command of one having authority, provided he has apparently power to enforce his threat or command.

4 Mason's R. 505

4. Where a person having the charge or custody of another person, exposes him to a situation of manifest danger to life, or is guilty of any unlawful omission towards him and death ensues in consequence.

1 Hale 431 et seq. 466; 1 East, P. C. 225; 1 Russ. 426-5; Archb. 319; 1 Hume 270-8; 1 Hawk. c. 31, s. 5; Salk. 381; 2 Camp. c. 650.

5. Where an idiot or lunatic is procured to kill another.

1 East. P. C. 228.

6. Where death ensues from the use of words or signs to induce to an act causing the death.

Lev. 437; Russ. 425.

7. Where the natural course of things alone intervening between the injury and the death, gives efficacy to the injury done, and death ensues.

Roscoe, 575.

8. Inflicting bodily injury upon a child while yet in the womb, causing its death within a year after its being born alive.

1 Hale 432; 3 Inst. 50; 1 Hawk. P. C. 31, s. 16; 1 East, P. C. 228; 1 Moody Cr. Ca. 346.

9. Persuading another person to kill himself, and being present, aiding and abetting such killing.

1 Hale 431; 1 Russ. 424-9; 3 Chitty 726; 4 Bl. C. 103; R. & R. 523.

## V. It is not Homicide

1. Where death does not ensue within a year from the injury committed, in the computation of which time the whole of the day on which the injury was done is to be reckoned as the first.

2. Where death results, not from the injury done, but from unskilful treatment or other cause subsequent thereto.

5 C. & P. 128; 1 Hume, 283; 1 Hale, 428; 1 Russ. 429; Archb. 319; Rosc. 544-6.

3. Where death ensues from any incidental or supervening unforeseen misfortune having an accidental or remote connection only with the injury.

Lev. 171 Rosc 575.

4. Bearing false witness on a capital charge with intent to destroy the life of any person, by reason where of such person shall be convicted and executed.

3 Inst. 48, 4, Bl. C. I 96, 7, 1 Rosc. : 427, 3 Chitty 726, Archb. 349, Rosc. 373.

5. Where death is occasioned by the operation of words or signs upon the imagination or passions.

1 Hale 429, 1 East, P. C. 225, 3 Chitty 726, 1 Russ. 425, & Stark. Ev. 574, Rosc. 570.

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## SUBJECTS OF HOMICIDE.

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VI. A human being, the subject of homicide, is one alive and in being, of whatever age or condition, whether a subject or alien, except an alien enemy in the heat of war and in the actual exercise thereof.

1 Hale, 4, 33; Archb. 319; 1 Hume, 276; Vin. Abr. Murder B. 3.

A child in the womb is not a subject of homicide, in respect of any injury inflicted in the womb, unless it afterwards be born alive, and die from the effect of the injury within a year from its birth.

1 Hale, 403; 1 Hume, 276; 5 C. P. 227, 6 C. and P. 349.

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## CRIMINAL HOMICIDE.

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VI. Criminal Homicide is—

1. Murder.
2. Manslaughter.
3. Self-Murder.

## VIII. Murder is—

1. Voluntary Homicide not justifiable, excusable, or extenuated,

2. Voluntary Homicide done in committing or attempting to commit specified crimes,

3. Voluntary Homicide done in unlawful resistance to officers or others acting in execution of the Law.

IX. Murder in the first degree is voluntary homicide, done with malice aforethought, without authority, justification or extenuation by Law, and is

1. Whensoever death results from any act or unlawful omission, done or omitted with the deliberate intention to kill or do great bodily harm to the person killed.

2. Where means used with intent to kill one person, through mistake or accident occasion the death of another person, and whether the offender be present or absent, when such means occasion injury.

1 East, P. C. 230.

3. The wilfully putting life in peril, whether intending mischief thereby to the deceased or any other person in particular, or wilfully doing an act or being guilty of an unlawful omission likely to occasion death, without intending the mischief to fall upon any person in particular.

1 Russ., 425 ; Archb., 319 ; Rosc., 571 ; 1 Hume, 281 ; Britt., c. 11 s. 9 ; Staundf., 36 ; 1 Hale, 466 ; 1 Hawk. c. 31, s. 10., note. Fost., 322 ; 1 Russ., 459 ; 2 Ld. Raym., 1674 ; 2 Stra., 882, 856 ; Bac. Abr. Murder, A.

4. Causing death in the committing or attempting to commit any felony with force or violence to the person or dwelling house of any other, or in burning or attempting to burn such dwelling house, or in committing or attempting to commit any felony, from which danger may ensue to the life or limb, or bodily organ of any other person.

5. Causing the death of any officer or other person, by the unlawful and forcible resistance to such officer or person lawfully executing in a lawful manner, any civil or criminal process or other authority for the advancement of the Law, or lawfully interposing in a lawful manner for the prevention or suppression of any breach of the peace, or other offence.

1 East., P. C. 295.

6. Causing the death of such officer or other person so executing such process or authority, by one who unlawfully interposes and takes part against such officer or person upon resistance unlawfully made to him, unless such

one interpose with the intention of preventing mischief, having reasonable cause for believing that such interposition was lawful.

1 East., P. C. 296.

7. When death ensues from several joining in a common design to commit any breach of the peace and to execute it in a violent, tumultuous or riotous manner, against all opposition and being so assembled in execution of such design, all are guilty of murder.

1 Hale, P. C. 489, 445; Foster, 353; 1 Russ., 453; 1 East., P. C. 257.

X. In all other cases than the above such voluntary homicide is murder in the second degree.

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## MANSLAUGHTER.

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XI. Manslaughter is the wrongful killing of a human being, but without malice aforethought, and includes

1. Involuntary homicide which is not by misadventure.
2. Involuntary extenuated homicide.
3. It is of two degrees.

XII. Involuntary homicide which is not by misadventure is when without any intention to kill or do any great bodily harm or wilfully to endanger life, death ensues in any of the following instances :

1. From any act or unlawful omission done or omitted with intent to injure the person of another, whether the injury fall upon the person intended or any other person.

2. From any wrong wilfully occasioned to the person of another.

1 East. P. C. 261.

3. From any unlawful act or omission attended with risk of injury to the person of another.

1 East. P. C. 259; 1 Hale, P. C. 39, 475.

4. From want of due caution either in doing an act or neglecting to prevent mischief which the offender is bound by Law to prevent.

1 Hale, P. C. 36, 475; East., P. C. 260, 265, 272; Fost., 264.

The utmost caution that can be used is not required, but only such a reasonable degree of caution as is appropriate to the nature of the act and the probability of danger in the particular case.



5. From the use of offensive weapons or instruments which cannot be used without probable danger.

6. From any unfair advantage taken in case of friendly contest without the use of such weapons, either as regards the nature of the instrument, the mode of using it, the want of due warning previously to violence used or from any want of due caution.

1 East. P. C. 261.

7. When on a slight cause of provocation an excessive return wholly disproportionate to the cause of provocation is made by the offender.

1 East P. C. 261.

8. Whosoever upon provocation given by mere words or gestures of reproach, contempt or derision, the person provoked uses an offensive weapon or otherwise makes a return wholly disproportionate to the affront offered.

Rossi Traité du Droit penal, Liv. 2, Chap. 21.

XIII. Homicide is not manslaughter when it occurs in the practice of any lawful sport or exercise with weapons not offensive, and without intent on either side to do bodily harm, and when no unfair advantage is intended or taken.

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## EXTENUATED HOMICIDE.

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XIV. Homicide is extenuated when it is involuntary and not deliberate, but committed

1. Under the influence of provocation arising from a sufficient cause :

2. Or when it is attributable to the influence of fear or the effect of surprise,

3. Or when the act or omission from which death results, was done or omitted at the request or with the consent of the party killed, where he was of sufficiently sane mind to discern the nature and consequence of such consent, or where the party killing had no reasonable cause to believe that such consent proceeded from some false impression in respect of facts upon the mind of the person then consenting.

4. Where the act is committed under the influence of passion from sudden provocation or other adequate cause, which for the time materially disturbs the judgment and mental faculties, and weakens the self possession and self control of the offender, it is extenuated homicide in the first, or second degree according to the circumstances of the case.

<sup>2</sup> Ld. Raym. 1296; Kel. 137; 1 East 225-226; Fort. 201; 1 Hale, P. C. 469; 1 Hawk P. C. c. 31, s. 34; 1 Rocc. 232.

5. When the act done is committed under the influence of passion excited by any act done or attempted or threatened to be done of an injurious and insulting character to the person of the offender or of any other person, or by any other grave cause of provocation of the like character to such offender or other person, such cause shall be sufficient extenuation of the killing, provided that in fact the killing be attributable to heat of blood so occasioned and not to a deliberate intention to kill or do great bodily harm, regard being specially had to the kind and degree of violence used as compared with the cause of provocation.

2 Lord Raymond, 144-1296; 1 East P. C. 325; Foster, 290-291; 1 Hale, P. C. 455-456-473; 1 Hawk, P. C. c. 31, sect. 33, 34; Fray's case 1 East. P. C. 236; 1 Rosc. 232.

6. When the offender by accident kill not the person who offered the provocation but some other person.

Fost. Disc. 11, c. s. 3; 1 East P. C. 231-245.

7. Where, upon any sudden quarrel, parties fight in heat of blood, and one is killed, the offence is extenuated.

8. When two persons deliberately agree to fight with deadly weapons and one is killed.

In such last case it is immaterial which of the parties was guilty of the first affront or assault.

## XV. Homicide is not extenuated when

1. The offender either seeks the provocation as a pretext for killing or doing great bodily harm, or endeavours to kill or do great bodily harm before provocation given.

Fost. 132; Rosc. 63, c. 1, s. 1, 24; 1 East. P. C. 239-243-4; 2 Hawk, P. C. c. 31, s. 24; 1 Hale, P. C. 456.

2. Where one seeks a quarrel or takes advantage of a quarrel with another person with intent to kill or do great bodily harm, and a contest ensues in which he kills the other although such provocation has intervened as might otherwise have extenuated the offence.

Mason's Case, Foster. 132; 1 East. P. C. 239; 1 Hawk, P. C. 31, s. 34; 1 Hale, P. C. 456.

3. When the death of the party killed is the consequence of any unfair advantage taken or unfair means used by the party killing.

4. Where one upon a sudden quarrel with another and before any provocation given sufficient to extenuate the offence, endeavours to kill or do great bodily harm to such other person, and afterwards upon a combat ensuing kills him, with a weapon or in a manner evidently and imminently endangering life, limb or member.

5. Where the provocation arises from and is the natural or probable consequence of the deliberate illegal act or deliberate gross misconduct of the party killing.  
1 Ld. Raym. 144.

6. Where the sudden passion has subsided or there has been sufficient opportunity therefor at the time of the homicide.  
1 East, P. C. 253; 1 Hawk, P. C. 61, c. 31, s. 30.

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## HOMICIDE NOT CRIMINAL.

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XVI. Homicide not criminal is

1. Justifiable or
2. By misadventure.

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## JUSTIFIABLE HOMICIDE.

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XVII. Justifiable homicide is that, authorised or excused by Law.

1. For the execution or advancement of the Law.
2. For the defence of personal property.
3. For self preservation.

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## HOMICIDE JUSTIFIABLE FOR THE EXECUTION OR ADVANCEMENT OF THE LAW.

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XVIII. Such homicide is justifiable—

1. Where the act is done in a lawful manner in execution of a lawful sentence, judgment or decree, of a Court having jurisdiction over the offence for which such sentence, judgment or decree is pronounced, and where it is executed by an officer or other person legally authorised to do execution, and such execution is done according to the legal exigency of the authority therefor.

1 Hawk, P. C. c. 28, s. 10; 1 Hale, 456-496-502; 2 Hale, P. C. 411; Fost. 267.

2. Where the act is done in legally arresting or attempting to arrest any one on a charge of felony, or in detaining or restraining, or attempting to detain or restrain any one

for arrest, or after arrest on such charge for examination or prosecution thereof.

2 Hale, P. C. 118; 1 Hale, P. C. 489, 490; East., P. C. 298, 300.

3. Where the act is necessarily done in preventing or attempting to prevent the escape of the person killed, who was legally imprisoned, in custody or detained under a conviction or sentence, or on a charge, complaint or prosecution of or for any offence.

4. Where the act is necessarily done by any officer of justice or other person lawfully executing in a lawful manner, any civil or criminal process or other authority for the advancement of the law, or lawfully interposing in a lawful manner for the prevention or suppression of any breach of the peace or other offence, which is unlawfully and forcibly resisted, but using no more force than is necessary to overcome such resistance, or when done by reason of the violence opposed to him and a reasonable fear of death, if he proceed to execute his duty, and because he cannot otherwise execute his duty and preserve his life.

1 Hale, 457, 481, 494; Fost. Dis., c. II. c. 8, s. 8, 9, 18; Fost., 137; 1 East., P. C. 304, 14, 16.

5. Where the act is necessarily done to prevent the person killed from perpetrating by violence any felony at the time attempted by him.

1 Hale, P. C. 485, 6; 1 East., P. C. 272.

6. Whensoever it is necessary to prevent the perpetration of any felony attempted to be committed by violence or surprise against the person, habitation or property of the party killing, or of any other person.

1 R. T. 459; 1 East P. C. 271-2, 292; Fost., 273; 1 Hawk., c. 28, s. 21; 4; 1 Hale, 445, 481, 45, 8, 93; 4 Bl., Com. 180; 1 Russ., on Cr.; Rosc. Cr. Ev. 637; Archb., 318.

7. It is essential that such necessity be apparent from the manner of and the means used in the attack or by some other manifestation of the criminal purpose, and that such necessity continue to the time of the act from which death results.

Kel. 51, 128-9; 1 East. P. C. 239, 243, 276, 283; 1 Hale, 45, 58, 456; 1 Hawk., P. C., c 28, s 22, 31, s 24; 4th Rep. Eng. Commiss'rs. p. 34 a 20-1; same, p. 37 a 37, p. 39 a 50.

8. The term, "any officer," used in the foregoing sections comprehends all officers of justice acting by virtue of any valid writ or warrant, or other special authority, all public officers lawfully acting in the execution of their office without special authority, and all private persons lawfully acting in aid of any such officer, or otherwise lawfully acting, for the advancement of the law.

9. Such officer or other person shall be deemed to act in the execution of lawful authority, whilst actually executing or endeavoring to execute the same, and also whilst proceeding to execute it, or retreating having executed it, or being unable by reason of resistance so to do.

**XIX.** It is essential to every justification,

1. Of killing by an officer or other person acting under the authority of a writ, warrant or other process ; and

2. To make the killing of an officer or other person so acting, murder ;

1. That such writ, warrant or process should have been issued from a Court or by a Magistrate having competent jurisdiction.

2 Fost. Dis., c. 8, s. 8.

2. That at the time of its being issued, it expressed by whom and against whom it was to be executed, and be otherwise complete and legal in its frame.

2 Fost. Dis., c. 8, s. 9 ; 1 Hale, P. C. 457.

3. That the execution or attempt thereof be by one authorised by Law, and who executed or attempted to execute the same lawfully with respect to the time, place and manner of the execution, and according to the exigency of such writ, warrant or process.

2 Fost. Dis., c. 8, s. 18

4. That at the time thereof, the resister had notice that the officer or other person executing the same, acted or purposed to act under the authority of such writ, warrant or process.

4th Rep. Eng. Commiss'rs, p. 41 a 58, 59, 60, 1, 2 ; Foster 137, 310 ; 1 East. P.C. 296, 314.

5. Such officer or person giving notice is not held to show such writ, warrant or process.

6. For killing by an officer interposing by virtue of his mere official authority, for the purpose of preventing or suppressing any breach of the peace or other offence, or to make the killing of such officer, so interposing, murder, it is essential that the person resisting had notice that such officer or person had such authority, and that he interposed for such purpose.

1 East. P. C. 314 ; Fost, 310.

7. The notice mentioned above need not be given in express terms, but collected as a matter of fact from the terms used by the officer or other person, or from other circumstances.

East., P. C. 319.

8. It is essential to justification for killing by any private person interposing as aforesaid to prevent or suppress any breach of the peace or other offence, or to make the killing of such person, murder, that express notice should have been given to the party resisting, that such private person interposed for such purpose.

Fost, 311 ; 1 East., P. C. 304, 318.

9. Upon failure of the plea of justification as above or when the homicide of one acting or assuming to act for the advancement of the laws, does not amount to murder, for want of a valid warrant, notice of intention or other cause, the quality of the act of homicide shall be determined by such rules concerning homicide as are applicable to the particular circumstances of the case.

1 East., P. C. 261, 277.

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## HOMICIDE JUSTIFIABLE FOR SELF-PRESERVATION OR FOR DEFENCE OF PROPERTY.

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XX. Homicide is justifiable whensoever a person is involuntarily placed in such a situation that he is under the necessity of killing another, in order to save his own life, provided there be no malice, and the necessity is not directly induced by the culpable fault or neglect of the person killing.

1 East., P. C. 294; 4 Bl. C. 480.

1. When the act is done in defence of his person against unlawful violence, endangering loss of life, restraint of liberty, mutilation or loss of the use or function of limb or bodily organ, or

1 Hume, 56; East. P. C. 271; Fost. 273; 1 Hawk. c. 28, a. 21, 4; 1 Halo, 445, 481, 4, 5, 8, 493; 4 Bl. C., 180; Rosc., C. C. 637.

For the safety of his person from imminent death, common to him and others, if the homicide be free from malice, and the necessity be not directly induced by his culpable fault or neglect.

1 East., P. C. 294; 4 Bl. C. 186; Hume, c. 28, a. 26.

2. Also in defence of a lawful right or of moveable property in his lawful possession, and repelling force by force, but using no more violence than necessary for the defence of such property against wrong.

Kel. 132; East. P. C. 371-2.

3. Also, where one in lawful possession of house or land, after requesting another who has no right to be there, to depart, is resisted but using no more violence than is necessary to remove such wrong-doer and retain his possession.

1 Halo, P. C. 435-6.

4. Such homicide, as is mentioned in the cases in the three last preceding articles, is justifiable where the party assaulted is under reasonable apprehension of immediate death and unable otherwise to preserve his life, or is under reasonable fear of death if he persist in his defence and because he cannot otherwise defend his property and preserve his life, or is, from the violence with which such wrong-doer endeavours to deprive him of possession, under a reasonable fear of death if he persist in his defence, and because he cannot otherwise retain possession of his property and preserve his life.

5. When the act is done, although the party killing was guilty of an assault or engaged in an unlawful conflict which led to the fatal result, subject to the following limitations,

1 East, P. C. 279; 4 Bl. C. 188; Fost. 288; 1 Hale, P. C. 479.

1. That he did not commence the attack or seek to provoke the same with intent to kill or do great bodily harm, or during conflict, or before such necessity arose, endeavor to kill or do great bodily harm.

1 Hale, 455.

2. That he declined further conflict and retreated from it as far as he could with safety.

3. That he killed the assailant from necessity, in order to avoid immediate death.

4. Where one who would have been justified in self-defence or otherwise in killing a wrong-doer, happens by mere accident to kill another.

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## HOMICIDE BY MISADVENTURE.

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XXI. Homicide by misadventure is where a person doing an act without intention of bodily harm to any other person, and using proper caution to prevent danger, happens to kill another, provided the act done be either a lawful act, or be not attended with risk of hurt to the person of another.

1 East, P. C. 260.

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## MALICE AFORETHOUGHT.

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XXII. Malice aforethought is presumed in respect to homicide, and the proof of legal justification, excuse or extenuation, is on the party who commits such homicide.

4 Bl. Com. 201; Fost. 255; 1 East, P. C. 224.

**XXIII.** Whether opportunity had been given for passion to subside, or in fact had subsided, and whether the act was attributed to sudden passion or defect of judgment so occasioned, and not to a deliberate intention to kill or do great bodily harm, is a question of fact, to be determined by the Jury.

1 Leach, 368; 1 Hale, 455, 456; Fost. C. L. 257.

**XXIV.** Homicide may be extenuated by other circumstances than sudden passion, where there is no malice aforethought of intent, disposition or temper.

1 East, 243-4, 255-9, 60, 1, 4, 71; Fost. 264; 1 Hale, 39, 475.

**XXV.** Justification and extenuation of homicide are to be determined by reference to the circumstances and occasion of the act, as legally shewn or presumed to have appeared to the offender at the time of the homicide.

1 East. P. C. 5, s. 46, p. 272-275; Nailor's Case, East, P. C. 247.

**XXVI.** In determining on any alleged justification or extenuation of the act, consideration is to be had if any notice, order, or warning required by law, or the circumstances of the case, have been given, and whether it was duly given to the person killed.

**XXVII.** Homicide is not justified by reason of the consent of the person killed.

**XXVIII.** Murder in the first degree shall be punished by death; and the Court by which the sentence is pronounced, may, in its discretion, order the body of the convict, after execution, to be dissected: and the Sheriff, in such cases, shall deliver the dead body of the convict to a professor of anatomy and surgery, in some college or public seminary, of the City, Town or County where execution is had, if requested, otherwise to any surgeon who may be in attendance to receive it and who will engage for the dissection thereof.

Murder in the second degree, by imprisonment in the Penitentiary for *life*.

Manslaughter, in the first degree, by imprisonment in the Penitentiary from *ten to twenty* years.

Manslaughter, in the second degree, by imprisonment in the Penitentiary for *five* or *ten* years.

Any inferior degree of homicide shall be punished by imprisonment for not more than *one* year, and by fine not exceeding \_\_\_\_\_ pounds currency, or both at the discretion of the Court wherein the trial is had.

Provided that no punishment shall be incurred by any person who shall kill another by justifiable homicide, or homicide by misadventure.



XXX. The degree of Murder or Manslaughter is the province of the Jury to determine.

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SECTION II.

PETIT TREASON.

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Every offence, which before the commencement of this Act would have amounted to Petit Treason, shall be deemed to be Murder only, and no greater offence; and all persons guilty in respect thereof, whether as principals or as accessories, shall be dealt with, indicted, tried, and punished as principals and accessories in Murder.

4 & 5 V., c. 27, s. 2.

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SECTION III.

SELF MURDER—SUICIDE.

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Self-Murder is the voluntary or malicious act of a person causing his own death, but it is not cognizable or punishable as a crime, in respect to the party killing or attempting to kill himself.

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SECTION IV.

DUEL. CHALLENGE.

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1. Engaging in a duel or challenging.
  2. Accepting a challenge.
  3. Posting.
  4. Plea of former acquittal or conviction.
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I. Any person who shall engage in a duel, with any deadly weapon, although no homicide shall ensue, or shall challenge another to fight such duel, or shall send or deliver any written or verbal message, purporting or intended to be such challenge, although no duel shall ensue, shall be punished by imprisonment in a common gaol, for not less than *six* months, and a fine of not less than pounds currency.

II. Any person who shall accept any such challenge as is mentioned in the first article, or who shall knowingly carry or deliver any such challenge or message, whether a duel shall ensue or not; and any person who shall be present at the fighting of a duel, that is fought with deadly weapons as an aid, second, or surgeon, or who shall advise, encourage or promote such duel, shall be

punished by imprisonment in a common gaol for not less than six months, and a fine of not less than pounds.

III. If any person shall post another, or in writing or print, shall use any reproachful or contemptuous language, to or concerning another, for not fighting a duel, or for not sending or accepting a challenge, he shall be punished by imprisonment in a common gaol for not less than *three* months, and a fine not less than pounds.

IV. Where any one dies within this Province of a wound inflicted out of this Province, by any inhabitant thereof or resident therein, in a duel fought in pursuance of a previous appointment or engagement within the Province, the person inflicting such wound, or any accessory to his offence, may plead to an indictment for such offence a former conviction or acquittal thereof, in any other Province or country; and such plea being established by admission or proof, shall be a bar to all further or other proceedings against him for the same offence within this Province.

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SECTION V.

MALICIOUS INJURIES TO THE PERSON.

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1. Administering poison.
  2. Attempt to murder or do bodily harm.
  3. Shooting at any person.
  4. Sending explosive substances.
  5. Negligence on railroads, &c.
  6. Maliciously impeding escape from such.
  7. Danger to life from negligence.
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I. Whosoever shall administer or cause to be taken by any person, any poison or other destructive thing, or shall stab, cut or wound any person, or shall by any means whatsoever cause to any person any bodily injury, dangerous to life, with intent, in any of the cases aforesaid, to commit murder, shall suffer death.

II. Whosoever shall attempt to administer to any person any poison or other destructive thing, or shall shoot at any person, or shall by drawing a trigger or in any other manner attempt to discharge any kind of loaded arms at any person; or shall set fire to, cast away or in anywise destroy any ship, vessel, steamboat or raft, or shall attempt to drown, suffocate or strangle any person, with intent in any of the cases aforesaid to commit the crime of murder, although no bodily injury shall be effected, or shall by any other means maliciously put the

life of any other person in danger or cause to him any bodily harm shall be liable, at the discretion of the Court, to be imprisoned in the Penitentiary for the term of his natural life, or for any term not less than *seven* years.

III. Whosoever unlawfully and maliciously shall shoot at any person, or shall, by drawing a trigger or in any other manner, attempt to discharge any kind of loaded arms at any person, or shall stab, cut or wound any person, with intent in any of the cases aforesaid to maim, disfigure or disable such person or to do some other grievous bodily harm to such person, or with intent to resist or prevent the lawful apprehension or detainer of any person, shall be liable, at the discretion of the court, to be imprisoned in the Penitentiary for the term of his natural life, or for any term not less than *seven* years.

IV. Whosoever shall unlawfully and maliciously place or throw in, into, upon or against or near any building or vessel any gunpowder or other explosive substance or send or deliver to or cause to be taken or received by any person, any explosive substance or any other dangerous or noxious thing, or shall cast or throw upon or otherwise apply to any person any corrosive fluid or other destructive matter, with intent in any of the cases aforesaid, to burn, maim, disfigure, or disable any person or to do some other grievous bodily harm to any person, and whereby or not in any of the cases aforesaid any person shall be burnt, maimed, disfigured or disabled, or receive some other grievous bodily harm, being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Penitentiary for the term of his natural life, or for any term not less than *seven* years.

V. Where the life of any person being a passenger is lost by reason of the negligence or carelessness of the proprietor of any railroad, steamboat, stage coach, or of a common carrier of passenger, or by the unfitness or gross negligence or carelessness of their servants or agents in this Province, such proprietor and common carrier shall be liable to a fine of such sum as the Court in its discretion shall determine, to be recovered by indictment to the use of and for the benefit of the widow and children of the deceased, to be divided in equal moieties, of which one is for the widow and the other for the children, or the whole to one if the other be not in existence; and if no such widow or children exist, then the fine shall be paid to the Treasurer of the City, Town or County in or nearest to which the life was lost.

VI. Whoever shall maliciously impede any person being on board of or having quitted any ship, vessel, steamboat, craft or boat, which is in distress or wrecked or stranded or on shore, in his endeavour to save his life, shall be

punished by imprisonment in the Penitentiary for not less than *five* years.

VII. Whoever shall negligently cause any danger to the life or any grievous bodily harm to any other person, shall be punished by imprisonment for not less than *two* years.

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SECTION VI.

RAPE.

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A Rape is :

I. The ravishing or carnally knowing of any female, by force and against her will, or while she is insensible.

1 Hawk. P. C. 61, c. 41, s. 2; R. & R. Cr. Ca. 487.

II. It is also Rape although the woman at last consent to carnal knowledge, if such consent is given through fear of death or by reason of duress.

1 Hawk. P. C. c. 41, s. 6; 1 East., P. C. 414.

III. It is also Rape although the woman were first taken by her consent, if she be afterwards forced against her will.

1 East. P. C. 444.

IV. It is also Rape by one who pretending to be the husband of any married woman or knowing that she believes him to be her husband, deceitfully and carnally knows her.

V. Every person who shall counsel, aid or abet the commission of this offence, including the legal husband, is a principal offender.

Rape is punished with imprisonment in the Penitentiary for not less than *ten* years.

VI. Whosoever maliciously assaults any female with intent to ravish or carnally know her by force and against her will, shall be punished by imprisonment in the Penitentiary for not less than *three* years.

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SECTION VII.

CARNAL ABUSE OF A CHILD

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I. Whosoever carnally and unlawfully abuses and knows a child under twelve years of age, shall be punished by imprisonment in the Penitentiary for life.

II. Any person who shall counsel, aid or abet the commission of this offence, is a principal offender, and shall be punished by imprisonment in the Penitentiary for not less than *ten* years.

III. Whosoever shall maliciously assault any female child under twelve years of age, with intent carnally to know and abuse her, shall be punished by imprisonment in the Penitentiary for not less than *seven* years.

IV. Whosoever one causes a female child under twelve years of age to repair to or remain or be at any place, or harbours or by any means detains such child with intent carnally to know or abuse her, or causes or procures her to be carnally known or abused, it shall be conclusively presumed to be by force, and without her consent and against her will.

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SECTION VIII.

CAUSING ABORTION.

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I. Whosoever maliciously and without lawful justification, with intent to cause the miscarriage of a woman then with child, administers to her, or causes or procures to be administered to or taken by her, or knowingly aids or assists in administering to her or causing or procuring to be administered to or taken by her, any poison or noxious thing, or maliciously uses any instrument or other means with like intent, shall be punished by imprisonment in the Penitentiary for not less than *seven* years.

II. And if she be then not quick with child, the punishment shall be imprisonment for not more than *three* years.

III. This article shall also in every particular apply to the woman with child who shall administer the poison or noxious thing to herself, or use the instrument for the purpose of abortion.

Deac. Cr. Law, 9; 1 Russ. 796; 3 Chit. Cr. Law, 798.

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SECTION IX.

CONCEALING THE BIRTH OF CHILD.

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I. Whosoever any woman shall be delivered of a child and shall by secret burying or otherwise disposing of the dead body of the said child endeavor to conceal the birth thereof, she shall be punished by imprisonment for not less than *two* years.

9 Geo. IV, c. 31, § 14.

II. It shall not be necessary to prove whether the child died before, at or after its birth.

III. Any woman indicted for the murder of her infant child may be also charged in the same indictment with the offence specified in the first article.

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SECTION X.

CRIME AGAINST NATURE.

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I. Whosoever shall commit the crime of buggery either with mankind or with any animal shall suffer imprisonment in the Penitentiary for life.

9 Geo. IV, c. 31, § 15.

II. The offering, using or making of any solicitation, persuasion, promise or threat to any person, to induce him to commit or permit such crime, shall be punished by imprisonment for not less than *three* years.

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SECTION XI.

KIDNAPPING.

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Whosoever kidnaps, to wit, forcibly or fraudulently and deceitfully, and without authority by law, imprisons, seizes, detains or inveigles away any person, with intent to cause such person to be secreted within this Province against his will, or sent out of the Province against his will, is guilty of this offence, and any person who shall counsel, aid, assist or abet the commission of this offence is a principal offender.

The punishment of this offence shall be imprisonment for not more than *one* year, with hard labour.

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SECTION XII.

UNLAWFUL IMPRISONMENT.

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I. Whosoever maliciously and without authority of law, imprisons another or causes any one to be imprisoned, such imprisonment not appearing to be kidnapping, is guilty of unlawful imprisonment.

II. Any person who shall counsel, aid, assist or abet the commission of this offence, is a principal offender.

The punishment of this offence is imprisonment for not more than *one* year.

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SECTION XIII.

CHILD STEALING.

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I. Whosoever shall maliciously, either by force, fraud or deception, lead, carry, convey or take, decoy, entice away or detain or conceal any child under the age of twelve years, with intent to deprive the parent or parents, or any other person having the lawful care or charge of such child, of the possession of such child, or with intent to steal any article upon or about the person of such child, to whomsoever such article may belong is guilty of Child Stealing.

II. Whosoever with any such intent as aforesaid, receives or harbours any such child, knowing the same to have been, by force or fraud, led, taken, decoyed, enticed away or detained as hereinbefore mentioned, is a principal offender.

III. Any person who counsels, aids or abets the commission of the said offences, is a principal offender.

IV. The preceding articles are not applicable to the case where one obtains, detains or receives a child from motives of humanity or compassion, to protect it from cruelty or save it from suffering, or in good faith as being the legal parent, guardian or master and entitled by law to the custody of any child, and for the purpose of asserting and vindicating such right, or as being the reputed father of such child, the same being illegitimate; but the right to the custody of the child shall nevertheless, in either such case, be subject to be determined by suitable legal proceedings between the parties.

V. Whoever is guilty of the offence mentioned in the two first articles, shall be punished by imprisonment for not less than two years, with hard labour, and of that in the third article by imprisonment for not less than *one* year.

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SECTION XIV.

ABDUCTION.

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I. Whosoever by force or deception, takes or entices away or detains any female, whether she have any interest, legal or equitable, present or future, absolute, condi-

tional or contingent in any real or personal estate or not, or whether she shall be an heiress presumptive or next of kin to any one having such interest or not, or whether from motives of lucre or any other, with intent to marry or to carnally defile her, or cause her to be married or carnally defiled, without her consent given previously to her being so taken or enticed away or detained, shall be punished therefor by imprisonment in the Penitentiary for not less than *three* years.

II. Whoever is accessory before or after the fact to such abduction is deemed to be a principal in the offence.

Cro. Car., 488 ; 1 Hawk, c. 41, s. 9 ; III. Inst. 61 ; Staundf. 44 ; 1 East, P. C. 452.

III. Whoever takes any unmarried female under sixteen years of age, or causes or procures such female to be taken out of the custody or control and against the will of her parent, guardian, or other person having lawful custody and control, care or charge of her, with intent to marry or defile such female, or cause or procure her to be married to or defiled by any one, though it be with her own consent, shall be punished by *two* years imprisonment, and a fine not exceeding *one hundred* pounds.

2 KeL. 32 ; 2 Hawk, P. C. c. 41, s. 10 ; Deac. 6.

IV. Where a female retracts her assent previously given, subsequent acts of others are subject to the same construction, in respect to the offence of abduction, as if she had not so given her consent.

1 East., P. C. 454, citing 1 Hawk, c. 41, s. 5, 6 ; 1 Hale, 660 ; 4 Bl. Com., 208 ; 5 St. tr. 450, 464, 473, 474.

V. In this offence the assent of a female, obtained by means of force, menace or deception, is of no effect, and is to be accounted null and not to be an assent.

Wakefield's case, Deac. 4.

VI. The female alleged to have been abducted is a competent witness in a prosecution for the abduction, notwithstanding her marriage, with or without her assent, to the offender.

East P. C. 454 ; I. Hale, 301, 660 ; I. Hawk. c. 41, s. 14 ; Deac. 5 ; Gab. Cr. L. 56.

VII. The subsequent consent of such parent, guardian, or other person, to the marriage of such female, so had, caused or procured, shall absolve the offender.

III. Mod. 169 I. East, P. C. 457.



## SEDUCTION.

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I. Whoever by conspiracy, or by false pretences, representations or other fraudulent means, or by wilful falsehood or deceit, seduces or procures any unmarried female to have carnal communication with him, shall be punished by imprisonment in a gaol for not more than *two* years, or by a fine not exceeding *one hundred* pounds and such imprisonment for not more than *one* year.

3 St. Tr. Lord Grey's Case; 1 East P. C. 460; Deacon p. 6.

Provided, however, that if the parties to such fornication, subsequently legally intermarry together with the consent of the parent or guardian or other person entitled at the time of her being so seduced, to the custody and control of such female, the seducer shall be absolved.

Deacon, 1082.

If any person shall by any false pretences, false representations or other fraudulent means, or by wilful falsehood or deceit, procure any woman or child under the age of *twenty-one* years to have illicit carnal connexion with any other man, such person shall be punished by imprisonment for not less than *one* year with hard labour.

12 & 13, Tr. ch. 76.

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CHAPTER XVI.

OFFENCES AGAINST HABITATION.

SECTION I.

BURGLARY.

1. What is Burglary.
2. Who is an inmate of a dwelling-house.
3. What is a breaking.
4. Actual breaking.
5. What is not breaking.
6. Breaking of an apartment.
7. Constructive breaking.
8. What is an entry.
9. Breaking and entry united.
10. Intent to commit Felony.
11. Felony other than that committed.
12. Dwelling house.
13. Church.
14. Chambers in College.
15. The apartment of House.
- 16, 17, 18. Extent of Dwelling House.
19. Dwelling House, though not used for sleeping.
20. Though auxiliary to use of remainder.
21. Though inhabited only part of the day.
22. Temporary use.
23. Casual occupation.
24. Motive for using building not material.
- 25, 26. Dwelling House of whom.
27. Joint occupation.
28. Occupation by self and lodgers.
29. Breaking and entry into one's apartment.
30. By wife, of dwelling house of husband.
31. Dwelling of husband and wife.
32. Breaking of apartment must be by night.
33. Different night from entry.
34. What is night.
35. Entry into a Church.
36. Punishment.

I. Burglary is

1. Whensoever one in the night time, breaks and enters the dwelling-house of another, with intent to commit a felony within the same ;

2. Or by day or night enters such dwelling-house, with such intent, and in the night breaks with such intent, any apartments thereof,

1 Hale, 523, 553 ; 2 East, P. C. 488 ; 2 Ross, 6.

3. Or in the night time enters such dwelling-house, with such intent, and in the night time breaks out thereof,

12 Anne, c. 7, s. 3 ; 7 & 8 G. 4, ch. 29, s. 11 ; 2 East, p. c. 490 ; 2 Ross, 7.

4. Or being an inmate in such dwelling-house, in the night time breaks and enters, with such intent, any apartment thereof without any right or authority at the time to enter the same; and in each of the said cases the offender is guilty of burglary.

1 Hale, 554, 523-4; Kel. 67, 69; Hutt, 20; 1 Str., 481.

II. The inmate of a dwelling-house is one who lives therein, or one who stays therein by the consent of the occupant, or of one who lives therein.

Buzzell's Case, 14; Pick, 154.

III. A breaking is either

1. Actual, or
2. Constructive.

IV. An actual breaking is

1. By breaking the substance of a door or window.

1 Hale, 552; 2 Russ. 2; Jebbs Cas. 99.

2. By unfastening a door or window and opening it.

1 Hale, 552; 2 Russ. 3; Moody, 337; 2 East, P. C. 487.

3. By merely opening either, when closed but not fastened.

7 C. & P. 441; R. & R. 451; 1 Hale, 552; 2 Russ. 3;  
2 East, P. C. 487. R. & R. 157; Moody, 377; 4 C.  
& P. 231.

4. And this though there be an inside door or shutter to the same opening, which is not broken.

R. & R. 341; 1 C. & P, 300; 2 East, P. C. 487.

5. And though there be an outside door or shutter to the same opening, which is not closed.

R. & R. 451.

6. By getting into a chimney from without, whether any part of it be broken or thrown down or not, and whether any apartment be entered or not.

Crompt. 32; Dalt. 253; 1 Hume, C. L. S. 97; 1 Hale, 552; R. & R. 450.

7. By breaking away the sides of an aperture, so as to enlarge it.

Moody, 327.

8. By breaking, removing, or opening the roof, wall, ceiling, floor, or any impediment to or defence against entry, and which is parcel of the dwelling-house.

2 Russ. 3; 1 Hawk, c. 17, s. 6.

9. By breaking into a walled or enclosed area, from which there is a passage into the dwelling-house, having

no door, shutter or other means (being parcel of the dwelling-house), constructed for closing it.

2 Hawk, 559 ; 2 East, P. C. 487 ; R. & R. 289, 322.

Provided the wall or enclosure be intended for the defence and protection of such passage-way against entry.

## V. It is not breaking

1. When the entry is made by any aperture found open.

4 Bla. C. 226 ; 1 Hawk, c. 17, s. 5 ; 1 Moody & Rob. 357  
2 C. & P. 628.

2. Nor the opening of any window, door, or other aperture, partly open, further than it was open before, in the manner in which it was intended by its construction to be opened.

1 Moody, 178 ; 7 Dane Ab. 136.

3. Nor the breaking of a cupboard or box affixed externally to the doors, shutters or walls, having an opening into the House sufficient to admit an entry.

C. & P. 135.

4. Nor the breaking of a walled and enclosed area, having a passage therefrom into the dwelling-house, constructed with a door, shutter or other means of closing it, such door, shutter or other means of closing it, being parcel of such House, whether such passage be actually closed at the time or not.

R. & R. 322, 289.

5. Nor the breaking of any thing which is not part of the freehold.

1 Mass. R. 476.

VI. The breaking of an apartment by one who is within the House may be by breaking the walls, partitions, floors, ceilings, doors, windows or other impediments, defences or barriers against the entrance of such apartment and which are parcel of such dwelling-house ; but not by merely breaking a cupboard, locker, press or any other such like repository, whether attached to the freehold or not, unless an access be gained thereby into an apartment.

1 Hale, 554-5 ; 2 East. P. C. 489 ; 2 Russ. 7 ; Rosc. Ev. 257.

VII. It is a constructive breaking, if an entry be actually made and the means of entrance are obtained,

1. By violence or threats of injury to person or property or intimidation, direct or indirect, with intent to obtain admission.

2 Russ. 8 ; 1 Hale, 553 ; 1 Hawk. c. 17, s. 7 ; 2 East., P. C. 486.

2. By stratagem, fraud, or trick practised to obtain admission.

2 East, P. C. 485; 1 Hawk. c. 17, s. 8-10; 1 Hale, 553; Kel. 42-3; 2 Russ. 8; 1 Leach, 284; 4 Bl. C. 226.

3. By collusion or conspiracy with any other person unlawfully affording or facilitating such entry.

4. If a party enter, upon admission fraudulently given by a servant or other inmate.

In the case of the two last sections, the entry, so far as regards the fact of entry shall constitute burglary, as well in the accomplice, servant or inmate admitting as in the party admitted.

1 Hale, 553; 1 Hawk. c. 17, s. 9; 2 Stra. 380; 19 St. Tr. 782, note.

VIII. It is essential to burglary that there should be an entry, which may be made

1. By introducing the hand, foot, finger or any part of the body into the house or the apartment thereof entered.

Fost., 107; 2 East, P. C. 490; 1 Hale, 553; R. & R. 499, 341; 1 C. & P. 300; 2 East, P. C. 187.

2. By getting into the chimney from without, though no apartment be entered.

R. & R. 450; 1 Hale, 552.

3. By discharging or throwing any missile into a dwelling-house, or an apartment thereof, or by introducing any engine or instrument, or any part of an engine or instrument into the same; provided such missile be discharged, or such engine or instrument or part thereof, be introduced with intent to commit a felony in such dwelling-house or apartment thereof.

1 Leach, 406; Moody, 183; 2 East, P. C. 490; 2 Russ. 10; 4 Camp. 222; 1 Starkie, R. 48; 1 Hawk. c. 17 s. 11; 3 Inst. 64.

4. An entry may be by a door or window, although there be an inside door or shutter to the same opening, which is not broken, or an outside door or shutter to the same opening, which is not closed.

R. & R. 341; 1 C. & P. 300; R. & R. 451.

5. An entry by a servant or an inmate of a dwelling-house into any inner part thereof, made with the intent to commit a felony, and not made by virtue of any authority, trust or employment at the time, is sufficient entry into such part to constitute burglary.

6. But an entry into such house or part thereof, by one having authority at the time to enter therein, shall not be such sufficient entry, although he enter with intent to

commit a felony, or having entered, doth commit a felony therein.

IX. The same act may be both a breaking and an entry, if it be a means of committing or attempting to commit any felony, as well as of breaking.

R. & R. 450; 1 Hale, 552; Fost., 107; 2 East, P. C. 490; Camp. 22; 1 Camp. 219; 2 Russ. 10.

X. To constitute burglary, an intent to commit some felony must exist.

1. At the time of the entry.

1 Hale 561; 2 Russ. 33; 2 East, P. C. 510-13; 1 Hawk. c. 17, s. 37, 38; Rosc. Cr. 280; 4 Bl. C. 227; Bac. Abr. Burg. (F).

2. At the time of the breaking, except when one having entered a dwelling-house with such intent in the night, breaks out of the same in the night.

2 Russ. 33; 1 Hale, 554, & Note (Y) 7 & 8 Geo. 4, c. 29, s. 11

3. But it is not necessary that the crime should be actually committed in either of the above cases.

1 C. & P. 300; R. & R. 341; 1 Hale, 561; 1 East, P. C. 500-13.

XI. An intent to commit a felony shall be taken to be an intent to commit any felony other than that which is actually committed in committing or attempting to commit the former.

2 East, P. C. 515; 1 Deac. 194; Rosc. Ev. 281; 1 Russ. 33, 454; 2 Russ. 487.

XII. A dwelling-house is every building used for the habitation and dwelling of men, and extends to and comprehends all the apartments, buildings or parts thereof, not constituting or being part of another dwelling-house, which have an immediate or direct and covered communication with each other, to the extent of such inter-communication, and no other.

3 East, 64; 1 Deac. Abr. p. 185; 1 Hale, p. 556; R. & R. 108; 8 B. & C. 461; s. ed. 1 Hale, 557; 2 Russ. 13; 2 East, P. C. 492; 1 Hawk. c. 17, s. 35.

XIII. So also a Church.

1 Hale 559; 2 East, P. C. 487-91.

XIV. So also chambers in an Inn of Court or a College.

Cro. Car. 473; 1 Hale 522, 556, 9; 1 Hawk. ch. 38, s. 18; 4 Bl. C. 252; 2 East, 505.

XV. An apartment of such house in respect of burglary, is any room, entry, compartment, or other division which is parcel thereof, or such walled or enclosed area as hereinbefore described in this chapter.

But a cupboard, locker, press, chest or other such like repository, whether attached to the freehold or otherwise, is not an apartment thereof.

1 Hale, 544; Fost 108; 2 East, P. C. 480; 2 Russ. 7; Rusc. 257.

**XVI.** A dwelling-house extends to and comprehends all the apartments, buildings or parts thereof, not constituting or being part of another dwelling-house, the parts whereof communicate together either immediately or by means of any covered and enclosed passage leading from the one to the other.

7 & 8 Geo. 4, ch. 29, s. 13; R. & R. 202; 1 Leach, 237, 537; Moody, 23; 2 East, P. C. 504; 2 Leach 913; 6 C. & P. 407.

*Provided*, that no building, although within the same curtilage with the dwelling-house and occupied therewith, shall be deemed part thereof, unless communicating therewith, as mentioned in last article.

**XVII.** And it also comprehends such apartments, buildings or parts thereof, although such communication may have doors or shutters which can be or are shut or fastened, so as to close the passage way or place of ingress.

R. & R. 202; Moody, 23; 1 Leach, 237.

*Provided*, they are not kept fastened for the purpose of permanently cutting off the communication.

2 Leach, 913.

**XVIII.** It is not necessary in order that such dwelling house should comprehend such apartments, buildings or parts thereof,

1. That they should be under the same roof with any main part of it,

2. Nor that they should be within the curtilage or inclosure thereof,

3. Nor that they should be occupied by persons who reside in such main part,

4. Nor that they should be held by any persons by or under the same title with that by or under which such main part is held,

5. Nor that they should not be occupied for other uses than that of dwelling therein.

Moody, 274-13; KeL 84; 2 East, P. C. 501, 487, 507, 494; 2 Russ. 22, 16; 2 Leach, 1016, Note: 1 Leach, 357; R. & R. 170 357, 334, 360; 1 Lew. 32; 1 Hale 557, 559.

**XIX.** A building may continue to be a dwelling-house when not used at the time for sleeping or lodging therein.

1 Hale, 556; 2 Russ. 18; 2 East, P. C. 496.

*Provided*, it has been previously so used by one having a settled intention so to use it again, and doing such acts as continue his constructive occupancy.

2 Leach, 701, Note; 2 East, P. C. 498, 496, 7; R. & B. 187; Foster, 76; 2 Russ. 18.

XX. When part of a building is usually occupied for sleeping or lodging therein, it may be a dwelling-house, though this is ancillary to the use of the remainder for other purposes.

1 Hawk. ch. 17, s. 31; 2 East, P. C. 492.

XXI. A building shall be deemed to be a dwelling house though it be not inhabited by living therein during any part of the day.

XXII. Though a building is intended only for temporary use as a dwelling-house, it shall be such while it is so occupied.

1 Moo. & Rob. 256.

XXIII. But the mere casual occupation by night of a building for some particular purpose or on some special occasion, shall not constitute it a dwelling-house.

2 East, P. C., 498; 2 Russ., 17; 1 Leach, 186, Note; 2 Leach 701.

XXIV. The motive or object for using a building for the purpose of lodging or dwelling therein by night, shall not be deemed material to the offence.

XXV. A dwelling-house in respect of burglary, is that of him who personally occupies the whole building or the whole of any portion of any building, or who occupies it by the members of his family, guests of his inn, his boarders, visitors, agents or servants, placed or continued therein by his licence and authority.

2 Russ. 19, 22; Moody, 329, 344, 244, 248; 2 Deac. Abr. 1511; 2 East, P. C. 501, 499, 502; R. & B. 185, 495, 115, 525; 16 East, R. 33; 8 c. & p. 150; 2 Leach, 930; Moody, 42.

It is not a necessary condition of such occupancy that the licence should be without benefit to the party licensed or authorized, or without compensation or allowance to the person licensing or authorizing.

2 East, P. C. 501; 2 Russ. 22; R. & B. 186, 525; 2 Taunt. 339; 2 Leach, 930; Moody, 248.

But when such member of the family, guest, visitor, boarder, agent or servant is tenant for a term or at will or at sufferance of a dwelling-house, it is his dwelling-house.

R. & B. 498; 2 Russ. 24; Moody, 7; Cro. Car. 376; 2 East, P. C. 1025; 1 Leach, 220, 242; Fost. 113; Jebb. 36.

But the placing of persons in a house temporarily to sleep or lodge by night for some particular purpose or on



some special occasion, will not of itself necessarily make it the dwelling-house of their employer.

2 East, 298; 2 Russ. 17.

The Government, or any public or private Corporation, may occupy a dwelling-house by others, according to the same rules by which an individual may do so.

1 Hale, 522; 1 Leach, 324; Kel. 27; 2 East, P. C. 501, 1027; 1 East, P. C. 1034; 2 Russ. 488; 1 Hawk. P. C. c. 18, s. 13,

**XXVI.** A building is the dwelling-house of him who occupies it by his wife, her family, guests of her inn, her boarders, visitors, agents or servants,

Though she live separately from her husband with her adulterer in the house, and on the income of her separate property; and

Though she hired the house on her husband's refusal to hire it.

Kel. 42; 2 Russ. 21; 3 C. & P. 201; R. & R. 491. 517.

Or though the house be her separate estate.

But if she be authorized by law to contract as sole, and do so by hiring a dwelling-house, and living separate from her husband, the dwelling-house is hers, during the continuance of such authority.

**XXVII.** When a building, or the whole of any portion thereof, shall be in the joint occupation of several persons, such building or portion shall be deemed to be the dwelling-house of such persons, whether they or any of them shall dwell therein, or whether the same be inhabited by any servant, agent or other person whatsoever, by the authority or licence of them or any of them.

1 Leach 537; 1 Hawk. c. 17, s. 34; 2 East. B. C. 504; 2 Russ. 30.

Where apartments in a house are inhabited for sleeping or lodging therein by lodgers, lessees or others having such like distinct possession thereof, and the keeper, lessor or other person under whose agreement they enjoy the same, occupies by himself or others as before provided, any part of the house as his dwelling house, and has either solely or in common, the use or control of the outer door, which is the only entrance to such apartments, then such apartments are part of his dwelling house.

But if the apartments or one or more of them have an entrance by a separate outer door, such apartment or apartments is or are the dwelling house or houses of the respective persons enjoying the same.

Where the keeper, lessor or other person under whose agreement such apartments are enjoyed, has no use or control of such common outer door or doors, or there is no such common outer door, then such apartments are the dwelling houses of the respective persons enjoying the same.

In such cases of several occupancy of parts of a building as separate dwelling houses, all the apartments in the occupation of one person, although for different uses, communicating with each other immediately or by a closed and covered passage way, whether it be used by him in common with others or not, constitute his dwelling house.

**XXVIII.** Whenever one occupies any building or any part thereof, with or by his lodgers, lessees or others having such like distinct possession thereof, so as to make it his dwelling house with respect to third persons, it is nevertheless, with respect to any breaking or entry by him, the dwelling house of such lodger, lessee or other person having such like distinct possession. And any part of such dwelling house occupied by such lodger, lessee or other person having such like distinct possession, is not with respect to any entry or breaking by himself, the dwelling house of another.

**XXIX.** Whenever a member of a family, guest of an inn, boarder, visitor, agent, servant or other inmate of a dwelling house, breaks and enters any apartment, wherein he has at the time any right or authority to enter, it is not with regard to him the dwelling house of another, otherwise it is so.

**XXX.** The breaking and entry by the wife, of the dwelling-house of the husband is not burglary.

**XXXI.** Buildings and parts thereof or apartments thereof which are the dwelling house of another, with regard to the husband are such with regard to the wife, and no others are so.

**XXXII.** When one enters a house, and while therein breaks an apartment, the entry may be by day or night, but the breaking in order to constitute burglary must be in the night. In all other cases, both the breaking and the entry must be in the night.

**XXXIII.** The breaking may be on a different night from the entry.

**XXXIV.** So far as the same is essential to the offence of burglary, the night shall be considered to commence at Nine of the Clock of the evening of each day, and to con-

clude at Six of the Clock in the morning of the next succeeding day.

XXXV. Any entry into a church, chapel, dwelling house, shop, warehouse, or counting house, shall be deemed to be a breaking thereof respectively in respect of any provision which makes the breaking thereof criminal.

XXXVI. Whoever enters the dwelling house of another with intent to commit a felony within the same, where any inmate, not a party thereto is within such dwelling house, such offender being armed with an offensive weapon at the time of entering or at any time while he is within such house, or committing an assault therein on any such inmate, or putting him in fear shall be punished

1. If the entry be in the night time, by imprisonment in the penitentiary for *life*.

2. If in the day time, by such imprisonment for *ten* years.

3. But if the offender be not so armed and do not commit such assault or put such inmate in fear, then if the entry be in the night time, by such imprisonment for not more than *seven* years, if in the day time by such imprisonment for not more than *five* years.

4. Whoever breaks and enters in the night time any office, shop or warehouse adjoining to or occupied with a dwelling-house, with intent to commit a felony shall be punished by such imprisonment for not more than *three* years,

5. Or any meeting-house, church, court-house, town house, college, academy or other building used for public purposes, not being a dwelling-house, with intent to commit felony therein, shall be punished by such imprisonment for not more than *three* years.

6. Whoever enters or breaks and enters the house of another, not being a dwelling-house, or the bank, office, counting room, shop, warehouse, storehouse, workshop or factory of another, or any enclosed and covered building of another used at the time for the deposit or safe keeping of property, or for the shelter, accommodation or employment therein of persons, other than the buildings described in the previous sub-article, the same not being a dwelling-house, or any vessel of another, with intent to commit a felony therein, when any person not a party thereto is within the buildings mentioned in the previous subsection, having right or authority to be therein, such offender being armed with an offensive weapon at the time of breaking or entering or at any time while he is therein, or committing an assault on any person so there-

in or putting him in fear, if such entry be in the night time, such offender shall be punished by imprisonment in the penitentiary for not more than *ten* years, and if it be in the day time by such imprisonment for not more than *five* years.

7. But if such offender as is mentioned in the two preceding sub-articles be not so armed and do not commit any such assault or put any such person in fear, if such entry be in the night time he shall be subject to such imprisonment for not more than *five* years, and if it be in the day time to such imprisonment for not more than *three* years.

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SECTION II.

ARSON AND MALICIOUS BURNING.

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1. Definition of Arson.
  2. What a setting fire to.
  3. Presumption of malice.
  4. Wilful burning.
  5. Malicious burning.
  6. What presumes malice.
  7. What not wilful or malicious burning.
  8. Burning in committing other felony.
  9. Structure and occupancy as in burglary.
  10. Part occupation.
  11. Sole building.
  12. Divers dwellings in one house.
  13. Occupant as in burglary.
  14. Burning of one's own dwelling house.
  15. Burning by married woman.
  16. Burning an object with intent to burn a dwelling adjoining thereto.
  17. Inmate, same as in burglary.
  18. Day and night as in burglary.
  19. Degrees of Arson.
  20. Malicious injuries to property by burning.
  21. Malicious explosion of gunpowder.
  22. Malicious burning wood, hay, grass, &c.
  23. Degrees of punishment for Arson.
  24. Ditto ditto for malicious burning.
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I. Arson is the wilful and malicious burning of the dwelling-house of another.

II. It is sufficient to constitute a burning within the provisions of this chapter, of a dwelling-house, building or other structure or any other subject which is an entire body or mass, that some part of the same is on fire, though no part or only a part thereof is absolutely consumed, and notwithstanding that the fire may go out of itself.

3 Inst. 66; Rosc. on Ev., 1637; 4 Bl. C. 222; 1 Hale, P. C. 568; 1 Hawk, c. 139, s. 16, 17, 18; 2 East, P. C. c. 2104; 1 Leach, 49; 18 Johns, 115.

III. Where one wilfully and maliciously sets fire to a thing, such and so situated that a building or other property adjoining thereto or in the vicinity thereof, is thereby in obvious and imminent danger of being destroyed by fire, it shall be presumed that he wilfully and maliciously intended to burn such building or other property.

IV. A wilful burning, within the provisions of this chapter, is a burning with intent to consume or destroy a subject.

The burning in such way that the natural and obvious consequence is the consuming and destroying thereof, if the fire be not checked and extinguished, is a burning with such intent.

Where the party burning, provides for arresting and extinguishing or intends to arrest and extinguish the fire, and intends that a subject shall not be thereby mediately or immediately destroyed or consumed, it is not a wilful burning of such subject, within the provisions of this chapter. But the same may, notwithstanding, be a wilful malicious mischief or injury and punishable as such.

18 John's R. 115.

V. Malicious burning is burning a thing, whether that of the offender or of another person, with intent to injure another, or without any legal or justifiable motive or object, and with a reckless disregard of the life or personal safety, property or legal rights or interests of another, where the same are obviously, immediately and imminently endangered by the burning.

2 Archb. Peel's Acts, 7.

VI. Where the thing burnt, endangered or attempted to be burnt, is that of another than the offender, malice is presumed: where it is that of the offender, the malice must be shown.

7 and 8 Geo. 4, c. 30, s. 25; 2 Deacon, p. 890; 3 B. and C. 248.

VII. A burning thoughtlessly or through mere negligence, is not a wilful, malicious burning, within the meaning of the provisions of this chapter, except in the cases specified in the following section:

East. P. C. f. 21 s. 3 p. 1019; 1 Hale, 50, 7, 9; 1 Hawk. s. 19.

VIII. The burning of a dwelling house or other property by any one in committing or attempting to commit, another criminal offence, is arson or the crime of malicious burning as the case may be, though the person so burning does not intend to burn or intends not to burn such subject, and the so burning thereof be merely casual or consequential.

Russ. on Cr. 1658, '59; 6 St. Tr. by Hargrave, 222; 3 Inst. 67; 4 Bl. C. 222, n.; 1 Hale, P. C. 569; 2 East, P. C. c. 21, s. 8; 1 Hawk. P. C. c. 39, Jus. 19; Dalt. s. c. 153; 2 East, P. C. c. 21, s. 7, 8; ditto, c. 21, s. 3, p. 1019.

**IX.** The description of structure and occupancy requisite to constitute a dwelling house, in respect to the provisions of this chapter, are the same as in respect to burglary, subject to the modifications expressed in this chapter.

7 Dane's Abr. 134; 2 East, P. C. 1020; 2 Lew. Cas. 46;  
2 Russ. on Cr. 489, note x.

**X.** Where a part of a building is occupied as a dwelling house or as part of a dwelling house, so much of such building as is not so occupied is, in respect to the provisions of this chapter, parcel of such dwelling house.

**XI.** A dwelling house does not, in respect to the provisions of this chapter, extend beyond one building, inhabited wholly or partly as such, to another building, and include the same as being part of such dwelling house, unless such other building or part thereof is occupied as being part of such dwelling house.

**XII.** Where a building contains divers dwelling houses or parts of divers dwelling houses, or one or more dwelling houses and a part of one or more dwelling houses, an attempt to burn such building is but one offence of an attempt to commit arson, and may be alleged to be an attempt to burn either of such dwelling houses.

2. The burning of a part of such building, not occupied as any part of either of such dwelling houses, is but one commission of the crime of arson and may be alleged to be the burning of either of such dwelling houses.

3. The burning of either of such dwelling houses is but one commission of the crime of arson, though part of such building, not being occupied as part of any dwelling house, be burnt at the same time, and the same must be alleged to be a burning of such dwelling house.

4. Arson, by the burning of any one of such dwelling houses, shall not be presumed to be with intent to burn any other of such dwelling houses.

**XIII.** A dwelling house is, in respect to arson, that of the occupant thereof as such, and who is such occupant shall be determined in the same manner and by the same rules as in respect to burglary, subject to the modifications provided in this chapter.

2 East, 1027, 25, 25, 26, 27; 1 Leach, 220, 242; 2 East, 1034; Mood, C. C., 344; 2 Deac., 1496; Cro. Car., 376; 2 John's R., 105; 7 and 8 G. 4 ch. 30 s. 1.

**XIV.** The wilful and malicious or fraudulent burning by any one, of his own dwelling house, is subject to the punishment for the crime of malicious burning of a building.

Cro. Car. 376; Russ. on Cr. 1659, '60; 1 Leach, 217, 220;  
2 East, P. C. c., 21 s. 6.

**XV.—1.** Where a married woman wilfully burns the dwelling house or other property, being wholly or in part that of her husband, with intent to injure him or defraud or injure another, she is subject to the punishment of burning by her of any house or property of another person than her husband.

Contra Moody, 344.

2. Where a married woman, legally separated from her husband and authorised to contract and to hold property independently of him, occupies a dwelling house, or holds property by virtue and in the exercise of such authority, it is in respect to the burning thereof by her husband or any other person, her dwelling house and her property.

**XVI.** The wilful and malicious setting fire to or burning an object, with intent thereby to burn a dwelling house or other thing adjoining to or in the vicinity of such subject, the same being in obvious and imminent danger of being thereby burnt, is an attempt to burn such dwelling house or other thing.

2 East, P. C. 1028, 1030; Russ. on Cr. 1662; 1 Eawl. c. 39, s. 15; 4 Bl. C. 221; 43 Geo. III, c. 58.

**XVII.** Inmate or occupant has the same meaning in this chapter as in respect to burglary.

**XVIII.** Day and night are distinguished in respect to the provisions of this chapter in the same manner as in respect to burglary.

**XIX.—1.** Such burning in the night of a dwelling house in which there is at the time of such burning any occupant or inmate, is arson in the first degree.

2. Such burning where there is no inmate is arson in the second degree.

3. All others are arsons in the third degree.

**XX.—1.** Whoever wilfully and maliciously or fraudulently burns in the night any building, vessel or structure whatsoever, whether partly or wholly his own or that of another, by the consuming or destroying of which by fire another might be injured, where the building, vessel or structure burnt, is, with its contents of the value of two hundred pounds or more, he is guilty of malicious burning in the first degree.

2. So he is guilty of the same offence in the same degree where the building, vessel or structure so burnt in the night, is so situated, that by the burning thereof, any other building, vessel, structure or property whatsoever, to the same value, together with such building, vessel

or structure so burnt and its contents of the amount aforesaid, is in evident and imminent danger of being destroyed by fire.

3. Whoever wilfully and maliciously or fraudulently burns, in the night any thing such and so situated that by the burning and by fire consuming thereof, any building, vessel or structure whatsoever which is, together with its contents and such thing, of the value aforesaid, is in obvious and imminent danger of being burnt and thereby materially injured, and where, by the burning and destroying thereof, another might be materially injured, he is guilty of malicious burning in the first degree.

4. Where the building, vessel, structure or property burnt or endangered, as mentioned in the three last preceding sub-articles, is of the value of one hundred pounds and less than two hundred pounds, such burning is malicious burning in the second degree.

5. Where such value is less than one hundred pounds it is malicious burning in the third degree.

6. Where the burning, as mentioned in first, second, third, fourth, and fifth sub-articles, is in the day, it is malicious burning in the third degree.

XXI. Whosoever shall maliciously, by the explosion of gunpowder or other explosive substance, destroy, throw down or damage the whole or any part of any dwelling house, any person being therein, shall be deemed to be guilty of arson in the first degree.

XXII. Whoever wilfully and maliciously burns any pile or parcel of wood, timber or lumber, his own or that of another, any fence or any stack or parcel of hay, grain or fodder, any grass, grain or other vegetable products, whether severed from the soil or not, any standing trees, brush or under-wood, any mine or mineral products or the soil itself, any other property or thing other than mentioned or otherwise than as mentioned in the preceding articles of this section, and by the burning up of which another obviously might be injured where such burning is in the night and the amount destroyed thereby is not less than fifty pounds, he is guilty of malicious burning in the first degree.

Whosoever wilfully and maliciously sets a running fire, by day or night, in a tract of woodland exceeding ten acres, also in woodlands or other lands where the burning and destroying of crops, buildings, wood, fences or other property to the amount of fifty pounds or more, is thus obviously and imminently endangered, he is guilty of malicious burning in the second degree.



In all other cases the setting of such running fire is malicious burning in the third degree.

XXIII. 1. Whoever is guilty of Arson, in the first degree, shall be punished by imprisonment in the Penitentiary for *life*.

2. Whoever is guilty of Arson in the second degree, shall be punished by imprisonment in the Penitentiary for *ten* years.

3. Whoever is guilty of other arson than that in the first and second degrees, shall be punished by imprisonment in the Penitentiary for *five* years.

XXIV. Whoever is guilty of malicious burning, in the first degree, shall be punished by imprisonment in the Penitentiary for not less than *five* years.

1. Whoever is guilty of malicious burning in the second degree, shall be imprisoned in the Penitentiary for not less than *three* years.

2. Whoever is guilty of malicious burning in the third degree, shall be punished by imprisonment for not less than *one* year.

Every male person under the age of sixteen years who is convicted under the provisions of this chapter of setting fire to any building, vessel or stack, shall be liable at the discretion of the Court before which he is convicted, in addition to any other sentence which may be passed upon him, to be publicly or privately whipped in such manner and as often, not exceeding *thrice*, as the Court shall direct.

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SECTION III.

VIOLETION OF SEPULTURE.

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I. Whoever not being authorised by a Board of Health, Mayor or Aldermen of any City, or the Mayor or Council of any Municipality, shall wilfully dig up, disinter, remove or convey away any human body or the remains thereof, or shall knowingly aid in such disinterment, removal or conveying away, or shall be accessory thereto, either before or after the fact, shall be punished by imprisonment for not less than *one* year.

II. Whoever shall, on any civil process or on any execution for debt, or on pretence of such process or execution, or on any unlawful pretence, arrest, seize or detain

any dead human body or the remains thereof, or the grave clothes in which any such body shall be invested, or the coffin in which it shall be placed, or shall otherwise wilfully, and without authority or justification by law prevent, interrupt or hinder the burial or entombing of such body, shall be punished by such imprisonment for not less than *six* months.

4 East, p. 455.

III. Whoever makes, constructs or opens any highway, townway, railroad, turnpike road, canal or other thing in the nature of a public easement, over, through, in or upon an inclosure or a part of any inclosure, belonging to any town, parish, society, corporation, or other proprietors, public or private, and used or appropriated for the burial of the dead, unless authority for that purpose be specially granted by Law, or unless the consent of such town, parish, society, corporation or proprietors be first obtained, shall be punished by imprisonment, for not less than *six* months.

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## CHAPTER XVIII.

### FRAUDULENT APPROPRIATIONS.

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#### SECTION I.

#### GENERAL PROVISIONS.

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1. Fraudulent intentions.
  2. Distinction by such intent.
  - 3, 4. Distinction between robbery and embezzlement.
  5. Robbing is by violence or fear of harm.
  6. Theft known by act of taking property.
  7. What not variance in allegation of possession.
  8. If offence not charged by night shall be presumed by day.

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I. A fraudulent intention to appropriate that which belongs to another is an ingredient common to the offences of theft (including robbery); extortion by threats; obtaining by false pretences; cheating; embezzlement.

II. It is by such intent that this class of offences is distinguished from trespass to moveable property or other wrongs remediable merely as civil injuries.

III. Theft, extortion by threats, obtaining by false pretences, and cheating are distinguishable from embezzlement by two circumstances. To the former, but not to the latter, a taking or obtaining by wrong is essential; to the former, defined acts of fraud with intent to appro-

priate, are essential ; an actual appropriation is the essence of the latter.

IV. The offences of theft, robbery, extortion by threats, obtaining by false pretences and cheating, are distinguishable from each other : first, by the several defined overt acts of force or fraud, peculiar to each ; secondly, in respect of the consent or absence of consent by the owner to part with his property. Where the owner consents to part with the absolute property, the taking does not amount to theft, unless it is by robbery, as hereinafter defined.

V. A taking by robbery may either be by violence or with consent extorted by fear of bodily harm. It is essential to the offences of extortion by threats, obtaining by false pretences and cheating, that the owner be induced to part with his property by means of some defined threat or fraud.

VI. Theft is distinguished from all others, comprehended within the general class, by the essential overt act of taking and removing the property of another.

VII. In the prosecution of any person for any offence committed upon or in relation to or in any way affecting any real estate ; or for any offence committed in stealing, destroying, injuring or fraudulently taking, obtaining, receiving or concealing money, goods or other personal estate, it shall be sufficient and shall not be deemed at variance if it be proved on the trial, that, at the time when the offence was committed, either the actual or constructive possession, or the general or special property in the whole or in any part of such real or personal estate, was in the person, society, community or body politic or corporate, alleged in the indictment or other accusation to be the owner thereof.

VIII. Where any larceny or other offence, the commission whereof in the night time is subject to an aggravated punishment, is not alleged and does appear in the indictment to have been committed in the night time, the same shall, in respect to the degree of punishment therefor, be deemed and taken to have been committed in the day time.

## SECTION II.

## ROBBERY.

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1. Definition.
  2. When effected.
  3. Not material whether threat be direct or indirect.
  4. Violence essential.
  5. Violence to the person.
  6. What not Robbery.
  7. Putting persons robbed in fear.
  8. What constitutes presumption of fear.
  9. Force used to retain not robbery.
  10. When thing taken is in presence of a person.
  11. Same rules for taking, and for theft and robbery.
  12. Robbery with stabbing.
  13. Robbery with assault, with offensive weapons.
  14. Robbery with menace of bodily harm.
  15. Punishments.
- 

I. Robbery is larceny or theft committed with violence or threats of violence to the person.

Whensoever one steals any property from the person of another, or any property which is in his presumed possession or under his care, by means of violence or threats of violence to his person or to the person of any other, he is guilty of robbery.

7 & 8 G. 4, ch. 29; sect. 6.

II. It is robbery, when effected :

1. When the stealing is effected by violence, by doing any the least injury to the person, or whensoever the act of taking is accompanied by any degree of force employed to overcome resistance to such taking.

2. By means of forcibly imprisoning the person robbed, or putting him under personal restraint or duress, until he shall surrender the things.

3. Under colour or pretence of executing legal process or other lawful authority:

2 East, 709; 2 Ruls. 69; 1 Leach, 280.

4. By taking suddenly, with intent to steal, and with such violence as to do a substantial corporal injury to the person, though he be not put in fear.

1 Leach, 320; 2 Leach, 790.

5. By plucking from the person, with intent to steal, upon a struggle, or by breaking or otherwise severing or disengaging a fastening or other means of attaching or securing a thing to the person, with corporal violence felt by the person.

R. & R., 419; 2 East, 709; 1 Lewin, 300, 1.

6. By taking by force though without putting in fear or corporal injury, and without knowledge by the person robbed that the thing stolen is taken from him.

Fost, 128 ; 4 Bl., C. 244 ; 2 East, 709.

7. By violence used with the intent or in the attempt to commit any felony other than robbery.

2 East, 711.

8. Even though the owner voluntary puts himself in the way of the taker or exposes himself to the attack with intent to apprehend the offender.

Foster, 129.

III. It is immaterial whether the threat be direct or indirect, or whether it be made by words, gestures or signs, or be made under pretence of lawful claim, or of acting under the pretence of legal process, or other authority, or of asking charity, or making a purchase, or requesting a loan or present, or other pretence whatsoever.

2 East, 711, 712 ; 2 Russ., 76 ; 4 Bl. Com., 244 ; 1 Hale, 533.

IV. It is not essential to the offence that the violence should have been at first used for the purpose of obtaining the thing taken, provided such violence be unlawful, and the property be yielded and taken, or permitted to be taken to prevent further violence.

2 East, 711.

V. The stealing is by threat of violence to the person

1. Whensoever possession of the thing stolen is obtained by any threat menace, or other means calculated to excite apprehension of violence, present or future, to the person of the party threatened, or of any other.

4 Rep. C. L. C., Art. 39 ; 2 East, P. C. 734.

2. Where the offender, by violence or threat of violence with intent to steal, shall cause the owner or possessor to relinquish his hold upon or otherwise wholly or in part to abandon the possession of any property, and shall afterwards take and remove the same, the robbery is complete, although the offender took and removed such property in the absence of the owner or possessor, or after the apprehension of violence had ceased.

4 Rep., C. L. C., Art. 43.

3. Actual fear is not material, provided the act be accompanied by such threats or menaces as are calculated to create an apprehension that force will be used in case of resistance.

2 East, 713.

## VI. It is not Robbery

1. When no actual violence is used, and the threats or menace used do not create any apprehension of violence, or such apprehension has ceased to exist at the time when the property is taken.

1 Hale, P. C. 532 ; 2 East, P. C. 713, 734.

2. When the snatching or taking is effected unperceived or unawares from the person, without actual corporal injury, or where the violence used is unimportant or inconsiderable.

2 East, 702, '3 ; 1 Leach, 290 ; 2 Leach, 790, 1 C. and P. 304.

3. When the taking is by force without intent to steal.

3 East, 660.

4. When the offender, at the time of taking by force or putting in fear, in good faith makes or intends to make, a sufficient compensation or what he *bona fide* thinks the just value of and a fair indemnity for the thing to the owner or possessor.

The Fisherman's case, 2 East, 661.

5. But otherwise, if the taker knows that the compensation to be made is inadequate it is robbery.

2 East, 712.

6. Fear of infamy or injury to reputation is not such fear as is requisite in order to constitute the crime of robbery.

2 Deac. Ab. p. 1136.

## VII. The putting in fear requisite to constitute robbery may be the putting of the person robbed in fear

1. Of corporal violence or injury.

2. Of the pulling down or burning his house.

2 Russ. 76 ; 2 East, C. L. 718, 728, 731, 712.

3. Of seizure or destruction of his property.

2 East, 712.

4. Of an injury threatened at some previous time before the taking, for the purpose of terrifying the person from whom the thing is taken, provided the fear continues and subsists at the time of the taking, or is the cause for surrendering the thing.

Staudf. 27 ; 1 Hale, 532 ; 1 Hawk. c. 34, s. 1 ; East, C. L., p. 714.

5. Of injury to the husband, wife, parent, child, brother, sister or other relation ; or to the master, servant, guardian, ward, friend, companion or associate of the person put in fear, or to any one in whose safety and welfare he is known by the robber to have a special interest.

Bac. Ab. 2, c. 5 ; Sect. 13, 14 ; East, C. L., c. 16, p. 718, 721.

6. Of a conspiracy against his life or for a corporal injury to him, or the destruction of his property, or such conspiracy against the life or property of another in whom he is known to have a special interest.

East, 711.

7. Or of any other injury or violence to the party robbed or to his property, or to another in whose safety or welfare he has a special interest, or to the property of such other, provided such injury or violence is an adequate ground of fear, or is an actual cause of a substantial appreciable fear, and which the offender has good reason to suppose to exist.

VIII. If the taking have been under circumstances of adequate ground of fear, the fact of being put in fear is presumed.

Fost., 128; 2 East, P. C. 666.

IX. When the act is committed without force or putting in fear, any subsequent force or fear for the purpose of preventing the owner from recovering the thing taken or for other purpose does not constitute robbery.

X. A thing is in the presence of a person, which is so within his reach, inspection, observation or control, that he could, if not overcome by violence or prevented by fear, retain his possession of it.

2 Str. 1015, 4 c. and p. 508; 2 Dec. 1724; 1 Hawk. c. 34, s. 5; 2 East, P. C. 707, '8, '9, Foster 128; 1 Hale, 533; 2 Russ. 49.

When the taking is begun, and the first act in taking is in the presence and from the custody of the person from whom the thing is taken, it is a taking in his presence.

2 East, 709.

XI. The same rules as to the taking or removing by the offender in case of theft apply to robbery, so also as to the sufficiency of a momentary possession, with a removal to some distance however small to constitute the offence of robbery.

XII. Whosoever shall rob any person, and at the time of or immediately before or after such robbery, shall stab, cut, or wound any person, shall be punished by imprisonment for *life* in the Penitentiary.

XIII. Whosoever being armed with any offensive weapon or instrument, shall rob or assault with intent to rob any person, or shall together with one or more persons rob any person, or assault with intent to rob, any person, and at the time of or immediately before or after such robbery, shall beat, strike or use any other personal violence, shall be imprisoned in the Penitentiary for the term of *seven years*.

XIV. Whosoever shall steal any chattel, money or valuable security in any dwelling house, and shall by any menace or threat put any one being therein, in bodily fear, shall be imprisoned in the Penitentiary for a term not exceeding *fourteen* years nor less than *seven* years.

XV. Whosoever shall assault any person, with intent to rob, shall (save and except in cases where a greater punishment is provided by this Act,) be imprisoned for any term not less than *three* years in the Penitentiary.

Whosoever shall, with menaces or by force, demand any chattel, money or valuable security, of any person with intent to steal the same, save as above, shall be imprisoned for any term not less than *five* years in the Penitentiary.

Whosoever shall rob any person, or shall steal any chattel, money or valuable security from the person of another, save as above, shall be liable to be imprisoned at hard labour in the Penitentiary for any term not less than *ten* years.

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## SECTION III.

## LARCENY.

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1. Essentials to larceny or theft.
  2. Theft, what.
  3. 4. 5. Rules for agents, servants, &c.
  6. Theft by one joint owner from another.
  7. What not theft by joint tenant.
  8. What not theft by carriers in good faith.
  9. What not theft by officer of the law
  10. What not theft by wife of husband's property.
  11. Nor when taking under mistake.
  12. Nor when temporary.
  13. Nor where consent of owner is given.
  14. Though consent obtained by false pretence.
  15. Nor when compensation intended.
  16. Nor for mere destruction, &c.
  17. Owner facilitating.
  18. Owner instigating.
  19. False inducement of owner.
  20. Subjects of theft.
  21. Human body not.
  22. Every wrongful taking is theft.
  23. What is taking.
  24. Property in thing taken.
  25. Property in third persons and possession.
  26. Wrongful possessor protected.
  27. Finding.
  28. Presumption of want of consent.
  29. Property of some value.
  30. Same rules for Corporations as for a person.
  31. Intent to deprive shewn by taking.
  32. Right of property or possession not changed by theft.
  33. Restitution no absolution.
  34. Theft is stealing.
  35. No definite time material for hiring.
  36. Thefts, simple or aggravated.
  37. Punishments.
  38. Three or more convictions.
  39. 40. Goods from wrecked vessels.
  41. Punishment.
  42. Stealing dog.
  43. 44. 45. } Stealing property in or attached to the freehold.
  46. 47. 48. }
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## THEFT.

1. The following circumstances are essential to the Law of Theft :

1. A wrongful taking and removal of the property of another.
2. That such taking and removal be without the consent of the owner, or other person authorized to give consent to transfer the right of property, unless the tak-

ing and removal be such as to constitute the crime of robbery.

3. Such removal must be with the intent to deprive the owner, of the thing taken and fraudulently to appropriate the same to the use of the offender.

4. Neither the means used for obtaining possession, nor the motive of the offender, nor the purpose to which he intends to apply the property, are essential to the offence, otherwise than as above stated.

5. The offence is distinguishable from mere trespass, by the attempt to despoil and fraudulently appropriate another man's goods.

6. It is also distinguishable from the offence of obtaining by false pretences, extortion by threat, deceit and embezzlement, by the circumstance, that a taking and wrongful removal in the first instance, are essential to the offence.

7. It is also distinguishable from the offences of obtaining by false pretences, extortion by threat and deceit, by the circumstance, that except in cases of robbery, the taking does not constitute theft, where the owner intends to transfer the right of property.

8. The distinction between Grand Larceny and Petty Larceny is abolished; and every Larceny, whatever be the value of the property stolen, shall be of the same nature, and subject to the same incidents in all respects, as Grand Larceny.

II. Theft or Larceny, is the wrongful taking and removal of any thing, of some value, being the property of any other person, without his consent, with the intent to deprive the owner of the thing taken, and fraudulently to appropriate the same.

1. It is theft when the offender fraudulently procures or avails himself of the consent given by the owner or any other person authorized to consent, with intent to deprive the owner of the thing taken and fraudulently to appropriate the same.

2 East, P. C. 675, 644, 687, 689; 2 Russ. 120, 128; 1 Leach, 294, 409; 2 Leach, 564; 2 East, P. C. 644, 689; Deacon, 750, 746-8, 5-6; C. & P. 390; 1 Lewin, 245, 199; Rosc. Ev. 488, 479, 489, 493.

2. It is theft, although the owner knowing that a theft is meditated, suffers it to be accomplished, provided he does not procure or induce it to be committed.

Eggington's case, 2 East, P. C. 666; 2 Russ. 105; 2 Leach, 913, 921; Fost, 129.

3. It is theft, if the taking and fraudulent appropriation is by one who has the bare charge or use of any property, but has no lawful possession distinct from that of the owner.

The following references point out places where the subject is discussed :—

2 Russ. 208, 201-4, 2-7-9, 197-8, 210-33, 114, 216 ;  
R. & R. 267, 98, 139, 349, 412, 125, 145, 56, 63, 463,  
198, 299-10, 319, 160, 80, 215 ; 2 East, P. C. 570-1-2,  
683-22, 565-9, 580, 510 ; 1 Leach, 33, 251, 3 ; 2 Leach,  
835, 1083, 841, 968, 302, 779, 912, 1033, 54, 92, 974 ;  
Moody, 434-3, 368-70, 343, 129, 259 ; 1 Hale, 506 ;  
3 Stark, N. P. C. 70, 349 ; 1 Deac. 778 ; 2 Deac.  
780, 1667, 779, 748 ; 8 C. & P. 154 ; 7 C. & P. 388,  
445, 325, 281, 834 ; 6 C. & P. 626 ; 1 C. & P. 454 ;  
5 C. & P. 534 ; 4 C. & P. 390 ; M. & M. 21 ; 1  
Hawk, c. 17, s. 37 ; 4 Taunt. 258, 284 ; 3 B. & P. 596.

III. 1. The rule in the third sub-article applies to servants or others having the lawful custody or charge of their masters' property, to be exercised upon his premises or elsewhere under his superintendence or control,

2 East, P. C. 565, 567, 568 ; 2 Leach, 825, 699, 952 ; 2  
Russ. 1221 ; 2 Russ. 100, 2-1 ; 1 Hale, 506-7 ; Rosc.  
Ev. 473-4 ; 2 East, P. C. 663-4 ; 8 Ves. 405 ; 2 Deac.  
Abr. 741 ; 1 Leach, 413.

2. To guests or inmates having temporary use of plate or other property,

3. To artificers or workmen having the charge of materials to be wrought in the house or buildings, or on the land of the employer.

4. And generally, whensoever any owner employs, permits or authorizes another to deal with his property in his house or buildings or on his land or elsewhere, for any purpose subject to his own continuing possession or control.

IV. Whensoever one has the temporary possession of any property subject to the continuing possession of the owner or his agent, with a view to a sale or transfer or other special purpose.

Chisser's case, L. Raymond 275 ; 2 East, P. C. 683 &  
'684.

V. The same Rule applies to Carriers intrusted with the possession of goods to be carried.

B. & R. 337 ; 2 Russ. 34, 135 ; 7 C. & P. 151 ; 1 Leach  
124, 415 ; 2 East, P. C. 697 ; 1 Leach 415 ; 1 Hale  
504 ; 1 Hawk. c. 33, s. 4.

To millers with corn to be ground.

To artificers or workmen with materials to be wrought.

To borrowers with things borrowed.

1 East, P. C. 694 ; 1 Leach 214 ; R. & R. 441 ; 2 Russ.  
132 ; 2 Deac. 748.

But not to hirers of goods, pawnbrokers and all others who by virtue of any express or implied consent, or by authority of law, or by any finding or other casualty or means whatsoever, have the lawful possession of any property distinct from that of the owner.

8 C. & P. 295; 2 Russ. 201-2-4-8; 1 Hale 506-7; 2 East, P. C. 570, 6, 2, 80, 10, 565, 9, 80; 1 Leach, 33, 251; 6 C. & P. 626; 2 Leach 341. 35, 779, 968, 968, 12, 1033, 83, 971.

VI. One owner of a thing as to larceny may commit larceny of it from another such owner; and every owner of a thing, whether proprietary or possessory, is owner in respect to larceny committed by any other such owner, subject to the modifications and exceptions contained in this chapter.

7 & 8 Geo. 4, c. 29, s. 5; 1 Archb. p. 9, 406; Moody c. 4, 368; 1 Hale 513-14; 3 Inst. 110; 1 Hawk. c. 33, s. 47; Fost. 123-4; 2 Russ. 154, 155; 4 Bl. Com. 231; 2 East. P. C. 557-8; R. & R. 470-81; Bac. Abr. 537; 1 Hawk. P. C., c. 19, s. 37; R. & R. 470; 2 Deac. Abr. 782; Rosc. Ev. 514.

VII. It is not theft by a joint tenant or tenant in common of the joint or common property as against his co-tenant, unless such co-tenant has a rightful exclusive possession of the same, as against the joint tenant or tenants in common taking the same.

2 Russ. 154-5; 2 East. P. C. 557; R. & R. 478; Rosc. Ev. 514.

VIII. It is not theft where the hiring of a thing is in good faith and not a mere pretence on the part of the lessee, as long as the thing remains in his possession under such contract.

2 Russ. 154; 2 East. P. C. 585; R. & R. 411; Moody 27.

IX. It is not theft by an officer of the law in legal possession of a thing, while it so remains in his possession.

10 Wend. 165; 7 Cowen 294-8; Cowen 137.

X. It is not theft by a wife in taking the property of her husband, nor by a husband in taking the property of his wife.

2 Russell 21, 155; 1 Russell 19; 1 Leach 536, 47; 2 East. P. C. 558-9; 1 Hale 514; 1 Hawk. c. 19, s. 32; R. & R. 491, 517; Moody 376, n. 375, 243; 2 Inst. 110.

*Provided*, that no delivery from the wife of the property of her husband, or consent by her to any taking or removing of such property, shall in anywise justify or excuse the taking and removing of such property by one intending to deprive the husband, and fraudulently to appropriate the thing removed.

New Principle—opposed to 1 Russell 27.

XI. Nor whensoever the acts of taking and removing, although wrongful, are done under a mistake of right or authority or through inadvertence or by accident.

Moody 160; 5 C. & P. 524, 17; Wend. 460.

XII. Nor where the intent is to deprive the owner of the temporary possession only, and not of his absolute property in the thing taken.

XIII. It is not theft, when the thing taken is upon consent given by the owner or any other person authorized to consent, such consent being given with the intent to transfer the right of property in the thing taken.

2 East. P. C. 668, 669, 693; Harvey's case, 1 Leach 467;  
2 Leach 614, 1054, 1082; Russell on Crimes, 1060;  
3 Taunton 258, 284.

XIV. Although such consent be obtained by false pretence or other fraud, whensoever the owner or other person authorized to consent intends and consents to part with the right of property, whether he intend and consent to transfer such right to the wrong doer or to any other person.

2 East. 660, 675; 2 Russ. 117, 118, 120; 1 Leach 93, 467; Moody 137; 2 Leach 610.

XV. It is not theft when one compulsorily takes a thing at the same time making what the taker deems a reasonable compensation for it.

Fisherman's C. 2 East, p. C. 661.

But the taking or offering a merely colorable, pretended and obviously inadequate compensation, will not prevent the taking from being theft.

1 Hume Crim. Law of Scotl. 83; Simon's C. 2 East, P. C. 662, 712; Benser's C. 2 East P. C. 712.

XVI. It is not theft if the taking be for the mere purpose of destroying, wasting or injuring it, without any appropriation of it by the taker for his own benefit or that of another, and without such benefit or profit.

2 East, P. C. 503; Anon. 2 East, P. C. 662; Rose Cr. 461. It is a case of malicious mischief

XVII: The facilitating or assisting in the taking of a thing by another for the purpose of convicting the persons concerned in the taking with the intent to steal, is not theft in the person so assisting.

R. & R. 310; 2 March. 571; 2 Russ. 104.

XVIII. The stealing of a thing by one upon the instigation or advice of the owner directly or indirectly for his own gain to steal a thing, is not a taking against his will and without his consent, and is not larceny.

Fost. 121.

**XIX.** The wrongful taking with intent to steal, with the consent of one having the possession or control or disposition of possession or control of a thing, but no right or authority to transfer the property therein, where such taking is by trick or stratagem, or by taking advantage of the mistake or error of the person having such custody or possession, is in larceny a taking against the will and without the consent of the owner.

1 Leach, 520; 2 East, P. C. 603, 73; 2 Russ. 119; Moody, 137.

**XX.** To be the subject of theft, property must be moveable or property severed from the realty, although it may be severed at the time, and for the purpose of taking and removing the same.

4 Rep. E. C. Theft Art. 17; 2 East, P. C. 587; 3 Inst. 109; 1 Hale, 510; 2 Russ. 136; 1 Hawk. c. 33, s. 34.

**XXI.** A human being, living or dead, is not the subject of theft.

2 East, 662; 2 Russ. on Cr. 163; Reg. Ev. 517; 1 Hale, 516.

**XXII.** Every species of wrongful taking and removal, without regard to the means by which the offender effects his purpose, is comprehended in the Law of Theft, whether clandestinely or otherwise, without consent or subject to the above exceptions with consent, or under pretence or color of legal process or other lawful authority, or by means of any other device, or under any other pretence whatsoever, practiced with intent to deprive the owner of the thing taken, and fraudulently to appropriate the same.

**XXIII.** The taking of a thing, is the getting manual or actual possession or control thereof, either directly or indirectly, by some intermediate agency or means.

2 Russ. on Cr. 63, 96, 95, 184; Reg. Ev. 470, 471, 487; 2 East, P. C. 557, 556, 555, 617; 1 Lewin, 249; 1 Hale, 533, 509; 6 C. & P. 344; 1 Leach, 320, 228; 2 Leach, 573; 1 Moody, 78, 14.

1. Any act of taking, by means of which the offender has such possession of the thing taken that he is enabled to remove it at his will to any distance, however small, and any removal to such distance, so that no portion of the thing removed occupy the space that it did before, are a sufficient taking and removing.

3 Inst. 108, 109; 2 East, P. C. 555; 3 Bacon's Ab. Felony, D.; 4 Bl. Com. 231; 1 Hale, P. C. 507, 509; 1 Leach, 225; 1 Moo. C. C. 14.

2. This taking includes every kind of removal by lifting, carrying or otherwise, or driving, leading or otherwise where an animal is the subject of theft.

Provided that such removal be effected by the offender, in furtherance of his intention to deprive the owner, and fraudulently to appropriate the thing removed.

3. The detaching, severing or separating from real estate, or removing any part of the same, or any thing affixed or annexed or appurtenant thereto, is a taking of such part or such thing.

29 Mass. R. New Y. Rev. Stat. P. 4 Tit. 3, ch. 1, sec. 38; 3 W. & M. c. 9, s. 5; 7 & 8 G. 4, c. 20, s. 45.

4. It is not essential to the offence that the thing taken be completely removed from any place of deposit, in which it may have been taken, or completely freed from all impediment to further removal,

Fulton D., P. C. 126.

Contrary to former rule.

2 East, P. C. 556; 1 Hale, P. C. 508.

5. The taking may be by the hand of another under the control of the taker and acting under his direction, but having no knowledge of the thievish intent of the other, or it may be by some intermediate means or contrivance.

1 Hale, 516; 2 Russ. 95, 113; 2 East. P. C. 485, 555; 2 Deac. Ab. 736; Rosc. Ev. 469, 496.

6. The taking at one time of one or more things from the same owner or owners, is but one larceny.

2 Deac. Ab. 789; 4 C. & P. 386, 217; 1 Hale, P. C. 531; 2 East, P. C. 740.

XXIV. To constitute larceny, a thing must be owned by, or be the general or special property of some one, or belong to him, either by a proprietary or possessory right thereto.

1. A proprietary right is that of one having a general or special property in a thing.

2. A possessory right is that of one having and being entitled to the possession of a thing.

3. Theft may be committed by the taking and removing the property of another, although the actual owner be unknown.

2 East. P. C. 652.

4. The last article shall be deemed to include the wrongful taking of waifs, estrays, treasure trove, and wreck, previously to the vesting thereof according to law.

26 Geo. 2, ch. 19; 1 Hale 510; 2 East. P. C. 606; 2 Russ. 162; 3 Inst. 107.

5. One having the authorized custody of or being entrusted with a thing so as to be answerable therefor or for the value thereof, has a possessory right thereto.

6. The actual possession of a thing by any one, is the constructive possession of all who have proprietary or possessory rights therein, general or special, absolute or qualified.

7. A proprietary or possessory right to a thing by one, constitutes him the owner thereof as to larceny thereof by another.

**XXV. In respect of larceny by a third person :**

The property in things supplied by a parent, master or guardian, for his child, apprentice or ward, or for liens on his property, is in both supplier and supplied.

2 Russ. 160; 2 East. P. C. 654; 1 Leach, 463-4 n.; 12 Rep. 113.

So also materials supplied by one to a manufacturer to be made for a compensation and whilst in the hands of latter.

Jones Bail. 64, 102; Dig. 19, 2, 31; Domat; Bk. 1, 4; Tr. 1.

So also on sale of a thing without actual delivery, the vendee having the right to take possession without further act by the vendor.

Bac. abr. Trespass c. 2, 7 c. p. 573.

So also in wrecks, estrays and waifs, in general the owner or salvor.

26 Geo. 2 c. 19; 1 Hale, 510; 2 East. P. C. 606; Russ. 162; 3 Inst. 107.

Corporate property is in the Corporation not in the individual members thereof.

1 Leach, 253; 2 Russ. 164.

A servant having custody of a thing specially entrusted to his keeping, is owner as to larceny.

Fost. 123, 124; 4 Bl. Com. 231; 2 East. P. C. 653-4; 2 Leach 871.

So also one specially charged with custody of a thing on behalf of the owner or persons interested in it, and who is answerable for the keeping of it.

2 Leach, 875; East. P. C. 653; 1 Leach, 356, 7 n.; 2 Russ. 157; 1 Hale 513; 4 C. & P. 391; 1 Hawk. P. C. c. 19, s. 47.

So also the possessor of a thing for work and labour on it.

2 East. P. C. 653; 1 Leach 357.

So also one having a lien upon a thing.

So also a mortgagee, promisee or pledgee.

2 Russ. 157, 4 T. R. 489, R. & R. 411; 1 Hale, 513; 2 East. P. C. 652.



So also, a trustee.

1 Leach, 513; 2 Russ. 165-6; Moody, 15.

So also one who by hypothecation has a valid property or lien on a thing, though not in his possession.

So a seizing officer in attaching.

2 Russ. 158; Rosc. Ev. 513; 2 East, P. C. 650.

Possession by one for or as representative or in behalf of another, is also possession by such other, whether such one have or have not a lien or interest to make him owner.

Moody, 26, 137; Rosc. Ev. 400; H. & R. 136, 411; 2 Deac Abr. 785; 8 C. & P. 237.

So by a servant, also that of a master.

So by an agent, also that of his principal.

**XXVI.** The wrongful possessor of a thing, even though it be obtained by larceny, is owner in respect to others having no proprietary or possessory interest in or right to it.

1 Hale, 507, 572; East P. C. 654; 1 Leach 522-3; 1 Taunt 59; Moody 178; 7 Bing 543; 2 Russ. 152, 6; Rosc. Ev. 511; Deac. 785.

2. A claim on the owner for or on account of a thing or its value, but without possession or lien thereof, or property therein, does not constitute ownership as to larceny.

3. The stealing of a thing is not merely from the actual possessor of it, but also from the other proprietary or possessory owners of it other than the thief himself.

**XXVII.** Where the taking is upon a finding or other casualty or by mistake, the quality of the act depends upon the intention of the party at the time, and it is not theft, unless he took with intent to deprive the owner of the thing taken and fraudulently to appropriate the same altho' such owner be unknown.

2 East. P. C. 663; Moody 160; 2 Leach. 352, 5 P. & C. 524; 2 Russ. on C. 1044; 17 Wend. 460.

**XXVIII.** Where the taking of a thing is with a fraudulent intent to deprive the owner for the benefit of the taker or some other person, it is presumed to be without the consent and against the will of the owner, whether known or not known.

2 Russ. 162; 2 East. P. C. 651.

**XXIX.** The property must be of some pecuniary value however small, or be valuable or economically useful to

the owner or to the person having a general or special property or interest, or possession or right of possession in it, although it be not of any value to sell or to any other person: this shall extend to property the taking or severance of which diminishes to the owner the value of any other property to the amount of such value.

Roscoe's Ev. 512; 2 Leach, 1036, 1090, 1093, 673; 2 Russ. 62.

**XXX.** The law and all rules concerning theft shall be equally available, whether the thing taken be the property of a sole owner or of several owners, or of a body corporate, also whether any such owner have or have not a right to the present possession of the thing taken, and also whether any such owner be or be not in possession of the thing taken.

**XXXI.** The taking and removing are with intent to deprive the owner of the thing taken and fraudulently to appropriate the same, whensoever these acts are done with intent to deprive the owner of the thing taken, and to have or deal with it as the property of the offender or some other person in fraud of the owner, without regard to the offender's motive for committing such spoliation or the particular use to which he intends to apply, or does apply, the thing taken.

2 East, P. C. 553, 659, 661, 662; Russ. C. 1086, 1039; 1 Hale, P. C. 506, 508, 509; 2 East, P. C. 662-3; R. & R. 418, 420; 1 C. & P. 658; Rosc. Ev. 472-3, 307; 2 Russ. 97; 3 C. & P. 409; 5 C. & P. 524.

**XXXII.** Neither the right of property nor of possession is in anywise altered by theft.

1 Leach, 522-3.

**XXXIII.** No restitution to the owner of a thing taken by theft, shall absolve the offender.

2 East, C. P. 557.

**XXXIV.** Whosoever shall commit the crime of theft, in respect to any property, shall be deemed to steal the same.

**XXXV.** Where possession is fraudulently obtained, under pretence of hiring or other agreement, for the temporary possession of moveable property, it is not material that the agreement should be for any definite time, nor is an actual appropriation, by the offender, of the thing taken, essential.

1 Russ. C. L. C. p. 23, art. 12.

**XXXVI.** The crime of theft is simple or aggravated.

1. It is aggravated if it be committed by tenants or lodgers, or clerks or servants.

2. If it be effected in the night time or attended with the violation of any repository or place of security, that is to say, with the breaking into or opening of any box or other repository containing the thing stolen, or with an entry into any building, yard or other enclosed place where the thing stolen is deposited, or otherwise than by the ordinary door or gate-way or entrance, the same, respectively, being open, or with a breaking, severing, loosing, or removing of any artificial fastening, tie or impediment, intended to protect or secure the thing stolen.

3. If effected by means of, or attended with deception, that is with any false statement or other device, made or used to deceive, for the purpose of accomplishing the theft.

4. If it be of any writing, valuable security, muniment of title, written instrument of justice or testamentary instrument.

5. If the property stolen be of the value of ten pounds currency or more.

6. If the theft be committed in a dwelling-house or other house court-house, or public building, church or meeting-house, town-house or gaol, bank or public office, or from the person of another, or from another in his presence, or in or from any stranded or wrecked vessel or ship of another, or from a house or vessel on fire, or in the removal of property on account of danger or alarm of fire.

7. All other thefts shall be simple thefts.

XXXVII. The punishment of simple theft shall be imprisonment for any term not exceeding *one* year, with or without hard labour during the term of imprisonment, in the discretion of the sentencing Court or Judge.

The punishment of aggravated theft shall be imprisonment in the Penitentiary for any term not exceeding *three* years.

XXXVIII. If an offender shall be convicted of three or more larcenies, at the same session of any criminal court, or of a larceny committed after conviction and sentence for a prior larceny, he shall be imprisoned in the Provincial Penitentiary for a term not exceeding *three* years.

XXXIX. If any goods, merchandize, or articles of any kind, belonging to any ship or vessel in distress, or wrecked, stranded, or cast on shore, as aforesaid, shall

by virtue of a search warrant, be found in the possession of any person, or on the premises of any person with his knowledge, and such person, being carried before a Magistrate, shall not satisfy him that he came lawfully by the same, then the same shall, by order of the Magistrate, be forthwith delivered over to or for the use of the rightful owner thereof.

XL. If any person shall offer or expose for sale any goods, merchandize or articles whatsoever, which shall have been unlawfully taken or reasonably suspected so to have been from any such ship or vessel, in every such case any person to whom the same shall be offered for sale, or any officer of the Customs, or Peace Officer, may lawfully seize the same, and shall with all convenient speed carry the same, or give notice of such seizure, to some Magistrate; and if the person who shall have offered or exposed the same for sale, being duly summoned by him, shall not appear and satisfy him that he came lawfully by such goods, merchandize or articles, then the same shall, by order of the Magistrate, be forthwith delivered over to, or for the use of the rightful owner thereof, upon payment of a reasonable reward, (to be ascertained by the Magistrate,) to the person who seized the same.

XLI. The offender, in the case of the two last sections, shall, on conviction by the Magistrate, forfeit and pay such sum of money not exceeding *ten pounds* as to the Magistrate shall seem meet.

XLII. If any person shall steal any dog, or beast or bird ordinarily kept in a state of confinement, every such offender, shall for every such offence forfeit and pay, over and above the value of the dog, beast, or bird, such sum of money not exceeding *ten pounds*, as to the convicting Magistrate shall seem meet.

XLIII. If any person shall steal, or shall cut, break, root up, or otherwise destroy or damage with intent to steal, the whole or any part of any tree, sapling or shrub, or any underwood, wheresoever the same may be respectively growing, the stealing of such article or articles, or the injury done, being to the amount of a shilling at the least, every such offender shall for every such offence forfeit and pay over and above the value of the article stolen, or the amount of the injury done, such a sum of money, not exceeding *ten pounds*, as to the convicting Magistrate shall seem meet.

XLIV. If any person shall steal, or shall cut, break or throw down with intent to steal, any part of any live or dead fence, or any wooden post, pale or rail set up or used as a fence, or any stile or gate or any part thereof,

respectively, every such offender, shall for every such offence forfeit and pay, over and above the value of the article so stolen, or the amount of the injury done, such sum of money not exceeding five pounds, as to the convicting Magistrate shall seem meet.

XLV. If 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, rail, stile or gate or any part thereof, being of the value of two shillings at the least, shall, by virtue of a search warrant, be found in the possession of any person, or on the premises of any person with his knowledge, and such person being carried before a Magistrate, shall not satisfy the Magistrate that he came lawfully by the same, he shall forfeit and pay, over and above the value of the article so found, any sum not exceeding *ten* pounds.

XLVI. If any person shall steal, or shall destroy or damage with intent to steal, any tree, sapling, shrub, bush, plant, root, fruit or vegetable production growing in any garden, orchard, nursery-ground, hot-house, green-house or conservatory, every such offender, shall forfeit and pay, over and above the value of the article so stolen, or the amount of the injury done, such sum of money, not exceeding ten pounds, as to the convicting Magistrate shall seem meet ; and if any person so convicted shall afterwards commit any of the said offences, such offender thereof shall be liable to be punished in the same manner as in the case of Simple Theft.

XLVII. If any person shall steal, or shall destroy or damage with intent to steal 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 enclosed, not being a garden, orchard or nursery-ground, every such offender, shall forfeit and pay over and above the value of the article so stolen, or the amount of the injury done, such sum of money, not exceeding twenty shillings, as to the Magistrate shall seem meet, and in default of payment thereof together with the costs, if ordered, shall be committed to the Common Goal for any term not exceeding one calendar month, unless payment be sooner made.

XLVIII. If any person shall steal or rip, cut or break with intent to steal, any glass or wood-work 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 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, street or other place dedicated to public use or ornament,

every such offender shall be punished in the same manner as in the case of simple theft; and in case of any such thing fixed in any square, street or other like place, it shall not be necessary to allege the same to be the property of any person.

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SECTION IV.

**EMBEZZLEMENT.**

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1. Definition.
2. Application to cases.
3. Extent of term *embezzle*.
4. To what applicable.
5. Distinct act of divestment not essential.
6. The embezzlement at one time of several things one offence.
- 7, 8. Possession by husband for wife and *vice versa*.
9. Theft no defence.
10. What not embezzlement.
11. Assistance of owner no defence.
12. Same interest available in embezzlement as in theft.
13. Civil remedy retained.
14. Compulsory civil disclosure no relief for embezzlement.
15. Effects—what
16. Allegations in prosecutions.
17. Distinct acts charged in one indictment.
18. Degrees of embezzlement.
19. Punishment.

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I. Whensoever one being for any special purpose intrusted under any contract express or implied, or other lawful authority, with the possession, control, custody or keeping of any moveable property or fixture, being the property of any other person, shall wrongfully and fraudulently embezzle the same or any part or any proceeds thereof, it is Embezzlement.

II. The preceding section shall apply to

1. Any person who being employed in the capacity of a clerk or servant, shall embezzle any property of his employer received or taken into his possession in that capacity.

7 and 8 Geo. 4, chapt. 29, Inst. 47.

2. Any person who being an officer or servant of any Incorporated Bank or other Company and being intrusted with or having the possession of or under his care by virtue of his office or employment, any property belonging to such Bank or Company or to any other persons lodged or deposited or intended so to be in such Bank or Company or with him as such officer or servant thereof shall embezzle the same.

3. Any person who acting in the capacity of a merchant, banker, broker, factor, attorney, or other commercial or Law agent shall embezzle any property of any other person entrusted to him.

III. The term *embezzle* shall be deemed to comprehend

1. Any kind of fraudulent appropriation, provided the offender by some act manifest his intention to make such fraudulent appropriation.

2. Every kind of fraudulent concealment with the intent fraudulently so to appropriate the same.

3. Every kind of fraudulent destruction of such property, without the intent to restore the same or make compensation or indemnity therefor; and although in all the said cases the property embezzled was not received into the possession of such Master or owner, otherwise than by the actual possession of such clerk, servant or other person so employed.

IV. The law of embezzlement shall apply indifferently

1. Whether such possession or control, custody or keeping of such moveable property or fixture be derived from the owner, or any other person, and

2. Whether any right of possession, control, custody or keeping shall or shall not continue to the time of such embezzlement.

V. A distinct act of taking whereby to divest or violate the possession of the owner is not essential to embezzlement.

VI. The embezzlement at one time of one or more things belonging to the same owner is only one such offence.

VII. Possession by the husband, of any moveable property or fixture let with lodgings to or otherwise intrusted to the possession of his wife, shall be a possession by him, and be within the Law of embezzlement, if he embezzle the same.

VIII. A husband having possession of such property or fixture within the Law of embezzlement; his wife shall incur the penalties of such Law if she embezzle the same.

IX. The being guilty of theft in taking such property or fixture by reason of preconcerted fraud shall not avail as a defence on an accusation of embezzlement of such property or fixture.

X. It is not embezzlement,

1. Whensoever one mis-appropriates any such property or fixture of which he shall be the sole or a joint or a part owner.

2. Whensoever one obtains such property or fixture by delivery from the owner or any other person having authority for that purpose, intending to part with the right of property.

3. Whensoever one is a Trustee or Director in or under any instrument whatever, or any mortgagee of any property real or personal, in respect of any act done by him in relation to such property comprised in or affected by such trust or mortgage.

4. Whensoever a Merchant, Banker, Broker, Factor, Attorney or other commercial or law agent receives any money which shall be and become actually due and payable upon or by virtue of any valuable security according to its tenor or effect.

5. Whensoever a merchant, banker, broker, factor, attorney or other commercial or law agent sells, transfers or otherwise disposes of any securities or effects in his possession, upon which he shall have any lien, claim or demand entitling him by law so to do, unless such sale, transfer or disposal shall extend to a greater number or part of such securities or effects than shall be requisite for satisfying his lien, claim or demand.

6. Whensoever any factor or commercial agent being entrusted for the purpose of sale with any goods or merchandize, or with any bill of lading, warehouse-keeper's or wharfinger's certificate or warrant, or ashes or other inspection certificate, or order for the delivery of goods or merchandize, shall pledge or deposit any such goods or merchandize or any of the said documents, in case such pledge or deposit shall not be made a security for, or subject to the payment of any other or greater sum of money, than the amount which at the time of such deposit or pledge, was justly due and owing to such factor or agent from his principal, together with the amount of any bill or bills of exchange drawn by or on account of such principal and accepted by such factor or agent.

XI. No act of the owner in affording an opportunity or facility for committing the offence, or supplying means with a view that one expected to offend may be brought to justice, shall avail in defence, provided that such owner do not in any wise procure the commission of such offence.



XII. The same interest or property in, or possession or right of possession of a thing which constitutes ownership thereof, in respect to the offence of larceny, constitutes such ownership as to embezzlement.

XIII. This law against embezzlement shall not in any wise affect or lessen any civil remedy of any party.

XIV. The compulsory disclosure by any person, in any *bona fide* suit or judicial civil proceeding against him, of any act done by him, shall not relieve him from the penalties of this chapter, for embezzlement by him.

XV. The term *effects* in this chapter shall extend to all securities entrusted to the officers or servants aforesaid, although they be of no definite or intrinsic value.

XVI. In any prosecution for embezzlement of money, bank-notes, checks, drafts, bills of exchange, or other securities for money, of any person, by any clerk, agent or servant of such person, it is sufficient to allege generally an embezzlement of money to a certain amount, without specifying any particulars of such embezzlement; and on the trial, evidence may be given of any such embezzlement, committed within six months next after the time alleged; and it is sufficient to maintain the charge, or, is not a variance, if it be proved that any money, bank-note, check, draft, bill of exchange or other security for money of such person, of whatever amount, was embezzled by such clerk, agent or servant, within the said period of six months.

XVII. Provided that for preventing the difficulties that have been experienced in the prosecution of the last mentioned offenders; it shall be lawful to charge in the indictment and proceed against the offender for any number of distinct acts of embezzlement, not exceeding three, which may have been committed by him against the same Master within the space of six calendar months from the first to the last of such acts; and in every such indictment, except where the offence shall relate to any chattel, it shall be sufficient to allege the embezzlement to be of money, without specifying any particular coin or valuable security; and such allegation, so far as regards the description of the property, shall be sustained if the offender shall be proved to have embezzled any amount, although the particular species of coin or valuable security of which such amount was composed shall not be proved; or if he shall be proved to have embezzled any piece of coin or valuable security, or any portion of the value thereof, although such piece of coin or valuable security may have been delivered to him in

order that some part of the value thereof should be returned to the party delivering the same, and such part shall have been returned accordingly.

**XVIII.** Embezzlement shall consist of two degrees :

The first, when the embezzlement is committed

1. By any chief or any subordinate officer employed in any of the departments of the Government, Imperial or Provincial, in this Province.

2. By any cashier or other officer, agent or servant of any incorporated or other bank or public company in this Province.

3. By any merchant, banker, broker, factor, attorney or other commercial or law agent.

All other acts of embezzlement are in the second degree.

**XIX.** The first shall be punished by imprisonment in the Penitentiary for not less than *three* years.

The second by imprisonment for not less than *one* year with hard labour.

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SECTION V.

**OBTAINING PROPERTY BY FALSE  
PRETENCES.**

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1. Definition.
2. Essential that property was obtained by deception.
3. Pretence must be of some specific fact.
4. " with intent of fraudulently obtaining property.
5. " may be by words or by implication.
6. " need not be false in the whole.
7. " by false token.
8. " not by prospective representation.
9. " nor by mere false promise.
10. Extends to all moveable property.
- 11, 14. Larceny or theft found, no defence.
12. Trial for this offence bars trial for larceny.
13. No removal by *certiorari*.
15. Punishment.

I. Obtaining property by false pretences is, whensoever any one shall, by any false pretence, obtain any property from any other person, with intent to cheat or defraud any person.

II. It is essential to this offence that the property be obtained wholly or partly by means and in direct consequence of the deception effected by, or the credit given to, the false token or pretence.

2 East, 830, 672, 673, 30; 1 Camp. 212; Leach, 302.

III. A false pretence must be of some specific fact.

3 T. R. 98.

IV. The false pretence must be made with the intent and as the means of fraudulently obtaining the property to which the pretence relates.

R. and R. 504.

V. The pretence may be by express words or it may be implied by the act or conduct of the offender, and not by words, provided such act or conduct be done or adopted with intent to create an impression, which if made by express words, would constitute a false pretence.

Russ. 1395; 2 East, P. C. 831; 2 East R. 30; 3 Camp 370; R. and R. 127.

VI. It is not essential to this offence that the whole of the pretence must be false, provided part be false, and that upon credit given to that part that is false, property be obtained.

R. and R. 190.

VII. The fraudulently obtaining by false token or pretence the signature of any person, whereby he or another is or might be subjected to loss, damage or pecuniary prejudice, or prejudice to or derogation from his title or right to or interest in or reasonable expectation of, legally obtaining or receiving any thing of value, is an obtaining of property by false pretences.

2 Russ. 126, 4, 3; 1 Yerg. 76; 9 Wend, 190; 11 W. 18 and 13 W. 311; 3 Camp. 370; 1 Deac. 231; 2 East, P. C. 680, 79, 78, 87; 2 Leach, 640; 1 Leach, 314, 238, 345; 1 Lewin, 245.

VIII. No representation merely prospective is a false pretence under the provisions of this chapter.

R. and R. 461; Moody, 224, 462.

IX. Nor a mere false promise, which the party making it does not intend to keep.

1 C. and P. 321, 661; R. and R. 464.

X. The law of obtaining property by false pretences extends to all moveable property, and also to property which although not moveable at the time of the false pretence made, is afterwards severed and obtained by means of such false pretence.

XI. If upon the trial of any person for this offence it shall be proved that he obtained the property in question

in such manner as to amount to larceny, he shall not be acquitted of this offence.

XII. A trial for this offence shall bar a trial for larceny on the same facts.

XIII. An indictment for this offence shall not be removed by *certiorari*.

XIV. An offender against this law shall be subject to its penalties, although, under the circumstances of the taking and removing of the property he was guilty of theft.

XV. The punishment for this offence shall be imprisonment for not more than *two* years with hard labour.

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SECTION VI.

FRAUDULENTLY FITTING OUT AND  
DESTROYING SHIPS.

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1. Wilfully casting away ships, &c.
  2. Lading or equipping ship, &c., to cast same away.
  3. Owner or freighter exhibiting false invoice, bill of lading, &c
  4. Master, &c., swearing to false affidavits, &c.
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I. Whoever wilfully casts away, burns, sinks or in any way destroys any ship, steamer or vessel, with intent to defraud any ship owner, the master, or any freighter or charterer, or any shipper or consignor, consignee or other person owning or interested in the freight or cargo thereof, or any insurer of such ship, steamer or vessel, or its freight, or any part of its cargo, shall be punished by imprisonment in the penitentiary for *life*.

II. Whoever shall lade, equip or fit out or assist in lading, equipping or fitting out, or procure to be laded, equipped or fitted out any ship, steamer or vessel, with the intent that the same shall be wilfully cast away, burnt, sunk or in any way destroyed, to injure or defraud any ship owner, the master, any freighter or charterer, or any shipper, consignor or consignee, or other person owning or interested in the freight or cargo thereof, or any insurer of such ship, steamer or vessel or its freight, or any part of its cargo, shall be punished by similar punishment as the foregoing.

III. If any owner or pretended owner of any ship, steamer or vessel, or of the freight or charter thereof, or any part of the property laden or about to be laden or pretended to be laden, or to be about to be laden on board of the same; or if any person concerned in the

lading or fitting out, or pretended lading or fitting out of any ship, steamer or vessel, shall make out or exhibit, or cause or procure to be made out or exhibited, or be concerned in making out or exhibiting any false or fraudulent invoice, bill of lading, bill of parcels or other false estimate of any goods or property laden or about to be laden or pretended to be laden, or to be about to be laden on board of such ship, steamer or vessel, with intent to defraud or injure any insurer thereof or any insurer of its freight or charter or any part thereof, or to defraud or injure the insurer of such property or any part thereof, he shall be punished by imprisonment in the penitentiary for not more than *three* years.

IV. If any master, officer or mariner of any ship, steamer or vessel shall make or cause or procure to be made, or shall swear to any false affidavit or protest; or if any owner or other person concerned in any ship, steamer or vessel, or the freight or charter thereof, or in the goods or property laden, or pretended to be, or to have been, laden on board of any ship, steamer or vessel, shall cause or procure to be made, or shall exhibit any such false affidavit or protest, with intent to defraud or injure any insurer of such ship, steamer or vessel or any insurer of its freight or charter, or any insurer of the goods or property, or any part of the goods or property, laden or pretended to be laden on board of such ship or vessel, he shall be punished by imprisonment gaol for not less than *two* years.

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SECTION VII.

**EXTORTION.**

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1. Definition.
  2. Extortion by threats.
  3. Extorting by public officer.
  4. Receiving fees not legally due.
  5. Extends to all moveable property.
  6. Extent of term "extortion by threats."
  7. Asking for thing with intent to extort.
  8. Degrees.
  9. Punishment.
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I. The obtaining of property from any person by means of such threats of injury as do not amount to robbery as defined in this Act, is extortion by threats.

II. It is extortion by threats

1. Whensoever any one shall accuse or threaten to accuse any person of an infamous crime as hereinafter

defined, with a view or intent to gain or extort from such person, and shall, by intimidating such person by such accusation or threat, extort or gain from any such person any moveable property.

2. The term "infamous crime" shall be deemed to include the crimes of sodomy and buggery committed either with mankind or with any animal, and every assault with intent to commit, and every attempt or endeavour to commit the said crime, and every solicitation, persuasion, promise or threat offered or made to any person, whereby to move or induce such person to commit or permit the said crime.

3. Whensoever any one shall knowingly send any letter or writing demanding of any person, with menaces and without any reasonable or probable cause, any moveable property; or shall accuse or threaten to accuse, or shall knowingly send or deliver any letter or writing, accusing or threatening to accuse any person of any crime punishable by law with death or transportation, or of any assault with intent to commit any rape, or of any attempt or endeavour to commit any rape, or of any infamous crime as hereinbefore defined, with a view or intent to extort or gain from such person any moveable property.

4. Whensoever any one shall by any unlawful violence or restraint, or threat of violence to the person of another, or by accusing or threatening to accuse any person of any crime punishable by law with death or transportation, or of any assault with intent to commit any rape, or of any attempt or endeavour to commit any rape, or of any infamous crime, as hereinbefore defined, induce another to execute, make, alter or destroy the whole or any part of any valuable security, muniment of title or testamentary instrument, or any release, receipt, discharge or acquittance, with intent to defraud or injure any person.

5. Whensoever any one shall by threatening to destroy or damage any property, extort from any other any moveable property.

6. Whensoever any one shall extort from another any thing of value, by threatening to charge or impute to him any secret deformity or any disgrace.

III. Whensoever any public officer of whatever description, civil, judicial or military, of any county, city, town, municipality, district or parish, by colour of his office, wilfully and corruptly demands and receives from another for his own benefit and profit any thing of value, knowing that he has not any authority by law or any right to exact the same, it is extortion.

IV. Whensoever any person shall wilfully and corruptly demand and receive from another for performing any service or duty the fee or compensation for which is established by law, any greater fee or compensation than is prescribed by law therefor it is extortion.

V. The law of extortion extends to all moveable property, and also to property which although not moveable at the time of the threat used, is afterwards severed and obtained by such threat.

VI. The term "extortion by threats" shall extend to threats by which one compels or induces another to sign or execute, or to confess or acknowledge the signature or execution of any valuable security, or any receipt, acquittance, release or discharge, or any writing which, if genuine, voluntarily made and valid, would affect the rights or interests of the maker or signer thereof, or the person confessing or acknowledging the signature thereof, with intent to take such writing and avail himself thereof, or enable any other person to avail himself thereof as being valid.

VII. Asking for or demanding a thing, with intent to extort the same, is an attempt to extort the same. The specification of such attempt does not exclude others.

VIII. The offence contained in the second article is extortion in the first degree, and shall be punished by imprisonment in the Penitentiary for not less than *three* years, and a fine not exceeding *one hundred* pounds.

IX. The offences contained in the other articles are extortion in the second degree, and shall be punished by imprisonment for not more than *two* years, and a fine not exceeding *fifty* pounds.

All other extortions are in the third degree and shall be punished by imprisonment for not more than *one* year.

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## SECTION VIII

## CHEATS.

1. Definition.
2. Cheats by public officers.
3. " in discharge of duty.
4. " tending to prevent administration of justice.
5. " in pursuance of a conspiracy.
6. " whereby life, &c., is endangered.
7. " by false tokens, &c.
8. 9. 10. 11. " by false personation.
12. " by removal of property.
13. " by sale without title.
14. " by adulterating substances in food.
15. 16. What not cheating.
17. False promise not a cheat.
18. Cheating by implication.
19. Civil remedy not exemption.
20. Conviction on criminal charge not evidence in civil suits.
21. Criminal plea or answer not proof against an offender in a civil suit.
22. Conviction on conspiracy, bars another charge.
23. Property in thing not changed.
24. Restitution by Court of thing obtained.
25. Degrees and punishment.

I. Cheats are such frauds as directly tend to injure the public, or numbers of persons indiscriminately, as distinguished from those affecting particular specific individuals only, and are

II. Whensoever one having a public office, employment, commission or trust, under or by authority of the government, or any branch or department thereof, or under or by authority or appointment of any officer thereof, or in, or under or by authority of any municipality, county, city, town, parish or district, or having any other public office, employment, commission or trust, knowingly and with fraudulent intent, is guilty of a cheat therein, for his own gain or pecuniary benefit, or that of another, whereby the public might be subject to loss, damage or direct pecuniary prejudice.

2 East. 136.

III. Whensoever one commits an act directly tending to defeat, hinder or injure any one in the discharge of his duty in the public service in any of its branches, civil, judicial or military.

1 Leach. 174; 2 East, P. C. 822; Deac. 226; 6 East. 136;  
1 Dalton 47; 1 Chetw. Burn, 591; cited 1 Deac. 234.  
sect. 11.

VI. Whensoever one commits an act tending to pervert or interfere with the public administration of justice.

2 East. P. C. 822.



V. Whensoever any one commits an act in pursuance of a conspiracy.

2 Lord Raymond, 1279, (1706).

VI. Whensoever any one commits an act whereby the life, limbs, members or health of others obviously is or might be endangered.

4 Bl. com. 162; 2 East. P. C. 822; 4 Camp. 12; 3 M. & S. 11; 12 Chit. C. P. C. 556; Stan. C. L. 682; 4 M. & S. 218.

VII. Whensoever one, by means of any false seal, signature, stamp, impression or mark deceptively used to obtain undue credit, as a certificate, warrant, or test of the truth of the contents of any writing, or of the genuineness or quality of any commodity, or by means of any machine, instrument or thing artfully contrived and fraudulently used for the purpose of deception, or by the false and deceptive use of any other instrument or thing by sleight of hand or other device, or by any false personation, or by conspiracy with any other by any false and subtle device or contrivance to cheat and defraud any other person, shall cheat and defraud or shall endeavor to cheat and defraud any other person.

2 Lord Raymond, 1179 (1706); 2 East. P. C. 820; Cowp. 323; 2 Strange 793; 4 M. & S. 214; 1 Sess. Cas. 217; 2 Roll. Abr. 78; 2 Burr. 1127; Deac. 227.

The last preceding article shall apply to mortgages, hypothecations, pawns and pledges, as well as to absolute property.

VIII. False personation consists in the offender's falsely representing himself, or assuming to be any other person, whether such other person ever existed or not, and in the former case, whether such person be still living or not, or in falsely representing himself to be with, or to occupy or possess any office, official character or station, or any authority of a public or private nature, or to be, or to have been the husband or wife of, or to stand or to have stood in any degree of relationship or kindred to any other person.

IX. Whensoever one shall by any false and deceitful personation, endeavour to receive any wages, pay, half-pay, prize money, bounty money, pension, gratuity or other allowance from any compassionate fund of the navy or army with intent to defraud any other person.

11 Geo. iv. & 1 Will. iv. c. 20, s. 84.

X. Whensoever one shall by falsely personating the owner of any share or interest of or in any stock, annuity or other public fund, which is or hereafter may be transferable, or of or in the capital stock of any body corporate, company or society, which is or hereafter may be established by charter or act of Parliament, endeavour to

transfer any share or interest belonging to such owner, or to receive any money due to any such owner.

11 Geo. iv., & 1 Will. iv., cap. 66, sect. 7.

XI. Whensoever one shall falsely and deceitfully personate or falsely assume, or procure any other person to personate or falsely assume the name or character of any officer, non-commissioned officer, soldier, or other person entitled or supposed to be entitled to any pension, wages, pay, prize money or relief, grant, bounty money, share, or other allowance of money due or payable or supposed to be due or payable, for or on account of any service performed, by any officer, non-commissioned officer, soldier or other person who shall have really served, or be supposed to have served in Her Majesty's army or in any military service, or shall personate or falsely assume or act, aid, or assist in personating or falsely assuming, or procure any other person to personate or falsely assume the name or character of the executor or administrator, wife, widow, next of kin, relation or creditor of any such officer, non-commissioned officer, soldier or other person as aforesaid, in order to receive or to enable any other person to receive, any prize money, grant, bounty money, share or other allowance of money due or payable, or supposed to be due or payable; for or on account of any service performed or supposed to have been performed by any such officer, non-commissioned officer, soldier or other person as aforesaid.

7 Geo. 4, cap. 16, f. 38 ; 2 Will. 4, cap. 53, f. 49.

XII. Whensoever one shall wrongfully and clandestinely take and remove any property, being in the lawful possession or custody of any other person, with intent fraudulently to deprive any other person of any security for any debt, claim, or interest, or fraudulently to subject any person to any charge or claim in respect of the loss of such property.

XIII. Whensoever one shall sell a thing, having and knowing he has, no title thereto or power or authority to sell the same, and having sufficient ground to believe that the purchaser will not in fact, by the sale, obtain and have the thing sold, or any compensation or indemnity instead thereof.

XIV. The knowingly compounding, preparing or adulterating any substance or mixture intended for food, drink, or medicine for man, with any ingredient or matter, so as to render such substance or mixture injurious to health or hurtful in use, or the knowingly procuring any such substance or mixture so compounded, prepared or adulterated, with the intent, fraudulently to sell the same or

cause the same to be sold, as being wholesome or salutary.

The specification of such attempt does not exclude other attempts.

**XV.** Cheating only in the quantity or value of a thing bought or sold otherwise than is provided in this chapter is not indictable as a cheat.

2 Burr. 1126, 30, 1, 25, 29, 28—1751, 4, 33, 1; Cowp. 323, 4; 3 Burr. 1697; 1 Hawk. c. 71, s. 1; 2 East, P. C. 817, 19, 18; 2 Lord Ray, 1164; 3 Lord R. 325; 1 Deac. 227, 228; 2 East, 810, 18; Stark R. 402.

**XVI.** Where goods have been delivered on an agreement of sale, the preventing of the vendor's reclaiming them on suspicion of the purchaser's insolvency, by means of a false pretence, is not, within the provisions of this chapter, a gross cheat, merely by reason of such subsequent false pretence.

14 Wend. 546.

**XVII.** A mere false promise which the maker does not intend to keep is not of itself indictable under the provisions of this chapter.

1 C. & P. 321, 661; R. and R. 464.

**XVIII.** The cheating may be by implication and not by words.

R. and R. 127, 81, 3 C. and P. 420.

**XIX.** Remedy by civil action does not exempt a person from criminal prosecution for gross cheating.

**XX.** The conviction or acquittal of any one on a charge for a gross cheat is not evidence in a civil suit against him on account of the same cheat.

**XXI.** The plea or answer of any one in relation to a fraud or cheat in any civil suit or action is not evidence in a criminal proceeding against him for such fraud or cheat.

**XXII.** One convicted of a cheat committed in pursuance of a conspiracy, is not liable to be thereafter indicted or tried, on a charge of the same conspiracy.

5 Mass. R. 106.

**XXIII.** The property in a thing, obtained by a gross cheat, is not thereby changed, but this provision does not prevent the same property being changed by a subsequent purchase in good faith, by a third person without notice.

7 Taunt. 52.

**XXIV.** On conviction of a party for obtaining a thing by a gross cheat, the Court in which such conviction is had,

may order the thing to be delivered to the person entitled thereto, and if need be, grant a writ or order of restitution thereof accordingly.

7 & 8 Geo. 4, c. 29, s. 57; contrary to 2 Leach, 585 and 5 Tr. 175.

**XXV.** This offence shall be of two degrees. degree, in each case, to be determined by the discretion of the Court.

In the first, the punishment shall be imprisonment for not more than *two* years.

In the last, such imprisonment for not less than *one* year.

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SECTION IX.

RECEIVING STOLEN GOODS.

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1. What is receiving Stolen Goods
  2. Receiving part of same.
  3. Fraudulent detention of same.
  4. " " of same in collusion with thief.
  - 5, 6, 7. What not.
  8. What not essentials to this offence.
  9. Aiding and assisting in act.
  10. One receiving of goods of divers.
  11. Several receiving of goods of divers.
  12. Similar ownership as in larceny.
  13. Conviction of thief need not be alleged.
  14. Place of trial.
  15. Restitution to owner.
  16. Advertising reward.
  17. Corruptly taking reward.
  18. Receivers where original offence is punished summarily.
  19. Indictments.
  20. Punishments.
- 

I. The receiving of stolen goods, within the meaning of the provisions of this chapter is :

1. On contract or otherwise, fraudulently taking, accepting of, taking charge of, keeping, storing, concealing, bestowing, depositing or disposing of any chattel, money, valuable security, goods or other property whatsoever, of another, feloniously or unlawfully stolen, taken, obtained, converted, embezzled or extorted by any one, or aiding therein ;

6 C. & P. 177.

2. The removal or aiding in the removal thereof, for the purpose of taking, accepting, taking charge, keeping, storing, concealing, bestowing, depositing or dis-

posing thereof, knowing in either case the same to have been so stolen, taken, obtained, converted, embezzled or extorted, whether within or without the Province;

II. The receiving of any specific part of the same thing that is stolen;

2 East, 617; 7 C. & P. 170; 1 C. & P. 127.

III. The obtaining possession or control, without any fraud, of goods knowing them to be stolen, and afterwards being in possession or having control thereof, fraudulently detaining, keeping, concealing or disposing of the same or aiding therein, with the intent that the same shall not be restored to the owner, but that the owner shall be deprived thereof or of the benefit thereof;

4 Yerg R. 149; 5 Yerg R. 154.

IV. So also, where one being requested or authorized by the owner of goods stolen, embezzled or extorted, to get possession of the same, thereupon obtains, detains, keeps, conceals or disposes of the same, or aids therein in collusion with the thief or otherwise, with the intent of defrauding the owner thereof of the same, notwithstanding such request or authority.

4 Yerg R. 149; 5 Yerg R. 154.

V. But, the receiving of a thing for which the thing stolen was exchanged, is not a receiving of stolen goods.

4 C. & P. 132; Rosc. Ev. 718.

VI. Nor receiving goods taken in another country beyond this Province, in a way not there amounting to larceny, embezzlement or extortion, although a similar taking in this Province be larceny, embezzlement or extortion.

2 Mass. R. 14.

VII. Nor so receiving of goods taken in another country in a way there amounting to larceny, embezzlement or extortion, and not being such in this Province.

VIII. It is not essential to constitute the offence of receiving stolen goods, that the receiver should intend any profit or benefit to himself.

6 C. & P. 335; 2 Deac. 1717; 2 East, 767-8, 557; 2 Russ. 257; R. & R. 332, 256, 333, n. 421, 257.

IX. One who is present and aids in stealing goods and then takes charge of the same, is guilty of larceny, and not of receiving stolen goods.

6 C. & P. 156.

X. The receiving of goods at one time belonging to the same divers joint or common owners, constitutes but one offence.

2 Mass. R. 409.

XI. Receiving different goods at distinct times, will constitute distinct offences, although the goods may belong to the same owner.

XII. The same interest or property in, or possession or right of possession of a thing which constitutes ownership thereof, in respect to the offence of larceny, constitutes ownership in respect to the offence of receiving stolen goods.

3 Rep. Crim. Com. 274.

XIII. In any prosecution for receiving stolen goods, it is not necessary to aver, nor on the trial to prove, that the person who stole the goods has been convicted.

Moody 257; 2 Desc. 1092.

XIV. If any person shall receive any chattel, money, valuable security, or other property whatsoever, knowing the same to have been feloniously or unlawfully stolen, taken, obtained or converted, every such person whether charged as an accessory after the fact to the Felony, or with a substantive Felony, or with a misdemeanor only, may be dealt with, tried and punished in any District, County or place in which he shall have or shall have had any such property in his possession, or in any District, County or place in which the party guilty of the principal Felony or misdemeanor may by law be tried, in the same manner as such receiver may be dealt with, indicted, tried and punished in the District, County or place where he actually received such property.

XV. If any person guilty of such offence, in stealing, taking, obtaining or converting, or in knowingly receiving any chattel, money, valuable security, or other property whatsoever, shall be indicted for any offence by or on the behalf of the owner of the property, or his heir, curator, executor or administrator, and convicted thereof, in such case the property shall be restored to the owner or his representative; and the Court before whom such person shall be so convicted, shall have power to award from time to time writs or orders of restitution thereof in a summary manner: Provided always, that if it shall appear, before any award or order made, that any valuable security shall have been *bona fide* paid or discharged by some person or body corporate liable to the payment thereof, or being a negotiable instrument, shall have been *bona fide* taken or received by transfer or delivery by some person or body corporate, for a just and valuable consideration without any reasonable cause to suspect that the same had by any such offence been stolen, taken, obtained or converted as aforesaid, in such case the Court shall not award or order the restitution of such security.

XVI. If any person shall publicly advertise a reward for the return of any property whatsoever, which shall have been stolen or lost, and shall in such advertisement, use any words purporting that no question will be asked, or shall make use of any words in any public advertisement purporting that a reward will be given or paid for any property which shall have been stolen or lost, without seizing or making any enquiry after the person producing such property, or shall promise or offer in any public advertisement to return to any pawnbroker or other person who may have bought or advanced money by way of a loan upon any property, stolen or lost, the money so paid or advanced, or any other sum of money or reward for the return of such property, or if any person shall print or publish any such advertisement in any of the above cases, every such person shall forfeit the sum of twenty pounds for every such offence, to any person who will sue for the same, by action of debt to be recovered with full costs of suit.

XVII. Every person who shall corruptly take any money or reward, directly or indirectly, under pretence or on account of helping any person to any chattel, money, valuable security, or other property whatsoever, which shall by any Felony or Misdemeanor have been stolen, taken, obtained or converted as aforesaid, shall, (unless he cause the offender to be apprehended and brought to trial for the same,) be guilty of Felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than *seven* years, or to be imprisoned in any other Prison or place of confinement for any term not exceeding *two* years.

XVIII. Where the stealing or taking of any property whatsoever is by this Act punishable on summary conviction, either for every offence, or for the first and second offence only, or for the first offence only, any person who shall receive any such property, knowing the same to be unlawfully come by, shall on conviction thereof before a Magistrate, be liable for every first, second or subsequent offence of receiving, to the same forfeiture and punishment to which a person guilty of a first, second or subsequent offence of stealing or taking such property is by this Act made liable.

XIX. In any indictment for receiving stolen property it is lawful to add a count for stealing the same property, and in any indictment for stealing property, it is lawful to add a count for receiving the same property knowing it to have been stolen; and on any such indictment the jury may find a verdict of guilty, either of so stealing or of so receiving the said property; and if the indictment be

found against two or more, the verdict may be found against all or any of the defendants, either of so stealing or of so receiving, or against one or more of so stealing and the other or others of so receiving.

XX. Whoever is guilty of receiving stolen goods, shall be punished by imprisonment in a common gaol for not less than *two* years, with hard labour.

Whoever is convicted of three or more offences of this description shall be punished by imprisonment in the penitentiary for not less than *seven* years.

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SECTION X.

WILFUL TRESPASSES.

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1. Cutting wood and carrying away timber, grass, &c.
  2. Entering a garden, orchard, &c. to take fruit, &c.
  3. Wilful trespass on Sunday, in disguise, or in the night.
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I. Whoever commits any wilful trespass, by cutting down or destroying any timber or wood standing or growing on the land of another, or by carrying away any kind of timber or wood cut down or lying on the land of another, or by digging up or carrying away any stone, ore, gravel, clay, sand, turf or mould from the land of another, or any roots, fruit or plant there being; or by cutting down or carrying away any sedge, grass, hay, or any kind of corn standing, growing or being on the land of another; or by carrying away from any wharf or landing-place any goods whatever, in which he has no interest or property, without the license of the owner thereof, shall be punished by imprisonment for not more than *six* months, or by fine not exceeding *fifty* pounds, or both, at the discretion of the convicting Court.

II. Whoever shall wilfully commit any trespass by entering upon the garden, orchard or other improved land of another, without permission of the owner thereof, and with intent to cut, take, carry away, destroy or injure the trees, grain, grass, hay, fruit or vegetables there growing or being, shall be punished by imprisonment for not more than three months, or by fine not exceeding *twenty* pounds, or both, as in the next preceding article.

III. In case of any of the offences mentioned in the two preceding sections being committed on the Lord's day, or in disguise, or secretly in the night time, between nine of the clock in the evening and six of the clock in the morning, the offender shall be imprisoned not less than *fifteen* days, or fined not less than *one hundred* pounds, or both.



CHAPTER XVIII.  
**FORGERY AND OTHER OFFENCES  
 CONNECTED THEREWITH.**

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1. What is Forgery.
  2. What is an Instrument.
  3. What is the term *Written*.
  4. Making, altering, and adding.
  7. Making of parts by several.
  8. Tendency to deceive.
  9. Intent to indemnify.
  10. False use of maker's name.
  12. Falsity of purport or allegation.
  14. Intent to deceive.
  16. Resemblance to genuine.
  17. Prejudice to another.
  20. Uttering defined.
  22. False personation.
  23. Cancelling.
  24. Filling a blank.
  25. False application of signature.
  26. Altering one's own writing.
  27. Fraudulent procuring of signature.
  28. Falsification of testimony by Magistrate.
  29. False certificate of acknowledgment.
  30. Falsification by Public Notary.
  31. False record.
  32. Commercial document.
  33. Having forged notes.
  - 34, 35. Engraving, or having tools and materials to engrave.
  36. Presumption of knowledge.
  37. Place of resort.
  38. Application to foreign instruments.
  39. Possession where.
  40. Persons defrauded.
  41. Degrees of forgery.
  42. Punishment.
  43. Interested persons competent witnesses.
  44. Testimony of Cashier received.
  45. Certificate of Secretary sufficient.
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I. Forgery consists in the false and fraudulent making of an instrument with intent to prejudice public or private right, where the false instrument, if genuine, would have created, increased, defeated, discharged or diminished any pecuniary obligation or transferred or in any manner affected any property whatever.

4 B. Com., 247; East. P. C. c. 19, s. 1-43; Leach, 366; Hammond, Project of a Case of Forgery, p. 7, s. 21; Commiss. Cr. Law, 5 Rep. p. 69; Livingston Code, n. 286, p. 400.

II. The term "instrument" shall include any written instrument, whether under seal or not, or any such instrument by any Statute now or hereafter to be in force in this Province, declared to be the subject of forgery, and

any character, figure, impression, device or other visible mark of distinction, whether it be made to appear upon any material or in the substance thereof, and also any type, die, seal, stamp, plate or other instrument for making upon any material whatsoever, any mark or impression used as a mean for authenticating the truth or genuineness of any fact or thing whatsoever.

Commiss. Cr. Law, 5 Rep. p. 63, s. 3.

III. The term "written," as used in the last preceding article, shall be deemed to apply whether the words or figures of the instrument, or any of them, be expressed at length or abridged, and whether they be so expressed by means of writing, printing or otherwise.

Moody, C. 141; 2 Lewin, 181; East, P. C. 962; Leach, 1048; Taunt. 300; R. and R. 212.

IV. An instrument shall be deemed to be falsely made when it is not really the instrument or mean of authentication for which it is intended to be taken, but is fraudulently made with intent to obtain that credit which would be due to it if it were genuine.

V. The making of an instrument comprehends not only the making of the whole thereof but also the making, altering or adding any material part.

2 East, P. C. 19, s. 4, p. 855, and s. 1, p. 853; 15 Mass. R. 527; 3 Inst. 169; 1 Hawk, c. 51, s. 42; R. & R. 320; East, P. C. 986; Moore, 619; 3 P. W. 419; Str. 18; R. and R. 101, 164, 251, 278; Leach, 1040; 2 Taunt., 328.

VI. Any fraudulent alteration of an instrument in any material part, whether it be by addition, diminution, erasure, transposition or any combination of any of these acts or any other device or means whatsoever, shall be deemed to be a false making of the written instrument so altered.

2 East, P. C. c. 19, s. 4, p. 855, and s. 1, p. 853; 15 Mass. R. 527; 3 Inst. 169; 1 Hawk, c. 51, s. 42; 4 T. R. 320; East, P. C. 966; Moore, 619; 3 P. W. 419; Str. 18; R. and R. 101, 164, 251; Leach, 1040; 2 Taunt., 328; 10 Mass. R. 34.

VII. If several persons shall make distinct parts of or shall otherwise contribute to the making of a false instrument or other thing, the subject of forgery, each of such persons shall be deemed to have falsely made such written instrument or other thing.

VIII. If any person, being deceived as to the contents of any instrument shall, by reason of such deception, be fraudulently induced to sign or otherwise execute the same, the party by whom he was so induced to sign or execute it shall be deemed to have falsely made it.

**IX.** Where an instrument made falsely as being that of another, and with intent to deceive and defraud, has a direct tendency to defraud or prejudice any person, it is a forgery notwithstanding the intention of the party making or uttering the same, to prevent any loss or prejudice to any person therefrom or to make indemnity for such loss or prejudice.

Russ. and Ry. 169; 8 C. and P. 274; 7 C. and P. 224, 553.

**X.** If a person fraudulently make or execute in his own name any written instrument which is false in respect of the date or any other material part, it shall be deemed to be a false making of such instrument.

See authorities Section 5.

**XI.** It shall be deemed to be a false making of a written instrument if the offender falsely make it in the name of any other person real or supposed, although such name be the offender's own name.

Leach, 57, 214, 226, 438, 775; East., P. C. cap. 19, s. 47, 48, 49, 50; R. and R. 75, 209, 278, 260, 405, 436; Russ. on Cr. 1439; II Stark. Ev. 573, (Note); IV T. R. 2; B. and P. 228, 197.

**XII.** Though a writing contain any false recital, statement or implication of any fact, it is not forgery, unless it be false in its allegation or purport of the party by whom it was made.

Russ. 1626; R. and R. 278.

**XIII.** A writing which in and of itself, independently of all extrinsic or collateral circumstances would, though it were genuine and made by a person authorised to make the same according to its purport, be obviously invalid, void and of no effect, is not a forgery.

East., C. L. c. 19, s. 43; Russ. and Ry. 496; East. P. C. 942; 21 Wend. R. 521; Russ. and R. 127; 6 Johns., R. 320; 2 Russ. 443; R. and R. 297.

**XIV.** An intent to deceive is essential to forgery, but it is not essential that any one should in fact be thereby deceived.

East, P. C. 854; 2 L'd. Raym. 1466.

**XV.** It is essential to forgery, that the instrument as made or altered, purport to be the instrument of another party than the person making or altering the same.

Russ. and R. 75, 90, 209, 278, 260, 405, 436.

Except in the cases of an alteration by the maker of a writing in which others have a property or direct interest: it is not necessary in order to constitute the offence, that there should really be any such other person or party to the instrument.

Russ. on Cr. 318, n.; Leach, 57, 83; East, P. C., c. 19, s. 37, 46, 50, 967, 959, 60; R. and R. 278, 209, 75, 120; 6 St. Tr. Hadfield, C. 103; Fost. 116.

**XVI.** So also the false instrument need not be an exact resemblance of the genuine one for which it is intended to be uttered : it is sufficient that it might pass for such genuine one with persons not skilled in or having knowledge of the genuine instrument simulated, though a person skilled therein would not be liable to be thereby deceived.

East, P. C. c. 19, p. 951 ; Leach, 1048 ; 4 Taunt. 300 ; R. and R. 212.

**XVII.** But a fabricated instrument, being such on its face that a person of ordinary intelligence, though not skilled in the genuine instrument would readily perceive it not to be genuine, is not a forgery.

Fost. 116 ; 1 Leach, 431 ; 9 Cowen, 778.

**XVIII.** It is not requisite that it should appear what person or party in particular, or whether the whole or what specific portion of the public or of the community was intended to be or might be defrauded or prejudiced, if the fabricated instrument were accredited as genuine ; it is sufficient that others known or unknown, might be defrauded or prejudiced.

2 Ch. Cr. L. 796, 1026.

**XIX.** It is sufficient that the false instrument be such as being uttered tends to defraud or prejudice another, though it may not appear that it would certainly have that effect.

East, P. C. c. 17, s. 44 ; Ibid. 1796 ; R. and R. 455, 50, 86 ; 9 Wend, 141 ; 3 Mood. 66, 2 Sid. 71 ; 1 Sid. 142 ; East, P. C. , c. 19, s. 7 ; 2 Hawk. c. 70, s. 4 ; 1 Salk. 376 ; 3 Salk. 186 ; Ld. Raym. 527, 1461 ; Str. 747.

**XX.** The uttering of an instrument is, in respect of forgery and the other offences provided against in this chapter, the fraudulently and deceptively offering, passing, negotiating, assigning, transferring or putting the same into circulation as being true and genuine according to its apparent purport, by a person knowing the same to be false, with the intent that any person shall be thereby deceived, and that any person shall be thereby defrauded and prejudiced.

2 Ld. Raym. 1461 ; R. and R. 200 ; Leach, 978 ; 4 B. and R. 96 ; R. and R. 72.

**XXI.** The uttering of an instrument which, as the same is uttered, is false and deceptive as to who was the person making the same and might defraud or prejudice another, is, though the same was not forged, subject to the penalty for uttering a forged writing.

Leach, 808 ; Hammond's Proj. of Code of Forgery, p. 64.

**XXII.** The knowingly and falsely personating of another as a party to any instrument or intended by any signature for the purpose of uttering or authenticating the same, with the intent thereby to deceive any person and defraud

or prejudice any person, where such false personation has a tendency to deceive and to defraud or prejudice, whether it be by a person of the same or a different name, and whether there in fact be or be not any such person as is personated, is subject to the penalty for forgery of a like instrument; and the knowingly, deceptively and fraudulently uttering an instrument so authenticated, is subject to the penalty for uttering a forged instrument of a like description.

East, P. C. c. 19, s. 45, 963; 1 Stark, Ev. 332-3; Russ. and R. 75, 90, 209, 276, 260, 405, 436.

**XXIII.** The cancelling, destroying, secreting or obliterating of an instrument being one's own or that of another, in which any other person has any property or direct interest, with intent thereby to defraud any person or prejudice any one in his person, property, rights or interests, and whereby any person might be defrauded or so prejudiced, is subject to the penalty for forgery of a like instrument.

**XXIV.** The knowingly and fraudulently filling up of a signed blank, otherwise than the party filling up the same is authorised by the signer or other person empowered thereto to fill up the same, with intent in either case to defraud or prejudice such signer or any other person, and where such signer or another might be thereby defrauded or prejudiced, is subject to the penalty for forgery of a like writing.

2. But this provision shall not affect the validity of such writing as against the parties liable thereon.

3. The knowingly and fraudulently uttering of a writing so filled up is subject to the penalty for uttering a like forged writing.

Mood. 466-7, C. and P. 224-642; 3 Inst. 171, 8 C. and P. 143; 1 Lew. 135.

**XXV.** The knowingly and fraudulently writing over or connecting with an instrument so as apparently to be connected with and recognized and sanctioned or authenticated by a signature, any thing other than what the person so writing or connecting the same is authorized by the signer to write over or connect with such signature, with intent to deceive and to defraud or prejudice another, and so that another might be thereby defrauded or prejudiced, is subject to the penalty for the forgery of a like writing.

2. The knowingly and fraudulently uttering of an instrument so made, is subject to the penalty for uttering a like forged instrument.

3. This section shall not prevent any such instrument from being a forgery which otherwise would be such nor affect the civil liability of any person thereon.

**XXVI.** The false and fraudulent alteration of an instrument made by the party altering the same and previously passed or delivered, so that others shall have become parties thereto or have a direct legal interest therein, the alteration being such as may tend to deceive any person and to defraud or prejudice any person, is equivalent to the falsely and fraudulently making of an instrument purporting to be that of another, and is forgery.

1 Mass. R. 136.

**XXVII.** The fraudulent and deceitful procuring of a signature to or a written authentication of an instrument, under pretence that it is another and different instrument, whereby the person writing or authenticating the same is deceived and signs and authenticates the same, as and for such other and different instrument, is subject to the penalty for forgery of a like instrument or authentication; and the knowingly and fraudulently uttering of such instrument or authentication is subject to the penalty for uttering a forged instrument or authentication of a like description.

**XXVIII.** Any Officer or Magistrate authorised by law to take any testimony, declaration or statement on oath, or an affirmation instead thereof, who knowingly and corruptly, falsely takes or certifies any testimony, declaration or statement as to the whole or in some material part, is subject to the penalty for forgery of like testimony declaration, statement or certificate; and the knowingly and fraudulently uttering of the same is subject to the penalty for uttering a forged writing of like description.

**XXIX.** Any Officer or Magistrate authorized by law to take acknowledgment or proof of any deed of conveyance of real Estate or any other instrument, in order to entitle the same to be recorded in any public office or by any public Officer, or to be produced in evidence or in order to give the same validity or additional weight, solemnity or effect, in respect to the property rights or interests to which the same relate, who falsely and corruptly certifies that any such deed or instrument was acknowledged to him by any party thereto, or that proof was given to him of the genuineness thereof when in fact no such acknowledgment was made or proof was given to him, is subject to the penalty for forgery of a certificate of like description.

2. And any Officer authorized by law to certify any fact, whose certificate is legal proof thereof to any purpose, who falsely and corruptly certifies such fact, is also subject to the penalty for forgery of a like certificate.

3. And the knowingly and fraudulently uttering any such false certificate is subject to the penalty for uttering a like forged certificate.

**XXX.** Any Notary Public in this Province authorised by law to make, minute or take any instrument in writing according to law, who shall corruptly and falsely in the whole or any part thereof insert therein any declaration matter or thing different from or contrary to the declared and expressed intentions, agreement or design of any party thereto so declaring and expressing the same, whereby such party signing or legally authenticating or assenting thereto is deceived, or who shall corruptly and falsely in the whole or any part of such instrument procure a signature to or any written or legally binding verbal authentication of or assent to the same, whereby the party thereto or any other person interested therein shall be deceived either immediately or immediately is subject to the penalty for forgery.

Any such Notary who corruptly or falsely in the whole or any material part of such instrument makes or certifies as authentic any such instrument or purported copy thereof, is subject to the like penalty of forgery, and the knowingly and fraudulently delivering of such false instrument or false purported copy thereof is subject to the penalty of uttering a like forged instrument or copy.

**XXXI.** Any Clerk or Registrar of any Court in this Province, or any Registrar of deeds, or any other Officer or person having the legal custody of any public record who corruptly and falsely, in or as to any material part, makes or certifies any record, or purported copy thereof, is subject to the penalty for forgery of a like record, copy or certificate.

2. And the knowingly and fraudulently uttering of such false record, copy or certificate, is subject to the penalty for uttering a like forged record, copy or certificate.

**XXXII.** The fabrication or uttering of a commercial document or writing merely for use abroad out of this Province for commercial purposes, without any intent and where there is no direct and obvious aptitude or tendency thereby, to prejudice or impair the rights of or to defraud or injure others in this Province, is not an offence within the provisions of this Chapter, and such intent shall not be presumed.

Common Law : 1 Johns. C. 141.

**XXXIII.** Whoever shall knowingly bring into this Province at any one time, purchase or receive or have in his possession or control, any forged note, blank bank note, of one or more banks or banking companies within or not within this Province, payable to the bearer thereof or to the order of any person, persons, corporation or company, one or more forged bills of credit, debent-

tures, certificates or acknowledgments of debt, purporting to be issued by authority of this Province or of any country or province under the dominion of Her Majesty, or of any foreign government, whether all the same purport to be issued by either, or some by one and some by another of the authorities aforesaid, with intent fraudulently to utter the same or cause, promote, facilitate or permit the fraudulent uttering of the same as genuine, shall be subject to the punishment provided for by this chapter.

10 and 11 Vict., ch. 9.

**XXXIV.** The engraving or in any wise making by any person or beginning to engrave or make, or aiding in engraving, or making, or having in his possession partly or wholly engraved or made, any plate, block, press or other apparatus, machine, implement, tool, instrument or article adapted and designed and known by him to be adapted and intended to be used for the engraving or making of forged or counterfeited bank-notes or similitudes of bank-notes of any bank or body corporate or person carrying on the business of a banker within or without this Province, or purporting on such counterfeit or similitude to be the note of such bank or body or person within or without this Province, or adapted and intended to be used, and known by him to be adapted and intended to be used for making any false and counterfeit note, instrument, debenture, note, bill of credit, certificate or evidence of debt, being a similitude or resemblance of any instrument, debenture, bill of credit, certificate or other evidence of debt of this Province or of the United Kingdom, or any of Her Majesty's dominions, or purporting to be such instrument, debenture, note, bill of credit, certificate or evidence of debt, with intent to use the same or cause permit the same to be used, is fraudulently making such false and forged or counterfeited bank-notes, instrument, debenture, note, bill of credit, certificate or evidence of debt, is subject to the penalty of forgery.

**XXXV.** The making, providing or having by any person, in his possession any paper, parchment or other fabric or material, engraved, stamped, marked, fabricated or prepared in similitude or resemblance of any such bank-note, instrument, debenture, note, bill of credit, certificate or evidence of debt, adapted and intended to be used for making such false and counterfeit or forged bank-note, instrument, debenture, note, bill of credit, certificate or evidence of debt, knowing the same to be so adapted and intended to be used and with the intent so to use the same, or cause or permit the same to be so used, is subject to the penalty for forgery.

**XXXVI.** The engraving or making by any person or beginning to engrave or make, or having in his possession



any plate, block, press or other apparatus, machine, implement, tool or article, or any such paper, parchment, fabric or material adapted and intended to be used as specified in the two last preceding sections, such person shall, unless the contrary appear, be presumed to know that the same is so adapted and intended to be used and the same being so adapted, shall, unless the contrary appear, be presumed to be designed and intended so to be used.

Provided however, that the having in possession a plate, block, press or other apparatus, machine, tool, implement, instrument or article, or paper, parchment or other fabric or material, the making or possession of which was lawful at the commencement of such possession, does not become unlawful on the passing of a subsequent law or otherwise, unless it be made so by some subsequent act or neglect of the person so possessing the same, and such act or neglect shall not be presumed.

R. and R. 446, 255 ; 2 Russ. 476 ; Mood. 52 ; 2 Stark, 389.

**XXXVII.** Where the alleged act of forgery or uttering or other equivalent offence under any of the preceding articles is done within this Province, it is punishable herein, though the subject matter purported by or referred to in the false instrument, in whatever language the said instrument shall be expressed, shall be partly or wholly without this Province, or the pretended promise, agreement or undertaking shall be to be partly or wholly performed or complied with, or the false writing shall be intended to be uttered, used, or have effect out of this Province.

18 Johns, 164 ; S. and R. 531.

**XXXVIII.** The provisions of this chapter shall apply to the forging and uttering, engraving or making, or having in possession of any plates or material for engraving or making of any instrument in any language of any foreign Prince or State, or of any minister or officer in the service of such Prince or State, or of any body corporate or body of a like nature constituted or recognised thereby, or of any person or company of persons resident in any country not under the dominion of Her Majesty, or having in possession any paper on which any part of such instrument shall be made or printed, without the authority of such Foreign Prince or State, Minister or Officer, body Corporate or body of the like nature, person or company of persons, the proof of which shall lie on the person accused.

10 and 11 Vict., ch. 9, sec. 13.

**XXXIX.** When the having any matter in the custody or possession of any person is in this chapter expressed to be an offence, if any person shall have any such matter in any dwelling-house or other building, lodging, apartment, field or other place open or inclosed, whether

belonging to or occupied by himself or not, and whether such matter shall be so had for his own use or for the use or benefit of another, every such person shall be deemed and taken to have such matter in his custody or possession within the meaning of this Act.

10 and 11 Vict., ch. 9.

**XL.** And when the committing of any offence with intent to defraud any person whatsoever is made punishable by this Act, in every such case the word "person" shall throughout this Act be deemed to include Her Majesty, or any Foreign Prince or State, or any body Corporate, or any company or society of persons not incorporated, or any person or number of persons whatsoever, who may be intended to be defrauded by such offence, whether such body corporate, society, person or number of persons, shall reside or carry on business in this Province or elsewhere in any place or country, whether under the dominion of Her Majesty or not.

10 and 11 Vict., ch. 9.

**XLI. Forgery in the first degree is**

1. Where the forging or counterfeiting or uttering is of the Great Seal of this Province, or of the late Province of Upper Canada, or of the late Province of Lower Canada.

10 and 11 Vict., ch. 9.

2. Where the forging, counterfeiting or uttering is of the Seal at Arms of any Governor, Lieutenant-Governor or person administering the Government of this Province, to any, or purporting to be to any instrument of a public nature appertaining or relating to the affairs of this Province, or the forging of any public register or book appointed by law to be made or kept, or the wilfully certifying or uttering any writing as and for a true copy thereof.

10 and 11 Vict., ch. 9.

3. Where the forging or altering, or in any way publishing, putting off or uttering as true, knowing the same to be forged or altered, is of any copy of Letters Patent or of the enrollment or onregistration thereof, or of any certificate thereof, or any debenture or scrip in lieu or satisfaction of any right or claim to a grant of land from the Crown in this Province.

10 and 11 Vict., ch. 9.

**Forgery in the second degree is**

1. Where the forging, altering, offering, disposing of or putting off is of any valuable security, or testamentary instrument, as such security and instrument are defined in this Act, with intent to defraud any person whatsoever.

10 and 11 Vict., ch. 9.

2. The forging, altering, offering, uttering, disposing of or putting off, knowing the same to be forged or altered, is of any Notarial Act or instrument or copy, purporting to be an authenticated copy thereof, *procès verbal* of any Surveyor or like copy thereof, or any written instrument of justice or muniment of title, as such instrument or muniment are hereby defined.

10 and 11 Vict., ch. 9.

3. The false and deceitful personating of any owner of any share or interest of, in or to any capital stock, or of any dividend or profit payable in respect thereof or of any person having a claim for a grant of land from the Crown in this Province, or for any scrip or allowance in lieu thereof, with the intent to transfer or receive or have any money due to such owner or person, as if such offender were the true and lawful owner, or to obtain any grant of land or any scrip, payment or allowance in lieu thereof, as if such offender was entitled thereto.

10 and 11 Vict., ch. 9, sect. 7.

4. The knowingly and wilfully personating any party, whose signature is affixed or subscribed to any instrument, whether under seal or not, or whether Notarial or otherwise, and whether such person be a party to such instrument or a witness thereto, or any party or person giving recognizances, bail, cognovit or deed to be registered or enrolled, before any Court, Judge or person thereto lawfully authorised.

10 and 11 Vict., ch. 9.

All other offences than as contained in the two last preceding articles shall be forgery in the third degree.

XLII. The punishment of this offence, in the first degree, shall be imprisonment in the Penitentiary for not less than *ten* years.

The punishment of this offence, in the second degree, shall be imprisonment in the Penitentiary for not less than *five* years.

The punishment of this offence, in the third degree, shall be imprisonment for not less than *two* years.

XLIII. In all prosecutions against any person for forgery, no person shall be deemed to be an incompetent witness, in support of any such prosecution by reason of any interest which such person or persons may have or be supposed to have in respect of any deed, writing, instrument or other matter given in evidence on the trial of any such indictment or information: Provided always, that the evidence of any person or persons so interested, or supposed to be interested, shall in no

case be deemed sufficient to sustain a conviction for any of the said offences unless the same be corroborated by other legal evidence in support of such prosecution.

**XLIV.** In prosecutions for forging or counterfeiting notes or bills of banks, or for uttering such bills or notes, or for being possessed thereof with intent to utter the same as true, the testimony of the president and cashier of any bank, the notes or bills of which are alleged to be counterfeited, may be dispensed with, if their place of residence is out of the district or county, or is more than forty miles from the place of trial; and the testimony of any person acquainted with the signature of the president or cashier of such bank, or who has knowledge of the difference in appearance of the true and counterfeit bank notes and bills thereof, may be admitted to prove that any such bank notes or bank bills are counterfeit.

**XLV.** In any prosecution for forging or counterfeiting any debenture, note, certificate, bill or credit of other security, issued on behalf of the Government, or for uttering as true any such forged or counterfeit debenture, note, certificate, bill of credit or security, or for being possessed thereof with intent to utter the same as true, the certificate under oath of the Secretary of the Province, or of the Inspector General, shall be admitted as evidence, for the purpose of proving the same to have been forged or counterfeit.

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## CHAPTER XIX.

## LIBEL.

1. Libel defined.
2. Libel construed according to the sense intended.
3. A writing referred to may thereby become libel.
- 4, &c. Malice.
- 10, &c. Charging Crime.
15. Imputations of fact involving civil disabilities.
16. Imputation of Vice or Immorality.
17. Imputation of Fraud.
18. Imputation of Disease, &c.
19. Libel of one in respect of office.
20. Libel of one in respect of profession or occupation.
21. Disparaging article of property.
22. Making.
- 23, 24. Publishing.
25. Libel on the Dead.
- 26, 27. Libel on a body of persons.
28. Libel on an Alien.
29. Libel on persons unknown.
30. Libel construed according to sense conveyed.
31. Obvious sense presumed to be intended.
32. Intent to publish presumed.
33. Libel presumed to be understood by maker and publisher.
34. Control of publication presumed knowledge of contents.
35. Publication by servant.
36. Privileged Publications.
37. Giving character.
38. Criticisms.
39. Giving the author.
40. Publishing a common rumour.
41. Abuse of privilege.
- 42, 43. Abuse not presumed.
44. Justification by proof of truth of a publication.
45. Reparation or offer, mitigation of punishment.
46. Degrees of offence.
47. Punishment.
48. Costs of prosecution.

I. A libel is a publication in writing or print, or by picture, engraving, drawing, statue, sign or symbol, or a representation other than by words merely spoken or by transient, momentary signs, which directly tends to injure the fame, reputation or good name of another than the person making or publishing the same, and to bring such other into disgrace, abhorrence, odium, hatred, contempt or ridicule, or to cause him to be excluded from the society of others.

1 Keb. 203; Pl. 117; Skin. 123, 124; 1 Ld. Kenyon, 416; 3 Inst. 174; Vin. Abr. Tr. Libel; Stark. 140; 5 Mod. 165; 5 Co. 125; Stark. Libel, 493, 502; 2 Camp. 512; 1 Hawk. 193-4; 10 Wend. 206; 1 Hawk. P. C. 103; 4 T. R. 126; Northampton's C. 1 Str. 422; Mod. 20, 142; 1 Vin. Abr. 429, 433, pl. 13; Smith v. Wisdome, Cro. Eliz. 349; 5 Bac. Ab. 197; 4 Co. 15; Poph. 210; 2 Bula. 134; 3 Bula. 262, 303; Cro. Jac. 287; Sid. 82; 2 Roll. Rep. 165; 11 Mod. 235; 12 Co. 31, 134; Cro. Jac. 422; Keb. 359, pl. 52; 1 Roll. Abr. 50; Mod. 418; Stark. Lib. 61, 62, 63, 64, 65, 66; Dalr. 17; Bro. Action sur lo Cas. pl. 2; 2 Wend. 534; 3 Wend. 291; 21 Wend. 70; 4 B. & Ad. 821; 10 Wend. 298, charging party with having had progeny by a dog, which implied the crime against nature; and see 16 Wend. 9; Roberts v. Brown, 10 Mag. 619; 10 Mag. 477.

II. Where a publication in the sense and application intended by the maker or publisher does not defame any one, it is not a libel by such maker or publisher, though it may be the occasion of injury to the reputation of some person.

5 B. & Ald. 645.

III. A representation referred to in a libel, may be thereby made part thereof.

7 C. & P. 369.

IV. Malice is shown in respect to libel, by making a publication or communicating it to others, wilfully and purposely to the prejudice and injury of another. It denotes a wrongful act done intentionally, without just cause or excuse. Hatred or ill will towards the party injured is not essential to libel.

1 C. & P. 223; 10 R. & C. 269; Littledale, P.

V. A general good purpose of bringing about a reformation in public manners, is not inconsistent with and does not conclusively shew the absence of, the malice requisite to libel.

15 Fick. R. 325.

VI. Malice may consist in a culpable carelessness or negligence in publishing.

Stark. 242; 2 Stark. 12, 361.

VII. Reciting a matter as a mere historical fact for illustration or for other justifiable purpose, without intending any personal application or knowing that such can be made, is not a malicious publishing thereof.

Cro. Car. 91, cited by Coke.

VIII. Any thing said of another, out of grief or from sincere kindness and compassionate interest taken in his behalf, and without gross and culpable carelessness of its injurious effect, is not a malicious publishing of the same.

1 Lev. 82.

IX. A communication made in good faith through motives of friendship, without any intent or culpable negligence of injury to another, is not a malicious publication.

Stark Lib. 323; 4 R. & C. 247.

X. The maliciously charging another with a crime, where such charge directly tends to bring him into disgrace, odium, contempt or ridicule, or to exclude him from the society of others, is a libel.

Per Story, J.: "A publication which accuses another with a crime punishable by law, is a libel."—4 Mason, 115; 5 Johns R. 158; 2 Vest. 28; Cro. Jac. 114; Cro. Car. 276; Poph. 21; 1 Vin. Abr. 405. Cro. Ells. 308; Cro. Jac. 138; 1 Roll. Abr. 41; Wils. 87; 11 Mod. 238; 2 Johns, R. 10; Caines's R. 346; 4 Johns, R. 109; 20 Johns, R. 340; 12 Mass. R. 453.

XI. The maliciously charging one with a disgraceful crime is a libel, though it be a crime that, under the circumstances, he is incapacitated to commit, where such incapacity is not known to those to whom the charge is published.

16 Pick. 1.

XII. The imputing a fact impossible in the nature of things, but popularly believed to be possible, and necessarily implying and supposing a disgraceful crime, is a libel.

16 Wend. 296.

XIII. The imputation of a crime may be a libel, though it appear by the charge itself, that prosecution for it is barred by limitation.

14 Johns. 233.

XIV. The charging of one with a violation of law which would not be a disgrace to him, is not a libel.

19 Johns. R. 367; 5 Johns. 188; 2 Mod. 153; Cro. Jac. 448; Cro. Eliz. 49, 191; Holt, R. 425; 6 Mod. 125; Dig. of Law of Lib. 80; Stark. Lib. 532; 6 C. & P. 497.

XV. The imputation of a fact which, if true, would subject the party to whom it is imputed to civil disfranchisement or civil disability, may be a libel.

Vin. Abr. 396; Poph. 3, 6.; Stark. Lib. 26; Stark. Lib. 24.

XVI. The charging of any one with a vice, or with moral turpitude, is a libel only where it has the tendency specified in the first article.

Stark. Lib. 22, 23, 24; 2 Johns. R. 10; 1 Caines', R. 347; 12 Mass. R. 406; 6 C. & P. 497; Moore; 2 Meagher; 1 Taunt.

XVII. The malicious imputing to another a disgraceful breach of trust, knavery, fraud or dishonesty, is a libel.

1 Will. Saund. 248 n. (3); Hard. 470; Skin. 123; 2 Show. 315; 2 Wils. 403; 1 T. R. 743; 2 Str. 638; 1 B. & P. 331; 4 Taunt. 355; 11 Moore 344; 4 B. & Ad. 821; 10 Bing. 250; 6 C. & P. 431.

XVIII. The malicious imputing of a disease or infection which is disgraceful, or which would directly tend to exclude one from the society of or association with others, is a libel.

1 Will. Saund. 248, n. (3) and cases there cited.

XIX. Charging another with fraud, gross misconduct, gross violation of duty, or gross malversation or gross breach of trust in his public office, place or trust, where such charge directly tends to bring such other into dis-

grace, is a libel; whether, at the time, he continues or has ceased to hold such office, place or trust.

17 Wend. 209; 1 Ld. Raym. 153; Comb. 13, 46, 65, 66<sup>7</sup>  
414; 10 Mod. 186; 11 Mod. 166; 12 Mod. 98, 514<sup>7</sup>  
414; Str. 420; Carth. 14, 15; 3 Mod. 139; 5 Mod.  
203; 6 Mod. 124; 7 Mod. 28; 1 Russ. on Cr. 302,  
325; Stark. Lib. 532-3; Holt Lib. 153; 1 Camp. 359;  
3 Stark. R. 35; 5 C. & P.; 17 Wend. 63, 426; 3 Wils.  
177; Hawk. P. C. c. 21, s. 18.

**XX.** The maliciously charging of one with gross fraud, or gross misconduct, or gross breach of trust in or gross unskillfulness in, incompetency to or disqualification for his profession, occupation, trade or employment, where such charge has the tendency specified in the first section, is a libel.

2 Mod. 159.

**XXI.** The mere depreciation of the value of any article of property of another in consequence of a publication, without any aspersion upon his character, is not a ground of criminal prosecution for libel.

4 Camp. 528; 9 C. & P. 323.

**XXII.** The making of a libel is the writing, printing, devising, inventing, constructing or in any way forming of the same; or aiding or assisting therein, or the instigating, procuring or promoting thereof, with the intent, in either case, that it shall be published.

3 Camp. 24; 2 Salk. 419; Moore 813; 5 Mod. 163;  
1 Ld. Raym. 415.

**XXIII.** The publishing of a libel is the maliciously putting of it into circulation, or the promulgating, exhibiting, dispersing or distributing of it, for the purpose of making it known and thereby, in fact, making it known to others; or aiding or assisting therein or the causing, procuring or promoting thereof.

5 Co. 125, 166; 9 Co. 59, 163; 2 Burr 985; Moore  
627, 813; 2 Stark. Ev. pt. 2, p. 434, 455; 2 C. & P.  
11 s. p. 624; Stark. Lib. 350, 505-8; Russ. on Cr. 339;  
1 Ld. Raym. 341, 417, 486; 2 St. Tr. 469; 5 Burr,  
2686; 2 Camp. 446; 7 East. 67; 5 Dow 201; 5 Bac.  
Abr. tit. Libel 208; 12 Vin. Abr. 229; 1 Barn K. B.  
306; 2 Esp. Cas. N. P. 21; 4 T. R. 126; Cro. Jac.  
91; 5 Mod. 167; 9 Co. 59; 7 Wend. 560; 2 Mod.  
& R. 54; 1 Mod. 58; Moore 627;

**XXIV.** Where a libel is sent from one place to another place to be communicated, and it is thereupon so communicated, this is a publication, both in the place from which, and that to which it is sent.

6 Bing. 749; Rast. Ent. tit. Action sur le Case, 3 a;  
1 Ld. Raym. 311, 417, 486; 1 Camp. 215; Bul. N. P.  
6; 7 East. 65; 3 B. & A. 717; 4 B. & A. 95.

**XXV.** A libel on the dead is subject to like punishment as one on the living, where the same is malicious in respect to persons living, and directly or indirectly defamatory



of or an outrage against, or injury to persons living, and is intended so to be by the maker or publisher.

1 Hawk. 193; 4 T. R. 126; 1 Russ. on Cr. 133; Stark. Lib. 493; Lofft. 776; 4 Mass. R. 168; Wood, b. 3, c. 3, p. 445.

**XXVI.** A libel may be of a corporation, body, board, class, society or association of persons, no less than of one or more persons individually.

2 Barn. K. B. 138, 166; 5 B. and Ad. 559; 1 D. and R. 197; 5 Bac. Ab. 201; Stark. Lib. 494, 533; Com. Dig. libel A. 2; 7 Mod. 400; Holt, Lib. 247; 3 T. R. 199; 3 Camp. 159; 3 Stark. 45; Holt, Lib. 247; 6 C. and P. 184; 10 Bing. 260.

**XXVII.** The same libel may be on a body and on the individuals of such body.

16 Pick. R. 132.

**XXVIII.** The offence of libel may be committed in respect to an alien friend.

6 Bing. 212.

**XXIX.** A publication inveighing against mankind in general, or where it is not made to appear by the publication or the evidence, who are reflected upon, is not a libel.

3 Salk. 224; 1 Ld. Kenyon, 486.

**XXX.** Any person is chargeable with and answerable for libel, only according to the meaning intended by him to be conveyed to others and the application intended by him to be made by others, and only as far as such meaning would in fact be conveyed to and such application made by others.

1 Stark. Ev. 452, n. (p.)

**XXXI.** The maker or publisher of an alleged libel is presumed to have intended that it should be understood and applied by others in its natural and obvious sense; but a different intention may be proved.

4 Mason, 116.

**XXXII.** Where an alleged libel has been published, it is presumed that the person making the same intended that it should be published.

**XXXIII.** It is presumed, the contrary not appearing, that any person making or publishing a libel did so knowingly, and understanding its meaning, import and obvious application.

4 T. R. 128; 6 C. and P. 431.

**XXXIV.** A person having the superintendence, direction and control of a published work, whether as proprietor, editor, agent or otherwise, is presumed to know of and to intend the publication of its contents.

**XXXV.** A publication of a libel by a servant or person employed by another in the business of publishing in the course of his employment as such, is presumed to be a publication by the employer; which presumption may be rebutted, by proving that it was without his knowledge, authority, sanction, consent, acquiescence or connivance, and that he was not wanting in due diligence and attention to prevent the publication.

2 Stark. Er. 445; 1 B. Moore, 477; 1 M. and M. 433; Burr. 2686; 1 Barnard, K. B. 306; Dig. Law, libel, 27; Russ. on Cr. 341; 8 Taunt. 42; Stark. Lib, 370; 4 T. R. 125; 2 M. and R. 54; 2 St. Tr. 469; 4 M. and R. 115.

**XXXVI. 1.** The writing, printing or publishing in good faith and without malice, in the due exercise of any lawful function or the discharge of any public, social or private duty, or in the due prosecution, maintenance or defence of any interest or legal right, what may be prejudicial to the reputation of another, is privileged and is not a libel by the person so writing, printing or publishing the same; provided the occasion and motive be adequate, the grounds reasonable and probable, the matter written, printed or published pertinent, and the mode and extent of the publication suitable and no more than commensurate with the occasion and with the justifiable object.

1 Camp. 269, n.

**2.** The publishing to either branch of the legislature, by any member of such branch, any matter within the authority or cognizance thereof, is privileged. So also is the writing or publishing of any matter by any such member, the writing of which or such publication of which, pertains to the exercise of his functions and discharge of his duties.

1 M. and S. 273; 7 C. and P. 731; 8 T. R. 293; 2 Shower, 471; Hobb, 18; 11 Harg. St. Tr. App. 33, n.; 6 C. and P. 385; 1 Esp. 226.

**3.** Every public officer and any board or body of persons having legal jurisdiction and cognizance of a matter, is privileged in writing, printing or publishing in good faith and in the usual or in due course of proceeding, any thing, the writing, printing or publishing of which pertains to the legal exercise of his functions and the legal discharge of his duty as such.

1 T. R. 503; 5 B. and P. 341; 2 B. and B. 130; Stark. Lib. 184; 6 Bac. Abr. tit. libel, 199; Moore, 627; Hawk. P. C. b. 1, c. 73, c. 8; 12 Pick B. 163; 3 Taunt 456.

**4.** A person is not subject to punishment for libel, for anything pertinent to the subject matter of consideration or inquiry in good faith and on probable grounds or cause, written or printed by him in the usual or in due course, or published by him in the usual or in due course of pro-

ceeding, as a party or being interested in or as counsel, agent, next friend, guardian or representative of or in behalf of a party or one interested in, or as the authorized representative of and in behalf of the public, in any prosecution, suit, petition, motion, subject for determination of action, complaint, remonstrance or memorial, pending or about to be brought before any court, jury, tribunal, officer, magistrate, commissioner, arbitrator, referee, auditor, person, board or body, having, according to law or the agreement of parties or under the circumstance of the case, the jurisdiction, cognizance or hearing thereof or authority to proceed therein.

3 Pick. 304 ; Dyer, 285 ; 2 Bula. 269 ; Cro. Jac. 90 ; 4 B. and Ald. 605 ; 1 B. and Ald. 232 ; 4 B. and C. 473 ; 5 B. and A. 642 ; Hawk. 61 c. 63 s. 8 ; 7 Cowp. 725 ; 1 Roll. R. 61 ; 4 Co. 41 ; 2 Burr. 807 ; 3 Bl. Com. 125 ; 10 Mod. 210 ; 1 M. and M. 446 ; Stark. 193 ; Cro. Eliz. 230, 247 ; Cro. Jac. 432 ; Hob. 266 ; Noy. 23 ; 4 Co. 14 ; 3 Esp. 32 ; 4 Mass R. 168 ; Cro. Car. 276 ; 4 Ad. and El. 795 ; 2 Burr. 506 ; 5 C. and P. 375 ; R. and M. 287 ; 6 C. and P. 548 ; 21 Wend. 319 ; 1 M. and R. 198 ; 5 Esp. 109 ; 1 W. Bl. 386.

5. Every person has, in the legal pursuit and vindication of his rights and interest, or those of another, a qualified privilege as to the making or publishing of statements, suggestions and enquiries affecting the character of other persons, which it plainly concerns his legal rights and interests, and those of the person written to, that he should so communicate.

1 Camp. 267, 269, n. ; 5 B. and A. 643 ; 4 B. and C. 247 ; 4 C. and P. ; 1 M. and M. 461 ; 4 Esp. 491 ; Str. Tr. 210 ; 2 Camp. 268 ; 3 C. and P. 160 ; 5 C. and P. 543 ; 8 C. and P. 88 ; 2 M. and R. 20 ; 1 M. and S. 637 ; 3 Camp. 294.

6. Any person giving testimony or making statements under an oath authorized by law, is not chargeable with libel for what he testifies relative to the subject matter in respect to which his testimony is required, or in apt and pertinent reply to the interrogatories on which he is examined.

Hut. 11 ; Stark. 185 ; 1 Vin. Abr. 387-8 ; 1 Roll. Abr. 87.

7. Where any person is making a statement on oath supposed by him to be authorized by law, he is privileged,  
2 Wend. 215.

8. A fair and true report of a public judicial proceeding, in which the parties thereto have opportunity to be heard, before a court or tribunal having legal cognizance, jurisdiction or authority in the subject matter reported, and made in the usual or in the due course of such publication, is privileged.

Camp. 267 ; 8 T. R. 293 ; 1 B. and P. 525 ; 3 Pick. 304, (Coroner's Inquest) ; 3 B. and Ald. 167, 702 ; 6 Bing. 213 ; 1 M. and S. 273 ; 7 East, 493 ; 1 B. and Ald. 379 ; 7 John's R. 264 ; 2 Barnard K. B. 40, 124 ; 1 Esp. 226.

9. Where the report is published out of the usual or other course of such publication with malicious intent to defame, it is not privileged.

2 Bayley, 1 M. and S. 273 ; 4 B. C. 473 ; 5 Esp. 123 ;  
1 B. and Ald. 379 ; 3 B. and C. 24, 556 ; 2 Camp. 563 ;  
3 B. and Ald. 702, 702.

10. A publication of inferences or conclusions from, comments upon, or supposed results of, a trial or proceeding or the testimony therein, is not within the privilege of a reporter.

4 B. and Ald. 605 ; 6 Bing. 213 ; 1 Mod. 118 ; 3 B. and Ald. 702 ; John's R. 264 ; 3 Serg. and Rawl. 23.

11. The publication of an unfair report of a judicial proceeding, or any part thereof, the same being more defamatory of any person than a fair, full and exact report of the whole proceeding would be is not privileged.

6 Bing. 213 ; 4 B. and Ald. 605 ; 4 B. and C. 473 ; 3 Bing. New R. 950.

12. Where the proceedings involve blasphemy or gross obscenity, the unnecessary publication of a report of such facts of the publication of them with unnecessary fullness and particularity, is not privileged.

3 B. and Ald. 167 ; 1 B. and P. 5, 25.

13. Where any person permits himself to be a candidate for any public office or trust, a communication to those who have the election or appointment of facts relative to his qualifications therefor, by publication in the mode and to the extent necessary for making such communication, is privileged.

3 Mass. R. 379 ; 4 Ditto, 163.

14. But defamation, by the malicious publication of falsehoods or irrelevant facts respecting a candidate, is not privileged.

5 Johns, R. 1 ; Cowen, 613.

XXXVII. Where any person has a justifiable occasion or object for giving the character of another, his giving such character in good faith and on probable grounds, in particulars which are relevant to the occasion or object, and publishing the same in a form and to an extent suitable to such object or occasion, is privileged.

1 Vent. 263 ; 3 B. and P. 587 ; 3 Wend. 291 ; 4 B. and C. 247 ; Bull. N. P. ; 1 T. R. 100 ; 2 Stark. R. 297 ; 3 B. and P. 587 ; 1 B. and Ald. 232 ; Burr, 2425 ; Stark Lib. 229 ; 8 B. and C., 578 ; 9 B. and C. 403.

XXXVIII. Criticisms and remarks upon a publication that is addressed to or intended for the public, for the purpose of showing its meaning, motives, object, character, merits or defects, or upon any specimen of art or any other object publicly exhibited, or upon any public per-

formance or exhibition, or upon any subject, control or authority therein, such criticisms or remarks not being maliciously defamatory, are privileged.

2 Camp. 72; 1 M. and M. 74, 187; 1 Camp. 354; Ry. and M. 287; 1 Esp. R. 29.

If the critic goes out of the way into personal abuse or matters irrelevant, he is not privileged.

7 C and P. 621; Russ. on Cr. 345 n. (f.)

**XXXIX.** A publication is not privileged in respect to its being a libel, merely by reason of its stating upon what authority it is made, though the authority may be truly stated: whether stating the authority is a mitigation of the offence of libel, is to be determined by the circumstances of the case

5 Bing. 392; 4 B. and Ald. 605; 3 B. and C. 24; 2 Atk. 469; 12 C. and B. 130; 7 T. R. 17; 6 Bing. 409; 10 Johns. 447; 8 Wend. 602.

**XL.** The circumstance that the facts published are matters of common rumor or have been generally published by others, does not make the publication a privileged one: whether the fact of common rumor is admissible in evidence, either in mitigation or aggravation of the alleged offence of libel, is for the decision of the Court.

4 Esp. 218; 2 Marsh. 372.

**XLI.** Where any privilege is used as a pretence or occasion for a malicious defamation, or where the publication exceeds the limits of the privilege, the person so abusing the privilege or exceeding its limits, is not protected thereby as to such abuse or excess.

5 Camp. 373; 2 Serg. and R. 23; 4 Ditto, 420.

**XLII.** In case a privilege exists in relation to the subject matter of any publication, that is made within the limits and object of such privilege, the maker or publisher of the same is conclusively presumed to have acted in good faith and without malice.

Stark, lib. 223, 229; 5 Bac. Abr. 198; rebuttable by the circumstances or direct proof, 6 C. and P. 407; 2 Bing. N. C. 372, 457; 3 Bing. 950.

**XLIII.** Where a publication exceeds the limits and object of a privilege, there is no presumption against its being malicious.

2 Stark. R. 297; 3 Leon. 138.

**XLIV.** In every prosecution for writing or publishing a libel, the defendant may give in evidence, in his defence upon the trial, the truth of the matter contained in the publication charged to be libellous; provided that such evidence shall not be deemed a justification, unless it shall be further made to appear on the trial, that the

matter charged to be libellous was published for the public benefit or with good motives and for justifiable ends.

3 Pick. 316; 19 Wend. 487; 20 Johns, R. 204.

**XLV.** In case a party charged with the offence of making or publishing a libel, shall make or offer and be ready to make, such redress to the party libelled, by a published contradiction or recantation, or by making reparation for damages or otherwise, as the Court before which the prosecution is had shall approve, his punishment may be remitted or mitigated at the discretion of the Court; he shall be discharged upon such terms as the Court may order.

**XLVI.** The offence of making as also that of publishing a libel is of three degrees, the degree to be determined by the Jury; where the facts are admitted by plea or otherwise the degree is to be determined by the Court before which proceedings are had.

**XLVII.** The punishment for the first degree shall be imprisonment in Common Gaol for not less than *two* years, with fine of not less than *fifty* pounds and the costs sustained by the prosecutor or person libelled.

For the second degree, such imprisonment for not less than *one* year, with fine and costs aforesaid.

For the third degree, such imprisonment for not less than *six* months, with fine and costs aforesaid.

The said costs shall be payable to the prosecutor or party libelled, after the same shall be taxed by the proper officer of the Court before which the indictment in the case is tried.

## CHAPTER XX.

## PERJURY AND FALSIFYING EVIDENCE.

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1. Definition.
  2. Assent to false statement is perjury.
  3. Affirmation equivalent to an oath.
  4. False statement is perjury.
  5. False testimony by expert is perjury.
  6. " " by witness in material fact.
  7. " statement on oath of qualification.
  8. What false statement wilfully made.
  9. 10. What not perjury.
  11. Essential to perjury.
  12. 13. What is a material fact in perjury.
  14. Fact stated to prove competency of witness.
  15. Wilful suppression of fact.
  16. Statement false in sense intended.
  17. Not necessary that false statement be believed.
  18. 19. 20. What is subornation of perjury.
  21. Degrees of perjury.
  22. Punishment.
- 

I. The wilful making of a false statement, or the attestation to, or wilful suppression of any material fact, on oath, where the oath is required by law, or the requiring of it is authorised by law, is perjury.

5 B. & A. 929, Note.

II. An assent to or denial of a fact, is a statement of a fact within the meaning of the preceding section.

III. An affirmation or declaration authorised by law, instead of an oath, is, in respect to perjury, equivalent to an oath.

IV. A false statement wilfully made by a witness or deponent, of his belief, impression or recollection, or best recollection of a material fact, is Perjury.

1 Leach, 327; 3 Wils. 427; 2 Bl. R. 881.

V. Where one testifies as an expert, having scientific or practical knowledge or skill in a subject matter, a false statement by him of his opinion or judgment upon, or inference from, certain facts, is Perjury.

3 West. 166; Com. Dig. Just of P.; D. 102; Hawk, c. 69, s. 6; 2 Russ. on Cr. 517-19.

VI. Where an oath is required, or the requiring of it is authorized by law, in case a person makes any statement as evidence, but his testifying is subject to be conclusively objected to by himself or another, and the objection not being taken, he wilfully testifies falsely in what is material, it is Perjury.

1 Sid. 274.

VII. A wilful false statement of, or attestation to a material fact, in an oath of qualification for any office, employment, trust, or duty, is perjury; but a subsequent violation of so much of such oath as is merely promissory, is not perjury.

Deac. 1002; 1 Hawk, c. 69, s. 6; Bac. Abr. Perjury.

VIII. A false statement is wilfully made when the maker is conscious that he has not ground therefor, whether the fact stated be actually as stated by him or not.

Deac. 1000; 69 R. 637; 1 Leach, 327. n.

IX. Where the administration of the oath and the taking of it are merely voluntary, and there is no authority by law to require that the statement should be on oath, a false statement or attestation is not Perjury;

2 Russ. p. 1751.

X. Nor if an erroneous statement be made, through misapprehension or mistake.

1 Hawk, c. 69, s. 2; Russ. p. 1753; Deac. 999.

XI. It is essential to Perjury:

1. That the oath be duly administered.

3 Chit. Cr. L. 443; Deac. 710; Cro. Car. 156; Hawk, ch. 69, s. 3.

2. That it be administered, and the wilfully false statement or attestation made in a proceeding or on an occasion and in reference to a subject matter, in regard to which, the statement or attestation may by law be required to be on oath, and that such statement or attestation should be so made that it is or could be used, or has or might have some effect, in respect to such proceeding or subject matter.

1 M. and M. 971.

3. That the oath be taken before a person authorized by law to administer the same.

2 Str. 903; Hawk, P. C. c. 60, s. 4; 2 Roll. Abr. 237;  
3 Inst. 165; Yelv. 72; 1 John. Rep. 499; 5 Johns.  
234; 3 Camp. 493; Cro. Eliz. 168.

XII. A material fact in respect to perjury is one that is pertinent to and affects, or may or might affect the matter in question, the proceeding or the occasion on or in reference to which, the statement is made.

3 Inst. 167; Hutchins, c. 69, s. 7; 1 T. R. 69; 1 C. and P. 238.

XIII. It is enough that the fact is indirectly material, by its giving credibility or weight to evidence.

6 Bac. Abr. property A; 1 Hawk, c. 69, s. 6; 2 Russ.  
Cr. L. 521; 1 Lord Raym., 260; 12 Mid. 149; 2 Ld.  
Raym., 887; 2 Deac. 1003.

XIV. A fact tending to shew, and stated for the purpose of shewing the competency or incompetency of the witness



himself or any other witness, or the admissibility or inadmissibility of any testimony, or that any witness is or is not credible, or in what degree he is worthy of credit, is a material fact.

Deac. 1003; 1 Hawk, c. 69, s. 8; 12 Mod. 142; 1 L. Raym., 258; 10 Mod. 195.

**XV.** The suppressing of a fact is wilful when it is intentional, with the knowledge or obvious ground of belief, on the part of the witness, that he is bound by his oath to state the same.

R. and M. 100; Perkins' Annot. c. 93; 4 Burr, 225, 4; 4 East 557, n. b.; 2, C. and P. 500; 1 Esp. 280.

**XVI.** In order to constitute perjury, the statement must be false in the sense intended by the party making the same, to be conveyed to those authorised to determine, act or proceed in the subject matter, in reference to which the oath is administered, and it must be such as is or would be understood by them in such sense.

3 Inst. 166; Rosc. Ev. 677; Loft's Gilb. Ev. 662.

**XVII.** It is not necessary to perjury that the false statement should be credited or have weight.

1 Hawk, c. 69, s. 9; Bac. Abr. Perjury (A.); 2 Russ. 522.

**XVIII.** Subornation of perjury is the wilful and corrupt procuring of another to commit perjury, and is subject to the penalty of perjury, in the same degree.

2 Str. 904; 2 Cart. 362; 2 Chit. Cr. L. 235; 2 Deac. 1005.

**XIX.** Whosoever fraudulently or maliciously deceives another, and leads him into a mistake with the intent to cause, and thereby causing him, in testifying in any case or on any occasion, to make a material mis-statement, which, if wilfully made, would be perjury, shall be subject to the penalty of subornation of perjury in like case of like tendency.

**XX.** Whoever maliciously or fraudulently contrives or causes facts and circumstances, with intent that by proof thereof by testimony under oath, in the course of the administration of justice, any one shall be falsely charged with or convicted or acquitted of any crime, or falsely gain or lose any right or claim, and such proof is thereupon so given, shall be subject to the punishment of subornation of perjury of similar tendency in like case.

**XIX.** Perjury, on a complaint or proceeding against or trial of any one for a crime, subject to capital punishment, evidently tending to charge him with or convict him of such crime in case he shall, on such complaint, proceeding or trial, be charged with or convicted of the same, is perjury in the first degree.

2. Perjury, on a complaint or proceeding against or trial of any one for a crime subject to punishment by imprisonment for more than ten years, tending to charge him therewith, in case he shall, on such complaint, proceeding or trial, be charged with or convicted of the crime, is perjury in the second degree.

3. So also on a complaint or proceeding against or trial of any one, as specified in the preceding sub-section, in case he shall not be thereupon charged with or convicted of the crime as therein specified, whether the perjury tend to charge or discharge, or to convict or acquit the party complained of or accused; or in case he shall be charged or convicted, where the perjury does not evidently tend as specified in the said sub-section.

Other perjuries are perjuries in the third degree.

XXII. The offence of perjury, in the first degree, shall be punished by imprisonment in the penitentiary for *life*.

The offence of perjury, in the second degree, shall be punished by imprisonment in the penitentiary for not more than *ten* years.

The offence of perjury, in the third degree, shall be punished by imprisonment for not more than *two* years.

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## CHAPTER XXI.

### CONSPIRACY.

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Article 1. Definition.

2. Who is a party.
  3. Conspiracy constitutes the offence not the act.
  4. "Public" what.
  5. Combination to forbear or omit acting.
  6. Wrongful injury.
  7. Ends or means make conspiracy.
  8. Conspiracy unlawful though the act lawful if done by one.
  9. The act of each binds all.
  10. Husband and Wife alone cannot form conspiracy.
  11. Trial jointly or singly.
  12. Trial for conspiracy bar to other trial.
  13. Conspiracy proveable directly or circumstantially.
  14. Co-conspirator good witness.
  15. If found trivial, discharge may follow.
  16. Degrees of crime.
  17. Punishments.
- 

I. 1. A conspiracy is a malicious or fraudulent combination, confederation, association, agreement or mutual undertaking or concerting together of two or more, to

commit any crime or instigate any one thereto or charge any one therewith; or to do what plainly and directly tends to excite to or occasion a crime, or what is obviously and directly wrongfully injurious to another.

3 Chit. C. L. 508 n. c.; 1 Ves. 65; 1 Hawk c. 21, s. 15, c. 72, s. 2, Str. 904; 2 East, 362; 1 East, P. C. 462; 2 Show. 1; 6 T. R. 619; Russ., 807, 1803, 1800, 1813; 1 Lord Raym. 148; 2 Lord Raym. 1167. 69, 79; 1 Burr. 510, 1434; 3 Burr. 1320; 2 Burr. 1127; 4 Burr. 2106; 4 T. R. 285; 1 Salk. 174, 4 B. and C. 329; 1 Bl. R. 368; 3 Camp. 229; 3 East. P. C. 858; 1 Camp. 639; 6 Mod., 42, 501; 8 Mod., 321.

II. Any person knowingly acceding to and joining in a conspiracy after the same is formed, is a party thereto, no less than one who originally takes part in forming the same.

4 Wend. 260.

III. It is not requisite that the act agreed upon should be done or attempted in pursuance of the conspiracy, the conspiracy itself constitutes the offence.

1 Lew. 22, 52; 1 Lord Raym. 879; 1 Salk., 174; 1 Str. 193; Russ. 1807; 3 M. and S. 67; 2 Burr. 603; 3 Burr. 1321; 1 Leach. 37.

IV. The *public*, as described in the chapter on cheating, is "*another*" within the meaning of the first section.

3 M. and S. 375, 67; 1 Sid. 174.

V. So also a malicious or fraudulent combination, confederacy, association, agreement or mutual undertaking, or a concerting together to abstain or refrain from or to forbear, refuse or neglect the doing of a thing is a conspiracy, where such abstaining, refraining, forbearing, refusing or neglecting is criminal, or in contravention of the rights of and, wrongfully injurious to another.

VI. A wrongful injury within the meaning of the first and second sections, is where it is not done in the legal exercise of a legal right of the party doing the same, or is done in illegal contravention of the legal rights of another.

1 Camp. 529 n.; 15 East. 528; 1 Stark 402; 1 Salk. 174; Gabbett's Cr. L. 245.

VII. A conspiracy may be such by reason of either the end or means being illegal or wrongfully injurious.

2 Russ., 1800; 1 Leach. 67; 3 Mod. 321; 1 Wils. 41; 3 Burr. 1439; 3 Wend., 376.

VIII. The conspiracy may be unlawful, though the act proposed to be done would not be unlawful if done by an individual without any confederation with others.

6 T. R. 636; 8 Mod. 11, 320; 1 East, P. C. 400; 6 St. Tr. 510; 1 Deac. 4; 3 Burr. 1455; 4 Burr. 2472; 13 Wend 9; 1 Lew. 257.

**IX.** The act of each party to a conspiracy, in pursuance thereof is the act of all.

2 T. R. 733 ; 2 Chit. C. L. 36.

**X.** Husband and wife cannot by themselves, without others, be guilty of a conspiracy, and the acts or confessions of either are not evidence against the other, in a prosecution for conspiracy.

Phil. Ev. 76 ; 1 Deac. 281 ; 3 Esp. 125.

**XI.** Conspirators may be tried jointly or severally.

1 Deac. 272.

**XII.** Where one is convicted of a conspiracy to commit a misdemeanor, he is not liable to be thereafter tried for such misdemeanor ; and where one is convicted of any felony or misdemeanor, he is not liable thereafter to be tried for or convicted of a conspiracy to commit the same ; and if a conspiracy to commit a crime and the commission of the same be charged in the same indictment, the defendant is liable to be sentenced for one only.

1 Wend 265 ; 5 Mass. R. 106.

**XIII.** A conspiracy may be proved directly or circumstantially.

2 Bl. R. 392 ; 1 Str. 144 ; 1 Deac. 280 ; 2 Camp. 233.

**XIV.** In the trial of any one for a conspiracy, another charged as a co-conspirator may be a witness ; and in such case the two may be separately tried, though joined in the indictment.

**XV.** On a prosecution for conspiracy, if the Jury find, or the magistrate having a jurisdiction of the fact, consider the offence to be trivial, the defendant shall be discharged, with or without costs, at the discretion of the Court or Magistrate.

**XVI.—1.** Conspiracy to commit, or to instigate to the commission of a felony, or to charge any one with a felony, or to prevent, obstruct, defeat or pervert the cause of justice, or to forge or counterfeit a cheat, to an amount exceeding fifty pounds is conspiracy in the first degree,

2. Conspiracy not appearing to be in the first degree, is in the second or third degree, and the degree is to be determined by the Court, Jury or Magistrate authorized to decide on the facts, or to decide the case on the admissions of the defendant.

**XVII.—1.** Whoever is guilty of conspiracy in the first degree, shall be punished by imprisonment in the Penitentiary not more than five years, or by fine not exceeding

*one hundred pounds* and imprisonment for not more than *two years*.

2. Whoever is guilty of conspiracy in the second degree shall be punished by imprisonment in the Penitentiary not more than *three years*, or by fine not exceeding *fifty pounds* and imprisonment for not more than *one year*.

3. Whoever is guilty of conspiracy in the third degree shall be punished by imprisonment for not more than *six months*, or by fine not exceeding *fifty pounds* or both.

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## CHAPTER XXII.

### MALICIOUS INJURIES AND MISCHIEFS.

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1. Definitions.
  2. Specific Injuries.
  3. Injury to another.
  4. Presumption of prejudice or damage to others.
  5. Malice.
  6. An act done to assert a right.
  7. Trivial injuries and mischiefs.
  8. Injury by husband or wife.
  9. Degrees.
  10. Punishments.
- 

I. Any injury or mischief specified in the following article, or any one similar in kind or character to any so specified, done or caused unnecessarily, without authority or right by law and maliciously, by any one to or in respect to the property, possession, right, franchise, liberty or privilege of another, whereby another may or might be subject to loss, damage or prejudice, or to disturbance in the enjoyment of his right, franchise, liberty or privilege, is a malicious injury, within the meaning of the provisions of this chapter: and so also is cruelty to animals.

#### II. Malicious injuries may be by

1. Destroying, demolishing, defacing, injuring or obstructing the use of, a dwelling-house or any fixture, erection or structure being part thereof, or being appurtenant thereto or to the grounds thereto belonging:

2. Destroying, demolishing, defacing, injuring or obstructing the use or impairing the value or utility of any building, bridge, frame, erection, structure, or fixture whatsoever, public or private; or any wharf, dock or landing-place, public or private:

3. Destroying or injuring any tree, shrub, bush, vine, root, bulb, plant, flower, vegetable, grain, grass, herbage, crop, fruit, or vegetable product, whether attached to or severed, detached or separate from the soil :
4. Destroying, injuring, rendering useless or impairing the value of or obstructing the use of any mine, quarry, clay-pit, gravel pit, gravel bank, or bed, marl bed, peat meadow, land or soil :
5. Demolishing, destroying, defacing, breaking down, throwing down or removing any wall, post, fence or any part thereof :
6. Cutting down, pulling up, destroying or injuring any hedge :
7. Filling up, obstructing or injuring any ditch, drain or reservoir :
8. Throwing down, opening or removing, injuring or defacing, putting up, erecting or closing any door, gate, bars or barrier to ingress, egress or passage :
9. Digging away, undermining, levelling, demolishing, destroying or injuring, or constructing or making any embankment, mound, bank, glacis, drain, dyke, wall, or barrier against the outlet or inlet of water :
10. Destroying, demolishing, defacing or injuring any culvert, lock or flume or any fixture, support or appendage thereof :
11. Destroying, throwing down, severing, cutting down, removing, displacing, spoiling or injuring any prop, support, bind, trellis or shelter :
12. Destroying, cutting down, throwing down, demolishing, breaking in pieces, removing, plucking up, burying, concealing, effacing, obliterating, disfiguring, disguising or altering any monument, object, inscription, mark or token, used or serving for a land-mark, or point or course of proprietary, or possessory, or territorial boundary or division :
13. Drawing or letting off water from any pond, reservoir, canal, aqueduct, channel, trench, pipe, conduit, vat or tank :
14. Diverting water from an outlet, water-course, channel, aqueduct, reservoir or pond :
15. Filling up, stopping or obstructing an outlet or channel for water, a water course, canal, aqueduct, pipe, trench or conduit :

16. Filling up or preventing or obstructing the use of a well, fountain, spring, reservoir, brook or stream :

17. Opening or closing a water-gate, cock or other outlet :

18. Flooding or draining land, or flooding any mine or quarry :

19. Destroying, demolishing, removing, defacing, disfiguring, marring, making an inscription upon, marking or injuring any tomb, tombstone, gravestone, or any monument or monumental memorial or ornament, of whatever description, public or private :

20. Destroying, demolishing, breaking down, breaking in pieces or removing any fence, railing, curb or other thing placed, intended or serving for an enclosure, protection or ornament of or being appurtenant to any tomb, sepulchre, monument, grave-stone, or other memorial of the dead, or any cemetery or grave, or any public or private monument or memorial of any other description :

21. Destroying, mutilating, removing, cutting, breaking or injuring any tree, shrub or plant situated within the enclosure or limits of, or placed or intended as part of the enclosure or limits of, or placed, intended or serving as an ornament of any public or private cemetery, any grave, tomb or burial place of the dead or any monument or memorial of any other description :

22. Destroying, cutting down, demolishing, breaking, defacing, erasing, obliterating or altering or making any inscription or index upon or injuring any guide book, guide post, way mark or way guide or way signal or mile stone or other monument or mark (for public or private convenience) indicating or used and serving to indicate any course, distance, place or object, or to give warning of any danger:

23. Lighting or extinguishing any street lamp or the lamp for lighting any way, passage, entry or place, public or private, or emptying oil from the same or breaking, defacing or injuring the same :

24. Lighting or extinguishing any gas light, letting off gas from any gas reservoir, gasometer or gas pipe or gas conduit or destroying or injuring any gasometer, gas reservoir or gas pipe or gas burner :

25. Destroying, removing, breaking, splitting, cutting, defacing, disfiguring or injuring any sign board or sign, or making, erasing, obliterating, altering, marring, covering up or injuring any inscription, letter, number, figure, re-

presentation, emblem, token or signal, upon any sign-board or sign, whether such sign-board or sign be part of or attached to or detached or separate from any building or fixture, and whether it be public or private.

26. Making or obliterating, erasing, effacing, cutting out, altering, defacing, disfiguring, cancelling, expunging or injuring any inscription, name, number, description, figure, label, direction, address, emblem, token, representation or mark upon any building, subject or thing whatsoever:

27. Destroying, defacing, disfiguring, scuttling, sinking, putting adrift, stranding, infecting, contaminating, rendering useless, impairing the use or value of, or injuring any ship, vessel, steamer, boat or water-craft whatsoever.

28. Destroying, injuring or displacing the sails, rigging, furniture or any utensil, appurtenance or part of any ship, vessel, steamer, boat or other water-craft or any machinery for working the same.

29. Putting up, erecting, removing, displacing, changing, disguising, changing the appearance of, concealing, intercepting the view of, injuring or rendering useless or deceptive, any buoy, beacon, sea-mark, channel-mark, fixed signal for navigation, any guide or direction, indicating or used for the purpose of indicating or ascertaining course or distance in navigation, inland or at sea, whether in canals, channels, rivers, lakes or whatever waters, or the place or way and course for fording or otherwise crossing any water, or indicating or used for indicating or ascertaining or giving warning of any rock, bank, shoal or other danger, in navigation, fording, or crossing or passing over, upon or through or by any water:

30. Extinguishing the light of any light-house or beacon:

31. Putting out, erecting or exhibiting any false or deceptive light or signal or indication whereby to deceive navigators, travellers or others, in respect to any course, distance, danger, object or place:

32. Destroying, defacing, taking in pieces, rendering useless, impairing the usefulness or value of, or injuring, any engine, machine, machinery, water-wheel, or other wheel, gearing, apparatus, implement, tool, mechanical article, engine, vehicle, harness, tackling, furniture for horses or other animals, or for carriages or other vehicles, or ships or other vessels or any part of either:

33. Putting out of gear, entangling, obstructing the operation, working or use of, unhooking, unbuckling,



unhanging, unhinging, unfastening, removing, displacing or deranging any gearing, machinery, harness, furniture, apparatus, implement or instrument :

34. Destroying, cutting, tearing, disfiguring, marring, infecting, contaminating, spoiling, rendering useless, or impairing the value or use of, or injuring, any article of apparel or personal ornament, or article intended to be worn or borne about the person, or any article of household furniture, or of furniture for any building or apartment or enclosure :

35. Destroying, breaking, spoiling, disfiguring, rendering useless, impairing the use of, perforating, marring, contaminating, infecting or injuring any cask, vessel of utensil whether for domestic or other use :

36. Destroying, defacing, disfiguring, staining, coloring, discoloring, cutting or injuring any book, writing, painting, picture, engraving, map, chart, drawing, statue, or article of beauty, taste, convenience, luxury, ornament or decoration.

37. Destroying, breaking, injuring, putting out of tune, hindering or obstructing the playing upon any musical instrument :

38. Removing obstructing, mixing, confusing, putting afloat, submerging, scattering or dispersing things :

39. Breaking open letters, breaking seals, undoing packages or bales, breaking or opening chests, trunks, boxes, vessels or repositories ; uncorking bottles, taking the bungs from casks, uncovering covered vessels or repositories :

40. Discharging, or emptying out, or taking out the contents or any part of the contents of any cask, vessel, receptacle or repository :

41. Filling, wholly or partly, any cask vessel, receptacle or repository :

42. Injuring any thing by means of heat or cold, or by means of water, sulphuric acid, or any other fluid or substance :

43. Endangering the life or health of another by means of exposure to heat or cold or other physical suffering :

44. Poisoning, spoiling or mixing any deleterious, offensive, injurious or contaminating fluid or substance with water, or any fluid or substance used as beverage or

food, or for sustenance or medicine, or as a remedy, or as a preservative of health for men or animals :

45. Putting lime, Indian berry, or other substance deleterious to fish, into any lake, pond, stream or reservoir, for the purpose of destroying the fish :

46. Poisoning or infecting the air, or rendering the same deleterious or offensive :

47. Exposing poisonous, deleterious or injurious substances to be taken by men or animals :

48. Maliciously and cruelly killing, mutilating, maiming, wounding, disfiguring, marking, beating, ill treating, abusing or injuring cattle or other animals or any living creature, the property of the offender or of another :

49. Communicating or causing contagious disease to men or animals :

50. Destroying, spoiling, wasting, rendering useless, impairing the value or use of, disfiguring, defacing or injuring any thing the property of, or in the possession and use of, another :

51. Putting animals into any barn, building, field or enclosure :

52. Letting out animals from any barn, stable, building, yard or enclosure ; or letting loose animals that are confined or fastened ; or causing animals to escape, go at large or astray :

53. Obstructing any highway, rail-road, private way, or passage, or making pitfalls, excavations chasms or holes therein, or removing railing on the sides thereof, or otherwise rendering the same dangerous or inconvenient to travellers or persons passing over or along the same :

54. Obstructing or rendering dangerous to others to pass over, or resort to, or to be in, any common, public square, public place, place of resort or concourse, meeting or assembly :

55. Obstructing any navigable canal or navigable channel, or otherwise rendering the same dangerous or inconvenient to persons navigating or passing along the same :

56. Frightening, exasperating or animating a horse or other animal, to the endangering of the personal safety

or the property of any person, or of the animal itself, being that of another :

57. Furiously or heedlessly of the safety of others driving or conducting any vehicle, or riding furiously or heedlessly of the safety of others, where the personal safety of others is thereby imminently endangered :

58. Designedly or rashly, and with gross heedlessness of consequences, or gross, rash, and reckless unskillfulness, propelling or navigating any steam vessel or other vessels, to the evident danger of the lives or personal safety of others :

59. Letting fall or precipitating things from the roof of any building, or from a height, shooting bullets, shot or arrows, or hurling, projecting or propelling any missile or thing among or near to other persons, or in or into a public high-way, or place of concourse, meeting, resort or passage, or near to any person, and thereby purposely or recklessly endangering the life or personal safety of any one :

60. Setting on, encouraging or exciting any dog or any ferocious animal to worry, injure or annoy any person, cattle or animal, or wilful neglect by the person having charge of any such dog or animal to call him off, or prevent him from worrying, injuring or annoying any person or animal ; Provided, however, that when the so setting on, encouraging or exciting, or so neglecting to call off or restrain any such dog or animal, is merely the justifiable means of defence or protection against trespass or assault, or any injury to any person, property or right, it is not a malicious injury.

61. Letting loose or putting at large ferocious or dangerous animals.

62. Making alarming outcries or noises or exhibiting hideous and frightful sights.

63. Cutting, breaking, destroying or injuring in any manner any post, wire, instruments or other erection used for any line of electro-magnetic telegraphs in this Province.

64. Attempting to set fire by any overt act, although such firing be not effectual, to any building or vessel, or to any stack or to any vegetable produce of such kind and with such intent that if the offence were complete the offender would be liable to imprisonment in the penitentiary for any term not less than *three* years.

65. Having in possession or making or manufacturing any gunpowder, explosive substance or any dangerous or noxious thing or any machine, engine, instrument or thing with intent by means thereof to commit any offence against the provisions of this chapter.

III. Injury to another, or in respect to the property, possession, right, franchise, liberty or privilege of another, within the provisions of the first Article, includes injury affecting or which might affect the public generally or persons unknown or persons casually and incidentally liable thereto.

IV. In case of injury or mischief to, or in respect to any tomb, gravestone, sepulchral monument, monument in commemoration or honour of any person or event, or any erection, structure, work or object whatever of value, of public or private utility, convenience, ornament or taste, or auxiliary to amusement or recreation, or consecrated to religion or improvement in morals, manners, learning or science, where such thing does not belong to the person doing the injury, and whereby the value, utility, stability, durability, beauty or ornamental effect of such thing is impaired, such injury or mischief shall be conclusively presumed to subject others to loss, damage, prejudice, and a disturbance in the enjoyment of their right.

V. An injury or mischief is maliciously done, within the provisions of the first and second articles, when it is done without adequate legal motive or justification, with intent to injure, prejudice or put to inconvenience another, or with a reckless disregard to the life, health, property, right, interest, privilege, liberty or franchise of another, where the same is evidently endangered by the act, and cruelty to an animal, specified in the forty-eighth sub-article, is malicious, not only when practised as aforesaid in this article but also when practised merely to torment or distress it, or with a reckless disregard to the suffering which will evidently be thereby caused to it.

VI. An act done in the fair exercise, assertion, maintenance or vindication, in good faith, of a supposed legal right, where there is any real or apparent ground for supposing such right to exist, and the same is not used as a mere pretence, or occasion for a malicious injury, is not punishable as a malicious injury.

VII. An injury or mischief, that is trivial in its character and consequences, and without appreciable damage, prejudice or inconvenience to another, and not accompanied with outrage, insult or indignity, is not punishable within the provisions of this chapter.

VIII. The rules in respect to malicious injury or mischief by a married woman to or in respect to the property, right or interest of her husband, and by a married man, to or in respect to the separate property, right or interest of his wife, are the same as in respect to the burning of the property of either by the other.

IX. 1. A malicious injury, endangering the life or personal safety of another, or whereby property to an amount of one hundred pounds is destroyed or in danger of being destroyed is such in the first degree.

2. A malicious injury, not appearing to be such in the first degree, is such in the second or third degree.

3. A malicious injury, by damage to property merely or by merely endangering thereof to the amount in either case, of not more than five pounds without any circumstances of extraordinary aggravation is such in the third degree.

X. 1. Whoever is guilty of a malicious injury for which punishment is not otherwise expressly provided by statute, shall for the first degree be punished by imprisonment in the penitentiary for not less than *three* years, for the second degree by imprisonment for not more than *one* year.

2. For the third degree by imprisonment for not more than *six* months.

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CHAPTER XXIII.  
ASSAULT AND BATTERY.

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1. Assault defined.
  2. Assault and battery how made.
  - 3, 4. Assault and battery defined.
  5. Excessive force.
  6. Forcible injury in revenge or retaliation.
  7. Forcible injury by authority of law.
  8. Forcible injury in self-defence.
  9. Forcible injury of property or of another.
  10. Forcible injury incidental to an act.
  11. Justification for decision of jury.
  12. Force authorized by law, when.
  13. Whether notice necessary.
  14. Presumption of knowledge.
  15. Notice not required against presumption.
  16. Force to restrain a lunatic.
  17. On trial of assault and battery, assault may be found.
  - 18, 19, 20. Degrees.
  21. Punishment.
  - 22, 23. Summary proceedings before Magistrate.
  24. Magistrate restrained from proceeding in title to real estates.
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**I. An assault is a malicious attempt to do a corporal injury to another, without authority or justification by law.**

1 East. P. C. 406; 2 Hawk. c. 62, s. 1; Rosc. Crim. Ev. 209; Bac. Abr. Tit. Assault and Battery A.

**II. An assault and battery may be made,**

1. Directly by an actual personal assault, or

2. Indirectly by means of another or other thing.

Russ. b. 3, p. 863, 864; 2 Bl. R. 892; 3 Wilson, 403; Bul. N. P. 16; 1 Bac. Abr. Assault and Battery, B.

3. But mere menacing gestures or acts where there is no intent of doing a corporal injury, and mere words though injurious and insulting, where there is no other act than speaking, do not constitute an assault.

1 Mod. 3; 2 Kel. 545; 1 Russ. 63, c. 11, s. 1; p. 862 Arch. Pr. Q. S. 195.

4. Nor where the party has not the ability or means and where it is not physically possible for him with the instrument or in the mode adopted to commit an assault and battery, his endeavour to do so is not an assault.

2 Leigh, N. P. 1409; Russ. 862; East. P. C. 406.

**III. The malicious and forcible doing of a corporal injury, however slight, to another without authority or justification by law, is an assault and battery.**

Arch. P. Q. S. 195; Russ. p. 862, 863, 864; East. P. C. 406; Hawk. c. 62, s. 2; 2 Leigh N. P. 1410; Rosc. Cr. Ev. 210; Bac. Abr. Tit. Assault and Batt.; 2 Camp. 650—3.

IV. A corporal injury, however slight, being maliciously and forcibly done, is an assault and battery.

V. So also the malicious infliction of corporal injury unnecessary, excessive and disproportioned to the occasion in kind, mode or degree, though a use of reasonable, adequate force proportionable to the occasion, be under the circumstances, authorized by Law.

14 Johns., R. 119; 15 Mass., R. 365; 2 Wend., 467.

VI. So also the forcible corporal injury to another, done not merely for defence against impending illegal violence, or to overcome illegal resistance, but for revenge or retaliation, or after the resistance, danger or other ground of justification has ceased.

VII. It is not battery when the forcible injury to the person is done by authority of Law.

Russ., b. 3, c. 11, s. 1, v. I, p. 868; Russ., b. 3, c. 11, s. 1, v. 1, p. 865; Sel., N. P., Asst. & By., 33, n. 1; 1 Hawk., P. C., c. 62, s. 2; 1 Bac. Abr., Assault and Batt., B.; Russ., b. 3, c. 11, s. 1.

VII. Forcible injury done in self defence against illegal violence, on an adequate occasion for forcible defence, where only such kind, mode and degree thereof, as is reasonable and adequate, and proportionate to the occasion and legal purpose is used, it is not an assault and battery or either.

1 Russ., b. 3, c. 11, s. 1, pas. 868, 869; 1 Hawk., c. 60, s. 23; 1 Bac. Abr. Asst. & By., C; Moody 80; 2 Deac., 840, 860, 863, 866, 874, R. & R. 329; 1 Venr., 216; 1 East; P. C. 897, 898.

IX. Nor such forcible injury in defence of one's property or right against any illegal invasion of the same, nor in defence of any person at his request, or with his consent, nor in defence of his property or right against unlawful violence, on an adequate occasion for the use of force, and where only a reasonable kind and degree of force is used.

2 Salk, 641; Russ., p. p. 868, 869. 3 Hawk., c. 60, s. 23, 24; 2 Deac., 871; Lofft., 251; Bull N. P. 15, 19; Fost., 262; 1 Hale, 494; 1 Lord Raymond, 144; Selw., N. P. Asst. and Batt., 33, a. 1; 1 Russ. 1806; 5 Camp., R. 304.

X. Nor such corporal injury to another where it is merely incidental to a lawful Act, and is by mischance without any fault or negligence imputable by law to the party doing the same.

4 Mod., 405; 1 Strange, 190.

XI. What is an adequate occasion for the use of force in defence of one's own or another's person or property, or right against unlawful violence, and what is the kind, mode and degree thereof, reasonable, adequate and pro-

portionate to the occasion, are matters of fact for the Jury.

XII. Force is authorized by law where and as far as it is necessary for the purpose of arresting or restraining any one under legal process, warrant, order or authority and

2 Hawk. c. 60, s. 23; 1 Bac. Abr. Asst. and Batt. C.;  
1 Russ. p. 867, 63, c. 11, s. 1.

For the purpose of detaining or preventing the escape of one imprisoned or under arrest, restraint and detention by authority of and according to law.

XIII. In respect to justification of the use of force it is to be considered whether such notice or warning was given as is expressly required by law or was obviously reasonable under the particular circumstances.

XIV. Where the party against whom force is used for the purpose of arrest, restraint, defence or prevention of crime is committing or preventing an illegal act, he is presumed to know that the same is illegal.

XV. No notice unless it be expressly required by law need be given to one of what is presumed by law to be or is in fact known to him.

3 C. and P. 394; Deac. 871.

XVI. The use of force when and as far as necessary to restrain a lunatic, is justifiable.

2 Hawk. c. 60, s. 23; Russ. p. 67.

XVII. On the trial of any person for any of the offences hereinbefore mentioned, or for any felony whatever, where the crime charged shall include an assault against the person, it shall be lawful for the jury to acquit of the felony and to find a verdict of guilty of assault against the person indicted, if the evidence shall warrant such finding.

XVIII. The following assaults and assaults and batteries are such in the first degree :

1. A deliberate malicious assault or assault and battery or either, made with intent to commit or to compel another to commit a felony ;

2. With intent to maim, disfigure or mutilate another ;

3. Or to destroy or disable any limb, member or bodily organ of another ;

4. Or made with a weapon obviously and imminently dangerous to life ;



5. Where in either of the said cases the person assaulted shall be thereby maimed, mutilated or disfigured in his person, or shall suffer the loss or be disabled in or lose wholly or partially the use of limb, member or bodily organ;

6. Or made on any public officer, civil, judicial or military, with intent to resist, prevent, hinder or obstruct him in the discharge or execution of his duty or office as such.

**XIX.** The following assaults and assaults and batteries or either are such or either in the second degree :

1. On any public officer, civil, judicial or military, when obviously in the public exercise of his public functions, and the public discharge of his public duties as such officer.

2. On any Magistrate, officer or other person whatsoever, lawfully authorized on account of the exercise of his duty in or concerning the preservation of any vessel in distress, or of any vessel, goods or effects wrecked, stranded or cast on shore or lying under water.

3. On any Member of either of the Legislative Branches while in session.

4. On any Member of a Committee of the Legislative Council or Assembly, while such Committee is in session.

5. On any Juryman when acting on any Jury.

6. When made in presence of the Governor and Council or of a Branch of the Legislature when in session.

7. In presence of any Judicial Court when in session.

8. On any referee, expert, arbitrator or auditor appointed by legal authority or agreement of the parties when acting as such at any meeting of the parties.

9. On any President, Chairman, Moderator or Secretary of any lawful public meeting when acting as such at such meeting.

10. On any clergyman, religious minister or teacher, while in the exercise of his functions or the discharge of his duties as such at any religious meeting or solemnity, or with the knowledge of the offender, when going to perform such duties or returning from the performance thereof.

11. On any president, professor, master or teacher of any seminary or school public or private, when in the exercise of his functions and in the discharge of his duties as such, in presence of his pupils assembled for instruction or discipline.

12. On any notary public with intent to prevent or obstruct him in the due exercise of his duty.

13. On any peace or revenue officer or on any one acting in aid of such officer acting in the discharge of his duty.

14. On any lecturer, public or private, lawfully engaged in lecturing to an audience.

15. When made with intent to resist or prevent the lawful apprehension or detainer of the party so assaulting or of any other person for any offense for which he may be liable by law to be apprehended or detained.

16. When made on a gaoler, keeper, warden or governor of any prison, penitentiary or other place of confinement by one in lawful custody for any term of imprisonment therein, or on any ministerial servant or officer employed therein.

17. When made with intent to rescue or for the purpose of rescuing any prisoner lawfully imprisoned or any person under arrest, restraint or detention by authority of and according to law.

18. Or in pursuance of a conspiracy to raise the price of wages.

19. With an offensive weapon or a weapon dangerous to life.

20. With intent to commit felony.

21. With intent to maim, mutilate or disfigure another or to destroy, disable or impair the use of a limb, member or bodily organ of another.

22. With intent to make another an agent in doing an unlawful act.

XX. Any assault or assault and battery not appearing to be such in the second degree, is such in the third degree.

XXI. 1. The punishment of the above offence in the first degree shall be imprisonment in the Penitentiary for not more than *three* years, or by fine not exceeding *one*

*hundred* pounds and imprisonment in a gaol for not more than *two* years.

2. In the second degree, where other punishment is not specifically and expressly provided by Law the same shall be imprisonment for not more than *two* years, or by fine not exceeding *fifty* pounds and imprisonment with hard labour for not more than *one* year, or by either such fine or such last mentioned imprisonment.

3. In the third degree, where other punishment is not specifically and expressly provided by Law the same shall be imprisonment, with or without hard labour as the sentencing Court may in its discretion order, for not more than *six* months or fine not exceeding *twenty* pounds.

4. Provided however, that where such assault or assault and battery in the third degree is not of a high and aggravated nature, the offender shall be punished by fine not exceeding *ten* pounds.

XXII. Where any person shall unlawfully assault or beat any other person, it shall be lawful for any Magistrate, upon complaint of the party aggrieved, praying him to proceed summarily under this Act to hear and determine such offence, & the offender shall forfeit and pay such fine as shall appear to the Magistrate to be meet, not exceeding together with costs (if ordered) the sum of *five* pounds, and if such fine together with the costs (if required) shall not be paid, either immediately after the conviction, or within such period as the Magistrate shall at the time of the conviction appoint, the offender shall be imprisoned in the common gaol for not more than *two* months, unless such fine and costs be sooner paid; but if the Magistrate shall deem the offence not to be proved, or shall find the assault or battery to have been justified, or so trifling as not to merit any punishment, and shall accordingly dismiss the complaint with costs if he shall so order, he shall forthwith make out a certificate under his hand, stating the fact of such dismissal, and shall deliver such certificate to the party against whom the complaint was preferred; and if such costs shall not be paid immediately upon dismissal, or within such period as such Magistrate shall, at the time of such dismissal, appoint, it shall be lawful for him to issue his warrant to levy the amount of such costs within a certain time to be in the said warrant expressed, and in case no distress sufficient to satisfy the amount of such warrant shall be so found, to commit the party ordered to pay such costs to the common gaol for not more than *ten* days, unless such costs shall be sooner paid.

XXIII. Where any person against whom any such complaint shall have been preferred for any common as-

sault or battery, shall have obtained such certificate as aforesaid, or having been convicted shall have paid the whole amount adjudged to be paid under such conviction, or shall have suffered the imprisonment awarded for non-payment thereof, in every such case he shall be released from all further or other proceedings, civil or criminal, for the same cause.

XXIV. But if such Magistrate shall find the assault and battery to have been accompanied by any attempt to commit felony, or shall be of opinion that the same is, from any other circumstances, fit subject for a prosecution by indictment, he shall abstain from any adjudication thereupon, and shall proceed as in any other case of felony charged before him.

XXV. Such Magistrate shall have no jurisdiction in any case of assault or battery, in which any question shall arise as to the title to any lands, tenements or 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, and shall not present therein if either party litigating make oath to that effect before him.

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## CHAPTER XXIV.

### ATTEMPTS AND INSTIGATIONS.

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- SECTION 1. What is an attempt of a crime.
2. When the crime is impracticable.
  3. Presumption.
  4. Attempt of one crime under intent of another.
  5. Mere preparation.
  6. Merger of attempt.
  7. Presumption of degree attempted.
  8. Instigation.
  9. Merger of instigation.
  10. Revocation of instigation.
  11. Proof of Instigation.
- 

I. An attempt to commit a crime, is some act done towards the committing, and in part execution of the intent to commit the same.

II. Where the commission of the crime is in the nature of things impracticable in the way or by the means adopted, it is not an attempt.

III. Where one does acts in pursuance of an intent to commit any crime, the commission of the same is presum-

ed to be practicable in the mode and by the means adopted.

IV. But where the Act done in pursuance of such intent does not amount to an attempt to commit the crime intended, by reason of the impossibility in the nature of things of committing the same by the means and in the mode adopted therefor, if the act so done be in fact under the circumstances towards and in part of the commission of another and different crime, the same is an attempt to commit such other crime.

Adolphe and Helie, *Theorie pen.* ; Code, V. vol., p. 334

V. A mere preparation of the means of committing any crime, nothing being done in execution of the intent to commit the same, is not an attempt to commit the same.

VI. Where any crime attempted is committed by the party making such attempt, the attempt is merged in the crime.

VII. When it does not appear which of two or more degrees of crime is attempted the lowest of such degrees is presumed.

VIII. 1. Whoever attempts to commit any crime for the punishment of which attempt no special provision is otherwise expressly made, shall if the crime be punishable by death or imprisonment for life, be punished by imprisonment in the Penitentiary for not more than *ten* years.

2. And in any other case by such imprisonment not exceeding one-half of the maximum nor less than one-half of the minimum punishment for such crime.

IX. Whoever instigates another to the commission of any crime by commanding, soliciting or offering to hire or otherwise endeavoring to induce him to commit the crime shall be subject to the penalty of an attempt to commit such crime with like presumption as to the degree of the crime intended to be instigated.

X. The instigation is merged in the crime committed in pursuance thereof, when the crime is committed in such manner that the instigator is guilty thereof, by reason of his being an accessory before the fact or otherwise.

XI. No person is subject to be convicted of instigating another to a crime on the testimony only of the party professing to have been so instigated, not corroborated by other direct or circumstantial evidence except in cases where it is expressly otherwise provided.

## CHAPTER XXV.

## VAGRANTS—DISORDERLY PERSONS.

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1. Strolling beggars.
  2. Jugglers.
  3. Fortune Tellers.
  4. Runaways.
  5. Common Drunkards.
  6. Nightwalkers.
  7. Persons of lewd behaviour.
  8. Common brawlers.
  9. Spendthrifts.
  10. Unlicensed sellers of Spirituous Liquors.
  11. Affrayers—Disturbers of the peace.
  12. Petty thieves.
  13. Pick-pockets.
  14. Persons having implements for committing offences.
  15. Persons having arms for same purpose.
  16. Punishment.
  17. Recognizancers.
  18. When offender is a minor.
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I. Any idle person who is able to work who habitually goes about, or sends any one about begging for his own support or profit, or for the support of his family,

II. Any person who goes about or sends any one about using juggling, or games or plays for his support or profit,

III. Any person who, by palmistry, cards or otherwise, for gain tells or pretends to tell fortunes, or predicts or pretends to predict future events, or who practices as a profession, trade, or occupation, the discovering or pretending to discover to others, for gain, where things lost or stolen are to be found,

IV. Any one running away, for the purpose of escaping from the authority and control of any person, who by law is entitled to the personal custody of him, and authority and control over him,

V. Any common drunkard,

VI. Any common nightwalker, meaning thereby a female, who, by night, frequents the streets, highways or public places, or goes about or abroad with intent to offer herself for prostitution, or to entice, allure, or invite any one to sexual intercourse,

VII. Any person who, in presence of others, is lewd, wanton or lascivious, in speech or behavior,

VIII. Any common railer or brawler,

IX. Any person who, by reason of his neglecting his calling or mispending his earnings, has not sufficient provision for his own support or that of his family,

X. Any person who sells spirituous or fermented liquor without license, in the open air, in any booth or temporary building, in any house, shop, room or apartment, used for tipping or gaming, or in which tipping or gaming is allowed, or which is used for the resort of loose, lascivious, wanton or dissolute persons,

XI. Any one who is a dangerous or disorderly person, by reason of his being an affrayer, rioter, disturber of the peace, going offensively armed, uttering menaces or threatening speeches, or otherwise,

XII. Any person guilty of simple larceny to the amount of five dollars or less, committed within the district or county in which he shall be arrested therefor,

XIII. Any person resorting to or frequenting any place with intent to steal, or to commit any other offence,

XIV. Any person having in his possession a picklock-key, or other implement or article adapted to be used in breaking, opening or entering any dwelling-house, building, apartment, closet, vault, receptacle, safe, chest, trunk, box, ship or other vessel or watercraft, or any yard, inclosure or place, with intent so to use the same, in committing or for the purpose of committing any crime,

XV. And any person being armed with a gun, pistol, sword or other weapon, with intent to use the same in committing or for the purpose of committing any crime,—  
Shall severally be deemed vagrants and,

XVI. May, each of them respectively, be committed, by order of any Recorder's Court, or of any Police Court of the City or Town, or of any Magistrate of the district or county in which he shall be arrested, to the common jail of the district or county, or city or town within such district or county at the discretion of such court or magistrate, there to be detained, at hard labour for any period not exceeding six months, or may be fined not exceeding *five pounds* with the said imprisonment, if such fine be not paid within *twenty-four* hours after conviction with costs of prosecution.

XVII. Provided, however, that if the party charged will enter into a recognizance in a sum, and with surety or sureties, to be approved by the court or magistrate taking cognizance of the case, conditioned that he will not commit the offence or trespass complained of, or alleged to have been by him intended, within any time to

be prescribed by such court or magistrate for not less than six months nor more than two years, he shall be discharged.

XVIII. If the party charged be a minor or a married woman, other persons may recognize in his or her behalf.