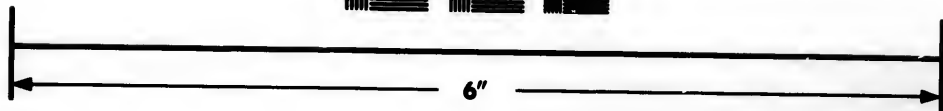
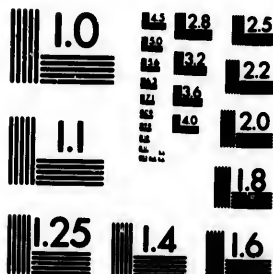


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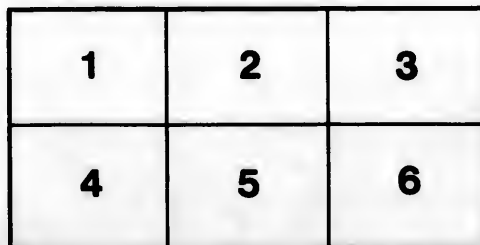
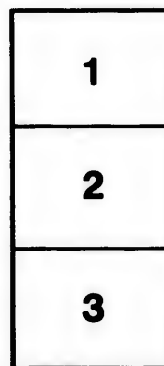
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PRINT

A CLASS BOOK,

FOR THE USE OF

COMMON SCHOOLS AND FAMILIES,

IN THE UNITED CANADAS,

ENTITLED THE

YOUTH'S GUARD AGAINST CRIME,

HAVING EMBODIED IN IT ALL THE

CRIMINAL LAWS OF THE LAND,

CONVENIENTLY ABBRIDGED.

BY ISRAEL LEWIS, C. M.

KINGSTON:
PRINTED AT THE ATHENEUM PRINTING OFFICE.

1844.

1874 BOOK

KINGSTON:

ENTERED, according to Act of the Provincial Legislature, in the year of our Lord one thousand eight hundred and forty-four, by ISRAEL LEWIS, in the Office of the Registrar of the Province of Canada.

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**ROBERT R. SMILEY—PRINTER.**  
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THE AUTHOR believes that all men were created by their Maker to be useful, in their day and generation, to their fellow creatures ; it is also stated that where there no are Laws there are no transgressions ; and it may be enforced safely by every reflecting mind, that the limited knowledge of the existence and bearing of all the Criminal Laws of this Province, amongst the common classes, amounts almost to there being no Laws at all, so far as they have any knowledge of the fact. In proof of my remarks, I have seen Judges and Magistrates compelled to punish offenders whom they believed entirely ignorant of the Law they had violated. It is customary in all the institutions of learning, from the highest to the lowest, to state that it is the object of all concerned to teach useful knowledge,—and what is more useful than to give the community a full understanding of the Criminal Laws of the land, and the consequences of their being violated. I have seen a notice put up on a bridge, stating that a penalty of five shillings would be enforced for crossing the bridge faster than a walk with teams.—Men saw the Law, and therefore did not violate it. If crime is prevented in this case by having a knowledge of the Law, why not in many other cases? Persons knowing the Laws of the Country ought never to violate them, because they also know that they will be punished accordingly.

ISRAEL LEWIS,

C. M.

Kingston, March 1, 1844.

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INTRODUCTION.

IN introducing this work to the public, to be used as a Class Book in Common Schools, it may be proper for me to make a few remarks on the merits of the work ; and, in so doing, I shall set out by referring to the first law that God gave unto Adam, which was a criminal one—because there was a *penalty* attached to it.

The law, as given by the Almighty, is found in the following words :—“ And the Lord God commanded the man, saying, of every tree in the garden thou mayest eat ; but of the tree of the knowledge of good and evil thou shalt not eat : for on the day thou eatest thereof thou shalt surely die,” Genesis, chap. ii : verses 6 & 17. This law was, in my opinion, both Divine and Criminal—Divine, because God gave it,—Criminal, because Adam violated it. The law was made public in the garden, in order that Adam should read and understand it. It was not hid and locked up in a volume, as our Revised Statutes are—which, from their magnitude and value, cost fifty shillings, and thereby are excluded from the common people ; but it grew upon a tree, so that Adam could not fail to see it, and did see it. But he was carried away by the persuasion of the wicked one ; and, as he broke the law, God did not fail to enforce the penalty. In so doing, he was just in his own eyes, in the eyes of angels, and of men. Why so ? Because the law he gave unto Adam to observe and keep was in accordance with His own glory, and at the same time intended to promote the spiritual and temporal happiness of Adam and his posterity. In consequence of that rash act of Adam, in violating the criminal code of his Sovereign, he incurred the indignation of his God and King, and brought sin and death into the world,—

by which the whole human family were made to mourn. It seems that at one time, in the garden of Eden, there was a kind of friendship between Adam and the most ferocious beasts of the forest: the lion and the lamb agreed together; the fowls of the air fluttered around him without fear, as if they knew that all created flesh was the handiwork of God, and should dwell together in unity. But when Adam violated the most sacred law of his Creator, enmity immediately sprang up between God and man, and beast and bird. All the happiness they once enjoyed was at an end; which was the natural consequence of man breaking the first law given to him to observe and keep inviolate.

I feel it my duty, in preparing this work, to record in it the Ten Commandments, which we find in the law of Moses, and which I consider to be a Divine Law, that will serve as a connecting link between the Moral Law of God and the Criminal Law of our Sovereign Lady the Queen. Those who keep the Moral Law of God, in *nine* cases out of *ten*, will be found keeping the Criminal Laws of the land—because it forms a part of their moral character; and from those who make no other pretensions to religion than the observance and preservation of the Criminal Laws, we may expect the most flattering support in the introduction of this work. They will have a disposition to respect and honor the moral law, and at the same time think favorably of the Christian Religion; because the criminal law, by which society is protected, is based upon those great principles of Love and Benevolence which gave birth to the moral law of God, and have been revealed to us for the good of mankind and the redemption of the world.

I shall now enter a little more into the importance of placing the Criminal Laws in every family and Common School in the Province. I consider these laws of the land to stand in near relation to that book of books the Bible. It may be asked by some,

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—what do these laws contain that is so valuable? I will remark to those who ask this question, that the Statutes contain a code of Criminal Laws given to us from the Throne of Great Britain, by our Sovereign, as a guarantee to every good subject of life, liberty, and the enjoyment of national happiness. They also protect our persons, and those of our wives, our children, and our property. At the same time they throw around us and about us the means of enjoying civil and religious liberty. Such being the case, it is important that every man, woman and child should understand the Criminal Laws. If I succeed in getting a copy of this work into every family, I am led to believe that the head of those families will feel themselves called upon by every consideration of self or family preservation to act the part of a Magistrate on their own premises. If this should be done, it would not be long before the committal of crime would be but rarely known in our land. A knowledge of these laws among the rising generation would produce a pride and ambition in them to see that they were kept inviolate. They will never become stale, because they are the laws of the land, and are identified with the best interests of every subject in Her Majesty's dominions. If this work should find its way into Common Schools in ten years to come, the Judges and Magistrates on the bench of Justice will have no hesitation in pronouncing sentence against an offender, who has been taught in the Common Schools of the land, and thus became acquainted with the Criminal Laws of the Nation. There would be no pleading ignorance of the law, as is often the case in our Courts now; for the great majority of the community do not at present understand the Criminal Laws,—which they should do by all means. I hope the friends of the Bible, and particularly the Bible Society of Great Britain, whose object is to place a copy of the Bible in every family in which it is possible to do so, will also take into consideration the propriety of giving to each family in the Nation an abridgement of the Criminal Laws. I see a corresponding sympathy between

the Bible and these laws. A proper observance of the former will enforce implicit obedience to the latter: surely both should, therefore, be equally known, equally read, and equally understood. A proper knowledge of the laws early planted in the minds of our youth, for the building up of a moral character, will form a foundation which will grow in strength and beauty, and aid in advancing society. As men pass from youth to old age they will be ready at all times to defend the laws of their Sovereign, because they understand them. They will live for them; they will die for them, if they are invaded by an internal or external foe. Every individual should obey the laws, for two reasons: firstly, because they protect his person and property, and secondly, because by so doing he will secure the approbation and countenance of his Sovereign, through whom he derives those blessings: but by violating them, he saps the foundation of his own liberty, and at the same time invokes the justice of the law giver upon his own head; and the consequence is that all Magistrates, Sheriffs, Constables, and other officers of justice, are called upon to seek out those offenders, if they are to be found in the land, and confine them in gaol to await their trial before the Judges of the Nation, and if found guilty by them and an impartial Jury of their country, they will be punished according to the crime they have committed, either by death, banishment, fine, or imprisonment. Man by his own unguarded act, in violating the law, and displeasing his Queen and countrymen, is driven from society, as Adam was from the garden of Eden for disobeying and insulting his King. Thus, offending man must suffer death as a murderer, or linger out a miserable existence in some dungeon or lonely cell in the prison of the State. The evil effects of disobedience to the laws do not always follow the Convict to the place of his punishment; he leaves behind him a bereaved Father, and weeping Mother, to mourn over the fate of a degraded child. What a train of evil consequences follow a violation of the law! I am clearly of opinion that, in order to check

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these crimes and consequences, the laws should be read, felt, and understood, by every individual in the country. To prove what I say to be true I will refer the reader to the Lawyers of the Bar:—they understand the law, and we hardly ever hear of their violating it. The reason is, because they are acquainted with the laws, and can make more by keeping than by breaking them. I have often thought that the Criminal Laws should be made a part of the study of Theology: all Criminal Law should be considered a transcript of the Divine Law. No human power should make a law to punish his fellow man that the Divine Law would disapprove of.

Should the reviews he has advanced in the foregoing remarks be approved of, the compiler hopes that study will prove them sound in theory, sound in practice, and beneficial to mankind. He is called upon to believe, from the best feelings towards all men, that by the circulation of these laws throughout the whole length and breadth of the land, they will call forth a friendly discussion by the community, in order to better secure to themselves their validity and authority. Institutions are never more safe than when their utility and value are discussed by the people, whose object is to perpetuate them.

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THE YOUTH'S GUARD AGAINST CRIME,
BEING A
CLASS BOOK FOR COMMON SCHOOLS.

THE TEN COMMANDMENTS.

EXODUS, CHAPTER XX.

I. I am the Lord thy God, which have brought thee out of the land of Egypt, out of the house of bondage: thou shalt have no other gods before me.

II. Thou shalt not make unto thee any graven image, or any likeness of any thing that is in heaven above, or that is in the earth beneath, or that is in the water under the earth. Thou shalt not bow down thyself to them, nor serve them; for I the Lord thy God am a jealous God, visiting the iniquity of the fathers upon the children, unto the third and fourth generation of them that hate me; and shew mercy unto thousands of them that love me, and keep my commandments.

III. Thou shalt not take the name of the Lord thy God in vain: for the Lord will not hold him guiltless that taketh his name in vain.

IV. Remember the sabbath day, to keep it holy. Six days shalt thou labour, and do all thy work: but the seventh day is the sabbath of the Lord thy God: in it thou shalt not do any work, thou, nor

thy son, nor thy daughter, thy man-servant nor thy maid-servant, nor thy cattle, nor stranger that is within thy gates : For in six days the Lord made heaven and earth, the sea, and all that in them is, and rested the seventh day ; wherefore the Lord blessed the sabbath day, and hallowed it.

V. HONOR thy father and thy mother : that thy days may be long upon the land which the Lord thy God giveth thee.

VI. Thou shalt not kill.

VII. Thou shalt not commit adultery.

VIII. Thou shalt not steal.

XIX. Thou shalt not bear false witness against thy neighbour.

X. Thou shalt not covet thy neighbour's house, thou shalt not covet thy neighbour's wife, nor his man-servant, nor his maid-servant, nor his ox, nor his ass, nor any thing that is thy neighbors.

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COMMON LAW OF ENGLAND.

OUTLINES OF CRIMINAL LAW.*

PART FIRST.—THE NATURE OF CRIMES.

Crimes and Misdemeanors defined—Acts committed or omitted in violation of a Public Law, either forbidding or commanding them—distinguished from civil injuries—Violation of public rights due to the community.

1. A crime, or misdemeanor, is an act committed or omitted in violation of a public law, either forbidding or commanding it. This general definition comprehends both crimes and misdemeanors; which, properly speaking, are mere synonymous terms; though in common usage, the word "crime" is made to denote such offences as are of deeper and more atrocious dye; while similar faults and omissions of less consequence are comprised under the gentler terms of misdemeanor only.

2. In the English Law, however, "misdemeanor" is generally used in contra-distinction to *felony*, and misdemeanors comprehend all indictable offences which do not amount to felony or perjury, battery, libels, conspiracies, attempts and solicitations to commit felonies, &c.

3. The distinction of public wrongs from private, of crimes and misdemeanors from civil injuries, seems principally to consist in this: that private wrongs or civil injuries are an infringement or privation of the civil rights which belong to individuals, considered merely as individuals; public wrongs, or

crimes and misdemeanors, are a breach and violation of the public rights and duties due to the whole community, considered as a community in its social aggregate capacity.

4. As if I detain a field from another man, to which the law has given him a right—this is civil injury, and not crime, for here only the right of an individual is concerned, and it is immaterial to the public which of us is in possession of the land: but treason, murder, and robbery, are properly ranked among crimes; since, besides the injury done to individuals, they strike at the very being of society, which cannot possibly subsist where actions of this sort are suffered to escape with impunity.

5. The distinction between public and private injuries, seems entirely to be created by positive *Laws*, and is referable only to civil institutions.

6. Every violation of a moral Law, or natural obligation, is an injury for which the offender ought to make retribution to the individual who immediately suffers from it; and it is also a crime for which he ought to be punished to that extent, which would deter both him and others from a repetition of the offence.

7. In positive Laws, those acts are denominated injuries, for which the Legislature has provided only retribution, or a compensation in damages; but when from experience it is discovered that this is not sufficient to restrain within moderate bounds certain classes of injuries, it then becomes necessary for the Legislative Power to raise them into crimes, and to endeavour to repress them by

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9. The word "crime" has no technical meaning in the Law of England. It seems, when it has a reference to positive Law to comprehend those acts which subject the offender to punishment.

10. When the words high *crimes* and *misde-meanours* are used in prosecutions by impeachment, the words *high crimes* have no definite signification, but are used merely to give greater solemnity to the charge.

11. In all cases the crime includes an injury; every public offence is also a private wrong: and somewhat more, it affects the individual, and likewise affects the community.

12. Thus, treason, in imagining the King's death, involves in it conspiracy against an individual, which is also a civil injury; but, as this species of treason in its consequences principally tends to the dissolution of government, and the distraction thereby of the order and peace of society, this denominates it a crime of the highest magnitude.

13. Murder is an injury to the life of an individual; but the law of society considers principally the loss which the State sustains by being deprived of a member, and the pernicious example thereby set for others to do the like.

14. Robbery may be considered in the same view: it is an injury to *private* property; but, were that all, a civil satisfaction in damages might

atone for it. The public mischief is the thing for the prevention of which our laws have made it a capital offence.

15. In these gross and atrocious injuries, the private is swallowed up in the public wrong: we seldom hear any mention made of satisfaction to the individual. the satisfaction to the community being so very great.

16. And indeed, as the public crime is not otherwise avenged than by forfeiture of life and property, it is impossible afterwards to make any reparation for the private wrong, which can only be had from the body, or goods of the aggressor.

17. But there are crimes of an inferior nature, in which the public punishment is not so severe, but it affords room for a private compensation also, and herein the distinction of crimes from civil injuries is very apparent.

18. For instance, in the case of battery or beating another, the aggressor may be indicted for this at the suit of Kings, for disturbing the public peace, and be punished criminally by fine and imprisonment; and the party beaten may also have his private remedy by action of trespass for the injury he in particular sustains, and recover a civil satisfaction in damages.

19. So also in case of a public nuisance, as digging a ditch across a highway; this is punishable by indictment, as a common offence to the whole Kingdom, and all His Majesty's subjects; but if any individual sustains any special damage thereby, as laming his horse, breaking his carriage, or the

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like, the offender may be compelled to make ample satisfaction, as well for the private injury as for the public wrong.

20. Upon the whole, we may observe, that in taking cognizance of all wrongs or unlawful acts, the law has a double view, viz: not only to redress the party injured, by either restoring to him his right if possible, or by giving him an equivalent—the manner of doing which was the object of our inquiries in the preceding part; but also to secure to the public the benefit of society, by preventing or punishing every breach and violation of those laws, which the Sovereign power has thought proper to establish for the government and tranquility of the whole.

21. What those branches are, and how prevented or punished, are to be considered in the present volume.*

PART SECOND—PERSONS CAPABLE OF COMMITTING CRIMES.

All persons are capable of committing crimes, unless there be a defect of will. The will does not concur, 1st. where there is not defect of understanding; 2nd. where no will is exerted; 3rd. where the act is constrained. A vicious will may be wanting: in cases of, 1st. infanoy; 2nd. idiotey or lunacy; 3rd. drunkenness (though this does not excuse); 4th. misfortune; 5th. ignorance; 6th. compulsion, by civil subjection; duress; unavoidable choice of one of two evils; want or hunger (but which is no legitimate excuse.) The Sovereign incapable of doing wrong.

1. Having in the preceding chapter considered in general the nature of crimes, we are led next, in

* For the theory of Punishment, see 4. Bl. Com. 6—19.—(4 Bl. 7.)

order of our distribution, to inquire what persons are or are not *capable* of committing crimes ; or, which is all one, who are exempted from the censures of the *law* upon the commission of those acts, which in other persons would be severely punished.

2. In the process of which enquiry, we must have recourse to particular and special exceptions : for the general rule is, that no person shall be excused from punishment for disobedience to the laws of his country, excepting such as are expressly defined and exempted by the laws themselves.

3. All the several pleas and excuses, which protect the committer of a forbidden act from the punishment which is otherwise annexed thereto, may be reduced to this single consideration, the want or defect of *will*.

4. An involuntary act, as it has no claim to merit so neither can it induce any guilt : the concurrence of the will when it has its choice either to do or to avoid the fact in question, being the only thing that renders human actions either praiseworthy or culpable.

5. Indeed to make a complete crime cognizable by human *laws*, there must be both a will and an act.

6. For though, *in foro conscientia*, a fixed design or will to do an unlawful act is almost as heinous as the commission of it, yet as no temporal tribunal can search the heart or fathom the intentions of the mind otherwise than as they are demonstrated by outward actions, it therefore cannot punish for what it cannot know.

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7. For which reason in all temporal jurisdictions, an overt act, or some open evidence of an intended crime, is necessary in order to demonstrate the depravity of the will, before the man is liable to punishment.

8. And as a vicious will without a vicious act, is no civil crime, so, on the other hand, an unwarrantable act, without a vicious will, is no crime at all.

9. So that to constitute a crime against human laws, there must be, first, a vicious will, and, secondly, an unlawful act, consequent upon such vicious will.

10. Now there are three cases in which the will does not join with the act: 1. where there is a defect of understanding, for where there is no discernment there is no choice, and there can be no act of will, which is nothing else but a determination of one's choice to do or to abstain from a particular action; he therefore that has no understanding, can have no will to guide his conduct.

11. 2. Where there is understanding and will sufficient residing in the party, but not called forth and exerted at the time of the action done, which is the case of all offences committed by chance or ignorance.

12. Here the will sits neuter; and neither concurs with the act, nor disagrees to it. 3. Where the action is constrained by some outward force or violence.

13. Here the will counteracts the deed; and is so far from concurring with, that it loaths and disagrees to what the man is obliged to perform.

(4, Bl. 21.)

14. It will be the business of the present chapter briefly to consider all the several species of defect in will, as they fall under some one or other of these general heads; as infancy, idiotcy, lunacy, and intoxication, which fall under the first class; misfortune and ignorance, which may be referred to the second; and compulsion or necessity, which may properly rank in the third.

OFFENCES COMMITTED BY INFANTS.

1. We will consider the case of infancy or non-age, which is a defect of the understanding.

2. Infants under the age of discretion, ought not to be punished by any criminal prosecution whatever.—[1 Hawk, p. c. 2.]

3. What the age of discretion is, in some nations, is matter of some variety.

4. The Law of England does in some cases privilege an infant under the age of twenty-one, as to common misdemeanors, so as to escape fine, imprisonment and the like, and particularly in cases of omission, as not repairing a bridge or a highway, and other similar offences, [1 hal. p. c. 20, 21 and 22:] for not having the command of his fortune till twenty-one, he wants the capacity to do those things which the law requires.

5. But where there is any notorious breach of the peace, a riot, battery or the like, (which infants when full grown are at least as liable as others to commit,) for these an infant above the age of fourteen is equally liable to suffer, as a person of the full age of twenty-one.

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6. With regard to capital crimes, the law is still more minute and circumspect; distinguishing with greater nicety the several degrees of age and discretion.

7. By the law as it now stands, and has stood at least ever since the time of Edward the Third, the capacity of doing ill or contracting guilt, is not so much measured by years and days as by the strength of the delinquent's understanding and judgment.

8. For one lad of eleven years old may have as much cunning as another of fourteen, and in these cases our maxim is that "*malitia suplet etatem.*"

9. Under seven years of age, indeed, an infant cannot be guilty of felony, [C. Mir. c. 4. S. 16: 1 Hal. c. 27;] for then a felonious discretion is almost an impossibility in nature, but at eight years of age he may be guilty of felony.—[Dalt. just. c. 147.]

10. Also under fourteen, though an infant shall be *prima facie* adjudged to be *doli incapax*, yet if it appear to the court and jury that he was *doli capax*, and could discern between good and evil, he may be convicted, and suffer death.

11. Thus a girl of thirteen has been burnt for killing her mistress; and one boy of ten and another of nine years old who had killed their companion, have been sentenced to death, and he of ten years actually hanged, because it appeared upon their trials that one hid himself and the other hid the

body he had killed, which hiding manifested a consciousness of guilt, and a discretion to discern between good and evil.—[1 Hal. p. c. 26 & 27.]

12. And there was an instance where a boy of eight years old was tried at Abingdon for firing two barns; and it appearing that he had malice, revenge, and cunning, he was found guilty, condemned and hanged accordingly.—[Emlyn on 1 Hal. p. c. 25.]

13. Thus also in very modern times a boy of ten years old was convicted on his own confession of murdering his bed-fellow, there appearing in his whole behavior plain tokens of mischievous discretion, and as the sparing this boy merely on account of his tender years might be of dangerous consequence to the public, by propagating a notion that children might commit such atrocious crimes with impunity, it was unanimously agreed by all the Judges that he was a proper subject of capital punishment.

14. But in all such cases, the evidence of that malice which is to supply age, ought to be strong, clear and beyond all doubt and contradiction.

OFFENCES COMMITTED BY LUNATICS.

1. The second case of a deficiency in will, which excuses from the guilt of crimes, arises also from a defective or vitiated understanding, viz., in an Idiot or a Lunatic.

2. For the rule of law as to the latter, which may easily be adapted also to the former is that "*furiosus furore solum punitur.*"

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3. In criminal cases, therefore, idiots and lunatics are not chargeable for their own acts, if committed when under these incapacities ; no, not even for treason itself.

4. Also, if a man *in* his sound memory commits a capital offence, and before arraignment for it he becomes mad, he ought not to be arraigned for it, because he is not able to plead to it with that advice and caution that he ought.

5. And if, after he has pleaded, the prisoner becomes mad, he shall not be tried ; for how can he make his defence ?

6. If after he be tried and found guilty, he loses his senses before judgment, judgment shall not be pronounced, and if after judgment he become of non-sane memory, execution shall be stayed, for peradventure, says the humanity of the English Law, had the prisoner been of sound mind and memory, he might have alleged something in stay of judgment or execution.—(1 Hal. P. C. 34.)

7. Indeed in the bloody reign of Henry the Eighth a Statute was made (33 Henry VIII. C. 20,) which enacted that if a person being *compos mentis* should commit high treason, and after fall into madness, he might be tried in his absence, and should suffer death as if he were of perfect memory.

8. But this savage and inhuman law was repealed by the Statute 1 & 2, Ph. & M. C. 10.

9. For, as is observed by Sir Edward Coke (3 Inst. 6,) the execution of an offender is for example,

(4 Bl 25.)

ut pœna ad paucos, metus ad omnes perveniat : but so it is not when a madman is executed.

10. But should be a miserable spectacle, both against law and of extreme inhumanity and cruelty, and can be no example to others; but if there be any doubt whether the party be *compos* or not, this shall be tried by a Jury.—(See 1 Russ. 9; 5 C. & P. 168.)

11. And if he be so found a total idiocy, or absolute insanity excuses from the guilt, and of course from the punishment of any criminal action committed under such deprivation of the senses; but if a lunatic hath lucid intervals of understanding, he shall answer for what he does in those intervals of understanding as if he had no deficiency.—(1 Hal. P. C. 31.)

12. The 39 & 40 G. 3, C. 94, provides for the safe custody of persons acquitted on the ground of insanity.

13. In the case of absolute madmen, as they are not answerable for their actions, they should not be permitted the liberty of acting, unless under proper control; and in particular they ought not to be suffered to go loose, to the terror of the King's subjects.

14. It was the doctrine of our ancient law, that persons deprived of their reason, might be confined till they recovered their senses, (Bro. Abr. tit. Corone 101,) without waiting for the forms of a commission or other special authority from the Crown, and by the Vagrant Acts (17 G. 2, C. 5,) a method is prescribed for imprisoning and sending them to their proper homes.

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15. The 39 & 40 G. 3, C. 94, S. 3, provides for the commitment of persons dangerous and insane, and the 2 & 3, W. 4, C. 107, provides for the care and treatment of the insane.

OFFENCES BY PERSONS IN A DRUNKEN STATE.

1. Thirdly ; as to artificial, voluntarily contracted madness, by drunkenness or intoxication, which, depriving men of their reason, puts them in a temporary phrenzy ; our law looks upon this as an aggravation of the offence, rather than as an excuse for any criminal misbehavior.

2. A drunkard, says Sir Edward Coke, (Inst. 247,) who is *voluntarius demon*, hath no privilege thereby, but what hurt or ill he does, his drunkenness doth aggravate it : *nam omne crimen ebrietas et incendit et detegit.*

3. The law of England, considering how easy it is to counterfeit this excuse, and how weak an excuse it is (though real,) will not suffer any man thus to privilege one crime by another.—(Plowd 19.)

4. In some cases, however, the state of the culprit may be taken into consideration, where premeditation is the material point to be decided. (1 Russ. 8.)

OFFENCES BY CHANCE OR MISFORTUNE.

1. A fourth deficiency of will, is where a man commits an unlawful act by *misfortune* or *chance*, and not by design.

(4 Bl. 26.)

2. Here the will observes a total neutrality, and does not co-operate with the deed; which therefore wants one main ingredient of a crime.

3. Of this, when it affects the life of another, we shall find more occasion to speak hereafter; at present only observing, that if any accidental mischief happens to follow from the performance of a *lawful* act, the party stands excused from all guilt; but if a man be doing anything *unlawful*, and a consequence ensues which he did not foresee or intend, as the death of a man, or the like, his want of foresight shall be no excuse.

4. For, being guilty of one offence, in doing antecedently what is in itself unlawful, he is criminally guilty of whatever consequences may follow the first misbehavior.—(1 Hal. p. c. 39.)

5. But a very important distinction is made in such cases, viz: whether the unlawful act is also in its original nature wrong and mischievous, for a person is not answerable for the incidental consequences of an unlawful act, which is merely a *malum prohibitum*; as where any unfortunate accident happens from an unqualified person being in pursuit of game, he is amenable only to the same extent as a man duly qualified.—(Fost. 259; 2 Hal. p. c.)

OFFENCES BY IGNORANCE OR MISTAKE.

1. Fifthly: Ignorance or mistake is another defect of will; when a man intending to do a lawful act, does that which is unlawful.

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2. For here the deed and the will acting separately, there is not that conjunction between them which is necessary to form a criminal act.

3. But this must be an ignorance or mistake of fact, and not an error in point of law.

4. As if a man, intending to kill a thief or house-breaker in his own house, by mistake kills one of his own family; this is no criminal action: (Cro. car. 538,) but if a man thinks he has a right to kill a person, excommunicated or outlawed, wherever he meets him, and does so, this is wilful murder.

5. For a mistake in point of law, which every person of discretion not only may, but is bound and presumed to know is, in criminal cases, no sort of defence.

6. "*Ignorantia juris, quod quisque tenetur scire neminem excuset,*" is as well the maxim of our own law, (Plowd 343,) as it was of the Romans.—(Ff. 22, 6, 9.)

OFFENCES COMMITTED FROM COMPULSION.

1. A sixth species of will, is that arising from *compulsion* and inevitable *necessity*.

2. These are a constraint upon the will, whereby a man is urged to do that which his judgment disapproves; and which, it is to be presumed, his will (if left to himself,) would reject.

3. As punishments are therefore only inflicted for the abuse of that free will which God has given to

man, it is highly just and equitable that a man should be excused for those acts which are done through unavoidable force and compulsion.

4. Of this nature, in the first place, is the obligation, whereby the inferior is constrained by the superior to act contrary to what his own reason and inclination would suggest: as when a legislator establishes iniquity by a law, and commands the subject to do an act contrary to religion or sound morality.

5. How far this excuse will be admitted *in foro conscientiae*, or whether the inferior in this case is not bound to obey the divine, rather than the human Law, it is not my business to decide, though the question I believe, among the casuists, will hardly bear a doubt.

6. But, however that may be, obedience to the Laws in being is undoubtedly a sufficient extenuation of civil guilt before the municipal tribunal.

7. The Sheriff who burnt Latimer and Ridley, in the bigoted days of Queen Mary, was not liable to punishment from Elizabeth, for executing so horrid an office; being justified by the commands of that magistracy, which endeavored to restore superstition under the holy auspices of its merciless sister, Persecution.

8. As to persons in private relations; the principal case where constraint of a superior is allowed as an excuse for criminal misconduct, is with regard to the matrimonial subjection of the wife to her husband; for neither a son nor a servant are excus-

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ed for the commission of any crime, whether capital or otherwise, by the command or coercion of the parent or master [Cap. 57]; though in some cases the command or authority of the husband, either expressed or implied will give a privilege to the wife from punishment, even for capital offences.

9. And therefore if a woman commit theft, burglary or other civil offences against the Laws of society, by the coercion of her husband, or even in his company, which the Law construes a coercion, she is not guilty of any crime; being considered as acting by compulsion, and not of her own will.—[1 Hal. P. C. 45.

10. Which doctrine is at least a thousand years old in the Kingdom, being to be found among the Laws of King Ina, the west Saxon.

11. But (besides that in our Law, which is a stranger to slavery, no impunity is given to servants, who are as much free agents as their masters,) even with regard to wives, this rule admits of an exception in crimes that are *mala in se*, and prohibited by the law of nature, as murder and the like:* not only because these are of a deeper dye, but also since in a state of nature, no one is in subjection to another; it would be unreasonable to screen an offender from the punishment due to natural crimes, by the refinements and subordinations of civil society.

12. In treason, also, (the highest crime which a member of society can, as such, be guilty of,) no plea

* The Law seems to protect the wife in all felonies committed by her in company with her husband, except murder and manslaughter.—[Hal. P. C. 47.] see the following cases on this subject:—2 East, 559; R. & R. 270; 1 Russ. 16, 18, 20.

of coverture shall excuse the wife ; no presumption of the husband's coercion shall extenuate her guilt— [1 Hal. P. C. 47] : as well, because of the odiousness and dangerous consequences of the crime itself, as because the husband, having broken through the most sacred tie of social community, by rebellion against the state, has no right to that obedience from a wife, which he himself as a subject has forgotten to pay.

13. In inferior misdemeanors, also, we may remark another exception ; that a wife may be indicted with her husband, for keeping a brothel—for this is an offence touching the domestic economy or government of the house, in which the wife has a principal share ; and is also such an offence as the Law presumes to be generally conducted by the intrigues of the female sex.— [1 Hawk, P. C. 2 & 3.]

14. And in all cases where the wife offends alone, without the company or coercion of her husband, she is responsible for her offence as much as any *feme sole*.

15. In all misdemeanors it appears that the wife may be found guilty with the husband.

16. It is said, the reason she was excused in burglary, larceny, &c., was because she could not tell what property the husband might claim in the goods— [Chris. N. 4.] But the better reason seems to be, that by the ancient Law, the husband had the benefit of the clergy, if he could read, but in no case could the woman have that benefit ; it would therefore have been an odious proceeding to have

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executed the wife, and to have dismissed the husband with a slight punishment; to avoid this it was thought better that in such cases she should be altogether acquitted, but this reason did not apply to misdemeanors.

17. Secondly,—Another species of compulsion or necessity is what our Law calls *duress per minas*, or threats and menaces, which induce a fear of death or other bodily harm, and which take away for that reason the guilt of many crimes and misdemeanors, at least before the human tribunal.

18. But then that fear which compels a man to do an unwarrantable action, ought to be just and well grounded, such "*qui cadere possit in virum constantum, non timidum et meticulosum*," as Bracton expresses it—[L. 2. F. 16,] in the words of the civil Law.—[Ff. 4, 2, 5 & 6.]

19. Therefore, in time of war or rebellion, a man may be justified in doing many treasonable acts by compulsion of the enemy or rebels, which would admit of no excuse in time of peace.—[1 Hal. P. C. 50.]

20. The fear of having houses burnt or goods spoiled is no excuse in the eye of the Law for joining and marching with rebels.

21. The only force that does excuse, is a force upon the *person*, and present fear of death; and this force and fear must continue all the time the party remains with the rebels.

22. It is incumbent upon men who make force their defence to shew an actual force, and that they joined *pro timore mortis et recesserunt quam cito potuerunt*.—[Fost. 14, 216, & see 1 East. p. c. 71.]

23. This excuse also, seems only, or at least principally, to hold as to positive crimes, so created by the laws of society; and which, therefore, society may excuse: but not as the natural offences so declared by the law of God, wherein human magistrates are only the executioners of Divine punishment.

24. And therefore though a man be violently assaulted, and hath no other means of escaping death but by killing an innocent person, this fear and force shall not acquit him of murder; for he ought rather to die himself, than escape by the murder of an innocent person.—[Hal. p. c. 31.]

25. But in such a case he is permitted to kill the assailant, for the law of nature, and self-defence, its primary canon, have made him his own protector.

26. There is a third species of necessity which may be distinguished from the actual compulsion of external force or fear; being the result of reason and reflection, which act upon and constrain a man's will, and oblige him to do an action, which without such obligation would be criminal.

27. And that is when a man has his choice of *two evils* set before him, and being under a necessity of choosing one, he chooses the least pernicious of the two.

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28. Here the will cannot be said freely to exert itself, being rather passive than active; or if active, it is rather in rejecting the greater evil than in choosing the less.

29. Of this sort is that necessity, where a man by the commandment of the law is bound to arrest another for any capital offence, or to disperse a riot, and resistance is made to the authority: it is here justifiable and even necessary to beat, to wound, or perhaps to kill the offenders, rather than permit the murderer to escape, or the riot to continue.

30. For the preservation of the peace of the Kingdom, and the apprehending of notorious malefactors, are of the utmost consequence to the public; and therefore excuse the felony, which the killing would otherwise amount to.—(1 Hal. p. c. 53.)

31. There is yet another case of necessity, which has occasioned great speculation among the writers upon general law, viz: whether a man in *extreme want* of food or clothing, may justify stealing either, to relieve his present necessities.

32. And this both Grotius (D. jure, B. & P. L. 2, c. 2,) and Puffendorf, (Law of Nat. and N. 1, 2, c. 6,) together with many other foreign jurists, hold in the affirmative, by maintaining many ingenious, humane, and plausible reasons, that in such cases the community of goods, by a kind of tacit confession of society, is revived.

33. And some of our own Lawyers have held the same, (Brit. c. 10, Mirr. c. 4, §16,) though it seems to be an unwarrantable doctrine, borrowed

from the notions of some civilians ; at least it is now antiquated, the Law of England admitting no such excuse at present.—(1 Hal. p.c. 54.)

34. And that its doctrine is agreeable not only to the sentiments of many of the wisest ancients, particularly Cicero, (De Off. l. 3, c. 5,) who holds that "*Suum cuique incommodum ferendum est, potius quam de alterius commodis detrahendum*;" but also to the Jewish Law, as certified by King Solomon himself, (Prov. vi. 30,) "If a thief steal to satisfy his soul when he is hungry, he shall restore sevenfold, and shall give all the substance of his house;" which was the ordinary punishment for theft in that Kingdom.

35. And this is founded upon the highest reason: for men's properties would be under a strange insecurity, if liable to be invaded according to the wants of others, of which wants no man can possibly be an adequate judge, but the party himself who pleads them.

36. In this country especially, there would be a peculiar impropriety in admitting so dubious an excuse; for by our laws such sufficient provision is made for the poor by the power of the civil Magistrate, that it is impossible the most needy stranger should ever be reduced to the necessity of thieving to support nature.

37. This case of a stranger is, by the way, the strongest instance put by Baron Puffendorf, and whereon he builds his principal arguments, which however, they may hold upon the Continent, where

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the parsimonious industry of the natives orders every one to work or starve, yet must lose all their weight and efficacy in England, where charity is reduced to a system, and interwoven with our very constitution.

38. Therefore our laws ought by no means to be taxed with being unmerciful for denying this privilege to the necessitous ; especially when we consider that the King, on the representation of his ministers of justice, hath a power to soften the law, and to extend mercy in cases of peculiar *hardship*.

39. An advantage which is wanting in many states, particularly those which are democratical ; and these have in its stead, introduced and adopted, in the body of the law itself a multitude of circumstances tending to alleviate its rigour.

40. But the founders of our Constitution thought it better to vest in the Crown the power of pardoning particular objects of compassion, than to countenance and establish theft by one general undistinguishing law.

OF OFFENCES BY THE SOVEREIGN.

1. To these several cases, in which the capacity of committing crimes arises from a deficiency of the will, we may add one more, in which the law supposes an incapacity of doing wrong, from the excellence and perfection of the person ; which extends as well to the will as to the other qualities of his mind.

2. I mean the case of the King, who by virtue of his royal prerogative is not under the coercive power

of the law, (1 Hal. p. c. 44,) which will not suppose him capable of committing a folly, much less a crime.

3. We are, therefore, out of reverence and decency, to forbear any idle inquiries of what would be the consequence if the King were to act thus and thus; since the law deems so highly of his wisdom and virtue, as not even to presume it possible for him to do any thing inconsistent with his station and dignity, and therefore has made no provision to remedy such a grievance.

PART THIRD—OFFENCES AGAINST GOD AND RELIGION.

Crimes and misdemeanors cognizable by the Laws of England, are such as offend—1st. God and Religion; 2d. the law of nations; 3d. the King and his Government; 4th. the public or commonwealth, 5th. individuals. — Crimes against God and Religion, are—1st. Apostacy; 2d. heresy; 3d. offences against the Established Church; 4th. Blasphemy; 5th. profane swearing and cursing; 6th. pretending to witchcraft; 7th. Religious impostors; 8th. Simony; 9th. Sabbath breaking; 10th. Drunkenness; 11th. Lewdness.

1. In the present part, we are to enter upon the detail of the several species of crimes and misdemeanors, with the punishments annexed to each by the Law of England.

2. It was observed in the beginning of this volume, that crimes and misdemeanors are a breach and violation of the public rights and duties owing to the whole community, in its social aggregate capacity.

3. Human laws can have no concern with any but social and relative duties, being intended only to

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regulate the conduct of man, considered under various relations, as a member of civil society.

4. All crimes ought therefore to be estimated merely according to the mischiefs which they produce in civil society, (Beccar, chap. 8,) and of consequence private vices or breach of mere absolute duties, which man is bound to perform, considered only as an individual, are not, cannot be, the object of any municipal law, any farther than as by their evil example, or other pernicious effects, they may prejudice the community, and thereby become a species of public crimes.

5. Thus the vice of drunkenness, if committed privately and alone, is beyond the knowledge, and of course beyond the reach of human tribunals; but if committed publicly, in the face of the world, its evil example makes it liable to temporal censures.

6. The vice of lying, which consists (abstractedly taken) in a criminal violation of truth, and therefore in any shape is derogatory from sound morality, is not, however, taken notice of by our law, unless it carries with it some public inconvenience, as spreading false news, or some social injury, as slander and malicious prosecution, for which a private recompense is given.

7. And yet drunkenness and malevolent lying are in *foro conscientia*, as thoroughly criminal when they are not, as when they are, attended with public inconveniences.

8. The only difference is, that both public and private vices are subject to the vengeance of eternal

justice ; and public vices are besides liable to the temporal punishment of human tribunals.

9. On the other hand, there are some misdemeanors which are punished by the municipal law, that have in themselves nothing criminal, but are made unlawful by the positive constitutions of the State for public inconvenience ; such as poaching, exportation of wool, and the like.

10. These are naturally no offences at all ; but their whole criminality consists in their disobedience to the supreme power, which has an undoubted right, for the well being and peace of society, to make some things unlawful, which are in themselves indifferent.

11. Upon the whole, therefore, though part of the offences to be enumerated in the following pages are offences against the revealed Law of God, others against the law of nature, and some are offences against neither ; yet in treaties of municipal law, we must consider them all as deriving their particular guilt, here punishable, from the law of man.

12. Having premised this caution, I shall next proceed to distribute the several offences, which are either directly or by consequences injurious to civil society ; and, therefore, punishable by the Laws of England, under the following general Heads : first, those which are more immediately injurious to God, and his holy Religion ; secondly, such as violate and transgress the Law of Nations ; thirdly, such as more especially effect the Sovereign executive power of the state, or the King and his government ;

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fourthly, such as more directly infringe the rights of the public or commonwealth; and, lastly, such as derogate from those rights and duties, which are owing to particular individuals, and in the preservation and vindication of which the community is deeply interested.

13. First, then, of such crimes and misdemeanors as more immediately offend Almighty God, by openly transgressing the precepts of religion, either natural or revealed; and, mediately, by their bad example and consequence, the Law of Society also: which constitutes that guilt in the action, which human tribunals are to censure.

14. Of this species the first is that of apostacy, or a total renunciation of Christianity, by embracing either a false religion, or no religion at all.

15. This offence can only take place in such as have once professed the true *religion*.

16. We find by Bracton, that in his time apostates were to be burned to death.

17. Doubtless the preservation of christianity, as a national religion, is, abstracted from its own intrinsic truth, of the utmost consequence to the civil state: which a single instance will sufficiently demonstrate.

18. The belief of a future state of rewards and punishments, the entertaining just ideas of the moral attributes of the Supreme Being; and a firm persuasion, that he superintends, and will finally compensate every action in human life, these are the grand foundations of all judicial Oaths; which call

God to witness the truth of those facts, which perhaps may only be known to him and the party attesting, all moral evidence therefore must be overthrown by total infidelity.

19. Wherefore all affronts to christianity, or endeavors to depreciate its efficiency, in those who have once professed it, are highly deserving of censure.

20. But yet the loss is a heavier penalty than the offence, taken in a civil light, deserves; and taken in a spiritual light, our Laws have no jurisdiction over it.

21. This punishment, therefore, has long ago become obsolete; and the offence of apostacy was for a long time the object only of the ecclesiastical courts, which corrected the offender *pro salute animæ*.

22. But about the close of the seventeenth century, the civil liberties to which we were restored being used as a cloak of maliciousness, and the most horrid doctrine, subversive of all religion, being publicly avowed both in discourse and writings, it was necessary again for the civil power to interpose, by not admitting those miscreants (Mescroyantz, in our ancient Law Books, is the name of unbelievers,) to the privileges of society, who maintained such principles as destroyed all moral obligation.

23. To this end it was enacted by statute, 9 & 10 W. 3 c., 32, that if any person educated in, or having made profession of, the Christian Religion, shall, by writing, printing, teaching, or advised speaking, deny the Christian religion to be true, or the holy

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Scriptures to be of Divine authority, he shall upon the first offence be rendered incapable to hold any office or place of trust; and, for the second, be rendered incapable of bringing any action, or of being guardian, executor, legatee, or purchaser of lands, and shall suffer three years' imprisonment, without bail.

24. To give room, however, for repentance, if, within four months after the first conviction, the delinquent will in open court openly renounce his error, he is discharged for that once from all disabilities.

25. A second offence is that of heresy, which consists not in a total denial of christianity, but of some of its essential doctrines, publicly and obstinately avowed; being defined by Sir Matthew Hale, '*sententia rerum divinarum humano sensu excogitata, palam docta pertinaciter defensa.*'—[1 Hal. P. C. 384.]

26. And here it must be acknowledged that particular modes of belief or unbelief, not tending to overturn christianity itself, or to sap the foundations of morality, are by no means the object of coercion by the civil Magistrate.

27. What doctrine shall therefore be adjudged heresy, was left by our old constitution to the determination of the ecclesiastical judge; who had here in a most arbitrary latitude allowed him.

28. For the general definition of an heretic given by Lynwood, (cap. de hereticis,) extends to the

smallest deviation from the doctrines of holy church, *hæreticus est qui dubitat de fide catholica, et qui negliget servare ea, quæ Romana ecclesia statuit; seu servare decreverat.*

29. Or as the statute 2 Hen. 4, c. 15, expresses it in English, Teachers of erroneous opinions, contrary to the faith and blessed determinations of the Holy Church.

30. Numerous acts of a sanguinary nature were passed on this subject, but I shall not perplex the reader with the various repeals and revisals of them, but shall proceed directly to the reign of Queen Elizabeth; when the reformation was finally established with temper and decency, unsullied with party rancour, or personal caprice and resentment.

31. By statute 1 Eliz., c. 1, all former statutes relating to heresy are repealed, which leaves the jurisdiction of heresy as it stood at common Law; viz., as to the infliction of common censures, in the ecclesiastical courts; and in case of burning the heretic, in the provincial senate only. (F. 5 rep. 23, 12 rep. 56, 92.)

32. Sir Matthew Hale is indeed of a different opinion, and holds that such power resided in the diocesan also, though he agrees that in either case the writ *de hæretico comburendo* was not demandable of common right, but grantable or otherwise at the King's discretion.—[1 Hal. P. C. 405.

33. But the principal point now gained was, that by this Statute a boundary is for the first time set

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to what shall be accounted heresy ; nothing for the future being to be so determined, but only such tenets, which have been heretofore so declared.

34. First—By the words of the canonical scriptures : second, by the first four general councils, or such others as have only used the words of the holy scriptures ; or third, which shall hereafter be so declared by the Parliament, with the assent of the clergy in convocation.

35. Thus was heresy reduced to a greater certainty than before, though it might not have been the words to have defined it in terms still more precise and particular : as a man continued still liable to be burnt, for what perhaps he did not understand to be heresy till the ecclesiastical judge so interpreted the words of the Canonical Scriptures.

36. For the writ *de hæretico comburendo* remained still in force, and we have instances of its being put in execution upon two Anabaptists in the seventeenth of Elizabeth, and two Arians in the ninth of James the First.

37. But it was totally abolished, and heresy again subjected only to ecclesiastical correction, *pro salute animæ*, by virtue of the statute 29 Car. 2, c. 9.

38. For in one and the same reign, our lands were delivered from the slavery of military tenures, our bodies from arbitrary imprisonment, by the *habeas corpus* act, and our minds from the tyranny of superstitious bigotry, by demolishing this last badge of persecution in the English Law.

39. In what I have now said I would not be understood to derogate from the just rights of the National Church, or to favor a loose latitude of propogating any crude undigested sentiments in religious matters.

HERESY AND NON-CONFORMITY.

1. Another species of offences against religion are those which affect the established Church, and these are either positive or negative: positive by reviling its ordinances; or negative, by non-conformity to its worship. Of both of these in their order.

2. And, first, of the offence of reviling the ordinances of the Church.

3. This is a crime of a much grosser nature than the other of mere non-conformity: since it carried with it the utmost indecency, arrogance, and ingratitude; indecency, by setting up private judgment in virulent and factious opposition to public authority: arrogance, by treating with contempt and rudeness what has at least a better chance to be right than the singular notions of any particular man—and ingratitude by denying that indulgence and undisturbed liberty of conscience to the members of the National Church, which the retainers to every petty conventical enjoy.

4. However, it is provided by Statutes 1 Edw. 6, C. 1, and 1 Eliz. C. 1, that whoever reviles the sacrament of the Lord's Supper shall be punished by fine and imprisonment; and by the Statute 1 Eliz. C. 2, if any minister shall speak any thing in

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PART FOUR
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derogation of the book of Common Prayer, he shall if not beneficed, be imprisoned one year for the first offence, and for life for the second ; and if he be beneficed, he shall for the first offence be imprisoned six months, and forfeit a year's value of his benefice ; for the second offence he shall be deprived and suffer one year's imprisonment ; and for the third, shall in like manner be deprived and suffer imprisonment for life.

5. And if any person whatsoever shall, in plays, songs, or other open words, speak any thing in derogation, degrading or despising of the said book, or shall forcibly prevent any one reading of it, or cause any other service to be used in its stead, he shall forfeit for the first offence an hundred marks ; for the second, four hundred ; and for the third, shall forfeit all his goods and chattels, and suffer imprisonment for life.

PART FOURTH—OFFENCES AGAINST THE PROPERTY OF INDIVIDUALS :—THEFT, OR STEALING FROM THE PERSON, AND ROBBERY.*

1. Definition of Theft.—2. Subjects of Theft.—3. The acts of taking and carrying away.—4. The circumstances which make a taking felonious.—5. The ownership of stolen property.—6. Taking from the owner's possession.—7. Provisions of 7 & 8, G. 4, c. 29, and 1 Vict. c. 87.

1. The law relating to offences against private property, by robbery and stealing from the person, has undergone great alterations by the Statutes 7

* For the offence of stealing from a dwelling house, &c., see chap. xvi., ante ; for malicious injuries, see chap. xix. ; and for forgery, see chap. xx. post.

and 8, G. 4, c. 29, "for consolidating and amending the Laws in England relative to Larceny, and other offences connected therewith;" and 1 Viet. c. 87, "for amending the Laws relating to robbery and stealing from the person."

2. Before proceeding to the provisions of these acts, it will be proper to take a general view of the common Law relating to Larceny and Theft :

1st. *Delineation of Theft.*

3. Theft is the felonious taking and carrying away of the personal goods of another.

2d. *The Subjects of Theft,* are

1. *Chattels Personal.*—All personal goods, save as hereafter excepted, are the subjects of theft. This rule includes money, plate, apparel, household stuff, stones dug out of quarries, grass in cocks, wood cut, plants rooted or dug up, fruits separated from the plants that produced them, and all moveable goods, save as hereinafter excepted.

2. *Parcel of freehold, growing produce, fixtures.*—Theft cannot be committed by severing, and immediately taking away, anything which is parcel of or annexed to the soil, or which is the unsevered produce thereof, although it may be severed by the wrong-doer with intent to despoil the owner.

3. This rule includes soil, earth, stones, minerals, and whatever else is an unsevered portion of the land or realty.

4. Also, all trees, bushes, shrubs, fruit, flowers, corn, grain, grass, roots, and other vegetable productions whatsoever, unsevered from the realty.

5. Realty

6. Material building

7. And other

8. Various parts of the property and fixtures of the common

3d.

1. All realty, and removals thereof, continued as of theft with the

2. Theft and removal

3. According

4. Other things removed

5. Also, all buildings and fixtures annexed to the realty.

6. All Iron, Copper, Lead, and other metals, and materials, whatsoever, annexed to any house or building, or otherwise fixed to the realty.

7. All Rails, Pailings, Hedges, Fences, Palisades and other annexations to the realty whatsoever.

8. By the 7 & 8 G. 4. C. 29, S. 37 to 44, various provisions are enacted, (as hereafter stated) for the protection of vegetable and mineral productions and fixtures, and those are partial innovations upon the common Law principle.

3d. *Interval between Severance and Removal.*

1. Although a thing be a parcel of the realty, or be any annexation to or unsevered produce of the realty, yet if any person sever it from the realty, and remove it with an intent to steal it, after an interval which so separates the acts of severance and removal that they cannot be considered as one continued act, the thing taken is a chattel the subject of theft, notwithstanding such previous connection with the realty.

2. The interval between the acts of severance and removal, is variously stated by the authorities.

3. According to some, an *hour's* time is essential; according to others, a *day*.

4. Other authorities lay down the rule with greater vagueness, stating that it is felony if the goods are removed *afterwards*, or after they are severed *any time*.

5. And it does appear to be settled, whether the thief must quit the premises before the removal.

Fourth—1. If any parcel of the realty, or any annexation to or unsevered produce of the realty be severed otherwise than by one who afterwards removes the same, it is the subject of theft, notwithstanding it be stolen instantly after such severance. This doctrine and the preceding rule proceed upon the subtlety, of which there are many similar instances in our early jurisprudence, that the property was not personalty when taken, because it was the very act of taking which converted it into personalty.

2. Though the taking of goods without an interval elapsing is only a trespass, it is called by Chief J. Hyde a rank trespass.

3. Several eminent authorities have expressed their astonishment at the distinction, and represent it as *exceedingly nice*; others have unequivocally disapproved of it.

5th. *Accessories to realty: Charters: Box of Charters.*

1. Nothing which is necessary to or which savours of realty, is the subject of theft at Common Law.

2. This rule comprehends all commissions relating to the realty; and all boxes in which any such writings that concern the realty are locked, sealed, or otherwise fastened up; this rule does not extend to heir-looms.

3. The term "savoring of the realty," which is used in all the authorities, may seem not to be par-

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ticularly well adapted to popular comprehension ; and it would appear that the distinction between a box of charters, fastened or unfastened, was an unnecessary refinement.

4. And it is to be observed, that at present there is a want of uniformity in the law, in consequence of a partial innovation upon the common law principle by the Statute 7 and 8 Geo. 4, c. 29, s. 22, 23.

5. The strictness of the rule which excludes even the materials and stamps of writings relating to land, from being the subjects of theft, according to the legal maxim, *omne magis dignum trahit ad se minus*, does not appear to be satisfactory.

5. *Choses in Action*.—Securities concerning choses in action, are not the subjects of theft. The common law principle of this rule was founded on the crude notions of an early state of society respecting property ; but it can have but little operation in the present day, in consequence of the extensive provisions of the 7 & 8 Geo. 4, c. 29, s. 5, against stealing valuable securities.

6. But the principle of the common Law stands in direct contrast with that of the Statute Law in respect of any property in a written instrument not deemed to be a valuable security within the meaning of the Statute.

7. *Materials and Stamps of written Instruments*.—The materials and stamps of any written instrument not relating to the realty, are the subjects of theft.

8. In a recent decision upon the subject, it was held that the stealing of rolls of parchment, though

they are records of a court of Justice, will be larceny, unless they concern the realty.—(6 Carr. and P. 106.)

9. *Human Body*.—No human body, living or dead, is the subject of theft. Our jurisprudence differs upon this point from that of several other nations.

10. By 9 Geo. 4, c. 31, child stealing is, in certain cases made felony.

11. *Things of Value*.—Theft can be committed of such things only as are of some intrinsic value.—This rule can have very little operation in the present day, but it expresses the general principle from which many of the rules respecting the subjects of theft were, probably, in ancient times derived.

12. As for example, several species of minerals and charters concerning lands, negociable securities, and reclaimed animals not fit for food, were not deemed subjects of theft, according to some authorities, because they were not of any determinate or marketable value. And indeed, it was held in an ancient case, that it was not felony to take a diamond or ruby, "because they were not of price with all men, howsoever some do hold them both dear and precious."

13. Theft may be committed of things valuable to the owner, though not of value to any one else, nor saleable. It would seem that if the principle of the former rule were regarded, and its early applications were superseded, most of the existing anomalies of the common Law, with regard to the subjects of theft, would disappear, and many statutory provisions would be rendered unnecessary.

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14. For the principle of the common Law rule was, that things of value should be deemed the subjects of theft.

15. And if this principle had been applied, for the first time, within the last century, it would necessarily have been held to comprise a variety of subjects which have been legislated for separately, because they were not deemed to be of value in a remote age.

16. The above exception to the rule is a departure, in modern times, from the ancient principles of the common Law.

DOMESTIC ANIMALS.

1. All domestic animals which are fit for food, or which are not of a base nature, whether living or dead, and also all parts of such animals, their young, and their eggs, are the subjects of theft. This rule includes horses, kine, sheep, swine, geese, hens, ducks, turkeys, and all other animals whatsoever, not of a base nature.

2. The statute 7 & 8 Geo. 4, C. 29, S. 25, enacts, that it shall be felony to steal horses, cows, sheep and certain other domestic animals.

3. Domestic animals of a base nature, and not fit for food, are not the subjects of theft. This rule includes dogs and cats: but the stealing of dogs is the subject of statutory provision in the 7 & 8 Geo. 4, C. 29, S. 41.(see post.)

4. *Wild Animals reduced into possession, and fit for Food.*—Animals of a wild nature which are fit

for food, including deer, hares and conies; carp, tench, trout, eels and other fish; swans, pigeons, pheasants, and all other birds and beasts which are fit for food, are the subjects of theft, when they have been reduced into possession, so long as that possession continues.

5. There is a conflict of authorities upon this subject, some laying down the rule that the restraint need only be sufficient to prevent the animals falling again into the common stock, whilst others affirm that the animals must be restrained of their liberty in such a manner as to imply an immediate intention to make use of them.

6. Animals are reduced into possession when they are restrained of their natural liberty, and confined in buildings, stalls, parks, paddocks, mews, nets, trunks, ponds, or other inclosures, of such limited extent that they may be taken by the owner whenever he pleases; and doves, being in a dove-cote, are included within this rule: but the authorities are not very precise upon the subject of stealing doves; some alleging that young doves in a dove-cote may be stolen, and others that old doves in a dove-cote are the subjects of theft, if the dove-cote be shut up.—[4. Car. & P. 131.

7. The Statute 7 & 8 Geo. 4, C. 29, S. 26, to 30, and 34, 35, provides against stealing deer, hares, conies, and fish, under various circumstances.

8. *Wild Animals reclaimed and fit for Food.*—Animals of a wild nature, which are the subjects of theft when they are deprived of their natural liberty, and reduced into possession, are also the

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subjects of theft, if they be reclaimed and known to be reclaimed, although they go abroad and return at their pleasure.

9. This rule also includes swans, peacocks and other birds which are reclaimed and known to be so.

10. The words "reclaimed" "tame" "*domita naturæ*," are often used promiscuously as applied to the subject-matter of this rule; but it does not appear that the authorities furnish any rule as to the degree or manner in which an animal must have been divested of its wild nature, in order to be deemed reclaimed for the purpose of theft.

11. The ancient authorities contain a number of distinctions respecting swans, which do not appear to be applicable in the present day.

12. The knowledge of the animal being reclaimed would appear to be properly a circumstance indicative of a felonious intention.

Hawks, Falcons, Bees.—1. Reclaimed hawks, and falcons, are the subjects of theft, although they are not fit for food. So also a stock of bees.

2. The ground assigned for the exception, of hawks and falcons, will scarcely be thought reasonable in the present day; it is "on account of their noble and generous nature and courage, and as serving *ob vitæ solatium* of princes, and noble and generous persons, and as making them fitter for great employments."

3. It does not appear from the authorities upon what principle bees are the subject of theft. Silk

worms would seem to be equally fit subjects of larceny with bees.

4. *Young of wild Animals which are the subjects of Theft.*—The young of such wild animals as are the subjects of theft, when reduced into possession or reclaimed, are also the subjects of theft so long as they cannot run or fly and join the common stock, but remain in a house or several grounds, so that the owner of such house or grounds, may take them at all times at his pleasure.

5. The point whether the young of unreclaimed animals (but which, when reclaimed, are the subjects of theft,) may be stolen on the ground of being property *ratione impotentia*, is rendered very doubtful in consequence of conflicting authorities.

6. Young doves, usually stated as an example of this rule, are sometimes considered as belonging to the class of cases respecting "animals reduced into possession."

7. With respect to the *eggs* of unreclaimed birds (but which when reclaimed are the subjects of theft,) the authorities do not lay down any rule; but the taking of certain species of eggs is made punishable by statute.

8. It would seem that where the eggs of birds, whether reclaimable or not, are reduced into possession, they ought to be the subjects of theft.

9. This rule includes, amongst others, young pigeons in a dove-house, which cannot fly, young swans and cygnets which cannot fly, and are breed-

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ing in any parks or several grounds ; and young hawks or herons in the nest.

10. *Produce of Animals the subject of Theft.*—Where the animal itself is the subject of theft, the produce of the animal, if of any value, is also the subject of theft.

11. This rule extends to the taking of wool from the back of a sheep, milk from a cow, and all other cases whatsoever, where such produce is of value.

12. There is considerable discrepancy among the authorities upon this subject, as to the point whether, to constitute theft, the property stolen should be above the value of 12d., when this is not the case, it has been said that the maxim "*de minimis non curat Lex*" applies.

13. *Dead Animals the subject of Theft.*—Wild animals which when living may be the subjects of theft, are, whether they have been actually reduced into possession or reclaimed, or not, the subjects of theft when dead ; this rule includes all parts of the bodies of such animals.

14. *Wild Animals not reduced or reclaimed, or reverting to a wild state.*—Animals in a wild state are not the subjects of theft. Some of the examples usually given of this rule, as doves out of a dove-house, may perhaps be thought to come more properly under the rule applicable to reclaimed animals, not known to be reclaimed.

15. The rule includes deer, hares, conies, swans, pheasants, hawks, herons, pigeons, and all other birds and beasts not reclaimed or reduced into possession.

16. The rule includes also wild animals, which, after having been reclaimed or reduced into possession, have reverted to their wild state.

17. *Wild Animals not fit for food.*—Animals of a wild nature which are not fit for food, are not the subject of larceny, although they be reduced into possession or reclaimed.

18. This rule includes bears, foxes, apes, monkeys, polecats, cats and dogs, ferrets, thrushes, singing birds in general; but not hawks or falcons, or bees, as before specified.

19. It would seem that the rule upon this subject, arose from the circumstance that the animals above specified, being unfit for food, were not formerly marketable, and of a determinate value.

20. But they are all now the subject of civil remedies for property, and would seem to require the same protection from the Criminal Law as reclaimed animals fit for food.

21. In some authorities, the above mentioned animals are said to be of a base nature, and therefore not the subjects of theft.

22. There is some uncertainty in the law as to animals which are occasionally used for food, and sometimes for pleasure.

23. For the simplicity of the ancient law does not appear to have contemplated the possibility of animals being kept for pleasure which were fit for food.

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24. The use of animals, alive or dead, for the purposes of science, has not perhaps been sufficiently protected either by common law or statute.

25. The statute 7 & 8 Geo. 4, C. 29, S. 31, provides, but not as for a theft, against taking such beasts or birds as are ordinarily kept in a state of confinement, and their *skins* and *plumage* only.

26. The common law principle does not appear satisfactory in the present day ; and a want of uniformity in the law is occasioned by the old principle being partially innovated upon by the statute.

YOUNG OF WILD ANIMALS NOT THE SUBJECT OF THEFT.

1. The young of wild animals which are not the subjects of theft when reduced into possession or reclaimed, are not the subjects of theft, whether in the nest, kennel, den or otherwise.

2. The authorities do not lay it down in terms sufficiently clear and positive, whether the eggs, produce, skeletons, carcasses, skins and plumage of wild animals, which cannot, though reclaimed, be the subjects of theft, may be stolen.

3. Of this nature are Ostrich, and other valuable feathers, sable and other skins, skeletons and the like.

4. Such chattels are often extremely valuable articles of commerce, and of the highest importance to science.

5. The circumstance of the animal whilst living, having been fit for food, is not a reasonable criterion of the value of its component parts after death.

6. Property of this description is only very partially provided for by the statute 7 & 8 Geo. 4, C. 29, S. 31.

7. It would seem to be more consistent with the principles of the common law, that these articles should not be deemed the subjects of theft, but such a rule would be contrary to the dictates of reason and convenience.

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THE PRACTICE OF A JUSTICE OF THE PEACE

OUT OF QUARTER SESSIONS.*

PART FIRST—OF THE APPOINTMENT OF JUSTICES.

1. Justices of the Peace are certain officers, appointed by the Sovereign authority, to be Magistrates, within certain limits, generally within the Counties or Districts where they are residents, for the conservation of the peace, and for the execution of divers things committed to their charge, as well by their commission, as by divers Acts and Statutes in that behalf. Before the institution of Justices of the Peace in England, there were Conservators of the Peace in every County, whose office it was to preserve the King's peace, and to protect the obedient and innocent subjects from force and violence, Burns J., Tit. J. of peace. These Conservators, by the ancient common law, were by force of the King's writ chosen by the Freeholders in the County court, out of the principal men of the County. After which election, so made and returned, the King directed a writ to the person so elected, authorising him to take upon him and execute the office, until the King should order otherwise.

2. The general duty of Conservators of the Peace, by the common law, was to employ their own, and to command the help of others, to correct and pacify all such, who in their presence, and within their jurisdiction and limits, by word or by deed

* See Magistrate's Manual, page 5.

should go about to break the peace, Dalt. C. I. These Conservators of the Peace are now superceded by the modern Justices of the Peace. Her Majesty the Queen is by her office and dignity royal, the principal Conservator of the Peace within all Her dominions, and may give authority to any other, to see the peace kept, and to punish such as break it; hence it is usually called the Queen's (or King's) Peace. Justices of the Peace are now appointed by the Queen's special commission, under the great Seal, the form of which, we are told, was settled by all the Judges of England in the year 1590. This commission appoints them all jointly and severally to keep the peace, and any two or more of them in their sessions to enquire of and determine felonies and other misdemeanors, in which number it was formerly usual to include some particular Justices, who were directed to be always present, without which, or the presence of some of them, no business could be done, the words of the commission running thus: "*Quorum aliquem vestrum A B C, &c., unum esse volumus* :"

Whence the persons so specially named, were called "Justices of the Quorum." But this practice is now no longer followed, and no exception is now taken or allowable for not expressing in the form of the proceedings had before the Justices, that one or more of them was or were of the quorum.

As the office of these Justices is conferred by the Sovereign, so it subsists only during her pleasure, and is determinable by various means, but most generally by the issuing of a new Commission, which virtually and silently discharges all the Justices who

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are not included in it. That Justices of the Peace may see the nature and extent of the authority they hold under their Commission, I shall here insert the general Commission of the Peace issued for the District of Montreal.

Victoria, by the Grace of God, Queen of the United Kingdom of Great Britain and Ireland, Defender of the Faith, &c.

To (the names of the Justices appointed) Esquires, Greeting. Know ye that we have assigned you, jointly and severally, and every one of you, our Justices, to keep the peace in our District of Montreal, in that part of our Province heretofore known as the Province of Lower Canada, and to keep, and cause to be kept, all ordinances and statutes for the good of the peace and for the preservation of the same, and for the quiet rule and government of our people, made in all and singular their articles in our said late Province, or in our Province of Canada, according to the force, form and effect of the same; and to chastise and punish all persons that offend against the form of those ordinances and statutes; and to cause to come before you, or any one of you, all those who, to any one or more of our people, concerning their bodies, or the firing of their houses, have used threats, to find security for the peace, or their good behaviour towards us and our people, and if they shall refuse to find such security, then, them in our prisons until they shall find such security to cause to be safely kept; we have also assigned you, and every two or more of you, our Justices, to enquire more fully into the truth, by the oaths of good and lawful men of the District aforesaid, by whom

the truth of the matter may be the better known, of all, and all manner of felonies, poisonings, trespasses, forestallings, regratings, engrossings, and extortions, whatsoever, and of all and singular the crimes and offences of which the Justices of the Peace may and ought lawfully to inquire, by whomsoever and by what manner soever, in the said District, had, done, or perpetrated, or which hereafter shall there happen to be done or attempted; and also of all those who in the aforesaid District, in companies, against our peace in disturbance with our people, with armed force have gone or rode, or hereafter shall presume to go or ride; and also of all those who shall there have laid in wait, or hereafter shall presume to lie in wait to maim, or cut, or kill our people; and also of all victuallers, and all and singular other persons, who in the abuse of weights and measures, or in selling victuals against the form of the ordinance and statutes, or any of them therefor made for the common benefit, or of our said late Province of Lower Canada and of our people thereof, have offended or attempted, or hereafter shall presume in our said District to offend or attempt; and also of all Sheriffs, Bailiffs, Stewards, Constables, Keepers of Gaols, and other officers who in the execution of their offices about the premises or any of them, have unduly behaved themselves or hereafter shall presume to behave themselves unduly, or have been, or hereafter shall happen to be, careless, remiss or negligent in our said District; and of all and singular articles and circumstances, and all other things whatsoever that concern the premises or any of them, by whomsoever, and after what manner soever, in our aforesaid District done or perpetrated, or which shall hereafter happen to be done or attempted, in what

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manner soever ; and to inspect all indictments whatsoever before you, or any of you taken, or to be taken, or before others, late our Justices of the Peace, in our aforesaid District, made or taken, and not yet determined ; and to make and continue process thereupon against all and singular the persons so indicted, or who before you shall hereafter happen to be indicted, until they can be taken, surrender themselves or be outlawed ; and to hear and determine all and singular the felonies, poisonings, trespasses, forestallings, regratings, engrossings, extortions, unlawful assemblies, and indictments aforesaid ; and all and singular other the premises, according to the Laws and Statutes of our said late Province of Lower Canada, or form of the ordinances and statutes aforesaid, as in the like case it has been accustomed or ought to be done, and the same offenders, and every of them, for their offences, by fines, ransoms or amerciaments, forfeitures, and other means as according to the law and custom of our said late Province of Lower Canada, or form of the ordinances and statutes aforesaid, it has been accustomed, or ought to be done to chastise and punish. Provided, always, that if a case of difficulty upon a determination of any of the premises before you, or any two or more of you, shall happen to arise, then let judgment in no wise be given before you, or any two or more of you, unless in the presence of one of our Justices of our Court of our Bench, or of one of our Justices appointed to hold the Assizes in the said District ; and therefore we command you and every one of you, that to keeping the peace, ordinances, statutes, and all and singular other the premises you diligently apply yourselves, and that at certain days and places which you, or

any such two or more of you as aforesaid shall appoint for these purposes, into the premises ye make enquiries, and all and singular the premises you hear and determine, and perform and fulfil them in the aforesaid form, doing therein what to Justice appertains, according to the law and custom of our said late Province of Lower Canada, saving to us our amerciements, and other things to us therefrom belonging. And we command, by the tenor of these presents, our Sheriff of our said District, that at certain days and places, which you, or any two or more of you as is aforesaid shall make known to him, he cause to come before you or such two or more of you as aforesaid, so many and such good and lawful men of his District by whom the truth of the matter in the premises shall be the better known and enquired into.

In testimony whereof, &c.

OATH OF OFFICE OF A JUSTICE OF THE PEACE.*

You shall swear that as Justice of the Peace for the District of —, in all articles in the Queen's Commission to you directed, you shall do equal right to the poor and to the rich, after your cunning, wit, and power; and after the laws and customs of that part of the Province of Canada, heretofore called Lower Canada, and the laws, Ordinances and Statutes thereof made; and ye shall not be of counsel of any quarrel hanging before you; and that ye hold your sessions after the form of the statutes thereof made; and the issues, fines, and amerciements that shall happen to be made, and all forfeit-

* See Magistrate's Manual, page 10.

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ures which shall fall before you, ye shall cause to be entered without any concealment or embezzling, and truly send them to the Queen's Exchequer; ye shall not let for gift or other cause, but well and truly ye shall do your office of Justice of the Peace in that behalf; and that ye take nothing for your office of Justice of the Peace to be done, but of the Queen and fees accustomed, and costs limited by statute; and ye shall not direct, nor cause to be directed, any warrant by you to be made to the parties, but ye shall direct them to the Bailiff of the said District or other the Queen's Officers or Ministers, or other indifferent persons, to do execution thereof.

So help you God.

OF THE QUALIFICATION OF JUSTICES OF THE PEACE.

By Act of the Provincial Legislature of the 6th Vic. Cap. 3, it is enacted, that no person shall be a Justice of the Peace, or act as such within any District of this Province, who shall not have in his actual possession, to and for his own proper use and benefit, a real estate, either in free or common soccage, or *en fief* or *en roture*, or *en franc aleu*, in absolute property, or for life, or by *emphyteose*, or lease for one or more lives, or originally created for a term not less than twenty-one years, or by usufructuary possession for his life, in lands, tenements, or other immoveable property, lying and being in this Province, of above the value of three hundred pounds currency, over and above what will satisfy and discharge all incumbrances affecting the same, and over and above all rents and charges payable out of, or affecting the same, who shall not

before he takes upon himself to act as a Justice of the Peace, after the first day of January, one thousand eight hundred and forty three, take and subscribe the oath following before some Justice of the Peace for the District for which he intends to act, that is to say : " I, A. B., do swear that I truly and *bona fide*, have to and for my own proper use and benefit, such an estate, (specifying the nature of such estate, whether land, and if land designating the same by its local description, rents, or anything else) as doth qualify me to act as Justice of the Peace for the District of — according to the true intent and meaning of an Act of the Provincial Parliament, made in the sixth year of the Reign of Her Majesty Queen Victoria, and intituled 'An Act for the qualification of Justices of the Peace,' and that the same is lying and being (or issuing out of lands, tenements or hereditaments situate) within the Township, Parish of Seigniority of — (or in several Townships, Parishes or Seigniorities of —) (or as the case may be.) So help me God." A certificate of which oath having been so taken and subscribed as aforesaid, shall be forthwith deposited by the said Justice of the Peace, who shall have taken the same, at the Office of the Clerk of the Peace for the District, and be by the said Clerk filed among the records of the Sessions of the said District.

By the 5th clause it is also enacted, that any person who shall act as a Justice of the Peace in and for any District in this Province, without having taken and subscribed the said oath as aforesaid, or without being qualified according to the true intent and meaning of this Act, shall for every such

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offence forfeit the sum of twenty five pounds currency, one moiety to Her Majesty, and the other moiety to such person or persons as shall sue for the same, to be recovered, together with full costs of suit, by civil action, or by plaint or information in any Court having competent jurisdiction in the District wherein the offence shall have been committed; and in every action, suit, or information, the proof of his qualification shall be upon the person against whom the suit shall be brought.

By the 13th Sect. if the statement in any oath, or in any declaration under oath taken or made in pursuance of the requirements of this Act, to the knowledge of the person making the same be false, such person shall be guilty of wilful and corrupt perjury, and subject to all the pains and penalties attendant on that offence.

By the 14th Sect. it is enacted, that every action, suit or information given by this Act, shall be commenced within the space of six calendar months next after the fact upon which the same is grounded shall have been committed, and not afterwards.

OF THE POWER, OFFICE, AND DUTY OF JUSTICES OF THE PEACE.*

It would be difficult to enumerate all the duties of a Justice of the Peace, from the great variety of circumstances in which he may be called to exercise his office; therefore, under this title, all that can be attempted will be to mark some general rules, and to shew how others may be collected by inference from adjudged cases, in instances where experienced Magistrates might derive information.

* Sec Magistrate's Manual.

The power, office, and duty of a Justice of the Peace depends upon his Commission, and on the several statutes, Acts and Ordinances which have created objects submitted to his jurisdiction, 1 Bl. Com. 354. His commission first empowers him singly to conserve the peace, and thereby gives him all the power of the ancient Conservators at the common law, in suppressing riots and affrays—in taking securities for the peace—and in apprehending and committing felons and other inferior criminals. The powers given to one or more Justices, by the said Statutes, Acts and Ordinances, in a variety of offences and matters to be determined before them in a summary manner, must necessarily call for the time and attention of those Justices, that their proceedings in such cases may be regulated conformably to law. Wherever they are called to inflict a penalty for the omission of some duty, or the commission of some infringement of the law, they must be convinced of the necessity of their knowing what the law in every such case enjoins, and in what manner it is to be enforced. The power of infliction of penalties by summary conviction has been found necessary for carrying into execution many laws made for the public benefit, and although this power has been considered as a departure from the security to liberty and property granted by *Magna Charta*, by which it is established that none ought to be tried or condemned but by their peers, yet it has been adopted as necessary from the increasing number of laws occasioned by the increasing wants of a more advanced state of society, because it gives a speedy remedy against individuals for some breach of the law, often trivial, and can be had at small expense, and without loss of time, by the sum-

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mary proceeding before the Magistrate. Every man, therefore, who accepts the office of Justice of the Peace, and fulfils the duties of it, without sinister views of his own, or using it for political purposes, deserves well of the public, 4 Bl. Com. 281. Mr. Justice Blackstone observes, that the country is obliged to gentlemen who will undertake the duties of this office, and particularly to men of rank and influence, who hold a greater stake in society, and from their situation in life must be presumed to be more alive to its general interest. The extensive powers of a Justice of the Peace, even in the hands of a man of honor, are highly formidable, but should the office fall into the hands of men of low rank and character, it will be liable to be prostituted to the low ends of selfish ambition, or of personal resentment. Under such circumstances, therefore, how essential is it for the interests of society that men of fit character, and such as will meet the public confidence, should be appointed to this office?

When a Statute directs certain things to be done generally by *Justices of the Peace*, and no power is expressly given to *one Justice* to act under it, a single Justice in that case, has no jurisdiction to execute its provisions, (Dalt. Just., c. 5.—1 Deacon 714,) yet, if the offence be any misdemeanor, or matter against the peace, then upon complaint made to one Justice, he may of his own authority grant a warrant for the apprehension of the offender, in order that he may be brought before himself and some other Justice, for the purpose of hearing and determining the complaint. (Dalt. Just., c. 6.—Burns, J.) When a Justice is out of the particular District for which he

is commissioned, he has no coercive magisterial power, and, therefore, his acts or orders are not binding. It seems, however, that recognizances and informations voluntarily taken before him in any place, are good. (2 Hawk, c. 8, S. 28.) But a Justice has no jurisdiction either over the offence or the offender, when the one is committed, and the other abiding, in another District.

There are cases, however, where the presence of the offender, within the District or jurisdiction of the Justice, which authorises him, from the necessity of preserving the peace, to proceed against the offender. Thus, if a man commit a felony in the District of Quebec or Three Rivers, and comes into the District of Montreal, a Justice of the latter District may take the information against him and also his examination, and may commit him and bind over the witnesses to give evidence at the trial, and in short proceed in all respects, as if the offence had been committed within his jurisdiction.—2 Hale, 50.

By Statute 24, Geo. 2, cap. 55, if any person against whom a warrant is issued shall escape into any other county, any Justice of that county, upon proof of the hand-writing of the Justice granting the warrant, may endorse his own name thereon, which shall be sufficient authority to the person charged with the execution of the warrant, to execute the same in such other county, and carry the offender before the Justice who endorsed the warrant, or any other Justice of that county, in case the offender be bailable, but if not, then before a Justice of the county where the offence was committed.

In cases of summary conviction, and the lighter kinds of misdemeanors, a Magistrate should issue a

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summons against the party, and not a warrant in the first instance. (13 East. 55.) But if the party disobeys the summons, then the Justice may properly issue a warrant against him, that is where the presence of the party is anywise necessary for the object of the complaint or prosecution, for when a Statute gives a Justice jurisdiction over an offence, it impliedly gives him a power to compel the attendance of the party charged with it, (2 Hawk, c. 13, s. 15.—10 Mod. 248.—2 Bing. 63.)

It is in the discretion of Magistrate when he takes the examination of a person charged before him with felony, whether he will allow the presence of an Attorney, or other person acting as legal adviser, either for the prisoner or prosecutor, for such an examination is only a preliminary enquiry, whether there be sufficient ground to commit the prisoner for trial, (13 and c. 37.—3 B. and A 432. —1 Chitt. Rep. 217.—2 D. and R. 86,) and if an Attorney had a right to be present, there could never be any private examinations, which are often necessary for the purposes of justice, in order to find where further evidence may be obtained, and to get at accomplices, an object that would be entirely defeated if an Attorney for one of a gang of felons might obtain and convey information to the rest.

In the case, however, of a trial, or summary conviction before a Magistrate there is a difference; here the Magistrate acts judicially, and it is reasonable that a party should have professional assistance before he is fully condemned to pay a penalty, or suffer a term of imprisonment.

A Justice of the Peace out of Sessions, before information led in Court, or indictment found, has

jurisdiction in the first instance upon sufficient affidavits to issue his warrant to apprehend a party charged with publishing a libel, and requiring him to find bail, and in default of sureties to commit to prison to abide his trial, 4 Moore, 195.—1 B, and B. 548.

When an Act empowers two Justices to execute a judicial act they must meet and execute it together, and cannot proceed separately. (3 T. Rep. 38., 2 East. 244.)

On complaint for breach of the peace, or threats, or other sufficient cause, a Justice of the Peace is authorised to require sureties of the peace, for a limited time, according to his discretion, and need not bind the party over to the next Sessions only, (2 B. and A. 278.)

A Justice may issue his warrant to search for stolen property, and to bring a party before him, upon the representation of a reasonable suspicion of felony committed, and it is not absolutely necessary that there should be a direct and positive averment on oath, 1 D. and R. 102.

Although a Justice of the Peace is required to administer an oath in the investigation of matters properly brought before him in his judicial character, yet it is very questionable whether he is justifiable in taking a voluntary affidavit made on any extrajudicial matter, as is frequently done, upon any petty occasion, as swearing to an account or matter of debt, or any fact or circumstance unconnected with any proceeding legally had before the Justice, (4 Bl. com. 137.) There can be no conviction for perjury on such affidavits, although the guilt of it

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may be incurred. Lord Coke says, it is a high contempt to administer any such oath, and that the offence is punishable by fine and imprisonment, 3 Inst. 165.

In all cases where a Justice may hear and determine out of Sessions, whether on his own view, on confession, or the oath of witnesses, he ought to make a record in writing under his hand of all the matters and proofs, which record must be returned to the Sessions.

CRIMINAL STATUTES OF CANADA.

An Act to reduce the number of cases in which Capital Punishment may be inflicted; to provide other punishment for offences which shall no longer be Capital after the passing of this Act; to abolish the privilege called benefit of Clergy, and to make other alterations in certain Criminal Proceedings, before and after conviction.*

[Passed 13th February, 1833.]

Preamble.—Whereas it is fit that it should be plainly declared in the Statutes of this Province, for what crimes offenders shall be liable to be punished with death; And whereas it does not seem to be indispensable, for the security and well being of society, that the punishment of death should be inflicted in any other cases than those hereinafter mentioned.—Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act pass-

*See Statutes of Canada, 3 Wm. IV., chap. 4.

ed in the Parliament of Great Britain, entitled "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, entitled "An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province," and by the authority of the same, that if a person do compass or imagine the Death of our Lord the King, or if a person do levy War against our Lord the King, in this Province, or be adherent to the King's enemies in this Province, giving to them aid and comfort, in this Province, or elsewhere, and thereof be provably attainted of open deed by people of his condition, such persons so attainted shall be deemed guilty of Treason, and shall suffer Death.

2. *Murder*.—Every person convicted of Murder, or of being an accessory before the fact to Murder, shall suffer Death as a Felon.

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

4. *Rescuing Persons*.—If any person or persons whatsoever shall by force set at liberty or rescue, or attempt to rescue, or set at liberty, any person out of prison who shall be committed for, or found guilty of murder; or rescue, or attempt to rescue, any person convicted of Murder going to execution, or during execution, every person so offending shall

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be deemed, taken and adjudged to be guilty of felony, and shall suffer death.

5. *Rape*.—Every person convicted of the crime of Rape, shall suffer death as a felon.

6. *Carnal Knowledge*.—If any person shall unlawfully carnally know and abuse any girl under the age of ten years, every such offender shall be guilty of felony, and being convicted thereof, shall suffer death as a felon.

7. *Sodomy*.—Every person convicted of the abominable crime of Buggery, committed either with mankind or with any animal, shall suffer death as a felon.

8. *Robbery*.—If any person shall Rob any other person of any chattel, money, or valuable security; or shall rob any person carrying or conveying, or having charge of His Majesty's Mail, in any part of this Province, of any letter or letters, packet or packets, bag or mail of letters, every such offender, being convicted thereof, shall suffer death as a felon; and such offenders shall and may be inquired of, tried and determined, either in the District in which the offence shall be committed, or in which the offender shall or may be apprehended.

9. *Burglary*.—Every person convicted of Burglary, shall suffer death as a felon.

10. *What shall be deemed to be part of the Dwelling House*.—No Building, although within the same curtilage with the dwelling house, and occupied therewith, shall be deemed to be part of such dwell-

ling house, for the purpose of burglary, unless there shall be a communication between such building and dwelling house, either immediate or by means of a covered passage leading from the one to the other.

11. *Arson*.—If any person shall unlawfully and maliciously set fire to any church or chapel, or to any building commonly used for religious worship, or to any house, stable, coach-house, out-house, ware-house, office, shop, mill, malt-house, barn or granary, or to any building or erection used in carrying on any trade or manufacture, or any branch thereof, whether the same, or any of them respectively, shall then be in the possession of the offender, or in the possession of any other person, with intent thereby to injure or defraud any person, or any body corporate or company of persons, every such offender shall be guilty of felony, and being convicted thereof, shall suffer death as a felon.

12. *Accessories before the Fact*.—Every person convicted of being an Accessory before the Fact to any of the offences made capital by this Act, shall suffer death as in cases of felony.

13. *British Statute, 1 Geo. 1, chap 5, commonly called "the Riot Act," recited*.—And whereas, for the preventing and suppressing of Riots and Tumults, and for the more speedy and effectual punishing the offenders therein, an Act was passed in the Parliament of Great Britain, in the first year of the reign of King George the First, entitled "An Act for preventing Tumults and Riotous Assemblies, and for the more speedy and effectual punishing the Rioters," whereby it is among other things enacted, that "if any persons to the number of twelve or more, being unlawfully,

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riotously and tumultuously assembled together, to the disturbance of the Public peace, at any time after the last day of July, in the year of our Lord one thousand seven hundred and fifteen, and being required or commanded by any one or more Justices of the Peace, or by the Sheriff of the County, or Under Sheriff, or by the Mayor, Bailiff or Bailiffs, or other Head Officer, or Justice of the Peace of any City, or Town Corporate, where such assembly shall be, by Proclamation, to be made in the King's name, in the form in the said Act directed, to disperse themselves and peaceably to depart to their habitations, or to their lawful business, shall, to the number of twelve or more, (notwithstanding such proclamation made) unlawfully, riotously and tumultuously remain or continue together by the space of one hour after such command or request made by Proclamation, that then such continuing together to the number of twelve or more, after such command or request made by Proclamation, shall be adjudged felony without benefit of Clergy, and the offenders therein shall be adjudged felons, and shall suffer death as in case of felony, without benefit of Clergy. And it is in the said Act further enacted, that the order and form of the Proclamation which shall be made by the authority of the said Act shall be as hereafter followeth, (that is to say) :—That the Justice of the Peace, or other person authorised by the said Act to make the said Proclamation, shall, among the said Rioters, or as near to them as he can safely come, with a loud voice command, or cause to be commanded silence to be, while Proclamation is making; and, after that, shall openly and with a loud voice, make, or cause to be made Proclamation in these words, or like in effect :—

Proclamation for Rioters to disperse.—Our Sovereign Lord the King chargeth and commandeth all persons being assembled immediately to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, upon the pains contained in the Act made in the First year of King George, for preventing tumults and riotous assemblies.—God save the King.

And every such Justice of the Peace, Sheriff, Under Sheriff, Mayor, Bailiff, and other Head Officer aforesaid, within the limits of their respective jurisdictions, are by the said Act authorised, empowered, and required, on notice, or knowledge of any unlawful riotous assembly, to resort to the place where such unlawful riotous persons are to the number of twelve or more, and there to make Proclamation in manner aforesaid. And that if such persons so unlawfully assembled, or twelve or more of them, after Proclamation made in manner aforesaid, shall continue together, and not disperse themselves within one hour, that then it shall be lawful for every Justice of the Peace, Sheriff, or Under Sheriff of the County where such assemblies shall be, and for such other persons as shall be commanded, to be assisting unto any such Justice of the Peace, Sheriff, Under Sheriff, Bailiff, or other Head Officers, (who are authorised to command all His Majesty's subjects of age and ability, to be assisting to them therein,) to seize and apprehend such persons so unlawfully, riotously, and tumultuously continuing together after Proclamation made as aforesaid, and forthwith to carry the persons so apprehended before one of His Majesty's Justices of the Peace of the County or place where such persons shall be

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so apprehended, in order to their being proceeded against for such their offences, according to law, and if the persons so unlawfully and riotously assembled or any of them, shall happen to be killed, maimed or hurt in the dispersing, seizing, or by reason of their resisting the persons so dispersing them, that then every such Justice of the Peace, Sheriff or other Peace Officers, and all and singular persons being aiding and assisting to them or any of them shall be free, discharged and indemnified.

14. *Statutes of Upper Canada, 36 Geo. 3, ch. 1 ;* —An Act for the further introduction of the Criminal Law of England in this Province, and for the more effectual punishment of certain offenders ; and of the several Acts of the Parliament of this Province, passed authorising the issuing of Government Debentures, as provides that any offence in any of those Statutes respectively mentioned, shall be punishable with death, shall be and the same is hereby repealed ; and that such offences shall continue to be of the degree of felony, and the persons convicted thereof shall be liable to the punishments, or any of them, which are by this Act provided in respect to felonies generally, which are not punishable with death.

15. *Persons confessing, or outlawed, to be punished in the same manner as if convicted by verdict.* —If any person shall be indicted for any offence made capital by this, or any other Statute made or to be made, such person shall be liable to the same punishment, whether he or she shall be convicted by verdict or confession, or shall be outlawed, upon indictment ; and this as well in the case of accessories as of principals.

16. *Certain forms on arraignment dispensed with**
 —If any person being arraigned upon any indictment for Treason or Felony, shall plead thereto a plea of “Not Guilty,” he shall by such plea without any further form be deemed to have put himself upon the country for trial—and that if any person being arraigned upon any indictment for Treason or Felony, shall stand mute of malice, or will not answer directly to the indictment, in every such case it shall be lawful for the court, if it shall so think fit, to order the proper officer to enter a plea of “Not Guilty,” on behalf of such person, and the plea so entered, shall have the same force and effect as if such person had actually pleaded the same.

17. *Sentence in certain cases of High Treason mitigated.*—Whereas in certain cases of High Treason, as the Law now stands, the sentence of judgment required by Law to be pronounced or awarded against any persons convicted or adjudged guilty of the said crime, in such cases, is, that they should be drawn on a hurdle to the place of execution, and there be hanged by the neck, but not until they are dead, but that they should be taken down again, and that when they are yet alive their bowels should be taken out, and burnt before their faces; and that afterwards their heads should be severed from their bodies, and their bodies divided into four quarters, and their heads and quarters to be at the King's disposal: And whereas it is expedient in the said cases of High Treason to alter the sentence or judgment required by Law: Be it therefore enacted by the authority aforesaid, that in all cases of High Treason in which, as the Law now stands, the sentence

*Statute 4 & 5 Vic., chap. 24, sec. 14.

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or judgment to be pronounced or awarded from and after the passing of this Act against any person convicted or adjudged guilty shall be, that such person shall be drawn on a hurdle to the place of execution, and be there hanged by the neck until such person be dead—and that afterwards the body of such person shall be dissected and anatomized.

18. *Persons convicted of Murder.**—Whenever any person shall be convicted of Murder, and executed therefor, the body of such murderer shall be delivered by the Sheriff, or his Deputy, and his Officers, to a Surgeon, for the purpose of being dissected and anatomized.

19. *Sentence when to be passed—Term of the sentence.†*—The sentence shall be pronounced in open Court immediately after the conviction of such Murderer, and before the Court shall proceed to any other business, unless the Court shall see reasonable cause for postponing the same; in which sentence shall be expressed, not only the usual judgment of death, but also the time appointed for the execution thereof, and the mark of infamy hereby directed for such offenders; in order to impress a just horror in the mind of the offender, and on the minds of such as shall be present of the heinous crime of murder.

20. *Respite.*—After such sentence pronounced, as aforesaid, in case there shall appear reasonable cause, it shall be lawful to and for such Judge or Justice, before whom such criminal shall have been so tried, to stay the execution of the sentence, at the discretion of

* Statute 4 & 5 Victoria, chap. 27.

† Statute 4 & 4 Victoria, chap. 27, sec. 4 and 5.

such Judge or Justice, regard being always had to the true intent and purpose of this Act: Provided also that it shall be in the power of any such Judge or Justice to appoint the body of any such criminal to be dissected and anatomized.

21. *Further regulations—Food of Convicts.*—After sentence passed as aforesaid, and until the execution thereof, such offender shall be fed with bread and water only, except in case of any violent sickness, or wound, in which case some known Physician, Surgeon or Apothecary may be admitted by the Gaoler or keeper of said Prison to administer necessaries, the Christian and Surname of such Physician, Surgeon or Apothecary, and his place of abode being first entered in the books of such Prison or Gaol.

22. *Benefit of Clergy abolished.**—From and after the passing of this Act, benefit of Clergy in this Province shall be abolished, and that the same need not in any case be prayed, and shall not in any case be allowed, any Law, Statute or usage to the contrary, notwithstanding; and that in all cases of crimes made punishable by this Act with death, the effect of such provision shall be the same as in the case of any offence which, before the passing of this Act was made punishable with death without benefit of Clergy.

23. *For what Felonies offenders may be whipped or set in the pillory.†*—If any person shall be convicted, after the passing of this Act, of Forgery, or

* Statute 4 & 5 Victoria, Chap. 24, Sec. 19 & 20.

† See 4 & 5 Victoria, Chap. 24, Sec. 31.

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of uttering any forged deed, will, instrument, note, bill or writing, or of falsely personating any person or persons, which forgery, or which uttering, or which false personating was, before the passing of this Act, punishable with death in this Province, the Court before which such person shall be convicted may, if they shall think fit, adjudge such person (unless in case of a female) to be set in the Pillory, once or oftener, or to be once or oftener publicly or privately whipped, at such time or times, and at such place or places as they may direct, which punishment shall either be in addition to any other punishment which the Court, according to Law, may award, or otherwise, as may to them appear proper.

1. *Any person procuring Soldiers or Sailors to desert.**—That from and after the passing of this Act, if any person other than enlisted Soldiers in Her Majesty's Service, or Sailors in the Naval service of Her Majesty, shall by words or with money, or by any ways, methods or means whatsoever, directly or indirectly, prevail upon, procure, persuade or encourage any such Soldiers or Sailors to desert, or leave Her Majesty's Naval or Military service as aforesaid, and shall be thereof lawfully convicted before any Court of Oyer and Terminer and general gaol delivery in this Province, such person so offending shall be deemed guilty of a misdemeanor, and upon conviction shall be liable to be punished by imprisonment in the Common Gaol of the District in which such conviction shall happen, or by imprisonment in the Provincial Penitentiary in this Province, for

* 3rd Victoria, Chap. 4.

such period as the Court before which such trial shall take place shall in their discretion adjudge, and shall be further liable to the payment of such fine as the said Court shall impose upon and require to be paid by such offender.

2. *Citizens or subjects of a foreign Power taken in arms.*—That if any person, being a citizen or subject of any foreign State or Country, at peace with the United Kingdom of Great Britain and Ireland, shall after the passing of this Act, be or continue in arms against Her Majesty, her heirs or successors, within this Province, or shall commit any act of hostility therein, or shall enter this Province, with design or intent to levy war against Her said Majesty, or to commit any felony within the same, for which any person convicted of such felony would by the laws of this Province be liable to suffer death, then it shall and may be lawful for the Governor of this Province to order the assembling of a Militia general Court Martial for the trial of such person, agreeable to the Militia Laws of this Province; and upon being found guilty by such Court Martial to suffer death, or such other punishment as shall be awarded by the Court.

INFORMATION FOR DISTURBANCE OF A CONGREGATION IN CHURCH DURING DIVINE SERVICE, UNDER 4 & 5 VIC., CHAP. 27, SEC. 31.*

DISTRICT OF } Information of D. C., of the Parish
 _____ } of _____ in the said District, yeoman, taken before me, M. W., Esqr.,
 one of Her Majesty's Justices of the _____ District.

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The said D. C. being duly sworn, deposeth and saith, that on Sunday the ——— day of ——— instant, a congregation of persons being assembled and met together in the Parish Church of the said Parish, (*or in any Church, Chapel or other place of worship as the case may be*) for the purpose of religious worship, E. F., late of the said Parish, tailor, and G. H., of the same place, labourer, together with divers other evil disposed persons, did, during the performance of such religious worship in the said Parish Church (*or such Church, Chapel, &c., as above*) the day and year aforesaid, at the Parish aforesaid, wilfully interrupt and disquiet the said congregation so assembled, by making a great noise, and hollowing at and near the said Church (*or Church, Chapel, &c., as above*) and throwing stones against and breaking the windows of said Church (*or Church, Chapel, &c., as above*) (*or other disturbances as the case may be*) whereby the said congregation was greatly disturbed, and the said religious worship indecently interrupted. Therefore prays justice in the premises.

Sworn at ——— in the said)
 District, this ——— day of) (Signed,) D. C.
 ——— 18—, before me.)
 (Signed,) M. W., J. P.

 COIN AND CURRENCY.*

By the Act of the Provincial Legislature of the 4 and 5 Vic., c. 93, sec. 12, made to regulate the Currency of this Province, it is provided, that if any person shall colour, guild or case over with gold or

* See Magistrate's Manual, page 112.

silver, or any thing producing the colour of gold or silver, any coin of coarse gold or of coarse silver, or of base metal resembling any coin current by the said Act—or if any person shall bring or import into this Province any forged, false or counterfeit gold, silver or copper coin, like to any of the gold, silver or copper coin made current by the said Act, knowing the same to be false, &c.—or if any person shall alter or tender in payment as being any of the gold, silver or copper coin, made current by the said Act, any false or counterfeit coin, counterfeited to any of the gold, silver or copper coins made current by said Act, knowing the same to be false or counterfeit, such person shall be guilty of a misdemeanor, and on conviction shall be liable to imprisonment and hard labour—and if such person shall afterwards offend in like manner, he shall be guilty of felony, and punished accordingly.

By sec. 13. If any person shall form, make, cut, sink, stamp, engrave, repair or mend, or shall assist in forming, &c., or shall have in his possession, except for some known and lawful purpose, any die, plate, press, tool or instrument, paper, matter or material, of any kind used or designed for the purpose of counterfeiting or imitating any coin which shall be lawfully current in this Province by virtue of this Act,—or any Bank note, bill, note or writing, purporting to be a Bank note in circulation in this Province, or in any of the United States of America adjoining this Province,—such person shall be guilty of a misdemeanor, and shall be liable to punishment accordingly. And the proof that such die, plate, press, tool or instrument, paper, metal or material, was formed, made, cut, sunk, stamped, engraved, re-

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paired or mended by, or was in the possession of such person, for some lawful purpose shall be upon him or her.

By sec. 14. It is declared lawful for any Justices of the Peace upon complaint made on oath before him, that there is just cause to suspect, that any person or persons, is or are, or hath or have been concerned in making, counterfeiting or imitating any such coin, bank note, bill, note or writing as aforesaid, by warrant under his hand, to cause the dwelling house, room, workshop, outhouse or other buildings, yard, gardens, ground or other place belonging to such suspected person or persons, to be searched for any counterfeit coin, &c. And if any such, or any die, plate, press, &c., as aforesaid, shall be found in the such possession or custody of any person whatsoever, it shall be lawful for any person or persons discovering the same to seize and carry the same forthwith before a Justice of the Peace, having jurisdiction within the locality in which the same shall be seized, who shall cause the same to be secured and produced in evidence against the offender.

By sec. 15. The person to whom any suspicious gold, silver or copper coin shall be tendered in payment, may cut or break the same, and if found counterfeit, the person tendering the same shall bear the loss, otherwise the person breaking it shall receive a sum proportionate to its weight. And if any question arise, whether such coin be counterfeit, it shall be determined by any Justice of the Peace, who if he entertain any doubt in that behalf, may summon three skilful persons,—the decision of a majority of whom shall be final.

CONSTABLE.*

The Constable is a Peace officer generally chosen by the Justices at their Quarter Sessions, and is the proper officer to a Justice of the Peace, and bound to execute his warrants.—*Burns*.

Every Constable is by the Common Law, a conservator of the Peace, and is authorised without any warrant to arrest all traitors, felons, or suspicious persons, and in case of any breach of the Peace committed, or about to be committed in the presence of a Constable, or where violent threats or attempts are used by any person to beat or hurt another, he may arrest the party, and carry him before a Magistrate, or detain him till he can conveniently do so.— [2. Hawk, c. 12, sec. 19.

By St. 27, Geo. 2., c. 20, sec. 2., a Constable executing any warrant of distress, must, if required, shew the same to the person whose goods are distrained, and suffer a copy thereof to be taken. But in no case is a Constable required to part with his warrant out of his possession, for that is his justification under 24 Geo. 2, c. 44, sec. 6., in case of any action brought against him.

By the Ordinance of the Governor and special Council of the 4 & 5 Vic. c. 17, s. 7, the Policemen appointed for the Cities of Quebec and Montreal, are sworn in as Constables in the several Districts, for preserving the Peace, and preventing robberies and other felonies, and apprehending offenders against the peace, and it is ordained, that the men so sworn, have within the said Districts all such powers and

* See Magistrate's Manual, page 130.

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authorities, privileges and advantages, and shall be liable to all such duties and responsibilities as any Constable duly appointed has now, or hereafter may have under and by virtue of the laws of this Province, or of any Statute or Ordinance made or to be made, and shall obey all such lawful commands as they may from time to time receive from the Commissioner of Police, for conducting themselves in the execution of their office.

ABDUCTION OF WOMEN.

By the Act of the Provincial Legislature of the 4 & 5 Vict: c. 27: Sec. 19—If any person shall, from motives of lucre, take away or detain any woman, against her will, having any interest, whether legal or equitable, present or future, absolute, conditional or contingent, in any real or personal estate, or shall be an heiress presumptive, or next of kin to any one having such interest, with intent to marry or defile her, or to cause her to be married to any other person, or defiled by any other person, every such offender shall be guilty of felony, and on conviction liable to be imprisoned at hard labour at the discretion of the Court.

By Sec. 20. If any person or persons shall unlawfully take, or cause to be taken, any unmarried girl under the age of sixteen years, out of the possession, and against the will of her Father or Mother, or any other person having the lawful care or charge of her, every such offender shall be guilty of a misdemeanour, and on conviction suffer such punishment, by fine or imprisonment, or both, as the Court shall see fit.

By Sec. 21. If any person or persons shall maliciously, either by force or fraud, lead or take away, or decoy, or entice away, or detain any child under the age of ten years, with intent to deprive the parent or parents, or any other person or persons having the lawful care or charge of such child, of the possession of such child, or if any person shall, with any such intent, receive or harbour any such child, knowing the same to be enticed, taken away, or detained, every such offender, and every person counselling, aiding, or abetting such offender, shall be guilty of felony, and on conviction liable to imprisonment at hard labour in the Penitentiary for not less than seven years, or in any other prison for any time not exceeding two years.

Under this Law, as in all cases of felony and misdemeanour, the Justice of the Peace can receive the necessary information, or depositions of Witnesses, to substantiate the offence, and grant his Warrant to arrest the offender—and after taking his examination, and the examinations of the witnesses in his presence, as in the case of felony, commit him to prison for trial, or admit him to bail, as circumstances may require.

LARCENY.

An Act of the 4th and 5th Vic., chap. 25, entitled an Act for consolidating and amending the Laws of this Province, relative to Larceny, and other offences connected therewith.

By Sec. 2, the distinction between Grand and Petty Larceny is abolished, and every Larceny, whatever be the value of the property stolen, shall

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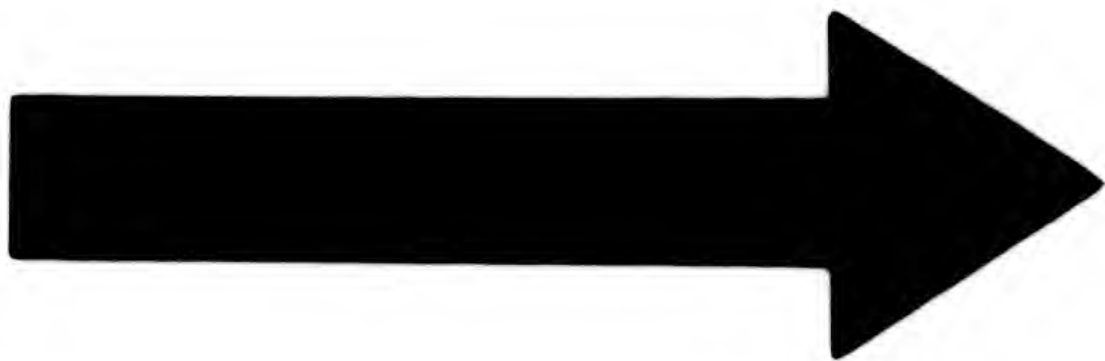
be deemed to be of the same nature, and subject to the same incidents in all respects as Grand Larceny was before the commencement of this Act, and every Court whose power as to the trial of Larceny was, before the commencement of this Act, limited to Petty Larceny, shall have power to try every case of Larceny, the punishment of which cannot exceed the punishment hereinafter mentioned for simple Larceny, and also to try accessories to such Larceny.

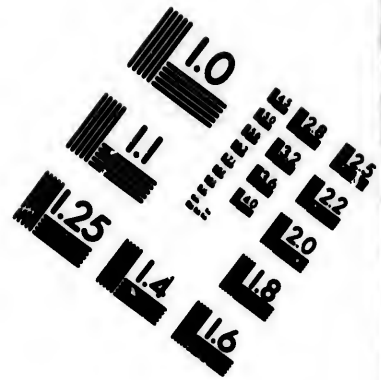
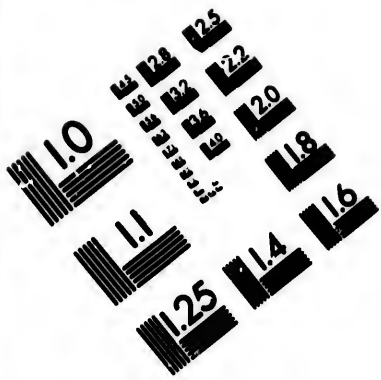
By Sec. 3, every person convicted of simple Larceny, or of any felony made punishable like simple Larceny, shall be liable to imprisonment and hard labour at the discretion of the Court.

By Sec. 4, where any person shall be convicted of any felony or misdemeanor punishable under this Act, for which imprisonment may be awarded, it shall be lawful for the Court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour in the Common Gaol 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 to such imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three in any one year, as to the Court in its discretion shall seem meet.

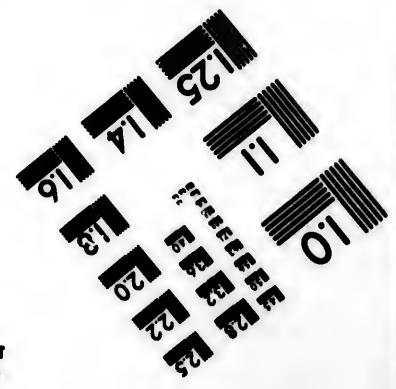
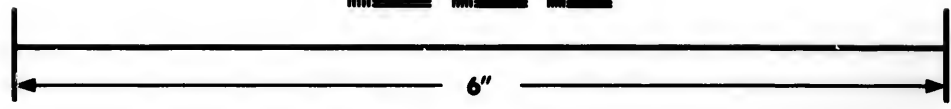
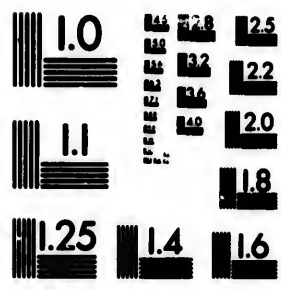
By Sec. 6, whosoever shall rob any person, and at the same time shall cut, stab, or wound any person, shall be guilty of felony, and shall suffer death.

By Sec. 7, whosoever shall, with any offensive weapon, rob, or assault with intent to rob, any person, or shall beat, or use any personal violence to





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any person, shall be guilty of felony, and liable to be punished with imprisonment and hard labour at the discretion of the Court.

By Sec. 8, whosoever shall accuse or threaten to accuse any person of the abominable crime of Buggery, or of making any solicitations, promise or threat to any person whereby to move or seduce such person to commit, or permit such crime, or shall by intimidating such person by such accusation to extort or gain property, shall be guilty of felony, and liable to be punished by imprisonment and hard labour at the discretion of the Court.

By Sec. 9, whosoever shall rob any person, or shall steal any money, chattel, or valuable security from the person of another, shall be liable to imprisonment and hard labour for a term of years.

By Sec. 11, whosoever shall, by force or menaces, demand any chattel, money, or valuable security of any person, with intent to steal the same, shall be guilty of felony, and be liable to imprisonment.

By Sec. 13, if any person shall break and enter any Church or Chapel, and steal therein any chattel,—or having stolen any chattel, money, or valuable security therein, shall break out of the the same, he shall be liable to imprisonment and hard labour, at the discretion of the Court.

By Sec. 14, whosoever shall break and enter any dwelling house, and shall assault with intent to murder any person being therein, or shall stab, cut, wound, beat, or strike, any such person, shall be guilty of felony, and shall suffer death.

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By Sec. 15, whosoever shall be guilty of burglary, shall be liable to imprisonment and hard labor, at the discretion of the Court. Night shall be considered, and is declared to commence at nine o'clock in the evening and to conclude at six in the morning. If any person shall enter the dwelling house of another with intent to commit any felony, or being in such dwelling house, shall commit any felony, and shall in either case break out of said dwelling house in the night time, such person shall be guilty of burglary.

By Sec. 17, whosoever shall steal any chattel, money, or valuable security, in any dwelling house, and shall by menace or threat, put any one being therein in bodily fear, shall be guilty of felony, and be liable to imprisonment and hard labor.

By Sec. 18, no building, although within the same curtilage with the dwelling house, shall be deemed to be part of such dwelling house, for the purpose of burglary, unless there shall be a communication between such building and dwelling house, either immediate or by means of a covered or inclosed passage, leading from the one to the other.

By Sec. 19, if any person shall break or enter any building, being within the curtilage of the dwelling house, but not being part thereof, and steal therein any chattel, money, or valuable security, shall be liable to imprisonment and hard labour.

If any person break and enter any shop or counting-house, and ~~steal therein~~ he shall be liable to

By Sec. 21, if any person shall steal any goods in any vessel, barge, or boat, in any port, or upon any navigable river or canal, or from any dock or wharf adjacent to such port, he shall be liable to the same punishment as hereiubefore mentioned.

By Sec. 22, whosoever shall plunder or steal any part of a ship wrecked or in distress, or any goods of any kind belonging to such ship, shall be liable to imprisonment and hard labour.

By Sec. 23, if any goods belonging to any ship wrecked or in distress, shall, by virtue of a search warrant, be found in possession, or on the premises of any person, who shall not be able to satisfy the Justice of the Peace that he came lawfully by the same, the Justice may order the same to be delivered to the proper owner; and the offender, upon conviction of such offence before the Justice, shall forfeit and such pay sum of money, not exceeding twenty pounds, as the Justice may seem meet.

By Sec. 24, if any person shall offer for sale any articles suspected to have been taken unlawfully from any ship or vessel so wrecked or in distress—in such case the person to whom the said articles are offered for sale, or any Custom House or Peace Officer, may lawfully seize the same, and give notice to some Justice of the Peace; and if the person who offered the same for sale, upon being summoned by the Justice, shall not appear and satisfy the Justice that he came lawfully by and in possession of such articles, then the same shall be ordered by the Justice to be forthwith delivered over to and for the use of the owner, upon payment of a reasonable reward to the person who seized the same.

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STEALING OF RECORDS.

By Sec. 25, if any person shall steal, obliterate or destroy any record, writ, return, pannel, process, interrogatory, deposition, affidavit, rule, order, or warrant of Attorney, or any original document whatever, of, or belonging to any Court of Justice, every such offender shall be guilty of a misdemeanor, and on conviction shall be liable to imprisonment and hard labour, or to fine and imprisonment, as the Court may award.

By Sec. 26, if any person shall during the life, or after the death of a Testator, or Testatrix, steal, or for any fraudulent purpose destroy or conceal any will or codicil, he shall be guilty of a misdemeanor, and liable to the punishment above last mentioned.

By Sec. 27, if any person shall steal any original papers, &c., being evidence of the title to any real estate, he shall be guilty of a misdemeanor, and liable to the same punishment as last before mentioned.

By Sec. 28, no conviction or judgment for any of the above misdemeanors, shall prevent any remedy at law or equity which the party aggrieved by such offence would have had, if this Act had not been passed.

By Sec. 29, if any person shall steal any horse, mare, gelding, colt or filly, or any bull, cow, ox, heifer or calf, or any ram, ewe, sheep or lamb, or shall wilfully kill any such cattle, with intent to steal the carcase or skin, he shall be guilty of felony, and be liable to imprisonment and hard labor, at the discretion of the Court.

By Sec. 30, if any person shall steal any dog, bird, or beast ordinarily kept in confinement, and being convicted thereof, before any Justice of the Peace, shall for every such offence, forfeit and pay over and above the value of the dog, &c., such sum of money, not exceeding five pounds, as to the Justice shall seem meet.

By Sec. 31, if any person shall steal, or cut, break, root up, or otherwise destroy or damage, with intent to steal, any part of any tree, sapling or shrub, or any underwood, wheresoever the same may be growing, the stealing of such things, or the injury done, being to the amount of one shilling at the least, every such offender being convicted before any Justice of the Peace, shall for every such offence forfeit and pay, over and above the value of the articles stolen, or the amount of injury done, such sum of money, not exceeding five pounds, as to the Justice shall seem meet.

By Sec. 32, if any person shall steal, or 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 and used as a fence, or any stile or gate, or any part thereof, upon conviction before any Justice of the Peace, he shall for every such offence forfeit and pay, over and above the value of the articles stolen, or the amount of injury done, such sum of money, not exceeding five pounds, as to the Justice shall seem meet.

By Sec. 33, if the whole or any part of any tree, sapling, or any underwood, or any part of any live or dead fence, or any post, rail, or stile gate, or any

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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 Justice of the Peace, shall not satisfy the Justice that he came lawfully by the same, he shall, on conviction by the Justice, forfeit and pay over and above the value of the article so found, any sum not exceeding two pounds.

By Sec. 34, 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, and being convicted thereof before a Justice of the Peace, shall forfeit and pay over and above the value of the articles stolen, or amount of the injury done, such sum of money, not exceeding five pounds, as to the Justice shall seem meet; and upon a subsequent conviction shall be liable to be punished as for simple larceny.

Stealing Vegetable Productions.—By Sec. 35, If any person shall steal, or destroy, or damage with intent to steal, any cultivated root or plant used for the food of man, or beast, or for medicine, distilling or dyeing, or for or in the course of any manufacture, growing in any land open or enclosed, not being a garden, or orchard; every such offender being convicted thereof before a Justice of the Peace, shall forfeit and pay over and above the value of such articles so stolen, or the amount of the injury done, such sum of money, not exceeding twenty shillings, as to the Justice shall seem meet, and in default of payment thereof, together with the costs, if ordered, he shall

be committed to the House of Correction for any time not exceeding one calendar month, unless payment be sooner made.

SIMPLE LARCENY.

Stealing glass, wood-work or fixtures of any kind from buildings, and metal fixtures from grounds.—

By Sec. 36, if any person shall steal, rip, cut, or break with intent to steal, any glass or wood-work belonging to any building, or any lead, iron, copper, brass, or other metal, or any utensil or other fixture, whether made of metal or other materials, fixed in or to any building or anything made of metal fixed in any land, being private property, or in any square, street, or other place dedicated to public use or ornament, every such offender shall be guilty of felony, and liable to be punished as in case of simple Larceny.

Tenants or Lodgers stealing from apartments.—

By Sec. 37, if any person shall steal any chattel or fixture, let to be used in or with any house or lodging, he shall be guilty of felony, and punished as for simple larceny. If any clerk or servant shall steal the property of his master, he shall, in cases not capitally punishable, be liable to imprisonment and hard labor at the discretion of the Court.

By Sec. 38, if any clerk or servant shall fraudulently embezzle any chattel, money, &c., he may receive on account of his master, every such offender shall be deemed to have feloniously stolen the same from his master, and shall be liable to the punishments hereinbefore last mentioned.

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Mode of proceeding against such offenders.—By Sec. 39, distinct Acts of embezzlement may be charged in the same indictment which may have been committed within six calendar months from the first to the last of these acts.

Agents embezzling money entrusted to them for special purposes.—By Sec. 40, if any money or security for the payment of money, be entrusted to any banker, merchant, broker, attorney, or other agent, with directions in writing to apply the same to any particular purpose, and he shall in violation of good faith, convert the same to his own use, every such offender shall be guilty of a misdemeanor, and be liable to imprisonment and hard labor. So also in the case of any power of attorney for the sale or transfer of any share or interest in any public stock or fund, should such banker or merchant convert the same to his own benefit.

By Sec. 41, factors pledging for their own use, any goods entrusted to them for the purpose of sale, or any warrant or order for the delivery of any goods, are declared guilty of a misdemeanor, and liable to fine, imprisonment and hard labor at the discretion of the Court,—not to extend to cases where the pledge does not exceed the amount of the lien of such factor.

Of obtaining money under false pretences.—By Sec. 42, if any person shall by any false pretence, obtain from any other person, any chattel, money, or valuable security, with intent to cheat or defraud any person of the same, such offender shall be guilty of a misdemeanor, and be liable to imprisonment and hard labor.

Accessories to felony, how and when to be tried. — By Sec. 43, if any person shall receive any chattels, money or other property, the stealing whereof would amount to felony, such person knowing the same to have been stolen, shall be guilty of felony, and may be tried and convicted, either as an accessory after the fact, or for a substantial felony, and be liable to imprisonment and hard labor.

Receivers may be tried where the property is found. —By Sec. 44, all persons charged as receivers of stolen property, whether as accessory after the fact, to the felony or with a substantive felony, or with a misdemeanor, may be tried and punished in the District or place in which he shall have had such property in his possession, or wherever the party guilty of the principal felony or misdemeanor may be tried.

By Sec. 45, if the person guilty of stealing, or of receiving stolen property, shall be prosecuted to conviction by or on behalf of the owner, he, or his legal representative shall have restitution of the property by order of the court.

Taking rewards for helping to recover Stolen Goods.—By Sec. 50, if any person shall corruptly take any reward under pretence of helping the owner of such stolen property to recover it, unless he cause the offender to be apprehended and brought to trial, he shall be guilty of felony, and punishable by imprisonment and hard labor.

By Sec. 51, if any person shall publicly advertise a reward for the return of any stolen property, and that no question shall be asked, without seizing, or making any enquiry after the person producing

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such property, or shall promise or offer to return, to any pawnbroker or other person, who may have bought, or advanced money on the property stolen, the money so paid or advanced, every such person shall forfeit the sum of twenty pounds to any person who will sue for the same, with full costs.

When stealing is punishable, receivers punished in same manner.—By Sec. 52, when the stealing of any property is by this Act punishable on summary conviction, the person receiving such property, knowing the same to be unlawfully come by, shall on conviction thereof before a Justice of the Peace, be liable to the same forfeiture and punishment to which the person guilty of stealing, is by the said Act made liable.

Principals in the second degree, and accessories before and after the fact.—By Sec. 53, every principal in the second degree, and every accessory before the fact to any felony punishable under this Act, shall be punishable with death or otherwise in the same manner as the principal in the first degree is by this Act punishable, and every accessory after the fact, (except only a receiver of stolen property) shall on conviction, be liable to imprisonment for any term not exceeding two years, and every person who shall aid, abet, counsel, or procure the commission of any misdemeanor punishable under this Act, shall be liable to be indicted and punished as a principal offender.

Abettors of offence punishable.—By Sec. 54, if any person shall aid, abet, counsel, or procure the commission of any offence, by this Act punishable

on summary conviction, every such person, shall on conviction before a Justice of the Peace, be liable to the same forfeiture and punishment to which a person guilty as principal offender is made liable.

Persons found in the act of committing an offence, —of granting a search warrant,—of arresting persons offering stolen property for sale.—By Sec. 55, any person found committing any offence, may be immediately apprehended without a warrant, by any Peace Officer, or by the owner of the property on which the offence is committed, or by his servant, or by any person authorised by such owner, and taken forthwith before some neighboring Justice of the Peace, to be dealt with according to law, and if any witness shall prove upon oath before a Justice of the Peace, that there is a reasonable cause to suspect that any property whatsoever connected with the offence committed, is in any dwelling house, out house, garden, yard, croft or other place, the Justice may grant a warrant to search such dwelling house, &c., for such property as in the case of stolen goods. And any person to whom any property shall be offered to be sold, pawned, or delivered, if he shall have reasonable cause to suspect that any such offence has been committed in regard of such property, is hereby authorised, and (if in his power) is required to apprehend, and forthwith to carry before a Justice of the Peace, the party offering the same, together with such property, to be dealt with according to law.

Limitation as to summary proceedings.—By Sec. 56, the prosecution of every offence punishable on summary conviction, shall be commenced within

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three calendar months after the commission of the offence and not otherwise—and the evidence of the party aggrieved shall be admitted in proof of the offence.

4 & 5 VICTORIA, CHAP. XXIV.

An Act for improving the Administration of Criminal Justice in this Province.

Provisions to apply to all Justices and Coroners.—
 Sec. 8, provides that the provisions of this Act relating to Justices and Coroners shall apply to the Justices and Coroners, not only of Districts and Counties at large, but also of all other jurisdictions.

9. *Persons tried for Felony.*—That all persons tried for felonies shall be admitted, after the close of the case for the prosecution to make full answer and defence thereto by counsel learned in the law, or by Attorney in the Courts where Attornies practice as counsel.

10 *Same in cases of summary conviction.*—That in all cases of summary conviction, persons accused shall be admitted to make their full answer and defence, and to have all witnesses examined and cross-examined by Counsel or Attorney.

11. *Orders for delivery of prisoners to be tried at Assizes.*—That when and so often as the attendance of any person confined in any Gaol or Prison in this Province, or upon the limits thereof, shall be required in any Court of Assize and Nisi Prius, or Oyer and Terminer or general Gaol delivery, or other Court, it shall and may be lawful for the Court

before whom such prisoners shall and may be lawfully required to attend, in its discretion to make order upon the Sheriff, Gaoler or other person having the custody of such prisoner, to deliver such prisoner to the person named in such order to receive him, which person shall thereupon instantly convey such prisoner to the place where the Court issuing such order shall be sitting, there to receive and obey such further order as to the said Court shall seem meet : provided always, that no prisoner confined for any debt or damages in any civil suit shall be thereby removed out of the District where he shall be confined.

12. *Prisoners entitled to copies of depositions against them.*—That all persons who, after the passing of this Act shall be held to bail or committed to prison for any offence against the law, shall be entitled to require and have on demand (from the person who shall have the lawful custody thereof and who is hereby required to deliver the same,) copies of the examinations of the witnesses, respectively, upon whose depositions they have been so held to bail, or committed to prison, on payment of a reasonable sum for the same, not exceeding three pence for each folio of one hundred words : provided always, that if such demand shall not be made before the day appointed for the commencement of the Assize or Sessions at which the trial of the person on whose behalf such demand shall be made, is to take place, such person shall not be entitled to have any copy of such examination of witnesses, unless the Judge or other person to preside at such trial, shall be of opinion that such copy may be made and delivered without delay or

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inconvenience to such trial, but it shall nevertheless be competent for such Judge or other person so to preside at such trial, if he shall think fit, to postpone such trial on account of such copy of the examination of witnesses not having been previously had by the party charged.

13. *Persons under trial may inspect all depositions.*—That all persons under trial shall be entitled, at the time of their trial, to inspect without fee or reward all depositions (or copies thereof) which have been taken against them, and returned into the Court before which such trial shall be had.

14. *A plea of not guilty without more shall put the prisoner on his trial.*—That if any person whatever, being arraigned upon any indictment for treason, felony, or piracy, shall plead thereto a plea of "not guilty," such person shall, by such plea, without any further form, be deemed to have put himself or herself upon the country for trial, and the Court shall, in the usual manner, order a Jury for the trial of such person accordingly.

15. *Challenging Jury beyond the legal number.*—That if any person indicted for any treason, felony or piracy, shall challenge peremptorily a greater number of the men returned to be of the Jury, than such person is entitled by law so to challenge in any of the said cases, every peremptory challenge beyond the number allowed by law in any of the said cases, shall be entirely void, and the trial of such shall proceed as if no such challenge had been made.

17. *Attainder of crime not pleadable.*—That no plea setting forth any attainder shall be pleaded in

bar of any indictment, unless the attainder be for the same offence as that charged in the indictment.

18. *Jury shall not inquire of Prisoner's Lands.*—Where any person shall be indicted for treason or felony, the Jury impannelled to try such person shall not be charged to enquire concerning his lands, tenements or goods, nor whether he fled for such treason or felony.

21. *Every punishment for felony after it has been endured shall have the effect of a pardon under the great seal.*—And whereas it is expedient to prevent all doubts respecting the civil rights of persons convicted of felonies not capital, who have undergone the punishment to which they were adjudged; be it therefore enacted, that where any offender had been or shall be convicted of any felony not punishable with death, and hath endured or shall endure the punishment to which such offender hath been or shall be adjudged for the same, the punishment so endured hath and shall have the like effects and consequences as a pardon under the great seal as to the felony whereof the offender was so convicted: Provided always, that nothing herein contained, nor the enduring of such punishment, shall prevent or mitigate any punishment to which the offender might otherwise be lawfully sentenced, on a subsequent conviction for any other felony.

22. *No misdemeanor (except perjury) shall render a party an incompetent witness.*—And whereas there are certain misdemeanors which render the parties convicted thereof incompetent witnesses, and it is expedient to restore the competency of such parties after they have undergone their punishment;

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be it therefore enacted, that where any offender hath been or shall be convicted of any such misdemeanor (except perjury or subornation of perjury) and hath endured or shall endure the punishment to which such offender hath been or shall be adjudged for the same, such offender shall not, after the punishment so endured, be deemed to be by reason of such Misdemeanor, an incompetent witness in any Court or proceeding, Civil or Criminal.

23. *Officers of Courts.*—That in all cases in which any person shall be charged with felony, the officers of the Court before which such person shall be tried, or any proceeding had with regard to such charge, and who shall render any official services in the matter of such charge, or in the course of such trial, to the person so charged with felony, shall be paid their lawful fees for all such services out of the public funds, in the same manner as other fees due and payable to them in respect to official services, by them rendered to the Crown, in the conduct of public prosecutions, are now paid, and no such fees shall in any case be demanded of or payable by the person charged with such felony.

24. *Felonies not Capital.*—Every person convicted of any felony not punishable with death, shall be punished in the manner prescribed by the statute or statutes specially relating to such felony; and that every person convicted of any felony for which no punishment hath been or hereafter may be specially provided, shall be deemed to be punishable under this Act, and shall be liable, at the discretion of the Court, to be imprisoned at hard labor 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.

25. *Persons returning from Transportation.*—If any person sentenced or ordered, or hereafter to be sentenced or ordered, to be transported, or who shall have agreed or shall agree to transport or banish himself or herself on certain conditions, either for life or for any number of years, shall be afterwards at large within any part of this Province, contrary to such sentence, order or agreement, without some lawful cause, before the expiration of his or her term of transportation or banishment, every such offender shall be guilty of felony, and shall be liable to be transported beyond the seas, for his or her natural life, and previously to transportation shall be imprisoned for any term not exceeding four years; and every such offender may be tried either in the District, County, or place where such offender shall be found at large, or in the District, County, or place, in or at which such sentence, or order of transportation or banishment was passed or made.

26. *Allegation of Sentence.*—In any indictment or information against any offender for being at large in this Province contrary to the provisions of this Act, or of any other Act hereafter to be in force in this Province, it shall be sufficient to allege the sentence or order of transportation or banishment of such offender, without alleging any indictment, information, trial, conviction, judgment or other proceedings or any pardon or intention of mercy,

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27. *Certificate of the sentence.*—The Clerk of the Court or other Officer having the custody of the records of the Court where any such sentence or order of transportation or banishment shall have been passed or made, or his deputy, shall, at the request of any person on behalf of Her Majesty, make out and give a certificate in writing, signed by him, containing the effect and substance only (omitting the formal part) of any indictment, information, and conviction of such offender, and of the sentence or order for his or her transportation or banishment, (not taking for the same more than the sum of five shillings,) which certificate shall be sufficient evidence of the conviction and sentence or order for the transportation or banishment of such offender; and every such certificate shall be received in evidence upon proof of the signature of the person signing the same.

28. *The Court may order hard labor or solitary confinement.*—Where any person shall be convicted of any offence punishable under this act, for which imprisonment may be awarded, it shall be lawful for the Court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labor in the common gaol, or house of correction, and also to direct that the offender shall be kept in solitary confinement, for any portion or portions of the term of such imprisonment, or of such imprisonment with hard labor, 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.

29. *A person under sentence.*—When sentence shall be passed for felony on a person already imprisoned under sentence for another crime, it shall be lawful for the Court to award imprisonment for the subsequent offence, to commence at the expiration of the imprisonment to which such person shall have been previously sentenced; and where such person shall be already under sentence of imprisonment, the Court may award such sentence for the subsequent offence, to commence at the expiration of the imprisonment to which such person shall have been previously sentenced, although the aggregate term of imprisonment may exceed the term for which such punishment could be otherwise awarded.

30. *Punishment for a subsequent offence.*—It is expedient to provide for the more exemplary punishment of offenders who commit felony after a previous conviction for felony, whether such conviction shall have taken place before or after the commencement of this Act: Be it therefore enacted, that if any person shall be convicted of felony, not punishable with death, committed after a previous conviction for felony, such person shall on such subsequent conviction be liable, at the discretion of the Court, to be imprisoned at hard labor 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; and in any indictment for any such felony committed after a previous conviction for felony, it shall be sufficient to state that the offender was at a certain time and place convicted of felony, without otherwise describing the previous felony; and a certificate containing the substance

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and effect only, (omitting the formal part) of the indictment and conviction for the previous felony, purporting to be signed by the Clerk of the Court or other officer having the custody of the records of the Court where the offender was first convicted, or by the deputy of such Clerk or officer, (for which certificate a fee of five shillings and no more shall be demanded or taken,) shall upon proof of the identity of the offender be sufficient evidence of the first conviction, without proof of the signature or official character of the person appearing to have signed the same; and if any such clerk, officer, or deputy shall utter any false certificate of any indictment and conviction for a previous felony, or of any sentence or order of transportation or banishment, or if any person other than such clerk, officer, or deputy, shall sign any such certificate as such clerk, officer, or deputy, or shall utter any such certificate with a false or counterfeit signature thereto, every such offender shall be guilty of felony, and being lawfully convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labor 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.

32. *No report to be made to the Governor.*—It shall not be necessary that any report should be made to the Governor, Lieutenant Governor or person administering the Government, in the case of any prisoner convicted before any Court and now under sentence of death, or who may be hereafter convicted before any Court and sentenced to the like punishment, previously to sentence being

carried into execution ; any Law, usage, or custom to the contrary notwithstanding.

33. *The Court may abstain from pronouncing judgment.*—Whenever any offender shall hereafter be convicted before any Court of Criminal Judicature, of any crime for which such offender shall be liable to the punishment of death, and the Court shall be of opinion that, under the particular circumstances of the case, such offender is a fit and proper subject to be recommended for the royal mercy, it shall and may be lawful for such Court, if it shall think fit so to do, to direct the proper officer, then being present in the Court, to require and ask, (whereupon such officer shall require and ask) whether such offender hath or knoweth any thing to say why judgment of death should not be recorded against such offender, and in case such offender shall not allege any matter or thing sufficient in Law to arrest or bar such judgment, the Court shall and may, and is hereby authorized to abstain from pronouncing judgment of death upon such offender, and instead of pronouncing such judgment to order the same to be entered of record, and thereupon such proper officer as aforesaid shall and may and is hereby authorized to enter judgment of death on record against such offender in the usual and accustomed form, and in such and the same manner as is now used, and as if judgment of death had actually been pronounced in open Court against such offender by the Court.

34. *Such record to have the same effect as if pronounced.*—A Record of every such judgment so entered, as aforesaid, shall have the like effect to all intents, and be followed by all the same consequen-

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35. Court to direct execution in certain cases.—

Whenever any offender shall hereafter be convicted before any Court of criminal judicature, of any offence for which such offender shall be liable to and shall receive sentence of death, and the Court shall be of opinion that, under the circumstances of the case, the judgment of the Law ought to be carried into effect, it shall be lawful for the said Court, and such Court is hereby required, to order and direct execution to be done on such offender in the same manner as any Court is empowered to order and direct execution by the Law as it stood before the passing of this Act.

36. Not to affect the Royal Prerogative.—Provided always, and be it enacted, that nothing in this Act contained shall affect Her Majesty's Royal Prerogative of mercy.

37. Accessory before the fact.—If any person shall counsel, procure or command any other person to commit any felony, whether the same be a Felony at common Law, or by virtue of any Statute or Statutes made or to be made, the person so counselling, procuring, or commanding, shall be deemed guilty of felony, and may be indicted and convicted as an accessory before the fact to the principal felony, either together with the principal felon, or after the conviction of the principal felon; or may be indicted for and convicted of a substantive felony, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to Justice, and may be punished in the same manner as

any accessory before the fact of the same felony, if convicted as an accessory, may be punished; and the offence of the person so counselling, procuring, or commanding, howsoever indicted, may be inquired of, tried, determined, and punished by any Court which shall have jurisdiction to try the principal felon, in the same manner as if such offence had been committed at the same place as the principal felony, although such offence may have been committed either on the high Seas or at any place on land, whether within Her Majesty's Dominions or without; and in case the principal felony shall have been committed within the body of any District or County, and the offence of counselling, procuring, or commanding shall have been committed within the body of any other District or County, the last mentioned offence may be enquired of, tried, determined, and punished in either of such Districts or Counties: Provided always, that no person who shall be once duly tried for any such offence, whether as an accessory before the fact, or as for a substantive felony, shall be liable to be again indicted or tried for the same offence.

38. *Accessory after the fact.*—If any person shall become an accessory after the fact to any felony, whether the same be a felony at common law, or by virtue of any Statute or Statutes made or to be made, the offence of such person may be inquired of, tried, determined, and punished by any Court which shall have jurisdiction to try the principal felon, in the same manner as if the act by reason whereof such person shall have become an accessory, had been committed at the same place as the principal felony, although such Act may have been committed on the

high Seas, or at any place on land, whether within Her Majesty's dominions or without; and in case the principal felony shall have been committed within the body of any District or County, and the act by reason whereof any person shall have become accessory shall have been committed within the body of any other District or County, the offence of such accessory may be inquired of, tried, determined, and punished in either of such Districts or Counties: provided always, that no person who shall be once duly tried for any offence of being an accessory shall be liable to be again indicted or tried for the same offence.

39. *Accessory may be prosecuted.*—If any principal offender shall be in anywise convicted of any felony, it shall be lawful to proceed against any accessory either before or after the fact, in the same manner as if such principal felon had been attained thereof, notwithstanding such principal felon shall die, or be pardoned, or otherwise delivered before attainder; and every such accessory shall suffer the same punishment, if such accessory be in anywise convicted, as such accessory should have suffered if the principal had been attained.

40. *Offences committed on the boundaries of different Districts.*—Where any felony or misdemeanor shall be committed on the boundary or boundaries of two or more Districts or Counties, or within the distance of five hundred yards of any such boundary or boundaries, or shall be begun in one District or County and completed in another, every such felony or misdemeanor may be dealt with, enquired of, tried, determined, and punished in any of the said Districts or Counties, in the same manner as if it had been actually and wholly committed therein.

41. Offences committed during a Journey.—Where any felony or misdemeanor shall be committed on any person, or on or in respect of any property, in or upon any coach, waggon, cart, or other carriage, whatever, employed in any journey, or shall be committed on any person, or on or in respect of any property, on board any vessel, whatever, employed in any voyage or journey, upon any navigable river, canal, or inland navigation, such felony or misdemeanor may be dealt with, inquired of, tried, determined, and punished in any District or County through any part whereof such coach, waggon, cart, carriage or vessel shall have passed in the course of the journey or voyage during which such felony or misdemeanor shall have been committed, in the same manner as if it had been actually committed in such District or County; and in all cases where the side, centre, or other part of any highway, or the side, bank, centre, or other part of any such river, canal, or navigation, shall constitute the boundary of any two Districts or Counties, such felony or misdemeanor may be dealt with, inquired of, tried, determined, and punished in either of such Districts or counties, through or adjoining to or by the boundary of any part whereof such coach, waggon, cart, carriage, or vessel, shall have passed in the course of the journey or voyage, during which such felony or misdemeanor shall have been committed, in the same manner as if it had been actually committed in such district or county.

42. Indictment for Offences.—In any indictment or information for any felony or misdemeanor, wherein it shall be requisite to state the ownership of any property whatsoever, whether real or personal, which shall belong to or be in the possession of

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more than one person, whether such persons be partners in trade, joint-tenants, parceners, or tenants in common, it shall be sufficient to name one of such persons, and to state such property to belong to the persons so named and another or others, as the case may be; and, whenever, in any indictment or information for any felony or misdemeanour, it shall be necessary to mention for any purpose whatsoever, any partners, joint-tenants, parceners, or tenants in common, it shall be sufficient to describe them in the manner aforesaid; and this provision shall be construed to extend to all joint-stock companies and trustees.

43. *An indictment relating to Churches, &c.*—In any indictment or information for any felony or misdemeanour committed in, upon, or with respect to any church, chapel, or place of Religious Worship, or to any bridge, court, court-house, gaol, house of correction, penitentiary, infirmary, asylum, or other public building, or any canal, lock, drain, or sewer erected or maintained in whole or in part at the expense of the Province, or of any division or subdivision thereof, or on or with respect to any materials, goods, or chattels, whatsoever, provided for or at the expense of the Province, or of any division or subdivision thereof, to be used for making, altering or repairing any bridge or highway, or any court or other such building, canal, lock, drain, or sewer as aforesaid, or to be used in or with any such court or other building, canal, lock, drain, or sewer, it shall not be necessary to state such church, chapel, or place of Religious Worship, or such bridge, court, court-house, gaol, house of correction, penitentiary, infirmary, asylum, or other building, or such canal, lock, drain, or sewer, or any such materials, goods, or chattels to be the property of any person.

44. *Property of Turnpike Trust.*—In any indictment or information for any felony or misdemeanor, committed on or with respect to any building, gate, machine, lamp, board, stone, post, fence, or other thing erected or provided, in pursuance of any Act in force in this Province for making any turnpike road, or of any conveniences or appurtenances thereunto respectively belonging, or any materials, tools, or implements provided for making, altering, or repairing any such road, it shall be sufficient to state any such property to belong to the Trustees or Commissioners of such road, and it shall not be necessary to specify the names of any such Trustees or Commissioners.

45. *Indictments not to abate by dilatory plea.*—No indictment or information shall be abated by reason of any dilatory plea of misnomer, or of want of addition or of wrong addition of any party offering such plea, if the Court shall be satisfied by affidavit or otherwise, of the truth of such plea; but in such case the Court shall forthwith cause the indictment or information to be amended according to the truth, and shall call upon such party to plead thereto, and shall proceed as if no such dilatory plea had been pleaded.

46. *What defects shall not vitiate an indictment.*—No judgment upon any indictment or information for any felony or misdemeanor, whether after verdict or outlawry, or by confession, default or otherwise, shall be stayed or reversed for want of the averment of any matter unnecessary to be proved, nor for the omission of the words, "as appears by the record," or of the words "with force and arms," or of the words, "against the peace," nor for the insertion of the

words "against the form of the statute," instead of the words, "against the form of the statutes," or *vice versa*, nor for that any person or persons mentioned in the indictment or information is or are designated by a name of office or other descriptive appellation, instead of his, her or their proper name or names, nor for omitting to state the time at which the offence was committed, in any case where time is not of the essence of the offence, nor for stating the time imperfectly, nor for stating the offence to have been committed on a day subsequent to the finding of the indictment, or exhibiting the information, or on an impossible day, or on a day that never happened, nor for a want of proper or perfect venue, where the Court shall appear by the indictment or information to have had jurisdiction over the offence.

47. *Certain formal defects.*—No judgment after verdict upon any Indictment or information for any felony or misdemeanor, shall be stayed or reversed for want of a similitur, nor by reason that the jury process has been awarded to a wrong officer upon an insufficient suggestion, nor for any misnomer or misdescription of the officer returning such process, or of any of the jurors, nor because any person has served upon the jury who has not been returned as a juror by the sheriff or other officer; and that where the offence charged shall be an offence theretofore created by any statute, or subjected to a greater degree of punishment, or excluded from the benefit of Clergy, by any statute, the indictment or information shall after verdict be held sufficient if it describe the offence in the words of the statute creating the offence, or prescribing the punishment, or excluding the offender from the benefit of Clergy.

48. *Effect of free or conditional pardon.*—And be it declared and enacted, that where the Queen's Majesty, or the Governor, Lieutenant Governor, or person administering the Government of this Province for the time being, shall be pleased to extend the royal mercy to any offender convicted of any felony, punishable with death or otherwise, and by warrant under the royal sign Manual, countersigned by one of the principal Secretaries of State, or by warrant under the hand and seal at arms of such Governor, Lieutenant Governor, or person administering the Government as aforesaid, shall grant to such offender either a free or a conditional pardon, the discharge of such offender out of custody, in case of a free pardon, and the performance of the condition in the case of a conditional pardon, shall have the effect of a pardon under the great seal for such offender, as to the felony for which such pardon shall have been granted: provided always, that no free pardon, or any such discharge in consequence thereof, nor any conditional pardon, nor the performance of the condition thereof, in any of the cases aforesaid, shall prevent or mitigate the punishment to which the offender might otherwise be lawfully sentenced, on a subsequent conviction for any felony committed after the granting of any such pardon.

49. *Recognizances in certain cases.*—And whereas the practice of indiscriminately estreating recognizances for the appearance of persons to prosecute or give evidence, or to answer for a common assault, or in the other cases hereinafter specified, has been found in many instances productive of hardship to persons who have entered into such recognizances; be it therefore enacted, that in every

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case where any person bound by recognizance for his or her appearance, (or for whose appearance any other person shall be so bound) to prosecute or give evidence in any case of felony or misdemeanor, or to answer for any common assault, or to articles of the peace, shall therein make default, the officer of the Court by whom the estreats are made out, shall, and such officer is hereby required to prepare a list in writing, specifying the name of every person so making default, and the nature of the offence in respect of which every such person, or his or her surety was so bound, together with the residence, trade, profession, or calling of every such person and surety, and shall in such list distinguish the principals from the sureties, and shall state the cause, if known, why each such person has not appeared, and whether by reason of the non-appearance of such person, the ends of justice have been defeated or delayed; and every such officer shall, and such officer is hereby required, before any such recognizance shall be estreated, to lay such list, if at a Court of Oyer and Terminer or gaol delivery in any District or County, or at any of Her Majesty's superior Courts of Record in this Province, before one of the Justices of those Courts, respectively, or if at a Session of the Peace, before two of the Justices of the Peace, who shall have attended such Courts, who are respectively authorized and required to examine such list, and to make such order touching the estreating or putting in process any such recognizance as shall appear to them, respectively, to be just; and it shall not be lawful for the officer of any Court to estreat or put in process any such recognizance without the written order of the Justice, or Justices of the Peace before whom respectively such list shall have been laid.

50. Rule for the interpretation of this and all criminal acts.—And be it enacted, that wherever in this Act or in any other Act relating to any offence, whether punishable upon indictment or summary conviction, in describing or referring to the offence or the subject matter on or with respect to which it shall be committed, or the offender or the party affected or intended to be affected by the offence, any word or words have been or shall be used or employed importing the singular number or the masculine gender only, every such Act shall be understood to include several matters of the same kind, as well as one matter, and several persons as well as one person, and females as well as males, and bodies corporate as well as individuals, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such construction; and wherever any forfeiture or penalty is or shall be made payable to a party aggrieved, it shall be payable to a body corporate in every case where such a body shall be the party aggrieved.

51. All Acts repugnant to this Act repealed.—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 into 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, except in so far as may relate to any offence committed before the commencement of this Act, which shall be dealt with and punished as if this Act had not been passed.

52. From what period the imprisonment is to be reckoned.—And be it enacted, that the period of imprisonment in the Provincial Penitentiary, in pursuance of any sentence passed under this Act, or under any other Act relating to the punishment of offences by confinement and imprisonment in the Provincial Penitentiary, shall be held to commence from the period of passing such sentence, whether the convict upon whom such sentence shall be passed shall be removed to the said Provincial Penitentiary forthwith, or be detained in custody in any other prison or place of confinement, previously to such removal.

53. And be it enacted, that this Act shall commence and take effect from and after the first day of January one thousand eight hundred and forty two.

An Act for consolidating and amending the Laws in this Province, relative to Larceny and other offences connected therewith.*

54. Conviction shall not be evidence in action.—Nothing in this Act contained relating to either of the misdemeanors aforesaid, nor any proceeding, conviction or judgment, to be had or taken thereupon, shall 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 any such offender shall not be received in evidence in any action at law or suit in equity against him, and no person shall be liable to be convicted of

* Sec 4 & 5 Victoria, Chap. 25.

either of the misdemeanors aforesaid, by any evidence whatever, in respect of any Act done by him, if he shall at any time previously to his being indicted for such offence, have disclosed such Act on oath in consequence of any compulsory process of any Court of law or equity in any action, suit or proceeding which shall have been *bona fide* instituted by any party aggrieved, or if he shall have disclosed the same in any examination or deposition before any Commissioner of Bankrupts.

55. *Factors pledging for their own use.*—If any factor or agent, intrusted for the purpose of sale with any goods or merchandize, or intrusted with any bill of lading, warehouse keeper's or wharfinger's certificate or warrant or order for delivery of goods or merchandize, shall for his own benefit and in violation of good faith, deposit or pledge any such goods or merchandize, or any of the said documents as a security for any money, or negotiable instrument borrowed or received by such factor or agent, at or before the time of making such deposit or pledge, or intended to be thereafter borrowed or received, every such offender shall be guilty of a misdemeanor, 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 imprisoned in any other prison or place of confinement, for any term not exceeding two years, or to suffer such other punishment by fine or imprisonment, or both, as the Court shall award, but no such factor or agent shall be liable to any prosecution for depositing or pledging any such goods or merchandize, or any of the said documents, in case the same shall not be

made a security for or subject to the payment of any 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.

56. Advertising a reward for the return of stolen property.—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 inquiry after the person producing such property, or shall promise or offer in any such 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.

An Act for consolidating and amending the Laws in this Province relative to Malicious Injuries to Property.—[Chap. 26.]

57. Destroying Silk, Woollen, Linen, or Cotton goods.—If any person shall unlawfully and mali-

ciously cut, break or destroy, or damage with intent to destroy, or to render useless, any goods or article of silk, woollen, linen or cotton, or of any one or more of those materials, mixed with each other or mixed with any other material, or any frame-work, knitted piece, stocking, hose or lace, respectively, being in the loom or frame, or on any machine or engine, or on the rack or tenders, or in any stage, process, or progress of manufacture ; or shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or to render useless, any warp or shute of silk, woollen, linen, or cotton, or of any one or more of those materials mixed with each other, or mixed with any other material, or any loom, frame machine, engine, rack, tackle, or implement, whether fixed or moveable, prepared for or employed in carding, spinning, throwing, weaving, fulling, shearing or otherwise manufacturing or preparing any such goods or articles : or shall by force enter into any house, shop, building, or place, with intent to commit any of the offences aforesaid, every such offender shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned at hard labor 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.

58. *Destroying Threshing or other Machines.*— If any person shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or to render useless, any threshing machine, or any machine or engine, whether fixed or moveable, prepared for or employed in any manufacture whatsoever, (except the manufacture of silk, woollen, linen,

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or cotton goods, or goods of any one or more of those materials mixed with each other, or mixed with any other material, or any frame-work-knitted piece, stocking, hose or lace,) every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labor in the Provincial Penitentiary for any term not less than seven years, or in any other prison or place of confinement for any term not exceeding two years.

59. Riotously demolishing a Church or Chapel.—

If any persons, riotously and tumultuously assembled together to 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 church chapel, or meeting house, for the exercise of any mode or form of religious worship, or any house, stable, coach-house, out-house, warehouse, office, shop, mill, malt-house, hop-oast, barn or granary, or any building or erection used in carrying on any trade or manufacture, or any branch thereof, or any machinery, whether fixed or moveable, prepared for or employed in any manufacture, or in any branch thereof, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labor in the Provincial Penitentiary for the term of his natural life, or 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.

60. Setting fire to Ships or Vessels.—Whosoever shall unlawfully and maliciously set fire to, cast away, or in any wise destroy any ship or vessel,

either with intent to murder any person, or whereby the life of any person shall be endangered, shall be guilty of felony, and being convicted thereof shall suffer death.

61. *Hanging out false lights.*—Whosoever shall unlawfully exhibit any false light or signal, with intent to bring any ship or vessel into danger, or shall unlawfully and maliciously do any thing to the immediate loss or destruction of any ship or vessel in distress, shall be guilty of felony, and being convicted thereof shall suffer death.

62. *Setting fire to Ships or Vessels with intent to destroy the same.*—Whosoever shall unlawfully and maliciously set fire to, or in any wise destroy any ship or vessel, whether the same be completed or in an unfinished state, or shall unlawfully and maliciously set fire to, cast away, or in any wise destroy any ship or vessel, with intent thereby to prejudice any owner or part owner of such ship or vessel, or of any goods on board the same, or any person that hath underwritten or shall underwrite any policy of insurance upon such ship or vessel, or on the freight thereof, or upon any goods on board the same, shall 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 the term of his natural life, or for any other term not less than seven years, or to be imprisoned in any other prison or place of confinement for any time not exceeding two years.

63. *Impeding any person from endeavouring to save life.*—Whosoever shall by force prevent or impede any person endeavouring to save his life from

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any ship or vessel which shall be in distress, or wrecked, stranded, or cast on shore, (whether he shall be on board or shall have quitted the same,) shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned at hard labor in the Provincial Penitentiary for the term of his natural life, or 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.

64. *Destroying wrecks or any articles belonging thereto.*—Whosoever shall unlawfully and maliciously destroy any part of any ship or vessel which shall be in distress, or wrecked, stranded, or cast on shore, or any goods, merchandize, or article of any kind belonging to such ship or vessel, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned at hard labor 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.

65. *Destroying any sea bank, &c.*—If any person shall unlawfully and maliciously break down or cut down any sea bank or sea wall, or the bank or wall of any river, canal or marsh, whereby any land shall be overflowed or damaged, or shall be in danger of being so, or shall unlawfully and maliciously throw down, level or otherwise destroy any lock, sluice, flood-gate, or other work on any navigable river or canal, every such offender shall be guilty of felony, and being convicted thereof, shall be imprisoned for any term not exceeding four years; * and if any

* See 6 Victoria, Sec. 5, Chap. 3.

person shall unlawfully and maliciously cut off, draw up or remove any piles, chalk, or other materials fixed in the ground and used for securing any sea bank or sea wall, or the bank or wall of any river, canal, or marsh, or shall unlawfully and maliciously open or draw up any floodgate, or do any other injury or mischief to any navigable river or canal with intent and so as thereby to obstruct or prevent the carrying on, completing, or maintaining the navigation thereof, every such offender shall be guilty of felony, and being convicted thereof shall be imprisoned for any term not exceeding two years.

66. *Injury to a public bridge.*—If any person shall unlawfully and maliciously pull down, or in any wise destroy any public bridge, or do any injury with intent, and so as thereby to render such bridge or any part thereof dangerous or impassable, every such offender shall be guilty of felony, and being convicted thereof, shall be imprisoned for any term not exceeding four years.

67. *Destroying a turnpike gate, toll house, &c.*—If any person shall unlawfully and maliciously throw down, level, or otherwise destroy, in whole or in part, any turnpike gate, or any wall, chain, rail, post, bar, or other fence belonging to any turnpike gate, or set up or erected to prevent passengers passing by without paying any toll directed to be paid by an Act or Acts, Ordinance or Ordinances, relating thereto, in force in this Province, or any house, building or weighing engine erected for the better collection, ascertainment, or security of any such toll, every offender shall be guilty of a misdemeanor, and being convicted thereof, shall be punished accordingly.

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68. *Breaking down the dam of a fishery.*—If any person shall unlawfully and maliciously break down or otherwise destroy the dam of any fish pond, or of any water which shall be private property, or in which there shall be any private right of fishery, with intent thereby to take or destroy any of the fish in such pond or water, or so as thereby to cause the loss or destruction of any of the fish, or shall unlawfully and maliciously put any lime or other noxious material in any such pond or water, with intent thereby to destroy any of the fish therein, or shall unlawfully and maliciously break down or otherwise destroy the dam of any mill pond, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be punished accordingly.

69. *Killing or maiming cattle.*—If any person shall unlawfully and maliciously kill, maim or wound any cattle, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labor 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.

70. *Setting fire to Agricultural produce.*—Whosoever shall unlawfully or maliciously set fire to any stack of corn, grain, pulse, peat, coals, charcoal, or wood, or any steer of wood, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labor in the Provincial Penitentiary for the term of his natural life, or 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.

71. *Destroying or damaging trees, shrubs, &c.*—If any person shall unlawfully and maliciously cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any tree, sapling, or shrub, or any under-wood, respectively growing in any park, pleasure-ground, garden, orchard, or avenue, or in any ground adjoining or belonging to any dwelling house, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be punished accordingly; and if any person shall unlawfully and maliciously cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any tree, sapling, or shrub, or any underwood respectively, growing elsewhere than in any of the situations hereinbefore mentioned, every such offender (in case the amount of the injury done shall exceed the sum of one pound,) shall be guilty of a misdemeanor, and being convicted thereof shall be punished accordingly.

72. *Destroying or damaging trees, shrubs, under-wood, &c.*—If any person shall unlawfully and maliciously cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any tree, sapling or shrub, or any under-wood, wheresoever the same may be respectively growing, the injury done being to the amount of one shilling at the least, every such offender, being convicted thereof before a Justice of the Peace shall forfeit and pay, over and above the amount of the injury done, such sum of money not exceeding one pound, as to the Justice shall seem meet.

73. *Destroying any fruit or vegetable production.*—If any person shall unlawfully and maliciously destroy, or damage with intent to destroy any plant,

root, fruit or vegetable production, growing in any garden, orchard, nursery ground, hot-house, greenhouse or conservatory, every such offender being convicted thereof before a Justice of the Peace, shall forfeit and pay, over and above the amount of the injury done, such sum of money, not exceeding two pounds, as to the Justice shall seem meet.

74. *Destroying vegetable productions not growing in gardens.*—If any person shall unlawfully and maliciously destroy, or damage with intent to destroy any cultivated root or plant used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture, and growing in any land, open or enclosed, not being a garden, orchard or nursery ground, every such offender being convicted thereof, before a Justice of the Peace, shall forfeit and pay, over and above the amount of the injury done, such sum of money not exceeding twenty shillings, as to the Justice shall seem meet.

75. *Destroying any fence, wall, stile, or gate.*—If any person shall unlawfully and maliciously cut, break, throw down, or in anywise destroy any fence of any description whatsoever, or any wall, stile, or gate, or any part thereof respectively, every such offender, being convicted before a Justice of the Peace, shall forfeit and pay, over and above the amount of the injury done, such sum of money not exceeding one pound, as to the Justice shall seem meet.

76. *Persons committing damage to property.*—If any person shall wilfully or maliciously commit any damage or injury, or spoil to or upon any real or personal property whatsoever, either of a public or

private nature, for which no remedy or punishment is hereinbefore provided, every such person being convicted thereof, before a Justice of the Peace, shall forfeit and pay such sum of money as shall appear to the Justice to be a reasonable compensation for the damage, injury or spoil so committed, not exceeding the sum of five pounds; which sum of money shall, in case of private property, be paid to the party aggrieved, except where such party shall have been examined in proof of the offence; and in such case, or in the case of property of a public nature, or wherein any public right is concerned, the money shall be applied in such manner as every penalty imposed by a Justice of the Peace under this Act is hereinafter directed to be applied: provided always, that nothing herein contained shall extend to any case where the party trespassing acted under a fair and reasonable supposition that he had a right to do the act complained of.

77. Malice at the owner not essential to any offence.—Every punishment and forfeiture by this Act imposed on any person maliciously committing any offence, whether the same be punishable upon indictment, or upon summary conviction, shall equally apply and be enforced, whether the offence be committed from malice conceived against the owner of the property in respect of which it shall be committed or otherwise.

78. Principals in the second degree and accessories.—In the case of every felony punishable under this Act, every principal in the second degree, and every accessory before the fact, shall be punishable with

death or otherwise, in the same manner as the principal in the first degree is by this Act punishable; and every accessory after the fact to any felony punishable under this Act, shall, on conviction, be liable to be imprisoned for any term not exceeding two years, and every person who shall aid, abet, counsel or procure the commission of any misdemeanor, punishable under this Act, shall be liable to be indicted and punished as a principal offender.

79. *The Court may, for all offences within this act, order hard labor or solitary confinement.*—Where any person shall be convicted of any indictable offence punishable under this Act, for which imprisonment may be awarded, it shall be lawful for the Court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labor, in the common gaol 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 labor, 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.

80. *Persons in the act of committing any offence may be apprehended.*—And for the more effectual apprehension of all offenders against this Act; be it enacted, that any person found committing any offence against this Act, whether the same be punishable upon indictment or upon summary conviction, may be immediately apprehended, without a warrant, by any peace officer or the owner of the property injured, or his servant, or any person authorized by him, and forthwith taken before some neighboring Justice of the Peace, to be dealt with according to law.

81. *Limitation as to summary proceedings.*—The prosecution for every offence punishable on summary conviction under this Act, shall be commenced within three calendar months after the commission of the offence, and not otherwise; and the evidence of the party aggrieved shall be admitted in proof of the offence, and also the evidence of any inhabitant of the District, County or place in which the offence shall have been committed, notwithstanding any forfeiture or penalty incurred by the offence may be payable to any public fund of such District, County or place.

82. *Mode of compelling the appearance of persons.*—And for the more effectual prosecution of all offences punishable on summary conviction under this Act; be it enacted, that where any person shall be charged on the oath of a credible witness, before any Justice of the Peace, with any such offence, the Justice may summon the person charged to appear at a time and place to be named in such summons, and if he shall not appear accordingly, (then upon proof of the due service of the summons upon such person, by delivering the same to him personally, or by leaving the same at his usual place of abode) the Justice may either proceed to hear and determine the case *ex parte*, or issue his warrant for apprehending such person, and bringing him before himself or some other Justice of the Peace; or the Justice before whom the charge shall be made, may, if he shall so think fit, without any previous summons, (unless where otherwise specially directed) issue such warrant; and the Justice before whom the person charged shall appear or be brought, shall proceed to hear and determine the case.

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83. *If a person summarily convicted shall not pay.*—In every case of a summary conviction under this Act, where the sum which shall be forfeited for the amount of the injury done, or which shall be imposed as a penalty by the Justice, shall not be paid, either immediately after the conviction, or within such period as the Justice shall, at the time of conviction, appoint, it shall be lawful for the convicting Justice, (unless where otherwise specially directed,) to commit the offender to the common Gaol or House of Correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, according to the discretion of the Justice, for any term not exceeding two calendar months, where the amount of the sum forfeited or of the penalty imposed, or of both, (as the case may be,) together with the costs, shall not exceed five pounds; and for any term not exceeding four calendar months, where the amount with costs shall exceed five pounds, and not exceed ten pounds; and for any term not exceeding six calendar months where the amount with costs shall exceed ten pounds; the commitment to be determinable in each of the cases aforesaid upon the payment of the amount and costs.

84. *The Justice may discharge the offender in certain cases.*—Where any person shall be summarily convicted before a Justice of the Peace of any offence against this Act, and it shall be a first conviction, it shall be lawful for the Justice, if he shall so think fit, to discharge the offender from his conviction, upon his making such satisfaction to the party aggrieved for damages and costs, or either of them, as shall be ascertained by the Justice.

85. *Pardon for non-payment of money.*—It shall be lawful for the Queen's Majesty, or for the Governor, Lieutenant-Governor, or person administering the Government of this Province for the time being, to extend the Royal mercy to any person imprisoned by virtue of this Act, although he shall be imprisoned for non-payment of money to some party other than the Crown.

85. *A summary conviction shall be a bar to any other proceeding for the same cause.*—In case any person convicted of any offence punishable upon summary conviction by virtue of this Act, shall have paid the sum adjudged to be paid, together with costs, under such conviction, or shall have received a remission thereof from the Crown, or shall have suffered the imprisonment awarded for non-payment thereof, or the imprisonment adjudged in the first instance, or shall have been discharged from his conviction in the manner aforesaid, in every such case he shall be released from all further or other proceedings for the same cause.

86. *Form of Conviction.*—And be it enacted, that the Justice before whom any person shall be convicted of any offence against this Act, may cause the conviction to be drawn up in the following form of words, or in any other form of words to the same effect, as the case may require, *videlicet* :—

“ Be it remembered that on the _____ day of _____ in the year of our Lord _____ at _____ in the District (or City, &c. _____ as the case may be) A. O. is convicted before me J. P. one of Her Majesty's Justices of the Peace for the said District (or City, &c.) for that he the said A. O. did (*spe-*

cify the offence, and the time and place when and where the same was committed, as the case may be,) and I the said J. P. adjudge the said A. O. for his said offence to be imprisoned in the (or to be imprisoned in the and there kept to hard labor,) for the space of (or) I adjudge the said A. O. for his said offence to forfeit and pay (here state the penalty actually imposed, or state the penalty and also the amount of the injury done, as the case may be,) and also to pay the sum of for costs, and in default of immediate payment of the said sums, to be imprisoned in the (or, to be imprisoned in the and there kept to hard labor) for the space of unless the said sums shall be sooner paid ; (or, and I order that the said sums shall be paid by the said A. O. on or before the day of) and I direct that the said sum of (i. e. the penalty only,) shall be paid to me, the convicting Justice, and that the said sum of (i. e. the sum for the amount of the injury done) shall be paid to C. D. (the party aggrieved, unless he is unknown, or has been examined in proof of the offence, in which case state that fact, and dispose of the whole like the penalty as before ;) and I order that the said sum of for costs, shall be paid to (the complainant.)

Given under my hand and seal, the day and year first above mentioned.

87. Appeal.—In all cases where the sum adjudged to be paid on any summary conviction shall exceed five pounds, or the imprisonment adjudged shall exceed one calendar month, or the conviction shall take place before one Justice only, any person who

shall think himself aggrieved by any such conviction, may appeal to the next Court of General or Quarter Sessions, which shall be holden not less than twelve days after the day of such conviction for the District, Inferior District, County, or place wherein the cause of complaint shall have arisen; provided that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof within three days after such conviction, and seven clear days at the least before such Sessions, and shall also either remain in custody until the Sessions, or enter into a recognizance with two sufficient sureties before a Justice of the Peace; conditioned personally to appear at the said Sessions, and to try such appeal, and to abide the judgment of the Court thereupon, and to pay such costs as shall be by the Court awarded; and upon such notice being given, and such recognizance being entered into, the Justice before whom the same shall be entered into, shall liberate such person if in custody; and the Court at such Sessions shall hear and determine the matter of the appeal, and shall make such order therein with or without costs to either party, as to the Court shall seem meet; and in case of the dismissal of the appeal or the affirmance of the conviction, shall order and adjudge the offender to be punished according to the conviction; and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment.

§§. Convictions to be returned to the Quarter Sessions.—Every Justice of the Peace, before whom any person shall be convicted of any offence against this Act, shall transmit the conviction to the next Court of General or Quarter Sessions which

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shall be holden for the district or inferior district, court or place, wherein the offence shall have been committed, there to be kept by the proper officer among the records of the Court; and upon any indictment or information against any person for a subsequent offence, a copy of such conviction, certified by the proper officer of the Court, or proved to be a true copy, shall be sufficient evidence to prove a conviction for the former offence, and the conviction shall be presumed to have been unappealed against until the contrary be shown.

89. Limitation of time, and venue in proceedings.

—And for the protection of persons acting in the execution of this Act; be it enacted, that all actions and prosecutions to be commenced against any person for any thing done in pursuance of this Act, shall be laid and tried in the District or inferior District where the fact was committed, and shall be commenced within six calendar months after the fact was committed, and not otherwise; and notice, in writing, of such action, and of the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action; and in any such action the defendant may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into Court after such action brought by or on behalf of the defendant; and if a verdict shall pass for the defendant, or the plaintiff shall become non-suited, or discontinue any such action after

issue joined, or if, upon demurrer or otherwise, judgment shall be given against the plaintiff, the defendant shall recover his full costs as between Attorney and client, and have the like remedy for the same, as any defendant hath by Law in other cases; and though a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the Judge before whom the trial shall be, shall certify his approbation of the action, and of the verdict obtained thereupon.

90. *Fines to be in current money.*—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.

91. *Repealing clause.*—And be it enacted, that 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 into 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, except in so far as they may relate to any offence committed before the said time, which shall be dealt with and punished as if this Act had not been passed.

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An Act for consolidating and amending the Statutes in this Province relative to offences against the person.—[4 & 5 Victoria, chap. 27.]

1. *Preamble.*—Whereas it is expedient to amend and consolidate the provisions contained in various statutes now in force in this Province, relative to offences against the person; be it therefore enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, intituled An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada, and it is hereby enacted by the authority of the same, that this Act shall commence and take effect from and after the first day of January, one thousand eight hundred and forty two.

2. *Petit treason to be treated in all respects as murder.*—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.

3. *Punishment of principals and accessories in murder.*—Every person convicted of murder, or of being an accessory before the fact to murder, shall suffer death as a felon: and every accessory after the fact to murder, shall be liable, at the discretion of the Court, to be imprisoned at hard labor in the

Provincial Penitentiary for the term of his natural life, or 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.

4. *Sentence in case of murder.*—From and after the passing of this Act, sentence of death may be pronounced after convictions for murder, in the same manner, and the Court before which the conviction may be had shall have the same power in all respects as after convictions for other capital offences.

5. *Prison regulations as to murderers under sentence.*—Every person convicted of murder, shall, after judgment, be confined in some safe place within the prison, apart from all other prisoners, and shall be fed with bread and water only, and with no other food or liquor, except in case of receiving the sacrament, or in case of any sickness or wound, in which case the surgeon of the prison may order other necessaries to be administered; and no person but the gaoler and his servants, and the chaplain and surgeon of the prison, shall have access to any such convict, without the permission, in writing, of the Court or Judge before whom such convict shall have been tried, or of the Sheriff or his Deputy.

6. *Provision for the trial of murder and manslaughter.*—Where any person being feloniously stricken, poisoned, or otherwise hurt upon the sea, or at any place out of this Province, shall die of such stroke, poisoning, or hurt, in this Province, or being feloniously stricken, poisoned, or otherwise hurt at any place in this Province, shall die of such stroke, poisoning, or hurt, upon the sea, or at any place out of this Province, every offence committed in respect of any

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such case, whether the same shall amount to the offence of murder or of manslaughter, or of being accessory before the fact to murder, or after the fact to murder, or manslaughter, may be dealt with, inquired of, tried, determined, and punished in the District, County, or place in this Province, in which such death, stroke, poisoning, or hurt shall happen, in the same manner, in all respects, as if such offence had been wholly committed in such District, County or place.

7. *Punishment of manslaughter.*—Every person convicted of manslaughter, shall be liable, at the discretion of the Court, to be imprisoned at hard labor in the Provincial Penitentiary for the term of his natural life, or 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, or to pay such fine as the Court shall award.

8. *As to homicide not felonious.*—No punishment or forfeiture shall be incurred by any person who shall kill another by misfortune or in his own defence, or in any other manner without felony.

9. *Punishment for administering poison, &c.*—It is enacted, that 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 be guilty of felony, and being convicted thereof shall suffer death.

* But see 6 Victoria, chap. 5.

10. *Punishment for offences with intent to commit murder, though no injury effected.*—It is enacted, that 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 attempt to drown, suffocate, or strangle any person, with intent in any of the cases aforesaid to commit the crime of murder, shall, although no bodily injury shall be affected, be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned at hard labor in the Provincial Penitentiary for the term of his natural life, or 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.

11. *Punishment for cutting and maiming, with intent to disfigure.*—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 guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labor in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years,* or to be

* But see 6 Victoria, chap. 5.

imprisoned in any other prison or place of confinement for any term not exceeding two years.

12. *Punishment for sending explosive substances.*

—It is enacted that whosoever shall unlawfully and maliciously 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 cast or throw upon or otherwise apply to any person, any corrosive fluid, or 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 in any of the cases aforesaid any person shall be burnt, maimed, disfigured or disabled, or receive some other grievous bodily harm, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned at hard labor in the Provincial Penitentiary for the term of his natural life, or 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.

14. *Punishment for trying to procure abortion.*—

It is enacted, that whosoever with intent to procure the miscarriage of any woman, shall unlawfully administer to her, or cause to be taken by her, any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, shall 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 the term of his natural life, or 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.

15. *A woman secreting the dead body of her child.*—If any woman shall be delivered of a child, and shall, by secret burying or otherwise disposing of the dead body of the said child, endeavour to conceal the birth thereof, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable to be imprisoned for any term not exceeding two years; and it shall not be necessary to prove whether the child died before, at, or after its birth: provided always, that if any woman, tried for the murder of her child, shall be acquitted thereof, it shall be lawful for the jury, by whose verdict she shall be acquitted, to find, in case it shall so appear in evidence, that she was delivered of a child, and that she did, by secret burying or otherwise disposing of the dead body of such child, endeavor to conceal the birth thereof, and thereupon the Court may pass such sentence as if she had been convicted upon an indictment for the concealment of the birth.

16. *Assaults with intent to commit felony.*—It is enacted, that where any person shall be charged with and convicted of any of the following offences as misdemeanors, that is to say, of any assault with intent to commit felony; of any assault upon any peace officer or revenue officer in the due execution of his duty, or upon any person acting in aid of such officer; of any assault upon any person with intent to resist or prevent the lawful apprehension or detainer of the party so assaulting, or of any other person, for any offence for which he or they may be

liable by law to be apprehended or detained ; or of any assault committed in pursuance of any conspiracy to raise the rate of wages : in any such case, the Court may sentence the offender to be imprisoned for any term not exceeding two years, and may also (if it shall so think fit) fine the offender, and require him to find sureties for keeping the peace.*

17. *Assault on any seaman, &c.*—If any person 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 ; or if any person 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 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, every such offender may be convicted thereof before two Justices of the Peace, and imprisoned and kept to hard labor in the common gaol or house of correction, for any term not exceeding three calendar months : provided always, that no person, who shall be punished for any such offence, by virtue of this provision, shall be punished for the same offence by virtue of any other law whatsoever.

18. *Persons committing any assault or battery may be compelled by a magistrate to pay a fine.*—And

* But see 6 Victoria, chap. 5, sec. 5, as to assault with intent to Rape or Buggery.

whereas it is expedient that a summary power of punishing persons for common assaults and batteries should be provided under the limitations hereinafter mentioned ; be it therefore enacted, that where any person shall unlawfully assault or beat any other person, it shall be lawful for any Justice of the Peace, upon complaint of the party aggrieved, praying him to proceed summarily under this Act, to hear and determine such offence ;* and the offender, upon conviction thereof before him, shall forfeit and pay such fine as shall appear to him to be meet, not exceeding, together with costs (if ordered) the sum of five pounds, which fine shall be paid to the Treasurer of the Municipal District, or place in which the offence shall have been committed, and make part of the funds of such District, or if the conviction be had in any place not within any Municipal District, then such fine shall be paid over to such officer, and be applicable to such purposes as other fines and penalties by law are ; and the evidence of any inhabitant of the Municipal District shall be admitted in proof of the offence, notwithstanding such application of the fine incurred thereby ; and if such fine as shall be awarded by the said Justice, together with the costs (if ordered) shall not be paid, either immediately after the conviction, or within such period as the said Justice shall at the time of the conviction appoint, it shall be lawful for him to commit the offender to the common gaol or house of correction, there to be imprisoned for any term not exceeding two calendar months, unless such fine and costs be sooner paid ; but if the Justice, upon the hearing of any such case of assault or battery shall

* But see the Election Act, 6 Victoria, chap. 1, as to assaults within a certain distance of the poll during Election.

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, 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 Justice 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 by whom such costs shall be so ordered to be paid, as aforesaid, to the common gaol of the District, County or Division, where such offence shall be alleged to have been committed, there to be imprisoned for any term not exceeding ten days, unless such costs shall be sooner paid.

19. *Such certificate or conviction shall be a bar to any other proceedings.*—It is enacted, that if any person against whom any such complaint shall have been preferred for any common assault 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.

20. *Magistrate may discharge offender on his satisfying aggrieved party.*—When any person shall

be summarily convicted before a Justice of the Peace of any offence against this Act, it shall be lawful for such Justice, if he shall so think fit, to discharge the offender from his conviction upon his making such satisfaction to the party aggrieved for damages and costs, or either of them, as shall be ascertained by the said Justice.

51. *Where felony intended Magistrate not to adjudicate.*—In case the Justice shall find the assault or battery complained of to have been accompanied by any attempt to commit felony, or shall be of opinion that the same is, from any other circumstance a fit subject for a prosecution by indictment, he shall abstain from any adjudication thereupon, and shall deal with the case in all respects in the same manner as he would have done before the passing of this Act: provided also, that nothing herein contained shall authorize any Justice of the Peace to hear and determine 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.

22. *Punishment for disturbing divine service.*—If any person shall wilfully disturb, interrupt, or disquiet any assemblage of persons met for religious worship, by profane discourse, by rude, or indecent behavior, 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, upon conviction thereof before any Justice of the Peace, on the oath of one, or more, credible

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witness, or witnesses, forfeit and pay such a sum of money, not exceeding five pounds, as the said Justice shall think fit.

23. Fines, how levied.—In default of payment of any fine imposed under the authority of this Act, on a summary conviction before any Justice of the Peace, together with the costs attending the same, within the period specified for the payment thereof, at the time of conviction by the Justice before whom such conviction may have taken place, it shall and may be lawful for such Justice to issue his warrant directed to any constable to levy the amount of such fine and costs within a certain time to be in the said warrant specified, and in case no distress sufficient to satisfy the amount shall be found, it shall and may be lawful for him to commit the offender to the common gaol of the District wherein the offence was committed for any term not exceeding one month, unless the fine and costs be sooner paid.

24. Appeal against convictions to Quarter Sessions.—And it is enacted, that any person who shall think himself aggrieved by any summary conviction, or decision, under this Act aforesaid, may appeal to the next Court of General, or Quarter Sessions, which shall be holden not less than twelve days after the day of such conviction or decision for the District wherein the cause of complaint shall have arisen: provided always, that such person shall give to the other party a notice, in writing, of such appeal, and of the cause and matter thereof, within three days after such conviction or decision, and seven days at the least before such Sessions, and shall also, either remain in custody until the Sessions, or enter into a

recognizance with two sufficient sureties before a Justice of the Peace, conditioned personally to appear at the said Sessions and to try such appeal, and to abide the judgment of the Court thereupon, and to pay such costs as shall be by the Court awarded, and upon such notice being given, and such recognizance being entered into, the Justice before whom the same shall be entered into, shall liberate such person, if in custody, and the Court at such Sessions, shall hear and determine the matter of the appeal, and shall make such order therein, with or without cost, to either party, as to the Court shall seem meet ; and in case of the dismissal of the appeal, or the affirmance of the conviction, shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment.

25. Appeals triable by jury.—Whenever an appeal shall be made from the decision of any Justice under this Act as aforesaid, the Court of General or Quarter Sessions shall have power to empanel a Jury to try the matter on which such decision may have been made, and the Court on finding of such Jury, under oath, shall thereupon give such judgment as the circumstances of the case may require : provided always, that such Court shall not in any case adjudge the payment of a fine exceeding five pounds in addition to the costs, or to order the imprisonment of the person so convicted, for any period not exceeding one month ; and all fines imposed, and recovered, by the judgment of such Court, shall be applied and disposed of in the same manner as other fines recovered under the provisions of this Act.

26. *Punishment of accessories.*—In the case of every felony punishable under this Act, every principal in the second degree, and every accessory before the fact, shall be punishable with death or otherwise, in the same manner as the principal in the first degree is by this Act punishable; and every accessory after the fact to any felony punishable under this Act, shall, on conviction, be liable to be imprisoned for any term not exceeding two years.

27. *Offences punishable by imprisonment.*—When any person shall be convicted of any offence punishable under this Act, for which imprisonment may be awarded, it shall be lawful for the Court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labor, in the common gaol 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 labor, 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.

28. *Jury may acquit of felony and convict of assault in certain cases.*—On the trial of any person 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; and when such verdict shall be found, the Court shall have power to imprison the person so found guilty of an assault, for any term not exceeding three years.

29. *Not to affect the laws relating to the forces.*—Nothing herein contained shall alter or affect any of the laws relating to the Government of Her Majesty's Land or Naval Forces.

30. *Persons imprisoned may be pardoned.*—It shall be lawful for the Queen's Majesty, and for the Governor, Lieutenant Governor or person administering the Government of this Province, to extend the Royal mercy to any person imprisoned by virtue of this Act, although he shall be imprisoned for non-payment of money to some party, other than the Crown.

31. *Provisions for offences against this act.*—And for the more effectual prosecution of offences punishable upon summary conviction by virtue of this Act; be it enacted, that where any person shall be charged on the oath of a credible witness, before any Justice of the Peace, with any such offence, the Justice may summon the person charged to appear at a time and place to be named in such summons, and if he shall not appear accordingly, then (upon proof of the due service of the summons upon such person, by delivering the same to him) the Justice may either proceed to hear and determine the case *ex parte*, or may issue his warrant for apprehending such person and bringing him before himself or some other Justice of the Peace, or the Justice before whom the charge shall be made may (if he shall so think fit) issue such warrant in the first instance, without any previous summons.

32. *Time for summary proceedings.*—The prosecution for every offence punishable on summary

the said offence was committed, to be by him applied according to the directions of the Statute in that case made and provided; (*or as the case may be:*) and I order that the said sum of _____ for costs shall be paid to C. D. (*the party aggrieved.*)

Given under my hand, the day and year first above mentioned."

34. *Not to repeal any act relating to high treason or the revenue.*—Nothing in this Act contained, shall affect or alter any Act, so far as it relates to the crime of High Treason, or to any branch of the Public Revenue.

35. *All Acts repugnant to this Act repealed.*—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 into 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, except in so far as may relate to any offence committed before the said time, which shall be dealt with, and punished, as if this Act had not been passed.

6TH VICTORIA, CHAP. 5.

An Act for better proportioning the punishment to the offence, in certain cases, and for other purposes therein mentioned.

[12th October, 1842.]

1. Whereas it is expedient to enable the Courts before whom offenders may be convicted in certain

cases, better to proportion the punishment of such offenders to the guilt of the offence; be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, intituled, An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada, and it is hereby enacted by the authority of the same, that so much of a certain Act passed in the Session held in the fourth and fifth years of Her Majesty's Reign, and intituled An Act for improving the administration of criminal justice in this Province, or of a certain other Act passed in the same Session, and intituled, An Act for consolidating and amending the Laws in this Province, relative to Larceny and other offences connected therewith, or of a certain other Act passed in the same Session, and intituled An Act for consolidating and amending the Laws in this Province, relative to malicious injuries to property, or of a certain other Act passed in the same Session, and intituled An Act for consolidating and amending the Statutes in this Province, relative to offences against the person, or of any other Act or Law, as shall be repugnant to or inconsistent with the enactments of this Act, shall be and is hereby repealed.

2. Cases in which offenders may be committed.— For each and every offence for which by any of the Acts hereinbefore cited, the offender is liable on conviction to be punished by imprisonment in the Provincial Penitentiary, but may instead thereof and in

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the discretion of the Court, be punished by imprisonment in any other Prison or place of confinement for any term not exceeding two years, the offender may, if convicted after the passing of this Act, be punished in the discretion of the Court, by imprisonment in the Provincial Penitentiary for any term not less than three years and not exceeding the longest term for which such offender might have been so imprisoned if this Act had not been passed; or by imprisonment in any other prison or place of confinement for any term not exceeding two years, in the manner prescribed by such Act; provided always, that nothing in this Act shall prevent such offender from being punished by imprisonment in the Provincial Penitentiary for life, if he might have been so punished if this Act had not been passed.

3. *Other cases in which offenders may be committed.*—For each and every offence, for which by any of the said Acts, the offender may on conviction be punished by imprisonment for such term as the Court shall award, or for any term exceeding two years, such imprisonment if awarded for a longer term than two years, shall be in the Provincial Penitentiary.

4. *Instead of being punished by transportation, offenders may be imprisoned for a like term in the Penitentiary.*—For each and every offence for which by any of the said Acts or by any other Act or Law, the offender might, if this Act had not been passed, have been punished by transportation beyond the seas, such offender may, if convicted after the passing of this Act, be punished by imprisonment in the Provincial Penitentiary for any term for which he might have been transported beyond the seas if this Act had not been passed, or by impris-

onment for life, if without this Act he might have been punished by transportation for life.

5. *Assault with intent to commit Rape.*—It is necessary to determine the punishment to be inflicted upon certain offenders, not provided for by the said before recited Act, intituled An Act for consolidating and amending the Statutes in this Province relating to offences against the person, be it enacted that where any person shall be charged with and convicted of any assault, with intent to commit rape, or of any assault with intent to commit the abominable crime of buggery, either with mankind or with any animal, the Court in any such case may sentence the offender to be imprisoned at hard labor in the Provincial Penitentiary for any term not exceeding three years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

PUNISHMENT FOR KEEPING A BILLIARD TABLE WITHOUT LICENSE.

An Act for granting to Her Majesty a Duty upon Billiard Tables.*

1. It shall and may be lawful for the inspector of the District in which any such billiard table may be had or kept, or any other person, to give information of the same before any Justice of the Peace; and it shall and may be lawful for any two or more Justices of the Peace of such District to hear and determine the same, and to award execution therein according to the provisions of the Act, any law, usage or custom to the contrary notwithstanding.

*See 3rd Victoria, part of Sec.

2. In case where after conviction the penalty cannot be recovered, in consequence of the party convicted not having sufficient property to make the amount required, it shall and may be lawful for either of the Justices before whom the information and complaint shall have been made to issue his warrant for the apprehension and committal to the common gaol of the District of such delinquent, for a period not to exceed one month, unless the fine and costs shall be sooner paid.

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TREATY BETWEEN HER MAJESTY AND THE UNITED STATES OF AMERICA.

Signed at Washington, August 9, 1842.

[RATIFICATIONS EXCHANGED AT LONDON, OCTOBER 13, 1842.]

A Treaty to settle and define the Boundaries between the Possessions of Her Britannic Majesty in North America, and the Territories of the United States:—for the final suppression of the African Slave Trade:—and for the giving up Criminals, fugitive from Justice; in certain cases.*

WHEREAS certain portions of the Line of Boundary between the British Dominions in North America and the United States of America, described in the second Article of the Treaty of Peace of 1783, have not yet been ascertained and determined, notwithstanding the repeated attempts which have been heretofore made for that purpose; and whereas it is now thought to be for the interest of both parties that, avoiding further discussion of their respective rights, arising in this respect under the said Treaty, they should agree on a Conventional Line in said portion of the said Boundary, such as may be convenient to both Parties, with such equivalents and compensations as are deemed just and reasonable:—and whereas, by the Treaty concluded at Ghent on the 24th day of December, 1814, between His Britannic Majesty and the United States, an Article was agreed to and inserted, of the following tenor, viz: “Art. X. Whereas

* See Canada Official Gazette, February 3, 1844.

“ the Traffic in Slaves is irreconcilable with the
“ principles of humanity and justice ; and whereas
“ both His Majesty and the United States are desi-
“ rous of continuing their efforts to promote its en-
“ tire abolition ; it is hereby agreed, that both the
“ contracting parties shall use their best endeavors to
“ accomplish so desirable an object :”—and whereas,
notwithstanding the laws which have at various
times been passed by the two Governments, and the
efforts made to suppress it, that criminal traffic is
still prosecuted and carried on ; and whereas, Her
Majesty the Queen of the United Kingdom of
Great Britain and Ireland, and the United States of
America, are determined that, so far as may be in
their power, it shall be effectually abolished :—and
whereas it is found expedient for the better adminis-
tration of justice, and the prevention of crime within
the Territories and jurisdiction of the two Parties,
respectively, that persons committing the crimes
hereinafter enumerated, and being fugitives from
justice, should, under certain circumstances, be re-
ciprocally delivered up :—Her ~~British~~ Majesty,
and the United States of America, having resolved
to treat on these several subjects, have for that pur-
pose appointed their respective Plenipotentiaries
to negotiate and conclude a Treaty, that is to say :
Her Majesty the Queen of the United Kingdom of
Great Britain and Ireland has, on Her part, appoint-
ed the Right Honorable Alexander Lord Ashburton,
a Peer of the said United Kingdom, a member of
Her Majesty's Most Honorable Privy Council, and
Her Majesty's Minister Plenipotentiary on a Spe-
cial Mission to the United States ; and the President
of the United States has, on his part, furnished with
full powers Daniel Webster, Secretary of State of

the United States; who, after a reciprocal communication of their respective full powers, have agreed to and signed the following Articles:—

ARTICLE I.

It is hereby agreed and declared, that the Line of Boundary shall be as follows:—Beginning at the monument at the source of the River St. Croix, as designated and agreed to by the Commissioners under the fifth article of the Treaty of 1794, between the Governments of Great Britain and the United States; thence north, following the exploring line run and marked by the Surveyors of the two Governments in the years 1817 and 1818, under the Fifth Article of the Treaty of Ghent, to its intersection with the River St. John, and to the middle of the channel thereof; thence up the middle of the main channel of the said River St. John to the mouth of the River St. Francis; thence up the middle of the channel of the said River St. Francis, and of the lakes through which it flows, to the outlet of the Lake Pohenagamook; thence south-westerly, in a straight line, to a point on the north-west branch of the River St. John, which point shall be ten miles distant from the main breach of the St. John, in a straight line and in the nearest direction; but if the said point shall be found to be less than seven miles from the nearest point of the summit or crest of the highlands that divide those rivers which empty themselves into the River St. Lawrence from those which fall into the River St. John, then the said point shall be made to recede down the said northwest branch of the River St. John, to a point seven miles in a straight line from the said summit or crest; thence in a straight line, in a course

about south, eight degrees west, to the point where the parallel of latitude $46^{\circ} 25'$ north, intersects the south-west branch of the St. John's; thence southerly by the said branch, to the source thereof in the highlands at the Metjarmette Portage; thence down along the said highlands which divide the waters which empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean, to the head of Hall's Stream; thence down the middle of said stream, till the line thus run intersects the old Line of Boundary Surveyed and marked by Valentine and Collins previously to the year 1774 as the 45th degree of north latitude, and which has been known and understood to be the line of actual division between the States of New York and Vermont on one side, and the British Province of Canada on the other; and from said point of intersection west along the said dividing line, as heretofore known and understood, to the Iroquois, or St. Lawrence River.

ARTICLE II.

It is moreover agreed, that from the place where the joint Commissioners terminated their labors under the Sixth article of the Treaty of Ghent, to wit, at a point in the Neebish Channel, near Muddy Lake, the Line shall run into and along the ship channel between St. Joseph's and St. Tammany Islands, to the division of the channel at or near the head of St. Joseph's Island; thence turning eastwardly and northwardly around the lower end of St. George's or Sugar Island, and following the middle of the channel which divides St. George's from St. Joseph's Island; thence up the east Neebish channel nearest to St. George's Island, through the

middle of Lake George; thence west of Jonas' Island into St. Mary's River, to a point in the middle of that river about one mile above St. George's or Sugar Island, so as to appropriate and assign the said Island to the United States; thence adopting the line traced on the maps by the Commissioners, through the River St. Mary and Lake Superior, to a point north of Ile Royale in said lake, one hundred yards to the north and east of Ile Chapeau, which last mentioned Island lies near the north-eastern point of Ile Royale, where the line marked by the commissioners terminates; and from the last mentioned point south-westerly through the middle of the sound between Ile Royale and the north-western mainland, to the mouth of Pigeon River, and up the said river to and through the north and south Fowl Lakes, to the Lakes of the height of land between Lake Superior and the Lake of the Woods; thence along the water-communication to Lake Saisaginaga and through that lake; thence to and through Cypress Lake, Lac du Bois Blanc, Lac la Croix, Little Vermillion Lake, and Lake Namecan, and through the several smaller lakes, straits, or streams connecting the lakes here mentioned, to that point in Lac la Pluie, or Rainy Lake, at the Chaudière Falls, from which the Commissioners traced the line to the most north-western point of the Lake of the Woods; thence along the said line to the said most north-western point, being in latitude $49^{\circ} 23' 55''$ north, and in longitude $95^{\circ} 14' 38''$ west, from the observatory at Greenwich; thence, according to existing Treaties, due south to its intersection with the 49th parallel of north latitude, and along that parallel to the Rocky mountains. It being understood that all the

water communications, and all the usual portages along the line from Lake Superior to the Lake of the Woods, and also Grand Portage from the shore of Lake Superior to the Pigeon River, as now actually used, shall be free and open to the use of the subjects and citizens of both countries.

ARTICLE III.

In order to promote the interests, and encourage the industry of all the inhabitants of the countries watered by the River St John and its tributaries, whether living within the Province of New Brunswick, or the State of Maine, it is agreed, that where by the provisions of the present Treaty, the River St. John is declared to be the Line of Boundary, the navigation of the said river shall be free and open to both parties, and shall in no way be obstructed by either; that all the produce of the forest, in logs, lumber, timber, boards, staves, or shingles, or of agriculture, not being manufactured, grown on any of those parts of the State of Maine watered by the River St. John, or by its tributaries, of which fact reasonable evidence shall, if required, be produced, shall have free access into and through the said river and its said tributaries, having their source within the state of Maine, to and from the sea port at the mouth of said River St. John's, and to and round the falls of the said river, either by boats, rafts, or other conveyance; that when within the Province of New Brunswick, the said produce shall be dealt with as if it were the produce of the said Province; that in like manner the inhabitants of the territory of the upper St. John, determined by this Treaty to belong to Her Britannic Majesty, shall have free access to and through the river for their

produce, in those parts where the said river runs wholly through the State of Maine:—provided always that this agreement shall give no right to either party to interfere with any regulations not inconsistent with the terms of this treaty, which the Governments, respectively, of New Brunswick or of Maine may make respecting the navigation of the said river, where both banks thereof shall belong to the same party.

ARTICLE IV.

All grants of land heretofore made by either party within the limits of the territory which by this Treaty falls within the dominions of the other party, shall be held valid, ratified, and confirmed to the persons in possession under such grants, to the same extent as if such territory had by this Treaty fallen within the dominions of the party by whom such grants were made; and all equitable possessory claims, arising from a possession and improvement of any lot or parcel of land by the person actually in possession, or by those under whom such person claims, for more than six years before the date of this Treaty, shall in like manner be deemed valid, and be confirmed and quieted by a release to the person entitled thereto, of the title to such lot or parcel of land, so described as best to include the improvements made thereon; and in all other respects the two Contracting parties agree to deal upon the most liberal principles of equity with the settlers actually dwelling upon the territory falling to them respectively, which has heretofore been in dispute between them.

ARTICLE V.

Whereas, in the course of the controversy respecting the disputed territory on the north-eastern

Boundary, some monies have been received by the authorities of Her Britannic Majesty's Province of New Brunswick, with the intention of preventing depredations on the forests of the said territory, which monies were to be carried to a fund called the "Disputed Territory Fund," the proceeds whereof it was agreed should be hereafter paid over to the parties interested, in the proportions to be determined by a final settlement of Boundaries; it is hereby agreed that a correct account of all receipts and payments on the said fund shall be delivered to the Government of the United States within six months after the ratification of this Treaty; and the proportion of the amount due thereon to the States of Maine and Massachusetts, and any bonds or securities appertaining thereto, shall be paid and delivered over to the Government of the United States; and the Government of the United States agrees to receive for the use of, and pay over to the States of Maine and Massachusetts their respective portions of said fund; and further, to pay and satisfy said States, respectively, for all claims for expenses incurred by them in protecting the said heretofore disputed territory, and making a survey thereof in 1838: the Government of the United States agreeing with the States of Maine and Massachusetts to pay them the further sum of three hundred thousand dollars, in equal moieties, on account of their assent to the Line of Boundary described in this Treaty, and in consideration of the conditions and equivalents received therefor from the Government of Her Britannic Majesty.

ARTICLE VI.

It is furthermore understood and agreed, that for the purpose of running and tracing those parts of the

line between the source of the St. Croix and the St. Lawrence River, which will require to be run and ascertained, and for marking the residue of said line by proper monuments on the land, two Commissioners shall be appointed, one by Her Britannic Majesty, and one by the President of the United States, by and with the advice and consent of the Senate thereof; and the said Commissioners shall meet at Bangor, in the State of Maine, on the 1st day of May next, or as soon thereafter as may be, and shall proceed to mark the line above described from the source of the St. Croix to the River St. John, and shall trace on proper maps the dividing line along said river, and along the River St. Francis to the outlet of the Lake Pohenagamook; and from the outlet of the said lake they shall ascertain, fix, and mark by proper and durable monuments on the land, the line described in the First Article of this Treaty; and the said Commissioners shall make to each of their respective Governments a joint report or declaration, under their hands and seals, designating such Line of Boundary, and shall accompany such report or declaration with maps, certified by them to be true maps of the new Boundary.

ARTICLE VII.

It is further agreed, that the channels in the River St. Lawrence on both sides of the Long Sault Islands, and of Barnhart Island, the channels in the River Detroit, on both sides of the Island Bois Blanc, and between that Island and both the Canadian and American shores, and all the several channels and passages between the various Islands lying near the junction of the River St. Clair with the lake of that

name, shall be equally free and open to the ships, vessels and boats of both parties.

ARTICLE VIII.

The parties mutually stipulate, that each shall prepare, equip and maintain in service on the coast of Africa, a sufficient and adequate squadron, or naval force of vessels, of suitable numbers and descriptions, to carry in all not less than eighty guns, to enforce, separately and respectively, the laws, rights, and obligations of each of the two countries for the suppression of the Slave Trade; the said squadrons to be independent of each other, but the two Governments stipulating nevertheless to give such orders to the officers commanding their respective forces, as shall enable them most effectually to act in concert and co-operation, upon mutual consultation, as exigencies may arise, for the attainment of the true object of this Article: copies of all such orders to be communicated by each Government to the other respectively.

ARTICLE IX.

Whereas, notwithstanding all efforts which may be made on the coast of Africa for suppressing the Slave Trade, the facilities for carrying on that traffic, and avoiding the vigilance of cruisers, by the fraudulent use of flags and other means, are so great, and the temptations for pursuing it, while a market can be found for Slaves, so strong, as that the desired result may be long delayed, unless all markets be shut against the purchase of African negroes;—the parties to this Treaty agree, that they will unite in all becoming representations and remonstrances with any and all powers within whose dominions such markets are allowed to exist; and

that they will urge upon all such powers the propriety and duty of closing such markets effectually, at once and for ever.

ARTICLE X.

It is agreed that her Britannic Majesty and the United States shall, upon mutual requisitions by them or their ministers, officers or authorities, respectively made, deliver up to justice all persons who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged paper, committed within the jurisdiction of either, shall seek an asylum, or shall be found within the territories of the other:—provided that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offence had there been committed; and the respective Judges and other Magistrates of the two Governments shall have power, jurisdiction, and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such Judges or other Magistrates, respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining Judge or Magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition, and receives the fugitive.

ARTICLE XI.

The Eighth Article of this Treaty shall be in force for five years from the date of the exchange of the Ratifications, and afterwards, until one or the other party shall signify a wish to terminate it. The Tenth Article shall continue in force until one or the other of the parties shall signify its wish to terminate it, and no longer.

ARTICLE XII.

The present Treaty shall be duly ratified, and the mutual exchange of Ratifications shall take place in London within six months from the date hereof, or earlier if possible.

In faith whereof we, the respective Plenipotentiaries, have signed this Treaty, and have hereunto affixed our seals.

Done in duplicate at Washington, the ninth day of August, Anno Domini one thousand eight hundred and forty-two.

ASHBURTON.

DANIEL WEBSTER.

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