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No. 12.

3RD SESSION, 3RD PARLIAMENT, 13 & 14 VICTORIA, 1850.

# BILL.

AN ACT to establish a CODE OF CRIMINAL PROCEDURE.

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

Second Reading,

HON. MR. BADGLEY.

TORONTO: PRINTED BY LOVELL AND GIBSON, FRONT STREET.

# CODE

OF

# CRIMINAL PROCEDURE

## OF CANADA.

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# BILL.

## An Act to establish a Code of Criminal Procedure.

WHEREAS it is expedient to establish a Code of Criminal Procedure for the Povince of Canada: Be it therefore enacted, &c.

I. That this act shall be known as THE CODE OF CRIMINAL PROCEDURE OF THE PROVINCE OF CANADA.

II. This Code is divided into six parts.

The first relates to the Courts having original jurisdiction of criminal actions:

The second relates to the prevention of public offences:

The third relates to the proceedings in criminal actions prosecuted by indictment:

The fourth relates to proceedings in the Police Courts:

The fifth relates to special proceedings of a criminal nature:

The sixth relates to costs in criminal actions, and in proceedings of a criminal nature:

III. A crime or public offence is an act or omission forbidden by law, and to which, upon conviction, punishment is attached.

IV. Punishments are

1. Death:
2. Imprisonment:
3. Fine:
4. Removal from office:
5. Disqualification to hold and enjoy any office of honor, trust or profit under the Government of this Province.
6. Whipping.

V. Public offences are divided into,

1. Felonies: and
2. Misdemeanors.

VI. A public offence, punishable with death or by imprisonment in the Provincial Penitentiary, is a felony.

VII. Every other public offence is a misdemeanor.

VIII. No person can be punished for a public offence, except upon legal conviction in a court having jurisdiction thereof.

IX. Every public offence must be prosecuted by indictment, or presentment, except in

Proceedings had for the removal of a civil officer of the Province, on an impeachment for wilful or corrupt misconduct in office:

2. Proceedings had for the removal of Justices of the Peace, and others holding office at the pleasure of the Crown:

3. Offences arising in the militia:

4. Offences cognizable by Police Courts, Police Justices or Superintendents, or Justices of the Peace:

5. Contempts.

X. The proceeding for the trial and punishment of a public offence, is known as a criminal action.

XI. A criminal action is prosecuted by the title and in the name of the Sovereign for the time being, as a party against the party charged with the offence.

XII. The party prosecuted in a criminal action, is designated in this Code, as the defendant.

XIII. In a criminal action, the defendant is entitled,

1. To a speedy and public trial:

2. To make full answer and defence thereto by himself in person or by counsel learned in the law.

3. To produce witnesses or proof in his behalf, and to be confronted with and cross examine the witnesses against him in the presence of the court; except that where the charge has been preliminarily examined before a magistrate, and the testimony reduced by him to the form of a deposition in the presence of the defendant, who has, either in person or by counsel, cross-examined or had an opportunity to cross-examine the witness; the deposition of the witness in such case may be read as evidence, upon its being satisfactorily shown to the Court that he is dead or insane, or cannot, with due diligence, be found in the Province.

XIV. No person shall be subjected to a second criminal action for a public offence, for which he has once been duly convicted or acquitted on the merits.

XV. No person can be compelled, in a criminal action, to be a witness against himself; nor can a person charged with a public offence, be subjected before conviction, to any more restraint than is necessary for his detention to answer the charge.

XVI. No person can be convicted of a public offence, for which he is entitled to a trial by jury, unless by the verdict of a jury accepted and recorded by the Court, or upon a plea or confession of guilty.

# PART I.

## THE COURTS HAVING ORIGINAL JURISDICTION IN CRIMINAL ACTIONS.

XVII. The following are the Courts of Justice in this Province, having original jurisdiction of criminal actions:

1. The several courts of Queen's Bench:
2. The Court of Common Pleas.
3. The Courts of Assize:
4. The Courts of Oyer and Terminer:

These are all Courts of Record, and have original jurisdiction in all matters of criminal offences, and exercise all such powers as are delegated to them by statute or according to the laws now in force in either section of the Province therefor, together with such other powers, jurisdiction and authority as shall be and are specially delegated to them or either or any of them by this Act, or by the Criminal Code.

5. The Courts of General Sessions of the Peace.

These are also Courts of Record and exercise original jurisdiction in criminal matters, except in the following:

Treason and Misprision of Treason;

Offences against the Queen's person, authority or government, inferior to Treason, and other offences contained in the 2nd chapter of the Criminal Code;

Homicide, and other offences contained in the 15th chapter of the said Code;

Perjury and subornation thereof;

Duel and Challenge;

Forgery, and other offences connected therewith, in the 18th chapter;

Bigamy and Incest;

Bribery.

6. The Police and Magistrate's Courts.

XVIII. These last Courts have summary jurisdiction over the following public offences committed in their respective jurisdictions, and over all such other offences as are specially subjected to their jurisdiction by this Act or the Criminal Code, or by any statute not repealed by this Act or the said Code.

1. Assault and battery, not charged to have been committed riotously, or upon a public officer in the execution of his duties, or with a felonious intent:

2. Poisoning, ki'ling, maiming, wounding, torturing, ill-treating or cruelly beating an animal:

3. Racing animals, within one mile of the place where a court is held:

4. Committing a wilful trespass, or severing any produce or article from the freehold, not amounting to larceny:

5. Larceny, when the amount stolen is not alleged to exceed one pound:

6. Embezzlement, when the amount embezzled is not alleged to exceed five pounds:

7. Receiving stolen goods, when the value of the goods alleged to have been so received does not exceed five pounds:

8. Malicious injuries and mischiefs, not endangering life or personal safety, or grievous bodily harm to the sufferer or when the value of the property taken or carried away, or amount of injury or mischief occasioned thereby is not alleged to exceed five pounds:

9. Selling poisonous substances, not labelled as required by statute:

10. Maliciously removing, altering, defacing or cutting down monuments or marked trees:

11. Maliciously breaking, destroying or removing mile-stones, mile-boards or guide-boards, or altering an inscription thereon:

12. Wilful trespasses, when the value of the property taken or carried away, or injury occasioned thereby is not alleged to exceed five pounds.

13. Profanity.

14. Blasphemy.

15. Drunkenness.

16. Vagrancy, and the offences mentioned in the 25th chapter.

Provided that the defendant in all cases shall have a trial by a jury on his appeal therefor as in other cases.

XIX. Any Court or Magistrate having jurisdiction of any crime, has also jurisdiction over accessories thereto either before or after the fact.

# PART II.

## OF THE PREVENTION OF PUBLIC OFFENCES.

Title 1. Of Lawful Resistance.
2. Of the Intervention of Officers of Justice.

### TITLE I.

### OF LAWFUL RESISTANCE, BY WHOM, IN WHAT CASES AND TO WHAT PURPOSE.

20. By the party about to be injured.
21. By other parties.

XX. Lawful resistance to the commission of a public offence may be made by the party about to be injured,

1. To prevent an offence against his person:

2. To prevent an illegal attempt, by force, to take or injure property in his lawful possession.

XXI. By other parties,

In aid or defence of the person about to be injured, sufficient to prevent the offence.

### TITLE II.

### OF THE INTERVENTION OF THE OFFICERS OF JUSTICE.

22. In what cases.
23. Persons acting in their aid, justified.

XXII. To prevent public offences:

1. By requiring security to keep the peace:

2. By requiring the attendance of police in exposed places:

3. By suppressing riots.

4. By criminal proceedings against offenders.

XXIII. When the officers of justice are authorized to act in the prevention of public offences, other persons, who by their command, act in their aid, are justified in so doing.

## CHAPTER I.

## SECURITY TO KEEP THE PEACE.

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28. Persons complained of, when to be discharged.
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31. Persons committed for not giving security, how discharged.
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34. Appearance of party bound, upon his undertaking.
35. Person bound, may be discharged, if complainant do not appear.
36. Proceedings in Sessions, on appearance of both parties.
37. Undertaking, when broken.
38. Evidence of breach.
39. Security for the peace not required, except according to this chapter.

XXIV. An information may be laid before any magistrate that a person has threatened to commit an offence against the person or property of another.

XXV. When the information is laid before the magistrate, he must examine on oath the complainant and any witnesses produced by him and must take their depositions in writing, and cause them to be subscribed by the parties making them.

1 Ch. C. L. p. 32.

XXVI. If it appear from the depositions, that there is sufficient ground for proceeding, the magistrate must issue a summons or warrant, as he may judge expedient to ensure justice, directed generally to any peace officer of the district or county, city or town, reciting the substance of the information, and commanding the officer forthwith to arrest the person complained of, and bring him before himself or some other magistrate having jurisdiction.

Hawk. P. C. b. 2. ch. 13., ss. 11, 15, 16, 18.

XXVII. When the person complained of is brought before the magistrate, if the charge be controverted, the magistrate must take testimony in relation thereto, which must be reduced to writing, and subscribed by the witnesses in the presence of the accused.

XXVIII. If it appear that there is no sufficient ground for proceeding, the magistrate shall dismiss the charge, whether it be direct or on suspicion only, and discharge the accused.

XXIX. If there be sufficient ground for proceeding, the magistrate shall require the person complained of to enter into recognizance in such sum as the magistrate may direct, with one or more sufficient sureties, to abide the order of the next Court of General Sessions of the Peace for the district or county, and in the mean time to keep the peace towards the people of this Province, and particularly towards the complainant.

XXX. If such recognizance be given, the party complained of must be discharged, but if it be not given, the magistrate must commit him to prison, specifying in the warrant, the charge, the requirement to give security, the amount thereof, and the omission to give the same.

XXXI. If the person complained of be committed for not giving security, he may be discharged by any magistrate upon giving the same.

XXXII. Such recognizance must be forthwith transmitted by the magistrate to the Clerk of the Peace for the district or county in which it has been received.

XXXIII. A person, who, in he presence of a court or magistrate, assaults or threatens to assault another, or to commit an offence against his person or property, or who contends with another with angry words, may be ordered by the court or magistrate to give security as provided hereinabove, and on refusal to do so, he may be committed as provided above.

XXXIV. A person who has entered into a recognizance to keep the peace, must appear on the first day of the next term of the Court of General Sessions of the said district or county, and on failure so to do his recognizance will be *ipso facto* forfeited, and may be prosecuted, unless his default be excused during the same term.

XXXV. If the complainant do not appear, the person complained of may be discharged, unless good cause to the contrary be shewn.

XXXVI. If both parties appear, the Court of General Sessions may hear their proofs and allegations, and may either discharge the undertaking, or require a new one, for any time not exceeding one year.

XXXVII. A recognizance to keep the peace shall be deemed to be broken, on the failure of the person complained of so to appear at the said Court of General Sessions, or upon his being convicted of a breach of the peace, shall thereupon *ipso facto* stand forfeited, and may be prosecuted.

XXXVIII. In all actions upon such recognizances, the offence stated in the record of conviction must be alleged as the breach of the recognizance, and shall be conclusive evidence thereof.

XXXIX. Security to keep the peace or to be of good behaviour, cannot be required, except as prescribed in this Chapter.

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## CHAPTER II.

## POLICE IN CITIES AND VILLAGES AND THEIR ATTENDANCE AT EXPOSED PLACES.

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XL. The organization and regulation of the police in the cities and villages in this Province, are governed by special statutes.

The mayor or other officer having the direction of the police in a city or village, must order a force, sufficient to preserve the peace, to attend any public meeting, when he is satisfied that a breach of the peace is to be apprehended.

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## CHAPTER IV.

## SUPPRESSION OF RIOTS.

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49. Governor may, in certain cases, proclaim a county in a state of insurrection.
50. May revoke the proclamation.
51. Consequences of resisting process, after a county is proclaimed in a state of insurrection.

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XLI. When a peace officer, authorized to execute process, finds or has reason to apprehend that resistance will be made to the execution of the process, he shall return the fact to the Sheriff of the district or county in which the process is to be served, who may command as many male inhabitants of his district or county as he may think proper, to assist the officer in overcoming the resistance, and if necessary, in seizing, arresting, and confining the parties resisting and their aiders and abettors, to be punished according to law.

XLII. The Sheriff must certify to the court or magistrate by whom or from which the process issued, the names of such parties, their aiders and abettors, to the end that they may be proceeded against for contempt.

XLIII. Every person commanded as above by such Sheriff to assist the officer in the execution of process, who, without lawful cause, refuses or neglects to obey the command, is guilty of a misdemeanor.

XLIV. When any persons to the number of twelve or more, armed with offensive weapons, or to the number of thirty or more, whether armed or not, are unlawfully or riotously assembled in a district, county, city, village, parish or town, the Sheriff of the district or county, the Mayor of the city or town, or Mayor or chief executive municipal officer of the county or village, as the case may be, must go among the persons assembled, or as near to them as possible, and command them, in the name of the Sovereign, immediately to disperse.

XLV. If the persons assembled do not immediately disperse, the magistrates and officers must immediately arrest them, or cause them to be arrested, that they may be punished according to law, and for that purpose may command the aid of all persons

present or within the district, county, city, town, village or parish, and may thereupon proceed in such manner as they may deem necessary, to disperse the assembly and arrest the offenders.

XLVI. If a person so commanded to aid the magistrates or officers, neglect to do so, he shall be deemed one of the rioters and be punishable accordingly.

XLVII. If a magistrate or officer having notice of such unlawful or riotous assembly, neglect to proceed to the place thereof, or as near thereto as he can with safety, and there to exercise his authority for suppressing the same and arresting the offenders, he shall be guilty of a misdemeanor.

XLVIII. When there is an unlawful or riotous assembly, with intent to commit a felony or to offer violence to person or property, or to resist by force the laws of the Province, and the fact is made to appear to the Sheriff of the district or county, or the Mayor of the city or town aforesaid, or either of them, as the case may be, may issue an order directed to the commanding officer or military force under his command, to furnish such part of it as he may deem sufficient for the purpose, to appear at a specified time and place to aid the civil authorities in suppressing violence and enforcing the law.

1. The commanding officer to whom the order is given must forthwith obey it; and the troops required must appear at the time and place appointed, armed and equipped with necessary ammunition.

2. When an armed force is called out for the purpose of suppressing an unlawful or riotous assembly, it must obey the orders in relation thereto of the civil officers requiring them.

3. The troops must not be brought up to the place until after the magistrate has ordered the assembly to disperse.

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

5. The commanding officer must act entirely on the defensive, not suffering his men to use their arms except to repel actual violence, unless

6. An attack be made on any one of the troops, by which his life is in danger, or an attempt be made to disarm him, when he may defend himself by discharging his fire-arms:

7. A general attack be made by the rioters upon the troops with fire-arms, missiles or other weapons by which their lives are indiscriminately put in danger, the commanding officer may order the troops to fire; but not until an endeavour has been made to disperse the rioters by less dangerous means:

8. If the troops cannot be placed between the rioters and the persons or property apparently intended to be attacked, and the purpose of the riot be persevered in by means evidently dangerous to the life or property of others, although no attack be made on the troops themselves, the commanding officer may be directed

to disperse the rioters by such means as he may deem effectual, and by firing upon them if he shall judge it necessary.

XLIX. When the Governor is satisfied that the execution of the laws has been forcibly resisted in any District or County, by bodies of men, or that combinations to resist the execution of the laws by force exist in any district, county, city, town or village, and that the civil power has been exerted and has not been sufficient to enforce their execution, he may, on the application of the Sheriff, or of the Attorney General, or of any two magistrates, by proclamation, to be published in the Canada Gazette, and in such papers in the district or county as he may direct, declare the same to be in a state of insurrection.

L. The Governor may, when he shall think proper, revoke the proclamation authorized by the last article, or declare that it shall cease, at the time and in the manner directed by him.

LI. A person who after the publication of the said proclamation resists or aids in resisting the execution of the law, in a district, county, city, town or parish so proclaimed, or who aids or attempts the rescue or escape of another from lawful custody or confinement by reason thereof, or who resists or aids in resisting a force ordered out to quell or suppress an insurrection, shall be guilty of a felony, and be punishable by imprisonment in the Penitentiary for not less than three years.

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# PART III.

## PROCEEDINGS IN CRIMINAL ACTIONS PROSECUTED BY INDICTMENT.

1. Of the Local Jurisdiction of Public Offences.
2. Of the Time of commencing Criminal Actions.
3. Of the Information and Proceedings thereon to the Commitment, inclusive.
4. Of the Proceedings after Commitment and before Indictment.
5. Of the Indictment.
6. Of the Proceedings on the Indictment before Trial.
7. Of the Trial.
8. Of the Proceedings after Trial and before Judgment.
9. Of the Judgment and Execution.
10. Of Appeals.
11. Of Miscellaneous Proceedings.

## TITLE I.

## OF THE LOCAL JURISDICTION OF PUBLIC OFFENCES.

52. Jurisdiction of Offences committed in this Province.
53. When the offence is commenced without, but consummated within, this Province.
54. When an offence is committed partly in one District or County and partly in another, or within 500 yards of the boundary thereof.
55. Where property is feloniously taken in any part of Her Majesty's dominions and held in possession in this Province.
56. Jurisdiction of an offence on board a vessel or in a carriage.
57. Of indictment for kidnapping, enticing away a child, or abduction
58. Of same for bigamy or incest.
59. Of same for libel.
60. Of same for return from transportation.
61. Of same for receiving stolen goods.
62. Of same for hurts out of, and death in, the Province.
63. Of same for forgery.
64. Of same for accessories before the fact.
65. Of same for same after the fact.
66. Proceedings against accessory without principal.
67. Conviction or acquittal in one district or county a bar where jurisdiction is concurrent.
67–*a*. Offences against the Post Office.
67–*b*. Indictments for returning from banishment.

LII. Every person being an inhabitant of this Province or of any other country, is liable to punishment by the laws of this Province for a public offence committed by him therein.

LIII. When the commission of a public offence commenced without this Province, is completed within the same, either by the defendant himself or through the intervention of an innocent or guilty agent, or by any other means proceeding directly from himself, he is liable to punishment therefor in this Province; and in such case the jurisdiction is in the district or county in which he offence is completed.

LIV. Where any public offence shall be begun in one district or county and completed in another, or on the boundary of two or more districts or counties, or within the distance of five hundred yards of any such boundary, the jurisdiction over such offence shall be in any of the said districts or counties; the five hundred yards shall be measured in a direct line from the boundary.

5 Jur., 225; Harr. Digest, 7171.

LV. When any person having stolen, or otherwise unlawfully taken in any part of Her Majesty's dominions, any property

whatsoever, the stealing or taking whereof is made punishable by indictment under this Code, shall afterwards have such property in his possession in any part of this Province, the jurisdiction over such offence shall be in any part of this Province, where he so had such property; and for every receiver thereof knowing the same to have been so stolen or taken, the jurisdiction thereof shall be in that part of the Province where he shall receive or have the said property.

LVI. Where any public offence shall be committed in this Province in or upon any carriage whatever employed in any journey on any highway or on board a vessel navigating a river, lake, canal or stream, or lying therein in the prosecution of her voyage, and in all cases where any part of a highway or of a river, lake, canal or stream, shall constitute the boundary of any two or more districts or counties, the jurisdiction shall be in any district or county, through or by any part whereof such carriage or vessel shall have passed in the course of the journey or voyage, or in the district or county where the voyage terminates.

LVII. In all cases of child-stealing, kidnapping, abduction of any female, and unlawful seizure and imprisonment of any person, the jurisdiction shall be in the district or county in which the offence shall be committed or in, into or out of which the person upon whom such offence may be committed, may in the commission thereof have been brought, or in which any act shall be done by the defendant in instigating, procuring, promoting or aiding in or being an accessary to the commission of the offence, or in abetting the parties concerned therein.

LVIII. In all cases of bigamy or incest committed in one district or county where the defendant is arrested in another, the jurisdiction is in either district or county.

LIX. In all cases of Libel published in any district or county of this Province by any person within or without the Province at the time of the publication thereof, the jurisdiction shall be in any district or county in which such libel shall be so published by him.

LX. In all cases of return from transportation or banishment and being found at large in this Province without lawful cause, the jurisdiction shall be either in the district or county where the defendant shall be found at large, or in or at which his sentence or order of transportation or banishment was passed or made.

LXI. In all cases of receivers of property feloniously or unlawfully stolen, taken, obtained or converted in this Province, the jurisdiction shall be either in the district or county in which the property is found in their possession, or in that in which the property was by them actually received; when property feloniously taken in one district or county by robbery, burglary, larceny or embezzlement, has been brought into another, the jurisdiction of the offence shall be in either district or county.

LXII. When any person being feloniously stricken, poisoned or otherwise hurt upon the sea, or at any place out of this Province, shall die thereof in this Province, or being feloniously stricken, poisoned, or otherwise hurt at any place in this Province, shall die thereof upon the sea or at any place out of this Province, every offence committed in respect of any such

case, whether the same shall amount to the offence of murder or of manslaughter, may be dealt with, enquired of, tried, determined, and punished in the district or county 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 or county.

LXIII. In all cases of forgery the offence at common law or by any act or statute may be dealt with, indicted, tried and punished and laid and charged to have been committed in any district or place in which the offence shall have been committed or in which the offender shall be apprehended or be in custody, as if his offence had been actually committed in that district or place; and every accessory thereto or person aiding, abetting or counselling the commission of any such offence, may be dealt with, indicted, tried and punished, and his offence laid and charged to have been committed in any district or place in which the principal offender may be tried.

LXIV. In cases of accessories before the fact, if any person shall counsel, procure or command any one to commit any offence such person shall be deemed guilty of the offence charged and may be indicted and convicted as an accessory before the fact, either together with the principal offender or after the conviction of the said principal or for a substantive offence, and whether the principal 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 to the same offence, 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 offendor, in the same manner as if such offence had been committed at the same place as the principal offence although the same may have been committed either on the high seas or at any place on land, whether within this Province or without; and in case the principal offence 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.

LXV. In cases of accessories after the fact, if any person shall become an accessory after the fact to any offence, the offence may be inquired of, tried, determined, and punished by any Court which shall have jurisdiction to try the principal offence, 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 offence, although such act may have been committed either on the high seas, or at any place on land, whether within this Province or without; and in case the principal offence shall have been committed within the body of any district or county, and the act of the accessory shall have been committed within the body of any other district or county, his offence may be inquired of, tried, determined and punished in either of such districts or counties.

LXVI. If any principal offender shall be in any wise convicted of any offence it shall be lawful to proceed against any accessory, aider and abettor therein or therefor, in the same manner as

if such principal offender had been attainted thereof, notwithstanding such principal offender shall die or be pardoned, or otherwise delivered before attainder; and every such aider and abettor or accessory shall suffer the same punishment, if he be in anywise convicted, as he should have suffered if the principal had been attainted.

LXVII. When the offence, whether principal or accessory is within the jurisdiction of two or more districts or counties, a conviction or acquittal thereof, in one of them, shall be a bar to a criminal action thereof in another.

LXVII–*a*. The jurisdiction over offences against the Post Office shall be in any district or county where the offence is committed or where the offender is apprehended or in custody, as if the offence were committed therein; or in respect of a mail, post letter bag, post letter, moveable property, money or security sent by the post, the jurisdiction shall be as well in the district or county in which the offender is apprehended or is in custody, as also in any district or county through any part whereof such mail, post letter bag or post letter, moveable property, money or security sent by the post shall have passed in the conveyance or delivery thereof, in the same manner as if it had actually been committed in such district or county, and in all cases where the side, centre or other part of a highway or a river, canal or navigation shall constitute the boundary of two districts or counties, the jurisdiction shall be in either as if it had actually been committed in such district or county, and the offence of any accessory before the fact to any such offence shall and may be laid and charged to have been committed in any district or county in which the principal offender may be tried.

7 W. 4 and 1 Vic. c. 36, s. 37.

LXVII–*b*. 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 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 term of transportation or banishment, every such offender shall be guilty of Felony, and shall be liable to be imprisoned in the Penitentiary for life, and every such offender may be tried either in the district or county where such offender shall be found at large, or in the district or county in or at which such sentence or order of transportation or banishment was passed or made.

## TITLE II.

# OF THE TIME OF COMMENCING CRIMINAL ACTIONS.

68. Prosecution for murder may be commenced at any time.
69. Limitation of two years for other felonies.
70. Limitation of one year for all other public offences.
71. Exception when defendant is out of the Province.
72. Indictment deemed found, when presented in Court and filed.

LXVIII. Prosecutions for murder may be commenced at any time without limitation after the death of the person killed.

LXIX. An indictment for any other felony must be found within two years after its commission.

LXX. In all other public offences an indictment must be found within one year after its commission; except that prosecutions for offences punishable on summary conviction shall be commenced within three calendar months from the commission of the offence, unless otherwise specially directed, and in such summary cases the evidence of the party aggrieved shall be admitted in proof of the offence.

LXXI. If, when the offence is committed, the defendant be out of the Province, the indictment may be found within the term herein limited after his coming within the Province; and no time, during which the defendant is not an inhabitant of or usually resident within the Province shall be part of the limitation.

LXXII. An indictment shall be deemed to be found within the meaning of the previous articles of this chapter when duly presented by the grand jury in open Court and received and filed therein.

## TITLE III.

# OF THE INFORMATION AND PROCEEDINGS THEREON TO THE COMMITMENT INCLUSIVE.

1. The information.
2. The warrant of arrest.
3. Arrest by an officer, under a warrant.
4. Arrest by an officer, without a warrant.
5. Arrest by a private person.
6. Re-taking after an escape or rescue.
7. Examination of the case and discharge of the defendant or holding him to answer.

## CHAPTER I

## THE INFORMATION.

73. Information, defined.
74. Magistrate, defined.
75. Jurisdiction of Magistrate.
75-*a*. If summons issue before warrant and variance in same.

LXXIII. The information is the complaint made to a magistrate, that a public offence has been or is suspected to have been committed, in order to compel the appearance of the party known or suspected thereof, for inquiry concerning the same.

LXXIV. A magistrate is an officer, having power to issue a warrant for the arrest of a person charged with a public offence.

LXXV. Such a warrant, to be executed within the limits of the jurisdiction of the magistrate, may be granted by any magistrate who has authority by statute, commission or otherwise, to make preliminary inquiry concerning the particular offence, or solely or jointly with any other magistrate to hear and determine such offence.

LXXV-*a*. In all cases where it is intended to issue a summons instead of a warrant in the first instance, it shall not be necessary that such information and complaint shall be in writing, or be sworn to or affirmed in manner aforesaid, but in every such case such information and complaint may be by parol merely and without any oath or affirmation whatsoever to support or substantiate the same; but

12 & 13 Vict. ch. 69, sect. 8.

No objection shall be taken or allowed to any such information or complaint for any alleged defect therein, in substance or in form, or for any variance between it and the evidence adduced on the part of the prosecution before the Magistrate who shall take the examination of the witnesses in that behalf as herein before mentioned.

12 and 13 Vict. c. 69.

## CHAPTER II.

## THE WARRANT OF ARREST.

76. Examination of the prosecutor and his witness, upon the information.
77. Depositions, what to contain.
78. In what case warrant of arrest may be issued.
79. Form of the warrant.
80. Name or description of the defendant, in the warrant, and statement of the offence.
81. Warrant to be directed to and executed by a peace officer.
82. If issued by a Judge, to what officer directed.
83. To what peace officer warrant to be directed, and when and how to be executed in another district or county.
84. Endorsement on the warrant, for service in another district or county, how and upon what proof to be made.
85. Defendant to be taken before the magistrate issuing the warrant, or another magistrate in the same district or county, if for felony.
86. Defendant, arrested for a misdemeanor in another district or county to be taken before a magistrate therein, and admitted to bail.
87. Proceedings on taking bail from the defendant, in such case.
88. Proceedings where he is admitted to bail in such case, but bail is not given.
89. Before what magistrate in the same district or county, defendant is to be taken, when the magistrate issuing the warrant is unable to act.
90. Defendant, in all cases to be taken before a magistrate, without delay.
91. If defendant be taken before another magistrate than the one who issued the warrant, depositions to be sent to the magistrate, or witnesses to be examined anew.

LXXVI. When such complaint is made the magistrate must examine on oath the informant or prosecutor, and any witnesses he may produce; and must forthwith reduce their depositions into writing, and cause them to be subscribed by the parties making them, and by himself.

LXXVII. The depositions must set forth the facts stated by the prosecutor and his witnesses, tending to establish the commission of the offence, or their suspicion thereof, and the guilt of the defendant.

LXXVIII. If the magistrate be satisfied therefrom, that there is reasonable ground to believe that the offence complained of has been committed, and that the defendant has committed it, he must issue a warrant of arrest.

2 Hale, P. C., 72, 108.

LXXIX. A warrant of arrest is an order in writing under the title of the Queen, signed by a magistrate, commanding the arrest of the defendant, and shall be substantially in the following form:

2 Lord Raym. 1195.

"District or county of [*or as the case may be.*]

"In the name of our Sovereign Lady the Queen: To any "peace officer in this district, [*or in the county of* , *or as* "*the case may be.*]

"Information upon oath having been this day laid before me, "that the crime of, [*designating it,*] has been committed and "accusing C. D., thereof,

"You are therefore commanded, forthwith to arrest the above "named C. D., and bring him before me, at [*naming the place,*] "or in case of my absence or inability to act, before the nearest "or most accessible magistrate in this district or county.

"Dated at the , [*or as the case may be,*] this "day of , 18 ." [*as the year may be*].

E. F. *Justice of the Peace,*
[*or as the case may be.*]

LXXX. The warrant must specify the name of the defendant, (*a*) or if it be unknown to the magistrate, then he may be designated therein by any name or description sufficient to distinguish him; the offence in respect to which the warrant is issued, (*b*) the time and place of issuing it, and the signature of the magistrate with his name of office subscribed thereto. (*c*)

(*a*) Russ. on Cr. 620-1; (*b*) 1 Hale, P. C. 582; 4 Bl. Com. 290-1; (*c*) Hawk. P. C., b. 2, c. 13, s. 22.

LXXXI. If a woman be charged the warrant must specify her by name, and either as a single woman, spinster or widow, or as the wife of a person married or described as above.

LXXXII. If a warrant be issued by a Judge of a superior Court, or by a district or circuit Judge, it may be directed generally to any peace officer in the Province, and may be executed by any of those officers to whom it may be delivered.

4 Bl. Com. 291.

LXXXIII. If it be issued by any other magistrate, it may be directed to a peace officer by name, or generally to any peace officer in the district or county in which it is issued, and must be executed in that district or county (*a*); or if the defendant be in another district or county, it may be executed therein, upon the written direction of a magistrate of that district or county indorsed upon the warrant and signed by him, with his name of office, and dated at the place where it is made, to the following effect: "This warrant may be executed in the district "or county of ," [*or as the case may be.*] (*b*)

(*a*) 1 Ch. Cr. L. 38; 5 East, 233; (*b*) 1 Ch. Cr. L. 46; 3 Esp. C. 176.

LXXXIV. The indorsement mentioned in the last article, cannot, however, be made, unless upon the oath of a credible witness, in writing, indorsed on or annexed to the warrant, proving the hand writing of the magistrate by whom it was issued. Upon this proof, the magistrate indorsing the warrant is exempted from liability to a civil or criminal action, though it afterwards appear that the warrant was illegal or improperly issued.

LXXXV. If the offence charged in the warrant be a felony, the officer after the arrest made must take the defendant before the magistrate who issued the warrant, or some other magistrate in the same district or county.

LXXXVI. If the offence charged in the warrant be a misdemeanor, or the defendant be arrested in another district or county, the officer must, upon being required by the defendant,

take him before any magistrate in that district or county who must admit the defendant to bail, and take bail from him accordingly.

LXXXVII. On taking bail, the magistrate must certify that fact on the warrant, and deliver the warrant and recognizance of bail to the officer having charge of the defendant. The officer must then discharge the defendant from arrest, and must, without delay, deliver the warrant and recognizance to the Clerk of the Peace for the district or county.

LXXXVIII. If on the admission of the defendant to bail, by any other magistrate than by him who issued the warrant, bail be not forthwith given, the officer must take the defendant before the magistrate who issued the warrant, or some other magistrate in the same district or county, as provided in the next article.

LXXXIX. When, by the preceding articles of this chapter, the defendant is required to be taken before the magistrate who issued the warrant, he may, if that magistrate be absent or unable to act, be taken before the nearest or most accessible magistrate in the same district or county. The officer must, at the same time, deliver to the magistrate, the warrant with his return indorsed and subscribed by him.

1 Hale, 582; 2 Hale, 112.

XC. The defendant must, in all cases be taken before the magistrate without unnecessary delay.

6 D. and R. 623; 2 Hale 112, 119; Peake's R. 234.

XCI. If the defendant be taken before a magistrate other than the one who issued the warrant, the depositions on which the warrant was granted must be sent to that magistrate, or if they cannot be procured, the prosecutor and his witnesses must be summoned to give their testimony anew.

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## CHAPTER III.

## ARREST BY AN OFFICER UNDER A WARRANT.

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92. Arrest defined.
93. By whom an arrest may be made.
94. Every person bound to aid an officer in an arrest.
95, 96. When the arrest may be made.
97. How an arrest is made.
98. No further restraint allowed than is necessary to the arrest and detention of defendant.
99, 100. Officer must state his authority and show warrant, if required.
101. If defendant flee or resist, officer may use all necessary means to effect arrest.
102, 103. When officer may break open a door or window.
104. Continuance of custody.
105. " of warrant.

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XCII. Arrest is the taking of the body of a person into custody, in order that he may be forthcoming to answer for a public offence.

4 Bl. Com. 289.

XCIII. An arrest may be either,

1. By a peace officer under a warrant.

2. By a peace officer, without a warrant: or

3. By a private person.

XCIV. Every person must aid a peace officer in the execution of a warrant, if the officer require his aid, and he be present and acting in its execution.

4 Bl: Com: 293, 294.

XCV. If the offence charged be a felony, the arrest may be made on any day, and at any time of the day or night.

1 Ch. Cr. L. 49.

XCVI. If it be a misdemeanor, the arrest cannot be made on Sunday or at night, unless upon the special direction of the magistrate indorsed upon the warrant, or unless on an attachment for a rescue, (Willes, 459,) or under an escape warrant.

5 T. R. 25.

XCVII. An arrest is made by some actual touch or restraint of the person of the defendant, by his submission to the custody of the officer by words or actions, or by the laying hold of the party and pronouncing words of actual arrest.

Chitty's Burn. *Arrest*; 1 Ch. Cr. L. 48; Foster, Disc. 2 of Homicide, 320.

XCVIII. The defendant is not to be subjected to any more restraint, than is necessary for his arrest and detention, and to prevent his escape.

6 D. and Ry. 623.

XCIX. The officer executing the warrant must inform the defendant that he acts under the authority of a warrant, notifying the substance thereof, and must also show the warrant, if required.

8 T. R. 188; 2 Hale 116.

C. If upon an officer's delivering his warrant for inspection, a party illegally refuse to re-deliver the same to the officer, he may re-take it by force, provided he use no greater degree of violence than is necessary for the purpose.

3 C. & P. 31.

CI. If, after notice of intention to arrest the defendant, he either flee or forcibly resist, the officer may use all necessary means to effect the arrest and prevent his escape.

1 Hale P. C. 489; 1 East P. C. 248, 400.

CII. The officer may break open an outer or inner door or window of a dwelling-house, to execute the warrant, if, after notice of his authority and purpose, he be refused admittance, and it cannot be otherwise obtained.

14 East, 110; 4 Bl. C. 294. I Chitty's Cr. L. 56.

CIII. An officer may break open an outer or inner door or window of a dwelling-house, for the purpose of liberating a person, who, having entered for the purpose of making an arrest, is detained therein, or when necessary for his own liberation after having lawfully entered the same.

1 Russ. on C. 632.

CIV. The prisoner when brought before the Magistrate is deemed to continue in the custody of the officer until he be discharged, bailed or committed.

2 Hale, 120.

CV. Every warrant shall continue in force until it has been fully executed according to its terms.

T. R. 110.

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## CHAPTER IV.

## ARREST BY AN OFFICER, WITHOUT A WARRANT.

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106. In what cases allowed.
107, 108. May break open a door or window, if admittance refused.
109. May arrest at night, on reasonable suspicion of felony.
110. Must state his authority, and cause of arrest, except where party is committing felony or is pursued after escape.
111. May take before a magistrate, a person arrested by a by-stander, for breach of the peace.
112. Magistrate may commit by verbal or written order, for offences committed in his presence.
113. Sheriff and Coroner may search without warrant.

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CVI. A peace officer may, without a warrant, arrest a person on a criminal charge,

1. For a public offence, committed or attempted in his presence and view:

1 Hale, p. C. 463; Hawk. p. C. 61, c. 31, s. 54; 1 Russ. on C. 295—6; C. & P. 741.

2. When the person arrested has committed a felony, although not in his view:

3. When a felony has in fact been committed or a dangerous wound inflicted and he has reasonable cause for believing the person arrested to have committed the one or inflicted the other:

2 Hale 87, 91, 92; 6 B. and C. 635. 1 Ch. Cr. L. 22.

4. On a charge, made upon reasonable cause, of the commission of a felony by the party arrested.

1 East, P. C. 301.

CVII. To make an arrest, as provided in the last article, the officer may break open an outer or inner door or window of a dwelling-house, if, after notice of his office and purpose, he be refused admittance, and it cannot be otherwise obtained.

2 Hale, P. C. 90–1. 4 Bl: Com: 292.

CVIII. He may without warrant break open such doors to suppress an affray.

2 Hale, P. C. 95. I Russ. 273.

CIX. He may also, at night, without a warrant, arrest any person whom he has reasonable cause for believing to have committed a felony, and is justified in making the arrest. though it afterwards appear that a felony had not been committed.

6 B. and C. 635. I Ch. Cr. L. 21.

CX. When arresting a person without a warrant, the officer must inform him of his authority and the cause of the arrest, except when he is in the actual commission of a public offence, or is pursued immediately after an escape.

CXI. He may take before a magistrate, a person, who, being engaged in a breach of the peace, is arrested by a by-stander and delivered to him.

I Russ. 274.

CXII. When a public offence is committed in the presence of a magistrate, he may himself arrest or by a verbal or witten order, command any person to arrest the offender, and may thereupon proceed as if the offender had been brought before him on a warrant of arrest.

1 Ch. Cr. L. 25; R. & M. C. C. 207; 1 Russ. on Cr. 623.

CXIII. A sheriff and coroner may arrest any felon in his district or county without warrant.

2 Hale, P. C. 86, 4 Bl: Com: 289, 292.

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## CHAPTER V.

## ARREST BY A PRIVATE PERSON.

114. In what cases allowed.
115. Must inform the party of the cause of arrest, except when actually committing the offence or on pursuit after escape.
116. May break open a door or window, if admittance refused.
117. Must immediately take prisoner before a magistrate, or deliver him to a peace office.
118. May detain persons until morning.

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CXIV. A private person may arrest another without warrant.

1. For any public offence committed or attempted or a dangerous wound given in his presence:

Hawk. P. C. b. 2, c. 12, s. 1 R. & M. 93, 207; 1 Ch. Cr. L. 16.

2. When the person arrested has committed a felony, although not in his presence:

3. When a felony has been in fact committed, and he has reasonable cause or suspicion for believing the person arrested to have committed it.

1 Ch. Cr. L. 15, 19; 4 Bl. Com. 293.

CXV. He must, before making the arrest, inform the person to be arrested of the cause thereof, and require him to submit,(*a*) except when he is in the actual commission of the offence, or when he is arrested on pursuit immediately after its commission.(*b*)

(*a*) Livingston's Code 504; (*b*) 1 Russ on Cr. 623.

CXVI. If the person to be arrested have committed a felony, and a private person, after notice of his intention to make

the arrest, be refused admittance, he may break open an outer or inner door or window of a dwelling-house, for the purpose of making the arrest, but not upon mere suspicion only.

4 Bl. Com. 292, 3.

CXVII. A private person, who has arrested another for the commission of a public offence, must, without unnecessary delay, take him before a magistrate, or deliver him to a peace officer or carry him to goal.

1 Hale, 589; 2 Hale, 77, 81.

CXVIII. Any person observed in the night attempting to commit a felony, may be lawfully detained by a private person without warrant, until he can be carried before a magistrate.

1 R. & M. cc. 93.

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## CHAPTER VI.

## RE-TAKING AFTER AN ESCAPE OR RESCUE.

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119. May be at any time, or in any place in the province.
120. May break open a door or window, if admittance refused.

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CXIX. If a person lawfully arrested, escape or be rescued, the person from whose custody he escaped or was rescued, may immediately pursue and re-take him at any time of the day or night, and in any place in the Province, and deal with him as on an original taking.

Cb. Burn's Inst. Tit. Lord's Day; 5 T. R. 25; Dalt. Just. 169.

CXX. To re-take the person escaping or rescued, the person pursuing may, after notice of his intention and refusal of admittance, break open an outer or inner door or window of a dwelling-house into which such arrrested person has entered.

1 Russ. on C. 632; 1 Hale, 459.

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## CHAPTER VII.

## EXAMINATION OF THE CASE, AND DISCHARGE OF THE DEFENDANT OR HOLDING HIM TO ANSWER.

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121. Magistrate to inform defendant of the charge, and his right to counsel.
122. Time to send for counsel.
123. On appearance of counsel, or waiting for him a reasonable time, examination to proceed.
124. Adjournment by Magistrate.
125. When to be completed.
126. On adjournment, defendant to be committed, or discharged on bail.
127. Form of commitment.
128. Depositions, to be read on examination, and witnesses examined.
129. Examination of witnesses to be in presence of defendant, and witnesses to be cross-examined in his behalf.
130. Defendant to be informed of his right to make a statement.
131. Waiver of his right, and its effect.
132, 133. Statement, how taken.
134. How reduced to writing, and how authenticated.
135. After refusal, defendant's witnesses to be examined.
136. Witnesses to be kept apart.
137. Who may be present at examination.
138. Testimony, how taken and authenticated.
139. Influence to obtain testimony not allowed.
140. Depositions and statement, how and by whom kept.
141. Violation of last section a misdemeanor.
142. Defendant entitled to copies of depositions and statement.
143. Defendant, when and how to be discharged.
144. When and how to be committed.
145. Order for commitment.
146. Bail in case of doubt.
147. Certified on bail being taken.
148. Order for bail, on commitment.
149. 150. Form of commitment.
151. If proof against another.
152. If proof for other offences than charged.
153. Undertaking of witnesses to appear, when and how taken.
154. Infants and married women may be required to give security for appearance as witnesses.
155. Witness to be committed, on refusal to give security for appearance.
156. Magistrate to return proceedings.
157. Notice of appeal.
158. Action of Judge on appeal.
159. Warrant of commitment to be directed to officer.
160. What sufficient statement in treason, etc.
161. Must show authority of magistrate.
162. If informal not to be discharged on *habeas corpus*.
162 *a*. Prisoner for debt may be brought up for examination.

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CXXI. When the defendant is brought before a magistrate upon an arrest either with or without warrant on a charge of having committed a public offence, or suspicion thereof, the magistrate shall inform him of the charge against him, and of his right to the aid of counsel in every stage of the proceedings.

CXXII. He shall also allow the defendant a reasonable time to send for counsel, and adjourn the examination for that purpose.

CXXIII. The magistrate shall, immediately after the appearance of counsel, or if none appear and the defendant require the aid of counsel, after waiting a reasonable time therefor, proceed to examine into the case.

CXXIV. The Magistrate may at his diseretion adjourn the examination to such future time as may reasonably be necessary, and (*a*) so from time to time, either by orally directing the defendant to remain in the same custody (*b*) or by commitment indorsed on the warrant of arrest (*c*).

(*a*) 1 Ch. Cr. L. 73, 4; (*b*) 1 Hale, 585; 2 Hale, 120, 2: (*c*) Bac Abr. Trespass D.

CXXV. The adjournment shall not be for more than two days at each time, nor more than six days in all, unless for good cause shewn by affidavit or by consent or on motion of the defendant.

CXXVI. If an adjournment be had for any cause, the magistrate shall commit the defendant for examination, or discharge him from custody, on sufficient security being given for his appearance at the time to which the examination is adjourned.

CXXVII. The commitment for examination shall be by an indorsement signed by the magistrate, on the warrant of arrest, to the following effect: "The within named A. B., having been "brought before me under this warrant, is committed for exam- "ination, to the sheriff of ," or "to the keeper of the "common goal, &c." [as the case may be.]

CXXVIII. At the examination, the magistrate shall, in the first place, read to the defendant the depositions of the witnesses examined on the taking of the information, and if the defendant request it, must summon the witnesses so examined, if they be in the district or county, if they do not so appear, their depositions shall not be evidence. He must also issue subpœnas for additional witnesses required by the prosecutor or defendant.

3 M. & S. 1; 1 Ch. Cr. L. 77.

CXXIX. The witnesses must be examined in the presence of the defendant, if he be in custody, and may be cross-examined in his behalf.

1 Ch. Cr. L. 79.

CXXX. When the examination of the witnesses on the part of the prosecution is closed, the magistrate must distinctly inform the defendant, that it is his right to make a statement in relation to the charge against him, (stating to him the nature thereof;) that the statement is designed to enable him, if he see fit, to answer the charge and to explain the facts alleged against him, and that he is at liberty to refuse making a statement.

CXXXI If no statement be made, the magistrate must make a note thereof, immediately following the depositions of the witnesses against the defendant.

CXXXII. If the defendant make a statement, the magistrate shall take it in writing, without oath, and shall put to the defendant the following questions only:

1. What is your name and age?

2. Where were you born?

3. Where do you reside, and how long have you resided there?

4. What is your business or profession?

5. Give any explanation you may think proper, of the circumstances appearing in the testimony against you, and state any *facts which you think will tend to your exculpation.*

CXXXIII. The answer of the defendant to each of the questions must be distinctly read to him, as it is taken down. He may thereupon correct or add to his answer, and it must be corrected until it is made conformable to what he declares is the truth.

CXXXIV. The statement must be reduced to writing by the *magistrate, or under his direction, not* under oath (2 Hale, P. C. 52,) and must be authenticated in the following form:

1. It must set forth in detail, that the defendant was informed of his rights as provided above, and that after being so informed, he made the statement.

2. It must contain the questions put to him, and his answers thereto, as provided above.

3. It may be signed by the defendant, or he may refuse to sign it; but if he refuse to sign it, his reason therefor must be stated as he gives it:

4. It must be signed and certified by the magistrate.

CXXXV. After the refusal of the defendant to make a statement, or after he has made it, his witnesses, if he produce any, must be sworn and examined.

CXXXVI. The witnesses produced on the part either of the prosecution or of the defendant, cannot be present at his examination; and while a witness is under examination, the magistrate may exclude all witnesses who have not been examined. He may also cause the witnesses to be kept separate, and to be prevented from conversing with each other, until they are all examined.

CXXXVII. The magistrate shall also, upon the request of the defendant, exclude from the examination, every person, except the clerk of the magistrate, the public prosecutor, the prosecutor and his counsel, the defendant and his counsel, and the officer having the defendant in custody.

CXXXVIII. The testimony given by each witness shall be, *under oath, reduced to writing* as a deposition, by the magistrate or under his direction, in the presence and hearing of the defendant, not in technical terms, but as nearly as may be in the very words used by the witness, and authenticated in the following form by the magistrate:

1. It shall state the name of the witness, his place of residence, business or profession:

2. It shall contain the questions put to the witness, and his answers thereto; each answer being distinctly read to him as it is taken down, and being corrected or added to, until it is made conformable to what he declares is the truth:

3. If a question put be objected to on either side, and overruled, or the witness decline answering it, that fact, with the ground on which the question was overruled, or the answer declined, shall be stated:

4. The deposition shall be signed by the witness, or if he refuse to sign it, his reason for refusing shall be stated in writing, as he gives it:

5. It shall be signed and certified by the magistrate.

CXXXIX. No influence by means of any promise, threat or representation shall be made to any person under examination to induce him to disclose or withhold any matter within his knowledge.

CXL. The Magistrate shall keep all the depositions taken on the information and on the examination, with the statement of the defendant if any, until they are returned to the proper Court: and shall not permit them to be inspected by any person, except a Judge of a Court having jurisdiction of the offence, the public prosecutor, the private prosecutor and the defendant and his counsel.

CXLI. A violation of the provisions of the last article is punishable as a misdemeanor.

CXLII. The defendant shall in all cases, within two days after demand, be furnished by the Magistrate with a copy of the said depositions and statement, or of either of them, or shall be permitted to take a copy of the same.

CXLIII. If the Magistrate is satisfied that a public offence has not been committed, or that there is no sufficient cause to believe the defendant guilty thereof, he shall forthwith order the defendant to be discharged, by an order in writing attached to the depositions and statement, and signed by him, to the following effect: "There being no sufficient cause to believe the within named A. B. guilty of the offence within mentioned, I order him to be discharged. C. D., J. P."

CXLIV. If, in the opinion of the Magistrate, a public offence has been committed, and there is sufficient cause to believe the defendant guilty thereof, or to raise a strong presumption of his guilt, the magistrate must, in like manner, attach to the depositions and statement, an order, signed by him, to the following effect: "It apearing to me by the within depositions (and statement, if any,) that the offence therein mentioned, [or any other offence, according to the fact, stating generally the nature thereof,] has been committed, and that there is sufficient cause to believe the within named A. B. guilty thereof, I order that he be held to answer the same."

CXLV. If the offence be not bailable, the following words, or words to the same effect, must be added to the endorsement: "and that he be committed to the Sheriff of the County of — or to the keeper of the common Gaol, &c., as the case may be."

CXLVI. If, however, it appear from the examination, that an offence has been committed, but that the evidence adduced does not raise such strong presumption of guilt against the defendant as to require a judicial inquiry, or if the evidence adduced by the defendant weakens such presumption, but sufficient ground for such inquiry shall appear notwithstanding, the defendant shall be admitted to bail in the manner hereinafter provided.

CXLVII. If the offence be bailable, and bail be taken by the Magistrate, the following words, or words to the same effect, must be added to the endorsement: "and I have admitted him to bail, to answer, by the recognizance hereto annexed."

CXLVIII. If the offence be bailable and the defendant be admitted to bail, but bail has not been taken, the following words, or words to the same effect, must be added to the endorsement: "and that he be admitted to bail in the sum of and be committed to the Sheriff of the District or County of ," [or in the City of "to the keeper of the prison in the City of "] "until he give such bail."

CXLIX. If the Magistrate order the defendant to be committed as above provided, he shall make out a commitment, signed by him, with his name of office, and deliver it, with the defendant, to the officer to whom he is committed, or if that officer be not present, to a peace officer, who must immediately deliver the defendent into the proper custody, together with the commitment.

CL. The commitment must be to the following effect:

"District or County of [*or as the case may be.*]

"In the name of Our Sovereign Lady the Queen:

"To the Sheriff of of " [of or "to the keeper of the prison, &c." *as the case may be.*]

"An order having been this day made by me, that A. B. be held to answer, upon a charge of [*stating briefly the nature of the offence,*] you are commanded to receive him into your custody and detain him, until he be legally discharged."

"Dated at [*as the case may be,*] this day of

"C. D., *Justice of the Peace.*"

[*as the case may be.*]

CLI. If on examination before a Magistrate a charge is made, or just cause of suspicion of any offence appear on oath against any one there present, other than the accused, the Magistrate may in his discretion order him to be detained for the purpose of examination, and may proceed as though such one had been brought up on a charge made against him.

CLII. If on examination it appear that the defendant has committed or may be justly suspected of having committed some offence other than that wherewith he was originally charged, he may be discharged, committed or bailed in respect of such other, in the same manner as for the original offence.

CLIII. On holding the defendant to answer, the Magistrate may bind by recognizance, with such sureties and in such sum as he may deem proper, all such persons as know or declare any material fact touching the offence wherewith the defendant is charged, to appear and testify at the Court to which the depositions and statement are to be sent.

CLIV. Infants and married women, who are material witnesses against the defendant, may in like manner be required to procure sureties for their appearance, as provided in the last article. 13 Price, 673.

CLV. If a witness, required to enter into a recognizance to appear and testify, either with or without sureties, refuse compliance with the order for that purpose, the Magistrate must commit him to prison until he comply, or be legally discharged. 1 Ch. Burns' Just., Recognizance, Bail.

CLVI. When a Magistrate has discharged a defendant, or has held him to answer, as provided above, he must return to the Criminal Court having jurisdiction over the offence, at or before its opening on the first day, the warrant, depositions, the statement, if any, and recognizances of bail, for the appearance of the defendant or of the witnesses, taken by him.

CLVII. The Defendant, upon his committal or his counsel on his behalf, may notify the committing Magistrate of his intention to move the Superior Criminal Court of the District or County in which he stands committed, or one of the Judges thereof, for an order for his admission to bail, whereupon such Magistrate shall forthwith transmit to the Clerk of the Peace, close under his hand, a certified copy of the warrant of arrest, proceeding, depositions, statement and commitment.

CLVIII. Upon any such application to a Superior Court or Judge thereof as aforesaid, the same order, touching the defendant's being bailed or continued in custody, shall be made as if the party were brought up upon a *habeus corpus*. 4 and 5 Vict., ch. 24, sec 6.

CLIX. Every warrant of commitment must be directed to some Sheriff or Gaoler, either by his name or official description, (Hawk, b. 2, c. 16, s. 13,) to receive and keep the prisoner until discharged in due course of law, or until the next Criminal Court in the District or County, (1 Ch. Cr. L. 114,) describing the prisoner by his names, if known, or by description of his person on his refusal to tell his name, stating the same, (1 Hale, 577,) and stating the offence in legal terms or substance, without other particulars, (1 Leach, 167; Hawk, b. 2, ch. 16, s. 17,) setting forth in the body or margin the time when or the place where the warrant is made. (Ch. Burns' Just. Commitments for Safe Custody).

CLX. A commitment for treason or misprision thereof, or treasonable practices, is sufficient without stating an overt act (7 T.R. 736); for felony, by a brief description of the offence charged, (2 Wils., 150; 7 T. R. 736); if the degree of offence be necessary to be shewn, the degree may be stated, but it shall not be necessary to use the term *feloniously*. (1 Ch. Cr. L., 11; 2 T. R. 255).

CLXI. The commitment must shew the authority of the committing Magistrate, (1 Ch. Cr. L., 109,) but need not state it to be made by him in that character, (2 Hale, 122); it must be in all cases in the Queen's name, (1 Ch. C. L., 109,) must state the place of imprisonment, (2 Stra. 934,) must be drawn up before the party is sent to prison, (4 B. and Ad., 418,) and must be authenticated by the signature of the committing Magistrate or the seal of the committing Court.

CLXII. If it be informal, the defendant shall not be discharged on *habeas corpus* if the *corpus delicti* appear in the depositions

returned to the Court, (3 East, 157); nor is it void by reason of defect for omission of cause of imprisonment, so as to make the Gaoler or officer acting on it a trespasser, or to excuse an escape, (Bac. Ab. Trespass, Escape; 1 Hale, 584).

CLXII.—*a.* Any Superior Court of Criminal Jurisdiction or any Judge thereof, may, when it is necessary, grant a writ of *habeas corpus*, directed to the Keeper of a Gaol in which the party is imprisoned for debt, to take him before a Magistrate for examination from day to day on a criminal charge.

5 B. and A., 730.

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## TITLE IV.

## OF PROCEEDINGS AFTER COMMITMENT, AND BEFORE INDICTMENT.

1. Preliminary Provision.
2. Formation of the Grand Jury.
3. Powers and duties of the Grand Jury.
4. Presentment and proceedings thereon.

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### CHAPTER I.

### PRELIMINARY PROVISION.

CLXIII. All public offences prosecuted in a Court of Criminal Jurisdiction, or in a Court of General Sessions of the Peace, shall be prosecuted by indictment or presentment.

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### CHAPTER II.

### FORMATION OF THE GRAND JURY.

164. Grand Jury defined.
165. For what Court to be drawn.
166. If thirteen Grand Jurors do not appear, additional number to be ordered.
167. Manner of designating the additional Grand Jurors.
168. Number to constitute a Grand Jury.
169. Grand Jury, how drawn when more than a sufficient number attends.
170. Who may challenge the panel or an individual Grand Juror.
171. Causes of challenge to the panel.
172. Causes of challenge to an individual Grand Juror.
173. Manner of taking and trying the challenges.
174. When to be made to individual.
175. Decision upon the challenge.
176 Effect of allowing a challenge to the panel.
177, 178. Effect of allowing a challenge to an individual Grand Juror.
179. Appointment of Foreman.
180, 181. 182. Oath of the Foreman and the other Grand Jurors.
183. Charge of the Court.
184. Retirement of the Grand Jury.
185. Appointment of a Clerk, and his duties.
186. Discharge of the Grand Jury.
186 *a*. Excuse for non-attendance.

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CLXIV. A Grand Jury is a body of men, not less than thirteen nor more than twenty-three in number, legally qualified, returned

according to law at stated periods from the legally qualified persons in the district or county, before a Court of competent jurisdiction, and sworn to inquire of public offences commttted or triable in the district or county.

CLXV. A Grand Jury must be returned for every term of the Courts of Original Criminal Jurisdiction.

CLXVI. If at least thirteen persons, qualified to serve as Grand Jurors, and who have been summoned, do not appear, or if the number of Grand Jurors attending be reduced below thirteen, the Court may order the Sheriff to summon a sufficient number, (specifying it) to complete the Grand Jury.

CLXVII. The Sheriff must accordingly, in the manner required in respect to the Grand Jurors originally returned forthwith summon the persons whose names are designated, who must attend and serve as if they had been originally summoned as Grand Jurors and subject to the same penalties, unless excused or discharged by the Court.

CLXVIII. No more than twenty-three nor less than thirteen persons can be sworn on a Grand Jury; nor can a Grand Jury proceed to any business, unless thirteen members at least are present.

4 Bl. C. 302; 1 Ch. Cr. L 312.

CLXIX. When more than twenty-three persons summoned as Grand Jurors attend to serve, the Clerk must prepare separate ballots containing their names, folded as nearly alike as possible, and so that the names cannot be seen and must deposit them in a box. He must then openly draw out of the box twenty-three ballots; and the persons whose names are drawn constitute the Grand Jury.

CLXX. A person held to answer a charge for a public offence may challenge the panel of the Grand Jury or an individual Grand Juror.

CLXXI. A challenge to the panel may be interposed for one or more of the following causes only:

1. That the requisite number of Jurors were not summoned from the Grand Jury List of the District or County;

2. That the summoning was not had by the Sheriff or Coroner (as the case may be) of the District or County;

3. That it was not had at least ten days before the sitting of the Court.

CLXXII. A challenge to an individual Grand Juror may be interposed for one or more of the following causes only:

1. That he is a minor;

2. That he is an alien;

3. That he is insane;

4. That he is under attaint for treason or felony or under outlawry, or has been convicted of any infamous crime, unless pardoned therefor.

5. That he is the prosecutor upon a charge against the defendant;

6. That he is a witness on the part of the prosecution, and has been served with process or bound by a recognizance as such;

CLXXIII. The challenges mentioned in the last three articles may be oral, and must be entered upon the minutes, and tried by the Court, in the same manner as challenges in the case of a trial by Jury which are triable by the Court.

CLXXIV. The challenge to the individual Juror must be made before the trial and not afterwards.

2 Ch. Cr. L. 308; Bar. Abr. Juries.

CLXXV. The Court must allow or disallow the challenge, and the Clerk must enter its decision upon the minutes.

2 Hale, 155.

CLXXVI. If a challenge to the panel be allowed, the Grand Jury are prohibited from inquiring into the charge against the defendant, by whom the challenge was interposed. If they should, notwithstanding, do so, and find an indictment against him, the Court must direct it to be set aside.

CLXXVII. If a challenge to an individual Grand Juror be allowed, he cannot be present at, or take part in, the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the Grand Jury thereon.

CLXXVIII. The Grand Jury must inform the Court of a violation of the last article, and it is punishable by the Court as a contempt.

CLXXIX. From the persons summoned to serve as Grand Jurors, and appearing, the Court must appoint a foreman. The Court must also appoint a foreman, when a person already appointed is discharged or excused, before the Grand Jury are dismissed.

CLXXX. The following oath must be administered to the foreman of the Grand Jury: "You, as foreman of this Grand Jury, shall diligently inquire and true presentment make, of all public offences committed or triable within this district or county, [*as the case may be,*] of which you shall have or can obtain legal evidence: you shall present no person through malice, hatred or ill will, nor leave any unpresented through fear, favour, or affection, or for any reward, or the promise or hope thereof; but in all your presentments or indictments, you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding. So help you God!"

CLXXXI. The following oath must be immediately thereupon administered to the other Grand Jurors present: "The same "oath which your foreman has now taken before you on his part "you and each of you shall well and truly observe on your part. "So help you God!"

CLXXXII. If, after the foreman is sworn, any Grand Juror appear, and be admitted as such, the oath, as prescribed in article 180, must be administered to him, commencing, "You, as one of this Grand Jury," and so on, to the end.

CLXXXIII. The Grand Jury being impanelled and sworn, must be charged by the Court. In doing so, the Court must deliver to them a copy of the provisions of this code, from article 188 to article 199, both inclusive, and must give them such information, as it may deem proper, as to the nature of their duties, and any charges for public offences returned to the Court, or likely to come before the Grand Jury. The Court need not, however, charge them respecting violations of a particular statute.

CLXXXIV. The Grand Jury must then retire to a private room, and inquire into the offences cognizable by them.

CLXXXV. The Grand Jury must appoint one of their number as Clerk, who must preserve minutes of their proceedings, (except, of the votes of the individual members on a presentment or indictment,) and of the evidence given before them.

CLXXXVI. The Grand Jury, on the completion of the business before them, must be discharged by the Court; but whether the business be completed or not, they are discharged by the final adjournment of the Court.

CLXXXVI–*a*. Any person summoned to serve on any Grand Jury must attend if reasonably able, unless he can shew any exemption by law from so doing, (2 Hale, P. C. 309); but the matter of exemption is not available to such persons if so able to attend unless he does attend and shew such matter to be true.

Hawk. P. C. b. 2, c. 25, s. 20.

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## CHAPTER III.

## POWERS AND DUTIES OF THE GRAND JURY.

188. Power of a Grand Jury to inquire into all public offences committed or triable in the District or County, and to proceed by presentment or indictment.
189. When defendant has been held to answer, Grand Jury may indict.
190. In all other cases, they can proceed by presentment only.
191. Definition of an indictment.
192. Definition of a presentment.
193. Foreman may administer oaths.
194, 195, 196. Evidence receivable before the Grand Jury.
197. Grand Jury not bound to hear evidence for the defendant, but may order explanatory evidence to be produced.
198. Degree of evidence to warrant an indictment.
199. Grand Jurors must declare their knowledge as to commission of a public offence.
200. Grand Jury must inquire as to persons imprisoned on criminal charges and not indicted, the condition of public prisons and the misconduct of public officers.
201. Grand Jury entitled to access to public prisons and to examine public records.
202. When and from whom they may ask advice, and who may be present during their sessions.
203. Secrets of the Grand Jury to be kept.
204. Grand Jury when bound to disclose the testimony of a witness.
205. Grand Juror not to be questioned for his conduct as such.

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CLXXXVIII. The Grand Jury has power, and it is their duty to inquire into all public offences committed or triable in their

District or County only, and to present them to the Court, either by presentment or indictment, as provided in the next two articles: Provided that this shall not prevent their inquiring of collateral facts in another District or County, tending to the proof of their inquiry.

CLXXXIX. Upon such inquiry they may, where the defendant has been held by a Magistrate to answer the charge, and in no other case, if they believe him guilty thereof, find an indictment against him.

CXC. In all other cases if upon investigation the Grand Jury believe that a person is guilty of a public offence, they can proceed by presentment only.

CXCI. An indictment is an accusation in writing, at the suit of the Crown, presented by a Grand Jury to a competent Court, charging one or more persons with one or more public offences.

CXCII. A presentment is an informal statement in writing by the Grand Jury, representing to the Court that a public offence has been committed which is triable in the District or County, and that there is reasonable ground for believing that a particular individual named and described, has committed it.

CXCIII. The foreman may administer an oath to any witness appearing before the Grand Jury.

CXCIV. In the investigation of a charge for the purpose of either presentment or indictment, the Grand Jury can receive no other evidence than such as is given by witnesses produced and sworn before them or is furnished by legal documentary evidence.

CXCV. The improper swearing of the witnesses will not vitiate the indictment when found.

1 C. & M. 247.

CXCVI. The Grand Jury can receive none but legal evidence and the best evidence in degree to the exclusion of hearsay or secondary evidence.

Haw. P. C. b. 2, c. 25, s. 145, 138-9.

CXCVII. The Grand Jury is not bound to hear evidence for the defendant; but it is their duty to weigh all the evidence submitted to them and when they have reason to believe that other evidence, within their reach, will explain away the charge, they should order such evidence to be produced; and for that purpose may require the prosecuting counsel to issue process for the witnesses.

1 Ch. Cr. L. 317-18.

CXCVIII. The Grand Jury ought to find an indictment when all the evidence before them, taken together, is such as in their judgment would if unexplained or uncontradicted warrant a conviction by the trial Jury.

CXCIX. If a member of the Grand Jury know or have reason to believe that a public offence has been committed, which is triable in his District or County, he must declare the same to his fellow-jurors who must thereupon investigate the same.

CC. The Grand Jury must inquire:

1. Into the case of every person imprisoned in the Gaol of the District or County on a criminal charge and not indicted;

2. Into the condition and management of the public prison in the District or County; and

3. Into the wilful and corrupt misconduct in office of public officers of every description in the District or County.

CCI. They are also entitled to have free access at all reasonable times to the public prison, and to the examination, without charge, of all public records with reference to their duties in the district or county.

CCII. The Grand Jury may at all reasonable times ask the advice of the Court or of any member thereof or of the public prosecutor in the case; but unless such advice be asked such prosecutor is not permitted to be present during the sessions of the Grand Jury, unless when so required by the Grand Jury, nor is any other person permitted to be present during their sessions except the members of the Grand Jury and the witness actually under examination.

CCIII. Every member of the Grand Jury must keep secret what trauspires in evidence before them or what he himself or any other Grand Juror may have said or voted on a matter before them.

Ch. Cr. L. 317; Bl. Com. 126.

CCIV. This does not extend to exclude the evidence of a Grand Juror concerning the perjury of a witness giving evidence on the trial at variance with that he gave before the Grand Jury.

4 Bl. C. 126; Ch. C. L. 317.

CCV. A Grand Juror cannot be questioned for anything he may say or any vote he may give in the Grand Jury, relative to a matter legally pending before the Jury, except for a perjury of which he may have been guilty, in making an accusation or giving testimony to his fellow Jurors.

## CHAPTER VIII.

## PRESENTMENT, AND PROCEEDINGS THEREON

206. Presentment must be by twelve Grand Jurors, and signed by the Foreman.
207. Must be presented in the presence of the Grand Jury, and filed.
208. Depositions, or minutes of testimony, must be returned with persentment.
209. Depositions, how filed and kept.
210. Violation of last article, a contempt and misdemeanor.
211. Copy of depositions to be furnished to defendant.
212. Finding of presentment not to be disclosed, until defendant arrested.
213. Violation of last article, a contempt and misdemeanor.
214. If facts stated in presentment constitute a public offence, Court to order bench warrant.
215. Bench warrant by whom and how issued.
216. Form of bench warrant.
217. Bench warrant, how served.
218. Proceedings of the magistrate, on defendant being brought before him.
219. Copy of presentment and depositions to be furnished to magistrate.

CCVI. A presentment cannot be found, without the concurrence of at least twelve Grand Jurors. When so found, it must be signed by the Foreman.

CCVII. The presentment, when found, must be presented by the Foreman, in the presence of the Grand Jury, to the Court, and must be filed with the Clerk.

CCVIII. When the Grand Jury make a presentment, they must return to the Court therewith, the depositions of the witnesses examined before them, or the minutes, or a copy thereof, of the testimony on which the presentment is made.

CCIX. When the depositions are returned, as provided in the last article, they must be filed with the Clerk of the Court, and cannot be inspected by any person, except the Court, the Clerk and his deputies or assistants, and the Prosecuting Attorney, until after the arrest of the defendant.

CCX. A violation of the provisions of the last article is punishable as a contempt, and as a misdemeanor.

CCXI. After the arrest of the defendant, the Clerk of the Court must, within two days after the demand, furnish a copy of the depositions to the defendant or his counsel.

CCXII. No Grand Juror, Counsel for the prosecution, Clerk, Judge, or other officer, can disclose the fact of a presentment having been made for a felony, until the defendant has been arrested. But this prohibition does not extend to a disclosure, by the issuing or in the execution of a warrant to arrest the defendant.

CCXIII. A violation of the provisions of the last article is punishable as a contempt, and as a misdemeanor.

CCXIV. If the Court deem that the facts stated in the presentment constitute a public offence, triable in the district or county, it shall direct the clerk to issue a bench warrant for the arrest of the defendant.

CCXV. The Clerk, on the application of the Prosecuting Attorney, may accordingly at any time after the order, whether the Court be sitting or not, issue a bench warrant, under his signature and the seal of the Court, into every part of the district or county subject to the jurisdiction of the Court.

CCXVI. The bench warrant, upon a presentment, must be substantially in the following form;

" District of , [*as the case may be.*]
" In the name of our Sovereign Lady the Queen:
" To any Peace Officer in this District. A presentment
" having been made on the day of
[SEAL.] " 185, to the *Court of*
" [*as the case may be,*] charging C. D. with the crime of
" [*designating it generally.*]
" You are therefore commanded, forthwith to arrest the above
" named C. D., and take him before E. F., a magistrate of this
" county, or in case of his absence or inability to act, before the
" nearest or most accessible magistrate in this county.
" City [*or "town"*] of , the day of , 18
" By order of the Court.
" G. H., Clerk."

CCXVII. The bench warrant may be served in any district or county; and the officer serving it must proceed thereon, in all respects, as upon a warrant of arrest on an information, as hereinbefore provided except that when served in another district or county, it need not be endorsed by a magistrate of that district or county.

CCXVIII. The magistrate, when the defendant is brought before him must proceed upon the charge contained in the presentment, in the same manner in all respects as upon a warrant of arrest on an information.

CCXIX. Upon the arrest of the defendant, the Clerk with whom the presentment and depositions are filed, must, without delay, furnish to the magistrate before whom the defendant is taken, a certified copy of the presentment and depositions.

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## TITLE V.

## OF THE INDICTMENT.

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1. Finding and presentation of the indictment.
2. Form of the indictment.
3. Arraignment of the defendant.
4. Setting aside the indictment.
5. Demurrer.
6. Plea.
7. Removal of the action before trial.

## CHAPTER I.

## FINDING AND PRESENTATION OF THE INDICTMENT.

220. Indictment must be found by twelve Grand Jurors and endorsed by Foreman.
221. If not so found, depositions, &c. must be returned to the Court, with dismissal endorsed.
222. Effect of dismissal.
223. If part only found, another preferred.
224. May be found against one of several.
225. Names of witnesses must be inserted at foot of indictment or endorsed therein.
226. Indictment must be presented in presence of the Grand Jury, and filed.
227. Indictment ignored.
228. Two found for same offence.
229. Defective indictment.
230. Court not bound to quash one of two indictments.

CCXX. An indictment cannot be found without the concurrence of at least twelde Grand Jurors. When so found it must be indorsed, "A true bill," and the indorsement must be signed by the Foreman of the Grand Jury, and the finding must be absolute and unconditional.

Com. Dig. Indict. A.

CCXXI. If twelve Grand Jurors do not concur in finding an indictment, the depositions (and statement, if any) transmitted to them must be returned to the Court, with an indorsement thereon, signed by the Foreman, to the effect that the charge is dismissed.

CCXXII. The dismissal of the charge does not, however, prevent its being again submitted to a Grand Jury, if the Court may so direct upon good cause shewn, but not more than once again. But without such direction it cannot be again submitted.

CCXXIII. If part only of the charge be found, another indictment ought to be preferred.

2 Hale, 162; Bac. Abr. Indict. D.

CCXXIV. An indictment may be found against one or more of several, and not against the rest.

1 Ch. Cr. L. 324.

CCXXV. When an indictment is found the names of the witnesses who have been examined before the Grand Jury or whose depositions may have been read before them, shall in all cases be inserted at the foot of the indictment or indorsed thereon before it is presented to the Court.

CCXXVI. An indictment, when found by the Grand Jury, must be presented by their Foreman, in their presence to the Court, and must be filed with the Clerk; it is then complete and remains in his office as a public record.

1 Ch. Cr. L. 324; Com. Dig. Indict. A.

CCXXVII. After an indictment has been dismissed by a Grand Jury, another for the same charge ought not to be sent before the Grand Jury during the same Assize or Sessions.

1 C. & M. 601.

CCXXVIII. An indictment is valid although another has been found for the same offence in law and fact or for the same fact wholly or in part.

CCXXIX. If an indictment found be defective another may be preferred and found, on which the Court will quash the first, at its discretion, and on the imposing of such terms as may seem to be just.

1 Dowl. N. S. 320.

CCXXX. The Court is not bound to quash one of two indictments for the same offence, the one charging it to be a felony, the other a misdemeanour.

Q. B. W. 33. 82

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## CHAPTER II.

## FORM OF THE INDICTMENT.

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231. Form of pleading heretofore existing, abolished.
232. First pleading for the prosecution, is indictment.
233. Indictment, what to contain.
234. Form of indictment.
235. Manner of stating the act constituting the offence.
236. Indictment must be direct and certain.
237. When defendant is indicted by fictitious or erroneous name, his true name may be inserted in subsequent proceedings.
238. Indictment must charge but one offence and in one form, except where it may be committed by different means.
239. Statement as to time when offence was committed.
240. Statement as to person injured or intended to be injured.
241. Construction of words used in indictment.
242. Words used in a statute need not be strictly pursued.
243. Indictment, when sufficient.
244. Indictment insufficient for defect of form not tending to prejudice defendant.
245. Variances amendable.
246. Presumptions of law and matters of which judicial notice is taken, need not be stated.
247. Pleading a judgment or determination of, or proceeding before, a Court or officer of special jurisdiction.
248. Private statute, how pleaded.
249, 250, 251. Indictment after previous conviction for felony.
252. Indictment for Libel.
253. Indictment for offence to joint property.
254. Indictment for offence to House of Worship.
255. Indictment for offence to Turnpike Trusts.
256. Indictment for forgery.
257, 258. Indictment for perjury or subornation of perjury.
259. Indictment for embezzlement.
260. Indictment for administering unlawful Oath.
265. Statement of means.
266, 267. Words used to be charged.
268. Statement of particular pretences.
269. Statement of special intent.
270, 271, 272. Names of parties.
273, 274. Official descriptions.
274-*a*. Description of women offenders.
275. Individual things stated by ordinary terms.
276, 277, 278. Amount of particular Property.
279. Possession of Real Property.
280. Exceptions must be negatived.
281. But not defence not noticed in description.
282, 283, 284. Repugnancy or Inconsistency.
285. Disjunctive statement of offences.
286. Time stated for prosecution.
289, 290. Indictment for offences in different degrees.
291. Distinction between accessory and principal abolished.
292. Accessory after the fact when tried.
293. Indictment for compounding Felony.
293-*a*. Description of female offender.

CCXXXI. All the forms of pleading in criminal actions, heretofore existing, are abolished; and hereafter, the forms of pleading, and the rules by which the sufficiency of pleadings is to be determined, are those prescribed by this Code.

CCXXXII. The first pleading on the part of the prosecution, is the indictment.

CCXXXIII. The indictment must contain,

1. The title of the action, specifying the name of the Court in which the indictment is found and to which it is presented, and the names of the parties.

2. A statement of the acts constituting the offence, in ordinary and concise language, without repetition, and in such manner as to enable a person of common understanding to know what is intended.

3. The time when and the place where it is found.

CCXXXIV. It may be substantially in the following form:

Court of [*stating the Court*] of the of ;
[*stating the proper district or county.*]
Our Sovereign Lady the Queen
against
A. B. of

A. B. is accused by the Grand Jury of the [*here insert the name of the district or county in which the indictment is found.*] by this indictment, of the crime of , [*here insert the name of the offence, if it have one, such as treason, murder, arson, manslaughter, or the like, or if it be a misdemeanor, having no general name, such as libel, assault and battery, or the like, insert a brief description of it, as it is given by law;*] committed as follows:

The said A. B., on the day of , 1850, at the town, [*or city, parish or village, as the case may be.*] of , in this District or county, [*here set forth the act charged as an offence, according to the form adapted to the case as provided in the next article.*]

Given at the city this day of

CCXXXV. The manner of stating the act constituting the offence, as set forth in the appendix to this Code, is sufficient in all cases where the forms there given are applicable. In other cases, forms may be used, as nearly similar as the nature of the case will permit.

CCXXXVI. The indictment must be direct and certain, as it regards,

1. The party charged:

2. The offence charged:

3. The particular circumstances of the offence charged, when they are necessary to constitute a complete offence.

CCXXXVII. When the defendant is indicted by a fictitious or erroneous name, or without or with a wrong addition, and in any

stage of the proceedings his true name or addition is discovered, it may be inserted in the subsequent proceedings, referring to the fact of his being indicted by the name or without or with the addition mentioned in the indictment.

4 & 5 Vic. Cap. 24 s 45.

CCXXXVIII. The indictment must charge but one offence, and in one form only: except that where the offence may be committed by the use of different means, the indictment may allege the means in the alternative.

CCXXXIX. The precise time at which the offence was committed, need not be stated in the indictment; but it may be alleged to have been committed at any time before the finding thereof, unless the time itself is material to the description of the offence charged or to the jurisdiction of the Court.

CCXL. When an offence involves the commission of, or an attempt to commit a private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured or intended to be injured, is not material.

CCXLI. The words used in an indictment must be construed in their usual acceptation, in common language, except words and phrases defined by law, which are to be construed according to their legal meaning.

2 East. 33, 34; 5 East. 259, 260.

CCXLII. Words used in a statute to define a public offence, need not be strictly pursued in the indictment; but other words conveying the same meaning may be used.

CCXLIII. The indictment is sufficient, if it can be understood therefrom,

1. That it is entitled in a Court having authority to receive it, though the name of the Court be not accurately stated:

2. That it was found by a Grand Jury of the district or county in which the Court was held:

3. That the defendant is named, or if his name cannot be discovered, that he is described by a fictitious name, with the statement that he has refused to discover his real name or that his real name is unknown.

4. That the offence was committed at some place within the jurisdiction of the Court; except where, as herein provided, the act though done without the local jurisdiction of the district or county, is triable therein:

5. That the offence was committed at some time prior to the time of finding the indictment:

6. That the act, omission or circumstance essential to and charged as the offence, is clearly and distinctly set forth, in ordinary, plain, direct and distinct language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended:

7. That such act, omission or circumstance is stated with such

a degree of certainty, as to enable the Court to pronounce judgment, upon a conviction, according to the right of the case.

CCXLIV. No indictment is insufficient, nor can the trial, judgment, or other proceedings thereon be affected: 1st, by reason of a defect or imperfection in matter of form, which does not tend to the prejudice of the substantial rights of the defendant, upon the merits: 2d, nor by reason of mere surplusage which does not vitiate the sense, (1 Leach 109, 1 Ch. C. L. 216,) nor 3d, for want of the averment of any matter unnecessary to be proved: nor 4th, for the designation of a defendant by a name of office or descriptive appellation, instead of his proper name: nor 5th, for stating the time of the commission of the offence imperfectly or upon a day subsequent to the indictment or on an impossible day or a day that never happened: nor 6th, for omission or false statement of the place unless a specific allegation of the place be material to the description of the offence charged or to shew that the Court had jurisdiction: nor 7th, for want of a proper or perfect venue when by the indictment the Court has jurisdiction in and over the offence.

CCXLV. When any variance shall appear in any indictment between any matter in writing or in print produced in evidence, and the recital or setting forth thereof in such indictment whereon the trial is pending, any Court of criminal jurisdiction before which such indictment is pending may, if such Court see fit so to do, cause such indictment to be forthwith amended in such particular by some officer of the Court, and after such amendment the trial shall proceed on such indictment in the same manner in every respect, both with regard to the liability of witnesses to be indicted for perjury or otherwise, as if no such variance had existed.

CCXLVI. Neither presumptions of law, nor matters of which judicial notice is required to be taken, need be stated in an indictment.

CCXLVII. In pleading a judgment or other determination of, or proceeding before a Court or officer of special jurisdiction, it is not necessary to state the facts conferring jurisdiction; but the judgment or determination may be stated to have been duly given or made. The facts constituting jurisdiction, however, must be established on the trial.

CCXLVIII. In pleading a private statute, or right derived therefrom, it is sufficient to refer to the statute, by its title and the day of its passage, and the Court shall thereupon take judicial notice thereof.

CCXLIX. In any indictment for any felony not punishable with death, committed after a previous conviction for felony, it shall be sufficient to state that the defendant was at a certain time and place convicted of felony, without otherwise describing the previous felony and a certificate containing the substance and effect only, omitting the formal parts of the indictment and conviction for the previous felony, and signed by the Clerk of the Court or officer having the custody of the Records when the defendant was first convicted, shall, upon proof of the identity of the person of the defendant be sufficient evidence of the first conviction, without proof of the signature or official character of the person who signed the same.

CCL. In any indictment against an offender for being at large in this Province contrary to the provisions of this Act, or of the

Criminal Code 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, trial, conviction, judgment or other proceeding, or any pardon or intention of mercy, or signification thereof, of or against or in any manner relating to such offender.

CCLI. The Clerk of the Court or other officer having the custody of the Records of the Court where any 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, and conviction of such offender, and of the sentence or order for his 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.

CCLII. An indictment for libel need not set forth any extrinsic facts, for the purpose of shewing the application to the party libelled, of the defamatory matter on which the indictment is founded; but it is sufficient to state generally, that the same was published concerning him; and the fact that it was so published, must be established at the trial.

CCLIII. In any indictment for offence to the property, real or personal, of partners in trade, joint tenants, parceners or tenants in common, it shall be sufficient to state the property to belong to one of such persons by name and another or others, as the case may be, and such description shall be sufficient for any purpose whatsoever in such indictment; and this provision shall extend and apply to all joint stock companies and trustees.

4 and 5 Vic. Ch. 24, Vic. 42.

CCLIV. In any Indictment for any offence committed in, upon, or with respect to any Church, Chapel or place of religious worship, or to any bridge, Court, Court-house, goal, 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 sub-division thereof, or on or with respect to any materials, goods or chattels, whatsoever, provided for at the expense of the Province, or of any division or sub-division 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, goal, 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.

CCLV. In any indictment for any offence, committed on or with respect to any house, 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 or joint stock 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 sall be sufficient to state any such property to belong to the Trustees or Commissioners of such road, without naming them or any of them.

CCLV–*a*. In any indictment for forgery no difference in the date or year marked upon the lawful current coin described in the indictment and that marked on the false coin counterfeited to pass for or resemble the lawful coin, or upon any tool or instrument used or designed for the purpose of counterfeiting or imitating such lawful coin, shall be good cause of acquittal of the defendant.

CCLVI. In any indictment for forgery it shall not be neccessary to set forth any copy or *fac simile* of the instrument; but it shall be sufficient to describe the same in such manner as would sustain an indictment for stealing the same.

8 C. & P. 276.

CCLVII. When an instrument, which is the subject of an indictment for forgery, has been destroyed or withheld by the act or procurement of the defendant, and the fact of the destruction or withholding is alleged in the indictment, and established on the trial, the misdescription of the instrument is immaterial.

CCLVIII. In an indictment for perjury or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the offence was committed, and in what Court, or before whom, the oath alleged to be false was taken, and that the Court or person before whom the oath was taken, had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment need not set forth the pleadings, record or proceedings with which the oath is connected, nor the commission or authority of the Court or person before whom the perjury was committed.

CCLIX. In any indictment for embezzlement of money, bank-notes, checks, drafts, bills of exchange, or other securities for money of any person, by any clerk, agent or servant of such person, it is sufficient to allege generally an embezzlement of money to a certain amount, without specifying any particulars of such embezzlement, except when the offence shall relate to any chattel; and on the trial, evidence may be given of any such embezzlement committed within six months next after the time alleged; and it is sufficient to maintain the charge, or it is not a variance, if it be proved that any money, bank-note, check, draft, bill of exchange or other security for money of such person, of whatever amount, was embezzled by such clerk, agent or servant, within the said period of six months, although the particular species of coin or valuable security of which such amount was composed shall not be proved; or, if he shall be proved to have embezzled any piece of coin or valuable security, or any portion of the value thereof, although such piece of coin or valuable security may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, and such part shall have been returned accordingly.

CCLX. In an indictment for administering or taking an unlawful oath, it is not requisite to set forth the form or tenor of

the alleged oath or obligation; it is sufficient to set forth that an unlawful oath or obligation was administered or taken by the person indicted, setting forth the substance thereof, with the place and occasion of taking the same, and the person administering or the person taking the same, is a competent witness in a prosecution of the other, if he is not otherwise incompetent to testify; and any person so testifying shall not thereafter be liable to prosecution for any such offence previously committed by him.

CCLXI. In any indictment for procuring or promoting the commission of an offence, the means used need not be mentioned otherwise than by the general terms contained in the Criminal Code.

CCLXII. The act of attempting or endeavouring to commit an offence may be described generally, provided that every such charge shall specify the offence intended to have been perpetrated and its subject matter.

CCLXIII. The act of conspiring, where essential to the offence, may be alleged generally, provided that every such charge shall specify some unlawful object to be attained by such conspiracy or unlawful means intended to be used in effecting such object.

CCLXIV. Where the particular means used to effect a criminal purpose are essential to the offence, they are to be circumstantially alleged; this applies to offences committed by fraudulent means, and to offences for speaking blasphemous or seditious words, publishing libels, perjury, sending threatening letters and all other offences to which the speaking or writing particular words or matter is essential.

3 T. R. 681; 2 M. and S. 287.

CCLXV. Provided that in all indictments for publishing any libel or speaking any blasphemous or seditious words or for forgery, the very words must be stated.

CCLXVI. When any charge founded on the very words written or spoken by the defendant, any error in the description by which the sense is altered, is material.

1 Ch. C. L. 295.

CCLXVII. Where the indictment does not profess to set out an exact copy but the substance only, a variance will not be fatal unless it alter the substance of the charge.

1 Leach, 192; Doug. 193.

CCLXVIII. A charge for obtaining moveable property by false pretences, must state the particular pretences used.

1 Ch. C. L. 275.

CCLXIX. Where some special intent or reference to defined acts is essential to an offence, the particulars to which the intent relates, must be specified.

CCLXX. The names of persons against whom the offence is committed or whose description is involved in the statement of the offence, are to be specified.

Bac. Abr. Indict. A. 2.

CCLXXI. But it may be stated, according to fact, that the names of such persons are unknown to the Jurors.

2 Hale, 181.

CCLXXII. When the names are known the persons shall be described by their Christian and surnames, or the names by which they are usually known shall be sufficient.

2 Hale, 244-5.

CCLXXIII. Official description of an officer shall be sufficient by alleging the defendant to be such officer.

CCLXXIV. The allegation of being in a particular office or situation is equivalent to a direct averment that the defendant was therein.

How. P. C. b. 2, c. 25, s. 111, 12.

CCLXXV. Individual things incident to the description of an offence may be described by their ordinary names, with number and magnitude and such other particulars as may be convenient with a view to identity.

CCLXXVI. In any indictment wherein it is necessary to make an averment concerning property, the name of the owner shall be specified, if it be known, or unless it be otherwise provided.

CCLXXVII. Moveable property or fixtures may be described as the property of a person specified or of such person and another or others, although he or they are only the special owner or owners thereof, as bailees or otherwise.

CCLXXVIII. Fixtures for public use or ornament in any public place, being the object of ornament, may be described as being so put or placed, according to the fact, in the place specified, without any description of ownership.

CCLXXIX. Any real property the subject of averment, may be described as being in the actual possession of a person specified or of such person and another or others, according to the fact, without stating any property or ownership.

CCLXXX. Exceptions contained in the Article of the Criminal Code enacting the offence, or in any other article of that Code to which the enacting clause immediately refers, must be negatived, (1 East, 644; 6 T. R. 559); a general negation in such case is sufficient, (Starkie's C. P. 175.)

CCLXXXI. A ground of defence not specially noticed in the description of the offence, need be negatived only in the general terms of the description itself.

CCLXXXII. Repugnancy or inconsistency in the description of the party, or subject matter injured, or other person or thing, the description of which is essential to a statement of the offence, or in respect of any other matter material to the charge and rendering it uncertain, vitiates the indictment.

1 Ch. C. L. 216.

CCLXXXIII. Where a matter necessary to be stated, is once plainly and distinctly stated, a subsequent repugnant and unnecessary allegation may be rejected as surplusage.

Bac. Abr. Indt. I.

CCLXXXIV. It is otherwise where the allegation is sensible and consistent in the place where it occurs, and not repugnant to the antecedent matter.

Exec. 244.

CCLXXXV. Offences must not be stated disjunctively, so as to render it uncertain which was meant.

Ch. C. L. 236; Bac. Abr. Indt. G.

Where the penalty is aggravated by a previous conviction, this must be alleged.

CCLXXXVI. Where a prosecution is to be commenced or an act shewn to be done within a limited time, an express warrant is unnecessary, provided it appear from the time stated that the prosecution or act was commenced or done within the prescribed limit.

3 East, 259; Bac. Abr. Usury, K.

CCLXXXVII. An indictment against several defendants and charging them with separate acts, shall be deemed to be several as to each.

4 T. R. 536; 2 Hale, 177; Bac. Abr. Misnomer; G., Indictment G. 2.

CCLXXXVIII. Upon an indictment against several defendants any one or more may be convicted or acquitted.

CCLXXXIX. In a trial for an offence in which there are different degrees, if the defendant is charged with the offence generally, it shall in all cases be the duty of the Court or Magistrate to inform the Jury of the nature of the crime and the degrees thereof, and the Jury shall find the degree of the offence with their verdict, as part thereof, except in such cases where the Court is specially required to determine the degree.

CCXC. In a trial for an offence of which there are different degrees, in which the defendant is charged with the commission of the offence in any particular degree, he may be punished for the crime in any lower degree, provided the statement and description of the offence in the indictment or complaint is applicable to such lower degree, and adequately sets forth the same in such manner as to give the defendant due notice for the purpose of making defence, and enable him to avail himself of the conviction or acquittal in bar of another prosecution for the same offence.

CCXCI. The distinction between an accessory before the fact and a principal, and between principals in the first and second degree, in cases of felony, is abrogated; and all persons concerned in the commission of a felony, at statute or at common law, whether they directly commit the act constituting the offence or aid and abet in its commission, though not present, shall hereafter be indicted, tried and punished as principals, as in the case of a misdemeanor.

4 & 5 Vict. cap. 24, s. 37.

CCXCII. An accessory after the fact to the commission of a felony may be indicted, tried and punished, though the principal felon be neither indicted nor tried.

CCXCIII. A person may be indicted, for having, with the knowledge of the commission of a public offence, taken money or property of another, or a gratuity or reward, or an engagement or promise therefor, upon an agreement or understanding express or implied, to compound or conceal the offence, or to abstain from a prosecution therefor, or to withhold any evidence thereof, though the person guilty of the original offence have not been indicted or tried.

CCXCIII-*a*. A woman may be described as a single woman, spinster or widow or as the wife of a person described by his name and additions.

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## CHAPTER III.

## PROCEEDINGS AFTER AN INDICTMENT FOUND, TO COMPEL PARTIES TO ANSWER.

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294. If defendant be in custody he must be brought up for arraignment.
295. If not, but voluntarily in Court, discretionary in Court to detain him.
296. If in custody of another Court, may be brought up by Habeas Corpus.
297. If default made Bench Warrant may issue.
298. If for felony, Defendant must be present, not in misdemeanor.
299. If in custody, Court may order his presence.
300. If discharged on bail and not appearing, Bench Warrant to issue.
301. When warrant may issue.
302. Form of warrant for felony.
303. Form of warrant for misdemeanor.
304. If offence be bailable, bail to be found on Warrant.
305. Rules for arrests by warrant applicable to Bench Warrants.
306. Proceedings of Magistrate in respect of bail.

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CCXCIV. If defendant be in the custody of the Court or present therein he may be brought up and arraigned or charged with the indictment, before that Court, if it be triable therein, or if not, before the Court to which it is sent or removed.

1 Ch. Cr. L. 338.

CCXCV. If he be not actually in custody, but appears voluntarily in Court, it is discretionary in the Court to detain him or leave him to be taken by the ordinary legal process.

4 Burr. 2531 ; 2 Lewin. C. C. 277.

CCXCVI. If he be in custody of another Court he may be removed by order or Rule of the Court before which the indictment is found, to be charged with the indictment, plead, take his trial or further be dealt with according to law.

Corner's Forms, 68.

CCXCVII. If he be not in actual custody or under recognizance to appear and answer or being under recognizance, make default, his appearance before the Court to answer shall be compelled by Bench Warrant for his arrest.

CCXCVIII. If the indictment be for felony the defendant must, except by leave of the Court (B. & C. 575), appear and plead in person (Corner's, F. 130) ; but if for a misdemeanor only, his personal appearance is unnecessary, and he may appear upon the arraignment and plead by counsel.

1 Ch. Cr. L. 86, 411. 4 Com. 351.

CCXCIX. When his personal appearance is necessary, if he be in custody, the Court may direct the officer in whose custody he is, to bring him before it to be arraigned ; and the officer must do so accordingly.

CCC. If the defendant have been discharged on bail, and do not appear to be arraigned, when his personal attendance is necessary, the Court, in addition to the forfeiture of the recognizance of bail, may direct the Clerk to issue a Bench Warrant for his arrest.

CCCI. The Clerk, on the application of the prosecuting Counsel, may accordingly at any time after the order, whether the Court be sitting or not, issue a Bench Warrant into any District or County in this Province.

CCCII. The Bench Warrant upon the indictment must, if the offence be a felony, be substantially in the following form:

"District or County of [*or as the case may be:*]

"In the name of Our Sovereign Lady The Queen:

"To any Peace Officer in this Province: An indictment "having been found on the day of
[SEAL.] "1850, in the *Court of* [*as the case may be*] charging "C. D. of with the crime of [*designating it "generally.*

"You are therefore commanded, forthwith to arrest the above "named C. D., and bring him *before that Court,* [*or if the indict-"ment have been sent or removed to another Court, before the "* [*as the case may be,*] to answer the indictment; "or if the Court have adjourned for the term, that you deliver "him into the custody of the Sheriff of the district or county of "[*as the case may be,*] or in the city of "to the keeper of the prison of the city of.

"City [*or town*] of , the day of , 185

"By order of the Court,

"E. F. Clerk."

CCCIII. If the offence be a misdemeanor, the Bench Warrant must be in a similar form, adding to the body thereof a direction to the following effect: "or if he require it, that you take "him before any magistrate in that district or county, or in the "district or county in which you arrest him, that he may give "bail to answer the indictment."

CCCIV. If the offence charged be bailable, the Court, upon directing the Bench Warrant to issue, must fix the amount of bail; and an endorsement must be made upon the Bench Warrant and signed by the Clerk, to the following effect:—"The defendant is to be admitted to bail in the sum of pounds currency."

CCCV. Unless it be otherwise specially provided, the like rules as regards the persons by whom, the places where and the mode or manner whereby warrants issued before indictments, are or shall be executed, and the powers, protection and indemnification of such persons shall apply to Bench Warrants; except that the latter shall not in any case require to be backed or indorsed in another district or county.

CCCVI. If the defendant be brought before a magistrate of another district or county for the purpose of giving bail, the magistrate must proceed in respect thereto, in the same manner as if the defendant had been brought before him upon a warrant of arrest, and the same proceedings shall be had thereon, as are hereinbefore provided therefor.

## CHAPTER IV.

## PROCEEDINGS AFTER APPEARANCE OF PARTY AND PREVIOUS TO ARRAIGNMENT.

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307. In Treason, copy of indictment, &c. to be delivered to defendant eight days before arraignment.
308. In all other offences on application.
309. Computation of eight days.
310. Plea by defendant, waiver of objection for non-delivery.
311. Inspection of depositions.
312. Assignment of counsel.
313. Indictment quashed for defect.
314. Not after removal.
315. If removed at instance of defendant, may be quashed before he appears.
316. Motion to quash for apparent defect, to be made before trial.
317. Amendment of substance of indictment.

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CCCVII. A true copy of the whole indictment found against any person, if it be for treason or misprision of treason, together with a list of the witnesses to be produced on the trial for proving the said indictment, mentioning their names, professions and places of abode, and a list of the Petit Jury, mentioning their names, professions and places of abode, shall be given and delivered to the defendant at any time not later than eight days before his arraignment and in the presence of two or more credible witnesses.

7 & 8 W. 3, c. 3, s. 1; 7 Anne, ch. 21, s. 11; 6 G. 4, c. 50 s. 21.

CCCVIII. In all other cases, such copy of the indictment may be granted at any time on application therefor by the defendant.

Hawk. P. C. b. 2, c. 39, s. 13.

CCCIX. The delivery of a copy of the panel is sufficient, though it be before the return of the precept.

Fost. 230; 1 East, P. C. 113; 1 Ch. Cr. L. 406.

CCCX. The eight days before arraignment as above, shall be reckoned exclusively of the days of delivery and arraignment, (Fost. 230; Hawk. P. C. b. 2, c. 29, s. 15); and in every such case, exclusive of Sunday, (Fost. 2, 230; 1 Ch. Cr. L. 405.)

CCCX. Any objection in respect of such non-delivery or defective delivery is waiver by the defendant pleading to the indictment.

Fost. 230; 2 Salk, 634.

CCCXI. The defendant shall, at or before his trial, have inspection of all depositions or copies thereof taken against him and returned into the Court in which such trial is had.

6 & 7 Wm. 4, c. 114, s. 4.

CCCXII. Counsel, not exceeding two, shall, in all cases be assigned to defendant, by the Court, on his application either personally or by counsel, (Hawk. P. C. b. 2, c. 37, s. 10; Foster, 230, note); and others may be added to those assigned, (Hawk. P. C. b. 2, 39, s. 8.)

CCCXIII. An indictment may be quashed at the discretion of the Court, by reason of any intrinsic defect in it, unless it be susceptible of amendment under the rules therefor, in which case the Court may order the amendment to be made therein.

Hawk. P. C. b. 3, c. 34, s. 1.

CCCXIV. But such indictment shall not be quashed after its removal to another Court and a conviction therein.

9 Dow. P. C. 600.

CCCXV. If it be removed at the instance of the defendant, it may be quashed before his appearance.

1 Dow. N. S. 330.

CCCXVI. A motion to quash an indictment for defect apparent on the face of it, is to be made before trial.

2 M. & R. 197.

CCCXVII. An indictment cannot, unless where otherwise hereby provided, be amended in matter of substance.

1 Ch. Cr. L. 297, 335, 443.

## CHAPTER V.

## ARRAIGNMENT OF THE DEFENDANT.

318. The defendant to be free from unnecessary restraint.
319. If charged in several indictments may be tried on all.
320. If several charged in one indictment all to be arraigned at same trial.
321. Arraignment to be of record.
322. Arraignment, how made.
323. If defendant stand mute.
324. Not required to hold up his hand.
325. Defendant to be informed, if the name in the indictment be not his true name, he must then declare it.
326. If he give no other name, to be proceeded against by the name in the indictment.
327. If he give another name, subsequent proceedings to be had by that name, referring to name in the indictment.
328. Time allowed to defendant to answer indictment.
329. How defendant may answer indictment.
330. If time not required, he may move to set aside or plead.

CCCXVIII. The defendant shall be brought up for arraignment without shackles or restraint, unless there be danger of escape or rescue.

2 Hale 119. Hawk. P. C. b. 2, ch. 28, s. 1.

CCCXIX. If he be charged with more than one indictment or inquisition for the same offence he may be arriagned and tried at the same time on all.

2 Hale, 221. 1 East. P. C. 371.

CCCXX. When several are charged in same indictment all ought to be arraigned at the same time.

Kel. 9.

CCCXXI. The arraignment must be entered of record.

Hawk. P. C, 62, c. 28, s. 6.

CCCXXII. The arraignment must be made by the Court, or by the Clerk under its direction, and consists in reading the indictment to the defendant and asking him whether he pleads guilty or not guilty to the indictment.

4 Bl. Com. 385, Selw. N. P. 952.

CCCXXIII. If the defendant be deaf and dumb, if he understands the use of signs, he may be arraigned, and the meaning of the clerk addressing him conveyed to him by signs, and his signs in reply explained to the Court.

1 Ch. Cr. L. 417.

CCCXXIV. The defendant upon his arraignment shall not be required to hold up his hand, nor to state how he would be tried; his plea of not guilty, when made by or entered for him, shall be deemed to have put him upon his country for trial.

CCCXXV. When the defendant is arraigned, but must be informed that if the name by which he is indicted be not his true name, he must then declare his true name, or be proceeded against by the name in the indictment.

CCCXXVI. If he give no other name, the Court may proceed accordingly.

CCCXXVII. If he allege that another name is his true name, the Court must direct an entry thereof in the minutes of the arraignment; and the subsequent proceedings on the indictment may be had against him, by that name, referring also to the name by which he is indicted.

CCCXXVIII. If, on the arraignment, the defendant require it, he must be allowed until the next day, or some further time may be allowed him, as the Court may deem reasonable, to answer the indictment.

CCCXXIX. If the defendant do not require time, as provided in the last article, or if he do, then on the next day, or at such further day as the Court may have allowed him, he may, in answer to the arraignment, either move the Court to set aside the indictment or may demur or plead thereto.

## CHAPTER VI.

## SETTING ASIDE THE INDICTMENT.

330. Indictment, when set aside on motion.
331. Defendant, when precluded from objecting to indictment in any other manner.
332. Motion, when heard.
333. If denied, defendant must immediately demur or plead.
334. If granted, defendant discharged, unless the case be submitted to the same or another Grand Jury.
335. Effect of order for re-submission.
336. New indictment in such case, when to be found.
337. Order to set aside indictment, no bar to another prosecution.

CCCXXX. The indictment must be set aside, by the Court in which the defendant is arraigned, and upon his motion, in either of the following cases:

1. When it is not found, endorsed and presented, as hereinbefore prescribed.

2. When the names of the witnesses examined before the Grand Jury, or of those whose depositions may have been read before them, are not inserted at the foot of the indictment, or endorsed thereon, as herein prescribed.

3. When a person is permitted to be present during the session of the Grand Jury, while the charge embraced in the indictment is under consideration, except as hereinbefore provided.

CCCXXXI. If the motion to set aside the indictment be not made, the defendant is precluded from afterwards taking the objections mentioned in the last article.

CCCXXXII. The motion must be heard at the time of the arraignment, unless, for good cause, the Court postpone the hearing to another time.

CCCXXXIII. If the motion be denied, the defendant must immediately answer the indictment, either by demurring or pleading thereto.

CCCXXXIV. If the motion be granted, the Court must order the defendant, if in custody, to be discharged therefrom, or if admitted to bail, that his bail be exonerated; unless the Court direct that the case be re-submitted to the same or another Grand Jury.

CCCXXXV. If the Court direct that the case be re-submitted, the defendant, if already in custody, must so remain, unless he be admitted to bail; or if already admitted to bail, the bail must continue answerable for the appearance of the defendant to answer a new indictment.

CCCXXXVI. Unless a new indictment be found before the next Grand Jury of the district or county is discharged, the Court must on the discharge of such Grand Jury make the order.

CCCXXXVII. An order to set aside an indictment, as provided in this Chapter, is no bar to a future prosecution for the same offence.

## CHAPTER VII.

## PLEA AND ISSUE.

338. Plea to the jurisdiction.
339. How pleaded.
340. Prosecution after time limited not maintainable.
341. Commencement of prosecution.
342. Crown to reply or demur immediately.
343. Judgment on plea.
344. Confession to be recorded.
345. Confession not to prevent arrest of judgment.
346. Plea in abatement to be pleaded, when and how.
347. Issue shown by prosecution.
348. Judgment on plea in abatement.
349. Only other pleading for defendant, is demurrer or plea.
350. Demurrer or plea, when put in.
351. Grounds of demurrer.
352. Demurrer, how put in and its form.
353. When heard.
354. Demurrer or want of plea entered in absence of counsel.
355. Demurrer cannot be withdrawn without leave of Court.
356. Joinder in demurrer.
357. Judgment for want of joinder.
358. Record in issue on demurrer.
359. Judgment on subsequent error found.
360. Judgment on demurrer.
361. If allowed, judgment a bar to another prosecution, unless the case be re-submitted to the same or another Grand Jury.
362. If re-submission not ordered, defendant discharged.
363. Proceedings, if re-submission ordered.
364. If demurrer disallowed, defendant may be permitted to plead. When he must do so, and effect of his omission.
365. When objections, forming ground of demurrer, may be taken at the trial, or in arrest of judgment.

CCCXXXVIII. The defendant, before any other plea be pleaded, may object to the jurisdiction of the Court before which he is arraigned.

4 Bl. Com. 333. Hawk. P. C. 62, c. 34, s. 4.

CCCXXXIX. The objection must be pleaded (Hawk. P. C. 62, c. 36, s. 5) shewing what Court has jurisdiction to try the party (East. 18, 1 Ch. C. L. 438) and supported by affidavit of the truth of the facts averred (4 Bl. Com. 333) unless the prosecution be specially limited as to time, place or otherwise, by this or some other Public Act.

1 East, 352. 1 Ch. C. L. 438.

CCCXL. If a prosecution be commenced within the time limited by law but not proceeded with, no prosecution subsequent after the time of limitation, is maintainable.

2 Ad. & Ell. 389. 1 Russ. on C. 471.

CCCXLI. The laying of an information before a magistrate in order to the issuing of a summons or warrant against a party shall be deemed sufficient commencement of a prosecution.

1 East. P. C. 186.

CCCXLII. The Crown shall reply or demur immediately.

1 Ch. C. L. 439.

CCCXLIII. If the plea to the jurisdiction for any offence, be found against the defendant, the judgment shall be that he answer over to the indictment; if it be found for him the judgment shall be that he be discharged.

1 Ch. C. L. 439. 6 East, 602.

CCCXLIV. If the defendant confess the charge to be true, the confession shall be recorded and judgment awarded according to law.

4 Bl. Com. 330. 1 Ch. C. L. 602.

CCCXLV. A confession or plea of guilty does not exclude the defendant from afterwards taking objection by motion in arrest of judgment or writ of error in respect of faults apparent on the record.

Hawk. P. C. b. 2, c. 31, s. 4.

CCCXLVI. A plea in abatement to quash indictment must be pleaded previously to any plea in bar (4 Bl. C. 334) but must be verified by affidavit (Hawk. P. C., b. 2, c. 34, s. 7. 3 Burr. 1617. Fost. 16, 1 Ch. C. L. 448.) It may be either in writing or verbal: (1, Leach, 476, 1 Ch. C. L. 448) and must pray for the quashing of the indictment (10 East, 83.)

CCCXLVII. The prosecutor may demur, take issue or reply matter of fact, and thereupon the defendant is bound to join in demurrer or rejoin immediately.

6 Yerg. St. p. 238.

CCCXLVIII. If plea in abatement be found against the defendant or be rejected by means of amendment allowed or made to or in the indictment, the judgment shall in all cases be that he answer over; if it be found for him, the judgment shall be that he be discharged.

2 Hale, P. C. 238. 10 East, 88. 1 Ch. C. L. 450-1.

CCCXLIX. The only pleading on the part of the defendant other than the foregoing, is either a demurrer or a plea.

CCCL. Both the demurrer and the plea must be put in in open Court, either at the time of the arraignment or at such other time as may be allowed to the defendant for that purpose.

60 G. 3, & 1 G. 4, c. 4, s. 2; 1 C. & M. 299. 180.

CCCLI. The defendant may demur to the indictment when it appears upon the face thereof, either,

1. That the Grand Jury by which it was found had no legal authority to inquire into the offence charged, by reason of its not being within the local jurisdiction of the district or county:

2. That it does not substantially conform to the requirements herein before prescribed.

3. That more than one offence is charged in the indictment:

4. That the facts stated do not constitute a public offence:

5. That the indictment contains any matter which, if true, would constitute a legal justification or excuse of the offence charged or other legal bar to the prosecution.

CCCLII. The demurrer must be in writing, signed either by the defendant or his counsel, and fyled. It must distinctly specify

the ground of objection to the indictment, or it may be disregarded.

1 Ch. C. L. 440.

CCCLIII. Upon the demurrer being filed, the objections presented thereby must be heard, either immediately or at such time as the Court may appoint.

CCCLIV. If the defendant in the absence of counsel plead to an indictment, the Court will allow him to demur before the evidence is gone into.

1 C. & M. 617.

CCCLV. A demurrer cannot be withdrawn without the permission of the Court.

1 Ch. C. L. 440.

CCCLVI. The prosecutor may join in the demurrer immediately or according to the course of practice of the Court.

1 Ch. C. L. 440.

CCCLVII. If he do not so join, the defendant is entitled to judgment for want of joinder.

1 Ch. C. L. 441.

CCCLVIII. Upon demurrer the validity of the proceedings on the record as above is put in issue.

1 T. R. 316; 1 Ch. C. L. 440.

CCCLIX. If on objection by demurrer at a later stage of proceedings, an error appear in the earlier stage, judgment is to be given against the party who committed the error.

1 M. & S. 190; 1 Ch. C. L. 443.

CCCLX. Upon considering the demurrer the Court must give judgment, either by allowing or disallowing it; and an order to that effect must be entered upon the minutes.

CCCLXI. If the demurrer be allowed, the judgment is final upon the indictment demurred to, and is a bar to another prosecution for the same offence unless the Court being of opinion that the objection on which the demurrer is allowed may be avoided in a new indictment, direct the case to be re-submitted to the same or another Grand Jury.

CCCLXII. If the Court do not direct the case to be re-submitted, the defendant, if in custody, must be discharged, or if admitted to bail his bail is exonerated.

1 Ch. C. L. 441-3; 4 Bl. Com. 334.

CCCLXIII. If the Court direct that the case be submitted anew the same proceedings must be had thereon as are prescribed for the original indictment.

CCCLXIV. If the demurrer be disallowed the Court must permit the defendant at his election to plead over; which he must do forthwith or at such time as the Court may allow. If he do not plead, a plea of not guilty will be entered for him.

1 Ch. Cr. L. 441-2-3; 4 Bl. C. 334.

CCCLXV. When the objections mentioned in Article 351 appear upon the face of the indictment they can only be taken by demurrer; except that the objection to the jurisdiction of the

Court over the subject of the indictment, or that the facts stated do not constitute a public offence, may be taken at the trial under the plea of not guilty and in arrest of judgment.

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## CHAPTER VIII.

366. The different kinds of pleas.
367. Plea, how put in.
368. Its form.
369. Plea of guilty, how put in.
370. It may be withdrawn by permission of the Court.
371. What is denied by a plea of not guilty.
372. What may be given in evidence under it.
373. A former conviction or acquittal a bar to subsequent prosecution.
374. Not so of facts not ground of former conviction.
375. Different offences in same indictment.
376. Fraudulent former conviction or acquittal.
376-*a*. Conviction for one degree of offence.
377, 378, 379. Indictment must be sufficient and before a sufficient Court to constitute a bar.
380. Such plea in bar to be established by record of former acquittal, &c.
381. May be pleaded as to part of the charge.
382. When error in former process, no exclusion of plea in bar.
383, 384. Acquittal must be by Jury.
385. How former record to be brought up.
386. Plea of former conviction or attainder how pleaded.
387. Rules applicable thereto.
388. Time to be granted to make proper plea.
389, 390, 391. Plea of pardon, how and when pleaded and proved.
392, 393. Exceptions in act of pardon, how pleaded.
394, 395, 396. Extent of pardon.
397, 398. Variances in pardon.
399. Effect of judgment on pleas in bar.
400. Plea of not guilty, when to be put in for defendant.
401. Extent of plea.
402. Plea to part, and confession, &c. to remainder.
403. Denial of liability by common right and otherwise, how pleaded.
404. Where default to answer, judgment against defaulter.
405. Plea to a charge on Coroner's inquisition.
406. Proceeding on indictment for riot.
407. Pleas amendable.
408. Pleas may be withdrawn.

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CCCLXVI. There are three kinds of pleas to an indictment,

1. Guilty:

2. Not guilty:

3. A former judgment of conviction or acquittal of the offence charged, or pardon for the same offence of which he is then arraigned; which may be pleaded either with or without the plea of not guilty:

4. No pleas of special justification or defence shall be pleaded to any indictment.

2 Hale, 258, 284; 1 Ch. C. L. 472.

CCCLXVII. Every plea must be oral and must be entered upon the minutes of the Court, and a defendant may plead as many such pleas as he thinks fit, if they are not repugnant to each other.

Hawk. P. C. b. 2, c. 23, ss. 128-137; 1 B. & Ald. 423.

CCCLXVIII. The plea must be entered in substantially the following form:

1. If the defendant plead guilty:—"The defendant pleads that "he is guilty of the offence charged in this indictment":

2. If he plead not guilty:—"The defendant pleads that he is "not guilty of the offence charged in this indictment," and no replication or similiter on the record shall be deemed necessary.

1 Ch. C. L. 416.

3. If he pleads a former conviction or acquittal or pardon:—"The defendant pleads that he has been already convicted (*or "acquitted or pardoned, as the case may be*) of the offence charged "in this indictment, by the judgment of the Court of (*nam-"ing it*) rendered at , (*naming the place*) on the day "day of "

CCCLXIX. A plea of guilty can in no case be put in, except by the defendant himself in open Court unless upon an indictment against a corporation; in which case it may be put in by counsel.

CCCLXX. The Court may at any time before judgment, upon a plea of guilty, permit it to be withdrawn and a plea of not guilty substituted: so also the plea of "not guilty" may be withdrawn and that of "guilty" substituted.

Contra. 2 Lewin's, C. C. 264.

CCCLXXI. The plea of not guilty is a denial of every material allegation in the indictment, and puts the whole charge in issue.

1 Ch. C. L. 471.

CCCLXXII. All matters of fact, tending to establish a defence, other than that specified in the third sub-division of article 366, may be given in evidence under the plea of not guilty.

CCCLXXIII. Where, in a subsequent prosecution, the offence alleged is the same that the defendant was convicted of in a former prosecution, or such as, upon proof of his guilt, he might have been convicted of under a former presecution, in which he was acquitted on a trial upon the merits before a court, tribunal or magistrate having jurisdiction of the case, such former acquittal or conviction may be pleaded in bar of such subsequent prosecution.

1 Ch. Cr. L. 452, 455-6; 2 Hale, 246; Fost. 329, 25, 28; 4 Co. Rep. 45-6; 1 Leach, 12; 12 East R. 415; 1 Ch. C. L. 251.

CCCLXXIV. If the facts alleged in the subsequent prosecution be such as if proved, would not have been ground of conviction in the former prosecution, the former conviction or acquittal cannot be pleaded in bar of the subsequent prosecution.

CCCLXXV. Where the same act constitutes two or more diverse and distinct offences different in their nature and character, one not being merged into the other, the offender may be

proceeded against for each, and cannot plead a conviction or acquittal for one in bar of proceeding against him for the other.

CCCLXXVI. A conviction or acquittal fradulently or collusively obtained by the defendant on his own relation, complaint or information, or by any other person on his behalf, is not a bar to a subsequent prosecution.

CCCLXXVI–*a*. When the defendant shall have been convicted or acquitted, upon an indictment for an offence consisting of different degrees, the conviction or acquittal is a bar to another indictment for the offence charged in a former, or for any inferior degree of that offence, or for an attempt to commit the same.

CCCLXXVII. A former acquittal on a sufficient indictment before a Court of competent jurisdiction is a bar to another prosecution, and that, although such acquittal were erroneous, if it stand unreversed.

Hawk. P. C. b. 2, c. 35, s. 8; 2 Hale, 247; 1 Ch. C. L. 458.

CCCLXXVIII. So also for a former conviction on such indictment of the offence charged in the second indictment or of any offence included in the second indictment.

2 Hale, 246; 2 Leach. C. C. L. 708; 3 B. and C. 502.

CCCLXXIX. The acquittal is not a bar unless it be on a sufficient indictment, although the jury find a special verdict and the defendant be thereupon acquitted.

2 Hale's P. C. 248, 395; Stark on Cr. P. 302.

CCCLXXX. Such plea of former acquittal or conviction shall be establised by voucher of the record of judgment of such sufficient Court.

CCCLXXXI. The plea is pleadable as to part of the charge contained in the second indictment.

2 M. and Rob. 26; 2 Lewin's C. C. 52.

CCCLXXXII. No error in the former process will exclude the party from pleading such plea as long as the former conviction remains unreversed.

2 Hale, 248; Hawk. P. C. b. 2, c. 35, s. 8.

CCCLXXXIII. The acquittal must be by the verdict of a petty jury.

2 Hale, 243–6.

CCCLXXXIV. On issue taken in fact on such plea, a jury may be awarded and returned immediately to try the issue.

1 Ch. C. L. 461.

CCCLXXXV. In whatever Court the trial shall be if the record of warrant in such plea be of another Court, it shall be sent up to the Court having the trial, under seal of the Record Court.

2 Hale, 242, 255.

CCCLXXXVI. A previous conviction or attainder for the same offence in fact and in law with that stated in the indictment, or for any offence involving such same offence in fact or in law, may be pleaded in bar of such indictment.

2 Hale, P. C. 251; 2 East, P. C. 519.

CCCLXXXVII. The rules applicable to pleading a former acquittal shall apply as far as may be to pleading in former conviction or attainder.

CCCLXXXVIII. Time must be granted on application therefor to draw up properly a plea of former conviction or acquittal, and the indictment shall be read over so that its contents may be taken down.

6 C. and P. 93, 101; 5 B. Ab. 1173; 7 C. and P. 836; 2 Moo. C. C. 9.

CCCLXXXIX. Plea of pardon must be pleaded in bar, and is not allowed after plea of not guilty, (1 Fost. 43; Bac. Ab. Pardon, c. 2; 4 Bl. C. 402.) except a general pardon be allowed, (1 Leach, C. C. 40) or pardon be had by public act, the benefit whereof is allowed without plea.

1 Ch. C. L. 466; Fost. 43.

CCCXC. Profert must be made of the Letters Patent of pardon, if pleaded.

1 Ch. C. L. 468.

CCCXCI. Where the pardon is personal to the defendant, or he is included in a general act of grace, the privilege must be pleaded.

1 Ch. C. L. 466.

CCCXCII. If exceptions are contained in the enacting clause of the act of pardon, the claimant under the Act must shew that he is not included within the exceptions, (Hawk. P. C. b. 2, c. 37, s. 60; Bac. Abr. Pardon, 1 Ch. C. L. 467); but otherwise if pardon in the body of the act be general and exceptions are contained in a distinct proviso. (Bacon Abr. Pardon. G. 1, 7.)

CCCXCIII. Where a particular offence is excepted, it is not necessary to negative its commission, (Bac. Abr. Pardon. G. 1, 1 Ch. C. L. 467) nor if an individual be excluded from the benefit of the act of pardon. (Bac. Abr. Pardon, G. 1.)

CCCXCIV. A pardon including murder avails where the cause of death occurs before the time to which the pardon applies, although death only happens after that time.

Hawk. P. C. b. 2, c. 37, s. 21; 1 Hale, 426.

CCCXCV. A pardon for homicide less than murder only avails where the cause of death occurs before the time to which the pardon applies, but where the death does not happen until after that time.

Fost. 64; Bac. Ab. Pardon, D.

CCCXCVI. A pardon of a minor offence included in that whereof the party is indicted is pleadable in bar to such offence and he may plead not guilty as to the rest.

2 Hale, 258.

CCCXCVII. Variances as to the description of the party pardoned may be reconciled by proper averments of his identity.

Bac. Ab. Pardon, Geo. II.

CCCXCVIII. Variances as to the circumstances of the offence which could not have been material are reconcilable by averments

Bac. Ab. Pardon, G. 2.

CCCXCIX. Judgment on pleas in bar for the defendant shall be that he be discharged, (2 Hale, 391); if against him, that he plead over, if so minded (2 Hale, 256.)

CCCC. If the defendant refuse to answer the indictment by demurrer or plea or stand mute for any cause, a plea of not guilty must be entered for him.

CCCCI. The plea of "not guilty" shall be deemed to have put the defendant on his trial, and the Court shall thereupon order a jury for trial.

CCCCII. The defendant may plead "not guilty" as to part and either confess or plead matter in reference as to the remainder.

1 Ch. C. L. 472-3.

CCCCIII. When defendant denies a liability which is of common right (3 Camp. 222) he must, unless relieved by a public statute, show his relief by pleas; but otherwise, if liability be not of common right (2 Saund. 59, n. 10; a. n. 10) in the former, the person liable and the reason therefor (5 Burr. 2700, 2 P. R. 166) must be shown, the plea must not conclude with a traverse.

2 Saund. 659, c. 10; 1 Ch. C. L. 477; 1 Saund. 23, n 5, 2 Ditto 159. a. n. 10; 2 H. B, 182.

CCCCIV. If answer by replication or otherwise to any special plea or rejoinder in demurrer be not put in or made, judgment against the party in default is to be entered and pronounced against him.

CCCCV. The defendant charged by a Coroners' inquisition with murder or manslaughter, may plead or demur thereto in the same manner as to an indictment, and issue may be joined in like manner.

Corners' P. 64.

CCCCVI. In indictment for riot, the prosecutor may, at the direction of the Court, be required to select two or three and to proceed to trial against them, the others entering into a rule to plead guilty if those selected be found guilty, and thereupon judgment of guilty shall be entered against them as if they had been found guilty.

6 Mod. 212.

CCCCVII. Plea is amendable at all times before filed upon the record.

CCCCVIII. A plea or demurrer may be withdrawn at the direction of the Court (Ch. C. L. 436) and if a plea be so withdrawn the former arraignment is no answer to a subsequent arraignment.

Fost. 16, 23; 1 Will. 157; Corners' p. 132.

## CHAPTER IX.

## REMOVAL OF THE ACTION BEFORE TRIAL.

409. Existing writs and proceedings, to remove indictment before tria abolished.
410. When, and in what cases, indictment may be removed before trial.
411. If former trial were had, indictment may be removed before the new trial.
412. Application for removal, how made.
413. Stay of trial, how obtained, to enable defendant to apply for removal.
414. Decision on application for stay, to be endorsed on papers and filed.
415. If application for stay be denied, no other application can be made.
416. Violation of last article a misdemeanor and contempt, and order of removal to be vacated.
417. Order of removal to be filed, and pleadings and proceedings to be transmitted.
418. Proceedings on removal, if defendant be in custody.
419. Order for removal must be filed, before a juror is sworn. Authority of the Court to which indictment is removed.
420. No discharge by jail delivery of trial to be in Queen's Bench.
421. Indictment may be removed without certiorari.
422. No trial can be had on removal of indictment found before Court without jurisdiction.

CCCCIX. All writs and other proceedings heretofore existing, for the removal of indictments from one Court to another before trial, are abolished; and the only mode of removing indictments from one Court to another, before trial, is that prescribed by this Chapter.

CCCCX. An indictment may, at any time before trial, on the application of the defendant, be removed from the Court in which it is pending, as provided in this chapter, in the following cases:

1. From a Court of General Sessions or from any inferior Criminal Court, to the Court of Queen's Bench or Court of Oyer and Terminer of the same district or county, for good cause shown:

2. From a Court of Oyer and Terminer to the Court of Queen's Bench or of Oyer and Terminer of another district or county, on the ground that a fair and impartial trial cannot be had in the district, county or city where the indictment is pending.

1 D. P. C. 527; 2 D. P. C. 440; 4 East 210; 6 T. R. 195; 7 T. R 735; 38 Geo. III. c. 52, s. 1-3.

CCCCXI. If one or more trials be had, and a new trial is necessary, either by reason of the discharge of a jury without a verdict, or of the granting of a new trial, the removal may be allowed at any time before the new trial.

CCCCXII. The application for the order of removal must be made to the Court of Queen's Bench at a criminal term in the district or county upon notice of at least ten days to the public prosecutor of the district or county where the indictment is pending, with a copy of the affidavits or other papers on which the application is founded.

CCCCXIII. To enable the defendant to make the application, a Judge of the said Court of Queen's Bench may, in his discre-

tion, upon good cause shown by affidavit, make an order staying the trial of the indictment until the application can be made and decided.

CCCCXIV. When an application for an order to stay the trial is made to such Judge, he must endorse his decision on the affidavits or other papers presented to him, and cause them to be immediately filed with the Clerk of the Court in which the indictment is pending.

CCCCXV. If the application for an order to stay the trial be made to one Judge and denied, a similar application cannot be made to another Judge.

CCCCXVI. A violation of the last article is punishable as a misdemeanor, and as a contempt of the Court in which the indictment is pending; and that Court must vacate an order of removal made in violation thereof.

CCCCXVII. If the Court of Queen's Bench order the removal of the indictment a certified copy of the order for that purpose must be delivered to and filed by the Clerk of the Court where the indictment is pending; and the Clerk shall thereupon transmit the same with a certified copy of the pleadings and proceedings in the action, including the recognizances for the appearance of the defendant or of the witnesses, to the Court to which the action is removed.

38 Geo. III. c. 52, s 5-6.

CCCCXVIII. If the defendant be in custody, and the removal be to the Court of Queen's Bench or a Court of Oyer and Terminer of another district or county than that where the indictment is pending, the order must provide for the removal of the defendant, by the Sheriff of the district or county where he is imprisoned, to the custody of the proper officer of the district or county to which the indictment is removed; and he must be forthwith removed accordingly.

38 Geo. III, c. 52, s. 4.

CCCCXIX. An order for the removal of the action is of no effect, unless a certified copy thereof be filed, as herein required before a jury is sworn to try the indictment. The Court to which it is removed, must thereupon proceed to trial and judgment therein.

CCCCXX. A defendant triable only in the Court of Queen's Bench or under a special commission, cannot be discharged under a Commission of Gaol Delivery.

1 Leach, C. C. 157, 170,

CCCCXXI. An indictment found at a Court of Quarter Sessions or other Court of an offence inquirable there may be removed to another Court as above without a writ of certiorari.

Talf. Dick. Q. S. 145.

CCCCXXII. An indictment found before a Court without jurisdiction to take it, is void and no other Court can try it on removal.

R. & M. 298.

## TITLE VI.

# OF THE PROCEEDINGS ON THE INDICTMENT BEFORE TRIAL.

1. The mode of trial.
2. Formation of the trial Jury.
3. Calendar of issues for trial.
4. Postponement of the trial.
5. Challenging the Jury.

## CHAPTER I

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CCCCXXIV. An issue of fact must be tried by Jury of the district or county in which the indictment was found, unless the action be removed by order of the Court of Queen's Bench, as hereinbefore provided.

CCCCXXV. If the indictment be for a misdemeanor the trial may be had in the absence of the defendant, if he have previously appeared or do appear by counsel; but if for a felony, he must be personally present.

1 Ch. C. L. 411, 532; Telf. Dick. Q. S. 600.

CCCCXXVI. On trial for felony the defendant shall stand at the bar of the Court, (9 C. & P. 483), and in all cases of misdemeanor, except libel.

CCCCXXVII. The consent of counsel for the trial of a defendant for misdemeanor during his absence by reason of illness, does not authorize the Court to proceed.

2 C. & P. 413.

## CHAPTER II.

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CCCCXXVIII. The Jurors duly summoned for the trial of issues of fact at a criminal Court, are the Jurors for the trial of issues of fact upon indictments found at such Courts of criminal jurisdiction or upon indictments removed to such Courts.

CCCCXXIX. A Jury must be summoned for each of the terms of the Court, and the summons must specify the number and the name of the Court for which they are to be summoned.

CCCCXXX. The summons must be served upon each Juror at least ten days before the term for which the Jury is ordered; and the return of such service on the list, certified by the Sheriff of the district or county, must be filed with the Clerk of the Peace for the district or county at least five days before the term; and when so filed is conclusive evidence of the summoning of the Jury.

CCCCXXXI. A misdescription of the title of the Court does not affect the validity of the summoning, if it can be plainly understood therefrom what Court is intended.

CCCCXXXII. At the opening of the Court, the Clerk must file the list deposited by the Sheriff, which shall contain the names of the persons returned as Jurors with their places of residence and occupations.

CCCCXXXIII. When the indictment is called for trial, either party may require the names of all the Jurors in the panel to be called and that an attachment shall issue against those who are absent; but the Court may, in its discretion, wait or not for the return of the attachment.

CCCCXXXIII-*a*. In every trial the names of the Jurors on the list shall be called over in the order in which they stand in the said list, and the first twelve whose names shall be so called and be present in Court and shall not be lawfully challenged, shall be sworn for such trial; and the said Clerk shall in every trial begin at the name next after that of the last Juror sworn, and so on until he shall have gone through the list, when he shall begin at the top thereof again, and go through it as aforesaid, omitting the names of any Jurors who may then be engaged

in trying any case: Provided always, that at every Term of the Superior Court of Criminal Jurisdiction or at any Court of Oyer and Terminer, no more than sixty such Jurors shall be summoned, nor more than thirty-six at any General Sessions of the Peace.

CCCCXXXIV. When a Jury has been duly summoned, if upon calling the indictment for trial, twenty-four of the Jurors summoned do not appear, or when by reason of any challenges or for any other cause an indictment, issue or plea is likely to remain untried for default of Jurors, the Court must order the Sheriff to summon as many persons qualified to be Juors in the district or county as it may think proper, at least sufficient to make twenty-four Jurors, from whom a Jury for the trial of the indictment must be selected.

6 G. 4, c. 50; 1 Ch. C. L. 560.

CCCCXXXV. A Jury *de medietate* may be summoned for the trial of an alien for any offence other than treason, (1 Haw. P. C. b. 2, c. 43, s. 47), but alien Jurors need not be qualified as other Jurors.

6 G. 4, c. 50, s. 47.

CCCCXXXVI. The want of a Jury *de medietate* is a ground of challenge to the array.

2 Hale, 272; Bac. Abr., Juries E. 8.

CCCCXXXVII. The exception for want of such Jury cannot be taken before the Jury are sworn,

Haw. P. C. b. 2, c. 43, s. 40; 2 Hale, 271-2.

CCCCXXXVIII. It is not essential that such Jurors be natives of the country to which the defendant belongs.

Haw. P. C. b. 2, c. 43. s. 42; Bac. Abr. Juries, E 8.

CCCCXXXIX. It is essential, if an improper process be awarded (7 H. 6, c. 28,) or it be directed to one without authority to make a return, or where no return is made (Cro. El. 468, 574, 586—5 Co. 36., or where a person not returned on the panel serves on the Jury, (5, B. and C. 257, and cases there cited.)

CCCCXL. The Jury consists of twelve men, sworn to try and determine the issue by an unanimous verdict.

CCCCXLI. If a sufficient number cannot be obtained from the list to form a Jury, the Court may, as often as is necessary, order the Sheriff to summon so many persons, qualified to serve as jurors, as it deems sufficient, to form a Jury; and the provisions therefor hereinbefore, govern the execution of the order. The jurors so summoned must be called from the list returned by the Sheriff, and so many of them, not excused or discharged, as may be necessary to complete the Jury, must be empanelled and sworn: Provided, that in Lower Canada, if a sufficient number cannot be obtained from the list to form a Jury in such manner as to give the defendant jurors for his trial one half of whom, at least, shall be competently skilled in the language of his defence, if the same be either the English or French language, the Court may, as often as necessary, order the Sheriff to summon so many persons qualified to serve as jurors skilled in the particular language as it deems sufficient to form such Jury.

CCCCXLII. A special Jury for a criminal trial may be had as provided by the existing law in force in either section of this Province.

CCCCXLIII. Another party on failure of the other may proceed on rule for a special Jury.

Corners' P. 138.

CCCCXLIV. If a special Jury have been nominated or selected, the rule must be discharged by consent or otherwise before the trial can be had by a common Jury.

Corners' P. 138.

CCCCXLV. If after a special Jury be struck the trial goes off for want of jurors, the trial can only be had by the jury first appointed or so many of them as appear with the addition of talesmen.

5 P. N. 453.

CCCCXLVI. A view of the place in question may be had at the instance of either party by means of and subject to such rules and orders as the Court may direct.

Corners' P. 139.

CCCCXLVII. Jurors qualified to serve according to the law in force in either section of the Province shall alone be summoned to serve on criminal trials.

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## CHAPTER III.

## CALENDAR OF ISSUES FOR TRIAL.

448. Clerk to prepare calendar.
449. Order of disposing of issues on the calendar.
450. Indictment pending before term, not to be tried but by consent, unless placed on the calendar.
451. Defendant to have four days after plea to prepare for trial, if he require it.
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453. Register to be submitted to the Court, at its opening at every term.

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CCCCXLVIII. The Clerk of the Crown for each district or county must at least four days before the Criminal Term, prepare a calendar of the indictments to be tried at the term, enumerating them according to the date of the filing of the indictment, and specifying opposite the title of each action, whether it be for a felony or a misdemeanor, and whether the defendant be in custody or on bail; and must in like manner enter thereon all indictments found during the term, and on which issues of fact are joined.

CCCCXLIX. The issues on the calendar must be disposed of in the following order, unless, upon the application of either party, for good cause, the Court direct an indictment to be tried out of its order:

1. Indictments for felony, where the defendant is in custody:

2. Indictments for misdemeanor, where the defendant is in custody:

3. Indictments for felony, where the defendant is on bail: and

4. Indictments for misdemeanor, where the defendant is on bail.

CCCCL. An indictment pending before the term cannot be tried thereat, unless it be placed on the calendar, as hereinbefore provided, except with the consent of the defendant.

CCCCLI. After his plea, the defendant is entitled to at least two days to prepare for his trial, if he require it.

CCCCLII. The Clerk must keep a register of all the criminal actions in the Court, in which he must enter:

1. All cases returned to the Court by a magistrate, whether the defendant be discharged or held to answer:

2. All indictments found in the Court, or sent or removed thereto for trial, with the time of finding the indictment, or when it was sent or removed; and

3. The time of arraignment, of the demurrer or plea, and of the trial, conviction or acquittal of the defendant, together with a brief note of all the other proceedings in the action.

CCCCLIII. The register must be submitted to the Court at its opening at every term.

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## CHAPTER VI.

## POSTPONEMENT OF THE TRIAL.

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455. If defendant appear for trial, and cause for postponement be not shewn by District Attorney, indictment to be discharged unless otherwise specially ordered.
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458, 459. Nolle prosequi.
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CCCCLIV. When an indictment is called for trial, or at any time previous thereto, the Court may, upon sufficient cause shown by either party, as the illness or absence of a witness, that the witness is incompetent from tender years to take an oath without instruction, (1 Leach C. C. 430) that circumstances have occurred to prevent fair trial, (2 M. & Rob. 192) for procuring necessary evidence not then attainable, or defective by improper practice of party charged or others for him, (9 c. & p. 284) and in other cases for good cause shown to the satisfaction of the Court, (9 c. & p. 83) direct the trial to be postponed to another day in the same term, or to another term. The affidavits read on both sides upon the application, must at the same time be filed with the Clerk.

CCCCLV. If, when the indictment is called for trial, the defendant appear for trial, and no sufficient cause for postponing the same be shewn by the prosecutor, the Court must order the indictment to be discharged; unless, being of opinion that the public interests require the indictment to be retained for trial, it direct it to be so retained and discharge the defendant in the

meantime on his own recognizance or admit him to bail, or remand him.

7 c. & p. 799. 4 c. & p. 251.

CCCCLVI. If the Court order the indictment to be discharged, the order is not a bar to another prosecution for the same offence, unless the Court so direct. If the Court so direct, judgment of acquittal must be entered.

CCCCLVII. No motion to put off trial for any offence can be entertained until after plea pleaded.

2 M. & Rob. 192.

CCCCLVIII. A nolle prosequi cannot be entered by the Clerk of the Crown at the instance of the prosecutor without the consent of the public prosecutor.

1 Ld. Raym. 721.

CCCCLIX. The entry of a nolle prosequi is no acquittal nor sufficient to preclude a further prosecution for the same offence.

1 Ch. C. L. 430. Com. Dig. Indictment K.

CCCCLX. The Court will interfere to stay proceedings for defects or omissions apparent on the face of the indictments and will discharge recognizances of parties and witnesses bound to prosecute for defects in evidence or other sufficient cause.

6 C. & P. 323, 342.

## CHAPTER V.

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509. Order of challenges.
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514. If challenge made by the one be disallowed, it may be made by the other party.
515. If Juror found indifferent, may be challenged peremptorily
516. If Jury discharged, another Jury sworn for trial.

CCCCLXI, A challenge is an objection made to the trial Jurors, and is either:

1. To the panel or array.
2. To an individual juror or polls.

But no challenge can be made either to the array or to the polls, previously to the appearance of a sufficient number to constitute a full jury.

Ch. C. L. 544–5; 4 B. & Ald. 471.

CCCCLXII. When several defendants are tried together, they cannot sever their challenges, but must join therein.

CCCCLXIII. A challenge to the panel, is an objection made to all the trial jurors returned, and may be taken by either party, as well to the panel returned for the term, as to the additional panel ordered to complete the jury as hereinbefore prescribed.

CCCCLXIV. A challenge to the panel can be founded only on some manifest partiality in the returning officer, or on a material departure from the forms prescribed by this Code, in respect to the summoning and return of the jury, or on the intentional omission of the sheriff to summon one or more of the jurors drawn, or in respect to the list of jurors returned to the Court.

CCCCLXV. It is a good principal cause of challenge to the panel, if the returning officer be a party to the proceeding or a party aggrieved; (1 Leach, 101.)

Or return a juror at the request of any party; (1 Bac. Abr. c. 1.)

Or if a suit be depending between such officer and a party; (1 Ch. C. L. 537.)

Or if he be Counsel, Attorney, Arbitrator or Expert in the case, or has any pecuniary interest in the event, (3 Bur. 185-6. Bac. Abr. b. 1.) or be otherwise so circumstanced that the Court may reasonably suspect his partiality.

CCCCLXVI. A challenge to the array for favour, is founded on the allegation of facts not sufficient in themselves to warrant the Court in inferring partiality but sufficient for inquiry into the actual existence of partiality in the returning officer; (Bac. Abr. Jur. b. 1; 1 Ch. Cr. L. 538; 2 Hale P. C. 271.)

CCCCLXVII. On such challenge for favour the adverse party may either confess it or deny the facts alleged by his plea, or demur.

1 Ch. C. L. 546–548.

CCCCLXVIII. On plea pleaded triers are sworn and charged to inquire if the array be impartial or favourable.

4 Bl. Com. 753; Bac. Abr. Juries E. 12.

CCCCLXIX. The proof of facts to disqualify the officer lies on the objecting party.

Moody's C. C. 51.

CCCCLXX. If the array be quashed, a new venue is awarded to the Coroner.

1 Ch. C. L. 548.

CCCCLXXI. To enable the defendant to make his challenges, the whole panel must be read over, so that he may know who they are that appear.

Fost. 7; Hawk. P. C. b. 2, c. 42, s. 4.

CCCCLXXII. A challenge to the panel must be taken, before a juror is sworn, (9 C. & P. 136.) and must be in writing, speci-

fying plainly and distinctly the facts constituting the ground of challenge; but a challenge to the polls may be oral. ((1 Ch. C. L. 546,) Challenge to the polls may be made after challenge to the array, but not *vice versa*.

1 Ch. C. L. 545.

CCCCLXXIII. If the sufficiency of the facts alleged as a ground of challenge be denied, the adverse party may except to the challenge. The exception need not be in writing, but must be entered upon the minutes of the Court; and thereupon the Court must proceed to try the sufficiency of the challenge, assuming the facts alleged therein to be true.

2 Hale: 275; 2 Ch. C. L. 547-8; 4 Bl. Com. 353; Bac. Abr. Juries E. 12.

CCCCLXXIV. If, on the exception, the Court deem the challenge sufficient, it may, if justice require it, permit the party excepting, to withdraw his exception, and to deny the facts alleged in the challenge. If the exception be allowed, the Court may, in like manner, permit an amendment of the challenge.

CCCCLXXV. If the challenge be denied, the denial may, in like manner, be oral, and must be entered upon the minutes of the Court; and the Court must proceed to try the question of fact.

CCCCLXXVI. Upon the trial of the challenge, the officers, whether judicial or ministerial, whose irregularity is complained of, as well as any other persons, may be examined to prove or disprove the facts alleged as the ground of the challenge.

CCCCLXXVII. If either upon an exception to the challenge or a denial of the facts, the challenge be allowed, the Court must discharge the Jury, so far as the trial of the indictment in question is concerned; and no other Jury for the trial thereof can be summoned for the same term. If it be disallowed the Court must direct the Jury to be impannelled.

1 Ch. C. L. 548.

CCCCLXXVIII. Before a Juror is called the defendant must be informed by the Clerk of the Court that if he intend to challenge an individual Juror he must do so when the Juror appears and before he is sworn.

1 Ch. C. L. 532.

CCCCLXXIX. A challenge to an individual Juror is either,

1. Peremptory, or

2. For cause.

CCCCLXXX. It must be taken when the Juror appears and before he is sworn; but no party can of right challenge the array or any juryman after the swearing of the Jury, unless for cause after the oath is administered; but the Court may, for good cause, permit it to be taken, after the jury is sworn, and before the jury is completed.

1 Ch. C. L. 544, 545; 4 Barn. & Ald. 471.

CCCCLXXXI. A peremptory challenge can be taken by the defendant only, and may be oral. It is an objection to a Juror for which no reason need be given but upon which the Court must exclude him.

Hawk. b. 2, c. 43, s. 1; 2 Hale, 274; 1 Ch. C. L. 545.

CCCCLXXXII. If the offence charged be a felony the defendant is entitled to twenty peremptory challenges, and any peremptory challenge beyond twenty shall be entirely void. On a trial for any other offence he is not entitled to any peremptory challenges.

Such challenge is not permitted on any collateral issue.

2 Hale, P. C. 267; Fost. 42.

CCCCLXXXIII A challenge for cause to the polls may be taken either by the Queen or by the defendant, if by the latter, after having exhausted his peremptory challenges.

Com. Dig. Indictment M.; 1 Ch. C. L. 500.

CCCCLXXXIV. It is an objection to a particular Juror and is either,

1. General, that the Juror is disqualified from serving in any case; or

2. Particular, that he is disqualified from serving in the case on trial.

CCCCLXXXV. Where several are tried at the same inquest, each has a right to his full number of challenges, (Fost. 106-7; 2 Hale, P. C. 268; 1 Ch. C. L. 335), and they may be tried separately to avoid the inconvenience of exhausting the panel, (2 Hale, P. C. 264; Hawk. P. C. b. 2, c. 41, s. 9.)

CCCCLXXXVI. If several objections can be made to the same Juror, they must all be taken at the same time and orally.

Bac. Abr. Juries, E. 11; 1 Ch. C. L. 547.

CCCCLXXXVII. General causes of challenge are,

1. A conviction for a felony:

2. A want of any of the qualifications prescribed by law to render a person a competent Juror:

3. Unsoundness of mind or such defect in the faculties of the mind or organs of the body, as renders him incapable of performing the duties of a Juror.

CCCCLXXXVIII. Particular causes of challenge are of two kinds:

1. For such a bias as, when the existence of the facts is ascertained, in judgment of law disqualifies the Juror, and which is known in this Code as implied bias or principal challenge:

2. For the existence of a state of mind on the part of the Juror in reference to the case, or to either party, which satisfies the triers in the exercise of a sound discretion, that he cannot try the issue impartially and without prejudice to the substantial rights of the party challenging, and which is known in this Code as actual bias or challenge to favour.

CCCCLXXXIX. A principal challenge or for implied bias may be taken for all or any of the following causes and for no other:

1. Consanguinity or affinity within the ninth degree to the person alleged to be injured by the offence charged or on whose

complaint the prosecution was instituted or to the defendant, (3 Bl. Com. 363), if he be under the power of a party or in his employment, or has any legal interest in the result;

2. Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offence charged, or on whose complaint the prosecution was instituted, or in his employment on wages, or of the same society or corporation with either party;

3. Being a party adverse to the defendant in a civil action or having an interest therein, or taken money for his verdict or having complained against, or been accused by defendant in a criminal prosecution;

4. Having served on the Grand Jury which found the indictment, or any other against the party for the same offence, or in respect of any other fact material to the present charge, or on a Coroners' Jury which inquired into the death of a person whose death is the subject of the indictment;

5. Having served on a trial Jury, which has tried another person for the offence charged in the indictment;

6. Having been one of a Jury formerly sworn to try the same indictment, and whose verdict was set aside or which was discharged without a verdict, after the cause was submitted to it;

7. Having served as a juror, in a civil action brought against the defendant, for the act charged as an offence;

CCCCXC. A challenge for favour or actual bias may be taken for the cause mentioned in the second subdivision of article 488, and for no other cause.

CCCCXCI. The Queen shall not show cause until the whole panel has been exhausted, and if the defendant challenge the residue of the panel, he must first show all his causes of objection before the Crown can be called upon to show its ground of challenge.

1 Ch. C. L. 534, 547. 9 C. & P. 136.

CCCCXCII. The validity of the objections is to be argued and determined.

1 Ch. C. L. 534, 547. 9 C. & P. 136.

CCCCXCIII. A Juror may challenge himself by stating that he is not qualified and he may himself be examined upon oath.

4 Harg. St. T. 740.

CCCCXCIV. Any good cause of challenge to the array by reason of the presumed partiality of the officer is also good cause of challenge of an individual juror.

1 Ch. C. L. 542.

CCCCXCV. A challenge for favour is when the facts are not sufficient without inquiry to cause a presumption of undue influence or prejudice, but sufficient to raise suspicion thereof and to warrant inquiry whether such influence or prejudice in fact exists.

Bac. Abr. Juries, R. 5.

CCCCXCVI. The same circumstances which may be urged by way of challenge to the array for the partiality of returning officer, may be offered as ground of objection to the favour of one called as a juror.

1. Ch. C. L. 544.

CCCCXCVII. An exemption from service on a Jury is not a cause of challenge, but the privilege of the person exempted.

CCCCXCVIII. In a challenge for implied bias, one or more of the causes stated as above must be alleged. In a challenge for actual bias, the cause stated in the second subdivision of article 488 must be alleged. In either case the challenge may be oral, but must be entered upon the minutes of the Court.

CCCCXCIX. The adverse party may except to the challenge, in the same manner as to a challenge to the panel; and the same proceedings must be had thereon, as prescribed therefor, except that if the exception be allowed, the juror must be excluded. The adverse party may also orally deny the facts alleged as the ground of challenge.

D. If the facts be denied, the challenge must be tried as follows:

1. If it be for implied bias, by the Court:

2. If it be for actual bias, by triers.

DI. The triers are three impartial persons, not on the Jury panel, appointed by the Court. All challenges for actual bias must be tried by the triers thus appointed, a majority of whom may decide.

DII. The triers must be sworn, generally, to inquire whether or not the several persons who may be challenged, and in respect to whom the challenges shall be given to them in charge, are true, and to decide the same according to the evidence, and no challenge of the triers is admissible.

1 Ch. C. L. 549.

DIII. The juryman objected to may be examined on the *voire dire* as to the state of his mind or affections in relation to the parties, (4 Hang. St. T. 740, 750) but not by questions tending to his disgrace, discredit, or the injury of his character (3 Bl. Com. 364. Bac. Ab. Juries E. 12.)

DIV. Other witnesses may also be examined on either side; and the rules of evidence applicable to the trial of other issues, shall govern the admission or exclusion of testimony, on the trial of the challenge.

DV. On the trial of a challenge for implied bias, the Court must determine the law and the fact, and must either allow or disallow the challenge, and direct an entry accordingly upon the minutes.

DVI. On the trial of a challenge for actual bias, when the evidence is concluded, the Court must instruct the triers that it is their duty to find the challenge true, if the evidence establishes the existence of a state of mind on the part of the juror, in reference to the case or to either party, which satisfies them, in the exercise of a sound discretion, that he cannot try the issue

impartially and without prejudice to the substantial rights of the party challenging; and that, if otherwise, they must find the challenge not true. The Court can give them no other instruction.

DVII. The triers must thereupon find the challenge either true or not true; and their decision is final. If they find it true, the juror must be excluded.

DVIII. All challenges to an individual juror, except peremptory, must be taken, first by the defendant, and then by the Queen, and each party must exhaust all his challenges before the other begins.

DIX. The challenges of either party need not all be taken at once; but they must be taken separately, in the following order, including in each challenge, all the causes of challenge belonging to the same class:

1. To the panel:

2. To an individual juror, for a general disqualification:

3. To an individual juror, for implied bias:

4. To an individual juror, for actual bias:

DX. If all the challenges on both sides be disallowed, the defendant may still take a peremptory challenge, unless the peremptory challenges be exhausted.

DXI. The triers are officers of the Court and liable to be punished for breach of duty.

Bac. Ab. Juries, E. 12.

DXII. If a person actually summoned answer to a wrong name it is ground of challenge but not for arrest of judgment, unless some actual injustice was done.

12 East 231, n. a.

DXIII. A defective panel may be amended by order of the Court and a corrected list delivered.

1 East P. C. 113, 114.

DXIV. A juror challenged on one side and found to be indifferent may still be challenged on the other.

Bac. Ab. Juries E. 11.

DXV. If he be challenged for cause and found indifferent he may be afterwards challenged peremptorily.

6 T. R. 531.

DXVI. If Jury be discharged by reason of illness of one, or for other cause, and the same eleven with another be returned immediately the defendant cannot challenge the eleven.

Contra. 4 Taunt, 309.

# TITLE III.

# OF THE TRIAL

1. The trial.
2. Adjournment of trial.
3. Conduct of the Jury after the cause is submitted to them.
4. The verdict.

## CHAPTER I.

## THE TRIAL.

517, 518. In what order trial to proceed.
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520. Address of defendant.
521. Defendant presumed innocent, until contrary proved. In case of reasonable doubt, entitled to acquittal.
522. When reasonable doubt of which degree he is guilty, he must be convicted of the lowest.
523. Separate trial of defendants jointly indicted.
524, 525. Discharging one of several defendants before verdict, that he may be a witness. Effect of the discharge.
526. Rules of evidence in civil cases applicable in criminal cases, except where otherwise provided in this Code.
527. Confession of defendant, when evidence, and its effect.
528. Competence of witnesses.
529, 530. Evidence on trial for treason.
531. Evidence on trial for conspiracy.
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534. Evidence on trial for perjury.
535. Evidence on trial on joint charge.
536. Warrants.
537. Mistake in evidence.
539, 540. Examination on depositions filed.
541, 542. Reply on proof of character.
543, 544. Two or more jointly indicted for several offences.
545. Conviction cannot be had on testimony of accomplice, unless corroborated.
546. On trial for false pretences, no evidence of pretences admissible, unless in writing. But this article not applicable to prosecution for falsely representing or personating another, and in such character receiving money or property.
547. Conviction cannot be had for kidnapping, child-stealing, abduction or seduction, unless testimony of person injured be corroborated.
548. If testimony show higher offence than that charged, Court may discharge Jury, and hold defendant to answer a new indictment.
549. If new indictment not found, defendant to be re-tried on the original indictment.
550. Court may discharge Jury where it has not jurisdiction of the offence, or if the facts do not constitute an offence.
551. Proceedings, if Jury discharged for want of jurisdiction of the offence, when committed out of the Province.
552, 553. Proceedings in such case when offence committed in the Province.

554, 555. Proceedings if Jury discharged because the facts do not constitute an offence.

556. When evidence on either side is closed, Court may advise acquittal. Effect of the advice.

557. View of premises, when ordered, and how conducted.

558. Knowledge of Juror to be declared in Court, and Juror to be sworn as witness.

559. Jurors may be permitted to separate during the trial. If kept together, oath of the officers.

560. Jurors not to converse together on the subject of the trial, nor form an opinion until the case is submitted.

561. Proceedings where Juror becomes unable to perform his duty before conclusion of trial.

562. Court to decide questions of law arising during trial.

563. On indictment for libel, jury to determine law and fact.

564. In all other cases Court to decide questions of law, subject to right of defendant to except.

565. In charging Jury, Court to state all necessary matters of law, and to inform them that they are the exclusive judges of all questions of fact.

566. Jury may decide in Court, or retire in the custody of officers. Oath of the officers.

567. When defendant on bail appears for trial, he may be committed.

568. The Jury not to inquire of defendant's lands, &c.

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DXVII. The Jury having been impanelled and sworn, the trial must proceed in the following order:

1. If the indictment be for a felony, the Clerk must read it, and state the plea of the defendant to the Jury. In all other cases this formality may be dispensed with:

2. The public prosecutor or other prosecuting counsel must open the case and offer the evidence in support of the indictment:

3. The defendant or his counsel may then open his defence, and offer his evidence in support thereof:

4. The parties may then, respectively, offer rebutting testimony only, unless the Court, for good reason, in furtherance of justice, permit them to offer evidence upon their original case:

5. When the evidence is concluded, unless the case is submitted to the Jury on either side or on both sides, without argument, the counsel for the prosecution may conclude the argument to the Jury:

6. The Court must then charge the Jury:

7. If a previous conviction be set forth in the indictment it must not be given in charge or read to the Jury until after the finding for a subsequent offence, except when evidence as to good character is given.

DXVIII. When the state of the pleadings requires it, or in any other case, for good reasons and in the sound discretion of the Court, the order prescribed in the last article may be departed from.

DXIX. If the indictment be for felony, two counsel on each side may argue the cause to the Jury, except in reply, when one

only shall be heard. If it be for misdemeanor the Court may in its discretion, restrict the argument to one counsel on each side.

DXX. In indictments for felony, both the counsel for defendant may address the Jury, although they call no witnesses, (1 Sheph. C. L. 304; if he conduct his own defence, he may be heard by counsel on matters of law, (3 Camp. 98), but he cannot claim a right to address a Jury in person, and be also a witness in person, (8 C. & P. 141, 242, 531; 2 M. & R. 124.)

DXXI. A defendant in a criminal action is presumed to be innocent until the contrary be proved; and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to be acquitted.

DXXII. When it appears that a defendant has committed a public offence and there is reasonable ground of doubt in which of two or more degrees he is guilty, he shall be convicted of the lowest of those degrees only.

DXXIII. When two or more defendants are jointly indicted for a felony, any defendant requiring it must be tried separately. In other cases defendants jointly indicted, may be tried separately or jointly, in the discretion of the Court.

DXXIV. When two or more persons are included in the same indictment, the Court may at any time before the defendant has gone into his defence, on the application of the prosecuting counsel, direct any defendant to be discharged from the indictment, that he may be a witness for the prosecution.

R. & M. 401; 11 East, 313; 9 C. & P. 83.

DXXV. When two or more persons are included in the same indictment and the Court is of opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defence, it must order him to be discharged from the indictment before the evidence is closed, that he may be a witness for his co-defendant. The order is an acquittal of the defendant discharged, and a bar to another prosecution for the same offence.

DXXVI. The rules of evidence in civil cases are applicable also to criminal cases, except as otherwise provided in this Code.

DXXVII. A confession of a defendant, whether in the course of judicial proceedings or to a private person, cannot be given in evidence against him, when made under the influence of fear produced by threats; nor is it sufficient to warrant his conviction without additional proof that the offence charged has been committed.

DXXVIII. The competency of witnesses shall not be affected by reason of their having undergone punishment for an offence committed by them or by reason of their being pardoned therefor, or by reason of their undergoing or suffering such punishment at the time of being brought up as witnesses. The pardon, either free or conditional of a defendant for a felony and his discharge out of custody shall have the effect of a pardon for such felony, but shall not relieve him from punishment upon a conviction for a felony committed after the grant of pardon for such other felony.

DXXIX. Upon a trial for treason the defendant cannot be convicted, unless upon the testimony of two witnesses to the same overt act, or of one witness to one overt act, and another witness to a different overt act of the same treason. But if two or more distinct treasons, of different kinds, be alleged in the indictment, two witnesses to prove different treasons, are not sufficient to warrant a conviction.

1 East P. C. 128, 168. 1 Ch. C. L. 320.

DXXX. Upon a trial for treason, evidence cannot be admitted, of an overt act not expressly charged in the indictment; nor can the defendant be convicted, unless one or more overt acts be expressly alleged therein.

DXXXI. Upon a trial for a conspiracy, in a case where an overt act is necessary to constitute the offence, the defendant cannot be convicted, unless one or more overt acts be expressly alleged in the indictment, nor unless one or more of the acts alleged be proved; but any other overt act, not alleged in the indictment, may be given in evidence.

DXXXII. Proof of actual penetration into the body, is sufficient to sustain an indictment for rape, or for the crime against nature, or of carnally abusing a girl of or under the age of twelve years.

9 G. 4, c. 31, s. 18.

DXXXIII. A certificate under the hand of the Clerk of the Court or other officer having the custody of the Records of the Court by which any sentence of banishment or imprisonment shall have been made against an offender being at large contrary to law, containing the effect and substance only, omitting the formal part, of any indictment or conviction and of the sentence of banishment or imprisonment of such offender shall be sufficient evidence of such conviction and sentence, and every such certificate shall be received in evidence upon proof of the signature of the party signing the same.

DXXXIV. Proof of an assignment of perjury by a single witness is insufficient; (4 Bl. Com. 358. 10 Mod. 194) it is sufficient if it be directly proved by one witness, and material though not direct evidence in support of the assignment is given by another (2 Russ, 545.)

DXXXV. When an offence is charged jointly against two or more but no offence is found against all, the prosecutor must elect to proceed against one or more if there be evidence of joint action, and the rest shall be acquitted (1 c. & p. 528); and in an indictment for felony, the election is a matter for the discretion of the Judge, to be exercised with a view to prevent the defendant from being embarrassed in his defence (8 C. &. P. 727.)

DXXXVI. No variance in proof from the allegations of the indictment shall be material if it occur as to a matter or circumstance the specification or allegation whereof is directory only or not material to the charge, or as to the description of something material, unless it be so material to its identity that if the description be true the offence charged cannot be the same with that proved, or where the acts and circumstances charged and proved are legally identical.

Post. 351. 1 Hale, 436–8, 462, 521. 1 Hawk. b. 2, c. 46, s. 39.

DXXXVII. When such variance shall appear, the Court trying the offence may cause the record in any indictment to be forth-

with amended in such particular by some officer of the Court, and the trial shall thereupon proceed as if no such variance had appeared.

9 G. 4, c. 15.

DXXXVIII. Although by mistake evidence applicable to a different indictment has been given, that applicable to the indictment under trial may be gone into.

1 C. & M. 144.

DXXXIX. An examination by the defendant shall be allowed of a witness with reference to any matter contained in his depositions before a Magistrate, only after the deposition has been previously read as part of the evidence for the defendant, after which examination the prosecutor may cross-examine the witness and will be entitled to a reply, and if any supposed variance in such deposition be commented on without its being read, the Court may direct it to be read and allow the prosecutor to reply upon it.

DXL. If the witness deny that he made a statement contained in his deposition, the defendant may adduce testimony that he made the statement; in such case the prosecutor will be entitled to reply.

DXLI. If the only evidence for the defendant be to character, no reply shall be allowed to the prosecutor unless he adduces contradictory evidence.

DXLII. The Crown in all cases may reply althongh no evidence is produced by the defendant.

M. & M. 439.

DXLIII. If two or more be jointly indicted for the same offence and one only call witnesses, the prosecutor may reply as to each (2 M. & R. 155), but not otherwise.

DXLIV. A conviction cannot be had upon the testimony of an accomplice unless he be corroborated by such other evidence as tends to connect the defendant with the commission of the offence; and the corroboration is not sufficient if it merely show the commission of the offence or the circumstances thereof.

DXLV. Upon a trial for having, with intent to cheat or defraud another, designedly by any false pretence, obtained the signature of any person to a written instrument, or having obtained from any person any money, personal property or valuable thing, no evidence can be admitted of a false pretence expressed orally and unaccompanied by a false token or writing, unless the pretence or some note or memorandum thereof be in writing, either subscribed by or in the handwriting of the defendant. But this article does not apply to a prosecution for falsely representing or personating another, and in such assumed character receiving money or property.

DXLVI. Upon a trial for kidnapping, child-stealing or the abduction of any female for any purpose whatever, the defendant cannot be convicted upon the testimony of the person injured, unless she is corrobrated by other evidence tending to connect the defendant with the commission of the offence.

DXLVII. If it appear by the testimony that the facts proved constitute an offence of a higher nature than that charged in the

indictment, the Court may direct the Jury to be discharged and all proceedings on the indictment to be suspended, and may order the defendant to be committed, or continued on, or admitted to bail, to answer any new indictment which may be found against him for the higher offence.

DXLVIII. If an indictment for the higher offence be dismissed by the Grand Jury or be not found at or before the next term, the Court must again proceed to try the defendant on the original indictment.

DXLIX. The Court may also direct the Jury to be discharged where it appears that it has not jurisdiction of the offence or that the facts as charged in the indictment do not constitute an offence punishable by law.

DL. If the Jury be discharged because the Court has no jurisdiction of the offence charged in the indictment and it appear that it was committed out of the jurisdiction of this Province, the Court may order the defendant to be discharged or to be detained for a reasonable time specified in the order, until a communication can be sent by the Public Prosecutor to the Provincial Secretary for transmission to the chief executive officer of the country or territory where the offence was committed.

DLI. If the offence were committed within the exclusive jurisdiction of another section of this Province other than that in which the defendant is charged, the Court must direct the defendant to be committed for such time as it deems reasonable, to await a warrant from the proper section for his arrest; or if the offence be a misdemeanor only, it may admit him to bail, on recognizance, with sufficient sureties, that he will, within such time as the Court may appoint, render himself amenable to a warrant for his arrest, from the proper section, and if not sooner arrested thereon, will attend at the office of the Sheriff of the district or county where the trial was had, at a time particularly to be specified in the recognizance to surrender himself upon a warrant, if issued, or that his bail will forfeit such sum as the Court may fix, and to be mentioned in the recognizance.

DLII. In the case provided for in the last article, the Clerk must forthwith transmit a certified copy of the indictment, and of all papers in the action, filed with him, to the public prosecutor of the proper section, the expense of which transmission is chargeable to the Provincial funds.

DLIII. If the defendant be not arrested as provided in article 551, on a warrant from a proper section, he must be discharged from custody, or his bail in the action be exonerated; and the sureties in the recognizance mentioned in that article must be discharged.

DLIV. If he be arrested, the same proceeding must be had thereon, as upon the arrest of a defendant in another district or county, on a warrant of arrest issued by a magistrate.

DLV. If the Jury be discharged, because the facts as charged do not constitute an offence punishable by law, the Court must order that the defendant, if in custody, be discharged therefrom, or if admitted to bail, that his bail be exonerated, unless in its opinion a new indictment can be framed, upon which the de-

fendant can be legally convicted; in which case it may direct that the case be re-submitted to the same or another Grand Jury.

DLVI. If the Court direct that the case be submitted anew the same proceedings must be had thereon as hereinbefore provided.

DLVII. If, at any time after the evidence on either side is closed, the Court deem it insufficient to warrant a conviction, it may advise the jury to acquit the defendant. But the Jury are not bound by the advice; nor can the Court, for any cause, prevent the Jury from giving a verdict, except as hereinbefore provided.

DLVIII. When, in the opinion of the Court, it is proper that the Jury should view the place in which the offence is charged to have been committed, or in which any other material fact occurred, it may order the Jury to be conducted in a body, in the custody of proper officers, to the place, which must be shown to them by a Judge of the Court, or by a person appointed by the Court for that purpose.

DLIX. The officers must be sworn to suffer no person to speak to or communicate with the Jury, nor to do so themselves, on any subject connected with the trial, and to return them into Court without unnecessary delay, or at a specified time.

DLX. If a juror have any personal knowledge, respecting a fact in controversy in a cause, he must declare it in open Court during the trial. If, during the retirement of the Jury, a juror declare a fact, which could be evidence in the cause, as of his own knowledge, the Jury must return into Court. In either of these cases the juror making the statement must be sworn as a witness, and examined in the presence of the parties.

DLXI. The jurors sworn to try an indictment, may, at any time before the submission of the cause to the Jury, in the discretion of the Court, be permitted to separate or be kept in charge of proper officers. The officers must be sworn to keep the jurors together until the next meeting of the Court, to suffer no person to speak to or communicate with them, nor to do so themselves, on any subject connected with the trial, and to return them into Court at the next meeting thereof.

DLXII. The Jury must also, at each adjournment of the Court, whether permitted to separate or kept in charge of officers, be admonished by the Court, that it is their duty not to converse among themselves, on any subject connected with the trial, or to form or express any opinion thereon, until the cause is finally submitted to them.

DLXIII. If, before the conclusion of the trial, a juror become sick, so as to be unable to perform his duty, the Court may order him to be discharged. In that case a new juror may be sworn, and the trial begin anew, or the Jury may be discharged, and a new Jury be then or afterwards impanelled.

2 Leach, 546; C. & P. 413.

DLXIV. The Court must decide all questions of law which arise in the course of the trial.

DLXV. On the trial of an indictment for libel the Jury have the right to determine the law and the fact.

DLXVI. On the trial of an indictment for any other offence than libel, questions of law are to be decided by the Court, saving the right of the defendant to except; questions of fact by the Jury. And although the Jury have the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless, to receive as law what is laid down as such by the Court.

DLXVII. In charging the Jury the Court must state to them all matters of law which it thinks necessary for their information in giving their verdict; and if it presents the facts of the case, must, in addition to what it may deem its duty to say, inform the Jury that they are the exclusive judges of all questions of fact.

DLXVIII. After hearing the charge the Jury may either decide in Court or retire for deliberation. If they do not agree without retiring, one or more officers must be sworn, to keep them together in some private and convenient place, without food or drink, except bread and water, unless otherwise ordered by the Court; and not to permit any person to speak to or communicate with them, nor to do so themselves, unless it be by order of the Court or to ask them whether they have agreed upon a verdict, and to return them into Court when they have so agreed or when ordered by the Court.

DLXIX. When a defendant who has given bail appears for trial, the Court may in its discretion, at any time after his appearance for trial, order him to be committed to the custody of the proper officer of the district or county, to abide the judgment or further order of the Court; and he must be committed and be held in custody accordingly.

DLXX. In trials for criminal offences the Jury shall not be charged to inquire concerning the lands, tenements or goods of the defendant or whether he fled for such offence.

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## CHAPTER II.

## ADJOURNMENT OF TRIAL—DISCHARGE OF JURY.

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571. Adjournment from day to day.
572. Death or inability of Juror to act.
573. If during the trial a relative of party be found as a Juror.
574. Jury discharged on application or consent of defendant.
575. Court may order new trial in certain case.

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DLXXI. If the trial cannot be concluded in one day, it may be adjourned over to the next juridical day, and so on from day to day (6 T. R. 527; 1 Ch. C. L. 313), but the separation of the Jury in such case does not abate the verdict (2 B. & Ald. 462).

DLXXII. If a Juror die or become unable to act as such before the verdict, another may, by consent of the defendant, be substituted, but without challenge of the remainder, but who

shall be re-sworn, or the Jury may be discharged and a fresh Jury charged.

R. & R. 224; 2 B. & Ald. 462; 2 C. & P. 413; 1 Ch. C. L. 629, 630.

DLXXIII. The trial must proceed though one of the Jurors during the trial be discovered to be related to the party on his trial.

1 C. & M. 647.

DLXXIV. The Court may order the discharge of the Jury on the application of the defendant.

6 C. & P. 151.

DLXXV. But although the witnesses for the prosecution have all been examined, the Court may direct another trial to be had, to give time for the production of a thing essential to the proof, which has been deposited at a distance.

6 Jur. 267.

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## CHAPTER III.

## CONDUCT OF THE JURY AFTER THE CAUSE IS SUBMITTED TO THEM.

576. Room and accommodation for the Jury after retirement, how provided.
577. Accommodation for the Jury when kept together during the trial or after retirement.
578, 579. What papers the Jury may take with them.
580. May return into Court for information.
581. If, after retirement, a Juror become sick or unable to act, Jury to be discharged.
582. Not to be discharged in any other case, unless there is no reasonable probability that they can agree.
583. When Jury discharged or prevented from giving a verdict, cause to be again tried.
584. Court may be adjourned during absence of Jury, as to other business, but deemed open till verdict returned or Jury discharged.
585. Final adjournment of Court discharges Jury.

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DLXXVI. A room must be provided for the use of the Jury upon their retirement for deliberation, with suitable furniture, fuel, lights and stationery.

DLXXVII. While the Jury are kept together either during the progress of the trial or after their retirement for deliberation, they must be provided by the Sheriff, upon the order of the Court, with suitable and sufficient food and lodging.

DLXXVIII. Upon retiring for deliberation the Jury may take with them all papers, except depositions which have been received as evidence in the cause or copies of such parts of public records or private documents given in evidence, as ought not, in the opinion of the Court, to be taken from the person having them in possession.

DLXXIX. The Jury may also take with them notes of the testimony or other proceedings on the trial taken by themselves or any of them, but none taken by any other person.

DLXXX. After the Jury have retired for deliberation, if there be a disagreement between them, as to any part of the testimony or if they desire to be informed of a point of law arising in the cause, they must require the officer to conduct them into Court. Upon their being brought into Court the information required must be given in the presence of or after notice to the public prosecutor or prosecuting attorney and the defendant or his counsel.

2 Hale, P. C. 296, 1 Ch. Archb. 400.

DLXXXI. If after the retirement of the Jury one of them become so sick as to prevent the continuance of his duty, or any other accident or cause occur to prevent their being kept together for deliberation, the Jury may be discharged, or the parties may consent to the verdict of the remaining Jurors after the discharge of any Juror.

DLXXXII. Except as provided in the last article the Jury cannot be discharged after the cause is submitted to them, until they have agreed upon their verdict and rendered it in open Court, unless by the consent of the defendant entered upon the record (6 C. & P. 151 : Hawk. b. 2, c. 47, s. 1), or unless at the expiration of such time as the Court deems proper, it satisfactorily appears that there is no reasonable probability that the Jury can agree.

DLXXXIII. In all cases where a Jury are discharged or prevented from giving a verdict, by reason of an accident or other cause, except where the defendant is discharged from the indictment during the progress of the trial or after the cause is submitted to them, the cause may be again tried at the same or another term.

DLXXXIV. While the Jury are absent the Court may adjourn from time to time as to other business; but it is nevertheless deemed open for every purpose connected with the cause submitted to them, until a verdict is rendered or the Jury discharged.

DLXXXV. A final adjournment of the Court discharges the Jury.

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## CHAPTER IV.

## THE VERDICT.

586. When the Jury have agreed, they must be called into Court, and their names called. If all do not appear, Jury to be discharged and cause again tried.
587. In felony, defendant must be present. In misdemeanor, verdict may be rendered in his absence.
588. Manner of taking the verdict.
589. Verdict may be general or special.
590. General Verdict.
591. Special verdict.
592, 593. Special verdict, how rendered.
594. Special verdict, how brought to argument.
595. Judgment thereon.
596. When special verdict defective, new trial to be ordered.
597. Upon indictment for offence consisting of different degrees, Jury may convict of any degree, or of an attempt to commit the offence.

598. If upon indictment for treason, a felony be found.
599. In other cases, Jury may convict of any offence neces-
600. Two or more jointly charged cannot be convicted on proof of offence severally committed.
sarily included in that charged.
601. On indictment against several, Jury may render a verdict as to some, and the cause be again tried as to the others.
602. Joint charge for aggravated offence.
603, 604. Cases of less offence included in greater.
605, 606. For indictments after previous conviction.
607. General verdict for libel.
608. General verdict may be arrested.
608. Verdict is not bad for surplusage.
609, 610, 611. In what cases Court may direct a re-consideration of the verdict.
612. When judgment may be given upon an informal verdict.
613. Polling the Jury.
614. Recording the verdict.
615. Defendant, when to be discharged or detained after acquittal.
616. Proceedings upon general verdict of conviction, or a special verdict.
617. When defendant acquitted on the ground of insanity, the fact to be stated with the verdict. Commitment of defendant to the Provincial Lunatic Asylum.

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DLXXXVI. When the jury have agreed upon their verdict, they must be conducted into Court by the officer having them in charge. Their names must then be called, and if all do not appear, the rest must be discharged without giving a verdict. In that case, the cause may be again tried, at the same or another term.

Liv. Crim. Code, 534, art. 370, 371.

DLXXXVII. If the indictment be for a felony, the defendant must, before the verdict is received, appear in person; (Hawk, P. C. 62, c. 47. s. 2.) If it be for a misdemeanor, the verdict may be rendered in his absence.

DLXXXVIII. If the Jury appear, they must be asked by the Court or the Clerk, whether they have agreed upon their verdict; and if the foreman answer in the affirmative, he must, on being required, in the presence and hearing of the rest, declare the same; and the assent of all to the verdict, is presumed conclusively.

DLXXXIX. The Jury may either render a general verdict, or where they are in doubt as to the legal effect of the facts proved, they may, except upon an indictment for libel, find a special verdict.

4 Bl. Com. 361. 1 Ch. C. L. 637, 642,

DXC. A general verdict upon a plea of not guilty, is either "guilty" or "not guilty;" which imports a conviction or acquittal of the offence charged in the indictment. Upon a plea of a former conviction or acquittal of the same offence, it is either "for the Queen," or "for the defendant."

DXCI. A special verdict is that by which the Jury find the facts only, leaving the judgment to the Court. It must present

the conclusions of fact, as established by the evidence, and not the evidence to prove them; and these conclusions of fact must be so presented, as that nothing remains to the Court but to draw conclusions of law upon them.

DXCII. The special verdict must be reduced to writing by the Jury, or in their presence, entered upon the minutes of the Court, read to the Jury, and agreed to by them, before they are discharged.

DXCIII. The special verdict need not be in any particular form, but is sufficient if it present intelligibly the facts found by the Jury.

DXCIV. The special verdict may be brought to argument by either party, upon three days' notice to the other, at the same or another term of the Court; and upon the hearing thereof, the Counsel for the defendant may conclude the argument.

DXCV. The Court must give judgment upon the special verdict as follows:—

1. If the plea be "not guilty," and the facts prove the defendant guilty of the offence charged in the indictment, or of any other offence of which he could be convicted under that indictment, as provided hereinbefore judgment must be given accordingly; but if otherwise, judgment of acquittal mustbe given.

2. If the plea be a former conviction or acquittal of the same offence, the Court must give judgment of conviction or acquittal, according as the facts prove or do not prove the former conviction or acquittal.

DXCVI. If the Jury do not, in a special verdict, pronounce affirmatively or negatively on the facts necessary to enable the Court to give judgment, or if they find the evidence of facts merely, and not the conclusions of fact from the evidence, as established to their satisfaction, the Court must order a new trial.

DXCVII. Upon an indictment for an offence consisting of different degrees, the Jury may find the defendant not guilty of the degree charged in the indictment, and guilty of any degree inferior thereto, or of an attempt to commit the offence.

DXCVIII. If an indictment be for treason, and the verdict find facts amounting to a felony not a treason, or to a misdemeanor, or if the indictment be for a felony and the verdict find facts amounting to a misdemeanor only, the judgment may be only for the lesser offence found.

1 Leach 14, 302; 2 Str. 1113; 2 East, P. C. 737, 778.

DXCIX. In all other cases the defendant may be found guilty of any offence, the commission of which is necessarily included in that with which he is charged in the indictment, (Leach. 336, n. a. 1 Ch. C. L. 217) though the failure to prove the whole crime alleged arises from variance in point of local description, (Leach. 252, 339 n. a.)

DC. Two or more jointly charged with an offence cannot be found guilty on proof of offences severally committed; (R. & K. 344) in such case judgment may be given against one or several who are jointly found guilty and the others not jointly found guilty discharged from the indictment.

DCI. On an indictment against several one or more may be convicted and the other or others acquitted, or if the Jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly; and the case, as to the rest, may be tried by another Jury.

DCII. Where several are jointly charged with an aggravated offence which includes any more simple offence, one or more may be convicted of the former and another or others of the latter offence.

DCIII. In any indictment against a woman for the murder of her child, she may be convicted of only concealment of the birth of the child, if it be found that she was delivered of a child.

9 G. 4, c. 31, s. 14, in part.

DCIV. On a trial for felony where the offence shall include an assault the verdict may be for the latter only if it be found.

7 W. 4 & 2 Vic. c. 85, s. 11, in part.

DCV. On trial of any offence not punishable with death after previous conviction, the latter shall not be read to the Jury till the finding for the subsequent felony, and if on such trial evidence of good character be adduced by or for the defendant, counter-evidence of previous conviction may be brought up before verdict of subsequent felony inquired or found.

6 & 7 W. 4, c. 111.

DCVI. So if a witness for the prosecution state the good character of defendant, counter-evidence of previous conviction may be given.

8 C. & P. 676.

DCVII. On trials for libel the Jury may give a general verdict upon the whole matter put in issue, but the Court shall according to its discretion, give its opinion and direction to the Jury on the matter in issue as in other criminal trials: Provided always, that the Jury may find a special verdict if they see fit.

12 G. 3, c. 60, s. 2.

DCVIII. If a verdict of guilty be found the defendant may move in arrest of judgment as in other criminal trials.

DCVIII *a*. A verdict is not vitiated by surplusage.

Haw. P. C. b. 2, c. 47, s. 10.

DCIX. When there is a verdict of conviction in which it appears to the Court that the Jury have mistaken the law, the Court may before recording the verdict, but not after, explain the reason for that opinion and direct the Jury to re-consider their verdict, (Hawk. P. C. b. 2, c. 47, s. 11; Cromp. 112), and if after the re-consideration they return the same verdict, it must be entered. But when there is a verdict of acquittal the Court cannot require the Jury to reconsider it: Provided that though a verdict is recorded, yet if it promptly appear that it is not in accordance with the intention of the Jury, it may forthwith be corrected, (1 R. & M. 45.)

DCX. The postea may be amended on sufficient cause shewn where there is a Judge's note or other sufficient document to shew that it is incorrect.

12 Ad. & Ell. 317.

DCXI. If the Jury render a verdict which is neither a general nor a special verdict, the Court may, with proper instructions as to the law, direct them to reconsider it; and it can not be recorded until it be rendered in some form, from which it can be clearly understood what is the intent of the Jury, whether to render a general verdict or to find the facts specially and to leave the judgment to the Court.

DCXII. If the Jury persist in finding an informal verdict from which however it can be clearly understood that their intention is to find in favour of the defendant, upon the issue, it must be entered in the terms in which it is found and the Court must give judgment of acquittal. But no judgment of conviction can be given unless the Jury expressly find against the defendant upon the issue, or judgment be given against him on a special verdict.

Liv. Crim. Code 536, Art. 394—396.

DCXIII. When the verdict is rendered and before it is recorded the Jury may be polled on the requirement of either party; in which case they must be severally asked whether it is their verdict; and if any one answer in the negative, the Jury must be sent out for further deliberation.

DCXIV. When the verdict is given and is such as the Court may receive, the Clerk must immediately record it in full upon the minutes and must read it to the Jury and inquire of them whether it is their verdict. If any Juror disagree, the fact must be entered upon the minutes and the Jury again sent out; but if no disagreement be expressed the verdict is complete and the Jury must be discharged from the case.

DCXV. If judgment of acquittal be given on a general verdict and the defendant be not detained for any other legal cause, he must be discharged as soon as the judgment is given; except that when the acquittal is for a variance between the proof and the indictment which may be obviated by a new indictment, the Court may order his detention to the end that a new indictment may be preferred, in the same manner and with the like effect as herein provided.

DCXVI. If a general verdict be rendered against the defendant or a special verdict given, he must be remanded if in custody, or if on bail he may be committed to the proper officer of the District or County, to await the judgment of the Court upon the verdict. When committed his bail is exonerated.

DCXVII. If the defence be the insanity of the defendant, the Jury must be instructed, if they acquit him on that ground, to state that fact with their verdict. The Court may thereupon, if the defendant be in custody, and they deem his discharge dangerous to the public peace or safety, order him to be committed to the Provincial Lunatic Asylum until he become sane.

# TITLE VIII.

# OF THE PROCEEDINGS AFTER TRIAL AND BEFORE JUDGMENT.

1. Bill of exceptions.
2. New trials.
3. Arrest of Judgment.

## CHAPTER VIII.

## BILL OF EXCEPTIONS.

618. In what cases.
619. By whom settled and how filed.
620. To be settled at the trial or the point noted in writing.
621, 622. When and how settled after the trial.
623. Enlarging the time therefor.
624. Effect of not serving exceptions or amendments within the time prescribed.
625. What to be contained in bill of exceptions.
626. With whom and when filed.

DCXVIII. On the trial of an indictment exceptions may be taken by the defendant to a decision of the Court upon a matter of law, by which his substantial rights are prejudiced and not otherwise, in any of the following cases:

1. In disallowing a challenge to the panel of the Jury or to an individual Juror for implied bias:

2. In admitting or rejecting witnesses or testimony or in charging the triers on the trial of a challenge to a Juror for actual bias:

3. In admitting or rejecting witnesses or testimony or in deciding any question of law not a matter of discretion, or in charging or instructing the Jury upon the law on the trial of the issue.

DCXIX. The bill of exceptions must be settled at the trial unless the Court otherwise direct. If no such direction be given, the point of the exception must be particularly stated in writing, and delivered to the Court and must immediately be corrected or added to, until it is made conformable to the truth.

DCXX. A bill containing the exceptions must be settled and signed by the presiding Judge, and filed with the Clerk.

DCXXI. If the bill of exceptions be not settled at the trial, it must be prepared and served within five days thereafter on the public prosecutor or prosecuting counsel who may, within five days, serve on the defendant or his counsel amendments thereto. The defendant may then, within five days, serve the prosecuting

attorney with a notice to appear before the presiding Judge of the Court, at a specified time, not less than five nor more than ten days thereafter to have the bill of exceptions settled.

DCXXII. At the time appointed the Judge must settle and sign the bill of exceptions.

DCXXIII. The time for preparing the bill of exceptions or the amendments thereto or for settling the same, may be enlarged by the consent of the parties or by the presiding Judge or by a Judge of a Superior Court, but by no other officer.

DCXXIV. If the bill of exceptions be not served within the time above prescribed or within the enlarged time therefor as also above prescribed, the exceptions are deemed abandoned. If it be served and the parties omit, within the time limited as above, the one to prepare amendments and the other to give notice of appearance before the Judge, they are respectively deemed, the one to have agreed to the bill of exceptions and the other to the amendments.

DCXXV. The bill of exceptions must contain so much of the evidence only as is necessary to present the questions of law upon which the exceptions were taken, or as may shew that the decision excepted to has not prejudiced the substantial rights of the defendant; and the Judge must, upon the settlement of the bill, whether agreed to by the parties or not strike out all other matters contained therein.

DCXXVI. The bill of exceptions must be filed with the Clerk of the Court at the time of or before taking the appeal.

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## CHAPTER II.

## NEW TRIALS.

627. New trial defined.
628. By what Court granted.
629. Its effect.
630. In what cases it may be granted.
631. Must be applied for before judgment, on motion for arrest, and only upon leave of the Court.
632. Court to prescribe time and manner of making the application.
633. Presence of applicant not necessary.
634. Granted to convicted only, though others acquitted.
635. New trial on application of prosecutor.
636. Verdict for defendant on special plea cannot be set aside.
637. Verdicts not to be explained by affidavits, &c.
638. Suspension of entry of judgment for four days.
639. Indictment for perjury of witness not ground for postponing judgment
640. When inferior Court can grant a *venire de novo*.

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DCXXVII. A new trial is a re-examination of the issue in the same Court, before another Jury, after a verdict has been given.
5 T. R. 486; 1 Ch. C. L. 654, Ch. Burns' Just. New Trial.

DCXXVIII. A new trial can be granted by the Court in which he former trial was had only in the cases provided above,

and it may be granted at the discretion of the Court, after the time limited for motions for new trials, if the Court is satisfied that justice has not been done.

5 T. R. 486; 11 East. 309; 1 Ch. C. L. 659; 3 M. & S. 10.

DCXXIX. The granting of a new trial places the parties in the same position as if no trial had been had. All the testimony must be produced anew; and the former verdict cannot be used or referred to either in evidence or in argument.

Liv. Code of Proced. art. 403.

DCXXX. The Court in which a new trial is had upon an issue of fact, has power to grant a new trial when a verdict has been rendered against the defendant by which his substantial rights have been prejudiced, upon his application in the following cases:

1. When the trial has been had in his absence, if the indictment be for a felony:

2. Where the Jury has been improperly summoned or returned or for a challenge improperly disallowed:

1 Ch. C. L. 655.

3. When the Jury has received any evidence out of Court other than that resulting from a view, as provided above.

4. When the Jury have separated without leave of the Court after retiring to deliberate upon their verdict, or been guilty of any misconduct by which a fair and due consideration of the case has been prevented:

1 Wils. 48; 4 B. & A. 273; 2 Tidd. 922; 1 Ch. C. L. 655.

5. When the verdict has been decided by lot or by any means other than a fair expression of opinion on the part of all the Jurors:

6. When the Court has misdirected the Jury in a matter of law or has refused to instruct them as prescribed above.

7. When the verdict is contrary to law or evidence—(R. & R. 88, 332; 1 Camp. 334; East. P. C. 350, not law; 7 Ad. & El. 330; 1 C. M. & R. 919; 4 Ad. & El. 53.) But no more than two new trials can be granted for this cause alone.

8. Where for any other cause the awarding of a new trial shall appear to the Court to be essential to justice.

1 Ch. C. L. 654, 658; 2 Tidd. 906.

DCXXXI. The application for a new trial must be made before judgment and before motion in arrest or bar of judgment, (1 Ch. C. L. 658; 2 Tidd. 912, 913), and can be made only upon leave granted by the Court, on application within four days after verdict recorded, (5 T. R. 486; 1 Ch. C. L. 654, *et. seq.*)

DCXXXII. If leave be granted the Court must prescribe the time and manner of making the application.

DCXXXIII. The presence of the defendant is not necessary on motion for new trial or its allowance or otherwise.

Contra. 1 Ch. C. L. 659; 2 D. & R. 46; 6 D. & R. 65.

DCXXXIV. New trial may be granted only to the defendant or defendants convicted, whether other or others are acquitted.

1 Ch. C. L. 659; 6 T. R. 638, 640; 11 East. 307.

DCXXXV. A new trial may be had in the same manner on the application of the prosecutor when the party acquitted shall have kept back any witness for the prosecution or been acquitted by fraudulent means or practice.

1 Ch. C. L. 657; 5 B. & Ald. 52; 2 B. & Ad. 606; 4 M. & Sel. 337; 6 East. 315.

DCXXXVI. A verdict for defendant on a special plea in bar cannot be set aside, although it be against evidence and the Judge's direction.

2 Moody. C. C. 9.

DCXXXVII. Affidavits of Jurors not admissible to explain their verdict or their reasons for giving it, but are so admissible to repel charges of misconduct by them.

Cornish & Dakin. Exch. East. T. 1845; Handwicke & Hopkins; 14 Law Journal.

DCXXXVIII. The Court shall in all cases suspend entering up judgment of conviction or acquittal, provided the application therefor be made within four days after verdict recorded.

16 East. 223; 2 Ch. R. 215; 1 B & Ald. 63; 5 M. & S. 322; 1 Ch. C. L. 660.

DCXXXIX, The indictment of a witness for perjury not a ground to postpone judgment on conviction.

1 W. Bl. 404; 3 Burr. 1837.

DCXL. No inferior Court can grant *venire de novo* upon the merits, except only for some irregularity apparent on the face of the record.

13 East. 416, n. b.; 1 Ch. C. L. 657.

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## CHAPTER III.

## ARREST OF JUDGMENT.

641. Motion in arrest of judgment defined, and upon what defects founded.
642. Court may arrest judgment without motion.
643. Motion, when and how made.
644. Effect of arresting the judgment.
645. The presence of the defendant necessary.
646, 647. When arrest of judgment allowed.
648. Proof of identity.
649, 650. When judgment shall not be arrested.
651. When defendant to be bailed or discharged.
652. On Crown cases reserved.

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DCXLI. A motion in arrest of judgment is an application, on the part of the defendant, that no judgment be rendered on a plea or verdict of guilty, or on a verdict against the defendant on a plea of a former conviction or acquittal. It may be founded on any of the defects in the indictment, mentioned hereinbefore.

DCXLII. The Court may also, on its own view of any of these defects, arrest the judgment, without motion.

1 East, 146; Steph. C. L. 332.

DCXLIII. The motion must be made after a rule absolute to enter a verdict for the Crown (4 Jur. 431) it may also be made before or at the time when the defendant is called for judgment. If made before, it must be on notice to the Prosecuting Attorney or in his presence.

DXLIV. The effect of allowing a motion in arrest of judgment, is to place the defendant in the same situation in which he was before the indictment was found.

DCXLV. The presence of the defendant in Court is necessary in order to move in arrest of judgment unless excused by the Court.

2 Burr. 834, 930; 1 W. Bl. 269.

DCXLVI. Judgment may be arrested if pardon have been granted since arraignment (4 Bl. Com. 402) but the arrest to be subject to the same rules and regulations as for pardon pleaded upon arraignment; Provided that such pardon shall not be deemed to include a conviction of felony unless it is therein particularly mentioned (Hawk. P. C. b. 2, c. 37, s. 8; 4 Bl. Com. 409; 1 Ch. C. L. 770) and no property forfeited by the conviction shall be revested in him without express words of restitution (Hawk. P. C. b. 2, c. 35, s. 64; Ch. Burns' Just "Pardon.")

DCXLVII. Judgment may also be arrested upon defects apparent (4 Burr. 2287; 1 Ld. Raym. 231) in any part (1 Ch. C. L. 662; Ch. Burns' Just. "Judgment") of the record, and which regard either the jurisdiction of the Court, the statement of the offence (4 Bl. Com. 375, cases cited Ch. Burns' Just-"Indictment," "Judgment") or any of the proceedings of the Court (1 Ch. C. L. 662; Ch. Burns' "Judgment.")

DCXLVIII. If the offender have been out of custody since his conviction or on being brought up for judgment deny that he is the person convicted, his identity shall be tried by a Jury to be immediately empanelled by direction of the Court, without challenge to any of the Jury but with counsel to assist him.

4 Bl. Com. 396; 1 Bl. Rep. 6; 4 Bl. Rep. 45; Fost. 42; 1 Ch. C. L. 777, and cases cited therein.

DCXLIX. No Judgment after verdict upon any indictment or information for any felony or misdemeanor, shall be stayed or reversed for want of a similiter, nor by reason that the Jury process has been awarded to a wrong officer upon an insufficient suggestion, nor for any misnomer or misdescription of the officer returning such process, or of any of the jurors, nor because any person has served upon the Jury who 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.

DCL. 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 versâ*, 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.

DCLI. If from the evidence on the trial, there is reasonable ground to believe the defendant guilty, and a new indictment can be framed upon which he may be convicted, the court may order him to be re-committed to the officer of the proper district or county, or admitted to bail anew, to answer the new indictment. If the evidence show him guilty of another offence, he must be committed or held thereon; and in neither case is the verdict a bar to another prosecution or indictment for the same offence. But if no evidence appear, sufficient to charge him with any offence, he must, if in custody, be discharged, or if admitted to bail his bail is exonerated, and the arrest of judgment operates as an acquittal of the charge upon which the indictment was founded; provided that such acquittal shall be no bar to any other prosecution for the offence of which he is acquitted.

4 Bl. Com. 375; 1 Ch. C. L. 720; Burns' just "judgment."

DCLII. On a Crown case reserved, a defendant's counsel is not allowed to answer objections apparent on the face of the indictment and which are the proper subject of a writ of error.

1 C. & M. 655.

# TITLE IX.

# OF THE JUDGMENT AND EXECUTION.

1. The judgment.
2. The execution.

## CHAPTER I.

## THE JUDGMENT.

653, 654. Time for pronouncing judgment, to be appointed by the Court.
655. Benefit of clergy is abolished.
656. In felony, defendant must be present. In misdemeanor, judgment may be pronounced in his absence.
657. When defendant is in custody, how brought before the Court for judgment.
658. How brought before the Court, when he is on bail.
659. Bench warrant to issue.
660. Form of bench warrant.
661, 662. Service of the bench warrant.
663. Arraignment of defendant for judgment.
664. What cause may be shown against the judgment.
665. If no sufficient cause shown, judgment to be pronounced.
666. Court may summarily inquire into circumstances in aggravation or mitigation of punishment.
667. Testimony, how given.
668. No other testimony or representations to be received.
669. Violation of last article, how punished.
670, 671, 672. Practice when defendant is brought up for judgment.
673. Judgment of death recorded.
674. Same effect as if pronounced.
675. And conviction in certain cases to be submitted to Governor.
676. Governor may require opinion of Judges.
677. Governor only can reprieve.
678. Governor's warrant for execution.
679. *Prison regulations as to convicts under sentence of death.*
680. Hard labor with imprisonment.
681. Punishment of *accessories.*
682. Pillory abolished.
683. Two judgments of imprisonment to be in succession.
684. Direction of imprisonment on judgment to pay a fine.
685. Judgment against several according to several offences.
686. Judgment may be for misdemeanor if facts in verdict for felony show the less offence.
687. Court cannot supply defects in special verdict.
688. Person under sentence of death cannot be brought up for other sentence.
689. Court may reduce judgment for penalty.
690. So on miscalculation of amount of fine.
691. Time and place of execution no part of sentence.
692, 693. Judgment in case of nuisance.
694. Judgment roll.

DCLIII. After a plea or verdict of guilty, or after a verdict against the defendant on a plea of a former conviction or acquit-

tal, if the judgment be not arrested, or a new trial granted, the Court must pronounce judgment within a time to be appointed.

2 Hale, P. C. 401; 2 M. & S. 71.

DCLIV. The time appointed must be at least four days after the verdict, if the Court remain in session so long, or if not until some future day in the following term on which the Court shall be duly held.

DCLV. Benefit of clergy with reference to persons convicted of felony is abolished.

DCLVI. For the purpose of judgment, if the conviction be for a felony, the defendant must be personally present; if it be for a misdemeanor, judgment may be pronounced in his absence.

DCLVII. When the defendant is in custody, the Court may direct the officer in whose custody he is, to bring him before it for judgment; and the officer must do so accordingly; if he be in custody of another Court he must be brought up on *Habeas Corpus.*

DCLVIII. If the defendant be at large without bail or have been discharged on bail, and do not appear for judgment, when his personal attendance is necessary, the Court, in addition to the forfeiture of the recognizance of bail may direct the issue of a bench warrant for his arrest.

4 Bl. Com. 375; 1 Ch. C. L. 691.

DCLIX. The Clerk, on the application of the Prosecuting Attorney, may accordingly, at any time after the order, whether the Court be sitting or not, issue a bench warrant into any county or counties of this Province.

DCLX. The bench warrant must be substantially in the following form:

"District or county of [*as the case may be.*]

"In the name of our Sovereign Lady the Queen.

"To any Sheriff, constable or policeman in this Province,

"A. B. having been on the day of

[SEAL.] "18 , duly convicted in the Court [*as the case may be*]

"of the crime of [*designating it generally.*]

"You are therefore commanded, forthwith to arrest the above "named A. B., and bring him before that Court for judgment; "or if the Court have adjourned for the term, you are to deliver "him into the custody of the Sheriff of the district or county of "[*as the case may be, or in the city of* '*to the keeper of the* "*prison of the city of* .']

"City of [*as the case may be*] the day of "1850.

"By order of the Court.

"E. F. Clerk."

DCLXI. The bench warrant may be served in any district or county, in the same manner as a warrant of arrest; except when served in another district or county it need not be indorsed therein.

DCLXII. Whether the bench warrant be served in the district or county in which it was issued or in another, the officer

must arrest the defendant and bring him before the Court or commit him to the officer mentioned in the warrant according to the command thereof.

DCLXIII. When the defendant appears for judgment he must be informed by the Court or by the Clerk under its direction, of the nature of the indictment, and of his plea and the verdict, if any thereon; and must be asked whether he have any legal cause to show why judgment should not be pronounced against him.

DCLXIV. He may show for cause against the judgment,

1. That he is insane; and if, in the opinion of the Court, there be reasonable ground for believing him to be insane, the question of his insanity must be tried as provided in this Code. If upon the trial of that question the Jury find that he is sane, judgment must be pronounced; but if they find him insane he must be committed to the Provincial Lunatic Asylum until he becomes sane; and when notice is given of that fact, as provided herein, he must be brought before the Court for judgment:

2. That he has good cause to offer either in arrest of judgment or for a new trial; in which case the Court may in its discretion, order the judgment to be deferred and proceed to decide upon the motion in arrest of judgment or for a new trial.

DCLXV. If no sufficient cause be alleged or appear to the Court why judgment should not be pronounced, it must thereupon be rendered, in his presence if for felony, but if for misdemeanor his presence is not necessary.

Hawk. P. C. b. 2, c. 48, s. 17; 4 C. & P. 538; Com. Dig. Indictment N.; 1 Ch. C. L. 695; 3 Burr. 1784.

DCLXVI. After a plea or verdict of guilty in a case where a discretion is conferred upon the Court as to the extent of the punishment, the Court upon the suggestion of either party that there are circumstances which may be properly taken into view either in aggravation or mitigation of the punishment, may in its discretion hear the same summarily at a specified time and upon such notice to the adverse party as it may direct.

4 C. & P. 538.

DCLXVII. The circumstances must be presented by affidavits taken out of Court but subject to be rebutted by counter affidavits.

3 T. R. 428.

DCLXVIII. No affidavit or testimony or representation of any kind, verbal or written, can be offered to or received by the Court or a member thereof, in aggravation or mitigation of punishment, except as provided in the two last articles.

Provided that affidavits in aggravation are not admissible on a charge of felony, although the indictment has been removed into the Court of Queen's Bench.

9 D. & R. 174.

DCLXIX. A violation of the last article is punishable as a misdemeanor on the part of the person offering or receiving the affidavit or representation; and the person offering it may, in addition, be punished by the Court for a contempt.

DCLXX. Where a defendant is brought up for judgment after verdict, the defendant's affidavits shall be read first, then those of the prosecution, after which the defendant's counsel is heard and then the counsel for the prosecution (2 T. R. 683; 7 Ad. & E. 593.) This rule is reversed in each particular when the defendant is brought up without verdict.

DCLXXI. The first rule applies where several defendants are brought up after judgment by default and others after verdict

2 M. & R. 406; 7 Ad. & El. 582, 593.

DCLXXII. If no affidavits are produced, the defendant's counsel are first heard and then the counsel for the prosecution.

7 T. R. 683; Corner's P. 153.

DCLXXIII. 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, it shall and may be lawful for such Court 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 anything 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.

DCLXXIV. 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 consequences as if such judgment had actually been pronounced in open Court.

DCLXXV. 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 it shall be lawful for the said Court, and such Court is hereby required to order and direct such execution to be done on such offender not sooner than three months after such sentence recorded and to order the defendant to remain in close confinement until such sentence be executed or the defendant be otherwise disposed of; and the said Court shall immediately after such sentence order the proper officer to transmit forthwith to the Governor the whole record of the proceedings certified by him for the consideration of the Governor aforesaid.

DCLXXVI. The Governor may thereupon require the opinion of the Judges of the Superior Courts and of the Public Prosecutor, or of any of them, upon the statement so furnished.

DCLXXVII. No Judge, Court or officer, other than the Governor, can reprieve or suspend the execution of a judgment of death, except the Sheriff, in the cases provided in the next eight articles.

DCLXXVIII. No person so imprisoned shall be executed in pursuance of such sentence until a warrant shall be issued by

the Governor, under the Great Seal of this Province, directed to the Sheriff of the district or county where the defendant is imprisoned, commanding the Sheriff to cause the sentence of death to be carried into execution in his district or county, which warrant the Sheriff shall obey as therein directed.

DCLXXIX. Every person sentenced to death 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.

DCLXXX. 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 goal, 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; provided that the last article shall not apply to the punishment of imprisonment in the Penitentiary.

DCLXXXI. In the case of every felony, 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, (except only a receiver of stolen property,) 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 as a principal offender.

DCLXXXII. The punishment of the pillory is abolished.

DCLXXXIII. If the defendant have been convicted of two or more offences, before judgment on either, the judgment may be that the imprisonment upon any one may commence at the expiration of the imprisonment upon any other of the offences.

G. 4, c. 25, s. 10; 1 Leach. 536; 1 Ch. C. L. 718.

DCLXXXIV. A judgment that the defendant pay a fine, may also direct that he be imprisoned until the fine be satisfied, specifying the extent of the imprisonment; and when the offenders are jointly convicted the fine may be joint.

1 Ch. C. L. 718.

DCLXXXV. Where two or more are indicted for an offence, including a lesser one of the same degree, and one or more are convicted of the greater and others of the lesser offence, judgment may be severally given according to their different offences.

1 Mood. 520.

DCLXXXVI. If a general verdict of felony be rendered on an indictment therefor, but the first, in the opinion of the Court, shew a misdemeanour only, the judgment shall be for the latter.

Str. 1133; 1 R. & M. 397.

DCLXXXVII. On special verdict the Court is strictly confined to the facts expressly found and cannot supply any want by argument or implication from what is found.

Hawk. P. C. b. 2, c. 47, s. 9.

DCLXXXVIII. No person under sentence of death shall be brought up to receive another sentence.

R. & R. 268.

DCLXXXIX. If the extent or amount of penalty is discretionary with the Court, it shall not be excessive, (8 D. & R. 173; 5 B. & C. 395), and the Court may vary that extent and amount, at any time and from time to time during the term, assizes or sessions in which the judgment therefor shall have been pronounced.

1 Ch. C. L. p. 722; Hawk. P. C. b. 2, c. 48, s. 20.

DCXC. If the amount of a fine has been miscalculated, the Court, on motion, may alter the rule for judgment and entry roll for so much (3 Smith, 366), but not after the judgment has been formally recorded.

1 Ch. C. L. 722; Ch. Bunn. "Judgment."

DCXCI. The time and place of execution of a felon are no part of the sentence.

1 Leach, 67; 3 Bro. P. C. 517.

DCXCII. Upon conviction of a nuisance which is alleged to be a continuing nuisance, judgment is to be given for its abatement.

8 T. R. 142; 7 T. R. 467.

DCXCIII. The judgment may be suspended if the Court be satisfied that the nuisance is abated (13 East. 164) or money given for its abatement, (Corner's P. 144.)

DCXCIV. When judgment upon a conviction is rendered, the Clerk must enter the same upon the minutes, stating briefly the offence for which the conviction has been had, and must immediately annex together and file the following papers, which constitute the judgment roll:

1. A copy of the minutes of a challenge interposed by the defendant to the panel of the Grand Jury or to an individual Grand Juror and the proceedings and decision thereon:

2. The indictment and a copy of the minutes of the plea or demurrer:

3. A copy of the minutes of a challenge which may have been interposed to the panel of the trial Jury or to an individual Juror and the proceedings and decision thereon,

4. A copy of the minutes of the trial:

5. A copy of the minutes of the judgment:

6. The bill of exceptions if there be one.

## CHAPTER II.

## THE EXECUTION.

695. Authority for the execution of a judgment, except death.
696. Commitment of the defendant.
697. Judgment of imprisonment, by whom and how executed.
698. Power of Sheriff to require assistance. Refusal to assist, how punished.
699. Warrant of execution upon judgment of death. Time of execution.
700. Presiding Judge to transmit warrant to Sheriff.
701. If good reason to suppose defendant insane, Jury to inquire into it, how and by whom ordered.
702. Duty of public prosecutor upon the inquisition.
703. Inquisition, how certified and filed.
704, 705. Proceedings upon the finding of the jury.
706. If good reason to suppose female defendant pregnant, jury to inquire into it, how and by whom ordered. Proceedings upon the inquisition.
707. Proceedings upon the finding of the jury.
708. Proceedings when judgment of death, remaining in force, has not been executed.
709. Punishment of death, how inflicted.
710. Execution, where to take place.
711. Who to be present at the execution.
712. Certificate of the execution.
713. Certificate, how filed and published.
714. Commencement of imprisonment in Penitentiary.
715. No execution is lawful which varies from the judgment.
716. Execution to be done as required by the warrant.
717. If not dead after cut down, to be hung again.
718. Fines and penalties, how levied by Sheriff.
719. Writ of execution.

DCXCV. When a judgment except of death has been pronounced, a certified copy of the entry thereof upon the minutes must be forthwith furnished to the officer whose duty it is to execute the judgment, and no other warrant or authority is necessary to justify or require its execution.

4 Bl. C. 403; 2 Hale, P. C. 410; 1 Ch. C. L. 780 *et seq.*

DCXCVI. If the judgment be imprisonment, or a fine and imprisonment until it be paid, the defendant must forthwith be committed to the custody of the proper officer and by him detained until the judgment be complied with, and the period of such imprisonment shall be held to commence from the period of the passing of such sentence.

DCXCVII. When the judgment is imprisonment in a district or county jail, or a fine and that the defendant be imprisoned until it be paid, the judgment must be executed by the Sheriff of the district or county. In all other cases when the sentence is imprisonment, the said Sheriff must deliver the defendant to the proper officer in execution of the judgment.

DCXCVIII. If the judgment be imprisonment except in a district or county jail, the Sheriff must deliver a copy of the entry of the judgment upon the minutes of the Court together with the

body of the defendant, to the keeper of the prison in which the defendant is to be imprisoned.

DCXCIX. The Sheriff or his deputy while conveying the defendant to the proper prison, in execution of a judgment of imprisonment, has the same authority to require the assistance of any person in the Province in securing the defendant and in retaking him if he escape, as if the Sheriff were in his own district or county; and every person who refuses or neglects to assist the Sheriff when so required, is punishable as if the Sheriff were in his own district or county.

DCC. When judgment of death is rendered the presiding Judge must sign and deliver to the Sheriff of the county a warrant, stating the conviction and judgment, and appointing a day on which the judgment is to be executed, which must not be less than three months from the time of the judgment.

DCCI. If, after judgment of death, there be good reason to suppose that the defendant has become insane, the Sheriff of the county, with the concurrence of a Judge of the Court by which the judgment was rendered, may summon from the list of Grand Jurors, a Jury of twelve persons to inquire into the supposed insanity, and must give immediate notice thereof to the Prosecuting Attorney of the district or county.

DCCII. The Prosecuting Attorney must attend the inquisition, and may produce witnesses before the jury; for which purpose he may issue process in the same manner as for witnesses to attend before a Grand Jury; and disobedience thereto may be punished at the next Criminal Court in the district or county, in the same manner as disobedience to process issued by that Court.

DCCIII. A certificate of the inquisition must be signed by the jurors and the Sheriff, and filed with the Clerk of the Court in which the conviction was had.

DCCIV. If it be found by the inquisition that the defendant is sane, the Sheriff may execute the judgment; but if it be found that he is insane, the Sheriff must suspend the execution of the judgment until he receive a warrant from the said Judge who shall have tried the question of insanity, directing the execution of the judgment.

DCCV. If the inquisition find that the defendant is insane, the Sheriff must immediately transmit it to the Governor, who may, when the defendant becomes sane, issue a warrant appointing a day for the execution of the judgment.

DCCVI. When there is good reason to suppose that a female, against whom judgment of death is rendered, is pregnant, the Sheriff of the county, with the concurrence of a Judge of the Court by which the judgment was rendered, may summon a Jury of six physicians of the county to inquire into the supposed pregnancy. Immediate notice thereof must be given to the Attorney of the section of the Province. The provisions of articles and , apply to the proceedings upon the inquisition.

DCCVII. If it be found by the inquisition that the female is not pregnant the Sheriff must execute the judgment. If, however, in the case of a female, it be found that she is pregnant, the Sheriff must suspend the execution of the judgment and transmit the inquisition to the Governor.

DCCVIII. When the Governor is satisfied that the female is no longer pregnant, he may issue his warrant appointing a day for the execution of the judgment.

DCCIX. If, for any reason, a judgment of death have not been executed, and it remains in force, any Superior Court, on the application of the prosecuting Attorney of the district or county where the conviction was had, must order the defendant to be brought before it; or if he be at large, a warrant for his apprehension may be issued by that Court, or by a Judge thereof.

DCCX. Upon the defendant being brought before the Court it must inquire into the facts, and if no legal reason exist against the execution of the judgment, must make an order that the Sheriff of the proper district or county execute the judgment at a specified time. The Sheriff must execute the judgment accordingly.

DCCXI. The punishment of death must be inflicted by hanging the defendant by the neck until he be dead.

DCCXII. A judgment of death must be executed within the walls of the jail of the district or county in which the conviction was had, or within a yard or enclosure adjoining the jail.

DCCXIII. The Sheriff or his Deputy of the county must be present at the execution, and must require the presence of two physicians and four reputable citizens, to be selected by him.—He must also, at the request of the defendant, permit any minister of the gospel whom the defendant may name, and any of his relatives, to attend the execution; and also such peace officers as the Sheriff or under-sheriff may deem proper. But no other persons than those mentioned in this section, can be present at the execution; nor can any person under age be allowed to witness the same.

DCCXIV. The Sheriff or his Deputy attending the execution must prepare and sign with his name of office a certificate setting forth the time and place of the execution, and that the judgment was executed upon the defendant, according to the provisions hereinbefore contained; and must cause the certificate to be signed by the public officers, and by at least three persons not relatives of the defendant, who witnessed the execution.

DCCXV. The Sheriff or his Deputy must cause the certificate to be filed in the office of the Clerk of the Peace for the district or county where the execution was had, and a copy thereof to be published in the Gazette of Canada, and in one newspaper if any printed in the district or county.

DCCXVI. 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.

DCCXVII. No execution is lawful which varies from the judgment, unless such variation be warranted by some express and lawful authority.

Hawk. P. C. b. 2, c. 51, s. 5; Fost. 269, 270.

DCCXVIII. In capital cases execution is to be done upon the offender at the time and place specified in the warrant.

DCCXIX. If the offender after hanging be cut or taken down before he is actually dead, he shall be again hanged until he be dead.

2 Hale, P. C. 412; 4 Bl. Com. 405.

DCCXX. After judgment a warrant may issue to bring in the party convicted if he is not in custody.

DCCXXI. Fines and penalties shall be levied by the Sheriff by warrants of distress or execution as in civil cases.

DCCXXII. A writ of restitution when allowed to a party shall be granted by the Court and executed by the Sheriff as other writs, but the granting of such writ is discretionary with the Court.

5 Ad. & Ell. 826; 3 M. & R. 826.

# TITLE X.

# OF APPEALS AND REMOVALS.

1. Appeals, when allowed, and how taken.
2. Dismissing an appeal for irregularity.
3. Argument of the appeal.
4. Judgment upon appeal.
5. Removal of Indictment.

## CHAPTER I.

## APPEALS, WHEN ALLOWED, AND HOW TAKEN.

723. Writs of error and of certiorari, abolished.
724. Appeal substituted, as provided in this chapter.
725-730. Proceedings in appeal.
731. Parties, how designated in appeal.
732. In what cases appeal may be taken by defendant.
733. In what cases by the Queen.
734, 735. In what cases by either party.
736. Must be taken within one year after judgment.
737, 738. Appeal, how taken.
739. Appeal by the Queen, not to stay or affect the judgment until reversed.
740. Stay of proceedings on appeal from judgment of conviction.
741. Stay, upon appeal to Superior Court from judgment of lower Court affirming judgment of conviction.
742. Certificate of stay not to be granted but on notice to prosecutor or his Attorney.
743, 744. Effect of the stay.
745. Transmitting the papers to the appellate Court.

DCCXXIII. Writs of error and of certiorari in criminal actions as they have heretofore existed, are abolished; and hereafter the only mode of falsifying or reviewing a judgment or order in a criminal action, is that prescribed by this chapter.

DCCXXIV. The party aggrieved whether the Queen or the defendant, may appeal from such a judgment or order in the cases prescribed in this chapter.

1 East. 303; 49 R. 161; 2 T. R. 89; 4 Burr 2456; 4 M. &. S. 748.

DCCXXV. The appeal may be taken for matter not apparent upon the face of the record, and for matter apparent upon the face thereof.

DCCXXVI. Matter not apparent is the want of authority in the Court, person or persons by whom the judgment or order was pronounced.

1 Hale, P. C. 661; 4 Bl. C. 391; 1 Ch. C. L. 644, 6, 7.

DCCXXVII. Matter apparent is all such as is sufficient to arrest or bar a judgment (1 Ch. C. L. 752), and also any material defect in the judgment itself (1 Ld. Kenyon, 48, 267; 1 Ch. C. L. 752), as sentence to punishment not warranted by law (R. & R. 253.)

DCCXXVIII. An appeal upon a judgment in fact can be assigned for error which contradicts the record.

2 B. & Ad. 362; 4 C. & P. 415.

DCCXXIX. On an appeal, the indictment and other proceedings thereon must be removed into the Court of Appeal.

1 Ch. C. L. 749.

DCCXXX. A judgment of an inferior Court can only be reversed in appeal.

DCCXXXI. The party appealing is known as the appellant and the adverse party as the respondent. But the title of the action is not changed in consequence of the appeal.

DCCXXXII. An appeal to the Court of Appeal may be taken by the defendant from a judgment on a conviction; and upon the appeal any actual decision of the Court or judgment appealed from in an intermediate order or proceeding forming part of the judgment roll, may be reviewed.

DCCXXXIII. An appeal to the said Court of Appeal may be taken by the Sovereign in the following cases, and no other:

1. Upon a judgment for the defendant, on a demurrer to the indictment:

2. Upon an order of the Court, arresting the judgment.

DCCXXXIV. The defendant or his heir, executor or administrator only can sue out an appeal.

Hawk. P. C. b. 2, c. 50, s. 11; 4 Bl. Com. 392; 1 Ch. C. L. 747.

DCCXXXV. Unless some real error be assigned, error in law shall not be admitted, though error in fact may be admitted.

4 Burr. 2551.

DCCXXXVI. An appeal must be taken within one month after the judgment was rendered.

DCCXXXVII. An appeal must be taken by the service of a notice in writing, on the Clerk with whom the judgment roll is filed, stating that the appellant appeals from the judgment.

DCCXXXVIII. If the appeal be taken by the defendant, a similar notice must be served on the prosecuting attorney of the county or district in which the original judgment was rendered.

DCCXXXIX. If it be taken by the Sovereign a similar notice must be served on the defendant if he be a resident of or imprisoned in the city or county or district; or if not, on the counsel if any, who appeared for him on the trial, if he reside or transact his business in the county or district. If the service cannot after due diligence be made, the Appellate Court upon proof thereof may make an order for the publication of the notice, in such newspaper and for such time as it deems proper.

DCCXL. At the expiration of the time appointed for the publication, on filing an affidavit of the publication, the appeal becomes perfected.

DCCXLI. An appeal taken by the Sovereign in no case stays or affects the operation of a judgment in favor of the defendant until the judgment is reversed.

DCCXLII. An appeal to the said Court of Appeal from a judgment of conviction, stays the execution of the judgment upon fyling with the notice of appeal a certificate of the presiding Judge of the Court in which the conviction was had, or of a Judge of one of the Superior Courts that in his opinion there is a probable cause for the appeal, but not otherwise.

DCCXLIII. An appeal to the Court of Appeal from a judgment of any Court of Criminal Jurisdiction or any Judge thereof affirming a judgment of conviction, stays the execution of the judgment appealed from upon filing, with the notice of appeal, a certificate of a Judge of the Court of Appeal or of the Superior Court, that in his opinion there is probable cause for the appeal, but not otherwise.

DCCXLIV. The certificate mentioned in the last two articles cannot, however, be granted upon an appeal on a conviction of felony until such notice as the Judge may prescribe has been given to the prosecuting attorney of the section where the conviction was had, of the application for the certificate. But the Judge may stay the execution of the judgment in the meantime.

DCCXLV. If the certificate provided in articles 743 and 744 be given, the Sheriff must, if the defendant be in his custody, upon being served with a copy of the order, keep the defendant in his custody without executing the judgment, and detain him to abide the judgment upon the appeal.

DCCXLVI. If before the granting of the certificate the execution of the judgment have commenced, the further execution thereof is suspended, and the defendant must be restored by the officer in whose custody he is, to his original custody.

DCCXLVII. Upon the appeal being taken, the Clerk with whom the notice of appeal is filed, must, within ten days thereafter, without charge, transmit a copy of the notice of appeal and of the judgment roll to the Clerk of the Coart of Appeal.

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## CHAPTER II.

## DISMISSING AN APPEAL FOR IRREGULARITY.

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748. For what irregularity, and how, dismissd.
749. Dismissal for want of return.

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DCCXLVIII. If the appeal be irregular in a substantial particular, but not otherwise, the Court may, on any day in term, on motion of the respondent, upon five days notice, with copies of the papers on which the motion is founded, order it to be dismissed.

DCCXLIX. The Court may also upon like motion, dismiss the appeal, if the return be not made as hereinbefore provided, unless for good cause the time for that purpose be enlarged.

## CHAPTER III.

## ARGUMENT OF THE APPEAL.

750. Appeal to Supreme Court, how and where brought to argument.
751. Appeal to Court of Appeal, how brought to argument.
752. Notice of argument to counsel for defendant.
753. Papers, by whom furnished, and effect of omission.
754. Judgment of affirmance may be without argument if appellant fail to appear. Reversal only upon argument, though respondent fail to appear.
755. Number of counsel to be heard. Defendant's counsel to close the argument.
756. Defendant need not be present.

DCCL. An appeal to the said Court of Appeal may be brought to argument by either party on four days notice, on any day in term held by the said Court.

DCCLI. If a counsel within four days after the appeal have given notice to the prosecuting Attorney that he appears for the defendant, notice of argument must be served on him instead of the defendant, otherwise notice must be served as the Court may direct.

DCCLII. When the appeal is called for argument, the appellant must furnish the Court with copies of the notice of appeal and judgment roll. If he fail to do so the appeal must be dismissed, unless the Court otherwise direct.

DCCLIII. Judgment of affirmance may be given without argument if the appellant fail to appear. But judgment of reversal can only be given upon argument though the respondent fail to appear.

DCCLIV. Upon the argument of appeal, if the offence be punishable with death, two counsel on each side must be heard, if they require it, except in reply, when only one shall be heard.—In any other case the Court may in its discretion, restrict the argument to one counsel on each side. The counsel for the defendant is entitled to the closing argument.

DCCLV. The defendant need not personally appear, in the appellate Court.

## CHAPTER IV.

## JUDGMENT UPON APPEAL.

756. Court to give judgment, without regard to technical errors, defects or exceptions, not affecting substantial rights.
757. May reverse, affirm or modify the judgment, and order a new trial.
758. New trial, where to be had.
759. Defendant to be discharged on reversal of judgment against him, where new trial is not ordered.
760. Judgment to be executed on affirmance against the defendant.
761. Judgment of appellate Court, how entered and remitted.
762. Papers returned not to be remitted.
763. Jurisdiction of Appellate Court ceases after judgment remitted.
763–*a*. Effect of reversal.
*b*. Defendant upon reversal to re-enter on lands granted.
*c*. Reversal from technical error, no relief to defendant.
*d*. Reversal of judgment against principal, relieves accessory.

DCCLVI. After hearing the appeal the Court must give judgment, without regard to technical errors or defects, or to exceptions which do not affect the substantial rights of the parties.

DCCLVII. The Appellate Court may reverse, affirm, or modify the judgment appealed from, and may, if necessary or proper, order a new trial.

DCCLVIII. When a new trial is ordered, it may be directed to be had, in the Court of such District or County having criminal jurisdiction therein.

DCLIX. If a judgment against the Defendant be reversed, without ordering a new trial, the Appellate Court must direct, if he be in custody, that he be discharged therefrom, or if he be admitted to bail, that his bail be exonerated, or if money be deposited instead of bail, that it be refunded to the defendant.

DCCLX. On a judgment of affirmance against the defendant, the original judgment must be carried into execution, as the Appellate Court may direct.

DCCLXI. When the judgment of the Appellate Court is given, it must be entered in the judgment book, and a certified copy of the entry forthwith remitted to the clerk with whom the original judgment is fyled, or if another trial be ordered in another district or county, to the clerk of that district or county, unless the judgment be rendered in the absence of the adverse party, in which case, the Court may direct it to be retained, not exceeding ten days.

DCCLXII. The papers returned to the Appellate Court, must there remain of record, and are not to be remitted to the Court below.

DCCLXIII. After the certificate of the judgment has been remitted, the Appellate Court has no further jurisdiction of the appeal, or of the proceedings thereon; and all orders which may be necessary to carry the judgment into effect, must be made by the Court to which the certificate is remitted.

DCCLXIII–*a*. The effect of a reversal of a conviction shall render such judgment and all former proceedings null and void, and the defendant if living, and if dead his heir or personal representative respectively, shall be restored to all things which such defendant may have lost by such judgment and proceedings, and shall stand in every respect as if he had never been charged with the offence in respect of which such judgment was rendered: but if the execution only be erroneous, that only shall be reversed.

Hawk. P. C. b. 2, c. 50, s. 19; 4 Bl. Com. 393; 1 Ch. C. L. 756.

*b*. If the defendant had any lands at the time of his attainder, and the same have been granted away by the Crown, he may re-enter upon them in the same manner as if he had been disseized.

Ib.

*c*. Provided that if the reversal be by reason of some technical error in the judgment or subsequent process, the defendant shall be liable to a new trial for the offence in respect of which the judgment is reversed.

Ib.

*d*. By the reversal of the judgment against the principal, that against the accessory before the fact indicted, together with the principal for any offence, becomes *ipso facto* null and void, and all the like consequences follow as regards the accessory as follow in the case of the principal.

1 Roll. Abr. 777; Hawk. ib. s. 4; Ch. C. L. 756.

## CHAPTER V.

## REMOVAL OF INDICTMENT.

763-*a*. Who entitled to order of removal.
*b*. Statutes taking away certiorari, bind all parties.
*c*. To grant such order, difficulties must be pointed out.
*d*. If fair trial be doubted, &c. removal to Superior Court.
*e*. Removal may be before or after indictment.
*f*. When defendant may remove indictment.
*g*. Not after acquittal, though surreptitiously obtained.
*h*. *Procedendo*, when awarded.
*i*. For what cause removal after judgment.
*j*. The effect of the order of removal.
*k*, *l*. Receipt of order, stay of proceedings.
*m*. Recognizance required for removal.
*n*. Order granted on application of one of several.
*o*. No removal for indictment for disorderly houses.
*p*. Depositions not removable.
*q*. Several concurring in application.
*r*. If order be unduly obtained.
*s*. When *habeas corpus* may issue.
*t*. When application to be made.
*u*. Issue of writ not of course.
*v*. Service how made.
*w*. Reasonable time for service.
*x*. Contents of return.
*y*, *z*. What sufficient return.
*aa*. Facts in return to be taken as true.
*bb*. Return may be confessed and avoided.
*cc*. Return amendable.
*dd*. How Counsel to be heard.
*ee*. Remanding of defendant.
*ff*. Irregular arrest will not discharge if good ground exist.
*gg*. Commitment for contempt in execution.
*hh*. When no warrant of commitment, bail to be taken.
*ii*. Rules applicable to bail generally, to apply in this case.

DCCLXIII-*a*. All parties aggrieved are entitled to an order of removal, unless otherwise herein provided, on application shewing special cause, either for the prosecution or the defence.

As to the prosecutor,

1 East. 303; 1 T. R. 161; 2 T. R. 89; 4 Burr. 2456; Hawk. P. C. b. 2, c. 27, s. 27.

As to a defendant,

4 M. & S. 744.

*b*. Statutes which take away the Writ of Certiorari or order of removal shall be deemed to bind all parties, prosecutor and defendant, whether such party be the Crown or an individual, unless the contrary intention appear.

15 East. 341; 4 Ad. & El. 198; Corners, P. 51.

*c*. To induce the Court to grant such order on the ground that legal difficulties are likely to occur, they must be pointed out.

5 Dowl. P. C. 415; 4 Ad. & El. 539; 8 Dowl. P. C. 138.

*d*. Circumstances which render it probable that the defendant will not have a fair and impartial trial in the Court below, or

that specific legal difficulties are likely to arise upon the trial, or that questions of fact will arise requiring proof by the evidence of scientific persons, are proper to be submitted to the Superior Court on application for the Writ.

1 W. H. & H. 35; 5 Ad. & El. 529; 8 Dowl. P. C. 128; 4 Jur. 413, 656, 292; 2 H. & W. 293; 1 Ch. 175, n.; 3 D. & R. 301; 1 W. H. & H. 35; 4 Dowl. P. C. 607.

*e.* The removal into the Superior Court may be ordered as well before as after indictment found.

40 G. 3; 1 G. 4, c. 4, s. 4; Corners, P. 52.

*f.* The prosecutor may remove an indictment at any time before trial (2 Dowl. P. C. 529), but after conviction it shall not be removed, except for special cause (2 Str. 1227; 6 T. R. 145; 13 East, 411; 2 Burr. 749.)

*g.* After acquittal on an indictment in the lower Court, though the verdict has been surreptitiously obtained by a violation of the practice of the Court, no order shall be allowed for the purpose of setting aside the verdict and granting a new trial.

1 Dowl. P. C. 578; Corners, P. 53.

*h.* If the indictment be removed after conviction, in order to move in arrest of judgment, the Court shall award a *procedendo* without hearing the objections.

6 T. R. 145.

*i.* No record shall be removed after judgment except in order to carry the judgment into execution (7 T. R. 375; 1 Bar. & Cr. 142; Corners, P. 53), and except as to defendants who of right shall have such order. Provided that any Court on the application of the public prosecutor, may after sentence of death entered and recorded at the Assizes, order the removal into the Superior Court of the Judgment Roll, and also order that the defendant so convicted be brought up (2 Ad. & Ell. 266.)

*j.* The effect of the order is to remove all the proceedings in the Court below up to the time of receiving the order (1 East. 298; Hawk. P. C. b. 2, c. 27, s. 73), even though the indictment has been discontinued in the Court below (ib. s. 74); but to be effectual the order must be delivered before the time for its return has expired (Hawk. P. C. b. 2, c. 27, s. 59).

*k.* On receiving the order all proceedings, whether completed, commenced or continuing shall be absolutely stayed, although the order may have been awarded against the law.

Camp. 129.

*l.* An order of removal having been lodged in the Court where the indictment was found, before trial, all former proceedings in that Court are superseded, and the proceedings must begin anew in the Court to which the removal is ordered.

Corners, P. 127.

*m.* No order for removal shall in any case be granted unless the party applying therefor, the Public Prosecutor excepted, previously enter into recognizance with sureties to the amount of £20 to appear at the return of the order and proceed thereon to final judgment in the Court into which the indictment shall be removed.

*n.* The order may be granted on the application of one of several defendants (Corners, P. 33; 4 Ad. & Ell. 513) and shall avail to all (Corners, P. 54.)

*o.* No such order shall be allowed for indictments found for keeping disorderly houses.

*p.* Depositions taken before a magistrate for an offence shall not be removed from an inferior Court when the recognizances have been discharged in that Court.

6 Jur. 149.

*q.* Where several defendants concur in the application for an order of removal, each must enter into a separate recognizance.

*r.* If an order is unduly attained, or it has issued illegally or improvidently, or the defendant has neglected to perform the conditions of his recognizance, or that bad or insufficient sureties have been put in, or that the recognizance has been unduly entered into, or for other such just cause, the Superior Court or a Judge thereof in vacation will, at discretion, award an order of *procedendo* or require the defendant to put in better bail, or quash the allowance and return of the order.

Corners, P. 58.

*s.* The writ of *habeas corpus* may issue in term or in vacation in the manner and under the provisions of the laws as the same are in force in either section of the Province, and under such rules, order and practice therefor as are recognized in each such section.

*t.* The application for a writ of *habeas corpus*, whether made to the Court in term or to a Judge in vacation, must be upon affidavit shewing sufficient ground for the interference of such Court or Judge.

3 B. & Ad. 420.

*u.* The issue of such writ is not of course, but must be supported by affidavit upon which the Court or Judge will exercise a discretion to award the same. (2 Ch. R. 207; 3 B. & Ad. 450 S. C.; Ch. Burns. Hab. Corp.) No such writ shall issue for an alien enemy. (2 W. Bl. 1324; 2 Burr. 765.)

*v.* The writ must be served by actual delivery to the party to whom it is directed, or by leaving it at the place of restraint or confinement of the party confined, with the servant or agent of the person so confining or restraining him (56 G. 3, c. 100, s. 2 & 6; Corners, P. 114); if it be directed to more than one, copies shall be first served on all but the principal, shewing the original writ to each, and the original shall thereafter be delivered to such principal (Corners, P. 114).

*w.* A reasonable time for the return must be allowed in all cases.

9 Dowl. P. C. 195.

*x.* The return must contain a copy of the prisoner's detainer, and, if the body be not brought, the reasons stated distinctly and unequivocally why it is not and cannot be obeyed, or that the party was not at any time before or at the time of the service of the writ or afterwards and is not in the custody, power or control of the person making the return.

5 T. R. 89; 2 W. Bl. 1204; Corners, P. 115.

*y.* It is a sufficient return to such writ that the party is in custody under the sentence of a Court of competent jurisdiction, to inquire of the offence and pass such a sentence, without setting

forth the particular circumstances necessary to warrant such a sentence.

1 East, 303.

*z.* Such returns do not require minute correctness provided the substance of the facts be stated.

Corners, p. 115; 2 Roll. R. 157; 9 Add. & Ell. 789.

*aa.* The facts stated in the return shall be taken to be true until they are impeached.

Corners, 116.

*bb.* The return may be confessed and avoided by fyling a suggestion of matters not contradictory of the return (Corners, P. 117), or its truth may be impeached on a motion for an attachment.

*cc.* The return is amendable by leave of the Court or Judge after it has been filed, or a new one may on leave be substituted.

*dd.* On a motion to discharge defendant brought up on *habeas corpus*, the prisoner or his counsel is first heard, then the prosecuting counsel, and the counsel for the prisoner in reply.

9 Add. & Ell. 213.

*ee.* The defendant may be remanded from time to time to the same custody; or he may during a reasonable time be bailed *de die in diem* until it be determined in what manner to deal with him.

Bac. Abr. Hab. Corp. B. 13; 5 Mod. 19.

*ff.* An irregular arrest or defective or informal warrant will not discharge the defendant, if the Court or Judge, from the depositions returned, see that an offence has been committed and a reasonable ground of charge exists against him, but he shall be remanded or bound over by recognizance to answer the charge.

3 East, 157; Cald. 295; 1 B. & C. 258; Ch. C. L. 182; 9 B. & C. 446; 5 Mod. 19; Vaugh. 137.

*gg.* A commitment by a Court of Record or by one of the Houses of Parliament for a contempt, is a commitment in execution, and need not specify the particulars of the offence.

3 Wils. 199; 11 Ad. & El. 273.

*hh.* Where there is no warrant of commitment shewing the crime charged, the defendant is entitled to be bailed by the Court or Judge before whom he is brought.

2 Wils. 158; 1 Ld. Raym, 65; 1 Salk. 347.

*ii.* The rules relating to the number, sufficiency, and amount of bail, shall apply to bail upon *habeas corpus*.

## CHAPTER VI.

## TIME OF PROCEEDING BY PROSECUTOR.

*jj.* When prosecutor may bring indictment to trial.
*ll.* Notice of trial, how given.
*mm.* Contents of notice.
*nn.* Proceeding in default of prosecutor to proceed.
*oo.* Service of notice.
*pp.* Want of notice.
*qq.* Insufficient notice.
*rr.* A defendant may compel proceeding to trial.
*ss.* No trial for felony without presence of defendant.
*tt.* Jury sworn on cross indictment.
*uu.* Staying proceedings in matter of nuisance.
*vv.* When recognizances may be discharged.
*ww.* When indictments shall be submitted.
*xx.* When defendant may be discharged.

*jj.* The public prosecutor may bring any indictment to trial at what time he thinks proper, subject to the discretion of the Court on application of the defendant for delay, and subject to the provisions of this Code in respect thereof.

*kk.* Notice of trial, whenever necessary, according to the practice of the Court, or the provisions hereof, must in all cases be given by either party to the other, but at no longer interval than five days, and if the case remain untried for want of jurors, absence of witnesses, or other cause, the notice must be renewed.

*ll.* The notice of trial must specify the nature of the offence, and is to be signed by the party or his attorney.

*mm.* If default be made by the prosecutor to proceed on the day appointed, the prosecution shall be discharged; if the defendant fail to appear, the prosecution, if for misdemeanor, but not otherwise, shall proceed as if he had appeared.

*nn.* The service of the notice shall be made personally on the party; if he cannot be found, on affidavit shewing the fact, the Court shall order what service shall be sufficient, and proceedings shall be had accordingly.

*oo.* Want of notice is waived by the appearance of the party.

1. C. & P. 660.

*pp.* An insufficient notice is not waived by appearance of the party, or statements by himself or his Counsel of such insufficiency, or that his witnesses are unable to attend.

8 C. & P. 109.

*qq.* A defendant under recognizance to answer for an offence at the next sessions, assizes, or term of a criminal court, or to an indictment found at a previous term, assizes or sessions may, on giving due notice to the prosecutor, compel him to proceed to trial at the next term, assizes, or sessions.

1 Leach, 111, 8 C. & P. 676; 9 C. & P. 284.

*rr.* The Court will not in any case of felony appoint a time for trial unless the defendant be brought to the bar, and be personally present in Court, when an order is made for the purpose.

Str. 826.

*ss.* When there are cross indictments for assaults, the jury may be sworn in both at the same time.

8 C. & P. 250.

*tt.* The Court will not stay proceedings on an indictment for a public nuisance, on the ground that the original private prosecutor abandoned the prosecution, which was then continued by another.

3 B. & A. D., 757.

*uu.* It is discretionary with the Court to discharge recognizances of parties bound to prosecute, without indictment preferred, on the ground of defect of evidence or other sufficient cause.

6 C. & P., 342.

*vv.* An indictment shall be submitted to the Grand Jury against a defendant in the term in which he may be committed, if so committed in the first ten days of that term or at any time in the vacation preceding such term, and if not so submitted the defendant shall be discharged on his own recognizance.

*ww.* The defendant may be discharged on his own recognizance if no proceedings are had against him in the term succeeding that in which the indictment is found; and he shall be discharged absolutely if no such proceedings are had during two terms after indictment found.

# TITLE XI.

# OF MISCELLANEOUS PROCEEDINGS.

1. Bail.
2. Compelling the attendance of witnesses.
3. Examination of witnesses, conditionally.
4. Examination of witnesses, on commission.
5. Inquiry into the insanity of the defendant before trial, or after conviction.
6. Compromising certain public offences by leave of the Court.
7. Dismissal of the action, before or after the indictment, for want of prosecution, or otherwise.
8. Remitting the punishment, in certain cases.
9. Proceedings against corporations.
10. Entitling affidavits.
11. Errors and mistakes, in pleadings and proceedings.
12. Disposal of property, stolen or embezzled.
13 Reprieves, commutations and pardons.

## CHAPTER I.

## BAIL.

1. In what cases the defendant may be admitted to bail.
2. Bail, upon being held to answer, before indictment.
3. Bail, upon an indictment, before conviction.
4. Bail, upon an appeal.
5. Surrender of the defendant.
6. Forfeiture of the undertaking of bail.
7. Re-commitment of the defendant, after having given bail.

### ARTICLE I.

### IN WHAT CASES THE DEFENDANT MAY BE ADMITTED TO BAIL.

764. Admission to bail, defined.
765. Taking bail, defined.
766. Offences not bailable.
767. In what cases defendant may be admitted to bail, before conviction.
768. Nature of bail before conviction.
769. Nature of bail after conviction and upon appeal.
770. Bail may be put in before arrest.

DCCLXIV. Admission to bail is the order of a competent Court or magistrate, that the defendant be discharged from actual custody upon bail.

DCCLXV. The taking of bail consists in the acceptance, by a competent Court or magistrate, of the recognizance of sufficient bail for the appearance of the defendant, according to the terms thereof, or that the bail will pay a specified sum.

DCCLXVI. The defendant cannot be admitted to bail, where sufficiently charged,

1. With Treason.

2. With murder,

3. With the infliction of a personal injury upon another, likely to produce death, and under such circumstances, as that, if death ensue, the offence would be murder.

DCCLXVII. If the charge be for any other offence, he may be admitted to bail, before conviction, as follows:

1. As a matter of right, in cases of misdemeanor:

2. As a matter of discretion, in all other cases.

DCCLXVIII. After the conviction of an offence not punishable with death, a defendant who has appealed, and when there is a stay of proceedings, but not otherwise, may be admitted to bail:

1. As a matter of right, when the appeal is from a judgment imposing a fine only:

2. As a matter of discretion, in all other cases.

DCCLXIX. Before conviction, a defendant may be admitted to bail,

1. For his appearance before the magistrate, on the examination of the charge, or before being held to answer.

2. To appear at the Court, having jurisdiction of the offence, upon the defendant being held to answer after examination;

1 Burr, 460

3. After indictment, either upon the bench warrant issued for his arrest, or upon an order of the Court committing him, or enlarging the amount of bail, or upon his being surrendered by his bail,—to answer the indictment in the Court in which it is found, or to which it may be sent or removed for trial.

DCCLXX. After conviction and upon an appeal, the defendant may be admitted to bail as follows:

1. If the appeal be from a judgment imposing a fine only, on the recognizance of bail, that he will pay the same, or such part of it as the appellate Court may direct, if the judgment be affirmed or modified or the appeal be dismissed:

2. If judgment of imprisonment have been given, that he will surrender himself in execution of the judgment, upon its being affirmed or modified, or upon the appeal being dismissed.

DCCLXXI. Bail may be put in before the party indicted is taken, in order to protect him from any process or warrant issuing at the instance of the prosecutor.

Corners, P. 125.

ARTICLE II.

## BAIL, UPON BEING HELD TO ANSWER, BEFORE INDICTMENT.

772, 773. By what courts or magistrates defendant may be admitted to bail
774. At what time defendant may be admitted to bail by a magistrate.
775. Order on *habeas corpus*
776. In cities, if offence be be felony, application for admission to bail must be on notice.
777. Form of order, if made by the court.
778. Form of order if made by a magistrate.
779. If application be denied by a magistrate, no subsequent application can be made to another magistrate.
780. Violation of last article a misdemeanor. Admission to bail in such case, how revoked or vacated.
781. On denial of application, by a magistrate, defendant may appeal to court.
782. Manner of taking appeal.
783. Decision of court on appeal, final.
784. Bail, by whom taken.
785. How put in; and form of the undertaking.
786. Qualification of bail.
787, 788. Bail, how to justify.
789. Bail may be examined as to sufficiency.
790. Other testimony may be received as to their sufficiency.
791. Decision as to their sufficiency; and filing affidavits of justification and undertaking.
792. On allowance of bail, and execution of recognizance, defendant to be discharged. Form of discharge.
793. If bail disallowed, defendant to be detained until other bail be put in and justify.

DCCLXXII. When the defendant has been held to answer, the admission to bail may be by the magistrate by whom he is so held, as follows:

1. By any magistrate when the offence charged is a misdemeanor, or a felony punishable with imprisonment.

2. By a Judge of the Superior Courts, of criminal jurisdiction or district or circuit Judge in all cases where bail may be taken, before conviction.

DCCLXXIII. When, by reason of the degree of the offenee, the committing magistrate has not authority to admit to bail, the defendant may be admitted to bail by one of the Judges in the last sub-article mentioned or by the Court having jurisdiction over the offence or to which, after indictment, it may be sent or removed for trial.

DCCLXXIV. The defendant may be admitted to bail by a Judge or magistrate, as provided in the last two articles, upon being held to answer, or at any time before the return of the depositions and statement to the Court. After that time he can be admitted to bail, only by the Court in which the offence is triable, if it be sitting, or if not, by one of the Judges mentioned in the second sub-division of article 772.

DCCLXXV. Upon any application to a Court of Superior Criminal Jurisdiction, for that part of the Province within which

such person stands committed, or to any Judge thereof the same order touching the Prisoner being bailed or continued in custody, shall be made as if the party were brought up upon a *Habeas Corpus*.

DCCLXXVI. In the several cities of this Province, if the offence charged be felony, the application for admission to bail must be upon notice of at least two days, to the prosecuting attorney of the district or county; and the committing magistrate upon the like notice, in writing, requiring him to do so, must transmit the depositions and statement, or a copy thereof, to the court or magistrate to whom the application for bail is to be made.

DCCLXXVII. If the application be to the court, an order must be made, granting or denying it, and if it be granted, stating the sum in which bail may be taken.

DCCLXXVIII. If the application be to a magistrate, he must certify in writing, his decision granting or denying the same; and if he grant the application, must state in the certificate the sum in which bail may be taken; which certificate he must cause to be forthwith filed with the clerk of the court to which the depositions and statement are required to be sent.

DCCLXXIX. If an application for admission to bail, made to a magistrate, be denied, no subsequent application therefor can be made to another magistrate.

DCCLXXX. A violation of the last article is punishable as a misdemeanor, and the admission of the defendant to bail contrary thereto, may be revoked by the magistrate who made it, or vacated by the court to which the depositions and statement are or must be sent, or to which, after indictment, the action must be sent for trial.

DCCLXXXI. If the applicaiion, when made to a magistrate, be denied, the defendant may appeal from his decision to the court to which the depositions and statements are sent in which the case is triable or to the court to which after indictment it must be sent for trial.

DCCLXXXII. The appeal is by a notice in writing to the public prosecutor that the defendant appeals from the decision, and that he will apply to the Judge or Court to be admitted to bail, at a time to be specified, not less than two days from the service of the notice.

Ch. Burns' Just. "Bail."

DCCLXXXIII. The decision of the Judge or Court granting or denying bail, either upon an original application or upon an appeal, is final.

DCCLXXXIV. If the defendant be admitted to bail by a magistrate, the bail must be taken by the magistrate granting the order or by any other magistrate in the same district, county, city or village. If by the Court it may be taken either by the Court or by any magistrate whom the Court may designate in the district or county in which the defendant is committed.

DCCLXXXV. Bail is put in by a written undertaking or recognizance, executed by two sufficient sureties (with or without

the defendant in the discretion of the Court or magistrate) and acknowledged before the Court or magistrate in substantially the following form:

2 Hale, P. C.; 126 Burns' Just. "Bail."

"An order having been made on the day of "18 , by A. B., *a Justice of the Peace of the of (or "as the case may be,)* that C. D. be held to answer upon a charge "of, *(stating briefly the nature of the offence,)* upon which he has "been duly admitted to bail in the sum of

"We, E. F., of *(stating his place of residence and occupation,)* "and G. H., of *(stating his place of residence and occupation)* "hereby undertake that the above named C. D. shall appear and "answer the charge above mentioned, in whatever Court it may "be prosecuted; and shall at all times render himself amenable "to the orders and process of the Court; and if convicted, shall "appear for judgment and render himself in execution thereof; "or if he fail to perform either of these conditions, that he will "pay to the Queen the sum of *(inserting the sum "in which the defendant is admitted to bail.)*"

1 Ch. C. L. 99, 103; Steph. C. L. 251.

DCCLXXXVI. The qualifications of bail are as follows:

1. Each of them must be a resident, and a householder or freeholder within the Province:

2. They must each be worth the amount specified in the recognizance; but the Court, Judge or magistrate, on taking bail, may allow more than two bail to justify severally in amounts less than that expressed in the undertaking, if the whole justification be equivalent to that of two sufficient bail, (1 Ch. C. L. 99; Burns' Just Bail; Dougl. 466 n.) but no married woman, infant or prisoner in custody shall be allowed to be bail (Ch. Burns' Just. Bail.)

DCCLXXXVII. Except as prescribed in the next article the bail may, in the exercise of a just discretion, be taken, and may justify, wthout notice to the Public Prosecutor, or reasonable notice may be required by the Court, Judge or magistrate, to be given to the Public Prosecutor of the intention to give bail.—When notice is given it shall be as prescribed in the next article.

DCCLXXXVIII. If the offence charged be a felony a previous notice of at least two days, of the time and place of giving the bail must be served upon the said Public Prosecutor, stating,

1. The names, place of residence and occupation of the proposed bail:

2. A general description of the real or personal property of the bail, in respect to which they propose to justify as to their sufficiency, with the incumbrances thereon, by mortgage, judgment or otherwise, if any.

DCCLXXXIX. The bail must in all cases justify by affidavit, taken before the Court, Judge, or magistrate, as the case may be. The affidavit must state that they each possess the qualifications above provided.

DCCXC. The Public Prosecutor or the Court, Judge or magistrate aforesaid may thereupon further examine the bail upon

oath, concerning their sufficiency, in such manner as the Court, Judge or magistrate may deem proper. The questions put to the bail and their answers must be reduced to writing and must be subscribed by them.

DCCXCI. The said Court, Judge, or magistrate may also receive other testimony, either for or against the sufficiency of the bail, and may from time to time adjourn the taking of bail, to afford an opportunity of proving or disproving their sufficiency.

DCCXCII. When the examination is closed, an order shall be made either allowing or disallowing the bail, and which with the affidavits of justification, and the recognizance of bail must be transmitted to be filed with the Clerk of the Court to which the depositions and statement must be sent.

DCCXCIII. Upon the allowance of the bail and the execution of the recognizance, the Court or magistrate must make an order, signed by him, with his name of office, for the discharge of the defendant to the following effect:

"To the Sheriff of the district or county of
"[*or the city of* , *to the keeper of the prison of the*
"*city of* :] A. B., who is detained by you on a
"commitment to answer a charge for the offence of [*designating*
"*it generally*] having given sufficient bail to answer the same,
"you are commanded forthwith to discharge him from your
"custody."

DCCXCIV. If the bail be disallowed the defendant must be detained in custody until other bail be put in and justify.

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ARTICLE III.

## BAIL, UPON AN INDICTMENT BEFORE CONVICTION.

795. In misdemeanor, officer to take defendant before a magistrate.
796. In felony, to deliver him into custody.
797. Taking bail, when offence is bailable.
798. Bail, how put in. Form of undertaking.
799. Articles applicable to qualifications of bail, to putting in and justifying bail, and to incidental proceedings.

DCCXCV. When the offence charged in the indictment is a misdemeanor, the officer serving the bench warrant must, if required, take the defendant before a magistrate in the district or county in which it is issued, or in which he is arrested, for the purpose of giving bail as prescribed above.

DCCXCVI. If the offence charged in the indictment be a felony, the officer arresting the defendant must give him into custody, according to the command of the bench warrant, as prescribed above.

DCCXCVII. When the defendant is so delivered into custody, if the felony charged be bailable, and the amount of bail have been fixed by the Court, as provided above, bail may be taken in the Court in which the indictment was found, or to which it is sent or removed, or by any magistrate in the district or

county having authority to admit a defendant to bail, upon being held to answer before indictment, as provided hereinbefore.

DCCXCVIII. The bail must be put in, by a recognizance executed by two sufficient sureties, with or without the defendant, in the discretion of the Court or magistrate, acknowledged before the Court or magistrate, in substantially the following form:

"An indictment having been found on the day of , 185 , in the *Court of* [*or as the case may be,*] charging A. B. with the crime of, [designating it generally,] and he having been duly admitted to bail in the sum of :

"We, C. D., of [*stating his place of residence and occupation,*] and E. F., of [*stating his place of residence and occupation,*] hereby undertake, that the above named A. B. shall appear and answer the indictment above mentioned, in whatever Court it may be prosecuted, and shall at all times render himself amenable to the orders and process of the Court: and if convicted, shall appear for judgment, and render himself in execution thereof; or if he fail to perform either of these conditions, that we will pay to the Queen the sum of [*inserting the sum in which the defendant is admitted to bail.*]"

DCCXCIX. The provisions contained in articles as to bail, apply to the qualifications of the bail, and to all the proceedings respecting the putting in and justifying of bail, and incidental thereto.

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ARTICLE IV.

## BAIL UPON AN APPEAL.

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800. Who may admit to bail.
801. Notice of the application, when required.
802. Qualifications of bail, how put in.

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DCCC. In the cases in which the defendant may be admitted to bail upon an appeal, as provided hereinbefore, the order admitting him to bail may be made, either by the Court from which the appeal is taken, or the presiding Judge thereof, or by the Appellate Court, or a Judge thereof, or by a Judge of any of the Superior Courts.

DCCCI. When the admission to bail is a matter of discretion, the Court or officer by whom it may be ordered, may require such notice of the application therefor, as he deems reasonable, to be given to the prosecuting Attorney of the District or county in which the verdict or judgment was originally rendered.

DCCCII. The bail must possess the qualifications, and must be put in all respects, in the manner prescribed by articles with reference to bail as above; except that the undetaking of the bail must be to the effect that the defendant will, in all respects abide the orders and judgment of the Appellate Court upon the appeal.

ARTICLE V.

## SURRENDER OF THE DEFENDANT.

807. Surrender, by whom, when, and how made.
808 By whom, when and where, defendant may be arrested for the purpose of a surrender.

DCCCVII. At any time before the forfeiture of their recognizance, the bail may surrender the defendant in their exoneration, or he may surrender himself, to the officer to whose custody he was committed at the time of giving bail, in the following manner:

1. A certified copy of the recognizance of the bail must be delivered to the officer, who must detain the defendant in his custody thereon, as upon a commitment, and by a certificate in writing, acknowledge the surrender:

2. Upon the undertaking and the certificate of the officer, the Court in which the indictment or the appeal, as the case may be, is pending, may, upon a notice of five days to the prosecuting attorney, with a copy of the recognizance and certificate, order that the bail be exonerated; and on fyling the order and the papers used on the application, they are exonerated accordingly.

DCCCVIII. For the purpose of surrendering the defendant the bail, at any time before they are finally charged, and at any place within the Province, may themselves arrest him, or by a written authority endorsed on a certified copy of the recognizance, may empower any person of suitable age and discretion to do so.

ARTICLE VII.

## FORFEITURE OF THE RECOGNIZANCE OF BAIL.

810. In what cases, and how ordered.
811. When and how forfeiture may be discharged.
812. Forfeiture of bail, to be enforced by action.
813. Remission of forfeiture.
814. Application therefor, how made and on what terms granted.
815. Forfeiture or payment does not relieve the defendant.
816. When defendant exonerated.

DCCCX. If without sufficient excuse the defendant neglect to appear for arraignment, or for trial or judgment, or upon any other occasion where his presence in Court may be lawfully required, or to surrender himself in execution of the judgment, the Court must direct the fact to be entered upon its minutes, and the recognizance of his bail is thereupon forfeited.

DCCCXI. If at any time before the final adjournment of the Court the defendant appear and satisfactorily excuse his neglect, the Court may direct the forfeiture of the recognizance to be discharged upon such terms as are just.

DCCCXII. If the forfeiture be not discharged, as provided in the last article, the public prosecutor may at any time after the

adjournment of the Court, proceed by action only against the bail upon their recognizance.

DCCCXIII. After the forfeiture of the recognizance, any Superior Court or Judge of the district, section or county, may upon good cause shown remit the forfeiture or any part thereof, upon such terms as are just.

DCCCXIV. The application must be upon at least three days notice to the public prosecutor of the district or county, with copies of the affidavits and papers on which it is founded; and can be granted only upon the payment of the costs and expenses incurred in the proceedings for the enforcement of the forfeiture.

DCCCXV. Although a recognizance may be forfeited and the penalty levied or paid, the defendant continues to be amenable to answer for the crime in respect of which the recognizance was taken.

Talf. Dick. Quart. Sep. 125.

DCCCXVI. A party under recognizance to prosecute or answer a charge, is not exonerated from his recognizance if he depart without having his appearance entered, although no bill be found, unless the Court shall in their discretion so order.

Talf Dick. Q. S. 125.

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ARTICLE VIII.

## RE-COMMITMENT OF THE DEFENDANT AFTER HAVING GIVEN BAIL.

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817. In what cases.
818. Contents of the order.
819. Defendant may be arrested in any county.
820. If for failure to appear for judgment, defendant must be committed.
821. If for other cause he may be admitted to bail.
822. Bail in such case by whom taken.
823. Form of the undertaking.
824. Qualifications of bail, and how put in.

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DCCCXVII. The Court to which the committing magistrate returns the depositions and statement, or in which an indictment or an appeal is pending, or to which a judgment on appeal is remitted to be carried into effect, may, by an order entered upon its minutes, direct the arrest of the defendant, and his commitment to the officer to whose custody he was committed at the time he was admitted to bail, and his detention, until legally discharged in the following cases:

1. When, by reason of his failure to appear, he has incurred a forfeiture of his bail:

2. When it satisfactorily appears to the Court that his bail, or either of them, are dead, or insufficient, or have removed from the Province:

3. Upon an indictment being found, in the cases provided in article

DCCCXVIII. The order for the re-commitment of the defendant must recite, generally, the facts upon which it is founded, and direct that the defendant be arrested by any peace officer in this Province, and committed to the officer to whose custody he was committed at the time he was admitted to bail, to be detained until legally discharged.

DCCCXIX. The defendant may be arrested pursuant to the order, upon a certified copy thereof, in any district or county, in the same manner as upon a warrant of arrest; except, that when arrested in another district or county the order need not be endorsed by a magistrate thereof.

DCCCXX. If the order recite, as the ground upon which it is made, the failure of the defendant to appear for judgment upon conviction, the defendant must be committed, according to the requirement of the order.

DCCCXXI. If the order be made for any other cause, and the offence be bailable, the Court may fix the amount of bail, and may direct in the order that the defendant be admitted to bail in the sum fixed, which must be specified in the order.

DCCCXXII. When the defendant is admitted to bail, the bail may be taken by any magistrate in the district or county having authority in a similar case to admit to bail upon the holding of the defendant to answer before indictment, or by any other magistrate to be designated by the Court.

DCCCXXIII. When bail is taken upon the re-commitment of the defendant, the recognizance of bail must be in substantially the following form:

"An order having been made on the day of , 1850, "by the Court of (*naming the Court,*) that A. B. be admitted to "bail in the sum of in an action pending in that "Court against him in behalf of the Queen, upon a [*present-"ment, indictment or appeal, as the case may be.*]

"We, C. D., of [*stating his place of residence and occupation,*] "and E. F. of [*stating his place of residence and occupation,*] "hereby undertake that the above named A. B., shall appear in "that or any other Court in which his appearance may be law-"fully required, upon that [*presentment. indictment or appeal, as "the case may be,*] and shall at all times render himself amenable "to its orders and process, and appear for judgment, and sur-"render himself in execution thereof; or if he fail to perform "either of these conditions, that we will pay to the Queen the "sum of [*inserting the sum in which the defendant is admitted to "bail.*

DCCCXXIV. The bail must possess the qualifications, and be put in, in all respects, in the manner prescribed above.

## CHAPTER II.

## COMPELLING THE ATTENDANCE OF WITNESSES.

825. Subpœna defined.
826. Magistrate may issue subpœnas on information or presentment.
827. Prosecuting attorney may issue subpœnas for witnesses before Grand Jury.
828. He may also issue subpœnas for the Queen on trial of an indictment.
829. Clerk may issue blank subpœnas for witnesses for defendant on trial.
830. Form of subpœna.
831. Requirement in subpœna to produce books, papers and documents.
832. Subpœna, by whom served.
833. How served.
834, 835. Payment of expenses of witness, when he is from without the county or is poor.
836. Witnesses residing or served with subpœna out of the county, when and how compelled to attend.
837. How witness in custody to be brought up.
838. Disobedience to subpœna or refusal to be sworn or to testify, how punished.
839. Witness for defendant disobeying a subpœna, to forfeit twelve pounds ten shillings.
840. Order of delivery of persons to be tried.

DCCCXXV. The process by which the attendance of a witness before a Court or magistrate is required, is a subpœna.

DCCCXXVI. A magistrate before whom an information is laid or to whom a presentment of a Grand Jury is sent, may issue subpœnas subscribed by him for witnesses within the Province, either on behalf of the Queen or of the defendant.

DCCCXXVII. The public prosecutor of the district or county may issue subpœnas subscribed by him, for witnesses within the Province, in support of the prosecution or for such other witnesses as the Grand Jury may direct, to appear before the Grand Jury upon an investigation pending before them.

DCCCXXVIII. He may in like manner issue subpœnas subscribed by him, for witnesses within the Province in support of an indictment to appear before the Court at which it is to be tried.

DCCCXXIX. The Clerk of the Court at which an indictment is to be tried must at all times, upon the application of the defendant and without charge, issue as many blank subpœnas, under the seal of the Court and subscribed by him as Clerk, for witnesses within the Province as may be required by the defendant.

DCCCXXX. A subpœna authorized by the last four articles must be substantially in the following form:

"In the name of Our Sovereign Lady the Queen:
"To A. B.
"You are commanded to appear before C. D., a Justice of the "Peace of the the town of , (*or the Grand Jury of the county*

" *of* , *or the Court of Sessions of the county of* , *or as the* " *case may be,*) at (*naming the place*) on (*stating the day and* " *hour,*) as a witness in a criminal action prosecuted by the " Queen, against E. F.

" Dated at the town of , (*as the case may be*) the day of " 1850.

" G. H., Justice of the Peace," (*or I. K., district attorney, or by* " *order of the Court, L. M., Clerk, as the case may be.*)"

DCCCXXXI. If books, papers or documents be required, a direction to the following effect must be contained in the subpœna:—" And you are required also to bring with you the following," (*describing intelligibly the books, papers or documents required.*)

DCCCXXXII. A peace officer must serve in his district, county, city, town or village, as the case may be, any subpœna delivered to him for service either on the part of the prosecutor or of the defendant, and must make a written return of the service subscribed by him, stating the time and place of service without delay. A subpœna may however be served by any other person.

DCCCXXXIII. A subpœna is served by delivering it, or by showing it, and delivering a copy thereof to the witnesses personally.

DCCCXXXIV. When a person attends before a Magistrate, Grand Jury or Court, as a witness on behalf of the Queen, upon a subpœna, or pursuant to a recognizance, and it appears that he has come from a place out of the district or county, or that he is poor, the Court, if the attendance of the witness be upon a trial by an order entered upon its minutes, or any Judge of a Supereior Court or any District or Circuit Judge, by a written order, may direct the Sheriff to pay the witness a reasonable sum, to be specified in the order, for his expenses.

DCCCXXXV. Upon the production of the order, or a certified copy thereof, the said Sheriff must pay the witnesses the sum specified therein.

DCCCXXXVI. No person is obliged to attend as a witness before a Court or magistrate out of the district or county where the witness resides or is served with the subpœna, unless a Judge of the Court in which the offence is triable or a Judge of any Superior Court, upon an affidavit of the prosecutor or District Attorney, or of the defendant or his counsel, stating that he believes that the evidence of the witness is material, and his attendance at the examination or trial necessary, shall endorse on the subpœna an order for the attendance of the witness, and unless such Judge shall endorse on the subpœna the amount of expenses to be paid or tendered, and unless the said expenses are so paid or tendered to the witness, if he require payment of the same.

DCCCXXXVII. If the witness be in custody of the trial Court, he may be brought up by a rule or order of the Court; if in custody of another Court, he may be so brought up by *habeas corpus.*

DCCCXXXVIII. Disobedience to a subpœna or a refusal to be sworn or to testify, may be punished by the Court or magistrate as for a criminal contempt.

DCCCXXXIX. A witness disobeying a subpœna issued on the part of the defendant also forfeits to the defendants the sum of , which may be recovered in a civil action.

DCCCXL. 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 be 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.

## CHAPTER III.

## EXAMINATION OF WITNESSES CONDITIONALLY.

841. Witnesses to be examined conditionally, for the defendant, as provided in this Chapter.
842. In what cases defendant may apply for order.
843. Application, on what facts, to be founded.
844. If during term, to be made to the Court.
845. If not during term, to whom to be made.
846. The order, when granted and what to contain.
847. If made by the court, may direct examination before a judge or magistrate. If made by a judge, examination to be before him.
848. On proof of service, if prosecuting Attorney absent, examination to proceed.
849. If facts on which order was founded, be disproved, examination not to proceed.
850. Testimony, how taken and authenticated.
851. Deposition, how, by whom and when fyled.
852. When it may be read in evidence.
853. When to be excluded.
854. On reading the deposition, on trial, what objections may be taken.
855. Attendance of witness for examination, how compelled.
856. Disobedience of witness, how punished.

DCCCXLI. When a defendant has been held to answer a charge for a public offence, he may, either before or after indictment, have witnesses examined conditionally on his behalf, as prescribed in this Chapter, and not otherwise.

DCCCXLII. When a material witness for the defendant is about to leave the Province, or is so sick or inform as to afford reasonable grounds for apprehending that he will be unable to attend the trial, the defendant may apply for an order that the witness be examined conditionally.

DCCCXLIII. The application must be made upon affidavit, showing,

1. The nature of the offence charged;

2. The state of the proceedings in the action;

3. The name and residence of the witness, and that his testimony is material to the defence of the action; and,

4. That the witness is about to leave the Province, or is so sick or infirm, as to afford reasonable grounds for apprehending that he will be unable to attend the trial.

DCCCXLIV. The application, if made during the term, must be made to the Court.

DCCCXLV. If not made during the term, it may be made when the indictment is pending in a Court of Sessions of the Peace, to a Judge of any Superior Court, or to a District or Circuit Judge.

DCCCXLVI. If the Court or officer be satified, that the examination of the witness is necessary to the attainment of justice, an order must be made that the witness be examined conditionally, at a specified time and place, and that a copy of the order, and of the affidavit on which it was granted, be served on the attorney, within a specified time before that fixed for the examination.

DCCCXLVII. If the order be made by the Court, it may direct that the examination be taken before a Judge thereof, or before a magistrate in the county, to be named in the order. If made by any of the officers mentioned in the 845th article, it must direct the examination to be taken before him.

DCCCXLVIII. On proof being furnished to the officer before whom the examination is appointed, of the service upon the prosecuting attorney, of a copy of the order, and of the affidavit on which it was granted, if no counsel appear on the part of the Queen, the examination must proceed.

DCCCXLIX. If the public prosecutor or other counsel appear on the part of the prosecution, and it be shown to the satisfaction of the court or officer, by affidavit or other proof, or on the examination of the witness, that he is not about to leave the Province, or is not sick or infirm, or that the application was made to avoid the examination of the witness on the trial, the examination cannot take place; otherwise it must proceed.

DCCCL. The testimony given by the witness must be reduced to writing, and authenticated in the same manner as the testimony of a witness taken in support of an information.

DCCCLI. The deposition must be retained by the officer taking it, and fyled by him in the office of the Clerk of the Court without unnecessary delay.

DCCCLII. The deposition, or a certified copy thereof, may be read in evidence by either party on the trial, upon its appearing that the witness is unable to attend, by reason of his death, insanity, sickness or infirmity, or of his continued absence from the Province.

DCCCLIII. The deposition cannot, however, be read, if it appear that the copy of the order, and of the affidavit on which

it was founded, was not served on the prosecuting attorney, as directed, or that the examination was in any respect unfair, or not conducted as prescribed in this Chapter.

DCCCLIV. Upon the reading of the deposition in evidence, the same objections may be taken to a question or answer contained therein, as if the witness had been examined orally in Court.

DCCCLV. The attendance of the witness may be enforced by a subpœna subscribed by the officer, or issued under the seal of the Court.

DCCCLVI. Disobedience to the subpœna, or a refusal to be sworn or to testify, may be punished by the Court or officer, as for a criminal contempt in the manner provided in the Code of Civil Procedure; and the witness also forfeits to the defendant the sum of twelve pounds ten shillings, which may be recovered in a civil action.

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## CHAPTER IV.

## EXAMINATION OF WITNESSES, ON COMMISSION.

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857. Witnesses residing out of the Province to be examined for defendant, as provided in this chapter.
858. In what cases defendant may apply for order to examine witnesses on commission.
859. Commission defined.
860. Application for commission, on what facts to be founded.
861. If during term, to be made to the Court.
862. If not during term, to whom to be made.
863. Notice of application, when required and how given.
864. Order for commission, when granted.
865. Trial to be stayed until execution and return of commission.
866. Interrogatories and notice of settlement.
867. Cross-interrogatories and notice of settlement.
868, 869. What may be inserted in interrogatories.
870. Direction as to return of commission.
871. Commission, how executed.
872. Copy of last article to be annexed to commission.
873, 874. Commission, how returned, when delivered to agent for that purpose.
875. When and how fyled.
876. Commission returned by mail, how disposed of.
877. Commission and return to be open for inspection, and copies to be furnished.
878 Deposition to be read in evidence. What objections may be taken thereto.

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DCCCLVII. When an issue of fact is joined upon an indictment, the defendant may have any material witness residing out of the Province examined in his behalf, as prescribed in this Chapter, and not otherwise.

DCCCLVIII. When a material witness for the defendant resides out of the Province, the defendant may apply for an order that the witness be examined on a commission.

DCCCLIX. A commission is a process issued under the seal of the Court and the signature of the Clerk, directed to one or more persons designated as Commissioners, authorizing them to examine the witness upon oath on interrogatories annexed thereto, and to take and return the deposition of the witness according to the directions given with the commission.

DCCCLX. The application must be made upon affidavit showing,

1. The nature of the offence charged:

2. The state of the proceedings in the action and that issue of fact has been joined therein:

3. The name of the witness and that his testimony is material to the defence of the action:

4. That the witness resides out of the Province:

DCCCLXI. The application if made during the term must be made to the Court.

DCCCLXII. If not made during the term the application may be made as follows:

When the indictment is pending in a Court of Superior Criminal Jurisdiction, to a Judge of any Superior Court or to a district or circuit Judge.

DCCCLXIII. If the application be made to the Court it may be without notice to the prosecuting attorney, unless the Court direct notice to be given, in which case it must prescribe the manner of giving the same. If made to one of the officers mentioned in the last section, the application must be upon three days' notice to the prosecuting attorney with a copy of the affidavit upon which it is founded.

DCCCLXIV. If the Court or Judge to whom the application is made be satisfied that the witness resides out of the Province, and that his examination is necessary to the attainment of justice an order must be made that a commission be issued to take his testimony, and that the Sovereign be permitted to join in the commission and to examine witnesses in support of the indictment.

DCCCLXV. If the application for a commission be granted, the Court or Judge must insert in the order therefor a direction that the trial of the indictment be stayed for a specified time, reasonably sufficient for the execution and return of the commission.

DCCCLXVI. When the commission is ordered, the defendant must serve upon the attorney, and the prosecuting attorney, if he intend to join in the commission and examine witnesses in support of the indictment, must serve upon the defendant or his counsel, a copy of the interrogatories to be annexed thereto, with a notice of two days of their settlement, before a Judge who might have granted the order out of term, as provided above.

DCCCLXVII. The public prosecutor and the defendant may in the same manner, serve cross-interrogatories, to be annexed to the commission, with the like notice of the settlement thereof.

DCCCLXVIII. In the interrogatories, either party may insert any question pertinent to the issue.

DCCCLXIX. Upon the settlement of the interrogatories, the judge must expunge every question not pertinent to the issue, and modify the questions so as to conform them to the rules of evidence, and when settled, must endorse upon them his allowance, and annex them to the commission.

DCCCLXX. Unless the parties otherwise consent, by an endorsement upon the commission, the officer must endorse thereon a direction as to the manner in which it must be returned; and may in his discretion direct that it be returned by mail or otherwise, addressed to the clerk of the Court in which the indictment is pending, designating his name, and the place where his office is kept.

DCCCLXXI. The commissioners or any one of them, unless otherwise specially directed, may execute the commission as follows:

1. They must publicly administer an oath to the witness, that his answers given to the interrogatories shall be the truth, the whole truth, and nothing but the truth:

2. They must cause the examination of the witness to be reduced to writing:

3. They must write the answers of the witness, as nearly as possible in the language in which he gives them, and read to him each answer as it is taken down, and correct or add to it until it is made conformable to what he declares is the truth:

4. If the witness decline answering a question, that fact, with the reason for which he declines answering it, as he gives it, must be stated:

5. If papers or documents are produced before them, and proved by the witness, they must be annexed to his deposition, and be subscribed by the witness, and certified by the commissioners:

6. The commissioners must subscribe their names to each sheet of the deposition, and annex the deposition, with the papers or documents proved by the witness, to the commission, and must close it up under seal, and address it as directed thereon:

7. If there be a direction on the commission, to return it by mail, the commissioners must immediately deposit it in the nearest post-office. If any other direction be made, by the written consent of the parties, or by the officer, on the commission, as to its return, they must comply with the direction.

DCCCLXXII. A copy of the last article must be annexed to the commission.

DCCCLXXIII. If the commission and return be delivered by the commissioners to an agent, he must deliver it to the clerk to whom it it is directed, or to a judge of the Court in which the indictment is pending, by whom it may be received and opened, upon the affidavit of the agent that he received it from

the hands of one of the commissioners, and that it has not been opened or altered since he received it.

DCCCLXXIV. If the agent be dead, or from sickness or other casualty unable personally to deliver the commission and return, as prescribed in the last article, it may be received by the clerk or judge from any other person, upon his making an affidavit that he received it from the agent, that the agent is dead, or from sickness or other casualty unable to deliver it, that it has not been opened or altered since the person making the affidavit received it, and that he believes it has not been opened or altered since it came from the hands of the commissioners.

DCCCLXXV. The clerk or judge receiving or opening the commission and return, must immediately file it, with the affidavit mentioned in the two last articles, in the office of the clerk of the Court in which the indictment is pending.

DCCCLXXVI. If the commission and return be transmitted by mail, the clerk to whom it is addressed must receive it from the post-office, and open and file it in his office, where it must remain, unless the Court otherwise direct.

DCCCLVII. The commission and return must at all times be open to the inspection of the parties, who must be furnished by the clerk with copies of the same, or of any part thereof, on payment of his fees, at the rate of for every hundred words.

DCCCLXXVIII. The deposition, taken under the commission, may be read in evidence by either party on the trial, and the same objections may be taken to a question in the interrogatories, or to an answer in the deposition, as if the witness had been examined orally in court.

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## CHAPTER V.

## INQUIRY INTO THE INSANITY OF THE DEFENDANT BEFORE TRIAL OR AFTER CONVICTION.

879. An insane person cannot be tried, sentenced or punished for a public offence.
880. When doubt arises as to sanity of defendant, on calling indictment for trial, or defendant for judgment, jury to be ordered and impanelled to try the question.
881. Trial or judgment to be suspended until question of insanity determined.
882. Order of the trial of the question of insanity.
883. Charge of the Court.
884. If defendant found sane, trial to proceed or judgment to be pronounced.
885. If found insane, trial or judgment suspended, and defendant to be committed to Provincial Lunatic Asylum, if his discharge be dangerous to the public peace or safety.
886. If defendant committed, bail exonerated.
887. Detention of defendant in Asylum and proceedings on his becoming sane.
888. Expenses incident to sending defendant to Asylum, how paid.
889. Jury may act on their own view or knowledge.

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DCCCLXXIX. An act done by a person in a state of insanity cannot be punished as a public offence, nor can a person be

tried, adjudged to punishment or punished for a public offence while he is insane, though such insanity shall not prevent a Grand Jury from finding a true bill against him, if the evidence is sufficient.

8 C. & P. 195.

DCCCLXXX. When an indictment is called for trial, or upon conviction, the defendant is brought up for judgment, if a doubt arise as to the sanity of the defendant, the Court must order a Jury to be impanelled from the jurors summoned and returned for the term, or who may be summoned by direction of the Court as hereinafter provided, who shall inquire into the fact.

DCCCLXXXI. The trial of the indictment or the pronouncing of the judgment, as the case may be, must be suspended until the question of insanity is determined by the verdict of the Jury.

DCCCLXXXII. The trial of the question of insanity must proceed in the following order;—

1. The counsel for the defendant, if there be any, must open the case and offer evidence in support of the allegation of insanity;

2. The counsel for the prosecution may then open their case and offer evidence in support thereof;

3. The parties may then respectively offer rebutting testimony only, unless the Court for good reason, in furtherance of justice, permit them to offer evidence upon their original case.

4. When the evidence is concluded, unless the case is submitted to the Jury on either side or on both sides, without argument, the counsel for the prosecution must commence, and the defendant or his counsel may reply.

5. If the indictment be for an offence punishable with death, two counsel on each side may argue the cause to the Jury; if it be for any other offence, the Court may, in its discretion, restrict the argument to one counsel on each side.

6. The Court must then charge the Jury.

DCCCLXXXIII. The provisions in respect to the duty of the Court upon questions of law, and of the Jury upon questions of fact, and the provisions in respect to the charge of the Court to the Jury, upon the trial of an indictment, apply to the trial of the question of insanity.

DCCCLXXXIV. If the Jury find the defendant sane, the trial of the indictment must proceed, or judgment may be pronounced, as the case may be.

DCCCLXXXV. If the Jury find the defendant is insane, the trial or judgment must be suspended until he become sane; and the Court, if it deem his discharge dangerous to the public peace or safety, may order that he be, in the mean time, committed by the Sheriff to the Provincial Lunatic Asylum, and that upon his becoming sane he be re-delivered by the Superintendent of the Asylum to the Sheriff.

DCCCLXXXVI. The commitment of the defendant, as mentioned in the last article, exonerates his bail.

DCCCLXXXVII. If the defendant be received into the Asylum he must be detained there until he becomes sane. When he becomes sane, the Superintendent must give notice of that fact to the Sheriff and public prosecutor of the district or county. The Sheriff must thereupon, without delay, bring the defendant from the Asylum, and place him in the proper custody until he be brought to trial or judgment, as the case may be, or be legally discharged.

DCCCLXXXVIII. The expenses of sending the defendant to the Asylum, of keeping him there, and of bringing him back, are, in the first instance, chargeable to the Province; but the Province may recover them from the estate of the defendant, if he have any, or from a relative, town, city, district or county, who is bound to provide for and maintain him elsewhere.

DCCCLXXXIX. A Jury may form their own judgment of the insanity from the defendant's demeanour, during the inquest or trial, without further evidence, (7 Ad. & El. 536); where strong symptoms of insanity are apparent during the inquest or trial, the defendant need not be asked if he would question any witness or remark upon the evidence.

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## CHAPTER VI.

## COMPROMISING CERTAIN PUBLIC OFFENCES, BY LEAVE OF THE COURT.

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890. Certain offences, for which the party injuried has a civil action, may be compromised.
891. Compromise to be by permission of the Court. Order thereon.
892. Order, a bar to another prosecution.
893. No public offence to be compromised, except as provided in this chapter.

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DCCCXC. When a defendant is held to answer, on a charge of misdemeanor, for which the person injured by the act constituting the offence, has a remedy by civil action, the offence may be compromised, as provided in the next article, except when it was committed,

1. By or upon an officer of justice, while in the execution of the duties of his office:

2. Riotously: or,

3. With an intent to commit a felony.

DCCCXCI. If the party injured appear before the Court, to which the depositions and statement are required to be returned, at any time before trial on an indictment for the offence, and acknowledge in writing that he has received satisfaction for the injury, the Court may, in its discretion, on payment of costs incurred, order all proceedings to be stayed upon the prosecution, and the defendant to be discharged therefrom. But in that case, he reasons for the order must be set forth therein and entered upon the minutes.

DCCCXCII. The order authorized by the last article, is a bar to another prosecution for the same offence.

DCCCXCIII. No public offence can be compromised, nor can any proceeding for the prosecution or punishment thereof, upon a compromise, be stayed, except as provided in this Chapter.

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## CHAPTER VII.

## DISMISSAL OF THE ACTION, BEFORE OR AFTER INDICTMENT, FOR WA T OF PROSECUTION, OR OTHERWISE.


894. Dismissal, when a person held to answer is not indicted at the next term thereafter.
895. When a person indicted is not brought to trial at the next term thereafter.
896. Court may order action to be continued, and in the mean time discharge defendant from custody, on his own undertaking, or on bail.
897. If action dismissed, defendant to be discharged from custody, or his bail exonerated, or deposit of money refunded.
898. Court may, of its own motion, or on application of district attorney order indictment to be dismissed. Order to state reasons.
899. *Nolle prosequi* abolished. No indictment to be dismissed or abandoned, except according to this Chapter.
900. Dismissal, a bar, in misdemeanor; but not in felony.


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DCCCXCIV. When a person has been held to answer for a public offence, if an indictment be not found against him, at the next term of the Court at which he is held to answer, the Court must order the prosecution to be dismissed, unless good cause to the contrary be shown.

DCCCXCV. If a defendant, indicted for a public offence, whose trial has not been postponed upon his application, be not brought to trial at the next term of the Court in which the indictment is triable, after it is found, the Court must order the indictment to be dismissed, unless good cause to the contrary be shown.

DCCCXCVI. If the defendant be not indicted or tried, as provided in the two last articles, and sufficient reason therefor be shown, the Court may order the action to be continued from term to term, and in the mean time may discharge the defendant from custody, on his own recognizance, or on the recognizance of bail for his appearance to answer the charge at the time to which the action is continued.

DCCCXCVII. If the Court direct the action to be dismissed, the defendant must, if in custody, be discharged therefrom, or if admitted to bail, his bail is exonerated.

DCCCXCVIII. The Court may, either of its own motion, or upon the application of the prosecuting attorney, and in furtherance of justice, order an action, after indictment, to be dismissed; but in that case, the reasons of the dismissal must be set forth in the order which must be entered upon the minutes.

DCCCXCIX. The entry of a *nolle prosequi* is abolished; and neither the attorney-general, nor the prosecuting attorney, can

discontinue or abandon a prosecution for a public offence, except as provided in the last article.

DCCCC. An order for the dismissal of the action, as provided in this Chapter, is a bar to another prosecution for the same offence, if it be a misdemeanor; but it is not a bar, if the offence charged be a felony.

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## CHAPTER VIII.

## PROCEEDINGS AGAINST CORPORATIONS.

901. Summons upon an information or presentment against a corporation, by whom issued, and when returnable.
902. Form of the summons.
903. When and how served.
904. Examination of the charge.
905. Certificate of the magistrate, and return thereof with the depositions.
906. If magistrate certify that there is sufficient cause to believe the corporation guilty, grand jury may proceed as in the case of a natural person.
907. Appearance, and plea to indictment, and proceedings thereon
908. Fine on conviction, how collected.

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DCCCCI. Upon an information or presentment against a corporation, the magistrate must issue a summons signed by him, with his name of office, requiring the corporation to appear before him, at a specified time and place, to answer the charge; the time to be not less than ten days after the issuing of the summons.

DCCCCII. The summons must be in substantially the following form:

"District or County of [*or as the case may be.*]

"In the name of our Sovereign Lady the Queen

"To the [*naming the Corporation.*]

"You are hereby summoned to appear before me, at [*naming the place,*] on [*specifying the day and hour,*] to answer the charge made against you, upon *the information of A. B.*, or, [*the presentment of the Grand Jury of the district or county of* ,] or, [*as the case may be,*] for [*designating the offence, generally.*]

"Dated at the city [*or town,*] of , the day of , 1850.

"G. H., *Justice of the Peace,*"
[or, as the case may be.]

DCCCCIII. The summons must be served at least five days before the day of appearance fixed therein, by delivering a copy thereof and showing the original to the president, or other head of the corporation, or to the secretary, cashier, or managing agent thereof.

DCCCCIV. At the time appointed in the summons, the magistrate must proceed to investigate the charge, in the same manner as in the case of a natural person brought before him, so far as those proceedings are applicable.

DCCCCV. After hearing the proofs, the magistrate must certify upon the depositions, either that there is, or is not sufficient cause to believe the corporation guilty of the offence charged, and must return the depositions and certificate, in the manner prescribed in charges before magistrates.

DCCCCVI. If the magistrate return a certificate that there is sufficient cause to believe the corporation guilty of the offence charged, the Grand Jury may proceed thereon, as in the case of a natural person held to answer.

DCCCCVII. If an indictment be found, the corporation may appear, by counsel, to answer the same. If they do not thus appear, a plea of not Guilty must be entered, and the same proceedings had thereon as in other cases.

DCCCCVIII. When a fine is imposed upon a corporation, on conviction, it may be collected by virtue of the order imposing it, by the Sheriff of the county, out of their real and personal property, in the same manner as upon an execution in a civil action.

## CHAPTER IX.

## ENTITLING AFFIDAVITS.

909. Affidavits defectively entitled, valid.

DCCCCIX. It is not necessary to entitle an affidavit or deposition, in the action, whether taken before or after indictment, or upon an appeal; but if made without a title, or with an erroneous title, it is as valid and effectual for every purpose, as if it were duly entitled, if it intelligibly refer to the proceeding, indictment or appeal in which it is made.

## CHAPTER X.

## ERRORS AND MISTAKES, IN PLEADINGS AND OTHER PROCEEDINGS.

910. No departure from the forms prescribed by this code, or error or mistake in a pleading or proceeding, material, unless it prejudice or tend to prejudice a substantial right.
911. Indictments not to abate by dilatory plea.
912. Judgments not be stayed for certain defects.

DCCCCX. Neither a departure from the form or mode prescribed by this Code, in respect to any pleadings or proceedings, nor an error or mistake therein, renders them invalid, unless it have actually prejudiced the defendant, or tend to his prejudice, in respect to a substantial right.

DCCCCXI. 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.

DCCCCXII. No judgment upon any indictment, whether after verdict or by confession, default or otherwise, shall be stayed or traversed by want of the averment of any matter unnecessary to be proved, nor for the omission of the words "as appears by the record," or "with force and arms," or "against the peace," nor for the insertion of the words, "against the force of the statute," instead of "against the form of the statutes," or *vice versa*, nor for that any person mentioned in the indictment is or was designated by the 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 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 a proper or perfect venue, where the Court shall appear by the indictment or information to have jurisdiction over the offence.

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## CHAPTER XI.

## DISPOSAL OF PROPERTY STOLEN OR EMBEZZLED.

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913. When property, alleged to be stolen or embezzeled, comes into custody of peace officer, he must hold it subject to order of magistrate.
914. Order for its delivery to owner.
915. When it comes into custody of magistrate, he must deliver it to owner, on proof of title and payment of expenses.
916. Court in which trial is had for stealing or embezzling it, may order it to be delivered to owner.
917. If not claimed in six months, to be delivered to County Treasurer.
918. Receipt for money or property, taken from a person arrested for a public offence.
919. Duties of Police Clerks, in making entries of property stolen or embezzled, and furnishing copy to Chief of Police.
920. Police Clerks to take charge of property stolen or embezzled, how designated, and regulations respecting their duties and security.

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DCCCCXIII. When property, alleged to have been stolen or embezzled, comes into the custody of a peace officer, he must hold it, subject to the order of the magistrate authorized by the next article to direct the disposal thereof.

DCCCCXIV. On satisfactory proof of the title of the owner of the property, the magistrate before whom the information is laid, or who examines the charge against the person accused of stealing or embezzling the property, may order it to be delivered to the owner, on his paying the reasonable and necessary expenses incurred in its preservation, to be certified by the magistrate. The order entitles the owner to demand and receive the property.

DCCCCXV. If property stolen or embezzled comes into the custody of a magistrate, it must be delivered to the owner, on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate.

DCCCCXVI. If property stolen or embezzled have not been delivered to the owner, the Court before which a trial is had for stealing or embezzling it, may, on proof of his title, order it to be restored to the owner.

DCCCCXVII. If property stolen or embezzeled, be not claimed by the owner before the expiration of six months from the conviction of a person for stealing or embezzling it, the magistrate or other officer having it in custody, must, on payment of the necessary expenses incurred in its preservation, cause it to be sold at public auction, and the proceeds accounted for to the County Treasurer.

DCCCCXVIII. When money or other property is taken from a defendant, arrested upon a charge of a public offence, the officer taking it, must, at the time, give duplicate receipts therefor, specifying particularly the amount of money or the kind of property taken; one of which receipts he must deliver to the defendant, and the other of which he must forthwith fyle with the clerk of the Court to which the depositions and statement must be sent.

DCCCCXIX. The Clerks of the Peace in each district or county, must enter in suitable books, a description of every article of property, alleged to be stolen or embezzled, and brought into the office, or taken from the person of a prisoner; and must attach a number to each article, and make a corresponding entry thereof. They must also enter in a suitable book, a statement of all property stolen or embezzled, of which information is given to them, and must daily furnish a copy of that statement, to the Chief of Police in the chief city or town of the district or county.

DCCCCXX. The Clerks of the Peace shall take charge of all property alleged to be stolen or embezzled, and which may be brought into the Police Office or taken from the person of a prisoner, and shall deposit the same for safe keeping in some safe repository, and shall be answerable for the same.

## CHAPTER XII.

## REPRIEVES, COMMUTATIONS, AND PARDONS.

921. Power of Governor to grant reprieves, commutations, and pardons.
922. Not to affect Royal Prerogative.
923. Pardon, how granted.
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925. Pardon though non-payment of money.
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929, 930, 931. Reprieve and its effect.
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933. Penalty on justices contravening this Act.
934. Papers relating to application, to be fyled with Secretary of the Province.

DCCCCXXI. The Governor has power to grant reprieves, commutations and pardons, after conviction, for all offences, except cases of impeachment and nuisance not abated, upon such conditions, and with such restrictions and limitations, as he may think proper, subject to the regulations provided in this Chapter.

DCCCCXXII. Nothing herein contained shall affect Her Majesty's Royal Prerogative of Mercy, provided that no offence can be pardoned before it is committed, and such pardon shall be void.

Hawk. P. C., A. 2, c. 37, s. 38—Ch. Burns' Just., "Pardon."

DCCCCXXIII. A pardon may be either by Act of Parliament or by Letters Patent.

Stph. C. L., 334, 5—Ch. Burns' Just., "Pardon."

DCCCCXXIV. When an application is made to the Governor, for a pardon, he may require the presiding Judge of the Court before which the conviction was had, or the public prosecutor by whom the indictment was prosecuted, to furnish him, without delay, with a statement of the facts proved on the trial, and of any other facts having reference to the propriety of granting or refusing the pardon.

DCCCCXXV. It shall be lawful for the Queen's Majesty, and for the Governor aforesaid, to extend the Royal Mercy to any person imprisoned for any offence, although he shall be imprisoned for non-payment of money to some party other than the Crown.

DCCCCXXVI. Where the Queen's Majesty, or the Governor of this Province for the time being, shall be pleased to extend the Royal Mercy to any offender convicted of any offence, 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 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 offence committed after the granting of any such pardon

DCCCCXXVII. The pardon, either free or conditional, of a defendant after judgment, prevents the execution of the judgment and gives him new credit, character and capacity (1 Ch. C. L. 775): Provided, that no disability specially imposed upon him by law as the consequence of his conviction shall be removed by such pardon, 1 Ch. C. L. 776, and cases there cited,) nor without express words of restitution shall any property forfeited by his conviction be revested in him. (Hawk c. 6, s. 54; Ch. Burns, "Pardon.")

DCCCCXXVIII. The pardon, either free or conditional, of any defendant for an offence, and his discharge out of custody shall have the effect of a pardon as above for such offence, but shall not relieve him from punishment upon conviction for an offence committed after the grant of such pardon.

DCOCCXXIX. The execution of the judgment may likewise be suspended by a reprieve, (1 Ch. C. L. 756,) which may be granted either by the Crown, or by the Court empowered to award execution; (1 Hale, P. C. 368; 2 Hale, P. C. 412.; 1 Ch. C. L. 758.) if by the Crown, it is grantable at its mere discretion, expressed to the said Court by any sufficient means to convey the same, and thereupon the Court shall respite the defendant accordingly (same Authorities), if by the Court, it is grantable at discretion whenever substantial justice requires the withdrawal of the judgment.

2 Hale, P. C. 412; 1 Ch. C. L. 758-9.

DCCCCXXX. The Court is bound to grant a reprieve in the following cases:—

1st. When the defendant, being a female, is pregnant.

1 Hale, P. C. 368; 2 Hale, P. C. 406, 413; 4 Bl. Com. 395; 1 Ch. C. L. 759.

2. When the defendant becomes insane after judgment pronounced against him.

2 Hale, P. C. 370; 4 Bl. Com. 395; 1 Ch. C. L. 761.

DCCCCXXXI. *a.*—Judges of Assizes have the power of reprieve after their Commission is determined.

2 Hale, 12; 4 Bl. Com. 387; Hawk, b. 2, c. 2, s. 8.

DCCCCXXXII. 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 of 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.

DCCCCXXXIII. If any justice or coroner shall neglect or offend in any thing contrary to the true intent and meaning of any of the provisions of this Act, it shall be lawful for the Court to whose officer any such examination, information, evidence, bailment, recognizance, or inquisition ought to have been delivered, and such Court is hereby authorized and required upon examination and proof of the offence, in a summary manner, to set such fine upon every such justice or coroner as the Court shall think meet.

DCCCCXXXIV. When a reprieve, commutation or pardon is granted, all the papers or documents connected therewith presented to the Governor, shall be lodged within ten days after the grant in the office of the Secretary of the Province, by whom they shall be kept as records open to public inspection.

# PART V.

# OF PROCEEDINGS IN THE POLICE, OR MAGISTRATES' COURTS.

1. Of the Proceedings in Police Courts.
2. Of Appeals from the Police Courts.

## TITLE I.

## OF THE PROCEEDINGS IN POLICE COURTS.

935. Charge to be read to defendant, and he required to plead.
936. The plea, and how put in.
937. Issue, how tried.
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939. Same in summary conviction.
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944, 945, 946. Assault.
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948, 949. Certificate of conviction. Its form.
950. Magistrate may discharge.
951. Certificate, when fyled.
952. Certificate, conclusive evidence.
953. Judgment, by whom executed.
954. Fine, by whom received before commitment, and how applied.
955. Fine, to whom paid after commitment, and how applied.
956. Proceedings against Magistrate or Sheriff, on neglect to pay fine into county treasury.
957. Subpœnas for witnesses, and punishing them for disobedience.
958. No fees to witnesses.
959. During time allowed for bail, and until judgment, defendant to be continued in custody of officer, or committed to jail.
960. Form of commitment.
961. By whom executed.
962. Defendant may be admitted to bail.
963. Bail, how and by whom taken.
964. Form of the undertaking.
965. Undertaking, when forfeited, and action thereon.
966. Forfeiture, how and by whom remitted.
967. Application of penalties in summary convictions.
967*a*. Commitment on non-payment.
968. Discharge in certain cases.
969. Summary conviction bar to any other proceeding.
970. Apprehension of person committing summary offences,
971. Limitation.
972. Compelling appearance of witnesses.

DCCCCXXXV. In the cases in which the Police or Magistrates' Courts have jurisdiction, when the defendant is brought

before the magistrate, the charge against him must be distinctly read to him, and he must be required to plead thereto.

DCCCCXXXVI. The defendant may plead the same pleas as upon an indictment, but his plea must be oral, and entered upon the minutes of the magistrate.

DCCCCXXXVII. Upon a plea other than a plea of guilty, the magistrate must proceed to try the issue.

DCCCCXXXVIII. In all cases where by this Act two or more Justices of the Peace are authorized and required to hear and determine any complaint, one Justice shall be competent to receive the original information or complaint, and to issue the summons or warrant requiring the parties to appear before two or more Justices of the Peace; and after examination upon oath into he merits of the said complaint, and the adjudication hereupon by any such two Justices being made, all and every the subsequent proceedings to enforce obedience thereto, or otherwise, whether respecting the penalty, fine, imprisonment, costs, or other matter or thing relating to the offence, may be enforced by either of the said Justices, or by any other Justice of the Peace for the same district, county, city, town or place, in such and the like manner as if done by the same two Justices who so heard and adjudged the said complaint; and where the original complaint or information shall be made to any Justice or Justices of the Peace, different from the Justice or Justices before whom the same shall be heard and determined, the form of conviction shall be made conformable and according to the fact.

DCCCCXXXIX. 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.

DCCCCXL. When the defendant pleads guilty, or is convicted, either by the magistrate or by a jury, the magistrate must render judgment thereon, of fine or imprisonment, or both, as the case may require; but the fine cannot exceed
nor the imprisonment six months.

DCCCCXLI. A judgment that the defendant pay a fine, may also direct that he be imprisoned until the fine be satisfied; specifying the extent of the imprisonment, which cannot exceed one day for every *pound currency* of the fine.

DCCCCXLII. When the defendant is acquitted by the magistrate he must be immediately discharged; and if the magistrate certify upon his minutes, that the prosecution was malicious or without probable cause, the magistrate must order the prosecutor to pay the costs of the proceedings, or to give satisfactory security, by a written undertaking, with one or more sureties, to pay the same to the County Treasurer within fifteen days after the trial.

DCCCCXLIII. If any person shall aid, abet, counsel, or procure the commission of any offence which is punishable on summary conviction, either for every time of its commission or for the first and second time only, or for the first time only, every such person shall, on conviction before a justice or justices of the peace, be liable for every first, second or subsequent offence of aiding, abetting, counselling, or procuring, to the same forfeiture

and punishment to which a person guilty of a first, second or subsequent offence as a principal offender is by this Act made liable.

DCCCCXLIV. Where any person shall unlawfully assault or beat any other person, it shall be lawful for any magistrate, upon complaint of the party aggrieved, praying him to proceed summarily under this Act, to hear and determine such offence, and the offender 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; and if such fine together with the costs (if ordered) shall not be paid either immediately after the conviction, or within such period as the magistrate shall at the time of the conviction appoint, the offender shall be imprisoned in the common gaol for not more than two months, unless such fine and costs be sooner paid; but if the magistrate shall deem the offence not to be proved, or shall find the assault or battery to have been justified, or so trifling as not to merit any punishment, and shall accordingly dismiss the complaint with costs, if he shall so order he shall forthwith make out a certificate under his hand, stating the fact of such dismissal, and shall deliver such certificate to the party against whom the complaint was preferred; and if such costs shall not be paid immediately upon dismissal or within such period as such magistrate shall at the time of such dismissal appoint, it shall be lawful for him to issue his warrant to levy the amount of such costs within a certain time to be in the said warrant expressed, and in case no distress sufficient to satisfy the amount of such warrant shall be so found, to commit the party ordered to pay such costs to the common gaol for not more than ten days, unless such costs shall be sooner paid.

DCCCCXLV. Where 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.

DCCCCXLVI. But if such magistrate shall find the assault and battery to have been accompanied by any attempt to commit felony, or shall be of opinion that the same is from any other circumstance fit subject for a prosecution by indictment, he shall abstain from any adjudication thereupon, and shall proceed as in any other case of felony charged before him, and such magistrate shall have no jurisdiction in any case of assault or battery in which any question shall arise as to the title to any lands, tenements or hereditaments, or any interest therein or accruing therefrom, or as to any bankruptcy or insolvency, or any execution under the process of any Court of Justice, and shall not proceed thereon if either party litigating make oath to that effect before him.

DCCCCXLVII. If the prosecutor do not pay the costs or give security therefor the magistrate may enter judgment against him for the amount thereof, which may be enforced, in all respects, in the same manner as a judgment rendered by a Court held by a justice of the peace.

DCCCCXLVIII. When a conviction is had, upon a plea of guilty or upon a trial, the magistrate must make and sign, with

his name of office, a certificate in substantially the following form:

"Police [*or Magistrates*] Court,

"City or county of , town or township of [*as the "case may be.*

"The Queen
"against
"A. B.

" , , 1850.

"The above named A. B., having been brought before me, C. "D, a Justice of the Peace of the town [*or city*] of [*as the case "may be*] charged with [*briefly designating the offence*] [*or "having been required by me to give bail for his appearance at the "next Court of General Sessions of this district or county, and "having omitted to do so for twenty-four hours after being so "required,' as the case may be.*]

"And the above named A. B. having thereupon pleaded not "guilty, [*as the case may be*] and having been thereupon duly "tried, and upon such trial duly convicted,

"I have adjudged,—That he be imprisoned in the gaol of this " days, [*or 'pay a fine of "or be imprisoned until it be paid, not exceeding days,' "or both, as the case may be.*]

"Dated at the of , the day "of , 1850.

"C. D.

"Justice of the Peace of the town [*or 'city*] "of ' [*as the case may be.*]"

DCCCCXLIX. If the defendant have pleaded guilty, instead of the second paragraph, the certificate must state substantially as follows: "And the above named A. B. having been thereupon "duly convicted, upon a plea of guilty."

DCCCCL. Where any person shall be summarily convicted before a magistrate of any offence, it shall be lawful for such magistrate, 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 magistrate.

DCCCCLI. Within twenty days after the conviction, the magistrate must cause the certificate to be fyed in the office of the Clerk of the Peace for the district or county where the conviction is had.

DCCCCLII. The certificate, made and fyled as prescribed in the last two articles, or a certified copy thereof, is conclusive evidence of the facts stated therein, and the conviction shall be presumed to be unappealed against until the contrary be shown.

DCCCCLIII. The judgment must be executed by the sheriff of the district or county, or by a constable or policeman of the city village, town or county in which the conviction is had, upon receiving a copy of the certificate prescribed as above, certified by the magistrate or the county Clerk.

DCCCCLIV. If a fine imposed be paid before commitment, it must be received by the magistrate, and be applied to the pay-

ment of the expenses of the prosecution. The residue, if any, must be paid by the magistrate, within thirty days after its receipt, into the hands of the treasurer of the said district or county, for the use thereof.

DCCCCLV. If the defendant be committed for not paying a fine, he may pay it to the Sheriff of the county, but to no other person; who must in like manner, within thirty days after the receipt thereof, pay it into the hands of the district or county treasurer, as provided in the last article.

DCCCCLVI. If the magistrate or sheriff receiving the fine fail to pay it, or such part of it as is so payable, into the county treasury, the county treasurer must immediately commence an action therefor, in the name of the county.

DCCCCLVII. The magistrate may issue subpœnas for witnesses, and punish disobedience thereof.

DCCCCLVIII. No fees are payable to a witness for his attendance in a police or magistrate's court.

DCCCCLIX. During the twenty-four hours allowed to a defendant to give bail, and until judgment is given, he may be continued in the custody of the officer, or committed to the common gaol, to answer the charge as the magistrate may direct.

DCCCCLX. The commitment must be signed by the magistrate, by his name of office, and must be in substantially the following form:

"The sheriff or the keeper of the common gaol of the is required to receive and detain A. B., who stands charged before me for [*designating the offence, generally*] to answer the charge before a police court in the town [*or* city] of , [*as the case may be*].

"Dated at the town [*or* city] of , the day of , 18 .

"C. D., justice of the peace of the county town [*or* city] of ," [*as the case may be*].

DCCCCLXI. When committed, the defendant must be delivered to the custody of the proper officer, by any peace officer in the district or county to whom the magistrate may deliver the commitment.

DCCCCLXII. Either before or after his committal, or upon being committed, the defendant must, if he require it, be admitted to bail.

DCCCCLXIII. The bail must be taken by the magistrate, by a written recognizance, executed by the defendant, with one or more sufficient sureties approved by the magistrate, in a sum not exceeding

DCCCCLXIV. The recognizance must be in substantially the following form:

"A. B. having been duly charged before C. D., a justice of the peace in the town [*or* city] of , [*as the case may be*] with the offence of [*designating the offence generally.*]

"We undertake that he shall appear thereon, from time to time until judgment, at a police court in the district [county-town, *or* city] of , [*as the case may be*], held by the justice above named, or that we will pay to the county of , [*naming the county in which the Court is held*] the sum of , [*inserting the sum fixed by the magistrate*].

"Dated at of ," [*as the case may be.*]

DCCCCLXV. If the defendant fail to appear according to the recognizance, the magistrate, unless a sufficient excuse be shewn, must declare the recognizance of bail forfeited, and the district or county treasurer must immediately commence an action, for the recovery of the sum mentioned therein, in his official name.

DCCCCLXVI. The District or County Court of the district or county may remit the forfeiture, or any part thereof, upon good cause shewn therefor.

DCCCCLXVII. Every sum of money which shall be forfeited for or as the value of any property stolen or taken, or for or as the amount of any injury done (such value or amount to be assessed in each case by the convicting magistrate,) shall be paid to the party aggrieved, if known, except where such party shall have been examined in proof of the offence, and in that case, or where the party aggrieved is unknown, such sum shall be applied in the same manner as a penalty: Provided always, that where several persons shall join in the commission of the same offence, and shall, upon conviction thereof, each be adjudged to forfeit a sum equivalent to the value of the property, or to the amount of the injury done, in every such case no further sum shall be paid to the party aggrieved than that which shall be forfeited by one of such offenders only, and the corresponding sum or sums forfeited by the other offender or offenders shall be applied in the same manner as any penalty imposed by a magistrate is hereinbefore directed to be applied.

DCCCCLXVIII. Where the sum which shall be forfeited for the value of the property stolen or taken, or for the amount of the injury done, or which shall be imposed as a penalty by any magistrate, together with the costs, if awarded, (which costs such magistrate is and is hereby authorized to award, if he or they shall think fit, in any case of a summary conviction under this Act,) shall not be paid either immediately after the conviction, or within such period as the magistrate shall at the time of conviction appoint, which he is and is hereby authorized to appoint, it shall be lawful for the convicting magistrate (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 magistrate, 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 six calendar months, where the amount with costs shall exceed five pounds, and shall not exceed ten pounds; the commitment to be determinable in each of the cases aforesaid, upon payment of the amount and costs.

DCCCCLXIX. Where any person shall be summarily convicted before a magistrate, of any offence, and it shall be a first conviction, it shall be lawful for the magistrate, 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 such magistrate.

DCCCCLXIX–*a*. In case any person convicted of any offence punishable by summary conviction by virtue of this Act, shall have paid the sum adjudged to be paid, together with costs, if awarded, 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.

DCCCCLXX. Any person found committing any offence punishable either upon indictment or upon summary conviction, may be immediately apprehended without a warrant, by any peace officer, or by the owner of the property on or with respect to which the offence shall be committed, or by the servant of or any person authorized by such owner, and forthwith taken before some neighbouring magistrate, to be dealt with according to law; and if any credible witness shall prove upon oath, before a magistrate, that there is reasonable cause to suspect that any property whatsoever, on or with respect to which any such offence shall have been committed, is in any dwelling-house, out-house, garden, yard, croft or other place or places, the magistrate may grant a warrant to search such dwelling-house, out-house, garden, yard, croft or other place or places, for such property, as in the case for 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 on or with respect to such property, is hereby authorized, and if in his power is required to apprehend and forthwith to carry before a magistrate, the party offering the same, together with such property, to be dealt with according to law.

DCCCCLXXI. The prosecution of every offence punishable on summary conviction shall be commenced within one calendar month after the commission of the offence and not otherwise; and the evidence of the party aggrieved shall be admitted in proof of the offence.

DCCCCLXXII. Where any person shall be charged, on the oath of a credible witness, before any magistrate, with any such offence, he may summon the person charged to appear at a time and place to be named in the 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 magistrate may either proceed to hear and dispose of the case *ex parte*, or issue his warrant for apprehending such person and bringing him before himself, or some other magistrate; or the magistrate before whom the charge shall be made, may (if he shall so think fit,) without any previous summons, (unless when otherwise specially directed,) issue such a warrant; and the magistrate before whom the person charged shall appear or be brought, shall proceed to hear and determine the case.

## TITLE II.

## OF APPEALS FROM THE POLICE AND MAGISTRATES COURTS.

973. Judgment of such Court reviewable only upon appeal to the Sessions.
974. Appeal for what causes allowed.
975. Appeal, how taken.
976. How allowed.
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979. Delivery of affidavit, and allowance of appeal to magistrate or clerk of Court, within five days after allowance. Appeal then deemed taken.
980. Return, when and how made.
981. Compelling return.
982. Ordering and compelling further or amended return.
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985. Appeals triable by Jury.
986. Service of return on, and consequences of failure.
987. If brought to hearing by defendant, appeal must be argued, though no one oppose; if by public prosecution, judgment to be affirmed, unless defendant appear.
988. Appeal to be heard on original return.
989. What judgment may be rendered.
990. Judgment to be entered on the minutes.
991. Order, upon judgment for affirmance.
992. Order, upon judgment of reversal.
993. If new trial ordered, to be had in Court of Sessions. Proceedings thereon.
994. Proceedings to carry judgment upon appeal into effect, to be had in Court of Sessions.
995. On judgment of Court of Sessions, defendant may appeal to Court of Appeals.
996. Judgment of Appeal Court upon appeal, final.
987. Proceedings to carry into effect judgment of such Court.

DCCCCLXXIII. A judgment upon any conviction, rendered by a Police Court, may be reviewed by the Court of General Sessions of the place for the district or county where the conviction is had, upon an appeal, as prescribed by this title, and not otherwise.

DCCCCLIV. An appeal cannot be allowed, for any other cause than the erroneous decision of the Court, in the course of the proceedings before it, or in the determination of the cause.

DCCCCLXXV. For the purpose of appealing, the defendant, or some one on his behalf, must, within ten days after the judgment, make an affidavit, stating the facts showing the alleged errors in the proceedings or conviction complained of, and must, within that time, present it to the district or county judge, or to a judge of a Superior Court, and may apply thereon for the allowance of the appeal.

DCCCCLXXVI. If, in the opinion of the judge, it is proper that the question arising on the appeal should be decided by the Court of General Sessions, he must endorse on the affidavit an allowance of the appeal to that Court.

DCCCCLVII. Upon allowing the appeal, the judge may take from the defendant, a recognizance with such sureties as he may approve, that the defendant will abide the judgment of the Court of General Sessions upon the appeal; and may thereupon order that he be discharged from imprisonment, on service of the order upon the officer having him in custody, or if he be not in custody, that all proceedings on the judgment be stayed.

DCCCCVIII. The recognizance upon the appeal, must be immediately fyled with the clerk of the Court of General Sessions.

DCCCCLXXIX. The affidavit and the allowance of the appeal must be delivered to the magistrate who tried the case, or to the clerk of the Police Court, within five days after the allowance of the appeal; and when so delivered, the appeal is deemed taken.

DCCCCLXXX. The magistrate or Court rendering the judgment must make a return to all the matters stated in the affidavit, and must cause the affidavit and return to be fyled in the office of the clerk of the Court of Sessions, within ten days after the service of the affidavit and allowance of the appeal.

DCCCCLXXXI. If the return be not made within the time prescribed in the last article, the Court of Sessions or the presiding judge thereof, may order that a return be made within a specifiep time which may be deemed reasonable; and the Court may, by attachment, compel a compliance with the order.

DCCCCLXXXII. If the return be defective, a further or amended return may be ordered, and the order may be enforced in the manner provided for in the last article.

DCCCCLXXXIII. When the return is made, the appeal may be brought to argument by the defendant, on any day in term, upon a notice of not less than three days before the term, to the Public Prosecutor of the district or county.

DCCCCLXXXIV. If the defendant omit to bring the appeal to argument, as provided in the last article, the Court must dismiss it, unless it continue the same, by special order, for cause shown.

DCCCCLXXXV. 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 empannel a Jury to try the matter on which such decision may have been made, and the Court, on the 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 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.

DCCCCLXXXVI. The defendant must serve upon such Public Prosecutor, a copy of the return, with or before the notice of argument. If he fail to do so, the appeal must be dismissed, upon upon proof of the failure, unless the Court otherwise direct.

DCCCCLXXXVII. If the appeal be brought to hearing by the defendant, it must be argued, though no one appear to oppose; but if brought on by the said Prosecutor, he may take judgment of affirmance, unless the defendant appear to argue the appeal.

DCCCCXXXVIII. The appeal must be heard upon the original return; and no copy thereof need be furnished for the use of the Court.

DCCCCLXXXIX. After hearing the appeal, the Court must give judgment, without regard to technical errors or defects, which have not prejudiced the substantial rights of the defendant; and may render the judgment which the Court below should have rendered, or may, according to the justice of the case, affirm or reverse the judgment, in whole or in part, as to all or any of the defendants, if there be more than one, or may order a new trial.

DCCCCLXC. When judgment is given upon the appeal, it must be entered upon the minutes.

DCCCCLXCI. If the judgment be affirmed, the Court must direct its execution, and if the defendant has been discharged on bail, after the commencement of the execution of a judgment of imprisonment, must commit him to the proper custody for the remainder of his term of imprisonment.

DCCCCLXCII. If the judgment be reversed, and the defendant be imprisoned in pursuance of the judgment of the Police Court, the Court of Sessions must order him to be discharged.

DCCCCLXCIII. If a new trial be ordered, it must be had in the Court of Sessions, in the same manner as upon an issue of fact on an indetment; and that Court may proceed to judgment and execution, as in an action presecuted by indictment.

DCCCCLXCIV. If any proceedings be necessary to carry the judgment upon the appeal into effect, they must be had in the Court of Sessions.

DCCCCLXCVI. The judgment of the Court of Session upon the appeal, is final.

DCCCCXCVII. The same proceedings must he had, to carry into effect the judgment of Superior Court upon the appeal, as if it had been taken upon a judgment in an action prosecuted by indictment.

# PART VI.

# OF SPECIAL PROCEEDINGS OF A CRIMINAL NATURE.

1. Of Coroners' Inquests, and the duties of Coroners.
2. Of search warrants.
3. Of proceedings against fugitives from justice.
4. Of proceedings respecting vagrants.
5. Of proceedings respecting disorderly persons.
6. Of proceedings respecting masters, apprentices, and servants.
7. Of criminal statistics.
8. Miscellaneous provisions and definitions.

## TITLE I.

## OF CORONERS' INQUESTS, AND THE DUTIES OF CORONERS.

998. In what cases Coroner to summon a jury. Number of jurrors to be summoned.
999. What Coroner.
100. Jury to be sworn.
1001. Witnesses to be subpœnaed.
1002. Compelling attendance of witnesses, and punishing their disobedience.
1003. Verdict of the jury.
1004. Testimony, how taken and filed.
1005. Contents of verdict.
1006. If defendant arrested before inquisition filed, depositions to be delivered to magistrate, and by him returned.
1007. Warrant for arrest of party charged by verdict.
1008. Party be present,
1009. Form of Warrant.
1010. Party in custody.
1011. Warrant, how executed.
1012. Proceedings of magistrate, on defendant being brought before him.
1013. Clerk with whom inquisition is filed, to furnish magistrate with copy of the same and of testimony returned therewith.
1014. Coroner to deliver money or property found, on deceased, to county treasurer.
1015. County treasurer to place money to credit of county; and to sell other property and place proceeds to credit of county.
1016. Money, when and how paid to representatives of deceased.
1017. Statement under oath, from Coroner, before auditing his accounts.
1018. Police justices may perform duties of coroner, during his inability.
1019. Compensation of coroners.
1020. Same certainty as indictment.
1021, 1023. Inquisition may be quashsd.

DCCCCXCVIII. When a Coroner is informed by affidavit that a person has been killed or dangerously wounded by another, or

has suddenly died, under such circumstances as to afford a reasonable ground to suspect that his death has been occasioned by the act of another, by criminal means, or that he has committed suicide, he must go to the place where the person is, and forthwith summon not less than twelve persons, qualified by law to serve as jurors, to appear before him forthwith, at a specified place, to inquire into the cause of the death or wound.

DCCCCXCIX. The Coroner within whose jurisdiction the body shall be lying dead, only, shall hold the inquest, notwithstanding that the cause of death did not arise within his jurisdiction.

6 and 7 Vict. c. 12, s 1.

M. When the jurors appear, they must be sworn by the Coroner to inquire who the person was, and when, where and by what means he came to his death or was wounded, as the case may be, and into the circumstances attending the death or wounding, and to render a true verdict thereon, according to the evidence offered to them, or arising from the inspection of the body.

2 Hale P. C. 60; 3 B. and A. 260.

MI. The Coroner may issue subpœnas for witnesses, returnable forthwith, or at such time and place as he may appoint. He must summon and examine as witnesses, every person who, in his opinion, or that of any of the jury, has any knowledge of the facts; and he must summon as a witness a licensed surgeon or physician, who must, in the presence of the jury, inspect the body, and give a professional opinion as to the cause of the death or wounding, and if the jury shall require it he shall summon another such surgeon or physician to attend as a witness as above.

2 Hale 157.

MII. A witness served with a subpœna may be compelled to attend and testify, or may be punished by the Coroner for disobedience, as upon a subpœna issued by a magistrate, and on failure to appear shall be fined twenty shillings by the Coroner, except the medical witness, who shall forfeit ten pounds unless he can show good cause against the same.

MIII. After inspecting the body, and hearing the testimony, the jury must render their verdict, and certify it by an inquisition in writing, signed by them, setting forth that it was taken on view of the body (2 Hale 60) the place where it was taken (Hawk, P. C. b. 2, c. 9, s. 22.) who the person killed or wounded is, and when, where, and by what means he came to his death or was wounded, or where the body was found (1, B. and C. 247,) and if he were killed or wounded, or his death were occasioned by the act of another, by criminal means, who is guilty thereof, if such person be known or discovered.

MIV. The testimony of the witnesses examined by the Coroner's jury, must be reduced to writing by the Coroner, or under his direction, in the presence of the party charged with the offence, if he be present, giving him full opportunity for cross examination, and must be forthwith filed by him, with the inquisition, in the office of the Clerk of the Peace for the district or county.

MV. The verdict must show that it was taken by the oaths of lawful persons of the district or county (Haw. P. C. b. 2, c. 9, s.

22,) and their names should be inserted in the body of the inquisition, (6 B. & C. 247.)

MVI. If, however, the defendant be arrested before the inquisition can be filed, the coroner must deliver it with the testimony, to the magistrate before whom the defendant is brought, who must return it, with the depositions and statement taken before him, in the manner before prescribed.

MVII. If the Jury find that the person was killed or wounded by another, under circumstances not excusable or justifiable by law, or that his death was occasioned by the act of another, by criminal means, and the party committing the act be ascertained by the inquisition, and be not in custody, the coroner must issue a warrant, signed by him, with his name of office, into any district or county of the Province, for the arrest of the person charged, and for taking him before such coroner or before some other magistrates having jurisdiction, in order to his being committed.

MVIII. If the party accused be present on the inquest, the coroner shall commit him forthwith for trial.

MIX. The coroner's warrant must be substantially in the following form:

"District or County of , [*or as the case may be.*]

"In the name of Our Sovereign Lady the Queen: To any peace officer in this Province:

"An inquisition having been this day found by a coroner's Jury, before me, stating that *A. B. has come to his death by the act of C. D., by criminal means,* [*or as the case may be, as found by the inquisition:*]

"You are therefore commanded forthwith to arrest the above named C. D., and bring him before me, [*or take him before the nearest and most accessible magistrate in this district or county.*"]

"Dated at the *city of* , [*or as the case may be,*] the day of , 1850.

E. F.,

Coroner of the district or county of ."

[*or as the case may be.*]

MX. If the party be already in custody the coroner shall indorse a detainer on the warrant of arrest, in the same manner and form as prescribed for other warrants of arrest.

MXI. The coroner's warrant shall be served, in any district or county of the Province, in all respects and in the same manner as a magistrate's warrant or information, except that it need not be backed in another district or county.

MXII. The magistrate shall proceed on the warrant, when the defendant is brought before him, and examine the charges contained in the inquisition, and hold the defendant to answer, or discharge him therefrom, in the same manner, in all respects, as upon such magistrate's warrant.

MXIII. Upon the arrest of the defendant, the Clerk of the Peace with whom the inquisition is filed, must, without delay, furnish to the magistrate a certified copy of it, and of the testimony returned therewith.

MXIV. The coroner must, within thirty days after an inquest upon a dead body, deliver to the Clerk of the Peace, any money or other property which may be found upon the body, unless claimed in the meantime by the legal representatives of the deceased. If he fail to do so, the said Clerk may proceed against him for its recovery, by a civil action in his official name.

MXV. Upon the delivery of money to the said Clerk, he must place it to the credit of the Receiver General. If it be other property, he must, within thirty days, sell it at public auction, upon reasonable public notice; and must, in like manner, place the proceeds to the credit of the said Receiver General.

MXVI. If the money be demanded within one year, by the legal representatives of the deceased, the Receiver General must pay it to them, after deducting the fees and expenses of the coroner and of the district or county, in relation to the matter, or it may be so paid at any time thereafter, upon the order of a Judge of any Superior Court after cause shown.

MXVII. Before auditing and allowing the account of the coroner, he must be required to produce to a Judge of any superior court, a statement in writing of any money or other property found upon persons upon whom inquests have been held by him, verified by his oath, to the effect that the statement is true, and that the money or property mentioned in it has been delivered to the legal representative of the deceased, or to the said clerk of the court, and his account shall thereupon be audited and allowed by such judge.

MXVII. If the coroner be absent or be unable, for any cause, to attend, the duties imposed hereby may be performed by a police justice, or by a magistrate, with the same authority, and subject to the same obligations and penalties as apply to the coroner.

MXVIII. The coroner is entitled for his services, in holding inquests and performing any other duty incident thereto, to such compensation as may be fixed by the judges of the superior courts for the section, and approved by the Governor, and he can receive for those services no other compensation or fees whatever. And the medical practitioner shall receive the following fees: in each inquest, for attendance only, £1 5s.; for attendance and *post mortem* examination, £2 10s; for attendance and *post mortem* examination and analysis of the contents of the stomach, £5; and 1s. per mile for travel going to and returning from such inquest.

MXX. The same degree of certainty is requisite in inquisitions as in indictments, and the rules relating to the description of the offences in indictments, and as to variences therein or amendments thereto, so far as the same are applicable, shall apply to inquisitions.

MXXI. An inquisition may be squashed for defects appearing on the face of it, if not amendable, on the application either of party interested or the Crown.

MXXII. It may also be quashed for the misconduct of the coroner or the jury.

## TITLE II.

# OF SEARCH WARRANTS.

1023. Search warrant defined.
1024. Upon what grounds it may be issued.
1025. It cannot be issued but upon probable cause, supported by affidavit.
1026. Before issuing warrant, magistrate must examine, on oath, the complainant and his witnesses, and take their depositions in writing.
1027. Depositions, what to contain.
1028. Magistrate, when to issue warrant.
1029. Form of the warrant.
1030. By whom served.
1031. Officer may break open door or window to execute warrant.
1032. May break open door or window to liberate person acting in his aid or for his own liberation.
1033. When warrant may be served in the night time, and direction therefor.
1034. Within what time warrant must be executed and returned.
1035. Officer to give receipt for property taken.
1036. Property, when delivered to magistrate, how disposed of.
1037. Return of warrant and delivery to magistrate of inventory of property taken.
1038. Magistrate to deliver copy of inventory to the person from whose possession property is taken and to applicant for warrant.
1039. If grounds for warrant controverted, magistrate to take testimony.
1040. Testimony, how taken and authenticated.
1041. Property, when to be restored to person from whom it was taken.
1042. If goods stolen, to whom to be delivered.
1043. Depositions, search warrant, return and inventory, to be returned to Court of Sessions or City Court having jurisdiction of offence.
1044. Maliciously and without probable cause procuring search warrant, a misdemeanor.
1045. Peace officer, exceeding his authority or exercising it with unnecessary severity, guilty of a misdemeanor.
1046. If person charged with felony be supposed to have a dangerous weapon, or anything which may be used as evidence of commission of offence, magistrate may direct him to be searched, and the weapon or other thing retained, subject to his order or the order of the Court.

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MXXIII. A search warrant is an order in writing in the name of the Queen, signed by a magistrate, directed to a peace officer,

commanding him to search for personal property and bring it before the magistrate.

MXXIV. It may be issued upon either of the following grounds:

1. When the property was stolen or embezzled; in which case it may be taken, on the warrant, from any house or other place in which it is concealed, or from the possession of the person by whom it was stolen or embezzled, or of any other person in whose possession it may be;

2. When it was used as the means of committing a felony: in which case it may be taken, on the warrant, from any house or other place in which it is concealed, or from the possession of the person by whom it was used in the commission of the offence, or of any other person in whose possession it may be;

3. When it is in the possession of any person with the intent to use it as the means of committing a public offence, or in the possession of another, to whom he may have delivered it for the purpose of concealing it or preventing its being discovered; in which case it may be taken, on the warrant, from such person or from a house or other place occupied by him, or under his control, or from the possession of the person to whom he may have so delivered it.

DXXV. A search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person, and particularly describing the property and the place to be searched.

MXXVI. The magistrate must, before issuing the warrant, examine on oath the complainant and any witnesses he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them; but a positive oath that a theft has been committed is not necessary to justify the issuing of a search warrant.

2 D. & R. 97.

MXXVII. The depositions must set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist.

MXXVIII. If the magistrate be thereupon satisfied of the existence of the grounds of the application, or that there is probable cause to believe their existence, he must issue a search warrant, signed by him with his name of office, to a peace officer in his district or county, commanding him forthwith to search the person or place named for the property specified, and to bring it before the magistrate.

2 Hale, 252; Hale, Sum. 93; Burn's Just. "Search Warrant."

MXXIX. The warrant must be substantially in the following form:

"District or County of [*as the case may be.*]

"In the name of Our Sovereign Lady the Queen: To any Peace Officer in the county of [*as the case may be.*]

"Proof, by affidavit, having been this day made before me, that [*stating the ground of the application in the same manner*]:

"You are therefore commanded, in the day time, [*or,* "at any time of the day or night," *as the case may be,*] to make immedi-

ate search *on the person* of C. D., [*or*, "in the house situated"—*describing it, or any other place to be searched with reasonable particularity, as the case may be,*] for the following property: [*describing it with reasonable particularity;*] and if you find the same or any part thereof, to bring it forthwith before me, at [*stating the place.*]

"Dated at the city of [*as the case may be,*] the day of , 1850.

"E. F.,

Justice of the Peace of the [*district, county or town*] of [*as the case may be.*]

MXXX. A search warrant may, in all cases, be served by any of the officers mentioned in its direction, but by no other person, except in aid of the officer, on his requiring it, he being present and acting in its execution.

2 Hale, 150.

MXXXI. The officer may break open an outer or inner door or window of a house, or any part of the house, or any thing therein, to execute the warrant, if, after notice of his authority and purpose, he be refused admittance.

2 Hale, 151.

MXXXII. He may break open any outer or inner door or window of a house, for the purpose of liberating a person, who, having entered to aid him in the execution of the warrant, is detained therein, or when necessary for his own liberation.

MXXXIII. The magistrate must insert a direction in the warrant, that it be served in the day time, unless the affidavits be positive that the property is on the person, or in the place to be searched; in which case, he may insert a direction, that it be served at any time of the day or night.

2 Hale, P. C. 150; 3 Burns' Just., 797.

MXXXIV. A search warrant must be executed, and returned to the magistrate by whom it was issued, within five days after its date. After the expiration of that time the warrant, unless executed, is void.

MXXXV. When the officer takes property under the warrant, he must give a receipt for the property taken, (specifying it in detail,) to the person from whom it was taken by him, or in whose possession it was found, or, in the absence of any person, he must leave such receipt in the place where he found the property.

MXXXVI. When the property is delivered to the magistrate he must, if it was stolen or embezzled, dispose of it as provided hereinbefore. If it were taken on a warrant issued on the grounds stated in the second and third subdivisions of article 1024 he must retain it in his possession, subject to the order of the Court to which he is required to return the proceedings before him, or of any other Court in which the offence, in respect to which the property was taken, is triable.

MXXXVII. The officer must forthwith return the warrant to the magistrate, and deliver to him the property taken, with a written inventory thereof, made publicly, or in the presence of the person from whose possession it was taken and of the appli-

cant for the warrant, if they be present; verified by the affidavit of the officer, and taken before the magistrate, to the following effect: "I, A. B., the officer by whom this warrant was "executed, do swear that the above inventory contains a true "and detailed account of all the property taken by me on the "warrant."

MXXXVIII. The magistrate must thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken, and to the applicant for the warrant.

MXXXIX. If the grounds on which the warrant was issued be controverted, the magistrate must proceed to take testimony in relation thereto.

MXL. The testimony given by each witness must be reduced to writing and authenticated in the manner herein prescribed.

MXLI. If it appear that the property taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the magistrate must cause it to be restored to the person from whom it was taken.

2 Hale, 151.

MXLII. If it appear that the goods were stolen, they are to be delivered to the Sheriff of the district or county, to the end that the offender may be prosecuted and restitution made.

2 Hale, 151.

MXLIII. The magistrate must annex together the depositions, the search warrant and return, and the inventory, and return them to the next Criminal Court for the district or county, having power to inquire into the offence in respect to which the search warrant was issued, at or before its opening on the first day.

MXLIV. A person, who, maliciously and without probable cause, procures a search warrant to be issued and executed, is guilty of a misdemeanor.

MXLV. A peace officer, who, in executing a search warrant, wilfully exceeds his authority, or exercises it with unnecessary severity, is guilty of a misdemeanor.

MXLVI. When a person charged with a felony is supposed by the magistrate before whom he is brought to have upon his person a dangerous weapon, or any thing which may be used as evidence of the commission of the offence, the magistrate may direct him to be searched in his presence, and the weapon or other thing to be retained, subject to his order or the order of the Court in which the defendant may be tried.

## TITLE III.

# OF PROCEEDINGS AGAINST FUGITIVES FROM JUSTICE.

1047. Arrest of such fugitive from the United Kingdom and British Possessions.
1048. Arrest of such fugitive from any foreign country except the United States.
1049, 1050. Extent of Warrant.
1051. Arrest of such fugitive from United States.
1052, 1053, 1054. Proceedings in same.
1055. Escape of fugitive from custody.
1056. Proceedings for arrest and commitment similar to same order on magistrate's warrant.
1057. Admission to bail of offender.
1058. Notice to Provincial Government.

MXLVII. If any person charged in the United Kingdom or in any other British Possession with any offence, against whom a warrant shall be issued by any judge or magistrate therein competent to issue the same, shall flee from justice and be found in this Province, he shall and may be arrested and be taken by virtue of such warrant into the country in which the warrant was issued, to be there dealt with according to law, upon such warrant being indorsed by a magistrate in that part of this Province where the offender is found, after proof to such magistrate of the handwriting of the judge or magistrate who shall have issued the warrant and of his capacity at the date thereof to issue the same.

MXLVIII. If any such fugitive from any foreign country save the United States of America, having committed any offence therein, not treasonable or political, which by the laws of this Province would be punishable with death or imprisonment in the Penitentiary, or by imprisonment in any Gaol with hard labour for not less than three months, be found in this Province and be charged before a magistrate herein with the commission of such offence, he shall and may be arrested and committed upon warrant of such magistrate upon such charge and satisfactory evidence adduced as, according to the laws of this Province, would justify the issuing of such warrant, if the offence had been committed in this Province.

MXLIX. Such warrant shall be sufficient authority for the delivery of the offender to any person competent to receive him for conveyance into such foreign country, only in case a requisition shall have been made to the Governor of this Province by the Executive Government of such foreign country or its ministers or officers authorized to make the same, and such requisition shall have been assented to by the Governor at his discretion, by and with the advice of the Executive Council of the Province, after satisfactory evidence of criminality has been submitted to the Governor against the offender for any such offence as aforesaid and an order thereupon, under the sign manual of the Governor, be given to the magistrate.

MLI. Such warrant shall justify the commitment of the offender until the order by the Governor shall be given to the magistrate if it be so given within one month from the time of the commitment, failing which the offender shall be discharged and shall not be again liable to arrest upon the same charge.

MLII. If any such fugitive from any of the United States of America having committed therein any of the offences of murder, assault with intent to commit murder, piracy, arson, robbery, forgery or utterance of forged paper, be found in this Province and be charged upon complaint on oath before a Judge of any of the Superior Courts in this Province or any magistrate therein with the commission in any of the said States of any of the said offences, he shall and may be arrested upon the warrant of such judge or magistrate, and thereupon committed to the common gaol of the district, county or city where the warrant is issued, if the judge or magistrate shall be satisfied that such charge is well founded, upon such evidence of criminality as, according to the laws of this Province, would justify the arrest if such offence had been committed in this Province.

MLIII. Copies of the depositions upon which an original warrant in any of the United States may have been granted, certified under the hand of the officer or person having the legal custody thereof and attested upon the oath of the party producing them to be true copies of the original depositions, may be received in evidence upon the making of the complaint and the issuing of the warrant of arrest of the magistrate.

MLIII. The warrant of commitment shall remain in full force and effect for and during the space of two months, over and above the time actually required to convey the offender from the gaol to which he shall have been committed, by the readiest way, out of this Province, and shall thereafter expire, and the offender shall then be discharged by the order of any Judge of any of the said Superior Courts, upon the application of the said offender therefor, after proof made of reasonable notice of his intention to make such application given to the Provincial Secretary, unless sufficient cause be shewn to the said Judge why such discharge should not be ordered.

MLIV. The committing magistrate shall forthwith, after committing the offender, transmit to the Provincial Secretary a certified copy of his warrant of commitment, and of the proceedings and evidence in connection therewith, and the Governor of the Province, on receipt thereof, and of a requisition of the proper authorities of the said United States, or any of them, in which the offence was committed, shall by order under his sign manual order the offender to be delivered to the person authorized in the name or on the behalf of the said States or any of them, to be there dealt with according to law: and such person shall be authorized, in virtue of such warrant, to hold the offender in custody and to take him to the said United States, or to the said State where the offence was committed.

MLV. If any such fugitive while in custody shall escape therefrom, he may be retaken in the same manner as any person accused of any offence in this Province may be retaken upon an escape.

MLVI. The proceedings for the arrest and commitment of the person charged shall be in all respects similar to those provided

for the arrest and commitment of a person charged with a public offence committed in this Province, except it be otherwise herein specially provided.

MLVII. The magistrate may admit the person arrested to bail, by a recognizance with sufficient sureties and in such a sum as he deems proper, for his appearance before him at a time specified in the recognizance, or for his surrender to be arrested upon the order or warrant of the governor of this Province.

MLVIII. Immediately upon the commitment of the person charged, the magistrate must give notice to the Secretary of the Province of the name of the person and the cause of his arrest, and must transmit at the same time to the Secretary an exemplified copy of the warrant of arrest, and of the operations and proceedings in support thereof.

The foregoing from Provincial Statutes.

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## TITLE IV.

## OF PROCEEDINGS RESPECTING VAGRANTS.

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1059. Who are vagrants.
1060. Peace officers, when required by any person, to carry vagrant before a magistrate for examination.
1061. Vagrant, when to be convicted. Form of certificate of conviction.
1062. Certificate to constitute record of conviction, and to be fyled. Commitment of vagrant.
1063. Peace officers to arrest and pursue a person disguised, and take him before a magistrate.
1064. Private citizen may do so, without warrant.
1065. Peace officer may require aid. Duty of persons required to aid him.
1066. Neglect or refusal to aid peace officer, without lawful cause, a misdemeanor. Punishment.
1067. Magistrate may depute a freeholder of the district or county to make arrest of person disguised. If his name be not known, fictitious name may be used.

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MLIX. The following persons are vagrants:

1. A person who, not having visible means to maintain himself, lives without employment:

2. A person who, being an habitual drunkard, abandons, neglects, or refuses to aid in the support of his family:

3. A person who has contracted an infectious or other disease, in the practice of drunkenness or debauchery, requiring charitable aid to restore him to health:

4. A common prostitute, who has no lawful employment, whereby to maintain herself:

5. A person wandering abroad and begging, or who goes about from door to door, or places himself in the streets, highways, passages, or other public places, to beg or receive alms, or causes or procures any child to do so;

6. A person wandering abroad and lodging in taverns, groceries, ale-houses, watch or station-houses, out-houses, market-places, sheds, stables, barns or uninhabited buildings, or in the open air, and not giving a good account of himself:

7. A person who, having his face painted, discolored, covered or concealed, or being otherwise disguised, in a manner calculated to prevent his being identified, appears in a road or public highway, or in a field, lot, wood or enclosure.

MLX. A peace officer must, when required by any person, carry a vagrant before a magistrate or police justice in the same city, village, town or county, or before the mayor of the same city, for the purpose of examination.

MLXI. If the magistrate be satisfied, from the confession of the person so brought before him, or by competent testimony, that he is a vagrant, he must convict him, and must make and sign, with his name of office, a certificate substantially in the following form:

"I certify that A. B., having been brought before me, charged with being a vagrant, I have duly examined the charge, and that upon his own confession in my presence, [*or, upon testimony adduced before me,*] by which it appears that he is a person [*pursuing the description contained in the subdivision above, which is appropriate to the case,*] I have adjudged that he is a vagrant.

"Dated at the [*or city*] of , the day of , 18

"E. F.,
"Justice of the Peace of the
of ," [*or as the case may be.*]

MLXII. The magistrate must immediately cause the certificate, which constitutes the record of conviction, to be fyled in the office of the Clerk of the Peace for the district or county, and must, by a warrant, signed by him with his name of office, commit the vagrant, if not a notorious offender, and a proper object for such relief, to the county or district House of Correction if there be one, for not exceeding six months, at hard labour, or if the vagrant be an improper person to be so committed, or if there be no such House of Correction, he must be committed for a like term, to the county jail, if there be one, or the jail of the district.

MLXIII. It is the duty of every peace officer to arrest and take such person before a majestrate, to be proceeded against as a vagrant; and when the peace officer is credibly informed, that the vagrant is within the district, county, city, village, or town, he must pursue him, and in like manner arrest him and convey him before the magistrate.

MLXIV. A private citizen of the county, district, city, town, or village, may also, without warrant, exercise the powers conferred upon a peace officer by the last article.

MLXV. In the execution of the duties imposed upon the peace officer he may command the aid of as many male inhabitants of

his county, city, village or town, as he may think proper; and a citizen so commanded, may provide himself or be provided with, such means and weapons as the officer giving command may designate.

MLXVI. A person so commanded to aid the officer, who without lawful cause refuses or neglects to do so, is guilty of a misdemeanor, and is punishable by a fine not exceeding five pounds, or by imprisonment not exceeding one month, or both.

MLXVII. A magistrate to whom complaint is made against a person charged as a vagrant, may, by a warrant, signed by him with his name of office, depute any freeholder of the district or county to arrest and bring the vagrant before him, to answer the complaint: and if the name of the person complained of be not known, he may be described in the warrant and in all subsequent proceedings thereon, by a fictitious name.

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## TITLE V.

## OF PROCEEDINGS RESPECTING DISORDERLY PERSONS.

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1068. Who are disorderly persons.
1069. On complaint, warrant to be issued.
1070. On confession or proof that he is a disorderly person, security to be required.
1071. If security given, defendant to be discharged. If not, to be convicted. Form of certificate.
1072. Certificate, to constitute record of conviction, and to be fyled. Commitment thereon.
1073. Undertaking, when forfeited.
1074. How prosecuted, proceeds how applied.
1075. When new security may be required, or defendant committed after recovery on recognizance.
1076. Defendant committed for not giving security, how discharged.
1077. Keeper of prison to return list of disorderly perso committed to Court of Sessions.
1078. Examination of the case by the Court.
1079. Court may discharge, or authorize the binding over of disorderly persons.
1080. Court may also commit him to prison. Nature and duration of imprisonment.

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MLXVIII. The following are disorderly persons;

1. Persons who actually abandon their wives or children, without adequate support, or leave them in danger of becoming a burden upon the public, or who neglect to provide for them according to their means;

2. Persons who threaten to run away, and leave their wives or children a burden upon the public;

3. Persons pretending to tell fortunes, or where lost or stolen goods may be found;

4. Keepers of bawdy houses or houses for the resort of prostitutes, drunkards, tipplers, gamesters, or other disorderly persons;

5. Persons who have no visible profession or calling, by which to maintain themselves, but who do so, for the most part, by gaming;

6. Jugglers, common showmen and mountebanks, who exhibit or perform for profit, puppet shows, wire or rope-dancers, or other idle shows, acts or feats;

7. Persons who keep, in a public highway or place, an apparatus or device for the purpose of gaming, or who go about exhibiting tricks or gaming, therewith;

8. Persons who play, in a public highway or place, with cards, dice or any other apparatus or device for gaming.

MLXIX. Upon complaint on oath, to a magistrate or police justice of a city, village or town, or to the mayor of a city or municipality, against a person, as being disorderly, the magistrate must issue a warrant, signed by him with his name of office, requiring a peace officer to arrest defendant, and bring him before the magistrate for examination.

MLXX. If the magistrate be satisfied, from the confession of the defendant, or by competent testimony, that he is a disorderly person, he may require that the person charged enter into a recognizance, with one or more sureties to be approved by the magistrate, to the following effect:

1. If he be a person described in the first or second subdivision of article 1068, that he will support his wife and children, and will indemnify the county, city, village or town, against their becoming, within one year, chargeable upon the public;

2. In all other cases, that he will be of good behaviour for the space of one year;

Or that the sureties will pay the sum mentioned in the recognizance, and which must be fixed by the magistrate.

MLXXI. If the recognizance be given, the defendant must be discharged. But if not, the magistrate must convict him as a disorderly person, and must make and sign with his name of office, a certificate in substantially the following form:

"I certify, that A. B., having been brought before me, charged with being a disorderly person, I have duly examined the charge, and that upon his own confession in the presence, [or, '*upon testimony duly adduced before me,*] by which it appears that he is a [*pursuing the description as above, which is appropriate to the case,*] I have adjudged that he is a disorderly person.

"Dated at the , of , the day of , 18

"E. F.
Justice of the Peace of the
of ," [*or, as the case may be.*]

MLXXXII. The magistrate must immediately cause the certificate, which constitutes the record of conviction, to be fyled in the office of the Clerk of the Peace, and must, by a warrant signed by him, with his name of office, commit the defendant to the jail of the district or county, for not exceeding six months at hard labor, or until he give the security prescribed above.

MLXXIII. The said recognizances shall be forfeited *ipso facto* by the commission of any of the acts which constitute the person by whom it was given a disorderly person, and in the case of a person described in the seventh and eighth subdivisions of article 1068, by his playing or betting, at one time or sitting, for money or property exceeding the value of five shillings.

MLXXIV. When a recognizance is forfeited, it may be prosecuted in the name of the Clerk of the Peace for the district or county where the same may be, and the sum collected in the action must be paid to the county or city treasury, as the case may be, in aid of its funds.

MLXXV. On a recovery on the recognizance, the Court in which it is had, may require from the defendant new security, in the manner above provided, or if he fail to give it, may commit him.

MLXXVI. A person committed as a disorderly person on failure to give security, may be discharged by any two Justices of the Peace or Police Justices, in the district, county or city, upon giving security, as originally required.

MLXXVII. The keeper of every prison to which disorderly persons may be committed, must return to the said Court of General Sessions of the Peace, on the first day of its next term after the commitment, a list of the persons so committed and then in his custody, with the nature of the offence of each, the name of the magistrate by whom he was committed, and the term of his imprisonment.

MLXXVIII. The said Court must thereupon inquire into the circumstances of each case, and hear any proof that may be offered, and must examine the record of conviction, which is evidence of the facts contained in it, until disproved.

MLXXIX. The Court may discharge a person so committed, from imprisonment, either absolutely or upon his giving security as herein provided, or if he be a minor, the Clerk of the Peace may bind him out in some lawful calling as a servant, apprentice, mariner or otherwise, until he be of age; or if he be of age, may contract for his service with any person, as a laborer, servant, apprentice, mariner or otherwise, for not exceeding one year. The binding out or contract, pursuant to this article, has the same effect as the indenture of an apprentice, with his own consent and that of his parents, and subjects the person bound out or contracted, to the same control as if he were bound as an apprentice.

MLXXX. The Court may also, in its discretion, order a person convicted as a disorderly person, to be kept in the district, county or city jail, for a term not exceeding six months at hard labour.

## TITLE VI.

# OF PROCEEDINGS RESPECTING MASTERS, APPRENTICES AND SERVANTS.

1081. Complaint against apprentice or servant, for absenting himself, or refusing to serve, or for a misdemeanor, or ill behaviour.
1082. Warrant, when complaint is made in the absence of the defendant and by whom and how executed.
1083. Hearing the complaint, and committing or discharging the defendant.
1084. Complaint against the master, for cruelty, mis-usage or violation of duty.
1085. Hearing the complaint, and dismissing it or discharging the apprentice or servant.
1086. Preceding articles, not applicable to apprentice with whom money is received or agreed for.
1087. Complaint by and against master in such case, and direction thereon, if not compromised by bail at session.
1088. Proceedings thereon, and order of the Court.
1089. Indenture or contract of service, how assigned on death of master.

MLXXXI. If an apprentice or servant, lawfully bound to service as prescribed by special statutes, or by law, wilfully absent himself therefrom, without the leave of his master, or refuse to serve according to his duty, or be guilty of any misdemeanor or ill behaviour, his master may take him before a magistrate in the county, district, city, or town, or before the mayor of a city or of the municipality where he resides, and make complaint of the facts under oath, or may, without taking him before the magistrate, make the like complaint.

MLXXXII. If the complaint be made in the absence of the defendant, and the facts be proved to the satisfaction of the magistrate, he must issue his warrant for the arrest of the defendant and so bring him before the magistrate forthwith, or at a specified time and place, to answer the complaint, which warrant any peace officer within the jurisdiction of the magistrate must accordingly execute, by arresting the defendant and taking him before the magistrate as directed.

MLXXXIII. The magistrate must immediately, or at a time to which he may, for good cause, adjourn the matter, proceed to hear the parties and their proofs, and if the complaint appear to be well founded, must commit the defendant to the district, county or city gaol, for not exceeding one month, at hard labour, where he must be confined in a room with no other person; or may, by his certificate, discharge the defendant from the service of his master, and the master from all obligations to the defendant.

MLXXXIV. If a master be guilty of cruelty, mis-usage, refusal of necessary provisions or clothing, or any other violation of duty toward his apprentice or servant, as prescribed by

special statutes or by law, or by the indenture or contract of service, the apprentice or servant may make complaint thereof on oath, to any magistrate where such master resides, who must summon the defendant before him at a specified time and place.

MLXXXV. The magistrate must immediately, or at a time to which he may for good cause, adjourn the matter, proceed to hear the parties and their proofs, and if the complaint be well founded, must, by his certificate, discharge the apprentice or servant from the service of his master; or if not, he must, by a similar certificate, dismiss the complaint.

MLXXXVI. The preceding articles of this title do not extend to an apprentice or clerk, whose master has received, or is entitled to receive a sum of money with him, as a compensation for his instruction.

MLXXXVII. Where money is paid, or agreed to be paid, on binding out a clerk or apprentice, the master or the clerk or apprentice may make complaint as before mentioned, and the magistrate to whom it is made, must examine it, as herein provided, and on such examination may make such order and direction between the parties, as the justice of the case may require, and if the complaint cannot be compromised, the magistrate must take a recognizance from the master, or from the clerk or apprentice as the case may be, for his appearance at the next Court of Sessions of the Peace for the district or county in a sum and with sureties approved by them to answer the complaint.

MLXXXVIII. Upon hearing the parties, the Court may, by an order entered upon the minutes, direct that the clerk or apprentice be discharged from service, and that the money paid or agreed for in binding him out, be refunded, if paid, to the person who advanced it, or his personal representatives, or if not paid, that it be discharged, and that any security given therefor be delivered up or cancelled, or may punish the clerk or apprentice by fine or imprisonment or both as for a misdemeanour.

MLXXXIX. Upon the death of a master to whom a person has been bound to service, as clerk, apprentice or servant, the personal representatives of the master may, with the written consent of the clerk, apprentice or servant, acknowledged before a magistrate, assign the indenture or contract of service to another, who thereby becomes vested with all the rights of the master, but if such written consent be refused, the assignment may be made with the same effect, under an order of the said Court of Sessions upon fourteen days notice of the application therefor, to the apprentice or to his parent or guardian, if there be any in the district or county.

## TITLE VII.

## OF CRIMINAL STATISTICS.

1090. Clerks of Criminal Courts to transmit statement to the Provincial Secretary.
1091, 1092. Report of Sheriff respecting persons convicted at those Courts and at Police Courts.
1093. Form of Report.
1094. Sheriff to make certain inquiries to enable him to make Report.
1095. Magistrates holding Courts to give information to Sheriff and to make certain inquiries.
1096. Copies of certificates of conviction in Magistrates' and Police Courts, to be transmitted to Provincial Secretary by Clerk of same.
1097, 1098. Clerks of the Peace to transmit transcripts of convictions to Secretary of the Province.
1099. Penalty for neglect to comply with provisions of this title.
1100. Secretary of the Province to cause this title to be published, and to report annually the information obtained pursuant thereto.

MXC. Within ten days after the adjournment of a Criminal Court the Clerk thereof must transmit to the Provincial Secretary, by mail, a certified statement of the number of indictments tried thereat, specifying the number for each offence, the number on which convictions were had, the number on which the defendant was acquitted, and the number of indictments against persons discharged without trial, specifying the number for each offence.

MXCI. Within ten days after the adjournment of such Court the Sheriff of the district or county where it was held must report by mail to the Provincial Secretary the name, occupation, age, sex, and native country, when known, of every person convicted at that Court of a public offence, with the degree of instruction which each person convicted has received, and such other information in relation to the persons so convicted, and their offences, as the said Secretary may require.

MXCII. A Report must be made in like manner by the Sheriff of every district or county in which there is a city, in respect to persons convicted at a Magistrates' or Police Court. The Report, in respect to such Courts must be made on the first days of January and July in each year.

MXCIII. The Report required by the last three articles must be made in the form to be prescribed by the said Secretary.

MXCIV. To enable the Sheriff to make his Report he may, either before or after conviction, by himself or his deputies, make all necessary inquiries of the persons convicted, and of the keeper of a gaol, penitentiary, or other prison where the persons convicted are confined, as well as of all other persons.

MXCVI. Every magistrate holding a Magistrate's or Police Court at which a person is convicted of a public offence, must, on being so required, furnish to the Sheriff of the county, all the information he can obtain, to enable the Sheriff to make the said report, and must make such inquiries of the persons convicted before them, and of others, as the said Secretary may direct.

MXCVII. When a Clerk of the Peace transmits to the said Secretary transcripts of convictions had in Criminal Courts, he must transmit therewith, copies of all certificates of convictions in Police Courts, fyled with him.

MXCVIII. The Clerk of each Police Court in the several cities of this Province must, on the first day of every month, transmit by mail, to the said Secretary, a transcript of the entry of every conviction of that Court, during the preceding month, containing the name of the offender, a description of the offence, and the judgment upon the conviction.

MXCIX. For every neglect of a magistrate, clerk or sheriff, to comply with the requirements of this title, he shall forfeit the sum of five pounds to be recovered in a civil action, in the name of the Queen.

MC. The said Secretary must cause this Title to be published with forms and instructions for the execution of the duties therein prescribed, and to be distributed among the officers therein mentioned, the expense of which must be paid from the Provincial funds. He must also annually report to the Legislature, the results of the information obtained in pursuance of this Title.

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## TITLE XII.

## MISCELLANEOUS PROVISIONS, RESPECTING SPECIAL PROCEEDNGS OF A CRIMINAL NATURE.

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1101. Parties to a special proceeding, how designated.
1102. Provisions of the article respecting entitling affidavits, applicable.
1103. Courts and magistrates to issue subpœnas, and punish disobedience of witnesses.

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MCI. The party prosecuting a special proceeding of a criminal nature, is designated in this Code as the complainant, and the adverse party as the defendant.

MCII. The provisions of the article in this code in respect to entitling affidavits in a criminal action, are applicable to special proceedings of a criminal nature.

MCIII. The courts and magistrates before whom a special proceeding is prosecuted, may issue subpœnas for witnesses, and punish their disobedience in the same manner as in a criminal action.

# TITLE XIII.

# MISCELLANEOUS PROVISIONS AND DEFINITIONS.

## CHAPTER I.

## MISCELLANEOUS PROVISIONS.

1104. Code not retroactive.
1105. Not to affect or alter laws relating to Her Majesty's land and naval forces.
1106. Provisions for magistrates extended to persons executing like duties.
1107, 1108. General saving clauses.
1109. As to existing practice.
1110, 1111. When code to take effect.

MCIV. No part of this Code is retroactive, unless expressly so declared.

MCV. Nothing herein contained shall alter or affect any of the laws relating to the Government of Her Majesty's land or naval forces.

MCVI. All provisions concerning Magistrates, Sheriffs or Coroners shall, so far as they are applicable, apply to such officers and those severally appointed to execute like duties, by whatsoever name such officers may be described or known, in ridings and others divisions or districts of limited local jurisdiction, not being judicial districts recognized by law.

MCVII. Nothing herein contained shall be deemed in any way to affect or alter any authority of Her Majesty's Privy Council or Principal Secretaries of State, or of either of the Houses of the Imperial Parliament or of the Provincial Parliament, in respect of any offence, or to affect the trial of any Peer or any impeachment or any summary proceedings in respect of any contempt against the said Houses of either Parliament or against any Court of Justice in this Province;

MBVIII. Or to repeal, abolish or alter any existing rule or practice of, in or relating to any Criminal Court now existing, and which may be necessary or useful for the carrying of the provisions of the Criminal Code or of this Code into effect, and which is not specially repealed, abolished or altered by any provisions contained in this Code,

MBIX. Where any new rule or practice, or the alteration of any rule or practice of any such Court shall be necessary for the carrying of the provisions of this Code into effect, it shall be competent to such Court to establish such rule, practice or alteration, provided it regards Courts of Sessions of the Peace, or Magistrates or Police Courts, in which no Judge of any of the Superior Courts of this Province shall preside, the sanction of two of whom shall be necessary for the establishment of any such rule, practice or alteration.

MCX. This Code applies to criminal actions and to all other proceedings in criminal cases which are herein provided for, from the time when it takes effect; and all such actions and proceedings, theretofore commenced, must be conducted in the same manner as if this Code had not been passed, without prejudice however to any proceeding already had therein.

MCXI. This Code shall take effect on the day of

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## CHAPTER II.

## DEFINITIONS.

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1112. Interpretation Act to apply to this Code.
1113. Term "writing."
1114. Term "signatures."
1115. Term "original."
1116. Term "determined."
1117. Terms "prosecuted and punished."
1118. Terms "to the tenor following," or "as follows."
1119. Term "purport."
1120. Terms "in manner and form following."
1121. Term "feloniously."
1122. Term "charge."
1123. Term "magistrate."
1124. Terms "peace officer."
1125. Terms "Superior Courts."
1126. Terms "public prosecutor."

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MCXII. The Provincial Interpretation Act shall apply to this Code, as far as it is applicable, and not altered by the provisions hereof.

MCXIII. The term "writing" includes printing.

MCXIV. The term "signature," includes a mark, when the person cannot write; his name being written near it, and the mark being witnessed by a person who writes his own name as a witness, except to an affidavit or deposition or a paper executed before a judicial officer, in which case the attestation of the officer is sufficient.

MCXV. The term "inquired" shall be deemed to signify that every proceeding preliminary to trial may be taken with respect to any offences.

MCXVI. The term "determined" that the offence may be tried, and every subsequent proceeding, including the punishment of the offender, may be so taken.

MCXVII. The term "prosecuted and punished," that every proceeding, whether preliminary or subsequent to trial, or upon such trial, may be taken with respect to the offender, unless in any such case there is something in the subject or context repugnant thereto.

MCXVIII. The term "to the tenor following," or "as follows," imports an exact copy.

MCXIX. The term "purport," means the substance of the instrument appearing on the face of the instrument on reading it.

MCXX. The term "in manner following," imports only the setting forth of the substance of an instrument, or of words to which they are applied.

MCXXI. The term "feloniously," as used in the description of any act or omission, shall be deemed to signify that the act was done or omitted to be done under such circumstances as constituted such act or omission a felony, within the provisions of the Criminal Code, or of this Code.

MCXXII. The term "charge" shall be deemed to include an indirect as well as a direct charge of any offence.

MCXXIII. The term "magistrate" shall extend to and include every judge, justice of the peace, or other judicial officer having authority, solely or jointly with another or others, to inquire of or hear and determine the offences within the limits of his jurisdiction.

MCXXIV. The term "peace officer" unless when otherwise provided, shall extend to and include any sheriff, coroner, constable, marshal, or policeman.

MCXXV. The term "Superior Courts" shall extend only to the Superior Courts of Common Law in Upper Canada, and the Court of Queen's Bench in Lower Canada.

MCXXVI. The term "public prosecutor" shall include the Attorney and Solicitor General, or any counsel in their stead appointed to conduct the criminal proceedings in any district or county, city or place.

MCXXVII. The term "civil law" shall refer to the civil law of England.

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Note.—In the references to the Notes to the Criminal Code, those in favour and those against the doctrine of the text are some times indiscriminately cited—the principal object in those instances being to refer to the places in the books where the subject of the text is treated. In this Code the citations are in support of the text.

# APPENDIX:

REFERRED TO IN THIS CODE, AND CONTAINING THE MANNER OF STATING THE ACT CONSTITUTING THE OFFENCE.

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## FORMS.

### No. 1.

### INDICTMENT FOR MURDER.

Without the authority of law, and with malice aforethought, killed C. D., by *shooting him with a gun or pistol*, or by *administering to him poison*, or by *pushing him into the river, whereby he was drowned*, or by *throwing him from the window of a building*, or by *means unknown to the Grand Jury*, or *as the case may be.*

### INDICTMENT FOR ARSON.

### No. 2.

*Arson, in the first degree.*

Wilfully set fire to, [*or burned,*] in the night time, a dwelling house, in which there was at the time, a human being, namely, C. D., [*or whose name is unknown to the Grand Jury.*]

### No. 3.

*Arson, in the second degree.*

Wilfully set fire to, [*or burned,*] an inhabited dwelling house in the day time, in which there was at the time, a human being, namely C. D., [*or whose name is unknown to the Grand Jury.*]

### No. 4.

*Or,*

Wilfully set fire to, [*or burned,*] in the night time a shop [*or warehouse or building*] (not being a dwelling-house in which there was at the time a human being,) and which shop [*or warehouse or building*] was adjoining to [*or within the curtilage of*] an

inhabited dwelling-house, so that such house was endangered by such firing.

No. 5.

*Arson, in the third degree.*

Wilfully set fire to [*or burned*] in the day time, a shop [*or warehouse or building,*] (not being a dwelling-house in which there was at the time a human being,) and which shop [*or warehouse or building*] was adjoining to [*or within the curtilage of*] an inhabited dwelling-house, so that such house was endangered by such firing.

No. 6.

*Or,*

Wilfully set fire to [*or burned*] in the night time the house of C. D., (not being a dwelling-house in which there was at the time a human being, nor a shop or warehouse or building) adjoining to [*or within the curtilage of*] an inhabited dwelling-house which was endangered by such firing.

No. 7.

*Or,*

Wilfully burned the ship named the , which was at the time insured by the insurance company of the against loss or damage by fire, with intent to prejudice such insurers.

No. 8.

*Arson, in the fourth degree.*

In the day time, wilfully set fire to [*or burned*] the house [*or building* of C. D., (not being, &c., [*as in No. 5, to the end.*]

No. 9.

*Or,*

Wilfully set fire to [*or burned*] a saw-mill [*or carding machine, or a building containing a carding machine, or a stack of grain, or a stack of hay*] not belonging to the said A. B.

## INDICTMENT FOR MANSLAUGHTER.

No. 10.

*Manslaughter, in the first degree.*

Was engaged in the perpetration of the following misdemeanor: [*stating it as in an indictment thereof.*]

And the said A. B., while engaged in the perpetration of such misdemeanor, without a design to effect death, by his act, [*or procurement, or culpable negligence,*] killed C. D., by [*striking him with a club, or by other means, to be stated as in No.* 1.

No. 11.

*Or*

Deliberately assisted one C. D., in the commission of self-murder, which crime the said C. D. then and there committed, by hanging himself by the neck until he was dead, [*or as the case may be.*]

No. 12.

*Manslaughter, in the second degree.*

Killed C. D., in the heat of passion, but in a cruel and unusual manner, and not under such circumstances as to constitute excusable or justifiable homicide, by striking him with a club, [*or stating the means according to the fact.*

No. 13.

*Manslaughter, in the third degree.*

Unnecessarily killed one C. D., by striking him with a club, [*or stating the means, according to the fact*] while resisting an attempt by the said C. D. to commit an assault and battery upon him, [*describing the offence or unlawful act attempted, according to the fact.*]

*Or,*

No. 14.

Was the owner of a bull, [*or other mischievous animal, describing it,*] and knowing its propensities, wilfully suffered such bull to run at large, [*or kept it without ordinary care*] and the said bull, while so at large, [*or not confined,*] killed one C. D., who took all the precautions which the circumstances would permit, to avoid such bull.

*Or,*

No. 15.

Was managing a steamboat called the
for gain, and wilfully [*or negligently*] received on board so many

passengers [*or such a quantity of lading*] that the said boat sunk [*or was overset,*] whereby C. D., who was on the said boat was drowned, [*or otherwise killed, according to the fact.*]

Same applicable to railroad carriages.

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## INDICTMENT FOR RAPE.

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No. 16.

Forcibly ravished E. F., a woman of the age of ten years or upwards.

*Or,*

No. 17.

Carnally and unlawfully knew G. H., a female child under the age of ten years.

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## INDICTMENT FOR ROBBERY.

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No. 18.

*Robbery in the first degree,*

Feloniously took a gold watch, [*or as the case may be,*] the property of C. D., from his person and against his will, by violence to his person, [*or by putting him in fear of some immediate injury to his person.*]

*No.* 19.

Feloniously took a gold watch, [*or as the case may be,*] the property of C. D., in his presence and against his will, by violence to his person, [*or by putting him in fear of some immediate injury to his person.*]

No. 20.

*Robbery in the second degree.*

Feloniously took a gold watch, [*or as the case may be,*] the property of C. D., in his presence [*or from his person,*] which was delivered [*or suffered to be taken*] through fear of some injury to his person [*or property, or to the person of a relative or member of his family,*] threatened to be inflicted at a different time which fear was produced by the threats of the said A. B.

## INDICTMENT FOR GRAND LARCENY.

No. 21.

Feloniously took and carried away a gold watch, [*or as the case may be,*] the personal property of C. D., [*or of a person whose name is unknown to the grand jury,*] of the value of more than five pounds.

No. 22.

*Or,*

Feloniously took and carried away, in a dwelling house, [*or ship or vessel,*] a gold watch, [*or as the case may be,*] the personal property, &c., as in No. 21, to the end,

No. 23.

*Or,*

Feloniously took and carried away, in the night time, from the person of C. D., a gold watch, [*or as the case may be,*] the personal property of the said C. D., [*or of a person whose name is unknown to the grand jury,*] of the value of more than five pounds.

## INDICTMENT FOR PETIT LARCENY.

No. 24.

Stole, took and carried away a silver watch [*or as the case may be,*] the personal property of C. D., [*or of some person unknown to the Grand Jury,*] of the value of five pounds or under.

## INDICTMENT FOR BURGLARY.

No. 25.

*Burglary, in the first degree.*

Broke into and entered in the night time the dwelling-house of C. D., in which there was at the time a human being, namely, the said C. D. [*or whose name is unknown to the Grand Jury*] with intent to commit larceny [*or other public offence, describing it generally*] therein, by forcibly bursting or breaking the wall, [*or an outer door or a window or a shutter of a window*] of such house [*or as the case may be.*]

No. 26.

*or,*

Broke into and entered, in the night time, the dwelling house of C. D., in which there was at the time a human being, namely, the said C. D., [*or whose name is unknown to the Grand Jury,*] with intent to commit larceny, [*or any other public offenee describing it generally,*] therein, by unlocking an outer door by false keys, [*or by picking the lock of an outer door.*]

No. 27.

*Burglary, in the second degree.*

Broke into and entered, in the day time, the dwelling house, &c., [*as in Nos.* 25 *and* 26, *to the end.*

No. 28.

*Burglary, in the third degree.*

Broke and entered, in the day [*or night*] time, a building within the curtilage of the dwelling house of C. D., but not forming a part thereof, with intent to steal therein, [*or if to commit any other public offence, describing it generally.*]

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## IN AN INDICTMENT FOR FORGERY.

No. 29.

*Forgery, in the first degree.*

Forged [*or counterfeited, or falsely altered, by erasing a material part thereof, or as the case may be,*] an instrument purporting to be [*or being*] the last will and testament of C. D., devising certain real and personal property, with intent to defraud.

No. 30.

*Or,*

Forged a certificate, purporting to have been issued by J. C., an officer duly authorized to make such certificate, of the acknowledgment of C. D., of the execution by him, of a conveyance to E. F. of certain real property in the town of with intent to defraud the said C. D.

No. 31.

*Forgery in the second Degree.*

Counterfeited the great seal of this Province, with intent to defraud.

No. 32.

*Or,*

Falsely made an impression, purporting to be the impression of the great seal of this Province, on an instrument in writing, being [*or purporting to be*] a , [*stating generally the purport of the instrument,*] with the intent to defraud.

No. 33.

*Or,*

Counterfeited a gold [*or silver*] coin of the republic of Mexico, called a dollar, which was at that time current, by custom or usage, with this Province.

No. 34.

*Forgery, in the third degree.*

Counterfeited a gold [*or silver*] coin of the Republic of France, called a franc, with the intent of exporting the same, to injure or defraud the citizens of that republic.

No. 35.

*Forgery, in the fourth degree.*

Had in his possession a counterfeit of a gold [*or silver*] coin of the republic of Mexico, called a dollar, which was at that time current in this Province, knowing the same to be counterfeited, with intent to defraud [*or injure*] by uttering the same as true, [*or false.*]

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## IN AN INDICTMENT FOR PERJURY.

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No. 36.

On his examination as a witness, duly sworn to testify the truth, on the trial of a civil action in the Court of , between C. D., plaintiff, and E. F., defendant, which Court had authority to administer such oath, he testified falsely, that [*stating the facts alleged to be false,*] the matters so testified being material, and the testimony being wilfully and corruptly false.

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## INDICTMENT FOR BIGAMY.

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No. 37.

Having a wife then living unlawfully married with one G. H.

## IN AN INDICTMENT FOR VIOLATING THE GRAVE.

No. 38.

Removed the dead body of O. P., [*or a human being, whose name is unknown to the Grand Jury,*] from the grave, for the purpose of selling the same.

## IN AN INDICTMENT FOR LIBEL.

No. 39.

Published in a newspaper called the , the following libel, concerning C. D.

## IN AN INDICTMENT FOR AN ASSAULT AND BATTERY.

No. 40.

Assaulted and beat C. D.